

Rethinking Regulation to Decarbonize Canada

Decarbonizing Remote Indigenous Communities

Regulatory reform in B.C.
and the territories



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2025

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- ATCO Electric
- BC Hydro
- Government of British Columbia - Ministry of Energy and Climate Solutions
- Government of the Northwest Territories
- Government of Nunavut – Climate Change Secretariat
- Government of Yukon
- Keppel Gate Consulting
- Northern Energy Innovation, Yukon University
- Northwest Territories Public Utilities Board
- Northwest Territories Power Corporation
- Nunavut Economic Developers Association
- High Latitude Energy Consulting
- Arctic Renewables Society
- Nunavut Nukkiqsautiit Corporation (NNC)
- Polaris Strategy and Insight
- Yukon Development Corporation

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Executive summary

This report analyzes the current state of electricity regulation and legislation in remote communities in British Columbia and the territories. It also explores potential pathways to support Indigenous leadership and participation in the transition to a cleaner, more sustainable energy future, including enabling Indigenous-owned renewable energy projects.

The main findings and recommendations for the provincial and territorial governments, as well as the regulators, are as follows:

- Current legislation and regulations fail to meet energy security, emissions reductions and reconciliation priorities and require updating to support Indigenous self-determination in energy development.
- Energy regulators need direction from government to consider non-economic factors such as emissions reductions and reconciliation in decision-making. Regulators, however, do have the ability to take immediate action to ensure inclusive and accessible regulatory processes.
- The enactment of the United Nations Declaration on the Rights of Indigenous Peoples by the governments of Canada, British Columbia and the Northwest Territories emphasizes the need to align energy legislation with Indigenous rights.
- Energy legislation must be developed collaboratively with Indigenous nations to foster inclusive governance and shared decision-making. To enable this, provincial and territorial governments must prioritize the development of capacity-building programs and processes for engagement.
- Clear and transparent pathways for the development of hybrid energy systems that include renewable and energy storage projects, for example through independent power producer policies, are critical for supporting opportunities for Indigenous communities. These pathways must be developed in partnership with Indigenous communities, provide full community benefits and respect Indigenous rights.
- Government and regulator capacity must be increased and/or efforts must be made to increase efficiency to support the implementation of reform actions.
- Government and utility planning and target setting is needed to support community clean energy ambitions.

1. Introduction

This report, part of the *Rethinking Regulation to Decarbonize Canada* series that explores opportunities for regulatory reform, analyzes the current status of electricity legislation and regulation in remote communities across British Columbia, the Yukon, Nunavut, and the Northwest Territories and explores potential pathways to enable Indigenous-owned renewable energy projects within these jurisdictions.

These jurisdictions have been chosen because of specific remote community energy development conditions that provide common challenges to regulatory reform. They have a high number of remote communities with a significant Indigenous population that are reliant on diesel microgrids and where varying actions have been taken toward advancing Indigenous rights and energy sovereignty.¹

A more in-depth analysis of the legislative and regulatory frameworks in each jurisdiction is provided in separate accompanying reports, along with tailored recommendations. These reports can be accessed at <https://www.pembina.org/pub/decarbonizing-remote-indigenous-communities>.

Actions to support community ambitions for an equitable and rights-based approach to decarbonization in remote communities can be targeted at three different levels: legislative, regulatory, and utility.

The foundation for energy development is set at the legislative level through acts passed by provincial and territorial legislatures that set out overarching principles and rules, including establishing the mandates of regulators. Regulators review and approve utility actions to ensure that utilities provide safe and reliable electricity services with costs that are fair, just, and reasonable. At the utility level, public utilities have established business models for supplying electricity to their customers that adhere to the utilities' mandates and the economic and non-economic requirements imposed on them.

Changes at the utility level are often constrained by legislation and regulation. Consequently, this report focuses on regulatory and legislative frameworks, underscoring the role of regulators and federal, provincial, and territorial governments in driving actionable change.² The

¹ “Energy sovereignty” refers to the inherent right of individuals, communities, and Indigenous Peoples to make their own decisions on every aspect of the energy they use, from generation to distribution to consumption.

