

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

FORT ST. JOHN, B.C.  
January 17, 2020

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**Community Input Workshop**

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**BEFORE:**

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

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**FORT ST. JOHN, B.C.**

**January 17<sup>th</sup>, 2020**

**(PROCEEDINGS RESUMED AT 10:15 A.M.)**

1  
2  
3  
4 MR. GEORGE: Good morning, Friends, welcome to the  
5 Indigenous Utilities Regulation Inquiry Draft Report  
6 Workshop. I want to begin by acknowledging Treaty 8  
7 Territory that we are gathered on here today. Raise  
8 our hands in respect to the elders, the matriarchs,  
9 the citizens of Treaty 8 for hosting us here in their  
10 beautiful territory.

11 The BCUC, we're big on safety, so please  
12 make note of the exits in the room here in case you  
13 need to leave the room in a hurry. Cords are on the  
14 floor, so please be careful moving about the room.  
15 The restrooms, you just go outside the main door here  
16 and down to the right for the men's and ladies'  
17 restrooms. And please silence your phones while we're  
18 in session.

19 I will now turn to the BCUC panel and ask  
20 them to please briefly introduce themselves, beginning  
21 with our Chair, David Morton.

22 THE CHAIRPERSON: Hi, I'm Dave Morton, I'm the chair and  
23 CEO of the B.C. Utilities Commission. I'm also the  
24 Chair of this panel. I've been with the Commission  
25 since 2010 as a commissioner, and I've been the Chair  
26 since late 2015.

1                   This has been an interesting inquiry, and  
2                   clearly one of -- certainly one of the most  
3                   interesting proceedings I've worked on, and this is  
4                   our second tour of the province that we've done.  
5                   First one was prior to the preparation of the draft  
6                   report, and I'd like to thank you for coming out, and  
7                   look forward to further discussion with you today.  
8                   Thank you.

9   COMMISSIONER FUNG:    Good morning, my name is Anna Fung,  
10                   and I am a member of this panel, and I am also the  
11                   Deputy Chair of the B.C. Utilities Commission. I am  
12                   delighted here to be on Treaty 8 Territory today.

13                   I just want to acknowledge that this is the  
14                   last of our workshops that we've scheduled to review  
15                   the recommendations in our draft report. And I have  
16                   found that the input that we received throughout the  
17                   workshops has been very helpful to us, and  
18                   illuminating. So I don't think it will be any  
19                   different today. So thank you in advance for coming  
20                   out to this workshop, and I look forward to hearing  
21                   from you.

22   COMMISSIONER BREWER:   Good morning, my name is Carolann  
23                   Brewer, and I am happy to be here in Treaty 8  
24                   Territory. I have been a panel member -- I have been  
25                   a commissioner since January of last year, and I am  
26                   also, just to tell you a bit of my background, I have

1       practiced Indigenous law, and utility law, and I have  
2       been happy to be participating in this inquiry, and I  
3       look forward to hearing your testimony.

4       COMMISSIONER LOCKHART:    Good morning, my name is Blair  
5       Lockhart, I am a commissioner as of January of 2018,  
6       and by background, I am a lawyer, prior to that I was  
7       a geologist. I grew up on the prairies, so today's  
8       cold weather is wonderful. Thank you.

9       MR. GEORGE:            Thank you very much. We also have a could  
10       of staff from the BCUC, please raise your hands, Staff  
11       members. If you need any assistance, please approach  
12       them during our time together. We also have our  
13       external legal counsel for the BCUC, Lino Bussoli, who  
14       is here with us. Good morning, Lino.

15                            We also have a number of members from the  
16       Allwest team who are doing our recording here, so good  
17       morning.

18                            For those of you who I haven't had the  
19       pleasure to meet, my name is Dan George. I'm  
20       president and CEO of Four Directions Management and my  
21       role, along with my colleague here, Teresa Doleman, is  
22       to facilitate the dialogue that we're going to be  
23       having here today.

24                            So our workshop is designed -- this morning  
25       we're going to hear from David Morton, our Chair, who  
26       will provide an overview of why we are here and make a

1 presentation on the proposed recommendations made  
2 within the draft report. There will be time for  
3 questions and answers.

4 Following this presentation we'll break  
5 into small group discussion where you'll have the  
6 opportunity to discuss the draft report and its  
7 recommendations more deeply. A short lunch will take  
8 place. Right now we're looking at 12:30 to 1:00 p.m.  
9 for that lunch to occur. We will reassemble into our  
10 small groups and ask that each group take 20 minutes  
11 to discuss who from your group can summarize the  
12 discussion for your table back to the panel. A  
13 representative will then present their summary of  
14 comments on the drafty report to the panel.

15 This presentation will be on the record and  
16 transcribed. The break out small group discussion  
17 will not be on the record or transcribed. Any  
18 individuals who wish to make additional comments to  
19 the panel will have the opportunity to do so after the  
20 small table breakout group presentations.

21 So the primary objective of our time here  
22 today is to assist the BCUC by providing your input in  
23 the draft report which was recently released and which  
24 seeks to address what characteristics you believe  
25 define an Indigenous energy utility and if or how an  
26 Indigenous utilities should be regulated.

1                   On November 1<sup>st</sup>, 2019, the BCUC released its  
2                   Indigenous Utilities Regulation Inquiry Draft Report,  
3                   including its preliminary findings and recommendations  
4                   for the B.C. Government. The report is available on  
5                   the Inquiry's proceeding page at the BCUC website and  
6                   a summary has been provided to you today. In order to  
7                   ensure that the draft report recommendations reflect  
8                   the interest and perspectives of B.C.'s Indigenous  
9                   people and communities, we invite you to provide your  
10                  comments to the BCUC. The comment period on this  
11                  draft report is open until March 2<sup>nd</sup>, 2020.

12                  Today at this workshop we're hoping to hear  
13                  your initial thoughts and comments. This is also an  
14                  opportunity to ask the BCUC questions about this work  
15                  and seek any clarifications that you may require. The  
16                  BCUC has prepared a brief presentation providing an  
17                  overview of the Inquiry process to date and which will  
18                  be now provided by our Chair, David Morton.

19                  Just for some rules of engagement and to  
20                  create a safe and respectful container for our  
21                  dialogue to occur, I want to encourage us to be hard  
22                  on issues and soft on people, where we challenge ideas  
23                  and not people. The process is only as strong as the  
24                  level of participation received from each of you, so  
25                  please find your merge lane into the conversation.  
26                  When we come together in these forums we always

1 generate great ideas, and when we do let's please take  
2 them as far as we can. We ask that you listen  
3 generously and have a solution orientation and  
4 ultimately to be present.

5 So that being said, I'll give it over to  
6 you, Mr. Morton.

7 **PRESENTATION BY CHAIRMAN MORTON:**

8 THE CHAIRPERSON: Thank you, Dan. Can everyone hear me  
9 all right? Can everyone hear me okay now? All right,  
10 thanks Dan.

11 I'm going to talk a little bit about the  
12 background into regulation, utility regulation  
13 generally. I'm going to talk a little bit about the  
14 BCUC and then I'm also going to talk a little bit  
15 about the draft report that we're here to have,  
16 hopefully, a fruitful discussion on.

17 So I'm going to start with, and the term  
18 I'm going to use is "energy utility". What is an  
19 energy utility? So the reason that we're interested  
20 in energy utilities is that -- at the least the reason  
21 we at the BCUC are interested in energy utilities is  
22 because that's what we're charged with regulating in  
23 British Columbia. And our Act, the *British Columbia*  
24 *Utilities Commission Act*, defines an energy utility as  
25 any company that sells natural gas, electricity or any  
26 agent for the production of heat or light or power or

1 hot water, or cold, to the public. And it does not  
2 include petroleum products. It doesn't include crude  
3 oil, or gasoline, or diesel, or jet fuel, or any of  
4 those related quantities. But it does include natural  
5 gas and it includes electricity, and it includes  
6 thermal energy plants which use various sources. It  
7 may use geothermal sources, it could use biomass, to  
8 generate heat, and then pipe the heat around and  
9 provide that heat to buildings.

10 So anyone who owns or operates an energy  
11 utility then, they're responsible for maintaining the  
12 equipment, they're responsible for making sure that  
13 service is available, that service is safe and service  
14 is reliable and they are responsible for metering and  
15 charging for that energy, and they're responsible for  
16 ensuring that the amount that they charge is not an  
17 unfair amount.

