

August 30, 2017

Sent via email: commission.secretary@bcuc.com

Karen Campbell
Suite #390, 425 Carrall Street
Vancouver, BC, V6B 6E3
Tel: 604-685-5618 ext. 287
kcampbell@ecojustice.ca

Kegan Pepper-Smith
Suite #390, 425 Carrall Street
Vancouver, BC, V6B 6E3
Tel: 604-685-5618 ext. 267
kpsmith@ecojustice.ca

Site C Inquiry Panel
David Morton, Chair, and Commissioners
Karen Keilty, Dennis Cote, and Richard Mason
British Columbia Utilities Commission
Sixth Floor, 900 Howe St, Box 250
Vancouver, BC, V6Z 2N3

Dear Members of the Commission Panel,

Re: Inquiry into continuing, suspending or terminating the Site C project (the “Inquiry”)

We write on behalf of the Sierra Club of British Columbia Foundation (“Sierra Club BC”), who is an interested party to this inquiry into the Site C project in northeastern BC (the “Project” or “Site C”). Sierra Club BC is a member-based organization. Its members include BC Hydro rate-payers. Sierra Club BC has participated in other BC Utilities Commission (the “BCUC” or “Commission”) proceedings and, herein intends to participate in this Inquiry as established by Commission Order G-120-17 (the “Timetable Order”). Sierra Club BC also intends to file an application for a Participant Assistance/Cost Award (“PACA”) upon publication of the Final Report on November 1, 2017, or at such other time as the Commission directs, pursuant to the Site C Inquiry PACA Guidelines established by Commission Order G-97-17.

On August 2, 2017, the Lieutenant Governor in Council issued Order in Council No 244 (the “OIC”). The OIC tasked the Commission with conducting an inquiry into the implications of continuing, suspending, or terminating the Site C project. On August 9, 2017, the Commission issued its Timetable Order for this Inquiry, establishing a deadline of August 30, or 3 weeks total, for submissions.

The new government has made it clear this Inquiry is of great public importance. In issuing the OIC, BC's Minister of Energy, Mines and Petroleum Resources, Michelle Mungall stated:

Our government is delivering on our commitment to British Columbians by ordering an independent review of Site C to ensure we can keep hydro rates affordable. The previous government refused to allow our independent energy watchdog to examine the project to determine if it was in the public interest. That was wrong. We're sending this project to the BCUC to ensure we make the right decision for B.C. families.¹

This concern about the failure to ensure the project was fully reviewed was also stated by the Joint Review Panel (the "JRP") tasked with the Site C environmental assessment. The JRP made findings about the critical gaps posed by the BCUC exemption. In its final report the JRP stated:

The Panel cannot conclude on the likely accuracy of Project cost estimates because it does not have the information, time, or resources. This affects all further calculations of unit costs, revenue requirements, and rates.

On this basis, the JRP issued Recommendations 46 and 49, both of which address the important role and function of the Commission in relation to this project:

46. If it is decided that the Project should proceed, a first step should be the referral of project costs and hence unit energy costs and revenue requirements to the [Commission] for detailed examination.² ...

49. The Panel recommends that, if Ministers are inclined to proceed, they may wish to consider referring the load forecast and demand side management plan details to the BC Utilities Commission.³

It is clear that this Inquiry, though late and though undertaken with a truncated process, is of critical importance to British Columbians given the scope, cost and energy planning implications of Site C. Sierra Club BC's submissions are divided into three main parts:

A. Ensuring the Commission fully implements the OIC Terms of Reference;

¹ British Columbia, Energy, Mines and Petroleum Resources, "Province sends Site C project to BCUC for review", News Release, 2 August 2017, online: <<https://news.gov.bc.ca/releases/2017EMPR0018-001380>>.

² Joint Review Panel, *Report of the Joint Review Panel – Site C Clean Energy Project* (Her Majesty the Queen in Right of Canada, May 2014) [JRP Report] at 280.

³ JRP Report, *ibid* at 306.

