



ORDER NUMBER
G-241-20

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

British Columbia Utilities Commission
Inquiry into the Regulation of Safety

BEFORE:

D. M. Morton, Commissioner

on September 23, 2020

ORDER

WHEREAS:

- A. Section 1 of the *Utilities Commission Act* (UCA) defines a “public utility”, in part, as “a person, or the person’s lessee ... who owns or operates in British Columbia, equipment or facilities for the production, generation, storage, transmission, sale, delivery or provision of electricity ... or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation”;
- B. Section 23 of the UCA states, in part, that the British Columbia Utilities Commission (BCUC) has general supervision of all public utilities and may make orders about matters it considers necessary or advisable for the safety, convenience or service of the public;
- C. Section 24 of the UCA states that in its supervision of public utilities, the BCUC must make examinations and conduct inquiries necessary to keep itself informed about the conduct of public utility business, compliance by public utilities with the UCA, regulations or any other law, and any other matter in the BCUC’s jurisdiction;
- D. Section 25 of the UCA states that if the BCUC, after a hearing held on its own motion or on complaint, finds that the service of a public utility is unreasonable, unsafe, inadequate or unreasonably discriminatory, the BCUC must determine what is reasonable, safe, adequate and fair service, and order the utility to provide it;
- E. Section 37 of the UCA states that if the BCUC considers that a supervisor or inspector should be appointed to supervise or inspect, continuously or otherwise, the system, works, plant, equipment or service of a public utility with a view to establishing and carrying out measures for the safety of the public and of the users of the utility’s service, the BCUC may appoint a supervisor or inspector for that utility and may specify the person’s duties;
- F. Section 38 of the UCA states that a public utility must provide and maintain its property and equipment in a condition to enable it to provide a service to the public that the BCUC considers is in all respects adequate, safe, efficient, just and reasonable;

- G. Recent BCUC inquiries, including Phases 1 and 2 of the Inquiry into the Regulation of Electric Vehicle Charging Service (EV Inquiry) and the Indigenous Utilities Regulation Inquiry (IUR Inquiry), have identified issues relating to clarity on the BCUC’s jurisdiction as it relates to safety;
- H. Section 3 of the Electric Safety Regulation, under the *Safety Standards Act*, states, in part, that the regulation “does not apply to a public utility as defined in the [UCA] in the exercise of its function as a utility with respect to the generation, transmission and distribution of electrical energy”;
- I. In the Phase 1 EV Inquiry, Technical Safety BC stated, in part, that it considers EV charging stations to fall outside of a public utility’s generation, transmission and distribution system. The BCUC noted that “distribution equipment” is a defined term in the UCA. Therefore, the BCUC recommended that sections 25 and 38 of the UCA, with respect to safety only, not be included in the Part 3 exemption for EV charging service providers that are not already a public utility under the UCA, until jurisdiction of the BCUC for safety is clarified.
- J. In the Phase 2 EV Inquiry, the BCUC stated that it is satisfied that safety supervision of EV charging infrastructure, as currently provided by Technical Safety BC, is adequate such that duplication of that safety regulation by the BCUC is unwarranted and would be counterproductive. The BCUC noted that it has the jurisdiction under the UCA to intervene to provide the necessary safety oversight if and when needed, and in the event the service of a public utility is unsafe, the BCUC has the ability to order the public utility to provide safe service. Given the provisions under the UCA, the BCUC made no determination as to whether an EV charging station is or is not distribution equipment, although the BCUC recommended that it continue to retain jurisdiction relating to safety in accordance with sections 25 and 38 of the UCA;
- K. In the IUR Inquiry the BCUC stated that, generally speaking, the UCA provides the BCUC with a broad oversight role of utility functions, including safety and reliability, as well as utility spending, including spending on safety and reliability programs. The BCUC also noted that there are multiple regulatory agencies, such as Technical Safety BC and the BC Oil and Gas Commission, with oversight of specific aspects of utility operation. Given this, the BCUC stated that further clarity concerning the role of the BCUC in the regulation of safety would be helpful, including clarity concerning the jurisdiction of other safety regulators.
- L. Given the provisions relating to safety contained in the UCA, and that further clarity concerning the role of the BCUC in the regulation of safety is required, the BCUC considers that the establishment of an inquiry to review the BCUC’s jurisdiction as it relates to safety (Inquiry) and a regulatory timetable are warranted.

