COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Powell River Energy Inc. v. British Columbia (Utilities Commission),* 2026 BCCA 93

Date: 20260306
Docket: CA49825

Between:

Powell River Energy Inc.

Appellant

And

British Columbia Utilities Commission

Respondent

Before: The Honourable Justice Riley
The Honourable Justice Edelmann
The Honourable Justice Mayer

On appeal from: A decision of the British Columbia Utilities Commission, dated March 27, 2024 (Order Number G-91-24).

Counsel for the Appellant:	D.W. Bursey S. Chenatte
Counsel for the Respondent:	L. Bussoli
Place and Date of Hearing:	Vancouver, British Columbia December 2, 2025
Place and Date of Judgment:	Vancouver, British Columbia March 6, 2026

Written Reasons by:
The Honourable Justice Riley

Concurred in by:
The Honourable Justice Edelmann
The Honourable Justice Mayer

Summary:

The appellant, Powell River Energy Inc. ("PREI"), the owner and operator of two hydroelectric generation and transmission stations in or near Powell River, appeals from a decision of the British Columbia Utilities Commission ("Utilities Commission" or "Commission") holding that it is a "public utility" subject to regulation under the Utilities Commission Act, R.S.B.C. 1996, c. 473 [UCA]. PREI produces and distributes electricity that is supplied to one or more corporate subsidiaries, for sale in the export market. The company argues on appeal that the Utilities Commission erred in its interpretation of the term "public utility". HELD: Appeal dismissed. On a correct interpretation of the UCA, PREI fits within the broad definition of a "public utility", and its supply of electricity to one or more corporate subsidiaries for sale in the export market does not fit within the statutory exception for self-supply.

Reasons for Judgment of the Honourable Justice Riley:

Introduction

[1] The appellant, Powell River Energy Inc. ("PREI"), owns and operates two hydroelectric generation and transmission stations on Powell Lake and Lois Lake, in Powell River, British Columbia. PREI seeks to overturn a decision of the British Columbia Utilities Commission (the "Utilities Commission" or "Commission") holding that the company is a "public utility" as defined in s. 1(1) of the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 [*UCA*]. The effect of the decision is to confirm that PREI is subject to regulation by the Utilities Commission as provided for under the *UCA*.

[2] On appeal, PREI argues that the Utilities Commission erred in law in its interpretation of the statutory definition of "public utility". PREI says that, on a correct interpretation, it is not a "public utility" because it produces electricity solely for its own corporate affiliates, who then sell the electricity outside of British Columbia. Accordingly, PREI submits that it fits within the statutory exception for a person who supplies a regulated commodity or service only to "the person or the person's employees or tenants, if the service or commodity is not resold to or used by others".

[3] For the reasons that follow, I would dismiss the appeal. I do not accept PREI's submission, an essential premise of which is that a wholly owned subsidiary company is not a separate "person" within the meaning of the exception provided for in subparagraph (d) of the statutory definition of "public utility". It is commonly

understood that a wholly owned subsidiary corporation is a distinct legal entity from its parent company. Principles of statutory interpretation do not suggest or require a different approach to the status of a corporate subsidiary under the *UCA*.

Background

[4] In 2001, PREI acquired the two hydroelectric generation and transmission stations. These facilities were originally used to supply electricity to the Catalyst pulp and paper mill in Powell River, as a result of which PREI was granted a ministerial order exempting its sale of electricity to Catalyst, and its sale of excess electricity on the wholesale market, from various regulatory requirements under the *UCA*.

[5] In 2021, Catalyst closed its Powell River mill. PREI's ministerial exemption was subsequently rescinded.

[6] At some point thereafter, PREI rearranged its affairs so as to supply all of the electricity from the two hydro facilities to wholly owned subsidiary companies, who then sell the electricity to customers in the United States. In correspondence with the Utilities Commission, PREI took the position that under this arrangement the company did not fit within the statutory definition of a "public utility" under s. 1(1) of the *UCA*.

[7] On 6 December 2023, a Utilities Commission panel issued an order stating that PREI was a "public utility" as defined in s. 1(1), subject to regulation by the Commission.

[8] PREI subsequently applied to the Utilities Commission for a reconsideration of its decision. The Commission convened a public hearing in writing and received submissions from PREI and several interveners.

[9] On 27 March 2024, a Utilities Commission reconsideration panel (the "Panel") issued a written decision dismissing PREI's reconsideration application, under s. 99 of the *UCA*.

