COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Richmond (City) v. British Columbia (Utilities Commission),* 2026 BCCA 139

Date: 20260407
Dockets: CA50129; CA50130; CA50135; CA50136

Docket: CA50129

Between:

City of Richmond

Appellant

And

British Columbia Utilities Commission, FortisBC Energy Inc., FortisBC Inc., FortisBC Alternative Energy Services Inc., and British Columbia Hydro and Power Authority

Respondents

- and -

Docket: CA50130

Between:

Lulu Island Energy Company Ltd.

Appellant

And

British Columbia Utilities Commission, FortisBC Energy Inc., FortisBC Inc., FortisBC Alternative Energy Services Inc., and British Columbia Hydro and Power Authority

Respondents

- and -

Docket: CA50135

Between:

City of North Vancouver

Appellant

And

British Columbia Utilities Commission

Respondent

- and -

Docket: CA50136

Between:

Lonsdale Energy Corporation

Appellant

And

British Columbia Utilities Commission

Respondent

Before: The Honourable Madam Justice DeWitt-Van Oosten
The Honourable Justice Iyer
The Honourable Justice Brundrett

On appeal from: A decision of the British Columbia Utilities Commission, dated August 12, 2024 (Order Number G-214-24).

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Place and Date of Hearing:	Vancouver, British Columbia February 12–13, 2026
Place and Date of Judgment:	Vancouver, British Columbia April 7, 2026

Written Reasons by:
The Honourable Madam Justice DeWitt-Van Oosten

Concurred in by:
The Honourable Justice Iyer
The Honourable Justice Brundrett

Summary:

After an inquiry, the British Columbia Utilities Commission decided that local government corporations that are wholly owned and wholly operated by municipalities and regional districts are public utilities within the meaning of the Utilities Commission Act. However, the Commission went on to recommend to government that these types of corporations be exempted from application of the Act, subject to an annual reporting requirement. The appellant municipalities appealed the resultant order, arguing the Commission misinterpreted the meaning of the term "municipality" under its governing legislation. From the appellants' perspective, the reference to "municipality" in the definition of a public utility under s. 1(1) of the Utilities Commission Act includes wholly owned and wholly operated energy corporations and these entities therefore fall outside the Commission's regulatory authority. The appellants also argue the inquiry process leading to the Commission's order was procedurally unfair.

HELD: Appeals dismissed. Applying the modern approach to statutory interpretation, the Commission correctly interpreted the scope of the municipal exclusion from the definition of a public utility under the Utilities Commission Act. The meaning of the term "municipality" is precise and unequivocal when read in conjunction with the Interpretation Act, and the Commission's narrow construction accords with the context, objects, and purpose of the Utilities Commission Act. The appellants' argument about procedural unfairness also fails. They received ample opportunities to provide input on the questions stated at the inquiry, including the framework to be applied in assessing whether a municipality's local government corporation qualifies for an exemption from application of the Utilities Commission Act.

Reasons for Judgment of the Honourable Madam Justice DeWitt-Van Oosten:

Introduction

[1] These four appeals were heard together and raise two issues. First, whether a local government corporation (an "LGC") that is wholly owned and wholly operated by a municipality is a public utility within the meaning of the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 [*UCA*]. Second, whether an inquiry conducted by the British Columbia Utilities Commission (the "Commission") to decide that question was procedurally unfair.

[2] The appellants, City of Richmond, Lulu Island Energy Company Ltd., City of North Vancouver, and Lonsdale Energy Corporation, say that a wholly owned and wholly operated local government corporation is excluded from the definition of a public utility. They argue there is no real difference between a municipality and its

wholly owned and wholly operated LGCs. Accordingly, these entities should be treated as one under the *UCA* and equally excluded from the statutory definition of a public utility. The respondents, FortisBC Energy Inc., FortisBC Inc., and FortisBC Alternative Energy Services Inc., (collectively, "FortisBC"), and British Columbia Hydro and Power Authority ("BC Hydro"), take the opposite position.

[3] Resolution of this issue lies in the proper interpretation of the term "public utility" as defined in s. 1(1) of the *UCA*. Applying the modern approach to statutory interpretation, I am satisfied a wholly owned and wholly operated municipal LGC is not excluded from the definition of a public utility and is subject to regulation. That was the conclusion reached by the Commission in the matter under appeal and in my view, the Commission got it right. I am also satisfied the inquiry was procedurally fair.

[4] The appellants have not established reversible error. Accordingly, I would dismiss the appeals.

