FINAL ARGUMENT

NUU-CHAH-NULTH TRIBAL COUNCIL, COWICHAN TRIBES, GITANYOW FIRST NATION, HOMALCO FIRST NATION and B.C. FIRST NATIONS CLEAN ENERGY WORKING GROUP

BRITISH COLUMBIA UTILITIES COMMISSION
INDIGENOUS UTILITIES REGULATION INQUIRY

OCTOBER 4, 2019

Table of Contents

1. Introduction

This final written Argument ("*Argument*") to the British Columbia Utilities Commission's ("*BCUC*") Indigenous Utilities Regulation Inquiry ("*Inquiry*") is made by Nuu-chah-nulth Tribal Council, Cowichan Tribes, Gitanyow First Nation, Homalcow First Nation and B.C. First Nations Clean Energy Working Group ("Collective *First Nations*").

The following two passages from the "*Summary of the Final Report of the Truth and Reconciliation Commission of Canada*[1] ("*Truth and Reconciliation Commission*") help frame this Argument as they did the Collective First Nation's original Submission[2]:

> *"Canada denied the right to participate fully in Canadian political, economic and social life to those Aboriginal people who refused to abandon their Aboriginal identity."*
>
> *"In terms of the economy, that means participating in it on their own terms. They want to be part of the decision-making process. They want their communities to benefit if large-scale economic projects come into their territories. They want to establish and develop their own businesses in ways that are compatible with their identity, cultural values and world views as Indigenous peoples."*

In making its recommendations to the Provincial Government the BCUC must be prepared to go beyond its traditional role as a utility regulator and advance reconciliation with First Nations[3]. Any concerns the BCUC may have about its jurisdiction to make recommendations need to be assessed in the context of sections 5(1) and 5(2) of the Utilities Commission Act ("*UCA*") all as described in more detail under the heading "*Jurisdiction*".

This Argument is divided into the following parts:

> **Economic Opportunity – United Nations Declaration on the Rights of Indigenous Peoples – Self Determination**.
>
> The need for economic opportunities for Collective First Nations in the Clean Energy industry, and the need to consider the United Nations Declaration on the Rights of Indigenous Peoples ("*UNDRIP*"), the work of the Truth and Reconciliation Commission of Canada ("*Truth and Reconciliation Commission*") and self-determination are absolutely essential elements that the BCUC must consider when it makes its recommendations to the Provincial Government.

[1] Pages 2 and 305
[2] Exhibit C13-2, page 1
[3] The term "Indigenous" includes First Nations, Metis and Inuit. The Collective First Nations do not represent Metis and Inuit but for convenience, the terms "Indigenous" and "First Nations" will be used interchangeably in this Argument

Jurisdiction

The impact of sections 5(1) and (2) of the UCA on the BCUC's ability to make recommendations. When making recommendations to the Provincial Government, the BCUC is working with a "*clean sheet*" and is not constrained by jurisdictional matters.

Responses to BCUC Questions

Responses to the questions set out in Exhibit A-38 "*Guidance for Final Arguments*".

First Nations Land Management Act and Land Codes

This material and in particular the Framework Agreement on First Nation Land Management are being submitted as evidence that the Federal Government has recognized that[4]:

> "… *First Nations have a unique connection to and constitutionally protected interest in their lands, including decision-making, governance, jurisdiction, legal traditions, and fiscal relations associated with those lands*;"

Although there is a very high probability that First Nations that enact Land Codes that include utility regulation are exempt from BCUC oversight, the Collective First Nations are not requesting the BCUC to make a finding in this respect. Rather they are requesting the BCUC to make a recommendation to the Provincial Government that it should place heavy emphasis on the Federal Government's land management legislation when the Provincial Government considers an explicit Provincial legislative re-ordering of oversight of Indigenous Utilities. It is a compelling precedent for the reordering of decision making authority to First Nations. The objective should be reconciliation with First Nations and not a protracted constitutional legal battle over Indigenous/First Nation Utility regulation[5].

