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Friday, July 12, 2019

Mr. Patrick Wruck
Commission Secretary and Manager Regulatory Support
British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC V6Z 2N3

Dear Mr. Wruck:

RE: British Columbia Utilities Commission – Indigenous Utilities Regulation Inquiry
– Project No. 1598998 –
Order G-110-19 –Written Evidence Submission

I am submitting my attached written evidence for the above proceeding. For further information, please contact the undersigned.

Yours truly,
Donald Flintoff

BCUC Indigenous Utilities Regulation Inquiry

Intervener Evidence filed Monday, July 15, 2019 by Donald Flintoff

Contents

Chapter 1. OIC 108 – 2019

The Lieutenant Governor in Council, under section 5 (1) of the UCA, requests that the Commission advise the Lieutenant Governor in Council respecting the regulation of indigenous utilities in accordance with the **terms of reference** set out in section 3 of this order, OIC 108 – 2019. With respect to the indigenous utilities, the Commission should recommend that a "level playing field" for all utilities is maintained throughout the Province when making its recommendation to the Lieutenant Governor in Council.

1.1. Theme

The premise of this submission is to suggest a uniform set of regulations that apply equally to all utilities and provide indigenous nations the same opportunities that are currently afforded others such as municipalities and regional districts that may own and operate utilities. This means that certain definitions and regulations may have to be adjusted and clarified to accommodate the indigenous nations and others while keeping the regulations equally applicable to all utilities. With no disrespect to the jurisdictional (government to government) status of indigenous nations, it may be beneficial to become regulated by the BCUC as it may quickly clarify their status as utilities and avoid issues such as found in the Spirit Bay Utilities Limited's Decision by BCUC. The BC Government could very quickly issue regulations that could move these changes forward and the indigenous nations could advance their projects within a known regulatory framework rather than struggle with a new and unproven framework that will take months to put in place. Quoting Mr. Obrigewitsch[1] (Spirit Bay Developments, Beech Bay Scia'new FN) , "Our approach has always been when we originally looked at the UCA, we felt that the First Nation should be treated like any other municipality would be treated in that regard,..." [p. 447] and "So we are huge advocates for saying that there should be a treatment for Beecher Bay First Nation along the same lines as there would be for any other municipalities under the UCA" [p.435] However, Ms Morven (CEO for the village of

[1] https://www.bcuc.com/Documents/Transcripts/2019/DOC_54478_2019-07-04-TranscriptV10-CIS-Victoria.pdf

Gitwinksihlkw of the Nisga'a nation) states that "the Nisga'a village of Gitwinksihlkw advocates that the regulation of Indigenous utilities must be approached from an innovated perspective that is grounded upon Indigenous right and self-government." [517] Hence, for uniform regulation of all utilities in BC, additional consultation on the jurisdiction of the BCUC should be undertaken by the federal and provincial governments.

The Local Government Act Part 2, sec. 9 states:

Incorporation of reserve residents as village

9 (1) On the recommendation of the minister, in order to implement an agreement between the Lieutenant Governor in Council and a band council with the approval of the Governor in Council, the Lieutenant Governor in Council may, by letters patent, incorporate as a village the residents of an area of land inside a reserve as defined in the *Indian Act* (Canada).

(2) Letters patent under this section may not be issued until

(a) the agreement of the Governor in Council and the band council is obtained,

(b) the question of incorporation has been submitted to those members of the Indian band who are entitled to vote at the election of the band council, and

(c) more than 50% of those entitled to vote have voted and, of those voting, more than 60% have voted in the affirmative.

If the Indigenous Nations (Band Councils), and on recommendation of the minister, Lieutenant Governor in Council (LIC) can come to an agreement, and with the approval of the Governor in Council, the LIC can (by letters patent) incorporate as a village the residents of an area of land inside a reserve. Now, the LIC can add "but does not include (c) a municipality or regional district or a village" to the definition of a public utility in the UCA through a regulation and move forward with regulation under the UCA.

1.2. OIC Terms of reference

3 (l) Subject to subsection (2), the terms of reference, in accordance with which the commission must inquire into the matter referred to it by section 2, are as follows:

(a) the commission must advise on the appropriate nature and scope, if any, of the regulation of indigenous utilities;

(b) without limiting paragraph (a), the commission must provide response to the following questions:

(i) What are the defining characteristics of indigenous utilities, having regard to

(A) the nature of the ownership and operation of indigenous utilities,

(B) the types of services provided by indigenous utilities,

(C) the persons to whom services are provided by indigenous utilities, and

(D) the geographic areas served by indigenous utilities.

(ii) Should indigenous utilities be regulated under the Act or under another mechanism, or be unregulated?

(iii) If it is appropriate to regulate indigenous utilities under the Act, is there any matter under the Act in respect of which indigenous utilities should be regulated differently from other public utilities, and, if so, how should that matter be regulated?

(iv) If it is not appropriate to regulate indigenous utilities under the Act but is appropriate to regulate indigenous utilities in some manner, how should indigenous utilities be regulated?

(v) If an indigenous utility is not regulated under the Act, would the utility become subject to the Act on ceasing to be an indigenous utility, and, if not, what transitional and other mechanisms are required to ensure that the utility is subject to the Act on ceasing to be an indigenous utility?

Chapter 2. Indigenous Nations

The Indigenous nations in OIC 108 – 2019 (OIC) for the purpose of this Inquiry are:

> a) a band within the meaning of the Indian Act (Canada); These bands come under the Governor General of Canada and the Minister for Indian Affairs.
>
> b) the Westbank First Nation (WFN); Westbank First Nation has a Self-Government Agreement with Canada . This Agreement is without prejudice to treaty-making in British Columbia. WFN is involved through a partnership with two wind farms--one near Pennask Lake off the Coquihalla Connector towards Merritt, and another between Summerland and Peachland. Together, they are expected to create 15 megawatts of power at each station, enough to power up to 4,000 homes.
>
> c) the Sechelt Indian Band and the Sechelt Indian Government District established under the Sechelt Indian Band Self-Government Act (Canada);
>
> d) a treaty First Nation; In BC, these treaty first Nations come under the Douglas treaties and the Numbered Treaties.
>
> e) the Nisga'a Nation and Nisga'a Villages;
>
> f) another Indigenous community within British Columbia, if the legal entity representing the community is a party to a treaty and land claims agreement within the meaning of sections 25 and 35 of the Constitution Act, 1982 that is the subject of Provincial settlement legislation;

The regulation of indigenous utilities is a complex matter. First, the individual treaties with these indigenous nations must be respected along with any provincial agreements that are in place with the indigenous nations and the provincial government. In certain instances, the indigenous nations may have different individual treaty rights regarding the operation of a utility. If after consultation and assuming the indigenous nations above are in agreement with complying with the UCA, then they <u>should</u> have the same status as a municipality or regional district which should provide a fair and level playing field or all existing and new utilities, indigenous as well as the other non-indigenous utilities.

