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British Columbia Utilities Commission Indigenous Utilities Regulation Inquiry

Interim Report to the Minister of Energy, Mines and Petroleum Resources

December 31, 2019

Before:

D. M. Morton, Panel Chair
C. M. Brewer, Commissioner
A. K. Fung, QC, Commissioner
E. B. Lockhart, Commissioner

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Appendix A – Summary of the Draft Report

1.0 Introduction

The British Columbia Utilities Commission (BCUC) is the regulator for British Columbia’s electric, auto-insurance, natural gas, and thermal energy “public utilities.” Regulation is generally needed when customers have limited or no choice in utility providers (such as natural gas or electricity). The BCUC is an independent regulatory agency of the government of the Province of British Columbia and its role is to ensure that British Columbians receive safe, reliable energy services at fair prices, while allowing utilities the opportunity to earn a fair return on their investments. The legislation governing the BCUC is the *Utilities Commission Act* (UCA or the “Act”) which sets out the roles and responsibilities for the BCUC and the framework that regulated energy utilities must follow. For example, regulated utilities must follow a number of requirements, such as: obtaining approval for the construction of new projects; providing information to the BCUC when requested; not discriminating between customers; and obtaining approval for rates charged to customers.

The BCUC holds inquiries, whether on its own initiative or on request from the provincial government, on matters that may have broad impact on persons or groups in BC. Inquiries are open and transparent processes where the public can participate and give their views to the BCUC. On March 11, 2019, by Order in Council (OIC) No. 108 the Lieutenant Governor in Council (LGIC) directed the BCUC to conduct an Inquiry respecting the Regulation of Indigenous Utilities (Inquiry).

The terms of reference in OIC No. 108 set out several key questions the BCUC needs to consider and advise the LGIC on:

1. the BCUC must advise on the appropriate nature and scope, if any, of the regulation of Indigenous utilities;
2. without limiting the above, the BCUC must provide responses to the following questions:
 - i. What are the defining characteristics of Indigenous utilities, having regard to:
 - a. the nature of the ownership and operation of Indigenous utilities,
 - b. the types of services provided by Indigenous utilities,
 - c. the persons to whom services are provided by Indigenous utilities, and
 - d. the geographic areas served by Indigenous utilities.
 - ii. Should Indigenous utilities be regulated under the [*Utilities Commission*] Act or under another mechanism, or be unregulated?
 - iii. If it is appropriate to regulate Indigenous utilities under the Act, is there any matter under the Act in respect of which Indigenous utilities should be regulated differently from other public utilities, and, if so, how should that matter be regulated?
 - iv. If it is not appropriate to regulate Indigenous utilities under the Act but is appropriate to regulate Indigenous utilities in some manner, how should Indigenous utilities be regulated?
 - v. If an Indigenous utility is not regulated under the Act, would the utility become subject to the Act on ceasing to be an Indigenous utility, and, if not, what transitional and other mechanisms are required to ensure that the utility is subject to the Act on ceasing to be an Indigenous utility?

OIC No. 108 states for the purposes of this inquiry an “Indigenous Nation” means any of the following:

- a) a Band within the meaning of the *Indian Act* (Canada);
- b) the Westbank First Nation;
- c) the Sechelt Indian Band and the Sechelt Indian Government District established under the *Sechelt Indian Band Self-Government Act* (Canada);
- d) a Treaty First Nation;
- e) the Nisga’a Nation and Nisga’a Villages; and
- f) another Indigenous community within British Columbia, if the legal entity representing the community is a party to a treaty and land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982* that is the subject of Provincial settlement legislation.

The OIC defines the term “Indigenous utility” as a public utility that is owned or operated, in full or in part, by an Indigenous Nation.

Pursuant to OIC No. 108 and by BCUC Order G-62-19 issued March 19, 2019, the BCUC established this Inquiry. The terms of reference for the Inquiry state that¹:

- an interim report describing the BCUC's progress to date and the BCUC's preliminary findings must be submitted to the minister responsible for the *Hydro and Power Authority Act* no later than December 31, 2019 (Interim Report); and
- a final report describing the results of consultations undertaken by the BCUC and the BCUC's findings and recommendations must be submitted no later than January 31, 2020 (Final Report).

On October 31, 2019, OIC No. 108 was amended by OIC 559 which granted the BCUC an extension for the Final Report to April 30, 2020².

The remainder of this Interim Report summarizes the BCUC's engagement process, proposed recommendations, and next steps for the Inquiry.

2.0 Methodology

The BCUC sought to provide an open and welcoming environment by offering a range of opportunities to participate in various ways. The Inquiry had a first phase of engagement activities to give parties an opportunity to respond to the OIC questions and to provide input into the Draft Report. The second phase provides an opportunity for feedback on the Draft Report, which contains the Panel's proposed recommendations. These phases are further described in the following subsections.

The BCUC is grateful for the input of all participants in the Inquiry to date. The Inquiry has been enriched by the broad range of participants that has included First Nations, groups representing multiple First Nations, individuals, utilities, energy developers and other organizations. The absence of Federal Government participation in the Inquiry was noted by a number of parties.

