

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

PRINCE GEORGE, B.C.
November 18, 2019

Community Input Workshop

BEFORE:

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

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1 **PRINCE GEORGE, B.C.**

2 **November 18th, 2019**

3 **(PROCEEDINGS COMMENCED AT 9:59 A.M.)**

4 (INTRODUCTIONS)

5 MR. GEORGE: (*Indigenous Language Greeting*) Ladies and
6 Gentlemen, welcome to the Indigenous Utilities
7 Regulation Inquiry draft report workshop. I want to
8 begin by acknowledging Lheidli T'enneh territory that
9 we are gathered on here today. Chief Clayton Pountney
10 and his council, as part of our protocol, we reached
11 out to the leadership, and they were unavailable to
12 welcome us to the territory. They told me to offer to
13 you their words of encouragement for a productive
14 session here today.

15 We're big on safety, so please make note of
16 the fire exits around the room in case we need to
17 leave here in a hurry. The restrooms, as I noted
18 earlier, are outside the doors here on your bear right
19 on your way back to the main desk, and they're there
20 on the right-hand side. And please be careful moving
21 about the room here, because we do have some cords on
22 the floor.

23 I want to also take a moment to acknowledge
24 each of you who have taken time out of your busy
25 schedules to be here with us today. Many pressing
26 demands on your time, you've chosen to be here today,

1 and for that we are grateful.

2 I want to acknowledge the B.C. Utilities
3 Commission panel that we have with us here today.
4 David Morton our Chair, Carolann Brewer, Commissioner.
5 Anna Fung, Commissioner, and Blair Lockhart who is a
6 Commissioner, but she is unable to be with us here
7 today.

8 I would like to ask the panel to briefly
9 introduce themselves.

10 THE CHAIRPERSON: Thanks, Dan. Hi, my name is Dave
11 Morton. As Dan said, I am the Chair of the panel. I
12 am also the Chair and CEO of the BCUC. And I would
13 also like to add my words of welcome to everyone
14 today. I certainly appreciate you coming, and I look
15 forward to hopefully a productive and interesting
16 discussion today.

17 I've been with the BCUC since 2010, I've
18 been a Commissioner since then, and I've been the
19 Chair and CEO since late 2015. I am a professional
20 engineer, and I've certainly learned quite a lot about
21 utility regulation in the last almost 10 years. And
22 I've also really enjoyed working on this inquiry
23 panel, and meeting the people I've met, and it's been
24 a very interesting process.

25 So, on that note, again welcome, and I look
26 forward to a good day today. Thanks.

1 COMMISSIONER FUNG: Thank you very much, everyone, and
2 welcome to our workshop. As Dan said, we really
3 appreciate you taking the time out of your day to join
4 us and provide us with your feedback.

5 I am a member of this panel, and a
6 Commissioner at the Utilities Commission. I have been
7 with the Commission since 2018, and prior to that I
8 worked as a lawyer in private practice, as well as for
9 a number of companies in the province. And early on
10 in my legal career I had the privilege of working on
11 the *Regina v. Sparrow* decision, which involved the
12 Musqueam Indian Band, and it was the first case that
13 recognized the existence of Aboriginal rights and
14 title, and the section 35 of the *Constitution Act*.

15 So, I am very happy to be with you today,
16 as part of this panel, and I look forward to receiving
17 your feedback on our draft recommendations. Thank
18 you.

19 COMMISSIONER BREWER: Good morning, everyone, my name
20 is Carolann Brewer, and I am a Commissioner, I've been
21 a Commissioner since January of this year. I am
22 Smalqmix and Sylx, I am a member of the Lower
23 Similkameen Indian Band, and I have been a lawyer
24 since 1984, and most of my career has been dedicated
25 to Indigenous rights law.

26 I want to acknowledge that we are within

1 the territory of the Lheidli T'enneh, and I did spend
2 a brief period of time in this territory working. So
3 it is nice to be back, and I look forward to hearing
4 your comments on our report.

5 MR. GEORGE: Thank you. There are a number of staff
6 here for the BCUC as well. I want to ask them to
7 stand and to introduce themselves, and if at any point
8 you have questions, please feel free to reach out to
9 someone you see here. So I want to begin at the back
10 table here. Introduce yourself.

11 [BCUC STAFF INTRODUCTIONS]

12 MR. GEORGE: Thank you. And I'm Dan George, I have the
13 fortune of being your MC for today's proceedings. I
14 want to also acknowledge Lino Bussoli, the legal
15 counsel. Lino, put your hands up there buddy, and
16 introduce the Allwest team, Hal if your team can
17 introduce yourselves please.

18 [ALLWEST REPORTING STAFF INTRODUCTIONS]

19 MR. GEORGE: So today's sessions are being transcribed
20 by Allwest Reporting, who also have a few staff in the
21 room that have just identified themselves. And you
22 can also listen live to the community input sessions
23 on BCUC.com.

24 So, the format for today's workshop, this
25 morning we are going to hear from the panel who will
26 provide an overview of why we are here, and make a

1 presentation on the proposed recommendations made
2 within the draft report, and there is going to be time
3 for a Q&A during that presentation. Following the
4 presentation, we will break into small group
5 discussions, probably just going to have one
6 discussion table here this morning where you will have
7 an opportunity to discuss the draft report and its
8 recommendations more deeply.

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

22 And we will conclude today's sessions with
23 some brief remarks by 3:00 P.M. It says 3:00 P.M.,
24 but depending upon how the day goes, we might end a
25 little bit sooner.

26 The primary objective of today's workshop

1 is to assist the BCUC by providing your input in the
2 draft report, which was recently released, and which
3 seeks to address what characteristics you believe
4 define an Indigenous energy utility, and if or how
5 Indigenous utilities should be regulated.

6 I want to acknowledge the B.C. Utilities
7 Commission for once again going out to communities and
8 soliciting feedback now when the draft recommendations
9 generated from our first round.

10 On November 1st, 2019, BCUC released its
11 Indigenous Utilities Regulation Inquiry draft report,
12 including its preliminary findings and recommendations
13 for the B.C. government. The report is available on
14 the Inquiry's proceeding page, of the BCUC website,
15 and a summary has been provided to you today at
16 registration. In order to ensure that a draft report
17 recommendations reflect the interests and perspectives
18 of B.C.'s Indigenous peoples and communities, we
19 invite you to provide your comments to the BCUC.

20 The comment period on this draft report is
21 open until March 2nd, 2020. Today at this workshop we
22 are hoping to hear your initial thoughts and comments.
23 This is also an opportunity to ask the BCUC questions
24 about this work, and seek any clarifications you may
25 require.

26 The BCUC has prepared a brief presentation

1 providing an overview of the inquiry process to date,
2 and an overview of the draft report, and the
3 recommendations contained within.

4 So, you will have an opportunity to inform
5 the panel of your interests related to this inquiry.
6 You are welcome to ask questions or make a
7 presentation in your traditional language, however we
8 ask that you please provide translation for the
9 presentation so they can be transcribed and added to
10 the public record. All presentations to the panel,
11 along with the name of the person making the
12 submission will be transcribed. Live audio streamed
13 at BCUC.com, and placed on the public record.

14 The dialogue that takes place during the
15 breakout groups will not be transcribed, live audio
16 streamed, or placed on the public record. No part of
17 these workshops will be videotaped. Everyone is
18 welcome to come and go during the session as their
19 schedule permits.

20 So, we ask that, you know, when we talk
21 about our territories, we talk about energy, it is
22 often highly emotional for many of us. So I'm going
23 to suggest the following rules of engagement to help
24 create a safe, respectful container for all of us.
25 So, we ask that you be hard on issues, and soft on
26 people, and that you actively participate during your

1 time here today. So, if you have a cell phone, please
2 turn it to off or turn it to vibrate while we're in
3 session, and we'll take breaks during the day when you
4 can check your messages.

5 When we come into these kind of forums,
6 there are always great ideas that are generated, so
7 when we do generate great ideas during our time
8 together, let's please take them as far as we can. We
9 ask that you listen generously to one another,
10 listening to our thoughts that cause us to think the
11 way that we do, listening to one another's feelings
12 that cause us to feel the way that we do, and also
13 listening to the silence, because it is often in the
14 silence is where our greatest learning moments occur.

