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Canada

09 November 2018

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British Columbia Utilities Commission
Suite 410 – 900 Howe Street,
Vancouver,
BC V6Z-2N3
Attention: **Mr. Patrick Wruck**
BCUC Commission Secretary

Dear Sirs,

**Re: FortisBC Energy Inc. – Application for Approval of Operating Terms between
the City of Surrey and FortisBC Energy Inc. and the Application by the City of
Surrey for an Order Pursuant to Section 32(2) of the Utilities Commission Act –
Project No. 1598915**

INTERVENER FINAL ARGUMENT ON NEW EVIDENCE

Following the Commission’s revised Timetable per General Order G-202-18, wherein interveners are given the opportunity to respond to the BCUCs Information Requests to the City of Surrey (City) and FortisBC (FEI) with their respective IR responses and their Final Arguments on New Evidence, the following is submitted for the Commissions considerations.

BCUC IR to FortisBC Energy Inc:

- 1.1 Does FEI provide compensation to any other municipality other than those with which it has a franchise agreement in BC for use and occupancy of public places? If so, does FEI operate under a Certificate of public convenience and necessity (CPCN) in any of these instances?

MY RESPONSE:

I believe FortisBC has provided an excellent summation with context to this information request. Not only by explanation, by examples, but also by citations of the Gas Utilities Act and the CNCP Act, along with various other BCUC approvals, and has, quote:
FEI and the BCUC have since adjusted this approach, now citing section 23(1)(g) of the UCA.

Further, the open and transparency of FEI responses is reflected in the following Table in conjunction with FEI’s Attachment 1.1 “List of Municipalities”

Table 1: Municipalities Served by FEI*

Category		Number	Percent of FEI's Customers	Percent of FEI's volume	Percent of FEI's revenues
1	Municipalities currently served by FEI with no operating agreement (and thus no fee)	5	6%	6%	6%
2	Municipalities with operating agreements that provide for an operating fee	74	32%	35%	26%
3	Municipalities with operating agreements that do not provide for an operating fee	26	56%	54%	61%

1

2
3 In my opinion the 26 operating agreements for communities on Vancouver Island and
4 Sunshine Coast are “unique”. In as much as the “Vancouver Island Natural Gas
5 Pipeline Act” is/was a controlling legal framework factor, until amendments were
6 made, effective January 1, 2015¹
7

8 It is this particular point that the City in their application seemed to ignore.
9

10 Which I believe negates the City’s supportive arguments in their application, by citing
11 these communities, operating agreements and fees by reference to the Vancouver Island
12 and Sunshine Coast.
13

14 I readily admit I am somewhat confused by the City’s responses to the BCUC IR 1.5
15 Nevertheless, I must leave these two conflicting references to the “GUA and the
16 “CNCP” to the professionals and the Commission to argue their validity in this matter.
17

18 Focusing on the IR question: *“Does FEI provide compensation to any other municipality
19 other than those with which it has a franchise agreement in BC for use and
20 occupancy of public places?”*
21

22 FEI clearly demonstrates they pay an operating fee. Out of 105 British Columbian
23 communities, FEI pays an operating fee in 74 cases. But the ratios by population,
24 municipal area, miles of pipeline data is missing. The 3 columns given in the above
25 table do not directly inform the Commission in a manner that supports either FEI’s or the
26 City’s valuations as to what an appropriate operating fee might be. - Which might be in
27 the range of 0.7% to 3%

28 As a Taxpayer in Surrey my submitted evidence² (FEI Monthly Billing) quantifies what a
29 typical taxpayer is on the hook for. Neither FEI nor the City do that. (emphasis added).
30

31 **BCUC IR to City of Surrey:**
32

1.5 Does the City of Surrey believe that a utility operating within a municipal
jurisdiction under the authorities of a Certificate of Public Confidence and
Necessity (CPCN) is within its rights to use and occupy public places
without compensation? If not, please explain, including what rights the
City of Surrey believes are conveyed to a utility under a CPCN.

33
34 **CITY RESPONSE:**

35 “Neither a CPCN issued by the BCUC nor a CPCN deemed to be received by a
36 public utility confers rights to use and occupy the lands of others whether the
37 lands are

- 38 • Crown land,
- 39 • land owned and controlled by a municipality, or

¹ Bill 4 – 2014 Miscellaneous Statutes 37 Amendment Act (No. 2), 2014.