² For utility-focused barriers, motivations, and recommendations, see Emily He, Grace Brown and Dave Lovekin, *Transforming the Utility Business Model* (Pembina Institute, 2022). <https://www.pembina.org/pub/transforming-utility-business-model>

recommendations provided focus on updating frameworks and decision-making processes, while connecting affordable, reliable and clean energy, climate resiliency, and reconciliation.

1.1 Background

Canada has made a commitment to achieving a net-zero electricity grid by 2035 and net-zero greenhouse gas emissions by 2050. Including remote Indigenous communities is essential to ensure an equitable clean energy transition.

Current regulatory and legislative frameworks fall short of fostering Indigenous-owned local renewable energy, applying Indigenous rights, and promoting energy sovereignty within the context of the clean energy transition. Moreover, in the territories the remote nature of their electricity grids poses a unique challenge for decarbonization efforts.

Remote communities in Canada, typically characterized as those lacking connectivity to the North American electricity grid or natural gas networks, remain heavily reliant on imported diesel and other fossil fuels for their electricity, heating, and transportation needs.³ This dependence poses various interconnected environmental, health, and community development challenges. Consequently, there has been widespread support for transitioning to hybrid systems that use renewable energy sources such as solar, wind, hydro, and biomass.⁴

Indigenous communities are increasingly at the forefront of the energy transition, spearheading renewable energy projects to displace diesel consumption and drive community development and economic opportunities.⁵ The enactment of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) federally, in B.C., and the Northwest Territories has reinforced the need to examine whether current frameworks for energy development enable renewable energy projects that are aligned with and support Indigenous rights.⁶

1.2 Methodology

A thorough literature review was done of various sources, including existing legislation and

³ Natural Resources Canada, *The Atlas of Canada: Remote Communities Energy Database* (2018). <https://atlas.gc.ca/rced-bdece/en/index.html>

⁴ Megan Gordon and Alex Callahan, *A Sustainable Jobs Blueprint — Part II: Putting workers and communities at the centre of Canada's net-zero energy economy* (Pembina Institute, 2023). <https://www.pembina.org/pub/sustainable-jobs-blueprint-part-ii>

⁵ Canadian Institute for Climate Choices, *Waves of Change* (2022). <https://climateinstitute.ca/wp-content/uploads/2022/02/ICE-report-ENGLISH-FINAL.pdf>

⁶ Arthur Bledsoe, Katarina Savic, and Bhan Gatkuoth, *Government action on UNDRIP and the clean energy transition* (Pembina Institute, 2023). <https://www.pembina.org/blog/government-action-undrip-clean-energy-transition>

regulations, academic research papers, policy papers, discussion papers, reports, and government documents. Additionally, a series of interviews were conducted with a diverse range of participants. Among them were Indigenous clean energy professionals and advocates, personnel from Indigenous economic development corporations, public servants, electric utilities, and regulators.

2. Need for reform

Despite the increasing desire of Indigenous governments and businesses in remote communities to implement renewable energy projects, technical, logistical, economic, and policy barriers often stymie or hinder progress (see Figure 1). These barriers, particularly the latter two, are often directly tied to legislative and regulatory systems and practices in remote communities.

