

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

KAMLOOPS, B.C.
January 14, 2020

Community Input Workshop

BEFORE:

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

VOLUME 19

INDEX

PAGE

VOLUME 1, JUNE 3, 2019 - CRANBROOK

PRESENTATION BY MR. McCURRY2
PRESENTATION BY MS. EUNSON19

VOLUME 2, JUNE 5, 2019 - KELOWNA

PRESENTATION BY MR. CAWLEY35
PRESENTATION BY MR. FODEN78
PRESENTATION BY MR. ALEXIS55
PRESENTATION BY MS. DERRICKSON64

VOLUME 3, JUNE 6, 2019 - KAMLOOPS

PRESENTATION BY MR. MATTHEW69
PRESENTATION BY MS. MANUAL103
PRESENTATION BY MS. HOOPER114
PRESENTATION BY MR. GOTTFRIEDSON132

VOLUME 4, JUNE 7, 2019 - WILLIAMS LAKE

PRESENTATION BY MR. THOMPSON141

VOLUME 5, JUNE 10, 2019 - PRINCE RUPERT

PRESENTATION BY MR. STARLUND177
PRESENTATION BY MS. GEMEINHARDT208
PRESENTATION BY MR. McDAMES209
PRESENTATION BY MS. SKIDMORE218
PRESENTATION BY CHIEF CAMPBELL222
PRESENTATION BY MR. WILSON230

INDEX

PAGE

VOLUME 6, JUNE 12, 2019 - VANCOUVER

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

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

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

VOLUME 8, JUNE 27, 2019 - PRINCE GEORGE

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

VOLUME 9, JULY 3, 2019 - CAMPBELL RIVER

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

VOLUME 10, JULY 4, 2019 - VICTORIA

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

INDEX

PAGE

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

VOLUME 11, SEPTEMBER 18, 2019 - VANCOUVER

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

VOLUME 12, SEPTEMBER 26 - VANCOUVER

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

VOLUME 13, NOVEMBER 18 - PRINCE GEORGE

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

VOLUME 14, NOVEMBER 21 - KELOWNA

No Presentations

INDEX

PAGE

VOLUME 15, NOVEMBER 27- VANCOUVER

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

VOLUME 16, NOVEMBER 28- NANAIMO

POWERPOINT PRESENTATION BY THE CHAIR	817
PRESENTATION BY MR. SANCHEZ	841
REPORT PRESENTATION BY MR. MOORE	845

VOLUME 17, NOVEMBER 29 - VICTORIA

POWERPOINT PRESENTATION BY THE CHAIR	874
PRESENTATION BY MR. ALEXANDER	907
PRESENTATION BY MS. BEATON	915
REPORT PRESENTATION BY MR. ALEXANDER	918

VOLUME 18, DECEMBER 9 - SMITHERS

POWERPOINT PRESENTATION BY THE CHAIR	949
REPORT PRESENTATION BY MR. STARLUND	987

VOLUME 19, JANUARY 14, 2020 - KAMLOOPS

POWERPOINT PRESENTATION BY THE CHAIR	1033
REPORT PRESENTATION BY CHIEF EDWARDS	1059
PRESENTATION BY MR. GRIFFIN	1077

INDEX

	<u>PAGE</u>
PRESENTATION BY MS. PAULIN	1081

INDEX OF EXHIBITS

NO.	DESCRIPTION	PAGE
VOLUME 16, NOVEMBER 28- NANAIMO		
C11-3	MAP SHOWING LEQ'A':MEL RESERVES	783

KAMLOOPS, B.C.

January 14th, 2020

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

1
2
3
4 MR. GEORGE: Okay, good morning friends, and welcome to
5 the Indigenous Utilities Regulation Inquiry Draft
6 Report Workshop. We are grateful that you are here
7 today and taking time out of your busy schedules and
8 inclement weather to be with us.

9 We want to begin by acknowledging Secwepemc
10 Territory that we are gathered on here today. Raise
11 our hands in respect to the elders, the matriarchs,
12 the youth, the good people of this territory for
13 hosting us here. Particular acknowledgement to
14 Kukwpi7 Rosanne Casimir, and her Tuniquila from the
15 Tk'emlups te Secwepemc for again hosting us here in
16 their territory.

17 We are big on safety here at the BCUC, so
18 if you need to leave the room in a hurry, please make
19 note of the exits here. The restrooms are outside the
20 door, and you make your way all the way around the
21 corner to the end. Please silence your phones while
22 we are in session, and please be careful moving about
23 the room because there is a number of tables and bags
24 on the floor.

25 I want to begin by having the BCUC panel
26 that are here with us today to briefly introduce

1 themselves, beginning with the chair, David Morton.

2 THE CHAIRPERSON: Thank you Dan, my name is Dave
3 Morton, and I'm the chair and CEO of the British
4 Columbia Utilities Commission. I am also the chair of
5 this panel. And I've been with the Commission since
6 2010, I've been a Commissioner since then, and I've
7 been Chair since late 2015. I am a professional
8 engineer by training, and of late have found myself
9 surrounded by lawyers and accountants. But still I
10 soldier on.

11 I'd like to thank everyone for coming
12 today. This inquiry, I think it's an important
13 inquiry that comes at a pivotal time in the history of
14 British Columbia, and some of the issues that have
15 surfaced are issues that we really need to take a look
16 at. And we really appreciate everyone's thoughts and
17 involvement in this.

18 So, thank you very much for this, and we
19 look forward to a good session today.

20 COMMISSIONER FUNG: Good morning, everyone. My name is
21 Anna Fung, and I am one of the panel members, and one
22 of the three lawyers on this panel. I am also the
23 Deputy Chair of the B.C. Utilities Commission. I've
24 been with the Commission now since December 2018, and
25 I just want to thank all of you first of all for
26 coming out in such inclement weather to join us and

1 provide us with your feedback on the recommendations
2 that we've put forward as draft recommendations in our
3 report on the Indigenous Utilities Regulation Inquiry.

4 Just by way of background, as I said, I am
5 a lawyer, but in my career one of the areas I have
6 specialized in is Aboriginal law. So I know something
7 about it, but certainly not from the perspective that
8 you have, as the First Nations people living in this
9 territory.

10 So I am really looking forward to hearing
11 your feedback today as I said, and I welcome your
12 participation. Please feel free to ask us any
13 questions that you have about our inquiry, and our
14 recommendations, and we'll do our best to answer them.

15 So thank you once again for your
16 participation.

17 COMMISSIONER BREWER: Good morning, my name is Carolann
18 Brewer. I am Okanagan from the Lower Similkameen
19 Band, and I am also a lawyer. I have worked as an
20 advisor to First Nations and to First Nation
21 organizations and my entire career has been dedicated
22 to Indigenous law throughout various practice areas,
23 including utilities law when I worked for Hydro One in
24 Ontario.

25 I am very happy to be a panelist on this
26 Inquiry. I was appointed to the Commission on a part-

1 time basis in January of last year.

2 COMMISSIONER LOCKHART: Good morning, my name is Blair
3 Lockhart. I am also a lawyer, and I've been a member
4 of the Commission since January of last year. Prior
5 to becoming a lawyer I was a geologist. My areas of
6 practice have included resource -- mineral resources
7 in the province and South America. I am looking
8 forward to today, thank you.

9 MR. GEORGE: Thank you very much. It is always good to
10 know who we are sharing time and space with. For
11 those of you that I haven't had the good fortune of
12 meeting, my name is Dan George, I am the president and
13 CEO of Four Directions Management Services, and my
14 role here is as the MC and to assist in the
15 facilitation of dialogue on the draft recommendations.
16 Joining me I have --

17 MS. DOLMAN: Teresa Dolman. Teresa Dolman, Four
18 Directions Management Services. Good morning
19 everyone.

20 MR. GEORGE: And I've asked Teresa to move around the
21 room with the microphone. It's always good to know
22 who's in the room with you, so please briefly
23 introduce yourself and who you belong to.

24 MR. NORDQUIST: Dave Nordquist. I'm with the Adams Lake
25 Indian Band.

26 MS. SIMON: Nicola Simon, I'm a member of staff with

1 the BCUC.

2 MS. VAN LOON: Krissy Van Loon, I'm also a member of the
3 staff at BCUC.

4 MR. STALLARD: Hi, Phil Stallard, also with BCUC
5 staff.

6 MS MORTIMER: My name is Kailee Mortimer, I'm a
7 community consultant with Urban Systems.

8 MS. ANDREW: Trish Andrew, Cayoose Creek Development.

9 MS. EDWARDS: Michelle Edwards, I'm chief of the Cayoose
10 Creek Indian Band.

11 MR. GARDNER: Bob Gardner, Allwest Reporting staff.

12 MR. CHORNEY: Good morning, my name is Al Chorney, I'm
13 CEO Simpcw Resources Group.

14 MS. MATTHEW: Good morning, my name is Martha Matthew
15 and I'm a Councillor with the Simpcw First Nation.
16 And I would also like to acknowledge that we are in
17 the traditional territory of the Tk'emlúps te
18 Secwepemc.

19 MS. FOWLER: Good morning, my name is Robin Fowler and I
20 work for BC Hydro here in Kamloops.

21 MR. BUSSOLI: Lino Bussoli, external counsel to the
22 Utilities Commission.

23 MS. PAULIN: Brienne Paulin, lawyer at Aldridge and
24 Rosling, general counsel of Nisga'a Nation.

25 MR. GRIFFIN: I'm Mansell Griffin, Director of Lands
26 and resources for Nisga'a Lisims Government.

1 MR. GEORGE: Thank you. And we have more of our
2 friends from Allwest Reporting with us here today. A
3 lot of effort goes into setting this up and getting on
4 the road. We have to drive to Fort St. John. Our
5 next meeting there is on Friday, so I just want to
6 acknowledge our team from Allwest Reporting.

7 Today's workshop, this morning we're going
8 to hear from Dave Morton our chair, who will provide
9 an overview of why we are here and make a presentation
10 on the proposed recommendations made within the draft
11 report. There will be time for questions and answers
12 at the conclusion of Dave's presentation. Following
13 the presentation we'll break into one, I think one
14 small group where we will have the opportunity to
15 discuss the draft report and its recommendations more
16 deeply.

17 A short lunch will take place from 12:30 to
18 1:00 p.m., after which time we will reassemble and ask
19 that each group take 20 minutes to discuss who from
20 your group can summarize a discussion for your table
21 back to the panel. A representative from each table
22 will then present their summary and comments on the
23 draft report to the panel.

24 This presentation will be on the record and
25 transcribed. The breakout small group discussion will
26 not be on the record or transcribed. Any individuals

1 who wish to make additional comments to the panel will
2 have the opportunity to do so after the small table
3 breakout personation. We will conclude today's
4 session with some brief remarks. We have scheduled to
5 3:00 p.m., but we will conclude naturally when the
6 group needs to conclude.

7 The primary objective of today's workshop
8 is to assist the BCUC by providing your input into the
9 draft report, which was recently released and which
10 seeks to address what characteristics you believe
11 define an Indigenous energy utility and if or how an
12 Indigenous utility should be regulated. I want to
13 acknowledge the BCUC for once again going out to
14 community and soliciting feedback now on the draft
15 recommendations generated from our first round of
16 dialogue.

