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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 19, 2018 Submissions on Panel IRs, dated November 26, 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 19, 2018 Submissions on Panel IRs**

**November 26, 2018**

1. Surrey's November 19, 2018 submission states "In paragraph 3 of the FEI Submissions, FEI concedes that the operating fee can reasonably be viewed as rent for the use of highways and other public places owned and controlled by the municipality...". That is an inaccurate characterization of FEI's submission.

- FEI's paragraph 3 started with "Even if one were to view an operating fee as "rent"...". FEI respectfully submits that when a paragraph starts with "Even if one were to", it should be abundantly clear that counsel was pointing out that Surrey's argument was flawed even if one were to accept, for the sake of argument alone, the premise that an operating fee is "rent".
- The meaning of "even if one were to" should be even clearer when the immediately preceding paragraph of FEI's submission (paragraph 2) had called Surrey's "rent" argument "too simplistic", and had noted that "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."
- FEI had also made clear in prior submissions that it regarded as inapt Surrey's characterization of the operating fee as "rent".<sup>1</sup>

2. Surrey argues in paragraphs 6 to 8 that "the disparity in gas line relocation costs as between the City of Surrey and other municipalities...is the opposite of what FEI suggests it is" by virtue of the fact that fewer relocations occur in other municipalities. FEI's point was that, whereas other municipalities receiving a 3% operating fee have agreed to pay the full cost of relocation, Surrey wants both the the full operating fee and full reimbursement for relocation costs in most cases. The fact that small municipalities have fewer relocations than Surrey isn't an answer to FEI's point because the limited gas consumption in small municipalities also means that a small municipality receives a small total operating fee (in dollars).<sup>2</sup> There is some proportionality between what FEI/FEI customers and the municipality

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<sup>1</sup> See FEI's June 28, 2018 Further Reply to Surrey, para. 22.

<sup>2</sup> See May 31, 2018 FEI Final Submissions, para. 83. The Village of Keremeos, for which the template Keremeos Agreement was approved, had a population of 548 in 2016, and received a fee of \$10,955. Other municipalities with operating agreements are even smaller than Keremeos. Sixty percent of the municipalities that receive

are each receiving under such an operating agreement. By contrast, the same fee formula applied to Surrey's urban volumes yields a very large annual operating fee - one that is 1,000 times larger than the smallest operating fee collected in 2016.<sup>3</sup> Allowing Surrey to require FEI customers to pay for all relocation costs in most cases, on top of paying a large total operating fee, would confer a windfall at the expense of FEI customers.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated:

November 26, 2018

*[original signed by Matthew Ghikas]*

Matthew Ghikas

FASKEN MARTINEAU DUMOULIN LLP

Counsel for FortisBC Energy Inc.

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fees have fewer than 10,000 people. Over half of the municipalities that received Operating Fees in 2016 (40 of 75) received \$50 thousand or less. In all such cases, the Operating Fee is sufficiently small that the difference between using the 3% of gross revenues formula and another formula is relatively modest in absolute terms.

<sup>3</sup> See May 31, 2018 FEI Final Submissions, para. 84.