

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

Community Input Workshop

BEFORE:

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

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SMITHERS, B.C.

December 9th, 2019

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

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

(TRADITIONAL GREETING)

MR. GEORGE: Thank you very much, Chief.

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

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

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

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.

23 I am Smalqmix, from the Sylx Nation in
24 lower B.C. and I am a member of the Lower Similkameen
25 Indian Band and a member of this panel, a
26 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 1st, 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 2nd, 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 be 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 interveners 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 2nd 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 Hwey 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 2nd. 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 2nd, 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 2nd, 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 view, 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.

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

17 COMMISSIONER FUNG: Thank you.

18 MR. ASP: Jerry Asp, more a comment on Anna's, what she
19 asked there, because I'm confused. What do you say as
20 what you perceive that there is some additional
21 benefits to be called an Indigenous utility, okay?
22 I've seen this game played, especially in economic
23 development, where somebody will come in to be a
24 partner with a First Nation's person to gain access to
25 economic opportunities. The Tahltans are very
26 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 halfway 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 2nd, 2020.
11 The final report to the Government of B.C. with the
12 BCUC's final recommendations is due April 30th, 2020.
13 More information on the inquiry and how to stay
14 involved can be found at 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.

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

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


A.B. Lanigan, Court Reporter

December 9th, 2019