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March 6, 2020

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 further to BCUC Order No. G-26-20 to provide its written comments on the draft report for the Indigenous Utilities Inquiry. This is an important inquiry and represents a key area of interest for Indigenous communities and therefore we appreciate the opportunity to be involved.

For further information, please contact Anthea Jubb at 604-623-3545 or by email at bchydroregulatorygroup@bchydro.com.

Yours sincerely,



Fred James
Chief Regulatory Officer

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Enclosure

Indigenous Utilities Regulation Inquiry

BC Hydro Written Comments on the Draft Report

Introduction and Background

The Indigenous Utilities Regulation Inquiry (Inquiry) was initiated by the Minister of Energy, Mines and Petroleum Resources (the **Minister**) on March 11, 2019 by Order in Council 108 (OIC 108). Section 3 of OIC 108 sets out the Commission's Terms of Reference for the Inquiry. On March 19, 2019, the Commission, by Order No. G-62-19 established the regulatory process for the Inquiry. In accordance with the regulatory schedule set out by the Commission, BC Hydro submitted written evidence on July 15, 2019, (Exhibit C2-2), provided responses to Commission and Intervener IRs (Exhibit C2-3) and submitted its Final Argument on October 4, 2019. On November 1, 2019, the BC Utilities Commission (**BCUC** or **Commission**) issued its Draft Report for the Inquiry (**Draft Report**), marked as Exhibit A-43 in the proceeding. Section 7.1 of that report contained its proposed recommendations to the Minister while section 7.2 contained additional questions for subsequent workshops and comment period. On December 31, 2019, the Commission issued its Interim Report to the Minister, which provided a summary of undertaken and planned engagement by the Commission. The Interim Report also contained the BCUC's proposed recommendations from its Draft Report. Between December 2019 and January 2020, the Commission held seven workshops across the Province, four of which were attended by BC Hydro staff. Intervener comments on the Draft Report are due on Monday, March 6, 2020 with reply comments due on March 31, 2020. The Commission's Final Report to the Minister will be submitted on April 30, 2020.

This submission represents BC Hydro's comments on the Draft Report.

Context

As described previously in its Final Argument on October 4, 2019, BC Hydro acknowledges the unique nature of Indigenous governments and their ongoing interest in advancing their objectives (including economic prosperity and employment) in a manner consistent with their community’s values and their constitutional rights. The Province has articulated in the *Clean Energy Act (CEA)* that one of British Columbia’s energy objectives is to foster the development of First Nation communities through the use and development of clean or renewable resources. The Province has also mandated BC Hydro to incorporate the United Nations Declaration of the Rights of Indigenous Peoples (**UNDRIP**) and the Calls to Action of the Truth and Reconciliation Commission within BC Hydro’s mandate and context. The mandate and context for BC Hydro also includes the Province’s energy objectives that BC Hydro’s customers receive the benefits of BC Hydro’s generation, transmission and distribution assets (heritage assets) and that BC Hydro’s rates remain amongst the most competitive in North America.

BC Hydro Comments on Draft Report Recommendations

The following table includes the Commission’s proposed recommendations to the Minister from section 7.1 of the Draft Report and BC Hydro’s comments on each of the Commission’s proposed recommendations.

#	Proposed Recommendations to the Minister	BC Hydro Comments
Regulation of Monopolies		
1	<i>“That all ratepayers of Indigenous utilities receive the same protection as do ratepayers of non-Indigenous utilities.”</i>	BC Hydro supports this proposed recommendation.

#	Proposed Recommendations to the Minister	BC Hydro Comments
Regulation of Mandatory Reliability Standards		
2	<p><i>“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.”</i></p>	<p>BC Hydro supports this proposed recommendation but requests that the Commission modify its recommendation to include any entity that may impact the Bulk Electric System.</p> <p>Mandatory Reliability Standards (MRS) apply to any entity and infrastructure capable of impacting the Bulk Electric System and which meets the criteria of MRS defined functions. As described in Exhibit C2-3, BC Hydro’s response to BCUC IR 1.1.1.1, MRS are in place to preserve and maintain a minimum measure of reliability and security regarding the North American interconnected electric grid (the Bulk Electric System - BES) which covers most Canadian provinces, the U.S., and parts of Mexico. MRS are developed by the North American Electric Reliability Corporation and may be supplemented by region-specific reliability standards developed by appointed regional entities. MRS are adopted in Canada at a provincial level and in the U.S. and Mexico, at a federal level. The application of MRS in all applicable BES jurisdictions is not limited to public utilities, but also includes any entity that is capable of impacting the BES and meets the criteria of MRS defined functions, which include but are not limited to, Distribution Provider, Transmission Service Provider, Transmission Owner, and Generator Owner.</p>
Reserve Lands		
3	<p><i>“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.”</i></p>	<p>BC Hydro supports this proposed recommendation and believes that the following principled approach can be applied appropriately to an Indigenous Utility in the circumstances identified by the Commission in its recommendations.</p> <p>As described on Page 3 of BC Hydro Final Argument dated October 4, 2019, “In certain circumstances an Indigenous utility can have the accountability to, alignment of interests with, customers that would allow those utilities to be exempt from some sections of the UCA and still address public interest concerns. Specifically, BC Hydro supports Indigenous utilities being self-regulated or regulated under an Indigenous Regulator when the Indigenous Utility:</p>

