

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

VANCOUVER, B.C.  
November 27, 2019

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**Community Input Workshop**

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**BEFORE:**

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

**VOLUME 15**

**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

**VOLUME 5, JUNE 10, 2019 - PRINCE RUPERT**

PRESENTATION BY MR. STARLUND .....177  
PRESENTATION BY MS. GEMEINHARDT .....208  
PRESENTATION BY MR. McDAMES .....209  
PRESENTATION BY MS. SKIDMORE .....218  
PRESENTATION BY CHIEF CAMPBELL .....222  
PRESENTATION BY MR. WILSON .....230

INDEX

PAGE

**VOLUME 6, JUNE 12, 2019 - VANCOUVER**

PRESENTATION BY CHIEF MICHELL .....	245
PRESENTATION BY MR. MORAES .....	287
PRESENTATION BY MR. ROKA .....	300
PRESENTATION BY MS. BALABANOWICZ .....	306
PRESENTATION BY MR. CORMAN .....	309

**VOLUME 7, JUNE 25, 2019 - FORT ST. JOHN**

PRESENTATION BY MR. HARMER .....	326
PRESENTATION BY MS. DOKKIE .....	330
PRESENTATION BY MS. DUKE .....	335

**VOLUME 8, JUNE 27, 2019 - PRINCE GEORGE**

PRESENTATION BY MR. THOMPSON .....	345
PRESENTATION BY MR. HOY .....	380
PRESENTATION BY MS. ANDREWS .....	384

**VOLUME 9, JULY 3, 2019 - CAMPBELL RIVER**

PRESENTATION BY CHIEF BLANEY .....	390, 425
PRESENTATION BY MS. DONKERS .....	404
PRESENTATION BY CHIEF WEBBER .....	410
PRESENTATION BY MR. ROBINSON .....	418

**VOLUME 10, JULY 4, 2019 - VICTORIA**

PRESENTATION BY CHIEF CHIPPS .....	430
PRESENTATION BY MR. OBRIGEWITSCH .....	432
PRESENTATION BY MR. EDWARDS .....	450

**INDEX**

**PAGE**

PRESENTATION BY MR. PODLASLY .....451  
PRESENTATION BY MR. WABERSKI .....477  
PRESENTATION BY MR. GRIFFIN .....484  
PRESENTATION BY MR. BOLTON .....487  
PRESENTATION BY MR. KNIGHT .....499  
PRESENTATION BY MR. CHARLES MORVEN AND  
MS. LINDA MORVEN .....510

**VOLUME 11, SEPTEMBER 18, 2019 - VANCOUVER**

PRESENTATION BY CHIEF NA'MOKS .....527  
PRESENTATION BY CHIEF McLEOD .....531  
PRESENTATION BY CHIEF CHASITY .....545  
PRESENTATION BY MS. TOLMIE .....551

**VOLUME 12, SEPTEMBER 26 - VANCOUVER**

ARGUMENT BY MS. SAYERS .....568  
ARGUMENT BY MR. AUSTIN .....586  
ARGUMENT BY MR. THOMPSON .....646

**VOLUME 13, NOVEMBER 18 - PRINCE GEORGE**

POWERPOINT PRESENTATION BY THE CHAIR .....679  
REPORT PRESENTATION BY MS. RIVARD .....703  
REPORT PRESENTATION BY MR. IMRAN .....713

**VOLUME 14, NOVEMBER 21 - KELOWNA**

No Presentations

**INDEX**

**PAGE**

**VOLUME 15, NOVEMBER 27- VANCOUVER**

POWERPOINT PRESENTATION BY THE CHAIR .....742  
PRESENTATION BY CHIEF HARRIS .....770  
REPORT PRESENTATION BY MR. TYSON .....777  
REPORT PRESENTATION BY MR. KRISHNAN .....788

**INDEX OF EXHIBITS**

<b>NO.</b>	<b>DESCRIPTION</b>	<b>PAGE</b>
C11-3	MAP SHOWING LEQ'A':MEL RESERVES .....	783

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

**VANCOUVER, B.C.**

**November 27<sup>th</sup>, 2019**

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

MR. GEORGE:       (*Indigenous Language Greeting*) Ladies and  
Gentlemen, welcome to the Indigenous Utilities  
Regulation Inquiry draft report workshop. I want to  
begin by acknowledging Coast Salish territory that we  
are gathered on here today, raise our hands in respect  
to the elders, the matriarchs, the youth, the good  
people of this land for hosting us here once again.  
We are very fortunate today to have Chief Bill  
Williams from Squamish to offer a traditional welcome.  
Chief.

(TRADITIONAL WELCOME BY CHIEF)

MR. GEORGE:       (*Indigenous language spoken*), Chief.  
Thank you very much. And thank you very much for  
taking time to be here with us today. I also want to  
acknowledge your service on behalf of British  
Columbians during your career, so thank you very much  
for all that you are.

We are big on safety here. We have fire  
exits, please make note of the fire exits in case we  
need to leave the room here in a hurry. Staff can  
help you if you need something, just let our staff  
know. A number of staff are going to be in the room  
here, they're going to introduce themselves, or stand

1           and be recognized momentarily. The restrooms once  
2           again are just outside the door, straight away down on  
3           the right-hand side for the men, and for the women  
4           outside the doorways here and bear right around the  
5           elevators. Little bit cramped quarters in some of the  
6           room here, so please be careful moving about the room.

7                        I want to take a moment to acknowledge all  
8           of you for taking time out of your busy schedules to  
9           be here today. Many pressing demands on your time,  
10          you've chosen to be here with us, and for that we are  
11          grateful.

12                       We have our BCUC panel who is here with us  
13          today. Our Chair, Dave Morton; our Commissioners  
14          Carolann Brewer, Anna Fung and Blair Lockhart, and I'd  
15          like to ask each of them to briefly introduce  
16          themselves beginning with you, Dave.

17   THE CHAIRPERSON:   Thank you, Dan. And welcome everyone  
18          to this workshop today. I much appreciate your  
19          interest in this inquiry and in the important topics  
20          of the inquiry.

21                       As Dan said, my name is Dave Morton, I'm  
22          the chair and CEO of the Utilities Commission, and in  
23          addition, I'm the chair of this panel, as Dan just  
24          also mentioned. I have been with the Commission as a  
25          Commissioner since 2010. I am a professional  
26          engineer, and not so professional economist,

1 accountant and lawyer that I also have to be as I work  
2 through my day-to-day life.

3 And this has been one of the most  
4 interesting projects that I've worked on while I've  
5 been with the Commission, and I am really looking  
6 forward to hearing everyone's views today.

7 We've issued this draft report. It is only  
8 a draft, and certainly, as I said, looking forward to  
9 hearing what you have to say. Thank you.

10 COMMISSIONER FUNG: Thank you very much everyone. My  
11 name is Anna Fung, and I am a member of this panel.  
12 I've been a Commissioner now at the B.C. Utilities  
13 Commission since December 2017, and I am the Deputy  
14 Chair of the Commission. I am very happy to be part  
15 of this panel, and early on in my legal career,  
16 because I am a lawyer, I had the pleasure of working  
17 for a number of First Nations, including the Musqueam  
18 Indian Band. So I thank you, Chief Williams, for your  
19 warm welcome on behalf of the Squamish Indian Band.  
20 And I'm very pleased to be here on the land of the  
21 Coast Salish peoples and thank you very much for your  
22 attendance here today.

23 As for the rest of you, I'm so proud that  
24 you braved the threatened transit strike to join us  
25 today. And I'm looking forward you hearing your  
26 feedback on the contents of our draft report. And I

1 emphasize it's a draft report. We are not necessarily  
2 married to the recommendations that we have proposed  
3 in the report and we welcome your feedback and your  
4 input on any and all aspects of it. So we're keeping  
5 an open mind and hoping to get some helpful feedback  
6 in terms of crafting our final recommendations to the  
7 provincial government on what we ought to be doing in  
8 the area of regulation of Indigenous Utilities in this  
9 province.

10 So thank you for your attendance and I look  
11 forward to your feedback.

12 COMMISSIONER BREWER: Good morning everyone, my name is  
13 Carolann Brewer and I've been a Commissioner since  
14 January of this year. My background is I am Smalqimx  
15 from the Sylx Nation in the interior of B.C. and a  
16 member of the Lower Similkameen Indian Band.

17 I come from a career which was immersed in  
18 primarily Indigenous law, but also my practice was  
19 with Hydro One in Ontario, so I have a background in  
20 utilities law. As well as I've dabbled in all sorts  
21 of different areas of legal and policy related to  
22 First Nations and Indigenous peoples. Had the  
23 opportunity to work on constitutional conferences and  
24 those sorts of things in the past.

25 So I'm very happy to be here today on the  
26 territory of the Musqueam, Tsleil-Waututh and Squamish

1       peoples. And I'm looking forward to listening to the  
2       input that you have to provide on the report that  
3       we've worked so hard at over the past few months.

4       Thanks.

5       COMMISSIONER LOCKHART:       Good morning, my name is Blair  
6       Lockhart. I am a Commissioner and also, as Carolann,  
7       was appointed in January of this year, so I'm just  
8       completing my first fabulous year of being a  
9       commissioner here.

10               My background is law. I've practiced law  
11       for a number of years. Prior to becoming a lawyer I  
12       was a geologist and therefore rocks really make me  
13       tick. In any event, really looking forward to this  
14       morning and this afternoon, thank you very much.

15       MR. GEORGE:       Thank you very much. I'd also like to  
16       acknowledge that there's a number of Staff here from  
17       the BCUC as well. Maybe they could just please stand  
18       and give a wave out to people here. So if you need  
19       anything they're here to assist you. The Staff are  
20       also going to make a presentation providing some  
21       background on how we got to today and what sort of  
22       input is being sought by you.

23               We'd also like to introduce Lino Bussoli,  
24       the BCUC external legal counsel. Good to see you  
25       again, Lino. And we're here at the home of the  
26       Allwest team, Allwest Reporting. Today's sessions are

1           being transcribed by Allwest Reporting, who also have  
2           a few staff in the room here, raise your hands. So  
3           they're here to assist us, and you can also listen  
4           live to the community input sessions on BCUC.com.

5                     My name is Dan George, I'm the President  
6           and CEO of Four Directions Management. My colleague,  
7           Teresa Dolman, is here and we have an MC facilitative  
8           role that we will play during our time here together.

9                     So a little bit about our format for the  
10          day. This morning we're going to hear from the panel,  
11          who will provide an overview of why we are here and  
12          make a presentation on the proposed recommendations  
13          made within the draft report. There will be time for  
14          questions and answers during that presentation.

15                    Following this presentation we will break  
16          into small group discussions where we will have the  
17          opportunity to discuss the draft report and its  
18          recommendations more deeply.

19                    A short lunch will take place. We are  
20          having a barbeque today from 12:30 to 1:00 P.M., after  
21          which time we will reassemble into our small groups  
22          and ask that each group take 20 minutes to discuss who  
23          from your group can summarize the discussions for your  
24          table back to the panel.

25                    A representative from each table will then  
26          present their summary and comments on the draft report

1 to the panel. This presentation will be on the record  
2 and transcribed. The breakout small group discussion  
3 will not be on the record and transcribed.

4 Any individuals who wish to make additional  
5 comments of the panel will have the opportunity to do  
6 so after the small table breakout group presentations.  
7 And we will conclude today's session with some brief  
8 remarks by 3:00 P.M.

9 So the primary objectives of today's  
10 workshop is to assist the BCUC by providing your input  
11 into the draft report which was recently released, and  
12 which seeks to address what characteristics you  
13 believe define an Indigenous Energy Utility, and if or  
14 how Indigenous Utilities should be regulated.

