Building and Governing the Canadian Energy Sector: Learning from Canada's Energy Leaders

David Morton and Anna Fung of the British Columbia Utilities Commission

By Brandon Schaufele and Guy Holburn

David M. Morton, Chair and Chief Executive Officer

David was appointed Chair and CEO of the BCUC in December 2015. His responsibility is to deliver on the Vision of the BCUC – to be a trusted and respected regulator that contributes to the well-being and long-term interests of British Columbians. He is also a Commissioner, a role he has had since 2010, and he continues to participate in many proceedings. David also has over 25 years of experience as a consultant in the information technology sector. He is a Professional Engineer in BC, has a Licentiate in Accounting from the Society of Management Accountants Canada, was certified with the ICD.D designation in 2013 by the Institute of Corporate Directors, and holds a Bachelor of Applied Science from the University of Toronto. David also serves as President of the West Vancouver Community Arts Council. Appointed by OIC 490/19

Anna Fung Q.C., Deputy Chair, Commissioner

Anna was appointed as a BCUC Commissioner in December 2017 and as Deputy Chair in 2019, after serving as Vice President, Legal and General Counsel for TimberWest Forest Corp., where she also served as its inaugural Chief Ethics Officer. She was previously Corporate Counsel at Intrawest ULC and Senior Counsel at BC Gas Inc. Anna holds a Bachelor of Laws and Bachelor of Arts (English and French) from the University of British Columbia. She earned her Certified Corporate Counsel designation in 2015. She has served as President of the Law Society of British Columbia, Canadian Corporate Counsel Association, People's Law School, Association of Chinese Canadian Professionals and BC Autism Association. She is the Chair of the BC Unclaimed Property Society and a past director for the Vancouver Airport Authority, Vancouver Foundation, Law Foundation of British Columbia and Arts Club Theatre Company. Appointed by OIC 491/19

Energy policy usually tries to balance three imperatives: affordability for consumers, reliability and security of supply, and environmental impacts. How does an economic regulator like the BCUC think about these three pillars of energy policy?

Morton: We are an economic regulator. As an economic regulator, we have a different focus than a policymaker.

Regulators set rates to provide safe and reliable service. They also have to provide the utility the opportunity to earn a reasonable financial return. Rates, therefore, aren't too high and they aren't too low. They either achieve their goal or they don't.

This doesn't mean that there aren't affordability issues. Certainly, on a personal level, that's a major concern for me but traditionally economic regulators don't focus on affordability. If someone can't afford to pay their electricity bill, that's an issue for policy-makers. That's a huge problem. But it's not what the regulator is empowered or legislated to do.

A similar argument applies to greenhouse gas reduction. If government places a cap on utility emissions, that would fit within our economic framework, we would move towards finding the least cost methods of providing energy given that target. If we don't have that legislative target to work towards, then we don't have the authority to require this of regulated entities—or of customers.

Fung: I agree. I would add that it's important for us as an economic regulator to understand what our role is not - to formulate policy or substitute our own views or opinions for what government establishes as policy. We are a creature of statute. That means our powers come strictly from governing legislation. We don't get to make up the rules when we review applications. Nor do we get to substitute our own opinions for the Government's. We have to follow policy mandated in legislation, not formulate policy of our own.

Do you think that the mandate of regulators could evolve to incorporate additional pillars in the future? When there are trade-offs, for example between environmental impacts and affordability, regulators possess substantial expertise and may be well positioned to evaluate multiple objectives.

Fung: That's a great question and I have to say that there's certainly an argument for that. As parties with expertise, we are well-placed to understand the various competing considerations. We can provide input to government on whether we think that our mandate should include these factors. But I'm always conscious of the fact that I'm not elected by ratepayers to make those decisions. Politicians are elected to carry out the wishes of the electorate. If I wanted to set policy, I should run as a politician. I shouldn't be a regulator.

Morton: I think a regulator is well-positioned to make certain decisions, but only within a fairly narrow mandate. As Anna says, we're not elected and decisions about broader societal trade-offs should be made by politicians.

With that being said, I do think that that we can help in making those decisions. We have transparent public processes. We are effective at gathering and testing evidence. We often have inquiries to gather information and make recommendations to government. So a Commission could be helpful in that context.

How do you manage regulatory hearings? And how do you ensure BCUC decisions are made independently?

Morton: We adhere to principles of natural justice and administrative law. Everyone potentially affected by a decision has a right to be heard and everyone has a right of reply. A panel will never consider evidence where parties to a proceeding haven't had an opportunity to comment.

We ensure that our hearings are open and transparent, but this doesn't mean that every decision needs hundreds of people weighing in. You scale the process to meet the circumstances. Everything is done publicly and everybody knows what we're doing. If you think we've made a wrong decision, then you can appeal to the BC Court of Appeal and convince the judge of your case. I can't guarantee that we didn't miss something or that we should have adjusted a utility's budget a little more over here or a little more over there. But we do make our decisions in an open and transparent process.

