October 4, 2019

Mr. Patrick Wruck
Commission Secretary
British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC
V6Z 2N3
Delivered via email: commission.secretary@bcuc.com

Re: British Columbia Utilities Commission –
Indigenous Utilities Regulation Inquiry
Final Argument of Coastal First Nations-Great Bear Initiative

Dear Mr. Wruck:

Pursuant to Commission Order G-62-19, issued on March 19, 2019, and Exhibit A-5 in the referenced proceeding, please find attached the final argument of Coastal First Nations-Great Bear Initiative.

Sincerely,

Paul Kariya
Senior Policy Advisor

BEFORE THE BRITISH COLUMBIA UTILITIES COMMISSION

INDIGENOUS UTILITIES REGULATION INQUIRY

FINAL ARGUMENT of COASTAL FIRST NATIONS-GREAT BEAR INITIATIVE

October 4, 2019

INTRODUCTION

Coastal First Nations-Great Bear Initiative ("CFN") promotes community self-sufficiency and sustainable economic development on BC's north and central coast and Haida Gwaii. Our focus is on building a strong, conservation-based economy that recognizes our Rights and Title, and protects our culture and environment.

CFN is comprised of the following nine Nations and Councils:

- Skidegate
- Metlakatla
- Heitsuk
- Nuxaklk Nation
- Gitga'at
- Kitasoo/Xaixais
- Council of the Haida Nation
- Old Masset
- Wuikinuxv

CFN appreciates the opportunity to file its Final Argument in this proceeding.

ORGANIZATION OF FINAL ARGUMENT

CFN has organized this Final Argument in three parts:

- An overview of CFN's arguments;
- Comments on other matters raised by participants; and
- Responses to the Commission's questions in Exhibit A-38.

PART I: Overview of CFN's Arguments

1. Indigenous Utilities Akin to Municipalities and Regional Districts

CFN has argued in this proceeding that in many circumstances, it is reasonable to exempt Indigenous Utilities on the basis that political accountability can provide a reasonable check on monopoly behaviour. We said:

> "Indeed, on that basis [accountability through the political process] it is difficult to imagine a legitimate pubic policy rationale for not seeking to extend the exemption granted to municipalities and regional districts to Indigenous Nations (as that definition is used in Order in Council No. 108)."[1]

This rationale is supported by a number of other interveners.

[1] Exhibit C20-2, Page 5.

For example, in its response to Commission Information Request 1.2.1, FortisBC states:

> "FortisBC is identifying that the rationale for municipal/regional district exclusion from the public utility definition can be applied to "indigenous utilities", as can the rationale underlying the existing section 88 exemption for strata corporations. In both cases, the underlying rationale is that the customers of the utility are protected by virtue of the control that they exercise over the entity that owns the utility (a principle which we will refer to as "unified governance" for short-hand). In these cases, the premise is that customers have access to the governance of rates and service primarily through their voting rights. To the extent that the conditions of unified governance can exist within an Indigenous Nation, then it is consistent with the theory of public utility regulation and the current regulation and practice in British Columbia to forebear from BCUC regulation. Treatment of an "indigenous utility" is then equivalent to other comparable non-"indigenous utilities"."[2]

FortisBC draws some further definition to its position in its filed evidence – notably in its description of five groupings that it proposes as a useful reference in considering an approach to Indigenous Utility regulation.

In this section of its evidence, FortisBC identifies Group 2 – which it says should be exempt from Part 3 of the UCA pursuant to section 88(3) – as a:

> "Public utility with a <u>controlling</u> interest owned by an 'indigenous nation', serving only indigenous peoples who <u>have</u> a say I the governance of the "indigenous nation"." [Emphasis in original][3]

FortisBC distinguishes this from Group 3, which it says should be regulated by the Commission. Group 3 utilities are different from Group 2 utilities by virtue of "serving one or more customer who <u>don't have</u> a say in the governance of the "indigenous Nation". [Emphasis in original][4]

BC Hydro takes a similar position to FortisBC. Asked by the Commission if "an Indigenous utility [could] be considered similar to a municipality or regional district, with respect to accountability and to alignment with customers," BC Hydro states:

> "While BC Hydro recognizes that Indigenous governments differ in nature from municipalities or regional districts, an Indigenous utility could be

[2] Exhibit C4-3, Page 2.
[3] Exhibit C4-2, Pages 10 and 11.
[4] Exhibit C4-2, Pages 10 and 11.

