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Utilities Commission

**Patrick Wruck**  
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August 2, 2019

Sent via email/eFile

**BCUC INDIGENOUS UTILITIES REGULATION INQUIRY**  
**EXHIBIT A-26**

Ms. Robin Phillips  
JFK Law Corporation  
816 - 1175 Douglas Street  
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**Re: British Columbia Utilities Commission – Indigenous Utilities Regulation Inquiry – Project No. 1598998 - BCUC Information Request No. 1**

Dear Ms. Phillips:

Further to British Columbia Utilities Commission Order G-110-19, enclosed please find BCUC Information Request No. 1 to Adams Lake Indian Band. 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

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British Columbia Utilities Commission  
Indigenous Utilities Regulation Inquiry

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**INFORMATION REQUEST NO. 1 TO ADAMS LAKE INDIAN BAND**

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**1.0 Reference: Exhibit C14-2, pp. 2–3, 8  
Structural barriers**

On pages 2 to 3 of Exhibit C14-2, the Adams Lake Indian Band (Adams Lake) states:

By ensuring room for Indigenous governance of Indigenous utilities, the BCUC [British Columbia Utilities Commission] would remove a structural barrier to Indigenous economic development and capacity building and facilitate meaningful reconciliation in British Columbia.

On page 8, Adams Lake states:

For reconciliation to have any meaning, the regulation of Indigenous utilities cannot just be another example of importing external laws, policies, and regulations onto Indigenous governments without consideration of their perspectives or their laws and legal principles.

- 1.1 In Adams Lake’s view, please briefly discuss examples of any structural barriers to economic development and capacity building that may exist as a result of regulating Indigenous utilities under the *Utilities Commission Act* (UCA).

**2.0 Reference: Exhibit C14-2, p. 3  
Providing utility services**

Adams Lake states in Exhibit C14-2: “In the future, Adams Lake also intends to adopt a Land Code guiding land use and management, which ought to include the right to provide utility services.”

- 2.1 Please confirm if the Land Code guide would apply to non-Indigenous lease holders.
- 2.2 Please clarify if “the right to provide utility services” should be interpreted to mean “the right to provide utility services without being subject to BCUC regulation.”
- 2.2.1 Please also clarify whether that right should apply only to the provision of utility services on reserve lands, traditional territories or beyond. Please provide the rationale for your response.

**3.0 Reference: Exhibit C14-2, p. 7  
Regulation of Indigenous utilities**

In Exhibit C14-2, Adams Lake states:

Where an Indigenous utility will provide utility services beyond its lands, it should maintain its jurisdiction over its services to promote 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. This in turn, may result in fewer costs associated with the development of new infrastructure, as ratepayers may be able to avail themselves of a proximate Indigenous utility system.

...Under the *Indian Act*, Adams Lake is empowered to enact bylaws governing local works that would ensure procedural fairness, transparency, and protect ratepayers; Adams Lake may also develop and enact comprehensive policies. By legislation, Council has been granted the authority to develop its own enactments, and this authority should be honoured.<sup>1</sup>

- 3.1 To the extent that it is possible at this time, please discuss any mechanisms that Adams Lake may introduce to manage an Indigenous utility, to ensure safe and reliable energy services at a fair price for ratepayers.
  - 3.1.1 If Adams Lake has a view, please explain how disputes between an Indigenous utility and non-Indigenous and Indigenous ratepayers would be resolved.
- 3.2 Please explain if the bylaws and policies would apply only to services provided on Adams Lake reserve lands, or to all areas where an Indigenous utility may serve.
  - 2.2.1 Please explain how the bylaws and policies would align with the Adams Lake Land Code Guide and other legislation.

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

Prepared by its legal counsel 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 the view of Adams Lake on the legal analysis provided by FortisBC, regarding the applicability of the UCA on Reserve lands.

**5.0 Reference: Exhibit C14-2, p. 8  
Resources for Indigenous utilities**

Adams Lake states:

It may be beneficial to develop resources to work in partnership with Indigenous utilities, providing resources, for example model rates bylaws, policies and resolutions. These forms of assistance, however, must remain firmly rooted in the objectives of self determination and self government.

- 5.1 Does Adams Lake have a view on whether such resources would be developed by the BCUC, or another entity, in partnership with Indigenous utilities?

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<sup>1</sup> Emphasis added.

**6.0 Reference: Exhibit C14-2, p. 6  
Ownership of Indigenous utilities**

Adams Lake states:

We would also caution against requiring that Indigenous utilities be exclusively Indigenous owned, as this would create an unfair barrier to Indigenous economic development. Utility projects often require more capital than that to which many First Nations will have immediate access and this barrier would unduly hamper cooperation and partnership between Indigenous and non-Indigenous people.

6.1 Does Adams Lake have a view on a minimum level of Indigenous ownership that would be required to be classified as an “Indigenous utility”?

**7.0 Reference: Exhibit C14-2, p. 5  
Additional revenue from Indigenous utilities**

Adams Lake states:

Adam’s Lake’s vision in establishing and operating its own utilities is progressive and revitalizing for the community and would contribute to a sustainable economy. The additional revenue generated by Indigenous owned and operated utilities would be significant, and would benefit both Adams Lake members and leaseholders. For example, additional own-source revenue would potentially allow the Nation to off-set others [sic] costs, freeing up resources to explore developments beneficial to the community.<sup>2</sup>

7.1 Please discuss how Adams Lake has determined that the additional revenue generated by Indigenous utilities would be significant.

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<sup>2</sup> Emphasis added.