18 And our role -- in our role we oversee all  
19 of those activities of companies that do that and we  
20 ensure -- one of our primary roles is to ensure that  
21 rates are fair, but to both the consumer and also to  
22 the company, to allow the company to make the  
23 investments that it needs to ensure that the utility  
24 infrastructure is maintained in a safe and reliable  
25 manner.

26 Why do we regulate these utilities? I mean

1 we don't regulate 7-Eleven stores, we don't regulate,  
2 you know, many other products and services that are  
3 provided to people. Why we regulate utilities -- and  
4 it's not only us, virtually every country or every  
5 jurisdiction in the world does it, regardless of their  
6 political stripe, regardless of their level of  
7 economic development. It's an activity that is common  
8 throughout the world.

9 I myself have been to regulators in  
10 southern Africa, companies that were -- or sorry,  
11 countries that are in various phases of economic  
12 development, because they also want to ensure that the  
13 same principles apply to their utilities. And we do  
14 it because in the world of utilities typically it's  
15 required a huge investment in infrastructure and  
16 generation and transmission infrastructure. And it's  
17 not something that any other company can easily do.  
18 So that provides a barrier to entry, and what it does  
19 is it generally lends itself to a monopolistic  
20 environment.

21 So companies that provide utility services  
22 are often large and it's very difficult for anyone  
23 else to compete with them. So when they're in that  
24 kind of monopolistic position, then it's generally  
25 viewed that there is some sort of oversight that's  
26 required to ensure that they don't abuse that position

1           and they don't charge prices that are unreasonable or  
2           they don't deny service to people or they -- and that  
3           they maintain their equipment in a safe and reliable  
4           manner.

5                        So we are an independent regulatory agency,  
6           the British Columbia Utilities Commission is. We are  
7           -- we have been created by the British Columbia  
8           government. However, we're at arm's length to the  
9           government. We don't represent the government per se.  
10          We regulate utilities that are owned by the government  
11          and we regulate utilities that are owned by the  
12          private sector.

13                       And all of our decisions are made in an  
14          independent manner. We are not influenced by  
15          government. And we have commissioners that review  
16          evidence that comes forward to us when utilities make  
17          applications for things like rate increases or  
18          application to spend money on infrastructure. And we  
19          have transparent and open hearings, where we invite  
20          the public and people that are going to be affected by  
21          those decisions to come forward with their evidence,  
22          and then our commissioners make their positions on  
23          those applications.

24                       We also hold inquiries into various matters  
25          in addition to reviewing applications, and this is an  
26          example of one such inquiry. This particular inquiry

1       was ordered -- we were ordered to do by government,  
2       but we also hold inquiries that we initiate ourselves.  
3       And a recent example is one -- an inquiry into  
4       electric vehicle charging and how that should be  
5       regulated, whether it should continue to be regulated  
6       or not.

7                 And the reason that I bring this up now is  
8       that it ties into the earlier point that I made about  
9       monopolies, we are very aware of the fact that we  
10      really only should be regulating when there is a  
11      monopoly present. If there isn't a monopoly, if there  
12      is competition in the marketplace, then we generally  
13      step aside, and we recommend to government that we  
14      don't regulate.

15                And that's the situation with electric  
16      vehicle charging, and that was the recommendation that  
17      we made to government, is that electric vehicle  
18      charging in most instances should be exempt from our  
19      regulation, and we made that recommendation to  
20      government.

21                So, what we're doing here in this inquiry  
22      is at government's request, but they are asking us how  
23      should Indigenous utilities be regulated, and one of  
24      the lenses that we are looking at that in is  
25      monopolistic -- whether they are monopolistic or not.

26                But that's not the only lens that we are

1 looking at. We are looking also at other lenses, and  
2 in particular the lens of UNDRIP. That's another area  
3 that we are considering when we make our  
4 recommendations.

5 So this slide summarizes what I've just  
6 said about the role of the BCUC, and what we do with  
7 utilities, the kinds of things -- the kind of  
8 applications we get from utilities.

9 I'd just like to give a little background  
10 information. We are going to be talking next about  
11 the report, and before we do, there is just a couple  
12 of aspects of the *Utilities Commission Act* that I'd  
13 like to highlight.

14 One of those is that the *Utilities*  
15 *Commission Act* provides an exemption for  
16 municipalities that own or operate their own utility  
17 that provide service within their municipal  
18 boundaries. And in those circumstances, the  
19 municipality, we have no oversight over that utility.  
20 The municipality has their own municipal council, and  
21 it's up to them to set the rates for their own  
22 utility. There is about half a dozen such utilities  
23 in the province, and most of those are smaller  
24 municipalities. It's not something that larger  
25 municipalities have taken on. In fact, one of the  
26 larger municipalities in the province, Kelowna,

1 recently did have its own and divested it, they sold  
2 their electric utility to Fortis. But New Westminster  
3 has one, City of Nelson has one. Summerland,  
4 Penticton, Grand Forks.

5 And the reason I mention this, is that in  
6 the first phase of this inquiry, when we went on our  
7 first trip around the province, and when we heard  
8 interveners and other parties providing us comment,  
9 what we heard is that, well First Nations are a lot  
10 like municipalities. Indian Bands that are operating  
11 on *Indian Act* land are a lot like municipalities.  
12 They should have the same treatment, or they should be  
13 afforded the same exemptions that municipalities are.  
14 And we'll talk a little bit more about that when we  
15 talk about the recommendations in the report. But I  
16 bring that up now so that you're aware of that.

17 And the second thing is, that you'll see  
18 some wording in the report around something called  
19 "mandatory reliability standards." And what you'll  
20 see up on the screen is the transmission network, the  
21 high voltage transmission network in the province.  
22 And there is an interconnection point with this high  
23 voltage network. Interconnection points with  
24 Washington State and with Alberta. And we are  
25 connected through those connection points to the  
26 larger North American grid. The North American high

1 voltage transmission grid. And that interconnected  
2 grid is especially vulnerable to -- areas in that grid  
3 are especially vulnerable to things that would happen  
4 in another area, and an example of that is that in  
5 2003 there was a tree that fell on a transmission line  
6 in Ohio, and as a result of that there was a -- it  
7 triggered a series of catastrophic events that ended  
8 up with Toronto, Montreal, Philadelphia, Boston, New  
9 York City, all being out of -- the lights went out  
10 there, and remained out for a considerable period of  
11 time.

12 As a result of that, the Government of  
13 Canada and the Government of the United States got  
14 together, and to make a long story short, we now all  
15 operate cooperatively and there's a set of mandatory  
16 reliability standards, which includes standards around  
17 how vegetation should be maintained and also cyber  
18 security, that ensures, hopefully ensures, that those  
19 kinds of catastrophes don't reoccur.

20 That's important to us in British Columbia  
21 because not only do we sell energy, excess energy,  
22 through the grid, but it's also important for our  
23 reliability here. If we were to lose, for whatever  
24 reason, a significant generation asset, Revelstoke Dam  
25 let's say or Mica Dam or something like that, we would  
26 not be able to keep the lights on in British Columbia.

1 We would need, on an emergency basis, to purchase  
2 energy from our neighbours. And we have a reciprocity  
3 agreement that if that happened to them that we would  
4 have to supply them with energy. So it's important  
5 for us to remain connected to this grid. It's  
6 important for us to -- therefore it's important for us  
7 to continue to adhere to those standards, and we've  
8 made some recommendations in the report around how  
9 those standards should continue to be regulated.

10 And finally, the retail access prohibition.  
11 You'll see that wording in the report also, and  
12 there's government legislation that -- what the  
13 government legislation basically lays out is, first of  
14 all, most of this transmission grid is owned and  
15 operated by BC Hydro. And what this legislation says  
16 is that if I was to own and operate a generation  
17 asset, let's say here, and you were to live here and I  
18 wanted to sell you energy from my generation asset to  
19 your home or business here, there's nothing  
20 technically that would prevent that from happening,  
21 and there's other jurisdictions in the world where  
22 that does happen. However, I am not -- I'm denied  
23 access to this transmission system for that purpose.  
24 I can sell the energy to BC Hydro, if I can negotiate  
25 a contract with them, and you could purchase that  
26 energy from BC Hydro. So it would have to go through

1       that intermediary, but I couldn't directly -- we  
2       couldn't directly enter into a contract together to do  
3       that. And that's called a retail access prohibition.

