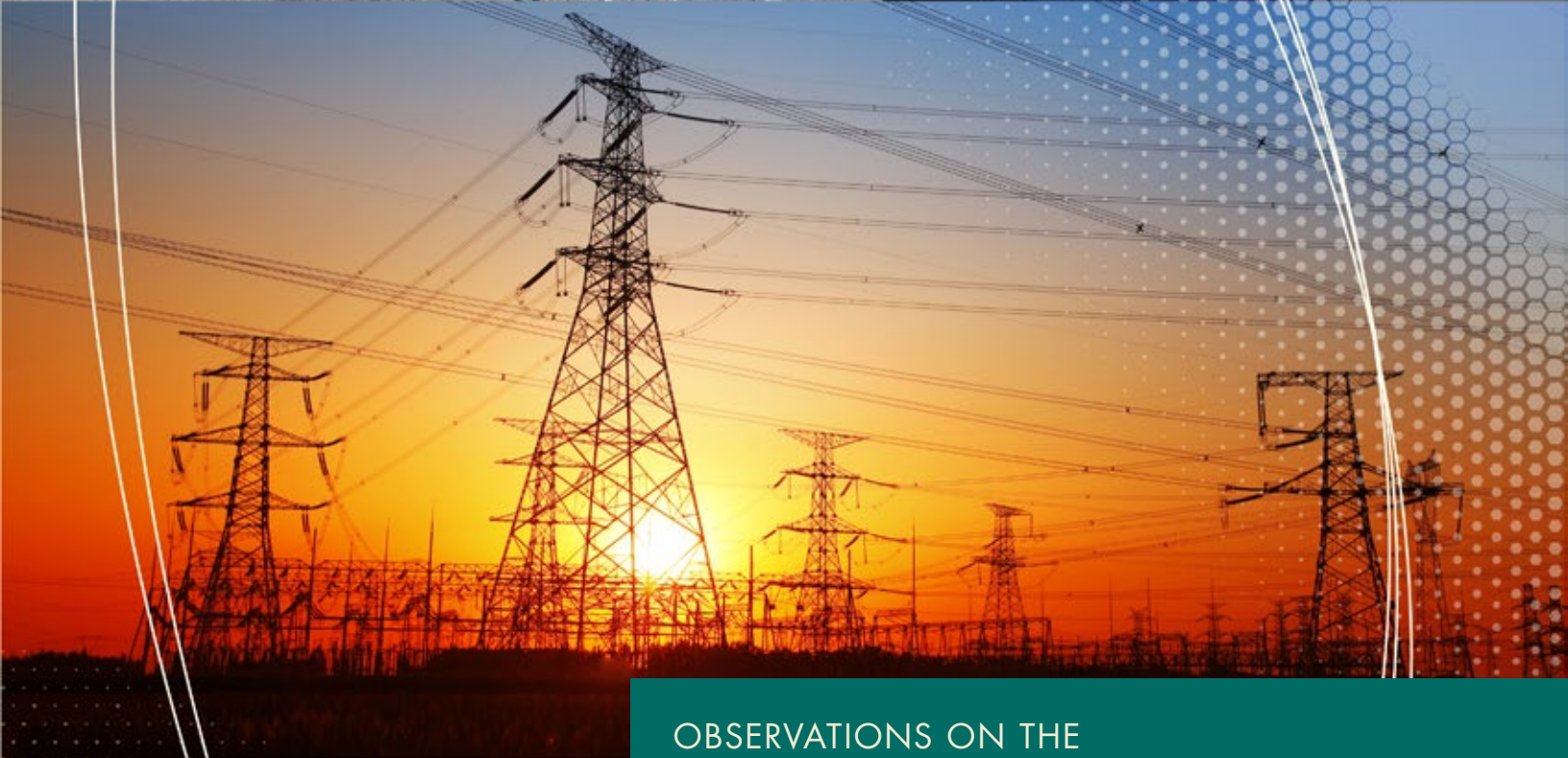


March 2018



OBSERVATIONS ON THE BC UTILITIES COMMISSION

www.bcauditor.com



OFFICE OF THE
Auditor General
of British Columbia

CONTENTS

Auditor General's comments	3
Report highlights	5
Response from the BC Utilities Commission and the Ministry of Attorney General	6
Background	8
Overview of the BC Utilities Commission	8
Recent government reviews of the commission	10
What we did	12
Observations	13
Independence of the commission	13
Review of large projects by the commission	15
Clarity of policy guidance	17
Capacity of the commission	18
Effectiveness of processes and performance	18
Appendix A: common terms	20

623 Fort Street
Victoria, British Columbia
Canada V8W 1G1
P: 250.419.6100
F: 250.387.1230
www.bcauditor.com

The Honourable Darryl Plecas
Speaker of the Legislative Assembly
Province of British Columbia
Parliament Buildings
Victoria, British Columbia
V8V 1X4

Dear Mr. Speaker:

I have the honour to transmit to the Speaker of the Legislative Assembly of British Columbia the report, *Observations on the BC Utilities Commission*.