15 I want to acknowledge the B.C. Utilities  
16 Commission for once again going out to the community  
17 and soliciting feedback now on the draft  
18 recommendations generated from our first round of  
19 engagement. The BCUC's approach is respectful and  
20 inclusive, and must be commended. So great work, I  
21 want to acknowledge the panel here.

22 On November 1<sup>st</sup>, 2019, BCUC released its  
23 Indigenous Utilities Regulation Inquiry draft report,  
24 including its preliminary findings and recommendations  
25 for the B.C. government. The report is available on  
26 the inquiries proceeding page of the BCUC website, and

1 a summary has been provided to you today.

2 In order to ensure that a draft report  
3 recommendations reflect the interests and perspectives  
4 of B.C.'s Indigenous peoples and communities, we  
5 invite you to provide your comments to the BCUC. The  
6 comment period on this draft report is open until  
7 March 2<sup>nd</sup>, 2020.

8 Today at this workshop, we are hoping to  
9 hear your initial thoughts and comments. This is also  
10 an opportunity to ask the BCUC questions about this  
11 work, and seek any clarifications you may require.  
12 The BCUC has prepared a brief presentation providing  
13 an overview of the inquiry process to date, and an  
14 overview of the draft report and the recommendations  
15 contained within.

16 So just some rules of engagement to create  
17 some behavioral norms for us here during our time  
18 together. You will have an opportunity to inform the  
19 panel of your interest related to this inquiry. You  
20 are welcome to ask questions or make a presentation in  
21 your traditional language. However, we ask that you  
22 please provide translation for the presentation so  
23 that it can be transcribed and added to the public  
24 record. All presentations to the panel, along with  
25 the name of the person making the submission, will be  
26 transcribed, live audio streamed at BCUC.com and

1 placed on the public record. The dialogue that takes  
2 place during the breakout groups once again will not  
3 be transcribed, live audio streamed or placed on the  
4 public record. No part of these workshops will be  
5 videotaped.

6 So everyone is welcome to come and go  
7 during the session as your schedule permits, and  
8 participants must conduct themselves in a respectful  
9 manner. All participants, including observers, will  
10 be asked to participate in the small group discussion  
11 portion of today's proceedings. So when we talk about  
12 our territories, when we talk about energy, often  
13 times that's highly emotional for many of us. So, to  
14 create a safe, respectful container for our dialogue  
15 to occur, I want to encourage us to be hard on issues  
16 and soft on people. That you actively participate.  
17 The process is only as strong as the level of  
18 participation received from each of you, so please  
19 find your merge lane into the conversation offering  
20 your insights and your ideas.

21 When we come together in these kind of  
22 forums with such a diverse, gifted group of people we  
23 always generate great ideas. So when we do, let's  
24 please take them as far as we can. We ask that you  
25 listen generously to one another and to always have a  
26 solution orientation. Problem identification,

1 solution identification. We don't want to get stuck  
2 in the problem.

3 Are those reasonable? Nodding heads? We  
4 can do that today? Excellent. Thank you.

5 So I'd like to call up Dave Morton, our  
6 chair, who will give you an overview of the report.  
7 Dave? Thank you.

8 **PRESENTATION BY CHAIRMAN MORTON:**

9 Thanks Dan. I'm just going to go through a  
10 few slides. We are going to talk a little bit about  
11 what a utility is, what the BCUC does, how the  
12 *Utilities Commission Act* works. What we are hoping to  
13 achieve in this inquiry, the questions we've been  
14 asked to answer. And then we are going to look at the  
15 findings of the draft report that we are going to be  
16 asking you to review in the workshop here today.

17 So, let's start with what is an energy  
18 utility. And as you can see there is some  
19 characteristics of an energy utility listed on the  
20 screen, and there is a little graphic that shows a way  
21 of looking at an energy utility. But I think for the  
22 purposes of our conversation, generally in our  
23 conversation today, what we can look at is it's two  
24 different instances of a utility, and any given  
25 utility could be either or combine both of these  
26 things.

1                   So the definition of a utility, the  
2                   definition in a *Utilities Commission Act*, is a company  
3                   that sells energy to someone in British Columbia. And  
4                   that's almost all kinds of energy: electricity,  
5                   natural gas, heat, hot water, steam. However, it does  
6                   not include petroleum products other than natural gas.  
7                   So, you know, a corner gas station isn't considered  
8                   selling energy for the purposes of *Utilities*  
9                   *Commission Act*. But anyone that sells electricity to  
10                  someone else in the province is.

11                  So for the purpose of the discussion here  
12                  today and a lot of the issues that have risen in the  
13                  report, there's two kind of settings, as it were, of a  
14                  utility. One, one is a company that generates energy  
15                  from something like wind power or a run-of-river  
16                  project and it sells that energy to BC Hydro. And  
17                  those are called things like -- it's called an IPP for  
18                  example, an independent power producer. But under the  
19                  *Utilities Commission Act* that company is considered a  
20                  utility because it generates energy in British  
21                  Columbia and it sells it in British Columbia. If that  
22                  company sells energy outside of British Columbia, then  
23                  for those purposes it's not considered a utility, but  
24                  if it's selling energy within British Columbia, it is  
25                  a utility.

26                  And then there's something that we -- that

1           may be more familiar to most of us as a utility, and  
2           that would be a company that generates energy and has  
3           a bunch of wires that run down the street and they  
4           sell it to individuals and businesses along that  
5           street. And that has -- there's a lot of elements in  
6           common with the first example, but the second example  
7           is an example of a utility that touches many more  
8           people, it has allot more customers, and it's a  
9           utility like BC Hydro or Fortis Gas, for example.

10                   Now, a utility could do both. It could  
11           sell some of its energy locally, and then it could  
12           sell a bulk amount of its energy to BC Hydro, or it  
13           could be one or either of the other.

14                   So I think in terms of the way that a lot  
15           of the comments that we've had in this proceeding and  
16           the submissions that we've had from interveners, and  
17           in fact, the interest that interveners represent, it's  
18           generally one or the other, or possibly both of those  
19           groupings of energy utilities.

20                   Now, the BCUC regulates all of those  
21           circumstances, regulates the sale of energy in all of  
22           those circumstances, and what that means is we approve  
23           rates that are set. We approve, in the case of  
24           selling energy to individuals or in the case of a  
25           power purchase contract between the utility and BC  
26           Hydro, we would approve that contract, the terms of it

1 and the price of it.

2 We regulate aspects of safety of those  
3 utilities when they're providing the service. We  
4 regulate their obligation to provide the service. In  
5 other words, if you have a utility and you run some  
6 wires down a street, then there's certain -- generally  
7 under most circumstances you have to provide  
8 electricity to people, you can't say, well, we'll  
9 provide electricity that house, but not to that house.  
10 And we ensure that the rules around how people are  
11 provided with energy are fair.

12 We also approve infrastructure spending.  
13 We approve the building of those towers, to build the  
14 wires and laying of pipe under the street to provide  
15 natural gas. And there's other aspects of a utility's  
16 operation that we regulate; the contracts that it  
17 enters into, any securities that it issues, shares or  
18 ventures or bonds, and we regulate acquisitions and  
19 mergers and those sorts of activities around the  
20 utility.

21 So, and we do that under the *Utilities*  
22 *Commission Act*. That's the Act that lays out the  
23 rules, as it were, that we apply when we engage in  
24 these regulatory activities and when we review  
25 applications that come before us from those utilities.

26 We also apply a large body of common law

1           that has developed and it's not only in British  
2           Columbia, but it's across Canada, in the United States  
3           and throughout the rest of the world. This is not an  
4           activity that we engage in here alone.

5                     The regulation of utilities is a very  
6           common practice throughout the entire world. And  
7           there's a lot of precedent, a lot of common knowledge,  
8           that's built up around how the rates can be set and  
9           under what terms things are approved and not approved.  
10          And those are the things that we look at when we're  
11          looking at applications.

12                    So, I think it's important to understand  
13          that, that even though we do have an Act that covers  
14          things, that covers a lot of the rules here in British  
15          Columbia, we're part of a greater body of regulators  
16          and regulatory knowledge and regulatory history.

17                    So I think we've gone through a lot of  
18          these points. These are some of the responsibilities  
19          of the utilities and some of the ways in which we  
20          interact with the utilities to insure that they're  
21          acting in a responsible manner.

22                    So you might ask why do you need a  
23          utilities commission and why -- you know, I mean, you  
24          don't have any commission looking after the 7-Eleven  
25          to make sure it has the chocolate bars arranged  
26          properly on the shelves, so why do we need somebody

1 looking at utilities? And the reason for it is even  
2 though our Act doesn't say this, and the Act and  
3 similar acts in many other jurisdictions don't  
4 explicitly lay it out, but this whole notion of  
5 regulation developed because in most cases utilities  
6 were monopolies. They require a lot of capital to  
7 build the infrastructure and once built it would be  
8 very difficult for another company to duplicate that.  
9 In addition, even if another company could duplicate  
10 it, there is very little appetite for a town or a city  
11 to allow another company to run its wires down the  
12 street or to run two or three or four sets of natural  
13 gas pipes down underneath the road.

14 So what developed then was the idea that  
15 one company and one company only would provide this  
16 service. However, that would make it a monopoly and  
17 it would mean that the customers could potentially be  
18 harmed because that monopoly could charge whatever  
19 prices it wanted, set whatever levels of service it  
20 wished and there was no competitive forces that would  
21 act against it in those circumstances.

22 So what happened is the whole idea of  
23 regulation developed. And the idea then is that the  
24 regulator acts as a proxy for competition. So there's  
25 no competition, so in the absence of competition we  
26 decide if a rate is a reasonable rate or not.

1                   So the idea then is that the principles  
2                   that are applied in regulating these companies, they  
3                   serve as a substitute or a proxy for competition.  
4                   It's not perfect, and is it even right in every case?  
5                   Not necessarily. However, in the long run the idea is  
6                   that the public is better off with regulation of  
7                   monopolies than it would be if there were no  
8                   regulation of monopolies. And that's the principle  
9                   behind utility regulation, that's the goal of our  
10                  *Utilities Commission Act* and that certainly our  
11                  mandate and that's what we look at.

12                  That's largely the way that utilities used  
13                  to be. If you look at a BC Hydro, for example, or  
14                  Fortis Gas, they are great examples of these large  
15                  monopolies. However, the world is changing, and there  
16                  are different kinds of energy that are being delivered  
17                  to people now. Thermal energy, small projects, and  
18                  the ability for people to even generate their own  
19                  energy behind the meter.

20                  So, these are all forces that are changing  
21                  the dynamics of the utility industry. And it is not  
22                  always a monopoly situation anymore. And at the BCUC  
23                  we're very aware of that, and we have looked at this  
24                  situation in some detail, and one of the principles  
25                  that we do apply is that we only regulate if there is  
26                  a monopoly. And if there is sufficient market forces

1 to ensure that there is competition, then we recommend  
2 to government that our regulatory jurisdiction be  
3 reduced in those circumstances.

4 There are three concepts that I would like  
5 to go through, and the reason I want to talk about  
6 these now is that when you look at our recommendations  
7 you'll see recommendations that specifically mention  
8 these three things. And I think it's important that  
9 we have an understanding of them before we move into  
10 the recommendations.

