

BRITISH COLUMBIA UTILITIES COMMISSION
IN THE MATTER OF THE UTILITIES COMMISSION ACT
R.S.B.C. 1996, CHAPTER 473

And

British Columbia Utilities Commission
Indigenous Utilities Regulation Inquiry

VICTORIA, B.C.
November 29, 2019

Community Input Workshop

BEFORE:

D.M. Morton,	Panel Chair/Chairman
A. Fung Q.C.,	Commissioner/Deputy Chair
C.M. Brewer,	Commissioner
B. Lockhart,	Commissioner

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VICTORIA, B.C.

November 29th, 2019

(PROCEEDINGS RESUMED AT 10:06 A.M.)

1
2
3
4 MR. GEORGE: Good morning friends and welcome to the
5 Indigenous Utilities Regulation Inquiry Draft Report
6 Workshop. I want to begin by acknowledging Songhees
7 and Esquimalt territory that we're gathered on here
8 today. Raise our hands in respect to the elders, the
9 matriarchs, the youth, the good people of this
10 territory for hosting us. We did reach out as part
11 of our protocol to have a welcome and a prayer
12 provided by the Nations and unfortunately they were
13 unable to attend here today, so we have their
14 blessings to continue on with our meeting.

15 We're big on safety here, so please make
16 note of the exits in case you need to leave the room
17 here in a hurry. We know, I've shared with you, that
18 the restrooms, the men's and ladies' restrooms, are
19 down by the main desk. And just please be careful
20 moving about the room here because we're in a little
21 bit cramped quarters.

22 I want to thank each of you for taking time
23 out of your busy schedules to be here. Many pressing
24 demands on your time, you've chosen to be here with us
25 today and for that we are grateful.

26 We are fortunate today to have the B.C.

1 Utilities Commission panel with us. David Morton, our
2 Chair; Carolann Brewer, Commissioner; Anna Fung,
3 Commissioner; and Blair Lockhart, Commissioner. I
4 would ask them all to briefly introduce themselves,
5 beginning with you, David.

6 THE CHAIRPERSON: Thank you, Dan. Good morning all.
7 Thank you for joining us here today, we appreciate it,
8 and looking forward to a good discussion today.

9 My name is Dave Morton. As Dan said, I'm
10 the Chair and CEO of the Utilities Commission and in
11 addition I'm the Chair of this panel. I have been a
12 Commissioner since 2010 and I'm a professional
13 engineer and a little outnumbered up here by three
14 lawyers, but I struggle along as best I can.

15 I've worked on a lot of different panels on
16 a number of inquiries and a lot of applications. And
17 this has been one of the most interesting projects
18 I've undertaken. And I'm hopeful that we can all look
19 at the draft recommendations that were -- the proposed
20 recommendations that we've laid out and that you can
21 provide your help and advice on how we should move
22 forward from here.

23 So, thank you once again and look forward
24 to today.

25 COMMISSIONER FUNG: Thank you very much. My name is Anna
26 Fung and I'm a member of this panel, as you've heard,

1 and I'm also a lawyer.

2 I really appreciate all of you taking time
3 out of your Black Friday shopping time to join us here
4 today to provide us with your input on our draft
5 recommendations in our report. So, just want to share
6 with you the fact that I'm very lucky to have been
7 able to practice Aboriginal Law dating back to early
8 in my legal career. And one of the things that I
9 worked on before I left Fortis as a lawyer was the
10 structuring of the Mount Hayes LNG partnership
11 involving the Cowichan and the Chemainus Indian Bands
12 with Fortis, which went into service here on Vancouver
13 Island in 2011. So, very proud to have been part of
14 that. And I'm looking forward to hearing your
15 feedback on our draft recommendations today, so thank
16 you all.

17 COMMISSIONER BREWER: Good morning everyone. My name is
18 Carolann Brewer and I am Smalqmix from the Sylx Nation
19 in the interior of B.C., in the Okanagan area. I'm a
20 member of the Lower Similkameen Indian Band and I am a
21 lawyer. I was called to the bar in Ontario in 1984
22 and here in B.C. in 2007.

23 I've been a member of the Commission, a
24 Commissioner, since January of this year. And I've
25 been a member of the panel since -- well, since the
26 panel started. Yes, since March. And I feel very

1 privileged to be included in this panel, which is
2 dealing with a very important matter for First Nations
3 in B.C. and I'm looking forward to hearing your input
4 on the hard work that we've put into this over the
5 past few months.

6 COMMISSIONER LOCKHART: Good morning, my name is Blair
7 Lockhart. I'm the fourth member of the panel and I've
8 been with the B.C. Utilities Commission since January
9 of this year. I'm not going to take any time
10 introducing myself because Anna's reminded me about
11 Black Friday shopping and I'm now distracted. Anyhow,
12 thank you.

13 MR. GEORGE: Thank you very much. I'd also -- there are
14 a number of staff here from the BCUC, can you please
15 stand and give a wave? If you need any kind of
16 information or support, please see these individuals
17 in the room.

18 Joining us as the external legal counsel
19 for the BCUC, Lino Bussoli. Thank you, Lino, for
20 being here with us. We have the Allwest team that's
21 been on this road show with us. They are transcribing
22 our conversations here today. Please give a wave from
23 Allwest.

24 And it's always good to know who we're
25 sharing time and space with, so Teresa's going to
26 quickly go around the room here and just have you

1 introduce who you are and who you're here
2 representing.

3 MR. COUSSENS: Matthew Coussens, director lands and
4 infrastructure for Esquimalt Nation.

5 MR. HALDANE: Good morning, Bruce Haldane, deputy chief
6 councillor for community of Gitwinksihlkw.

7 MS. MORVEN: Good morning and good to see you all
8 again, I'm Linda Morven, CEO for the village of
9 Gitwinksihlkw.

10 MR. ALEXANDER: Good morning everyone, Merle Alexander,
11 I am here with Nisga'a Village of Gitwinksihlkw, and
12 I'm also here with BCAFN/First Nations Leadership
13 Council.

14 MS. BEATON: Good morning everybody, Emmy Beaton, I'm
15 here with BCAFN.

16 MR. HILES: Hello, my name is Clayton Hiles, I'm here
17 representing the Marine Renewable Energy Lab out of
18 UVic.

19 MS. VAN HUIZEN: Hello everyone, Danielle Van Huizen,
20 from BC Hydro.

21 MS. EDWARDS: Hello, my name is Laura for Beecher Bay.

22 MS. WOOD: Good morning everyone, my name is Lindsay
23 Wood, and I am with the Ministry of Energy, Mines and
24 Petroleum Resources.

25 MR. GEORGE: Excellent, thank you very much.

26 For those of you who don't know me, my name

1 is Dan George, Four Directions Management, and my
2 colleague here with me is Teresa Dolman, and we have a
3 role here in terms of assisting in the facilitation
4 and moving us through the agenda.

5 This morning we are going to hear from
6 David Morton, our chair, who will provide an overview
7 of why we are here, and make a presentation on the
8 proposed recommendations made within the draft report.
9 There will be time for questions and answers during
10 Mr. Morton's presentation. Following his
11 presentation, we will break into small group
12 discussions where we will have the opportunity to
13 discuss the draft report and its recommendations more
14 deeply.

15 A short lunch will take place from 12:30 to
16 1:00 P.M., after which time we will reassemble into
17 our small groups and ask that each group take 20
18 minutes to discuss who from your group can summarize
19 the discussion for your table back to the panel. A
20 representative from each table will then present their
21 summary and comments on the draft report to the panel.
22 This presentation will be on the record and
23 transcribed. The breakout small group discussion will
24 not be on the record or transcribed. Any individuals
25 who wish to make additional comments to the panel will
26 have the opportunity to do so after the small table

1 breakout group presentations. And we will conclude
2 today's sessions with some brief remarks.

3 So the primary objective of today's
4 workshop is to assist the BCUC by providing your input
5 into the draft report, which was released and which
6 seeks to address what characteristics you believe
7 define an Indigenous energy utility, and if or how
8 Indigenous utilities should be regulated.

9 On November 1st, 2019, BCUC released its
10 Indigenous Utilities Regulation Inquiry Draft Report,
11 including its preliminary findings and recommendations
12 for the B.C. Government. The report is available on
13 the Inquiry's proceeding page, or the BCUC website,
14 and a summary has been provided to you today.

15 In order to ensure that the draft report
16 recommendations reflect the interests and perspectives
17 of B.C.'s Indigenous peoples and communities, we
18 invite you to provide your comments to the BCUC.

19 I want to acknowledge the BCUC for once
20 again going out to the community and soliciting
21 feedback now on the draft recommendations generated
22 from our first round. The comment period on this
23 draft report is open until March 2nd, 2020. Today at
24 this workshop we are hoping to hear your initial
25 thoughts and your concern and comments. This is also
26 an opportunity to ask the BCUC questions about this

1 work and seek any clarifications that you may require.

2 The BCUC has prepared a presentation that
3 once again will be delivered to you momentarily by our
4 Chair, Mr. Morton.

5 So, today you are going to have an
6 opportunity to inform the panel of your interest
7 related to this inquiry. You are welcome to ask
8 questions or make a presentation in your traditional
9 language. However, we ask that you please provide
10 translation for the presentation so that it can be
11 transcribed and added to the public record.

12 All presentations to the panel, along with
13 the name of the person making the submission, will be
14 transcribed, live audio streamed at BCUC.com and
15 placed on the public record. The dialogue that takes
16 place during the breakout groups, again, will not be
17 transcribed, live audio streamed, or placed in the
18 public record. No part of these workshops will be
19 videotaped. Everyone is welcome to come and go during
20 the session as your schedule permits.

21 We know when we talk about the land and
22 development on the land base, often it's highly
23 emotional for many of us, so to help create a safe
24 respectful container for our dialogue to occur we ask
25 that you be hard on issues and soft on people, that
26 you actively participate, recognizing that the process

1 is only as strong as level of participation received
2 from each of you. So, please, give us your feedback.

3 I always like to introduce people in the
4 room because it demonstrates the diversity of people
5 in the room. And when we come together in these kind
6 of forums we always generate great ideas. When we do,
7 let's please we take them as far as we can, listening
8 generously to one another, and always having a
9 solution orientation. So we know we can always
10 improve. When we identify an improvement area, please
11 be prepared to offer a solution as well. We don't
12 want to get stuck in the problem.

13 And we ask that you silence all your phones
14 during our time together. We'll take natural breaks
15 over the course of the day when you can check your
16 messages.