NOW THEREFORE pursuant to section 82 of the UCA, the BCUC orders as follows:

- 1. An inquiry to review the BCUC’s jurisdiction relating to safety is established.
- 2. A regulatory timetable is established for the Inquiry, as set out in Appendix A to this order.
- 3. Interveners who wish to participate in the Inquiry are to register with the BCUC by completing a [Request to Intervene Form](#), by the date established in the regulatory timetable attached as Appendix A to this order and in accordance with the BCUC’s Rules of Practice and Procedure.
- 4. The BCUC requests registered interveners provide written submissions to address the questions set out in Appendix B by the date established in the regulatory timetable, attached as Appendix A to this order.

5. Members of the public are invited to provide letters of comment for the BCUC's consideration, by the date established in the regulatory timetable attached as Appendix A to this order. Letters of comment must be in the [Letter of Comment Form](#) and be submitted on the BCUC's website, or submitted by email to commission.secretary@bcuc.com.

DATED at the City of Vancouver, in the Province of British Columbia, this 23rd day of September 2020.

BY ORDER

Original signed by:

D. M. Morton
Commissioner

Attachment

British Columbia Utilities Commission
An Inquiry into the Regulation of Safety

REGULATORY TIMETABLE

Action	Date (2020)
Intervener registration	Wednesday, October 14
Intervener written submissions and letters of comment	Thursday, November 12
Further process	To be determined

British Columbia Utilities Commission
An Inquiry into the Regulation of Safety

BACKGROUND AND SCOPE FOR SUBMISSIONS

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1.0 INTRODUCTION

The British Columbia Utilities Commission (BCUC) is an independent regulatory agency of the British Columbia (B.C.) government (Government), operating under and administering the *Utilities Commission Act* (UCA). The BCUC is responsible for ensuring safe and reliable energy supply at fair rates for energy users across the province. The BCUC balances this responsibility with the need to ensure public utilities under its jurisdiction are afforded a reasonable opportunity to earn a fair return on their investments.

2.0 PUBLIC UTILITY REGULATION AND SAFETY

The UCA includes numerous references to the BCUC's role in ensuring safe operation of the province's regulated energy systems. Section 23 of the UCA grants the BCUC responsibility for general supervision of public utilities and the authority to make orders about matters the BCUC considers necessary or advisable for the safety, convenience or service of the public.¹ Section 38 of the UCA requires public utilities to provide and maintain their systems such that the BCUC considers the service the utilities provide to be adequate, safe, efficient, just, and reasonable in all respects.²

In its supervision of public utilities, the BCUC must make examinations and conduct inquiries necessary to keep itself informed about the conduct of public utility business, compliance by public utilities with the UCA, regulations or any other law, and any other matter within the BCUC's jurisdiction.³ Further, if the BCUC, after a hearing held on its own motion or on complaint, finds that the service of a public utility is unreasonable, unsafe, inadequate or unreasonably discriminatory, the BCUC must determine what is reasonable, safe, adequate and fair service, and order the utility to provide it.^{4,5}

The regulation of public utilities in B.C. is not limited to the UCA; it also includes, among other things, various Government Directions, Special Directions and Orders in Council issued to the BCUC and the regulated public utilities, the *Clean Energy Act*, the *Gas Utility Act*, and the *Hydro and Power Authority Act*. Many other regulatory bodies also play essential roles. For example, gas utilities are also subject to regulation by the BC Oil and Gas Commission (BCOGC) as mandated by the *Oil and Gas Activities Act*. Further, safety and standards regulations for some public utilities are administered by Technical Safety BC (TSBC), with standards being developed by organizations such as the CSA Group (formerly the Canadian Standards Association). The Workers Compensation Board of B.C. (WorkSafeBC), established under the *Workers Compensation Act*, has jurisdiction over the regulation of occupational health and safety of employers operating in the province.

