

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

NANAIMO, B.C.
November 28, 2019

Community Input Workshop

BEFORE:

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

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NANAIMO, B.C.

November 28th, 2019

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(PROCEEDINGS RESUMED AT 10:0 A.M.)

4

MR. GEORGE: Ladies and Gentlemen, welcome to the
Indigenous Utilities Regulation Inquiry draft report
workshop. I want to begin by acknowledging the
Snuneymuxw Territory we are gathered on here today.
We raise our hands in respect to the elders,
matriarchs, the youth, and people of the territory for
hosting us. We are blessed to have Elder Lolly Good
with us here today, to offer a traditional welcomes
and prayer.

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(TRADITIONAL WELCOME AND PRAYER)

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MR. GEORGE: Thank you very much, Elder, for starting
us off in such a joyous way today.

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We're big on safety here at the BCUC, so
please make note of the doors to leave the room here
in case we have to exit the building in a hurry. As
well, the men's and ladies' restrooms are just outside
the doors here to the left and to the right outside
the hallway.

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I want to acknowledge all of you for taking
time out of your busy schedules to be with us here
today. Given any pressing demands on your time you've
chosen to be here with us today and for that we're
grateful.

1 I'd like to introduce the B.C. Utilities
2 Commission panel: David Morton, our chair; Carolann
3 Brewer, Commissioner; Anna Fung, Commissioner; and
4 Blair Lockhart, Commissioner, and ask each of them
5 briefly introduce yourselves. David?

6 THE CHAIRPERSON: Hi. Thanks, Dan. I've Dave Morton,
7 I'm the chair and the CEO of the Utilities Commission,
8 and in addition I'm the chair of this panel. I've
9 been a Commissioner since 2010 and I've sat on a
10 number of panels, quite a lot of panels actually, and
11 I have to say this has been certainly one of the most
12 interesting panels I've been involved in. And the
13 issues that we've been looking at I know are important
14 to very many people around the province and I'm really
15 hopeful that they will be helpful for the province and
16 for all residents of the province.

17 I'm a professional engineer. I'm here with
18 -- I'm outnumbered here in a team of lawyers, but I do
19 my best anyway. And, again, I'm very happy to be here
20 and I welcome you all and hopefully we'll have a
21 productive day.

22 COMMISSIONER FUNG: My name is Anna Fung and I'm also a
23 member of this panel. I've been a Commissioner now
24 since December 2017 and I also have the role of the
25 Deputy Chair of the Commission.

26 I am a lawyer by training and actually

1 before joining the Commission I had worked for 15
2 years at Fortis as in-house counsel. And one of my
3 last jobs as in-house counsel there was to actually
4 structure the partnership between the Chemainus Indian
5 Band and the Cowichan Band, along with Fortis in
6 building the Mount Hayes LNG facility, which has since
7 gone into operation as of 2011. So I have some
8 knowledge about partnerships between Indigenous groups
9 as well as the existing utilities.

10 So I'm looking forward to your feedback
11 here today on the issues and the recommendations that
12 flow out of our draft report. So thank you in advance
13 for your input and I'll look forward to hearing from
14 you.

15 COMMISSIONER BREWER: Good morning. My name is
16 Carolann Brewer. And I'm happy to be here on
17 Snuneymuxw Territory. And just a little bit about
18 myself, I am a lawyer as well. My primary area of
19 practice has been Indigenous law. I worked at Hydro
20 One for a number of years, so I've also worked in
21 utility law. In my practice I've been engaged in
22 various commercial endeavours, as well as partnerships
23 between First Nations and various commercial
24 endeavours and land use in particular.

25 And I have been with this board since
26 January of this year. And I've been very privileged

1 to be sitting here with this panel on the Indigenous
2 Utilities. So I'm looking forward to your input.

3 COMMISSIONER LOCKHART: Good morning. My name is Blair
4 Lockhart. I'm the fourth member of the panel. I am
5 also a lawyer. Before being a lawyer I was a
6 geologist. And I'm a mother of two children. Looking
7 forward to today and I want to thank the Elder for the
8 delightful welcome that we had to her territory.
9 Thank you.

10 MR. GEORGE: Thank you very much. We have a number of
11 staff here from the BCUC as well. Please stand and
12 give a wave to people here, the Staff. If you have
13 any questions or require any sort of support, please
14 approach one of these individuals. If anyone has
15 questions or require any sort of support, please
16 approach one of these individuals.

17 There will also be a presentation upcoming
18 that will provide some background for today of the
19 input is being sought. Our chairperson will be
20 providing that. We have our BCUC internal counsel
21 with us, Lino Bussoli. Today's sessions are being
22 transcribed by Allwest Reporting and we acknowledge
23 the Allwest Reporting team for their work getting this
24 organized and on the road here. You can also listen
25 to listen live to the community input sessions on
26 BCUC.com.

1 And my name is Dan George, I'm a member of
2 the Wet'suwet'en Nation, Gilseyhu Clan, Big Frog Clan
3 of the Wet'suwet'en people. My father clan is the
4 Gitdumden, Bear clan. And I'm serving as your MC and
5 facilitator for today's proceedings and my colleague
6 Teresa Dolman is with me here as well. She's just
7 assisting the Elder back to her vehicle.

8 A little bit about the format today and
9 what to expect this morning. We're going to hear from
10 the panel. We will provide an overview of why we are
11 here and make a presentation on the proposed
12 recommendations made within the draft report. You
13 will have an opportunity to pose questions at that
14 point in time.

15 Following the presentation we're going to
16 break you into small group discussions where you will
17 have the opportunity to discuss the draft report and
18 its recommendations. A short lunch will take place
19 from 12:30 to 1:00. And these times are a little bit
20 fluid, right? We'll adjust as we go along during the
21 day.

22 After lunch we will reassemble into our
23 small groups and ask that each of you take 20 minutes
24 to discuss who from your group will summarize the
25 discussion for your table back to the panel. The
26 representative from each table will then present their

1 summary and comments on the draft report to the panel.
2 This presentation will be on the record and
3 transcribed. The break out small group discussion
4 will not be on the record and transcribed. Any
5 individuals that wish to make additional comments to
6 the panel will have the opportunity to do so at the
7 small break out group presentations.

8 And, again, given our smaller numbers here
9 today we're going to have a little bit of flexibility
10 with the time as well, so there's -- we'll work with
11 that as the day progresses.

12 The primary objective of today's workshop
13 is to assist the BCUC by providing them input for the
14 draft report which was recently released and proceeds
15 to address what characteristics you believe to find in
16 Indigenous energy utility and if or how Indigenous
17 utilities should be regulated.

18 I want to acknowledge the BCUC for once
19 again coming out to the community and soliciting
20 feedback, now with the draft recommendation generated
21 from our first round. And I want to acknowledge,
22 again, the BCUC's approach, being respectful and
23 inclusive and it requires a commendation.

24 On November 1st, 2019, the BCUC released its
25 Indigenous Utilities Regulation Inquiry draft report,
26 including its preliminary findings and recommendations

1 to the B.C. Government. The report is available on
2 the Inquiry's proceeding page of the BCUC website and
3 a summary has been provided to you today. In order to
4 ensure that the draft report recommendations reflect
5 the interests and perspectives of B.C.'s Indigenous
6 people and communities, we invite you to provide your
7 comments to the BCUC. The comment period of this
8 draft report is open until March 2nd, 2020.

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

17 So you will have an opportunity to inform
18 the panel of your interest related to this inquiry.
19 You are welcome to ask questions or make a
20 presentation in traditional language, although we ask
21 that you please provide translation of the
22 presentation so that it can be transcribed and added
23 to the public record. All presentations to the panel,
24 along with any other person making a submission will
25 be transcribed and live audio streamed at BCUC.com and
26 placed on the public record. The dialogue that takes

1 place during break out groups, once again, will not be
2 transcribed, live audio streamed or placed on the
3 public record. No part of these workshops will be
4 videotaped. Everyone's welcome to come and go during
5 the session as your schedule permits.

