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Submission on the Greenhouse Gas Reduction Regulation amendments

To: The Honourable Bruce Ralston, Minister of Energy, Mines and Low Carbon
Innovation

From: BC First Nations Energy and Mining Council

Date: July 13, 2022

Re: Response to the Greenhouse Gas Reduction Regulation amendments

The BC First Nations Energy and Mining Council (FNEMC) has a mandate to support and advocate for First Nations efforts to manage and develop energy and mineral resources in ways that protect and sustain the environment for generations while enhancing the social, cultural, economic and political well-being of First Nations in British Columbia (BC) today. This mandate was established by the BC First Nations Leadership Council composed of the political executives of the Union of British Columbia Indian Chiefs, the First Nations Summit and the British Columbia Assembly of First Nations. The FNEMC takes direction from and reports to the BC First Nations Leadership Council and is accountable to the BC Chief's Assembly.

This submission is in response to information presented in a letter dated May 31, 2022, written by the Ministry of Energy, Mines and Low Carbon Innovation (EMLI) to the First Nations Summit. This notification letter is said to be in accordance with the *Declaration on the Rights of Indigenous Peoples Act* (Declaration Act) which affirms the application of the *United Nations Declaration on the Rights of Indigenous Peoples* (UN Declaration) to the laws of British Columbia. Specifically, Article 19 in the UN Declaration calling for the Free, Prior and Informed Consent of First Nations before implementing legislation or legislative changes should be noted.



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Measures to align laws with the BC Declaration on the Rights of Indigenous Peoples Act

The BC *Declaration on the Rights of Indigenous Peoples Act* (Bill 41-2019) possesses two mechanisms to implement the UN Declaration. The first is to amend legislation, making all laws consistent with UN Declaration principles; the second is joint decision-making agreements for statutory decisions. Of primary importance to these Greenhouse Gas Reduction Regulation (GRR) amendments is Declaration Act section 3 which reads,

In consultation and cooperation with the Indigenous peoples in British Columbia, the government must take all measures necessary to ensure the laws of British Columbia are consistent with the Declaration.

While this letter of notification and call for questions, may inform First Nations of legislative proposals currently being considered, it fails to provide the time and resources required for adequate social, environmental and economic analysis of how these changes may or may not impact BC First Nations, as well as how these changes do or do not affirm the distinct rights provided to Indigenous Peoples by the Declaration Act.

More reflective of a process aiming to implement UN Declaration articles, is the recent partnership between EMLI and the FNEMC that seeks to, “collaborate with Indigenous leadership, Nations and organizations in a dialogue to position Indigenous Nations to fully participate in current and future opportunities in British Columbia’s clean energy sector to improve the economic, environmental, social and cultural outcomes for Indigenous peoples in British Columbia.”¹ In 2021 EMLI and the FNEMC, embarked on this Indigenous Clean Energy Opportunity (ICEO) process. The ICEO process, through the Terms of Reference identifies 14 clean energy topic areas that will be jointly explored through collaborative engagement. One of those topic areas, is legislative and regulatory reform to align clean energy law with the principles of the UN Declaration. Given the identified ICEO topic area of legislative reform, engagement with the ICEO process on these amendments to the GRR instead of an ad hoc letter of notification should be strongly encouraged.

Greenhouse Gas Reduction Regulation-Proposed Amendments

The Greenhouse Gas Reduction Regulation (GRR), authorized under sections 18 and 35(n) of the Clean Energy Act, allows government to set out prescribed undertakings which utilities may choose to carry out to reduce greenhouse gas emissions while recovering the costs in

¹ The ICEO Working Terms of Reference can be found here:
http://indigenoucleanenergyopportunities.gov.bc.ca/app/uploads/sites/721/2021/10/ICEO_TOR_202110.pdf



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rates.² Section 18 of the *Clean Energy Act* prohibits the BC Utilities Commission (BCUC) from preventing a utility from carrying out an undertaking and mandates the BCUC to allow utilities to recover their costs of the undertakings. Effectively, these provisions indicate greenhouse gas reduction priorities which the BC Government wishes utilities to pursue. A list of current GGRR prescribed undertakings can be found in Appendix A.

