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September 10, 2019

Kitselas Geothermal Inc.
22255 Gitaus Road
Terrace, BC V8G 0A9

Attention: Mr. Tim Thompson, Director

Dear Mr. Thompson:

Re: British Columbia Utilities Commission (BCUC) Indigenous Utilities Regulation Inquiry (Inquiry) – Project No. 1598998

Written Evidence of the FortisBC Group of Companies¹ (collectively FortisBC or the Companies)

FortisBC Responses to the Kitselas Geothermal Inc. (KGI) Information Request (IR) No. 1

In accordance with BCUC Order G-214-19 updating the Regulatory Timetable, FortisBC respectfully submits the attached response to KGI IR No. 1.

If further information is required, please contact the undersigned.

Sincerely,

on behalf of FORTISBC

Original signed:

Doug Slater

Attachments

cc (email only): Commission Secretary
Registered Parties

¹ Including FortisBC Energy Inc. (FEI), FortisBC Inc. (FBC), FortisBC Alternative Energy Services Inc. (FAES), and Mt. Hayes Limited Partnership (MHLP).

1 **1.0 Reference: Exhibit C4-2, Section 4.3, pp. 10-11**

2 **Approach to Indigenous Utility Regulation Can Be Usefully**
 3 **Considered in Relation to Five Groupings**

4 On pages 10-11, FortisBC states that for Grouping 3 and 4,

5 the “rational for an exclusion akin to municipalities is absent. Some customers
 6 would have no meaningful recourse in the event of inadequate service or
 7 excessive rates.”

Grouping	Description	FortisBC Position	Rationale
3	Public utility with <u>controlling</u> interest owned by an “indigenous nation”; serving one or more customers who <u>don’t have</u> a say in the governance of the “indigenous nation”	Regulated by BCUC. Nature of regulation depends on other factors typically considered by the BCUC.	The rationale for an exclusion akin to municipalities is absent. Some customers would have no meaningful recourse in the event of inadequate service or excessive rates. The nature of regulation (i.e. whether light-handed or not) should depend on the extent of consumer vulnerability and proportionality of regulatory burden.
4	Public utility with <u>non-controlling</u> interest owned by an “indigenous nation”; serving one or more customers who <u>don’t have</u> a say in the governance of the “indigenous nation”.	Regulated by BCUC. Nature of regulation depends on other factors typically considered by the BCUC.	The rationale for an exclusion akin to municipalities is absent. Some customers would have no meaningful recourse in the event of inadequate service or excessive rates. Necessary to avoid gaming. An investor owned public utility should not be able to avoid regulation by the BCUC, simply by granting a non-controlling interest to an “indigenous nation”.

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 9 1.1 Could FortisBC provide a justification for making this conclusion for those
 10 customers who do not have a say in the governance of the “Indigenous Nation”?
 11 Alternately phrased, “Why does Indigenous control automatically suggest that
 12 non- Indigenous customers will not have meaningful recourse in the event of
 13 inadequate service or excessive rates?”

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 15 **Response:**

16 For clarity, FortisBC’s position is focussed on the extent to which customers of the utility and the
 17 owner of the utility are effectively unified (one and the same), which is the approach underlying

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1 utility regulation in BC today. FortisBC is not suggesting that an “indigenous utility” is any more
2 or less likely to try to exert monopoly power than a municipal utility or non-“indigenous utility”.

3 FortisBC’s statement referenced in the preamble suggests that the rationale used for the
4 exemption of a municipality from regulation (i.e., the ability to vote in a municipal election as a
5 means of recourse) is absent in this case. In other words, FortisBC has suggested that some
6 form of recourse is necessary and the form of recourse justifying the exclusion of a municipality
7 from BCUC regulation is absent. Please also refer to FortisBC’s response to BCUC IR 1.1.2
8 and 1.4.5.

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12 1.2 Further, the conclusion that FortisBC has drawn seems to suggest that non-
13 Indigenous customers have different interests than the Indigenous customers.

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15 It could be argued that the interests of the Indigenous customers are exactly
16 aligned with the non-Indigenous customers. If it is agreed that the Indigenous
17 customer recourse is an effective process, then the Indigenous resolution of
18 inadequate service or excessive rate issues would, by extension, equally serve
19 those who FortisBC suggest do not have meaningful recourse.

