

August 21, 2017

Sent via email: commission.secretary@bcuc.com

Karen Campbell
Suite #390, 425 Carrall Street
Vancouver, BC, V6B 6E3
Tel: 604-685-5618 ext. 287
kcampbell@ecojustice.ca

Kegan Pepper-Smith
Suite #390, 425 Carrall Street
Vancouver, BC, V6B 6E3
Tel: 604-685-5618 ext. 267
kpsmith@ecojustice.ca

Site C Inquiry Panel
David Morton, Chair, and Commissioners
Karen Keilty, Dennis Cote and Richard Mason
British Columbia Utilities Commission
Sixth Floor, 900 Howe Street, Box 250
Vancouver, BC, V6Z 2N3

Dear Members of the Commission Panel,

Re: Inquiry into continuing, suspending or terminating the Site C project (“Site C Inquiry” or “Inquiry”)

We represent Sierra Club BC (“Sierra Club”) in the BC Utilities Commission’s (the “Commission” or “BCUC”) Site C Inquiry. Sierra Club is a member-based organization. Its members are BC Hydro rate-payers. Sierra Club has participated in other BCUC proceedings and intends to participate in the two phases of the Inquiry as established by Commission Order G-120-17 (the “Timetable Order”).

Pursuant to the Order of the Lieutenant Governor in Council No. 244 (the “OIC”), the Inquiry was ordered to assist in determining whether continuing with the Site C Project is in the public interest. Michelle Mungall, Minister of Energy, Mines and Petroleum Resources, captured the importance of the Inquiry when she stated:

Our government is delivering on our commitment to British Columbians by ordering an independent review of Site C to ensure we can keep hydro rates affordable. The previous government refused to allow our independent energy watchdog to examine the project to determine if it was in the public interest. That was wrong. We’re

*sending this project to the BCUC to ensure we make the right decision for B.C. families.*¹

The Commission has a responsibility to fully implement the Terms of Reference as set out in the OIC. After reviewing the several Commission Orders relating to the Inquiry, Sierra Club is concerned the process adopted for the Inquiry falls short in several respects.

Sierra Club makes the following recommendations which, if adopted, will aid the Inquiry in fulfilling its important public interest mandate:

- (1) Make materials provided by BC Hydro and Deloitte LLP publically available as soon as possible, and provide time for the public to comment on these materials in the first phase. If necessary, extend the August 30th deadline for participants to provide submissions;
- (2) Provide an opportunity in the second phase to test and challenge submissions; and
- (3) Issue an additional Order outlining how the Commission intends to “advise on the implications of” the scenarios set out in sections 3(a)(i)-(iii) of the OIC Terms of Reference.

(1) BC Hydro materials and Deloitte Reports should be made available prior to the first phase submissions deadline

Pursuant to the August 9th Commission Order G-121-17 (“Filing Order”), participants have until August 30th to file submissions. This is simply not enough time for participants to adequately prepare submissions.

The August 9th Filing Order directed BC Hydro to provide information and evidence to the Commission by August 30th. BC Hydro is also required to provide the Commission and its consultants with access to relevant documents and information, as requested. Unfortunately, the Filing Order does not specify whether the Commission will provide an opportunity for the public to review the information and evidence collected from BC Hydro.

It would be detrimental to the Inquiry if participants are not provided access to BC Hydro’s information, reports, analysis, and modelling before the August 30th deadline. Without access, participants will need to rely on limited and dated information. Such a limitation is not conducive to ensuring the public has adequate and accurate information in its participation in the Inquiry.

Sierra Club has similar concerns with the publication of the reports that the Commission has engaged Deloitte LLP to produce (the “Deloitte Reports” or “Reports”). According to the Timetable Order, the Commission will publish all non-confidential aspects of the Deloitte Reports prior to issuing the Preliminary Report on September 20, 2017.

¹ British Columbia, Energy, Mines and Petroleum Resources, “Province sends Site C project to BCUC for review”, News Release, 2 August 2017, online: <https://news.gov.bc.ca/releases/2017EMPR0018-001380>.

The Deloitte Reports should be made publically available prior to the initial submission deadline, or at least prior to the public’s deadline for submissions. Making the Deloitte Reports publically available earlier will ensure adequate opportunity for participants to assess and comment on this critical component of the Inquiry.

(2) Participants should be provided an opportunity in the second phase to test and challenge submissions

Sierra Club’s second issue with the Timetable Order is closely related to the first. It appears that there is no place in the Inquiry to test information, evidence, and analysis submitted by BC Hydro, Deloitte, or public participants. Denying opportunities to directly challenge and test submissions undermines the credibility of the process and the defensibility of the resulting final report.

Participants should be given an opportunity to serve information requests and cross-examine experts on their submissions. As the BC government has made clear, this Inquiry is of great public importance. Other public inquiries have included such opportunities to test and challenge evidence. For example, in the *Cohen Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River*, cross-examination was an important component of the process and it served to strengthen the resulting report.

(3) An additional Order should be issued explaining how the Commission intends to address section 3(a) of the OIC Terms of Reference

Sierra Club is concerned with the Commission’s scoping of the Inquiry. Through the OIC the BC Government tasked the Commission with *advising on the implications of*:

- (i) Completing the Site C project by 2024, as currently planned,
- (ii) Suspending the Site C project, while maintaining the option to resume construction until 2024, and
- (iii) Terminating construction and remediating the site.²

The Timetable Order is devoid of the “advise on the implications” language found in this section. Rather, the Timetable Order states that the OIC “specifically requests that the Commission provide responses to the following questions...”. The questions that follow mirror those of section 3(b) of the OIC’s Terms of Reference. Those questions require a binary “yes” or “no” or monetary answer.

Sierra Club’s concern is that the Commission is erroneously limiting the Inquiry by not including a reference to the requirement of “advising on the implications of”.

“Advising on the implications” of the scenarios set out in section 3(a)(i)-(iii) of the Terms of Reference requires much more than the simple answers contemplated in section 3(b).

² OIC, Terms of Reference 3(a)(i) – 3(a)(iii).

Merriam-Webster defines “advise” as giving “a recommendation about what should be done.”³ Cambridge English Dictionary defines “implications” as “the effect that an action or decision will have on something else in the future.”⁴ Accordingly, “advising” (providing *recommendations* about what should be done) on the “implications of” (the *effect of the options* as set out in 3(a)(i)-(iii)) involves a much more elaborate analysis and response than that which the Commission appears to have limited itself to.


Sierra Club asks the Commission to acknowledge the broader scope of Inquiry, thereby ensuring a quantitative *and* qualitative approach is adopted for determining whether the Site C project is in the public interest.

In conclusion, the credibility and rigor of the Inquiry process is important for the Commission to generate an informed and responsive report for the BC government. Implementing the changes outlined in this letter will aid in ensuring this commendable task is upheld.

All of which is respectfully submitted,



Karen Campbell
Barrister & Solicitor



Kegan Pepper-Smith
Barrister & Solicitor

³Merriam-Webster Dictionary, *sub verbo* “advise”, accessed August 17, 2017 <<https://www.merriam-webster.com/dictionary/advise>>.

⁴Cambridge English Dictionary, *sub verbo* “implication”, accessed August 17, 2017 <<http://dictionary.cambridge.org/dictionary/english/implication>>.