



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

October 18, 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) Panel
Information Request (IR) No. 1**

On May 18, 2017, FEI filed the Application referenced above. In accordance with BCUC Order G-191-18 setting out the amended Regulatory Timetable for the review of the Application, FEI respectfully submits the attached response to BCUC Panel IR No. 1.

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

FortisBC Energy Inc. (FEI or the Company) Application for Approval of Terms for an Operating Agreement between the City of Surrey and FEI (the Application)	Submission Date: October 18, 2018
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1 **1.0 Reference: OPERATING FEE**

2 **City of Surrey's Reply Arguments to FEI, p. 9**

3 **Use and occupancy of public places by a Public Utility**

4 In the City of Surrey's Reply Argument to FEI, page 9, dated June 14, 2018, the City of
5 Surrey indicates that it disagrees with FEI's characterization of the operating fee as
6 contractual consideration and instead characterizes the operating fee as follows: "*The*
7 *operating fee can be viewed as a rent for FEI's use and occupancy of public places.*"

8 1.1 Does FEI provide compensation to any other municipality other than those with
9 which it has a franchise agreement in BC for use and occupancy of public
10 places? If so, does FEI operate under a Certificate of public convenience and
11 necessity (CPCN) in any of these instances?

12 **Response:**

13 FEI operates in approximately 165 communities throughout BC, including 105 municipalities and
14 2 First Nations with agreements that were entered into over the course of many years.

15 Municipalities without an agreement do not receive an operating fee. A majority of the
16 municipalities that have an operating agreement receive an operating fee; however, the
17 municipalities with agreements that represent the majority of FEI's business (revenues,
18 customers and volume) do not. The breakdown is as follows. The municipalities in each
19 category are listed in the Attachment 1.1.

20
21 **Table 1: Municipalities Served by FEI***

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

22 * Excludes First Nations with Operating Agreements

23
24 In the case of the 27 operating agreements with municipalities on Vancouver Island and the
25 Sunshine Coast that provide for an operating fee, collection of an operating fee is relatively new
26 (since 2013 for the Sechelt Indian Band and since 2015 for 26 other municipalities). Prior to
27 that, FEI did not pay operating fees to Vancouver Island and Sunshine Coast municipalities.
28 Ten of the Vancouver Island municipalities where operating fees are now collected did have



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1 predecessor operating agreements that provided for an operating fee; however, the collection of
2 an operating fee was prohibited by the *Vancouver Island Natural Gas Pipeline Act* until
3 amendments were made, effective January 1, 2015¹.

4 FEI has explained in response to BCUC Panel-FEI 1.1.4 how it does, from time to time and on
5 an inconsistent basis, pay individual permit fees in municipalities without an operating fee out of
6 pragmatism. A municipality's legal ability to collect such permit fees is disputed by FEI because
7 of section 121 of the UCA.

8 FEI's entire system, including the portions in municipalities, are authorized by a deemed CPCN
9 pursuant to section 45(1) of the UCA and, as a consequence, the *Gas Utilities Act*. It is only in
10 the limited instances where the BCUC has required a separate CPCN for a specific project that
11 FEI must apply for one. Otherwise, FEI has a Main Extension Test, for instance, such that the
12 Tariff allows people (in municipalities and otherwise) to request service and FEI extends service
13 to them on the terms set out in the Tariff.

14 There was a period of time during which FEI was requesting approval, and the BCUC was
15 approving, new and renewed operating agreements citing section 45, such that a material
16 portion of the agreements in place today are approved under "C" orders and framed as CPCNs.
17 In FEI's view this was in error since there was a CPCN already in place for FEI's system
18 generally (including within municipal boundaries) and no municipal franchises were required to
19 operate. A CPCN is only required for a franchise agreement (per section 45(7) to (9), "a
20 privilege, concession or franchise granted to a public utility by a municipality") and there was no
21 grant of "privilege, concession or franchise" in any of these operating agreements. FEI and the
22 BCUC have since adjusted this approach, now citing section 23(1)(g) of the UCA.

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26 1.2 Does FEI operate under the authority of a CPCN within any BC municipality or
27 regional district receiving an operating fee of 3 percent of the gross revenues for
28 that municipality or regional district?
29

30 **Response:**

31 Yes, FEI operates under the authority of a CPCN, as described in FEI's response to BCUC
32 Panel-FEI IR 1.1.1. However, we note that there are no Regional Districts that receive an
33 operating fee.

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

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1 1.3 Does FEI believe that in the absence of an operating agreement with the City of
2 Surrey, the City of Surrey would be entitled to compensation by FEI and its
3 ratepayers for use and occupancy of public places with the municipally? Please
4 explain this response.
5

6 **Response:**

7 No. There is no statutory authority requiring public utilities to pay rent or other compensation to
8 a municipality for the use and occupancy of public places, and section 121 of the UCA suggests
9 that the opposite is true. Rather, the BCUC has the ability to set terms under sections 32-33 of
10 the UCA in the event that a utility and municipality cannot agree.

11 There is no requirement in the UCA that an order under sections 32-33, regardless of whether
12 that takes the form of an approved operating agreement or a specific one-off direction, must
13 include provision for rent or compensation payable to the municipality. FEI has, therefore, been
14 approaching operating fees from the perspective of whether or not it is reasonable to agree to
15 collect one from FEI customers on behalf of a municipality given what FEI/customers are getting
16 in return under the agreement.

17 FEI has only ever paid fees to municipalities under BCUC-approved operating agreements or
18 franchise agreements. Not all municipalities have had an agreement with FEI and its
19 predecessors, and not all agreements have provided for fees.

