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By Electronic Filing

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

Attention: Mr. Patrick Wruck, Commission Secretary

Dear Sirs/Mesdames:

**Re: FortisBC Energy Inc. Application for Approval of Terms for an Operating Agreement with
the City of Surrey
Project No. 1598915**

We enclose for filing in the above proceeding FEI's Further Submission on Panel IRs, dated November 5, 2018.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

[Original signed by]

Matthew Ghikas
Personal Law Corporation
MTG/gvm

Enc.



BRITISH COLUMBIA UTILITIES COMMISSION
IN THE MATTER OF THE UTILITIES COMMISSION ACT (THE “ACT”)
R.S.B.C. 1996, CHAPTER 473

**Application for Approval of Terms for an Operating Agreement with
the City of Surrey**

**FortisBC Energy Inc.’s
Further Submissions on Panel IRs**

November 5, 2018

1. British Columbia Utilities Commission (BCUC) Order G-202-18 established a timetable for further submissions on the parties' respective responses to BCUC Panel information requests (IRs). This submission is thus very limited in scope. In short, the parties' responses to the Panel IRs are consistent with the evidence and submissions that were already on the record in this proceeding. Other than making the following brief points, FEI will rely on its prior submissions.

2. FEI's responses to the Panel IRs underscored the fact that Surrey's justification for an operating fee based on 3 percent of gross revenues - in essence, that other municipalities receive a fee and that the fee is "rent" - is too simplistic.

- There is no statutory authority (whether in the *Utilities Commission Act* or some other legislation) requiring public utilities to pay "rent" or other compensation to a municipality for the use and occupancy of public places.
- Rather, the BCUC has the ability to set terms under sections 32-33 of the UCA in the event that a utility and municipality cannot agree, and the terms need not include compensation.
- Despite Surrey's arguments regarding the *Community Charter* in Panel-Surrey IR 1.3, section 121 of the UCA ensures that municipalities are subject to important limits when it comes to interfering with public utility operations. Section 121 expressly refers to the *Community Charter*.
- Even in the case of franchises, section 45 of the UCA (the section under which franchises are approved) does not reference fees. In order to require franchise fees, the BCUC would first have to find that "the public convenience and interest reasonably require" a condition stipulating the payment of fees.

- FEI operates pursuant to a CPCN and the *Gas Utility Act* throughout its operating area. It does not pay, and never has paid, an operating fee in the areas representing the majority of FEI’s business.¹ This is shown in the table below:²

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%

* Excludes First Nations with Operating Agreements

3. Even if one were to view an operating fee as “rent”, then the reasonable amount of that “rent” would presumably have to bear some relationship to the value of what FEI is getting in return. Surrey is seeking to charge “rent” on a similar basis as other municipalities while giving less to FEI in return relative to those other municipalities. Notably, other municipalities receiving a 3 percent operating fee agreed to be responsible for all relocation costs.

4. In short, any operating fees would be paid by utility customers, and the amount should be fair to them. The evidence suggests that - regardless of how an operating fee is characterized - the rote application of the 3 percent methodology used for municipalities representing a minority of FEI’s overall business would lead to an imbalanced and unreasonable result in the case of Surrey.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: November 5, 2018

[original signed by Matthew Ghikas]

Matthew Ghikas
FASKEN MARTINEAU DUMOULIN LLP
Counsel for FortisBC Energy Inc.

¹ Exhibit B1-17, BCUC Panel IR 1.1.

² Exhibit B1-17, BCUC Panel IR 1.1.