

Indexed as: BCSSAB 48 (1) 2021

**IN THE MATTER OF THE SAFETY STANDARDS ACT,  
S.B.C. 2003, Chapter 39**

**AND IN THE MATTER OF an appeal to the  
BRITISH COLUMBIA SAFETY STANDARD APPEAL BOARD**

**BETWEEN:**

**Electrician**

**APPELLANT**

**AND:**

**Technical Safety BC**

**RESPONDENT**

**REASONS FOR DECISION**

**Safety Standards Appeal Board:**

**Jeffrey Hand**

**Representing the Appellant:**

**The Appellant**

**Counsel for Technical Safety BC:**

**Vanessa Knutson**

**INTRODUCTION**

[1] This appeal arises out of regulated electrical work performed by the Appellant at a property located at [REDACTED], Kaleden, BC. The work involved the installation of an electrical disconnect switch / combination meter to bring electrical service to the property on a utility pole which also carried an electrical transformer attached to the Fortis BC distribution system. A Certificate of Inspection ELIN-2529783-2021 dated October 6, 2021 (“Certificate of Inspection”) issued by the Respondent found the work was not compliant with the Canadian Electrical Code because the Appellant did not obtain authorization from Fortis BC for the use of this utility pole. A Decision of the Safety Manager found that the Certificate of Inspection was correctly issued.

[2] The Appellant says that his equipment was installed on a privately owned pole for which he did not require any authorization from Fortis BC and accordingly the installation was compliant with the code. He is asking the Board to set aside the Safety Manager's decision.

[3] This appeal proceeded by way of written submissions from the parties.

## **BACKGROUND FACTS**

[4] The Appellant is an electrical contractor carrying on business in Naramata, British Columbia. In or about May 2021 he was hired by the owners of the Foggy Mountain Ranch located [REDACTED], Kaleden, BC ("the Property"). The Property had lost its electrical service in a windstorm that had damaged the mast attached to the roof of the home on the Property. The Appellant was to restore electrical service to the Property by installing a new disconnect switch/meter and connecting this to the incoming electrical service.

[5] The registered owners of the Property are shown on a State of Title Certificate as [REDACTED] [REDACTED] as joint tenants. The Land Title documents indicate the [REDACTED] have owned the Property since 2014.

[6] The Appellant obtained an electrical installation permit number EL – 120-0372 – 2021 dated May 27, 2021 to allow the installation of a 200 amp service disconnect combination meter base to a customer owned pole nearest to the home. This utility pole had a Fortis BC tag bearing number 313037 ("Pole 037")

[7] Affixed to the top of Pole 037 was a transformer connected to a high-voltage line coming from a power line running more or less parallel to the Property along Highway 3A through a right-of-way in the name of BC Hydro. The transformer, prior to the windstorm had a line running from it to the mast affixed to the roof of the home on the Property. The work contemplated by the Appellant was to install an electrical box at the bottom of Pole 037 roughly 6 feet off the ground and containing a disconnect switch and meter which would feed the electrical service into a buried trench which led to the house.

[8] There is a second pole on the Property between Highway 3A and Pole 037 which carries the high-voltage lines out to the highway. This bears a Fortis BC tag 313036 ("Pole 036")

[9] The Appeal Record contains a number of emails between the Appellant and Fortis BC in May and June 2021, before the work was performed, which reveal there was disagreement between the Appellant and Fortis BC concerning whether Pole 037 was a Fortis BC utility pole as opposed to it being privately owned. The Appellant was warned that he could not install consumer owned equipment on Pole 037. The Appellant wanted proof that Fortis BC owned the pole and he pointed to the fact that the Land Title documents did not indicate that Fortis BC had a Statutory Right of Way registered on title. The Appellant also suggested that the records concerning the connection of the Property to the power grid were not conclusive on when the Property came to receive electrical service given the age of the Property. However, there does not appear to be any controversy that the Property in fact receives its electrical power from Fortis BC, and its predecessor, West Kootenay Power, and has done so for decades.

[10] Notwithstanding the debate in May 2021 about ownership of Pole 037, the Appellant proceeded with the work in an effort to restore electrical service to the Property. The Owners were apparently relying on a gas-powered generator in the interim.

[11] The Appellant called for an inspection of his work in June, 2021. Safety Officer [REDACTED] attended at the Property on June 6, 2021. He observed the high voltage transformer on the top of Pole 037 and, believing this to indicate that Pole 037 was a Fortis BC asset, he found the work non-compliant because the Appellant lacked authorization from Fortis BC for the use of Pole 037.

[12] There were multiple requests for inspections thereafter, each attaching additional photographs and information on the title to the Property, culminating in a final request for an inspection in late September 2021. On October 6, 2021, Safety Officer [REDACTED] spoke with the Appellant by telephone and confirmed that the Appellant's equipment remained installed on Pole 037. He issued a Certificate of Inspection showing the work as non-compliant with the Canadian Electrical Code and thus not able to be energized.

[13] The Appellant continued to take the position that Pole 037 was privately owned in the absence of proof from Fortis BC, satisfactory to him, that Fortis BC owned the pole. Officer [REDACTED] made inquiries with Fortis BC and was told that the pole was owned and maintained by Fortis BC and that they would not permit consumer equipment to be installed on their utility pole.

[14] This information was communicated to the Appellant however he did not accept this as proof of ownership.