17 Let's give a warm welcome to Mr. Morton.

18 **PRESENTATION BY CHAIRMAN MORTON:**

19 THE CHAIRPERSON: Thanks, Dan. As Dan said, I'm going
20 to -- I'm try to keep it as brief as possible. This
21 is about the fifth time I've done this now and I've
22 managed to shave a few minutes off each time, so we'll
23 see how we can do now. But I also want to make sure
24 that I answer all your questions and provide as much
25 information as possible. So feel free to ask
26 questions as I go along and I'll pause as we go along

1 to make sure that everyone does have an opportunity.

2 So we're going to talk a little bit about
3 energy, energy utilities, what they are; and then a
4 little bit about how the BCUC regulates them; and then
5 we'll talk a bit about this inquiry, what we've done
6 so far, what the process has been; and then we're
7 going to move into the draft report and it's proposed
8 recommendations, and then hopefully we'll all be in a
9 better position to discuss those recommendations.

10 So when we talk about energy utilities, and
11 as that term is defined in the Act, what an energy
12 utility is, it's anyone or any company -- and I'm
13 paraphrasing here, but any company that sells energy,
14 most kinds of energy, to anyone in British Columbia.
15 And the kind of energy that's referred to are things
16 like electricity, natural gas, heat, hot water, steam
17 or what they call thermal utilities. However, it
18 doesn't include the energy that's produced by the
19 petroleum industry. So it doesn't include, you know,
20 gas stations and the sale of crude oil and so on. But
21 it does include all the other forms that I discussed

22 And for the participants in this inquiry,
23 there's been two focuses of energy utilities, two
24 different flavours, let's say, of energy utilities.
25 And one comes in the form of a company that would set
26 up a power generation facility, an electric generation

1 facility, let's say – and it doesn't have to be
2 electrically, but in this example an electric
3 generation facility – and the primary purpose of that
4 is to sell energy, bulk energy to BC Hydro and that
5 would then be used by BC Hydro in their system to sell
6 to their customers.

7 And those kinds of projects, we refer to
8 them as IPPs, independent power producers. And so
9 those independent power producers are generating
10 energy and selling it to another party in B.C., that
11 other party being BC Hydro.

12 Another kind of energy utility is an energy
13 utility that has a bunch of wires that run down a
14 street and connect to your house and your neighbours'
15 house, and provides energy to yourself and your
16 neighbour, maybe as a natural gas pipe that runs down
17 the street and supplies natural gas. Those are
18 sometimes called distribution utilities, but they are
19 a utility that has a diverse customer base, and has
20 what we call retail customers.

21 Now, a utility isn't either/or, it could be
22 both. It could provide energy locally as a
23 distribution utility, and it could sell off surplus
24 energy to an organization like BC Hydro. But we are
25 going to be talking about those are the kinds – those
26 are the kinds we're talking about when we're talking

1 about utilities.

2 As I indicated, utilities in this province
3 are regulated under the *Utilities Commission Act* and
4 regulated by the British Columbia Utilities
5 Commission. The *Utilities Commission Act* is the Act
6 that lays out how we provide that regulation.

7 So, why do we regulate utilities? Although
8 the Act is silent on why utility regulation exists, it
9 is not something that's only done in British Columbia.
10 It's pretty common throughout other provinces of
11 Canada, in the United States, in Europe. In fact
12 around the entire world utilities are regulated. And
13 generally regardless of the political stripe of the
14 country or the level of development of the country,
15 almost every country in the world has some form of
16 regulation of its utilities.

17 And largely the reason for that is that
18 utilities tend to be monopoly companies. When you
19 look at -- and I certainly don't mean to pick on BC
20 Hydro for the representative in the room, they are a
21 great example of it. If you look at a utility like BC
22 Hydro, it has a tremendous investment in capital
23 infrastructure, and it's not easy to grow to that
24 level, and it's not easy to make those kinds of
25 investments.

26 So, that tends to be a barrier to entry to

1 other companies. So therefore, a lot of utilities
2 tend to be what we call natural monopolies, because
3 there is really nobody around that can effectively
4 compete with them. And as I'm sure you're aware, if
5 you are a natural monopoly, or a monopoly of any kind,
6 you don't have any competition. So, there is nobody
7 there to offer things that you are offering at a lower
8 price, so you can basically -- you could charge what
9 you want, you can provide whatever level of service
10 that you want. And it's to protect against those
11 potential monopoly abuses that utility regulation is
12 in place. And that's what we at the British Columbia
13 Utilities Commission, that's what we see as the
14 purpose of regulation.

15 The utility world is changing. Not all
16 utilities, not all energy is delivered by large
17 utilities like BC Hydro. There are smaller utilities,
18 especially when you look at other forms of energy than
19 electricity. Small thermal energy utilities, for
20 example. And there can be competition in those
21 markets, and at the Utilities Commission we recognize
22 that, and we have policies in place so that if there
23 is a competitive market, then we make recommendations
24 to government that those circumstances don't be
25 regulated, because the protection we provide is
26 automatically protected in the competitive market

1 place.

2 So, what do we do when we regulate
3 utilities? Well, utilities are required to come to us
4 to get approval for the rates that they charge. They
5 are required to come to us to do many, many, many
6 things that they do. Issue securities, if there is
7 mergers or amalgamations, if they want to build any
8 capital infrastructure. All of those activities
9 require them to make an application to us, and for us
10 to review it and either approve or not approve it.

11 There is one thing I would like to say
12 though about the capital infrastructure. A lot of
13 capital infrastructure of a utility, of course,
14 consists of things like pipelines, transmission lines,
15 generation facilities, dams, wind farms and so on.
16 Although it could be a new office building, it could
17 be a computer system, but it's the large capital
18 projects that have an environment impact that I would
19 like to talk about.

20 And when I say that we are required to
21 approved those, the approval that we provide is in the
22 context of whether it's appropriate for the utility to
23 spend that money and recover it from its customers in
24 rates. It's not an approval to build a project at
25 that location. It's not the only approval that's
26 required to build a project at that location.

1 Typically there is environmental permits that are
2 required and there may be other permits too. And none
3 of those are within our jurisdiction. So, to say that
4 we approve something and also to think that if you
5 don't need -- if someone doesn't need our approval, if
6 they're exempt from our oversight, it doesn't mean
7 that you can just go ahead and build something. There
8 are other permits that would be required, and we are
9 not an environmental regulator, we're generally an
10 economic regulator.

11 I just want to go over a little bit of
12 background information that we will need in order to
13 start our discussion of the recommendations in the
14 report. And again, I'm going to focus a little bit on
15 the electricity side in a minute. But one of the
16 points is that under the *Utilities Commission Act* a
17 municipality -- if a municipality operates a utility
18 within its own boundaries, selling to the criticizes
19 of that municipality, regardless of the energy type,
20 it could be natural gas, thermal energy, electricity,
21 they are not regulated by us. There's what's called
22 an exemption for municipalities. And that's going to
23 figure in the recommendations and I just want to make
24 sure that we understand exactly what they mean before
25 we get there.

26 Secondly, if we look at transmissions

1 system, the high voltage electric transmission system,
2 in British Columbia, you can see the lines on the map
3 show where it runs. You know, a lot of it runs from
4 the north to the south to deliver energy that's
5 generated in the north to the south. There are some
6 points in this transmissions system that connect to
7 other jurisdictions. There's a couple of points that
8 connect into Washington and there's points that
9 connect into Alberta and also into Montana and Idaho.

10 And the reason for this is so that energy
11 can be traded back and forth between British Columbia
12 and our neighbours. And what that does is that helps
13 all of the parties to run their system more
14 efficiently. Because there's times when you excesses
15 of electricity that you can sell to your neighbours or
16 there's times when you have shortages and you can
17 purchase energy that you're short from your neighbour.
18 And also, perhaps more importantly, during times of
19 emergency if a generation facility goes down our
20 neighbours are there to help us out with back--up
21 energy and conversely, we're there to help our
22 neighbours out. This system is interconnected
23 throughout the entire Canada, United States and
24 northern Mexico.

25 And in 2003 there was an event where a tree
26 fell one wire in Ohio and took out the entire eastern

1 seaboard. It took out New York City, Toronto, Boston,
2 Philadelphia and so on. What that did is that really
3 shook up the participants in the grid and the federal
4 government in Canada and the United States. And
5 there's been a lot of work since then on developing
6 mandatory reliability standards to ensure that that
7 doesn't happen again. So, to ensure that the
8 vegetation is maintained and recently to ensure that
9 the system is safe from cyber-attacks.

10 So those are called mandatory reliability
11 standards and those are regulated by the British
12 Columbia Utilities Commission and we make some
13 recommendations around the continued regulation of
14 mandatory reliability standards later on. So we'll
15 talk a little more about that.

16 The third issue is retail access, and most
17 of this system, not all of it, but the vast majority
18 of the system is currently run by -- owned and
19 operated by BC Hydro. And there is a prohibition on
20 accessing the system to sell energy in the province,
21 for any third party to sell energy.

22 So if I have a generation facility here and
23 I'd like to sell you energy to your house here, I
24 can't use the BC Hydro transmission system to, what
25 they call, wheel that energy to you, because there's a
26 prohibition on that. And as we'll see when we talk

1 about it, that has some implications, especially for
2 small utilities that may need access to the
3 transmission system to broaden their customer base.
4 And we're going to talk about what those
5 recommendations are when we get there.

6 One of the things that -- one of our duties
7 as a Utilities Commission is to answer questions that
8 are posed to us by government. And earlier this year
9 government posed a series of questions to us and asked
10 us to conduct an inquiry to answer those questions and
11 provide the answer to government. Those questions are
12 laid out here and they're also laid out in the
13 handbook that you've got -- that you should have.

14 One of the defining characteristics of an
15 Indigenous Utility, should Indigenous Utilities be
16 regulated under the *Utilities Commission Act* or should
17 there be another mechanism under which they're
18 regulated? Or, sorry, or should they be unregulated?
19 If it's appropriate to regulate Indigenous Utilities
20 under the *Utilities Commission Act*, should they be
21 regulated in a different way, or in other words,
22 should the *Utilities Commission Act* be modified to
23 provide a different regulatory structure?

24 And if it's not appropriate to regulate
25 Indigenous Utilities under the *Utilities Commission*
26 *Act*, but in some other manner, then what should that

1 other manner look like? And then finally, if an
2 Indigenous Utility -- if Indigenous Utilities weren't
3 regulated, what would happen to a utility if it ceased
4 to become an Indigenous Utility?

5 So those were the questions that we were
6 asked to answer and that was roughly around March this
7 year we kicked off this inquiry in an effort to answer
8 those questions. Because one of the characteristics
9 of our Commission is that we -- we're not a consulting
10 company. We don't go and look at questions and then
11 figure out what the best answer is. We are an
12 organization that has open and transparent processes,
13 and we reach out to our stakeholders and reach out to
14 the broad community when we do need to answer
15 questions like this, and that's exactly what we did
16 this time.