15 We know that we can always do better, we
16 can always improve. When you identify an improvement
17 area, please be prepared to offer a solution. Problem
18 identification, solution identification. We don't
19 want to get stuck in the problem. Are those
20 reasonable? Can we do that today? Nodding heads? We
21 good? Thank you.

22 I will now turn it over to our Chair, Dave
23 Morton, who will be making a presentation.

24 (POWERPOINT PRESENTATION)

25 THE CHAIRPERSON: Thanks, Dan.

26 I'm going to talk a bit about the process

1 that got us here and then I'm going to talk a little
2 bit about what's in the report and some issues that
3 we're going to be asking you to discuss in the small
4 group here today.

5 So, as you probably know, we're the British
6 Columbia Utilities Commission and we regulate
7 electricity, natural gas, thermal energy, the sale of
8 those items, and we also regulate the companies that
9 deliver on that kind of energy. We regulate a lot of
10 their capital spending, which includes pipelines and
11 transmission lines and computer systems and any other
12 systems that they build.

13 And we're an independent regulatory agency.
14 We are an independent administrative tribunal. We are
15 fully funded by the utilities that we regulate, we're
16 not funded by the taxpayers. And at this point we
17 regulate all utilities in the province, which as I
18 said is any entity that sells that kind of energy to
19 any person in British Columbia.

20 And one of the things that we're empowered
21 under our legislation to do is hold inquiries into
22 various matters, and we were asked by the provincial
23 government to hold this inquiry into whether we should
24 continue to regulate Indigenous utilities in the same
25 manner or whether there should be some other form of
26 regulation for Indigenous owned utilities.

1 So, the key questions then in this inquiry
2 that we were asked by the government to conduct, and
3 government laid out these questions for us to answer,
4 are what are the defining characteristics of an
5 Indigenous Utility? And as I said, should they be
6 regulated under the *Utilities Commission Act* or should
7 they be regulated under some other mechanism or should
8 they be regulated at all? And if it's appropriate to
9 regulate Indigenous utilities under the *Utilities*
10 *Commission Act*, should they be regulated in a
11 different fashion or should BCUC's processes be
12 modified to regulate Indigenous utilities? And if
13 it's not appropriate to regulate under the *Utilities*
14 *Commission Act*, should they be regulated in some other
15 manner? And then finally, if they aren't regulated,
16 what would happen to a utility that would cease to be
17 an Indigenous Utility, should that be regulated under
18 the *Utilities Commission Act*?

19 So, these were the questions that we were
20 directed by the provincial government to answer. And
21 that's going to be -- we kicked off this inquiry and
22 that's ultimately why we're here today to try to
23 answer those questions.

24 So, as I briefly mentioned, an energy
25 utility is a company that owns the equipment that's
26 required to deliver, under the *Act*, a specific form of

1 energy: electricity, natural gas for heat or cooling,
2 a thermal energy system. And there's some little
3 diagrams of what they look like. And while the Act is
4 silent on this, it doesn't specifically say why these
5 companies need regulating, it's something that's
6 pretty common in all jurisdictions for utilities to be
7 regulated, and a lot of the provisions in our Act
8 mirror the provisions that are in legislation in other
9 jurisdictions, not only in Canada but across North
10 America and in fact around the world.

11 And it's generally acknowledged that the
12 reason this regime has developed over time is because
13 utilities tend to be monopolistic. Because they tend
14 to require a large amount of capital, there's lot of
15 infrastructure and that infrastructure is fairly
16 intrusive. You know, it consists of wires that go
17 down streets and pipes that go under streets. And
18 it's not easy to have a competitive market in those
19 circumstances.

20 First of all, it's very expensive, so
21 that's a barrier to entry for other companies who want
22 to get in the business. And secondly, a lot of
23 people, they don't want five sets of wires running
24 down their street, one set is quite enough.

25 So that's how regulation has developed and
26 that's largely considered to be the reason for

1 regulation. However, the world is changing and a
2 different approach to utilities is emerging and there
3 are competitive forms of utilities now. And at the
4 Commission we're always mindful of that, and we have
5 looked at some newer forms of utilities, like any
6 little-league thermal systems that can provide small
7 scale, very small scale providers of energy. And so
8 we always look at whether they should be regulated in
9 the same way or not, since the same monopolistic
10 characteristics may not be present in those
11 circumstances.

12 So the inquiry process, I think we started
13 -- Dan, you probably remember better than I do when we
14 started. Earlier this year, I believe,
15 February/March, something like that?

16 MR. GEORGE: Yeah, it was earlier this year.

17 THE CHAIRPERSON: Yeah, thank you, it's confirmed. We
18 started earlier this year and we began with an
19 engagement process. We went out and we held a number
20 of sessions, much like this one, where we invited
21 people in communities around the province to come and
22 talk to us, to reflect on those questions and provide
23 us with their comments on those questions. We came
24 here as part of that, we were in Fort St. John and
25 Kamloops, Kelowna, Cranbrook, Prince Rupert, Nanaimo,
26 Victoria, Vancouver. I'm sorry if I've left anyone

1 out.

2 COMMISSIONER FUNG: Campbell River.

3 THE CHAIRPERSON: William's Lake, yeah. And then after
4 that we went away and we also invited intervenors to
5 join. Intervenors are -- anyone can participate as an
6 intervener in addition to coming to those community
7 sessions. And intervenors were requested to file any
8 evidence and then they were given the opportunity to
9 question other intervenors on the evidence that they
10 filed. So we've gone through that phase of evidence
11 of filing and questioning. And then we invited all
12 the intervenors to make a final submission. And then
13 based on that we've come up with a draft report. Now,
14 I'm going to talk a little bit about the draft report
15 in a few minutes.

16 And, now we're moving into the workshops
17 and written comments. So, what we wanted to do is we
18 wanted to move up, make sure that everyone had had a
19 chance and an opportunity to read the draft report
20 which consists of our draft recommendations, which are
21 the recommendations that we're suggesting that we make
22 to the provincial government. And those
23 recommendations have been based on what we've heard
24 during the engagement process and the intervenors'
25 submissions.

26 And the reason that we want to provide the

1 opportunity to workshop this is, first of all, we want
2 to make sure that what we've heard is correct, that
3 we'd like you to let us know if we've understood that
4 correctly. And then secondly, we'd like to make sure
5 that you've had a chance to look at the draft
6 recommendations and let us know if you think that
7 those are recommendations that we should move forward
8 to government with or whether there should be some
9 modification to them. And then, once we're completed
10 with that we will do the final report.

11 Now, there is an interim report between
12 here and the final report, and that's a bit of a
13 legacy of the original Order in Council that
14 established this inquiry. Because it established a
15 timeline which had an interim report at the end of
16 December and then a final report at the end of
17 January. We did go back to government a few months
18 ago and suggest that the timeline be modified because
19 we didn't feel there was enough time for this
20 engagement process, and we had also committed to doing
21 a draft report prior to the interim report. It's a
22 very long complicated story.

23 But so, the interim report is a report that
24 we will send to government at the end of December.
25 Government granted the extension, so the whole process
26 was expanded by three months. We left the interim

1 report and that's the report that we'll send to
2 government but it will be a report on the process, it
3 will be to tell government what we've done and what
4 sessions we've held and what sessions we're planning
5 to hold.

6 As far as the substance of the
7 recommendations, they are in this draft report and
8 then they will be in the final report, either in the
9 same or some altered format that will arise out of the
10 result of the discussion over the next few months.

11 So let's talk a little bit then about the
12 proposed recommendations. And again, these are
13 recommendations that the panel is proposing to make to
14 government and is based on what we've heard from all
15 the people who have participated in the process so
16 far.

17 So the first thing is, regarding the
18 regulation of monopolies generally, we feel that all
19 ratepayers of Indigenous utilities should have the
20 same protection as ratepayers of non-Indigenous
21 utilities. In other words, what the panel is saying
22 is that regardless of how it's adopted or
23 administered, that the protections that are in the
24 *Utilities Commission Act*, the protections that are
25 provided by the *Utilities Commission Act* for
26 ratepayers of monopolistic utilities, those are

1 protections that we feel should be applied to
2 customers of all utilities, Indigenous utilities and
3 non-Indigenous utilities.

