

New Energy: Modernizing the BC Utilities Commission

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Background

The *Utilities Commission Act* is based on an outdated model of regulating energy

The legislation that governs the BC Utilities Commission (BCUC), and by extension regulates utilities including BC Hydro and FortisBC is based on an outdated, 20th century model of centrally producing and delivering energy with minimal regard to social or environmental impact. The regulatory compact established throughout North America in the early 1900s was designed to encourage more efficient jurisdictional monopolies, in exchange for a mechanism to ensure that utilities acted “in the public interest” — defined at the time as providing service that was safe, reliable and affordable for the majority of ratepayers.

While these goals remain relevant today, regulation based purely on an optimized cost recovery model ignores the changes that have taken place in the energy system, in the values of societies, and in our global commitment to address climate change during the last 100 years. These include the urgent need to decarbonize nearly all end-uses of energy, the clear benefits of distributed and self-governed energy systems for rural and Indigenous communities; a commitment to equity, reconciliation, and anti-racism, and the disproportionate impacts of high energy bills on low-income households.

There is a critical opportunity on the horizon to influence the future of utility regulation in BC

In early 2022, two critical proceedings will come before the BCUC. The first is BC Hydro’s *Integrated Resource Plan*, which will set the direction for the utility’s planning for years to come, including its forecast demand for electricity in several scenarios. One such scenario will consider a pathway for electrification of BC’s economy, consistent with legislated climate targets. It is critical that this scenario be treated as the default, and used as a baseline for the utility’s planning process.

The second proceeding coming before the BCUC is BC Hydro’s *Rate Design Application*. BC Hydro is currently engaging with customers and stakeholders about the future of its tiered residential rate, and proposing a number of alternative options. Proper direction must be given to the utility to ensure that any new rate design be consistent with policy goals of encouraging electrification of space and water heating, electrification of transport, and protecting affordable energy access for households that experience energy poverty.

The BCUC is not permitted to pursue innovative approaches to regulation

Historically, the basic objectives of utility regulation, and rate structuring in particular (as popularized by James Bonbright in 1961¹) were to:

- a) Distribute costs fairly among customers
- b) Optimize efficiency

c) Recover costs and realize allowable profits

It is an oft-quoted principle of utility ratemaking (and in BC, a legislated requirement) that rates should not be “unduly preferential” to certain categories of customers. However, the concept of not discriminating unduly against certain groups is a critical extension of this principle. In an effort to avoid the perception of preferential treatment, utilities and regulators in BC have often overlooked the impacts that geographic location, housing conditions, ability to access programs, and access to energy sources have on some of BC’s most vulnerable ratepayers. The plight of rural and Indigenous communities that pay up to 3 times the provincial average on their electricity bills is one example of this disproportionate impact that is a consequence of “non-discriminatory” rate design principles.ⁱⁱ

A purely economic reading of the Bonbright principles also neglects the urgent need to address climate change, and reduce the associated cost burden on future ratepayers. For example, allowing a utility to expand natural gas service to new customers has the potential to increase costs for all ratepayers when that infrastructure is later rendered unprofitable or obsolete by a regulatory and societal shift to low-carbon electricity.

In summary

The BCUC is forbidden from approving or prescribing any expenditures that might be considered unduly preferential to certain customers – even if that prevents it from advancing other policy goals including:

- Decarbonization of the energy system, consistent with BC’s legislated emissions targets
- Electrification of key sectors of the economy, including buildings and transportation
- Advancing equity and poverty reduction goals by ensuring all British Columbians have secure and affordable access to energy regardless of language they speak, previous life experience in Canada, or income.
- Advancing economic reconciliation and self-determination by providing Indigenous communities autonomy in navigating and transforming their energy systems, grounded in the community’s culture, visions and aspirations

Implications

There are several examples of the current regulatory regime failing to align with public policy objectives and broader societal goals, some of the most pressing including:

1. Insufficient signal for utilities to contribute to meeting legislated climate targets

BC has set a highly ambitious GHG emissions reduction target for the building sector of 59-64% below 2007 levels by 2030. The most critical pathway to achieving this target will be widespread fuel switching in the residential and commercial sectors away from the use of polluting natural gas toward low-emissions electric heating.

Currently, there is no effective regulatory pathway that requires a utility’s resource plan or forecasted revenue requirements to align with this emissions reduction pathway. As a result, utility resource plans

and planned activities fail to adequately consider these targets. Although the BCUC may require that a utility consider greenhouse gas reduction targets in the course of a utility proceeding, there is little restriction on the expansion of fossil fuel infrastructure, in particular natural gas, which remains the most common heating fuel used in new buildings.

