

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

KELOWNA, B.C.
June 5, 2019

Community Input Session

BEFORE:

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

VOLUME 2

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KELOWNA, B.C.

June 5, 2019

(PROCEEDINGS COMMENCE AT 10:35 A.M.)

THE CHAIRPERSON: I'd like to begin by acknowledging the land on which we gather is the traditional territory of the Okanagan Nation. And I'd also like to say a special thank you to Elder Rose Lube for her welcoming remarks, thank you. We greatly appreciate being here today and look forward to hearing your comments and feedback on the scope of today's inquiry.

As you know and have heard just now in the presentation by Laura, we're seeking your input on what characteristics define an Indigenous utility and if or how those utilities should be regulated. If you're unsure as to what information would be within scope please feel free to ask staff, look at the materials that are available for review, or feel free to come up and ask the panel, we're happy to talk about that with you.

I'd also like to note that during the breaks in today's session myself and my fellow panel members will be available and feel free to speak with us. However, if you do have some comments that you want to make about the inquiry, we would prefer that you make them to all of us in this format rather than just to any one or a couple of us. It's part of the

1 transparency of the inquiry that all panel members
2 should really have the same information, that each of
3 us should have the same information that the others
4 do.

5 So on that note then let's begin. I
6 understand that Mr. Cawley has a few words or has some
7 remarks he'd like to make. Thank you.

8 **PRESENTATION BY MR. CAWLEY:**

9 MR. CAWLEY: Good morning. Good morning everybody, Mr.
10 Panel Chair, and commissioners, and First Nations.
11 It's a pleasure to be here. Just a quick
12 introduction, my name is John Cawley, C-A-W-L-E-Y.
13 I'm from Resolution Electric, that's my company, and
14 we provide renewable energy systems, solar electric
15 and solar thermal systems for residential customers.

16 A little bit of background from where I am.
17 You can tell probably from my accent I'm from the U.K.
18 Moved over to Canada in 2003. And I've been working
19 in the utilities industry for approximately 20 years,
20 working for large blue chip companies like the
21 National Grid in the U.K. and also for the local
22 utility FortisBC as a maintenance engineer. Worked
23 for my company for ten years, which is Resolution
24 Electric, installing solar energy.

25 And I've also intervened on a number of the
26 BCUC regulatory processes. I did the FortisBC net

1 metering original process, the agreement; and then the
2 FortisBC net metering update; the FortisBC
3 Neighbourhood Solar Project; and the FortisBC Cost Of
4 Service Analysis just recently. I'm not quite sure if
5 I'm going to intervene or just follow this closely.

6 From a point of view of background when you
7 look at the utilities, early days when electricity was
8 first started there was local generation stations that
9 would provide cities. Then along came the grid system
10 which connected all of these cities up and created a
11 grid transmission system, which enabled more efficient
12 optimized use of the grid system. And then along came
13 technology like solar energy and battery backup
14 systems which is evolving at an extremely fast rate,
15 which is why we're called disruptive technology and is
16 upsetting the mix and the balance of that existing
17 system.

18 Where that could come into play with
19 Indigenous utilities would be islanded systems and
20 areas where utilities are not serving the remote
21 Indigenous people and communities. In which case
22 those areas would be either self-sufficient in their
23 own generation and disconnected from either FortisBC
24 or BC Hydro system.

25 From the background of the solar industry
26 from ten years, ten years ago we were trying to sell

1 solar electric at \$4.50 a watt. Today we are selling
2 systems actively now for \$2.20 a watt. So it's
3 literally halved in price and become more realistic as
4 a viable option.

5 My house is 75 percent powered on solar.
6 And I say 75 percent powered on solar because that's
7 the biggest challenge that we have. The 25 percent is
8 the winter load, which is typically supplied by a
9 utility and in the event of an islanded system it
10 would need to be provided through generation, through
11 diesel generation or gas generation, et cetera.

12 The internet of things is a big changing
13 dynamic and control of loads and demand side reduction
14 and being able to actually control when loads are
15 actually placed on a homeowner's utilities is changing
16 things. We can actually put timers and sequence
17 things in the home. That can actually change the
18 dynamic of their -- of the load. So when we're
19 looking at islanded systems and being able to manage
20 loads and having a utility in an Indigenous area,
21 there's huge technology advantage that's coming down
22 the pipeline.

23 For an Indigenous utility, if they're off
24 grid there's probably going to be a competitive
25 market. Like I've already indicated there is
26 competition there if the utility -- if the Indigenous

1 nations are buying in services to create their own
2 utility, then there is an industry that is providing a
3 very competitive angle on that. So typically in a
4 regulated utility the consumer doesn't have an option.

