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March 3, 2022

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, B.C.
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Attention: Mr. Patrick Wruck, Commission Secretary

Dear Mr. Wruck:

Re: FortisBC Energy Inc. (FEI)

Application for Approval of an Operating Agreement between the City of Prince George and FEI (Application)

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

On October 20, 2021, FEI filed the Application referenced above. On February 10, 2022, BCUC staff responded by email with BCUC Staff IR No. 1.

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

If further information is required, please contact the undersigned.

Sincerely,

FORTISBC ENERGY INC.

Original signed:

Diane Roy

Attachments



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5 **A. FEI-PRINCE GEORGE LEASE-IN LEASE-OUT (LILO) AGREEMENT**

6 **1.0 Reference: FEI-Prince George Lease-in Lease-out (LILO) Agreement**
7 **Exhibit B-2, Schedule B Capital Lease, Sections 3.2-3.3, 4.1-4.2,**
8 **Appendix 2, Schedule E Additions Option**
9 **Early Termination**

10 In Sections 3.2 and 3.3 of Schedule B Capital Lease, FEI states:

11 3.2 Early Termination Option.

12 Lessor has the right, at Lessor's option, to terminate this Lease on October 31,
13 2021 (the "Termination Date"), such right to be exercisable at any time from July
14 1, 2021 to September 30, 2021 by the Lessor delivering written notice to the
15 Lessee that this option has been exercised, in which event the Lessor shall pay to
16 the Lessee the Termination Payment on the Termination Date. The Termination
17 Payment (assuming prepayment of the maximum amount under Section 4.2) shall
18 be calculated as follows:

19 Refund of Unamortized Prepaid Rent	\$ 29,314,000 plus
20 Termination Charge	\$ 60,000
21 Termination Payment	\$ 29,389,000

22 In exchange for the Termination Payment, the Lessee shall execute and deliver to
23 the Lessor a signed agreement surrendering this Lease in an appropriate form
24 provided by and executed by the Lessor.

25 3.3 Lease Ends Upon Payment.

26 At the end of the Term, whether pursuant to termination under section 3.2, section
27 4.6 or otherwise, this Lease shall continue in effect until, as the case may be:

- 28 a. the Termination Payment provided for in section 3.2;
- 29 b. the payments provided for in section 4.6; or



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1 **Response:**

2 By Order G-91-04, the BCUC approved the LILO arrangements between FEI (then Terasen Gas
3 Inc.) and the City of Prince George, which included the Capital Lease and the Operating Lease.
4 As such, the ability for FEI to exercise its right of early termination in the Capital Lease has already
5 been approved by Order G-91-04 and no further BCUC approvals are required.

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9 1.2 Please explain whether FEI and the City of Prince George have agreed to a
10 Termination Payment amount.

11

12 **Response:**

13 FEI and the City of Prince George agreed to the Termination Payment amount as set out in the
14 Capital Lease component of the LILO arrangements.

15

16

17

18 1.3 Please clarify whether the Termination Payment has been paid.

19 1.3.1 If not, please explain whether the Lease has ended.

20

21 **Response:**

22 The termination payment was paid to the City of Prince George in October 2021.

23

24

25

26 1.4 Please discuss how, in FEI's opinion, the BCUC would assess the prudence of the
27 Termination Payment.

28

29 **Response:**

30 The approval sought in this Application is for approval of the new Operating Agreement between
31 FEI and the City of Prince George. The approvals related to the LILO arrangements, the Lease
32 agreement, and any of the terms and provisions of the Lease agreement have already been
33 approved by the BCUC by Order G-91-04, which includes the calculation of the Termination
34 Payment within the terms of the Capital Lease. The BCUC could assess the prudence of the
35 Termination Payment in terms of the benefits to FEI's customers, which in this case is the future
36 benefit seen on the lower cost of debt associated with the LILO assets.

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1.5 Please explain the accounting treatment for the Prepayment Amount totalling \$60,990,000 received from the City of Prince George in 2004 and the associated annual ratepayer impacts since then, if any.

Response:

The proceeds from the prepayment amount were recorded for accounting purposes as a finance obligation. Lease payments made over the term, less the portion considered to be interest expense, decreased the finance obligation. The related GST was recorded and remitted to CRA.

As part of the arrangement, the assets continued to form part of the rate base of FEI for regulatory purposes, continued to earn a normal return on rate base, and have associated with them the same cost of service as they would have had if the LILO arrangement with the City of Prince George had not occurred. The effect of such treatment is that the LILO arrangement did not affect customer rates.

1.6 Please explain the expected accounting treatment for the Termination Payment, including any tax implications and ratepayer impacts, if any, associated with: a) the Refund of Unamortized Prepaid Rent; and b) the Termination Charge. As part of the response, please clarify whether the ratepayer impacts explained in the response would be included by FEI in any of its future revenue requirement applications to the BCUC, or in any other regulatory submissions submitted by FEI, for approval by the BCUC.

1.6.1 Please explain the difference, if any, between the accounting treatment and related ratepayer impacts of the 2004 Prepayment Amount and the Termination Payment.

Response:

The termination payment associated with both the (a) refund of unamortized prepaid rent and (b) termination charge, for accounting purposes, was applied against the outstanding finance obligation, reducing the finance obligation to NIL on termination. The refund of the unamortized prepayment will be considered an expense for tax purposes and at the same time an equivalent amount in respect of the tax reserve claimed on the initial receipt will be included in taxable income. The two amounts should offset and there should be no net tax cost or benefit resulting from this repayment. The termination charge would ultimately result in a deduction for tax purposes.



