

**BRITISH COLUMBIA UTILITIES COMMISSION
IN THE MATTER OF THE UTILITIES COMMISSION ACT**

An Inquiry into the Regulation of Municipal Energy Utilities

City of Vancouver

WRITTEN SUBMISSIONS

October 24, 2019

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1 **1 INTRODUCTION**

2 1. The City of Vancouver (“City”) files this submission in response to the
3 Commission’s Order G-177-19 governing this Inquiry.

4 2. In the Commission’s Letter dated 1 August 2019¹, the Commission expressed the
5 goal of this Inquiry as follows:

6 Upon the completion of this Inquiry, the BCUC will consider if it is
7 appropriate or necessary to:

8
9 i) seek advance approval from the Government of BC to offer a
10 class of cases exemption to municipalities and regional district
11 energy systems in certain circumstances; and/or

12
13 ii) make a recommendation to the Government of BC to review
14 the definition of a “public utility” within the UCA as it relates to
15 such entities.

16
17 3. In Order G-177-19, the Commission requested intervenor submissions on the
18 following issue:

19 The BCUC requests registered interveners provide written submissions to
20 address the following:

21
22 1) Whether a utility affiliated, in some way, with a municipality or
23 regional district is considered a public utility as defined by section 1 of
24 the UCA. Forms of affiliation include, but may not be limited to:

25
26 a. The utility’s assets are owned by a corporation of which the
27 municipality or regional district is a shareholder or the sole
28 shareholder;

¹ Exhibit A-1.

1
2 b. The utility's assets are owned by a partnership of which the
3 municipality or regional district is a partner, a limited partner or a
4 general partner;

5
6 c. The utility's assets are owned by a third party, but the
7 municipality or regional district has granted a franchise
8 agreement, a licence and/or has enacted enabling bylaws to
9 facilitate the construction and/or operation of the utility;

10
11 d. The utilities' assets are owned by a municipality or regional
12 district but are operated by a third party; and

13
14 e. The municipality or regional district, by agreement with the
15 utility owner, sets or approves the setting of rates for the utility.

16
17 4. The City's submission is organized into the following parts:

18 a) overview of Commission decisions and principles that support a broad
19 interpretation of the municipal exclusion from the definition of public
20 utility,

21 b) summary of the legislative framework authorizing the municipal
22 exclusion,

23 c) examples illustrating the importance of the municipal energy utility model
24 as a mechanism to fulfil municipal energy, land use and other municipal
25 planning goals, and

26 d) responses to the Commission's questions set out in Order G-177-19.

27 **2 OVERVIEW**

28 5. The City supports the exclusion of services provided by a municipality or a
29 regional district from the definition of "public utility" under the *Utilities Commission*

1 *Act.* (“UCA”). For ease of reference, we will refer to this exclusion as the "Municipal
2 Exclusion".

3 6. The City requests that the Commission

4 a) interpret or, if necessary, modify the Municipal Exclusion to offer greater
5 regulatory certainty and opportunity for municipalities or regional districts
6 to plan and implement municipal or regional district utility options to
7 achieve policy goals, and

8 b) request that the Minister issue a class exemption for energy producers,
9 who are not otherwise a public utility, when they sell to a municipal or
10 regional district utility. The exemption would apply to the energy
11 producer for that sale.

12 7. We explain the rationale for both of these requests later in this submission, but
13 first we start with the overall conceptual framework in which this discussion is
14 occurring.

15 8. When reviewing the Municipal Exclusion in this Inquiry, the Commission should
16 begin with the threshold questions:

17 a) What is the purpose of UCA public utility regulation?

18 b) Does the Commission need to regulate municipal or regional district
19 energy utilities to fulfil that purpose?

20 ***The purpose of UCA public utility regulation***

21 9. In its decision on the *Inquiry into the Offering of Products and Services in*
22 *Alternative Energy Solutions and Other New Initiatives*, the Commission expressed its
23 views on the rationale for regulation as follows:

24 Regulation exists to protect consumers against the abuse of monopoly
25 power but, in the Commission Panel’s view, the superior protection for
26 consumers is the competitive marketplace. ... This is consistent with the

1 first principle outlined in this Section, to only regulate where required.
2 Competitive forces are generally accepted as providing societal benefits
3 and consumer protection more efficiently and effectively than economic
4 regulation.

5
6 Regulation is costly, time-consuming, and limited by informational
7 asymmetries. It is only in natural monopoly situations where consumer
8 protection is needed that these limitations are outweighed by the benefits
9 of regulation.

