



Diane Roy
Vice President, Regulatory Affairs

Gas Regulatory Affairs Correspondence
Email: gas.regulatory.affairs@fortisbc.com

Electric Regulatory Affairs Correspondence
Email: electricity.regulatory.affairs@fortisbc.com

FortisBC
16705 Fraser Highway
Surrey, B.C. V4N 0E8
Tel: (604) 576-7349
Cell: (604) 908-2790
Fax: (604) 576-7074
Email: diane.roy@fortisbc.com
www.fortisbc.com

March 2, 2018

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, B.C.
V6Z 2N3

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

Dear Mr. Wruck:

Re: FortisBC Energy Inc. (FEI)

Project No. 1598915

**Application for Approval of Operating Terms between the City of Surrey and FEI
(the Application)**

**Response to the British Columbia Utilities Commission (BCUC or the
Commission) Information Request (IR) No. 2**

On May 18, 2017, FEI filed the Application referenced above. In accordance with the Commission Order G-201-17 setting out the amended Regulatory Timetable for the review of the Application, FEI respectfully submits the attached response to BCUC IR No. 2.

If further information is required, please contact Ilva Bevacqua at 604-592-7664.

Sincerely,

FORTISBC ENERGY INC.

Original signed:

Diane Roy

Attachments

cc (email only): Registered Parties



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A. UNRESOLVED OPERATING TERMS

12.0 Reference: Rationale for FEI's Proposal Regarding Operating Fee

Exhibit B1-1, p. 17

Inland operating fee

On page 17 of FortisBC Energy Inc.'s (FEI) application for approval of terms for an operating agreement with City of Surrey (FEI Application) filed with the British Columbia Utilities Commission (Commission), it states that:

Inland Natural Gas [Inland] (one of FEI's predecessors) began collecting an Operating Fee on behalf of municipalities in the Interior region in 1957, when natural gas was first introduced. The Operating Fee rate since inception in the Interior region has been set at 3 percent of gross revenues received by the Company for the provision and distribution of gas consumed within the municipality. FEI is not aware of any information setting out the basis or methodology used to determine the 3 percent amount, or any supporting information identifying how this amount was determined or derived.

12.1 In FEI's view, could the 3 percent of gross revenues fee have also been considered to be a franchise fee to recognize the exclusive rights granted to Inland to distribute natural gas in the communities?

Response:

Yes, the fee was a franchise fee.

In the case of the municipalities in the Inland Natural Gas service area, it appears that all but two of the early agreements contemplated a grant of franchise and a fee. In those agreements with a fee, the fee was explicitly provided in consideration for the grant of franchise. For instance, the 1980 renewal agreement between Inland Natural Gas Inc. and the City of Nelson provided in part:

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1. The Company agrees to obtain a supply of gas subject as hereinafter provided, to distribute and sell gas within the boundary limits of the Municipality, and, subject as hereinafter provided, the Municipality insofar as and to the extent that it is able and so empowered, hereby grants to, bestows and confers upon the Company the exclusive charter, right, franchise or privilege to supply gas by pipeline to the Municipality and its inhabitants and to consumers or customers situated within its boundary limits for the term of Twenty-one (21) years from the date of the expiry of that Franchise Agreement dated the 1st day of December, 1956, which expired on the 30th day of November, 1977.

...

13. Subject as hereinafter provided, the Municipality agrees with the Company that it will not during the term of this Agreement as set out in Clause One (1) hereof, itself construct, operate or maintain a distribution system for the supplying of gas to the Municipality and/or its inhabitants and/or consumers or customers within its boundary limits, or to use the public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares or parks under its control or owned by it, or any part of them, for such purposes.

...

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23. As compensation for the use by the Company of the public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares and parks as provided in Clause Three (3) hereof, and for the exclusive charter, right, franchise, or privilege to supply gas by pipeline as provided in Clause One (1) hereof, the Company shall pay to the Municipality on the first days of November in each of the years 1978 to and including 1998 or such earlier year in which this Agreement may expire under the provisions hereof a sum equal to Three (3%) per cent of the amount received in each immediately preceding calendar year by the Company for gas consumed within the boundary limits of the Municipality, but such amount shall not include revenues from gas supplied for resale, and, within Ninety (90) days after the twenty-first (21st) anniversary of the date of this Agreement or after such earlier date on which this Agreement may expire under the said provisions hereof the Company shall pay to the Municipality a sum equal to Three (3%) per cent of the amount received by the Company for gas consumed, save as aforesaid, within the boundary limits of the Municipality during the period from the commencement of the calendar year in which such anniversary or

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earlier date falls to such anniversary or earlier date, as the case may be. Since this Agreement is an extension of that Franchise Agreement dated the 1st day of December, 1956, which expired on the 30th day of November, 1977, it is agreed therefore that the following provisions as found on Page 13, starting in Line 25 of the aforesaid agreement, shall be waived:

"...and, within ninety (90) days after the twenty-first anniversary of the date of this Agreement or after such earlier date on which this Agreement may expire or be terminated as aforesaid, the Company shall pay to the City a sum equal to three (3%) per cent of the amount received by the Company for gas consumed, save as aforesaid, within the boundary limits of the City during the period from the commencement of the calendar year in which such anniversary or earlier date falls to such anniversary or earlier date, as the case may be."

In any event, this new Agreement shall recognize that the Company shall pay to the Municipality on the 1st day of November in the year 1978 a sum equal to Three (3%) per cent of the amount received in the immediately preceding calendar year, i.e. 1977, by the Company for the gas consumed within the boundary limits of the Municipality, except as provided herein, which shall not include revenues for gas supplied for resale. The amount received by the Company in any particular period for gas so consumed, and upon which the aforesaid percentage compensation is based, shall be that amount for the equivalent period upon which the percentage tax provided under Section 333 of the Municipal Act, 1960, Revised Statutes of British Columbia, Chapter 255, as now enacted would be payable and as if said percentage compensation herein provided were a tax provided for under said section, and such compensation shall not be or be deemed to be a tax or in lieu of any taxes, rates or licence fees otherwise properly payable to the Municipality. In the event that

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during the currency of this Agreement, the Company should enter into any contract or franchise agreement similar to this Agreement with another Municipality named and set out wherein under s similar clause to this Clause Twenty-three (23) the Company shall agree to pay to such Municipality, as compensation for the use by the Company of the public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares and parks for like purposes as in Clause Three (3) hereof set out, a greater percentage compensation than Three (3%) per cent of revenues as herein provided, then such greater percentage shall be and be deemed to be substituted for the Three (3%) per cent in this clause provided, but only applicable to the amounts received by the Company for gas consumed within the boundary limits of the Municipality, save as aforesaid, from the effective date of such other contract or franchise agreement until the expiration of the term of this Agreement as provided in Clause One (1) hereof or until the sooner termination hereof as hereinbefore provided.

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3 Please refer to Attachment 12.1 for a copy of the City of Nelson 1980, City of Castlegar 1979,
4 and Armstrong 1977 franchise agreements, as samples of earlier Inland Natural Gas
5 agreements.

6 Two of the early Inland Natural Gas agreements with municipalities, those with Chetwynd and
7 100 Mile House, were explicitly "Operating Terms" rather than a franchise agreement. While
8 they established terms for the use of public spaces, they provided no franchise, exclusive or
9 otherwise. Accordingly, Inland Natural Gas did not collect and remit any franchise fee. Please
10 also refer to Attachment 12.1 for a copy of the 100 Mile House Operating Terms, 1980. The
11 Chetwynd Operating Terms appear to be the same in substance.

12 The exclusive franchise that was a part of early Inland Natural Gas agreements that
13 contemplated a fee was maintained in agreements renewed in the 1990s by BC Gas. This is

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- 1 illustrated by the 1990 agreement between BC Gas and the Municipality of Clinton. The section
- 2 "Fee For Franchise Rights" provided:

14. FEE FOR FRANCHISE RIGHTS

As compensation for the use by the Company of the public places, as provided in Clause one (1) hereof, and for the exclusive charter, right, franchise, or privilege to supply gas granted herein, the Company shall pay to the Municipality on the first day of November in each year during the term of this Agreement a sum equal to three (3%) percent of the amount received in each immediately preceding calendar year by the Company for gas consumed within the boundary limits of the Municipality, but such amounts shall not include any percentage for or based upon any revenues received by the Company from gas supplied for resale. On the last day of March on the year immediately following the expiry or termination of this Agreement, the Company shall pay to the Municipality a sum equal to three (3%) percent of the amount received by the Company for gas consumed within the boundary limits of the Municipality during the period from the commencement of the preceding calendar year to the expiry or termination of this Agreement. Such compensation shall not be or be deemed to be in lieu of any taxes, rates, or licence fees otherwise properly payable to the Municipality.

15. DURATION AND EXCLUSIVITY OF FRANCHISE

Subject as hereinafter provided the Municipality hereby covenants and agrees with the Company that the powers hereby granted to the Company for the purpose aforesaid are and shall be granted to the Company exclusively for a period of ten (10) years commencing the 13th day of March 19 90 and expiring on the 12th day of March 2000 (the "Primary Term") and continuing from year to year after the expiry of the Primary Term until terminated by either party upon twelve (12) months written notice of termination received one year prior to the expiry of the Primary Term or any anniversary thereafter. Notwithstanding the foregoing, the term of this Agreement shall not continue longer than twenty-one (21) years. During the Primary Term or any extension of the term of this Agreement thereafter the Municipality shall not itself supply gas to any of its inhabitants, or use or allow or consent to any other person, firm, or corporation to supply or distribute gas to any of its inhabitants, or to use the said public places, or any of them, for the purpose of laying gas mains or pipes along, through or under the same; for the purpose of supplying or distributing gas within the boundary limits of the Municipality.

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- 1 The renewed BC Gas agreement with the Municipality of Armstrong contained similar
- 2 provisions:

14. FEE FOR FRANCHISE RIGHTS

As compensation for the use by the Company of the public places, as provided in Clause One (1) hereof, and for the exclusive charter, right, franchise, or privilege to supply gas granted herein, the Company shall pay to the Municipality on the first day of November in each year during the term of this Agreement a sum equal to three (3%) percent of the amount received in each immediately preceding calendar year by the Company for gas consumed within the boundary limits of the Municipality, but such amounts shall not include any percentage for or based upon any revenues received by the Company from gas supplied for resale. On the last day of March of the year immediately following the expiry or termination of this Agreement, the Company shall pay to the Municipality a sum equal to three (3%) percent of the amount received by the Company for gas consumed within the boundary limits of the Municipality during the period from the commencement of the preceding calendar year to the expiry or termination of this Agreement. Such compensation shall not be or be deemed to be in lieu of any taxes, rates, or licence fees otherwise properly payable to the Municipality.

15. DURATION AND EXCLUSIVITY OF FRANCHISE

Subject as hereinafter provided the Municipality hereby covenants and agrees with the Company that the powers hereby granted to the Company for the purpose aforesaid are and shall be granted to the Company exclusively for a period of ten (10) years commencing the **12th day of October, 1998** and expiring on the **11th day of October, 2008** (the "Primary Term") and continuing from year to year after the expiry of the Primary Term until terminated by either party upon twelve (12) months' written notice of termination received one year prior to the expiry of the Primary Term or any anniversary thereafter. Notwithstanding the foregoing, the term of this Agreement shall not continue longer than twenty-one (21) years. During the Primary Term or any extension of the term of this Agreement thereafter the Municipality shall not itself supply gas to any of its inhabitants, or use or allow or consent to any other person, firm, or corporation to supply or distribute gas to any of its inhabitants, or to use the said public places, or any of them, for the purpose of laying gas mains or pipes along, through or under the same; for the purpose of supplying or distributing gas within the boundary limits of the Municipality.

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- 5 None of the agreements entered into by BC Electric with Lower Mainland municipalities and
- 6 Oak Bay (on Vancouver Island) were exclusive franchise agreements, and none involved the
- 7 payment of a fee. For example, the Oak Bay agreement specifically stated that it was not an
- 8 exclusive franchise:

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14. It is hereby mutually agreed by and between the parties hereto and this agreement is made upon the distinct and express understanding that nothing herein contained shall be deemed or construed as a grant to the Company of the exclusive right to the privileges herein contained and that the Corporation shall be at liberty at any time it may desire to grant the same or similar privileges to any other person persons or corporation.

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3 The same is true for the City of Langley agreement, for instance:

13. It is hereby mutually agreed by and between the parties hereto and this agreement is made upon the distinct and express understanding that nothing herein contained shall be deemed or construed as a grant to the Company of the exclusive right to the privileges herein contained and that the Corporation shall be at liberty at any time it may desire to grant the same or similar privileges to any other person, persons or Corporation or to engage in the manufacture distribution and sale of gas and to instal and operate its own gas system and to supply gas to its inhabitants in such manner and upon such terms as it may deem proper without thereby incurring any obligation whatever to the Company.

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6 The proforma agreement approved for use with Vancouver Island municipalities, like the Inland
7 region agreements (and unlike the Lower Mainland), also contemplated exclusive operating
8 rights and an operating fee:

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2. **Grant of Operating Rights.** The Municipality, to the extent that it is empowered, grants to the Company subject to the terms and conditions of this Agreement and subject to compliance with applicable federal and provincial statutes and bylaws of the Municipality, the exclusive right to supply Gas by pipeline to consumers located within the Municipality.
3. **Exclusivity of Operating Rights.** The Municipality shall not grant to any other person the right to supply or deliver Gas by pipeline within the Municipality or the right to use Highways or Public Lands to supply or deliver Gas by pipeline, so long as the Company complies with the terms and conditions of this Agreement and this Agreement remains in force.

The exclusive grant in the original Vancouver Island agreements was also accompanied by a fee of 3 percent of gross revenues, but the fees were ultimately prevented by legislation.

None of the agreements currently in place with FEI are franchise agreements, and none purport to grant exclusivity to the utility. The old franchise agreements in the Inland region have been replaced with operating agreements, as have the Vancouver Island agreements. The legacy fee of 3 percent of gross sales remained in the replacement agreements through the negotiation process.

12.2 To what extent should the operating fee reflect the goodwill of the municipality in allowing Inland Natural Gas (Inland) to utilize municipal infrastructure for gas distribution?

Response:

The older Inland Natural Gas franchise agreements, sample excerpts from which are copied in the response to BCUC-FEI IR 2.12.1, describe the franchise fee as being consideration for the use of the public places, as well as in exchange for the grant of franchise. However, with respect to the term “goodwill”, one should be careful about assuming that the use of the streets was only a benefit to the utility. These original agreements accompanied the initial build out of the system. It is clear from the agreements that the municipalities were very much interested in having the gas utility present in the municipality and providing low cost service to residents.

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FEI already pays municipal taxes on all of its infrastructure, irrespective of whether or not it is located on private or public property. The Operating Fee collected on behalf of the Inland municipalities should today be regarded as a payment to the municipality in exchange for agreeing to an overall package of terms that will facilitate the efficient and effective operation of the utility in the municipality with an acceptable level of disruption.

12.3 Would the Inland operating fees have also recognized the inconvenience and visual impact that cuts to roadways impose?

Response:

As stated in the response to BCUC-FEI IR 2.12.2, the older Inland Natural Gas franchise agreements, sample excerpts from which are copied in the response to BCUC-FEI IR 2.12.1, describe the franchise fee as being consideration for the use of the public places, as well as in exchange for the grant of exclusive franchise. There is no specific reference to inconvenience and visual impacts of road cuts in the agreements. However, use of public places for the purposes contemplated in those agreements would involve road cuts and disruption.

12.4 Did FEI reach out to past Inland employees or Inland's legal counsel to better understand the basis of the 3 percent of gross revenue operating fee? If not, why not?

Response:

As discussed in the response to BCUC-FEI IR 2.12.1, it is clear from the old Inland agreements themselves that the fee was a franchise fee, and was provided in consideration for the grant of franchise and the use of public spaces. FEI did contact Inland's external legal counsel to find information on the origin of using 3 percent of gross revenue but no records could be found. FEI employees who were employees of Inland were also contacted and also could not provide any additional information.

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13.0 Reference: Rationale for FEI's Proposal Regarding Operating Fee

Exhibit B1-1, p. 17

Victoria operating fee

On page 17 of the FEI Application, it states:

The operating agreements on Vancouver Island post-dated the Inland agreements. The Pro-Forma Interim Municipal Gas Operating Agreement (the Interim Vancouver Island Agreement) between 19 municipalities and the Company's predecessors had contemplated that the utility would collect an Operating Fee on behalf of municipalities equal to 3 percent of gross revenues, provided that the fee was authorized by the Legislature. The authorization had been anticipated to occur following repayment of the grants made by the Province related to the Vancouver Island Natural Gas Pipeline Project. The Commission by Order G-13-91, dated February 8, 1991, had approved the Interim Vancouver Island Agreement with the 19 Vancouver Island Municipalities for a term of 21 years on this basis. However, Section 7(5) of the *Vancouver Island Natural Gas Pipeline Act* (VINGPA) had then legislatively precluded municipalities from levying an Operating Fee. On November 25, 2014, Bill 4-2014 was enacted, amending the VINGPA by repealing Section 7(5). In 2015, the Commission approved 26 executed operating agreements with Vancouver Island municipalities, which included the provision for collection and remittance of Operating Fees based on 3 percent of gross revenues.

13.1 The Victoria butane utility was originally owned by British Columbia Hydro and Power Authority (BC Hydro), like the situation in the City of Surrey. Was BC Hydro exempt from paying taxes in both communities and is that why there were no operating fees for these communities?

Response:

FEI does not have any history from the Victoria butane utility so cannot comment specifically, other than to say that to the best of FEI's knowledge the Victoria butane utility is unrelated to the natural gas system on Vancouver Island.