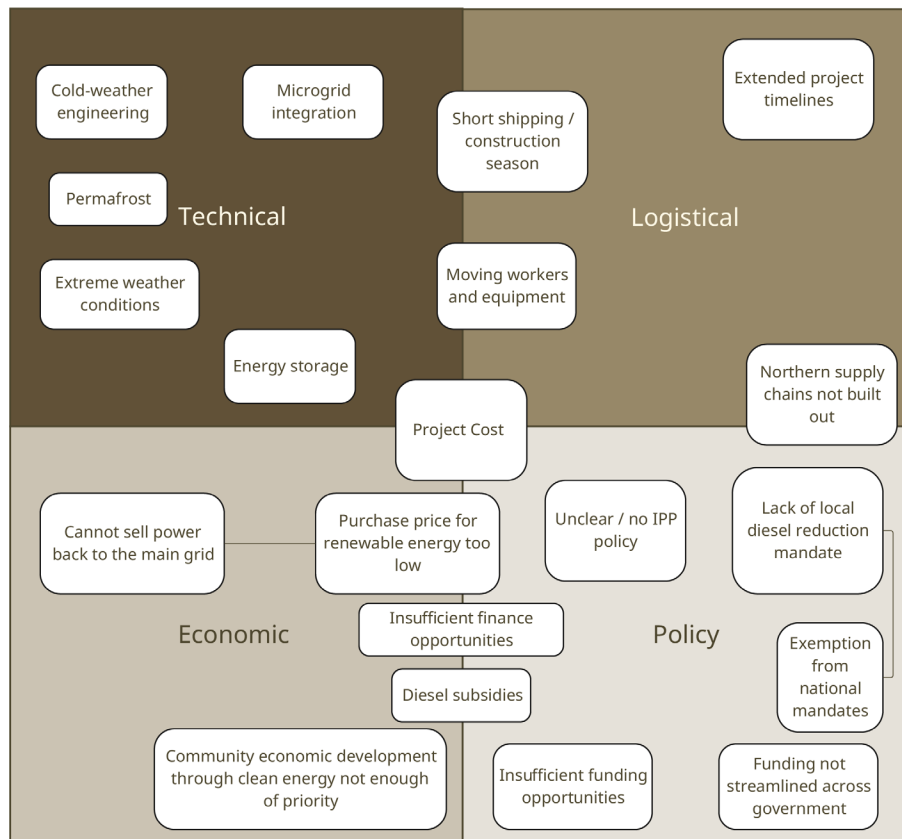


Figure 1. Challenges to clean energy development for remote communities

For example, project economics is a primary barrier that an Indigenous proponent for a local renewable energy project, also known as an independent power producer (IPP), must overcome. Projects in remote communities can be orders of magnitude more expensive to implement because of the technical and logistical challenges listed in Figure 1. Typically, the sole source of revenue for these projects comes from selling energy to the community's electric utility. However, the energy regulator and legislation restrict how the utility can work with the community to strengthen the economic viability of the project.

Utilities base their payments to energy producers on the direct savings that come from replacing diesel generation with renewable energy. This approach is meant to limit any impacts on utility expenses and consequently consumer affordability. These payments, however, are rarely

sufficient to cover the high costs of implementing a renewable energy project in remote communities. As a result, communities and renewable energy producers are often unable to undertake projects without significant government funding. This situation locks remote communities into fossil-fuel dependency and restricts opportunities for Indigenous ownership and economic development.

Project economics and policy are only two of the obstacles in the transition to clean energy. Current legislative and regulatory structures also present the following challenges:

1. Restrictive mandates, as set out in legislation, result in misalignment between government objectives (e.g., reducing greenhouse gas emissions) and actions by the regulator and utility.
 - a. Regulators and utilities prioritize the lowest cost option, which often reinforces the status quo (i.e., continued reliance on diesel generation)
 - b. Regulators and utilities lack the authority to support Indigenous-owned renewable energy projects based on non-economic factors such as reconciliation or emissions reductions
2. Lack of specific government direction to regulators and utilities renders them unable to prioritize Indigenous ownership and participation in the energy transition.
 - a. Regulatory practices support legacy interpretations of what is in the public interest (as discussed in Section 3.2) — interpretations that do not consider the climate and reconciliation objectives of federal, provincial, and territorial governments
3. Differing understanding of regulator decision-making practices by the utility and project proponent creates non-uniform views on the constraints these practices place on implementing Indigenous-owned renewable energy projects in remote communities
4. Legislation and regulations do not align with UNDRIP in supporting Indigenous rights.

Legislative and regulatory frameworks need to be revised to address these challenges.