6 So, we talk about the land, we talk about
7 the generation of energy and often times it's highly
8 emotional for many of us. So I want to help create a
9 respectful container for our dialogue to occur. I
10 want to suggest the following behavioral norms:
11 First, that we're hard on issues and soft on people.
12 Second, the process is only as strong as the level of
13 participation we receive from each of you, so please
14 find your merge lane into the conversation over the
15 course of the day, offering your ideas and your
16 insights to panel. When we come together in these
17 kinds of forums we always generate great ideas, so
18 when you do let's please take them as far as we can.
19 We ask that we listen generously to one another and to
20 always have a solution orientation. Problem
21 identification, solution identification. We don't
22 want to get stuck in a problem. And lastly, to be
23 present, and if you have a cellphone please turn it
24 off or turn it to vibrate while we're in session. And
25 there will be natural breaks over the course of the
26 day for you to check your messages.

1 Are those reasonable, can we do that today?
2 Nodding heads, we're good. Thank you.

3 So, without further ado I'd like to
4 introduce David Morton who will be making the
5 presentation, Dave. A warm Snuneymuxw welcome to Dave
6 Morton.

7 **PRESENTATION BY CHAIRMAN MORTON:**

8 THE CHAIRPERSON: Thank you. As Dan indicated, I'm
9 going to give a presentation. I'm going to talk a
10 little bit about utility regulation generally, about
11 the BCUC, what we do. And then I'm going to talk
12 about this inquiry, what we've done so far in this
13 inquiry. And then we're going to look at the draft
14 recommendations that we've made in the report. Let me
15 rephrase that. The proposed recommendations as we've
16 made in the draft report. And that's what we're
17 asking for your feedback on today.

18 So, I'm going to start with "What is a
19 utility or an energy utility?" The way that a utility
20 is defined in the *Utilities Commission Act* -- and the
21 *Utilities Commission Act* is what governs the B.C.
22 Utilities Commission. It's defined as any person, or
23 let's say a company, that sells energy in British
24 Columbia. So the sale of energy can come in different
25 forms and there's a couple of different flavours of
26 utilities that I know that the people have been

1 participating in this inquiry certainly have a sense
2 of both of these players. And one is of an energy
3 project that's been built specifically to sell energy
4 in bulk, let's say, to BC Hydro. That would be a
5 utility because it's selling energy in the province.
6 But then it's also the notion of A utility that sells
7 energy to you and I, to our home. It has wires that
8 run down the street and the energy is distributed and
9 sold to individuals.

10 Both of those are utilities and both of
11 those are regulated under the *UCA*. And it doesn't
12 preclude a company that would do both, it may have
13 access to energy that is in bulk. The primary goal is
14 to sell energy to individuals, commercial and
15 residential, and so on.

16 And it could be -- and a company that sells
17 energy to individuals could generate its own energy,
18 or they could purchase energy in bulk from another
19 party, and then simply distribute that energy. It
20 would still be selling energy in British Columbia, so
21 it would be subject to our regulation, pursuant to the
22 regulation under the *Act*.

23 Why do we regulate the energy utilities?
24 This is something that is not unique to British
25 Columbia, it is not unique to Canada. It's throughout
26 almost every country in the world, regardless of their

1 stage of development or political strife, almost every
2 country in the world has some sort of regulatory
3 oversight for utilities.

4 And why do they do that? They do that
5 because traditionally utilities have been large
6 companies, capital intensive, they have a lot of
7 infrastructure, and that creates a barrier to
8 competition. And when there is a barrier to
9 competition, then you end up with a monopoly, and so
10 that is a characteristic, generally speaking, of
11 utilities. And when there is a monopoly, then there
12 is no check or balance on that company from setting
13 its own terms of service, whatever it feels like, it
14 can serve whoever it feels like, at whatever cost.
15 And that is generally not considered to be in the
16 public interest. So there is usually some sort of
17 regulatory body. That is our focus, and that is what
18 we primarily -- primarily an economic regulator.

19 And to that end, our primary function is to
20 set rates, or to approve rates that are proposed by
21 utilities. But we also regulate the whole range of
22 activities of a utility, including utility mergers and
23 acquisitions, the issuance of securities, and so on.
24 And also the development of infrastructure. We would
25 be asked to approve the construction of a pipeline
26 perhaps, or the construction of a generation project.

1 But in the context of what we are going to
2 be talking about today, I think it's important to
3 understand when we're asked to approve a capital
4 infrastructure project, the lens in which we look at
5 that is are we okay with the utility spending that
6 money and recovering that money from its ratepayers in
7 rates, which it will have to do in order to recover
8 the amount of money it has spent on that facility.

9 Even though we apply a public interest
10 test, that's largely the public interest that we view
11 it under, and then we also look at, well has the
12 utility consulted with its ratepayers to make sure
13 that everybody understands that this may cause rates
14 to increase, for example, in order to pay this
15 facility off.

16 We don't provide environmental approval for
17 it. Just because we say "Yes, it's okay to build that
18 facility and to recover any rates," doesn't give that
19 project the green light to go ahead. That project is
20 still subject to environmental regulation, which is
21 completely out of our jurisdiction. And I would also
22 point out it's out of scope of this inquiry, and out
23 of scope of the recommendations of this report.

24 So, just to fast forward to what we are
25 going to be looking at a little later when we're
26 talking about whether utilities should be exempt from

1 our oversight or not, that does not mean that even if
2 it is exempt from our oversight does not mean that it
3 would be exempt from all oversight, and would still
4 have to deal with whatever environmental approval
5 regime was in place.

6 So, we are an independent regulatory
7 agency. We are not affiliated with any of the
8 utilities that we regulate, although we are self-
9 funded, and they cover the cost of regulation. But we
10 don't have any direct affiliation with government, and
11 we don't have any direct affiliation with the
12 utilities.

13 However, our legislation is the
14 responsibility of government, and we have only the
15 jurisdiction that the government gives us. And part
16 of our jurisdiction is to, when requested, conduct an
17 inquiry on any matter that the government asks us to
18 do. And we have been asked to conduct this inquiry
19 into -- and provide recommendations surrounding the
20 regulation of Indigenous owned utilities.

21 So that is a slide that summarizes some of
22 the aspects of our regulation that I've just gone
23 through, and I won't go into a lot more detail.

24 I am going to pause here if anyone has any
25 questions? And also feel free to ask questions as I
26 go along. If anyone has any questions on what I've

1 said, please feel free to ask them.

2 MR. GEORGE: Are we good?

3 THE CHAIRPERSON: Hearing none, we will continue.

4 Another bit of background information that
5 I'd like to just touch on now, because it will begin
6 to figure somewhat prominently in the discussions we
7 are going to have a little later.

8 Our *Utilities Commission Act* contains an
9 exemption for a utility that is operated by a
10 municipality. And we call that a municipal exemption.
11 And you will see that will start to frame some of the
12 discussion around our recommendations a little bit
13 later.

14 The secondly, this map shows the
15 hydroelectric transmission system in the province, and
16 there is interconnection points with Washington,
17 Idaho, Montana and Alberta. And the reasons for these
18 interconnections are twofold. One is that we buy and
19 sell energy from these other jurisdictions, and we do
20 that because there is all those times when we have a
21 surplus, and there is times when we have a shortage,
22 and as there is in all the other regions. It means
23 all the regions can operate their systems more
24 effectively as long as they can do that trading back
25 and forth.

26 In addition, it provides an important

1 backup in an emergency situation when there is an
2 accident or global event, we often reach out to our
3 neighbouring jurisdictions, as do they. The entire
4 North American grid is interconnected like this, and
5 it operates synchronously, meaning it all has to
6 operate together at the same time.

7 And an example of the implications of that
8 were in the early 2000s, 2003 I think it was when a
9 tree fell on a transmission line in Ohio and took down
10 the entire eastern portion of the grid, including
11 Toronto, parts of Ontario, New York City, Boston,
12 Washington, and so on. And there were people without
13 electricity for significant periods of time. Out of
14 that came an initiative to develop reliability
15 standards that would effect all transmission that
16 makes up this grid.

