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January 28, 2019

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. 1598974**

**Application for Approval of an Operating Agreement between the City of Kelowna and FEI (the Application)**

**Response to the British Columbia Utilities Commission (BCUC) Panel Information Request (IR) No. 1**

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On January 10, 2019, FEI filed its responses to BCUC IR No. 1. On January 22, 2019, BCUC staff responded by Email with BCUC Panel IR No. 1.

FEI respectfully submits the attached response to BCUC Panel IR No. 1.

If further information is required, please contact Ilva Bevacqua, Manager of Regulatory Compliance and Administration at (604) 592-7664.

Sincerely,

**FORTISBC ENERGY INC.**

***Original signed:***

Doug Slater

Attachments



FortisBC Energy Inc. (FEI or the Company) Application for Approval of an Operating Agreement between the City of Kelowna (Kelowna) and FEI (the Application)	Submission Date: January 28, 2019
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1   **1.0   Reference:   OPERATING AGREEMENT**

2                           **Exhibit B-1, Appendix A, p. 12**

3                           **BCUC decision or provincial legislation**

4           Section 11.3 of the FEI-City of Kelowna Operating Agreement (Agreement) states as  
5           follows:

6                           In the event that a decision by the BCUC [British Columbia Utilities Commission],  
7                           other than periodic rate changes as a result of commodity, delivery or margin  
8                           increases or decreases, or new legislation by the Provincial Government,  
9                           impacts the operating fee being paid to the Municipality [City of Kelowna]so as to  
10                          increase it or decrease it by more than 5% annually at the time of the decision or  
11                          in subsequent years, the parties shall negotiate a new operating fee formula  
12                          which best reflects the revenue stream received by the Municipality under this  
13                          Agreement. For greater certainty, the parties acknowledge that a change to the  
14                          BCUC's decision that FortisBC shall provide the agency billing and collections  
15                          service for marketers on a mandatory basis, as set out in the "Business Rules for  
16                          Commodity Unbundling dated June 5, 2003 as set out in Appendix A to Letter  
17                          No. L-25-03, may impact the operating fee being paid to the Municipality.

18           1.1   Please explain the purpose and meaning of this section, including examples of  
19           BCUC decisions that could invoke this section.

20  
21   **Response:**

22   Section 11.3 was added to the operating agreement terms as part of the negotiations with the  
23   Union of British Columbia Municipalities (UBCM) leading up to the 2006 proceeding resulting in  
24   acceptance of 10 new operating agreements with Interior Municipalities (BCUC Orders C-7-06  
25   through C-16-06) which formed the basis for the Keremeos Agreement terms.

26   It was necessary to add Section 11.3 to address concerns from the municipalities about the  
27   possibility of changing revenue as a result of a BCUC decision requiring implementation of  
28   residential unbundling. Below is an extract from the response to BCUC IR 1.1.2 from the 2006  
29   proceeding which discussed why Section 11.3 was added:

30                          Commission Order No. C-7-03 directed Terasen Gas to “seek” a method to  
31                          convert the fee to a charge on Utility Margin. In addition, municipalities also  
32                          wanted to review the franchise fees because they were concerned that as a  
33                          result of potential implementation of Commodity Unbundling, they could lose  
34                          revenue if Terasen Gas no longer supplied and billed for commodity; as occurred  
35                          when transport customers first received service under Terasen Gas tariff rates.  
36                          However, since Order No. C-7-03 was issued; Terasen Gas has implemented



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1 commodity unbundling for commercial customers. As part of the Essential  
2 Service Model of commodity unbundling, Terasen Gas is to perform the billing  
3 function for the marketers. As such, municipalities did not see a reduction in  
4 franchise fee revenue because of commercial unbundling. Terasen Gas is  
5 exploring the possibility of implementing unbundling for Residential Customers.  
6 This is expected to be done under the Essential Services Model and will  
7 therefore have no impact on municipal revenue based on the current franchise  
8 fees. However, Section 11.3 was added to the operating agreements, contained  
9 within the application, to address the possibility of municipalities' revenue  
10 changing as a result of residential unbundling. This clause compels Terasen Gas  
11 to implement a new franchise fee that replicates the revenue received under the  
12 current franchise fee model if franchise revenue were to change as a result of  
13 commodity unbundling or any other such change.