² Intervener Exhibit C1-2 IR-8 page 5 for FEI Billing, and Intervener Evidence; Exhibit C1-5 2 Evidence: Options 1,2,3 on page 2 and Option 4 with Recommendation on page 3

1 • land owned by a private land owner.
2 The CPCN does not confer rights on the public utility to use and occupy the lands
3 of others.....
4 1. Gas utility may expropriate land
5 Section 6 of the GUA confers on a gas utility the right to expropriate any land in
6 British Columbia reasonably required for the gas utility's undertaking, and, in that
7 event, the Expropriation Act applies, including the requirements to compensate
8 the land owner”..... AND SO ON.
9

10 **MY RESPONSE:**
11

12 *The CPCN does not confer rights on the public utility to use and occupy the lands*
13 *of others, really, so why does it happen all over the place; please read on:*
14

15 Surrey is the third largest municipality in British Columbia, and clearly FEI utilizes
16 various publically owned lands and ROW easements on private land. It would follow
17 using the City’s argument that any operating fee given to the City should be equally
18 apportionate to any ROW and easements on private land. Neither applicant in this matter
19 has addressed this particular issue. I am. Consider the ROW crossing on “**Eaglequest**
20 **Golf Course**”, many crossings through the Agricultural Land Reserve, and the ROW on
21 lands “south” of LOTS 14982, 14992, 15006 to 15138 on 95A Avenue Surrey, there are
22 many many more private lands further east along this energy corridor that BC Hydro
23 shares with FEI as well. These are just three known examples.
24

25 Both FEI and the City should be mindful, every crossing is sign posted (bright yellow
26 rectangle) with Emergency Contact number. So I went looking:
27 Every address noted above can be found on the City of Surrey COSMOS Website.
28

29 It must be left to the **BCUC to be “Fair Minded” to all British Columbians** in their
30 final decision. I believe in the 1980’s FEI, then owned by BC Gas, upgraded their
31 pipeline, expropriated private homeowner lands, tore down fences, ruined gardens and
32 rebuilt fences. The private homeowner was not compensated (I know for fact). Why ?
33 And so why should the City receive preferential operating agreements, fees, rent for land
34 use and occupancy when the taxpayers, homeowners of Surrey do not, Why ? There is
35 nothing “equitable” about this argument put forward by the City.
36

37 I ask the Commission to keep in mind, it was the City of Surrey that opened this door.
38 They referred to Private Land Owners in their final argument, line #1 above.
39

40 **BCUC IR to the City of Surrey:**
41

42 1.9 What amount or proportion of the City of Surrey’s proposed operating fee
43 is intended to offset some of the costs incurred by the city as a result of
44 FEI’s use of municipal public places?

45 **CITY RESPONSE:**

46 **Based on the City’s best estimate of the costs it incurs due to FEI’s use and**
47 **occupancy of public places in Surrey, the City estimates that the revenue from the**
48 **City’s requested operating fee will not recover all of the City’s costs due to FEI.**
49 **Please refer to paragraphs 42 to 52 of the City’s Final Argument.**

47 BCUC Exhibit B2 City’s Final Argument May 31, 2018 (pages 19 to 21), quote:
48 “44. As identified in their report, Aplin & Martin quantified the annualized direct
49 costs to the City as a result of FEI’s infrastructure operating within the City’s highways to

- 1 be \$3,342,258 on a present value basis and based on 2017 dollars (without adjustment for
- 2 inflation) for the next 10 years.”
- 3 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

4
5 “46. In response to BCUC IR 2.16.6, the City provided an estimate of its operating
6 costs incurred as a result of FEI’s use and occupation in highways and other public places
7 in Surrey, which the City believes is in the range of \$300,000 to \$500,000 / year. The
8 Aplin & Martin report specifically did not take such costs into account, and this estimate
9 is based on the City’s experience and cost estimates derived for other third party utility
10 impacts.”

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

21
22 **MY RESPONSE:**

23
24 The City of Surrey’s **5 Year Financial Plan 2018 to 2022** purports a different financial
25 analysis. The following are extracts from this plan. See link for more detail:

26 <https://flipbook-surrey-ca.cld.bz/COS-Financial-Plan-2018-20221>

27 In an a briefed summation the following table from the **5 Year Plan** demonstrates the
28 next **5 Year Capital Plan** regarding Engineering infrastructure program. Page 252
29 (emphasis added)