17 We are a part of this system, and we
18 implement these mandatory reliability standards. And
19 we've made some recommendations around how that should
20 be treated going forward if there is any change to the
21 regulatory regimes as we're going to discuss.

22 And then thirdly, much of this transmission
23 network is operated by BC Hydro and there is currently
24 a retail access prohibition, which means that if I am
25 running a generation system, let's say up here, and I
26 want to sell it down here, the only way to get the

1 energy from there to here is to wheel it over to the
2 BC Hydro's transmission system. Well, I can't do
3 that. I can sell it to BC Hydro, if I can get a
4 contract with them and approved, but I couldn't sell
5 it to you down here because of this retail access
6 prohibition. So again, we think that that's an issue
7 that could potentially effect Indigenous Utilities, so
8 you've got some recommendations, or some questions at
9 least around the retail access prohibition.

10 Yes?

11 MR. OKADA: So on that note --

12 MR. GEORGE: Microphone. First and last names.

13 MR. OKADA: My name is Yuko Okada, last name O-K-A-D-A,
14 from (inaudible). So on that note, when you say
15 retail access prohibition, does that specifically mean
16 a seller cannot sell to a retail customer, like
17 residential customers? Or does that apply essentially
18 to any buyers across the board including retailers?

19 THE CHAIRPERSON: The wording of the prohibition is
20 that you can't use the -- and I'm paraphrasing
21 somewhat here, but you can't use the transmission
22 system to sell to a retail purchaser, or anyone that
23 would supply to a retail purchaser. So, our
24 interpretation, and I say our, the Utilities
25 Commission's interpretation of that is that I can't
26 sell it to you, and I couldn't sell it to a utility

1 that you are purchasing from either, because they are
2 providing it to you.

3 Any other questions?

4 So, earlier this year, around February or
5 March I think it was, we were asked by the provincial
6 government to conduct an inquiry and answer the
7 following questions. And the questions were, what are
8 the defining characteristics of an Indigenous Utility?
9 Should an Indigenous Utility be regulated under the
10 *Utilities Commission Act*, which we've been discussing
11 and is part of the way we regulate. Or should they be
12 regulated under another mechanism? Or should they not
13 be regulated at all? And then if it's appropriate to
14 regulate an Indigenous Utilities under the *Utilities*
15 *Commission Act*, should they be regulated in a
16 different way? Should there be different rules that
17 would apply? Or different -- some modifications be
18 made to our processes? And then if it's not
19 appropriate to regulate them under the *UCA*, but
20 regulate it in some other manner, then what should
21 that regulation look like?

22 And then finally, if Indigenous Utilities
23 aren't regulated, what would happen to a utility, an
24 Indigenous Utility if it ceased to become an
25 Indigenous Utility, presumably because the structure
26 of the utility changed, then what would happen to it?

1 Those are the questions that were posed to
2 us and that's what brings us to where we are here
3 today.

4 The Inquiry was, as I said, established
5 earlier this year. We've started with registering
6 interveners. And interveners are parties that would
7 like to participate in this in a formal way, and that
8 means that they would have some evidence that they'd
9 want to put forward and are willing to be -- to answer
10 questions on that evidence and would like to question
11 other interveners on their evidence, and then make
12 submissions to the Panel. Depending on the evidence
13 that they've put forward and the rigorousness of the
14 testing, then the Panel places varying amounts of
15 weight on what we hear from interveners.

16 But we also want to hear from other parties
17 that aren't -- that don't have that kind of an
18 interest in the proceeding, and so we've also reached
19 out to the entire province and we've run through a
20 series of community input sessions, where we travelled
21 around the province and in rooms much like this we've
22 gathered and heard what people have had to say. It
23 was kind of like writing a letter of comment to us,
24 except the people have come and said it in person.

25 And then based on that we've produced our
26 draft report and our draft report contains a number of

1 proposed recommendations. And what we mean by that,
2 are subject to discussion in a second phase. These
3 are the recommendations that will go back to the
4 provincial government.

5 So I think it's important also to note that
6 we don't have the ability to make any changes to the
7 *Utilities Commission Act*. We don't have the ability
8 to not regulate just because we don't think we should.

9 And on that note I would point out that we
10 have in the past on numerous occasions taken a look at
11 particular situations and said, well, there's no
12 monopoly here. There's competition because there's a
13 change taking place in the utility world and not all
14 utility services are now delivered by monopolistic
15 utilities. And we're always alert to situations where
16 there isn't a monopoly and there are competitive
17 forces at play. And in most circumstances we don't
18 think we should regulate, but we can't not regulate
19 because our Act tells us that we have to regulate
20 anyone who is selling energy.

21 So what we do then is we go to government
22 and say, well, we recommend that you provide an
23 exemption for such and such a circumstance. So we
24 have always done that. We've always done that before,
25 and that's what we've used, and that's -- those are --
26 that's similar to some of the recommendations that

1 we've made in the draft report.

2 Now, originally the report was due at the
3 end of January and there was a provision for an
4 interim report at the end of December. But the
5 interim report was a report on progress to date and a
6 description of the process. We realized that that was
7 not -- there's just not sufficient time for us to
8 provide all parties, interveners and the public
9 generally, with sufficient time to comment on a draft
10 report.

11 So we've made a recommendation to
12 government that they extend the timeline of the
13 inquiry, which they have done. And so now we have --
14 now the report is now due at the end of April and
15 we've got a roughly three-month period, an additional
16 three months to go out for comment on the draft
17 report. So the final report will be due, as I said,
18 at the end of April.

19 Now, I'm going to pause again, see if
20 there's any questions and ask how we're all doing, if
21 you want to take a break for a couple minutes or --

22 MR. GEORGE: Should we keep rolling or do you want to
23 have a break? Keep rolling? Okay, just keep rolling.

24 THE CHAIRPERSON: Okay. So I'm just going to go
25 through the draft recommendations or the proposed
26 recommendations. And these are the specific questions

1 that we're going to be going and asking you for your
2 feedback on today.

3 So one of the overarching recommendations
4 is that with regard to the regulation of a monopoly,
5 if a utility is acting in or was in a monopolistic
6 situation, we feel that all ratepayers of Indigenous
7 Utilities should receive the same protection as
8 ratepayers of non-Indigenous Utilities do in the
9 province. In other words, whether we provide the
10 protection or it's provided in some other way, the
11 protection should be there for ratepayers of
12 monopolistic utilities whether they're owned by an
13 Indigenous -- the ownership is Indigenous or not. And
14 other ratepayers, Indigenous or not.

15 Secondly, looking at the regulation of the
16 reliability standards of the transmission system that
17 we talked about, it's our view that the BCUC retain
18 the jurisdiction with respect to the approval,
19 compliance and the enforcement of mandatory
20 reliability standards. We think that's important
21 because we need to maintain our participation in the
22 North American grid. And so regardless of where the
23 transmission network is and who owns any portion of
24 the transmission network, it should all be subject to
25 the same regulation in the province.

26 And then after looking at those issues, we

1 started then to look at specific circumstances for
2 Indigenous owned utilities. And I'm not going to talk
3 at this moment about what an Indigenous owned utility
4 is, so just bear with me (inaudible: coughing) but
5 we'll get back to it in a little while.

6 So, we looked at different -- because lands
7 have different statuses, we found it was necessary to
8 break down what kind of a -- whatever status the land
9 was in order to layout our recommendations. But the
10 overarching approach that we took to this was that --
11 remember I talked about how municipalities if they
12 chose to operate their own utility they wouldn't be
13 subject to the *Utilities Commission Act*. Now, there
14 aren't many municipalities that operate their own
15 utility, there's about five or six of them. And most
16 of them resell energy that they purchase from BC Hydro
17 or they purchase -- electrical energy that they
18 purchase from BC Hydro or Fortis. One of whom
19 generates its own energy, that's the city of Nelson.

