



Doug Slater
Director, 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: (778) 578-3874
Cell: (778) 214-3842
Fax: (604) 576-7074
Email: doug.slater@fortisbc.com
www.fortisbc.com

February 6, 2019

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

Attention: Mr. Patrick Wruck, Commission Secretary and Manager, Regulatory Support

Dear Mr. Wruck:

Re: FortisBC Energy Inc. (FEI)

Application for Approval of an Operating Agreement between the Corporation of the City of Kamloops (Kamloops or the City) and FEI (the Application)

FEI and Kamloops have entered into a new Operating Agreement dated January 17, 2019 (the FEI-Kamloops Operating Agreement), for which FEI is requesting approval from the British Columbia Utilities Commission (BCUC), on an interim and permanent basis, pursuant to section 23(1)(g) and section 89 of the *Utilities Commission Act* (UCA). A copy of the executed FEI-Kamloops Operating Agreement is provided in Appendix A.

There is some urgency to the request for an interim order, as the existing Franchise Agreement expires on February 14, 2019.

Kamloops is an Interior Municipality with an Expiring Franchise Agreement

FEI (through predecessor companies Inland Natural Gas Co. Ltd. and BC Gas Utility Ltd.) and the City entered into a Franchise Agreement (approved by BCUC Order C-14-80), which expired on February 14, 1998. Subsequently, FEI and the City entered into a Franchise Agreement dated February 25, 1998, which was approved by BCUC Order C-7-98. The term of this agreement expires on February 14, 2019. A copy of the expiring Franchise Agreement is attached as Appendix B.

FEI commenced discussions with the City of Kamloops regarding a new operating agreement in December 2018, using the approved terms of the Village of Keremeos Operating Agreement¹ (the Keremeos Terms) as the starting point in accordance with BCUC Order C-7-14. FEI adopted this approach for the same reasons as outlined in FEI's

¹ Order C-8-14, dated July 24, 2014, approved the Village of Keremeos terms to be the basis for comparison in future operating agreement applications.

response to BCUC IR 1.1.1 of the FEI Application for Approval of an Operating Agreement between the City of Kelowna and FEI (the FEI-City of Kelowna Operating Agreement Application). A copy of that response is attached as Appendix C.

Negotiations completed only recently, culminating in the execution of an operating agreement that can be used on an interim basis pending the BCUC's final approval. As discussed below, the parties are contemplating that the final agreement may differ.

FEI and Kamloops Have Agreed to Adopt the Terms Ultimately Approved for Kelowna

The proposed FEI-Kamloops Operating Agreement is consistent with the Keremeos Terms. The only changes in the FEI-Kamloops Operating Agreement as compared to the Keremeos Terms are to make four very minor corrections: three of which are to make typographical corrections to reflect the original intent or make dates more current, and a final one to update the reference to other applicable legislation. The following details these four changes:

1. **Section 6.2**, third line, capitalization of utilities:
 - "...the Municipality's utilities..." now reads "...the Municipality's Utilities..."
2. **Section 6.4.1**, last line of the second paragraph, replacing "or" with "of":
 - "...non-use and want or repair." now reads "...non-use and want of repair."
3. **Section 11.2**, last two lines of the paragraph, to update the years in the example to be more current:
 - "...on March 1, 2014 will be the amount received during the 2013 calendar year." now reads "...on March 1, 2018 will be the amount received during the 2017 calendar year..."
4. **Section 13.1.3**, line 4, update to current legislation
 - "...*Gas Safety Act*,..." with "...*Safety Standards Act*,..."

The City and FEI were cognizant of the FEI-City of Kelowna Operating Agreement Application. Kamloops requested that their form of operating agreement be the same as that which the BCUC determines on a permanent basis for Kelowna. A copy of an email dated February 5, 2019 from the City confirming this request is attached as Appendix D. FEI agreed to that request, given the high degree of similarity between Kamloops and Kelowna. Notably, they are the two largest interior municipalities with pre-existing agreements that contemplate an operating fee. Both municipalities were prepared to accept the general "puts and takes" inherent in the Keremeos Terms. We regard the protocols and processes in the Keremeos Terms as workable in the case of both municipalities.

Order Sought

Given the existing Franchise Agreement expires on February 14, 2019, FEI requests approval from the BCUC, pursuant to section 23(1)(g) and section 89 of the UCA, of the executed FEI-City of Kamloops Operating Agreement on an interim basis effective February 15, 2019 until a final determination is made. This is, in essence, the same interim order that

was granted by the BCUC in Order G-206-18 in the Kelowna Operating Agreement Application proceeding.

FEI respectfully requests that the BCUC direct the final form of the FEI-City of Kamloops Operating Agreement after it has decided the Kelowna Operating Agreement Application. Consistent with the intent of the parties, the BCUC's final order in this Application would specify that the FEI-City of Kamloops Operating Agreement shall be the same as the agreement that the BCUC ultimately approves for the City of Kelowna.

A draft Interim Order is included in Appendix E.

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

cc (email only): City of Kamloops

Appendix A

**FEI – CITY OF KAMLOOPS OPERATING AGREEMENT
DATED JAN 17, 2019**

OPERATING AGREEMENT

THIS OPERATING AGREEMENT (the "Agreement") made this 17th day of January, 2019.

BETWEEN:

THE CORPORATION OF THE CITY OF KAMLOOPS, a municipal corporation incorporated under the laws of the Province of British Columbia

(hereinafter called the "**Municipality**")

OF THE FIRST PART

AND:

FORTISBC ENERGY INC., a body corporate duly incorporated under the laws of the Province of British Columbia, formerly known as Terasen Gas Inc., and having its registered office in the City of Vancouver, in the Province of British Columbia

(hereinafter called "**FortisBC**")

OF THE SECOND PART

RECITALS:

- A. Whereas by a certificate of public convenience and necessity (CPCN), FortisBC was granted the right to construct and operate gas distribution facilities within the Municipality;
- B. And whereas pursuant to the Community Charter, S.B.C. 2003, a Municipal council may, by resolution adopt and enter into a licensing and operating agreement;
- C. And whereas FortisBC and the Municipality are the parties to a Franchise or Operating Agreement dated the 25th day of February, 1998, which will expire on February 14, 2019;
- D. And whereas FortisBC and the Municipality wish to enter into this Agreement to clarify and settle the terms and conditions under which FortisBC shall exercise its rights to use Public Places in conducting its business of distributing Gas within the Municipality.

NOW THEREFORE THIS AGREEMENT WITNESSES that the parties covenant and agree as follows:

1. DEFINITIONS

For the purposes of this Agreement:

- (a) “Boundary Limits” means the boundary limits of the Municipality as they exist from time to time and that determine the area over which the Municipality has control and authority;
- (b) “BCUC” means the British Columbia Utilities Commission or successor having regulatory jurisdiction over natural gas distribution utilities in British Columbia;
- (c) “CPCN” means a Certificate of Public Convenience and Necessity granted by the BCUC which allows FortisBC to operate, maintain and install Company Facilities for the distribution of Gas within the Municipality;
- (d) “Company Facilities” means FortisBC’s facilities, including pipes, buildings, structures, valves, signage, storage facilities, machinery, vehicles and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution and transmission system;
- (e) “Distribution Pipelines” means pipelines operating at a pressure less than 2071 kilopascals (300 psi);
- (f) “FortisBC Employees” means personnel employed by or engaged by FortisBC including officers, employees, directors, contractors, and agents;
- (g) “Gas” means natural gas, propane, methane, synthetic gas, liquefied petroleum in a gaseous form or any mixture thereof;
- (h) “Gas Distribution” means fixed equipment, structures, plastic and metal lines and pipe, valves, fittings, appliances and related facilities used or intended for the purpose of conveying, testing, monitoring, distributing, mixing, storing, measuring and delivering Gas and making it available for use within the Municipality;
- (i) “Highway” means street, road, lane, bridge or viaduct controlled by the Municipality or Provincial Government of British Columbia;
- (j) “Mains” means pipes used by FortisBC to carry gas for general or collective use for the purposes of Gas Distribution;
- (k) “Municipal Employees” means personnel employed by or engaged by the municipality, including officers, employees, directors, contractors and agents;

- (l) “Municipal Facilities” means any facilities, including highways, sidewalks, conduits, manholes, equipment, machinery, pipes, wires, valves, buildings, structures, signage, bridges, viaducts and other equipment within the Public Places used by the Municipality for the purposes of its public works or municipal operations;
- (m) “Municipal Supervisor” means the Municipal Engineer or other such person designated by the Municipality to receive notices and issue approval as set out in this Agreement;
- (n) “New Work” means any installation, construction, repair, maintenance, alteration, extension or removal work of the Company Facilities in Public Places except;
 - (i) routine maintenance and repair of the Company Facilities that does not involve any cutting of asphalted road surface;
 - (ii) installation or repair of Service Lines whether or not such installation or repair involves cutting of asphalted road surface; or
 - (iii) emergency work;but notwithstanding such exceptions, New Work shall include any installation, construction or removal of the Company Facilities in Public Places that are planned to disturb underground Municipal Facilities;
- (o) “Pipeline Markers” means post, signage or any similar means of identification used to show the general location of Transmission Pipelines and distribution pipelines or FortisBC Rights of Way;
- (p) “Planned Facilities” means those facilities not yet constructed but which have been identified by way of documented plans for the works of the Municipality, for works of third parties, where such works are identified by documented plans approved by the Municipality, or for works of FortisBC submitted to the Municipality subject to Municipal approval;
- (q) “Public Places” means any public thoroughfare, highway, road, street, lane, alley, trail, square, park, bridge, right of way, viaduct, subway, watercourse or other public place in the Municipality;
- (r) “Service Line” means that portion of FortisBC’s gas distribution system extending from a Main to the inlet of a meter set and, for the purposes of this Agreement, includes a service header and service stubs;
- (s) “Transmission Pipeline” means a pipeline of FortisBC having an operating pressure in excess of 2071 kilopascals (300 psi); and
- (t) “Utilities” means the facilities or operations of any water, waste water, sewer, telecommunications, energy, cable service or similar service provider located in Public Places within the Municipality.

2. INTERPRETATION

For the purposes of interpreting this Agreement:

- (a) the headings are for convenience only and are not intended as a guide to interpretation of this Agreement;
- (b) words in the singular include the plural, words importing a corporate entity include individuals, and vice versa;
- (c) in calculating time where the agreement refers to “at least” or “not less than” a number of days, weeks, months or years, the first and last days must be excluded and where the agreement refers to “at least” or “not less than” a number of days, Saturdays, Sundays and holidays must be excluded;
- (d) the word “including”, when following any general term or statement, is not to be construed as limiting the general term or statement to the specific items or matters, but rather as permitting the general term or statement to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general term or statement.

3. OBLIGATION TO ACT IN GOOD FAITH

FortisBC and the Municipality acknowledge and agree that they will act in good faith, in carrying out the terms and conditions of this Agreement and within reasonable time frames, carry out the obligations under this Agreement.

FortisBC and the Municipality will at all times carry out all work and operations with the due care and attention that is necessary to safeguard the interests of the public, their own employees, and the other party’s employees.

4. FORTISBC RIGHTS TO ACCESS & USE PUBLIC PLACES

The Municipality hereby acknowledges FortisBC’s rights to:

- (a) develop, construct, install, maintain or remove Company Facilities on, over, in and under Public Places in the Municipality;
- (b) enter on Public Places from time to time as may be reasonably necessary for the purpose of maintaining, repairing, or operating the Company’s Facilities;
- (c) place pipeline identification markers within Public Places where a Transmission Pipeline or Distribution Pipeline crosses or is otherwise within a Public Place;

subject to terms and conditions defined in this Agreement.

