British Columbia Utilities Commission

An Inquiry into the Regulation of Municipal Energy Utilities

Thursday, October 24, 2019

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Contents

Chapter 1. Introduction

In Order Number G-177-19, the BCUC requests registered interveners provide written submissions to address the following:

1) Whether a utility affiliated, in some way, with a municipality or regional district is considered a public utility as defined by section 1 of the UCA. Forms of affiliation include, but may not be limited to:

a. The utility's assets are owned by a corporation of which the municipality or regional district is a shareholder or the sole shareholder;

b. The utility's assets are owned by a partnership of which the municipality or regional district is a partner, a limited partner or a general partner;

c. The utility's assets are owned by a third party, but the municipality or regional district has granted a franchise agreement, a licence and/or has enacted enabling bylaws to facilitate the construction and/or operation of the utility;

d. The utilities' assets are owned by a municipality or regional district but are operated by a third party; and

e. The municipality or regional district, by agreement with the utility owner, sets or approves the setting of rates for the utility.

Chapter 2. Background

Section 1 of the Utilities Commission Act (UCA) defines a “public utility”, in part, as “a person, or the person’s lessee ... who owns or operates in British Columbia, equipment or facilities for the production, generation, storage, transmission, sale, delivery or provision of electricity ... or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation”.

Section 1 of the UCA states: that a “public utility” does not include “a municipality or regional district in respect of services provided by the municipality or regional district within its own boundaries” thus offering an exclusion from regulation to these entities under certain circumstances. The definition is quite clear on this matter.

In addition to directly owning ~~and~~ [or] operating energy systems, there are several ownership and operational structures in which a municipality or regional district can participate in providing energy services, including: establishing a municipally-owned corporation, entering partnering or joint venture agreements, a franchise agreement or outsourcing operations of a fully owned municipal energy system to a third party.

The ownership ~~and~~ [or] operational structures now available to a municipality or regional district to provide energy services do not appear to be specifically addressed in the UCA and, as such, there appears to be ambiguity regarding whether these ownership and operational structures are “public utilities” or the exclusion to these ownership and operational structures continue, pursuant to the definition in section 1 of the UCA. However, there is no ambiguity in the definition of a public utility in the UCA.

In its role of administering the UCA, the British Columbia Utilities Commission (BCUC) is responsible for making findings with respect to the definition of a “public utility” and the applicability of, or exclusion to, regulation under the UCA. In its previous decisions, the BCUC has ruled on the definition as “municipality or regional district owned”.

2.1. Paramountcy

In Canadian constitutional law, the doctrine of paramountcy establishes that where there is a conflict between valid provincial and federal laws, the federal law will prevail and the provincial law will be inoperative to the extent that it conflicts with the federal law. Unlike interjurisdictional immunity, which is concerned with the scope of the federal power, paramountcy deals with the way in which that power is exercised.

Relationship with Provincial laws

The Community Charter, section 10, Relationship with Provincial laws[1], reads as follows:

(1) A provision of a municipal bylaw has no effect if it is inconsistent with a Provincial enactment [emphasis added].

(2) For the purposes of subsection (1), unless otherwise provided, a municipal bylaw is not inconsistent with another enactment if a person who complies with the bylaw does not, by this, contravene the other enactment.

The UCA is clearly a provincial Act and has paramountcy over the Community Charter and any municipal Bylaw that conflicts with it.

2.2. The UCA Section 121

Section 121 of the UCA states the relationship with the Local Government Act and the Community Charter. Section 121 of the UCA is as follows:

Relationship with **Local Government Act**

121 (1) Nothing in or done under the Community Charter or the Local Government Act

(a) supersedes or impairs a power conferred on the commission or an authorization granted to a public utility, or

(b) relieves a person of an obligation imposed under this Act or the Gas Utility Act.

(2)In this section, **"authorization"** means

[1] http://www.bclaws.ca/civix/document/id/complete/statreg/03026_02#section10

(a) a certificate of public convenience and necessity issued under section 46,

(b) an exemption from the application of section 45 granted, with the advance approval of the minister responsible for the administration of the Hydro and Power Authority Act, by the commission under section 88, and

(c) an exemption from section 45 granted under section 22, only if the public utility meets the conditions prescribed by the Lieutenant Governor in Council.

(3) For the purposes of subsection (2) (c), the Lieutenant Governor in Council may prescribe different conditions for different public utilities or categories of public utilities.

