

**Interest Paper: Comprehensive Review of BC Hydro  
Phase 3**

**Summary of Review and Recommendations  
June 27, 2021**

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### **APPENDIX A: Engagement Techniques**

## Introduction

The British Columbia provincial government has been undertaking a comprehensive review of BC Hydro for the last several years. The provincial government released the Phase 2 interim report for the comprehensive review in March, 2020. The FNLC has noted in letters to the provincial government that the Indigenous engagement completed to date for the Phase 2 Interim Report has not been adequate to satisfy the provincial government's obligations to Indigenous Nations and is not consistent with the spirit and intent of the *BC Declaration on the Rights of Indigenous Peoples Act*. The FNLC provided the provincial government with a proposed process for collaborative, meaningful engagement to satisfy the government's obligations. A copy of the FNLC letter from May 27, 2020 is included as Attachment A to this report.

The First Nations Leadership Council (FNLC) working with the BC First Nations Energy and Mining Council (FNEMC) have reviewed the Phase 2 Interim Report for the Comprehensive Review of BC Hydro. The provincial government's process to date does not meet the minimum requirements for consultation and consent. As the issue is of such importance, FNEMC has undertaken an internal review of the process to date and makes several recommendations for the FNLC to consider transmitting to government.

This report summarizes key findings from the review and recommendations to FNLC on areas to explore during further engagement with the provincial government and BC Hydro. This report includes attachments that provide summaries of background information reviewed in developing the recommendations.

Key documents examined during this review include:

- Terms of Reference for the Comprehensive Review of BC Hydro – Phase 1.
- Comprehensive Review of BC Hydro: Phase 1 Final Report.
- BC Hydro F2020 to F2021 Revenue Requirements Application (F2020-F2021 RRA), including Evidentiary Update to it.
- BC Hydro responses to BCUC and Intervenor Information Requests.
- Terms of Reference for the Comprehensive Review of BC Hydro – Phase 2.
- Comprehensive Review of BC Hydro: Phase 2 Interim Report.
- BCUC's Indigenous Utilities Regulation Inquiry Summary Report.
- First Nations Major Projects Coalition submission to the BCUC for the Indigenous Utilities Regulation Inquiry.

## Background and Context

This section provides background and context for the recommendations developed in this report. Attachment B provides a more detailed summary of the key documents reviewed in preparing this report.

## FNEMC Participation in BC Hydro 2013 IRP

The FNEMC participated in the Technical Advisory Committee (TAC) for BC Hydro's 2013 IRP. Key concerns noted by the FNEMC in submissions to BC Hydro at that time included:<sup>1</sup>

- BC Hydro's recommendations to reduce or eliminate IPP opportunities was a substantial concern. First Nations have been successful developers and partners in many IPP projects that supply clean and renewable energy. There is a material risk from this recommendation that BC Hydro will reduce confidence in its commitment to developing clean and renewable energy in the IPP sector and with First Nations.
- New infrastructure development must include meaningful engagement and accommodation for First Nations affected by new infrastructure. This should include benefit sharing beyond short-term construction employment and contracting opportunities such as revenue sharing and equity participation.
- The Province should provide clarity with respect to the process used to implement decisions and actions flowing from the IRP. BC Hydro develop processes for ongoing engagement of First Nations on resource planning issues between formal reviews of the IRP.

FNEMC is currently participating in the TAC for BC Hydro's 2021 IRP. Interim reports submitted on behalf of FNEMC to BC Hydro have noted the following concerns:

- Reconciliation is not a planning objective that BC Hydro can consider as a trade-off with other energy planning considerations. Reconciliation with Indigenous Nations is a requirement under the *BC Declaration on the Rights of Indigenous Peoples Act* that must be respected and prioritized regardless of other planning objectives.
- Participation in electricity purchase agreements (EPAs) has been the primary mechanism available to Indigenous communities to participate in revenue sharing in the provincial electricity sector. FNEMC firmly believes these opportunities should not be curtailed and in fact renewed to reflect the Indigenous title of the First Nation where they operate.
- BC Hydro should expand opportunities for Indigenous ownership, revenue and benefit sharing across all BC Hydro infrastructure and operations.
- BC Hydro should implement community-led energy planning in collaboration with Indigenous Nations. This will require the province to invest in training and hiring Indigenous community energy specialists.
- BC Hydro should require informed consent from affected Indigenous Nations for all future developments, including redevelopments of existing infrastructure and renewal of existing EPAs.

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<sup>1</sup> Summarized from the FNEMC's submission to BC Hydro dated October 2013.

## Phase 2 Terms of Reference

The provincial government's terms of reference (TOR) state the Phase 2 review will explore global energy sector shifts and provincial strategies that could transform the way BC Hydro does business with the objective of developing recommendations on how BC Hydro can accomplish the provincial policy objectives laid out in the CleanBC plan including meeting legislated greenhouse gas reduction targets.<sup>2</sup> The FNLC was not consulted on the development of the TOR.

Specific areas of interest set out in the TOR include:

1. Supporting CleanBC: including identifying opportunities to reduce greenhouse gas emissions through fuel-switching, electrification and conservation.
2. Thriving in an Evolving Electricity Sector: including understanding trends and actions necessary to integrate new technologies and opportunities such as distributed generation, microgrids and digital utilities.
3. Leveraging Our Strengths: including examining whether there are opportunities to enable increased participation in external markets to the benefit of BC Hydro ratepayers.
4. Opportunities for Indigenous Nations and Communities: with the stated objectives of developing recommendations to enhance Indigenous Nations participation in the energy sector and explore alternatives to how BC Hydro currently works with communities.

The TOR note the recommendations from the Phase 2 Review will be used to inform BC Hydro's Integrated Resource Plan (IRP) that will be filed with the British Columbia Utilities Commission (BCUC) in 2021. The FNEMC is currently involved as a participant in the Technical Advisory Committee to BC Hydro's IRP. While the Phase 2 review may inform the development of the IRP, the issues identified in the terms of reference extend beyond the scale of issues that can be resolved within the timeframe of the current IRP process.

## Phase 2 Interim Report

The Phase 2 Interim Report was released on March 6, 2020. Section 6 of the interim report addresses reconciliation through new partnerships with Indigenous Nations and notes the following:

- The provincial government passed the *BC Declaration on the Rights of Indigenous Peoples Act* that provides a path forward on reconciliation to build a stronger BC.
- The Phase 2 Review is exploring future opportunities or new roles for Indigenous Nations in the development, ownership or operations of electrical infrastructure or services.
- A major theme shared with BC Hydro and the provincial government through engagement processes over the last decade is the importance of recognizing the significant impacts of BC Hydro's legacy infrastructure and sharing BC Hydro revenue with communities who experience the impacts of this infrastructure.

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<sup>2</sup> Page 1 of Phase 2 Terms of Reference. Available: [https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bch\\_review\\_phase\\_ii\\_tor\\_190716\\_public\\_clean.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bch_review_phase_ii_tor_190716_public_clean.pdf). Accessed: June 11, 2020.

- Indigenous Nations embraced participation in the clean energy sector through independent power producer (IPP) projects. As new IPP opportunities are not available at this time there is interest in other mechanisms for participation including ownership of transmission assets, BC Hydro generation assets and Indigenous-owned utilities.

The Interim Report also states the Phase 2 Review will undertake further engagement with Indigenous Nations and organizations on these topics to inform the content of the final report to better understand opportunities and barriers and potential impacts from an economic, social and cultural perspective. Information shared by the provincial government on results of the limited engagement with Indigenous communities and organizations completed by early May 2020 confirm the continued interest of Indigenous Nations in advancing provincial reconciliation commitments through revenue sharing and ownership participation in provincial energy infrastructure.

Other topics addressed in the Phase 2 Interim Report include:

- BC Hydro is partnering with the Province and the federal government to help remote Indigenous communities reduce or eliminate diesel generation and replace it with energy from cleaner sources. The Interim Report notes diesel generated electricity represents less than 0.5% of provincial electricity generation. Experts in the Phase 2 review emphasized there should be investment in early engagement with Indigenous Nations to identify opportunities and implement clean generation resources that are less costly than BC Hydro's existing marginal cost of operations.
- Load profiles are changing as customers change the way they interact with the energy sector. In particular the Interim Report notes electric vehicles are a new and growing area of load, with BC leading North America in the sale of electric vehicles. BC Hydro will need to work with customer to managing charging capabilities for electric transportation.
- Customer expectations are changing. Customers expect more choice in products and service offerings and customers are increasingly concerned about the environmental impact of their energy choices.

## Recommendations

Based on the review conducted to date, FNEMC makes a number of recommendations that should be considered as part of a renewed Phase 3 examination of energy policy and planning issues in a collaborative process with Indigenous Nations, BC Hydro and the government of British Columbia.

### Recommendation #1: Undertake a Consultation Process Consistent with the BC Declaration of the Rights of Indigenous Peoples Act

The FNLC's letter to the Premier, the Minister of Energy Mines and Petroleum Resources and the Minister of Indigenous Relations and Reconciliation dated May 27, 2020 noted a need for a coordinated process for the Phase 2 Review that had not been undertaken.<sup>3</sup> The FNLC proposed a process meant to re-set the relationship based on the commitments and articles in the United

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<sup>3</sup> The FNLC letter is included as Attachment A to this report.

Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Key articles from the UNDRIP relevant to this process include:

- Article 18 Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
- Article 19 States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.
- Article 20 1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities. 2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.
- Article 23 Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, Indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.
- Article 25 Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.
- Article 26 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.
- Article 29 1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination. 2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent. 3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

- Article 32 1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. 14 2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. 3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.
- Article 40 Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Future planning of the energy sector in British Columbia will require an extensive and meaningful joint engagement process between the Province of British Columbia and First Nations. Indigenous Nations will require a collaborative process, with appropriate process funding, to ensure the provincial government's responsibilities are addressed. FNLC's letter of May 27, 2020 set out what such a process could look like.

The initial review of the Phase 2 Interim Report highlighted a number of issues that should be examined as part of such a collaborative process. These issues relate both to past and current adverse effects on First Nations communities from legacy infrastructure as well as methods to ensure meaningful opportunities to participate in future infrastructure development. Initial discussion on some of these issues can take place through BC Hydro's 2021 IRP but the larger process should not be limited by timing necessary to complete the IRP. Resource plans are by necessity living documents that must be reviewed and updated as new information becomes available. Preliminary recommendations on areas that should be examined are provided in the following sections.

### [Recommendation #2: Explore and Expand Revenue Sharing](#)

The Phase 2 interim report acknowledges there remain unresolved impacts from existing BC Hydro infrastructure. Indigenous Nations continue to experience the effects of legacy energy infrastructure. New infrastructure development also affects the ability of Indigenous peoples to access their lands and waters and continue their traditional use of these areas. Revenue sharing is one key mechanism that should be examined to ensure benefits of energy infrastructure (both existing infrastructure and future developments) are shared with Indigenous Nations.

The First Nations Clean Energy Business Fund provides for capacity funding, equity funding and revenue sharing agreements between the provincial government and eligible First Nations. The revenue sharing structure allows for 50% of new, incremental water and land rentals to be deposited in the fund. A total of 75% of those funds are shared directly with First Nations whose

territories are impacted by a clean energy project. The remaining funds are used to support future capacity and equity grants.<sup>4</sup>

The provincial government has signed a number of revenue sharing agreements since 2013.<sup>5</sup> This concept should be explored further and expanded in scope to provide a model for revenue sharing for future projects, as well as addressing ongoing effects of legacy infrastructure projects. Table 1 summarizes the water rentals, net income and dividends paid by BC Hydro to the provincial government. Water rental payments ranges between \$323 million per year to \$378 million per year. Sharing 50% of the annual water rentals with Indigenous Nations would result in annual payments of between \$162 million to \$194 million.

**Table 1: BC Hydro's Revenues, Water Rental Payments, Net Income and Dividends from F2017 to F2021 (\$ millions)**

	\$ millions	Actuals			Updated Plan	
		F2017	F2018	F2019	F2020	F2021
1	Total Domestic Revenue	4,709.7	4,895.5	5,067.2	4,918.5	4,942.4
2	Water Rental Payments to the BC Government	387.0	361.6	363.1	329.3	323.2
3	Net Income	683.5	684.0	(428.2)	712.0	712.0
4	Dividends paid to the BC Government	259.0	159.0	59.0	0.0	0.0

**Source:**

BC Hydro Letter to the BCUC dated January 21, 2020 on Submitting correction in Appendix A of Evidentiary Update

Available: [https://www.bccuc.com/Documents/Proceedings/2020/DOC\\_56890\\_B-11-2-BCH-EvidentiaryUpdate-AppendixA-Correction.pdf](https://www.bccuc.com/Documents/Proceedings/2020/DOC_56890_B-11-2-BCH-EvidentiaryUpdate-AppendixA-Correction.pdf)

- 1) Total Domestic Revenue: Schedule 1.0, Line 24.
- 2) Water Rental: Schedule 4.0, Line 23.
- 3) Net Income: Schedule 8.0, Line 53.
- 4) Dividends: Schedule 9.0, Line 4.

### Recommendation #3: Support Indigenous Ownership Participation in Electricity Infrastructure

The Phase 2 interim report notes it is exploring future opportunities or new roles for Indigenous Nations in the development, ownership or operation of electrical infrastructure. As noted in the interim report, Indigenous Nations embraced the opportunity to participate in clean energy IPP projects. Currently new IPP opportunities are not available due to surplus electricity. In the event the provincial government removes the self-sufficiency provision of the *Clean Energy Act* as discussed in the Phase 2 interim report, the future opportunities for IPP projects in British Columbia would be reduced. As a result, Indigenous Nations have an increased interest in equity participation and ownership in other assets including transmission, existing generation resources or distribution systems.

<sup>4</sup> Government of British Columbia website. Available: <https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/consulting-with-first-nations/first-nations-clean-energy-business-fund>. Accessed June 12, 2020.

<sup>5</sup> Government of British Columbia website. Available: <https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/consulting-with-first-nations/first-nations-negotiations/first-nations-clean-energy-business-fund-revenue-sharing-agreements>. Accessed June 12, 2020.

The FNEMC noted during the review of BC Hydro's 2013 IRP that ownership interests for First Nations must be included as benefit options for new energy infrastructure.<sup>6</sup> In a submission to the BCUC during the Indigenous Utilities Inquiry, the First Nations Major Projects Coalition identified a number of case studies illustrating Indigenous ownership models for transmission and distribution assets.<sup>7</sup> FNEMC has continued to note such concerns through its participation in the TAC for BC Hydro's 2021 IRP. The Phase 2 interim report notes the electricity sector delivery model is changing, as customers expect more choice in the way they meet their energy needs. The collaborative process between the provincial government and First Nations should examine opportunities for Indigenous ownership of assets throughout the supply chain, from generation to transmission to distribution to customer service and administrative functions. This should include opportunities related to storage or non-wires services that may develop as the electricity sector continues to evolve. It should also be noted that increased electrification, including expanding the penetration of electric vehicles, could increase provincial electricity requirements in the future. To the extent new generation resources are required in British Columbia projects that include First Nation ownership and equity participation should be prioritized.

Opportunities for First Nation ownership in projects could take the form of Indigenous utilities, partnerships with private sector partners or partnerships with BC Hydro. All of these options should be explored in the context both of existing assets and future developments.

Where Indigenous ownership arises in partnership with BC Hydro or the provincial government, it will be important to recognize that minority equity participation often limits the ability of First Nations to have influence on the operations of the projects. This can lead to investment risks where First Nations have different interests from government partners. Mechanisms to address these imbalances should be explored as part of the collaborative process between the provincial government and the First Nations.

#### [Recommendation #4: Advance Indigenous Participation in Governance, Employment and Contracting Opportunities with BC Hydro](#)

The Phase 2 interim review acknowledges that Indigenous Nations have emphasized the importance of recognizing and respecting Indigenous peoples and their contributions as full participants in British Columbia's economy. As part of this effort, BC Hydro, the province of British Columbia and the First Nations should examine and expand opportunities for Indigenous involvement in BC Hydro at all levels including:

- Governance through representation on BC Hydro's board of directors and senior management teams. The province of British Columbia and the First Nations should work collaboratively to develop and implement processes, targets, and timelines to ensure meaningful representation of Indigenous people at the most senior levels of BC Hydro.
- Indigenous employees of BC Hydro including reducing barriers to employment, ensuring Indigenous employees feel respected and empowered in their roles and developing employment targets and timelines to ensure Indigenous representation in BC Hydro's

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<sup>6</sup> Summarized from page 12 of FNEMC submission to BC Hydro as part of the 2013 IRP process. October 2013.

<sup>7</sup> Submission to the BCUC during the Indigenous Utilities Inquiry by the First Nations Major Project Coalition. Dated July 10, 2019.

workforce. Training and workforce development opportunities should also be explored to ensure Indigenous employees have the opportunity to advance in their careers.

- Indigenous businesses should have opportunities to provide goods and services to BC Hydro. The provincial government, BC Hydro and First Nations should work collaboratively to ensure contracting provisions do not create barriers for Indigenous businesses. Procurement preferences for Indigenous owned and operated businesses should also be explored.

### Recommendation #5: Transition from Diesel to Renewable Generation in Remote Indigenous Communities

The Phase 2 interim report notes BC Hydro is partnering with the provincial and federal governments to reduce or eliminate diesel generation. The expert panel for the Phase 2 review supported reducing diesel consumption with an emphasis on early engagement with Indigenous Nations. The FNEMC identified the need to transition away from diesel generation in Indigenous communities and in particular that electrification initiatives should include extending BC Hydro grid service to remote communities as a priority.<sup>8</sup>

It is understood the Coast Funds and Fraser Basin Council will provide up to \$16.5 million to remote communities to develop renewable electricity projects on behalf of the Province.<sup>9</sup> This program should be examined as part of the collaborative process between the provincial government and First Nations to expand the reach of the program. Updates on progress in reducing diesel generation should also be provided.

### Recommendation #6: Implement Necessary Legislative and Policy Changes

Advancing the recommendations will require legislative and policy changes. It is recommended the First Nations and the provincial government work collaboratively to development and implement the required changes.

### Recommendation #7: Explore Other Issues Determined by the Parties

It is anticipated that the collaborative process will identify other issues that require exploration and resolution. The process should allow for new issues to be considered.

## Summary

The FNLC and other First Nations have stated the Phase 2 Comprehensive Review Process to date has not satisfied the government's obligations for First Nations engagement. FNLC has set out a proposal for a collaborative process that would ensure meaningful engagement is completed. This report has provided some context on process to date and made recommendations for broad areas to be explored as part of the process. Sufficient time and funding from the provincial government will be required to undertake the necessary engagement.

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<sup>8</sup> Summarized from page 9 of the FNEMC submission to BC Hydro as part of the 2013 IRP process, dated May 6, 2011.

<sup>9</sup> Government of British Columbia website. Available: <https://www2.gov.bc.ca/gov/content/industry/electricity-alternative-energy/community-energy-solutions/renewable-energy-remote-communities#:~:text=The%20RERC%20Program%20is%20a,80%20per%20cent%20by%202030>. Accessed June 11, 2020.

While the Phase 2 review will inform the development of BC Hydro's 2021 IRP, the required engagement cannot be constrained by deadlines associated with the IRP. FNEMC is currently involved in the technical advisory committee for BC Hydro's IRP. Progress on some of the issues identified in this report can be made through the IRP process, but full resolution will require more time and commitment from BC Hydro, the provincial government, and First Nations. The IRP is by necessity a living document that is revised and updated at regular intervals to reflect new developments in the energy sector and updated information.

Attachment A: Letters to the Provincial Government

# FIRST NATIONS LEADERSHIP COUNCIL

May 27, 2020



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## Hon. John Horgan

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## Hon. Bruce Ralston

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## Hon. Scott Fraser

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Via Email: [abr.minister@gov.bc.ca](mailto:abr.minister@gov.bc.ca)

## Re: BC Hydro Phase 2 Review and UN Declaration on the Rights of Indigenous Peoples

Dear Premier Horgan, Minister Ralston, and Minister Fraser,

Further to the attached April 16, 2020 letter from the First Nations Leadership Council, the October 18, 2019 letter from the BCAFN, and Ministerial-FNLC teleconference meetings on April 30, 2020 and May 7, 2020, we write to you again regarding the Ministry of Energy Mines and Petroleum Resources' (EMPR) BC Hydro Phase 2 review process. These letters and meetings all sought to ensure a coordinated process among the First Nations Leadership Council (FNLC) supported by our technical organization, the BC First Nations Energy and Mining Council (FNEMC).