5 The BCUC has vast amounts of knowledge from
6 a regulatory point of view from -- to act as a
7 barometer, effectively, because they have the
8 knowledge and understanding of the typical utility
9 systems like BC Hydro and Fortis, and so they have the
10 ability to understand the value that could be placed
11 within that Indigenous utility. However, the process
12 that the Utility Commission is quite complex and
13 sometimes, you know, very in depth and it's also maybe
14 not as dynamic as maybe what the Indigenous utilities
15 may require. So I'm not quite sure, you know, at the
16 moment, until this proceeding goes through,
17 whereabouts I feel I need to sit.

18 So to summarize, the industry has changed
19 dramatically and you see it everywhere. You see it
20 in, you know, the retail market in shopping, you see
21 it in entertainment, in media. So everything is
22 changing. And the same thing with utilities,
23 utilities are looking at controlling and keeping their
24 industry under their power. BC Hydro is looking to
25 basically run their utility as they've always done,
26 and FortisBC are looking to run their utility as

1 they've always done. Unfortunately, disruptive
2 technology like solar and batteries and electric
3 vehicles are going to place a huge demand on the
4 systems. And that's only going to grow, so that will
5 -- technology will spill out into Indigenous utilities
6 and give the remoter islanded nations that don't have
7 electricity connected to the grid more opportunity to
8 have better quality supply and more reliable supply.
9 So it'll be interesting to see where this goes.

10 So thank you very much to allow comments
11 and I look forward to seeing where this inquiry goes.
12 Thank you.

13 COMMISSIONER LOCKHART: Mr. Cawley, thank you very much
14 for your remarks.

15 MR. CAWLEY: Thank you.

16 COMMISSIONER LOCKHART: I appreciate your insight, it's
17 been very helpful.

18 In terms of your reference to islanded
19 systems, islanded electricity systems, how do you see
20 a possible connection or input from the BC Utilities
21 Commission in terms of islanded systems?

22 MR. CAWLEY: Well, islanded systems are -- they have to
23 have either generation and the requiring of fuel
24 source, so there's -- you know, how that fuel is
25 regulated, the cost of that energy, that's -- you
26 know, the people who have islanded systems and

1 islanded electricity are really beholden to that
2 energy cost. And also the operation and maintenance
3 of those systems. So there is a lot higher of cost to
4 run islanded systems.

5 From a BCUC -- for islanded, how they could
6 actually regulate that, islanded systems tend to be
7 small in the grand scheme of things, so it's a very --
8 you know, it's a small system, and I'm not sure if,
9 you know, how deeply the BCUC could actually go with
10 an islanded system. Clearly there is energy costs
11 there, and that could be regulated, the cost of
12 providing gasoline or propane or diesel for whatever,
13 for the islanded system.

14 So, yeah, in terms of that, that's all I
15 have to comment on that.

16 COMMISSIONER LOCKHART: Thank you very much, you've
17 given us a lot to think about.

18 MR. CAWLEY: Thank you, any further questions?

19 COMMISSIONER BREWER: I guess I do have a question.
20 And thank you for coming forward and presenting.

21 It occurred to me when you were talking and
22 that you may be talking kind of about -- now there are
23 existing, I suppose, for instance diesel facilities
24 and whatnot on some communities. I'm sure you're
25 aware. And I guess one of the things that I was
26 wondering was, if you're seeing -- like you're talking

1 about a different technology, and a different
2 technology I suppose that Indigenous communities may
3 be accessing, or may be taking over or whatnot. Do
4 you see that in any way extending beyond reserves?

5 MR. CAWLEY: Any remote community that wants
6 electricity, one of the first things that is used --
7 typically installed is just the old fashioned diesel
8 generators, or they are reliable and -- but they're
9 obviously cause for fuel. But any other communities
10 other than -- can you extrapolate on that?

11 COMMISSIONER BREWER: Well, I'm just thinking that
12 usually I think the diesel generation and whatnot is
13 generally I think fairly confined to remote reserves.
14 I'm wondering whether with the technology that you see
15 developing, whether that will enable -- and I'm just
16 thinking that you may have given this some thought, I
17 don't know. Whether you may have thought about it
18 extending, like with the new technology, extending
19 beyond the reserves as Indigenous utilities, of
20 extending beyond the reserves. And what role BCUC or
21 how that might -- how regulation might be used or not
22 used in that situation?

23 MR. CAWLEY: Right. Well, the existing system that we
24 have is covered under net metering under FortisBC and
25 BC Hydro, so anything that is connected to that system
26 is covered by those agreements. The main issue with

1 any kind of technology is it is not typically
2 controllable, from a solar point of view. We can't
3 control the sun. And the further north from the
4 equator you go, then the more back up generation you
5 need for covering you in the winter periods. So, if
6 you are close to the equator, that's where most of the
7 successful solar projects work, and battery back-up
8 technology.

9 People, companies like Tesla have done big
10 battery back-up systems for remote communities in
11 Australia. But Australia sees an even amount of sun
12 throughout their seasons. So the further north you
13 go, the more challenging you have for Indigenous
14 people, and that is typically where the more remote
15 communities are. So, any mix with solar is more of a
16 cost in technology, and it still doesn't provide
17 energy right through the winter months.