The Vancouver Island natural gas system was originally constructed after Pacific Coast Energy Corporation (PCEC) received an Energy Project Certificate in 1989 from the Ministry of Energy, Mines and Petroleum Resources. PCEC constructed the transmission system and the Vancouver Island Gas Company (in 1991 renamed to Centra Gas Vancouver Island Inc.) and Victoria Gas Company (1988) Ltd. (in 1991 renamed to Centra Gas Victoria Inc.), (collectively Centra Gas) constructed the distribution system. PCEC began the transmission to, and

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1 distribution of natural gas on, and to Vancouver Island and the Sunshine Coast in October 1991.
2 PCEC operated the transmission pipeline and Centra Gas operated the distribution system.

3 In January of 1996, PCEC purchased the distribution assets of Centra Gas and combined them
4 with its transmission assets and was renamed Centra. In 2002, the former BC Gas Inc.
5 purchased the shares of Centra, which in April 2003 became Terasen Gas (Vancouver Island)
6 Inc., and then in March 2011 became FortisBC Energy (Vancouver Island) Inc., and finally, as of
7 December 31, 2014, was amalgamated into FEI.

8 In 1990, Centra's predecessor companies applied for approval from the Commission for Interim
9 Operating Agreements to enable commencement of construction of natural gas distribution
10 facilities. It was in these Interim Operating Agreements that a provision for the establishment of
11 operating or franchise fees at 3 percent originated. These Interim Operating Agreements were
12 approved by Commission Order G-13-91 dated February 8, 1991.

13 FEI is not aware of whether BC Hydro was exempt from paying taxes in Victoria or Surrey in the
14 past. However, we do not believe this would have been determinative either way. An Operating
15 Fee (or franchise fee) is not a tax.

16
17
18
19 13.2 If Victoria allowed a 3 percent of gross revenue operating fee after being
20 acquired by an investor owned utility, does this establish a precedent for other
21 former BC Hydro gas division entities now owned by investor utilities?
22

23 **Response:**

24 FEI is not aware of the history of Victoria's butane utility. However, FEI's predecessors were
25 founded in 1988 and 1989 to facilitate the development of natural gas on Vancouver Island. To
26 the best of FEI's knowledge, those predecessor companies never sold butane. Please refer to
27 the response to BCUC-FEI IR 2.13.1 for the history of natural gas on Vancouver Island and the
28 commencement of the collection of Operating Fees based on the history of the Vancouver
29 Island natural gas system.

30 FEI does not believe that there is a precedent established regarding Operating Fees for former
31 BC Hydro divisions now investor owned.

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14.0 Reference: Unresolved Operating Terms

Exhibit B1-6, BCUC Information Request (IR) 1.5.3-1.5.4, p. 19

Operating fee based on delivery margin

In response to Commission IR 1.5.3, FEI provided a table on *FEI Gross Revenue and Delivery Margin for the Municipality of Surrey 2007 to 2016*.

In response to Commission IR 1.5.4, FEI stated it believes “the primary benefits of an Operating Fee calculated annually based on delivery margin versus gross revenue are a closer relationship with costs and activity levels in the municipality, and increased stability and predictability for customers and the municipality” and further “that an Operating Fee calculated based on gross revenue does not support the cost causation principle, because it is impacted by costs other than those related to the gas delivery system.”

14.1 Please update the table provided by FEI in response to Commission IR 1.5.3 to identify the operating fees that would have been collected based on 3 percent of delivery margin.

Response:

In response to this question FEI has added column 7 to the table originally provided in response to BCUC-FEI IR 1.5.3. FEI has also added the year 2017 to the table.

(1)	(2)	(3)	(4)	(5)	(6)	(7)
Year	Gross Revenue (City of Surrey)	Delivery Margin (City of Surrey)	Delivery Margin as % of Gross Revenue (3) / (2)	Operating Fee Under City of Surrey Proposal (2) x 3%	Operating Fee Under FEI Proposal (3) x 0.7%	Operating Fee at 3% of Delivery Margin (3) x 3%
2007	177,309,613	N/A		5,319,288		
2008	198,902,478	56,315,594	28.3%	5,967,074	394,209	1,689,468
2009	183,958,099	58,721,732	31.9%	5,518,743	411,052	1,761,652
2010	160,470,828	58,707,333	36.6%	4,814,125	410,951	1,761,220
2011	159,511,102	65,466,772	41.0%	4,785,333	458,267	1,964,003
2012	148,481,666	65,853,780	44.4%	4,454,450	460,976	1,975,613
2013	138,584,595	68,009,066	49.1%	4,157,538	476,063	2,040,272
2014	142,125,873	66,925,607	47.1%	4,263,776	468,479	2,007,768
2015	121,125,018	61,735,481	51.0%	3,633,751	432,148	1,852,064
2016	112,778,116	71,205,081	63.1%	3,383,343	498,436	2,136,152
2017	132,021,181	85,001,298	64.4%	3,960,635	595,009	2,550,039

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15.0 Reference: Unresolved Operating Terms

**Exhibit B1-6, BCUC IR 1.7.2, p. 26; Exhibit B1-5, CEC IR 1.3.2 p. 4;
Exhibit B1-11, p. 15, B2-8-1, p. 53**

High Pressure Pipelines Relocations

In response to Commission IR 1.7.2, FEI stated that:

The Company has no record of relocating the City of Surrey facilities over the past 10 years. FEI has made several requests but has been instructed by the City to work around their facilities. Due to grade requirements, the City can be restricted in altering their facilities. As a result, it becomes necessary for FEI to work around the City's facilities with additional costs being incurred by the Company, which ultimately results in higher costs for all natural gas customers. As such, other than damage repairs to water services and sewer lines, according to the Company's records, FEI has made no payments to the City for relocation of their facilities in the past 10 years.

In response to Commission IR 1.7.1, the City of Surrey stated:

Based on the City's readily accessible records and staff recollection, in the last 10 years the City of Surrey has requested FEI to alter or relocate its High Pressure Pipelines four times. Due to changes to the City's financial system in and around 2012, we cannot quantify the precise number of times the City has requested FEI to relocate its Gas Mains (low pressure), however, we estimate it is on the order of 100 times over the past 10 years.

In response to Commercial Energy Consumers Association of British Columbia's (CEC) IR 1.3.1, FEI stated:

The change to 50/50 for High Pressure Pipelines in FEI's proposal is a concession made by FEI as part of an overall package. Please refer to section 3.2 of FEI's Application and the response to BCUC IR 1.9.1 for further discussion of the Apportionment of Relocation Cost rationale. FEI explains in the latter response why the Commission has jurisdiction to adopt a 100 percent allocation for High Pressure Pipelines as well, should it consider that allocation to be fairer.

On page 15 of FEI's Supplemental Evidence, it states:

Under the 1957 Operating Agreement (and other municipal operating agreements approved with Vancouver Island and Inland municipalities to

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1 which Surrey compares itself) the party requesting a relocation bears all
2 of the costs. As such, there is significant cost discipline on the party
3 requesting relocations. FEI's proposed Operating Agreement includes a
4 compromise on High Pressure Pipelines that weakens this discipline in
5 the interests of securing an overall agreement (FEI is proposing equal
6 sharing for High Pressure Pipelines). Surrey's proposal goes further,
7 suggesting the application of the Pipeline Crossing Regulation to both
8 High Pressure Pipelines and Gas Mains, which would involve FEI paying
9 100 percent of the costs in many circumstances (with the only exception
10 being new roads, where the costs would be shared equally). Surrey's
11 proposal eliminates or materially reduces the present cost discipline on
12 the City when requesting relocations of FEI's facilities for the City's own
13 purposes, including for transmission relocations, the cost of which can be
14 very significant. This outcome increases the potential for the City to
15 initiate very costly relocations so as to reduce its own cost and
16 inconvenience even where the relocation is unnecessary or costs more
17 overall. FEI's experience would suggest it is reasonable to expect Surrey
18 to take this approach. Surrey has never moved its own facilities at the
19 request of FEI, even though it may cost significantly less for the City to
20 move its facilities than to require FEI to work around them. The majority of
21 the costs incurred by FEI on projects usually relates to working around
22 City infrastructure, restoring/paving to City specifications and working
23 under their by-law restrictions (road and hours of work restrictions).

24 15.1 Given the above situation, why would FEI not agree to relocation charges based
25 on 100 percent for High Pressure Pipelines?
26

27 **Response:**

28 FEI interprets the question as asking why FEI would not agree to pay 100 percent of the costs
29 for relocation of High Pressure Pipelines when requested by the Municipality.

30 This would be much more onerous on FEI and its customers than the 1957 Agreement with
31 Surrey and any other operating agreement. For instance, all agreements with Vancouver Island
32 and Inland municipalities make the municipality responsible for 100 percent of all relocation
33 costs.

34 FEI did not agree to accept the allocation of 100 percent of the relocation costs for High
35 Pressure Pipelines because doing so would remove any responsibility and accountability for
36 cost discipline from the City with respect to relocation projects. FEI is concerned that if FEI
37 were to accept an allocation of 100 percent of relocation costs, the City would have no incentive
38 to consider alternatives which may be more or most cost effective on given projects, particularly
39 if the relocation resulted in the shifting of costs over to FEI which the City would otherwise incur.

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1 This shifting of costs would mean that all of FEI's customers (in Surrey and throughout the
2 province) would have to bear costs which benefit the City of Surrey. As such, all of FEI's
3 customers would be subsidizing the City's projects and budgets.

4 Some considerations the City might ignore if there is no financial incentive or risk for the City to
5 consider may be alternative routing and elevations for their utilities to avoid FEI's natural gas
6 lines, providing timely permitting, daytime access to minimize the cost of FEI's work, and overall
7 improved cooperation and task sharing to reduce the overall cost of relocations. If FEI were to
8 accept 100 percent relocation costs for High Pressure Pipelines, this would create a financial
9 incentive for the City to request relocation of FEI facilities even if there were other equally
10 acceptable alternatives that would not require a relocation. As such, the City could make
11 decisions based on benefiting its budget to the detriment of FEI and its ratepayers, and FEI
12 would have no recourse. FEI believes that such an allocation would lead to increased numbers
13 of relocation requests and total relocation costs that will result in increased rates for all of FEI's
14 customers for projects which benefit the City of Surrey and Surrey taxpayers.

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18 15.2 Is this truly a "concession", or would Surrey face any added costs when it asks
19 for a relocation of an FEI High Pressure Pipeline? Please discuss.

20
21 **Response:**

22 It is a compromise, and a material one, with reference to the status quo in Surrey and other
23 municipalities.

24 In the context of the 1957 Operation Agreement, the City (defined in the agreement as the
25 "Corporation") pays the entire replacement cost, less an amount calculated with reference to
26 *book value* and age of the asset. The deduction *from book value* gets larger as the asset gets
27 older; however, at the same time the *actual replacement costs* (pre deduction) are subject to
28 inflation. The fact that the City is required to pay *actual* relocation costs, less a deduction based
29 on *book value* means that the amount the City must pay will still likely grow over time due to
30 inflation on replacement costs. For FEI's older assets, which had a small initial book value
31 because they were installed decades ago, the City will pay most of the cost of relocating the
32 assets even after making a substantial deduction from the book value for the age of the assets.

33 The relevant provision is inserted below:

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5. (a) If the part of the said works of which the location is changed as provided in paragraph 4 here- of was (1) installed as to both line and elevation in accordance with the approval or instructions in writing of the Municipal Engineer, or (11) was installed as to line in accordance with the approval or instructions in writing of the Municipal Engineer and was laid at a depth of at least eighteen inches under a roadway paved with at least two inches of concrete or asphalt, or (111) was installed as to line in accordance with the approval or instructions in writing of the Municipal Engineer and is being changed because its line is no longer satisfactory to the Corporation, the Corporation shall bear and pay to the Company the entire cost of the change less an amount equal to two (2) per cent of the installed value on the Company's books of any of the said part of the said works which the Company takes out of service as a result of the change multiplied by the number of years during which it has been in service. Provided, however, that notwithstanding that the said part of the said works was installed, or installed and laid, in one of the manners specified, if at any time the Corporation requires the Company to alter the elevation of any part of the said works to facilitate the laying, construction or operation of either storm or sanitary sewer pipes by not more than one half of the outer diameter of the storm or sanitary sewer pipe concerned, plus one half of the outer diameter of the gas pipe concerned, the

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Corporation shall bear and pay to the Company fifty (50) per cent of the sum arrived at by taking from the cost of the change an amount equal to two (2) per cent of the installed value on the Company's books of any of the said part of the said works which the Company takes out of service as a result of the change multiplied by the number of years during which it has been in service.

In all the other more recent FEI operating agreements, which are with municipalities on Vancouver Island and in the Interior, the municipality pays 100 percent of relocations for High Pressure Pipelines and Gas Mains.

As such, FEI's proposal that Surrey paying 50 percent for Relocation Costs of High Pressure Pipelines is a compromise by FEI as all of FEI's customers' rates would increase to cover the remaining 50 percent of these Relocation Costs. The 50/50 allocation is not only a compromise by FEI, it is a benefit to Surrey compared to the past, the status quo, and as compared to all other operating agreements between FEI and other municipalities. Under FEI's proposal, Surrey would realize significantly lower costs than it has paid historically for High Pressure Pipeline relocations.

15.3 Does FEI feel strongly about the 50/50 sharing proposal or would it be open to a 100 percent allocation? Please discuss.

Response:

FEI would not voluntarily agree to assume all Relocation Costs. Such a change would alter the overall cost-benefit analysis of FEI's Proposed Operating Terms for our customers.

FEI discussed its concerns about accepting 100 percent allocation of High Pressure Pipeline Relocation Costs in the response to BCUC-FEI IR 2.15.1. FEI believes that its proposal is fair, provides accountability and incentive for cost discipline which should drive effective decision making, and result in minimizing the cost of relocation projects. An allocation of 100 percent to FEI would result in all of FEI's customers subsidizing the City of Surrey's projects.

FEI is seeking a Commission determination on the most appropriate allocation for the cost of relocations, having regard to the overall operating terms, given the potential cost and risks to FEI customers.

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15.4 Please give a practical example of how the Pipeline Crossing Regulation to both High Pressure Pipelines and Gas Mains would lead to FEI paying 100 percent of the FEI costs of a relocation required by the City of Surrey for its needs?

Response:

Under the Pipeline Crossing Regulation, for High Pressure Pipeline relocations Surrey is responsible for 50 percent of all of FEI's costs if the activity triggering the relocation work is the construction of a new highway by Surrey on either an existing Right of Way or a newly dedicated Right of Way. In all other instances, Surrey is not responsible for FEI's costs relating to High Pressure Pipelines. All of these provisions are subject to variation by agreement.

The Pipeline Crossing Regulation does not apply to Gas Mains.

The City is seeking to have the Pipeline Crossing Regulation default requirements applied to both High Pressure Pipelines and Gas Mains. Based on the City's proposal, an example of a gas line relocation that would be 100 percent chargeable to FEI would be when the City upgrades any infrastructure or installs new utilities in an existing roadway which conflicts with FEI's High Pressure Gas Pipeline or Gas Main. Instead of changing the grade or redesigning the City utility to avoid FEI's gas line, the City would request FEI relocate the gas facility at no cost to the City. This would essentially have FEI rate payers subsidizing the City of Surrey projects.

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16.0 Reference: Operating Fee Calculation

Exhibit, B1-5, CEC IR 1.5.1, pp. 6-7

Cost Breakdown and Cost Causation

In response to CEC IR 1.5.1, FEI stated:

FEI considers the activity approach based on cost causation to be a fairer approach than km of pipeline because the latter approach may not reflect the construction activity in a municipality. The approach favoured by Surrey in its application and used in other agreements results in an excessive Operating Fee when measured against anticipated costs and activity levels related to FEI's operations in Surrey. FEI's view is that, if there is to be an Operating Fee, it should be based on cost causation and levied as a percentage of delivery margin, such that the percentage should relate to costs. FEI did consider potential options for financial arrangements outside of the Operating Fee model, but landed on the current proposal as the fairest approach to address cost causation.

16.1 If the Commission agrees with FEI that the operating fee should be based on "cost causation," then should it be calculated based on all direct and indirect costs faced by the City of Surrey, including indirect impacts such as traffic inconvenience and visual impacts of road cuts? Please discuss.

Response:

The point that FEI was trying to make, while perhaps worded poorly, is that FEI believes there should be a link between the amount of an Operating Fee being paid to Surrey and what FEI customers are getting in return. An Operating Fee is a fee that is collected and remitted to a municipality in consideration of covenants made by the municipality in an operating agreement. It should be proportional and balanced having regard to what the parties are getting from the agreement.

FEI has been operating in the City for decades without an Operating Fee, and its operations have involved road cuts and impacts on traffic flows. So the question should be: what are FEI customers getting in return for now paying an Operating Fee?

- FEI already has the right to construct and operate its system and extensions to that system under its CPCN and provisions of the UCA and the *Gas Utility Act*. FEI is thus not receiving an exclusive franchise, as had been the case in the original Inland and Vancouver Island agreements.

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- FEI already pays taxes to Surrey in respect of its total infrastructure in the municipality – irrespective of whether or not it is on public or private land. The City is thus already paid for the presence of the infrastructure, and is not agreeing to forego its right to taxation.
- Rather, with a new operating agreement, the City is primarily agreeing not to assert a right to fees for permits and authorizations associated with the work FEI (and/or its contractors) is performing, and it has agreed to more effective protocols to facilitate FEI's ability to serve customers in Surrey. FEI customers are saving these (disputed) authorization costs and are avoiding transaction costs in its dealings with the City commensurate with the level of activities it is undertaking. For that reason, FEI has linked the amount of its proposed Operating Fee to the permit / authorization fees that the City would otherwise be seeking to charge for the activities FEI is undertaking and an amount for the value of dispute avoidance.

