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BCUC Memo – Law Reform Project

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# ENVIRONMENTAL LAW CLINIC

## MEMO

To: Tom Hackney, BC Sustainable Energy Association  
From: Caroline M. Price (Student Researcher)  
Date: 23 April 2008  
Re: File 2008-01-03/ BC Sustainable Energy Association Law Reform Project

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### Issues

1. Argument for Progressive Legislation
2. Recommended amendments to the BCUC mandate, jurisdiction and objectives
3. Recommended amendments to Participant Cost Award Eligibility Guidelines
4. Recommended amendments to Participant Cost Award Procedures

### Summary

Based on my review of the legislation and regulations related to Utilities Board or Commissions in jurisdictions across Canada and the United States, I have concluded that British Columbia is one of the leaders in progressive legislation with respect to participant funding. Yet, while the Government's confirmed its commitment to sustainable energy and environmental conservation in its 2007 BC Energy Plan, it cannot achieve these goals without significant amendments to enable and encourage environmental groups to present environmental information and perspectives that will enable the Commission to incorporate an analysis of environmental costs and benefits into its decision making processes.

Ontario and Manitoba are, with British Columbia, at the forefront of a movement to facilitate participation of public interest groups in Utility Board/Commission proceedings. Oregon and California are in a similar position in the United States. The legislation of each of these jurisdictions, while containing progressive elements, still could also be improved to more clearly embrace public interest participation in proceedings. The legislation consistently defines "ratepayer" as consumers, whose primary interest is in inexpensive energy rates. With the exception of Ontario, the legislation of these and other jurisdictions generally reserves participant or intervenor funding to ratepayer groups. However, it appears that, in practice, these four jurisdictions allow the greatest scope for presentations that will address concerns about sustainable energy and environmental conservation.

There are three main problems with the British Columbia's Utilities Commission Act and Participant Cost Award Guidelines:

- (1) ***Jurisdiction and Mandate:*** The BC Energy Plan appears to contemplate that the Commission will consider sustainability and conservation concerns in its decision-making, yet the wording of the Act and regulations do not reflect this in the Commission's jurisdiction and mandate. The Act or regulations should be amended to provide expressly for it to consider sustainability and conservation concerns. The jurisdiction, mandate and objectives of the BCUC should be clearly laid out in both the BC Utilities Commission Act and the Participant Assistance/Cost Award Guidelines. Amendments to the jurisdiction, mandate and objectives in the Act should reflect the Commission's duty to consider the social, financial and environmental costs and benefits of future utilities projects. Amendments to the Guidelines' objectives should clarify that the Cost Award program is intended to encourage public interest groups to present relevant information about social, financial and environmental costs and benefits of Commission decisions at a professional level.
- (2) ***Eligibility:*** The eligibility guidelines in the Participant Assistance/Cost Award Guidelines must be expanded to allow public interest groups other than those whose primary interest is low rates to be eligible for Cost Awards. The eligibility guidelines must reflect the Government of British Columbia's current recognition that there is a "culture of conservation" among British Columbians whose interests extend beyond low energy rates to include energy sustainability and environmental conservation.
- (3) ***Process:*** The Commission should amend the procedures for awarding participant costs to make them more predictable and reliable. Individuals responsible for making the ultimate decision awarding costs should also be responsible for initially assessing eligibility for costs. The pre-hearing assessment should give rise to a "rebuttable presumption" that can be altered after the hearing only if the participant fails to follow

the guidelines or participate in the manner outlined in their initial application for eligibility.

### **1. Argument for Progressive Participant Cost Award Legislation**

In 2007, the Government of British Columbia released a progressive Energy Plan setting a much needed conservation target of meeting 50% of BC Hydro's incremental resource needs through conservation by 2020. In the BC Energy Plan, the government expresses its intention to work with utilities to "research, develop, and implement best practices in conservation and energy efficiency and to increase public awareness."

Without a process by which environmental and other public interest groups can participate effectively in hearings designed to discuss whether future projects are in the public interest, the Commission will lack the expertise and information it needs to perform its mandate of ensuring environmental conservation and energy sustainability as well as low energy rates.

