

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

**SMITHERS, B.C.**  
**December 9, 2019**

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**Community Input Workshop**

---

**BEFORE:**

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

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## **SMITHERS, B.C.**

December 9<sup>th</sup>, 2019

3 (PROCEEDINGS RESUMED AT 10:00 A.M.)

4 MR. GEORGE: Good morning friends, and welcome to the  
5 Indigenous Regulation Inquiry Draft Report Workshop.  
6 I want to begin by acknowledging Wet'suwet'en  
7 traditional territory that we are gathered on here  
8 today, and we are very fortunate today to have Chief  
9 Timberwolf Mabel Forsythe to welcome us to Gitdumden  
10 territory. Chief?

## 11 (TRADITIONAL GREETING)

12 MR. GEORGE: Thank you very much, Chief.

13                   We are big on safety, so please make note  
14                   of the fire exits in case we need to leave the room  
15                   here in a hurry. There is also restrooms as I noted  
16                   earlier outside the main doors, step outside the main  
17                   doors, men go right up the stairs, women go left down  
18                   the hallway. And just please be careful moving about  
19                   the room as well.

20                   We are here in Smithers, this is our fifth  
21 session in this round. We've been in Kelowna,  
22 Vancouver, Nanaimo, Victoria, now we're in Smithers,  
23 and the second week in January we will be in Kamloops  
24 and Fort St. John. So once again thank you for being  
25 here and thank you, Chief, for welcoming us so warmly  
26 to Gitdumden territory.

1                   I want to begin by introducing the B.C.  
2                   Utilities Commission Panel. Our Chair, David Morton,  
3                   Carolann Brewer, our Commissioner. Anna Fung, our  
4                   Commissioner, and Blair Lockhart, Commissioner, and if  
5                   we could all please briefly introduce yourselves in  
6                   turn? Dave?

7                   THE CHAIRPERSON:     Thanks, Dan. As Dan said, I am Dave  
8                   Morton, I am the Chair and CEO of the Utilities  
9                   Commission. I am also the Chair of this panel. And  
10                  as Dan's said, we've spent the last couple of weeks  
11                  visiting four locations around the province. And I am  
12                  going to give a little talk in a few minutes, and as  
13                  you'll learn, this is our second tour of the province.  
14                  We did a tour earlier on in this proceeding.

15                  I am a professional engineer, and I have  
16                  been a Commissioner since 2010, and I've been the  
17                  Chair for the last four years. And I have to say this  
18                  is one of the more interesting inquiries or  
19                  proceedings that I've been involved in.

20                  My hope is that the recommendations that  
21                  come out of this will be helpful to everyone in the  
22                  province, and certainly helpful to Indigenous  
23                  Utilities, which is the focus of the Commission, and I  
24                  am hopeful that we can get to those recommendations  
25                  jointly with everyone's input and in as consultative a  
26                  process as possible.

1                   So I thank you all for coming out today,  
2 and I appreciate your attendance. And hopefully it  
3 will be an instructive day for all of us, thank you.

4 COMMISSIONER FUNG: My name is Anna Fung, and I am a  
5 Commissioner, and the Deputy Chair of the B.C.  
6 Utilities Commission. I'd like to thank Chief  
7 Timberwolf Mabel Forsythe for her warm welcome this  
8 morning.

I have been very fortunate in this is my  
second time to beautiful Smithers. Last time was in  
the middle of summer, and I wanted to thank all of you  
for making the effort to come out on this cold but  
really quite beautiful day in Smithers, to share your  
thoughts with us about our draft recommendations in  
the report that we issued on November 1<sup>st</sup>.

16 So I am looking forward to hearing your  
17 feedback, and thank you once again in advance for  
18 sharing your day with us.

19 COMMISSIONER BREWER: Good morning, my name is Carolann  
20 Brewer, and I am happy to be here on the Wet'suwet'en  
21 Territory and thank Chief Timberwolf for the welcome  
22 to the territory.

I am Smalqmix, from the Sylx Nation in  
lower B.C. and I am a member of the Lower Similkameen  
Indian Band and a member of this panel, a  
Commissioner, and I joined the Commission in January

1           of this year. So I'm very much looking forward to  
2           hearing from the participants with respect to the  
3           regulation of Indigenous Utilities. Thanks.

4       COMMISSIONER LOCKHART: Good morning, my name is Blair  
5           Lockhart. I'm also a Commissioner and member of this  
6           panel. I have been a Commissioner since January of  
7           this year and I am a lawyer by training. Looking  
8           forward to everybody's participation and I appreciate  
9           the opportunity to meet with you this -- this  
10          afternoon? This morning. Thank you.

11       MR. GEORGE: We also have a couple of staff in the room  
12           from the B.C. Utilities Commission. Please wave,  
13           stand up, wave your hand. If you need anything from  
14           our staff, they're right behind you there as well.

15           Paul Miller, the BCUC external legal  
16           counsel is here as well. Good morning, Paul. The  
17           Allwest team are here, Hal and his team, wave your  
18           hands there gentlemen. There's the ones that get us  
19           all organized and ready to face our day here, so thank  
20           you very much for all the work that you do for us.

21           My name is Dan George, I'm your  
22           independent, neutral facilitator for today's  
23           proceedings. My partner, Teresa Dolman, is here as  
24           well and she's just helping the Chief get back to her  
25           residence.

26           This morning we're going to hear from the

1           panel, Dave Morton, our chair, who will provide an  
2           overview of why we are here and make a presentation on  
3           the proposed recommendations made within the draft  
4           report. There will be ample time for questions and  
5           answers. Following Mr. Morton's presentation we will  
6           break into small group discussion where we will have  
7           the opportunity to discuss the draft report and its  
8           recommendations more deeply.

9           A short lunch will take place from 12:30 to  
10          1:00 p.m., after which time we'll reassemble into our  
11          small groups and ask that each group take 20 minutes  
12          to discuss who from your group can summarize a  
13          discussion from your table and report back to the  
14          panel. We're going to be a little bit fluid there,  
15          you know, in terms of our timing, but here's kind of  
16          an outline of what we have planned for you.

17          A representative from each table will then  
18          present their summary and comments on the draft report  
19          to the panel. This presentation will be on the record  
20          and transcribed. The breakout small-group discussions  
21          will not be on the record or transcribed.

22          Any individuals who wish to make additional  
23          comments to the panel will have the opportunity to do  
24          so after the small table breakout group presentations.  
25          We will conclude today's session with some brief  
26          remarks by 3:00 p.m. Again, very fluid there. We'll

1 end sooner if that is necessary.

2                         The primary objective of today's workshop  
3 is to assist the BCUC by providing your input into the  
4 draft report, which was recently released and which  
5 seeks to address what characteristics you believe  
6 define an Indigenous Energy Utility and if or how  
7 Indigenous Utilities should be regulated.

8                         On November 1<sup>st</sup>, 2019, the BCUC released its  
9 Indigenous Utilities Regulation Inquiry Draft Report,  
10 including its preliminary findings and recommendations  
11 for the B.C. Government. The report is available in  
12 the Inquiry's proceeding at the BCUC website and a  
13 summary has been provided to you today.

14                         In order to ensure that the draft report  
15 recommendations reflect the interests and perspectives  
16 of B.C.'s Indigenous peoples and communities, we  
17 invite you to provide your comments to the BCUC.

18                         I want to acknowledge the BCUC, we went out  
19 and had, I believe, nine sessions in round one which  
20 generated the draft recommendations and those  
21 recommendations are now being brought back to  
22 Indigenous communities to see if they can be improved  
23 in any way. The comment period on this report is open  
24 until March the 2<sup>nd</sup>, 2020.

25                         Today at this workshop we are hoping to  
26 hear your initial thoughts and comments. This is also

1           an opportunity to ask the BCUC questions about this  
2           work and seek any clarifications that you may require.

3           The BCUC has prepared a brief presentation  
4           providing an overview of the inquiry process to date  
5           and an overview of the draft report and the  
6           recommendations contained therein.

7           A little bit of rules of engagement. You  
8           are going to have an opportunity to inform the panel  
9           of your interest related to this inquiry. You are  
10          welcome to ask questions or make a presentation in  
11          your traditional language. However, we ask that you  
12          please provide translation for the presentation so  
13          that it can be transcribed and added to the public  
14          record.

15          All presentations to the panel, along with  
16          the names of the person making the submission will be  
17          transcribed, live audio streamed at bcuc.com and  
18          placed on the public record. The dialogue that takes  
19          place during the breakout groups once again will not  
20          be transcribed, live audio streamed, or placed on the  
21          public record. No part of these workshops will be  
22          videotaped.

23          Everyone is welcome to come and go during  
24          the session as your schedule permits, and you must  
25          conduct yourselves in a respectful manner. And when  
26          we talk about development on the territories, often

1 times it is highly emotional for many of us. So to  
2 help create a safe respect container for our dialogue  
3 to occur, I want to encourage us to be hard on issues,  
4 and soft on people.

5 We ask that you actively participate during  
6 the course of the day, offering your ideas and  
7 thoughts to the panel. When we have these kind of  
8 sessions we always generate great ideas. And when we  
9 do, let's please take them as far as we can. We ask  
10 that you listen generously to one another, and to have  
11 a solution orientation. So when you identify an  
12 improvement area, please be prepared to offer a  
13 solution as well, because we don't want to get stuck  
14 in a problem. And lastly, if you have a cell phone,  
15 please turn it to off or turn it to vibrate while  
16 we're in session, and we'll take natural breaks over  
17 the course of the day when you can check your  
18 messages.

19 Dave Morton has been drinking coffee since  
20 6 o'clock this morning, he is ready for this  
21 presentation. A warm welcome for David Morton.

22 **PRESENTATION BY CHAIRMAN MORTON:**

23 Thank you, Dan. I also notice that you  
24 didn't let people know that we wouldn't be operating  
25 the DJ station or asking anybody to come on to the  
26 dance floor.

1       MR. GEORGE:     We are going to be dancing.

2       THE CHAIRPERSON:     Thank you. I am going to hopefully  
3           be brief here, but what I would like to do is I'd like  
4           to talk a little bit about utilities, and what a  
5           utility is. And then I'll talk a little bit about the  
6           BCUC and how we regulate utilities or what the  
7           expectations are around our regulation. And then I'll  
8           talk a little bit about the inquiry process, what the  
9           questions we've been asked are, the process that we've  
10          gone through to date, and as Dan mentioned, the  
11          proposed recommendations that we've made. And I'll  
12          talk a little bit about what that means exactly.

13           So if we start with utilities, a utility is  
14          defined in the Act that we operate under, the  
15          *Utilities Commission Act*, and generally speaking it's  
16          defined as a company that delivers energy,  
17          electricity, natural gas, heating and cooling. So  
18          that means thermal systems, hot water steam systems,  
19          Anything that delivers energy other than petroleum  
20          products. Any company involved in anything other than  
21          petroleum products are basically regulated under the  
22          *Utilities Commission Act*.

23           And there is some examples there of an  
24          electric utility which has generation, transmission  
25          and distribution wires, and customers, and natural  
26          gas, which has a wellhead where they gather the

1           natural gas and then it comes down a pipeline and then  
2           it is distributed to customers in a distribution area.

3                 And we were developed to regulate the sale  
4           of electricity and natural gas and thermal utilities.

5                 Primarily, although the *Utilities Commission Act*  
6           doesn't say this explicitly, there is nothing in the  
7           *Utilities Commission Act* that suggests why there is a  
8           need for regulation, but British Columbia is not the  
9           only place that regulates utilities and regulates them  
10          in this manner. It's quite common throughout Canada,  
11          North America, and the entire world, regardless of the  
12          political stripe of the country, or the level of  
13          development of the country. The regulation of  
14          utilities is something that is generally practiced  
15          around the world. And the reason for that is because  
16          a traditional utility, and by traditional utility I  
17          mean something like a BC Hydro, for example, or Fortis  
18          Gas, they invest a tremendous amount of money in  
19          infrastructure. Transmission towers aren't cheap,  
20          neither are generation facilities. And there is  
21          generally billions of dollars invested into  
22          infrastructure.