Geographic Extent of First Nation Utility Regulation

The Collective First Nations have reviewed the transcript of the Oral Argument session and wish to clear up any ambiguity they may have left with the BCUC in relation to their position on the geographic extent of First Nation regulatory oversight over First Nation Utilities. It would extend to reserve lands, Treaty lands and First Nation traditional territory. This position is consistent with the municipal

[4] UCA, section 1, definition of "public utility" subsection (b)

[5] In this Final Argument, a First Nations Utility or Indigenous Utility is a utility that is 51% owned or controlled by a First/Indigenous Nation that owns or operates equipment or facilities that provide goods or services of the kind provided by a "public utility" as this term is defined in the UCA.

or regional district exemption precedent of providing services "*within its own boundaries*"[6].

The preceding description of geographic extent is also almost identical to that contained in the Collective First Nation's original Submission[7].

Municipalities

The right to vote in any election is not a basis for concluding that municipal or regional district utility ratepayers have recourse in the event they have a complaint against a municipal or regional district utility. Commercial or industrial ratepayers do not have the right to vote in municipal or regional district elections. Nor do they have the right to vote in Provincial elections.

Stranded Assets

Any stranded assets resulting from the creation of First Nation Utilities that are regulated by First Nations would be insignificant when compared for example to BC Hydro's decision to proceed with Site C and the need to reduce greenhouse gas emissions from the burning of natural gas.

Transitional Measures

This part contains the Collective First Nation's response to the BCUC Chair's request[8] to provide transitional recommendations to facilitate a faster route to change.

Conclusion

First Nations must be allowed to regulate the utilities they own or control. It is a matter of reconciliation and UNDRIP supported by reference to the Framework Agreement on First Nations Land Management[9], the First Nations Land Management Act[10], the historical regulation free period public utilities like BC Hydro and the Lower Mainland portion of FortisBC Energy Inc. gas distribution system enjoyed in their formative years[11] and the exemption municipalities and

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[6] UCA, section 1, definition of "public utility" subsection (c)

[7] Exhibit C13-2, page 11, response to: "Does the Indigenous utility provide service solely on reserve; Indigenous nation/band-owned lands, treaty lands, traditional territory? The reference to "Indigenous nation/band-owned lands" has been dropped. The term "traditional territory" is broad enough to include "Indigenous nation/band-owned lands". As well, at this time, one First Nation should not be able to acquire "Indigenous nation/band-owned lands" in the Traditional Territory of another First Nation and establish a First Nations Utility.

[8] Transcript, Volume 12, page 582

[9] Exhibit C-13-11

[10] Exhibit C-13-10

[11] Exhibit C2-3, BC Hydro responses to Collective First Nations IRs 1.1.1 and Exhibit C4-5, FortisBC responses to Collective First Nation IR 1. The Lower Mainland gas distribution network was owned and operated by BC Hydro and unregulated until September 1980 when the UCA was made applicable to it

regional districts enjoy under the UCA[12]. This right to regulate may also flow from the provisions of Treaty settlements[13].

The Collective First Nation's Final Argument is complimentary to and not substitute for its original Submission and Oral Argument.

2. Economic Opportunity - UNDRIP – Self-Determination

2.1. Clean Energy Economic Opportunity

Since the early 2000's, First Nations have been involved in the clean energy industry in British Columbia. First Nation's participation has ranged from royalty sharing to equity ownership and had plans to develop more energy projects. When BC Hydro indefinitely suspended the Standing Offer Program and the micro standing offer program in February 2019, opportunities for First Nations to sell electricity to BC Hydro were eliminated.

First Nations have been trying to persuade the Provincial Government to provide opportunities in the clean energy industry as set out in the Clean Energy Act objectives[14]:

> *"(l) to foster the development of first nation and rural communities through the use and development of clean or renewable resources*"

First Nation Utilities are an opportunity to create revenue and jobs for their communities and allow these communities to continue to develop capacity in the development and management of clean energy projects.

2.2. UNDRIP

The Provincial Government has also committed to implement UNDRIP and the Calls to Action of the Truth and Reconciliation Commission. This government plans to table legislation this fall with respect to UNDRIP and pass it by the end of this session. As BC Hydro is a Provincial Crown Corporation it must live up to the commitments of its sole shareholder.