5. FORTISBC COMPLIANCE WITH STANDARDS FOR USE OF PUBLIC PLACES

5.1 Non-discriminatory Standards for FortisBC

In its use of Public Places, FortisBC shall comply with all Federal and Provincial laws, regulations and codes and shall comply with all Municipal bylaws, standards and policies except that FortisBC shall not have to comply with such Municipal bylaws, standards and policies that:

- (a) conflict with terms of this Agreement or limit any rights or concessions granted to FortisBC by the Municipality under this Agreement; or
- (b) conflict with other legislation governing FortisBC.

Further, where the Municipality has established requirements and standards for work in Public Places, the Municipality shall apply them in a fair, reasonable and non-discriminatory manner consistent with the manner that the Municipality establishes requirements on other Utilities.

5.2 Provide emergency contacts.

FortisBC will provide the Municipality with a 24 hour emergency contact number which the Municipality will use to notify FortisBC of emergencies including; gas leaks, third party accidents around work sites, ruptures of gas lines, and other potentially hazardous situations.

5.3 Assist with facility locates

FortisBC will, at no cost to the Municipality, provide locations of its Company Facilities within a time frame as may be reasonably requested by the Municipality unless the reason for the request is the result of an emergency; in which case the information shall be provided forthwith. FortisBC shall provide gas locations from FortisBC records. FortisBC shall perform on site facility locates in accordance with the *Safety Standards Act – Gas Safety Regulations Section 39*.

6. FORTISBC WORK OBLIGATIONS:

6.1 Notices - General Requirements

6.1.1. Notice for New Work

For New Work, FortisBC shall give notice to the Municipality or such officer or official thereof who has been designated from time to time by the Municipality that it intends to perform such New Work. The Notice shall include:

- (a) a plan and specifications showing the proposed location and dimensions of the New Work;

- (b) FortisBC's plans for the restoration of the Public Place affected by the New Work if FortisBC's restoration plans are different from those set out in Section 6.4.2 of this Agreement;
- (c) the name of a FortisBC representative who may be contacted for more information;
- (d) projected commencement and completion dates; and
- (e) such other information relevant to the New Work as the Municipality may reasonably request from time to time.

6.1.2. Exception for Emergency

Where FortisBC is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Company Facilities, FortisBC shall not be required to give prior notice but shall do so as soon as possible thereafter.

6.1.3. Municipal Approval for New Work

The Municipality may object to the New Work on the following grounds:

- (a) the proposed location of the New Work conflicts with existing Municipal Facilities, existing third party facilities or Planned Facilities; or
- (b) the proposed location or design of the New Work is likely to compromise public safety or does not conform with Municipal bylaws, standards or policies; or
- (c) in instances where FortisBC can delay the New Work without compromising the supply, capacity or safety of its Gas Distribution System or its customers' need for gas service and the Municipality intends within the next 3 months to undertake work in the same location and wishes to co-ordinate both work;

by providing FortisBC with notice of its objections, provided such objections are reasonable, no more than 10 days after receiving FortisBC's notice of New Work. If the Municipality has not provided such notice of its objections to FortisBC, or in the case of large and complex New Work, the Municipality has not provided FortisBC with a notice to extend the time to reply to FortisBC until a stated time, the Municipality shall be deemed to have granted its approval of the New Work. The Municipality shall not otherwise withhold or delay its approval.

In addition, the Municipality may request FortisBC to provide the public with notice of the New Work.

6.1.4. Work Not to Proceed

If the Municipality has notified FortisBC of its objections or has requested a time extension, no more than 10 days after receiving FortisBC's notice of New Work, FortisBC shall not proceed with the New Work until FortisBC and the Municipality have agreed upon a resolution to the Municipality's objections. If the Municipality and FortisBC are unable to agree, then the matter shall be resolved in accordance with Section 17 (Resolution of Disputes).

6.2 Notice of Service Lines

FortisBC shall provide the Municipality with notice of its intent to install, remove or repair Service Lines no less than three (3) days prior to commencement of such work. FortisBC's request for the location of the Municipality's Utilities shall be deemed to be a notice of FortisBC's intent to install, remove or repair Service Lines. The Municipality may object to such work on the same grounds as set out in Subsection 6.1.3 (a) and (b) above by providing FortisBC with notice of its objections within two (2) days of receiving FortisBC's notice. If the Municipality has not provided such notice of its objections to FortisBC, the Municipality shall be deemed to have granted its approval of the installation, removal or repair of the Service Lines. The Municipality shall not otherwise withhold or delay its approval.

6.3 FortisBC to Obtain Locate Information

Prior to conducting any New Work, FortisBC shall locate other Utilities and satisfy itself that it is clear to proceed.

6.4 Work Standards

All work carried out by FortisBC shall be carried out in accordance with sound engineering practices.

6.4.1. Specific Work Requirements Remove Materials

FortisBC shall keep its work sites clean and tidy. FortisBC shall remove all rubbish and surplus material from Public Places upon completion of its work.

The Company shall not leave any part of its gas system in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair.

6.4.2. Restore Surface and Subsurface

Where FortisBC has performed any operations or New Work in a Public Place, FortisBC shall restore without unreasonable delay and return such Public Place, as much as reasonably practical, to the condition and use which existed prior to such activity. The restoration will be in accordance with the specifications set out by

the Municipality. Such specifications may include the degree and nature of compaction, subsurface structure, surface finish and landscaping required.

Without limiting the generality of this section and by way of example only, the Municipality may require FortisBC to restore asphalt and concrete surfaces with a permanent repair or a temporary repair. Should a temporary repair be directed, FortisBC or the Municipality at its discretion will subsequently construct a permanent repair in accordance to its usual maintenance/replacement schedule for that area. The cost of permanent and temporary repairs to remediate Highway surfaces will be at the expense of FortisBC proportional to the surface area affected by the New Work.

Where FortisBC is required to cut pavement on a Public Place such cuts and restoration will be limited to less than 1.5 meters unless at the discretion of FortisBC a larger excavation is warranted due to the depth or size of the pipe or requirements of the Workers' Compensation Board or other relevant Provincial or Federal regulations. FortisBC will be responsible for any repairs and maintenance of the surface repair for a period of three (3) years. However, where pavement restoration has been conducted by the Municipality, whether or not such work was undertaken to repair cuts on FortisBC's behalf, FortisBC shall not be responsible for the repairs or maintenance of the surface repair.

6.4.3. Repair Damage to Municipal Facilities

To the extent that any of the work being done by FortisBC results in damage to Municipal Facilities or Public Places, other than the usual physical disruption to Public Places caused by the installation of Company Facilities that FortisBC shall restore in accordance with Section 6.4.2 above, FortisBC will, as soon as reasonably possible, report such damage and reimburse the Municipality for its costs arising from such damage calculated in accordance with Section 14.1 below. Where such damage results directly from inaccurate or incomplete information supplied by Municipality, and FortisBC has complied with all applicable laws and regulations, and with instructions supplied by the Municipality, then the cost of repairing damaged Municipal Facilities or Public Places will be at the expense of the Municipality.

6.5 Conformity Requirement

The New Work must be carried out in conformity with FortisBC's notice of New Work except that FortisBC may make in-field design changes when carrying out the New Work to accommodate field conditions which could not have been reasonably foreseen by FortisBC. If such in-field conditions materially impact FortisBC's plans for restoration or materially change the impact of FortisBC's work on Municipal Facilities, other than in respect of projected commencement and completion dates, FortisBC shall notify the Municipality of the changes and the reasons for them as soon as reasonably possible.

6.6 Non-Compliance

If Company Facilities located in Public Places are later found not to be located in compliance with FortisBC's notice of New Work provided in accordance with Section 6.1 and 6.5, then any alteration or upgrading required to bring them into compliance with such notice will be at the expense of FortisBC provided that the work has not been altered, damaged or modified by the Municipality or a third party.

7. COMPANY FACILITY CHANGES REQUIRED BY THE MUNICIPALITY

7.1 Notice of Closure of Public Places

Before any Public Places containing Company Facilities may be legally closed or alienated by the Municipality, the Municipality shall as soon as reasonably possible notify FortisBC of its intent to close or alienate such Public Places and either:

- (a) grant FortisBC a registered statutory right of way in a form satisfactory to FortisBC so as to maintain FortisBC's right to use the land; or
- (b) request FortisBC to remove and (if possible and practicable) relocate those Company Facilities affected by such closure or alienation at the sole cost of the Municipality.

If the Public Places are expropriated by an expropriating authority and FortisBC is required to remove the Company Facilities then the Municipality shall as soon as reasonably possible notify FortisBC of the expropriation. This provision is applicable when the Municipality receives official notice of expropriation or otherwise becomes aware of expropriation through communications with the expropriating authority.

8. FACILITY CHANGES REQUIRED

8.1 By FortisBC

FortisBC may provide Notice to the Municipality that it requires Municipal Facilities to be altered, changed, temporarily shut-down, temporarily by-passed, or relocated to accommodate its requirements. The Municipality will comply with FortisBC's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. FortisBC agrees to pay for all of the costs for changes to the affected Municipal Facilities.

8.2 By the Municipality

The Municipality may provide Notice to FortisBC that it requires Company Facilities to be altered, changed or relocated to accommodate its requirements. FortisBC will comply with the Municipality's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. The Municipality agrees to pay for all of the costs for changes to the affected Company Facilities. This section 8.2 is

an agreement between the Municipality and FortisBC for the purpose of section 76(1)(c) of the *Oil and Gas Activities Act*.

9. JOINT PLANNING, COOPERATION AND COORDINATION

9.1 Conduct of Construction and Maintenance Activities

The Municipality and FortisBC agree to use reasonable efforts in carrying out their construction and maintenance activities in a manner that is responsive to the effect that it may have on the other party, as well as other users of Public Places. Such reasonable efforts include attending the planning meetings described in Section 9.2 below and reducing as much as is practical, the obstruction of access to Public Places, and interference with the facilities and activities of others in Public Places.

9.2 Communication and Coordination Activities

At the initiation of the Municipality, representatives of the Municipality, FortisBC and other affected Utilities and third parties will meet each year, prior to the construction season, to discuss the parties' anticipated construction activities for that year. Such discussions will include

- (a) the use of common trenching, common utility access facilities and such other common facilities as may be commercially reasonable and comply with operating and safety standards; and
- (b) the consolidation of planned maintenance work where pavement must be cut in order to avoid multiple excavations.

9.3 Municipal Planning Lead

During such annual planning meetings, the Municipality shall lead the planning process for all Utilities and third parties with Planned Facilities in Public Places.

10. MUTUAL INDEMNITY

10.1 Indemnity by FortisBC

10.1.1. FortisBC indemnifies and protects and saves the Municipality harmless from and against all claims by third parties in respect to loss of life, personal injury (including, in all cases, personal discomfort and illness), loss or damage to property caused by FortisBC in:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Company's Facilities on or under any Public Places;
- (b) any breach of this Agreement by FortisBC;

except to the extent contributed by negligence or default of the Municipality or the Municipal Employees.