11 So, one of them is the municipal exception.  
12 The *Utilities Commission Act* provides an exemption for  
13 a municipality in British Columbia that generates its  
14 own electricity, or purchases its own electricity, and  
15 sells it only to the residents of its municipality,  
16 within its municipal boundaries. There is I think  
17 five examples of such municipalities in British  
18 Columbia. There is New Westminster, Penticton, Grand  
19 Forks, Nelson and --

20 MR. BUSSOLI: Summerland.

21 THE CHAIRPERSON: -- and Summerland, thank you. So,  
22 it's not a widespread practice, and I am not an  
23 expert, I am not a historical expert, I am not sure  
24 why those five and no others. But in any event, those  
25 municipalities operate their own utilities and they  
26 are exempt from any provisions of the *Utilities*

1           *Commission Act.*

2                         Now, as you'll see in a few minutes, we've  
3           had -- there has been a lot of discussion about this  
4           municipal exemption. The fact that one exists, and  
5           whether a similar exemption should apply to Indigenous  
6           owned utilities, and we are going to talk about that  
7           in a few minutes, and so I just want to make sure that  
8           you understand what we mean by the municipal  
9           exemption.

10                        Second issue is mandatory reliability  
11           standards. You can see on the map, that's a map of  
12           the high voltage transmission system in British  
13           Columbia, most of which is owned and operated by BC  
14           Hydro, a much smaller portion by Fortis, and then  
15           there are a couple of pieces that are owned and  
16           operated by private companies that are not otherwise  
17           utilities.

18                        The reliability of this system is a  
19           particularly important piece of regulation that the  
20           BCUC is responsible for. And the reason for that is  
21           it is interconnected to the northwest -- called the  
22           North American Grid. And we sell energy out of the  
23           province, we sell to Alberta, we sell to the  
24           northwestern U.S. to California. We also purchase  
25           energy from those same jurisdictions. And we purchase  
26           and we sell energy while we have a surplus, and we

1 purchase it when we have a shortage. And we also rely  
2 on electricity on that grid to provide energy for us  
3 when we have an emergency. If we were to lose a  
4 significant generation station, for example, or if one  
5 of our transmission lines went down, then we may need  
6 to purchase energy from one of those places, from  
7 Northwest U.S. or from Alberta, in order to maintain  
8 coverage within B.C. And similarly, people in  
9 northwest Washington and Alberta rely on being  
10 connected to this grid so that we can provide energy  
11 for them in a similar emergency.

12 In the early 2000s there was a circumstance  
13 where a tree fell on a wire, I think it was in Ohio  
14 somewhere, and it took down the entire electric system  
15 in Ontario, part of Quebec, most of New York, Ohio,  
16 Massachusetts. There were millions of people that  
17 without energy for a significant amount of time, all  
18 because a tree fell on a wire. And what that showed  
19 is how fragile the high-voltage grid is.

20 And as a consequence of that the Government  
21 of Canada and the United States got together and  
22 implemented a shared responsibility and a set of  
23 mandatory reliability standards, which included  
24 standards for making sure that vegetation was  
25 maintained around the wires. And also, more recently,  
26 that cyber security protection is in place.

1                   We're a part of that international effort  
2                   and we have set of standards that apply to any  
3                   operator of transmission in this system. And you'll  
4                   see in a little while recommendations around how we  
5                   can insure that that's maintained regardless of who  
6                   operates a utility that's connected to the  
7                   transmission system.

8                   And the third concept is a concept of  
9                   retail access. And basically what that means is  
10                  accessing BC Hydro's transmission system in order for  
11                  a company that generates energy in point A to sell it  
12                  to a customer at point B where it needs to reel that  
13                  energy across the transmission system to get it there.  
14                  And there are currently prohibitions about that, and  
15                  they're called the Retail Access Prohibitions. And  
16                  there are circumstances in which First Nations or  
17                  Indigenous owned utilities may have a need to be able  
18                  to access the transmission system to sell energy,  
19                  either to other parts of its own nation or to meet  
20                  other nations or customers that are other points in  
21                  the transmission system. So that's one of the other  
22                  issues around which you'll see recommendations and the  
23                  request at the workshop.

24                  So that brings us to the inquiry. And this  
25                  inquiry was kicked off earlier this year, in January  
26                  or February of this year -- in March actually, I

1 think. And it was in response to questions that were  
2 asked of us by the provincial government. They've  
3 ordered us to conduct this inquiry and answer these  
4 questions. And these are the questions that have been  
5 asked of us: What are the defining characteristics of  
6 Indigenous Utilities? Should Indigenous Utilities be  
7 regulated under the *Utilities Commission Act* or under  
8 another mechanism or should they be unregulated? If  
9 it's appropriate to regulate Indigenous Utilities  
10 under the *Utilities Commission Act*, should they be  
11 regulated differently or should there be changes made  
12 to the Act to account for a different form of  
13 regulation? If it's not appropriate to regulate  
14 Indigenous Utilities under the Act but regulated in  
15 some other manner, how should they be regulated? And  
16 then finally, for the Indigenous Utility, if they're  
17 not regulated what would happen to an Indigenous  
18 Utility if it -- sorry, what would happen to a utility  
19 if it ceased to be an Indigenous Utility?

20 So we got the marching orders from the  
21 provincial government to answer these questions. We  
22 kicked off the inquiry and then we started an  
23 engagement process. And as Dan alluded to earlier,  
24 what we did was we traveled around the province and we  
25 held community input sessions. Some of you attended  
26 those sessions, thank you. And we heard comments from

1 people about their responses to those questions that I  
2 just went through.

3 We also invited parties to register as  
4 interveners, and these are parties that may have  
5 evidence that they wanted to have entered into the  
6 proceeding, but that they were willing to have  
7 questions asked of them of other interveners and of  
8 the Utilities Commission. And largely we've had  
9 evidence -- well, we've had interveners from a range  
10 of areas. We've had First Nation utilities and their  
11 partners are participating as interveners. Some of  
12 the provincial existing utilities, Hydro and Fortis,  
13 are participating, and we found a number of  
14 individuals, and we've had a number of Indian Bands  
15 and First Nations that have also participated as  
16 interveners.

17 So, we went through the process of entering  
18 evidence and asking everyone, asking each other  
19 questions on the evidence, and then we went through  
20 the community input sessions. Once that process was  
21 completed, what the panel did was prepare a draft  
22 report. And the draft report you should have before  
23 you, and the summary of the draft report you should  
24 have before you. And what we are now doing is we are  
25 going out again around the province to these  
26 workshops, and we've asked questions in our draft

1 report. We've said, okay, this is what we are  
2 proposing that we could recommend, so we'd like your  
3 comments on that. And we'd like to hear what you have  
4 to say about it.

5 The original inquiry terms of reference  
6 included an interim report to be submitted at the end  
7 of December, which we will be submitting, but it's a  
8 report to summarize the engagement process. So it  
9 will be a relatively short report, it won't have  
10 anything of any substance concerning recommendations.  
11 It will simply say that we have conducted X number of  
12 community input sessions and we heard comments from a  
13 wide number of people, and this is the plan going  
14 forward. And then in April we will be preparing a  
15 final report for government.

16 I think it is important to understand that  
17 although we have a *Utilities Commission Act* that we  
18 work under, so to speak now, we don't have any ability  
19 to change that *Act*. So, right now the position that  
20 the Utilities Commission is in is that we regulate all  
21 utilities in the province, including Indigenous owned  
22 utilities, and non-Indigenous owned utilities. And  
23 until that *Act* is changed, that will remain. Until  
24 and unless it is changed, that will remain the case.

25 So the *Act* will contain recommendations to  
26 government, but the final decision on any changes to

1       the *Act* will be with government, and they are not with  
2       us. We do not have the jurisdiction to make changes  
3       to our own *Act*. So these will be recommendations that  
4       will come out of the report.

5               So, I am going to now go through the  
6       recommendations in the report. If there is any  
7       questions -- I'm sorry, I should have said this in the  
8       beginning, please feel free to ask any questions as we  
9       go along. We're good so far? Okay.

10              So, these are the proposed recommendations.  
11       First of all is that with regards to the regulation of  
12       monopolies, we recommended that all ratepayers of  
13       Indigenous Utilities, and indeed all ratepayers of all  
14       utilities receive the same protection. And that is  
15       one of the foundational pieces of the report. Now  
16       that doesn't speak to who provides the protection, or  
17       who is sitting at the seat of the regulator, but it  
18       does say that we feel that to the extent that a  
19       utility is a monopoly, then its customers need  
20       protection, and all customers need the same  
21       protection.

22              With regard to the regulation of the  
23       mandatory reliability standards, and these are the  
24       standards that I talked about around the transmission  
25       system and the safety and reliability of the  
26       transmission system, we recommend that the BCUC retain

1       that jurisdiction regardless of where that  
2       transmission infrastructure is, and regardless of who  
3       owns the transmission infrastructure.

4               And then what we looked at was specific  
5       utilities. And because of the complexity of the law,  
6       generally the law as it applies to First Nation lands,  
7       we found that we had to break it down into different  
8       categories of land.

9               So, what we looked at first was Reserve  
10       Lands, so these are lands that are -- as you know,  
11       these are lands that are covered under the *Indian Act*.  
12       And so we looked at those -- well, we didn't actually  
13       look at them first, but we are listing them first  
14       here, and then we'll move from there to other  
15       categories.

16               So, what we heard in the inquiry is that  
17       Bands that want to operate a utility on Reserve land,  
18       should be given the same exemption that municipalities  
19       get, and largely because they operate as  
20       municipalities do. They've got a similar role, let's  
21       say. Similar responsibilities and function in a  
22       similar fashion. And the panel agrees with that. We  
23       agree that there are a lot of similarities and there  
24       should be similar treatment.

25               As a practical matter, a band is not a  
26       municipality, so it's not covered in that definition,

1 but our recommendation is that a similar exemption be  
2 provided.

3 Again, subject to the overarching point in  
4 Number 1, that all ratepayers have the same  
5 protections, and so what -- first of all then, we're  
6 suggesting that the non-Reserve land, that the  
7 exemption be provided automatically. It's not  
8 something that you would have to apply for, and there  
9 is no hurdle that you would have to pass to get that  
10 exemption. However, it wouldn't be the default. The  
11 default would be that the *Utilities Commission Act*  
12 would continue to apply unless you notify the  
13 Utilities Commission and said that "we have our own  
14 utility, it's called such and such, and we are now  
15 triggering our municipal exemption." For want of a  
16 better way to put it. And then at that point,  
17 thereafter then, *UCA* generally wouldn't apply in that  
18 circumstance.

19 However, we have made a recommendation  
20 though that as far as the dispute handling process,  
21 because of our recommendation that all ratepayers have  
22 the same protection, that we would ask that if you  
23 have a dispute resolution mechanism, that you  
24 demonstrate that. If you don't have one, or if there  
25 isn't one in place, or if it doesn't apply to the  
26 utility, then we are recommending the Utilities

1 Commission would still act on a complaint basis, so  
2 that customers could complain to the Utilities  
3 Commission and then we would work with the Council and  
4 the utility to resolve the complaint. However, if  
5 your dispute resolution mechanism applies to the  
6 utility and provides the protection, then we would  
7 step out completely.

8 That leaves one other area, and that is the  
9 area of safety. And we had a number of conflicting  
10 submissions on this. We have some submissions that  
11 say that the Band should regulate safety in this  
12 circumstance, but we've also had submissions that say  
13 the Utilities Commission should continue to regulate  
14 safety. So, we haven't made a proposed recommendation  
15 on that, and we are asking you to take a look at that  
16 and let us know about what would be a reasonable  
17 approach in this circumstance.

18 So then looking at that kind of framework  
19 for Reserve lands, we then looked at some modern  
20 treaty lands, in particular Nisga'a Territory, Nisga'a  
21 Nation. And again, we received submissions from  
22 Nisga'a that the same thing, that they should have the  
23 same ability to be exempt from regulation that the  
24 municipal exemption provides. And again, we agree.  
25 And from our understanding, their dispute resolution  
26 mechanisms were very robust, and would cover any

1 utility that they would own. And so we've recommended  
2 that the municipal exemption -- or similar to the  
3 municipal exemption rule apply.

