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February 28, 2020

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, B.C.
V6Z 2N3

Attention: Mr. Patrick Wruck, Commission Secretary and Manager, Regulatory Support

Dear Mr. Wruck:

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

FortisBC Group of Companies¹ (collectively FortisBC or the Companies) Responses to BCUC Panel Information Request (IR) No. 1

In accordance with BCUC Order G-26-20 updating the Regulatory Timetable for the above noted Inquiry, FortisBC respectfully submits the attached responses to BCUC Panel 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): Registered Parties

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

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1 **1.0 Reference: EXISTING UTILITIES' SERVICE AREA**

2 **Final Argument, p. 8**

3 On page 8 of its Final Argument, the FortisBC Group of Companies (FortisBC) states:

4 ...as BC Hydro notes, an “indigenous utility” extending service into the service territory of
5 a pre-existing utility (e.g., FortisBC) precludes the latter from capturing those customers
6 or can erode its customer base and load. This adversely impacts the existing customers
7 of the pre-existing utility. Lower load means that the pre-existing utility’s costs of
8 operating the system must be recovered from fewer customers. Left unchecked, assets
9 may ultimately be underutilized or stranded. The risk associated with the erosion of load
10 can also adversely impact the pre-existing utility’s cost of capital, which is borne by
11 ratepayers. In considering the appropriate regulatory approach for “indigenous utilities”,
12 the BCUC should be mindful of the regulatory risks created by the interplay between
13 utilities operating in the same area.

14 1.1 Please provide the geographic boundary of FortisBC Inc. (FBC) and FortisBC
15 Energy Inc.’s (FEI) service territory.

16

17 **Response:**

18 Attachment 1.1 outlines the service areas of FEI. The following figure outlines the service area
19 of FBC. The parameters of how those service areas are defined is discussed in the response to
20 Panel-FortisBC IR1 1.1.



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1.1.1 Please clarify whether FBC and/or FEI’s service territory is limited to a certain distance from the nearest existing transmission or distribution line.

Response:

10 As described below, FBC and FEI’s respective service territories arise differently from one
11 another in some respects. However, neither utility’s service area is defined with reference to a
12 specific distance from an existing infrastructure.

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1 **Legislation Grants FBC the Right to Operate Within 150 Miles of Rossland**

2 FBC was previously known as West Kootenay Power and Light Company, Limited. It was
3 created by an 1897 statute called “An Act to Incorporate the West Kootenay Power and Light
4 Company, Limited” (WKPA). FBC is still subject to the obligations, and has all the rights
5 granted, pursuant to the incorporating statute, as amended.

6 The statute authorized FBC to conduct its utility business within the territory defined as the “said
7 area”:

8 9. The Company is hereby authorized and empowered to erect, construct,
9 operate, and maintain compressed air and electric works, power houses,
10 generating plant and such other appliances and conveniences as are necessary
11 and proper for the generating of compressed air and electricity, and for
12 transmitting the same to any part of the said area to be used as a motive power
13 for the tramways by this Act authorized, or other works of the Company, or to be
14 supplied by the Company as a motive power for hauling, propelling, pumping,
15 lighting, heating, smelting, crushing, milling or drilling, or any other operations of
16 any nature or kind whatever for which compressed air or electricity may be used,
17 supplied, applied or required. And for any of the above purpose the Company is
18 hereby authorized and empowered by its servants, agents, contractors and
19 workmen from time to time to make and erect such compressed air and electric
20 works, and to sink, lay, place, fit, maintain and repair such wires, accumulators,
21 storage batteries, transformers, cables, mains, pipes, switches, connections,
22 branches, motors, dynamics, engines, machines, cuts, drains, water-courses,
23 buildings and other devices, and to erect and place any electric line, cable, main,
24 wire, pipe or other compressed air and electric apparatus above or below ground,
25 along, over or across any street, bridge or highway, or any line or lines of railway,
26 tramway or street railway in said area, and to erect poles or pipes for the purpose
27 of placing the same in such manner as the Company shall think fit, necessary or
28 proper for the purpose of carrying out the operations of the Company in respect
29 of and incidental to the making, generating or supplying of compressed air and
30 electricity.

31 The “said area” was expanded in 1929 to encompass all areas within 150 miles of Rossland:

32 8A. In the following sections of this Act the expression ‘said area’ shall mean the
33 area which comprises the City of Rossland and all lands within the Province
34 situate within a distance of one hundred and fifty miles from the City of Rossland.