In adhering to UNDRIP the Province must allow First Nations to develop their own resources and be in charge of their own development. First Nations want to continue to develop clean energy from the resources in their territories and to be part of an industry that has high environmental standards. Having a First Nations Utility regulated by First Nations is consistent with the following provisions of this declaration[15]:

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[12] UCA, section 1, definition of "public utility" subsection (c)

[13] Five First Nation members of the Nuu-chah-nulth Tribal Council have a modern Treaty called the Maa-nulth Treaty ("*Treaty Nations*"). Chapter 13, section 13.11.1 allow the Treaty Nations to establish their own institutions and laws. For example they could set up their own utility and pass laws that regulate this utility. Chapter 5, section 5.6.3 of this Treaty provides Treaty Nations with reasonable access to Crown lands to exercise their section 35 rights. Under section 5.2.2 they can also designate their own lands as private lands.

[14] Section 2 (l)

[15] https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html

"Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 26:

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned."

Controlling the lands and resources does not include regulation of Indigenous Utilities by the BCUC.

2.3. Reconciliation

Reconciliation has been embraced by the Provincial Government and Article 3 of UNDRIP states:

"*Article 3*

"Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

The right of self-determination includes the right of First Nations to freely pursue their own social, economic, and cultural development. Policies and programs of the Provincial Government must not prevent First Nations from developing their own projects or utilities.

Self-determination means that First Nations will regulate their own activities. Which they develop in their own way in their own time frame. There should not be oversight of their utilities by another body when First Nations can do so themselves. The time for paternalism is over.

First Nations are economic players in this province. They know business and how to conduct themselves in business. They understand the need to be competitive in pricing. But as responsible governments, they understand the need to have affordable electricity for their members. With high unemployment, and a portion of their members on social assistance, they will make electricity prices reasonable.

Several First Nations have large developments on their reserve, be it industrial parks, residential developments, or malls and developing a utility to serve these commercial and industrial businesses would be a good source of income for them and the need to have competitive prices.

Reconciliation means righting the wrongs of the past. One of those wrongs was to approve the continuation of Site C without even talking to First Nations who would be impacted by cessation of the SOP program. They must find opportunities, and First Nation Utilities that regulate themselves are a good idea.

Reconciliation means working with First Nations to develop resources in their territories by their own standards and laws. It means First Nations pursuing their economic development so they are no longer have the highest unemployment, are the lowest revenue generators and are dependent on the Federal Government.

When the Premier of the Province announced the continuation of Site C he made the following statement about reconciliation and UNDRIP[16]:

> *"Well our commitments to reconciliation and UNDRIP don't stop in the Peace. They are Province wide. We're working, Scott Fraser who again couldn't be with us today, has an explicit mandate to ensure that he works with his colleagues across Cabinet, across Government to make sure that we're implementing the UN Declaration on the Rights of Indigenous Peoples as well as the Reconciliation Calls to Action from the most recent Truth and Reconciliation Commission, at the federal level. So we're committed to doing that across Government. This element, these issues in the Peace are part and parcel of that."*

3. Jurisdiction

In Oral Argument[17] concerns were expressed about the BCUC's jurisdiction and in particular making any determination as to whether the First Nations Land Management Act is effectively paramount over the UCA. Order in Council 108[18] which establishes the Inquiry states in part:

> *"2. By this order, the Lieutenant Governor in Council, under section 5(1) of the Act, requests that the commission advise the Lieutenant Governor in Council*

[16] https://www.youtube.com/watch?v=xOW0hJwdZvI, December 11, 2017, 10:42
[17] Transcript, Volume 12, page 629
[18] Dated March 11, 2019

> *respecting the regulation of indigenous utilities in accordance with the terms of reference set out in section 3 of this order."*

Section 5(1) of the UCA says:

> *"(1) On the request of the Lieutenant Governor in Council, it is the duty of the commission to advise the Lieutenant Governor in Council on any matter, whether or not is a matter in respect of which the commission otherwise has jurisdiction"*

In a section 5(1) inquiry the BCUC is given a "*clean sheet*" in relation to jurisdiction. It can inquire into matters that would otherwise be beyond its jurisdiction and it necessarily follows that it can make recommendations that would otherwise be beyond its jurisdiction. For example the BCUC has no jurisdiction over: "*a person not otherwise a public utility who is engaged in the petroleum industry*"[19] however at the request of the Provincial Government it is currently conducting an inquiry into Gasoline and Diesel Prices in BC.

