



October 11th, 2019

Patrick Wruck
Commission Secretary
British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC V6Z 2N3

Subject: British Columbia Utilities Commission (“BCUC”) Project No. 1598998 Indigenous Utilities Regulation Inquiry
Kitselas Geothermal Inc. (“KGI”) Final Submission

Dear Mr. Wruck,

Please find enclosed Kitselas Geothermal Inc.’s Final Submission for the above proceeding, in compliance with BCUC Order G-214-19.

If you have any questions, please do not hesitate to contact me.

Warm Regards,

Tim Thompson
Director
Kitselas Geothermal Inc.

British Columbia Utilities Commission Indigenous Utilities Regulation Inquiry

Final Submission by Kitselas Geothermal Inc.

October 11, 2019



“First Nations turn Opportunity into Economy”

“The Solution is already there – it’s a matter of will.”

-- Edison Bolton, Kitselas First Nation



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About Kitselas Geothermal Inc.

Kitselas Geothermal Inc. (“KGI”) is majority owned by Kitselas Development Corporation (“KDC”), which is the economic arm of the Kitselas First Nation. KDC is wholly owned by Kitselas First Nation and takes directions from the Chief and Band Council. Borealis GeoPower Inc. is a minority owner of KGI. It is the goal of KGI to harness thermal energy in Kitselas First Nation traditional territory. In addition to an economic interest and an interest in being a self-sufficient Nation, Kitselas First Nation also has an interest in using its own resources and living off the land. The Nation wants to create something that benefits not only Kitselas Citizens and their future generations, but also the socio-economic well-being of North West British Columbia.

Appreciation

KGI would like to thank the BC Government and the BCUC for taking the time and effort to examine issues related to Indigenous Utilities. In addition, KGI wants to highlight the sensitivity and grace with which the BCUC has engaged First Nations throughout the inquiry process. We also extend our appreciation to the following who have contributed to shaping our testimony:

- Other First Nations and Interveners for recognizing geothermal energy in their Inquiry submissions and oral testimony.
- FortisBC for creating and outlining in their Fortis Framework Grouping 6 how the Open Access Transmission Tariff (OATT) would/could work for IUs and in particular, KGI.¹
- BC Hydro for answering our Intervener Requests and stating their openness to the idea of serving regional supply gaps by procuring electricity outside of the now suspended Standing Offer Program (SOP).²
- Collective First Nations for identifying the broad mandate within which the BCUC can make recommendations to the Minister of Energy.³

Framing the Discussion

While KGI will directly address the questions posed by the BCUC in a Table at the end of this document (Appendix 1), KGI believes that issues related to Indigenous Utilities are broader than the BCUC’s frame of reference.

The Province, BC Hydro and BC’s Indigenous Peoples have a history that bears on how the future for Indigenous Utilities (“IUs”) should be determined.

It is KGI’s view, as noted by Mr. Bolton in his testimony, that First Nations have historically been excluded from participating in BC’s energy markets, where the foundational infrastructure for those markets was unfairly acquired, without material benefit to those they acquired them from – notably BC’s First Nations. This is particularly unjust given the current economic and

¹ FortisBC Final Argument, pages 14-16, Groupings 1A, 2A, 6.

² *Clean Energy Act*, SBC 2010, c 22, s 2(1).

³ Collective First Nations Final Argument, page 7.

social realities facing Indigenous Peoples in BC, as highlighted by many of the interveners in this hearing (e.g. Beecher Bay First Nation and Adams Lake⁴ and Collective First Nations⁵).

This inequity has created an obligation between those who built the “heritage” infrastructure and those from whom it was taken, which remains undischarged.

In recent years, significant progress was made with the latest evolution of BC Hydro’s Standing Offer Program (“SOP”), which was a simplified mechanism for Independent Power Producers (“IPPs”) to sell electrical energy into the BC market.

The last SOP projects mandated “significant First Nations involvement” and many of the earlier SOP projects also had significant First Nations involvement. Pragmatically, for any project on territorial lands, the relevant First Nations had to be supportive of the project for it to proceed.

This had two impacts. It may have been the first instance where Indigenous Peoples could materially participate in BC’s electricity market. Second, it created de facto IUs or precursors to IUs, where prospective developers were either the First Nations themselves or required to meaningfully partner with First Nations.

It is important to note the key elements that made the SOP relevant for First Nations:

1. It was a relatively simple process (including regulatory), with open and transparent requirements, that granted market access.
2. It required project developers to effectively recognize First Nations rights within their traditional territories.
3. It conferred real economic benefit to those First Nations who developed projects.

The indefinite suspension of the SOP program, by BC Hydro, in concert with BC Hydro constructing its own incremental generation supply at Site C, has demonstrated that the market access, originally provided by the SOP, was illusory.

Irrespective of whether this is an allowable contractual outcome, the reality of the SOP suspension is that it has caused significant economic harm for those projects and First Nations who participated, as perhaps none of the SOP facilities have ‘paid out’ and they are left with real debt obligations and a concern about the source of funds to service them, should BC Hydro decide to stop purchasing electricity. Further, it has left many First Nations, including KGI, who had submitted a draft application to the SOP and already invested considerable time and funds into the project, wondering how their in-process energy developments will fare going forward.

While both BC Hydro and the Province of BC have committed to UNDRIP and the Calls to Action of the TRC, their SOP actions would appear to belie their words.

While KGI has only done cursory research, we were unable to discover a regulatory basis suggesting that BC Hydro has a “right” to the BC electricity market. While it has obligations and benefits with respect to serving its customers and to the Province of BC, KGI would suggest that

⁴ Beecher Bay First Nation and Adams Lake Final Argument, para 12.

⁵ Collective First Nations Final Argument, page 6.

has no right to serve any one customer. Rather, that this is an issue to be determined by an independent body, such as the BCUC, to determine whether service by one provider, or another, is in the ratepayers' interest.

Geothermal Energy Generation

KGI is a leader in developing BC's geothermal resources. KGI is positioned to commission thermal and potentially electricity generation projects in the near term.

As the 'first of its kind' development in British Columbia, the regulatory picture governing geothermal energy generation and distribution has been less than clear.

To capture and codify this complexity, KGI has prepared draft Regulatory Flowcharts, which we believe represent the decision matrix that currently rules in or out specific regulators and regulations, as they pertain to geothermal energy developments.

This has complicated KGI's IU discussion as in addition to seeking an understanding of the proposed recognition and/or accommodations for IUs, it has sought clarification on how geothermal utilities would be treated, both within an IU and generally.

Specifically, we are looking for the BCUC to clarify its position on *Figure 3 – Regulatory Flowchart: Geothermal Resource Development*, and *Figure 4 – Regulatory Flowchart Exemption for Cascaded Geothermal Heat Projects*, where 'exempt' thermal projects could be 'recaptured' by BCUC regulation. More information on Cascaded Heat can be found in CanGEA's final submission.⁶ KGI wishes to confirm that once a project is 'exempt', it remains so and is not 'recaptured' in any way.