Obviously, the UCA has paramountcy over the Local Government Act and the Community Charter. Hence, there is no ambiguity.

2.3. The Community Charter or Vancouver Charter

There are other Acts of interest. These are the Local Government Act and the Interpretation Act.

2.3.1. Local Government Act

Letters of Patent

Letters patent incorporating a municipality are issued by the BC Lieutenant Governor in Council (LIC) and should be available in evidence as they will spell out the limit of powers granted a municipality, regional district, town or village.

Letters patent for municipality[2]: additional powers

33 (1) Despite this or any other Act, the Lieutenant Governor in Council may, by letters patent, do one or more of the following in relation to the incorporation of a municipality or the extension or reduction of the area of a municipality:

(a) impose requirements on the municipality;

(b) restrict the powers of the municipality;

[2] http://www.bclaws.ca/civix/document/id/complete/statreg/r15001_02#section10

(c) make provisions the Lieutenant Governor in Council considers appropriate for the purpose of preventing, minimizing or otherwise addressing any transitional difficulties;

(d) in respect of a provision included in the letters patent under paragraphs (a) to (c), provide an exception to or a modification of a requirement or condition established by an enactment.

(2) Despite this or any other Act, letters patent for a municipality or an order of the Lieutenant Governor in Council under this Part, other than an order under Division 6 [Regional District Incorporation and Related Matters] of this Part, may establish any terms and conditions the Lieutenant Governor in Council considers appropriate in respect of any matter related to the letters patent or order.

(3) As restrictions in exercising a power under this section, the Lieutenant Governor in Council may not do the following:

(a) override an absolute prohibition contained in an enactment;

(b) eliminate a requirement for obtaining the assent of the electors, unless that requirement is modified by replacing it with a requirement for obtaining the approval of the electors by alternative approval process.

2.3.2. Municipal Exclusion

Public Interest and Rate Setting

Is the public interest adequately safeguarded? Since the customer based may be larger than the electoral approval requirements then does the municipal exclusion adequately protect the public interest?

The Alternative Approval Process (AAP) allows a Council to proceed with an action unless at least ten per cent (10%) of the electors state their opposition within a prescribed period. If more than ten per cent (10%) of the electors state their opposition to the proposed action, the Council may not proceed with the action unless the matter is made subject to and successfully passes a referendum.

In Richmond, those voted in 2018 for mayor was only about 36% or 47,340. Therefore assuming about 130,000 eligible voters 13% of the voters would be required to achieve the 10% necessary to force a referendum. The probability of this occurring is very low. Hence, the elected Councils usually prefer the AAP.

Rate setting is usually recommended by staff and approved by Council but not an independent Commission. Unfortunately, City senior staff also sits on the boards of these utility corporations and therefore they are in a conflict of interest situation when rates are set. If a Council sets rates below that of BC Hydro then how does the electorate know that the rates even cover the costs incurred by the utilities as the Councils are approving other funding transfers to the utilities? The electorate is paying for energy from these utilities being run by City staff. However, doing so curtails the amount of green energy being purchased from BC Hydro thus increasing the cost of electricity and natural gas to those not connected to the municipal utility. This is definitely not in the public interest.

2.3.3. Community Charter

Section 10 of the Community Charter defines the relationship with Provincial laws as follows:

Relationship with Provincial laws

10 (1) A provision of a municipal bylaw has no effect if it is inconsistent with a Provincial enactment.

(2) For the purposes of subsection (1), unless otherwise provided, a municipal bylaw is not inconsistent with another enactment if a person who complies with the bylaw does not, by this, contravene the other enactment.

Again, it is obvious that Provincial law has paramountcy over a municipal bylaw under the Community Charter.

2.3.4. Vancouver Charter

The Vancouver Charter, passed in 1953, incorporates the City of Vancouver, BC, Canada. This legislation supersedes the Vancouver Incorporation Act and grants the City different powers than other communities have under BC's Municipalities Act. The Courts may

hold that there is no authority, in the UCA, to override City by-laws made under the Vancouver Charter.

The following sections of Vancouver Charter differ from the Provincial Community Charter and the Local Government Act. These sections enable Vancouver to establish and operate an energy utility system. As the Vancouver Charter is not referenced in the UCA section 121, Relationship with Local Government Act; one can assume that it stands alone and apart from the UCA for those utilities owned or operated by the City of Vancouver. However, those private utilities, that own or operate utilities within the City of Vancouver, come under the UCA for regulation.