20 But nevertheless, we're looking at that
21 model and we've heard a lot from interveners in this
22 inquiry about the municipal exemption. And we agree
23 with what we heard and we agree that First Nations
24 should also have similar opportunity that the
25 municipalities have to self-regulate when they're
26 providing service to the people of their community or

1 within the geographical area that's their community.
2 So that's largely why we then started to look at what
3 the nature of these different communities were.

4 We started by looking at reserve land, and
5 again, with that recommendation that a Band Council or
6 First Nation that's providing energy on its own lands
7 or on its own territory that it has jurisdiction over
8 should have an opportunity to opt out of BCUC
9 regulation. And the opting out should be a relatively
10 simply process. Notification process, to say, "We've
11 got this utility and we're choosing to regulate it
12 ourselves, so just letting you know." And subject to
13 two key parts, that's a comment recommendation that
14 we've made.

15 And the two things are that we want to make
16 sure that there is adequate consumer protection in
17 place. So that means, first of all, does that
18 Council's own bylaws include jurisdiction over a
19 utility? And do the dispute resolution mechanism that
20 that Council has in place for other areas of its
21 jurisdiction, are they going to cover this utility?
22 And are they going to cover all ratepayers of this
23 utility?

24 And then the second piece is the safety
25 piece. And we've heard from interveners and the
26 comments that we've heard at the community input

1 sessions, we've had mixed comments on that. We've had
2 parties that say that the BCUC should continue to
3 regulate safety, and we've had parties that say that
4 regulation of safety should prolong the economic
5 regulation and that it should be exempt from the UCA.
6 So, we're asking you on your views on that -- what
7 your views on that are.

8 And then we've applied that similar --
9 we've taken that approach and we've applied that to
10 other categories, as it were, of lands. Modern Treaty
11 lands, it works with because it's probably the best
12 example. And we were proposing to recommend that
13 since Nisga'a is able to demonstrate that they have
14 jurisdiction over dispute regulation for a utility,
15 then they would have the same exemption. Again
16 though, keeping in mind that if Nisga'a builds a
17 transmission line, our recommendation is still that
18 that would be subject to BCUC oversight for the
19 purpose of mandatory reliability standards.

20 And then the other groupings of lands or
21 other modern Treaty lands. Historical Treaty lands,
22 which would be like a Treaty 8 situation. And there
23 were two specific circumstances we looked at.
24 Westbank was -- First Nation, is an intervener in this
25 proceeding and they have made some submissions on what
26 their views were. So we've provided some specific

1 draft recommendations on Westbank First Nation.
2 Again, along the same lines and provided they have an
3 advisory council law and provided that applies to the
4 resolution of utility complaints, then the same --
5 take the same approach as to the Nisga'a and similarly
6 with Sechelt Band.

7 And then, ceasing to be an Indigenous
8 Utility. That seemed to be not contentious. If you
9 cease to meet whatever definition there would be for
10 an Indigenous Utility, then it would automatically
11 default to whatever regulatory regime is in place in
12 the rest of the province.

13 And the definition of an Indigenous
14 Utility, we didn't really provide any recommendations
15 on this, frankly. I'll talk in a minute about why we
16 didn't. And so that's something we're asking to turn
17 your minds to in this workshop.

18 So, these are the reference, being what
19 we're asking you today, please, is whether your views
20 generally on these proposed recommendations -- did
21 they strike the right balance between the need for
22 ratepayer protection and the right of First Nations to
23 self-governance?

24 And we've talked a bit about complaints and
25 dispute resolution mechanisms and we've talked about
26 having an onus on a First Nation to provide some

1 evidence that their dispute resolution mechanisms do
2 apply to a utility. So the question is then, well
3 what should that really look like and how does that
4 actually work on the ground?

5 And then, are there specific areas which
6 should not be exempt such as safety? And again, we've
7 made no recommendations in that area. So we would
8 appreciate your feedback.

9 So now we'll talk a little bit then about
10 what is an Indigenous Utility. And as I said, we've
11 not made any recommendations on what that actually
12 means. So here's -- we've put some bullet points
13 together or things for you to consider, and we would
14 like you to do that. And I would like to also point
15 out that we've talked a little bit about the municipal
16 exemption. There's a similar set of issues as this
17 definitional issue that applies to the municipal
18 exemption. The wording in the Act is that it's -- the
19 exemption provided for a municipality that provides
20 utility services within its own boundaries. Again,
21 I'm paraphrasing. But that there is some ambiguity
22 and there is certainly some argument in there about
23 whether or not it was a company owned by a
24 municipality. And if so, how much of the company does
25 a municipality have to own for that to get the
26 municipal exemption? Is it majority owned? Is it

1 partly owned? And then there is other forms of
2 association between the municipality and the private
3 corporation.

4 So there is a similar set of thought
5 processes that we need to go through here too. So, if
6 a utility's assets are owned by a corporation of which
7 a First Nation is a shareholder, or sole shareholder,
8 is it 51 percent of course you need to have majority
9 ownership, but you don't necessarily need majority
10 ownership to control a corporation. So, is it the
11 notion of controlling? And if so, how are we going to
12 demonstrate control? If the assets are owned by
13 partnership of which the First Nation is a partner,
14 limited partner, or general partner. If the assets
15 are entirely owned by a third party, that the First
16 Nation is granted a franchise agreement or some sort
17 of licence. Let's say an exclusive licence to operate
18 in its territory, then does that make it an agent of
19 the First Nation? Does that then qualify it as an
20 Indigenous owned utility?

21 And so there is a couple of other examples
22 of the thought process to go through on that. And I
23 would also add, flipping back over to the municipal
24 exemption, we have an inquiry currently that is taking
25 place concurrently with this one that is looking at
26 these very issues for the definition of the municipal

1 exemption.

2 Now we are going to talk a little bit about
3 what does the proposed exemption look like. So, what
4 we've said is we're proposing an exemption for an
5 Indigenous owned utility, however that is defined,
6 operating on that First Nation's territory, selling
7 energy to individuals that live on that territory,
8 that you're located on that territory.

9 But we've also heard in this inquiry that
10 that is often not sufficient. There is just not
11 enough critical mass there to make a utility cost
12 effective, so it's going to have to -- you know, get
13 in a lot of times the number of population and how
14 spread out lands are, that do need to be some other
15 considerations.

16 So, one of the things is that if an exempt
17 utility sells energy to a neighbouring First Nation,
18 because it needs to do that in order for it to be cost
19 effective, then how should the sale of that energy be
20 regulated on the other First Nation's lands. So we've
21 proposed the exemption in this case for Nation A,
22 which owns and operates a utility on its territory,
23 and that's fine. But now it's selling energy to
24 another Nation somewhere else. So, now what does the
25 regulatory regime look like in that exemption road?

26 And then now we are going to circle back to

1 the retail access exemption, and if in order to sell
2 energy to another First Nation it needs to access the
3 BC Hydro transmission system, well it can't. So,
4 should there be changes made to the retail access
5 prohibition to enable that utility to garner enough
6 customers to make it cost effective? And to have a
7 customer base that would basically make it to operate.
8 And then should we therefore recommend the changes be
9 made to the prohibition?

10 As a result of the proposed
11 recommendations, an exempt Indigenous owned utility
12 could sell energy to a municipality, because as we've
13 talked about, the municipality is also exempt. Again,
14 that sale of energy wouldn't require any regulatory
15 approval at all in this scenario. But again you need
16 to get it from the source. You may need to use the
17 transmission system to get it from the source to the
18 customer. So, again, that would be included in the
19 prohibition.

20 Should an exempt Indigenous owned utility
21 be free to sell its energy to members of its nation or
22 band no matter where they live in the province? What
23 if they live in downtown Vancouver, downtown Nanaimo?
24 Should they be able to relay energy over the BC Hydro
25 transmission system to get it to that customer and
26 take that customer away from BC Hydro's customer base

1 and sell the energy to them?