23                 What that leads to then is a barrier to  
24          entry for other companies. So there's not a lot of  
25          competition in a traditional utility world. And  
26          because of a lack of competition, that means that

1           there's no pressure on a company that delivers that  
2           energy to keep prices low or to have service levels  
3           that it adheres to. So the whole idea and the whole  
4           reason for regulation is to ensure that prices are  
5           reasonable. And we use that term to mean there's  
6           enough profit in it for the utility to maintain its  
7           infrastructure and build new infrastructure as  
8           required, but not so high that the customers are not  
9           getting are not getting a fair deal. And also to  
10          ensure that sufficient money is spent on safety and  
11          that anybody that needs access to the energy has the  
12          right and the ability to get that access.

13           So those are the reasons that the Utilities  
14          Commissions exist and that's the reason that our  
15          Utility Commission exists.

16           We're an independent regulatory agency.  
17           We're an administrative tribunal. We operate in a  
18          somewhat similar fashion to a court. Utilities come  
19          to us with applications to do things like raise their  
20          rates, possible lower their rates possibly, change  
21          their rates, let's say. To build something – to build  
22          a new transmission line, to build a generation  
23          station, to build a pipeline and a whole host of other  
24          things. To issue shares or amalgamate with another  
25          company, to sell their company, to buy another  
26          company. There's a whole host of activities around

1                   the utility that are regulated by our commission.

2                   And when we get an application from a  
3                   utility to approve any of those kinds of activities,  
4                   then what we do is we have what's kind of like a mini-  
5                   court proceeding. We have a panel and we have parties  
6                   that join the proceeding and anybody who has an  
7                   interest in it at all has a right to have a say and  
8                   then we have a panel that looks at all of the evidence  
9                   that's come in during that process and makes a  
10                  determination about whether the company gets what it  
11                  asked for or not.

12                  We would also conduct inquiries. We do  
13                  them either on what we call under our own motion if we  
14                  feel that there's something that needs to be looked  
15                  into that's outside any particular application  
16                  process. Or, in this case, the case of this inquiry,  
17                  that government asks us to, and in this case  
18                  government did ask us to conduct an inquiry into what  
19                  is the appropriate regulatory regime for Indigenous  
20                  owned utilities. And I will talk a little bit more  
21                  about specifically what we were asked for.

22                  So this is a summary then of some of things  
23                  that I just went through about the regulation that's  
24                  covered under our Act. We don't make -- we can't make  
25                  anything up, we can only do what the Act tells us that  
26                  we have to do and we apply the tests that the Act

1        tells us to apply, which are things like ensuring that  
2        rates are fair to both utilities and the customers and  
3        to ensuring that utility spending is in the public  
4        interest. And so those are the kinds of thing that we  
5        consider.

6              If we decide that something doesn't need  
7        regulating, we can't stop regulating, we can't not  
8        regulate it. But we have in the past found that there  
9        are some utility activities that aren't monopolies and  
10       that's especially true of some newer kinds of  
11       utilities, especially in British Columbia. We've had  
12       a lot of examples of thermal utilities. Small-scale  
13       utilities that get heat from the ground from what they  
14       call a heat pump, a ground source heat pump, and then  
15       use that to heat water and then sell water to either  
16       one building or a couple of buildings or a small  
17       community. And in those cases we've found that  
18       monopolistic pressure were not the same as they are in  
19       a larger utility setting and in that circumstance  
20       we've found that it's not necessary for us to regulate  
21       those or regulate in the same way. So when we find  
22       that then we go to government and we say, "Look, these  
23       are not real monopolies, they don't need to regulated  
24       the same way, so we recommend that they be exempt from  
25       regulation in whole or in part."

26              Just a little background information before

1           we -- additional background information then before we  
2           move in to the talk about the inquiry. There's three  
3           things that I'd just like to point out. One is that  
4           the *Utilities Commission Act* provides an exemption for  
5           municipalities and regional districts in the province  
6           from our oversight.

7           Again, the *Utilities Act* is silent on why  
8           that exemption exists. However, we do note that in  
9           the case of a municipality or regional district there  
10          is accountability to the citizens of that municipality  
11          and regional district. And so long as they only  
12          provide service to their own citizens, then there are  
13          some -- there is that accountability and dispute  
14          resolution mechanisms that can provide similar  
15          benefits to the *Utilities Commission Act*.

16          Of the, I don't know, roughly 200  
17          municipalities in the province, there are six  
18          municipalities that current operate their own utility,  
19          most of which resell electricity that they purchase  
20          from BC Hydro; one of which generates its own  
21          electricity and that would be Nelson. And the others  
22          are Grand Forks, New Westminster, Penticton,  
23          Summerland and I've forgotten the last one, but it's a  
24          smaller community, it's -- none of the large cities  
25          operate their own utilities.

26          Secondly, I'd like to talk about what are

1                   called mandatory reliability standards. If you look  
2                   at the map on the right, the map of British Columbia,  
3                   you'll see the lines on that map and those lines are  
4                   the lines that are what are called high-voltage  
5                   transmission lines and we call that the bulk electric  
6                   system. And if you could see a little better, at the  
7                   bottom where there's lines that extend into the United  
8                   States, into Washington State, and then there's some  
9                   lines on the east that extend into Alberta. Those are  
10                  contact points with our neighbours. And what we do is  
11                  we buy and sell energy from our neighbours at various  
12                  times throughout the year.

13                  And that's considered to be a beneficial  
14                  feature of our bulk electric system, because that way  
15                  we have -- we and our neighbours can deal with things  
16                  when we have a peak and they don't, we can sell them  
17                  electricity. And when they have a peak and we don't  
18                  they can sell us electricity. And if we have an  
19                  outage, an unplanned outage, if we have a catastrophic  
20                  event in a generator, for example, there's some access  
21                  to backup electricity from our neighbours. So, you  
22                  find that there's a grid, that it stretches around  
23                  North America and all points in the grid are  
24                  interconnected this way.

25                  And because of the interconnection there's  
26                  -- it makes the whole grid vulnerable to something

1           that happens. Somewhere at one point on the grid can  
2           then affect other points. So, the case in point is  
3           that in 2003 a tree in Ohio fell on a wire and it  
4           knocked out electricity to the entire eastern  
5           seaboard, to Montreal, Toronto, New York, Boston,  
6           Philadelphia, and it was out for several days and it  
7           could only be described as a catastrophic event. And  
8           as a result of that, then America and Canada, and  
9           lately Mexico, got together and implement standards  
10          for anyone that's connected to this grid have to  
11          ensure that there's certain standards that are met  
12          before the interconnection point is allowed. And if  
13          not, then we would not be able to connect to our  
14          neighbours and we wouldn't get those reliability and  
15          economic benefits from those interconnections. We're  
16          going to talk a bit about that later because we make  
17          some recommendations around those reliability  
18          standards.

19           The other thing I'd like to point out, and  
20          it also affects that grid that we were just talking,  
21          is that if you want to move electricity around the  
22          province, let's say if you own a generation facility  
23          somewhere up here and you wanted to sell it to  
24          somebody down here, the only way you can get the  
25          electricity there is to move it around that grid,  
26          short of building your own line that would go there

1           directly. So it's important then for entities that do  
2           wish to buy and sell energy across large distances  
3           that they would have access to that grid. However,  
4           remember how we talked about earlier that companies  
5           have -- utilities have monopiles and they have certain  
6           areas where they operate? Well, a lot of that is  
7           considered BC Hydro territory and there's retail  
8           access prohibition on the grid. So that means that  
9           you can't sell -- and when I say "you" I mean any of  
10          us, no one, can use that grid to sell energy to some  
11          other point in the system. And we'll talk a little  
12          bit more about that later because there's some  
13          recommendations that we make around that that could  
14          have an effect on an Indigenous Utility.

15           So I'll move now into the inquiry, the  
16          questions that government asked of us, and they asked  
17          us to hold an inquiry and help them answer these  
18          questions.

19           So one of the key questions is, what are  
20          the defining characteristics of an Indigenous Utility.  
21          In other words, what does that mean? What does it  
22          mean to be an Indigenous Utility. And then how should  
23          those Indigenous Utilities be regulated? Should they  
24          be regulated under the *Utilities Commission Act* the  
25          way that other utilities in the province are or should  
26          there be some other mechanism to regulate those

1           utilities, or should they even be regulated at all?

2           And then the next question is, if it is  
3           appropriate to regulate them under the *Utilities*  
4           *Commission Act* should there be modifications made to  
5           the *Act* to accommodate any different way that they  
6           should be regulated.

7           And then if it's not appropriate to  
8           regulate them under the *Utilities Commission Act* but  
9           to regulate them in some manner, then what does that  
10          other manner look like? How should they be regulated?  
11          And then if they are not regulated, would the utility  
12          become subject to these *Utilities Commission Act* on  
13          ceasing to be an Indigenous Utility.

14          So those were the questions that we were  
15          asked, and what we did when we were asked these  
16          questions -- we were asked these questions earlier  
17          this, approximately March of this year, and we put  
18          together an inquiry process. We were originally asked  
19          to provide a report with the answers by the end of  
20          January. What emerged as we went through the first  
21          part of this process is that that timeline was a  
22          little short. So we went back to government and  
23          recommended extending it. So it's now been extended  
24          to the end of April.

25          And so what we did when we -- and Dan  
26          talked a little bit about this earlier. We started

1           with an engagement process where we travelled around  
2           the province in rooms like this, and held consultation  
3           sessions with anyone that was interested, anyone that  
4           had anything that they wanted to say to the panel or  
5           that they wanted to come or if they wanted to come and  
6           listen to what other people had to say.

7           And we did that in Cranbrook -- I risk  
8           leaving someone out here, but in Cranbrook, in  
9           Kamloops, Kelowna, Prince George, Fort St. John,  
10          Vancouver, Victoria. How did I do, Dan?

11          MR. GEORGE: Campbell River.

12          COMMISSIONER FUNG: Prince Rupert.

13          MR. GEORGE: Williams Lake.

14          THE CHAIRPERSON: Campbell River, thank you. Prince  
15          Rupert and Williams Lake, right.

16           And we also registered interveners as we do  
17           in all of our processes. We invite people who have  
18           evidence that they want to bring forward and have that  
19           evidence formally tested by allowing other interveners  
20           to ask questions about it. And so we had a number of  
21           intervenors that registered in this proceeding, and  
22           they included First Nations themselves, included  
23           companies that First Nations are partnered with on  
24           utility projects. It included some of the existing  
25           utilities in the province, BC Hydro and Fortis, and it  
26           also included some just individual private citizens

1           that felt they had some interest in the process.

2           So all of those people have registered and  
3           provided evidence and you can you go onto our website  
4           and you can read what they've provided and you can  
5           read the questions that they've asked of each other.

6           And then what the panel did, we went away  
7           and then we developed a draft report, and the summary  
8           of that you'll see on your table. That was published  
9           at the end of September, and that report contained a  
10          number of what we call proposed recommendations, and  
11          what they are is they are kind of a strawman, or a  
12          strawperson, and what they are is the panel's best  
13          thinking to date on it based on what we had heard so  
14          far in the inquiry. And what we are saying is that we  
15          would be prepared to go to government with these  
16          recommendations if what we are saying reflects what  
17          we've been hearing and if that's what everyone agrees,  
18          then these are the recommendations that we would make.

19           So let's say subject to what hear from  
20          these workshops, and what we hear from interveners  
21          when they make further submissions and comments in the  
22          new year, after this workshop session is over, and  
23          that would be in March of next year. We'll wrap up  
24          these workshops in January and we've got a couple now  
25          scheduled in February. And then starting in March we  
26          are going to have two rounds of comments and

1 submissions. March the 2<sup>nd</sup> I think is the first round,  
2 and then three or four weeks later everyone will have  
3 a chance to read what everyone else said, and then  
4 you'll have a chance to make a second submissions  
5 based on what everyone else has said. And that will  
6 be the end of March and then the panel will produce a  
7 final report at the end of April.

8 So now I'm going to look at what the  
9 proposed recommendations in the draft report are. And  
10 one of the first, and what we call the overarching  
11 recommendations is that all ratepayers of Indigenous  
12 utilities should receive the same protections as  
13 ratepayers of non-Indigenous utilities. So this kind  
14 of cuts across a number of the questions that were  
15 asked in the inquiry regarding how should Indigenous  
16 utilities be regulated, or should they be regulated.  
17 The panel's view is that regardless of how they are  
18 regulated, or who regulates them, that the same  
19 protections -- the protections that we talked about  
20 that are in the *Utilities Commission Act*, they should  
21 be available to all ratepayers of all utilities,  
22 Indigenous or otherwise. And the next question of  
23 course then is how to get there.