Legislative Context

[5] In their factums and at the hearing of the appeal, the parties referred us to multiple statutes and multiple provisions. I do not consider it necessary to set those out in full. Rather, it will suffice to refer to the provisions I consider of greatest relevance to resolving the appeals. I will then turn to the background of the case, the order under appeal, and my analysis of the issues for determination.

[6] As recently explained by this Court in *Powell River Energy Inc. v. British Columbia (Utilities Commission)*, 2026 BCCA 93 [*Powell River*]:

> [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* [*ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4] 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), 1996 CanLII 3048 (BC CA), 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).

[7] The term "public utility" is defined in s. 1(1) of the *UCA*. Subparagraph (c) of that definition expressly excludes "municipalities" and "regional districts". For convenience, I will refer to the subparagraph (c) exclusion as the "Municipal Exclusion":

> **"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
>
> (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
>
> (b) the conveyance or transmission of information, messages or communications by guided or unguided electromagnetic waves, including systems of cable, microwave, optical fibre or radiocommunications if that service is offered to the public for compensation,
>
> but does not include
>
> (c) a municipality or regional district in respect of services provided by the municipality or regional district within its own boundaries …
>
> …
>
> [Emphasis added.]

[8] In *Powell River*, this Court noted that the opening words of the definition of a public utility and that definition's subparagraphs (a) and (b) assign the term "public utility" a broad and inclusive scope, which is then narrowed by specific exclusions in subparagraphs (c) to (g): at para. 25. Furthermore, the definition is a:

> [24] … 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").
>
> [Emphasis added.]

[9] The term "service" is also defined under s. 1(1) of the *UCA* and "includes":

> (a) the use and accommodation provided by a public utility,
>
> (b) a product or commodity provided by a public utility, and
>
> (c) the plant, equipment, apparatus, appliances, property and facilities employed by or in connection with a public utility in providing service or a product or commodity for the purposes in which the public utility is engaged and for the use and accommodation of the public …

[10] The *UCA* does not define the term "municipality". However, that term is defined in s. 29 of the *Interpretation Act*, R.S.B.C. 1996, c. 238. The *Interpretation Act* applies to "every enactment, whether enacted before or after the commencement of [the *Interpretation Act*], unless a contrary intention appears …": s. 2(1). There is nothing in the *UCA* that ousts the *Interpretation Act,* and the latter statute has been considered in the interpretation of the *UCA.* See, for example, *Powell River* at para. 34.

[11] Section 29 of the *Interpretation Act* defines the term "municipality" this way:

> **"municipality"** means, as applicable,
>
> (a) the corporation into which the residents of an area are incorporated as a municipality under the *Local Government Act* [R.S.B.C. 2015, c. 1], the *Vancouver Charter* [S.B.C. 1953, c. 55] or any other Act, or
>
> (b) the geographic area of the municipal corporation …
>
> [Emphasis added.]

[12] The appellants, City of Richmond and City of North Vancouver, are municipalities incorporated under the *Local Government Act*. Generally (there are defined exceptions), a municipality is incorporated only once the people who are

proposed to be incorporated have participated in a voting process specific to that issue: *Local Government Act*, s. 4(1).

[13] As municipalities, the City of Richmond and City of North Vancouver operate in accordance with the *Community Charter*, S.B.C. 2003, c. 26. Section 8(2) of the *Community Charter* authorizes municipalities to "provide any service that [their] council considers necessary or desirable". Municipalities "may do this directly or through another public authority or another person or organization".

[14] The *Community Charter* empowers municipalities to "incorporate a corporation other than a society" and to "acquire shares in a corporation" with the approval of the Inspector of Municipalities: s. 185. The appellants, Lulu Island Energy Company Ltd. and Lonsdale Energy Corporation, were incorporated by the City of Richmond and the City of North Vancouver in 2013 and 2003, respectively. No one takes issue with the authority of these LGCs under the *Community Charter* to provide utility services on behalf of their parent municipalities, within the applicable geographical boundaries.

[15] Section 4(1) of the *Community Charter* stipulates that the powers it confers on "municipalities and their councils" must be interpreted broadly in accordance with the purposes of the *Community Charter* and in accordance with "municipal purposes".

[16] However, s. 121(1) of the *UCA* provides that nothing done under the *Community Charter*:

> (a) supersedes or impairs a power conferred on the commission or an authorization granted to a public utility, or
>
> (b) relieves a person of an obligation imposed under [the *UCA*] or the *Gas Utility Act* [R.S.B.C. 1996, c.170].
>
> [Emphasis added.]

