



**bcuc**  
British Columbia  
Utilities Commission

# Indigenous Utilities Regulation Inquiry Final Report Summary

April 2020



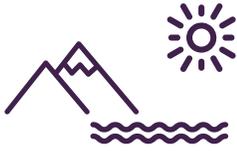
## About the BCUC

The British Columbia Utilities Commission (BCUC) is the regulator for British Columbia's electric, natural gas, and thermal energy "public utilities" as well as Basic compulsory auto-insurance. Regulation is generally needed when customers have limited or no choice in utility providers. The BCUC is an independent agency of the government of the Province of British Columbia and its role is to ensure that British Columbians receive safe, reliable energy services at fair price, while allowing utilities the opportunity to earn a fair return on its investments. The legislation governing the BCUC is the *Utilities Commission Act (UCA)* which sets out the roles and responsibilities for the BCUC and the framework that regulated energy utilities must follow. For example, regulated utilities have to follow a number of requirements including, but not limited to: receiving approval for the construction of new projects, providing information to the BCUC when requested, not discriminating between customers, and receiving approval for rates charged to customers.

## Definition of a Public Utility

In the UCA, a "public utility" is defined as: a person, or the person's lessee, trustee, receiver or liquidator, who owns or operates in British Columbia, equipment or facilities for the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, steam or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation. An entity that meets the definition of a "public utility" is subject to regulation under the UCA.

There are a number of exceptions from the definition of a public utility, including municipalities or regional districts that provide services within their own boundaries, and a person that provides services to employees or tenants. Under the UCA, most utilities with an existing connection to an Indigenous community are regulated as public utilities.



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## About the Indigenous Utilities Regulation Inquiry

On March 11, 2019, the Lieutenant Governor in Council directed the British Columbia Utilities Commission (BCUC) to provide recommendations to the Minister Responsible for the *Hydro and Power Authority Act* regarding the regulation of Indigenous energy utilities in British Columbia (BC). The terms of the Inquiry are outlined in Order in Council (OIC) No. 108, and the timeline for the Inquiry was amended per OIC No. 559. The BCUC established the Inquiry on March 19, 2019 by Order G-62-19, and it issued a Draft Report on November 1, 2019, with proposed recommendations. In addition, an Interim Report was sent to the Minister Responsible for the *Hydro and Power Authority Act* on by December 31, 2019 and a Final Report with revised recommendations on April 30, 2020.



### Scope

The BCUC's Indigenous Utilities Regulation Inquiry explored and sought feedback on a number of important questions per OIC No. 108. The questions included:

What are the characteristics of an "Indigenous utility" with respect to:

- ☀ The ownership and operation of the utility;
- ☀ What services are provided;
- ☀ Who the services are provided to; and/or,
- ☀ The location or area served by the utility?

Should Indigenous utilities be regulated or not? And if so, how?

- ☀ If they should be regulated, should they be regulated by the UCA or another mechanism?
- ☀ If unregulated, how will the interests of Indigenous utility ratepayers be protected?

## Participation

The BCUC thanks all those who contributed to this Inquiry and those who travelled to attend the Community Input Sessions and Draft Report Workshops. We appreciate the time and thoughtful input from participants. The Panel has considered all comments and submissions that were received in the course of this Inquiry when making the key findings and recommendations set out in its Final Report.

10+1



### Community Input Sessions

In June and July 2019, the BCUC held a series of ten Community Input Sessions throughout BC to hear comments on the topics raised in the Inquiry. The BCUC also held an additional Community Input Session to coincide with the BC Assembly of First Nations 16th Annual General Assembly held in Vancouver on September 18, 2019.

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### Draft Report Workshops

The BCUC hosted eight workshops around BC in November and December 2019 and January 2020, to gather feedback and submissions on its Draft Report. The BCUC also presented updates on the Inquiry at the BC First Nations Summit Meeting in February 2020 and the BC Assembly of First Nations 16th Special Chiefs Assembly in March 2020.

18



### Interested Parties

18 people or groups registered as Interested Parties in the Inquiry.

21



### Registered Intervenors

The Inquiry included participation from 21 Registered Intervenors. Intervenors had the opportunity to file written evidence, submit and respond to information requests, and provide final arguments.

2,163



### Pages of Evidence

Evidence was submitted for review from Indigenous groups, representatives, and individuals from over 50 different First Nations as well as special interest groups, and existing utilities.

