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October 4, 2019

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

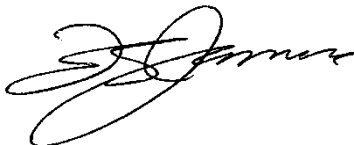
Dear Mr. Wruck:

RE: Project No. 1598998
British Columbia Utilities Commission (BCUC or Commission)
Indigenous Utilities Regulation Inquiry
British Columbia Hydro and Power Authority (BC Hydro)

BC Hydro writes in compliance with BCUC Order No. G-214-19 to provide its final submission in the above mentioned proceeding.

For further information, please contact the undersigned.

Yours sincerely,



Fred James
Chief Regulatory Officer

sh/af

Enclosure

BCUC Indigenous Utilities Regulation Inquiry

Final Written Submission
on behalf of
British Columbia Hydro and Power Authority

October 4, 2019

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1 **Introduction**

2 These are BC Hydro's submissions with regard to the Indigenous Utilities Regulation
3 Inquiry (**IUR Inquiry**). They are filed pursuant to the regulatory timetable set out in
4 Order G-214-19.

5 The IUR Inquiry was initiated by Order-in-Council 108/2019 (**OIC 108**).¹ OIC 108
6 requires the Commission to provide advice to the Minister responsible for the *Hydro*
7 *and Power Authority Act* (the **Minister**) on a number of listed topics, as elaborated
8 on by the Commission in Appendix A to its letter of May 10, 2019 (Exhibit A-5). For
9 the convenience of the Commission and participants in this inquiry, BC Hydro's
10 submissions are framed as recommendations to the Commission regarding the
11 advice it is obliged to provide to the Minister as set out in the Terms of Reference
12 contained in OIC 108.

13 The timetable for the IUR Inquiry contemplates the issuance of a draft report on
14 November 1, 2019, and an opportunity for participants in this proceeding to
15 comment on the draft report. In light of that opportunity BC Hydro's submissions at
16 this time are relatively high-level. BC Hydro reserves the right to elaborate on or
17 supplement these submissions in any comments it might have in regard to the draft
18 report, including making the Commission aware of the potential impacts of different
19 regulatory regimes on BC Hydro customers. Where appropriate, BC Hydro will make
20 suggestions regarding regulatory approaches that would avoid or mitigate negative
21 impacts on BC Hydro customers.

22 BC Hydro also provides submissions on the questions set out in the Commission's
23 letter of September 20, 2019 (Exhibit A-38).

¹ OIC 108 is attached to these submissions for reference as Appendix A.

1 **Summary**

2 BC Hydro acknowledges the unique nature of Indigenous governments and their
3 desire to advance their objectives (including economic prosperity and employment)
4 in a manner consistent with their community's values and their constitutional rights.
5 The Province has articulated in the *Clean Energy Act* (**CEA**) that one of British
6 Columbia's energy objectives is to foster the development of First Nation
7 communities through the use and development of clean or renewable resources.²
8 The Province has also mandated BC Hydro to incorporate the United Nations
9 Declaration of the Rights of Indigenous Peoples (**UNDRIP**) and the Calls to Action of
10 the Truth and Reconciliation Commission within BC Hydro's mandate and context.³
11 The mandate and context for BC Hydro also includes the Province's energy
12 objectives that BC Hydro's customers receive the benefits of BC Hydro's generation,
13 transmission and distribution assets (heritage assets)⁴ and that BC Hydro's rates
14 remain amongst the most competitive in North America.⁵

15 BC Hydro makes the following submissions mindful of the above context.

16 **Retaining the UCA as the Principal Regulatory Framework and the** 17 **Commission as the Principal Regulator**

18 BC Hydro believes that the *Utilities Commission Act* (**UCA**) should be the principal
19 regulatory framework for all Public Utilities operating in British Columbia and that the
20 Commission should administer the UCA.

² CEA, section 2(l).

³ <https://www.bchydro.com/content/dam/BCHydro/customer-portal/documents/corporate/accountability-reports/openness-accountability/bch-mandate-letter-2019-2020.pdf>

⁴ CEA, section 2(e).

⁵ CEA, section 2(f).