FEI's response to BCUC IR 2.16.2.1 provides further discussion.

16.2 Please provide a detailed cost breakdown by category in relation to FEI operating in the City of Surrey for the last 24 months. Please provide this breakdown in a workable Excel format.

Response:

In FEI's Application (page 15), FEI estimated three categories of cost savings based on FEI's activities in Surrey with respect to permit/pavement cut fees, operating efficiencies, and avoidance of disputes/litigation. Table 1 below provides a cost breakdown of permit/pavement cuts fees and avoidance of disputes/litigation which updates the information provided in the response to BCUC-FEI IR 1.5.5 with the latest information available for 2016 and 2017, which is the most recent 24 months of available information. Operating efficiencies are estimated savings, which FEI hopes will materialize should the Commission approve FEI's Proposed Operating Terms. FEI does, however, also expect to incur additional labour costs to provide the City with the more detailed invoices as set out in Section 8.4 (b) of FEI's Proposed Operating Terms.

As was described in the response to BCUC-FEI IR 1.5.5, there are challenges with compiling historical permit fee data. Keeping those challenges in mind, below is the latest information gathered for 2016 and 2017 which includes fees paid by both FEI and FEI's contractors. This information is for illustrative purposes only because, as also noted in the response to BCUC-FEI IR 1.5.5, the costs may not include all permit fees paid by FEI's contractors as FEI cannot be certain that contractor invoices have separately identified such fees on a consistent basis. To

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the extent that such fees have been paid by contractors but not separately identified, those amounts would not be included in Table 1 below. The amounts in Table 1 also do not include any FEI internal administrative or legal staff time or costs because it is not practical nor efficient to track internal costs to the level of detail required to be specific to each municipality. Attachment 16.2 provides Table 1 as an Excel file as requested.

Table 1: FEI's Actual Costs for Operating in City of Surrey (2016 - 2017) (note 1)

Cost Type	2016 (note 2)	2017 (note 3)	Total: (before taxes)
Permits (note 4):			
Road ROW Use Permit (note 5)	\$ 47,175	\$ 63,541	\$ 110,716
Traffic Obstruction Permit (note 5)			
Pavement Cut Fee (based on \$540 each)	not applicable (note 6)		
Other:			
Administration (note 7)	\$ 50,504	\$ 70,571	\$ 121,075
Legal fees (note 8)	\$ -	\$ -	\$ -
TOTAL:	\$ 97,679	\$ 134,112	\$ 231,791

Notes:

¹ All amounts are before applicable taxes

² 2016 information has been updated from the response to BCUC IR 1.5.5 to include contractor permit fee payments not previously available.

³ 2017 information has been updated from the response to BCUC IR 1.5.5 to include year end FEI information and contractor permit fee payments not previously available.

⁴ Does not include all potential permit payments due to prior practice and guidance from Surrey Traffic Administrator.

⁵ Based on combined Permit Fees for Road ROW Use and Traffic Obstruction of \$116 for 2016 and \$230 for 2017.

⁶ Pavement Cut Fees not currently being charged or paid.

⁷ Does not include internal FEI administrative or legal staff time or costs.

⁸ Does not include internal administrative or legal staff time or costs, or external legal fees or costs related to negotiations or this regulatory proceeding.

16.2.1 Please discuss which costs, if any, would be reduced if an operating fee is put in place.

Response:

As noted in FEI's Application, Section 3.3.3.1, FEI estimated an appropriate Operating Fee based on activity levels experienced in Surrey by extrapolating various permit fees that would be avoided, accounting for probable operating efficiencies, and factoring in a notional amount to recognize avoidance of legal fees and potential litigation. Based on current practice, if FEI's

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1 Proposed Operating Agreement Terms were in place and working as intended, FEI would
2 expect some operating efficiencies, cost reductions, or avoided costs to include:

- 3 • Elimination of permit fees currently being charged to our construction and flagging
4 contractors, and avoidance of future permit fees;
- 5 • Operation efficiencies and resource time currently being expended to obtain permits;
- 6 • Improvements to scheduling with improved processing times from the City;
- 7 • Avoidance of dispute and litigation costs; and
- 8 • Avoidance of other potential fees and charges which the City might otherwise seek to
9 charge in the future.

10
11 FEI does, however, expect to incur additional labour costs to provide the City with the more
12 detailed invoices as set out in Section 8.4 (b) of FEI's Proposed Operating Terms.

13

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17.0 Reference: Unresolved Operating Terms

Exhibit, B1-4, BCOAPO IR 1.8.3, p. 13; Exhibit B1-8, Robinson IR 1.4.1, p. 6

Collection of Operating Fee

In response to British Columbia Old Age Pensioners' Organization et al.'s (BCOAPO) IR 1.8.3, FEI stated:

FEI has no evidence to indicate that Surrey ratepayers are willing to pay what will be required under FEI's proposal; however, absent an Operating Fee based on FEI's proposal, we expect that overall costs will go up for all customers as a result of increasing costs of work in Surrey. FEI is sensitive that any rate increases are not desirable for customers. FEI's interests are aligned with customers in that fees added to customer bills represent a competitive challenge. FEI believes its proposal reasonably balances the needs of Surrey while keeping the direct impact to Surrey customers as low as possible.

In response to Randolph Robinson's IR 1.4.1, FEI stated that "an Operating Fee, if one is approved, would be collected by FEI, on behalf of the City of Surrey..."

17.1 Would FEI agree that with a higher operating cost, taxpayers in the City of Surrey might not be significantly disadvantaged if that funding of the municipal budget led to similar reductions in other municipal taxes? Please discuss.

Response:

FEI is unclear what the link is in the question posed between FEI's higher operating costs in the absence of a new operating agreement and Surrey taxpayers. However, FEI offers the following.

An Operating Fee, if approved, would be paid by FEI's 113 thousand customers in Surrey, which would provide a source of revenue for the City to apply to its municipal budget. To the extent that revenues from an Operating Fee reduce requirements for municipal taxes, then one would expect that municipal taxpayers in the City of Surrey would benefit as a whole. An Operating Fee cannot be approached like a tax, and is over and above the tax FEI pays on all of its infrastructure (irrespective of whether it is on public or private land).

This shifting of responsibility for revenue generation from one group of people (all Surrey taxpayers) to a subset of those people (FEI's 113 thousand customers in Surrey who are also taxpayers) may be appropriate if FEI customers are also obtaining a commensurate benefit from the City under the operating agreement to justify the fee as something other than an indirect tax. Otherwise, the shifting effect, which is less transparent than proper taxation, is difficult to justify.

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1 The fact that Surrey's proposal yields such a disproportionately large Operating Fee should be a
2 concern.

3
4
5 17.2 Would the 3 percent of gross revenue operating fee put FEI at a competitive
6 disadvantage to competing fuels in Surrey and has it impeded FEI's sales in
7 communities where it currently exists? Please discuss.
8

9 **Response:**

10 With the current low commodity price environment being experienced, natural gas would still be
11 lower on an operating cost basis compared to electricity, even with an Operating Fee based on
12 3 percent of Gross Revenue. However, a higher Operating Fee reduces the operating cost
13 advantage; eroding the operating cost advantage unnecessarily, which is not desirable from a
14 competitive perspective. FEI believes that the addition of a 3 percent Operating Fee on Gross
15 Revenue is disproportionately high and would result in four outcomes as follows: 1) contributing
16 to FEI's competitive challenges; 2) disproportionately increasing costs for FEI's customers in
17 Surrey; and 3) negatively impacting affordability generally. FEI says this for the following three
18 reasons.

19 First, while today the operating cost for customers of their natural gas equipment for cooking,
20 heating, and hot water is less expensive than the cost of electricity, when making a choice about
21 which energy equipment to install, customers must also account for the higher up-front capital
22 investment required for piping and appliances to install natural gas as compared to electricity.
23 As such, any additional increases to operating costs for natural gas will factor into a customer's
24 energy choice.

25 Second, Surrey's proposal is based on a percentage of Gross Revenues, which includes
26 commodity costs. Commodity price volatility and future commodity price increases (as noted in
27 the response to Surrey-FEI IR 1.2.15.5) can result in a significant increase to a customer's total
28 bill. When an Operating Fee is based on Gross Revenue, the Operating Fee to Surrey will
29 increase when commodity prices increase and the impact of rising commodity prices will be
30 exacerbated on customers' bills; this increase has no relationship to FEI's activity levels within a
31 municipality. The Commission recognized the challenges associated with including commodity
32 costs in the formula when it directed FEI to explore a new method of calculating an Operating
33 Fee based on utility (delivery) margin. The current low commodity cost environment has
34 contributed to strong growth in FEI customer attachments throughout the province as customers
35 are recognizing the operating cost benefit between gas and electric in place today. A
36 disproportionately high Operating Fee will reduce the operating cost benefit between gas and
37 electric and impact competitiveness.

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1 Third, although natural gas is the cleanest burning fossil fuel and is an important aspect of our
2 clean energy future, FEI continues to be challenged by climate policies at all levels of
3 government which result in restricting a customer's energy choices. Further, rising costs to
4 meet climate action requirements also contribute to FEI's competitive challenges, such as the
5 Carbon Tax, which is set to increase by \$5 per tonne each year for the next four years.
6 Maintaining an operating cost advantage helps FEI compete in the face of these obstacles.

7
8
9
10 17.3 Since FEI is only acting on behalf of the City of Surrey in collecting and remitting
11 the Operating Fee, should the Commission place greater emphasis on the costs
12 incurred by Surrey as opposed to the Permit and Cut Fees and efficiencies
13 calculated by FEI at page 16 of the FEI Application? Please discuss.

14
15 **Response:**

16 The Commission should not place greater emphasis on the costs Surrey indicates it incurs.

17 FEI pays utility taxes on all of its infrastructure already. In the normal course, Surrey would only
18 be seeking to charge permit / authorization fees. It would not be tracking and charging out all of
19 its internal administrative costs from its day-to-day dealings with FEI. An Operating Fee
20 calculated to recover municipal costs, rather than being related to what FEI customers are
21 receiving in exchange (avoided payment of currently disputed permit / authorization fees and
22 streamlined processes), would take on the flavor of an additional indirect tax on one group of
23 citizens.

24 In addition, the Commission does not have the ability or authority to review Surrey's costs or
25 Surrey's budgets and cannot determine their reasonableness or accuracy, nor can it influence
26 Surrey costs. Surrey has its own budget process whereby its fees and budgets are approved
27 through council. FEI is only able to speak to what Surrey's published permit and cut fees are at
28 a given point in time. With that information, FEI has attempted to estimate potential savings or
29 efficiencies that could result.

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18.0 Reference: Unresolved Operating Terms

Exhibit, B1-9, the City of Surrey IR 1.2.7, p. 7

Principled Operating Fee

In response to City of Surrey's IR 1.2.7, FEI stated:

The most recent operating agreement approved by the Commission is between FEI and the Corporation of the Village of Montrose. The Operating Agreement provides for a 3 percent Operating Fee on gross revenues, was entered into by FEI and the municipality on January 30, 2017, and was approved by Commission Order C-4-17 dated April 6, 2017.

18.1 Why would FEI have proposed the Montrose operating agreement as recently as 2017 when it had been negotiating previously with City of Surrey for a more "principled" operating fee?

Response:

The Village of Montrose (the Village or Montrose) operating agreement was a renewal of a previous existing operating agreement approved by the Commission in Order C-6-96, which was expiring. Prior to that, Montrose had an operating agreement with FEI's predecessor Inland Natural Gas Co. Ltd. approved by the Commission's predecessor in Order G-13-75. Both of the prior operating agreements contained the provision for the historic 3 percent Operating Fee. Given that the prior agreements contained that provision and Montrose is in the predecessor Inland region where all operating agreements contain the historic 3 percent Operating Fee, FEI used the Village of Keremeos operating terms as the basis of the renewal terms for Montrose's operating agreement pursuant to Commission Order C-8-14.

The Village of Montrose is very small. The Operating Fee determined under the 3 percent of Gross Revenues formula resulted in the collection of an Operating Fee on behalf of Montrose in the amount of \$6,315 in 2016¹. Given the small size of the Village, in this case the difference in the Operating Fee amount between the two methodologies is not that significant.

18.2 Please explain if FEI considers any of the operating agreements with operating fees of 3 percent of gross revenues to be "principled" or based on "cost causation"?

¹ Refer to Response to BCUC-FEI IR 1.4.2 (Ex. B1-6).

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1 **Response:**

2 While FEI is aware that the Operating Fee originated as a franchise fee that was collected for
3 Inland and Vancouver Island municipalities in consideration for exclusivity, FEI is not aware of
4 the basis for the calculation methodology used (3 percent of Gross Revenues). That
5 methodology had been included in more recent renewal agreements through negotiation, and
6 now appears in the standard form of agreement that has been used for Inland and Vancouver
7 Island municipalities. As the product of negotiation based on a historic legacy fee from
8 predecessor companies and regions, it is fair to say the calculation methodology is not based on
9 principle or cost-causation.

10 The amount yielded by this formula in the context of a village like the Village of Montrose is
11 small (approximately \$6,000 in 2016), and the differential between this methodology and one
12 based on 0.7 percent of delivery margin is also relatively small. The issue in the case of Surrey
13 is that the rote application of the formula used elsewhere on Vancouver Island and in the Inland
14 region would yield an Operating Fee for Surrey that is excessive.

15

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19.0 Reference: Operating Fee Calculation

Exhibit, B1-9, the City of Surrey IR 1.2.9, p. 8

Operating Fee of 3.09 percent

In response to City of Surrey's IR 1.2.9 which asked "What was the original basis for FEI's decision to apply the 3% of gross revenues operating fee as a 3.09% charge on customer bills (that is, apply the 3% to the customer's delivery charges + commodity charges + Operating Fee as indicated on page 20, lines 7 to 8 of FEI's application)?...", FEI stated it "has no knowledge of the original basis for calculating the Operating Fee in this manner other than it has always been done this way in the billing systems of the predecessor companies."

19.1 Has FEI made any attempt to correct the double counting of the existing operating fee calculations as it renegotiated operating agreements? If not, why?

Response:

The manner in which the Operating Fee (previously referred to as a franchise fee) is collected from gas customers which are located in municipalities where FEI remits such fees was approved by the Commission in the FEI (formerly BC Gas Utility Ltd.) Decision and Order G-101-93 in the Phase B Rate Design Application, dated October 25, 1993.

There is no double counting of the existing Operating Fee, as the fee is not a tax; therefore, the amount of the fee collected from customers must be included as part of the total Gross Revenues to which the 3 percent is applied. This results in the necessity of collecting 3.09 percent based on the total Gross Revenue billed to customers for delivery charges and all commodity charges including cost of gas and storage and transportation, in order to collect and pay the 3 percent Operating Fee to the municipality. Put another way, the 3 percent Operating Fee is calculated on the total gross revenue on customer's bills, and the total gross revenue is defined as Delivery Charges + Commodity Charges + 3% Operating Fee. That means that FEI must charge the 3 percent Operating Fee on the total Gross Revenue which results in charging 3 percent on the Operating Fee itself, which is part of the total Gross Revenue. The calculation is as follows:

1. Delivery Charges + Commodity Charges = Sub-Total Delivery & Commodity Charges
2. Sub-Total Delivery & Commodity Charges x 3 % Operating Fee = Total Gross Revenue
3. Total Gross Revenue (including Operating Fee) x 3 % Operating Fee = Total Customer Bill (before applicable taxes)

Prior to the separation of the Operating Fee (or franchise fee) on the customer's bill, effective January 1, 1994, the Operating Fee cost was embedded in the property tax expense and was

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1 part of the utility's cost of service for deriving customers rates. With the Commission's approval
2 of separating the Operating Fee out of the utility's cost of service and effectively out of the
3 delivery rates that the utility charges, in order to leave municipalities unaffected from the change
4 (not impact the revenue collected for and remitted to the municipalities), it was necessary to
5 implement the calculation to collect 3.09 percent of the utility's total revenues (calculating 3
6 percent on the 3 percent Operating Fee = 3.09 percent).

7 The reason for separating out the Operating Fee from the utility's cost of service was to derive
8 common rates to charge all customers, irrespective of whether or not the customers were in
9 municipalities in which an Operating Fee was applicable.

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1 **B. JURISDICTION**

2 **20.0 Reference: Highway Dedication**

3 **Exhibit, B2-8-1, BCUC IR 1.10.1, p. 63**

4 **Statutory Rights of Ways**

5 In response to Commission IR 1.10.1, the City of Surrey stated that it “accepts that the
6 Commission does not have jurisdiction to, by order, require FEI to extinguish its private
7 interests in land in all cases whenever requested by the City of Surrey and without
8 regard to the circumstances of each case.”

9 20.1 Recognizing the above acceptance of FEI’s Statutory Rights of Ways (SROW)
10 rights, is there some wording that FEI can propose for the Operating Agreement
11 that could give the City of Surrey comfort that its projects would not be
12 unreasonably delayed? For example, would wording such as “FEI will consider
13 requests by Surrey expeditiously and will only not approve these requests when
14 the FEI SROW change would be vital to the ongoing operations of FEI” be
15 appropriate? Please discuss.

