

Liquid Waste Services
Tel. 604 451 6039

October 24, 2019

File: CP-03-04-SW008

Mr. Patrick Wruck, Commission Secretary
British Columbia Utilities Commission
6th Floor – 900 Howe Street
Vancouver, BC V6Z 2N3

Dear Mr. Wruck:

Re: British Columbia Utilities Commission – An Inquiry into the Regulation of Municipal Energy Utilities – Project No. 1599027 – Letter of Comment

Metro Vancouver is submitting the enclosed Evidence Submission as a Registered Intervener for the British Columbia Utilities Commission Inquiry into the Regulation of Municipal Energy Utilities (Project No 1599027). We thank the Commission for the opportunity to participate in this Inquiry and look forward to providing any further information and submissions that the Commission may find useful.

Contact Information

For further information, please contact:

Jeff Carmichael
Division Manager, Utility Research & Innovation
Metro Vancouver
4730 Kingsway
Burnaby, B.C. V5H 0C6
604-456-8833
Jeff.Carmichael@metrovancover.org

Ian Webb
Legal Counsel
Lawson Lundell LLP
1600-925 West Georgia Street
Vancouver, B.C. V6C 3L2
604-631-9117
iwebb@lawsonlundell.com

Sincerely,



Jeff Carmichael, Ph.D.
Division Manager, Utility Research and Innovation

cc: Ian Webb, Lawson Lundell LLP

Attachment: British Columbia Utilities Commission Inquiry into the Regulation of Municipal Energy Utilities: Evidence Submission of Metro Vancouver

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BRITISH COLUMBIA UTILITIES COMMISSION

INQUIRY INTO THE REGULATION OF MUNICIPAL ENERGY UTILITIES

EVIDENCE SUBMISSION OF METRO VANCOUVER

OCTOBER 24, 2019

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I. Introduction

1. This is Metro Vancouver's initial evidence submission for the British Columbia Utilities Commission (**Commission**) Municipal Energy Utilities Inquiry (**Inquiry**).¹

2. On September 9, 2019, Metro Vancouver registered as an intervener in the Inquiry. In this submission, Metro Vancouver will comment on the following question:

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.

3. The initial question above is whether a utility affiliated, in some way, with a municipality or regional district is considered a public utility as defined in the *Utilities*

¹ Established by Commission Order No. G-177-19 dated August 1, 2019.

*Commission Act*² (the *Act*); however, the assumptions underlying the initial question are not entirely clear. Metro Vancouver considers that the matters raised by this Inquiry should generally be considered in a two-part framework: (1) does an “entity” that is not a municipality or regional district but is affiliated, in some way, with a municipality or regional district fall within paragraph (a) of the *Act*’s definition of “public utility” and, if so, (2) should the entity be regulated as a public utility under some or all of the provisions of the *Act*. An entity that does not fall within paragraph (a) of the definition of “public utility” in the *Act* is not a public utility under the *Act*. On the other hand, if an entity falls within paragraph (a) of the definition of “public utility”, further consideration will be required because it is almost trite to say that paragraph (a) is overbroad and captures entities that should not be regulated as a public utility.

4. The issue the Commission has raised about entities involved in providing utility services in affiliation with municipalities or regional districts is inseparable from the underlying reason why municipalities and regional districts are themselves not public utilities under the *Act* in respect of services they provide within their own boundaries. In British Columbia, this exclusion is presented as a carve-out in the definition of “public utility” in the *Act*:

“public utility” means... but does not include

(c) a municipality or regional district in respect of services provided by the municipality or regional district within its own boundaries

(the **Local Government Exclusion**).³

5. Given that the Inquiry is inextricably tied to the long standing public policy underlying the Local Government Exclusion, Metro Vancouver believes that the Inquiry is an

² R.S.B.C. 1996, c. 473 (*Act*).

³ *Ibid*, s. 1(1), definition of “public utility”.

appropriate forum to raise and consider issues in connection with entities involved in providing utility services in affiliation with municipalities or regional districts and relating to the applicability and scope of (1) paragraph (a) of the *Act's* definition of “public utility”, and (2) the Local Government Exclusion. Metro Vancouver proposes that the Inquiry consider whether any amendment to the Local Government Exclusion would be necessary or beneficial to encompass modern local government energy service delivery structures and provide greater certainty to interested parties. Metro Vancouver further proposes that the Inquiry consider whether amendment to other, outdated exclusions within the definition of “public utility” would be beneficial.

