



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 29, 2019

Sent via eFile

BCUC INDIGENOUS UTILITIES REGULATION INQUIRY
EXHIBIT A-32

Mr. David Austin
Stirling LLP
Suite 1460 - 701 West Georgia Street
PO Box 10156, LCD Pacific Centre
Vancouver, BC V7Y 1E4
daustin@stirlingllp.com

**Re: British Columbia Utilities Commission – Indigenous Utilities Regulation Inquiry – Project No. 1598998
– Scott Hempling Information Request Responses to the Collective First Nations**

Dear Mr. Austin:

Further to the the August 12, 2019 Information Requests to Mr. Scott Hempling, on behalf of the Nuu-Chah-Nulth Tribal Council, Cowichan Tribes, Gitanyow First Nation, Homalco First Nation and BC First Nations Clean Energy Working Group (Collective First Nations), please find enclosed Mr. Hempling's responses.

Sincerely,

Original Signed By Ian Jarvis for:

Patrick Wruck
Commission Secretary

/ad
Enclosure

Responses by Scott Hempling to Questions of Collective First Nations August 28, 2019

1.0 Reference: Exhibit A-8, “I. Publicly-owned utilities”, page 8

“Publicly-owned utilities are utilities that are owned by the government or by the customers themselves. These utilities differ from shareholder-owned companies in two important ways. First, they are ultimately accountable to taxpayers or customers – so their leader can be removed by political actors. Second, they have no private shareholders, so there is no profit interest to cause conflict with the customers’ interests. Given these two facts some argue that an independent regulator is unnecessary; that these companies have every reason to regulate themselves. Others cite examples of nonprofit or government-owned utilities that are inefficient because they are monopolies making regulation no less necessary than it is for for-profit utilities”

1.2 What experience does the author have with utility regulation in British Columbia and in particular publicly-owned utilities? Please provide the details.

I do not have experience with utility regulation in British Columbia, other than this assignment, and a brief one for the Office of Auditor General in 2017. As for publicly-owned utilities, here is a brief list of my experience:

For my first three years out of law school (1984-87), was an associate in the law firm of Spiegel & McDiarmid, the largest and most prominent of Washington, DC firms that represent public power entities. I conducted all the remaining work listed below from my own law firm, which I founded in 1990.

Currently I advise the South Carolina Department of Administration in its legislatively required investigation into the future of Santee Cooper, the state-owned utility company.

From 2015-2018 I advised the new Puerto Rico Energy Commission in its oversight of the Commonwealth-owned Puerto Rico Electric Power Authority.

For the American Public Power Association, I prepared a U.S. Supreme Court brief in 1990, and co-authored a report on "municipal aggregation" in 2000. I have also presented several educational seminars to its members and spoken at its conferences.

I represented the Connecticut Municipal Electric Energy Cooperative in several merger and other proceedings in the early 1990s.

In 1997-98 I represented Suffolk County, New York (not a public power entity) in its legal challenges to various actions by the Long Island Power Authority.

On a very brief matter relating to competition I advised the Iowa Association of Municipal Utilities in the mid-1990s.

I prepared an expert witness report for the City of Jacksonville, Florida around 2015, relating to corporate responsibility for hazardous waste.

I advised Montgomery County, Maryland (not a publicly-owned utility) on a property tax dispute involving an electricity generating company.

I appeared as an expert witness for the City of Winter Park, Florida in an arbitration relating to the City's efforts to become a municipal utility.

2.0 Reference: Exhibit A-8, “B. Regulated actors”, page 10

“The main actor will be the utility that serves retail customers.”

2.1 What is meant by the term “retail customers”? Does it include residential, commercial and industrial customers? Residential customers only? Please explain.

As I used the term, and as it is used in the regulatory profession, “retail customer” is synonymous with “ultimate customer” or “consumer.” The phrase therefore includes any individual or entity that consumes the power that it purchases. It therefore includes residential, commercial, and industrial customers. Also local government, because a local government consumes power when it runs its streetlights and its offices. A Tribal Council also would be a retail customer to the extent it buys power for its own use—such as to light its offices. A Tribal Council could also be a wholesale customer, if it buys power and then resells it to residents and businesses for consumption. (A wholesale customer would be a customer that resells what it purchases to others.)

Thank you for these questions. If you have additional ones you may contact me at shempling@scotthemplinglaw.com, 301-754-3869.