⁶ CanGEA Final Argument, section 7.



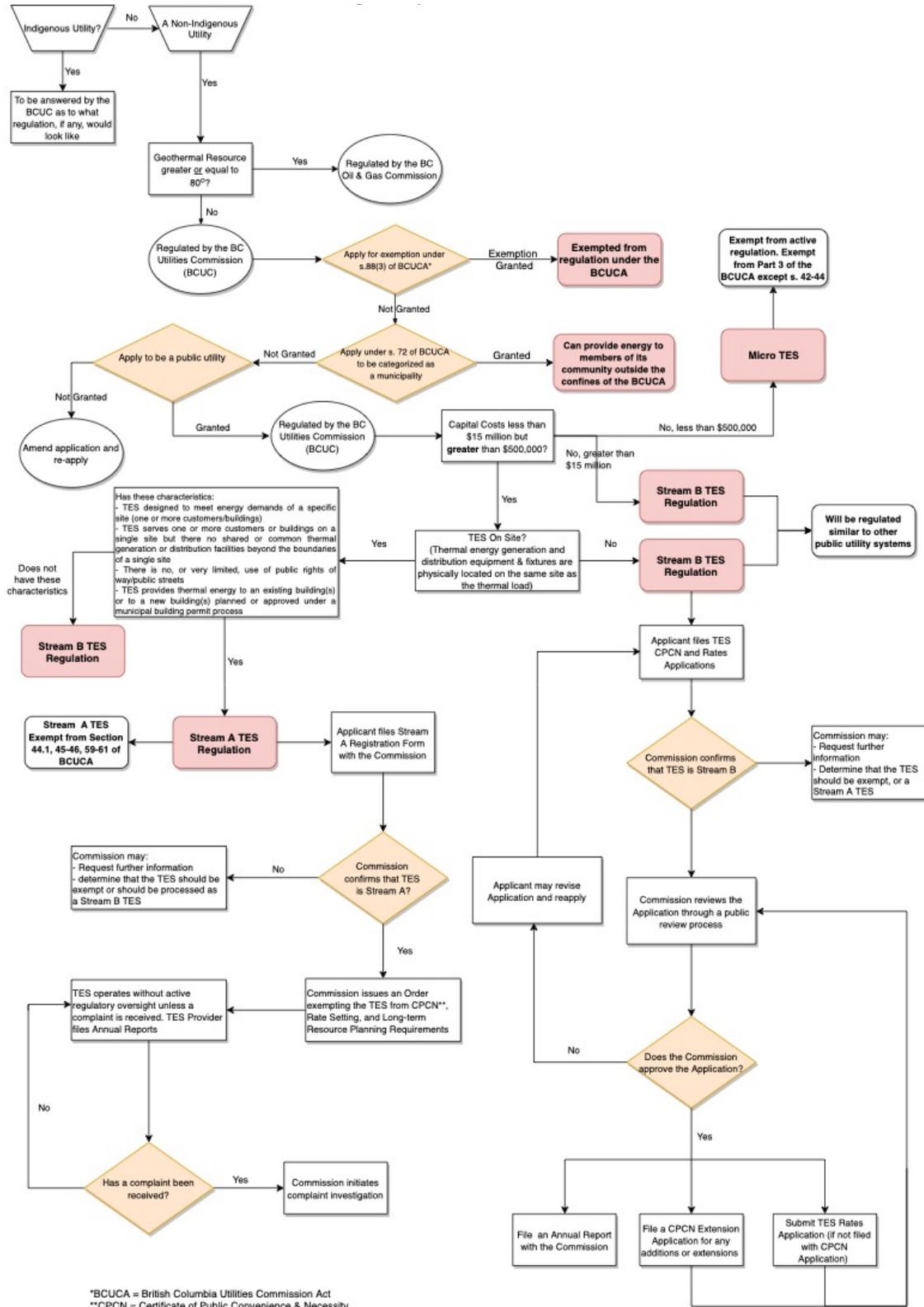


Figure 1. Regulatory Flowchart



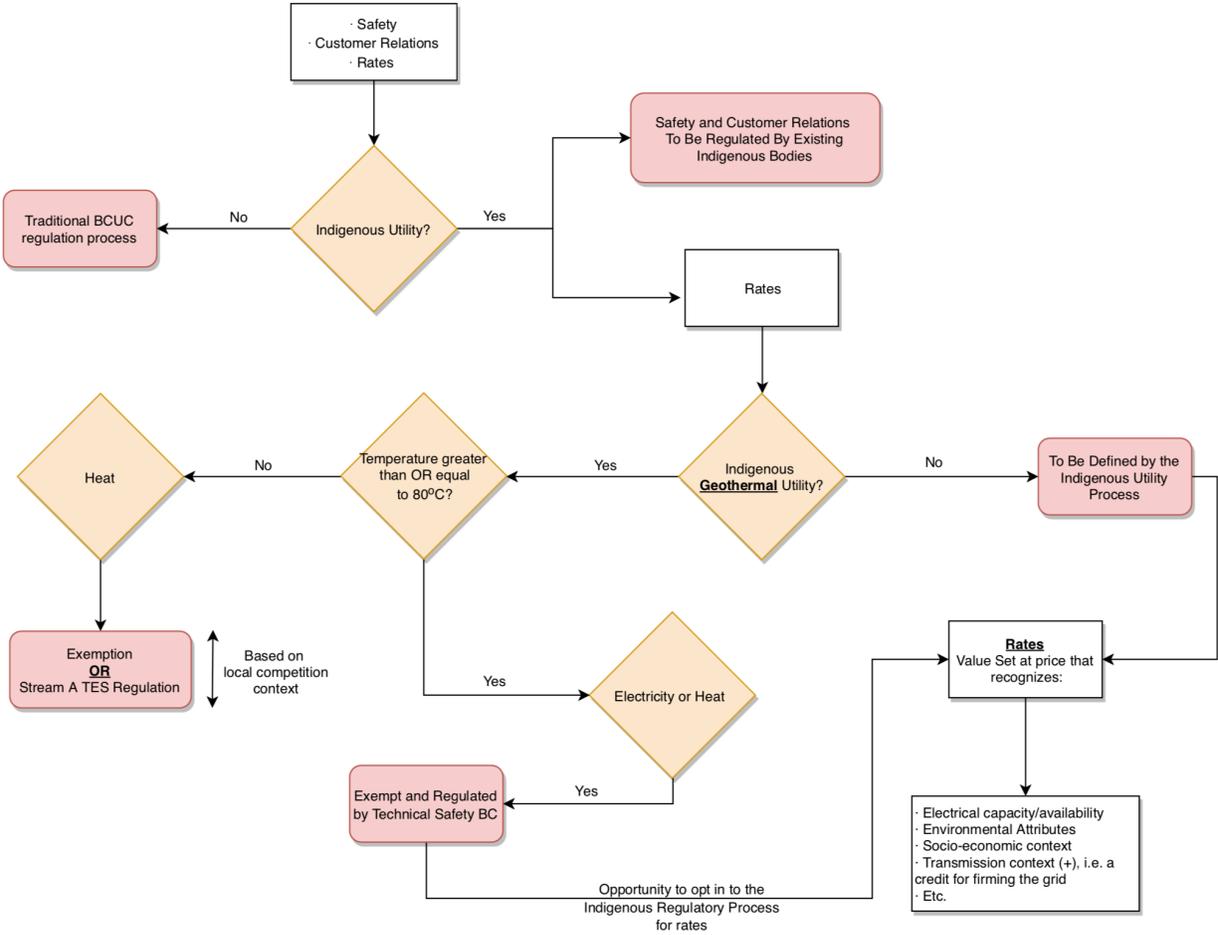


Figure 2. Regulatory Flowchart: Indigenous Utilities



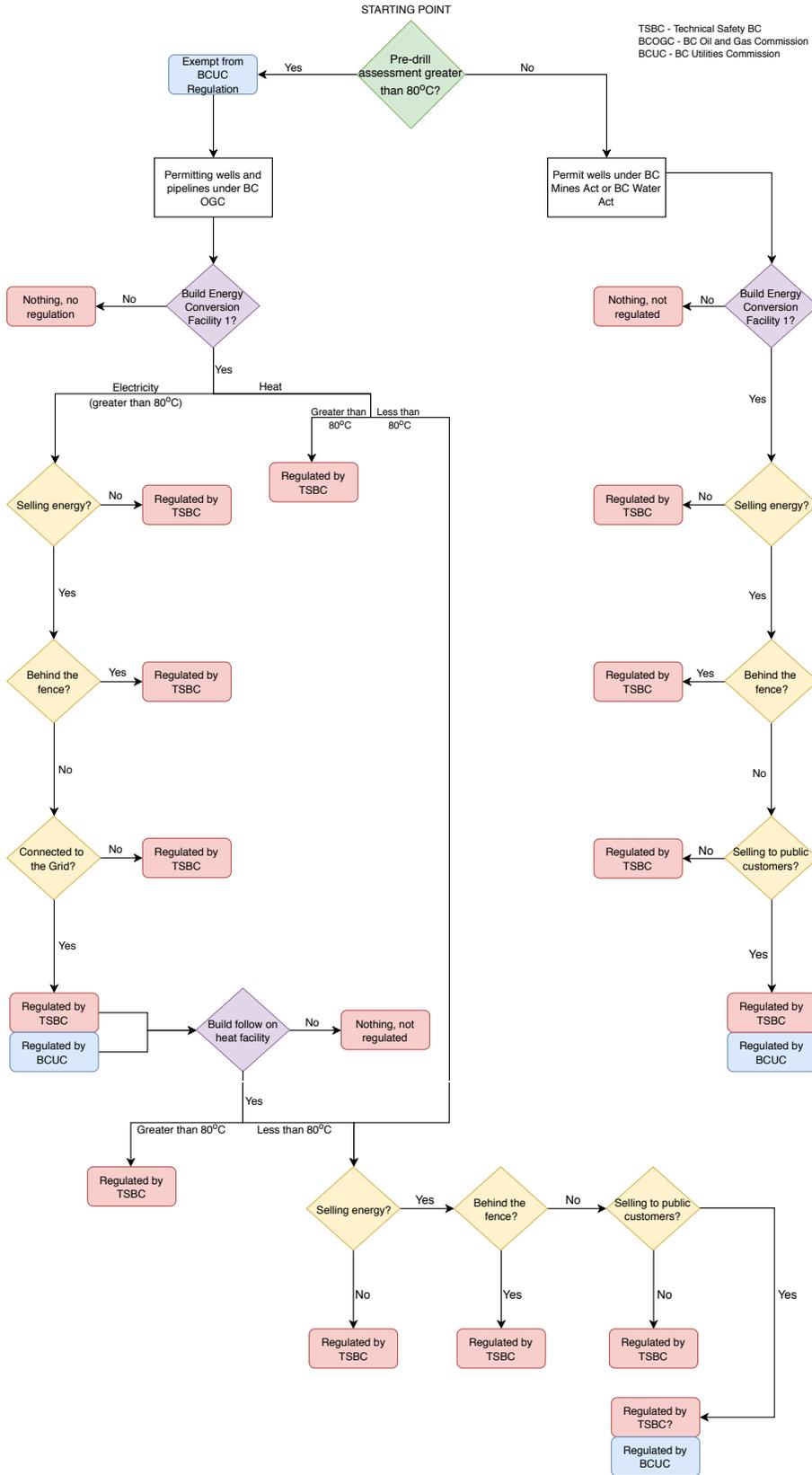


Figure 3. Regulatory Flowchart: Geothermal Resource Development



Specifically, in the chart above, KGI would like to have the following area examined:

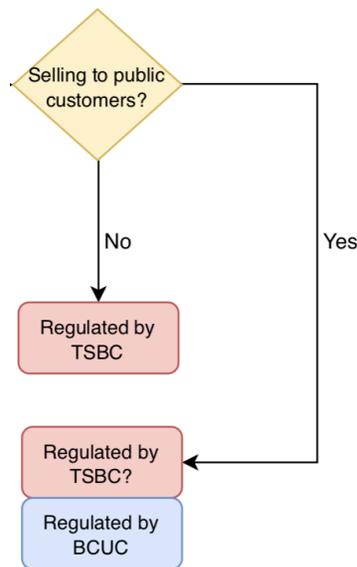


Figure 4. Regulatory Flowchart Exemption for Cascaded Geothermal Heat Projects

Overview of Recommendations

KGI re-iterates the recommendations it made in its earlier submission, with a few amendments and upgrades.

1. We strongly encourage the BCUC to create a category of Indigenous Utilities.
2. We request that the BCUC use a flexible definition for determining whether a utility is Indigenous or not; grounded in meaningful participation and/or control.
3. We request that the BCUC rely on pre-existing safety and customer service/dispute resolution systems, rather than regulate these core functions.
4. We request that Indigenous heat Utilities be lightly regulated by the BCUC (notably under Stream A or exempt).
5. We would request that Indigenous Utilities have energy market access equivalent to that enjoyed by BC Hydro.
6. In the interim, we request that the BCUC seek authority from the BC Government to establish an electricity market access program, for Indigenous Utilities, that provides, for qualifying entities:
 - a. long term grid sales,
 - b. firm pricing and relevant escalators,



- c. pricing that preferentially values capacity (base load), as well as other socio-environmental factors important to Indigenous communities,
 - d. pricing that captures the value, if any, related to transmission credits, related to avoided line losses and increased reliability, as supply migrates to end of line generators, and
 - e. allowance for regional differences; e.g. Northwest BC (west of Prince George) about to enter supply shortfall whereas Northeast BC about to enter supply surplus.
7. We further request that the BCUC, or another independent body, be authorized by the BC Government to provide the oversight on IUs unfettered access to BC’s electricity market.
8. We request that, in the case of IUs, that the BC Government authorize the BCUC to take over regulation of early geothermal exploration and development activities (both heat and electricity).