12



### Letters of Comment

The BCUC received 12 Letters of Comments from the public, which were reviewed and taken into consideration.

# Timeline



March 11, 2019  
**OIC Issued**



March 19, 2019  
**BCUC Established the Inquiry**



June/July 2019  
**Community Input Sessions**



## Community Input Sessions

June 3, 2019 <b>Cranbrook</b>	June 10, 2019 <b>Prince Rupert</b>	July 3, 2019 <b>Campbell River</b>
June 5, 2019 <b>Kelowna</b>	June 12, 2019 <b>Vancouver</b>	July 4, 2019 <b>Victoria</b>
June 6, 2019 <b>Kamloops</b>	June 25, 2019 <b>Fort St John</b>	September 18, 2019 <b>Vancouver (BC AFN General Assembly)</b>
June 7, 2019 <b>Williams Lake</b>	June 27, 2019 <b>Prince George</b>	



July 15, 2019  
**Deadline for Intervener Registration & Written Evidence Submissions**



August 2019  
**Deadline for Information Requests on Written Evidence Submissions**



September 27, 2019  
**Oral Final Argument**



October 4, 2019  
**Deadline for Final Arguments**



November 1, 2019  
**Draft Report**



## Draft Report Workshops

November 18, 2019 <b>Prince George</b>	November 29, 2019 <b>Victoria</b>
November 21, 2019 <b>Kelowna</b>	December 9, 2019 <b>Smithers</b>
November 27, 2019 <b>Vancouver</b>	January 14, 2020 <b>Kamloops</b>
November 28, 2019 <b>Nanaimo</b>	January 17, 2020 <b>Fort St. John</b>



November/December 2019/  
January 2020  
**Draft Report Workshops**



December 31, 2019  
**BCUC Interim Report to BC Government**



March 6, 2020  
**Deadline for Written Comments on Draft Report**



March 31, 2020  
**Deadline to Respond to Comments on the Draft Report**



April 30, 2020  
**Final Report to BC Government**





## What We Heard

In the Spring of 2019, the BCUC hosted Community Input Sessions across BC to hear feedback to the questions posed in the Inquiry.

Feedback and discussion topics included:

- ☀ Jurisdiction of Indigenous Nations
- ☀ Role of reconciliation
- ☀ The nature of ownership and operation of Indigenous utilities
- ☀ The types of services provided by Indigenous utilities
- ☀ Indigenous utilities customer base
- ☀ The drivers of Indigenous utilities
- ☀ Regulation of Indigenous utilities under the UCA
- ☀ Exception similar to the municipal exception
- ☀ Self-Regulation
- ☀ Indigenous utilities regulatory body
- ☀ BCUC support to Indigenous utilities
- ☀ Indigenous participation in the utility or energy sector
- ☀ Access to transmission grid and other markets



## Summary of the Draft Report

The BCUC Draft Report provided a summary of the feedback it had received, prepared 14 draft recommendations and set out a number of questions to be considered in the Draft Report Workshops and public comment period. Recommendations addressed the following topics:

- ☀ Regulation of Monopolies
- ☀ Regulation of Mandatory Reliability Standards
- ☀ Reserve Lands
- ☀ Modern Treaty Lands – Nisga’a
- ☀ Other Modern Treaty Lands

- ☀ Historic Treaty Lands
- ☀ Westbank First Nation
- ☀ Sechelt Indian Band
- ☀ Ceasing to be an Indigenous Utility

The BCUC’s recommendations support First Nations governance of First Nation-owned utilities, and regulation by an arm’s length regulator of their choice. To read more about the Draft Report, visit: [bit.ly/2xkTfng](https://bit.ly/2xkTfng).



## Feedback on the Draft Report

The BCUC heard that owning a utility is important to many First Nations as a means to promote economic development on their land and that the regulation of a First Nation owned public utility can impede these economic development benefits.

Many parties submitted that any changes to the regulatory regime applicable to Indigenous-owned energy utilities should support First Nations economic development. Comments included:

- i. having the flexibility to structure a utility and set rates in a manner that generates benefits to communities;
- ii. extending jurisdiction for Band-owned and operated utilities beyond reserve boundaries onto traditional territory;
- iii. the evaluation framework for Energy Purchase Agreements involving Indigenous utilities; and
- iv. lifting the prohibition on retail access for Indigenous utilities.