Franchise for telegraph, steam-heat, or hot-water service

153A. The Council may, by agreement, grant to any person a franchise for a term not exceeding thirty years for the supply of telegraph, steam-heat, or hot-water service and may in such agreement prescribe how and where mains, pipes, conduits, poles, and wires shall be installed and, without restricting the generality of the foregoing, may prescribe the other terms, conditions, and restrictions, including payments to the city, for and in connection with such franchise.

Establishment and operation of energy utility system

300.1 (1)In this section:

"energy" means light, heat, cold or power distributed or delivered by water, electricity, steam, natural gas or any other agent;

"energy utility system" means a system for the generation, storage, transmission and distribution of energy.

(2)The Council may provide for the following:

(a) the design, construction, installation, maintenance and repair of an energy utility system, for all or any part of the city, including all necessary appliances and equipment;

(b) acquiring, managing and maintaining real property, inside or outside of the city, and all necessary appliances and equipment for the purposes of an energy utility system.

(3) Without limiting subsection (2), the Council may provide for the following:

(a) by by-law, regulating the design, construction, installation, maintenance and repair of an energy utility system, including all necessary appliances and equipment;

(b) by by-law, compelling persons to make use of the energy utility system;

(c) by by-law, establishing the terms and conditions on which persons may make use of the energy utility system, which terms and conditions may vary in relation to one or more of the following as established by the Council:

(i) different classes of energy;

(ii) different classes of persons;

(iii) different classes of property;

(iv) different areas of the city;

(v) different classes of energy services;

(d) by by-law, requiring all persons to conform to the applicable terms and conditions under paragraph (c);

(e) by by-law, requiring any owner or occupier of any parcel of real property that is capable of being served by the energy utility system to pay a levy to the city for the opportunity to use the system, whether or not they in fact use the system, which levy may vary in relation to one or more of the following as established by the Council:

(i) different classes of energy;

(ii) different classes of persons;

(iii) different classes of property;

(iv) different areas of the city;

(v) different classes of energy services;

(f) by by-law, setting charges for use of the energy utility system, which charges may vary in relation to one or more of the following as established by the Council:

(i) different classes of energy;

(ii) different classes of persons;

(iii) different classes of property;

(iv) different quantities of energy;

(v) different classes of energy services;

(g) by by-law, compelling the payment of levies and charges under paragraphs (e) and (f), including providing that the levy or charge may be inserted in the real-property tax roll with respect to the parcels to which it relates;

(h) entering into contracts with persons with respect to all or part of the energy utility system or the supply of energy, on terms and conditions prescribed by the Council;

(i) by by-law, establishing exemptions from terms and conditions under paragraph (c) or charges under paragraph (f) on the basis that

(i) the person or property does not require the service,

(ii) payment for the service would place an undue financial hardship on the person or property, or

(iii) there are restrictions or limitations related to the configuration of the real property or access to the real property;

(j) by by-law, delegating to persons authority to do one or more of the following:

(i) enter onto real property, at any reasonable time, for the purpose of installation, maintenance, repair or removal of an energy utility system, including appliances or equipment;

(ii) enter onto real property, at any reasonable time, to inspect the real property and appliances and equipment, and enforce any by-law under this section;

(iii) determine applications for exemptions authorized by by-law;

(iv) vary the level and terms of service provided by the energy utility system among classes as defined by by-law under this section.

2.3.5. Interpretation Act

The definition of a public utility in the UCA refers to a *person* who owns or operates... equipment or facilities

The Interpretation Act defines a person as: "person" includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law.

Hence, the word “person” is clearly meant to include other non-municipal or non-regional districts entities and therefore would not include municipal or regional district corporations, partnerships or parties, and the personal or other legal representatives of a person to whom the context can apply according to law.

Chapter 3. Community Charter

The Community Charter is subservient to Section 121 of the UCA. The following two DEUs were established under the Community Charter without respect to Section 121 of the UCA. Hence, should these knowable parties be subject to an offence under the UCA?

3.1. City of North Van

The Corporation of the City of North Vancouver employed Bylaw No. 7575 to create a Hydronic Energy Service states: "…the Community Charter empowers the municipality to provide any service that the Council considers necessary or desirable." While this may be true, Section 121 of the UCA still applies.