Table 1: Current Geothermal Regulatory Regime

Type of Regulation	Resource < 80°C	Resource ≥80°C
Rates, Customer Relations, Safety	BCUC / Technical Safety BC	Exempt / Technical Safety BC
Project Development and Pipelines to Customers	BCUC	BC Oil & Gas Commission
Energy Conversion Facilities	BCUC	Exempt

A proposed regulatory regime, designed to encourage Indigenous geothermal Utilities, could look like this:

Table 2: Proposed Geothermal Regulatory Regime

Type of Regulation	Resource < 80°C	Resource ≥80°C
Rates, Customer Relations, Safety	BCUC / Technical Safety BC	Exempt / Technical Safety BC
Early exploration, i.e. core holes and slim wells; developments with flows from 0 to <100 l/s	BCUC	BCUC
Project Development when ≥80°C production and injection wells are involved with flows > 100 l/s	Not applicable	BC Oil and Gas Commission
Energy Conversion Facilities	BCUC	Exempt

9. We ask the BCUC to, where they find regulation required, to develop – in concert with Indigenous Nations – a simpler and more efficient process for regulating, likely small scale, Indigenous Utilities.



KGI would like to speak to a few key issues more broadly.

1. Market Access

Self-Determination

KGI has noted earlier that for IUs to succeed, they will require market access sufficient to support, at a minimum, ‘scale’ (Exhibit C6-3, page 11) facilities, as this will provide energy generation at competitive rates, a necessary condition for their long-term survival.

It may be the case that sufficient market exists within a First Nation’s traditional territory (or collection of First Nations’ traditional territories), or it may not.

It is KGI’s view that the traditional territory boundary is only important if it does not extend beyond the minimum ‘scale’ market, and has no exclusions, i.e. – municipalities within the traditional territory are accessible markets to the IU(s).

On this point, KGI agrees with BC Hydro’s assertion that well-defined geographic boundaries make regulation easier and these can be agreed with the BCUC.⁷ However, KGI strongly disagrees with BC Hydro’s assertion that IUs be restricted to only serving reserves or treaty settlement lands⁸ as this is economically unsustainable. KGI prefers Fortis’s approach, where scaled regulation would apply depending on services offered, customer recourse, and relevant jurisdictional boundaries, as well as BCUC’s own “unique regulatory frameworks that address specific types of utilities, namely small thermal energy utilities”.^{9,10} We believe this position is also supported by the Commercial Energy Consumers Association of BC (CEC)¹¹ with the caveat that they do not result in increased costs for ratepayers¹² – a condition that we intend to later address in this submission.

While the Province of BC and BC Hydro have committed to UNDRIP and the Calls to Action of the TRC in the context of IUs as being considered by the BCUC¹³, KGI submits that this recognition of First Nations’ rights is less meaningful if IUs are relegated to sub-scale, sub-economic utilities, as these will neither “...foster development of First Nation and rural communities through the use and development of clean or renewable resources;” (one of BC’s Energy Objectives)¹⁴ nor maintain or strengthen their distinct political, legal, social, and cultural institutions.

KGI would also like to address comments put forth by BC Hydro, with respect to market access.

Market access should not be controlled by documents such as the OATT or the Retail Access Provisions, as these are essentially self-serving regulations that reinforce the status quo.

⁷ BC Hydro Final Argument, page 8, lines 9-10.

⁸ BC Hydro Final Argument, page 8, lines 13-16.

⁹ FortisBC Final Argument, page 22, sections 47- 48.

¹⁰ FortisBC Final Argument, page 23, sections 51.

¹¹ CEC Final Argument, page 4 section 25.

¹² CEC Final Argument, page 4 section 26.

¹³ BC Hydro Final Argument, page 2, lines 8-10.

¹⁴ *Supra* note 2.



As BC Hydro noted in its response to our information request (excerpt shown below), these contracts would allow a new market entrant, such as an IU, to sell power to either no one BC Hydro currently serves (or partially serves) or to another exempt utility – which is effectively no one outside of Columbia Power Corp or FortisBC.¹⁵

Response from BC Hydro: As explained on page 13 of BC Hydro’s Evidence submitted on July 15, 2019, “...retail access allows for a customer to utilize the electrical system of the electrical utility to which it is connected, to service its own load directly through the purchase of market energy or energy purchased from another seller(s)”. BC Hydro cannot conceive of a likely scenario in which it would be beneficial to BC Hydro and its ratepayers to have a third-party serve a load connected to the BC Hydro system instead of BC Hydro supplying energy to such load.

BC Hydro also wishes to clarify that a third-party generator is not precluded from connecting to BC Hydro’s system, and accessing BC Hydro’s transmission system, as a result of the prohibition of retail access. As discussed in BC Hydro’s response to BCUC IR 1.8.1, a power producer in B.C. may sell power to:

- A wholesale customer connected to the BC Hydro system, such as another public utility; or
- To an entity based in B.C., or otherwise, that is not a retail customer of BC Hydro.

However, we are encouraged by BC Hydro’s response to our information request, restated below.

KGI Information Request to BC Hydro: In the event of a positive outcome that improves infrastructure and thereby improves the reliability for the Provincial grid, lower the costs of electricity and the concerns BC Hydro has no longer exist, would BC Hydro advance retail access in those instances, i.e. in areas of grid instability or where BC Hydro is unable to serve customers?

BC Hydro response [excerpt]: ..., in a scenario where BC Hydro has identified that a generation resource may be able to support local grid reliability or defer infrastructure investments, BC Hydro would explore available alternatives including whether an energy purchase agreement with a third-party supplier is viable.

This is the scenario in which KGI currently finds itself.

In Northwest BC (“NWBC”), LNG Canada has been granted an exemption from the *Clean Air Act* to self-generate ~ 600 MW of electrical power from natural gas as BC Hydro cannot serve all of their needs. BC Hydro is expected to deliver ~ 100 MW of electricity to LNG Canada. This is an example of the real opportunity where partial access would benefit all parties and also the environment. The consequences incurred from not serving or not fully serving a

¹⁵ Exhibit C2-3, Kitselas Geothermal Inc. Information Request No. 1.6.1 to British Columbia Hydro & Power Authority



customer/industry/region, such as the LNG industry, are many and could include: a) an increase in greenhouse gases (GHGs) from self-generated electricity sources, and/or b) curtailed regional economic development due to a lack of electricity.^{16 17}

An example of the potential for Indigenous Utilities to reduce transmission distances and increase grid stability is illustrated using the KGI project, shown below.