14 As such, section 11.3 was intended to apply to changes in the inputs or variables upon which  
15 the 3 percent gross revenues-based operating fee is calculated that might result from changes  
16 in the way FEI is directed to account for revenues. Apart from the circumstances that led to the  
17 inclusion of the clause in 2006, we cannot currently think of an instance where the inputs would  
18 change in this manner.

19 As section 11.3 is focussed on formula inputs, it could remain in place regardless of whether the  
20 BCUC intended to approve the proposed 3 percent gross revenues operating fee, or approve  
21 some other calculation approach at this time. Once a methodology is approved as part of the  
22 operating agreement, however, the formula would remain in place for the approved agreement  
23 term unless, for instance, changes to the inputs were to cause the dollar outcome to differ by  
24 more than 5 percent (in which case section 11.3 is triggered) or the agreement were to be  
25 terminated for a reason permitted under the agreement.

26  
27

28

29 1.1.1 Please confirm, or otherwise explain, whether the City of Kelowna is in  
30 agreement with FortisBC Energy Inc.'s (FEI) interpretation of this  
31 section and the examples given in FEI's response to this information  
32 request.

33

34 **Response:**

35 While FEI has not specifically discussed this point with Kelowna, Kelowna was involved in the  
36 2006 proceeding where the Section 11.3 was included and discussed as noted in the response  
37 to BCUC IR 1.1.1.

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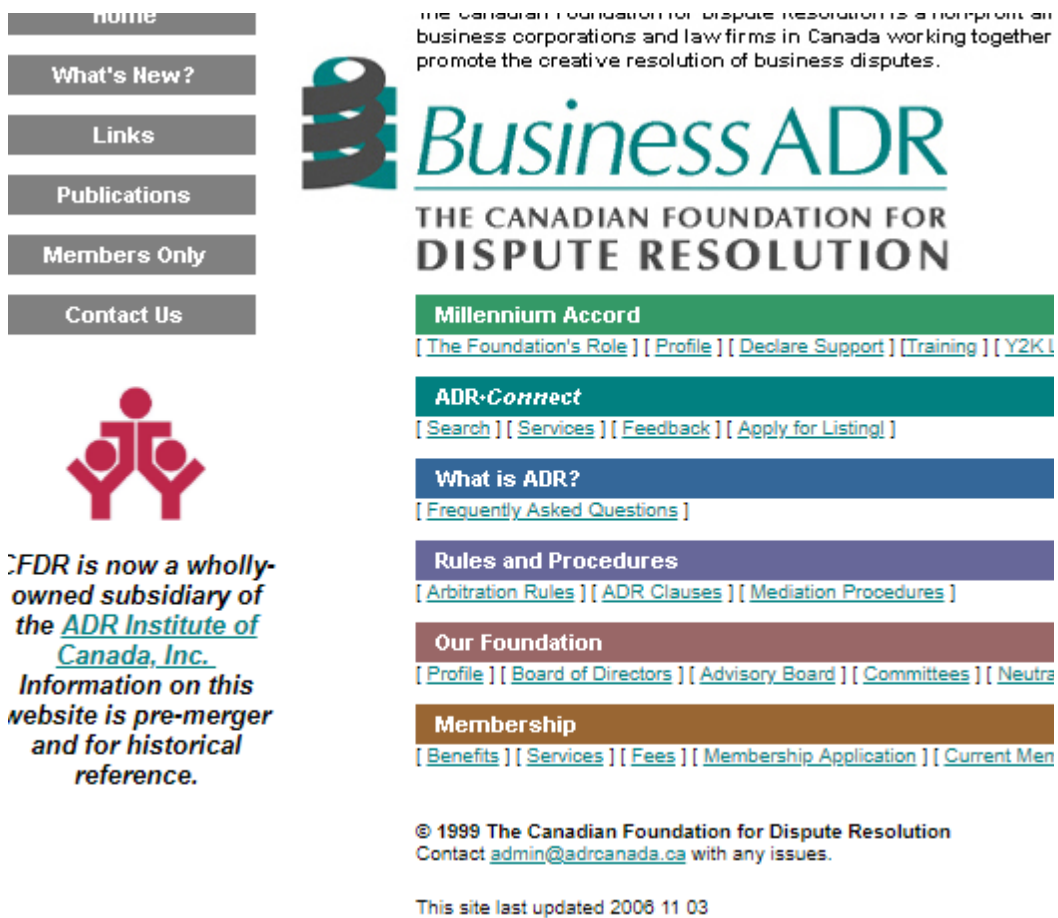
1    **2.0    Reference:    OPERATING AGREEMENT**