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21 Could FortisBC both respond to the above questions, and also, if required,
22 please define any salient differences between Indigenous and non-Indigenous
23 customers being contemplated in Groupings 3 and 4.

24

25 **Response:**

26 FortisBC agrees that Indigenous and non-Indigenous utility customers share the same interests
27 in relation to ensuring that safe and reliable service is maintained at a price that reflects the
28 nature and quality of service provided.

29 The distinction between Indigenous customers of an “indigenous utility” and non-“indigenous
30 customers” of that utility is similar to the distinction that would exist in the case of a municipal
31 utility where some customers are outside of the municipal boundary: the recourse in the form of
32 a vote is absent. The absence of the vote leaves the non-voting customers at greater risk of
33 receiving inadequate or unduly discriminatory service than the voting customers.

34 The question is asking FortisBC to assume that all customers have effective recourse in some
35 fashion, but FortisBC has difficulty envisioning a recourse mechanism that would provide the
36 same degree of consumer protection as an independent regulator like the BCUC. As stated in
37 response to BCUC IR 1.4.5, FortisBC acknowledges that other adequate recourse mechanisms
38 may exist to warrant light handed regulation by the BCUC.

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1 **2.0 Reference: Exhibit C4-2, Section 4.3, pp. 10-11**
2 **Approach to Indigenous Utility Regulation Can Be Usefully**
3 **Considered in Relation to Five Groupings**
4 **Exhibit C4-2, Section 4.5, p. 17**
5 **Small “Indigenous Utilities” May Merit Light-handed Regulation**
6 **Similar to Other Small Utilities**

7 On page 17, FortisBC states:

8 At the other end of the spectrum is “light-handed” regulation, which could involve as little
9 BCUC intervention as inquiring only upon customer complaint.

10 2.1 Would FortisBC agree or disagree that the nature of BCUC regulation, related to
11 Groupings 3-5, would be “light handed” if retail access were granted to
12 alternative suppliers? Please assume that alternate suppliers could provide
13 adequate service, as defined by their potential customers.
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15 **Response:**

16 It is difficult to answer this question in the abstract. The existence of a competitive market has
17 been a consideration in whether / how the BCUC regulates. However, it would also be relevant
18 as to whether one entity continues to hold a monopoly over the distribution infrastructure that
19 the alternative suppliers and customers depend on. Factors such as the sophistication of the
20 parties involved could also be considered.
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24 2.2 Similarly, would FortisBC agree or disagree, related to Groupings 3-5, that the
25 nature of BCUC regulation would be “light handed” in the event that customers
26 were offered a price cap equal to or below that offered by the incumbent
27 supplier(s) to that market?

Grouping	Description	FortisBC Position	Rationale
3	Public utility with <u>controlling</u> interest owned by an “indigenous nation”; serving one or more customers who <u>don’t have</u> a say in the governance of the “indigenous nation”	Regulated by BCUC. Nature of regulation depends on other factors typically considered by the BCUC.	The rationale for an exclusion akin to municipalities is absent. Some customers would have no meaningful recourse in the event of inadequate service or excessive rates. The nature of regulation (i.e. whether light-handed or not) should depend on the extent of consumer vulnerability and proportionality of regulatory

			burden.
4	Public utility with <u>non-controlling</u> interest owned by an “indigenous nation”; serving one or more customers who <u>don’t have</u> a say in the governance of the “indigenous nation”.	Regulated by BCUC. Nature of regulation depends on other factors typically considered by the BCUC.	The rationale for an exclusion akin to municipalities is absent. Some customers would have no meaningful recourse in the event of inadequate service or excessive rates. Necessary to avoid gaming. An investor owned public utility should not be able to avoid regulation by the BCUC, simply by granting a non-controlling interest to an “indigenous nation”.
5	Public utility owned either by “indigenous nation”, other non-Indigenous investors, or both; “indigenous nation” is contracted operator;	The owner is a public utility, regulated by the BCUC. A contractor may or may not be a public utility regulated by the BCUC. Nature of regulation depends on other factors typically considered by the BCUC.	A contractor may or may not be a public utility regulated by the BCUC, depending on the extent of delegation of the owner’s rights and obligations. The rationale for an exclusion akin to municipalities is absent. Some customers would have no meaningful recourse in the event of inadequate service or excessive rates.