> similar to a municipality or regional district with respect to accountability to and alignment with customers where the Indigenous utility is owned and effectively controlled by the First Nation's government, operates within the boundaries of the First Nation's reserve or treaty settlement lands (for which ownership has been transferred to the First Nation government in the treaty), and serves customers who are the First Nation's members."[5]

However, despite much common ground, the two utilities appear to part company somewhat on implementation.

Where FortisBC relies on a relatively objective test in establishing grounds for exemption (effectively whether an Indigenous utility is accountable to *all* of its customers), BC Hydro suggests a case-by-case evaluation to "assess the level of input and recourse that resident customers have in respect of the service and rates of the Indigenous utility which serves them."[6]

CFN recognizes the complexity of the issue. As we stated in our written evidence:

> "In the case of municipalities and regional districts, the UCA relies on a geographic limit - namely, municipal and regional governments are exempted from public utility status for service delivered 'within [their] own boundaries'. This, effectively, ensures the political accountability that, from a public policy perspective, serves to replace regulation as the constraint on monopoly behaviour.[7]
>
> "In the case of Indigenous Nations, however, the overlap between an economically rationale utility service area and political accountability may be less clear. Put simply, beyond reserves, the area that an Indigenous utility may wish to serve may include both members of the Indigenous Nation, and non-members.
>
> "This requires an imperfect choice: regulate the utility, and violate the principles that justify the exemption of municipal and regional governments, or don't regulate, and risk monopoly power being exercised over some of the utility's customers.
>
> "CFN believes that a compromise position is available.

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[5] Exhibit C2-3, Response to BCUC IR 1.4.1, Page 1 of 2.
[6] Exhibit C2-3, Response to BCUC IR 1.4.1, Page 2 of 2.
[7] Although as noted by several interveners, there is in fact an imperfect link between boundaries and accountability, even for municipalities and regional districts; businesses, for example, will pay utility rates, but their owners may not be able to vote.

> "In particular, we recommend that Indigenous Nations/Bands should be able to form and operate unregulated utilities that serve areas where the majority of the customer base are a member of that Nation/Band, provided that such utilities do not discriminate in rates or terms of service between their Indigenous and non-Indigenous customers."[8]

CFN understands and appreciates the suggestions of both BC Hydro and FortisBC. However we believe that broader deference to enabling unregulated Indigenous utilities with some geographic reach beyond reserve land and some service to non-Indigenous customers is appropriate.

As CFN notes in its evidence, such reach may well be necessary to achieve the scale and scope required to make an Indigenous utility economically viable and electrically rational. In addition, CFN does not believe that it is in the public interest to have Indigenous utilities incented to decline service to those that can be most rationally served by it, because doing so will protect their unregulated status.

CFN believes that other interveners have also offered compelling reasons for providing the broadest reasonable scope for leaving Indigenous utilities exempt from regulation.

The first such argument is from BC Hydro. As it points out[9], the Commission should avoid recommending solutions that replicate the case of Nelson Hydro, where service to customers within the municipal boundary is unregulated, while service outside the city limits is subject to rate-setting by the Commission. As BC Hydro notes, this circumstance has led to Nelson Hydro seeking from the Commission much larger rate increases for its regulated customers than the City has approved for its unregulated customers.

CFN believes that such dual regulation creates difficult challenges for the Commission, as it seeks to establish what "just and reasonable" and "non discriminatory" rates are in this context.

We have proposed, instead, a solution that approaches this problem on a complaints basis, looking only at whether the rates for non-Indigenous customers are different from the rates charged to similar Indigenous customers.

The second argument for applying deference to an unregulated status for Indigenous utilities, even when these entities are serving customers beyond their reserves, has been raised by a number of First Nations participants in this Inquiry.

This perspective is captured in the written evidence of the First Nations Leadership Council ("FNLC"), for example:

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[8] Exhibit C20-2, Page 6
[9] Exhibit C2-3, Response to BCUC IR 1.1.1, Pages 1 and 2 of 2

> "The FNLC takes the firm position that First Nations in BC have jurisdiction over energy generation, transmission, and distribution in our territories. This sovereign authority and jurisdiction is undermined by BCUC regulation of Indigenous utilities."[10]

In addition, the FLNC notes that:

> "Under the UCA, Indigenous utilities in BC are regulated as public utilities, which the FNLC asserts is an infringement of Aboriginal Title and Rights, and yet another unwanted imposition of Canadian Law into our inherent jurisdiction. Practically, it has the effect of discriminating against First Nations by hampering their efforts to attain self-determination. It does this by setting up administrative barriers under Part 3 of the UCA, such as lengthy rate application processes, and by applying a cost-benefit analysis that effectively excludes small utilities."[11]