10.1.2. This indemnity expressly extends to all acts and omissions of FortisBC Employees.

10.2 Indemnity by the Municipality

10.2.1. The Municipality indemnifies and protects and saves FortisBC harmless from and against all claims by third parties in respect to loss of life, personal injury (including, in all cases, personal discomfort and illness), loss or damage to property to the extent caused by the Municipality in:

- (a) placing, constructing, renewing, altering, repairing, maintaining, removing, extending, operating or using the Municipal Facilities on or under any Public Places;
- (b) any breach of this Agreement by the Municipality;

except to the extent contributed by the negligence or default of FortisBC or FortisBC Employees.

10.2.2. This indemnity expressly extends to all acts and omissions of Municipal Employees.

10.3 Limitations on Municipality's Liability

All property of FortisBC kept or stored on the Public Places will be kept or stored at the risk of FortisBC. For further certainty, FortisBC acknowledges that the Municipality has made no representations or warranties as to the state of repair or the suitability of the Public Places for any business, activity or purpose whatsoever. FortisBC accepts its use of Public Places on an "as is" basis.

11. OPERATING FEE

11.1 Fee Calculation

11.1.1. FortisBC agrees to pay to the Municipality a fee of three percent (3%) of the gross revenues (excluding taxes) received by FortisBC for provision and distribution of all gas consumed within the Boundary Limits of the Municipality provided that the Municipality is permitted by law to charge such a fee. Such amount will not include any amount received by FortisBC for gas supplied or sold for resale.

11.1.2. The Municipality will provide FortisBC with thirty (30) days prior written notice of any boundary expansion so that existing and new customers in the expanded area can be included as a part of the annual payment fee.

11.1.3. FortisBC will be responsible for adding those existing and new customers within the new Municipal boundary upon receipt of such notice from the Municipality and the revised calculation of the fee will commence effective the date that is the later of the date of actual boundary change or thirty (30) days after the notification under section 11.1.2.

11.2 Payment Date and Period

Payments by FortisBC to the Municipality will be made on the first day of March of each year of the Agreement in respect of the amount received by FortisBC during that portion of the term of this Agreement which is in the immediately preceding calendar year. By way of example only, payment made on March 1, 2018 will be the amount received during the 2017 calendar year.

11.3 BCUC Decision or Provincial Legislation

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

12. OTHER APPROVALS, PERMITS OR LICENSES

Except as specifically provided in this Agreement, the Municipality will not require FortisBC to seek or obtain approvals, permits or licenses. The Municipality will not charge or levy against FortisBC any approval, license, inspection or permit fee, or charge of any other type, that in any manner is related to or associated with FortisBC constructing, installing, renewing, altering, repairing, maintaining or operating Company Facilities on any Public Places or in any manner related to or associated with FortisBC exercising the powers and rights granted to it by this Agreement (other than for repair of damage to the Municipal Facilities or Public Places in accordance with Section 14).

If the Municipality does charge or levy fees or costs against FortisBC (other than for repair of damage to the Municipal Facilities or Public Places in accordance with Section 14) then FortisBC may reduce the annual operating fee payable to the Municipality under Section 11 by an amount equal to such charges, fees or costs or in the event no annual operating fee is payable, FortisBC will not be required to pay such charges or fees or costs.

13. MUNICIPAL OBLIGATIONS

13.1 Municipal Work

13.1.1. Before the Municipality undertakes any construction or maintenance activity which is likely to affect a part of the Company Facilities, excluding routine maintenance and repair that does not involve any cutting of asphalted road surface, it must give FortisBC notice not less than 10 days before commencing such construction or maintenance activity.

Before the Municipality undertakes routine maintenance and repair that does not involve any cutting of asphalted road surface and is likely to affect Company Facilities, it must give FortisBC notice not less than 3 days before commencing such construction or maintenance activity.

13.1.2. Where the Municipality is required to carry out work urgently in the interests of public safety or health or to preserve the safety of property and Municipal Facilities, the Municipality shall not be required to give prior notice but shall do so as soon as possible thereafter.

13.1.3. FortisBC will be entitled to appoint at its cost a representative to inspect any construction or maintenance activity undertaken by the Municipality. The provisions of this section do not relieve the Municipality of its responsibilities under the *Safety Standards Act*, *Oil and Gas Activities Act*, and successor legislation, regulations thereunder, or the requirements of the BC Workers' Compensation Board.

13.1.4. In addition, the Municipality shall provide Notice to FortisBC of any work planned that will be adjacent to, across, over or under a Transmission Pipeline or within a right-of-way for a Transmission Pipeline. To the extent that FortisBC requires that permit be issued for construction or other activities within a Transmission Pipeline right-of-way, the Municipality will submit an application for such a permit in sufficient time for the application to be reviewed and approved by FortisBC prior to the commencement of the construction or other activity.

13.1.5. The Municipality shall assist FortisBC in FortisBC's efforts to reduce instances of residences being built over gas lines and other similarly unsafe building practices by third parties.

13.1.6. The Municipality shall not interfere with Transmission Pipeline markers.

13.1.7. The Municipality shall provide notice to FortisBC of any damage caused by the Municipality to Company Facilities or Transmission Pipeline Markers as soon as reasonably possible. To the extent that any of the work being done by the Municipality results in damage to the Company Facilities, the Municipality will report such damage and pay FortisBC its costs arising from such damage in accordance with Section 14.1 below.

Where such damage results directly from inaccurate or incomplete information supplied by FortisBC, and the Municipality has complied with all applicable laws and regulations, and with instructions supplied by FortisBC, then the cost of repairing the damaged Company Facilities will be at the expense of FortisBC.

13.1.8. The Municipality shall notify FortisBC of any new bylaws, standards or policies adopted or passed by the Municipality that are likely to affect FortisBC's operations in Public Places.

14. COSTS AND PAYMENT PROCEDURES

14.1 Definition of Costs

Wherever one party is required to pay the other party Costs as a result of damage caused by one party to the other's property, the Costs shall be:

- (a) all direct expenses and disbursements incurred to restore such property to as good a state of repair as had existed prior to the damage;
- (b) reasonable administration and overhead charges on labour, equipment and materials;
- (c) such taxes as may be required in the appropriate jurisdiction;
- (d) in the case of loss of gas or re-lights, the cost of the commodity as determined by the length of time that the gas is leaking, size of pipe and hole and the pressure; and
- (e) in the case of water, electrical or sewer, cost of supplying alternate service.

14.2 Cost Claim Procedures

14.2.1. Wherever one party is claiming Costs of the other party in regard to any work or issue arising under this Agreement the claiming party shall:

- (a) provide an invoice to the other party no later than one year after incurring Costs;
- (b) provide detailed descriptions of the cost items;
- (c) provide the time period the invoice covers;
- (d) provide a minimum of 21 day terms for payment of the invoice; and
- (e) provide for late payment interest at the rate consistent with the party's policy for charging for late payments, which rate must be reasonable;

14.2.2. The party claiming Costs shall have no right of set off for these invoices against any amounts otherwise payable to the other party, except to the extent so approved in writing by the other party.

14.3 Cost Verification Procedures

14.3.1. Wherever either party is the recipient of or is claiming Costs and or fees that party may at its own discretion request from the other party:

- (a) Certification by an officer or designated representative verifying the calculations and computations of the Costs and or fees, or
- (b) An internal review or audit of the calculations and computations of the Costs and or fees, with the internal review or audit to be carried out by a person appointed by the party being asked to provide the review; or
- (c) An independent external audit of the calculations and computations of the costs and fees, with the independent external auditor being a Chartered or a Certified General Accountant in British Columbia appointed by the party requesting the external audit;

14.3.2. The costs of this cost verification process shall be borne by the party who is required to supply the information except as otherwise specified providing the frequency of such requests does not exceed once per calendar year. For all future cases which occur in that calendar year, the costs of such further verifications shall be at the expense of the requester.

Where the independent external audit finds and establishes errors representing a variance greater than 2% of the originally calculated value in favour of the party claiming Costs, the costs shall be at the expense of the party supplying the information. Once an error has been verified, payment or refund of the amount found to be in error will be made within 21 days.

15. START, TERMINATION AND CONTINUITY

15.1 Municipal Authority to Enter into Agreement

Prior to entering into this Agreement the Municipality will complete all procedures, obtain all consents and enact and bring into force all resolutions required under the *Community Charter*, and amendments thereto, and all other applicable legislation, to approve and authorize this Agreement.

15.2 Agreement Not Binding Until Approved by BCUC

15.2.1. This Agreement will not come into effect and does not bind the parties until FortisBC has obtained such approvals of this Agreement, or its terms, as may be required under the *Utilities Commission Act*. Upon executing this Agreement FortisBC shall make reasonable efforts to fulfill this

condition. If this condition is not fulfilled or waived within one (1) year of the date of execution of this Agreement, then the obligation on FortisBC to make reasonable efforts to fulfill this condition will terminate, and neither party will have any further obligation to the other under this Agreement.

15.3 Termination of Franchise Agreement

If not already terminated or expired, any franchise and operating agreement between the Municipality and FortisBC is terminated upon the effective date of this Agreement as referred to in section 15.2 of this Agreement.

15.4 Term of Agreement

This Agreement will have a term of 20 years from the date that it comes into effect and after the initial term shall continue indefinitely unless terminated in accordance with Section 15.5 below.

15.5 Termination of Agreement

15.5.1. This Agreement may be terminated by the Municipality upon the occurrence of any of the following events:

- (a) FortisBC admits its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency;
- (b) FortisBC starts proceedings or takes any action to commence or executes an agreement to authorize its participation in any proceeding:
 - (i) seeking to adjudicate it bankrupt or insolvent;
 - (ii) seeking liquidation, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws; or
 - (iii) seeking the appointment of a receiver, trustee, agent, custodian or other similar official for it or for any substantial part of its assets or if a creditor seeks the appointment of a receiver, trustee, agent, custodian or other similar official for any substantial part of its assets; and such proceeding is not dismissed, discharged, stayed or restrained within 20 days of the Municipality becoming aware of it.

15.5.2. Either party may terminate if other breaches any term, provision, obligation hereunder and such breach, is a material major breach, and has not been cured within sixty (60) days of receipt of Notice of such breach. A Party will not be considered to be in default if such matter is in dispute

or has been referred to commercial arbitration, the outcome of which is pending, or is being resolved in good faith compliance with the dispute resolution and arbitration processes of this Agreement.

- 15.5.3.** After the initial twenty (20) year term of this Agreement, either party may terminate this Agreement by giving the other not less than one (1) year's notice of termination.

15.6 Amendments and Waivers

This Agreement may be amended only by an agreement in writing signed by the parties. No waiver of any provision nor consent to any exception to the terms of this Agreement shall be effective unless in writing and signed by the parties to be bound, and then only to the specific purpose, extent and instance so provided. No waiver, delay or failure to exercise any rights under this Agreement shall be construed as a continuing waiver of such right or as a waiver of any other right under this Agreement.

The parties agree to meet to discuss the operations of the Agreement within thirty (30) days of either party making the request. Such a meeting will determine whether any amendments are required to this Agreement and the parties shall discuss any proposed amendments with a view to maximizing the benefit of the relationship.

15.7 Negotiations on Termination or Expiry of this Agreement

Upon one party giving Notice to the other of termination of this Agreement, the parties shall negotiate in good faith to enter into a new agreement with respect to the terms and conditions under which FortisBC may use the Public Places. In the event that such negotiations break down and in the opinion of one or other of the parties acting in good faith that settlement is unlikely, either party may give Notice to the other of its intention to apply to the BCUC to seek resolution of the terms and conditions applicable to FortisBC's continued operations and construction activities within the Municipality.