24 And then we also made a recommendation  
25 about those mandatory reliability standards that we  
26 talked about on the transmission system. And we said

1           that since the transmission system is integral and it  
2        has got such importance to the province, that we felt  
3        that the BCUC should retain jurisdiction with respect  
4        to enforcement of those mandatory reliability  
5        standards on the transmission system no matter who  
6        owns the transmission system, or where the  
7        transmission system lines run. The same mandatory  
8        reliability standards should apply and should continue  
9        to be regulated in the same manner.

10           And then we turned our attention to  
11        specifically then how should the regulation of  
12        Indigenous utilities, how should that be accomplished.  
13        And I think again one of the overarching principles  
14        that the panel considers is that First Nations should  
15        have the opportunity, or should have the ability to  
16        regulate utilities that they own or operate. And this  
17        is what we have heard already from a lot of people in  
18        this inquiry, is that we should have the same ability  
19        that municipalities do. Municipalities have an option  
20        of self-regulating a utility that they operate, and  
21        that a First Nation should be in that same situation,  
22        and we generally agree.

23           And so our recommendations, the next few  
24        recommendations we had to temper -- or not temper, but  
25        vary them a little bit, depending on the nature of the  
26        land. And maybe that's not the right approach, maybe

1           it is, we don't know. But we certainly welcome your  
2           comment on that. But for better or for worse, we then  
3           split it up into different kinds of land, recognizing  
4           that there are legal differences. And so that we've  
5           said that on Reserve Land that if a Band on Reserve  
6           Land has a Band-owned utility that it wants to  
7           regulate, then it should notify the Utilities  
8           Commission and say "We're going to regulate that  
9           ourselves," and then going forward it would be  
10          regulated by the Band.

11           We do have, again looking at the first  
12          overarching recommendation about the protections that  
13          should be in place, we do raise a concern or a  
14          question about the nature of dispute resolution  
15          mechanisms and complaint processes, and we do  
16          acknowledge that those are in place in many  
17          circumstances. So as long as those complaint  
18          processes and dispute resolution processes are in  
19          place, then that would mean then that the self-  
20          regulation wouldn't require any further oversight of  
21          the Utilities Commission.

22           So, again --

23 MR. ASP:       I have a question.

24 THE CHAIRPERSON:     Yes, please.

25 MR. GEORGE:      Jerry, one second, they'll bring you the  
26           mic. And just say your first and last name, and spell

1                   your last name for the record please, Jerry.

2    MR. ASP:       My name is Jerry Asp, and I'm from Tahltan  
3                   Nation up in Telegraph Creek. I am interested in  
4                   number 3, because I'm a little confused. What are the  
5                   "self-regulated?" What does a municipality self-  
6                   regulate?

7    THE CHAIRPERSON:     So what it means then, is let's look  
8                   at what happens when the Utilities Commission  
9                   regulates. It means that, for example, BC Hydro can't  
10                  just go and raise its rates next year. And if it  
11                  wants to raise them by 3 percent, it has to come to us  
12                  and say "Here is the reason we need a 3 percent rate  
13                  increase, and we need you to approve it." So that  
14                  would be an example.

15                   So, if a municipality runs its own utility,  
16                  and regulates its own rates, it means a municipality  
17                  can set its rates at whatever it wants. And it can  
18                  raise them by 3 percent next year, or 10 percent next  
19                  year, or drop them by 2 percent, without coming to any  
20                  external body for approval. The Municipal Council can  
21                  do that in the case of a municipality.

22                   So what we are saying then is that a First  
23                  Nation should be in the same position as a  
24                  municipality, and if it owns a utility, then it's up  
25                  to the Council to sell that to its own members, to  
26                  sell any rate increase, and manage that itself.

1     MR. ASP:       And secondly, what is the criteria for  
2                   infrastructure? Because BC Hydro has certain criteria  
3                   that have to meet with infrastructure. I understand a  
4                   little bit about Hydro, I took Dease Lake off of  
5                   diesel generation. I built the Hewey Lakes Hydro  
6                   project, so I know a little bit about it. So what is  
7                   the criteria that the municipality and First Nation  
8                   have to meet?

9     THE CHAIRPERSON:   So let me talk -- fair enough. Let  
10                  me talk a little bit then, first about BC Hydro. If  
11                  BC Hydro or Fortis wants to build a piece of  
12                  infrastructure, they do have to come to us for  
13                  approval to do that. But our approval is what they  
14                  call limited approval. What we are saying is that if  
15                  we give approval to BC Hydro to build a project, let's  
16                  say it going to cost \$100 million, we're saying yes  
17                  you can build that project, we're basically saying  
18                  that you can recover that \$100 million in rates going  
19                  forward.

20                  They still need to go to the environmental  
21                  agency to get an environmental permit and any other  
22                  permits that they need to get for various reasons. We  
23                  don't really provide any of that kind of approval.  
24                  They have to still be approved -- get those kinds of  
25                  approvals to build a project. What we do though is we  
26                  approve them, the economic side of it and say, "Yes,

1           you're not paying too much on that or spending too  
2           much on that so yes, you can recover that in rates."

3                 When it comes to a municipality, if a  
4           municipality wants to build generation within its own  
5           boundaries, like the City of Nelson does along the  
6           river there, Columbia River, then -- or the Kootenay  
7           River, then it will have to go through the same  
8           environmental approvals that any other organizations  
9           would, but it doesn't need to go to any body, any  
10           entity to say, "Can I spend this much money on it?"  
11           It just needs council approval and council says, you  
12           know, "\$100 million? We can recover that in rates  
13           going forward so we'll go ahead and spend that." And  
14           so that would be the same in this situation.

15           MR. ASP:       So who regulates their standard criteria for  
16           safety, et cetera, et cetera? What if they decide to  
17           take shortcuts as opposed to do an 187 kV line they do  
18           a 38 kV line when a 187 is necessary? So now you have  
19           a problem, a potential problem. Who regulates that?  
20           Who's the oversight committee on that?

21           THE CHAIRPERSON:   Well, one of the -- we've have a lot  
22           of submissions in this proceeding about the regulation  
23           of safety. And it's one of things that we're going to  
24           be getting to is who -- I mean, it's a very pressing  
25           question because that's a recommendation, a proposed  
26           recommendations that we haven't made because there

1       does need to be a safety regulator and there are  
2       parties in this inquiry that are arguing that that  
3       should be regulated by the First Nation and there are  
4       parties in this inquiry that are saying that shouldn't  
5       be regulated by the First Nation, it should be  
6       regulated by the same safety -- by the BCUC, the same  
7       as other utilities.

8    MR. ASP:     Yeah, I'm just wondering what the safety  
9       standards are all across Canada and that's what you  
10      should meet. There should be a minimum.

11   THE CHAIRPERSON:    Correct. And there would be, yes.  
12      There would -- safety standards, presumably, would  
13      still apply, yeah. And some of those safety standards  
14      are set by Technical Safety BC, some of them are --  
15      but there are additional safety standards that -- the  
16      reliability standards, for example, cover some of  
17      those areas. And there may be municipal standards  
18      that cover some areas too. But generally the same  
19      safety standards should apply, the question is what --  
20      who should be responsible for the regulation?

21   MR. ASP:     Who's responsible for that? That's the  
22      question. Who will be, you?

23   THE CHAIRPERSON:   Well, that's a question to you, yes.  
24      Sorry, I don't mean to -- but that is a question that  
25      we're putting to people.

26   MR. ASP:     Yeah, I'm not opposed to owning utilities and

1                   First Nation owning them, I just want to know what the  
2                   safety standards are going to be and who enforces  
3                   those regulations.

4 THE CHAIRPERSON:       Right. Well, right now the oversight  
5                   for safety is with the Utilities Commission, but a lot  
6                   of the on the ground safety inspections are done by  
7                   Technical Safety BC. So the question is, is who would  
8                   retain the oversight of it? Would it be retained by  
9                   the Utilities Commission or would it be transferred to  
10                  the local Council?

11 MR. ASP:       I just want to make sure it doesn't fall  
12                  through the cracks, that's what I'm talking about.

13 THE CHAIRPERSON:       I agree with you. I totally agree  
14                  with you. Thank you.

15                   Okay, so then there is two -- Westbank  
16                  First Nation and Sechelt Indian band, the reason  
17                  they're singled out is that they have -- they are  
18                  parties to the proceeding and there's some -- we just  
19                  wanted to get some assurance that their dispute  
20                  resolution and their advisory council laws applied to  
21                  the resolution of utility complaints.

22                   And on ceasing to be an Indigenous Utility,  
23                  there didn't seem to be a lot of controversy about  
24                  that. It should become subject to regulation under  
25                  the UCA.

26 MR. GEORGE:       So we have a microphone. So just raise

1           your hands. We'll get the microphone to you. Please  
2           say your first and last name for the record, and spell  
3           your last name. Thank you.

4 MS. ERICKSON:     Tina Erickson, E-R-I-C-K-S-O-N. I just  
5           wanted a few more minutes just to see this, please.

6 THE CHAIRPERSON:   Of course, sorry. Yeah. So I can go  
7           through it then.

8                   So we looked at Reserve lands and then we  
9           looked at an example of Modern Treaty, the Nisga'a  
10           treaty, and based on the panel's review of the treaty  
11           and the dispute resolution mechanisms that were in the  
12           treaty, we said that that would -- that's at least as  
13           effective as the dispute resolution that's in the  
14           *Utilities Commission Act*. However, we still felt  
15           that the BCUC should retain jurisdiction over the  
16           mandatory reliability standards, even if the Nisga'a  
17           utility built its own transmission on its own  
18           territory, that that should still be subject to the  
19           *Utilities Commission Act*.

20                  And then we looked at other Modern Treaty  
21           -- well, there's not really much to look at with other  
22           Modern Treaty lands, but we conjectured that provided  
23           it has the same or had similar mechanisms that are in  
24           the Nisga'a treaty, then that would cover the dispute  
25           resolution issues. And then we looked at historical  
26           treaties, like Treaty 8 for example.

1                   We're going to be engaging further  
2 hopefully with Treaty 8 Nations when we are in Fort  
3 St. John and we appreciate that there are Indian  
4 reserves scattered through Treaty 8, but there is some  
5 concern about how to provide some sort of wholistic  
6 regulation or at least some recommendations for  
7 wholistic regulation in that circumstances. And so we  
8 are putting that out as a question.

9                   And you'll see in the questions that we're  
10 posing to people, you'll see how we're asking those  
11 questions.

12                  And then the Westbank First Nation, they  
13 have an advisory council law that applies to the  
14 resolution and utility complaints and so we're asking  
15 them to confirm that that would apply to utility  
16 disputes. And similarly there's an advisory council  
17 for the Sechelt Indian Band and we're asking them to  
18 confirm that that would apply to utility disputes.  
19 But otherwise, the same recommendations all apply for  
20 all of these circumstances.

21                  So are there any questions?

22                  Okay, so I'm going to move then to some of  
23 the specific questions that we're asking for your  
24 feedback on. First of all is what are you views on  
25 these recommendations generally? Do they strike the  
26 right balance between the need for ratepayer

1 protection and the rights of First Nations to self-  
2 governance? And what should an appropriate complaints  
3 and dispute resolution process look like? In other  
4 words, if we're saying that the exemption from the  
5 *Utilities Commission Act* in its entirety is dependent  
6 upon being able to demonstrate a dispute resolution  
7 mechanism, then what should that look like. And if  
8 that is a condition, how can that be fairly applied?

9 And then to the gentleman's question, are  
10 there specific areas that should not be exempt such as  
11 safety, service reliability, things like the  
12 obligation to serve which is an obligation in the  
13 *Utilities Commission Act* that lays out the utility's  
14 obligations to provide electricity to people that are  
15 within a certain distance of the service line, and if  
16 they are not within a certain distance, then it lays  
17 out what would be a fair price to extend the utility  
18 service to that person. And we call that the  
19 obligation to serve. And that's an issue of the  
20 reliability of the services provided. So should those  
21 areas be exempt from the *Utilities Commission Act* and  
22 should they be regulated by the Indigenous owners of  
23 the utility.

