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Utilities Commission

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Sent via email/eFile

BCUC INDIGENOUS UTILITIES REGULATION INQUIRY
EXHIBIT A-19

Mr. Niilo Edwards
Executive Director
First Nations Major Project Coalition
Suite 905, 100 Park Royal
West Vancouver, BC V7T 1A2
executivedirector@fnmpc.ca

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

Dear Mr. Edwards:

Further to British Columbia Utilities Commission Order G-110-19, enclosed please find BCUC Information Request No. 1 to First Nations Major Project Coalition. 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 FIRST NATIONS MAJOR PROJECT COALITION

1.0 Reference: Exhibit C3-3, p. 5
Comparative jurisdictions

On page 5 of Exhibit C3-3, the First Nations Major Project Coalition (FNMPC) states:

While these comparative examples are not an exact match to the BC situation due to differences in legal structures and competitive environments, they provide insight to the issues facing BC First Nations and the provincial government's approach to regulation of Indigenous utilities. In examining the 60+ worldwide examples, there were three jurisdictions that stood out as possible data sources for BC and First Nations regulatory examples.

- Canada (Ontario)
- New Zealand
- United States

1.1 Please briefly explain why FNMPC considers that these three jurisdictions were the most relevant for BC, and why other jurisdictions were not selected.

2.0 Reference: Exhibit C3-3, pp. 6–7
Regulation of Indigenous utilities

On page 6 of Exhibit C3-3, FNMPC summarizes examples of Indigenous utility ownership in Ontario. FNMPC notes: "It appears that every Ontario example is regulated under existing provincial regulations."

On pages 6 to 7 of Exhibit C3-3, FNMPC summarizes examples of equity ownership in geothermal generation plants in New Zealand by a Maori community. FNMPC notes: "The Maori Trust officers informed MPC that existing New Zealand regulations apply to all their electricity generation investments."

2.1 Does FNMPC have a view on the pros and cons of Indigenous utilities in BC being subject to the same regulations as other public utilities, similar to the New Zealand and Ontario examples?

3.0 Reference: Exhibit C3-3, p. 8
U.S. tribal-owned utilities

On page 8 of Exhibit C3-3, FNMPC states with respect to U.S. tribal-owned utilities:

US tribes have defined sovereign over lands with fixed boundaries, namely their federally recognized and negotiated tribal reservations. Unlike Canadian First Nations, US reservations are generally larger than Canadian Indian Reserves allowing for greater economies of scale and infrastructure opportunities.

...In every examined case, tribal utility jurisdiction only applies within reservation boundaries. Tribal utilities have the option of servicing off-reservation customers but would be subject to state utility regulators outside of the tribal land boundaries.

- 3.1 From the research undertaken, has FNMPC identified any commonly occurring advantages and disadvantages of tribal utility jurisdiction only applying within reservation boundaries?
- 3.2 Noting the difference in size between U.S. reservations and Canadian Indian Reserves, please discuss if FNMPC has a view on whether the U.S. examples of on-reservation jurisdiction only could serve as an appropriate model for BC, either as an interim or longer term solution.

**4.0 Reference: Exhibit C3-3, pp. 10, 12
BC Indigenous utility association**

On page 10 of Exhibit C3-3, FNMPC provides the following summary of U.S. tribal utility associations:

- a. In the US, utility-owning tribes have organized a number of tribal utility associations that provide technical, group procurement, political advocacy and access to legal-type services for tribal members.
- b. These associations allow member tribes to share utility operational experiences, skills, and best practices with one another. While these associations are not multi-tribal utilities in themselves, they do allow tribal members to coordinate their mutual utility interests.

On page 12 of Exhibit C3-3, FNMPC “encourage[s] the BCUC to consider:”

...the formation of a BC Indigenous utility association that can address utilities issues in a collective manner.

- a. This association would act in a similar manner as the US tribal utilities associations, providing interested First Nations a venue to share interests, technical skills, and common community and commercial concerns.
 - b. This association would also be instructive to begin a dialog on how concurrent BC Crown and Indigenous jurisdictions might operate within the province.
- 4.1 Please discuss, if known to FNMPC, whether any of the U.S. tribal utilities associations have any regulatory powers or responsibilities for tribal utilities within their membership.
 - 4.1.1 Please clarify if FNMPC foresees that a BC Indigenous utility association should have any regulatory powers or responsibilities.
 - 4.2 Please discuss, if known to FNMPC, how U.S. tribal utility associations are: a) governed; and b) resourced (including funding).
 - 4.2.1 If FNMPC has a view, please discuss any relevant considerations for a potential BC Indigenous utility association on matters of governance and resourcing.

**5.0 Reference: Exhibit C3-3, p. 11
Interim solution**

On page 11 of Exhibit C3-3, FNMPC states:

When MPC [Major Projects Coalition] examined the successful US tribal utilities, it was clear that the defined and mutually agreed areas of land jurisdiction was key to providing an environment that allowed the US tribal utilities to thrive. The BCUC questions as posed are a technical attempt (solving a problem with expert knowledge) to solve an adaptive challenge (solving a problem with new learnings from all parties). The adaptive challenge is the question of how the BC Crown and First Nations will interact on unceded traditional territories. In the cited US examples, the issue of delineated sovereignty is clear. In BC, it is not.

- 5.1 Please clarify if FNMPC has a position on what interim regulatory framework may be appropriate for Indigenous utilities while issues pertaining to land jurisdiction are being resolved. Alternatively, please explain if FNMPC considers that the regulation under the *Utilities Commission Act* should apply until land jurisdiction issues are resolved. Please provide the rationale for FNMPC's response.

**6.0 Reference: Exhibit C3-3, Appendix B, pp. 21–22, 23, 25, 28–29, 30, 34, 39, 41, 43, 45–46
Further research**

FNMPC includes the paper *The Role of Indigenous People in Major Project Development: Paths for Indigenous Participation in Electricity Infrastructure* as Appendix B to Exhibit C3-3. The paper highlights a number of questions for further research.

- 6.1 If FNMPC has any updates on the questions for further research, please provide where possible.