3.2. City of Richmond

The City of Richmond Bylaw that creates Alexandra District Energy Utility is Bylaw 8641. This Bylaw states: "...the Community Charter empowers the municipality to provide any service that the Council considers necessary or desirable." and "...the City of Richmond (the "City") wishes to establish a service for the purpose of providing energy for space and water heating and cooling to multi-family, residential, commercial, institutional and industrial buildings located within the Alexandra neighbourhood of the municipality." However, Section 121 of the UCA still applies.

The Oval Village District Energy Utility Bylaw No. 9134 and the City Centre District Energy Utility Bylaw No. 9895 were established employing the same wording as Alexandra District Energy Utility is Bylaw 8641.

Chapter 4. UCA Process

4.1. Regulatory Process

The process to be followed by a municipality or regional district is to:

a) Obtain a decision from the BCUC that they are not included within the definition of a public utility.

b) If the exemptions requested are not granted, then the Commission will regulate them, their rates and require CPCNs and other reports.

c) If they do come under the definition of a public utility then they are able to request an exemption from certain sections of the UCA.

Chapter 5. Government Business Enterprise

5.1. What is a Government Business Enterprise?

A Government Business Enterprise (GBE) corporation is a legal entity separate and apart from its owners (emphasis added), the shareholders. Legally, it has all the rights and obligations of an individual. The corporation can enter into contracts, own real property, sue and be sued.

A GBE corporation provides limited liability to a municipality as shareholder. The municipality's liability is limited to the value of the shares it purchased in the corporation. The corporation is also taxed independently from shareholders.

While shareholders own the corporation, they typically delegate most of the authority and responsibility for operation of the GBE corporation to its board of directors.

The GBE corporation must comply with a range of statutes and regulations—provincial and federal one of which includes the UCA.

5.2. GBE Directors

GBE Directors will want to avoid financial responsibility for contingent liabilities such as unpaid employee wages. Municipalities will want to protect directors against liabilities, through insurance or indemnity, in situations in which immunity does not apply. Hence, the need for a separate corporation.

Municipalities may want to seek a legal opinion on whether the statutory immunities enjoyed by municipal officers, officials, employees and volunteers extend to directors of the corporation.

5.3. Elector Approvals

Elector approval is required as a statutory pre-condition to transfer existing municipal utilities from the municipality to a corporation.

Elector approval is required if the partnering agreement covers more than five years, or could exceed five years through renewal or extension.

Elector approval is also needed for loans or loan guarantees that are provided to a municipal corporation under an agreement.

However, electoral approval is not required for the transfer of utility fund surpluses to DEUs.

5.4. Alternative Approval Process

The alternative approval process allows electors to indicate whether they are against a local government proposal moving forward. If 10 percent or more of the eligible electors in the area to which the process relates submit elector response forms, the local government may not proceed with the action or proposal unless it obtains assent of the electors.

5.5. Inspector of Municipalities Approval

A municipality may, with the authority granted by the Inspector’s approval, invest in a corporation through the acquisition of shares, either at the initial issue stage or through subsequent issues. The Inspector must approve each acquisition unless specified otherwise. However, subsequent share purchases might have occurred without the specific approval of the Inspector of Municipalities. These share purchases may have been the result of asset transfers without elector approval.

5.6. Grants

Local government corporations are not entitled to apply for or receive grants under the provincial grants statute—Local Government Grants Act[3] and regulations. However, a municipality might apply for a grant and then later transfer the funds or assets to the GBE.

5.7. Municipal Revenue Streams

Other revenue streams are available to GBEs not related to the sale of energy. The municipalities can move Water Utility surpluses from the municipal surplus to the GBE without any elector approval.

5.8. The Green Argument

The DEUs claim that they are supplying green energy with the lowest GHGs. However, when asked what their GHGs are compared to BC Hydro's GHG Intensities for total electricity generation in 2015 was 4 carbon dioxide equivalent metric tonnes per gigawatt hour (t CO2 e/GWh).[4] The information is not forthcoming. The argument that BC Hydro energy is dirty as it imports cheap coal-fired energy in the evenings from the USA fails since it exports clean energy during the day. Therefore the exchange of energy most likely has a net zero effect on North American GHGs. Further, the coal plants can not shut down and restart therefore they will generate GHGs in any case.

[3] http://www.bclaws.ca/civix/document/id/complete/statreg/96275_01#section5

[4] https://www.bchydro.com/content/dam/BCHydro/customer-portal/documents/corporate/environment-sustainability/environmental-reports/ghg-intensities-2007-2015.pdf

Chapter 6. Capital Expansions

If the private sector wishes to expand their utility, it must raise capital to create new assets. Those assets are then added into the rate base and new rates applied for.