18 But what it does do is offset greenhouse
19 gas emissions and diesel generator and fuel costs and
20 trucking, and for all the times that you don't
21 actually need to use those generators. So, in the
22 spring and summer and fall, you could provide a lot of
23 your energy with an integrated solar systems and
24 battery back-up systems. Lithium ion batteries are
25 becoming extremely popular and competitive in pricing.

26 But from a point of view of moving further

1 into -- from Indigenous utilities, I could see that
2 also playing a role, that type of technology and
3 moving out into other communities too. But again,
4 that is offsetting the traditional utility demand.
5 And that is where the challenge comes, is like I say,
6 25 percent of my energy is still from the utility,
7 because it needs to be supplied in the winter months,
8 and that's the challenge with solar. Thank you.

9 COMMISSIONER FUNG: Thank you, Mr. Cawley. I want to
10 pick your brains a bit. You had mentioned that you
11 thought that the B.C. Utilities Commission's current
12 processes, and I'm quoting you, or paraphrasing you,
13 slightly here, where complex, in depth, less dynamic
14 perhaps than ideal. I'm just wondering whether based
15 don your experience, perhaps in other jurisdictions,
16 are there other ways that you see how we might improve
17 regulation, for instance, for smaller utilities? Do
18 you have any thoughts on that? Or whether you think
19 that despite our unwieldiness the current process
20 works pretty well?

21 MR. CAWLEY: The current process is extremely
22 effective. It is very methodical, meticulous, and it
23 covers the broad spectrum gambit of all kind of
24 aspects of the topic. So it's broad ranging and it
25 reaches out and it gives people the opportunity to
26 comment, participate, intervene, and the process, what

1 I've found is, it is sometimes can be quite prolonged
2 and protracted. So that's where I was saying
3 something more dynamic, that if there is a need to
4 change or to review costings, then for example if
5 you've got a remote community and they are served with
6 solar, or some kind of generation, and they need to
7 then do something because of their need to increase
8 their costings and the kilowatt -- if you go in by a
9 kilowatt hour costing, the review process may be more
10 expedient to get that technology moving through, so we
11 can actually provide a stable and effective and
12 reliable system.

13 COMMISSIONER FUNG: Thank you very much.

14 MR. CAWLEY: Thank you.

15 THE CHAIRPERSON: I have a question. I don't mean to
16 put you in the hot seat here.

17 MR. CAWLEY: That's fine.

18 THE CHAIRPERSON: Sorry about that, but just to go a
19 little further on this issue about remote communities.
20 So let's say a typical remote community has diesel
21 generation and a distribution system that is owned by
22 BC Hydro, the diesel generators are probably owned by
23 BC Hydro, and they charge a rate to people which is
24 similar to the rate that is charged in non-remote
25 communities. And they get their electricity that way.
26 That is our typical remote community model here in

1 British Columbia.

2 So I just want to try to understand your
3 comments when you said that as disruptive technology
4 moves in, then -- I think you said something along the
5 lines of remote communities are more likely to not be
6 in a monopolistic situation and -- and maybe I'm
7 reading too much into what you said, but therefore,
8 they are most likely to adopt a different model.

9 So, I'm just wondering if you could kind of
10 walk us through the shortcomings of the existing model
11 of regulation in a remote community, which is that we
12 look at the rate that BC Hydro charges, look at the
13 cost of their diesel generators, look at the cost of
14 the distribution system, and decide if the rate is
15 appropriate. Like what is going to change about that?
16 The diesel generators could get swapped out for some
17 sort of renewable energy generator, but the
18 distribution system would still remain in place, or
19 are you suggesting that it wouldn't anymore, and it
20 would be that disruptive?

21 MR. CAWLEY: That's exactly it. With the technology,
22 you are looking at supplying generation, or you could
23 be looking at supplying generation without the load
24 source. So distribution generation actually putting
25 solar energy, solar thermal systems, you could design
26 a system that could actually power a home and actually

1 heat a home for the majority of the time and require
2 less infrastructure and less cabling.

3 And also you have the ability to control
4 the load flow. So if you actually automated each of
5 the homes you wouldn't need a bigger grid system
6 because you could control your charge rates and the
7 infrastructure and the technology could not put so
8 much demand on the system. So we have the ability to
9 do demand side management, control the loads, and so
10 that would mitigate the need for infrastructure
11 investment rebuilding or making bigger powerlines or
12 reconductoring.

13 THE CHAIRPERSON: But would you generally see that
14 whole process as one that needs less regulation than
15 it currently has or more regulation or different
16 regulation or --

17 MR. CAWLEY: Again, if you're looking at putting
18 technology in people's homes then there has to be some
19 kind of cost recovery. And so that would have to be
20 regulated because you would need the ability to
21 recover those costs at a fair rate and what would be a
22 fair rate for the home consumer?