6. First, the Local Government Exclusion, if strictly interpreted, could be viewed as applying only to a “municipality” or “regional district” as those terms are defined in the *Local Government Act*.⁴ Such interpretation does not mean that an entity that is not a municipality or regional district but is affiliated, in some way, with a local government utility is necessarily subject to regulation under the *Act*. An initial question is which entity, the local government or the affiliated entity, is responsible for the provision of the utility service to customers. Further, the policy rationale behind the Local Government Exclusion suggests that the following entities should not be regulated under the *Act*: (1) entities that are affiliated in some way with a local government utility, but where the performance of the local government utility, including rates, remains directly accountable to the voting constituents of the municipality or regional district, and (2) other regional governmental entities that are responsible and accountable to the public in a substantially similar way as the municipalities and regional districts captured by the Local

⁴ R.S.B.C. 2015, c. 1 (*Local Government Act*). The term “local government” as used in this submission has the same meaning as “local government” as defined in the *Local Government Act*, being (a) the council of a municipality, or (b) the board of a regional district.

Government Exclusion. Metro Vancouver will submit that consideration should be given to providing additional clarity that such persons are exempt from regulation under the *Act* by way of either legislative amendment to the wording of the Local Government Exclusion or a class of cases exemption pursuant to section 88 of the *Act*, for example. If legislative amendment or section 88 exemption is deemed unnecessary (for example, on the basis that the statutory language of the Local Government Exclusion can be interpreted broadly enough to encompass various forms of corporate structures and affiliations), it would nevertheless be beneficial for the Commission to develop clear guidelines to provide greater certainty to interested parties.

7. Second, none of the other exclusions in paragraphs (d) through (g) of the definition of “public utility” are responsive to emerging, provincially supported alternative energy sources. Instead, an inefficient and costly patchwork of various orders and regulations issued or adopted by the Commission, Cabinet, and/or the Minister exempt or exclude various persons from some or all provisions of the *Act*. As with the Local Government Exclusion, Metro Vancouver will submit that consideration should be given to also exempt persons not otherwise public utilities engaged in the energy industry from regulation as public utilities through expanded or new statutory exclusions in the definition of “public utility” or, if necessary, through a class of cases exemption pursuant to section 88 of the *Act*.

8. Metro Vancouver appreciates the opportunity to provide its written submissions and looks forward to continued participation in the Inquiry.

II. About Metro Vancouver

9. Four different entities operate under the banner of what is commonly referred to as “Metro Vancouver”. These four entities are:

- Metro Vancouver Regional District;
- Greater Vancouver Sewerage and Drainage District (**GVS&DD**);
- Greater Vancouver Water District; and
- Metro Vancouver Housing Corporation.⁵

10. Metro Vancouver is a federation of 21 municipalities,⁶ one Electoral Area, and one Treaty First Nation⁷ that collaboratively plans for and delivers regional-scale services. Metro Vancouver's core services are drinking water, wastewater treatment, and solid waste management. Metro Vancouver also regulates air quality, plans for urban growth, manages a regional parks system, and provides affordable housing.

11. Of the four entities that operate under Metro Vancouver, the entity most involved in the energy industry (and therefore the focus of Metro Vancouver's submissions) is the GVS&DD. The GVS&DD was created and constituted pursuant to the *Greater Vancouver Sewerage and Drainage District Act (GVS&DD Act)*.⁸ The GVS&DD is responsible for the construction, maintenance, operation, and administration of major sewerage and drainage facilities as well as for the disposal of all types of waste.⁹

12. Its access to solid and liquid wastes and the energy potential within those wastes is the basis of GVS&DD's participation in the energy industry. For example, the GVS&DD

⁵ Refer to <<http://www.metrovancouver.org/about/Pages/default.aspx>>.

⁶ These 21 municipalities are Anmore (Village), Belcarra (Village), Bowen Island (Municipality), Burnaby (City), Coquitlam (City), Delta (City), Langley (City), Langley (Township), Lions Bay (Village), Maple Ridge (City), New Westminster (City), North Vancouver (City), North Vancouver (District), Pitt Meadows (City), Port Coquitlam (City), Port Moody (City), Richmond (City), Surrey (City), Vancouver (City), West Vancouver (District), and White Rock (City).

