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BY E-FILING

British Columbia Utilities Commission
Sixth Floor – 900 Howe Street
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Attention: Patrick Wruck, Commission Secretary

Dear Mr. Wruck

Re: British Columbia Utilities Commission
FortisBC Energy Inc. and City of Surrey Applications for Approval of Terms for an Operating Agreement
Project No. 1598915

On behalf of the City of Surrey, we enclose the City's final argument for filing in accordance with the regulatory timetable established by Commission Order No. G-92-18. Supporting documents are also enclosed, as referenced in the final argument.

Yours very truly,

LAWSON LUNDELL LLP

Ian Webb

cc. FEI counsel

BRITISH COLUMBIA UTILITIES COMMISSION

FortisBC Energy Inc. and City of Surrey

Applications for Approval of

Terms for an Operating Agreement

Project No. 1598915

City of Surrey

Final Argument

May 31, 2018

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1. Introduction

1.1. About the City of Surrey

1. The City of Surrey[1] is south of the Fraser River, between the cities of Delta and Langley. The City was incorporated in 1879 and officially became a city in 1993. It has six distinct communities each with its own town centre: Cloverdale, Fleetwood, Guildford, Newton, South Surrey and Whalley/City Centre.

2. The total land area of Surrey is 316 square kilometers stretching from the Fraser River in the north to Boundary Bay and the US border in the south, and it is the second largest urban municipality by area in the province (slightly smaller than the City of Abbotsford).

3. Surrey is the second largest city in British Columbia by population, after the City of Vancouver. Surrey's population grew by 10.6% from 2011 to 2016 (or approximately 2% per year) which was the 4th highest among municipalities with populations over 200,000 in Canada, and 2nd highest among the 10 largest municipalities in British Columbia. Surrey is expected to become the most populous city in the province, surpassing the City of Vancouver within 10 years. Based on current projections, 25% of Metro Vancouver residents will live in Surrey by 2045.

4. Relatively affordable housing for families and workers along with excellent transportation connections to the rest of the region by highway and Sky Train are key factors driving population growth and economic development in Surrey.

5. There is more FortisBC Energy Inc. ("**FEI**") distribution equipment in Surrey than in any other municipality in the province. FEI has 2,248 kms of pipes within Surrey, consisting of 2,143 kms of distribution mains and 105 kms of high pressure pipelines.[2] To put those

[1] In this final argument, the corporation of the City of Surrey is referred to as "**the City**". To distinguish the legal entity, the City, from the geographic land area owned and/or controlled by the City, the land area owned and/or controlled by the City is referred to in this argument as "**Surrey**".

[2] For its own business purposes, FEI categorises its gas pipelines as Distribution Main, Intermediate Pressure or Transmission Pressure. For the purposes of the proposed terms for an operating agreement and for the purposes of this argument, FEI's gas pipelines are categorised as either a Gas Main (FEI pipeline operating at less than 700 kPa) or a High Pressure Pipeline (FEI pipeline operating at, or in excess of, 700 kPa). The 700 kPa threshold aligns to the definition of "pipeline" in the *Oil and Gas Activities Act*.

numbers in context, the City asked FEI to provide the equivalent numbers for Victoria, Nanaimo and Kelowna (being the largest cities in the province receiving an operating fee from FEI) and for Keremeos and Coldstream (being municipalities that have been the basis for FEI's "Standard Operating Agreement"[3]), and FEI provided the following table.[4]

		Victoria	Nanaimo	Kelowna	Keremeos	Coldstream	Surrey
i)	*Kilometers of Distribution Mains*	190.8	503.3	820.9	17.7	129.6	2,143.1
ii)	*Kilometers of IP & TP**	8.1	15.9	42.4	-	16.9	104.9
iii)	*Number of Gas Line Relocations*						
	2012						
	DP	-	-	3	-	-	41
	IP						6
	2013						
	DP	-	-	-	-	2	44
	IP	-	-	-	-	-	6
	TP	-	-	-	-	-	4
	2014						
	DP	-	1	16		-	31
	2015						
	DP	-	-	3	-	-	11
	TP	-	-	1	-	-	-
	2016	-	-				
	DP	1	-	2	-	-	10
	Total:	**1**	**1**	**25**	**-**	**2**	**153**
iv)	FEI has not paid to relocate any municipal infrastructure for the installation of any Gas Mains or High Pressure Pipelines.						
v)	*Total Cost of Gas Line Relocations*						
	2012						
	DP	$ -	$ -	$ 13,576	$ -	$ -	$ 183,479
	IP	$ -	$ -	$ -	$ -	$ -	$ 959,325
	2013						
	DP	$ -	$ -	$ -	$ -	$ 3,612	$ 541,773
	IP	$ -	$ -	$ -	$ -	$ -	$1,443,011
	TP	$ -	$ -	$ -	$ -	$ -	$ 533,749
	2014						
	DP	$ -	$ 1,783	$ 96,971	$ -	$ -	$ 757,651
	2015						
	DP	$ -	$ -	$ 8,468	$ -	$ -	$ 135,582
	TP	$ -	$ -	$ 833	$ -	$ -	
	2016						
	DP	$ 9,708	$ -	$ 3,326	$ -	$ -	$ 33,536
	Total:	**$ 9,708**	**$ 1,783**	**$ 123,174**	**$ -**	**$ 3,612**	**$4,588,106**
vi)	*Operating Fees*						
	2015	** $ 180,970	** $ 154,115	$1,152,144	$ 11,776	$ 108,999	
	2016	$ 542,359	$ 465,809	$1,029,095	$ 10,955	$ 111,634	

*** IP=Intermediate Pressure, TP=Transmission Pressure**

**** 2015 is Partial Year Only due to implementation of Operating Fee collection mid-year.**

[3] The term "Standard Operating Agreement" has been used in reference to the form of FEI operating agreement most-recently accepted by the BCUC, which subsequent operating agreements may be compared against (refer to Order No. C-9-13 dated November 7, 2013 and Order No. C-8-14 dated July 24, 2014). BCUC Letter No. L-4-02 dated February 4, 2002 (provided at Tab 8 of the supporting documents provided with this final argument) confirms that the "Standard Operating Agreement" is not a standard agreement to be applied to all municipalities. The Commission will rule on the terms and conditions for each municipality individually.

[4] Exhibit B1-9, FEI response to the City's IR 1.1.1.

6. Largely due to the extent of FEI facilities in Surrey and the high rate of population growth and economic development in Surrey including housing construction, increasing density as housing stock shifts to more affordable multi-family units, and major projects like a new Light Rail Transit system, the City has more capital projects (primarily highway widenings, water and sewer works expansions and upgrades) requiring FEI to relocate[5] its facilities to accommodate the project than any other municipality in the province.[6]

7. The City has reimbursed FEI $5.4 million over the period 2010 to 2015 related to relocating FEI facilities to accommodate the City's projects,[7] and has incurred significantly more costs as a result of FEI's use and occupation of public places than any other municipality in the province. FEI confirms in its response to the City's IR 1.2.8 that many municipalities in the province have no or very few projects that require FEI to relocate its facilities, and accordingly no or very low costs incurred due to FEI occupying their highways:[8]

> "As requested, below are the municipalities who have operating agreements which contain the provision for FEI to collect an Operating Fee on their behalf, grouped by the amount FEI invoiced to municipalities to relocate gas piping at the request of that municipality.

Total Amount FEI Invoiced to municipalities in 2016 to relocate gas piping	Number of municipalities (receiving an operating fee)
$0	63
$1 to $10,000	7
$10,000 to $25,000	3
$25,000 to $50,000	1
$50,000 to $100,000	0
More than $100,000	1

[5] To accommodate a City capital project, FEI might need to realign, raise, lower, by-pass, relocate or add casing or other appurtenances to protect its facilities. Such actions are collectively referred to in the proposed terms for an operating agreement and in this final argument by the terms "**relocate**" or "**relocation**".
[6] Exhibit B1-9, FEI's response to the City's IR 1.1.2.
[7] Exhibit B2-1, the City's Application, page 6.
[8] Exhibit B1-9, FEI's response to the City's IR 1.2.8.

8. In addition to incurring costs in connection with working around FEI facilities, the City has also incurred costs due to FEI or its predecessors damaging the City's infrastructure by cross boring natural gas lines through sewers and water mains as shown in Attachment 3 to the City's response to BCUC IR No. 1.[9] The City has also faced delay claims from its contractors, which the City believes are due to FEI's conduct in connection with relocation projects (*e.g.*, a $1.7 million delay claim by the City's contractor for the Roberts Bank Railway Corridor Combo Project).[10]

9. In short, (i) Surrey hosts more FEI pipes within its boundaries than any other municipality in the province, including 105 kms of piping conveying gas at high pressure, and (ii) the City incurs far more costs as a result of FEI's use of public places than any other municipality in the province. The City is the clear outlier in the province with respect to the extremely high costs and burden it bears as a result of FEI's use of public places.

10. As the community continues to grow, infrastructure renewals and upgrades are going to become more challenging as the limited space within highway corridors is becoming more congested with utilities, traffic and pedestrian management and safety around construction activity is becoming more paramount, and infrastructure assets are aging/deteriorating and reaching the end of their service life.

1.2. The City's History of Disputes with FEI

11. Since about 1956, FEI and its predecessors have occupied and used public places in Surrey for the purposes of natural gas distribution pursuant to a Trunk Line Agreement (the "**1956 Agreement**") and a Natural Gas Distribution Agreement (the "**1957 Agreement**")[11] between the British Columbia Electric Company Limited[12] and the Corporation of the District of Surrey.

[9] Exhibit B2-8-1.
[10] Exhibit B2-8-1, the City's response to BCUC IR 1.1.1.
[11] A copy of the 1957 Agreement is attached to the Interim Agreement provided in Appendix A to the City's Application (Exhibit B2-1).

12. There have been many disputes between the City and FEI over the years related to FEI's conduct when the City has requested FEI to relocate its facilities to accommodate the City's projects.[13] The disputes have primarily arisen about the scope of work FEI defines for itself (*e.g.*, scope that includes upgrading and bettering FEI facilities); FEI's expectation that the City will reimburse 100% of FEI's costs; transparency and accountability for FEI's budget overruns; and schedule / timelines for FEI's relocation project.

13. One such dispute in relation to a City project to widen the Fraser Highway resulted in a determination by Mr. Justice Pearlman of the British Columbia Supreme Court that the 1956 Agreement was terminated by fundamental breach and repudiation as a result of FEI's conduct.[14] In coming to this decision Justice Pearlman found, among other things, that FEI's refusal to perform work (which was needed to allow the City's project to proceed) unless the City accepted FEI's terms (which were inconsistent with the terms of the 1956 Agreement) deprived the City of substantially the whole of the commercial benefit of the 1956 Agreement and committed a breach that went to the root of the contract. Justice Pearlman held that FEI's delay in performing the required work was a fundamental breach and repudiation of FEI's contractual obligation to carry out work with "reasonable speed" when requested to do so by the City. Justice Pearlman further found that the City had accepted the repudiation.

14. The conduct examined in the Fraser Highway dispute included a demand by FEI that the City agree to FEI's terms, notwithstanding that the terms were inconsistent with the terms of the 1956 Agreement. FEI refused to review the City's Fraser Highway project designs and perform the necessary alterations and relocations of FEI pipelines to accommodate the City's Fraser Highway project unless the City agreed to provide FEI

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[12] In 1964, the British Columbia Electric Company Limited was amalgamated into the British Columbia Hydro and Power Authority. In 1988, BC Hydro transferred its lower mainland natural gas assets to a private company which, following several name changes is now called FortisBC Energy Inc. ("**FEI**").

[13] Some of these disputes are summarised in the City's responses to BCUC IRs 1.1.1, 1.6.2 and 1.6.4 (Exhibit B2-8-1), and 2.13.1 (Exhibit B2-14); and in the City's response to CEC IR 2.5.2 (Exhibit B2-15). Copies of these IR responses are provided at Tab 2 of the supporting documents for this final argument.

[14] *FortisBC Energy Inc. v. Surrey (City)*, 2013 BCSC 2382.

essentially a blank cheque in the form of a purchase order and agreement to cover any and all costs FEI incurred regardless of any estimate that FEI may have provided and regardless of the cost allocation methodology prescribed by regulation.[15] FEI also required the City to agree to other terms and conditions unfavourable to the City and inconsistent with the terms of the 1956 Agreements.

15. The conduct examined in the Fraser Highway dispute, which led to the findings of fundamental breach and repudiation of the 1956 Agreement, mirrors FEI's conduct over the years in many other projects in Surrey.[16] The common theme being that the City has faced delays, additional costs and third party claims because of FEI's conduct. Faced with the risk of additional costs and liability associated with project delays, including claims by third party contractors who have been awarded the construction project and the risk of losing federal or provincial project funding tied to deadlines, the City has had no option but to accede to FEI's demands over the years and to, among other things, make applications to the Oil and Gas Commission ("**OGC**") seeking orders that FEI perform the necessary pipeline work in an effort to mitigate delay.[17]

16. The City and FEI have also not agreed on the scope, validity and enforceability of the 1957 Agreement. The City is of the position that the 1957 Agreement has also been terminated by, among other things, fundamental breach, repudiation of its terms and notice of termination, though that is not an issue in this proceeding.[18]

1.3. The Need for a new Operating Agreement

17. The relationship between the City and FEI, as outlined above, was intolerable and costly to both parties. The public interest demands that the City and FEI move forward with a

[15] During the period of the Fraser Highway project dispute, the prescribed cost allocation methodology was in the Pipeline Regulation and then in the Oil and Gas Activities Act General Regulation. The prescribed cost allocation methodology was subsequently moved to and is now in the Pipeline Crossing Regulation, a copy of which is provided at Appendix D of the City's Application. A copy of the Pipeline Crossing Regulation is also provided at Tab 3 of the supporting documents provided with this final argument.
[16] Refer to the City's responses to BCUC IRs 1.1.1, 1.6.2 and 1.6.4 (Exhibit B2-8-1), and 2.13.1 (Exhibit B2-14); and the City's response to CEC IR 2.5.2 (Exhibit B2-15).
[17] Exhibit B2-8-1, the City's response to BCUC IR 1.1.1 at page 2.
[18] Exhibit B2-8-1, the City's response to BCUC IR 1.1.1 at page 3.

clear understanding of their respective rights and responsibilities for FEI's use of public places in Surrey.

18. Instead of further litigating the enforceability of the 1957 Agreement, the City and FEI have acted responsibly to avoid unnecessary litigation, which would not be in the public interest, by attempting over nearly a three year period to negotiate an operating agreement to replace the 1957 Agreement with new operating terms in accordance with the legislative scheme and in particular the *Gas Utility Act*, *Utilities Commission Act*, *Community Charter*, *Oil and Gas Activities Act* and the Pipeline Crossing Regulation. The parties also entered into the Interim Agreement dated November 8, 2016 to provide for orderly termination of the 1957 Agreement and its replacement. A copy of the Interim Agreement has been provided as Appendix A to the City's Application.

1.4. The City's approach to a new Operating Agreement

19. The essential purpose of the operating agreement is to set out the terms and conditions under which FEI shall exercise its rights under the *Gas Utility Act* to use municipal highways and other public places in the municipality for conducting its business of distributing natural gas as a public utility.[19]

20. Overarching considerations for developing operating agreement terms include the frequency, complexity and impact of interactions between FEI and the City, and between FEI and other users of public places in Surrey (e.g., residents and businesses). These interactions are more frequent, more complex and have greater impacts for municipalities like the City of Surrey that host extensive FEI infrastructure (and particularly extensive high pressure pipelines), are urban and have high rates of population growth and economic development as compared to municipalities that are rural, have limited FEI infrastructure and/or limited development.

[19] The legislative regime establishing the terms under which a gas utility shall operate its business within a municipality is set out in detail in section 2 of the City's Application and repeated at Tab 1 of the supporting documents provided with this final argument. Also refer to the City's response to BCUC IR 1.8.2.

21. It is critical that FEI and the City efficiently coordinate their work with each other. Each party needs to know when the other party is working near the party's facilities and/or requires the other party to relocate their facilities. Both parties need to review each other's work plans on predictable timelines and provide timely clear communication to efficiently complete their work. The City needs reasonable oversight of FEI's work in Surrey to ensure FEI does not unreasonably interfere with the public's use of municipal highways and public places, including by obstructing traffic on major roads during peak periods, and to identify potential conflicts with multiple parties (*e.g.*, FEI, telecommunications companies, developers and BC Hydro) working in the same area at the same time. The City needs robust and more transparent estimates of FEI's reimbursable relocation costs to make prudent project planning decisions and for financial accountability to the City's taxpayers and other levels of government.[20]

22. During the negotiations with FEI and in proposing operating terms to the British Columbia Utilities Commission ("**BCUC**"), the City gave much consideration and effort to seeking to address the problems that have arisen in the past and to create terms that are reasonable and balanced. The City specifically had regard to the public interest as follows:[21]

- the requested operating terms are based on the terms of FEI's recent operating agreements that have been approved by the BCUC
- the City carefully considered the BCUC's past orders and reasons for decisions regarding FEI operating agreements with municipalities, operating fees and relocation costs, and in particular Orders C-7-03, C-9-06, G-17-06, G-113-12 and the BCUC's reasons for decision, and Letter L-4-02[22]
- the City considered the causes of past disputes between the City and FEI, and focused on developing clear and robust agreement terms in those areas

[20] Exhibit B2-8-1, the City's response to BCUC IR 1.5.2.
[21] Exhibit B2-8-1, the City's response to BCUC IR 1.11.2.
[22] Copies of these BCUC Orders and Letter L-4-02 are provided at Tabs 4, 8, 9, 10, and 13 of the supporting documents provided with this final argument.

- the City also considered how issues related to gas and other utilities operating in municipalities are dealt with in other provinces and by the Canada Radio-television and Telecommunications Commission ("**CRTC**")[23] which regulates the use of municipal public places by telecommunications companies

23. The City is of the view that its requested operating terms reflect principles and policies that have been determined in British Columbia and other jurisdictions to be reasonable and appropriately balanced as between the municipality (and its residents) and the gas utility (and its customers), and therefore the City believes that its requested operating terms substantially support the public interest.

1.5. Summary of Agreed-to Terms

24. After nearly three years of negotiations, the City and FEI reached agreement on the majority of, but not all terms for an operating agreement. The agreed-to terms are beneficial to both parties by providing clarity and improving procedures related to the following matters:

- Recitals A-C clarify and record for future reference the legal basis for the Agreement
- Recital E, s. 1.1 definitions of "Public Places" and "Highway", section 3.1 and Schedule A make clear the public places in Surrey that FEI may use pursuant to the Agreement
- Section 3.3 specifies FEI's requirements to maintain insurance
- Section 5 provides clear procedures, timelines and criteria for approval of FEI work in Public Places, and clarity respecting the circumstances in which approval is not required

[23] Exhibit B2-11 provides a review of (i) how utility relocation costs are allocated between municipality and utility, and (ii) use and process to determine operating/franchise fees, in the jurisdictions of Alberta, British Columbia, Ontario, Nova Scotia and Canada (CRTC).

- Section 5.1 provides that neither the City nor FEI will charge each other fees for approving work and issuing permits[24]
- Section 5.3 specifies the circumstances in which FEI is required to obtain permits from the City pursuant to the City's by-laws and the circumstances in which such permits are not required
- Section 6.7 identifies prime contractor for purposes of the *Workers Compensation Act*
- Sections 6.8 and 8.2 provide clarity respecting responsibility for the costs of work
- Section 8 provides clear procedures and timelines with respect to a party's request for the other party to change its facilities to accommodate the party's work, including more robust procedures and criteria for scoping, cost estimating and coordinating projects
- Section 10 provides for coordinated planning and co-operation
- Section 11 provides reciprocal indemnities and limitations of liability
- Section 14 provides the requirements if FEI ceases to use facilities in Surrey
- Section 16 provides for the accommodation of future changes
- Section 17 provides appropriate procedures for resolving disputes

25. With the exception of the four areas of disagreement outlined in the section 1.6, below, both parties agree that the terms they have negotiated have many significant improvements (benefiting both parties) as compared to the 1957 Agreement and FEI's "Standard Operating Agreement".[25] The clarifications and other improvements in the agreed-to operating terms also make the proposed terms more clear and user-friendly,

[24] The City agrees to waive any approval, license, inspection or permit fees, charges and security deposit requirements in respect of FEI's work and occupancy of public places in Surrey on condition of receiving the operating fee requested by the City. Refer to the City's Application, section 4(i) at page 8.

[25] Refer to footnote 3, above. Exhibit B2-8-1, the City's response to BCUC IR 1.3.1 summarises the differences in the City's proposed terms for an operating agreement as compared to FEI's "Standard Operating Agreement".

as compared to the 1957 Agreement and FEI's Standard Operating Agreement, which will improve predictability of outcomes reducing disputes going forward. Each of the parties also expects that the agreed-to terms will enable them to improve the efficiency of their respective business processes.[26]

1.6. Summary of Terms Not Agreed-to

26. The City and FEI have reached agreement on many terms for an operating agreement; however, they reached an impasse on the following four matters:

(i) *Methodology for calculating Operating Fee*

FEI and the City agree that the new terms for an operating agreement should include an operating fee that FEI will pay to the City, but the parties do not agree on the methodology for calculating the fee. The City's requested operating fee methodology is set out in section 12.1 of the City's proposed terms for an operating agreement (Appendix B of Exhibit B2-1).

(ii) *Allocation of Relocation Costs for changes to FEI facilities*

FEI will incur "relocation costs" when the City undertakes a project that requires FEI to realign, raise, lower, protect, by-pass or relocate (collectively, "**relocate**") its facilities to accommodate the City's project. Typically, the need for FEI to relocate its facilities arises when the City builds a new highway, widens a highway, or installs sewer or water main works along, over or under FEI's pipeline. The parties do not agree on the methodology for allocating FEI's relocation costs as between FEI and the City. The City's requested allocation is set out in section 8.2(c) of the City's proposed terms for an operating agreement.

[26] Exhibit B2-8-1, the City's response to BCUC IR 1.4.3 estimates that the City will save approximately $100,000 per year in operating efficiencies and reduced staff time and resources as a result of the proposed terms for a new operating agreement. FEI estimates that it will save $150,000 for operating efficiencies (refer to Exhibit B1-1, FEI's application, page 16).

(iii) *Definition of Relocation Costs*

In addition to disagreeing on the methodology for allocating FEI's relocation costs, the parties also disagree on the scope of costs that will be subject to reimbursement in accordance with allocation methodology. The crux of the issue is that the City believes it should not be responsible for any costs associated with FEI upgrading or bettering its facilities during a relocation project. The City's requested definition of "Relocation Costs" is set out in section 1.1(s) of the City's proposed terms for an operating agreement.

(iv) *FEI obligation to release statutory right-of-way ("**SROW**") interest for highway dedications*

The City regularly has projects to create or widen highways or requires developers to create or widen highways, and if a person holds rights over the land required for such purposes the rights will be released by consent or by expropriation in order to establish the necessary highway dedication in the Land Title Office. The City and FEI agree that the operating agreement should address this matter, but the parties disagree on the strength of FEI's commitment to consent to release its SROW interest and obtain the consent of the mortgagees of FEI's SROW interest when requested by the City for highway dedication. The City's requested terms in relation to this matter are set out in section 9 of the City's proposed terms for an operating agreement.

1.7. The Applications

27. The failure to reach agreement on all terms for an operating agreement necessitated the City's Application to the BCUC for an order pursuant to subsection 32(2) of the *Utilities Commission Act* specifying the terms under which FEI may install, operate and maintain its distribution equipment in public places within the Surrey boundary limits. The City's requested form of BCUC Order is provided as Appendix C to the City's Application (Exhibit B2-1). Subject to the City's submissions summarised in paragraph

128, below, the City continues to request the form of Order provided in Appendix C to Exhibit B2-1.

28. FEI filed its own application reflecting the agreed-to terms and FEI's position on the four matters in dispute (Exhibit B1-1). The BCUC established a single proceeding to consider each party's application and position.

2. City of Surrey's Submissions

2.1. Scope of Submissions

29. After nearly three years of negotiations, the City and FEI reached agreement on the majority of, but not all terms for an operating agreement. Both the City and FEI have submitted in their respective applications that the agreed-to terms for an operating agreement are the product of arm's-length negotiation and compromise on issues that are important to each party, and that this regulatory proceeding should focus on resolving the four matters that the parties were not able to agree on. The City agrees with FEI's position that the "Proposed Operating Terms should thus be treated as a package, with only the disputed items to be determined."[27]

30. This regulatory proceeding began approximately a year ago and has included two rounds of BCUC and intervener information requests, supplementary evidence and rebuttal evidence, and a BCUC Panel information request to the City, almost all of which was focused on the four matters that the parties were not able to agree on.

31. Although the BCUC has not made an order specifically limiting the scope of the proceeding to consideration of the four matters in dispute, for the reasons set out above the City's submissions below address only the four matters.

[27] Exhibit B1-1, page 25, lines 29-33.

2.2. Operating Fee

2.2.1. BCUC Jurisdiction – Operating Fee

32. Section 2 of the City's Application sets out the BCUC's jurisdiction under section 32(2) of the *Utilities Commission Act* to, by order, allow a public utility to use public places in a municipality to place the public utility's distribution equipment, and specify the manner and terms of such use. For convenience, section 2 of the City's Application is reproduced at Tab 1 of the supporting documents for this final argument.

33. Subject to the limitations discussed in sections 2.3.1, 2.4.1 and 2.5.1 of this final argument, the City submits that the BCUC has jurisdiction pursuant to sections 32, 33 and 36 of the *Utilities Commission Act* to, by order, specify the manner and terms of FEI's use of public places in a municipality and municipal structures, including the compensation that FEI shall pay to the municipality for its use and occupancy of such public places.

34. The BCUC has approved operating fees in at least 75 operating agreements between FEI and municipalities in the province, and the BCUC has exercised its jurisdiction under subsection 32(2) of the *Utilities Commission Act* to direct that a municipality's operating fee shall be 3.0 percent of FEI's gross revenues when FEI and the municipality could not agree on the operating fee. Specifically, in 2006 the BCUC was called upon to specify the manner and terms of FEI's use of public places in the District of Chetwynd. In that case, Chetwynd requested the BCUC to approve multiple fees that were estimate to sum to approximately 11 percent of FEI's gross revenues. At page 9 of the Order No. G-17-06 Decision dated February 2, 2006, the BCUC held:[28]

> "The District of Chetwynd has proposed additional fees related to Terasen operations in the area. The Commission has not previously approved operating agreements that contain operating fees greater than 3 percent and is not persuaded to do so in this instance. **Accordingly, the Commission approves an operating fee of 3 percent in the new Operating Agreement.**"

[28] A copy of the Order No. G-17-06 Decision is provided at Tab 4 of the supporting documents provided with this final argument.

35. Thus, the BCUC has exercised its jurisdiction to specify the operating fee in circumstances where the amount of the operating fee is in dispute. Moreover, no questions have been raised in this proceeding about the BCUC's jurisdiction to specify the compensation FEI shall pay to the City in an operating agreement for FEI's use and occupancy of public places within Surrey.

2.2.2. The City's position – Operating Fee

36. The City requests that the terms for FEI's use of public places to place its facilities within Surrey include an operating fee of 3.0 percent of the gross revenues (excluding taxes) received by FEI for provision and distribution of all gas consumed within the boundaries of Surrey, other than gas consumed by customers from whom the Commission has not allowed FEI to collect the operating fee. Such amount will not include any amount received by FEI for gas supplied or sold for resale.

37. The City requested language respecting the operating fee is contained in section 12 of the proposed terms for an operating agreement in Appendix B to the City's Application. The City's proposed language is identical to that contained in FEI's Standard Operating Agreement.

38. The City of Surrey's Council has been fully apprised of and supports the request for the 3.0 percent of gross revenues operating fee.

39. At the outset of this proceeding, the City understood that it's requested 3.0 percent of gross revenues operating fee is precisely the same operating fee as FEI collects and remits to about 70 other municipalities in the province and, as such, it is the standard in FEI's operating agreements with other B.C. municipalities. The City submitted IRs to FEI seeking to verify that understanding. The evidence in this proceeding confirms the following facts:

- not 70, but in fact at least 75 other municipalities receive an operating fee from FEI calculated on the basis of 3.0 percent of the gross revenues (excluding taxes)

received by FEI for provision and distribution of gas consumed in the municipality[29]

- no municipality in the province receives an operating fee from FEI other than 3.0 percent of gross revenues[30]
- as recently as April 6, 2017[31] (shortly before the City filed its Application) and March 1, 2018[32] (actually during this regulatory proceeding), FEI and the BCUC continue to approve operating agreements with operating fees of 3.0 percent of FEI's gross revenues
- the BCUC previously rejected a municipality's request for an operating fee other than 3.0 percent of gross revenues, and directed that the municipality's operating fee shall be 3.0 percent of gross revenues[33]

40. In light of the above qualitative facts, the City considers that adopting the same 3.0 percent of FEI's gross revenues operating fee structure substantially supports transparency, public interest and consistency among FEI ratepayers, most of whom are also municipal taxpayers.[34]

41. The City's position also considers the BCUC's 2014 Decision adopting common rates for all FEI, FortisBC Energy Vancouver Island and FortisBC Energy Whistler (collectively referred to as FEI) ratepayers across the province. Given the adoption of common rates for all FEI ratepayers across the province and the fact of a standard FEI operating fee

[29] Exhibit B1-6, FEI's response to BCUC IR 1.4.1 states that FEI has 75 operating agreements with municipalities that include the 3 percent of gross revenues operating fee. Subsequent to FEI filing that evidence, the BCUC has approved at least one additional operating agreement that presumably includes the 3 percent of gross revenues operating fee. Refer to footnote 32, below.
[30] Exhibit B1-9, FEI response to Surrey IR 1.2.2.
[31] BCUC Order No. C-4-17 dated April 6, 2017. FEI confirmed in Exhibit B1-9, FEI's response to the City's IR 1.2.7, that FEI's Operating Agreement with the Village of Montrose dated January 30, 2017 and approved by the BCUC on April 6, 2017 includes the same 3.0 percent of gross revenue operating fee that the City is requesting. A copy of Order No. C-4-17 is provided at Tab 5 of the supporting documents provided with this final argument.
[32] BCUC Order No. C-1-18 dated March 1, 2018 approved an Operating Agreement between FEI and the Village of Salmo. The City does not have a copy of this Operating Agreement, and presumes that it includes the same 3.0 percent of gross revenue operating fee that the City is requesting. A copy of Order No. C-1-18 is provided at Tab 6 of the supporting documents provided with this final argument.
[33] Refer to paragraph 34 of this final argument.
[34] Exhibit B2-16, the City's response to BCUC Panel IR 1.2.

structure, the City continues to believe that the most appropriate position in terms of transparency, public interest and consistency among FEI ratepayers, most of whom are also municipal taxpayers, is to adopt the same operating fee structure as is in place for other municipalities in the province.[35]

42. In addition to the above important qualitative considerations, in response to a request by the BCUC the City has submitted quantitative analysis demonstrating that the City's requested operating fee is reasonable on the basis of the City's costs due to FEI's use and occupation of highways and other public places in Surrey. This analysis was completed by Aplin & Martin Consultants and assesses the cost impact due to FEI's presence and activities within the City's highways.[36] Aplin & Martin is one of the most qualified and experienced civil engineering and municipal infrastructure firms in British Columbia, and they have 50 years of experience providing these services in the City of Surrey. Aplin & Martin's experience in municipal infrastructure planning, design, construction and operation is extensive, and focused on local aspects within Surrey and Metro Vancouver. Aplin & Martin has direct and extensive experience in designing municipal infrastructure in and around other utilities and FEI gas mains, both distribution and transmission; cost estimating and evaluation of contractor's unit rate prices for work, including FEI related activities; and construction administration including avoidance and contractor delay claims and costs associated with FEI utilities.[37]

43. The objective of the Aplin & Martin assessment was to respond to the BCUC's request by defining the types of costs and the associated amounts the City is incurring both directly and indirectly that the City would not have incurred if FEI's infrastructure was not present within the City's highways.[38]

44. As identified in their report, Aplin & Martin quantified the annualized direct cost to the City as a result of FEI's infrastructure operating within the City's highways to be

[35] *Ibid*.
[36] Aplin & Martin's assessment is included as an attachment to Exhibit B2-8-1 and a copy of it was also included with the City's response to Panel IR No. 1 (Exhibit B2-16).
[37] Exhibit B2-14, the City's response to BCUC IR 2.16.1.
[38] Aplin & Martin report cover letter.

$3,342,258 on a present value basis and based on 2017 dollars (without adjustment for inflation) for the next 10 years.[39] Aplin & Martin's summary Table 7 is reproduced below.

Table 7: Total Costs Incurred by City of Surrey Annually

	Annualized Cost
Administrative / Overhead	
Staff Costs	$152,600
Permit Fees	$154,030
Pavement Cut Fees	$204,700
Capital Costs	
Design Phase	$432,365
Construction Phase	$1,687,466
Delay	$216,620
Litigation	$100,000
FEI Relocations	$905,807
Operating Costs	Not Assessed
Estimate Annual Cost to Surrey	$3,342,258

45. Given the limited time constraints, Aplin & Martin was only able to validate some of the direct costs, and Aplin & Martin's report does not take into account:

- work that is performed outside the City's highway/road right of way boundaries
- a cost quantification of the City's operating costs due to FEI
- the costs the City incurs to acquire highway/road right of way and other public places occupied by FEI infrastructure in the municipality for the City's works and projects
- costs directly or indirectly incurred by the City and its residents and businesses as a result of FEI's presence and activities such as those for traffic disruption and inconvenience, park and public amenity disruption and temporary loss of use, and social costs associated with visual trench patches and cuts in the roads

46. In response to BCUC IR 2.16.6, the City provided an estimate of its operating costs incurred as a result of FEI's use and occupation in highways and other public places in

[39] Aplin & Martin report, Table 7.

Surrey, which the City believes is in the range of $300,000 to $500,000 / year. The Aplin & Martin report specifically did not take such costs into account, and this estimate is based on the City's experience and cost estimates derived for other third party utility impacts.

47. The costs estimated in Aplin & Martin's report and those identified and quantified in Surrey's response to BCUC IR 2.16.6 sum to $3.64 million to $3.84 million / year, based on 2017 dollars (without adjustment for inflation) and exclusive of difficult to quantify yet very important costs to the City and its residents and businesses due to traffic inconvenience, temporary loss of park amenities, public acceptance with visual trench patches and road cuts, and other similar matters due to FEI's use of public places. As submitted in Surrey's response to BCUC IR 2.16.6, this suggests that if the City's operating fee was designed to recover the City's actual direct and indirect costs as a result of FEI's use and occupation of public places in Surrey, the operating fee value would probably be more than $4 million / year in 2017 Canadian dollars.

48. One must also not lose sight of the fact that while the City and its residents are uniquely burdened by FEI's activities, FEI and its customers benefit by FEI's facilities occupying highways and other public places without contributing to the City's cost of acquiring such public places. Moreover, if the City needs to purchase additional lands at market value to expand the City's public services (*e.g.*, roads, water mains, sewers and parks), FEI can place its facilities in such lands without contributing to the City's costs of acquiring such lands, all in the context of the high land values in Surrey relative to the approximately 75 other municipalities that receive the 3.0 percent of gross revenues operating fee from FEI.

49. FEI's response to the City's IR 2.5.1 provides FEI's gross revenues for provision and distribution of gas consumed in Surrey at $112.8 million in 2016 and $132.0 million in 2017. On the basis of those gross revenue figures, the $4 million / year figure above equates to an operating fee of about 3.55% on the 2016 gross revenue or 3.05% on the 2017 gross revenue. Thus, the City's quantitative cost analysis verifies that an operating

fee of 3.0% of gross revenue is reasonable and representative of the City's costs, as well as supporting the important qualitative considerations noted above.

50. Approving the City's requested operating fee would not provide a "windfall" to the City. Obviously the City is a not-for-profit organisation. The City is incurring substantial costs due to FEI (more than any other municipality), and the operating fee revenue will reduce the need for other sources of revenue, primarily property taxes, to pay for these costs.

51. Given that FEI is expected to collect the revenues needed to pay the operating fee from FEI customers in Surrey, the principal beneficiaries of FEI's use of public places in Surrey (being FEI's customers in Surrey) will contribute to the operating fee and reduce the burden of FEI's activities on the City's taxpayers. The operating fee will therefore provide for a reallocation of some of the City's costs due to FEI from all taxpayers to FEI customers in Surrey. The operating fee is more of a user pay model, which the City believes is more equitable than continuing to require all taxpayers to pay for these costs whether or not they receive any benefit from FEI's facilities in Surrey.