23 And I'm kind of protracting out what would
24 happen in 50 years, because we've seen a dynamic
25 change in the system and in society. Electric
26 vehicles is going to turn the world upside down if

1 they actually come in in mass force in production and
2 the costs are coming down, and down, and down. And
3 that's going to increase an awful lot of burden on the
4 utility companies.

5 But going back to your point, I think there
6 would still be the need for regulation at a utility
7 level if you're putting that type of technology on
8 people's properties. You could be a utility and
9 actually put -- like under the present net metering
10 agreement you can't -- I can't come in as a utility
11 and put solar on a customer's home because it has to
12 be their own generation, it has to be their own owned
13 generation. So that's prohibiting a company like
14 myself to coming and creating a utility and supplying
15 them, the homeowner, with electricity from solar.

16 But that could well be the dynamic in
17 Indigenous utilities, where I could come in and put
18 solar on people's homes. The challenge of that is
19 recovering costs, because I could go and put solar on
20 somebody's home and it's not going to provide them
21 with 100 percent of electricity, so they need that
22 electricity from somewhere else and they might choose
23 not to pay me for my investment on the roof. So
24 that's like that's the challenge, right?

25 THE CHAIRPERSON: Yeah, of course.

26 MR. CAWLEY: And the government was talking a pay-as-

1 you-go system which was a loan that would've been
2 attached to a utility meter. So basically the loan
3 from the government from the pay-as-you-save, that
4 would have paid for investment, and then that -- the
5 money that you save would pay for the repayment of
6 that loan. So if you do see anything, that would
7 really be a government level financing.

8 THE CHAIRPERSON: Okay. Okay, thank you.

9 MR. CAWLEY: Thank you.

10 THE CHAIRPERSON: Thanks very much, appreciate it.

11 Go ahead.

12 MR. GEORGE: Thank you very much. Is there anybody
13 from the audience that would like to address the
14 panel?

15 Yes, sir. Please make your way to the
16 table here. Introduce who you are and spell your last
17 name for the record, please.

18 **PRESENTATION BY MR. FODEN:**

19 MR. FODEN: Good morning. My name is Ross Foden,
20 F-O-D-E-N. And I sit here as a director of the -- one
21 of the directors of the Silver Star Property Owners
22 Association, which is a small ski resort in the North
23 Okanagan. I guess my comments are more general around
24 the regulation of utilities and the impact of
25 utilities that aren't regulated. And our particular
26 interest is around sewage, which isn't regulated by

1 anybody at the moment and we currently suffer the
2 highest charges in the whole of British Columbia for
3 our sewage.

4 We've had experience of dealing with the
5 BCUC through the gas services that ARE supplied to
6 Silver Star, and I guess my interest in speaking today
7 is to really advocate for the regulation of monopolies
8 as this area is vitally important and the unregulated
9 pricing can have a significant impact on something
10 where, by definition, customers do not have a choice
11 in terms of where they need to go to.

12 Our interaction with the BCUC with regard
13 to gas, I would echo I think some of the comments of
14 the previous speaker, but it was structured and we
15 felt that as novices we were supported by the BCUC
16 staff and we believe that the outcomes that came out
17 of that wouldn't have happened had there not been a
18 transparent approach to regulation.

19 So I would encourage you to include sewage.
20 There's been a lot of talk around energy. Water is
21 obviously regulated by the comptroller of water. We
22 have been advocating with government to try and get
23 sewage regulated and I would encourage this panel and
24 the BCUC to look at the broader issues. Having gone
25 to the extent of launching this inquiry, which I think
26 is a very good thing, to leave what is by definition a

1 utility when compared to everything else that you do,
2 to leave that on the outside at this point of looking
3 at the challenges of regulation are fresh and then
4 maybe having to go back and relook at this at some
5 point in the future would really be a missed
6 opportunity.

7 So I guess I'm here to advocate on behalf
8 of the process of the BCUC, having been a practical
9 applicant within that, that it did drive results that
10 gave the utility a fair return on its capital, but
11 also meant the community had far more transparency and
12 a belief around the fact that they couldn't just be
13 exploited by a monopoly. We find ourselves still in a
14 position that we are being exploited in our view by a
15 monopoly and with government really not embracing that
16 as something which needed to be looked at.

17 So that's really all I wanted to say this
18 morning, and thank you for the opportunity of being
19 able to make some comments.

20 THE CHAIRPERSON: I have some personal knowledge of the
21 Stargas that you're talking about.

22 MR. FODEN: Yes.

23 THE CHAIRPERSON: But thank you for your comments.

24 Does anyone have -- Yes, go ahead.

25 COMMISSIONER LOCKHART: Mr. Foden, I appreciate your
26 words today. Thank you very much for taking the time

1 and having the courage to come and speak to us.

