



BCUC File 63258
Batch 59998

March 31th, 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”) Written Reply to Final Comments

Dear Mr. Wruck,

Pursuant to the referenced Inquiry, Kitselas Geothermal Inc respectfully submits the attached Written Reply to Final Comments, further to 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

Written Reply to Final Comments from Other Participants on Draft Report

by Kitselas Geothermal Inc.

March 31, 2020



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.

Introduction and Background

The Minister of Energy, Mines, and Petroleum Resources initiated the Indigenous Utilities Regulation Inquiry on March 11, 2019, through Order in Council 108.

In accordance with the regulatory schedule for this Inquiry, KGI participated at the Community Input Sessions in Prince Rupert, Prince George, and Victoria on June 10, June 27, and July 4, 2019, respectively, submitted written evidence on July 15, 2019, submitted information requests on August 13, 2019, and submitted responses to the information requests of other participants on September 10, 2019.

On November 1, 2019, the British Columbia Utilities Commission published its Draft Report for this Inquiry, addressing the Terms of Reference as set out for the inquiry in Section 3 of Order in Council 108. KGI participated in the Community Input Workshop in Prince George on November 18, 2019 and submitted comments on the Draft Report on March 6, 2020.

This submission represents KGI’s written reply to the comments from other participants on the Draft Report.

As KGI’s written reply, we will feature the other definitions of Indigenous Utility that KGI is in agreement with, we will highlight select positions of other Inquiry participants that we are in agreement with and would like to place emphasis on, and then we will address BC Hydro and other existing regulated utilities with regards to the Standing Offer Program Suspension and their financial participation in the development of Indigenous Utilities.

KGI would like to thank each and every Inquiry participant for the wealth of knowledge that they have shared, and the time and effort that they have dedicated towards the common goal of improving the regulatory framework for Indigenous Utilities in British Columbia. An effective and efficient regulatory framework for Indigenous Utilities is in the best interest of all British Columbians and will provide Indigenous communities with opportunities for economic self-determination.



Recommendation 14 – Definition of an Indigenous Utility

The Draft Report provided “[t]hat consideration be given during the workshop and written comment period to any further context in which the definition of Indigenous Utility is required.”¹

In our Final Written Comments on the draft report, we noted that it was our position that the definition of Indigenous Utility be grounded in the concepts of meaningful Indigenous participation and/or Indigenous control.

Further, we noted that 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. This is particularly true in the geothermal industry which is relatively capital intensive.

BC Hydro on the Definition of an Indigenous Utility

KGI would like to thank BC Hydro for expressing their opinion on the ownership and operation requirements for Indigenous Utilities and is in agreement with BC Hydro in this regard. BC Hydro stated that “[they recommend] that some substantial degree of ownership, interest or operation by Indigenous nations of Indigenous Utilities should be a precondition to receiving an exemption from the UCA, but that the meaning of “substantial” could be considered further. However, the scope of an Indigenous nation’s ownership, interest, or operation of a public utility may not be the sole consideration in determining the appropriate regulatory model for that utility.”² [Emphasis Added]

Fortis BC on the Definition of an Indigenous Utility

While KGI is not in agreement with Fortis BC that “the Indigenous Utility should be [restricted to] operating on its own Reserve, or Treaty / self-government lands where those receiving service can exercise effective control through governance mechanisms”, KGI acknowledges and agrees with Fortis BC’s comment that “[t]he concept of a “controlling interest” still allows for investment by third-parties. Control could arise in a number of ways depending on the rights and obligations specified by (e.g., shareholder) agreement among the owners”³ and also with Fortis BC’s comment that “the opportunity to self-regulate should be preconditioned on the First Nation/Band Council having a controlling interest in the Indigenous utility. Assuming normal principles of corporate governance are in play, ownership of more than 50% of the voting shares would likely meet this test. However, it is conceivable that control could be exercised in another manner, so a case-by-case review is appropriate.”⁴ [Emphasis Added]