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Response:

FortisBC notes that there is no uniform definition of “light-handed’ regulation. However, in practice FortisBC would agree that “light-handed” regulation could include price cap regulation. The relationship between the price cap and the actual costs of providing the service will be of particular importance.

FortisBC also notes that the need for price regulation is a symptom of the lack of a market price for the service, such that comparisons to other utility service prices, while informative, are not necessarily sufficient information to rely on for price setting at a utility.

As noted in response to BCUC IR 1.5.3, FortisBC supports development of a scaled regulatory framework.

Please also refer to FortisBC’s response to KGI IR 1.2.1.

1 **3.0 Reference: Exhibit C4-2, Section 4.7, pp. 18-19**

2 **Additional Considerations Relevant to the Regulatory Framework**

3 On page 18-19, FortisBC states, the following:

4 There is also a cost associated with staffing a new regulatory agency. Based on
 5 the approach taken with tribunals like the BCUC and BC Ferry Commission,
 6 those costs end up being allocated out to the entities subject to regulation. The
 7 allocated costs are, in turn, recovered from energy consumers through regulated
 8 rates. There are cost advantages to having a single regulator of public utilities,
 9 particularly for small utilities. Most of the BCUC’s costs (approximately \$13
 10 million in 2017/18) are allocated to the largest utilities – BC Hydro and FortisBC.

11 While not a perfect comparison, the costs of the Ferry Commission (which only
 12 regulates BC Ferries) provide an indication of the potential costs involved in
 13 establishing a small regulatory agency to handle the regulation of “indigenous
 14 utilities”. Its budget is \$892,250 for FY 2020 (i.e., April 1, 2019 to March 31,
 15 2020). Costs of that magnitude may be very difficult for customers of a handful of
 16 small “indigenous utilities” to absorb.

17 3.1 KGI thanks FortisBC for providing a costs comparison between different
 18 regulatory agencies. While not a perfect example, it assists in thinking about
 19 other considerations for regulating Indigenous Utilities with a separate body other
 20 than the BCUC.

21 Could FortisBC detail the costs allocated to each of BC Hydro, FortisBC and
 22 other utilities (in aggregate) for the past 5 years? We have included a chart which
 23 may be helpful.

BCUC Costs per Utility					
	2018/2019	2017/2018	2016/2017	2015/2016	2014/2015
BC Hydro					
FortisBC					
Other Utilities (in aggregate)					

24
 25 **Response:**

26 The BCUC recovers its costs through levies charged to the utilities and companies it regulates.
 27 The levies are calculated based on a forecast of BCUC expenditures and other recoveries,
 28 which are divided amongst the utilities based on the units of energy sold by each utility in the
 29 prior year. The BCUC issues an order annually establishing the levies for each fiscal year (from
 30 April 1 to March 30). When the BCUC establishes the levy, it is based on the BCUC’s forecast
 31 of expenditures along with any adjustments for special initiatives, over or under recoveries from
 32 the prior year, and any anticipated direct recoveries from the utilities for costs related to
 33 reviewing applications and filings. The following table summarizes the BCUC levies based on



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- 1 the BCUC Orders issued for the past 5 years as well as the current fiscal year. The BCUC
2 publishes a summary of their annual actual recoveries and expenses in their annual report
3 available on the BCUC website at the following link: [https://www.bcuc.com/about/annual-](https://www.bcuc.com/about/annual-reports-business-plans-performance-measures.html)
4 [reports-business-plans-performance-measures.html](https://www.bcuc.com/about/annual-reports-business-plans-performance-measures.html).

BCUC Annual Levies Charged to Utilities						
BCUC Order	G-138-19A	G-114-18	G-82-17	G-82-16	G-108-15	G-64-14
Fiscal Year	2019/20	2018/19	2017/2018	2016/2017	2015/2016	2014/2015
BC Hydro	\$ 4,429,164.57	\$ 4,776,665.91	\$ 3,193,126.47	\$ 2,723,237.93	\$ 2,693,533.42	\$ 2,851,791.83
FortisBC	5,361,615.27	5,967,032.43	3,693,806.55	2,985,557.27	3,008,309.47	3,295,789.61
Other Utilities (in aggregate)	1,030,154.16	1,041,356.01	920,034.96	897,012.59	896,870.35	935,189.46
Total:	\$10,820,934.00	\$11,785,054.35	\$ 7,806,967.98	\$ 6,605,807.79	\$ 6,598,713.24	\$ 7,082,770.90

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