10
11 Based on the above, the Commission Panel finds as a fundamental
12 principle that regulation is only appropriate where required and is driven
13 by the inability of competitive forces to operate with greater efficiency
14 and effectiveness than a sole service provider.²

15
16 10. In a more recent decision, the Commission elaborated on this rationale by stating
17 that regulation is required when natural monopoly characteristics are present and there is
18 a need to regulate in the public interest.³

19 11. Further, the Commission noted that its objective is the “protection of the public
20 interest by regulating public utilities to ensure that they provide safe and reliable service
21 at reasonable prices”.⁴ The Commission regulates public utilities to “ensure that the
22 prices they charge to customers, who are often captive, are reasonable for the level of
23 service provided”.⁵

² BCUC Report, *FortisBC Energy Inc. ~ Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives*, December 2012, page 14.

³ *BCUC Report in the Matter of the FortisBC Energy Inc. Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives* dated December 27, 2012 at p. 8.

⁴ Order No. G-104-18 in the matter of the *Utilities Commission Act, R.S.B.C.*, 1996, Chapter 473 and *SSL-Sustainable Services Ltd.* Status as a Public Utility under the *Utilities Commission Act* dated June 5, 2018 at p. 9.

⁵ *Ibid.*

1 12. In the Commission’s procedural directions for the Indigenous Utilities
 2 Regulation Inquiry, established by Order G-62-19, the Commission summarized its
 3 principles related to the need and form of regulation.

4 **Principles:**

- 5 i. Regulation should not impede competitive markets and should only be used if:
- 6 • natural monopoly characteristics are present and there is a need to regulate
 7 to protect the public interest; and/or
- 8 • legislation (such as the *Utilities Commission Act* or the *Clean Energy Act*)
 9 requires an activity to be regulated;
- 10 ii. The form of regulation should:
- 11 • provide adequate customer protection in a cost effective manner;
- 12 • consider administrative efficiency;
- 13 • consider the level of expenditure, the number of customers, the
 14 sophistication of the parties involved and the track record of the utility in
 15 undertaking similar projects; and
- 16 • require the provision of sufficient information to allow the BCUC to
 17 assess the new business activity, and any rates to be set, against BC’s
 18 Energy Objectives and the requirements of the *Utilities Commission Act*
 19 and the *Clean Energy Act*.⁶
- 20

21

22 13. In the current UCA, the Legislature has already established its clear intent that
 23 municipal utilities be excluded from Commission regulation. Good legal and policy
 24 reasons underpin that exclusion, all based on the foundational concept that
 25 municipalities are in the best position to decide on how to regulate these utilities.

26 ***The Commission does not need to regulate municipal or regional district energy***
 27 ***utilities***

⁶ Commission letter dated 10 May 2019 on Additional Scope Questions. (Exhibit A-5)

1 14. A municipality or regional district is authorized by its enabling legislation and is
 2 well-equipped to provide and regulate utility services provided within its boundaries. If
 3 customers have any issues or concerns with the service, they may complain to the
 4 municipality or regional district in accordance with the procedure that a municipality or
 5 regional district establishes for that purpose. Apart from any specific customer input
 6 process, a customer's ultimate recourse is to express support or dissatisfaction at the
 7 ballot box at the next municipal election. There is no public interest served by the
 8 Commission being involved in the regulation of municipal or regional district energy
 9 utilities. In fact, BCUC regulation would duplicate and possibly interfere with
 10 municipal or regional district regulation.

11 ***Key principle: is a municipality or regional district directing decisions on the service?***

12 15. The wording of the current Municipal Exclusion has few words – each with
 13 broad scope – which allows the Commission discretion for broad interpretation to allow
 14 municipalities and regional districts the flexibility to draw in the assistance they need to
 15 plan, construct, finance, operate, maintain and deliver utility services.

16 “a municipality or regional district in respect of services provided by the
 17 municipality or regional district within its own boundaries.”

18 16. The essential characteristics that trigger the Municipal Exclusion are: 1) a
 19 municipality or regional district is providing the service, and 2) the service is within its
 20 own boundaries. “Service” is a defined term under the UCA, but “providing” is not.
 21 The City submits that as long as the municipality or regional district is making or
 22 directing the decisions about the cost and terms of service to customers, then the
 23 municipality or regional district is “providing” the service and the energy utility should
 24 fall within the Municipal Exclusion.

25 17. The core decisions about “service” would include decisions related to the
 26 following aspects of the service:

27 a) the design, construction, operation, maintenance and expansion of the
 28 utility plant and distribution infrastructure,

1 b) the types of service offerings and customers served, and

2 c) the pricing and terms of service.