4               And when we looked at that we realized --  
5       for reasons that we'll get into later, we realized  
6       that that could be an impediment to Indigenous owned  
7       utilities that need a larger customer base to grow,  
8       and so we've made some recommendations around that  
9       retail access prohibition.

10              So why are we here today? And why did we  
11       write a draft report? Well, we were -- the draft  
12       report was in answer to these questions that were  
13       posed to us by the Provincial Government. And when  
14       the Provincial Government asked us to conduct this  
15       inquiry and answer these questions, they asked us:  
16       What are the defining characteristics of an Indigenous  
17       utility? Should Indigenous utilities be regulated  
18       under the Act or should there be another mechanism to  
19       regulate them? Or should they not be regulated at  
20       all? At least not regulated by the Provincial  
21       Government.

22              If it is appropriate to regulate Indigenous  
23       utilities under the UCA, the *Utilities Commission Act*,  
24       should they be regulated in a different fashion?  
25       Should different rules apply? Should we use different  
26       processes to review those utilities?

1                   And then if it's not appropriate to  
2                   regulate Indigenous utilities under the UCA, either  
3                   with the existing -- either as it exists or with  
4                   modifications, then how should those utilities be  
5                   regulated?

6                   And then finally, if Indigenous utilities  
7                   aren't regulated, what would happen to the Indigenous  
8                   utility if it was sold and no longer satisfied the  
9                   definition, whatever that definition may be, of an  
10                  Indigenous utility?

11                  So these were the questions, the specific  
12                  questions, that the government posed to us and asked  
13                  us to answer those questions, and these are the  
14                  questions that the report attempts to answer. But in  
15                  the attempting these questions, then, other issues  
16                  arose. So there are issues around these questions  
17                  that the report addresses and those are the questions  
18                  that we're -- sorry. And the draft report then makes  
19                  recommendations, draft recommendations. In other  
20                  words, what we're saying is depending on what we hear  
21                  during these consultations and depending on what we  
22                  hear in March when we're asking for final submissions,  
23                  we would be prepared to make these recommendations  
24                  unless we hear otherwise from you today and from  
25                  others.

26                  What have we done so far in this Inquiry?

1 Well, since the Inquiry was established in early 2019,  
2 we have gone through, as I said, an engagement process,  
3 I think a reasonable extensive engagement process.  
4 We've travelled to communities around the province,  
5 held sessions like this where we've listened to  
6 comments. We've also invited interveners that have  
7 evidence that they would like to bring forward and  
8 then invited other interveners to question them on  
9 that evidence, and we've gone through that part of the  
10 process also. And then based on all of that we wrote  
11 the draft report.

12 And now we're having workshops and inviting  
13 written comments on that draft report. We will be  
14 inviting the interveners to make their final  
15 submissions on the draft report during the month of  
16 March. And then we will be providing a final report.  
17 We did provide an interim report to government at the  
18 end of December that summarized the process so far and  
19 you can see that on our website, but that report  
20 contains no recommendations at all.

21 I'm not going to go through these slides in  
22 huge detail, but I'd like to highlight a couple of  
23 things. One is, the report -- what we call an  
24 overarching recommendation in the report is that  
25 ratepayers of Indigenous utilities -- and those  
26 ratepayers could be anyone. They could be Indigenous

1 people that live on Indigenous land or they could be  
2 non-Indigenous people somewhere else. No matter who  
3 is a customer of an Indigenous utility, should be  
4 afforded the same or similar protection to those  
5 customers that have -- let's say for example BC Hydro,  
6 that are provided protections under the *Utilities*  
7 *Commission Act*. So that was a high level  
8 recommendation that we are -- a draft recommendation  
9 and we would propose to make that recommendation in  
10 our final report.

11 A high level recommendation concerning the  
12 reliability standards, the ones that apply to the  
13 transmission system, our high level recommendation  
14 there is that no matter who owns that transmission  
15 system and operates it, whether it's an Indigenous  
16 utility or not an Indigenous utility, it should  
17 continue to be regulated by the BCUC under the  
18 regulation of the mandatory reliability standards.

19 And then we dove down into different  
20 classifications or categories of Indigenous lands.  
21 And the reason we did that is because that was the way  
22 the questions in the OIC were framed. But in all  
23 cases we -- and this was in response to many  
24 submissions and comments that we got in the first  
25 phase, the ones that I said earlier, which were  
26 Indigenous utilities should be treated like municipal

1           utilities are and we generally agreed with that  
2           comment and we generally recommend that that similar  
3           treatment -- that Indigenous utilities have similar  
4           treatment under the *Utilities Commission Act*.

5                       We did have some concerns in some  
6           circumstances around dispute resolution mechanisms and  
7           complaint processes and we also had some concerns  
8           around safety and reliability regulation. And in  
9           fairness I think there was a number of parties that  
10          had similar concerns, especially around safety and  
11          reliability, that felt that -- and there were  
12          suggestions that we should continue to retain  
13          jurisdiction over the regulation of safety. And we've  
14          made no draft recommendations about that and we're  
15          going out and that's one of the things that we want to  
16          ask you in the workshop.

17                      So in the interests of time here I'll just  
18          move through these slides but, again, we looked at  
19          reserve lands, lands that are defined under the *Indian*  
20          *Act*; then we looked at modern treaty lands, the  
21          Nisga'a, and other modern treaty lands that are under  
22          negotiation, historical treaty lands like the  
23          territory here in this area; and then we looked at  
24          Westbank First Nation and Sechelt.

25                      And then we looked at the question of  
26          ceasing to be an Indigenous utility. And once we'd

1 finished that, then we turned our attention to what is  
2 an Indigenous utility. And, again, I think that this  
3 needs further consideration and we'd like to hear  
4 further comment on it. Some of the questions are does  
5 a utility -- and again I'll just use the analogous  
6 municipal utility definition, the definition of a  
7 municipal utility is that the utility assets are owned  
8 and operated by the municipality.

9 So, you know, that could be one definition  
10 of an Indigenous utility if the utility assets are  
11 owned and operated by the municipal council -- or  
12 sorry, the Band Council or the whatever is the  
13 governance structure for the territory. Or could it  
14 be a utility that's owned and operated by Indigenous  
15 people? Could it be a utility that there's a  
16 partnership ownership by a Band Council and a non-  
17 Indigenous group? So these are some of the  
18 considerations around what is a municipal -- sorry, my  
19 apologies, what is an Indigenous utility.

20 So the feedback that we're asking you for  
21 is what are your views generally on our proposed  
22 recommendations? Do they strike the right balance  
23 between the need for ratepayer protection and the  
24 rights of First Nations for self-governance? What  
25 might an appropriate complaints and dispute resolution  
26 process look like? And should the BCUC have any role

1 in that process? Also, are there specific areas which  
2 should not be exempt, such as safety and service  
3 reliability? And if that is the case, then how should  
4 those areas be regulated?

5 We've also laid out some specific "what if"  
6 questions, and again I'm not going to go through the  
7 -- although I am happy to answer questions, I'm sorry  
8 I should have said right now, please feel free, but I  
9 think Dan will go through these in the workshop when  
10 we get started.

11 So we've laid out some examples along the  
12 lines that I've just described, if the utility's  
13 assets are owned by a corporation of which the Band  
14 Council is a shareholder, or the sole shareholder;  
15 what if it's a limited partnership and the council is  
16 a partner or a limited partner? What if they are  
17 owned by third party, but they have a franchise? In  
18 other words, the council has given them some sort of  
19 legal right to operate in a certain territory. And  
20 what if the Band Council has some say in the setting  
21 or approval of rates? How do these fact patterns, as  
22 it were, how does that affect the definition of an  
23 Indigenous utility?

24 And then there are some questions around  
25 how an Indigenous utility would be regulated, and who  
26 would regulate it under certain circumstances. What

1 if the definition of an Indigenous utility is that it  
2 is a utility operated by a particular Band Council, so  
3 now it wants to sell energy to another Nation, or  
4 another Band Council somewhere else. Then who  
5 regulates the sale of that energy, in the second  
6 territory?

7 And then there is this issue around retail  
8 access. I think it's fair to say the panel strongly  
9 feels that given the critical mass of customers that  
10 is often required to operate a utility, it may be  
11 difficult to make a utility viable in a smaller  
12 community. And it may be necessary to reach further  
13 afield for customers, and in order to do that,  
14 sometimes there may need to be access to BC Hydro's  
15 transmission system. So, what should we do about this  
16 retail access prohibition? Should we make a  
17 recommendation that it be varied to allow for the  
18 growth of Indigenous utilities? Should Indigenous  
19 utilities be able to access the transmission -- BC  
20 Hydro's transmission system to sell energy to another  
21 community, or even another individual somewhere else  
22 in the province.

