

FLINTOFF
 INFORMATION REQUEST **NO. 1**- 1598998

FortisBC
BCUC– Indigenous Utilities Regulation Inquiry – Project No. 1598998

Table of Contents	Page No.
A. Definitions	1
B. THE APPROPRIATE REGULATORY MODEL(S):	2
C. Group 3 Indigenous Utilities – “Indigenous Nation” Has Controlling Interest	4
D. Loopholes that Would Allow Utilities to Avoid Scrutiny	4

A. DEFINITIONS

- 1.0 **Reference: THE DEFINITION OF “INDIGENOUS UTILITIES”**
Exhibit #C5-2, Section # 3, pp. # 5-7
Public Utility and Village

The Terms of Reference define “indigenous utility” as follows: “a public utility that is owned or operated in full or in part, by an indigenous nation”. This definition is so broad that it would encompass:

- everything from a micro-utility owned, in whole or in part, by a First Nation for on-reserve service, to a utility like MHLP, all the way to a major investor-owned utility that happens to have sold a single non-voting share to an “indigenous nation”;
- a company that provides, for compensation, any of the types of service referenced in the definition of “public utility”, including natural gas, electricity, or thermal energy;
- a company that serves Indigenous peoples or non-Indigenous peoples; and
- a company that operates entirely on a Reserve, as well as a utility that covers the entire province.

...

The breadth of entities (which only vary by geographic scope and ownership) captured within the term “indigenous utility” demonstrates that the phrase is too broad to be useful in a practical sense when it comes to determining the appropriate approach to regulation.

LOCAL GOVERNMENT ACT, Part 2 — Incorporation of Municipalities and Regional Districts,
 Division 4 — Specific Powers in Relation to Municipal Letters Patent, Section 26 — Letters patent for reserve village: additional powers

26 (1) Letters patent incorporating a village under section 9 (1) [*incorporation of reserve residents as village*] may

(a) include exceptions from statutory provisions,

(b) specify the effective period or time for an exception, and

(c) provide for restriction, modification or cancellation by the Lieutenant Governor in Council of an exception or its effective period.

(2)The letters patent or agreement referred to in section 9 (1) may exempt the municipality or owners or residents from a provision of this or another Act and may include a provision considered desirable whether or not it is consistent with any Act.

1.1 Would the word “village” from the LGA inserted into the definition of public utility in the UCA along with municipality and regional district be sufficient to create a level playing field that protects not only the customers but all utilities in the province? See excerpt below:

"public utility" means a person, or the person's lessee, trustee, receiver or liquidator, who owns or operates in British Columbia, equipment or facilities for

...

but does not include

(c) a municipality or regional district in respect of services provided by the municipality or regional district *or village* within its own boundaries,

...

1.1.1 If not, why not? Please elaborate.

B. THE APPROPRIATE REGULATORY MODEL(S):

2.0 Reference: **Approach to Indigenous Utility Regulation Can Be Usefully Considered in Relation to Five Groupings**
Exhibit B-1, Section 1.4, pp. 8–9
Regulatory Groupings

Grouping	Description	FortisBC Position	Rationale
1	An “indigenous nation” ¹⁵ provides unmetered service to members only, without compensation.	Not subject to the UCA.	This service is not “public utility” service if there is no compensation payable.
2	Public utility with <u>controlling</u> interest owned by an “indigenous nation”, serving only Indigenous peoples who <u>have</u> a say in the governance of the “indigenous nation”.	Section 88(3) exemption from Part 3 of the UCA.	Similar to municipalities, where consumer protection is provided by the ability to vote for municipal government.
3	Public utility with controlling interest owned by an “indigenous nation”; serving one or more customers who don’t have a say in the governance of the “indigenous nation” ¹⁶	Regulated by BCUC. Nature of regulation depends on other factors typically considered by the BCUC.	The rationale for an exclusion akin to municipalities is absent. Some customers would have no meaningful recourse in the event of inadequate service or excessive rates. The nature of regulation (i.e. whether light-handed or not)