It may be easier to define when an indigenous nation would not a public utility under the UCA and therefore not subject to regulation. This is the approach I intend to pursue in my submission.

2.1. Shíshálh (Sechelt) nation

Shíshálh nation traditional lands and waters located around the Sechelt Peninsula in the Sunshine Coast. SIGD (Sechelt Indian Government District) is in essence, the local government, created by Bill C 93 Sechelt Indian Band Self Government Act and established as a local government in BC by Bill 4 Sechelt Indian Government District Enabling Act in 1987. The Bill enabled SIGD to qualify for municipal benefits that are available to other municipalities in BC, to enact laws and bylaws that a Municipality has the power to enact and the ability to tax. Hence, the Shíshálh may meet the requirements to be defined as a municipality or regional district under the UCA and the Interpretation Act.

As Order in Council No. 108, refers to the Sechelt Indian Band and the Sechelt Indian Government District (SIGD) established under the Sechelt Indian Band Self-Government Act (Canada) as indigenous nation. As such, the Shíshálh may be willing to be considered as a municipality or regional district in the UCA or already meets the criteria.

2.2. A Treaty First Nation

A treaty First Nation example would be Treaty 8[2] First Nation. Treaty rights and Aboriginal rights are different: Aboriginal rights can be exercised within the member's own traditional land. Treaty rights include rights to areas used for hunting, fishing, cultural activities and burial grounds within all of Treaty 8. Wherever a Treaty 8 member is in Treaty 8 territory, he or she has rights within the whole territory, not just his or her own traditional land. So treaty rights give members a bigger area to live their way of life. Treaty 8 straddles the BC-AB border and as such presents other issues to consider regarding border crossing of utility services.

[2] http://treaty8.bc.ca/wp-content/uploads/2015/07/Treaty-No-8-Easy-Read-Version.pdf

2.3. The Westbank First Nation

The Westbank First Nation is part of the Okanagan Nation. The Westbank First Nation Self-Government Agreement was ratified by Membership on May 24, 2003. Self-government was implemented on April 1, 2005 under the Westbank First Nation Self-government Act. The Intergovernmental Implementation Committee is the mechanism by which Canada and Westbank First Nation work together to oversee the self-government implementation activities as required under the WFN Self-Government Agreement and as set out in the Implementation plan for the WFN Self-Government Agreement. The Westbank First Nations may request to enter into an agreement with BC regarding the regulation of an indigenous utility. The scattered District Lands of the Westbank First Nations present boundary issues and how to resolve them.

2.4. The Nisga'a Nation

The Nisga'a Treaty is a negotiated agreement between the Nisga'a Nation, the Government of British Columbia (B.C.) and the Government of Canada. It came into effect on May 11, 2000. The Nisga'a Nation and the Nisga'a Villages can enter into agreements with the Kitimat-Stikine Regional District for the delivery of services on Nisga'a Lands by the Kitimat-Stikine Regional District. The Nisga'a Nation has granted rights of way to BC Hydro and BC Tel (Telus) for existing transmission lines outside Nisga'a Villages, for other utilities works including distribution lines within Nisga'a Villages BC Hydro and BC Tel will be granted licences. The BC government has established a water reservation for the Nisga'a Nation for domestic, industrial and agricultural purposes. The Nisga'a Hydro Power Reservation will have a term of 20 years (soon to expire). If the Nisga'a Nation wishes to engage in setting up an indigenous utility to supply energy to its Lands, it may have to negotiate this with the BC government and agree to be regulation under the UCA. The Nisga'a may have already attained certain rights as a result of its treaties. Additional consultation could be required before any attempts to regulate their rights on district lands.

Chapter 3. UCA Definition of a Utility

The UCA defines a public utility as:

“"public utility" means a person, or the person's lessee, trustee, receiver or liquidator, who owns or operates in British Columbia, equipment or facilities for

(a) 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, or ...

but does not include

(c) a municipality or regional district in respect of services provided by the municipality or regional district within its own boundaries, ...”

3.1. Definition of an Indigenous Utility

In attempting to define an indigenous utility within the UCA, we should look at whether or not the indigenous is exempt from regulation. Assuming the indigenous nation has the status of a municipality or regional district and provides services within its own boundaries then it should be exempt from regulation. However, boundaries for a municipality or regional district are usually easy to define. However, the indigenous nations’ boundaries need to be determined. Indigenous lands may be reserves, villages, district lands, traditional lands, crown lands just to name a few. So, to be an indigenous utility and exempt from regulation, the boundaries need to be discussed further.

As Indigenous lands such as reserves, villages, district lands, traditional lands, crown lands may not be contiguous but scattered throughout the traditional lands. The Panel, if an exemption is considered, should take this matter into account.

3.2. Exempt Indigenous Utilities

Prior to considering exemptions from the UCA and assuming all the indigenous nations, bands, treaty nations, and communities are agreeable to being treated as a BC municipality or regional district and the Province agrees with this; and an Agreement is negotiated and signed; then those indigenous nations could be exempt from regulation under the UCA since they might not meet the definition of a public utility and a level playing field could be established for the indigenous nations, municipalities and regional districts within BC.

Under these circumstances, an indigenous nation may not be a public utility if:

1. an indigenous nation owns or operates in British Columbia, utility equipment or facilities for in respect of services[3] provided by the indigenous nation to or for the public or a corporation for compensation within its own boundaries; or
2. provides the service or commodity only to the person or the person's employees or tenants, if the service or commodity is not resold to or used by others; or
3. is engaged in the petroleum industry or in the wellhead production of oil, natural gas or other natural petroleum substances; or
4. is engaged in the production of a geothermal resource, as defined in the *Geothermal Resources Act*, or who enters into or is created by, under or in furtherance of an agreement designated under section 12 (9)[4] of the *Hydro and Power Authority Act*, in respect of anything done, owned or operated under or in relation to that agreement.