52. Denying the City's requested operating fee would perpetuate the requirement for the City and its taxpayers to pay costs that 75 other municipalities and their taxpayers are not required to pay in other areas of the province because those municipalities receive the 3.0 percent of FEI's gross revenue operating fee.

2.2.3. The City's submissions respecting FEI's position – Operating Fee

53. FEI opposes the City receiving a 3.0 percent of FEI's gross revenue operating fee, though FEI has not clearly articulated its reasons for doing so. FEI proposes, instead, an operating fee for the City of 0.7 percent of the delivery revenue (excluding taxes) received by FEI from its customers for the distribution of gas consumed within the Surrey boundary limits. FEI's proposed operating fee amount for the City is roughly 16% of the City's requested operating fee amount.

54. Although FEI opposes a 3.0 percent of FEI's gross revenues operating fee for the City, FEI recently agreed to and asked the BCUC to approve two operating agreements that include the 3.0 percent of gross revenues operating fee; one with the Village of Montrose and the other with the Village of Salmo.[40]

55. FEI's responses to the City's IRs 1.2.3 through 1.2.6 confirm that the operating fee structure FEI proposes for the City is novel: it has never been proposed to or considered by the BCUC before.

56. FEI, in its Application, states that an "Operating Fee is a fee collected by the Company from its customers within a municipality and remitted to the municipality in consideration of covenants made by the municipality contained in an operating agreement and costs incurred by the municipality as a result of the Company's operations in the municipality's streets."[41] That description by FEI of the purpose of an operating fee has some similarities and some differences as compared to the definition of "Municipal Operating Fees" in the FEI Tariff General Terms and Conditions, the pertinent components of which provide that the operating fee is for FEI's use of public places within the municipality to construct and operate its utility business, relating to the revenues received by FEI for gas delivered and consumed within the municipality.[42] The similarity being that the operating fee is for FEI's use of public places within the municipality, the key difference being that the definition of Municipal Operating Fees in FEI's Tariff says nothing about "cost incurred by the municipality".

57. The definition of Municipal Operating Fees in the FEI Tariff accurately reflects what the City understands is the purpose and nature of an operating fee: it is for FEI's use of public places within the municipality to construct and operate its utility business.[43]

[40] Refer to footnotes 31 and 32 of this final argument.
[41] FEI Application, page 13, lines 20-24. Underlining added.
[42] The complete definition of "Municipal Operating Fees" in the FEI Tariff General Terms and Conditions is quoted in Exhibit B2-8-1, the City's response to BCUC IR 1.5.3. A copy of page D-4 of FEI's General Terms and Conditions with the definition of "Municipal Operating Fees" is provided at Tab 7 of the supporting documents provided with this final argument.
[43] Exhibit B2-14, the City's response to BCUC IR 2.15.1.

58. Contrary to the nature and purpose of an operating fee as stated in FEI's own Tariff and contrary to how FEI describes the purpose in its application, in FEI's response to the City's IR 2.4.2 FEI says that the operating fee value FEI proposes for the City (which equates to about $600,000 / year) is intended as "a reasonable Operating Fee in exchange for what FEI customers are receiving (avoided payment of currently disputed permit / authorisation fees and streamlined processes)".[44] Thus, the City understands that FEI's proposed operating fee value is based on FEI's estimate of the expected cost savings for FEI as a result of the proposed terms for a new operating agreement relative to the past arrangements between the parties including the legacy 1957 Agreement, as follows:[45]

- $350,000 / year of FEI's proposed operating fee value is based on FEI's calculation of permit and pavement cut fees based on fees in effect in Surrey as at January 2017 and using 2016 FEI construction activities as a multiplier (refer to FEI Application, errata dated August 10, 2017, page 15, lines 8-9). FEI says in its response to Surrey IR 2.4.2 that it included this component in its proposed operating fee amount because pursuant to the new operating agreement FEI will avoid payment of these fees, whereas in its Application (errata dated August 10, 2017, page 15, lines 6-8) FEI says that it included this component in its proposed operating fee value "under the premise that this amount should be reflective of the activity level within the City in recognition of the impact of our activities in Surrey".

- $250,000 / year of FEI's proposed operating fee value is based on cost savings to FEI that FEI expects as a result of streamlined process in the new operating agreement, consisting of $150,000 / year by avoiding 1.5 FTEs that it would

[44] Notwithstanding the nature and purpose of an operating fee as stated in FEI's Tariff and the alternative purpose stated in FEI's application, FEI reiterated this second alternative view of the purpose of an operating fee for the City of Surrey in Exhibit B1-13, FEI's response to BCUC IR 2.16.1 where FEI said that "So the question should be: what are FEI customers getting in return for now paying an Operating Fee?"

[45] Exhibit B2-16, the City's response to BCUC Panel IR 1.1.

otherwise require to process permits and expedite service to FEI customers, and $100,000 / year by avoiding disputes and litigation.

59. FEI's proposed operating fee structure for the City is not designed to compensate the City for FEI's use of public places within the municipality to construct and operate its utility business, either on the basis of the costs incurred by the City or on the basis of a standard fee.

60. FEI's proposed approach to calculation of the operating fee value (based on FEI's expected incremental cost savings as a result of the operating agreement compared to an uncertain historical baseline) is novel, and not consistent with,

- the purpose of the operating fee as specified in the FEI Tariff[46], nor
- the purpose of the operating fee as stated by FEI in its application in this regulatory proceeding,[47] nor
- the purpose of the operating fee as stated by FEI in the BCUC proceeding resulting in Order No. C-7-03,[48] nor
- the operating fee provisions of the FEI "Standard Operating Agreement", nor
- the cost causation / recovery approach suggested by the BCUC and BCOAPO IRs in this proceeding,[49] nor
- the approach to operating fees in the adjacent jurisdiction of Alberta (the Alberta Utilities Commission allows municipalities in Alberta to determine annually the level of their gas utility franchise fee up to 35% of the gas utility's

[46] The definition of "Municipal Operating Fees" in the FEI Tariff General Terms and Conditions is quoted in the City's response to BCUC IR 1.5.3, and accurately reflects the City's understanding of the purpose and nature of an operating fee.
[47] As quoted in paragraph 56 of this final argument.
[48] At page 5 of its Order No. C-7-03 Decision, the BCUC refers to FEI's (then Terasen's) argument that the fees is paid for the use of streets and other public places in the municipality. A copy of the Order No. C-7-03 Decision is provided at Tab 10 of the supporting documents provided with this final argument.
[49] Refer to BCUC IRs 1.4.2 and 2.16.6 to the City, and BCOAPO IR 1.1.2 to the City and the City's responses thereto.

delivery tariff.[50]

61. Accordingly, the City is of the position that FEI's proposed operating fee value is based on an inapt approach and uses the wrong inputs.[51]

62. The City further submits that whether or not the municipality grants an exclusive franchise to FEI is a distinction without a difference for the purposes of an operating fee.[52] FEI's use of public places in a municipality has the same impacts on the municipality and its residents whether the use is pursuant to an exclusive franchise or as the incumbent gas utility. As stated in FEI's Tariff and its historical franchise agreements, the fee is to compensate the municipality for FEI's use of the public places.[53]

63. The City's position is that the only question is whether the operating fee for FEI's use of public places in Surrey should be the 3.0 percent of FEI's gross revenues (which is the standard in British Columbia) or a municipality-specific fee based on the costs actually incurred by the City, which in the case of the City calculates to about 3.0 percent of FEI's gross revenues anyway.

64. With respect to FEI's proposal to apply the City's operating fee to delivery revenue (instead of gross revenue), the City's response to BCUC IR 1.2.3 provides the City's position on the benefits and risks of utilizing gross revenue versus delivery revenue as the basis for calculating the operating fee, as follows:

> "From the City of Surrey's perspective, the benefits and risks of utilizing gross revenue versus delivery margin as the basis for calculating the operating fee FEI remits to Surrey are as follows.

[50] Refer to Attachment 3 and related tabs of Exhibit B2-11.
[51] Exhibit B2-16, the City's response to BCUC Panel IR 1.1.
[52] In Exhibit A-8, the BCUC submitted IRs to FEI that appear to explore whether the 3 percent of gross revenues operating fee could have been considered to be a franchise fee, and if so whether such distinction is relevant. The City submits that any such distinction is not relevant.
[53] Exhibit B1-13, FEI's response to BCUC IR 2.12.1 at pages 7 and 8.

Benefits

- If gross revenue is used, Surrey's operating fee will be calculated on the same basis as the operating fees FEI remits to 70 other municipalities in the province with Commission approval.
- FEI has existing systems and procedures for calculating and remitting an operating fee calculated on the basis of gross revenue.
- To our knowledge, FEI has never utilized delivery margin as the basis for calculating an operating fee. Continuing to utilize the existing gross revenue approach avoids the added costs and complexity (for example, for changes to financial systems and business processes) associated with FEI using a new approach.
- Avoids other municipalities potentially requesting FEI to change the basis for their operating fee from gross revenue to delivery margin if they perceive a benefit from such a change.

Risks

- None."

65. With respect to the second benefit noted above (staying with gross revenue as the basis for the operating fee allows FEI to utilize existing systems and procedures and avoid the costs and communications requirements associated with changing the approach), FEI confirms in its application that changing the approach to one based on delivery revenue would require four to six months in order to allow for planning and communication to customers, and to implement and test the required changes to FEI's customer information systems.[54] The City submits that this is precisely why the BCUC previously decided not to change the basis for FEI's operating fees from gross revenue to delivery revenue. Specifically, in a BCUC proceeding in 2006, which resulted in the BCUC approving a series of FEI operating agreements, the BCUC sought submissions on whether the public interest is better served through operating fees on delivery revenue

[54] Exhibit B1-1, FEI's application, page 25, lines 19-27.

versus gross revenue. At that time the municipalities and FEI (then Terasen) raised significant concerns about added complexity, costs, and communication requirements if the basis for the fee was changed to delivery revenue.[55]

66. The City submits that there is no justification for incurring the added complexity, costs, and communication requirements to switch to delivery revenue as the basis for the operating fee. The only benefit that has ever been suggested for making such a change was the concern, some fifteen years ago in the context of exceptionally volatile natural gas prices, that applying the charge to gross customer bills including gas commodity charges had led to volatility for natural gas customer bills and volatility in the operating fees paid to municipalities. Fifteen years ago, pursuant to Order No. C-7-03 dated September 2, 2003 the BCUC directed FEI to seek a method to convert the charge FEI was applying on customer bills to one based on utility margin "so as to stabilize the costs to utility customers".[56] The volatility in natural gas prices experienced during the 2000-2003 period reduced significantly and, as discussed above, in 2006 the BCUC decided not to change the basis for operating fees from gross to delivery revenue.

67. The City also notes that in recent years FEI's gross revenues and delivery revenues have had roughly equivalent year-to-year volatility[57] demonstrating that there is no material benefit to incurring the added complexity, costs, and communication requirements to switch to delivery revenue as the basis for the operating fee. As the City has stated several times, adopting the same operating fee structure substantially supports transparency, public interest and consistency among FEI ratepayers, most of whom are also municipal taxpayers. There would need to be significant benefit to justify changing the operating fee structure, and none has been shown in this proceeding.

68. If the operating fee was to be expressed as a percentage of delivery revenue, based on the 2016 Delivery Margin of $71.2 million and 2017 Delivery Margin of $85.0 million

[55] Refer to preamble paragraphs F, G, J and K of BCUC Order Nos. C-9-06 through C-16-06 dated August 29, 2006. A copy of Order No. C-9-06 is provided as Tab 9 of the supporting documents provided with this final argument.
[56] Order No. C-7-03 Decision at page 5. A copy of the Order No. C-7-03 Decision is provided as Tab 10 of the supporting documents provided with this final argument.
[57] Exhibit B1-15, FEI's responses to the City's IRs 2.5.1 and 2.5.2.

(per FEI's response to Surrey IR 2.5.1), the $4 million / year figure above equates to an operating fee of about 5.6% or 4.7% on Delivery Margin, respectively. Should the BCUC decide to have the operating fee value expressed as a percentage of Delivery Margin, as proposed by FEI the rate should therefore be in the range of 4.7 to 5.6 percent with the understanding that this approach would be unique to the City of Surrey and create discrepancy amongst municipalities in contrast to the common rate methodology for FEI. Changing the basis for the operating fee to delivery revenue for the City of Surrey would also create a risk that other municipalities will request to change the basis for their operating fees to delivery margin if they perceive a benefit from such a change.

69. Based on the evidence developed through this proceeding, the City remains of the position that gross revenue should be used as the basis for calculating the operating fee, and that switching the basis for operating fees to delivery margin would result in added costs and risks with no benefit.

70. In conclusion regarding the operating fee, the City submits that it would be unfair and against the public interest for the BCUC to order a novel and very low operating fee for the City, particularly when the City is more burdened by FEI's activities than any other municipality in the province.

2.3. Allocation of Relocation Costs

2.3.1. BCUC Jurisdiction – Allocation of Relocation Costs

71. In the proposed terms for an operating agreement, "Relocation Costs" arise when the City or FEI undertakes a project that requires the other party's facilities to be realigned, raised, lowered, protected, by-passed or relocated to accommodate the project.[58] Typically, this arises when the City builds a new highway, widens a highway, or installs sewer or water main works that require FEI to relocate its pipeline.

72. The City submits that in specifying the manner and terms of FEI's use of public places in Surrey (or any other municipality in the province), the BCUC does not have jurisdiction

[58] Refer to sections 8.1 and 8.2 of the City's proposed terms for an operating agreement in Appendix B to the City's Application.

to specify the allocation as between FEI and the municipality of costs FEI incurs to relocate its pipelines to accommodate municipal projects if the pipeline is conveying natural gas at 700 kPa or higher. This is because the Pipeline Crossing Regulation (B.C. Reg. 147/2012) prescribes the cost allocation for such pipeline crossings and relocations.[59] Specifically, the cost allocation provisions in section 3 of the Pipeline Crossing Regulation apply whenever a person constructs a highway, road or railway, an underground communication or power line,[60] or any other work, operation or activity that results in a disturbance of the earth to a depth of more than 45 cm[61] along, over or under a pipeline conveying natural gas at 700 kPa or higher, and the pipeline owner realigns, raises or lowers or adds casing to the pipeline to protect it from the work.

73. The Pipeline Crossing Regulation is the law of the province of British Columbia respecting the matter, as follows.

74. The *Oil and Gas Activities Act* grants the Lieutenant Governor in Council ("**LGIC**") the power to make regulations respecting how the costs of such pipeline relocations are to be allocated and, in doing so, prescribes the law on the issue.

75. Section 99(1)(m.1) of the *Oil and Gas Activities Act* states:

> 99 (1) The Lieutenant Governor in Council may make regulations as follows:
>
> (m.1) respecting how costs incurred in relation to
>
> (i) the construction of anything referred to in section 76(1)(a),
>
> (ii) the carrying out of an activity under section 76(1)(b), or
>
> (iii) the relocation referred to in section 76(5)(a) and any actions referred to in section 76(5)(b)
>
> are to be allocated between the pipeline permit holder and the person doing anything referred to in subparagraphs (i) to (iii) of this paragraph;

[59] A copy of the Pipeline Crossing Regulation is provided in Appendix D of the City's Application, and in Tab 3 of the supporting documents provided with this final argument.
[60] *Oil and Gas Activities Act*, s. 76(1). Extracts from the *Oil and Gas Activities Act* are provided at Tab 11 of the supporting documents provided with this final argument.
[61] Section 2(1) of the Pipeline Crossing Regulation prescribed such ground activity for the purposes of section 76(1)(b) of the *Oil and Gas Activities Act* and for the purposes of the cost allocation provisions in section 3 of the Pipeline Crossing Regulation.

76. Section 99(1)(m.1) of the *Oil and Gas Activities Act*, above, refers to sections 76(1)(a) and (b) and 76(5)(a) and (b) of the *Oil and Gas Activities Act* which state:

> 76(1) Subject to subsection (3), a person must not
>
> (a) construct
>
> (i) a highway, road or railway,
>
> (ii) an underground communication or power line, or
>
> (iii) any other prescribed work, or
>
> (b) carry out a prescribed activity[62]
>
> along, over or under a pipeline or within a prescribed distance of a pipeline unless
>
> (c) the pipeline permit holder agrees in writing to the construction or the carrying out of the prescribed activity, either specifically or by reference to a class of construction projects or activities,
>
> (d) the commission, by order issued under subsection (2), approves the construction or the carrying out of the prescribed activity, either specifically or by reference to a class of construction projects or activities, or
>
> (e) the construction or prescribed activity is carried out in accordance with the regulations.
>
> (5) The commission may order a pipeline permit holder whose pipeline is the subject of an order issued under subsection (2) to do one or both of the following:
>
> (a) with the approval of the Lieutenant Governor in Council, relocate the pipeline to facilitate the construction or prescribed activity approved by the order issued under subsection (2);
>
> (b) take the actions specified in the order that the commission considers necessary to protect the pipeline.
>
> (6) In relation to an order of the commission referred to in subsection (5), the Lieutenant Governor in Council
>
> (a) may order that a person other than the pipeline permit holder must pay the costs, or a portion of the costs, incurred in carrying out the commission's order, or

[62] Pursuant to section 2(1) of the Pipeline Crossing Regulation, any work, operation or activity that results in a disturbance of the earth to a depth of more than 45 cm is a prescribed activity for the purposes of section 76(1)(b).

> (b) may approve the payment of any of those costs from the consolidated revenue fund.

77. The Pipeline Crossing Regulation, enacted by the LGIC pursuant to the regulation making power under section 99(1)(m.1) of the *Oil and Gas Activities Act*, applies to all such relocations of "pipelines" as defined in the *Oil and Gas Activities Act*. This includes piping conveying natural gas at 700 kPa or higher, but does not include piping conveying natural gas at less than 700 kPa to consumers by a gas utility (including FEI). The term "pipeline" as used in the Pipeline Crossing Regulation is defined in the *Oil and Gas Activities Act* as follows:

> **"pipeline"** means, except in section 9, piping through which any of the following is conveyed:
>
> (a) petroleum or natural gas;
>
> …
>
> and includes installations and facilities associated with the piping, but does not include
>
> (f) piping used to transmit natural gas at less than 700 kPa to consumers by a gas utility as defined in the *Gas Utility Act*,

78. The Pipeline Crossing Regulation is the law of the province of British Columbia respecting the allocation of costs between a pipeline permit holder (*e.g.*, FEI) and a person doing work referred to in section 76 of the *Oil and Gas Activities Act* (*e.g.*, the City doing road, sewer or water main works). That the regulation is the law in British Columbia and binding on FEI is further emphasised by section 21 of the *Oil and Gas Activities Act* which requires pipeline permit holders (*e.g.*, FEI) to carry out all of their oil and gas activities[63] in compliance with the regulations, including the Pipeline Crossing Regulation, as follows:

> **21** Subject to section 23, a person must not carry out an oil and gas activity unless
>
> …
>
> (b) the person carries out the oil and gas activity in compliance with

[63] Section 1 of the *Oil and Gas Activities Act* defines "oil and gas activity" as including the "construction and operating of a pipeline".

(i) this Act and the regulations,

(ii) a permit issued to the person, if any, and

(iii) an order issued to the person, if any.

79. FEI said in its response to BCUC IR 1.9.1 that the BCUC has jurisdiction pursuant to section 32 of the *Utilities Commission Act* to replace the cost allocation provisions of the Pipeline Crossing Regulation. That FEI argument is not correct. The BCUC's powers pursuant to sections 32, 33 and 36 of the *Utilities Commission Act* are broad, but clearly they are not so broad as to empower the BCUC to, by order, direct FEI and/or the City to contravene the Pipeline Crossing Regulation and the mandatory requirement of section 21 of the *Oil and Gas Activities Act* stipulating that FEI must carry out its activities in compliance with the regulations including the Pipeline Crossing Regulation. Nowhere in the *Utilities Commission Act* is the BCUC given the power to make an order that is contrary to FEI's obligations under section 21 of the *Oil and Gas Activities Act* or the cost allocation methodology of the Pipeline Crossing Regulation.[64]

80. FEI also provides, in its response to BCUC IR 1.9.1 (at pages 30-31 of FEI's response to BCUC IR No. 1), what FEI describes as three example of when the BCUC previously exercised its jurisdiction to allocate pipeline relocation costs in a manner inconsistent with the Pipeline Crossing Regulation or its predecessors. For the following reasons, none of FEI's three examples support FEI's claim.

(i) FEI references BCUC Order Nos. G-98-90 and G-160-90, which are procedural orders. The final decision in that proceeding (the Order No. G-13-91 Decision) addressed cost allocation in the circumstance of new pipeline construction where the municipality might request that Vigas or Victoria Gas install its new pipeline at a depth beyond that planned by the utility. That is a totally different situation than the one covered by the Pipeline Crossing Regulation and its

[64] Section 121 of the *Utilities Commission Act* clearly states that the BCUC's powers under the *Utilities Commission Act* supersede anything in or done under the *Community Charter* or the *Local Government Act*. Nothing in the *Utilities Commission Act* provides for the BCUC's orders pursuant to sections 32, 33 and 36 to supersede section 21 of the *Oil and Gas Activities Act* or the Pipeline Crossing Regulation. Extracts from the *Utilities Commission Act* are provided at Tab 12 of the supporting documents provided with this final argument.

predecessors as described above (that is, construction of roads and work that disturbs the earth to a depth of more than 45 cm near an existing pipeline, requiring that pipeline to be relocated or protected).

(ii) FEI references BCUC Order No. G-17-06.[65] In that Order the BCUC did exercise its jurisdiction pursuant to section 32 of the *Utilities Commission Act* but it did not make any order respecting cost allocation for pipeline crossings / relocations.

(iii) FEI references BCUC Order No. G-113-12.[66] In that Order the BCUC did address cost allocation for pipeline crossings / relocations; however, contrary to FEI's argument, the BCUC actually confirmed that the cost allocation methodology in the Pipeline Crossing Regulation's predecessor does apply and the BCUC did not make an order that results in contravention of the requirements of the regulation. At pages 10-11 of the BCUC's Order No. G-113-12 Decision, the BCUC made the following determination:

> "Section 8.1 of the Revised FEI Operating Terms deals with requests by FEI when they require Municipal Facilities to be altered, changed or relocated. Section 8.2 deals with requests by the Municipality when they require the same of FEI's Company Facilities. Both Section 8.1 and 8.2 require that the party making the request pay for all of the costs. The Municipality has noted in several submissions that the requirement in Section 8.2 that the Municipality "...agrees to pay for all of the costs for changes to the affected Company Facilities" forces them to abandon their rights under the Oil and Gas Activities Act (the OAGA Act). The Oil and Gas Activities Act General Regulation[67] provides the opportunity for cost sharing between specific parties when particular conditions are met. In the Commission's view, the Municipality does not abandon its rights under the OAGA Act, given that Section 5.1 of the Revised FEI Operating Terms requires FEI to comply with "all Federal and Provincial laws, regulations and codes." (underlining added)

[65] A copy of the Order No. G-17-06 Decision is provided at Tab 4 of the supporting documents provided with this final argument.
[66] A copy of the Order No. G-113-12 Decision is provided at Tab 13 of the supporting documents provided with this final argument.
[67] The Oil and Gas Activities Act General Regulation (B.C. Reg. 274/2010) contained the pipeline crossing cost allocation provisions before these provisions were moved into the Pipeline Crossing Regulation. Prior to 2010, the cost allocation methodology was prescribed in the Pipeline Regulation.

81. Thus, FEI's claim that the BCUC has previously exercised its jurisdiction pursuant to section 32 of the *Utilities Commission Act* to order cost allocation for pipeline crossings/relocations that is contrary to the Pipeline Crossing Regulation and results in a contravention of it and of section 21 of the *Oil and Gas Activities Act*, is simply not correct.

82. The City acknowledges that the Pipeline Crossing Regulation does not apply to crossings and relocations of piping conveying natural gas at less than 700 kPa to customer by a gas utility, and that there is no regulation in British Columbia prescribing the cost allocation for crossing and relocations of piping conveying natural gas at less than 700 kPa to customers by a gas utility.[68] The City further submits that the BCUC does have jurisdiction pursuant to sections 32, 33 or 36 of the *Utilities Commission Act* to, by order, specify the manner and terms of FEI's use of public places in Surrey, including the allocation of costs for crossing and relocations of FEI's piping conveying natural gas to customers at less than 700 kPa. There is no regulation prescribing this, and no other regulatory body in B.C. with jurisdiction over the specific matter.

2.3.2. The City's position – Allocation of Relocation Costs

83. The City's position is that the terms for FEI's use of public places within the Surrey boundary limits should specify that the extent to which the City is responsible for FEI's Relocation Costs to accommodate a City project shall be calculated in accordance with subsection 3(3) or 3(4) of the Pipeline Crossing Regulation, as applicable, whether the affected FEI facilities are high pressure pipelines or low pressure gas mains. This is set out in section 8.2(c) of the City's proposed terms for an Operating Agreement provided in Appendix B of the City's Application.

84. As discussed above, the City's proposed treatment is the law in British Columbia respecting the allocation of costs for crossing and relocations of FEI's piping conveying natural gas to customers at 700 kPa or higher. Unfortunately, there is no law in British

[68] Exhibit B2-8-1, the City's response to BCUC IR 1.9.1.

Columbia prescribing a methodology for the allocation of FEI's costs for crossing and relocation of FEI's low pressure gas mains (below 700 kPa) to accommodate a City project. The City's position is that, in the absence of such a law, the BCUC should specify that the same treatment (subsection 3(3) or 3(4) of the Pipeline Crossing Regulation, as applicable) shall apply to crossing and relocations of FEI's piping conveying natural gas at less than 700 kPa.

85. Regarding the allocation of costs for relocation of FEI low pressure gas mains, the BCUC has the jurisdiction and must decide the method by which such relocation costs are allocated in the public interest. The City submits there is no compelling reason why what is good public policy in relation to high pressure pipelines (as prescribed in the Pipeline Crossing Regulation) is not also good public policy in relation to low pressure pipelines. Surely the public policy reflected in the Pipeline Crossing Regulation's cost allocation methodology is not dependent on the pressure of the natural gas conveyed in the pipeline.

86. The public policy reflected in the Pipeline Crossing Regulation prescribes different cost allocation treatments when the "enabled action" is carried out by a "specified enabled person" (*i.e.*, the provincial government, a municipality or the B.C. Railway Company) versus an "enabled person" (*i.e.*, any other person). If the enabled action is carried out by a specified enabled person (*e.g.,* a municipality), FEI is required to bear more costs than if the enabled action is carried out by a non-government person. Thus, the cost allocation methodology prescribed in the Pipeline Crossing Regulation reflects public policy that municipal projects are public interest projects and take some degree of precedence over gas utility infrastructure in municipal lands and on municipal structures.

87. The BCUC has discretion when it comes to specifying terms for the allocation as between FEI and the municipality of costs to relocate low pressure distribution gas mains to accommodate municipal projects, and it would be eminently reasonable for the BCUC to employ the methodology in the Pipeline Crossing Regulation, and the public

policy it reflects, in specifying terms for the allocation of costs to relocate distribution gas mains. There is also significant benefit if one consistent cost allocation methodology is applied regardless of pipeline pressure, rather than two different methodologies that in some cases would both need to be applied to components of a single project. Applying two different cost allocation methodologies to a single project would require FEI to separately track the staff and contractor time and materials used on the low versus high pressure components of the project, which the City expects would have challenges with respect to transparency and verification of the costs.

88. Therefore, the City believes that it is in the public interest that the cost allocation methodology in the Pipeline Crossing Regulation apply to both relocation of FEI high pressure pipelines (as required by law) and low pressure gas mains (pursuant to BCUC order under section 32 of the *Utilities Commission Act*).

89. Alternatively, if the BCUC was to decide that the Pipeline Crossing Regulation cost allocation methodology should not apply to relocations of FEI's low pressure distribution gas mains required by the City, then the City would support a sliding scale methodology as is used by the CRTC.[69] Under the CRTC's approach, the percentage of the utility's relocation costs to be paid by the municipality is determined by the number of years since the utility's assets were originally installed, diminishing to zero percent after a certain number of years. The CRTC has used seven-year, ten-year and seventeen-year sliding scales.

90. The CRTC's methodology is more complicated to apply than the methodology in B.C.'s Pipeline Crossing Regulation, and employing the CRTC's sliding-scale methodology would mean that two different methodologies would apply:

- the Pipeline Crossing Regulation methodology would apply to the costs of relocating FEI piping used to convey gas at 700 kPa or greater, and

[69] Refer to Exhibit B2-11, Attachment 2, rows under Canada-Telecom; the CRTC's Telecom Decision CRTC 2016-51 at Tab 8 of Attachment 4 to Exhibit B2-11; and Exhibit B2-15, the City's response to CEC IR 2.4.1. A copy of the City's response to CEC IR 2.4.1 is provided at Tab 14 of the supporting documents provided with this final argument.

- a sliding scale methodology would apply to the costs of relocating FEI piping conveying gas at less than 700 kPa.

91. If a particular project required relocation of FEI facilities with low and high pressure components, the two different methodologies would need to be applied to components of the same relocation project.

92. Other than the concerns noted above about added complexity associated with applying two different methodologies, the City would be open to considering a seventeen-year sliding scale methodology for the allocation of FEI's costs to relocate distribution gas mains (and not high pressure pipelines, which remain subject to the Pipeline Crossing Regulation) when requested by the City.

2.3.3. The City's submissions respecting FEI's position – Allocation of Relocation Costs

93. FEI requests that the BCUC specify that the City shall reimburse FEI for relocation costs in the following amounts:

- 100% of FEI's relocation costs when the affected FEI facilities are gas mains, and
- 50% of FEI's relocation costs when the affected FEI facilities are high pressure pipelines.

94. FEI submits in section 3.2.5 of its application that its proposed apportionments of relocation costs are "fair to Surrey and FEI's customers".[70] FEI does not provide any justification for its claim of fairness, except for an incorrect claim that it's proposed 50:50 allocation when the affected FEI facilities are high pressure pipelines is more favourable to the City than the methodology in FEI's Standard Operating Agreement. That FEI claim is incorrect because it is contrary to the requirements of the Pipeline Crossing Regulation and, as discussed above,[71] the BCUC's Order No. G-113-12 Decision confirms that municipalities operating under the FEI Standard Operating Agreement do not abandon their rights under the Pipeline Crossing Regulation given that these

[70] Exhibit B1-1, section 3.2.5, page 13.
[71] Refer to paragraph 80 of this final argument.

agreements require FEI to comply with all federal and provincial laws, regulations and codes.

95. Through the IR process, FEI has argued that if the City is not responsible for a portion of FEI costs to relocate its facilities to accommodate the City's project, the City would not be subject to cost discipline in designing its projects.[72] The City firmly disagrees with that argument, and thoroughly addressed it in its responses to CEC IRs 2.5.1 to 2.5.6.[73] In particular, the City provided the following evidence in response to CEC IR 2.5.1:

> "The City can assure City taxpayers and FEI and its ratepayers that the City is subject to cost discipline and fiscal responsibility when requesting utility relocations, as follows.
>
> One of the biggest risks to municipal construction projects is third party utilities and delays incurred because the utilities are not relocated in a timely manner. Utility relocation delays often lead to significant construction cost escalation to municipalities due to change orders, delay claims and litigation costs. As an example (refer to Surrey's response to BCUC IR 1.1.1), the City incurred a $1.7 million delay claim from our contractor on the Roberts Bank Rail Corridor project as a direct result of FEI's delay in relocating their gas main. To minimize this risk of construction delays to the City's project and increased costs to the City, during design of capital projects the City's engineers make tremendous effort to avoid relocating third party utilities.
>
> With the City's proposal, if the City does require FEI to relocate its facilities then FEI would complete the relocation design, thus allowing FEI the opportunity to evaluate and design the lowest cost relocation and manage their contractor to control costs, both of which allow FEI to protect its interests and those of its ratepayers.
>
> Further, the City's proposal is for cost allocation that is consistent with Provincial Law, which balances the allocation of costs to the municipality (and its taxpayers) versus FEI (and its ratepayers) based on whether the municipality's works are within an existing highway, which FEI has benefited from occupying, or the works are for a new highway. The City's proposal provides a forward looking balance as the City builds new highways to support growth the City and region are experiencing."

[72] See for example, Exhibit B1-13, FEI's response to BCUC IR 1.15.4.
[73] Exhibit B2-15, the City's responses to CEC IRs 2.5.1 to 2.5.6.

96. FEI's proposed allocation of relocation costs is arbitrary, contravenes the law in British Columbia (that is, section 21 of the Oil *and Gas Activities Act* and the Pipeline Crossing Regulation) and is contrary to the BCUC's Order No. G-113-12 determination respecting FEI's own Standard Operating Agreement. The City submits that the most principled, balanced, supportive of the public interest, and easy to administer approach to allocation of FEI's relocation costs is to apply the methodology prescribed in the Pipeline Crossing Regulation whether the affected FEI facilities are high pressure pipelines or low pressure gas mains.

2.4. Definition of Relocation Costs

2.4.1. BCUC Jurisdiction – Definition of Relocation Costs

97. The City's submissions respecting the BCUC's jurisdiction to specify the scope of costs in connection with a relocation project that are to be allocated as between the parties (that is, the definition of "Relocation Costs" for the terms of FEI's use of public places in Surrey) are essentially the same as those set out in section 2.3.1, above.

98. The Pipeline Crossing Regulation states the scope of costs that are the subject of the regulation's cost allocation methodology, and this regulation is the law in British Columbia for the allocation of FEI's costs to relocate a high pressure pipeline (700 kPa or higher) to accommodate a municipality's "enabled action" under the regulation.

99. As submitted in section 2.3.1, above, the City believes that the BCUC does not have jurisdiction to specify a term for FEI's use of public places in Surrey that is contrary to the Pipeline Crossing Regulation and results in a contravention of it, including the scope of costs that are the subject of the regulation's cost allocation methodology.

100. Also as submitted in section 2.3.1, above, the City acknowledges that the Pipeline Crossing Regulation does not apply to crossings and relocations of piping conveying natural gas at less than 700 kPa to gas utility customers, and that there is no regulation in British Columbia prescribing the scope of costs to be allocated for work needed to relocate or protect low pressure gas mains from municipal projects that impact the

safety of the pipeline. The City further submits that the BCUC does have jurisdiction pursuant to sections 32, 33 or 36 of the *Utilities Commission Act* to, by order, specify the scope of the FEI costs to be allocated if FEI has to relocate its low pressure facilities to accommodate the City's project.

101. As submitted in section 2.3, above, the City requests that the BCUC order the same definition of Relocation Costs applies in relation to (i) the relocation of FEI high pressure pipelines, (ii) the relocation of FEI's low pressure gas mains, and (iii) the relocation of the City's facilities. One common definition will be easier for the parties to administer and should avoid future disputes.

2.4.2. The City's position – Definition of Relocation Costs

102. The City's requested definition of Relocation Costs is provided in section 1.1(s) of the City's proposed terms for an operating agreement as provided in Appendix B of the City's Application.

103. The City believes that its requested definition of Relocation Costs is entirely consistent with the Pipeline Crossing Regulation.[74]

104. In addition, given the history of disputes between the City and FEI arising from FEI exercising broad discretion and discretionary standards to scope work (and demanding that the City pay 100% of the costs of such work),[75] the City's requested definition is designed to provide greater certainty to the parties to avoid future disputes. Furthermore, the City's definition of Relocation Costs is drafted to be reciprocal, applying to relocations of FEI facilities (natural gas pipelines) and to relocations of the City's facilities (highways, water mains and sanitary sewers).

105. The City's requested definition of Relocation Costs specifically excludes the value or incremental costs of any upgrading and/or betterment of the party's facilities or the facilities of third parties whether or not such upgrading and/or betterment is required

[74] Exhibit B2-8-1, the City's response to BCUC IR 1.6.1.
[75] Refer to section 1.2 of this final argument.

to comply with applicable laws. The City believes that this specific exclusion is entirely consistent with the Pipeline Crossing Regulation, which provides no indication that costs the pipeline permit holder (*e.g.*, FEI) incurs to upgrade or better its facilities as part of a relocation project are to be included in applying the cost allocation formula and recovered from the municipality, and thus provides greater certainty to the parties.

