

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

WILLIAMS LAKE, B.C.
June 7, 2019

Community Input Session

BEFORE:

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

VOLUME 4

INDEX

PAGE

VOLUME 1, JUNE 3, 2019 - CRANBROOK

PRESENTATION BY MR. McCURRY 2
PRESENTATION BY MS. EUNSON 19

VOLUME 2, JUNE 5, 2019 - KELOWNA

PRESENTATION BY MR. CAWLEY 35
PRESENTATION BY MR. FODEN 78
PRESENTATION BY MR. ALEXIS 55
PRESENTATION BY MS. DERRICKSON 64

VOLUME 3, JUNE 6, 2019 - KAMLOOPS

PRESENTATION BY MR. MATTHEW 69
PRESENTATION BY MS. MANUAL 103
PRESENTATION BY MS. HOOPER 114
PRESENTATION BY MR. GOTTFRIEDSON 132

VOLUME 4, JUNE 7, 2019 - WILLIAMS LAKE

PRESENTATION BY MR. THOMPSON 141

WILLIAMS LAKE, B.C.

June 7, 2019

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

(PROCEEDINGS COMMENCED AT 10:48 A.M.)

(INTRODUCTION AND BACKGROUND GIVEN)

THE CHAIRPERSON: As you know I'm Dave Morton. And I would also like to welcome all of you to our proceedings today and I'd like to say a special thank you to Elder Millie Emile. Really appreciate your very personal stories that you shared with us and the opening prayer. Thank you very much.

I'd also like to acknowledge that we are on the traditional territory of the Secwepemc First Nation and we're happy to be here with you today. And finally I'd like to acknowledge the MLA for this area, Donna Barnett. Thank you for your interest in today's proceedings.

We're looking forward to hearing everyone's comments and feedback. Laura has just gone over why we're here and what we're inviting you to comment on. If you have any questions or doubts about whether what you're addressing is in scope or not, please feel free to come up and talk to the panel anyway and, you know, we can help you with that. So we welcome anyone that has anything that they want to share with us.

I'd also like to note that during the breaks in today's proceedings we are -- the panel is

1 available to mingle and talk with you, but we would
2 ask that if you have specific things that you would
3 like to say about the inquiry, that you keep your
4 remarks focused on all of us as opposed to taking one
5 of us aside and just talking to one of us. We all
6 have to hear the same stories that one of us do. So
7 that would save us then having to go back and share
8 everything with everybody, so we would much appreciate
9 that.

10 So on that note, Dan, do we have speakers
11 lined up?

12 MR. GEORGE: Come on up, please. As noted by Laura if
13 you could just introduce yourself and spell your last
14 name, please. Thank you.

15 **PRESENTATION BY MR. THOMPSON:**

16 MR. THOMPSON: Three lawyers and an engineer, so this
17 could be intimidating.

18 My name is Tim Thompson, last name is
19 spelled T-H-O-M-P-S-O-N. My staff has kindly provided
20 me with a script because I hate scripts, so I'm going
21 to do my best to pay attention to it while ignoring
22 every bit of it I can.

23 I'm appearing before you because I'm a
24 director of a corporation named Kitselas Geothermal
25 Inc., which is a First Nations led enterprise. It's a
26 private corporation established in B.C., who's been

1 attempting to develop geothermal assets in the Terrace
2 region for about five years.

3 As such, you know, in the near term it's
4 our expectation that we will have assets on the ground
5 that would likely be both regulated and some not
6 regulated by you according to our read of the current
7 legislation. And please forgive, we're not lawyers
8 and we don't have a big development team, so when I
9 say "our read" it's got to be taken with a grain of
10 salt.

11 Just a quick sort of start off, a couple of
12 sides. I want to be clear I'm not here speaking for
13 the Kitselas First Nation. I believe they will likely
14 be before you at another one of these consultation
15 sessions, so I'm not speaking for them. However, I
16 think were they here they would thank you and some of
17 the parties here for the very kind and thoughtful
18 welcome.

19 Again, leaving the script, it would appear
20 to -- I'm from Alberta. It would appear from the
21 outside that the potential to develop energy assets by
22 Indigenous bands is some form of reconciliation for
23 past harm. And I don't want to get into that great
24 debate -- it's not really a debate, but that
25 discussion, but to the degree that the BCUC can get
26 out of the way of that development and let that come

1 productively to pass without really engendering the
2 safety of people or harming customers, I think is sort
3 of what's lurking in the back of some of the minds of
4 the people that we work with.

5 So I'm before you because we have a number
6 of comments we want to provide and we'd love to get
7 your response to them. I know I've got limited time
8 so that may not happen sort of as we go, it may have
9 to be done in writing later. And we're withholding
10 some of our thoughts and just providing maybe a broad
11 brush outline for two reasons. One, we'd like to hear
12 from some other people as well. There's a number of
13 positions I think that have yet to emerge. And I
14 think -- I've been reading the transcripts, there's a
15 lot coming out of yourselves, the Commission, as we
16 go, so you're just sort of going to get the broad
17 brush.