Normally, section 44 of the Administrative Tribunals Act[20] prevents the BCUC from considering constitutional questions but this provision does not apply with respect to a section 5(1) inquiry.

Although there is a very high probability that First Nations who enact Land Codes that include utility regulation are exempt from BCUC oversight, the Collective First Nations are not requesting the BCUC to make a finding in this respect. Rather they are requesting the BCUC to make a recommendation to the Provincial Government that the Provincial Government should place heavy emphasis on the Federal Government's land management legislation when it considers an explicit Provincial legislative re-ordering of oversight of Indigenous Utilities. It is a compelling precedent for the reordering of decision making authority to First Nations. The objective should be reconciliation with First Nations and not a protracted constitutional legal battle over Indigenous Utility regulation. And an example of Federal and Provincial co-operation on constitutional jurisdiction.

4. Responses to BCUC Questions

1. 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?

The issue is not whether there is a need to protect the consumer against potential abuse of monopoly power by the service providers but whether First Nations, with redress to the Courts by ratepayers if necessary[21], can provide the required protection if they own or

[19] UCA, section 1, definition of "public utility" sub-section (e)
[20] UCA, section 2.1, subsection (e)
[21] In the case of Land Codes to the Federal Court, section 36(2) of the First Nations Land Management Act and section 18 of the Federal Courts Act and in other cases the common law of judicial oversight of monopolies applies Chastain vs BC Hydro, Exhibit C13-2, Collective First Nations original Submission, pages 13 and 14

control the utilities that they are regulating. Given that in their formative years, BC Hydro and what is now the core of FortisBC Energy Inc., were not regulated, except by the Courts, and the B.C. Government's participation in their regulation, especially BC Hydro, once they became regulated, there is no reason to expect that First Nations are not capable of providing regulatory oversight over the utilities they own or control. First Nations are being asked to prove that they can be trusted to be competent regulators especially in relation to non-First Nations customers. Given the history in living memory of regulation of B.C. public utilities the assumption should be that First Nations are more than capable of providing regulatory oversight until proven otherwise[22].

In Exhibit C12-3, the Westbank First Nation succinctly addressed the matters of First Nation's trust and capability:

> "… *WFN Lands are home to over 10,000 non-Member residents on two Indigenous Reserves. For over the course of ten years, we have maintained an accountable and transparent government to both WFN Members and the greater non-Member population.*"

The perception of the Collective First Nation is that there has also been too much emphasis in this Inquiry on the need to protect non-First Nation members or entities that would be served by First Nation Utilities. For example they can't vote in Band elections. No such emphasis has been placed on the need to protect First Nation members that are served by non-First Nation public utilities. With respect to the regulation of public utilities in British Columbia, First Nation members are assumed to have the same needs and concerns as non-First Nation members. This is not consistent with findings of the Truth and Reconciliation Commission.

2. 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?

No it would not be appropriate. It would be a clear signal that First Nations can't be trusted to regulate their own utilities or that they have the necessary competency to do so. From the practical perspective, an investigation of a complaint would require a detailed examination of the First Nation Utilities' operating and financial structure. In other words the BCUC would become the regulator of the First Nations Utility with the ability to substitute its judgement for that of the First Nations regulator. Oversight of First Nations regulator's should be a matter for the Courts. This is not an unusual occurrence for utility regulators of all kinds. According to Daria Babaie:

> "*In general, decisions and order of regulators for both Indigenous and non-Indigenous utilities may be subject to judicial review in accordance with the provincial or territorial legislation. A review of the legislation with respect to the*

[22] Exhibit A-34, Daria Babaie response to Collective First Nation IR 5.1

ability to seek judicial review is not within the scope of the Consultant's work…"

3. **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?**

Yes. The BCUC should retain its jurisdiction over reliability issues because it is a North American wide problem because of the interconnection of electrical utilities across state and provincial borders and the Canada-U.S. border. With respect to safety, it has never been clear what the BCUC's role actually is with respect to safety. For example: "*How it is applied in practice to existing public and municipal and regional district utilities*?" The issue of safety was canvassed during Phases 1 and 2 of the BCUC's "*An Inquiry into the Regulation of Electric Vehicle Charging Service*" and there were different views with respect to the BCUC's role with respect to safety. Ultimately the BCUC decided that it should retain its jurisdiction under sections 25 and 38 of the UCA with respect to EV charging service providers that are not already a public utility under the UCA[23].