16
17 **Response:**

18 The wording proposed by FEI in section 9 (a) of the FEI’s Proposed Operating Terms already
19 incorporates a timeframe to facilitate project schedules. Section 9(a) states:

20 ...If FortisBC agrees to release its statutory right of way interest, FortisBC shall
21 use commercially reasonable efforts to execute the necessary plans and other
22 documents provided by the Municipality, including subdivision and/or road
23 dedication plans, within ten (10) days of receipt of such documents from the
24 Municipality, all at no cost to the Municipality and without compensation payable
25 to FortisBC. (Emphasis added)

26
27 However, limiting FEI’s discretion to consider the impacts of the release on a case-by-case
28 basis to only locations “vital to the ongoing operations of FEI” is problematic for several reasons:

- 29 1. The added requirement on FEI is not balanced by a corresponding obligation on the City
30 to prove it has no alternative routings or other options to effect the municipal purpose;
- 31 2. The test of “vital to...operations” fails to consider other factors such as cost implications
32 or asset protection as a result of the change of use of the land surface, which could
33 result in Surrey requiring a release of SROW based on its own convenience and cost
34 savings (when having regard to alternatives available to Surrey), but require FEI to incur
35 significant cost to protect its assets. Depending on the nature of the work required to be

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undertaken by FEI, these costs may not be recoverable or not fully recoverable from
Surrey as Relocation Costs;

3. Including a qualifier on FEI's decision making shifts the burden onto FEI to justify why it
should not give up its existing rights, instead of requiring the City to prove it requires the
land for a municipal undertaking and has no other options available;

4. City of Surrey has, and continues to have, the right to obtain an interest in the lands over
which FEI holds an SROW through the *Expropriation Act* absent any reference to
SROW's in the Operating Agreement. Section 9 of FEI's Proposed Operating Terms is
for the sole benefit of the City. It already incorporates a process to facilitate municipal
work and further, releases the City from its obligation to compensate FEI for releasing its
interest in the lands. FEI has already agreed to forego compensation to which it may
otherwise be entitled from the City and, therefore, potentially assuming additional costs
created by importing a further qualifier increases the financial impact to FEI which
ultimately is borne by FEI's customers; and

5. Importing a test creates uncertainty of outcome in the event of dispute. The City does
not release its right of expropriation and, therefore, under FEI's proposed wording, the
City always had recourse to the *Expropriation Act*. However, if the City does not agree
with FEI's classification and decision not to release the SROW, the appropriate
mechanism for resolving the resulting dispute may itself be disputed by the parties
(existence of a dispute resolution mechanism in the Proposed Operating Agreement
Terms and the right of expropriation).

THIS AGREEMENT made this 3rd day of June
in the year of our Lord One Thousand Nine Hundred and ~~Seventy-~~^{Eighty}
Nine.

BETWEEN:

THE CORPORATION OF THE CITY OF NELSON,
a municipal corporation incorporated
under the laws of the Province of
British Columbia;

(hereinafter called the "Municipality")

OF THE FIRST PART

AND:

INLAND NATURAL GAS CO. LTD., a body
corporate duly incorporated under the
laws of the Province of British Columbia,
and having its registered office in the
City of Vancouver, in the said Province;

(hereinafter called the "Company")

OF THE SECOND PART

WHEREAS the Company has entered into Gas Purchase
Contracts for the supply of gas by pipeline for the purposes
of making same available for distribution in British Columbia
in accordance with the terms of such Contracts.

AND WHEREAS the Company was formed for the purpose
of engaging in the business of transporting, supplying, dis-
tributing and selling gas for industrial, commercial, domestic
and other uses for power, heat and energy, and pursuant to the
terms and conditions of its contracts with its supplier(s),
has available for such uses supplies of gas for the purpose
of making same available to the Municipality and to consumers
or customers within, or in the environs of, the Municipality.

AND WHEREAS the Company will construct and operate all the necessary facilities, pipelines, mains and pipes for a supply of gas (which term as used in this Agreement shall include natural gas, synthetic natural gas, liquefied natural gas, liquefied petroleum gas, manufactured gas and/or other utility gases or any of them or any mixtures thereof) to the Municipality and/or such consumers or customers as are situated within the boundary limits thereof, and is willing to do so on the terms and conditions hereinafter set forth.

AND WHEREAS it is to the mutual advantage of the Company and the Municipality to extend the present Franchise Agreement, with minor modifications, all in accordance with the terms and conditions as hereinafter provided.

AND WHEREAS the Company has constructed the necessary transmission and distribution facilities, all in accordance with governmental, municipal, or other regulatory authorities having jurisdiction over same for the supply of gas to and within the Municipality.

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the premises and mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. The Company agrees to obtain a supply of gas subject as hereinafter provided, to distribute and sell gas within the boundary limits of the Municipality, and, subject as hereinafter provided, the Municipality insofar as and to the

extent that it is able and so empowered, hereby grants to, bestows and confers upon the Company the exclusive charter, right, franchise or privilege to supply gas by pipeline to the Municipality and its inhabitants and to consumers or customers situated within its boundary limits for the term of Twenty-one (21) years from the date of the expiry of that Franchise Agreement dated the 1st day of December, 1956, which expired on the 30th day of November, 1977.

2. The Company agrees that the gas supplied to the Municipality and its inhabitants and to consumers or customers situated within its boundary limits shall at all times be of a quality and standard conforming with the regulations for the time being in force and from time to time formulated under the provisions of the Gas Inspection Act being Chapter 129 of the Revised Statutes of Canada, 1952, and any amending statutes, and also conforming with any regulations or laws applicable thereto, whether such regulations or laws be made or issued by the Government of Canada or by the Province of British Columbia and whether now or hereafter brought in force and effect.

3. Subject as hereinafter provided, the Municipality hereby grants to the Company the authority, permission and right for the term of this Agreement as set out in Clause One (1) hereof to enter in, upon and under all public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares and parks within the boundary limits of the Municipality and over which the Municipality has control and authority for such permission and right to give, and the same to use, break up, dig, trench, open up and excavate, and therein, thereon and thereunder place, construct, lay, operate, use, maintain, renew, alter,

repair, extend, relay and/or remove a distribution system which term means mains, pipes, valves and facilities for the purpose of carrying, conveying, distributing, supplying and making available for use gas within the said boundary limits of the Municipality as and in the manner herein set out, but excludes any transmission or main pipeline and appurtenances which are an integral part of the natural gas transmission system bringing gas to the boundary limits of the Municipality or through the Municipality by transmission lines to enable distribution to other areas outside its said boundary limits or to other Municipalities or other unorganized areas.

4. Before placing, constructing or laying down the distribution system, or any part thereof, the Company shall file with the Municipality, or such officer or official thereof as shall be designated from time to time for such purpose by the Municipality, detailed plans and specifications showing the size and dimensions of the mains and pipes thereof, the proposed depth thereof below the surface of the ground, and the proposed location thereof, and the same shall not be placed, constructed or laid down without the approval of the Municipality or of such designated officer or official, as the case may be, PROVIDED ALWAYS that such approval shall not be unreasonably withheld. In establishing location of mains, the Company shall endeavour to use lanes or alleys in preference to streets, where same are available and the use thereof is compatible with and conforms to the general economics and engineering of the distribution system or the relevant portion thereof.

5. The Company shall give written notice to the Municipality or such officer or official thereof as shall be designated from time to time by the Municipality for the purposes in the next preceding clause set out, of its intention to break up, dig, trench, open up or excavate any, or in or on any, public thoroughfare, highway, road, street,

lane, alley, bridge, viaduct, subway, public place, square or park within the boundary limits of the Municipality, not less than three (3) clear days before the beginning of such work, except in such cases of repair, maintenance or the like that can reasonably be deemed to be emergencies or in the interests of the health or safety of the public, or of the safety of property by whomsoever owned, or any of them, in which cases no notice need be first given but shall be given as soon as practicable thereafter. *The City shall thereupon be entitled to appoint a representative to supervise or advise in respect of such work and so long as the directions, instructions or advice of such representatives are or is followed or complied with by the Company, the Company shall be relieved from all liability in connection with any damage done to the property of the City by reason of such work.* The provisions of this clause shall apply notwithstanding the provisions of the next preceding clause and the grant of the approval or approvals therein referred to.

6. Should any of the public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares or parks, under or on which any part of the distribution system of the Company lies or is constructed, be legally closed as such or alienated by the Municipality or by or under any other paramount authority, ~~written notice by prepaid registered mail shall be given to the Company,~~ the Company agrees that with all reasonable speed and dispatch after receipt of such written notice from the Municipality it will remove and (if possible or practicable) re-locate that part of its distribution system so affected by such closure or alienation, the cost of such removal and/or relocation to be at the cost and expense of the Municipality, unless such removal and/or relocation has been enforced upon the Municipality by any such other paramount authority without the Municipality having applied therefor.

7. The Company agrees with the Municipality that it will create and cause as little damage as possible in the execution of the authorities, permissions and rights to it hereby granted and will use its best endeavours to cause as little obstruction or inconvenience or danger as possible during the progress of any of the work hereinbefore set out,

and will place and maintain such warning signs, barricades, lights or flares on, at or near the site of any work in progress as will give reasonable warning thereof and protection therefrom to members of the public, and further agrees to restore without unreasonable delay the said public thoroughfares, highways, roads, streets, lanes, alleys, viaducts, bridges, subways, public places, squares and parks so broken up, dug, trenched, opened up or excavated to a state of repair or condition as nearly as possible as existed immediately before the commencement of such work.

8. The distribution system of the Company and the mains and pipes thereof shall be laid in such manner as not to interfere with any public or private sewer or any other pipe, conduit, duct, manhole or system belonging to the Municipality or which shall have been previously laid down and be then subsisting in any said public thoroughfare, highway, road, street, lane, alley, bridge, viaduct, subway, public place, square or park by, or with the permission or approval of, the Municipality or by virtue of any charter or right granted by competent government or municipal authority.

9. The Company agrees with the Municipality that it will protect, indemnify and save harmless the Municipality from and against all actions, proceedings, claims and demands of any corporation, firm or person against the Municipality and will reimburse the Municipality for all damage and expenses caused to it, in respect of or by the execution by the Company of the authorities, permissions and rights hereby to it granted or by reason of the construction, maintenance or operation of the distribution system of the Company within the boundary limits of the Municipality,

except where caused by or contributed to by the negligence or default of the Municipality or its servants or agents.

10. The Municipality agrees with the Company that before it makes any additions, repairs or alterations to any of its public services within the boundary limits of the Municipality, and which said additions, repairs or alterations may in any way affect any part of the distribution system of the Company, or any equipment thereof, it will give to the Company at its main office within the boundary limits of the Municipality, or at its Head Office in the City of Vancouver, British Columbia, not less than three (3) clear days notice thereof, except in such cases of repair, maintenance or the like that can reasonably be deemed to be emergencies or in the interests of the health or safety of the public, or of the safety of property by whomsoever owned, or any of them, in which case no notice need be first given but shall be given as soon as practicable thereafter. The Company shall thereupon be entitled to appoint a representative to supervise or advise in respect of such additions, repairs or alterations and so long as the directions, instructions or advice of such representative are or is followed or complied with by the Municipality, the Municipality shall be relieved from all liability in connection with any damage done to the property of the Company by reason of such additions, repairs or alterations.

11. Subject to the next clause hereof, the Company agrees with the Municipality that during the term of this Agreement as set out in Clause One (1) hereof and the

exclusive charter, right, franchise and privilege herein granted, but commencing only after the construction and putting into service of facilities so to do, it will supply such reasonable quantities of gas as may be required for consumption or purchase by its customers or consumers within the boundary limits of the Municipality ~~subject, however, to the terms and conditions of the service agreement between the customer or consumer and the Company~~, PROVIDED THAT such requirements are to be supplied to places or buildings lying or being on property fronting or lying alongside a main or pipe of the distribution system of the Company. The property line of such property shall be the place of delivery of all gas supplied by the Company, but the Company shall provide and install a meter suitably located on the property to be supplied with gas. The Company shall also supply and install a service pipeline from the property line to the meter on and in accordance with the costs and terms set forth in the Company's tariff and revisions thereto as filed with and approved by the British Columbia Energy Commission, from time to time. The said meter and service pipeline shall be located and installed in a manner and at a location selected by the Company, and shall remain the property of the Company. The expense and risk of utilizing and using such gas after delivery at the said property line shall be borne by the consumer or purchaser and not by the Company unless any loss or damage occasioned by such utilization or user is directly attributable to the negligence or carelessness of the Company, its servants or agents.

12. Notwithstanding anything to the contrary in this Agreement contained, and in particular notwithstanding the provisions of Clauses One (1), Two (2) and Eleven (11) hereof, the obligations, duties and covenants of the Company herein contained, and on its part to be performed and carried out,

and the performance of this Agreement, are subject from time to time to (a) fire, explosion, lightning, tempest, the elements, adverse weather or climatic conditions, acts of God, force majeure, actions or acts or restraints of enemies, foreign princes and governments (whether foreign or domestic), strikes, lockouts, riots, shortage of labour or materials, civil insurrection, delays in or shortage of transportation, impossibility or difficulty of or in manufacturing, mixing, procuring, receiving, distributing or delivering gas, or impossibility, difficulty or delay in procuring, acquiring or receiving materials or equipment required or advisable for the placing, construction, maintenance or operation of the distribution system or any pipeline or facility for bringing gas to the boundary limits of the Municipality, and generally all shortage of supply or delays in delivery caused or resulting directly or indirectly from causes beyond the reasonable control of the Company, and ~~(b) the operation of the entire natural gas transmission pipelines of its supplier(s) (including gathering lines), and (c) the construction and operation of the transmission or main pipeline and appurtenances of the Company required to bring gas from such natural gas pipeline to the boundary limits of the Municipality.~~

13. Subject as hereinafter provided, the Municipality agrees with the Company that it will not during the term of this Agreement as set out in Clause One (1) hereof, itself construct, operate or maintain a distribution system for the supplying of gas to the Municipality and/or its inhabitants and/or consumers or customers within its boundary limits, or to use the public thoroughfares, highways, roads, streets,

lanes, alleys, bridges, viaducts, subways, public places, squares or parks under its control or owned by it, or any part of them, for such purposes.

14. The Company agrees that the rates which the Company will charge for gas sold to the Municipality or other consumers or customers taking delivery in the manner aforesaid within the boundary limits of the Municipality shall be the applicable rates filed with and approved by the British Columbia Energy Commission.

~~15. Either party hereto shall have the right at any time prior to Six (6) months before the expiration of the term of Twenty-one (21) years hereinbefore in Clause One (1) set out to give to the other party notice in writing of its desire to renew this Agreement and the exclusive charter, right, franchise and privilege hereunder for a further term of Twenty-one (21) years or lesser years, and upon such terms and conditions as may be mutually agreed upon. As soon as possible after giving of such notice the parties shall, in the interest of both of them, enter into negotiations looking towards such renewal and shall use their best endeavours to bring such negotiations to a mutually satisfactory conclusion before the expiration of the first mentioned term of Twenty one (21) years.~~

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h7h*

16. In the event that prior to Six (6) months before the expiration of the term of Twenty-one (21) years hereinbefore referred to neither party shall have given to the other party the notice in writing of its desire for renewal as in the next preceding clause set out, or, in the event that such a notice in writing shall have been duly given but the parties shall not have agreed on all the terms and conditions of such renewal by the expiration of the said term

of Twenty-one (21) years, then, and in either of such events, the Municipality shall have the right to purchase from the Company its whole business and undertaking within the boundary limits of the Municipality and being its distribution system and all its lands, buildings, plants, equipment, apparatus, vehicles, supply lines, supplies, stocks, tools and machinery and generally every and all its property and assets forming part of, or actually used or available for use exclusively in its undertaking or business of manufacturing, treating, processing, supply and distributing gas to consumers or purchasers within such boundary limits of the Municipality. PROVIDED THAT the Municipality shall not be entitled to purchase and the right of purchase hereinbefore given shall not cover any part of the business, undertaking or transmission or main pipelines (with appurtenances) of the Company situate either inside or outside the boundary limits of the Municipality which are an integral part of the transmission system bringing natural gas to or through the Municipality or which the Company considers necessary to it in the manufacture, mixing, transportation, storage, distribution, supply or sale of gas to other areas, corporations or persons not covered by this agreement. In the event that the Municipality shall acquire and desire to exercise the said right to purchase it shall exercise the said right by notice in writing given to the Company not later than Three (3) days after the expiration of the said term of Twenty-one (21) years, and a sale and purchase made under this clause shall become, and be deemed to have become, effective at midnight of the last day of the said term of Twenty-one (21) years.

17. In the event of a sale and purchase by the Municipality under the provisions of the next preceding clause, the purchase price payable by the Municipality to the Company for the said business and undertaking (which price is herein-

after referred to as "the price") shall be such as may be agreed in writing between the parties not later than One (1) month after the said effective time of the sale and purchase, or within such further time as the parties may decide upon in writing PROVIDED THAT in the event of failure so to agree, or in the event of failure to agree as to whether or not any item or items of property is or are parts of the undertaking being sold and purchased, the matter in dispute shall be referred to arbitration held under the provisions of the Arbitration Act of the Province of British Columbia, wherein each party hereto shall appoint one arbitrator, and the said arbitrators so appointed shall appoint a third. In determining the price, whether by negotiation or by arbitration, same shall be the fair value of the business and undertaking as a going concern at the said effective time of the sale and purchase, but it shall not include anything for any charter, franchise, right or privilege granted to the Company under this agreement, nor shall the so-called "scrap-iron" rule be applied in determining such fair value. The price shall be paid to the Company within Ninety (90) days after the determination thereof and shall carry interest at ^{the rate of five (5%) percent} ~~the prime rate of the Bank of Montreal then in effect plus One (1%) per cent per annum~~ per annum from the effective time of sale and purchase to payment of the price. In the event that after the price is determined the laws of British Columbia require the consent of the Lieutenant-Governor in Council to the sale and purchase or to any by-law that is enabling, or require the assent of the citizens, rate payers, or electors of the Municipality to the sale and purchase or the raising of money therefor, and such consent or assent is refused then the Company and the Municipality shall be released from all obligations to complete such sale and purchase pursuant to such notice, but the Municipality shall pay all expenses or costs of the Company incurred in any arbitration held, and the Company

shall be entitled to retain or be reimbursed for all profits made in the operation of the undertaking from the said effective time of sale.