18 The other sort of last aside before I get
19 into it and I apologize, some of this stuff is going
20 to be dense I think, our comments heavily focus on the
21 potential for the inquiry to make substantive changes
22 to legislation and potentially policy. And we're less
23 so about the definitions, right? So for us it's not
24 that important -- it may be for you, but not that
25 important how you define an Indigenous utility. To me
26 it's much more important, what you do with that

1 Indigenous utility, right? Whether I want to get
2 caught in the net matters what happens to me when I'm
3 in the net. So, you know, and we can structure
4 ourselves almost any way we see fit corporately. So
5 it's more about what is the sort of regulatory frame,
6 and then we will try to sort of either fit ourselves
7 into the frame or try to exit as quickly as possible,
8 you know.

9 So we are at the end of the day a
10 geothermal outfit and as such I'd like to acknowledge
11 our bias, right? We're a baseload -- or we will be a
12 baseload green energy provider. And this sort of --
13 it changes how we view the world and we're forwarding
14 an agenda quite blatantly that wants to increase the
15 market access to that, to lower cost in greener energy
16 options that currently exist in the province. And it
17 will have a natural geothermal bias. So I can't speak
18 to run-of-river, or wind, or how my comments may be
19 perceived by them, positively or negatively.

20 So with that being said, we have three sets
21 of questions. The full set of three sets of
22 questions, or interests, or thoughts. I've struggled
23 with the language as how to frame what I was trying to
24 say. We are curious about the full scope of the
25 inquiry. It's got an interesting historical
26 development, at least seen by us, and plumbing that a

1 little might be interesting.

2 Secondly, it's a little clearer to me today
3 hearing some of the comments, particularly from
4 Commissioner Fung, we had a question, can this inquiry
5 be used as a vehicle to input positive recommendations
6 regarding changes that would increase market access to
7 offerings such as our own, specifically if they were
8 tailored within the context of a First Nations
9 utility?

10 And thirdly, we wanted to sort of highlight
11 a set of issues, and it's maybe a subset, that we
12 think will strongly effect the potential growth of
13 First Nations utilities. And this is sort of -- if
14 you remember the adage about -- you know, there's a
15 Chinese ideogram, I think it's "danger", but danger
16 equals also opportunity. So it's -- you know, we're
17 rolling the dice. We're before, we've got an inquiry,
18 the panel can change the rules. Well, they could run
19 for you, they could run against you. So I just sort
20 of want to highlight what may or may not concern us.

21 *[cell phone rings]* That's my mom.

22 COMMISSIONER FUNG: Do you need to take that?

23 MR. THOMPSON: No, no. I would if it were my mom.

24 She's getting on in years and if you don't pay respect
25 to people like that you don't -- you're out of the
26 will. But that's me ad-libbing again.

1 So as to the scope of the inquiry we've
2 reached out and we have a limited understanding of
3 sort of how this thing emerged. And it appears, from
4 our take on it again, that it's emerged from a
5 disagreement regarding the application of the *UCA* to a
6 real estate development being constructed by the
7 Beecher Bay First Nations Band, which ostensibly was
8 entirely on reserve land. And I believe that the
9 salient point that the band was asserting was because
10 the project was sited in federal land provincial
11 jurisdiction didn't apply.

12 Now, that may not be entirely right, that
13 may be sort of be partially right, but we were curious
14 – sort of to be responded to later – is this the
15 central point of the inquiry or is the remit more
16 broad? Now, we're hoping it is. We're hoping that
17 this is an opportunity input, or it sounds like it is.
18 But if it's more broad, you know, sort of putting our
19 strategy hat on, we're very curious as to the reasons
20 why it broadened. Not just that it is broad, but why
21 it was broadened, because that may play into some of
22 the submissions we may make later.

23 [Comment off microphone - inaudible]

24 MR. THOMPSON: Well it depends, I've got -- here, I've
25 got fifteen minutes, so I want to like plow through or
26 you can --

1 THE CHAIRPERSON: We can allow you some latitude.

2 MR. THOMPSON: Okay.

3 THE CHAIRPERSON: You're essentially correct about the
4 Beecher Bay being the genesis of it. The issue of it
5 being on federal land, that certainly may have
6 contributed to Beecher Bay's position, how they felt
7 about their position, but the issue that the
8 Commission dealt with, the strict issue we dealt with
9 was whether they were a municipality or not. If they
10 were a municipality then there's an exemption or an
11 exception under the act for municipalities and that
12 was the finding that we made in that case. But that's
13 a distinction perhaps without a difference for the
14 purpose of this conversation. That was -- a key piece
15 of the genesis or the inquiry was the issue of that,
16 of the Beecher Bay project.

17 Why it's broadened since then, the
18 government set the scope of this inquiry, so I can't
19 really say it did broaden. But I will say that if we
20 had set the scope for the inquiry and that had been
21 the genesis for setting the scope, we would probably
22 have broadened the scope also. Because there's a lot
23 of different flavours of First Nations utilities and
24 First Nations are running IPP projects, a number of
25 IPP projects in the province and some of those may be
26 repurposed or could also serve First Nations

1 communities. There may be other configurations of
2 First Nations utilities, and if I had been setting the
3 scope for the inquiry I wouldn't have left it as
4 narrow as just dealing with the Beecher Bay project
5 myself.

6 MR. THOMPSON: Okay. Thank you, and the funny thing is
7 that it'll likely be an iteration. So once you define
8 it everyone's going to sit back and decide whether
9 they want to be in or not. This may spool back.

10 THE CHAIRPERSON: It may not be over at the end of the
11 year, after all, yes.

12 MR. THOMPSON: No, no. So under the second question
13 that I framed here, can this inquiry be used as a
14 vehicle for positive recommendations, I think that's
15 sort of an answer, at least with the introduction, and
16 here -- I just wanted to, again, leave the script.