The solutions we proposed were meant to re-set the relationship based upon the commitments and articles in the UN Declaration on the Rights of Indigenous Peoples including the BC Declaration on the Rights of Indigenous Peoples Act. The Chiefs in assembly at our regional meetings all supported similar resolutions last fall, and many First Nations have stated the Phase 1 and Phase 2 stages have not met their expectations. To date, our proposed solutions have all been met with rejection and unnecessary delays.

After the most recent meeting with Minister Ralston on May 7, 2020, we were informed more internal discussion was required by EMPR to consider the proposal we presented. Two calls were subsequently convened with the First Nations Energy and Mining Council and EMPR staff on May 13 and May 14 to attempt to find solutions.

The First Nations Energy and Mining Council informed us that all the proposed solutions were rejected by EMPR with the exception of a very limited timeline to review and provide written recommendations to many months of discussions on Phase 1 and Phase 2. Those scope and timeline proposed by EMPR were unrealistic as after a more than 2-year period, we were given 3-4 weeks to review and produce a report. In light of this rejection, we again call upon you to halt the process so we can jointly find a pathway to collaborate on:

1. Review of the work completed to date
2. Jointly coordinate new workshops with First Nations
3. Joint drafting of the recommendations and the final report.

We continue to advocate for a political oversight committee consisting of the FNLC and Ministers of EMPR and MIRR. Given the COVID-19 situation and the months of delays to find a joint solution, we request a 6-month delay in the process. Attached is a proposal and budget for your consideration.

For further communications, please contact Jaime Sanchez at [jaime.sanchez@bcfn.ca](mailto:jaime.sanchez@bcfn.ca), cell #: 250-713-1129.

Sincerely,

**On behalf of the FIRST NATIONS SUMMIT**



Cheryl Casimer



Robert Phillips



Lydia Hwitsum

**On behalf of the UNION OF BC INDIAN CHIEFS**



Grand Chief Stewart Phillip



Chief Don Tom



Kukpi7 Judy Wilson

**On behalf of the BC ASSEMBLY OF FIRST NATIONS:**



Regional Chief Terry Teegee

Cc: Dave Porter, CEO, BC First Nations Energy and Mining Council

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May 26, 2020

Ref: 111347

Regional Chief Terry Teegee  
British Columbia Assembly of First Nations

Email: [regionalchief@bcfn.ca](mailto:regionalchief@bcfn.ca)

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Dear Regional Chief Teegee,

Thank you for making the time to speak to me last week about how we can work together to ensure that the perspectives and priorities of the First Nations Leadership Council (FNLC) are included in our work on Phase 2 of the Comprehensive Review of BC Hydro.

I am writing to reiterate the Province's commitment to engaging immediately with the FNLC on Phase 2 of the Review, through the First Nations Energy and Mining Council (FNEMC), and our ability to support this engagement with \$50,000 of capacity funding. Our view is that this support would enable the FNEMC to review and consider the issues raised in Phase 2 of the Review and provide its recommendations accordingly.

As noted in the 2019 resolutions of the FNLC, it is important for the Province to be engaged directly with aboriginal rights and title-holding Indigenous Nations. The Ministry has recently shared with the FNEMC the results of our engagement with Indigenous Nations and other Indigenous organizations on Phase 2. The Ministry has also made a funding agreement available for FNEMC to support this policy work.

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**Ministry of  
Energy, Mines and  
Petroleum Resources**

**Office of the Minister**

**Mailing Address:  
PO Box 9060, Stn Prov Govt  
Victoria, BC V8W 9E2**

**Telephone: 250 953-0900  
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While we are not in a position to co-draft the Final Report for Phase 2 of the Review with the FNEMC, it is important to the Province that the FNLC's priorities and perspectives are reflected in the document. We look forward to working with the FNEMC to ensure that we appropriately hear and reflect your views. As well, I would note that the Final Report for Phase 2 is not intended to be an end point, but rather it will likely set out specific topics that will require additional Indigenous engagement on implementation ideas or recommendations. We expect to continue working with the FNLC and FNEMC as this engagement process unfolds.

Ministry staff are ready to continue with the FNEMC on this matter now and can transfer the capacity funding to the FNEMC upon agreement to terms.

I also remain committed to engaging with you directly as the Review proceeds and look forward to the opportunity of talking with you and your colleagues again soon.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Ralston". The signature is fluid and cursive, with a long horizontal stroke at the end.

Bruce Ralston  
Minister

# FIRST NATIONS LEADERSHIP COUNCIL

April 16, 2020



BRITISH COLUMBIA  
ASSEMBLY OF  
FIRST NATIONS

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**Hon. Bruce Ralston**  
**Minister of Energy Mines and Petroleum Resources**  
PO Box 9052 Stn Prov Govt  
Victoria, BC V8W 3E2  
Via Email: EMPR.Minister@gov.bc.ca

## RE: BC HYDRO PHASE 2 REVIEW PROCESS

Dear Minister Ralston,

We welcome hearing that you are available to meet with us to discuss the Ministry of Energy Mines and Petroleum Resources' ("EMPR") BC Hydro Phase 2 Review ("Phase 2 Review"). The purpose of this letter is to explain in advance some of our concerns and to formally request the postponement of the Phase 2 Review until the process includes meaningful engagement with First Nations in British Columbia through coordinated efforts with the First Nations Leadership Council ("FNLC").

Due to the lack of inclusion of First Nations in the Phase 2 Review's Terms of Reference and the lack of meaningful First Nations engagement during the Phase 1 Review, despite major impacts from its outcomes (e.g. cancellation of the BC Hydro Standing Offer Program), First Nations in BC have serious concerns with the Phase 2 Review.

Stemming from the concerns with the BC Hydro Comprehensive Review, in 2019 the FNLC's respective assemblies passed Resolutions directing the FNLC, with the support of the First Nations Energy and Mining Council ("FNEMC"), to engage BC Hydro in the Phase 2 Comprehensive Review, if appropriate changes were made to the Terms of Reference (UBCIC Resolution no. 2019-55, FNS Resolution #1019.09 and BCAFN Resolution no. 25/2019, enclosed with this letter).

To date we have been unable to secure changes to the Terms of Reference that address our concerns or that reflect the Province's commitments to First Nations in BC, such as the principles on working as partners found in the *Declaration on the Rights of Indigenous People Act* and the *Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples*.



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As outlined in the mandates found in our Resolutions, we seek to participate in a coordinated process that ensures that First Nations are meaningfully included in the BC Hydro Phase 2 Review. This is also important because the current Phase 2 Review will give direction to BC Hydro's 2021 Integrated Resource Plan ("IRP"), which will shape the direction of BC Hydro and its operations, including those that impact First Nations' Territories, Rights and Title.

Given the expected delays due to the COVID-19 epidemic, we suggest regrouping and developing a new and more collaborative process in full cooperation with the FNLC. This cooperation should include:

1. A political oversight committee consisting political representatives of the First Nations Leadership Council and the Minister of Energy Mines and Petroleum Resources.
2. A senior oversight committee of Deputy Ministers and Senior staff from the FNLC and the FNEMC.
3. Working groups as needed to undertake:
  - a. Jointly developed discussion papers.
  - b. Jointly planned regional workshops or webinars.
  - c. A shared decision-making process on recommendations along with a province wide meeting to disseminate them to communities and identify follow up activities.

Ten years ago, the FNEMC participated in the BC Hydro IRP process and they are prepared to assist us again. They are currently working with BC Hydro on the IRP technical advisory team process which commenced on March 9. They plan to coordinate regional workshops throughout BC to receive input from First Nations later this fall. While we understand the IRP is a separate initiative to the Phase 2 Review, we want to create linkages to let First Nations understand both processes.

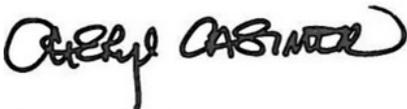
The Phase 2 Review is very important to the FNLC. We have learned from the impacts that the Phase 1 Review had on First Nations and we hope to produce more positive outcomes from the Phase 2 Review. Through a coordinated and respectful approach in partnership with the FNLC, we can ensure that BC's commitments to advance reconciliation with First Nations are upheld.

We understand that meetings will be undertaken via video or teleconference in the coming months and we look forward to meeting with you at your earliest convenience.

For further communications, please contact Jaime Sanchez at [jaime.sanchez@bcfn.ca](mailto:jaime.sanchez@bcfn.ca), cell #: 250-713-1129.

Sincerely,

**On behalf of the FIRST NATIONS SUMMIT**



Cheryl Casimer



Robert Phillips



Lydia Hwitsum

**On behalf of the UNION OF BC INDIAN CHIEFS**



Grand Chief Stewart Phillip



Chief Don Tom



Kukpi7 Judy Wilson

**On behalf of the BC ASSEMBLY OF FIRST NATIONS:**



Regional Chief Terry Teegee

Cc: Dave Porter, CEO, BC First Nations Energy and Mining Council

# OUR LAND IS OUR FUTURE

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UNION OF B.C. INDIAN CHIEFS  
51<sup>ST</sup> ANNUAL GENERAL ASSEMBLY  
OCTOBER 1<sup>ST</sup>- 3<sup>RD</sup>, 2019  
MUSQUEAM COMMUNITY CENTRE, X<sup>W</sup>MƏƏK<sup>W</sup>ƏYƏM (MUSQUEAM TERRITORY)

Resolution no. 2019-55

**RE: Call for Immediate, Meaningful, and Substantive Engagement of First Nations in BC Hydro's Phase II Review**

**WHEREAS** the generation, transmission, and distribution of energy in British Columbia have profoundly and negatively affected our territories and our Title and Rights, while at the same time we have been denied equal access to the very same energy produced;

**WHEREAS** for too long decisions about energy have been made by the Province of British Columbia, BC Hydro, and the British Columbia Utilities Commission, without meaningful representation or participation of First Nations at the decision-making tables, both with respect to policy and with respect to specific projects, and without the free, prior, and informed consent of impacted First Nations;

**WHEREAS** the *United Nations Declaration on the Rights of Indigenous Peoples*, which the government of Canada has adopted without qualification, and has, alongside the government of BC, committed to implement, affirms:

**Article 18:** Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

**Article 19:** States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

**Article 32: (1)** Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources;

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Certified copy of a resolution adopted on the 3<sup>rd</sup> day of October of 2019 in Musqueam Territory

Grand Chief Stewart Phillip, President

2019-55  
Page 1 of 3

**WHEREAS** in December 2018, the Province released its CleanBC plan, a vision for a new low-carbon economy, which sets out ambitious goals for reductions in greenhouse gas (GHG) emissions and adapting to climate change. One of the main goals of CleanBC is to find a pathway to increase the use of clean and renewable energy. At the same time, First Nations have been working hard to reduce reliance on diesel fuel in remote communities, and to be included in the generation of clean energy and the economic opportunities presented by the transition to a low-carbon economy;

**WHEREAS** on March 7, 2019, the UBCIC Chiefs-in-Assembly passed Resolution 2019-02 which supports the efforts to develop renewable energy and alternative energy economies in First Nation communities. Additionally, in June 2019, UBCIC Resolution 2019-31 *Advancing a Pact for Canada's New Green Deal* was passed, which also prioritizes the economic opportunities presented by clean energy;

**WHEREAS** the UBCIC and the First Nations Leadership Council (FNLC) are not Aboriginal Title and Rights or Treaty Rights holders and cannot engage in processes to establish and provide free, prior, and informed consent on behalf of individual First Nations;

**WHEREAS** in 2010, the First Nations Energy and Mining Council (FNEMC) and BC Hydro signed a protocol agreement ("Energy Collaboration Agreement") to identify areas of common interest within sustainable clean energy development, to discuss pressing issues related to BC Hydro's plans and policies, and to work together to advance First Nations' interests with respect to clean energy;

**WHEREAS** BC's shift to support Independent Power Producers (IPPs) and the BC Hydro Standing Offer Program (SOP) represented a new opportunity for First Nations to participate in the energy sector as proponents and partners, and to explore energy independence. More than 100 First Nations in BC are now involved in an energy project, demonstrating strong interest and capacity in the energy sector;

**WHEREAS** in 2017 the Minister of Energy, Mines and Petroleum Resources (EMPR) received the mandate to undertake a Comprehensive Review of BC Hydro and to work with BC Hydro to develop a refreshed plan to keep rates affordable over the long-term. In June 2018, Government announced a two-phase approach for carrying out the Minister's mandate (Phase 1 Review and Phase 2 Review). Phase 1 Review did not include any participation or consultation with First Nations, despite making findings and decisions that profoundly affect us, including the indefinite suspension of the SOP;

**WHEREAS** Phase 2 Review currently plans to inquire about the long-term future of BC Hydro, including Indigenous Participation in the energy sector. Despite this, there is no First Nation representation in the Committees conducting the review, or oversight or guidance by First Nations at any stage. In fact, the only engagement planned is an opportunity to comment, alongside other "stakeholders", on the "interim results". Phase 2 Review is currently underway and expected to be finished in early 2020; and

**WHEREAS** Phase 2 Review completely fails to meet the minimum expectations of meaningful engagement with First Nations and fails to honour the commitments made by the Provincial government to respect and implement the *UN Declaration on the Rights of Indigenous Peoples*, the Truth and Reconciliation Commission's Calls to Action, BC Hydro's Statement of Indigenous Principles, and Minister Mungall's mandate letter to BC Hydro.

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Certified copy of a resolution adopted on the 3<sup>rd</sup> day of October of 2019 in Musqueam Territory



Grand Chief Stewart Phillip, President

**THEREFORE BE IT RESOLVED** the UBCIC Chiefs-in-Assembly direct the UBCIC Executive, working with the BC Assembly of First Nations and the First Nations Summit as the First Nations Leadership Council, and with the support of the First Nation Energy and Mining Council to:

- 1) Call on the government of British Columbia to immediately overhaul the Terms of Reference of Phase 2 of the Comprehensive Review of BC Hydro currently underway, such that there is meaningful and substantive engagement by First Nations and by representative First Nations organizations at all levels of the review, and that the Phase 2 Review recognizes and upholds our inherent and constitutionally protected Indigenous Title, Rights and Treaty Rights.
- 2) Engage BC Hydro in the Phase 2 Comprehensive Review, under the revisions to the Terms of Reference, and with the understanding that the FNLC is not an Aboriginal Title and Rights or Treaty Rights holder and cannot engage in processes to establish and provide free, prior, and informed consent on behalf of individual First Nations.
- 3) Notwithstanding current government-to-government processes that First Nations are involved in directly with regarding BC Hydro.

**Moved:** Chief Donna Aljam, Nicomen Band  
**Seconded:** Kukpi7 Wayne Christian, Splatsin  
**Disposition:** Carried  
**Date:** October 3, 2019

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Certified copy of a resolution adopted on the 3<sup>rd</sup> day of October of 2019 in Musqueam Territory



Grand Chief Stewart Phillip, President

2019-55  
Page 3 of 3

# First Nations Summit

## RESOLUTION #1019.09

**SUBJECT: CALL FOR IMMEDIATE, MEANINGFUL AND SUBSTANTIVE ENGAGEMENT OF FIRST NATIONS IN BC HYDRO'S PHASE 2 REVIEW**

- A. The generation, transmission and distribution of energy in British Columbia have profoundly and negatively affected First Nations territories and title and rights, while at the same time we have been denied equal access to the very same energy produced.
- B. For too long decisions about energy have been made by the Province of British Columbia, BC Hydro and the British Columbia Utilities Commission, without meaningful representation or participation of First Nations at the decision-making tables, both with respect to policy and with respect to specific projects, and without the free, prior, and informed consent of impacted First Nations.
- C. The *United Nations Declaration on the Rights of Indigenous Peoples*, which the Government of Canada has adopted without qualification, and has, alongside the Government of BC, committed to implement, affirms:

**Article 18:** Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions;

**Article 19:** States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them;

**Article 32: (1)** Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

- D. In December 2018, the Province released its CleanBC plan, a vision for a new low-carbon economy, which sets out ambitious goals for reductions in greenhouse gas (GHG) emissions and adapting to climate change. One of the main goals of CleanBC is to find a pathway to increase the use of clean and renewable energy. At the same time, First Nations have been working hard to reduce reliance on diesel fuel in remote communities, and to be included in the generation of clean energy and the economic opportunities presented by the transition to a low-carbon economy.

**PAGE TWO**

**RESOLUTION #1019.09**

**SUBJECT: CALL FOR IMMEDIATE, MEANINGFUL AND SUBSTANTIVE ENGAGEMENT OF FIRST NATIONS IN BC HYDRO'S PHASE 2 REVIEW**

- E. Member organizations of the First Nations Leadership Council (FNLC) are not Aboriginal Title and Rights, or Treaty Rights holders and therefore cannot engage in processes to establish and provide free, prior, and informed consent on behalf of individual First Nations.
- F. In 2010, the First Nations Energy and Mining Council (FNEMC) and BC Hydro signed a protocol agreement ("Energy Collaboration Agreement") to identify areas of common interest within sustainable clean energy development, to discuss pressing issues related to BC Hydro's plans and policies, and to work together to advance First Nations' interests with respect to clean energy.
- G. BC's shift to support Independent Power Producers (IPPs) and the BC Hydro Standing Offer Program (SOP) represented a new opportunity for First Nations to participate in the energy sector as proponents and partners, and to explore energy independence. More than 100 First Nations in BC are now involved in an energy project, demonstrating strong interest and capacity in the energy sector.
- H. In 2017, the Minister of Energy, Mines and Petroleum Resources (EMPR) received the mandate to undertake a Comprehensive Review of BC Hydro and to work with BC Hydro to develop a refreshed plan to keep rates affordable over the long-term. In June 2018, Government announced a two-phase approach for carrying out the Minister's mandate (Phase 1 Review and Phase 2 Review). Phase 1 Review did not include any participation or consultation with First Nations, despite making findings and decisions that profoundly affect us, including the indefinite suspension of the SOP.
- I. Phase 2 Review currently plans to inquire about the long-term future of BC Hydro, including Indigenous Participation in the energy sector. Despite this, there is no First Nation representation in the Committees conducting the review, or oversight or guidance by First Nations at any stage. In fact, the only engagement planned is an opportunity to comment, alongside other 'stakeholders,' on the 'interim results.' Phase 2 Review is currently underway and expected to be finished in early 2020.
- J. Phase 2 Review completely fails to meet the minimum expectations of meaningful engagement with First Nations, and fails to honour the commitments made by the provincial government to respect and implement the *United Nations Declaration on the Rights of Indigenous Peoples*, the Truth and Reconciliation Commission's Calls to Action, and also the mandate letters of Minister Mungall, BC Hydro's Statement of Indigenous Principles and Minister Mungall's mandate letter to BC Hydro.

**THEREFORE BE IT RESOLVED:**

That the First Nations Summit Chiefs in Assembly direct the First Nations Summit Political Executive to work with the BC Assembly of First Nations and the Union of BC Indian Chiefs as the First Nations Leadership Council (FNLC), and the First Nation Energy and Mining Council to immediately:

- a. call on the Government of British Columbia to overhaul the Terms of Reference of Phase 2 of the Comprehensive Review of BC Hydro to ensure there is meaningful and substantive engagement by First Nations and by representative First Nations organizations at all levels of the review, and that as a starting premise, the Phase 2 Review recognizes and upholds the inherent and constitutionally protected title, rights and treaty rights of respective First Nations in BC; and

**PAGE THREE**

**RESOLUTION #1019.09**

**SUBJECT: CALL FOR IMMEDIATE, MEANINGFUL AND SUBSTANTIVE ENGAGEMENT OF FIRST NATIONS IN BC HYDRO'S PHASE 2 REVIEW**

- b. engage BC Hydro in the Phase 2 Comprehensive Review as necessary, under the revisions to the Terms of Reference, on the understanding that the FNLC is not an Aboriginal Title and Rights or Treaty Rights holder and cannot engage in processes to establish and provide free, prior, and informed consent on behalf of individual First Nations.

Passed by consensus.