2 We talked about utilities with, you know,
3 with distribution systems and selling it to
4 individuals, but as I also mentioned, a utility is
5 also selling energy at bulk. And when we sell energy
6 at bulk to BC Hydro, or any other party other than an
7 exempt party, even if the seller is exempt from
8 regulation, if they're selling it to BC Hydro, that
9 transaction is not exempt from *Utilities Commission*
10 *Act* approval. Now, there have been historically some
11 specific transactions that have been exempt from the
12 *Utilities Commission Act* by government, but generally
13 speaking any energy purchase agreement that Hydro
14 enters into is subject to BCUC approval.

15 So, in this world of exemptions that we're
16 talking about, if the Indigenous owned utility is
17 exempt and wants to sell energy through BC Hydro, that
18 purchase contract would not be exempt and would come
19 to the BCUC for approval. And the test for approval
20 that we would apply would be a public interest test.
21 And two big parts of the public interest test that we
22 would apply is does BC Hydro need the energy and
23 what's the cost of the energy? Is it at a cost that's
24 greater than the per annum cost of energy at the time,
25 thereby would drive rates up and it would harm,
26 economically harm existing ratepayers. So those would

1 be the tests that would apply.

2 So what we're asking you to consider is
3 whether in this world of an exempt Indigenous owned
4 utility that public interest test should be altered,
5 or varied, or should it be different, or should the
6 same public interest issues -- should the BCUC
7 consider the same public interest issues?

8 We've talked about a First Nation or a Band
9 Council that had the ability to opt out of BCUC
10 regulation, but in the event that it chooses not to
11 opt out of BCUC regulation it would still remain
12 subject to our regulation. What, if anything, can and
13 should the BCUC do in its regulation of that
14 Indigenous Utility? Should it regulate it in the same
15 way that we regulate other utilities or should there
16 be some specific consideration made in that scenario?

17 Any questions on the questions? You will
18 have a chance to ask your moderator when we get -- but
19 if you have a question now?

20 So what I'll do then, I'll just go over the
21 next steps after we're finished here today. We've got
22 a few more of these sessions, these workshop sessions,
23 I think four more coming up. Tomorrow in Victoria,
24 next week -- or the week after next in Smithers, and
25 then in the new year Kamloops and Fort St. John.

26 We will be sending an interim report, as I

1 said, on Tuesday, December 31st, which we will post on
2 our website before we send it. It will not contain
3 any recommendations at all, draft or otherwise. It
4 will -- other than repeating the draft recommendations
5 that are in this report. There will be a summary of
6 the work that's been done to date, just a high-level
7 summary of attendance at workshops and so on.

8 And then, that will then give all parties
9 until March the 2nd to consider what you've heard at
10 these workshops and any other matters, you'll get the
11 opportunity to consult with others about this. And
12 then we're asking you for a written comment, on the
13 2nd.

14 Your comments at the end of your workshop
15 session today will be transcribed, and will be
16 considered by the panel. But if you have a change of
17 mind, or you have something to add to those comments,
18 March the 2nd would be the time to do that.

19 But that is not your last opportunity to
20 make a comment, and what we are then doing is we're
21 giving you the next three or four weeks to read what
22 other people's comments are. Because everyone
23 hopefully will have commented on March the 2nd. And
24 then on March the 31st you have an opportunity to reply
25 to any of the other comments that others have made.

26 And then the panel will go away on that --

1 well, we won't go away physically, but we will then
2 spend the next few weeks writing the final report.
3 And I realize four weeks might seem like a long time,
4 but believe me, it's really not. There will be a lot
5 of material for the panel to go over, there is a lot
6 of detail that we will have to consider for the final
7 report. And that will go to government on the 30th of
8 April.

9 I think that's the last slide.

10 MR. GEORGE: Any questions for Dave? Are we good?
11 Good job Dave, thank you.

12 Let's have a break now until 11:18, and
13 then we're going to reconvene and do small group
14 breakout that was referenced by Dave and by me in my
15 earlier comments. Please make note that there are
16 refreshments, coffee behind the screen here. Help
17 yourself please.

18 **(PROCEEDINGS ADJOURNED AT 11:03 A.M.)**

19 **(PROCEEDINGS RESUMED AT 11:21 A.M.)**

20 MR. GEORGE: So, we're going to start. The small group
21 breakout, a good opportunity here for some comments to
22 be made.

23 Jamie Sanchez, say your name and I'll hand
24 it over.

25 **PRESENTATION BY MR. SANCHEZ:**

26 MR. SANCHEZ: Good morning everyone. My name is Jamie

1 Sanchez, S-A-N-C-H-E-Z. I'm the special advisory to
2 the Regional Chief for the B.C. Assembly of First
3 Nations. And I can't stay for the whole workshop
4 today, but I'm making, I guess, a couple draft
5 recommendations to the board. I don't have formal
6 approval from either the Regional Chief of BCAFN, in
7 the work we're doing.

8 We have made a submission as BCAFN and the
9 leadership council, and that include Canadian B.C.
10 Indian Chiefs, the First Nations' Summit, the BCAFN.
11 So that we're a political organization that represent
12 all First Nations in the province. We have a keen
13 interest in what's going on here with the inquiry.
14 We've been a submission -- we wrote a submission
15 already. We'll be reviewing the draft report and
16 making further submissions.

17 We understand the panel and BCUC
18 Commission, your mandate is -- you're operating in a
19 box talking about a box. And what we're submitting is
20 broader than that as well, in terms of when it relates
21 to Indigenous rights and title and jurisdiction in
22 B.C.

23 So there is keep interest from the First
24 Nations' leadership to see changes in how this works,
25 especially now with the passage of Bill 41 related to
26 implementing the declaration. And the acknowledgement

1 of jurisdiction and opportunities that are available
2 to the First Nations.

3 So, I guess as part of the process
4 recommendations to the panel, from your timelines
5 you've got, April I believe, be done here. There is a
6 series of political meetings that the Chiefs are
7 preparing for in March at the Summit Union of the
8 BCAFN. BCAFN will be posting it on our AGA here in
9 Nanaimo actually, and I forgot to acknowledge the
10 Snuneymuxw territory here today. We'll be having our
11 AGA here, March 5th, 6th and 7th. So I recommend to the
12 panel that you also present to the Union at the Summit
13 meetings as well in February at their meetings. So
14 you can get a good cross-section of giving an update
15 to the Chiefs regarding this work.

16 And in terms of process, we operate from
17 mandates from the Chiefs be a resolution at these
18 meetings. So, come February, March we should see a
19 review and a sort of series of mandates related to the
20 progress of the discussions and the inquiry there.

21 So this was difficult for me to really kind
22 of do anything substantive related to those -- to the
23 questions there, all the questions that are being put
24 forward here today. I mean, if there's other
25 representatives from First Nations they can make their
26 own representations, as they should. But we're not

1 here to speak on behalf of anyone in particular, but
2 again it depends on the mandates that we get from our
3 Chiefs in B.C.

4 But just to reiterate, I mean, there is an
5 interest in this. You know, we understand you're
6 talking about changing the box in a box, so we're
7 talking about something a little different than -- and
8 that's all I've got. Thank you.

9 THE CHAIRPERSON: Thank you Mr. Sanchez. So, we would
10 be happy to come and talk in February, certainly. So
11 are you suggesting a change to the timeline, is that
12 -- am I hearing that?

13 MR. SANCHEZ: No. Just -- no.

14 THE CHAIRPERSON: No. Which is fine if you're --

15 MR. SANCHEZ: Just that there are those opportunities
16 to try and update at the meetings. I believe you did
17 in September.

18 THE CHAIRPERSON: We did, yes.

19 MR. SANCHEZ: So likewise, an opportunity in March, at
20 least for BCAFN. So we'll make sure there's space on
21 the agenda for that. But you have to connect with the
22 Summit and the Union about their meetings.