2. Exemptions Should Extend to Customer-Owned Utilities

In its written evidence, CFN stated that: "the same general policy argument that favours exemptions for government-owned utilities can also be applied to consumer owned utilities, such as co-operatives."[12]

We continued:

> "Consumer-owned utilities represent a potential avenue for Aboriginal participation in electricity markets. With appropriate policy change from the Province, such utilities represent an opportunity for regionally concentrated industry, for example, to aggregate supply and/or construct wires networks for their own collective use. CFN believes that this could be especially attractive in underserved areas of the Province, such as the north coast, where customers will be largely funding new infrastructure development even wen taking service from BC Hydro."[13]

As described in some detail above, CFN believes that the record of this proceeding supports the proposition that direct or indirect control of the governance of a utility is protection from it exercising monopoly behaviour.

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[10] Exhibit C16-2, Page 5
[11] Exhibit C16-2, Page 10
[12] Exhibit 20-2, Page 7
[13] Exhibit C20-2, Pages 7 and 8

Moreover, as the Commission has itself noted, regulation should generally be used only where natural monopoly conditions exist and where these circumstances require regulation is required to protect the public interest.[14]

As we have shown, co-operative utilities will have no inherent tendency toward monopoly behaviour and, as such, for the reasons put forward by the Commission, should require no regulation.

CFN recognizes that other participants in this proceeding have not evinced much interest in the matter of co-operative regulation. As stated, however, CFN believes that in areas where its members operate, co-operatives may have a role to play. Clarity now about their form of regulation would be helpful as CFN and its members consider how they may wish to participate in energy markets moving forward.

3. Defining Indigenous Utilities

The question of defining an Indigenous utility is both central to this inquiry and, as the record has shown, subject to various reasonable answers.

FortisBC, for example, emphasised that "control" was the primary delineator of an Indigenous utility:

> "In other words, when determining whether the rationale for regulatory oversight exists or whether the section 88(3) exemption should apply, it is important to look at the extent to which the Indigenous Nation has the ability to control the public utility, rather than just examining the extent of the Indigenous Nation's ownership interest in the public utility.
>
> "In the view of FortisBC, in order of an 'indigenous utility' to secure an exemption, the controlling interest should [be] of a nature that provides the customers of the utility with meaningful input into the governance of the utility. If it is not possible to demonstrate this unified governance, then it is appropriate, as a default, for the BCUC to regulate it as a public utility."[15]

This position is central to FortisBC's policy argument, which CFN shares[16], that exempting a utility from regulation relies on it having political accountability to its customers. If the Indigenous utility does not exercise control, then the votes of its customers can have no practical effect. As such, any test for an Indigenous utility must first and foremost achieve this result, to ensure that monopoly power is held in check.

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[14] Exhibit A-5, Page 2 of 3
[15] Exhibit C4-3, Page 8
[16] Exhibit C20-2, Page 5

Collective First Nation[17] and FNLC[18] argue that majority ownership is the determinative feature of an Indigenous utility, although FLNC additionally would recognize "majority controlled" entities, as this concept is recognized in the "BC Corporations Act and Securities Regulation".

If these majority ownership tests are adopted, CFN argues that a 'material benefits' test is also necessary. CFN's perspective is that since ownership and benefits need not track one another, the definition of Indigenous utilities must not be set in such a way that encourages commercial arrangements which "deliver a very low share of returns to the Indigenous partner, despite a nominal "majority stake in the firm."[19]

4. Rate-Making for Indigenous Utilities Should Allow Retained Benefits

CFN's evidence recognizes that there will be cases where First Nations utilities are subject to regulation, perhaps because political accountability or ownership tests have not justified exemption, or perhaps because the utility sees benefits in regulation.

In its evidence, CFN identified[20] the risk that traditional cost of service ratemaking can be inconsistent with, or can frustrate, the ability of regulated Indigenous utilities to protect for themselves – as opposed to passing through to ratepayers – the benefits of policy initiatives such as favourable financing, taxation, or capital contributions.

This issue was not widely discussed in the course of this Inquiry. Nevertheless, CFN urges the Commission to recognize and address it in its recommendations.

In CFN's experience, the question of whether these benefits are retained or flow-through is a practical problem that, in the absence of an understood mechanism to address it, makes it difficult to assess and determine the potential viability of an Indigenous utility venture.

