



Bill 17 – *Clean Energy Act*: Improvement needed to ensure a credible planning process

EXECUTIVE SUMMARY

The *Clean Energy Act* (the “*Act*”) is the government’s attempt to find a way forward in the renewable electricity sector, which has been rife with heated debate and community opposition. Much of this opposition has resulted from the absence of credible, transparent and inclusive planning to limit the potentially harmful environmental, economic and social impacts of new generation while maximizing public benefit. While the *Act* sets out a basic framework to conduct electricity planning,

West Coast Environmental Law is concerned that the *Act* as currently framed will not ensure inclusive and comprehensive energy planning, will not succeed in avoiding unnecessary environmental impacts, and will not ensure that the scaling up of renewable electricity generation achieves social license and broad public buy-in to create the certainty needed by industry.

In December 2009, West Coast Environmental Law co-authored a set of six recommendations for responsible clean energy development¹ aimed at creating a more certain political environment for the development of renewable electricity projects through strategic planning, strengthened environmental assessment, and a public dialogue on whether BC should actively pursue electricity exports. For additional information on the extent to which the *Act* responds to our recommendations, see the Pembina Institute’s May 5, 2010 assessment of the *Clean Energy Act*.

In particular, West Coast Environmental Law is concerned that the *Clean Energy Act*:

1. Fails to commit the province to achieving its energy objectives with the lowest possible environmental impact.

2. Fails to ensure a transparent, inclusive and comprehensive planning process.

The *Act*: (a) does not guarantee meaningful public consultation in the planning process, (b) eliminates independent oversight of energy planning and many major projects, (c) does not require regional planning to identify the best options for development, and (d) short-circuits the planning process by predetermining critical policy questions.

3. Does not respond to the need identified by First Nations for greater involvement in both renewable electricity decision-making and development in their traditional territories.

The government and legislature must work rapidly in consultation with First Nations, conservation groups and the concerned public to ensure that these deficiencies are redressed through amendments to the *Clean Energy Act*, or through appropriate regulations and direction to BC Hydro.

West Coast Environmental Law firmly supports renewable electricity generation as one way to mitigate against the effects of climate change. We understand that BC is positioned to play a unique leadership role in Canada and North America on renewable energy. However, this leadership should also be exercised in ensuring the best possible process to meet our renewable electricity needs, and that the most robust environmental protection is in place as our province moves in that direction.

¹ http://wcel.org/sites/default/files/publications/Clean_Electricity_Recommendations.pdf

1. ACT FAILS TO ENSURE NEW ELECTRICITY SUPPLY IS LOW IMPACT

The *Act* sets out a wide range of 15 energy objectives for BC. Left out of the list is the need to ensure that new renewable electricity generation capacity is developed with as little environmental impact as possible, for example, by placing limitations on new power projects to address anticipated environmental or social impacts such as the effects on water flows, fish, and wildlife or on areas of high conservation value outside of existing protected areas. The *Act* sets out numerous sensible objectives such as encouraging the reduction of greenhouse gas emissions, switching away from greenhouse gas intensive forms of energy, increasing BC's commitment to energy efficiency, and encouraging economic development and job creation in First Nations and rural communities. BC Hydro's integrated resource plan is required to respond to these objectives in determining how to build out BC's renewable electricity supply. It makes no sense to exclude the consideration of environmental impacts as one of this long list of objectives required to be balanced as part of energy planning.

While BC Hydro will likely have regard for environmental impacts, it appears that they may be given short shrift. The absence of a statutory requirement for the plan to minimize the environmental impact of renewable electricity development allows the other legally-mandated objectives to take precedence. This will result in unbalanced decision-making, and possibly cause unnecessary and avoidable environmental harm.

The BC Utilities Commission's guidelines for previous integrated resource plans by BC Hydro established the "consideration of environmental impacts" as one of the objectives required to be included in integrated resource planning.² In light of the explicit inclusion of environmental impacts as a factor to be considered in previous IRPs, it is difficult to comprehend why this factor would be deliberately excluded from the list of factors to be considered in future IRPs under the *Act*.