106. Leaving uncertainty with respect to whether the costs of upgrading and/or betterment are included in or excluded from Relocation Costs would be a major issue for the City because FEI has regularly upgraded and bettered its system as part of its relocation projects and demanded that the City pay 100% of the costs including the incremental costs of the upgrading and betterment.

107. The crux of the issue is that the City believes it should not be responsible for any costs associated with FEI upgrading or bettering its facilities, whether the upgrade/betterment results from FEI

- applying its own discretionary standards,
- applying new external codes/standards, or
- undertaking works that extend beyond the specific limits of what is required to accommodate the City's project.

108. To illustrate the City's concerns about upgrading and betterment, Attachment 1 to Exhibit B2-11 and the City's responses to BCUC IRs 1.6.2 to 1.6.4 provide detailed accounts of several projects where FEI sought to have the City pay for upgrades and/or betterment of FEI facilities. In addition, the City's response to CEC IR 1.2.2 provides an illustrative example and scenarios to help explain the issue.

109. Although this has been a major issue for the City, the City cannot precisely quantify the incremental costs of the betterment and upgrades FEI has installed and charged to the City over the years because FEI has not provided sufficiently detailed information on

either its cost estimates or invoices to enable Surrey to identify the incremental costs either by individual project or annually.[76]

110. The City's requested wording to specifically exclude the value or incremental costs of any upgrading and/or betterment is intended to make clear the incremental costs resulting from cost drivers/factors that broaden the scope of work in response to a request for relocation well beyond the specific limits being requested will not be subject to the cost allocation methodology and will not be recoverable from the requesting party.

111. The codes/standards that have frequent impact on the scope of work in response to requests for relocation are: (i) depth of cover requirements under CSA Z662, which covers design, construction, operation and maintenance of oil and gas industry pipeline systems, (ii) FEI's internal practices, procedures and engineering judgement, which are not publically available and are solely at the discretion of FEI, and (iii) City of Surrey's Engineering Design Criteria and MMCD Supplementary Specifications.

112. The City and FEI agree that FEI must adhere to the CSA Z662 code/standard for FEI's pipelines in Surrey. However, the City is of the opinion that if FEI has infrastructure that does not confirm to CSA Z662 and the City requests that FEI alter a portion of said infrastructure to accommodate municipal work, the City should not be burdened with FEI's incremental cost to bring its facilities up to CSA Z662. FEI's costs to alter its facilities as requested should be Relocation Costs, and its incremental costs above and beyond that to comply with the applicable standard should not be. It should not be the City's responsibility to reimburse FEI for its costs to bring its infrastructure up to standards. Compliance with codes and standards is the responsibility of the asset owner.

113. The City wants to be clear that it agrees it is appropriate for FEI (and in the interests of FEI's ratepayers) to take a total cost-effectiveness approach to its project that includes risk assessment, life cycle costs, asset renewal and operational and maintenance cost

[76] Exhibit B2-8-1, the City's response to BCUC IR 1.6.3; and Exhibit B2-15, the City's response to CEC IR 2.5.2.

savings. It might well be cost effective for FEI to use the opportunity of excavating to relocate its facilities to also improve and upgrade the facilities; however, FEI and its customers are the beneficiaries of the incremental costs of the FEI project designed using such approach in excess of the lowest cost solution to accommodate the City's project. For greater certainty, the City does not object to FEI taking the above approach to its projects, but the City remains of the view that it is not fair to require the City to pay any portion of incremental costs FEI incurs to upgrade or better its facilities as a result.[77] Such costs should be excluded from the cost allocation methodology and no portion of them should be recoverable from the other party. Also, FEI should ensure that such additional works do not delay the City's project.

2.4.3. The City's submissions respecting FEI's position – Definition of Relocation Costs

114. Based on FEI's Exhibit B1-12 evidence and FEI's response to the City's IR 1.3.4.1, the City understands that FEI's proposal for a definition of Relocation Costs for an operating agreement with the City evolved during this proceeding. The City understands that the following are the key terms of FEI's current proposal for a definition of Relocation Costs:[78]

	FEI Proposal	**Reference**
1.	The requesting party will be responsible for the appropriate apportionment of the lowest cost solution to meet applicable Laws (codes and regulatory standards – not company policies/practices).	FEI Rebuttal Evidence, page 3, lines 14-16
2.	The only case where the Relocation Costs covered by FEI's Proposed Operating Terms would include more than the amount required to meet codes and standards is if the requesting party (Surrey) insists on having FEI install a more expensive alternative or perform additional work for the City's own reasons.	FEI Rebuttal Evidence, page 3, lines 16-19

[77] Exhibit B2-15, the City's responses to CEC IRs 2.5.5 and 2.5.6.
[78] Exhibit B2-14, the City's response to BCUC IR 2.13.1.

3.	For Gas Mains: • The amount subject to the allocation formula would be the least costly of the like for like steel or the equivalent capacity replacement PE Gas Main pipe needed to meet codes or regulatory standards. • Excavation, remediation, and other work involved in relocating the Gas Main itself remains the same irrespective of the pipe material chosen. • If FEI were to decide to increase the Gas Main pipe size to address future needs for increased capacity or otherwise improve the facilities, any such related additional or incremental costs above the least costly alternative (likely PE pipe) are paid by FEI.	FEI Rebuttal Evidence, page 3, lines 25-33
4.	For Service Lines: • The amount subject to the allocation formula would be the least costly of the code compliant alternatives to reconnect Service Lines.	FEI Rebuttal Evidence, page 4, lines 3-5
5.	For all relocation requests it is FEI's intention for the definition of Relocation Costs to capture only the cost of the lowest cost alternative necessary to comply with applicable Laws. That is, the Relocation Costs that are subject to the allocation methodology would include the lowest cost alternative for the Gas Main relocation plus the lowest cost alternative for the Service Line connections. FEI would pay for all additional or incremental costs associated with betterments, upgrades, improvements, or any other discretionary costs not required by applicable Laws.	FEI Rebuttal Evidence, page 5, lines 2-8
6.	Relocation Costs do not include costs related to relocation of facilities that are already identified for replacement under the owner's asset management plans.	FEI response to Surrey IR 1.3.4.1, Scenario #1

115. If the above table accurately describes the terms of FEI's current proposal for a definition of Relocation Costs, the City would agree that FEI's proposal is fair in principle, except for one detail. The City does not agree with FEI's stipulation that the definition

of Relocation Costs capture the cost of the lowest cost alternative *to meet applicable Laws (codes and regulatory standards)*. Under the stipulation "to meet applicable Laws (codes and regulatory standards), if codes and standards have evolved since the facilities were originally installed, and/or if the facilities were originally installed to sub standards and did not conform to the codes and standards in effect at the time, FEI's cost to upgrade such facilities to bring them into compliance with current codes and standards would be included in Relocation Costs and subject to the allocation methodology. For the reasons set out above, the City does not agree with this aspect of FEI's definition.

116. To provide clarity and context with respect to the Relocation Cost definition as it relates to including costs to upgrade to "codes and regulatory standards", in its response to BCUC IR 2.13.1 the City provided four specific examples that often arise between municipalities and gas companies, including case examples between Surrey and FEI. The City's Example #3 in that response concisely explains the issue as follows:

> "The City is making modifications (raising and/or widening) to an existing roadway bridge to which FEI has an existing gas pipeline attached. FEI requires the City to relocate the gas pipeline prior to the bridge modifications works being done and as part of such FEI requires the City to add isolation valves on FEI's gas main on either side of the river crossing because that is identified within CSA Z662 standard for river crossings. The City is of the position that if FEI's existing pipeline does not have isolation valves on either side of the bridge then the City should not have to pay FEI's costs to bring FEI's pipeline into compliance with the standard."

117. The City further believes that it might be fair to base the Relocation Costs on the lowest cost alternative necessary to comply with applicable laws (codes and regulatory standards –not FEI policies/practices) if the facilities to be relocated already meet the

current codes and standards (in which case there is no upgrading/betterment), but not if:

- the facilities to be relocated were installed to lesser standards and now have to be upgraded to meet current codes and standards, or
- the facilities to be relocated were subject to inaccurate or defective installation and FEI now has to bring them into compliance as part of the relocation project.

118. If the BCUC agrees with the City's position as set out in section 2.3.2, above, that the Pipeline Crossing Regulation's cost allocation methodology shall apply whether the affected FEI facilities are high pressure pipelines or low pressure gas mains, then the City would agree to FEI's proposal for a definition of Relocation Costs for an operating agreement as set out in paragraph 114 of this final argument. That is, the City would in such case be agreeable to a definition of Relocation Costs that captures the cost of the lowest cost alternative to meet applicable Laws (codes and regulatory standards - not FEI policies/practices).

2.5. Release of SROW for Highway Dedication

2.5.1. BCUC Jurisdiction – Release of SROW

119. The City has accepted that the BCUC does not have jurisdiction to, by order, require FEI to extinguish its private interests in land in all cases whenever requested by the City and without regard to the circumstances of each case.[79] Consistent with the City's submissions above that the BCUC does not have jurisdiction to order terms that require FEI and/or the City to contravene section 21 of the *Oil and Gas Activities Act* or the Pipeline Crossing Regulation, the City believes that the BCUC also does not have jurisdiction to order terms that require FEI to release its legal SROW rights or waive its rights under the *Expropriation Act* in all cases.

[79] Exhibit B2-8-1, the City's response to BCUC IR 1.10.1.

120. On the other hand, FEI has contradicted itself in its submissions on BCUC jurisdiction in this proceeding. Specifically, FEI argues that the BCUC does not have jurisdiction to order terms that require FEI to abandon its SROW rights or its rights under the *Expropriation Act*,[80] but as discussed above, FEI also argues that the BCUC has jurisdiction to order terms that require the City to abandon its rights to the prescribed cost allocation methodology under the Pipeline Crossing Regulation. The City submits that FEI is correct that the BCUC does not have jurisdiction to order terms for FEI's use of public places in Surrey that require FEI to abandon its rights under the *Expropriation Act* without FEI's consent. Similarly, the BCUC does not have jurisdiction to order terms for FEI's use of public places in Surrey that require the City to abandon its rights under the Pipeline Crossing Regulation.

2.5.2. The City's position – Release of SROW

121. In negotiating new terms for an operating agreement with FEI, release of SROW for highway dedication was an important issue for the City because the City regularly has projects to create or widen highways or that require developers to create or widen highways, and it is much more efficient (in terms of both time and cost) if persons having an interest in the land to be dedicated as highway consent to the dedication instead of the cumbersome and potentially costly expropriation alternative. The process is even more cumbersome and costly if FEI has mortgaged its SROW interest (which in the City's experience is often the case) and as a result the SROW is burdened by interests of mortgagees or charge holders which must also be extinguished through expropriation in order to effect a highway dedication and who may independently from FEI make claims under the *Expropriation Act*.

122. The City believes that expropriation is a particularly wasteful use of resources when it is FEI's interest in land relating to a buried pipeline because highway dedication will not result in any deprivation of FEI's right to keep its pipeline there and will in most cases result in enhanced rights (as rights under a SROW are extinguished and replaced by

[80] FEI Application, page 22, lines 31-34.

rights under the operating agreement). Moreover, pursuant to section 2 of the *Expropriation Act*, the Pipeline Crossing Regulation and orders of the OGC trump the provisions of the *Expropriation Act*, as follows:

> 2(1) If an expropriating authority proposes to expropriate land, this Act applies to the expropriation, and, if there is an inconsistency between any of the provisions of this Act and any other enactment respecting the expropriation, the provisions of this Act apply.
>
> …
>
> (1.3) Despite subsection (1), if there is an inconsistency between a provision of this Act and a provision of either a regulation under section 99(1)(m.1) of the *Oil and Gas Activities Act* [that is, the Pipeline Crossing Regulation] or an order [of the OGC] under section 76(6) of that Act, the provision of the regulation or order prevails.

123. Accordingly, the City's position is that having to expropriate FEI's interest and the interests of FEI's mortgagees in land relating to a buried pipeline is highly inefficient, and both parties would save time and resources if FEI consents to release its SROW in order to permit highway dedication and obtains the necessary consent of the mortgagees of its SROW interest, as set out in the City's proposed section 9 of its proposed terms for an operating agreement. That said, the City accepts that the BCUC does not have jurisdiction to order FEI to do so in all cases when requested by the City, and the City appreciates the comments and commitments FEI made in section 3.5 of its application respecting this matter.

2.5.3. The City's submissions respecting FEI's position – Release of SROW

124. The submissions above constitute the City's final argument on this issue.

3. Conclusions

125. The interactions between FEI and the City, and between FEI and other users of public places in Surrey (*e.g.*, residents and businesses) are frequent, complex and have significant impacts largely because Surrey hosts more FEI infrastructure (and particularly extensive high pressure pipelines) than any other municipality in the province, and has high rates of population and economic growth. As a result of those factors, there has been a history of disputes between the City and FEI related to FEI's use and occupation of public places in Surrey.

126. The public interest demands that the City and FEI move forward with new operating terms for FEI's use of public places in Surrey that address the problems that have arisen in the past and will undoubtedly continue in the future in the absence of new and appropriate operating terms.

127. After nearly three years of attempting to negotiate a new operating agreement that addresses the City's circumstances and the issues that have arisen in the past, the parties have reached agreement on many terms for an operating agreement; however, they reached an impasse on the following four matters necessitating the applications that are the subject matter of this proceeding.

128. Sections 2.2 through 2.5 of this final argument provide the City's detailed submissions on each of the four outstanding matters. The following briefly summarises the City's main points.

(i) *Methodology for calculating Operating Fee*

- FEI and the City agree that the new terms for an operating agreement should include an operating fee that FEI will pay to the City, but the parties do not agree on the methodology for calculating the fee.

- The City requests an operating fee calculated on the same basis as the operating fee FEI pays to about 75 other municipalities, which will equate to

a fee amount less than the costs the City estimates it incurs due to FEI's use and occupation of public places in Surrey.

- Approving the City's requested operating fee would not provide a "windfall" to the City. The operating fee revenue will reduce the need for other sources of revenue, primarily property taxes, to pay for the costs the City incurs as a result of FEI's activities in Surrey. The operating fee will therefore provide for a reallocation of some of the City's costs due to FEI from all taxpayers to FEI customers in Surrey. The operating fee is more of a user pay model, which the City believes is more equitable than continuing to require all taxpayers to pay for these costs whether or not they receive any benefit from FEI's activities in Surrey.

- The City agrees to waive any approval, license, inspection or permit fees, charges and security deposit requirements in respect of FEI's use and occupation of public places in Surrey on the condition of receiving the operating fee of 3.0% of FEI's gross revenues.

(ii) *Allocation of Relocation Costs for changes to FEI facilities*

- The parties do not agree on the methodology for allocating FEI's relocation costs as between FEI and the City.

- The City submits that the most principled, balanced, supportive of the public interest, and easy to administer approach to allocation of FEI's relocation costs is to apply the methodology prescribed in the Pipeline Crossing Regulation whether the affected FEI facilities are high pressure pipelines or low pressure gas mains.

- Alternatively, if the BCUC decides that the Pipeline Crossing Regulation cost allocation methodology should not apply to relocations of FEI's low pressure (less than 700 kPa) distribution gas mains required by the City, then the City

would support a seventeen-year sliding scale methodology for the allocation of FEI's costs to relocate distribution gas mains (and not high pressure pipelines, which remain subject to the Pipeline Crossing Regulation).

(iii) *Definition of Relocation Costs*

- In addition to disagreeing on the methodology for allocating FEI's relocation costs, the parties also disagree on the scope of costs that will be subject to reimbursement in accordance with allocation methodology.

- The crux of the issue is that the City believes it should not be responsible for any costs associated with FEI upgrading or bettering its facilities during a relocation project.

- If the BCUC agrees with the City's position that the Pipeline Crossing Regulation's cost allocation methodology shall apply whether the affected FEI facilities are high pressure pipelines or low pressure gas mains, then the City would agree to FEI's proposal for a definition of Relocation Costs as set out in paragraph 114 of this final argument. That is, the City would in such case be agreeable to a definition of Relocation Costs that captures the cost of the lowest cost alternative to meet applicable Laws (codes and regulatory standards - <u>not</u> FEI policies/practices).

(iv) *FEI obligation to release SROW interest for highway dedications*

- The City and FEI agree that the operating agreement should address the release of FEI's SROW rights and the obtaining of consent of the mortgagees of FEI's SROW interest when requested by the City for highway dedication; however, the parties disagree on the strength of FEI's commitment to consent to release its SROW interest and obtain the consent of mortgagees.

- This is an important issue for the City; however, the City accepts that the BCUC does not have jurisdiction to order FEI to release its SROW rights and/or to obtain the consent of the mortgagees of its SROW interest for highway dedication in all cases when requested by the City.

- The City appreciates the comments and commitments FEI made in section 3.5 of its application respecting this matter.

All of which is respectfully submitted this 31st day of May 2018.

By: _____

Ian D. Webb

Counsel for the City of Surrey

Tab 1

Legislative Summary

FEI is a public utility under the *UCA*. FEI is also a gas utility under the *Gas Utility Act* ("*GUA*") as follows:

> "gas utility" means a person that owns or operates in British Columbia equipment or facilities for the production, generation, storage, transmission, sale, delivery or furnishing of gas for the production of light, heat, cold or power to or for the public or a corporation for compensation, but does not include a company within the meaning of that word as defined in the National Energy Board Act (Canada)

Pursuant to subsections 2(1) and 2(2) of the *GUA*, a gas utility that on April 14, 1954 was carrying on business as a gas utility in a municipality, or to which a CPCN has been granted under the *UCA* or the legislation that preceded it, is authorized and empowered, subject to the *UCA*, to carry on its business as a gas utility in the municipality.

Pursuant to subsection 2(3)(c) of the *GUA*, such a gas utility (including FEI) may,

> place, construct, renew, alter, repair, maintain, operate and use its pipes and other equipment and appliances for mixing, transmitting, distributing, delivering, furnishing and taking delivery of gas on, along, across, over or under any public street, lane, square, park, public place, bridge, viaduct, subway or watercourse… in a municipality, <u>on the conditions that the gas utility and the municipality agree to</u> [underlining added]

If the gas utility and the municipality are not able to reach agreement on the terms and conditions of the gas utility's access to public places in the municipality for such purposes, the parties or either of them may seek relief from the Commission pursuant to section 32 of the *UCA*, as follows:

> 32 (1) This section applies if a public utility
>
> > (a) has the right to enter a municipality to place its distribution equipment on, along, across, over or under a public street, lane, square, park, public place, bridge, viaduct, subway or watercourse, and

> (b) cannot come to an agreement with the municipality on the use of the street or other place or on the terms of the use.
>
> (2) On application and after any inquiry it considers advisable, the commission may, by order, allow the use of the street or other place by the public utility for that purpose and specify the manner and terms of use.

Accordingly, FEI is authorized and empowered, subject to the *UCA*, to carry on its business as a gas utility in Surrey, and may construct, operate and maintain its distribution equipment on, along, across, over or under public places in Surrey on the terms and conditions FEI and Surrey agree to. Failing such agreement the Commission may, by order, specify the manner and terms of FEI's use of public places in Surrey for such purposes.

The parties have agreed on many terms for an Operating Agreement; however, they have not been able to reach agreement on all terms, necessitating the Application for an order pursuant to section 32(2) of the *UCA*.

Tab 2

A. EXISTING AND PROPOSED AGREEMENT OVERALL

1.0 **Reference: INTRODUCTION**
Exhibit B2-1, Section 1, p. 1
Enforceability of 1957 Agreement

On page 1 of the City of Surrey's application for approval of terms for an operating agreement with FortisBC Energy Inc. (FEI) (Application) filed with the British Columbia Utilities Commission (Commission), it states that "…FEI and its predecessors have occupied and used public places in Surrey for the purposes of natural gas distribution pursuant to a Natural Gas Distribution Agreement (the "1957 Agreement") between the British Columbia Electric Company Limited and the Corporation of the District of Surrey."

Further, in regards to City of Surrey and FEI's position on the 1957 Agreement, the Application states that "for some time, the parties have not agreed on the scope, validity and enforceability of the 1957 Agreement…" Consequently, City of Surrey states that "for the last two years the parties have been attempting to reach agreement on new terms (an "Operating Agreement") to replace the 1957 Agreement and provide certainty going forward."

City of Surrey attached as Appendix B to the Application, a proposed Operating Agreement.

1.1 **Please discuss whether City of Surrey views the 1957 Agreement as unenforceable and why. Please provide evidence to support your position.**

RESPONSE:

The validity, enforceability and scope of the 1957 Agreement are all moot points.

To the extent the 1957 Agreement was, prior to the Interim Agreement dated November 8, 2016, binding and enforceable, the parties have in the Interim Agreement agreed to its termination. A copy of the Interim Agreement has been provided as Appendix A to Surrey's application.

By entering into the Interim Agreement, Surrey and FEI have acted responsibly and in a manner contemplated by the legislative scheme and have avoided unnecessary litigation that would not be in the public interest.

In any event, Surrey's view is that there is no merit to the notion that the 1957 Agreement is binding and enforceable with respect to all past, present and future natural gas infrastructure FEI might install and operate in the city.

The following is a summary of some of the key arguments Surrey would make in support of a finding that the 1957 Agreement has been terminated and is not enforceable. The following is not an exhaustive list of all arguments, nor does it identify all the evidence that Surrey would rely upon in support of its position that the 1957 Agreement is not enforceable. As in any litigation process, Surrey would, among other things, rely on extensive document discovery and examinations for discovery in the same way Surrey did in the litigation between the parties that

resulted in the Court confirming the 1956 Agreement has been terminated.

Surrey's position is that the 1957 Agreement has been terminated by fundamental breach, repudiation, breach of condition(s) and/or notice.

Justice Pearlman held that the 1956 Agreement had been terminated by fundamental breach and repudiation. In coming to this decision Justice Pearlman found, among other things, that FEI's refusal to perform the upgrade work until Surrey accepted FEI's terms (which were inconsistent with the terms of the 1956 Agreement) deprived Surrey of substantially the whole of the commercial benefit of the 1956 Agreement and committed a breach that went to the root of the contract. Justice Pearlman held that FEI's delay in performing the pipeline upgrade was a fundamental breach of FEI's obligation to carry out work with "reasonable speed" when requested to do so by Surrey. Justice Pearlman further found that Surrey had accepted the repudiation when it delivered its application to the Oil and Gas Commission (OGC).

In asserting its view that the 1957 Agreement has also been terminated by fundamental breach and repudiation, Surrey would rely on some of the same evidence that was before Justice Pearlman as well as project specific evidence and evidence related to other projects.

The conduct examined in the Fraser Highway dispute, which led to the findings of fundamental breach and repudiation of the 1956 Agreement, mirrors FEI's conduct over the years in many other projects in Surrey. The common theme being, Surrey has incurred delays, additional costs and third party claims because of FEI's conduct. Unless Surrey agreed to the terms demanded by FEI, notwithstanding that the terms are inconsistent with the terms of the 1957 Agreement, necessary alterations and relocations of FEI pipelines to accommodate Surrey highway and infrastructure projects was not or would not be performed by FEI. Among other things, before beginning to review Surrey designs, FEI required, in advance, essentially a blank cheque in the form of a purchase order and agreement to cover any and all costs FEI incurred regardless of any estimate that it may have provided. FEI also required Surrey's agreement to other terms and conditions unfavourable to Surrey and inconsistent with the terms of the 1957 Agreement.

Faced with the risk of additional costs and liability associated with project delays, including claims by third party contractors who have been awarded the construction project and the risk of losing federal or provincial project funding tied to deadlines, Surrey has had no option but to accede to FEI's demands over the years and to, among other things, make applications to the OGC seeking orders that FEI perform the necessary pipeline work in an effort to mitigate delay.

Like the 1956 Agreement, the 1957 Agreement similarly contained an obligation to carry out work with reasonable speed:

> *4. Upon the written request of the Corporation or the Municipal Engineer on its behalf, the Company shall change the location (which in the case of pipe means any change of either or both of line and elevation) of any part of the said works on public property to some other reasonable location on public property, and shall carry out each such change* ***with reasonable speed****.*

Recent projects where Surrey's work was delayed by FEI and as a result Surrey incurred additional costs and/or claims include, but are not limited to, the following:

a) Surrey works associated with Robert's Bank Railway Corridor Combo Project (192nd Street Overpass) were significantly delayed as a result of FEI's conduct and resulted in a delay claim in excess of $1.7 million dollars which FEI has refused to pay. The nature of FEI's conduct is summarized in Surrey's demand letter to FEI which is the nature of evidence Surrey would advance. A copy of the letter is provided as Attachment 1.

b) Surrey highway and intersection improvements in and around the most northerly intersection of 168th Street and 48th Avenue for which design drawings were submitted to FEI in April 2010 and because of FEI refusing to perform necessary work to accommodate the project, Surrey had no option but to make an application to the OGC in November 2010 ultimately obtaining an Order in February 2011 from the OGC requiring FEI to perform the necessary pipeline work. FEI did not complete the pipeline work until June 2011. Samples of evidence Surrey would rely on are provided as Attachment 2.

   The project impacted a high pressure pipeline owned and operated by FEI located within 168 Street that extended along 168th Street approximately between the intersection of 32nd Avenue and 168th Street and the intersection of 80th Avenue and 168th Street in Surrey, British Columbia.

In addition to failing to comply with the obligation to carry out work with "reasonable speed", in Surrey's view FEI has also breached the provisions related to indemnification and obtaining Municipal Engineer approval, and the provisions related to not damaging municipal infrastructure demonstrating further repudiation of the 1957 Agreement. On the later point of damage to municipal infrastructure, see Attachment 3.

Moreover, FEI created and issued permits to Surrey incorporating terms that, in Surrey's view, effectively rewrote the indemnity obligations and imposed additional liabilities and obligations on Surrey that amounted to a breach of the 1957 Agreement and that also demonstrate repudiation of the 1957 Agreement.

As a result of fundamental breach, repudiation (which has been accepted by Surrey) and by breach of condition(s), Surrey believes that it has been discharged from any further performance of the 1957 Agreement.

The conduct of the parties and the absence of evidence that the 1957 Agreement has been relied on or applied by the parties also supports a finding that the agreement has been repudiated.

In addition, as the 1957 Agreement has no termination clause, it is terminable upon reasonable notice which Surrey has effectively given on numerous occasions.

6.2 **Please describe how incremental costs of upgrading and/or betterment of facilities costs have been treated historically.**

RESPONSE:

When the City of Surrey has requested the relocation of FEI facilities, historically the City has paid for any and all costs specified by FEI, even betterment and/or upgrading that is of no benefit to the City and sole benefit to FEI. This is partially because FEI's definition of scope of work in quotations provided to the City and level of details on their invoices are insufficient for the City to assess whether betterment and/or upgrading is included in the quote/invoice, and in situations where the City has been able to assess that betterment and/or upgrading has occurred the City has unfortunately had to bear the costs because FEI has refused to complete any alteration / relocation works unless Surrey provides a Purchase Order (PO) for the entirety of the scope of work as determined by FEI.

In recent history, the City has through persistence been able to obtain a clearer scope of work from FEI, with a more detailed breakdown of costs and design drawing illustrating the extent of works. Through these recent projects, the City provides the following examples of betterment and/or upgrading. The City is able to provide more examples, however, those identified below should provide sufficient information to illustrate the status-quo and why it is unreasonable and cannot continue to occur.

<u>Eldorbud Sanitary Sewer</u>

One of the City's capital projects was to install a new sanitary sewer and water main in Eldorbud Place, south of 60 Avenue, and as part of the utility works the City requested FEI relocate 210m of their existing 88mm steel distribution pressure (DP) Gas Main. On January 11, 2017, FEI provided a design drawing for the relocation, with the drawing (refer to Attachment 1) showing the replacement of the existing 88mm steel gas main with an 114mm plastic pipe, which is an upsize and betterment as the inside diameter of the plastic pipe is larger than the steel pipe. The drawing also included fine print notes, specifically:

Note 3: Install tracer wire and bonding cable.
Note 4: Test and Transfer six (6) existing plastic services to new gas main
Note 5: Renew five (5) steel services to plastic pipe
Note 6: The standard depth of cover for gas mains in road allowances is 0.6m minimum.

On January 17, 2017, FEI submitted a quotation for the works in the amount of $90,238.68 (refer to Attachment 2) and as noted on the quotation, the scope of work was very limited and vague in its definition "Install new gas main 1.0m off east p/l of Eldorbud Place and abandon existing main on west side to facilitate new sanitary sewer connections". The scope of work and quotation did not mention: (i) the justification or cost allocation for bettering their gas main from 88mm to 114mm nor did it mention (2) the justification or cost allocation for renewal of five (5) service connections beyond the City's work limits.

The City's engineering consultant provided a probable opinion of construction cost for the FEI works in an amount of $45,000, which then triggered the City to ask FEI for clarification and a breakdown of the cost estimate so the City can assess the reasonableness of the costs. On February 14, 2017 FEI provided a breakdown of the costs (refer to Attachment 3), which illustrated the $90,238.68 included $22,200.00 for 12 Service Alterations, even though Surrey's relocation did not trigger service relocations/renewals and even though FEI's drawing indicated there are 11 services and not 12 as included in the quotation. This break down of costs did not further include, nor provide any reference to, the incremental costs to upgrade FEI's Gas Main from 88mm to 114mm as it was assumed to be embedded within the total costs consistent with the approach taken on the services. Thus, deducting the cost of the service work, the quotation from FEI to Surrey should have been for $68,038.68 ($90,238.68 less $22,200).

On March 07, 2017, FEI resent their design drawing (refer to attachment 4) to the City's engineering consultant for coordination.

The week of March 20, 2017, months after FEI completed their design and provided a quotation for the works, FEI visited the site / Eldorbud Place to review the site conditions and proposed FEI alignment. Following which, FEI elected to revise their design to have the Gas Main located 1.5m off property line (PL) instead of the previous 1.0m offset, due to proximity to power poles (refer to Attachment 5).

On April 6, 2017, FEI then revised their design drawings to reflect their decision to adjust the alignment to 1.5m off PL, at the same time FEI further decided, at their own discretion, to increase the pipe diameter to 168mm, thus making a further upgrade from the original 88mm, to a pipe nearly double the capacity (please refer to Attachment 6). FEI also resubmitted their quotation (refer to Attachment 7), with the description of the scope of work being unchanged and still not including any references to the betterment (service connection renewals) or upgrades (now 168mm instead of existing 88mm) nor was the offset from property line reflected. The quotation amount changed to $87,356.12, with no detailed explanation or breakdown as to why, nor was the City able to ascertain if the costs for the increased betterment to a 168mm are included or excluded.

On April 7, 2017, Surrey informed FEI that the City should not be paying for betterment or upgrading and requested further discussions on cost allocations for these items, which discussions where then initiated.

On June 05, 2017, FEI provided a revised quotation (refer to Attachment 8), with a much more clarified scope of work, in the amount of $73,621 which is a significant reduction from original $90,238.68 once FEI removed the betterment costs for the service renewals, and yet the original upgrade from 88mm to 114mm was still not clarified. Moreover, the City notes that the 3rd quotation received ($73,621) is still higher than what the quotation should have been ($68,038.68 as noted above) based on FEI's original quotation and further breakdown of costs. This leads the City to formulate the opinion that the costs for the second upgrade to a 168mm diameter were actually passed onto the City in the quotation even though FEI indicates otherwise, and without

the breakdown of costs the City cannot be certain as to how the costs were quantified.

On June 12, 2017 the City issued a PO in the amount of $73,621, even though we were not confident in the cost allocation, because FEI would not commence work until a PO was received (refer to Attachment 9) and the City could not afford any further delays since the original FEI design and cost estimate 6 months previous.

One month later, FEI's contractors commenced work and very shortly thereafter FEI's contractor ran into a conflict with utilities along the design alignment FEI had selected. FEI's contractors demobilized from the site, thus delaying the project and the City's contractor, and FEI then instructed the City to relocate the City utilities in conflict. On July 25, 2017, FEI informed the City that the City is responsible for all costs for FEI's contractor to date and all move-on costs and that all of these costs are over and above the original quotation (refer to Attachment 10). In addition to FEI's claim, the City's contractor was making a claim against the City that FEI has delayed the project and the contractor was seeking costs from the city. In essence, the City was facing delay claims from both FEI's contractor and the City's contractor over the same issue which was conflicts in FEI's design and the alignment they chose, and verified in the field on two occasions.

Barnston Drive Road Widening

At the intersection of 168 Street and Barnston Drive, Kinder Morgan's oil pipeline transverses west-east through the intersection, while FEI has an abandoned steel gas main that transverses north-south and is directly above Kinder Morgan's oil pipeline. Rather than remove their Gas Main from the Highway at the time of abandonment, FEI decided to leave the pipeline buried in the ground.

In Spring 2015 during construction of the road widening and storm sewer works at this intersection, the City discovered a conflict between FEI's existing 60mm Gas Main and the City's proposed storm sewer. The location of the conflict was 10m away from Kinder Morgan's pipeline and not directly impacting FEI's abandoned Gas Main (refer to Attachment 11).

While completing relocation of the 60mm Gas Main across the storm sewer, FEI secured a Proximity Permit from Kinder Morgan as FEI was working within 30m of their pipeline. Even though the FEI works were 10m away from the Kinder Morgan pipeline, as a requirement of doing gas works in the area Kinder Morgan required FEI to remove their abandoned Gas Main that was crossing the Kinder Morgan oil pipeline. This request was simply a requirement of one pipeline company to another so there is no interference of metallic pipelines in close proximity, and this requirement was not at the request of the City nor was it a requirement in order to complete the necessary relocation – it was simply a coordinated work because FEI happen to being working in the area. Rather than incurring the cost of this system improvement as FEI's own business operating expense, FEI put the cost of removal onto the City of Surrey (refer to Attachment 12) and unfortunately the City had to pay as we were already under duress with a contractor on-site and the City could not risk delay claims.

Hyland Creek Culvert at 148 Street

In 2013 the City was replacing the Hyland Creek culvert across 148 Street and raising the elevation of the road such that a new bridge could be installed. FEI's had an existing 60mm Gas Main along 148 Street that provided service from the north (65A Avenue), went across the creek and stopped north of the railway crossing and did not extend / loop to 64 Avenue.

During construction, a 50m long segment of FEI's existing 60mm Gas Main (directly at the creek crossing) had to be temporarily abandoned at the location of the creek to facilitate the bridge construction, however, abandonment would result in the property at 6455 148 Street not having gas service because FEI's system was not looped from 64 Avenue due to the existing railway. Rather than install a temporary 50m segment of gas main alongside the bridge construction, FEI required the City to pay for installation of 70m of 60mm Gas Main from 64 Avenue, below the Southern Railway (in a casing pipe), and connection on 64 Avenue, all at a very high cost of $114,000 (refer to Attachment 13). As part of this work, which was designed by FEI's engineers, FEI required the City to secure crossing permits and authorizations from BC Hydro and Southern Railway, and endure all the special terms and conditions of said permits.

FEI had an option to simply provide a temporary 50m service to the customer at 6455 148 Street and reinstate the existing Gas Main after the bridge was constructed, however, FEI elected to proceed with a longer, more expensive, relocation that provides long-term betterment to FEI's system as now they have a looped gas system and a permanent crossing beneath a railway. FEI required the City to the pay the costs of the betterment that was not needed to accommodate the City's work.

72 Ave Road Widening

In 2015 the City widened 72 Avenue between 192 Street and 196 Street and initially during design the City did not anticipate any relocations of FEI's Gas Mains as the proposed road grades were very similar to existing ground conditions. Once construction commenced, the City's contractor discovered there were significant locations where the existing FEI Gas Main only had 0.2 to 0.5m cover (refer to Attachment 14), which in the City's opinion is not in compliance with the minimum depth requirements per CSA Z662.

Initially FEI requested the City provide a PO for the costs to relocate the entire 220m length of Gas Main that was at insufficient depth of cover. Upon receipt of the PO request, the City and FEI had further discussions and agreed to cost share the Gas Main relocation, with FEI paying to relocate those specific lengths of Gas Main which at the present time did not have the adequate 0.6m cover and the City agreeing to pay the apportionment of costs for the lengths of gas main which did, at that time, have the minimum 0.60m cover but were going to have less than 0.60m cover with the proposed road grade. Based on actual depths surveyed and length of Gas Mains relocated, the final costs were shared FEI 39 : Surrey 61) due to the fact that 39% of the alignment had insufficient depth of cover under the then present conditions.