17 On November 1st, 2019, the BCUC released its
18 Indigenous Utilities Regulation Inquiry Draft Report,
19 including its preliminary findings and recommendations
20 for the B.C. government. The report is available on
21 the Inquiry's proceedings page on the BCUC website and
22 a summary has been provided to you today. In order to
23 ensure that draft report recommendations reflect the
24 interests and perspectives of B.C.'s Indigenous
25 peoples and communities, we invite you to provide your
26 comments to the BCUC. The comment period on this

1 draft report is open until March 2nd, 2020. Today at
2 this workshop we're hoping to hear your initial
3 thoughts and comments. This is also an opportunity to
4 ask the BCUC questions about this work and seek any
5 clarifications you may require. The BCUC has prepared
6 a brief presentation providing an overview of the
7 inquiry process to date and an overview of the draft
8 report and the recommendations contained within.

9 So just some general rules of engagement
10 for our time together. You will have an opportunity
11 to inform the panel of your interests related to this
12 inquiry, you are welcome to ask questions and make a
13 presentation in traditional language. However, we ask
14 that you please provide translation for the
15 presentation so that it can be transcribed and added
16 to the public record.

17 All presentations to the panel, along with
18 the name of the person making the submission, will be
19 transcribed, live-audio streamed at bcuc.com and
20 placed on the public record. The dialogue that takes
21 place during the breakout group will not be
22 transcribed again, live-audio streamed or placed on
23 the public record. No part of this workshops will be
24 videotaped.

25 So today I just ask you to be hard on
26 issues and soft on people. The process is only as

1 strong as the level of participation we see from each
2 of you, so please find your merge lane into the
3 conversation. Build on the ideas of others. We
4 always generate great ideas when we come together in
5 these forums. We ask that you listen generously to
6 what is being shared and always that we have a
7 solution orientation. When we identify an improvement
8 area please be able to offer a solution. Problem
9 identification, solution identification.

10 Krissy, maybe you could speak to the camera
11 that's in the room.

12 MS. VAN LOON: Yes. So, I think it made it around --

13 MR. GEORGE: Microphone -- hang on.

14 MS. VAN LOON: I think I made it around to most of the
15 folks in the room. However, we do have a television
16 camera from the local news station here. This is
17 Adam, he's just here to gather a bit of B-roll.
18 Mostly backs of heads, it won't be to identify anybody
19 and won't be filming individual submissions, it's just
20 here for this morning while the panel makes a
21 presentation. But if anybody's uncomfortable, please
22 let me know and we can chat with Adam about what would
23 work best for his setup.

24 THE CHAIRPERSON: And I would add he will not be
25 videotaping any of the discussions.

26 MS. VAN LOON: That's right, he's just here for the

1 panel presentation this morning.

2 MR. GEORGE: Okay, thank you. Is everybody fine with
3 that? Are we good? Okay.

4 THE CHAIRPERSON: Okay, can everybody hear me all
5 right?

6 COMMISSIONER FUNG: Yes.

7 **PRESENTATION BY CHAIRMAN MORTON:**

8 THE CHAIRPERSON: Okay, great. All right, well thanks.
9 So, I'm going to take a few minutes, probably more
10 than a few minutes sadly, to give you a little bit of
11 background on the Utilities Commission and what we do
12 and on this Inquiry, the purpose of the Inquiry and
13 how the inquiry has been conducted to date. Please
14 feel free to ask questions as I go along and I'll try
15 and pause specifically for questions as we go.

16 So, a lot of the discussions that we're
17 going to have are focused energy utilities -- well,
18 we're calling energy utilities, and energy utilities
19 are what are defined in our Act. We operate under the
20 B.C. *Utilities Commission Act*. It defines the
21 companies that we regulate, these energy utilities,
22 and an energy utility then is defined in our Act and I
23 would point out that it's not necessarily a universal
24 definition.

25 Generally speaking, there's utility
26 commissions in almost every jurisdiction in the world,

1 of countries of different political stripes and
2 different places in their socioeconomic development,
3 but it's a universal concept is to regulate utilities.
4 But each jurisdiction does it in a slightly different
5 way and defines it in a slightly different way. The
6 definition that we use here is in our Act, and it's a
7 company that owns or operates the equipment that
8 delivers energy to your home, community or business.
9 It's not the exact definition, it's a paraphrase. And
10 the energy, it can electricity, natural gas or any
11 agent for the production of heat, light, hot water and
12 so on.

13 There's a specific exclusion in our Act for
14 petroleum products; crude oil, gasoline and diesel.
15 So generally speaking we do not regulate that aspect
16 of energy production, but any other aspect of energy
17 production -- the sale of it in British Columbia is
18 regulated by the Utilities Commission.

19 So, an energy utility, a company that
20 delivers this stuff, is responsible for providing this
21 energy to your home, responsible for maintaining that
22 delivery of energy and it's responsible for providing
23 reading your meters and collecting money for it and
24 it's responsible for delivering safe and reliable
25 service.

26 The Utilities Commission, then, as I

1 explained, is a pretty common concept throughout the
2 world. And the reason they developed is that
3 typically and traditionally those companies are large
4 monopolistic companies, and they are that way because
5 there is a lot of investment in infrastructure that's
6 required, so there is a huge barrier to entry. Not
7 everybody can set up their own utility. And there is
8 generally a public interest issue in having only one
9 set of infrastructure. A lot of people don't want
10 three or four different companies running their wires
11 down your street. They don't want the street
12 constantly being dug up because there is five
13 different companies delivering natural gas to yourself
14 and your neighbours.

15 So there has been a general evolution
16 towards one company that does this, and they do it.
17 And because they are the only company then that you
18 can buy your electricity or buy your natural gas from,
19 they have a monopoly position, which means there is a
20 potential for them to abuse that position, and
21 potential for them to charge you too much money
22 because there is no competition to keep those prices
23 in line. And there is a potential for them not to
24 provide reliable service, because again, there is no
25 competition to keep them in line.

26 So, the primary goal of a utilities

1 commission then is to ensure that those companies
2 operate in a way that provides a service at the prices
3 that are fair to the customers, and also on the other
4 side of it, that are fair to the utility. The goal is
5 not to drive prices down as low as possible. The goal
6 for us is to achieve a balance so that the utility can
7 earn enough money so that it can maintain its
8 infrastructure and build new infrastructure as
9 required. But also so that you don't have -- and
10 collect a reasonable profit. But also to ensure that
11 the users pay a fair price and no more than that.

12 So, as I said, generally speaking we
13 regulate all companies that provide these kinds of
14 energy services in the province. Now there are some
15 exceptions. There are some exceptions in our Act for
16 a municipality that provides service within its own
17 boundaries to its own residents in its boundaries.
18 However, as far as Indigenous Utilities go, a utility
19 that would be owned and/or operated by a First Nation,
20 whether it is operating solely on First Nation
21 territory or operating outside of its territory, it
22 has traditionally been regulated in the same fashion
23 that any other utility in the province is regulated.

24 We are an independent regulatory agency.
25 We are what is called an administrative tribunal.
26 When utilities come to us asking for rate increases,

1 or asking for the ability to build infrastructure
2 around the province, and then take the amount of money
3 that they've spend on that infrastructure and recover
4 it in rates, then they must come to us and ask for
5 approval to do so.

6 So we regulate a broad range of activities
7 of utilities which includes building infrastructure,
8 charging rates. But it also includes things like
9 issuing shares, buying other utilities, merging with
10 other utilities, and building infrastructure that may
11 not have a physical footprint. Upgrading computer
12 systems for example could be some of the kind of
13 capital expenditures that we would review.

14 And in addition to holding hearings when
15 utilities make applications to us for these kinds of
16 activities, we also under our Act have the ability to
17 hold inquiries into certain matters. And those
18 inquiries may be inquiries that we decide are
19 something that we need to look at, or we could be
20 directed by government to hold an inquiry into a
21 certain issue. Often it's an issue that would have to
22 do with our Act and how we operate under the Act. We
23 don't have the ability to change our Act, but if we
24 are ordered by government to look into something like
25 that, then we would turn around and make
26 recommendations to government, which may involved a

1 recommendation to change our Act.

2 A recent example of that is we held an
3 inquiry into electric vehicle charging, which is an
4 activity that is by definition regulated under our
5 Act. This was an inquiry that I ordered, it wasn't a
6 government directed inquiry. But it was an inquiry
7 that myself and my staff decided it was of sufficient
8 importance to look at the way that electric vehicle
9 charging is regulated. And the reason that we did
10 that is that we felt electric vehicle charging, it was
11 not a monopolistic activity, it was something that
12 competitors could participate in. And our view has
13 always been that if there's competition, there doesn't
14 need to be regulation or there needs to be a much
15 lighter approach to regulation. So that's why we
16 conducted an inquiry into electric vehicle charging
17 and as a result of that we made certain
18 recommendations to government about changes to our Act
19 and government, so far they've responded in part and
20 made some changes and they're still as I understand it
21 mulling over the remainder of the recommendations.

22 This inquiry then achieves a similar
23 objective or hopefully will achieve a similar
24 objective. However, this one was directed by
25 government and government asked us to look at the way
26 that we are regulating Indigenous utilities and

1 whether that's an appropriate way to continue or
2 whether there should be changes made to the Act to
3 reflect any recommended differences in the way we
4 operate, that we regulate Indigenous owned utilities.

5 This slide, it's a summary of some of the
6 things I was just saying about the responsibility of
7 regulated utilities and how we have a role in that
8 regulation. I won't go over that again.

9 I'll just provide -- this slide, however,
10 is one I would like to look at, because it's an area
11 of our regulation that is an important piece of
12 regulation and it's one that in our draft report we've
13 singled out and I want to make sure that we have an
14 understanding of that and why we did do that. On that
15 map -- obviously a map of the province, but you can
16 see that this is BC Hydro's transmission system.

17 Now, BC Hydro as you all know is the
18 dominant electric utility in the province, basically
19 owns virtually all of the transmission system in the
20 province, with the exception of a small amount that's
21 operated by Fortis in this area and -- not directly in
22 Kamloops, but in this general area and in the
23 Kootenays. And there are some -- a very small amount
24 of transmission that's privately owned and operated,
25 but the bulk of it is owned and operated by British
26 Columbia -- sorry, by BC Hydro.

1 And there are interconnections between
2 B.C., and Washington State, and Alberta, and we're all
3 part of a connected grid, the North American grid.
4 And there's a joint governance of that grid between
5 Canada and the United States, and the Canadian aspect
6 of the regulation of that is met by each individual
7 province that regulates their piece of the
8 transmission system.

9 And one of the common goals of this
10 regulation is reliability of that grid. As you may
11 know in the early 2000s, I think it was 2003, there
12 was a tree that fell on a transmission line in Ohio
13 and before you know it most of the Eastern Seaboard in
14 Canada and America was without power for a significant
15 amount of time. All the major cities were dark.

16 And so this regulation arose largely in
17 response to that, and it consists of education,
18 maintenance standards to ensure that there's enough
19 right-of-way around the transmission lines and also
20 lately cyber security standards to protect against
21 cyber attacks. Because of the interconnected role and
22 the cross border issues with that, we've singled that
23 part out in our report and made recommendations about
24 how that should continue to be regulated.

25 There's also the issue of the municipal
26 exemption that I mentioned earlier on, and that's any

1 municipality that chooses to run its own electric
2 utility is exempt from our regulation. There's not a
3 lot of examples of that, there's six municipalities in
4 the province that do that: New Westminster, Grand
5 Forks, Penticton, Summerland, and Nelson. And the
6 reason I mention that is that the conversation in this
7 inquiry, it has been that there are many First Nation
8 bands that operate like municipalities and therefore
9 should have a similar -- the approach to them should
10 be similar, and so you'll see wording in the draft
11 report around that municipal exception. Just to
12 explain, that's where that comes from and how that
13 arises.

