



bcuc
British Columbia
Utilities Commission

Patrick Wruck
Commission Secretary

Commission.Secretary@bcuc.com
bcuc.com

Suite 410, 900 Howe Street
Vancouver, BC Canada V6Z 2N3
P: 604.660.4700
TF: 1.800.663.1385
F: 604.660.1102

August 2, 2019

Sent via email/eFile

BCUC INDIGENOUS UTILITIES REGULATION INQUIRY
EXHIBIT A-24

Ms. Erin Thomson-Leach
JFK Law Corporation
816 - 1175 Douglas Street
Victoria, BC V8W 2E1
ethomson-leach@jfkclaw.ca
ruths.fn640@yahoo.com

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

Dear Ms. Thomson-Leach:

Further to British Columbia Utilities Commission Order G-110-19, enclosed please find BCUC Information Request No. 1 to Beecher Bay 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 BEECHER BAY FIRST NATION

- 1.0 Reference: Exhibit C9-2, pp. 3–4; Spirit Bay Utilities Ltd. Application for Exemption Pursuant to Section 88(3) of the *Utilities Commission Act* (UCA) proceeding, Order G-175-16 with Reasons for Decision dated December 1, 2016, p. 10 Challenges operating Spirit Bay Utilities Ltd.**

In Exhibit C9-2, the Beecher Bay First Nation (Beecher Bay) states:

The decision to deny the exemption application had significant consequences for SB Utilities, the Spirit Bay development, and for Beecher Bay. SB Utilities had already invested roughly \$1.5 million into infrastructure required to bring three phase power from BC Hydro out to the Spirit Bay economic development zone. SB Utilities intended to recover that significant investment through the additional revenue from selling electricity purchased at bulk rates from BC Hydro and distributed to customers in the Spirit Bay development at fair market value; however, that is currently not possible under the current structure of the UCA.

In addition, SB Utilities has established a geothermal ocean direct energy system. The system was funded in part through a \$440,000 provincial grant from the BC First Nations Clean Energy Fund. In order to receive the full amount of the grant, Beecher Bay must be able to provide the province examples of six months of billing. To date, because SB Utilities was not granted an exemption, it has not been able to provide the requisite examples and has not been able to recover all of its costs for developing this system or realize its full objectives in supplying clean energy to leaseholders.

In the Spirit Bay Utilities Ltd. Application for Exemption Pursuant to Section 88(3) of the *Utilities Commission Act* proceeding, the British Columbia Utilities Commission (BCUC) directed in Order G-175-16 as follows:

Spirit Bay Utilities Ltd. is to produce a plan, including proposed filings and timing, which will ensure Spirit Bay Utilities Ltd.'s and Spirit Bay Developments Limited Partnership's compliance with the UCA on a prospective basis.

The BCUC further stated:

As the Panel has denied Spirit Bay Utilities' request for an exemption pursuant to section 88(3) of the UCA, it is required to comply with section 45 of Part 3 of the UCA. As such, Spirit Bay Utilities and Spirit Bay Developments must not begin the construction or operation of a public utility plant or system without first obtaining a certificate of public convenience and necessity (CPCN) from the Commission. At the time of this application, the Panel notes that infrastructure of the thermal energy system and the initial electrical system is in place; however, no propane utility assets have been placed in the

ground. Each of these systems may require a CPCN from the Commission. As well, before services can be provided and charged to customers, Spirit Bay Developments and/or Spirit Bay Utilities will require approval of tariffs under sections 59-61 of the UCA.

- 1.1 Please confirm, and if confirmed explain, that SB Utilities did not file an application for a CPCN under section 45 of the UCA, or an application for approval of tariffs under sections 59 to 61 of the UCA, following the BCUC determination in Order G-175-16. If not confirmed, please explain why.
- 1.2 Please elaborate why it would not be not possible for SB Utilities, as a regulated utility under the UCA, to sell electricity purchased at bulk rates from BC Hydro to customers in the Spirit Bay development.
- 1.3 Please explain further why SB Utilities has not been able to provide the province with examples of six months of billing, as a public utility regulated under the UCA.