2. Inability to set an income-qualified electricity rate

The ability to protect low-income ratepayers from incurring high energy bills and experiencing energy poverty has been hampered by the BCUC's scope of regulation, notably in 2017 when the Commission determined it did not have the ability to set a lower rate for a disadvantaged group of customers, contrary to Government's stated intention to introduce this much-needed 'lifeline rate'.ⁱⁱⁱ In light of the ongoing engagement on residential rate designs by BC Hydro, and the COVID-19 pandemic's impact on British Columbia's most vulnerable citizens, it is more important than ever to ensure that these types of measures are given due consideration by the Commission.

3. Cancellation of key ratepayer protections

Although BC Hydro's Customer Crisis Fund was supported by 88% of ratepayers, the BCUC approved BC Hydro's request to terminate the pilot program in 2021 because it did not "generate a utility benefit sufficiently justifiable on an economic or cost of service basis". Such a narrowly defined objective clearly should not be the primary objective of such a program with wide social impacts and benefits.^{iv}

4. Failure to address equitable engagement and program design by utilities

BC Hydro is currently soliciting feedback from stakeholders in advance of the planned 2022 *Rate Design Application* proceeding before the BC Utilities Commission. In engaging with stakeholders regarding the rate design application, BC Hydro has solicited input solely online and only in English, a non-inclusive approach that effectively prevents at least 30% of BC Hydro's customers (the majority of whom are racialized and People of Colour) that speak a mother tongue other than English from engaging. This is just one recent example of BC Hydro's ongoing stakeholder engagement, programming, and communications approach that is not in line with BC Hydro's commitment to anti-racism^v or the BC *Multiculturalism Act*, which sets a high standard for the BC Government (as the majority shareholder of BC Hydro) to "carry on government services and programs in a manner that is sensitive and responsive to the multicultural reality of British Columbia".^{vi}

5. A rate structure that systemically disadvantages low-carbon heating

The prevailing inclining block residential rate structure penalizes those heating with low-carbon electricity, as it charges a higher rate to customers with higher consumptions (which is often correlated with the use of electric heating, particularly for rural areas). As a result, those without the means to install high-efficiency electric heating (e.g. heat pumps) are driven toward the use of polluting natural gas appliances as the lowest cost choice. And worse, low- or moderate-income households who switch to natural gas without the understanding or knowledge that their rates may increase must absorb this future financial impact.

Meeting BC's climate targets in the buildings sector will require significant fuel switching to electricity; yet under the BCUC's current mandate it will be difficult to implement rate structures that explicitly encourage fuel switching outside of periods of energy surplus. Expanding the mandate of the

Commission to fully incorporate legislated and sectoral climate targets would enable these options. The need to decarbonize BC's economy is independent from the state of our energy resource balance - whether we are in energy surplus or shortage, rates that encourage switching from fossil fuels to clean electricity are needed.

6. Insufficient opportunities for Indigenous communities to advance energy self-sufficiency and participation in the energy sector

In 2019, the BCUC undertook an inquiry related to the establishment of Indigenous utility entities in the Province. In its final report to Government, the BCUC noted that changes to the *Utilities Commission Act* would be required to enact the full scope of their recommendations. These include amendments requiring the BCUC to consider the principles of the UN *Declaration on the Rights of Indigenous Peoples* when working with Indigenous proponents seeking to develop public utilities, and to provide the BCUC with new jurisdiction to consider regulatory principles and compensation with regard to the operation of Indigenous utilities.^{vii} The *Utilities Commission Act* needs to be revised in order to be consistent with BC's *Declaration on the Rights of Indigenous Peoples Act*, and the spirit of reconciliation, enabling Indigenous communities greater autonomy and self-sufficiency over their energy systems.

Recommendations

Our organizations have considerable experience working within BC's regulatory regime, and in the course of our work we witness firsthand the implications and limitations of the BCUC's current mandate. We collectively recommend that the Government consider the following actions to modernize the Commission and enable it to more effectively support public policy objectives.

1. Align the ratemaking and resource planning process with legislated climate targets

Given appropriate enabling legislation, the BCUC could be playing a leading role in enabling an equitable transition of BC's energy system to be low-carbon and highly energy efficient. In order to affect this transition, the BCUC must be empowered to send a clear message to utilities that their demand forecasting, resource planning, rate-setting and demand-side management programs be aligned with a plan to meet legislated climate targets and achieve a just transition to a clean energy economy.