¹ Order In Council (OIC) No. 108, section 3, retrieved from: http://www.bclaws.ca/civix/document/id/oic/oic_cur/0108_2019.

² OIC No. 559, retrieved from: http://www.bclaws.ca/civix/document/id/oic/OIC_CUR/0559_2019.

2.1 First Phase of Engagement

Following the establishment of the Inquiry, in June and July 2019 the BCUC held 10 community input sessions throughout British Columbia to receive comments on the issues being addressed in the Inquiry (Community Input Sessions). In advance of the Community Input Sessions, the BCUC issued an expanded scope document where it set out a list of suggested questions for participants to consider for each of the items in the Terms of Reference.³ The details of the Community Input Sessions are set out in the table below.

Location of the Community Input Session	Date of Community Input Session
Cranbrook	June 3, 2019
Kelowna	June 5, 2019
Kamloops	June 6, 2019
Williams Lake	June 7, 2019
Prince Rupert	June 10, 2019
Vancouver	June 12, 2019
Fort St John	June 25, 2019
Prince George	June 27, 2019
Campbell River	July 3, 2019
Victoria	July 4, 2019

Community Input Sessions provide an opportunity for representatives of Indigenous communities and members of the public to speak directly to the Inquiry Panel. They also provide an opportunity for the Panel to effectively gather public input for consideration on the matters that are within the scope of the Inquiry and ask questions of speakers. The sessions were live streamed at bcuc.com and transcripts of the sessions were posted on the BCUC website.⁴ The Panel heard presentations from 47 people over the course of the Community Input Sessions, the majority of whom represented or were members of First Nations or proponents of Indigenous energy projects.⁵

The BCUC also invited parties to register as interveners in the Inquiry. Intervenors had the opportunity to file written evidence, submit and respond to information requests, and submit final arguments. The deadline for written evidence submissions was July 15, 2019, and the BCUC received 19 submissions from a range of Indigenous representatives, special interest groups and existing utilities. Information Requests on these written submissions from both the BCUC and intervenors were conducted in early August 2019. In addition to the registered intervenors, 17 interested parties registered, and the BCUC received eight letters of comment. The table below lists the parties that registered as intervenors in the Inquiry.

³ Exhibit A-5.

⁴ <https://www.bcuc.com/ApplicationView.aspx?ApplicationId=669>.

⁵ The full list of presenters is found in Exhibit A-43 (Inquiry Draft Report), pp. 6–8.

Registered Interveners
Adams Lake Indian Band (Adams Lake)
Beecher Bay (Sc'lanew) First Nation (Beecher Bay)
British Columbia Hydro and Power Authority (BC Hydro)
Canadian Geothermal Energy Association (CanGEA)
Commercial Energy Consumers Association of British Columbia (CEC)
Coastal First Nations-Great Bear Initiative Society (CFN-GBI)
Don Flintoff (Flintoff)
Enerpro Systems Corp (Enerpro)
First Nation Major Projects Coalition (FNMPC)
First Nations Energy and Mining Council (FNEMC)
First Nations Leadership Council (FNLC)
Foothills First Nation
FortisBC Energy and FortisBC Inc. (FortisBC)
Heiltsuk Tribal Council
Kitselas Geothermal Inc. (KGI)
Leq'á:mel First Nation
Nisga'a Lisims Government (Nisga'a Nation)
Nuu-chah-nulth Tribal Council, Cowichan Tribes, Gitanyow First Nation, Homalcow First Nation, B.C. First Nations Clean Energy Working Group (Collective First Nations)
Osoyoos Indian Band (OIB)
Tzeachten First Nation
Westbank First Nation Government (Westbank First Nation)

On September 18, 2019, David Morton, the Chair and CEO of the BCUC and Chair of the Inquiry Panel, spoke at the BC Assembly of First Nations (BC AFN) 16th Annual General Assembly in Vancouver to discuss the progress of the Inquiry. This was followed by a special Community Input Session later that evening in Richmond, BC.

On September 27, 2019, interveners had the opportunity to provide oral final argument to the Panel at a session hosted in Vancouver. Participants were also given an opportunity to submit final written arguments by October 4, 2019. Ahead of the deadline, the BCUC provided guidance on content and invited submissions on several questions.⁶ The BCUC received written final arguments from ten interveners,⁷ including a joint submission from Beecher Bay (S'cianew) First Nation and Adams Lake Indian Band.

⁶ Exhibit A-38.

⁷ Final written arguments were submitted by: CFN-GBI, Flintoff, Fortis BC, BC Hydro, Beecher Bay First Nation, Adams Lake, CEC, Nisga'a Nation, Collective First Nations, Leq'á:mel First Nation and KGI.

The submissions and evidence received in the first phase of engagement formed the basis for a draft report issued for public comment on November 1, 2019 (Draft Report).⁸ A summary of the issues arising from participants' submissions can be found in Section 4 of the Draft Report. A summary version of the Draft Report is included as Appendix A to this Interim Report.

In the following subsection, the Panel outlines the second phase of the BCUC's engagement activities following the Draft Report.