2 Do you have -- have you contacted your MLA,
3 Member of Legislature, or your municipal government
4 authorities regarding possible regulation of sewage?

5 MR. FODEN: Yes, we have. So we have spoken to
6 multiple MLAs. This is a long-standing problem. If
7 there was a simple solution to this it would've been
8 found by now. We've engaged with the local authority,
9 the Regional District of North Okanagan, we've engaged
10 with MLAs, myself and a colleague who will be
11 attending the Victoria presentation have met with the
12 ministerial staff of Flinrod in Victoria. We've put
13 them a white paper in March 2018.

14 I would say that we've had tea and sympathy
15 without the tea, but with no strong sense of this
16 being a priority. And if you look at it-- and we've
17 done a lot of background research trying to -- the
18 first thing you need to do to be able to manage an
19 issue is to quantify how big that is and we've had to
20 do that pretty much on our own.

21 We continue to advocate with both the
22 elected officials on a provincial basis and directly
23 with the government as well within the province. It's
24 an ongoing issue. As I say, it's "hurry up and wait"
25 would be one way of describing it I guess, but we
26 don't get a sense of that getting much in the way of

1 momentum.

2 We're being listened to and, you know, we
3 appreciate that people are busy and have lots of
4 different priorities. It just seems to me that with
5 this opportunity it would -- as I say, it would be a
6 real pity to leave what is by all definitions a
7 utility off of the regulatory table as you're spending
8 the time and effort, which is considerable, to get
9 into this.

10 COMMISSIONER LOCKHART: I certainly hear your
11 frustration and I appreciate you sharing this with us
12 today. Thank you.

13 COMMISSIONER FUNG: Mr. Foden, I'm just wondering
14 whether you have any views personally on whether or
15 not First Nations utilities, so Indigenous utilities
16 ought to be regulated in the same way as any other
17 utility? And I'm specifically pointing to the risk
18 that you posed that we actually help to mitigate as a
19 Commission, and that is the risk of exploitation by
20 monopolies. Do you think that same risks exist for
21 First Nations utilities operating within their own
22 boundaries?

23 MR. FODEN: Yes, I do. And I think it's going back
24 again to something the previous speaker said, that we
25 live in an ever more interconnected world. If you
26 look at the -- power is a great example of how that's

1 become far more network dependant rather than
2 something which sits with a binary relationship
3 between its generator capacity and the community that
4 it serves. And that is probably on balance a good
5 thing, because it drives up resiliency. So, the
6 ability to be able to deal with shocks to the system
7 increases in a network world.

8 It also then means that trying to separate
9 what may be on the whole supply chain something which
10 a supply service goes to an Indigenous community, but
11 the generation and therefore the pricing of that sits
12 outside of the boundaries of the particular community
13 that it's serving.

14 So, I think the complexity of regulating
15 that entire supply chain will get more complex as we
16 get more networked. I think electricity is a good
17 example of that. Something like sewage is probably
18 less of a good example. They tend to be more local,
19 people don't want to move water, or the outputs from
20 that over long distances in the same way as they do.
21 But inherently, I don't see that the Indigenous
22 communities would be at any less risk. Because again,
23 whether it is owned and operated by an Indigenous
24 community, which could be supplying to their community
25 plus others, or whether the Indigenous community is
26 receiving services from outside of their particular

1 area, that risk of no oversight on price regulation
2 and rate making I think is just as valid, if not more
3 so.

4 COMMISSIONER FUNG: Thank you, that is very helpful.

5 THE CHAIRPERSON: Thank you. I appreciate it, thank
6 you very much sir.

7 MR. FODEN: Thank you very much for your time.

8 MR. GEORGE: Thank you very much. Any other interested
9 parties in addressing the panel? I see nobody is
10 making any eye contact with me, everybody put their --

11 COMMISSIONER FUNG: I think people need coffee.

12 MR. GEORGE: Have a quick coffee break, then we'll
13 reconvene. Let's break for 15 minutes, we will
14 reconvene at 11:25. Thank you.

15 (PROCEEDINGS ADJOURNED AT 11:08 A.M.)

16 (PROCEEDINGS RESUMED AT 11:28 A.M.)

17 MR. GEORGE: I wanted to acknowledge the two presenters
18 that we had before our coffee break, thank you very
19 much, gentlemen, for coming up and sharing your
20 thoughts and ideas with us. Here is another
21 opportunity for members of the audience to address the
22 panel. Is there anybody interested in coming up and
23 doing that?

24 Good morning, Mr. Alexis, please make your
25 way up to the front here.

26 **PRESENTATION BY MR. ALEXIS:**

1 Good morning, my name is Fabian Alexis. My
2 last name is A-L-E-X-I-S, and I am a member of the
3 Okanagan Indian Band, and I am here, I wasn't
4 intending to speak, but listening to a number of the
5 presenters, I have more questions and answers I guess
6 so far.

