



July 22, 2019

Sent via eFile

<b>BCUC INDIGENOUS UTILITIES REGULATION INQUIRY EXHIBIT A-14</b>
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Raf De Guevara  
Manager  
The Westbank First Nation  
Intergovernmental Affairs / Title & Right Department  
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Kelowna, BC V1Z 3J2  
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**Re: British Columbia Utilities Commission – Indigenous Utilities Regulation Inquiry – Project No. 1598998  
– Response to Westbank First Nation Submission, Exhibit C12-2**

Dear Mr. De Guevara:

On July 11, 2019, the British Columbia Utilities Commission (BCUC) received the written submission of the Westbank First Nation (WFN)<sup>1</sup> regarding the Indigenous Utilities Regulation Inquiry (Inquiry). The WFN's submission states in part:

The Westbank First Nation ("WFN") has been granted Intervener status with respect to the above-noted inquiry. As a Self-Governing First Nation, we have concerns with the asserted authority of the British Columbia Utilities Commission's ("BCUC") ability to insert their interest onto reserve lands, currently residing under federal jurisdiction. We believe that the BCUC should be engaging with Canada concerning this regulation inquiry. At this early stage, we are interested in better understanding the status of Indigenous Utilities. Once a point of reference has been established, we can begin to engage in discussions of the pros and cons of BCUC as a 'potential' regulatory body. Why now, is the BCUC reviewing Indigenous Utilities? We want to be involved in this inquiry and influence the outcome to protecting our Membership and government interests.

In this letter, the BCUC provides responses regarding the two main issues raised by WFN above: participation of the Federal Government of Canada, and the reason for the BCUC's review of Indigenous Utilities. This response may also provide clarity to other interveners.

**Participation of the Federal Government of Canada**

Further to feedback from participants in this Inquiry, including WFN, the BCUC has invited the Federal Government of Canada to participate in the Inquiry.

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<sup>1</sup> Exhibit C12-2.

The BCUC encourages all parties to provide submissions on issues related to jurisdiction over indigenous utilities both on reserve and non-reserve lands in their responses, submissions, or letters of comment. The BCUC notes that final submissions are to be filed with the BCUC by September 27, 2019.

### **Authority, Timing and Scope of the Inquiry**

Section 5(1) of the *Utilities Commission Act* (UCA) directs that where requested, the BCUC must advise the Lieutenant Governor in Council (LGIC) on any matter, whether or not it is a matter in respect of which the BCUC otherwise has jurisdiction.

On March 11, 2019, the Lieutenant Governor in Council, by Order in Council (OIC) No. 108, requested the BCUC to advise the LGIC respecting the regulation of Indigenous utilities in accordance with the terms of reference set out in section 3 of OIC No. 108.

Although the timing and rationale for the Inquiry were determined by the Provincial Government of BC, the BCUC notes that it has previously reviewed an application<sup>2</sup> from Spirit Bay Utilities Ltd. (Spirit Bay Utilities), an entity that is 51% owned by the Beecher Bay First Nation. Spirit Bay Utilities applied for an exemption from regulation under the UCA pursuant to section 88(3) of the UCA, with an alternate request that the BCUC direct that Beecher Bay First Nation is a municipality or regional district for the purposes of the UCA and therefore be deemed an exception from the UCA's definition of a "public utility". By Order G-175-16 and accompanying reasons for decision,<sup>3</sup> the BCUC found that Spirit Bay Utilities met the definition of a "public utility" in that proceeding, and that the UCA therefore applied to Spirit Bay Utilities' proposed utility services. Further, the BCUC found that Spirit Bay Utilities did not meet the definition of a municipality or regional district for the purposes of the UCA.

This inquiry is broader in scope than the Spirit Bay Utility proceeding, and the BCUC is inviting submissions on a range of questions to inform its recommendations to Government, including but not limited to the scope questions outlined in [Exhibit A-5](#).

Sincerely,

*Original signed by Ian Jarvis for:*

Patrick Wruck  
Commission Secretary

PS/dg

cc: Registered Interveners                      Jen Bellingham  
   Researcher/Assistant Negotiator  
   WFN Intergovernmental Affairs / Tittle & Rights Department  
   jbellingham@wfn.ca

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<sup>2</sup> Spirit Bay Utilities Ltd. Application for an Exemption Pursuant to Section 88(3) of the Utilities Commission Act or Declaration Pursuant to Section 72

<sup>3</sup> [https://www.bcuc.com/Documents/Proceedings/2016/DOC\\_48316\\_12-01-2016\\_G-175-16\\_Spirit-Bay\\_Exemption\\_Reasons-Final.pdf](https://www.bcuc.com/Documents/Proceedings/2016/DOC_48316_12-01-2016_G-175-16_Spirit-Bay_Exemption_Reasons-Final.pdf)