[17] Section 121(1) of the *UCA* is important because, as discussed below, the appellants seek an interpretation of the definition of a public utility that in its practical effect, "supersedes and impairs" the authority of the Commission by expanding the scope of the Municipal Exclusion.

Factual Background

[18] In August 2019, the Commission established an inquiry into the regulation of municipal energy utilities. Among other things, a four-member panel was tasked with deciding whether the Municipal Exclusion includes LGCs that are wholly owned and wholly operated by municipalities. This same question was posed in relation to regional districts. However, none of the parties to the appeal are regional districts; as such, I will focus on municipalities in these reasons, appreciating that what this Court says about the definition of a public utility under the *UCA* will apply with equal force to LGCs that are wholly owned and wholly operated by regional districts.

[19] In August 2021, the Commission established a two-stage inquiry. The first stage considered two questions, simplified here for ease of reference: (a) whether the Municipal Exclusion encompasses an LGC that is wholly owned and wholly operated by a municipality or regional district and provides energy utility services solely within their boundaries; and (b) if not, whether these LGCs should nonetheless be exempted from regulation under the *UCA.* The second stage of the inquiry, which has yet to occur, will address regulatory considerations for other variations of utility service providers that may be affiliated with local governments.

[20] In November 2022, the Commission released its final report on the first stage of the inquiry (the "Final Report"). The Commission concluded that the Municipal Exclusion does not encompass wholly owned and wholly operated municipal LGCs. Consequently, like other public utilities, they are subject to regulation.

[21] However, the Commission went on to decide that wholly owned and wholly operated municipal LGCs should nonetheless be eligible for a s. 88(3) "class of persons" exemption from application of the *UCA*, subject to an annual requirement that they report information required by the Commission in the manner and form specified by the Commission. Section 88(3) allows the Commission to "exempt a person, class of persons, equipment or facilities from the application of all or any of the provisions of the [*UCA*]" with the advance approval of the minister responsible for the administration of the *Hydro and Power Authority Act*, R.S.B.C. 1996, c. 212.

[22] The Commission declared that an LGC is wholly owned by a municipality when that municipality is the sole shareholder of the LGC. An LGC is wholly operated by a municipality when "managerial and day to day operational decisions are not contracted out to third parties to carry out and the ultimate decision-making power on the core aspects of the energy utility service … remain with the LGC board".

[23] The appellants appealed from the Commission's ruling. Section 101(1) of the *UCA* grants a right of appeal from an order issued by the Commission, with leave. A first attempt at an appeal was quashed for jurisdictional reasons because the Commission had not issued an order before the hearing of the appeal: *North Vancouver (City) v. British Columbia (Utilities Commission)*, 2024 BCCA 221 at paras. 18–20. The Commission subsequently issued an order (dated August 12, 2024) and leave to appeal to this Court was granted in November 2024: *Richmond (City) v. British Columbia (Utilities Commission)*, 2024 BCCA 399.

[24] As required by the *UCA*, the Attorney General of British Columbia has received notice of the appeal; however, she has elected to not participate.

Commission's Decision

[25] The Final Report is 54 pages in length. A significant portion of the Report is dedicated to summarizing the positions advanced by the many participants. It is not necessary to recap those positions. Instead, I will focus on parts of the "Panel Discussion and Recommendation" that I consider most germane to the appeal.

[26] The Commission began its analysis of the two questions posed in the first stage of the inquiry by noting that all energy utilities in British Columbia are "by default" public utilities under the *UCA* and subject to regulation by the Commission unless they are "specifically excluded". The Commission agreed with the FortisBC respondents and BC Hydro that "when reading the words of the UCA in their grammatical and ordinary sense, there is no specific exclusion for LGCs, or any other type of entity associated with a Local Government within the definition of public utility under the UCA": at 43.

[27] At the same time, the Commission appreciated that the statutory definition should not be interpreted in a vacuum. It agreed with the appellants that the *Local Government Act* and the *Community Charter* should be considered in the analysis; in particular, the "principles, purposes and powers" of municipalities as laid out in those statutes. The Commission recognized that with the enactment of the *Community Charter*, municipalities were empowered to create corporations or to acquire shares in them, and "there was a clear intent on the part of the Legislature to give Local Governments broad powers to provide services to their constituents, directly or through another person or organization". As such, the appellants' argument in favour of a broad interpretation of the Municipal Exclusion was not without merit: at 44.