#	Proposed Recommendations to the Minister	BC Hydro Comments
		<ul style="list-style-type: none"> • Provides similar protections for all its customers as is required of municipal utilities. This can be achieved through the ownership structure of the Indigenous utility, the First Nation’s laws and governance processes, and applicable legislation or modern treaty requirements.” In this regard, BC Hydro has provided additional context in Exhibit C2-3, BC Hydro’s responses to BCUC IR 1.1.4 and BCUC IR 1.4.2; • Operates in B.C. on reserves or on Current Treaty Settlement Lands (lands for which ownership has been transferred to the treaty government under an existing modern treaty and over which the treaty government has appropriate law-making authority. Current Treaty Settlement Lands would not include what is generally understood to be a Nation’s traditional territory, or the entirety of a Historic Treaty territory); and • In section 5.3.3.1 of the Draft Report, the Commission noted that “Historical Treaties include reserves and territories wherein the Treaty Bands can exercise specific rights. Unlike modern treaties, they don’t enumerate government powers and First Nations authority. As such, unless a Historical Treaty band chooses to opt into the <i>First Nations Land Management Act</i>, the <i>First Nations Financial Management Act</i> or a similar sectoral government or negotiates a specific self-government Act, it remains subject to the Indian Act, including s. 88.” <p>BC Hydro also supports the BCUC’s actions to date to mitigate the regulatory burden on small utilities, including Indigenous Utilities, and supports the BCUC’s consideration of further approaches to mitigate the regulatory burden while still ensuring the public interest is maintained.</p>

#	Proposed Recommendations to the Minister	BC Hydro Comments
4	<p><i>“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 that it cannot do so the BCUC would retain jurisdiction to handle all complaints.”</i></p>	<p>BC Hydro supports proposed recommendations 4 and 5.</p> <p>Regarding recommendation 5, BC Hydro requests that the Commission specifically retain the power to compel solutions between utilities as it currently does, regardless of the regulatory model chosen by the Indigenous government.</p> <p>Regarding recommendation 6, BC Hydro requests that the BCUC retain its jurisdiction over safety and reliability provisions of the UCA for Indigenous Utilities.</p>
5	<p><i>“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.”</i></p>	<p>In Exhibit C2-3, BC Hydro’s response to BCUC IR 1.4.3, we explained that the lack of a common regulator may compromise reliability, safety and efficiency and that a common regulator is particularly important in situations where various utilities are interconnected to the BC Hydro system. Due to the interconnected nature of electrical systems, adjoining utilities must work cooperatively to ensure reliability, safety and efficiency. Should there be a disagreement between utilities, a common regulator is required to resolve the disagreement.</p>
6	<p><i>“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.”</i></p>	<p>In Exhibit C2-3, BC Hydro’s responses to BCUC IR 1.1.1, 1.1.1.1 and 1.1.3, BC Hydro provided examples of situations where the actions of one utility may have negative implications for other utilities outside of their boundaries and examples of the value of a single regulator to maintain safety and reliability standards and to compel solutions between utilities.</p>

#	Proposed Recommendations to the Minister	BC Hydro Comments
	<p>“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...”</p> <p>“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.”</p> <p>“Any First Nation that seeks to acquire an asset from BC Hydro or any other incumbent public utility will continue to be subject to BCUC regulation with respect to the approval of the transaction. In reviewing the transaction, the BCUC would consider among other matters the rate impact on the incumbent utility’s ratepayers.”</p>	<p>BC Hydro does not provide further comments on an Indigenous Utility’s obligation to serve.</p> <p>BC Hydro supports the BCUC’s actions to date to mitigate the regulatory burden on small utilities and supports the BCUC’s consideration of further approaches to mitigate the regulatory burden while still ensuring the public interest is maintained.</p> <p>BC Hydro notes that the BCUC has affirmed that the acquisition of existing public utility assets will continue to be subject to BCUC regulation with respect to its approval and that as part of any acquisition request, the BCUC would consider the rate impact and other factors on incumbent utility ratepayers. This is aligned with the principles by which BC Hydro would support an Indigenous utility located in BC operating under a different regulatory framework as set out in Exhibit C2-3, BC Hydro’s response to BCUC IR 1.1.4.</p>
Modern Treaty Lands – Nisga’a		
7	<p><i>“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.”</i></p>	<p>BC Hydro supports this recommendation.</p> <p>Please refer to BC Hydro’s comments in respect of proposed recommendation 3 that specifically relate to Current Treaty Settlement Lands, BC Hydro’s comments in respect of proposed recommendations 4 and 5 relating to complaint and dispute handling processes, and BC Hydro’s comments on proposed recommendation 6 regarding safety and reliability.</p>

