

# William J. Andrews

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British Columbia Utilities Commission  
Sixth Floor, 900 Howe Street, Box 250  
Vancouver, BC, V6Z 2N3  
Attn: Patrick Wruck, Commission Secretary  
By Email: [commission.secretary@bcuc.com](mailto:commission.secretary@bcuc.com)

Dear Sir:

Re: Re: BCUC Inquiry into the Regulation of Municipal Energy Utilities,  
BCUC Project No. 1599027  
B.C. Sustainable Energy Association Submission

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This is the submission of the intervener B.C. Sustainable Energy Association addressing the question identified in the Commission's August 1, 2019 Order G-177-19 [Exhibit A-1].

The question 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 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.”

For reference, the wording of the UCA exclusion of a municipality or regional district from the definition of “public utility,” which will be referred to as the Municipal Exclusion in this submission, is as follows:

“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,...

It is noted that the inquiry question does not address the “within its own boundaries” component of the exclusion. Presumably this aspect will be addressed in due course.

BCSEA’s comments on the question posed by the Inquiry Panel are as follows:

1. BCSEA has a strong interest in district energy systems that can provide zero-carbon space and water heating solutions as a mechanism to reduce GHG emissions in the Province. Virtually all low-carbon district energy systems in B.C. have been, and will likely continue to be, implemented by local governments either directly or under some form of local government direction.
2. BCSEA is concerned that the expansion of low-carbon district energy systems is inhibited by uncertainty as to whether and if so how the BCUC would regulate these services.
3. BCSEA sees this inquiry as an important opportunity to bring into the open different perspectives on what is the proper legal meaning of the Municipal Exclusion under the UCA, or, alternatively, how the exclusion should be reworded.<sup>1</sup>
4. In general, courts and tribunals, such as the BCUC, prefer to make statutory interpretation decisions (such as the meaning of the “Municipal Exclusion”) based on evidence of a specific situation. However, it is not inappropriate for the Commission to make statutory interpretation findings in a hypothetical context such as the current inquiry. The Commission has done so in previous inquiries such as the Alternative Energy Solutions Inquiry<sup>2</sup> and the Inquiry into an Exemption for Biogas and Biomethane Suppliers.<sup>3</sup>
5. The framework of analysis set out by the Commission Panel in the 2018 SSL-Sustainable Service Ltd. decision<sup>4</sup> is a persuasive, but not legally binding, starting point for the statutory interpretation component of the response to the inquiry question. BCSEA respectfully submits that the Inquiry Panel should keep an open mind about how to interpret the Municipal Exclusion.
6. For example, the Panel in the SSL Decision said that “whether a public utility should be regulated for public policy reasons is not relevant to whether a person meets the definition of a public utility.”<sup>5</sup> It could be argued that this is a narrower approach than is required under the “Modern Principle” of statutory interpretation in the context of the UCA and the *Clean Energy Act*.
7. BCSEA has no ‘cut and dried’ answer to whether each of the examples of forms of affiliation would constitute “a municipality or regional district providing energy services” under the UCA. The issue is one of governance and control, which is a matter of degree. A municipality or regional district that has sole ownership and control of a corporate entity that owns and operates assets by which the municipality or regional district provides energy services might well meet the exclusion requirements. On the other end of the spectrum, a

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<sup>1</sup> Rewording the exclusion would require an Act of the Legislature. Another approach is a class exemption under UCA s.88(3) by the Minister on the recommendation of the Commission.

<sup>2</sup> <http://www.bcuc.com/ApplicationView.aspx?ApplicationId=309>.

<sup>3</sup> <http://www.bcuc.com/ApplicationView.aspx?ApplicationId=391>.

<sup>4</sup> Decision and Order G-104-18.

<sup>5</sup> Decision and Order G-104-18, Appendix A, p.9.

municipality or regional district that is a mere limited partner in a partnership that provides energy services would presumably not meet the exclusion requirement: by definition, a limited partner is an investor that doesn't have a role in the operation of the business.

8. In BCSEA's view, the Commission's determination the required element of local government control should take into account the rationale for the Municipal Exclusion, being the accountability of a local government to its voters and the responsibility of a local government to pursue proper community objectives.
9. Whatever is the outcome of the statutory interpretation of the existing wording of the Municipal Exclusion, BCSEA encourages the Inquiry Panel to go farther and to identify where the outcome is unsatisfactory in particular circumstances, taking into account the legislative and policy framework. This would include consideration of the UCA, the B.C. energy objectives under the *Clean Energy Act*, and the "CleanBC" climate action strategy.
10. Examples of the types of solutions the Inquiry could explore would include (without limitation) a recommended exemption under UCA s.88(3), such as the recent partial exemption of a class of providers of public EV charging services; light-handed regulation, as provided under the Thermal Energy Services Regulatory Framework Guidelines; guidelines articulating the acceptable degree of local government control to be within the Municipal Exclusion; and (included for completeness) a recommendation for a change in the wording of the UCA by the Legislature.
11. BCSEA looks forward to reviewing the submissions from the wide range of other interveners in this Inquiry.

All the above is respectfully submitted.

Yours truly,

William J. Andrews



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