Fung: We've managed hearings to ensure that there is transparency and accountability. You don't assign panel members to a hearing if you know that they have agendas or specific views on the issue. Panel members are supposed to be keep an open mind and not allow their personal views to influence outcomes. Decisions are based on the evidence that was brought forward in the proceeding.

We're also very careful to ensure that any given panel is totally independent of the rest of the Commission. There's no interference by other Commissioners with respect to the decision. Decisions are by the panel that heard the evidence. Further, every Commissioner is fully aware that, while staff assist tremendously in a proceeding and analyze the evidence, it is the panel that's responsible. There is no crossing the line when it comes to who is making the decisions.

Morton: I would add that our Commissioners are appointed by Cabinet for specified terms. Any party that appears before us could attempt to persuade a Commissioner on an ex parte basis, but influence could also come from Government. Certainly, some people think that we do whatever Government tells us – especially as the Government owns the biggest electricity company in the province. But there is no phone call in the night telling us what to decide. Our terms are respected and I'm actually impressed with the level of independence that we have.

How are market forces and new technologies changing the scope of regulation? For example, regulators need to deal with traditional networks of transmission and distribution while at the same time storage is becoming more important and customers are becoming more demanding. How does the BCUC think about areas where it may regulate more or regulate less?

Morton: If you look at the evolution of energy over the last few years, one of the themes is greater input from customers. If you want electricity at your house, you rely on the wires that run down your street. There isn't much choice in whichever electricity company happens to be in your neighborhood.

One of the important practices that we adopted at the BCUC is the perspective that we should only regulate where market conditions made it necessary. That might sound like a no-brainer—the whole reason for utility regulation is natural monopoly—but, if you actually read our Utilities Commission Act, the definition of a utility is anybody that sells energy in British Columbia. The word monopoly doesn't appear.

Thinking of new technologies, an issue that has arisen with electric vehicle charging is billing. If you charge your electric car outside the home, you can be billed on a per minute basis. Charging at home is billed on a per kilowatt-hour basis. Is this a regulatory matter for organizations such as the BCUC?

Morton: This issue has come up in BC. Measurement Canada is the regulator of all electric meters in the country. Measurement Canada has yet to approve a standard for volumetric delivery of EV charging. Currently, it only has a time-based standard. We asked whether a utility could use an EV meter that is not approved by Measurement Canada and it seems that they can't. So, we ordered our two biggest electric utilities to ask for a dispensation from Measurement Canada. In plain speak, they are asking for an exemption from Measurement Canada rules, which say that you can't use volumetric meter for out-of-home EV charging.

More generally, EV charging is not part of a monopolistic utility. Anybody can set up an EV charging station and sell you electricity for your electric car. An important principle is that the BCUC deals with monopolies. As a result, we recommended to Government that technologies such as EV charging not be regulated by us, because it is not monopolistic.

Fung: This is a perfect illustration of how some regulatory processes have not kept up with the pace of change in technology. Regulation and technology have to go hand-in-hand for regulation to be effective. This one is such an easy fix. Surely, it is possible to have a standard that can measure volumetric charging. Everyone understands the inequities of charging by time when you have different vehicles capable of different charging speeds, different battery sizes and at different temperatures, all which influence the amount of time it takes you to get a full charge. Our direction to BC's utilities arises because we're not waiting for Measurement Canada. It's unclear how long it will be before we see an approved measurement device.

BC is at the forefront of renewal natural gas. FortisBC, as an example, recently submitted an application on incorporating more renewable gas into their services. How do you see renewable natural gas fitting into the BC system?

Morton: We're in the early stages of FortisBC's submission. Since I'm on the panel, I can't say much. What I can do is offer some historical context.

Fortis first came to the BCUC with a proposal for a voluntary program. They wanted to enter into contracts with BC-based producers to buy upgraded, pipeline-quality biogas. They would then inject this into the system and deliver it to customers on a voluntary basis.

Initially, there was a big price differential between biogas and conventional natural gas. This differential has eroded as natural gas prices and the carbon tax have increased, but there's still a gap. The BCUC was okay with the pilot proposal as long as it was on a voluntary basis. Our concern as a regulator was imposing—on the entire customer base—the cost of a specific energy that they don't, from a statutory perspective, have to purchase and that is not required under law. This is why making the initial program voluntary was important.

Currently, the pace of decarbonisation in the province has picked up. The Government stepped in with a regulation that allowed Fortis to buy and be compensated for a certain amount of biogas. The motivation was to backstop the risk for Fortis. The greenhouse gas reduction regulations have evolved to allow Fortis to buy up to a certain percentage of its total gas supply as renewable natural gas, and cost recovery is guaranteed.

Fung: Biogas is not a silver bullet that is going to solve the energy crisis and resolve climate change. It's one of the many tools that we have to deploy. In order to meet the greenhouse gas reduction targets that have been set, we need a range of technologies. Most new and emerging alternative energy sources don't come cheap. Our job at the BCUC is to do whatever we can to make them affordable.

British Columbia has experienced the severe effects of climate change. We had the Heat Dome, floods and fires in Abbotsford, Merit and Lytton. We need to seriously explore all opportunities. Renewable natural gas is one of the many that we should look at seriously. Other technologies include carbon capture and hydrogen. We will likely need all of these and more.