We are issuing this report under section 12 of the *Auditor General Act*, which provides for the Auditor General to make a report at any time to the Legislative Assembly or other government organization.

Our report is a summary of information obtained during the course of our ongoing planning activities. This information has not been subject to audit and accordingly we provide no assurance thereon.



Carol Bellringer, FCPA, FCA
Auditor General
Victoria, B.C.
March 15, 2018

AUDITOR GENERAL'S COMMENTS

THE BRITISH COLUMBIA Utilities Commission (the commission) regulates some of the biggest companies in B.C.—including BC Hydro, FortisBC and the Insurance Corporation of British Columbia (ICBC)—which together, provide services to almost all residents in the province. Utility companies such as BC Hydro and FortisBC naturally tend to be monopolies because of the significant amount of money needed to build and maintain the necessary infrastructure. Therefore, an effective regulator is in the interests of all British Columbians.

The Legislative Assembly created the commission in 1980 to protect the interests of ratepayers, while still allowing utility companies to earn a fair return. The commission considers and decides on individual applications from utilities, such as requests for rate changes and new facilities.

Government can direct the commission to take certain actions or not take action at all. British Columbia has a history of government directing the outcome of the commission's decisions or, in some cases, excluding it from key decisions altogether. For example, as recent as 2017, government direction restricted the commission's review of ICBC rates.

An independent regulator, such as the commission, can offer government objective, transparent and well-informed advice, particularly when government is deciding on matters with competing or conflicting interests. The commission is also able to provide important financial oversight of the utilities it regulates by considering both the short and long-term interests of ratepayers as well as the financial viability of the companies it regulates.

Government already knows how it can use the commission more effectively. Government's 2014 task force identified risks to the



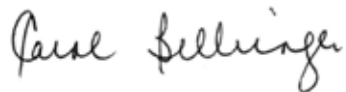
CAROL BELLRINGER, FCPA, FCA
Auditor General

AUDITOR GENERAL'S COMMENTS

commission's effectiveness and made recommendations for improvement. Our work identified many of the same risks. Over the last three years, government and the commission have made changes, but it is not clear how government intends to proceed with outstanding recommendations.

Over the years, government has committed to strengthening and protecting the independence and credibility of the commission. As such, we encourage government to clarify its intentions regarding the outstanding recommendations.

My thanks to the British Columbia Utilities Commission, and to everyone we spoke with, for their involvement and cooperation in this work.



Carol Bellringer, FCPA, FCA
Auditor General
Victoria, B.C.
March 2018

REPORT HIGHLIGHTS

UTILITY COMPANIES naturally tend to be **MONOPOLIES**

COMMISSION REGULATES energy utilities and basic auto insurance like BC Hydro, FortisBC and ICBC

COMMISSION can offer government **OBJECTIVE, TRANSPARENT AND WELL-INFORMED ADVICE**



An **INDEPENDENT REGULATOR** provides important **FINANCIAL OVERSIGHT**

MISSION: reliable services at **FAIR RATES** for consumers & **FAIR RETURNS** for service providers



COMMISSION DECIDES ON REQUESTS FROM UTILITIES, like rate changes and new facilities



Government **TASK FORCES** identified risks to the commission's **EFFECTIVENESS** and **RECOMMENDED CHANGES**

We encourage government to **CLARIFY ITS INTENTIONS** around outstanding recommendations



BC GOVERNMENT has **DIRECTED** commission **DECISIONS** and **EXCLUDED IT FROM KEY DECISIONS**



RESPONSE FROM THE BC UTILITIES COMMISSION AND THE MINISTRY OF ATTORNEY GENERAL

WE APPRECIATE THE opportunity to respond to the Office of the Auditor General report.

The Auditor General report highlights many of the issues the BCUC and Government are addressing as we continue to improve the BCUC's effectiveness and value as the sole provincial regulator of energy and compulsory automobile insurance. The energy and compulsory automobile insurance environment are becoming increasingly complex and it is important that the BCUC stays informed of and educated on emerging trends and that it has adequate capacity to carry out its mandate.

Over the last three years, the BCUC and Government have made changes to address the 35 recommendations made by the Independent Task Force. The Task Force was appointed by Government to review the BCUC and provide a report with findings and recommendations to increase the BCUC's effectiveness and efficiency. The final report was published in November of 2014.

Of the 35 recommendations 19 were directed to the BCUC, 14 were directed to Government and 2 require no action by either BCUC or Government. Of the 33 recommendations that are actionable 21 have been fully addressed or significant progress has been made.

The remaining recommendations require government policy or legislative change.

BCUC recognizes the importance of retaining and attracting professional talent. The Auditor General observes that the staff compensation structure has not changed since the 2014 report in which the Task Force recommended that:

“Government should continue to approve BCUC's compensation framework but increase the upper limit of compensation ranges in line with market levels so the Commission is competitive in recruiting and retaining qualified individuals.”