2.2 The Draft Report and Second Phase of Engagement

During the initial engagement period, the Panel received feedback from a number of participants that they needed more time to deeply consider and discuss the issues being addressed in the Inquiry. The Panel has also observed that awareness of the Inquiry among First Nations and other interested parties has grown steadily since the Inquiry was established in March. Consequently, some participants have only recently become involved in this engagement process.

Responding to these concerns, in advance of this Interim Report, the BCUC committed to issuing a publicly available Draft Report and established a second phase of engagement to seek feedback on the Draft Report from interested groups and individuals.⁹ The issuance of a Draft Report for public comment differs from BCUC's usual processes. In this Inquiry, we recognize the importance of ensuring ongoing engagement with participants, adapting our processes to meet their needs, and facilitating an iterative approach to developing and refining our recommendations. We also acknowledge the complexity and importance of the issues being addressed in this Inquiry which require time to digest and evaluate.

Following its commitment to issue a Draft Report by November 1, 2019, the BCUC requested an extension to the date of the Final Report from January 31, 2020 to April 30, 2020. On October 31, 2019, OIC No. 108 was amended by OIC No. 559 which granted the BCUC an extension for the Final Report to April 30, 2020. While we recognize this timeframe may not be as long as some participants would like, we note that this extension allows further engagement opportunities and more time for participants to reflect on the proposed recommendations in our Draft Report and provide input into the Inquiry.

The BCUC issued its Draft Report¹⁰ and accompanying Draft Report Summary on November 1, 2019,¹¹ which included the BCUC's proposed recommendations and findings based upon the evidence and submissions received in the first phase of engagement. Eight workshops around BC¹² have been scheduled to present the BCUC's proposed recommendations and gather feedback on the Draft Report from participants, as discussed in the following subsection. The Panel also plans to give a presentation at the BC AFN 16th Special Chiefs Assembly on March 6, 2020 in Nanaimo. We will be inviting written comments on the Draft Report from all interested parties until March 2, 2020, and participants will also have an opportunity to reply to the written comments of other participants by March 31, 2020. The Panel will review all oral and written comments submitted during the second phase of engagement in preparation for the Final Report. The table below sets out the completed and upcoming milestones from the issuance of the Draft Report to the deadline for the Final Report.

⁸ [Exhibit A-43.](#)

⁹ Exhibit A-30.

¹⁰ [Exhibit A-43.](#)

¹¹ BCUC Indigenous Utilities Regulation Inquiry – Draft Report Summary, retrieved from: https://www.b cuc.com/Documents/Proceedings/2019/DOC_56157_2019-11-01-BCUC%e2%80%93Indigenous-Utilities-Inquiry-Glossy.pdf.

¹² Exhibit A-36, A-40, and A-47.

Milestone	Date
Draft Report issued for public comment	November 1, 2019
Workshop – Prince George	November 18, 2019
Workshop – Kelowna	November 21, 2019
Workshop – Vancouver	November 27, 2019
Workshop – Nanaimo	November 28, 2019
Workshop – Victoria	November 29, 2019
Workshop – Smithers	December 6, 2019
Interim Report issued to minister responsible for the <i>Hydro and Power Authority Act</i>	December 31, 2019
Workshop – Kamloops	January 14, 2020
Workshop – Fort St John	January 17, 2020
Written comments on the Draft Report	March 2, 2020
Presentation at BC AFN 16th Special Chiefs Assembly, Nanaimo	March 6, 2020
Written reply to comments from other participants on Draft Report	March 31, 2020
Final Report issued to minister responsible for the <i>Hydro and Power Authority Act</i>	April 30, 2020

2.2.1 Draft Report Workshops

Based on feedback received in the Community Input Sessions, the BCUC adapted the format of the Draft Report workshops to be more informal and conversational. At each workshop, the Panel Chair has presented an overview of the Inquiry and the BCUC's proposed recommendations.¹³ Participants have divided into discussion groups with BCUC staff and BCUC's Indigenous relations consultants (Four Directions Management Services) to gather feedback on the BCUC's proposed recommendations, address the questions posed by the BCUC in its Draft Report, and present a transcribed group summary to the Panel. Participants have also been encouraged to provide any additional comments or ask questions directly of the Panel.

The transcripts for the workshops to date are posted on the Inquiry website,¹⁴ and notes from the breakout discussions are posted as Exhibits A2-3 through A2-6. The Panel will consider these materials, along with the written comments submitted in March, as we deliberate our final recommendations. The BCUC thanks all participants at the workshops for their time, active involvement and insightful feedback on the BCUC's proposed recommendations. The Final Report will include a summary of the discussions and key issues raised at the workshops.

¹³ The presentation is filed as Exhibit A2-1.

¹⁴ <https://www.bcuc.com/ApplicationView.aspx?ApplicationId=669>.

