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Utilities Commission

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August 2, 2019

Sent via email/eFile

BCUC INDIGENOUS UTILITIES REGULATION INQUIRY
EXHIBIT A-17

Chief Derek Epp
Tzeachten First Nation
Unit 29 - 6014 Vedder Road
Chilliwack, BC V2R 5M4
derek@tzeachten.ca

Re: British Columbia Utilities Commission – Indigenous Utilities Regulation Inquiry – Project No. 1598998 - BCUC Information Request No. 1

Dear Chief Epp:

Further to British Columbia Utilities Commission Order G-110-19, enclosed please find BCUC Information Request No. 1 to Tzeachten First Nation. In accordance with the Regulatory Timetable, please file your responses no later than Tuesday, September 10, 2019.

Sincerely,

Original Signed By:

Patrick Wruck
Commission Secretary

/nd



British Columbia Utilities Commission
Indigenous Utilities Regulation Inquiry

INFORMATION REQUEST NO. 1 TO TZEACHTEN FIRST NATION

1.0 Reference: Exhibit C1-1, pp. 1–2; Exhibit C16-2, p. 15
Power authority

On pages 1 to 2 of Exhibit C1-1, Tzeachten First Nation states: “Tzeachten is currently in works with other bands in creating a power authority to regulate and create a dispute resolution process to ensure the safety of our customers.”

On page 15 of Exhibit C16-2, the First Nations Leadership Council (FNLC) states:

The FNLC recommends the research and development of legislation creating an independent Indigenous Utilities Commission (IUC), led and directed by First Nations organizations, to provide expert guidance to Indigenous utilities in BC as well as acting as a quasi-judicial body with similar functions to the BCUC – with key differences. Along with a mandate to protect ratepayers and establish a fair price for utilities, the IUC would have a diversified mandate to consider the unique circumstances of Indigenous utilities and to support First Nations decision making and dispute resolution structures according to their own legal orders. The Commitment Document sets out the goal of establishing an Indigenous commission to provide a dispute resolution, governance building, and law-making role that First Nations may opt-in to use, ‘in accordance with First Nations respective laws, customs, and traditions’. A specialized IUC could build on this model, with the energy expertise to provide case-by-case guidance and parameters on utility service rates in consultation with Indigenous utilities and communities. Alternatively, it could act as an appeal body in case of disputes. More consultation is needed to understand to what extent these regulatory structures should be available on an opt-in basis, and to what extent they should be binding on Indigenous utilities. The approach must be distinctions-based to provide flexibility for the different circumstances of different First Nations owned and/or operated utilities in their unique territories.

The IUC should operate independently from government. The Province could and should remain in an advisory role, but the IUC would need to be empowered with the full jurisdiction that BCUC currently has by statute. Furthermore, it should not be subject to direction by the Province, which would distinguish it from the BCUC under its enabling legislation. A plan should be made, with the urgency reflective of a climate crisis, to move the funding that the province currently puts towards subsidizing fossil fuel dependency towards the IUC’s operations and associated training and capacity building in First Nations communities.

- 1.1 Please clarify if the “power authority” referred to by Tzeachten First Nation would be the same as the “Indigenous Utilities Commission” proposed by FNLC.

1.1.1 If these are not the same, please provide further details of the potential power authority. For example, to the extent that it is possible, please provide Tzeachten First Nation's view on:

- a) How the power authority may be governed;
- b) Whether the power authority could apply to all BC First Nations; and
- c) How such an organization might be set up and funded.

1.2 At this time, does Tzeachten First Nation have a view on whether it would be preferable for any utility that may be established by Tzeachten First Nation to be regulated solely by the Tzeachten First Nation, to be regulated by a proposed "power authority," or otherwise? Please provide supporting discussion where applicable.

**2.0 Reference: Exhibit C1-2, p. 2
Rights of municipalities**

On page 2 of Exhibit C1-2, Tzeachten First Nation states: "I would be happy to explain why Tzeachten First Nation are applying for the same rights as municipalities under the BCUC Indigenous Utilities Regulation Inquiry."

Section 1 of the *Utilities Commission Act* (UCA) provides in part the following definition of a "public utility:"

'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

(b) the conveyance or transmission of information, messages or communications by guided or unguided electromagnetic waves, including systems of cable, microwave, optical fibre or radiocommunications if that service is offered to the public for compensation,

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...

2.1 Please confirm that when Tzeachten First Nation refers to "the same rights as municipalities," this is to say that Indigenous utilities should be granted an exception/exemption from the UCA similar to that granted to municipalities, and therefore not regulated by the BCUC.

2.1.1 If this is not confirmed, please explain what rights Tzeachten First Nation are requesting as a result of this inquiry.

2.1.2 Does Tzeachten First Nation have a view on whether an exception/exemption from the UCA for Indigenous Nations¹ should apply to utility services provided on Indigenous Nations' Reserve lands/Treaty lands only, or should it apply to service provided beyond these lands? Please provide any explanation that may be useful to the BCUC.

¹ As defined in section 1 of Order in Council No. 108, http://www.bclaws.ca/civix/document/id/oic/oic_cur/0108_2019.

**3.0 Reference: Exhibit C1-2, pp. 1–2
Sanitary and water services**

On page 1 of Exhibit C1-2, Tzeachten First Nation states:

Furthermore, Tzeachten is proud of the governance level we have achieved to date. We administer and monitor our sanitary and water services to all our citizens living on Tzeachten First Nation through service agreements. Through Land Code and the *First Nations Lands Management Act*, we have jurisdiction over our lands and resources, in which we carry out with quality and efficiency. This has in turn created ability and capacity within our government organization. This capacity has enabled Tzeachten to excel in various services and programming for all citizens of Tzeachten First Nation.

3.1 Please provide additional details about the administration and monitoring of sanitary and water services by Tzeachten First Nation, where possible. Specifically, this may include the following:

- a) Who participates in decision-making regarding sanitary and water services within Tzeachten First Nation?
- b) Does Tzeachten First Nation administer and monitor services provided to Tzeachten First Nation members only, or are there also customers that are non-members?
- c) Are the services provided on Reserve/Treaty lands only?
- d) What dispute resolution mechanisms exist for residents?

3.1.1 Please also provide any additional comments about how these governance processes of Tzeachten First Nation could be applied to Indigenous utilities.