We note, in addition, that it is crucial to take both a provincial-scale and regional-scale look at balancing the desire for the lowest possible environmental impacts against other factors favouring the development of new generation. Considering these questions at a provincial scale only could result in important region-specific values and needs being ignored. Conversely, making decisions on a regional basis alone could result in the wrong projects going ahead – while a particular project may be seen as the least impactful and most desirable within a particular region, that same project may have environmental and social impacts that exceed a similarly beneficial and feasible project in a different part of the province. This will only become apparent if the potential for renewable electricity developments is examined both on a regional and a provincial level.

Act fails to ensure strong environmental assessment for renewable electricity projects.

In addition to the failure to require the integrated resource plan to minimize environmental impacts, the *Act* also fails to ensure public confidence in the expansion of renewable electricity generation by not ensuring that environmental assessment is conducted in a transparent, precautionary, and scientifically robust.

The *Act* amends the *Environmental Assessment Act* to include "potential cumulative environmental effects" among the factors that may, by the discretion of the Environmental Assessment Office (EAO), be included in an environmental assessment. This is an illusory change in that cumulative effects

² Integrated Resource Planning Guidelines, Appendix D of *A Participants' Guide to the BC Utilities Commission*, 1999, http://www.bcuc.com/Documents/Guidelines/Participant_Guide.pdf at p. 2.

assessment is already permitted under the current law. It is allowed to be done, according to the discretion of the EAO, but it is not required. It is currently done in many cases, though there is criticism that it is done poorly and scoped inappropriately, masking the significance of a project's environmental impact.³ This amendment simply restates what is already the case, and it does not require cumulative effects assessments for renewable electricity generation projects.

The *Act* also fails to lower the threshold triggering an environmental assessment for renewable electricity projects from the high 50 MW nameplate capacity to 20 MW, as was specified in the joint recommendations. As a result, many renewable electricity projects below the 50 MW threshold will continue to go without provincial environmental assessment – and those in the 2008 Clean Power Call will also be free from BCUC scrutiny.

In addition, there is no commitment to improved monitoring and enforcement either in the *Act* or the government's statements in relation to it.

2. ACT FAILS TO ENSURE A TRANSPARENT, INCLUSIVE AND COMPREHENSIVE PLANNING PROCESS

Our joint recommendations called for a transparent, rigorous provincial-scale planning framework for renewable electricity establishing high-level direction for regional-scale cumulative impact assessments. The aim was to enable the strategic development of renewable electricity in the areas of British Columbia best-suited for such development, while avoiding the worst-suited areas, addressing the challenge of climate change, protecting ecosystem integrity, giving effect to First Nations constitutionally-protected rights, and maximizing public benefit. The framework would be developed through a meaningful public process, and would build upon and be integrated with existing strategic land and resource policy, strategies and plans.

The *Act* provides for the creation of an integrated resource plan (“IRP”) by BC Hydro to describe its plan to achieve electricity self-sufficiency and achieve BC's energy objectives as set out in the *Act* (s. 3). Integrated resource planning is nothing new in BC – these plans have been required of all utilities in the province and are reviewed by the BC Utilities Commission, which later reviews specific projects against the plan. It is not clear in the *Act* exactly whether the integrated resource planning process to be conducted by BC Hydro will be able to respond to this broad vision – or whether it amounts to nothing more than a repackaging of the existing process that will fail to meet the clear need for inclusive and strategic electricity planning on a provincial and regional basis.

No guarantee of meaningful public consultation on planning decisions. The *Act* does not make clear how the public will be consulted in the planning process, leaving it up to Cabinet to decide how consultation will be done (ss. 3(4), 35(g)).