[10] PREI applied before a single justice of this Court for leave to appeal the reconsideration decision under s. 101 of the *UCA*. The Justice granted leave to appeal.

Relevant Statutory Provisions

[11] The focal point of both the Utilities Commission's reconsideration decision and the appeal is the definition of "public utility" in s. 1(1) of the *UCA*, the relevant parts of which read as follows:

> **"public utility"** means a person, or the person's lessee, trustee, receiver or liquidator, who owns or operates in British Columbia, equipment or facilities for
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> (a) the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, steam or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation, or
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> …
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> but does not include
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> …
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> d) a person not otherwise a public utility who provides the service or commodity only to the person or the person's employees or tenants, if the service or commodity is not resold to or used by others,
>
> …

The Panel's Reasons

[12] In its written submission to the Panel, PREI argued that it was not a "public utility" because it fell within the exclusion provided for in subparagraph (d) of the statutory definition. As I understand PREI's position, its success rested on two planks, both of which involved a particular interpretation of subparagraph (d).

[13] First, PREI argued that, as a matter of statutory interpretation, subparagraph (d) effectively creates two exclusions. The first exclusion is for a "person" who supplies a regulated service or commodity to "the person". The second is for a "person" who supplies a regulated service or commodity to "the person's employees or tenants". The crux of this interpretation is that the first "or" in the phrase "to the person or the person's employees or tenants" [emphasis added] must be interpreted

disjunctively. PREI's position was that under the first of these two exclusions, a "person" can include not just a corporation, but also the corporation's wholly owned subsidiaries. Thus, PREI is a "person" providing electricity to its wholly owned subsidiaries, all of which together constitute a single "person" caught by the exclusion.

[14] Second, PREI argued that for jurisdictional and constitutional reasons, the final phrase in subparagraph (d) only applies to a regulated service or commodity that is "resold to or used by others" within British Columbia. PREI submitted that its operation does not contemplate any resale or use by others within the meaning of subparagraph (d), because all of its electricity will be sold in the export market, such that its wholly owned subsidiary would not be re-selling or making electricity available for use by others, within British Columbia.

[15] The Panel did not accept the first plank of PREI's position. Specifically, the Panel did not agree that subparagraph (d) effectively created two separate exclusions. In the Panel's view, the phrase "to the person or the person's employees or tenants" was a single exception. In the Panel's view, the first "or" in the phrase "to the person or the person's employees or tenants" [emphasis added] is conjunctive, in the sense that it applies to situations in which the regulated service or commodity is provided to both the person and the person's employees or tenants. On this interpretation, the Panel found that PREI's distribution of electricity through subsidiary companies does not fit within the exception provided for in subparagraph (d), because PREI does not provide electricity to itself and its employees or tenants. The Panel also reasoned that in providing electricity to its corporate subsidiary, PREI is providing electricity to "a separate legal person" such that the exclusion in subparagraph (d) did not apply.

[16] The Panel dealt with the second plank of PREI's position less directly, by noting in its review of the background that the original panel found the exclusion did not apply because, in providing electricity to multiple subsidiaries, who export it for end use customers, PREI provides electricity to "others" as contemplated in

subparagraph (d). I interpret this as an implicit rejection of PREI's contention that resale or distribution to users outside British Columbia is, for jurisdictional or constitutional reasons, not caught by the phrase "resold to or used by others" in subparagraph (d).

The Fresh Evidence Application

[17] PREI seeks to adduce fresh evidence, demonstrating that after the Panel decision, it was part of a corporate reorganization which "simplified the relevant corporate structure". It is unnecessary to review the details, apart from noting that both before and after the corporate reorganization, PREI continues to own and operate the two hydro facilities and continues to distribute electricity through at least one wholly owned subsidiary company, for ultimate sale in the export market.

[18] I would dismiss the fresh evidence application. The corporate reorganization does not alter the key and determinative features of PREI's operations, namely that the electricity PREI produces at its hydro facilities is: (i) provided to at least one corporate affiliate, and (ii) destined for sale to others. As I will explain below, the fact that the "others" are consumers in the export market is of no moment for the purposes of the definition of "public utility" in the *UCA*. Hence, the fresh evidence pertaining to the corporate reorganization cannot "be expected to have affected the result" as required under the fourth element of the test set out in *Palmer v. The Queen*, [1980] 1 S.C.R. 759.