Based on feedback received, and in consideration of reconciliation, and the *Declaration of the Rights of Indigenous Peoples Act* (DRIPA), the BCUC reviewed and revised its previous recommendations.



# Recommendations

## Evaluation Framework

While preparing its Recommendations in response to the Inquiry scope, the BCUC took many factors into consideration. In particular, the BCUC respects the rights of Indigenous peoples to economic self-determination and self-governance, as laid out in the Articles of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and we seek to reconcile these interests and create mutual benefits for all.

### General

- An Indigenous utility be regulated by a competent arm's length regulator.
- The regulator of an Indigenous utility follow best practices of ratepayer protection for all ratepayers.

### Definition of an Indigenous Utility

- An Indigenous utility be defined as a "public utility" for which, as the owner or operator, an Indigenous Nation has *de facto* or *de jure* control.
- Therefore, the definition of "Indigenous Utility":
  - Is not limited to the types of services to be provided;
  - Includes the provision of public utility services to persons in its service area.

### Ceasing to be an Indigenous Utility

- When a First Nation no longer controls an Indigenous utility, the utility will at that point become a public utility as that term is defined in the UCA, and regulated by the BCUC.
- A First Nation notify the BCUC when it enters into any agreement that results in a change of control of an Indigenous utility, such that the utility is no longer an Indigenous utility.

### Who Regulates Indigenous Utilities on Reserve Land

- A First Nation determine the means of regulation of an Indigenous utility providing services on that First Nation's reserve land. Any BCUC oversight ceases when that First Nation notifies the BCUC that it no longer requires BCUC regulation and demonstrates, as further described in the Complaints and Appeals recommendations, that there is an arm's length complaint and dispute resolution process to protect all ratepayers.

### Complaints & Appeals

- A panel or body composed of Indigenous people and others with specialized knowledge, such as First Nations governance, assess a First Nation's complaint and dispute resolution process in the context of public utility regulation as it is practiced in Canada and also within the specific context of that First Nation, prior to that First Nation's Indigenous utility law coming into force.
- First Nations collectively develop a province-wide appeal body that can be available to customers of Indigenous utilities who are unable to resolve their complaints.
- The BCUC serve as an appeal body until such time as a First Nation operated body can be established and operational. Further, the BCUC provide any assistance that the First Nation operated body may request in order to become fully operational.

### BCUC Regulation

- The BCUC ensure that it include Indigenous people, in both staff and Commissioner roles, especially for matters that directly affect First Nations.
- The BCUC include Indigenous representatives with expertise in such matters as First Nations governance, on BCUC panels where applications of Indigenous utilities are being considered.
- The BCUC modify its regulatory policies and procedures to better reflect the objectives of reconciliation in its proceedings.

### Nisga'a & Tsawwassen First Nations

- The UCA be amended to exclude from the definition of public utility, any utility recognized under Nisga'a law as a Nisga'a utility insofar as its services relate to the Nisga'a Lands or a Nisga'a Village within Nisga'a Lands.
- The UCA be amended to exclude from the definition of public utility, any Indigenous utility providing services within Tsawwassen treaty lands.

### Other Modern Treaty Nations

- A modern treaty First Nation, other than Tsawwassen First Nation and Nisga'a Nation, determine the means of regulation of an Indigenous utility providing services on that First Nation's former reserve lands. Any BCUC oversight ceases when that First Nation notifies the BCUC that it no longer requires BCUC regulation.
- Future modern treaties include explicit provisions with respect to the First Nation's authority to regulate Indigenous utilities providing services within treaty settlement lands.

### Historic Treaty Nations

- A historic treaty First Nation determine the means of regulation of an Indigenous utility providing services on that First Nation's reserve lands. Any BCUC oversight ceases when the First Nation notifies the BCUC that it no longer requires BCUC regulation and demonstrates that it has an arm's length complaint and dispute resolution process to protect all ratepayers.

### Westbank & Sechelt First Nations

- Westbank First Nation determine the means of regulation of an Indigenous utility providing services on Westbank Lands. Any BCUC oversight ceases when Westbank First Nation notifies the BCUC that it no longer requires BCUC regulation and demonstrates, as further described in the Complaints and Appeals recommendations, that it has an arm's length complaint and dispute resolution process to protect all ratepayers.
- The Sechelt Indian Band determine the means of regulation of an Indigenous utility providing services on Sechelt lands. Any BCUC oversight ceases when the Sechelt Indian Band notifies the BCUC that it no longer requires BCUC regulation and demonstrates, as further described in the Complaints and Appeals recommendations, that it has an arm's length complaint and dispute resolution process to protect all ratepayers.