If a large-scale expansion of renewable electricity generation is truly needed (a fact that the *Act* assumes, rather than leaving it to the planning process to evaluate), it will not gain the necessary public support unless the public is meaningfully involved in the process – including the process to decide on key, overarching policy questions that will determine the shape of BC's renewable electricity future, such as finding the right balance between the capacity of renewable electricity to help reduce greenhouse gas emissions and the need to maintain ecosystem integrity, the impact of development on communities and

³ See Carrier Sekani Tribal Council, Critique of the BC Environmental Assessment Process from a First Nations Perspective, at p. 8, accessed at <http://www.cstc.bc.ca/downloads/EAO%20Critique.pdf>.

cultures, and the extent to which and conditions under which BC should pursue electricity generation for export, if at all. The answer to these questions will play a role in determining how much power is needed and what sorts of impacts and trade-offs British Columbians will accept.

Given that the intense opposition to expanded renewable electricity generation has been spurred, in part, by the lack of genuine public involvement in decisions, it would be preferable for the *Act* itself to require a high level of public involvement in both the scoping of factors to be considered in planning (elaborating and expanding as necessary on the *Act*'s energy objectives), and in the creation of the plan. As the *Act* will remove the BCUC's role in assessing the completed integrated resource plan, and with it, the formal opportunity for public comment on the completed plan, it is critical that the public be given a robust opportunity for involvement in the creation of the plan itself. This public involvement should go well beyond the public input into past IRPs, which could include stakeholder collaborative sessions, information sessions, workshops, and publicly-released issue papers.⁴

The Act predetermines policy questions that should be subject to public consultation.

By deciding a number of critical policy questions in advance, the government is short-circuiting the planning process.

No public dialogue to consider role of electricity exports: Our joint recommendations called for the government to engage British Columbians in a meaningful public dialogue about the terms and conditions under which existing and future electricity exports should occur (such as ensuring that demonstrable greenhouse gas reductions result in the importing jurisdiction), and if they should occur at all, including consideration of potential NAFTA implications and energy security impacts. Instead, the government has pre-determined in the *Act* that the province will develop electricity for export, and that BC must generate a 3000 gigawatt hour surplus of electricity. While it is the government's prerogative to set policy for the province, it is unwise to make this decision without a public dialogue on this complex policy decision which, while it might yield environmental benefits in the form of reducing emissions, will also have significant environmental impacts here in BC. Pushing ahead with the export agenda in the absence of public discussion and public buy-in will likely generate opposition and uncertainty.

Major projects Site C Dam and Northwest Transmission Line already decided: It is questionable whether the integrated resource planning process will be able to deal with the Site C Dam or the Northwest Transmission Line in a meaningful way, given that the government has made clear that it intends to proceed with both projects. A truly credible renewable electricity plan would consider BC's needs (and any potential desire for export capacity) alongside viable demand-side management and energy efficiency potential, and then decide whether or not major generation and transmission projects like these should have a role in BC's electricity future.

Elimination of independent oversight of energy planning. The *Act* eliminates independent oversight of BC Hydro's electricity planning, replacing it with political approval by Cabinet. We share the observation of the Pembina Institute that it is an open question whether the *Clean Energy Act*'s planning process will fill the gap left by the elimination of the BCUC's independent and public scrutiny of electricity planning.

⁴ Integrated Resource Planning Guidelines at p. 5, 6.

Integrated resource planning has been a utility-driven process that, according to the BCUC guidelines, reflects “management’s judgement”. In that sense, although conducted by a Crown corporation and while public input was required, integrated resource planning in the past has not been a truly public or independent process. However, the plans, once completed, were subject to independent public review and scrutiny by the BCUC. Under the *Act*, renewable electricity planning will continue to be conducted by BC Hydro. The plan must be “consistent with good utility practice” (s. 3(1)), which, while undefined by the *Act*, hints that the IRP may remain fundamentally a utility-driven process, rather than an independent, public process. However, under the *Act*, the BCUC will no longer be the regulatory authority for long-term energy planning. The approval of the IRP will fall, instead, to Cabinet, which will decide if the plan is in the public interest but without any opportunity for formal public involvement at the decision-making stage. This is likely to result in poorer and unduly politically-driven decisions.