23 We've talked a lot about utilities selling  
24 energy to individual customers. But as I mentioned  
25 earlier on, if I have got a generation facility, I can  
26 sell my energy to BC Hydro. And then that way I am

1 not in the retail business at all, I'm in the  
2 wholesale business, and I can let BC Hydro worry about  
3 where they are going to sell the energy. And that is  
4 a model that is used by many Indigenous utilities in  
5 the province currently, and you probably know it as  
6 the IPP program.

7 As you know, there is a lot of IPPs that  
8 are currently up for renewal, and they are running  
9 into a lot of headwinds in getting renewals from BC  
10 Hydro for those IPPs now largely around the price, and  
11 the need for energy. There is a glut of energy right  
12 now all across North America, and the circumstances  
13 that were in place 10, 20, 25 years ago when these  
14 IPPs were first entered into have changed  
15 significantly now.

16 Those IPP contracts, they come to us, to  
17 the Utilities Commission, for approval. So even if  
18 you're an exempt utility, if it was Indigenous owned  
19 utility that was exempt, if you wanted to sell energy  
20 to BC Hydro the way the Act is written right now, you  
21 would need British Columbia Utilities Commission  
22 approval. And when we look at an energy contract we  
23 look at the public interest and we look at the rate  
24 impact on BC Hydro's ratepayers.

25 The question is, is what if any  
26 recommendations should we make around the review of

1        those contracts when an Indigenous utility is  
2        involved? Should the public test be varies or are  
3        there other public interest issues that should take  
4        precedence over and above ratepayer impact on --  
5        economic impact on ratepayers.

6                    And then we're also asking, what should we  
7        do to assist in Indigenous utility regulation to  
8        reduce the regulatory burden and improve accessibility  
9        of the regulatory process. This is assuming that  
10       either we make no recommendation for exemption or  
11       limited exemption, or the government doesn't accept  
12       them. If Indigenous utilities end up continuing to be  
13       regulated by the BCUC then our question -- for  
14       whatever reason, our question then is what should we  
15       do? Or is there anything we should do and if so what  
16       should we do to ensure that that regulation is  
17       appropriate and is effective and works to meet the  
18       needs of Indigenous -- of those Indigenous utilities  
19       and their owners and the customers.

20                    So this is the last consultation session on  
21        this report we've scheduled and we're really happy to  
22        be here and thank you for inviting us. And we're  
23        going to be going away after this and in March, the  
24        next steps are that we're inviting all interveners and  
25        any member of the public, whether they've attended a  
26        session or not, to provide their written comments on

1 the report.

2 Now, we're also asking you for your  
3 comments today, but if you go away and think about and  
4 have additional comments or change your mind on any  
5 comment that you've made today, we invite you to make  
6 a written comment on or before March the 2<sup>nd</sup>. And then  
7 we've scheduled roughly a month-long period after that  
8 to give you the opportunity to read everybody else's  
9 comment. And then March the 31<sup>st</sup>, if you choose to,  
10 you could provide further comment on somebody else's  
11 comment. And after that the panel will go away and  
12 spend a month writing the final report.

13 And I think that brings us to the end of  
14 the show, thank you.

15 MR. GEORGE: Thank you very much, Dave, for those scene  
16 setting, context setting comments. Are there any  
17 questions that the participants have for Dave of  
18 clarification? Any questions?

19 MR. LORO: Davide with Doig River First Nation, I've got  
20 a lot of questions. Well, it's more just for  
21 educating myself, but I have a bunch written down  
22 here.

23 THE CHAIRPERSON: Sure.

24 MR. LORO: I just need to educate myself on. So, my  
25 logic says non-regulated is better than -- far better.  
26 It's easier to navigate than regulated. Now, is that

1 a true thought or is --

2 THE CHAIRPERSON: I would say yes. Well, first of all I  
3 would say it depends on who you are. If you're a  
4 ratepayer, then that may not be the case. You may  
5 readily agree that regulation is good. However, if  
6 you're a utility owner you probably would find it  
7 easier to navigate, without a doubt. Although we  
8 really do what we can to make processes as streamlined  
9 as possible, but just by the very nature of our  
10 processes which, which as I indicated includes going  
11 out to members of the public and the ratepayers and  
12 inviting comment and just the openness and the process  
13 itself can make it a burden on the utility.

14 However, when I talk to the owners and  
15 managers of the utilities that we regulate, they  
16 generally welcome the regulation. They feel that --  
17 these are my words, not theirs, but that it  
18 legitimizes the decisions that they make, it makes it  
19 easier for them to sell their decisions to their  
20 customers. If they can go to their customers and say,  
21 "Well, the Utilities Commission approved this," that  
22 helps them a lot because, you know, they know their  
23 customers had an opportunity to have a say in it.

24 So it's a little bit more nuanced than  
25 that, but, yes, I would agree at a high level it's the  
26 fastest way to get from point A to point B, but when

1       you get to point B, sometimes you may have wished that  
2       you didn't get there quite so fast.

3 MR. LORO:     I'm just thinking, most industries do they  
4       start non-regulated and become regulated in general?

5 THE CHAIRPERSON:     Well, under our Act, as soon as you  
6       sell energy to someone in British Columbia, no matter  
7       how small you are, you are supposed to be regulated.  
8       So generally, no, I would say that's not the case.

9 MR. LORO:     Yeah, I'm just trying to think, you know,  
10       economics of scale. You're not -- well, I guess you  
11       are competing with BC Hydro. So I have no idea what  
12       percentage -- let's say if every Indigenous community  
13       had a project, possibly -- would be less than one  
14       percent of the whole things.

15 THE CHAIRPERSON:     Yes.

16 MR. LORO:     So we're already handicapped in that way, you  
17       know, if they want to sell somebody they just -- they  
18       have --

19 THE CHAIRPERSON:     Yes. Well, the costs of regulation are  
20       -- without question the costs of regulation are more  
21       impactful on smaller utilities than on larger  
22       utilities and we are mindful of that, which is why we  
23       try to modify our processes so that the impact on  
24       smaller utilities isn't as great, but that is an issue  
25       that we are -- we absolutely are aware of.

26 MR. LORO:     I've got lots, so I still have some.

1 THE CHAIRPERSON: That's okay, go ahead. That's fine,  
2 yeah. Keep going, yeah.

3 MR. LORO: Yeah, I guess the next one is I guess using  
4 the infrastructure. Kind of like that's almost a  
5 given, you have to use Hydro lines to be able to  
6 expand, be able to reach the entire province or  
7 anyone, for that matter.

8 THE CHAIRPERSON: Yeah, that's correct. Yes, yeah.

9 MR. LORO: Who owns or -- is it Hydro owns those lines or  
10 do the taxpayers own that? What is that --

11 THE CHAIRPERSON: Well, the legal ownership of them --

12 MR. LORO: Yeah, I just work for TELUS and I know how  
13 that works, so --

14 THE CHAIRPERSON: Yeah, the legal ownership is Hydro.  
15 They have been -- arguably they have been paid for by  
16 ratepayers because the amortization of the costs of  
17 building those things have gone into rates, so that --  
18 you know, you could -- from I suppose a morals  
19 perspective you can argue they're ratepayer -- you  
20 know, they're owned by ratepayers, they are there for  
21 the benefit of ratepayers, and ratepayers have paid  
22 for them, but they are Hydro assets.

23 And you're quite right, that generally  
24 speaking to wheel energy around the province you do  
25 need -- you will need to access Hydro's system. If  
26 you were -- and the distribution system, in almost

1 every community in B.C., even remote communities are  
2 connected to that grid, is owned by Hydro or to a  
3 lesser extent by Fortis. And I should also point out  
4 that this is not just about electric utilities, it's  
5 about gas utilities too. So there's perhaps more  
6 opportunity to build gas grids than there is to build  
7 electric grids, because not every community has a gas  
8 grid, but there's less appetite for that also.

9 But, you know, there's probably very few  
10 circumstances, other than a new housing development  
11 where you would need to build even a distribution  
12 grid. But there are circumstances when you would  
13 build a new distribution grid and that would be for a  
14 new housing development.