- B. Demonstrating how continuing with Site C is inconsistent with the *Clean Energy Act's*⁴ (“CEA’s”) energy objectives;
- C. Raising concerns about the availability of proponent information and the lack of procedural safeguards adopted for the Inquiry.

A. Full Implementation of the Terms of Reference

It is difficult to overstate the importance of giving full effect to the Terms of Reference. Their interpretation is the task of the Commission,⁵ but in doing so the Commission must be aware of the implications of improperly scoping the Inquiry. According to Professor Ratushny, in *The Conduct of Public Inquiries: Law, Policy and Practice* text:

The terms of reference are crucial because the mere appointment of a commissioner tells us little. The entire life of a commission is dictated by its terms of reference, which are legally binding. They establish the jurisdiction of the commission. The boundaries of that jurisdiction dictate what the commission must do and what it cannot do. And they are legally enforceable by the courts.⁶

Moreover, the OIC was issued pursuant to s. 5 of the *Utilities Commission Act*,⁷ which states that where the Commission undertakes an inquiry, the Commission has a duty to advise the Lieutenant Governor in Council on matters as set out in the Terms of Reference.

Section 3(a) of the OIC Terms of Reference is the guiding section for this Inquiry. It states: “the commission must advise on the implications of (i) completing the Site C project by 2024, as currently planned, (ii) suspending the Site C project, while maintaining the option to resume construction until 2024, and (iii) terminating construction and remediating the site.”

“Advising on the implications” of the scenarios set out in section 3(a)(i)-(iii) of the Terms of Reference requires much more than the simple answers contemplated in section 3(b). Merriam-Webster defines “advise” as giving “a recommendation about what should be done.”⁸ Cambridge English Dictionary defines “implications” as “the effect that an action or decision will have on something else in the future.”⁹ Accordingly, “advising” (providing *recommendations* about what

⁴ SBC 2010, c 22.

⁵ Ed Ratushny, *The Conduct of Public Inquiries: law, policy and practice* (Toronto: Irwin Law Inc., 2009) at 141 [Ratushny, “Public Inquiries”].

⁶ *Ibid*, Ratushny, “Public Inquiries” at 130.

⁷ RSBC 1996, c 473.

⁸ *Merriam-Webster Dictionary*, *sub verbo* “advise”, accessed August 17, 2017 <<https://www.merriam-webster.com/dictionary/advise>>.

⁹ *Cambridge English Dictionary*, *sub verbo* “implication”, accessed August 17, 2017 <<http://dictionary.cambridge.org/dictionary/english/implication>>.

should be done) on the “implications of” (the *effect of the options* as set out in 3(a)(i)-(iii)) involves a more holistic or qualitative and quantitative analysis and response.

Despite the clear importance of this section, the Commission’s Inquiry Timetable Order is devoid of the “advise on the implications” language. On August 21, 2017, we wrote to the Commission outlining Sierra Club BC’s concern that by omitting this language the Commission would undertake an improperly scoped Inquiry.

Counsel for the Commission provided a verbal reply to our August 21 letter, confirming that the Commission would be advising on the implications of the s. 3(a) scenarios – that is, conducting a holistic analysis and providing qualitative and quantitative conclusions. Counsel also confirmed that the Commission had not yet determined what this would look like in practice for the Inquiry, and invited Sierra Club BC to provide recommendations.

The remainder of this submission, with its emphasis on application of the *CEA* objectives and procedural issues, presents a way satisfy this s. 3(a) requirement. Meaningful consideration of the qualitative as well as the quantitative issues in the OIC Terms of Reference will answer the questions posed to the Commission. Whereas recognizing the procedural shortfalls of the Inquiry will ensure the government is aware that the truncated process adopted for the Commission review is inadequate for achieving the Inquiry’s important public interest mandate.

B. Meaningful consideration of the objectives of the Clean Energy Act

The OIC included several Terms of Reference. Terms of Reference section 3(b)(iv) states:

Given the energy objectives set out in the Clean Energy Act, what, if any, other portfolio of commercially feasible generating projects and demand-side management initiatives could provide similar benefits (including firming; shaping; storage; grid reliability; and maintenance or reduction of 2016/17 greenhouse gas emission levels) to ratepayers at similar or lower unit energy cost as the Site C project? (emphasis added)

The Sierra Club BC submits that any consideration of portfolios of generating projects and demand side management initiatives that could operate at similar or lower unit energy cost is to be considered based on the detailed objectives set out in the *CEA*.