17 Geothermal energy is new relatively
18 speaking to BC. It is not easy to do. I think at
19 every regulatory turn we're typically applying it as
20 Borealis or KGI for the first permit of, ever granted.
21 And that's a process that, for lack of a better word,
22 is wearing. And I think we've almost emerged to a
23 point where we're going to be appearing before you.

24 And one of the things that is central to us
25 is that we really are an energy business. We don't
26 sell just power or just heat, they kind of come

1 together. And what concerns us is sort of a
2 definition of thermal energy systems that I think has
3 arisen out of more traditional forms of thermal energy
4 that ostensibly are very mature and don't attach to
5 sort of these very prospective developments.

6 And so again, when we try to read through
7 the documentation, it would appear that something that
8 is, what we call a sub 80 degrees C geothermal
9 resource, which is an anachronism because according to
10 the BC definition that can't exist. But we find hot
11 water coming out of the ground less than 80, it would
12 fall under a thermal energy system definition and
13 notably fall into TS stream B, which would require us
14 have both rate hearings and a certificate of public
15 convenience and necessity.

16 And we feel that this is both onerous, but
17 it may sort of misunderstand what we as geothermal
18 developers are trying to do. We would like to swing
19 for the fences in many cases and develop power right
20 off the bat. But that requires very high temperature
21 reservoirs that are extremely rare. And if there's a
22 geologist on the panel they might understand how hard
23 that is to develop.

24 But we often see the sub 80 C resources as
25 a commercial net. So if you swing for the fence and
26 fail, you can still commercially win and provide a

1 productive enterprise, but then you've got all these
2 prospective exploration costs which we would suggest
3 don't really fit within the normal regulatory frame,
4 i.e., say we had a small utility, these heat utilities
5 that we would suggest for sub 80 are almost people-
6 less. They're very small. The total salary might be
7 50,000 a year. Well how do I fit within that? The
8 idea that I have to go to a rate hearing and I also
9 have to get a certificate of public convenience. I
10 just -- they're orthogonal in some way to each other.

11 So we wanted to call out the idea that
12 geothermal thermal energy systems might want to be
13 given the same kind of exemptions that we see on the
14 power side. Now, I don't know why they're in the *UCA*.
15 I can speculate. And my speculation was, it was a
16 recognitions of the infancy of the industry and as a
17 need to develop it and get it going and get it mature.
18 At which point that exemption may fall because it's no
19 longer needed or no longer appropriate.

20 But we just wanted to sort of say, on that
21 set of very dense point, that we would appreciate or
22 we may be seeking some kind of relief or a different
23 interpretation.

24 Then in addition to that, sort of going to
25 the third thing that we were bringing forward.
26 There's sort of, you know, you have a lot of power.

1 You can choose to exercise it with some discretion,
2 but you are constrained by regulations. So again,
3 we're looking for some guides, and the team has
4 identified four issues that we would want your view
5 one. And the first one speaks right to the Beecher
6 Bay. I'll read it out because I'm never going to
7 paraphrase this, but:

8 "In our view, we would be looking for the
9 inquiry to take a clear position on the
10 implications associated with the physical
11 project and/or market location and the
12 impact on jurisdiction. And notably, the
13 three distinctions: operations or customers
14 solely on reserve, operation or customers
15 solely off reserve..."

16 Which might seem redundant because I think that is
17 your remit. And then,

18 "...operations and customers that bridge both
19 on and off reserves positions."

20 Right?

21 The second thing that we'd -- we're looking
22 to confirm or obtain some direction on would be the
23 primacy of the geothermal exclusion already contained
24 within the *UCA*. So if we were to emerge under your
25 definition as a First Nations utility, would we then
26 be caught or captured or put within the First Nations
 net? Our read says that even if we were we still can

1 avail ourselves of these exclusions, but we would like
2 that just reconfirmed. And if it's not, then that's
3 important to us and we would react accordantly.

4 The third, and this is going to be an
5 interesting one. We'd like you to take a look at how
6 you examine how First Nation energy companies, whether
7 their utilities or not, integrate with existing
8 utilities.

9 And I have had some regulatory background
10 in my past. I used to work for TransCanada Pipelines,
11 and we took a lot of flak for being the incumbent, not
12 monopolistic but pretty much near, operator and how we
13 treated some of the smaller fry that we would work
14 worth. I would suggest humbly that there is an
15 oligopoly in B.C. and if you're a very small entity
16 trying to work with that there's -- things are always
17 advantaged in our favour.

18 So in reference to some of the information
19 you've provided, our read of it is that, you know,
20 that BCUC prefers competition to regulation subject to
21 reasonable conditions. And I think reasonable
22 conditions would include customer protections and
23 safety. I'm not here arguing before you that that
24 would change in any form. But that would be the
25 appropriate mechanism for protecting customer
26 interests. And we wholeheartedly agree with this

1 view.

2 I think our preference, and we have polled
3 the First Nation on this, is in every instance we
4 would prefer to be unregulated. We're not sure that
5 there is a regulatory context at this point that we
6 would wish to enter. But the funny thing is, as a
7 consequence of where our resources are, or where our
8 customers are, or both, we are going to interact with
9 existing utilities and we can either compete with them
10 or compliment them. And our preference is for the
11 latter. And, you know, there's sort of the usual
12 suspects, I'll just identify them as natural gas and
13 power utilities.