While the existing GGRR and the proposed amendments encourage utilities to extend themselves beyond providing energy, and also undertake activities to reduce greenhouse gases while recouping costs, the proposed amendments fall short of UN Declaration implementation, recognizing the distinct rights of Indigenous peoples and encouraging First Nation participation in prescribed undertakings.

What follows is a high-level submission on the GGRR amendments, particularly emphasizing policy mechanisms for increasing First Nations economic opportunities in the clean energy sector that these amendments may have yet to consider.³

Clean Transportation

The Clean BC Roadmap 2030 commitment relevant to the proposed GGRR amendment is as follows: By 2030, ZEVs to account for 90% of all new light-duty vehicle sales in the province (and targets of 26% by 2026 and 100% by 2035); new ZEV target for medium/heavy duty vehicles to be developed.

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- Replacing the compressed natural gas (CNG) and liquefied natural gas (LNG) provisions in the GGRR with references to renewable natural gas (RNG), is a necessary change to meet BC's long-term net zero goal. However, it remains unclear if or how the existing *First Nations Clean Energy Business Fund* (FNCEBF) will apply.
- Included in Part 6 of the 2010 Clean Energy Act, the FNCEBF promotes increased Indigenous community participation in the clean energy sector through revenue sharing agreements. At present, 50% of revenue derived from new incremental water and land rentals for clean energy projects (often hydropower) will be deposited in to the FNCEBF. 75% of those deposited funds will be directly shared with First Nations whose territory may be impacted by a clean energy project (total of 37.5% of the deposited rentals). The remaining 12.5% will remain in the fund to further support capacity and equity grants.⁴

² <https://www2.gov.bc.ca/gov/content/industry/electricity-alternative-energy/transportation-energies/clean-transportation-policies-programs/greenhouse-gas-reduction-regulation>

³ UN Declaration Article 21.2, States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions.

⁴ https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/10022_01



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- Will charging and hydrogen fuelling infrastructure be included in the FNCEBF revenue sharing model or will a separate mechanism to increase economic opportunities for First Nations be created?

Hydrogen

The Clean BC Roadmap 2030 commitment relevant to the proposed GRR amendment is as follows: By 2030, to produce 1.3B litres of renewable fuels in BC.

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- Using a carbon intensity threshold is a good method to ensure that natural gas-based hydrogen is indeed low carbon. An initial threshold of 36.4 gCO₂e/MJ, and which declines over time, is reasonable when paired with notional amounts of hydrogen production/purchase in the short-term. However, while allowing hydrogen procurement from outside BC allows flexibility to meet the CleanBC 15% renewable gas target, this provision may reduce economic opportunities for BC First Nations to participate in clean energy production.
- Similar to opportunities in clean transportation, it is unknown if or how the FNCEBF will apply. Furthermore, if hydrogen is being developed from renewable fuel derived from forest or agriculture resources, will the same forest license or agricultural land rents still apply or will rent reductions, waste bill reductions, etc. be offered for First Nations in particular?

Building Decarbonization

The Clean BC Roadmap 2030 commitment relevant to the proposed GRR amendment is as follows: By 2030, all new buildings will be zero carbon, and all new space and water heating equipment will meet the highest standards for efficiency.

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- In the recent *Energy Affordability in BC Discussion Paper* led by the Minister of Social Development and Poverty Reduction, an overwhelming amount of evidence is presented demonstrating the systemic barriers Indigenous people suffer and as a result experience increased rates of energy poverty. However, the proposed GRR amendment fails to recognize this through the provision of distinct clauses that encourages utilities to support increasing the energy efficiency of Indigenous peoples' homes beyond other British Columbians.
- The Clean BC Roadmap 2030 also announced a Low Carbon Building Materials Strategy to be implemented by 2023 that emphasizes public sector buildings. At this time, it is



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unclear if First Nations' own administration buildings will be included in that prioritization. If they are not considered public sector buildings, what other opportunities are being considered?