7 One of the questions that I do have, and it
8 is not in any of the literature that I've seen, other
9 than in the background where the Lieutenant Governor
10 in Council had requested this inquiry. I would like
11 to know what triggered this inquiry? Was it a
12 specific First Nation or Indian Band that there was
13 some incident or whatnot that happened for this to
14 come about?

15 Secondly, I'd like to know, is this
16 specific for on reserve entities, like run of the
17 river or whatever type of utility may be on reserve?
18 Or is it in First Nations territories that we are
19 speaking about? I would just like to get some clarity
20 on that.

21 That is all I have for now, and I know
22 there may be some questions that you may have for me.
23 But as I said, I wasn't intending on speaking, but I
24 had more questions. Okay, thank you.

25 THE CHAIRPERSON: No problem, Mr. Alexis, I am happy to
26 answer those questions.

1 So, as far as what triggered this inquiry,
2 as you know, the inquiry was, and as you suggested, it
3 was directed by the Lieutenant Governor. But it came
4 shortly after and I believe in large part was
5 triggered by -- although I'm sure there were other
6 factors, but there's a Band on Vancouver Island, just
7 outside of Victoria, called Beecher Bay. Or that may
8 not be the Band name, I'm not sure, but it was known
9 as Beecher Bay by us. And they applied to us for an
10 exemption from the *Utilities Commission Act* for a
11 development, and the development was called Spirit
12 Bay, and it was a townhouse development, townhouse and
13 apartments I believe. A number of housing units
14 anyway, a few hundred I believe. And they wanted to
15 build on band land, and then it would be sold to the
16 general public.

17 They wanted to build -- or they wanted to
18 provide utility services to the development, and I
19 believe those utility services would have also been
20 provided to the Band buildings in addition. And it
21 consisted of a water source heat pump which would be
22 located in the ocean, and that would extract heat from
23 the ocean, and it would be used for domestic hot water
24 and space heating. They were going to purchase
25 electricity from BC Hydro, build their own
26 distribution system and distribute the electricity to

1 all of the buildings. And then they were going to
2 build a grid, a gas grid, and fuel it with propane.
3 Because I think they were significantly far enough
4 away from the closest Fortis line that it wasn't
5 practical to connect directly to Fortis.

6 So they came to us with this project and
7 requested an exemption on the grounds that they were a
8 municipality. And as you may know, there is an
9 exception in the *Utility Commissions Act* for
10 municipalities. We looked at it, and it was -- the
11 hearing was fairly narrowly scoped, because the
12 question was whether they were a municipality or not,
13 and they didn't meet the definition of a municipality
14 as that term is defined in the *Interpretation Act*.

15 And it was after that that there was
16 discussion about whether that was reasonable or not,
17 whether First Nations -- and I should point out also
18 that this was not a completely -- not a 100 percent
19 First Nation owned utility. The company that was
20 going to provide the utility services was partly owned
21 by First Nations.

22 Lino, do you recall, was it 50/50 interest?
23 Or 49/51, I don't recall.

24 MR. BUSSOLI: I don't recall exactly, but I can find
25 out.

26 THE CHAIRPERSON: Yeah, anyway, it was roughly 50/50

1 interest between the Band and a private non-First
2 Nation individual, as far as I recall, living in
3 Victoria. And he was the other partner in this
4 project.

5 So, when taken together, it didn't satisfy
6 the definition of a municipality, so it was a fairly
7 narrow technical ruling on our part. But I think it
8 triggered a discussion in government about whether
9 that is an appropriate way for the regulation to be
10 structured or not.

11 And there were some other issues with that,
12 at least from a regulatory perspective, that the water
13 source heat pump was actually located in the ocean, so
14 it was arguably not within provincial jurisdiction,
15 the ocean being federal jurisdiction. So, even though
16 we didn't go down that road, there may have been other
17 issues had we looked at it more closely.

18 So, to answer the second question, the
19 scope of this inquiry is not restricted to whether
20 things were on reserve or whether they are on treaty
21 lands or not on treaty lands. One of the questions
22 that we're asking in this inquiry is what is a First
23 Nations' utility? You know, is it a utility that is
24 owned 10 percent by a First Nation's utility? And it
25 may be selling energy on reserve lands, or on treaty
26 lands, or it may be selling energy to someone in

1 downtown Vancouver. There is no scope restriction on
2 that. It is an attempt to try to tease out what
3 issues are around ownership of First Nations
4 utilities, and what the regulatory relationship should
5 be for those utilities, if it should be different at
6 all. And those are the questions that we're asking.
7 Or asking for opinions on at least.

8 MR. ALEXIS: Thank you for your response. So there is
9 a fine line, I'm hearing, or looking into the skies
10 there about the joint venturing, or joint partnership
11 and the amount of ownership of a particular utility,
12 if it's -- if the First Nation is 49 percent, they're
13 not majority and that seems to be the case I'm
14 thinking for the issue. So, and my understanding is
15 it is on reserve where the development was going to
16 take place?