If the indigenous nations own or operate a utility within their own boundaries (District Lands, Reserves, Villages, etc) then they should be exempt from regulation under the UCA.

3.2.1. Own

As some of the indigenous nations run their development companies through various corporate structures, the definition of “own” in the UCA is important to them and others.

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[3] 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

[4] Hydro and Power Authority Act, Section12 (9): The Lieutenant Governor in Council, by order, may designate any agreement entered into or to be entered into by the authority that the Lieutenant Governor in Council considers relates to the provision of support services to or on behalf of the authority.

Some may interpret “own” as 100% wholly owned corporation, majority owned corporation, senior partner in partnership or a joint-venture. However, each of these business configurations do not meet the test of “own” as the subsidiary company created (that is considered to be an individual) is the owner.

By “own” (have or hold as property, possess), I interpret this to mean - an indigenous nation must own (possess) a utility directly and not hold it through a corporation, partnership, joint-venture within or outside of their boundaries. I do not interpret “own” to mean owning 100% or less shares in a corporation having a separate board of directors, or a partnership, or a joint-venture operation.

For instance, I own my car, it’s registered in my name, and I’m listed as being the insured individual. If my car was owned by my business, it’s registered in the business’ name, and I’m not listed as being the insured individual (only a third party), the business is; and I am a listed as the operator. As the owner of the car, I am responsible, hence personally liable, for its use and operation.

Owning 100% (or majority or less) of the shares in a corporation means you get to appoint the Board and the Board makes the business decisions. You hold only shares in the utility corporation and avoid liability for its operation. Hence, owning all or some of the shares in a utility does not mean you are exempt from regulation. Also, any other form of owned corporation would defeat the purpose of an “arms-length” corporation, which is, in this case, is to limit liability.

3.2.2. 100% Wholly Owned Corporation

As a 100% wholly owned corporation[5] (an “artificial” individual) has the capacity and the rights, powers and privileges of an individual of full capacity. This individual (a separate person) therefore owns or operates the indigenous utility not the indigenous nation (which is also a person). Similarly, if a municipality or regional district owns or operates a utility through a 100% wholly owned corporation then it meets one of the criteria to be a public utility and to be regulated by the BCUC.

[5] http://www.bclaws.ca/civix/document/id/complete/statreg/02057_02#section30

If the indigenous nation accepts a similar status to that of a municipality or regional district, then, for this criterion, it could be declared a public utility under the Act.

3.2.3. Operate

By “operate” (cause to function, work), I interpret this to mean - an indigenous nation must cause a utility to work or function and not operate it through a corporation, partnership, joint-venture within or outside of their boundaries. However, if the indigenous nation owns the utility, then it may sub-contract the operation of it without the sub-contracted operator being declared a public utility.

3.2.4. Compensation

By compensation, we can have several different interpretations. However, if an indigenous nation owns an indigenous utility within its districts lands and decides to provide free energy to it members, then it should not be considered a public utility under the UCA.

3.2.5. Boundaries

By “boundaries”, I interpret this to mean – indigenous district lands (not traditional lands). As the district lands are scattered this is not the same as lands under the control of a BC municipality or regional district. Therefore, the wheeling of energy needs to be addressed. The wheeling rate between the indigenous nation’s district lands should be set so that the retail rates within its boundaries are the same throughout its district lands.

There may be special instances where the indigenous nations have district lands the straddle the AB-BC border. If those district lands are interconnected by transmission lines then the NEB will have jurisdiction. However, if those district lands are interconnected with distribution lines then the jurisdiction is either with BC or AB or both. The situation would not be dissimilar to ATCO Electric Ltd. Alberta/British Columbia Border Customers Exemption Application ~ Project No.3698819 (G-140-15).

3.2.6. Geothermal vs. Geo-exchange

These distinctions between geothermal and geo-exchange may be important to the indigenous nations and others.

By “geothermal”, the Geothermal Resources Act defines this as "geothermal resource" which means the natural heat of the earth and all substances that derive an added value from it, including steam, water and water vapour heated by the natural heat of the earth and all substances dissolved in the steam, water or water vapour obtained from a well, but does not include water that has a temperature less than 80^{o}C at the point where it reaches the surface, or hydrocarbons.

Hence, geo-exchange systems that operate at a temperature less than 80^{o}C will be subject to regulation as a public utility under the UCA. See definition for “geothermal resource” in Geothermal Resources Act.

Further, if the indigenous nations own or operate a utility through a corporation, partnership, joint-venture within or outside of their boundaries and if all that energy is sold to BC Hydro using Energy Purchase Agreements (EPAs), then they will be exempt from regulation[6] under Minister's Order No. M-22-0205.

Further, Chief Patrick Michell, the Kanaka Bar Indian Band, advised the Panel of a letter[7] “... dated February 14, 201(9) ..., from Les McLaren” stating “...Effective immediately there will be no more renewable energy projects permitted in B.C." and “"I'm writing to notify you that the SOP program is indefinitely suspended[8]." However, the energy cost might be partially recoverable through net metering.

The BC Government’s news release[9] states:

> “Due to the decisions of the previous government, ratepayers will overpay billions of dollars for power they did not need,” said Mungall. “While costing the average household

[6] M202-MO22-0205, Minister's Order No. M-22-0205 dated June 6, 2002
[7] Transcript 6, p. 258
[8] https://engage.gov.bc.ca/sopengagement/ and https://archive.news.gov.bc.ca/releases/news_releases_2017-2021/2019EMPR0004-000231.htm
[9] https://archive.news.gov.bc.ca/releases/news_releases_2017-2021/2019EMPR0004-000231.htm

an extra $200 per year, 80% of that money did not stay in the province. This was just not a good deal for British Columbians."

Government recognizes that many Indigenous Nation communities have seen small-scale private power as economic development opportunities. That is why the Ministry of Energy, Mines and Petroleum Resources will be engaging with Indigenous Nations to discuss the extent to which the suspension of the Standing Offer Program may affect individual Nations.