4 Secondly, I'll just explain the term MRS.
5 We have a high-voltage transmission system in this
6 province and it's interconnected with the high-voltage
7 transmission system in Washington State, Idaho,
8 Alberta and a bit of north-Canada. And it's part of
9 the broader North American grid. And if we
10 participate in the regulation of that broader North
11 American grid -- now, you may recall a number of years
12 ago there was a huge blackout in eastern Canada and
13 the eastern United States. It was caused by a tree
14 falling on a wire in Ohio and that created a series of
15 rolling blackouts that took out a number of large
16 cities in eastern Canada -- Toronto, Hamilton, all the
17 way down to Boston and New York and so on.

18 And that prompted a concerted effort by
19 governments of both Canada and the United States to
20 make sure that there's reliability, that there were
21 reliability standards developed and enforced across
22 the North American grid. And British Columbia is a
23 member of that organization, and we have a set of
24 mandatory reliability standards that we administer,
25 and then we ensure that the companies that operate the
26 transmission grid in British Columbia, which are

1 largely B.C. Hydro and Fortis, we oversee and make
2 sure that those standards are kept and maintained.
3 Otherwise the risk is significant, the risk of large
4 outages is significant.

5 So we recommend that the BCUC retain that
6 jurisdiction over the transmission system regardless
7 of where it is in the province and regardless of what
8 utility operates any particular portion of it.

9 And then the next set of recommendations,
10 we've broken that up based on a taxonomy, as it were,
11 of different kinds of Indigenous lands. And as I'm
12 sure you all know better than I do, that the issue of
13 jurisdiction over First Nations land is complicated.
14 There's different kinds of lands: there's reserve
15 lands; there's lands that are subject to older
16 treaties; there's lands that are subject to newer
17 treaties, like Nisga'a, for example; and there's lands
18 that are under treaty negotiation; and then there's
19 other lands that perhaps don't even fit those
20 categories; and then there's also traditional
21 territories, which also may not fit any of those
22 categories.

23 So we found as we were looking at the
24 submissions that we were getting and what we heard
25 from people, and as we looked further at these
26 questions, that there perhaps wasn't a one size fits

1 all solution to this or a one size fits all approach
2 to this. So what we've done, rightly or wrongly,
3 we've split the recommendations up into different
4 kinds of land.

5 Starting with reserve land. And one of the
6 principle recommendations that we are recommending –
7 if that's the right way to phrase it – with regard to
8 reserve land is that First Nations should have the
9 opportunity to self-regulate when it provides a
10 utility service on its reserve land in much the same
11 way that municipalities and regional districts do.

12 Now, this is not -- we're not necessarily
13 saying that First Nations are municipalities or
14 regional districts, and whether they are or aren't is
15 not critical with respect to this, this
16 recommendation. However, this is what we heard from a
17 lot of parties. A lot of parties said that, "We are
18 like municipalities and we are like regional
19 districts." And municipalities and regional districts
20 have an exemption from the *Utilities Commission Act*.
21 They're not regulated by us.

22 The reasons again are lost in the mists of
23 time. They're not articulated in the *Utilities*
24 *Commission Act*. It's possibly because there's some
25 accountability that a municipality has to its citizens
26 and the people that vote for the council. So

1 therefore, there's an accountability for any utility
2 that the municipality operates. But that's not
3 explicitly laid out in the Act.

4 However, they do have an exemption, and
5 what we've heard in this inquiry is that First Nations
6 would like to have the same kind of exemption afforded
7 to them. So we framed a lot of these recommendations
8 around that concept, that yes, we agree that – without
9 getting into whether a First Nation is a municipality
10 or not a municipality for legal purposes – that there
11 should be an exemption that works similarly to the
12 municipal exemption in the Act and that should be
13 accorded to Indigenous utilities.

14 However, we've also -- there's two areas
15 that we've looked at. One is the complaints handling
16 and dispute resolution, and the other area is the
17 safety regulation more generally, and more generally
18 within the mandatory reliability standard that we
19 talked about earlier. And we appreciate that in some
20 circumstances that there are very robust dispute
21 resolution mechanisms in place on reserve land, and if
22 there is, then that's good and that means that all the
23 ratepayers of that utility will have an adequate
24 opportunity to have any complaints that they may have
25 repaired.

26 However, in the event that there wasn't a

1 robust complaints mechanism, we are recommending that
2 the BCUC retain jurisdiction to handle any complaints
3 and to work then with the Indigenous Utility and the
4 Band Council to ensure that the complaints get
5 resolved in a reasonable manner.

6 And safety and reliability, we've heard
7 different things from different people in the same
8 query. There are some parties that have said that the
9 B.C. Utilities Commission should continue to retain
10 jurisdiction over safety, and some people have said
11 that they shouldn't, that that should be part of the
12 exemption. So we're asking you to discuss that when
13 you break up into discussion groups, that's one of the
14 things that we would appreciate your input on.

15 Then we looked at the Nisga'a as an example
16 on non-treaty land and, again, we've got the same
17 basic recommendation. And, again, this was what we
18 were asked by the Nisga'a. The Nisga'a asked that
19 they be accorded the same exception that is accorded
20 to a municipality, and we agree. And so, we are
21 recommending that the Nisga'a Nation should have the
22 opportunity to self-regulate as municipalities and
23 regional districts. And, again, that we would
24 maintain authority over the management or liability
25 standards for any hydro transmission that may be
26 across their territory. And we also looked at the

1 dispute resolution mechanisms that are in place on the
2 Nisga'a territory and considered their submissions,
3 and we don't feel there's any need in that case for
4 any oversight of dispute resolution or customer
5 complaints.

6 And then we looked at other modern treaty
7 lands, which are generally under -- still under
8 negotiation. And our recommendation, our proposed
9 recommendation there is provided it has -- if the
10 treaty contains terms that are substantially similar
11 to those in the Nisga'a treaty, that they should have
12 the same opportunity to self-regulate under the same
13 conditions.

14 Then we looked at historical treaty lands.
15 These would be a treaty like a Treaty 8 for example.
16 And we propose that that be provided the same
17 opportunity as we discussed in reserve lands.

18 Now, there's two other -- there were two
19 other sort of different special cases, as it were.
20 One was Westbank First Nation and the other was
21 Sechelt. Now, Westbank did -- sorry, Sechelt --
22 Westbank participated in this process and made
23 submissions on their advisory council law. We looked
24 at the advisory council law and we also are proposing
25 the same -- similar recommendation to the Nisga'a,
26 provided that the advisory council law applies to the

1 resolution of utility complaints. It does apply to
2 many other commercial complaints because there's a lot
3 of development on Westbank land, and we're inviting
4 them to come and participate further in the
5 discussion. And we have a similar recommendation for
6 Sechelt Indian Band and we're hopeful that they will
7 also participate and clarify that for us.

8 We've also said that if a utility ceases to
9 meet the definition of an Indigenous Utility it will
10 become subject to regulation under the *Utilities*
11 *Commission Act*.

12 Then with regard to the definition of an
13 Indigenous Utility, so the way I've used the term so
14 far was -- and the way the recommendations are framed
15 is -- and this is also what we heard in -- or have
16 heard in the first phase of this inquiry, is that an
17 Indigenous Utility is a utility that's owned by the
18 governments of the First Nation character, or the Band
19 Councils, or the First Nations government. Again,
20 similar to the municipal exemption where the utility
21 has to be owned by the municipality, so it would be --
22 as we've understood it, it's a similar case here, the
23 utility has to be directly owned by the Band Council.

24 But that's not the only way a Band Council,
25 for example, could deliver service. It could be a
26 partner in a utility, it could be a shareholder in a

1 utility. It could own 51 percent of the utility or 49
2 percent of the utility. The utility could be entirely
3 privately owned and the Band Council could give it a
4 licence to operate or it could give it a franchise
5 agreement or the Band Council could approve their
6 rates. So these are all variants of a utility that
7 would be directly owned by the Band Council.

8 And so, those are all considerations that
9 would go into what is the definition of an Indigenous
10 Utility and, again, so these -- we've not made any
11 recommendations yet, although we have heard a lot of
12 submissions during the first part of the inquiry that
13 say that as long as the utility is majority owned by
14 the Band Council or by the First Nation, then it
15 should qualify as being a Indigenous Utility. But
16 even then, that was in the details. You can have
17 effective control of the company without having more
18 than 51 percent membership. It depends on how the
19 rest of the ownership is structured. So maybe control
20 of the company is a better test than ownership.