17 THE CHAIRPERSON: In that particular case it was, yes.

18 MR. ALEXIS: And that is where most of the
19 jurisdictional issues come about, not just B.C.
20 utilities, but other government agencies as well.

21 THE CHAIRPERSON: That's correct.

22 MR. ALEXIS: So this is complicated.

23 THE CHAIRPERSON: Yes.

24 MR. ALEXIS: I'm thinking.

25 MR. BUSSOLI: If I could interject, and just give you
26 some further background on that specific situation, it

1 was 51 percent -- the development corporation was 51
2 percent owned by the Beecher Bay First Nation, and 49
3 percent by the developer. The utility itself was
4 initially to be partially owned by Beecher Bay First
5 Nation, but ultimately wholly owned by the First
6 Nation. So ultimately in that case the utility would
7 be 100 percent owned.

8 THE CHAIRPERSON: But I would like to point out,
9 though, that in that case the decision didn't turn on
10 what percentage of ownership the utility was. It
11 turned on whether a First Nation band was a
12 municipality, or not, and under the *Interpretation Act*
13 the finding was that it is not, by definition not a
14 municipality. That's not a comment on whether it
15 should be regulated the same way a municipality is or
16 isn't, but the exception in the *Utilities Commission*
17 *Act* is specifically for a municipality or a regional
18 district. And there is no way that the definition of
19 Band could have been shoehorned into that.

20 MR. ALEXIS: So I guess the only thing that would
21 qualify, just to qualify for a municipality would be a
22 community under self-government, like Westbank for
23 example?

24 THE CHAIRPERSON: Lino is our lawyer.

25 MR. ALEXIS: Sorry for asking.

26 THE CHAIRPERSON: That's fine.

1 MR. BUSSOLI: Lino Bussoli, I'm external counsel for
2 the Utilities Commission. And it would be under the
3 *Local Government Act*, meeting the definition of
4 municipality there.

5 MR. ALEXIS: So yes, Westbank would qualify?

6 MR. BUSSOLI: I don't believe Westbank First Nation
7 would qualify as a municipality.

8 MR. ALEXIS: Okay. Just one last point, question, in
9 the end, you mentioned November 22nd, I guess it was a
10 date for review, or for comments?

11 THE CHAIRPERSON: November 31st is when we'll be --

12 MR. ALEXIS: November 31st? But 22nd I wrote down. So
13 in the end, with the report drafted up and whatnot,
14 what will happen in the end with it? Will this be
15 part of a policy or legislation? Will this be
16 legislated I guess.

17 THE CHAIRPERSON: I'd like to just step back and give
18 you a bit of background. So, the Utilities Commission
19 operates under a piece of legislation that is called
20 the *Utilities Commission Act*, and the *Utilities*
21 *Commission Act* lays out the definition of a public
22 utility. What you have to do before you are
23 considered a public utility, you have to sell energy
24 to someone in British Columbia, for example. It lays
25 out who is exempt from regulation, and in what ways,
26 and who is excepted from that definition.

1 We don't have any control over the Act
2 itself. We can't decide that, well, we don't think
3 these people should be regulated, or we don't think
4 that company should be regulated. We can't make those
5 decisions and decide not to regulate. But what we can
6 do is we can make a recommendation to government that
7 the *Utilities Commission Act* be changed, or if
8 government issued some sort of direction to override
9 the terms of the *Utilities Commission Act*.

10 And the purpose of this inquiry is for all
11 of us to look at the *Utilities Commission Act*, make
12 recommendations about whether the existing framework
13 of regulation is appropriate or not, and if it is not,
14 in what ways should it be changed. And then those
15 would be in our report as recommendations to
16 government. And then it would be up to government to
17 adopt those recommendations and make those changes to
18 the *Utilities Commission Act*, and if, as and when that
19 process is completed, then the new regulatory regime
20 would be in place.

21 MR. ALEXIS: Just one last thing before I sit down.
22 Has the Federal Government provided any kinds of
23 comments or suggestions and whatnot on this issue?

24 THE CHAIRPERSON: No, we haven't heard from the Federal
25 Government to date.

26 MR. ALEXIS: Do you expect to?

1 THE CHAIRPERSON: Well, I frankly don't know. I don't
2 know if they are aware of this, quite frankly, and we
3 could make them aware of it, and invite their
4 comments. Would that be your recommendation?

5 MR. ALEXIS: I think you should notify them, because
6 especially if it's on reserve stuff, this is all
7 jurisdictional.

