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November 19, 2018  
File No.: 240148.00841/14797

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## By Electronic Filing

British Columbia Utilities Commission  
Sixth Floor, 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 FortisBC Energy Inc.'s Reply to City of Surrey's November 5, 2018 Submissions on Panel IRs, dated November 19, 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**

**Reply to City of Surrey’s November 5, 2018 Submissions on Panel IRs**

**November 19, 2018**

1. The submissions of interveners on Panel IRs generally support FEI's position, and there is little in the way of new arguments in Surrey's November 5, 2018 Submissions ("Surrey's Submission on Panel IRs"). As such, FEI's submissions below are limited to making four points in response to specific aspects of Surrey's Submissions on Panel IRs. FEI's prior submissions otherwise provide a full response to Surrey's position.

**A. THE COMMUNITY CHARTER IS ONE OF THE ACTS THAT S.121 REFERENCES**

2. The first two sections of Surrey's Submission on Panel IRs (paragraphs 7-24) point out powers of municipalities under the *Community Charter*, and describe FEI's rights with reference to sections of the UCA and the *Gas Utility Act*. Section 121 of the UCA<sup>1</sup> is not mentioned in that context, but is a part of that framework as well. The *Community Charter* is one of the acts referenced in s.121 of the UCA.

**B. SECTION 32 OF THE UCA APPLIES TO LOW AND HIGH PRESSURE PIPELINES**

3. In paragraph 24 of Surrey's Submission on Panel IRs, the City appears to suggest that the BCUC's jurisdiction under section 32 (or section 33 or 36, as applicable) only applies "in the case of low-pressure natural gas distribution equipment". This is incorrect. The Commission's jurisdiction under these sections extends to both low pressure and high pressure equipment.

4. Section 32 is triggered when a public utility "has the right to enter a municipality to place its distribution equipment on, along, across, over or under a public street, lane, square, park, public place, bridge, viaduct, subway or watercourse". The term "distribution equipment" is a defined term in the UCA. It is defined as including both distribution and transmission mains, the latter of which operate at higher pressures:

"distribution equipment" means posts, pipes, wires, transmission mains, distribution mains and other apparatus of a public utility used to supply service to the utility customers;

**C. THE BCUC OWES NO DEFERENCE TO CITY DECISIONS**

5. In paragraphs 26 to 27, Surrey offers a interpretation of section 32 of the UCA that would require the BCUC to pay deference to Surrey's decisions: "the BCUC should give

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<sup>1</sup> 121 (1) Nothing in or done under the *Community Charter* or the *Local Government Act*

(a) supersedes or impairs a power conferred on the commission or an authorization granted to a public utility, or

(b) relieves a person of an obligation imposed under this Act or the *Gas Utility Act*.

deference to the municipal Council's judgment because the elected Council is itself responsible to make decisions that support the public interest." The City would limit the BCUC's role to overriding City's conditions or requirements that:

- are "excessive",
- are "unreasonable", or
- "effectively prevent" FEI from placing, constructing, operating and maintaining its infrastructure.

There is nothing in the UCA that would support the City's claim that municipal councils are owed deference by the BCUC, nor is there any reasonable basis to infer an obligation on the BCUC to pay deference to a municipal council.

6. In direct contrast to the City's argument for deference, section 121 places the BCUC's powers and authorizations granted to a public utility in priority over actions taken by municipalities pursuant to the key municipal statutes. As discussed in FEI's May 31, 2018 Final Submission (see paragraph 68), the precursor to section 121 was introduced following a Supreme Court of Canada decision in which the Court had underscored the BCUC's ability to consider a broader range of interests than municipalities when it comes to utility infrastructure:

The whole tenor of the Act [i.e. the precursor to the UCA] shows clearly that the safeguarding of the interests of the public, both as to the identity of those who should be permitted to operate public utilities and as to the manner in which they should operate, was a duty vested in the Commission. It is quite impossible, in my opinion, to hold that these powers and those which might be asserted by a municipality to regulate the operations of such companies under s.58, cls. 55 and 109, were intended to co-exist. [...]

In discharging its important duties under the Public Utilities Act the Commission is required to consider the interests not merely of single municipalities but of districts as a whole and areas including many municipalities. The duty of safeguarding the interests of the municipalities and their inhabitants, to the extent that they may be affected by the operations of public utilities, has by these statutes been transferred from municipal councils to the Public Utilities Commission, subject, inter alia, to the right of municipalities of insuring a supply of gas by municipal enterprise of the nature referred to in the reasons delivered by the Chairman of the Public Utilities Commission [i.e., a municipal utility]. This

right the Commission was careful to preserve.<sup>2</sup> [Emphasis and parenthetical added.]

The BCUC's ability to carry out that broader public interest mandate would be impeded by paying deference to a municipal council's decision.

**D. FEI'S ANSWERS TO PANEL IR'S ARE COMPLETE AND FACTUAL**

7. The City suggests that FEI's "commentary" in BCUC Panel IR 1.1 "about its operations in communities outside of municipalities" is "incomplete and potentially misleading because the concept of an operating agreement and operating fee is only applicable to FEI's use of highways and public places owned and controlled by municipalities...".<sup>3</sup> FEI submits that this characterization is wrong. The sum total of FEI's "commentary" is a single passing reference to the fact that FEI serves 165 communities throughout BC; FEI's response is otherwise only talking about municipalities. The table that is the focus of the IR response addresses only municipalities, and clearly breaks out how many municipalities have agreements and how many do not (as well as the percentage of customers, volume and revenues represented by each of these groups). In short, FEI's response was a complete and straightforward response to the questions posed in Panel IR 1.1.

8. The City then says that FEI's responses to BCUC Panel IRs 1.2 and 1.4 are "incomplete and potentially misleading" because FEI stated that FEI has no operating agreements and provides no operating fees to regional districts.<sup>4</sup> The only reason FEI referred to regional districts in its responses to these IRs at all was because ***both of the BCUC's questions had specifically asked about FEI's operating agreements with regional districts.*** Here is the question and response to Panel IR 1.2 for ease of reference, with the Panel's reference to regional districts underlined and bolded for emphasis:

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

Response:

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

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<sup>2</sup> Surrey, paras. 15, 17

<sup>3</sup> Surrey Panel IR Submission, November 5, 2018, para. 33.

<sup>4</sup> Surrey Panel IR Submission, November 5, 2018, para. 35.

Panel IR 1.4 similarly asked FEI about regional districts, and FEI corrected the incorrect premise in the question in a similar fashion to its response to Panel IR 1.4.<sup>5</sup> In other words, by referencing regional districts in the responses to these two IRs, FEI ensured that it provided complete and accurate responses.

**E. CONCLUSION**

9. The other aspects of Surrey's November 5, 2018 Submission have been adequately covered off by FEI's other submissions.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated:

November 19, 2018

*[original signed by Matthew Ghikas]*

Matthew Ghikas

FASKEN MARTINEAU DUMOULIN LLP

Counsel for FortisBC Energy Inc.

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<sup>5</sup> The relevant part of the question in Panel IR 1.4 stated: "Are there any municipalities **or regional districts** within BC where FEI operates with either i) no operating agreement or ii) an operating agreement that excludes an operating fee?" The relevant part of FEI's answer thus stated: "No regional districts have operating agreements. There are municipalities where FEI operates with no operating agreement, and this has always been the case."