Analysis

Standard of Review

[19] PREI's appeal is taken under s. 101 of the *UCA*. In the language of *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 36, this is a "statutory appeal mechanism from an administrative decision to a court". This means the Panel decision is subject to appellate oversight based on conventional standards of appellate review.

[20] I agree with the parties that PREI's appeal raises a question of statutory interpretation for which the standard of review is correctness. The question is whether the Panel was correct in determining that, on a proper interpretation of the statutory definition in s. 1(1), PREI is a "public utility" whose electricity production and distribution facilities are subject to regulation under the *UCA*.

Principles of Statutory Interpretation

[21] The words of the statute "are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of [the legislature]": *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21, citing E.A. Driedger, *Construction of Statutes* (2nd ed. 1983) at 87. The interpretation of a particular statutory provision "cannot be founded on the wording of the legislation alone": *Rizzo* at para. 21. The Court is "obliged to consider the total context of the provisions to be interpreted", which requires an examination of "the purpose and scheme of the legislation, the legislative intent and the relevant legal norms": *ATCO Gas & Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4 at para. 48.

Interpreting the Relevant Provisions of the *UCA*

[22] The overall purpose of public utilities regulation is to "protect the public from monopolistic behaviour and the consequent inelasticity of demand while ensuring the continued quality of an essential service": *ATCO* at para. 3. This Court has described the primary responsibility of the Utilities Commission under the *UCA* as "the supervision of British Columbia's natural gas and electricity utilities 'to achieve a balance in the public interest between monopoly, where monopoly is accepted as necessary, and protection to the consumer provided by competition', subject to the government's direction on energy policy": *Kwikwetlem First Nation v. British Columbia (Utilities Commission)*, 2009 BCCA 68 at para. 9, citing *British Columbia Hydro & Power Authority v. British Columbia Utilities Commission* (1996), 20 B.C.L.R. (3d) 106 (C.A.) at para. 46. The core mandate of the regulator under public

utilities legislation is to set “just and reasonable rates” and protect “the integrity and dependability of the supply system”: *ATCO* at para. 7.

[23] To discharge this mandate, the *UCA* gives the Utilities Commission the jurisdiction to regulate public utilities in British Columbia. The Commission’s regulatory powers and responsibilities include general supervision of public utilities (s. 23) and overseeing: improved service (s. 25), extended service (s. 30), discontinuance of service (s. 41), long-term resource plans (s. 44.1), expenditure schedules (s. 44.2), capitalization (ss. 51–52); and the setting of just and reasonable rates (ss. 58–61).

[24] The definition of “public utility” in s. 1(1) of the *UCA* is therefore a key element of the regulatory scheme. It delineates what entities are subject to the Utilities Commission’s regulatory supervision and oversight. In terms of the overall structure of the *UCA*, the definition is key to the operation of Part 3 (which provides for the Utilities Commission’s regulation of “public utilities”), and Part 6 (which sets out the Commission’s jurisdiction and the manner in which it conducts hearings and makes orders for the regulation of “public utilities”).

[25] Turning to the text of the term “public utility” in s. 1(1), its opening words and first two subparagraphs ((a) and (b)) give the term a broad and inclusive scope, which is then narrowed by specific exceptions as set out in the last five subparagraphs ((c) to (g)).

[26] Boiled down to its key elements, the opening phrase refers to a “person”, or a representative of that person, who “owns or operates”, in British Columbia, “equipment or facilities” as described in subparagraphs (a) or (b). This case is concerned with subparagraph (a), which describes equipment and facilities for the production and distribution of various forms of energy, including electricity.

[27] The specific exception in issue in this case is the one described in subparagraph (d), which can be loosely described as a form of self-supply exclusion. In the context of electricity production and distribution, it excludes a “person” who

provides electricity “only to the person or the person’s employees or tenants”, if the electricity “is not resold to or used by others”.

[28] PREI’s position on the interpretation of subparagraph (d), advanced before the Utilities Commission and maintained on appeal, rests on two interpretive planks. The first plank pertains to the interpretation of the phrase “who provides the [electricity] only to the person or the person’s employees or tenants”. The second plank is concerned with the phrase “if the [electricity] is not resold to or used by others”. For PREI’s interpretation to prevail, it must be correct in its interpretation of both of these components of subparagraph (d).