15.8 Continuity In The Event No Agreement Is Settled

Upon termination of this Agreement, if a new agreement has not been ratified or if the BCUC has not imposed the terms and conditions under which FortisBC may use the Public Places, the following provisions will apply:

- (a) The Company Facilities within the boundary limits of the Municipality both before and after the date of this Agreement, shall remain FortisBC's property and shall remain in the Public Places.
- (b) The Company Facilities may continue to be used by FortisBC for the purposes of its business, or removed from Public Places in whole or in part at FortisBC's sole discretion.
- (c) FortisBC may continue to use Public Places within the Municipality for the purposes of its business. FortisBC's employees, may enter upon all the Public Places within the Boundary Limits of the Municipality to maintain,

operate, install, construct, renew, alter, or place Company Facilities; provided that FortisBC continues to operate in a manner consistent with the terms and conditions of this Agreement as if the term had been extended except with respect to the payment of the operating fee.

- (d) FortisBC will with the support of the Municipality take such steps necessary to seek BCUC approvals of the extension of terms and conditions including payment of the operating fee under the terminated agreement during negotiations of a new agreement.
- (e) Should FortisBC no longer be authorized or required to pay the operating fee under any Agreement between it and the Municipality or by any order of the BCUC, the Municipality shall be free to apply such approval, permit and licence fees, charges and levies it is legally entitled to collect.

16. ACCOMMODATION OF FUTURE CHANGES

16.1 Outsourcing of Infrastructure Management

In the event that the Municipality assigns the task of infrastructure management to a third party the Municipality will ensure that:

- (a) its contracts for such infrastructure management contain provisions that will allow the Municipality to meet its obligations under and to comply with the terms and conditions of, this Agreement, and
- (b) FortisBC will accept the appointment of such third party as the Municipality's agent or subcontractor to enable such third party to deal directly with FortisBC so as to enable the Municipality to comply with the terms, obligations and conditions of this Agreement.

16.2 Changes to the Community Charter

In the event that the provisions of the *Community Charter* or other legislation affecting the rights and powers of municipalities change in such a way as to materially, in the opinion of the Municipality, affect municipal powers in respect to matters dealt with in this Agreement,

- (a) the Municipality may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and FortisBC agrees to negotiate such terms; and
- (b) failing satisfactory resolution of the terms of the Agreement either of the parties may seek resolution through the Dispute Resolution Process, Section 17.

16.3 Changes to the Utilities Commission Act

In the event that the provisions of the *Utilities Commission Act* or other legislation affecting the rights and powers of regulated Utilities change in such a way as to materially, in FortisBC's opinion, affect FortisBC's powers in respect to matters dealt with in this Agreement,

- (a) FortisBC may within one year of the change coming into effect propose new agreement terms with respect to only those specific changes and the Municipality agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will seek resolution through the Dispute Resolution Process, Section 17.

17. DISPUTE RESOLUTION

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 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 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.

17.3 Additional Rules of Arbitration

The arbitrator shall issue a written award that sets forth the essential findings and conclusions on which the award is based. The arbitrator will allow discovery as required by the *Commercial Arbitration Act* of British Columbia in arbitration proceedings.

17.4 Appointment of Arbitrator

If the arbitrator fails to render a decision within thirty (30) days following the final hearing of the arbitration, any party to the arbitration may terminate the appointment of the arbitrator and a new arbitrator shall be appointed in accordance with these provisions. If the parties are unable to agree on an arbitrator or if the appointment of an arbitrator is terminated in the manner provided for above, then any party to Agreement shall be entitled to apply to a judge of the British Columbia Supreme Court to appoint an arbitrator and the arbitrator so appointed shall proceed to determine the matter *mutatis mutandis* in accordance with the provisions of this Section.

17.5 Award of Arbitrator

The arbitrator shall have the authority to award:

- (a) money damages;
- (b) interest on unpaid amounts from the date due;
- (c) specific performance; and
- (d) permanent relief.

17.6 Cost of Arbitration

The costs and expenses of the arbitration, but not those incurred by the parties, shall be shared equally, unless the arbitrator determines that a specific party prevailed. In such a case, the non-prevailing party shall pay all costs and expenses of the arbitration, but not those of the prevailing party.

17.7 Continuation of Obligations

The parties will continue to fulfill their respective obligations pursuant to this Agreement during the resolution of any dispute in accordance with this Section 17, provided that, neither party shall proceed with any work or activity or take any further action which is the subject matter of the dispute.

18. GENERAL TERMS & CONDITIONS

18.1 No Liens

FortisBC will do its best to not allow, suffer or permit any liens to be registered against the Company Facilities located in Public Places as a result of the conduct of FortisBC. If any such liens are registered, FortisBC will start action to clear any lien so registered to the Public Place within ten (10) days of being made aware such lien has been registered. FortisBC will keep the Municipality advised as to the status of the lien on a regular basis. In the event that such liens are not removed within ninety (90) days of the registration of such lien, FortisBC will pay them in full or post sufficient security to ensure they are discharged from title.

18.2 Corporate Authority

FortisBC now warrants, represents and acknowledges that:

- (a) it has the full right, power and authority to enter into this Agreement;
- (b) it is a corporation, duly organized, legally existing and in good standing under the laws of its jurisdiction of incorporation or continuance and is lawfully registered and licensed to do business in British Columbia.

18.3 Representations

Nothing in this Agreement shall be deemed in any way or for any purpose to constitute either party as the legal representative, agent, partner or joint venturer of the other, nor shall either party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against, in the name of, or on behalf of the other party.

18.4 Assignments and Enurement

This Agreement and any rights or obligations under it are not assignable by either party, without the prior written consent of the other party hereto, such consent not to be unreasonably withheld. This Agreement shall be binding upon, enure to the benefit of, and be enforceable by, the successors and permitted assigns of the parties hereto.

18.5 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia.

18.6 General

This Agreement is subject to the laws of Province of British Columbia and the applicable laws of Canada, and nothing in this Agreement will be deemed to exclude the application of the provisions of such laws, or regulations thereunder.

18.7 Entire Agreement

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter herein contained and supersedes all prior agreements and undertakings with respect thereto.

18.8 Severability

If any provision of this Agreement is held invalid by any court, governmental agency or regulatory body, the other provisions to the extent permitted by law shall remain in full force and effect. To the extent permitted by applicable law, the parties hereby waive any provision of law that renders any provision hereof prohibitive or unenforceable in any respect.

18.9 Force Majeure

Neither party shall be liable to the other for temporary failure to perform hereunder, if such failure is caused by reason of an Act of God, labour dispute, strike, temporary breakdown of facilities, fire, flood, government order or regulations, civil disturbance, non-delivery by program suppliers or others, or any other cause beyond the parties' respective control.

18.10 Notice

Any notice or other written communication required, or permitted to be made or given pursuant to this Agreement (the "Notice") shall be in writing and shall be deemed to have been validly given if delivered in person or transmitted electronically and acknowledged by the respective parties as follows:

A) if to the Municipality:

THE CORPORATION OF THE CITY OF KAMLOOPS
7 Victoria Street
Kamloops, B.C.
V2C 1A2

(B) If to FortisBC:

FORTISBC ENERGY INC.
16705 Fraser Highway
Surrey, B.C. V4N 0E8
Attention: Vice President, Regulatory Affairs

THE CORPORATION OF THE CITY OF KAMLOOPS

by its authorized signatories

Kenneth L. Christian, Mayor

Authorized Signatory

Authorized Signatory

FORTISBC ENERGY INC.

by its authorized signatories

Douglas L. Stout
Vice President
Market Development and External Relations

Authorized Signatory

Authorized Signatory

Appendix B

**FEI – CITY OF KAMLOOPS OPERATING AGREEMENT
DATED FEB 25, 1998**

STANDARD FORM FRANCHISE AGREEMENT

COPY

THIS AGREEMENT made this ^{25th} day of ^{February}, 1997/8 *W*

Between:

**BC GAS UTILITY LTD.
1111 West Georgia Street
Vancouver, British Columbia
Canada, V6E 4M4**

And:

**THE CORPORATION OF THE CITY OF KAMLOOPS
7 Victoria Street West
Kamloops, British Columbia
V2C 1A2**

BC GAS UTILITY LTD. STANDARD FORM FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT made this *15th* day of *February*, 1998

BETWEEN:

The Corporation of the City of Kamloops
7 Victoria Street West
Kamloops, British Columbia
V2C 1A2

(hereinafter called the "Municipality")

OF THE FIRST PART

AND:

BC Gas Utility Ltd., a body corporate duly incorporated under the laws of the Province of British Columbia, and having its registered office in the City of Vancouver, in the Province of British Columbia

(hereinafter called the "Company")

OF THE SECOND PART

WHEREAS the Company has entered into gas purchase contracts for the supply of gas by pipeline for the purposes of making same available for distribution in British Columbia in accordance with the terms of such contracts.

AND WHEREAS the Company was formed for the purpose of engaging in the business of transporting, supplying, distributing and selling gas for industrial, commercial, domestic and other uses for power, heat and energy, and pursuant to the terms and conditions of its contracts with its suppliers, has available for such uses supplies of gas for the purpose of making same available to the Municipality and to consumers within, or in the environs of, the Municipality.

AND WHEREAS the Company has constructed and is operating all the necessary facilities, pipelines, mains and pipes for a supply of gas (which term as used in this Agreement shall include natural gas, manufactured gas, mixed gas, liquefied petroleum gas, synthetic natural gas, liquefied natural gas, and/or other utility gases or any of them or any mixtures thereof) to the Municipality and such consumers or customers as are situated within the boundary limits thereof and is willing to continue to do so on the terms and conditions hereinafter set forth.

AND WHEREAS it is to the mutual advantage of the Company and the Municipality to enter into this Agreement.

AND WHEREAS the Company has constructed the necessary transmission and distribution facilities, all in accordance with governmental, municipal, or other regulatory authorities having jurisdiction over same for the supply of gas to and within the Municipality.

NOW THEREFORE THIS INDENTURE WITNESSETH that in consideration of the premises and mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. GRANT OF FRANCHISE

The Municipality hereby grants to the Company, its successors and assigns, subject to the terms, conditions and provisions hereinafter contained, the full power, right and liberty to place, construct, renew, alter, repair, maintain, operate and use its pipes and other equipment and appliances (which pipes and other equipment and appliances are hereinafter sometimes called "the gas system"), for mixing, transmitting, distributing, delivering, furnishing, selling and taking delivery of gas upon, along, across, over or under any public thoroughfare, highway, road, street, lane, alley, square, park, public place, bridge, viaduct, subway or watercourse in the Municipality (all or any of which are hereinafter sometimes called "public places") as may be necessary or convenient for the purposes of supplying and conducting gas to the consumers thereof, and the Company by its officers, employees, contractors and licensees as to that end authorized to enter upon any and all public places and to break at its own expense the surface and to make the necessary excavation thereon when and where the same may be required for the aforesaid purpose, and to do all other things reasonably necessary or convenient for the purpose of supplying gas to the inhabitants of the Municipality, and placing, constructing, renewing, altering, repairing, maintaining, operating and using the gas system doing as little damage as may be in the execution of the powers hereby granted, and causing as little obstruction as possible during the progress of the work, and at all other times, and restoring without unreasonable delay the public places in the Municipality to a state of repair or conditions as nearly as reasonably possible as existed immediately before the commencement of such work, and the Company shall at all times, while any public place shall be broken up, cause safeguards to be set up and maintained during which same shall be broken up, and a proper guard during the day to the satisfaction of the Municipal Clerk or such other officer as may be appointed by the Municipality for that purpose.