Developing recommendations for reform, however, first requires understanding the motivations behind current regulatory practices, as described in Section 3, and how UNDRIP relates to the energy transition, as described in Section 4.

3. Current motivators in regulation

Electricity generation, transmission and distribution is a provincial and territorial responsibility in Canada, leading to 13 different electricity systems across the country. Each province and territory has built its own governance structure to oversee its grid. In general, this process begins with the provincial or territorial government passing an enabling act that sets out principles and general rules and establishes a quasi-judicial regulatory body, provides it with a set of objectives called a mandate, and grants that body the authority to create rules. Ministers or cabinets can also create regulations, orders, and directives to achieve the act's outcomes.

The regulations, orders, and directives created by ministers and cabinets are secondary to the enabling act and typically used to provide advice to the regulator on current issues. Quasi-judicial rules developed by the regulator themselves act similarly to regulations. These rules provide clarity and improve efficiency on regulator actions and can take the form of guidelines, methodologies, forms, and standards. Together, these three levels of direction are intended to keep government, regulators and utilities aligned toward established objectives.

The regulator must adhere to its mandate when establishing rules and making decisions. Most regulators are mandated to ensure that ratepayers receive safe and reliable electricity services at just and reasonable rates without discrimination. The rules they develop are the detailed requirements for implementing the enabling act.

Because regulators are quasi-judicial bodies, their decisions can be appealed to the courts for judicial review. These reviews generally centre on whether the decision aligns with the regulator's mandate. For example, in 2017, several organizations intervened in a British Columbia Utilities Commission (BCUC) proceeding on a rate design application to advocate for ratepayer assistance for low-income households. The BCUC denied the proposed solutions, deciding that setting special rates for low-income customers would be unjust, unreasonable, and unduly discriminatory (and therefore against its mandate) because the cost of providing electricity to all residential customers regardless of income

is the same.⁷ This example illustrates the rigidity of mandates and how the regulator is restricted by the overarching legal framework.

3.1 Regulatory compact

The electricity sector is a natural monopoly, where high start-up costs and other barriers to entry make it more efficient for a single entity to construct, own, and operate necessary infrastructure. Regulation is necessary to check the market power of these entities and protect consumers from unnecessarily high costs. This regulation can take on two different forms, depending on the structure of the electricity system.

The first form is total regulation, which is used when a single, vertically integrated corporation manages generation, transmission, distribution, and retail of electricity within the province or territory. A regulatory body or advisor prevents the corporation from exploiting the lack of competition to raise prices. This structure is used in most of Canada, including B.C. and the territories. The second form features a deregulated electricity market, where electricity generation is opened to competitive forces. Electricity transmission and distribution utilities remain regulated, with a single electricity grid operating province wide. Versions of this structure are used in Alberta and Ontario.

The general agreement between regulators and utilities, called the regulatory compact, emphasizes the reliability and economic needs of consumers whether the regulator oversees the full system or only transmission and distribution. In exchange for a protected monopoly, utilities in those markets must provide reliable electricity services at a reasonable price.⁸

3.2 Bonbright Principles

A “reasonable price” for electricity, one that is in the consumers’ economic interest yet maintains the utility’s financial viability, is determined through ratemaking proceedings.

⁷ Harper Grey LLP, “Case Summary: BCCA denies leave to appeal a decision of the BCUC that a reduced utilities rate for low-income ratepayers would be unjust, unreasonable, and unduly discriminatory,” January 17, 2018. <https://www.harpergrey.com/uncategorized/bcca-denies-leave-to-appeal-a-decision-of-the-bcuc-that-a-reduced-utilities-rate-for-low-income-ratepayers-would-be-unjust-unreasonable-and-unduly-discriminatory/>

⁸ Marla Orenstein, *Changes & Challenges to the Regulatory Compact* (Canada West Foundation, 2019), 2. <https://cwf.ca/research/publications/background-changes-challenges-to-the-regulatory-compact/>