**MOVED BY:** Councillor Hugh Braker, Tseshah First Nation  
**SECONDED BY:** Robert Morales, Hul'qumi'num Treaty Group  
**DATED:** October 18, 2019

**ENDORSED BY:**



Cheryl Casimer



Robert Phillips



Lydia Hwitsum



## BRITISH COLUMBIA ASSEMBLY OF FIRST NATIONS

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Prince George, BC V2K5S3  
Telephone: 250-962-1603  
Facsimile: 250-962-9552  
Website: www.bcafn.ca

### BCAFN ANNUAL GENERAL MEETING

Musqueam Community Centre, X<sup>w</sup>məθk<sup>w</sup>əyəm, Vancouver, BC  
September 18-20, 2019

### Resolution 25/2019

**SUBJECT: CALL FOR IMMEDIATE, MEANINGFUL AND SUBSTANTIVE ENGAGEMENT OF FIRST NATIONS  
IN BC HYDRO'S PHASE TWO REVIEW**

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**MOVED BY: CHIEF COUNCILLOR CHARLES MORVEN, GITWINKSIHLKW VILLAGE GOVERNMENT**

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**SECONDED BY: CHIEF WILLIE BLACKWATER, GITSEGUCLA**

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**DECISION: CARRIED**

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#### WHEREAS:

- A. The generation, transmission and distribution of energy in British Columbia have profoundly and negatively affected our territories and our rights and title, while at the same time we have been denied equal access to the very same energy produced;
- B. For too long decisions about energy have been made by the Province of British Columbia, BC Hydro and the British Columbia Utilities Commission, without meaningful representation or participation of First Nations at the decision-making tables, both with respect to policy and with respect to specific projects and without the free, prior and informed consent of impacted First Nations;
- C. In December 2018, the Province released its CleanBC plan, a vision for a new low-carbon economy, which sets out ambitious goals for reductions in greenhouse gas (GHG) emissions and adapting to climate change. One of the main goals of CleanBC is to find a pathway to increase the use of clean and renewable energy. At the same time, First Nations have been working hard to reduce reliance on diesel fuel in remote communities, and to be included in the generation of clean energy and the economic opportunities presented by the transition to a low-carbon economy;

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**Certified copy of a resolution adopted on the 19<sup>th</sup> day of September, 2019, at the Musqueam Community Centre, X<sup>w</sup>məθk<sup>w</sup>əyəm, Vancouver, BC**

A blue ink signature of Terry Teegee, the BC Regional Chief.

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**Terry Teegee, BC Regional Chief**

- D. On March 7, 2019, the BCAFN Chiefs-in-Assembly passed Resolution 2019-04 which supports the efforts to develop renewable energy and alternative energy economies in First Nations. Additionally, in July 2019, the Chiefs-in-Assembly at the Assembly of First Nations AGA passed Resolution no. 05/2019, *Advancing First Nations Clean Energy Leadership for Economic Development and Action on Climate Change*, which also prioritizes the economic opportunities presented by clean energy;
- E. The BCAFN and the First Nations Leadership Council (FNLC) are not Aboriginal Title and Rights or Treaty Rights holders and cannot engage in processes to establish and provide free, prior and informed consent on behalf of individual First Nations;
- F. In 2010, the First Nations Energy and Mining Council (FNEMC) and BC Hydro signed a protocol agreement (“Energy Collaboration Agreement”) to identify areas of common interest within sustainable clean energy development, to discuss pressing issues related to BC Hydro’s plans and policies, and to work together to advance First Nations’ interests with respect to clean energy;
- G. BC’s shift to support Independent Power Producers (IPPs) and the BC Hydro Standing Offer Program (SOP) represented a new opportunity for First Nations to participate in the energy sector as proponents and partners, and also to explore energy independence. More than 100 First Nations in BC are now involved in an energy project, demonstrating our strong interest and capacity in the energy sector;
- H. In 2017 the Minister of Energy, Mines and Petroleum Resources (EMPR) received the mandate to undertake a Comprehensive Review of BC Hydro and to work with BC Hydro to develop a refreshed plan to keep rates affordable over the long-term. In June 2018, Government announced a two-phase approach for carrying out the Minister’s mandate (Phase 1 Review and Phase 2 Review). Phase 1 Review did not include any participation or consultation with First Nations, despite making findings and decisions that profoundly affect us, including the indefinite suspension of the SOP;
- I. Phase 2 Review currently plans to inquire about the long-term future of BC Hydro, including Indigenous Participation in the energy sector. Despite this, there is no First Nation representation in the Committees conducting the review, or oversight or guidance by First Nations at any stage. In fact, the only engagement planned is an opportunity to comment, alongside other “stakeholders”, on the “interim results”. Phase 2 Review is currently underway and expected to be finished in early 2020;
- J. Phase 2 Review completely fails to meet the minimum expectations of meaningful engagement with First Nations, and fails to honour the commitments made by the Provincial government to honour and implement the *UN Declaration on the Rights of Indigenous Peoples*, the Truth and Reconciliation Commission’s Calls to Action, and also the mandate letters of Minister Mungall, BC Hydro’s Statement of Indigenous Principles and Minister Mungall’s mandate letter to BC Hydro;
- K. The *United Nations Declaration on the Rights of Indigenous Peoples* states:  
**Article 18:** Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their

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Terry Teegee, BC Regional Chief

own procedures, as well as to maintain and develop their own indigenous decision-making institutions;

**Article 19:** States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them;

**Article 32: (1)** Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

**THEREFORE BE IT RESOLVED THAT:**

1. The BCAFN Chiefs-in- Assembly direct the BCAFN Regional Chief, working with the Union of BC Indian Chiefs and the First Nations Summit as the First Nations Leadership Council, and with the support of the First Nation Energy and Mining Council to:
  - Call on the government of British Columbia to immediately overhaul the Terms of Reference of Phase 2 of the Comprehensive Review of BC Hydro currently underway, such that there is meaningful and substantive engagement by First Nations and by representative First Nations organizations at all levels of the review and that the Phase 2 Review recognizes and upholds our inherent and constitutionally protected Indigenous Title, Rights and Treaty Rights.
  - Engage BC Hydro in the Phase 2 Comprehensive Review, under the revisions to the Terms of Reference, and with the understanding that the FNLC is not an Aboriginal Title and Rights or Treaty Rights holder and cannot engage in processes to establish and provide free, prior and informed consent on behalf of individual First Nations.

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**Terry Teegee, BC Regional Chief**

## BRITISH COLUMBIA ASSEMBLY OF FIRST NATIONS



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**Fax # 778-945-9916**  
**Toll-Free # 1-833-381-7622**

October 18, 2019

Honourable Michelle Mungall.  
Minister of Energy, Mines and Petroleum Resources  
PO Box 9052, Stn Prov Govt  
Victoria, BC V8W 9E2  
Via email: [EMPR.Minister@gov.bc.ca](mailto:EMPR.Minister@gov.bc.ca)

Dear Minister Mungall,

### ***Re: Comprehensive Review of BC Hydro – Phase 2 Review***

Thank you for your letter to Jaime Sanchez dated September 19, 2019, in response to the BCAFN's concerns related to Phase 2 of the Comprehensive Review of BC Hydro ("Phase 2 Review"). I also acknowledge and thank you for your attendance and openness to answer questions from the Chiefs in BC at our Annual General Meeting (AGM) on September 19<sup>th</sup>.

I write to inform you that at the AGM, the Chiefs-in-Assembly passed Resolution 25/2019 (*attached*). The resolution calls for the "government of British Columbia to immediately overhaul the Terms of Reference of Phase 2 of the Comprehensive Review of BC Hydro currently underway, such that there is meaningful and substantive engagement by First Nations and by representative First Nation organizations at all levels of the review and that the Phase 2 Review recognizes and upholds our inherent and constitutionally protected Indigenous Title, Rights and Treaty Rights."

Through this resolution, the Chiefs-in-Assembly respectfully disagree with the suggestion in your September 19<sup>th</sup> letter that the Phase 2 Review is "structured to provide the opportunity for Indigenous peoples to collaboratively influence the process." In fact, the Terms of Reference were established without any engagement with Indigenous Nations or organizations. There is still no formal participation of Indigenous Nations or organizations within the structures established by the Terms of Reference, and there is also no opportunity to participate in the decisions which might flow from the Phase 2 Review.

These shortcomings are the source of our deep concern, shared by Chiefs and Nations from across the Province. There is no doubt that the Terms of Reference for the Phase 2 Review as drafted are seriously flawed and need to be immediately amended.

#honouringourancestors



bcafn

Your letter refers to the participation of an “Indigenous expert” in the review. We think this is a good first step, but we still believe that it is entirely deficient given the potential impacts of the Phase 2 Review on Indigenous Nations, including their Title, Rights and Treaty Rights.

We appreciate your confirmation of the Province’s commitment to the *UN Declaration on the Rights of Indigenous Peoples* (UN Declaration). We want to draw your attention to Article 18, which confirms that:

*“Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.”*

The Phase 2 Review clearly fails to meet this minimum standard from the UN Declaration. Given your Government’s recent announcement to implement the UN Declaration through legislation, we see no reason why a process as important as the Phase 2 Review should continue as is when it clearly fails to meet the commitment made by the Province to do things differently, now.

Resolution 25/2019 provides the BCAFN with the mandate to work with our partners at the First Nations Leadership Council, and with the support of the First Nations Energy and Mining Council, to engage in the Phase 2 Review, subject to the revisions necessary to the Terms of Reference to create a more meaningful, respectful and inclusive process. Funding is also a critical prerequisite to participate.

This is an opportunity to invest in and demonstrate a new way of doing business as partners on a topic that we all care about deeply and which affects us all. We therefore ask you to immediately halt the Phase 2 Review and mandate senior officials from the Province and BC Hydro to work with us to establish the necessary changes to the process.

We ask for a meeting with you, the First Nation Leadership Council and the senior officials responsible for the Phase 2 Review as soon as possible, so that we can move forward on these discussions and the Phase 2 review can begin again in a good way.

Sincerely,



Regional Chief Terry Teegee

Cc: First Nations Leadership Council  
First Nations Energy and Mining Council  
David Coney, EMPR



## Attachment B: Background and Policy Context for Phase 2 of the Comprehensive Review of BC Hydro

This memo was prepared by the BC First Nations Energy and Mining Council (FNEMC) on behalf of the BC First Nations Leadership Council (FNLC) to support recommendations related to the Interim Report for Phase 2 of the Comprehensive Review of BC Hydro. This memo describes the background and policy context for Phase 2 of the Comprehensive Review. It includes a summary of:

- The recommendations made in the Phase 1 Final Report of the Comprehensive Review (“Phase 1 Review”) and how they were implemented by BC Hydro in its F2020 to F2021 Revenue Requirements Application (“F2020-F2021 RRA”), including special attention to decisions about independent power producers and the Standing Offer Program because of their interest to Indigenous Nations and the British Columbia Utilities Commission (“BCUC”) recommendation that the program be reconsidered;<sup>10,11</sup>
- The terms of reference for the Phase 2 of the Comprehensive Review (“Phase 2 Review”) and how they have been addressed in the Phase 2 Interim Report (“Interim Report”); and
- The outcomes of the BCUC’s Indigenous Utilities Regulation inquiry conducted between March 19, 2019 and April 30, 2020, including the First Nations Major Projects Coalition submission, which describes options for Indigenous ownership in energy projects.

### Phase 1 of the Comprehensive Review

Phase 1 of the Comprehensive Review (“Phase 1 Review”) was an internal review of BC Hydro, carried out by an advisory group consisting of staff from the Ministry of Energy, Mines and Petroleum Resources, the Ministry of Finance and BC Hydro. This work was guided by the 2018 Comprehensive Review of BC Hydro Phase 1 Terms of Reference (“Phase 1 TOR”).<sup>12</sup>

According to the Phase 1 Review, the key outcomes are:<sup>13</sup>

1. A new five-year (April 1, 2019 – March 31, 2024) rates forecast that reflects cost and revenue strategies that are intended by the BC government to keep BC Hydro’s rates affordable; and
2. A regulatory framework that is meant to enhance the BCUC’s oversight of BC Hydro.

Recommendations from the Phase 1 Review were incorporated into BC Hydro’s F2020-F2021 RRA, which is currently under consideration with the BCUC. Table B1 and Table B2 present the

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<sup>10</sup> British Columbia. (n.d.). Standing Offer Program – Results. Available from <https://engage.gov.bc.ca/govtogetherbc/impact/standing-offer-program-results/> [accessed June 11, 2020].

<sup>11</sup> British Columbia Utilities Commission. (2020). Indigenous Utilities Regulation Inquiry Final Report Summary, p. 9.

<sup>12</sup> Government of British Columbia. (2019). Terms of Reference of the 2018 Comprehensive Review of BC Hydro Phase 1. Available from [https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/terms\\_of\\_reference\\_bc\\_hydro\\_review\\_public\\_final\\_may25\\_901am\\_2018\\_mmm\\_mcj\\_additions\\_lm.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/terms_of_reference_bc_hydro_review_public_final_may25_901am_2018_mmm_mcj_additions_lm.pdf) [accessed June 11, 2020], p.1.

<sup>13</sup> Government of British Columbia. (2019). Phase 1 of the Comprehensive Review of BC Hydro. Available from <https://www2.gov.bc.ca/gov/content/industry/electricity-alternative-energy/electricity/bc-hydro-review-phase-1> [accessed June 11, 2020].

recommendations from the Phase 1 Review and how BC Hydro states they were reflected in the F2020-F2021 RRA.

The first set of recommendations are described as “ensuring sound financial and regulatory oversight of BC Hydro.” The Phase 1 review states that “to help ensure sound financial and regulatory oversight of BC Hydro, the government has made changes to the accounting standards BC Hydro must follow and is taking steps to enhance the BCUC’s oversight of BC Hydro. This is being done in a way that recognizes impacts to the government’s overall Fiscal Plan, while advancing government’s social, economic and environmental priorities. These changes also aim to address previous concerns that have been raised by the Auditor General and transition toward increased independent regulatory oversight.”<sup>14</sup>

**Table B1: Phase 1 Review Recommendations for Oversight and Implementation**

Phase 1 Review Recommendations		Inclusion in BC Hydro F2020-F2021 RRA
Write-off of the Rate Smoothing Regulatory Account	BC Hydro will request closure of the account in its 2020-2021 RRA.	BC Hydro requested to close the Rate Smoothing Regulatory Account in fiscal 2020 as this account has a zero balance and BC Hydro is not proposing to smooth rates over the fiscal 2020 to fiscal 2021 test period. <sup>15</sup>
Changes in Accounting Rules	BC Hydro will adopt International Financial Reporting Standards (IFRS), without exception, as recommended by the Auditor General.	BC Hydro has adopted IFRS as of its fiscal 2019 year-end statements. <sup>16</sup>
Enhanced BCUC Oversight of BC Hydro:		
<ul style="list-style-type: none"> <li>Regulatory Accounts</li> </ul>	The BCUC to allow BC Hydro to recover the March 31, 2019 balances of all its regulatory accounts in rates over time, with the exception of the Rate Smoothing Regulatory Account.	BC Hydro currently has 29 regulatory accounts. In the F2020-F2021 RRA, BC Hydro is requesting approval to close two regulatory accounts, which would reduce the total number of regulatory accounts to 27 by the end of fiscal 2021. <sup>17</sup>
<ul style="list-style-type: none"> <li>Deferral Account Rate Rider (DARR)</li> </ul>	In its upcoming RRA, BC Hydro will be proposing to lower the DARR from 5% to 0%, based on forecast March 31, 2019 balances in BC Hydro’s three energy deferral account balances.	BC Hydro is seeking approval to reduce the DARR from 5% to 0% on April 1, 2019. Therefore, there are no DARR revenues in fiscal 2020 and fiscal 2021. <sup>18</sup> The reduction of the DARR appears to have no/minimal impact on rates.

<sup>14</sup> Government of British Columbia. (2019). Phase 1 of the Comprehensive Review of BC Hydro. Available from <https://www2.gov.bc.ca/gov/content/industry/electricity-alternative-energy/electricity/bc-hydro-review-phase-1> [accessed June 11, 2020].

<sup>15</sup> BC Hydro. (2019). Fiscal 2020 to Fiscal 2021 Revenue Requirements Application. Available from [https://www.bcuc.com/Documents/Proceedings/2019/DOC\\_53488\\_B-1-BCH-F20-F21-RR-Application.pdf](https://www.bcuc.com/Documents/Proceedings/2019/DOC_53488_B-1-BCH-F20-F21-RR-Application.pdf) [accessed June 12, 2020], p. 7-7.

<sup>16</sup> Ibid, p. 2-2

<sup>17</sup> Ibid, p. 7-4

<sup>18</sup> BC Hydro. (2019). Response to AMPC Round I IR # 1.22.1. Available from [https://www.bcuc.com/Documents/Proceedings/2019/DOC\\_54173\\_B-6-BCH-Response-to-Intervener-IR1.pdf](https://www.bcuc.com/Documents/Proceedings/2019/DOC_54173_B-6-BCH-Response-to-Intervener-IR1.pdf) [accessed June 12, 2020].

Phase 1 Review Recommendations		Inclusion in BC Hydro F2020-F2021 RRA
1. Integrated Resource Plan (IRP)	The government has amended the deadline for the submission of the next IRP from November 2018 to February 2021 to allow time for the IRP to be informed by the Phase 2 Review and the actions required to support the CleanBC plan.	BC Hydro will be submitting its next IRP to the BCUC in February 2021. <sup>19</sup> BC Hydro stated that the scope and time horizon of the 2021 IRP has not yet been determined. 20 years is generally the time horizon for BC Hydro's IRPs and BC Hydro expects that the scope will be informed by Phase 2 of the Government of B.C.'s Comprehensive Review of BC Hydro. <sup>20</sup>
2. Dividends and Net Income	<p><b>Dividend:</b> BC Hydro's dividend will be \$0 for Fiscal 2020 and Fiscal 2020.</p> <p><b>Net Income:</b> for Fiscal 2020 and Fiscal 2021 where BC Hydro's allowed net income of \$712 million</p>	<p><b>Dividend:</b> BC Hydro is not forecasting any dividend payments to the Government of B.C. during the fiscal 2020 and fiscal 20201 test years.<sup>21</sup></p> <p><b>Net Income:</b> BC Hydro projected \$712.0 million net income for each Fiscal 2020 and Fiscal 2021 test years.<sup>22</sup></p>
Address Government Priorities:		
<ul style="list-style-type: none"> <li>Expenditures for Export</li> </ul>	<p>The BCUC was obliged to ensure that BC Hydro's rates would not allow BC Hydro to recover "expenditures for export" from ratepayers. In recent years, shale gas development and subsidization of renewable energy development in the United States have led to low market prices for electricity.</p> <p>As a result, the pursuit of large-scale electricity export opportunities has lost its economic rationale and, therefore, the expenditure for export provisions are no longer required.</p>	<p>BC Hydro stated that there has never been any need and there continues to be no need for BC Hydro to distinguish expenditures for export from other expenditures. BC Hydro has never categorized its costs on this basis. BC Hydro believes that the BCUC should assess all of BC Hydro's Cost of Energy, irrespective of how they might be characterized and allow BC Hydro to recover all prudently incurred expenditures in rates for fiscal 2020 and fiscal 2021.<sup>23</sup></p>

<sup>19</sup> BC Hydro. (2020). Integrated Resource Plan. Available from <https://www.bchydro.com/about/planning-for-our-future/irp.html> [accessed June 12, 2020]. The timeline for filing the 2021 IRP has since been shifted to late 2021.

<sup>20</sup> BC Hydro. (2019). Response to BCUC Round I IR # 1.170.3.

<sup>21</sup> BC Hydro. (2019). Fiscal 2020 to Fiscal 2021 Revenue Requirements Application, Evidentiary Update. Appendix A, Schedule 9.0. Available from <https://www.bchydro.com/content/dam/BCHydro/customer-portal/documents/corporate/regulatory-planning-documents/regulatory-filings/rra/00-2020-01-21-bchydro-f20-f21-rra-evidentiary-update-revisions.pdf> [Accessed June 12, 2020].

<sup>22</sup> Ibid.

<sup>23</sup> BC Hydro. (2019). response to BCUC Round I IR # 1.2.1.