23 THE CHAIRPERSON: Okay, thank you. Thank you very
24 much.

25 COMMISSIONER FUNG: Mr. Sanchez, do you know where
26 those meetings are in February and March or have they

1 been scheduled yet or not?

2 MR. SANCHEZ: Both the Summit and the Union will be
3 Musqueam, at the cultural centre there for their AGM.
4 And the BCAFN AGA will be here at Nanaimo the 5th, 6th
5 and 7th. I think it will be here at the convention
6 centre in Nanaimo.

7 COMMISSIONER FUNG: Okay, thank you.

8 MR. GEORGE: Okay. Thank you.

9 **(PROCEEDINGS ADJOURNED AT 11:27 A.M.)**

10 **(PROCEEDINGS RESUMED AT 1:13 P.M.)**

11 MR. GEORGE: I want a round of applause for the hands
12 that prepared and served our food.

13 So, as part of our agenda, we've just gone
14 through the small group breakout session. Nigel has
15 volunteered himself to present a high-level
16 information that was generated during the table talk.
17 And Nigel and other members of the team will make
18 themselves available to any questions that the panel
19 may have with regards to the materials presented. Are
20 we ready to roll, everybody?

21 Nigel, please say your name, first, last
22 name, and spell your last name for the record please.

23 **REPORT PRESENTATION BY MR. MOORE:**

24 Sure, so my name is Nigel Moore, M-O-O-R-E.
25 So I will just go through what we've got here on the
26 board. Am I presenting to you folks here? Is that

1 what's going on?

2 THE CHAIRPERSON: And broadcast on the internet, and
3 transcribed. So no pressure.

4 MR. MOORE: And Facebook Live. Great.

5 So I'm just going to go through a bit of
6 our discussion here, one at a time. I am going to be
7 addressing the proposed recommendations in order,
8 Starting with number 1, regulation of monopolies. The
9 one comment that came out of our discussion on that
10 one was that it might be beneficial to have more
11 clarity on what protection means, the word
12 "protection." And so we had a full discussion about
13 it, to clarify that this is irrespective of who was
14 providing protection, but just that it might be useful
15 to break that down and so the people know what we're
16 talking about there.

17 On number 2, and please jump in at any
18 moment, other folks, if I am getting anything wrong or
19 misrepresented. Regulation of the mandatory
20 reliability standards. There was a discussion, and
21 this came up a few times around what the mandatory
22 reliability standards applied to, and specifically the
23 distinction between transmission and distribution.
24 And that that's really important. The MRS applied to
25 transmission which is like high voltage, long range.
26 Whereas what might be more pertinent or sort of a more

1 greater interest in the context of this discussion is
2 distribution level. And there is not a lot of
3 addressing of distribution level issues in here.
4 Obviously the MRS doesn't apply to it, and that's why,
5 but this is just something that is sort of a gap maybe
6 in what is being addressed here.

7 And we had a little clarification about
8 whether the MRS are minimum standards, and yes, and
9 they require utility to -- they have to be met or
10 exceeded. And we also clarified that the minimum
11 reliability standards are also evolving and changing
12 as a result of external processes, mostly in the U.S.,
13 and so this is just something to be aware of.

14 On number 3, reserve lands, I'll start with
15 number 3 here. Again, this is sort of a general
16 comment that came out a few times in our discussion
17 around the reserve lands as a perhaps not appropriate
18 or a too small of a definition, and that territorial
19 descriptions might be more relevant to Nations, and
20 should be considered directly in the text.

21 And another sort of broader point that
22 relates to this one is around the economic opportunity
23 in operating an Indigenous Utility would be much
24 smaller if the operation of the utility was only on
25 reserve lands as opposed to territorial lands, for
26 example. But we also are noting here that what you're

1 discussing is regulation. That doesn't necessarily
2 mean that the operation would be restricted to reserve
3 lands, but again that's another thing that maybe just
4 should be clear when people are looking at the
5 recommendations.

6 We also had a little bit of a discussion --
7 maybe somebody can jump in and clarify, you know,
8 exactly why this is relevant -- about BCUC regulating
9 BC Hydro wherever BC Hydro operates and this included
10 on reserve lands and this is -- just was something
11 that was noted. And I don't know if anyone wants to
12 jump in on that? No? Okay.

13 THE CHAIRPERSON: So you -- I'm sorry, you're saying --
14 you're just commenting that BC Hydro is regulated by
15 us on reserve land, is that what you're saying?

16 MR. MOORE: Yes. It was part discussion under this
17 section and so I just wanted to mention it and see if
18 there was anyone who wanted to clarify, because I'm
19 not entirely clear on it.

20 THE CHAIRPERSON: Well, to clarify from the panel's
21 perspective, we've made -- that is the case and we've
22 made no draft recommendations otherwise.

23 MR. MOORE: Okay. On dispute resolution, number 4, we
24 had a -- somebody put forward an idea that an option
25 perhaps should exist for an entity that's not
26 necessarily the Indigenous Utility, but, for example,

1 a panel, like an Indigenous Utilities Commission that
2 could handle dispute resolution.

3 So it doesn't have to be an either/or of an
4 Indigenous Utility or BCUC, perhaps there's other
5 entity that has Indigenous oversight that might be
6 able to perform that function. And that might -- this
7 is something that, again, will come up again, but that
8 might be something that has to sort of evolve over
9 time and not necessarily be set up right away, but it
10 could be something just to sort of work towards, let's
11 say.

12 Sorry, I'm just reading through our notes
13 here thing to make sure that I represent all the --

14 Yeah, so, again, this a part of that sort
15 of broader point about creating space within the
16 recommendations for the further development of
17 capacity of Indigenous organizations to play a role in
18 regulation. And so that might be something that sort
19 of evolves over time and the recommendations to create
20 that space for an oversight body, Indigenous oversight
21 bodies that might be outside of BCUC, but would
22 perform some of these functions that you're sort of
23 trying to decide, you know, should we perform these or
24 should we not. Maybe there's a capacity building role
25 to create other institutions.

26 We did not have any particular comments

1 that I can see in our notes here on safety and
2 reliability. And there weren't much in the way of
3 comments specifically on Nisga'a, Sechelt, Westbank,
4 or historic treaties. However, I know one of the
5 individuals had said that they were going to submit a
6 written comment about this.

7 There was a specific comment in the text
8 around the recommendation around Nisga'a, that -- or
9 sorry, on other modern Treaty lands, number 9, that
10 rather than say "in the same manner as proposed for
11 the Nisga'a Nation", instead to say replace that with
12 "Modern Treaty nations". That's a specific change to
13 the text.

14 Definition of an Indigenous Utility. So
15 some key points that I think came out of the
16 discussion here was that there was an idea that a
17 panel, an Indigenous -- a panel of Indigenous people
18 or with Indigenous expertise could play a role in
19 defining what is an Indigenous Utility. I think that,
20 to editorialize a little bit on our discussion as
21 well, perhaps that this is something that might evolve
22 over time and setting and making a firm decision on
23 this is what it is, this is what it isn't, that it's
24 inflexible might not make a lot of sense.

25 We had a bit of discussion around how
26 appropriate this idea of control or ownership is. And

1 certainly that's one way and part of looking what
2 might constitute an Indigenous Utility. But at the
3 same time there are other things to consider. For
4 example, how the operations of this utility might
5 benefit Indigenous communities in other ways, right?
6 So their hiring practices, the number of people who
7 are employed, all these other sort of things that
8 might not necessarily fall under control or ownership
9 might also be worth considering when trying to decide
10 what is an Indigenous Utility or what doesn't qualify
11 as that.

12 And there may also be an idea that it might
13 be too restrictive to say that, for example, an
14 Indigenous Utility has to be majority Indigenous owned
15 but there could be, for example, one that starts off
16 minority and has a plan to become majority of it over
17 time. And that idea of sort of having a -- I guess,
18 of capacity building plan could be another thing to
19 consider with regards to whether something can be an
20 Indigenous Utility. So the plan for its future
21 development might also worth considering.