Developing and sustaining expertise in-house is imperative to ensuring that the BCUC is able to carry out its mandate, as well as its mission to be a trusted and respected regulator that contributes to the wellbeing and long-term interests of British Columbians. This remains an important issue for BCUC and it will continue to work with government on this matter.

The Ministry of Energy, Mines and Petroleum Resources (MEMPR) notes the observations in

RESPONSE FROM THE BC UTILITIES COMMISSION AND THE MINISTRY OF ATTORNEY GENERAL

the report regarding the Commission's challenge to balance the diverse British Columbia energy objectives set out in section 2 of the *Clean Energy Act*. In a letter dated July 19, 2017 the Premier directed the Minister of Energy, Mines and Petroleum Resources regarding priorities, including "Create a roadmap for the future of B.C. energy that will drive innovation, expand energy-efficiency and conservation programs, generate new energy responsibly and sustainably, and create lasting good jobs across the province."

MEMPR intends that the initiative to "create a roadmap for the future of B.C. energy" will set strategic energy policy. This effort is at an early stage of development. Government consideration of legislative changes, including any changes that affect the energy objectives of the *Clean Energy Act*, will be a component of this strategic policy initiative.

With respect to the remaining recommendations that have not been addressed, government commits to reviewing them in collaboration with the BCUC and determining next steps.

BACKGROUND

PUBLIC UTILITIES AND THEIR REGULATION

A **PUBLIC UTILITY IS A COMPANY** or organization that maintains the infrastructure and delivery of public services, such as electricity or natural gas. Public utilities can be privately owned, as in the case of FortisBC, or publicly (Crown) owned, as with BC Hydro. In B.C., the *Utilities Commission Act* defines what is considered a public utility for the purposes of regulation and oversight.

Public utilities often operate in a market dominated by a single seller or a small number of sellers. This is because building and maintaining the infrastructure for utilities has traditionally lent itself to economies of scale, is expensive and can take decades. This creates barriers to entry and therefore gives the advantage to the largest, and often the first, supplier on the market, with little room for competition. This is often referred to as a natural monopoly.

Control over a market can lead to undesirable behaviour (e.g., high prices or poor services). To protect consumers from utility monopolies, governments set up commissions or boards to regulate public utilities. Commissions provide oversight and transparency of utilities' activities while still affording shareholders a reasonable opportunity to earn a fair return on their invested capital.

OVERVIEW OF THE BC UTILITIES COMMISSION

The British Columbia Utilities Commission (the commission, sometimes referred to as BCUC) is responsible for regulating B.C.'s energy utilities, compulsory automobile insurance rates, intra-provincial pipelines and the reliability of the electrical transmission grid.

The commission oversees some of the biggest companies in B.C., including public utilities like BC Hydro and FortisBC, as well as the Insurance Corporation of British Columbia (ICBC). Together, these three organizations provide services to almost all residents in the province. Annually, their revenues total over \$13 billion.

THE COMMISSION'S MISSION

To ensure that ratepayers receive safe, reliable and non-discriminatory energy services at fair rates from the utilities it regulates, and that shareholders of those utilities are afforded a reasonable opportunity to earn a fair return on their invested capital.

(Note: The commission also regulates compulsory automobile insurance rates, which is not reflected in its mission statement.)

BACKGROUND

The commission also regulates a number of small- and medium-sized utilities that provide energy services (gas, thermal and electrical), such as Pacific Northern Gas and Nelson Hydro.

In addition, the commission:

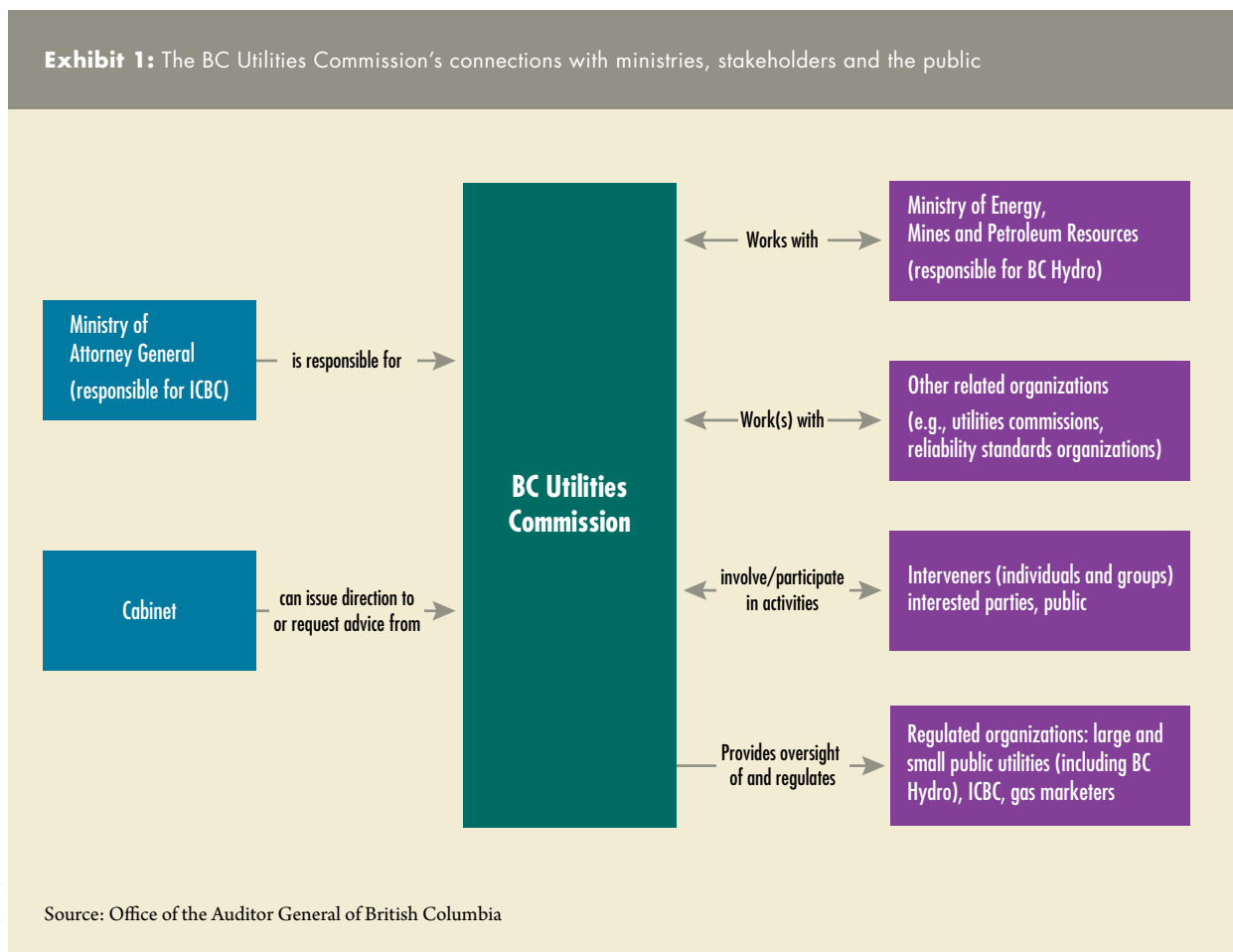
- ◆ establishes tolls and conditions of service for intra-provincial pipelines
- ◆ licenses and sets conditions for gas marketers (licensed gas retailers)
- ◆ establishes mandatory standards for the reliability and security of interconnected power systems
- ◆ reviews ratepayer complaints

The *Utilities Commission Act* is the primary legislation that determines the extent of the commission's oversight. The commission interacts with different ministries and stakeholders as part of its work (see Exhibit 1).

The Legislative Assembly of British Columbia (the legislature) created the commission in 1980 to:

- ◆ establish a public and comprehensive review process for energy projects
- ◆ fully regulate BC Hydro electricity rates
- ◆ review B.C.'s energy exports
- ◆ fulfil energy policy commitments

Exhibit 1: The BC Utilities Commission's connections with ministries, stakeholders and the public



Source: Office of the Auditor General of British Columbia

BACKGROUND

The commission replaced the BC Energy Commission, which regulated privately owned utilities (but not BC Hydro). The legislature brought the regulation of ICBC basic insurance rates under the commission's purview in 2003.

The commission sits within the executive branch of government, under the authority of the Ministry of Attorney General. The commission is often referred to as quasi-judicial because—similar to the judicial branch of government—it can make enforceable rulings based on applicable laws, evidence and proceedings of individual cases. In this way, the commission operates as an administrative tribunal (see [Appendix A](#)). Decisions and rulings by the commission are enforceable under the *Utilities Commission Act* and appealable to the B.C. Supreme Court or B.C. Court of Appeal.

Similar to other utilities commissions in Canada, in North America and around the world, the commission provides regulatory oversight through reviews, proceedings, orders and decisions. Regulatory oversight includes reviewing and approving rates charged to customers and proposed infrastructure projects. The commission also monitors utilities' compliance with regulations and orders.

The commission's process for regulating utilities varies. When reviewing larger applications from utilities (e.g., a proposed new power-generating facility), the commission will normally:

- ◆ publicly post non-confidential evidence entered into the proceeding
- ◆ involve interested parties, interveners and the general public

- ◆ consider various legal tests (based on the *Utilities Commission Act*)
- ◆ issue orders
- ◆ make a final decision

The commission is funded directly by the organizations it regulates (through levies and fees) and therefore by the ratepayers of those organizations. In 2015/16, 75 percent of the commission's revenue came from levies and 25 percent from direct recoveries from proceedings and ICBC. The large utilities make up the bulk of the revenue from levies, with 51 percent from FortisBC and 46 percent from BC Hydro.

Recent government reviews of the commission

The B.C. government has undertaken two reviews of the role, responsibilities and performance of the BC Utilities Commission. In January 2013, the Minister of Energy, Mines and Natural Gas appointed a three-person task force (2013 task force) to examine the provincial electricity policy and regulatory framework and make recommendations. The task force released its report, [Industrial Electricity Policy Review](#), in October 2013.