¹ Exhibit A-43, page 96

² Exhibit C2-7, page 9

³ Exhibit C4-11, page 11

⁴ *Ibid*, page 19



Coastal First Nations on the Definition of an Indigenous Utility

Coastal First Nations – Great Bear Initiative (CFN-GBI) uses the term “mind and management” when referring to Indigenous ownership, interest, or operation in Indigenous Utilities. CFN-GBI proposes that where a First Nation, or the political body of a First Nation is the “mind and management” of the utility, the proposed exemption from the UCA should apply, as customers have recourse through political accountability. This “mind and management” could be exercised by the First Nation using a number of different economic/corporate structures.⁵

CFN-GBI acknowledges that if an Indigenous Utility served customers outside of the boundaries of their reserves, those customers may not enjoy political franchise. In such a case, CFN-GBI proposes that the solution would be to create a narrow complaint role for the BCUC to protect those customers from discrimination.⁶

Overall, KGI agrees with CFN-GBI’s definition of Indigenous Utility and the reasoning used to justify it.

Agreed Positions of other Inquiry Participants

KGI highlights the following positions from other Inquiry participants. Upon reviewing the Final Written Comments of others, these positions amplify KGI positions on these topics, as put forward for discussion by the Commission during the written comment period of this Inquiry.

General Positions

Coastal First Nations – Great Bear Initiative (Written Comments)

“As a practical matter, there are likely few instances where aboriginal utilities will be economic serving on-reserve customers from on-reserve generation. That is not where economic opportunity lies for First Nations, and we respectfully suggest it is not where reconciliation will be found. Yet that is where the substance of the Commission’s recommendations of broad application is focussed in the Draft Report.

We respectively believe that the Commission needs to step back to the comments it heard in this proceeding (and reported in Section 4 of its Draft Report) about creating real economic opportunity for First Nations, and imagine how regulation fits into that commercial construct. CFN-GBI believes that is where the value in this inquiry is best found.”⁷

First Nations Leadership Council (Written Comments)

“A plan should be put in place to reallocate subsidies of fossil fuel dependency towards funding Nation’s governance rebuilding work and the research and development of Indigenous-led solutions.”⁸

⁵ Exhibit C20-6, pages 4-6

⁶ *Ibid.*

⁷ Exhibit C20-6, page 2-3

⁸ Exhibit C16-5, page 4



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

First Nations Leadership Council (Written Comments)

“Retail Access must be made available to First Nations to overcome the difficulty of scale that impacts Nations’ ability to obtain financing or achieve economic viability.”⁹

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?

First Nations Leadership Council (Written Comments)

“Public interest issues include the economic independence of a First Nation or Nations, and enabling purchases of renewable, sustainable sources. Energy produced with solar, tidal, small hydro or geothermal power, for example, should not have to meet the standard of being comparable to market value. BC’s commitments to the Paris targets of reducing GHG emissions by not only producing, but using, clean energy in BC are important public interest issues. First Nations have the potential to be leaders in this renewable energy transition, contributing to energy security for their communities at the same time.”¹⁰

Coastal First Nations – Great Bear Initiative (Written Comments)

“It would be entirely appropriate for BC to include within the UCA (directly or by reference) new "reconciliation objectives" that are analogous to BC's energy objectives to guide a range of Commission decisions as they relate to Indigenous Utilities. These objectives might reasonably pertain to, for example, granting First Nations CPCNs to operate merchant transmission lines, or to set rates that facilitate First Nations utilities retaining economic benefits they secured from governments.”¹¹

What should the BCUC do to assist in Indigenous utility regulation, reduce the regulatory burden, and improve the accessibility of its regulatory processes for First Nations that choose to remain under its jurisdiction?