2. NOT TO INTERFERE WITH EXISTING FACILITIES

The gas system shall be placed and constructed in such manner as not to interfere with any public or private sewer or any other pipe, conduit, duct, manhole or system belonging to the Municipality or which shall have been previously laid down and be then subsisting in any public place by, or with the permission or approval of the Municipality, or by virtue of any charter or right granted by competent government or municipal authority.

3. COMPANY TO INDEMNIFY MUNICIPALITY

The Company agrees with the Municipality that it shall protect, indemnify and save harmless the Municipality from and against all actions, proceedings, claims and demands of any corporation, firm or person against the Municipality and will reimburse the Municipality for all damage and expenses caused to it in respect of or by the execution by the Company of the authorities, permissions and rights hereby granted to it or by reason of the construction, maintenance or operation of the gas system of the Company within the boundary limits of the Municipality, except where caused by or contributed to by the negligence or default of the Municipality or its servants or agents. The Company further agrees that it shall protect and indemnify the Municipality from and against all claims, demands and actions by third persons in respect of damages sustained by reason of any operations of the Company in connection with the execution of the powers hereby granted, or by reason of any operations of the Company in relation to its gas system.

4. WRITTEN NOTICE EXCEPT IN EMERGENCIES

The Company shall give notice in writing to the Municipality or such officer or official thereof as shall be designated from time to time by the Municipality for the purposes set out in Clause Five (5), of its intention to break up, dig, trench, open up or excavate any, or in or on any, public place, not less than three (3) clear days before the beginning of such work, except in such cases of repair, maintenance or the like that can reasonably be deemed to be emergencies or in the interests of the health or safety of the public, or of the safety of property by whomsoever owned, or any of them, in which cases no notice need be first given but shall be given as soon as practicable thereafter.

5. APPROVAL OF GAS SYSTEM PLANS

A plan showing the proposed location of the gas system to be placed or constructed from time to time shall be first submitted to and approved by such officer or official as shall be designated from time to time by the Municipality for that purpose, and the gas system shall not be placed or constructed without such approval, provided always it shall not be unreasonably withheld.

6. NOTICE TO COMPANY OF MUNICIPAL WORKS

The Municipality agrees with the Company that before it makes any additions, repairs or alterations to any of its public services within the boundary limits of the Municipality, and which additions, repairs or alterations may in any way affect any part of the gas system of the Company, it shall give to the Company at its main office in the Province of British Columbia or such other office as the Company may advise the Municipality in writing from time to time not less than three (3) clear days' notice thereof, except in such cases of repair, maintenance or the like that can reasonably be deemed to be emergencies or in the interests of the health or safety of the public, or of the safety of property by whomsoever owned, or any of them, in which case no notice need be first given but shall be given as soon as practicable thereafter. The Company shall be entitled to appoint a representative to supervise or advise in respect to such additions, repairs or alterations. The provisions of this clause shall not relieve the Municipality of its responsibilities under regulations pursuant to the Gas Safety Act, R.S.B.C. 1979, Chapter 149 and any amendments thereto.

7. CLOSURE OF PUBLIC PLACES BY MUNICIPALITY

Should any of the public places under or on which any part of the gas system of the Company lies or is constructed, be legally closed or alienated by the Municipality or by or under any other paramount authority, the Municipality shall notify the Company forthwith, and the Company agrees that with all reasonable speed and dispatch after receipt of written notice from the Municipality, it shall remove and (if possible and practicable) relocate, subject as aforesaid to the approval of the Municipality, that part of its gas system so affected by such closure or alienation, the cost of such removal or relocation to be at the cost and expense of the Municipality, unless such removal or relocation has been enforced upon the Municipality by any such other paramount authority without the Municipality having applied therefor.

8. ALTERATIONS TO WORK

Notwithstanding anything hereinbefore contained, if either party shall request the other party to make some change in such other party's pipes, equipment, plant or appliances installed on, over, under or adjacent to, public property in order to facilitate the installation or construction of new pipes, equipment, plant or appliances by the requesting party, such other party shall, if it reasonably can, carry out the change or alteration requested and shall charge the requesting party with the entire cost thereof. Such costs shall include without limiting the generality of the foregoing, such overhead charges on labour and materials as may be from time to time be charged by the non-requesting party, as well as all expenses and disbursements incurred by the non-requesting party in carrying out such change or alteration.

9. DAMAGE TO GAS SYSTEM

If the Municipality shall destroy or damage any part of the gas system on, over, or under, public property which was installed before or after the date hereof the Municipality shall bear the cost of repairing the damaged gas system in such manner as to restore the damaged gas system to as good a state of repair as had existed prior to the occurrence of such damage or destruction and to the reasonable satisfaction of the Company.

10. GAS RATES CHARGES TO CONSUMERS

The Company agrees that the rates which the Company shall charge for gas sold to the Municipality or other consumers or customers taking delivery in the manner aforesaid within the boundary limits of the Municipality shall be the applicable rates filed with and approved by the British Columbia Utilities Commission or its successor.

11. ALLOCATION OF GAS

If the Company shall at any time not have a sufficient supply of gas to supply all the requirements of connected customers, the Company shall have the right to prescribe reasonable rules and regulations for allocating the available supply of gas for such requirements to domestic, commercial and industrial customers or consumers in that order or priority, or as approved by the British Columbia Utilities Commission or its successor.

12. EXTENSION OF SERVICES

Subject to the elements, acts of God and the Queen's enemies, and generally all shortages of supply or delays in delivery caused or resulting directly or indirectly from causes beyond the reasonable control of the Company, but commencing only after the construction and putting into service of facilities so to do, the Company shall supply such reasonable quantities of gas as may be required for consumption or purchase by its customers or consumers within the boundary limits of the Municipality, provided that such requirements are to be supplied to places or buildings lying or being on property fronting or lying alongside a main or pipe of the gas system of the Company. The property line of such property shall be the place of delivery of all gas supplied by the Company. The Company shall also supply and install a meter suitably located on the property and a service pipe line from the property line to the meter in accordance with the costs and terms set forth in the

Company's tariff and revisions thereto as filed with and approved by the British Columbia Utilities Commission or its successor, from time to time. The said meter and service pipe line shall be located and installed in a manner and at a location selected by the Company, and shall remain the property of the Company. The expense and risk of utilizing and using such gas after delivery at the said property line shall be borne by the customer or consumer and not by the Company unless any loss or damage occasioned by such utilization or user is directly attributed to the negligence or carelessness of the Company, its servants or agents.

13. COMPLIANCE WITH GAS SAFETY LEGISLATION

The Company agrees that the gas supplied to the Municipality and its inhabitants and to consumers or customers situated within its boundary limits shall at all times be of a quality and standard conforming with the regulations for the time being in force and from time to time formulated under the provisions of the Electricity and Gas Inspection Act being 1980-83 Chapter 86 of the Statutes of Canada, and any amending statutes, and also conforming with any regulations or laws applicable thereto, whether such regulations or laws be made or issued by the Government of Canada or by the Province of British Columbia and whether now or hereafter brought in force and effect.

14. FEE FOR FRANCHISE RIGHTS

As compensation for the use by the Company of the public places, as provided in Clause One (1) hereof, and for the exclusive charter, right, franchise, or privilege to supply gas granted herein, the Company shall pay to the Municipality on the first day of November in each year during the term of this Agreement a sum equal to three (3%) percent of the amount received in each immediately preceding calendar year by the Company for gas consumed within the boundary limits of the Municipality, but such amounts shall not include any percentage for or based upon any revenues received by the Company from gas supplied for resale. On the last day of March of the year immediately following the expiry or termination of this Agreement, the Company shall pay to the Municipality a sum equal to three (3%) percent of the amount received by the Company for gas consumed within the boundary limits of the Municipality during the period from the commencement of the preceding calendar year to the expiry or termination of this Agreement. Such compensation shall not be or be deemed to be in lieu of any taxes, rates, or licence fees otherwise properly payable to the Municipality.

15. DURATION AND EXCLUSIVITY OF FRANCHISE

Subject as hereinafter provided the Municipality hereby covenants and agrees with the Company that the powers hereby granted to the Company for the purpose aforesaid are and shall be granted to the Company exclusively for a period of ten (10) years commencing the **15th day of February, 1998** and expiring on the **14th day of February, 2008** (the "Primary Term") and continuing from year to year after the expiry of the Primary Term until terminated by either party upon twelve (12) months' written notice of termination received one year prior to the expiry of the Primary Term or any anniversary thereafter. Notwithstanding the foregoing, the term of this Agreement shall not continue longer than twenty-one (21) years. During the Primary Term or any extension of the term of this Agreement thereafter the Municipality shall not itself supply gas to any of its inhabitants, or use or allow or consent to any other person, firm, or corporation to supply or distribute gas to any of its inhabitants, or to use the said public places, or any of them, for the purpose of laying gas mains or pipes along, through or under the same; for the purpose of supplying or distributing gas within the boundary limits of the Municipality.

16. RENEWAL

Either party hereto shall have the right at any time prior to six (6) months before the expiration of the term of this Agreement, hereinbefore in Clause Fifteen (15) set out, to give to the other party notice in writing of its desire for a new agreement with powers as hereunder for a term of twenty-one (21) or lesser number of years, and upon such terms and conditions as may be mutually agreed upon. As soon as possible after giving of such notice, the parties shall, in the interest of both of them, enter into negotiations looking towards such a new agreement and shall use their best endeavours to bring such negotiations to a mutually satisfactory conclusion before the expiration of this Agreement.

17. OWNERSHIP OF THE GAS SYSTEM

Upon the termination of this Agreement, the gas system of the Company shall be and remain the Company's property and as such may be used by it in its business or removed in whole or in part as it may see fit, and for any of such purposes, but subject to the conditions of Clause One (1), the Company may enter in, upon and under all the public places in the Municipality and otherwise for the purpose of the maintenance, renewals, repair, removal or operation of the gas system or any part thereof, provided that the Company shall not leave any part of its gas system in such a state as to constitute a nuisance or a danger to the public through neglect, non-use and want of repair.

18. ASSIGNMENT

This Agreement shall be assignable by the Company to a subsidiary, or to its successor, without the consent of the Municipality but otherwise shall only be assignable by the Company with the consent in writing of the Municipality first had and obtained, such consent not to be unreasonably withheld. Subject to the foregoing, this Agreement shall enure to the benefit of and be binding on the parties hereto and their respective successors and assigns.

19. AGREEMENT SUBJECT TO LAW

This Agreement and everything herein contained shall be subject to the provisions of any statutory provision of the Government of Canada or of the Province of British Columbia relative thereto, and of the proper authorities and powers of the British Columbia Utilities Commission of the Province and nothing herein contained shall be deemed to exclude the application of the provisions of such statutory provisions or any jurisdiction thereof or thereunder, or of the British Columbia Utilities Commission or shall be deemed to be a waiver or abandonment by the Company of any right, privilege, or benefit conferred upon it by such statutory provisions.