The 2013 task force found that the commission had a restricted role in regulating BC Hydro, citing examples where government removed the commission's authority over BC Hydro, as authorized under the *Utilities Commission Act*. The task force also reported that most participating stakeholders would like the commission to regain its regulation of BC Hydro rates.

BACKGROUND

Stakeholders that participated in the 2013 task force also raised concerns about the commission's capacity to deliver clear, timely decisions. The task force found that most stakeholders wanted to see a strengthened, better-resourced commission and recommended that government undertake an independent review of the commission to evaluate its resource needs and performance.

In response to the 2013 task force's report, the Minister of Energy and Mines and Minister Responsible for Core Review appointed a separate task force in 2014 (2014 task force) to review, evaluate and make recommendations about the commission's processes, structure, resource needs, performance and other matters. A goal of the review was to get the commission back to setting BC Hydro electricity rates.

The 2014 task force consulted with stakeholders and hired professional services company KPMG to review the commission's performance and operations. The 2014 task force's final report, [Independent Review of the British Columbia Utilities Commission](#), released publicly in February 2015, had seven key findings for restoring a "strong and independent BCUC" (see sidebar) and 35 recommendations for government and the commission.

In 2015, government accepted the 2014 task force's recommendations to strengthen the commission and committed to working with the commission to implement them.

Although our report refers to the work of both task forces, we did not audit their results or findings.

KEY FINDINGS OF THE 2014 TASK FORCE

In its final report, the 2014 task force highlighted seven key findings for restoring a strong and independent commission, as follows:

1. It is the provincial government's prerogative to set provincial energy policy, to define the commission's mandate, and to direct the Commission on specific matters.
2. The existence of an independent expert Commission is more important than ever today. By regulating monopolies the BCUC provides an essential public service. Unfortunately the government and key stakeholders have less confidence in the BCUC than in the past.
3. The Commission needs to be strengthened, and be seen to be strengthened.
4. The Commission staff needs to be strengthened.
5. Commission review processes should be improved.
6. Crown corporations present unique regulatory challenges.
7. Solutions to most of the Commission's challenges do not require legislative or regulatory changes.

(For a complete description of the key findings and recommendations, see the full report: [Independent Review of the British Columbia Utilities Commission: Final Report, 2015](#), pp. 1–2 and 45–47.)

WHAT WE DID

IN OUR 2015/16–2017/18 [Performance Audit Coverage Plan](#), we committed to looking at whether the BC Utilities Commission is exercising effective oversight of the organizations it regulates.

In late 2016, we started planning an audit of the commission by identifying risks to the commission's effectiveness. We looked at roles and responsibilities, legislation and policies, processes and proceedings, and the internal operations of the commission. We talked to:

- ◆ BC Utilities Commission commissioners and staff
- ◆ staff from the Ministry of Energy, Mines and Petroleum Resources and the Ministry of Attorney General¹
- ◆ stakeholders of the commission, including several regulated organizations and intervenor groups
- ◆ subject-matter experts in utilities regulation
- ◆ panel members and other participants involved in the work of the 2014 task force

Our planning work identified many of the same risks to the commission's effectiveness as were previously identified by government through its task force reviews. We also noted that work has been done and is ongoing in implementing task force recommendations. It is not clear, though, how government intends to proceed with outstanding recommendations. Consequently, we decided that further audit work at this time would not contribute to a better understanding of the issues. We stopped the audit, but because of the critical importance of an effective regulator we have issued this report to draw attention to key aspects of the task forces' work that still warrant consideration by government.

¹ Prior to July 2017, the Ministry of Energy and Mines and the Ministry of Justice.

OBSERVATIONS

INDEPENDENCE OF THE COMMISSION

EXPERTS TOLD US that independence is essential if a regulator is to be effective and credible. According to the BC Council of Administrative Tribunals (BCCAT), this means a regulator should have the independence to make objective decisions that are based on publicly available facts. These facts should come from evidence during official proceedings, rather than from undue influence or other pressures.

Independence enables regulators, like the BC Utilities Commission, to consider the short- and long-term interests of its stakeholders, which includes ratepayers, utilities regulated by the commission, and the public. For decisions on matters with competing or conflicting interests, BCCAT noted that an independent decision-maker creates trust among its stakeholders.

Independence engenders respect for the tribunal, and the regulatory process, and leads to broader acceptance of regulatory decisions. ([Independent Review of the BC Utilities Commission, 2014](#))

However, independence does not mean that regulators should operate in isolation. Rather, they are subject to a number of factors, including:

- ◆ laws enacted by the legislature
- ◆ policies from government
- ◆ court decisions
- ◆ public demands

An independent regulator is not and should not be independent of these other factors.

In addition to these factors, Section 3 of the *Utilities Commission Act* allows government to issue direction to the commission, and the commission must comply with that direction. A direction (or directive) from government can require the commission to exercise a power, perform a duty, or refrain from doing either.