1 The UCA, as administered by the Commission is effective and efficient at balancing
2 the interests of customers, Public Utilities and other stakeholders and protecting the
3 public interest.⁶

4 A single regulatory framework and regulator supports the efficient development of
5 utility infrastructure and ensures the appropriate allocation of costs by Public Utilities
6 to their customers as well as between Public Utilities, thereby ensuring that all
7 customer interests are balanced. In the case of electrical utilities whose electrical
8 infrastructure and operations are interconnected, a single regulatory framework and
9 regulator reduces the complexity of relationships between Public Utilities, promotes
10 reliability, safety and efficiency in operations across all systems, and provides a
11 consistent process and principles for resolution of disagreements between Public
12 Utilities.

13 **Role for Self-Regulated Indigenous Utilities or an Indigenous Regulator**

14 BC Hydro believes that in certain circumstances an Indigenous utility can have the
15 accountability to, and alignment of interests with, customers that would allow those
16 utilities to be exempt from some sections of the UCA and still address public interest
17 concerns. Specifically, BC Hydro supports Indigenous utilities being self-regulated or
18 regulated under an Indigenous Regulator when the Indigenous utility operates in
19 B.C. on reserves or Current Treaty Settlement Lands (lands for which ownership has
20 been transferred to the treaty government under an existing modern treaty) and the
21 Indigenous utility provides similar protections for all of its customers as is required of
22 municipal utilities.⁷ This can be achieved through the ownership structure of the
23 Indigenous utility, the First Nation's laws and governance processes, and applicable
24 legislation or modern treaty requirements.⁸

⁶ Exhibit C2-2, sections 5 and 6.

⁷ Exhibit C2-2, section 7.2.

⁸ Exhibit C2-3, response to BCUC IR.1.4.2.

1 In respect of BC Hydro concerns in the above circumstances, BC Hydro has stated
2 its support for the above regulatory model, subject to the safeguards for BC Hydro
3 ratepayers described in BC Hydro's response to BCUC IR 1.1.4 (Exhibit C2-3).

4 **Continued Role for Commission**

5 The Commission should retain jurisdiction over all BC Hydro utility assets and
6 operations across the Province, and BC Hydro should not be subject to any new
7 regulator which regulates Indigenous utilities. The Commission should also retain
8 the ability to adjudicate solutions to disputes between Indigenous utilities and other
9 Public Utilities and jurisdiction of Mandatory Reliability Standards and other safety
10 and reliability provisions of the UCA. Regulation of Indigenous utilities serving
11 customers on future treaty settlement lands should be considered on a case-by-case
12 basis, given the unique nature of treaties and treaty negotiations.

BC Hydro Response to the Questions in the Terms of Reference

A. What are the Defining Characteristics of Indigenous Utilities Having Regard to the Nature and Ownership of Indigenous Utilities?

To the extent that the Commission advises the Minister that regulation by a mechanism other than the UCA⁹ is appropriate for Indigenous utilities,¹⁰ it seems necessary to identify some degree of ownership or operation of public utilities by Indigenous nations.¹¹ However, there is little evidence on the record of this proceeding that relates an appropriate type of regulation based on different potential ownership and/or operating models for Indigenous utilities. Some Indigenous nations have submitted that an Indigenous utility should be majority-owned or controlled by an Indigenous nation¹² while others have cautioned against prescriptive ownership criteria¹³ or have indicated that rather than ownership requirements, a material benefit should accrue to the First Nation.¹⁴ Accordingly, BC Hydro recommends that the Commission advise the Minister that some substantial degree of ownership, interest, or operation by Indigenous nations of Indigenous utilities should be a precondition to receiving an exemption from the UCA, but that the meaning of "substantial" could usefully be considered further. However, the scope of an Indigenous nation's ownership, interest, or operation of a public utility may not be the sole consideration in determining the appropriate regulatory model for that utility.

⁹ BC Hydro uses the generic expression "different forms of regulation" to include unregulated, self-regulated, and regulated by an entity under a different statutory framework than is provided for in the *Utilities Commission Act (UCA)*. It does not use the expression to refer to the different ways the Commission currently regulates public utilities under the UCA including for example stream-lined review processes and so on.

¹⁰ "Indigenous utilities" as used in these submissions has the same meaning as in OIC 108.

¹¹ Ibid.

¹² Collective First Nations, Exhibit C13-2, page 7.

¹³ First Nation Leadership Council, C16-2, page 6.

¹⁴ Coastal First Nations - Great Bear Initiative, Exhibit C20-2, page 12.

B. What are the Defining Characteristics of Indigenous Utilities Having Regard to the Types of Services Provided by Indigenous Utilities?