21 These are big issues that do need to be
22 considered and we will need to consider them in order
23 to come with a recommendation about the definition of
24 an Indigenous Utility.

25 So those are the recommendations that we
26 made in the report. However, those recommendations

1 gave rise to a number of additional questions, and
2 we're also going to ask you to turn your mind to some
3 of these questions, and I'll give you a lot of
4 homework here, and hopefully there will be time to go
5 over it. But if there isn't, we would ask that you
6 take these questions away and reflect on them, and
7 you'll have several months before anyone would ask you
8 to make your final comments on the draft report.

9 So generally we'd like to know what your
10 views are of those recommendations. Do you like them?
11 You don't like them? Maybe lukewarm. Just generally
12 we'd like to hear what your views are. Did we strike
13 the right balance between the need for ratepayer
14 protection and the rights of the First Nations to
15 self-governance? What might an appropriate complaints
16 and dispute resolution process look like, and should
17 there be these minimum safeguards. We place a lot of
18 emphasis on the safeguards for ratepayers, and we'd
19 like to have your feedback on that. And also whether
20 the BCUC should have the role as an appeal body. Even
21 if we retain no jurisdiction over complaints and
22 dispute resolution at all, if a dispute cannot be
23 solved, presumably the only remedy that a ratepayer
24 would have would be to go to court. And would it be
25 more desirable that the ratepayer have an opportunity
26 to come to us rather than going to court if the

1 dispute cannot be resolved.

2 And again, to look at the safety and
3 service reliability and whether they should be exempt
4 from -- or whether we should retain jurisdiction over
5 those.

6 And another thing that we've heard is --
7 sorry. And the first section there summarizes what I
8 said about the definition of an Indigenous Utility.
9 Those bullets are some examples of the cases that
10 you'd consider.

11 Looking down at the part in white, one of
12 the things that we've heard is that it's -- as I said,
13 a lot of utilities are large and a lot of times you
14 need a large customer base and you need some critical
15 mass in order to operate a utility cost effectively.
16 And a lot of times -- and again, looking at the
17 municipal exemption, even though any municipality in
18 the province could operate their own utility and not
19 be regulated by the BCUC, I think it's instructive to
20 note that I think there's only four within the
21 province that do that. And I think one of the reasons
22 for that is that it's because of this idea of needing
23 the critical mass. Most municipalities are simply too
24 small to be able to cost effectively operate a
25 utility.

26 It's treated -- some are larger. Some

1 could be larger in Vancouver or possibly Victoria, but
2 largely if you don't have a large customer base, it
3 can be difficult. And we've heard that also in this
4 inquiry.

5 So we've heard people say, "Well, in order
6 for my utility to be cost effective, I need to be able
7 to sell the energy somewhere else." And one of the
8 ways to sell the energy somewhere else is, you know,
9 to sell it, for example, to sell it to BC Hydro or to
10 Fortis, or to sell it to an individual or a group of
11 individuals somewhere else in the province.

12 And one of the keys areas that we heard
13 from people are "Well, I might want to sell it to
14 another First Nation that's a few miles away, or
15 adjacent or part of my Nation, we're spread out. I
16 want to sell it to other portions of my Nation but I
17 can't get it there, I need to access somebody else's
18 system to get it there. Or I might want to sell it to
19 another First Nation that's a few hundred miles away."
20 So it's one thing to say that an Indigenous Utility
21 should be able to self-regulate, but if that utility
22 can't be viable by only selling on its own footprint,
23 then it begs the question of, well should regulation
24 somehow support it being able to sell this energy
25 further afield.

26 So the question is: If an exempt utility

1 sells energy to a neighbouring First Nation then how
2 should the sale of that energy be regulated on the
3 other First Nation land? Because the way that the
4 recommendation is proposed is that if an Indigenous
5 Utility sells energy to its own people on its own
6 land, then it's not regulated. But what if it sells
7 it to some other nation on some other piece of land,
8 and who regulates that utility? Is it regulated by
9 the first First Nation or is it regulated by the
10 second First Nation, the customer? So that's a
11 question that we're putting up there because we don't
12 have a recommendation for that.

13 And another issue that arises looking at
14 the bottom bullet point is, if in selling that energy
15 to a group in a different location and you require BC
16 Hydro's transmission system to get it there, then it's
17 a retail access prohibition. Basically it's a B.C.
18 government regulation that says you can't use the BC
19 Hydro transmission system to sell energy to another
20 person in the province that would otherwise be a
21 customer of BC Hydro or would take regional energy
22 from BC Hydro. So it may be difficult then to access
23 the transmission system. So should there be a change
24 made to the BC Hydro retail access prohibition?

25 As a result of the proposed
26 recommendations, an exempt utility could sell energy

1 to a municipality. However, again, there's the retail
2 access provision applies, and should that prohibition
3 be changed, and are there any other things that should
4 be considered with respect to sales of energy to non-
5 Indigenous customers within another utilities
6 territory?

7 And again, as we just discussed, should the
8 Indigenous exempt utility be free to sell its energy
9 to members of its own nation or band, wherever they
10 reside in the province?

11 In addition to selling energy to
12 individuals, as I said, there's another place that an
13 Indigenous Utility can and does sell energy is to BC
14 Hydro or possibly to Fortis, and that's done through
15 an energy purchase agreement. And the test for
16 acceptance of an energy purchase agreement is that it
17 has to be in the public interest.

18 Now, even though the Indigenous Utility
19 would be exempt from BCUC regulation, if it wants to
20 enter into an energy purchase agreement with a
21 utility, that energy purchase agreement would be
22 reviewed by the BCUC, not because the Indigenous
23 nation utility is regulated, but because BC Hydro is
24 regulated. And so any contract it enters into is
25 reviewed by us.

26 And our test in that case is that the

1 energy purchase agreement has to be in the public
2 interest. And that means that applicants should
3 demonstrate that Hydro needs the energy and the
4 contract price is comparable to the market price.

5 So the question that we're asking, are
6 there other issues that we should consider when we're
7 considering this energy purchase agreements? Are
8 there any other public interest issues particular to
9 First Nations that we should be looking at, and what
10 are those issues and how should the public interest
11 test that we apply be modified, if it should be
12 modified, to deal with that?

13 And then I think it's last, lastly, what
14 should the BCUC do to assist in Indigenous Utility
15 regulation to reduce the regulatory burden and improve
16 accessibility of our regulatory process for any First
17 Nation that chooses to remain under our jurisdiction.

18 Sorry, I should have mentioned earlier, in
19 our original proposals, when we are proposing that, in
20 our draft proposal is that a First Nation owned
21 utility be exempt. We are proposing that the
22 mechanism that would be used, they would notify the
23 BCUC. It wouldn't be an approval. It would just
24 simply be a notification that we've got this utility
25 and we're taking advantage of the exemption. And
26 we're just notifying you that that utility would be

1 exempt.

2 It would make then the choice of the First
3 Nation whether it would want to be exempt or not,
4 whether or not their utility would remain under BCUC
5 regulation. And so the question is, if it did remain
6 under BCUC regulation, should we -- how should that
7 regulatory structure look like in terms of that
8 Indigenous Utility? Should be modify our processes?
9 Are there any particular considerations that we should
10 make that would be -- that would enhance that
11 regulatory regime for any nation or Band that chose to
12 remain under it?

13 I think that was all I have.

14 MR. GEORGE: Excellent. Thanks, Dave.

15 So I want to draw your attention to this
16 publication. Does everybody have a copy of it? Okay.
17 I just want to do a quick slide through of this
18 document.

19 Page 1 outlines who the BCUC is and the
20 definition of a public utility. Page 2 gets into the
21 Indigenous Utilities Regulation Inquiry and its scope.
22 Page 3 is -- you know, aligns with this notion that we
23 hear in our communities about "Nothing about us
24 without us". So we had a number of different
25 community input sessions, interested parties, letters
26 of comment, registered interveners, and it says here

1 "six draft report workshops" but in fact we're going
2 to be having eight. We've added January 14th in
3 Kamloops and we've added January 17th in Fort St. John,
4 again being responsive to Indigenous communities'
5 requests for us to be within their territories.

6 Page 4 articulates the timeline and I think
7 it's important to make note of the March dates there,
8 so you have a chance to reflect on the recommendations
9 and the questions that our Chair just went through and
10 provide written comments to the B.C. Utilities
11 Commission, and the final report being due April 30th,
12 2020.

