



BCUC File 63062

Batch 59998

March 6th, 2020

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 Written Comments

Dear Mr. Wruck,

Please find enclosed Kitselas Geothermal Inc.’s Final Written Comments for the above proceeding, in compliance with BCUC Order G-26-20.

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

Warm Regards,



Alison Thompson
Director
Kitselas Geothermal Inc.

British Columbia Utilities Commission Indigenous Utilities Regulation Inquiry

Final Written Comments by Kitselas Geothermal Inc.

March 6, 2020



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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 serves the economic directions of the Chief and Band Council. Borealis GeoPower Inc. is a minority owner of KGI.

KGI’s mission is to harness the geothermal energy that lies beneath the traditional lands of Kitselas First Nation, and use it to create heating, cooling, and electricity projects that provide the Nation with economic self-determination, training opportunities, jobs, and food security, while contributing to a clean regional airshed.



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Comments on Proposed Recommendations

Recommendation 1 – Regulation of Monopolies

Recommendation 2 - Regulation of Mandatory Reliability Standards

KGI agrees with Recommendations 1 and 2 with no further comments.

Recommendations 3 to 6 – Reserve Lands

Recommendations 7 and 8 – Modern Treaty Lands - Nisga'a

Recommendation 9 – Other Modern Treaty Lands

Recommendation 10 – Historical Treaty Lands

KGI reserves comment on Recommendations 3 to 10.

Recommendations 11 and 12 – Westbank First Nation and Sechelt Indian Band

KGI has no comment on Recommendations 11 and 12.

Recommendation 13 – Ceasing to be an Indigenous Utility

KGI agrees with Recommendation 13.

Recommendation 14 – Definition of an Indigenous Utility

It is KGI's position that the definition of Indigenous Utility be grounded in the concepts of meaningful Indigenous participation and/or Indigenous control.

Further, the BCUC should be able to use its discretion in its assessment of whether a First Nation meets the standard of meaningful Indigenous participation/control, to be applied on a case-by-case basis.

KGI does not recommend that the BCUC use First Nation ownership percentage as a bright-line determinant of Indigenous participation/control. Given the capital requirements for potential Indigenous Utilities, the First Nation may not have the economic means required to retain a greater than 50% ownership level. The ownership stake of the First Nation could be lower while retaining meaningful participation/control.



Comments on Topics for Discussion

KGI will address some of the topics put forward for discussion as outlined on pages 96 and 97 of the draft report, and in the BCUC's Guidance for Final Written Comments.

Should the BCUC recommend that changes be made to the Retail Access prohibition?

The BCUC frames this question in the context of an exempt utility that wants to sell energy to a different reserve or First Nation or a municipality. KGI's goal, however, is to sell electricity to members of the public. In order to do so, changes to the Retail Access prohibition must be made.

It is KGI's respectful opinion that Indigenous Utilities should be permitted to sell energy, be it electricity, heat, or cooling, to whomever they wish, as restricted by normal market forces. To be permitted to do so is in the best interest of Indigenous reconciliation and economic self-determination, and often, the environment.

Indigenous Utilities should not be limited to the sale of energy to Reserve Lands, Treaty Lands, and municipalities. Doing so would render many Indigenous Utilities uneconomic (especially geothermal utilities due to their cost structure of requiring high capital expenditures before enjoying low operating expenditures). KGI submits that this recognition of First Nations' rights is less meaningful if Indigenous Utilities 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)¹ nor maintain or strengthen their distinct political, legal, social, and cultural institutions.

Should the BCUC consider public interest issues, particular to First Nations, in approving Energy Purchase Agreements (EPAs) involving Indigenous Utilities? What might those public interest issues include?

Yes, the BCUC should absolutely consider public interest issues, particular to First Nations, in approving EPAs involving Indigenous Utilities.

Self-Determination

Firstly, the BCUC should consider First Nations self-determination issues when determining the public interest. The BCUC's actions should be consistent with UNDRIP. As such, the dominant public interest issue as it relates to the approval of EPAs involving Indigenous Utilities is the extent that the EPA can provide the First Nation with economic self-determination.

SOP Suspension, Reconciliation, and the Environment

Further, the BCUC should consider the impacts of the February 14, 2019 Standing Offer Program (SOP) suspension on First Nations. As reported by the BC Government, a significant number of First Nations in BC had expressed interest in developing or partnering on clean energy projects under the SOP. The Provincial Government indicated that they were seeking to engage with First Nations to explore how the

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



SOP's indefinite suspension may affect the economic interests of First Nations and to explore alternate opportunities to meet those interests.²

The BC Government has not yet adequately engaged with First Nations on the SOP suspension issue. While engagement occurred in 2019, it was only cursory; thus far there has been no substantive response to the information that the First Nations provided to the government. Overall, engagement has not been timely or responsive. Under the current terms of engagement, the issue has been passed on to yet another review process – Phase 2 of the Comprehensive Review of BC Hydro.