FINANCIAL SUMMARY – DEPARTMENTAL PROGRAM SUMMARY

	<i>(in thousands)</i>							
NET PROGRAMS	2016 ACTUAL	2017 ACTUAL	2017 BUDGET	2018 BUDGET	2019 PLAN	2020 PLAN	2021 PLAN	2022 PLAN
Drainage Operating	\$ 12,327	\$ 12,712	\$ 13,436	\$ 13,489	\$ 13,582	\$ 13,676	\$ 13,771	\$ 13,867
Parking Authority	(2,152)	(5,700)	(4,082)	(3,651)	(3,991)	(4,142)	(4,280)	(4,432)
Roads & Traffic Safety Operating	29,471	34,898	33,064	33,929	34,404	34,689	34,970	35,261
Sewer Operating	(4,336)	(1,617)	820	(862)	1,070	(952)	(3,074)	(5,453)
Solid Waste Operating	(5,277)	(5,038)	(5,925)	(5,061)	(6,148)	(6,627)	(7,156)	(9,286)
Surrey City Energy	112	(92)	8	(631)	(509)	(613)	(1,128)	(2,279)
Water Operating	(14,265)	(14,698)	(9,708)	(7,985)	(9,166)	(10,639)	(12,553)	(15,269)
	\$ 15,880	\$ 20,465	\$ 27,613	\$ 29,229	\$ 29,242	\$ 25,392	\$ 20,550	\$ 12,409

1 At a glance it can be seen the City over the
2 next 5 years, plans to reduce its spending
3 on the various in ground infrastructure
4 programs. The City through Alpin and
5 Martin report are not in sync. In as much as
6 the City purports increases not including
7 inflation are some \$4 million annually, as
8 these costs directly relate to FortisBC
9 Energy Inc. - (clearly declining costs).
10 The City of Surrey has also negated to
11 inform the Commission, that “any”
12 development is required to pay



13
14 “Development Cost Charges”, of which 98% of these DCC are revenues to the City over
15 and above various permit and inspection fees. These revenues are structured to offset
16 City costs, and augment revenues from Property Taxes, by keeping property taxes (mil
17 rate) affordable to all Surrey Homeowners and Businesses. The remaining 2% of DCCs
18 are designated as revenue to the Green City Reserve Fund.
19

20 As background to the DCCs in Surrey, we are informed within the 5 Year Financial Plan
21 (page 331), quote:

22 *“The City requires developers to contribute to its future growth. They must pay*
23 *Development Cost Charges (DCC) in order to develop land....., Contributions*
24 *collected in a given year can be included as a funding source in the next year’s Capital*
25 *Financial Plan. Each contribution can only be used for the purpose for which it was*
26 *collected. For instance, water DCC’s can only be spent on a growth-related water*
27 *project.”*
28

29 It all gets more complicated by the City asserting in part of their response to BCUC IR
30 1.2 pages 3 & 4 in their final argument. I have extracted from the City of Surrey’s
31 responses, specific phrases (italic bolded) to reduce repetitive reading, quote:
32

1.2 Please discuss in detail why the City of Surrey believes that it should be
compensated by FEI and its ratepayers for use and occupancy of public
places.

33
34

35 • ***The City incurs substantial costs as a result of FEI's use and occupancy of such public***
36 ***places within Surrey (estimated at about \$4 million / year in 2017 Canadian dollars), and the***
37 ***operating fee revenue will reduce the need for other sources of revenue, primarily property***
38 ***taxes, to pay for these costs.***
39

40 **MY RESPONSE**

41 According to the 5 Year Financial Plan, these costs are diminishing, and I have
42 presented argument based on City documentation, facts that illustrate a different cost
43 impact on the City than what Alpin’s and Martin Report purports in 2016.
44

45 • ***If the City has purchased lands or needs to purchase additional lands at market value to***
46 ***expand the City’s public services (e.g., roads, water mains, sewers and parks), FEI can piggy-***
47 ***back on the City's purchase by placing its natural gas distribution facilities in such lands***
48 ***without contributing to the City’s costs of acquiring such lands, all in the context of the high***
49 ***land values in Surrey.***
50

1 **MY RESPONSE:**

2 There is some merit to the City’s point, they do buy land as required. The funding for
3 these purchases are well planned for, and capitalized in their 10 Year Capital Plans.
4 These land purchases are not for the express purpose of land use provisions for any
5 utility, whether they be BC Hydro, Rogers Communications, Shaw, Bell, Telus,
6 FortisBC, Water, Sewer, Drainage or even Parks.

7 Any one or more of these utilities “piggy-back” these city land purchases to within an
8 agreed ROW, above or below ground. **What are their operating agreements / fees ?**

9 The City develop said lands within the Official Community Plan - OCP, and in some
10 instances the Neighbourhood Community Plan - NCP. The corridor used by these
11 utilities generally follow roads designed by developer architects under the direct, and or
12 supervision of the City Planning and Engineering departments.