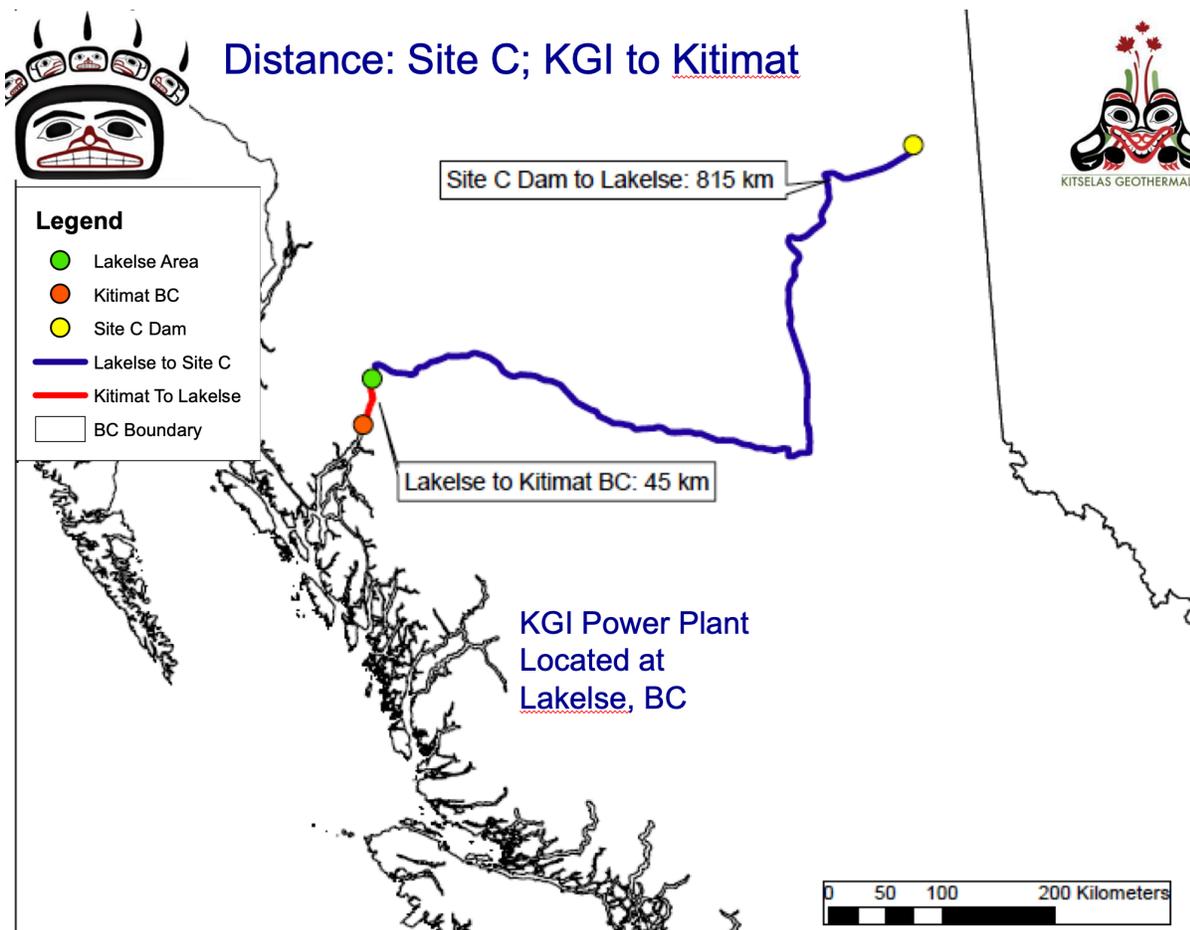


Figure 5. Distance from Site C vs. KGI to Kitimat

The KGI project, as illustrated in Figures 6 through 9, below, can serve as an example of how a geothermal energy project can reduce air impacts, while also serving a customer/industry that would otherwise not fully use clean energy, which is a priority of the Federal and Provincial governments.¹⁸

¹⁶ <https://www.canada.ca/en/innovation-science-economic-development/news/2019/06/government-of-canada-confirms-support-for-largest-private-investment-in-canadian-history.html>

¹⁷ Exhibit C7-2, page 13.

¹⁸ https://news.gov.bc.ca/files/MOU_Canada_BritishColumbia_Natural_Gas_Electrification.pdf