[28] However, the Commission decided it could not "ignore" the fact that while the Legislature may have broadened the scope of local government powers and authorized expanded vehicles through which local governments can exercise those powers, it did not amend the Municipal Exclusion to add wholly owned and wholly operated LGCs, or to otherwise open the door to their implied inclusion. Furthermore, notwithstanding the broadening of municipal powers under the *Community Charter* and greater flexibility in local governance, the Commission noted that s. 121(1) of the *UCA* preserves the paramountcy of the public utilities scheme: at 45.

[29] Ultimately, the Commission adopted a narrow interpretation of the Municipal Exclusion, holding that "LGCs, wholly owned and operated by a Local Government and providing energy utility services exclusively within the boundaries of that Local Government, <u>are</u> Public Utilities and are not excluded from regulation under the UCA": at 45, underlining added, bolding omitted.

[30] After reaching this conclusion, the Commission turned to whether these LGCs should nonetheless be exempted from application of the *UCA* under s. 88(3).

[31] The Commission found that "where an LGC is, at all times, 100 percent owned <u>and</u> operated by the Local Government there is little difference between

the LGC and traditional structures where the energy utility is a department of a Local Government" (emphasis in the original). As such, subject to an annual reporting requirement, exemption from application of the *UCA* is warranted. The Commission accepted that with wholly owned and wholly operated LGCs, the "traditional justification" for its regulation of public utilities "loses force". Furthermore, municipalities are "well suited to administer and regulate the delivery of a wide variety of services without external supervision …": at 46.

[32] In August 2024, the Minister responsible for the administration of the *Hydro and Power Authority Act* granted the Commission advance approval for a s. 88(3) exemption. The exemption is embodied within the order under appeal and remains in effect until the Commission orders that it no longer applies. The August 2024 order stipulates that an exemption from s. 71 and Part 3 of the *UCA* applies to persons that meet the following criteria:

> a. The LGC is Wholly Owned and Wholly Operated by a Local Government;
> b. The LGC provides energy utility services exclusively within the boundaries of that Local Government; and
> c. The LGC files annual reporting information required by the BCUC in the manner and form specified by the BCUC.

[33] On appeal, no one disputes that at the time of the Commission's first stage decision, the appellants met exemption criteria (a) and (b).

Issues on Appeal

[34] The appellants, City of Richmond and Lulu Island Energy Company Ltd., filed a full factum in the appeal. The appellants, City of North Vancouver and Lonsdale Energy Corporation, also filed a factum; however, they did not raise or develop their own grounds of appeal and adopt the submissions of their co-appellants.

[35] The appellants allege the Commission erred in its interpretation of the definition of a public utility specific to municipalities. They say the Commission:

> a) failed to interpret the text of the Municipal Exclusion in a grammatical and ordinary sense in its entire context;

b) failed to interpret the Municipal Exclusion in the context of the larger statutory scheme applicable to municipal services and in a manner that is consistent and harmonious with that scheme; and,
c) the Commission's interpretation of the Municipal Exclusion results in an absurdity in that it creates an irrational distinction that finds no support in the statutory scheme applicable to local governments.

[36] The appellants also allege procedural unfairness as a ground of appeal. They contend it was unfair for the Commission to deprive the appellants of notice and input into the exemption criteria articulated in the August 2024 order.

Discussion

Standards of review

[37] I will address the two grounds of appeal separately. Before doing so, it is necessary to say something about the applicable standards of review.

[38] The Commission's interpretation of the Municipal Exclusion is reviewed applying a correctness standard. In assessing the merits of the procedural fairness allegation, we ask whether the first stage of the inquiry was fair: *Powell River* at paras. 19–20; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 36; *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at para. 54.

First ground of appeal: interpretation of the term "public utility"

[39] I do not consider it necessary to set out and discuss each position advanced on the proper interpretation of the definition of a public utility, specific to municipalities. That is because I consider the answer obvious given the precise and unequivocal wording of the Municipal Exclusion, once considered in context.

Ordinary meaning of "municipality"

[40] In my view, this is a case in which the ordinary meaning of the term "municipality" appropriately dominates.

[41] The appellants submit that once the s. 1(1) definition of a public utility is read in its "entire context", including the *Community Charter,* it is readily apparent the *UCA*'s "municipal exclusion includes services provided by local government irrespective of the means through which the local government acts" (emphasis added). This would include services delivered through a wholly owned and wholly operated LGC. From the appellants' perspective, a broad and inclusive interpretation of the municipal exclusion "ensures a coherency and consistency in the larger statutory scheme applicable to local government".