18. In the event of a sale and purchase by the Municipality under the provisions of Clause Sixteen (16) hereof, the authorities, permissions, charters, privileges, rights, and franchises given to the Company by Clauses One (1) and Three (3) hereof, and the duties and obligations of the Company referred to in Clauses One (1), Two (2) and Eleven (11) hereof, shall terminate and cease at the said effective time of sale and purchase.

19. If at any time during the term of this Agreement as set out in Clause One (1) hereof, any dispute, difference or question shall arise between the parties hereto touching the construction, meaning or effect of this Agreement, or any clause thereof, or as to the extent or limit of any authority, permission, right, duty, obligation, benefit or liability of the parties hereto, then every such dispute, difference or question shall be referred to a single arbitrator appointed by the parties hereto or, in default of Agreement, by and under the provisions of the Arbitration Act of the Province of British Columbia, and the said arbitration shall be held under the provisions of that Statute.

20. The award, determination or decision made under any arbitration held pursuant to the terms of this Agreement shall be final and binding upon the parties hereto, save as in the Arbitration Act of the Province of British Columbia otherwise provided.

21. Subject always to the provisions of Clause Twelve (12) and Clause Nineteen (19) hereof, in the event of the Company making an authorized assignment or having a receiving order made against it under the Bankruptcy Act and during bankruptcy failing to comply with any of the terms or conditions of this Agreement on its part to be observed or performed, or, the Company not having made an authorized assignment or having a receiving order made against it under the Bankruptcy Act, upon any wilful failure or neglect by the Company to comply with any of the major terms or conditions of this Agreement and on its part to be observed or performed which continues for Thirty (30) days after the receipt of written demand by the Municipality for the observance or performance of such terms or conditions, the Municipality shall have the right by written notice to the Company to terminate this Agreement. The rights of the Municipality under this clause are and shall be in addition to or without prejudice to any other rights at law or in equity which it may have against the Company for or by reason of any breach by the Company of this Agreement or any part thereof.

22. Upon the termination of this Agreement at the expiration of the said term of Twenty-one (21) years as set out in Clause One (1) hereof without a sale and purchase of the business and undertaking of the Company taking place under the provisions of Clauses Sixteen (16) to Eighteen (18) inclusive, hereof or upon the termination of this Agreement by cancellation notice from the Municipality under the provisions of Clause Twenty-one (21) hereof, the distribution system of the Company shall be and be deemed always to have been and to remain its own property and as such may be used by it in its business or removed in whole or in part as it shall see fit, and for such purposes, or either of them, said

distribution system may remain in, on or under all the public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares and parks within the boundary limits of the Municipality and the Company may enter in, upon and under the same and the same to use, break up, dig, trench, open up and excavate for the purpose of the maintenance, renewal, repair, removal or operation of such distribution system, or any part thereof, but not for the extension thereof, PROVIDED THAT the Company shall in so doing comply with and be bound by the provisions of Clauses Two (2), Five (5), Six (6), Seven (7) and Nine (9) hereof, mutatis mutandis, notwithstanding the termination of this Agreement.

23. As compensation for the use by the Company of the public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares and parks as provided in Clause Three (3) hereof, and for the exclusive charter, right, franchise, or privilege to supply gas by pipeline as provided in Clause One (1) hereof, the Company shall pay to the Municipality on the first days of November in each of the years 1978 to and including 1998 or such earlier year in which this Agreement may expire under the provisions hereof a sum equal to Three (3%) per cent of the amount received in each immediately preceding calendar year by the Company for gas consumed within the boundary limits of the Municipality, but such amount shall not include revenues from gas supplied for resale, and, within Ninety (90) days after the twenty-first (21st) anniversary of the date of this Agreement or after such earlier date on which this Agreement may expire under the said provisions hereof the Company shall pay to the Municipality a sum equal to Three (3%) per cent of the amount received by the Company for gas consumed, save as aforesaid, within the boundary limits of the Municipality during the period from the commencement of the calendar year in which such anniversary or

earlier date falls to such anniversary or earlier date, as the case may be. Since this Agreement is an extension of that Franchise Agreement dated the 1st day of December, 1956, which expired on the 30th day of November, 1977, it is agreed therefore that the following provisions as found on Page 13, starting in Line 25 of the aforesaid agreement, shall be waived:

"...and, within ninety (90) days after the twenty-first anniversary of the date of this Agreement or after such earlier date on which this Agreement may expire or be terminated as aforesaid, the Company shall pay to the City a sum equal to three (3%) per cent of the amount received by the Company for gas consumed, save as aforesaid, within the boundary limits of the City during the period from the commencement of the calendar year in which such anniversary or earlier date falls to such anniversary or earlier date, as the case may be."

In any event, this new Agreement shall recognize that the Company shall pay to the Municipality on the 1st day of November in the year 1978 a sum equal to Three (3%) per cent of the amount received in the immediately preceding calendar year, i.e. 1977, by the Company for the gas consumed within the boundary limits of the Municipality, except as provided herein, which shall not include revenues for gas supplied for resale. The amount received by the Company in any particular period for gas so consumed, and upon which the aforesaid percentage compensation is based, shall be that amount for the equivalent period upon which the percentage tax provided under Section 333 of the Municipal Act, 1960, Revised Statutes of British Columbia, Chapter 255, as now enacted would be payable and as if said percentage compensation herein provided were a tax provided for under said section, and such compensation shall not be or be deemed to be a tax or in lieu of any taxes, rates or licence fees otherwise properly payable to the Municipality. In the event that

during the currency of this Agreement, the Company should enter into any contract or franchise agreement similar to this Agreement with another Municipality named and set out wherein under s similar clause to this Clause Twenty-three (23) the Company shall agree to pay to such Municipality, as compensation for the use by the Company of the public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares and parks for like purposes as in Clause Three (3) hereof set out, a greater percentage compensation than Three (3%) per cent of revenues as herein provided, then such greater percentage shall be and be deemed to be substituted for the Three (3%) per cent in this clause provided, but only applicable to the amounts received by the Company for gas consumed within the boundary limits of the Municipality, save as aforesaid, from the effective date of such other contract or franchise agreement until the expiration of the term of this Agreement as provided in Clause One (1) hereof or until the sooner termination hereof as hereinbefore provided.

24. Any notice, demand or request required or desired to be given or made under or in respect of this Agreement shall be deemed to have been sufficiently given to or made upon the party to whom it is addressed if it is mailed at the City of Nelson, British Columbia, in a prepaid registered envelope addressed respectively as follows:

(a) If given to or made upon the Municipality:

The City Clerk
The Corporation of the City of Nelson
502 Vernon Street
Nelson, B.C. V1L 4E8

(b) If given to or made upon the Company:

The Corporate Secretary
Inland Natural Gas Co. Ltd.
1066 West Hastings Street
Vancouver, B.C. V6E 3G3

and any notice, demand or request so given or made shall be deemed to have been received and given or made on the day after the mailing thereof. In the event the Company changes its Head Office address, the Municipality shall be notified in writing.

25. Notwithstanding anything to the contrary in this Agreement contained, this Agreement shall be subject to the provisions of the Pipelines Act, the Gas Utilities Act and the Energy Act of the Province of British Columbia and the proper authorities and powers of the British Columbia Energy Commission, and nothing herein shall exclude, or be deemed to exclude, the application of the provisions of the said Acts or any jurisdiction thereof or of the said British Columbia Energy Commission.

26. The Company covenants and agrees with the Municipality that in the construction of any extension or extensions of its distribution system which may be made from time to time, it will insofar as it considers it practicable, and provided that the Company shall not consider in so doing that it will or might in any way be penalized in either cost or efficiency, employ labourers, workmen and artisans who reside in the Municipality and purchase in the Municipality such materials as are required for the said construction work as are available in the Municipality. The Municipality acknowledges that the construction and installation of a gas distribution system is a specialized construction project calling for the services of


artisans and technicians with special skills and experience, and that in the performance by the Company of the covenant and agreement hereinbefore in this paragraph set out, the Company shall not be deemed to be in default in performance thereof by its employing artisans or technicians who reside elsewhere than in the Municipality for any work requiring specialized skill or experience, even although there may be artisans or technicians residing in the Municipality and available who might be able to do such specialized work satisfactorily. In the event that the said distribution system or any part or parts thereof, or any extension or extensions thereof, are constructed or installed by any contractor or contractors to the Company, then the Company covenants and agrees that it will endeavor to procure a similar covenant on the part of such contractor or contractors that any such contractor or contractors carry out and perform the covenant and agreement hereinbefore set out in this paragraph in the same manner and to the same extent as if the Company itself were carrying out the work.


27. This Agreement shall be assignable by the Company to a subsidiary without consent of the Municipality but otherwise shall only be assignable by the Company with the consent in writing of the Municipality first had and obtained, such consent not to be unreasonably withheld. Subject to the foregoing, this Agreement shall enure to the benefit of and be binding on the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto caused their respective corporate seals to be affixed,

attested to by the signatures of their officers in that
behalf, the day and year first above written.

The Corporate Seal of THE CORPORATION OF THE CITY OF NELSON was hereunto affixed in the presence of:

 MAYOR

 CITY CLERK

The Corporate Seal of INLAND
NATURAL GAS CO. LTD. was here-
unto affixed in the presence
of:

H. F. Clark

THIS AGREEMENT made this *10th* day of *December*
in the year of our Lord One Thousand Nine Hundred and Seventy-
nine.

BETWEEN:

THE CORPORATION OF THE CITY OF CASTLEGAR,
a municipal corporation incorporated
under the laws of the Province of
British Columbia;

(hereinafter called the "Municipality")

OF THE FIRST PART

AND:

INLAND NATURAL GAS CO. LTD., a body
corporate duly incorporated under the
laws of the Province of British Columbia,
and having its registered office in the
City of Vancouver, in the said Province;

(hereinafter called the "Company")

OF THE SECOND PART

WHEREAS the Company has entered into Gas Purchase
Contracts for the supply of gas by pipeline for the purposes
of making same available for distribution in British Columbia
in accordance with the terms of such Contracts.

AND WHEREAS the Company was formed for the purpose
of engaging in the business of transporting, supplying, dis-
tributing and selling gas for industrial, commercial, domestic
and other uses for power, heat and energy, and pursuant to the
terms and conditions of its contracts with its supplier(s),
has available for such uses supplies of gas for the purpose
of making same available to the Municipality and to consumers
or customers within, or in the environs of, the Municipality.

AND WHEREAS the Company will construct and operate all the necessary facilities, pipelines, mains and pipes for a supply of gas (which term as used in this Agreement shall include natural gas, synthetic natural gas, liquefied natural gas, liquefied petroleum gas, manufactured gas and/or other utility gases or any of them or any mixtures thereof) to the Municipality and/or such consumers or customers as are situated within the boundary limits thereof, and is willing to do so on the terms and conditions hereinafter set forth.

AND WHEREAS it is to the mutual advantage of the Company and the Municipality to extend the present Franchise Agreement, with minor modifications, all in accordance with the terms and conditions as hereinafter provided.

AND WHEREAS the Company has constructed the necessary transmission and distribution facilities, all in accordance with governmental, municipal, or other regulatory authorities having jurisdiction over same for the supply of gas to and within the Municipality.

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the premises and mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. The Company agrees to obtain a supply of gas subject as hereinafter provided, to distribute and sell gas within the boundary limits of the Municipality, and, subject as hereinafter provided, the Municipality insofar as and to the

extent that it is able and so empowered, hereby grants to, bestows and confers upon the Company the exclusive charter, right, franchise or privilege to supply gas by pipeline to the Municipality and its inhabitants and to consumers or customers situated within its boundary limits for the term of Twenty-one (21) years from the date of the expiry of that Franchise Agreement dated the 24th day of April, 1958, which expired on the 30th day of August, 1977.

2. The Company agrees that the gas supplied to the Municipality and its inhabitants and to consumers or customers situated within its boundary limits shall at all times be of a quality and standard conforming with the regulations for the time being in force and from time to time formulated under the provisions of the Gas Inspection Act being Chapter 129 of the Revised Statutes of Canada, 1952, and any amending statutes, and also conforming with any regulations or laws applicable thereto, whether such regulations or laws be made or issued by the Government of Canada or by the Province of British Columbia and whether now or hereafter brought in force and effect.

3. Subject as hereinafter provided, the Municipality hereby grants to the Company the authority, permission and right for the term of this Agreement as set out in Clause One (1) hereof to enter in, upon and under all public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares and parks within the boundary limits of the Municipality and over which the Municipality has control and authority for such permission and right to give, and the same to use, break up, dig, trench, open up and excavate, and therein, thereon and thereunder place, construct, lay, operate, use, maintain, renew, alter,

repair, extend, relay and/or remove a distribution system which term means mains, pipes, valves and facilities for the purpose of carrying, conveying, distributing, supplying and making available for use gas within the said boundary limits of the Municipality as and in the manner herein set out, but excludes any transmission or main pipeline and appurtenances which are an integral part of the natural gas transmission system bringing gas to the boundary limits of the Municipality or through the Municipality by transmission lines to enable distribution to other areas outside its said boundary limits or to other Municipalities or other unorganized areas.

4. Before placing, constructing or laying down the distribution system, or any part thereof, the Company shall file with the Municipality, or such officer or official thereof as shall be designated from time to time for such purpose by the Municipality, detailed plans and specifications showing the size and dimensions of the mains and pipes thereof, the proposed depth thereof below the surface of the ground, and the proposed location thereof, and the same shall not be placed, constructed or laid down without the approval of the Municipality or of such designated officer or official, as the case may be, PROVIDED ALWAYS that such approval shall not be unreasonably withheld. In establishing location of mains, the Company shall endeavour to use lanes or alleys in preference to streets, where same are available and the use thereof is compatible with and conforms to the general economics and engineering of the distribution system or the relevant portion thereof.

5. The Company shall give written notice to the Municipality or such officer or official thereof as shall be designated from time to time by the Municipality for the purposes in the next preceding clause set out, of its intention to break up, dig, trench, open up or excavate any, or in or on any, public thoroughfare, highway, road, street,

lane, alley, bridge, viaduct, subway, public place, square or park within the boundary limits of the Municipality, not less than three (3) clear days before the beginning of such work, except in such cases of repair, maintenance or the like that can reasonably be deemed to be emergencies or in the interests of the health or safety of the public, or of the safety of property by whomsoever owned, or any of them, in which cases no notice need be first given but shall be given as soon as practicable thereafter. The provisions of this clause shall apply notwithstanding the provisions of the next preceding clause and the grant of the approval or approvals therein referred to.

6. Should any of the public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares or parks, under or on which any part of the distribution system of the Company lies or is constructed, be legally closed as such or alienated by the Municipality or by or under any other paramount authority, written notice by prepaid registered mail shall be given to the Company, the Company agrees that with all reasonable speed and dispatch after receipt of such written notice from the Municipality it will remove and (if possible or practicable) relocate that part of its distribution system so affected by such closure or alienation, the cost of such removal and/or relocation to be at the cost and expense of the Municipality, unless such removal and/or relocation has been enforced upon the Municipality by any such other paramount authority without the Municipality having applied therefor.

7. The Company agrees with the Municipality that it will create and cause as little damage as possible in the execution of the authorities, permissions and rights to it hereby granted and will use its best endeavours to cause as little obstruction or inconvenience or danger as possible during the progress of any of the work hereinbefore set out,

and will place and maintain such warning signs, barricades, lights or flares on, at or near the site of any work in progress as will give reasonable warning thereof and protection therefrom to members of the public, and further agrees to restore without unreasonable delay the said public thoroughfares, highways, roads, streets, lanes, alleys, viaducts, bridges, subways, public places, squares and parks so broken up, dug, trenched, opened up or excavated to a state of repair or condition as nearly as possible as existed immediately before the commencement of such work.

8. The distribution system of the Company and the mains and pipes thereof shall be laid in such manner as not to interfere with any public or private sewer or any other pipe, conduit, duct, manhole or system belonging to the Municipality or which shall have been previously laid down and be then subsisting in any said public thoroughfare, highway, road, street, lane, alley, bridge, viaduct, subway, public place, square or park by, or with the permission or approval of, the Municipality or by virtue of any charter or right granted by competent government or municipal authority.

9. The Company agrees with the Municipality that it will protect, indemnify and save harmless the Municipality from and against all actions, proceedings, claims and demands of any corporation, firm or person against the Municipality and will reimburse the Municipality for all damage and expenses caused to it, in respect of or by the execution by the Company of the authorities, permissions and rights hereby to it granted or by reason of the construction, maintenance or operation of the distribution system of the Company within the boundary limits of the Municipality,

except where caused by or contributed to by the negligence or default of the Municipality or its servants or agents.

10. The Municipality agrees with the Company that before it makes any additions, repairs or alterations to any of its public services within the boundary limits of the Municipality, and which said additions, repairs or alterations may in any way affect any part of the distribution system of the Company, or any equipment thereof, it will give to the Company at its main office within the boundary limits of the Municipality, or at its Head Office in the City of Vancouver, British Columbia, not less than three (3) clear days notice thereof, except in such cases of repair, maintenance or the like that can reasonably be deemed to be emergencies or in the interests of the health or safety of the public, or of the safety of property by whomsoever owned, or any of them, in which case no notice need be first given but shall be given as soon as practicable thereafter. The Company shall thereupon be entitled to appoint a representative to supervise or advise in respect to such additions, repairs or alterations and so long as the directions, instructions or advice of such representative are or is followed or complied with by the Municipality, the Municipality shall be relieved from all liability in connection with any damage done to the property of the Company by reason of such additions, repairs or alterations.