3.0 RECENT BCUC REVIEWS RELATING TO SAFETY

While the UCA recognizes the importance of safety in the BCUC's mandate, recent BCUC inquiries, including the Indigenous Utilities Regulation Inquiry (IUR Inquiry) and Phases 1 and 2 of the Inquiry into the Regulation of Electric Vehicle Charging Service (EV Inquiry), have identified a lack of clarity with respect to the BCUC's jurisdiction over safety. These inquiries, as well as other recent examples of proceedings before the BCUC with significant safety considerations, are described briefly below. While this is by no means an exhaustive list, the BCUC hopes that these examples help to illustrate the importance of clarifying its role with respect to safety regulation.

¹ Section 23, *Utilities Commission Act* [RSBC 1996] Chapter 473.

² Section 38, *Utilities Commission Act* [RSBC 1996] Chapter 473.

³ Section 24, *Utilities Commission Act* [RSBC 1996] Chapter 473.

⁴ Section 25, *Utilities Commission Act* [RSBC 1996] Chapter 473.

⁵ In addition to the above there are numerous other sections in the UCA that have a direct, or indirect, link to safety.

3.1 Indigenous Utilities Regulation Inquiry

On March 11, 2019, the Lieutenant Governor in Council requested the BCUC provide recommendations to Government regarding the regulation of indigenous utilities in B.C., and the IUR Inquiry was established on March 19, 2019.⁶ The scope of the IUR Inquiry included assessing whether indigenous utilities should be regulated, and if so, whether they should be regulated under the UCA, or another mechanism.⁷ Of consideration in the IUR Inquiry was the regulation of standards, safety, and reliability.⁸

With respect to safety, participants noted that regulation of safety and service reliability is a shared responsibility between the BCUC and other regulators (e.g. TSBC and the BCOGC), and suggested that it would be beneficial for the BCUC to provide clarification with respect to how it sees its role in these regards.⁹

In its final report, the BCUC stated that, generally, the UCA provides the BCUC with a broad oversight role of utility functions, including safety and reliability, as well as utility spending, including spending on safety and reliability programs. The BCUC also agreed that there are multiple regulatory agencies with oversight of specific aspects of utility operation. Given this, the BCUC stated that further clarity concerning the role of the BCUC in the regulation of safety would be helpful, including clarity concerning the jurisdiction of other safety regulators.¹⁰

3.2 An Inquiry into the Regulation of Electric Vehicle Charging Service

On January 12, 2018, the BCUC established an inquiry to review the regulation of EV charging service in B.C.¹¹ The EV Inquiry aimed to explore the potential regulatory issues, including the level of regulation necessary in the EV charging services market, the rates for EV charging service, and any other matters that should be considered by the BCUC as the regulator of energy services provided by public utilities.¹²

The BCUC found that a person providing EV charging services for compensation is a public utility under the UCA.¹³ However, the Panel found that economic regulation is not required of persons who are not otherwise public utilities and, accordingly, the BCUC recommended an exemption from those portions of the UCA applicable to price regulation.¹⁴ The exemption was not extended to sections 25 and 38 of the UCA pertaining to safety, as the decision stated that until jurisdiction for safety is clarified, the BCUC wants to ensure that safety regulation does not “fall between the cracks.”¹⁵

The need to clarify jurisdiction with respect to safety arose because Section 3 of the Electric Safety Regulation, administered by TSBC under the *Safety Standards Act*, states that the regulation “does not apply to a public utility as defined in the [UCA] in the exercise of its function as a utility with respect to the generation, transmission and distribution of electrical energy.”¹⁶ TSBC advised that it considers EV charging stations to fall outside of a public utility’s generation, transmission and distribution system, and therefore to be within its jurisdiction. However, the BCUC noted that “distribution equipment” is a defined term in the UCA and that

⁶ Order G-62-19, March 19, 2019.

⁷ BCUC Indigenous Utilities Regulation Inquiry, Information Sheet: Indigenous Utilities Regulation Inquiry, p. 1.