Phase 1 Review Recommendations		Inclusion in BC Hydro F2020-F2021 RRA
<ul style="list-style-type: none"> <li>Retail Access</li> </ul>	<p>To minimize potential costs to ratepayers, retail access for BC Hydro customers is currently prohibited. Retail access is the ability for customers to secure electricity from the market via a third-party provider rather than the local utility such as BC Hydro.</p> <p>As a result of the Phase 1 Review, this prohibition will continue. The government has extended the prohibition of retail access through regulation. The prohibition will continue until or unless a public utility, in this case BC Hydro, requests otherwise.</p>	<p>Section 7 of Direction No. 8 prohibits the BCUC from setting a rate for BC Hydro that enables retail customers within BC Hydro's service territory to use the Open Access Transmission Tariff to secure electricity from a third-party generator (located in B.C. or elsewhere), unless BC Hydro chooses to file such a rate. BC Hydro does not currently have such a rate and, as a result, retail customers in BC Hydro's service territory may not take advantage of retail access opportunities.<sup>24</sup></p>
<ul style="list-style-type: none"> <li>Rate Rebalancing</li> </ul>	<p>Government will continue to prohibit the BCUC from rebalancing BC Hydro's rates for Fiscal 2020 and Fiscal 2021 through regulation, since the BC Government thinks that a near-term rebalancing of BC Hydro's rates could conflict with government's commitment to keep life affordable for British Columbians.</p>	<p>The BCUC cannot order BC Hydro to file a rate rebalancing application. Under section 58.1 of the <i>Utilities Commission Act</i>, a rate rebalancing application must be initiated by a public utility.<sup>25</sup></p>
<ul style="list-style-type: none"> <li>Powerex Corp.</li> </ul>	<p>Government will continue to restrict the BCUC from regulating the activities of Powerex as an outcome of the Phase 1 Review. Powerex is wholly owned by BC Hydro. It participates in wholesale electricity markets in North America to buy and supply electricity, natural gas, and ancillary services.<sup>26</sup></p>	<p>Section 8 of Direction No. 8 provides interim direction in this area ahead of proposed legislative amendments that are expected to be tabled in the BC Legislature this spring. It states that the BCUC may not exercise any power or perform any duty under Part 3 of the <i>Utilities Commission Act</i> in regard to Powerex Corp.<sup>27</sup></p>

The second group of recommendations were focused recommendations that the BC Government believes will keep rates affordable. The Phase 1 Review identified the following strategies meant to enhance BC Hydro's long-term financial position:

- Write-off of the Rate Smoothing Regulatory Account;
- Reduce future energy costs of purchases from Independent Power Producers;

<sup>24</sup> BC Hydro. (2019). Response to BCUC Round II IR # 2.202.1. Available at [https://www.bcuc.com/Documents/Proceedings/2019/DOC\\_55272\\_B-12-BCH-Response-BCUC-IR2.pdf](https://www.bcuc.com/Documents/Proceedings/2019/DOC_55272_B-12-BCH-Response-BCUC-IR2.pdf) [accessed June 12, 2020].

<sup>25</sup> Ibid, Response to BCUC Round II IR # 2.201.1.

<sup>26</sup> Powerex. (n.d.). About us. Available from <https://www2.powerex.com/AboutUs.aspx> [accessed June 12, 2020].

<sup>27</sup> BC Hydro. (2019). Fiscal 2020 to Fiscal 2021 Revenue Requirements Application, Table 2-1. Available from [https://www.bcuc.com/Documents/Proceedings/2019/DOC\\_53488\\_B-1-BCH-F20-F21-RR-Application.pdf](https://www.bcuc.com/Documents/Proceedings/2019/DOC_53488_B-1-BCH-F20-F21-RR-Application.pdf) [accessed June 12, 2020], p. 2-10.

- Reduce planned capital expenditures and additions; and
- Tightly manage controllable operating costs.
- Increase revenues

The recommendations related to these topics and where the recommendations are incorporated into the F2020-F2021 RRA are presented in Table B2.

**Table B2: Phase 1 Review Recommendations for Affordability and Implementation**

Phase 1 Review Recommendations		Inclusion in BC Hydro 2020-2021 RRA
Write-off of the Rate Smoothing Regulatory Account	Through government direction, the ongoing debt servicing costs related to the Rate Smoothing Regulatory Account (estimated at \$45 million annually) will continue to be recovered from ratepayers.	BC Hydro notes that the debt servicing costs related to the RSRA is an estimated amount based on BC Hydro's Weighted Average Cost of Debt. <sup>28</sup> Annual debt servicing costs related to the Rate Smoothing Regulatory Account is reported to be \$44.1 million for Fiscal 2020 and \$43.4 million for Fiscal 2021. <sup>29</sup>
Reduce Future Energy Costs from Independent Power Producers:	The government intends to provide a direction to the BCUC with respect to the approval of the program documentation and require the costs associated with the Biomass Energy Program to be recovered from ratepayers. BC Hydro will no longer be obligated to continue to maintain a Standing Offer Program, including offering any new Electricity Purchase Agreements.	BC Hydro and the Government of B.C. have taken the following steps related to IPP power acquisitions: <sup>30</sup> <ul style="list-style-type: none"> <li>• No active energy procurement programs.</li> <li>• SOP is indefinitely suspended.</li> <li>• Terminations and other volume reductions. Since the reductions reported in the F2017-F2019 RRA, 3 EPAs were terminated and 3 EPAs were allowed to expire. Volumes for the terminated EPAs were not located but the three expired EPAs combined produced less than 2 GWh/yr.<sup>31</sup> According to BC Hydro's list of IPPs in operation as of April 1, 2020, they are capable of delivering about 21,500 GWh/yr.<sup>32</sup> A more detailed breakdown in the F2020-F2021 RRA was not available.<sup>33</sup></li> <li>• Selective renewals at lower prices, subject to BCUC acceptance in section 71 applications.</li> <li>• Biomass Energy Program.</li> </ul>

<sup>28</sup> BC Hydro. (2019). Response to BCUC Round III IR # 3.293.1. Available from [https://www.bcuc.com/Documents/Proceedings/2019/DOC\\_55866\\_B-16-BCH-Responses-to-BCUC-IR3.pdf](https://www.bcuc.com/Documents/Proceedings/2019/DOC_55866_B-16-BCH-Responses-to-BCUC-IR3.pdf) [accessed June 11, 2020].

<sup>29</sup> BC Hydro. (2019). Response to BCUC Round I IR # 1.140.1.

<sup>30</sup> BC Hydro. (2019). Fiscal 2020 to Fiscal 2021 Revenue Requirements Application. Available from [https://www.bcuc.com/Documents/Proceedings/2019/DOC\\_53488\\_B-1-BCH-F20-F21-RR-Application.pdf](https://www.bcuc.com/Documents/Proceedings/2019/DOC_53488_B-1-BCH-F20-F21-RR-Application.pdf) [accessed June 11, 2020], pp. 4-9 to 4-12.

<sup>31</sup> According to p. 4-10 of the F2020-F2021 RRA, the EPAs for Conifex Mackenzie – Combined Heat and Power Project, Fries Creek, and Septimus Creek Wind Creek were terminated, while the EPAs for McDonald Ranch (< 0.5 GWh/yr in energy), Morehead Creek Hydro (<.05 GWh/yr in energy) Seaton Creek Hydro (1 GWh/yr in energy), expired. Capacity is from BC Hydro's list of operational IPPs as of October 1, 2014 (<https://www.bchydro.com/content/dam/BCHydro/customer-portal/documents/corporate/independent-power-producers-calls-for-power/independent-power-producers/independent-power-producers-currently-supplying-power-to-bc-hydro.pdf>).

<sup>32</sup> BC Hydro. (2020). Independent Power Producer (IPP) Supply List – In Operation. Available from <https://www.bchydro.com/content/dam/BCHydro/customer-portal/documents/corporate/independent-power-producers-calls-for-power/independent-power-producers/ipp-supply-list-in-operation-20200401.pdf> [accessed June 12, 2020].

<sup>33</sup> The tables breaking down IPP and long-term purchase volumes for the integrated system, unit cost of IPP and long-term purchases for the integrated system, and IPP and long-term commitments for the Integrated System were supplied to the BCUC but were redacted for the public in BC Hydro's response to BCUC Round 1 IR # 1.14.2.

Phase 1 Review Recommendations	Inclusion in BC Hydro 2020-2021 RRA	
Reduce Planned Capital Expenditures and Additions	The BCUC also has the opportunity to review all forecast capital expenditures and additions through BC Hydro's RRA.	The F2020-F2021 RRA includes fiscal 2020 to fiscal 2024 Capital Plan that BC Hydro finalized in October 2018. The Capital Plan supported the Comprehensive Review and contains investment-level detail for fiscal 2020 to fiscal 2024 and a high-level investment projection for fiscal 2025 to fiscal 2029.
Tightly Manage Controllable Operating Costs <ul style="list-style-type: none"> <li>• Base Operating Costs Trend</li> </ul>	BC Hydro expects to be able to limit its base operating cost increases below the projected rate of inflation over the five-year rates forecast period. These operating costs will be reviewed by the BCUC as part of the upcoming RRA proceeding.	BC Hydro is limiting base operating cost increases below the forecast rate of inflation, by offsetting non-controllable cost increases with reductions to controllable costs. BC Hydro has achieved reductions in controllable costs through a variety of means, including vacancy factor savings, lease consolidations, and a reduction to advertising costs. <sup>34</sup>
Increase Revenues:		
<ul style="list-style-type: none"> <li>• Increase revenues through sale of Low Carbon Fuel Standard (LCFS) credits</li> </ul>	The Ministry of Energy, Mines and Petroleum Resources is currently undertaking a review of the LCFS program. As part of this review, regulatory and legislative changes could increase the number of LCFS credits available for sale. If adopted, these changes would generate incremental revenues for Powerex and its parent, BC Hydro, between fiscal 2020 and fiscal 2024. This incremental revenue would be incorporated in future rate forecasts.	The Ministry of Energy, Mines and Petroleum Resources is currently undertaking a review of the LCFS program, and the results of that review are not yet available. BC Hydro notes that the Trade Income forecast for fiscal 2020 to fiscal 2021 is based on a five-year average of Powerex Corp's net income, which is unaffected by this review. Any variances between forecast and actual Trade Income are deferred to the Trade Income Deferral Account, to the account of ratepayers. <sup>35</sup>

<sup>34</sup> BC Hydro. (2019). Fiscal 2020 to Fiscal 2021 Revenue Requirements Application. Available from [https://www.bcuc.com/Documents/Proceedings/2019/DOC\\_53488\\_B-1-BCH-F20-F21-RR-Application.pdf](https://www.bcuc.com/Documents/Proceedings/2019/DOC_53488_B-1-BCH-F20-F21-RR-Application.pdf) [accessed June 11, 2020], p. 1-5.

<sup>35</sup> BC Hydro. (2019). Response to AMPC Round I IR # 1.9.1. Available from [https://www.bcuc.com/Documents/Proceedings/2019/DOC\\_54173\\_B-6-BCH-Response-to-Intervener-IR1.pdf](https://www.bcuc.com/Documents/Proceedings/2019/DOC_54173_B-6-BCH-Response-to-Intervener-IR1.pdf) [accessed June 11, 2020].

Phase 1 Review Recommendations	Inclusion in BC Hydro 2020-2021 RRA	
<ul style="list-style-type: none"> <li>Work to attract additional customers and increase electricity demand</li> </ul>	<p>BC Hydro is pursuing strategies to grow domestic electricity demand. As part of this, BC Hydro is exploring the option to offer current industrial customers year-round access to real time, market-based pricing for incremental energy purchases. For example, during the freshet period, there are high inflows into BC Hydro's reservoirs, resulting in surplus electricity generation that could potentially be sold at a discounted rate to industrial customers.</p>	<p>Prospective incremental energy sales and revenue from the Freshet Rate are not considered in BC Hydro's fiscal 2020 and fiscal 2021 load and revenue forecasts. To the extent that BC Hydro's actual energy sales and revenue vary from planned amounts as a result of the Freshet Rate, the variance would be deferred to the Non-Heritage Deferral Account, to the account of ratepayers.</p> <p>In the F2020-F2021 RRA, BC Hydro states that its forecasts for fuel switching loads is based on provincial government and BC Hydro programs, including BC Hydro's Low Carbon Electrification Program and the fuel switching component of the EfficiencyBC program, which BC Hydro delivers on behalf of the BC Government.<sup>36,37</sup></p>

<sup>36</sup> BC Hydro. (2019). Fiscal 2020 to Fiscal 2021 Revenue Requirements Application. Available from [https://www.bcuc.com/Documents/Proceedings/2019/DOC\\_53488\\_B-1-BCH-F20-F21-RR-Application.pdf](https://www.bcuc.com/Documents/Proceedings/2019/DOC_53488_B-1-BCH-F20-F21-RR-Application.pdf) [accessed June 11, 2020], p. 3-13.

<sup>37</sup> BC Hydro. (2019). Fiscal 2020 to Fiscal 2021 Revenue Requirements Application, Appendix Y. Available from [https://www.bcuc.com/Documents/Proceedings/2019/DOC\\_53488\\_B-1-BCH-F20-F21-RR-Application.pdf](https://www.bcuc.com/Documents/Proceedings/2019/DOC_53488_B-1-BCH-F20-F21-RR-Application.pdf) [accessed June 11, 2020].

## Independent Power Producers

One of the recommendations in the Phase 1 Review is to reduce future energy costs from independent power producers (“IPPs”) by a variety of means, including indefinitely suspending the Standing Offer Program (“SOP”). The provincial government acknowledged that Indigenous communities have been interested in the program since its inception in 2008 and stated that it conducted engagement with Indigenous Nations about the suspension of the program.<sup>38</sup> This section provides more background on the recommendations in the Phase 1 Review related to IPPs and its implementation in the F2020-F2021 RRA.

BC Hydro designed the SOP to encourage the development of clean or renewable energy projects with nameplate capacity from 100 kW up to and including 15 MW.<sup>39</sup> The SOP was intended to streamline the process for selling electricity to BC Hydro for projects that would connect to BC Hydro’s distribution system and to simplify the contract, which is called the Standard Form Electricity Purchase Agreement (“Standard Form EPA”). To apply to the SOP, developers and their projects needed to meet the following requirements:<sup>40</sup>

- Clean or renewable energy as defined in the Clean Energy Act;
- Located in BC, including Canadian and BC territorial waters, but outside of Protected Areas;
- Generation technology must be considered either commercial operation technology or complete prototype generation technology;
- If a project is located behind a BC Hydro customer load, BC Hydro will only purchase energy on a net-of-load basis;
- Must be a customer taking electrical services from BC Hydro unless customers take only back -up or start-up electricity service from another public utility;
- The project’s commercial operation data must be in a year with sufficient room available for the project’s annual energy volume; and
- The project must have all material permits for the project and demonstrate site control.

The Phase 1 Review noted that one of BC Hydro’s biggest cost drivers is electricity purchases from IPPs. The report notes that BC Hydro has been purchasing electricity from IPPs since the 1980s and has relied on the private sector for new power generation. The reliance on IPPs is because BC Hydro has been restricted from developing new generation resources outside of Site C and additions to legacy hydroelectric facilities. To purchase energy from IPPs, BC Hydro typically concludes an Electricity Purchase Agreement (“EPA”), which often has contract terms of

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<sup>38</sup> Government of British Columbia. (n.d.) Phase 1 of the Comprehensive Review of BC Hydro. Available from <https://www2.gov.bc.ca/gov/content/industry/electricity-alternative-energy/electricity/bc-hydro-review-phase-1> [accessed June 11, 2020].

<sup>39</sup> BC Hydro. (2019). Standing Offer Program. Available from <https://www.bchydro.com/work-with-us/selling-clean-energy/standing-offer-program.html> [accessed June 11, 2020].

<sup>40</sup> BC Hydro. (2019). SOP: Who Can Apply. Available from <https://www.bchydro.com/work-with-us/selling-clean-energy/standing-offer-program/who-can-apply.html> [accessed June 11, 2020].

between 20 and 40 years. Currently, BC Hydro is projected to have an energy surplus into the 2030s, which it states makes buying power from IPPs unnecessary.<sup>41</sup>

The cost of energy purchased by BC Hydro from IPPs has increased. BC Hydro states projected increases in costs between Fiscal 2018 and Fiscal 2024 are related to a number of factors, such as:

- A growing number of projects with existing EPAs that have recently come into service (as of October 2018, there were 124 projects in operations) and the nine additional projects with agreements that are currently in development and not yet in service.
- Price escalation, as provided for under existing Electricity Purchase Agreements.
- New Electricity Purchase Agreements entered into under the Standing Offer Program or through negotiations related to contractual commitments to First Nations.

BC Hydro states there is limited flexibility to make significant reductions in energy procurement costs due to the structure of the existing EPAs. Existing EPAs with IPPs will not be cancelled as a direct result of Phase 1 Review. According to BC Hydro, the primary opportunities for managing costs moving forward relate to expiring biomass agreements and the SOP. Since the ability to manage cost of energy is largely limited to potential biomass EPA renewals and the SOP, actions flowing from the Phase 1 Review focused on these programs.

BC Hydro stated that current prices for energy from the SOP are significantly higher than the cost of generation from Site C and BC Hydro's heritage assets, as well as projected domestic and export market price forecasts.

- Standing Offer Program prices currently average \$108 per MWh, which is over three times the cost of energy from BC Hydro heritage assets and nearly 75% higher than that of Site C; and
- Standing Offer Program prices are up to nearly five times higher than export market price forecasts.<sup>42</sup>

### Implementation of the Recommendations in the F2020-F2021 RRA

BC Hydro states forecast increases to its Cost of Energy are primarily driven by increasing IPP energy costs under existing agreements. To mitigate their impact, BC Hydro is not acquiring new resources from IPPs, with the exception of from five new First Nations energy projects (with a combined capacity of 36.5 MW) that are part of impact benefit agreements with BC Hydro or mature projects and some EPA renewals, such as new contracts under the Biomass Energy Program.<sup>43</sup> According to BC Hydro, the forecast increase in IPP energy costs from fiscal 2019 to fiscal 2021 is in large part due to pre-determined factors, including price escalation terms and

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<sup>41</sup> Government of British Columbia. (2019) Comprehensive Review of BC Hydro: Phase 1 Final Report, 22-23. Available from [https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/final\\_report\\_desktop\\_bc\\_hydro\\_review\\_v04\\_feb12\\_237pm-r2.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/final_report_desktop_bc_hydro_review_v04_feb12_237pm-r2.pdf) [accessed June 11, 2020], pp. 22-23.

<sup>42</sup> Ibid, p. 23

<sup>43</sup> According to the program update page for the SOP, the five First Nations clean energy projects announced on March 14, 2018 (all of which are either part of Impact Benefit Agreements with BC Hydro or mature projects) (<https://www.bchydro.com/work-with-us/selling-clean-energy/standing-offer-program.html>).

other terms in existing EPAs, and new IPP projects from existing EPAs reaching commercial operation.<sup>44,45,46</sup>

BC Hydro and the Government of B.C. state they have taken the following steps related to IPP power acquisitions:

- No active energy procurement programs: BC Hydro does not have any active programs for the procurement of new energy resources from IPPs. Other than EPA renewals, the only expected new EPAs are from five First Nations energy projects.
- SOP is indefinitely suspended: The SOP (which also includes the Micro-Standing Offer Program) is indefinitely suspended. The program was for permit ready, clean energy projects with nameplate capacity over 100 kW and up to 15 MW. Based on a review of publicly available documents, before the SOP was suspended, at least nine First Nations clean energy projects had negotiated an EPA or were negotiating an EPA through the SOP.<sup>47</sup> BC Hydro will not be executing any other SOP EPAs, with the exception of five First Nations clean energy projects that are part of Impact Benefit Agreements with BC Hydro and/or are mature projects that have significant First Nations involvement.
- Terminations and other volume reductions: In the BCUC Decision on the F2017-F2019 Rate Requirements Application, it observed that there is a potential for cost savings if additional IPP contracts are canceled or amended to reduce the volume of IPP purchases. BC Hydro states that it continually manages its rights and obligations under existing EPAs with IPPs. Earlier reductions are:<sup>48</sup>
  - As reported in the F2017-F2019 Rate Requirements Application, from fiscal 2014 to fiscal 2015, BC Hydro:
    - Terminated 14 EPAs through mutual agreement as a result of project challenges related to costs, financing and permitting;<sup>49</sup>

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<sup>44</sup> BC Hydro. (2019). Fiscal 2020 to Fiscal 2021 Revenue Requirements Application. Available from [https://www.bcuc.com/Documents/Proceedings/2019/DOC\\_53488\\_B-1-BCH-F20-F21-RR-Application.pdf](https://www.bcuc.com/Documents/Proceedings/2019/DOC_53488_B-1-BCH-F20-F21-RR-Application.pdf) [accessed June 11, 2020], pp. 4-9 to 4-12.

<sup>45</sup> BC Hydro. (2018). BC Hydro to Proceed with Five First Nations' Clean Energy Projects. Available from [https://www.bchydro.com/news/press\\_centre/news\\_releases/2018/bc-hydro-to-proceed-with-five-first-nations--clean-energy-projec.html](https://www.bchydro.com/news/press_centre/news_releases/2018/bc-hydro-to-proceed-with-five-first-nations--clean-energy-projec.html) [accessed June 11, 2020].

