



bcuc
British Columbia
Utilities Commission

Patrick Wruck
Commission Secretary

Commission.Secretary@bcuc.com
bcuc.com

Suite 410, 900 Howe Street
Vancouver, BC Canada V6Z 2N3
P: 604.660.4700
TF: 1.800.663.1385
F: 604.660.1102

August 22, 2019

Sent via eFile

**BCUC INDIGENOUS UTILITIES REGULATION INQUIRY
EXHIBIT A-31**

Ms. Cheryl Moore
Acting Chief Executive Officer and Executive Director
Nisga'a Lisims Government
PO Box 213 / 2000 Lisims Dr
New Alyansh, BC V0J 1A0

**Re: British Columbia Utilities Commission – Indigenous Utilities Regulation Inquiry – Project No. 1598998 -
BCUC Information Request No. 1 on Nisga'a Nation Written Evidence**

Dear Ms. Moore:

Further to British Columbia Utilities Commission (BCUC) Order G-110-19, enclosed please find BCUC Information Request No. 1 on the Nisga'a Nation written evidence. In accordance with the Regulatory Timetable, please file your responses no later than Tuesday, September 10, 2019.

Sincerely,

Original signed by Nhi Do for:

Patrick Wruck
Commission Secretary

/ad
Enclosure

cc: Mr. David Bursey
Partner, Bennett Jones LLP
burseyd@bennettjones.com



British Columbia Utilities Commission
Indigenous Utilities Regulation Inquiry

INFORMATION REQUEST NO. 1 TO NISGA'A NATION

**1.0 Reference: Exhibit C21-3, pp. 6, 7, 12
Enactment of Nisga'a Nation Laws**

On pages 6 to 7 of Exhibit C21-3, the Nisga'a Nation as represented by the Nisga'a Lisims Government (Nisga'a Nation) states:

The Nisga'a Treaty also states that federal and provincial laws generally apply to, among other things, the Nisga'a Nation, Nisga'a Institutions, Nisga'a Corporations, Nisga'a citizens and Nisga'a Lands, but that, 'in the event of an inconsistency or conflict between [the Nisga'a Treaty] and the provisions of any federal or provincial law, [the Nisga'a Treaty] will prevail to the extent of the inconsistency or conflict.'

The Nisga'a Treaty then sets out, in detail, the subject matters over which Nisga'a laws will prevail to the extent of any inconsistency or conflict with federal over provincial laws, and conversely, where federal or provincial laws will prevail to the extent of any conflict with Nisga'a laws.

On page 13, the Nisga'a Nation states:

The Nisga'a Nation may in the future wish to draw down legislation regulating, among other things, a Nisga'a Utility for the generation, storage, distribution and sale of energy.

- 1.1 Please confirm whether to date, the Nisga'a Nation has enacted any laws specifically related to the provision or regulation of utility services.
- 1.2 Please clarify whether the establishment of a Nisga'a Utility would require the Nisga'a Nation to enact law(s) regarding the regulation of the Utility.
 - 1.2.1 If not, please explain in the view of the Nisga'a Nation, that in the absence of laws enacted by the Nisga'a Nation whether the *Utilities Commission Act* (UCA) could apply to the regulation of a Nisga'a Utility.

On pages 7 to 8, the Nisga'a Nation states:

As it relates to public works and utilities, the Nisga'a Government Chapter of the Nisga'a Treaty recognizes, *inter alia*, that:

...

Nisga'a Lisims Government may make laws in respect of the regulation, control, or prohibition of any actions, activities, or undertakings on Nisga'a Lands, or on submerged lands within Nisga'a Lands, other than actions, activities, or undertakings on submerged lands that are authorized by the Crown, that constitute, or may constitute, a nuisance, a

trespass, a danger to public health, or a threat to public order, peace, or safety;...²⁶
[Emphasis added]

In Footnote 26, it is stated that:

Nisga'a Treaty, Chapter 11 – Nisga'a Government Chapter, para 59. In the event of a conflict between a Nisga'a law under paragraph 59 or 60 and a federal or provincial law of general application, the federal or provincial law prevails to the extent of the conflict; Nisga'a Treaty, Chapter 11 – Nisga'a Government Chapter, para 62.

- 1.3 Please clarify the extent to which the enactment of laws related to the regulation of a Nisga'a Utility is enabled by Nisga'a Treaty, Chapter 11 – Nisga'a Government Chapter, para 59.
- 1.4 Please discuss if the Nisga'a Nation has a view on whether there may be any potential for conflict between the UCA and a law enacted by the Nisga'a Nation pursuant to Nisga'a Treaty, Chapter 11 – Nisga'a Government Chapter, para 59.

2.0 Reference: Exhibit C21-3, pp. 3, 16, 17
Proposed Exclusion from Definition of Public Utility

On page 3 of Exhibit C21-3, the Nisga'a Nation states:

The Nisga'a Nation has authority under the Nisga'a Treaty to enact laws that regulate utilities on Nisga'a Lands, and the provisions of these Nisga'a laws may prevail over the UCA to the extent of any inconsistency or conflict. Therefore, the threshold assumption that the BCUC has the authority to regulate a Nisga'a Utility on Nisga'a Lands is flawed.

On pages 16 to 17, the Nisga'a Nation proposes an exclusion to be added to the UCA definition of a "public utility." The Nisga'a Nation states on page 6:

The specific exclusion is necessary to respect the Nisga'a Nation's jurisdiction and allow the Nisga'a Nation to regulate the services provided by a Nisga'a Utility.

- 2.1 On the basis that the Nisga'a Nation has authority to enact laws that regulate utilities on Nisga'a Lands, which may prevail over the UCA, please explain why an exclusion from the UCA definition of a "public utility" is necessary.

3.0 Reference: Exhibit C21-3, p. 12
Attributes of a Nisga'a Utility

On page 12 of Exhibit C21-3, the Nisga'a Nation states:

A Nisga'a Utility could have the following attributes, while still retaining its fundamental character:

- a) wholly or partly owned by the Nisga'a Nation or an entity owned by the Nisga'a Nation;
- b) majority owned by the Nisga'a Nation or an entity owned by the Nisga'a Nation, with other Indigenous or non-Indigenous partners;
- ...
- e) the Nisga'a Utility provides services within Nisga'a Lands (i.e. 'within its own boundaries');....

- 3.1 Please confirm, or explain otherwise, that a Nisga'a Utility would be majority owned by the Nisga'a Nation or an entity owned by the Nisga'a Nation,
- 3.2 Please discuss if the Nisga'a Nation has a view as to how a Nisga'a Utility would be regulated if it were to provide service beyond Nisga'a Lands.