35 The purpose and effect of the WKPA was to confer upon FBC the right to provide electricity
36 service in the “said area”. Today, the entire operating area of FBC falls within the 150 mile
37 radius established by the WKPA.

1 ***FEI Has Rights Conferred by CPCN***

2 With respect to FEI, the right to operate is conferred by CPCN. Under the UCA, FEI has a
3 deemed CPCN for the infrastructure that was in place before September 11, 1980, along with
4 any extensions thereto (subject to any BCUC direction to apply for separate CPCNs for new
5 extensions). FEI also had CPCNs issued in earlier decades that covered specific geographic
6 areas (e.g., the Lower Mainland and Fraser Valley).

7 CPCNs do not confer exclusivity over a particular service territory in the formal legal sense.
8 Rather, exclusivity arises in practice because of the combination of:

9 (a) the legal requirement for a potential new utility to obtain a CPCN from the BCUC to
10 provide service in the area, such that the potential new entrant must establish that
11 having two utilities offering the same service in the same area would be in the public
12 interest, and

13 (b) the economic reality that a particular utility service, with its significant capital
14 requirements and finite customer base, can be provided most cost-effectively by one firm
15 (i.e., the economic principle of sub-additivity of costs).

16 The economic principle of sub-additivity of costs is a feature of a natural monopoly and is a
17 fundamental rationale for utility regulation. The statutory requirement to obtain approval before
18 constructing utility infrastructure in a new service area prevents ruinous competition among
19 utilities that is contrary to the public interest. The provision of safe and reliable utility service
20 requires a very significant up-front investment, which only makes commercial sense if there is a
21 reasonable expectation of being able to recover that investment through rates. There is a finite
22 pool of end users from which to recover the costs of providing utility service, and dividing that
23 cost among more customers lowers the unit cost of service. All customers pay a lower unit cost
24 when there is more load on the system. Conversely, having redundant infrastructure owned by
25 multiple utilities, while splitting the customer base that pays for each utility's duplicate
26 infrastructure, would increase the rates paid by all consumers.

27 These principles are echoed in the Hempling paper, filed by the BCUC in this Inquiry as Exhibit
28 A-8 (see p. 5):

29 Most utilities are legal monopolies. The legislative body has passed a law, or a
30 regulatory commission has issued an order, that does three things:

- 31 1. It draws the boundaries of a particular service territory.
- 32 2. It appoints a single company to provide some set of services to
33 customers within that service territory.
- 34 3. It prohibits any other company from competing with the appointed
35 company within that service territory.

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1 We call this government action "granting a certificate of public convenience and
2 necessity" or "granting a franchise." Governments grant these monopoly
3 franchises when they find that the particular service, such as retail electric
4 service or retail gas service, is a natural monopoly. A natural monopoly is a
5 product or service having two main characteristics: (1) the per-unit cost of
6 providing the service declines as output increases; and (2) the decline continues
7 for the entire quantity sold within the defined market. If a service has these
8 characteristics, costs to customers will be lowest if the market has only one
9 company.

10 Mr. Hempling also noted that "competing distribution wires cluttering our neighborhoods would
11 raise costs for all." (p.6).

12 The distance from a utility's existing facilities comes into play under the UCA in the context of
13 the duty to serve. That is, there is a duty on the part of the utility, subject to some specified
14 conditions, to serve a new customer where a supply line is near. Section 28 (1) provides "On
15 being requested by the owner or occupier of the premises to do so, a public utility must supply
16 its service to premises that are located within 200 metres of its supply line or any lesser
17 distance that the commission prescribes suitable for that purpose." Section 29 authorizes the
18 BCUC to direct a utility to provide service to premises beyond that 200 metre limit. These
19 sections are best understood as creating obligations on the utility, rather than conferring rights
20 on the utility. The utility's authorization comes from the deemed CPCN, which authorizes
21 extensions irrespective of their distance from existing facilities.

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25 1.2 Please provide documentation of any agreement establishing FBC and FEI's
26 service territory, and any exclusive rights to provide service therein.

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28 **Response:**

29 There are no agreements or other documentation beyond the statutes, statutory deemed CPCN
30 and the CPCN's issued by the BCUC, for the reasons described in response to Panel-FortisBC
31 IR1 1.1. While FEI's predecessors at one time had exclusive franchise agreements with various
32 municipalities, these have been superseded by CPCNs and operating agreements that only
33 address operational matters.