[15] On October 18, 2021 the Appellant requested a Safety Manager's review of Officer ██████'s decision. In or about the same time the owners began looking for another electrical contractor to take over this work.

[16] On November 19, 2021, Safety Manager ██████ determined that Safety Officer ██████ had correctly determined that Fortis BC's consent had not been given for the use of Pole 037 for consumer owned equipment and thus the installation was non-compliant and could not be energized.

[17] On December 13, 2021 the Appellant filed an appeal with the Board seeking to set aside the Certificate of Inspection and to allow him to energize the service to the Property.

[18] In December 2021, the Owners terminated the Appellant's contract. On December 9, 2021 they retained a different electrical contractor to complete the work. A permit was secured for completing the work, which provided for the installation of a new utility pole to be installed between Pole 037 and the house and for the transfer of the disconnect switch that had been installed by the Appellant to this new pole. This work was completed shortly thereafter. Officer ██████ says this work was inspected and was found compliant and electrical service was restored to the Property.

### **Issue to determined in this appeal**

[19] Should the Safety Manager's decision be confirmed, varied or set aside?

### **ANALYSIS**

[20] Section 20 of the *Electrical Safety Regulation* provides that the Canadian Electrical Code ("CEC") is adopted as the BC Electrical Code.

[21] Section 6-116 of the CEC provides that consumer services or equipment shall be installed in compliance with the requirements of the supply authority, which in this case is Fortis BC.

The *Fortis BC Electrical Tariff* provides that:

#### 4.4 Ownership of Facilities

Subject to any contractual arrangement and, notwithstanding the payment of any Customer contribution toward the cost of facilities, Fortis BC will retain full title to all equipment and facilities installed and maintained by Fortis BC.

#### 16.1 Ownership and Maintenance

Fortis BC will assume ownership and maintenance of an extension on public or private property upon connection of the Extension to Fortis BC's distribution system.

The *Fortis BC Metering Guide* states:

##### 2.1.1 Pole-mounted Services

Under no circumstances will consumer-owned equipment be allowed on a Fortis BC service pole.

[22] The Respondent has submitted an affidavit from ██████████ of Fortis BC. He says according to Fortis BC records, that Pole 037 was installed in 1976, and has been maintained by Fortis BC since that time. Fortis BC affixes a number to all such poles so they can be tracked in their system. A photograph attached to the affidavit of Officer ██████████ shows numbered tag 313037 on Pole 037.

[23] There does not appear to be any disagreement that the transformer affixed to Pole 037 is connected to Fortis BC's distribution system or that this is the means by which electrical service is brought onto the Property. The Appellant does not argue otherwise although he does suggest that Fortis BC cannot determine when the Property began receiving electricity. However, in my view, when the Property became connected to the power grid and when the owners began paying for that electricity is not determinative of the issue before me. What is important is that the power is coming from the Fortis BC distribution network and as such the line running onto the Property is an extension of that grid. Once so connected, as per the Fortis BC Electrical Tariff, Fortis BC assumes ownership and the obligation to maintain Pole 037, something they have done for some 40 years without complaint from these owners or, apparently, any previous owners of the Property.

[24] There is no evidence submitted to demonstrate that the Owners have ever maintained Pole 037. Neither is there any evidence that the Owners object to receiving electrical power from the Fortis BC distribution system.

[25] A sworn statement from Mr. [REDACTED] of Fortis BC, supported by their records, indicates that this pole and transformer belong to Fortis BC. Officer [REDACTED] and Safety Manager [REDACTED] relied on this evidence in determining that the work done by the Appellant was not compliant with the CEC and could not be energized.

[26] The Appellant relies on a letter he obtained from Telus in response to an inquiry he made as to ownership of the poles on the Property. Telus apparently provides a communication line to the property via the same utility poles that carry the electrical service. [REDACTED], a Land Agent for Telus, says that Telus' engineering department considers these poles to be privately owned although he offers no explanation for why that is so.

[27] Mr. [REDACTED]'s statement is not a sworn statement. It is not supported by any Telus records, and he does not address the fact that these poles have Fortis BC tags affixed to them. As between Mr. [REDACTED] and Mr. [REDACTED], I find Mr. [REDACTED]'s statement, supported by Fortis BC records, to be more persuasive.

[28] It is also telling that the Appellant has not produced any evidence from the Owners of the Property asserting ownership of Pole 037 or otherwise explaining how this pole came to be installed on the Property or suggesting that they have been maintaining it. I would have expected to see something from the Owners if that was their position. It is also telling that the Owners retained another contractor to install a new utility pole to provide the connection to their home. They presumably would not have done so if they believed Pole 037 was not the property of Fortis BC.

[29] Considering all of the foregoing I find that the Safety Manager correctly found that the Appellant did not provide authorization from Fortis BC to install consumer equipment on Pole 037 and as such the work was not compliant with the CEC. The evidence does not persuade me that the Certificate of Inspection was incorrect.

[30] I wish to be clear that this decision is made in respect of the appeal taken from the Safety Manager's decision and as such it is of application only as between the Appellant and the Respondent, as parties to this appeal and as governed by the *Safety Standards Act*. I make no determination of the legal rights of either Fortis BC or the Property owners. Neither of them were parties to this appeal and the Board's jurisdiction does not extend to making determinations of land or property rights.

[31] The appeal is dismissed.

Signed;

A handwritten signature in black ink, appearing to read 'J. Hand', written in a cursive style.

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Jeffrey Hand, Chair