



August 2, 2019

Sent via email/eFile

**BCUC INDIGENOUS UTILITIES REGULATION INQUIRY**  
**EXHIBIT A-18**

Mr. Fred James  
Chief Regulatory Officer  
Regulatory & Rates Group  
British Columbia Hydro and Power Authority  
16th Floor - 333 Dunsmuir Street  
Vancouver, BC V6B 5R3  
[bchydroregulatorygroup@bchydro.com](mailto:bchydroregulatorygroup@bchydro.com)

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

Dear Mr. James:

Further to British Columbia Utilities Commission Order G-110-19, enclosed please find BCUC Information Request No. 1 to British Columbia Hydro and Power Authority. 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 BRITISH COLUMBIA HYDRO AND POWER AUTHORITY**

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**1.0 Reference:** **Exhibit C2-2, Section 5.2, pp. 8–9**  
**Different regulatory frameworks**

On page 8 of Exhibit C2-2, the British Columbia Hydro and Power Authority (BC Hydro) states:

Having one set of rules and regulations for all Public Utilities should minimize the potential for disagreements between Public Utilities and/or between Regulators, thereby minimizing harm to customers in the form of higher regulatory costs to be passed on to customers.

On page 9, BC Hydro states:

Where a potential BC Hydro customer is itself a Public Utility, having that Public Utility regulated under a different regulatory framework (i.e., – regulated under a different set of rules than the UCA [*Utilities Commission Act*] and/or administered by a different regulator than the Commission) has the potential to create uncertainty and duplication, impact BC Hydro's ongoing operations and increase costs for existing and future ratepayers. For example, if BC Hydro and a Public Utility customer of BC Hydro's disagreed on the application of a BC Hydro rate or its terms of service, it is possible that two different regulators viewing this dispute under different regulatory frameworks could come to different conclusions and issue different decisions.

- 1.1 Please give specific examples of disagreements, uncertainty and/or duplication that have resulted from the different regulatory treatment of entities that are exceptions from the UCA definition of “public utility,” such as municipalities and regional districts.
  - 1.1.1 If no existing examples are available, please provide examples of how a different regulatory framework could result in uncertainty, and increased costs for ratepayers.
- 1.2 Please clarify whether the reference to “a potential BC Hydro customer is itself a Public Utility” means an entity that is not currently a BC Hydro customer but is a public utility.
- 1.3 Please further explain in the example provided in the preamble, why a separate regulator of a hypothetical “Public Utility customer” might have any jurisdiction to make any decision over the application of a BC Hydro rate or its terms of service.
- 1.4 Please discuss whether BC Hydro considers that the risks described in the preamble could be mitigated with an appropriate delineation of jurisdiction between the British Columbia Utilities Commission (BCUC) and another regulatory body.

**2.0 Reference:** **Exhibit C2-2, Section 5.2, p. 9**  
**Risks from different regulatory frameworks**

BC Hydro states:

If a Public Utility customer of BC Hydro's falls under the jurisdiction of a different regulator and/or a different regulatory framework, the possibility exists that it could receive regulatory approval to construct electrical utility equipment that could impair the value of existing BC Hydro assets or render those assets stranded (not used and useful).

- 2.1 Please describe the types of electrical utility equipment constructed by the Public Utility that could impair the value of existing BC Hydro assets.
- 2.2 Please discuss the extent to which BC Hydro already faces stranded asset risk similar to those described in the example in the preamble, such as: from self-generating customers; other "behind the meter" innovations; competing forms of energy (e.g. gas, wood burning); or other.
  - 2.2.1 Please discuss what approaches BC Hydro takes to forecast and mitigate these risks.
  - 2.2.2 Please discuss whether BC Hydro considers that a similar approach to forecasting and mitigating stranded asset risks is feasible in a situation where Indigenous utilities were not subject to the same regulatory treatment under the UCA.

**3.0 Reference:** **Exhibit C2-2, pp. 11, 12**  
**Streamlined review process**

BC Hydro states:

Regarding the regulation of small Public Utilities, BC Hydro believes that the financial and human resource burden of regulation is likely substantially higher for small Public Utilities than for large Public Utilities. BC Hydro believes that the Commission should consider streamlined or expedited review processes which would allow the public interest to be safeguarded while also allowing for a reduction in the overall regulatory cost placed on the utility and ultimately borne by its ratepayers.

- 3.1 Does BC Hydro foresee any concerns with respect to fulfilling its own mandate if smaller public utilities were to be subject to a streamlined or an expedited review process?
- 3.2 In BC Hydro's view, please discuss the characteristics of a streamlined process that would be appropriate for Indigenous utilities.
- 3.3 Please provide any examples of existing streamlined processes that may be appropriate references.