3 18. A municipal or regional district utility service differs from a franchise or other
4 right granted to a third party who wishes to offer an energy service because it is the
5 municipality or regional district, and not the third party, that is directing the decisions on
6 the service.

7 19. A municipal or regional district public utility may use third party contractors to
8 assist with various aspects of the utility services – for example, customer service,
9 construction, maintenance, or meter reading – without changing the municipal character
10 of the service and without the contractor being considered a “public utility”. If the
11 ultimate decision-maker is the municipality or regional district, then it is a municipal or
12 regional district service and should fall within the Municipal Exclusion.

13 **3 THE LEGISLATIVE FRAMEWORK RELATED TO THE MUNICIPAL**
14 **EXCLUSION**

15 20. Section 1 of the UCA defines “public utility” as follows, allowing an exclusion
16 for a municipality or regional district:

17 “**public utility**” means a person, or the person’s lessee, trustee,
18 receiver or liquidator, who owns or operates in British Columbia,
19 equipment or facilities for

20 (a) the production, generation, storage, transmission, sale,
21 delivery or provision of electricity, natural gas, steam or
22 any other agent for the production of light, heat, cold or
23 power to or for the public or a corporation for
24 compensation, ...

25 but does not include ...

26 (c) a municipality or regional district in respect of services

1 provided by the municipality or regional district within its
2 own boundaries, ...

3
4 21. The definition of public utility and the Municipal Exclusion apply to a person,
5 not the plant and equipment. Plant and equipment are included in the definition of
6 “service”, which the UCA defines as follows:

7 **"service"** includes

8 (a) the use and accommodation provided by a public utility,

9 (b) a product or commodity provided by a public utility,
10 and

11 (c) the plant, equipment, apparatus, appliances, property
12 and facilities employed by or in connection with a public
13 utility in providing service or a product or commodity for
14 the purposes in which the public utility is engaged and for
15 the use and accommodation of the public;

16 22. Under the *Vancouver Charter*, the City has explicit authority to undertake energy
17 utility systems, with a full range of powers to regulate the essential elements of those
18 systems and the service they offer.

19 23. Several of the relevant statutory provisions that enable the City to provide and
20 regulate energy utility service are as follows:

21 **City's powers exercisable by Council generally**

22 145. (1) Except as otherwise provided, the powers of the city shall be exercisable
23 by the Council.

24 (2) Without limiting subsection (1) and subject to any express limitation in this
25 Act, the city has full power to engage in any commercial, industrial or business
26 undertaking.

1 **Added powers of Council**

2 199. The Council, in addition to the powers specifically allotted to it, shall have
3 power to do all such things as are incidental or conducive to the exercise of the
4 allotted powers.

5 **Establishment and operation of energy utility system**

6 **300.1** (1) In this section:

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

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

11 (2) The Council may provide for the following:

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

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

18 ...

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

20 ...

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

25 (i) different classes of energy;

26 (ii) different classes of persons;

- 1 (iii) different classes of property;
- 2 (iv) different areas of the city;
- 3 (v) different classes of energy services;
- 4 ...
- 5 (h) entering into contracts with persons with respect to all or part of the
- 6 energy utility system or the supply of energy, on terms and conditions
- 7 prescribed by the Council;
- 8 ...

9 24. Section 300.1 of the *Vancouver Charter* does not require the City to undertake

10 and operate an energy utility system in its sole capacity. Subsection 300.1(3)(h)

11 explicitly authorizes the City to enter into contracts with one or more parties to

12 undertake all or part of an energy utility system. This subsection recognizes that

13 undertaking an energy utility system is complex. Questions relating to financing,

14 design, construction, fuel type, safety, rates, operation, service supply and service

15 demand, among others, all need to be considered. This subsection recognizes that a

16 municipality may wish to draw upon the expertise or resources of one or more external

17 parties to supplement its internal resources. For the purpose of the Municipal Exclusion

18 analysis, the key question is: Who will be directing the decisions on the utility service

19 as opposed to who will be carrying out those decisions? If it is the City that is directing

20 the decisions, the Municipal Exclusion should apply.

21 25. This statutory scheme demonstrates that the Legislature explicitly enabled the

22 City to undertake energy utility services, and equipped the City with a full suite of

23 powers and resources to do so. The City has, in fact, undertaken these services as part of

24 its energy and climate change policy initiatives, as explained in the next section.

25 26. Other municipalities also have explicit authority under section 8(2) the

26 *Community Charter* to provide any service through “another person or organization.”

27 8 (1) A municipality has the capacity, rights, powers and

28 privileges of a natural person of full capacity.