24 Then we've got some more specific questions  
25 for you, and this gets to what I was just talking  
26 about when you've got -- when you may have a

1           patchwork, a geographic patchwork of Indigenous owned  
2           lands -- or sorry, Indigenous owned utilities on  
3           Indigenous lands, and -- sorry before we talk about  
4           that, the first thing I want to talk about is this  
5           whole idea of a definition of an Indigenous Utility.  
6           So we haven't really addressed that yet, even though  
7           that was one of the key questions of the inquiry.

8           We've laid out some things to consider, and  
9           those are -- what if you have utility assets,  
10          utility's assets that are owned by a corporation, and  
11          the First Nation is a shareholder of the corporation.  
12          There's a case where it's a sole shareholder, another  
13          case where it's a partial shareholder. And if it's  
14          partial shareholder, it could majority shareholder at  
15          51 percent, in which case it presumably would control  
16          the utility. But as you know, you don't necessarily  
17          need 51 percent to control a corporation, you can  
18          control a corporation with 45 percent if the rest of  
19          the shares are spread and widely held. So there is  
20          this whole issue of then what's the trigger, what does  
21          it take in order for a corporation to be an Indigenous  
22          Utility, which is different from the Band or the  
23          Nation owning the assets itself directly.

24          And I would also point out that these  
25          issues arise with the municipal exemption also because  
26          in order -- the way that we have interpreted the Act

1           is that the municipality has to own the utility  
2           assets. It has to legally own all of the distribution  
3           lines and all of the equipment. If a corporation owns  
4           it, even if the municipality owns a corporation, it's  
5           our position -- and I say our position, the Utility  
6           Commission's position, that that is not an exempt  
7           utility. But we do an inquiry, another inquiry,  
8           that's looking into that very issue and looking into  
9           some of these other issues around it.

10           So we think that the same issues should be  
11           considered here in this inquiry, and that's one of  
12           them.

13           Second is what if it's owned by a  
14           partnership or a limited partnership, and what if the  
15           First Nation is just simply a partner, or what if it's  
16           a general partner in a limited partnership. Does any  
17           of this make any difference, and if so, what  
18           difference does it make?

19           What if the utility assets are owned by a  
20           third-party and the First Nation doesn't directly own  
21           any of it at all, but what if it controls the rates?  
22           What if there's an agreement between the Band Council,  
23           let's say, and the utility that says, "You have to  
24           come to us and we don't let you operate on our lands  
25           unless you've got a rate that we approve." Should  
26           that still be subject to the *Utilities Commission Act*

1           or should that be -- should that utility be considered  
2           in the same way that an Indigenous-owned utility is  
3           considered?

4           So those are some of the questions that  
5           we'd like you to look at around that. And then sorry,  
6           the second one is the one that speaks to when you've  
7           got different utilities operating on different pieces  
8           of land but you need -- in order to make a utility  
9           successful you need a critical mass of customers, and  
10          you may not have enough customers on one -- in one  
11          territory to make that utility successful. But if you  
12          sell some energy to another Band, a neighbouring Band,  
13          that may then provide enough customers to make the  
14          utility successful. But in that circumstance then,  
15          how does that proposed exemption that we provided, how  
16          is that going to work?

17          We said that provided the Band owns the  
18          utility and is selling utility to people that live on  
19          its territory, then it would be exempt, but now it  
20          starts selling to people on another territory that's  
21          subject to the jurisdiction of another council. So  
22          how should that sale be regulated? Is it regulated by  
23          the second group, or is it regulated by the first and  
24          there's some issues around that we'd like you to look  
25          at.

26          What if those two pieces of land aren't

1           contiguous? What if there's a distance that separates  
2           then? Then you need access to -- if you could get  
3           there using BC Hydro's transmission, for example, then  
4           what do you do about that retail access prohibition  
5           that we talked about? How can you sell energy to --  
6           let's say it's all territory that is within the  
7           jurisdiction of one nation or one Band, but it's not  
8           contiguous, and you need to move the energy across BC  
9           Hydro's transmission system to get it from one place  
10          to the other, how should that retail access  
11          prohibition be dealt with? Should we make a  
12          recommendation that that retail access prohibition be  
13          removed in those circumstances?

14           And as a result of these proposed  
15          recommendations, an exempt Indigenous-owned utility  
16          could sell energy to a municipal utility, because you  
17          would both be exempt from the *Utilities Commission*  
18          *Act*, and so none of our rules would apply to any  
19          transactions between the two. But again, if you need  
20          to transport that across the transmission system, then  
21          you would be faced with a retail access prohibition.

22           Now this whole issue of needing to be able  
23          to move energy around to sell it, it arises again  
24          because of these economies of scale. It's very hard  
25          to make a small utility economically viable. And when  
26          there is a limited number of people within a

1           particular geographic footprint, and if that's the  
2         only market that you have, then it's going to be very  
3         hard to make that utility economically viable. So you  
4         may need to be able to expand your customer base. So  
5         all of these questions are around how are you going to  
6         do that, and how does this proposed regulatory  
7         structure, what does it look like when you look at  
8         expanding that territory?

9           Now, another way to achieve that economy of  
10        scale is to sell the energy, not to different  
11        customers in different parts of the province, but to  
12        sell it to a single customer, and that's the IPP  
13        model. To sell a lot of energy to BC Hydro. So you  
14        maybe take a little bit, tap a little bit of that  
15        energy off the top, and you can sell it to a few  
16        hundred or perhaps a few thousand local residents.  
17        But if you sell the bulk of it to BC Hydro then that  
18        is an economic model that may work. And we are going  
19        to talk a little bit about that in just a minute.

20           But if you don't have that access to be an  
21        IPP and sell energy in bulk to BC Hydro, then you have  
22        to build your utility one customer at a time, then you  
23        need to turn your attention to where you are going to  
24        get those customers from.

25           So then that leads to another question then  
26        is, should an exempted Indigenous Utility be free to

1           sell its energy to members of its own nation, wherever  
2       they reside in the province? And again, this raises  
3       then that retail access prohibition, because you  
4       couldn't get energy from here to sell it to somebody  
5       in Downtown Vancouver, because you're using the  
6       transmission system to do that.

7           So, returning then to what I just spoke  
8       about, if you are in a position where you can  
9       negotiate an energy purchase agreement with BC Hydro  
10      to sell bulk amounts of energy to BC Hydro, even if  
11      you as an Indigenous Utility are exempt, BC Hydro is  
12      not exempt from the *Utilities Commission Act* and it's  
13      required to come to us for approval of energy purchase  
14      agreements of any energy that it purchases.

15           And when we look at an energy purchase  
16      agreement, we look at public interest issues. And the  
17      public interest issues we consider are, does BC Hydro  
18      need the energy? If it already has enough energy,  
19      then any additional energy it purchases, it's going to  
20      have to sell. And so then we say, well, if this is  
21      surplus energy that it doesn't need, then is it going  
22      to be in a position where it sells it at a loss? So  
23      then we look at the price of the energy contract. And  
24      if Hydro doesn't need the energy, and it's going to  
25      have to pay more for it than it can get selling it on  
26      the open market, then that's going to leave other BC

1                   Hydro ratepayers having to cover the costs of that.  
2                   And so that is a public interest issue that the  
3                   Utilities Commission looks at when it looks at an  
4                   energy purchase agreement.

5                   And that can leave Indigenous-owned  
6                   utilities disadvantaged. Well, not disadvantaged, but  
7                   in a position where it may be difficult to sign a  
8                   contract with BC Hydro. And I say it's not  
9                   disadvantage, it would leave any IPP regardless of who  
10                  owns it, in a position where it would be difficult to  
11                  sell that energy to Hydro because the contract  
12                  wouldn't be approved.

13                  So the question that we're asking is,  
14                  should there be modifications made to that public  
15                  interest test in the case of an Indigenous-owned  
16                  utility when it's selling energy to BC Hydro? Should  
17                  exceptions be made to that public interest test? So  
18                  we're asking you consider that and make  
19                  recommendations to us about whether they should be or  
20                  not.

21                  We've also heard in this inquiry that --  
22                  we've heard from a number of parties that say, "Look,  
23                  we don't really want to regulate our own utilities.  
24                  We're happy with the BCUC regulating our utilities,  
25                  but we would like you to make your processes more  
26                  accessible to us." And those processes that I defined

1 at the beginning, these quasi-judicial processes, they  
2 can be very formal and they can be inaccessible to  
3 people, and not just Indigenous people. We hear it  
4 from a number of people around the province. And so  
5 it's something we are very aware of. We're always  
6 trying to ensure that our processes are accessible,  
7 but what we're asking, what could we do in particular  
8 for an Indigenous-owned utility that is -- if it was  
9 regulated by the BCUC, then how can our processes be  
10 modified in a way that makes it work better all around  
11 for the Indigenous-owned utility and for its  
12 ratepayers?

13 There's rather a lot there, I appreciate  
14 that and I'm sorry if I've gone a little quickly.  
15 We're going to be working in groups now, or a group,  
16 I'm not sure, and please feel free, if you have any  
17 questions. We do have a lot of staff here.

18 Dan's already talked about the key dates.  
19 I'd just like to focus a little bit on the last few  
20 dates, the written comments on Monday, March 2<sup>nd</sup>. So  
21 when you leave this room today -- we're going to ask  
22 you to summarize the results of your workshop. We  
23 will be writing that down and taking it with us, but  
24 it's not cast in stone. So think about it between now  
25 and March and feel free to reach out to our staff and  
26 ask them any questions. And then on March 2<sup>nd</sup>, feel

1           free to write in any further comments that could be  
2           different from the comments you've made today, that's  
3           fine. We'd certainly like to hear back from you.

4                         And then through the month of March you'll  
5           have an opportunity to read what everybody else had  
6           said on March 2<sup>nd</sup>, and then by the end of the month you  
7           can reply to the comments that you've heard from  
8           everyone else. And then we're going to go away for a  
9           month after that. I know it seems like a long time  
10          but a month really isn't when we have to go through as  
11          much material as we do, and then we'll be publishing  
12          our draft report.

13                         Dan.

14 MR. GEORGE: So thank you, Dave. Any final questions  
15          for Dave before we go for a quick break? Yes? Over  
16          here.

17 MS. ERICKSON: Tina Erickson again. I just wanted to  
18          find out, do you have an example of say the Fort  
19          Nelson utility, and if they have excess power and they  
20          can't sell it to the grid, then what position does  
21          that leave them in as a utility?

22 THE CHAIRPERSON: Yeah, sorry, you mean the City of the  
23          Nelson?

24 MS. ERICKSON: Yes.

25 THE CHAIRPERSON: So in that case the city of Nelson  
26          actually -- they've got -- they have quite an old

1           hydroelectric facility on the river just outside of  
2           town, and it actually doesn't provide all of the  
3           energy they need. They are a net importer of  
4           electricity which they buy off Fortis because they are  
5           in the Fortis territory. So they are generally not in  
6           that position. If they were in that position though,  
7           then they would have to have a contract with BC Hydro  
8           or with Fortis to sell it to them.

9                 But failing that, and I should have talked  
10           about this earlier, the *Utilities Commission Act*  
11           doesn't cover the sale of electricity outside of the  
12           province, and the retail access prohibition doesn't  
13           cover electricity that's being wheeled over the  
14           transmission system to get it outside the province.  
15           So any IPP or the City of Nelson or anyone else can  
16           sign a contract with someone let's say in Washington  
17           State to sell them energy. And then you go to BC  
18           Hydro and say, "I want to access your transmissions  
19           system," and you pay for that. And then you can get  
20           it from here to Washington State and fulfill that  
21           contract. And that's not covered under the *Utilities*  
22           *Commission Act* because in order to be covered under  
23           the *Utilities Commission Act* you have to be selling it  
24           in British Columbia. So that would be the alternative  
25           for the City of Nelson and for you, or any of the rest  
26           of us in this room that wanted to build a generator

1           and couldn't sell it to BC Hydro.

2   GEORGE:       Mark, first and last name, spell your name for  
3           the record, please?

4   MR. STARLUND:    Mark Starlund, S-T-A-R-L-U-N-D,  
5           representing Gitanyow. Yeah, just to follow up on  
6           that, so I understand it, there is an issue before you  
7           as I understand where BC Hydro is looking to purchase  
8           spot energy outside of the province, so Alberta, U.S.  
9           So, that issue is in front of you. So do you guys  
10          regulate that part, because they are buying it, and  
11          then selling it here?