Specifically, CFN has found that is not uncommon for the business case of a new Indigenous utility to rely on retention of such benefits for their business model. Moreover, such benefits are often sought as part of reconciliation or accommodation packages, and it would be a perverse result if these benefits were then "clawed back" by the form of rate-making to which Indigenous utilities were subject.

5. BC Hydro System Should be Used to Advance Reconciliation

In its evidence, CFN states that:

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[17] Exhibit C13-2, Page 8
[18] Exhibit C16-2, Page 6
[19] Exhibit C20-2, Page 12
[20] Exhibit C20-2, Page 9

> "BC may (and in CFN's opinion, should) choose to take actions ensuring that Indigenous utilities and their customers can benefit from BC's Heritage Assets, including through access to an allocation of Heritage energy and capacity, and through a practical means of wheeling power on BC Hydro's transmission system."[21] [Emphasis added]

In the course of this Inquiry, this observation appears to have been burdened with two considerations that are not central to CFN's position: (1) that wholesale customers can, in fact, already wheel power on the BC Hydro system; and (2) that retail access is no longer allowed in BC, owing, at least in part, to fears of stranding BC Hydro assets.[22]

As CFN notes, its suggestion is that providing a more *practical* means of wheeling on the BC Hydro system would be consistent with the reconciliation aims of this inquiry.

While CFN understands that utilities may, technically, seek wheeling service on BC Hydro's system, it also understands that securing such service is generally impractical for small customers, in part for cost and rate-design reasons, and in part because of the administrative complexity of booking transmission on the OASIS system. Again, if the goal of this Inquiry is, at least to some extent, to facilitate reconciliation, then making it easier for Indigenous utilities to use the existing transmission system that runs across their territories seems to CFN to be a reasonable objective.

CFN is also not persuaded that the stranded asset risk set out by BC Hydro[23] is likely to be material in the context of Indigenous utilities. CFN's members' interest, for example, would be to engage in the provision of clean energy to industrial facilities that are planned for their territories (likely as a supplement to, rather than a replacement for, BC Hydro service). In light of the limited generation in the area, the existing transmission constraints on delivering energy west of Prince George, and the limited distribution network in the northwest, it is difficult to imagine that BC Hydro's assets are at any great risk of impairment.

Again, CFN believes that if finding avenues for reconciliation is part of the goal in this Inquiry, then it will be necessary to be somewhat more nuanced in our assessment of what is possible, and what the risks might really be.

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[21] Exhibit C20-2, Page 15
[22] See, for example, Exhibit C-2-3, IR 8.
[23] Exhibit C2-3, Response to IR 1.2.1

PART II: Comments on Matters Raised by Other Interveners

1. "Seams" Between Differently Regulated Utilities are Manageable

Throughout this Inquiry, First Nations have demonstrated the importance of self-regulation, and the policy and legal basis for it.

While differences arose about mechanisms, definitions, and implementation, there seemed to be little objection to the foundational idea that there should be circumstances where Indigenous utilities are free from oversight by the Commission.

Nevertheless, an operational counter argument to this view was provided by BC Hydro. For example, it states:

> "Where a ~~potential~~ BC Hydro customer is itself a Public Utility, having that Public Utility regulated under a different regulatory framework (i.e., – regulated under a different set of rules than the UCA [Utilities Commission Act] and/or administered by a different regulator than the Commission) has the potential to create uncertainty and duplication, impact BC Hydro's ongoing operations and increase costs for existing and future ratepayers. For example, if BC Hydro and a Public Utility customer of BC Hydro's disagreed on the application of a BC Hydro rate or its terms of service, it is possible that two different regulators viewing this dispute under different regulatory frameworks could come to different conclusions and issue different decisions."[24]

Based on this statement, the Commission sought to clarify "why a separate regulator of a hypothetical "Public Utility customer" might have any jurisdiction to make any decision over the application of a BC Hydro rate or its terms of service."[25]

CFN agrees that the Commission has asked an important question and, respectfully, is not persuaded by the concerns raised in BC Hydro's response to it, especially in the context of Indigenous utilities. Simply put, it is difficult to conceive of a situation where an Indigenous utility taking service from BC Hydro raises, to any serious degree, any of the issues posited by BC Hydro in its response.