The Participant Assistance/Cost Award program is intended to ensure that the Commission will be aware of the concerns and interests of a broad range of individuals affected by its decisions. It is expected that by hearing different perspectives, the Commission will be able to make well-informed decisions that fairly consider the impact of utility cost and service on all residents of the Province. The Commission's ability to do this depends on the contribution of Interveners who can ensure that it has a comprehensive understanding of the issues before it. The legitimacy of the Commission's decisions with respect to its mandate to protect the public interest is compromised by an inadequate, unreliable and unpredictable Cost Award process and by funding eligibility requirements that effectively exclude representatives of organizations with a recognized public and political interest in energy sustainability and environmental conservation.

The BC Energy Plan confirmed the Government's undertaking to review the BC Utilities Commissions' role in considering social, environmental and economic costs and benefits and to determine how best to ensure that these are appropriately considered within the regulatory framework. Yet, Bill C-15, which amended the Utilities Commission Act, made no mention of the inadequacies of the Cost Award Program. Amendments can still be made to the Guidelines,

however, and amendments can still be made to the Act before or after it receives Royal Assent. It is clear that without providing a process that encourages and facilitates the participation of public interest groups that have a stake in the sustainability of British Columbia's energy industries and the expertise to help the Commission consider the social, environmental and economic costs and benefits of future projects, the Government will fall short of its BC Energy Plan promises.

## **2. Recommended amendments to the BCUC mandate, jurisdiction and objectives**

The following is an outline of the British Columbia Utilities Commission mandate as provided for in the Organization Profile on the BCUC website. The Utilities Commission Act does not provide any clear mandate or set of objectives for the Commission. The words that are underlined are the amendments that should be made to the jurisdiction, mandate and objectives of the Utility Commission to bring these in line with the jurisdiction, mandate and objectives outlined in the 2007 Energy Plan:

The British Columbia Utilities Commission is a regulatory agency of the Provincial Government, operating under and administering the Utilities Commission Act ("UCA"). Under the Utilities Commission Act, the Commission is assigned responsibility for the general supervision of public utilities in the public interest. The Commission is responsible for ensuring that customers receive safe, reliable, sustainable and non-discriminatory energy services at fair rates from the utilities it regulates, that shareholders of these utilities are afforded a reasonable opportunity to earn a fair return on their invested capital, and that the competitive interests of B.C. businesses are not frustrated. The Commission is required to determine if utility projects are in the public interest by considering need, safety, economic feasibility, community benefits, security of supply and environmental impacts. It considers social, environmental and economic costs and benefits in its decision-making. It requires utilities to design rates and implement best practices to encourage efficiency, conservation and the development of renewable energy and public awareness. It evaluates and requires innovative rate designs, products and practices that encourage efficiency, conservation and the development of clean or renewable energy. It approves the construction of new facilities planned by utilities and their issuance of securities. The Commission's function is quasi-judicial and it has the power to make legally binding rulings. Decisions and Orders of the Commission may be appealed to the Court of Appeal on questions of law or jurisdiction.

The Commission also reviews energy-related matters referred to it by Cabinet. These inquiries usually involve public hearings, followed by a report and recommendations to Cabinet. In addition, under Part 7 of the Pipeline Act, the Commission establishes tolls and conditions of service for intra-provincial oil pipelines. The Commission also has responsibilities under the UCA for electricity transmission facilities and energy supply contracts, matters that are likely to become more active as the reorganization of the energy industry proceeds.

The Commission's mission is to ensure that ratepayers receive safe, reliable, sustainable and nondiscriminatory 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.

The provision in the *BC Utilities Commission Act* that addresses the jurisdiction of the Commission to make orders reads as follows:

- 23** (1) The commission has general supervision of all public utilities and may make orders about
- (a) equipment,
  - (b) appliances,
  - (c) safety devices,
  - (d) extension of works or systems,
  - (e) filing of rate schedules,
  - (f) reporting, and
  - (g) other matters it considers necessary or advisable for
    - a. the safety, convenience or service of the public and the environment, or
    - b. the proper carrying out of this Act or of a contract, charter or franchise involving use of public property or rights.