14 And for us, you know, I try to sort of
15 harken back to the idea, "what is a first nation
16 utility?" It's probably fairly young. It's probably
17 not very big, it doesn't have a large customer base,
18 it's limited in capacity, which is not to demean the
19 people in them.

20 But we don't have teams of lawyers going
21 through, for instance, the open access tariff, which
22 is a 692 page document, to try to understand what it
23 actually means vis-à-vis "I'm trying to sell power to
24 Bob. Can I sell power to Bob or not?" And we would
25 read the document and go, "I'm not sure. I genuinely
26 don't know if I can serve this customer." But we

1 don't have the resources to hire said panel of lawyers
2 to figure that out for us.

3 So I think that, you know, there are some
4 asymmetries in capability that have been lost, I
5 think, in the broader discussion and well meaning
6 discussion on how to regulate interaction between some
7 of the more sophisticated players in the market, if
8 you will.

9 And then there's the one that always gets
10 people chaffed a little, how much money am I going to
11 make? So let's put that on the table, right? It's
12 typical, or at least, there is a view that regulatory
13 oversight, which includes rates, will put you in a
14 risk-return envelope that is fairly benign. And I
15 remember my days at TCPL, we would argue about the
16 second decimal on the rate of return at great length.
17 And we're not in that world. We're in the world where
18 I have to get, you know, VC investors or angels in to
19 invest with us. And the First Nation is taking a heck
20 of a risk, right? And I laud them for coming with us
21 in this journey, or we're with them, however you want
22 to say it. But at the end of the day, the normal
23 regulatory risk-return discussion, we're well outside
24 that envelope.

25 Now, if there was a said that said, "Oh no,
26 we can embrace that kind of discussion and we're okay

1 with it, because at the end of the day our proposal
2 will be, in terms of a value proposition, we will
3 always undercut the existing rates. It's a must for
4 us, you know. Energy is ubiquitous in some ways, it's
5 a commodity, there's nothing special about our
6 electron or our joule of heat relative to our
7 competitors, so we have to compete in price.

8 So we have a value proposition for the
9 customers, but commensurately there has to be one for
10 our investors. And our concern is, you know, is that
11 kind of risk-return relationship to be embraced by the
12 Commission? And we're unclear, we don't know. So we
13 just want to call that out as -- you know, you'll find
14 that at the end of the day people want to make a buck.
15 A buck commensurate with the risk, and that's what was
16 seen as a fair return, but it's a bit outside the
17 norm.

18 And I think that is the end. So subject to
19 questions, I'd like to thank you very much for your
20 time and address them if I can today or at another
21 moment.

22 THE CHAIRPERSON: I have a questions, please.

23 MR. THOMPSON: Sure.

24 THE CHAIRPERSON: Just towards the end when you were
25 talking about competition and exemptions or the fact
26 that regulation may not be needed if there's

1 competition, and I think you made a statement along
2 the lines of your utility would always operate in a
3 competitive market or that's the way it would be
4 operating. Did I hear that correctly, your utility
5 would always be competing?

6 MR. THOMPSON: It's spilt, right? Because the weird
7 thing about geothermal, it's not just power, it's
8 power and heat.

9 THE CHAIRPERSON: Right.

10 MR. THOMPSON: So those two markets I think are very
11 different, right?

12 THE CHAIRPERSON: Yes.

13 MR. THOMPSON: So within the power market I think we'd
14 be looking for the same kind of long term contractual
15 agreements that you would see underpinning, you know,
16 debt lending and the construction of large assets,
17 right?

18 THE CHAIRPERSON: Right.

19 MR. THOMPSON: So in the power market I'd see us being
20 as competitive in the moment but really long term once
21 you're under contract, you're subject to the terms of
22 the contract. In the heat market it's much more
23 competitive, right?

24 THE CHAIRPERSON: So in both those markets do you see
25 yourself selling to the end-user or are you a
26 wholesaler in that case? And are you selling

1 electricity to BC Hydro and then they're distributing
2 it to the community or are you proposing to distribute
3 the electrical energy directly to the end-user?

4 MR. THOMPSON: Which came first, the chicken or the
5 egg? So you tell me what the rules are, right, and
6 I'll tell you how I'm going to play them. No, but --

7 THE CHAIRPERSON: Fair enough, yeah.

8 MR. THOMPSON: So at the end of the day, you know, the
9 Kitselas First Nation do have a number of enterprises
10 on reserve. So I think there's a certain demand for
11 both power and heat that we would like to serve first,
12 and that is sort of on-reserve to on-reserve. And
13 then you would -- if the assets prove out to be larger
14 we would obviously want to go further with them.

15 And then the question becomes do you -- if
16 in the case of power, do we access the open access
17 tariff or do we just go around it and set our own set
18 of lines in the ground, right? And/or how do we avoid
19 sort of the duplication of the infrastructure?

20 So we're open, but it's likely the case
21 that we would put energy on the grid. I think
22 ultimately the easiest thing to do would be to give it
23 to BC Hydro because they have that system wide view
24 and let them determine what's the best allocation of
25 those resources.

