

D Barry Kirkham, QC⁺
 Duncan J Manson⁺
 Daniel W Burnett, QC⁺
 Ronald G Paton⁺
 Karen S Thompson⁺
 Laura A Wright
 James H McBeath⁺
 Scott H Stephens⁺
 David W P Moriarty
 Katharina R Spatzl
 Patrick J Weafer

Robin C Macfarlane⁺
 Alan A Frydenlund, QC⁺ *
 Harvey S Delaney⁺
 Paul J Brown⁺
 Gary M Yaffe⁺
 Harley J Harris⁺
 Kari F Richardson⁺
 James W Zaitsoff⁺
 Daniel H Coles⁺ *
 Sameer Kamboj
 Georgia Barnard

Josephine M Nadel, QC⁺
 Allison R Kuchta⁺
 James L Carpick⁺
 Patrick J Haberi⁺
 Heather E Maconachie
 Jonathan L Williams⁺
 Paul A Brackstone⁺ *
 Pamela E Sheppard⁺
 Jocelyn M Bellerud⁺
 Brian Y K Cheng^{**}
 Lucky D Johal

James D Burns⁺
 Jeffrey B Lightfoot⁺
 Christopher P Weafer⁺
 Gregory J Tucker, QC⁺ ** **
 Terence W Yu⁺
 Michael F Robson⁺
 Barbara E Janzen
 George J Roper⁺
 Tony R Anderson
 Steffi M Boyce

Rose-Mary L Basham, QC, Associate Counsel⁺
 Jennifer M Williams, Associate Counsel⁺
 Hon Walter S Owen, QC, QC, LLD (1981)
 John I Bird, QC (2005)

⁺ Law Corporation
^{*} Also of the Yukon Bar
^{**} Also of the Alberta Bar
^{***} Also of the Ontario Bar
^{**} Also of the Washington Bar

OWEN BIRD

LAW CORPORATION

PO Box 49130
 Three Bentall Centre
 2900-595 Burrard Street
 Vancouver, BC
 Canada V7X 1J5

Telephone 604 688-0401
 Fax 604 688-2827
 Website www.owenbird.com

August 12, 2019

VIA ELECTRONIC MAIL

Mr. Niilo Edwards
 Executive Director
 First Nations Major Project Coalition
 Suite 905, 100 Park Royal
 West Vancouver, BC V7T 1A2
 executivedirector@fnmpc.ca

Direct Line: 604 691-7557
 Direct Fax: 604 632-4482
 E-mail: cweafer@owenbird.com
 Our File: 23841/0209

Dear Mr. Edwards:

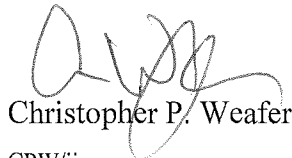
**Re: British Columbia Utilities Commission – Indigenous Utilities Regulation Inquiry –
 Project No. 1598998**

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 First Nations Major Project Coalition 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 First Nations Major Projects Coalition on
Written Evidence**

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

August 12, 2019

1. Reference: Exhibit C3-3 FNMCP Written Evidence page 6

MPC found 32 cases of Canadian Indigenous ownership in electricity generation and transmission with most of the examples being in Ontario.

In Ontario there are cases of full -- or planning-to-be full -- First Nations utility ownership like the 100% Indigenous-owned Five Nations Power Five Nations Energy Inc. which owns and operates the Western James Bay Transmission Line Project serving Indigenous communities in Northeastern Ontario, and Wataynikaneyap (Watay) Power, a 24 First Nation majority-owned electricity transmission company located in Northwestern Ontario.

Watay was established by Northwestern Ontario First Nations to connect 24 First Nations to the main provincial electricity grid. In total, Watay will build (and has begun to build), own and operate 1,800 km of 230 kV, 115 kV, and 44 kV lines transmission lines worth approximately \$1.9 billion. At the moment, First Nations own 51% of the company with the balance being held by FortisOntario. Watay intends to extend their ownership to 100% in the coming years.

It appears that every Ontario example is regulated under existing provincial regulations.

1.1 Please provide the ‘existing provincial regulations’ which govern the Ontario examples.

2. Reference: Exhibit C3-3, FNMPC Written Evidence page 9

Submission to the BCUC Indigenous Utilities Regulation Inquiry

2. Rates - Cost Reduction and Management of Electricity Costs

- a. Unlike Canada, US states allow for private market competition in energy generation, transmission and delivery. Within their operation areas, US tribal utilities compete for customers in an open market.
- b. Several of the US tribes contacted commented that this competition keeps their rates to a competitive level. Few of the tribes have a regulated rate structure, relying on the private market to set competitive rates.
- c. As utilities, the US tribal entities are able to make wholesale power purchases, allowing them to benefit from bulk energy discounts. In some cases, the utilities passed on these savings to their customers.

2.1 Please provide a list of the key benefits of market competition.

- 2.1.1 For each benefit please comment on whether or not FNMPC believes they can or should be replicated through regulation, and if so, how.**

3. Reference: Exhibit C3-3 FNMPC Written Evidence page 11

The BCUC questions as posed are a technical attempt (solving a problem with expert knowledge) to solve an adaptive challenge (solving a problem with new learnings from all parties). The adaptive challenge is the question of how the BC Crown and First Nations will interact on unceded traditional territories. In the cited US examples, the issue of delineated sovereignty is clear. In BC, it is not.