⁷ The Treaty First Nation is the Tsawwassen First Nation.

⁸ *An Act to Incorporate the Greater Vancouver Sewerage and Drainage District*, S.B.C. 1956, c. 59, s. 3 (*GVS&DD Act*).

⁹ *Ibid*, ss. 6(1) and 7A.

captures biogas at its Lulu Island wastewater treatment plant and upgrades it to pipeline quality biomethane for sale to FortisBC Energy Inc.¹⁰ The GVS&DD also sells to BC Hydro electricity generated at GVS&DD's waste-to-energy facility in Burnaby.¹¹ The GVS&DD will also be selling thermal energy recovered at its new North Shore Wastewater Treatment Plant to the Lonsdale Energy Corporation, a wholly owned subsidiary of the City of North Vancouver.¹²

13. The GVS&DD is statutorily deemed to be a regional district for the purposes of planning, regulating, storing, and managing solid waste and recyclable material under the British Columbia *Environmental Management Act*.¹³ Although the GVS&DD is not deemed to be a regional district for its other purposes, it is governed and accountable to the public in a substantially similar manner as the municipalities and regional districts referred to in the Local Government Exclusion. Like those local governments,¹⁴ the powers and functions of the GVS&DD are exercised and discharged by a local government board (**GVS&DD Board**). The GVS&DD Board is currently made up of 35 elected representatives¹⁵ from the GVS&DD member jurisdictions across the Metro Vancouver region.¹⁶ Each of these 35 elected representatives is directly accountable to the voters in their respective jurisdictions.

¹⁰ Refer to Commission Order No. E-13-13 dated September 30, 2013.

¹¹ Refer to Commission Order No. G-60-03 dated September 18, 2013.

¹² Refer to Commission Order No. G-105-19 dated May 15, 2019 (Order No. G-105-19).

¹³ *GVS&DD Act*, *supra* note 8, s. 7A(7).

¹⁴ In this submission, the term "local government" will be used to refer to "municipalities" and "regional districts". Note that in the *Local Government Act*, *supra* note 4, Schedule, local government is defined to mean (a) the council of a municipality, and (b) the board of a regional district.

¹⁵ Specifically, there are 16 mayors, 18 councillors, and one director (of Electoral Area A) on the GVS&DD Board.

¹⁶ The jurisdictions that are part of the GVS&DD Board are Burnaby (City), Coquitlam (City), Delta (City), Electoral Area A, Langley (City), Langley (Township), Maple Ridge (City), New Westminster (City), North Vancouver (City), North Vancouver (District), Pitt Meadows (City), Port Coquitlam (City), Port Moody (City), Richmond (City), Surrey (City), Vancouver (City), West Vancouver (District), White Rock (City). Anmore (Village), Belcarra (Village), Bowen Island (Municipality), Lions Bay (Village), and Tsawwassen First Nation are not part of GVS&DD.

14. The GVS&DD Board meets on a regular basis and operates in an open, transparent and publicly accountable manner.¹⁷ Its meeting materials, including agendas and meeting minutes, are available to the public and easily accessible through Metro Vancouver's website.¹⁸ Additionally, with a few exceptions, GVS&DD Board meetings are open to the public and webcasts of these meetings are publicly available online.¹⁹

III. Policy Rationale for the Local Government Exclusion

15. There is a long history in British Columbia of local governments owning and operating their own utilities for the benefit of their community.

16. The City of New Westminster, for example, owns the oldest continuously operating electrical utility in British Columbia.²⁰ The City of New Westminster began generating electricity for streetlights in 1891 and, through its Electrical Department, continues to distribute electricity to customers.²¹ The City of New Westminster has also established its own Utility Commission, which provides accountable, effective stewardship for an electric utility operating in a municipal environment and ensures that customers of the municipal utility have reliable, cost-effective services and utility solutions.²²

17. More recently, the City of Vancouver established the Southeast False Creek Neighbourhood Energy Utility (NEU), which uses waste thermal energy captured from sewage

¹⁷ *GVS&DD Act*, *supra* note 8, s. 14(3); Regional District of Greater Vancouver, revised by-law No. 1205, *Procedure By-law*, (2014), s. 3.1 (*Procedure By-law*).

¹⁸ *GVS&DD Act*, *supra* note 8, s. 8(5.1). Also refer to <<http://www.metrovancouver.org/boards/search/Pages/results.aspx>>.