4 There are these other modern treaty lands,  
5 again, provided there is dispute resolution  
6 mechanisms, is a similar approach. And then there is  
7 historical treaty lands, for example Treaty 8. We are  
8 asking for input -- we are asking for input on any of  
9 this, of course, but in particular on if there is any  
10 particular issues on historical treaty lands, like a  
11 Treaty 8 land, or whether that's simply an extension  
12 of the Reserve land, and that should be treated  
13 similar to the recommendation about Reserve land.

14 And then we had some specific issues that  
15 were brought forward around the Westbank and Sechelt  
16 circumstances. And again, recommending a similar  
17 exemption, but again a focus on whether the dispute  
18 resolution mechanisms that they already have in place,  
19 a confirmation that they would apply to a utility that  
20 was operated by the Nation. And again, subject to  
21 recommendations on safety regulation.

22 I realize this is complicated, and if you  
23 do have questions, please feel free to ask.

24 And then as far as ceasing to be an  
25 Indigenous Utility, well that seems fairly straight  
26 forward, then it would simply then be like any other

1 utility in the province that would be regulated under  
2 the *Utilities Commission Act*, if it no longer  
3 satisfied the definition and we'll talk a bit about  
4 the definition in a minute.

5 In fact we'll talk about it now. And as  
6 far as the definition, I think we've got a talk about  
7 that on the next slides. Do we? No, we don't. So,  
8 actually I think we do. Sorry about that, I've only  
9 done this presentation once. I think we do, we have a  
10 slide coming up, so let's hold off on that.

11 So what we're asking for feedback here then  
12 is generally what do you think and what are your views  
13 on the proposed recommendations? Feel free to comment  
14 on any aspect of them at all. Do they strike the  
15 right balance between the need for ratepayer  
16 protection and the right of First Nations to self-  
17 governance? This is of course -- this is important,  
18 for us, this is an important balance that we need to  
19 make would it apply. That all need to sure that we've  
20 got it right.

21 And given our concerns about the dispute  
22 resolution and the complaints mechanisms, what should  
23 it look like and what minimum safeguards, if any,  
24 should there be?

25 Another suggestion is that even if there is  
26 no oversight of the BCUC in any of the complaint or

1       dispute resolution process -- just to look at our  
2       process for example, if somebody complains to us about  
3       BC Hydro, then we work with BC Hydro and we to resolve  
4       it. If we're not able to resolve it to the customer's  
5       satisfaction, then the customer's recourse is to take  
6       it to the appeal court. That would be the appeal  
7       process that they have.

8                   And so, our suggestion here is that -- and  
9       that's onerous for a customer to go through that. So  
10      the suggestion here is that the BCUC could be set up  
11      as a "appeal court" for a dispute, an unresolved  
12      dispute in the case of an Indigenous owned utility.  
13      Again, a suggestion that we ask you to take a look at.  
14      And there's specific areas that should not be exempt  
15      such as safety and service reliability.

16                   So, these are some of the topics around  
17      what the definition of an Indigenous Utility is. I  
18      mean, we've used that term, I've been using the term,  
19      it rolls off tongue. It was a term that was used in  
20      the terms of reference. But the question is, what is  
21      an Indigenous Utility? What does that mean exactly?  
22      And here are some of the things that we're asking you  
23      to consider.

24                   What if a utility's assets are owned by a  
25      corporation of which a First Nation or a Band Council  
26      is a shareholder, sole shareholder? What if it's a

1 minority shareholder? What if it's a minority  
2 shareholder but that has control? Because as you  
3 know, you don't necessarily need 51 percent of a  
4 company to control it. You can control a company with  
5 35 percent of the shares if the other 65 percent are  
6 widely held. So, what exactly does it mean in the  
7 case of a corporation that owns the utility?

8 What if a utility's assets are owned by a  
9 partnership of which the First Nation or Band Council  
10 is a partner, a limited partner or a general partner?  
11 What if they're owned by a third party with no formal  
12 ownership at all by the First Nation but the First  
13 Nation has granted it a licence to operate in its  
14 territory or on its lands? What if the Band Council  
15 has to approve the rates that are set up and does that  
16 make it an Indigenous Utility?

17 And the reason that I -- one of the things  
18 I'd like to point is that we have similar issues that  
19 arise when we talked earlier about the municipal  
20 exemption. We have exactly the same issues that arise  
21 with municipalities, and we have utilities that aren't  
22 directly owned by the municipality that we're in  
23 similar situations to these that argue that they  
24 should be granted the municipal exemption. And as an  
25 FYI, we have a parallel inquiry running, and to answer  
26 these questions with regard to what's the definition

1 of a municipal -- sorry, a municipal utility.

2 We would like you to turn your attention to  
3 these because we would like to answer these questions  
4 so that we can provide a recommendation on the report  
5 on what the definition of an Indigenous Utility is.

6 And then we would also like you to look at  
7 the question of -- and some other questions that  
8 arise. What if you have an exempt utility, an  
9 Indigenous owned utility that is exempt from the UCA  
10 that operates and is owned by a utility -- sorry, that  
11 is owned by Nation A, now wants to sell energy to,  
12 let's say to a neighbouring nation, Nation B, and it  
13 wants to sell energy either directly to the nation or  
14 -- sorry, to Nation B or to people that live on Nation  
15 B's land. So who should regulate that utility or  
16 should that utility be regulated with respect to the  
17 sales and the operations in the other territory? So  
18 that's one of the questions that we'd like you to look  
19 at.

20 If that exempt utility wants to sell energy  
21 to a different nation or a different reserve and it  
22 needs to wheel it across BC Hydro's transmission  
23 system, this is the situation I talked about earlier.  
24 And then BC Hydro says, well, sorry, you're not  
25 allowed to do that because that would be retail  
26 access. So should we make some recommendations that

1 would address the prohibition on retail access?

2 Should we recommend that that be lifted, or modified  
3 in some way, and we'd like you to look at that.

4 Our understanding of the law as we've read  
5 it is that municipalities are exempt from our  
6 regulation and if a First Nation is exempt from our  
7 regulation, from the regulation of the UCA, then that  
8 First Nation would be free to sell energy to a  
9 municipality. And in some cases that could possibly  
10 be done or probably be done without accessing BC  
11 Hydro's transmission system. However, there may be  
12 circumstances in which that sale would, again, require  
13 BC Hydro's transmission system. The question is, does  
14 that violate the retail access provision, and if it  
15 does, then what recommendations would there be around  
16 that?

17 Another question is should an Indigenous  
18 Utility or, again, a utility owned by a First Nation,  
19 should it -- and this also goes to the retail access  
20 prohibitions. Should it be able to sell energy to any  
21 member of its nation, that they live somewhere else?  
22 That may live in downtown Vancouver, let's say. So,  
23 again, that would be selling to a customer that may  
24 require access to BC Hydro's transmission system in  
25 order to do -- and also it would require the ability  
26 to sell to a customer of BC Hydro that's not living on

1 the land that the exemption is provided for.

2 I want to talk a little bit about the  
3 energy purchase agreements now. We talked earlier  
4 about the two flavours of utilities, one that provides  
5 the energy, you know, with the wires that are done --  
6 you know, that go down the street, and the other is  
7 the IPP that sells energy to BC Hydro. In that  
8 circumstance, in order to sell the energy to BC Hydro,  
9 there has to be an energy purchase agreement contract,  
10 and those contracts -- even if that utility is owned  
11 by -- is an Indigenous owned utility, it is therefore  
12 exempt -- after our recommendations if they're  
13 accepted, if it was exempt it would still need our  
14 approval in order to sell the energy to BC Hydro. It  
15 would need that because there's two parties to that  
16 transaction, there's the exempt utility and there's BC  
17 Hydro, and the BC Hydro part is regulated, so that  
18 contract has to be approved.

19 When we look at those contracts, there's a  
20 public interest test that we look at. And two key  
21 pieces of the public interest test are that Hydro has  
22 to need the energy, and the energy has to be at a  
23 price that doesn't harm ratepayers. That it's not  
24 higher than the price it could acquire the energy from  
25 somewhere else, let's say. The market price of  
26 energy.

1                   So, the question we are going to you with  
2                   is, is that reasonable? Does that continue to be a  
3                   reasonable test in that scenario, where you've got a  
4                   First Nation exempt utility? Or should there be  
5                   modifications to the public interest test in that  
6                   circumstance?

7                   And then also if a First Nation or a Band  
8                   chooses not to self-regulate, and as I said, there is  
9                   many municipalities for example that can self-regulate  
10                  but choose not to. And similarly, if a First Nation  
11                  chose not to self-regulate, and our jurisdiction would  
12                  continue to apply, what can we do to -- how can we  
13                  modify our regulatory processes to make that  
14                  relationship work better? And so those are some  
15                  questions.

16                  There are some particular issues with that,  
17                  and one of them is that we have a number of small  
18                  utilities around the province that we regulate, and  
19                  it's an area that we are well aware that we need --  
20                  that we need to improve our processes to ensure that  
21                  we can continue to provide cost effective regulation.

22                  Our regulation is very cost effective when  
23                  it comes to BC Hydro or Fortis that has literally  
24                  millions of customers, and the costs are spread across  
25                  those millions of customers. I mean, you're talking  
26                  about a few dollars a year on someone's bill. But

1           when we're regulating a small utility that maybe only  
2           has a few hundred customers, or a thousand customers,  
3           then the cost of regulation can be disproportionate.  
4           And it's a constant challenge for us to ensure that we  
5           can provide the same protections to ratepayers of  
6           smaller utilities that we can for larger utilities, at  
7           a price that is cost effective.

8                         So, we're always looking for ways to  
9           improve our processes, and of course we also want to  
10          make sure that the parties that we are engaging with  
11          that our processes are matched to those parties, and  
12          that they are accessible to those parties, and that  
13          they can engage with us in a way that they can  
14          understand and relate to. And so again, we'd like any  
15          comments that you have on how we could do that, and  
16          reducing the regulatory burden.

17                        So, just talking a little bit now about the  
18          rest of the process, this report process. At number  
19          three, the third line down, and we've got a number of  
20          other workshops coming up. We've got Nanaimo  
21          tomorrow, Victoria on Friday, and then Kamloops and  
22          Fort St. John in early January.

23                        We'll be submitting the interim report to  
24          the Minister. We will make sure that's on the website  
25          before it goes, but as I said, the interim report has  
26          no recommendations. It is not making any

1           recommendations. It is a description of the process  
2           that we've gone through so far.

3                       And then we are asking for written comments  
4           on the draft report. So again I'd like to remind you  
5           that any comments that you make today we'll write them  
6           down and we'll take them with us. But we are not  
7           going to do anything until we get your final comments.  
8           So those will be coming during March. And we are  
9           going to invite everyone to provide written comments  
10          on March the 2<sup>nd</sup>, and then again on March 31<sup>st</sup>.

11                      And the reason for that is so that you get  
12          an opportunity to look at what everybody else has  
13          said. So you get to say your peace, then everybody  
14          else gets to say theirs. And then you and everybody  
15          else can look at everybody else's, and then you can  
16          find a set of comments.

17                      So that's on March 31<sup>st</sup>, and then we're  
18          going to take April to write the report. I know that  
19          might seem a long time, but believe me, a month is not  
20          that long when there's a lot of comments to read  
21          through and there's a lot of issues for us to go  
22          through. And so we'll be publishing our final report  
23          at the end of April and then that report will go to  
24          government and it will be up to government to accept  
25          or not accept the recommendations in the report.

