



ORDER NUMBER
G-177-19

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

and

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

BEFORE:
D. M. Morton, Commissioner

on August 1, 2019

ORDER

WHEREAS:

- A. Section 1 of the *Utilities Commission Act* (UCA) defines a “public utility”, in part, as “a person, or the person’s lessee ... who owns or operates in British Columbia, equipment or facilities for the production, generation, storage, transmission, sale, delivery or provision of electricity ... or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation”;
- B. Section 1 of the UCA states that a “public utility” does not include “a municipality or regional district in respect of services provided by the municipality or regional district within its own boundaries” thus offering an exclusion from regulation to these entities under certain circumstances;
- C. In addition to directly owning and operating energy systems, there are several ownership and operational structures in which a municipality or regional district can participate in providing energy services, including: establishing a municipally-owned corporation, entering partnering or joint venture agreements, a franchise agreement or outsourcing operations of a fully owned municipal energy system to a third party;
- D. The ownership and operational structures now available to a municipality or regional district to provide energy services do not appear to be specifically addressed in the UCA and, as such, there appears to be ambiguity regarding whether these ownership and operational structures are “public utilities” or the exclusion to these ownership and operational structures continue, pursuant to the definition in section 1 of the UCA;
- E. In its role of administering the UCA, the British Columbia Utilities Commission (BCUC) is responsible for making findings with respect to the definition of a “public utility” and the applicability of, or exclusion to, regulation under the UCA;
- F. Recent BCUC proceedings including: Sustainable Services Ltd. Geothermal Energy System Status as a Public Utility under the UCA, Creative Energy Vancouver Platforms Inc. Reconsideration and Variance of Order G-88-16, and the Greater Vancouver Sewerage and Drainage District Application for an Exemption from Part 3

of the UCA, have brought forward issues and complaints related to matters of interpretation and paramountcy between the UCA and the *Community Charter* or *Vancouver Charter*;

- G. These proceedings have explored a range of issues related to ownership structures and operational arrangements now available to municipalities or regional districts including: the point at which “services” cease to be “provided by the municipality or regional district”; ownership structure of energy systems entities; the ability of a municipality to enter into a franchise agreement and levy franchise fees without prior BCUC approval subject to the public interest test pursuant to section 45(8) of the UCA; and the regulatory status of entities that own and operate equipment beyond municipal boundaries and whether they fall under the jurisdiction of the UCA or the *Community Charter*; and
- H. Given that the UCA contains an exclusion of a municipal or regional district energy system that is provided by the municipality or regional district within its own boundaries from the definition of a public utility under certain circumstances, and thereby regulation by the BCUC, the BCUC considers the establishment of an inquiry to review the municipal and regional district exclusion from the definition of public utility in section 1 of the UCA (An Inquiry into the Regulation of Municipal Energy Utilities) and a regulatory timetable are warranted.

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

1. An inquiry to review certain aspects of the municipal and regional district exclusion from the definition of public utility in section 1 of the UCA is established.
2. A regulatory timetable is established for the Inquiry into the Regulation of Municipal Energy Utilities, as set out in Appendix A to this order.
3. Interveners who wish to participate in the Inquiry into the Regulation of Municipal Energy Utilities are to register with the BCUC by completing a [Request to Intervene Form](#), by the date established in the regulatory timetable attached as Appendix A to this order and in accordance with the BCUC’s Rules of Practice and Procedure.
4. The BCUC requests registered interveners provide written submissions to address the following:
 - 1) Whether a utility affiliated, in some way, with a municipality or regional district is considered a public utility as defined by section 1 of the UCA. Forms of affiliation include, but may not be limited to:
 - a. The utility’s assets are owned by a corporation of which the municipality or regional district is a shareholder or the sole shareholder;
 - b. The utility’s assets are owned by a partnership of which the municipality or regional district is a partner, a limited partner or a general partner;
 - c. The utility’s assets are owned by a third party, but the municipality or regional district has granted a franchise agreement, a licence and/or has enacted enabling bylaws to facilitate the construction and/or operation of the utility;
 - d. The utilities’ assets are owned by a municipality or regional district but are operated by a third party; and
 - e. The municipality or regional district, by agreement with the utility owner, sets or approves the setting of rates for the utility.

5. Members of the public are invited to provide letters of comment for the BCUC's consideration, by the date established in the regulatory timetable attached as Appendix A to this order. Letters of comment must be in the [Letter of Comment Form](#) and be submitted on the BCUC's website, or submitted by email to commission.secretary@bcuc.com, mail, courier or personal delivery to the British Columbia Utilities Commission, 4th Floor, 900 Howe Street, Vancouver, BC, V6Z 2N3.

DATED at the City of Vancouver, in the Province of British Columbia, this 1st day of August 2019.

BY ORDER

Original signed by:

D. M. Morton
Commissioner

Attachment

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

REGULATORY TIMETABLE

Action	Date (2019)
Intervener registration	Thursday, September 12
Intervener written submissions and letters of comment	Thursday, October 24
Further process	To be determined