The evidence indicates that Indigenous nations are interested in engaging in a number of different activities that could bring them within the definition of "public utility" in the UCA. For example, Indigenous nations have expressed an interest in, among other things, owning and operating electricity distribution assets,¹⁵ owning electricity distribution assets that may be operated by a third party,¹⁶ and owning and/or operating generation assets and selling the electricity to loads in British Columbia.¹⁷

As with the topic of ownership/operation, there is little evidence on the record of this proceeding that relates an appropriate type of regulation based on different types of service to be provided by Indigenous utilities. However, the current legal framework under the UCA already contemplates different types of regulation for different types of public utility service.¹⁸ Accordingly, BC Hydro recommends that the Commission advise the Minister that to the extent that different forms of regulation are determined to be appropriate for Indigenous utilities, different forms of regulation might also be appropriate for different types of public utility service provided by Indigenous utilities.

¹⁵ Coastal First Nations – Great Bear Initiative, Exhibit C20-2, page 8, Adams Lake First Nation, Exhibit C14-2, page 5.

¹⁶ Collective First Nation, Exhibit C13-2, page 7, Beecher Bay First Nation, Exhibit C9-2, page 127.

¹⁷ Collective First Nations, Exhibit C-13-2, page 10, Kitselas Geothermal Inc., Exhibit C6-3, page 5.

¹⁸ For example, public utilities that sell electricity at wholesale to BC Hydro and who are not otherwise public utilities are exempt from Part 3 of the UCA per Minister's Order No. M-22-0205.

C. What are the Defining Characteristics of Indigenous Utilities Having Regard to the Persons to whom Services are Provided by Indigenous Utilities?

The evidence indicates that some Indigenous nations support different forms of public utility regulation for Indigenous utilities¹⁹ and wish to serve customers who may not be members of the Indigenous nation.²⁰ BC Hydro has expressed some concerns about this scenario in its written evidence and in its responses to information requests.

BC Hydro sees that, in the event of dissatisfaction with a utility's service, there is a public interest in ensuring that utility customers have recourse to either an independent utility regulator or a body politically accountable to them. That public interest is apparent in the current UCA, which generally provides for recourse to the Commission²¹ or, in the case of municipalities, to the municipal body²².

BC Hydro recommends that the Commission advise the Minister that to the extent that exemptions from the UCA for Indigenous utilities are determined to be appropriate, protection to all customers still be provided in a manner consistent with the UCA, municipal utilities, and the considerations in BC Hydro's response to BCUC IR 1.4.2 (Exhibit C2-3).

D. What are the Defining Characteristics of Indigenous Utilities Having Regard to the Geographic Areas Served by Indigenous Utilities?

The evidence indicates that some Indigenous nations and Interveners support exemptions from the UCA and may wish to serve customers beyond reserves and

¹⁹ Or being subject to regulation by bodies that would be created by and serve the policy objectives of Indigenous nations.

²⁰ First Nations Leadership Council, Exhibit C16-2; Beecher Bay First Nation, Exhibit C9-2, page 2; Coastal First Nations, Exhibit C20-2, page 6.

²¹ UCA, sections 82 and 83.

²² Exhibit C2-2, section 7.2, pages 14 and 15.

1 Current Treaty Settlement Lands and across an Indigenous nation's traditional
2 territory.²³ BC Hydro has expressed some concerns about this scenario, primarily in
3 its response to BCUC IR 1.4.3 (Exhibit C2-3). In this scenario, Public Utilities could
4 effectively choose their customers, leaving more costly customers to other Public
5 Utilities who are regulated under the UCA and who have an obligation to serve. Also,
6 multiple regulators may lead to disagreements or uncertainty in relation to reliability,
7 safety and efficiency, particularly in situations where various Indigenous utilities were
8 interconnected to the BC Hydro system.

9 An appropriate answer to this concern is that Indigenous utilities with exemptions
10 from the UCA should provide service within well-defined geographic areas. In
11 addition, the Commission should continue to have jurisdiction for the provision of
12 service outside such well-defined geographic areas.

13 BC Hydro recommends that the Commission advise the Minister that Indigenous
14 utilities could receive exemptions from the UCA on reserves or Current Treaty
15 Settlement Lands, subject to the conditions and considerations set out in BC Hydro's
16 responses to BCUC IRs 1.1.4 and 1.4.2 (Exhibit C2-3).