#	Proposed Recommendations to the Minister	BC Hydro Comments
8	<p><i>“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.”</i></p>	<p>BC Hydro supports this recommendation but requests that the Commission modify its language to include any entity that may impact the Bulk Electric System.</p> <p>Please refer to BC Hydro’s comments regarding the Bulk Electric System as provided in BC Hydro’s comments to proposed recommendation 2.</p>
Other Modern Treaty Lands		
9	<p><i>“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 services on its own lands, in the same manner as we have proposed for the Nisga’a,”</i></p>	<p>BC Hydro supports this recommendation.</p> <p>BC Hydro notes that, in considering whether the treaty terms of another modern Treaty Nation are substantially similar to those in the Nisga’a Treaty, the Commission will need to interpret and assess those terms in the context of all other provisions of the Treaty.</p>
Lands Subject to Historical Treaties		
10	<p><i>“... the Panel is inclined to recommend that First Nations that are parties to Historical Treaties be covered by the same recommendations outlined in respect of Reserve Land. However, we welcome comments on this recommendation during the workshop and comment period.</i></p>	<p>Please refer to BC Hydro’s comments in respect of proposed recommendation 3.</p>
Westbank First Nation		
11	<p><i>“Provided that the Advisory Council Law applies to resolution of utility complaints, we are inclined to recommend that Westbank First Nation be given the opportunity to self-regulate when it provides utility service on its own lands, as we have proposed for Nisga’a.”</i></p>	<p>BC Hydro makes no further submission on this recommendation.</p> <p>Please refer to BC Hydro’s comments in respect of proposed recommendation 3.</p>

#	Proposed Recommendations to the Minister	BC Hydro Comments
12	<p><i>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 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."</i></p>	<p>BC Hydro makes no further submission on this recommendation.</p> <p>Please refer to BC Hydro's comments in respect of proposed recommendation 3.</p>
Ceasing to be an Indigenous Utility		
13	<p><i>If a utility ceases to meet the definition of an Indigenous Utility it becomes subject to regulation under the UCA.</i></p>	<p>BC Hydro supports this recommendation.</p>

#	Proposed Recommendations to the Minister	BC Hydro Comments
Definition of an Indigenous Utility		
14	<p><i>The definition of Indigenous utility should be further explored during the workshops. We have outlined above recommendations for the recommendation of utility services provided by First Nations. The Workshop topics further explore ways that the 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.</i></p>	<p>As set out in sections A – D of BC Hydro’s Final Submission dated October 4, 2019, BC Hydro repeats its main recommendations regarding the defining characteristics of an Indigenous Utility:</p> <p>Ownership and operation - “BC Hydro recommends 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 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.”</p> <p>Types of services provided - “BC Hydro recommends that the Commission advise the Minister that to the extent 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.”</p> <p>Persons to whom services are provided - “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, municipalities, and the considerations in BC Hydro’s response to BCUC IR 1.4.2 (Exhibit C2-3).” BC Hydro notes that this recommendation appears to be aligned with the Commission’s proposed recommendation 1.</p>

#	Proposed Recommendations to the Minister	BC Hydro Comments
		Geographic area served – “... Indigenous Utilities with exemptions from the UCA should provide service within well-defined geographic areas. In addition, the Commission should continue to have jurisdiction for the provision of service outside such well-defined geographic areas. BC Hydro recommends that the Commission advise the Minister that Indigenous Utilities could receive exemptions from the UCA on reserves or Current Treaty Settlement Lands subject to the conditions and considerations set out in BC Hydro’s responses to BCUC IR 1.1.4 and 1.4.2 (Exhibit C2-3).”

BC Hydro also provides comment regarding the two matters that the BCUC encouraged participants to address in Exhibit A-48.

1. How and the extent to which the implementation of the *Declaration on the Rights of Indigenous Peoples Act* should impact the BCUC’s recommendations.
2. Should the BCUC include the facilitation of economic opportunities for First Nations in its recommendations around a regulatory framework for Indigenous Utilities?

BC Hydro is committed to reconciliation and supporting economic opportunities with Indigenous groups in relation to our business consistent with BC Hydro’s mandate letter and British Columbia’s Energy Objectives in the *Clean Energy Act*.

The stated intention of the government with DRIPA was to establish a process for the Province to align its laws with UNDRIP, including through amendments to legislation such as the UCA. Until the Province makes such amendments, the Commission is not required, or empowered, to do anything more than what it is currently under the UCA, including in respect of creating economic opportunities for First Nations.

Concerning economic opportunities for First Nations, the Province has articulated in the *Clean Energy Act* that one of British Columbia’s energy objectives is to foster the

development of First Nation communities through the use and development of clean or renewable resources.

BC Hydro notes that the Commission is therefore required to consider British Columbia's energy objectives when a public utility brings forward resource plans (s.44.1, UCA), capital filings (s.44.2, 45, UCA) or energy supply contracts (s.71, UCA) for approval or acceptance by the Commission.

BC Hydro thanks the Commission for providing the opportunity to provide further comments on the proposed recommendations to the Minister.