

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

Community Input Workshop

BEFORE:

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

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VANCOUVER, B.C.

November 27th, 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 1st, 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 2nd, 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 2nd, and then again on March 31st.

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 31st, 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 9th
5 in Smithers, and January 14th in Kamloops, and January
6 17th in Fort St. John. I want to note those last two
7 dates, January 14th in Kamloops and January 17th 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.)**

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

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A.B. Lanigan, Court Reporter

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November 27th, 2019

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