⁸ BCUC Indigenous Utilities Regulation Inquiry, Final Report dated April 30, 2020, (IUR Inquiry Report) p. 57.

⁹ *Ibid*, p. 61.

¹⁰ *Ibid*.

¹¹ Order G-10-18, dated January 12, 2018.

¹² BCUC, An Inquiry into the Regulation of Electric Vehicle Charging Service, Report Phase 1 dated November 26, 2018, (EV Inquiry Phase 1 Report) p. i.

¹³ *Ibid*, p. 27.

¹⁴ *Ibid*, p. 33.

¹⁵ *Ibid*, p. 38.

¹⁶ *Ibid*.

determination of what constitutes distribution equipment is highly nuanced.¹⁷ To help illustrate this, the Panel provided an example where EV charging services are being provided by not one, but two public utilities.¹⁸ In this situation the charging equipment operated by the downstream utility might be properly considered “distribution equipment”, and as such excluded from TSBC’s supervision.

In the Phase 2 EV Inquiry the BCUC stated that it was satisfied that safety supervision of EV charging infrastructure, as currently provided by TSBC, is adequate such that duplication of that safety regulation by the BCUC is unwarranted and would be counterproductive.¹⁹ The BCUC noted that it has jurisdiction under the UCA to intervene to provide the necessary safety oversight if and when needed. Further, in the event the service of a public utility is unsafe, the BCUC has the ability to order the public utility to provide safe service. Given the provisions under the UCA, the BCUC made no determination as to whether an EV charging station is or is not distribution equipment, although the BCUC recommended that it continue to retain jurisdiction relating to safety in accordance with sections 25 and 38 of the UCA.²⁰

3.3 Recent Certificate of Public Convenience and Necessity Proceedings and Complaints before the BCUC

In December 2018, FortisBC Energy Inc. (FEI) filed an application with the BCUC seeking a Certificate of Public Convenience and Necessity (CPCN) for its Inland Gas Upgrades Project. FEI stated that the project, which involves upgrades to 29 of the company’s transmission laterals, is required to mitigate the potential for pipeline rupture resulting from corrosion. Rupture of a transmission pipeline could have significant safety, reliability, environmental and regulatory consequences, and the need for the upgrades was supported by the BCOGC; highlighting an intersection between the BCOGC’s mandate and the role of the BCUC.

In its decision, the Panel concluded that the primary justification for the project related to the safety of FEI’s natural gas supply and the continued provision of natural gas without interruption to customers, as well as the physical safety of those in proximity to the laterals.²¹ The Panel urged FEI to consider providing a more comprehensive discussion of its risk assessment methodology in future applications of this type so that the BCUC can more readily determine the appropriateness and sufficiency of the proposed solution for addressing the identified risk.

In June 2018, Creative Energy Vancouver Platforms Inc. (Creative Energy) filed an application with the BCUC for a CPCN relating to the company’s plans to construct and operate new and renovated steam plant facilities in downtown Vancouver. Among other things, Creative Energy proposed to renovate its existing Beatty Street steam plant, to decommission equipment at the existing plant that had reached end of life, and to construct a new steam plant at the neighbouring BC Place Stadium. In its application, Creative Energy noted that the existing steam plant did not conform to modern standards for seismic and fire resistance, nor did it conform to current building codes.²² Further, hazardous materials such as asbestos, lead, and polychlorinated biphenyls (PCBs) had been identified on the site.²³

¹⁷ EV Inquiry Phase 1 Report, pp. 37-38; BCUC, An Inquiry into the Regulation of Electric Vehicle Charging Service, Phase 2 Report dated June 24, 2019, (EV Inquiry Phase 2 Report) p. 49.

¹⁸ Ibid, p. 50.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Decision and Order G-12-20, Application for a Certificate of Public Convenience and Necessity for the Inland Gas Upgrade Project dated January 21, 2020, p. 7.

²² Decision and Order G-38-19, Application for a Certificate of Public Convenience and Necessity for Beatty-Expo Plants and Reorganization, dated February 19, 2019, p. 16.

²³ Ibid.