14 Okay, so what did the government
15 specifically then ask us to answer? So these are the
16 questions that the government laid out for us in early
17 2019. And they are: What are the defining
18 characteristics of Indigenous utilities? Should they
19 be regulated under the *Utilities Commission Act* or
20 under another mechanism or should they be regulated at
21 all? And if it's appropriate to regulate them under
22 the UCA, should they be regulated in the same fashion
23 as other utilities are or should there be a difference
24 approach to regulation? And we can talk a little bit
25 more about when we -- it's one of the areas that we're
26 going to ask you to discuss in the workshops.

1 And if it's not appropriate to regulate the
2 Indigenous utilities under the UCA but in some other
3 fashion, then how should they be regulated? And then
4 if the utilities cease to become an Indigenous owned
5 utility, then what should happen? Should it then
6 default to regulation under the UCA?

7 So, when we received these questions we
8 looked at them and we started to map out a way that we
9 could answer the questions. Now, one of the things
10 that we do as a commission, and we are an
11 administrative tribunal, we're not a consulting
12 company even though we have staff that have the same
13 kinds of skills that a consulting would do and can
14 apply the same kind of analysis, we don't just go --
15 somebody doesn't ask you the question, we go away and
16 think about it, write a report and provide the answer.
17 That's not how we operate.

18 The way we operate with anything we do,
19 whether it's an inquiry or an application, is we go
20 out to public and we create a process and we invite
21 peoples' thoughts and we invite people to provide
22 evidence and we give everybody the opportunity to
23 review what everyone else has said, cross-examine
24 evidence as required, and then we allow for final
25 submissions from everyone. And then we have a panel
26 of adjudicators that look at all of the evidence and

1 all of the -- everything that's transpired in the
2 process and then they produce a decision or a report
3 as the case may be as a result of that.

4 So what we wanted to do is we wanted to
5 make sure that we designed a process that fully
6 engaged with, in particular, the people that would be
7 affected by any recommendations that were made. And
8 as a result of that what we did was we set up an
9 inquiry process that allowed for the registration of
10 parties that wanted to intervene, parties that had
11 evidence that they wanted to bring forward to be
12 tested and cross-examined. And then we also wanted to
13 provide the opportunity for the more general public to
14 have some input into it.

15 And so, that part of the process ended up
16 with a set of community input sessions that we did,
17 that we held around the province. We were here in
18 Kamloops, I can't remember exactly when, it was last
19 summer I believe, August-ish, among a number of other
20 locations in the province, where we invited people to
21 come and make whatever comments they chose to make to
22 us.

23 And then we went away and we wrote a draft
24 report. What the panel did was we looked at all the
25 submissions that we had from interveners and we looked
26 at all the comments that we'd received in the public

1 interest input process and the panel said, "Let's make
2 some draft recommendations," kind of like a straw man,
3 or a guess a straw person would be the appropriate
4 wording to use, and we'll say, "This is what our
5 recommendations could look like." And we had issued
6 those in the draft report and what we're asking now is
7 for you to take a look at those and tell us if you
8 agree with them or disagree with them, if we got it
9 right, somewhat right, not very right at all. And
10 then the panel would go away with your comments and a
11 further process for final submissions from the
12 interveners and then we'll go away and then we'll
13 produce a final report, which as I indicated before,
14 still doesn't change anything even if there are
15 reconditions for change. That will then go to
16 government and it will be up to government to decide
17 whether they want to adopt any or all of those
18 recommendations or not.

19 So what are those proposed recommendations,
20 the recommendations that we're asking you to discuss
21 among yourself today and present your conclusions or
22 your thoughts on them? The proposed recommendations
23 were that -- the first one we felt was an important
24 recommendation, and that is that customers of
25 Indigenous utilities, all customers of Indigenous
26 utilities, should have the same protection as all

1 customers of any other utility does. However that
2 protection is delivered, it should substantially be
3 the same, it should provide for the same protections,
4 provided that Indigenous utility is operating in a
5 monopolistic fashion, then the customers deserve the
6 same treatment.

7 The regulation of the mandatory reliability
8 standards, the standards that apply to the
9 interconnected grid that I talked about, we felt that
10 those should continue to be regulated by the BCUC
11 regardless of where the transmission line falls, no
12 matter what kind of territory it is over, or who owns
13 or operates the transmission system. There has to be
14 a consistent set of standards that apply to those.
15 And the reason for that is it's part of an
16 international, and an interprovincial obligation. We
17 would not be able to trade electricity back and forth
18 if we didn't continue to maintain those standards.
19 And that ability to trade electricity back and forth
20 is important because we rely on our neighbours for
21 back up energy in the case of emergencies. If
22 something catastrophic was to happen here to a
23 generation plant for example, we can bring in
24 electricity from other jurisdictions. And we also
25 trade energy back and forth on a daily basis, and that
26 helps keep electricity rates down, because we can

1 arbitrage, and buy electricity when it's cheaper to
2 buy it than it is to produce it. So, in order to
3 continue that relationship, we felt it was important
4 to maintain those reliability standards.

5 And then we looked at different kinds of
6 lands. Reserve lands under the *Indian Act* as opposed
7 to modern treaty lands, not modern treaty lands, and
8 lines that are subject to treaty negotiations. I
9 won't go through all of those in detail, but generally
10 speaking the panel's view is that Indigenous
11 utilities, certainly when operating within their own
12 territories however they may be defined, they should
13 have the similar rights to self-regulations that, for
14 example, municipal utilities do, and not necessarily
15 be subject to the *Utilities Commission Act*.

16 But based on some of the things that we had
17 heard in the first phase of this inquiry, we felt that
18 could be done on an opt-out basis. In other words, it
19 wouldn't be automatic. But if a First Nation chose
20 not to be regulated by the *Utility Commission Act*,
21 they could simply indicate that they were going to opt
22 out, and wouldn't be regulated. They could choose to
23 not opt out, and continue to be regulated.

24 We did express some concerns, and I
25 appreciate that they may be viewed by some as
26 controversial, but we did express some concerns about

1 dispute resolution mechanisms, and the robustness of
2 them, and moreover the application of them to a
3 utility. We recognize that there are dispute
4 resolution mechanisms in place on reserve lands, and
5 on many other lands. But the question is, do they
6 apply to all customers of an Indigenous, a band-owned
7 utility? And so we had some concerns around that,
8 which you will see expressed in recommendations as, in
9 many cases, that we would ask that there be some
10 demonstration that those dispute resolution mechanisms
11 do apply.

12 And then we've got, as I say, those are
13 generally the recommendations, and there is some
14 differences with regard to those dispute resolution
15 mechanisms. In some cases, we did review them and we
16 are satisfied that they existed. Say for example, the
17 Nisga'a treaty, but we weren't sure under the *Indian*
18 *Act* if that was the case.

19 So as I say, I don't want to race over
20 this, but each of these groupings are explained in the
21 report. And then as far as ceasing to be an
22 Indigenous utility, it's reasonably straightforward to
23 the panel, but maybe there are some subtleties here,
24 that if a utility ceases to be an Indigenous utility,
25 or sold for example to an outside interest, then the
26 regulation under the *Utilities Commission Act* would

1 kick back in again, so to speak.

2 And then the definition of an Indigenous
3 Utility. Well that one is a little trickier. And the
4 reason it's a little trickier is because there is
5 different kinds of ownership.

6 You know, a band for example, could own the
7 utility assets, you know, it could own the -- you
8 know, a generation plant could own the wires, could
9 own the pipes and that would be a pretty clear case of
10 that would be an Indigenous utility. But what about a
11 case where the investment money came from a third
12 party and the Band retained some ownership share? And
13 it may be majority share, it may be a minority share.
14 And then, as you know, the share ownership in a
15 company doesn't even necessarily dictate the control
16 of the company. You can control the company with a
17 minority share. So there's a whole host of issues
18 around what would the threshold have to be before
19 something is considered an Indigenous utility in that
20 scenario.

21 I would add, those same issues exist with
22 the municipal exemption and we wrestle with the same
23 things. It's pretty clear, you know, that for
24 example, New Westminster owns, directly owns all of
25 its electricity infrastructure, but we do have cases
26 that come before us where a municipality simply has a

1 portion -- an interest in a portion of a utility and
2 they argue that that's a municipal utility. So those
3 that are interested in that issue, we have an inquiry
4 that is running along with the same -- in parallel to
5 this one that looks into that issue around municipal
6 utilities and what satisfies the definition of a
7 municipal utility.

8 So what we're asking for you today is we're
9 asking generally for your views on these
10 recommendations and asking whether they strike the
11 right balance between ratepayer protection and the
12 rights of First Nations to self-governance. With
13 regard to the complaints and dispute resolution
14 process, what should it look like and what are the
15 minimum safeguards that should be there. And should
16 the BCUC have any role in that.

17 And what that means is, right now we act as
18 a dispute resolution, we're part of the dispute
19 resolution process with utilities generally. If you
20 have a complaint about BC Hydro, then you're expected
21 to call BC Hydro and try to work it out with them and
22 if you can't, then you call us and we have a complaint
23 department that then tries to mediate, or at least
24 investigate that complaint and work out between
25 yourselves and BC Hydro how that complaint can be
26 resolved. If you're not happy with that, you're not

1 happy with the way we acted on that, then legally your
2 next recourse is that you can go to the B.C. Supreme
3 Court and that would be the appeal from the way that
4 we would resolve that complaint.

5 And presumably that would be the recourse
6 if you're a customer of an Indigenous utility and you
7 had a complaint and couldn't work it out with the
8 utility, then you would presumably then have a similar
9 recourse to the courts. So the question that we're
10 suggesting is perhaps you could -- perhaps the
11 customer could tap into the BCUC's complaint
12 resolution at that point and we could provide
13 assistance in that regard. Again, it's just -- it's a
14 suggestion that we'd like to see how you feel about.

15 And we also heard in the first phase of
16 this Inquiry that there are areas that some parties
17 felt that the BCUC should not withdraw its oversight
18 under any circumstances, and safety and reliability
19 was one of the key areas that we heard that from some
20 parties, that we should always retain a safety and
21 reliability oversight of all utilities in the province
22 regardless of where they are operating and who they
23 are owned by.

24 So we've asked some specific questions that
25 we hopefully can draw out some discussion on these
26 topics. We've laid out some examples, you know,

1 around the utility, who owns the utility – and these
2 are some of the things I just talked about – if
3 they're owned by a corporation or owned by a
4 partnership or a general partnership. If they're
5 owned by a third party and a First Nation, the Band
6 council grants a franchise or a licence for it, then
7 does that -- you know, is that enough to trigger the
8 same kind of exemptions for regulation.

9 And then we've asked a number of questions
10 around, well -- those questions look at the utility
11 operating within the Band -- the area of the Band's
12 jurisdiction, but as you know, you need a critical
13 mass of customers to make a utility economically
14 viable, and in many cases that would mean having a
15 broader customer base than just the immediate area.
16 So what happens if Band A wants to -- Band A's utility
17 wants to sell energy to people that belong to another
18 Band in another geographic location? Who should
19 regulate that? Should there be regulation of that?
20 Should it be regulated by the first Band or the second
21 Band or should there be a third party regulator?

22 And then that brings up other questions.
23 Well, how do you get the energy from there, from point
24 A to point B in that scenario? What if you need to
25 use the BC Hydro transmission system? There are
26 prohibitions on that. The province does not allow

1 third parties or BC Hydro is not allowed to -- we're
2 not allowed to approve third party access to the
3 transmission system for those purposes. So, should
4 there be some changes made to that legislation?