KGI Heat Park – Phase I: Emissions reduction

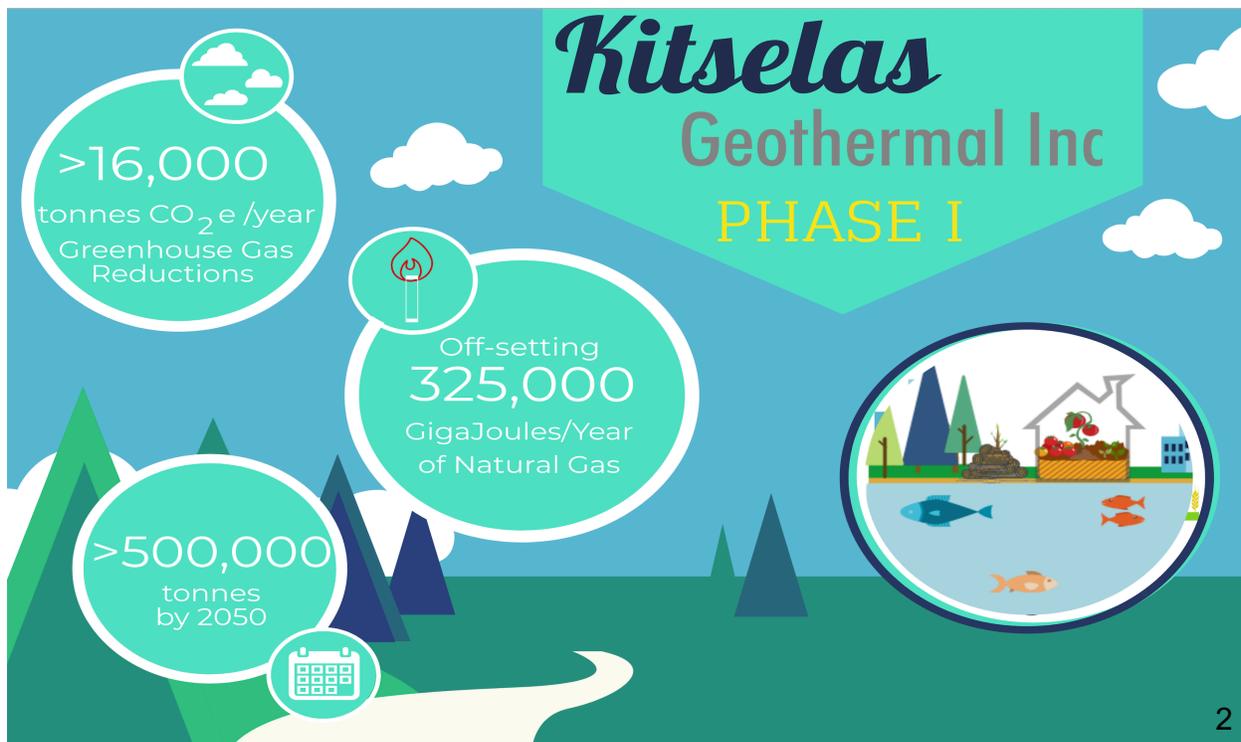


Figure 6. KGI Heat Park Phase I Emissions Reduction Potential





KGI Heat Park – Full: Emissions reduction

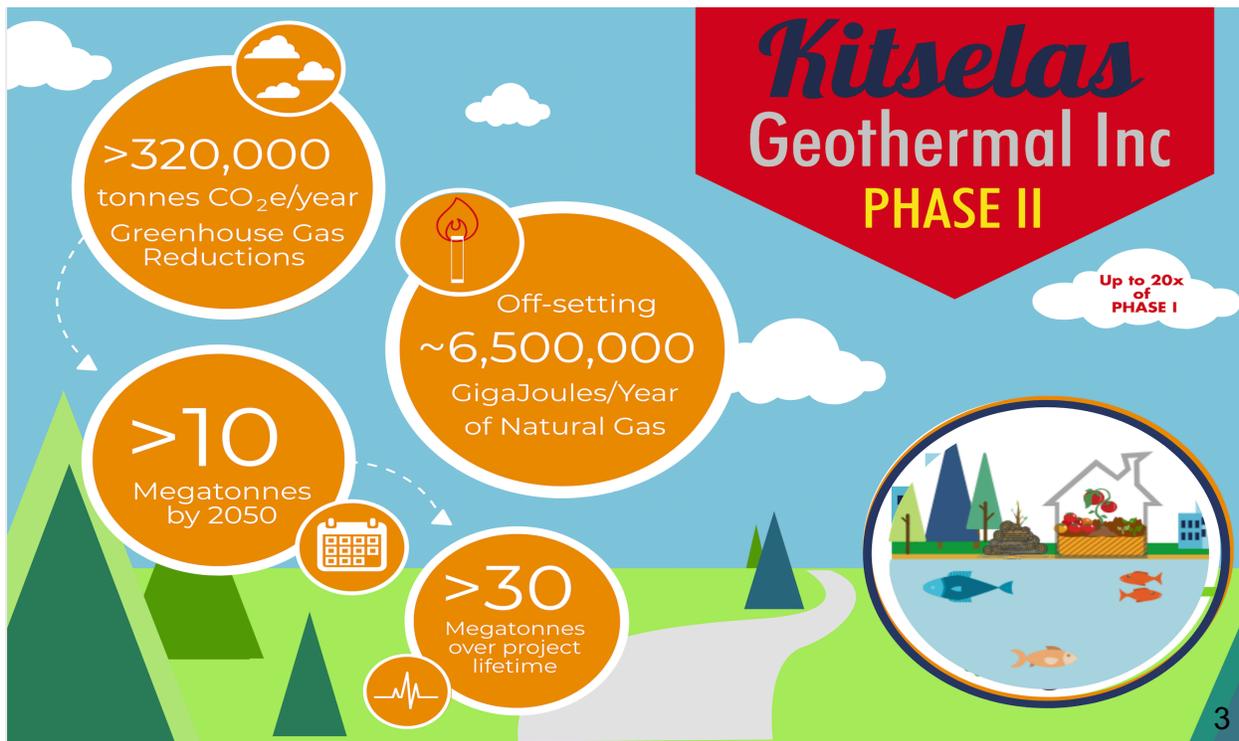


Figure 7. KGI Heat Park Phase II Emissions Reduction Potential





KGI Power Station – Emissions Reduction

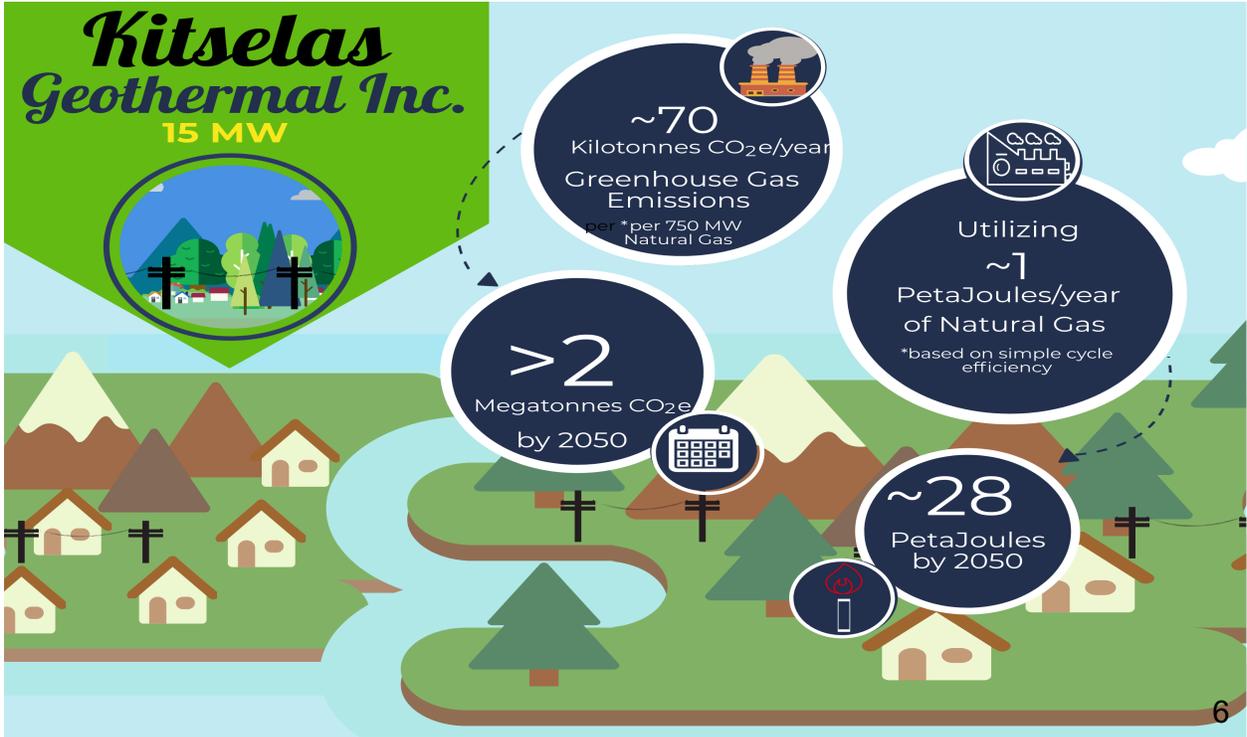


Figure 8. KGI 15 MW Electricity Plant Emissions Reduction Potential





LNG Canada – Emission reduction of eliminating self supply

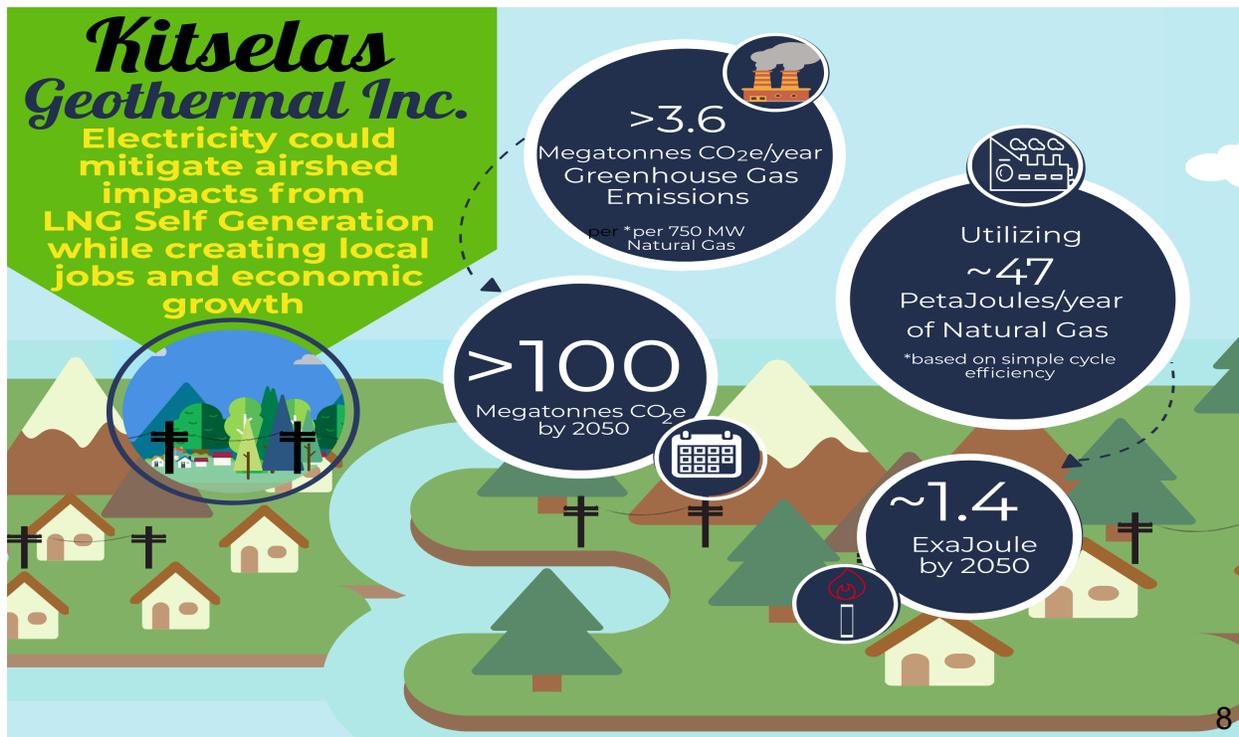


Figure 9. LNG Industry - Emission Reduction Potential of Eliminating/Reducing Self Supply

To mitigate the environmental impacts of LNG industry electricity self-generation, KGI suggests that the BCUC enact some form of preferred market access for IUs, especially for geographic regions (or to customers or industries) that BC Hydro cannot fully serve. This is especially necessary in cases where BC Hydro (or the Ministry of Energy), whichever the case may be, has chosen not to advance an SOP or more generally an EPA request.

Reconciliation

A similar but different argument can be advanced for preferential market access.

As noted earlier, an open obligation exists between BC Hydro (and the government it represents) and BC's Indigenous Peoples for the impact of building BC Hydro's 'heritage' electricity assets, which asymmetrically benefited non-indigenous peoples and BC Hydro itself.



As the Collective First Nations note in their Final Argument, the BCUC must “advance reconciliation with First Nations”¹⁹ and that it has both the ability and responsibility to do so, as articulated in sections 5(1) and 5(2) of the *Utilities Commission Act*.²⁰ KGI’s understanding of these sections of the UCA is that they provide the BCUC with the freedom to recommend very broad changes, rather than restricting their comments to solely address the proposed questions contained within OIC 108.

KGI would simply assert that access to the electricity market, which First Nations have historically been excluded, is only fair – given the previous actions of both the Province and BC Hydro.

2. Self-regulation versus Exemption

KGI would suggest, that – for now – IUs be both recognized and regulated by the BCUC. We strongly believe this is a ‘table stakes’ requirement as it creates an immediate opportunity for First Nations to advance projects. Regulatory oversight would ensure third party review of equipment and operational standards that offer potential investors in IUs confidence regarding the long-term viability of any assets the IU might propose.