26 MR. GEORGE:           Excellent, thank you. Any questions for

1 Dave?

2 So, we're going to get the microphone,  
3 Teresa, and if you can introduce who you are, first  
4 name, last name and spell your last name for the  
5 record please.

6 **PRESENTATION BY CHIEF HARRIS:**

7 CHIEF HARRIS: I'm Chief Don Harris from Douglas First  
8 Nation, H-A-R-R-I-S. This is the first session that  
9 we've made it out to and I wasn't really keeping aware  
10 of this, that was going on and then we saw something,  
11 and we'd better get involved here.

12 But, first off, I think that it needs to be  
13 dealt with directly with the communities. My  
14 understanding is that it went to the leadership tables  
15 and we're not always at these leadership tables. And  
16 in those places they tend to try and make decisions  
17 without us. That doesn't work for us.

18 So there are a lot of different areas on  
19 here that as my community needs to address is that  
20 eventually we're going to own some of our projects  
21 outright with options to buy into a number of others.  
22 Currently the ones that are going to be turned over  
23 the community at the end of our agreement are going to  
24 be approximately 45 megawatt. And my community is not  
25 big enough to burn off that kind of power, so we would  
26 need the ability to send power elsewhere. We don't

1        have private lines. Our access is through the BC  
2        Hydro grid. And we're waiting to see how this is  
3        going to roll out, what it's going to look like before  
4        we can make full comment on how it's going to work for  
5        us.

6                    Well, currently we would need to send -- or  
7        sell excess power. How we're going to do that? We  
8        don't know yet. How these changes are going to affect  
9        us? We don't know yet. What's the limitations going  
10       to be if we create our own utilities commission, our  
11       own utilities? Is that going to restrict us in a  
12       number of areas?

13                   And it was made pretty clear that we can't  
14       pick and choose who we sell to, but we would have a  
15       need to either sell to BC Hydro or sell to another  
16       utilities commission -- or the utilities, whether it  
17       be another First Nation or whether it be a  
18       municipality.

19                   And safety regulations, that currently  
20       we're not big enough to maintain the capacity to  
21       address safety and those areas. So we would be  
22       looking at probably adopting or being regulated by the  
23       Commission.

24                   So, it's hard to make full comment on this  
25       today, but one of the things that we need to make sure  
26       is that we're not getting caught up by the majority

1       who make a decision that affect how we operate, as  
2       again, we're just a small community. All the  
3       communities that are involved in energy creation have  
4       different agreements, there are different investments.  
5       Some put a lot of money into investments, some put  
6       partial money into investment. Some have agreements  
7       that benefit at the end of the agreement. And so we  
8       need to make sure that whatever gets put in place here  
9       doesn't restrict a community in the future. Otherwise  
10      we would be -- that's another thing I was thinking of  
11      too, is that -- especially with the EPAs, how this  
12      rolls out may affect Hydro's need for power in the  
13      future, so how is that going to affect us? Will we  
14      have the ability to sell? Will they have the need for  
15      that in the future if a lot of these other utilities  
16      are taken off of their grid, and is that going to  
17      reduce their power enough to not need more? These are  
18      some things that we have to look at for the future.

19                But we definitely need, for my community,  
20      to keep on top of what is happening after you meet  
21      with all of these other communities. Like I don't  
22      know how many First Nations communities are involved  
23      with the generation of power, or creating the power.  
24      Are there a lot of communities that are just going to  
25      buy power and create their utility? So, these are  
26      some things that we also need to look at.

1                   One of the things that, as Douglas First  
2                   Nation, we have to make sure that we don't have other  
3                   communities, or other cabals trying to dictate how we  
4                   sell our power in the future.

5                   And I'm just going to leave it there for  
6                   now, because again, there is a lot more information  
7                   that we got to gather. There is a lot more -- we have  
8                   to review what all these other communities are going  
9                   to put forward. We are going to probably be a utility  
10                  in the future based on the amount of power that we're  
11                  going to have, but we just want to make sure that all  
12                  these other communities and areas that are just not  
13                  going to affect us.

14                  Thank you.

15                  MR. GEORGE:        Thank you, Chief.

16                  THE CHAIRPERSON:      Can I just say, we don't have -- I'm  
17                  not aware of reliable numbers that I could answer your  
18                  questions with about how many First Nation communities  
19                  operate their own electricity generation. But I would  
20                  like to point out that first of all, the story is not  
21                  just electricity, because there is natural gas grids,  
22                  or propane grids that are operated by First Nation  
23                  communities. And then there is also thermal  
24                  utilities. Especially in urban areas, there are  
25                  multi-unit developments, apartment buildings and  
26                  condos and so on, that are heated -- or their hot

1 water is provided by ground source heat pumps. And  
2 there are First Nations that are building, and will in  
3 some cases operate themselves those systems.

4 And there are also circumstances where --  
5 and again, this is similar with municipal utilities,  
6 the First Nation or the municipality doesn't actually  
7 generate any electricity at all, it purchases it  
8 wholesale, from either Hydro or Fortis depending on  
9 whose territory they're in. And they just operate  
10 their own distribution system. And so the customers  
11 are theirs, but they don't have any electricity  
12 generation. They buy that in bulk, and resell it to  
13 their customers. So that is another model of having  
14 your own utility. But you don't need to have your own  
15 generation.

16 So, I just wanted to point those things  
17 out. But no, I don't have any numbers on who is doing  
18 what. Those are anecdotal.

19 CHIEF HARRIS: So with that one, is that we would have  
20 to recommend that the BCUC make recommendations to  
21 change the prohibitions on the Hydro lines for us so  
22 we can move power.

23 MR. KRISHNAN: Hi, my name is Prasanna Krishnan, K-R-I-  
24 S-H-N-A-N, I am a solar energy engineer. The question  
25 I had was ultimately authors of the report will have  
26 the final input, even though you are taking a lot of

1           recommendations. Is the Commission that we see in  
2           front of us, the four people, the authors? How would  
3           you determine the outcome in case of a tie on a  
4           difference of opinion? And finally, once you receive  
5           opinions and comments, will you provide any feedback  
6           or justifications on why you went in a certain  
7           direction? Thank you.

8       THE CHAIRPERSON:       Well, to answer the second question,  
9           yes, the report will -- all the recommendations will  
10          be buttressed by the reasoning behind it.

11                           The first question, we strive for consensus  
12          when we write a report like this, or even when we make  
13          a decision on an application. We spend a lot of time  
14          deliberating and looking at the various facets of the  
15          problem. To answer your question, technically the tie  
16          goes to the chair of the panel. I mean that's as a  
17          practical matter, but I can tell you that that -- I'm  
18          noticing that happen. We always make sure that we've  
19          looked as deeply and as broadly at the question as  
20          possible and we come to decisions that we can all  
21          agree with, and then we make sure that they're  
22          explained in a way that people can all understand.  
23          Hopefully.

24       MR. GEORGE:       Thank you, Dave.

25       THE CHAIRPERSON:    Thanks.

26       MR. GEORGE:       Can we have a break now? Any more questions

1 for Dave?

2 If there aren't any, I'd like to go for a  
3 break now for 12 minutes till 11:30. I want to ask  
4 the staff to move these two tables together, and then  
5 we're going to have two of these tables, we're going  
6 to have some facilitators and notetakers at each  
7 table. And our role is now going to walk through all  
8 the different recommendations and solicit your  
9 feedback about whether or not they're on point, or  
10 they missed the point, or if something's missing.  
11 This is the participative part for you to give us the  
12 guidance that we require to strengthen the report that  
13 will be provided to the B.C. government. Okay?

14 So we'll have the staff do that. We'll  
15 break for 12 minutes till 11:30, and then we'll have  
16 small group discussion until 12:30, at which point  
17 we'll have a barbeque lunch until one o'clock.

18 Bathrooms, again, are just down the hall  
19 for the men, straight down the hall on the right-hand  
20 side, and the women is to go out back around by the  
21 elevators and bear left around the corner. Okay? Are  
22 we good?

23 Eat some of those refreshments, drink some  
24 of that refreshments, eat some of that food, and we'll  
25 reconvene at 11:30. Thank you.

26 **(PROCEEDINGS ADJOURNED AT 11:19 A.M.)**

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

2    **(PROCEEDINGS RESUMED AT 1:48 P.M.)**

3    MR. GEORGE:        Okay, we are going to have the first  
4                      presentation from the back of the room here. Please  
5                      say your name for the record and spell your last name  
6                      please?

7    MR. TYSON:        My name is Jeff Tyson, T-Y-S-O-N, and I am  
8                      with Leq'a':mel First Nation. I guess I am given the  
9                      floor to go through this material.

10   **REPORT PRESENTATION BY MR. TYSON:**

11                     We've got a number of bullet points here,  
12                     and I'm gong to rely on my aide here, Phil, to help me  
13                     with some of the writing here. But the first  
14                     component is municipal exemption.

15                     So, this took up quite a bit of our  
16                     discussion today, and if you look at the  
17                     recommendations, the recommendations sort of fall  
18                     between First Nation utilities being a municipality,  
19                     and an entity that has some oversight by the Utilities  
20                     Commission. It's kind of in the sort of what we refer  
21                     to as no-man's land.

22                     So what we are looking for is for an  
23                     exemption, and it might be a change to the Act where  
24                     First Nation Utilities would be granted an exemption  
25                     just like municipalities are right now. But there  
26                     wouldn't be the oversight by the Utilities Commission.

1           And part of that would be, an example we gave is that  
2           we would have our own tariff sheet, because Leq'a':mel  
3           has a number of businesses, and they would be subject  
4           to say terms and conditions, and so forth.

5                        So, if that were the case, what we then --  
6           within that tariff sheet would be dispute resolution,  
7           because we realize that's important, it's something  
8           the Commission sees as important as well. But what we  
9           don't want to have is an asterisk there saying "oh, by  
10          the way, if you don't get results you want through  
11          Leq'a':mel, you can go back to the Utilities  
12          Commission." We just see that as sort of inconsistent  
13          but more to undermining the principles and the  
14          governance structure set out by Leq'a':mel.

15                       So, the other issue here is on the reserve  
16          lands, and it seems that the recommendations really go  
17          to either reserve or on/off reserves. And we had  
18          provided a map of the Leq'a':mel Reserves, and it is  
19          going to be filed, but it shows a number -- there are  
20          11 separate reserves, and they are all separated by  
21          certain distance. Often it's usually a number of  
22          kilometres.

23                       So what we were trying to impress is, that  
24          if we were to go down the road of developing a  
25          utility, and we're looking at that at least with  
26          respect to two reserves be given the infrastructure

1       that's in place, that we would want to be able to  
2       provide that service off reserve without being  
3       encumbered by any other rules. We would want the same  
4       sort of rules that apply to on-reserve to be applied  
5       off-reserve.

6               And the point is, is that if you take a  
7       look at the reserves and you draw this sort of -- call  
8       it like a circle around the reserves, you see this  
9       sort of continuous sort of group of reserves from this  
10      perspective, and it would make sort of economic sense  
11      -- and it also goes to title by First Nations.

12             So, it's not just reserve, it's title lands  
13      as well. So what we're trying to do is we're trying  
14      to encompass the title First Nations have, as well as  
15      perhaps economic benefits to extending beyond a  
16      reserve. So that was the second point.

17             Then we talked about retail access here and  
18      we realized that it's not something that's in place.  
19      This aspect is available with -- well, a bit of  
20      Fortis' system or with the natural gas pipelines.  
21      It's something that we would like to examine further.  
22      We're not sure if we're quite there yet, but it  
23      certainly would provide benefit, especially if we were  
24      trying to grow utilities, this would certainly be an  
25      avenue to advance our interest. And again, we can't  
26      offer any sort of details on that at this point.