2                                    **Exhibit B-1, Appendix A, p. 19–20**

3                                    **Dispute resolution Section 17**

4                                    Section 17 of the proposed Agreement provides for dispute resolution by mediation and  
 5                                    arbitration to be referred to the Canadian Foundation for Dispute Resolution (CFDR).

6                                    Provided below is a screenshot of CFDR’s website ([www.cfdrr.org](http://www.cfdrr.org)), indicating the CFDR  
 7                                    is now a wholly owned subsidiary of the Alternative Dispute Resolution Institute of  
 8                                    Canada (ADRIC).



The Canadian Foundation for Dispute Resolution is a nonprofit organization with business corporations and law firms in Canada working together to promote the creative resolution of business disputes.

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This site last updated 2006 11 03

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11                                    2.1    Please explain the rationale for FEI continuing to refer the resolution of disputes  
 12                                    to the CFDR in Sections 17.1 and 17.2 of the proposed operating agreement.

13

14    **Response:**

15    Please refer to the response to BCUC Panel IR 1.2.2.

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2.2 Has FEI considered updating Section 17 to provide, *inter alia*, that disputes be referred to ADRIIC for resolution by mediation and/or arbitration pursuant to its rules of procedure?

**Response:**

The reference to the CFDR is an anachronism that the parties had overlooked. Ideally, the agreement should be changed to reference the successor organization, and FEI would be open to the BCUC making that direction. The clauses would read:

17.1 Mediation

Where any dispute arises out of or in connection with this Agreement, including failure of the parties to reach agreement on any matter arising in connection with this Agreement, the parties agree the dispute shall be mediated pursuant to the National Mediation Rules of the ADR Institute of Canada, Inc. ~~to try to resolve the dispute by participating in a structured mediation conference with a mediator under the Rules of Procedure for Commercial Mediation of The Canadian Foundation for Dispute Resolution.~~

17.2 Referral to the BCUC or Arbitration

If the parties fail to resolve the dispute through mediation, the unresolved dispute shall be referred to the BCUC if within its jurisdiction. If the matter is not within the jurisdiction of the BCUC, such unresolved dispute shall be referred to, and finally resolved by arbitration under the Arbitration Rules of the ADR Institute of Canada, Inc. ~~or determined by arbitration under the Rules of Procedure for Commercial Arbitration of The Canadian Foundation for Dispute Resolution.~~ Unless the parties agree otherwise the arbitration will be conducted by a single arbitrator.

Clause 17.3 includes reference to the *Commercial Arbitration Act*, which has been replaced by the *Arbitration Act*. That could also be changed as a housekeeping matter, although it is not strictly necessary. There is a provision in the *Arbitration Act* that provides “2(3) If an arbitration agreement contains a reference to ... the Commercial Arbitration Act, R.S.B.C. 1996, c. 55, that reference is deemed to be a reference to this Act.”