**4.0 Reference:** **Exhibit C2-2, pp. 10, 14–15; Exhibit C13-2, p. 12;**  
**Exhibit C14-2, pp. 6–7; Exhibit C16-2, pp. 13–14**  
**Exemptions from the UCA**

On page 10 of Exhibit C2-2, BC Hydro states:

At the same time as the UCA offers consistency in the treatment of Public Utilities, it also provides the Commission with flexibility to more lightly regulate a Public Utility where that Public Utility can demonstrate to Government and the Commission how its particular circumstances adequately meet or protect the broad public interest. Examples of the types of questions that BC Hydro believes the Commission may explore when considering a possible exemption from Public Utility regulation include:

- (a) Is the Public Utility operating in a competitive market? (i.e. are there alternative suppliers and products available to customers, or are there significant barriers to alternative suppliers);
  - (b) To what extent does the Public Utility operate for the benefit, including the financial benefit, of all of its customers; and
  - (c) What accountability does the Public Utility have to its customers? (i.e. is there an opportunity for all customers to raise and have concerns about the cost and provision of services addressed through a fair process under an arbiter that has oversight and/or governance responsibilities for all of its customers).
- 4.1 In the case of Indigenous utilities, please discuss if BC Hydro views that possible exemptions from the UCA should be considered on a case-by-case basis, or on a “class” basis, using the criteria listed in the preamble?

On pages 14 to 15 of Exhibit C2-2, BC Hydro states:

In British Columbia, public utility services provided by municipalities and regional districts are an example of publicly-owned utilities which are not regulated by the UCA. BC Hydro notes that municipalities and regional districts, which are incorporated and governed by the *Local Government Act*, are accountable to their customers, who are also their citizens. If customers have concerns regarding their service, they have the opportunity and right to demand improvements to their service, including by voting out of power elected officials they deem ultimately responsible for their service concern not being addressed. As well, because such utilities are not operated for profit, any financial gains flow back to all of the customers of the municipality or regional district. As all of the customers are either residents or organizations that reside within the municipal boundary, customers ultimately receive the financial benefits of the utility. Together, these factors provide the municipality or regional district with accountability to and alignment with customers. In doing so, they offer public interest protection against monopolistic characteristics.

A number of interveners have submitted that Indigenous utilities should not be considered a public utility for the purposes of the UCA, in a similar manner to municipalities or regional districts, but should be given similar relief from regulation under the UCA.<sup>1</sup>

- 4.2 In BC Hydro’s view, could an Indigenous utility be considered similar to a municipality or regional district, with respect to accountability to and alignment with customers?
- 4.2.1 If similar to a municipality or regional district, please discuss whether BC Hydro considers this provides a case for providing an exemption/exception from the UCA, or what other considerations would be required.

On page 14 of Exhibit C16-2, the First Nations Leadership Council (FNLC) states:

...[E]xempting Indigenous utilities from regulation on the same basis as municipalities would require careful discussion and support to ensure that Nations’ Title and Rights are upheld, Indigenous governance and legal processes are respected, and at the same time ensure that viable dispute resolution and appeal procedures are available to ensure Indigenous ratepayers’ interests are protected.

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<sup>1</sup> Exhibit C13-2, p. 12; Exhibit C14-2, pp. 6–7; Exhibit C16-2, pp. 13–14.

...A question that arises in this analysis is what constitute the boundaries within which an Indigenous utility provides service. The FNLC maintains that to be consistent with Title and Rights, as well as for economic viability, the boundaries must reflect a territorial approach rather than be limited to reserve. This territorial approach means Indigenous utilities must be empowered to determine their customer base, which reasonably would extend to non-Indigenous people and non-band members residing within the service area of an Indigenous utility. To allow otherwise would provide for a patchwork of electricity provision in our territories and ultimately undermine the right of self-government of First Nations. A flexible approach that works with each Indigenous utility's specific needs and context should be adopted. Flexibility should also be applied to allow Indigenous utilities to provide service to industrial and commercial operations within our territories, at reasonable market rates to facilitate our economic viability.<sup>2</sup>

- 4.3 With respect to the Indigenous utilities' framework for exemption from regulation under the UCA, proposed by FNLC above, please outline BC Hydro's perspective on the potential impacts, both positive and negative, to existing public utilities such as BC Hydro.
- 4.3.1 Please identify any key differences if an exemption/exception from regulation under the UCA were applied to Indigenous utilities for services provided on-reserve only.