1 (2) A municipality may provide any service that the council
 2 considers necessary or desirable, and may do this directly
 3 or through another public authority or another person or
 4 organization. ...

5 **4 MUNICIPAL ENERGY UTILITIES HELP ACHEIVE MUNICIPAL POLICY**
 6 **GOALS**

7 *Local governments are best able to address local needs*

8 27. A current example of how the City may employ the municipal utility approach
 9 relates to the City's efforts to combat climate change through municipal energy use
 10 policy. While we cite this example to illustrate the importance of the municipal energy
 11 utility model and the Municipal Exclusion in the climate change context, the Municipal
 12 Exclusion will also cover a much wider spectrum of municipal energy service
 13 applications.

14 28. A local government is in the best position to understand and respond to the needs
 15 of its community. While a municipal energy utility is an important tool to combat
 16 climate change, this tool can also help to advance other policies including land-use,
 17 energy use, urban growth, sustainability, livability, accessibility and affordability. The
 18 Municipal Exclusion can enhance municipal planning in these areas if it offers clear
 19 guidance on what municipal projects would be excluded from UCA regulation. Clear
 20 guidance on this point helps municipalities plan their project since UCA regulation adds
 21 cost, time and regulatory administrative burden.

22 *Municipal energy utility as a tool to combat climate change*

23 29. The City of Vancouver and many other municipalities and regional districts in
 24 the Province of British Columbia including New Westminster, Burnaby, Richmond,
 25 District of North Vancouver, District of West Vancouver, Township of Langley, Capital
 26 Regional District and Islands Trust Council have declared a climate emergency, and are
 27 adopting climate change policies that align with the similar objectives adopted by the
 28 Province.

1 30. Municipalities and regional districts, through their climate policies and
2 commitment, can help the Province achieve its own objectives. Given the shared
3 objectives, the Province should furnish municipalities and regional districts with as
4 many tools as possible to tackle climate change.

5 31. Even though climate change is a global crisis, some of the key solutions are
6 local. One area municipalities and regional districts can have significant direct control
7 over is how buildings are heated or cooled and how energy efficient buildings are.
8 Municipal or regional district energy utilities can reduce emissions from the building
9 energy supply side by incorporating clean energy sources and increasing system
10 efficiency by operating at greater economies of scale through a neighbourhood or district
11 scale energy system.

12 32. For example, the City of Vancouver's GHG objectives, as directed by City
13 Council, are to have the City (community wide) run on 100% renewable energy and be
14 carbon neutral before 2050. Council has also set a 2030 interim target of 50% GHG
15 reduction from 2007 levels. These objectives align with the Paris Agreement, the Pan-
16 Canadian Framework on Clean Growth and Climate Change, and the Province's
17 CleanBC plan. It is unlikely any of these national or provincial objectives will be met
18 without significant action in local communities by cities and regional districts.

19 33. Approximately 45% of Vancouver's GHGs come from space heating and hot
20 water in buildings and therefore a major focus of Vancouver's climate mitigation
21 activities are related to new and existing buildings. District energy utilities that use
22 renewable energy as a fuel are important tools to moving buildings toward these
23 objectives.

24 34. The City and other local municipalities and regional districts have identified the
25 use of a low-carbon thermal energy utility, such as the False Creek Neighbourhood
26 Energy Utility ("**City NEU**") in the City of Vancouver, as one such tool to reduce
27 carbon emissions from buildings while providing cost-effective and reliable low-carbon
28 energy. The City NEU is currently supplied by 70% renewable energy and City Council
29 has tasked staff with initiating a plan to transition to 100% renewable energy by 2030.

1 35. In addition to the City of Vancouver, the cities of Richmond, North Vancouver,
2 Surrey, Gibsons, Revelstoke, Enderby and Prince George have established, and other
3 cities and regional districts are also considering establishing, municipal low-carbon
4 energy utilities.

5 ***Municipal Exclusion provides greater flexibility to help achieve policy goals***

6 36. While establishing such a utility can be a substantial financial undertaking, the
7 Municipal Exclusion provides much needed flexibility on how to structure the financing,
8 ownership and operation of the utility.

9 37. This flexibility also allows a municipality or regional district to have more scope
10 and efficiency in its services by drawing on the expertise and resources of one or more
11 project partners. If these undertakings were regulated under the UCA framework, they
12 would bear the additional administrative and cost burden of public utility regulation,
13 which could render many useful projects uneconomic given their small scale.