11. Subject to the next clause hereof, the Company agrees with the Municipality that during the term of this Agreement as set out in Clause One (1) hereof and the

exclusive charter, right, franchise and privilege herein granted, but commencing only after the construction and putting into service of facilities so to do, it will supply such reasonable quantities of gas as may be required for consumption or purchase by its customers or consumers within the boundary limits of the Municipality subject, however, to the terms and conditions of the service agreement between the customer or consumer and the Company, PROVIDED THAT such requirements are to be supplied to places or buildings lying or being on property fronting or lying alongside a main or pipe of the distribution system of the Company. The property line of such property shall be the place of delivery of all gas supplied by the Company, but the Company shall provide and install a meter suitably located on the property to be supplied with gas. The Company shall also supply and install a service pipeline from the property line to the meter on and in accordance with the costs and terms set forth in the Company's tariff and revisions thereto as filed with and approved by the British Columbia Energy Commission, from time to time. The said meter and service pipeline shall be located and installed in a manner and at a location selected by the Company, and shall remain the property of the Company. The expense and risk of utilizing and using such gas after delivery at the said property line shall be borne by the consumer or purchaser and not by the Company unless any loss or damage occasioned by such utilization or user is directly attributable to the negligence or carelessness of the Company, its servants or agents.

12. Notwithstanding anything to the contrary in this Agreement contained, and in particular notwithstanding the provisions of Clauses One (1), Two (2) and Eleven (11) hereof, the obligations, duties and covenants of the Company herein contained, and on its part to be performed and carried out,

and the performance of this Agreement, are subject from time to time to (a) fire, explosion, lightning, tempest, the elements, adverse weather or climatic conditions, acts of God, force majeure, actions or acts or restraints of enemies, foreign princes and governments (whether foreign or domestic), strikes, lockouts, riots, shortage of labour or materials, civil insurrection, delays in or shortage of transportation, impossibility or difficulty of or in manufacturing, mixing, procuring, receiving, distributing or delivering gas, or impossibility, difficulty or delay in procuring, acquiring or receiving materials or equipment required or advisable for the placing, construction, maintenance or operation of the distribution system or any pipeline or facility for bringing gas to the boundary limits of the Municipality, and generally all shortage of supply or delays in delivery caused or resulting directly or indirectly from causes beyond the reasonable control of the Company, and (b) the operation of the entire natural gas transmission pipelines of its supplier(s) (including gathering lines), and (c) the construction and operation of the transmission or main pipeline and appurtenances of the Company required to bring gas from such natural gas pipeline to the boundary limits of the Municipality.

13. Subject as hereinafter provided, the Municipality agrees with the Company that it will not during the term of this Agreement as set out in Clause One (1) hereof, itself construct, operate or maintain a distribution system for the supplying of gas to the Municipality and/or its inhabitants and/or consumers or customers within its boundary limits, or to use the public thoroughfares, highways, roads, streets,

lanes, alleys, bridges, viaducts, subways, public places, squares or parks under its control or owned by it, or any part of them, for such purposes.

14. The Company agrees that the rates which the Company will charge for gas sold to the Municipality or other consumers or customers taking delivery in the manner aforesaid within the boundary limits of the Municipality shall be the applicable rates filed with and approved by the British Columbia Energy Commission.

~~15. Either party hereto shall have the right at any time .~~
~~prior to Six (6) months before the expiration of the term~~
~~of Twenty-one (21) years hereinbefore in Clause One (1) set~~
~~out to give to the other party notice in writing of its~~
~~desire to renew this Agreement and the exclusive charter,~~
~~right, franchise and privilege hereunder for a further term~~
~~of Twenty-one (21) years or lesser years, and upon such terms~~
~~and conditions as may be mutually agreed upon. As soon as~~
~~possible after giving of such notice the parties shall,~~
~~in the interest of both of them, enter into negotiations~~
~~looking towards such renewal and shall use their best~~
~~endeavours to bring such negotiations to a mutually~~
~~satisfactory conclusion before the expiration of the~~
~~first mentioned term of Twenty one (21) years.~~

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16. In the event that prior to Six (6) months before the expiration of the term of Twenty-one (21) years hereinbefore referred to neither party shall have given to the other party the notice in writing of its desire for renewal as in the next preceding clause set out, or, in the event that such a notice in writing shall have been duly given but the parties shall not have agreed on all the terms and conditions of such renewal by the expiration of the said term

of Twenty-one (21) years, then, and in either of such events, the Municipality shall have the right to purchase from the Company its whole business and undertaking within the boundary limits of the Municipality and being its distribution system and all its lands, buildings, plants, equipment, apparatus, vehicles, supply lines, supplies, stocks, tools and machinery and generally every and all its property and assets forming part of, or actually used or available for use exclusively in its undertaking or business of manufacturing, treating, processing, supply and distributing gas to consumers or purchasers within such boundary limits of the Municipality. PROVIDED THAT the Municipality shall not be entitled to purchase and the right of purchase hereinbefore given shall not cover any part of the business, undertaking or transmission or main pipelines (with appurtenances) of the Company situate either inside or outside the boundary limits of the Municipality which are an integral part of the transmission system bringing natural gas to or through the Municipality or which the Company considers necessary to it in the manufacture, mixing, transportation, storage, distribution, supply or sale of gas to other areas, corporations or persons not covered by this agreement. In the event that the Municipality shall acquire and desire to exercise the said right to purchase it shall exercise the said right by notice in writing given to the Company not later than Three (3) days after the expiration of the said term of Twenty-one (21) years, and a sale and purchase made under this clause shall become, and be deemed to have become, effective at midnight of the last day of the said term of Twenty-one (21) years.

17. In the event of a sale and purchase by the Municipality under the provisions of the next preceding clause, the purchase price payable by the Municipality to the Company for the said business and undertaking (which price is herein-

after referred to as "the price") shall be such as may be agreed in writing between the parties not later than One (1) month after the said effective time of the sale and purchase, or within such further time as the parties may decide upon in writing PROVIDED THAT in the event of failure so to agree, or in the event of failure to agree as to whether or not any item or items of property is or are parts of the undertaking being sold and purchased, the matter in dispute shall be referred to arbitration held under the provisions of the Arbitration Act of the Province of British Columbia, wherein each party hereto shall appoint one arbitrator, and the said arbitrators so appointed shall appoint a third. In determining the price, whether by negotiation or by arbitration, same shall be the fair value of the business and undertaking as a going concern at the said effective time of the sale and purchase, but it shall not include anything for any charter, franchise, right or privilege granted to the Company under this agreement, nor shall the so-called "scrap-iron" rule be applied in determining such fair value. The price shall be paid to the Company within Ninety (90) days after the determination thereof and shall carry interest at the rate of five (5) per cent per annum from the effective time of sale and purchase to payment of the price. In the event that after the price is determined the laws of British Columbia require the consent of the Lieutenant-Governor in Council to the sale and purchase or to any by-law that is enabling, or require the assent of the citizens, rate payers, or electors of the Municipality to the sale and purchase or the raising of money therefor, and such consent or assent is refused then the Company and the Municipality shall be released from all obligations to complete such sale and purchase pursuant to such notice, but the Municipality shall pay all expenses or costs of the Company incurred in any arbitration held, and the Company

shall be entitled to retain or be reimbursed for all profits made in the operation of the undertaking from the said effective time of sale.

18. In the event of a sale and purchase by the Municipality under the provisions of Clause Sixteen (16) hereof, the authorities, permissions, charters, privileges, rights, and franchises given to the Company by Clauses One (1) and Three (3) hereof, and the duties and obligations of the Company referred to in Clauses One (1), Two (2) and Eleven (11) hereof, shall terminate and cease at the said effective time of sale and purchase.

19. If at any time during the term of this Agreement as set out in Clause One (1) hereof, any dispute, difference or question shall arise between the parties hereto touching the construction, meaning or effect of this Agreement, or any clause thereof, or as to the extent or limit of any authority, permission, right, duty, obligation, benefit or liability of the parties hereto, then every such dispute, difference or question shall be referred to a single arbitrator appointed by the parties hereto or, in default of Agreement, by and under the provisions of the Arbitration Act of the Province of British Columbia, and the said arbitration shall be held under the provisions of that Statute.

20. The award, determination or decision made under any arbitration held pursuant to the terms of this Agreement shall be final and binding upon the parties hereto, save as in the Arbitration Act of the Province of British Columbia otherwise provided.

21. Subject always to the provisions of Clause Twelve (12) and Clause Nineteen (19) hereof, in the event of the Company making an authorized assignment or having a receiving order made against it under the Bankruptcy Act and during bankruptcy failing to comply with any of the terms or conditions of this Agreement on its part to be observed or performed, or, the Company not having made an authorized assignment or having a receiving order made against it under the Bankruptcy Act, upon any wilful failure or neglect by the Company to comply with any of the major terms or conditions of this Agreement and on its part to be observed or performed which continues for Thirty (30) days after the receipt of written demand by the Municipality for the observance or performance of such terms or conditions, the Municipality shall have the right by written notice to the Company to terminate this Agreement. The rights of the Municipality under this clause are and shall be in addition to or without prejudice to any other rights at law or in equity which it may have against the Company for or by reason of any breach by the Company of this Agreement or any part thereof.

22. Upon the termination of this Agreement at the expiration of the said term of Twenty-one (21) years as set out in Clause One (1) hereof without a sale and purchase of the business and undertaking of the Company taking place under the provisions of Clauses Sixteen (16) to Eighteen (18) inclusive, hereof or upon the termination of this Agreement by cancellation notice from the Municipality under the provisions of Clause Twenty-one (21) hereof, the distribution system of the Company shall be and be deemed always to have been and to remain its own property and as such may be used by it in its business or removed in whole or in part as it shall see fit, and for such purposes, or either of them, said

distribution system may remain in, on or under all the public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares and parks within the boundary limits of the Municipality and the Company may enter in, upon and under the same and the same to use, break up, dig, trench, open up and excavate for the purpose of the maintenance, renewal, repair, removal or operation of such distribution system, or any part thereof, but not for the extension thereof, PROVIDED THAT the Company shall in so doing comply with and be bound by the provisions of Clauses Two (2), Five (5), Six (6), Seven (7) and Nine (9) hereof, mutatis mutandis, notwithstanding the termination of this Agreement.

23. As compensation for the use by the Company of the public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares and parks as provided in Clause Three (3) hereof, and for the exclusive charter, right, franchise, or privilege to supply gas by pipeline as provided in Clause One (1) hereof, the Company shall pay to the Municipality on the first days of November in each of the years 1977 to and including 1997 or such earlier year in which this Agreement may expire under the provisions hereof a sum equal to Three (3%) per cent of the amount received in each immediately preceding calendar year by the Company for gas consumed within the boundary limits of the Municipality, but such amount shall not include revenues from gas supplied for resale, and, within Ninety (90) days after the twenty-first (21st) anniversary of the date of this Agreement or after such earlier date on which this Agreement may expire under the said provisions hereof the Company shall pay to the Municipality a sum equal to Three (3%) per cent of the amount received by the Company for gas consumed, save as aforesaid, within the boundary limits of the Municipality during the period from the commencement of the calendar year in which such anniversary or

earlier date falls to such anniversary or earlier date, as the case may be. Since this agreement is an extension of that Franchise Agreement dated the 24th day of April, 1958, which expired on the 30th day of August, 1977, it is agreed therefore that the following provisions as found on Page 12, starting in Line 17 of the aforesaid agreement, shall be waived:

"...and, within ninety (90) days after the twentieth anniversary of the term of this Agreement or after such earlier date on which this Agreement may expire or be terminated as aforesaid, the Company shall pay to the Village a sum equal to three per cent (3%) of the amount received by the Company for gas consumed, save as aforesaid, within the boundary limits of the Village during the period from the commencement of the calendar year in which such anniversary or earlier date falls to such anniversary or earlier date, as the case may be."

In any event, this new agreement shall recognize that the Company shall pay to the Municipality on the 1st day of November in the year 1977 a sum equal to Three (3%) per cent of the amount received in the immediately preceding calendar year, i.e. 1976, by the Company for gas consumed within the boundary limits of the Municipality, except as provided herein, which shall not include revenues for gas supplied for resale. The amount received by the Company in any particular period for gas so consumed, and upon which the aforesaid percentage compensation is based, shall be that amount for the equivalent period upon which the percentage tax provided under Section 333 of the Municipal Act, 1960, Revised Statutes of British Columbia, Chapter 255, as now enacted would be payable and as if said percentage compensation herein provided were a tax provided for under said section, and such compensation shall not be or be deemed to be a tax or in lieu of any taxes, rates or licence fees otherwise properly payable to the Municipality. In the event that

during the currency of this Agreement, the Company should enter into any contract or franchise agreement similar to this Agreement with another Municipality named and set out wherein under a similar clause to this Clause Twenty-three (23) the Company shall agree to pay to such Municipality, as compensation for the use by the Company of the public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares and parks for like purposes as in Clause Three (3) hereof set out, a greater percentage compensation than Three (3%) per cent of revenues as herein provided, then such greater percentage shall be and be deemed to be substituted for the Three (3%) per cent in this clause provided, but only applicable to the amounts received by the Company for gas consumed within the boundary limits of the Municipality, save as aforesaid, from the effective date of such other contract or franchise agreement until the expiration of the term of this Agreement as provided in Clause One (1) hereof or until the sooner termination hereof as hereinbefore provided.

24. Any notice, demand or request required or desired to be given or made under or in respect of this Agreement shall be deemed to have been sufficiently given to or made upon the party to whom it is addressed if it is mailed at Castlegar, British Columbia, in a prepaid registered envelope addressed respectively as follows:

(a) If given to or made upon the Municipality:

The City Clerk
The Corporation of the City of Castlegar
460 Columbia Avenue
Castlegar, B.C. V1N 1G7

(b) If given to or made upon the Company:

The Corporate Secretary
Inland Natural Gas Co. Ltd.
1066 West Hastings Street
Vancouver, B.C. V6E 3G3

and any notice, demand or request so given or made shall be deemed to have been received and given or made on the day after the mailing thereof. In the event the Company changes its Head Office address, the Municipality shall be notified in writing.

25. Notwithstanding anything to the contrary in this Agreement contained, this Agreement shall be subject to the provisions of the Pipelines Act, the Gas Utilities Act and the Energy Act of the Province of British Columbia and the proper authorities and powers of the British Columbia Energy Commission, and nothing herein shall exclude, or be deemed to exclude, the application of the provisions of the said Acts or any jurisdiction thereof or of the said British Columbia Energy Commission.

26. This Agreement shall be assignable by the Company to a subsidiary without consent of the Municipality but otherwise shall only be assignable by the Company with the consent in writing of the Municipality first had and obtained, such consent not to be unreasonably withheld. Subject to the foregoing, this Agreement shall enure to the benefit of and be binding on the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto caused their respective corporate seals to be affixed,

attested to by the signatures of their officers in that
behalf, the day and year first above written.

The Corporate Seal of THE)
CORPORATION OF THE CITY OF)
CASTLEGAR was hereunto affixed)
in the presence of:)

Andray L. Mare)
Anthony)

The Corporate Seal of INLAND)
NATURAL GAS CO. LTD. was here-)
unto affixed in the presence)
of:)

[Signature])
H. F. Clark)



THE GOVERNMENT OF
THE PROVINCE OF BRITISH COLUMBIA

2734

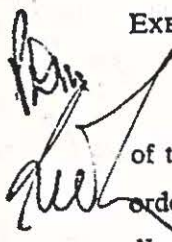
I hereby certify that the following is a true copy of a Minute of the Honourable the Executive Council of the Province of British Columbia approved by His Honour the Lieutenant-Governor.

APPROVED AND ORDERED 25.AUG.1977

Assistant Deputy Provincial Secretary

Lieutenant-Governor

EXECUTIVE COUNCIL CHAMBERS, VICTORIA 25.AUG.1977

 Pursuant to the Municipal Act, and upon the recommendation of the undersigned, the Lieutenant-Governor, by and with the advice and consent of the Executive Council, orders that By-law No. 715 of the City of Armstrong cited as "City of Armstrong Natural Gas Franchise By-law # 715 of 1977", be approved in the form of by-law hereto attached.

Minister of Municipal Affairs and Housing.

Presiding Member of the Executive Council.

3. This By-Law shall, before the final passing thereof, be submitted to and receive the approval of the Lieutenant-Governor in Council in the manner provided for by Section 574(2) of the Municipal Act.

4. This By-Law may be cited as the City of Armstrong Natural Gas Franchise By-Law #715 of 1977.

READ A FIRST TIME by the Municipal Council this 9th day of May, 1977.
READ A SECOND TIME by the Municipal Council this 9th day of May, 1977, pursuant to Section 33 of By-Law No. 1.

READ A THIRD TIME by the Municipal Council this 9th day of May, 1977, pursuant to Section 33 of By-Law No. 1.

I, J.D. Hayden, HEREBY CERTIFY the within to be a true and correct copy of By-Law #715 as read a THIRD time by the Council of the City of Armstrong on the 9th day of May, 1977.


CITY CLERK, J.D. Hayden
CITY OF ARMSTRONG

RECEIVED the approval of the Lieutenant Governor in Council this 25th day of August 1977

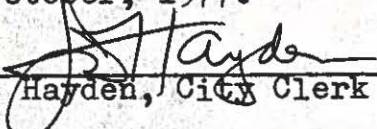
RECONSIDERED, finally read and adopted by the said Council of the City of Armstrong, signed by the Mayor and Clerk, and sealed with the Corporate Seal of the said City this 12 day of October, 1977.