<sup>46</sup> BC Hydro. (2019). Fiscal 2020 to Fiscal 2021 Revenue Requirements Application, 4-8 to 4-12. Available from [https://www.bcuc.com/Documents/Proceedings/2019/DOC\\_53488\\_B-1-BCH-F20-F21-RR-Application.pdf](https://www.bcuc.com/Documents/Proceedings/2019/DOC_53488_B-1-BCH-F20-F21-RR-Application.pdf) [accessed June 11, 2020].

<sup>47</sup> BC Hydro's Independent Power Producer (IPP) Supply List InOperation (<https://www.bchydro.com/content/dam/BCHydro/customer-portal/documents/corporate/independent-power-producers-calls-for-power-producers/ipp-supply-list-in-operation-20200401.pdf>) and Independent Power Producer (IPP) Supply List – In Development (<https://www.bchydro.com/content/dam/BCHydro/customer-portal/documents/corporate/independent-power-producers-calls-for-power/independent-power-producers/ipp-supply-list-in-development-20200401.pdf>) provide the names, owners, location, capacity, and energy for projects but it is not always apparent which projects involve Indigenous Nations. Nine Indigenous Nations is a conservative count.

<sup>48</sup> BC Hydro. (2019). Fiscal 2020 to Fiscal 2021 Revenue Requirements Application. Available from [https://www.bcuc.com/Documents/Proceedings/2019/DOC\\_53488\\_B-1-BCH-F20-F21-RR-Application.pdf](https://www.bcuc.com/Documents/Proceedings/2019/DOC_53488_B-1-BCH-F20-F21-RR-Application.pdf) [accessed June 11, 2020], pp. 4-9 to 4-12.

<sup>49</sup> BC Hydro. (2016). Fiscal 2017 to Fiscal 2019 Revenue Requirements Application. Available from <https://www.bchydro.com/content/dam/BCHydro/customer-portal/documents/corporate/regulatory-planning-documents/revenue-requirements/f17-f19-rra-20160728.pdf> [accessed June 11, 2020], p. 4-18.

- Deferred 11 EPAs; and
- Downsized and/or deferred two EPAs.
- As of the date of the F2020-F2021 RRA, since fiscal 2015, BC Hydro has:
  - Terminated an additional three EPAs; and
  - Not renewed three other EPAs that expired.

In addition, BC Hydro states that it actively enforces its rights and obligations in EPAs to reduce cost commitments, such as exercising turn down rights when it is cost effective to do so.

- Selective renewals at lower prices, subject to BCUC acceptance in section 71 applications: In its decision on the F2017-F2019 Rate Requirements Application, the BCUC recommended that BC Hydro consider the timing of its existing IPP contracts and contract renewals. Generally, BC Hydro states that it pursues the renewal of expiring EPAs to meet future long-term energy needs where it is cost-effective. Through bilateral negotiations, BC Hydro claims that it has renewed contracts with IPPs at lower prices than under their original contracts.

Since fiscal 2016, BC Hydro has renewed six run-of-river hydro EPAs and one storage hydro EPA. Four of the run-of-river hydro EPAs have been accepted by the BCUC as being in the public interest. The remaining two run-of-river hydro EPAs and the storage hydro EPA are the subject of an application that is currently being reviewed by the BCUC.

BC Hydro also entered into short-term extension agreements for two biomass EPAs that were due to expire prior to April 2018, extending their respective terms up to September 2019. These short - term extension agreements were a bridging mechanism while BC Hydro, in consultation with the Government of B.C., was developing a longer-term strategy for biomass facilities. As required under section 71 of the Utilities Commission Act, these extension agreements have been filed with the BCUC for acceptance. The BCUC suspended its proceedings on these agreements pending the completion of the first phase of the Comprehensive Review.

- Biomass Energy Program: As part of the Phase 1 Review, the Government of BC announced the Biomass Energy Program. The Biomass Energy Program is intended to be a cost and volume limited, transitional measure to provide for the continued operation of biomass generating facilities with EPAs expiring over the next three years. The intent of the program is to allow time for the forest sector to develop and implement new product lines to diversify and become more competitive while also providing optionality should BC Hydro require additional supply resources in the future.

Under the Biomass Energy Program, BC Hydro will potentially renew up to 80% of the historical aggregate energy deliveries from biomass IPPs whose EPAs are expiring in the next three years. BC Hydro will procure this energy through a combination of load offset and/or energy purchases with a priority given first to load offset. The price paid for biomass energy under this program will be lower than current contracts to reflect changed market conditions for electricity. The Government of B.C. has indicated that it intends to provide a direction to the BCUC with respect to the approval of the program documentation and to require the costs associated with the program to be recovered from ratepayers.

## Phase 2 of the Comprehensive Review

While the stated purpose of the Phase 1 Review was to look for opportunities to help BC Hydro maintain affordable rates by increasing its revenue, reducing its costs, and empowering the BCUC to protect ratepayer interests,<sup>50</sup> the Phase 2 Review is examining shifts in the energy sector and province-wide strategies that could transform the way BC Hydro does business. The Phase 2 Review is considering North American energy and market trends, the needs of BC Hydro customers, evolving technologies and utility structures, and opportunities for Indigenous involvement.<sup>51</sup>

According to the Phase 2 Terms of Reference (“Phase 2 TOR”), the review committee (representatives from the Ministry of Energy, Mines and Petroleum Resources; BC Hydro; and Powerex), advisory committee (representatives from Electricity and Alternative Energy; Ministry of Energy, Mines and Petroleum Resources; BC Hydro; Powerex; and Climate Action Secretariat), and expert advisors will answer questions in four areas and develop recommendations. The four areas are:

- Supporting CleanBC;
- Thriving in an evolving electricity sector;
- Leveraging our strengths; and
- Opportunities for Indigenous nations and communities.

This section of the memo presents the guidance from the Phase 2 TOR and a summary of how the Interim Report responds. The Interim Report is currently more of a discussion paper than a set of concrete recommendations, although it provides some suggestions around certain topics.

Before discussion of the topic areas of interest, the Interim Report highlights emerging trends that the authors believe will affect BC Hydro’s future operations.

- **Changes in Traditional Load Profile:** The Interim Report notes that “new load presents an opportunity for BC Hydro and may mitigate the risk of declines in traditional load, but it also often requires new infrastructure to serve.”<sup>52</sup> One third of BC Hydro’s load is made up by the industrial sector. In BC, most of these customers rely on commodity prices for profitability, which creates uncertainty for BC Hydro’s industrial load. Industrial customers need competitive rates, but the provincial government wants to leverage strategic advantages to maintain and grow industrial load. Meanwhile, the transportation sector is a growing source of demand as BC Hydro manages charging for transportation.
- **Evolving technologies:** The decreasing costs of solar and wind generation and small-scale battery storage has translated into the addition of solar and wind generation to grids. The

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<sup>50</sup> Ministry of Energy, Mines and Petroleum Resources. (n.d.). Terms of Reference for Comprehensive Review of BC Hydro – Phase 2. Available from [https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bch\\_review\\_phase\\_ii\\_tor\\_190716\\_public\\_clean.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bch_review_phase_ii_tor_190716_public_clean.pdf) [accessed June 11, 2020], p. 1.

<sup>51</sup> Ibid, p. 2

<sup>52</sup> Ministry of Energy, Mines and Petroleum Resources. (2020). Comprehensive Review of BC Hydro: Phase 2 Interim Report. Available from [https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bc\\_hydro\\_cr\\_ph2\\_ir\\_mar06\\_2020\\_f.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bc_hydro_cr_ph2_ir_mar06_2020_f.pdf) [accessed June 11, 2020], p. 7.

addition of intermittent renewables has driven down wholesale costs at certain times of the day. This can affect revenues from selling excess energy and increase consumer-scale systems that reduce revenues collected by customers. The growing presence of intermittent renewables also means that forecasting demand and dispatching supply may need to be modified.

- Changing customer preference: Utilities are traditionally conservative, but customers are growing savvier and expecting more customized services.
- Evolution of Electricity Trade: The western grid in which BC Hydro's grid is embedded is changing through retiring coal fleets and the increased penetration of intermittent renewables. Intermittent renewables can create oversupply conditions in some regions when environmental conditions are good. Grids with intermittent renewable penetration still require backstopping, which BC Hydro's supply of hydroelectric generation could provide cleanly.<sup>53</sup>

### Supporting CleanBC

In December 2018, the provincial government released the CleanBC plan. The plan includes targets to reduce greenhouse gas emissions with goals established for 2030, 2040, and 2050. According to the plan, targets will be achieved through cleaner transportation initiatives; new building technology, including retrofitting homes and helping remote communities reduce their use of diesel; working with industry to reduce greenhouse gas emissions; reducing emissions from waste; and training people to work in clean energy.<sup>54</sup>

The Phase 2 TOR states that the Phase 2 Review should consider:<sup>55</sup>

- Changes to BC Hydro required to meet the electrification goals in CleanBC;
- Additional opportunities to reduce greenhouse gas emissions;
- Requirements that new customer demand for access to clean energy from the grid is efficient, cost - effective, and timely;
- Cost allocation between existing and new customers, along with the potential role for government in financing infrastructure for access to clean electricity;
- Should BC Hydro encourage fuel switching; and
- How BC Hydro and the Province's CleanBC Better Homes/Better Buildings program can coordinate.

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<sup>53</sup> Ministry of Energy, Mines and Petroleum Resources. (n.d.). Comprehensive Review of BC Hydro: Phase 2 Interim Report. Available from [https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bc\\_hydro\\_cr\\_ph2\\_ir\\_mar06\\_2020\\_f.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bc_hydro_cr_ph2_ir_mar06_2020_f.pdf) [accessed June 11, 2020], p. 9.

<sup>54</sup> Government of British Columbia. (2018). CleanBC: Highlights Report. Available from [https://blog.gov.bc.ca/app/uploads/sites/436/2019/02/CleanBC\\_Highlights\\_Report\\_Updated\\_Mar2019.pdf](https://blog.gov.bc.ca/app/uploads/sites/436/2019/02/CleanBC_Highlights_Report_Updated_Mar2019.pdf) [accessed June 11, 2020].

<sup>55</sup> Ministry of Energy, Mines and Petroleum Resources. (n.d.). Terms of Reference for Comprehensive Review of BC Hydro – Phase 2, Available from [https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bch\\_review\\_phase\\_ii\\_tor\\_190716\\_public\\_clean.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bch_review_phase_ii_tor_190716_public_clean.pdf) [accessed June 11, 2020].

To address these issues the Interim Report focuses on rate design, time and cost for industrial customers to connect, diesel reduction, demand side management and fuel switching investments, and internal carbon pricing and electrification.

### *Rate Design*

BC Hydro currently uses a tiered rate structure. For residential customers, rates are structured as a Basic Charge, Step 1 Energy Charge, and Step 2 Energy Charge. The tiered rate structure is to encourage customers to conserve electricity. Large industrial customers take service at the Transmission Service stepped rate. These rate designs have traditionally worked with residential customers conserving energy were possible and large industrial customers focusing on long-term conservation and load reductions. New rate structures could make electricity more affordable and reduce emissions for residential customers and increasing the competitiveness of clean energy for large industrials.

The Interim Report suggests that BC Hydro consider optional rates for residential and commercial customers. The report provides some examples of optional rates for each customer class, including a discounted rate for residential customers with heating pumps and commercial rates that encourage vehicle charging at work. For industrial customers, the Interim Report proposes flattening the two-tier industrial rate since they consider it a barrier to electrification for some large industrial customers.

As BC Hydro considers changes to rate design, affordability remains an important consideration. Stakeholder feedback reinforced this. The Interim Report also notes that energy -intensive and trade- exposed resource industries require access to affordable energy to remain competitive. In addition to helping businesses remain profitable, competitive electricity rates can help large industrial customers make decisions about electrification.<sup>56</sup>

### *Time and Cost for Industrial Customers to Connect*

Based on stakeholder feedback, the Interim Report suggests changes to the process for industrial customers to connect to the grid, including amendments to the interconnection tariff. Changes to the interconnection process could remove one barrier to electrification.<sup>57</sup> The changes should streamline the process and reduce costs and risks for new connections, including eliminating the current 150 MVA threshold. For industrial customers with a close, more carbon-intensive alternative, such as upstream oil and natural gas industry, economics are often a barrier to electrification.<sup>58</sup> The 2013 Industrial Electricity Policy Review found that the 150 MVA threshold is not found in other jurisdictions, and while it may protect ratepayers from large rate increases if a large industrial customer connects to the BC Hydro system, it also signals that large electrical loads are not supported in BC.<sup>59</sup>

The Interim Report also notes that a building out the transmission system will be necessary to support electrification of industry. There is a memorandum of understanding between BC and the

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<sup>56</sup> Ministry of Energy, Mines and Petroleum Resources. (2020). Comprehensive Review of BC Hydro: Phase 2 Interim Report. Available from [https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bc\\_hydro\\_cr\\_ph2\\_ir\\_mar06\\_2020\\_f.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bc_hydro_cr_ph2_ir_mar06_2020_f.pdf) [accessed June 11, 2020], pp. 10-13.

<sup>57</sup> Ibid, p. 13

<sup>58</sup> Ibid, p. 13

<sup>59</sup> Ibid, p. 14

Government of Canada to co-fund identified transmission projects to electrify the natural gas sector.<sup>60</sup>

### *Diesel Reduction*

The discussion about diesel reduction concentrates on remote Indigenous communities that are on isolated grids. There is the potential to reduce diesel consumption in remote Indigenous communities, which needs to be balanced with maintaining reliability.<sup>61</sup> According to Natural Resources Canada, there were 22 remote Indigenous communities in BC that rely on diesel generation in 2018. The annual fossil fuel generation was available for 8 of the communities. For those communities it was 20,595 MWh/year.<sup>62</sup> To support this objective, the Interim Report suggests that BC Hydro needs to invest in early engagement with Indigenous Nations to identify opportunities and implement clean generation resources that are less costly than BC Hydro's marginal cost of existing operations.<sup>63</sup>

### *Demand Side Management and Fuel Switching Investments*

BC Hydro's demand side management programs were examined in the Phase 1 Review. Through that review, the current level of investment was considered appropriate. In terms of policy developments, the Interim Report suggests that BC Hydro could consider new programs to encourage electrification but does not give any specific examples. Electrification should be encouraged in transportation, building, and industry.<sup>64</sup>

### *Internal Carbon Pricing and Electrification*

Noting that utilities in other jurisdictions incorporate the cost of carbon into long-term resource plans, the Interim Report proposes that BC Hydro develops an internal carbon price to guide decision making and investments.<sup>65</sup> Before proposing this recommendation, the Interim Report describes other carbon price tools in BC:

- In the transportation sector, the carbon tax at the pump and the Renewable and Low Carbon Fuel Requirements Regulation that require fuel supplier to reduce the carbon content of fuels promote the switch to low-carbon electricity.
- In the industrial sector, intensity benchmarks developed under the CleanBC Industrial Incentive Program will promote the cost-effectiveness of fuel switching.<sup>66</sup>

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<sup>60</sup> Ministry of Energy, Mines and Petroleum Resources. (2020). Comprehensive Review of BC Hydro: Phase 2 Interim Report. Available from [https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bc\\_hydro\\_cr\\_ph2\\_ir\\_mar06\\_2020\\_f.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bc_hydro_cr_ph2_ir_mar06_2020_f.pdf) [accessed June 11, 2020], p. 14.

<sup>61</sup> Ibid, p. 15

<sup>62</sup> Natural Resources Canada. (2018). Remote Communities Energy Database. Available from <https://atlas.gc.ca/rced-bdece/en/index.html> [accessed June 11, 2020].

<sup>63</sup> Ministry of Energy, Mines and Petroleum Resources. (2020). Comprehensive Review of BC Hydro: Phase 2 Interim Report. Available from [https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bc\\_hydro\\_cr\\_ph2\\_ir\\_mar06\\_2020\\_f.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bc_hydro_cr_ph2_ir_mar06_2020_f.pdf) [accessed June 11, 2020], p. 15.

<sup>64</sup> Ibid, p. 16

<sup>65</sup> Ibid, p. 17

<sup>66</sup> Ibid, p. 16

## Thriving in an Evolving Electricity Sector

The Phase 2 TOR notes that there are trends in technology, changes in electricity markets, and transformative approaches used by other electric utilities. This section in the Phase 2 Review should provide recommendations on how BC Hydro will adapt to future scenarios and evolve. At minimum, the Phase 2 Review should:<sup>67</sup>

- Describe the industry trends most likely to affect BC Hydro;
- Describe necessary actions for BC Hydro to benefit from new markets and integrate new technologies while keeping rates affordable;
- Describe opportunities for BC Hydro to provide customers with more energy choices and information; and
- Describe changes in BC Hydro's governance structure to pursue new business opportunities.

The Interim Reports provides a brief discussion of four evolving areas in the energy sector that BC Hydro will possibly need to consider going forward.

### *Grid Modernization*

The Interim Report notes that the distribution system provides the greatest opportunity for innovation for utilities. The Interim Report refrains from making recommendations on a grid modernization strategy because the approach will support a variety of objectives and business opportunities. Additional opportunities include using data to optimize the reliability and cost of conventional service or provide tailored customer products and services. BC Hydro's distribution will need to evolve its smart-grid technology, including demand forecasting tools, distributed energy management systems, communication and control technologies.<sup>68</sup>

### *New Products and Services*

The Interim Report concentrates on developments behind the meter and how BC Hydro could potentially take advantage of these developments. To facilitate developments behind the meter, BC Hydro could fulfill multiple roles, including providing customers discounts for allowing BC Hydro to manage non-essential services (e.g., hot water heating) to shift demand to off-peak hours or being the platform for other organizations to offer services behind the meter.<sup>69</sup>

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<sup>67</sup> Ministry of Energy, Mines and Petroleum Resources. (n.d.). Terms of Reference for Comprehensive Review of BC Hydro – Phase 2, Available from [https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bch\\_review\\_phase\\_ii\\_tor\\_190716\\_public\\_clean.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bch_review_phase_ii_tor_190716_public_clean.pdf) [accessed June 11, 2020], p. 5.

<sup>68</sup> Ministry of Energy, Mines and Petroleum Resources. (2020). Comprehensive Review of BC Hydro: Phase 2 Interim Report. Available from [https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bc\\_hydro\\_cr\\_ph2\\_ir\\_mar06\\_2020\\_f.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bc_hydro_cr_ph2_ir_mar06_2020_f.pdf) [accessed June 11, 2020], p. 18.

<sup>69</sup> Ibid, p. 18

## *Innovation*

For innovation, the expert advisors recommended looking to incentivize and encourage innovation throughout the organization. They also suggested an annual budget to try new technologies that is not subject to cost disallowance by the BCUC.<sup>70</sup>

## *Resource Options*

The Interim Report discusses the self-sufficiency provision in the Clean Energy Act that limits BC Hydro to planning to acquire resources within BC until self-sufficient. The Interim Report suggests that eliminating the self-sufficiency requirement for BC Hydro could keep costs down while meeting future demand because:<sup>71</sup>

- BC Hydro would be able to import electricity from outside the province;
- The cost of adding new generation would be lower due to timing flexibility;
- BC Hydro would no longer need to commit to long-term resources when facing short-term energy deficits.

The impacts of eliminating the self-sufficiency provision will be included in the Integrated Resource Plan.

## Leveraging Our Strengths

This section of the Phase 2 report will focus on opportunities to increase participation in external markets to the benefit of BC Hydro ratepayers. The recommendations should consider:<sup>72</sup>

- Constraints, if any, that reduce Powerex's ability to trade electricity in the Western Interconnection;
- Opportunities or actions that will allow Powerex to expand its business in markets outside of BC;
- Effective clean energy outside of BC in BC Hydro's planning and operations; and
- Opportunities to own or operate assets outside of BC Hydro's current service area to the benefit of BC Hydro ratepayers.

The Interim Report suggests that BC Hydro maintain alignment of clean energy policies with trade partners in the west to leverage its strength as a clean supplier of energy. According to the Interim Report, Powerex, a wholly owned subsidiary of BC Hydro, currently conducts 90% of its trade activities with three west coast states with clean energy commitments. The alignment could provide opportunities to lower the costs of acquiring clean energy as other regions produce surplus energy or produce lower cost clean energy than BC. Between aligning with energy trade

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<sup>70</sup> Ministry of Energy, Mines and Petroleum Resources. (2020). Comprehensive Review of BC Hydro: Phase 2 Interim Report. Available from [https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bc\\_hydro\\_cr\\_ph2\\_ir\\_mar06\\_2020\\_f.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bc_hydro_cr_ph2_ir_mar06_2020_f.pdf) [accessed June 11, 2020], p. 19.

