

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

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 20

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

VOLUME 20, JANUARY 17, 2020 - FORT ST. JOHN

POWERPOINT PRESENTATION BY THE CHAIR	1106
REPORT PRESENTATION BY MR. LORO	1141
PRESENTATION BY MR. GRIFFIN	1077

INDEX OF EXHIBITS

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

FORT ST. JOHN, B.C.

January 17th, 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 1st, 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 2nd, 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 2nd. 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 31st, 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 17th, 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 2nd, 2020. As I noted,
26 representation from the panel will be updating the

1 Chiefs Assembly on March 6th 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 30th, 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.

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A.B. Lanigan, Court Reporter

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January 17th, 2020

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