Unfortunately, the *Act* does not indicate what form public consultation and decision-making on the IRP will take. It is impossible to know whether integrated resource planning will create the meaningful opportunity for public input or independence and transparency in decision-making that is vital to a credible planning process – and which might make the lack of BCUC oversight less of a concern.

Exclusion of projects from BCUC oversight: The *Act* will also eliminate the BCUC’s independent oversight of major projects such as the Site C Dam, the Northwest Transmission Line, and all the independent run-of-river projects in the 2008 Clean Power Call, among others. By exempting these massive projects from this oversight, the *Act* trades independent and public review for a politically-driven approval process. Since the government can direct provincial environmental assessments to reflect government policy, such as the *Clean Energy Act*’s objective of a 3,000 gigawatt hour electricity surplus and its decision to go ahead with the transmission line, environmental assessment may similarly fail to provide an independent regulatory review of these projects.

Act fails to require regional renewable electricity planning. It is clear that strong regional planning is needed to assess the potential cumulative effects of renewable electricity development, and to identify the best options for development (in areas with the most positive mutually reinforcing benefits and the least risk of significant adverse effects), and the areas where development should be prohibited.

While the integrated resource plan will be required to assess the potential for developing renewable electricity generation sources grouped by geographic area (s. 3(3)), this is not a requirement for true regionally-based planning. It simply requires BC Hydro to report its conclusions geographically. In order to be credible with the public, regional plans are needed in areas of potentially intensive development which will complement and feed into the overall provincial plan. While the *Act* does not prevent BC Hydro from conducting regional planning as part of the IRP process, it is not required. Given the tight 18 month timeline for planning under the *Act*, it would be sensible to require regional planning with regional cumulative effects assessment in order to ensure that this vital tool is not left aside in a bid to hastily complete the IRP.

3. ACT FAILS TO RESPOND TO THE NEED IDENTIFIED BY FIRST NATIONS FOR GREATER INVOLVEMENT IN RENEWABLE ELECTRICITY DECISION-MAKING AND DEVELOPMENT

It is clear from the Green Energy Advisory Task Force's report that First Nations representatives set out the requirement that priority consideration be given to First Nations in the issuance of new tenures to lands or waters for the purposes of renewable energy production. While this recommendation was set out in the Task Force's report,⁵ it was accompanied by a footnote stating that a majority of task force members "strongly disagree with this recommendation". While the *Act* sets out the development of First Nation and rural communities as one of BC's energy objectives, it does not indicate any role for First Nations in decision-making about renewable electricity development in their traditional territories, or how the integrated resource plan will be developed in a way that is consistent with the constitutionally protected title and rights of First Nations.

The *Act* also fails to ensure that First Nations have a meaningful role in the environmental assessment process, with engagement beginning at the earliest stages of consideration of a project. The *Environmental Assessment Act* was changed in 2002 to remove provisions mandating the participation of First Nations and requiring cultural effects to be considered by the assessment process. The legislation is not designed to meet the requirements of the Crown's duty to consult and accommodate the First Nations. First Nations have no legislated involvement in the scoping or design of the environmental assessment, the design of the First Nations consultation process, or in making the ultimate decision. There is also minimal funding available for First Nations to participate meaningfully in the process (which is often given with conditions attached that may conflict with the First Nation's interests). The *Clean Energy Act* fails to address any of these serious concerns.

In addition, the creation of a First Nations Clean Energy Business Fund appears to be a positive development. However, the initial \$5 million dollar capital in the fund seems to be completely inadequate to foster any significant participation by BC's many First Nations in the renewable electricity industry, and it is presently unclear whether the fund will be endowed with sufficient resources to do this in the future.

This backgrounder was prepared by the West Coast Environmental Law Association, 200-2006 West 10th Ave., Vancouver, BC V6J 2B3 for education purposes only. If you require advice about the specifics of your legal situation, please contact one of West Coast's lawyers: 1.800.330.9235.

⁵ *Green Energy Advisory Task Force Report* at p. 17, accessed at <http://www.empr.gov.bc.ca/EAED/Documents/GreenEnergyAdvisoryTaskForce.pdf>.