¹⁹ *GVS&DD Act*, *supra* note 8, s. 14(3); *Procedure By-law*, *supra* note 17, s. 3.9. Also refer to <<http://www.metrovancouver.org/boards/webcast/Pages/default.aspx>>.

²⁰ Refer to <<https://www.newwestcity.ca/services/electrical-utility#contact-information>>.

²¹ *Ibid*.

²² *Ibid*; New Westminster Utility Commission Strategic Plan: 2018-2022 at 9 and accessible at <https://www.newwestcity.ca/database/files/library/Utility_Commission_Strategic_Plan_2018_2022.pdf>.

to provide space heating and hot water to buildings in Southeast False Creek.²³ City staff including the General Manager of Engineering Services report to city council annually on the NEU and bring a comprehensive rate review to city council every five years.²⁴ City of Vancouver employs an independent neighbourhood energy expert panel to advise staff and city council on future rate adjustments as well as on key activities related to the implementation of the Vancouver Neighbourhood Energy Strategy.²⁵

18. Other municipalities and regional districts in British Columbia that own and operate their own electric utilities and sell electricity directly to their residents are the Cities of Nelson, Grand Forks, and Penticton, as well as the District of Summerland.²⁶

19. Local governments in British Columbia have been statutorily excluded from the definition of “public utility” in respect of the services they provide within their boundaries for over 80 years.²⁷ The longstanding, underlying reason for excluding local government utilities from regulation by a provincial regulator in respect of services provided within their boundaries is that utilities owned by municipalities (or regional districts) are effectively regulated by the residents of those municipalities (or regional districts).²⁸

²³ Refer to < <https://vancouver.ca/home-property-development/southeast-false-creek-neighbourhood-energy-utility.aspx>>.

²⁴ City of Vancouver Administrative Report from General Manager of Engineering Services to Vancouver City Council re: False Creek Neighbourhood Energy Utility (“NEU”) 2019 Customer Rates dated November 20, 2018 and accessible at <<https://council.vancouver.ca/20181211/documents/spec1e.pdf>> (“Administrative Report”).

²⁵ *Ibid.*

²⁶ Refer to <<https://www2.gov.bc.ca/gov/content/industry/electricity-alternative-energy/electricity/residential-electricity>>.

²⁷ Municipalities were first statutorily excluded from the definition of “public utility” in British Columbia in the *Public Utilities Act*, S.B.C. 1938, c. 47, s. 2, which read as follows: “public utility” means... but shall not include a municipality in respect of services furnished by the municipality within its own boundaries.

²⁸ Paul A. Meyer, “The Municipally Owned Electric Company’s Exemption from Utility Commission Regulation: The Consumer’s Perspective” (1983) 33:2 Case W. Res. L. Rev. 294 at 312.

20. Local government owned utilities differ from shareholder owned utility companies in two ways.²⁹ First, local government utilities are directly accountable to their customers—who are also their constituents—for the utility service they provide and the rates they charge. If these customers consider the utility service and rates to be unjust or unreasonable, they can remove the elected representatives (on the municipality’s council or the regional district’s board) responsible for the utility through the electoral process.

21. Second, municipalities and regional districts do not have and are not controlled by private shareholders. Local government owned utilities are therefore not motivated by a profit interest that ultimately can conflict with the interests of their customers.

22. The Commission recently recognized the rationale underlying the exclusion of municipalities from provincial utility regulation in a 2016 decision on an application for an exemption pursuant to section 88(3) of the *Act*.³⁰ As an alternative to an exemption under section 88(3) of the *Act*, the applicant asked the Commission to find a particular First Nation to be a municipality or regional district. In denying the applicant’s request, the Commission said the following about the policy behind Local Government Exclusion:

generally speaking, ratepayers of a municipal utility are entitled to vote in a municipal election. Thereby, municipal councils are accountable to ratepayers for the performance, including rates, of the municipal utility.³¹

23. Accordingly, local government utilities are justifiably excluded from the jurisdiction of the provincial regulator because the local government is (1) politically

²⁹ As recently summarized on page 8 of an independent expert report requisitioned by the Commission as part of the Indigenous Utilities Regulation Inquiry, established by Commission Order No. G-62-19, titled “Utility Regulation: What Is It, Why Do We Have It, and How Does It Work?” authored by Scott Hempling and listed as Exhibit A-8.