26 THE CHAIRPERSON: Fair enough. And right now there's

1 little to no regulation of IPPs that sell energy to BC
2 Hydro, because as you say Hydro is a regulated entity
3 and they're the ones that have the transactions with
4 the end users, they're the ones that have monopoly.
5 So moving from being a supplier to BC Hydro, to being
6 -- and then a supplier to an end-user, that could put
7 you from -- that could put you into a monopolistic
8 position. And the reason I'm going through this
9 detail is I'm wondering if you are in that
10 monopolistic position. Are you then saying -- still
11 saying that you don't think that regulation would be
12 appropriate?

13 MR. THOMPSON: Oh, I have two comments.

14 THE CHAIRPERSON: Okay.

15 MR. THOMPSON: The first is with regards to market
16 access, which is sort of implicit in your discussion.
17 Our read of the retail access documents -- again
18 another substantive pile of information -- is that
19 let's take a mythical for instance, there's a pipeline
20 company in B.C. and it has power stations. It has a
21 need for greenhouse gas credits. This is
22 hypothetical.

23 I generate also greenhouse gas credits
24 because I'm displacing in the heat market carbon where
25 I wouldn't do so in power. I cannot sell power to one
26 of their stations, I'd have to sell power to all of

1 their stations, because it's a stipulation within the
2 market access, retail access documentation that I --
3 that you either get all your power from BC Hydro or
4 none and there's no intermediate case. So I think
5 that from a market access point of view there are
6 issues.

7 Now, with regards to a monopoly -- I used
8 to work for Keegan in the Emirates, but aside from
9 that a monopoly in and of itself is not necessarily
10 bad, it can be beneficial. And I think the way you
11 manage that is, for instance, if we sold on a price peg
12 that was an automatic discount to the next best
13 competitor, right? And we just said, look, we're not
14 going to sell and take super normal profit from you.
15 We will always ensure that we would peg at a discount
16 to your next best next viable option. And have a very
17 simple contract based on that and let it flow. We
18 could be a monopoly, but in some ways always be
19 beneficial all the time.

20 So I think that that pricing mechanisms
21 that you use, if they have the flexibility to allow
22 the customer that benefit, then it changes whether you
23 should be considered a monopoly or whether being a
24 monopoly is and of itself bad. Is that --

25 THE CHAIRPERSON: A monopoly by definition doesn't have
26 a next best available price.

1 MR. THOMPSON: Well it -- you know -- I struggle with
2 this. You know, natural gas is regulated, propane is
3 not. Can they sell to the same customer? Absolutely.
4 Just a little change in kit, right, will allow a
5 furnace or a barbeque. So even though the same
6 customer has a regulated supplier, they also have an
7 unregulated supplier. So -- but often we speak about
8 natural gas corporations having monopolistic control
9 of the customer. That's how I'm thinking of it.

10 THE CHAIRPERSON: Yeah. And fair enough. And natural
11 gas, you can always replace natural gas with
12 electricity, but you can't go other way around for all
13 applications. So I agree with you, yes.

14 MR. THOMPSON: Yeah. Did I answer your question? I
15 just want to make sure.

16 THE CHAIRPERSON: Yes.

17 MR. THOMPSON: Okay.

18 COMMISSIONER FUNG: Okay, Mr. Thompson, you've raised
19 some very interesting issues and questions. Obviously
20 you and your group have thought about this. So I've
21 noted them. I'm not going to try to answer them
22 because those are precisely the kind of issues that we
23 are trying to get a handle on as a panel.

24 However, I am interesting in knowing more
25 about the ownership and the governance structure of
26 your corporation. If you could share some information

1 and insights about that I would appreciate it. Is it
2 owned by First Nations or is it owned by private
3 interests? How does it relate to the First Nation if
4 at all?

5 MR. THOMPSON: The Kitselas First Nation is, if you
6 will, body politic and they have a corporate entity
7 called the Kitselas Development Corporation, which has
8 set up – I may get this wrong, but I'll do my best – a
9 master limited partnership arrangement whereby
10 Kitselas Development Corporation owns 51 percent
11 equity interest in KGI, the company, we're the
12 minority partner, but the operator is the general
13 partner, the LP. If that makes any sense? And it's a
14 B.C. corporation.

15 COMMISSIONER FUNG: And in terms of governance how does
16 the governance --

17 MR. THOMPSON: We each have three directors on the
18 board. So the Kitselas Develop Corporation has three
19 directors and Borealis GeoPower has three.

20 THE CHAIRPERSON: The general partner --

21 MR. THOMPSON: Yes, sorry, yeah.

22 COMMISSIONER FUNG: So Borealis owns the remaining 49
23 percent?

24 MR. THOMPSON: Yes.

25 COMMISSIONER FUNG: Okay. That's what I took it to be.
26 Thank you.

1 MR. THOMPSON: Okay.

2 THE CHAIRPERSON: Is that it?

3 COMMISSIONER FUNG: Yes, thank you.

4 COMMISSIONER BREWER: Okay, so I guess one of the
5 questions that I would have is, the generation of
6 power and heat source, I guess, it is -- do you think
7 that that has any relevance? The situation of where
8 that is located, do you think that would have any
9 relevance in terms of the definition?

10 MR. THOMPSON: Could I paraphrase? It may. I believe
11 you're asking me that if it were the case that the
12 First Nations owned the geothermal right to the
13 resource would that change maybe the definitional
14 nature of whether our utility or our corporation is
15 Indigenous in nature or not? I would argue no, but
16 the *Geothermal Resources Act of British Columbia*, with
17 all due respect, is not as -- it lacks the history of
18 any other, you know, exploitation regimes, for lack of
19 a better word. Mining's got a long history, oil and
20 gas a long history, you have -- so, the *Oil and Gas*
21 *Act* is phone book, the *Mining Act's* two phonebooks.
22 The *Geothermal Resources Act* about seven pages. It
23 lacks some subtlety and as a result who owns the
24 geothermal resources? I would suggest is -- the
25 province seems very clear that they do, but I don't
26 know that it's something that's actually been tested.