If a municipal wishes to expand their utility, it can make use of rezoning its property to have a developer provide a district energy utility (DEU). “The [City’s] rezoning considerations for this development include a requirement for a legal agreement that, if the City elects, would require the developer to transfer ownership of the development's centralized low carbon energy plant to the City or LIEC at no cost to the City or LIEC.”[5] However, since the developer agreed what did the City give up to acquire an approximately $25M DEU? If the transfer ownership of the DEU is to the City, is the City in compliance with the Local Government Act and Community Charter when it transfers it to LIEC?

As municipalities can extract capital funding through rezoning agreements to expand their DEUs, has the other regulated private and crown energy providers been disadvantaged? As BC Hydro is a crown corporation, have its ratepayers (and provincial taxpayers) been adversely affected? Some municipalities have made use of this “work around”.

[5] Report to Committee, Sep. 6, 2019. File: 12-8060-20-009921Nol 01, Re: City Centre District Energy Utility Bylaw No. 9895, Amendment Bylaw No. 10100

Chapter 7. Alberta Decision 24056-D01-2019

7.1. ENMAX District Energy Edmonton Exemption Application

Although Alberta PUA is different than the UCA, they are actually somewhat comparable. In its Decision on Enmax's application as several parallel matters were discussed. These were:

a) ATCO argued that … DE Edmonton would be in competition with its distribution system because both provide a service that allows end-use customers to heat their buildings. In ATCO's view, potential DE Edmonton customers will view service from DE Edmonton as a substitute for gas distribution service. ATCO stated that its obligation to serve all customers upon request, regardless of size, contrasts with ENMAX's proposal to "cherry-pick" only the most economically attractive loads while protecting itself with exclusive franchise rights against competition to serve the balance of those customers. In ATCO's view "ENMAX is requesting the benefit of an exclusive monopoly franchise agreement as well as the benefits of a competitive market." (at para. 19; references omitted)[6]

b) The Commission itself concluded that ENMAX had not discharged its onus to show that (at para 35) "sufficient competition will exist such that regulation of ENMAX in its provision of thermal energy within the exclusive franchise area is unnecessary; or, stated in another way, that it would be in the public interest to exempt DE Edmonton and ENMAX (as its owner and operator) from Part 2 of the Public Utilities Act. Rather, the evidence suggests the contrary."

In the Decision[7], ENMAX Independent Energy Solutions Inc.'s application for a declaration from the Commission under Section 79 of the Public Utilities Act was denied.

BC DEUs are currently unregulated suppliers of energy to only the most economic loads, protecting itself through exclusive franchise rights and bylaws against competition and has no obligation to serve other customers. By creating an exclusive supply zone, are the DEUs stifling the public interest? The AUC Decision may provide the Panel with additional insight into this matter of DEUs and the public interest.

[6] https://ablawg.ca/wp-content/uploads/2019/08/Blog_NB_AUCDecision24056.pdf
[7] http://www.auc.ab.ca/regulatory_documents/ProceedingDocuments/2019/24056-D01-2019.pdf

Chapter 8. Reply to BCUC

Obviously, the queries posed by BCUC are centred on ownership or the various types of ownership.

8.1. Shareholder or Sole Shareholder

The utility's assets are owned by a corporation of which the municipality or regional district is a shareholder or the sole shareholder. The rights of the shareholder differ from the rights of a direct owner.

The rights and powers of a corporation are defined in the Interpretation Act of BC as:

Corporate rights and powers

17 (1) A corporation has perpetual succession and may do the following:

(a) sue and be sued in its corporate name;

(b) contract and be contracted with in its corporate name;

(c) have a common seal and may alter or change it;

(d) acquire and dispose of property other than land for its purposes;

(e) regulate its own procedure and business;

(f) in the case of a corporation with a name consisting of an English and a French form or a combined English and French form, use either the English or French form of its name or both forms and show on its seal both the English and French forms of its name or have 2 seals, one showing the English and the other showing the French form of its name.

(2) A majority of the members of the corporation may bind the others and the corporation by their acts.

(3) Individual members of a corporation established by an enactment who do not contravene the enactment are exempt from personal liability for the corporation's debts, obligations or acts.