MAYOR, R.B. Shadlock


CITY CLERK, J.D. Hayden

I, J.D. Hayden do hereby certify that the foregoing is a true and correct copy of By-Law #715 as finally reconsidered and passed on the 12th day of October, 1977.

Dated at Armstrong, B.C. this 17th day of October, 1977.


J.D. Hayden, City Clerk

SCHEDULE "A"

THIS AGREEMENT made this 12 day of OCTOBER
in the year of our Lord One Thousand Nine Hundred and
Seventy-SEVEN - (1977).

BETWEEN:

THE CITY OF ARMSTRONG, a municipal
corporation incorporated under the
laws of the Province of British
Columbia;

(hereinafter called the "Municipality")

OF THE FIRST PART

AND:

INLAND NATURAL GAS CO. LTD., a body
corporate duly incorporated under the
laws of the Province of British Columbia,
and having its registered office in the
City of Vancouver, in the said Province;

(hereinafter called the "Company")

OF THE SECOND PART

WHEREAS the Company has entered into Gas Purchase
Contracts for the supply of gas by pipeline for the purposes
of making same available for distribution in British Columbia
in accordance with the terms of such Contracts.

AND WHEREAS the Company was formed for the purpose
of engaging in the business of transporting, supplying, dis-
tributing and selling gas for industrial, commercial, domestic
and other uses for power, heat and energy, and pursuant to the
terms and conditions of its contracts with its supplier(s),
has available for such uses supplies of gas for the purpose
of making same available to the Municipality and to consumers
or customers within, or in the environs of, the Municipality.

AND WHEREAS the Company will construct and operate all the necessary facilities, pipelines, mains and pipes for a supply of gas (which term as used in this Agreement shall include natural gas, synthetic natural gas, liquefied natural gas, liquefied petroleum gas, manufactured gas and/or other utility gases or any of them or any mixtures thereof) to the Municipality and/or such consumers or customers as are situated within the boundary limits thereof, and is willing to do so on the terms and conditions hereinafter set forth.

AND WHEREAS it is to the mutual advantage of the Company and the Municipality to extend the present Franchise Agreement, with minor modifications, all in accordance with the terms and conditions as hereinafter provided.

AND WHEREAS the Company has constructed the necessary transmission and distribution facilities, all in accordance with governmental, municipal, or other regulatory authorities having jurisdiction over same for the supply of gas to and within the Municipality.

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the premises and mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. The Company agrees to obtain a supply of gas subject as hereinafter provided, to distribute and sell gas within the boundary limits of the Municipality, and, subject as hereinafter provided, the Municipality insofar as and to the

extent that it is able and so empowered, hereby grants to, bestows and confers upon the Company the exclusive charter, right, franchise or privilege to supply gas by pipeline to the Municipality and its inhabitants and to consumers or customers situated within its boundary limits for the term of Twenty-one (21) years from the date upon which the By-law of the Municipality authorizing this Agreement comes into force under the terms of the Municipal Act, being 1960, R.S.B.C., Chapter 255 and Amendments.

2. The Company agrees that the gas supplied to the Municipality and its inhabitants and to consumers or customers situated within its boundary limits shall at all times be of a quality and standard conforming with the regulations for the time being in force and from time to time formulated under the provisions of the Gas Inspection Act being Chapter 129 of the Revised Statutes of Canada, 1952, and any amending statutes, and also conforming with any regulations or laws applicable thereto, whether such regulations or laws be made or issued by the Government of Canada or by the Province of British Columbia and whether now or hereafter brought in force and effect.

3. Subject as hereinafter provided, the Municipality hereby grants to the Company the authority, permission and right for the term of this Agreement as set out in Clause One (1) hereof to enter in, upon and under all public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares and parks within the boundary limits of the Municipality and over which the Municipality has control and authority for such permission and right to give, and the same to use, break up, dig, trench, open up and excavate, and therein, thereon and thereunder place, construct, lay, operate, use, maintain, renew, alter,

repair, extend, relay and/or remove a distribution system which term means mains, pipes, valves and facilities for the purpose of carrying, conveying, distributing, supplying and making available for use gas within the said boundary limits of the Municipality as and in the manner herein set out, but excludes any transmission or main pipeline and appurtenances which are an integral part of the natural gas transmission system bringing gas to the boundary limits of the Municipality or through the Municipality by transmission lines to enable distribution to other areas outside its said boundary limits or to other Municipalities or other unorganized areas.

4. Before placing, constructing or laying down the distribution system, or any part thereof, the Company shall file with the Municipality, or such officer or official thereof as shall be designated from time to time for such purpose by the Municipality, detailed plans and specifications showing the size and dimensions of the mains and pipes thereof, the proposed depth thereof below the surface of the ground, and the proposed location thereof, and the same shall not be placed, constructed or laid down without the approval of the Municipality or of such designated officer or official, as the case may be, PROVIDED ALWAYS that such approval shall not be unreasonably withheld. In establishing location of mains, the Company shall endeavour to use lanes or alleys in preference to streets, where same are available and the use thereof is compatible with and conforms to the general economics and engineering of the distribution system or the relevant portion thereof.

5. The Company shall give written notice to the Municipality or such officer or official thereof as shall be designated from time to time by the Municipality for the purposes in the next preceding clause set out, of its intention to break up, dig, trench, open up or excavate any, or in or on any, public thoroughfare, highway, road, street,

lane, alley, bridge, viaduct, subway, public place, square or park within the boundary limits of the Municipality, not less than three (3) clear days before the beginning of such work, except in such cases of repair, maintenance or the like that can reasonably be deemed to be emergencies or in the interests of the health or safety of the public, or of the safety of property by whomsoever owned, or any of them, in which cases no notice need be first given but shall be given as soon as practicable thereafter. The provisions of this clause shall apply notwithstanding the provisions of the next preceding clause and the grant of the approval or approvals therein referred to.

6. Should any of the public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares or parks, under or on which any part of the distribution system of the Company lies or is constructed, be legally closed as such or alienated by the Municipality or by or under any other paramount authority, written notice by prepaid registered mail shall be given to the Company, the Company agrees that with all reasonable speed and dispatch after receipt of such written notice from the Municipality it will remove and (if possible or practicable) relocate that part of its distribution system so affected by such closure or alienation, the cost of such removal and/or relocation to be at the cost and expense of the Municipality, unless such removal and/or relocation has been enforced upon the Municipality by any such other paramount authority without the Municipality having applied therefor.

7. The Company agrees with the Municipality that it will create and cause as little damage as possible in the execution of the authorities, permissions and rights to it hereby granted and will use its best endeavours to cause as little obstruction or inconvenience or danger as possible during the progress of any of the work hereinbefore set out,

and will place and maintain such warning signs, barricades, lights or flares on, at or near the site of any work in progress as will give reasonable warning thereof and protection therefrom to members of the public, and further agrees to restore without unreasonable delay the said public thoroughfares, highways, roads, streets, lanes, alleys, viaducts, bridges, subways, public places, squares and parks so broken up, dug, trenched, opened up or excavated to a state of repair or condition as nearly as possible as existed immediately before the commencement of such work.

8. The distribution system of the Company and the mains and pipes thereof shall be laid in such manner as not to interfere with any public or private sewer or any other pipe, conduit, duct, manhole or system belonging to the Municipality or which shall have been previously laid down and be then subsisting in any said public thoroughfare, highway, road, street, lane, alley, bridge, viaduct, subway, public place, square or park by, or with the permission or approval of, the Municipality or by virtue of any charter or right granted by competent government or municipal authority.

9. The Company agrees with the Municipality that it will protect, indemnify and save harmless the Municipality from and against all actions, proceedings, claims and demands of any corporation, firm or person against the Municipality and will reimburse the Municipality for all damage and expenses caused to it, in respect of or by the execution by the Company of the authorities, permissions and rights hereby to it granted or by reason of the construction, maintenance or operation of the distribution system of the Company within the boundary limits of the Municipality,

except where same is not caused by or contributed to by the negligence or default of the Company, or its servants or agents.

10. The Municipality agrees with the Company that before it makes any additions, repairs or alterations to any of its public services within the boundary limits of the Municipality, and which said additions, repairs or alterations may in any way affect any part of the distribution system of the Company, or any equipment thereof, it will give to the Company at its main office, if any, within the boundary limits of the Municipality, or if not then at its main office in the City of Vernon -----, British Columbia, or at its Head Office in the City of Vancouver, British Columbia, not less than three (3) clear days notice thereof, except in such cases of repair, maintenance or the like that can reasonably be deemed to be emergencies or in the interests of the health or safety of the public, or of the safety of property by whomsoever owned, or any of them, in which case no notice need be first given but shall be given as soon as practicable thereafter. The Company shall thereupon be entitled to appoint a representative to supervise or advise in respect to such additions, repairs or alterations and so long as the directions, instructions or advice of such representative are or is followed or complied with by the Municipality, the Municipality shall be relieved from all liability in connection with any damage done to the property of the Company by reason of such additions, repairs or alterations.

11. Subject to the next clause hereof, the Company agrees with the Municipality that during the term of this Agreement as set out in Clause One (1) hereof and the

exclusive charter, right, franchise and privilege herein granted, but commencing only after the construction and putting into service of facilities so to do, it will supply such reasonable quantities of gas as may be required for consumption or purchase by its customers or consumers within the boundary limits of the Municipality subject, however, to the terms and conditions of the service agreement between the customer or consumer and the Company, PROVIDED THAT such requirements are to be supplied to places or buildings lying or being on property fronting or lying alongside a main or pipe of the distribution system of the Company. The property line of such property shall be the place of delivery of all gas supplied by the Company, but the Company shall provide and install a meter suitably located on the property to be supplied with gas. The Company shall also supply and install a service pipeline from the property line to the meter on and in accordance with the costs and terms set forth in the Company's tariff and revisions thereto as filed with and approved by the British Columbia Energy Commission, from time to time. The said meter and service pipeline shall be located and installed in a manner and at a location selected by the Company, and shall remain the property of the Company. The expense and risk of utilizing and using such gas after delivery at the said property line shall be borne by the consumer or purchaser and not by the Company unless any loss or damage occasioned by such utilization or user is directly attributable to the negligence or carelessness of the Company, its servants or agents.

12. Notwithstanding anything to the contrary in this Agreement contained, and in particular notwithstanding the provisions of Clauses One (1), Two (2) and Eleven (11) hereof, the obligations, duties and covenants of the Company herein contained, and on its part to be performed and carried out,

and the performance of this Agreement, are subject from time to time to (a) fire, explosion, lightning, tempest, the elements, adverse weather or climatic conditions, acts of God, force majeure, actions or acts or restraints of enemies, foreign princes and governments (whether foreign or domestic), strikes, lockouts, riots, shortage of labour or materials, civil insurrection, delays in or shortage of transportation, impossibility or difficulty of or in manufacturing, mixing, procuring, receiving, distributing or delivering gas, or impossibility, difficulty or delay in procuring, acquiring or receiving materials or equipment required or advisable for the placing, construction, maintenance or operation of the distribution system or any pipeline or facility for bringing gas to the boundary limits of the Municipality, and generally all shortage of supply or delays in delivery caused or resulting directly or indirectly from causes beyond the reasonable control of the Company, and (b) the operation of the entire natural gas transmission pipelines of its supplier(s) (including gathering lines), and (c) the construction and operation of the transmission or main pipeline and appurtenances of the Company required to bring gas from such natural gas pipeline to the boundary limits of the Municipality.

13. Subject as hereinafter provided, the Municipality agrees with the Company that it will not during the term of this Agreement as set out in Clause One (1) hereof, itself construct, operate or maintain a distribution system for the supplying of gas to the Municipality and/or its inhabitants and/or consumers or customers within its boundary limits, or to use the public thoroughfares, highways, roads, streets,

lanes, alleys, bridges, viaducts, subways, public places, squares or parks under its control or owned by it, or any part of them, for such purposes.

14. The Company agrees that the rates which the Company will charge for gas sold to the Municipality or other consumers or customers taking delivery in the manner aforesaid within the boundary limits of the Municipality shall be the applicable rates filed with and approved by the British Columbia Energy Commission.

15. Either party hereto shall have the right at any time prior to Six (6) months before the expiration of the term of Twenty-one (21) years hereinbefore in Clause One (1) set out to give to the other party notice in writing of its desire to renew this Agreement and the exclusive charter, right, franchise and privilege hereunder for a further term of Twenty-one (21) years or lesser years, and upon such terms and conditions as may be mutually agreed upon. As soon as possible after giving of such notice the parties shall, in the interest of both of them, enter into negotiations looking towards such renewal and shall use their best

endeavours to bring such negotiations to a mutually satisfactory conclusion before the expiration of the first mentioned term of Twenty-one (21) years.

16. In the event that prior to Six (6) months before the expiration of the term of Twenty-one (21) years hereinbefore referred to neither party shall have given to the other party the notice in writing of its desire for renewal as in the next preceding clause set out, or, in the event that such a notice in writing shall have been duly given but the parties shall not have agreed on all the terms and conditions of such renewal by the expiration of the said term of Twenty-one (21) years, then, and in either of such events, the Municipality shall have the right to purchase from the Company its whole business and undertaking within the boundary limits of the Municipality and being its distribution system and all its lands, buildings, plants, equipment, apparatus, vehicles, supply lines, supplies, stocks, tools and machinery and generally every and all its property and assets forming part of, or actually used or available for use exclusively in its undertaking or business of manufacturing, treating, processing, supplying and distributing gas to consumers or purchasers within such boundary limits of the Municipality. PROVIDED THAT the Municipality shall not be entitled to purchase and the right of purchase hereinbefore given shall not cover any part of the business, undertaking or transmission or main pipelines (with appurtenances) of the Company situate either inside or outside the boundary limits of the Municipality which are an integral part of the transmission system bringing natural gas to or through the Municipality or which the Company considers necessary to it in the manufacture, mixing, transportation, storage, distribution, supply or sale of gas to other areas, corporations or persons not covered by this agreement. In the event that the Municipality shall acquire

and desire to exercise the said right to purchase it shall exercise the said right by notice in writing given to the Company not later than Three (3) days after the expiration of the said term of Twenty-one (21) years, and a sale and purchase made under this clause shall become, and be deemed to have become, effective at midnight of the last day of the said term of Twenty-one (21) years.

17. In the event of a sale and purchase by the Municipality under the provisions of the next preceding clause, the purchase price payable by the Municipality to the Company for the said business and undertaking (which price is hereinafter referred to as "the price") shall be such as may be agreed in writing between the parties not later than One (1) month after the said effective time of the sale and purchase, or within such further time as the parties may decide upon in writing PROVIDED THAT in the event of failure so to agree, or in the event of failure to agree as to whether or not any item or items of property is or are parts of the undertaking being sold and purchased, the matter in dispute shall be referred to arbitration held under the provisions of the Arbitration Act of the Province of British Columbia, wherein each party hereto shall appoint one arbitrator, and the said arbitrators so appointed shall appoint a third. In determining the price, whether by negotiation or by arbitration, same shall be the fair value of the business and undertaking as a going concern at the said effective time of the sale and purchase, but it shall not include anything for any charter, franchise, right or privilege granted to the Company under this agreement, nor shall the so-called "scrap-iron" rule be applied in determining such fair value. The price shall be paid to the Company within Ninety (90) days after the determination thereof and shall carry interest at the prime rate of the Bank of Montreal then in effect plus One (1%) per cent per annum from the effective time of sale and purchase to payment of

the price. In the event that after the price is determined the laws of British Columbia require the consent of the Lieutenant-Governor in Council to the sale and purchase or to any by-law that is enabling, or require the assent of the citizens, rate payers, or electors of the Municipality to the sale and purchase or the raising of money therefor, and such consent or assent is refused then the Company and the Municipality shall be released from all obligations to complete such sale and purchase pursuant to such notice, but the Municipality shall pay all expenses or costs of the Company incurred in any arbitration held, and the Company shall be entitled to retain or be reimbursed for all profits made in the operation of the undertaking from the said effective time of sale.

18. In the event of a sale and purchase by the Municipality under the provisions of Clause Sixteen (16) hereof, the authorities, permissions, charters, privileges, rights, and franchises given to the Company by Clauses One (1) and Three (3) hereof, and the duties and obligations of the Company referred to in Clauses One (1), Two (2) and Eleven (11) hereof, shall terminate and cease at the said effective time of sale and purchase.

19. The Company agrees with the Municipality that in the event that it should enter into any contract or franchise agreement similar to this agreement with The Corporation of the City of Kamloops, or The Corporation of the City of Vernon, or The Corporation of the City of Kelowna, or The Corporation of the City of Salmon Arm, or The Corporation of the District of Summerland, or The Corporation of the City of Penticton (any one of which is in this Clause hereinafter referred to as a "Municipality") for the exclusive provision, distribution and sale of gas by pipeline within such Municipality for a term of years wherein such

Municipality is given an absolute right to purchase the distribution system of the Company situate therein on a date prior to the 19th day of --June-----, 1998, then the Municipality by not less than One (1) year's notice in writing to the Company, shall be entitled to declare that this Agreement shall expire at midnight of such prior date (or if there be more than one such prior date, of the earliest) and thereupon this Agreement shall thenceforth be read and construed as if the date of the expiration of the term of Twenty-one (21) years from the date hereof as set out in Clause One (1) hereof were the said declared earlier date of expiry, and the term of this Agreement as set out in said Clause One (1) hereof were therein set out in the period from the date hereof to and including the said earlier date of expiry, and all relevant provisions hereof shall apply and have reference to such earlier date of expiry, mutatis mutandis, accordingly.