BC Hydro[10] will continue to pursue electricity purchase agreement negotiations with the following small or micro projects:

- Tsilhqot'in Solar – a one megawatt solar power project led by Tsilhqot'in National Government near Hanceville.
- Siwash Creek– a 500 kilowatt hydroelectric project in partnership with Kanaka Bar Indian Band near Boston Bar.
- Sarita River – a five megawatt hydroelectric project led by Huu-ay-aht First Nation near Bamfield.
- Sukunka Wind – a 15 megawatt wind power project led by Saulteau First Nations near Chetwynd.
- Zonnebeke Wind – a 15 megawatt wind power project with West Moberly First Nations near Chetwynd.

Perhaps the indigenous nations should have been given a priority in the development of clean energy in BC and then all of the money would have stayed in BC and been a better deal for all British Columbians. The question is should the SOP program or something similar be permitted continuing access by indigenous nations only.

3.3. Non-Exempt or Public Indigenous Utilities

Assuming all the indigenous nations are agreeable to being treated as a BC municipality or regional district, those indigenous nations may or may not be exempt from regulation under the UCA based on my foregoing interpretation of "own", "operate", "boundaries", "geothermal resources", and Minister's Order No. M-22-0205.

[10] https://www.bchydro.com/news/press_centre/news_releases/2018/bc-hydro-to-proceed-with-five-first-nations--clean-energy-projec.html

If the indigenous nations own or operate a utility outside of their boundaries then they should not be exempt from regulation under the UCA even if it is on their traditional lands.

If the indigenous nations own or operate a utility through a corporation, partnership, joint-venture within their boundaries then they should not be exempt from regulation under the UCA even if it is on their traditional lands.

If the indigenous nations own or operate a utility through a corporation, partnership, joint-venture outside of their boundaries then they should not be exempt from regulation under the UCA even if it is on their traditional lands.

Chapter 4. Community Input Sessions

What I got from the Community Input sessions is the indigenous nations are moving towards becoming energy providers not only to themselves but others as well. Because of the low number of members, they need to be able to access transmission lines to make their projects profitable by being able to sell the power to others. The indigenous utilities that can access nearby transmission lines using the OATT tariffs are able to sell their energy to others. Treaty 8 may be able to sell energy into Alberta on distribution lines with agreement of the provincial regulators thus avoiding the NEB but not provincial regulation.

In the spring of 2019, the BC Government indefinitely suspended BC Hydro's Standing Offer Program, effective immediately; and no change will be made to electricity purchase agreements that are already signed and in place. This has negatively impacted the long term planning of energy projects for indigenous nations. Net metering may be their only remaining option for smaller projects.

The indigenous nations/utilities view regulation as a jurisdictional issue and too complicated. However, I believe the non-indigenous regulated utilities share a similar view of regulation. In addition to safeguarding the public interest, regulation provides a level-playing field for all utilities in BC by establishing fair, just and reasonable rates, and a secondary check on capital expenditure business plans through the CPCN process.

During the Community Input sessions, a common theme for a successful indigenous utility is access to the grid as its customer base is small. In January, 2004, Grant Thornton prepared a Non-Integrated Areas (NIA) business strategy for BC Hydro. At that time, the Stikine Nation Power Corp (SNPC) was started by Tahltan Nation Development Corporation (a company 100% owned by the indigenous nation in the area. The project has an initial 3,000 kW with an ultimate capacity of 6,000 kW. It has a substation and transmission system with the capability of delivering 20 GWh per year of electricity. Unfortunately, the project construction encountered major cost overruns, which forced SNPC into receivership. The lender Manulife took over the project and with the help of its power development company Regional Power

completed the construction. The project created the potential for serving the Dease Lake, Telegraph Creek and Eddontenajon area as a mini-grid. The mini-grid could have also included Jade City and Good Hope Lake. Obviously, access to transmission lines to the south and distribution lines in the north will be required to displace diesels (standby only) and reduce GHGs from those diesels. Also, transmission/distribution lines to the north into the Yukon may provide further benefits for Watson Lake and the indigenous nations in this area. However, there is a cost to doing this and that may be somewhat offset by the diesel fuel and maintenance cost of the diesel generators in favour of reducing the GHGs in the north. The Northwest Transmission Line (NTL) Connecting Iskut to the grid will reduce their reliance on diesel generation will eliminate about 2,800 tonnes of greenhouse gas emissions per year.[11]

Apparently, Connor, Clark & Lunn Infrastructure (CC&L Infrastructure) and Régime de Rentes du Mouvement Desjardins[12], Desjardins Financial Security Life Assurance Company, and Certas Home and Auto Insurance Company (together, Desjardins) acquired Regional Power Inc. (Regional Power) from The Manufacturers Life Insurance Company. Regional Power's assets include three operating run-of-river hydroelectric projects with a combined installed capacity of approximately 70 megawatts (MW) and a pipeline of development stage wind and hydro generation opportunities. This is just one of several CC&L Infrastructure investments involving indigenous nations made lately in BC. As existing EPAs were updated and filed, one can only assume BCUC and BC Hydro are aware of these transfers of EPA ownerships.

[11] https://www.bchydro.com/news/press_centre/news_releases/2014/iskut-connected-to-grid.html
[12] https://www.cclgroup.com/cclinfrastructure/en/centres/media-centre

Chapter 5. OIC

5.1. Terms of reference

3 (l) Subject to subsection (2), the terms of reference, in accordance with which the commission must inquire into the matter referred to it by section 2, are as follows:

(a) the commission must advise on the appropriate nature and scope, if any, of the regulation of indigenous utilities;

Response:

Order G-175-16[13] has already established a basis for the regulation of indigenous utilities under the UCA. In the Commission's Order, the Panel stated: "Spirit Bay Utilities Ltd.'s alternative request that it be declared a municipality or regional district for purposes of the UCA is denied."

This can be rectified easily by amending the UCA to include in the definition of a public utility indigenous nations with municipalities and regional districts.

In its Reasons for Decision[14], the Panel also states:

> ***However, Spirit Bay Utilities also states that "[i]t is the substance and not the form that determines whether an entity is a municipality or regional district. The Beecher Bay First Nation as majority owner of [Spirit Bay Utilities] easily qualifies with the authority it has been granted under federal legislation."16 Spirit Bay Utilities stated that Spirit Bay Utilities customers who are not members of the Beecher FN cannot vote in Beecher Bay Council elections, because "[r]esidency does not create political rights."***
>
> ***This issue is more complex since some customers are non-members of Beech FN without voting rights. However, this situation already exists in certain municipalities where district energy***

[13] Spirit Bay Utilities Ltd. Application for Exemption pursuant to section 88(3) of the Utilities Commission Act
2.2 Declaration as a regional district or municipality.
https://www.bcuc.com/Documents/Proceedings/2016/DOC_48316_12-01-2016_G-175-16_Spirit-Bay_Exemption_Reasons-Final.pdf

systems are, by Bylaw[15], forced on certain developers as a condition of obtaining a building permit. The City of Richmond through it building permit process is having the Developer, Bene (Richmond) Development Ltd., design, construct and transfer ownership of the on-site energy plant to the City[16].