The BC Government should be committed to achieving reconciliation with First Nations through a renewed, province-to-nation, government-to-government relationship based on recognition of rights, respect, co-operation, and partnership as the foundation for transformative change.

In the spirit of reconciliation, the BCUC should consider whether the approval of EPAs involving Indigenous Utilities would provide a First Nation who had expressed interest and had taken material steps towards participating in the Standing Offer Program with an alternate opportunity to meet the economic interests that they had wished to further using the Standing Offer Program.

In the context of KGI and Kitselas First Nation, the indefinite suspension of the Standing Offer Program has materially slowed the development of our geothermal energy project, which could have been capable of providing the nearby LNG industry, currently under construction, with a material amount of baseload, non-emitting, and renewable electricity.

Due to the indefinite suspension of the Standing Offer Program, KGI was deprived of the opportunity to supply clean electricity to the regional grid. Due to an apparent shortage of electricity and/or transmission capacity in the area, the BC Government chose to exempt the LNG Canada project from the Clean Energy Act to allow co-generation of electricity with natural gas. This will result in environmental impacts which will negatively affect the regional airshed that the Kitselas First Nation calls home.

The Federal Government provided the LNG Canada project with \$220 million to help fund gas turbines that are more efficient, minimizing greenhouse gas emissions.³ If government had provided \$220 million to help fund the development of geothermal electricity in the region, ~45 MW of local and emissions-free geothermal electricity, along with its by-product heat, could have potentially been commissioned for the benefit of the region's economy and environment instead.

While KGI recognizes that the co-generation of electricity using natural gas was necessary to provide commercial certainty to the project, the environmental impact that will occur over the following decades could have been lessened if the SOP was not suspended.

Moving forward, the BCUC should consider whether the approval of EPAs involving Indigenous Utilities would provide any environmental benefits.

² <https://engage.gov.bc.ca/govtogetherbc/impact/standing-offer-program-results/>

³ <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>



Energy Reliability

The BCUC should also consider whether the approval of EPAs involving Indigenous Utilities could provide improved energy reliability to customers in rural and remote regions, or regions with grid instability. Given British Columbia's existing generation and transmission infrastructure, customers in rural and remote regions experience energy service disruptions more often than other more populated areas of the province. Indigenous Utilities, especially those that can generate energy with a baseload profile, would be able to provide customers with locally generated energy, increasing overall energy reliability.

Regulation of Indigenous Utilities on Traditional Territory

How and the extent to which the implementation of the *Declaration on the Rights of Indigenous Peoples Act* should impact the BCUC's recommendations

KGI reserves comment on this issue.

If an Indigenous utility's service area overlaps with that of an existing utility's "franchise area" (or service territory), should the Indigenous utility be able to serve customers residing within the existing utility's franchise area? If so, to what extent and why?

It is KGI's position that, yes, an Indigenous Utility should be able to serve customers residing within an existing utility's franchise area.

It is KGI's position that an Indigenous Utility should be able to serve energy to any customer residing within or outside the boundaries of the First Nation's traditional territory, to the maximum extent as limited by the capabilities of the Indigenous Utility, on the condition that the energy served is self-generated by the First Nation within their traditional territory and that it has an equal or lower environmental impact than the existing utility's energy.

Allowing Indigenous Utilities to serve as many customers as is feasible will facilitate economic self-determination. An Indigenous Utility that is allowed to operate at a scale that promotes efficiency will be able to provide the greatest amount of benefit to the First Nation. Such benefits include revenues, employment, skills training, business capacity building, economic diversification, and various other induced socio-economic and health benefits.

In the context of KGI, we contend that since we have undertaken the exploration and development risk to develop a local resource with low-to-no environmental footprint that provides added energy security to a region that is experiencing increased energy demand, the resource should be used to its maximum extent in order to provide the greatest benefit to the region.



To what extent, if any, should the BCUC’s recommendations have regard to the resulting impact on the existing utility? Why or why not?

It is KGI’s position that while the resulting impact on the existing utility is a factor to be taken into account, this impact needs to be balanced with a host of other factors.

A framework that balances the economic impact to the existing utility with any First Nations reconciliation and economic self-determination benefits is important and should be applied on a case-by-case basis to any decisions made regarding an Indigenous Utility that wishes to service customers in an existing utility’s service territory. In the case of KGI, it is our position that given the limited size of our potential generation capacity, as compared to existing franchise utilities’ access to energy, our impact on the existing utilities pales in comparison to the reconciliatory and economic self-determination benefits we could generate.