17 So we went through -- we publicized the
18 inquiry. We invited interveners to participate in the
19 inquiry. Intervenors are people or organizations that
20 have evidence that they want to bring forward that
21 would support a position that they would want to take
22 with regard to these questions.

23 In addition, we went out on a trip around
24 the province to engage with communities around the
25 province, to ask their views on these questions. And
26 then, when we were finished with that and had gathered

1 as much information as we reasonably could within the
2 time that was allocated to us, we prepared a draft
3 report.

4 The timeline for the inquiry was originally
5 for us to provide a completed report by the end of
6 January, but it became quickly clear to us -- a lot of
7 the comments that we received as we went out to talk
8 to people was that this is a complex subject and we
9 really need some time to reflect on it. So we
10 discussed that with government and they extended the
11 timeline until the end of April. And so what that's
12 done then is that's given us an opportunity to prepare
13 this draft report, and then go out for a period of
14 consultation on the draft report, which is where we
15 are now. We're doing these workshops and we're having
16 a comment period which goes until roughly the end of
17 February.

18 We will be producing an interim report for
19 the end of the year, but that interim report will have
20 no recommendations at all. There will be a summary of
21 the process and progress to date, via description of
22 the sessions that we've held. It will just be a
23 summary of the process. So, because there will be no
24 recommendations, there will be no action taken by
25 government whatsoever.

26 However, the final report will contain our

1 recommendations, and at that point it will be in
2 government's hands whether they choose to act on any
3 of the recommendations in the report.

4 We as a Commission do not have the ability
5 to decide what we are going to regulate and what we're
6 not. And even how we are going to regulate it. Our
7 jurisdiction comes from our Act and that comes from
8 government. So, even if we make recommendations that
9 something shouldn't be regulated, government still has
10 to put regulations or legislation in place to make
11 that so. So it will be up to government to act on the
12 recommendations or not of the final report.

13 So now I'm going to stop for questions.

14 MR. GEORGE: Any questions? Okay.

15 THE CHAIRPERSON: Okay. Thanks. So now I'm going to
16 talk a bit about the proposed recommendations that we
17 made in the report. And what I mean by proposed
18 recommendations, what the panel means by proposed
19 recommendations, is that at the point we wrote the
20 draft report, based on the information and feedback
21 and the submissions that we had, these were the
22 recommendations that we would make. However, we
23 acknowledge that there may be other considerations,
24 and that people perhaps needed more time to reflect on
25 them. So, they are simply proposed recommendations,
26 and they are subject to change, and they are subject

1 to change based on what we will hear back from you,
2 both today and during the comment period in March.

3 So, this is an opportunity to say "no, that
4 recommendation is terrible, we do not agree with it."
5 Or it's an opportunity to say "yes, we highly endorse
6 that recommendation." Or somewhere in between.

7 So I am going to go through the
8 recommendations that we've made, the draft
9 recommendations we've made in the report. And the
10 first one, an overarching recommendation is that all
11 ratepayers of Indigenous Utilities should receive the
12 same protection as ratepayers of non-Indigenous
13 Utilities. Or another way to look at that is that
14 regardless of who regulates an Indigenous Utility,
15 whether it's a utilities commission or some other form
16 of regulator or regulation, we feel that the same
17 safeguards should be in place for ratepayers of
18 Indigenous Utilities as there are for utilities all
19 over the province, and in fact all over the world. We
20 don't see that there should be a different regulatory
21 regime for Indigenous Utilities. Again though, that's
22 not a comment on who should enforce that regime, or
23 who should be putting that regime in place.

24 As far as the regulation of the mandatory
25 reliability standards, and again, these are the
26 standards that apply to the grid for the reliability

1 of the bulk electric system, the high voltage electric
2 system. We feel that regardless of who owns or
3 operates it, that the BCUC should retain jurisdiction,
4 and it should continue to be regulated in the same way
5 that the rest of the North American grid is regulated.

6 And then we drill down and looked at
7 Indigenous Utilities specifically, and we looked at
8 them in two ways. One is who should regulate them,
9 and the second is we looked at what is an Indigenous
10 Utility, what does that mean exactly for a utility to
11 be Indigenous.

12 So, to deal with the first case, which is
13 how should Indigenous Utilities be regulated, we
14 looked at different -- since the whole issue of land
15 and land jurisdiction is complicated, at least it
16 certainly was for me, we broke it down into different
17 sub-groups. However, there is an overarching
18 principle for all of the next few groups of
19 recommendations, and that is that the First Nation
20 should be responsible for regulation of a utility that
21 it operates on its territory. That was the
22 overarching principle. And that if that nation so
23 chose, they could remain under Utilities Commission
24 oversight and continue as regulated. However, they
25 should have the option of regulating themselves. So
26 that was the overarching recommendation.

1 But then when it came to reserve lands we
2 looked at those in particular and because of our --
3 the first point that I made, which is that Indigenous
4 Utility ratepayers should be afforded the same
5 protections are ratepayers of all utilities, we've
6 made a recommendation that even though a nation can --
7 on reserve land if a nation could opt out of our
8 regulation -- and there would be no hurdle to opting
9 out, it would simply be a notification to say we've
10 got a utility, we're going to regulate it ourselves --
11 there's two -- there are two issues that we want to
12 focus on. One is how safety would be regulated,
13 safety and reliability of that utility, how that would
14 be regulated.

15 Because we heard from -- we've heard from
16 everyone that -- well not everyone, sorry. There's
17 been mixed views in this proceeding. There's been
18 some views that the BCUC should always retain control
19 over safety regulation and there are some views that
20 say that the nation should be responsible for safety
21 regulation. So we're asking you to consider that and
22 let us know how you feel about that.

23 And the second issue is what system is in
24 place to handle complaints and what kind of a dispute
25 resolution mechanism is available for the customers of
26 the utility? And we find -- it appears to the Panel

1 that it's not always clear whether dispute resolution
2 mechanisms that are in place would cover a utility in
3 a reserve land situation. So we're suggesting then
4 that the Band Council be able to ensure that the
5 dispute resolution mechanisms that are in place for
6 other matters also apply to utilities, and if not,
7 then the BCUC would retain oversight of complaints.

8 And these recommendations then apply to all
9 of the other circumstances. However, there were some
10 cases where it appeared to the Panel that there was no
11 issue around the dispute resolution mechanisms. That
12 they were already in place and were robust enough and
13 would cover utility situations, for example with the
14 Nisga'a. And there was some question with Westbank
15 and Sechelt, and we were asking for confirmation that
16 that would be the case there.

17 So what we'd like you to do is when you
18 break up into your groups, is take a look at that set
19 of recommendations and let us know if you're generally
20 in agreement with that approach or if there's any
21 recommendations that you have of your own.

22 As far as this exemption approach goes,
23 we've made these recommendations largely because
24 that's what we've heard from many parties in this --
25 that have participated in this inquiry. And what
26 appears to have been the driving force for it was what

1 I talked about earlier, the municipal exemption. Is
2 that many parties said that there should be an
3 exemption similar to the municipal exemption because
4 we -- our councils essentially operate as
5 municipalities or in a similar manner to
6 municipalities. So just to tie that back to the
7 discussion we had earlier, this reflects what we've
8 heard from a lot of participants in the proceeding.

9 And then finally, there didn't seem to --
10 there doesn't seem to be a lot of controversy over
11 ceasing to be an Indigenous Utility. If it ceased to
12 meet whatever definition may be in place, then it
13 would automatically default to being regulated as
14 other utilities would be in the province.

15 The definition of an Indigenous Utility
16 then, we're going to turn to that next, because we've
17 just been using that term. And we've talked about the
18 concept of a utility that's owned and operated by a
19 Band Council or by First Nation. So we need to tie
20 these concepts together and figure out what an
21 Indigenous Utility is. And we'll talk a bit more
22 about that in a minute.

23 So, when we're asking for your feedback
24 here we're asking what are your views in general on
25 our proposed recommendations. Do they strike the
26 right balance between the need to provide ratepayer

1 protection and between the rights of First Nations to
2 self-governance, especially considering the principles
3 of UNDRIP and those parent rights that have been
4 recognized by the province. We would like to ensure
5 that our recommendations are consistent with that and
6 yet are providing the protections that we all need.

7 When we talk about this complaints and
8 dispute resolution process and making sure there's an
9 adequate one in place, well, what does that look like?
10 And we'd like you to turn your attention to that and
11 give us your feedback on that. And then this whole
12 issue about safety and service reliability, should
13 that be exempt from the UCA or should that continue to
14 be regulated under the *Utilities Commission Act*?

15 So then now I'd like to talk about the
16 whole issue of a definition of an Indigenous Utility.
17 And again, we've framed our recommendations in the
18 context of a utility that's owned and operated by, as
19 I said, by a First Nation. But what about these other
20 scenarios? What if the utilities assets are owned by
21 a corporation? Just a private corporation, but the
22 First Nation is a shareholder. Let's say it's a sole
23 shareholder. But what if it's not the sole
24 shareholder? What if it's 51 percent shareholder? Or
25 what if it's a minority shareholder that still has
26 control of the company? Because as you know, you can

1 control a company with a minority position depending
2 on who the other shareholders are and how much they
3 hold of it.

4 What if the utility's assets are owned by a
5 partnership and the First Nation is a limited partner
6 to that or a general partner to that? Should that be
7 considered an Indigenous Utility and therefore should
8 that be captured by the exemption that we're
9 proposing? What if the utility's assets are owned by
10 a third party but the First Nation has granted a
11 franchise agreement or a licence or has enacted any
12 enabling bylaws to facilitate the operation of the
13 utility? What if the Council sets the rate for the
14 utility?

15 And just to let you know, where some of
16 these questions are coming from is, if you recall
17 again when we talked about the municipal exemption, to
18 the extent that this is a very similar approach to the
19 municipal exemption, we're facing these same issues
20 with regard to the municipal exemption. We've got --
21 there's five or six municipalities in the province.
22 Of the 150 or so municipalities, five or six of them
23 own their own utility assets and operate their own
24 utility outright. But there's some other
25 circumstances where the municipality owns a portion of
26 a corporation that's providing service and they

1 argument is arising, well that's a municipal utility
2 and that should be exempt.

3 So all of these situations are arising
4 around that exemption also. And we have an inquiry
5 going at the same time that's looking into these
6 issues. So, we think that there's the same sets of
7 issues here. If we're going to build an exemption
8 around a concept of First Nation or a Band Council
9 owning and operating a utility, then you get into
10 these issues around, well, is there a line to be drawn
11 and if so where is that line drawn?