2.3 Communications and Outreach

Throughout the Inquiry, the BCUC has sought to raise awareness and provide information about participating in the Inquiry (such as the Community Input Sessions and workshops) by a number of means, including:

- Invitation letters to all BC First Nations
- Follow up phone calls and emails to First Nations' administrative offices
- Print and digital newspaper advertising
- Radio advertisements
- Communications sent via the BC Assembly of First Nations
- Social media posts (Twitter and Facebook)
- Hosting booths at industry events
- Conducting presentations at conferences, industry events and at the BC AFN Annual General Meeting
- Word of mouth through the BCUC's retained Indigenous relations consultancy
- News releases
- E-notifications via the BCUC website
- Inquiry background information, fact sheets, summaries, and Draft Report for web and print distribution

The BCUC will continue its outreach activities ahead of its preparations for the Final Report.

3.0 The BCUC's Proposed Recommendations

OIC No. 108 requests that the BCUC describe its preliminary findings in this Interim Report. As previously discussed, the Draft Report contains a series of proposed recommendations for review and comment during the second phase of engagement. These proposed recommendations represent the initial recommendations that the Panel is prepared to make in its Final Report. We emphasize that these are only a starting point for further discussion, and we are amenable to modifying our proposed recommendations following consideration of feedback from participants. On certain issues, we did not make a finding or recommendation in the Draft Report, and the Draft Report outlined several questions¹⁵ where we are seeking further input in the comment period.

As the second phase of engagement is already underway, the BCUC will not be making any further findings or recommendations for the purposes of this Interim Report. The proposed recommendations as set out in the Draft Report are restated in the table below for convenience.

Regulation of Monopolies
1. That all ratepayers of Indigenous utilities receive the same protection as do ratepayers of non-Indigenous utilities.
Regulation of Mandatory Reliability Standards
2. That the BCUC retain jurisdiction with respect to approval, compliance and enforcement of Mandatory Reliability Standards applicable to all transmission infrastructure in the province, regardless of who owns or operates the infrastructure.

¹⁵ Section 7.2 of the Draft Report.

Reserve Lands

3. That a First Nation be given the opportunity to self regulate when it provides utility service on its reserve land, in much the same way municipalities and regional districts do. Subject to recommendations 4 to 6 below, this can be accomplished by enabling a First Nation or Band Council to “opt out” of BCUC regulation by notifying the BCUC of its intention.
4. That the First Nation should demonstrate that it has an appropriate complaint and dispute handling process in place to protect all ratepayers. In the event it cannot do so the BCUC would retain jurisdiction to handle all complaints.
5. That the BCUC complaint and dispute handling processes be available to any ratepayer who wishes to appeal a decision arising out of the First Nation utility’s complaint process.
6. Safety and reliability (other than MRS) will be the subject of the workshop and comment period. If the Final Report recommends that the BCUC retains jurisdiction over safety and reliability, First Nations would not be able to opt out of those applicable portions of the UCA governing these issues.

In proposing these recommendations, we have not made any comment on the issue of the “obligation to serve.” The municipal exclusion does not require a municipality to provide service to every customer and we do not consider it necessary to explicitly impose this obligation on a First Nation-owned utility. Public utilities are generally expected to have a clear and transparent policy for apportioning costs of extending the system to serve new customers between its existing customers and those new customers (extension policy). We note that any potential customer who is dissatisfied with the application of the extension policy provided by the First Nation utility would have recourse to a robust complaint process.

Those First Nations that choose not to opt out, would continue to be regulated by the BCUC subject to the terms of the UCA. The Panel is aware of the regulatory burden on small utilities and is considering approaches to mitigate that burden.

Any First Nation that seeks to acquire any assets from BC Hydro or any other incumbent public utility will continue be subject to BCUC regulation with respect to the approval of that transaction. In reviewing the transaction, the BCUC would consider among other matters the rate impact on the incumbent utility’s ratepayers.

Modern Treaty Lands – Nisga’a

7. That the Nisga’a Nation be given the opportunity to self regulate, as do municipalities and regional districts, when it provides utility service on its own lands.
8. Notwithstanding the Nisga’a’s authority over their own lands, we recommend that the BCUC retain jurisdiction over Mandatory Reliability Standards, because of the interconnected nature of the North American bulk electric system.

Other Modern Treaty Lands

9. Provided that a modern Treaty contains terms that are substantially similar to those set out in the Nisga’a Treaty, we would recommend, on the basis of parity, that a modern Treaty Nation be given the opportunity to self-regulate when it provides utility service on its own lands, in the same manner as we have proposed for the Nisga’a,