Economists typically recommend that consumers face time-varying prices for electricity. Yet, many jurisdictions are reluctant to implement these types of pricing schemes. How important do you think it is to update pricing structures? What do you think would be feasible from a consumer perspective?

Fung: Time-of-use rates are still relatively rare. It's not an approach that we've used to date in British Columbia. We understand the value of encouraging electric vehicle charging at night, but we prefer an approach that doesn't involve adding costs to the rate base.

Morton: Mandatory time-of-use rates are becoming less popular. Voluntary time-of-use rates are certainly more politically palatable. That said, I do think that time-of-use rates, and rate structures more generally, are important tools going forward.

Time-of-use rates are particularly useful for managing capacity issues. Anything that can smooth out demand is helpful, because we build infrastructure for peak demand. We don't build for average demand. This means that much of what we build is not used most of the time. Regulations and practices that help us become more efficient help with affordability.

BC has used other rate structures like demand charges and residential increasing block rates. They were quite controversial when they first came in and remain so in some areas. In fact, we're moving away from block rates. We also had industrial declining block rates, but those are likewise becoming less common.

Rate design is important, but we need to do it in a thoughtful way. It can't be about forcing people to do their laundry at night and eating dinner in the middle of the day. It is critical to provide affordable electricity to people when they need it.

Fung: Energy policy and solutions, including rate design, have to be considered as a whole.

Morton: Further, as regulators, we need to be careful. We're technical people. We're analysts, engineers, accountants and economists. For us, there's no structure that is too complicated. But most people don't like complicated. Anything other than a straightforward per kilowatt-hour charge is a complicated rate structure. Simplicity and public accessibility is something that we sometimes forget, but it is important.

BC is in the fortunate position of having an abundance of clean hydro resources. Many jurisdictions are less fortunate. Building greater connections across Canada, so that provinces such as BC can supply provinces with clean electricity, could help achieve Canada's net zero targets. What are the prospects for developing new transmission infrastructure?

Morton: Virtually all of our transmission infrastructure runs North-South. This is not unique to British Columbia. There is very little East-West transmission and there's a lot of inertia in our existing transmission system.

I don't currently see much impetus to build transmission between BC and Alberta. BC has a market for all the power we generate. We have connections to California and other US states. Canada would like to encourage east-west transmission, but I don't think there's a business case for it right now. Moreover, unlike in the US, Canada does not have a national regulator that's promoting interprovincial transmission projects.

How do you see BCUC's role in improving energy literacy among the public?

Fung: I learned English as a second language and then proceeded to teach English. This experience taught me that it is very important to communicate in a manner that's easy for people to understand. Since I've been at the Commission, we've made a concerted effort to make our processes more accessible, less complicated and less mysterious to a wider range of people. In addition to our website, we post YouTube videos that explain to the public what we do and, more importantly, what we don't do. We use language that everyone can understand as opposed to acronyms. As an example, consider the term ratepayers. Why can't we just say customers?

We now have a practice of ensuring that every decision includes a short executive summary that tells people what this decision is about, rather than forcing them to read pages of acronyms and difficult concepts. As David pointed out, nothing is too technical for energy wonks at the Commission. But not everybody wants to be an energy wonk.

AUTHORS

Brandon Schaufele is the Director of the Ivey Energy Policy and Management Centre and an Associate Professor in Business, Economics and Public Policy at the Ivey Business School. Prior to coming to Ivey in 2014, Brandon was an Assistant Professor in the Department of Economics at the University of Ottawa as well as the Research Director of Sustainable Prosperity. Brandon's research focuses on the economics of energy and the environment and the economics of law. Among other places, he has published papers in the American Economics Journal: Applied Economics, Journal of Environmental Economics and Management, Energy Economics and the Canadian Journal of Economics.

Guy Holburn is a Professor of Business, Economics and Public Policy at the Ivey Business School. Holburn is the founder of the Ivey Energy Policy and Management Centre, and served as Director from 2010-2022. He is currently the faculty lead for the Centre's Electrification Research Program. His areas of expertise are regulation, governance, and business strategy, with a focus on the energy and utilities sectors. He has published widely in top peer-reviewed academic journals and has authored more than a dozen reports on provincial and federal energy policies. He is a Director of London Hydro, a board member of the Alliance for Research on Corporate Sustainability, and on the Council for Clean and Reliable Energy. Holburn has served as a consultant and advisor to corporations and governments in Canada and the U.S. He has provided advice on economic impact assessments, corporate governance, merger/acquisition strategy, regional economic development strategy, electricity pricing policy, pipeline regulation, and corporate performance improvement. He testified as an expert witness on utility regulation and Crown corporation governance issues at the Muskrat Falls Inquiry in 2018 and 2019. He has also testified in court as an expert witness on business strategy issues in commercial litigation. He holds a PhD and MA from the University of California, Berkeley, and a BA Hons. (First Class) from Cambridge University. Previously he worked for several years as a management consultant for Bain and Company in the U.K. and in South Africa.