[42] The difficulty with this argument is that it effectively ignores s. 29 of the *Interpretation Act*, which contains a clear and specific definition of the term "municipality". If we apply the s. 29 definition (underlined below) to s.1(1) of the *UCA*, which we must do, the Municipal Exclusion reads this way:

> **"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
>
> …
>
> but does not include
>
> (c) a corporation into which the residents of an area are incorporated as a municipality … in respect of services provided by the corporation into which the residents of an area are incorporated as a municipality … within its own boundaries …
>
> [Emphasis added.]

[43] An LGC is not a "corporation into which the residents of an area [have been] incorporated as a municipality" (emphasis added). Only a municipality established under the *Local Government Act* and in accordance with that statute's incorporation requirements fits that definition. I agree with the FortisBC and BC Hydro respondents that the appellants' position in the appeal fails to grapple with the effect of s. 29 of the *Interpretation Act* on the meaning and scope of the Municipal Exclusion. Once the s. 29 definition is brought into play, the term "municipality" in the Municipal Exclusion is precise and unequivocal: the only municipal entity excluded

from the definition is one that has been "incorporated as a municipality" under the *Local Government Act* in respect of services provided by that corporate entity within its own boundaries.

[44] The Municipal Exclusion makes no express allowance for a corporate entity other than the incorporated municipality to claim the benefit of the Exclusion, no matter the degree of its attachment. As noted in the Final Report, the Legislature had the opportunity to amend the definition of public utility to add LGCs to the Municipal Exclusion when it enacted the *Community Charter*: at 45. However, it did not do so.

[45] In *Powell River*, this Court also considered the definition of a public utility under the *UCA*. In that context, it noted:

> [33] … [t]here 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), 1972 CanLII 1178 (NS CA), 30 D.L.R. (3d) 224 at 231 (N.S.C.A) …
>
> [Emphasis added.]

[46] With this principle intact, the *Interpretation Act*'s definition of the term "municipality" and the Legislature's choice to not add LGCs to the Municipal Exclusion is not without significance. Municipalities and LGCs are legally and factually distinct corporate entities. As noted in BC Hydro's factum, an LGC is a "separate company, with its own rights and powers conferred by company legislation". The Commission characterized LGCs as a "legal entity that has as its shareholder a Local Government" and which is "separate" from the local government itself: at 43. The appellants do not dispute that such is the case.

Contextual considerations

[47] The fact that the ordinary meaning of the term "municipality" is precise and unequivocal under s. 1(1) of the *UCA* does not mean that is the end of the statutory

interpretation analysis. The ordinary meaning of a term may properly dominate the analysis, but it is not dispositive. *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4 [*ATCO*] obliges us "to consider the total context of the provisions to be interpreted, no matter how plain the disposition may seem upon initial reading (see *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 84, 2002 SCC 3, at para. 34; R. Sullivan, *Sullivan and Driedger on the Construction of Statutes* (4th ed. 2002) at 20–21)": at para. 48. None of the FortisBC or BC Hydro respondents take issue with this proposition.

[48] The appellants argue the Commission's construction of the term "municipality" is too narrow, reflects undue focus on corporate form, and fails to consider the term more broadly as representative of everything a modern municipality entails, including broadened powers under the *Community Charter*, increased flexibility in meeting the needs of constituents, and the ability to deliver services directly and indirectly. The appellants submit that the phrase "in respect of services provided by the municipality" is the most important part of subparagraph (c); in their words, the reference to "services" is the "linchpin in the interpretive exercise". Had the Commission appreciated that fact, it would have understood that the municipal exclusion is "agnostic" as to the corporate nature and structure of the service provider; rather, what the Legislature intended to exclude from the definition of a public utility are all utility services that may be delivered by a municipality within its own boundaries, whether directly through a municipal department or indirectly through another entity, such as a wholly owned and wholly operated LGC. The word "service" is defined under the *Community Charter* to include "activity, work or facility undertaken or provided by or on behalf of the municipality" (Schedule, s. 1, emphasis added).

[49] In support of this argument, the appellants point to several provisions of the *Community Charter*, such as s. 1(2)(a), which recognizes that municipalities require "adequate powers and discretion to address existing and future community needs". Sections 3 and 4 of the *Community Charter* acknowledge the need for municipalities to have the "flexibility … to respond to the different needs and changing

circumstances of their communities" and mandate that municipal powers "be interpreted broadly". Section 40(1) of the *Interpretation Act* stipulates that so far as they "can be applied", the definitions established under the *Community Charter* are to "apply to all enactments relating to municipal and regional district matters".