The 2013 task force found that government issued 87 regulatory directives to the commission for BC Hydro between 1980 and 2013. Each directive ordered the commission to take certain action or actions (e.g., interpret provincial energy policy a particular way, consider certain matters, issue regulatory orders or set specific rates) or refrain from taking action.

The 2014 task force explored the independence of the commission and how government directives can affect it. QC Rowland Harrison summed up the issue as follows:

The fundamental question is this: Is the BCUC truly intended to be “an independent regulatory agency ... a quasi-judicial tribunal that makes decisions ...” or is it an agent that, to a large degree, implements decisions made by cabinet? Currently, the Commission is described as the former, but is closer to being the latter when it is subject to detailed and prescriptive directives issued by the provincial cabinet.

OBSERVATIONS

ICBC PROCEEDINGS, DECEMBER 2016

The commission reviews and approves ICBC's annual revenue requirements and corresponding basic insurance rates (that ICBC charges to customers). As part of the 2016 proceedings, the commission asked ICBC to provide a set of hypothetical scenarios and describe how they would affect basic insurance rates. ICBC's response to the scenarios projected substantial increases in rates. That information was released publicly in November 2016.

Shortly after, government changed the terms of the commission's proceedings and launched a separate review of ICBC's basic insurance rates. In December 2016, government issued a series of special directions to the commission that, among other things, capped rate increases for basic insurance at 4.9 percent and reduced the time available for the commission's proceedings.

Similarly, in December 2017, government directed the commission to issue orders related to ICBC's basic insurance rates. This direction changed the terms of the commission's review, decreased time available for proceedings, and capped the basic insurance rate increase at 6.4 percent.

The 2014 task force view was that the provincial government should set provincial energy policy, define the commission's mandate, and direct the commission on specific matters. However, government's directions to the commission should not dictate specific outcomes or intrude on the commission's consideration of individual applications.

Subsequent to the task force report, government continued to direct the commission in relation to BC Hydro and ICBC. Government directives to the commission in December 2016 and December 2017 specifying the amount of ICBC basic automobile rate changes are examples (see sidebar).

Government has also directed the commission with regard to BC Hydro rates and associated rate-regulated accounting (see sidebar [page 15](#)). In 2011, government mandated the accounting standard that BC Hydro had to meet, but waived the requirement for an independent third-party regulator. This is one of the reasons why we issued a qualified audit opinion on B.C.'s 2016/17 Summary Financial Statements.

As we noted in our report, [Understanding Our Audit Opinion on B.C.'s 2016/17 Summary Financial Statement](#), even though B.C. has an independent third-party regulator (the BC Utilities Commission), government has issued a number of directions that the commission must follow in the rate-setting process. The overall effect has been to limit rate increases, thereby increasing the costs that will have to be covered in the future. Because we don't know what the commission would have allowed in the absence of government direction, our audit opinion did not quantify the financial impact.

OBSERVATIONS

RATE-REGULATED ACCOUNTING

Rate-regulated accounting is an internationally accepted practice that, in part, enables public and private corporations, including utilities, to defer the recognition of expenses and revenue into the future. Being subject to rate regulation means a corporation may smooth out the recovery of costs over a longer period rather than increasing rates dramatically in one year and then lowering rates in following years (e.g., if a destructive storm takes out the power grid one year, the repairs can be quite costly). An independent regulator plays a critical role in the rate-setting process; part of that role is to ensure that the deferred amounts can reasonably be absorbed in future rates.

THE CLEAN ENERGY ACT

In 2010, the Legislative Assembly of British Columbia passed the *Clean Energy Act*, which exempted a number of BC Hydro projects and plans from the commission's review, including:

- ◆ Site C dam
- ◆ Northwest Transmission Line
- ◆ Mica Dam Units 5 and 6
- ◆ Revelstoke Dam Unit 6
- ◆ power supply proposals from independent power producers
- ◆ the smart meters program
- ◆ the integrated resource plan, outlining the long-term plan to meet electricity demand
- ◆ the operation of Burrard Thermal

REVIEW OF LARGE PROJECTS BY THE COMMISSION

Government can issue directions or special directives to the commission. It can also exempt projects, programs and expenditures from the commission's review altogether. Government has done this under the *Clean Energy Act* (see sidebar) and Sections 3 and 22 of the *Utilities Commission Act*.

The 2014 task force noted that limitations on a regulator or exemptions from regulation can make sense for smaller utilities or in an effective competitive environment, where the cost of full regulation exceeds the potential benefits.

However, there is a risk that exempting the commission from reviewing large projects can undermine public confidence in those projects and in the regulator itself. As noted by both the 2013 and 2014 task forces, regulators are set up in part to provide a transparent and evidence-based process for regulation.

The Site C dam—exempted from the commission's review in 2010—demonstrates this. Our office has received many requests to examine government's decision to build the Site C dam, which government initially excluded from the review process.