This section of Sierra Club BC’s submission will focus on what is necessary of the Commission in order to properly give effect to Term of Reference s. 3(b)(iv). It will first provide an explanation of what the law requires of the Commission vis-à-vis the *CEA* energy objectives. It will then rely on analysis from others to demonstrate that continuing with Site C is not consistent with these objectives.

1. *How the Commission is to consider BC's legislated clean energy objectives*

The *CEA* contains 16 energy objectives for BC, which establish a vision for clean energy development and greenhouse gas (“GHG”) emission reductions in BC.¹⁰ The Sierra Club BC submits that these objectives should be read as a whole, and when done so in the context of the available evidence, it is in the public interest to terminate the Site C Project.

Canada's courts and the Commission have accepted a purposive approach to statutory interpretation, where:

... the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament.¹¹

Further, where legislation has more than one purpose, a purposive analysis takes multiple shifting perspectives into account, and where there are competing purposes, a balancing or weighting occurs.¹² In Sierra Club BC's submission, these principles should guide the consideration of the *CEA* objectives in the context of the Commission's analysis.

Interpretation statutes of general application can also be useful in determining legislative intent and statutory purpose. These statutes give meaning and effect to words used in other legislation and are generally the key to the will of the legislature.¹³ Section 7 of BC's *Interpretation Act* states that every enactment must be construed as always speaking.¹⁴ If a provision in an enactment is expressed in the present tense, the provision applies to the circumstances as they arise.¹⁵ This factor is important given some of the factual changes that have occurred since Site C was approved in October 2014.

Overall, the 16 objectives of the *CEA* fall into four categories: (i) those that focus on greenhouse gas reductions; (ii) those that focus on prioritizing energy conservation and efficiency; (iii) those that focus on fostering innovation, technology, jobs and community development; and (iv) those that facilitate energy self-sufficiency.

The consideration of these objectives, combined with other submissions to the Commission and material on the public record, lead to a conclusion that continuing with the Site C project is

¹⁰ See Appendix A for full list of s.2 *CEA* energy objectives

¹¹ Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6 ed (Markham: LexisNexis Canada, 2014) at 7; BC Utilities Commission, Decision G-5-17, January 20, 2017, accessed August 30, 2017 <<http://www.ordersdecisions.bcuc.com/bcuc/decisions/en/item/218025/index.do>> at 41.

¹² Ruth Sullivan, *Driedger on the Construction of Statutes*, 3 ed (Markham: Butterworths Canada Ltd, 1994) at 47.

¹³ CED 4th (online), *Statutes*, “Interpretation Acts – Rules of General Application” (III.2.(a)) at § 58.

¹⁴ *Interpretation Act*, RSBC 1996, c 238, s 7(1) [*Interpretation Act*].

¹⁵ *Interpretation Act*, s 7(2).

inconsistent with the provincial energy objectives set out in the *CEA*. Even more concerning, further locking British Columbia into this very costly project may well impede the attainment of many of the *CEA* objectives.

Each of the four above-noted categories of *CEA* objectives is examined in turn.

i. Reducing greenhouse gas emissions in line with provincial targets

Objectives (g), (h), (i) and (n) all address the goal of reducing BC's GHG emissions, and in particular, incorporate the targets set out in BC's *Greenhouse Gas Reduction Targets Act*¹⁶ (detailed in objective (g)). In addition to the incorporation of the legislated targets, objective (h) encourages the switching from one source to another to decrease GHG emissions, objective (i) encourages communities to reduce GHG emissions, and objective (n) seeks to reduce GHG emissions in regions in which BC trades electricity.

The fact that four objectives relate to GHG emission reductions and also incorporate provincial targets indicates the importance of this goal in fostering clean energy development.