These examples demonstrate that FEI always seeks to recover "any and all costs" from the City,

even if it is to better their infrastructure to meet codes/standards or other reason. Eventual acceptance by FEI to not burden the City with the portion of costs attributable to FEI system betterment indicates that FEI ultimately agrees the City's proposed definition of Relocation Costs is fair and reasonable.

148 Street Widening

In 2016 the City completed road widening of 148 Street, between 66 and 72 Avenue. During construction, the City encountered 3 gas services that did not have sufficient depth of cover and requested FEI to relocate the services such that the City could proceed with the road works. In one of the locations, the existing gas service was buried directly below a wood landscaping wall, which was replaced to Allan block wall at same grades. FEI required the City pay for these costs (refer to Attachment 15) to better their infrastructure to meet code/standard requirement for depth of cover.

192 Street Widening

In 2013 the City completed road widening of 192 Street, between 72 and 73 Avenue.

As part of the road widening project, the City's contractor encountered 4 gas services along 192 Street (addresses 7329, 7331, 7337, 7339) that were installed at insufficient depth of cover. As shown on the City's design drawings and cross-sections for Sta. 3+880 and 3+900 (refer to Attachment 16) the proposed road grades at the location of these services is slightly higher than the original ground condition and not triggering a reduction in depth of cover nor the requirement for relocation in gas services. However, due to their shallow depth and non-conformance with depth of cover standards, FEI requested these services be relocated to a lower grade and that the City pay all the costs (refer to Attachment 17).

Once again, this betterment to meet depth of cover standards, whether it be FEI's own discretionary standard or CSA Z662, are costs that should not be borne by the City.

6.4 **Please provide details on what codes and standards and applicable laws are being referred to.**

RESPONSE:

The City of Surrey and FEI did not reach agreement on the definition of Relocation Costs for the operating agreement as the parties do not agree on the caveat at the end of the definition regarding the costs of upgrading and/or betterment of the party's facilities or the facilities of third parties.

FEI is of the opinion that Relocation Costs should exclude the costs of any upgrading and/or betterment *"beyond that which is required to comply with applicable Laws or sound engineering practices"*, which we understand means that essentially all costs of upgrading and/or betterment are burdened on the party requesting a change to the other party's facilities. Only if the upgrading and/or betterment is not required by the very broad and discretionary term "sound engineering practices" would they be excluded. Surrey has submitted information requests to FEI seeking clarification of what if any costs would be excluded by FEI's preferred caveat.

The City is of the opinion that any and all costs of betterment and/or upgrading the facilities of a party or of a third party shall not be included in Relocation Costs such that these costs shall be borne by the party that undertakes and benefits from the betterment/upgrading rather than burdening these costs on the party that simply requested relocation of facilities to accommodate work.

The City's requested wording for the caveat in the definition of Relocation Costs does not include the term "codes and standards". This term was used on page 9 of the City's application to help explain our view that costs of betterment and/or upgrading should not be included in Relocation Costs whether or not (even if) there is a code or standard that the party might believe justifies it doing the betterment or upgrade. A scope of work can expand to include just about anything and everything on the basis of "standards" or "sound engineering practice" when only a minor deflection is actually required.

In general terms, Surrey's requested wording for Relocation Costs is intended to address larger cost drivers/factors that broaden the scope of work in response to a request for relocation well beyond the specific limits being requested. The codes/standards that have frequent impact on the scope of work in response to requests for relocation are: (i) depth of cover requirements under CSA Z662, which covers design, construction, operation and maintenance of oil and gas industry pipeline systems, (ii) FEI's internal practices, procedures and engineering judgement, which are not publically available and are solely at the discretion of FEI, and (iii) City of Surrey's Engineering Design Criteria and MMCD Supplementary Specifications.

The City and FEI agree that FEI must adhere to the CSA Z662 code/standard for FEI's pipelines in the city. However, the City is of the opinion that if FEI has infrastructure that is not in compliance with CSA Z662 and the City requests that FEI alter a portion of said infrastructure to accommodate municipal work, the City should not be burdened with FEI's incremental cost to

bring its facilities into compliance with CSA Z662. FEI's costs to alter its facilities, as requested, should be Relocation Costs, and its incremental costs above and beyond that to comply with the applicable standard should not be. Likewise, CSA Z662 has frequently changed in the past 10 years and as this standard continues to change it is not Surrey's responsibility to reimburse FEI for its costs to keep its infrastructure up to the standard.

If the City is completing a capital project and there are changes to the depth of cover or surface restoration above a pipeline, FEI cannot mandate the City pay for relocation of FEI's infrastructure simply to be in accordance with FEI's opinion of "sound engineering" or simply because in FEI's opinion it would be easier for FEI to operate and maintain.

We provide the following historical examples to further articulate these issues and support the need for the caveat included in the City's preferred definition of Relocation Costs.

<u>173A Street Ditch Infill Project</u>

The City has plans to infill an existing ditch along the east side of 173A Street, south of 96 Avenue. At this specific location, FEI has existing 762mm and 1,066mm High Pressure Pipelines that run perpendicular across (below) the ditch and below 173A Street. The City's current design is to install a culvert and infill the ditch. The culvert will cross above FEI's High Pressure Pipelines. In April 2016 FEI issued an initial Pipeline Crossing Permit (see Attachment 1) and as a special condition of FEI's permit, FEI required:

> *The designed depth of cover over FortisBC gas pipeline must satisfy the following standard unless written consent has been provided by FortisBC:*
>
> *i. Minimum Depth of Cover: 1 .2 meters (4')*
> *ii. Maximum Depth of Cover: 1.8 meters (6')*

On September 19, 2017, the City, under the observation of FEI staff, located the existing FEI High Pressure Pipelines and surveyed their location. Currently, the existing 762mm pipeline has 0.57m depth of cover in the ditch and 2.4m below the road, while the 1,066mm pipeline has a depth of cover of 1.19m in the ditch and 3.5m below the roadway. Neither of the pipelines currently meets the standards stated in the Pipeline Crossing Permit FEI issued to the City and in fact the 762mm pipeline appears to be in non-conformance with CSA Z662.

Following the work to locate the FEI pipelines, the City raised the discrepancy between existing pipeline depths and FEI's permit crossing requirements and specifically sought clarity from FEI staff on "cover specifications within creeks and ditches". FEI staff replied that "each situation is to be approved by engineering and can vary so there is no general rule except a minimum of 12" separation which will be required in this case." Refer to Attachment 2.

This example illustrates that FEI's opinion is that there are no objective rules, codes, standards, and that is up to their engineering group to decide what is required apparently on a case-by-case

basis. In this case, it would likely cost in excess of $1 million to do the work necessary to comply with the requirements stated in FEI's Pipeline Crossing Permit.

The City also notes that the pipelines in this example are high pressure and under the cost allocation provisions of the Pipeline Crossing Regulation; however, FEI demands that the City pay all of FEI's costs to bring its pipelines up to code/standard simply because the City happens to have a project in and around FEI's deficient infrastructure. The City should not be burdened with FEI's costs.

105 Ave Connector Project

The City of Surrey is considering constructing a new road across FEI's High Pressure Pipelines at 105 Avenue, east of 140 Street. As part of the design process the City has approached FEI to secure a Pipeline Crossing Permit. FEI's response (refer to Attachment 3) is as follows:

> *Here are the requirements and recommendation prior to any road construction:*
>
> *1. Prior to any road construction, the existing 610mm transmission pressure gas pipeline shall be exposed for the length of the road boundaries with 1.5m buffer on each side of the travelled surface of the road. Ones exposed, the pipeline shall be thoroughly inspected for defects including coating damage, corrosion, dents, etc with repair if necessary; and all existing pipeline welds exposed shall be non-destructively tested or repairs conducted as approved by FortisBC Engineering.*
>
> *2. The vehicle crossing shall be constructed so that the angle between the centerline of the road and the centerline of the pipeline as close to 90 degrees as possible and in no case less than 45 degrees.*
>
> *3. Final depth of cover above the gas lines within the road allowance shall be a minimum of the following: 1200mm under all traveled road services*
>
> *4. Selection, placement and compaction of the soil used for embedment and backfill shall meet the requirement outlined in FortisBC standard.*
>
> *Our Engineering is currently performing the cost estimate for this project. As soon as I hear back from them I will let you know. Are we going to address the quotation to the City of Surrey?*

Firstly, FEI wants the City to locate and excavate their existing infrastructure and do condition assessment testing for defects, damages, dents, etc. While this might be "sound engineering practice" to complete, the City is of the opinion these types of activities are the responsibility of FEI as part of their operation and maintenance and all related costs should be borne by FEI. It is not known at this time of the design stage if FEI will need to alter/relocate its pipeline, yet as we understand it, these costs would be included in FEI's proposed definition for Relocation Costs.

Secondly, FEI states the minimum depth of cover within "the road allowance", not just the travelled road, "shall be 1200mm" which is in direct contradiction to the example above on 173A Street, even though both project correspondence occurred within one week of each other and from the same FEI Right-of-Way Department. FEI staff do not appear to be aware of what codes/standards apply to their own pipelines, and if they are aware then they are not consistent as to what the applicable depth of cover requirements are nor are they aware as to what should be done with existing pipelines that are non-conforming. This inconsistency is not acceptable, particularly when the potential High Pressure Pipeline alteration/relocations cost in excess of $1 million for each pipeline and have the ability to induce significant delay costs on the City's projects.

Thirdly, the City assumes that FEI is not suggesting that the City dig up FEI's entire High Pressure Pipeline and re-bed the pipeline with a different type of soil around the pipe as that activity would pose an unnecessary safety risk to the pipeline. Another matter raised is that all "backfill", presumably above the pipeline and below the travelled road, shall meet "FortisBC standard". The City is unaware as to what "FortisBC standard" means, and if one exists, the soil backfill may be in contradiction to the Master Municipal Construction Documents (MMCD) and City of Surrey Supplementary Standards. This further illustrates that the City's proposed definition for Relocation Costs is prudent as neither the City nor FEI staff themselves are clear on the "standards" FEI may have and/or develop over the term of the Operating Agreement.

<u>Eldorbud Sanitary Sewer</u>

On this particular project, the City requested the relocation of an existing steel FEI distribution gas main. FEI's position is that it no longer uses steel for distribution mains, even though FEI still uses steel for High Pressure Pipelines in the same streets and soil conditions. In addition to deciding to install plastic/polyethylene gas main, FEI also elected as part of the project to install a secondary conduit (non gas) with a bonding wire such that the bonding wire can be welded to the existing steel gas pipelines that remain in services on the adjoining streets.

The City is of the opinion that FEI replacing its steel pipe with a new polyethylene pipe is not a betterment as it is immaterial in nature and costs; however FEI's decision to install a secondary conduit (with bonding wire) plus replace metallic gas services from the main to the meter/ house with plastic/polyethylene pipes are both considered betterment that should not be included in Relocation Costs.

If FEI simply replaced the existing metallic gas pipe with a new metallic pipe then the "scope creep" of the secondary conduit and replacement of gas services would not be needed. Moreover, the City is of the opinion that gas service renewals and work on third party facilities on private property beyond the work limits of the City's capital project should not be included in Relocation Costs. The City's work is being completed entirely within the road allowance and does not require any change to off site third party facilities. The only basis for including the cost of betterment and/or upgrading of third party facilities well outside the work limits is a

continuation of FEI's historical practice of using its position to demand that Surrey pay whatever FEI specifies in its discretion.

While the City understands that it might be cost-effective for FEI to take the opportunity presented by a relocation project to replace metallic mains and gas services with polyethylene services (e.g., to reduce FEI's future costs), the City should not be burdened with the costs of such upgrading/betterment which is to the benefit of FEI and its customers in the form of lower future costs. FEI's preferred definition of Relocation Costs should not be approved because the additional costs resulting from FEI's decision to undertake work well beyond a "like for like" relocation may be argued to be "sound engineering" and/or aligned with internal FEI practices and procedures.

Under the City's requested definition of Relocation Costs, the change in pipe material from steel to polyethylene is immaterial in costs and would form part of the Relocation Costs. However, the "scope creep" to include a secondary conduit and bonding wire, and replace all existing metallic gas services is considered betterment and these costs are not included in the Relocation Costs.

South of Fraser Rapid Transit

As part of the initial design stages of the South of the Fraser Rapid Transit project in Surrey, a consulting team of Hatch Mott MacDonald, Steer Davies Gleave and Stantec has been retained to provide reference design consulting services including initial developing scope of work for third party relocations. As part of their effort, the consulting team met with FEI staff on March 23, 2016 and June 2, 2016. Meeting minutes provided to the City as follow-up to these meetings (refer to Attachment 4), clearly indicate that FEI staff:

1. Cannot confirm the depth of FEI's High Pressure Pipelines that cross the municipal Highways of 104 Avenue, King George Boulevard and Fraser Highway.
2. Gas Mains (low pressure pipelines) are to have a minimum of 0.60m depth.
3. If replacing an existing steel distribution system with polyethylene pipe, which is FEI's preference and not a code/standard requirement, the entire system including services requires upgrades to avoid corrosion issues and this would require upgrades of the service on private property from the property line to the gas meter / house.

Firstly, FEI staff were unaware of the existing depth of cover over their infrastructure and yet they seek to impose minimum depth requiring the proponent to correct existing deficiencies with FEI's infrastructure.

Secondly, in this case FEI staff were of the opinion that there is a minimum depth of cover, which contradicts FEI's position in the 173A Street example above, and that the minimum standard is 0.60m for low pressure pipelines. The City cannot confirm whether this matches the requirements of CSA Z662 and only raises this as another example showing that FEI staff are not certain as to whether there is a minimum depth of cover "code or standard".

Thirdly, FEI staff are of the opinion that if a gas main is relocated and replaced with a polyethylene main then "their entire system including services requires upgrades to avoid corrosion and this would include upgrades of the service on private property" and that the proponent should bear all of the costs. Once again, this illustrates that replacing steels mains with polyethylene is a betterment and/or upgrade because it reduces corrosion issues and future maintenance costs for FEI. FEI further expects the proponent to pay for upgrades of services owned by third parties on private property even though the project limits do not extend beyond road allowance in all locations.

Lastly, this supports our contention that FEI intends to charge Surrey the costs of upgrading FEI's entire system and third party services in the city by exercising broad discretion to scope work and discretionary standards. FEI should not have such discretion to include potentially unlimited upgrading and/or betterment costs in Relocation Costs.

CITY OF SURREY'S RESPONSE TO BCUC INFORMATION REQUEST NO. 2
FILED: MARCH 2, 2018

13.0 **Reference: Definition of Relocation Costs**
Exhibit B1-9, City of Surrey IRs 1.3.3, 1.3.4, pp. 23-25; Exhibit B1-12, pp. 1-5
Fairness of FEI's relocation proposal

FEI's response to City of Surrey IRs 1.3.3 to 1.3.4 and section 1.1 of the FEI Rebuttal Evidence further explain how FEI's relocation proposal would work.

13.1 Does City of Surrey have objections to the fairness of the FEI proposals? Please explain any objections and why the City of Surrey proposal would be more fair.

Response:

Based on FEI's Rebuttal Evidence (Exhibit B1-12) and response to Surrey IR 1.3.4.1, the City of Surrey understands that the following are the key terms of FEI's current proposal for a definition of Relocation Costs for an operating agreement with the City:

	FEI Proposal	Reference
1.	The requesting party will be responsible for the appropriate apportionment of the lowest cost solution to meet applicable Laws (codes and regulatory standards – not company policies/practices).	FEI Rebuttal Evidence, page 3, lines 14-16
2.	The only case where the Relocation Costs covered by FEI's Proposed Operating Terms would include more than the amount required to meet codes and standards is if the requesting party (Surrey) insists on having FEI install a more expensive alternative or perform additional work for the City's own reasons.	FEI Rebuttal Evidence, page 3, lines 16-19
3.	For Gas Mains: • The amount subject to the allocation formula would be the least costly of the like for like steel or the equivalent capacity replacement PE Gas Main pipe needed to meet codes or regulatory standards. • Excavation, remediation, and other work involved in relocating the Gas Main itself remains the same irrespective of the pipe material chosen. • If FEI were to decide to increase the Gas Main pipe size to address future needs for increased capacity or otherwise improve the facilities, any such related additional or incremental costs above the least costly alternative (likely PE pipe) are paid by FEI.	FEI Rebuttal Evidence, page 3, lines 25-33

4.	For Service Lines: • The amount subject to the allocation formula would be the least costly of the code compliant alternatives to reconnect Service Lines.	FEI Rebuttal Evidence, page 4, lines 3-5
5.	For all relocation requests it is FEI's intention for the definition of Relocation Costs to capture only the cost of the lowest cost alternative necessary to comply with applicable Laws. That is, the Relocation Costs that are subject to the allocation methodology would include the lowest cost alternative for the Gas Main relocation plus the lowest cost alternative for the Service Line connections. FEI would pay for all additional or incremental costs associated with betterments, upgrades, improvements, or any other discretionary costs not required by applicable Laws.	FEI Rebuttal Evidence, page 5, lines 2-8
6.	Relocation Costs do not include costs related to relocation of facilities that are already identified for replacement under the owner's asset management plans.	FEI response to Surrey IR 1.3.4.1, Scenario #1

If the above table accurately describes the terms of FEI's current proposal for a definition of Relocation Costs, the City would agree that FEI's proposal is fair in principle, except for FEI's proposal that the definition of Relocation Costs capture the cost of the lowest cost alternative necessary to comply with applicable Laws (codes and regulatory standards). Under FEI's definition, if codes and standards have evolved since the facilities were originally installed, and/or if the facilities were originally installed to sub standards and did not conform to the codes and standards in effect at the time, FEI's cost to upgrade such facilities to bring them into compliance with current codes and standards would be included in Relocation Costs and subject to the allocation methodology.

The City of Surrey remains of the view that it is not fair to require the municipality to pay any portion of incremental costs FEI incurs to upgrade or better its facilities, including to bring its facilities into conformity with current codes and standards. Compliance with codes and standards is the responsibility of the asset owner. If the municipality is only requesting FEI to relocate its facilities, any upgrading or betterment is not required by the municipality's request.

The City further believes that it might be fair to base the Relocation Costs on the lowest cost alternative necessary to comply with applicable Laws (codes and regulatory standards) if the facilities to be relocated already meet the current codes and standards (in which case there is no upgrading/betterment), but not if the existing facilities were installed to sub standards and now FEI is correcting defective or inaccurate installation at the time by bringing the facilities into compliance as part of the relocation project.

To provide clarity and context with respect to the Relocation Cost definition as it relates to including costs to upgrade to "codes and standards", the following are some specific examples that often arise between municipalities and gas companies, including case examples between Surrey and FEI. It is

important to note that CSA Z662 is the Standard/Code often referred to by FEI as a requirement it must follow when designing, constructing and maintaining gas pipelines; however, it is the City's position that Standard CSA Z662 does not set forth mandatory requirements but instead is a Standard to be used by persons competent to make technical judgements in the areas to which the Standard is being applied including engineering, safety and environmental protection. Thus there is no clarity as to whether or not FEI is bound by all the requirements of CSA Z662 and/or if its assets installed prior to mid 1990's, when CSA Z662 was first introduced and in effect, are "grandfathered" from this Standard. Since its first introduction in the mid 1990's, CSA Z662 has been regularly updated every 4 to 5 years and is scheduled for another update in 2019 with its draft pending review.

Example #1:

The City is widening an existing road from a 15m width to a 30m width and all works are being completed within the City's existing road allowance, and at the same road elevation. FEI has a transmission main that was installed in 1958 and the method of installation, depth of cover, type of joint welding and/or other design factors were based on engineering principles and professional judgment at the time and differ from those set out in CSA Z662.

During design, it was determined that FEI's pipeline does not meet the depth of cover recommended under CSA Z662 and the type of welding used in the 1950's was not that which is recommended by CSA Z662 for today's standards for roadways. As such, FEI has taken the position that Surrey ought to expose and inspect, 100% at Surrey's cost, the entire 30m of piping to assess that the pipe and welds can accommodate the traffic loads and if not FEI requires the entire 30m of pipe be altered/relocated or cased and that Surrey ought to pay for the alteration works to bring the pipeline up to standard. Surrey is of the position that it is not responsible for casing any of the pipeline, let alone the entire length, and Surrey's opinion is that these costs should be borne by FEI as it is FEI's obligation and duty to maintain its assets and bring them into compliance with standards and codes as required. Surrey should not be responsible for any of such costs simply because of the mere fact that the City has a project occurring at this location, especially when FEI has 1000's of kilometers of pipelines across the province which are in a similar situation of "grandfathered" non-compliance.

Example #2:

The City is installing a 100m long section of sidewalk directly above an existing FEI gas pipeline, circa 1960's, and the gas pipeline only has 0.3m depth of cover which is insufficient in accordance with the current edition of CSA Z662 Standards. FEI requires the City to expose and lower/relocate the entire 100m of gas pipeline to bring it into compliance with current standards, as FEI is of the opinion that in the 1960's the gas pipeline was likely installed to a standard 2ft 0.6ft bury although there is no survey information, nor as-built plan-profile nor inspection reports/photographs to confirm FEI's position. The City is of the position that it is FEI's sole requirement and cost to bring its pipeline into compliance with the current Standard.

Example #3:

The City is making modifications (raising and/or widening) to an existing roadway bridge to which FEI has an existing gas pipeline attached. FEI requires the City to relocate the gas pipeline prior to the

bridge modifications works being done and as part of such FEI requires the City to add isolation valves on FEI's gas main on either side of the river crossing because that is identified within CSA Z662 standard for river crossings. The City is of the position that if FEI's existing pipeline does not have isolation valves on either side of the bridge then the City should not have to pay FEI's costs to bring FEI's pipeline into compliance with the standard.

Projecting forwards, it is not unreasonable to foresee that as CSA Z662 continually changes, or another standard may come into effect, new standards may be introduced for gas pipelines across rivers in seismically sensitive areas, such as requiring horizontally directional drilling below the river or seismically restraining pipelines to bridge structures. Using the example illustrated above, if any such standard were to come into effect, it would be the City's position that such modifications to FEI's pipelines to meet the new seismic standards, including drilling beneath the river, would be solely the cost of FEI and not Surrey's because of the change in standards as well as the risk management and operational savings that FEI would enjoy.

Example #4:

Surrey is installing a new roadway across a FEI pipeline originally installed in 1958 and FEI requires the entire pipeline across the road allowance to be excavated and inspected for dents and damages, but not the pipeline beyond the new road allowance. FEI indicates this is a "code requirement" under CSA Z662 for proper maintenance of its pipelines in roadways, yet FEI is not completing this along the adjacent pipeline segments (in the non-road locations), nor is FEI completing such work on all of their other pipelines in roadways across the province. The City 's position is that given the City has never dug up nor exposed this FEI pipeline, any dents, damages or defects that may exist are a result of the installation methods in 1958 and not due to the City, and therefore any costs to inspect and repair the pipeline should be part of FEI's operating and maintenance expenditures and should not be borne by the City. Again, FEI's costs should not be imposed on the City based on the mere fact that the City has a project in the area.

In addition to the concerns above in relation to the Relocation Cost definition as it relates to including costs to upgrade to "codes and standards", the City's IR No. 2 to FEI seeks information to understand how FEI proposes to provide transparent information to the City to enable the City to verify that FEI's determination of Relocation Costs for a project complies with the terms proposed by FEI.

FortisBC Energy Inc. ("FEI") and City of Surrey Applications for Approval of Terms for an Operating Agreement
Project No. 1598915

CITY OF SURREY'S RESPONSE TO CEC INFORMATION REQUEST NO. 2

FILED: MARCH 2, 2018

5.2 Would both parties have a cost discipline if there was a pre-established threshold on every project such that the City would pay 100% of the relocation costs up to a certain level, and the parties would share the costs related to betterment and upgrades above that level? Please comment.

Response:

No, there would be less cost discipline with the approach outlined in the question above; if the City were to pay 100% of an agreed upon predetermined relocation cost, up to a certain level, and if both parties shared costs for betterment / upgrades above that level.

Addressing the later portion of the question first, upgrades and/or betterment solely benefit FEI and its ratepayers thus any and all costs associated with upgrades and betterment should be borne by FEI and not the City and its taxpayers. FEI has, in its rebuttal evidence, agreed that in principle incremental costs for upgrades and betterment shall be paid by FEI.

With regards to the first portion of the question, the City is of the position that there would not be any additional cost discipline for the following reasons:

1. When the City requests that FEI relocate its facilities, FEI develops the scope of work it will undertake and does not involve the City during such determination. Thus, the City is unable to ensure the scope of work defined by FEI is entirely and directly required due to the City's work, is the lowest cost solution and that there are no technically feasible lower cost alternatives.

   For example, in 2005 the City received a permit from FEI to construct road works along the existing 48 Avenue, west of 168 Street, across FEIs IP main, and FEI confirmed that no FEI facility relocations were required. Due to unforeseen circumstances the City did not proceed with its road construction project at that time. Subsequently, the City again sought to complete said works on the existing road and FEI indicated the 2005 permit expired and requested the City to issue a purchase order for $70,000 to relocate the IP main otherwise FEI would not authorize the City crossing its IP main. At the same time, the City was modifying the existing bridge on 168 Street and FEI requested another $239,030 to relocate its existing IP main on 168 Street and affix it to the bridge. The City did not agree with paying FEI $239,030 (100% of the cost) as the Regulations prescribe that FEI is responsible for 100% of its costs. Regardless of the dispute over cost allocation, FEI decided not to relocate its main onto the bridge but rather horizontally directional drill (HDD) beneath the Nicomekl River, without providing the City with an updated cost estimate nor the parties pre-agreeing to who is responsible for the costs. Nevertheless FEI invoiced the City for $973,832.91 for the works to drill below the river. This historical example demonstrates that FEI sometimes elects at its discretion and without the City's agreement to

proceed with a higher cost option, which may be for reasons that benefit FEI's ratepayers, but was not requested by the City and does not benefit he City's taxpayers.

2. When FEI provides cost estimates, it does not, and will not, provide sufficient level of detail and unit rates for the City to assess the reasonableness of the costs. Also, FEI's estimates do not provide an itemized scope of work, and the estimates include hidden contingencies which are developed in FEI's sole discretion without consent from the City. Without having itemized scope of work and unit rates on a transparent basis (and with hidden contingencies at FEI's discretion), the City is not able to assess the reasonableness of the costs proposed by FEI and agree upfront on a fixed cost.

3. In the City's experience, during construction FEI rarely inspects nor monitors their contractor's progress and quality of work on City initiated relocations. The City is not in a position to control and/or mitigate construction changes and claims from FEI's contractors, thus agreement to an upfront cost estimate plus a share of costs in excess of that without having the ability to manage construction and change orders is not a cost discipline based solution.

There is no effective cost discipline if one party is having to pay 100% of costs when said party has no control over the design, cost assumptions and estimates, the tendering / bidding process for the works, nor has the ability to manage and mitigate construction changes.

Tab 3

PIPELINE CROSSINGS REGULATION 147/2012

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Updated To:
[deposited June 25, 2012]

PIPELINE CROSSINGS REGULATION 147/2012

B.C. Reg. 147/2012

[deposited June 25, 2012]

Contents

[Provisions relevant to the enactment of this regulation: *Oil and Gas Activities Act*, SBC 2008, c. 36, s. 99.]

Definitions

1. In this regulation:

"Act" means the *Oil and Gas Activities Act*;

"enabled action" means the construction or activity that may be carried out by an enabled person;

"enabled person" means a person who, under section 76 (1) (c), (d) or (e) of the Act, may do anything referred to in subsection (1) (a) or (b) of that section;

"ground activity" means any work, operation or activity that results in a disturbance of the earth, including a mining activity as defined in section 1 of the *Mines Act*, but not including

(a) cultivation to a depth of less than 45 cm below the surface of the ground, or

(b) a disturbance, other than cultivation referred to in paragraph (a), of the earth to a depth of less than 30 cm;

"specified enabled person" means an enabled person that is the government, a municipality or the British Columbia Railway Company.

Pipeline crossing distances

2. (1) A ground activity is a prescribed activity for the purposes of section 76 (1) (b) of the Act.

(2) The prescribed distance for the purposes of section 76 (1) of the Act is 30 m.

(3) For the purpose of section 76 (1) (e) of the Act, the following requirements are prescribed respecting a person carrying out a ground activity at least 10 m away from the pipeline nearest to the site of the ground activity:

(a) subject to subsection (4), the person, before disturbing the earth for the purposes of the ground activity, must

(i) advise BC One Call of the proposed site of the activity, and

(ii) if BC One Call advises that there are one or more pipelines within 30 m of the proposed site of the activity, confirm with each pipeline permit holder that the pipeline is at least 10 m away from the proposed site of the activity;

(b) if physical contact is made with a pipeline as a result of the carrying out of the ground activity, the person must notify

(i) the commission, and

(ii) the pipeline permit holder of the contacted pipeline.

(4) A person is not required to comply with subsection (3) (a) respecting a ground activity if the person has, for another purpose, previously determined, in part on the advice of BC One Call, that the nearest pipeline to the proposed site of the ground activity is more than 30 m away from the site.

Cost allocation for pipeline crossings

3. (1) Subject to subsections (3) to (5), an enabled person is responsible for all costs incurred by the enabled person in carrying out an enabled action.

(2) Subject to subsections (3) to (6), an enabled person is responsible for any costs incurred by a pipeline permit holder as a result of the enabled person's carrying out of an enabled action, including, without limitations, costs

(a) to realign, raise or lower the pipeline,

(b) to excavate material from around the pipelines, and

(c) to add casing or other appurtenances that an official considers necessary for the protection of the pipeline.

(3) Subject to an order issued under section 76 (6) of the Act and to subsections (4) to (6) of this section, a specified enabled person is not responsible for any costs incurred by a pipeline permit holder as a result of the carrying out of an enabled action.

(4) The costs referred to in subsection (3) must be shared equally between the specified enabled person and the pipeline permit holder if

(a) the specified enabled person is a municipality, and

(b) the enabled action is the construction of a new highway within the boundaries of that municipality on either an existing right of way or a newly dedicated right of way.

(5) The costs incurred by a pipeline permit holder as the result of the carrying out of an enabled action must be shared equally between the enabled person and the pipeline permit holder if the enabled action is the construction of a new road for a subdivision within a municipality.

(6) The cost allocation rules set out in subsections (2) to (5) may be varied by agreement between the parties.

[Provisions relevant to the enactment of this regulation: *Oil and Gas Activities Act*, SBC 2008, c. 36, s. 99.]

Tab 4

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BRITISH COLUMBIA UTILITIES COMMISSION

ORDER NUMBER G-17-06

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IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

An Application by Terasen Gas Inc.
for Approval of Operating Terms for the Supply and Distribution of Natural Gas Service
within the District of Chetwynd

BEFORE: L.F. Kelsey, Commissioner
L.A. Boychuk, Commissioner February 2, 2006

WHEREAS:

A. On July 19, 2005, Terasen Gas Inc. ("Terasen") applied to the British Columbia Utilities Commission ("the Commission") pursuant to Section 32 of the Utilities Commission Act (the "Act") for approval of Operating Terms (the "Application") for the supply and distribution of natural gas service within the District of Chetwynd (the "District of Chetwynd", the "Municipality"); and

B. The Operating Terms proposed in the Application replace the Operating Agreement that was approved by Commission Order No. C-20-80 and extended by various Orders until June 30, 2005; and

C. On September 2, 2005 the District of Chetwynd filed a Reply to the Application and opposed, with reasons, the establishment of the new Operating Agreement; and

D. Commission Letter No. L-82-05 established a written inquiry into the Terasen Application including a timetable for submissions pursuant to Section 32 of the Act. The deadline for submissions was extended by Letter No. L-86-05. By Letter No. L-6-06 the Commission required further submissions from Terasen and the District of Chetwynd regarding the proposed commencement date of any new Operating Agreement; and

…/2

E. The Commission has reviewed the Application and the related submissions, which are discussed in the Reasons for Decision attached as Appendix A to this Order.

NOW THEREFORE pursuant to Section 32 of the Act, the Commission orders as follows:

1. The Operating Agreement proposed by Terasen on October 21, 2005, and amended as proposed by the District of Chetwynd on November 4, 2005, is approved, effective July 1, 2005, as set out in the attached Reasons for Decision.

2. The Operating Agreement between Terasen and the District of Chetwynd approved herein shall expire twenty-one years from the 1st day of July 2005.

3. Terasen and the District of Chetwynd are to file with the Commission an endorsed Operating Agreement in accordance with the terms approved by this Order and Reasons for Decision.

4. The terms of this Operating Agreement may be reviewed, upon application by Terasen or the District of Chetwynd, should the Commission determine that a significant revision is required.

DATED at the City of Vancouver, in the Province of British Columbia, this 28th of February 2006.

BY ORDER

Original signed by:

L.F. Kelsey
Commissioner

Attachment

TERASEN GAS INC.
Application for Approval of Operating Terms for the Supply and
Distribution of Natural Gas within the District of Chetwynd

REASONS FOR DECISION

1.0 BACKGROUND

Terasen Gas Inc. ("Terasen") is the successor to BC Gas Utility Ltd. ("BC Gas") and Inland Natural Gas Co. Ltd. ("Inland"). By Order No. C-20-80 dated June 17, 1980, the British Columbia Energy Commission granted a Certificate of Public Convenience and Necessity ("CPCN") to Inland approving its Operating Agreement with the Village of Chetwynd (now the District of Chetwynd) (the "District of Chetwynd", the "District", the "Municipality"). In compensation for the use by Inland of the public places within the boundary limits of the Municipality, the CPCN required Inland to pay an annual franchise fee to the District of Chetwynd equivalent to 3 percent of the annual gross revenues that Inland derived from sales of natural gas within the area encompassed by the Operating Agreement. The CPCN had a term of 21 years that ended on June 30, 2001. By Orders No. C-5-01, C-8-02, C-5-03 and C-13-04, the British Columbia Utilities Commission ("the Commission") approved one year extensions to the CPCN and the payment of the franchise fees until June 30, 2005.

2.0 TERASEN'S APPLICATION

On July 19, 2005, Terasen applied to the Commission pursuant to Section 32 of the Utilities Commission Act ("the Act") for approval of the Operating Terms for the supply and distribution of natural gas within the boundaries of Chetwynd ("the Application"). Terasen stated that it was unable to agree on the terms of an Operating Agreement with the District of Chetwynd. The Operating Terms proposed in the Application were described as being substantially similar to the terms in the Operating Agreements between Terasen and the Corporation of the City of Penticton and Terasen and the Corporation of the City of Salmon Arm, which were approved by Orders No. C-8-03 and C-7-03, except that the Operating Terms in the Application did not contain a provision for the payment of franchise fees and did not have a fixed term. Terasen excluded a provision for franchise fees to reflect the statement made in a May 14, 2005 letter from the Mayor of the District of Chetwynd (the "Mayor") to the Commission that the Mayor would recommend to Chetwynd Council that "we not collect franchise fees".

The following are excerpts from Section 32 of the Act.

Use of municipal thoroughfares

32 (1) This section applies if a public utility

(a) has the right to enter a municipality to place its distribution equipment on, along, across, over or under a public street, lane, square, park, public place, bridge, viaduct, subway or watercourse, and

(b) cannot come to an agreement with the municipality on the use of the street or other place or on the terms of the use.

(2) On application and after any inquiry it considers advisable, the commission may, by order, allow the use of the street or other place by the public utility for that purpose and specify the manner and terms of use.

The Application noted that pursuant to Section 45(2) of the Act, Terasen is deemed to have a CPCN to operate its system in the District of Chetwynd and to construct and operate extensions. The following are related excerpts from Section 45 of the Act.

Certificate of public convenience and necessity

45 (1) Except as otherwise provided, after September 11, 1980, a person must not begin the construction or operation of a public utility plant or system, or an extension of either, without first obtaining from the commission a certificate that public convenience and necessity require or will require the construction or operation.

(2) For the purposes of subsection (1), a public utility that is operating a public utility plant or system on September 11, 1980 is deemed to have received a certificate of public convenience and necessity, authorizing it

(a) to operate the plant or system, and

(b) subject to subsection (5), to construct and operate extensions to the plant or system.

(3) Nothing in subsection (2) authorizes the construction or operation of an extension that is a reviewable project under the *Environmental Assessment Act.*

(4) The commission may, by regulation, exclude utility plant or categories of utility plant from the operation of subsection (1).

(5) If it appears to the commission that a public utility should, before constructing or operating an extension to a utility plant or system, apply for a separate certificate of public convenience and necessity, the commission may, not later than 30 days after construction of the extension is begun, order that subsection (2) does not apply in respect of the construction or operation of the extension.