22 There was a specific point on bullet "E"
23 about specifically incorporating the language that
24 refers to majority owned. So I think right now it
25 just says "owned", it should be "majority owned", so
26 that's the comment.

1 And I think that, yeah, this final sort of
2 broader point about the benefit that is -- the
3 economic benefits specifically that's generated by the
4 Indigenous Utility going back to a broader Indigenous
5 communities being an important point. So it might be
6 relatively straightforward to set up an Indigenous
7 Utility that meets requirements of ownership, it
8 doesn't necessarily mean that the overall economic
9 benefits in terms of cash flow and other economic
10 development outcomes flow to the communities
11 themselves. And then there maybe to be some sort of
12 consideration of this as well that goes a little bit
13 beyond ownership.

14 On the retail access prohibition, I think
15 maybe it's fair to say that there was a general sort
16 of skepticism of the importance of the prohibition or
17 that the prohibition itself might considerably limit
18 what an Indigenous Utility is able to do, and its
19 potential for economic viability. And once again,
20 some confusion around transmission versus
21 distribution, and again this idea that that needs to
22 be sort of clarified. And then if the distribution
23 level that's maybe the most relevant to this
24 discussion. But a lot of the recommendations and what
25 BCUC is concerned about in this context relates to
26 transmission, longer distance and high-voltage

1 transmission.

2 And we also had a discussion about that
3 this idea of the retail access prohibition might limit
4 future renewables or other power procurement which
5 might be needed given electrification transition and
6 this sort of thing. And that that's something that
7 maybe ought to be considered or thinking about,
8 whether the retail access prohibition should be
9 applied.

10 Anything else on that front or anything
11 else that I have missed? I don't think we've got
12 anything else.

13 Oh, we had a brief discussion about
14 electricity purchase or energy purchase agreements and
15 about the public interest. And so "public interest",
16 it's like a sort of 'weasel' term, it could mean a lot
17 of different things. And so we had a discussion about
18 the importance of maybe defining that and defining
19 where the boundaries are. It's not just sort of
20 ratepayer -- who are the ratepayers we're talking
21 about and what are, you know, what are some of the
22 benefits that might result from the operation of
23 Indigenous Utilities beyond just ratepayer related
24 stuff.

25 So perhaps this public interest definition
26 needs to be expanded beyond its treatment in the

1 recommendations, which seems to just talk about
2 ratepayers. Yeah, and economic benefits to First
3 Nations being, you know, a key part of that that maybe
4 needs to be considered.

5 And that was our discussion. That's the
6 bit of it. Is there anything else from other folks
7 that I missed or misrepresented or ought to be
8 included?

9 MR. GEORGE: Great job, and actually now you've got to
10 answer all the questions from the Commission.

11 MR. MOORE: Really? I didn't sign up for that.

12 THE CHAIRPERSON: Thank you, that was very, very
13 helpful. Thank you.

14 COMMISSIONER FUNG: No, thank you very much.

15 THE CHAIRPERSON: Okay.

16 COMMISSIONER BREWER: Yeah, I do have a question and it
17 relates to -- in fact to the economic benefit. So I
18 guess one of the things, the principles that we
19 adopted, was the protection of the ratepayer as being
20 kind of one of our foundational principles because of
21 the operation of monopolies and the concept of a
22 monopoly.

23 Now, I guess what I'm wondering is if we
24 are defining that differently for Indigenous
25 Utilities, how -- I mean I suppose you could -- we
26 could incorporate the economic benefit element, which

1 I think we've tried to do as well in our principles
2 and in particularly in the reconciliation idea, but
3 I'm wondering if you might be able to elaborate just a
4 bit on that?

5 And the other question that I have, I had
6 two questions and they're not -- and I'm asking
7 everybody that sort of participated in the group if
8 they could sort of -- the other one related to you
9 made a -- you said there was a distinction in relation
10 to the MNR, the mandatory reliability.

11 VOICE: I understand it's MRS.

12 COMMISSIONER BREWER: Yeah, MRS, sorry. I don't know
13 why I said MNR, but anyway. Typing.

14 So, but I'm wondering if you would mind
15 saying a bit more about the distribution -- that you
16 said there needs to be a distinction between
17 distribution and transmission on this particular
18 point. And I wasn't entirely sure whether that
19 related to electricity, security and customer care or
20 what the -- how that was sort of tied in? Because
21 right now MNR is pretty narrow, so -- or M -- sorry.

22 THE CHAIRPERSON: MRS.

23 COMMISSIONER BREWER: MRS. I've got to -- yeah.

24 MR. GEORGE: Anybody from the group? And just once
25 again, your name, first and last name, spell your last
26 name for the record.

1 MR. MILLS: David Mills, M-I-L-L-S. I'll take the
2 question on expanding the definition of public
3 interest as it relates to Indigenous Utilities. I
4 think this public interest definition, it's twofold.
5 It is does BC Hydro need the power and will the
6 consumer in British Columbia be protected from rate
7 fluctuations that are unfair?

8 In the original foundation of BC Hydro,
9 public interest discussions were quite different. The
10 circumstances around the creation of the utility were
11 fairly extreme. There was a series of private
12 operators in the province, which were amalgamated, a
13 public utility was formed, and there were consequences
14 going forward for people who lived particularly in
15 areas where reservoirs displaced, you know, their
16 homes and livelihoods.

17 So if we're thinking about creation of
18 Indigenous Utilities now, it seems to me that the
19 opportunity to expand the definition of interests
20 would include some of the say benefits that were
21 afforded to British Columbia society in general back
22 in the '60s when this utility was formed.

23 So, we've come to accept that BC Hydro has
24 monopoly, but that has not always been the case. And
25 so in thinking about public interest, I just encourage
26 the Commission to reach back in time and take a

1 broader view of how power impacts society. And in the
2 formation of an Indigenous Utility, those two
3 definitions of supply for Hydro, do they need it? And
4 the average price for a customer in B.C. simply aren't
5 enough.

6 I'll hand it over to one of you two fella's
7 to discuss MRS.

8 MR. OKADA: All right, so Yuho Okada, O-K-A-D-A. So my
9 comment around that was -- first of all the
10 clarification of what MRS was for, and I understood
11 that it specifically applies to transmission line
12 infrastructure. And the folks that we work with at
13 Barclay are mainly on the distribution infrastructure
14 grid, particularly folks at the end of the line
15 communities and associated issues with power quality
16 and reliability. And so this idea of Indigenous
17 Utilities gives those communities a chance to
18 practically, I guess improve the reliability and the
19 quality of those utilities that affects them directly.

20 And so my concern was, okay, if there is
21 restrictions or standards being applied to those
22 smaller scale utilities, then they may be overburdened
23 from a regulatory perspective. But then I understood
24 that this was more for a transmission line
25 perspective. And we are talking about the North
26 American grid here, which is essentially immaterial to

1 a lot of the communities that I work for.

2 So that was a comment that I made, that I
3 think some of those members of the communities may
4 read this, and say -- and the other one was retail
5 access prohibition, which I understand as more also
6 about transmission line infrastructure restriction.
7 Am I correct?

8 THE CHAIRPERSON: That's correct, the retail access
9 prohibition is only on transmission. It's not on
10 distribution. So presumably one can wheel energy
11 across the distribution system without running into
12 the retail access prohibition.

13 MR. OKADA: Right, and so that may create some
14 confusion to those folks that are looking at smaller
15 community solutions, smaller economic opportunities,
16 and not to say that there are -- obviously Nations
17 that are looking at much bigger opportunities, right?
18 And those are for sure need to consider these factors.
19 Does that answer your question?

20 THE CHAIRPERSON: Thank you.

21 MS. LOCKHART: That's great, thank you.

22 MR. GEORGE: State your last name for the record
23 please?

24 MR. OKADA: It is Yuho Okada, O-K-A-D-A.

25 MS. LOCKHART: Thank you very much, Mr. Moore, for your
26 comments, and thank you to your table for putting your

1 heads together. It sounds like you came up with a lot
2 of really good suggestions.