In this process, utilities present evidence to the regulator that justifies the costs they will incur to provide reliable service. If the regulator accepts the proposed costs as reasonable and in the public interest, the next step is to design an appropriate rate structure that will fairly distribute these costs among consumers. James Bonbright's *Principles of Public Utility Rates*, published in 1961,⁹ provides regulators with a framework for designing reasonable rates that is still used today. The Bonbright Principles can be summarized as follows:

1. A utility revenue requirement must be established to ensure utilities can cover their costs.
2. These costs should be stable and fairly apportioned among customers.
3. Rate design should incentivize optimal energy use for maximum efficiency.^{10,11}

Like the regulatory compact, the Bonbright Principles focus on the economic wellbeing of utilities and consumers. This narrow interpretation of the public interest does not consider emerging priorities, such as reconciliation and decarbonization. The unequal impacts of energy developments, socioeconomic disparity and climate change are also not factored in when determining appropriate rates for different rate classes.

The economic focus of the Bonbright Principles is reflected in most regulator mandates, hindering their ability to support utility proposals that advance other priorities at an added cost.¹² This purely economic approach is particularly harmful for remote communities that rely on diesel generation. Ignoring the environmental, health, and social impacts of diesel generation in decision-making favours the status quo and limits opportunities for Indigenous-led clean energy development.¹³

⁹ James Bonbright, *Principles of Public Utility Rates* (New York: Columbia University Press, 1961).

¹⁰ Karl R. Rábago and Radina Valova, "Revisiting Bonbright's Principles of Public Utility Rates in a DER World," *The Electricity Journal* 31, no. 8 (2018), 10. <https://doi.org/10.1016/j.tej.2018.09.004>

¹¹ Utilis Consulting, *Back to Bonbright: Economic regulation fundamentals can enable net zero* (Electricity Canada, 2023), 2. https://issuu.com/canadianelectricityassociation/docs/ec_sel_frame_-_2023_21_

¹² Gabriel Chan and Alexandra B Klass, "Regulating for Energy Justice," *New York University Law Review* 97, no. 1426 (2022). <https://www.nyulawreview.org/issues/volume-97-number-5/regulating-for-energy-justice/>

¹³ Arthur Bledsoe and Katarina Savic, *Reexamining Rates for Remote Renewable Energy* (Pembina Institute, 2023), 6. <https://www.pembina.org/reports/reexamining-rates-issue-paper.pdf>

3.3 Regulator decision-making

Traditionally, decisions are made based on a least-cost, best-fit (LCBF) analysis. LCBF methods compare the capital, operations, and maintenance costs of available options over a set test period to determine the one that minimizes the net present value of the utility's revenue requirement. In some cases, the option chosen may not be the least cost but is the best fit because it reduces uncertainty about future costs outside the test period.¹⁴ LCBF methods do not typically consider benefits that do not reduce system costs, such as increased homeowner comfort.¹⁵ In a remote community context, LCBF methods thus prioritize continued diesel use since it often offers more favourable outcomes in terms of costs to the utility.

Alternatively, benefit-cost analysis (BCA) provides a framework for decision-making that is increasingly used when considering distributed energy resources and energy efficiency programs. Rather than summing total costs, BCA looks at whether an investment or program's costs are effective using an agreed-upon testing methodology. Several cost-effectiveness tests exist. Each one considers the proposal's impacts from a different perspective, and depending on the methodology, it can include benefits and costs beyond those to the utility.¹⁶ For example, New York began implementing its BCA framework for DER evaluation in 2016, and it considers benefits such as emissions and pollution reduction as well as non-energy benefits like avoided service terminations.¹⁷ However, exact methodologies for quantifying non-energy benefits are still being developed by some utilities.¹⁸

Under traditional LCBF decision-making, how competing options are evaluated may lead to decisions that are inconsistent with the jurisdiction's environmental or social plans and policies and therefore increase the cost of achieving those policies.¹⁹ With BCA,

¹⁴ John Shenot, Elaine Prause, and Jessica Shipley, *Using Benefit-Cost Analysis to Improve Distribution System Investment Decisions* (Regulatory Assistance Project, 2022), 3. <https://www.raponline.org/wp-content/uploads/2023/09/rap-shenot-prause-shipley-using-benefit-cost-analysis-issue-brief-2022-november.pdf>

¹⁵ *Using Benefit-Cost Analysis to Improve Distribution System Investment Decisions*, 4.