3.0 DISTRICT OF CHETWYND'S REPLY

On September 2, 2005 the District of Chetwynd filed a Reply to the Application and opposed the establishment of a new perpetual Operating Agreement on the following grounds:

a) Terasen's right to enter the municipality pursuant to Section 32 of the Act expired with the expiry of the 1980 CPCN.

b) It would be an error of jurisdiction for the Commission to approve an Operating Agreement for the use of municipal streets and other public property without considering, at the same time, the rates charged to consumers within the municipality. The municipality's position on appropriate compensation for use of municipal property may vary depending upon the rates to be charged to consumers within its municipal boundaries.

c) Approving an Operating Agreement that did not include provision for reasonable payment to the municipality would be an unlawful grant of assistance to a business contrary to section 25 of the Community Charter.

d) The terms of the Operating Agreement proposed by Terasen omits certain clauses that are critical to the District of Chetwynd.

The District of Chetwynd submitted that the Application should be brought under Section 36 of the Act and not Section 32. Section 36 of the Act provides as follows:

> **Use of municipal structures**
>
> **36** Subject to any agreement between a public utility and a municipality and to the franchise or rights of the public utility, and after any hearing the commission considers advisable, the commission may, by order, specify the terms on which the public utility may use for any purpose of its service
>
> (a) a highway in the municipality, or
>
> (b) a public bridge, viaduct or subway constructed or to be constructed by the municipality alone or jointly with another municipality, corporation or government.

The District of Chetwynd submitted that the proposed Operating Agreement must be considered in light of the rate structure that is applicable within the District of Chetwynd and relied upon Sections 45(7) to 45(9) of the Act which state:

45 (7) Except as otherwise provided, a privilege, concession or franchise granted to a public utility by a municipality or other public authority after September 11, 1980 is not valid unless approved by the commission.

(8) The commission must not give its approval unless it determines that the privilege, concession or franchise proposed is necessary for the public convenience and properly conserves the public interest.

(9) In giving its approval, the commission

(a) must grant a certificate of public convenience and necessity, and

(b) may impose conditions about

(i) the duration and termination of the privilege, concession or franchise, or

(ii) construction, equipment, maintenance, rates or service, as the public convenience and interest reasonably require.

The District of Chetwynd submitted that the removal of the 3 percent franchise fee would deprive the residents of Chetwynd of a reasonable fee for the use of publicly owned and maintained highways and other public places.

The District of Chetwynd also submitted that the Commission has no jurisdiction to impose a perpetual Operating Agreement. The District of Chetwynd noted that the Community Charter, section 22, imposes a 21 year limit on the term of Franchise Agreements. Section 22 of the Community Charter reads as follows:

Agreements granting exclusive or limited franchises

22 (1) A council may, by bylaw adopted with the approval of the electors, enter into an agreement that grants an exclusive or limited franchise for the provision of one or more of the following in accordance with the agreement:

(a) a public transportation system;
(b) water through a water supply system;
(c) sewage disposal through a sewage system;
(d) gas, electrical or other energy supply system.

(2) The maximum term of an initial agreement or a renewal agreement under this section is 21 years.

The District of Chetwynd submitted that if the Commission imposes the terms of an Operating Agreement on the District that the term be no more than a time sufficient to permit the review of the rate structure applicable to the District of Chetwynd at a Terasen Rate Design Hearing.

The District of Chetwynd also noted that the proposed Operating Agreement is deficient as it does not address the right of Terasen to maintain its works within the highways and other public places under the jurisdiction of the District of Chetwynd. It also proposed that the Operating Agreement should include an obligation on Terasen to maintain service levels within the boundary limits of the District of Chetwynd at least equivalent to those existing as of June 1, 2002 and to maintain other personnel and equipment sufficiently close to respond to emergency and other situations requiring prompt attention in accordance with any orders, standards, rules or practices established by the Commission.

The District of Chetwynd proposed that fees payable by Terasen under the Operating Agreement should include:

a) A franchise fee equal to 3 percent of the amount received by Terasen for gas consumed within the District boundaries. This fee represents compensation for the right to operate a gas distribution system within the District of Chetwynd.

b) A distribution margin fee equal to 6 percent of the revenue received by Terasen for the distribution of gas to residential and commercial gas customers and a fee of 3 percent of the distribution margin received to gas customers other than residential and commercial customers within the boundaries of the municipality. This fee is to pay for the use of municipal streets and other municipal property.

c) A fee of 10 percent of the total sum of the franchise fee and the distribution margin fee for the use of public highways and other public places within the District to deliver natural gas to consumers who do not reside within the boundaries of the District of Chetwynd.

The District of Chetwynd also proposed that the Operating Agreement contain a clause providing that if Terasen enters into an agreement with another municipality that contains terms and conditions more favorable than this Operating Agreement, that upon notice from the Municipality, this Operating Agreement is deemed to be amended to include such terms and conditions. The District of Chetwynd also proposed that the Operating Agreement include provisions for Statutory Standards regarding the design, installation and maintenance of Terasen works; a provision to avoid damage to public works; to notify the Municipality before Terasen undertakes any construction or maintenance activity; to identify that the Municipality cannot act unlawfully; to require Terasen to obtain Municipal permits; and to repair damage to Municipal property.

The District of Chetwynd stated that it has offered to Terasen to extend the terms of the current Operating Agreement until the District has an opportunity to participate in the next Terasen rate structure hearing or, alternatively, on a year-to-year basis.

4.0 REGULATORY REVIEW PROCESS

By Letter No. L-82-05, the Commission informed Terasen and the District of Chetwynd that the Commission would conduct a written inquiry into the Terasen Application pursuant to Section 32 of the Act. The inquiry would consider the Terasen Application, the Chetwynd Reply dated September 2, 2005, the previous correspondence on file with the Commission regarding the Chetwynd Operating Agreement and natural gas rates charged in Chetwynd. Letter No. L-82-05 established a timetable for further submissions on the Terasen Application with a deadline for a Terasen response of October 14, 2005 and a Chetwynd reply of October 19, 2005.

By letters dated October 7 and October 11, 2005, respectively, the District of Chetwynd and Terasen requested that their respective deadlines for submissions be extended by two weeks. By Letter No. L-86-05, the Commission approved an extension to the timetable for further submissions on the Terasen Application with a deadline for a Terasen response of October 21, 2005 and a Chetwynd reply of November 4, 2005.

5.0 TERASEN'S RESPONSE

On October 21, 2005, Terasen filed its response (the "Terasen Response") to the District of Chetwynd's September 2, 2005 submission. The Terasen Response included a new version of the proposed Operating Agreement that included the provision of Operating Fees of 3 percent and a term of 21 years effective from January 1, 2006 to December 31, 2026 (the "Second Agreement"). These changes effectively removed the exclusions from the Application and Terasen requested approval of this Second Agreement pursuant to Section 32 of the Act.

The Terasen Response also addressed the following issues raised by the District of Chetwynd in its September 2, 2005 submission as follows:

a) Terasen disagrees that Section 32 of the Act requires Terasen to have a separate right to use property owned or held by the Municipality in addition to Terasen's rights under Section 2 of the *Gas Utility Act* and its CPCN under Section 45(2) of the Act.

b) Terasen noted that the Commission (Letter No. L-36-05) stated that "Chetwynd suggests that it may no longer wish to collect franchise fees. As these are fees that a public utility collects on behalf of municipalities, it is unlikely that either Terasen or the Commission would object to a proposal from a municipality to eliminate franchise fees from a future Franchise/Operating Agreement." Terasen does

not agree that the District of Chetwynd will be disadvantaged compared to other municipalities if were not to collect franchise fees. While municipalities in the Interior of British Columbia collect franchise or operating fees, municipalities in the Lower Mainland do not collect franchise or operating fees.

Terasen noted that the District of Chetwynd has proposed fees of approximately 11 percent but also suggested that these fees should not be charged back to the residents of Chetwynd. Terasen objected to this suggestion as it would have the effect of Terasen either not recovering its cost of service or having to recover this cost from all customers served by Terasen.

c) Terasen had not proposed a termination date in its July 19, 2005 Application as it believed there was no exclusivity and therefore no franchise was offered. The proposed new Operating Terms contain a term of 21 years.

d) Terasen noted that it previously sent two versions of operating agreements to the District of Chetwynd for review and comment. The first version is the agreement that was signed by Penticton and Salmon Arm and approved by the Commission. The second version was a draft of the agreement that Terasen has been negotiating with the Union of British Columbia Municipalities ("UBCM") over the last three years.

As the District of Chetwynd had not indicated to Terasen that it would like to sign the draft UBCM agreement, and pay the UBCM a fee, Terasen repeated its offer to base the new Operating Agreement on the document that was filed in the July 19, 2005 Application except that revisions were made to include a 3 percent franchise fee and a term of 21 years. Terasen stated that it would not accept any other changes proposed by the District of Chetwynd.

e) Terasen referred to its April 29, 2005 response to the District of Chetwynd where Terasen submitted that "the issue of rates is not linked to that of franchise/operating agreements". Terasen also noted that Letter No. L-36-05 stated that:

> "The Commission concludes a municipal Franchise/Operating Agreement with the public utility that owns and operates the distribution system, and gas rates for customers served by the utility, raise issues that largely need to be resolved separately. To put it another way, the form and terms of a Franchise/Operating Agreement do not impact the Commission's conclusions on the appropriate allocation of gas rates to Terasen customers in Chetwynd."

6.0 CHETWYND'S RESPONSE

On November 4, 2005 the District of Chetwynd filed its response ("Chetwynd's Response") to Terasen's October 21, 2005 submission and addressed the following issues:

a) The District of Chetwynd was prepared to address the issue of new Operating Terms and by letter dated September 18, 2002 provided BC Gas with a copy of Terms and Conditions for a new Operating Agreement. BC Gas replied by letter dated November 7, 2002 and rejected the District of Chetwynd's proposed new Operating Agreement primarily due to the Municipality including a right to purchase the

BC Gas distribution system that was not a feature of the existing Chetwynd Operating Agreement nor a feature that BC Gas would include in other municipal Operating Agreements.

b) The District of Chetwynd did not choose to participate in the UBCM negotiations with Terasen since Chetwynd had already expended considerable time, effort and resources on negotiating its own new Operating Agreement. Chetwynd would prefer a short term extension to the 1980 Franchise Agreement or a new short term Operating Agreement so that it may review the UBCM-negotiated Operating Agreement.

c) The District of Chetwynd provided a copy of its proposed new Operating Agreement that is substantially similar in content to the Second Agreement that Terasen filed on October 21, 2005, but which the District revised to include its proposed revisions described in Section 3.0 of these Reasons.

d) The District of Chetwynd does not agree to a 21 year term and continues to be of the view that it would be appropriate to review the Operating Terms at the time of the next rate review hearing, which would be Chetwynd's opportunity to raise the issue of the rates charged to consumers within the boundaries of Chetwynd.

e) The District of Chetwynd notes that the proposed Operating Term runs from January 1, 2006 and proposed that if the Commission approves new operating terms, it should also extend the expired Operating Agreement to the end of 2005.

7.0 COMMENCEMENT DATE OF THE NEW OPERATING AGREEMENT

By Letter No. L-6-06 the Commission required submissions from Terasen and Chetwynd regarding the proposed commencement date of a new Operating Agreement, i.e. should the commencement date of a new Operating Agreement be July 19, 2005 (the date of the Terasen Application), January 1, 2006 (the date proposed in Terasen's Revised Application) or some other date? A response from Terasen was required by January 31, 2006 and from Chetwynd by February 7, 2006.

By letter dated January 27, 2006, Terasen proposed a commencement date of July 1, 2005 for the new Operating Agreement. By letter dated February 7, 2006, the District of Chetwynd also proposed a commencement date of July 1, 2005 for the new Operating Agreement.

8.0 COMMISSION DETERMINATION

Applicability of Sections 32, 36 and 45 of the Act to the Application

The Commission agrees with Terasen that Section 32 of the Act is applicable for the review of this Application. Terasen, by virtue of Section 45(2) of the Act, is deemed to have a CPCN that does not expire. Terasen has the authority under Section 45(2) to operate the plant or system and to construct and operate extensions to the system; therefore it meets the requirements of Section 32 of the Act for review of the Application.

Franchise Fee or Operating Fee

In Section 5.0 of these Reasons, an excerpt from Commission Letter No. L-36-05 is provided wherein the Commission observed that franchise fees are collected by a public utility on behalf of municipalities. Terasen estimates that the fees proposed by the District of Chetwynd total approximately 11 percent. Terasen objects to the suggestion by Chetwynd that these fees should not be charged back to the residents of Chetwynd as Terasen would either not be able to recover its cost of service or would have to recover these costs from all customers served by Terasen.

In the Commission's view, a franchise fee or operating fee arrangement that does not allow Terasen to recover its cost of service would represent an unjust or unreasonable rate under Sections 59 and 60 of the Act. The Commission notes that the Operating Fee under the expired agreement was 3 percent. The District of Chetwynd has proposed additional fees related to Terasen operations in the area. The Commission has not previously approved operating agreements that contain operating fees greater than 3 percent and is not persuaded to do so in this instance. **Accordingly, the Commission approves an operating fee of 3 percent in the new Operating Agreement.**

Term of the new Operating Agreement

In Section 6.0 of these Reasons, the District of Chetwynd states that it does not agree with a 21 year term and submitted that if the Commission imposes the terms of an Operating Agreement on the District, the term be no more than for a period of time sufficient to permit the review of the rate structure applicable to the District of Chetwynd at a Terasen Rate Design Hearing.

The Commission continues to hold the view expressed in Letter No. L-36-05 that franchise/operating agreements and gas rates for customer are issues that largely need to be resolved separately and, therefore, finds no compelling reason for a new short-term Operating Agreement given that rate matters are determined and set by the Commission from time to time in the duration of any operating agreement.

In response to Commission Letter No. L-6-06, both Terasen and the District of Chetwynd proposed that the term of the new Operating Agreement commence on July 1, 2005. **The Commission considers that a term of 21 years is appropriate for the new Operating Agreement and it should be effective July 1, 2005.**

Form of the new Operating Agreement

The Commission has reviewed the Second Agreement submitted by Terasen on October 21, 2005 and the proposed revisions thereto submitted by the District of Chetwynd on November 4, 2005. The Commission notes that the District of Chetwynd's proposed new Operating Agreement is substantially similar in content to the Operating Agreement that Terasen filed on October 21, 2005 before the agreement was revised to include the District's proposed revisions.

The Commission approves the Second Agreement proposed by Terasen on October 21, 2005 as amended by the following approved revisions proposed by the District of Chetwynd. The following table summaries the revisions proposed by the District of Chetwynd and the Commission's determinations.

Revisions Proposed by the District of Chetwynd

Section of Operating Agreement	**Proposed Revision**	**Commission Determination**
5.1 Company to Indemnify Municipality	Insert "or claims made by" Delete "execution" Insert "exercise"	Revision not approved. The proposed changes do not seem necessary since "claims" already appears on line 2 and "execution" appears on line 5 of this Section.
5.2 Company to Indemnify Municipality	Insert paragraph on removal of liens on Public Places	Revision approved.
7.1 Notice Except in Emergencies	Delete "As and when required by the Municipality"	Revision approved.
10.1 Other Approvals, Permits or Licences	Insert "and insofar as it lawfully can" Insert description of other fees for water, sewer, garbage etc. and types of fees	Revisions approved.
10.2 Other Approvals, Permits or Licences	Insert paragraph on payments for any rates, taxes or assessments; bylaws and legislation	This Section is not required since it deals with "any" rates etc. while Section 10.1 deals with identified rates etc. or types of fees. Revision is not approved.
15.1 Damage to Municipal Facilities	Insert "works or" Insert sentence on Company obtaining written consent before proceeding with repairs	Inserting "works or" is approved. Requiring written consent before commencing repairs could result in delays. Revision is not approved.
15.2 Damage to Municipal Facilities	Insert paragraphs that deal with carrying out remedial work within 10 days, remedy any defects at Terasen's cost for 3 years from completion or reimburse Municipality	15.2(a) is approved. The 10 day deadline however, may not be appropriate for all situations and weather conditions. No evidence that required repairs had been unnecessarily delayed by Terasen. Revision 15.2(b) is not approved.
16.5-16.10 Fee to be Paid to Municipality	Inserts paragraphs for the 6 percent fee on residential and commercial revenue within Municipal boundaries, the 3 percent distribution fees for sales outside Municipal boundaries and additional 10 percent Operating fee for sales outside Municipal boundaries	The Commission has not approved operating agreements that contain franchise fees greater than 3 percent and the Commission approves an operating fee of 3 percent in the new Operating Agreement. Sections 16.5 to 16.10 are not approved.
17.1 Term of Operating Terms	Term starts on January 1, 2006 with end date removed.	A term of 21 years is appropriate for the new Operating Agreement effective July 1, 2005.

Section of Operating Agreement	**Proposed Revision**	**Commission Determination**
18.1 Maintaining Company Presence	Terasen to maintain June 1, 2002 service levels. Terasen to maintain personnel and facilities to respond to emergency and other circumstances within reasonable time	Terasen's Oct. 21, 2005 response did not address this specific revision but did not accept any proposed changes other than Operating Fees and term. The first revision restricts Terasen's business operations. The second revision does not consider Terasen's requirements to meet standards of Gas Safety and Service Quality Measures from approved Settlement Agreements and Commission Decisions. Revision is not approved.
19.1 Ownership and Continued Operation of the Company Facilities	Delete "continue to ...used by the Company for the purpose of its business, or" Insert "or may continue to be used by the Company in accordance with an agreement negotiated under section 19.2" Delete remainder of paragraph	The revision is inconsistent with Section 45(2) of the Act. The revision places excessive restrictions on the continued operation of Terasen's facilities. Revision is not approved.
19.2 Ownership and Continued Operation of the Company Facilities	Insert paragraph about negotiations at expiry or set by BCUC if unsuccessful	Revision is not required and not approved. Negotiations should begin prior to expiry. Already under BCUC jurisdiction
19.3 Ownership and Continued Operation of the Company Facilities	Insert paragraph on repair and restoration of Public Places if Terasen facilities are removed	Revision is not required. Section 3.0 or Section 3.1 is to be amended to specifically identify removal of Company Facilities and restoration of Public Places. Revision not approved.
25.1 Consistency of Terms	Insert Section to allow the Municipality to request and obtain any more favorable terms that Terasen agrees to with another municipality	The terms of this Operating Agreement may be reviewed, on application by Terasen or the District of Chetwynd, should the Commission determine that a significant revision is required. Revision is not approved.

Tab 5

British Columbia Utilities Commission

Sixth Floor, 900 Howe Street
Vancouver, BC Canada V6Z 2N3
TEL: (604) 660-4700
BC Toll Free: 1-800-663-1385
FAX: (604) 660-1102

ORDER NUMBER
C-4-17

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Energy Inc.
Application for Approval of Operating Agreement between
the Corporation of the Village of Montrose and FortisBC Energy Inc.

BEFORE:
D. M. Morton, Commissioner
W. M. Everett, Commissioner
D. J. Enns, Commissioner
H. G. Harowitz, Commissioner
M. Kresivo, Commissioner
B. A. Magnan, Commissioner

on April 6, 2017

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

WHEREAS:

A. On February 23, 2017, FortisBC Energy Inc. (FEI) applied to the British Columbia Utilities Commission (Commission) for approval of the Operating Agreement dated January 30, 2017 (Operating Agreement) between the Corporation of the Village of Montrose (Municipality) and FEI (Application) pursuant to section 45 of the *Utilities Commission Act*;

B. FEI (formerly BC Gas Inc. and Terasen Gas Inc.) and the Municipality entered into a Franchise Agreement dated April 23, 1995 (Franchise Agreement). On May 6, 1996, Commission Order C-6-96 approved a Franchise Agreement covering the period April 22, 1996 to April 21, 2006 (Primary Term) and continuing from year-to-year thereafter, but not longer than 21 years;

C. The term of the Franchise Agreement is set to expire on April 21, 2017;

D. On January 30, 2017, FEI and the Municipality signed the Operating Agreement; and

E. The Commission reviewed the Application and determines that approval of the Operating Agreement is in the public interest.

NOW THEREFORE the British Columbia Utilities Commission, pursuant to section 45 of the *Utilities Commission Act*, approves the Operating Agreement dated January 30, 2017, between the Corporation of the Village of Montrose and FortisBC Energy Inc. as filed.

DATED at the City of Vancouver, in the Province of British Columbia, this 6th day of April 2017.

BY ORDER

Original signed by:

D. M. Morton
Commissioner

Tab 6

bcuc
British Columbia
Utilities Commission

Suite 410, 900 Howe Street
Vancouver, BC Canada V6Z 2N3
bcuc.com

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ORDER NUMBER
C-1-18

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Energy Inc.
Application for Approval of an Operating Agreement between
the Corporation of the Village of Salmo and FortisBC Energy Inc.

BEFORE:
H. G. Harowitz, Commissioner
A. K. Fung, QC, Commissioner
B. A. Magnan, Commissioner
R. I. Mason, Commissioner
R. D. Revel, Commissioner

on March 1, 2018

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

WHEREAS:

A. On January 10, 2018, FortisBC Energy Inc. (FEI) applied to the British Columbia Utilities Commission (Commission) for approval of the Operating Agreement (Operating Agreement) between the Corporation of the Village of Salmo (Municipality) and FEI (Application) pursuant to section 45 of the *Utilities Commission Act*;

B. FEI (formerly BC Gas Inc. and Terasen Gas Inc.) and the Municipality entered into a Franchise Agreement, dated October 10, 1995 (Franchise Agreement). On April 18, 1996, Commission Order C-5-96 approved a Franchise Agreement covering the period June 6, 1995 to September 18, 2005 (Primary Term) and continuing from year-to-year thereafter, but not longer than 21 years;

C. The term of the Franchise Agreement expired on September 18, 2016;

D. On March 2, 2017, by Order C-2-17, the Commission approved an Amending Agreement, extending the terms and conditions of the Franchise Agreement to December 31, 2017;

E. On January 1, 2018, FEI and the Municipality signed a new Operating Agreement; and

F. The Commission has reviewed the Application and determines that the Operating Agreement is necessary for the public convenience and is in the public interest.

NOW THEREFORE the British Columbia Utilities Commission, pursuant to section 45 of the *Utilities Commission Act,* approves the Operating Agreement dated January 1, 2018, between the Corporation of the Village of Salmo and FortisBC Energy Inc. as filed.

DATED at the City of Vancouver, in the Province of British Columbia, this 1st day March 2018.

BY ORDER

Original signed by:

H. G. Harowitz
Commissioner

Tab 7

Long Term Biomethane Contract	A long term contract entered into between FortisBC Energy and a Customer for Biomethane Service, filed as a tariff supplement, for a term of no less than five Years and no greater than ten Years, and for a commitment to purchase no less than 60,000 Gigajoules in aggregate over the term of the contract. N
Main	Means pipes used to carry Gas for general or collective use for the purposes of distribution.
Main Extension	Means an extension of one of FortisBC Energy's mains with low, distribution, intermediate or transmission pressures, and includes tapping of transmission pipelines, the installation of any required pressure regulating facilities and upgrading of existing Mains, or pressure regulating facilities on private property.
Marketer	Means a Person who has entered into an agreement to supply a Customer under Commodity Unbundling Service.
Meter Set	Means an assembly of FortisBC Energy owned metering and ancillary equipment and piping.
Month or Monthly	Means a period of time, for billing purposes, of 27 to 34 consecutive Days.
Municipal Operating Fees	Means the aggregate of all monies payable by FortisBC Energy to municipalities or First Nations (a) for the use of the streets and other property to construct and operate the utility business of FortisBC Energy within municipalities or First Nations lands (formerly, reserves within the *Indian Act*), (b) relating to the revenues received by FortisBC Energy for Gas consumed within municipalities or First Nations lands (formerly, reserves within the *Indian Act*), or (c) relating, if applicable, to the value of Gas transported by FortisBC Energy through municipalities or First Nations lands (formerly, reserves within the *Indian Act*).
Other Service	Means the provision of Service other than Gas Service including, but not limited to, rental of equipment, natural gas vehicle fuel compression, alterations and repairs, merchandise purchases, and financing.

Tab 8

ROBERT J. PELLATT
COMMISSION SECRETARY
Commission.Secretary@bcuc.com
web site: http://www.bcuc.com

LETTER NO. L-4-02

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. CANADA V6Z 2N3
TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

Log No. 330

VIA FACSIMILE

February 4, 2002

Mr. David M. Masuhara
Vice President, Regulatory, Environment
& Safety, Supply Chain & Logistics
BC Gas Utility Ltd.
24th Floor, 1111 West Georgia Street
Vancouver, B.C. V6E 4M4

Dear Mr. Masuhara:

Re: BC Gas Utility Ltd.
Application to Approve the Terms of a Proposed Operating Agreement
Between BC Gas Utility Ltd. and Interior Municipalities

The Commission has reviewed your Application of December 6, 2001 and finds that the process suggested by BC Gas would be inconsistent with the Commission's authority under Section 32 of the Utilities Commission Act. In particular, the Commission believes that it would be inappropriate for it to undertake a general review to establish a standard form agreement between BC Gas and municipalities in the Inland and Columbia service territories.

In the normal course of events the Commission would expect the existing Franchise Agreements between BC Gas and individual municipalities to continue in force until their expiry dates, unless BC Gas and the individual municipality mutually agree to changes which they would like to file for approval by the Commission. Where an individual agreement has expired, the Commission expects that BC Gas and the municipality would make every effort to negotiate a new operating agreement. Only if the two parties are not able to agree to a new agreement would the Commission anticipate BC Gas making application to the Commission pursuant to Section 32 of the Utilities Commission Act to have the Commission determine the terms of such an agreement. The Commission would review the circumstances in each municipality and determine the appropriate terms and conditions on an individual basis.

At this juncture, the Commission notes from your Application that BC Gas has expired agreements with several municipalities and that negotiations toward the establishment of new agreements have been unsuccessful. Where those conditions exist, it would be appropriate for BC Gas to file an application with the Commission for each such municipality. It may be desirable for the Commission to review the several applications in one proceeding because of the commonality of many of the issues. However, the Commission anticipates ruling on the terms and conditions for each municipality individually.

Please provide the Commission with BC Gas' response to this letter by February 22, 2002.

Yours truly,

Original signed by:

Robert J. Pellatt

WJG/mmc

BCG/POA/Multi-Applicatn Procdg-to BCG

Tab 9

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. V6Z 2N3 CANADA
web site: http://www.bcuc.com

BRITISH COLUMBIA UTILITIES COMMISSION

ORDER NUMBER C-9-06

TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

An Application by Terasen Gas Inc.
for Approval of an Operating Agreement
with the City of Cranbrook

BEFORE: L.F. Kelsey, Commissioner)
L.A. Zaozirny, Commissioner) August 10, 2006

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

WHEREAS:

A. On January 12, 2006, Terasen Gas Inc. ("Terasen Gas") applied to the British Columbia Utilities Commission ("the Commission") for approval of an Operating Agreement with the City of Cranbrook ("the Municipality") ("the Application"); and

B. The Franchise Agreement approved by Commission Order No. C-5-83 expired on June 20, 2004; and

C. By Commission Order No. C-4-05, the term of the Franchise Agreement was extended to December 31, 2005; and

D. In its Application, Terasen Gas advised that it undertook negotiations with the Union of British Columbia Municipalities ("UBCM") Operating Agreement Committee to establish the terms of a new form of Operating Agreement. In 2005 Terasen Gas successfully negotiated a pro-forma Operating Agreement with the UBCM and using this agreement as a template, negotiated new Operating Agreements with those municipalities with Operating Agreements which expired on December 31, 2005 (collectively the "Municipalities"); and

E. The Application requests approval of a 20-year Operating Agreement between Terasen Gas and the Municipality from January 1, 2006 to December 31, 2025 that sets out the terms and conditions, including a

…/2

3 percent operating fee, under which Terasen Gas shall exercise its rights to use the public places of the Municipality in conducting its business of distributing gas within the Municipality; and

F. Commission Order No. C-7-03, which approved a District of Salmon Arm and Terasen Gas Operating Agreement and Addendum, directed Terasen Gas to seek a method in future agreements to convert the operating fee to a charge on utility margin; and

G. The Commission issued Information Request No. 1 to Terasen Gas on February 20, 2006, including questions related to the impacts of the proposed operating fee on rate stability and requesting an explanation of how such a fee based on Terasen Gas revenue fairly compensates the Municipalities for the costs incurred as a result of Terasen Gas' use of the streets and other public places within the Municipalities; and

H. Terasen Gas responded to the Commission's Information Request No. 1 on March 9, 2006. Terasen Gas provided historical franchise fee information and discussed five operating fee options (Option 1-5) which were all rejected by the Municipalities; and

I. The Commission issued Information Request No. 2 on March 28, 2006 and Terasen Gas responded on April 13, 2006. In IR No. 2, Terasen Gas analyzed an operating fee calculation using a base year methodology and provided additional information as to why Options 2, 4 and 5 in IR No. 1 were rejected; and

J. In a letter dated May 9, 2006, the Commission sought further submissions from Terasen Gas, the UBCM and the Municipalities to support or justify how the public interest is better served through an operating fee, as proposed, compared to Option 5, described as a "Hybrid Approach" whereby customers in Rate Classes 1-3 would pay a margin based fee and all other customers would continue to pay a franchise fee based on revenue of 3.09 percent; and

K. From May 17, 2006 to May 26, 2006 the Commission received submissions from Terasen Gas, the City of Rossland, the District of Hudson's Hope, the City of Kimberly, the City of Fernie, the City of Grand Forks, the Town of Oliver and the City of Cranbrook. Other interested parties such as the City of Kelowna, the City of Nelson and Mr. Greg McCormick also provided submissions to the Commission. Among other things, Terasen Gas and the Municipalities stated that the agreements are "package deals" with a considerable amount of compromise involved, including the fees agreed to within the package, and outlined their significant concerns to the added complexity, costs, communication and need to renegotiate if a margin fee were imposed; and

L. The Commission has reviewed the Application and the related submissions presented to it and has determined that the Operating Agreement with the City of Cranbrook should be approved.

NOW THEREFORE the Commission, pursuant to Section 45 of the Utilities Commission Act the Commission approves the Operating Agreement as filed.

DATED at the City of Vancouver, in the Province of British Columbia, this 29th of August 2006.

BY ORDER

Original signed by

L.F. Kelsey
Commissioner

Tab 10

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. V6Z 2N3 CANADA
web site: http://www.bcuc.com

BRITISH COLUMBIA UTILITIES COMMISSION

ORDER NUMBER C-7-03

TELEPHONE: (604) 660-4700
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IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

An Application by BC Gas Utility Ltd.
for Approval of an Operating Agreement and Addendum
with the Corporation of the District of Salmon Arm

BEFORE: R.H. Hobbs, Chair)
K.L. Hall, Commissioner) September 2, 2003

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

WHEREAS:

A. On January 22, 2003, BC Gas Utility Ltd. (now Terasen Gas Inc., "Terasen") applied to the British Columbia Utilities Commission ("the Commission") for approval of an Operating Agreement and Addendum ("the Application") with the Corporation of the District of Salmon Arm ("the Municipality"); and

B. The Operating Agreement has a 21-year term to December 31, 2023 and replaces the franchise agreement approved by Commission Order No. C-24-80. As this Agreement is one of the first of the new form intended to replace all gas franchise agreements, the Addendum contains a favoured municipality provision allowing it to substitute the provisions of any alternative agreement or arrangement that Terasen might negotiate with other municipalities. The Addendum expires December 31, 2007 if this right is not exercised; and

C. Commission Order No. G-28-03 referred the Application to a written hearing process, including an agenda and timetable for Information Requests and Submissions; and

D. The Commission has reviewed the Application and the evidence adduced thereon, all set forth in the Reasons for Decision attached as Appendix A to this Order.

…/2

NOW THEREFORE the Commission, pursuant to Section 45 of the Utilities Commission Act, grants a Certificate of Public Convenience and Necessity which shall expire twenty-one years from the 1st day of January, 2003 based on the January 1, 2003 Operating Agreement and Addendum with the Corporation of the District of Salmon Arm.

DATED at the City of Vancouver, in the Province of British Columbia, this 5th of September 2003.

BY ORDER

Original signed by:

Robert H. Hobbs
Chair

Attachment

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REASONS FOR DECISION

TERASEN GAS INC.
Application for Approval of Operating Agreement and Addendum with the Corporation of the District of Salmon Arm

1.0 BACKGROUND

Terasen Gas Inc. ("Terasen", "Company") is the successor to BC Gas Utility Ltd. ("BC Gas") and Inland Natural Gas Co. Ltd. ("Inland"). Terasen has natural gas distribution operations throughout the Interior of British Columbia and its predecessors have franchise agreements, operating agreements or similar arrangements with 46 municipalities which are subject to Certificates of Public Convenience and Necessity ("CPCNs") issued by the British Columbia Utilities Commission ("the Commission"). The CPCNs grant Terasen the right to construct and operate its facilities and provide service to its customers. Commission Order No. C-24-80 approved a franchise between Inland and the Corporation of the District of Salmon Arm ("Municipality") for a term of 21 years. That agreement granted Inland (or its successors) the exclusive right to supply gas by pipeline to the Municipality and customers and the right to construct and maintain a distribution system within the boundary limits of the Municipality. The agreement also set out certain terms under which Inland was to construct and operate its distribution system. The Municipality agreed that it would not itself construct and operate a gas distribution system during the term of the agreement, but held an option to purchase the distribution system from Inland if the parties could not agree on all the terms and conditions of a renewal of the agreement.

In compensation for the use by Inland of the public places within the boundary limits of the Municipality, and for the exclusive right to supply gas by pipeline, the agreement specified that the Company shall pay a sum equal to 3% of the amount received in each immediately preceding calendar year by the Company for gas consumed within the boundary limits of the Municipality. When the agreement expired on January 17, 1999, BC Gas and the Municipality agreed to extend the terms to allow for the negotiation of a new long-term agreement. A new Operating Agreement and Addendum Agreement was signed by BC Gas and the Municipality on January 1, 2003.

2.0 APPLICATION

On January 22, 2003, BC Gas applied to the Commission for approval of the Operating Agreement and Addendum ("the Application") with the Municipality. The Operating Agreement has a 21-year term to December 31, 2023 and replaces the franchise agreement approved by Commission Order No. C-24-80. The Operating Agreement continues the right to construct and maintain a distribution system within the boundary limits of the Municipality, but no longer includes an exclusive right to supply natural gas to consumers in the Municipality. However, the Municipality's option to purchase the distribution system from Terasen has also been removed. The fees to be paid to the Municipality remain at 3%, but the annual date for payment is moved from November to March.

As this Operating Agreement is one of the first of the new form intended to replace all gas franchise agreements, the Addendum contains a favoured municipality provision allowing the Municipality to substitute the provisions of any alternative agreement or arrangement that Terasen might negotiate with other municipalities. The Addendum expires December 31, 2007 if this right is not exercised.

3.0 WRITTEN HEARING

Commission Order No. G-28-03 referred the Application to a written hearing process, including an agenda and timetable for Information Requests, Responses and Submissions. Submissions were received from the Lower Mainland Large Gas Users Association ("LMLGUA"), the BC Greenhouse Growers Association, Elk Valley Coal Corporation ("Elk Valley"), BC Old Age Pensioners' Organization, Council of Senior Citizens' Organizations of BC, Federated Anti-poverty Groups of BC, Senior Citizens' Association of BC, End Legislated Poverty, West End Seniors' Network, and Tenants Right Action Coalition ("BCOAPO et al."), and West Fraser Mills Ltd. The submissions were responded to by Terasen. The City of Penticton and the Municipality also provided input, and were supported by the Interior Municipalities Group, which represents a number of interior municipalities that have operating agreements with Terasen.

4.0 INTERVENOR ISSUES

4.1 Standard Form Operating Agreements

None of the intervenors objected to the general terms of the Operating Agreement. However, the BCOAPO et al. submitted that, before Terasen proceeds too far along the road of replacing franchise agreements with operating agreements, it would be appropriate for the Commission to assess whether the benefits to the ratepayers of such agreements outweigh the costs. Elk Valley submitted that it is impractical from an administrative perspective to deal with each standard form agreement as an individual agreement and requested that the Commission convene an Inquiry in 2003. The LMLGUA states that the Operating Agreement is intended to replace the current form of franchise agreement in effect in various communities in its service areas, and that approval would set a dangerous precedent.