<sup>71</sup> Ibid, p. 19

<sup>72</sup> Ministry of Energy, Mines and Petroleum Resources. (n.d.). Terms of Reference for Comprehensive Review of BC Hydro – Phase 2. Available from [https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bch\\_review\\_phase\\_ii\\_tor\\_190716\\_public\\_clean.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bch_review_phase_ii_tor_190716_public_clean.pdf) [accessed June 11, 2020], pp. 4-5.

partners and BC Hydro's current operations with almost 98% of electricity generated cleanly, BC Hydro will assume a "100% clean electricity standard for the integrated grid when developing its Integrated Resource Plan."<sup>73</sup>

### Opportunities for Indigenous Nations and Communities

According to the Phase 2 TOR, this section of the Interim Report should discuss future opportunities and roles for Indigenous Nations in the "development, ownership, or operation of electrical infrastructure."<sup>74</sup> The recommendations should describe how BC Hydro can enhance Indigenous Nation's participation in the energy sector.

The Interim Report summarizes feedback from interactions with Indigenous Nations and notes that more engagement is required to complete the final report. The feedback on opportunities for Indigenous Nations and communities are:

- Indigenous Nations consider BC Hydro's willingness to share revenue with communities experiencing impacts important. Some have experienced serious impacts from BC Hydro's legacy infrastructure built in the 1960s, 1970s, and 1980s. To date, BC Hydro has not provided substantial benefits while continuing to operate legacy infrastructure.
- Since BC Hydro currently has surplus electricity, new IPP opportunities are not available. Indigenous Nations are now interested in other opportunities, such as ownership in transmission assets, BC Hydro generation assets, and establishing Indigenous utilities that could provide power on-reserve or within treaty lands or off-reserve outside of treaty lands. New opportunities will require capacity support.<sup>75</sup>
- Indigenous Nations require the provincial government and BC Hydro to adhere to the United Nations Declaration on the Rights of Indigenous Peoples, including good faith consultation; free, prior, and informed consent; acknowledgement of their role as stewards of the land and the importance of their participation in decision making; the importance of early engagement on a strategic level; concerns about ongoing impacts from BC Hydro's operations and cumulative impacts; and opportunities to plan on a regional level.<sup>76</sup>

### Indigenous Utilities Regulation Inquiry

From March 19, 2019 through April 30, 2020 the BCUC conducted an inquiry on Indigenous utilities regulation.<sup>77</sup> Order in Council (OIC) No. 108/2019 (OIC 108) describes the terms of inquiry. The OIC is a response to the 2016 application by the Beecher Bay First Nation for an

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<sup>73</sup> Ministry of Energy, Mines and Petroleum Resources. (n.d.). Comprehensive Review of BC Hydro: Phase 2 Interim Report. Available from [https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bc\\_hydro\\_cr\\_ph2\\_ir\\_mar06\\_2020\\_f.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bc_hydro_cr_ph2_ir_mar06_2020_f.pdf) [accessed June 11, 2020], p. 22.

<sup>74</sup> Ministry of Energy, Mines and Petroleum Resources. (n.d.). Terms of Reference for Comprehensive Review of BC Hydro – Phase 2. Available from [https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bch\\_review\\_phase\\_ii\\_tor\\_190716\\_public\\_clean.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bch_review_phase_ii_tor_190716_public_clean.pdf) [accessed June 11, 2020], p. 5.

<sup>75</sup> Ministry of Energy, Mines and Petroleum Resources. (2020). Comprehensive Review of BC Hydro: Phase 2 Interim Report. Available from [https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bc\\_hydro\\_cr\\_ph2\\_ir\\_mar06\\_2020\\_f.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bc_hydro_cr_ph2_ir_mar06_2020_f.pdf) [accessed June 11, 2020], p. 23.

<sup>76</sup> Ibid, p. 24

<sup>77</sup> The BCUC issued a draft report on November 1, 2019, sent an interim report the Minister Responsible for the Hydro and Power Authority act on December 31, 2019, and issued the final report on April 30, 2020.

exemption from Part 3 of the Utilities Commission Act, which describes how the BCUC regulates public utilities. Since the Beecher Bay First Nation did not meet the definition of a municipality, the BCUC determined that it was not eligible for an exemption.<sup>78</sup>

Order in Council 108 requested recommendations and advice on the “appropriate nature and scope, if any, of the regulation of indigenous utilities.”<sup>79</sup> To reach recommendations, the BCUC was required to provide responses regarding:

- the characteristics of Indigenous utilities;
- if they should be regulated under the Act, a different mechanism, or left unregulated;
- if Indigenous utilities should be regulated under the Act, is there any aspect that should be regulated differently from other public utilities; and
- if Indigenous utilities should be regulated in some manner but not under the Act, what would that look like.

The BCUC’s responses and recommendations for the questions in OIC 108 are presented in Table B3. Not all recommendations align directly with the mandated topics in the inquiry as some were in response to stakeholder feedback, which was gathered through 11 community input sessions, including 1 special session to coincide with the BC Assembly of First Nations 16th Annual General Assembly and 8 draft report workshops. There were 21 registered intervenors who had the opportunity to file written evidence, submit and respond to information requests, provide final arguments and file comments on the Draft Report.<sup>80</sup> Feedback on the draft report included multiple parties stating that owning a utility is important to many First Nations as a means of economic development. The regulation of Indigenous-owned public utilities can potentially reduce the economic development benefits. This feedback was reflected in the final recommendations.<sup>81</sup>

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<sup>78</sup> BCUC. (2020). Indigenous Utilities Inquiry Final Report. Available from [https://www.bcuc.com/Documents/Proceedings/2020/DOC\\_57958\\_2020-04-30-BCUC-IUR-Inquiry-Final-Report-Web.pdf](https://www.bcuc.com/Documents/Proceedings/2020/DOC_57958_2020-04-30-BCUC-IUR-Inquiry-Final-Report-Web.pdf) [accessed June 11, 2020], p. 1.

<sup>79</sup> Order in Council No. 108, Province of British Columbia, Order of the Lieutenant Governor in Council, March 11, 2019.

<sup>80</sup> BCUC. (2020). Indigenous Utilities Inquiry Final Report, Appendix B. Available from [https://www.bcuc.com/Documents/Proceedings/2020/DOC\\_57958\\_2020-04-30-BCUC-IUR-Inquiry-Final-Report-Web.pdf](https://www.bcuc.com/Documents/Proceedings/2020/DOC_57958_2020-04-30-BCUC-IUR-Inquiry-Final-Report-Web.pdf) [accessed June 11, 2020].

<sup>81</sup> BCUC. (2020). Indigenous Utilities Regulation Inquiry Final Report Summary. Available from [https://www.bcuc.com/Documents/Other/2020/DOC\\_57960\\_BCUC-Indigenous-Utilities-Inquiry-FinalReportSummary.pdf](https://www.bcuc.com/Documents/Other/2020/DOC_57960_BCUC-Indigenous-Utilities-Inquiry-FinalReportSummary.pdf) [accessed June 11, 2020], p. 5.

**Table B3: Mandated Topics of Inquire and BCUC Responses**

Mandated Topics of Inquiry in OIC 108	BCUC Recommendations/Responses
Defining characteristics of Indigenous utilities	An Indigenous utility should be defined as a “public utility” for which an Indigenous Nation has <i>de facto</i> or <i>de jure</i> control. The definition is not limited to the types of services provided and it includes the provision of public utility services to persons in its service area.
Should Indigenous utilities be regulated under the Act, under a different mechanism, or unregulated?  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?	<p>Indigenous utilities should be regulated by a competent arm’s length regulator who follows best practices of ratepayer protection for all ratepayers.</p> <p>On reserve land, First Nations determine the means of regulation, but they must formally end BCUC oversight. To end BCUC oversight, the First Nation must notify the BCUC and demonstrate that there is an arm’s length complaint and dispute resolution process. The same process for ending BCUC oversight applies to the Westbank and Sechelt First Nations, modern treaty First Nations other than the Tsawwassen First Nation and Nisga’a Nation, and historic treaty nations.</p> <p>Future modern treaties should include provisions related to the First Nation’s authority to regulate Indigenous utilities providing services within treaty settlement land.</p>
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?	<p>The <i>Utilities Commission Act</i> should be amended to exclude from its definition of public utility any utility recognized under Nisga’a law as a Nisga’a utility as its services relate to the Nisga’a Lands or a Nisga’a Village within the Nisga’a Lands, and be amended to exclude from its definition of public utility any Indigenous utility providing services within Tsawwassen treaty lands.</p>
In unregulated, how will the interests of Indigenous utility ratepayers be protected? <sup>82</sup>	<p>The BCUC should retain jurisdiction with respect to approval, compliance, and enforcement of mandatory reliability standards applicable to any entity that may impact the Bulk Electric System in the province.</p> <p>If a First Nation delegates regulation of safety to the BCUC, the applicable portions of the <i>Utilities Commission Act</i> will apply to the Indigenous utility.</p> <p><i>For complaints and appeals:</i></p> <p>A panel or body composed of Indigenous people and others with specialized knowledge, such as First Nation’s governance, assess a First Nation’s complaint and dispute resolution process in the context of public utility regulation as it is practiced in Canada and also within the specific context of that First Nation, prior to that First Nation’s Indigenous utility law coming into force.</p> <p>First Nations collectively develop a province-wide appeal body for customers of Indigenous utilities who are unable to resolve complaints BCUC serve as an appeal body until a First Nation operated body can be established and operational.</p> <p>The BCUC will provide any assistance that the First Nation operated body may request to become operational.</p>

<sup>82</sup> This question was not included in OIC 108 but was included in the BCUC’s Summary Report (p. 2).

Mandated Topics of Inquiry in OIC 108	BCUC Recommendations/Responses
<p>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?</p>	<p>When a First Nation no longer controls an Indigenous utility, it becomes a public utility as defined in the <i>Utilities Commission Act</i> or notifies the BCUC when it enters into an agreement that changes the control of an Indigenous utility so that it is no longer controlled by the First Nation.</p>
<p>Amendments to the <i>Utilities Commission Act</i></p>	<p>BCUC jurisdiction should be expanded to consider regulatory principles enacted by the First Nation when BCUC adjudicated Indigenous utility complaints and disputes.</p> <p>BCUC should be allowed to determine in a public proceeding fair compensation for an incumbent utility if the operations of an Indigenous utility materially impact that incumbent utility.</p> <p>Section 52 be amended to require BCUC to consider UNDRIP and the economic development of a First Nation seeking to acquire public utility assets.</p> <p>Require BCUC to consider the principles of UNDRIP when considering the <i>Clean Energy Act</i> objective to “foster the development of First Nation...communities”.</p>

Table B4 presents the remainder of the BCUC recommendations that do not neatly align with OIC 108.

**Table B4: Other BCUC Recommendations by Topic Area**

Topic	BCUC Recommendation/Response
BCUC Regulation	<p>The BCUC ensure that it include Indigenous people in both staff and Commissioner roles, especially for matters that directly affect First Nations.</p> <p>The BCUC include Indigenous representatives with expertise in such matters as First Nations governance on BCUC panels where applications of Indigenous utilities are considered</p> <p>The BCUC modify its regulatory policies and procedures to better reflect the objectives of reconciliation in its proceedings.</p>
Retail Access	<p>The provincial government should review and revise policies that, in restricting an Indigenous utility’s access to BC Hydro’s transmission system, may results in an undue barrier to the First Nation’s pursuit of economic self-determination.</p> <p>Direction 8 should be reviewed to reflect the intention whether prohibition is limited to only customers of BC Hydro or to customers of any public utility.</p> <p>The BCUC review of transmission and distribution tariffs to reflect Direction 8 and/or any amendments to Direction 8.</p>
Wholesale Energy Sales	<p>The provincial government should reconsider the Standing Offer Program and the cap for that program and any other provision that places undue economic barriers on potential participants. If the program is restructured and reintroduced, it should be based on market electricity prices.</p> <p>Provide assistance to Indigenous utilities that want to export energy to customers outside British Columbia.</p>
Incumbent Public Utilities	<p>If an incumbent utility acquires energy from an Indigenous utility, when setting rates for that incumbent utility on that First Nation’s reserve, modern treat First Nation’s former reserve land, or Nisga’a to Tsawwassen lands, the <i>Utilities Commission Act</i> be amended to require the BCUC to consider the cost of that energy, even if the resulting rate differs from the rate that would otherwise be set.</p> <p>The Government of BC consider mechanisms to encourage the development of further economic partnerships between incumbent utilities and First Nations.</p>
Traditional Territory	<p>As the modern treaty process is the accepted means of clarifying Indigenous rights on Traditional Territory, the modern treaty process should address the issues of utilities regulation and the right of both incumbent utilities and Indigenous utilities to operate in those territories.</p> <p>As an incremental approach to the entry of Indigenous utility operation on Traditional Territory, the <i>Utilities Commission Act</i> be amended to require the BCUC to consider UNDRIP and the economic development needs of a First Nation applying for a Certificate of Public Convenience and Necessity to operate an Indigenous utility on Traditional Territory.</p>
Strategy for capacity building	<p>Develop with Indigenous representatives a strategy to build First Nation capacity in utility regulation and a strategy to reduce barriers to the recruitment and placement of Indigenous people in advisory, staff, and Commissioners roles in the BCUC.</p> <p>The provincial government should consider capacity funding to make this happen where necessary.</p>

## First Nations Major Projects Coalition Submission

During the inquiry, the First Nations Major Project Coalition (MPC) submitted a document titled *The Role of Indigenous People in Major Project Development: Paths for Indigenous Participation in Electricity Infrastructure*. The MPC is a Canada-wide organization of 51 Indigenous nations that works to enhance the economic well-being of its members with the understanding that a strong economy relies on a healthy environment, cultural experience, and traditional laws.<sup>83</sup> The MPC review compared three jurisdictions with Indigenous utility regulation: Ontario, Canada; New Zealand; and the United States. It concluded that<sup>84</sup>

- Ontario has the most cases of full or planning to be full First Nations utility ownership. In Ontario, they are regulated under existing provincial regulations. Examples described in the MPC submission include Five Nations Energy Inc., which is owned by energy corporations for Attawapiskat, Kashechewan, and Fort Albany First Nations and Wataynikaneyap Power, which is majority owned by 24 First Nations in Northwest Ontario.
- In New Zealand, a Maori community through an Indigenous trust is an equity partner in two geothermal power generation plants, which are regulated under existing New Zealand regulations.
- In the United States, US Native American tribal-owned utilities operated under their own regulatory regimes, which only apply within reservation boundaries.<sup>85</sup> Some provide electricity on-reservation only, some provide it to tribal and non-tribal customers, and some sell power to other reservations.

The MPC concluded that many of the questions included in OIC 108 were premature. Based on its review of US tribal utilities, clearly defined and mutually agreed areas of land jurisdiction were critical to the success of US tribal utilities. The same situation does not exist in British Columbia. Canadian Indian Reserves are also not considered indicative of unceded traditional territories and inherent jurisdiction. Until land issues are resolved, MPC maintains that BCUC cannot enforce technical recommendations. To resolve these issues, concurrent jurisdiction issues need to be solved. In particular, MPC draws attention to Article 18 and Article 26 of UNDRIP, which deal with existing rights and revenues from traditional territories.

- Article 18: “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.”<sup>86</sup>
- Article 26: “1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. 2.

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<sup>83</sup> First Nations Major Projects Coalition. (2019). *The Role of Indigenous People in Major Project Development: Paths for Indigenous Participation in Electricity Infrastructure*. Available from <https://static1.squarespace.com/static/5849b10dbe659445e02e6e55/t/5d279f23bfceb4000114c6ff/1562877756904/MPC+-+Final+v.11.pdf> [accessed June 11, 2020], p. 2.

<sup>84</sup> *Ibid*, pp. 6-7

<sup>85</sup> First Nations Major Projects Coalition. (2019). *The Role of Indigenous People in Major Project Development: Paths for Indigenous Participation in Electricity Infrastructure*, p. 8. MPC notes that US reservations are typically larger than Canadian Indian Reserves, which allows for economies of scale and infrastructure.

<sup>86</sup> United Nations, 2007, *United Nations Declaration on the Rights of Indigenous Peoples*, Available from [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf) [accessed June 9, 2020], pp. 15-16.

Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired. 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.”<sup>87</sup>

While UNDRIP implementation is outside the BCUC’s mandate for the inquiry, MPC recommended that the BCUC remind the provincial government that its work is directly affected by UNDRIP. This recommendation is critical because BCUC decisions will be affected by evolving public policy perceptions of UNDRIP implementations.<sup>88</sup>

*The Role of Indigenous People in Major Project Development: Paths for Indigenous Participation in Electricity Infrastructure*

To support its submission to the BCUC, the MPC attached a discussion paper that describes how Indigenous people have begun pursuing equity ownership of major projects and infrastructure; the ways Indigenous people are capitalizing on social and policy changes to pursue their interests; and specific electrical infrastructure ownership examples that could be used as a model for the Canadian government and Indigenous Nations.

The MPC notes that Indigenous participation through impact benefit agreements has been evolving since the 1950s. Their summary of developments:

- In the 1950s through the 1970s, the focus was on Indigenous peoples joining the workforce, entry-level positions and environmental protections;
- In the 1980s, the focus was on the promotion of joint ventures and supporting businesses;
- In the 2000s, the focus was on revenue for community not tied to employment or procurement and Nation building;
- In the 2010s, the focus was on minority equity; and
- Currently, the focus is on now majority equity and Indigenous proponents.<sup>89</sup>

The discussion paper frames these developments within the context of righting an imbalance where previously developers and government had land access, relationships, access to relevant information, and access to technical expertise that Indigenous Nations did not.<sup>90</sup> The shift occurred through legal decisions in favour of Indigenous rights, the conclusion of land settlements,

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<sup>87</sup> United Nations. (2007). United Nations Declaration on the Rights of Indigenous Peoples. Available from [https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP\\_E\\_web.pdf](https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf) [accessed June 11, 2020], p. 19.

<sup>88</sup> First Nations Major Projects Coalition. (2019). *The Role of Indigenous People in Major Project Development: Paths for Indigenous Participation in Electricity Infrastructure*. Available from <https://static1.squarespace.com/static/5849b10dbe659445e02e6e55/t/5d279f23bfceb4000114c6ff/1562877756904/MPC+-+Final+v.11.pdf> [accessed June 11, 2020], p. 12.

<sup>89</sup> First Nations Major Projects Coalition. (2019). *The Role of Indigenous People in Major Project Development: Paths for Indigenous Participation in Electricity Infrastructure*. Available from <https://static1.squarespace.com/static/5849b10dbe659445e02e6e55/t/5d279f23bfceb4000114c6ff/1562877756904/MPC+-+Final+v.11.pdf> [accessed June 11, 2020], p. 15.

<sup>90</sup> Ibid, p. 8

and the ability for Indigenous communities to share knowledge with each other through social media and the internet.<sup>91</sup>

The bulk of the discussion paper describes examples/case studies of major projects on electricity infrastructure divided into co-ownership, generation, transmission, and distribution.<sup>92</sup> Below are summaries of Canadian examples plus one American example of an Indigenous utility. The discussion paper also includes international examples.

### *Co-ownership*

- In 2015, the Ontario government partially privatized Hydro One. During the privatization process, 2.5% or 15 million of the utility's outstanding common shares were made available to Ontario First Nations. The 15 million shares were negotiated by the Chiefs-in-Assembly representing Ontario First Nations and the Province of Ontario.<sup>93</sup> To support the purchase of common shares, the Ontario Government provided a low-interest loan of \$259,038,216 to be repaid from the utility equity share revenues. The interest rate is Ontario's relevant borrowing rate plus 15 basis points.

The Ontario government also provided \$29 million in seed capital for the establishment of the First Nations Indigenous Sovereign Wealth Fund. The fund will hold the shares and manage the revenue for all Ontario First Nations.<sup>94</sup>

### *Transmission*

- In Ontario, Wataynikaneyap (Watay) Power is majority owned by 24 First Nations. It is an electricity transmission company in Northwest Ontario. Its current plan is to connect 24 First Nations to the main provincial electricity grid by building, owning, and operating 1,800 km of 230 kV, 115 kV, and 44 kV transmission lines. Eventually Watay Power, which will build transmission lines near the Ring of Fire in hopes to provide interconnection for mines and other industrial power users. To finance the first 300 km of transmission lines, Watay Power partnered with Fortis Ontario BC and RES Canada. Eventually the First Nations will become 100% owners of the project.<sup>95</sup>
- In Ontario, Five Nations Energy Inc owns the Omushkego Ishkotayo Project, which is a 270 km 115 kV transmission line that serves the Attawapiskat, Fort Albany, and Kashechewan First Nations. Five Nations Energy Inc is co-owned equally by Attawapiskat Power Corporation, Fort Albany Power Corporation, and Kashechewan Power Corporation. The transmission line also provides power to the Victor Diamond Mine north of Attawapiskat. The line was built to displace diesel generation in the communities. Five Nations Energy Inc. is regulated by the Ontario Energy Board for major new construction

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<sup>91</sup> First Nations Major Projects Coalition. (2019). The Role of Indigenous People in Major Project Development: Paths for Indigenous Participation in Electricity Infrastructure. Available from <https://static1.squarespace.com/static/5849b10dbe659445e02e6e55/t/5d279f23bfceb4000114c6ff/1562877756904/MPC+-+Final+v.11.pdf> [accessed June 11, 2020], pp. 7-15.