The interests of the customers in the territory that an Indigenous Utility wishes to serve should also be taken into account. If the Indigenous Utility is able to serve those customers at rates that are lower than the rates of the existing utility, it is in the interest of those customers to allow for them to be served by the Indigenous Utility. In the *Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives Report*, dated December 27, 2012, the Commission articulated that regulation should not impede competitive markets.⁴

Further, the extent that the Indigenous Utility is able to provide energy that has a lower environmental impact than the existing utility should be taken into account. For example, geothermally generated electricity has an environmental footprint that is significantly less than that of a large hydroelectric dam. Similarly, the use of geothermal heat has a much lower environmental footprint than the use of natural gas. British Columbia’s Clean Energy Act states that the switching from one kind of energy source or use to another that decreases greenhouse gas emissions in British Columbia needs to be encouraged.⁵

Would any overlapped area be part of both utilities’ service areas? Would one utility’s claim have to prevail?

It is KGI’s position that, yes, any overlapped area should be part of both utilities’ service areas.

It is KGI’s position that, with all else being equal (e.g. the utilities’ environmental impact), the Indigenous Utility’s claim would have to prevail over the existing utility’s claim.

How would competing claims be resolved and by whom?

KGI’s position is that competing claims could be resolved by a decision maker through the use of a framework, as outlined above, that considers and weighs the impact on the existing utility against any First Nations reconciliation and economic self-determination benefits, any potential energy pricing and reliability benefits for the customers in the service area, as well as any environmental benefits that may be provided as a result of using the Indigenous Utility’s energy.

⁴ https://www.bcuc.com/Documents/Decisions/2012/DOC_33023_G-201-12_FEI-AES-Inquiry-Report_WEB.pdf, at page 6-7.

⁵ *Clean Energy Act*, SBC 2010, c 22, s 2(h).



Should Indigenous utilities operating on traditional territory serve only members of the First Nation, Indigenous people generally or should it have access to all potential customers within the territory? Please discuss the implications of any restrictions on who can be served.

KGI's position is that if there is an existing regulated incumbent franchise serving the First Nation's traditional territory, Indigenous Utilities operating on this traditional territory should not be automatically ruled out from accessing those customers. A framework analysis, as outlined above, may offer a methodology of determining access to customers in areas with an existing regulated incumbent franchise.

Consider these two situations: (1) An Indigenous utility (IU) operating in another utility's (Utility A) franchise area could purchase bulk electricity from Utility A and distribute the electricity to its (the IU's) customers in that territory – thereby not reducing Utility A's demand; or (2) the IU could generate its own electricity for sale to its customers - thereby reducing Utility A's demand.

KGI reserves comment on the first situation given.

KGI's position on the second situation is that if an Indigenous Utility is able to generate, on its traditional territory, its own electricity (or heat) for sale to its customers, the framework analysis, as outlined above, may offer a methodology of determining access to customers. The impact on the existing utility's demand, and any other resulting impact, must be fairly balanced with the benefits provided to the First Nation, to the customers, and to the environment, keeping in mind the spirit of the reconciliation journey that the Province has committed to.

If an Indigenous utility operates in an existing utility's franchise area should there be any restrictions on the source of the electricity (or other type of energy sold)? What factors, if any, should be considered?

KGI is of the view that the Indigenous Utility's energy should have an equal or lower environmental impact than the existing utility's energy.

Economic Opportunities from Indigenous Utilities

Should the BCUC include the facilitation of economic opportunities for First Nations in its recommendations around a regulatory framework for Indigenous utilities? If so, how?

KGI's position is that, yes, the facilitation of economic opportunities for First Nations should be included in the BCUC's recommendations around a regulatory framework for Indigenous Utilities. Revenue generation, employment, skills training, business capacity building, and economic diversification are all considered to be significant economic opportunities for First Nations. KGI has incorporated the facilitation of economic opportunities in its recommended framework analysis for access to customers, as outlined above.



Other Comments

KGI has approached regulated utilities about their potential participation in the development of geothermal energy. They have informed KGI that due to the rate regulation regime that the BCUC imposes on regulated utilities, they are not able to participate in the development of geothermal energy. The inherent risks that must be taken to develop geothermal energy are beyond the limits of what is accepted by the BCUC for its regulated utilities.

KGI's project has the potential to provide energy that can be sold at a lower cost than the incumbent energy and that has a smaller environmental footprint than the incumbent energy. KGI is developing energy that serves the economic self-determination interests of the First Nation and the reconciliation interests of the First Nation, the Province, and all Canadians.

By every measure, KGI's geothermal energy, generated on its traditional territory, should be able to be sold to as many customers as possible. If the BCUC would like to limit the potential harm to regulated incumbent franchises that may occur as a result, the regulations should be changed such that regulated incumbent franchises are able to meaningfully participate in the development of the geothermal energy sector. KGI proposes that the BCUC seriously consider the allowance of participation of regulated incumbent franchises in the exploration and development stage of geothermal energy projects and that the BCUC use KGI's project as a test case for such participation.

Overall, if KGI is able to successfully own and operate an Indigenous Utility using geothermal energy, it will inspire other First Nation stewards of the land to do the same, leading to a cleaner and more prosperous future for all British Columbians.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



Alison Thompson
Director
Kitselas Geothermal Inc.

NOTE: KGI's positions as put forth in this submission 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.