In response to a December 6, 2001 application by BC Gas for approval of a standard form agreement between BC Gas and the municipalities in its Inland and Columbia service areas, the Commission issued Letter No. L-4-02. In that letter, the Commission found that it would be inappropriate for it to undertake a general review to establish a general form agreement. Instead, the Commission expected that the Company and the municipalities would make every effort to negotiate new operating agreements. Acknowledging that, due to the commonality of many of the issues, it may be appropriate to review several applications in one proceeding, the Commission stated that it would review the circumstances in each municipality and determine the appropriate terms and conditions on an individual basis. Based on the Commission's findings, BC Gas withdrew its December 6, 2001 application and undertook to file such individual applications as appropriate.

Terasen has already signed, and been given Commission approval for, the renewals of several operating agreements. As noted in the Response to BCUC Staff Information Request question 12, seventeen other municipalities have between three to sixteen years before their CPCN's must be renewed.

While the Commission is not bound by precedent, it finds no reason to change its determination in Commission Letter No. L-4-02.

4.2 The 3% Franchise Fee

Does Terasen receive value for the 3% fee?

Some intervenors objected to the continuation of the 3% fee in the new Operating Agreement. West Fraser Mills felt that the fee was originally paid in consideration for the grant of franchise rights no longer in effect in the new agreement. However, the Salmon Arm submission noted that the Operating Agreement grants certain rights relating to the use of public property to Terasen and provides that Salmon Arm will not charge or levy against Terasen, approval, licence, or permit fees related to the Company constructing, maintaining or operating gas distribution facilities upon or under public places. It also provides for Salmon Arm to pay the costs associated with the movement of any Terasen facilities resulting from Salmon Arm's requirement to do so, in contrast to areas outside municipalities.

The LMLGUA submits that Terasen has offered no evidence to support the Application and that, if the Commission proceeds to approve the Operating Agreement, there will have been a breach of the 'rules of natural justice'. As well, it states that the Commission will have exceeded its statutory powers by having acted arbitrarily and with no reasonable evidentiary basis. The LMLGUA rationale is that circumstances have changed dramatically since franchise fees were introduced in the 1950's; first, because there is no longer a grant of a franchise and second, because the commodity cost of natural gas has increased dramatically. The LMLGUA submits that no explanation is offered as to why adjustments to the fee were not made to reflect changed circumstances and that the Application should not be approved without evidence to demonstrate that there will be no adverse impact on the competitiveness of natural gas relative to other energy sources in the Municipality.

The LMLGUA submits that the Commission has jurisdiction pursuant to Section 63 of the Act to consider and approve the Operating Agreement in the same manner as setting a rate, but that Terasen has not provided any evidence upon which the Commission could conclude that the fee is fair, just and reasonable. The LMLGUA submits that, absent some reasonable evidence that the fee is reasonably and necessarily incurred by Terasen in order to provide service, the fee cannot and should not be included in the tolls charged by Terasen.

Section 63 of the Act states:

> "A public utility must not, without the consent of the commission, directly or indirectly, in any way charge, demand, collect or receive from any person for a regulated service

> provided by it, or to be provided by it, compensation that is greater than, less than or other than that specified in the subsisting schedules of the utility applicable to that service and filed under this Act and the regulations."

The BC Greenhouse Growers Association is concerned that renewal of the franchise fee would likely stimulate similar applications and outcomes in other jurisdictions. While it does not state which jurisdictions it is referring to, the BC Greenhouse Growers Association submission states that such fees undermine the competitiveness of customers located in municipalities that charge franchise fees. The BC Greenhouse Growers Association therefore supports the submission of the LMLGUA.

The Terasen Reply states that the value to the Company of franchise agreements has always been the ability to make use of streets and other public places. With regard to the competitiveness of customers located in municipalities that charge franchise fees, Terasen submitted that it is appropriate that fees relating to the use of streets and other public properties be paid. As well, the Company notes that the introduction of transportation service has actually reduced the amount that would otherwise be payable under the agreements by reducing Terasen revenues.

The Commission agrees with Terasen that the provisions of the Operating Agreement provide value to the Company and support approval of the Application, as do the responses to the Information Requests provided as evidence in this hearing. The Commission finds that the 3% fee is not unreasonable for the concessions provided by the municipality. However, the Commission considers that the inclusion of the gas commodity cost in the calculation of fees for Sales Service customers has led to considerable volatility in recent years. The Commission directs Terasen to seek a method in future agreements to convert the fee to a charge on Utility Margin, so as to stabilize the costs to utility customers.

Section 607 of the Local Government Act

West Fraser Mills submitted that the fee was a tax imposed by Salmon Arm and that the customers have no effective representation in the process. However, the fees are billed to, and collected from, only those customers located in municipalities to whom the fee is paid. As customers, they are represented by Terasen, and, as tax payers, they are represented by the elected Council of Salmon Arm. The Municipality submitted that it has received no complaints from resident tax payers during the 21 years. As well, the Commission received no complaints from resident tax payers after the Notice of Written

Hearing on this matter was published in the Salmon Arm Observer.

The LMLGUA also submits that the fee is a tax levied by Salmon Arm and, as such, the Municipality did not have the authority to do so. The Mayor and Clerk of Salmon Arm were authorized to execute the Operating Agreement by Bylaw No. 3230, pursuant to Section 607 of the Local Government Act. Both West Fraser Mills and the LMLGUA submitted that the Operating Agreement does not grant franchise rights and therefore Section 607 (and the subsequent approval of the Inspector of Municipalities) does not apply. However, subsection 607(1)(b) allows a council to enter into or ratify or adopt agreements granting an exclusive or a limited franchise to supply gas to the inhabitants of the municipality. Section 607(2) states that an agreement may, with the approval of the Inspector of Municipalities, be renewed for one or more further terms and Section 607(4) states that a subsequent agreement to supply gas to the inhabitants of the municipality made between the parties to an agreement under subsection (1)(b) is deemed to be a renewal of the agreement.

Despite the Terasen response to BCUC Staff Information Request question 1, it is Salmon Arm's position that the Operating Agreement does provide Terasen with a limited franchise to supply gas to the inhabitants of the municipality and it is therefore an agreement which is valid and enforceable pursuant to the Local Government Act.

The Application has been made pursuant to the Utilities Commission Act and these issues are not relevant to its approval. It is open to any Intervenor to pursue these issues with the Municipality or the Inspector of Municipalities in the courts.

Sections 23 and 45 of the Utilities Commission Act

In its response to BCUC Staff Information Request question 1, Terasen stated that the Operating Agreements contain provisions which suggest they involve a "privilege" or "concession" and that approval was required under Section 45 of the Act. The LMLGUA submits that Section 45 is irrelevant to the Application since it is concerned with Certificates of Public Convenience and Necessity where a person wishes to begin the construction or operation of a public utility. The LMLGUA submits that the Application might fall under Section 23(g) of the Act, but that Terasen has given no basis for, and provided no evidence to support, such a determination by the Commission.

Section 45(1) states:

> "Except as otherwise provided, after September 11, 1980, a person must not begin the construction or operation of a public utility plant or system, or an extension of either, without first obtaining from the commission a certificate that public convenience and necessity require or will require the construction or operation."

Section 45(7) states:

> "Except as otherwise provided, a privilege, concession or franchise granted to a public utility by a municipality or other public authority after September 11, 1980 is not valid unless approved by the commission."

Section 45(8) states:

> "The commission must not give its approval unless it determines that the privilege, concession or franchise proposed is necessary for the public convenience and properly conserves the public interest."

Section 45(9) states:

> "In giving its approval, the commission
> (a) must grant a certificate of public convenience and necessity, and
> (b) may impose conditions about
> (i) the duration and termination of the privilege, concession or franchise, or
> (ii) construction, equipment, maintenance, rates or service, as the public convenience and interest reasonably require."

Section 23 of the Act does give the Commission general supervision over public utilities. However, Commission Order No. C-24-80 granted a CPCN to Terasen for a 21 year term. That CPCN has now expired and, in order for Terasen to continue to construct or operate its plant or system, or an extension of either, it has properly applied pursuant to Section 45 of the Act. There is no need for the Commission to make any determinations pursuant to Section 23(g).

Is the fee discriminatory?

The LMLGUA also submits that the fee is discriminatory because it impacts Terasen's full service customers far more significantly than its transportation service customers, without being related to the cost of providing service to one class of customer versus the other, and because there is no explanation why the fee is not collected from other utilities that operate in the Municipality. Terasen replied that there is nothing discriminatory regarding the fee as it is charged to all customers receiving gas service within the Municipality.

Although Transportation Service has created an anomaly between Sales Service and Transportation Services the Commission does not find it to be unduly discriminatory. Even though the development of competition in the provision of gas commodity to industrial and large commercial customers since the mid 1980's has resulted in a change to the gross revenues of the Utility, the Commission accepts that the changes in gross revenue and franchise payments continued to be calculated in accordance with the franchise agreement and did not result in an undue discrimination to either party. However, a fee structure based on the Utility Margin, exclusive of gas commodity cost, would avoid the current anomaly. Whether other utilities operating in the Municipality collect such fees is not a relevant issue here.

4.3 Other Issues

The LMLGUA submits that Terasen invoices its customers at the rate of 3.09% and therefore collects 0.09% in excess revenues without contractual authorization. The Commission approved a Terasen Gas Tariff franchise fee charge of 3.09%. However, as noted in the Terasen Reply, this is the amount which must be collected from customers to equal the 3% paid by Terasen.

The Commission agrees that there are no excess revenues.

The LMLGUA states that it is disturbed that the Application fails to disclose that Terasen paid $40,000 to the Municipality in respect of the Operating Agreement, and that the Company agreed to pay only because it expected to simply flow the cost through to its customers. It asks that the Commission inquire into the extent to which Terasen provides donations, grants, or other forms of compensation to parties with whom it contracts, and direct that Terasen at all times fully disclose the full consideration in relation to such contracts. Terasen replied that $10,000 of this amount was identified in its Information Request Responses and had nothing to do with the Operating Agreement. Terasen states that the $30,000 payable to assist in funding a community capital project was considered to be a reasonable expenditure to enable the negotiations to conclude and to avoid ongoing costs. Terasen also notes that, as the 2002 revenue requirements application was withdrawn, this expense has no effect on customer rates.

While the Commission believes that it should not have taken a request to the Municipality under the Freedom of Information and Protection of Privacy Act to obtain the information, the Commission considers that LMLGUA request for an inquiry and a direction in this matter is not warranted.

COMMISSION DETERMINATION

Based on its review of the issues in this proceeding, the Commission concludes that the issuance of a CPCN, based on the Operating Agreement and Addendum, is required for the public convenience and necessity.

Tab 11

"pipeline" means, except in section 9, piping through which any of the following is conveyed:

(a) petroleum or natural gas;

(b) water produced in relation to the production of petroleum or natural gas or conveyed to or from a facility for disposal into a pool or storage reservoir;

(c) solids;

(d) substances prescribed under section 133 (2) (v) of the *Petroleum and Natural Gas Act*;

(e) other prescribed substances,

and includes installations and facilities associated with the piping, but does not include

(f) piping used to transmit natural gas at less than 700 kPa to consumers by a gas utility as defined in the *Gas Utility Act*,

(g) a well head, or

(h) anything else that is prescribed;

Permit required

21 Subject to section 23, a person must not carry out an oil and gas activity unless

(a) either

(i) the person holds a permit that gives the person permission to carry out that oil and gas activity, or

(ii) the person is required to carry out that oil and gas activity by an order issued under section 49, and

(b) the person carries out the oil and gas activity in compliance with

(i) this Act and the regulations,

(ii) a permit issued to the person, if any, and

(iii) an order issued to the person, if any.

Pipeline crossings

76 (1) Subject to subsection (3), a person must not

(a) construct

(i) a highway, road or railway,

(ii) an underground communication or power line, or

(iii) any other prescribed work, or

(b) carry out a prescribed activity

along, over or under a pipeline or within a prescribed distance of a pipeline unless

(c) the pipeline permit holder agrees in writing to the construction or the carrying out of the prescribed activity, either specifically or by reference to a class of construction projects or activities,

(d) the commission, by order issued under subsection (2), approves the construction or the carrying out of the prescribed activity, either specifically or by reference to a class of construction projects or activities, or

(e) the construction or prescribed activity is carried out in accordance with the regulations.

(2) The commission, on application by a person referred to in subsection (1), may issue an order for the purposes of subsection (1) (d) and in doing so may impose any conditions that the commission considers necessary to protect the pipeline.

(3) The commission must approve

(a) the construction referred to in subsection (1) (a), and

(b) the carrying out of a prescribed activity under subsection (1) (b)

by the government or a municipality, but may impose conditions referred to in subsection (2) in the order issued under that subsection.

(4) The commission, for the purposes of deciding whether to issue an order under subsection (1) or impose conditions under subsection (2), may require a pipeline permit holder to submit information regarding the pipeline permit holder's pipeline.

(5) The commission may order a pipeline permit holder whose pipeline is the subject of an order issued under subsection (2) to do one or both of the following:

(a) with the approval of the Lieutenant Governor in Council, relocate the pipeline to facilitate the construction or prescribed activity approved by the order issued under subsection (2);

(b) take the actions specified in the order that the commission considers necessary to protect the pipeline.

(6) In relation to an order of the commission referred to in subsection (5), the Lieutenant Governor in Council

(a) may order that a person other than the pipeline permit holder must pay the costs, or a portion of the costs, incurred in carrying out the commission's order, or

(b) may approve the payment of any of those costs from the consolidated revenue fund.

(7) If there is an inconsistency between an order or an approval made under subsection (6) and a regulation made under section 99 (1) (m.1), the order or approval prevails to the extent of the inconsistency.

General

99 (1) The Lieutenant Governor in Council may make regulations as follows:

(a) prescribing activities for the purposes of the definition of "oil and gas activity" in section 1 (2);

(b) prescribing substances for the purpose of paragraph (e) of the definition of "pipeline" in section 1 (2) and prescribing exclusions for the purposes of paragraph (h) of that definition;

(c) prescribing regulations under a specified enactment for the purposes of paragraph (f) of the definition of "specified provision" in section 1 (2);

(d) prescribing circumstances for the purposes of section 6 (2);

(e) respecting the application of the *Public Inquiry Act* for the purposes of section 12;

(f) prescribing authorizations for the purposes of section 18 (2) (c) (i);

(f.1) prescribing requirements for the purposes of section 24 (3);

(g) prescribing periods of time for the purposes of section 32;

(g.1) [Not enacted.]

(g.2) prescribing periods for the purposes of section 32 (1.1);

(h) respecting disclosure and confidentiality as referred to in section 38.1;

(i) requiring that natural gas be gathered, and processed if necessary, and that the natural gas or liquid hydrocarbons extracted be marketed or injected into an underground reservoir for storage or for any other purpose;

(j) prescribing actions for the purposes of section 53;

(k) prescribing decisions for the purposes of the definition of "determination" in section 69;

(l) prescribing activities and methods for the purposes of section 75;

(m) prescribing works, activities and distances for the purposes of section 76 (1) and requirements for the purposes of section 76 (1) (e);

(m.1) respecting how costs incurred in relation to

(i) the construction of anything referred to in section 76 (1) (a),

(ii) the carrying out of an activity under section 76 (1) (b), or

(iii) the relocation referred to in section 76 (5) (a) and any actions referred to in section 76 (5) (b)

are to be allocated between the pipeline permit holder and the person doing anything referred to in subparagraphs (i) to (iii) of this paragraph;

Tab 12

Use of municipal thoroughfares

32 (1) This section applies if a public utility

(a) has the right to enter a municipality to place its distribution equipment on, along, across, over or under a public street, lane, square, park, public place, bridge, viaduct, subway or watercourse, and

(b) cannot come to an agreement with the municipality on the use of the street or other place or on the terms of the use.

(2) On application and after any inquiry it considers advisable, the commission may, by order, allow the use of the street or other place by the public utility for that purpose and specify the manner and terms of use.

Dispensing with municipal consent

33 (1) This section applies if a public utility

(a) cannot agree with a municipality respecting placing its distribution equipment on, along, across, over or under a public street, lane, square, park, public place, bridge, viaduct, subway or watercourse in a municipality, and

(b) the public utility is otherwise unable, without expenditures that the commission considers unreasonable, to extend its system, line or apparatus from a place where it lawfully does business to another place where it is authorized to do business.

(2) On application and after a hearing, for the purpose of that extension only and without unduly preventing the use of the street or other place by other persons, the commission may, by order,

(a) allow the use of the street or other place by the public utility, despite any law or contract granting to another person exclusive rights, and

(b) specify the manner and terms of the use.

Use of municipal structures

36 Subject to any agreement between a public utility and a municipality and to the franchise or rights of the public utility, and after any hearing the commission considers advisable, the commission may, by order, specify the terms on which the public utility may use for any purpose of its service

(a) a highway in the municipality, or

(b) a public bridge, viaduct or subway constructed or to be constructed by the municipality alone or jointly with another municipality, corporation or government.

Relationship with *Local Government Act*

121 (1) Nothing in or done under the *Community Charter* or the *Local Government Act*

(a) supersedes or impairs a power conferred on the commission or an authorization granted to a public utility, or

(b) relieves a person of an obligation imposed under this Act or the *Gas Utility Act*.

(2) In this section, **"authorization"** means

(a) a certificate of public convenience and necessity issued under section 46,

(b) an exemption from the application of section 45 granted, with the advance approval of the Lieutenant Governor in Council, by the commission under section 88, and

(c) an exemption from section 45 granted under section 22, only if the public utility meets the conditions prescribed by the Lieutenant Governor in Council.

(3) For the purposes of subsection (2) (c), the Lieutenant Governor in Council may prescribe different conditions for different public utilities or categories of public utilities.

Tab 13

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BRITISH COLUMBIA UTILITIES COMMISSION

ORDER NUMBER G-113-12

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IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

An Application by FortisBC Energy Inc.
for Approval of Operating Terms Between the District of Coldstream and FortisBC Energy Inc.

BEFORE: L.F. Kelsey, Commissioner
C.A. Brown, Commissioner
N.E. MacMurchy, Commissioner
B.A. Magnan, Commissioner
D.M. Morton, Commissioner

August 23, 2012

O R D E R

WHEREAS:

A. FortisBC Energy Inc. (FEI) (formerly BC Gas Inc. and Terasen Gas Inc.) entered into a Certificate of Public Convenience and Necessity (CPCN) to operate its system in the District of Coldstream (the Municipality) on October 10, 1967;

B. On January 28, 1991, FEI entered into a Franchise Agreement with the Municipality that expired on August 11, 2010 (the Franchise Agreement);

C. On August 23, 2010, FEI applied to the British Columbia Utilities Commission (the Commission) for approval of an extension of the Franchise Agreement to December 31, 2010, and on September 30, 2010, Commission Order C-7-10 approved the requested extension;

D. On December 21, 2010, FEI applied to the Commission for approval of an additional extension of the Franchise Agreement to March 31, 2011, and on February 10, 2011, Commission Order C-2-11 approved the requested extension;

E. On June 13, 2011, FEI applied to the Commission for approval of an additional extension of the Franchise Agreement to December 31, 2011, and on August 18, 2011, Commission Order C-10-11 approved the requested extension;

F. On January 3, 2012, FEI applied to the Commission for approval of an additional extension of the Franchise Agreement to June 30, 2012, and on January 26, 2012, Commission Order C-1-12 approved the requested extension;

…/2

G. On February 27, 2012, FEI applied to the Commission under section 32 of the *Utilities Commission Act* for approval of Operating Terms between the Municipality and FEI (the Application);

H. On March 8, 2012, Commission Order G-32-12 established a written hearing process for review of the Application and a regulatory timetable;

I. On June 28, 2012, FEI applied to the Commission for approval of an additional extension of the Franchise Agreement to December 31, 2012, and on July 5, 2012, Commission Order C-9-12 approved the requested extension;

J. The Commission has reviewed the Application and the related submissions.

NOW THEREFORE pursuant to section 32 of the *Utilities Commission Act*, the Commission, for the Reasons attached as Appendix A, orders as follows:

1. The Operating Agreement proposed by FEI, as amended by the Commission and set out in the attached Appendix A and Appendix B to this Order is approved, effective July 1, 2012.

2. The Operating Agreement between FEI and the Municipality approved herein shall expire twenty years from July 1, 2012.

3. FEI and the Municipality are to file with the Commission an endorsed Operating Agreement in accordance with the terms approved by this Order and consistent with Appendix A and Appendix B.

4. The terms of the Operating Agreement may be reviewed, upon application by FEI or the Municipality, should the Commission determine that a significant revision is required.

5. The amendments to the Operating Agreement, as directed by the Commission and set out in the attached Appendix A and Appendix B to this Order, are to be incorporated into future operating agreements between FEI and municipalities.

DATED at the City of Vancouver, in the Province of British Columbia, this 30th of August 2012.

BY ORDER

Original signed by:

D.M. Morton
Commissioner

Attachments

IN THE MATTER OF

FORTISBC ENERGY INC.
APPLICATION FOR APPROVAL OF OPERATING TERMS
BETWEEN
THE DISTRICT OF COLDSTREAM AND FORTISBC ENERGY INC.

REASONS FOR DECISION

August 29, 2012

BEFORE:

L.F. Kelsey, Commissioner
C.A. Brown, Commissioner
N.E. MacMurchy, Commissioner
B.A. Magnan, Commissioner
D.M. Morton, Commissioner

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1. BACKGROUND

FortisBC Energy Inc. (FEI or the Company) is the successor to Terasen Gas Inc. (Terasen), BC Gas Utility Ltd. (BC Gas) and Inland Natural Gas Co. Ltd. (Inland). On October 10, 1967, the British Columbia Public Utilities Commission granted Inland a Certificate of Public Convenience and Necessity (CPCN) approving the construction and operation of transmission and distribution facilities in the Village of Princeton, the District of Coldstream (the District, the Municipality) and the District of Peachland. On August 30, 1968, Inland and the Municipality entered into an Operating Agreement, with a term of 21 years (the 1968 Agreement). On January 28, 1991, BC Gas and the Municipality entered into a Franchise Agreement, with a "Primary Term" from August 12, 1989 to August 11, 1999 and the option to renew on a year to year basis to a maximum term of 21 years (the 1991 Agreement). This option to renew was exercised each year until the expiration of the 1991 Agreement on August 11, 2010. By Orders C-7-10, C-2-11, C-10-11, C-1-12 and C-9-12 the British Columbia Utilities Commission (the Commission) approved five extensions to the terms and conditions of the 1991 Agreement. The most recent extension (the Existing Agreement) is effective until December 31, 2012.

In 2002, the Union of British Columbia Municipalities (the UBCM) facilitated the formation of the BC Gas Franchise/Operating Agreement Committee (the Committee), comprised of UBCM members in the BC interior whose agreements with BC Gas contained franchise and operating agreements. The objective of the Committee was to recommend to members proposed operating terms with BC Gas to replace those agreements that were expired or expiring in the future.

The following is an excerpt from the Committee's Terms of Reference,[1] which specifies the goals of the Committee's Working Group.

Goals

1. To develop an agreement which provides:
   - Stability and predictability in revenue
   - Fairness to the taxpayers (in actuality and perception)
   - Equity between BC Gas and the 46 impacted municipalities, and between BC Gas and other Gas providers.
2. To negotiate a "best deal" on behalf of the 46 municipalities based on the principle of "win-win" between the parties for both the operational and financial terms of the agreement.
3. To maximize overall revenues, at a minimum cost to taxpayers.
4. To rationalize the revenues received under the provisions of the franchise agreement with other revenue sources, and the cost of funding the municipalities operations.
5. To ensure that the operation provisions provide the necessary legal and liability protection for municipalities while protecting the short and long run use of the municipal property.
6. To focus on a solution with respect to Gas, however, the solution could be applied to other utilities based on the particular needs of any municipality.

In 2005, Terasen and the Committee successfully negotiated the terms of a pro-forma operating agreement (the Pro-

[1] BC Gas Franchise / Operating Agreement Committee, Working Group. Terms of Reference (December 2002). Included in the Coldstream Comments.

forma Agreement) and using this as a template, negotiated new operating agreements with 10 municipalities whose operating agreements had expired on December 31, 2005.[2]

Since 2006, Terasen (and subsequent to March 2011, FEI) successfully negotiated new operating agreements containing terms substantially similar to the Pro-forma Agreement with 11 municipalities.[3]

2. FEI APPLICATION

On February 27, 2012, FEI applied to the Commission under section 32 of the *Utilities Commission Act* (the Act) for approval of operating terms between the Municipality and FEI (the Application). FEI submitted that it was unable to agree on terms of an operating agreement with the Municipality, despite several rounds of negotiations.

The following are excerpts from section 32 of the Act:

> **Use of municipal thoroughfares**
>
> 32 (1) This section applies if a public utility
>
> (a) has the right to enter a municipality to place its distribution equipment on, along, across, over or under a public street, lane, square, park, public place, bridge, viaduct, subway or watercourse, and
>
> (b) cannot come to an agreement with the municipality on the use of the street or other place or on the terms of the use.
>
> (2) On application and after any inquiry it considers advisable, the commission may, by order, allow the use of the street or other place by the public utility for that purpose and specify the manner and terms of use.

The Application noted that pursuant to section 45(2) of the Act, FEI is deemed to have a CPCN to operate its system in the Municipality and to construct and operate extensions. The following are related excerpts from section 45 of the Act.

> **Certificate of public convenience and necessity**
>
> 45 (1) Except as otherwise provided, after September 11, 1980, a person must not begin the construction or operation of a public utility plant or system, or an extension of either, without first obtaining from the commission a certificate that public convenience and necessity require or will require the construction or operation.
>
> (2) For the purposes of subsection (1), a public utility that is operating a public utility plant or system on September 11, 1980 is deemed to have received a certificate of public convenience and necessity, authorizing it
>
> (a) to operate the plant or system, and

[2] Town of Oliver (Order C-7-06), District of 100 Mile House (Order C-8-06), City of Cranbrook (Order C-9-06), Town of Creston (Order C-10-06), City of Fernie (Order C-11-06), City of Grand Forks (Order C-12-06), District of Hudson's Hope (Order C-13-06), City of Kimberly (Order C-14-06), Town of Osoyoos (Order C-15-06), City of Rossland (Order C-16-06).

[3] Village of Chase (C-1-07), Westbank First Nation (C-3-07), Village of Warfield (C-2-08), Village of Midway (C-4-10), Town of Princeton (C-6-10), District of Peachland (Order C-8-11), City of Sparwood (Order C-11-11), Village of Lumby (Order C-12-11), City of Greenwood (Order C-2-12), Village of Clinton (Order C-7-12), District of Mackenzie (Order C-8-12).

(b) subject to subsection (5), to construct and operate extensions to the plant or system.

(3) Nothing in subsection (2) authorizes the construction or operation of an extension that is a reviewable project under the Environmental Assessment Act.

(4) The commission may, by regulation, exclude utility plant or categories of utility plant from the operation of subsection (1).

(5) If it appears to the commission that a public utility should, before constructing or operating an extension to a utility plant or system, apply for a separate certificate of public convenience and necessity, the commission may, not later than 30 days after construction of the extension is begun, order that subsection (2) does not apply in respect of the construction or operation of the extension.

The operating terms proposed in the Application (the FEI Operating Terms) are described as being substantially similar to the terms in the Pro-forma Agreement. FEI stated in the Application that their general approach is to reach agreements that are "substantially similar to the agreements already negotiated with other municipalities" for the following reasons:

1. Standardizing the rights and responsibilities of both FEI and the municipalities provides value to FEI's ratepayers.
2. Changes diminish FEI's ability to negotiate future agreements.
3. Standardized and consistent agreements provide operational certainty and consistency.

The Application outlined 26 revisions proposed by the Municipality to the FEI Operating Terms (the Specific Terms in Dispute) and noted that "...FEI agrees with four of the revisions, agrees that two others are acceptable with some modification, and considers that seven others are not necessary since the matter is addressed elsewhere in the agreement." FEI submitted that they disagree with the remaining 13 items. A summary of the 26 Specific Terms in Dispute is included in Appendix A.1.

3. REGULATORY PROCESS

On February 29, 2012, the Municipality's legal counsel filed a letter (the Municipality Letter) to the Commission with the following comment over the regulatory process by which the Application should be reviewed:

> *As the Application does not seem to propose a process by which the Commission is to consider the Application or by which the parties (and the District in particular) may pursue the matter, I [the Municipality's legal counsel] am writing to enquire as to whether the Commission has any particular proposal for pursing this matter, and ask that I be advised accordingly.*

On March 7, 2012, Commission staff met with the Municipality's legal counsel and representatives from FEI to discuss the regulatory process and timetable for the Application. Subsequently, the Commission issued Order G-32-12 on March 8, 2012, establishing a written hearing process and a timetable for further submissions from FEI and the Municipality on the Application.

4. MUNICIPALITY'S COMMENTS ON THE APPLICATION

On March 21, 2012, the Municipality filed the comments on the Application (the Coldstream Comments) in which they outlined their position on each of the Specific Terms in Dispute.

The Municipality highlighted that the Pro-forma Agreement was neither approved nor endorsed by the UBCM but

rather the UBCM provided resources and acted as a facilitator during the negotiations between the municipalities and FEI.

On March 21, 2012, the Municipality also filed Information Requests to FEI (the Municipality IRs).

5. FEI RESPONSE TO THE COLDSTREAM COMMENTS

On April 4, 2012, FEI filed the response to the Coldstream Comments (the FEI Response) in which they further outlined their position on the Specific Terms in Dispute. On April 4, 2012 FEI also filed Information Requests to the Municipality (the FEI IRs) and their response to the Municipality IRs (the FEI IR Response).

The Municipality filed the response to the FEI IRs on April 20, 2012 (the Coldstream IR Response).

6. FEI FINAL ARGUMENT

On June 4, 2012, FEI filed the final argument submissions (the FEI Final Argument), including updated operating terms reflecting any changes made to the FEI Operating Terms since the Application (the Revised FEI Operating Terms). The FEI Final Argument sought the following three Commission approvals under section 32 of the Act:

1. Approval of the Revised FEI Operating Terms.
2. A 20-year term from July 1, 2012.
3. The Revised FEI Operating Terms may be reviewed and revised by the Commission, upon application by FEI or the Coldstream, should the Commission determine that a significant revision is required.

The FEI Final Argument addressed three issues as follows:

1. Application of Section 32

   FEI submitted that the application of section 32 of the Act is appropriate to the Application and noted the following:

   (a) Under section 32 of the Act, the Commission has the jurisdiction to make the orders requested by FEI in the Application;

   (b) Section 32 of the Act grants the Commission broad discretion over the use of municipal highways and other public places by a utility; and

   (c)Under section 36 of the Act, the Commission also has jurisdiction to make the orders requested by FEI in the Application.

2. Operating Terms Are in the Public Interest

   FEI submitted that the Revised FEI Operating Terms are in the public interest as they are substantially similar to the Pro-forma Agreement which FEI has entered into, and the Commission subsequently approved, with 21 other municipalities since 2006.

3. Specific Terms in Dispute

   FEI submitted additional comments on several of the outstanding Specific Terms in Dispute.

7. COLDSTREAM REPLY TO FEI FINAL ARGUMENT

On June 11, 2012, the Municipality filed the reply to the FEI Final Argument (the Coldstream Reply) and addressed the following issues:

1. The Municipality expressed concerns that the Revised FEI Operating Terms both increase the power of FEI to undertake works in public places and limit the ability of the Municipality to exercise its authority. The Municipality submitted that the powers granted to FEI are in excess of those granted under the 1967 CPCN, the 1968 Agreement and the 1991 Agreement.
2. The Municipality submitted that the importance placed on the Pro-forma Agreement by FEI is misplaced and commented specifically on the following points:
    a. The Municipality submitted that they are unaware of any proceeding whereby the Commission has approved a standardized agreement with FEI applicable to all municipalities and further indicated their understanding to be that the Commission would make decisions based on the specific circumstances in each municipality.
    b. The Municipality highlighted various questions raised and comments made by the Commission in Orders C-7-06 and C-8-06 relative to the Pro-forma Agreement. They argued that these comments do not provide a "strong endorsement" of the Pro-forma Agreement.
3. In relation to the application of section 32 of the Act, the Municipality requested that the Commission consider each Specific Term in Dispute based on their individual merits. Specifically, the Municipality requested that the Commission consider FEI's historical operations in the Municipality's public places, as per the terms of the 1968 Agreement and the 1991 Agreement.

The Coldstream Reply included the Municipality's proposed operating terms (the Municipality Operating Terms).

8. FEI REPLY TO THE COLDSTREAM REPLY

On June 18, 2012, FEI filed the reply argument submissions (the FEI Reply) and made the following general remarks:

1. Consistency is in the public interest

    FEI highlighted citations from the Ontario Energy Board (the OEB) and the Alberta Energy and Utilities Board (the AEUB) whereby they have pointed to the merits of standardized agreements. FEI submitted that, while they are open to modifications to the standardized agreement, "...[Coldstream] has not demonstrated the particular local conditions in Coldstream that make the proposed Operating Terms unreasonable."

    FEI requested that, should the Commission identify changes to the Revised FEI Operating Terms, those changes that are specific to the Municipality are distinguished from those that have a broader relevance to other municipalities.

2. The Revised FEI Operating Terms place a "narrow and appropriate" limitation on the authority of the Municipality

    FEI highlighted that the Revised FEI Operating Terms only exempt FEI from compliance with the Municipality's bylaws that conflict with the Revised FEI Operating Terms and / or other legislation directing FEI. Specifically, FEI expressed concern that a clause requiring FEI to comply with all Municipality bylaws would not be in the public interest as it would require FEI to comply with such bylaws as the Building Code

and Building Bylaw, for example, in their operation of the natural gas distribution and transmission system within public places.

3. Intermediate pressure and transmission pressure pipelines should be included in the operating terms.

   FEI addressed three points related to this issue:

   a) The Commission has jurisdiction to impose terms with respect to moves of the gas system within municipal streets and the cost allocation of such moves.

   b) The Municipality does not have a right to the cost allocation contained in Section 12 of the *Oil and Gas Act General Regulation.*

   c) The public interest requires that the intermediate transmission pressure pipelines be included in the operating terms. Further, the cost allocation proposed by FEI in Section 8.2 of the Operating Terms is in the public interest.

FEI also submitted final comments on several of the Specific Terms in Dispute.

9. COMMISSION DETERMINATION

Application of Sections 32, 36 and 45 of the Act

The Commission agrees with FEI that section 32 of the Act is applicable for the review of this Application. FEI, by virtue of Section 45(2) of the Act, is deemed to have a CPCN that does not expire. FEI has the authority under section 45(2) of the Act to operate the plant or system and to construct and operate extensions to the system; therefore, it meets the requirements of section 32 of the Act for review of the Application.

FEI Pro-forma Agreement

The Commission notes the Municipality's concerns over the emphasis placed on the Pro-forma Agreement by FEI and is in agreement with the Municipality that, with regard to applications made pursuant to section 32 of the Act, the circumstances in each municipality should be considered to determine the appropriate terms and conditions on an individual basis. The Commission has reviewed submissions from both parties and has included its determination on each of the Specific Terms in Dispute in Appendix A.1.

The Commission does not agree with comments made by the Municipality in the Coldstream Reply that questions raised and comments made by the Commission specific to the Pro-forma Agreement do not provide a "strong endorsement" of the Pro-forma Agreement. Instead, such questions and comments are part of the regulatory process that the Commission engages in prior to issuing orders and decisions. In the Commission's view, that FEI has successfully negotiated new operating agreements that are substantially similar to the Pro-forma Agreement with 21 municipalities, each with individual circumstances, since 2006 provides strong support for the merits of the Pro-forma Agreement.

Oil and Gas Activities Act

Section 8.1 of the Revised FEI Operating Terms deals with requests by FEI when they require Municipal Facilities to be altered, changed or relocated. Section 8.2 deals with requests by the Municipality when they require the same of FEI's Company Facilities. Both Section 8.1 and 8.2 require that the party making the request pay for all of the costs.

The Municipality has noted in several submissions that the requirement in Section 8.2 that the Municipality "...agrees to
pay for all of the costs for changes to the affected Company Facilities" forces them to abandon their rights under the *Oil and Gas Activities Act* (the OAGA Act). The *Oil and Gas Activities Act General Regulation* provides the opportunity for cost sharing between specific parties when particular conditions are met. In the Commission's view, the Municipality does not abandon its rights under the OAGA Act, given that Section 5.1 of the Revised FEI Operating Terms requires FEI to comply with "all Federal and Provincial laws, regulations and codes."