15 MR. LORO: And given that, would a company be able to  
16 access like Alberta and Washington or is that just a  
17 total separate --

18 THE CHAIRPERSON: Sorry, would they be able to access?

19 MR. LORO: To sell to like somebody in Calgary, is that  
20 connected through there?

21 THE CHAIRPERSON: So that's a good question. You could  
22 build a generation plant here and you could sell to  
23 somebody in Alberta.

24 MR. LORO: Or next door to it.

25 THE CHAIRPERSON: Yeah, or in Washington. Or California  
26 for that matter. And you would not need any approval

1 from us to do that. You'd need approval from the  
2 national -- what used to be called the National Energy  
3 Board for an electricity export permit, but you would  
4 be able to sell that energy, but you're not selling it  
5 to someone in British Columbia, and then you wouldn't  
6 have that retail access prohibition. You could wheel  
7 it over Hydro's lines to do that. And they do have an  
8 open access transmission tariff, so technically you  
9 would be able to do that, to sell to Alberta or  
10 Washington.

11 MR. LORO: So instead of -- I think most companies, I  
12 guess it's just way easier just to go wholesale and  
13 sell to Hydro, and Hydro takes care of the rest?

14 THE CHAIRPERSON: That is certainly the easiest, you  
15 don't have to find a customer then, yeah.

16 MR. LORO: But I think the hybrid model, technically  
17 would be best, but how would you navigate a wholesale  
18 and also the retail side? We have to sell the same  
19 regulars in our certain -- like you would want to --  
20 let's say you want to sell wholesale 5 cents to Hydro,  
21 but you want to sell it to someone else for 3. You  
22 know, optics wise, that's maybe not the best, but is  
23 that even possible?

24 THE CHAIRPERSON: Well I mean, that is hard -- it's kind  
25 of a general question, so my general answer would be,  
26 you would negotiate whatever price you could get with

1           whoever you could negotiate it with.

2 MR. LORO:    Kind of the same thing, let's say you have  
3           properties all over the place, let's say we built it,  
4           and we want to supply our properties with electricity.  
5           I guess you can say, it wouldn't go free, but you pay  
6           ourselves --

7 THE CHAIRPERSON:    Yes. Yes. So, you know, I am going  
8           flip -- you know, compare that to a municipal  
9           exemption, the municipal run utility, and you would  
10          be, in that circumstance then, if you operated under  
11          that kind of a regime, you would be free to charge  
12          your citizens whatever you wanted or not, give it away  
13          for free. It would be entirely the Band's decision.  
14          Are those all interconnected on the same grid? Or are  
15          there separate sub-grids here?

16 MR. LORO:    Within a hundred kilometers of --

17 THE CHAIRPERSON:    And they are all on one distribution  
18          grid?

19 MR. LORO:    I would assume so.

20 THE CHAIRPERSON:    Yes, then you would just have a  
21          generator here and you would sell or not, or give away  
22          the energy as you saw fit.

23 MR. LORO:    And then let's say with TELUS, the fibre  
24          network, old copper network, for a long time it was  
25          basically the high speeds of the -- you rent the  
26          copper --

1 THE CHAIRPERSON: Yeah.

2 MR. LORO: -- is that the same with Hydro? Or is that  
3 the fee -- let's say I wanted to send electricity a  
4 hundred kilometres --

5 THE CHAIRPERSON: Yeah, it's essentially -- yeah.

6 MR. LORO: -- 2,000 kilometers?

7 THE CHAIRPERSON: The same thing. You pay for the  
8 equivalent of a bandwidth, a proportion of the  
9 capacity on the line you pay for.

10 MR. LORO: That's enough for now.

11 THE CHAIRPERSON: Okay.

12 MR. GEORGE: Great, thank you very much, and just to once  
13 again for the record, if you could just say your first  
14 and last name, and spell your last name, please?

15 MR. LORO: I'll spell my first name too. It is Davide  
16 Loro. First name is D-A-V-I-D-E, so David with an e.  
17 Last name L-O-R-O. Thank you so much.

18 MR. GEORGE: Any other questions for Mr. Morton? Any  
19 questions? Thank you.

20 First and last name, spell your last name  
21 for the record please.

22 MS. SUTHERLAND: Theresa Sutherland, I am a counsellor  
23 from Fort Nelson First Nation, and entering this room  
24 I thought I was in the wrong meeting. It just seems  
25 that I thought that for sure that other First Nations  
26 would be interested enough to attend, but I'm glad

1           that you came out.

2                       The only thing that I -- basically I wanted  
3           to explore more, the definition of Indigenous  
4           Utilities, and how that might look. If we had  
5           jurisdiction over our own territory as far as all  
6           utilities, that would definitely secure jobs. It  
7           would provide training and revenue, and that revenue  
8           would flow back to the First Nations.

9                       I know in the Province of British Columbia  
10          it's really unusual, because we are in an area where  
11          there are so many areas that haven't been treated  
12          yet, and with ours, ours is a historical treaty, and  
13          so it kind of -- I'm kind of wondering if we should  
14          actually modernize our treaty rather than try to  
15          figure out what all the meaning of back in the  
16          history, like when our elders, what were their  
17          understanding.

18                      We are very clear on that particular part  
19          of the treaty, but when it comes to this sort of  
20          thing, I think it would be best if we had our own say  
21          on our own lands.

22                      And I know that municipalities have had  
23          that option of exercising the terms of what sort of  
24          rates that they charge, but that doesn't give them --  
25          it's not the same as what we feel we are. I think the  
26          municipalities are kind of -- not saying anything mean

1 or anything, but a little bit lower than us, because  
2 ours is a treaty, and we seem to have a bit of more, I  
3 don't know, more say I guess on our territory.

4 And I don't know if -- I've just kind of  
5 joined in late, because other counsellors that were  
6 initially on this, are in Vancouver on a different  
7 meeting. But I don't know if Fort Nelson has  
8 expressed, but I know that we have received a  
9 government grant, a huge government grant to explore  
10 geothermal on our territory.

11 So, having said that, I am really in line  
12 with having more say on our traditional territory  
13 rather than have somebody else regulate us, because  
14 we've gone down that route before. It just seems that  
15 we are always constantly regulated.

16 And B.C. Utilities Commission, is there  
17 anything similar to one that they have in Ontario,  
18 where the First Nations have some sort of say on their  
19 utilities?

20 THE CHAIRPERSON: We don't have any -- there is no  
21 separate --

22 MS. SUTHERLAND: The one that I'm particularly interested  
23 in is the one that they call the Ring of Fire, where  
24 they have that kind of say over their energy power.

25 THE CHAIRPERSON: No, there is nothing equivalent to that  
26 here.

1 MS. SUTHERLAND: Yeah. I was just going to say, too, that  
2 on that one -- I'm not sure that they actually have  
3 negotiated jurisdiction, it's -- I know there's a --

4 COMMISSIONER LOCKHART: A partnership with Hydro, maybe?

5 MS. SUTHERLAND: Yes. It's an ownership difference there,  
6 yeah.

7 COMMISSIONER LOCKHART: Okay.

8 THE CHAIRPERSON: But these are -- you know, these are  
9 all issues that we can deal with in our report  
10 recommendations, so please -- you know, if we don't  
11 hear it from you then, you know, we're not -- we've  
12 got less opportunity to really understand what you  
13 want.

14 As far as the municipal, comparisons to the  
15 municipalities go, I understand what you're saying.  
16 We certainly have heard that and it's not our  
17 intention -- from our perspective we're not making a  
18 comparison at that level. What we're doing is we're  
19 looking at that framework, regulatory framework, and  
20 saying that that's one that we would recommend, we  
21 would recommend in these circumstances. And, you  
22 know, we would -- at least speaking personally, I  
23 think that it makes sense that it applies to  
24 Indigenous utilities around the province, whether  
25 they're on modern treat land or historical treaty land  
26 or on *Indian Act* land. You know, it should be

1 transparently applicable in all circumstances, and so  
2 I just wanted to address that comment of yours. You  
3 know, I think that's a goal that we should strive for.

4 MS. SUTHERLAND: So, when you say "monopolous", what does  
5 mean? Like, monopolous as far as First Nation's  
6 having that power or BC Hydro having a monopoly over  
7 the --

8 THE CHAIRPERSON: Well, just the term "monopoly" means  
9 that there's only one customer that you can buy the  
10 service from. Where I live on the North Shore in  
11 Vancouver there's only one company I can get taxi cab  
12 from, for example. There's only one company I can  
13 buy my electricity from, you know? So those are all  
14 monopolies.