First Nations Leadership Council (Written Comments)

- “Streamline and simplify rate applications for Indigenous utilities.
- Adopt the suggestions from intervenors in the Inquiry regarding a “ceiling” of annual regulatory costs. Establish a fund to assist small utilities in the regulatory process.
- Use diversified approval criteria as outlined in the attached Response to Information Request with regards to non-economic decision-making criteria that a regulatory body should use when assessing rate proposals from Indigenous utilities.
- Understand that the BCUC is acting as a fiduciary with discretionary control over First Nations when making these determinations and must act in their best interests.
- Provide advice and capacity-building when requested.”¹²

⁹ Exhibit C16-5, page 11

¹⁰ Exhibit C16-5, page 11-12

¹¹ Exhibit C20-6, page 8

¹² Exhibit C16-5, page 12



Fortis BC (Written Comments)

“FortisBC believes that an overarching framework for scaled regulation that is applicable to all small utilities will be beneficial.”¹³

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?

Coastal First Nations – Great Bear Initiative (Reply Comments)

“[T]he Commission should not assume that the introduction of Indigenous utilities will lead to such stranding or lost opportunity, simply because it is conceptually possible. In many, if not most, cases, Indigenous utilities will come in at the geographic margins of the current utility systems, serving new rather than existing customers, with relatively small volumes of electricity. These are not conditions that lead to a material stranding risk.”¹⁴

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?

Collective First Nations (Written Comments)

“The Collective First Nations are interested in providing renewable energy so they have no comment on the provision of non-renewable energy. It is expected that the electricity that they would sell in their traditional territory will be renewable and sourced in this territory. It is conceivable the Collective First Nations could sell other renewable energy such as renewable hydrogen sourced in their territory. But this form of renewable energy is in its infancy and its potential is unknown.

To provide a competitive product, it may be necessary to shape renewable electricity from sources within their traditional territory so there should be no restrictions on the source of electricity. It may take some time to work out the details of a First Nation utility business model and they may differ across First Nation utilities.”¹⁵

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?

Collective First Nations (Written Comments)

“Insofar as they would not currently be allowed to do so, the BCUC could also recommend that First Nations utilities be allowed to wheel electricity on incumbent utilities electrical transmission and distribution systems. ... [The Recommendations] should also state that Fortis and BC Hydro should have

¹³ Exhibit C4-11, page 24

¹⁴ Exhibit C20-7, page 3

¹⁵ Exhibit C13-12, page 7



distribution tariffs that would allow First Nations utilities to have access to the respective electrical distribution systems.”¹⁶

The SOP Suspension and Participation in the development of Geothermal Indigenous Utilities – BC Hydro and other Regulated Utilities

In KGI’s final written comments, it was suggested that the BCUC consider the impacts of the February 14, 2019 Standing Offer Program (SOP) suspension on First Nations.¹⁷ It was also suggested 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. Due to the rate regulation regime that the BCUC currently imposes on regulated utilities, they are not able to participate in the development of geothermal energy.¹⁸

In these Reply Comments, KGI would like to refer BC Hydro to our suggestion to consider the impacts of their SOP suspension on First Nations and on energy reliability (pages 6 to 8 of Exhibit C6-10). KGI’s project has the potential to provide energy that can be sold at a lower cost than BC Hydro’s existing energy sources and that has a smaller environmental footprint than BC Hydro’s existing energy sources. KGI’s project also has superior reliability than BC Hydro’s existing energy sources, and if added to the electricity grid in Northwest BC has the ability to improve the region’s electricity reliability. 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.

In these Reply Comments, KGI would like to refer BC Hydro and all other regulated utilities in British Columbia to our suggestion to allow for their participation in the development of geothermal resources in the Province (page 11 of Exhibit C6-10). BC Hydro and all other regulated utilities should advocate for an adjustment to the rate regulation regime to facilitate participation in geothermal energy.

By every measure, KGI’s geothermal energy, generated on its traditional territory, should be able to be sold to as many customers as possible, and the participation of BC Hydro and other Regulated Utilities, either through an SOP/EPA or direct participation, would enable that.

Sincerely,



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.

¹⁶ Exhibit C13-12, page 7-8

¹⁷ Exhibit C6-10, page 6-8

¹⁸ Exhibit C6-10, page 11

