

REQUESTOR NAME: **Mr. D. Flintoff**

INFORMATION REQUEST **1.1, 1.1.1, 1.2, 2.1, 2.2 and 2.2.1.**

DATED: **August 12, 2019**

TO: **Collective First Nations**

RE: **British Columbia Utilities Commission – Indigenous Utilities Regulation Inquiry**

RESPONSE ISSUED: **September 10, 2019**

The Spirit Bay Community is being developed on reserve land by the Beecher Bay First Nation (“Beecher FN”) through a limited partnership owned 51% by the Nation and the remainder owned by a third party. The Panel also notes the Spirit Bay Developments is a limited partnership and is therefore not a municipality. The plan was for the Beecher Bay First Nation to eventually own 100% of the Spirit Bay Utility.

1.1 Assuming the word “village under the Local Government Act can be applied as does municipality and regional district in the UCA definitions, would not the Spirit Bay Utilities (SBU) still be found to be a public utility since Beecher Bay FN only owns 51% of SBU?

1.1.1 If not, please explain why not.

Response:

There was no issue whether Beecher FN was a municipality, regional district or a village. It wasn't. As part of its application the Beecher FN was seeking a declaration under Section 72(2) of the Utilities Commission Act that it be granted the status a regional district or municipality on the basis of the above ownership structure. There was very little consideration of this ownership structure because of the BCUC's concern that individuals that lived on reserve lands and who weren't Band members couldn't vote in band elections. The only consideration given to the ownership structure was: *“The Panel also notes the Spirit Bay is a limited partnership and therefore not a municipality”*. This is a narrow interpretation of the powers the BCUC has under Section 72(2) of the Utilities Commission Act. It is the substance of whether the Beecher FN was performing municipal functions and not the form of the corporate vehicle i.e. limited partnership that matters. In any event in the current proceeding, the BCUC can recommend legislative changes so the form of the corporate vehicle is immaterial. It should also be noted that the BCUC is holding an inquiry into: *“BCUC Municipal Energy Utilities Inquiry”*.

1.2 If the Beecher Bay FN were to directly own 100% of the utility (not SBU and the word “village” under the Local Government Act can be applied equally as does municipality and regional district in the UCA definitions, would not the Beecher Bay FN be exempt from regulation as a public utility?

Response:

The word “village” doesn’t change anything and the Beecher Bay FN was not going to initially own 100% of the utility. See Collective First Nation’s response to Fintoff IR 1.1.1

2. **Reference: CORPORATE STRUCTURE**
Exhibit 13-2, Section 1.4, pp. 8-9
Indigenous Nations’ Owned Businesses

2.0 Typically the corporate structure of Indigenous nation’s owned businesses consist of a limited partnership and a managing/general partner.

2.1 As this is a departure from the current definition of a public utility in BC, why should this special situation exist only for FN and not municipalities or regional districts?

Response:

On page 12 of Exhibit 13-2 it says in part:

“Advancing the proposition that they should be exempt from regulation under the UCA by using the example of municipalities and regional districts, is not the equivalent of saying First Nations are municipalities or regional districts or that the law making authority are the same.”

For the multitude of reasons set out in Exhibit13-2, special considerations should apply to Indigenous Utilities including the fact that First Nations never had the equal opportunity to pursue economic initiatives.

2.2 Could the investment by other FN and private investors be in the form of loans rather than an equity position?

2.2.1 Please discuss other forms of financing the would be available to FN to permit them to be exempt from regulation while maintaining a level playing field for all utilities within the Province of B.C.

Response:

There ae multiple financial structures that Indigenous Utilities could use. But maintaining a level playing field for all utilities within the Province of B.C. shouldn’t be a consideration when setting these financial structures. Indigenous Utilities don’t have the same access to capital, including debt and equity, as incumbent public utilities such as BC Hydro or Fortis or municipalities. There isn’t a level playing field to begin with e.g. the B.C. Government owned BC Hydro or the investor owned Fortis so it is not possible for Indigenous Utilities to maintain one, nor should they be expected to.