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September 10, 2019

Via Email
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File No. 1316-004

Dear Commission Secretary:

Re: BCUC Indigenous Utilities Regulation Inquiry

Please see enclosed Beecher Bay First Nation's responses to the following information requests:

1. BCUC Information Request No. 1
2. Commercial Energy Consumers Association No. 1
3. Mr. Flintoff's Information Request No. 1

Please contact me if you have any questions.

Yours truly,
JFK Law Corporation

Per:

Erin Thomson-Leach
ETL/clt

Encls.

Beecher Bay (S'cianew) First Nation

Responses to British Columbia Utilities Commission
Information Request No. 1
September 10th, 2019

British Columbia Utilities Commission Indigenous Utilities Regulation
Project No. 1598998

1.0 Reference: Exhibit C9-2, pp. 3–4; Spirit Bay Utilities Ltd. Application for Exemption Pursuant to Section 88(3) of the *Utilities Commission Act* (UCA) proceeding, Order G-175-16 with Reasons for Decision dated December 1, 2016, p. 10
Challenges operating Spirit Bay Utilities Ltd.

In Exhibit C9-2, the Beecher Bay First Nation (Beecher Bay) states:

> The decision to deny the exemption application had significant consequences for SB Utilities, the Spirit Bay development, and for Beecher Bay. SB Utilities had already invested roughly $1.5 million into infrastructure required to bring three phase power from BC Hydro out to the Spirit Bay economic development zone. SB Utilities intended to recover that significant investment through the additional revenue from selling electricity purchased at bulk rates from BC Hydro and distributed to customers in the Spirit Bay development at fair market value; however, that is currently not possible under the current structure of the UCA.
>
> In addition, SB Utilities has established a geothermal ocean direct energy system. The system was funded in part through a $440,000 provincial grant from the BC First Nations Clean Energy Fund. In order to receive the full amount of the grant, Beecher Bay must be able to provide the province examples of six months of billing. To date, because SB Utilities was not granted an exemption, it has not been able to provide the requisite examples and has not been able to recover all of its costs for developing this system or realize its full objectives in supplying clean energy to leaseholders.

In the Spirit Bay Utilities Ltd. Application for Exemption Pursuant to Section 88(3) of the *Utilities Commission Act* proceeding, the British Columbia Utilities Commission (BCUC) directed in Order G-175-16 as follows:

> Spirit Bay Utilities Ltd. is to produce a plan, including proposed filings and timing, which will ensure Spirit Bay Utilities Ltd.'s and Spirit Bay Developments Limited Partnership's compliance with the UCA on a prospective basis.

The BCUC further stated:

> As the Panel has denied Spirit Bay Utilities' request for an exemption pursuant to section 88(3) of the UCA, it is required to comply with section 45 of Part 3 of the UCA. As such, Spirit Bay Utilities and Spirit Bay Developments must not begin the construction or operation of a public utility plant or system without first obtaining a certificate of public convenience and necessity (CPCN) from the Commission. At the time of this application, the Panel notes that infrastructure of the thermal energy system and the initial

electrical system is in place; however, no propane utility assets have been placed in the ground. Each of these systems may require a CPCN from the Commission. As well, before services can be provided and charged to customers, Spirit Bay Developments and/or Spirit Bay Utilities will require approval of tariffs under sections 59-61 of the UCA.

1.1 Please confirm, and if confirmed explain, that SB Utilities did not file an application for a CPCN under section 45 of the UCA, or an application for approval of tariffs under sections 59 to 61 of the UCA, following the BCUC determination in Order G-175-16. If not confirmed, please explain why.

1.2 Please elaborate why it would not be not possible for SB Utilities, as a regulated utility under the UCA, to sell electricity purchased at bulk rates from BC Hydro to customers in the Spirit Bay development.

1.3 Please explain further why SB Utilities has not been able to provide the province with examples of six months of billing, as a public utility regulated under the UCA.