1                   The public interest here -- yes, just going  
2                   back here to the retail access point. And I'm often  
3                   sometimes confused by this, but in my mind I look at,  
4                   like, open access on a pipeline as opposed to what  
5                   takes place with an electric system. But what our  
6                   view of the access would be, in sort of the broadest  
7                   sense, so not just on the retail side but on a broader  
8                   perspective. Yes, that's right, transmission access.

9                   The other aspect is the public --

10 THE CHAIRPERSON:        Sorry, excuse me. Can you just -- I  
11                   wonder if you could just summarize. So what were you  
12                   saying about retail access to the transmission --  
13                   you're saying -- sorry, I wasn't sure what your  
14                   conclusion was there?

15 MR. TYSON:        I'm having a little bit of a difficulty with  
16                   the retail access. In my mind I look at sort of the  
17                   -- I don't know if it would be called open access, but  
18                   just general access to a system where you might want  
19                   to put in energy at one end and take it out through  
20                   displacement at another end. So that, in my mind, I  
21                   see that -- I'm not sure if retail access is sort of a  
22                   subcomponent of that access. But I think in general  
23                   we look at this prospect as being something that could  
24                   benefit our utilities in the future.

25 THE CHAIRPERSON:        Okay, thank you.

26 MS. COCHRANE:        Penny Cochrane, C-H-O-C-H-R-A-N-E. And

1           just to be clear, we're really taking transmission  
2           access as certainly fundamental to anything going  
3           forward. And retail access would be studied at a  
4           later time.

5 THE CHAIRPERSON:        Thank you.

6 (EMERGENCY ALERT TEST SOUNDS)

7 MR. TYSON:            There's two bullet points remaining. I'm  
8           kind of rambling on a bit here, trying to collect my  
9           thoughts. But the second to last is public interest.  
10          So this actually took up quite a bit of our discussion  
11          and it relates to the reconciliation component. So,  
12          this is more of a policy aspect, but at some point I  
13          would imagine that it would be set in an act of some  
14          sort or it would have some influence over the  
15          direction of the -- well, BCUC. And this would be  
16          related to if First Nations were looking at improving  
17          their economic pursuits and there was a number of  
18          issues that were being considered, our view is that  
19          they should be considered in a very broad perspective,  
20          and one of which criteria would be reconciliation.

21                        So this is a component that's really not  
22          sort of spelled out anywhere that we've seen, so --  
23          and we were trying to determine whether, if through  
24          the final report this is something that the Commission  
25          panel might consider and might elaborate on. And  
26          possibly, or probably if -- well, certainly First

1 Nations I think are -- the Leq'a':mel, this an aspect  
2 that Leq'a':mel would certainly want to comment on.  
3 So it is important to us. Anyway, that's something to  
4 consider.

5 And then lastly, defining Indigenous  
6 Utilities. And again I talk a little bit about the  
7 geographic aspect and it's boarder than just being on  
8 Reserve. And there's been a lot of discussion on sort  
9 of the ownership versus control aspect. And our view  
10 is that it's really the control aspect that determines  
11 the utility, not the ownership aspect. More often  
12 than not these entities are partnership arrangements  
13 which are controlled by a general partner, and those  
14 arrangements are such that the general partner would  
15 be taking directive from the Chief and Council of the  
16 Band. So, again, it's control, not ownership.

17 And lastly -- I'm not sure what that -- the  
18 last component there is. I think that's it. I hope  
19 that made sense.

20 MR. BUSSOLI: Mr. Chair.

21 THE CHAIRPERSON: Yes?

22 MR. BUSSOLI: Mr. Chair, I just want to -- Mr. Tyson  
23 referred to this map earlier in his presentation and I  
24 think he wanted to mark it as an exhibit, so that it  
25 could be part of the record and that the panel can  
26 refer to it. Is that correct?

1 MR. TYSON: Yeah, that's correct.

2 MR. BUSSOLI: Yes? Okay. So then this would be marked  
3 as Exhibit C11-3 for the Hearing Officer.

4 (MAP SHOWING LEQ'A':MEL RESERVES MARKED EXHIBIT C11-3)

5 THE CHAIRPERSON: Okay, thank you. I think we might have  
6 some questions up here. Please.

7 COMMISSIONER FUNG: Thank you very much, Mr. Tyson. I  
8 just have a follow-up question to one of your summary  
9 points and that relates to the fact that the  
10 Leq'a':mel Reserves actually number eleven of them and  
11 they're separated by several kilometres, in some  
12 cases, between reserves.

13 MR. TYSON: That's correct.

14 COMMISSIONER FUNG: And then you made the point that in  
15 the view of the Leq'a':mel First Nation you should be  
16 allowed to service off-reserve for the reason that  
17 they are separated and because it's actually -- your  
18 claim is broader than just reserves, it also entails  
19 tile lands. And I accept that as a principle, but I  
20 just want to clarify with you whether you think that  
21 right to service off-reserve also extends to non-First  
22 Nations members or non-Leq'a':mel members?

23 MR. TYSON: I think it would in the broadest sense,  
24 because going back to the situation at Leq'a':mel,  
25 the, call it non-reserve lands, would effectively be  
26 title lands. They would assert title, certainly. And

1       those lands more often than not will have non-band  
2       members as residents. So there's -- that one  
3       component and that is kind of the title component.

4               The other aspect would be if a utility is  
5       growing in size and sophistication, it might make good  
6       economic sense for that utility to extend beyond the  
7       reserve land. Now, there could be cases I guess where  
8       that competes against another utility or it provides a  
9       service that another utility is just not providing at  
10      the time, because there's a lot of situations where,  
11      well, where Leq'a':mel is, natural gas is not supplied  
12      to -- I don't know if all the reserves, but certainly  
13      to Reserve 8, which is Holachten.

14   THE CHAIRPERSON:    I'd just like to follow up on that.

15               Would there be any limit to the service territory, you  
16      know, that would be off-reserve?

17   MR. TYSON:        The concept is really looking at the reserve,  
18      the situation we have, and I think it would probably  
19      apply to a number of other bands. When you look at  
20      the map you'll see 11 little sort of -- call it areas  
21      on the map, they're not contiguous.

22   THE CHAIRPERSON:    Right.

23   MR. TYSON:        So the first aspect is that, well, if this  
24      was a master plan community you'd want to be looking  
25      at the entire site, that's the way you'd do it as a  
26      developer.

1 THE CHAIRPERSON: Yeah, of course.

2 MR. TYSON: So there's that component. And it might  
3 prove out economically to be the better route to go.

4 The other one is certainly the title  
5 aspect. And I'm not talking about, like you know, a  
6 hundred kilometres away or something of that nature.  
7 But certainly with respect to Leq'a':mel, you could  
8 almost -- we refer to it notionally just drawing a  
9 circle around the periphery and taking a position that  
10 that would be logical to extend a utility into any of  
11 those areas.

12 THE CHAIRPERSON: Right, okay. Thank you.

13 COMMISSIONER FUNG: Thank you very much.

14 COMMISSIONER BREWER: Yeah, thank you for your  
15 presentation. I'm just -- a couple of questions. I'm  
16 wondering, so are you -- is the concept that it would  
17 be a -- is a generation facility you're talking about  
18 and --

19 MR. TYSON: A distribution facility right now.

20 COMMISSIONER BREWER: Distribution?

21 MR. TYSON: Yes.

22 COMMISSIONER BREWER: Okay.

23 MR. TYSON: On reserve there's a certain amount of  
24 electrical infrastructure and that was constructed by  
25 Leq'a':mel.

26 COMMISSIONER BREWER: Oh, it was. Okay.

1 MR. TYSON: But BC Hydro utilizes that infrastructure  
2 and the unfortunate thing for Laq'a':mel is that we  
3 paid a considerable amount of money for that a number  
4 of years ago and we have to carry out the maintenance  
5 on it as well. So we're looking at an aspect of  
6 developing a utility, where we would buy both power  
7 and distribute it at prevailing rates or whatever --  
8 well, we haven't quite got that far yet. But the idea  
9 is to repatriate that system and look at the margin to  
10 set a margin high enough to recover our costs.

11 COMMISSIONER BREWER: So it would be essentially  
12 purchasing power generated elsewhere?

13 MR. TYSON: That's correct.

14 COMMISSIONER BREWER: Okay, and reselling it within the  
15 territory?

16 MR. TYSON: That's correct.

17 COMMISSIONER BREWER: Okay.

18 COMMISSIONER LOCKHART: Mr. Tyson, thank you for your  
19 remarks. I know in terms of the structure of the  
20 workshop we had two groups and you're speaking on  
21 behalf of your group. Is everybody in your group from  
22 Laq'a':mel First Nation?

23 MR. TYSON: No, we're not.

24 COMMISSIONER LOCKHART: So you're speaking really on  
25 behalf of your First Nation --

26 MR. TYSON: Well, I'm speaking on behalf of the group,

1 but any of these sort of examples I bring up relate to  
2 Laq'a':mel because that's who I'm familiar with.

3 COMMISSIONER LOCKHART: I see, okay. Thank you.

4 THE CHAIRPERSON: And, Mr. Tyson, I just would like to  
5 go back to your earlier remarks about -- that you made  
6 the comment about the recommendations may leave an  
7 Indigenous owned utility in some sort of regulatory  
8 no-man's land because there's some oversight by BCUC  
9 or there may be some oversight by BCUC of complaints.  
10 So, I'd just to follow up on that.

11 So to the extent then that the  
12 recommendation is that there be no oversight, provided  
13 that there is a complaint mechanism in place that  
14 covers the utility and its customers, then there  
15 should be an exemption. You would be in agreement  
16 with that statement, would you?

17 MR. TYSON: That's correct.

18 THE CHAIRPERSON: Okay. And what about then the safety  
19 part?

20 MR. TYSON: Well, the safety part we've indicated --  
21 and I think there's a distinction here between the  
22 reliability issues and safety. So, we had indicated,  
23 I think, in our evidence or our submission, that we  
24 feel that safety measures should be followed and there  
25 could be a number of ways of abiding by that concept.  
26 So we're not averse to that.

1 THE CHAIRPERSON: Okay. Thank you, sir.

2 MR. TYSON: Thank you.

3 MR. GEORGE: Okay, our second group please introduce  
4 yourself. First and last name, spell your last name  
5 for the record, please.

6 **REPORT PRESENTATION BY MR. KRISHNAN:**

7 MR. KRISHNAN: Hi, good afternoon. My name is Prasanna  
8 Krishnan. Last name is K-R-I-S-H-N-A-N. And our  
9 group's discussion focused on three major areas, which  
10 I will go through here.

11 In sections 3 to 6 there is the concept of  
12 reserve lands and several members of different nations  
13 expressed that this should be expanded to include not  
14 only reserve land but the broader territories which  
15 encompass the reserve lands upon which all of the  
16 energy generation activities could take place. And so  
17 this really underlines the importance of considering  
18 traditional territories in the context of that  
19 discussion.

20 The second major area was -- sorry, going  
21 back to the first one. Related to that, in points 12  
22 and 13 I believe it makes reference to Westbank and  
23 Sechelt Nations. And in our discussion we feel that  
24 in these scenarios where it considers self-governance,  
25 there should be language related to the Reconciliation  
26 Agreements included as part of the recommendations.

1 Point number 2, regarding Indigenous  
2 Utility definition, we felt that majority ownership,  
3 51 percent, or control, should define an Indigenous  
4 Utility. In other scenarios that could be considered  
5 anomalous to this. There are mechanisms to apply  
6 directly to the Energy Minister, or the Commission for  
7 an exemptions.