In its decision, the Panel concluded that construction of the project would result in improvements in safety, efficiency, and emissions control.²⁴ However, the Panel also identified numerous disadvantages, including insufficiently developed contingency plans and uncertainty around ratepayer impacts, which resulted in a denial of Creative Energy's request.²⁵ These deficiencies were subsequently addressed in a revised filing by Creative Energy, and on March 20, 2020 the Panel approved the company's request for a CPCN.²⁶

The BCUC has also launched complaint investigations relating to safety concerns. For example, on May 15, 2020, a hearing to review the safety and reliability of the Kyuquot Power Ltd. distribution system was established.²⁷ In January 2020, the Vancouver Sun published an article authored by the Centre for Policy Alternatives expressing concerns about the safety of the British Columbia Hydro and Power Authority's (BC Hydro) dams in the Peace River region as a result of earthquakes induced by nearby fracking operations.²⁸ In December 2019, the BCUC received a complaint with respect to the concerns raised in the article; the BCUC is currently investigating this complaint. Furthermore, at times, the BCUC has found it necessary to engage independent experts to review the safety of a public utility's energy system. For example, in October 2013, Maven Consulting Limited (Maven) undertook an on-site examination of Silversmith Power and Light Corporation on behalf of the BCUC in order to assess whether the public utility's electrical, mechanical and civil equipment/structures were both safe and reliable.²⁹ In the report that followed, Maven identified an emerging safety concern, which Silversmith Power and Light subsequently committed to rectifying.³⁰

4.0 ESTABLISHING AN INQUIRY INTO THE REGULATION OF SAFETY

In light of the above, the BCUC believes it is essential to seek clarity on its jurisdiction over safety. Accordingly, the BCUC has established an inquiry into the regulation of safety (Inquiry).

As a first step in the process, the BCUC is seeking input on safety regulation in the energy sector and the ways by which the BCUC can most effectively deliver on its safety mandate. The BCUC recognizes that B.C. public utilities have extensive experience with respect to safety. The BCUC expects that the specific approach and experiences of public utilities relating to safety, including safety oversight, standard utility practices, and emergency response planning will vary depending on, among other things, the nature and scale of the public utilities' energy system. Further, the BCUC recognizes the expertise of other regulatory bodies in the province, such as the BCOGC, TSBC, and WorkSafeBC, and their important safety mandates. The BCUC believes that the Inquiry will benefit greatly from the perspectives of the public utilities, regulatory bodies, and other stakeholders. The BCUC looks forward to the active involvement and support of participants as it moves forward with this important initiative.

Additionally, the BCUC acknowledges that safety is a broad term. While the BCUC envisions the regulation of safety as comprising the categories of asset safety, worker safety, and public safety, it also looks forward to understanding the various other framings interested parties may apply.

At this time, the BCUC seeks input on the following key topics in relation to the Inquiry:

²⁴ Ibid, p. 55.

²⁵ Ibid, pp. 55-57.

²⁶ Order C-1-20, dated March 5, 2020.

²⁷ Order G-115-20A, dated May 15, 2020.

²⁸ British Columbia Hydro and Power Authority, F2020-F2021 Revenue Requirements Application, Exhibit C9-15, p. 1.

²⁹ Appendix A to Order G-172-13, dated October 21, 2013, p. 1.

³⁰ BCUC Letter, Re: Silversmith Power and Light Order G-172-13 Requiring an On-Site Examination of Silversmith Power and Light Corporation and the Preparation of a Report Detailing the Findings of the Examination – On-site Examination Report, dated January 2, 2014, p. 2.

1. What is the BCUC's jurisdiction with respect to the regulation of safety and what aspects of a public utilities' activities does it apply to?
 - (a) Does the BCUC have the authority under the UCA to set standards, rules or regulations with respect to safety?
2. Are there currently any legislative gaps in the oversight of public utilities with respect to safety?
3. Are there any areas of legislative overlap or duplication in the oversight of public utilities with respect to safety?
4. Would a workshop in support of the Inquiry be beneficial?
 - (a) If so, what would an appropriate scope for a workshop include?