13 On page 5 and 6 we outlined the high-level
14 topics that we heard during our tour throughout the
15 province which led to the recommendations that Dave
16 just walked us through on pages 7 and 8. So
17 essentially we are here today, as Dave points out, to
18 get your initial reflections on the recommendations,
19 what may be missing and do the recommendations make
20 sense to you.

21 And then page 9 and 10 goes into the detail
22 about questions that we're interested in hearing a
23 feedback on. So all contained here within this nice
24 handy little document.

25 Is there any questions from the audience
26 about what you've heard from Mr. Morton? Any

1 questions pop up?

2 Yes, sir. Just one sec. We'll get a
3 microphone. If you could introduce who you are and
4 spell your last name. Spell your last name for the
5 record, please.

6 MR. IRWIN: My name is David Irwin, I-R-W-I-N, and I'm a
7 project developer working with First Nations in B.C.
8 and I'm just wondering if there's any terms of
9 reference in the regulation to the scale of the
10 project? Like will all projects be under this
11 regulation or would it be like a one megawatt scale or
12 larger?

13 THE CHAIRPERSON: No, we have not made -- we haven't
14 drawn that distinction, and I would say we're not
15 recommending a distinction on that basis. That said,
16 if you feel that there would be reason to, then please
17 bring that forward, but it's our view that it would
18 cover any utility operation that was owned by the
19 First Nation and delivered energy to the First Nation,
20 or delivered anywhere else, sold it anywhere else,
21 yes.

22 MR. IRWIN: Okay, thanks.

23 THE CHAIRPERSON: Thanks.

24 MR. GEORGE: Thank you. Other questions for Dave? Are
25 you sure?

26 Okay, good job, Dave. No questions.

1 THE CHAIRPERSON: Thank you.

2 MR. GEORGE: Should we break now? We'll have a brief
3 break now. So why don't we break until -- I'll give
4 you actually fifteen minutes, a real break, to 11:05.
5 We'll reconvene and I'm thinking that there's -- show
6 of hands, I've got Tim over here, I've got three
7 right, I've got two over here at this table. Should
8 we have two tables? Maybe three of our -- I've
9 actually got another one over here, I've got seven.
10 So we could have two different tables assembled with a
11 notetaker and a facilitator when we come back, okay?
12 And then we're going to kind of walk through these
13 recommendations one by one.

14 So we'll break until 11:05 and reconvene at
15 that point. Thank you.

16 **(PROCEEDINGS ADJOURNED AT 10:51 A.M.)**

17 **(SMALL GROUP DISCUSSIONS)**

18 **(PROCEEDINGS RESUME AT 1:35 P.M.)**

19 MR. GEORGE: I understand that we're done. Okay. So
20 we're going to hear from this table here first, and
21 for the record please say your name, first and last
22 name, spelling your last name for the record and going
23 through your presentation for the group, and if you
24 can stand while you're doing it.

25 **REPORT PRESENTATION BY MS. RIVARD:**

26 MS. RIVARD: Hello, my name is Charity Rivard, R-I-V-A-R-

1 D. All righty, so some of the things that we went
2 over, questions for the group, what's the relationship
3 with BC Hydro with regards to serving our own
4 communities?

5 A First Nation utility works 95 -- I guess
6 I have to elaborate on these. Okay, so one of the
7 things that we notice is that BC Hydro has a huge
8 monopoly, as everybody else has, I'm sure, as far as
9 utilities for electricity up in our area. The
10 communities that I'm up here and I'm close to is
11 Kwadacha* First Nation, and I'm a Kwadacha member
12 actually, and I am here representing Chu Chua
13 Environment for Tsay Keh Dene, which is 70 kilometers
14 south. So there's always that really rough history
15 with Hydro.

16 So if the First Nations utility works 95
17 percent of the time, what's the backup for the other
18 five percent? So we feel like there shouldn't be an
19 actual just straight, here you go and cut Hydro out.
20 We feel like there always has to be that -- that we
21 should be working as partners not as competitors, if
22 that makes sense. Yeah, because obviously nobody
23 wants to see our poor little communities frozen up
24 there if for some reason our utility is down for a
25 little bit.

26 So, if First Nation wants to keep

1 responsibility of safety and extra what's the process?
2 One of the things that I've been really strongly
3 suggesting and we've been discussing at our table here
4 is that BCUC needs to play a big part in helping First
5 Nations manage safety and setting it up. So, the
6 other gentleman that was sitting with us, Tim
7 mentioned that we don't want it transmission line
8 level, like we want a safety plan built for -- to meet
9 the needs of the community. So, and with that being
10 said there's every Indigenous Utility that's going
11 forward is going to be looking at something that's
12 completely unique to them. Say we want biomass, they
13 want solar or they want wind, right? So there's going
14 to be -- you're going to have to build those safety
15 standards to the community. And we feel that BCUC
16 needs to play a huge part in that, making sure that
17 we're set up for success. Because as we all know, we
18 are all new to the utility game.

19 And with that we promise continuous
20 engagements between First Nations, BCUC, in regards to
21 safety and having a point of contact. So if anybody
22 had done a BC Forest Safety Council audit for their
23 economic development stuff, you're in constant
24 communication with BC Forest Safety Council while
25 you're building your safety program. Asking them what
26 do I do for this? How do I do this? What forms do we

1 need to complete to be in compliance? Stuff like
2 that, right? So, that's one of the suggestions we
3 had.

4 Use on recommendations for positive issues
5 related to system maintenance need to consider
6 capability and manage the transfer of responsibilities.
7 So that's right down to the suggestions are mutually
8 beneficial for the Indigenous Utility and BC Hydro.
9 And if Indigenous Utility managed safety, the BCUC
10 sets minimum safety standards and supplies the tool
11 kit. And like I said it would have to be case by case
12 because not every Indigenous Utility is going to be --
13 tried to create power in the same way.

14 Don't have a minimum standard to be -- just
15 pretty much so it's not transmission line standards
16 for safety.

17 Question B, right balance. It feels like
18 BC Hydro is a gatekeeper, BCUC should be the regulator
19 and should play more of an active role. It really
20 does feel that way. It feels like every time we want
21 to do something we have to go and talk to Hydro and
22 BCUC is just kind of this entity on the side. Where
23 if it gets through Hydro then it goes to them, where
24 that's not right. They are the regulator and they
25 should be there, that's how I feel anyways, I don't
26 know about everybody else.

1 BC Hydro is your partner rather than
2 deciding who is in and out. It's a monopoly that
3 controls the competition. It feels like communicate
4 with BC Hydro more than BCUC. Yeah, this all plays up
5 on this BC Hydro being the gatekeeper. We are often
6 in discussions with BC Hydro not BCUC. And a lot of
7 things that we think should be going to BCUC gets road
8 blocked right there at BC Hydro just because it's --
9 yeah, for whatever reason.

10 EPAs are sketchy, especially for off grid
11 communities. BCUC and BC Hydro having difficulty to
12 interact with EPAs and off grid communities.
13 Communities may be inexperienced and limited capacity,
14 which may disadvantage them with regards to
15 negotiating with BC Hydro. Yeah, and currently like
16 tried to negotiate with the competitor.

17 So one of the problems we have is we have
18 to provide all of our information as far as the
19 economic standpoint of what we're doing to BC Hydro.
20 They're not allowed supplying us that information. So
21 like how are we supposed to find a balance when
22 they're not allowed giving us those numbers for
23 whatever reason, right?

24 Yeah, so -- and the other thing was, like,
25 working on EPAs, there's that problem and there's also
26 the problem that a lot of our communities are small,

1 less than a 1,000 people. Half of them don't even
2 live in the community, you know. We're not very big
3 nations and so in order for us to be going there, and
4 we have 500 people, only half of us live in the
5 community, the other half are going to school or doing
6 whatever. And how much of those 500 people or half of
7 those people, are able to come to the meetings like
8 this and speak properly, right? So when you have such
9 a small pool of human resources to use towards stuff
10 like this, and then you're sinking that all into
11 something and you don't even know where it's going to
12 go. Like what if it gets to BC -- or what if we start
13 the EPA and it gets dropped because we didn't meet the
14 standard or it's not this criteria or whatever, right?
15 So we need BCUC to be involved in the entirety of the
16 process not just at the end where we're just like, "oh
17 wow, we sunk all this money and all this human
18 resources into this to have nothing to show for it."
19 Now we've got to start back at one.