Sierra Club BC is concerned that the GHG implications of the Site C project have not been fully and adequately evaluated. As Rick Hendricks notes, the JRP drew conclusions about the relative GHG emission advantages of the Project without additional analysis beyond that provided by BC Hydro:

During [the JRP] hearings, minimal attention was paid to the issue of GHG emissions. Over the course of 25 days of hearings, the JRP dedicated one afternoon session to atmospheric and air quality issues, of which the sub-topic of GHG emissions was one of five sub-topics.¹⁷ No evidence concerning GHG emissions was presented to the Panel during the hearings, other than by BC Hydro. The JRP undertook no independent analysis of the findings of BC Hydro, and solicited no additional evidence through undertakings by BC Hydro or other interveners.¹⁸

Hendricks' report seeks to rectify the deficit of analysis on this critical issue – especially as it relates to the GHG emissions of alternative energy portfolios. He analyzed BC Hydro's information submitted to the JRP and with additional research, concluded:

¹⁶ SBC 2007, c 43.

¹⁷ Site C Clean Energy Project Joint Review Panel. 2013. Revised Public Hearing Schedule – released December 6, 2013, accessed August 30, 2017 <<http://www.ceaa-acee.gc.ca/050/documents/p63919/96899E.pdf>>.

¹⁸ Rick Hendricks, *Comparative Analysis of Greenhouse Gas Emissions of Site C versus Alternatives* (Vancouver: Program on Water Governance, University of British Columbia, 2016) at 5 [Hendricks, "Comparative Analysis of GHGs"].

The Site C dam does not deliver energy and capacity at significantly lower greenhouse gas emissions than a fully optimized Alternative Portfolio put forward by BC Hydro (which includes wind energy). The difference in lifecycle GHG emissions, if a difference exists at all, is at most 1% of BC's current emissions.¹⁹

Sierra Club BC is concerned about the end use of the electricity generated by Site C and the extent to which it will be used to support GHG intensive large industries such as mining, oil, and LNG. In this regard, Sierra Club BC adopts the concerning conclusions reached by the Canadian Centre for Policy Alternatives (the "CCPA") which has extensively analyzed Site C prior to²⁰ and for this Inquiry.²¹

These concerns include the following:

- The premise that clean electricity supplies should be used to reduce the GHG emissions associated with fossil fuel export projects should be rejected, as this ignores the full climate implications of all the extracted carbon removed from BC, most of which is counted in the GHG inventories of the importing nation where the fuel is consumed.²²
- Electricity from Site C will likely be provided to these industries pursuant to a highly subsidized scheme.²³ This encourages a continued focus on non-renewable resource development and discourages the transition to a less GHG-intensive economy. These extractive industries should be required to pay the true cost for their power. Otherwise, rate-payers, the climate and future generations shoulder the cost: "[E]xpanded gas fracking and processing operations are also likely to receive subsidized rates."²⁴

ii. Prioritizing energy conservation and efficiency

As stated above, there are several *CEA* objectives – (b), (d), and (j) – that can be broadly characterized as focusing on prioritizing energy conservation and efficiency. Objective (b) emphasizes the importance of taking demand-side measures ("DSMs") and conserving energy,

¹⁹ *Ibid*, Hendricks, "Comparative Analysis of GHGs" at 2.

²⁰ John Calvert and Marc Lee, *Electricity, Conservation and Climate Justice in BC: Meeting our Energy Needs in a Zero-Carbon Future*, June 20 2012 (Canadian Centre for Policy Alternatives), accessed August 30, 2017 <<https://www.policyalternatives.ca/electricity-justice>>.

²¹ Marc Lee, *Revisiting the Economic Case for Site C: Submission to the BC Utilities Commission Inquiry respecting Site C*, August 30, 2017 (Canadian Centre for Policy Alternatives) [CCPA Submission].

²² *Ibid*, CCPA Submission at 5.

²³ *Ibid*, CCPA Submission at 5.

²⁴ *Ibid*, CCPA Submission at 5.

with the goal of BC Hydro reducing increase in demand by 2020 by 66%. Objective (d) prioritizes the use and development of innovative technologies to support energy conservation and efficiency and the use of clean or renewable resources. Objective (j) focuses on reducing waste by encouraging the use of waste heat, biogas and biomass.