34 For the sake of completeness, FortisBC notes that there are agreements between FBC and
35 certain municipalities located within FBC's broader service territory that contemplate *the*
36 *municipality* having exclusive rights to operate within the municipal boundaries. However, we
37 understand this is not the focus of the question and thus have not provided those agreements.

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1.2.1 In the absence of any such agreement, please provide a view on what legal or regulatory barriers exist, if any, for other utilities wishing to operate and sell to customers within FBC and FEI's service territory.

Response:

The potential barriers that exist depend on how the Indigenous utility service offering is constructed. FortisBC has organized this response to reflect different models.

Scenario 1: Indigenous Utility seeks to construct and operate utility infrastructure in an area already served by another utility offering the same service

The legal and regulatory barriers outlined in response to Panel-FortisBC IR1 1.1 include the fact that a public utility cannot construct or operate utility infrastructure without a CPCN. The test for issuing a CPCN is the public interest.

In FortisBC's view, allowing a new utility to offer similar services with duplicate infrastructure within an area already served by another utility would generally result in higher rates for all consumers, which would be a consideration in the context of the BCUC's determination of the public interest. For instance, the customers of a micro-natural gas utility could well pay more for distribution service relative to what they would pay for distribution service from FEI because the costs of that small utility distribution system are spread among fewer customers. The customers of FEI would also likely pay more for distribution service if the BCUC were to allow that situation to develop, other things equal, because there would be less throughput/sales on FEI's system than otherwise would be the case. The customers of the incumbent utility could be disproportionately harmed if the new utility "cherry picks" the customers with lower than average costs to serve, leaving the incumbent utility rates to reflect a higher unit cost of service.

Scenario 2: Smaller scale utility as a customer of FEI or FBC

The potential exists for a smaller scale utility to be created within the service territory of a utility like FEI and FBC if the smaller utility itself becomes a customer of FBC or FEI. For FBC, this situation already exists with municipal utilities operating, for instance, in Nelson, Grand Forks and Penticton. Another example of where this already occurs is with a micro public utility such as a strata owning electric or gas infrastructure in a building; the strata is a customer of FBC or FEI. The only real obstacle or barrier to this occurring is the need for the new smaller utility to obtain a CPCN or an exemption order.

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1 **Scenario 3: Retail Access, Wheeling and Gas Marketing**

2 The BCUC approved tariffs of FBC and FEI provide for some opportunities for third parties to
3 engage in direct sales to consumers already, but some third party services would be precluded.
4 For instance:

- 5 • There would be limitations on the ability of another utility to directly serve certain
6 customers in the FBC service area because of limitations on retail access. The only
7 customers to which retail or wholesale access can be provided are those Eligible
8 Customers as defined by the Access Principle Settlement Agreement (as attached to
9 Order G-27-99) which are those customers whose eligibility is set by the BCUC from
10 time to time. Currently, the BCUC has provided for retail and wholesale access only to
11 FBC's wholesale and largest industrial customers. In addition, FBC only has wheeling
12 rates for customers connected at primary or transmission voltages. The elimination of
13 constraints on retail access for other classes of customers (e.g., residential) and the
14 associated "unbundling" of the electricity from delivery service would represent a
15 fundamental change in the way that costs are collected in the context of a BC's vertically
16 integrated utilities. It should only be contemplated after an in-depth assessment of the
17 implications that involves stakeholders more broadly.
- 18 • FEI's service offering is unbundled already. Larger customers can source their own
19 commodity and obtain Transportation only service from FEI. The FEI Customer Choice
20 program offers the ability of third parties (serving the role of gas marketers) to sell
21 natural gas commodity directly to residential customers. An Indigenous group could
22 serve the role of gas marketer. The sale of natural gas to residential customers by third
23 parties is governed by gas marketing rules established by the BCUC.

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1.2.2 Please also provide FortisBC's view on the jurisdiction and role of the
BCUC in determining whether another utility can operate and sell to
customers within FBC and FEI's service territory.