17 **E. Should Indigenous Utilities be Regulated Under the UCA, or**
18 **Under Another Mechanism, or be Unregulated?**

19 In its responses to BCUC IRs 1.1.4 and 1.4.2 (Exhibit C2-3), BC Hydro expressed its
20 support for Indigenous utilities being regulated under a mechanism other than the
21 UCA, within certain parameters. BC Hydro does not repeat that evidence here, since
22 it is both succinct and self-explanatory.

23 BC Hydro recommends that the Commission advise the Minister that Indigenous
24 utilities could be regulated under a mechanism other than the UCA, on reserves and

²³ First Nations Leadership Council, Exhibit C16-2, page 14.

1 Current Treaty Settlement Lands, within the parameters and considerations
2 described in BC Hydro's responses to BCUC IRs 1.1.4 and 1.4.2 (Exhibit C2-3).

3 **F. If it is Appropriate to Regulate Indigenous Utilities under the**
4 **Act, is there any matter under the Act in respect of which**
5 **Indigenous Utilities Should be Regulated Differently from**
6 **Other Public Utilities, and, if so, How Should that Matter be**
7 **Regulated?**

8 BC Hydro expects that many Indigenous utilities will be smaller utilities. BC Hydro
9 notes that the Commission has developed a number of processes and procedures to
10 review smaller applications with a limited number of issues, including streamlined
11 review processes, ad hoc exemptions, and others.

12 As described in BC Hydro's written submission (Exhibit C2-2), for small Indigenous
13 utilities which continue to be included in the UCA definition of a Public Utility, the
14 Commission should consider streamlined or expedited review processes which allow
15 for the public interest to be safeguarded and which allow for the overall regulatory
16 cost placed on the utility and ultimately borne by its ratepayers to be reduced. As
17 further described BC Hydro's responses to BCUC IRs 1.3.2 and 1.4.1 (Exhibit C2-3),
18 while BC Hydro is unable to recommend what form of regulation or reporting might
19 be appropriate, it has identified specific examples where the Commission has:

- 20 1. Required less extensive evidence in a regulatory approval for certain smaller
21 utilities relative to larger utilities;
- 22 2. Recommended exemptions from sections of the UCA that ease the regulatory
23 burden and cost for applicants while maintaining reliability standards and
24 remedies for potential future complaints on a case-by-case basis; and
- 25 3. Developed processes and guidelines that reduce the cost and time for
26 regulatory reviews.

G. If it is Not Appropriate to Regulate Indigenous Utilities under the Act but it is Appropriate to Regulate Indigenous Utilities in Some Manner, How Should Indigenous Utilities be Regulated?

BC Hydro has no additional submissions to make on this topic, at this time.

H. 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?

There is very little evidence on this topic in the evidence of this proceeding, and BC Hydro has no submissions to make at this time.

BC Hydro Response to the Commission's Letter of September 20, 2019

The following submissions are provided in response to the six questions set out in the Commission's letter of September 20, 2019 (Exhibit A-38).

1. The need for regulation of monopoly service providers is generally considered necessary where there is a need to protect the consumer against potential abuse of monopoly power by the service providers. Is this an applicable to and important factor for Indigenous utilities? Why or why not?

The primary purpose of public utility regulation is to ensure that monopoly suppliers of essential public services provide those services to all customers on a non-discriminatory basis and at reasonable rates. This is a public policy objective expressed in the UCA and in similar legislative regimes across North America. This principle should also be applicable to Indigenous utilities.

BC Hydro supports Indigenous nations deciding for themselves what form of public utility regulation is necessary or desirable within well-defined geographical areas (reserves and Current Treaty Settlement Lands) within the parameters and

1 considerations described in BC Hydro's responses to BCUC IRs 1.1.4 and 1.4.2
2 (Exhibit C2-3).

3 **2. If the regulation of Indigenous utilities were undertaken by an**
4 **entity other than the BCUC (for example, self-regulated by a**
5 **First Nation), would it be appropriate for the BCUC to retain its**
6 **jurisdiction to act upon complaints? Why or why not?**

7 Further to BC Hydro's response to question #1 above, BC Hydro supports an
8 on-going role for the Commission with respect to the regulation of Indigenous utilities
9 regardless of the form of regulation, including an ability to compel solutions to
10 disputes between public utilities and jurisdiction with regards to Mandatory Reliability
11 Standards and other safety and reliability provisions of the UCA. BC Hydro provided
12 examples of how a common regulatory framework and a common regulator have
13 benefitted utility customers in BC Hydro's responses to BCUC IRs 1.1.1.1 and 1.4.3
14 (Exhibit C2-3).