<sup>92</sup> The discussion paper includes domestic and international projects. This summary will focus on projects in Canada.

<sup>93</sup> Province of Ontario. (2016). Ontario and First Nations Announce Agreement-in-Principle for Sale of Hydro One Shares. Available from <https://news.ontario.ca/mndmf/en/2016/07/ontario-and-first-nations-announce-agreement-in-principle-for-sale-of-hydro-one-shares.html> [accessed June 11, 2020].

<sup>94</sup> First Nations Major Projects Coalition. (2019). The Role of Indigenous People in Major Project Development: Paths for Indigenous Participation in Electricity Infrastructure. Available from <https://static1.squarespace.com/static/5849b10dbe659445e02e6e55/t/5d279f23bfceb4000114c6ff/1562877756904/MPC+-+Final+v.11.pdf> [accessed June 11, 2020], pp. 27-28.

<sup>95</sup> Ibid, pp. 27-28

and transmission rates and the Independent Electricity System Operator for reliability. The Independent Electricity System Operator also services as a financial clearing house for all independent operators in Ontario.<sup>96</sup>

- In British Columbia, 16 First Nations are pursuing a joint venture to develop a 530 km transmission line from Prince George to Kitimat. The transmission line is necessary to power the proposed Chevron-Woodside liquified natural gas (LNG) facility in Kitimat. No details are provided around securing capital and the questions included for further research suggest that details such as funding and governance for the group have not been solidified yet or are not publicly available.<sup>97</sup>

### *Generation*

- In Ontario, Coral Rapids Power Corporation is owned by Taykwa Tagamou Nation in a joint venture with Ontario Power Generation. Coral Rapids Power Corporation is a 33% owner of a 20 MW run-of-river hydroelectric generating facility. The project cost \$300 million. Initial capital came from an OPG grievance settlement for historical infrastructure projects and from funding applications to government programs. Once Ontario Power Generation was a partner, additional sources of capital opened up. The project provides the community with a reliable revenue stream. Coral Rapid Power Corporation did not disclose the rate at which it sells electricity to the provincial grid but described it as “extremely lucrative.”<sup>98</sup>
- In Ontario, the Grand Renewable Energy Park is a 67-turbine, 149 MW wind farm and 100 MW photovoltaic solar facility.<sup>99</sup> The park is a joint venture between Samsung Renewable Energy, Pattern Energy, and the Six Nations of Grand River Development Corporation. The park sells all of its electricity to the provincial crown utility network under a 20-year power purchase agreement.<sup>100</sup>

### *Distribution*

- In Washington State, Yakama Power is a tribally owned wholesale power and transmission company. It provides electricity to tribal members and entities and hopes to eventually provide all electric loads within the 1.4 million acre Yakama Reservation. In 2007, the Yakama Nation entered into a settlement with Grant County Public Utility District regarding the relicensing of two Columbia River dams. The settlement provided some of the start-up funds for Yakama Power and created a partnership between the utility district and Yakama Power. In 2006, the Washington State Utilities and Transportation

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<sup>96</sup> First Nations Major Projects Coalition. (2019). The Role of Indigenous People in Major Project Development: Paths for Indigenous Participation in Electricity Infrastructure. Available from <https://static1.squarespace.com/static/5849b10dbe659445e02e6e55/t/5d279f23bfceb4000114c6ff/1562877756904/MPC+-+Final+v.11.pdf> [accessed June 11, 2020], pp. 33-34.

<sup>97</sup> Ibid, 29-30. Among the questions for further research are “How will the First Nations secure capital for their part of the transmission line joint-venture?” “How will the 16 First Nations work together in a corporate structure?” “Does this project require a government loan guarantee? Other government funding”

<sup>98</sup> First Nations Major Projects Coalition. (2019). The Role of Indigenous People in Major Project Development: Paths for Indigenous Participation in Electricity Infrastructure. Available from <https://static1.squarespace.com/static/5849b10dbe659445e02e6e55/t/5d279f23bfceb4000114c6ff/1562877756904/MPC+-+Final+v.11.pdf> [accessed June 11, 2020], pp. 40-41.

<sup>99</sup> The MPC discussion paper classifies the Grand Renewable Energy Park as an example of distribution, but the description describes a generation project that sells all of its energy to the provincial crown utility network.

<sup>100</sup> Ibid, pp. 46

Commission approved the transfer of distribution assets from Pacific Corp to Yakama Power, which allowed it to meet Bonneville Power Authority's Standards of Service.<sup>101</sup>

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<sup>101</sup> Ibid, pp. 44-45

## Attachment C: BC Hydro Phase 2 Review – Indigenous Engagement Summary

This memo was prepared by the BC First Nations Energy and Mining Council's (FNEMC) on behalf of the BC First Nations Leadership Council (FNLC). This memo summarizes FNEMC's understanding of the Indigenous engagement process to date related to the Phase 2 review of BC Hydro including timelines, techniques used, and themes emerging from the engagement process. The memo also summarizes suggestions for Indigenous inclusion from submissions by other stakeholders. This summary is being provided to the FNEMC and FNLC to help First Nations develop recommendations for next steps.

This summary has been prepared based on publicly available information as well as initial, anonymous engagement summary information provided by the government of British Columbia.

### Background

The Government of British Columbia launched a Comprehensive Review of BC Hydro in June 2018 with the stated purpose to contain rate increases and control costs to position BC Hydro for future success.<sup>102</sup>

### Phase 1

Phase 1 of the Comprehensive Review of BC Hydro<sup>1</sup> was completed in February 2019 and identified a number of measures it designed to maintain affordability and predictability of electricity rates over the long-term while ensuring BC Hydro continues to provide reliable, safe, and clean electricity. Aspects of the utility examined included:

- Affordability and rates
- Regulatory accounts
- Cost of energy acquisition
- Revenues
- Operating costs
- 10-year capital plan
- Payments to Government, including net income and dividends

Following the Phase 1 Review, BC Hydro submitted updated 5-year rates forecasts to the B.C. Utilities Commission (BCUC) that were approximately 55% lower than the cumulative increase for the same period under the previous government's 10-year rates plan and more than 40% lower than the 10.7% forecast rate of B.C inflation over the same period.<sup>1</sup> Key cost management decisions included limiting purchase of power, at high prices, from independent power producers while BC Hydro is in surplus and does not need additional supply as well as focusing on expanding financial and regulatory oversight of BC Hydro by the BCUC.

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<sup>102</sup> Comprehensive Review of BC Hydro: Phase 2 Interim Report, page 3. Available at [https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bc\\_hydro\\_cr\\_ph2\\_ir\\_mar06\\_2020\\_f.pdf](https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/electricity-alternative-energy/electricity/bc-hydro-review/bc_hydro_cr_ph2_ir_mar06_2020_f.pdf) [accessed June 10, 2020].

## Phase 2

The BC Government states its objective for the Phase 2 Review is to develop recommendations that will ultimately position BC Hydro for long-term success while meeting the provincial government's climate goals, providing affordable rates for BC residents, continuing reconciliation with Indigenous groups, and contributing to economic development.<sup>103</sup> The Phase 2 Review will be an expansive review examining shifts both within provincial and continental energy sectors, new technologies and the evolving needs of British Columbians. The review will focus on how BC Hydro can support:

- CleanBC and the Province's energy and economic development goals;
- Thriving in an evolving electricity sector;
- Leveraging strengths through participation in external markets; and
- Advancing reconciliation through new partnerships with Indigenous Nations.<sup>104</sup>

The Phase 2 process will support the development of BC Hydro's Integrated Resource Plan (IRP), which outlines how BC Hydro will provide safe, reliable, and affordable clean electricity to meet customers' need now and into the future. The IRP is expected to be filed in 2021.<sup>104</sup>

## Indigenous Engagement

The BC government passed legislation in November 2019 to implement the UN Declaration on the Rights of Indigenous Peoples, B.C. Declaration on the Rights of Indigenous Peoples Act, which recognizes the human rights of Indigenous peoples and provides a path forward on reconciliation that will build a stronger B.C.<sup>105</sup>

In spring 2020 the BC government began engagement on the Phase 2 BC Hydro Review Interim Report. Feedback was received from stakeholders, customer groups, and Indigenous Nations and organizations. The province has committed to continue to engage with stakeholders and seek more extensive feedback from Indigenous Nations and organizations.<sup>106</sup> The BC Government states its intent is to better understand opportunities and barriers on key areas of the Interim Report, as well as the potential impacts from an economic, social, and cultural perspective. The province has indicated that engagement feedback will inform the content of the final report including the development of final recommendations.<sup>107</sup>

## Provincial Indigenous Engagement to Date

Phase 2 of the Comprehensive Review of BC Hydro Interim Report included Indigenous Engagement activities occurring between February 2020 and May 2020. Engagement efforts documented by the BC Government included seven regional sessions, two webinars, meetings with 13 Indigenous nations and eight organizations as summarized in Appendix A. The province also indicated that written feedback was received from three Indigenous Nations.

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<sup>103</sup> Phase 2 Interim Report, page 5.

<sup>104</sup> Government of British Columbia 2020. Available at <https://www2.gov.bc.ca/gov/content/industry/electricity-alternative-energy/electricity/bc-hydro-review-phase-2> (accessed June 10, 2020).

<sup>105</sup> Phase 2 Interim Report, page 22.

<sup>106</sup> Phase 2 Interim Report, page 25.

<sup>107</sup> Phase 2 Interim Report, page 5.

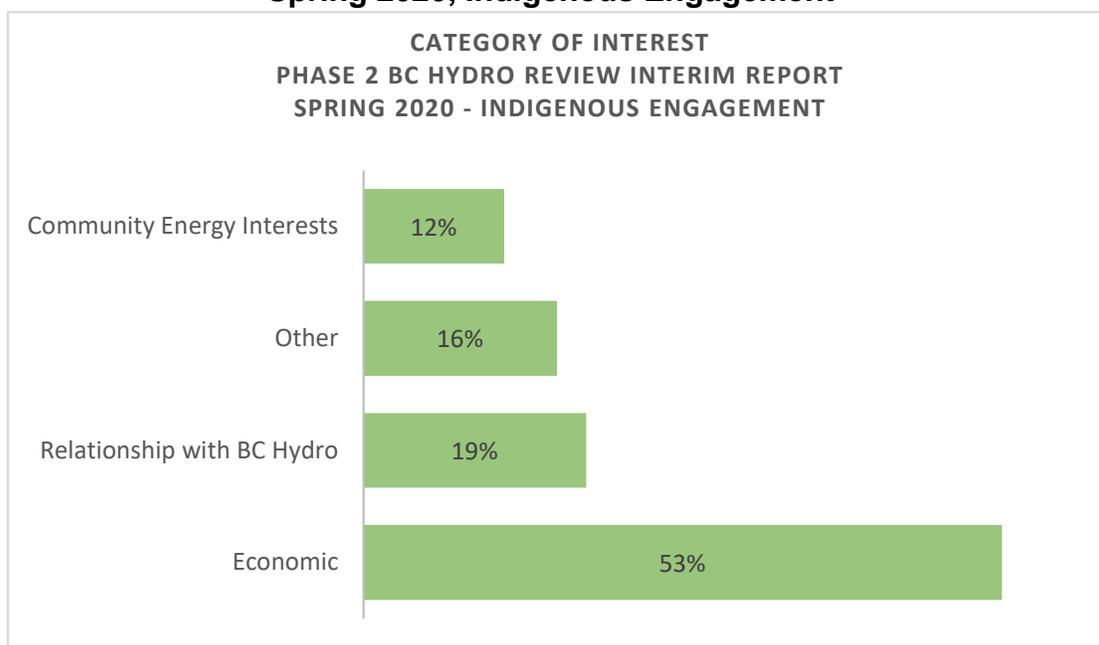
The provincial government shared records of feedback acquired through engagement efforts. Feedback was anonymous and therefore independent verification of the accuracy of the feedback is not possible.

### Key Themes

Figures C1 to C5 provide a summary of comments and perspectives gathered through the engagement process as reported by the provincial government. Figure C1 displays feedback by category inclusive of all comments, sub-themes will be examined in the figures to follow. Data categories and sub-themes were developed, defined, and populated by the province with records acquired through the engagement techniques referenced in Appendix A.

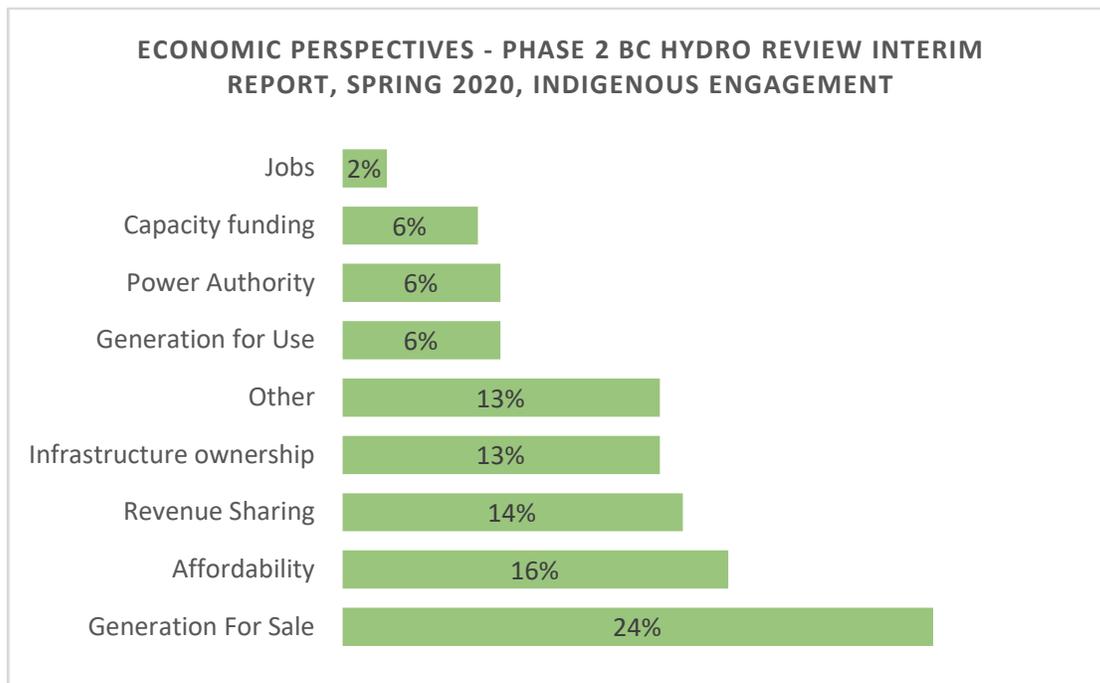
The most common themes include the strong desire for communities to move away from diesel energy shifting towards renewable, clean, and more reliable energy sources. Additionally, there was a great deal of interest in Indigenous communities having ownership opportunities in energy generation. Perspectives were also shared regarding the large amount of effort required to work towards reconciliation specifically in regard to how large infrastructure projects have been handled in the past. Several participant comments note that BC Hydro decision making needs to involve Indigenous consultation while also noting the desire to review electricity costs.

**Figure C1: Category of Interest - Phase 2 BC Hydro Review Interim Report, Spring 2020, Indigenous Engagement**



Feedback gathered through provincial Indigenous engagement sessions held in spring 2020 have been categorized by interests shared by participants. The largest amount of feedback was received on economic aspects of the report (53%), with relationship with BC Hydro (19%), other (16%), and community energy interests (12%) following well behind (Figure C1).

**Figure C2: Economic Perspectives - Phase 2 BC Hydro Review Interim Report, Spring 2020, Indigenous Engagement**



Generation for sale was the most prevalent theme (24%) within the economic perspectives shared (Figure C2). Several participants were interested in prioritizing First Nations in future electricity purchase agreements (EPAs) while others noted frustration with suspension of the BC Hydro Standing Offer Program and support for re-instating the program. Affordability (16%), revenue sharing (14%), and infrastructure ownership (13%) followed as themes identified within the economic feedback.

Affordability concerns focused on rates currently being too costly for First Nation communities and included suggestions for rate reduction including supporting optional or variable rates to shift demand to off peak periods to keep power bills lower.

Revenue sharing feedback noted that much of the infrastructure and resource development is located in the north, yet the benefits of these developments are realized in the south. This disparity needs to be recognized through revenue sharing.

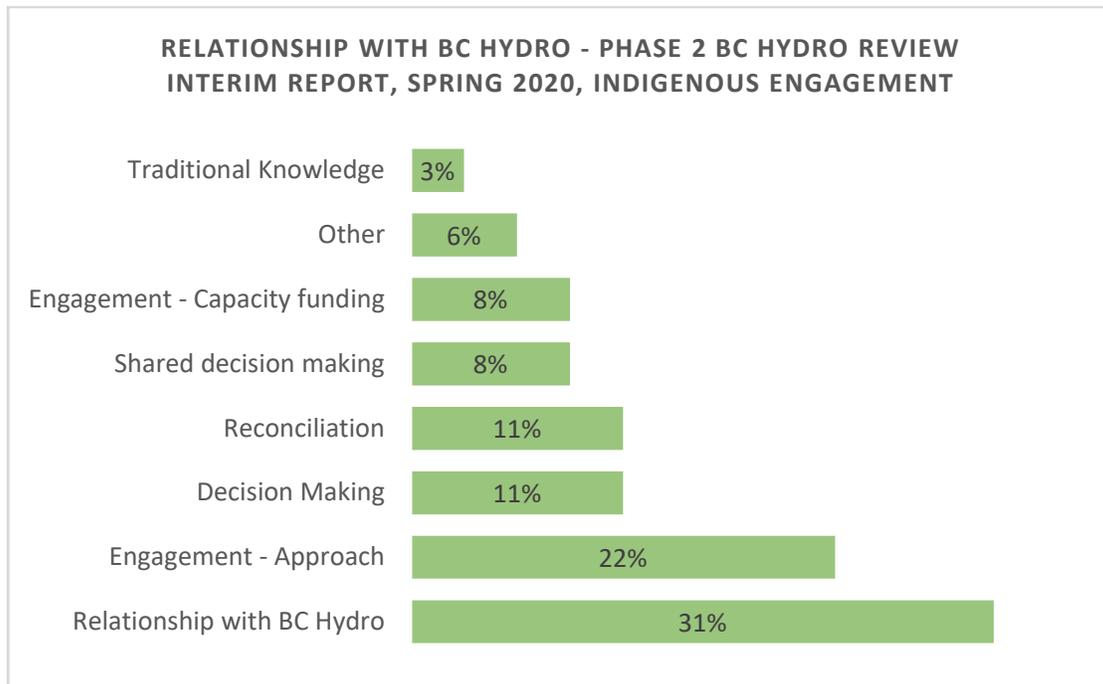
Infrastructure ownership was brought forward through discussions and a frequent perspective shared was that Nations need to not only be engaged when new infrastructure is created but also share in business opportunities via equity partnerships possibly through a First Nations Power Authority.

A general category termed Other (13%) captured a number of perspectives shared including reducing barriers for First Nations access to capital to support economic development and participation in the electricity sector, interest in renewable pump storage, and exploring creative new sustainable revenue streams including the potential to supply three phase power to communities to support economic development.

A number of other topics were brought forward through economic discussions with participants, these included generation for use (6%), power authority (6%), capacity funding (6%), jobs (2%)

or employment opportunities specifically associated with project located within Nation territories through preferred vendors and contracting opportunities.

**Figure C3: Relationship with BC Hydro - Phase 2 BC Hydro Review Interim Report, Spring 2020, Indigenous Engagement**



Participant feedback regarding the relationship with BC Hydro were further categorized by theme with relationship (building) with BC Hydro (31%) being the most notable theme discussed (Figure C3). Perspectives included how BC Hydro should be putting greater time and effort into forming stronger relationships with and greater inclusion of Indigenous businesses along with the desire to build capacity in Nations in the electricity sector.