Specific Terms in Dispute

The Commission has reviewed submissions from both parties and has included its determination on each of the Specific Terms in Dispute in Appendix A.1.

The Commission approves the Revised FEI Operating Terms, as amended by the Commission and set out in the attached Appendix A.1 and Appendix B.

The Commission considers that a term of twenty years is appropriate for the new Operating Agreement and is effective from July 1, 2012.

FEI and the Municipality are to file with the Commission an endorsed Operating Agreement in accordance with the terms approved by the Order accompanying the Reasons for Decision and consistent with Appendix B.

The terms of the Operating Agreement may be reviewed, upon application by FEI or the Municipality, should the Commission determine that a significant revision is required.

The amendments to the Operating Agreement, as directed by the Commission and set out in the attached Appendix A.1 and Appendix B, are to be incorporated into future operating agreements between FEI and municipalities.

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
1	**1 (e) Company Facilities**	" "Company Facilities" means FortisBC's facilities, including pipes, buildings, structures, valves, signage, storage facilities, machinery, vehicles and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution and transmission system";	" "Company Facilities" means FortisBC's facilities, including pipes, buildings, structures, valves, signage, ~~storage facilities~~, machinery, vehicles and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution and transmission system";	" "Company Facilities" means FortisBC's facilities, including pipes, ~~buildings, structures~~, valves, signage, ~~storage facilities~~, machinery, ~~vehicles~~ and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution ~~and transmission~~ system";	**The revision proposed by the Municipality is not approved**. Transmission System In the Commission's view, the inclusion of the term "transmission system" in the definition is appropriate. FEI, by virtue of section 45(2) of the Act, is deemed to have a CPCN that does not expire. FEI has the authority under section 45(2) to operate the plant or system and to construct and operate extensions to the system. The CPCN granted to Inland in 1967 required the "construction and operation by [Inland] of transmission and distribution facilities to supply natural gas" to Municipality. In addition, the 1991 Agreement granted FEI "... the full power, right and liberty to place, construct, renew, alter, repair, maintain, operate and use its pipes and other equipments and appliances... for mixing, **transmitting**, distributing, delivering, furnishing, selling and taking delivery of gas upon , along, across, over or under any public thoroughfare, highway, road, street, land, alley, square, park, public place, bridge, viaduct, subway or watercourse in the Municipality...as may be necessary or convenient for the purposes of supplying and conducting gas to the consumers thereof."

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					Other Proposed Revisions The Commission does not agree with the Municipality's position that the definition proposed by FEI would allow them to construct works in public places that are not connected to the natural gas system. The definition directly specifies that Company Facilities are those that are "...used to maintain, operate, renew, repair, construct and monitor a natural gas distribution and transmission system." The Commission considers it appropriate that all facilities used for this purpose should be included in the definition to ensure that FEI is not impeded from acting in accordance with the set terms.
2	**1 (o) New Wok**	"New Work" means any installation, construction, repair, maintenance, alteration, extension or removal work of the Company Facilities in Public Places except; (i) routine maintenance and repair of the Company Facilities that does not involve any cutting of asphalted road surface;	Same as FEI Application Operating Terms	"New Work" means any installation, construction, repair, maintenance, alteration, extension or removal work of the Company Facilities in Public Places except; (i) Routine work and maintenance, field testing, installation, removal and repair of the Company Facilities ~~that does not involve any cutting of asphalted road surface~~	**The revision proposed by the Municipality is not approved.** The Commission notes that the main difference between the definition of New Work in the Revised FEI Operating Terms and the Municipality Operating Terms concerns the installation or repair of Service Lines. The Municipality objects to the exclusion of Service Lines from the definition of New Work. Section 6.1 of the Revised FEI Operating Terms relates to New Work. Section 6.2 of the Revised FEI Operating Terms relates to the installation, removal or repair of Service Lines. In the Commission's view, given that New Work and Service Lines are dealt with in separate Sections of the Revised FEI Operating Terms, it is

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
		(ii) installation or repair of Service Lines whether or not such installation or repair involves cutting of asphalted road service; or (iii) emergency work; but notwithstanding such exceptions, New Work shall include any installation, construction or removal of the Company Facilities in Public Places that are planned to disturb underground Municipal Facilities;		provided that; a. Such installation or repair ~~of Service Lines whether or~~ does ~~not such installation or repair~~ involves~~s~~ cutting of asphalted road service; and ~~or~~ (iii) emergency work; but notwithstanding such exceptions, New Work shall include any installation, construction or removal of the Company Facilities in Public Places that are planned to disturb underground Municipal Facilities;	appropriate that the installation or repair of Service Lines is excluded from the definition of New Work. The Commission notes the Municipality's concerns regarding the definition of Company Facilities and its impact on the definition of New Work. This is addressed in the Commission determination on Issue #1.
3	**5.1 Non-discriminatory Standards for FortisBC**	"In its use of Public Places, FortisBC shall comply with all Federal and Provincial laws, regulations and codes and shall comply with all Municipal bylaws, standards and policies except that FortisBC shall not have to	Only minor change to (a): "conflict with ~~terms of~~ these terms or limit any rights or concessions granted to FortisBC by the Municipality under these terms; or"	The following sentence is added to the end of the first paragraph: "...are in direct conflict with provincial or federal legislation governing the operations of FortisBC."	**The revision proposed by the Municipality is not approved.** The Commission notes section 121 of the Act, which states the following:

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
		comply with such Municipal bylaws, standards and policies that: (a) conflict with terms of these terms or limit any rights or concessions granted to FortisBC by the Municipality under these terms; or (b) conflict with other legislation governing FortisBC. Further, where the Municipality has established requirements and standards for work in Public Places, the Municipality shall apply them in a fair, reasonable and non-discriminatory manner consistent with the manner that the Municipality establishes requirements on other Utilities."		Section (a), (b) and the final paragraph are deleted	121 (1) Nothing in or done under the Community Charter or the Local Government Act (a) supersedes or impairs a power conferred on the commission or an authorization granted to a public utility, or (b) relieves a person of an obligation imposed under this Act or the *Gas Utility Act*. Section 121 of the Act requires that a municipality may not enact bylaws, standards and policies that conflict with an authorization granted to a public utility. Therefore, the Commission considers that paragraph (a) and (b) add clarity to the scope of the agreement in regards to any bylaws that might otherwise apply to FEI's operations in public places. The Commission considers that the final paragraph adds clarity to the Revised FEI Operating Terms to ensure that fair requirements and standards are applied to FEI's work in the Municipality's public places.
4	**6.1.1 Notice for New Work**	Remove "if required by Municipality." Change made in Application Operating Terms.	Same as FEI Application Operating Terms	Same as FEI Application Operating Terms	**Issue resolved between parties.**

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
5	**6.1.3 Municipal Approval for New Work**	"(a) the proposed location of the New Work conflicts with existing Municipal Facilities, existing third party facilities or Planned Facilities; or"	Same as FEI Application Operating Terms	" (a) the proposed location or design of the New Work conflicts with ~~existing Municipal Facilities, existing third party facilities or~~ Planned Facilities, the Municipality's Official Community Plan or other bylaws, standards or policies of the Municipality; or"	**The revision proposed by the Municipality is not approved**. The Commission considers that the addition of "other bylaws, standards or policies of the Municipality" is redundant as this appears in Section 6.1.3(b) of the Revised FEI Operating Terms. In the Commission's view, the addition of the Official Community Plan is unnecessary for two reasons. First, the Municipality noted in the Coldstream Comments that "The OCP is a fundamental tool in guiding the future development of the District and, under the *Local Government Act* municipal bylaws must be consistent with the OCP." Given that the Municipality's bylaws are consistent with the OCP, the Municipality has grounds to object to New Work under Section 6.1.3(b) to the extent that the New Work does not conform to Municipal bylaws, standards or policies. Second, Section 6.1.3(a) of the Revised FEI Operating Terms provides that the Municipality may object to New Work on the grounds that the New Work conflicts with "Planned Facilities". Therefore, to the extent that any New Work conflicts with Planned Facilities included in the Municipality's Official Community Plan, a means for objection is already provided in the Revised FEI Operating Terms.

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
6	**6.1.3 Municipal Approval for New Work**	Section (d) not included in FEI Application Operating Terms.	Same as FEI Application Operating Terms	The following is added: "(d) the Municipality, acting reasonably, considers that the nature, design, type or location of the proposed New Work will cause undue interference or disruption to, or substantially affect the appearance or current use of, and Public Place or is otherwise not in the best interests of the public;"	**The revision proposed by the Municipality is not approved.** The Commission considers the proposed revision unnecessary as the Municipality is provided grounds to object to New Work in Sections 6.1.3 (a) and (b) of the Revised FEI Operating Terms if that New Work conflicts with existing or planned facilities, does not conform to Municipal bylaws, standards or policies and/or is likely to compromise public safety. Also, the addition of "not in the best interests of the public" is unnecessary as FEI is already required by Section 3 of the Revised FEI Operating Terms to carry out work and operations "with the due care and attention that is necessary to safeguard the interest of the public...".
7	**6.1.3 Municipal Approval for New Work**	"...by providing FortisBC with notice of its objections, provided such objections are reasonable, no more than 10 days after receiving FortisBC's notice of New Work..."	Same as FEI Application Operating Terms	The following is removed: "...provided such objections are reasonable..."	**The revision proposed by the Municipality is not approved.** The Municipality noted that the statement that "such objections are reasonable" is "unnecessary and poorly defined" yet proposed similar wording to Section 6.1.3(d). In the Commission's view, it is appropriate that all objections to New Work are reasonable, to ensure that FEI is not unnecessarily impeded from acting in accordance with the terms of agreement.
8	**6.2 Notice of Service Lines**	"FortisBC shall provide the Municipality with notice of its intent to install, remove or repair	Same as FEI Application Operating Terms	The following is removed: "FortisBC's request for the	**The revision proposed by the Municipality is not approved.**

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
		Service Lines no less than three (3) days prior to commencement of such work. FortisBC's request for the location of the Municipality's utilities shall be deemed to be a notice of FortisBC's intent to install, remove or repair Service Lines. The Municipality may object to such work on the same grounds as set out in SubSection 6.1.3 (a) and (b) above by providing FortisBC with notice of its objections within three (3) days of receiving FortisBC's notice. If the Municipality has not provided such notice of its objections to FortisBC, the Municipality shall be deemed to have granted its approval of the installation, removal or repair of the Service Lines. The Municipality shall not otherwise withhold or delay its approval."		location of the Municipality's utilities shall be deemed to be a notice of FortisBC's intent to install, remove or repair Service Lines."	**The Commission directs that all locate information requests sent by FEI expressly state FEI's intention is to install, remove and / or repair Service lines at the location under consideration.** **The Commission directs FEI to make the aforementioned change to all locate information requests sent to municipalities.** The Municipality submitted that the 'locate information requests' are inadequate notification as they do not specify FEI's intent to install, remove or repair Service Lines. FEI submitted that 'locate information requests' provide sufficient notification of their plans regarding Service Lines and that any additional notification would unnecessarily increase the costs to FEI's ratepayers. The Commission is in agreement with FEI that the requirement to send a second notification in addition to the 'locate information requests' would unnecessarily increase costs to ratepayers. However, the Commission agrees with the Municipality's argument that the 'locate information requests' do not provide sufficient information as to FEI's intent to install, repair and/or remove Service Lines. This hinders the Municipality's right to object to such work in instances where they are uncertain as to what work is actually being performed. Therefore, the Commission directs that all 'locate information requests' sent by FEI expressly state in the 'description

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					of the work' Section FEI's intention to install, remove and / or repair Service Lines at the location under consideration.
9	**6.4.1. Specific Work Requirements Remove Materials**	"FortisBC shall keep its work sites clean and tidy. FortisBC shall remove all rubbish and surplus material from Public Places upon completion of its work."	Same as FEI Application Operating Terms	The following is added to the end of the Section: "All work carried out by FortisBC on Public Places shall: (a) Comply with all federal, provincial and municipal laws and regulations; (b) Be carried out diligently in a good and workmanlike manner in accordance with sound engineering practices; (c) Not damage or interfere with existing third party or Municipal Facilities or other equipment or improvements over, under or adjacent to the Public Places; (d) Be conducted and completed to the reasonable satisfaction of the Municipality; and (e) Not unduly interfere with the public use and	**The addition of (a) is not approved.** Section 5.1 of the Revised FEI Operating Terms requires FEI to comply with all Federal and Provincial laws in addition to Municipal bylaws, standards and policies, other than those conflicting with the Revised FEI Operating Terms. **The addition of (b) is approved, in part. The Commission directs FEI to include the following in Section 6.4 of the Revised FEI Operating Terms:** **All work carried out by FortisBC on Public Places shall be carried out in accordance with sound engineering practices.** **The Commission directs FEI to incorporate the aforementioned revision into future operating agreements with municipalities.** The Commission agrees that the inclusion of "sound engineering practices" is required to ensure that the appropriate professional judgement is applied by FEI in its engineering within the Municipality. The Commission disagrees with the inclusion of "...diligently in a good and workmanlike manner ..." as this is a broad statement that adds little clarity to the Revised FEI Operating Terms.

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
				enjoyment of the Public Places."	**The addition of (c) is not approved.** The Municipality is provided grounds to object to New Work that conflicts with existing Municipal Facilities, existing third party facilities and/or planned facilities in Section 6.1.3(a) of the Revised FEI Operating Terms. The Commission considers it more appropriate to outline FEI's obligations in the unlikely event that work performed by FEI results in damage to Municipal Facilities. Such obligations are outlined in Section 6.4.3 of the Revised FEI Operating Terms. In the Commission's view, it is not appropriate to include 'third party facilities' in this section under consideration as indemnity against third party claims is covered in Section 10.1.1 of the Revised FEI Operating Terms. **The addition of (d) is not approved.** In the Commission's view, this is a broad term that adds little clarity to the Revised FEI Operating Terms. Section 6.4.2 of the Revised FEI Operating Terms provides that any restoration of the surface or subsurface by FEI must be "...in accordance with the specifications set out by the Municipality." Section 6.4.3 further specifies that any damage to Municipal Facilities must be conducted in accordance with 6.4.2, i.e. "...in accordance with the specifications set out by the Municipality."

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					The addition of (e) is not approved. Section 3 of the Revised FEI Operating Terms requires FEI to carry out all work in a manner that protects the interest of the public.
10	**6.4.4 Municipal Repairs Upon Default**	Section not included in Application Operating Terms	Same as FEI Application Operating Terms	The following Section is added: " 6.4.4 Municipal Repairs Upon Default If FortisBC fails to restore the surface or subsurface of a Public Place and when required by Section 6.4.2, or fails to repair Municipal Facilities as and when required by Section 6.4.3, the Municipality may, but is not required to, carry out and complete such restoration or repair at the cost of FortisBC and, despite anything to the contrary in Section 6.4.2. FortisBC shall be responsible for any repairs and maintenance of the surface repair for a period of three (3) years."	**The revision proposed by the Municipality is not approved**. Section 6.4.2 of the Revised FEI Operating Terms requires FEI to carry out restoration work on surfaces and subsurface "without unreasonable delay" and "in accordance with the specifications set out by the Municipality". Section 3 of the Revised FEI Operating Terms requires FEI to carry out their obligations under the terms within "reasonable time frames". Given FEI's obligations under Sections 3 and 6.4.2 as noted above, the proposed revision is, in the Commission's view, unnecessary. The Commission is in agreement with FEI that they should not be held responsible for the maintenance of restoration work performed by the Municipality. The Commission also highlights that the proposed revision is ambiguous, as it relates to Section 6.4.3. Section 6.4.3 requires FEI to notify and reimburse the Municipality for any damage to Municipal facilities, as opposed to FEI performing restoration work. Therefore, there is no requirement to "...repair Municipal Facilities

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					as and when required by Section 6.4.3" as noted in the proposed addition of Section 6.4.4.
11	**6.4.5 WCB Coverage**	Section not included in Application Operating Terms	Same as FEI Application Operating Terms	The following Section is added: " 6.4.5 WCB Coverage FortisBC shall at its own expense procure, carry and pay for, or cause to be procured, carried or paid for, full Workers' Compensation Board coverage for itself and all workers, employees, servants and others engaged in or upon any work or service which is the subject matter of these terms. FortisBC shall comply with all regulations and safety rules of the Workers' Compensation Act and ensure that all such safety rules and regulations are observed during the performance of any work under these terms."	**The revision proposed by the Municipality is not approved.** Section 5.1 of the Revised FEI Operating Terms requires FEI to comply with all Federal and Provincial laws. All incorporated entities, such as FEI, are required by law to register with WorkSafeBC. Therefore, pursuant to Section 5.1 of the Revised FEI Operating Terms, FEI is required to register with WorkSafeBC. Section 118 of the *Workers Compensation Act* (the WC Act) provides for the designation of one employer at a multi-employer site to be the prime contractor. The "prime contractor" is defined in the WC Act as follows: (a) the directing contractor, employer or other person who enters into a written agreement with the owner of that workplace to be the prime contractor for the purposes of this Part, or (b) if there is no agreement referred to in paragraph (a), the owner of the workplace. Section 118 of the WC Act further notes: (2) The prime contractor of a multi-employer workplace must

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					(a) ensure that the activities of employers, workers and other persons at the workplace relating to occupational health and safety are coordinated, and (b) do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with this Part and the regulations in respect of the workplace. (3) Each employer of workers at a multiple-employer workplace must give to the prime contractor the name of the person the employer has designated to supervise the employer's workers at that workplace. The revision proposed by the Municipality extends beyond FEI's legal obligations under the WC Act with the inclusion of "...others engaged in or upon any work of service which is the subject matter of these terms." This statement would require FEI to be responsible for other employers' workers or contractors when FEI is not the prime contractor. In the Commission's view, it is not in the public interest to increase FEI's responsibilities beyond what is required by the WC Act.
12	**6.7 Removal of Company Facilities**	Section not included in Application Operating Terms	Same as FEI Application Operating Terms	The following Section is added: " 6.7 Removal of Company Facilities	**The revision proposed by the Municipality is approved, in part.**

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
				FortisBC shall notify the Municipality from time to time if FortisBC no longer requires any Company Facilities located above the surface of the ground in any Public Place and, at the request of the Municipality, shall, within a reasonable period of time and at its cost, remove such surface Company Facilities, repair any damage caused by such removal and restore the surface of the Public Place. If FortisBC fails to repair any damage and restore the Public Place, the Municipality may carry out such work at the cost of FortisBC."	**The Commission directs FEI to add the following paragraph to the end of Section 6.4.1of the Revised FEI Operating Terms:** **The Company shall not leave any part of its gas system in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want or repair.** **The Commission directs FEI to incorporate the aforementioned revision into future operating agreements with municipalities.** In the Commission's view, a provision regarding disused Company Facilities is reasonable, in order to ensure that obsolete Company Facilities in public places are dealt with appropriately and in a timely manner. The Commission is in agreement with the Municipality that Section 6.4.2 of the Revised FEI Operating Terms does not specifically address the removal of unused FEI facilities and thus it would be appropriate to modify Section 6.4.2 of the Revised FEI Operating Terms to include removal of unused above-ground facilities, as directed by the Commission above. The revision ordered by the Commission above is reduced in scope as compared to the revision proposed by the Municipality for the following reasons: • Section 3 of the Revised FEI Operating Terms already requires FEI to carry out their

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					obligations under the terms within "reasonable time frames". • The restoration of surface and subsurface is covered in Section 6.4.2 of the Revised FEI Operating Terms. • The repair of damage to Municipal Facilities is covered in Section 6.4.3 of the Revised FEI Operating Terms. • The proposed revision that "...the Municipality may carry out such work at the cost of FortisBC" is not approved as Section 3 of the Revised FEI Operating Terms requires FEI to carry out their obligations under the terms within "reasonable time frames". Any disputes regarding compliance with the terms of agreement should be dealt with in accordance with the dispute resolution mechanisms outlined in Section 17 of the Revised FEI Operating Terms.
13	**7.1 Notice of Closure of Public Places**	"If the Public Places are expropriated by an expropriating authority and FortisBC is required to remove the Company Facilities then the Municipality shall promptly notify FortisBC of the expropriation."	Same as FEI Application Operating Terms	Full paragraph is deleted.	**The revision proposed by the Municipality is approved, in part.** **The Commission directs FEI to revise Section 7.1 of the Revised FEI Operating Terms to conclude with the following sentence:**

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					This provision is applicable when the Municipality receives official notice of expropriation or otherwise becomes aware of expropriation through communications with the expropriating authority. **The Commission directs FEI to incorporate the aforementioned revision into future operating agreements with municipalities.** The Commission agrees with the Municipality that FEI could be included in the definition of "owner" per the *Expropriation Act*. Section 1 defines "owner," in relation to land, as: a) a person who has an estate, interest, right or title in or to the land including a person who holds a subsisting judgment or builder's lien, (b) a committee under the Patients Property Act, (b.1) an attorney under Part 2 of the Power of Attorney Act, (b.2) a guardian, executor, administrator or trustee in whom land is vested, or (c) a person who is in legal possession or occupation of land, other than a person who leases residential premises under an agreement that has a term of less than one year;

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					Pursuant to Section 6 of the *Expropriation Act,* an expropriating authority must serve notice on each owner. However, FEI notes that they are unable to register ownership interest in the Land Title Office to ensure that an expropriating authority will know of its interest when doing a land title search. Therefore, whether or not FEI is likely to receive expropriation notice is a function of the knowledge and experience of the staff at the expropriating authority. The Commission notes that the definition of "Public Places" per the Revised FEI Operating Terms could include those that are not owned by the Municipality and may instead be owned by provincial or federal entities. Therefore, it is not appropriate that the Municipality is obliged to notify FEI of expropriation when they may not have received or be entitled to receive notification themselves. In the Commission's view, in instances where the Municipality receives official notice of expropriation or otherwise becomes aware of expropriation through communications with the expropriating authority, the obligation to inform FEI would only require minimal effort and resources on their part and is therefore reasonable to be included in the terms.

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
14	**8.1 Facility Changes Required By FortisBC**	"FortisBC may provide Notice to the Municipality that it requires Municipal Facilities to be altered, changed or relocated to accommodate its requirements. The Municipality will comply with FortisBC's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. FortisBC agrees to pay for all of the costs for changes to the affected Municipal Facilities."	Same as FEI Application Operating Terms	The following is added at the end of the first paragraph: "Provided that such request does not: • Conflict with the Municipality's Official Community Plan or other bylaws, standards or policies of the Municipality; • Conflict with the location of any Planned Facilities; or • Compromise public safety;"	**The revision proposed by the Municipality is not approved.** The Commission notes that Section 8.1 of the Revised FEI Operating Terms deals with requests by FEI that they require Municipal Facilities to be altered, changed or relocated. Section 8.2 deals with requests by the Municipality that they require the same of FEI's Company Facilities. Section 8.1 and 8.2 are reciprocal, with the exception of a sentence regarding the OAGA Act in Section 8.2. There is no equivalent sentence to be included in Section 8.1 as the OAGA Act relates to the safety of pipelines as opposed to Municipal Facilities. Both Section 8.1. and 8.2 require the party whose facilities are requested to be altered, changed or relocated to comply "...to the extent that it is reasonably able to do so..." Therefore, if it is unreasonable for the Municipality to comply with FEI's requests that conflict with Planned Facilities or municipal bylaws, the conflict should be dealt with in accordance the dispute resolution terms outlined in Section 17 of the Revised FEI Operating Terms. The Commission considers the third point unnecessary as Section 3 of the Revised FEI Operating Terms requires FEI to carry out work and operations "with the due care and attention that is necessary to safeguard the interest of the public...".

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
15	**9.2 Communication and Coordination Activities**	Remove requirement to 'meet' each year to "will be invited to meet". Change made in Application Operating Terms.	Same as FEI Application Operating Terms	Same as FEI Application Operating Terms	**Issue resolved between parties.**
16	**10.3 Limitations on Municipality's Liability**	"All property of FortisBC kept or stored on the Public Places will be kept or stored at the risk of FortisBC. For further certainty, FortisBC acknowledges that the Municipality has made no representations or warranties as to the state of repair or the suitability of the Public Places for any business, activity or purpose whatsoever. FortisBC accepts its use of Public Places on an "as is" basis."	Same as FEI Application Operating Terms	The following is added at the end of the paragraph: "Neither FortisBC nor the Municipality shall be liable to each other in any way for indirect or consequential losses or damage, or damage for pure economic loss, howsoever caused or contributed to, in connection with these terms."	**The revision proposed by the Municipality is not approved.** In the Commission's view, it is not in the public interest to have a contractual limitation that may result in all FEI ratepayers bearing the burden of damages that would otherwise be the Municipality's legal responsibility. Also, the revision proposed by the Municipality deals with liability arising from the use of public places by FEI to store its equipment. Therefore, the Commission considers that the proposed revision is not an explicitly mutual restriction on liability, further supporting that it is not in the public interest.
17	**10.4 Insurance**	Section not included in Application Operating Terms	FEI has added the following Section: "10.4 Insurance FortisBC shall obtain at its own	Same as FEI Revised Operating Terms.	**Issue resolved between parties.**

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
			expense General Commercial liability insurance for bodily injury, death and property damage with minimum amount $5 million per occurrence and name the Municipality as an additional insured on such policy."		
18	**10.5 Environmental Liabilities**	Section not included in Application Operating Terms	Same as FEI Application Operating Terms	The following Section is added: "FortisBC shall assume all environmental liability, including but not limited to liability for cleanup of any hazardous substances which it brings or deposits or causes to be brought or deposited onto any Public Place is uses under these terms. For certainty, FortisBC is not liable for any hazardous substances which may be or are present in, or under, along or around the Public Places which were not brought or deposited, or caused to be brought or deposited onto the Public Places by FortisBC, or which were brought or deposited by any party who FortisBC is not responsible or at law. For the	**The revision proposed by the Municipality is not approved.** Section 5.1 of the Revised FEI Operating Terms requires FEI to abide by all applicable laws. This would include the *Environmental Management Act* (the EM Act). The following are excerpts from the EM Act. **Section 45** **Persons responsible for remediation of contaminated sites** (d) a person who (i) transported or arranged for transport of a substance, and (ii) by contract, agreement or otherwise caused the substance to be disposed of, handled or treated in a manner that, in whole

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
				purposes of this Sections, "hazardous substances" means any hazardous substances and includes, but is not limited to, radiation, petroleum products and byproducts, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any law, ordinance, rule, regulation, by-law or code, whether federal, provincial or municipal.	or in part, caused the site to become a contaminated site; **Section 46** **Persons not responsible for remediation** (e) an owner or operator who (i) owned or occupied a site that at the time of acquisition was not a contaminated site, and (ii) during the ownership or operation, did not dispose of, handle or treat a substance in a manner that, in whole or in part, caused the site to become a contaminated site; The Commission considers that under Section 45 of the EM Act FEI could be held responsible for remediation of contaminated sites, when applicable. Section 10.1 of the Revised FEI Operating Terms provides the following indemnity by FEI to the Municipality: 10.1.1 FortisBC indemnifies and protects and saves the Municipality harmless from and against all claims by third parties in respect to loss of life, personal injury...loss or damage to property caused by FortisBC The Municipality submitted that Section 10.1.1 does not protect the Municipality against legal or

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					administrative sanctions for environmental offences; however, the Commission considers that Section 10.1.1 is appropriate as it refers to "all claims" in respect to "loss or damage to property". The revision proposed by the Municipality requires FEI to "assume all environmental liability". This differs from Section 10.1 of the Revised FEI Operating Terms, in which FEI indemnifies the Municipality "...except to the extent contributed by negligence or default of the Municipality or Municipal Employees." The Commission does not consider it to be in the public interest for FEI to assume all liability in instances where there may be shared liability due to negligence by the Municipality.
19	**12 OTHER APPROVALS, PERMITS OR LICENSES**	"Except as specifically provided in these terms, the Municipality will not require FortisBC to seek or obtain approvals, permits or licenses."	Same as FEI Application Operating Terms	"Except as specifically provided in <u>these terms or as required by Municipal bylaws, provincial or federal legislation</u> ~~these terms~~, the Municipality will not require FortisBC to seek or obtain approvals, permits or licenses."	**The revision proposed by the Municipality is not approved.** The proposed revision is not approved as it places undue restrictions on FEI's operations. The Commission is in agreement with FEI that the proposed revision would reduce the benefit that ratepayers obtain from the agreement. For example, FEI would be required to obtain permits and pay the applicable permit fees in order to comply with *Building and Plumbing Bylaw No. 1442*. The following is an excerpt from the Act:

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					Relationship with Local Government Act 121 (1) Nothing in or done under the Community Charter or the Local Government Act (a) supersedes or impairs a power conferred on the commission or an authorization granted to a public utility, or (b) relieves a person of an obligation imposed under this Act or the Gas Utility Act.
20	**13.1.1 Municipal Work**	"Before the Municipality undertakes any construction or maintenance activity which is likely to affect a part of the Company Facilities, it must give FortisBC notice not less than 10 days before commencing such construction or maintenance activity."	Same as FEI Application Operating Terms	"Before the Municipality undertakes any construction or maintenance activity which will require modification to ~~is likely to affect a part of the~~ Company Facilities, it must give FortisBC notice not less than ~~10~~ 3 days before commencing such construction or maintenance activity."	**The proposed revision to include "will require modification to" is not approved.** **The Commission directs FEI to make the following revision to Section 13.1.1 of the Revised FEI Operating Terms:** **Before the Municipality undertakes any construction or maintenance activity which is likely to affect a part of the Company Facilities, *excluding routine maintenance and repair that does not involve any cutting of asphalted road surface,* it must give FortisBC notice not less than 10 days before commencing such construction or maintenance activity.**

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					Before the Municipality undertakes routine maintenance and repair that does not involve any cutting of asphalted road surface and is likely to affect Company Facilities, it must give FortisBC notice not less than 3 days before commencing such construction or maintenance activity. **The Commission directs FEI to incorporate the aforementioned revision into future operating agreements with municipalities.** The Commission agrees with FEI regarding the symmetry between Section 6.1.3 and 13.1.1 of the Revised FEI Operating Terms. Section 6.1.3 of the Revised FEI Operating Terms provides the Municipality with 10 days after receiving FEI's notice of New Work to object. Section 13.1.1 requires the Municipality to give FEI 10 days notice of municipal work. However, the Commission is in agreement with the Municipality that a 10 day notice period for routine maintenance activities is not appropriate. The Commission notes that the definition of New Work excludes "... routine maintenance and repair of the Company Facilities that does not involve any cutting of asphalted road surface." Therefore, the Commission considers a 3 day notice period for routine maintenance to be more appropriate. This is consistent with Section 6.2 of the Revised FEI Operating Terms that requires FEI to provide no less than 3 days notice to the

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					Municipality of its intent to install, remove or repair Service Lines. In the Commission's view, it is appropriate that the Municipality notify FEI of all Municipal work that is 'likely' to affect a part of the Company Facilities as the Municipality may not be aware in all circumstances of what construction or maintenance will in fact require modification to the Company Facilities.
21	**13.1.8 Municipal Work**	"The Municipality shall notify FortisBC of any new bylaws, standards or policies adopted or passed by the Municipality that are likely to affect FortisBC's operations in Public Places."	Same as FEI Application Operating Terms	The word "directly" is added: "The Municipality shall notify FortisBC of any new bylaws, standards or policies adopted or passed by the Municipality that are likely to directly affect FortisBC's operations in Public Places."	**The revision proposed by the Municipality is not approved.** In the Commission's view, it is important that the Municipality advise FEI of any new bylaws, standards or policies that are likely to impact FEI, to ensure FEI complies with Section 5.1 of the Revised FEI Operating Terms.
22	**14.1 Definition of Costs**	"Wherever one party is required to pay the other party Costs as a result of damage caused by one party to the other's property, the Costs shall be: ... d) in the case of loss of gas or re-lights, the cost of the commodity as determined by the	Same as FEI Application Operating Terms	Both (d) and (e) are deleted.	**The revision proposed by the Municipality is not approved.** The Commission considers it appropriate that both FEI and the Municipality are entitled to recover the costs outlined in Section 14.1 incurred as a result of damage caused by the other party.

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
		length of time that the gas is leaking, size of pipe and hole and the pressure; and e) in the case of water, electrical or sewer, cost of supplying alternate service."			
23	**14.3.1 Cost Verification Procedures**	"Wherever either party is the recipient of or is claiming Costs and or fees that party may at its own discretion request from the other party: ... "	Same as FEI Application Operating Terms	A $50,000 threshold is added as follows: "Wherever either party is the recipient of or is claiming Costs and or fees that party may at its own discretion request from the other party, and that exceed $50,000 in value":	**The revision proposed by the Municipality is not approved.** **The Commission directs FEI to amend the Revised FEI Operating Terms to conclude (a) and (b) with the word "or," to clarify that only one cost verification procedure can be requested in each situation.** **The Commission directs FEI to incorporate the aforementioned revision into future operating agreements with municipalities.** The Municipality seeks to avoid the transaction costs associated with Section 14.3.1 for costs below a $50,000 threshold. The revision proposed by the Municipality means that disputes regarding costs below $50,000 would be dealt with in accordance with the dispute resolution mechanisms outlined in Section 17 of the Revised FEI Operating Terms. Section 17 requires

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					disputes to be resolved in a structured mediation conference, followed by referral to arbitration or to the Commission, where applicable. In the Commission's view, cost verification is not always well-suited to mediation or arbitration. Also, whether the cost verification procedures as per Section 14.3.1 are more or less expensive than the dispute resolution procedures as per Section 17 will depend on the specifics of each individual situation and thus the benefit of the $50,000 threshold proposed by the Municipality to the ratepayers is not evident. For that reason, the Commission takes the view that the $50,000 threshold proposed by the Municipality is not in the public interest. The Commission notes that Section 14.3.1 of the Revised FEI Operating Terms is ambiguous as it does not specify whether either party can request more than one of the three cost verification procedures. In the Commission's view, only one cost verification procedure should be employed in each instance and therefore the Commission directs FEI to amend the Revised FEI Operating Terms.
24	**15.7 (c) Continuity In The Event No Agreement Is Settled**	"FortisBC may continue to use Public Places within the Municipality for the purposes of its business. FortisBC's employees, may enter upon all	Same as FEI Application Operating Terms	The end of the sentence is modified as follows: "... provided that FortisBC	**The revision proposed by the Municipality is not approved.** In the Commission's view, the collection and remittance of the operating fee is not appropriate upon expiry of

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
		the Public Places within the Boundary Limits of the Municipality to maintain, operate, install, construct, renew, alter, or place Company Facilities; provided that FortisBC continues to operate in a manner consistent with the terms and conditions of these terms as if the term had been extended except with respect to the payment of the Operating Fee."		continues to operate in a manner consistent with the terms and conditions of these terms as if the term had been extended <u>including payment of the Operating Fee as required by Section 11.1</u> ~~except with respect to the payment of the Operating Fee~~."	the agreement, unless directed by the Commission.
25	**15.7 (e) Continuity In The Event No Agreement Is Settled**	"Should FortisBC no longer be authorized or required to pay the operating fee under these terms between it and the Municipality or by any other order of the BCUC, the Municipality shall be free to apply such approval, permit and licence fees, charges and levies it is legally entitled to collect."	Same as FEI Application Operating Terms	The paragraph is modified as follows: "Should FortisBC ~~no longer~~ be authorized or required to pay the <u>O</u>~~o~~perating <u>F</u>~~f~~ee under <u>any new agreement or</u> ~~these~~ terms between it and the Municipality or by any other order of the BCUC, <u>FortisBC shall reimburse the Municipality for any operating fees or rents not paid by FortisBC during the time period commencing on the termination or expiry of these terms until the effective date of the new terms or agreement, as the case may be, at the rate</u>	**The revision proposed by the Municipality is not approved.** In the Commission's view, the collection and remittance of the operating fee is not appropriate upon expiry of the agreement, unless directed by the Commission.