3 Mr. Moore, I've made a note of three things
4 I'd like to follow up with you. The first one is in
5 regards to your observation that the restriction to
6 reserve lands may perhaps be too small, and suggestion
7 instead to consider territorial boundaries, or
8 territorial descriptions I think you referred to.
9 Could you expand on that, please, as to how -- from a
10 practical standpoint how territorial descriptions
11 might be implemented?

12 MR. MILLS: David Mills, M-I-L-L-S. I don't know if
13 there's an answer for a practical definition of a
14 territorial boundary. That's up to First Nations and
15 the Crown to define, I believe. But I think our
16 comments were related to the impracticality of the
17 reserve as a boundary.

18 COMMISSIONER LOCKHART: Okay. Okay, thank you. I
19 appreciate that.

20 The second aspect was in regards to the
21 definition of a utility. And I think I took your
22 suggestion that the confining criteria to ownership,
23 degree of ownership or degree of operation, may
24 perhaps also be too narrow and that perhaps instead
25 one could also consider benefits to the community.

26 So taking that a step further, does that

1 mean that if -- is it possible that a utility may
2 still be considered an Indigenous Utility even if it
3 has no or minimal Indigenous ownership or operation,
4 but significant benefit to -- economic benefit or
5 other benefit to an Indigenous community?

6 MR. MILLS: I think that was a point that we were
7 suggesting be added as a criteria that, yes,
8 potentially that could be a case.

9 COMMISSIONER LOCKHART: Okay, thank you. Just as a
10 side note, it's gratifying to come to these workshops
11 because this -- you know, our report is the product of
12 our thoughts and deliberations, and it's interesting,
13 it's always helpful to have additional input, so we
14 appreciate that.

15 And then the last item that I made a note
16 of, Mr. Moore, was more for my clarification. And
17 I've written down here in terms of something you said
18 about renewables and electrification, and I think that
19 was to do not with retail access, but I just have a
20 big question mark beside it and was hoping that you
21 could expand on it?

22 (inaudible/off mic)

23 COMMISSIONER LOCKHART: Yeah, thank you.

24 MR. MOORE: So that was about -- sorry, this is Nigel
25 Moore, M-O-O-R-E. That comment was just to say that
26 one consideration of applying the prohibition, retail

1 access prohibition might be that there's going to be a
2 future need for more power in the province and that
3 the prohibition applied in this context might limit
4 the amount of or the size of projects that an
5 Indigenous Utility would undertake, right? Because
6 they're not able to transport that -- transmit that
7 power using a transmission line, they decide to do a
8 smaller project that is just on a distribution grid,
9 and ultimately the province would have benefited in
10 the future if a larger project was done because the
11 province will need more power in the future as a
12 result of things like electrification of transport.

13 COMMISSIONER LOCKHART: I understand, okay. Thank you,
14 that was really helpful.

15 MR. GEORGE: Any other comments from the Panel?

16 THE CHAIRPERSON: Well, Dan, I did have some questions,
17 but my colleagues have asked all my questions, so
18 thank you.

19 MR. MOORE: Thank you.

20 MR. GEORGE: Okay. Great job. Now I just want to
21 throw it open to any comments that anybody would like
22 to make to the Panel while the Panel is here. Now is
23 your opportunity if there's anything that you want to
24 share, observations you want to make.

25 MR. OKADA: So, again, it's Yuko Okada, O-K-A-D-A. So
26 first of all I'd like to thank you for meeting us here

1 today and I learned a lot about what the inquiry is
2 all about. We work for a lot of First Nations
3 communities across B.C. I'm not here to represent
4 them or speak on behalf of the communities, certainly,
5 but the information I gathered today I will take back
6 and try to communicate what this means to them.

7 One of the things that it did notice is
8 sort of perhaps a gap between what is being discussed
9 here, sort of more of a larger scale opportunities
10 versus the pragmatic issues that communities that I
11 work for face on a daily basis. And so, the issue I
12 spoke about in terms of the quality of power at the
13 end of the line communities, cost of living that are
14 being externalized to them. You know, for example,
15 have to replace appliances every three years or five
16 years or what have you. Those are things that are not
17 taken into account when a large scale regulatory body
18 such as yours are discussing a provincial wide
19 regulation regime.

20 And so, I just wanted to make a comment
21 about when you do make decisions and recommendations,
22 I hope that you do remember that these pragmatic
23 issues that are occurring. And that the
24 recommendations and decisions allow flexibility in
25 creating local solutions for local problems.

26 Right now I think BC Hydro systems,

1 perhaps, are too rigid to address some of those
2 issues. And technologically speaking, those are
3 readily available, implementable solutions out there
4 but they cannot be done for those reasons.

5 So, in those recommendations, at some point
6 I hope there is a space for and opportunities for
7 smaller Nations and communities and smaller economic
8 development opportunities that could be fostered.

9 That's all for my comment, thank you.

10 THE CHAIRPERSON: Thank you very much.

11 MR. LOCKHART: Doug Lockhart, L-O-C-K-H-A-R-T. I have
12 to echo the last speakers. There's a number of
13 different opportunities that can be presented with
14 respect to renewable energy and the production of
15 renewable energy and then focused into First Nations
16 communities especially. We have a unique opportunity
17 in B.C. with wind, solar, tidal. Other things that
18 haven't been explored is gasification, osmotic power.
19 Osmotic power is a tremendous green energy source that
20 can be utilized in just about every First Nations
21 community, fed back into the grid, supplied. There is
22 offshoot energy sources such as the geo-exchange.

23 But there's so many guards. You know, when
24 you look at it from a private point of view where we
25 have to spend so much time making sure that we're
26 delivering the product that the First Nation

1 communities need, what we end up finding is that we're
2 buried in time and about the politest thing I can say
3 is BC Hydro doesn't like anybody playing in their
4 sandbox. So consequently it's really really
5 difficult. If it's allowed to be done on the smaller
6 scale as already mentioned, it ends up as a grander
7 benefit to the rest of the province. And should it
8 start taking off, the greening of the province would
9 be tremendous.

10 And the really interesting part of that is
11 that it would be fostered and developed by, and
12 initiated by probably, five First Nations communities.
13 So I'm tireless on this, but I'm getting old, so it
14 would be nice if it was sped up a little bit for the
15 benefit of all of the province.

16 THE CHAIRPERSON: Thank you, Mr. Lockhart.

17 MR. GEORGE: Any other comments? Great, thank you for
18 those insightful comments. Thank you Nigel, again.

19 David, some closing comments from the
20 panel?

21 THE CHAIRPERSON: I'd like to thank you all for your
22 thoughtful comments and I would echo what Blair said,
23 it's always eye opening to get someone else's views
24 after -- you know, the four of us did spend quite a
25 bit of time and energy putting together the report,
26 but as the gentleman that has now left to use the word

1 "thinking in a box" and that certainly can happen. So
2 it's always helpful to get your views and the views of
3 others.

4 So I really appreciate your attendance
5 today and I appreciate you sharing your thoughts with
6 us. And I wish you all a safe journey home and a good
7 evening. Thank you.

8 MR. GEORGE: Thank you very much. A round of applause.

9 Just a closing reminder that anyone who
10 wishes to provide written evidence can send it to BCUC
11 by March 2nd, 2020. The final report to the government
12 of B.C. with the BCUC's final recommendations is due
13 April 30th, 2020. More information on the inquiry and
14 how to stay involved can be found at BCUC.com, as well
15 as page 4 of the draft report summary that has been
16 handed to you.

17 Thank you very much for taking time out of
18 your busy schedules. We'll see you down the road.

19 (*Indigenous language spoken*)

20 THE CHAIRPERSON: Thank you.

21 **(PROCEEDINGS ADJOURNED AT 1:49 P.M.)**

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



A.B. Lanigan, Court Reporter

November 28th, 2019