12 And then there's some of the questions
13 around what is this utility going to have the
14 opportunity to do? And how can it become viable as a
15 utility? Especially because in many circumstances
16 communities are quite small and they're spread out,
17 and in many cases many cases may not have enough
18 critical mass for the utility to operate economically.

19 So, some of the questions that we posed
20 around that are: what if an exempt utility, this
21 Indigenous Utility, sells energy to a neighbouring
22 First Nation and a different First Nation? So, how
23 should that sale of energy in the -- sort of, Nation A
24 is selling energy to Nation B, how should the sale of
25 the energy to Nation B be regulated on that Nation's
26 lands? Should it be regulated by the second First

1 Nation or should it be regulated by the first?

2 And then another question that arises in
3 that scenario is, well, what if in order to get the
4 energy there it needs to use the BC Hydro transmission
5 system? Or even to get it to another piece of land
6 within the same First Nation you'd need to use the BC
7 Hydro transmission system and there's a retail access
8 prohibition, so that does not allow you to do that.
9 Should we make recommendations that the retail access
10 prohibition be modified to allow that utility access
11 to the BC Hydro transmission system so it can get its
12 energy from one point to another.

13 Look at scenario where an exempt First
14 Nation utility wants to sell energy to a municipality.
15 Under the *Utilities Commission Act* that would not be
16 prohibited in this scenario because you've one exempt
17 utility selling to another exempt utility. And the
18 only problem there then would be how to get the energy
19 there. And again, if you need to get it across the
20 transmission system then there would be a prohibition.

21 A lot of this discussion would seem to --
22 first of all, it seems to focus on electricity and I
23 would like to make it clear that this is not just
24 about electricity, it's also about a propane grid and
25 it's about a thermal energy utility also. But some of
26 these issues are necessarily framed around an electric

1 utility. And a lot of them have been framed around
2 what we've called a "distribution utility", a utility
3 that distributes energy to multiple customers.

4 And I'd also like to point out that a
5 distribution utility wouldn't necessarily have to have
6 a source of generation. Almost all of the municipal
7 utilities that we have in the province, they simple
8 purchase energy from BC Hydro or Fortis and resell it
9 to their own customers. There's only one of the
10 municipal utilities that actually generates its own
11 electricity. So I just want to point that all of
12 these situations would cover whether the utility
13 generated its own or simply reselling energy
14 purchased.

15 But to go back to the other kind of utility
16 where it sells all of its energy or most of its energy
17 in bulk to BC Hydro. Even if its exempt under the
18 proposals that we're making, if it wants to sign a
19 contract with BC Hydro, BC Hydro being a regulated
20 utility triggers the need for Utilities Commission
21 approval of that contract. And the Utilities
22 Commission circumstances would apply a public interest
23 test to the approval of that contract. And that
24 public interest test would focus on a number of
25 things, but primarily it would focus on, does BC Hydro
26 need the energy? And is the cost of the energy --

1 does the price that it has to pay for the energy,
2 would it put its ratepayers -- would it harm its
3 ratepayers? In other words, if it has to pay more for
4 the energy then it could acquire the energy from
5 somewhere else it's going to drive up rates for
6 ratepayers. So that would mean that we would be less
7 likely to approve that contract.

8 So what we're asking in this question is
9 when in that circumstance, if an exempt Indigenous
10 owned utility is negotiating a purchase contract with
11 Hydro, are there modifications to the public interest
12 test that we apply, that would be warranted, for those
13 circumstances?

14 We also heard from a number of parties that
15 said that, "We're fine with the BCUC continuing to
16 regulate as it does but we find your processes are a
17 little difficult to deal with." And, you know,
18 frankly, we hear that from a number of people. And,
19 you know, we don't like having processes that are
20 difficult to deal with, but our processes, even though
21 they're open and transparent, there's a lot of rules
22 of administrative law that we have to follow that
23 ensure that they're fair. But unfortunately that ends
24 up making them a little hard to deal with. So the
25 comments that we were getting is that, "What can you
26 do to make your processes more accessible? What can

1 you do to make your regulation more cost effective?"
2 And that's a question that we're also asking you too
3 is, if we do regulate how can we do it better?

4 So those are the questions that we're
5 asking you to turn your attention to. And just before
6 I sit down, I just want to show you the rest of the
7 process. Where we are now is that we're in Victoria.
8 Next week we're going up to Smithers. We'll issue the
9 interim report at the end of December, and we have two
10 more workshops in the New Year at Kamloops and Fort
11 St. John. And I understand we're also arranging for
12 some additional workshops in February.

13 But then on March the 2nd we're asking for
14 your written comments. And they can be the same
15 comments that you're making to us today, they can be
16 different. You change your mind and say, "Well I said
17 this at the workshop, but upon reflection I have some
18 modifications." And we welcome any comments that you
19 would have on that date. But then there's -- for much
20 of the month -- gives you the opportunity until March
21 the 31st to read everybody else's comments.

22 So your comments will be posted publicly,
23 as will everyone else's. So then you can look at what
24 everybody else said and then you will have an
25 opportunity to rebut or agree with comments that other
26 parties have made. So that gives you a chance, two

1 chances, to make your comments and gives you a chance
2 to tweak your comments or change your comments based
3 on what you've heard from other people.

4 And then the Panel will go away for a
5 month. I know it seems like a long time, but for the
6 Panel it's really not. There's a lot of material to
7 go through. And then we'll be making our final
8 recommendations based on what we've heard at the
9 workshops and what we've heard during the comment
10 period.

11 Are there any questions?

12 MR. GEORGE: Any questions? Just state your first and
13 last name, spell your last name for the record.

14 MR. ALEXANDER: Hi, Merle Alexander. Last name A-L- --
15 A-L-E-X-A-N-D-E-R. I have a problem with my own last
16 name there. Usually have to spell my first name. And
17 I'm here with -- on behalf of Nisga'a Village,
18 (inaudible) B.C. Assembly First Nations and such. Do
19 you want us to make comments like right now on the
20 questions or do you only want that to happen through
21 -- because I think that --

22 THE CHAIRPERSON: Yeah, feel free to say what you want.

23 MR. ALEXANDER: Sure.

24 THE CHAIRPERSON: I was thinking that if you have
25 questions on the presentation or any of the things
26 that I said, you know, in particular, but if you have

1 comments on the recommendations, we're basically
2 asking you to make those comments in the workshop
3 portion. If you have something brief that you want --
4 MR. ALEXANDER: Maybe I'll say whatever. Just, I mean
5 just because I think, you know, I mean my comment is I
6 think applicable to other First Nations also and they
7 might want to pick it up in their small --

8 THE CHAIRPERSON: Yeah, sure.

9 MR. ALEXANDER: I mean, I think, you know, I think
10 there is like a problematic approach to the exemption
11 and that it only applies to reserves. And that, I
12 mean, you probably know as well as we do that reserve
13 land is only 0.4 percent of the province, so you're
14 immediately retaining 96.4 percent of the land base
15 jurisdiction that you already would have had, so it's
16 like highly favoured to you retaining jurisdiction.

17 I mean I think the bigger problem, what you
18 probably already heard in some of the workshops
19 already, is, you know, that this seems quite
20 inconsistent with the way -- I mean if this is
21 intended to be a right -- I mean, if you're -- by
22 engaging First Nations you're intending to sort of
23 hear from us as rights holders and you're -- but your
24 focusing on a geographic land base which is the *Indian*
25 *Act* based, there seems to be a fundamental flaw,
26 because obviously like when it comes to the way the

1 Indigenous peoples in British Columbia or First
2 Nations in British Columbia express their rights on
3 land base, it's always expressed in terms of territory
4 and Aboriginal title.

5 So for you to narrow the scope of your --
6 like what is otherwise I think a progressive
7 exemption, then I think that's problematic. And I
8 think -- the reason I'm saying I want to say it here
9 is just so that -- I mean I'll repeat it in small
10 group too, it's just though that -- like I think that
11 that's something that's probably universally rejected
12 by First Nations, that the exemption be so narrowly
13 construed to only apply to their reserve lands.
14 Because especially on the Island, like where they
15 negotiated historical treaties where they accepted
16 smaller land bases based on the fact that their
17 territorial rights would be much greater, like that's
18 the niche of the Douglas Treaties.

19 Like, you know, I think it's just -- I
20 think there's lots of problematic elements. So I mean
21 of course we'll make submissions in the small group as
22 well as in writing, you know, about -- on that, but I
23 think it sort of needs to be said because you really
24 have an incredibly narrow like land base.

25 Even for the Nisga'a, part of the sort of
26 treaty mandate was to only let them sort of establish

1 the highest threshold, which they only have got about
2 5 percent of their actual traditional territory. So
3 you can sort of see by variety of negotiations and
4 just the way that rights have been explored, like the
5 narrowing of the application of this inquiry becomes
6 very small, like quite quickly. And obviously
7 completely -- also leads towards the status quo.

8 THE CHAIRPERSON: Thank you, I appreciate that, and I
9 think it is probably a good topic to workshop. So I
10 don't want to get into it too much now, but we are
11 certainly open to what you are saying, absolutely.

12 As I see it, it's not limited to treaty
13 land -- sorry, to reserve land. It will cover both
14 the existing modern treaties and future modern
15 treaties as they emerge and they are established. And
16 as far as historic treaty lands go, we have made some
17 recommendations about historic treaty lands, and I
18 think we need a better understanding of how that might
19 work.

20 But one specific question, and I would ask
21 you to consider it in the workshop, is then if the
22 exemption is built around a utility that is owned and
23 operated by a Band Council or a First Nation, then how
24 does that work when the land base is -- and the energy
25 is sold to the people of that First Nation? How does
26 that work when the land base is broadened? The

1 exemption would presumably have to be worded
2 differently? I'm not sure we need to answer that now,
3 but if you could consider that in a workshop. But I
4 don't want to preclude it if you have got an answer.

5 MR. GEORGE: Okay, Emmy. First and last name, spell
6 your last name for the record.

7 MS. BEATON: Okay, B-E-A-T-O-N. So, thank you for the
8 opportunity to participate in this. I hope that it's
9 meaningful, what we say is included.

10 I want to clarify the process though,
11 because what you're saying is that what we are saying
12 here is on the record, but what we are saying in our
13 small groups is not?

14 THE CHAIRPERSON: That's correct, yes. However, your
15 small group will be reporting back to the larger
16 group, and that will be transcribed.