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
				specified in the new agreement or terms , as the case may be ~~shall be free to apply such approval, permit and licence fees, charges and levies it is legally entitled to collect.~~"	
26	**17.7 Continuation of Obligation**	Condition added regarding dispute resolution. Change made in Application Operating Terms.	Same as FEI Application Operating Terms	Same as FEI Application Operating Terms	**Issue resolved between parties.**

OPERATING TERMS for Fortis Energy Inc. ("FortisBC") in the District of Coldstream

1. DEFINITIONS

For the purposes of these terms:

(a) "Boundary Limits" means the boundary limits of the Municipality as they exist from time to time and that determine the area over which the Municipality has control and authority;

(b) "BCUC" means the British Columbia Utilities Commission or successor having regulatory jurisdiction over natural gas distribution utilities in British Columbia;

(c) "CPCN" means a Certificate of Public Convenience and Necessity granted by the BCUC which allows FortisBC to operate, maintain and install Company Facilities for the distribution of Gas within the Municipality;

(d) "Company Design" means the installation and design specifications which meet all applicable Provincial and Federal codes, standards and safety requirements for the gas services in the province of British Columbia, as they relate to approved gas works, system improvements, upgrades, connections and system extensions;

(e) "Company Facilities" means FortisBC's facilities, including pipes, buildings, structures, valves, signage, machinery, vehicles and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution and transmission system;

(f) "Distribution Pipelines" means pipelines operating at a pressure less than 2071 kilopascals (300 psi);

(g) "FortisBC Employees" means personnel employed by or engaged by FortisBC including officers, employees, directors, contractors, and agents;

(h) "Gas" means natural gas, propane, methane, synthetic gas, liquefied petroleum in a gaseous form or any mixture thereof;

(i) "Gas Distribution" means fixed equipment, structures, plastic and metal lines and pipe, valves, fittings, appliances and related facilities used or intended for the purpose of conveying, testing, monitoring, distributing, mixing, storing, measuring and delivering Gas and making it available for use within the Municipality;

(j) "Highway" means street, road, lane, bridge or viaduct controlled by the Municipality or Provincial Government of British Columbia;

(k) "Mains" means pipes used by FortisBC to carry gas for general or collective use for the purposes of Gas Distribution;

(l) "Municipal Employees" means personnel employed by or engaged by the municipality, including officers, employees, directors, contractors and agents;

(m) "Municipal Facilities" means any facilities, including highways, sidewalks, conduits, manholes, equipment, machinery, pipes, wires, valves, buildings, structures, signage, bridges, viaducts and other equipment within the Public Places used by the Municipality for the purposes of its public works or municipal operations;

(n) "Municipal Supervisor" means the Municipal Engineer or other such person designated by the Municipality to receive notices and issue approval as set out in these terms;

(o) "New Work" means any installation, construction, repair, maintenance, alteration, extension or removal work of the Company Facilities in Public Places except;

(p) routine maintenance and repair of the Company Facilities that does not involve any cutting of asphalted road surface;

(q) installation or repair of Service Lines whether or not such installation or repair involves cutting of asphalted road service; or

(r) emergency work;

(s) but notwithstanding such exceptions, New Work shall include any installation, construction or removal of the Company Facilities in Public Places that are planned to disturb underground Municipal Facilities;

(t) "Pipeline Markers" means post, signage or any similar means of identification used to show the general location of Transmission Pipelines and distribution pipelines or FortisBC Rights of Way;

(u) "Planned Facilities" means those facilities not yet constructed but which have been identified by way of documented plans for the works of the Municipality, for works of third parties, where such works are identified by documented plans approved by the Municipality, or for works of FortisBC submitted to the Municipality subject to Municipal approval;

(v) "Public Places" means any public thoroughfare, highway, road, street, lane, alley, trail, square, park, bridge, right of way, viaduct, subway, watercourse or other public place in the Municipality;

(w) "Service Line" means that portion of FortisBC's gas distribution system extending from a Main to the inlet of a meter set and, for the purposes of these terms, includes a service header and service stubs;

(x) "Transmission Pipeline" means a pipeline of FortisBC having an operating pressure in excess of 2071 kilopascals (300 psi); and

(y) "Utilities" means the facilities or operations of any water, waste water, sewer, telecommunications, energy, cable service or similar service provider located in Public Places within the Municipality.

2. INTERPRETATION

For the purposes of interpreting these terms:

(a) the headings are for convenience only and are not intended as a guide to interpretation of these terms;

(b) words in the singular include the plural, words importing a corporate entity include individuals, and vice versa;

(c) in calculating time where the agreement refers to "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded and where the agreement refers to "at least" or "not less than" a number of days, Saturdays, Sundays and holidays must be excluded;

(d) the word "including", when following any general term or statement, is not to be construed as limiting the general term or statement to the specific items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.

3. OBLIGATION TO ACT IN GOOD FAITH

FortisBC and the Municipality shall act in good faith in carrying out these terms and, within reasonable time frames, carry out the obligations under these terms.

FortisBC and the Municipality will at all times carry out all work and operations with the due care and attention that is necessary to safeguard the interests of the public, their own employees, and the other party's employees.

4. FORTISBC RIGHTS TO ACCESS & USE PUBLIC PLACES

FortisBC has the right to:

(a) develop, construct, install, maintain or remove Company Facilities on, over, in and under Public Places in the Municipality;

(b) enter on Public Places from time to time as may be reasonably necessary for the purpose of maintaining, repairing, or operating the Company's Facilities;

(c) place pipeline identification markers within Public Places where a Transmission Pipeline or Distribution Pipeline crosses or is otherwise within a Public Place;

subject to these terms.

5. FORTISBC COMPLIANCE WITH STANDARDS FOR USE OF PUBLIC PLACES

Non-discriminatory Standards for FortisBC

In its use of Public Places, FortisBC shall comply with all Federal and Provincial laws, regulations and codes and shall comply with all Municipal bylaws, standards and policies except that FortisBC shall not have to comply with such Municipal bylaws, standards and policies that:

(a) conflict with these terms or limit any rights or concessions granted to FortisBC by the Municipality under these terms; or

(b) conflict with other legislation governing FortisBC.

Further, where the Municipality has established requirements and standards for work in Public Places, the Municipality shall apply them in a fair, reasonable and non-discriminatory manner consistent with the manner that the Municipality establishes requirements on other Utilities.

Provide emergency contacts.

FortisBC will provide the Municipality with a 24 hour emergency contact number which the Municipality will use to notify FortisBC of emergencies including; gas leaks, third party accidents around work sites, ruptures of gas lines, and other potentially hazardous situations.

Assist with facility locates

FortisBC will, at no cost to the Municipality, provide locations of its Company Facilities within a time frame as may be reasonably requested by the Municipality unless the reason for the request is the result of an emergency; in which case the information shall be provided forthwith. FortisBC shall provide gas locations from FortisBC records. FortisBC shall perform on site facility locates in accordance with the *Safety Standards Act* – Gas Safety Regulations Section 39.

6. FORTISBC WORK OBLIGATIONS:

Notices - General Requirements

Notice for New Work

For New Work, FortisBC shall give notice to the Municipality or such officer or official thereof who has been designated from time to time by the Municipality that it intends to perform such New Work. The Notice shall include:

(a) a plan and specifications showing the proposed location and dimensions of the New Work;

(b) FortisBC's plans for the restoration of the Public Place affected by the New Work if FortisBC's restoration plans are different from those set out in Section 6.4.2 of these terms;

(c) the name of a FortisBC representative who may be contacted for more information;

(d) projected commencement and completion dates; and

(e) such other information relevant to the New Work as the Municipality may reasonably request from time to time.

Exception for Emergency

Where FortisBC is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Company Facilities, FortisBC shall not be required to give prior notice but shall do so as soon as possible thereafter.

Municipal Approval for New Work

The Municipality may object to the New Work on the following grounds:

(a) the proposed location of the New Work conflicts with existing Municipal Facilities, existing third party facilities or Planned Facilities; or

(b) the proposed location or design of the New Work is likely to compromise public safety or does not conform with Municipal bylaws, standards or policies; or

(c) in instances where FortisBC can delay the New Work without compromising the supply, capacity or safety of its Gas Distribution System or its customers' need for gas service and the Municipality intends within the next 3 months to undertake work in the same location and wishes to co-ordinate both work;

by providing FortisBC with notice of its objections, provided such objections are reasonable, no more than 10 days after receiving FortisBC's notice of New Work. If the Municipality has not provided such notice of its objections to FortisBC, or in the case of large and complex New Work, the Municipality has not provided FortisBC with a notice to extend the time to reply to FortisBC until a stated time, the Municipality shall be deemed to have granted its approval of the New Work. The Municipality shall not otherwise withhold or delay its approval.

In addition, the Municipality may request FortisBC to provide the public with notice of the New Work.

Work Not to Proceed

If the Municipality has notified FortisBC of its objections or has requested a time extension, no more than 10 days after receiving FortisBC's notice of New Work, FortisBC shall not proceed with the New Work until FortisBC and the Municipality have agreed upon a resolution to the Municipality's objections. If the Municipality and FortisBC are unable to agree, then the matter shall be resolved in accordance with Section 17 (Resolution of Disputes).

Notice of Service Lines

FortisBC, shall provide the Municipality with notice of its intent to install, remove or repair Service Lines no less than three (3) days prior to commencement of such work. FortisBC's request for the location of the Municipality's utilities shall be deemed to be a notice of FortisBC's intent to install, remove or repair Service Lines. The Municipality may object to such work on the same grounds as set out in Subsection 6.1.3 (a) and (b) above by providing FortisBC

with notice of its objections within three (3) days of receiving FortisBC's notice. If the Municipality has not provided such notice of its objections to FortisBC, the Municipality shall be deemed to have granted its approval of the installation, removal or repair of the Service Lines. The Municipality shall not otherwise withhold or delay its approval.

FortisBC to Secure Locate Information

Prior to conducting any New Work, FortisBC shall locate other Utilities and satisfy itself that it is clear to proceed.

Work Standards

All work carried out by FortisBC shall be carried out in accordance with sound engineering practices.

Specific Work Requirements Remove Materials

FortisBC shall keep its work sites clean and tidy. FortisBC shall remove all rubbish and surplus material from Public Places upon completion of its work.

The Company shall not leave any part of its gas system in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want or repair.

Restore Surface and Subsurface

Where FortisBC has performed any operations or New Work in a Public Place, FortisBC shall restore without unreasonable delay and return such Public Place, as much as reasonably practical, to the condition and use which existed prior to such activity. The restoration will be in accordance with the specifications set out by the Municipality. Such specifications may include the degree and nature of compaction, subsurface structure, surface finish and landscaping required.

Without limiting the generality of this section and by way of example only, the Municipality may require FortisBC to restore asphalt and concrete surfaces with a permanent repair or a temporary repair. Should a temporary repair be directed, FortisBC or the Municipality at its discretion will subsequently construct a permanent repair in accordance to its usual maintenance/replacement schedule for that area. The cost of permanent and temporary repairs to remediate Highway surfaces will be at the expense of FortisBC proportional to the surface area affected by the New Work.

Where FortisBC is required to cut pavement on a Public Place such cuts and restoration will be limited to less than 1.5 meters unless at the discretion of FortisBC a larger excavation is warranted to due the depth or size of the pipe or requirements of the Workers' Compensation Board or other relevant Provincial or Federal regulations. FortisBC will be responsible for any repairs and maintenance of the surface repair for a period of three (3) years. However, where pavement restoration has been conducted by the Municipality, whether or not such work was undertaken to repair cuts on FortisBC's behalf, FortisBC shall not be responsible for the repairs or maintenance of the surface repair.

Repair Damage to Municipal Facilities

To the extent that any of the work being done by FortisBC results in damage to Municipal Facilities or Public Places, other than the usual physical disruption to Public Places caused by the installation of Company Facilities that FortisBC shall restore in accordance with Section 6.4.2 above, FortisBC will report such damage and reimburse the Municipality for its costs arising from such damage calculated in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Municipality, and FortisBC has complied with all applicable laws and regulations, and with instructions supplied by the Municipality, then the cost of repairing damaged Municipal Facilities or Public Places will be at the expense of the Municipality.

Conformity Requirement

The New Work must be carried out in conformity with FortisBC's notice of New Work except that FortisBC may make in-field design changes when carrying out the New Work to accommodate field conditions which could not have been reasonably foreseen by FortisBC. If such in-field conditions materially impact FortisBC's plans for restoration or materially change the impact of FortisBC's work on Municipal Facilities, other than in respect of projected commencement and completion dates, FortisBC shall notify the Municipality.

Non-Compliance

If Company Facilities located in Public Places are later found not to be located in compliance with FortisBC's notice of New Work provided in accordance with Section 6.1 and 6.5, then any alteration or upgrading required to bring them into compliance with such notice will be at the expense of FortisBC provided that the work has not been altered, damaged or modified by the Municipality or a third party.

7. COMPANY FACILITY CHANGES REQUIRED BY THE MUNICIPALITY

Notice of Closure of Public Places

Before any Public Places containing Company Facilities may be legally closed or alienated by the Municipality, the Municipality shall promptly notify FortisBC of its intent to close or alienate such Public Places and either:

(a) grant FortisBC a registered statutory right of way in a form satisfactory to FortisBC so as to maintain FortisBC's right to use the land; or

(b) request FortisBC to remove and (if possible and practicable) relocate those Company Facilities affected by such closure or alienation at the sole cost of the Municipality.

If the Public Places are expropriated by an expropriating authority and FortisBC is required to remove the Company Facilities then the Municipality shall promptly notify FortisBC of the expropriation. This provision is applicable when the Municipality receives official notice of expropriation or otherwise becomes aware of expropriation through communications with the expropriating authority.

8. FACILITY CHANGES REQUIRED

By FortisBC

FortisBC may provide Notice to the Municipality that it requires Municipal Facilities to be altered, changed or relocated to accommodate its requirements. The Municipality will comply with FortisBC's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. FortisBC agrees to pay for all of the costs for changes to the affected Municipal Facilities.

By the Municipality

The Municipality may provide Notice to FortisBC that it requires Company Facilities to be altered, changed or relocated to accommodate its requirements. FortisBC will comply with the Municipality's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. The Municipality agrees to pay for all of the costs for changes to the affected Company Facilities. This section 8.2 is an agreement between the Municipality and FortisBC for the purposes of section 76(1)(c) of the Oil and Gas Activities Act.

9. JOINT PLANNING, COOPERATION AND COORDINATION

Conduct of Construction and Maintenance Activities

The Municipality and FortisBC agree to use reasonable efforts in carrying out their construction and maintenance activities in a manner that is responsive to the affect that it may have on the other party, as well as other users of Public Places. Such reasonable efforts include attending the planning meetings described in Section 9.2 below and reducing as much as is practical, the obstruction of access to Public Places, and interference with the facilities and activities of others in Public Places.

Communication and Coordination Activities

At the initiation of the Municipality, representatives of the Municipality, FortisBC and other affected Utilities and third parties may be invited to meet each year, prior to the construction season, to discuss the parties' anticipated construction activities for that year. Such discussions will include

(a) the use of common trenching, common utility access facilities and such other common facilities as may be commercially reasonable and comply with operating and safety standards; and

(b) the consolidation of planned maintenance work where pavement must be cut in order to avoid multiple excavations.

Municipal Planning Lead

1. During such annual planning meetings, the Municipality shall lead the planning process for all Utilities and third parties with Planned Facilities in Public Places.

10. MUTUAL INDEMNITY

Indemnity by FortisBC

FortisBC indemnifies and protects and saves the Municipality harmless from and against all claims by third parties in respect to loss of life, personal injury (including, in all cases, personal discomfort and illness), loss or damage to property caused by FortisBC in:

(a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Company's Facilities on or under any Public Places;

(b) any breach of these terms by FortisBC;

except to the extent contributed by negligence or default of the Municipality or the Municipal Employees.

This indemnity expressly extends to all acts and omissions of FortisBC Employees.

Indemnity by the Municipality

The Municipality indemnifies and protects and saves FortisBC harmless from and against all claims by third parties in respect to loss of life, personal injury (including, in all cases, personal discomfort and illness), loss or damage to property to the extent caused by the Municipality in:

(a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Municipal Facilities on or under any Public Places;

(b) any breach of these terms by the Municipality;

except to the extent contributed by the negligence or default of FortisBC or FortisBC Employees.

This indemnity expressly extends to all acts and omissions of Municipal Employees.

Limitations on Municipality's Liability

All property of FortisBC kept or stored on the Public Places will be kept or stored at the risk of FortisBC. For further certainty, FortisBC acknowledges that the Municipality has made no representations or warranties as to the state of repair or the suitability of the Public Places for any business, activity or purpose whatsoever. FortisBC accepts its use of Public Places on an "as is" basis.

10.4 Insurance

FortisBC shall obtain at its own expense General Commercial liability insurance for bodily injury, death and property damage with minimum amount of $5 million per occurrence and name the Municipality as an additional insured on such policy.

11. OPERATING FEE

Fee Calculation

FortisBC agrees to pay to the Municipality a fee of three percent (3%) of the gross revenues (excluding taxes) received by FortisBC for provision and distribution of all gas consumed within the Boundary Limits of the Municipality. Such amount will not include any amount received by FortisBC for gas supplied or sold for resale.

The Municipality will provide FortisBC with thirty (30) days prior written notice of any boundary expansion so that new customers can be included as a part of the annual payment fee.

FortisBC will be responsible for adding those new customers within the new Municipal boundary upon receipt of such notice from the Municipality and the revised calculation of the fee will commence effective the date that is the later of the date of actual boundary change or thirty (30) days after the notification under section 0.

Payment Date and Period

Payments by FortisBC to the Municipality will be made on the first day of March of each year of the Agreement in respect of the amount received by FortisBC during that portion of the term of these terms which is in the immediately preceding calendar year. By way of example only, payment made on November 1, 2012 will be the amount received during the 2011 calendar year.

BCUC Decision or Provincial Legislation

In the event that a decision by the BCUC, other than periodic rate changes as a result of commodity, delivery or margin increases or decreases, or new legislation by the Provincial Government, impacts the operating fee being paid to the Municipality so as to increase it or decrease it by more than 5% annually at the time of the decision or in subsequent years, the parties shall negotiate a new operating fee formula which best reflects the revenue stream received by the Municipality under these terms. For greater certainty, the parties acknowledge that a change to the BCUC's decision that FortisBC shall provide the agency billing and collections service for marketers on a mandatory basis, as set out in the "Business Rules for Commodity Unbundling dated June 5, 2003 as set out in Appendix A to Letter No. L-25-03, may impact the operating fee being paid to the Municipality.

12. OTHER APPROVALS, PERMITS OR LICENSES

Except as specifically provided in these terms, the Municipality will not require FortisBC to seek or obtain approvals, permits or licenses. The Municipality will not charge or levy against FortisBC any approval, license, inspection or permit fee, or charge of any other type, that in any manner is related to or associated with FortisBC constructing, installing, renewing, altering, repairing, maintaining or

operating Company Facilities on any Public Places or in any manner related to or associated with FortisBC exercising the powers and rights granted to it by these terms (other than for repair of damage to the Municipal Facilities or Public Places in accordance with Section 14).

If the Municipality does charge or levy fees or costs against FortisBC (other than for repair of damage to the Municipal Facilities or Public Places in accordance with Section 14) then FortisBC may reduce the annual operating fee payable to the Municipality under Section 11 by an amount equal to such charges, fees or costs.

13. MUNICIPAL OBLIGATIONS

Municipal Work

Before the Municipality undertakes any construction or maintenance activity which is likely to affect a part of the Company Facilities, excluding routine maintenance and repair that does not involve any cutting of asphalted road surface, it must give FortisBC notice not less than 10 days before commencing such construction or maintenance activity.

Before the Municipality undertakes routine maintenance and repair that does not involve any cutting of asphalted road surface and is likely to affect Company Facilities, it must give FortisBC notice not less than 3 days before commencing such construction or maintenance activity.

Where the Municipality is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Municipal Facilities, the Municipality shall not be required to give prior notice but shall do so as soon as possible thereafter.

FortisBC will be entitled to appoint at its cost a representative to inspect any construction or maintenance activity undertaken by the Municipality. The provisions of this section do not relieve the Municipality of its responsibilities under the *Gas Safety Act*, *Oil and Gas Activities Act*, and successor legislation, regulations thereunder, or the requirements of the BC Workers' Compensation Board.

In addition, the Municipality shall provide Notice to FortisBC of any work planned that will be adjacent to, across, over or under a Transmission Pipeline or within a right-of-way for a Transmission Pipeline. To the extent that FortisBC requires that permit be issued for construction or other activities within a Transmission Pipeline right-of-way, the Municipality will submit an application for such a permit in sufficient time for the application to be reviewed and approved by FortisBC prior to the commencement of the construction or other activity.

The Municipality shall assist FortisBC in FortisBC's efforts to reduce instances of residences being built over gas lines and other similarly unsafe building practices by third parties.

The Municipality shall not interfere with Transmission Pipeline markers.

The Municipality shall provide notice to FortisBC of any damage caused by the Municipality to Company Facilities or Transmission Pipeline Markers as soon as reasonably possible. To the extent that any of the work being done by the Municipality results in damage to the Company Facilities, the Municipality will report such damage and pay FortisBC its costs arising from such damage in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by FortisBC, and the Municipality has complied with all applicable laws and regulations, and with instructions supplied by FortisBC, then the cost of repairing the damaged Company Facilities will be at the expense of FortisBC.

The Municipality shall notify FortisBC of any new bylaws, standards or policies adopted or passed by the Municipality that are likely to affect FortisBC's operations in Public Places.

14. COSTS AND PAYMENT PROCEDURES

Definition of Costs

Wherever one party is required to pay the other party Costs as a result of damage caused by one party to the other's property, the Costs shall be:

(a) all direct expenses and disbursements incurred to restore such property to as good a state of repair as had existed prior to the damage;

(b) reasonable administration and overhead charges on labour, equipment and materials;

(c) such taxes as may be required in the appropriate jurisdiction;

(d) in the case of loss of gas or re-lights, the cost of the commodity as determined by the length of time that the gas is leaking, size of pipe and hole and the pressure; and

(e) in the case of water, electrical or sewer, cost of supplying alternate service.

Cost Claim Procedures

Wherever one party is claiming Costs of the other party in regard to any work or issue arising under these terms the claiming party shall:

(a) provide an invoice to the other party no later than one year after incurring Costs;

(b) provide detailed descriptions of the cost items;

(c) provide the time period the invoice covers;

(d) provide a minimum of 21 day terms for payment of the invoice; and

(e) provide for late payment interest at the rate consistent with the party's policy for charging for late payments, which rate must be reasonable;

The party claiming Costs shall have no right of set off for these invoices against any amounts otherwise payable to the other party, except to the extent so approved in writing by the other party.

Cost Verification Procedures

Wherever either party is the recipient of or is claiming Costs and or fees that party may at its own discretion request from the other party:

(a) Certification by an officer or designated representative verifying the calculations and computations of the Costs and or fees, or

(b) An internal review or audit of the calculations and computations of the Costs and or fees, with the internal review or audit to be carried out by a person appointed by the party being asked to provide the review; or

(c) An independent external audit of the calculations and computations of the costs and fees, with the independent external auditor being a Chartered or a Certified General Accountant in British Columbia appointed by the party requesting the external audit;

The costs of this cost verification process shall be borne by the party who is required to supply the information except as otherwise specified providing the frequency of such requests does not exceed once per calendar year. For all future cases which occur in that calendar year, the costs of such further verifications shall be at the expense of the requester.

Where the independent external audit finds and establishes errors representing a variance greater than 2% of the originally calculated value in favour of the party claiming Costs, the costs shall be at the expense of the party supplying the information. Once an error has been verified, payment or refund of the amount found to be in error will be made within 21 days.

15. START, TERMINATION AND CONTINUITY

(*not used)*

(*not used)*

Term of Agreement

These terms will be in effect for 20 years from the date that it comes into effect.

(*not used*)

(*not used*)

Negotiations on Termination or Expiry of these terms

Upon expiry of these terms, the parties shall negotiate in good faith to enter into a new agreement with respect to the terms and conditions under which FortisBC may use the Public Places. In the event that

such negotiations break down and in the opinion of one or other of the parties acting in good faith that settlement is unlikely, either party may give Notice to the other of its intention to apply to the BCUC to seek resolution of the terms and conditions applicable to FortisBC's continued operations and construction activities within the Municipality.

Continuity In The Event No Agreement Is Settled

Upon the expiry of these terms, if an agreement has not been ratified or if the BCUC has not imposed new terms and conditions under which FortisBC may use the Public Places, the following provisions will apply:

(a) The Company Facilities within the boundary limits of the Municipality both before and after the date of these terms, shall remain FortisBC's property and shall remain in the Public Places.

(b) The Company Facilities may continue to be used by FortisBC for the purposes of its business, or removed from Public Places in whole or in part at FortisBC's sole discretion.

(c) FortisBC may continue to use Public Places within the Municipality for the purposes of its business. FortisBC's employees, may enter upon all the Public Places within the Boundary Limits of the Municipality to maintain, operate, install, construct, renew, alter, or place Company Facilities; provided that FortisBC continues to operate in a manner consistent with the terms and conditions of these terms as if the term had been extended except with respect to the payment of the Operating Fee.

(d) FortisBC will, with the support of the Municipality, take such steps necessary to seek BCUC approvals of the extension of terms and conditions including payment of the operating fee under the expiring terms during negotiations of an agreement.

(e) Should FortisBC no longer be authorized or required to pay the operating fee under these terms between it and the Municipality or by any other order of the BCUC, the Municipality shall be free to apply such approval, permit and licence fees, charges and levies it is legally entitled to collect.

16. ACCOMMODATION OF FUTURE CHANGES

Outsourcing of Infrastructure Management

In the event that the Municipality assigns the task of infrastructure management to a third party the Municipality will ensure that:

(a) its contracts for such infrastructure management contain provisions that will allow the Municipality to meet its obligations under and to comply with the terms and conditions of, these terms, and

(b) FortisBC will accept the appointment of such third party as the Municipality's agent or subcontractor to enable such third party to deal directly with FortisBC

so as to enable the Municipality to comply with the terms, obligations and conditions of these terms.

Changes to the Community Charter

In the event that the provisions of the *Community Charter* or other legislation affecting the rights and powers of municipalities change in such a way as to materially, in the opinion of the Municipality, affect municipal powers in respect to matters dealt with in these terms,

(a) the Municipality may within one year of the change coming into effect propose new terms with respect to only those specific changes and FortisBC agrees to negotiate such terms; and

(b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

Changes to the Utilities Commission Act

In the event that the provisions of the *Utilities Commission Act* or other legislation affecting the rights and powers of regulated Utilities change in such a way as to materially, in FortisBC's opinion, affect FortisBC's powers in respect to matters dealt with in these terms,

(a) FortisBC may within one year of the change coming into effect propose new terms with respect to only those specific changes and the Municipality agrees to negotiate such terms; and

(b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

17. DISPUTE RESOLUTION

Mediation

Where any dispute arises out of or in connection with these terms, including failure of the parties to reach agreement on any matter arising in connection with these terms, the parties agree to try to resolve the dispute by participating in a structured mediation conference with a mediator under the Rules of Procedure for Commercial Mediation of The Canadian Foundation for Dispute Resolution.

Referral to the BCUC or Arbitration

If the parties fail to resolve the dispute through mediation, the unresolved dispute shall be referred to the BCUC if within its jurisdiction. If the matter is not within the jurisdiction of the BCUC, such unresolved dispute shall be referred to, and finally resolved or determined by arbitration under the Rules of Procedure for Commercial Arbitration of The Canadian Foundation for Dispute Resolution. Unless the parties agree otherwise the arbitration will be conducted by a single arbitrator.

Additional Rules of Arbitration

The arbitrator shall issue a written award that sets forth the essential findings and conclusions on which the award is based. The arbitrator will allow discovery as required by law in arbitration proceedings.

Appointment of Arbitrator

If the arbitrator fails to render a decision within thirty (30) days following the final hearing of the arbitration, any party to the arbitration may terminate the appointment of the arbitrator and a new arbitrator shall be appointed in accordance with these provisions. If the parties are unable to agree on an arbitrator or if the appointment of an arbitrator is terminated in the manner provided for above, then either FortisBC or the Municipality shall be entitled to apply to a judge of the British Columbia Supreme Court to appoint an arbitrator and the arbitrator so appointed shall proceed to determine the matter mutatis mutandis in accordance with the provisions of this Section.

Award of Arbitrator

The arbitrator shall have the authority to award:

(a) money damages;

(b) interest on unpaid amounts from the date due;

(c) specific performance; and

(d) permanent relief.

Cost of Arbitration

The costs and expenses of the arbitration, but not those incurred by the parties, shall be shared equally, unless the arbitrator determines that a specific party prevailed. In such a case, the non-prevailing party shall pay all costs and expenses of the arbitration, but not those of the prevailing party.

Continuation of Obligations

The parties will continue to fulfill their respective obligations pursuant to these terms during the resolution of any dispute in accordance with this Section 17, provided that neither party shall proceed with any work or activity or take any further action which is the subject matter of the dispute.

18. GENERAL TERMS & CONDITIONS

No Liens

FortisBC will do its best to not allow, suffer or permit any liens to be registered against the Company Facilities located in Public Places as a result of the conduct of FortisBC. If any such liens are registered, FortisBC will start action to clear any lien so registered to the Public Place within ten (10) days of being made aware such lien has been registered. FortisBC will keep the Municipality advised as to the status of the lien on a regular basis. In the event that such liens are not removed within ninety (90) days of the registration of such lien, FortisBC will pay them in full or post sufficient security to ensure they are discharged from title.

(not used)

Representations

Nothing in these terms shall be deemed in any way or for any purpose to constitute either party as the legal representative, agent, partner or joint venture of the other, nor shall either party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against, in the name of, or on behalf of the other party.

Enurement

These terms shall be binding upon, enure to the benefit of, and be enforceable by, the successors of the parties hereto.

Governing Law *(not used)*

General

These terms are subject to the laws of Province of British Columbia and the applicable laws of Canada, and nothing in these terms will be deemed to exclude the application of the provisions of such laws, or regulations thereunder.

(not used)

(not used)

Force Majeure

Neither party shall be liable to the other for temporary failure to perform hereunder, if such failure is caused by reason of an Act of God, labour dispute, strike, temporary breakdown of facilities, fire, flood, government order or regulations, civil disturbance, non-delivery by program suppliers or others, or any other cause beyond the parties' respective control.

Notice

Any notice or other written communication required, or permitted to be made or given pursuant to these terms (the "Notice") shall be in writing and shall be deemed to have been validly given if delivered in person or transmitted electronically and acknowledged by the respective parties as follows:

(A) if to the Municipality:

THE DISTRICT OF COLDSTREAM
9901 Kalamalka Road
Coldstream, BC V1B 1L6

(B) If to FortisBC:

FORTISBC ENERGY INC.
16705 Fraser Highway
Surrey, B.C. V4N 0E8
Attention: Director, Regulatory Affairs

Tab 14

FortisBC Energy Inc. ("FEI") and City of Surrey Applications for Approval of Terms for an Operating Agreement
Project No. 1598915

CITY OF SURREY'S RESPONSE TO CEC INFORMATION REQUEST NO. 2
FILED: MARCH 2, 2018

4. Reference: Exhibit B-2-8-1, BCUC 1.4.4.1 Attachment 2, pp 5O and 52

50. Accordingly, it would be appropriate to have a 16-year sliding scale to more accurately reflect the mutual benefits derived from the partnership between carriers and municipalities, without placing undue limitations on either party to plan future investments. Under this sliding scale, the City is primarily responsible for relocation costs in the first five years, following which its responsibility linearly diminishes to zero by the end of the 16th year.

52. Accordingly, wording of Section 25 of the MAA between the City and Bell Canada will read as follows:

In the case of a Municipality-initiated requirement to relocate a Company facility, the following schedule is to be used to allocate costs directly attributable to such relocation. These costs include, but are not limited to, depreciation, betterment and salvage costs.

Year(s) After Installation of Equipment	Percentage of Relocation Costs Paid by Municipality
1	100%
2	100%
3	100%
4	90%
5	80%
6	70%
7	65%
8	60%
9	55%

10	45%
11	40%
12	35%
13	30%
14	20%
15	10%
16	5%
17 onwards	0%

4.1 Please provide the City of Surrey's views, with explanations, as to the appropriateness of a schedule related to cost allocation similar to the above schedule included in the Municipal Access Agreement between the City of Hamilton and Bell Canada.

Response:

The Pipeline Crossing Regulation (B.C. Reg. 147/2012), a copy of which is included with the City of Surrey's Application, prescribes the cost allocation methodology for costs incurred by a pipeline permit holder (*e.g.*, FEI) as a result of construction or activity carried out by an "enabled person" or a "specified enabled person" including to realign, raise or lower a high pressure gas pipeline. A municipality is a "specified enabled person" under the Regulation. The Regulation is legally binding with respect to FEI's high pressure transmission pipelines (700 kPa or greater). Therefore, for relocation of FEI's high pressure transmission pipelines, the cost allocation methodology in the Pipeline Crossing Regulation will apply.

The City of Surrey agrees that the Pipeline Crossing Regulation is not legally binding with respect to FEI's piping used to transmit gas at less than 700 kPa, and therefore the Regulation's cost allocation methodology is not legally binding for FEI distribution gas main relocation projects within the city. The City believes that the BCUC has regulatory jurisdiction to specify a cost allocation methodology for FEI's costs to realign, raise or lower its low pressure distribution gas mains in response to a request by the City for FEI to relocate such facilities.

As discussed in Surrey's response to BCUC IR 1.9.1, the City believe that it would be reasonable for the BCUC to employ the formulae in the Pipeline Crossing Regulation, and the public policies they reflect, in specifying terms for the allocation of FEI's costs to relocate distribution gas mains when requested by the City. This would provide a consistent cost allocation methodology for all FEI facility relocations in the city, whether the gas within the facilities is greater than or less than 700 kPa.

If the BCUC does not support the above consistent methodology approach, the City would agree that the CRTC's "sliding scale" approach would be an alternative methodology the BCUC could employ for the allocation of FEI's costs to relocate distribution gas mains (and not transmission pipelines) when requested by the City. Under the CRTC's approach, the percentage of relocation costs to be paid by the municipality is determined by the number of years since the assets were originally installed, diminishing to zero percent after a certain number of years (the CRTC has used seven-year, ten-year and seventeen-year sliding scales). In its Decision 2016-51 (provided at Attachment 4 of Exhibit B2-11), the CRTC said the following about the rationale for the sliding scale methodology:

Commission's analysis and determinations

38. In making its determinations, the Commission has considered the principle of cost neutrality reflected in the Ledcor decision, i.e. that costs directly related to a carrier's infrastructure should be paid by the carrier, not municipal taxpayers. The Commission has acknowledged, however, in both the Baie-Comeau and Vancouver decisions, that it is appropriate, in certain circumstances, to deviate from this principle with regard to imposing liability for costs. In Decision 2001-23, the Commission indicated that the following factors would generally be relevant in allocating costs between the carrier and the municipality:

    - who has requested the relocation (i.e. the municipality, the carrier, or a third party);
    - the reason for the requested relocation (e.g. safety, aesthetics, or to better serve customers); and,
    - the date on which the request is made compared to the date of original construction (e.g. whether the request is made a considerable length of time after the original construction, or very shortly thereafter).

39. While both models proposed by the parties reflect the principle of cost neutrality to the municipality, the time period for accomplishing each differs.

40. Under the sliding scale approach, there is a complete deviation from the cost neutrality principle in the first few years, when the City is responsible for 100% of the relocation costs. The reasoning is that the City should, within its planning process, reasonably know whether the infrastructure it is authorizing to be installed will have to be relocated within the near future. Considering that with each additional year, it becomes more difficult for the City to foresee whether relocation will be required, the sliding scale approach diminishes the level of the City's responsibility over time. After a set number of years, the City is no longer responsible for any of the relocation costs, meaning the principle of cost neutrality for the City is once again applied.

50. Accordingly, it would be appropriate to have a 16-year sliding scale to more accurately reflect the mutual benefits derived from the partnership between carriers

> and municipalities, without placing undue limitations on either party to plan future investments. Under this sliding scale, the City is primarily responsible for relocation costs in the first five years, following which its responsibility linearly diminishes to zero by the end of the 16th year.
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> 51. Consistent with the Vancouver Model, the City will pay 100% of the costs in the first three years, because it is reasonable for the City to know whether the infrastructure it is authorizing to be installed will have to be relocated within those three years. After the first three years, the percentages will decrease approximately linearly over the remaining thirteen years of the scale.

The CRTC's methodology is more complicated to apply than the methodology in BC's Pipeline Crossing Regulation, and employing it would mean that two different methodologies would apply: (i) the Pipeline Crossing Regulation methodology for relocation of piping used to transmit gas at 700 kPa or greater, and (ii) a sliding scale methodology for piping at less than 700 kPa.

Other than the noted concerns about added complexity associated with applying two different methodologies, the City would be open to considering a seventeen-year 'sliding scale' methodology for the allocation of FEI's costs to relocate distribution gas mains (and not transmission pipelines) when requested by the City.