12   THE CHAIRPERSON:   Yes. Right. Correct.

13   MR. STARLUND:     So when they sell their excess power to  
14          the U.S. or Alberta, I mean that's a reciprocal, when  
15          it goes back and forth. So you don't regulate what  
16          goes out? Just what comes in?

17   THE CHAIRPERSON:   We don't regulate the contract for  
18          the energy that goes out, that's correct. We do look  
19          at BC Hydro's -- their resource balance, and their  
20          generation. We look at their plans for export, and if  
21          we were -- I'm sorry, I don't mean to make this more  
22          complicated, but you know, if we were approving a  
23          generation facility and approving the cost of that to  
24          be recovered in rates, if they were building it  
25          entirely for export, then we would look at that aspect  
26          of it, but as far as a contract to sell it, no, it

1           doesn't come under our jurisdiction.

2    MR. STARLUND:     Okay, I understand. Just quickly I  
3           guess, from a First Nations' perspective, a lot of the  
4           assets that British Columbia are long term assets were  
5           basically done without the benefit or consultation or  
6           accommodation of First Nations. So BC Hydro has got  
7           the benefit of all of those sort of Heritage assets --

8    THE CHAIRPERSON:   Yes.

9    MR. STARLUND:     And when they are flogging power to  
10          other customers and then buying power cheap back here,  
11          it has the effect of restricting opportunities for  
12          First Nations. The SOP program went sideways, and now  
13          BC Hydro is asking to buy power at a much lower cost.  
14          I get the economics of it, but from a historical point  
15          of view, BC Hydro is bankrolling their success off of  
16          opportunities that were given to them without the  
17          benefit of First Nations or in consultation with First  
18          Nations in any cases for that, actually for the  
19          detriment of First Nations in a lot of cases.

20                 So, I don't know if that is part of the  
21          consideration, but it is part of that pattern.

22    THE CHAIRPERSON:   I appreciate that, and we have heard  
23          that comment before, and I would say that it's not  
24          specifically within the scope of the inquiry, and I'm  
25          sorry I'm not just trying to brush it off, but it is  
26          not a question that we've been asked to answer,

1           although I do recognize it forms a backdrop for a lot  
2           of this discussion.

3           And that's why I have included in this  
4           discussion today the fact that there is a difference  
5           between just purely looking at what does regulation  
6           look like, as opposed to how can you build a utility  
7           that's going to operate successfully and economically.  
8           And as a regulator, we can't be blind to that. But we  
9           are not being asked in this recommendation to right  
10          any past wrongs, or to make suggestions about how the  
11          economics of an Indigenous utility can be --

12         MR. STARLUND:       I get that, but it does come down to  
13           like some of the things are stacked against our entry  
14           into that market, including retail access laws and  
15           stuff like that.

16         THE CHAIRPERSON:    And to the extent that retail access  
17           laws could be modified to provide a more level playing  
18           field, we would be happy to make recommendations  
19           around that. To make recommendations around specific  
20           pieces of regulation that are within our jurisdiction  
21           is something that we can do.

22           The only other thing I could suggest is  
23           that there is a review of BC Hydro going on right now,  
24           it's in Phase 2, where they are looking I believe at  
25           some -- I am not directly involved in the review, but  
26           I believe they are looking at some of those issues.

1           And I do believe they have a consultation schedule, or  
2           at least planning to have a consultation schedule,  
3           published.

4                   So, it would probably be more helpful for  
5           you to -- or it'd be helpful if you could make those  
6           comments in that phase 2 review. That panel could  
7           probably do more about it than we could.

8    MR. STARLUND:       I was involved in their last one and  
9           they kind of just ignored what I said anyways, so --

10   THE CHAIRPERSON:      Yeah. Okay, I'm sorry about that.

11   MR. GEORGE:          Thank you. Maybe we could just have a  
12           quick break for 10 minutes until 11:15. We're going  
13           to move these two tables together here and then all  
14           sit around this one table with a facilitator and a  
15           note taker and kind of walk through the  
16           recommendations and seek your further input. So  
17           please help yourself to the coffee and any of our  
18           refreshments here, and men's and ladies' restrooms are  
19           just outside the main doors here. Thank you.

20   **(PROCEEDINGS ADJOURNED AT 11:06 A.M.)**

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

22   **(PROCEEDINGS RESUMED AT 12:42 P.M.)**

23   MR. GEORGE:       We'll call the meeting back in to session,  
24           and we'll hear from our group. Mark, please introduce  
25           yourself, first and last name, and spell your last  
26           name for the record please.

1           **REPORT PRESENTATION BY MR. STARLUND:**

2           My name is Mark Starlund, S-T-A-R-L-U-N-D,  
3           I am representing Gitanyow here. And I'm also  
4           representing our table here. So, I'd just like to  
5           start off on the notes that we took here.

6           So the first point, regulation of  
7           monopolies, is something we all agree that was  
8           something that was required, BC Hydro being a monopoly  
9           we are speaking of in this case. So, I don't know how  
10          you want this format, that you want anybody to comment  
11          on. I will just keep going down there until somebody  
12          interrupts me.

13          And point number two, if we're following  
14          the points that were outlaid here in this process. So  
15          point number two is a regulatory process standards.  
16          We all agreed that BCUC should retain that  
17          jurisdiction as a point. There needs to be a  
18          governing body that has authority on basically  
19          provincially, it's recognized that whether First  
20          Nations are tying into transmission or distribution,  
21          or even islanded, that there should be a level of  
22          safety standards there. So that was something that  
23          was agreed upon.

24          THE CHAIRPERSON:     Thank you.

25          MR. STARLUND:      One of the things that we did bring up  
26          though, was for First Nations that are isolated, they

1           don't have any current BC Hydro infrastructure or they  
2           are on a diesel grid, and the question was, is there a  
3           national or provincial standards that exist outside of  
4           just what is regulated by BC Hydro? So, the point  
5           being if there is BC Hydro standards and whatever, and  
6           the costs are exorbitant, are there national or  
7           provincial standards for small communities or  
8           something like that, where they are not going to be  
9           tied to a grid or something like that. Do they need  
10          to maintain that level of standard? Or is there a  
11          national standard for that application, is a question.  
12          So, if there was -- basically we'd like some feedback  
13          on it to say if there is some other standards other  
14          than just the interconnection standards that exist  
15          now.

16         THE CHAIRPERSON:     So you're talking about standards for  
17           the distribution grid in an islanded community?

18         MR. STARLUND:      That's correct, so they are building  
19           their own infrastructure. We agree that we want to  
20           build it to a standard. Right now we understand that  
21           a standard, BC Hydro standard is the interconnection  
22           standard. Just the question is, is there a national  
23           standard that can be built to that doesn't necessarily  
24           consider interconnection, and some of the additional  
25           costs of interconnection that they are there?

26         THE CHAIRPERSON:     Right, so as far as the distribution

1           system itself goes, I think that would largely be  
2           under the B.C. Safety Authority would regulate that,  
3           and I think Paul can probably correct me if I am  
4           wrong, I think that would be the *Canadian Electrical*  
5           *Code*, would it not? For the distribution system that  
6           would apply?

7    MR. MILLER:    Yes, it would be technical safety, and  
8           then there may be some Canadian Standards Association  
9           standards that would apply.

10   THE CHAIRPERSON:   That the technical safety would  
11           apply. Now, talking about the interconnection  
12           standards, however, those are the standards that  
13           anybody who wants to connect to the system would have  
14           to -- and those are largely BC Hydro interconnection  
15           standards. And I know that there are some concerns  
16           around those standards, and it's something that we are  
17           monitoring. I don't know that there is national  
18           interconnection standards. I think they are all local  
19           to B.C.

20   MR. MILLER:    That's my understanding. I mean there may  
21           be if you are regulated by the NEB there may be  
22           different standards, but provincial standards, I think  
23           that's right.

24   MR. STARLUND:   Yeah, I guess just the question was if  
25           you were going to be an isolated community, you're not  
26           connecting, is there a standard to build to that isn't

1           necessarily --

2 THE CHAIRPERSON:       Yes.

3 MR. STARLUND:       So, the point number three, ability of  
4           First Nations to self-regulate, yes was the general  
5           response from that. We wanted to be able to have that  
6           opportunity.

7           And who is responsible for issues such as  
8           power outages, that was something that was brought up.  
9           Really, the issue becomes capacity. So, we understand  
10          the nature of this discussion is to determine whether  
11          or not regulation should -- First Nations should  
12          regulate or not regulate and the underlying issue is  
13          capacity. Like, I had mentioned when I was in Prince  
14          Rupert, our initial conversation is a lot of First  
15          Nations, and there 202 First Nations in B.C., and  
16          there may be a half a dozen to a dozen First Nations  
17          that might have the capacity to do this. So this is a  
18          very large conversation about very minimal amount of  
19          buy-in, unless of course we talk about things like  
20          leveling the playing field and such. So, that's part  
21          of it.

22           So if we were to do a regulatory -- like,  
23          take on regulation, in order to have the capacity  
24          there's likely to be a cooperative co-op type of --  
25          where maybe multiple First Nations so that you could  
26          have enough capacity to cover your own regulatory

1           process and your generation process there, otherwise  
2           it wouldn't happen.

3 THE CHAIRPERSON:       Yeah, that's a good point. Although  
4           I didn't cover it in my talk, there is a small section  
5           in the report on what we called an Indigenous  
6           Utilities Commission, because there have been some  
7           comments on that. And, you know, if you have any  
8           further thoughts on that please do elaborate. But I  
9           think it sounds like that's kind of what you're  
10          talking about, is it?

11 MR. STARLUND:        Yeah. I mean, nobody's against  
12          regulation per se. I think this table, you know, we  
13          would like to explore a First Nations regulatory body,  
14          but I think the question is whether there's the  
15          opportunity in terms of generating capacity. You've  
16          got to generate to regulate, right?

17 THE CHAIRPERSON:       Yes.

18 MR. STARLUND:        So, I'll give you a little example. Our  
19          community, we have about 450 people, and we were  
20          engaged in the SOP in which we had a six megawatt  
21          biomass. There's no way that I could just build that  
22          six megawatt now and sell to anybody but BC Hydro.  
23          And the capital costs of doing something like that  
24          doesn't begin to justify supplying 450 people in 120  
25          homes, right? So there needed to be real capacity and  
26          real ability to -- say there's 20 First Nations to the

1           south of us that need power, we lived there from under  
2           one umbrella. So those need to real in order for this  
3           to be real, because the guys are only about 20 or so.  
4           Otherwise we're just kind of talking about  
5           hypothetical.

6 THE CHAIRPERSON:       Did your group talk at all about --  
7           like, you're talking about the issue of capacity  
8           around creating and developing a First Nations  
9           Utilities Commission. Would there be any way to build  
10          off the existing capacity of this Utilities  
11          Commission? Like, let's say, you know, having some  
12          First Nations governance of the Utilities Commission  
13          or having some requirements for the constitution of  
14          the panel be certain First Nations people when it  
15          involves regulating a First Nations utility. Would  
16          there be something like that that could achieve  
17          similar goals yet leverage off what there is already?

18 MR. STARLUND:       I think you're talking about capacity  
19          building, basically, right?

20 THE CHAIRPERSON:       Yeah.

21 MR. STARLUND:       And I don't know about you guys, but I  
22          think capacity building is good, assuming you're  
23          building capacity for something tangible, right? So  
24          everybody here at the table, if we thought we'd be  
25          able to participate in the economy of power  
26          generation, then of course we'd want to have the

1           capacity to regulate that. So, that has to come  
2           together. Putting somebody on a board for the sake of  
3           doing that, I don't know, there might be a volunteer,  
4           it's a good job.

5       THE CHAIRPERSON:     You get to travel the province.

6       MR. STARLUND:      Right. You know, yeah, we could use  
7           employment, but I think for the purposes of an  
8           objective you need opportunity and then you obviously  
9           have to build capacity. From a regulatory point of  
10          view to build capacity, you have to have the  
11          underlying opportunity to make that worthwhile to us.  
12          Did I beat that one up? Okay.

13                          There's a question at the bottom of this,  
14                          "Is BCUC willing to accommodate a spectrum of  
15                          regulations?" So, self-regulation.

16       MR. ASP:        Hey, I'm Jerry Asp. The point for that was  
17           some people want to regulate everything and some  
18           people don't want to regulate anything. So the  
19           spectrum is from here to here. Is the BCUC willing to  
20           accommodate that spectrum?