RESPONSE 1.1 – 1.3

Beecher Bay understands that SB Utilities did not file an application for a CPCN under section 45 of the UCA or an application for approval of tariffs under section 59-61 of the UCA following Order G175-16. We understand that this is because SB Utilities is evaluating its long term plans, in light of the Commission's decision respecting the SB Utilities exemption application.

Beecher Bay understands that a regulated public utility under the *UCA* would be able to sell electricity purchased at bulk rates from BC Hydro to customers. However, the issue Beecher Bay noted in its submissions is that the *UCA* currently only permits this type of activity to be carried out by public utilities or a few, narrowly defined, alternative utility service providers (as described in the definition of "public utility". Beecher Bay's view is that Indigenous Utilities are *sui generis,* and that the *UCA* does not recognize or respond to the unique needs and nature of Indigenous Utilities.

Beecher Bay believes that it is this gap in the *UCA* that limits SB Utilities from realizing its objectives with respect to providing electricity services to Spirit Bay customers. As a result, it is not able to charge customers and therefore cannot produce examples of invoices.

2.0 Reference: Exhibit C9-2, p. 5
Characteristics of an Indigenous utility

Beecher Bay states in Exhibit C9-2:

> As Kris Obrigewitsch described in his oral submissions, Beecher Bay cautions against requiring that Indigenous utilities be 100% Indigenous owned. This would create a significant barrier to Indigenous economic development as utility projects may require more capital than that to which many First Nations will have immediate access. This may also impede the overarching objective of reconciliation between Indigenous peoples and communities and all Canadians, which should be at the forefront of all decisions affecting Indigenous peoples.

2.1 Does Beecher Bay have further views on how to characterize an Indigenous utility beyond not requiring 100 percent Indigenous ownership of the utility?

RESPONSE 2.1

Beecher Bay suggests that the defining characteristic for an Indigenous utility should be whether the Indigenous group holds a controlling interest in the utility company. For example, Beecher Bay owns 51% of SB Utilities. Holding a controlling interest is important so that the Indigenous community is positioned to guide the utility and make decisions in the interests of its community and according to its laws, traditions, and principles.

3.0 Reference: Exhibit C9-2, pp. 5, 6, 8
Regulation of Indigenous utilities

On pages 5 to 6 of Exhibit C9-2, Beecher Bay states:

> Beecher Bay's position is that Indigenous utilities should be exempt from the UCA and not regulated as other public utilities. Self government, if it is to be meaningful, must include the right to make laws and oversee all matters that fall within Indigenous governments' jurisdiction. Utilities located on reserves or Treaty settlement lands fall within the jurisdiction of Indigenous governments and provincial and federal governments should recognize Indigenous peoples' inherent governance rights and responsibilities, including to regulate any such Indigenous utilities.
>
> …It should also be open to Indigenous utilities to provide services off of their lands and there should be flexibility in any regulatory arrangement to allow for these various scenarios. Indigenous Governments are already subject to regulatory frameworks with their own mechanisms and remedies to protect ratepayers and to ensure fairness. Where an Indigenous utility would be providing utility services beyond its reserve or treaty settlement land, the relevant Indigenous government should also maintain its jurisdiction to regulate the utilities to maintain fairness and consistency among ratepayers in a region. In addition, an Indigenous utility may prove better situated to provide utility services to certain communities due to factors such as local geography or other utilities' limited ability to provide services (which can be the case in remote locations). This could facilitate development and energy security.

On page 8 of Exhibit C9-2, Beecher Bay states:

> First Nations' authority under FNLMA [*First Nations Land Management Act*] is at a minimum analogous to that of a municipality. Although not defined as a municipality under the *Interpretation Act*, other provincial legislation demonstrates that an Indigenous government should be viewed as, at the very least, equivalent in authority to a municipality or other form of local government. For example, the Community Charter defines a 'public authority' to include a First Nation.

3.1 Please explain further what flexibility Beecher Bay would expect to see in the regulatory arrangements for Indigenous utilities to provide services beyond their lands.