15 If I lived in, let's say, New Westminster,  
16 which has a municipal utility, there would still be  
17 only one company I could buy my electricity from and  
18 so it would still be a monopoly. If I lived on Band  
19 territory and there was a utility operated by the Band  
20 and that was the only place I could buy my  
21 electricity, that would be a monopoly.

22 So generally speaking, electricity service  
23 around the province is delivered by monopolies, but  
24 the question is, does it need us, the BCUC, as a third  
25 party regulator to oversee the effects of that  
26 monopoly. And again, and I'm sorry, I appreciate your

1        comments, but to look at the municipal situation, it  
2        is considered -- it's not necessary to have a third  
3        party regulator in a municipal situation because  
4        there's a municipal council that can manage those  
5        monopolistic effects and they get voted by their  
6        citizens and if they don't manage them properly  
7        they'll get voted out. And so those are the kinds of  
8        considerations, then, with having the Band Council or  
9        the governance of the territory operating their own  
10       utilities.

11                    The question is, yes, they're operating  
12        monopolistically but do they need to have someone  
13        overseeing that? And if the answer is no, which is  
14        what this panel felt when it made the draft  
15        recommendations, then there would not be a need for  
16        BCUC regulation there.

17                    Sorry, did I answer your question?

18 MS. SUTHERLAND:    Yes, I think you did. That's good,  
19        thank you.

20 MR. GEORGE:        One more.

21 MR. LORO:         Davide Loro, just here on BC Hydro. So, I  
22        know it's one step removed from the government, you're  
23        basically just bringing a message to the government to  
24        -- are you specifically --

25 THE CHAIRPERSON:    Yeah, that's a good question. We  
26        operate under this Act, the legislation, the *Utilities*

1           *Commission Act*; a couple of other acts but primarily  
2           that Act. And under that Act we're forced to -- we're  
3           required to regulate anyone that sells energy in B.C.  
4           So if you want to sell energy --

5 MR. LORO:     You have to --

6 THE CHAIRPERSON:   Yeah, correct. And we can't change  
7           that. We don't wake up and decide we don't want to do  
8           that, because we don't think you need to be regulated,  
9           so we're not going to do it anymore. We can't do  
10          that. We don't have that control. So what we are  
11          doing in these circumstances is we are going to  
12          government and saying, "Look, we don't really think  
13          that we should regulate under these circumstances. We  
14          recommend that you make a change to the *Act* so that we  
15          don't regulate." And so I don't know if that answers  
16          your questions?

17 MR. LORO:     It gives me a taste of it. Another thing, so  
18           obviously Hydro has got a monopoly, what

19 THE CHAIRPERSON:   Yes.

20 MR. LORO:     I'm sure -- I know you don't know  
21           specifically, what are their feelings on this?  
22           Because I've been on their site and it says their  
23           strategy and objectives, gain support for work with  
24           customers, First Nations communities, and then foster  
25           economic development, and frankly it says "our  
26           projects". Didn't they have at one time -- I can't

1       remember, someone said their objectives were slightly  
2       different, that they were supposed to not -- I can't  
3       remember.

4       THE CHAIRPERSON:    Well, Hydro -- I think it's  
5       complicated. Hydro is a big company, I can't speak  
6       for them at all. But they have a lot of interactions  
7       with First Nations. They purchase energy off of them  
8       through IPP contracts, they provide energy to remote  
9       communities, and operate distribution systems and  
10      diesel generators in those communities, and they also  
11      sell energy through the grid to remote communities and  
12      Indigenous peoples wherever they live. So, there is a  
13      wide range of interactions, and I don't think that  
14      there is a simple answer to the question. However,  
15      they are participating in this inquiry, and they have  
16      made submissions, and you could go onto our website  
17      and see what they have had to say about the  
18      recommendations. If you need help, our staff can help  
19      you.

20     MR. LORO:    Yeah, like I said --

21     THE CHAIRPERSON:    And they've participated in these  
22      workshops, and it's unfortunate that there is no one  
23      from Hydro here today, but they have participated, and  
24      they have made suggestions. So I wouldn't say that  
25      they are on one side or the other necessarily, I --

26     MR. LORO:    I'll defer -- they hold all the cards.

1 THE CHAIRPERSON: Well, they are a monopoly, they've got  
2 all the infrastructure, that's right.

3 MR. LORO: And I do agree that the word "regulated" in  
4 Indigenous communities is another four letter word,  
5 right? And even though it might be to the benefit,  
6 just the thought that there is -- like everything -- I  
7 just started with Doig just nine months ago, and just  
8 hearing all the stories -- you know, always asking for  
9 permission to do something, always have these rules, x  
10 rules, we are trying to get our governance and  
11 interaction with the city. The Indigenous people are  
12 audited and held to way higher -- so all that stuff,  
13 so.

14 THE CHAIRPERSON: I get that, so.

15 MR. LORO: So I think, you know, whether it's beneficial  
16 or not to the company for sales, regulation just is --  
17 puts a damper on the thing in my opinion.

18 THE CHAIRPERSON: Yeah, fair enough. Thank you.

19 MR. GEORGE: Okay. Thanks again, Dave, great job.

20 THE CHAIRPERSON: Thank you.

21 MR. GEORGE: Let's take a short break, let's assemble at  
22 the table here. Phil, you'll join us, Krissy, you'll  
23 join us, if we could have us come up to the table  
24 here. We are going to walk through the  
25 recommendations, the proposed recommendations and do a  
26 deeper dive on them. They are found on pages 7 and 8

1 of this little handout. This little handout. Thank  
2 you. So we will reconvene in 10 minutes, 11:25.

3 **(PROCEEDINGS ADJOURNED AT 11:15 A.M.)**

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

5 **(PROCEEDINGS RESUMED AT 12:57 P.M.)**

6 MR. GEORGE: Welcome back. A good conversation at our  
7 table with regards to the set of proposed  
8 recommendations and we have one of our participants  
9 who is going to be presenting their feedback to the  
10 proposed recommendations. I ask that you introduce  
11 yourself with your first and last name, and spell your  
12 last name for the record please. Thank you.

13 **REPORT PRESENTATION BY MR. LORO:**

14 Am I in a court of law? Davide Loro, D-A-  
15 V-I-D-E, L-O-R-O, from Doig River First Nation. I  
16 will just read what I see.

17 Fort St. John, January 17<sup>th</sup>, 2020.

18 Recommendation 1) what does "same protections" mean?

19 Oh, how fast -- is this just being recorded?

20 THE CHAIRPERSON: It's being transcribed, yes.

21 MR. LORO: Do I read --

22 THE CHAIRPERSON: Yeah. Well, they'll tell you if it  
23 is too fast, I'm sure. Okay, and you were pausing?  
24 You wanted us to answer? Or you were just pausing?  
25 You are just saying that rhetorically?

26 MR. LORO: Oh, are you able to answer these too? I

1 thought it was just them?

2 THE CHAIRPERSON: Yeah, that's fine. I wasn't sure if  
3 the pause was waiting for a response, but that's fine,  
4 yeah.

5 MR. LORO: If you have got something really good to  
6 say, go ahead.

7 So start again. What does "same  
8 protections" mean? Definition of "safe and reliable."  
9 Recommendation would benefit from an example.

10 Recommendation number 2, how frequently do  
11 the requirements change? We would like to see if and  
12 how First Nations could retain jurisdiction on this.  
13 Could First Nations partner with utilities to develop  
14 more capacity on utility operation and safety?

15 Recommendation 3, should be implemented as  
16 First Nations develop and prepare to operate the  
17 utility. Should be both opt-in and opt-out. Having a  
18 choice is critical. We need clarity on how this would  
19 impact traditional, historical, and modern lands.  
20 Needs jurisdictional clarity as well.

21 Recommendation 4, supportive, if an  
22 Indigenous Utilities complaint process isn't working,  
23 then the BCUC would be the next step to resolving it.  
24 Could it be a partnership between the BCUC and the  
25 Indigenous Utilities? Again, the ability to opt-in,  
26 opt-out is important.

1 Recommendation 5, all in support.

2 Recommendation 6, does not apply if there  
3 is an interconnection with the BC Hydro grid, because  
4 they would be the ones who need to meet the safety and  
5 reliability standards. Supportive of meeting or  
6 exceeding the established standards of safety and  
7 reliability.