21       THE CHAIRPERSON:   We are generally flexible when it  
22           come to regulation, and as I indicated in my talk,  
23           when we see circumstances where there's no monopoly  
24           present or no need for economic regulation because  
25           there's competition, then we always -- as a policy, we  
26           always recommend no recommendation.

1                   We've made these recommendations or there's  
2 proposed recommendations in the report because we do  
3 think that it's the right thing to do to provide  
4 opportunities for First Nations to self-regulate.

5                   So I'm not sure if that answers your  
6 question or not, but --

7 MR. ASP:       Well, I'll give you our example. The  
8 Tahltan, for instance, if we enter into a biomass  
9 energy project and sell to Hydro, that's where we want  
10 to go. We're not interested in distributing power to  
11 the Tahltan community.

12 THE CHAIRPERSON:     Understood.

13 MR. ASP:       So, but I hear Westbank or some others want  
14 full autonomous utility. That's their business.

15 THE CHAIRPERSON:     Yeah, they want to run a utility.

16 MR. ASP:       So that's the spectrum.

17 THE CHAIRPERSON:     Yes, understood. And, you know, I  
18 think the answer's different depending on the  
19 circumstances of where one is on that spectrum.

20 MR. STARLUND:     Yeah, there's 202 First Nations in B.C.  
21 and there's 202 opinions.

22 THE CHAIRPERSON:     Yes, exactly.

23 MR. STARLUND:     At least.

24 MR. ASP:       At least. Unless you're arguing with  
25 Tahltan, then you'd get three opinions.

26 MR. STARLUND:     So we'll try not to get into there.

1                   So, now we move down into the section for  
2 reserve lands. I guess I made my first point, 202  
3 First Nations, most will not have an economic capacity  
4 to create utilities. There is not capacity to do  
5 that. Now, some of the reasons for not having  
6 capacity is, of course, the way things were structured  
7 previously. You know, monopolies, BC Hydro  
8 regulations that don't allow First Nations, today at  
9 least, to engage in that and obviously we'd like to  
10 see that change. So we'd say that, you know, if we  
11 were to engage in that, given the premise that things  
12 could change so that we could do that, I think from  
13 this group it would be that we would need to have a  
14 cooperative body, in other words, every single First  
15 Nations that wanted to engage in an economic  
16 opportunity for power generation or to distribute  
17 power to their First Nation didn't have to build from  
18 the ground up its own utility commission.

19                   So we'd have a -- you could be a member of  
20 a regulatory body that was operated and run by First  
21 Nations and Gitanyow was one member of, say, 25 or 30  
22 First Nations that wanted to engage in that. So we'd  
23 collectively have a body to do that. So that from a  
24 capacity point of view from paying for services and  
25 all of that, you need revenue streams to do that and  
26 each individual First Nation on its own doesn't have

1           the capacity, in general, to do that. So we'd have  
2           to, from an economic point of view, we'd have to have  
3           that collaborative, cooperative, type of governance.

4 COMMISSIONER BREWER:       So, I'm sorry to interrupt you, I  
5           just wanted some clarification here. So when you're  
6           talking about capacity, I hear two different kind of  
7           -- two different things I think. What I'm hearing is  
8           one of them has to do with the actual economic  
9           viability of creating an electrical utility. And one  
10           is the regulatory capacity, I guess, the ability to  
11           have -- or the viability of having enough people  
12           together to be able to create a regulatory system. Am  
13           I hearing you correctly on those things?

14 MR. STARLUND:       You are. So, like, for example, up  
15           until a year or so ago, First Nations could engage in  
16           developing capacity by basically the SOP program, they  
17           could sell to one single customer, BC Hydro. So it's  
18           gone.

19           So, if we are going to continue to  
20           participate, or hope to participate in that economy,  
21           we need to have a customer base that we are competing  
22           with BC Hydro for. So, we need to try and figure out  
23           ways to level that playing field so we can access  
24           customers, either First Nation customers around the  
25           province, corporate customers, whoever. But without  
26           an economic justification to be able to do that, we

1           are on the sidelines, right? Competing against the  
2           monopoly, so not going to happen reality wise.

3                         So, first step is having to have an  
4           economic basis for doing that, and then the next step  
5           would be to regulate it. But one doesn't work without  
6           the other.

7       THE CHAIRPERSON:     So, not to put words into your mouth,  
8           but it sounds like what you may be saying is that the  
9           regulatory issue, or at least part of the regulatory  
10          issue is to ensure that you are on -- the playing  
11          field is such that you can compete that way, is that  
12          what I'm hearing?

13      MR. STARLUND:       Yeah, I mean, very simply, we need to  
14          have something to regulate. Right, if we are not --  
15          very few First Nations -- there has been some engaged  
16          in the SOP, but that's essentially -- I am not aware  
17          of any First Nations that have an economic basis to  
18          engage in power generation that haven't already  
19          basically got an agreement with BC Hydro. Outside of  
20          that, I'm not aware. There may be, but I'm not aware.

21      THE CHAIRPERSON:     Yeah, and just -- sorry, I don't want  
22          to interrupt here. But just as an aside, I should  
23          point out that we have largely focused on electricity  
24          here, and I largely did in my talk too, but there are  
25          First Nations and there are others that are involved  
26          in other energy projects, and there are other energy

1           projects. I mean, you know, there are things like  
2           thermal systems, ground source heat pumps and so on,  
3           that there is interest in. If you want to develop  
4           multiple unit buildings on your property, apartment  
5           buildings, 99 year lease buildings, and things like  
6           that, then -- and you want to provide a clean energy  
7           source, then you can develop, for example, solar or  
8           ground source heat pump, or wind or something like  
9           that, locally. And so electricity isn't the only  
10          thing I guess is what I'm saying.

11         MR. STARLUND:       Yeah, I mean regionally you are going to  
12          get, you know, different focusses because if you go to  
13          the northwest we'll talk gas, right? In this end of  
14          the world, from an energy generation perspective,  
15          you've got run of the river and biomass. So that is  
16          what we have to work with here. That is kind of why  
17          we are talking those two subjects. If we were in Fort  
18          St. John or something I'd be talking gas. There is a  
19          little bit Nickhalem [sic], in terms of talking  
20          geothermal stuff, but very localized. So, you're  
21          correct.

22         COMMISSIONER LOCKHART:   Mr. Starlund, when you refer to  
23          cooperative, are you referring to a cooperative  
24          regulator? Or a cooperative utility?

25         MR. STARLUND:       A membership regulator. So we'd need to  
26          defer the cost, because one individual First Nations

1           couldn't actually operate a regulatory, and so, I mean  
2           that's capacity building in terms of reference. I  
3           mean, it's a whole process to get there. But from a  
4           conceptual point of view, write the cheque for a  
5           regulatory agency requires capital infusion. So that  
6           means it is basically taking any taxation off of the  
7           business model -- businesses, that they pay -- they  
8           would essentially pay a fee for the regulations.

9                 If we were to do that outside of BCUC, if  
10          we were going to self-regulate, that's really how,  
11          from a practical point of view how you would have to  
12          do it. I don't think any small First Nations -- I  
13          mean, they have the right to do that, I'm not saying  
14          that that's not their right, I'm saying from a  
15          practical point of view it would be difficult.

16       COMMISSIONER FUNG:     So, just to be clear, Mr. Starlund,  
17       are you proposing that this is a voluntary type  
18       arrangement depending on the First Nation's will or  
19       desire to participate? Or is it mandatory?

20       MR. STARLUND:       No, it would have to be voluntary.  
21       First Nations have the right to make their own  
22       decisions, so every individual First Nation would  
23       decide whether to opt in or opt out. I wouldn't want  
24       to make that decision -- I don't have the right to. I  
25       wouldn't want to make that decision for any First  
26       Nation.

1           COMMISSIONER FUNG:       All right, thanks.

2           MR. STARLUND:       Where are we at? Oh yeah, just that the  
3                                 little comment on hybrid option. So, we discussed  
4                                 because of the monopoly that BC Hydro has, and it's  
5                                 not quite on your topic, but it infers that you have  
6                                 to have a business case before you need a regulator.  
7                                 We talked about some of the things that need to be  
8                                 sort of level playing fields that need to be  
9                                 introduced in order for us to participate in that.

10                                 And so BC Hydro essentially owns all the  
11                                 infrastructure in the province -- at least at our end  
12                                 of the province there is Fortis, so there would need  
13                                 to be some kind of access to that, being able to -- if  
14                                 for example, in our community, if we wanted to make  
15                                 power, we'd basically have to deliver it on BC Hydro  
16                                 infrastructure, if we could make -- like we can't make  
17                                 a case to make power for just our little community in  
18                                 the first place. Let's say we could, we'd still have  
19                                 to use BC Hydro infrastructure, so there would need to  
20                                 be some way to be able to access that infrastructure,  
21                                 and maybe a fee structure, whatever, but there needs  
22                                 to be some thought into how First Nations can  
23                                 participate in it, otherwise we're talking about  
24                                 something that we're really from all practical  
25                                 purposes being excluded from. And bottom line, it  
26                                 needs to be viable, it needs to be self-supporting,

1 right?

2 I might have already kind of stated that in  
3 so many words, but it says create an entry point for  
4 Indigenous utilities. So, an actual way to engage  
5 from an economic point of view into the process, then  
6 we can talk about who is going to regulate.

7 Yeah, again I think maybe stating it  
8 multiple times, but market access through BC Hydro.  
9 The sort of existing -- historical existing sort of BC  
10 Hydro has got a lot of -- is comprised of a lot of  
11 First Nations assets, so to speak. So we've been  
12 excluded from participating in that, so if we want to  
13 change that, we have got to make some regulatory  
14 changes so that we have access to, and we can engage  
15 in this process, so.

16 THE CHAIRPERSON: Could you -- sorry to interrupt.

17 Could you give me an example of what you mean by that  
18 exactly, please?

19 MR. STARLUND: I believe you -- the Burns Lake First  
20 Nations for example, when they flooded the entire land  
21 to create a dam, so BC Hydro asset, they basically  
22 just said "You guys can move. See you later."

23 And so now we're at a point where we've  
24 moved ahead and we have a legislation now that's  
25 saying "no, no, you have to consider First Nations and  
26 you have to consider from an economic point of view

1                   how it impacts things."

2                   So that legacy is there, but I think now is  
3                   an opportunity to try and change the process in which  
4                   we could engage on a fair and equitable basis.

5 THE CHAIRPERSON:       Okay.

6 MR. STARLUND:       So that's one example.

7 THE CHAIRPERSON:       Okay, thank you.

8 MR. STARLUND:       I'm not here to go through that list.

9                   It's a long one.

10 THE CHAIRPERSON:       No, I understand.

11 MR. STARLUND:       Okay, so not quite sure what the  
12                   translation was there. Every First Nation is their --  
13                   as you outlined in your draft, there's reserve land  
14                   and then there's traditional territory. For the most  
15                   part, reserve land was something that was arbitrarily  
16                   "Here, you go sit on this," right? And it doesn't  
17                   represent the aspects of the First Nation or the  
18                   opportunity. So by saying "reserve land" it's sort of  
19                   relegating you to a very small, sort of, imposed asset  
20                   and it doesn't reflect what would be required from an  
21                   opportunity point of view for First Nations to put  
22                   anything out that was viable.

23                   And they might -- in the case of the Burns  
24                   Lake First Nation, they have multiple reserves. What  
25                   did they say, how many reserves do you have? She has  
26                   17 reserves, right? So little tiny little bits and

1           pieces scattered around there, so there's no  
2           consolidation. Trying to even begin to think how you  
3           would do anything, you'd need to have a sort of  
4           access, regulator access, that could not segregate  
5           everything.

6 THE CHAIRPERSON: Right, to the areas in between.

7           Yeah, and there are people living in between the --

8 MR. STARLUND: There are, yeah. And there are people  
9           living on the traditional territory, so you know it's  
10          -- yeah, there is reserve land but that was a  
11          structure of not-First Nations.

12 THE CHAIRPERSON: No, I understand.

13 MR. STARLUND: So we're trying to say, "Okay, let's see  
14          how we can make something worthwhile and beneficial,"  
15          and be able to service our First Nation but maybe  
16          collectively work with other First Nations as well.  
17          So, we'd need to have some thought put into access  
18          regulations, right?