Some municipalities are already imposing conditions on corporate entities (non-voting) in the Province. The issue of non-voting, non-band members on indigenous district lands must be addressed equitably in a similar fashion to how non-voting citizens or corporations are dealt with in municipalities and regional districts.

Further, the non-voting, non-band members on indigenous district lands would be protected if the indigenous utility meets the definition of a public utility under the UCA, as the Commission could address any complaints and review of the rates charged for services provided. However, if the indigenous utility does not meet the definition of a public utility under the UCA, then the non-voting, non-band members on indigenous district lands would not be protected by the UCA and this group would remain at risk and without remedy.

(b) without limiting paragraph (a), the commission must provide response to the following questions:

(i) What are the defining characteristics of indigenous utilities, having regard to

(A) the nature of the ownership and operation of indigenous utilities,

Response:

The nature of ownership and operation of indigenous utilities as defined, in the foregoing sections of this submission, by treating district lands the same as municipalities or regional districts are clear. Indigenous utilities should have the same status and advantages as municipalities and regional districts under the UCA. However, the indigenous utilities should not have superior or inferior status as this would be discriminatory and disadvantageous to the other existing utilities and any future utility developments. If all parties are treated equally under the UCA, then we have a level playing field for all utilities including indigenous utilities. Order G-175-

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Definition of Low Carbon Building Energy System: https://www.richmond.ca/__shared/assets/_9_Bylaw_9769_BC_Energy_Step_Code_CNCL_07091850970.pdf

[16] https://www.richmond.ca/cityhall/council/agendas/dpp/2019/011619_agenda.htm

16[17] could have had a different outcome if the indigenous utilities had the status of municipality or regional district.

(B) the types of services provided by indigenous utilities,

Response:

The types of services provided by indigenous utilities should not be different than those already defined by the UCA.

(C) the persons to whom services are provided by indigenous utilities, and

Response:

The persons to whom services are provided by indigenous utilities for compensation within the Indigenous District Lands are the public (indigenous or otherwise) and corporations.

(D) the geographic areas served by indigenous utilities.

Response:

The geographic area (boundaries) served by indigenous utilities is their Indigenous District Lands, not their Traditional Lands. Due to the fact that their Indigenous District Lands may be scattered then special consideration should be given to the wheeling of energy between the District Lands.

(ii) Should indigenous utilities be regulated under the Act or under another mechanism, or be unregulated?

Response:

To present a level playing field for all utilities, indigenous utilities should be regulated under the UCA. If the indigenous utilities, in consultation and negotiation with the Province of BC, can reach an agreement that the indigenous nations can be treated as municipalities or regional districts, then the indigenous nations could be exempt from regulation if certain criteria are met. Certain changes to several Provincial Acts and Regulations may have to be made to facilitate these changes.

[17] Spirit Bay Utilities Ltd. Application for Exemption pursuant to section 88(3) of the Utilities Commission Act

(iii) If it is appropriate to regulate indigenous utilities under the Act, is there any matter under the Act in respect of which indigenous utilities should be regulated differently from other public utilities, and, if so, how should that matter be regulated?

Response:

Yes, it is appropriate to regulate indigenous utilities under the UCA. Uniform regulation across the industry presents a level playing field for all utilities. Because the indigenous nations district lands may not fit nicely within "boundaries", wheeling of energy between the indigenous nation's district lands will have to be accommodated in rates design and possible rates charged by other utilities that may already own lines between these district lands.

(iv) If it is not appropriate to regulate indigenous utilities under the Act but is appropriate to regulate indigenous utilities in some manner, how should indigenous utilities be regulated?

Response:

It is appropriate to regulate indigenous utilities under the UCA. See above.

(v) If an indigenous utility is not regulated under the Act, would the utility become subject to the Act on ceasing to be an indigenous utility, and, if not, what transitional and other mechanisms are required to ensure that the utility is subject to the Act on ceasing to be an indigenous utility?

Response:

Yes, on ceasing to be an indigenous utility under the UCA, the utility may become subject to the UCA. See sections 51, 52 & 53 of the UCA.

5.2. BCUC Additional Scope Questions

Exhibit A-5 contains several additional scope questions. These questions are repeated below.

5.2.1. i. What are the defining characteristics of Indigenous utilities, having regard to:

BCUC (i).A - the nature of the ownership and operation of Indigenous utilities,

BCUC (i).A.1 - What role does the structure of the utility play? For example, utility assets could be: The structure of the utility determines whether it is a public utility by definition or not.

Response BCUC (i).A.1:

The structure of the utility determines whether it is a public utility or not in the definitions of the UCA. The keywords are owned, operated, public or corporation, compensation and boundaries. If a municipality or a regional district owns the utility, then it will not be regulated. However, if a municipality or a regional district owns the utility through another corporate structure, then it will be regulated.

BCUC (i).A.1.1 - wholly or partly owned by the Indigenous nation/band that the utility serves?

Response BCUC (i).A.1.1:

An indigenous utility that is wholly owned by the same indigenous nation on its district lands would be a public utility as the same applies to a municipality or regional district. Therefore, the wholly owned indigenous utility is a public utility by definition in the UCA. However, if it is directly owned by the indigenous nation then it would be exempt.

To wholly own is to hold shares in a corporation, be part of a joint venture or other form of corporation or partnership arrangement, therefore by definition, the indigenous nation would be a public utility by definition in the UCA. See foregoing discussion on wholly owned.

BCUC (i).A.1.2 - owned by a corporation wholly or partly owned by the Indigenous nation/band that the utility serves?

Response BCUC (i).A.1.2:

To be exempt from regulation the utility must be directly owned by the indigenous band and not by a corporation either wholly or partly. Otherwise, it becomes a public utility.

BCUC (i).A.2 - Further, partners could be other indigenous persons or non-indigenous persons.

Response BCUC (i).A.2:

Again the indigenous utility is not owned by the indigenous band/nation, it becomes a public utility.

