



ORDER NUMBER
G-381-21

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

British Columbia Utilities Commission
An Inquiry into the Regulation of Municipal Energy Utilities

BEFORE:

T. A. Loski, Panel Chair
C. M. Brewer, Commissioner
W. M. Everett, QC, Commissioner
B. A. Magnan, Commissioner

on December 17, 2021

ORDER

WHEREAS:

- A. By Order G-177-19, the British Columbia Utilities Commission (BCUC) established an inquiry to examine the regulation of energy utilities affiliated with municipalities and regional districts in British Columbia (Inquiry) and established a regulatory timetable;
- B. On October 24, 2019, intervenor written submissions and letters of comment were received by the BCUC, addressing whether a utility affiliated, in some way, with a municipality or regional district is considered a public utility as defined by section 1 of the *Utilities Commission Act* (UCA);
- C. By Order G-316-19, and as amended by Order G-14-20, the BCUC amended the regulatory timetable, which included one round of information requests (IR);
- D. By Order G-56-20, the BCUC adjourned the Inquiry in recognition of the COVID-19 pandemic and suspended the regulatory timetable as set out in Order G-14-20 until further notice. Following a request for submissions, by letters dated July 16, 2020 and February 5, 2021, the BCUC confirmed that the adjournment would continue until the lifting of the state of emergency in BC. The BC state of emergency relating to the COVID-19 pandemic was lifted on June 30, 2021;
- E. By Order G-241-21, the BCUC resumed the Inquiry and established a further regulatory timetable;
- F. By Letter dated September 9, 2021, the City of Richmond applied (Richmond Application) for the disqualification of the Panel Chair for the Inquiry, Commissioner Tom Loski, on the grounds of a reasonable apprehension of bias;

- G. By Order G-280-21, the BCUC adjourned the regulatory timetable, as set out in Order G-241-21, pending the hearing of the Richmond Application and by letter dated September 24, 2021, requested submissions regarding the Richmond Application;
- H. By letter dated December 13, 2021, and following consideration of intervenor submissions, Richmond's Application was denied; and
- I. The BCUC considers that a further regulatory timetable is warranted.

NOW THEREFORE pursuant to section 82 of the UCA, the BCUC orders as follows:

- 1. The Inquiry to review certain aspects of the municipal and regional district exclusion from the definition of public utility in section 1 of the UCA is resumed.
- 2. An updated regulatory timetable is established, attached as Appendix A to this order.
- 3. The BCUC requests registered intervenors to provide written submissions to address matters related to the first Stage of the Inquiry as described in Appendix B to this order and in accordance with the regulatory timetable set out in Appendix A attached to this order.

DATED at the City of Vancouver, in the Province of British Columbia, this 17th day of December 2021.

BY ORDER

Original signed by:

T. A. Loski
Commissioner

Attachment

British Columbia Utilities Commission
An Inquiry into the Regulation of Municipal Energy Utilities

REGULATORY TIMETABLE

Phase 1 - Action	Date (2022)
Updated intervenor submissions and intervenor evidence (if any)	Thursday, January 27
BCUC information requests (IRs) on intervenor evidence and submissions	Thursday, February 10
Intervenor IRs on intervenor evidence and submissions	Thursday, February 24
Intervenor response to BCUC and intervenor IRs	Thursday, March 17
First stage draft report for comment	To be Determined
Further process	To be Determined

British Columbia Utilities Commission
An Inquiry into the Regulation of Municipal Energy Utilities

Request for Submissions

By Order G-56-20 dated March 17, 2020, the British Columbia Utilities Commission (BCUC) adjourned the inquiry to examine the regulation of energy utilities affiliated with municipalities and regional districts in British Columbia (Inquiry). The regulatory timetable, as set out in Order G-14-20, was adjourned until further notice due to the global COVID-19 pandemic and the state of emergency declared in British Columbia.

On February 5, 2021, following submissions from interveners in response to the BCUC letter issued on July 16, 2020, the BCUC issued a letter (Exhibit A-14) continuing the adjournment of the Inquiry until the state of emergency in British Columbia relating to the COVID-19 pandemic was lifted. The state of emergency was lifted on June 30, 2021. At the time the BCUC issued Exhibit A-14, due to the continuing uncertainties related to the COVID-19 pandemic, the BCUC indicated that it would seek submissions on restart dates. However, as the British Columbia Government Restart Plan is now in Step 3, the BCUC intends to restart the Inquiry process at this time, utilizing the staged approach described below.

As indicated in Exhibit A-1, upon the completion of this Inquiry, the Panel will consider if it is appropriate or necessary to:

- i. Seek advance approval from the Government of British Columbia to offer a class of case exemptions to municipalities and regional district energy systems in certain circumstances; and/or
- ii. Make a recommendation to the Government of British Columbia to review the definition of a “public utility” within the *Utilities Commission Act* (UCA) as it relates to such entities.

The intention of the Inquiry is not to question the validity of the municipal exclusion as defined in section 1 of the UCA, but rather to gain clarity on what types of municipal entities this exclusion applies to and ensure that its regulatory application is efficient and effective. More specifically, does the exclusion adequately capture the appropriate municipal entities or does the exclusion need to be broadened either through recommended changes to the UCA or through a class of cases exemption?

Based on submissions made to date, many municipalities make use of Local Government Corporations to conduct utility business. Local Government Corporations are for-profit corporations (under the *Business Corporations Act*) established with the approval of the Inspector of Municipalities.¹

The concept of a Local Government Corporation did not exist in its current form when the municipal exclusion to the UCA was introduced. In recognition of this, the BCUC is establishing a two-stage approach for this Inquiry. The first stage will seek submissions on the following specific questions only:

1. Does a Local Government Corporation, wholly owned and operated by a municipality and providing services exclusively within its own boundaries, meet the municipal exclusion as defined in section 1 of the UCA or is it a public utility?
2. If Local Government Corporations are excluded from the municipal exclusion as defined in section 1 of the UCA, should they be regulated under the UCA?
3. Are there any additional conditions or factors that should be considered?

¹ Exhibit A2-2, <https://www2.gov.bc.ca/gov/content/governments/local-governments/governance-powers/economic-development/local-government-corporations>

Following the receipt of submissions, the Panel will prepare a draft report summarizing the BCUC's initial findings and will provide parties an opportunity to comment on the draft report. Upon completing the first stage of the Inquiry, the second stage will address the regulatory considerations for other variations of municipal-affiliated utilities.

Given the time that has elapsed since submissions were made in October 2019, interveners are invited to update or revise their submissions as necessary, and to provide new evidence if they so choose. Parties and the BCUC will then be given an opportunity to make information requests on materials filed in the Inquiry.

Further to the BCUC letter dated February 24, 2020 (Exhibit A-8), the Panel confirms the issue of Participant Assistance/Cost Awards will be addressed at a later date.