8 On the specific points with respect to the  
9 takeaways for group discussion point (e), just going  
10 one-by-one in the order that they are presented in the  
11 summary, yes on the first point, there should be  
12 additional consideration in the recommendations, and  
13 the language should be edited to include the word  
14 "majority shareholder."

15 On the second point, the utilities assets  
16 are owned by a partnership. Amend -- consider that in  
17 the scope and amend to include First Nations control  
18 of limited partnership.

19 On the third point, where the assets are  
20 owned by a third party but rights are granted by the  
21 Nation, no, this shouldn't be part of the purview, and  
22 this should really only be considered if economic  
23 benefits are occurring to the Nations.

24 On the next point, the utilities assets  
25 owned by the Nation but operated by a third party,  
26 yes, they should form part of the regulation

1           recommendations.

2                           And on the final point with respect to the  
3           Nation essentially setting the rates, yes, there  
4           should be some more clarification on this, and  
5           provided this is an Indigenous Utility that's under  
6           discussion at that point.

7                           Continuing on in that section, point (f)  
8           talks about if an exempt utility sells energy to a  
9           neighbouring First Nation how should that be  
10          regulated? This should really sale between First  
11          Nations and not members. To extend that point, this  
12          means that irrespective of where the energy may be  
13          generated, if it's generated in one Nation and being  
14          sold to another Nation, the location where it's being  
15          distributed, and where the end customer is located, is  
16          the entity that should have control over the  
17          regulation and sale of that.

18                          Again, I think this is similar to the case  
19          brought up by the prior group, which is the location  
20          where the sale is being made is the entity that would  
21          have control over the regulation.

22                          The third and major point that we  
23          considered and discussed was the retail access  
24          prohibition, and the group felt that this mechanism  
25          should be changed to allow buying and selling of  
26          power. Thank you.

1 MR. GEORGE: Great job, thank you. Mr. Chair?

2 THE CHAIRPERSON: Thank you. Yes, very good  
3 presentation, thank you. I do have a couple  
4 questions.

5 You began by saying that Reserve land  
6 should include broader territory, and I think I heard  
7 broader territories on which generation could take  
8 place, and you used the term "traditional  
9 territories." So, a couple questions that arise. I  
10 mean, that's largely most of the province as I  
11 understand it at least. And so I just want to confirm  
12 that that is essentially what you're saying?

13 MR. KRISHNAN: If there is anyone from my group that  
14 would like to clarify, and this isn't really my  
15 strongest point as presenter.

16 THE CHAIRPERSON: Fair enough.

17 MR. KRISHNAN: In my understanding, that is the case, is  
18 the specific examples from my memory that I recall was  
19 Kanaka Bar, the representative of Kanaka Bar First  
20 Nation mentioning lands that their nation has title  
21 to, and reference was made to fee-simple lands. I  
22 believe Chief Harris also made a similar reference  
23 with respect to territory. I don't want to speak for  
24 the Chief. If he would like to add anything on that  
25 point?

26 CHIEF HARRIS: I think this discussion took up most of

1           our discussion.

2 MR. GEORGE:       Chief, you've got to introduce yourself  
3           again and for the record please.

4 CHIEF HARRIS:       Chief Don Harris, Douglas First Nation,  
5           H-A-R-R-I-S.

6                    I think it was about three different  
7           territories that took up a lot of our discussion, and  
8           the issues surrounding the traditional territories  
9           vary from community to community, Nation to Nation.  
10          Some have very little overlap, and some of them have  
11          huge overlaps. But I think what we ended up  
12          discussing was that it should be reserve and/or  
13          traditional territory based on whatever the structure,  
14          local structure is.

15                   It's important in some cases to go through  
16          a territory, it's a huge process, going through the  
17          consultation process because of all the overlaps from  
18          the other agreements in place, other provincial  
19          policies that created the overlap. That this was a  
20          very touchy subject and how we would get around it.  
21          So I think that's going to be something that's going  
22          to discussed for a long time with the government.

23 THE CHAIRPERSON:    Okay, fair enough. Thank you.

24 COMMISSIONER FUNG:   Chief Harris, may I just follow up  
25          with you on that, your comment with respect to  
26          traditional territories where there is overlap. How

1           then would we know which First Nation has the right to  
2           regulate an Indigenous utility operating in that kind  
3           of territory? How would we determine that?

4 CHIEF HARRIS:           There is a table coming up in March  
5           that's going to try and attempt to start dealing with  
6           that. But, like, one of the things that I've been  
7           suggesting for years is that based on the provincial  
8           policies, the revenue shares, is that there needs to  
9           be definition change to claim revenue shares from a  
10          traditional territory to an economic boundary.  
11          There's a lot of communities claim traditional  
12          territories for the purpose of revenue share and, you  
13          know, for them to claim that they have to extend their  
14          territories into others territories to claim revenue  
15          shares. It's going to be a long hard discussion.

16                        So I don't know how far we're going to get  
17          in March. There's a three day session coming up in  
18          March to start addressing the overlap. But a lot of  
19          it -- you can look at a lot of it based on the new  
20          regulations -- or the new opportunities under the  
21          *Water Sustainability Act*, whether there is now revenue  
22          share after a certain date for some of these  
23          generation stations in regards to water.

24 COMMISSIONER FUNG:       Okay, thank you.

25 MR. WITZKE:            Thanks, I'm James Witzke, W-I-T-Z-K-E,  
26           representing the Gitxaala Nation up on the north

1 coast. And so I just wanted to add a little context  
2 where Chief and I are -- we're in slightly different  
3 positions but in some cases the same. The Gitxaala  
4 Nation is in an area where the fringes of their core  
5 territory, there is a lot of overlap. But within  
6 their core territory, which is a large area, there  
7 isn't any overlap. So, and of course the reserve  
8 system in the territory is very very small.

9 So in that situation, you know, the  
10 consideration that I would like to see made is the  
11 consideration of non-overlap territory that would  
12 still be considered in that core traditional territory  
13 of a Nation for them to be able to -- you know,  
14 looking at developing projects. And it connects with  
15 really the same thing that we talked -- what the other  
16 group was talking about, is just moving power from one  
17 reserve to another essentially. It's the same idea,  
18 it's just it's power generated in one spot and it's in  
19 a territory that's transferred over to a community.

20 And then I think that there's, obviously,  
21 there's a very different process when there's  
22 overlapping territory. And there's, I mean, there's a  
23 number of creative ways that that could be dealt with  
24 and I don't think that it's -- it may or may not be  
25 something that would be considered as a  
26 recommendation, but I think it depends on the number

1 of -- the Nations that are actually wanting to engage.  
2 But, you know, if a Nation is proposing a project in  
3 overlap territory, well ultimately at the end of the  
4 day it's up to those Nations to I think engage and  
5 consult with each other directly as per either  
6 historic agreements or things like that to manage  
7 those processes.

8 So, to me that's a bit of a different  
9 situation, but I think that I wanted to just highlight  
10 the idea of non-overlap with overlap because it's a  
11 different can of worms.

12 COMMISSIONER FUNG: So, may I just ask you a follow-up  
13 question? Is it pretty clear then what that non-  
14 overlap territory is? Is it something we can point to  
15 on a map?

16 MR. WITZKE: Well, it is for Gitxaala, but it's  
17 certainly not for a lot of folks. I know that Chief  
18 was drawing his hand drawn map that didn't look very  
19 easy to follow and so I couldn't speak for -- I  
20 certainly would never speak for all folks, but I would  
21 say that in some cases, and ours is one of them, where  
22 we do have the luxury of space.

23 COMMISSIONER FUNG: Thank you very much.

24 THE CHAIRPERSON: There's something I'd like to point  
25 out, and that is in our discussions about self-  
26 regulation and having the ability to regulate, you

1 know, whether -- for example, whether or not an energy  
2 project goes ahead in a particular location. This  
3 inquiry's scope is the *Utilities Commission Act*. And  
4 the *Utilities Commission Act* does give the Utilities  
5 Commission jurisdiction over approving such a project,  
6 but it's only for purposes of recovery and rates of  
7 the costs of the project. There's still a level of  
8 environmental approval that has to be sought and  
9 provided and I just want to -- I just would like to  
10 point out that that's not within -- that's neither  
11 within our Commission's scope, we don't give  
12 environmental -- sorry, we don't provide environmental  
13 approvals for projects, and it's also not within this  
14 Inquiry's scope either.

15 So I don't want to raise any expectations  
16 here that, you know, if we went ahead with those  
17 recommendations, then that in that regulatory regime  
18 the Nation would have the ability to give a green  
19 light to a project at a particular location under that  
20 regulatory authority, because unless some other  
21 process has given the Nation the -- provides them with  
22 the environmental authority, then, you know, that's  
23 out of scope of our recommendation.

24 So I just want to make sure that that's --  
25 that we're all on the same page about that.

26 MR. GEORGE: Thank you, Mr. Chair.

1 THE CHAIRPERSON: Thanks. Yeah.

2 MR. AUSTIN: David Austin, A-U-S-T-I-N. One of the  
3 things that we did discuss at the table is the concept  
4 that if you want to become a non-regulated Indigenous  
5 Utility, you have to give notice to the B.C. Utilities  
6 Commission. So in a sense there was a check with  
7 respect to overlapping claims where an Indigenous  
8 Utility would want to provide services.

9 So it could be through that notice  
10 provision that if there's an overlapping claim that  
11 the notice in a sense wouldn't be -- I don't want to  
12 use the word "accepted", but it wouldn't be valid  
13 until the overlapping claim problem is sorted out.

14 And as pointed out by a previous speaker,  
15 it's up to the First Nations amongst themselves to  
16 sort that out. So if they were able to sort that out  
17 and were able to agree on terms, then they could come  
18 forward and provide that notice for that group of  
19 First Nations who wanted to become an Indigenous  
20 Utility.

21 And also in the recommendations we wanted  
22 to point out that Indigenous -- an Indigenous Utility  
23 could consist of more than one First Nation. So it  
24 would be "First Nation (s)" on the end of the word  
25 "First Nation". So we wanted to make sure that a  
26 group of First Nations could come together and become

1 an Indigenous Utility.

2 THE CHAIRPERSON: Thank you.

3 MR. GEORGE: Thank you.

4 COMMISSIONER BREWER: I have a question actually that  
5 relates to that kind of point. Now, I understand that  
6 you -- when you spoke about rate setting and that sort  
7 of thing that you -- that it would -- your group  
8 concluded that that should be left up to the -- or  
9 that regulation which I would assume includes rate  
10 setting, that that should be left to where the sale --  
11 the First Nation where the sale is made. Am I correct  
12 in what I heard there?

13 MR. AUSTIN: That's correct. But in a situation where  
14 collectively the First Nations came together, they  
15 would regulate collectively. So in other words, the  
16 sale and purchase would be regulated by the group of  
17 First Nations who entered into forming a First Nation  
18 utility that included more than one First Nation.

19 COMMISSIONER BREWER: Okay. And I'm sort of trying to --  
20 and don't want to get too much into the governance of  
21 that because I'm thinking -- is the theory that it  
22 would be -- there would be an authorized body or  
23 something like that that would do that that was kind  
24 of --

25 MR. AUSTIN: That's correct. The situation we were  
26 talking about was if I have a First Nation who's got

1 surplus electricity and it's a First Nation utility  
2 that wants to sell that electricity to another First  
3 Nation that is in its own right an Indigenous Utility,  
4 the two don't have a collective system of governance,  
5 then it's where the electricity was sold that that  
6 would be the sale that would be regulated by the First  
7 Nation as the purchaser/distributor of electricity.

8 COMMISSIONER BREWER: Okay, and it would just be within  
9 whatever territory that secondary First Nation was  
10 governing, I am assuming?