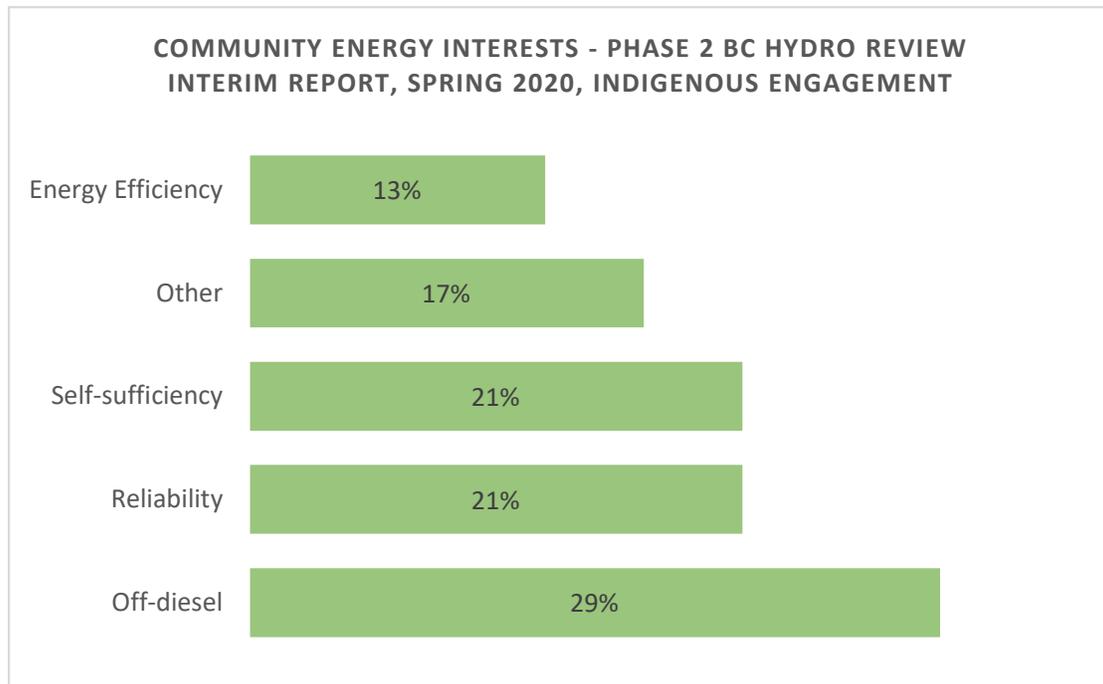
Engagement approach (22%) was also noted through participant feedback. Participants mentioned the need for hereditary recognition, additional effort put towards meaningful engagement including face-to-face meetings when protocols allow, and a need for engagement coordination between the province, BC Hydro, and the BCUC to avoid stakeholder fatigue and ensure meaningful stakeholder participation.

Decision making (11%) and reconciliation (11%) were also brought forward by participants. Decision making statements focused on how traditional knowledge could be included in agreements including ground disturbance and archaeology standards, the need for Nations to be engaged, involved, and play a role in decision making for future infrastructure developments, and how structured decision making (SDM) will be adjusted considering the UNDRIP commitments. Reconciliation comments centered on the lack of effort to address historic impacts which will be required to move forward, and how the disregard of the United Nation's call to suspend construction of Site C does not respect the province's commitment to implement UNDRIP.

A number of other topics were mentioned in relation to the relationship with BC Hydro, these included shared decision making (8%), engagement related to capacity funding (8%), a general theme of "other" (3%) which noted historic grievances and inquiries as to mechanisms for

communities within the FortisBC jurisdiction to provide feedback on concerns and perspectives, and traditional knowledge (3%).

**Figure C4: Community energy interests - Phase 2 BC Hydro Review Interim Report, Spring 2020, Indigenous Engagement**



Participant feedback regarding community energy interests was categorized by theme with the desire to switch off diesel power (29%) as the main concern noted. This adjustment was indicated as priority and that support would be required to achieve. (Figure C4).

Reliability (21%) was a concern noted by participants as communities experience frequent power outages. In addition to frequent outages, communities without a backup source of energy were left without a source for heating their homes once transmission lines had been constructed. The emergency response efforts by BC Hydro were felt to be inadequate in tackling these community outages.

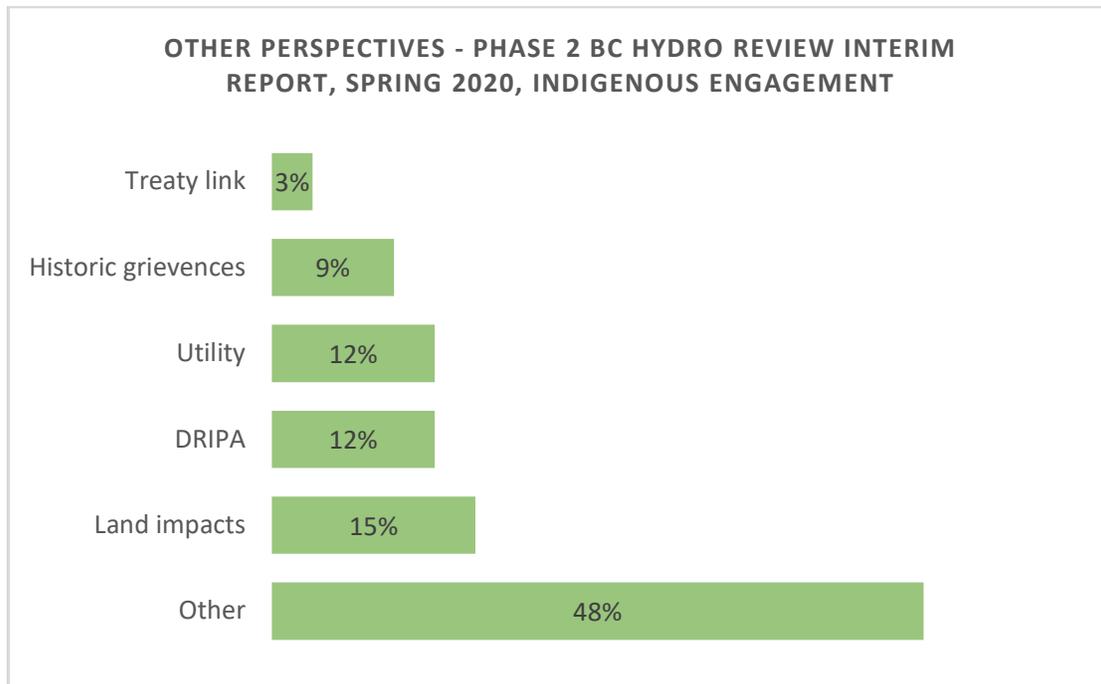
In addition to electricity provided by BC Hydro, communities have been looking at increasing their self-sufficiency (21%) by looking at alternative methods of energy. Alternate energy sources mentioned include biomass, solar powers, tidal power, small-scale generation, and microgrids. Communities have applied for the First Nations Clean Energy Business Fund (FNCEBF) in hopes to stimulate local economic development.

There were other perspectives (17%) heard, including suggestions that engagement discussions should be had at a community level to encourage deeper, more meaningful discussions that would not be possible at a regional level. It was questioned why the More Creek Project was going through an Environmental Assessment if BC Hydro was not involved, and that there was opposition to this project. On the public services side, it was mentioned that electric public transit would be of interest.

Feedback from participants noting energy efficiency (13%) was shared as communities have been told that their energy bills are high due to houses requiring energy efficient upgrades. As steps

have been taken to improve efficient upgrades, this rationale was not acceptable to engagement participants and they noted that a review of their smart metres has been requested.

**Figure C5: Other Perspectives - Phase 2 BC Hydro Review Interim Report, Spring 2020, Indigenous Engagement**



Participant feedback regarding multiple issues not clearly able to be categorized was kept as other (48%) (Figure C5). Much of this feedback was community focused, including the accommodation for legacy impacts, focusing on creating prosperous communities, advancing reconciliation and emergency situations requiring precedence instead of focusing on BC Hydro.

Concerns regarding land impacts (15%) were brought forward through discussions with participants. Comments around climate change implied changes to the environment were too short-sighted and did not consider future generations. It was also noted that there was a lack of consultation regarding ground disturbance resulting from transmission line construction. An inquiry on the rights of Indigenous utilities regarding the market was made, which was a common theme during discussions on becoming self-reliant in the energy market. The belief that large infrastructure projects are disproportionately made on reserve land was also noted.

Participants shared feedback with respect to the BC Declaration on the Rights of Indigenous Peoples Act (DRIPA) (12%) with respect to both cultural and heritage protocols as well as Indigenous water and economic rights. Participants noted that the updated framework gives new authority requiring consent from Indigenous Nations. Participants also requested further detail about the mechanics of the SDM.

Feedback regarding the utility itself (12%) included inquiries about the role of Indigenous communities within the market, and whether they would be considered producers as opposed to clients in the future. Participants were curious as to if there are Indigenous Commissioners currently within the utility industry. Participants questioned BC Hydro's rights to and potential reallocation of their shares within the market. Comments were noted describing the belief that BC Hydro maintains a monopoly in the market and therefore receives preferential access on projects.

Related to this, it was stated that BCUC should have the capacity to review BC Hydro where currently they handle their own review process.

Two other topics heard through participant feedback included historic grievances (9%) and treaty link (3%). Historic grievances were noted through feedback focusing on the need for communities to look forward instead of to the past, the reported lack of benefits from dams in the territory which they were not consulted on, and the impacts of these legacy infrastructure projects to communities.

### Submissions by Others

This section summarizes recommendations submitted to the provincial government by other industry stakeholders or customer groups for consideration in the Phase 2 Interim Report specifically regarding advancing reconciliation with Indigenous people.

BCLNGA recommendations include expanded compliance options which proposes offsets as a compliance tool to allow the BC LNG industry to continue to grow and engage other parts of the BC economy in climate solutions, such as Indigenous community fuel-switching or micro-grids. Future CleanBC calls for power will likely create opportunities for BC Hydro to promote micro-distributed/community energy projects which could facilitate commercial and fuel switching opportunities for Indigenous communities.<sup>108</sup>

BCSEA observes that the Interim Report does not reflect the intention of the previously expressed interest of BC Hydro's commitment to reducing diesel usage in remote Indigenous communities.<sup>109</sup>

Canadian Association of Petroleum Producers note that the electrification and grid connection of new upstream natural gas facilities would not only provide an opportunity to substantially reduce the upstream emission intensity but would also generate economic benefits for First Nations in terms of job creation during construction and operation of electricity-transmission infrastructure.<sup>110</sup>

BluEarth Renewables mentions that given the Province's commitment to UNDRIP and the BCUC's recommendations in the final report on the Indigenous Utilities Regulation Inquiry, they suggest that the Interim Report prematurely dismisses the opportunity for and impact on First Nation partnerships in Independent Power Projects.<sup>111</sup>

Clean Energy BC actively supports renewable energy projects that are owned, partnered, and operated by First Nations people. They feel that the process of reconciliation is emphasised by the low environmental impact of these projects, affirming Indigenous rights while strengthening the economic foundation for communities to prosper. They support the elimination of diesel reliance as a primary energy source in remote and end-of-line communities as a priority for BC Hydro. Clean Energy BC states that their members are prepared to support remote communities based on their unique needs. One suggestion includes the restructuring of the Standing Offer Program to create opportunity for self-determination and First Nations investing in the renewable energy sector. They also note that the elimination of the self-sufficiency provision in the Clean

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<sup>108</sup> BC LNG Alliance (BCLNGA) response to BC Hydro Phase 2 Interim Report.

<sup>109</sup> BC Sustainable Energy Association Comments on Comprehensive Review of BC Hydro: Phase 2 Interim Report.

<sup>110</sup> Canada's Oil & Natural Gas Producers response to BC Hydro Phase 2 Interim Report.

<sup>111</sup> BluEarth Renewables ("BluEarth") response to BC Hydro Phase 2 Interim Report.

Energy Act is another impediment to First Nation's ability to develop and manage their economies.<sup>112</sup>

Commercial Energy Consumer's supports the change of focus from the limited opportunity profiled for Indigenous Nations towards full participation in the BC economy. They recommend full participation that reaches beyond the meter and the hydroelectric system to portions of the economy not necessarily constrained by the electric system. This recommendation notes support for full participation in the economy focusing on buildings and the evolving opportunities in this sector. Their report also makes several references to how BC Hydro could address several social issues one of which is Indigenous issues. They support government responsibilities and policies related to Indigenous issues integrated into BC Hydro activities and see this as necessary, important, and should be continued. They note that BC Hydro is a crown corporation and as an agent of the government their expansion in many areas throughout the province has included encroachment on Indigenous lands, and in some cases with significant impact. As a result, they feel that it is appropriate for BC Hydro to integrate Indigenous issues into all its practises.<sup>113</sup> The Commercial Energy Consumer's also included their responses to the Phase 2 Interim Report questions. Specific to Indigenous issues, Commercial Energy Consumer's feel that IPPs for First Nations is a poor strategy; that cost-effective, safe, sustainable, disaster resilient buildings are better; and First Nations should have full participation in the BC economy, along with the economic financial capacities to participate and with the concept of joint purpose to give value to people and the planet.<sup>114</sup>

FortisBC notes that in the coming years BC Hydro will need to determine how best to advance Reconciliation and self-determination of Indigenous Nations. FortisBC suggests that efforts may include capacity building or more appropriately ensuring the absence of obstacles for First Nations communities by collaborating with them. BCUC's report on Indigenous Inquiry outlines strategies to achieve this of which FortisBC supports partnering with First Nation utilities to develop clean energy. As noted in the Indigenous Inquiry report, FortisBC supports the reconsideration of the currently suspended BC Hydro Standing Offer Program as using market rates or other flexible rate measures for electricity would reduce economic barriers for Indigenous groups. FortisBC also suggests reviewing retail access on BC Hydro's transmission and distribution systems, including the removal of obstacles for the use of the grid by third parties, including Indigenous utilities. FortisBC would also be supportive of measures that allow BC Hydro to realize the potential of renewable gases on Indigenous lands.<sup>115</sup>

Giga Metals Corporation submitted primary comments on the Phase 2 Interim Report. One of which recommends BC Hydro supports Indigenous communities engaging in reconciliation opportunities through electricity infrastructure investment. Specifically, Giga Metals supports the ability of Indigenous communities to participate in the ownership and operation of electrical generation and transmission facilities. In response to specific questions tabled within the Phase 2 Interim Report, Giga Metals recognizes that Indigenous communities are historically disadvantaged and believes BC Hydro is in a unique position to accomplish reconciliation and economic development goals through better environmental, social, and governance practices

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<sup>112</sup> Clean Energy Association of BC Response: BC Hydro Review – Phase 2 Review Interim Report.

<sup>113</sup> Response to BC Government Comprehensive Review of BC Hydro Phase 2 Interim Report Commercial Energy Consumers Comments on Key Concepts to Address, page 20.

<sup>114</sup> Response to BC Government Comprehensive Review of BC Hydro Phase 2 Interim Report Commercial Energy Consumers Comments on Key Concepts to Address, page 24.

<sup>115</sup> Diane Roy, Vice President, Regulatory Affairs, FortisBC response to the BC Hydro Phase 2 Interim Report.

when integrated into actions. Reliability and affordability of energy continue to be key issues for remote Indigenous and Non-Indigenous communities in British Columbia.<sup>116</sup>

Pembina Institute, Clean Energy Canada provided feedback on the Phase 2 Interim Report in which it notes that the provincial commitment to UNDRIP indicates a responsibility for removing undue barriers that prevent First Nations from participating equally in the energy market. They note that competitive clean energy options provided to remote Indigenous communities is critical to their self-determination. They suggest that the comprehensive engagement with Indigenous Nations should include independent power producer opportunities; re-opening the Standing Offer Program for Indigenous proponents; ownership of energy generation, resources and infrastructure; unrestricting Indigenous utilities' access to BC Hydro's transmission system; and encouraging development of economic partnerships between current utilities and First Nations. The Pembina Institute notes that the BC Utilities Commission's Indigenous Utility Regulation Inquiry Final Report includes positive recommendations however further engagement, supporting UNDRIP and economic reconciliation, is required.<sup>117</sup>

Siemen's Canada and Siemen's Energy Canada submitted recommendations that describe opportunities for Indigenous Nations and Communities. These include the suggestion that a shift away from carbon intense fossil fuel towards a greener electric or even mixed electric could be a solution for off-grid communities and potentially achieved through microgrids. They also recommend that BC Hydro could be a contributor in setting a gold standard for collaborative engagement. Playing the role as energy mediator, BC Hydro could work towards establishing a province wide collaborative engagement process from beginning to end.<sup>118</sup>

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<sup>116</sup> Gigametals Corporation response to BC Hydro Phase 2 Interim Report.

<sup>117</sup> Pembina Institute and Clean Energy Canada response to BC Hydro Phase 2 Interim Report.

<sup>118</sup> Siemens Canada Limited and Siemens Energy Canada Limited response to BC Hydro Phase 2 Interim Report.

## **APPENDIX A: Engagement Techniques**

Provincial records indicate a total of 60 Indigenous Nations were engaged with during the Phase 2 of the Comprehensive Review of BC Hydro through the representation of a total of 118 participants at in-person sessions, webinars, and written letters. Data shared by the province indicates that the following Nations participated in the process:

- Aq'am
- Bridge River Indian Band
- Coastal First Nations - Great Bear Initiative
- Coastal FNs
- Cowichan Tribes
- Dandzen Development Corporation
- First Nations Climate Initiative (FNCI)
- The First Nations Major Project Coalition (FNMPCC)
- Gingolx Village Government
- Gitanyow
- Gitga'at
- Gitksan Hereditary Chiefs
- Gitksan Treaty Society
- Haisla
- Iskut
- K'uL group
- Kanaka Bar
- Katzie
- Kelly Lake Métis
- Kispiox, Mid-Skeena Watershed
- Kitselas
- KNC
- K'omoks
- Kwantlen
- Kwikwetlem
- Lax Kwalaams
- Laxgalts'ap Village Government
- Leq'a:mel
- Lower Nicola Indian Band
- Mamalilika
- Mamalilikulla
- Metlakatla
- Musqueam
- Nisga'a
- Nisga'a Village of Gitwinksihlkw
- Nlaka'pamux Nation Tribal Council

- Nuu-Chah-Nulth Tribal Council
- Pacheedaht First Nation
- Quatsino
- Saulteau
- Skidegate Band Council
- Skii km lax ha
- Squamish
- St'at'imc Government Services
- Stswecem'c Xgat'tem
- Sunspear Microgrid
- Tahltan
- Takla Lake
- Tsilhqot'in National Government
- Tseil-Waututh
- Upper Nicola
- Upper Similkameen Indian Band
- Wei Wai Kai
- Wei Wai Kum
- Wet'suwet'en
- Williams Lake Indian Band
- ZN Advisory Services Inc.

**Table A1: Engagement Techniques<sup>119</sup>**

<b>Date</b>	<b>Engagement Technique</b>	<b>Comment Count</b>
<b>Regional Sessions</b>		
Spring 2020*	Terrace session	23
Spring 2020*	Kamloops session	19
March 20, 2020	Kelowna session	0
March 23, 2020	Prince George session	8
March 27, 2020	Nanaimo session	2
April 15, 2020 & March 31, 2020	Vancouver sessions	11
<b>Webinars</b>		
May 5, 2020	Webinar #1	12
Spring 2020*	Webinar #2	N/A
<b>Nation Meetings</b>		
Spring 2020*	Nation 1	5
March 31, 2020	Nation 2	13
Spring 2020*	Nation 3	4
March 26, 2020	Nation 4	9
March 17, 2020	Nation 5	6
April 2, 2020	Nation 6	12
April 7, 2020	Nation 7	6
March 18, 2020	Nation 8	9
March 31, 2020	Nation 9	9
May 5, 2020	Nation 10	8
March 13, 2020	Nation 11	3
Spring 2020*	Nation 12	2
March 26, 2020	Nation 13	2
<b>Organization Meetings</b>		
Spring 2020*	Organization 1	8
April 29, 2020	Organization 2	No record of event

<sup>119</sup> Government of British Columbia records of Indigenous Engagement.

Date	Engagement Technique	Comment Count
February 20, 2020 & April 3, 2020	Organization 3	13
April 30, 2020	Organization 4	No record of event
Spring 2020*	Organization 5	15
April 3, 2020	Organization 6	2
Spring 2020*	Organization 7	No record of event
April 30, 2020	Organization 8	4

\* Meeting date unavailable