Within this context, KGI would also suggest that IUs be broadly exempt from BCUC regulation. This agrees with the positions offered by many of the interveners.^{21,22,23,24,25}

KGI believes that this would put most IUs in a position where they may exert self determination in how they develop their operations but also allow for some basic protections, which KGI believes will be important, during their formative years.

In their oral submission, the Collective First Nations (“CFN”) argued that IUs should receive equal treatment to that which BC Hydro enjoyed in its formative years, notably that they were unregulated. KGI would suggest that this worked well for a monopoly, which had no competition, but it would not work well in the current context where IUs would have to compete with highly capable incumbents.

Analogous to the CFN comment that the Inquiry has lacked putting an emphasis on “the need to protect First Nation members that are served by non-First Nation public utilities”, KGI would assert that there is a need for nascent IUs to be protected from the tremendous market power wielded by the incumbents. We need only to refer to the indefinite suspension of the SOP as an example of this.

¹⁹ Collective First Nations Final Argument, page 1.

²⁰ RSBC 1996, c 473.

²¹ *Supra* note 1.

²² Collective First Nations Final Argument, page 3.

²³ Flintoff Final Argument, Chapter 1.

²⁴ CFN-GBI Final Argument, pages 3-4.

²⁵ Exhibit C16-2, page 5.



As such, KGI would assert, recognizing that the BCUC has asked for actionable near-term solutions, that IUs be both governed by, but exempt from, the BCUC. We believe that, pragmatically, this would confer protection without undue interference.

KGI would also recognize that in the medium- to long-term, the regulation of energy utilities within British Columbia will change, as there will be a need to recognize and accommodate the fragmentation of control inherent in the existing and future treaty settlements of First Nations.

KGI's position is also not meant to constrain, in any way, Kitselas First Nation's current or future position(s) vis-à-vis its treaty negotiations with the Province of BC nor with any future position Kitselas First Nation may take regarding what is appropriate energy regulation.

3. Public Interest

KGI would like to address the concern it heard from many interveners, namely that by creating IUs, conditions might be brought forward which, for a variety of reasons, would not be in the public, or more specifically, ratepayer interests.