5 And, again, an Indigenously owned exempt
6 utility could sell energy to a municipality. You
7 know, and that may require, again -- and that would
8 not be a transaction that requires any kind of
9 approval from the BCUC, and that's -- but the retail
10 access prohibition may prevent that, that sale from
11 occurring.

12 Sorry, let me explain that a little bit
13 better. If you're a First Nation utility or any other
14 kind of utility and, as I said, if you want to sell
15 energy anywhere else in the province, to anyone else
16 in the province and you need to transmit it over BC
17 Hydro's transmission system to sell it to -- say you
18 want to sell it me at my house, you're not allowed to
19 do that. However, if I lived in New Westminster you
20 could do that because then you're selling it into an
21 area that's exempt from the *Utilities Commission Act*,
22 which is where all of that retail access legislation
23 is. So the question then is, how should those
24 transactions be viewed?

25 The alternative to selling to individuals
26 or companies within British Columbia is to sell your

1 energy directly to BC Hydro and that's not a -- I'm
2 sure many of you in this room are familiar with that
3 model, that's the independent power producer model and
4 that requires an energy contract with BC Hydro.

5 Now, if you're an exempt Indigenous utility
6 you still need approval to enter into that energy
7 purchase contract with BC Hydro and that needs our
8 approval, the BCUC's approval, to enter into that
9 contract. And some of the issues that we look at when
10 we look at those contracts is we look at the public
11 interest issues, including what is the impact of that
12 purchase on a BC Hydro ratepayer? And if you're
13 selling energy to BC Hydro that's at a higher price
14 than the price of energy that Hydro could purchase
15 from elsewhere, typically importing let's say, then it
16 would be difficult -- it's difficult for us to approve
17 that because it doesn't pass a key test of not causing
18 ratepayer harm.

19 So being exempt from our oversight, while
20 it may mean that you wouldn't have to deal with the
21 Utilities Commission for selling to an individual
22 within your territory, it would mean that you would
23 still need approval to sell energy to BC Hydro and BC
24 Hydro may not want to purchase the energy depending on
25 the price, and even if they did you may not get
26 approval depending on the price.

1 So what we're asking today, is that a
2 reasonable approach going forward or should there be
3 changes made to the public interest test to reflect
4 particular First Nation issues with regard to those
5 kinds of power purchases?

6 And then finally, what should the BCUC --
7 or if anything, should the BCUC do to assist in
8 Indigenous utility regulation to reduce regulatory
9 burden and improve access to regulatory processes for
10 First Nation if a First Nation or a First Nation's
11 utilities end up continue being regulated by the
12 Utilities Commission. Is the way we're doing it
13 working for everyone or is there changes that we
14 should make?

15 So, this summarizes the key dates in this
16 process and where we are right now is January 14th.
17 So, we're going to be doing a workshop is Fort St.
18 John on Friday. I think we're doing another
19 presentation since that was made, aren't we Dan?
20 Another couple presentations.

21 MR. GEORGE: One in March with the B.C. Assembly of
22 First Nations.

23 THE CHAIRPERSON: Yeah. And then starting March, we're
24 asking for written comments on the draft report. So
25 what that means is you're hopefully going to discuss
26 this today, tell the panel how you feel about it but

1 that's okay, you can change your mind and if you do we
2 ask you, after you've reflected on it, to make any
3 additional comments that you may have by the 2nd of
4 March.

5 And then we have a second date, on the 31st
6 of March, and that gives you an opportunity during
7 March to read what everybody else -- the comments of
8 everyone else and it gives you, at the end of March,
9 the opportunity to respond to comments that others
10 have made.

11 And so the panel started then on the 1st of
12 April, the panel will be writing up a final report.
13 And then that will be issued at the end of April and
14 it will be posted on our website and we'll send a copy
15 to the Provincial Government. And at that point the
16 Inquiry, as far as we're concerned, is over, the
17 timeline would be out of our control at that point and
18 it would be up to government to act on any
19 recommendations they choose to in the report.

20 I'm sorry, I didn't stop for questions. I
21 said I was going to, but I'm happy to answer any
22 questions at this point.

23 MR. GEORGE: Thank you, Dave. Any questions for Dave?
24 Just wait for the microphone. Please say your first
25 and last name, for the record, spell your last name.

26 MR. CHORNEY: Al Chorney, C-H-O-R-N-E-Y. I guess a

1 fundamental question that I have, and I'm reading the
2 document here. And my question really is related to
3 the jurisdiction, the issues that exist between
4 whether or not it should be regulated by Federal or
5 Provincial Governments, and I think it's referred to
6 in 4.2.1. I think that's a fundamental question that
7 needs to be answered or addressed at some point in
8 time.

9 THE CHAIRPERSON: Okay, fair enough. At this point our
10 approach has been that the regulation of energy, these
11 energy utilities as we defined them here, from the
12 perspective of the Canadian Constitution is a
13 provincial responsibility. So generally speaking
14 within the bounds of the province the *Utilities*
15 *Commission Act* applies.

16 I agree that there are parties that --
17 mainly when it comes to treaty lands or *Indian Act*
18 lands that there may be some ambiguity about that and
19 we do welcome your comments on that. We have not
20 opined on that to date, and I would also add that the
21 Federal Government, although they have been invited
22 numerous times, has not, as to my knowledge, have not
23 participated, but we do welcome your comments on that.

24 MR. GEORGE: Thank you. Anybody else? Chief?

25 CHIEF EDWARDS: Thank you. Michelle Edwards, E-D-W-A-
26 R-D-S. I was just -- like, why was the question asked

1 about Indigenous utilities being regulated? Who asked
2 the question, really? Was that a question coming
3 from, you know, First Nation's leadership council or
4 BCAFN? Or --

5 THE CHAIRPERSON: I can't answer that specific
6 question. I can say, though, that one of the issues
7 that, as I understand it, was part of the genesis of
8 this inquiry was an application by Beecher Bay, which
9 is on southern Vancouver Island just outside of
10 Victoria. And they had a rather comprehensive
11 development that they were, and I think still are,
12 involved with, which involved the development of some
13 condominium properties. And they wanted to bring in
14 electricity from Hydro and resell it and have their
15 own distribution system. And then they had a water
16 source thermal heating system that would get its heat
17 from the ocean, ocean-source I guess you'd call it.
18 And then, I believe, there was a propane grid if I'm
19 not mistaken. I think that was the cluster of
20 utilities there.

21 And they did come to us asking for an
22 exemption under the -- sorry, first of all they came
23 to us and argued that the *Utilities Commission Act*
24 didn't apply and there was a determination that it did
25 apply, and I won't go into the details but that was
26 the determination, and then they asked for an

1 exemption.

2 In that particular case it was one of those
3 cases where it was not -- the assets were not directly
4 owned by the Band, they were owned by a private
5 corporation which the Band owned, I believe it was 51
6 percent, and then there was a private individual.
7 There was some issues with jurisdiction, certainly
8 with the federal government over the water source heat
9 pump because that was going to be in the ocean, which
10 may have been federal jurisdiction.

11 But it was -- you know, I would admit that
12 the decision was controversial and I believe that is
13 one of the things that drove this inquiry, but I
14 believe there were others too. There's -- as I'm sure
15 you're all aware there's a drive for economic
16 independence on First Nation lands, there's issues
17 around remote communities, and clean energy, and a
18 desire to replace diesel generation with clean energy.
19 There's issues around IPP contracts with BC Hydro.

20 So, you know, I can't speak for the
21 government and I'm not trying to, but I do believe all
22 of these issues have had some role in this inquiry.

23 CHIEF EDWARDS: Thank you.

24 THE CHAIRPERSON: Yeah.

25 MR. GEORGE: Any other questions or comments for Dave?

26 Okay, seeing none, let's have a brief

1 recess for ten minutes, and then we'll rearrange the
2 tables in the centre of the room here and we'll all
3 gather around one big group here and walk through the
4 recommendations point-by-point soliciting your
5 feedback.

6 Thank you. Please help yourself to
7 refreshments.

8 **(PROCEEDINGS ADJOURNED AT 11:07 A.M.)**

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

10 **(PROCEEDINGS RESUMED AT 1:06 P.M.)**

11 MR. GEORGE: Everybody's had a chance to have enough to
12 eat. Let's have a round of applause for the hands
13 that prepared and served our food.

14 I'll call the meeting back in to session.
15 Our chief is going to walk us through the comments
16 made by the table here. At the conclusion of that we
17 will then segue into any other comments or
18 presentations that need to be made by the
19 participants. Thank you very much, Chief, for
20 volunteering to do this.

21 **REPORT PRESENTATION BY CHIEF EDWARDS:**

22 CHIEF EDWARDS: Hello again, Michelle Edwards, E-D-W-A-
23 R-D-S. I am practicing to talk in front of people, so
24 that's why I put my hand up. It's good to see the
25 board again. I did do a presentation a few years ago,
26 I was an intervenor for Site C.

1 THE CHAIRPERSON: I remember that well, yes.

2 CHIEF EDWARDS: Yeah, we got some good feedback, but it
3 wasn't good enough, they are still building it.

4 I just really want to say thank you to
5 everybody who participated. It's good to have this
6 conversation, and it's good to participate in more of
7 these, and always have your input and learn from it.
8 Really I called yesterday and said I was coming. I
9 wasn't really sure if my community should have been
10 part of this, because it seemed to me that it was
11 utilities that should be on reserve, but I came anyway,
12 because I think there are things I think that we would
13 like to do as an Indigenous-owned utility off reserve.

14 So, some of the things that we went
15 through, I don't know if we have the regulations
16 monopoly? So I will just follow this and we'll go
17 through some of our answers. So, the proposed
18 recommendations, the following proposed
19 recommendations are intended to provide a starting
20 point for further discussion. Regulations of
21 monopolies 1) that all ratepayers of Indigenous
22 utilities receive the same protection as ratepayers of
23 non-Indigenous utilities.

24 The discussion around that was clarity was
25 needed on what same protection as ratepayers of non-
26 Indigenous utilities means. Because you say it up

1 there, it doesn't mean we know actually what those
2 protections are. So I think a little bit more clarity
3 on what that actually means.

4 The Colonialist statement, free market
5 should naturally provide ratepayer protection, I
6 believe our friend Dave had brought that up.

7 Chief and Council already have a duty to
8 protect --

9 THE CHAIRPERSON: Just to clarify that point, are you
10 saying that the notion that a free market protects
11 customers is a colonial concept? Is that what you're
12 saying?

13 CHIEF EDWARDS: Is that what you were saying, Dave?

14 MR. NORDQUIST: Just to clarify, yeah, that wasn't --
15 it was kind of what I was saying, but what I was
16 saying like for say the membership side of things,
17 Chief and Council have a fiduciary duty already to
18 provide best services.

19 THE CHAIRPERSON: Right.

20 MR. NORDQUIST: And then for leases. If we go
21 overboard on the rates, for no good reason, they'll
22 just pack their businesses up, and we don't want that.

23 THE CHAIRPERSON: Okay, thank you.

24 CHIEF EDWARDS: Thank you.

25 MR. NORDQUIST: Yeah, just the way you guys wrote that
26 was I thought a bit colonial.

1 THE CHAIRPERSON: Okay, fair enough, thank you.

2 CHIEF EDWARDS: Okay, so Chief and Council already have
3 a duty to protect their members, I just read that.

4 Does the BCUC see a possibility that there
5 could be a competitive market? This is written under
6 the assumption that a monopoly will still exist. If
7 the BCUC doesn't have jurisdiction over the
8 regulation, how would they step in if ratepayers
9 weren't being treated fairly? What if the utility is
10 closed loop, and only on Indigenous lands? Doesn't
11 use the grid, et cetera. Does the BCUC have any
12 jurisdiction?