1 And some that's worth making that test and there's
2 other points I think it's not.

3 Yeah, yeah. Because the Act was enacted in
4 1996 and there's a lot of stuff that's happened prior
5 to '96. So again, I'm not a lawyer, but my vague
6 understanding is some of that may apply, but no one's
7 actually gone to the point of testing it.

8 Now, let's say the First Nation did own the
9 subsurface resource, but to me that would, you know,
10 it's up to you folks. If you said the test were
11 majority ownership at least in the corporate entity,
12 you know, then I think that we could fall in or fall
13 out based on based on people's interest in being
14 majority owners.

15 Have I tried to address your question?

16 COMMISSIONER BREWER: No, I think that's -- you know,
17 I'm sort of just trying to probe the degree of
18 thinking around it on your part. So, yeah.

19 MR. THOMPSON: Well, the way we would view that, let's
20 say, we'll just, you know, let's talk about a project.
21 If we were in Terrace and the Kitselas were 100
22 percent owners of the subsurface resource, we would
23 likely make an arrangement with the Kitselas
24 recognizing that. But the development corporation
25 would be an entity who's structure was whatever was
26 deemed appropriate at the time. I think you're going

1 to get into some interesting cases if you think of the
2 topology of where the reserve and the resource
3 overlap. They're not going to be -- you're never
4 going to get the case where one beautifully matches
5 the other. So that then, how do we get in -- in the
6 on and off reserve jurisdiction of the exploiting the
7 resource and people having thought about issues like
8 unitization, like you might get the oil and gas --
9 with regards to heat, so.

10 COMMISSIONER BREWER: I'm sort of thinking maybe there
11 might be parallels on some things, but thank you for
12 your time.

13 MR. THOMPSON: Well, no, it's broadly untested, yeah.

14 COMMISSIONER LOCKHART: Mr. Thompson, this is very
15 interesting. I'm curious about -- I assume Kitselas
16 First Nation right now is fully connected, gas, hydro,
17 et cetera.

18 MR. THOMPSON: I just don't know. I would suspect, your
19 use of the word "fully", I would suspect no. I would
20 suspect they have members that are in the bush. So
21 that I'd venture no. But in fact I don't know.

22 COMMISSIONER LOCKHART: Okay, no. And can you tell us
23 the history of your particular resource? How long has
24 the geothermal been known?

25 MR. THOMPSON: KGI, which is in Borealis, has ownership
26 to title of three different sets of permits. It's a

1 bit of a collage because, again, the permitting scheme
2 I don't think's been fully finalized. We have title
3 to certain tenure under the *Geothermal Resources Act*,
4 we have also title to certain mineral claims and
5 there's land that's been held as a reserve for the
6 Kitselas First Nation. Those three overlapping sets
7 of tenures overly a graben, which you may understand,
8 but for everyone else in the room, how would I --

9 COMMISSIONER LOCKHART: It's a geologic feature.

10 MR. THOMPSON: It's a geologic term, but the best way to
11 explain it, I'm going to do a visual here. Because if
12 you have a fault and it slides? No big deal. A
13 graben's a fault with a kink in it and when it slides
14 it opens up a hole, that's exactly what it is.

15 Now Terrace being what it is, it's got
16 Canada's most youngest graben and as a result it also
17 has Canada's hottest hot spring, it leaks. And the
18 earth gets thinner there, it's incredibly hot.

19 So that resource has been examined, well, I
20 think the First Nations have stayed there since time
21 immemorial, frankly because it was warm in the winter,
22 right? But in terms of modern development I think it
23 was discovered in about 1890. Various hot spring
24 enterprises have gone forward since 1920. The last
25 one, which was Mount Layton Hot Springs, has sort of
26 fallen into disrepair since about 2000, but it's still

1 -- there's an enormous amount of heat energy coming
2 out of it.

3 Does that help? And we've been looking at
4 it since 2010, I think.

5 COMMISSIONER LOCKHART: Yes, that's exactly what I was
6 wanting to know. Do you have a sense of geothermal
7 resource energy potential throughout the province?

8 MR. THOMPSON: We do. There's a better body for --
9 there's the Canadian Geothermal Energy Association
10 that has taken an opinion. In their view, plus or
11 minus, there's probably 6,000 megawatts base-load
12 generation potential and the heat potential is -- it's
13 off the charts. Many multiples of the current demand
14 of British Columbia.

15 So it's really more about at what cost,
16 what's the merit order of development that makes sense
17 as you try to fold something in to an existing set of
18 infrastructure. And then how do the existing players
19 do or do not react at that as it becomes developed.

20 COMMISSIONER LOCKHART: I'm also curious, when you
21 suggest that any rates that are set will be less than
22 your competitor's rates or your peer's rates. Why do
23 you feel the need to be more competitive as opposed to
24 equally competitive? What is it about geothermal that
25 makes you need to be more competitive -- or better
26 than?