3.2 In Beecher Bay's view, please explain whether any exemption from regulation under the UCA granted to Indigenous utilities should apply to utilities that:

a) Are owned wholly or in part by an Indigenous Nation[1];
b) Are owned wholly or in part by an Indigenous Nation-owned corporation; and/or
c) Serve customers beyond Reserve/Treaty lands.

[1] As defined in section 1 of Order in Council No. 108, http://www.bclaws.ca/civix/document/id/oic/oic_cur/0108_2019.

3.3 From the perspective of Beecher Bay, please discuss the mechanisms and remedies Indigenous utilities employ to maintain consistency and fairness among ratepayers.

3.4 Please discuss Beecher Bay's views on how the interests of Indigenous utility ratepayers who reside off Reserve or beyond the Treaty settlement land could be protected if an Indigenous Nation's laws or treaty did not extend beyond such lands.

RESPONSE 3.1-3.4:

As there is no current example for Indigenous Utilities in BC, Beecher Bay can only describe possible suggestions for Indigenous Utilities regulation in broad, conceptual terms. These suggestions in no way represent the full and final position of Beecher Bay on this matter and are without prejudice to any position it may take in other proceedings or contexts.

Beecher Bay's view is that Indigenous Nations have the right to self-government, and that this includes the right to establish, operate and regulate Indigenous Utilities. The scope of this right would vary with the nature of the Indigenous Nation's relationship to the land; but it is most clear that an Indigenous Nation has jurisdiction over its reserve or other lands. Should an Indigenous Utility seek to provide services beyond the jurisdiction of Indigenous Nation, there could be a range of options for regulating that service. For example, as discussed further below, the terms of a service agreement with customers or with a particular body (like a local government) would specify mechanisms for setting rates, hearing complaints, and settling disputes etc. British Columbia could also explore co-management agreements, whereby an Indigenous Nation and the Commission incorporate Indigenous laws and processes into the regulation of utility services provided off Indigenous lands. The key here is that some measure of flexibility would best reflect the spirit of reconciliation and recognize rights to self-government and self-determination. Beecher Bay is not suggesting that unlimited options. Rather, the Province should avoid imposing its regulatory framework on Indigenous Nations and instead focus on building bridges and partnerships with Nations throughout the province.

The *UCA* should not apply to any utility that is owned wholly or in part by an Indigenous Nation or an Indigenous Nation-owned corporation. Beecher Bay can see no principled reason for distinguishing between a utility that is owned by the Indigenous Nation or an Indigenous Nation-owned corporation and it would be inconsistent with the objectives of reconciliation to essentially limit the options for how an Indigenous Nation may structure its interests in developing an Indigenous Utility. For example, it may be important for Indigenous Nations to partner with other investors to develop a utility provider and this may be more likely within a corporate arrangement.

Again, while there is no particular example of Indigenous Utilities in BC, there are a range of possible mechanisms and remedies for ensuring consistency and fairness among rate payers. Many of these mechanisms and remedies may, by agreement, be available to ratepayers off reserve or treaty settlement lands. This agreement may be directly with individual customers, or more broadly through a co-management agreement or something similar as noted above.

Beecher Bay acknowledges that a government may only enact laws within its jurisdiction. Within that jurisdiction, whether it be reserve land or treaty lands, any laws respecting utilities would likely apply to members and non-members. In addition, Indigenous Nations may adopt policies that would guide how elected officials or staff conduct themselves and make decisions respecting Indigenous Utility services. These policies may include requirements on government and utilities both on and off-reserve.

It is not reasonable to assume that an Indigenous government would make decisions that distinguish between ratepayers based on irrelevant factors or that they would make decisions leading to disputes between Indigenous and non-Indigenous ratepayers. Such an approach would be contrary to long-term development goals and would not support the best interest of an Indigenous community. Nonetheless, where any disputes

arise, including between different ratepayers, bylaws and policies that address rates may set out the ways in which the Indigenous government will respond to such disputes.

Indeed, these structures may be essential to attract businesses and residents to engage with an Indigenous Utility. Much like corporate persons, who do not participate in local government elections, non-members will look for ways to ensure their interests are considered. Such an approach ensures non-members are able to engage with council and council will be better informed to make decisions in the public interest.