(2) Subject to this Act, the commission may make regulations requiring a public utility to conduct its operations in a way that does not unnecessarily interfere with, or cause unnecessary damage or inconvenience to, the public and to the environment.

It is recommended that the words “and to the environment” be added to this jurisdiction to highlight the new objectives of the Commission in considering the environmental impact of its orders.

It is further recommended that the term “public interest” be clearly defined in the Act. The Ontario Energy Board website provides the basis for the following definition of public interest:

**"public interest"** means considering need, safety, economic feasibility, community benefits, security of supply and environmental impacts and any other factor the Commission deems relevant in the circumstances.

To help confirm the breadth of the mandate and the need for input from stakeholders, it would also be helpful to include broad definitions for the following terms, as provided for in the *Canadian Environmental Assessment Act, 1992, c. 37, C-15.2.:*

**"environment"** means the components of the Earth, and includes

- (a) land, water and air, including all layers of the atmosphere,
- (b) all organic and inorganic matter and living organisms, and
- (c) the interacting natural systems that include components referred to in paragraphs (a) and (b);

**"sustainable development"** means development that meets the needs of the present, without

compromising the ability of future generations to meet their own needs.

### ***Certificate of Public Convenience and Necessity***

A utility has to apply to the Commission for a Certificate of Public Convenience and Necessity (“CPCN”) before beginning construction of a new plant or system. The Commission has the discretion to require an application for a CPCN before a utility constructs or operates an extension to its existing system. For an approval the Commission needs to be satisfied that the new system or extension **is in the public interest and necessary for the public’s convenience.**

- 45 (1) Except as otherwise provided, after September 11, 1980, a person must not begin the construction or operation of a public utility plant or system, or an extension of either, without first obtaining from the commission a certificate that public convenience and necessity require or will require the construction or operation.
- ...
- (6.2) After receipt of a plan filed under subsection (6.1), the commission may
- (a) establish a process to review all or part of the plan and to consider the proposed expenditures referred to in that plan,
  - (b) determine that any expenditure referred to in the plan is, or is not at that time, in the interests of persons within British Columbia who receive, or who may receive, service from the public utility, or who have an interest in environmental conservation in an area of British Columbia affected by the construction, and
  - (c) determine the manner in which any expenditures referred to in the plan can be recovered in rates.
- ....
- (8) The commission must not give its approval unless it determines that the privilege, concession or franchise proposed is necessary for the public convenience and properly conserves **the public interest.**

**The California Public Utilities Code** outlines the following considerations as relevant to a determination of public convenience and necessity:

1002. (a) The commission, as a basis for granting any certificate (of public convenience and necessity) pursuant to Section 1001 shall give consideration to the following factors:
- (1) Community values.
  - (2) Recreational and park areas.
  - (3) Historical and aesthetic values.
  - (4) Influence on environment, except that in the case of any line, plant, or system or extension thereof located in another state which will be subject to environmental impact review ... or similar state laws in the other state, the commission shall not consider influence on the environment unless any emissions or discharges therefrom would have a significant influence on the environment of this state.

### *Energy Supply Contract*

The Commission, after a hearing, may find that an energy supply contract entered into by a utility is not in the public interest and declare the contract unenforceable.

- 71** (1) Subject to subsection (1.1), a person who, after this section comes into force, enters into an energy supply contract must
- (a) file a copy of the contract with the commission under rules and within the time it specifies, and
  - (b) provide to the commission any information it considers necessary to determine whether the contract is in the public interest.**
- ...
- (2) The commission may make an order under subsection (3) if the commission, after a hearing, finds that a contract to which subsection (1) applies is not in the public interest by reason of
- (a) the quantity of the energy to be supplied under the contract,
  - (b) the availability of supplies of the energy referred to in paragraph (a),
  - (c) the price and availability of any other form of energy, including but not limited to petroleum products, coal or biomass, that could be used instead of the energy referred to in paragraph (a),
  - (d) in the case only of an energy supply contract that is entered into by a public utility, the price of the energy referred to in paragraph (a),
  - (e) the availability of any other form of energy, which is either more sustainable or less harmful to the environment, that could be used instead of the energy referred to in paragraph (a), or**
  - (f) any other factor that the commission considers relevant to the public interest.**

### *Participant Costs*

The Commission can order a participant in a proceeding before the Commission, to pay the costs of another participant or the Commission can pay costs to participants in its proceedings.