1 MR. THOMPSON: Baldly put, I want to make a sale.

2 COMMISSIONER LOCKHART: Fair enough.

3 MR. THOMPSON: Right. So that if I'm equally
4 competitive what's the impetus for change? You know,
5 my view on the technical risk of delivering geothermal
6 heat may be very different than a customer's view
7 who's never seen it before.

8 COMMISSIONER LOCKHART: I see.

9 MR. THOMPSON: So if I offer them a discount plus
10 guarantees, I'm likely to garner customers. I think
11 our view on pricing might evolve over time. But where
12 it exists, geothermal energy is typically the cheapest
13 available option for power and heat. So that we have
14 the ability to make the offer as well, so it's not
15 just snake oil, right?

16 But yeah, no, I want to enter an existing
17 market and let's say that you folks, for instance,
18 just a hypothetical, were against me, if I'm lower cost
19 I make it hard for you. A public interest test where
20 I can save customers money, I want to make sure I've
21 got everyone aligned on my side, right? I want to be
22 there with my customers saying, "Can you please let me
23 have this?"

24 THE CHAIRMAN: So your concern with rate of return
25 regulation is that comes in with a cost that's too
26 high, or the price is too high then?

1 MR. THOMPSON: No. My concern about rate of return
2 regulation is that if there's value to be shared
3 you'll give too much of it to the customer, right?

4 THE CHAIRMAN: So you deliver at a cost that's too low?

5 MR. THOMPSON: Yeah. So let's say that, again,
6 hypothetical numbers, deliver gas plant-gate seven,
7 six bucks a gigajoule. Let's say I'm offering it at
8 five. Well, let's say my return is well above any
9 regulated return, if I listen to you I have to sell it
10 at three, right?

11 So the division of the pie is great for the
12 customer, but I've got VCs behind me saying, you know,
13 8.16 percent, you know, total return, forget the debt,
14 right? I can't get debt for that rate, so -- so
15 that's how I see it. You would actually force me into
16 a lower price position than where I would be, even
17 though I have a -- okay.

18 THE CHAIRMAN: Thank you.

19 COMMISSIONER LOCKHART: That concluded my questions.

20 Thank you very much.

21 COMMISSIONER BREWER: So, I was just curious then. So,
22 given that you, you know, what your submission is, I'm
23 wondering, so do you think that there is a need for --
24 you're kind of saying there's no need for regulation
25 at all for your -- except on safety or standards in
26 that respect. Is that what your submission is with

1 respect to First Nation utilities?

2 MR. THOMPSON: I have to be careful here, because I
3 don't think we're submitting. We're kind of
4 dialoguing, right?

5 COMMISSIONER BREWER: Okay, sure.

6 MR. THOMPSON: But in that context, I think that -- I
7 have to be careful here. I come from a corporate
8 background and corporate structures change with time.
9 So I think that you may put forward a view on what's a
10 First Nation's utility. But depending on what rules
11 will attach, the system will kind of reorganize itself
12 in response.

13 So that -- I'm not worried about the
14 definition, it's more, I think the question is, you'll
15 have a number a number of small, nascent, infant
16 players entering an oligopoly, right? And if you want
17 them to succeed, like small trees -- where are -- the
18 Elder's missing. But you're going to have to give
19 them a little bit of care or they're going to get
20 crushed, right?

21 And I have very large self-interest in not
22 being crushed. But aside from that -- no, but it
23 extends generally, right? So aside from that, you're
24 going to have to figure out the set of rules that
25 would allow them to persist in a way that (a), they
26 progress, but also -- to me this is your challenge, is

1 in the public interest, right?

2 We can't be allowed to progress if we are
3 uneconomic. That's, you know -- but to what degree if
4 we decarbonize the heat market? Does that allow us
5 some slack, right? You know, what are the various
6 levers, you know. If we develop a horrible safety
7 record, should we be allowed to persist? I'd argue
8 no. I'm saying safety, it's a given. It's required,
9 right? In my case I don't have anything that blows up
10 or -- so it's pretty easy, I'm not transporting
11 natural gas or oil or propane.

12 But also customer relations are important,
13 right? You know, you may ask us to build in opt-out
14 provisions in our contracts where the customers, even
15 at the lower price are dissatisfied, and that'll put
16 an onus on me to say, I need to deliver quality
17 service in addition to, right? To me, you know,
18 there's safeguards that I would expect you would
19 apply. Is that fair?

20 COMMISSIONER FUNG: I actually have a follow-up
21 question, Mr. Thompson. Other than the -- what you've
22 described as a benign risk-reward scenario that we
23 have with regulation, why do you object to being
24 regulated at all?

25 MR. THOMPSON: This is where I put my gun on the table,
26 right, you know? No. No, I think that --

1 COMMISSIONER FUNG: No, I'm genuinely interested in
2 hearing your response, because I can assure you that
3 some of our existing utilities actually like being
4 regulated because they have the assurance that the
5 Commission has looked and examined the -- either the
6 need for building a particular infrastructure, which
7 goes into rate base by the way, on which they earn a
8 rate of return, benign as it may be, and they also
9 have the assurance that the customer knows that the
10 rates they are changed are under -- as required by our
11 legislation fair, reasonable and non-discriminatory.
12 They like that stamp of approval.