³⁰ Commission Order No. G-175-16 dated December 1, 2016 (Order No. G-175-16).

³¹ *Ibid* at 6.

accountable to the community, including those community members that are utility customers, and (2) mandated by statute to act in the interest of the community, including these customers. The key to ensuring that these two conditions are met, and that exclusion from oversight by the provincial regulator is appropriate, is to limit the exclusion to services that the local government provides “within its own boundaries”.

24. As has been repeatedly confirmed by the British Columbia courts, municipalities and regional districts are statutorily mandated to act in the interests of the communities that they serve.³² Local governments also have the flexibility to respond to the different needs and changing circumstances of their communities.³³ In the context of local government provided utility service, these interests include reliable, quality, and cost effective utility service that is responsive to the particular and evolving characteristics of the community served. If the constituents in the jurisdiction of a local government owned utility do not like what they are getting, they have direct recourse through the ballot box.

25. Municipalities and regional districts have statutory mandates to act in the interest of and are directly accountable to the communities within their boundaries, as discussed above. On the other hand, municipalities and regional districts are not accountable in the same way to those located outside their boundaries. In cases where a municipality or regional district provides utility services to customers outside of its respective boundaries and economic regulation is warranted in respect of such services, it may be reasonable for the Commission to oversee the provision of such services to customers located outside of the boundaries.

³² *Local Government Act*, *supra* note 4, s. 1(a); additionally, see, for example, *International Bio Research v. Richmond (City)*, 2011 BCSC 471 at para. 31 and *Pitt Meadows (District) v. Ron Jones Ltd.*, 2004 BCCA 277 at para. 67.

³³ *Local Government Act*, *supra* note 4, s. 1(c).

26. Consequently, the Local Government Exclusion excludes municipalities and regional districts from regulation under the *Act* in respect of services they provide to consumers located within their boundaries, but not in respect of services they provide to consumers located outside their boundaries, if any. An argument was made by a party in a previous proceeding involving GVS&DD that the Local Government Exclusion might not apply to the extent a local government utility owns and operates equipment that is located outside of the local government's boundaries, even though the utility provides services only to consumers located within its boundaries. This argument misunderstands both the wording and the intent of the Local Government Exclusion. When the only services provided by the local government utility are provided to consumers within the local government's boundaries, the Local Government Exclusion applies to exclude the local government from regulation under the *Act*. That some equipment of such utility might be located outside the local government's boundaries has no bearing on the exclusion from regulation under the *Act* of the local government in respect of services provided within its boundaries.

27. The local government's constituents will play the same role as the Commission—through their voting power, these constituents hold the local government accountable for providing safe and reliable service at reasonable prices, responsive to the needs and evolving circumstances of the community. They, in effect, provide public interest oversight similar to what the Commission provides under the *Act*.³⁴ If some equipment of the local government utility is located outside the local government's boundaries, this will not diminish the local government's direct accountability to the community in respect of the service provided to them.

³⁴ Commission Order No. G-104-18 dated June 5, 2018 at 9 (Order No. G-104-18).

28. It would therefore be redundant and ultimately a waste of public resources for the Commission to regulate local government utilities when an effective form of regulation with the same goal is already in place. The reality of a provincial regulatory body, such as the Commission, regulating a local government utility in respect of services provided to customers located within its boundaries would be one statutory body with the obligation to act in the public interest (the Commission) second guessing the decisions of another statutory body that also has an obligation to act in the public interest (the municipality or regional district).

IV. Certain Persons Affiliated with a Local Government Should not be Subject to Regulation under the *Act*

29. A person affiliated in some way with a municipality or regional district and involved with a local government utility could potentially fall within paragraph (a) of the definition of “public utility” in section 1 of the *Act*. An initial question is which entity, the local government or the affiliated entity, is responsible for the provision of the utility service to customers. Affiliated persons should not be regulated by the Commission pursuant to the *Act* if the performance of the utility, including rates, remains directly accountable to the voting constituents of the municipality or regional district. In these cases, the observations above about public policy and potential waste of public resources equally apply.