17 MS. BEATON: Okay, so I think that the first comment
18 that I want to make is just that there is a
19 fundamental problem with the assumptions underlying
20 what you are talking about in the presentation. And I
21 think we need to focus on sovereignty, and that is the
22 spirit and intent of the U.N. Declaration legislation,
23 and that piece really shows itself in two areas. So
24 lands, reserves are colonial structures. We have
25 traditional lands that we assert. And that is how we
26 need to look at the updates to this regulation. The

1 second is "Bands." Bands are colonial structures, we
2 need to enable ourselves to be sovereign within our
3 own structures. So I think we need to have more
4 conversation around some of the assumptions that I
5 don't think are useful, and then how we could include
6 that in our recommendations. And so I look forward to
7 having that conversation at these tables, and then
8 hopefully as a group.

9 THE CHAIRPERSON: Absolutely, thank you, we appreciate
10 that.

11 MR. GEORGE: Thank you, Emmy. First and last name,
12 spell for the record.

13 MR. HILES: Clayton Hiles, H-I-L-E-S. This is the
14 engineer in me coming out, but I have a couple of
15 questions related to the -- what is the term here?
16 The minimum reliability standards?

17 THE CHAIRPERSON: Mandatory.

18 MR. HILES: I understand that it's mandatory, but I
19 don't understand what that means. Like what's
20 involved in adhering to minimum reliability standards?

21 THE CHAIRPERSON: I think the term mandatory in this
22 context is just, it's what they are called, mandatory
23 reliability standards. But they are mandatory for any
24 participant in the North American grid. And there are
25 standards around things like how wide the corridor
26 vegetation that has got to be maintained. Standards

1 around physical security of assets, like substations
2 and, you know, how big the lock has to be, and whether
3 it has to be guard at the gate, and all those kinds of
4 things.

5 So there is a number of standards, and
6 anyone that is connected to the North American grid
7 agrees to adhere to those standards. And we have a
8 program in place to ensure that the companies in
9 British Columbia that own assets that are connected to
10 the grid do adhere to those standards. We have an
11 audit program in place where we regularly audit them,
12 and we have a program in place for managing violations
13 and making sure the violations get dealt with.

14 MR. HILES: Okay, that helps. And obviously safety and
15 reliability as defined under item 6 is a little bit
16 different, it says other than MRS.

17 THE CHAIRPERSON: Yeah.

18 MR. HILES: So could you give me a similar description
19 for --

20 THE CHAIRPERSON: Yeah, so that would be if you are
21 running a pole down a street with some wires and
22 transformers on it, make sure that it's properly
23 grounded, and that the wires have the right amount of
24 insulation on it, and that people -- you know, that
25 the system is safe, the distribution system is safe,
26 people aren't going to get electrocuted.

1 MR. HILES: Okay, that helps, thank you.

2 MR. GEORGE: Okay, anybody else?

3 MR. ALEXANDER: It's Merle Alexander. I guess I will
4 circle back on the point that Emmy made here. I guess
5 like what we are really saying is that we think that
6 this should be like most of this discussion,
7 especially given the size of the group of people here,
8 that we could quite easily have this conversation
9 completely on the record, as opposed to just having be
10 this sort of double tiered process. I mean, there
11 isn't really only a handful of people in the room, and
12 only about -- and also an even smaller handful of
13 groups represented. Like I don't know why we couldn't
14 just have this conversation on the record. Because I
15 do think it actually is important for the
16 Commissioners to hear this directly also, as opposed
17 to it just being workshopped, and then you getting a
18 transcription --

19 THE CHAIRPERSON: Why don't we take a break?

20 MR. GEORGE: Why don't we take a break. 10-minute
21 break, and then we'll reconvene, thank you.

22 **(PROCEEDINGS ADJOURNED AT 11:00 A.M.)**

23 **(PROCEEDINGS RESUMED AT 11:13 A.M.)**

24 MR. GEORGE: So we can call back to order. Thank you
25 for the suggestion about the process here, and what we
26 want to move forward with is affording an opportunity

1 for any of our guests who are here today to make a
2 statement now on the public record, and then once that
3 is concluded, we would then get into two breakout
4 groups.

5 The process design was purposeful, in the
6 idea that we would be allowing in a small group
7 setting more participation from members who may not
8 feel comfortable speaking in the larger group. So it
9 is purposeful why we designed it this way.

10 The conversation in the breakout group is
11 going to be captured, the key points that are raised
12 by the participants on a flip chart. That flip chart
13 will then be used by a speaker that you will appoint,
14 who will share your high-level findings, and thoughts
15 and ideas with the larger group. The flip charts will
16 become part of the public record as well, and should
17 you want to make other comments outside of the
18 conversation that you had at your breakout table, you
19 will be allowed that as well. So, multiple
20 opportunities for you to bring forward your thoughts
21 and your ideas.

22 So, who would like to -- anybody here would
23 like to make a presentation, comments to the panel
24 prior to us getting into small groups? Merle?

25 **PRESENTATION BY MR. ALEXANDER:**

26 MR. ALEXANDER: Merle Alexander. So, basically I guess

1 joint comments by the Village of Gitwinksihlkw and
2 then BCAFN, and of course other BCAFN people can talk
3 about. I sort of feel like I pretty much have to,
4 since I suggested it to actually say something.

5 I guess as a general comment in terms of
6 the recommendations, I think that on why this spectrum
7 of impoverished views of consultation, I think that we
8 are somewhere like in the middle class of view. But I
9 do think that there is, as we have already
10 highlighted, like I think there is a fundamental flaw
11 about focusing too great on existing structures, such
12 as -- especially colonial based structures like the
13 *Indian Act*, so "Bands" and Bands versus First Nations,
14 and Title lands versus Reserves. I think that there
15 is -- especially because the colonial structures
16 really are particularly narrow, and don't look at the
17 proper rights holders, like scope of rights.

18 I think that part of the real fundamental
19 problem is that if you combine the recommendations
20 with factual realities, you could end up having little
21 to no First Nations ever having the capacity to ever
22 have an Indigenous Utility, which I think at the end
23 of the day is probably the exact opposite intent of
24 the inquiry, and your own deliberations on this work.
25 Like if you somehow turn the recommendations in to
26 sort of if you don't meet this than this, if you meet

1 this, then that, you sort of ran your way through a
2 factual scenario on it, you could quite easily end up
3 having little to no First Nations having the capacity
4 or having -- we pretty much would almost have to have
5 an on-Reserve project, which that's probably going to
6 be a fairly narrow scope, on that .4 percent of the
7 land base, or if you are a self-governing, you would
8 have to be within the scope of your settlement lands,
9 which may or may not be completely true. I guess
10 that's still open for some inquiry.

11 And then you'd have to have an advanced
12 dispute resolution process in place, something at
13 least akin to what the Nisga'a have, as an example.
14 And then you'd also have to, in addition to that,
15 convince BC Hydro that you should have an EPA and the
16 Nisga'a have been particularly looking into this
17 because they want to develop their own utility. And
18 they've been told by the province and BC Hydro,
19 essentially, that there's an energy surplus, at least
20 by their scoping, until 2030.

21 So if you combine all the -- like, the list
22 of conditions, recommendations sort of, in the most
23 negative interpretation of them and the factual
24 reality that the province has already seemingly taking
25 a perspective there's no need for any new energy
26 projects given current demands, you actually end up --

1 it's not a very optimistic view for many First Nations
2 that want to active participants in exercising their
3 sovereign rights in energy regulation.

4 So, I mean, I think that -- I won't go
5 into, maybe, the details of the question. But that's
6 sort of the -- like, I think that's, like, part of the
7 problematic approach here. I think in some respects
8 -- I mean, it's very difficult to reconcile the way
9 the inquiry's scoping with what occurred yesterday at
10 11:15 a.m. with the royal ascent of the *Declaration of*
11 *Rights of Indigenous Peoples Act*. Because that's
12 really a framework for a Constitutional partnership.
13 Whereas this process seems, at the end of the day, to
14 be very skewed towards the status quo and certainly
15 doesn't seem to have to be, like, something where
16 we're coming together and advancing together. It's
17 really more still very much, like as I said, has lot
18 of flawed false assumptions, which at the end of the
19 day I think may prevent Indigenous peoples from really
20 being active participants in energy regulation in
21 their own territories. So I think that's probably
22 just the gist of --

23 COMMISSIONER BREWER: Can I just -- I just want to
24 suggest, I think we appreciate your concerns.
25 Sincerely, we do. And I think we are striving to find
26 how can we address the issues that exist related to, I

1 guess, the application of Act to ensure that there is
2 still certain protections for ratepayers. And there
3 is potentially, like, issues that we may have that may
4 not be necessarily beyond our scope but potentially
5 beyond our scope in terms of the inquiry.

6 So, I guess what we'd like to hear is we
7 really want to hear the discussion, because we have
8 people from all over here and we really want your help
9 in addressing those things, right? So that's sort of
10 what we're trying to do here is to seek input into --
11 we recognize those goals and if there's a way that we
12 can create through our Act and the role of the BCUC a
13 mechanism for that to occur, that's what we'd like to
14 address. Because we do understand and we are striving
15 to, I think, be respectful in incorporating the values
16 that you're talking about.

17 MR. ALEXANDER: Full disclosure, I'm one of the --
18 like, I was part of the technical team that co-
19 developed the *Declaration Act*. So, I mean, I think
20 there is, like, a vision forward for how things can be
21 done together. I mean, it is now binding law in
22 British Columbia that, like, amendments to the laws of
23 British Columbia should be done in consultation and in
24 collaboration with Indigenous governing bodies and
25 their institutions -- of Indigenous peoples, I should
26 say. So, I mean, I think there is, like,

1 simultaneously as you're sort of asking this question
2 of how should we do this, I think there is, like, a
3 vision being painted forward for us that it should be
4 done together and not necessarily just sort of like,
5 the Commission listening to us as stakeholders or
6 listening to -- and weighing ratepayers and other
7 stakeholders organizations as equals with First
8 Nations that are right holders.

9 Like I think there's sort of a bit of a
10 disconnect there. Because I mean -- and I understand
11 that that's usually -- that that's sort of like the
12 norm, and that's like your mandate. I just think that
13 that -- there is a bit of a disconnect between the
14 vision that's sort of being painted forward of there
15 actually being -- of Indigenous governments really
16 being treated as equals and there being actually true
17 constitutional partnership to the way that laws are
18 developed in British Columbia.

19 So I mean I think maybe even more pointed,
20 like I think that if we are trying to determine how
21 ratepayers' rights will be -- maintain some vested
22 rights and that they are treated equally and
23 equitably, I think that the development of regulations
24 should be done in cooperation to consultation with
25 Indigenous peoples. I think that's -- like there's a
26 mechanism that is already -- you know, exists that's

1 now law in British Columbia that I think we have to
2 look to for guidance.