## Mandatory Reliability Standards (MRS)

- The BCUC retain jurisdiction with respect to approval, compliance and enforcement of MRS applicable to any entity that may impact the Bulk Electric System in the province, regardless of who owns or operates the infrastructure.

## Safety

- A First Nation determine the means of regulation of safety with respect to an Indigenous utility. If the First Nation delegates authority to the BCUC to regulate safety, the applicable portions of the UCA governing safety will remain in force for that First Nation.

## Retail Access

- The Government of BC review and revise policies that, in restricting an Indigenous utility's access to BC Hydro's transmission system, may result in an undue barrier to the First Nation's pursuit of economic self determination.
- Direction 8 be reviewed to reflect the intention regarding the prohibition on retail access, namely, whether that prohibition is limited to only customers of BC Hydro or to customers of any public utility. In addition, the BCUC review transmission and distribution tariffs to reflect Direction 8 and/or any amendments to Direction 8.

## Incumbent Public Utilities

- If an incumbent utility acquires energy from an Indigenous utility, when setting rates for that incumbent utility on that First Nation's reserve, modern treaty First Nation's former reserve land, or Nisga'a or Tsawwassen lands, the UCA be amended to require the BCUC to consider the cost of that energy, even if the resulting rate differs from the rate that would otherwise be set.
- The Government of BC consider mechanisms to encourage the development of further economic partnerships between incumbent utilities and First Nations.

## Traditional Territory

- As the modern treaty process is the accepted means of clarifying Indigenous rights on Traditional Territories, the modern treaty process should address the issue of utilities regulation and the rights of both incumbent utilities and Indigenous utilities to operate in those territories.
- As an incremental approach to the entry of Indigenous utility operation on Traditional Territory, the UCA be amended to require the BCUC to consider UNDRIP and the economic development needs of a First Nation applying for a CPCN to operate an Indigenous utility on Traditional Territory.

### Wholesale Energy Sales

- The Government of BC reconsider the Standing Offer Program (SOP) program along with the cap for that program and any other provision that places undue economic barriers on potential participants. If the program is restructured and reintroduced, it should be based on market electricity prices, so that Indigenous utilities are provided meaningful competitive economic opportunities while ensuring that all BC Hydro ratepayers are not harmed.
- Assistance be provided to Indigenous utilities seeking to export energy to customers outside of British Columbia.

### Strategy for Capacity Building

- The BCUC develop, in collaboration with Indigenous representatives, a strategy to build First Nations' capacity in utility regulation and a strategy to reduce barriers to the recruitment and placement of Indigenous people in advisory, staff, and Commissioners roles in the BCUC.
- Where necessary for the implementation of these recommendations, the Government of BC consider making funding available to First Nations.

### Changes to the UCA

- The UCA be amended to provide the BCUC jurisdiction to consider regulatory principles enacted by the First Nation when the BCUC adjudicates Indigenous utility complaints and disputes.
- The UCA be amended to enable the BCUC to determine, in a public proceeding, fair compensation for an incumbent utility, if the operations of an Indigenous utility materially impact that incumbent utility.
- Section 52 of the UCA be amended to require the BCUC to consider UNDRIP and the economic development needs of a First Nation seeking to acquire public utility assets.
- The UCA be amended to require the BCUC to consider the principles of UNDRIP when considering the *Clean Energy Act* energy objective to "foster the development of first nation... communities...".



## Next Steps

The BCUC has provided a copy of the Final Report to the Minister Responsible for the *Hydro and Power Authority Act* for review and consideration.

After reviewing the BCUC's Final Report, the Government of BC will consider the BCUC's recommendations and may use them to inform future changes to legislation or policy.

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### Disclaimer

This document is a summary of the Indigenous Utilities Regulation Inquiry Final Report. If there are any discrepancies or differences between this summary and the Final Report, the Final Report shall prevail.

For more information about the Inquiry or to review the Final Report, please visit [bcuc.com/Documents/Proceedings/2020/DOC\\_57958\\_2020-04-30-BCUC-IUR-Inquiry-Final-Report-Web.pdf](https://bcuc.com/Documents/Proceedings/2020/DOC_57958_2020-04-30-BCUC-IUR-Inquiry-Final-Report-Web.pdf)



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