13 The Federal Court offers a remedy for
14 people if they have an issue. How are ratepayers
15 currently protected.

16 THE CHAIRPERSON: Sorry, can we just go back. Can you
17 be a little bit more specific about the remedy of the
18 Federal Court? My three-lawyer panel members may well
19 know the answer to this, but I'm afraid I don't. So I
20 am just wondering if somebody could illuminate me on
21 that?

22 CHIEF EDWARDS: Yes, who made that comment? Was it --
23 David?

24 MR. NORDQUIST: That was mine. No, it just pertained
25 to like whenever we set up a tribunal, similar to how
26 you guys are set up, certain rules, et cetera. The

1 person that appeals to that tribunal always has the
2 right to go off to Federal Court.

3 THE CHAIRPERSON: So is it your dispute resolution
4 mechanism is subject to the Federal Court. So then
5 the question for us would be whether the utility
6 disputes would follow that stream?

7 MR. NORDQUIST: I would presume so, right?

8 THE CHAIRPERSON: Presumably so. Okay, thank you.

9 CHIEF EDWARDS: I think a good example is a lot of us
10 are becoming taxing authority, so we have systems and
11 standards and laws that are in place that you could
12 follow back on. We have an appeal process.

13 So, number 2) regulation of MRS, the BCUC
14 retain jurisdiction with respect to approval,
15 compliance and enforcement of MRS applicable to all
16 transmission infrastructure in the province regardless
17 of who owns or operates the infrastructure.

18 Recommendation number 2, response only
19 makes sense on an integrated grid at the point of
20 interconnection. If it isn't interconnected, MRS
21 should not apply.

22 THE CHAIRPERSON: And it doesn't, actually. It's only
23 if it's the transmission connected to grid, yeah.
24 Thank you.

25 CHIEF EDWARDS: Okay, thank you. Reserve lands, number
26 3, that a First Nation should have the opportunity to

1 self-regulate when it provides utility service on its
2 own land in much the same way as municipalities and
3 regional districts do. Subject to the proposed
4 recommendations 4 to 6, this can be accomplished by
5 proving that a First Nation or Band Council may opt
6 out of BCUC regulation by notifying the BCUC of its
7 intention. The recommendation was if you have
8 jurisdiction you shouldn't need to opt out, you should
9 have the option to opt in, and that was our friend,
10 the Nisga'a.

11 Four, that the First Nation should
12 demonstrate it has an appropriate complaint and
13 dispute handling process in place to protect all
14 ratepayers. In the event it cannot do so the BCUC
15 would retain jurisdiction to handle all complaints.

16 Number 4, the recommendation. What is the
17 basis for the BCUC's jurisdiction on reserve lands?
18 This is an operational guideline for owners of
19 utilities and should be self-imposed. Are elections
20 every two years sufficient for a complaints process?
21 That's our elections.

22 THE CHAIRPERSON: Okay, yeah.

23 CHIEF EDWARDS: So, number 5, reserve lands continued,
24 that the BCUC complaint and dispute handling processes
25 be available to any ratepayer who wishes to appeal a
26 decision arising out of the First Nations utilities

1 complaint process.

2 Recommendations to number 5, these should
3 even be questions. It implies our standards aren't
4 high enough or as high as other utilities. That's a
5 good way of saying it. I always say, we've upped our
6 standards, so up yours too.

7 Contracts should and do always have a
8 dispute resolution process. A dispute resolution
9 process is important for the average person or
10 customer.

11 Number 5 continued, why does it have to be
12 BCUC? Could we create a new entity in partnership
13 with the BCUC to do this? Like you have two on the
14 panel and we have two on the panel.

15 THE CHAIRPERSON: Sure, great idea.

16 CHIEF EDWARDS: If the BCUC plays a role it would be
17 because they have been invited by the organization who
18 has jurisdiction.

19 Number 6, safety and reliability, other
20 than MRS, will be the subject of the workshop and
21 comment period. If the final report recommends that
22 BCUC retains jurisdiction over safety and reliability
23 First Nations would not be able to opt out of those
24 applicable portions of the UCA.

25 Number 6, jurisdictional issue, BCUC may be
26 able to tell BC Hydro it can't sell certain assets but

1 it doesn't have the authority to tell an Indigenous
2 community it can't buy it assuming it is taking place
3 on reserve or treaty lands, more complex on
4 traditional territory. Safety and reliability should
5 not take priority over the environment, an Indigenous
6 way of life. The definition of reserve lands is too
7 restrictive and inconsistent with UNDRIP.

8 Do you understand the environment part of
9 it about the safety and the reliability?

10 THE CHAIRPERSON: And that it doesn't take precedence
11 over traditional governance, is that what you're
12 saying?

13 CHIEF EDWARDS: Well, it shouldn't take precedence if
14 someone has an aging asset and they're not looking
15 after it and then they come along and they ruin an
16 entire ecosystem because of something that they didn't
17 look after their asset. You'd put safety on BC Hydro
18 saying, "You need to go and fix that dam." But in the
19 meantime you're going to wipe out a whole way of life
20 and I don't think that's taken into consideration
21 because you wouldn't know that unless you asked us.

22 THE CHAIRPERSON: Yeah, I think -- I don't disagree
23 with what you're saying, it's a good example.
24 However, I think that this recommendation, it more
25 applied to assets that would be owned by the
26 Indigenous utility, and the question being what should

1 the oversight of safety be of those assets? And, you
2 know, frankly the panel is not taking a position on
3 what that should be. We're simply pointing out that
4 there have been parties in the first phase on this
5 inquiry that have said that the BCUC should retain
6 jurisdiction over the safety aspects of regulation of
7 those assets, and so that's the thrust of this
8 question. You know, your dam example is a good
9 example, but that wasn't what -- that wasn't the
10 question that we were specifically focusing on.

11 CHIEF EDWARDS: Okay. So it's a good example of how we
12 would operate and want to be operating.

13 THE CHAIRPERSON: Right. Yeah.

14 CHIEF EDWARDS: So Modern Treaty Lands, Nisga'a, number
15 7, that the Nisga'a Nation should have the opportunity
16 to self-regulate, as do municipalities and regional
17 districts, when it provides utility service on its own
18 lands. So jurisdiction is already with the Nisga'a
19 Nation, it doesn't need to be given by BCUC.

20 Number 8, that notwithstanding the
21 Nisga'a's authority over their own lands, the BCUC
22 retains its jurisdiction over MRS because of the
23 interconnected nature of the North American bulk
24 electric agreement.

25 Irrelevant. Should be removed unless we
26 intend to connect to the grid. More to come in

1 Nisga'a submission. So they do have a submission and
2 they wanted to be able to present that.

3 So number 9, Other Modern Treaty Lands,
4 that provided that a modern Treaty contains terms that
5 are substantially similar to those in Nisga'a 's
6 Treaty, on the basis of parity, a modern Treaty Nation
7 should have the opportunity to self-regulate when it
8 provides utility service on its own lands, in the same
9 manner proposed for the Nisga'a Nation. Same
10 sentiments as 7 and 8.

11 Number 10, so Historical Treaty lands, that
12 First Nations that are parties to Historical Treaties
13 by covered by the same proposed recommendations
14 outlined in 3 to 6 in the Reserve Land section of the
15 draft report. That was captured before.

16 THE CHAIRPERSON: Yeah.

17 CHIEF EDWARDS: Westbank First Nation, provided that
18 the Advisory Council applies to the resolution of
19 utility complaints, that recognition be given to the
20 Westbank First Nation's opportunity to self-regulate
21 when it provides utility services on its own lands in
22 the same manner as proposed for the Nisga'a. I think
23 by then we're saying just go talk to them.

24 Sechelt was kind of the same.

25 THE CHAIRPERSON: Yeah, and we have invited them to
26 make their submissions on that.

1 CHIEF EDWARDS: Okay. So next. 13, ceasing to be an
2 Indigenous Utility, that if a utility ceases to meet
3 the definition of an Indigenous utility it becomes
4 subject to regulation under the UCA. Ownership is
5 irrelevant, what matters is who has jurisdiction.

6 Number 14, Definition of an Indigenous
7 Utility, that consideration be given during the
8 workshop and written comment period to any further
9 context in which the definition of Indigenous utility
10 is required. An Indigenous utility as a utility
11 within your Indigenous jurisdiction, revenue generated
12 by the Indigenous utility taxes, et cetera, should
13 stay within the community, where does the Indigenous
14 council sit.

15 THE CHAIRPERSON: Ms. Edwards.

16 COMMISSIONER LOCKHART: Ms. Edwards.

17 THE CHAIRPERSON: Yeah. Go ahead, Blair.

18 COMMISSIONER LOCKHART: I wonder if just between --

19 THE CHAIRPERSON: Go ahead.

20 COMMISSIONER LOCKHART: Between recommendations 13 and
21 14, I'm curious about the interpretation regarding
22 jurisdiction versus ownership and I wonder if you
23 could expand on that? How -- like why wouldn't
24 ownership matter?

25 MR. GRIFFIN: Mansell Griffin, G-R-I-F-F-I-N. The
26 point I was making is in B.C., what's a B.C. utility,

1 right? If Fortis became -- I don't know if it's
2 publicly traded or not, but if it did --
3 THE CHAIRPERSON: It's parent is, yeah.
4 COMMISSIONER LOCKHART: It is.
5 MR. GRIFFIN: Right. So would that mean if it was
6 suddenly owned by a majority of Americans who buy
7 shares, it's no longer regulated by BCUC?
8 THE CHAIRPERSON: No, the definition is if you sell
9 energy to a person in British Columbia, that no matter
10 who owns you --
11 MR. GRIFFIN: That's my point.
12 THE CHAIRPERSON: Yeah.
13 MR. GRIFFIN: You're selling energy within your
14 jurisdiction, you're regulated by the Utilities
15 Commission because it's in your jurisdiction.
16 THE CHAIRPERSON: Yes. Right.
17 MR. GRIFFIN: So if they're selling energy in Nisga'a
18 jurisdiction, it doesn't matter who owns the shares or
19 whether it's owned by the Nisga'a or if it's owned by
20 B.C. If it's selling energy on Nisga'a lands and
21 we've passed legislation, then they're subject to our
22 legislation, period. It's our jurisdiction so it's
23 our matter to legislate. That's the point I was
24 making. It's not necessarily relevant who owns it as
25 much as where they're operating from.
26 THE CHAIRPERSON: So does that mean then that it's

1 Nisga'a's position that regulation of BC Hydro when
2 operating in Nisga'a territory should be regulated by
3 the Nisga'a?

4 MR. GRIFFIN: We have more specific comments that we'll
5 be making both verbally today and written. I don't
6 think we broached the idea of whether BC Hydro would
7 be subject or not.

8 THE CHAIRPERSON: Or Fortis or any other -- Pacific
9 Northern Gas, any other utility, yeah. You're going
10 to address that later?

11 MR. GRIFFIN: It'll be clear in our --

12 THE CHAIRPERSON: Because my question is, as I
13 understand this argument or this line of reasoning,
14 that any utility that's operating on any particular
15 Nation's territory is captured by regulation of that
16 Nation. Then a company that's operating across
17 British Columbia could, you know, find themselves
18 facing a hundred different regulators in that
19 scenario.