20 Okay, BCUC needs to consider fair market
21 value of transmission grid in B.C. on their land.
22 Greater payer protection should be within units
23 considered. Question about ratepayer protection and
24 reconciliation. Today's low rates are from historical
25 infrastructure. And like I said, being from Tsay Keh,
26 if anybody's familiar with that, our community is

1 flooded out for the Williston Reservoir, which
2 supplies, what was it? 75 percent of the power to
3 B.C., roughly? Yeah. And we run on diesel
4 generators, us and Fort Worth.

5 So the ratepayer only focuses on the Lower
6 Mainland, not remote off the grid communities. Can
7 use ratepayer protection to disallow competition which
8 isn't the purpose, so.

9 Okay, complaints and dispute resolutions.
10 Toolkit outlining process, so this was one of the
11 things that I think would be really helpful for small
12 communities. Because I'm sure if BCUC, BC Hydro --
13 like nobody wants to see this not succeed, right?
14 Like why would we? But why not make sure that we're
15 building everybody up so that way they're successful
16 once they get there? Why don't we have a toolkit
17 being, like, "This is standard safety". Maybe this
18 isn't going to work for your solar project, maybe this
19 isn't going to work for your biomass. All through it,
20 put it to each site. These are standard maintenance
21 procedures for running a biomass, for taking care of
22 solar power, stuff like that. Yeah, so setting up the
23 system for success.

24 As Indigenous utilities get started we want
25 some guidance from BCUC. BCUC building capacity, such
26 as holding workshops in the area to get communities

1 ready. Again, setting up the system for success.
2 Exemption requires some level of justification. Not
3 mandatory to access the BCUC support, but there should
4 be some minimal structures in place. Going to need
5 guidance on how to maintain system specific to the
6 size of the community. How to manage complaints, who
7 to bring it to. Community education. BCUC working
8 with the community, with BC Hydro, as a partner to
9 deliver this guidance. Not strict requirements, what
10 you could do, not what you have to do. Every
11 community will be unique.

12 And as far as annual audits, this is
13 specific to safety requirements and I feel like that's
14 a big thing. I feel like no matter which company you
15 work for or what industry you work in you should have
16 an annual audit in terms of safety to make sure that
17 nothing falls by the wayside and there's no
18 catastrophic failures or no fatalities, right?

19 Ownership, classification of Indigenous
20 utilities. So, as any small First Nations knows, you
21 need quite a chunk of money to go into creating your
22 own utility. And so, I think it's tough for First
23 Nations to have a 100 percent outright ownership of a
24 utility, especially with the amount of capital that
25 you need to put up, and they want it just sitting
26 there in a bank. You've got \$10,000,000, put it in a

1 bank. Yeah, that's not what we're going to do with a
2 million dollars. We need houses. But yeah, stuff
3 like that.

4 So, competition with other priorities such
5 as health and education. The Indigenous utilities, if
6 First Nations had meaningful control, members on the
7 board -- okay, just to classify, as long as there's
8 meaningful control. So, members on the board, they're
9 able to make decisions, make sure they know who's
10 being hired, stuff like that.

11 Ability to set up a complex structure can
12 be any specific definition by BCUC, should be based on
13 principles. Principles would be case-by-case basis.
14 The BCUC should be involved from day one. Make sure
15 -- yeah, that was just to make sure we're not sinking
16 out funds into something that's going to fail, right?
17 Just to make sure we're on the right track the whole
18 time.

19 Indigenous communities may not have the
20 capacity or capability for dealing with negotiations
21 with non-Indigenous outside parties. And this is
22 where we mention that the BCUC should actually be
23 involved in the process.

24 Okay, nation-to-nation sale. In nation-to-
25 nation discussions junior partners may not necessarily
26 be included in that discussion. If partners can

1 agree, then there is no role for BCUC, but offer
2 opinion of mediation by the BCUC. I think, yeah, if
3 it's nation-to-nation it should be nation-to-nation.
4 Nations selling elsewhere in B.C. such as retail
5 access, it should work like both companies. The
6 infrastructure should not be monopolized by Hydro.

7 Open access tariffs should be zero or
8 negative. Indigenous utilities should be paid to be
9 on the system.

10 Open carriage, like with phone or gas
11 rates, can be negative. Should have access to the
12 spectrum.

13 If can't sell openly, everyone would build
14 their own lines which would duplicate existing
15 infrastructure. And compete to get on to networks,
16 but once on it should be open access network.

17 Feedback on recommendations and the BCUC
18 process. A good set of recommendations, but the devil
19 is in the details. Change management issues for BCUC
20 and First Nations taking on roles. Managing interface
21 with the IUs and regulated utilities will be critical.
22 BCUC's roles will change and we will have to be
23 patient and helpful. BCUC being more proactive, be a
24 part of the process, not BC Hydro being the
25 gatekeeper. Where the IUs are being set up for
26 success, it's like we mentioned earlier. It seems

1 like BC Hydro is the gatekeeper and nothing gets to
2 BCUC without going through them first and it's -- they
3 did mention that's super unfair to Hydro too.

4 So, process time at the beginning to
5 explain key concepts. Relationships between the IUs,
6 BC Hydro and BCUC to help in meaningful discussion.
7 Transparency between BC Hydro and the IUs, especially
8 regarding rates, EPAs. BC Hydro should share numbers
9 currently not shared but IUs need to share all info
10 and we feel like this might be a role where BCUC may
11 be able to help and mediate. Sales suppliers
12 shouldn't be managing the markets.

13 MR. GEORGE: Great job.

14 **REPORT PRESENTATION BY MR. IMRAN:**

15 MR. IMRAN: Hi. My name is Moe Imran, I-M-R-A-N. And
16 I'm representing Takla Nation. So, the first
17 questions we are presented with was BCUC inquiry, the
18 conditions reasonable -- so as our understanding we
19 considered these are reasonable and thoughtful.

20 So, the next questions is if First Nations
21 opt for this kind of self-regulation model, you know,
22 like if First Nations don't want to work in current
23 framework where we have BCUC, then we are looking into
24 capacity development of the First Nations. Which
25 means human resource development, financial recourses,
26 infrastructure development, all the systems and

1 processes and regulations, everything which BCUC is
2 right now bring, which is -- taking care of the First
3 Nations communities.

4 Another questions is economic liability if
5 First Nations are looking into self-regulation model.
6 Is to look at the population density that they have in
7 their communities, their geographical location,
8 infrastructure availability. Taking into account
9 other resources, small scale projects, are there
10 grants available? How is the funding needs going to
11 work if First Nation are to take on this so-called
12 self-regulation model.

13 So yeah, so next questions is the role of
14 the BCUC? If we let and do self-regulation model and
15 that is the transferability of the skills, system,
16 processes, how we plan to deal with the company and
17 disputes. Regulation processes, setting up pipelines.
18 So yeah, so each and everything right now BCUC is
19 trained which, if First Nations opt for this self-
20 regulation model then they have to consider and take
21 into account all these things.

22 Another topic of discussion you had in the
23 transitioning group, Indigenous Utility of vision.
24 Which means building capacity for the First Nations so
25 they are able to carry on these operations
26 successfully. Devising their policies, as SOPs,

1 procedures, operations, their team members fully
2 equipped to carry on these in an efficient and
3 effective manner.

4 Another point we looked into is what
5 actually means that Indigenous Utility. So we have,
6 for better understanding for the First Nation and for
7 this whole business, it is important we break it down
8 into what is the role of the BCUC when it comes down
9 to a number of things. Like for instance, power
10 generation is one segment, price mechanism, health and
11 safety standards, transmission plans, distribution,
12 dispute resolution, complaints. So each and every
13 function that BCUC does, it is very important to break
14 it down into smaller components and then expand on
15 them and try to understand how it will be – the
16 situation if First Nations opt for self-regulation
17 model.

18 Next question is to consider the financial
19 costs associated with this self-regulation model. The
20 are social impacts, economic impacts which First
21 Nation communities would entail if First Nations opt
22 for this self-regulation model. And then we have some
23 of the nations, like, Takla Nation, (Indigenous name),
24 Tribal Council, Carrier Sekani, the Tribal Councils
25 role come into play. If we're having this BCUC
26 discussion, whole debate. So that would be another

1 area to look into as well in other detail.