20. RESOLUTION OF DISPUTES

If at any time during the term of this Agreement any dispute, difference or question shall arise between the parties hereto touching the construction, meaning or effect of this Agreement or concerning any clause or thing contained herein or the rights or liabilities of the parties respectively under this Agreement, or if the parties are unable to agree with respect to any matter or thing hereof, then every such dispute, difference or question, if within the jurisdiction of the British Columbia

Utilities Commission shall be determined by the British Columbia Utilities Commission and if not within such jurisdiction, shall be referred to arbitration pursuant to the Commercial Arbitration Act (B.C.).

21. BOUNDARY LIMITS

In this Agreement the words "boundary limits" or "limits" of the Municipality or like terms, shall mean the boundary limits or limits of the Municipality as exists from time to time and over which the Municipality has control and authority.

22. NOTICE

Any notice, demand or request required or desired to be given under the terms or in respect of this Agreement shall be deemed to have been well and sufficiently given if mailed prepaid registered post, and addressed respectively as follows:

(a) if given to the Municipality:

The Corporation of the City of Kamloops
7 Victoria Street West
Kamloops, British Columbia
V2C 1A2

(b) if given to the Company:

BC Gas Utility Ltd.
1111 West Georgia Street
Vancouver, British Columbia
Canada, V6E 4M4

Attention: Corporate Secretary

or at such other address as may from time to time be specified in writing by a party hereto, and shall be deemed to have been given three (3) days after the mailing thereof, non postal delivery days excepted.

23. AGREEMENT TO ENURE

Subject to the terms hereof this Agreement shall enure to the benefit of and be binding upon the Municipality, its successors and assigns, and upon the Company, its successors and assigns.

24. AGREEMENT NOT BINDING UNTIL APPROVED

This Agreement shall not be binding upon the parties unless and until it has been approved or assented to as required by law and is subject to the approval of the British Columbia Utilities Commission, and shall not be binding upon the Municipality until it has been authorized or adopted by By-law of the Municipality, which By-law shall before coming into force be subject to the approval of the Minister. This Agreement will be null and void if the conditions set out in this clause are not all met within five (5) months of the date first above written.

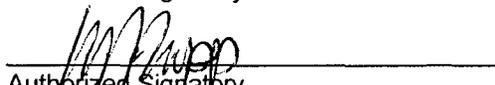
IN WITNESS WHEREOF the parties hereto have hereunto caused their respective corporate seals to be affixed, attested to by the signatures of their officers in that behalf, the day and year first above written.

The Municipal Seal of the **Corporation of the City of Kamloops** was hereunto affixed in the presence of:


Authorized Signatory
A/Mayor Patricia K. Kaatz

Authorized Signatory
C/Clerk C. Wayne Vollrath

The Common Seal of **BC Gas Utility Ltd.** was hereunto affixed in the presence of:


Authorized Signatory

Authorized Signatory

Appendix C

**FEI RESPONSE TO BCUC IR 1.1.1 OF THE FEI-CITY OF
KELOWNA OPERATING AGREEMENT APPLICATION**

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 10, 2019
Response to British Columbia Utilities Commission (BCUC) Information Request (IR) No. 1	Page 1

1 **1.0 Reference: OPERATING AGREEMENT**

2 **Exhibit B-1, Cover Letter, p. 1; FortisBC Energy Inc. and City of**
 3 **Surrey Applications for Approval of Terms for an Operating**
 4 **Agreement (FEI-Surrey Operating Agreement),**
 5 **FEI Final Argument, p. 17; Exhibit B1-5, CEC Information Request**
 6 **(IR) 1.6.2**

7 **Standard form operating agreement**

8 FortisBC Energy Inc. (FEI) states in their current application that the terms of the new
 9 FEI-City of Kelowna Operating Agreement negotiated by FEI and the City of Kelowna
 10 are consistent with the Keremeos Terms, which Order C-8-14¹ ruled could be used as
 11 the basis for comparison in future operating agreement applications.

12 On page 17 of FEI’s final argument in the FEI-Surrey Operating Agreement proceeding,
 13 FEI stated that the Keremeos Agreement was not appropriate for the Surrey context,
 14 given that the “...municipalities subject to those terms are less urbanized than Surrey,
 15 with limited natural gas facilities, and smaller populations.”

16 The following table has been compiled by British Columbia Utilities Commission (BCUC)
 17 staff to compare the municipalities of Surrey, Kelowna and Keremeos:

Municipality	Population (2016) ²	Gas premises count (2016) ³	Gas consumption (2016) ⁴	Distribution mains (km) ⁵
Surrey	517,887	114,009	13,681,766	2143
Kelowna	127,380	40,809	4,343,137	820.9
Keremeos	1,502	983	72,844	17.7

18
 19 1.1 Please discuss what FEI considers to be the limits of applicability of the
 20 Keremeos Agreements, in terms of: urbanisation, gas facilities, population or
 21 other characteristics.
 22

¹ FortisBC Energy Inc. Application for Approval of an Operating Agreement with the Village of Keremeos, Order C-8-14 dated July 24, 2014.
² FortisBC Energy Inc. and City of Surrey Applications for Approval of Terms for an Operating Agreement (FEI-Surrey Operating Agreement), Exhibit B1-6, BCUC IR 1.4.2.
³ Ibid., Exhibit B1-5, CEC IR 1.6.2.
⁴ Ibid.
⁵ FEI-Surrey Operating Agreement, Exhibit B1-9, City of Surrey IR 1.1.



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 10, 2019
Response to British Columbia Utilities Commission (BCUC) Information Request (IR) No. 1	Page 2

1 **Response:**

2 In the response below, we have endeavoured to provide some background, explain why FEI
3 proposed to apply the Keremeos terms in the case of Kelowna, and provide some commentary
4 on how the Keremeos agreement could be applied going forward.

5 ***Background***

6 FEI (through its predecessor companies Inland Natural Gas Co. Ltd. and BC Gas Utility Ltd.)
7 and the City of Kelowna entered into a Franchise Agreement, the term of which expired on
8 October 31, 2018. The Franchise Agreement had been extended six times with the last
9 extension in November 2001. FEI and the City negotiated a new operating agreement dated
10 September 27, 2018, which is consistent with the approved terms of the Village of Keremeos
11 Operating Agreement (Keremeos Agreement).

12 With the grant of a deemed CPCN under the UCA in the early 1980s, franchise agreements
13 became unnecessary. Operating agreements, which do not grant exclusive rights to FEI (or its
14 predecessor), have been used to replace Franchise Agreements with municipalities as they
15 expire. The 3 percent fee (characterized as an operating fee in these agreements) was just
16 carried over when negotiating the new operating agreements with municipalities.

17 The Keremeos Agreement originates from a public review process conducted by the BCUC in
18 2006, when FEI (then Terasen Gas) applied for approval of terms of a new form of operating
19 agreement with 10 Interior municipalities⁶. The terms of the new form of operating agreement
20 were negotiated with the 10 Interior municipalities with Franchise Agreements which expired on
21 December 31, 2005, through the Union of British Columbia Municipalities (UBCM). This review
22 process involved submissions from municipalities on the operating fee and various alternative
23 methods of calculating it. Various municipalities, including the City of Kelowna, filed comments
24 in that regulatory review process. During that proceeding, there does not appear to have been
25 evidence considering the applicability of urbanization, gas facilities, population or other
26 characteristics in the calculation of the operating fee. The operating fee provision was
27 considered as part of an overall package negotiated by the parties.⁷ After conducting its review
28 process, the BCUC approved the 10 new Interior operating agreements that included an
29 operating fee calculated based on three percent operating of gross revenues (Orders C-7-06
30 through C-16-06).

31 The operating agreement terms approved by Orders C-7-06 through C-16-06 then formed the
32 basis of the Interior Standard form Operating Agreement terms, later amended by Order G-113-
33 12, and further by Order C-8-14. Order C-8-14 then directed that the Keremeos terms were to

⁶ The 10 municipalities were the Town of Oliver, District of 100 Mile House, City of Cranbrook, Town of Creston, City of Fernie, City of Grand Forks, District of Hudson's Hope, City of Kimberley, Town of Osoyoos, and City of Rossland.

⁷ Order C-7-06, recital K: "Among other things, Terasen Gas and the Municipalities stated that the agreements are "package deals" with considerable amount of compromise involved, including the fees agreed to within the package, and outlined their significant concerns to the added complexity, costs, communication and need to renegotiate if a fee margin were imposed."

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 10, 2019
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1 be used as the basis for comparison for future operating agreement applications. Since the
2 issuance of Order C-8-14, no further guidance has been provided by the BCUC to use terms
3 other than the Keremeos terms to commence discussions with municipalities for new terms to
4 operating agreements. As such, in the absence of BCUC directions otherwise, the Keremeos
5 terms were used to commence discussions with both Surrey and Kelowna. Kelowna accepted
6 those Keremeos terms, but Surrey did not.

7 Although the BCUC had approved the Keremeos terms, the BCUC has also determined in past
8 proceedings that it would review the circumstances in each municipality and determine the
9 appropriate terms and conditions on an individual basis.⁸ FEI articulated in the Surrey
10 proceeding, and remains of the view, that this case by case approach is appropriate.

11 ***Relevant Considerations***

12 In FEI's view, urbanization, gas facilities, operating environment, and population are all relevant
13 considerations as to whether the Keremeos terms should be applied without modification. Other
14 relevant considerations include the historical context (predecessor utility arrangements), existing
15 operating agreement terms, and other trade-offs or demands made by the municipalities. The
16 overall objective is to achieve a commercial arrangement that is fair to both FEI's customers and
17 the municipality in question (a win-win).

18 As set out above, in the absence of BCUC direction otherwise, the Keremeos terms were used
19 to commence discussions with both Surrey and Kelowna. Kelowna accepted those Keremeos
20 terms, but Surrey did not.

21 ***Basis for Accepting Keremeos Terms for Kelowna, Notwithstanding Surrey Proceeding***

22 The combination of the above considerations had caused FEI to propose for Surrey an
23 operating fee that was based on 0.7 percent of delivery margin (a fee of approximately \$600
24 thousand based on recent 2016 experience). For instance, Surrey had never previously
25 received an operating fee, had never granted an exclusive franchise to FEI's predecessor, and
26 was also demanding very costly concessions from FEI in terms of the allocation of relocation
27 costs that differed from the allocation in the Keremeos agreement. At the same time, the
28 Keremeos approach of using 3 percent of gross revenues to calculate an operating fee would
29 have yielded an annual operating fee of approximately \$3 million because of the higher volumes
30 associated with Surrey's urban setting. FEI believes that its proposed terms in Surrey are
31 appropriate in those circumstances.

32 The Keremeos terms contain an operating fee based on 3 percent of gross revenues. This fee
33 originated long ago in franchise agreements signed between Inland Natural Gas Co. Ltd. and a
34 number of interior municipalities. The inclusion of a franchise fee in those agreements was
35 stated to be in consideration for, among other things, exclusivity. The origins of the amount of
36 the fee is unknown. In 1977, the Energy Commission (predecessor to the BCUC) held an
37 inquiry into franchise fees. The Energy Commission found that franchise fees were not in the

⁸ Order L-4-02, dated February 4, 2002, and reiterated in Order C-7-03, dated September 2, 2003, Appendix A, page 3.



