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Via email: ECD-DEC@ec.gc.ca
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Honourable Steven Guilbeault
Minister of Environment and Climate Change
229 Wellington Street
Ottawa ON K1A 0A6

Honourable Jonathan Wilkinson
Minister of Energy and Natural Resources
229 Wellington Street
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Re: Canada Gazette, Part 1, Volume 157, Number 33: Clean Electricity Regulations

Dear Ministers:

The Business Council of British Columbia (the Business Council) appreciates the opportunity to comment on Canada Gazette, Part 1, Volume 157, Number 33: Clean Electricity Regulations (CER).

The Business Council is a non-partisan organization committed to improving the competitiveness and prosperity of British Columbia and by extension Canada. Our membership includes leading large and medium-sized businesses active in every sector of the economy, representing hundreds of thousands of payroll jobs.

Our association and its members generally support the overall Canada 2050 greenhouse gases (GHG) management goals. Becoming more efficient in the way we use resources – including energy – supports positive outcomes for future generations. Striking the right balance of action among governments, industry, and civil society to reduce emissions while growing a robust economy is critical. Essential to success is a federal approach to policy and regulation that respects provincial roles and responsibilities.

With this context in mind, we disagree with Canada's assertion in the regulatory impact analysis statement (RIAS) accompanying the draft CER:

> *… without federal regulations to ensure the electricity generating sector is prepared to supply cleaner electricity from low and non-emitting electricity generating sources by 2035 the sector would not be on the path that would enable the economy to reach net zero GHG emission by 2050.*

All provinces, including British Columbia, have greenhouse gas management policy plans supporting the 2050 goals. They have done so in keeping with their primary jurisdiction under Canada's constitution for the development and regulation of the electricity infrastructure and markets, among other things. Moreover, electric utilities across the country, whether Crown or independently owned, all have similar goals and all are making progress. This raises a fundamental question about the need for more regulation by Canada and is a particularly important consideration in the context of the recent decision on the federal *Impact Assessment Act*, Supreme Court of Canada (SCC), which provided clarity about who regulates and cautions Canada with respect to its roles and responsibilities.

> [112] … *only the level of government to which a head of power has been assigned can validly legislate in respect of matters falling within that head of power.*

To illustrate this principle, the SCC specifically referred to electricity several times … [125] *provinces can exclusively make laws in respect of non-renewable natural resources, forestry resources and* ***electrical energy*** *pursuant to s. 92A*. [emphasis added]. In addition, the SCC clarified how its decision on the *Greenhouse Gas Pollution Pricing Act* should be understood in context and distinguished from the regulation of greenhouse gas emissions:

> [186] *… [the] GGPPA* ***does not extend to enabling the federal government to comprehensively regulate greenhouse gas emissions****.* [emphasis added]

In our view and contrary to the clear principles laid out by the SCC, the intent and purpose of the CER is to regulate GHGs in the electric sector in Canada as is described in the purpose section of the RIAS:

> *… establish performance standards to reduce GHG emission from fossil fuel-generating electricity starting in 2035.*

With this as context, we suggest the proposed CER goes well beyond what the SCC has said is the proper boundary for a federal role and responsibility in environment regulation (i.e., to regulate only the federal effects of undertakings and activities.) Therefore, given a reasonable understanding of cooperative federalism and the existing robust regulatory oversight of the electric sector in B.C. and the rest of Canada, the Business Council has significant concerns with the draft CER. In our view, Canada should abandon the current approach and instead work collaboratively with provincial governments to find productive ways to facilitate change.

In addition, as articulated in our previous submissions on the 2022 discussion paper and proposed regulatory frame, we are deeply concerned about affordability, reliability, and minimizing regulatory duplication. In our view the proposed regulations do not meet any of these tests. Supporting this view is some recent academic public commentary in Canada noting that … "*it is likely the CER will largely be rendered moot by carbon pricing*" (Blake Shaffer and Andrew Leach, 10 October 2023) and … "*climate polices that are focused on specific regions or sectors face the real risk of reducing emissions at much higher overall costs; 'excessive' costs in the sense that lower cost policy options are available to accomplish the same level of emissions reductions.*" (Christopher Ragan, Paul Rochon and Mark Jaccard, 10 June 2023).

Therefore, commenting on the substance of the draft regulations and RIAS is counterproductive. But even if the proposal was on a proper foundation, there are both theoretical and other practical flaws that cannot be addressed. For example, the modelling output used in subsequent supporting RIAS arguments appears to assume a Canada-wide operating environment that does not exist and is unlikely to develop. Geography, natural resource availability, and opportunities for trade have determined the nature and build-out of provincial electricity systems. This diversity across provinces creates serious problems for modelling emissions. Moreover, it is our understanding that utilities across the country did not review or approve the Nextgen modelling outputs used to inform development of the CER.

The proposal is also problematic because it tries to force fundamental change, including the construction of significant quantities of new variable generation resources, new interprovincial interties, imposing a standard for natural gas generation that is not technically or economically possible, and dictating the adoption and use of nascent technology (e.g., carbon capture and storage attached to electricity generating facilities). The downstream effect is increased rates, unnecessarily, for all classes of consumer, and reduced reliability.

Affordability, reliability and flexibility of electricity systems in Canada must be central considerations for contemplating change in this sector. These factors are best assessed by provincial utilities and system operators who have the requisite detailed regional engineering, economic, planning, and practical knowledge, with oversight by provincial regulators and provincial governments who have clear head-of-power Constitutional authority over electricity systems within their borders.

In summary, it is our view that the draft regulations are unnecessary and unsound. Importantly, they conflict with the reality of the provincial industry, infrastructure, and markets, and will result in uncertainty in regulation, constraint on capital investment, economic harm and unnecessary costs for consumers and businesses.

We appreciate the opportunity to provide our comments. The Business Council is committed to working with governments to find practical solutions to safeguard B.C.'s and Canada's prosperity as we all work to reduce GHG emissions in a cost-effective manner. We would be pleased to meet with you and your officials at your earliest convenience.

Yours sincerely,

Ken Peacock	Denise Mullen
Senior Vice President	Director, Environment, Sustainability,
and Chief Economist	& Indigenous Relations

cc: Honourable David Eby, Premier of British Columbia
Honourable Josie Osborne, B.C. Minister of Energy, Mines and Low Carbon Innovation
Honourable George Heyman, B.C. Minister of Environment and Climate Change Strategy