13 Where I depart from the City’s argument is; quote: **“without contributing to the City’s**
14 **costs of acquiring such lands”** They do not have to. These costs are recovered from
15 developers, by the payment of DCCs, permit fees. Also new revenues from the
16 developed properties by the collection of Property Taxes, and so on.

- 17
18 • ***The operating fee revenue will provide for a reallocation of some of the City’s costs due to***
19 ***FEI’s use and occupancy of public places, from all taxpayers to FEI customers in Surrey.....***
20

21 **MY RESPONSE:**

22
23 This argument by the City is so false and misleading. The very nature of this entire
24 application is for the City to reallocate cost recovery by adding 3% to every FortisBC
25 customer monthly bill as “RENT”.

26
27 **NO !** it’s TAXATION “piggy-back riding” on every homeowner’s energy consumption.

28
29 ***“FEI’s proposed approach is inapt and uses the wrong inputs for considering the***
30 ***amount of money (i.e., rent) to be paid regularly for the use of the City’s public places.”***
31

32 The City of Surrey never informed this hearing what the rent is they charge other utility
33 service providers, if any ? It is the City that is “**inapt**” by presenting their argument as,
34 “RENT” instead of an operating agreement/fee, which is a cost recovery excuse for
35 Taxation or “Rent” to FEI, and ultimately the end user, the homeowner.

36
37 **SURREY MISREPRESENTS:**

38 No matter how the Commission finally rules in this matter, the levy placed in terms
39 of an operating agreement (fee/rent) is TAXATION on Surrey homeowner’s energy
40 bill.

41
42 Ultimately it is the Surrey Taxpayer paying the operating agreement levy, not
43 FortisBC Energy Inc, who will simply tack on the levy to the homeowner’s bill.

44
45 Surrey is misrepresenting the service agreement operating cost payee, it IS NOT
46 FORTISBC ENERGY INC, it is the Surrey homeowner. (emphasis added).

47
48 **BCUC IR to the City of Surrey:**

- 49
50 1.9 What amount or proportion of the City of Surrey’s proposed operating fee
51 is intended to offset some of the costs incurred by the city as a result of
FEI’s use of municipal public places?

1 **CITY RESPONSE:**

2 “..... The City is a non-profit organization such that all of the operating fee revenue will
3 provide for a reallocation of some of the City’s costs due to FEI's use and occupancy of
4 public places, from all taxpayers to FEI customers in Surrey. The operating fee is more of a
5 user pay model, which the City believes is more equitable than continuing to require all
6 taxpayers to pay for these costs whether or not they receive any benefit from FEI’s
7 facilities in Surrey”. (underlined for emphasis).
8

9 **MY RESPONSE:**

10
11 There is nothing equitable about the City’s claim. As discussed above, any operating fee
12 is TAXATION.
13

14 The term “equitable”, again misrepresents who are the ultimate payees of any operating fee
15 is. What does equitable mean ? - (Equitable - even-handed, fair, reasonable, impartial, just,
16 unbiased). The City of Surrey explains, quote: “*City believes is more equitable than*
17 *continuing to require all taxpayers to pay for these costs whether or not they receive any*
18 *benefit from FEI’s facilities in Surrey”*. (underlined for emphasis).
19

20 Let us examine “ALL Taxpayers:” Homeowners, Small businesses, Shopping Malls,
21 Hospitals, Library, City Hall, and City Works buildings, Recreation Centres, Swimming
22 Pools, Schools and so on. “All” will be required to pay the operating fee as customers of
23 FEI. In the case of City buildings, this means the Taxpayer will pay twice for the
24 operating fee. In terms of indirect taxation. As the taxpayer already covers these costs in
25 their property taxes and in some cases user/entrance fees as well. That does not represent
26 “more equitable”, it’s just more revenue to the City by way of piggy-backing FEI
27 customers.
28

29 **What does this conversation mean to the BCUC ?**

30
31 Ideally not much. The City of Surrey’s examples are “Pure Dialogue” avoidance of
32 financial quantification, from the very first Exhibit B2-1, the application.
33 The focus of this hearing should be on the money, “What does it Cost” ?
34

35 The City has presented in this hearing process wild best estimates based upon Alpin and
36 Martin Report, and distant analogy to 74 other municipalities, that have little to no
37 financial tally to the City’s most current 5 Year Financial Plan. Presented to Council in
38 July 2018 for information by City Staff.
39

40 FEI and my evidence at least provide some measure of quantitative measure by which the
41 Commission could determine a fair and “equitable” operating fee.
42

43 A fee that has merit, in as much, double taxation seems to be the approved method for
44 some 74 other British Columbian municipalities.
45