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 10, 2019
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1 public interest. It issued an order cancelling all franchise fees in the province. (That aspect of
2 the order was overturned on appeal for reasons relating to procedural fairness, and there does
3 not appear to have been any further process. The new statute in 1980 included a deemed
4 CPCN and a provision that nullified franchise agreements in existence.) The Energy
5 Commission made a number of observations that underscore the murky origins of, and
6 questionable rationale for, the practice of calculating a franchise fee based on 3 percent of
7 gross revenues:

8 The reason for the level of the fee is even more obscure than the origin of the
9 franchise agreement. Apart from the prevalence of a "most favoured nations
10 clause" in the existing franchise agreements, there appears to be no clear reason
11 that the fee has been set at 3% of the gross revenue in virtually all of the cases
12 where it applies. There does not appear to have been any quantification of costs
13 to be reimbursed or of values recognized in the determination of the fees. There
14 was no evidence in the inquiry which would support their existing level.
15 Historically, the utilities have been able to include as a part of their utility cost-of-
16 service the full amount of the franchise fees paid to the municipalities. There has,
17 therefore, been little motivation, other than concern for the competitive price
18 advantage of gas, for the utilities to limit the amount of the fee.

19 Certain of the industrial consumers evinced a concern, shared by the
20 Commission, that the application of a fixed percentage fee to the gross revenue
21 of the utility constitutes an unreasonable basis for the franchise payment. As has
22 been indicated, no evidence was available as to the reason the 3% was originally
23 set. Even assuming there was some logical basis for it in the first instance and
24 there was some significant relationship between the cost and prospective
25 revenue at that time, the same relationship between costs of service and revenue
26 does not now exist. The municipalities were unable to provide any evidence of
27 actual costs which would be covered by the fee. There are, no doubt, some costs
28 to the municipalities associated with the operation and maintenance of a gas
29 distribution system. It should be noted, however, that direct costs arising out of
30 the laying of mains, extensions or connection services are borne by the utility on
31 a project-by-project basis. Municipal costs associated with utility operations relate
32 to unforeseen direct costs and indirect administrative costs. However, the cost of
33 gas bears no necessary relationship to either the additional costs imposed on a
34 municipality by virtue of the use of its facilities by the utility or to the value of the
35 franchise itself. The rather arbitrary nature of the fee is only exacerbated by the
36 introduction of additional external arbitrary costs, such as the cost of gas. It is
37 well known that the cost of gas has increased very substantially over the past
38 three years beyond the control of the utility or the municipality; the imposition of
39 the 3% on this increased cost of gas has contributed substantially to the revenue
40 flowing to the municipalities from the franchise fee. Certain municipalities have
41 enjoyed substantial increases in revenue resulting from annexation of outlying
42 areas in which the heavy concentration of industry results in increased franchise
43 fees disproportionate to any costs involved. [Emphasis added.]

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 10, 2019
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1 During discussions with Kelowna, FEI was cognizant of the protracted negotiations with Surrey
2 and what it had proposed for Surrey with respect to an operating fee. Ideally, FEI would have
3 been able to wait for any guidance provided by the BCUC in the Surrey decision, but that
4 proceeding has been going on for almost two years and the Franchise Agreement with Kelowna
5 had already been extended six times (the last time in November 2001).

6 Kelowna, while significantly smaller than Surrey, is still a large suburban municipality (as the
7 statistics cited in the preamble demonstrate). This consideration, on its own, would tend to
8 weigh in favour of a fee calculated for Kelowna on a basis different from that provided in the
9 Keremeos terms. However, FEI believes an operating fee for Kelowna based on the Keremeos
10 terms is appropriate for the following reasons which are elaborated on below:

- 11 1. Kelowna's expired agreement also contained the same operating fee calculated in the
12 same manner as the Keremeos terms, so maintains the status quo; and
- 13 2. Kelowna, unlike Surrey, did not require substantive revisions to any of the Keremeos
14 terms.

15 FEI provides the following further background and context for these two reasons.

16 **1. Status Quo for Kelowna:**

17 Kelowna is located in the Interior region, which was previously served by Inland Natural Gas Co.
18 Ltd. All of the municipalities in that region that have an agreement, have an operating fee
19 calculated based on 3 percent of gross revenues. The proposed agreement maintains the
20 status quo for Kelowna because the expired agreement contains the same operating fee
21 provision calculated on the same basis. As such, the operating fee does not represent a new
22 fee for FEI's customers. Reducing the fee will lead to a reduction in revenue for Kelowna.

23 Surrey has operated without receiving an operating fee for decades. Operating fees are
24 currently not, and have never been, collected on behalf of any Lower Mainland municipality⁹.

25 **2. Kelowna Accepted the Keremeos Terms without Revision:**

26 In the case of discussions with Kelowna, Kelowna accepted the standard Keremeos terms
27 without requiring substantive revisions.

28 In the case of Surrey, discussions commenced with the Keremeos terms, which Surrey was
29 unwilling to accept. There was a lengthy, and sometimes contentious, negotiation process.
30 Negotiation on the terms of a new operating agreement with Surrey presented FEI with the first
31 opportunity to "seek a method in future agreements to convert the fee to a charge on Utility
32 Margin, so as to stabilize the costs to utility customers" as directed by the BCUC in Order C-7-
33 03¹⁰.

34

⁹ FEI-Surrey Operating Agreement, Exhibit B-1, Application, Section 3.3.1.

¹⁰ Order C-7-03, dated September 2, 2003, Appendix A, page 5.

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 10, 2019
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1 Additionally, on the agreed-to terms between FEI and Surrey, there are certain terms that are
 2 more favorable to Surrey as compared to other municipalities.¹¹ Surrey also wanted FEI to pay
 3 most relocation costs, which is different from the Keremeos agreement. In the end, FEI was
 4 seeking to ensure that FEI customers receive a fair agreement overall and the proposed
 5 operating fee in that proceeding was part of that fair package.

6 **General Comments Regarding Limits of Keremeos Agreement**

7 Although it is not possible to articulate a bright line as to where the Keremeos agreement can be
 8 used, we offer these general comments.

9 The overall objective is to achieve a commercial arrangement that is fair to both FEI's
 10 customers and the municipality in question (a win-win). It is necessary to look at the overall
 11 package, including the operating fee and other rights and concessions made, and how they will
 12 play out in the specific municipality. This precludes a one size fits all approach.

13 Broadly speaking, however, FEI sees municipalities falling into three groups once we have the
 14 guidance of the BCUC on the Surrey agreement:

Smaller municipalities	The Keremeos agreement would generally be a sound basis for proceeding ¹² , varied for specific circumstances
Larger municipalities on Vancouver Island or Interior	The starting point would be the Keremeos agreement, varied for specific circumstances; but, the operating fee might have to be reduced for proportionality
Lower Mainland municipalities with legacy operating agreements with no fee	The starting point would be what the BCUC determines for Surrey, varied for specific circumstances

15

16 The Keremeos agreement works for small municipalities, in part because the absolute dollar
 17 value of an operating fee is small regardless of how it is calculated, there is less activity in the
 18 municipality, and the municipality is agreeing to pay for relocations. There is a point at which
 19 negotiating a different operating fee is an exercise in diminishing returns. However, as
 20 municipalities get larger and more densely urbanized, the 3 percent formula is more prone to
 21 yielding a fee that is out of proportion to benefits that FEI/FEI customers are getting back under
 22 the agreement. This is most acute in the Lower Mainland, but the risk exists in other large
 23 municipalities as well.¹³ In those circumstances, it becomes more important to consider whether
 24 the overall gives and takes reflected in the Keremeos agreement would continue to deliver
 25 benefits to customers.

¹¹ FEI-Surrey Operating Agreement, Exhibit B1-4, BCOAPO IR 1.1.1 and Exhibit B1-6, BCUC IR 1.4.5.

¹² Regardless, FEI believes that the operating fee should be expressed as a percentage of delivery margin, rather than gross revenues.

¹³ The amount in dollars yielded by the Kelowna three percent operating fee based on 2016 gross revenue was just over \$1 million. While still a large amount, Kelowna's operating fee is substantially smaller than one based on three percent of gross revenue for Surrey, which would be more than three times Kelowna's.



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 10, 2019
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1 There is currently a practical impediment to FEI negotiating a different operating fee for larger
2 Interior or Vancouver Island municipalities, even if FEI considers that a lower operating fee
3 might be warranted. The practical reality is that 3 percent of gross margin is going to be the
4 starting point for negotiations because (a) the BCUC's approval of the Interior agreement
5 (Keremeos terms), and (b) the fact that operating agreements for municipalities in the Interior
6 and Vancouver Island already have an operating fee calculated on that basis. Negotiating a
7 change is difficult in light of these facts. In that context, FEI regards 3 percent of gross
8 revenues as the upper limit unless other concessions are made that are not in the Keremeos
9 agreement. Conversely, the municipalities see 3 percent as the minimum unless they obtain
10 other concessions from FEI. Breaking this practical deadlock would require the BCUC to
11 express a view about the principles to be applied when negotiating with those municipalities that
12 currently receive a fee, and to express the view that operating fees can or should be lower.

13 These practical impediments do not arise in the Lower Mainland, because the municipalities are
14 starting from a different point: they have never had an operating fee. In such cases, it makes
15 sense to use the principled approach outlined by FEI in the Surrey application. FEI has resisted
16 the argument made by Surrey that, in effect, they should get a 3 percent fee based on gross
17 revenues because other municipalities do.

18 FEI looks forward to receiving the guidance of the BCUC's decision on the Surrey operating
19 agreement on the principles to be applied in calculating a fee and on other contentious issues,
20 which it will use to inform future operating agreement negotiations.

21
22

23

24 1.2 Please discuss if, and how, the BCUC should review each operating agreement
25 based on such limits of applicability.
26

27 **Response:**

28 Consistent with BCUC Order L-4-02, dated February 4, 2002, the BCUC stated that it would
29 review the circumstances in each municipality and determine the appropriate terms and
30 conditions on an individual basis.¹⁴ FEI believes the BCUC should continue to review each
31 operating agreement application on its own merits in the context of all relevant considerations
32 as noted in the response to BCUC IR 1.1.1.

33

¹⁴ Reiterated in Order C-7-03, Appendix A, page 3.

Appendix D

CITY OF KAMLOOPS EMAIL CONFIRMATION FEB 5, 2019

From: Denise McCabe <DMcCabe@fultonco.com>
Sent: Tuesday, February 05, 2019 5:10 PM
To: Taylor, Alison
Subject: [External Email] - FortisBC - City of Kamloops Operating Agreement
Attachments: Appendix E - Draft Order Draft Feb 5.pdf; FEI-City of Kamloops Operating Agreement_CL Draft Feb 5.pdf

Importance: High

**** THIS IS AN EXTERNAL EMAIL ** Use caution before opening links / attachments.**

Dear Alison,

Further to your email, I have received instructions from the City to confirm that:

- (a) the City supports the Application, including FEI's request for interim approval of the executed Operating Agreement; and
- (b) the City's position is that the final approved form of operating agreement for Kamloops should be the same as that approved by the BCUC on a final basis for Kelowna.

The City agrees with FEI's understanding of the agreement between the City and FEI as indicated in your below email, and the attached Application is consistent with this Agreement.



Denise McCabe
Senior Advisory Counsel | Fulton & Company LLP

KAMLOOPS | 300-350 Lansdowne Street
VANCOUVER | 960-1055 W. Georgia Street
direct: 250.851.2364 main: 250.372.5542
e: dmccabe@fultonco.com

Please visit our website at www.fultonco.com.

This communication may be privileged and/or confidential, and the sender does not waive any related rights and obligations. Any distribution, use or copying of this communication or the information it contains by other than an intended recipient is unauthorized. If you received this communication in error, please advise me immediately.