Government's decisions to exclude the commission from overseeing certain BC Hydro projects is inconsistent with one of the original purposes of the commission—to fully regulate BC Hydro. In the past, government has stated an intention to involve the commission more in reviewing future BC

OBSERVATIONS

Hydro decisions, but to not necessarily defer to the commission on what are essentially policy matters.

The 2014 task force recommended that where government does wish to retain the final decision on a matter that involves complex issues, government should consider referring the matter to the

commission for a review or recommendation only. Section 5 of the *Utilities Commission Act* allows government to seek input from the commission but still make the final decision itself. Government has recently used this option to request that the commission review the Site C dam.

SITE C DAM REVIEW

The Site C dam is under construction and, when completed, will be the third dam and power-generating station on the Peace River near Fort St. John, in northeastern B.C. As of December 2017, BC Hydro expects the project to cost \$10.7 billion and produce 5,100 gigawatt hours of energy annually. That's equivalent to powering about 450,000 homes for one year.

The commission first reviewed the Site C dam proposal between 1981 and 1983. At that time, the commission concluded that more work was required to assess future electricity demand and alternatives to the project.

In 2004, the project was re-initiated, with a five-stage evaluation process involving:

- ◆ feasibility studies
- ◆ consultation and technical reviews
- ◆ a joint federal-provincial environmental assessment
- ◆ final approval from the provincial government
- ◆ construction

In April 2010, government announced that the project would go ahead, subject to an environmental assessment, including consultation with First Nations. The federal-provincial joint review panel established to undertake the environmental assessment recommended that the commission examine in detail the project's costs and revenue requirements. Government approved the project in December 2014 and started construction in the summer of 2015—without further review by the commission.

In August 2017, government sent the project to the commission for an expedited review to determine whether the project was on time and within the proposed budget, and to advise on the implications of completing, suspending or terminating the project—costs that the ratepayer or taxpayer will ultimately cover.

The commission issued its report on Site C in November 2017. On December 11, 2017, government announced that it would complete construction of the dam.

OBSERVATIONS

CLARITY OF POLICY GUIDANCE

The *Utilities Commission Act* requires the commission to consider, among other things, the public interest. Government hasn't explicitly defined public interest, but legislation and policy identifies priorities and sets direction. This includes:

- ◆ the objectives of the *Clean Energy Act* (see sidebar [page 15](#))
- ◆ B.C.'s [energy plan \(2007\)](#), [natural gas strategy \(2012\)](#), [LNG strategy \(2012\)](#) and [climate leadership plan \(2016\)](#)

The commission then interprets and applies these policy objectives when regulating utilities.

The 2014 task force found that the provincial energy objectives contained in the *Clean Energy Act* are “seen as too diverse and in many cases contradictory with

each other or the [*Utilities Commission Act*], making it difficult for the [commission] to balance the stated objectives.”

Government's policy objectives cover a range of provincial, social, economic and environmental considerations and priorities (see sidebar). Commission staff told us this can make it challenging to determine how to balance different objectives.

The 2014 task force recommended that government review and amend the *Clean Energy Act* objectives to reduce conflicts between them. That report also noted that where government wants to prioritize a particular energy objective, it should make that clear in advance of the commission's proceedings, or use the inquiry function in the *Utilities Commission Act* to ask the commission to conduct a review without a decision. In its 2015 response, government stated that it would consider recommendations related to the energy plan and the *Clean Energy Act* as part of planning for the

PROVINCIAL ENERGY OBJECTIVES

The *Clean Energy Act* outlines 16 energy objectives, which include:

- ◆ achieving electricity self-sufficiency
- ◆ generating at least 93 percent of electricity in B.C. from clean or renewable resources
- ◆ ensuring that BC Hydro rates remain among the most competitive in North America
- ◆ reducing B.C.'s greenhouse gas emissions
- ◆ encouraging the use of waste heat, biogas and biomass
- ◆ encouraging economic development and the creation and retention of jobs
- ◆ being a net exporter of electricity from clean or renewable resources

OBSERVATIONS

spring 2016 legislative session. To date, government has not made any associated legislative or policy changes.

CAPACITY OF THE COMMISSION

The commission's staff process applications and other submissions from utilities, assist with preparing the evidence for proceedings, and provide support to commissioners where necessary. Commissioners are the decision-makers, responsible for considering and deciding upon each proceeding and issuing orders. The chair and CEO of the commission is a full-time commissioner and also oversees the operations of the commission.

The 2014 task force identified recruitment and retention of qualified commissioners and staff as a key challenge for the commission. To ensure that the commission has access to the expertise it needs to provide informed oversight, the task force recommended dramatically changing the recruitment of commissioners, as well as changing the compensation for both commissioners and staff.

The 2014 task force highlighted the need for more full-time commissioners because of the technical nature and importance of the commission's decisions. The report noted that part-time commissioners can be valuable because of the flexibility and expertise they bring, but should not be a substitute for full-time commissioners. The task force recommended higher compensation for full-time commissioners to help attract commissioners with relevant expertise.