15 **3. If the regulation of Indigenous utilities were undertaken by an**
16 **entity other than the BCUC, should the BCUC retain its**
17 **jurisdiction over system safety and reliability issues? Why or**
18 **why not?**

19 Please see BC Hydro's submission in response to question #2 above.

20 **4. If Indigenous utilities are not to be regulated under the Utilities**
21 **Commission Act, should there also be different regulatory**
22 **treatment for non-indigenous utilities that provide services**
23 **on-reserve or, in the absence of a specific treaty provision, on**
24 **Treaty lands (for example, BC Hydro utility services in a**
25 **non-integrated area)? Why or why not?**

26 Non-Indigenous utilities should continue to be regulated by the Commission under
27 the UCA, regardless of where they provide services within the Province. Whether
28 customers of a non-Indigenous utility providing services on-reserve would have
29 appropriate protections and recourse, either directly against the non-Indigenous

utility or through accountability of the Indigenous government to the customers, should be determined on a case-by-case basis under the UCA. The Commission should retain jurisdiction over all BC Hydro utility assets and operations across the Province, and BC Hydro should not be subject to any new regulator which regulates Indigenous utilities.

5. In the absence of alternative regulatory arrangements respecting indigenous utilities, please provide examples of how the UCA or other existing legislation relating to utility regulation might be amended to protect the interests of Indigenous Nations, while working towards reconciliation.

BC Hydro has no submissions to make in regard to this question.

6. If there were to be a recommendation to establish an "Indigenous Utilities Commission" or similar body to regulate Indigenous utilities, do interveners have a view whether such a body could or should have some degree of authority over all Indigenous utilities, or should the jurisdiction of such a body be limited to some extent (e.g., confined to specific territorial limits)? Why or why not?

Assuming the establishment of an entity to regulate Indigenous utilities on reserves or Current Treaty Settlement Lands, BC Hydro supports the view that Indigenous nations that would own or operate those utilities to be able to decide for themselves whether to opt-in to such a framework, or not, provided again that the parameters and considerations in BC Hydro's responses to BCUC IRs 1.1.4 and 1.4.2 (Exhibit C2-3) are satisfied.

ALL OF WHICH IS RESPECTFULLY SUBMITTED OCTOBER 4, 2019

Per: 

Fred James
Chief Regulatory Officer
British Columbia Hydro and Power Authority

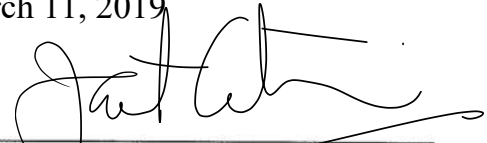
BCUC Indigenous Utilities Regulation Inquiry

Appendix A

Order-in-Council 108/2019

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

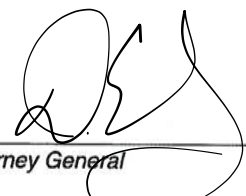
Order in Council No. 108 , Approved and Ordered March 11, 2019




Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that the attached order, British Columbia Utilities Commission Inquiry Respecting the Regulation of Indigenous Utilities, is made.



Attorney General



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: Utilities Commission Act, R.S.B.C. 1996, c. 473, s. 5

Other: _____

**BRITISH COLUMBIA UTILITIES COMMISSION INQUIRY RESPECTING
THE REGULATION OF INDIGENOUS UTILITIES**

Definitions

1 In this order:

“Act” means the *Utilities Commission Act*;

“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;
- (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;

“indigenous utility” means a public utility that is owned or operated, in full or in part, by an indigenous nation.

Referral to commission

2 By this order, the Lieutenant Governor in Council, under section 5 (1) of the Act, requests that the commission advise the Lieutenant Governor in Council respecting the regulation of indigenous utilities in accordance with the terms of reference set out in section 3 of this order.

Terms of reference

- 3 (1) Subject to subsection (2), the terms of reference, in accordance with which the commission must inquire into the matter referred to it by section 2, are as follows:
- (a) the commission must advise on the appropriate nature and scope, if any, of the regulation of indigenous utilities;
 - (b) without limiting paragraph (a), the commission must provide response 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 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?
- (2) It is a further term of reference that the commission must submit to the minister responsible for the *Hydro and Power Authority Act* reports as follows:
- (a) an interim report describing the commission's progress to date and the commission's preliminary findings must be submitted no later than December 31, 2019;
 - (b) a final report describing the results of consultations undertaken by the commission and the commission's findings and recommendations must be submitted no later than January 31, 2020.