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Utilities Commission

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August 2, 2019

Sent via email/eFile

BCUC INDIGENOUS UTILITIES REGULATION INQUIRY
EXHIBIT A-28

Mr. Paul Kariya
Coastal First Nations - Great Bear Initiative Society
Suite 1660 - 409 Granville Street
Vancouver, BC V6C 1T2
pkariya@coastalfirstnations.ca

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

Dear Mr. Kariya:

Further to British Columbia Utilities Commission Order G-110-19, enclosed please find BCUC Information Request No. 1 to Coastal First Nations. 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

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British Columbia Utilities Commission
Indigenous Utilities Regulation Inquiry

INFORMATION REQUEST NO. 1 TO COASTAL FIRST NATIONS-GREAT BEAR INITIATIVE

1.0 Reference: Exhibit C20-2, pp. 6–8
Flexibility with regulation

On page 6 of Exhibit C20-2, the Coastal First Nations-Great Bear Initiative (CFN) states:

> …[W]e recommend that Indigenous Nations/Bands should be able to form and operate unregulated utilities that serve areas where the majority of the customer base are a member of that Nation/Band, provided that such utilities do not discriminate in rates or terms of service between their Indigenous and non-Indigenous customers.

On page 7, CFN suggests the following amendments to the *Utilities Commission Act* (UCA) that provide the following:

> 1. Where in response to an application the Commission finds that a person that would otherwise be a public utility is owned by an Indigenous Nation/Band and intends to provide service primarily to members of that Nation, the Commission must exempt that person from all parts of the UCA; except
>
> 2. Where a customer of a person exempted under (1) complains to the Commission that it is receiving service at prices or on terms that are discriminatory relative to prices and terms under which the person provides service to its Indigenous customers, the Commission should retain the jurisdiction to hear that complaint, and order remedies with which the person must comply.

On page 8, CFN also notes:

> CFN recognizes, however, that when Indigenous utilities are operating as commercial (for profit) enterprises in a monopoly environment, regulation is required. Nevertheless, even in these cases, there are certain circumstances where the form of regulation should be adjusted.

1.1 Does CFN have a view on whether the "majority of the customer base" should be measured by the number of customers, or the overall revenue received from customers?

1.1.1 Under CFN's proposal, would an Indigenous utility that initially provided service primarily to members of that Nation/Band but at some later date provided service primarily to non-members of that Nation/Band then be subject to regulation under the UCA at that time?

1.2 Please confirm if both members and non-members of a Nation/Band would be able to complain to the British Columbia Utilities Commission (BCUC) under CFN's proposal.

1.3 Please clarify if the proposed exemption would only be applied to not-for-profit utilities.

2.0 Reference: Exhibit C20-2, pp. 7–8
Exceptions for consumer-owned utilities

In Exhibit C20-2, CFN describes a proposal for exceptions from regulation for consumer-owned utilities.

2.1 Please clarify under CFN's proposal whether "consumer-owned" could also mean owned in whole or in part by non-Indigenous consumers.

2.2 Please clarify under CFN's proposal whether an Indigenous Nation[1] itself could be the owner, or whether each individual customer of the utility would need to have a separate ownership share.

3.0 Reference: Exhibit C20-2, pp. 12, 14
Determining an Indigenous utility

On page 12 of Exhibit C20-2, CFN states:

> While imperfect and subjective, CFN believes that 'material benefits' tests are preferable to alternatives such as defined ownership requirements. In CFN's experience, such defined limits are easily and commonly circumvented- cases where majority ownership structures deliver negligible benefits to Indigenous interests are a frequent outcome.
>
> …For these reasons, CFN suggests that the Commission should test for Indigenous value when determining whether an entity is an Indigenous Utility.

3.1 Please clarify whether "material benefits" and "Indigenous value" tests are the same, and if not, describe how they differ?

3.2 If CFN has a view, please expand on how these tests may be developed for the purposes of determining whether an entity is an Indigenous utility.

3.2.1 Would there be a single test that would be applied to all prospective Indigenous utilities? If so, what are the specific elements of that test?

On page 12, CFN also states:

> In the worst cases, economic forces create competition among Indigenous Nations/Bands and its members to 'sell' their Indigenous status as 'majority' partners. The competition drives down the value of these arrangements to the Indigenous interests. The result: a very low share of returns to the Indigenous partner, despite a nominal 'majority' stake in the firm.

3.3 In the above example, please clarify whether an Indigenous Nation would still have majority control of the decision-making in a firm.

On page 14, CFN states:

> CFN is suggesting that Indigenous governments should be able to provide service to their constituents on a substantially unregulated basis. We would expect that this will often, but not always, occur on lands over which the Indigenous government has political control. The exceptions are likely to occur at the geographic edges, where the practicalities of system design and service area do not align exactly with political boundaries. For example, it may make sense for an Indigenous Nation with two proximate reserves to serve customers situated between these reserves.

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

3.4 For the purposes of considering exemptions from regulation under the UCA, does CFN have a view on whether the land that a utility operates should be:

a) classified in any definition of "exempt Indigenous utility;"
b) considered on a case-by-case basis in a utility's application for an exemption; or
c) based on some other mechanism?

4.0 Reference: Exhibit C20-2, pp. 13, 15, 17
Non-constituent customers

On page 13 of Exhibit C20-2, CFN states:

> CFN is suggesting that Indigenous governments should be able to provide service to their constituents on a substantially unregulated basis. Where doing so practically involves selling service to some non-constituent customers, we have suggested that the Commission should retain for itself a role in ensuring non-discrimination between constituent and non-constituent customers of a similar class.[2]

On page 15 of Exhibit C20-2, CFN states:

> CFN is suggesting two exceptions to regulation, where internal governance can adequately constrain undesirable monopoly behaviour. Specifically, we believe that political accountability can replace regulation in cases where Indigenous Utilities are government controlled and are serving constituents. Similarly, we believe that corporate governance can serve this function in the case of customer-owned utilities.[3]

On page 17 of Exhibit C20-2, CFN states:

> CFN respectfully submits that no 'relationship' between the Indigenous government, and the Commission is required in these cases. As noted, this changes slightly if the government-owned Indigenous Utility is serving customers who are not constituents of the Indigenous government. In this case, CFN believes that the Commission may need to retain a role to protect these non-constituent customers from monopoly discriminations.[4]

4.1 Please confirm, or explain otherwise, that "constituent customers" refers to customers who are members of an Indigenous Nation.

4.2 Please discuss the accountability that would apply when a government-owned Indigenous utility serves non-constituent customers?

4.2.1 Please explain how CFN sees the role of the BCUC in protecting non-constituent customers from monopoly discrimination should be carried out?

5.0 Reference: Exhibit C20-2, pp. 6, 8–10, 10–11
Modified ratemaking

On pages 8 to 10, CFN sets out considerations for the regulation of Indigenous utilities that are operating as commercial (for profit) enterprises in a monopoly environment. CFN submits that the form of ratemaking regulation applied by the BCUC should seek to avoid the transfer of value intended for Indigenous interests to non-Indigenous customers.

[2] Emphasis added.
[3] Emphasis added.
[4] Emphasis added.

5.1 Please discuss if CFN has a view on how such outcomes should be addressed. For example, would this require an amendment to the UCA, or would such issues need to be considered on an application-by-application basis or based on some other mechanism?