[50] The appellants also cite cases such as *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, in which the Supreme Court of Canada endorsed a "broad and purposive approach to the interpretation of municipal powers: at para. 6. Along these same lines, see *Compagna v. Nanaimo (City)*, 2018 BCCA 396 at para. 59 and *1193652 B.C. Ltd. v. New Westminster (City)*, 2021 BCCA 176 at paras. 4–5.

[51] I take no issue with a broad and purposive interpretive approach to municipal powers, as defined under the *Community Charter* or elsewhere. However, that is not what is at issue here. The first of the two questions answered by the Commission in the inquiry was not about the scope of municipal powers; rather, it focused on the scope of the Commission's regulatory jurisdiction over public utilities. These are two different things. Harkening back to what this Court said in *Powell River*, the definition of a public utility under the *UCA* and the specified exclusions, including the Municipal Exclusion, "delineates what entities are subject to the [Commission's] regulatory supervision and oversight": at para. 24. In that context, as opposed to a context in which the question is whether a municipality has the direct or indirect authority to deliver a particular service, the Legislature's intent to broaden the authority of municipalities and to provide increased flexibility in how they deliver their services is of diminished interpretive value.

[52] In their reply, the appellants suggest that the purpose of the Municipal Exclusion was to "exempt geographically limited municipal energy services from [the Commission's] oversight". This is not how I read the Exclusion. Consistent with the other exclusions delineated in subparagraphs (d), (e), (f), and (g) of the definition of a public utility, the Legislature carved out specific entities or persons from the Commission's jurisdiction, not forms of service delivery.

[53] Furthermore, the appellants' reliance on the definition of "service" under the *Community Charter* gives insufficient weight to the fact that the *UCA* itself contains a specific definition of that term. For ease of reference, the *UCA* defines "service" in s. 1(1) to include:

> (a) the use and accommodation provided by a public utility,
>
> (b) a product or commodity provided by a public utility, and
>
> (c) the plant, equipment, apparatus, appliances, property and facilities employed by or in connection with a public utility in providing service or a product or commodity for the purposes in which the public utility is engaged and for the use and accommodation of the public …

[54] The *UCA* definition of "service" most certainly applies to the Municipal Exclusion.

[55] The appellants argue s. 40(1)(a) of the *Interpretation Act* directs the *Community Charter*'s definition of "service" to be read into the Municipal Exclusion. As noted earlier, that section provides that: "So far as the terms defined can be applied, the definitions established by or applicable under the [*Community Charter*] apply to all enactments relating to municipal … matters".

[56] In my view, accepting the appellant's argument on this point would fundamentally alter the *UCA*'s definition of the term "service". The current definition concentrates on the type of service that is provided, not its manner of delivery. As the appellants themselves acknowledge in their reply to the respondents' factums, the *UCA* does not "dictate the means" by which a service is provided.

[57] The appellants argue the Municipal Exclusion must be "interpreted in a manner that is consistent and harmonious with [the] larger scheme" applicable to local governments. In their words, the "flexibility bestowed on local governments is undermined if the means through which a local government acts, alone, results in differential treatment under the *UCA*". To the extent this submission suggests the Commission's jurisdiction over public utilities must be interpreted in a manner that best accommodates a municipality's choices in service delivery, I disagree. This argument ignores s. 121(1) of the *UCA*, which makes it clear that the *Community*

Charter does not "supersede" the *UCA* and cannot "[impair] a power conferred on the [C]ommission". As such, even if the appellants are correct that s. 40 of the *Interpretation Act* is relevant to the interpretive analysis (something that need not be decided here), it is of diminished significance. As appropriately emphasized by the FortisBC and BC Hydro respondents, s. 121(1) of the *UCA* makes it clear that the *Community Charter* cannot "overwhelm the interpretation analysis" in the utility context. Realistically, that is the practical effect of the appellants' submissions.

Absurd consequences

[58] It is a well-established principle of statutory interpretation that when crafting a statutory provision or term, the Legislature does not intend absurd consequences. As helpfully explained by Justice Horsman in *Wang v. British Columbia (Securities Commission)*, 2023 BCCA 101 (dissenting in result):

> [42] … An interpretation may be considered absurd if it leads to ridiculous or frivolous consequences; if it is unreasonable, inequitable, illogical or incoherent; or if it is incompatible with other statutory provisions or statutory objectives: *Rizzo* [*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 1998 CanLII 837] at para. 27 …
>
> [43] The presumption against absurdity may permit a court to depart from the plain language of a provision, but only if the words of the provision can reasonably bear the interpretation ultimately adopted …
>
> [Emphasis added.]

