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Utilities Commission

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September 6, 2019

Sent via eFile

**BCUC INDIGENOUS UTILITIES REGULATION INQUIRY
EXHIBIT A-35**

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
– Daria Babaie Information Request Responses to the BCUC**

Dear Mr. Austin:

Further to the August 2, 2019 Information Requests to Mr. Daria Babaie, on behalf of the British Columbia Utilities Commission, please find enclosed Mr. Babaie's responses.

Sincerely,

Original Signed By:

Patrick Wruck
Commission Secretary

/nd
Enclosure

**British Columbia Utilities Commission (BCUC)
Indigenous Utilities Regulation Inquiry**

**Response to BCUC Information Request No. 1
to Daria Babaie, Ryezan Inc.**

**Prepared by:
Daria Babaie, P. Eng., CPA, CMA
Ryezan Inc.**

September 6, 2019

Response to the BCUC Information Request No. 1 to Daria Babaie, Ryezán Inc.

1. Reference: Exhibit A-13, Executive Summary, p. i; Section 3, p. 3, Regulation in other Canadian provinces and territories

On page i of Exhibit A-13, Mr. Daria Babaie of Ryezán Inc. (Babaie) states:

This report covers a jurisdictional review of the regulation of Indigenous utilities in twelve provinces and territories (BC was not part of the scope) across Canada. Specifically, several Indigenous utilities are found in Alberta, Northwest Territories, Nunavut, and Ontario. No other Indigenous utility exists in any other provinces or territories.

On page 3, Babaie states:

The Consultant contacted provincial and territorial boards and commissions responsible for the regulation of the electric and natural gas utilities in their respective province or territory.

For those provinces and territories where no Indigenous utilities currently exist, please confirm (or explain otherwise) that no statutory exceptions or exemptions from regulation currently exist that may apply to any future Indigenous utility.

Response:

The Consultant's inquiries made to the energy regulators regarding the regulation of Indigenous utilities in Canadian jurisdiction were informed by five specific questions that were listed in section 2 - Scope of the report, "Jurisdictional Review of the Regulation of Indigenous Utilities in Canada", as mandated by the BCUC's study. Where the regulator indicated that no indigenous utility currently existed in its respective province or territory, the Consultant did not ask the hypothetical question about whether there would be exceptions or exemptions should an indigenous utility operate in that jurisdiction in the future.

2. Reference: Exhibit A-13, Section 6, p. 24 - Newfoundland and Labrador

In Exhibit A-13, Babaie states:

This is informative to the jurisdictional review because if it is found that an electrical service provided by an Indigenous utility satisfies the definition of a public utility, a matter which a provincial regulator has authority to determine,

and assuming there is no constitutional impediment to the application of the legislation applicable to utility regulation in the respective province, in the case of British Columbia the *Public Utilities Act*, the Board would have jurisdiction to apply the relevant provisions of the *Act*. [Emphasis added by BCUC]

Please confirm if the underlined section should read: “in the case of British Columbia the *Utilities Commission Act*” or “in the case of Newfoundland and Labrador the *Public Utilities Act*.”

Response:

It is confirmed that the underlined section should read: “in the case of British Columbia the *Utilities Commission Act*”.

3. Reference: Exhibit A-13, Section 8, p. 57 Electrical Safety Authority

On page 57 of Exhibit A-13, Babaie states:

However, the ESA [Electrical Safety Authority] does not have any electrical safety authority and jurisdiction for the Ontario’s safety regulations and codes on First Nations land. The ESA safety services to the First Nation communities are provided upon request and on a voluntary basis.

Please clarify why the ESA does not have any authority and jurisdiction for the Ontario’s safety regulations and codes on First Nations land.

Response:

While preparing the report, “Jurisdictional Review of the Regulation of Indigenous Utilities in Canada”, the Consultant made inquiries and reviewed the ESA legislation and its website. Upon receiving the above BCUC Information Request (IR) #3, the Consultant made further inquiries and exchanged communication with the ESA. ESA provided additional clarification and explanation, which is listed below.

- I. ESA is the administrative regulatory authority that is mandated by the Government of Ontario to enhance public electrical safety in the province. ESA is both safety regulator and advocate.
- II. Under Part VIII of the *Electricity Act, 1998* (section 113), and Administrative Agreement between Her Majesty the Queen in right of Ontario and the Electrical Safety Authority, ESA received authority to administer and enforce the following Regulations:
 - a. Regulation 164/99 made under the *Electricity Act* (Electrical Safety Code)
 - b. Regulation 438/07 made under the *Electricity Act* (Product Safety)
 - c. Regulation 570/05 made under the *Electricity Act* (Licencing of Electrical Contractors)

and Master Electricians)

- d. Regulation 22/04 made under the Electricity Act (Electrical Distribution Safety)
- III. Regulation 22/04 was introduced to provide measures that serve to reduce the number of electrical accidents occurring in the utility sector. Regulation 22/04 applies to distributors who are licensed to own or operate a distribution system under Part V of the *Ontario Energy Board Act, 1998*¹, in other words, have been issued the Electricity Distribution Licence by the Ontario Energy Board (OEB).
 - IV. Regulation 22/04 establishes objective based electrical safety requirements for the design, construction and maintenance of electrical distribution systems owned by licensed distributors.
 - V. With respect to the jurisdiction of Regulation 22/04 on First Nations land, the issue is quite complex and far from simple. The application of Regulation 22/04, which is a provincial legislation must be viewed against section 94(24) of the *Constitution Act, 1867*, which imposes legislative jurisdiction in relation to First Nation lands on Parliament. The interplay of Paramountcy Doctrine and Inter-Jurisdictional Immunity Doctrine to Regulation 22/04 suggests that there may be a concurrent jurisdiction in some instances and requires careful approach and contextual analysis. As a result, answering the question of whether Regulation 22/04 applies to the First Nations land in a simple “yes” or “no” manner would be an oversimplification.
 - VI. Given the complex and context-specific application of constitutional principles of division of powers, ESA makes itself available to indigenous communities and conducts inspection, shares information and educates on issues relating to electrical safety and distribution safety, on a voluntary basis, upon request.

4. Reference: Exhibit A-13, Section 8, p. 60 Six Nations Natural Gas

On page 60 of Exhibit A-13, Babaie states:

Six Nations Natural Gas, Utilities Kingston and Kitchener Utilities are the only three natural gas utilities in Ontario that are exempted from the *Ontario Energy Board Act* with respect to rate regulation under section 36(1) by being a municipality or municipal public utility commission transmitting or distributing gas under the *Public Utilities Act*.

Please clarify and explain whether Six Nations Natural Gas is considered to be a municipality or municipal public utility commission for the purposes of an exemption from the *Ontario Energy Board Act*.

¹ Section 2(5) of the Electrical Distribution Safety Regulation (O. Reg 22/04)

Response:

In a response to an inquiry made by the Consultant with the manager of Six Nations Natural Gas regarding regulation of the utility, the manager stated that Six Nations Natural Gas is considered to be a municipal utility for the purposes of an exemption from the *Ontario Energy Board Act*. However, the Consultant was not able to find any documentation on the public record which either supports or contradicts this position.