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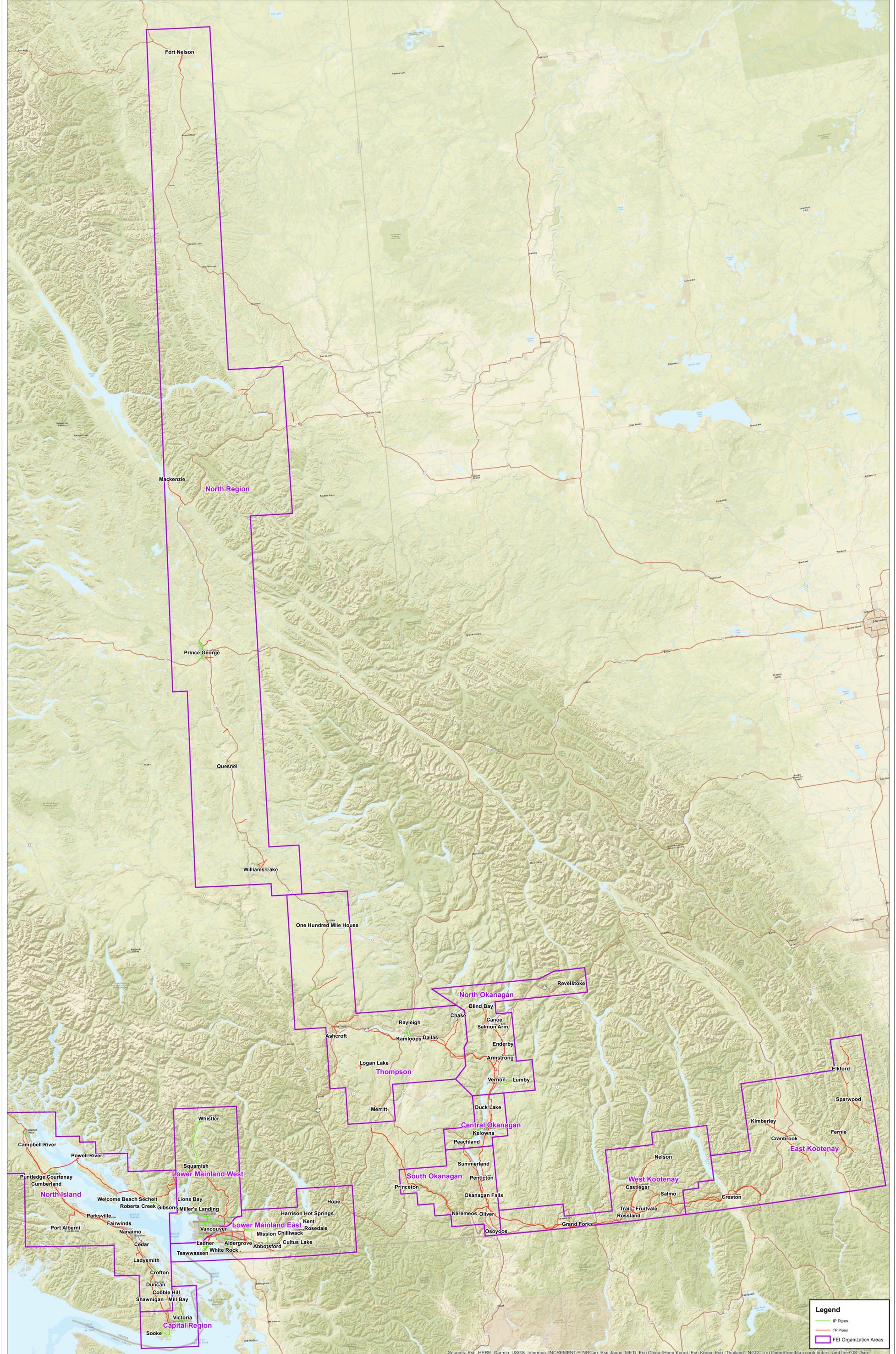
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Response:

32 The applicable legal limitations are discussed in the responses to Panel-FortisBC IR1 1.1 and
33 1.2. The BCUC would, in the first instance, have jurisdiction to determine whether a CPCN
34 should be issued to a new utility. The same would be true for amending the tariffs of FEI and
35 FBC or the rules governing gas marketers.

36

Attachment 1.1



Legend

- IP Pipes
- TP Pipes
- FEI Organization Areas

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community



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FortisBC Energy Inc. Organization Areas & Communities

Locations of electrical facilities shown on this map are approximate only. Accuracy, completeness, correctness, and currency are not guaranteed. Persons relying on these data assume and accept full responsibility for any errors. For more information, please contact FortisBC at 1-800-474-6888 prior to commencing any excavation.

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10 5 0 10 20 30 40
Kilometers

Projection: BC Standard Albers - Datum: NAD83(CRS86)