In addition to the potential co-management agreements described above, individuals or corporations located off Indigenous Nation lands could enter into an agreement setting out rate structures, mechanisms for increases, level of service, and dispute resolution processes, much like other servicing agreements. In order to be attractive and to provide certainty for both the customer and the Indigenous Utility, a servicing agreement would likely offer the same degree of service at similar and principled rates within and outside the jurisdiction of the entity offering the service.

4.0 Reference: Exhibit C4-2, pp. 8–9; Exhibit C9-2, p. 5
Applicability of the UCA

Beecher Bay states in Exhibit C9-2: "[u]tilities located on reserves or Treaty settlement lands fall within the jurisdiction of Indigenous governments," which is discussed further on pages 6 to 9.

Prepared by its legal counsel on pages 8 to 9 in Exhibit C4-2, FortisBC Group of Companies (FortisBC) provides an analysis of constitutional considerations with respect to the applicability of the UCA and the jurisdiction of the BCUC on Reserve lands. FortisBC submits that the UCA is a law of general application and applies to Reserve lands.

4.1 Please provide Beecher Bay's view of the legal analysis provided by FortisBC, regarding the applicability of the UCA on Reserve lands.

RESPONSE 4.1:

FortisBC suggests that the matter of the Commission's jurisdiction on reserve lands is a "threshold question." It appears to assert the question is whether the *UCA* applies to reserve lands or is barred by the division of powers between the provinces and the federal Parliament as enumerated in sections 91 and 92 of the *Constitution Act, 1867*. With respect, it would be more appropriate to consider this matter in the context of specific facts and a complete record so that parties could submit clear and principled legal analysis supported by evidence. Otherwise, the Commission risks drawing conclusions about this matter based, at least in part, on assumptions.

Beecher Bay therefore offers the following comments on FortisBC's analysis regarding the applicability of the UCA on Reserve lands *without prejudice* to any position that it may take in future proceedings on the applicability of the *UCA* or other provincial legislation on reserve lands. These comments are intended to assist the Commission to consider alternative analysis of s.88 of the *Indian Act* and do not represent Beecher Bay's complete position on this matter as Beecher Bay for the reasons noted above.

Section 88 of the *Indian Act* does not generally invigorate provincial legislation on reserve lands. As FortisBC correctly noted, while s.88 states that provincial laws of general application "…are applicable to and in respect of Indians…" the section does not refer to land reserved for Indians, the other matter assigned to the federal Parliament under s.91(24). While FortisBC noted that the effect of this division of powers is to preclude provincial laws that regulate the *use* of Reserve lands (such as laws concerning the manner of landholding or disposition of land-based interests), this is not a complete description of the types of laws that would impair the core of federal jurisdiction over reserve lands. For example, the BC Court of Appeal in *Sechelt Indian Band v.*

British Columbia (Manufactured Home Park Tenancy Act, Dispute Resolution Officer), 2013 BCCA 262, held that provincial laws that affect the *possession and management* of Indian land do not apply on reserve land.[2] This, in Beecher Bay's view, is a broader characterization of the types of decisions that First Nations may make respecting the use of their lands and this is reflected in the authority set out in the *First Nations Land Management Act* and the Beecher Bay *Land Code*. For example, the *First Nations Land Management Act* provides:

> 20 (1) The council of a First Nation has, in accordance with its land code, the power to enact laws respecting
> (a) interests or rights in and licences in relation to First Nation land;
> (b) the development, conservation, protection, management, use and possession of First Nation land;
> …
> (e) any matter arising out of or ancillary to the exercise of the power to enact laws under paragraphs (a) to (d).
> 20 (2) Without restricting the generality of subsection (1), First Nation laws may include laws respecting
> (a) the regulation, control or prohibition of land use and development including zoning and subdivision control;
> …
> (d) the provision of local services in relation to First Nation land and the imposition of equitable user charges for those services; and
> (e) the provision of services for the resolution of disputes in relation to First Nation land.