46 This statement does not condone the necessity for an operating agreement fee. It merely
47 acknowledges that **operating fees** appears to be a majority normal in British Columbia.
48 In my Exhibit C1-6 Final Argument I present 4 options, with a recommendation to adopt
49 Option 4.
50

51 In light of this **hearing’s** objective, to fix an operating fee. Then Option 4 is my choice,
52 which is both qualitative and quantitative. - Which was one of the BCUC IR requests.
53

1 **CITY OF SURREY FINAL ARGUMENT IN NEW EVIDENCE**
2

30. The City’s requested methodology for calculating the operating fee is identical to the operating fee FEI currently pays to 74 other municipalities in the province. FEI does not use and the BCUC has not approved any operating fee methodology other than the one that the City is requesting, and any new novel approach would not be in the public interest because it would lack transparency and consistency across the province.

3
4

5 **MY RESPONSE:**
6

7 This argument is disproportionate, in as much the City is not comparing apples to apples
8 by reference to the 74 other municipalities in scale to the land mass size of Surrey. Please
9 refer to FEI Exhibit B1-17 Attachment 1.1 “List of Municipalities”. In Category 3
10 “Municipalities with operating agreements that do not provide for an operating fee”
11 therein “Surrey and Vancouver” are side by side. Given the land mass and customer base,
12 they are very comparable. (emphasis added)

13 **What is Vancouver’s Operating Agreement ?**
14

15 The following 4 communities by way of examples are not comparable to Surrey in terms of
16 land mass, infrastructure, road ways, as FEI Customer base in each community paying
17 3% operating fee: 100 Mile House, Midway, Chase, Chetwynd and so on to Surrey.
18

19 This is why the City’s argument is disproportional. As examples these communities are
20 farming, small residential, in the middle of the country, and not a large metropolis like
21 Surrey or Vancouver. Where land use and occupancy is quite extensive. Apples to Apples
22 is the only “Fair Minded” approach, or my Option 4 in my opinion.
23

24 Quote: “for transparency and consistency across the province” Both FEI and the City
25 really have not provided detailed accounting of fees, costs and agreement details in this
26 hearing. Both applicants have skirted these details, which in my opinion is lacking in
27 transparency. Even in this final argument on new evidence, many more details and
28 questions are put forward, that probably will never have an answer.
29

30 **LACK OF ACKNOWLEDGEMENT OR RESPONSE:**

31 In the absence of any acknowledgement or response on my part to any of the BCUC’s IR,
32 or either party’s responses should not be construed as acceptance by this intervener, but
33 rather: -

34 “It’s all been said before.”
35

36 **MISSING EVIDENCE:**
37

38 I am unable to submit evidence to the Commission regarding ongoing utilities relocation
39 along 100 Avenue to 140th St. As the City will not respond to my three enquiries to date,
40 (September 18, 26, October 23). I can only surmise the Legislative Services Department
41 at Surrey City Hall simply ignored my requests. Which ultimately denied me and the
42 Commission of valuable financial information. That information would have confirmed
43 costs, grants, DCCs and permits. The information would have addressed the unique
44 construction that was undertaken in the area. As these utilities relocation services crossed
45 over FEI high pressure gas pipeline. It would have been far cheaper to relocate the Power
46 Poles, and re-hang the utility services. But that did not fit the planners choice for the

1 available land space along 100 Avenue, and the alignment across 140th Street east into
2 Green Timbers Park.

3 The following pictures comes from City of Surrey website – COSMOS

4 Looking West along 100Avenue

Looking East along 100 Avenue



5

6

7 **REPEATING:**

8

9 I respectfully submit the City of Surrey has not responded to the BCUC Panel IR's in a
10 "full and transparent manner". I submit the Commission Panel should therefore regard the
11 City of Surrey responses, as no response.

12

13 Respectfully I close by saying all existing FEI accounts (113,000 – *I still question that*
14 *number*) should be "Grandfathered" into not having to pay an Operating Fee, effective at
15 some point in time after the Commission Panel has issued their decision.

16

17 Perhaps January 1st 2020, once everyone has had time to calculate and introduce account
18 billing accordingly. It is also appropriate the Commission approve the final methodology.

19

20 This suggestion to Grandfather all existing FEI customers is broadly based on the costs of
21 services provided both by the City and FortisBC that are already in the ground.

22

23 Bought and paid for by our property taxes (past and present), and in our monthly billing
24 from FortisBC. Any other settlement outcome "does" amount to double taxation and a
25 windfall to the City.

26

27 Respectfully,

25

26

Richard T. Landale

27

Intervener C1