3 I mean obviously we're -- we couldn't be --
4 we literally couldn't be in more early, day two of the
5 implementation, so I mean you guys are obviously the
6 Utilities Commission, like, you know, can't -- you
7 know, you can only move so fast. But I mean it's
8 being asked of you on day two. Maybe was asked of you
9 yesterday also.

10 But I mean that, I just think that at the
11 end of the day I think there is like a vision being
12 painted forward, it's just that that's going to
13 require a lot of what was done before and the status
14 quo to be seriously examined, because I think there is
15 a different -- like there is a different sort of
16 constitutional vision for this province that is
17 captioned particularly in that Act.

18 THE CHAIRPERSON: Mr. Alexander, thank you for that.
19 You made the comment -- and I'm going to paraphrase
20 you, sorry, but you made the comment that our *Indian*
21 *Act* based approach and land based approach kind of
22 misses the mark because, you know, it should be more
23 holistic. I realize I'm putting words in your mouth,
24 but it should be a more holistic approach. And, you
25 know, I think that that's a great comment and I don't
26 disagree with that at all.

1 However, what I have to reconcile and I
2 think what the Panel has to reconcile is what we've
3 been hearing from the parties, and as you point out
4 largely the scope of the inquiry, is about how a First
5 Nation utility should be regulated or whether it
6 should be regulated. So we've somehow got to take
7 that holistic approach and figure out how it fits into
8 that concept. And I'm not, you know, I'm not trying
9 to be defensive here, but I think that that's why we
10 kind of got to the land based approach, because that,
11 to some extent at least, defines a First Nation and
12 its utilities customers and where its utility would
13 operate.

14 So I guess I'm saying that there's a
15 missing piece for us here, which is how to make it,
16 how to get to the more holistic approach that we would
17 really like yours and other parties' comments on.
18 Because I would point out that, you know, it was a
19 pretty overwhelming -- pretty overwhelming from the
20 participants in this inquiry were that, "Give, you
21 know, give my nation something like the municipal
22 exemption." We heard that from many people, including
23 the Nisga'a, and that's why -- and, you know, that's
24 how we got to where we got to, because that's the road
25 we all seemed to kind of go down.

26 MR. GEORGE: Thank you.

1 Emmy?

2 MS. BEATON: Emmy Beaton. I'm happy to try and tell
3 you my perspective on how to implement that holistic
4 approach.

5 THE CHAIRPERSON: Okay.

6 **PRESENTATION BY MS. BEATON:**

7 MS. BEATON: Which is, flip it on its side, say, you
8 know, based on our acceptance of sovereignty and joint
9 jurisdiction, this Act and the Regulations have to be
10 enabling for First Nations, however they govern
11 themselves, to be self -- to have jurisdiction and be
12 self-governing. And I don't think that that's too
13 complicated. Usually the way that that happens is
14 through agreements, through jointly developed
15 understandings of what we're going to do and what
16 you're going to do, right? And I think that if we
17 take that approach to the Act and the Regulations,
18 which is not a narrative I've seen in the draft
19 report, about how are they going to be enabling for
20 First Nations self-jurisdiction, then we can come to
21 understandings about the mechanism and the nitty-
22 gritty.

23 And I hear what you're saying about the
24 issues are of safety, the issues are of dispute
25 resolution and complaints. Absolutely, we can figure
26 out how we manage those things together, but we have

1 to come from a foundational perspective that First
2 Nations, yes, from the beginning have all of the
3 rights of a government. And just because things are
4 the way they are now doesn't mean we have to sort of
5 pick away at the edge. I think we need to flip it on
6 its side and say, "What would this look like from a
7 different perspective?"

8 MR. GEORGE: Thank you. Any other comments? First and
9 last name, for the record please, spell your last name
10 as well.

11 MS. MORVEN: Linda Morgan, M-O-R-V-E-N. I kind had
12 difficulty with your last comment after you did your
13 presentation that the majority of feedback that you
14 heard was that they were in support of BCUC retaining.
15 And I think the missing piece -- well, just to
16 backtrack on that.

17 This inquiry was led by BCUC and I think in
18 a way that's where you're missing pieces. And I think
19 a perfect next step in this, one of the
20 recommendations that we're going to make, is that a
21 taskforce of Indigenous people and others with
22 relevant expertise be created. I think that's a
23 perfect next step for you. Because at the end of the
24 say, and she just spoke to that, is what we can do as
25 we support as we move forward with some of our
26 initiatives. And as Merle indicated, we are looking

1 at a project, but with what we've been advised it's
2 very prohibitive and we don't want to work on
3 something that will not enable us, as she's indicated,
4 we want something that would work with us so that we
5 can achieve our goals.

6 MR. GEORGE: Thank you. Any other comments? We're
7 good? Okay, let's break up into the two smaller
8 groups, if I could have the staff assist us in that
9 regard.

10 **(PROCEEDINGS ADJOURNED AT 11:31 A.M.)**

11 **(LUNCH AND SMALL GROUP DISCUSSIONS)**

12 **(PROCEEDINGS RESUMED AT 1:17 P.M.)**

13 MR. GEORGE: Call our session back to order. I'd like to
14 -- please join with me in a round of applause for the
15 hands that prepared and served our food here today.
16 Thank you very much.

17 Merle Alexander is going to present on
18 behalf of the group, and invite others to jump in from
19 the group should they want to fill in any of the
20 information that Merle's going to provide.

21 THE CHAIRPERSON: Dan, we have a missing panel member
22 here.

23 COMMISSIONER FUNG: Yes, we cannot start.

24 MR. GEORGE: Oh, I'm sorry.

25 THE CHAIRPERSON: No worries.

26 **(DISCUSSION OFF THE RECORD)**

1 THE CHAIRPERSON: Okay, we're all set.

2 MR. GEORGE: Okay, Merle.

3 **REPORT PRESENTATION BY MR. ALEXANDER:**

4 MR. ALEXANDER: Good afternoon everyone. I guess I've
5 been volun-told to be the representative for the
6 group. We took up all of the questions and then a
7 couple extra couple sort of feedback issues.

8 So on recommendation 1 on whether or not
9 the idea that all ratepayers of Indigenous Utilities
10 receive the same protection as ratepayers of non-
11 Indigenous Utilities. There was discussion about what
12 exactly the definition of "same protection" as the
13 Commission staff sort of set aside that issue
14 essentially. And I guess that will be probably a bit
15 more further spelled out in following procedures.

16 There was discussion about whether or not
17 non-discrimination is really, sort of, at the core of
18 the recommendation. We also had the discussion about
19 what would be the appropriate standard if the
20 protections were actually higher for an Indigenous
21 Utility versus a non-Indigenous Utility and whether or
22 not there would be, sort of, conflicts of procedure
23 type of mechanisms. And then there was just generally
24 the comment that it seems that this recommendation is
25 driven primarily by a fear that Indigenous Utilities
26 would actually have lower standards and there was some

1 general thoughts that that might be reworded.

2 So, on the second recommendation,
3 primarily about the BCUC retaining jurisdiction on
4 enforcement of MRS. A number of people in the
5 committee, so obviously others can speak on this that
6 were in the group, rejected the idea that the main
7 default would be for the BCUC to retain jurisdiction,
8 and that there needed to be a consideration of
9 existing First Nations' jurisdiction in their
10 territories, and further inquiry into the concept of
11 co-jurisdiction.

12 On that same sort of premise there was
13 conversation about there being a false assumption
14 around jurisdiction, and that true reconciliation
15 requires sort of treating the two Indigenous
16 jurisdiction and existing Crown jurisdiction on equal
17 footing.

18 There was also reference to the fact that
19 in the new *Declaration Act* under section 7-7(1), the
20 province now has the capacity to enter into consent
21 based agreements, and that that might be a mechanism
22 for sort of looking at the particulars of a specific
23 project on jurisdictional issues.

24 Okay, that is my -- in summary. The topic
25 of reserve, of the very limited application of the
26 regulation on reserve lands, though obviously you've

1 already heard submissions like on the record earlier,
2 but I think there was quite a bit of conversation
3 about whether or not -- I guess just as sort of an
4 operational suggestion, that the Utilities Commission
5 should ask for submissions on the jurisdiction,
6 particularly looking at the application of Bill 41,
7 maybe the Commission itself could actually look to
8 guidance from the Province on whether or not that
9 should be taken up as a priority item under the action
10 plan for Bill 41.

11 Obviously you sort of already heard
12 generally the position of many of the First Nations
13 that are here, that First Nations have jurisdiction on
14 their title lands, not limited just to their Reserve
15 lands. So there was just generally like a rejection I
16 think of maybe the vocal members of the group that
17 this hyper-emphasis on reserve lands, particularly
18 such a small land base, need to be further examined,
19 and that there needs to be further inquiry into sort
20 of how to have the application be broader, on a
21 broader territorial basis.

22 There was also comment just generally that
23 like the Bill 41 as a whole is really like a
24 commitment by the province, and any entities created
25 under provincial legislation to really take a look at
26 areas where there is exclusive jurisdiction is the

1 assumption, and that one of the operational elements
2 of Bill 41 is that legal requirement for the province
3 to take a look at all laws of B.C. to ensure that they
4 are consistent with the U.N. Declaration. Like that
5 section, sort of the combination of section 2 and 3 of
6 Bill 41.

7 I think there is just generally in terms of
8 sort of taking into consideration sort of like the
9 types of things that would usually be considered,
10 there has to be an acceptance that with a change in
11 sort of the legislative targets itself, that there has
12 to really be some acknowledgement that the transition
13 to a green economy is going to have -- is sort of a
14 value change, and on top of that there could be
15 increased costs that are associated with that. But
16 that that is sort of like a conscious sort of trend in
17 choice that has been made. I think that's probably in
18 summary.

19 These are all going to be submitted to you
20 also, right? You'll have --

21 THE CHAIRPERSON: Sorry, when you say these will be
22 submitted, what do you mean exactly?

23 MR. ALEXANDER: Like the notes are going to be
24 submitted for your consideration also.

25 THE CHAIRPERSON: As I understand it, that's a choice
26 made by the table, whether they want their notes

1 submitted or not, is that right?

2 MR. ALEXANDER: I think it's fair to say, right group?
3 That you want -- because I am missing some of your
4 comments.

5 THE CHAIRPERSON: Yeah, okay.

6 MR. ALEXANDER: So we would like all of the written
7 comments to be transcribed to you and submitted to you
8 for your consideration.

9 Under still sort of like further comment I
10 think on recommendation 3, there is a comment really
11 that municipalities don't have constitutional rights,
12 and that the comparison shouldn't really be any
13 reference in this recommendation to municipalities and
14 regional districts, because the rights basis is one of
15 constitutional rights, versus entities that are
16 created by statute. Bands may be created by statute,
17 but First Nations themselves are not. And that is
18 actually a sort of thematic comment about many of the
19 recommendations which make that same reference to
20 municipalities and regional districts. That that
21 language be struck.