As the CCPA has observed, conservation and energy efficiency are generally accepted as the least expensive, lowest-impact form of meeting new energy demand.²⁵ This means prioritizing these objectives should be a BC Hydro priority.²⁶

In Sierra Club BC's submission, there are two primary reasons why continuing with Site C does not coincide with prioritizing energy conservation and efficiency through DSM and other efforts.

First, Site C is very likely to result in energy supply that far exceeds energy demand for at least several years after the project is completed. BC Hydro's own load forecast analysis confirms this excess. Its Fiscal 2017 to Fiscal 2019 Revenue Requirements Application ("RRA") with the Commission represented the first meaningful update of its forecasted energy and capacity requirements since the 2013 IRP.²⁷ As Hendricks et al note, the 2016 forecasts are significantly less than those offered by BC Hydro in 2012 and further reflect BC Hydro's tendency to overestimate capacity and demand requirements:

Throughout the 20-year forecasting period, the difference is on the order of 5,000 GWh/year of energy. In other words, in the four years since the 2012 Load Forecast, a "requirement" for energy equivalent to the Site C Project has disappeared from BC Hydro's 2016 Load Forecast. The expectation in the 2012 Load Forecast that energy requirements after DSM would reach 70,000 GWh/year by F2024, when Site C would be commissioned, is now expected in the 2016 Load Forecast not to occur until F2032, eight years later.

... actual requirements in F2016 are 6,500 GWh/year less than predicted just four years earlier in F2012. This illustrates that BC Hydro's mid-load forecasts continue to substantially overestimate actual future requirements.²⁸

²⁵ *Ibid*, CCPA Submission at 9.

²⁶ See Richard Hendricks, Philip Raphals & Karen Bakker, *Reassessing the Need for Site C* (Vancouver: Program on Water Governance, University of British Columbia, 2017) at 7 [Hendricks et al, "Reassessing Site C"]: "Importantly, the Clean Energy Act also sets the objective of maintaining competitively priced electricity, which therefore prioritizes the development of the lowest-cost low-carbon electricity resources. For example, where conservation and energy efficiency (i.e. "demand-side management" or "DSM") are lower cost, they would take priority over the development of clean or renewable energy, including hydroelectric projects like Site C, wind, biomass, solar and geothermal (i.e. "supply-side resources")."; See also Harry Swain, *Site C: Complete, Mothball, or Abandon?: Submission to the BC Utilities Commission Inquiry on Site C*, August 28, 2017 [Swain] at 16: proposes "price induced conservation" (i.e. price elasticity of demand) and DSM as alternatives to supply.

²⁷ *Ibid*, Hendricks et al, "Reassessing Site C" at 29.

²⁸ *Ibid*, Hendricks et al, "Reassessing Site C" at 32 (emphasis removed).

BC Hydro's tendency to overestimate capacity and demand requirements was recognized by the Commission in their key findings on the 2016 Load Forecast for F2017 to F2019, issued on August 25, 2017 in response to BC Hydro's F2017 to F2019 RRA. BC Hydro's application itself admitted that current load forecasts are lower than those used as input for the 2013 10 Year Rates Plan: "BC Hydro also states that the load forecast provided in the Application is lower than the forecasts provided by BC Hydro in the 2013 IRP which were used as an input into the 2013 10 Year Rates Plan."²⁹

Second, continuation of Site C will only increase BC Hydro's outstanding financial obligations³⁰ and thereby curtail investment in DSM programs and innovation. As former BC Hydro CEO Marc Eliesen notes, BC Hydro's DSM Programs have contributed significantly to the overall trend of flat demand for energy in recent years. However, "because BC Hydro is advancing the construction of Site C, the company is scaling down its efforts for demand side management. In the name of "fiscal control", BC Hydro is curtailing scheduled Power Smart Initiatives and have no plans for new conservation efforts after 2021."³¹

Hendricks et al also note BC Hydro's unfortunate turn away from focusing on DSM and other efficiency programs through its promotion of Site C:

The justification for proceeding with the Site C Project at this time hinges on BC Hydro's forecast that the province's electricity needs will grow by 40% over the next 20 years. Importantly, this is before accounting for energy savings from conservation and efficiency (i.e. DSM). After accounting for DSM, BC Hydro's most recent forecast projects that electricity needs will grow by 30%, meaning that BC Hydro is projecting that DSM will play only a modest role in reducing future electricity requirements.³² This is surprising since BC Hydro currently projects that DSM will meet more than 100% of the utility's needs to F2021, even if the utility were to immediately and entirely discontinue future spending on DSM programs.³³

²⁹ British Columbia Utilities Commission, *British Columbia Hydro and Power Authority F2017 to F2019 Revenue Requirements Application: Key Findings – Load Forecast*, August 25, 2017, Project No. 1598869 (3698869) at 2.

³⁰ Swain, *supra* note 26 at 12. See also Swain at footnote 27 for several reports and articles to substantiate claim that BC Hydro's financial situation is bad and getting worse.

³¹ Marc Eliesen, *An Evaluation of the Need for the Site C Project: Submitted to the British Columbia Utilities Commission's Inquiry into BC Hydro's Site C Project*, August 16, 2017 at 16 [Eliesen "Evaluation"].

³² Hendricks et al, "Reassessing Site C", *supra* note 26 at 13, citing to BC Hydro. January 23, 2017. F2017 to F2019 Revenue Requirements Application, Response to Information Request CEC 2.135.1. F2016 – 57,310 GWh/year and F2036 – 74,348 GWh/year, see spreadsheet attachment with PDF, accessed April 17 2017

<http://www.bcuc.com/Documents/Proceedings/2017/DOC_48632_B-15_BCH-Response-Intervener-IR-No2.pdf>.

³³ *Ibid*, citing BC Hydro. July 28, 2016. Fiscal 2017 to Fiscal 2019 Revenue Requirements Application, Table 10-5. BC Hydro would still rely only on DSM savings from codes, standards and rate impacts, accessed April 17 2017

<http://www.bcuc.com/Documents/Proceedings/2016/DOC_46852_B-1-1_BCH_RevenueRequirements-App.pdf>.

The years (possibly more than a decade) of excess energy supply, coupled with the significant increase in financial obligations, is not conducive to achieving the *CEA* energy objectives focused on conservation and efficiency. Excess supply discourages focus on DSM and the fostering of innovative technologies. Sierra Club BC is concerned that if the supply is there, BC Hydro would be more inclined to sell it rather than encourage conservation – only the former generates revenue.³⁴ Relatedly, a significant increase in financial obligations would force BC Hydro to divert resources from developing and incentivizing the adoption of conservation and efficiency programs, as described below.

iii. Fostering economic and community development and innovation

Objectives (d), (k), (l) and (m) all relate to fostering economic and community development in relation to clean energy. Objective (d) seeks to foster the development of innovative technologies to support energy conservation, efficiency and the use of clean or renewable resources; objective (k) encourages economic development and job creation/retention; objective (l) is to foster development in first nation and rural communities through clean energy; and objective (m) seeks to maximize the value of BC's clean energy resources. Combined, these objectives reflect the government's intent to prioritize innovative technologies and new opportunities offered by clean energy development for communities throughout BC.

Continuation of Site C could impede the attainment of these objectives in several ways.

First, the cost estimates associated with the project have increased markedly – by 33.3 percent since the Project was approved (from \$6.6 billion in 2010 to \$8.8 billion in 2016).³⁵ As Marc Eliesen has noted, other recent major BC Hydro projects demonstrate the consistency with which it manages to come in over budget.³⁶ BC Hydro is tying itself to significant financial obligations through this project, which means dedicating revenue to the development of innovative technologies, for example, will suffer as a result. Sustained cost increases and overruns could leave BC with fewer options for development of new clean energy sources, losing opportunities for innovation, technological advancement and rural and first nation community development opportunities.