8 No comments on 7 to 9.

9 Recommendation 10, what defines "Reserve  
10 lands?" The term "Reserve lands" needs to incorporate  
11 historical/traditional lands. This is a big one too.  
12 Recognize the government-to-government relationship  
13 when it relates to historical treaty lands. And in  
14 addition to that, promises were made within Treaty 8.

15 No comments on recommendations 11 and 12.

16 Recommendation 13, agree, but could it be  
17 phased in if it needs to transition from not regulated  
18 to regulated.

19 Recommendation number 14, if an Indigenous  
20 community produces it and regulates it, (inaudible)  
21 for it and it maintains it, it should be an Indigenous  
22 utility. Ownership may require partnership at the  
23 beginning but the intent is that dependence over time  
24 it should be an Indigenous utility. Could there be  
25 degrees of regulation or some changes, but there's  
26 still Indigenous participation.

1                   Okay, retail access needs to be changed or  
2                   it won't make sense to develop the utilities. I guess  
3                   behind that is if you want access to the consumer and  
4                   customer base. Why would anyone put out that money if  
5                   it's so small? Why would any -- why would anybody  
6                   partner when it comes to the upside?

7                   The UCA may need flexibility to meet the  
8                   different views of all Indigenous communities on peak  
9                   days. Continuing review and improve the legislation  
10                  to make sure it's meeting its objectives.

11                  What does "public interest" mean? How is  
12                  it defined and how is it derived? Is there a test of  
13                  public interest? If you pass is approval guaranteed?  
14                  Does the public interest apply to all B.C. residents  
15                  or just the potential customers? Do you get final say  
16                  or whose opinion matters most? Examples there are if  
17                  you were to build here and just access the Peace  
18                  River, would public interest -- does take into fact  
19                  that area or the entire province?

20                  And then, could the BCUC assist in creating  
21                  incentives for Indigenous green energy developers?

22 MR. GEORGE:       Great job. Are there any question or  
23                  clarification required by the panel?

24 THE CHAIRPERSON:    I do have a few questions, yes.  
25                  Thank you very much, Davide, that was really helpful,  
26                  I appreciate it.

1 I'll just answer -- or at least, I'm not  
2 sure I can answer but I'd like to just respond to a  
3 couple -- I realize your questions are largely  
4 rhetorical, but I'd like to address a couple of them,  
5 like the public interest test for example.

6 There is no official or legally defined  
7 public interest test. It's exactly as the words  
8 describe it. It's a public interest test and we put  
9 different weights on different aspects of the public  
10 interest. We put a lot of weight on economic impact  
11 to the ratepayers of whatever utility is involved, but  
12 we consider more broadly lots of issues, including  
13 environmental issues and other issues of that nature.  
14 We're guided by things like -- things that are laid  
15 out in legislation, like B.C.'s energy objectives, for  
16 example, and things that are in our *Utilities*  
17 *Commission Act*, but there is no official definition.

18 I'll look to Lino, Mr. Bussoli, if there's  
19 anything he would like to add to that, those comments.  
20 And I think one of the questions we are asking is,  
21 what particular issues that are of interest to  
22 Indigenous utilities and ratepayers of Indigenous  
23 utilities, what particular public interest issues do  
24 they give rise to?

25 MR. BUSSOLI: Sorry, you were asking that question  
26 directed to me? What --

1 THE CHAIRPERSON: I was just asking if you had anything  
2 you would like to add.

3 MR. BUSSOLI: No, I've nothing further to add.

4 THE CHAIRPERSON: Okay, or any of my panel members.  
5 See, I caught him that time, didn't I?

6 And then the question about our first  
7 objective, or our first recommendation which was  
8 similar protections. The protections that we're  
9 referring to there are the protections that I was  
10 outlining in my talk, which are protection from  
11 monopolistic pricing practices and other monopolistic  
12 price practices like, you know, not providing you with  
13 the service that you may require simply because you're  
14 a bit further away and it would cost more money to do  
15 that. You know, those are the kind -- and I'm not  
16 saying that any utility does do that or would do that,  
17 but it's to protect against the potential of that.  
18 Those are the kinds of protections that we're trying  
19 to get at.

20 But I have a question also for yourselves  
21 or anyone else in the room and it's a question that  
22 relates specifically to Treaty 8 territory and  
23 Indigenous utilities on Treaty 8 territory. So as I  
24 understand Treaty 8 territory, it's a large territory  
25 and it stretches into multiple provinces and there are  
26 a lot of Nations that are part of that treaty, that

1           are signatories to the treaty and that are affected by  
2           the treaty and live on the lands defined by the  
3           treaty. And I further understand that it's not --  
4           that there aren't necessarily, you know, geographic  
5           boundaries around each of those nations and, you know,  
6           they're kind of co-mingled, geographically co-mingled  
7           in the territory.

8                         So, how would the definition on an  
9           Indigenous utility in the territory on an -- of a  
10          particular utility, how would that apply in this  
11          context? And, you know, do you understand the --  
12          you've got my question? Yeah.

13 MS. SUTHERLAND:       Theresa Sutherland, T-H-E-R-E-S-A  
14                         S-U-T-H-E-R-L-A-N-D, Fort Nelson First Nation. The  
15                         Treaty 8 territory was imposed by the government, of  
16                         course, but within that Fort Nelson First Nation is a  
17                         participant in that treaty. However, we have a  
18                         boundary, I guess, what we feel is our traditional  
19                         territory.

20 THE CHAIRPERSON:       Right.

21 MS. SUTHERLAND:       That it overbounds provincial  
22                         territories I guess. So in that sense I guess we are  
23                         looking at it differently than just the boundaries of  
24                         the provincial or the reserve lands.

25 THE CHAIRPERSON:       Understood. Right.

26 MR. GEORGE:            Thank you.

1 THE CHAIRPERSON: Does anyone else have any --  
2 COMMISSIONER BREWER: I just had a question about --  
3 now, you talked about opting-in and opting-out and I'm  
4 just wondering if you could elaborate a little bit on  
5 that? I think in our recommendations we talk about  
6 enabling First Nations to opt-out of the UCA.  
7 MR. LORO: It's my understanding, it's my opinion, that  
8 having the choice of the (inaudible) and also that  
9 every nation will have their own timeframe whether  
10 they want to do it or not. Some will be ready to go  
11 as soon as they're ready, some might be two or three  
12 years later. I think -- let's say opt-in to  
13 regulation and find that it doesn't work for you, that  
14 it's in its infancy --  
15 THE CHAIRPERSON: Yes.  
16 COMMISSIONER BREWER: Yes.  
17 MR. LORO: So no one will know which one is better. Like  
18 it might sound better on paper, but you start and say,  
19 "No, we don't need this," but you're stuck there and  
20 you have to opt-in to something.  
21 THE CHAIRPERSON: Okay. Makes sense.  
22 COMMISSIONER BREWER: Okay.  
23 COMMISSIONER FUNG: Mr. Loro, thank you very much for  
24 your presentation. I just have one clarification  
25 question, and it may be because I've heard it wrong,  
26 but when you were talking about Recommendation number

1           10 and in particular what is the definition of a  
2           reserve, I think you stated that it ought to include  
3           historical treaties, is that correct?

4 MR. LORO:           Needs to -- reserve lands need to  
5           incorporate historical traditional lands.

6 COMMISSIONER FUNG:       Historical traditional lands?

7 MR. LORO:           Yeah.

8 COMMISSIONER FUNG:       Okay, thank you.

9 MR. LORO:           And also we put this up here specific to  
10          Treaty 8. I'm not sure exactly what this belongs to,  
11          but it's promises were made within Treaty 8, so.

12 THE CHAIRPERSON:       Right.

13 COMMISSIONER FUNG:       I take it that position is that our  
14          treatment of reserve lands should be similar to what  
15          we would give to Treaty 8 lands, is that correct? Is  
16          that the idea?

17 MR. LORO:           I guess that's the idea, yeah.

18 COMMISSIONER FUNG:       Ms. Sutherland?

19 MS. SUTHERLAND:        The term used "reserve lands" is too  
20          confining, so that we would like to have it more  
21          viewed as traditional lands as historically viewed.  
22          As a Nation when we signed on to the treaty, we signed  
23          on as traditional lands and not as a defined reserve  
24          land or a provincial land I guess.