30. Metro Vancouver does not yet have a position on precisely which forms of affiliation between a person and a municipality or regional district will ensure that the utility is the local government or is adequately controlled by the local government such that its performance remains accountable to the voting constituents of the local government. Clarification of the acceptable forms of affiliation and requisite degree of control is, however, desirable, as such clarification would allow local governments (and affiliated persons) to

effectively plan the development of energy utility services and avoid the unnecessary and inefficient use of taxpayers funds associated with seeking exemptions from regulation under the *Act* on a case-by-case basis.

31. Metro Vancouver looks forward to the Inquiry shedding more light on these matters.

V. The Local Government Exclusion Should Include Regional Governmental Entities

32. In addition to excluding municipalities and regional districts (as defined in the *Local Government Act*), the Local Government Exclusion should be modernized to also exclude other regional governmental entities, such as the GVS&DD, that are accountable to the public in a substantially similar way as the municipalities and regional districts to whom the Local Government Exclusion currently applies.

33. The Commission recently determined that the Local Government Exclusion, strictly interpreted, applies only to entities that are “municipalities” or “regional districts” as defined in the *Interpretation Act*:

“municipality” means, as applicable,

(a) the corporation into which the residents of an area are incorporated as a municipality under the *Local Government Act*, the *Vancouver Charter* or any other Act, or

(b) the geographic area of the municipal corporation;

...

“regional district” means a regional district as defined in the *Local Government Act*....³⁵

34. The GVS&DD is not a municipality incorporated under the *Local Government Act*, *Community Charter*, *Vancouver Charter*, or any other act. The GVS&DD is also not, except for the purposes of planning, regulating, storing and managing solid waste and recyclable material under the British Columbia *Environmental Management Act* (which is not at issue here), a regional district as defined in the *Local Government Act*. Accordingly, the GVS&DD is not a municipality or regional district as defined in the *Local Government Act* in respect of the energy services it does or could provide and therefore likely is not excluded from the definition of “public utility” under the *Act* by the Local Government Exclusion.

35. There is, however, no principled reason to exclude, from provincial utility regulation, entities that fall within the definition of “municipality” or “regional district” in the *Local Government Act*, but not exclude other regional governmental entities that are equally governmental in their governance and equally accountable to their community. The issue is that the wording of the Local Government Exclusion is outdated. As long as a utility is ultimately governed or controlled by a body politic and accountable to the voting community in a similar manner as a utility directly owned by a municipality or a regional district, the policy rationale behind the Local Government Exclusion should apply equally to such utility.

36. The GVS&DD is an example of a regional governmental entity that is accountable to the public in a substantially similar way as the municipalities and regional districts captured by the current Local Government Exclusion. Like those municipalities and

³⁵ Order No. G-104-18, *supra* note 34 at 9. Although neither “municipality” nor “regional district” are defined in the *Act*, both terms are defined in section 29 of the *Interpretation Act*, R.S.B.C. 1996, c. 238 (and excerpted in paragraph 34. Pursuant to section 2(1) of the *Interpretation Act*, the definitions in the *Interpretation Act* apply to the use of those terms in the *Act* because a contrary intention does not appear in either the *Interpretation Act* or the *Act*.

regional districts, the GVS&DD's powers and functions are discharged by a board made up of elected representatives.³⁶ The GVS&DD Board is required to have regular, open meetings and its meeting minutes must be available to the public.³⁷

37. The significance of these characteristics, shared by municipalities, regional districts, and other regional governmental entities like the GVS&DD, is that the activities, plans and performance of utility services they provide are transparent to their customers (and to their communities generally) and, if those customers (or the community generally) are dissatisfied with such performance and plans, they have direct recourse in the form of electing representatives that will advocate for the utility service they desire.

38. There is no rational reason for the Local Government Exclusion to apply to municipalities and regional districts as defined in the *Local Government Act* but not other similar regional governmental entities. If the Local Government Exclusion is to be strictly interpreted as applying only to entities that are “municipalities” or “regional districts” as defined in the *Interpretation Act*, the exclusion is simply outdated—it has not been amended to recognize evolving local governance structures or an increasing focus on regional coordination.³⁸

Expanding the Local Government Exclusion to include regional governmental entities such as the GVS&DD would recognize the evolving reality of local governance and provide certainty for such entities considering utility service delivery.

³⁶ *GVS&DD Act*, *supra* note 8, s. 8.

³⁷ *Ibid*, ss. 8(5.1) and 14(3); *Procedure By-law*, *supra* note 17, ss. 3.1 and 3.9.