The Corporate structure is used to erect a “corporate veil” between the utility and the municipality or regional district to reduce risk of liabilities to the municipality or regional district. Also, it allows the municipality or regional district to obfuscate the true costs by consolation of financial statements. The electorate no longer have direct control of the utility as it is run by a Board of Directors usually consisting of senior staff of the municipality or regional district. This creates many other problems including a possible perceived conflict of interest as these directors are employed by the municipality or regional district at the same time as they serve on the Board of the utility.

Further, the municipality or regional district is unlikely to have suitable energy sector staff at their disposal to own or operate a utility.

8.2. A Partner, a Limited Partner or a General Partner

The utility’s assets are owned by a partnership of which the municipality or regional district is a partner, a limited partner or a general partner.

Having a partnership creates issues of transparency and accountable. Usually a partnership is not subject to freedom of information requests and therefore is not accountable to the public it serves.

8.3. A Third Party

The utility’s assets are owned by a third party, but the municipality or regional district has granted a franchise agreement, a licence and/or has enacted enabling bylaws to facilitate the construction and/or operation of the utility.

A municipality or regional district can grant a franchise agreement, a licence and/or has enacted enabling bylaws to facilitate the construction and/or operation of the utility. However, the third party must comply with the UCA as it will be a public utility. Municipalities or Regional Districts are not able to grant exemptions from certain sections of the UCA. Only the BCUC is able to grant exemptions after receiving approval from the LIC. A third party operates in its own interest not the public interest.

However, a GBE that has an internal (GBE) operation manager or superintendent, who is responsible for the operating permit of the GBE, should be able to contract with a third party service provider for operation services.

8.4. Third Party Operator

The utilities' assets are owned by a municipality or regional district but are operated by a third party. The UCA definition includes the wording "owns or operates" for a reason. The first is safety and the second is reliability of service for a cost. So for the cost to be reasonable, the operator's costs and safety are regulated by the Commission.

8.5. Rate Setting by Agreement

The municipality or regional district, by agreement with the utility owner, sets or approves the setting of rates for the utility. First, this utility owner is a public utility by definition. This scenario assumes the utility owner is not a municipality or regional district and is interested in providing the service for a profit obtained through rates. The setting of rates may not allow for proper safety and reliability of service to its customers. To determine the appropriate rates and protect the public interest, the Commission will have to conduct a rate hearing. The "rates by agreement" approach does not protect the public interest. Besides, the Commission will have far more expertise in rate setting than a municipality or regional district.

As BC Hydro is a crown corporation and these other utilities (i.e. district energy utilities) compete with BC Hydro, the public, who are also BC Hydro ratepayers, is competing with itself and the cost of energy from BC Hydro will have to increase to replace the lost income resulting from the existence of these district energy utilities. Is this in the public interest?

Chapter 9. Summary

For municipalities or regional districts that are included under the Local Government Act and the Community Charter, the issue of paramountcy is clearly stated in Section 121 of the UCA, except in the case of the City of Vancouver which is governed by the Vancouver Charter. The definition of a public utility in the UCA is clear. The “municipal and regional district” exemption in the UCA is clear. The other ownership structures clearly separate the municipalities and regional districts from any other form of corporate ownership structure by the creation of “a person” who is captured within the UCA’s definition of a public utility and defined further in the BC Corporation Act and the Interpretation Act.

The Local Government Grants Act supports the narrow definition of municipalities and regional districts in the UCA. In the Local Government Grants Act, only conditional grants will be made to municipalities, regional districts and prescribed related organizations. Hence, prescribed related organizations (GBEs, etc.) are differentiated from municipalities or regional districts and clarify the meaning municipalities or regional districts and intent within the definition of a public utility in the UCA; otherwise non-conditional grants are available are available to municipalities and regional districts. If the BC Government intended to support a broader definition of municipalities or regional districts, then the caveat to distinguish prescribed related organizations (GBEs, etc.) from municipalities or regional districts would not be in the Local Government Grants Act.

The DEUs have the required earmarks of a utilities that should be regulated. Further, they displace revenue from the other regulated utilities and serve only high-valued customers to the disadvantage of the other regulated utilities.

There is nothing in the UCA that prevents the municipalities or regional districts from providing energy services within their boundaries either through a municipality or regional district or other corporate structure. However, the UCA is clear when another structure is used to provide energy services within their boundaries in that it could be regulated under the UCA.

This condition must have been determined by the Legislature and found to be in the public interest.

In the UCA, the question of whether non-compliant municipalities or regional districts may be guilty of an offence under Section 106(1)(b) is an interesting issue to be addressed in the Inquiry report.