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October 13, 2017

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**

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We write on behalf of the City of Surrey (the **City**) to provide our submissions on further process for the above-referenced British Columbia Utilities Commission (**Commission**) proceeding, in accordance with the timetable established by Order No. G-98-17.

As will be explained in further detail below, the City submits that there should be further written evidence in the proceeding followed by a Streamlined Review Process and written arguments.

#### **Should there be a second round of information requests?**

The City does not have a strong view on whether a second round of information requests (**IRs**) is needed. We have a few further questions arising from FortisBC Energy Inc.'s (**FEI's**) responses to round one IRs; however, our questions do not by themselves justify a second round of IRs. If the Commission determines that there will be another round of IRs, the City will submit its questions to FEI and, of course, the City will respond to any further IRs it receives.

#### **Should there be further direct evidence and/or rebuttal evidence?**

Yes. Specifically, the City believes that further evidence and rebuttal evidence is needed with respect to how other jurisdictions have addressed utility relocation costs, the potential cost impacts resulting from the different definitions of Relocation Costs, and with respect to how

other jurisdictions have addressed municipal operating fees to utilities operating within the municipality's boundaries.

In the City's IR 1.3.1 to FEI, we asked FEI to provide references to any regulatory precedents from other jurisdictions (*e.g.*, decisions, orders, regulations, standards, model agreements, etc.) FEI is aware of that align with FEI's position on responsibility for upgrade/betterment costs incurred during relocation projects, and in particular that employ the "but for" concept employed by FEI. FEI's response to that IR does not reference any decisions, orders, regulations, standards or model agreements from other jurisdictions, but the response references and incorrectly describes the operation of certain City of Surrey By-laws. FEI's incorrect statements cannot be corrected by submitting further IRs to FEI; they must be corrected by rebuttal evidence from the City.

FEI has also confirmed in its responses to round one IRs (*e.g.*, FEI's response to Surrey IR 1.2.10.1) that FEI is unaware of the original analysis, considerations and basis for including the 3% of gross revenue operating fee in 75 of its operating agreements with municipalities in the province. FEI has also confirmed that its requested operating fee for Surrey based on 0.7% of delivery margin is novel. Notwithstanding that evidence, FEI claims that its proposed novel approach for Surrey is more fair than the 3% of gross revenue operating fee standard. FEI also asserts without any basis in historical practice in British Columbia or other jurisdictions that operating fees should be based on the terms of the specific operating agreement and/or on the actual costs of the municipality directly related to FEI's activity level in the municipality. The City proposes to address this gap in the evidence by submitting further evidence with respect to what has been said in this and other jurisdictions about the purpose of municipal operating fees and how such fees have been determined in other jurisdictions.

The City also believes that the record would benefit from evidence regarding the potential cost impacts resulting from the different definitions of Relocation Costs, and the City proposes to submit a few examples.

The City proposes to submit the evidence discussed above in written form.

### **Should there be an oral hearing?**

The City believes that the Commission's Streamlined Review Process (**SRP**), as set out in the SRP Policy, Guidelines and Procedures document appended to Order No. G-37-12, would be an efficient and appropriate means to provide all participants the opportunity to collectively gather additional information and actively participate in building an understanding of the issues involved in the respective City of Surrey and FEI applications.

The SRP would provide an excellent venue for a clear and efficient discussion of the difference of opinion on the definition of Relocation Costs as the City and FEI disagree on potentially subtle wording differences that can allow significant discretion on the part of the relocating party and lead to significant cost variations.

With regard to the circumstances in which a SRP is appropriate as articulated in the Commission's SRP Policy, Guidelines and Procedures document, we submit that the following factors favour a SRP for this proceeding.

- Based on the applications and the first round of IRs, there are only four areas of disagreement between the City and FEI, and interveners are focused on less than four issues.
- The City believes that the outstanding issues are not contentious *per se*. The parties do not agree on the outstanding issues, but we believe that all participants are focused on providing the best evidence available to enable the Commission to make a decision and resolve the impasse.
- We believe that the applications do not seek to establish significant new policy. The Commission has previously stated that it determines the operating terms and conditions for each municipality on an individual basis.
- With the additional evidence Surrey proposes to submit as discussed above, an SRP would expedite the flow of information between the parties, interveners and the Commission by incorporating the benefits of a workshop, information requests and an oral hearing into one efficient process.
- Finally, with only four registered interveners in the proceeding a SRP will be eminently workable.

The SRP could be used to complete a full evidentiary record, including addressing any questions participants or the Commission might otherwise ask in a second round of IRs and any questions regarding the City of Surrey's additional written evidence as discussed above.

The City proposes that the requested SRP be used to complete the evidentiary record and that the proceeding include a written argument phase following the SRP. Given that the City and FEI are both applicants in this proceeding, each should be afforded the opportunity to submit a reply argument in response to the final argument of the other.

#### **What are the City's views with respect to timetable?**

The City expects that it will be able to submit the additional direct evidence and rebuttal evidence discussed above within one month of the Commission's procedural order on further process.

The City's witnesses and counsel will be available for an SRP at any time except for the holiday season from mid-December to early January.

The City proposes that the applicants FEI and the City submit their final written arguments three weeks following the SRP, interveners submit their final arguments three weeks after that, and the City and FEI submit their reply arguments two weeks after the date for intervener arguments.

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All of which is respectfully submitted.

Yours very truly,

LAWSON LUNDELL LLP

A handwritten signature in cursive script that reads "Ian Webb".

Ian Webb

cc. FEI counsel