The Canadian Indian Reserves as set out by the Indian Act are not seen by most First Nations as indicative of their unceded traditional territories and inherent jurisdiction.

This question of implied or assumed jurisdiction is outside of the BCUC's mandate for this inquiry. Without a mandate to reconcile this greater issue, any BCUC technical recommendations on how or where Indigenous utility services will be provided, or advice on BC-defined regulations for First Nations on federally-imposed Indian Reserves, will be rendered moot by future court decisions on Indigenous land questions, or by the evolving interpretation of UNDRIP articles, most specifically Article 18 which addresses decision making in areas of rights impact and Article 26 concerning traditional Indigenous lands.

- 3.1 Please provide FNMPC's views as to the obligations of BC Hydro to provide service at this time within traditional territories.
- 3.2 Does FNMPC consider that BC Hydro is obligated to interconnect with indigenous electricity utilities at this time? Please comment.
 - 3.2.1 If yes, please confirm that BC Hydro's electric tariff governs BC Hydro's interconnection with indigenous electric utilities.

4. Reference: Exhibit C3-3, FNMPC Written Evidence page 12

- 3. Encourage the formation of a BC Indigenous utility association that can address utilities issues in a collective manner.
 - a. This association would act in a similar manner as the US tribal utilities associations, providing interested First Nations a venue to share interests, technical skills, and common community and commercial concerns.
 - b. This association would also be instructive to begin a dialog on how concurrent BC Crown and Indigenous jurisdictions might operate within the province.

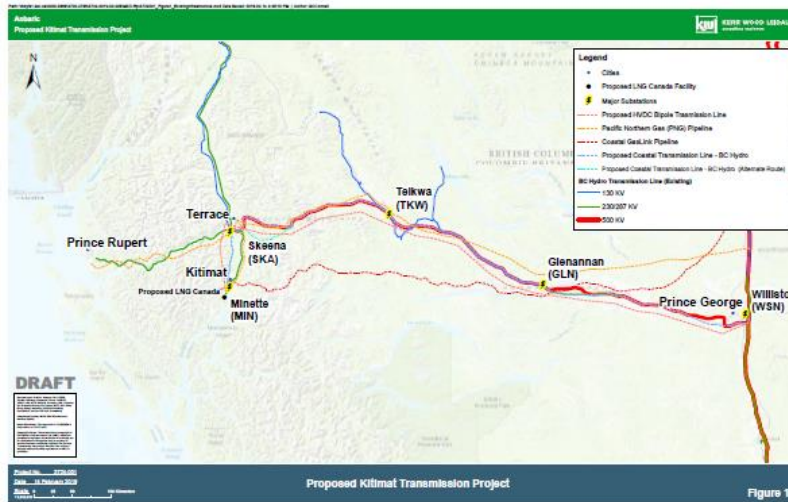
- 4.1. Please describe the manner in which FNMPC believes that the BCUC should 'encourage' the formation of a BC Indigenous utility association.
 - 4.2. Please describe the expected impact such encouragement is likely to have.
 - 4.3. Does FNMPC believe that the BCUC should be involved in such an association? Please explain.
5. **Reference: Exhibit C3-3, FNMPC Written Evidence Appendix B page 30**

BRITISH COLUMBIA – Kitimat Transmission Project

In Northern BC, 16 First Nations are pursuing a joint-venture to develop a 530 km electricity transmission project from Prince George to Kitimat. The First Nations propose to develop two, \$1.8 billion, 500kV direct current (DC) transmission lines to provide power to the proposed Chevron-Woodside liquid natural gas (LNG) facility in Kitimat, BC. The transmission lines would be a First Nations majority-owned project.

The current Prince George to Kitimat transmission line does not have the capacity to transmit the energy needed to power energy-intensive LNG refrigeration units. The transmission lines would allow the LNG facility to use clean hydroelectric power instead of greenhouse gas (GHG) intensive natural gas-fired power plants to produce LNG. The construction of the two transmission lines will ensure that BC LNG will be the cleanest LNG in the world in terms of GHG per unit.

Figure 13. Kitimat Transmission Project



Source: FNMPC.

Questions for further research:

- How will the First Nations secure capital for their part of the transmission line joint-venture?
- How will the 16 First Nations work together in a corporate structure?
- What will be the role of the development partners once the project is built?
- Could the transmission lines be extended into Prince Rupert or to other areas to service additional industrial or residential customers? If so, what are other potential projects such as microgrids that could be connected to the line?
- How will the 16 First Nations address the issues of shared traditional territory/overlap?
- Would this project qualify for Infrastructure Bank of Canada funding?
- How will the First Nations raise their part of the capital for the project?
- Does this project require a government loan guarantee? Other government funding?
- What number of jobs and in which areas would the First Nation be eligible?
- How will the project income be distributed to the communities?
- Would the multiple First Nation ownership require a Sovereign Wealth Fund or trust fund to manage/distribute income?

5.1 Does FNMPC envision serving customers in Kitimat, Prince Rupert or elsewhere that are currently serviced by BC Hydro? Please explain.