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August 6, 2019

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC
V6Z 2N3

Attention: Mr. Patrick Wruck, Commission Secretary and Manager, Regulatory Support

Dear Mr. Wruck:

Re: FortisBC Energy Inc. (FEI)

Withdrawal of Request for Approval to use the Operating Agreement between the Corporation of the City of Kamloops and FEI as the Basis for Comparison in Subsequent Interior Operating Agreement Applications

FEI is writing in response to British Columbia Utilities Commission (BCUC) Order G-176-19, dated July 31, 2019 in the above-noted proceeding, which established a public process to address FEI's request to use the Revised FEI-Kamloops Operating Agreement as the basis for comparison for future operating agreements with Interior municipalities.

As explained below, in retrospect, it appears that the way in which FEI formulated its request has caused the BCUC to interpret FEI's request far more broadly than had been intended. FEI has every intention of continuing to use the previously-approved Keremeos Terms as the basis for comparing future Interior operating agreements, and was simply trying to acknowledge the fact that the BCUC has since approved and directed some immaterial changes to these terms. In light of this, we believe it is appropriate to withdraw the requested approval that prompted Order G-176-19, which will facilitate cancelling the associated process.

Background

By Order C-8-14, dated July 24, 2014, the BCUC approved the terms of the FEI-Village of Keremeos Operating Agreement (Keremeos Terms) to be the basis for comparison for future operating agreement applications.

On October 9, 2018, FEI applied to the BCUC for approval of an operating agreement dated September 27, 2018 between FEI and the City of Kelowna (FEI-Kelowna Operating Agreement). It reflected the Keremeos Terms.

By Order G-206-18, dated October 31, 2018, the BCUC approved the FEI-Kelowna Operating Agreement dated September 27, 2018, on an interim basis until a final determination was made, and established a public hearing process and regulatory timetable.

On February 6, 2019, FEI applied to the BCUC for approval of an operating agreement dated January 17, 2019 between FEI and the Corporation of the City of Kamloops (FEI-Kamloops Operating Agreement), on an interim basis until a final determination was made. FEI also requested that the BCUC make a determination on the final form of the FEI-Kamloops Operating Agreement after it had reached a decision on the application for Approval of the FEI-Kelowna Operating Agreement. FEI requested that, consistent with the intent of the parties (i.e., FEI and Kamloops), the BCUC's final order specify that the FEI-Kamloops Operating Agreement be on the same terms as the BCUC ultimately approves for the FEI-Kelowna Operating Agreement. However, it was still anticipated that the differences between the version approved on an interim basis for Kelowna and the final version approved for Kamloops would be immaterial; both agreements were based on the Keremeos Terms.

By Order G-33-19, dated February 13, 2019, the BCUC approved, on an interim basis, the FEI-Kamloops Operating Agreement, until a final determination was made.

By Order G-81-19, dated April 15, 2019, the BCUC directed that the FEI-Kelowna Operating Agreement would remain interim subject to the direction that FEI submit a revised FEI-Kelowna Operating Agreement agreed to by the parties that included a revision to update the dispute resolution provisions of the operating agreement in accordance with the Reasons for Decision appended to the Order. In its Reasons for Decision, the BCUC Panel noted that the proposed FEI-Kelowna Operating Agreement reflects the parties' mutual agreement to the Keremeos Terms without material change, contains language that reflects current operating practices, and maintains the status quo and, on that basis, the Panel considered the Operating Agreement to be fair to both FEI's customers and the City of Kelowna.¹

On April 30, 2019, FEI filed a revised FEI-Kelowna Operating Agreement dated April 26, 2019, executed by the parties in accordance with BCUC Order G-81-19.

By Order G-99-19, dated May 3, 2019, the BCUC approved the revised FEI-Kelowna Operating Agreement dated April 26, 2019, on a permanent basis.

On June 3, 2019, FEI filed an application (Kamloops Application) for approval of a revised FEI-Kamloops Operating Agreement dated May 31, 2019 (Revised FEI-Kamloops Operating Agreement). As described in the Application, the Revised FEI-Kamloops Operating Agreement contains all of the recent BCUC-approved revisions as compared to the Keremeos Terms including those directed by the BCUC in Order G-81-19. The terms are identical to the terms of the FEI-Kelowna Operating Agreement.

In the Kamloops Application, FEI sought two separate approvals from the BCUC and attached a separate draft order for each one:

¹ Order G-81-19, Appendix A, p.3.