19 THE CHAIRPERSON: Yeah. I think just -- I mean, I  
20          understand what you're saying, but just by way of  
21          explanation, I think why we ended up down this whole  
22          path of reserve land is that we heard a lot in the  
23          first part of the inquiry about the municipal  
24          exemption and people wanted to have an exemption. And  
25          that municipal exemption basically works around the  
26          concept of land, because it says that, if you're on

1           this piece of land that the municipality runs, then  
2           you're exempt. So the way we kind of transferred that  
3           -- but then that's how we ended up with the reserve  
4           land. But as you correctly point out, there's a lot  
5           of limitations to that approach. So I think we need  
6           to rethink that, I think you're absolutely right.

7    MR. STARLUND:    Yeah. Like, Canada doesn't recognize  
8           First Nations as municipalities or communities. They,  
9           from a federal point of voice, I might be into the  
10          weeds a little bit but my own experiences, we -- the  
11          Gitanyow, we weren't recognized as a municipality, so  
12          from a tax exempt point of view we spent -- bought  
13          something off reserve applicable for GST and we could  
14          recover it, but because we weren't a municipality we  
15          could only recover 30 percent. So it's the First  
16          Nation model. So there's regulations that are piled  
17          on regulations, and all I'm saying is that, you know,  
18          I think we should look at intent of where we're trying  
19          to get.

20   THE CHAIRPERSON:   Yes, I agree.

21   MR. STARLUND:    And there's regulations piled on  
22          regulations. Municipalities, a lot of First Nations  
23          are going, "Well, a municipality has the right to tax  
24          and to generate revenue, First Nations don't." So  
25          there's differences, but First Nations, if they want  
26          to regulate that's their right to do so just as much

1                   as a municipality or more so.

2                   That whole issue around – what's the term –  
3                   restricting access. Yeah, just kind of stating the  
4                   obvious that BC Hydro is a monopoly, so there's never  
5                   been an engagement on how to do something outside of  
6                   that umbrella, so I guess that's the point there.

7                   On modern treaties, "First Nations" I think  
8                   is a blanket statement. A First Nation can speak for  
9                   its own self but it can't speak for others, so we  
10                  didn't have any comment on all of those other  
11                  categories that you put in there because if it isn't  
12                  our First Nation we're not going to comment on how  
13                  other First Nations makes their decisions or not.

14                  THE CHAIRPERSON: Okay, sorry, what are the other  
15                  categories?

16                  COMMISSIONER FUNG: Sechelt, Westbank, all that.

17                  THE CHAIRPERSON: Oh yeah. Okay, sorry, yeah. Okay.

18                  COMMISSIONER FUNG: Yeah, all that. Treaty lands.

19                  MR. STARLUND: So it's a nice read, but we're not going  
20                  to comment.

21                  THE CHAIRPERSON: Understood, thanks.

22                  COMMISSIONER FUNG: Understood, yeah.

23                  MR. STARLUND: Thirteen and fourteen, Indigenous  
24                  Utility, we're looking for a definition. So there's  
25                  -- we did that around a little bit. There obviously  
26                  have to be a definition, right? They have to define

1           it. We kicked it around the table a little bit. I  
2 personally think it's 51 percent, the majority.  
3 There's all these other situations that I guess can be  
4 discussed, but kind of the obvious threshold is either  
5 you're a First Nation or you're not. I don't know.

6           I mean this is a subject that you can  
7 really get into the weeds with, but I think the whole  
8 -- the one point we made was under law corporations  
9 aren't a First Nation. Right? So that's kind of a  
10 red herring as far as I'm concerned, because First  
11 Nations require a corporate entity to engage in  
12 business.

13           So it's more about the structure of the  
14 entity that they're using, whether it's an LP or a  
15 corporation. To say, well -- and I know that's how  
16 the federal government does taxation as well, is they  
17 say, "Well, you're not an exempt business because  
18 corporations have no rights as to status." But they  
19 reflect the ownership. So I think there needs to be a  
20 delineation between if it's owned by First Nations,  
21 then it's a First Nations owned business and not go  
22 down the whole rabbit hole of, well, a corporation  
23 isn't a First Nation.

24 COMMISSIONER BREWER:       And the ownership you feel -- how  
25 much ownership or how much interest is -- would be --

26 MR. STARLUND:       I don't know. I think 51 is kind of the

1                   majority --

2   COMMISSIONER BREWER:       Yeah, yeah.

3   MR. STARLUND:       Yeah, if you're a majority First Nations  
4                   owner.

5   COMMISSIONER BREWER:       Fifty-one percent.

6   MR. STARLUND:       I mean everyone -- every First Nations  
7                   is going to go out and have to get capital to invest.  
8                   And there's -- either you get capital, you get  
9                   partners. I found that it's -- from trying to invest  
10                  in some of these projects it's very difficult for a  
11                  lot of smaller First Nations to go through traditional  
12                  financing because, you know, typically you're using 20  
13                  to 30 percent equity stake. In a hundred million  
14                  dollar business you've got to say, let's write a check  
15                  for 30 million. Well, like most First Nations -- I  
16                  don't know, I mean maybe tapped into it, but not us,  
17                  so. But there's a lot that can't engage.

18                   So they're basically by definition not able  
19                  to engage unless they bring on a partner. So they  
20                  have a business opportunity, they reach out to a  
21                  partner that has said, "We'll partner with you." You  
22                  still have to have some kind of a standard to say, "51  
23                  percent." So there's ways of dealing with that. You  
24                  can tell your partner, "No, we're going in as a First  
25                  Nations business, so that means you're going to have  
26                  to do a shareholder's loan or some kind of a mechanism

1           in order to put the capital in and still retain the  
2           ownership that you need." There's ways if doing it,  
3           but you just need to have some kind of a standard and,  
4           I don't know, like 51 percent is probably the  
5           threshold for us. Right?

6           VOICE: We agree.

7           MR. STARLUND: You guys? You know? That's kind of  
8           consensus? There is?

9           VOICE: On what you were just talking about?

10          MR. STARLUND: Yeah, just what we talked about.

11          COMMISSIONER BREWER: I have a question on that as  
12           well. Just hypothetically, okay, if a utility were 51  
13           percent First Nation owned, for instance if you  
14           purchased a 51 percent interest in let's say Burnaby  
15           Hydro or something like that, would you consider that  
16           the same way? Or how would that -- or somewhere off  
17           the Reserve would probably be better.

18          MR. STARLUND: Yeah, I think the whole thinking  
19           "Reserve" is the wrong thought process.

20          COMMISSIONER BREWER: Yes. Right.

21          MR. STARLUND: It's First Nations people owning assets.  
22           So wherever you have that asset and it's owned by  
23           First Nations people, then it's First Nations owned.

24          COMMISSIONER BREWER: Not territorial --

25          MR. STARLUND: -- talking about traditional territory  
26           First Nations.

1 COMMISSIONER BREWER: Okay.

2 THE CHAIRPERSON: So it's not a First Nations --

3 MR. STARLUND: So I want to buy Burnaby Power.

4 THE CHAIRPERSON: Sorry, I didn't mean to interrupt.

5 COMMISSIONER BREWER: Yeah, that was a bad example, it  
6 just popped into my head. But I was just thinking of  
7 a utility somewhere, right, in B.C. So excuse me if  
8 I interrupted you.

9 THE CHAIRPERSON: That's okay, I just wanted to clarify  
10 then. So it's not -- it doesn't necessarily have to  
11 be "nation" owned utility to be an Indigenous Utility.  
12 It just has to be owned by an individual who is a  
13 member of a First Nation?

14 MR. STARLUND: Individual or group of individuals.

15 THE CHAIRPERSON: Or a group of individuals that's a  
16 member of a First Nations.

17 MR. STARLUND: That are First Nations under the law.

18 THE CHAIRPERSON: Yeah, okay.

19 MR. STARLUND: There is a legal definition for First  
20 Nations.

21 THE CHAIRPERSON: Understood, because I think that that  
22 is a different approach than we've been looking at.

23 COMMISSIONER BREWER: Yes.

24 THE CHAIRPERSON: We've been looking at utilities that  
25 are owned by the Nation or the Band, or the Band, or  
26 whatever the case may be.

1     MR. STARLUND:     Yeah, like you guys could probably be  
2                         considered a First Nations Corporation --

3     THE CHAIRPERSON:     Yeah, okay.

4     MR. STARLUND:     I don't think we want to relitigate what  
5                         the definition of a First Nation is, just simply state  
6                         that it's 51 percent First Nations.

7     COMMISSIONER FUNG:     So can I just ask, how do you feel  
8                         about the risk of gaming the system by having non-  
9                         Indigenous partners that will use a group of  
10                         individuals, for instance, to own an asset, and  
11                         thereby somehow escape regulation, traditional  
12                         regulation?

13    MR. STARLUND:     Are you asking me personally or --

14    COMMISSIONER FUNG:     Well, I'm just curious as to what  
15                         your thoughts are on that.

16    MR. STARLUND:     My personal opinion is come to me, throw  
17                         your money at us First Nations, and we can make that  
18                         decision as to whether they're gaming us or not. I  
19                         really get concerned when government bodies and  
20                         everything are looking after the interest of First  
21                         Nations, and they don't let First Nations make those  
22                         decisions.

23                         Yeah, set up a structure, set up  
24                         regulations on how the process goes, but First Nations  
25                         can make their own decisions on how those investments  
26                         might be made.

I have run across this before where  
somebody -- it took us, for example, I know this is on  
the record, but for example, when Gitanyow was putting  
their SOP program together, one of the conditions was  
we had to have a parcel of land on Reserve to build  
the project on. And it had to be rezoned, so the  
Federal Government took three and a half years to do a  
whole process which ended up in a public vote, and all  
the piles and piles of regulation, it basically pushed  
us past the SOP for somebody that was "looking after  
our interest." When everybody in our community knew  
what we wanted to do, we were informed, and didn't  
feel that we needed somebody from Ottawa telling us  
that we could actually put a plant on reserve, because  
they were looking after our interests. So that sadly  
goes sideways quite often.

COMMISSIONER FUNG: Thank you.

MR. ASP: Jerry Asp, more a comment on Anna's, what she  
asked there, because I'm confused. What do you say as  
what you perceive that there is some additional  
benefits to be called an Indigenous utility, okay?  
I've seen this game played, especially in economic  
development, where somebody will come in to be a  
partner with a First Nation's person to gain access to  
economic opportunities. The Tahltans are very  
careful, we understand very well.

1                   And so our criteria is minimum 51 percent  
2                   and a majority on the board, so it is First Nations  
3                   controlled and First Nations owned.

4                   But your question perceives that there's  
5                   some benefit to being an Indigenous Utility and  
6                   personally I don't see it. So perhaps you can explain  
7                   to me how you think there's a benefit to be an  
8                   Indigenous Utility? I know it looks good on paper and  
9                   I know some people think it's great, but I'm a Tahltan  
10                  that's very practical. I talk in dollars and cents.  
11                  So show me where the economic benefit is to me to have  
12                  it to be an Indigenous Utility. And I'd buy 51  
13                  percent of Burnaby Power if it makes money. I'd buy  
14                  it if it made money.

15 COMMISSIONER BREWER:       I really wish -- that was an  
16                   unfortunate example. I'm afraid I'm probably getting  
17                   -- we'll probably get letters on that one.

18 COMMISSIONER FUNG:       Yes, that's right.

19                   If I can try to answer your question, Mr.  
20                  Asp, I would answer it this way. I'm not sure there's  
21                  an economic advantage to being an Indigenous Utility  
22                  or not. However, there may be certain regulatory  
23                  advantages. If, for instance, our recommendation were  
24                  adopted by government, which is that Indigenous  
25                  utilities would be exempt generally from regulation by  
26                  the B.C. Utilities Commission, because one of the

1       issues that we've heard throughout this inquiry is  
2       that the cost of regulation, traditional regulation,  
3       are prohibitive for most, you know, small utilities,  
4       whether or not they're Indigenous or not. So that's  
5       how I would answer your question.

6 THE CHAIRPERSON:       Or there may be a perception.

7 COMMISSIONER FUNG:       Yeah.

8 THE CHAIRPERSON:       Yeah.

9 MR. STARLUND:       Bring your money, show me the  
10      perception. That, again, like what your statement is,  
11      it's conditional on us having actually access, right?  
12      So, yeah.