[59] The appellants say the interpretation adopted by the Commission leads to an absurdity, namely, an "irrational distinction in how local government services are treated" under the *UCA*. The *Community Charter* does not distinguish between services provided directly by a municipality and services provided on behalf of a municipality. From the appellants' perspective, it is irrational for the *UCA* to do so.

[60] In my view, the Commission's interpretation of the Municipal Exclusion has not resulted in an absurdity. That interpretation is not unreasonable, inequitable, illogical, or incoherent. It is consistent with the definition of the term "municipality" in the *Interpretation Act* that the Legislature intended to apply across provincial enactments in the absence of a demonstrated contrary intention. Furthermore, as

made manifest in this case, the *UCA* itself contemplates that the narrow exclusions to the definition of a public utility may require an attenuated regulatory approach for entities that do not fall in scope and for whom full regulation may not be compelling. It allows for case-by-case or class exemptions to regulation under s. 88(3). That is what occurred here, based on the fine distinction between municipalities as stand-alone corporate entities and their wholly owned and wholly operated LGCs.

[61] Given the availability of exemptions, the appellants' argument about absurd consequences is not compelling. The scheme itself is sufficiently flexible to ameliorate the concern. I agree with the respondent BC Hydro's factum that: "[t]he Commission's interpretation allows municipalities … to structure the delivery of utility services however they wish. However, it also allows the Commission to exercise the jurisdiction that the Legislature gave it under the [*UCA*]".

Consistency with the objects and purpose of the UCA

[62] Finally, the appellants contend their suggested interpretation of the Municipal Exclusion does not undermine the objects and purpose of the *UCA*, especially given the Commission's finding that with a wholly owned and wholly operated LGC, the "traditional justification for [Commission] regulation of public utilities loses force": at 46.

[63] To the contrary, I consider the appellants' interpretation of the Municipal Exclusion inconsistent with the Commission's mandate by reducing the extent of its regulatory reach and diminishing its capacity to ensure that energy consumers in British Columbia have accessible recourse in the face of unjust rates or substandard service. This Court has previously accepted that the Commission has "broadly drawn powers": *Coquitlam (City) v. British Columbia (Utilities Commission)*, 2021 BCCA 336 at para. 86, citing *ATCO*. See also *City of Richmond v. British Columbia Utilities Commission*, 2024 BCCA 16 at para. 45. The Legislature has determined there is good reason for those broad powers, in the public interest. I agree with the FortisBC respondents that the interpretation adopted by the Commission, coupled with the class exemption for wholly owned and wholly operated LGCs, achieves an

appropriate balance between consumer protection and "unnecessary, redundant or excessive oversight".

[64] I would not accede to this first ground of appeal.

Second ground of appeal: procedural unfairness

[65] The appellants allege procedural unfairness by the Commission. In the event this Court affirms the Commission's interpretation of the Municipal Exclusion, the appellants ask that we set aside the August 2024 order for procedural unfairness and that we remit this matter to the Commission for reconsideration of the exemption criteria.

[66] The appellants say that early in the inquiry, the Commission informed participants they would have an opportunity to comment on a draft of the Final Report, including a possible framework for exempting LGCs from the *UCA* in the event they were found to fall within the definition of a public utility. The appellants allege the Commission did not follow through on that opportunity or otherwise invite submissions specific to the framework. The result is an order granting a class exemption to wholly owned and wholly operated LGCs based on criteria that were developed without input from the directly impacted parties. The appellants also say the annual reporting requirement imposed under the order is vague and leaves too much room for increasingly tougher directives over time. Had they been given the opportunity to do so, the appellants would have had a good deal to say about the practical impact of the reporting requirement.

[67] In support of their procedural unfairness argument, the appellants cite cases such as *Nova-BioRubber Green Technologies Inc. v. Investment Agriculture Foundation British Columbia*, 2022 BCCA 247, in which Justice Horsman noted that:

> [70] … the scope and content of the duty to be fair depends on the circumstances. Relevant contextual factors include: the nature of the decision being made and the process followed in making it, the statutory context, the rights affected, the legitimate expectation of the person challenging the decision, and the tribunal's choice of procedure …
>
> [Internal reference omitted.]