Lands Subject to Historical Treaties
10. We are inclined to recommend that First Nations that are parties to Historical Treaties be covered by the recommendations outlined in respect of Reserve Land. However, we welcome comments on this recommendation during the workshop and comment period.
Westbank First Nation
11. Provided that the Advisory Council Law applies to resolution of utility complaints, we are inclined to recommend that the Westbank First Nation be given the opportunity to self-regulate when it provides utility service on its own lands, as we have proposed for the Nisga'a. To provide greater clarity, we invite the Westbank First Nation to give us further input as to how this law applies to utility complaint resolution during the workshop and comment period.
Sechelt Indian Band and Sechelt Indian Government District
12. It appears uncertain that either the Sechelt Indian Band or the Sechelt Indian Government District qualifies for the current municipal exception under the UCA. Nonetheless, we would recommend that those entities be given the opportunity to self-regulate when they provide utility service on their own lands, as we have proposed for the Nisga'a, provided that the Advisory Council has the power to resolve utility complaints. To assist us in making this recommendation, we invite the Sechelt Indian Band and the Sechelt Indian Government District to give us further insight into their processes during the workshop and comment period.
Ceasing to be an Indigenous Utility
13. If a utility ceases to meet the definition of an Indigenous utility it becomes subject to regulation under the UCA.
Definition of Indigenous Utility
14. The definition of Indigenous utility should be further explored during the workshops. We have outlined above recommendations for the regulation of utility services provided by First Nations. The workshop topics further explore different ways that service is provided, thereby defining an Indigenous utility. We also recommend that consideration be given, during the workshop period, to any further context in which the definition of Indigenous utility is required.

4.0 Closing and Next Steps

As outlined in this Interim Report, the BCUC will continue to gather feedback on its Draft Report until March 31, 2020. This will allow the Ministry of Energy, Mines and Petroleum Resources to review and provide comments or questions on the BCUC's Draft Report and/or Interim Report if desired. Any such submissions will be placed on the public record for the Inquiry.

Following the conclusion of the second phase of engagement, the Panel will review the evidentiary record and the submissions of all participants and will file its Final Report on or before April 30, 2020.

DATED at the City of Vancouver, in the Province of British Columbia, this 31st day of December 2019.

Original signed by:

D. M. Morton
Panel Chair / Commissioner

Original signed by:

C. M. Brewer
Commissioner

Original signed by:

A. K. Fung, QC
Commissioner

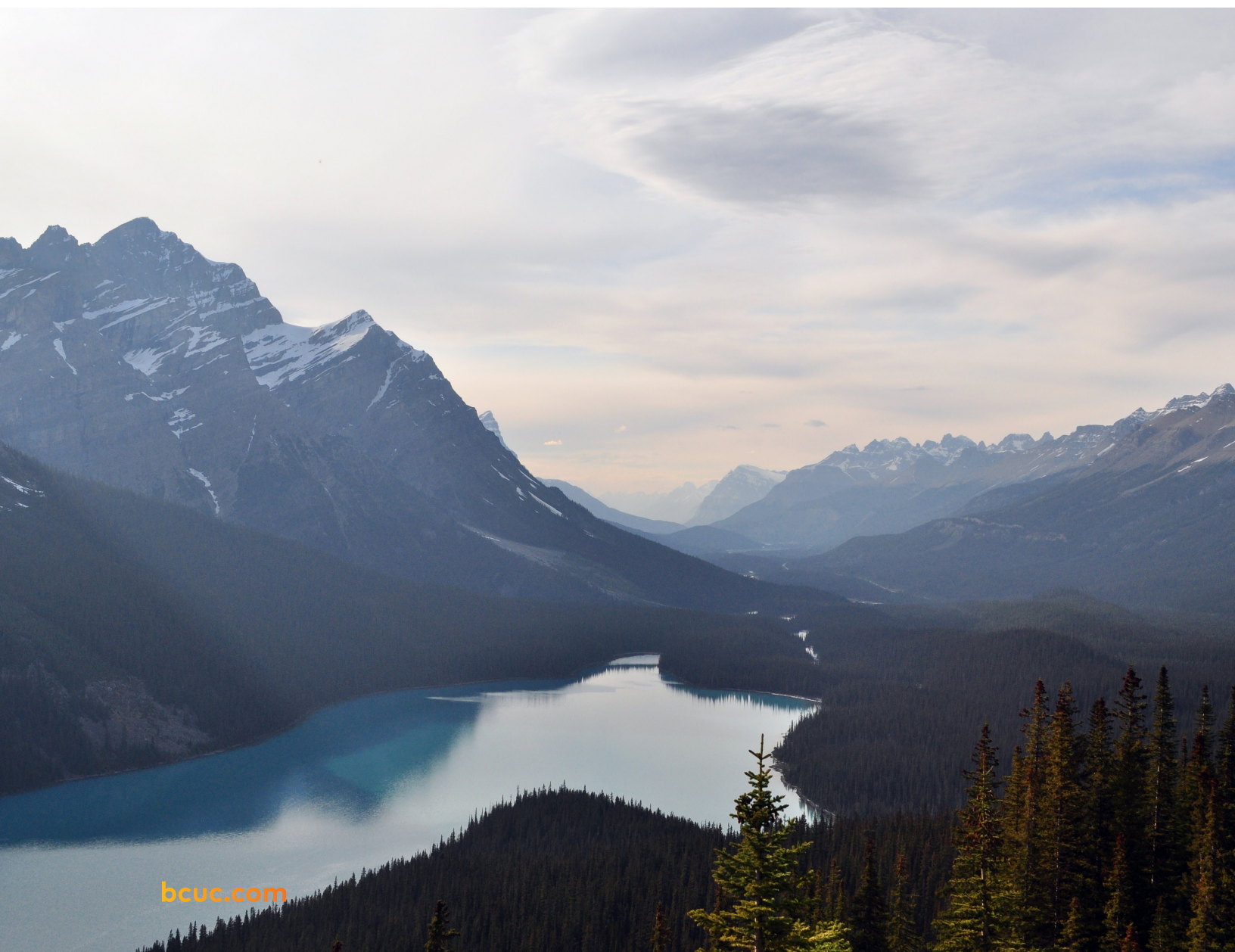
Original signed by:

E. B. Lockhart
Commissioner



Indigenous Utilities Regulation Inquiry Draft Report Summary

November 2019



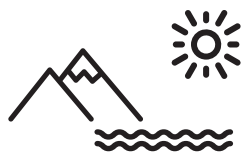
About the BCUC

The British Columbia Utilities Commission (BCUC) is the regulator for British Columbia's electric, auto-insurance, natural gas, and thermal energy "public utilities." Regulation is generally needed when customers have limited or no choice in utility providers (such as natural gas or electricity). The BCUC is an independent agency of the government of the Province of British Columbia and its role is to ensure that British Columbians receive safe, reliable energy services at fair price, while allowing utilities the opportunity to earn a fair return on its investments. The legislation governing the BCUC is the *Utilities Commission Act* (UCA) which sets out the roles and responsibilities for the BCUC and the framework that regulated energy utilities must follow. For example, regulated utilities have to follow a number of requirements including, but not limited to: receiving approval for the construction of new projects, providing information to the BCUC when requested, not discriminating between customers, and receiving approval for rates charged to customers.

Definition of a Public Utility

In the UCA, a "public utility" is defined as: a person, or the person's lessee, trustee, receiver or liquidator, who owns or operates in British Columbia, equipment or facilities for the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, steam or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation. An entity that meets the definition of a "public utility" is subject to regulation under the UCA.

There are a number of exclusions from the definition of a public utility, including municipalities or regional districts that provide services within their own boundaries, and a person that provides services to employees or tenants. The table below provides some examples of the types of entities that are and are not regulated by the BCUC. Under the UCA, most utilities with an existing energy connection to an Indigenous community are regulated as public utilities.



About the Indigenous Utilities Regulation Inquiry

On March 11, 2019, the Lieutenant Governor in Council directed the British Columbia Utilities Commission (BCUC) to provide recommendations to the BC Government's Minister Responsible for the Hydro and Power Authority Act regarding the regulation of Indigenous energy utilities in British Columbia (BC). The terms of the Inquiry are outlined in Order in Council (OIC) No. 108, and the timeline has been amended per OIC No. 559. The BCUC established the Inquiry on March 19, 2019 by Order G-62-19. Currently, under the *Utilities Commission Act* (UCA) most utilities with a connection to an Indigenous community are regulated as public utilities. The BCUC will be sharing the findings of its Inquiry with the BC Government. An interim report is due to the Minister Responsible for the Hydro and Power Authority Act by December 31, 2019 and a final report is due by April 30, 2020.



Scope

The Indigenous Utilities Regulation Inquiry was directed to explore and seek feedback on a number of important questions, including:

What are the characteristics of an "Indigenous Utility" with respect to:

- ☀ The ownership and operation of the utility;
- ☀ What services are provided;
- ☀ Who the services are provided to; and/or,
- ☀ The location or area served by the utility?

Should Indigenous utilities be regulated or not?
And if so, how?

- ☀ If they should be regulated, should they be regulated by the UCA or another mechanism?
- ☀ If unregulated, how will the interests of Indigenous utility ratepayers be protected?

Participation

The BCUC thanks everyone who has contributed to this Inquiry thus far; the Panel considered all comments and submissions in making the findings and recommendations as set out in the Draft Report.

10+1



Community Input Sessions

In June and July 2019, the BCUC held a series of ten Community Input Sessions throughout British Columbia to hear comments on the issues raised in the Inquiry. The BCUC also held an additional Community Input Session to coincide with the BC Assembly of First Nations 16th Annual General Assembly held in Vancouver on September 18, 2019.

21



Registered Interveners

Interveners had the opportunity to file written evidence, submit and respond to information requests, and submit final arguments. The BCUC received 19 written evidence submissions from a range of Indigenous representatives, special interest groups and existing utilities.

17+8



Interested Parties & Letters of Comment

17 people or groups registered as Interested Parties in the Inquiry and the BCUC received eight letters of comment.

6



Draft Report Workshops

The BCUC will host six workshops around BC in November and December 2019, to gather feedback and submissions on its Indigenous Utilities Regulation Inquiry Draft Report. Anyone interested in attending is encouraged to register with **Commission.Secretary@bcuc.com**.

Timeline





What We Heard

Overarching Policy Issues Influencing the Regulation of Indigenous Utilities

Jurisdiction of Indigenous Nations

Indigenous Nations have jurisdiction to make laws on their lands however, clarity is required regarding the jurisdiction of the BCUC and the applicability of the UCA on Indigenous lands.

Reconciliation

The issues explored in this Inquiry must be viewed with the perspective of the need to advance reconciliation with Indigenous peoples.