In the United States, utility regulators including those in Washington and California are now explicitly incorporating climate objectives into their mandates. Washington state has proposed new legislation that would phase out the use of natural gas in new construction – a critical regulatory tool to avoiding 'locking in' gas infrastructure that will contribute to carbon emissions for years or decades to come.^{viii} A similar situation is playing out in California, where the Public Utilities Commission launched new rulemaking in 2020 to manage the state's transition away from natural gas, coinciding with efforts from several California cities to phase out the use of natural gas in buildings.^{ix}

2. Ensure equity in rate design, and ensure that DSM programming reduces the incidence of energy poverty

The BCUC must be empowered to ensure that no groups are left behind or unduly disadvantaged in the transition to a low-carbon economy. In particular, in order to ensure that low-income households have equitable access to basic energy services and highly efficient heating technologies, the BCUC must be allowed to approve income-qualified services and/or rates.

The number of customers who would qualify for such provisions are small compared to the total number of ratepayers, keeping the potential impact on rates overall relatively modest.

Looking at successful examples of this type of regulation, Washington State's Utility Commission has a mandate to consider approving rates, charges, services and facilities at a discount for income-qualified ratepayers. The costs and lost revenues for providing these discounts are included in a utility's cost of service and are recovered by all ratepayers.^x The Public Utilities Commission in California is enabled to administer a program of this type as well. The California Alternate Rates for Energy (CARE) program, which has been in place for nearly twenty years, enables a 30-35% discount for electric bills and a 20% discount on natural gas bills for low-income customers.^{xi} Expenditures of this nature would almost certainly be disallowed in BC's current regulatory environment.

Additionally, the BCUC must ensure all British Columbians are engaged, empowered and considered in a utility's DSM programming, communications, and stakeholder engagement. Like government agencies, BC Hydro should incorporate Gender-based Analysis+ to ensure all customers are considered in program design, outreach, and communications. Newcomers, immigrants, lower and moderate-income families and other vulnerable groups also have historically low rates of participation in programs as a result of the lack of focused outreach and consideration for their unique needs.

3. Shift BC Hydro's Residential Conservation Rate structure to one that encourages fuel switching

Instead of considering opt-in rates only, BC Hydro should be required to consider a range of opt-out and/or default rate structures in its 2022 RDA, including structures that are specifically designed to encourage electrification by making the business case for switching from fossil fuel heating to high-efficiency electric heating more attractive.

Alternative rate designs could include an opt-out time of use rate, combined with an opt-in electrification rate for customers who switch from fossil fuels to high-efficiency electric heating. Another possible structure is an opt-in baseline electricity usage block that is larger than the current Tier 1 block, available only to customers that are using electricity as their primary home heating fuel.

The latter approach, utilized in California, not only encourages electrification of heating but could also begin to address one of the fundamental drivers of energy poverty, by reducing the rate paid for an 'essential services usage block' of electricity to cover basic heating, lighting and cooking. Such an initiative should continue to be complimented by significant and lasting incentive programs, e.g. through Better Homes BC, to help cover the higher capital cost of a heat pump as compared to a fossil fuel furnace (thus discouraging switching to either fossil fuel or electric baseboard heating).

4. Establish a provincial agency explicitly tasked with delivering DSM and electrification.

As an alternative to mandating that existing utilities improve their DSM, electrification and bill equity programs, an independent provincial agency could be established with a clear mandate to deliver on these objectives. Such an approach would require further design and engagement, but has been successful in other provinces that operate or have operated energy efficiency agencies, including Nova Scotia, Alberta and Manitoba.

Conclusion

Many of the original objectives that spurred the regulation of utilities in the early 20th century have not changed – providing safe, reliable and affordable energy to ratepayers without *undue* discrimination is still a worthy goal of an energy regulator or utilities commission. However, the energy system is evolving, and a more modern and innovative approach is needed to ensure regulators have the tools to keep up with technological changes, environmental threats, and societal goals.

Expanding the mandate of the BCUC to incorporate values of climate action and energy security, as well as meeting electrification and market transformation goals, will require a change from the status quo established in the current *Utilities Commission Act*. As long as utilities are regulated purely on a cost-of-service basis, there will be an insufficient signal for them to plan for a low-carbon, electrified future, or to invest in emissions-reducing technologies, or to protect their most vulnerable customers from the impacts of energy poverty or unexpected hardship.

Without this signal, it will become increasingly difficult for BC to meet its legislated climate targets, implement the CleanBC plan, or make meaningful progress on reducing the prevalence of energy poverty. BC needs a new set of ‘Bonbright’ principles for the 21st century. Fortunately, leading jurisdictions like Washington and California have shown the way, and provide an excellent blueprint for regulatory reform.

Contact

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