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23 1.4 Are there any municipalities or regional districts within BC where FEI operates
24 with either i) no operating agreement or ii) an operating agreement that excludes
25 an operating fee? If so, please provide details of these jurisdictions. Also provide
26 details of any fees paid to these jurisdictions for use and/or occupancy of public
27 places within the jurisdiction.
28

29 **Response:**

30 No regional districts have operating agreements. There are municipalities where FEI operates
31 with no operating agreement, and this has always been the case. There are also municipalities
32 with an operating agreement that does not provide for an operating fee, and this has always
33 been the case. Please refer to the response to Panel-FEI IR 1.1.1 for details.

34 The operating fees, where provided, have been calculated as 3 percent of gross revenues.
35 Apart from the operating fees provided to a number of the municipalities in FEI's service area,
36 there are no blanket fees paid to any municipalities. FEI and/or its contractors do, from time to
37 time, pay individual permit fees in municipalities without an operating fee. However, that
38 practice is inconsistent because FEI takes the position that such fees are not payable by virtue

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1 of section 121 of the UCA and the approach is driven by pragmatism in order to avoid disputes
2 and complete work efficiently and in a timely manner. FEI described how this has occurred in
3 Surrey in the Application:

4 FEI and its contractors are, in many instances, having to pay the fees in order to
5 avoid disputes and complete the work efficiently and in a timely manner.²

6 FEI takes the position that it is presently not required to pay any permit fees to
7 the City. FEI has frequently not paid the fees, and typically only pays them when
8 it is expeditious to do so.³

9 A similar pragmatic approach has been taken in other municipalities that do not receive
10 operating fees.

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14 1.5 Does FEI believe that a utility operating within a municipality's jurisdiction under
15 the authority of a (CPCN) is within its rights to use and occupy public places
16 without paying compensation? Please explain in your response.

17

18 **Response:**

19 Yes, unless the BCUC orders otherwise. There is no municipal right to a fee under the UCA or
20 any other statute. Rather, the UCA gives the BCUC the discretion to set the terms for the use of
21 public spaces in municipalities. Terms could include an operating fee if the BCUC determines it
22 is appropriate to require customers to pay one to the municipality.

23 The operating agreements with an operating fee have all been approved by the BCUC. From
24 FEI's perspective, the business rationale for entering into an operating agreement is that there
25 is value to the utility and its customers in having protocols in place and avoiding disputes;
26 however, the amount of the operating fee in previous instances has generally been a product of
27 the historical context.

28 FEI's position is that an operating fee can be justified if it is reasonable in its amount. A
29 reasonable operating fee, being contractual consideration, should reflect what else FEI is
30 providing to the municipality and what FEI customers are getting in return.

² Application, p. 14

³ FEI Supplementary Evidence, p. 3. Also see the Application, p. 5 and CEC-FEI IR 1.1.2.

Attachment 1.1

List of Municipalities

Category 1	Category 2	Category 3
Municipalities served by FEI with no operating agreement	Municipalities with operating agreements that provide for an operating fee	Municipalities with operating agreements that do not provide for an operating fee
1. Anmore	1. 100 Mile House	1. Abbotsford
2. Northern Rockies	2. Armstrong	2. Belcarra
3. Richmond	3. Ashcroft	3. Burnaby
4. West Kelowna	4. Cache Creek	4. Chilliwack
5. Whistler	5. Campbell River	5. Coquitlam
	6. Castlegar	6. Delta
	7. Central Saanich	7. Esquimalt
	8. Chase	8. Harrison Hot Springs
	9. Chetwynd	9. Hope
	10. Clinton	10. Kent
	11. Coldstream	11. Langley (City)
	12. Colwood	12. Langley (District)
	13. Comox	13. Maple Ridge
	14. Courtenay	14. Mission
	15. Cranbrook	15. New Westminister
	16. Creston	16. North Vancouver (City)
	17. Cumberland	17. North Vancouver (District)
	18. Duncan	18. Oak Bay
	19. Elkford	19. Pitt Meadows
	20. Enderby	20. Port Coquitlam
	21. Fernie	21. Port Moody
	22. Fruitvale	22. Squamish
	23. Gibsons	23. Surrey
	24. Grand Forks	24. Vancouver
	25. Greenwood	25. West Vancouver
	26. Highlands	26. White Rock
	27. Hudson's Hope	
	28. Kamloops	
	29. Kelowna	
	30. Keremeos	
	31. Kimberley	
	32. Ladysmith	
	33. Lake Country	
	34. Langford	
	35. Lantzville	
	36. Logan Lake	
	37. Lumby	
	38. Mackenzie	
	39. Merritt	

List of Municipalities

Category 1	Category 2	Category 3
Municipalities served by FEI with no operating agreement	Municipalities with operating agreements that provide for an operating fee	Municipalities with operating agreements that do not provide for an operating fee
	40. Metchosin	
	41. Midway	
	42. Montrose	
	43. Nanaimo	
	44. Nelson	
	45. North Cowichan	
	46. North Saanich	
	47. Oliver	
	48. Osoyoos	
	49. Parksville	
	50. Peachland	
	51. Penticton	
	52. Port Alberni	
	53. Powell River	
	54. Prince George	
	55. Princeton	
	56. Qualicum Beach	
	57. Quesnel	
	58. Revelstoke	
	59. Rossland	
	60. Saanich	
	61. Salmo	
	62. Salmon Arm	
	63. Sechelt	
	64. Sidney	
	65. Sooke	
	66. Spallumcheen	
	67. Sparwood	
	68. Summerland	
	69. Trail	
	70. Vernon	
	71. Victoria	
	72. View Royal	
	73. Warfield	
	74. Williams Lake	