Beecher Bay particularly notes that Parliament, in enacting the *First Nations Land Management Act*, contemplated that management of land included "the provision of local services in relation to First Nation land and the imposition of equitable user charges for those services" and in dispute resolutions respecting land.

Beecher Bay does not agree with FortisBC's suggestion that the *UCA* can apply on reserve lands because it likely "only incidentally interferes" with the federal powers under section 91(24). FortisBC's analysis on this point is unclear. Although it suggests the *UCA* regulates "activities" on reserve lands (see page 9 of its submissions), it does not explain its rationale for that position. In Beecher Bay's view, it is more likely that the *UCA* could not apply on reserve land because the Act seeks to regulate the use and management of reserve lands by limiting the types of decisions First Nations are authorized to make under the *First Nations Land Management Act* regarding the management of the lands. In this regard, the *UCA* would impermissibly impair the core of federal jurisdiction over reserve lands.

Beecher Bay would also caution against concluding, as FortisBC did, that the Commission's decision in the Spirit Bay Utilities proceeding determines this jurisdictional issue. In that decision the Commission only briefly discussed s.88 of the *Indian Act* with respect to whether the *First Nations Land Management Act* enabled First Nations to opt out of section 88.[3] It did not deal with the issue of whether the *UCA* could apply to *reserve land* (as opposed to "Indians in a province.") It also does not appear that the Commission considered that s.88 is "subject to the terms of "any other Act of Parliament"" or whether the terms of the *First Nations Land Management Act* potentially operate to exclude the *UCA*'s application on reserve land.

FortisBC has raised a question goes right to the heart of not only the constitutional division of powers but also engages matters like self-determination, self-government and reconciliation. Beecher Bay submits that, while this legal issue requires careful and comprehensive consideration, it alone will not determine the matter. The province can and should explore alternative, government-to-government approaches to Indigenous Utilities in the spirit of reconciliation.

[2] See paras 46 and 51 of this decision.
[3] Order G-175-16, Decision, p. 4.

Beecher Bay (S'cianew) First Nation

Responses to Commercial Energy Consumers Association of British Columbia (CEC)
Information Request No. 1
September 10, 2019

British Columbia Utilities Commission Indigenous Utilities Regulation
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1. Reference: Exhibit C9-2, Beecher Bay Written Evidence, page 3

> 12. In order to proactively obtain certainty as to the operation of SB Utilities, Beecher Bay and its partners explored ways to ensure that SB Utilities would be exempt from the application of Part 3 of the UCA. This included detailed discussions with the Ministry of Energy and Mines. The Minister and ministry staff encouraged and supported SB Utilities application for an exemption under s.88 of the UCA or, alternatively, a declaration that for the purposes of t he UCA, SB Utilities is a municipality. The Commission ultimately denied the application.

1.1 Please provide a link to the BCUC proceedings and decision.

RESPONSE 1.1:

This information is publicly available on the BCUC website here.

1.2 Please confirm that all the evidence on the Beecher Bay application may be considered as being on the evidentiary record in this proceeding.

RESPONSE 1.2:

It was not Beecher Bay's intent to introduce all of the evidence from the Spirit Bay 2016 Exemption Application into the record for this proceeding and it should not be considered as being on the evidentiary record in this proceeding unless the Commission determines otherwise.

2. Reference: Exhibit C9-2, Beecher Bay Written Evidence page 5

> 20. As Kris Obrigewitsch described in his oral submissions, Beecher Bay cautions against requiring that Indigenous utilities be 100% Indigenous owned. This would create a significant barrier to Indigenous economic development as utility projects may require more capital than that to which many First Nations will have immediate access. This may also impede the overarching objective of reconciliation between Indigenous peoples and communities and all Canadians, which should be at the forefront of all decisions affecting Indigenous peoples.
>
> ***Indigenous Governance and Regulation of Indigenous Utilities***
>
> 21. Beecher Bay's position is that Indigenous utilities should be exempt the UCA and not regulated as other public utilities. Self government, if it is to be meaningful, must include the right to make laws and oversee all matters that fall within Indigenous governments' jurisdiction. Utilities located on reserves or Treaty settlement lands fall within the jurisdiction of Indigenous governments and provincial and federal

2.1 Does Beecher Bay propose any particular threshold for Indigenous ownership in exempting the utility from regulation? Please explain.