11 MR. AUSTIN: Yeah, in the purchaser/seller, that's where  
12 the regulation would be.

13 COMMISSIONER BREWER: Okay, and in terms of the area  
14 between -- where is the regulation that --

15 MR. AUSTIN: That is where you would be looking at, as  
16 the other group described it, as transmission access.

17 COMMISSIONER BREWER: Okay.

18 MR. AUSTIN: So, in other words, it's unlikely that one  
19 First Nation can build a transmission line to sell  
20 surplus electricity to another First Nation, if there  
21 was an existing transmission line there.

22 COMMISSIONER BREWER: Right.

23 MR. AUSTIN: So that's the concept of transmission  
24 access, which is slightly different than retail  
25 access.

26 COMMISSIONER BREWER: Right, for sure.

1 MR. AUSTIN: But there is also the concept of a First  
2 Nation utility in its own right being able to purchase  
3 from a third party such as BC Hydro or somebody else.  
4 That was part of the concept of, at least in our  
5 discussion, transmission access.

6 COMMISSIONER BREWER: Okay, and you'd presumably, if  
7 you were purchasing from BC Hydro you would be using  
8 their assets. You'd be wheeling over their  
9 transmission lines --

10 MR. AUSTIN: Well, BC Hydro wheel --

11 COMMISSIONER BREWER: -- and onto the -- yes.

12 MR. AUSTIN: Your point of --

13 COMMISSIONER BREWER: And who would be regulating? I'm  
14 assuming that BCUC would be regulating that?

15 MR. AUSTIN: Absolutely. But there is also the situation  
16 where a First Nation could purchase from a third party  
17 and that transaction, to be completed, would need at  
18 least nominal access to a third party's transmission  
19 line, such as BC Hydro or Fortis.

20 COMMISSIONER BREWER: Okay, so there was another  
21 unrelated question for your group, which is there was  
22 mention of the reconciliation agreement? And I'm  
23 sorry, I kind of missed what was that -- I'd  
24 appreciate if you could clarify and speak a bit more  
25 about that?

26 MR. KRISHNAN: I'll do my best. That came up in the

1 sections looking at the Westbank and Sechelt Nations.  
2 And those are points 11 and 12 in the draft report.  
3 Because, as I understand, they are not Treaty  
4 agreements. The brief discussion we had on that point  
5 was going forward for similar cases, that should also  
6 be considered in the context of reconciliation. I  
7 don't know if anybody from the group would like to  
8 expand on that?

9 MR. AUSTIN: David Austin. What is happening is that  
10 rather than full-fledged treaty settlements, First  
11 Nations are now involved in what can broadly be  
12 described as reconciliation agreement discussions.  
13 So, you're not full treaty, you're not reserve,  
14 they're along the Westbank, Sechelt model, which is a  
15 reconciliation agreement that may cover self-  
16 governance. And if those agreements include  
17 provisions that provide for the establishment of  
18 utilities and utility regulations, they should be  
19 recognized as a group along with, say for example,  
20 Westbank and Sechelt.

21 So, maybe what the Utilities Commission's  
22 recommendation and comments, and Sechelt and Westbank  
23 were about is essentially about a sub-agreement that  
24 provides for some form of self-governance, and to have  
25 a non-regulated Indigenous Utility, those sub-  
26 agreements would have to contain provisions in

1 relation to the establishment of the utilities and  
2 regulation of utilities, just like say for example you  
3 would have under a land code.

4 COMMISSIONER BREWER: My question then is, and it is a  
5 legal question, is how could an agreement such as a  
6 reconciliation agreement supersede the legislation?  
7 Or do you write that in to the legislation? Do you  
8 have to write it in the *UCA*?

9 MR. AUSTIN: Well, you've probably got to go over the  
10 Sechelt and Westbank agreements.

11 COMMISSIONER BREWER: Yes. So put it in the *UCA* as  
12 another exempt area where there was a reconciliation  
13 agreement in place? Or --

14 MR. AUSTIN: Well, if they can.

15 COMMISSIONER BREWER: Or how is that ---

16 MR. AUSTIN: Well, again, you've already acknowledged  
17 the example of the Westbank and Sechelt agreements.  
18 So what our table was saying is it shouldn't be  
19 specific to the Westbank and Sechelt only if you wrote  
20 that into the legislation. It should be similar -- I  
21 don't want to use the word "similar", but as some sort  
22 of reconciliation agreement that provides for self-  
23 governance and has, hopefully, some language about the  
24 establishment and regulation of utilities. You give  
25 the comfort that Utilities Commission would want.

26 COMMISSIONER BREWER: Thank you.

1 THE CHAIRPERSON: Thank you. I have one more question  
2 for Mr. Krishnan. You said that if a utility is owned  
3 by a third party, or not owned by the Indigenous  
4 Nation, but has some sort agreement with the  
5 Indigenous Nation, that wouldn't qualify as an  
6 Indigenous owned utility. And I think you used the  
7 term "unless economic benefits would accrue to the  
8 First Nation". What does that mean? What is an  
9 economic benefit that accrues in that context? Is  
10 there a threshold amount of money that would be  
11 needed? Or --

12 MR. KRISHNAN: Yes, thank you. From my memory and  
13 notes I believe what we discussed in our group was  
14 that the majority of the revenue from such an  
15 agreement would accrue to the First Nation on whose  
16 land this project is built. And once again, I open it  
17 to my group members if there is any clarification that  
18 can be offered.

19 MR. AUSTIN: What we were discussing was, in terms of  
20 ownership and control there's a multitude of  
21 structures that could be used. And what we thought  
22 was best is if the Utilities Commission made a  
23 recommendation to government where it was 51 percent  
24 ownership or control. In terms of the anomalous  
25 situations, if there was an agreement with respect to  
26 a third party, then as long as the First Nation got 51

1           percent of the economic benefits we were comfortable  
2           with that.

3                       Beyond that, we could talk for days and  
4           days and days around our table about the anomalous  
5           situations. So, the solution for the anomalous  
6           situations was for the parties who created the  
7           anomalous situation to apply for an exemption under  
8           the *Utilities Commission Act* either to the Minister of  
9           Energy or the Utilities Commission itself in the same  
10          way that they would have to apply now if they wanted  
11          to be exempt from full regulation.

12                      We wanted to -- again, around the table, we  
13          didn't want the recommendations to the government to  
14          be so complicated that nobody would understand them  
15          and cover every anomalous situation. So the outlet  
16          for the anomalous situation would be to apply to the  
17          Minister of Energy or the Utilities Commission and  
18          would be dealt with on a case-by-case basis.

19   THE CHAIRPERSON:        Okay, thank you.

20   COMMISSIONER FUNG:       Can I just ask you, Mr. Austin, a  
21          follow question on that? I assume that when you talk  
22          about 51 percent of economic benefits, that's the  
23          opportunity for 51 percent? You're not talking about  
24          actual economic benefits of 51 percent, right?

25   MR. AUSTIN:            The actual, not the opportunity. Because  
26          what you don't want to do is have third parties using

1 First Nations as a front for avoiding regulation.

2 COMMISSIONER FUNG: So, how will we actually know if  
3 they are any economic benefits? You won't know until  
4 the end of the project whether there are actually  
5 benefits as opposed to losses. How will we then use  
6 that as a determining factor?

7 MR. AUSTIN: Well, maybe the term "actual" is not  
8 correct. It's projected financial benefits.

9 COMMISSIONER FUNG: Okay, thank you.

10 MR. AUSTIN: You would be doing what you do on the  
11 normal regulation of a utility, you're just doing --  
12 you're basing decisions on forecasts.

13 COMMISSIONER FUNG: Thank you.

14 MR. AUSTIN: But there would have to be some evidence  
15 that that was the situation. Again, the harm that  
16 we're receiving the whole idea is third parties  
17 avoiding regulation through some sort of complicated  
18 structure that at the end of the day wasn't really  
19 delivering 51 percent of the forecasted financial  
20 benefits to First Nations.

21 THE CHAIRPERSON: Thank you.

22 COMMISSIONER FUNG: Thank you.

23 MR. GEORGE: Thank you very much. Is there -- this is an  
24 opportunity now for anybody who would like to make  
25 comments to the panel, here's an opportunity for you  
26 to do that. Anybody interested? Okay, seeing none.

1                   We heard today -- thank you very much for  
2                   the very rich conversation that we had here. We heard  
3                   about municipal exemptions, the section entitled  
4                   Reserve Lands, you know, lots of conversation around  
5                   territorial and title lands that need to be  
6                   considered, the retail access prohibition. A lot of  
7                   talk about the public interest, complementary versus  
8                   competing, and its relationship to reconciliation.

9                   We know that, you know, big announcements  
10                  happened last night in Victoria as it relates to the  
11                  *UN Declaration on Rights of Indigenous Peoples*.  
12                  There's other agreements that are in place that were  
13                  referenced with one of our groups, strategic  
14                  engagement agreements, reconciliation agreements,  
15                  government-to-government agreements, much of which is  
16                  designed with reconciliation in mind. Very rich  
17                  conversation about the definition of Indigenous  
18                  Utilities, which really centres on ownership control  
19                  and ownership structures.

20                  So thank you, all of you, for taking time  
21                  out of your busy schedules to be here today. We  
22                  encourage you to keep involved with the work of the  
23                  Inquiry. Page 4 of this summary guide here outlines  
24                  the timeline and different critical points where you  
25                  can inject yourselves into the process, offering your  
26                  insight and ideas for the work that the Commission and

1 the Panel is producing.

2 We have a pretty aggressive schedule to go  
3 out to the community. We have upcoming sessions  
4 tomorrow in Nanaimo, Friday in Victoria, December 9<sup>th</sup>  
5 in Smithers, and January 14<sup>th</sup> in Kamloops, and January  
6 17<sup>th</sup> in Fort St. John. I want to note those last two  
7 dates, January 14<sup>th</sup> in Kamloops and January 17<sup>th</sup> in Fort  
8 St. John, were added by the Panel because of interest  
9 that was expressed by Indigenous groups in those  
10 respective areas. So I want to acknowledge the  
11 nimbleness, the openness and the responsiveness of the  
12 BCUC in that regard.

13 Dave, panel members, any closing remarks  
14 that you have?

15 THE CHAIRPERSON: No. Nothing relating to the  
16 discussion, but thank you, Dan, for your MCing of the  
17 event today and thank you everyone for your  
18 attendance. We appreciate your views.

19 MR. GEORGE: Thank you. So thank you to the Staff, all  
20 the staff here who did a great job putting this  
21 together. Thank you Hal from Allwest and your team  
22 for hosting us here and having a wonderful barbeque  
23 lunch. Thanks again for taking time out of your busy  
24 schedules. Safe travels home. We look forward to  
25 seeing you in the immediate future.

26 THE CHAIRPERSON: Sorry, one sec. We do have a comment,

1 another comment. Sorry.

2 MR. GEORGE: Oh, okay.

3 THE CHAIRPERSON: I also just want to reiterate that  
4 we've listened to what we've heard today, but that  
5 doesn't preclude you from having further comment.  
6 First of all, as Dan said, you're welcome to attend  
7 any of the other workshops, but more importantly,  
8 there's a comment period coming up in March and feel  
9 free -- if you have additional comments feel free to  
10 add them or if you have -- if you upon reflection  
11 change your mind about anything, feel free to add  
12 comments about that. Just clarify that this is a  
13 different comment, different than you said before. So  
14 please, please do feel free to do that.

15 Thank you, Dan.

16 MR. GEORGE: Excellent. Thank you very much.

17 Okay everybody, safe travels. Thank you.

18 **(PROCEEDINGS ADJOURNED AT 2:37 P.M.)**

19

20

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

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A.B. Lanigan, Court Reporter

25

November 27<sup>th</sup>, 2019

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