Providing Electricity “Only to the Person or the Person’s Employees or Tenants”

[29] PREI’s argument on the first phrase is that the words “only to the person or the person’s employees or tenants” [emphasis added] effectively create two exclusions, one for a person who provides electricity only to the person, and the other for a person who provides electricity to the person’s employees or tenants. Thus, on PREI’s interpretation, the word “or” is properly interpreted to be disjunctive. PREI says its distribution of electricity is caught by the phrase “only to the person” which, in PREI’s submission treats PREI and its wholly owned subsidiary corporations as a single person.

[30] The Panel rejected PREI’s submission for several reasons. One reason was that, in the Panel’s view, the phrase “only to the person or the person’s employees or tenants” creates a single exception, not two separate exceptions as submitted by PREI. To reach this conclusion the Panel interpreted the word “or” to be conjunctive. As I understand the Panel’s reasoning, the word “or” in the particular context of this statutory exception to the definition of a “public utility”, is to be read as synonymous with the word “and”. The Panel gave various examples in which the statutory self-supply exception would apply to both a “person” and the person’s “employees or tenants”.

[31] In my view, the Panel erred in interpreting the term “or” to be conjunctive as opposed to disjunctive, when in fact the Panel’s reasoning was that it ought to be read as inclusive as opposed to exclusive. On my reading of the phrase “only to the person or the person’s employees or tenants”, in light of its purpose and the context in which it is meant to operate, the underlined word “or” is properly interpreted to be both disjunctive and inclusive. Read this way, it would apply to all of the following categories of “persons”: (i) a person who supplies electricity to oneself, (ii) a person who supplies electricity to one’s employees or tenants, and (iii) a person who supplies electricity to oneself and also to one’s employees or tenants. On this interpretation, subparagraph (d) effectively creates a self-supply exception that covers supply either to oneself, or to one’s employees or tenants, or to both oneself and one’s employees or tenants.

[32] However, this was not the Panel’s only reason for rejecting PREI’s submission on the interpretation of the phrase “only to the person or the person’s employees or tenants”. Neither the original Utilities Commission panel, nor the review Panel accepted PREI’s argument that subparagraph (d) had to be interpreted to include both a corporation and its wholly owned subsidiary as a single “person”.

[33] The Panel was correct in concluding that a corporation and its wholly owned subsidiaries are not properly characterized as a single “person” in subparagraph (d). There is nothing in the text of the statute, interpreted in light of its context and purpose, that would suggest a departure from the well recognized principle that “a parent company and a subsidiary company, even a 100 percent subsidiary company, are distinct legal entities”: *Ebbw Vale Urban District Council v. South Wales Traffic Area Licensing Authority*, [1951] 2 K.B. 366 at 370 (C.A.), cited with approval in *The Queen v. Waverley Construction Co. Ltd.* (1972), 30 D.L.R. (3d) 224 at 231 (N.S.C.A). This concept of “corporate separateness” is not a “mere legal fiction”, but rather a “bedrock principle” of corporate law: *Yaigauje v. Chevron Corporation*, 2018 ONCA 472 at para. 57, applying *Salomon v. Salomon & Co.*, [1897] A.C. 22 (U.K.H.L.). Thus, the Panel correctly determined that in supplying electricity to its subsidiaries, PREI did not fall within the exclusion for a “person”

providing electricity “only to the person or the person’s employees or tenants” as contemplated in subparagraph (d).

[34] PREI emphasizes that s. 29 of the *Interpretation Act*, R.S.B.C. 1996, c. 238, defines “person” broadly and includes “corporation”. However, this is not inconsistent with, and in fact reinforces the point made above, which is that each corporation is a separate person. I agree with the respondent that, although the *Interpretation Act* definition of a “person” includes a corporation, it does not include multiple distinct, affiliated corporate entities as a single person.

[35] At a higher level, PREI says its interpretation is necessary for the exclusion in subparagraph (d) to serve any purpose at all, at least in the context of a corporation that supplies electricity only to itself. As I understand it, the logic behind this position can be summarized as follows:

- A “person” who owns or operates equipment used to provide electricity to a single corporation would only be caught by subparagraph (a) of the definition where there is “compensation”.

- Where the “person” and the “corporation” are one and the same, there can be no “compensation”, since, by definition, a single legal person or legal entity cannot compensate itself.

- Since a single corporation that owns or operates facilities or equipment to provide electricity to itself would not qualify as a “public utility” under subparagraph (a), it would be unnecessary to resort to the self-supply exclusion in subparagraph (d).