- 5.0 Reference:** **Exhibit C2-2, Section 3, 5.2, pp. 4, 8, 9;**  
**BC Hydro website, Remote Community Electrification Program**  
**Service in remote areas**

On page 4 of Exhibit C2-2, BC Hydro states:

BC Hydro also provides safe, reliable electricity to a number of small communities located in parts of British Columbia not connected to BC Hydro's integrated transmission grid. These customers are located in what we refer to as the non-integrated areas.

On page 8 of Exhibit C2-2, BC Hydro states:

Having one set of rules and regulations for all Public Utilities should minimize the potential for disagreements between Public Utilities and/or between Regulators, thereby minimizing harm to customers in the form of higher regulatory costs to be passed on to customers.

On page 9 of Exhibit C2-2, BC Hydro states:

Where a potential BC Hydro customer is itself a Public Utility, having that Public Utility regulated under a different regulatory framework (i.e., – regulated under a different set of rules than the UCA and/or administered by a different regulator than the Commission) has the potential to create uncertainty and duplication, impact BC Hydro's ongoing operations and increase costs for existing and future ratepayers.

On BC Hydro's website, BC Hydro provides a summary of its Remote Community Electrification Program.<sup>3</sup>

- 5.1 Please provide a brief description of BC Hydro's Remote Community Electrification Program.

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<sup>2</sup> Emphasis added.

<sup>3</sup> [https://www.bchydro.com/energy-in-bc/operations/remote\\_community\\_electrification.html](https://www.bchydro.com/energy-in-bc/operations/remote_community_electrification.html).

- 5.2 Please confirm, or explain otherwise, that at this time, BC Hydro is not accepting applications under the Remote Community Electrification Program.
- 5.2.1 If confirmed, please also explain under what circumstances that BC Hydro may reopen the Remote Community Electrification Program to further applications.
- 5.2.1.1 Please discuss whether BC Hydro is planning any other initiatives to enhance access to reliable electricity in rural communities.
- 5.2.2 If confirmed, please also explain whether any potential conflicts exist between BC Hydro and a prospective Public Utility that may wish to establish itself in remote areas not currently covered by the Remote Community Electrification Program.
- 5.3 In BC Hydro's view, please discuss whether there may be rationale for different regulatory considerations for Indigenous utilities that may wish to operate in:
- Communities currently served by BC Hydro in Non-Integrated Areas, with respect to reducing dependence on diesel; and
  - Areas not currently served by BC Hydro (or another electric public utility).
- 5.3.1 Does BC Hydro consider there would be potential for disagreements between BC Hydro and Indigenous utilities if Indigenous utilities (excepted from BCUC regulation) were operating independently of BC Hydro (or another utility's) integrated system? Please provide specific examples of areas for potential disagreement.

**6.0 Reference:** **Exhibit C14-2, p. 3**  
**Protocol agreements**

On page 3 of Exhibit C14-2, Adams Lake Indian Band submits:

Adams Lake and the Secwepemc Nation, of which it is a member, have actively engaged BC Hydro in respect of its claims for Aboriginal Title and Rights within the tradition territory of the Secwepemc Nation. In 2016, Adams Lake and other members of the Secwepemc Nation signed a protocol agreement with BC Hydro which is to guide reconciliation efforts between the parties.

The purpose of the protocol agreement was to develop a reconciliation framework that may lead to new social, economic and environmental arrangements and agreements between the parties. The development of Indigenous utilities in cooperation with BC Hydro is a prospect in line with the goals of the protocol agreement and that addresses both the assertion of Aboriginal Title and Rights and the need for historical and contemporary reconciliation between the parties.

- 6.1 Please provide a list of BC Hydro's protocol agreements with First Nations and an example of a protocol agreement between BC Hydro and a First Nation.

**7.0 Reference:** **Exhibit C2-2, p. 10; Exhibit C4-2, pp. 8–9**  
**Applicability of the UCA**

On page 10 of Exhibit C2-2, BC Hydro states: "We believe that the UCA is the appropriate regulatory framework for the regulation of all Public Utilities in BC, including indigenous utilities that meet the UCA definition of a Public Utility."

Prepared by its legal counsel in Exhibit C4-2, FortisBC Group of Companies provides an analysis of constitutional considerations with respect to the applicability of the UCA and the jurisdiction of the BCUC on Reserve lands.

- 7.1 Please discuss if BC Hydro has undertaken any legal review of the applicability of the UCA or the jurisdiction of the BCUC on Reserve or Treaty lands. If so, please provide a summary of this jurisdictional review.