Concerns With the Terms of Reference

The nature of the ownership and operation of Indigenous utilities

There is considerable focus on utilities owned or operated by local First Nations communities.

The types of services provided by Indigenous utilities

There are many aspects of an energy utility's service, including generation or production of energy, transmitting and distributing energy to customers, and the administration of metering and billing. There may be a role for Indigenous utilities to provide any of these utility services.

The persons to whom services are provided by Indigenous utilities

The customer base of an Indigenous utility is everyone – Indigenous, non-Indigenous, business or individual, residential, commercial and industrial – residing or conducting business in the service area of the utility.

The drivers of Indigenous utilities

Indigenous utilities could be an opportunity to provide self-sufficiency for communities. This includes facilitating economic development in Indigenous communities, providing revenue streams, attracting industry, creating employment, and funds to commit to community priorities. Indigenous utilities may also provide a pathway to improved energy services where communities are currently under-served. In addition, they allow Indigenous Nations to contribute to reducing the impact upon the environment and climate change.

Regulation of Indigenous utilities under the UCA

There may be benefits or a place for some degree of regulation by the BCUC under the UCA. However, if the BCUC were to regulate for any length of time, the current framework or process would need to be amended to meet the needs of Indigenous utilities.

Exception similar to the municipal exception

Under the UCA, there are a number of exceptions from the definition of a "public utility" that except utilities from regulation under the UCA. One such exception is, "a municipality or regional district in respect of services provided by the municipality or regional district within its own boundaries" (municipal exception). There should be similar treatment for Indigenous utilities.

Self-Regulation

Some participants submitted that it should be up to the Indigenous Nation(s) that own(s) or operate(s) the Indigenous utility to determine how the utility is run.

Indigenous Utilities Body

Some participants suggest the potential for an Indigenous-led regulatory body that would provide some degree of regulatory oversight, co-ordination and/or support to Indigenous utilities independent of the BCUC.

BCUC support to Indigenous utilities

Some participants suggest potential regulatory solutions that could make use of resources or frameworks provided by the BCUC, but in a way that is tailored to Indigenous Nations and separate to regulation under the UCA.

Other issues related to Indigenous participation in the utility or energy sector

A number of broader issues related to Indigenous involvement in the energy sector were raised, such as access to the transmission grid, energy policy decisions that have impacted potential Indigenous projects, and capacity constraints in Indigenous communities wishing to become more involved in the energy sector.

Access to transmission grid and other markets

Concerns were raised that any constraints upon the lands Indigenous utilities can serve would limit the available market and potential viability of such utilities. Current barriers to accessing markets beyond Indigenous lands, via the bulk transmission system in BC, also create a barrier to the viability of Indigenous utilities.



Proposed Recommendations

Regulation of Monopolies

1. That all ratepayers of Indigenous utilities receive the same protection as ratepayers of non-Indigenous utilities.

Regulation of Mandatory Reliability Standards

2. That the BCUC retain jurisdiction, with respect to approval, compliance, and enforcement of Mandatory Reliability Standards (MRS), applicable to all transmission infrastructure in the province regardless of who owns or operates the infrastructure.

Reserve Lands

3. That a First Nation be given the opportunity to self-regulate when it provides utility service on its reserve land in much the same way as municipalities and regional districts do. Subject to proposed recommendations 4–6, this can be accomplished by enabling a First Nation or Band Council to “opt out” of BCUC regulation by notifying the BCUC of its intention.
4. That the First Nation should demonstrate it has an appropriate complaint and dispute handling process in place to protect all ratepayers. In the event it cannot do so, the BCUC would retain jurisdiction to handle all complaints.
5. That the BCUC complaint and dispute handling processes be available to any ratepayer who wishes to appeal a decision arising out of the First Nation utility's complaint process.
6. Safety and reliability (other than MRS) will be the subject of the workshop and comment period. If the Final Report recommends that the BCUC retains jurisdiction over safety and reliability, First Nations would not be able to opt out of those applicable portions of the UCA.

First Nations that choose not to opt out, would continue to be regulated by the BCUC, subject to the terms of the UCA.

Any First Nation that seeks to acquire assets from BC Hydro or another public utility will continue to be subject to BCUC regulation with respect to the approval of that transaction. In reviewing the transaction, the BCUC would consider among other matters the rate impact on the incumbent utility's ratepayers.

Modern Treaty Lands – Nisga'a

7. That the Nisga'a Nation be given the opportunity to self-regulate as do municipalities and regional districts, when it provides utility service on its own lands.
8. That notwithstanding the Nisga'a's authority over their own lands, the BCUC retains its jurisdiction over MRS because of the interconnected nature of the North American bulk electric system.

Other Modern Treaty Lands

9. That provided a modern Treaty contains terms that are substantially similar to those in the Nisga'a Treaty, on the basis of parity, a modern Treaty Nation be given the opportunity to self-regulate, when it provides utility service on its own lands, in the same manner as proposed for the Nisga'a Nation.