25                        Does that make sense? Or -- does it make  
26          sense?

1 COMMISSIONER BREWER: I just -- I think it makes sense,  
2 but I'm just wondering then, so if you have -- because  
3 you still have the reserve land, right, within that?

4 MS. SUTHERLAND: Mm-hmm.

5 COMMISSIONER BREWER: So if you have a utility that  
6 operates beyond that, beyond the Reserve. I guess,  
7 are you -- is it your position or your recommendation  
8 that that be treated the same way, the one that  
9 extends beyond, that that be treated the same way as  
10 On Reserve?

11 MS. SUTHERLAND: When I thought of it, it would be as  
12 far as collecting royalties and money from it, that  
13 was the view that I had, and I think it may be not a  
14 question for me to answer. However, it could be a  
15 federal government/provincial question to them.

16 COMMISSIONER FUNG: Thank you very much.

17 MR. GEORGE: Dan George, G-E-O-R-G-E. One of the  
18 comments that was made at our table is like, Reserve  
19 Lands are creations of the *Indian Act* through  
20 legislation. The Treaty 8 itself is a government-to-  
21 government relationship, that within Treaty 8 contains  
22 many different solemn promises that were made to the  
23 people prior to entering into the treaty. As you  
24 compare them as being the same, it's not wise to do,  
25 because they are not the same. Reserve lands are not  
26 the same as the broader Treaty 8. So that is what I

1           was gathering from our conversation.

2   COMMISSIONER LOCKHART:        Okay, that's very helpful, but

3           I need some more background on this.  So, when I think

4           of treaty lands, I think of very specifically defined

5           geographic boundaries.  Are those different under

6           Treaty 8 terms?

7   MS. SUTHERLAND:            I guess historically, when you go back

8           to the treaty itself, it does not reference "Reserve

9           lands."  So what initially is happening here is it is

10          imposing reserve lands into what we feel was a treaty

11          that was signed on traditional grounds.  Is that clear

12          now?

13   COMMISSIONER LOCKHART:        Yes, that's helpful, thank you

14          very much, Ms. Sutherland.

15   THE CHAIRPERSON:            Did you have another question?

16   COMMISSIONER LOCKHART:        Yes, actually.  So is Treaty 8

17          unique in that context?  In British Columbia?

18   MR. GEORGE:                 I think there is one other historical

19          treaty on Vancouver Island.

20   THE CHAIRPERSON:            Yeah, Vancouver Island.

21   MR. GEORGE:                 But Treaty 8 would be the only historical

22          treaty in addition to that one on Vancouver Island.

23   COMMISSIONER FUNG:            That's right.

24   COMMISSIONER LOCKHART:        So then when we talk about

25          "Treaty lands" -- or sorry, "Reserve lands," the

26          equivalent term under Treaty 8 would be "traditional

1 lands?" What would be the comparable definition?

2 MS. SUTHERLAND: I'm not sure that we're capable of  
3 answering that. I think it's more like -- it's  
4 difficult because right now what you're seeing is the  
5 government-to-government arguments that are happening.  
6 Courts are determining that we actually have more  
7 rights, traditional rights than what was imposed on  
8 us.

9 So maybe it is a bigger question for the  
10 courts to decide on that. But there is two opposing  
11 views. European views and First Nation views. So,  
12 maybe it has to go back to the language of the people,  
13 in which I am very fluent at, and when we say  
14 (*Indigenous language spoken*), that means "our earth,"  
15 that means our traditional area. And it doesn't --  
16 it's not encompassed within, or confined on a reserve,  
17 or confined in a province. It goes beyond, or even  
18 our trading and that was recorded in our language as  
19 well.

20 So that's the sort of view that we have on  
21 I guess territory, traditional lands.

22 COMMISSIONER LOCKHART: Thank you.

23 MR. GEORGE: If I could just add one comment there.  
24 The figures that I've heard is that less than two  
25 percent of the province of British Columbia is reserve  
26 lands, right? So then the suggestion here is making

1           that bigger to accommodate the promises that were made  
2           with Treaty 8, right? So not being confined in such a  
3           small parcel of property.

4                           Any questions from the panel?

5   COMMISSIONER BREWER:        Yeah, I have another question and  
6           it's sort of a follow up on that, and I don't mean to  
7           put anyone on the hot seat here so please, you know,  
8           if this is not answerable please just let me know.

9                           So, I guess in the context of this inquiry  
10          we're talking about one -- making recommendations on  
11          one Act, really, the *Utilities Commission Act*. And  
12          the way it has been, I guess, the way the UCA has  
13          applied in the past has been that it's been basically  
14          applied in the absence of, for instance, federal  
15          legislation on reserve or like a treaty government  
16          enacting something and it's usually in the modern  
17          treaty context, than the UCA has been applied.

18                           So I'm wondering then, if we took this  
19          recommendation to try and put it forward, how would we  
20          do that if we were to say that traditional territories  
21          -- that we were to somehow apply our recommendation to  
22          traditional territories. I'm just wondering how would  
23          that -- have you thought about how that might -- it's  
24          a big question, I know.

25   MS. SUTHERLAND:        I think that BCUC is a provincially  
26          regulated board, is that correct? So what we see is a

1 lot of times the provincially regulated boards is  
2 where the problem is created, because the treaties  
3 were with the Federal Government. Any sort of G to G  
4 should be with the Federal Government. However, we do  
5 respect that these boards are put in place for all of  
6 the people that live and reside in British Columbia  
7 now. How do you go back and turn that in -- I don't  
8 know. Like, I think we as First Nations people didn't  
9 do the right thing and we're kind of stuck in the  
10 middle of it, so we need your help and the  
11 government's help, both provincially and federally, to  
12 move forward on this.

13 How do we do that? You're asking me, I  
14 don't know. I was raised in a very remote northern  
15 community called Fontas River, B.C. My father was a  
16 trapper, my mother lived off the land and we harvested  
17 our food and that sort of thing. So to ask me that  
18 question and -- I don't know. Like, I wish I could  
19 say magically that it's resolvable, but it isn't. I  
20 don't think it's an easy question.

21 THE CHAIRPERSON: Thank you. Thank you, Dan, and thank  
22 you everyone.

23 COMMISSIONER FUNG: Yes, thank you very much.

24 MR. GEORGE: Thank you, that concludes our session here  
25 today. Is there -- there's one final opportunity, is  
26 there any other comments that participants want to

1 make to the panel prior to our closing?

2 MR. LORO: Thank you for coming up and showing up even  
3 though it's cold, a lot of times nobody does. Few  
4 people come up, saw the temperature and they don't  
5 want to come up, so I appreciate it, just from a  
6 northern perspective.

7 THE CHAIRPERSON: No problem, thank you for the  
8 invitation and thank you for coming yourself, I  
9 appreciate it.

10 MS. SUTHERLAND: I think, like my colleague, I  
11 appreciate you all coming to Fort St. John. I know, I  
12 travel from Fort Nelson, it's more northern, it was  
13 minus 40 when I left yesterday and it's warmer here  
14 and I'm going outside in my sweater. Even in minus 39  
15 it seems warm to me, warmer than the weather that I  
16 left behind. So thank you very much for giving us an  
17 opportunity to be here today.

18 THE CHAIRPERSON: And thank you. Thank you for coming,  
19 ma'am, and we are acclimatizing slowly. I'm not going  
20 out in my sweater though, I'm definitely putting my  
21 coat on.

22 MR. GEORGE: Great. So, thank you very much everyone.  
23 On behalf of our team, just some reminders here.  
24 Anyone who wishes to provide written evidence can send  
25 them to BCUC by March 2<sup>nd</sup>, 2020. As I noted,  
26 representation from the panel will be updating the

1 Chiefs Assembly on March 6<sup>th</sup> in Nanaimo at the B.C.  
2 Assembly of First Nations meeting. The final report  
3 to the government of B.C. with the BCUC's final  
4 recommendations is due April 30<sup>th</sup>, 2020. More  
5 information on the Inquiry and how to stay involved  
6 can be found at bcuc.com.

7 Once again, on behalf of the panel, on  
8 behalf of all of our team, thank you very much for  
9 taking the time out of your busy schedules to be here  
10 today and (*Indigenous language spoken*).

11 THE CHAIRPERSON: Thank you.

12 **(PROCEEDINGS ADJOURNED AT 1:24 P.M.)**

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



A.B. Lanigan, Court Reporter

January 17<sup>th</sup>, 2020