³⁸ The Local Government Exclusion can be traced back to the *Public Utilities Act*, S.B.C. 1938, c. 47, which, at that time, read as follows: “public utility” means... but shall not include a municipality in respect of services furnished by the municipality within its own boundaries.

VI. Expand the Exclusions in the Definition of “Public Utility” to include producers of Renewable Natural Gas and Thermal Energy

39. Another opportunity to modernize the exclusions in the definition of “public utility” in the *Act* relates to persons not otherwise public utilities engaged in the renewable natural gas or thermal energy industries. Given recent advancements in energy production and the Province’s plan to support alternative renewable energy sources, persons not otherwise public utilities engaged in the renewable natural gas or thermal energy industries should be excluded from the definition of “public utility” in the *Act*.

40. Many emerging alternative energy sources are derived from raw materials that are readily available to local governments. Examples of these raw materials include solid waste (food scraps and other organic wastes can be used to produce biomethane, wood waste and other solid wastes can be combusted to produce heat), liquid waste (sewage heat recovery systems can provide heat and renewable natural gas), and landfill waste (landfill gas contains biomethane).

41. A patchwork of existing exclusions in the definition of “public utility” and various orders and regulations issued or adopted by the Commission, Cabinet, and/or the Minister over the past 20 years exclude or exempt various persons that produce energy and are not otherwise public utilities from regulation under the *Act*. These statutory exclusions, regulations and orders exempt or exclude; for example:

(1) electricity producers:

- electricity producers not otherwise public utilities with respect to the production and sale of electricity to BC Hydro or Powerex:³⁹

³⁹ Ministerial Order No. M-22-0205 dated June 6, 2002.

- Columbia Power Corporation (**CPC**)/Columbia Basin Trust (**CBT**) in respect of the sale, purchase or production of electricity from (i) the Arrow Lakes Generating Station, the Brilliant Project, the Brilliant Expansion Project, or the Waneta Expansion Project or (ii) a CPC/CBT contractual entitlement to electricity;⁴⁰ and
 - the GVS&DD with respect to the sale of electricity produced at a waste-to-energy facility in Burnaby to BC Hydro;⁴¹
- (2) producers of oil, natural gas, or other natural petroleum substances not otherwise public utilities;⁴²
- (3) producers of biogas or biomethane not otherwise public utilities who sell to public utilities;⁴³
- (4) producers of geothermal resources not otherwise public utilities;⁴⁴ and
- (5) thermal energy producers:
- the GVS&DD with respect to the production of thermal energy from treated effluent at the GVS&DD's North Shore Wastewater Treatment Plant and sale of such thermal energy to the Lonsdale Energy Corporation municipal district energy system.⁴⁵

42. As evidenced by the above list, producers of modern energy types that are not otherwise public utilities (namely, producers of thermal energy from sources other than geothermal resources, and producers of renewable natural gas if sold to anyone who is not a

⁴⁰ *CPC/CBT Projects Exemption Continuation Regulation*, B.C. Reg. 254/2010.

⁴¹ Order No. G-60-03, *supra* note 11.

⁴² *Act*, *supra* note 2, s. 1(1), definition of "public utility", subparagraph (e).

⁴³ Commission Order No. G-126-13 dated August 20, 2013.

⁴⁴ *Act*, *supra* note 2, s. 1(1), definition of "public utility", subparagraph (f).

⁴⁵ Order No. G-105-19, *supra* note 12.

public utility) are not cohesively captured by the various exclusions and exemptions. The statutory exclusions in subparagraphs (e) and (f) of definition of “public utility”, which exclude certain energy producers from regulation under the *Act*, are representative of the forethoughts at the time the statutory exclusions were enacted. These statutory exclusions are not inclusive of or responsive to the significant advancements in energy that have recently been made.