14 38. For example, the City's plans to expand the low-carbon energy generating
15 capacity of our City NEU to meet growing demand and City policy objectives will
16 require substantial resources. Having more certainty about the services that will fall
17 within the Municipal Exclusion would assist municipal planning of utility projects and
18 their economic viability. This will in turn enhance the City's ability to combat climate
19 change.

20 ***Class exemption for energy producers that sell to a municipal or regional district***
21 ***energy utility***

22 39. A related aspect of the energy utility service is the purchase of energy by a
23 municipal or regional district energy utility. As part of the City's climate change
24 policies, the City seeks to use low-carbon energy and encourage new low-carbon energy
25 generation sources. Often these energy sources may be small scale and could not bear
26 the economic and administrative burden of being regulated as a public utility.

1 40. As a related adjunct to the Municipal Exclusion, the City requests that the
 2 Commission request the Minister to issue a class exemption, pursuant to section 22 of
 3 the UCA, to exempt energy producers who sell energy to a municipal or regional district
 4 energy utility from the regulatory requirements of Part 3 (public utility regulation) and
 5 section 71 (energy supply contracts) of the UCA. The exemption should apply to energy
 6 producers who are not otherwise a public utility and apply only to the sale of energy to
 7 the municipal or regional district utility.

8 41. The City believes a class exemption would be more appropriate in this instance,
 9 rather than an exclusion, since the exemption would relate to a specific activity – sale to
 10 a municipal or regional district energy utility – rather than a general exclusion.

11 **5 OWNERSHIP AND OPERATING STRUCTURES FOR MUNICIPAL** 12 **UTILITIES**

13 42. British Columbia’s “local government system is based on concepts of autonomy,
 14 empowerment, and accountability, and collaboration among local governments and with
 15 other forms and levels of government”.⁷ Local governments “make decisions based on a
 16 legislative framework, provide services and are accountable to their electors in a diverse
 17 range of communities”.⁸

18 43. Two key elements of the Municipal Exclusion that require interpretation and
 19 clarification are the following:

- 20 a) What activities constitute “providing” the service?
- 21 b) What range of arrangements fall within "provided by the municipality"?

22 44. As the Commission notes in Preamble D to Order G-177-19

23 D. The ownership and operational structures now available to a
 24 municipality or regional district to provide energy services do not appear

⁷ British Columbia, “Local Government Facts & Framework” at
<https://www2.gov.bc.ca/gov/content/governments/local-governments/facts-framework>.

⁸ Ibid.

1 to be specifically addressed in the UCA and, as such, there appears to be
2 ambiguity regarding whether these ownership and operational structures
3 are “public utilities” or the exclusion to these ownership and operational
4 structures continue, pursuant to the definition in section 1 of the UCA;

5 45. The City and other municipalities and regional districts are authorized by their
6 respective enabling legislation to hire third parties to carry out various aspects of a
7 municipal utility service. If the ultimate decision-maker is the municipality or regional
8 district, then that municipality or regional district is “providing” the service and the
9 Municipal Exclusion should apply. The current wording of the Municipal Exclusion is
10 broad enough to allow for this interpretation.

11 46. Applying this principle to the Commission’s examples of different ownership
12 and operating structures, the City’s comments are as follows.

13 *a. The utility’s assets are owned by a corporation of which the municipality or*
14 *regional district is a shareholder or the sole shareholder*

15 47. This example falls within the Municipal Exclusion because the decision-making
16 authority is directly linked to the municipality or regional district.

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

19 48. This example would within the Municipal Exclusion if the municipality or
20 regional district is the ultimate decision-maker and directs the decisions on the service.

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

5 49. This example would only fall within the Municipal Exclusion if the municipality
 6 or regional district is the ultimate decision-maker and directs the decisions on the
 7 service.

8 *d. The utilities' assets are owned by a municipality or regional district but are*
 9 *operated by a third party*

10 50. This example would only fall within the Municipal Exclusion if the municipality
 11 or regional district is the ultimate decision-maker and directs the decisions on the
 12 service.

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

15 51. This example would only fall within the Municipal Exclusion if the municipality
 16 or regional district is the ultimate decision-maker and directs the other core decisions on
 17 the service in addition to the setting of rates.

18 **6 CONCLUSION**

19 52. The City appreciates the opportunity to engage in this Inquiry and believes it is
 20 timely to help clarify how the Municipal Exclusion should apply to a broad range of
 21 municipal ownership and operational structures.

22

1 53. All of which is respectfully submitted on behalf of the City.

2 Sincerely,

3 **CITY OF VANCOUVER**

4

5 Per:  _____

6 Name: Sadhu Johnston

7 Title: City Manager

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