RESPONSE 2.1:

Please see Beecher Bay's response to question 2.1 in the Commission's Information Request No. 1.

3. Reference: Exhibit C9-2 Beecher Bay Written Evidence page 6 and page 9

> 22. It should also be open to Indigenous utilities to provide services off of their lands and there should be flexibility in any regulatory arrangement to allow for these various scenarios. Indigenous Governments are already subject to regulatory frameworks with their own mechanisms and remedies to protect ratepayers and to ensure fairness. Where an Indigenous utility would be providing utility services beyond its reserve or treaty settlement land, the relevant Indigenous government should also maintain its jurisdiction to regulate the utilities to maintain fairness and consistency among ratepayers in a region. In addition, an Indigenous utility may prove better situated to provide utility services to certain communities due to factors such as local geography or other utilities' limited ability to provide services (which can be the case in remote locations). This could facilitate development and energy security.
>
> 35. To ensure transparency and procedural fairness for ratepayers, Beecher Bay First Nation has already prepared a Beecher Bay Spirit Bay Utilities Law (the "Utilities Law"), which is also included in the Exemption Application. The Utilities Law:
>
> a. Provides for equitable and reasonable rates that are subject to council approval (6.4); and
> b. Establishes a fair process for rate payer disputes, including an independent dispute resolution panel under the Land Code and the ability to appeal decisions to the Federal Court (6.7).
>
> 36. In addition, Beecher Bay could develop a formal process for ensuring non-members are made and remain aware of the Utility Law and any proposed revisions, amendments or replacements that may be made from time to time, including rate changes. Beecher Bay may also take additional measures to promote procedural fairness, such as seeking public input on proposed plans and changes affecting its utilities, promoting transparency and good utility governance.
>
> 37. As Ruth Sauder mentioned in her presentation to the Panel on July 4, 2019, Beecher Bay is already administering property taxes for non-member residents in the Spirit Bay Development. Beecher Bay works with BC Assessment to determine property assessments and determined initial rates based on rates in nearby municipalities. In addition to the formal structures set out in taxation laws, as a smaller community, Beecher Bay is committed to maintaining positive relationships with non-members and staff is available to answer questions and receive feedback. Beecher Bay's economic and social success as a community depends on fair and reasonable taxation rates and processes; and the same is true for any rates for any utilities Beecher bay would provide through SB Utilities.

3.1 Please elaborate on the ability of ratepayers who are not within the Indigenous community to have representation for their interests in a fair and meaningful manner under Beecher Bay's proposal without resorting to the Federal Court to appeal decisions.

RESPONSE 3.1:

Please see Beecher Bay's response to the Commission's Information Requests 3.1 - 3.4, which addresses this matter.

Beecher Bay (S'cianew) First Nation

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A. SPIRIT BAY UTILITIES LTD.

1.0 Reference: Ownership
Exhibit # C9-2, Section # 8, pp. #2-3 Definition of a Public Utility

"To facilitate the Spirit Bay development, Beecher Bay established Spirit Bay Developments Limited Partnership, of which Beecher Bay owns 51% and the remaining 49% is owned by a family-controlled entity. More details about Beecher Bay's development at Spirit Bay are outlined in SB Utilities' application for a s.88(3) exemption, which is attached as Appendix "A" (the "Exemption Application").

1.1 Does Beecher Bay First Nations (BBFN) agree that even if its status was the same as a municipality or regional district that it would be a regulated public utility by definition as BBFN does not own the utility rather Spirit Bay Utilities (SBU), a separate corporation, owns the utility.