- 118** (1) The commission may order a participant in a proceeding before the commission to pay all or part of the costs of another participant in the proceeding.
- (2) If the commission considers it to be in the public interest, the commission may pay all or part of the costs of participants in proceedings before the commission that were commenced on or after April 1, 1993 or that are commenced after June 18, 1993.
  - (3) Amounts paid for costs under subsection (2) must not exceed the limits prescribed for the purposes of this section.

### **3. Recommended amendments to Participant Cost Award Eligibility Guidelines**

The Commission Panel in a proceeding may award costs for participation. A Participant is

defined as an individual or an organization, which actively participates in a proceeding of the Commission. The Commission Panel determines whether a Participant is eligible or ineligible for an award according to whether, in the opinion of the Commission Panel, the Participant has a **substantial interest in a substantial issue** in the proceeding.

In his May 31, 2007 letter to Robert Pellatt, Commission Secretary, commenting on the Draft Revised *Participant Assistance/Cost Award Guidelines* on behalf of the BCSEA, Bill Andrews voiced BCSEA's concerns about adding the requirement of "in a substantial issue" to the threshold requirement for funding. In the letter, he pointed out a number of problems with this addition, which will not be repeated here.

### ***Substantial Interest***

If this "substantial interest in a substantial issue" test is to remain in the guidelines, it is recommended that, given the 2007 Energy Plan Objectives, issues of energy sustainability and environmental conservation are listed as a recognized "substantial interests" in all further Commission decisions. If these interests are included in the Board's mandate and the definition of "public interest" is defined as including the interests of sustainable energy and environmental protection then the eligibility criteria can be described as follows:

- The Participant primarily represents the **direct financial and other interests of consumers** (i.e. ratepayers) in relation to regulated services;
- The Participant primarily represents **a public interest relevant to the Board's mandate;**  
**or**
- The Participant primarily represents a significant grouping of interests relevant to the Board's mandate.

The Commission Panel should also continue to then consider the following questions currently listed in the Guidelines, with one amendment as underlined:

- (i) Will the Participant, or the individuals and groups the Participant represents, be affected by the outcome?
- (ii) Has the Participant contributed to a better understanding of the issues by the Commission?
- (iii) Are the costs incurred by the Participant for the purposes of participating in the proceeding fair and reasonable?
- (iv) Has the Participant joined with other groups with similar interests to reduce costs?
- (v) Has the Participant engaged in any conduct that tended to unnecessarily lengthen the duration

of the proceeding? (This criterion will not, by itself, disqualify a Participant for pursuing a relevant position in good faith and with reasonable diligence)

- (vi) Any other matters appropriate in the circumstances.

If the Commission Panel considers it to be an appropriate consideration in a proceeding, the Commission Panel may also consider the Participant's ability to participate in the proceeding without an award.

### ***Eliminating the Priority Given to "Ratepayer Groups"***

It is recommended that the Commission remove the following paragraph from the guidelines, which creates an unreasonably narrow avenue for public interest groups to be awarded participant costs for contributing to the other aspects of the Board's mandate:

Except in limited circumstances, it is expected that only ratepayer groups will establish a "substantial interest in a substantial issue" so as to be eligible for an award in a revenue requirements proceeding. For the purposes of this section, the principal interest of "ratepayer groups" will be the rate impacts of the revenue requirement to be paid by the ratepayer Participants.

Substantial issues related to the Commission's public interest mandate might include substantially assisting the Commission's investigations into the potential effects, costs and benefits of the proposed development.

Ontario has the most scope in its legislation for qualifying public interest groups other than ratepayer groups for the Energy Board's Cost Award program.