We observed that in the three years since the 2014 task force's report was published, some steps have been taken. For example, in September 2016, Treasury Board increased compensation for appointees to administrative tribunals and regulatory boards, including the BC Utilities Commission's commissioners. And in June 2017, the commission hired a new chief operating officer, which fulfilled a recommendation from the 2014 task force and a 2015 amendment to the *Utilities Commission Act*.

However, several of the recommendations from the 2014 task force are outstanding, including those related to appointing full-time commissioners. Recently, the commission has appointed one full-time commissioner.

Also, the staff compensation structure has not changed since the 2014 task force report. Consistent with the 2014 task force's findings, we heard that competing with higher-paying utilities makes recruiting and retaining experienced candidates challenging.

EFFECTIVENESS OF PROCESSES AND PERFORMANCE

Accessibility—through fair, transparent and inclusive processes—is a key value of the commission. In addition to its own enabling legislation, the commission is guided by the *Administrative Tribunals Act* and by principles of administrative law and procedural fairness. These statutes and principles are intended to ensure fair, open and transparent proceedings for participants.

OBSERVATIONS

The *Administrative Tribunals Act* gives considerable leeway to individual tribunals (e.g., regulators) to determine the policies and procedures under which they operate and how applications are reviewed and decided upon. This leeway means that the commission's specific policies and procedures establish many of the ground rules for its proceedings.

The commission also sets its own systems of performance monitoring and management. The commission's processes and performance management were the focus of a substantial number of the recommendations from the 2014 task force. Nineteen recommendations were issued to both the commission and government to improve the efficiency, operations and performance management of the commission.

We observed that since the 2014 task force's report was published, both the commission and government have taken steps to improve the processes and performance management of the commission. The commission has introduced new policies, procedures and guidance intended to improve its efficiency and effectiveness, including:

- ◆ a new planning and performance management cycle
- ◆ a new information request process for proceedings
- ◆ updated policies and procedures manuals
- ◆ changes to organizational structure

Government has also provided legislative changes intended to streamline the commission's processes. For example, changes removed the need for the Attorney General's approval to hire counsel to represent unrepresented interests. Legislation was amended in fall 2015 to address some of the recommendations in the 2014 task force report.

We heard largely positive responses from stakeholders about steps taken so far. However, we have not performed an audit and can offer no assurance in this regard. Furthermore, as these initiatives are new, the commission has not yet evaluated their effectiveness in meeting its needs. The commission has not evaluated either the new performance measures, to determine whether they are providing the information the commission needs to achieve its goals, or the new processes and policies, to determine whether they are responsive to the needs of the commission's stakeholders and the public.

APPENDIX A: COMMON TERMS

application: a request that a utility (e.g., BC Hydro) makes to the BC Utilities Commission (e.g., permission to build a new power-generating station, to change rates charged for utilities' services).

decision: a final document closing a proceeding, including a recap of evidence and the appointed panel's rationale for its decision (e.g., approval or denial of an application).

interested party: an individual or organization that receives information and may file a letter of comment in a proceeding, but cannot otherwise participate in a hearing.

intervener: an individual or organization that is a registered participant in a proceeding. Interveners can receive, request or submit information and are expected to actively participate in hearings. The commission grants intervener status.

order: a legal determination or direction to a utility or other party. Orders can be substantive or procedural in nature (e.g., an amendment to a utility's plan or rate schedule, an extension of a timeline for filing documents).

proceeding: all activities related to an application or review, such as correspondence, oral and written hearings and requests for information.

regulatory review: the consideration or assessment of a matter by appointed commissioners. Reviews can be initiated by the commission, the utility or the government.

tribunal or administrative tribunal: an organization that is responsible for making rules or decisions (e.g. decisions on land use applications) or resolving disputes (e.g., an appeal of a decision by a government agency).



OFFICE OF THE
Auditor General
of British Columbia

Location

623 Fort Street
Victoria, British Columbia
Canada V8W 1G1

Office Hours

Monday to Friday
8:30 am – 4:30 pm

Telephone: 250-419-6100

Toll free through Enquiry BC at: 1-800-663-7867

In Vancouver dial: 604-660-2421

Fax: 250-387-1230

Email: bcauditor@bcauditor.com

Website: www.bcauditor.com

This report and others are available at our website, which also contains further information about the Office.

Reproducing

Information presented here is the intellectual property of the Auditor General of British Columbia and is copyright protected in right of the Crown. We invite readers to reproduce any material, asking only that they credit our Office with authorship when any information, results or recommendations are used.



AUDIT TEAM

Malcolm Gaston,
Assistant Auditor General

Peter Nagati,
Executive Director

Tracey Janes,
Assistant Manager

Gabriel Botel,
Assistant Manager

Jacob Helliwell,
Performance Audit Analyst

Richard Davis,
Audit Associate

SUBJECT MATTER EXPERTS

Gaétan Caron,
MBA, B.AS

Scott Hempling,
Attorney at Law



OFFICE OF THE
Auditor General
of British Columbia