8 THE CHAIRPERSON: That is a very good point. We will
9 do that, thank you sir.

10 MR. ALEXIS: Thank you.

11 THE CHAIRPERSON: Thank you.

12 MR. GEORGE: Thank you, Mr. Alexis, is there anybody
13 else that would like to address the panel? Anybody
14 else?

15 I've got some questions.

16 THE CHAIRPERSON: Go ahead.

17 MR. GEORGE: If there is no further questions from the
18 audience, why don't we just pause? Lunch will be at
19 noon, and then we will take a read of the room on
20 whether or not anybody else comes to join us at
21 lunchtime that might want to be giving a presentation
22 in the afternoon, and we will be making a
23 determination on whether we close the meeting down for
24 the day or whether we continue to host it this
25 afternoon. And that will be dependent upon whether or
26 not people come forward to speak.

1 Yes? Can you come up to the front here,
2 please? Just once again introduce yourself and spell
3 your last name please.

4 **PRESENTATION BY MS. DERRICKSON:**

5 MS. DERRICKSON: Hi, my name is Christa Derrickson, D-
6 E-R-R-I-C-K-S-O-N, I am from Westbank First Nation.
7 This is just more of a comment than anything.

8 I think that it would probably be more
9 appropriate to start this discussion with the Federal
10 Government, because a lot of the stuff that -- well,
11 everything that happens on a reserve is federally
12 regulated. So, to hear that they haven't been
13 informed about it is surprising to me, because they
14 control the majority of the stuff that happens,
15 including onsite generation. Like I heard earlier
16 about communities that get their power through
17 generators? That's not them, and that's not Hydro,
18 that is actually the government, that's the federal
19 government that does all of that. So, the fact that
20 they haven't been involved is surprising to me. So
21 that is all I wanted to say.

22 THE CHAIRPERSON: Thank you.

23 MR. GEORGE: Thank you very much. Anybody else before
24 we pause and have lunch at noon? Okay -- so we'll
25 pause until noon. Thank you.

26 (PROCEEDINGS ADJOURNED AT 11:45 A.M.)

1 (PROCEEDINGS RESUMED AT 1:00 P.M.)

2 MR. GEORGE: Is there any -- you have had a chance to
3 ponder it over the course of lunch. Is there anybody
4 else that would like to make a presentation to the
5 panel? Anybody else?

6 Okay, so thank you for your attendance here
7 today. I am just going to provide a high level
8 flyover of some of the things that I heard as your
9 host for the day. The depth and the detail is
10 contained within the transcripts, so I am just going
11 to do a high flyover and pass it over to our Chair for
12 some comments.

13 The work of the inquiry here, through the
14 Indigenous utilities, is an opportunity to be able to
15 serve areas that are currently not being served
16 adequately with their energy needs, particularly for
17 remote and special access communities. And I think
18 about where my brother Satsan and his wife live in
19 Skidegate, Haida Gwaii, some significant challenges
20 that they have related to their constant energy needs.

21 Solar costs have become more affordable and
22 therefore a more realistic option and alternative as
23 we move towards greater and greater technological
24 advancements. There might be other options for us to
25 consider as well. There are competitive industries
26 that can provide off-grid services to Indigenous

1 communities, and that should be considered. And
2 always recovering costs with renewable utilities
3 installation is a challenge.

4 We heard for support for the regulation of
5 utilities. No regulation having a tremendous negative
6 impact on the consumer. The regulation provides
7 transparency and fairness, so consumers won't be
8 exploited by a monopoly utility.

9 We also heard that sewage should be
10 included as a regulated utility, and a comment about
11 don't see how Indigenous owned utilities would be at
12 any less risk of potential exploitation without
13 oversight of price, regulation and ratemaking.

14 Questions around the genesis or the
15 impetus behind the creation of the inquiry itself,
16 which our Chair responded to. The scope of the
17 proceedings of the Commission itself, whether it is on
18 reserve or territorial, once again that was spoken to
19 by our Chair, and there is no scope restriction on the
20 questions that are being proposed by the B.C.
21 Utilities Commission.

22 And we also heard about the role that the
23 federal government has in the lives of Indigenous
24 citizens, particularly those who reside within our
25 communities. And encouragement provided to the
26 Commission itself to reach out to the federal

1 government and involve them in a conversation related
2 to the scope of the inquiry.

3 So I will just high level flyover, pause my
4 comments there, Mr. Chair. And turn it over to you.

5 THE CHAIRPERSON: Thank you, Dan. Thank you very much
6 for that summary, that's a very good summary.

7 Thank you very much for all of you who
8 attended today, and for all of you that came forward
9 and asked questions and provided your comments for us.
10 It was very useful. And we are very happy to see your
11 interest in our inquiry.

12 So, I would like to wish you all a good
13 day, safe travels home, and we will continue our
14 journey around the province and continue with the
15 inquiry, and please look for our draft report on
16 November 30th. We will be looking for comments on
17 that.

18 So, once again, thank you very much.

19 (PROCEEDINGS ADJOURNED AT 1:05 P.M.)

20

21

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

22

23



24

A.B. Lanigan, Court Reporter

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June 6th, 2019