20 MR. GRIFFIN: Perhaps, right? Just if someone is
21 working across Canada finds themselves in more than --

22 THE CHAIRPERSON: Exactly, yeah, yeah.

23 MR. GRIFFIN: My point though, with respect to BC
24 Hydro, for example, BC Hydro is in our treaty, so
25 there are very specific circumstances with respect to
26 BC Hydro and for that matter, TELUS. There are

1 utility provisions in our treaty that are specific to
2 BC Hydro and what they get to do and under what
3 circumstances, whether it be part of a lease or right
4 of way.

5 THE CHAIRPERSON: Right. Right, okay. Thank you.

6 COMMISSIONER LOCKHART: And, sorry, then what about
7 areas of, kind of, either overlapping jurisdiction or
8 ambiguous jurisdiction, specifically traditional
9 territories?

10 CHIEF EDWARDS: Well, I think where ownership, even if
11 it's a minority ownership, it's still Indigenous
12 ownership, right? Because the reason they're there is
13 because they came to the community whose territory
14 they were in and asked to be in a partnership or do
15 you want to buy, you know, this utility with us. And
16 are only actually granted the purchase because we give
17 them access into the territory. So I think for that
18 one it's both jurisdiction and ownership, and if you
19 can actually prove both then it's really Indigenous
20 owned, but I think it should be -- it shouldn't
21 matter, right? Because you could be minority owner
22 and it's still Indigenous owned because you're in
23 their territory to be able to do that.

24 COMMISSIONER LOCKHART: I see, okay. Thank you, that's
25 really helpful. Thank you.

26 CHIEF EDWARDS: So, 14 continued, even if Indigenous

1 community is a minority owner the utility would not
2 exist in that area without their permission or
3 participation. Indigenous communities control access
4 even if it's adjacent to a reserve, it should still be
5 captured within the territory.

6 And then other, do we have the topics of --
7 so, topics for feedback continued. So, should the
8 scope of the proposed recommendations be expanded to
9 include specific area situations such as the
10 following: the utility's assets are owned by a
11 corporation of which the First Nation Band Council is
12 a shareholder; the utilities assets are owned by a
13 partnership of the First Nation Banc Council as a
14 partner or limited partner or a general partner; the
15 utility's assets are owned by a third party but the
16 First Nation Banc Council has granted a franchise
17 agreement, a licence and/or had enacted enabling
18 bylaws to facilitate the construction and operation of
19 the utility; the utility's assets are owned a First
20 Nation Band Council but are operated by a third party
21 and the First Nations Band Council by agreement with
22 the utility owner sets or approves the setting of
23 rates for the utilities.

24 Another was if an exempt utility sells
25 energy to a neighbouring First Nation, how should the
26 sale of that energy be regulated on other First

1 Nation's lands? If an exempt utility wants to sell
2 energy to a different reserve or a First Nation and BC
3 Hydro's transmission system is required to transport
4 the energy the retail access prohibition applies.
5 Should the BCUC recommend that changes be made to the
6 retail access prohibition? That's kind of what we
7 focused on in that discussion.

8 And so, it wasn't practical to stay on
9 reserve, would need to sell off reserve to local
10 communities. BC Hydro needs to fix their assets.
11 Retail access should not be an issued when one exempt
12 entity is selling to another exempt entity, example of
13 municipalities. Where does reconciliation fit here?
14 EPAs should consider both reconciliation and the
15 territory costs where the power is generated. EPAs
16 should consider more than just economic costs, social,
17 environment, et cetera. How do we get power from
18 where it is generated on Indigenous lands to where it
19 is needed on Indigenous lands.

20 And this one I think had to do again with
21 the EPAs. Processes need to be more open to capture
22 community feedback, and not just lawyer submissions.
23 But they're the ones that understand this.

24 And that's it, I believe. Anybody want to
25 add anything to that? Or are we going to go to our
26 presentation? This one over here? Okay.

1 Okay, so the parking lot. How does the
2 inquiry fit in and/or impact the current ongoing
3 discussions that are taking place locally? Should it
4 be considered throughout this inquiry process?
5 MR. GEORGE: So that was specific to some of the
6 government-to-government negotiations that are
7 underway?
8 CHIEF EDWARDS: Yes.
9 COMMISSIONER LOCKHART: Sorry, Ms. Edwards, can you
10 read that again for me please? How does?
11 CHIEF EDWARDS: How does the inquiry fit in and/or
12 impact the current ongoing discussions that are taking
13 place locally? Should it be considered throughout
14 this inquiry process?
15 COMMISSIONER LOCKHART: All right, thank you.
16 COMMISSIONER BREWER: I think I can take a stab at
17 responding to that one right now. I think we are
18 making policy recommendations. If you are in
19 discussions right now with government-to-government
20 with the Government of B.C., then those, whatever
21 comes out of that specific to your First Nation will
22 obviously be the policy that would be adopted with
23 respect to your First Nation. So, we are kind of
24 doing the broader policy considerations with respect
25 to regulation of Indigenous utilities. It's not as
26 specific -- you know, if you are in discussions, then

1 that's obviously going to -- whatever we recommend is
2 going to be subject to whatever those discussions are,
3 no doubt.

4 Martha?

5 MS. MATTHEW: Martha Matthew, M-A-T-T-H-E-W. I was the
6 one that raised that point, and it's not just a single
7 First Nation that is involved in these discussions in
8 this area. It is the Secwepemc Nation which consists
9 of four different divisions, or campfires as we refer
10 to them. And so as I said, it's not just a single
11 Nation that I'm talking about.

12 COMMISSIONER BREWER: Yeah, it will be the same. I
13 mean, if you are in discussions, then continue on with
14 your discussions. These will just be recommendations
15 on policy direction for the Province, and they can
16 implement those in whatever way, or not, really.

17 CHIEF EDWARDS: Anybody else? Are we good to go?

18 MR. GEORGE: Excellent. Great job, Chief.

19 THE CHAIRPERSON: Thank you very much.

20 COMMISSIONER LOCKHART: Sorry, Ms. Edwards --

21 THE CHAIRPERSON: One more question.

22 COMMISSIONER LOCKHART: I have a question about the
23 previous page with regards to the observation that
24 selling on reserve is not practical, and then the note
25 that BC Hydro needs to fix their assets. Certainly --

26 CHIEF EDWARDS: Don't get me started.

1 COMMISSIONER LOCKHART: And that is a comment that we
2 have heard. But I wonder the connection between how
3 -- what was the discussion around, or could you expand
4 on the discussion about not practical to stay on
5 reserve? We have heard that, and then how that
6 connects to BC Hydro needs to fix their assets?

7 CHIEF EDWARDS: Well, if you go into some territories,
8 and you want to put in like run-of-the-river, and
9 Hydro is impacting your entire territory with aging
10 infrastructure, then fixing it and bringing it up to
11 standards impacts how water might flow through some of
12 our IPPs. Or if they are having outages because they
13 are having to replace turbines and it's taking eight
14 years, whereas those outages will impact how we would
15 develop in our territories.

16 COMMISSIONER LOCKHART: I see, all right. Okay, thank
17 you.

18 MR. GEORGE: Thanks again, Chief.

19 **PRESENTATION BY MR. GRIFFIN:**

20 Mansell Griffin, G-R-I-F-F-I-N. With your
21 permission I will speak in Mispak first, and I will
22 translate and continue.

23 *GREETING IN INDIGENOUS LANGUAGE (as provided by Mr.*
24 *Griffin)*

25 *"Wag, Simgigat, Sigidimhaanak*
26 *ganhl t_xaan'itkshl k'ubawilksihlkw*

1 *Ksgookhl ni dim t'oogaks*
2 *Simoogit laxha ahl amaa*
3 *Sahl ginamit loom'*
4 *N'iik'aphl wag' ii Gitwinksihlkw*
5 *wil witgwig'*
6 *Nisga'a Lisims Government*
7 *wil dii Lahlalsig' ahl*
8 *Director of Lands & Resources*
9 *Luu-aamhl goodig' ni wil*
10 *di'akhlkw ni dim sil'ga wilsim'*
11 *ahl amaa satgun"*

12 Well, Chiefs, Matriarchs, Noble people.
13 First let us thank our creator for the beautiful day
14 he has given us. My hereditary name is N'iik'ap and I
15 come from the Nisga'a village of Gitwiuksihlkw. I am
16 here in my capacity as Director of Lands and Resources
17 for Nisga'a Lisims Government, and I am happy to be
18 here with you on this beautiful day.

19 I would like now to begin by expressing the
20 Nisga'a Nation's appreciation to the panel for holding
21 these workshops and providing us with the opportunity
22 to share with you some of our thoughts on the panel's
23 draft recommendations. Nisga'a Nation will also be
24 submitting formal written comments to the panel on
25 these recommendations and responses to the panel's
26 questions in the draft report. But we are pleased

1 today to provide our preliminary thoughts on the draft
2 recommendations.

3 Nisga'a Nation made submissions to the
4 panel in the Inquiry. Our submissions sought to
5 clearly set out the Nisga'a Nation's authority in the
6 Nisga'a Treaty to draw down legislation, regulating,
7 among other things, utilities owned or operated in
8 whole or in part by the Nisga'a Nation on Nisga'a
9 lands, which we refer today as Nisga'a Utility.

10 As you know, our treaty which came into
11 force May 11th, 2000. Our treaty area covers some
12 26,000 square kilometres of our traditional territory
13 in northwestern B.C. and we own approximately 2,000
14 square kilometres of land in fee simple, known in the
15 treaty as Nisga'a lands.

16 Our treaty is a complex, detailed and
17 comprehensive agreement addressing all aspects of the
18 continuing relationship between the Nisga'a Nation,
19 Canada, and British Columbia. It sets out the powers
20 of Nisga'a Lisims Government to make laws in relation
21 to matters vital to the Nisga'a Nation, including
22 public works, lands and resources. Importantly, our
23 Treaty sets out specific areas where Nisga'a laws
24 prevail over any inconsistent or conflicting federal
25 or provincial law, and conversely, specific areas
26 where federal or provincial laws will prevail over any

1 conflicting Nisga'a laws.

2 We are generally pleased with the Panel's
3 draft report, subject to some of our comments provided
4 today and that we will provide them again in writing.
5 We thank the Panel for its thoughtful consideration of
6 our submissions, and your recognition of Nisga'a
7 Lisims Government's broad jurisdiction in respect of
8 public utilities on Nisga'a Lands as set out in the
9 Nisga'a Treaty.

10 Before providing some of our comments, we
11 would like to emphasize that our comments today only
12 apply to a Nisga'a Utility and to the recommendations
13 that affect the Nisga'a Nation. We will let others
14 comment on recommendations that affect other
15 Indigenous groups and Indigenous utilities. We will
16 therefore only comment on the Panel's recommendation
17 numbers 7 and 8 with respect to the Nisga'a Nation,
18 and recommendation 14 with respect to the definition
19 of an Indigenous Utility. We would also like to
20 provide comments on the Nisga'a Nation's proposed
21 amendment to the *Utilities Commission Act*.

22 We do recognize that our submissions and
23 comments may generally apply to other modern treaties.
24 The Nisga'a Nation, however, is not authorized to make
25 submissions on behalf of other modern treaty nations
26 in the province. So our comments today are therefore

1 limited to the Nisga'a Nation and provisions of the
2 Nisga'a Treaty.

3 I will now turn it over to our general
4 counsel to provide our preliminary comments on these
5 recommendations.

6 **PRESENTATION BY MS. PAULIN:**

7 MS. PAULIN: Brianne Paulin, P-A-U-L-I-N.

8 Thanks, Mansell. Mr. Chair and members of
9 the Panel, first we would like to provide some
10 preliminary comments on the draft recommendations 7
11 and 8, and on the Nisga'a Nation's proposed exception
12 to the UCA.