¹⁶ *Using Benefit-Cost Analysis to Improve Distribution System Investment Decisions*, 6.

¹⁷ State of New York Public Service Commission, *Order Establishing the Benefit Cost Analysis Framework* 2016, Case 14-M-0101, 19. <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={F8C835E1-EDB5-47FF-BD78-73EB5B3B177A}>

¹⁸ New York State Electric and Gas, *Benefit Cost Analysis (BCA) Handbook* (2020), 63. https://jointutilitiesofny.org/sites/default/files/NYSEG_RGE_2020_DSIP_BCA_Handbook.pdf

¹⁹ *Using Benefit-Cost Analysis to Improve Distribution System Investment Decisions*, 14.

jurisdictions have the flexibility to create their own methodology for testing cost-effectiveness that considers policy goals and assigns costs to missing social or environmental plans and targets so that they can be evaluated alongside economic considerations.^{20,21}

Using BCA in decision-making can be challenging for regulators with mandates that typically focus on economics. Granting regulators the authority to consider social benefits, such as supporting Indigenous rights or mitigating climate change, alongside economic benefits can be done through

- revising the enabling act to update mandates,
- redefining the public interest within a contemporary context, and
- comprehensive planning at the provincial or territorial level that outlines broader goals for the jurisdiction's energy system.

These changes to the regulator's authority, whether explicitly in the form of mandate updates or indirectly through provincial or territorial energy plans, can also enable regulators to consider societal benefits outside of BCA frameworks as part of their decision-making process.

²⁰ *Using Benefit-Cost Analysis to Improve Distribution System Investment Decisions*, 6.

²¹ Tim Woolf et al., *National Standard Practice Manual for Benefit-Cost Analysis of Distributed Energy Resources* (National Energy Screening Project, 2020).
<https://www.nationalenergyscreeningproject.org/national-standard-practice-manual/>

4. UNDRIP and regulatory reform

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is a non-binding human rights declaration adopted by the United Nations in 2007. It contains 46 articles on the rights of Indigenous Peoples and affirms that Indigenous Peoples are entitled to the same rights as all people and recognizes the urgent need to protect those rights in recognition of the historic dispossession of land due to colonization.²²

Efforts to reform regulatory policy to facilitate reducing diesel in remote communities are intimately connected with implementing UNDRIP. Nearly all diesel-dependent remote communities in Canada are Indigenous communities who have been living on their traditional territories since time immemorial, and the dependency on diesel is the result of a colonial system that fails to recognize Indigenous rights.

4.1 UNDRIP in Canada

In 2021, Canada passed the United Nations Declaration on the Rights of Indigenous Peoples Act. The act specifies that the Government of Canada must consult and cooperate with Indigenous Peoples to “take all measures necessary to ensure the laws of Canada are consistent with UNDRIP.”²³

B.C. passed the Declaration on the Rights of Indigenous Peoples Act in 2019 and the NWT passed the United Nations Declaration on the Rights of Indigenous Peoples Implementation Act in 2023, each affirming UNDRIP and specifying a mandate for their respective governments similar to the federal government’s. Other provinces and territories have taken various actions such as reviewing and proposing legislation related to Indigenous Peoples, but no other formal commitments have been made.²⁴

In B.C. and the Northwest Territories, where UNDRIP has become law, the government is obligated to work in cooperation and consultation with Indigenous peoples to implement necessary reforms. To date, however, UNDRIP implementation has varied depending on

²² United Nations (General Assembly), *United Nations Declaration on the Rights of Indigenous Peoples* (2007). https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2019/01/UNDRIP_E_web.pdf

²³ Government of Canada, “Implementing the United Nations Declaration on the Rights of Indigenous Peoples Act: About the Act.” <https://www.justice.gc.ca/eng/declaration/legislation.html>

²⁴ CBC News, “Beyond 94: Adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples,” April 23, 2024. <https://www.cbc.ca/newsinteractives/beyond-94/adopt-and-implement-the-united-nations-declaration-on-the-rights-of-indigenous-peoples>

existing regulatory policy and Indigenous government agreements in each province and territory. In both B.C. and the Northwest Territories, energy acts have not yet been amended to reflect UNDRIP.