- (i) Permanent approval of the Revised FEI-Kamloops Operating Agreement dated May 31, 2019, pursuant to section 23(1)(g) of the *Utilities Commission Act* (UCA).²
- (ii) Approval to use the FEI-Kamloops Operating Agreement, once approved, as the basis for comparison in future operating agreement applications with Interior municipalities.³

By Order G-132-19, dated June 14, 2019, the BCUC established a public hearing process providing for public notice and intervener registration for FEI customers in the City of Kamloops regarding the Revised FEI-Kamloops Operating Agreement (paragraph (i) above). No applications to intervene were registered by the deadline of July 19, 2019.

By Order G-176-19, dated July 31, 2019, the BCUC established a public hearing process and regulatory timetable to address FEI's request to use the Revised FEI-Kamloops Operating Agreement as the basis for comparison for future operating agreements with Interior municipalities (paragraph (ii) above).

Withdrawal of Application for Use of Kamloops Operating Agreement as Basis for Comparison

In retrospect, it appears that the way in which FEI formulated its requested approvals and draft orders in the Kamloops Application has caused the BCUC to interpret FEI's request far more broadly than had been intended. FEI's only intention in seeking approval to use the Kamloops Terms as the basis for comparison for future operating agreements with Interior municipalities was to reflect the fact that the BCUC had made directions and approved changes to the Keremeos Terms that would have to be reflected in any future use of the Keremeos Terms. In other words, future applications would continue to be assessed against the Keremeos Terms, as revised to incorporate the changes directed by the BCUC in Order G-81-19 and approved by Order G-99-19 for the FEI- Kelowna Operating Agreement. The revised terms are not materially different from the Keremeos Terms. Specifically, as set out in Appendix C of the Kamloops Application, the only differences between the Revised FEI-Kamloops Operating Agreement and the Keremeos terms are:

- (i) three typographical corrections to reflect the original intent or make dates more current (ss. 6.2, 6.4.1 and 11.2), as described in BCUC Order G-81-19, Appendix A⁴, and approved by Order G-99-19;
- (ii) one updated reference to other applicable legislation (s. 13.1.3), as described in BCUC Order G-81-19, Appendix A⁵ and approved by Order G-99-19;
- (iii) a minor housekeeping revision to add clarifying language to reflect that the operating fee is not collected on revenues from compressed natural gas or liquefied natural gas services (s. 11.1.1), as approved by Order G-99-19; and
- (iv) an update to an anachronistic reference in the dispute resolution clause (so as to reference the ADR Institute of Canada, Inc., instead of referring to its

² Appendix B Draft Order – Permanent Approval of City of Kamloops Operating Agreement.

³ Appendix D Draft Order – Use of Kamloops Operating Agreement as Basis for Comparison.

⁴ Reasons for Decision, p. 2.

⁵ Reasons for Decision, p. 2.

predecessor) (ss. 17.1 and 17.2) as directed by BCUC Order G-81-19 and approved by Order G-99-19.

The broader public hearing process established by the BCUC in Order G-176-19, in FEI's view, is unwarranted. FEI believes that the process established by Order G-176-19 would result in the inefficient use resources and that the associated costs of publishing notice and conducting the regulatory process will be unreasonable given that FEI is continuing to rely on the Keremeos Terms.

In addition, the processes relating to the FEI-Castlegar and FEI-Spallumcheen Operating Agreements should resume. The request that prompted the BCUC to initiate the broader process had no practical impact on those matters, since both of those applications used the Keremeos Terms (not the Kamloops terms) as the basis for comparison. Those two applications are most appropriately reviewed by the BCUC in a process that reflects their narrow scope.

Requested Orders

FEI respectfully withdraws its request for approval to use the FEI-Kamloops Operating Agreement as a basis for comparison for operating agreements with Interior municipalities and will continue to use the Keremeos Terms as the basis for comparison as approved by the BCUC in Order C-8-14. FEI requests that the BCUC cancel or rescind Order G-176-19 or issue a subsequent order cancelling the public hearing process established therein, and proceed with making a determination on the final form of the FEI-Kamloops Operating Agreement for use in that municipality alone. No further process is required for that specific request, since there have been no interventions in relation to it.

In addition, FEI requests that the BCUC cancel or rescind Order G-179-19, dated August 2, 2019 (Application for Approval of FEI-Spallumcheen Operating Agreement dated June 3, 2019), and Order G-183-19, dated August 2, 2019 (Application for Approval of FEI-Castlegar Operating Agreement dated July 11, 2019), and recommence the review of these operating agreement applications currently before it. Both of these orders were predicated on the holding of a broad process in the Kamloops Application, which is unnecessary.

FEI acknowledges that this issue has arisen from the way in which it formulated its requested relief. FEI apologizes for the inconvenience this has caused.

If further information is required, please contact the undersigned.

Sincerely,

FORTISBC ENERGY INC.

Original signed:

Doug Slater