The *Ontario Energy Board Practice Direction on Cost Awards* provides for the following:

**"intervenor"** means a person who has been granted intervenor status by the Board or, for the purposes of a notice and comment process under section 45 or 70.1 of the Act or any other consultation process initiated by the Board, means a person who is participating in that process

3.03 A party in a Board process is eligible to apply for a **cost** award where the party:

- (a) primarily represents the direct interests of consumers (e.g. ratepayers) in relation to regulated services;
- (b) primarily represents a public interest relevant to the Board's mandate; or
- (c) is a person with an interest in land that is affected by the process.

3.04 In making a determination whether a party is eligible or ineligible, the Board may also consider any other factor the Board considers to be relevant to the public interest

The mandate of the Board is divided in the *Energy Board Act*, with different objectives with respect to electricity than to gas.

**Board objectives, electricity**

1. (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:
  1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
  2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry. 2004, c. 23, Sched. B, s. 1.

**Board objectives, gas**

2. The Board, in carrying out its responsibilities under this or any other Act in relation to gas, shall be guided by the following objectives:
  1. To facilitate competition in the sale of gas to users.
  2. To protect the interests of consumers with respect to prices and the reliability and quality of gas service.
  3. To facilitate rational expansion of transmission and distribution systems.
  4. To facilitate rational development and safe operation of gas storage.
  - 5. To promote energy conservation and energy efficiency in a manner consistent with the policies of the Government of Ontario.**
    - 5.1 To facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas.
  6. To promote communication within the gas industry and the education of consumers. 1998, c. 15, Sched. B, s. 2; 2002, c. 23, s. 4 (2); 2003, c. 3, s. 3; 2004, c. 23, Sched. B, s. 2.

It is not clear why the Ontario Energy Plan only considers energy conservation and efficiency to be an objective with respect to gas and not electricity, however, the BC Energy Plan makes no such distinction. To bring the BC Participant Assistance/Cost Award eligibility guidelines in line with the BC Energy Plan, it is recommended that the Commission allow for participant cost awards where the party primarily represents a public interest relevant to the Commission's mandate, and that the Commission's mandate to protect the public interest be clearly extended within the *BC Utilities Commission Act* to include promoting energy conservation and efficiency and environmental conservation and sustainability.

**4. Participant Cost Award Procedures**

At present, a potential Participant must submit a budget or application demonstrating the need

for funding to the Commission prior to the commencement of a proceeding. The proposed budget is then reviewed by Commission staff who will reply to the Participant with a review letter that gives “an indication whether their request for funding complies with the Guidelines” and includes “an estimate of the preparation days that may be funded.” The Commission staff review letter and included advice is not binding on the Participant or the Commission Panel. An application for Cost Award is then submitted at the end of the proceeding. “The final cost award is made by the Commission panel after the conclusion of the proceeding and is dependent upon the usefulness of the intervenor's contribution to the hearing.”

According to the above-mentioned May 31, 2007 letter from Bill Andrews to the Commission with respect to the PACA Guidelines, BCSEA believes that the biggest opportunity for “improving the ability of the *PACA Guidelines* to support the participation of an appropriate range of participants in Commission proceedings is to improve the *predictability* of the *PACA* system.” Currently, Participants will submit Budget Estimates and receive favourable review letters from the Commission Staff indicating that they meet the Guideline requirements, and after relying on those assurances and incurring enormous expense in preparing for a proceeding, their PACA applications are nonetheless fully or partially denied by the *Panel*.

BCSEA believes that the best way to improve predictability in the *PACA* system is to have the participants’ *PACA* “Budget Estimates” reviewed by the Commission Panel instead of by the staff. It is the Panel that makes the PACA awards after the proceeding; and it is therefore the Panel that should provide the crucial “review letter” providing guidance as to whether the participant’s proposed participation meets the criteria in the *PACA Guidelines*.

Participants need to have a greater degree of confidence the pre-hearing review of their proposed Budget can be relied on, so long as they continue to follow the Guidelines throughout their participation in the proceedings. This would allow the participant to make informed decisions about incurring the cost associated with the environmental or other public interest perspectives to the Panel.

Other jurisdictions have recognized this need and provide for greater predictability in their

respective Participant Cost Award Programs.

### ***Manitoba***

In Manitoba, the Minister of Conservation authorizes the Participant Assistance Program for the Manitoba Clean Energy Commission to assist qualifying people and organizations to “ensure effective public participation in the environmental assessment and review of many projects.”