One of the recommendations of this Inquiry should be that the Provincial Government consider setting objective safety standards for First Nation Utilities, public utilities and municipal and regional district utilities rather than allowing the existing very subjective standards of "*unsafe*" in section 25 of the UCA and "*safe*" in section 38 to remain.

In practice, any First Nation utility that is interconnected to BC Hydro and FortisBC will be required to comply with their interconnection requirements. E.g. "*Requirements for Customer-Owned Primary Service Supplied at 4 kV to 35 kV Primary Guide",* Issued; March 7, 2018, Effective Date: July 1, 2018.

http://www.bchydro.com/distributionstandards

4. **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 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?**

No. The concept of self-determination does not apply to BC Hydro. And reconciliation does apply to this entity in the same way as to First Nations. First Nations are seeking redress for lost opportunities including economic opportunities. This is not the case for the example of BC Hydro.

5. **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.**

[23] "An Inquiry into the Regulation of Electric Vehicle Charging Service" Report Phase 2, June 24, 2019, Executive Summary, page ii

The Collective First Nations can think of no amendments to the UCA or other existing legislation that would protect the interests of Indigenous Nations, while working towards reconciliation. Half measures such as "*light handed regulation*" or "*regulation by complaint*" would be further evidence that the onus is on First Nations to prove that they can be trusted to regulate utilities that they have a majority ownership in or control. Given the level of Provincial Government participation in the existing regulatory system of public utilities in B.C. and the outcomes, the onus should be on this government to prove that First Nations regulators could not meet the standard of regulation established by the Provincial Government over the last 40 years.

6. **It 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?**

It is premature to assume that an Indigenous Utilities Commission could be structured to represent the interests of all First Nations that might want to own utilities. They first need to establish themselves. As well First Nation Utilities are probably going to be local enterprises with local concerns and objectives. Initially, they should be regulated locally.

There is no guarantee that First Nation Utilities will be commercially successful. But it is an opportunity that should be available to them without BCUC oversight.

5. First Nations Land Management Act and Land Codes

In the Oral Argument the following material was thoroughly canvassed by the Collective First Nations:

- section 88 of the Indian Act;
- the preamble of the Framework Agreement on First Nation Land Management[24];
- the preamble and sections 6(1)(i),18(1), 20(1)(b) and (e), 20(2)(d), 25(1) and 36(1)-(3) of the First Nations Land Management Act[25]; and
- section 18(1) of the Federal Court Act.

There is no need for another "step through" of this material. It buttresses the Collective First Nation's position that First Nations must be allowed to regulate the utilities they own or control.

[24]Exhibit C-13-11
[25]Exhibit C-13-10

6. Geographic Extent of First Nation Utility Regulation

The Collective First Nations have reviewed the transcript of the Oral Argument session and wish to clear up any ambiguity they may have left with the BCUC in relation to their position on the extent of First Nation regulatory oversight over First Nation Utilities. It would extend to reserve lands, Treaty lands and First Nation traditional territory. The latter is similar to the municipal or regional district exemption precedent of providing services "*within its own boundaries*".

The preceding description of geographic extent is also identical to that contained in the Collective First Nation's original Submission[26].

Any disputes over overlapping First Nation traditional territory would ultimately be decided by the Courts.

As indicated in Oral Argument[27] the Collective First Nation are not seeking to regulate as the BCUC does under the UCA, existing public utilities such as BC Hydro and FortisBC except as their activities are subject to other laws and policies of Collective First Nations e.g. environmental.

7. Municipalities

The right to vote in any election is not a basis for concluding that municipal or regional district utility ratepayers have recourse in the event they have a complaint against a municipal or regional district utility. Commercial or industrial ratepayers do not have the right to vote in municipal or regional district elections. Nor in Provincial elections.