BC Hydro states: "Currently BC Hydro only provides service within a geographical area this is regulated by the BCUC. If in the future BC Hydro were to be a service provider in areas of the province in which the BCUC has no jurisdiction, then it would be subject to a different regulatory scheme in those other areas."[26]

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[24] Exhibit C2-2, Page 9. Please note that we have shown the word "potential" as struck out, in keeping with BC Hydro's response to BCUC IR 1.1.3 in Exhibit C2-3.
[25] Exhibit C2-3, IR 1.1.3, Pages 1 and 2 of 2
[26] *Ibid*

With respect, CFN has not understood participants in this Inquiry to be proposing that Indigenous regulators should have jurisdiction where BC Hydro is selling service. Indeed, the subject of this Inquiry is the regulation of Indigenous utilities – not the regulation of BC Hydro in service to Indigenous customers.

The scenario under discussion seems, to CFN, to be a case where BC Hydro, regulated by the Commission, sells service to an Indigenous utility, which is either unregulated or regulated by someone other than the Commission. CFN does not understand how delivering such a service puts BC Hydro at the sort of risk it describes.

2. There is Inherent Value in Indigenous Self-Regulation

Several participants in this Inquiry, including CFN, have noted that where (and if) regulation of Indigenous utilities remains appropriate, it makes sense to leave that regulation in the hands of the Commission. This has, primarily, been raised as an argument based on cost, existing expertise, and (less persuasively, in CFN's view), elimination of regulatory seams.

CFN notes, however, that compelling counter arguments have also been raised, including at the input session hosted in conjunction with the BC Assembly of First Nations General Assembly on September 18, 2019.

For example, Ms. Crystal Tolmie, representing the Gitanmaax Band Council, raised important points about the need for unique and specific understanding, experience, and expertise to properly regulate Indigenous utilities. As Ms. Tolmie explained:

> "[I]f you had a separate arm, which is specific for Indigenous [utilities], then you would have experts at that level. They would understand what different land rights are, the hereditary system; those types of things that just are not covered…under the usual regulations…"[27]

3. Workable Indigenous Utilities are an Avenue for Reconciliation

The September 18, 2019 input session opened with a presentation by Commission Staff. During that presentation, Staff identified that an emerging theme was the need for the Inquiry to advance reconciliation.

Several participants at the input session made comments about opportunities to improve both our approach to accommodation, and to the processes by which we discuss the inclusion of Indigenous groups in BC's energy opportunities.

[27] Transcript Volume 11, Page 551.

For example, Chief Na'Moks (Chief John Ridsdale) observed that the opportunity for Wet'suwet'en to be involved in clean energy development would be enhanced if its initiatives could be more readily integrated with existing BC Hydro service (financially) and existing transmission infrastructure (physically, and in respect of compensation for past infringements).

Chief Chasity of the Gitxsan expressed interest in this Inquiry serving as a vehicle to encourage companies to think about supporting Indigenous utilities as an element of their consultation and accommodation.

Chief Chasity explained that "everything you're talking about here is exactly what we would have wanted," in respect of the Northern Transmission Line traversing her Nation's traditional territory. "But at the time it was always, 'No.' We'll provide you with training, we'll give you jobs…a little compensation and that was it."[28]

Chief McLeod, Chief for Upper Nicola, Okanagan Nation, spoke of his difficulties dealing with BC Hydro over his Band's solar energy farm, and over BC Hydro's Interior-Lower Mainland transmission line. He expressed frustration that such dealings felt legalistic and exclusionary. As Chief McLeod stated:

> "So, when we wanted to advance [the solar farm] there's always something in front of us that says, "No, you can't. We're going to slow you down. We're all going to wear you out." Wear that dream out."[29]

Chief McLeod also expressed concerns with the process of this Inquiry:

> "I don't sit in front of you…This feels like a court. And I don't want it to be a court. I want to be a circle that we can sit around and have some real serious talk and be open to what we want to talk about. And given the time to talk about what we need to talk about."[30]

In light of these and similar thoughts expressed throughout this process, CFN respectfully urges the Commission to use this Inquiry as an opportunity to provide recommendations that reach beyond the narrow legal and policy question of how to regulate an Indigenous utility. Those are clearly important matters, and the record before this Panel is comprehensive and thoughtful on that front.

But for that conversation to be practical and relevant, first there must *be* Indigenous utilities. The record of this Inquiry is brimming with observations about both the opportunities and obstacles facing First Nations seeking to enter the BC energy sector, and about things that would make the opportunities better and the obstacles lower.

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[28] Transcript Volume 11, Page 549
[29] Transcript Volume 11, Page 539
[30] Transcript Volume 11, Page 542

CFN respectfully asks the Commission to think broadly about these matters as it considers its recommendations.