[68] From the appellants' perspective, the nature of the decisions made in the first stage of the inquiry and their regulatory impact were such that, contextually, the inquiry attracted a heightened duty of procedural fairness and the Commission's failure to solicit input on the exemption criteria significantly prejudiced the participants. The appellants allege that as currently articulated, the exemption criteria unduly hinder the statutory ability of local governments to deliver energy solutions through LGCs.

[69] The Commission participated in the appeal, limiting its submissions to the complaint of procedural unfairness. It points out that the inquiry commenced in August 2019. The first stage concluded in August 2024. Twenty-five interveners participated in the inquiry and were given full party status. They were allowed to file evidence and submissions, update their submissions after adjournments, reply to submissions received by them, and address matters of process.

[70] The Commission acknowledges that early in the inquiry, the regulatory timetable established for submissions included reference to commentary on a draft Final Report. However, as the inquiry unfolded, the Commission revisited the timetable and other aspects of its procedure to address issues as they arose and to respond to unanticipated events. This included the COVID-19 pandemic, which necessitated an adjournment of the inquiry, and separately resolving allegations of Commission bias and want of jurisdiction pursued by the appellant City of Richmond.

[71] The Commission issued the last of its revised timetables in February 2022. The timetable no longer included reference to comments on a draft Final Report. Instead, it allowed for submissions on "key themes" identified in an appendix to the timetable. One of those "key themes" addressed the possibility of exemption from application of the *UCA*:

> **5. Exemption from BCUC Regulation**
>
> If LGCs are determined to be a public utility as defined in section 1 of the UCA, should they be regulated under the UCA? Specifically:
>
> - What relevant factors should the BCUC look at to determine whether LGCs should be exempt from regulation (e.g., who

> retains decision-making authority over the LGC in respect of the core aspects of service, complaint process, rate-setting process, etc.)?
>
> - What framework could be used by the BCUC to determine whether to make an exemption on a case-by case basis, or a recommendation to the Government of BC for a class of cases exemption, or to review the UCA's public utility definition to expand the municipal exclusion from the UCA to include LGCs?
>
> [Emphasis added.]

[72] None of the appellants responded to the February 2022 revised timetable or provided additional submissions.

[73] In my view, the appellants' complaint about procedural unfairness is without merit.

[74] Opportunity to comment on a draft report is not statutorily mandated under the *UCA* nor is it stipulated in the Commission's rules of practice or procedure. It is a matter of discretion by the Commission, subject to reconsideration on a principled basis as matters unfold and issues arise that reasonably require amendments to process. Logically, this would include concerns about timely resolution and process efficiency. In this case, for example, the Commission's timetable was amended nine times to address developing issues or to respond to unanticipated interruption.

[75] I agree with the Commission that based on the record before us, the appellants received extensive opportunities to make submissions in support of their position on whether wholly owned and wholly operated municipal LGCs fell within the Commission's regulatory jurisdiction. It is readily apparent from the Final Report that the Commission meaningfully considered the appellants' position in deciding the first stage questions. By way of the February 2022 timetable, the appellants received an opportunity to file submissions specific to the framework the Commission might use in recommending a case-by-case or class exemption from the *UCA.* Any expectations the appellants may have held about input specific to exemption criteria or the conditional nature of an exemption were adequately addressed through the February 2022 timetable. The appellants chose not to

respond. In those circumstances, considered in their entirety, it cannot reasonably be said the inquiry process was unfair.

[76] The appellants have not persuaded me they were prejudiced by the Commission's procedure. They did not raise the absence of commentary on a draft report as an issue with the Commission following the revised February 2022 timetable. They did not seek any form of reconsideration after issuance of the August 2024 order. Indeed, the procedural complaint before us was not raised in the appellants' first attempt at an appeal to this Court (quashed for want of jurisdiction). It has only been advanced now, in the second appeal. The fact that it finds form as a new issue so late in the day speaks volumes about the perceived prejudice.

[77] I would not accede to the second ground of appeal.

Disposition

[78] I have concluded the Commission correctly interpreted the Municipal Exclusion from the definition of a public utility under s. 1(1) of the *UCA*. I am also satisfied the Commission's inquiry at the first stage was procedurally fair.

[79] Accordingly, I would dismiss the appeals.

"The Honourable Madam Justice DeWitt-Van Oosten"

I AGREE:

"The Honourable Justice Iyer"

I AGREE:

"The Honourable Justice Brundrett"