The Collective First Nations position on the UCA exemption status granted to municipalities and regional districts is set out in its original Submission. In summary First Nations, and in particular those with Land Codes, perform similar functions as these bodies and should have the same exemption status. However the Collective First Nations wish to reiterate the following from the original Submission[28]:

> "*At a minimum, Indigenous Utilities should have the same status under the UCA as municipalities and regional districts without being designated as such. Although there are some similarities to municipalities and regional districts that have been highlighted in this Submission, the Collective First Nations right to pass laws in their traditional territories is different that the law making authority of municipalities and regional governments. Advancing the proposition that they should be exempt from regulation under the UCA by using the example of municipalities and regional districts is not the equivalent of saying First Nations are municipalities or regional districts or that the law making authority is the same*."

[26] Exhibit C13-2, page 11, response to: *"Does the Indigenous utility provide service solely on reserve; Indigenous nation/band-owned lands, treaty lands, traditional territory*?"
[27] Transcript, Volume 12, pages 633 to 635
[28] Exhibit C13-2, page 12

As noted in Oral Argument[29] by Judith Sayers, President of the Nuu-chah-nulth Tribal Council, First Nations access to capital, especially equity, is limited. While it can be argued that municipal and regional district utilities should be wholly owned by them because their access to capital is not similarly limited, a recommendation by the BCUC that First Nation Utilities must be owned 100% by First Nations would prevent most First Nations from establishing utilities. As noted in the original Submission and in this Argument, the test should be 51% ownership or control of First Nations Utilities by First Nations.

8. Stranded Assets

Any stranded assets resulting from the creation of First Nation Utilities that are regulated by First Nations would be insignificant when compared, for example, to BC Hydro's decision to proceed with Site C and the need to reduce greenhouse gas emissions from the burning of natural gas.

9. Transitional Measures

In the Oral Argument process, the BCUC Chair's requested[30] the Collective First Nations to provide transitional recommendations to facilitate a faster route to change. After due consideration the Collective First Nations recommend that a Ministerial Order be issued pursuant to section 22 of the UCA that exempts First Nations Utilities[31], that are engaged in any of the activities enumerated in subsection (a) of the definition of "*public utility*" in the UCA, from the provisions of Part 3 and section 71 of the UCA. This Order would be similar in form to Ministerial Order No. M-22-0205 dated June 6, 2002 which exempted persons who produce and sell electricity to BC Hydro or Powerex who are not otherwise a public utility from Part 3 regulation. This precedent is being referred to for form only.

This would be a transitional and only a transitional measure to expedite the route to the reordering of decision making authority to First Nations in relation to the regulation of First Nations Utilities by First Nations.

10. Conclusion

First Nations must be allowed to regulate the utilities they own or control. It is a matter of reconciliation and UNDRIP supported by reference to the Framework Agreement on First Nations Land Management[32], the First Nations Land Management Act[33], the historical regulation free period public utilities like BC Hydro and the Lower Mainland portion of

[29] Transcript, Volume 12, pages 638 to 639
[30] Transcript, Volume 12, page 582
[31] A "First Nation Utility is one that is 51% owned or controlled by First Nations and serves the reserve lands, Treaty lands and First Nation traditional territory of the First Nations that own or control it.
[32] Exhibit C-13-11
[33] Exhibit C-13-10

FortisBC Energy Inc. gas distribution system enjoyed in their formative years[34] and the exemption municipalities and regional districts enjoy under the UCA[35]. This right to regulate also flows from the provisions of Treaty settlements such as the Maa-nulth Treaty which adds further impetus for the reordering of decision making authority to First Nations.

Any Federal Provincial jurisdictional overlap should be sidelined in the spirit of reconciliation and the spirit of federal provincial co-operation as well as any constitutional arguments pertaining to paramountcy and inter-jurisdictional immunity

The right to regulate would extend to reserve lands, Treaty lands and First Nation traditional territory. And this right is also about the creation of economic opportunities for First Nations.

All of which is respectfully submitted.

[34] Exhibit C2-3, BC Hydro responses to Collective First Nations IRs 1.1.1 and Exhibit C4-5, FortisBC responses to Collective First Nation IR 1. The Lower Mainland gas distribution network was owned and operated by BC Hydro and unregulated until September 1980 when the UCA was made applicable to it

[35] UCA, section 1, definition of "public utility" subsection (c)