



Suite 1600 Cathedral Place
925 West Georgia Street
Vancouver, BC
Canada V6C 3L2
T: 604.685.3456

November 19, 2018

BY E-FILING

British Columbia Utilities Commission
Sixth Floor – 900 Howe Street
Vancouver, B.C. V6Z 2N3

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 for filing the City's Response to FortisBC Energy Inc.'s Submissions on New Evidence.

Yours very truly,

LAWSON LUNDELL LLP

Ian Webb

cc. FEI counsel

Ian Webb
T: 604.631.9117
F: 604.694.2932
iwebb@lawsonlundell.com

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
Response to FortisBC Energy Inc. Submissions on New
Evidence**

November 19, 2018

TABLE OF CONTENTS

1. Introduction.....	1
2. City of Surrey’s Response to FEI Submissions	1

1. Introduction

1. On October 5, 2018, the British Columbia Utilities Commission (“**BCUC**”) Panel re-opened this proceeding to request further information from the City of Surrey (the “**City**”) and from FortisBC Energy Inc. (“**FEI**”).
2. The new information requests from the Panel were focused on the operating fee for the terms of a new operating agreement between the City and FEI. Both the City and FEI agree that the operating agreement between the parties should have an operating fee. The disagreement in regards to the operating fee is with respect to what methodology should be used to calculate the operating fee value.
3. On November 5, 2018, the City submitted its Final Argument on the new evidence to the BCUC. On the same date, FEI made submissions (the “**FEI Submissions**”) in regards to the new evidence. This submission of the City responds to the FEI Submissions.

2. City of Surrey’s Response to FEI Submissions

4. Section 2.5 of the City’s November 5, 2018 Final Argument on New Evidence provides the City’s comments on FEI’s response to BCUC Panel IR No. 1 to FEI, and those comments will not be repeated here. In particular, the FEI Submissions rely on Table 1 in FEI’s response to BCUC Panel IR 1.1. The City’s comments on FEI’s Table 1 are provided in paragraph 33 of the City’s November 5, 2018 Final Argument on New Evidence.
5. In the fourth bullet point of paragraph 2 of the FEI Submissions, FEI makes a point about franchises. FEI has already clearly stated that its modern operating agreements are not franchise agreements, and the City agrees with that. There is no grant of “privilege, concession or franchise” in any of FEI’s modern operating agreements, including the one before the BCUC in this proceeding. Accordingly, FEI’s comment about franchises is not applicable and ought to be disregarded.
6. In paragraph 3 of the FEI Submissions, FEI concedes that the operating fee can reasonably be viewed as rent for the use of highways and other public places owned

and controlled by the municipality; however, FEI implies that the City's requested 3% of gross revenues operating fee is too high because the City gives "less to FEI in return relative to those other municipalities" that receive the 3% of gross revenues operating fee. Specifically, FEI argues that the City should receive a unique, lower operating fee than the ubiquitous 3% of gross revenues operating FEI pays to 74 municipalities in the province because the City *gives less to FEI* in relation to gas line relocation costs. The City responds that this FEI argument is quite misleading. Paragraphs 5 to 7 of the City's May 31, 2018 Final Argument address the disparity in gas line relocation costs as between the City of Surrey and other municipalities, and the disparity is the opposite of what FEI suggests it is. Paragraph 7 of the City's May 31, 2018 Final Argument is reproduced below for convenience.

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, 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:

"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

"

7. Thus, FEI's argument is quite misleading. The truth, as confirmed by the table above submitted by FEI in its response to Surrey IR 1.2.8, is that the City requests the same 3% of gross revenues operating fee as the fee FEI is currently paying to 63 municipalities that in 2016 did not incur any gas line relocation costs at all, plus another 10 municipalities that paid FEI less than \$25,000 for gas line relocation costs.

8. The evidence is that (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.

All of which is respectfully submitted this 19th day of November, 2018.

By: 

Ian D. Webb

Counsel for the City of Surrey