13 In draft recommendation 7, the Panel
14 proposes that the Nisga'a Nation be given the ability
15 to self-regulate, as do municipalities and regional
16 districts, when it provides utility services on its
17 own lands.

18 We acknowledge that the Panel, in its draft
19 report, recognized the Nisga'a Nation's authority to
20 self-regulate, including the authority to regulate
21 safety and reliability standards, other than MRS.
22 Further, the Panel generally agreed with the Nisga'a
23 Nation's suggestion that the Nisga'a Nation and
24 Nisga'a Villages be excluded from the UCA to ensure
25 that the Nisga'a Nation is free to regulate a Nisga'a
26 utility on Nisga'a Lands in much the same way that a

1 municipality or regional district is within their own
2 boundaries.

3 We agree with these statements by the
4 Panel. However, we believe recommendation 7 does not
5 accurately reflect these statements and needs to be
6 amended. More specifically, the current wording of
7 recommendation 7 states that the BCUC recommends that
8 the Nisga'a Nation "...be given the opportunity to self-
9 regulate." This language, "be given", gives the
10 impression that the amendments to the UCA being
11 proposed will provide the Nisga'a Nation with the
12 power to self-regulate. The Nisga'a Nation's ability
13 to self-regulate a Nisga'a Utility derives from the
14 authority set out in the Nisga'a Treaty.

15 Unlike municipalities, the Nisga'a Nation
16 has inherent jurisdiction and constitutionally
17 protected rights, as set out in the Nisga'a Treaty.
18 Municipalities and regional districts, in contrast,
19 are statute-based entities and subordinate to the
20 provincial government. The Nisga'a Nation therefore
21 proposes that in order to more accurately reflect the
22 balance of the draft report and current legal
23 landscape, recommendation 7 be changed to the
24 following:

25 "That the Nisga'a Nation and Nisga'a Villages be
26 expressly excluded from the definition of

1 "public utility" in the UCA when the Nisga'a
2 Nation and Nisga'a Villages provide utility
3 services on Nisga'a Lands."

4 The Nisga'a Nation believes that the proposed changes
5 to this recommendation accurately reflects the Panel's
6 draft recommendation and its reasoning in the draft
7 report, specifically the Panel's draft finding that
8 the Nisga'a Nation and Nisga'a Villages should be
9 excluded from the UCA.

10 We will further elaborate on our changes to
11 recommendation 7 in our written comments.

12 In recommendation 8, the Panel proposes
13 that, notwithstanding the Nisga'a Nation's authority
14 over Nisga'a Lands, that the BCUC retain jurisdiction
15 over MRS because of the interconnected nature of the
16 North American bulk electric system.

17 The Nisga'a Nation recommends deleting this
18 draft recommendation as it is unnecessary. Put
19 simply, the BCUC has jurisdiction over MRS and we do
20 not see anything in our proposed rewording of
21 recommendation 7 that would change that.

22 I will quickly elaborate on this point. As
23 you know, any utility wishing to connect to the grid
24 is subject to MRS. The Nisga'a Treaty sets out
25 Nisga'a Government's authority in respect of Nisga'a
26 utilities on Nisga'a lands. No one is suggesting that

1 this authority extends to authority over the grid
2 itself. Therefore, a Nisga'a utility seeking to
3 connect to the grid would be subject to the MRS even
4 if the Nisga'a Nation and Nisga'a Villages are exempt
5 from the UCA. In this regard we note that the BCUC
6 does not specifically retain jurisdiction over MRS
7 from municipalities and regional districts that are
8 exempt from the UCA.

9 As recommendation 8 is unnecessary, we
10 therefore recommend removing it.

11 We would also like to take this opportunity
12 today to provide more information on the Nisga'a
13 Nation's proposed exception to the UCA. The Nisga'a
14 Nation proposed an amendment to the UCA to expressly
15 exclude the Nisga'a Nation and Nisga'a Villages, in a
16 manner similar to the exception for municipalities in
17 the UCA, but this was merely for convenience on the
18 basis of the current wording of the UCA. As noted in
19 our written submissions, the exclusion from the UCA
20 requested by the Nisga'a Nation has a different
21 purpose, and has a separate legal and constitutional
22 basis than the UCA's current exclusion in respect of
23 municipalities and regional districts.

24 To be clear, and as set out more fully in
25 the Nisga'a Nation's written submissions, the Nisga'a
26 Nation does not need an exclusion from the UCA to have

1 the power to regulate Nisga'a Utilities. That is
2 already provided for in the Treaty.

3 The Nisga'a Nation does not need an
4 exclusion from the UCA to have relevant Nisga'a laws
5 prevail over any inconsistent or conflicting
6 provisions of the UCA. That is also already provided
7 in the Nisga'a Treaty.

8 The Nisga'a Nation proposed that it be
9 expressly excluded from the UCA to ensure regulatory
10 certainty. In reviewing the current wording of the
11 UCA, the Nisga'a Nation came to the conclusion that
12 the easiest way to accomplish this goal was to amend
13 the UCA to expressly exclude the Nisga'a Nation and
14 Nisga'a Villages in a manner similar to the exception
15 for municipality and regional districts.

16 That recommendation was more for
17 legislative drafting convenience. It was not because
18 the Nisga'a Nation is in the same legal or
19 constitutional position as municipalities and regional
20 districts.

21 In its draft report, however, the panel
22 noted that there remains some uncertainty concerning
23 the scope of the municipal exception which is
24 currently being considered in a separate BCUC process.
25 The panel also expressed some concerns that if the
26 language of the exceptions suggested by the Nisga'a

1 Nation was adopted, the same ambiguities would apply.

2 We thank the panel for raising this
3 concern. However, in light of their different legal
4 status and authorities, we do not believe that the
5 outcome of the separate municipal inquiry should have
6 any bearing on the proposed Nisga'a exclusion from the
7 UCA, except to the extent that the legislative
8 language on how the Nisga'a Nation and Nisga'a
9 Villages are excluded from the UCA may be affected by
10 any proposed legislative wording that results from the
11 other inquiry.

12 As such, to address this concern we would
13 slightly alter our proposed amendment to section 2 of
14 the UCA. Rather than amending section 2(c) of the UCA
15 to add the Nisga'a Nation and Nisga'a Villages to the
16 existing municipal and regional districts exclusion,
17 we would instead simply add a new paragraph, paragraph
18 (c.1) which would say:

19 "...the Nisga'a Nation or a Nisga'a Village in
20 respect of services provided by the Nisga'a
21 Nation or a Nisga'a Village within Nisga'a
22 Lands."

23 This exclusion would work in conjunction
24 with the authority already set out in the Nisga'a
25 Treaty for the Nisga'a Nation to organize its own
26 affairs, including the flexibility in determining the

1 structure and services to be provided by a Nisga'a
2 Utility on Nisga'a Lands.

3 As we have noted, unlike municipalities
4 which are created by statute, the Nisga'a Nation has
5 the authority set out in the Treaty to determine the
6 corporate structure of a Nisga'a Utility and the types
7 of services it will provide.

8 The fundamental element that would define
9 the utility as a Nisga'a Utility is that the Nisga'a
10 Nation is providing the service, either directly or
11 through contractors within Nisga'a Lands. Ultimately
12 the Nisga'a Nation is directing the service.
13 Therefore, the Nisga'a Nation is not, and should not
14 be confined in structuring a Nisga'a Utility in the
15 same way as municipalities must structure utilities to
16 be exempt from regulation.

17 As such, the issues in the separate BCUC
18 process on the scope of the municipal exception are
19 not relevant to these Treaty issues, and so the
20 outcome of that municipal Inquiry should not affect
21 whether the Panel in this Inquiry recommends that the
22 Nisga'a Nation and Nisga'a Villages be exempt from the
23 UCA.

24 We therefore encourage the Panel to
25 recognize the legal and constitutional differences in
26 the exemption being requested by the Nisga'a Nation

1 and the exemption for municipalities in the UCA.

2 Finally, we'd like to provide some comments
3 on recommendation 14, the definition of Indigenous
4 utility. On this definition the Nisga'a Nation
5 submits that the Nisga'a Nation and Nisga'a Villages
6 should be specifically excluded from the definition of
7 Indigenous Utility adopted by the panel in its final
8 report. Including the Nisga'a Nation in the
9 definition of Indigenous Utility risks being
10 inconsistent with the Panel's general findings and
11 recommendations that the Nisga'a Nation and Nisga'a
12 Villages should be exempt from the UCA.

13 In being exempt from the UCA, the Nisga'a
14 Nation should not be confined in structuring a Nisga'a
15 utility in the same way as other Indigenous groups
16 must structure their utilities to meet the
17 characteristics, and definition, of an Indigenous
18 utility for the purpose of self-regulation as
19 recommended by the Panel. There are important
20 jurisdictional, constitutional and governance
21 distinctions between the Nisga'a Nation and other
22 Indigenous groups referenced in the definition of
23 Indigenous nation in the Order in Council for this
24 inquiry.

25 Excluding the Nisga'a Nation and Nisga'a
26 Villages from the definition of Indigenous utility

1 would respect the Nisga'a Nation's broad lawmaking
2 authority to regulate a Nisga'a Utility, including the
3 ability to determine the structure of, and the
4 services provided by, a Nisga'a Utility. It would
5 also be consistent with the Panel's general
6 recommendation that the Nisga'a Nation and Nisga'a
7 Villages be specifically exempt from the UCA.

8 We intend to respond to the Panel's
9 recommendations and questions set out in the draft
10 report in writing. Thank you very much for your time
11 today.

12 THE CHAIRPERSON: Thank you. Thank you, Ms. Paulin. I
13 have a question, please.

14 You've made a reference to, I think it was to
15 the treaty when you said that the -- I'm going to
16 paraphrase you here because, I'm sorry, I didn't copy
17 down exactly what you said, but I think you said along
18 the lines of the treaty contained language on the
19 definition of a Nisga'a utility, so that you would
20 look to that as opposed to looking to any definition
21 that we may provide or the government may provide.
22 Did I hear that correctly?

23 MS. PAULIN: No. So, there's no definition in the
24 Nisga'a Treaty that defines a Nisga'a utility. What
25 we were referencing is that the Nisga'a Treaty sets
26 out the authority for the Nisga'a Nation to determine

1 how to structure and what services would be provided
2 by this Nisga'a utility. So it's not specific
3 provision, it's just the Nisga'a Treaty provides that
4 authority.

5 THE CHAIRPERSON: Thank you. And whereabouts in the
6 treaty is that, please?

7 MS. PAULIN: It's all over. So it's the Nisga'a
8 Treaty. Yeah, so the Nisga'a Treaty -- the Nisga'a
9 Nation does not draw its lawmaking authority related
10 to Nisga'a utility from a specific provisions, it's
11 from the Nisga'a Treaty. So you have to read the
12 Nisga'a Treaty and it's the wordings of the various
13 provisions together.

14 THE CHAIRPERSON: Right, in it's entirety. Okay,
15 thank you.

16 COMMISSIONER FUNG: Ms. Paulin, thank you very much for
17 your presentation. I do have one question, I want to
18 go back to earlier this morning when the question was
19 raised by Chair Morten about, what is Nisga'a's
20 position with respect to its authority or jurisdiction
21 to regulate, for instance, BC Hydro or Fortis when
22 it's delivering services on Nisga'a lands? I just
23 want to understand what your position is.

