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### **A conversation on B.C. energy industry controversy**

Q&A with Clark Wilson LLP lawyer and energy industry expert David Austin

By Nelson Bennett | June 6, 2017, 9:00am

Whether it is Site C dam, the independent power sector, liquefied natural gas (LNG) or the untold story of B.C.'s massive energy potential in the Montney formation, David Austin, a lawyer with Clark Wilson LLP, is one of the go-to experts in B.C. for journalists covering the energy beat.

As Clark Wilson's resident expert in energy and infrastructure, Austin has testified as an expert witness in North American Free Trade Agreement disputes, was involved in the creation of B.C.'s independent power sector and has appeared at numerous BC Utilities Commission hearings, where he has taken a scalpel to BC Hydro load forecasts and projections for Site C dam.

Business in Vancouver recently chatted with Austin to get his perspective on a range of energy issues in B.C.

#### **Q&A**

Q: How did you end up specializing in energy law?

A: I originally worked at BC Hydro, which had both natural gas and electricity businesses. That's where I learned the basics about the fossil fuel industry and the electrical industry.

Q: You have been critical of BC Hydro and its Site C dam project. What is the biggest concern, from a public perspective, with BC Hydro and the way it operates?

A: That one's easy. The biggest problem BC Hydro has right now is its fixed costs are ever going upward – as it renovates its existing electrical system that, for the most part, was built in the '70s and '80s – but its customer base and its demand for electricity isn't.

Q: You have also been critical of the \$8.8 billion Site C dam project. What are your biggest concerns there?

A: We can prove, unequivocally, that the financial analysis for Site C was twisted to fit the desired

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result, which was to proceed. We're past that point now because it's now under construction. And the key question now is: what is it going to cost to complete, and when it is completed, what is the market for it going to be?

Q: The NDP and Greens have said they would review Site C. What do you think would happen if the project were referred to the BC Utilities Commission for review?

A: I don't think any political party is going to send it to the BC Utilities Commission to decide whether the project should continue to proceed. What the political parties need to do is send it for an independent review of the numbers so we can get an assessment of what the cost to complete is and whether there is going to be a market for the output when it comes into service.

Q: A number of your clients have been independent power producers. It's been suggested that Site C has killed that industry in B.C. Do you agree?

A: It is dead, subject to finding new demand for electricity. The most likely area where the new demand will come from is the production of fossil fuels. What people don't realize is the production of energy requires a lot of energy, and insofar as you can substitute renewable electricity for the fossil fuel that's currently used to produce fossil fuel, then there may be a significant increase in demand for electricity.

Q: Is the traditional electric utility going to survive as we know it?

A: Probably not. It is under siege from changing technology as users of electricity such as Google, Microsoft, Walmart and Facebook explore various other options of meeting their electricity requirements. The advent of micro-grids is but one of many examples where electricity users become actually or virtually self-sufficient and don't need grid electricity.

Q: One of the untold stories that you have been trying to tell is about the massive potential of the liquids-rich Montney formation that straddles Alberta and northeastern B.C. What do B.C. businesses need to know about the Montney?

A: The industrial sector that is receiving the most amount of capital investment – and we're measuring this in billions of dollars – is the development of the Montney shale fields in northeast British Columbia. But if you took 100 of the top business executives in British Columbia, and asked them whether they knew about this investment, probably 99 out of 100 wouldn't have a whole lot to say about it because they don't know about it.

I think one of the reasons that it's not very well understood in British Columbia [is that] the investment is basically being driven out of Calgary and Houston. And it's also not a prime component of the historic B.C. industrial base.

Q: The U.S. Energy Information Administration recently reported that the U.S. now has one LNG terminal in operation – Sabine Pass – and four under construction and is poised to become a net energy exporter. What does that mean for B.C.’s aspirations of developing an LNG industry?

A: Someone has to prove that you can make money by producing LNG in North America and selling it into northern coastal Asian cities. So far, no one has really been able to show that they can do that at the current world price in those markets. That is the prime reason why LNG projects in British Columbia are not going ahead – because the investors haven’t been able to convince themselves that there is a business case for this type of investment in British Columbia.

Q: So is B.C.’s LNG industry dead in the water?

A: I don’t think it’s dead in the water because B.C. remains competitive because of its low-cost sources of natural gas, especially from the Montney – some of the best anywhere – and the temperature advantage that people always seem to overlook that B.C. has in terms of producing LNG. But until you get to the point of being able to convince potential investors that there’s a business case, and that you will make money on a long-term basis by developing LNG facilities in British Columbia, no one is going to make that investment.

Q: According to West Coast Environmental Law, there are 19 court cases pending against the Trans Mountain pipeline expansion. Is it inevitable we will always have this level of litigation on projects like this?

A: The process for reviewing the Kinder Morgan expansion did not include oral hearings. When you have such a controversial and complicated project such as that, it was absolutely essential that you have a full review process including oral hearings. As a result of not having a full review process ... you left a lot of groups with unanswered questions, and now they’re taking out their frustrations by applying to courts. It’s a question of having the debate in the hearing room or having the debate in the streets or the courts.

Q: What do you think the chances are of one of these court challenges actually halting the Trans Mountain expansion?

A: Based on experience, litigation can best be described as a 50-50 process.

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