13 COMMISSIONER FUNG:       Absolutely. Which is why I say I  
14      can't comment on the economic advantages or not of  
15      having an Indigenous Utility.

16 MR. STARLUND:       There may be -- if we can also get the  
17      primary level of where we can have access and those  
18      kinds of things, then there could be an economic  
19      opportunity somewhere.

20 COMMISSIONER LOCKHART:       Mr. Starlund, I want to go back  
21      to the idea of the reserve not being the appropriate  
22      geographic boundary. And that certainly is  
23      compelling, is that that's too small. And I recall in  
24      Prince Rupert that you used the phrase, "It's an  
25      economic non-starter." And one of the characteristics  
26      though of a monopoly is that it's one -- there's only

1           one in the case of a monopoly, and so to some extent  
2           you do need a geographic boundary in order to maintain  
3           a monopoly.

4           What could be an appropriate geographic  
5           boundary, keeping in mind that traditional territory  
6           -- and if traditional territory is the appropriate  
7           geographic boundary, (a), is that the appropriate one  
8           and, (b) if so, how do traditional territories end up  
9           being an effective geographic boundary given the  
10          fluidity or ambiguity of the definition of  
11          "traditional territory"?

12         MR. STARLUND:     I don't think I'm qualified to define  
13          "traditional territory".

14         COMMISSIONER LOCKHART:     Okay. Perhaps not that, but  
15          what would be --

16         MR. STARLUND:     I am qualified to say that reserves are  
17          not First Nations' entire territory. They were --

18         THE CHAIRPERSON:     It's hard.

19         COMMISSIONER FUNG:     Yeah, it's an artificial construct.

20         MR. STARLUND:     The federal government basically  
21          confining you to that point. And so, I can show you  
22          the adverse position on that, is that reserves do not  
23          include the -- I think every First Nation would agree  
24          that the reserves are not the sum total of their  
25          assets and territories. So I would leave it up to the  
26          First Nations to define boundaries. That's not going

1           to be me. But definitely, reserves are constricted to  
2           trying to define what opportunities there are for  
3           First Nations.

4       COMMISSIONER LOCKHART:       Okay, and I see that one of  
5           your table --

6       MS. DEWIT:       My name is Virginia Dewit, Dewit is D-E-W-  
7           I-T. And my understanding of our traditional  
8           territory is 22,000 square foot from halfways to  
9           Hazelton, down to Maurice and Nato Dan, which is  
10          Babine. So this is a huge territory compared to the  
11          little tiny Reserve that we are put in. So I will  
12          just give you that example of what the territory and  
13          our reserves are.

14      COMMISSIONER LOCKHART:       Thank you.

15      THE CHAIRPERSON:       Mr. Starlund, or anyone, I think one  
16          of the reasons that we're kind of a little bit maybe  
17          look a little bit fixated on the land thing, is that  
18          again, it's kind of what we used as a basis for some  
19          of the recommendations, rightly or wrongly. But when  
20          you're talking about defining an Indigenous Utility as  
21          being 51 percent owned by a person who is a member of  
22          a First Nation, that's the end of the definition, is  
23          that correct? It doesn't matter where that utility is  
24          operating or who it's selling -- again, I don't want  
25          to put words in your mouth, but there doesn't seem to  
26          be any other part of the definition. So, it can be

1           operating anywhere, and selling energy to anyone, all  
2           it has to be is 51 percent owned?

3    MR. STARLUND:       That's correct, First Nations people own  
4           the majority of the business. This First Nation over  
5           here may want to be a partner with Tahltan, and the  
6           area of commonality is they're First Nations. So it  
7           is not necessarily a territory thing.

8    THE CHAIRPERSON:     Right, so the territory doesn't  
9           matter in this case.

10   MR. STARLUND:       They are First Nations people with an  
11           opportunity.

12   THE CHAIRPERSON:     So the territory doesn't matter, all  
13           that matters is the ownership.

14   MR. STARLUND:       No, and it's the Reserve lands and stuff  
15           like that is kind of not relevant.

16   THE CHAIRPERSON:     Okay.

17   MR. ASP:            Yeah, Jerry Asp, A-S-P. I just want to  
18           comment on that. One of the reasons I think you're  
19           fixated on Reserves is because that's where the  
20           communities are. And really that's the opportunity.  
21           For instance, Telegraph Creek is a Tahltan community.  
22           We have three major communities, Telegraph Creek is  
23           one of them. They're on diesel, that's where we are  
24           going to target our economic opportunity in  
25           electricity. And it's on reserve, yeah, so that's  
26           probably why this "Reserve" keeps coming up, because

1           that's the only economic opportunity.

2           If I could sell that power to Red Chris  
3           Mine or to Galore Creek, or to Eskey, I'd do it. But  
4           at the present, it's not economically viable. So,  
5           right now we are fixated on a community on Reserve in  
6           Telegraph Creek.

7           So probably that's where this is all coming  
8           from, because that's where the economic opportunity  
9           is, or potential opportunity.

10          THE CHAIRPERSON:     Yeah, that's right, and I think this  
11           has been an illuminating discussion to uncover that,  
12           thank you.

13          MR. STARLUND:      Economic divide. Economically viable  
14           and regulatorily available.

15          MR. ASP:            Yeah, even at the end of the day.. Even at  
16           the end of the day our project will come through your  
17           Commission.

18          THE CHAIRPERSON:    Okay, thank you.

19          MR. STARLUND:      Okay, I will read the question. "Do the  
20           same rules and benefits apply to BC Hydro as would to  
21           an Indigenous utility?" I think you kind of made a  
22           bit of a comment on what potential benefits there  
23           would be, but maybe there is a question for you?  
24           Yeah, is there a level playing field.

25          THE CHAIRPERSON:    Sorry, do the same rules apply?

26          MR. STARLUND:      In other words, would we be a mini-BC

1           Hydro? All the same rules?

2 THE CHAIRPERSON:     Well, we would like to think that we  
3           regulate all utilities the same way, at least in terms  
4           of the principles that we apply. And so the same  
5           rules that would apply to a smaller utility would  
6           apply to BC Hydro and vice versa. I mean that would  
7           be my general answer to that question, but I am not  
8           sure what specific issues we are looking at here.

9 MS. ERICKSON:     Tina Erickson, E-R-I-C-K-S-O-N. I think  
10          that one of the things that we were thinking about was  
11          the example where if we had an Indigenous Utility and  
12          it was going to sell to Washington -- or to Alberta,  
13          and so the rules and benefits that apply to BC Hydro,  
14          as far as you're concerned, do those same rules apply  
15          to the Indigenous utility if they were going to do  
16          that? And I know that you talked about fair benefit  
17          to the public at large, but I think that was -- the  
18          thought behind that is that if it was an Indigenous  
19          utility, whether it's on reserve lands or whatever, do  
20          we -- are we all playing by the same rules in spite of  
21          the fact that BC Hydro has the monopoly?

22 THE CHAIRPERSON:     Yes. Well, that would be our concern  
23          and that would be where our oversight -- we would  
24          apply our oversight to ensure that in that particular  
25          example that that utility has the same access to the  
26          BC Hydro transmission system so that it can get its

1           energy to Alberta or to Washington. It would have the  
2           same access that BC Hydro has when it wants to sell  
3           its energy to Alberta or to Washington.

4           That would really be the only oversight  
5           that we can have because we don't have any -- we can't  
6           have any oversight of the transaction that you  
7           negotiate between the party in Alberta or Washington,  
8           but we can ensure that you have the access to the  
9           system that you need to get the energy there under the  
10          same terms and the same costs.

11          We look at BC Hydro's internal costs  
12          structures and their transfer pricing agreements and  
13          so on, so we know how much Hydro has to pay itself. I  
14          know it sounds silly, but how much it has to pay  
15          itself to access its own transmission lines. And so  
16          we would -- again, our oversight would ensure that  
17          that's a level playing field.

18          MR. GEORGE:     Okay, thank you. Is there anybody else  
19          from this table that would like to add to what Mark  
20          just presented? One more comment, Mark?

21          MR. STARLUND:   So, when you're considering -- like, BC  
22          Hydro has got an inquiry into -- for your position  
23          with regards to spot, spot market purchasing?

24          THE CHAIRPERSON:   Sorry?

25          MR. STARLUND:   Spot market purchasing. So, BC Hydro,  
26          that's a part of their -- I don't know if it's in

1 front of you now or it's being presented to you. What  
2 we look at is that BC Hydro is an asset of the  
3 province of British Columbia and it has benefited from  
4 a lot of First Nations assets and lands. If that  
5 decision was to allow BC Hydro to just buy subsidized  
6 or low cost power elsewhere, it permanently would  
7 damage any opportunity that First Nations would have.  
8 We couldn't compete at that level. So there's an  
9 implication to that, whether -- that's all I'll say,  
10 is there's an implication to make in those decisions,  
11 negatively to First Nations, right?

12 THE CHAIRPERSON: Yeah, fair enough. And just to  
13 comment, what further complicates the issues is that  
14 energy purchases outside of the province are actually  
15 not done by BC Hydro, they're done by Powerex, which  
16 is a subsidiary of Hydro and which is explicitly  
17 exempt from regulation. And its exempt from -- well,  
18 it's naturally exempt outside of the province and is  
19 exempt inside the province. So it does make the  
20 answer to that question more complicated and there are  
21 some aspects of the interaction between BC Hydro and  
22 Powerex that we can regulate but it's not a  
23 straightforward question to answer. I'm sorry.

24 MR. STARLUND: I think I agree with Anna here that they  
25 may be gaming the system.

26 COMMISSIONER FUNG: No comment.

1       MR. GEORGE:     Excellent, thank you. Thank you very much  
2                    Mark.

3                    Before we move to closing, are there any  
4                    other comments that any of our participants would like  
5                    to make the Commissioners? Anybody? Okay.

6                    So I'm going to share a few housekeeping  
7                    closing remarks, and then turn it over to you, Dave,  
8                    for some closing remarks.

9                    Anyone who wishes to provide written  
10                  evidence can send it to the BCUC by March 2<sup>nd</sup>, 2020.  
11                  The final report to the Government of B.C. with the  
12                  BCUC's final recommendations is due April 30<sup>th</sup>, 2020.  
13                  More information on the inquiry and how to stay  
14                  involved can be found at [bcuc.com](http://bcuc.com).

15                  One of the interventions in our first round  
16                  when Dave was speaking about it, we concluded our  
17                  sessions by having a special session at one of the  
18                  evenings of the B.C. Assembly of First Nations General  
19                  Assemblies at September of last year. And we did that  
20                  because many of the Chiefs and their technical support  
21                  people were in Vancouver. So we set up a particular  
22                  meeting to be able to have accessibility to them.

23                  Similar requests have been put in front of  
24                  the Commission that we should be meeting at the BCAFN  
25                  next upcoming meeting in I believe it's March. And  
26                  then there is a couple of provincial meetings of the

1           Union of B.C. Indian Chiefs and the First Nations  
2           Summit in February. So we are endeavoring to get on  
3           the agendas and organize things with these particular  
4           groups, again trying to widen the circle and make sure  
5           we get as much input to the draft recommendations as  
6           we can.

7           So, thank you very much. Dave, some  
8           closing comments?

9           THE CHAIRPERSON:       Thank you, Dan. No, I would echo  
10          Dan's remarks about the comments, and I encourage you  
11          to, as you think about this over the next couple of  
12          months, to please provide any further comments that  
13          you have for us in March.

14          Otherwise, I'd like to thank you all very  
15          much, it has been -- for the panel, I think speaking  
16          for all of us, it has been a particularly helpful  
17          session, and your comments have been quite thoughtful.  
18          And I know they have come from a knowledgeable place,  
19          so we really appreciate that a lot, thank you.

20          And I wish you all a safe drive home. I  
21          know that some of you have driven to get here, and I  
22          appreciate that too, and hopefully we are getting you  
23          out of here while there is still enough daylight left.  
24          So, safe drive home to everyone. Thank you.

25           COMMISSIONER FUNG:     Thank you.

26           MR. GEORGE:         Happy Holidays.

1           **(PROCEEDINGS ADJOURNED AT 1:40 P.M.)**

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

6           

7           A.B. Lanigan, Court Reporter

8           December 9<sup>th</sup>, 2019

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