			should depend on the extent of consumer vulnerability and proportionality of regulatory burden.
4	Public utility with non-controlling interest owned by an “indigenous nation”; serving one or more customers who don’t have a say in the governance of the “indigenous nation”. ¹⁸	Regulated by BCUC. Nature of regulation depends on other factors typically considered by the BCUC.	The rationale for an exclusion akin to municipalities is absent. Some customers would have no meaningful recourse in the event of inadequate service or excessive rates. Necessary to avoid gaming. An investor owned public utility should not be able to avoid regulation by the BCUC, simply by granting a non-controlling interest to an “indigenous nation”.
5	Public utility owned either by “indigenous nation”, other non-Indigenous investors, or both; “indigenous nation” is contracted operator;	The owner is a public utility, regulated by the BCUC. A contractor may or may not be a public utility regulated by the BCUC. Nature of regulation depends on other factors typically considered by the BCUC.	A contractor may or may not be a public utility regulated by the BCUC, depending on the extent of delegation of the owner’s rights and obligations. The rationale for an exclusion akin to municipalities is absent. Some customers would have no meaningful recourse in the event of inadequate service or excessive rates.

2.1 Rational for Grouping 1 states: “This service is not “public utility” service if there is no compensation payable.”

2.1.1 The concept of “free” is difficult to demonstrate. Compensation can take many forms not just currency. On November 26, 2018, the BCUC issued the Phase 1 Report. ... The broad definition of “compensation” in the UCA encompasses many forms of direct and indirect compensation rendering most EV charging stations to be public utilities.

2.1.1.1 Please elaborate on what without compensation entails.

2.2 Rational for Grouping 2 states: “Similar to municipalities, where consumer protection is provided by the ability to vote for municipal government.”

2.2.1 In the description “Public utility with controlling interest owned by an “indigenous nation”, serving only Indigenous peoples who have a say in the governance of the “indigenous nation”; however, when the indigenous “public” utility serves non-indigenous customers who may not have a vote, does a difference arise?

- 2.2.2 Should the exemption be applied for individually or granted to all indigenous nations as each indigenous nation may have different treaty agreements for utilities with the governments?
- 2.3 Rational for Grouping 3 states: “The rationale for an exclusion akin to municipalities is absent. Some customers would have no meaningful recourse in the event of inadequate service or excessive rates.”
 - 2.3.1 As it is still Public utility with controlling interest owned by an “indigenous nation”; serving one or more customers who don’t have a say in the governance of the “indigenous nation”, would not the public utility come under the UCA? Please explain.
 - 2.3.2 If the indigenous utility was owned or operated (not just an interest), could it be conferred with the status of a “village” akin to a municipality or regional district and permit the exempt utility to regulate rate and complaints similar to other municipalities or regional districts who have non-voting businesses or customers who live outside of their boundaries. Please elaborate if you feel otherwise.
- 2.4 Should the definition “public utility” apply for an indigenous nation who directly owns or operates a utility for the public or a corporation for compensation within its own boundaries?

C. GROUP 3 INDIGENOUS UTILITIES – “INDIGENOUS NATION” HAS CONTROLLING INTEREST

- 3.0 **Reference: “Indigenous Nation” Has Controlling Interest
Exhibit C4-2, Section 4.4.3, p. 16
Traditional Lands**

For example, as a municipality, the City of Nelson is excluded from the definition of a public utility with respect to energy sales within its own boundaries. However, the Commission does regulate the City of Nelson’s sales with respect to customers in the surrounding area.

- 3.1 Does FBC believe that the Commission could regulate indigenous district lands and traditional lands using the same concept as the City of Nelson?

D. LOOPHOLES THAT WOULD ALLOW UTILITIES TO AVOID SCRUTINY

- 4.0 **Reference: “Indigenous Nation” Has Controlling Interest
Exhibit C4-2, Section 4.4.3, p. 16
Traditional Lands**

FortisBC’s view is that “indigenous utilities” should generally be regulated in a similar manner to non-“indigenous utilities”. In that case, a change in ownership should not result in the need to change the form of regulation.

- 4.1 Does FBC believe that it is necessary for indigenous utilities to be regulated in the same manner as non-indigenous utilities?
- 4.2 Please explain the benefits of having the same regulations apply to indigenous utilities as non-indigenous utilities.