KGI would suggest that a very specific obligation exists between BC Hydro (and the Province it represents) and BC First Nations. While it is not known how the BC Government may discharge this obligation, it needs to be understood that ratepayers have unduly benefited from its deferral. As such, any 'reconciliation' costs that might emerge from this or later IU negotiations, cannot be a subject for ratepayer complaint.

BC Hydro has also raised the spectre of stranded assets as being a significant risk and source of concern. Other commentators, notably Collective First Nations have dismissed this as being immaterial.²⁶ While KGI would agree with these assertions, we believe they do not go far enough. There has not been any discussion of the system benefits that additional IU assets might bring outside of our submissions. These could include, but are not limited to: VAR support, increased reliability, capacity, etc., as well as simply supplying non-emitting energy to customers not being served, in whole or in part with clean energy.

KGI would suggest that the BCUC strongly consider that IUs could ultimately confer greater system reliability at a lower cost than current rates, as opposed to only considering that higher rates should be anticipated due to stranded assets, as put forth by BC Hydro. Indeed, in the NWBC scenario KGI has described, even if BC Hydro does not participate directly in energy sales from an IU to a customer(s), they stand to benefit as well from greater system reliability.

To reinforce how serious the position is that communities might be served at a lower cost, relative to current levels, both KGI, in its oral testimony in Williams Lake, and the CFN – GBI in its written argument, have highlighted concerns that traditional cost of service ratemaking procedures would overly benefit customers, rather than the IUs, and as such, this needs to be guarded against.^{27, 28}

²⁶ Collective First Nations Final Argument, page 3.

²⁷ Transcript Volume 4, pages 166-168.

²⁸ CFN-GBI Final Argument, page 9.



Advice to the Minister responsible for the Hydro and Power Authority Act (the Minister)

In closing, we ask the Commission to recommend to the Minister that KGI, and other IUs who find themselves in our situation, are granted an exemption from the OATT so that full or partial retail access is provided to an IU who can serve a customer (in whole or in part), where BC Hydro has not been able to provide reliable service (in whole or in part). The intent of this exemption is to provide a myriad of benefits to British Columbians beyond merely electricity sales to a customer. We believe this request is consistent with and supportive of British Columbia's energy objectives including:²⁹

- (a) to achieve electricity self-sufficiency;
- (b) ...
- (c) to generate at least 93% of the electricity in British Columbia from clean or renewable resources and to build the infrastructure necessary to transmit that electricity;
- (d) to use and foster the development in British Columbia of innovative technologies that support energy conservation and efficiency and the use of clean or renewable resources;
- (e) to ensure the authority's ratepayers receive the benefits of the heritage assets and to ensure the benefits of the heritage contract under the BC Hydro Public Power Legacy and Heritage Contract Act continue to accrue to the authority's ratepayers;
- (f) to ensure the authority's rates remain among the most competitive of rates charged by public utilities in North America;
- (g) to reduce BC greenhouse gas emissions
 - (i) by 2012 and for each subsequent calendar year to at least 6% less than the level of those emissions in 2007,
 - (ii) by 2016 and for each subsequent calendar year to at least 18% less than the level of those emissions in 2007,
 - (iii) by 2020 and for each subsequent calendar year to at least 33% less than the level of those emissions in 2007,
 - (iv) by 2050 and for each subsequent calendar year to at least 80% less than the level of those emissions in 2007, and
 - (v) by such other amounts as determined under the Climate Change Accountability Act;
- (h) to encourage the switching from one kind of energy source or use to another that decreases greenhouse gas emissions in British Columbia;
- (i) ...
- (j) to reduce waste by encouraging the use of waste heat (including geothermal waste heat from a power plant – included in j) by KGI), biogas and biomass;
- (k) to encourage economic development and the creation and retention of jobs;

²⁹ *Clean Energy Act*, SBC 2010, c 22, s 2.



- (l) to foster the development of first nation and rural communities through the use and development of clean or renewable resources;
- (m) to maximize the value, including the incremental value of the resources being clean or renewable resources, of British Columbia's generation and transmission assets for the benefit of British Columbia;
- (n) ...
- (o) ...
- (p) ...

As KGI is not yet expert in how BCUC processes work, alternatively, perhaps an exemption can simply be granted by the BCUC to KGI, and others in this situation.

KGI's positions as outlined in this and other inquiry submissions (written and oral) are not meant to constrain, in any way, Kitselas First Nation's current or future position(s) vis-à-vis its treaty negotiations with the Province of BC nor with any future position Kitselas First Nation may take regarding what is appropriate energy regulation.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



Tim Thompson
Director
Kitselas Geothermal Inc.



Appendix 1

Table 3. Table of Concordance

Question	Summary Response	Reference in Argument
<p>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?</p>	<p>KGI views customer protection against potential abuse of monopoly power as important. However, as well-functioning customer recourse mechanisms broadly exist in most IUs or organizations proposing to become IUs, the point is moot.</p> <p>Further, KGI has highlighted the context of Indigenous <u>heat</u> utilities, where the market is and will be highly competitive, therefore such abuse is not a factor.</p>	<p>Exhibit C6-3, pages 9-10.</p>
<p>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?</p>	<p>No, it would not. KGI would suggest that were another regulator to exist, holding the necessary authority over its jurisdiction, the BCUC would be required to respect this authority.</p>	
<p>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?</p>	<p>No. The independent regulators would have to agree to the safety and reliability standards. In many cases, reliability in Indigenous communities is substandard, relative to the broader BC system as a whole. Giving voice to these communities to improve service standards, which are currently considered acceptable, is an important outcome of self-determination</p>	
<p>4) If Indigenous utilities are not to be regulated under the <i>Utilities Commission Act</i>, 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?</p>	<p>No. In this hearing, the non-indigenous Utilities have asserted that the UCA is their preferred regulatory mechanism.</p>	



<p>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.</p>	<p>Firstly, it is KGI’s view that some Indigenous communities may opt to manage their affairs outside of the BCUC and the UCA altogether, as per their legal rights.</p> <p>That being said, Indigenous Utilities require access to public markets, and KGI suggests that this access should be enshrined within the UCA.</p> <p>While KGI has no specific issues with the content of the UCA, of which we are largely unaware, we have two concerns.</p> <p>First, there is a financial burden associated with being regulated by the UCA. Large companies are able to absorb the costs while small Indigenous Utilities may not be able to do the same. With Reconciliation in mind, the BCUC needs to consider how it might deliver its service to small Indigenous Utilities, should they not be exempt.</p> <p>Second, we are concerned that the regulation of heat, and the decision matrix as to how much regulation is required, fails to capture the competitive context around geothermal heat generation, and therefore errs on the side of being overly burdensome.</p>	<p>Exhibit C6-3, pages 22, 24.</p>
<p>6) 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?</p>	<p>KGI has no response to this question.</p>	