2 So the question all said to other First
3 Nations should that be included in this inquiry
4 discussions, so we think that it should be included
5 and should be discussed in more detail. Especially
6 the access changes, and things like that which right
7 now BC Hydro is entitled to and nobody else can really
8 salvage without BC Hydro permission. So if we are
9 exploring this option of self-regulation by a First
10 Nation community then we have to work out the details
11 as to how we're going to proceed with that. Thank you

12 MR. GEORGE: Excellent. Is there any questions or
13 comments form the panel?

14 COMMISSIONER FUNG: Yes, thank you very much. Mr. Imran,
15 I just have one question, because you've raised an
16 interesting issue and one that I don't know very much
17 about. And that is the issue of to what extent does a
18 tribal council play a role nowadays in -- and it's
19 relationship with the official, I guess, Band Council
20 that you have under the reserve system? Because you
21 mentioned that the Tekla as well as the Carrier Sekani
22 does -- do have actually tribal councils as well. And
23 what is their role, right now when it comes to
24 governance?

25 MR. IMRAN: Well, we have -- so we have a different kind
26 of working arrangement when it comes down to legal

1 discussions and you know, if we are having let's say
2 forestry stewardship negotiations and they're at the
3 government level or with the private organizations
4 like Canfor and other forestry companies. So then we
5 are represented by this tribal council. When it comes
6 down to First Nations Health Authority and these type
7 of funding organizations, then we are directly dealing
8 with these individual funders.

9 So that's the kind of developing situation.
10 Like now we have part 2 negotiations going on and
11 those are kind of between nation, to the governmental
12 level, they are not represented by tribal council.

13 I have seen few of the nations opting out
14 of these type of council framework for the provision
15 of health services. Like emergency health related
16 travel services and things like that. So, it is very
17 difficult to say with certainty as to what is going to
18 be the jurisdiction of, you know, this BCUC debate, as
19 well as this tribal council is concerned. So, this is
20 something like we should explore in more detail as to
21 what is going to be the status of this tribal council
22 and our submissions relationship.

23 COMMISSIONER FUNG: Okay, thank you very much.

24 THE CHAIRPERSON: Hi, Ms. Rivard, I have a couple of
25 questions for you please. Thank you. Hi, you made a
26 comment, and I'm sorry, I didn't really catch it all,

1 so I was just wondering if you could remind me exactly
2 what you said. And it had something to do with the
3 fair market value of I think existing utility
4 infrastructure is what you said? But I didn't really
5 catch your whole comment.

6 MS. RIVARD: Okay. What did I say?

7 THE CHAIRPERSON: You said it was important to know the
8 fair market value of utility infrastructure that is
9 already existing, or something like that.

10 MS. RIVARD: Oh, I think it had to do with actually
11 just that when we have to -- this is the one where we
12 have to go and provide Hydro all of our rates and our
13 projections, and all this stuff?

14 THE CHAIRPERSON: Yeah.

15 MS. RIVARD: They, for confidentiality of whatever,
16 there is reasons why they can't provide us those
17 numbers as well. So it's hard for us to negotiate
18 when we don't know where we are supposed to meet them.

19 THE CHAIRPERSON: Okay, so this is for a particular
20 negotiation with BC Hydro that you are talking about
21 then?

22 MS. FAVILA: (Inaudible/off mic).

23 THE CHAIRPERSON: You are asking me?

24 MS. FAVILA: Yeah --

25 THE CHAIRPERSON: I don't know.

26 MS. FAVILA: Like your question was regarding

1 (Inaudible/off mic) talked about the infrastructure,
2 but we also talked about (Inaudible/off mic).
3 THE CHAIRPERSON: Right. Well, the comment was
4 something to do with the fair market value of
5 infrastructure.
6 (DISCUSSION BETWEEN PARTICIPANTS).
7 MS. RIVARD: Okay, so the fair market value and we were
8 talking about the infrastructure, like the historical
9 infrastructure that has been put in place, right?
10 THE CHAIRPERSON: Right.
11 MS. RIVARD: So I guess that's what we were going at,
12 was the fair market value never takes into
13 consideration that. Like and a lot of times what it
14 takes into consideration is where the market base is,
15 and that's all down south.
16 THE CHAIRPERSON: Oh, I understand.
17 MS. RIVARD: That has nothing to do with us up here.
18 We run on diesel generated power, right?
19 THE CHAIRPERSON: Right, you don't --
20 MS. RIVARD: The headwaters at the Williston storage
21 and reservoir.
22 THE CHAIRPERSON: Right, that you don't have a fair
23 share of the existing infrastructure kind of thing,
24 yeah.
25 MS. RIVARD: So when they calculate what we should be
26 paying up there, however --

1 THE CHAIRPERSON: You're talking about your existing
2 electricity rates basically is what you're talking
3 about? Yeah.

4 MS. RIVARD: Yeah, and it just doesn't really capture
5 that. Like, we run on diesel-powered generator, where
6 the headwaters above Williston -- of the Williston
7 Reservoir which supplies 75 percent, I might be wrong,
8 of the power for B.C., and our rates are a reflection
9 of the Lower Mainland.

10 THE CHAIRPERSON: Right, okay, thank you. And then you
11 also made a comment about the OATT -- I think you said
12 the OATT should be negative, and that Indigenous
13 utilities should be paid to be on the system. I
14 wonder if you could expand on that a little bit
15 please?

16 MS. RIVARD: Okay, so I feel like -- did you want to
17 take this? Yeah, this was -- that was actually one of
18 Tim's comments, but it has more to do with --

19 THE CHAIRPERSON: Okay, and he's gone now.

20 MS. RIVARD: -- as far as us going on to say that we
21 are providing some sort of relief to go onto the --
22 (DISCUSSION BETWEEN PARTICIPANTS)

23 MS. RIVARD: Open access tariffs should be zero or
24 negative. Indigenous utilities should be paid to be
25 on the system. Yeah, I think it was -- that's the
26 one, right? It depends, are we going on there to help

1 somebody else? Right? Are we just like -- we're not
2 going on there to sell. Like for instance for us,
3 like for Kwadacha and Tsay Keh, we're so far -- we're
4 off the grid already.

5 THE CHAIRPERSON: Right.

6 MS. RIVARD: We're not going to be providing power to
7 anybody else. Like it's just going to be for us and
8 being able to like -- how did I put it? So, let's say
9 hypothetically we have five people to a two-bedroom
10 house, and that's the average norm. We want to be
11 able to build a house without having to ask permission
12 from Hydro to see if our system can handle it. We
13 want to be able to improve the quality of living in
14 our community at our pace.

15 THE CHAIRPERSON: Okay, thank you, thanks for
16 clarifying.

17 MS. RIVARD: You're welcome.

18 COMMISSIONER BREWER: Thanks to both groups for the
19 presentations.

20 Now, I guess what I heard from both groups
21 was that you would both be looking at BCUC playing a
22 more active role in a couple of areas. One being in
23 kind of being a mediator? Am I clear on this? Being
24 a mediator with BC Hydro? Is that -- okay, and then
25 another was in a capacity building role, is that
26 correct? Was I hearing correctly on both of those?

1 MR. IMRAN: (Inaudible/off mic).

2 MR. GEORGE: Excuse me, wait for the microphone, say
3 who you are.

4 MR. IMRAN: Yeah, so right now, First Nations, they
5 don't have this capacity in terms of technical system,
6 if they are to take on this --

7 COMMISSIONER BREWER: Regulatory role?

8 MR. IMRAN: Yeah, so we will definitely be putting into
9 transitioning phase where you would have First Nations
10 who are ready and make sure things are going
11 efficiently and effectively.

12 COMMISSIONER BREWER: Okay.

13 MR. GEORGE: Okay, sir, just one more second, could you
14 say your name once again for the record? Because
15 every time you speak --

16 MR. IMRAN: Moe Imran.

17 MR. GEORGE: Thank you, Moe.

18 MS. FAVILA: Sophia Favila, F-A-V-I-L-A. Yes, so
19 basically one of the issues with negotiations with BC
20 Hydro is that they are mainly the gatekeeper rather
21 than the competitor or a partner we can build with.
22 So what we would like to see BCUC doing is stepping up
23 to a more active role, and like Charity said,
24 sometimes we try to negotiation a EPA or a deal, but
25 since we are competitors in the market we can't really
26 be transparent 100 percent with the numbers, for

1 example, or some sensitive issues.