24 MS. PAULIN: So, the Nisga'a Nation will respond to
25 that specifically in our written comments, but as
26 mentioned prior to us giving our comments today, that

1 the Nisga'a Treaty -- so it's a matter of concurrent
2 jurisdiction and then, let's say that the Nisga'a
3 Nation draws down legislation in an area, then you
4 have to look at the Nisga'a Treaty and if in the event
5 of a conflict between the Nisga'a law and the
6 provincial or federal law, then there's provisions on
7 where the federal law prevails over the Nisga'a law or
8 the Nisga'a law will prevail over the federal or
9 provincial law.

10 So it's the matter of concurrent
11 jurisdiction and then the Nisga'a Nation draws down
12 that legislation. If you look at the Treaty it has
13 the broad lawmaking authority to do so and then you do
14 the constitutional, the treaty analysis of whether in
15 the event of a conflict which of that law prevails.
16 So that's generally an answer to that of whether the
17 UCA would apply. And right now, because the Nisga'a
18 Nation has not drawn down legislation, the UCA does
19 apply and it's the question of -- and we can't comment
20 on that because the Nisga'a Nation has not drawn down
21 legislation, so we don't want to speculate on that,
22 but in the event that the Nisga'a Nation does draw
23 down that legislation, then it's the matter of doing
24 that treaty analysis.

25 COMMISSIONER FUNG: Okay, great. Thank you very much.

26 MR. GRIFFIN: Mansell Griffin, G-R-I-F-F-I-N. Just to

1 elaborate for this, so the comment I made earlier was
2 in a broader not Nisga'a Treaty specific circumstance,
3 we're just talking about who has jurisdiction, right?
4 Our jurisdiction is nuanced in a treaty. A lot of
5 people think the Nisga'a Treaty is all about Nisga'a
6 rights. Canadian citizens have Nisga'a Treaty rights.
7 There are provisions of our treaty that apply to
8 Canadian citizens generally. BC Hydro has Nisga'a
9 treaty rights. So it's --- we're a bit nuanced.

10 But in the abstract, if you're talking
11 about a jurisdiction, whether or not you're subject to
12 jurisdiction is relevant to what your jurisdiction is,
13 right? So and I pointed out in our roundtable that,
14 you know, whether or not you're subject as a B.C.
15 utility to the B.C. Utilities Commission doesn't
16 depend on how much you're owned by the provincial
17 government or a provincial citizen, it's that you're
18 exercising that operation within provincial
19 jurisdiction.

20 And so in the abstract, that should be the
21 same anywhere else. If you're concluding that reserve
22 lands have the jurisdiction to manage their own
23 affairs, it shouldn't matter whether the Band owns the
24 entity working in their jurisdiction. That's a
25 separate issue.

26 Ours is nuanced, because people were

1 obviously alive to these kinds of issues at the time
2 of our treaty and wanted to make sure we didn't take a
3 hammer to BC Hydro, and so there are specific
4 provisions about BC Hydro in our treaty.

5 THE CHAIRPERSON: So I think what I'm hearing you say
6 there is that BC Hydro may have some consideration
7 grandfathered into the Treaty, but if a new utility
8 came along and wanted to operate on Nisga'a lands,
9 then that may not get the same treatment that, you
10 know, that --

11 MR. GRIFFIN: Not as specific. Not as specific,
12 anyway.

13 THE CHAIRPERSON: Yeah.

14 MR. GRIFFIN: There are also provisions about utilities
15 generally in the Treaty.

16 COMMISSIONER FUNG: That's right.

17 MR. GRIFFIN: But I mean as an example, we were looking
18 at drawing down environmental use of pesticides
19 legislation as we were able and want to do. BC Hydro
20 has an exception to that built into our treaty. They
21 have the rights to apply to use pesticides.

22 THE CHAIRPERSON: Right.

23 COMMISSIONER FUNG: That's right.

24 MR. GRIFFIN: So on its face it means we can't pass
25 legislation that specifically prohibits anyone from
26 applying, because they have a treaty right to apply.

1 COMMISSIONER FUNG: That's right.

2 MR. GRIFFIN: And we can make it really hard to get
3 that permit, but we can't make it impossible.

4 THE CHAIRPERSON: Okay, thank you.

5 COMMISSIONER BREWER: I have a question actually
6 related to Nisga'a utility. And I guess if a Nisga'a
7 utility were to operate outside of Nisga'a land, I
8 think we would want to have some kind of a definition
9 of what that utility is, right? It is a matter of
10 jurisdiction, but are you saying that that utility
11 would be subject to -- I'm assuming you're saying --
12 you're recognizing that the B.C. Utilities Commission
13 would have jurisdiction in that respect? Or am I --

14 MS. PAULIN: So all our comments today are just
15 specifically on a Nisga'a utility providing services
16 on Nisga'a lands.

17 COMMISSIONER BREWER: Okay.

18 MS. PAULIN: We haven't explored that question and in
19 our submissions we indicated that all our comments
20 were specifically on services provided on Nisga'a
21 land.

22 COMMISSIONER BREWER: Okay. Okay, so I guess then in
23 terms of the exemption then we would -- we have to
24 take that into account then when we're looking at the
25 language.

26 MS. PAULIN: Yeah, so it's like the municipalities and

1 regional district that they have -- for that
2 exception, has to be within their own boundaries. So
3 the Nisga'a Nation, our proposed language would be
4 it's the exception of a Nisga'a Nation -- the Nisga'a
5 Nation and a Nisga'a Village providing services on
6 Nisga'a lands.

7 COMMISSIONER BREWER: Okay. Thank you.

8 THE CHAIRPERSON: Will you be providing submissions on
9 the question that the Commissioner just posed about
10 operating outside? Will you be doing that in
11 March?

12 MS. PAULIN: We have not turned our minds to that
13 because of the fact that we don't want to speculate,
14 and we're just concentrating on the fact that because
15 a Nisga'a utility -- the exceptions that we are
16 requesting is specifically to address the regulatory
17 uncertainty that could come on Nisga'a lands. And
18 also because the Nisga'a Treaty covers -- like
19 although they have treaty rights in the Nass area,
20 wildlife area, specifically it'd be as simple as
21 Nisga'a land. So we are specifically -- all our
22 submissions are on the utility services provided on
23 Nisga'a lands.

24 THE CHAIRPERSON: Thank you.

25 COMMISSIONER FUNG: But, Ms. Paulin, I hope you realize
26 that by not commenting on that potential issue you

1 really are in essence accepting, by implication, that
2 the UCA or the Utilities Commission would actually
3 have the authority then to regulate you when you're
4 operating outside the Nisga'a lands. That is the
5 status quo.

6 MS. PAULIN: Yeah, we can provide comments on that and
7 that's a question that we'll have to look into and
8 we're not -- our position is that on Nisga'a lands you
9 have to look at the Nisga'a Treaty.

10 COMMISSIONER FUNG: Right, of course.

11 MS. PAULIN: And then outside of Nisga'a lands that's a
12 completely different question and we can provide
13 comments on that, but today I just wanted to emphasize
14 that all we've been providing is whether --

15 THE CHAIRPERSON: Yeah, understood. Yeah.

16 MS. PAULIN: Exactly. Is that on Nisga'a lands a
17 Nisga'a utility, the Nisga'a Nation would have the
18 authority to draw down that legislations.

19 COMMISSIONER FUNG: Correct, yeah. But I would
20 encourage you to turn your minds and provide us with
21 some thoughts on the latter scenario, which is you can
22 operate not only within your own lands but also
23 incidentally outside of your Nisga'a lands, and in
24 that scenario what would you like to see happen and
25 what do you think is the appropriate treatment from a
26 regulatory perspective?

1 MS. PAULIN: Perfect, yeah. Yeah, we can provide
2 comments on that.

3 COMMISSIONER FUNG: Thank you.

4 THE CHAIRPERSON: Thank you very much.

5 MR. GEORGE: Thank you. Thank you to the Nisga'a
6 representatives.

7 Is there any other speakers that would like
8 to address the panel? Chief?

9 CHIEF EDWARDS: Mine is just the deadline for
10 submissions. I did come with a bit of a something to
11 read out, but I'm not prepared to answer the
12 questions, so I'm going to go for more of a fuller
13 submission. Like I said, I had just planned on coming
14 yesterday and so I can sit with my team and we can
15 actually put in a better submission on behalf of my
16 community and the utility we own.

17 THE CHAIRPERSON: Okay. So, Phil, can you put the
18 slide up? It's March 2nd, I think, is the -- if I'm
19 not mistaken.

20 MR. GEORGE: It's March 2nd, 2020.

21 THE CHAIRPERSON: Yeah, March 2nd your first round of
22 comments and then for the rest of the month you have
23 an opportunity to read it. So everybody gets to read
24 everybody else's. And then on March 31st you're
25 invited to, essentially, reply to it and, you know,
26 once you've had a chance to read everybody else's

1 comments. So there's two comment opportunities. And
2 if there's anything you'd like to say now, feel free,
3 we promise not to ask you any questions also.

4 Well, you know, the idea is that it follows
5 that a procedure of administrative law where everybody
6 has a right to reply. So the second round of comments
7 is supposed to only be your reply to others. It's not
8 supposed to be a brand new comment, so therefore there
9 shouldn't be another need for another round and --
10 that's the way it's supposed to work anyway.

11 CHIEF EDWARDS: Okay. Well, I mean, and some of my
12 comments will be on existing EPAs because that's what
13 we had in front of you guys and then that's why I
14 asked who asked this question because it just set us
15 back, in my opinion, years because we had plans in
16 place and when you have something like this come
17 along, when you have an EPA that can -- you know, is
18 almost ready to be approved, you've just set us back
19 years and so -- and the government really needs to
20 start realizing that that is what they do to us as
21 Indigenous communities who feel we're very progressive
22 and can be in that good place, where we've built our
23 team up to where we need them. So this was just
24 really an inconvenience for our community being, you
25 know, one of the probably three EPAs from existing
26 facilities that were in front of you.

1 THE CHAIRPERSON: Yeah. Well, I'm sorry to hear that,
2 I am.

3 CHIEF EDWARDS: Well it's not -- you didn't ask the
4 question, right? That's why I asked who asked.

5 THE CHAIRPERSON: I'm still sorry to hear it, yes.

6 CHIEF EDWARDS: I want to know, I want to talk to them.

7 COMMISSIONER LOCKHART: Chief Edwards, sorry, what
8 community are you from?

9 CHIEF EDWARDS: Cayoose Creek, so we're in the
10 Stl'atl'imx Nation, so we own an existing facility
11 with Innergex.

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

13 CHIEF EDWARDS: Yeah, and it's the Walden North
14 facility.

15 MR. GEORGE: Okay, anybody else? Seeing none, Dave?

16 THE CHAIRPERSON: No, thank you, Dan, I appreciate it.
17 And thank you to everyone also, I appreciate
18 everyone's attendance. I think we caught a really
19 lucky break today weather wise between snow storms, so
20 I'm glad to see that.

21 Until I get back home, yes, exactly. And
22 for those of you who do have to travel, I wish you
23 safe travels and hopefully you can get home before we
24 get any more inclement weather. So, thank you for
25 your thoughtful comments, much appreciated, and have a
26 great day. Thanks.

1 MR. GEORGE: Thank you, and please travel safe on the
2 way home. Thank you for taking time to be here today,
3 wonderful dialogue, thank you.

4 **(PROCEEDINGS ADJOURNED AT 2:01 P.M.)**

5

6

7

8

9

10

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

11

12

13

14

15



A.B. Lanigan, Court Reporter

16

January 14th, 2020

17

18

19

20

21

22

23

24

25

26