RESPONSE 1.1:

The focus of this question is not clear to Beecher Bay First Nation (Beecher Bay). We understand that it is requesting Beecher Bay's views regarding Spirit Bay Utilities' status under the *Utilities Commission Act* in they hypothetical event that Beecher Bay First Nation was determined to be analogous to a municipality.

First – we understand that the objective of this inquiry is to consider the nature of Indigenous utilities, and whether and how they should be regulated. We therefore do not see how it is relevant to this inquiry whether Beecher Bay could hypothetically be characterized as a municipality under the *UCA*.

Second – SB Utilities is majority owned by Beecher Bay (51%). As such, Beecher Bay submits that it is an Indigenous Utility.

B. INDIGENOUS GOVERNANCE AND REGULATION OF INDIGENOUS UTILITIES

2.0 Reference: Ownership
Exhibit # C9-2, Section # 21, pp.
#5-6 Exemption from UCA

"Beecher Bay's position is that Indigenous utilities should be exempt from the UCA and not regulated as other public utilities. Self government, if it is to be meaningful, must include the right to make laws and oversee all matters that fall within Indigenous governments' jurisdiction. Utilities located on reserves or Treaty settlement lands fall within the jurisdiction of Indigenous governments and provincial and federal governments should recognize Indigenous peoples' inherent governance rights and responsibilities, including to regulate any such Indigenous utilities."

2.1 Putting aside the self-government issue, would BBFN be willing to accept becoming a "village" under the Local Government Act if the word "village" was added to the UCA along with the already words of "municipality" and "regional district"?

2.2 If the word village was added to the UCA and BBFN owned the utility it would be exempt from regulation. Would this be an acceptable solution?

2.3 However, as BBFN only owns 51% of SBU, even in this instance it would still be a public utility subject to regulation but eligible to apply for an exemption. Would this be an acceptable solution?

RESPONSE to Information Requests 2.1 – 2.3:

Beecher Bay believes that ensuring Indigenous communities are able to meaningfully exercise their right to self-government rights is a core objective for reconciliation generally and a central issue in this Inquiry. It is not appropriate in this context to suggest that the "self-government issue" can be "put aside."

The circumstances described above appears to be related to issues described in the 2016 SB Utilities application for an exemption. These information requests describe hypothetical situations and to answer them Beecher Bay would need to make assumptions based on incomplete information. Further, in Beecher Bay's view, the questions narrowly construe the objective of this inquiry, which is to broadly consider the characteristics of all Indigenous Utilities, and not just the specific circumstances of SB Utilities.

In light of the above, Beecher Bay is not able to answer these questions.

C. BOUNDARIES

3.0 Reference: Non-District Lands
Exhibit # C9-2, Section # 22, p. #6
Traditional and Non-District Lands

"It should also be open to Indigenous utilities to provide services off of their lands and there should be flexibility in any regulatory arrangement to allow for these various scenarios. Where an Indigenous utility would be providing utility services beyond its reserve or treaty settlement land, the relevant Indigenous government should also maintain its jurisdiction to regulate the utilities to maintain fairness

and consistency among ratepayers in a region. In addition, an Indigenous utility may prove better situated to provide utility services to certain communities due to factors such as local geography or other utilities' limited ability to provide services (which can be the case in remote locations). This could facilitate development and energy security."

3.1 Once BBFN (as a village) supplies energy to non-district lands, it could be considered to be outside its boundaries similar to a municipal or regional district in which case it would be a public utility and regulated. Would this be an acceptable solution?

3.2 Would BBFN (as a village) agree that in this instance, it should be regulated the same as the City of Nelson in that only the areas outside its boundaries should be regulated?

3.3 In your opinion, is Spirit Bay Utility (a person), a public utility as defined in the UCA and therefore able to apply for exemptions?

RESPONSE to Information Requests 3.1-3.3

Again, in order to answer these questions, Beecher Bay must consider and anticipate the various potential outcomes of a hypothetical scenario and make assumptions based on incomplete information. Beecher Bay is not able to answer these questions.

With respect to 3.3, Beecher Bay does not agree that SB Utilities currently meets the definition of a public utility.