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August 12, 2019

VIA ELECTRONIC MAIL

Mr. Donald Flintoff
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Dear Mr. Flintoff:

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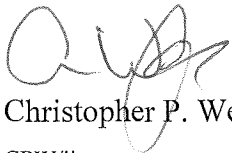
Re: British Columbia Utilities Commission – Indigenous Utilities Regulation Inquiry – Project No. 1598998

We are counsel to the Commercial Energy Consumers Association of British Columbia (the “CEC”). Attached please find the CEC’s first set of Information Requests on written evidence to Donald Flintoff with respect to the above-noted matter.

If you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Yours truly,

OWEN BIRD LAW CORPORATION



Christopher P. Weafer

CPW/jj
 cc: CEC
 cc: BCUC
 cc: Registered Interveners

**COMMERCIAL ENERGY CONSUMERS ASSOCIATION
OF BRITISH COLUMBIA (“CEC”)**

Intervener Information Request No. 1 to Don Flintoff on Written Evidence

**British Columbia Utilities Commission Indigenous Utilities Regulation
Project No. 1598998**

August 12, 2019

1. Reference: Exhibit C5-2, Flintoff PDF page 7 and page 10

The regulation of indigenous utilities is a complex matter. First, the individual treaties with these indigenous nations must be respected along with any provincial agreements that are in place with the indigenous nations and the provincial government. In certain instances, the indigenous nations may have different individual treaty rights regarding the operation of a utility. If after consultation and assuming the indigenous nations above are in agreement with complying with the UCA, then they should have the same status as a municipality or regional district which should provide a fair and level playing field for all existing and new utilities, indigenous as well as the other non-indigenous utilities.

It may be easier to define when an indigenous nation would not a public utility under the UCA and therefore not subject to regulation. This is the approach I intend to pursue in my submission.

3.1. Definition of an Indigenous Utility

In attempting to define an indigenous utility within the UCA, we should look at whether or not the indigenous is exempt from regulation. Assuming the indigenous nation has the status of a municipality or regional district and provides services within its own boundaries then it should be exempt from regulation. However, boundaries for a municipality or regional district are usually easy to define. However, the indigenous nations' boundaries need to be determined. Indigenous lands may be reserves, villages, district lands, traditional lands, crown lands just to name a few. So, to be an indigenous utility and exempt from regulation, the boundaries need to be discussed further.

As Indigenous lands such as reserves, villages, district lands, traditional lands, crown lands may not be contiguous but scattered throughout the traditional lands. The Panel, if an exemption is considered, should take this matter into account.

- 1.1 Mr. Flintoff appears to claim that an indigenous nation public utility should be exempt from regulation in a similar manner as a municipality or regional district, and defines an indigenous public utility as being one which is defined as having the status of a municipality or regional district. Please provide the criteria which declares a first nation to have municipal or regional district status.
- 1.2 Would Mr. Flintoff exclude indigenous nation public utilities from exemptions because they do not have municipality or regional district status? Please explain.

2. Reference: Exhibit C5-2, Flintoff, PDF page 27

If an indigenous directly owned utility provides services to its customers within its own boundaries, then it is not a public utility.

Do customers of the utility services pay for the service?

If an indigenous owned utility provides services to its customers within its own boundaries, then it is not a public utility and the indigenous nation decides if and what its customers will pay for the services provided.

If so, how and by whom are the rates determined?

If an indigenous directly owned utility provides services to its customers within its own boundaries, then it is not a public utility and the indigenous nation decides the customers' rates. Otherwise, the indigenous nation is a public utility then the rates are decided in a BCUC rate design hearing.

BCUC (i).C.1 - Are the customers of the utility Indigenous nation/ band members only?

Response BCUC (i).C.1:

No, not necessarily. Non-band members or commercial enterprises on indigenous district lands may also be customers. Also, sale of energy to other utilities may be possible.

- 2.1 Please explain how ratepayers are protected under Mr. Flintoff's concepts.

3. Reference: Exhibit C5-2, PDF page 26

BCUC (i).B.5 - Does the service provided by the Indigenous utility compete with or displace other services that are currently provided by third parties?

Response BCUC (i).B.5:

If an indigenous utility provides services to its customers within its own boundaries, then it is not a public utility and the indigenous nation may compete with or displace other services that are currently provided by third parties; but the customers should still have a choice of service provider when the indigenous utility displaces other services. The utility lines should be open for use by other suppliers.

- 3.1 Please comment on the cost risks to ratepayers not within the indigenous utility boundaries in maintaining service for a limited number of customers who have the option of alternative service.