From: Taylor, Alison <Alison.Taylor@fortisbcholdings.com>
Sent: Tuesday, February 5, 2019 2:04 PM
To: Denise McCabe <DMcCabe@fultonco.com>
Subject: FortisBC - City of Kamloops Operating Agreement

Dear Denise,

Further to our telephone discussion, I am attaching FortisBC's Application for Approval of the FEI - City of Kamloops Operating Agreement (the "Application").

Given that the existing Franchise Agreement expires on February 14, 2019 and the proceeding in the FEI- City of Kelowna Operating Agreement Application is ongoing, the Application seeks BCUC approval of the executed FEI-City of Kamloops Operating Agreement on an interim basis effective February 15, 2019, and a final order specifying that the FEI-City of Kamloops Operating Agreement shall be the same as the operating agreement the BUCU ultimately approves for the City of Kelowna.

We believe it would be useful for the BCUC to have confirmation that the City of Kamloops agrees with approach taken in the Application. In particular, it would be helpful to have confirmation from the City that:

- (a) the City supports the Application, including FEI's request for interim approval of the executed Operating Agreement; and
- (b) the City's position is that the final approved form of operating agreement for Kamloops should be the same as that approved by the BCUC on a final basis for Kelowna.

Please reply via return email that the City agrees with FEI's understanding of the agreement between the City and FEI, and that the attached Application is consistent with this agreement. FEI intends to include this email and your response on behalf of the City as Appendix D to the Application.

Thank you

Alison

Alison Taylor
Senior Counsel
Acting for the FortisBC Group of Companies

3700 2nd Avenue
Burnaby, BC
V5C 6S4

Tel (604) 293 8615 Cell (604) 219-8634
Fax (604) 293 8679
email: alison.taylor@fortisbcholdings.com

This email is confidential and may be legally privileged.

This email was sent to you by FortisBC*. The contact information to reach an authorized representative of FortisBC is 16705 Fraser Highway, Surrey, British Columbia, V4N 0E8, Attention: Communications Department. You can [unsubscribe](#) from receiving further emails from FortisBC or email us at unsubscribe@fortisbc.com.

*"FortisBC" refers to the FortisBC group of companies which includes FortisBC Holdings, Inc., FortisBC Energy Inc., FortisBC Inc., FortisBC Alternative Energy Services Inc. and Fortis Generation Inc.

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ORDER NUMBER

G-xx-xx

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Energy Inc.
Application for Approval of an Operating Agreement between the
Corporation of the City of Kamloops and FortisBC Energy Inc.

BEFORE:

[Panel Chair]
Commissioner
Commissioner

on **Date**

ORDER

WHEREAS:

- A. On February **XX**, 2019, FortisBC Energy Inc. (FEI) applied to the British Columbia Utilities Commission (BCUC) for approval of an Operating Agreement dated January 17, 2019, entered into between the Corporation of the City of Kamloops (Kamloops) and FEI (the FEI-Kamloops Operating Agreement or Application);
- B. FEI states that the terms of the FEI-Kamloops Operating Agreement reflect, in all but four minor respects to correct typographical errors and a reference to current legislation, the Keremeos Operating Agreement Terms approved by the BCUC in Order C-7-14 and used as a basis for comparison of subsequent agreements;
- C. Despite the terms of the executed FEI-Kamloops Operating Agreement, FEI and Kamloops have also agreed to request that the BCUC direct the final form of the FEI-Kamloops Operating Agreement be the same as the final form determined by the BCUC in the City of Kelowna (Kelowna) Operating Agreement proceeding currently before the BCUC;
- D. FEI requests approval of the FEI-City of Kamloops Operating Agreement on an interim basis until a final determination is made by the BCUC in the City of Kelowna Operating Agreement Application.

The BCUC has reviewed the Application and considers that approval on an interim basis is warranted.

NOW THEREFORE pursuant to section 23(1)(g) and section 89 of the *Utilities Commission Act*, the British Columbia Utilities Commission orders as follows:

- 1. The Operating Agreement dated January 17, 2019, between FortisBC Energy Inc. and the Corporation of the City of Kamloops is approved as filed on an interim basis.

2. Permanent approval of the final form for the FEI-Kamloops Operating Agreement will follow after a BCUC determination in the FEI-Kelowna Operating Agreement proceeding.

DATED at the City of Vancouver, in the Province of British Columbia, this (XX) day of (Month Year).

BY ORDER

(X. X. last name)
Commissioner



Doug Slater
Director, 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: (778) 578-3874
Cell: (778) 214-3842
Fax: (604) 576-7074
Email: doug.slater@fortisbc.com
www.fortisbc.com

February XX, 2019

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

Attention: Mr. Patrick Wruck, Commission Secretary and Manager, Regulatory Support

Dear Mr. Wruck:

Re: FortisBC Energy Inc. (FEI)

Application for Approval of an Operating Agreement between the Corporation of the City of Kamloops (Kamloops or the City) and FEI (the Application)

FEI and Kamloops have entered into a new Operating Agreement dated January 17, 2019 (the FEI-Kamloops Operating Agreement), for which FEI is requesting approval from the British Columbia Utilities Commission (BCUC), on an interim and permanent basis, pursuant to section 23(1)(g) and section 89 of the *Utilities Commission Act* (UCA). A copy of the executed FEI-Kamloops Operating Agreement is provided in Appendix A.

There is some urgency to the request for an interim order, as the existing Franchise Agreement expires on February 14, 2019.

Kamloops is an Interior Municipality with an Expiring Franchise Agreement

FEI (through predecessor companies Inland Natural Gas Co. Ltd. and BC Gas Utility Ltd.) and the City entered into a Franchise Agreement (approved by BCUC Order C-14-80), which expired on February 14, 1998. Subsequently, FEI and the City entered into a Franchise Agreement dated February 25, 1998, which was approved by BCUC Order C-7-98. The term of this agreement expires on February 14, 2019. A copy of the expiring Franchise Agreement is attached as Appendix B.

FEI commenced discussions with the City of Kamloops regarding a new operating agreement in December 2018, using the approved terms of the Village of Keremeos Operating Agreement¹ (the Keremeos Terms) as the starting point in accordance with BCUC Order C-7-14. FEI adopted this approach for the same reasons as outlined in FEI's

¹ Order C-8-14, dated July 24, 2014, approved the Village of Keremeos terms to be the basis for comparison in future operating agreement applications.

response to BCUC IR 1.1.1 of the FEI Application for Approval of an Operating Agreement between the City of Kelowna and FEI (the FEI-City of Kelowna Operating Agreement Application). A copy of that response is attached as Appendix C.

Negotiations completed only recently, culminating in the execution of an operating agreement that can be used on an interim basis pending the BCUC's final approval. As discussed below, the parties are contemplating that the final agreement may differ.

FEI and Kamloops Have Agreed to Adopt the Terms Ultimately Approved for Kelowna

The proposed FEI-Kamloops Operating Agreement is consistent with the Keremeos Terms. The only changes in the FEI-Kamloops Operating Agreement as compared to the Keremeos Terms are to make four very minor corrections: three of which are to make typographical corrections to reflect the original intent or make dates more current, and a final one to update the reference to other applicable legislation. The following details these four changes:

1. **Section 6.2**, third line, capitalization of utilities:
 - "...the Municipality's utilities..." now reads "...the Municipality's Utilities..."
2. **Section 6.4.1**, last line of the second paragraph, replacing "or" with "of":
 - "...non-use and want or repair." now reads "...non-use and want of repair."
3. **Section 11.2**, last two lines of the paragraph, to update the years in the example to be more current:
 - "...on March 1, 2014 will be the amount received during the 2013 calendar year." now reads "...on March 1, 2018 will be the amount received during the 2017 calendar year..."
4. **Section 13.1.3**, line 4, update to current legislation
 - "...*Gas Safety Act*,..." with "...*Safety Standards Act*,..."

The City and FEI were cognizant of the FEI-City of Kelowna Operating Agreement Application. Kamloops requested that their form of operating agreement be the same as that which the BCUC determines on a permanent basis for Kelowna. A copy of an email dated [INSERT DATE] from the City confirming this request is attached as Appendix D. FEI agreed to that request, given the high degree of similarity between Kamloops and Kelowna. Notably, they are the two largest interior municipalities with pre-existing agreements that contemplate an operating fee. Both municipalities were prepared to accept the general "puts and takes" inherent in the Keremeos Terms. We regard the protocols and processes in the Keremeos Terms as workable in the case of both municipalities.

Order Sought

Given the existing Franchise Agreement expires on February 14, 2019, FEI requests approval from the BCUC, pursuant to section 23(1)(g) and section 89 of the UCA, of the executed FEI-City of Kamloops Operating Agreement on an interim basis effective February 15, 2019 until a final determination is made. This is, in essence, the same interim order that was granted by the BCUC in Order G-206-18 in the Kelowna Operating Agreement Application proceeding.

FEI respectfully requests that the BCUC direct the final form of the FEI-City of Kamloops Operating Agreement after it has decided the Kelowna Operating Agreement Application. Consistent with the intent of the parties, the BCUC's final order in this Application would specify that the FEI-City of Kamloops Operating Agreement shall be the same as the agreement that the BCUC ultimately approves for the City of Kelowna.

A draft Interim Order is included in Appendix E.

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

cc (email only): City of Kamloops

DRAFT

Appendix E
DRAFT ORDER



ORDER NUMBER

G-xx-xx

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Energy Inc.
Application for Approval of an Operating Agreement between the
Corporation of the City of Kamloops and FortisBC Energy Inc.

BEFORE:

[Panel Chair]
Commissioner
Commissioner

on Date

ORDER

WHEREAS:

- A. On February 6, 2019, FortisBC Energy Inc. (FEI) applied to the British Columbia Utilities Commission (BCUC) for approval of an Operating Agreement dated January 17, 2019, entered into between the Corporation of the City of Kamloops (Kamloops) and FEI (the FEI-Kamloops Operating Agreement or Application);
- B. FEI states that the terms of the FEI-Kamloops Operating Agreement reflect, in all but four minor respects to correct typographical errors and a reference to current legislation, the Keremeos Operating Agreement Terms approved by the BCUC in Order C-7-14 and used as a basis for comparison of subsequent agreements;
- C. Despite the terms of the executed FEI-Kamloops Operating Agreement, FEI and Kamloops have also agreed to request that the BCUC direct the final form of the FEI-Kamloops Operating Agreement be the same as the final form determined by the BCUC in the City of Kelowna (Kelowna) Operating Agreement proceeding currently before the BCUC;
- D. FEI requests approval of the FEI-City of Kamloops Operating Agreement on an interim basis until a final determination is made by the BCUC in the City of Kelowna Operating Agreement Application.

The BCUC has reviewed the Application and considers that approval on an interim basis is warranted.

NOW THEREFORE pursuant to section 23(1)(g) and section 89 of the *Utilities Commission Act*, the British Columbia Utilities Commission orders as follows:

1. The Operating Agreement dated January 17, 2019, between FortisBC Energy Inc. and the Corporation of the City of Kamloops is approved as filed on an interim basis.

2. Permanent approval of the final form for the FEI-Kamloops Operating Agreement will follow after a BCUC determination in the FEI-Kelowna Operating Agreement proceeding.

DATED at the City of Vancouver, in the Province of British Columbia, this (XX) day of (Month Year).

BY ORDER

(X.X. last name)
Commissioner