20. If at any time during the term of this Agreement as set out in Clause One (1) hereof, any dispute, difference or question shall arise between the parties hereto touching the construction, meaning or effect of this Agreement, or any clause thereof, or as to the extent or limit of any authority, permission, right, duty, obligation, benefit or liability of the parties hereto, then every such dispute, difference or question shall be referred to a single arbitrator appointed by the parties hereto or, in default of Agreement, by and under the provisions of the Arbitration Act of the Province of British Columbia, and the said arbitration shall be held under the provisions of that Statute.

21. The award, determination or decision made under any arbitration held pursuant to the terms of this Agreement shall be final and binding upon the parties hereto, save as in the Arbitration Act of the Province of British Columbia otherwise provided.

22. Subject always to the provisions of Clause Twelve (12) and Clause Twenty (20) hereof, in the event of the Company making an authorized assignment or having a receiving order made against it under the Bankruptcy Act and during bankruptcy failing to comply with any of the terms or conditions of this Agreement on its part to be observed or performed, or, the Company not having made an authorized assignment or having a receiving order made against it under the Bankruptcy Act, upon any wilful failure or neglect by the Company to comply with any of the major terms or conditions of this Agreement and on its part to be observed or performed which continues for Thirty (30) days after the receipt of written demand by the Municipality for the observance or performance of such terms or conditions, the Municipality shall have the right by written notice to the Company to terminate this Agreement. The rights of the Municipality under this clause are and shall be in addition to or without prejudice to any other rights at law or in equity which it may have against the Company for or by reason of any breach by the Company of this Agreement or any part thereof.

23. Upon the termination of this Agreement at the expiration of the said term of Twenty-one (21) years as set out in Clause One (1) hereof or at such earlier date as provided in Clause Nineteen (19) hereof without a sale and purchase of the business and undertaking of the Company taking place under the provisions of Clauses Sixteen (16) to Eighteen (18), inclusive, hereof or upon the termination of this Agreement by cancellation notice from the Municipality under the provisions of Clause Twenty-two (22) hereof, the distribution system of the Company shall be and be deemed always to have been and to remain its own property and as such may be used by it in its business or removed in whole or in part as it shall see fit, and for such purposes, or either of them, said

distribution system may remain in, on or under all the public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares and parks within the boundary limits of the Municipality and the Company may enter in, upon and under the same and the same to use, break up, dig, trench, open up and excavate for the purpose of the maintenance, renewal, repair, removal or operation of such distribution system, or any part thereof, but not for the extension thereof, PROVIDED THAT the Company shall in so doing comply with and be bound by the provisions of Clauses Two (2), Five (5), Six (6), Seven (7) and Nine (9) hereof, mutatis mutandis, notwithstanding the termination of this Agreement.

24. As compensation for the use by the Company of the public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares and parks as provided in Clause Three (3) hereof, and for the exclusive charter, right, franchise, or privilege to supply gas by pipeline as provided in Clause One (1) hereof, the Company shall pay to the Municipality on the first day of November in each of the years 1977 to and including 1997 or such earlier year in which this Agreement may expire under the provisions of Clause Nineteen (19) hereof a sum equal to Three (3%) per cent of the amount received in each immediately preceding calendar year by the Company for gas consumed within the boundary limits of the Municipality, but such amount shall not include revenues from gas supplied for resale, and, within Ninety (90) days after the twenty-first (21st) anniversary of the date of this Agreement or after such earlier date on which this Agreement may expire under the said provisions of Clause Nineteen (19) hereof the Company shall pay to the Municipality a sum equal to Three (3%) per cent of the amount received by the Company for gas consumed, save as aforesaid, within the boundary limits of the Municipality during the period from the commencement of the calendar year in which such anniversary or earlier date

falls to such anniversary or earlier date, as the case may be. Since this agreement is an extension to that Franchise Agreement dated the 21st day of June, 1956, which expires on June 20th, 1977, it is agreed therefore that the following provisions as found on Page 13, starting in Line 14 of the aforesaid agreement, the following shall be waived:

"...and, within ninety (90) days after the twenty-first anniversary of the date of this agreement or after such earlier date on which this agreement may expire under the said provisions of Clause 19 hereof the Company shall pay to the City the sum equal to Three (3%) per cent of the amount received by the Company for gas consumed, save as aforesaid, within the boundary limits of the City during the period from the commencement of the calendar year in which such anniversary or earlier date falls to such anniversary or earlier date, as the case may be".

In any event, this new agreement shall recognize that the Company shall pay to the Municipality on the 1st day of November in the year 1977 a sum equal to Three (3%) per cent of the amount received in the immediately preceding calendar year, i.e. 1976, by the Company for gas consumed within the boundary limits of the Municipality, except as provided herein, which shall not include revenues for gas supplied for resale. The amount received by the Company in any particular period for gas so consumed, and upon which the aforesaid percentage compensation is based, shall be that amount for the equivalent period upon which the percentage tax provided under Section 333 of the Municipal Act, 1960, Revised Statutes of British Columbia, Chapter 255, as now enacted would be payable and as if said percentage compensation herein provided were a tax provided for under said section, and such compensation shall not be or be deemed to be a tax or in lieu of any taxes, rates or licence fees otherwise properly payable to the Municipality. In the event that during the currency of this Agreement, the Company should

enter into any contract or franchise agreement similar to this Agreement with another Municipality named and set out in Clause Nineteen (19) hereof wherein under a similar clause to this Clause Twenty-four (24) the Company shall agree to pay to such Municipality, as compensation for the use by the Company of the public thoroughfares, highways, roads, streets, lanes, alleys, bridges, viaducts, subways, public places, squares and parks for like purposes as in Clause Three (3) hereof set out, a greater percentage compensation than Three (3%) per cent of revenues as herein provided, then such greater percentage shall be and be deemed to be substituted for the Three (3%) per cent in this clause provided, but only applicable to the amounts received by the Company for gas consumed within the boundary limits of the Municipality, save as aforesaid, from the effective date of such other contract or franchise agreement until the expiration of the term of this Agreement as provided in Clause One (1) hereof or until the sooner termination hereof as hereinbefore provided.

25. Any notice, demand or request required or desired to be given or made under or in respect of this Agreement shall be deemed to have been sufficiently given to or made upon the party to whom it is addressed if it is mailed at Armstrong, British Columbia----- in a prepaid registered envelope addressed respectively as follows:

(a) If given to or made upon the Municipality:

City Clerk
City Hall
Armstrong, B.C. V0E 1B0

(b) If given to or made upon the Company:

The Company Secretary
Inland Natural Gas Co. Ltd.
1075 West Georgia Street
Vancouver, B.C. V6E 3G3

and any notice, demand or request so given or made shall be deemed to have been received and given or made on the day

after the mailing thereof. In the event the Company changes its Head Office address, the Municipality shall be notified in writing.

26. Notwithstanding anything to the contrary in this Agreement contained, this Agreement shall be subject to the provisions of the Pipelines Act, the Gas Utilities Act and the Energy Act of the Province of British Columbia and the proper authorities and powers of the British Columbia Energy Commission, and nothing herein shall exclude, or be deemed to exclude, the application of the provisions of the said Acts or any jurisdiction thereof or of the said British Columbia Energy Commission.

27. The Company covenants and agrees with the Municipality that in the construction of any extension or extensions of its distribution system which may be made from time to time, it will insofar as it considers it practicable, and provided that the Company shall not consider in so doing that it will or might in any way be penalized in either cost or efficiency, employ labourers, workmen and artisans who reside in the Municipality and purchase in the Municipality such materials as are required for the said construction work as are available in the Municipality. The Municipality acknowledges that the construction and installation of a gas distribution system is a specialized construction project calling for the services of artisans and technicians with special skills and experience, and that in the performance by the Company of the covenant and agreement hereinbefore in this paragraph set out, the Company shall not be deemed to be in default in performance thereof by its employing artisans or technicians who reside elsewhere than in the Municipality for any work requiring specialized skill or experience, even although there may be

artisans or technicians residing in the Municipality and available who might be able to do such specialized work satisfactorily. In the event that the said distribution system or any part or parts thereof, or any extension or extensions thereof, are constructed or installed by any contractor or contractors to the Company, then the Company covenants and agrees that it will endeavour to procure a similar covenant on the part of such contractor or contractors that any such contractor or contractors carry out and perform the covenant and agreement hereinbefore set out in this paragraph in the same manner and to the same extent as if the Company itself were carrying out the work.

28. This Agreement shall be assignable by the Company to a subsidiary without consent of the Municipality but otherwise shall only be assignable by the Company with the consent in writing of the Municipality first had and obtained, such consent not to be unreasonably withheld. Subject to the foregoing, this Agreement shall enure to the benefit of and be binding on the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto caused their respective corporate seals to be affixed, attested to by the signatures of their officers in that behalf, the day and year first above written.

The Corporate Seal of THE
CITY OF ARMSTRONG was here-
unto affixed in the presence
of:

R.B. Shadlock - Mayor
J. Hayden - CLERK

The Corporate Seal of INLAND
NATURAL GAS CO. LTD. was here-
unto affixed in the presence
of:

[Signature]
PRESIDENT
[Signature]
VICE-PRESIDENT

OPERATING CONDITIONS

1. Definitions

- (a) The term "Village" as used herein shall mean the Village of 100 Mile House.
- (b) The term "Company" as used herein shall mean Inland Natural Gas Co. Ltd.
- (c) The term "public thoroughfare" shall mean highway, road, street, lane, alley, bridge, viaduct, subway, public place, square or park.

2. Subject as hereinafter provided, the Village hereby grants to the Company the authority, permission and right to enter in, upon and under all public thoroughfares within the boundary limits of the Village and over which the Village has control and authority for such permission and right to give, and the same to use, break up, dig, trench, open up and excavate, and therein, thereon and thereunder place, construct, lay, operate, use, maintain, renew, alter, repair, extend, relay and/or remove a distribution system which term means mains, pipes, valves and facilities for the purpose of carrying, conveying, distributing, supplying and making available for use gas within the said boundary limits of the Village as and in the manner herein set out, but excludes any transmission or main pipeline and appurtenances which are an integral part of the natural gas transmission system through the said Village.

3. Before placing, constructing or laying down the distribution system, or any part thereof, the Company shall file with the Village, or such officer or official thereof as shall be designated from time to time for such purpose by the Village,

detailed plans and specifications showing the size and dimensions of the mains and pipes thereof, the proposed depth thereof below the surface of the ground, and the proposed location thereof, and the same shall not be placed, constructed or laid down without the approval of the Village or of such designated officer or official, as the case may be, PROVIDED ALWAYS that such approval shall not be unreasonably withheld. In establishing location of mains, the Company shall endeavour to use lanes or alleys in preference to streets, where same are available and the use thereof is compatible with and conforms to the general economics and engineering of the distribution system or the relevant portion thereof; and the Company shall endeavour not to conflict with existing or planned services, pipes, conduits, ducts, mains, manholes or systems belonging to the Village.

4. The Company shall give written notice to the Village, or such officer or official thereof as shall be designated from time to time by the Village for the purposes in the next preceding clause set out, of its intention to break up, dig, trench, open up or excavate any, or in or on any public thoroughfare within the boundary limits of the Village, not less than three (3) working days before the beginning of such work, except in such cases of repair, maintenance or the like that can reasonably be deemed to be emergencies or in the interests of the health or safety of the public, or of the safety of property by whomsoever owned, or any of them, in which cases no notice need be first given but shall be given as soon as practicable thereafter. The provisions of this clause shall apply notwithstanding the provisions of the next preceding clause and the grant of the approval or approvals therein referred to.

5. Should any of the public thoroughfares under or on which any part of the distribution system of the Company lies or is constructed, be legally closed as such or alienated by the Village or by or under any other paramount authority, the Company agrees that with all reasonable speed and dispatch after receipt of written notice from the Village it will remove and (if possible or practicable) relocate that part of its distribution system so affected by such closure or alienation, the cost of such removal and/or relocation to be at the cost and expense of the Village unless such removal has been enforced upon the Village by any other paramount authority without the Village having applied therefor.

6. The Company agrees with the Village that it will create and cause as little damage as possible in the execution of the authorities, permissions and rights to it hereby granted and will use its best endeavours to cause as little obstruction or inconvenience or danger as possible during the progress of any of the work hereinbefore set out, and will place and maintain such warning signs, barricades, lights or flares on, at or near the site of any work in progress as will give reasonable warning thereof and protection therefrom to members of the public, and further agrees to restore without unreasonable delay the said public thoroughfares so broken up, dug, trenched, opened up or excavated to a state of repair or condition as nearly as possible as existed immediately before the commencement of such work, to the satisfaction of the Village's Engineer or such other persons designated by Council at the time the work is carried out.

7. The distribution system of the Company and the mains and pipes thereof shall be laid in such manner as not to interfere with any public or private sewer or any other pipe, conduit, duct, manhole or system belonging to the Village

or which shall have been previously laid down and be then subsisting in any said public thoroughfare by, or with the permission or approval of, the Village or by virtue of any charter or right granted by competent governmental or municipal authority.

8. The Company agrees with the Village that it will protect, indemnify and save harmless the Village from and against all actions, proceedings, claims and demands of any corporation, firm or person against the Village and will reimburse the Village for all damage and expenses caused to it, in respect of or by the execution by the Company of the authorities, permissions and rights hereby to it granted or by reason of the construction, maintenance or operation of the distribution system of the Company within the boundary limits of the Village, except where same are caused by or contributed to by the negligence or default of the Village of 100 Mile House, or its servants or agents.

9. The Village agrees with the Company that before it makes any additions, repairs or alterations to any of its public services within the boundary limits of the Village, and which said additions, repairs or alterations may in any way affect any part of the distribution system of the Company, or any equipment thereof, it will give to the Company at its main office within the boundary limits of the Village not less than three (3) working days notice thereof, except in such cases of repair, maintenance or the like that can reasonably be deemed to be emergencies or in the interests of the health or safety of the public, or of the safety of property by whomsoever owned, or any of them, in which case no notice need be first given but shall be given as soon as practicable thereafter. The Company shall thereupon be

entitled to appoint a representative to supervise or advise in respect to such additions, repairs or alterations and so long as the directions, instructions or advice of such representative are or is followed or complied with by the Village, the Village shall be relieved from all liability in connection with any damage done to the property of the Company by reason of such additions, repairs or alterations.

10. Subject to the next clause hereof, the Company agrees with the Village that it will supply such reasonable quantities of gas as may be required for consumption or purchase by its customers or consumers within the boundary limits of the Village subject, however, to the terms and conditions of the service agreement between the customer or consumer and the Company, PROVIDED THAT such requirements are to be supplied to places or buildings lying or being on property fronting or lying alongside a main or pipe of the distribution system of the Company. The property line of such property shall be the place of delivery of all gas supplied by the Company, but the Company shall provide and install a meter suitably located on the property to be supplied with gas. The Company shall also supply and install a service pipeline from the property line to the meter on and in accordance with the costs and terms set forth in the Company's tariff and revisions thereto as filed with and approved by the British Columbia Energy Commission, from time to time. The said meter and service pipeline shall be located and installed in a manner and at a location selected by the Company, and shall remain the property of the Company.

11. Notwithstanding anything to the contrary as set forth herein, the obligations, duties and covenants of the Company herein contained in Section 10 and on its part to be performed

and carried out are subject from time to time to (a) fire, explosion, lightning, tempest, the elements, adverse weather or climatic conditions, acts of God, force majeure, actions or acts or restraints of enemies, foreign princes, and governments (whether foreign or domestic), strikes, lockouts, riots, shortage of labour or materials, civil insurrection, delays in or shortage of transportation, impossibility or difficulty of or in manufacturing, mixing, procuring, receiving, distributing or delivering gas, or impossibility, difficulty or delay in procuring, acquiring or receiving materials or equipment required or advisable for the placing, construction, maintenance or operation of the distribution system or any pipeline or facility for bringing gas to the boundary limits of the Village, and generally all shortage of supply or delays in delivery caused or resulting directly or indirectly from causes beyond the reasonable control of the Company, and (b) the operation of the entire natural gas transmission pipelines of its supplier(s) (including gathering lines), and (c) the construction and operation of the transmission or main pipeline and appurtenances of the Company required to bring gas from such natural gas pipeline to the boundary limits of the Village.

12. Any notice, demand or request required or desired to be given or made under or in respect of this agreement shall be deemed to have been sufficiently given to or made upon the party to whom it is addressed if it is mailed at 100 Mile House, British Columbia, in a prepaid registered envelope addressed respectively as follows:

(a) If given to or made upon the Village:

The Village Clerk,
The Village of 100 Mile House,
P.O. Box 340,
100 Mile House, B.C. V0K 2E0

(b) If given to or made upon the Company:

The Corporate Secretary,
Inland Natural Gas Co. Ltd.,
23rd Floor, 1066 West Hastings Street,
Vancouver, B.C. V6E 3G3

and any notice, demand or request so given or made shall be deemed to have been received and given or made on the day after the mailing thereof.

13. Notwithstanding anything to the contrary as set forth herein, these provisions shall be subject to the provisions of the Pipelines Act, the Gas Utilities Act, the Municipal Act and the Energy Act of the Province of British Columbia and the proper authorities and powers of the British Columbia Energy Commission and anything herein shall exclude or be deemed to exclude the application of the provisions of the said Acts or any jurisdiction thereof or of the said British Columbia Energy Commission.

AGREED TO as Operating Conditions

this _____ day of _____,
1980.

THE VILLAGE OF 100 MILE HOUSE

Per: *[Signature]* Mayor.

Per: *Z. Wood*

INLAND NATURAL GAS CO. LTD.

Per: *[Signature]*

Per: *G. F. Black*

Attachment 16.2

REFER TO LIVE SPREADSHEET MODEL

Provided in electronic format only

(accessible by opening the Attachments Tab in Adobe)