**2.0 Reference: Exhibit C9-2, p. 5
Characteristics of an Indigenous utility**

Beecher Bay states in Exhibit C9-2:

As Kris Obrigewitsch described in his oral submissions, Beecher Bay cautions against requiring that Indigenous utilities be 100% Indigenous owned. This would create a significant barrier to Indigenous economic development as utility projects may require more capital than that to which many First Nations will have immediate access. This may also impede the overarching objective of reconciliation between Indigenous peoples and communities and all Canadians, which should be at the forefront of all decisions affecting Indigenous peoples.

- 2.1 Does Beecher Bay have further views on how to characterize an Indigenous utility beyond not requiring 100 percent Indigenous ownership of the utility?

**3.0 Reference: Exhibit C9-2, pp. 5, 6, 8
Regulation of Indigenous utilities**

On pages 5 to 6 of Exhibit C9-2, Beecher Bay states:

Beecher Bay's position is that Indigenous utilities should be exempt from the UCA and not regulated as other public utilities. Self government, if it is to be meaningful, must include the right to make laws and oversee all matters that fall within Indigenous governments' jurisdiction. Utilities located on reserves or Treaty settlement lands fall within the jurisdiction of Indigenous governments and provincial and federal governments should recognize Indigenous peoples' inherent governance rights and responsibilities, including to regulate any such Indigenous utilities.

...It should also be open to Indigenous utilities to provide services off of their lands and there should be flexibility in any regulatory arrangement to allow for these various scenarios. Indigenous Governments are already subject to regulatory frameworks with their own mechanisms and remedies to protect ratepayers and to ensure fairness. Where an Indigenous utility would be providing utility services beyond its reserve or treaty settlement land, the relevant Indigenous government should also maintain its jurisdiction to regulate the utilities to maintain fairness and consistency among ratepayers in a region. In addition, an Indigenous utility may prove better situated to provide utility services to certain communities due to factors such as local geography or

other utilities' limited ability to provide services (which can be the case in remote locations). This could facilitate development and energy security.

On page 8 of Exhibit C9-2, Beecher Bay states:

First Nations' authority under FNLMA [*First Nations Land Management Act*] is at a minimum analogous to that of a municipality. Although not defined as a municipality under the *Interpretation Act*, other provincial legislation demonstrates that an Indigenous government should be viewed as, at the very least, equivalent in authority to a municipality or other form of local government. For example, the Community Charter defines a 'public authority' to include a First Nation.

- 3.1 Please explain further what flexibility Beecher Bay would expect to see in the regulatory arrangements for Indigenous utilities to provide services beyond their lands.
- 3.2 In Beecher Bay's view, please explain whether any exemption from regulation under the UCA granted to Indigenous utilities should apply to utilities that:
 - a) Are owned wholly or in part by an Indigenous Nation¹;
 - b) Are owned wholly or in part by an Indigenous Nation-owned corporation; and/or
 - c) Serve customers beyond Reserve/Treaty lands.
- 3.3 From the perspective of Beecher Bay, please discuss the mechanisms and remedies Indigenous utilities employ to maintain consistency and fairness among ratepayers.
- 3.4 Please discuss Beecher Bay's views on how the interests of Indigenous utility ratepayers who reside off Reserve or beyond the Treaty settlement land could be protected if an Indigenous Nation's laws or treaty did not extend beyond such lands.

**4.0 Reference: Exhibit C4-2, pp. 8–9; Exhibit C9-2, p. 5
Applicability of the UCA**

Beecher Bay states in Exhibit C9-2: "[u]tilities located on reserves or Treaty settlement lands fall within the jurisdiction of Indigenous governments," which is discussed further on pages 6 to 9.

Prepared by its legal counsel on pages 8 to 9 in Exhibit C4-2, FortisBC Group of Companies (FortisBC) provides an analysis of constitutional considerations with respect to the applicability of the UCA and the jurisdiction of the BCUC on Reserve lands. FortisBC submits that the UCA is a law of general application and applies to Reserve lands.

- 4.1 Please provide Beecher Bay's view of the legal analysis provided by FortisBC, regarding the applicability of the UCA on Reserve lands.

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