BCUC (i).A.3 - Should there be a minimum threshold to the percentage of ownership of the utility by one or more Indigenous nations in order for it to qualify as an "Indigenous utility"?

Response BCUC (i).A.3:

No. The indigenous utility must be directly owned and provides services within its own boundaries to not be a public utility; otherwise, any other form of corporate ownership makes it a public utility.

BCUC (i).A.4 - If there are partners in the utility what, if any, are the implications of the ownership split?

Response BCUC (i).A.4:

The indigenous utility must be directly owned and provide services within its own boundaries to not be a public utility; however, if there are partners involved it is a public utility.

BCUC (i).A.5 - Who operates the utility?

Response BCUC (i).A.5:

Who owns or operates the utility in British Columbia can determine its status as a public utility unless it is a utility directly owned or operated by the indigenous

band and provides services within its own boundaries. However, the indigenous band can subcontract the operation to an outside service provider without relinquishing its exemption from regulation.

BCUC (i).A.6 - How are decisions made regarding the running of the utility?

Response BCUC (i).A.6:

If the indigenous utility is in charge of the utility and provides services within its own boundaries; it is not a public utility. How the decisions are made is up to the indigenous nation/band. The indigenous nation can sub-contract to other consultants and operators for decisions on running the utility or their own staff. However, the indigenous nation/band should employ an FSR Class A to hold the operating permit.

Who participates in decision making?

Clearly, if the indigenous nation/band owns the utility, then it participates in the decision making. If the indigenous nation/band forms a separate corporation to own or operate the utility, then it is a public utility.

BCUC (i).B. the types of services provided by Indigenous utilities,

BCUC (i).B.1 - Does the utility produce and/or supply electricity/gas/heat? From what energy source?

Response BCUC (i).B:

An indigenous utility should be able to produce and/or supply electricity/gas/heat or any other agent available to it within its district lands or by other agreements.

BCUC (i).B.1.1 - Does the utility resell or distribute energy provided by another utility?

Response BCUC (i).B.1.1:

An indigenous utility should be able to resell or distribute energy provided by another utility within its own boundaries and to its district lands without being a public utility. An example of this is YVR.

BCUC (i).B.2 - Is the utility involved in the generation or distribution of energy, or both?

Response BCUC (i).B.2:

An indigenous utility could be involved in the generation or distribution of energy, or both within its own boundaries or by other agreements.

BCUC (i).B.3 - What are the objectives of the utility?

Response BCUC (i).B.3:

An indigenous public utility objective is to provide of light, heat, cold or power to or for the public or a corporation for compensation; unless it is not a public utility and provides services within its own boundaries.

BCUC (i).B.4 - Does the utility provide services directly to customers?

Response BCUC (i).B.4:

If an indigenous directly owned utility provides services to its customers within its own boundaries, then it is not a public utility.

Do customers of the utility services pay for the service?

If an indigenous owned utility provides services to its customers within its own boundaries, then it is not a public utility and the indigenous nation decides if and what its customers will pay for the services provided.

If so, how and by whom are the rates determined?

If an indigenous directly owned utility provides services to its customers within its own boundaries, then it is not a public utility and the indigenous nation decides the customers' rates. Otherwise, the indigenous nation is a public utility then the rates are decided in a BCUC rate design hearing.

BCUC (i).B.5 - Does the service provided by the Indigenous utility compete with or displace other services that are currently provided by third parties?

Response BCUC (i).B.5:

If an indigenous utility provides services to its customers within its own boundaries, then it is not a public utility and the indigenous nation may compete with or displace other services that are currently provided by third parties; but the customers should still have a choice of service provider when the indigenous utility displaces other services. The utility lines should be open for use by other suppliers.

BCUC (i).B.6 - Is energy resold to another utility or third party? If so, under what arrangement?

Response BCUC (i).B.6:

If an indigenous utility resells its energy to another utility or third party then it may be a public utility as it is providing a service outside of its boundaries unless it resells the energy to BC Hydro, then they may be exempt from regulation[18]. If it is a reseller within its own boundaries then it may not be subject to an EPA provided the buyer is not already a public utility. From the UCA, “"energy supply contract" means a contract under which energy is sold by a seller to a public utility or another buyer, and includes an amendment of that contract, but does not include a contract in respect of which a schedule is approved under section 61 of this Act;”. Section 61 applies to a public utility.

BCUC (i).C. the persons to whom services are provided by Indigenous utilities, and

BCUC (i).C.1 - Are the customers of the utility Indigenous nation/ band members only?

Response BCUC (i).C.1:

No, not necessarily. Non-band members or commercial enterprises on indigenous district lands may also be customers. Also, sale of energy to other utilities may be possible.

[18] M202-MO22-0205 Minister's Order No. M-22-0205 dated June 6, 2002

BCUC (i).C.2 - Does the utility serve both Indigenous nation/ band members and non-members?

Response BCUC (i).C.2:

Yes, the indigenous utility may serve both Indigenous nation/ band members and non-members on indigenous district lands.

BCUC (i).C.3 - Are the customers residential/ commercial/ industrial?

Response BCUC (i).C.3:

Yes, the indigenous utilities may serve customers: residential/ commercial/ industrial customers on indigenous district lands.

If there is a mix, do all customers pay the same rates?

Response:

No, the indigenous (exempt) utilities should be able to charge customers with rates by customer class (similar to BC Hydro). The non-exempt indigenous utilities would be regulated and the rates determined by BCUC.

If not, how and by whom will the appropriate rates to be charged to each group be determined?

Response:

If the indigenous utility is by definition a public utility, then the BCUC, through a rate design hearing, will determine or confirm the rates by customer class. If the indigenous utility is by definition not a public utility, then the indigenous utility will set the rates.

BCUC (i).D. the geographic areas served by Indigenous utilities.

BCUC (i).D.1 - Does the Indigenous utility provide service solely on reserve; Indigenous nation/band-owned lands; treaty lands; traditional territory?

Response BCUC (i).D.1:

The Indigenous directly owned utility provides service solely on reserve or district lands if it wishes not to be regulated and have the status of a municipality or regional district. This may vary according to its treaty agreement. However, if it is considered to be a non-exempt utility, then it will be regulated when operating off or outside of its district lands.

BCUC (i).D.2 - Does the Indigenous utility provide service on other lands?