A Participant Assistance Committee will make recommendations to the Minister regarding conditions for a provisional order of participant assistance. The provisional order specifies which applicants are eligible for assistance, the type and timing of assistance, and any other conditions, which the Proponent and Participants must meet. This progressive program also provides up to 30% of the assistance before the hearings to help to provide start-up funds to prepare for the hearings and that may include the procurement of expert services by Participants.

There is a similar level of predictability in the award of costs for participation in the Manitoba Public Utilities Board hearings as provided by the Public Utilities Board Act. Section 27 of that Act instructs any interested party or organization to provide a written request to intervene that, among other requirements (a) identifies the specific interventions on which they seek approval to intervene and (b) clearly quantifies the cost of the proposed intervention, by issue.

### ***Ontario***

The ***Ontario Energy Board Act*** also provides for a somewhat more predictable cost award program. Applying for a cost award in Ontario is a two-step process. An intervenor must first prove to the Board that they are eligible to apply for an award of costs because they fall under one of the eligibility criteria established in the Board's Cost Eligibility Guideline. The potential Intervenor files a letter of intervention before the proceedings stating whether they will seek an award of costs at the conclusion of the proceeding as well as the reasons the intervenor meets the eligibility criteria. The Board Members who hear the application are the Hearing Panel and determine whether a party is accepted as an Intervenor based on this information.

The Board will respond to a letter of intervention advising the party whether they have been accepted as an intervenor in the proceeding and whether they have been deemed eligible for cost awards. It is generally the case that Participants who are ineligible for Cost Awards are also ineligible to participate in the Hearing. However, the actual amount they will be awarded is still determined at the conclusion of the Hearing.

At the end of the proceeding, the same Hearing Panel that determined initial eligibility, determines the percentage of each intervenor's expenses that should be reimbursed based on the whether, in the Board's opinion, they have participated responsibly in the proceeding and contributed to the Board's understanding of the issues. This determination will either be included as part of the Board's Report/Decision with Reasons, or a Supplementary Cost Decision with Reasons. The Energy Board then reviews the individual intervenor's cost statements for reasonableness according to the Board's Cost Assessment Tariff, taking into account the percentage awarded by the Hearing Panel, and makes a recommendation on the amount to be awarded.

The Board then issues a Cost Order directing the party designated as the payor to reimburse the intervenor for the amount of the cost award as determined by the Hearing Panel. The recommendation may be objected to by either the applicant or the intervenor. The final determination of the actual amount of the award will be made by the Hearing Panel.

### ***California***

According to the **California Public Utilities Code** s. 1801.3, it is the intent of Legislature that the provisions of the article that deals with Cost Awards "shall be administered in a manner that encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process." Further, it is the intent of Legislature that "the process for finding eligibility for intervenor compensation be streamlined, by simplifying the preliminary showing by an intervenor of issues, budget, and costs."

Section 1804 of the California **Public Utilities Code** requires a prospective recipient of a cost award to file and serve a notice of intent to claim compensation shortly after a pre-hearing

conference and showing that participation in the hearing or proceeding would pose a significant financial hardship. Within 15 days after service of that notice of intent, an administrative law judge may allow any other interested party to file a statement responding to the notice. Within 30 days, the administrative law judge, in consultation with an assigned commissioner, will issue a preliminary ruling addressing whether the participant will be eligible for an award of compensation. A finding of significant financial hardship thus creates a **rebuttable presumption** of eligibility for compensation in other commission proceedings commencing within one year of the date of that finding.

However, a finding of significant financial hardship still does not ensure the Participant will receive compensation and following the hearing the must file a request for compensation. The commission will then issue a decision that determines whether or not the participant has made a substantial contribution to the final order or decision in the hearing or proceeding and if it so finds, it will provide the cost award.

### *Oregon*

Oregon has adopted a unique process for awarding costs, which, although perhaps not appropriate for British Columbia, is worth exploring. In that State, section 757.072 of the Utility Regulation Generally provisions governs agreements for financial assistance to organizations representing customer interests. Subsection (1) authorizes public utilities to enter into a written agreement with an organization that represents broad customer interests in regulatory proceedings conducted by the Public Utility Commission to govern how financial assistance may be provided to the organization.