4.2 UNDRIP and clean energy in remote communities

Many UNDRIP articles have implications for energy policy in remote communities because they address self-determination, decision-making, resource development and protection, and economic development. A few of these articles are highlighted below.

- Article 3 specifies that Indigenous Peoples have a right to self-determination and to pursue their own economic, social, and cultural development.
- Article 18 affirms Indigenous Peoples' right to participate in decision-making on matters that affect their rights.
- Article 19 calls on states to consult and cooperate in good faith with Indigenous Peoples to obtain free, prior, and informed consent before enacting legislative or administrative matters that affect them.
- Articles 23 and 29 affirm Indigenous Peoples' right to determine priorities for development and the productive capacities of their territories, as well as their right for the protection of the environment.

Implementing UNDRIP calls for a new standard of inclusive governance and shared decision-making between governments and Indigenous Peoples. This means developing legislative and regulatory reforms in partnership with Indigenous communities and governments and requires governments to be highly flexible within these processes since each community will have a different level of capacity to engage. Providing Indigenous communities with adequate funding and time to engage in the process is also needed.

Approaches to developing reforms on energy development that support Indigenous self-determination, clean energy, and diesel reduction will vary by jurisdiction. However, there are three common, initial steps that should be taken:

1. Governments should build engagement forums and processes for ongoing collaboration with Indigenous communities to co-develop priorities and strategies for energy sector reform. Building trusted relationships with established norms and procedures not only sets the stage for future UNDRIP implementation, but will improve policy outcomes, as

Indigenous communities have local expertise that is critical for advancing practical solutions tailored to their community.

2. Regulators should make it a priority to ensure that Indigenous communities' participation and engagement in existing regulatory processes is well supported and accessible.²⁵
3. Regulators should recognize the unique nature of remote communities. When evaluating whether utility activities are aligned with the public interest, regulators must establish special conditions and procedures to ensure the public interest also includes the interests of affected remote communities.

²⁵ For example, the B.C.'s Declaration Act Secretariat, a government agency tasked to help ensure that provincial laws align with UNDRIP, established that mechanisms for engagement should be jointly determined with Indigenous partners and should set out clear expectations around process, mandates, outcomes, timing, and funding.

5. Provincial and territorial recommendations for reform

Reforming energy policy and government and regulator practices also requires meaningfully including Indigenous peoples from the outset and providing sufficient resources to enable participation. As stated by Indigenous Clean Energy, “without upfront partnership and co-creation, policies risk reproducing the inequities that are present in current resource industries.”²⁶

The suite of recommendations presented below was tailored for each jurisdiction’s social, economic, legislative, and regulatory circumstances, acknowledging that the time, capital, and human resources to effect reform will vary according to jurisdictional context. For example, in B.C., regulatory amendments have allowed utilities to recover costs for supporting Indigenous-owned renewable energy projects and for upgrading microgrids to enable renewables from the province’s large non-remote rate base. However, this same recommendation cannot be made for the territories given barriers to distributing costs. In B.C., where recovery costs are distributed among over five million customers, the impacts to individual rate payers are fairly negligible. In the territories though, these costs are more likely to significantly impact ratepayers due to the much smaller population and contribute further to the high cost of living. Although these reform actions have been instrumental in supporting Indigenous-owned renewable energy projects in B.C.’s remote communities, given overarching territorial government priorities to limit impacts on cost of living, it is unlikely that the territories can adopt these measures.

While all recommendations require careful and inclusive planning and processes, the level of engagement and change to existing systems varies.