PART THREE: Responses to the Commission's Questions in Exhibit A-38

The need for regulation of monopoly service providers is generally considered necessary where there is a need to protect the consumer against potential abuse of monopoly power by the service providers. Is this an applicable to and important factor for Indigenous utilities ? Why or why not?

CFN submits that all consumers require protection from potential monopoly abuse, where market conditions raise that risk. From that basis, the issue in this proceeding is how that protection should be achieved. In the broadest sense, the evidence in this inquiry has allowed this question to be broken into two parts:

1. Where political accountability can replace external regulation, the evidence in this inquiry, and the practice with respect to municipalities and regional districts, for example, suggests that it is reasonable and desirable for this opportunity to be available to Indigenous utilities. CFN has stated in its evidence and this Argument that this political accountability should allow for some flexibility for Indigenous utilities to serve non-Indigenous customers, and that protection for these customers from monopoly abuse can be managed by a limited complaint process.

2. Where political accountability is not present for whatever reason, this inquiry has heard differing views, both on the need for external regulation and, if regulation is appropriate, on whom should provide that regulation. These views have encompassed jurisdictional, policy, and efficiency arguments. CFNs views on some of these matters are set out through this Argument.

If the regulation of Indigenous utilities were undertaken by an entity other than the BCUC (for example, self-regulated by a First Nation), would it be appropriate for the BCUC to retain its jurisdiction to act upon complaints? Why or why not?

CFN has suggested a very limited jurisdiction for the Commission to hear complaints. In particular, we have suggested that this may be necessary to protect customers who may be subject to monopoly-discrimination risk because they lack political franchise.

CFN does not believe it is practical or appropriate for the Commission to retain a broader complaint jurisdiction, as acting on that power would result in the Commission being, in a sense, a "senior" regulator. This seems to offend both the jurisdictional and practical arguments in favour of Indigenous regulation.

If the regulation of Indigenous utilities were undertaken by an entity other than the BCUC, should the BCUC retain its jurisdiction over system safety and reliability issues? Why or why not?

This regulatory overlap should be avoided. Simply, there should be no presumption that Indigenous utilities and any possible Indigenous regulator are less able to effect safety and reliability regulation effectively than municipalities or regional districts (in their oversight of self-regulated utilities) or the Commission (as a regulator).

The application of Mandatory Reliability Standards is an exception to this principal. Those standards rely on common application across North America for their effect, so it could be argued that a single regulator may be more efficient, without denying significant regulatory autonomy to an Indigenous utility or regulator.

That said, the Commission enforces international MRS standards in British Columbia precisely because of jurisdictional boundaries, and it is not unreasonable to extend the same deference to First Nations or First Nations regulators.

If Indigenous utilities are not to be regulated under the Utilities Commission Act, should there also be different regulatory treatment for non-indigenous utilities that provide services on-reserve or, in the absence of a specific treaty provision, on Treaty lands (for example, BC Hydro utility services in a non-integrated area)? Why or why not?

CFN understands this question to be addressing the situation where, for example, BC Hydro were providing service to customers on reserve or Treaty lands, or in non-integrated areas. In that case, CFN believes that that service would have to be regulated as an element of the serving-utility's broader regulation. As a purely practical matter, CFN cannot envisage a practical means for dividing the regulation of a utility (on the same manner, such as setting rates, for example) between two distinct regulators.

In the absence of alternative regulatory arrangements respecting indigenous utilities, please provide examples of how the UCA or other existing legislation relating to utility regulation might be amended to protect the interests of Indigenous Nations, while working towards reconciliation.

CFN has no specific recommendations in this regard.

If there were to be a recommendation to establish an "Indigenous Utilities Commission" or similar body to regulate Indigenous utilities, do interveners have a view whether such a body could or should have some degree of authority over all Indigenous utilities, or should the jurisdiction of such a

body be limited to some extent (e.g., confined to specific territorial limits)? Why or why not?

CFN struggles to answer this question without a more precision about what the Commission means by an "Indigenous Utilities Commission".

For example, CFN's views on how much authority such an entity might properly have would be quite different if this body were a created, staffed, and administered in the same way as the BC Utilities Commission, as compared to if that entity were, for example, a construct of First Nations themselves.

CFN respectfully suggests that, if the Commission decides in its recommendations to seek to define an "Indigenous Utilities Commission", then it should do so only with a great deal of careful consultation with First Nations that builds upon, but reaches beyond, the record in this Inquiry.