Response BCUC (i).D.2:

The Indigenous (non-exempt) utility might provide service on other lands but in competition with the other utilities that may participate in the area.

BCUC (i).D.3 - Does the Indigenous utility operate where there is another utility service (e.g. BC Hydro, FortisBC)? If so, please describe the nature of other utility service, and whether the Indigenous utility is integrated with or dependent on the latter system.

Response BCUC (i).D.3:

The Indigenous (non-exempt) utility may operate where there is another utility service by wheeling power over existing lines to provide energy to a particular customer.

5.2.2. BCUC (ii).1 - What are the reasons for Indigenous utilities to be regulated or unregulated?

Response BCUC (ii).1:

The reasons for Indigenous (non-exempt) utilities to be regulated are to create a province-wide level playing field for all utilities. If the Indigenous owned utilities by definition (status similar to municipality or regional district), then depending on the application of the definition, it may be unregulated.

BCUC (ii).1.1 - What are the benefits to regulation?

Response BCUC (ii).1.1:

The benefits to regulation are: a level playing field for all public utilities, rates that are fair, just, and reasonable, and safety oversight.

BCUC (ii).1.2 - What are the costs or barriers created by regulation?

Response(ii).1.2:

As viewed by all utilities, regulation is not desirable. However, regulation is for the protection of the public and costs will be included in rates.

BCUC (ii).1.3 - If Indigenous utilities were unregulated, how would customers be protected to ensure they receive fair rates and safe, reliable service?

Response BCUC (ii).1.3:

If Indigenous utilities were unregulated, customers are not protected to ensure they receive fair rates and safe, reliable service by the BCUC. The indigenous nation would have to ensure they receive fair rates and safe, reliable service which seems to be their intent.

BCUC (ii).1.4 - Should an Indigenous nation or band be considered similar to a municipality for the purposes of utility regulation? Why or why not?

Response BCUC (ii).1.4:

An Indigenous nation or band should be considered similar to a municipality or regional district for the purposes of utility regulation provided it meets the other criteria because it places the indigenous nation on an equal footing and provides a level playing field for all. However, the scattered nature of their district lands must be taken into consideration.

BCUC (ii).1.5 - Should there be a different approach to the regulation of different Indigenous utilities? What characteristics of Indigenous utilities, or other factors, would justify different regulatory approaches?

Response BCUC (ii).1.5:

No, except when the district lands are considered and how the indigenous utilities would like to address the scattered district lands.

BCUC (ii).2 - What would be the alternative to regulation by BCUC?

Response BCUC (ii).2:

I don't believe alternative to regulation by BCUC is necessary. The indigenous nations can be accommodated (if agreeable after further consultation and amendments to the Acts and Regulations) within the UCA.

BCUC (ii).2.1 - What is the role and authority of Indigenous governance structures in overseeing Indigenous utilities? What experience and expertise are needed and/or available to oversee the activities of Indigenous utilities?

Response:

The role and authority of indigenous governance structures in overseeing indigenous utilities is parallel and quite similar to those of municipalities and regional districts if agreed to by the indigenous nations.

BCUC (ii).2.2 - What other safeguards are available to ensure that Indigenous utilities protect the customer and the public?

Response:

If the indigenous nations agree that they have the same status as municipalities or regional districts and are subject to the UCA for regulation, then no additional safeguards are required.

BCUC (ii).2.3 - Is there another legal basis, taking precedence over the UCA, for Indigenous utilities to be unregulated or regulated by another body?

Response:

There may be further jurisdictional issues that need to be addressed through additional and individual consultation before the BC Government takes any action on the outcome of this Inquiry.

BCUC (ii).2.4 - What is the role of other legislation with respect to Indigenous utilities, such as the Clean Energy Act and the Greenhouse Gas Reduction Regulation?

Response:

If the indigenous nations agree to regulation under the UCA, then the Clean Energy Act and the Greenhouse Gas Reduction Regulation should apply.

iii. If it is appropriate to regulate Indigenous utilities under the UCA, is there any matter under the UCA in respect of which indigenous utilities should be regulated differently from other public utilities, and, if so, how should that matter be regulated?

Response:

No; other than the nature of the indigenous nation's boundaries and the scattered nature of its district lands. The matter of the scattered nature of its district lands must take into consideration the need to wheel sufficient power to supply the scattered areas. This could include agreements with other utilities that are capable of wheeling the energy or some other special arrangement.

BCUC (iii).1 - Should Indigenous utilities be exempt from some sections of the UCA but not all? What would be the reasons for continuing to regulate, or exempting from, sections of the UCA that address:

Indigenous utilities could be exempt from some sections of the UCA but not all on the same basis as other utilities are to maintain uniformity of application of the UCA.

BCUC (iii).1.1 - safety, standards and reliability (25-26, 37-38);

Response:

Indigenous utilities, if determined to be public utilities, should not be exempt from the following sections of the UCA 25-26, 37-38. Otherwise, the safety issues will fall under the Technical Safety BC.

BCUC (iii).1.2 - obligation to serve (28-30, 34-35, 39);

Response:

If found to be public utilities, the Indigenous utilities should not be exempt from the following sections of the UCA 28-30, 34-35, 39 as the BCUC can relieve them of the obligation to serve.

BCUC (iii).1.3 - duty to obey orders, provide information and keep records (42-44, 49);

Response:

If found to be public utilities, the Indigenous utilities should not be exempt from the following sections of the UCA 42-44, 49 – the duty to obey orders, provide information and keep records because if they are regulated the information is required by BCUC and the indigenous utilities must obey BCUC's orders for regulation to be functional.

BCUC (iii).1.4 - construction of new projects (45-46);

Response:

If found to be public utilities, the Indigenous utilities should not be exempt from the following sections of the UCA 45-46 – the construction of new projects since the application provides a second opinion on the need and necessity of the project and how it will incorporate into the rates.

BCUC (iii).1.5 - setting of rates (59-61);

Response:

If found to be public utilities, the Indigenous (non-exempt) utilities should not be exempt from the following sections of the UCA 59-61 – the setting of rates since this

provides protection of its customers and the utility by permitting fair and reasonable rates while allowing the utility to recover its allowable costs.

BCUC (iii).1.6 - energy supply contracts (71); and

Response:

If found to be public utilities or not, the Indigenous utilities should not be prevented or exempted when entering into energy supply contracts under UCA section 71. Section 71 applies to a person.