Historical Treaty Lands

10. That First Nations that are parties to Historical Treaties be covered by the same proposed recommendations outlined in 3–6 in the "Reserve Lands" section of the Draft Report. Comments are welcomed on this during the Draft Report Workshops and comment period.

Westbank First Nation

11. Provided that the Advisory Council Law applies to the resolution of utility complaints, that recognition be given to the Westbank First Nation's opportunity to self-regulate when it provides utility services on its own lands, in the same manner as proposed for the Nisga'a Nation.

To provide greater clarity, the Westbank First Nation is invited to give further input as to how this law applies to utility complaint resolution during the Draft Report Workshops and comment period.

Sechelt Indian Band

12. It appears uncertain that either the Sechelt Indian Band or the Sechelt Indian Government District qualifies for the current municipal exception under the UCA. Nevertheless, that the Sechelt Indian Band and the Sechelt Indian Government District be given the opportunity to self-regulate when they provide utility services on their own lands, in the same manner as proposed for the Nisga'a Nation, provided that the Advisory Council has the power to resolve utility complaints. To assist in making this recommendation, the Sechelt Indian Band and the Sechelt Indian Government District are invited to give further insight into their processes during the workshop and written comment period.

Ceasing to be an Indigenous Utility

13. That if a utility ceases to meet the definition of an Indigenous utility it becomes subject to regulation under the UCA.

Definition of an Indigenous Utility

14. That consideration be given during the workshop and written comment period to any further context in which the definition of Indigenous utility is required. The definition of Indigenous utility will be further explored during the Draft Report Workshops. The Draft Report Workshop topics further explore different ways that service is provided, thereby defining an Indigenous utility.



Topics for Feedback

The proposed recommendations are intended to provide a starting point for further discussion. The BCUC welcomes feedback and comment during the workshops and the written comment period regarding the proposed recommendations and regulatory model. Participants in the workshops will be able to ask questions and make comments about any aspects of the Draft Report that are of interest to them.

- a. What are your views on the BCUC's proposed recommendations?
- b. Do the proposed recommendations strike the right balance between the need for ratepayer protection and the rights of First Nations to self governance?
- c. What might an appropriate complaints and disputes resolution process look like and should there be minimum safeguards? Should the BCUC have a role as an appeal body in resolving complaints or disputes?
- d. Are there specific areas which should not be exempt, such as safety and service reliability? If so, what are those specific areas and which body/bodies should regulate those areas?
- e. Should the scope of the proposed recommendations be expanded to include specific areas/situations such as the following:
 - ☀ A utility's assets are owned by a corporation of which the First Nation/Band Council is a shareholder or the sole shareholder;
 - ☀ A utility's assets are owned by a partnership of which the First Nation/Band Council is a partner, a limited partner or a general partner;
 - ☀ The utility's assets are owned by a third party, but the First Nation/Band Council has granted a franchise agreement, a licence, and/or has enacted enabling bylaws to facilitate the construction and/or operation of the utility;
 - ☀ The utilities' assets are owned by a First Nation/Band Council but are operated by a third party; and
 - ☀ The First Nation/Band Council, by agreement with the utility owner, sets or approves the setting of rates for the utility.

For the above questions, where appropriate, please consider the minimum level of ownership or control required.

These ownership issues are also being canvassed with respect to the municipal/regional district exception in a parallel inquiry.¹

¹ British Columbia Utilities Commission An Inquiry into the Regulation of Municipal Energy Utilities.
bcuc.com/ApplicationView.aspx?ApplicationId=695



- f. If an exempt utility sells energy to a neighbouring First Nation, how should the sale of that energy be regulated on the other First Nation's lands?
- g. If an exempt utility wants to sell energy to a different reserve or First Nation, and BC Hydro's transmission system is required to transport the energy, the Retail Access prohibition applies. Should the BCUC recommend that changes be made to the Retail Access prohibition?
- h. As a result of the proposed recommendations, an exempt utility could sell energy to a municipality. However, if BC Hydro's transmission system is required to transport the energy, the Retail Access prohibition applies. Should the prohibition be changed? What effects, if any, should be considered with respect to sales of energy to non-Indigenous customers within an incumbent utility's territory?
- i. Should the exempt utility be free to sell its energy to members of its Nation/Band wherever they reside in the province?
- j. The test for acceptance of an Energy Purchase Agreement (EPA) is that it must be in the public interest. In particular, applicants should demonstrate that BC Hydro needs the energy and that the contract price is comparable to the market price. Should the BCUC consider public interest issues, particular to First Nations, in approving EPAs involving Indigenous utilities? On what basis might the BCUC do so, and what might those public interest issues include?
- k. What should the BCUC do to assist in Indigenous utility regulation to reduce the regulatory burden, and improve accessibility of its regulatory processes for First Nations that choose to remain under its jurisdiction?

Disclaimer

This document is a summary of the Indigenous Utilities Regulation Inquiry Draft Report. If there are any discrepancies or differences between this summary and the Draft Report, the Draft Report shall prevail.

For more information about the Inquiry or to review the Draft Report, please visit

bcuc.com/ApplicationView.aspx?ApplicationId=669.



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