In particular, the CCPA notes that First Nations in BC are leading in taking advantage of renewable energy opportunities. The University of Victoria has found that almost half of 105 BC First Nations are involved in clean energy generation to some degree, noting that BC Hydro could be more supportive in fostering such opportunities.³⁷

³⁴ CCPA Submission, *supra* note 21 at 7, noting that Site C's excess supply is likely to be sold to the US at a significant loss.

³⁵ Eliesen, "Evaluation", *supra* note 31 at 6.

³⁶ *Ibid*, Eliesen, "Evaluation" at 8; Hendricks et al, "Reassessing Site C", *supra* note 26 at 62-63 for a chart on these project cost overruns.

³⁷ CCPA Submission, *supra* note 21 at 13-14.

Second, and related to the conservation and efficiency submissions in section (ii) above, is the concern that all Site C power would be surplus. If the completion of Site C would mean that BC Hydro is selling its new electricity supply at a loss,³⁸ it would in turn mean that BC is not able to “maximize the value” of its clean energy resources as set out in objective (m).

iv. Facilitating electricity self-sufficiency and net exports

The fourth category of objectives are those related to energy self-sufficiency and exports. Objective (a) seeks to achieve electricity self-sufficiency and objective (n) takes this further by setting a goal to be a net exporter of clean electricity.

In general, these objectives should not be read independently from the goals of reducing greenhouse gas emissions, encouraging conservation and efficiency, and fostering innovation and economic development. It should be kept in mind that these objectives should be considered as a whole, and as noted above, where balancing occurs, it must be done in a purposive manner. Sierra Club BC submits that self-sufficiency and net exports alone could not be justified in the context of the *CEA* objectives.

2. BC’s legislated clean energy objectives point to termination of Site C

The foregoing section of Sierra Club BC’s submission on *CEA* objectives is meant to inform the Commission’s consideration of Term of Reference s. 3(b)(iv). As previously stated, the Commission is tasked with determining the scope of the Inquiry as determined by the OIC Terms of Reference³⁹ and the applicable statutes (the *CEA* and the *Utilities Commission Act*). In interpreting the *CEA* energy objectives, the Commission must consider several aspects of interpretation, namely: (i) adopt a purposive approach; (ii) in considering potentially conflicting purposes, balance or weigh those consistent with the purposive approach; (iii) construe each objective as always speaking – that is, consider them in the circumstances that now exist, rather than those that did when they were enacted.

On this latter point, Sierra Club BC submits that key changes since the original approval in October 2014 – e.g. BC Hydro’s drastically reduced demand forecast and diminished demand by the oil and gas industry (informed in part by Petronas’ cancellation of the Pacific Northwest LNG Project) – are factors that should be analyzed by the Commission.⁴⁰

³⁸ CCPA Submission, *supra* note 21 at 7.

³⁹ Ratushny, “Public Inquiries”, *supra* note 5 at 130 – the Terms of Reference are legally binding.

⁴⁰ CCPA Submission, *supra* note 21 at 3-6.

Given the current energy and economic reality surrounding the Site C project, Sierra Club BC submits that a proper interpretation and application of the *CEA* objectives indicates project termination is warranted.

In summary, the evidence suggests:

- there is little or no difference between GHG emissions from the Project and alternative energy portfolios, unless the end use GHG emissions for large industries such as oil and gas/LNG are considered;
- the Project is likely to result in significant excess supply, which will curtail innovation and development of DSM and alternative, lower-impact renewable energy;
- the significant capital costs of the Project will hamstring BC Hydro's ability to develop alternatives to reduce demand and/or increase supply, thus impeding the shift to decarbonization that is urgently required; and
- the Project will impede the development of viable regional energy alternatives for communities in BC.

All of this outweighs any purported benefit Site C will provide to the remaining goals of energy self-sufficiency and being a net exporter.