BCUC (iii).1.7 - complaints (83).

Response:

Indigenous utilities should not be exempted from Section 83 of the UCA – Complaints as this provides an arbitrator and a settlement process for any complaints. This is to the benefit of the utility and its customers. The Commission has discretion on whether any action is to be taken.

BCUC (iii).1.8 - Is there a role for "light touch" regulation?

Response:

Later upon application, there may be a role for "light touch" regulation, but I'm unsure if it should be made immediately available until the indigenous nations show that they are willing to comply with the UCA and regulation. I believe the BCUC should monitor the situation before an application will be considered.

BCUC (iii).1.9 - Would there be any impacts upon other utilities if Indigenous utilities were regulated differently?

Response:

Yes, there may be impacts upon other utilities if Indigenous utilities were regulated differently since the playing field is not level in the Province.

iv. If it is not appropriate to regulate Indigenous utilities under the UCA but is appropriate to regulate indigenous utilities in some manner, how should indigenous utilities be regulated?

Response:

Yes, it is appropriate to regulate Indigenous utilities under the UCA to provide certainty and a level playing field for all utilities that operate within BC.

BCUC (iv).1 - What is the role of Indigenous government structures in regulating Indigenous utilities?

Response:

At this moment the issue of regulating indigenous utilities is what is being discussed. The Spirit Bay Utilities Ltd. has already encountered this issue on regulation. The indigenous nations and the BC Government need additional consultation for regulation, if not exempt, to take effect immediately and remove this uncertainty.

BCUC (iv).1.1 - What relationship, if any, should Indigenous government structures have with the BCUC?

Response:

The indigenous nations must have a similar relationship with the BCUC as any municipality or regional district.

BCUC (iv).2 - Are there entities other than or in addition to the BCUC that could or should have a role in regulation?

Response:

No, it would appear to be preferable to have all utilities regulated by BCUC within BC using the same Act. This would provide uniformity and clarity of the application of the Act.

v. If an Indigenous utility is not regulated under the UCA, would the utility become subject to the UCA on ceasing to be an Indigenous utility, and, if not, what transitional and other

mechanisms are required to ensure that the utility is subject to the UCA on ceasing to be an Indigenous utility?

Response:

Yes, if an Indigenous utility is not regulated under the UCA, then the utility become subject to the UCA on ceasing to be an Indigenous utility since the Indigenous Nation is no longer the person who owns the utility.

BCUC (v).1 - If Indigenous ownership of a utility were to be sold to non-Indigenous ownership, would an application to the BCUC (or another regulatory authority) be required to authorize the sale?

Response:

If Indigenous ownership of a utility were to be sold to non-Indigenous ownership, an application would have to be made to the BCUC and possibly the federal government depending of the status and nature of any treaty agreements.

BCUC (v).2 - What about the sale of an Indigenous utility from one Indigenous nation to another Indigenous nation – should an application to the BCUC (or another regulatory authority) be required to authorize the sale?

Response:

The sale of an Indigenous utility from one Indigenous nation to another Indigenous nation would require an application to the BCUC and possibly the federal government depending of the status and nature of any treaty agreements. Also, since the district lands of the purchasing Indigenous Nation are not the same, the purchasing Indigenous Nation would become a public utility if not already one.

5.3. Summary

There are several issues in play with this Inquiry. .

These are:

1. The jurisdictional issues (federal/provincial) regarding indigenous nations.

2. The consideration of any other agreements with the individual indigenous nations that may impact the outcome of these recommendations.

3. The requirements for consultation, that needs to be met, before any recommendations take effect; such as the inclusion of indigenous nations having the same status as a municipality or regional district.

4. The willingness of the indigenous nations to acquire the status of municipality or regional district as defined in the UCA. The acceptance of all parties to add the word "village" alongside "municipality or regional district" as defined in the UCA

5. The definition of a public utility within the UCA.

6. The meaning of "person", "own", "operate", and "boundaries", within the definition of a public utility in the UCA; and "individual" in the Corporation Act as it applies and may be interpreted by the BCUC in the future for all utilities.

7. The meaning of district lands versus other types of lands, such as traditional lands, treaty lands, etc. and how this may impact the definition of "boundaries" in the UCA as it applies and may be interpreted by the BCUC in the future for all utilities.

8. The need to provide indigenous nations "a priority access" to EPAs and SOPs since most monies would most likely remain within BC and benefit the indigenous nations and the public. However, the recent actions of CC&L Infrastructure in acquiring these assets need to be considered before providing the indigenous nations any priority access to EPAs. This negatively impacts the transfer of ownership issue as the financial benefits will flow outside of BC.

9. The need to reduce GHGs. The Atlin Hydro Electric (Pine Creek) Project that displaced BC Hydro's diesel back 2009 was the perfect example of a successful indigenous utility. The project displaced 1.2 million litres of fuel per year or 3,300 litres per day. This is approximately 4,500 tonnes of fewer Green House Gases annually. BCUC accepted the EPA for filing as Order G-91-08[19]. If the indigenous nations are able to displace the diesel units in the BC Hydro NIA, then all indigenous nations would benefit from increased reliability and a significant reduction in GHGs as can be seen from an older BC Hydro Non-Integrated Areas (NIA) Business Strategy dated January 14, 2004[20].

10. In the USA, the DOE's Tribal Energy Program[21] promotes tribal energy sufficiency, economic development and employment on tribal lands through the

[19] https://www.bcuc.com/Documents/Orders/2008/DOC_18999_G-91-08_BCH_Pine%20Creek%20Project.pdf

[20] https://www.bchydro.com/content/dam/hydro/medialib/internet/documents/planning_regulatory/rev_reg/rev_regs_1/may1704_e_nia_report_appendices_dated_jan1404_pdf.pdf

[21] https://www.energy.gov/sites/prod/files/2016/01/f28/0811review_01pierce.pdf

use of renewable energy and energy efficiency technologies. Although this is outside the mandate of the Inquiry, I thought it might be of interest. Several American tribes are moving into the energy business. However, any program for indigenous utilities should be federally funded in Canada and provincially regulated.

11. The issue of light-handed regulation should be applied equally within BC and without preferential treatment to any group of utilities, municipalities, regional districts, or indigenous nations. Light-handed regulation can be applied for under various programs created by BCUC. Further, exemptions from regulation can be sought through application to BCUC.