22 On recommendation 4 about the complaint and
23 dispute resolution handling, there was some discussion
24 about what exactly, who would determine what is
25 appropriate in the process. There was a rejection of
26 sort of the reverse onus that's applied for a First

1 Nation to demonstrate it has an appropriate process in
2 place, and there was generally some recommendations
3 that this recommendation be reworded and that it be
4 more positively framed to be more of an opt-in process
5 as opposed to an opt-out.

6 So in terms of Recommendation 5 -- can you
7 guys move that?

8 VOICE: The screen. Who is controlling the screens?

9 THE CHAIRPERSON: Oh, where's the clicker gone?

10 MR. ALEXANDER: That's okay, I'll do it. Now I really
11 am -- oh, now you guys are in trouble.

12 In terms of Recommendation 5 regarding the
13 BCUC complaint process, I think there was like
14 generally -- like there was a discussion about whether
15 or not -- in the transition of whether or not there
16 being just that assumption is fair and whether or not
17 there should be -- whether or not like a complainant
18 should be able to sort of forum shop. I think that
19 there was discussion about there being sort of more of
20 a joint dispute resolution process that could be
21 developed. And that this seem that it should be
22 workshopped as a transition process to build sort of
23 more sort of inclusive dispute resolution processes.

24 On Recommendation 6 regarding the -- hold
25 on, I'm sorry, there's more still on that one. Okay.
26 There was some comments still on Recommendation 5,

1 that it should be up to the First Nation to choose if
2 they want to have the BCUC regulate or not and that
3 it's inappropriate for self-determining First Nations
4 that the BCUC would retain this jurisdiction from the
5 beginning and that it would probably be contrary to
6 their Treaty rights. There is also discussion about
7 the fact that the BCUC doesn't have jurisdiction over
8 municipalities complaints.

9 On Recommendation 6 regarding safety and
10 reliability, the comment was made that, "I was unclear
11 about the BCUC would be considering impacting
12 incumbent utilities ratepayers." There was discussion
13 about clarifying the incumbent utility, whether or not
14 it's BC Hydro, et cetera. Questions about the wording
15 of "other matters" that's sort of part of the
16 recommendation and maybe that needs to be flushed out
17 more.

18 Generally a comment about that was that
19 reconciliation should be considered in this matter and
20 that it's not the right place for considering to have
21 -- or that this isn't -- like one of the elements of
22 this particular paragraph is that there's a comment
23 that this isn't really the right place -- if the issue
24 is going to be a work shopped, that it isn't the right
25 place for a recommendation to sort of spell out like
26 what the outcomes might be. So in that instance it

1 was essentially commented that after the first
2 sentence the rest of the recommendation should be
3 deleted from the recommendation. Because the
4 recommendation essentially contemplates like if not --
5 if the workshop doesn't result in X, than Y. So like
6 we'll make written submission of that also.

7 With regard to Recommendation 7,
8 particularly the comments from the Nisga'a
9 representatives that were in the group, that the
10 recommendation has to be redrafted, because it's not
11 that the Nisga'a are given the opportunity to
12 self-regulate, it's that their Treaty provides to that
13 capacity to self-regulate. So they were -- so it has
14 to be essentially redrafted, and also like before
15 there should be references to comparisons between
16 municipalities and regional districts should be
17 struck. And just generally that the BCUC isn't giving
18 the right to regulate, so it has to be reworded.

19 And generally the comment which is sort of
20 Nisga'a specific, but then maybe just generally a
21 legal commentary also here, is that I think
22 Recommendation 8 actually isn't an actual
23 recommendation, it's just a legal interpretation of
24 what the default will be. So it doesn't seem to me to
25 be an actual -- have a place in the recommendations.
26 It's more of like a legal interpretation of what might

1 happen as a default. So the suggestion was to strike
2 it.

3 On recommendation 9 regarding other modern
4 day treaty lands, similar comment actually can be -- I
5 think, was made here, that there should be no -- well,
6 one was that the Nisga'a Treaty shouldn't be used as a
7 baseline comparison. That other modern day treaty
8 groups should just be -- their agreements should stand
9 on their own and that's the interpretation and that's
10 the lens that their right to self-govern should be
11 placed. That similarly there shouldn't be any -- it's
12 not an opportunity to self-regulate, it's their self-
13 government right as set out under their modern day
14 treaty. Yes, I mean just generally the idea that it's
15 not the role of the BCUC to interpret treaties.

16 On comments on both 10 and 11, sort of
17 similar themes about -- I mean, I think there's just
18 going to have to be more -- I think probably the most
19 tangible suggestion on recommendation 10 is probably
20 that this topic should be workshopped, particularly
21 with Douglas Treaty and Treat 8 First Nations, given
22 that this is really their historical treaty rights
23 that are being interpreted here. But just generally
24 the comment I think that reducing historical treaties
25 to being just the same as Indian Bands without
26 treaties isn't exactly fair or ethical or probably

1 legally correct.

2 Dual comments on 11 and 12 about -- that
3 essentially I think that the same sort of comments
4 about self-regulation, that it's not the Commission
5 that's giving the opportunity to self-regulate. It's
6 that either these First Nations have self-government
7 powers or they do not. So, I mean, ultimately I think
8 the general discussion was it's up for those First
9 Nations to have those interactions directly with the
10 Commission. Particularly with Sechelt First Nation
11 where there is a -- they have a reconciliation
12 agreement which actually causes probably a bit of a
13 trigger for the provincial government to sort of
14 elicit comments on this, so -- but generally a
15 rejection of the -- generally a rejection of that sort
16 of -- the idea that the Utilities Commission would be
17 providing an opportunity to regulate when they neither
18 have that self-governing power or have that -- they
19 have that right to self-government power already.

20 On recommendation 13, I think just
21 generally the comment was made that is sort of a bit
22 of a cart before the horse. So, I mean, whether or
23 not this means reframing the recommendations as that
24 being recommendation 14. It just seems that if
25 there's going to be a specific workshop specifically
26 on this topic or are you sort of contemplating, like,

1 what would happen in the absence of it seems to be ill
2 placed. So I think the general -- and there was a
3 full written submission that was read into our group
4 that was submitted by BCAFN which will be submitted in
5 writing. There was also the Nisga'a Village of
6 Gitwinksihlkw also highlighted that they had made
7 written -- their original written submission had
8 provided a definition of an Indigenous Utility, or at
9 least it set out characteristics of an Indigenous
10 Utility in their comments. So they'd like that to be
11 highlighted.

12 We had quite a bit of conversation about
13 other topics for feedback on retail access. One of
14 the sort of tangible recommendations on this is that
15 the BCUC should invite First Nations' submission on
16 the application of Bill 41 to the current regulation
17 of retail access. And there was discussion about just
18 generally the use of EPAs and the BC Hydro's capacity
19 to sort of determine whether or not it will be
20 entering EPAs really makes this sort of mechanism,
21 quite often, a prohibitive for Indigenous
22 participation in energy regulation. And just
23 generally the ability for them to develop their own
24 utilities.

25 There was comment generally that First
26 Nation to First Nation agreements could also be a

1 solution as a sort of, in some way, indirectly sort of
2 highlighted in the report. And generally there was
3 some comment about that the existing sort of
4 electrical network should be much more akin to allow
5 much more public access to it.

6 On the issue of the energy purchase
7 agreements, just a general comment that reconciliation
8 should be considered to be part of the public good in
9 the consideration of those things. I mean, I guess
10 another sort of comment just generally that perhaps it
11 shouldn't be BC Hydro that determines whether or not,
12 like it has EPAs -- or the existing regulator that
13 there should be opportunity for Indigenous groups to
14 make more submissions on that.

15 In terms of improvements to the BCUC
16 process, I think generally there was comment that this
17 was really a question of governance, and ensuring the
18 First Nations participation in all levels of
19 participation with the BCUC. There was a
20 recommendation that this topic should probably be
21 workshopped so that First Nations could have a better
22 sense of all the different elements that go into the
23 BCUC process, and then they can make more substantive
24 procedural comments.

25 One of the recommendations, or our sort of
26 thoughts that was discussed was the idea of having co-

1 jurisdiction panels or joint review panels.

2 I think those are the submissions.

3 MR. GEORGE: Thank you. Any other comments from the
4 group before we go to the panel? Bravo.

5 THE CHAIRPERSON: I have a couple of questions, Mr.
6 Alexander. Thank you very much, that was very
7 informative.

8 I have a question just concerning this
9 inquiry. You'd made a comment in your remarks earlier
10 on about the scope of this inquiry, and I think those
11 remarks were in the context of the passage of Bill 41.
12 And you've also talked in the remarks you just made
13 now, you've talked about how perhaps some aspects of
14 this approach should be revisited at least in the
15 light of Bill 41, and that we should go out and ask
16 for opinion on some specific matters with regard to
17 Bill 41.

18 So, considering all of that, my question to
19 you then is, looking at the scope of this inquiry and
20 the remaining timeline, do you think that there should
21 be any modifications made to either, now that Bill 41
22 has passed? Do you think parties need more time, and
23 the Commission needs more time to digest it and
24 consider these issues? Or do you think that the
25 process that you've seen outlined and the trajectory
26 that we're on is sufficient, and that issues around

1 Bill 41 can be taken into account in the existing
2 framework of this inquiry? Sorry for such a long
3 question.

4 MR. ALEXANDER: Well, this is probably -- I mean, now I
5 am probably only speaking on my own behalf, because I
6 have no mandate to speak on behalf of the group, nor
7 the First Nations Leadership Council or the other
8 clients that have abandoned me here.

9 It seems reasonable to me that given the
10 questions around Bill 41's application in this
11 circumstance that an extension might be considered. I
12 mean, it already has been -- I think some of the
13 deliberative processes have already been adapted to
14 sort of allow for broader participation. I think it
15 is probably fair to say despite the best efforts of
16 all the three regional organizations, like First
17 Nations organizations, that given the timing concerns
18 that you had, you heard during the hearings happening
19 during the summer, and then this being a completely
20 fresh new legal Act which might have ramifications for
21 every single piece of legislation in British Columbia,
22 that it would seem fair that given those concerns that
23 some sort of extension might be considered.

24 And I think to not do so, like, may well --
25 like -- well, it would probably decrease the
26 likelihood of First Nations supporting the eventual

1 report. So I think, like, it probably makes some
2 sense to consider an extension given that
3 circumstance. But that's ultimately just me
4 personally thinking aloud. Because this seems to be,
5 for the most part, a path that's been, sort of,
6 unilaterally charted. And that doesn't seem
7 consistent, like, with hopefully the new sort of era
8 that we're venturing on together in British Columbia.