- This interpretation should be avoided, since it would leave subparagraph (d) with no purpose, contrary to the presumption that the legislature does not speak in vain by crafting pointless provisions.

[36] I would not give effect to such an elaborately constructed argument to defeat what I consider to be the plain and ordinary meaning of the statutory text, taken in context, in a manner that is consistent with the object and purpose of the statute.

[37] A more straightforward interpretation is the one proposed by the respondent, namely that under subparagraph (a), any person who owns electricity facilities or equipment to provide electricity to the public, or a corporation, and who carries on business for compensation, will be caught by the definition unless the person's activities fall within one of the specific statutory exceptions found in subparagraphs (c) through (g). This interpretation supports the overall purpose of the *UCA*, and is consistent with the structure of the definition, which describes the regulated subject matter in broad and inclusive terms, subject to a number of specific exceptions.

[38] PREI argues that the statutory exclusion in subparagraph (d) must be interpreted to apply to it, because a corporation's production of electricity which is then supplied solely to a corporate affiliate is not the kind of arrangement that engages the purposes of the *UCA*, which is fundamentally concerned with the protection of consumers through the setting of just and reasonable rates. I do not find this argument convincing, for two reasons.

[39] First, this submission rests on an unduly narrow understanding of the Utilities Commission's mandate, which is to set just and reasonable rates and protect the integrity and dependability of supply systems. PREI's operation is caught by the broad definition of "public utility" and does not fall within the narrow exclusion for self-supply set out in subsection (d) of the definition. It is an entity whose production and distribution of electricity engages the mandate of the Utilities Commission. The fact that PREI does not sell its electricity to the public in British Columbia does not mean that its manner of operation has no impact, or potential impact, on the integrity and dependability of the electricity supply within British Columbia.

[40] Second, the fact that PREI is found to be a "public utility" subject to regulation under the *UCA* does not determine the scope or extent of regulation that may be required in view of its operations. Once an entity is determined to be a "public utility"

which is subject to regulation, the Utilities Commission will determine the degree of oversight that is required. Under s. 22 of the *UCA*, the Minister responsible for administering the *Hydro and Power Authority Act*, R.S.B.C. 1996, c. 212, has the power to exempt a "public utility" from any or all of the provisions in Part 3 of the *UCA*. And under s. 88 of the *UCA*, the Utilities Commission has the power to limit the application of, or exempt any person from any order, rule, or regulation made under the statute.

[41] For all of these reasons, I reject PREI's interpretation of the phrase "person … who provides [electricity] only to the person or the person's employees or tenants". Although I would not agree with all of the Utilities Commission's reasoning on the interpretation of this phrase, I find that the Commission reached the correct result in concluding that it did not apply to PREI, because PREI's supply of electricity to a corporate affiliate constitutes supply to a separate person. For this reason alone, PREI does not fit into the statutory exception in subparagraph (d) and its appeal must fail.

Electricity "Not Resold to or Used by Others"

[42] To prevail on the appeal, PREI would also have to be correct in its interpretation of the phrase "if the service or commodity is not resold to or used by others" in subparagraph (d) of the statutory definition of "public utility". As I understand PREI's position, it says that for jurisdictional or constitutional reasons, the phrase "resold to or used by others" must be interpreted to mean "resold to or used by others within British Columbia". PREI says this limitation does not apply to its operation, because its electricity is destined for sale outside British Columbia, and it is therefore not "resold to or used by others" within the meaning of the statute. PREI says its supply of electricity to consumers outside British Columbia is outside of the Utilities Commission's mandate to oversee the setting of "just and reasonable rates" for British Columbia consumers.

[43] There is good reason to question PREI's position on this issue, once again on the basis that it rests on an unduly narrow understanding of the Utilities

Commission's mandate. In particular, while oversight of rate-setting with respect to electricity destined for the export market would be unnecessary for the protection of British Columbia consumers, PREI's production of electricity and use of electrical infrastructure in British Columbia may well engage concerns about the integrity and dependability of the electricity supply within the province. However, having rejected the first plank of PREI's statutory interpretation argument, I need not reach a definitive conclusion on this point.

Conclusion and Disposition

[44] I conclude that the Utilities Commission reached the correct result in finding that PREI falls within the statutory definition of the term "public utility" in the *UCA*. I would dismiss the application to adduce fresh evidence and dismiss the appeal.

"The Honourable Justice Riley"

I AGREE:

"The Honourable Justice Edelmann"

I AGREE:

"The Honourable Justice Mayer"