43. Further, these statutory exclusions to the definition of “public utility” are not consistent with the BC Energy Plan (2007), the BC Bioenergy Strategy (2008), or CleanBC (2018), which expressly contemplate an increasing development of energy from biogenic waste, solar thermal energy, and geothermal energy and acknowledge that the provincial government will promote energy efficiency and alternative energy systems by working with municipalities, utilities, and other stakeholders.⁴⁶ They are also not consistent with local governments’ statutory obligations related to greenhouse gas emission reduction.⁴⁷

44. Adding a new exclusion to the definition of “public utility” for persons, not otherwise public utilities, engaged in the renewable natural gas or thermal energy industry has two obvious benefits. First, such an exclusion would further the Province’s goal of supporting alternative energy sources while recognizing the role that local governments can play in

⁴⁶ “The BC Energy Plan – A Vision for Clean Energy Leadership” dated 2007 and accessible at <https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/bc_energy_plan_2007.pdf>; “BC Bioenergy Strategy – Growing our Natural Energy Advantage” dated 2008 and accessible at <https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/bc_bioenergy_strategy.pdf>; “Clean BC Report” dated 2018 and accessible at <https://blog.gov.bc.ca/app/uploads/sites/436/2019/02/CleanBC_Full_Report_Updated_Mar2019.pdf>.

⁴⁷ For example, official community plans and regional growth strategies must include targets for the reduction of greenhouse gas emissions as well as the policies and actions of the local government or regional district with respect to achieving those targets (*Local Government Act*, *supra* note 4, ss. 473, 429). Additionally, 187 of 190 BC municipalities, regional districts and the Islands Trust have signed the BC Climate Action Charter committing to taking action to reduce greenhouse gas emissions, which is over 98% of all BC local governments.

promoting energy efficiency and alternative energy sources.⁴⁸ Second, it is far more efficient (with respect to both cost and time) to provide a transparent blanket statutory exclusion than it is to require each person not otherwise a public utility engaged in the renewable natural gas or thermal energy industries to seek an exemption from regulation under the *Act* on a case-by-case basis. Such increased efficiency is in the interest of not only those seeking certainty in respect of applicability of the *Act* but is also in the interest of the Commission and, ultimately, British Columbia.

45. Additionally, entities that produce biomethane and thermal energy from waste materials, and are who are not otherwise public utilities, do not have market power. Potential purchasers of such energy from such producers—public utilities, municipal energy utilities, or private consumers—are under no compulsion to take such energy and, in fact, have ample energy source options. If potential purchasers decide to purchase such energy from such producers, it is because they decide that such a purchase is in their best interests based on cost, environmental benefits, preferences of the community they serve (if applicable), and other factors. If the purchaser is a public utility, such purchase is subject to Commission oversight through section 71 of the *Act*. If the purchaser is a local government utility, such purchase is overseen by elected officials, backstopped by voters in the local government’s community. In these circumstances, regulation of the energy producers that are not otherwise public utilities is not necessary to protect the public interest nor is it a good use of public funds.

⁴⁸ The proposed exclusion from the definition of “public utility” for persons not otherwise public utilities engaged in the renewable natural gas or thermal energy industries would exclude from regulation under the *Act* a municipal energy utility that has surplus capability and enters into an arrangement with a neighbouring municipality to supply surplus thermal energy to that municipality’s energy utility.

VII. Conclusion

46. The Commission's stated focus in this Inquiry is 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 *Act*. Metro Vancouver's position is that certain persons involved in the provision of local government utility services, and that are not themselves a municipality or local government, might fall within subparagraph (a) of the existing definition of "public utility". Such persons should not be regulated under the *Act* as long as the local government remains directly accountable for the utility's performance to its ratepayers, and the community generally, through the utility's governmental governance structure and rate-setting processes.

47. Metro Vancouver further believes that this Inquiry is a chance for the Commission to encourage modernization of the statutory exclusions to the definition of "public utility". Modernizing the Local Government Exclusion to include other forms of local governmental entities is consistent with the longstanding policy rationale underlying the Local Government Exclusion, recognizes changing local governance structures and increasing regional cooperation, and provides certainty and increased efficiency for all parties concerned, thereby facilitating provincial objectives. If legislative amendment is deemed unnecessary, for example on the basis that the statutory language of the Local Government Exclusion can be interpreted more broadly to encompass various forms of corporate structures and affiliations, it would nevertheless be beneficial for the Commission to develop clear guidelines to provide greater certainty to interested parties.

48. Similarly, adding an exclusion in the definition of "public utility" for persons not otherwise public utilities engaged in the renewable natural gas or thermal energy industry is

consistent with provincial energy priorities and eliminates the need for such persons to incur the cost and expend the time needed to continue to seek exemptions on a case-by-case basis.

49. Metro Vancouver thanks the Commission for the opportunity to participate in this Inquiry and looks forward to providing any further information and submissions that the Commission may find useful.