9 THE CHAIRPERSON: Yeah. Thank you, I appreciate that.
10 And a follow-up and somewhat related question then is,
11 I think I heard you say that some of the issues that
12 Bill 41 brings up are jurisdictional issues and issues
13 of joint jurisdiction and those are things that need
14 to be explored. Those, as I'm sure you appreciate,
15 those aren't easy sometimes and may not be
16 straightforward and may not be able to be done in a
17 timely manner. And in fact, one of the things that
18 we've tried to avoid doing so far in this inquiry is
19 making findings of jurisdiction.

20 And so I think that that's one of the
21 things that drove the whole exemption approach is,
22 that is until such issues of jurisdiction are sorted
23 out then parties are asking for exemptions and that
24 would seem to be a way forward, a way to expedite
25 matters until such time as jurisdictional issues are
26 worked out.

1 So, I guess I'm not really sure if I have a
2 question here or not, but, you know, maybe that's a
3 different approach, is to set aside the jurisdictional
4 issues and say that's a bigger question for a
5 different time and how can this inquiry address what
6 we're hearing as urgent concerns from some parties.

7 MR. ALEXANDER: I mean, I think generally, like, at
8 least some of our initial thoughts, and this is
9 probably, like, more within the BCAFN sort of realm,
10 that there isn't any -- obviously, that was, like, the
11 call for an exemption came from First Nations
12 Leadership Council, and as well as other First
13 Nations. So I think, like, that component of
14 requesting an exemption, I think, is supported.

15 It's just ultimately the issue of
16 territoriality, which is combined with it, which then
17 renders it almost -- like, to have very minimal
18 application. Like, I think it's -- like even
19 throughout today it was pretty taking up the topic,
20 like together with it being an issue of Aboriginal
21 title, the application of Aboriginal title, the
22 application of, like, a broader territoriality and
23 then a rejection of just it only applying to reserves.

24 So I don't think -- like, I think, like,
25 the submission was meant to be, sort of, taken as a
26 whole, I think. That there would be an exemption for

1 Indigenous Utilities within their territory.

2 I mean, we're not naïve to think that
3 that's going to be -- that there doesn't need to be
4 more work on that topic and that might have to be part
5 of the deliberations in any process. But I think
6 that, you know, they really need to be sort of taken
7 up together. I think the exemption is probably, it's
8 fair to say, it's supported, it's just the territorial
9 application which is the issue.

10 COMMISSIONER BREWER: I think where we would really
11 like some thought from folks like yourself is on --
12 and we don't make the assumption that ratepayers of an
13 Indigenous Utility would be treated less respectfully
14 or whatnot. We don't make that -- that is not an
15 assumption that we made at all. But the issues is
16 that that exemption relates to how you hold -- how the
17 ratepayer access -- in the context of a monopoly, how
18 do they access recourse? Like what recourses do they
19 have? And I guess it's -- that's kind of how we
20 analyze it, and I guess it's not just Indigenous
21 people who would be serviced within the traditional
22 territory.

23 So if an Indigenous Nation was regulating
24 within that, the assumption for the exempt -- behind
25 the exemption that exists right now is that there is a
26 kind of a link, there's a vote or something like that

1 between the people who are being serviced and the
2 utility servicer, which would be the municipal
3 government, right?

4 So I guess the challenge is how would --
5 like and this is where we need to figure out how would
6 that be addressed. Because the policy justification
7 behind the exemption in, as I say, in municipal
8 government cases is the assumption that there is some
9 kind of an accountability back to the municipal
10 government who controls that utility. And if you
11 don't have that link I guess we want to know, okay,
12 how is that -- how do we kind of address that? It's a
13 policy concern, right? I think you can understand our
14 dilemma.

15 MR. ALEXANDER: Yeah, I'm, again, really talking just
16 for myself. I mean I think in some respects like I
17 think that's why -- well at least why I was saying
18 that the issue of trying to develop joint dispute
19 resolution mechanisms needs to be workshopped.
20 Because they don't -- I mean I don't generally think
21 anybody's -- like I don't think any -- those who are
22 like advocates of Indigenous Utilities aren't trying
23 to undermine administrative law principles and issues
24 of fairness, and like those are all probably universal
25 like rights that would be supported by like for an
26 Indigenous Utilities commission or Indigenous

1 Utilities also.

2 I think it's more a matter of that, one, in
3 the transition period, if the BCUC is to be sort of
4 that transition body that assists with disputes, that
5 that needs to be adapted so that -- that's why the
6 recommendation of workshopping sort of some -- what
7 are some adaptive elements of existing BCUC
8 deliberative complaint process, so that you could
9 more, like, for lack of a better term, sort of like at
10 least indigenize them and look at all the different
11 procedures and substantive rights that might be
12 effected, but then look for them to be sort of more
13 inclusive of the application of Indigenous legal
14 orders alongside that of the existing jurisdiction.
15 So I think that's like sort of a transition, sort of
16 mid-term solution.

17 Then I think there's just a broader, bigger
18 -- the reason I think it is also part of like a
19 longer-term workshopping discussion is that we need to
20 sort of anticipate and contemplate that there will at
21 some point or another be completely separate
22 jurisdictions for each one of these areas, but that
23 they should still be -- have some core principles that
24 are consistent between the two so the ratepayer
25 doesn't feel discriminated regardless of who -- like
26 what the source of their energy is.

1 But anyway, so I mean ultimately I think
2 it's -- circling back, it's one of the reasons I think
3 that topic needs to be workshopped is so that you
4 could sort of have a much more sort of a bit of a
5 dialogue about like, one, so that First Nations could
6 see like all of the substantive and procedural rights,
7 and get a sense of like where they could be improved,
8 and then sort of start thinking through the
9 transition, which hopefully is ahead of us.

10 COMMISSIONER LOCKHART: Thank you, Mr. Alexander, and
11 to the members of your group. I appreciate the effort
12 that you've put into presenting your comments to us
13 today. And I especially appreciate the encouragement
14 of various lenses to consider this through. I did
15 make one note on my -- I have noted one area on your
16 comments on Recommendation Number 3 that I was hoping
17 you could expand on. And what I wrote down was,
18 "Transition to a green economy is a value change and
19 will include increased costs." And Recommendation
20 Number was with regards to opportunity to self-
21 regulate when it provides utility service on its
22 Reserve land.

23 Can you perhaps expand on that comment and
24 what you meant by -- where you thought the --

25 MR. ALEXANDER: Maybe I'll let the person in the group
26 who spoke to that -- I think it was Emmy.

1 COMMISSIONER LOCKHART: Thank you.

2 MS. BEATON: I think that it applies to 3 and many
3 others.

4 MR. GEORGE: Say your name?

5 MS. BEATON: Oh, sorry. Emmy Beaton. It applies
6 across many of the recommendations, which is, when
7 you're looking at protections for ratepayers or
8 whether you're looking at what's best for the public
9 good or any of these things that you're considering in
10 your decisions. The other objectives that we have as
11 a province, such as transitioning to a clean economy
12 or increasing Nations' ability to create own source
13 revenue in the green energy space, or whatever it is,
14 should be considered.

15 COMMISSIONER LOCKHART: Okay, thank you.

16 COMMISSIONER FUNG: Mr. Alexander, I have a question
17 for you. I don't think you've mentioned it, but I'm
18 wondering how do you deal, under this new regime or
19 transition period, with questions of overlapping
20 territories or overlapping claims between First
21 Nations in terms of jurisdiction?

22 MR. ALEXANDER: Like I think ultimately that's probably
23 something that has to be workshopped. It's actually,
24 like, strangely funny timing because actually we're
25 currently, in First Nations Leadership Council,
26 considering a particular workshop focusing on that

1 exact topic.

2 I can say though, like, you know in other
3 contexts, just drawing from personal professional
4 experience, like one of the simplest solutions I often
5 see to sort of, in a way, setting aside the strength
6 of claim rights overlapping or joint title issues is
7 often for First Nations just to combine their
8 territories and then just sort of create, like, a
9 consultation zone or an economic zone or an energy
10 zone. And then just say, "Okay, we're all going to
11 equally participate. We all have rights within that
12 zone, we're all going to equally participate in that
13 process." And then, sort of, in some ways sort of
14 takes the rights conversation out of it. At least
15 that's where I've seen often, like, very just sort of
16 progressive groups work together. Is just sort of set
17 aside their own strength of claim rights debates and
18 just say, "Let's join our jurisdictions".

19 In some respects I think that that's --
20 there's some implicit understanding of that, I think,
21 that's included in the report that isn't fully fleshed
22 out. That idea that you might actually -- when you
23 start exploring the idea of First Nations selling to
24 First Nations and how would that be regulated. But I
25 think that's probably, like, one of the most common
26 innovations that I see take place, is to sort of set

1 aside the rights but then maintain the geographic
2 range. That would also, in some ways, solve some of
3 the initial comments about what's the appropriate
4 territorial range to be applying, like, this exemption
5 to.

6 COMMISSIONER FUNG: Thank you.

7 MR. GEORGE: Further comments from the panel? Great.
8 Thank you very much.

9 Is there any other comments that the
10 attendees would like to address to the panel on the
11 record? Okay, seeing none.

12 Before I go to our Chair for a closing
13 comments, I just want to remind you of some next
14 steps. Anyone who wishes to provide written evidence
15 can send it to the BCUC by March 2nd, 2020. The final
16 report to the government of B.C. with the BCUC's final
17 recommendations right now is slated for April 30th,
18 2020. More information on the Inquiry and how to stay
19 involved can be found at BCUC.com. And in this
20 summary document here, page 4 of the draft report
21 summary gives you more detail on the timeline and
22 opportunities for you to continue to support this
23 important work.

24 Thank you on behalf of Teresa and I for the
25 opportunity to provide service to the group. Dave?

26 THE CHAIRPERSON: Yeah, thanks, Dan. And I would like

1 to add my thanks. I appreciate the discussion that
2 we've had, and the input we've had from everyone. And
3 we look forward to hearing more from you as we move
4 along. And in the meantime, if you do have any
5 questions please feel free. You've met some of our
6 staff now, please feel free to be in touch with them.
7 If you don't have their business card, make sure you
8 get it before you go.

9 And on that note, I will say thank you, and
10 have a great weekend and safe travels home. Thank
11 you.

12 **(PROCEEDINGS ADJOURNED AT 1:53 P.M.)**

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I HEREBY CERTIFY THAT THE FORGOING
is a true and accurate transcript
of the proceedings herein, to the
best of my skill and ability.

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A.B. Lanigan, Court Reporter

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November 29th, 2019

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