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October 24, 2019

Mr. Patrick Wruck
Commission Secretary and Manager
Regulatory Support
British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC V6Z 2N3

Dear Mr. Wruck:

**RE: Project No. 1599027
British Columbia Utilities Commission (BCUC or Commission)
Municipal Energy Utilities Inquiry
British Columbia Hydro and Power Authority (BC Hydro)
Written Evidence**

BC Hydro is writing to the Commission to provide its submissions into the Commission's Inquiry into the regulation of municipal energy utilities (**Inquiry**), the scope of which is set out in Commission Order No. G-177-19 (the **Order**). We are a Crown corporation owned by the Province of British Columbia and the largest electricity provider in British Columbia serving over four million British Columbians. BC Hydro is regulated by the Commission under the *Utilities Commission Act (UCA)*. We thank the Commission for the opportunity to provide comments at this time. BC Hydro provides the following comments on the scope of evidence that the Commission has requested in its Order and on comments contained in the cover letter to the Order, both of which have been filed as Exhibit A-1 in this proceeding.

Submission on Scope of Intervener Evidence Requested by Commission

In Section 4 of the Order, Commission requested that registered interveners provide written submissions to address "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."

The UCA is a Provincial statute that provides the framework for the regulation of public utilities operating within British Columbia. Section 1 of the UCA states that a "**public utility**" means a person, or the person's lessee, trustee, receiver or liquidator, who owns or operates in British Columbia, equipment or facilities for (a) the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, steam or

another agent for the production of light, heat, cold or power to or for the public or a corporation for compensation, or (b) the conveyance or transmission of information, messages or communications by guided or unguided electromagnetic waves, including systems of cable, microwave, optical fibre or radiocommunications if that service is offered to the public for compensation.” Paragraphs 1(c) through (g) of this definition set out exceptions to the definition. In those circumstances, the utility is not a public utility regulated under the UCA. Of particular relevance to this inquiry, is paragraph (c) which states that a public utility “... does not include (c) a municipality or regional district in respect of services provided by the municipality or regional district within its own boundaries”

BC Hydro’s interpretation of the UCA is that a “municipality or regional district” in section 1 of the UCA refers exclusively to a municipality or regional district incorporated as a municipality under the *Local Government Act*, the *Vancouver Charter*, or other Act¹ (**Municipality**). The exclusion does not necessarily extend to a separate entity that owns or operates facilities providing services to the Municipality or to customers within the boundaries of the Municipality (**Municipal Affiliated Entity**). A Municipal Affiliated Entity, which is a distinct legal entity, is not a Municipality simply by virtue of its affiliation to the Municipality. For that reason, Municipal Affiliated Entities may be public utilities as defined in section 1 of the UCA.

In section 4 of the Order, the Commission provided five examples of a Municipal Affiliated Entity. Below, BC Hydro provides its comments on whether the entity is a public utility.

BC Hydro notes that the Commission has provided conceptual examples of Municipal Affiliated Entities, whereas the definition of a public utility in paragraphs 1(a) and (b) of the UCA is expansive and must be applied to the particular facts of the Municipal Affiliated Entity. Where BC Hydro has made assumptions, this is noted in BC Hydro’s comments.

Example A: *“The utility’s assets are owned by a corporation of which the municipality or regional district is a shareholder or the sole shareholder;”*

BC Hydro Comment

In the above example, the corporation owning the utility’s assets may be a public utility subject to regulation under the UCA, particularly if the corporation is providing utility service to customers in the Municipality for compensation. A corporation with shareholders is not a Municipality that has been incorporated under the *Local Government Act*, the *Vancouver Charter*, or other Act. The corporation is an entity which is distinct from its Municipal shareholder.

¹ See definition of “municipality,” section 29, *Interpretation Act*, RSBC 1996, C. 238, as amended.

Example 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;”*

BC Hydro Comment

In the above example, the partnership owning the utility’s assets may be a public utility subject to regulation under the UCA, and particularly if the partnership is providing utility service to customers in the Municipality for compensation. The partnership is not a Municipality that has been incorporated under the *Local Government Act*, the *Vancouver Charter*, or other Act so the partnership is not a Municipality, even though one of the partners is a Municipality. The partners, other than the Municipality, may also be public utilities subject to regulation under the UCA.

Example C: *“The utility’s assets are owned by a third party, but the municipality or regional district has granted a franchise agreement, a license and/or has enacted enabling bylaws to facilitate the construction and/or operation of the utility;”*

BC Hydro Comment

The exclusion from the definition of a public utility in section 1 of the UCA applies to Municipalities providing utility services within its own boundaries and not to third parties.

In the above example, the third party is very likely a public utility subject to regulation under the UCA, particularly given the implication that the third party owns the utility and is providing service to customers in the Municipality for compensation.

In the case of a franchise from a Municipality to own a utility and/or to provide service to customers within a Municipality, the third party is very likely a public utility. The example does not describe the nature of the licence or bylaws contemplated. The fact that the Municipality has enabled the third party to build, own and/or operate the utility through franchise, licence or bylaws does not mean that the third party enjoys the benefit of the exclusion under section 1 of the UCA for Municipalities.

Example D: *“The utilities’ assets are owned by a municipality or regional district but are operated by a third party;”*

BC Hydro Comment

The exclusion from the definition of a public utility in section 1 of the UCA applies to Municipalities providing utility services within its own boundaries and not to third parties.

In this example, the third party may be a public utility subject to regulation, and particularly where the third party is providing utility service directly to customers in the

Municipality for compensation. However, if it is the Municipality providing service to customers and the Municipality is merely subcontracting some aspects of the operations to the third party, the third party is probably not a public utility.

Example E: *“The municipality or regional district, by agreement with the utility owner, sets or approves the setting of rates for the utility.”*

BC Hydro Comment

The exclusion from the definition of a public utility in section 1 of the UCA applies to Municipalities providing utility services within its own boundaries and not to third parties.

Under this example, the utility is very likely a public utility. The utility owner is presumably a third party owner providing utility service to customers in the Municipality for compensation. The fact that rates are approved by the Municipality does not mean that the third party enjoys the benefit of the exclusion under section 1 of the UCA for Municipalities.

Submission on Consideration of Class Exemptions

In its cover letter to the Order, the Commission states that “Upon the completion of this Inquiry, the BCUC will consider if it is appropriate or necessary to:

- (i) seek advance approval from the Government of BC to offer a class of cases exemption to municipalities and regional district energy systems in certain circumstances; and/or
- (ii) make a recommendation to the Government of BC to review the definition of a “public utility” within the UCA as it relates to such entities.”

Regarding the Commission's consideration in (i), BC Hydro currently supports continuing to assess exemptions from public utility regulation under the UCA on a case by case basis. Should the Commission, through this proceeding, identify a class of case exemptions which it believes may be appropriate to seek advance approval for from the Government of B.C., BC Hydro requests that Interveners in this proceeding be given the opportunity to make submissions on the matter.

BC Hydro makes no comment at this time respecting the Commission's consideration of (ii).

October 24, 2019
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Written Evidence

For further information, please contact the undersigned.

Yours sincerely,



Fred James
Chief Regulatory Officer

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Enclosure