

REQUESTOR NAME:

NUU-CHAH-NULTH TRIBAL COUNCIL, COWICHAN TRIBES, GITANYOW FIRST NATION, HOMALCO FIRST NATION and B.C. FIRST NATIONS CLEAN ENERGY WORKING GROUP (“COLLECTIVE FIRST NATIONS”)

INFORMATION REQUEST ROUND NO: #1

TO: FortisBC (“Fortis”)

DATE: August 12, 2019

ORDER NO: G-62-19

APPLICATION NAME: BCUC INDIGENOUS UTILITIES REGULATION INQUIRY

1.0 Reference: Exhibit C4-2, 1. Introduction, page 1, lines 8-10

“FortisBC includes the two largest regulated investor owned public utilities in British Columbia, one providing electricity (FBC) and the other (FEI) providing natural gas. FEI and FBC have been providing regulated utility service to British Columbians for decades.”

1.1 Please confirm that the largest portion of Fortis’ gas distribution system i.e. the Lower Mainland, was formerly owned by BC Hydro and sold in 1988 to Inland Natural Gas a predecessor to Fortis.

2.0 Reference: Exhibit C4-2, 4. The Appropriate Regulatory Model(s) pages 7 and 8, lines 24-28 and 1-2

“The appropriate approach to public utility regulation for an “indigenous utility” will reflect the consumer protection rationale underlying public utility regulation generally – that of ensuring safe and reliable service is maintained at a price that reflects the nature and quality of service provided and a fair return on the utility’s investment. In general, an “indigenous utility” should be regulated similarly to an equivalent non-“indigenous utility”, with the nature of the regulation (i.e. full or some form of light-handed regulation) dependent on what is required to achieve the purpose of regulation.”

2.1 Are First Nations not capable of providing “public utility regulation” of an “indigenous utility”?

2.2 If they are not capable please explain why and how this explanation is consistent with First Nation’s right to self-determination.

Grouping	Description	FortisBC Position	Rationale
2	Public utility with <u>controlling interest owned by an “indigenous nation”, serving only Indigenous peoples who have a say in the governance of the “indigenous nation”.</u>	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 <u>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”</u> 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. ¹⁷

- 2.3 Please confirm that First Nations members who live on reserve are not allowed to vote in municipal elections. If confirmed, please explain why.
- 2.4 Please confirm that First Nations members who live on reserve are allowed to vote in regional district elections? If confirmed, please explain why.

3.0 **Reference: Exhibit C4-2, “Utility Owned by Indigenous Nation Still Subject to Regulation Due to Absence of Adequate Recourse for Some Customers, page 16, lines 4 and 5.**

Fortis cites, presumably with approval, the following portion of the BCUC’s decision with respect to Spirit Bay Utilities:

“For Spirit Bay Utilities to state that a dispute resolution process is in place and that civil remedies are available through the courts does not distinguish Spirit Bay Utilities from any other regulated utility in the province except that it underlines that there is no independent regulator to whom complainants can turn.”

Section 3(1) of the Utilities Commission Act (B.C.) says that: “Subject to subsection (3), the Lieutenant Governor in Council, by regulation, may issue a direction to the commission with respect to the exercise of powers and the performance of the duties of the commission, including, without limitation, a direction requiring the commission to exercise a power to perform a duty, to refrain from doing either, as specified in the regulation.”

- 3.1 Doesn’t this provision allow the Provincial Government to import its biases into the decision process of the independent regulator?
- 3.2 How is the importation of these biases any different than the perceived biases of First Nations acting as regulators of indigenous utilities?
- 3.3 Do the commercial and industrial customers of public utilities have the right to vote in Provincial elections?

4.0 **Reference: Exhibit C4-2, Miscellaneous**

- 4.1 When a third party e.g. a First Nation, develops a greenfield residential, commercial or industrial real estate project on reserve lands or otherwise, does the third party pay the

- cost of the associated electrical and/or natural gas infrastructure or Fortis?
- 4.2 Does Fortis pay the third party any monies when the residential, commercial or industrial electrical and/or natural gas infrastructure is transferred to Fortis? If yes, please explain.
 - 4.3 Is the standard to which this electrical and/or natural gas infrastructure in accordance with Fortis' interconnection requirements? Please explain.