13 MR. THOMPSON: I like the subtlety of that question.
14 I'm going to give you a two-part reply. My first part
15 is with regards to drilling, I have actually been on a
16 long journey trying to find said regulator within the
17 province of British Columbia, because the hodgepodge
18 of regulation that applies to me is difficult to do
19 because my activities change over time and some fall
20 within certain regulatory agreements, others not. I
21 very much appreciate that, because the idea of a
22 drilling rig rolling up and drilling wells with
23 absolutely no sanction is craziness. I want the
24 imprimatur that attaches from an approving body. So I
25 very much appreciate what you're saying from that
26 point of view.

1 With regards to regulation, sort of qua
2 regulation absent pricing control, dangerous ground.
3 I would suggest that probably I don't necessarily
4 disagree. I would humbly suggest that my First Nation
5 partners might want some level of autonomy. There may
6 be a trust issue. Maybe it's the best way I can put
7 nit. So that they might want control over their own
8 destiny. You may view that as an opportunity for good
9 or an opportunity to fail, but it's still an
10 opportunity and that could be seen as important. I
11 don't want to speak for them.

12 COMMISSIONER FUNG: Thank you.

13 MR. THOMPSON: Okay, thank you.

14 THE CHAIRPERSON: Mr. Thompson, thank you very much for
15 your thoughtful remarks. We really appreciate that.

16 MR. THOMPSON: Well, thank you for your time.

17 THE CHAIRPERSON: Thank you.

18 MR. GEORGE: Thank you very much, sir.

19 Is there anybody else that would like to
20 make a presentation to the Commission? Anybody?

21 Why don't we take a short recess then.

22 We'll recess for 15 minutes, I'll come back and test
23 it again on whether or not you can make a
24 presentation. Doesn't have to be super formal. If
25 you have some questions that you want to direct to the
26 commissioners we would welcome that as well.

1 So we will break till 11:45. Please help
2 yourself to the refreshments at the back of the room.
3 Once again, if you need the restrooms they're outside
4 the doorway here, down the hall to the left. Thank
5 you.

6 (PROCEEDINGS ADJOURNED AT 11:31 A.M.)

7 (PROCEEDINGS RESUMED AT 11:52 A.M.)

8 MR. GEORGE: I can call ourselves back into session.

9 Is there anybody else interested in making
10 a presentation before the panel? Anybody?

11 VOICE: We can chat throughout lunch though, can't we?

12 MR. GEORGE: You can chat throughout lunch, but if it's
13 something specific to the inquiry there would be a
14 desire on behalf of the panel that you address the
15 panel as a whole rather than as individuals. Okay?

16 Okay. Thank you very much for being here
17 this morning. I want to acknowledge you, Mr.
18 Thompson, for your presentation today. Very
19 interesting perspective brought forward on behalf of
20 Kitselas Geothermal.

21 I'm going to offer some observations. My
22 observations are not designed to encapsulate all of
23 the presentation that you provided. That is left up
24 to the transcription services, but I do want to touch
25 upon your acknowledge of reconciliation and the
26 understanding that our future here within British

1 Columbia and indeed across Canada is one based upon
2 collaboration and being able to work together in a
3 respectful way that understands our shared history
4 within this country. Your observations around the
5 regulatory framework that could be contemplated for an
6 Indigenous utility was certainly thought stimulating
7 for me.

8 And then the participation in the market I
9 think is really, really important and when I reflect
10 upon the Delgamuukw court action paragraph 163 that
11 talks about the land having an inescapable component,
12 it's about how do you participate in the economy in
13 ways that reflect who Indigenous people are while at
14 the same understanding that we are very much
15 interconnected within our communities, particularly in
16 the smaller communities.

17 Also, that you can't contemplate anything
18 with regards to the economy without thinking about the
19 environment. You know, a core value with Indigenous
20 people is that we're taught that if we are going to
21 take care of the land, the air and the water, the
22 land, the air and the water will take care of you.

23 So your submission today was very thought
24 provoking and very welcome and I thank you for that.

25 I want to acknowledge our Elder who started
26 us off here today with her prayer and her story. And

1 each of us are just an assemblage of stories, and she
2 was grateful enough and courageous enough to share her
3 story with us, which is sadly not a common story
4 within Indigenous communities.

5 And I want to acknowledge the panel here
6 today to listen to the stories and to make space,
7 meaningful space for Indigenous people within the
8 socio-economic fabric of British Columbia and by
9 extension Canada.

10 I raise my hands again in respect to the
11 Secwepemc people for hosting us here within the
12 territory and I also want to acknowledge the mayor and
13 council of Williams Lake for hosting us here today.

14 We are going to call the session now, and
15 I'm going to have Dave, our Chair, Mr. Morton, offer
16 some comments. What I would I would like to do though
17 is to encourage you to stay with us for lunch, but the
18 formal proceedings, we will wrap that up right now.
19 And I thank you very much and turn it over to our
20 Chair for some comments.

21 THE CHAIRPERSON: Thank you, Dan. I don't really have a
22 lot to add. I echo Dan's remarks. First of thank you
23 all for coming out and thank you, sir, for your
24 submissions or your discussion this morning.

25 And a thank you to Elder Millie Emile for
26 her opening prayers. And we wish you all safe

1 travels. Please stay for lunch and please enjoy the
2 lunch and then I wish you all safe travels home.

3 Thank you very much.

4 (PROCEEDINGS ADJOURNED AT 11:57 A.M.)

5

6

7

8

9

10

11

12

13

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

14

15

16

17



A.B. Lanigan, Court Reporter

18

June 11th, 2019

19

20

21

22

23

24

25

26