Table 1 and Table 2 summarise what actions can be taken by governments and regulators in B.C., the Yukon, the Northwest Territories, and Nunavut to enable Indigenous-owned renewable energy projects. The tables also indicate the relative effort of taking these actions.

To support this report, and the recommendations below, we have published a set of jurisdictional analyses that offer an in-depth review of the regulatory environment within each jurisdiction. These comprehensive jurisdictional analyses directly inform the recommendations below and provide additional information and context in support of

²⁶ Laura Cameron, Freddie Huppé Campbell, and Mackenzie Roop, *Sustainable Jobs for Indigenous Clean Energy Action* (International Institute for Sustainable Development and Indigenous Clean Energy, 2024), 8. <https://www.iisd.org/publications/brief/sustainable-jobs-indigenous-clean-energy-action>

reform and government action. We encourage readers to visit these reports at <https://www.pembina.org/pub/decarbonizing-remote-indigenous-communities> to understand the full context of Tables 1 and 2.

Table 1. Government recommendations by region and effort level

Government recommendation	BC	YT	NT	NU	Relative effort
Align energy legislation with UNDRIP					high
Align energy legislation with climate action plans					high
Build government capacity and establish the structures needed to create and implement energy policy					high
Improve institutional memory for decisions and changes in energy governance structures					moderate
Create a long-term energy plan					moderate
Create long-term and interim GHG emissions targets					moderate
Legislate a clean energy target for remote diesel grids					moderate
Build formal capacity and processes to collaborate government-to-government on energy issues					moderate
Provide direction to the regulator on considering non-economic factors such as reconciliation or emissions reductions in decision-making					moderate
Improve or implement IPP policy ²⁷					moderate
Empower the regulator to act as a decision-maker					moderate
Require collaborative integrated resource planning in remote diesel communities					moderate

²⁷ For more information on IPP policy, see Emily He, *Power Purchase Agreements – Part I: An introductory guide for Indigenous clean energy project proponents in remote communities* (Pembina Institute, 2024). <https://www.pembina.org/pub/power-purchase-agreements>

Table 2. Regulator recommendations for reform

Regulator recommendation	BC	YT	NT	NU	Relative effort
Increase funding and capacity support for Indigenous participation in regulatory processes					low
Establish a regular and accessible review of remote community energy plans					low
Require long-term resource planning by utilities or evaluate the need for such planning					high
Evaluate moving from a least-cost economic analysis to a benefit-cost analysis framework					moderate
Implement IPP policy					moderate
Seek an increase in regulator capacity (i.e., budget, staff, training)					low

6. Conclusion

Current regulatory and legislative frameworks hinder the ability to foster Indigenous-owned renewable energy and apply Indigenous rights within the context of the clean energy transition. In addition, these frameworks reinforce the dependency of remote communities on diesel and restrict energy sovereignty.

The enactment of UNDRIP by the governments of Canada, British Columbia, and the Northwest Territories has reinforced the need to ensure that energy development is aligned with Indigenous rights and reconciliation. However, challenges such as restrictive regulator mandates, unclear government direction, inconsistent regulatory decision-making practices, and misalignments between UNDRIP and current energy legislation hinder progress. These same challenges also constrain the ability to make emissions reduction and reconciliation priorities in decision-making.

Reforms are possible to overcome these challenges. Nevertheless, any proposed changes to energy sector legislation affecting remote communities must be developed in close collaboration with Indigenous nations and communities. Implementing UNDRIP means fostering inclusive governance and shared decision-making between Canadian institutions and Indigenous peoples. It also requires governments to be flexible and to provide adequate support, including funding and time, for Indigenous participation in these processes.

Updating legislative and regulatory frameworks in collaboration with Indigenous communities, even in the absence of adopting UNDRIP, also requires providing avenues for early and ongoing consultation, establishing trusted relationships, ensuring well-supported and accessible Indigenous participation in regulatory processes, and broadening the scope of what is considered to be in the public interest.



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