C. Procedural and accessibility concerns

Finally, Sierra Club BC reiterates our concerns in our August 21, 2017 letter regarding availability of materials and the inability to test evidence and challenge assumptions in this process. The extremely short time frame and limited publicly available data have presented challenges in the preparation and filing of submissions. We would note that other parties have voiced a similar concern and, in the case of the Clean Energy Association of BC, have requested complete working versions of models or calculations that are germane to this inquiry. Sierra Club BC adds its voice to the call that the models cited are necessary for interested parties to be able to conduct due diligence with respect to s. 3(b) of the Terms of Reference.⁴¹

The complexity and the significance of the questions before this Commission are such that a more fulsome review should have been undertaken. Sierra Club BC remains hopeful that procedural adjustments to allow for careful review of BC Hydro models and materials, in the form of information requests or cross examination, along with extended timelines, will be considered by the Commission as it prepares its draft report.

⁴¹ Clean Energy Association of BC submission of August 17, 2017 to the BC Utilities Commission, ID No. F18-1, accessed August 30, 2017 at < http://www.bcuc.com/Documents/Proceedings/2017/DOC_90021_F18-1_CEBC_Site-C-Submission.pdf>. See also BC Sustainable Energy Association submission of August 8, 2017 to the BC Utilities Commission, ID No. F29-2, accessed August 30, 2017 at http://www.bcuc.com/Documents/Proceedings/2017/DOC_90034_F29-2_BCSEA_Site-C-Submission.pdf>.

In light of all of the above, and barring any procedural modifications to this process, Sierra Club BC respectfully submits that it is in the best interests of British Columbia for the Site C project to be terminated.

All of which is respectfully submitted.



Karen Campbell
Barrister & Solicitor



Kegan Pepper-Smith
Barrister & Solicitor

APPENDIX A

Clean Energy Act, SBC 2010, c 22
as amended by BC Reg 234/2012

British Columbia's energy objectives

2 The following comprise British Columbia's energy objectives:

- (a) to achieve electricity self-sufficiency;
- (b) to take demand-side measures and to conserve energy, including the objective of the authority reducing its expected increase in demand for electricity by the year 2020 by at least 66%;
- (c) to generate at least 93% of the electricity in British Columbia, other than electricity to serve demand from facilities that liquefy natural gas for export by ship, from clean or renewable resources and to build the infrastructure necessary to transmit that electricity;
- (d) to use and foster the development in British Columbia of innovative technologies that support energy conservation and efficiency and the use of clean or renewable resources;
- (e) to ensure the authority's ratepayers receive the benefits of the heritage assets and to ensure the benefits of the heritage contract under the BC Hydro Public Power Legacy and Heritage Contract Act continue to accrue to the authority's ratepayers;
- (f) to ensure the authority's rates remain among the most competitive of rates charged by public utilities in North America;
- (g) to reduce BC greenhouse gas emissions
 - (i) by 2012 and for each subsequent calendar year to at least 6% less than the level of those emissions in 2007,
 - (ii) by 2016 and for each subsequent calendar year to at least 18% less than the level of those emissions in 2007,
 - (iii) by 2020 and for each subsequent calendar year to at least 33% less than the level of those emissions in 2007,
 - (iv) by 2050 and for each subsequent calendar year to at least 80% less than the level of those emissions in 2007, and
 - (v) by such other amounts as determined under the Greenhouse Gas Reduction Targets Act;

- (h) to encourage the switching from one kind of energy source or use to another that decreases greenhouse gas emissions in British Columbia;
- (i) to encourage communities to reduce greenhouse gas emissions and use energy efficiently;
- (j) to reduce waste by encouraging the use of waste heat, biogas and biomass;
- (k) to encourage economic development and the creation and retention of jobs;
- (l) to foster the development of first nation and rural communities through the use and development of clean or renewable resources;
- (m) to maximize the value, including the incremental value of the resources being clean or renewable resources, of British Columbia's generation and transmission assets for the benefit of British Columbia;
- (n) to be a net exporter of electricity from clean or renewable resources with the intention of benefiting all British Columbians and reducing greenhouse gas emissions in regions in which British Columbia trades electricity while protecting the interests of persons who receive or may receive service in British Columbia;
- (o) to achieve British Columbia's energy objectives without the use of nuclear power;
- (p) to ensure the commission, under the Utilities Commission Act, continues to regulate the authority with respect to domestic rates but not with respect to expenditures for export, except as provided by this Act.