2 And BCUC should act as a mediator in order
3 to reach more reasonable agreement that has meaning
4 for all parties, rather than, oh well, here is our
5 numbers, BC Hydro has to figure something out, and
6 then go to the BCUC to make a decision. So basically
7 the ones making the decision whether we enter the
8 market or not is BC Hydro and not the BCUC.

9 COMMISSIONER BREWER: Thank you for that clarification.

10 THE CHAIRPERSON: Thanks. And I just have actually one
11 more question please for Ms. Rivard again. I think I
12 also heard you comment on our proposed recommendation
13 for the way the exemption would work is that if a
14 First Nation notified the BCUC and said, "We're going
15 to regulate ourselves," then that would be sufficient.
16 But I think I you heard you say that you didn't feel
17 -- you felt that there should be some sort of --
18 something more than that. It should be -- there
19 should be a bigger hurdle to cross in that, or did I
20 misunderstand you?

21 MS. RIVARD: I feel -- I think what I was -- I think
22 maybe you're thinking of having the systems in place.
23 Like I don't feel like the BCUC -- if there is going
24 to be an exemption, I don't feel like the BCUC just
25 hands it over and they're gone. Like I feel like if
26 there's a exemption, yes, you give that nation the

1 opportunity to do what they can, but I feel like there
2 always has to be a system check of everything.

3 Everything.

4 THE CHAIRPERSON: Okay, okay, right.

5 MS. RIVARD: Like, I don't know, I've done safety for
6 quite a few years and so, I'm like -- I feel like
7 there needs to be a system check for everything just
8 to make sure that there's always a failsafe kind of
9 deal. To make sure that everything's going on track
10 and nothing is going to go into an area where nobody
11 wants it to go.

12 THE CHAIRPERSON: Okay, thank you. Appreciate it.

13 Thanks.

14 COMMISSIONER BREWER: I do have another question just
15 sort of following up on that. So when we're talking
16 about that, are you talking about -- and I'm assuming
17 -- so you were saying that the standards would have to
18 be established by the community based on the utility
19 that's in place in that community, okay. But the
20 standards will be -- I am assuming that they will be
21 sort of -- because I guess safety would be safety,
22 right?

23 MS. RIVARD: Yes, exactly. As far as safety goes,
24 safety is safety. Like, you know, if you need work
25 boots here, just because it's on reserve land and
26 you're doing the same thing doesn't mean you don't

1 need work boots. We still want our people to come
2 home safe every night.

3 COMMISSIONER BREWER: Yeah. Probably reliability would
4 be sort of a similar thing?

5 MS. RIVARD: Yeah. And that's one of the things that I
6 didn't elaborate on, was actually what we were talking
7 about as far as the toolkits go, it would just be some
8 standardized guidelines, like setting us up for
9 success, giving us like, "This is how the utility in
10 Prince George would have to deal with this issue.
11 This is how -- this is the standardized way that you
12 can deal with this issue in your community."

13 THE CHAIRPERSON: So I don't want to put words in your
14 mouth, but would that also then include our approach
15 to customer complaints and dispute resolution that --

16 MS. RIVARD: Yeah.

17 THE CHAIRPERSON: Yeah.

18 MS. RIVARD: Like on providing us some of -- like a
19 toolkit with some of that information and some
20 guidance, right? Like some guidance so that we --
21 everything is set up for success. So that way -- and
22 regardless of like what's going on, that somebody from
23 the outside could come in and be able to like
24 understand exactly where everything is.

25 THE CHAIRPERSON: Okay. Thank you.

26 MS. RIVARD: Yes. And while taking into account the

1 unique community and the individuality of the nation.

2 THE CHAIRPERSON: Okay, thanks.

3 MR. GEORGE: Excellent, great job. A round of
4 applause.

5 (APPLAUSE)

6 MR. GEORGE: Is there anybody else in the room that
7 would like to make any comments, further comments to
8 the panel? Are we good? Okay. Excellent, thank you
9 very much.

10 Panel, closing comments?

11 THE CHAIRPERSON: Once again I'd like to thank everyone
12 for joining us today. This is our first workshop, our
13 kick off of the workshop tour, so to speak. And I'm
14 very happy with the results of today. I'm glad that
15 people were able to engage in the discussion. I know
16 that it's a complicated story.

17 You know, when we sat down to write the
18 report, it's not easy to even write it in a simple
19 way. There's perhaps a simple face to it, but the
20 regulatory part is complex, the utility part is
21 complex, the whole treaty process and jurisdiction is
22 complex, and, you know, I can understand for those of
23 you that sat down today and this was the first -- you
24 know, perhaps the first time you'd really considered
25 it, you know, I can appreciate that it's not easy to
26 do. So I really appreciate that everybody is engaged,

1 you've engaged as you have and that's really helpful
2 to the panel and we thank you for that.

3 Over the next couple of months we ask that
4 you, you know, think about these things, and as your
5 thoughts maybe further, you know, further develop,
6 please feel free to reach out to any of the staff
7 members that you've talked to here today, they'd be
8 happy to help you with any further questions that you
9 have. And we do look forward to your final comments.
10 And if you're intervening your final intervener
11 submissions on March -- my memory -- March the 2nd,
12 thank you.

13 And so on that note again I'd like to say
14 thank you very much.

15 MR. GEORGE: Thanks you very much. Just some high
16 level closing comments from me. Really appreciate the
17 comments that we heard from both of the tables. A lot
18 of discussion around capacity required to be able to
19 meaningfully participate in this process. HR policy
20 -- or capacity, excuse me, financial capacity, capital
21 capacity. We heard about the need for negotiation and
22 mediation capacity as well and some capacity in the
23 area of dispute resolution and conflict
24 transformation, as well as in change management,
25 because change is afoot. Safety first, as always.
26 Access to opportunities for Indigenous people to

1 participate in the energy sector.

2 We heard about tools and methods that are
3 important here, whether they be policies, procedures,
4 standards, toolkits, checklists, again, that kind of
5 guidance that our communities require. It may be
6 advantageous in future sessions to be able to
7 disentangle the role of the regulator versus the role
8 of the operators in some shape or fashion.

9 We know that with regards to ownership,
10 that collaboration with others is going to be required
11 for Indigenous communities and ownership can be
12 described as meaningful control resting with First
13 Nations with those entities. We heard about the
14 mitigation and managing of impacts and the social,
15 economic, environmental, and cultural arenas.

16 And to, you know, disentangle the role of
17 First Nation aggregates, i.e. tribal councils, versus
18 the role of individual First Nations. And it's not
19 consistent across the province how that is done,
20 right? So there would have to be some real thought
21 that went into that process.

22 At the end of the day what we continuously
23 hear is that communities at the river's edge, at the
24 community level, are the ones that hold title and
25 rights. It's not tribal councils, it's not other
26 groupings that hold those titling rights, but those

1 aggregates, those groupings do have a significant role
2 that they play alongside of our communities. So being
3 able to understand and differentiate between the two.

4 Tracking some of Dave's comments I just
5 want to remind people of next steps once again.
6 Anyone who wishes to provide written evidence can send
7 it to the BCUC by March 2nd, 2020. The final report to
8 the government of British Columbia with the BCUC's
9 final recommendations is due April 30th, 2020. And
10 more information on the inquiry and how to stay
11 involved can be found at BCUC.com.

12 Once again, thank you very much for taking
13 the time out of your busy schedules to be here with us
14 today. The offering of your great energy and your
15 thoughtful comments will serve to inform, strengthen
16 recommendations for the final report due April 30th.
17 So once again, thank you very much.

18 Safe travels home to everybody who has
19 traveled distances to be here. And where are we going
20 next? Where's our roadshow going next so we can --

21 THE CHAIRPERSON: Kelowna.

22 MR. GEORGE: We're going to Kelowna, Thursday.

23 Thursday in Kelowna. So all the dates are contained
24 within the package. Thank you, safe travels.

25 THE CHAIRPERSON: Thank you, Dan.

26 **(PROCEEDINGS ADJOURNED AT 2:21 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.



A.B. Lanigan, Court Reporter

November 19th, 2019