- Overall, while the proposed GRR amendment appears to further contribute to the decarbonization of buildings in BC, it stops short of recognizing the systemic barriers First Nations face in compared to non-indigenous homeowners and communities in benefiting from those existing programs the amendment is targeting.

GRR Proposed amendments Gap: Remote community decarbonization

Upon review of the existing prescribed undertakings and amendments proposed, there appears to be room to further support increasing clean energy opportunities for remote First Nations in particular. CleanBC includes a goal of reducing diesel consumption for generating electricity in remote communities by 80% by 2030. There are approximately 50 remote communities in BC that are not connected to the provincial electricity supply grid, and most are Indigenous communities that depend on diesel fuel to generate power and heat.

All the prescribed undertakings discussed above focus on activities additional to utilities' main task of providing energy. But a prescribed undertaking aimed at transitioning remote communities away from diesel-generated electricity could allow BC Hydro to allocate additional funds to that transition (and have the BCUC approve cost recovery). This type of prescribed undertaking would better support achieving the Clean BC 2030 commitment of 80% remote community diesel generated electricity reduction by 2030 and also support the Remote Community Energy Strategy which promotes reducing greenhouse gas emissions, economic development in remote communities and furthers reconciliation commitments with Indigenous peoples.

Recommendations/Next Steps:

The ICEO process has opened the door for increasing clean energy economic opportunities for First Nations in BC. Through this process, increased time and resources could be provided for further engagement with BC First Nations on these GRR amendments. Additionally, either through the ICEO process or through direct communication with the FNEMC, further dialogue from EMLI on the following three items in particular is requested:

1. BC remote First Nations and regulating the 80% diesel generated electricity reduction target by 2030 within the Clean Energy Act or the Climate Change Accountability Act.
2. Status of the First Nations Clean Energy Business Fund and how future clean energy opportunities will or will not apply to this existing regulation and revenue sharing model.



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3. Transparency on the legislative amendment process and explaining what stage of the process these GRRR amendments are in, as well as the legal advice received on the level of impact to First Nations rights holders these amendments will have. Providing this information can support the FNLC in planning and preparing to engage with the First Nations rights holders most impacted by these amendments.

On behalf of the First Nations of British Columbia we look forward to working in partnership with you.



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Appendix A

Greenhouse Gas Reduction Regulation

Current prescribed undertakings

- **Compressed and liquified natural gas**
 - fuelling stations, including storage, compression and dispensing equipment and facilities
 - conversion of vehicles to use CNG or LNG
 - purchase or lease of generators, boilers, burners or kilns that use CNG or LNG
 - LNG distribution and storage infrastructure, including LNG rail tank cars, ISO containers and shore-side assets
- **Acquires renewable natural gas**
 - producing or purchasing biogas and upgrading it to renewable natural gas
- **Electrification of oil and gas facilities in northeast BC**
- **EV fast charging stations**
 - constructs/purchases and operates an eligible charging station
- **Hydrogen**
 - produces or purchases hydrogen that is distributed through the natural gas distribution system in British Columbia
 - the hydrogen is derived from water using electricity (hydrolysis) or is waste hydrogen
 - does not exceed 15% of the total amount of natural gas, in GJ, provided by the public utility
- **Synthesis gas**
 - derived from biomass
 - used to replace, at least in part, natural gas derived primarily from fossil fuels
 - does not exceed 15% of the total amount of natural gas, in GJ, provided by the public utility
- **Lignin**
 - derived from black liquor (by-product from the pulp making process)
 - used to replace, at least in part, natural gas derived primarily from fossil fuels
 - does not exceed 15% of the total amount of natural gas, in GJ, provided by the public utility