Accordingly, the various utility companies entered into an agreement directly with interested citizen groups to establish eligibility guidelines and procedures for intervenor funding, which the utility companies are then authorized by the State to recover through rates. Portland General Electric Company (PGE), PacifiCorp, Northwest Natural Gas Company dba NW Natural (NW Natural), Cascade Natural Gas Corporation (Cascade Natural Gas), Avista Corporation dba Avista Utilities (Avista Utilities) entered into the current agreement with Industrial Customers of

Northwest Utilities (ICNU), Citizens' Utility Board of Oregon (CUB) and Northwest Industrial Gas Users (NWIGU).

This is an especially unique process because the public interest intervenors are designated in advanced and will consistently represent the various public interests to the Commission. Only parties that are precertified or that become case-certified for a particular proceeding will be eligible for funding. Like the current legislation in British Columbia, the Oregon Agreement requires that Intervenor organizations represent the interests of a broad group or class of customers and "those interests are primarily directed at public utility rates and terms and conditions of service affecting that broad group or class of customers..." (s. 5.1) However, there is scope for certified Intervenor organizations such as the Citizens' Utility Board to present, among other concerns, the interest of Oregon citizens in purchasing sustainable energy at proceedings before the Commission. For example, the Citizens' Utility Board's mission statement on its website reads as follows:

"...in addition to fighting rate hikes, we fight for clean and efficient energy alternatives."

The government of British Columbia will not meet its commitment to sustainable energy and environmental conservation in its 2007 BC Energy Plan, unless it makes significant amendments to the BC Utilities Commission Act and the Participant Assistance / Cost Award Guidelines. If the mechanisms are not in place to enable environmental groups to present relevant information and perspectives the Commission needs to incorporate an analysis of environmental costs and benefits into its decision making processes, the Commission will be unequipped to follow through on the stated goals of energy sustainability and environmental management.

The progressive legislation of Ontario, Manitoba, California and Oregon provide valuable models that British Columbia can integrate into its legislation and regulations in order to facilitate the participation of public interest groups in Utility Board/Commission proceedings. Oregon and California are in a similar position in the United States.

## **Relevant Legislation and Regulations**

***British Columbia Utilities Commission Act*, [RSBC 1996] Chapter 473  
[http://www.qp.gov.bc.ca/statreg/stat/U/96473\\_01.htm](http://www.qp.gov.bc.ca/statreg/stat/U/96473_01.htm), especially section 118.**

***Participant Assistance / Cost Award Guidelines***  
 British Columbia Utilities Commission **APPENDIX A** to Order No. G-72-07  
[http://www.bcuc.com/Documents/Guidelines/2007/DOC\\_5014\\_G-72-07\\_PACA\\_2007\\_Guidelines.pdf](http://www.bcuc.com/Documents/Guidelines/2007/DOC_5014_G-72-07_PACA_2007_Guidelines.pdf)

***California Public Utilities Code***  
<http://law.justia.com/california/codes/puc.html>, especially chapters 5 and 9

***Oregon Public Utility Commission - Utility Regulation Generally***, 2007 Edition, Chapter 757  
<http://www.leg.state.or.us/ors/757.html>

***Oregon Public Utility Commission – Order No. 07-564***  
 Approval of the Intervenor Funding Agreement

***Ontario Energy Board***: website and mandate  
<http://www.oeb.gov.on.ca/OEB/About+the+OEB/What+We+Do>

***Ontario Energy Board Act***, S.O. 1998, Chapter 15, Schedule B  
[http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_98o15\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_98o15_e.htm)

***Manitoba Public Utilities Board Act***, C.C.S.M. c. P280  
<http://web2.gov.mb.ca/laws/statutes/ccsm/p280e.php>

***Manitoba Participant Assistance Program Application Guide***  
**Manitoba Clean Environment Commission**  
<http://www.cecmanitoba.ca/File/CEC%20Admin/assistance-guide%20Feb.%202008.pdf>