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1 As described in response to BCUC Staff IR1 1.5, the LILO arrangements, including the
2 termination payment itself, do not affect customer rates. Ending the LILO agreement is expected
3 to have a future benefit to customers as the regulated debt associated with the LILO assets will
4 be re-financed at FEI's new incremental cost of debt, which is currently lower than the interest
5 rate embedded in the Prince George LILO arrangement.

6
7

8

9 1.7 Please discuss the number of other LILO Agreements with BC municipalities FEI
10 anticipates terminating in the next 10 years, if any.

11

12 **Response:**

13 FEI anticipates terminating the one remaining LILO agreement in 2022 if it concludes it is
14 beneficial to do so.

15
16

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18 1.7.1 Please provide the cumulative Termination Payments that FEI
19 anticipates having to pay to terminate these additional LILO agreements.

20

21 **Response:**

22 The anticipated termination payment on the one remaining LILO agreement is \$2,687,143 related
23 to the refund of unamortized prepaid rent, a \$5,500 termination charge, and GST of \$134,632,
24 totaling \$2,827,275.

25
26

27

28 In Schedule E Additions Options, FEI states:

2. OPTION

2.1 **Additions Notice.** On or before April 1 of each year of the Term Lessor shall give Lessee notice (the "Additions Notice") of the Additions (and the cost thereof broken down by calendar quarters) made by or on behalf of Lessor during the preceding calendar year.

2.2 **Option.** The Lessee shall have an option to lease the Additions during the Term on those terms and conditions set out in the Additions Capital Lease.

2.3 **Operating Lease.** If the Lessee exercises this option and leases Additions, then the Lessee will thereafter concurrently sublease the leased Additions to the Lessor on those terms and conditions set out in the Operating Lease Amendment.

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1 1.8 Please briefly summarize the Additions Notices that FEI has submitted to the City
2 of Prince George over the term of the Lease Agreement, and whether the City of
3 Prince George elected to lease the Additions or declined to lease the Additions.
4

5 **Response:**

6 FEI submitted Additions Notices to the City of Prince George annually, as required based on
7 actual additions, over the term of the Lease Agreement. The City of Prince George did not
8 exercise its option to lease any additions over the term.

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12 1.9 Please clarify whether the new Operating Agreement for which FEI is currently
13 requesting approval from the BCUC includes all Gas Distribution Assets within the
14 City of Prince George.
15

16 **Response:**

17 Confirmed.

18
19

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21 1.10 Has the Termination Payment with respect to any Addition Options which have
22 been exercised by the City of Prince George over the term of the lease been
23 determined?

24 1.10.1 If so, has the Termination Payment with respect to any Addition Options
25 been paid?
26

27 **Response:**

28 The City of Prince George did not exercise its option to lease any Additions. As such, a
29 Termination Payment with respect to any Addition Options was not required.

30

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1 **2.0 Reference: FEI-Prince George Lease-in Lease-out (LILO) Agreement**
2 **BCUC Letter L-55-03, p. 1**
3 **Public Consultation**

4 On page 1 of BCUC Letter L-55-03, the BCUC stated:

5 The Commission has approved the LILO arrangements between Terasen Gas Inc.
6 and the City of Kelowna and the City of Vernon, and understands that Terasen
7 Gas Inc. will be entering into similar arrangements with other Interior Municipalities
8 where the existing agreements have buyout options. As part of the municipal
9 review and approval process, the Commission also understands that each
10 municipality had approved the agreements in principle, carried out a public
11 communication process, including open house meetings, and provided a
12 counterpetition opportunity for municipality ratepayers. In addition, as the
13 municipality must borrow through the Municipal Financing Authority, the proposal
14 was approved by the Inspector of Municipalities. Once the counterpetition process
15 was completed, each municipality submitted the bylaws and the approvals of the
16 Inspector of Municipalities to the Commission.

17 In addition to the municipal review and approval process, Terasen Gas Inc. must
18 also apply to the Commission for approval to enter into the LILO arrangements
19 and to establish the mode of regulation under which rates will be set to take these
20 arrangements into account. The Commission notes that the LILO arrangements
21 are arrived at after negotiations between sophisticated parties and that through the
22 municipal process, there appears to be a sharing of benefits between the
23 municipality, the utility's customers and the utility's shareholders. The Commission
24 considers that, in most circumstances, the municipal review and approval process
25 discussed above, could negate the need for a long, adversarial process. In the
26 normal course of events, therefore, the Commission would not require a separate
27 public proceeding to deal with these applications unless there is substantive
28 opposition to the arrangements in the municipal public review and approval
29 process.

30 2.1 Please explain what public consultation, if any, has been conducted by the City of
31 Prince George or by FEI with regard to the termination of the LILO agreement and
32 the new Operating Agreement. Please discuss the outcomes of any public
33 consultation.

34
35 **Response:**

36 FEI is not aware whether the City of Prince George conducted a public consultation process with
37 regard to the termination of the LILO arrangements.

38 FEI did not conduct a public consultation process with respect to the exercise of its termination
39 right in the Capital Lease as one was not required. As described in response to BCUC Staff IR1



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1 1.1, by Order G-91-04, the BCUC approved the LILO arrangements between FEI (then Terasen
2 Gas) and the City of Prince George. The LILO arrangements between FEI and the City of Prince
3 George included a Capital Lease and an Operating Lease. FEI has a right of early termination
4 in the Capital Lease and FEI exercised this right. The Operating Lease expired on same date as
5 the early termination date in the Capital Lease.

6 FEI discussed its intention to exercise its right of termination with City Council and staff and FEI
7 understands termination was viewed as a positive step for the City as discussed in local media in
8 2021 as can be seen from an article in the online publication CKPGToday:
9 <https://ckpgtoday.ca/2021/10/07/council-learns-fate-of-fortis-agreement/>.

10 In addition FEI notes that in 2004, the City of Prince George held a referendum and City Council
11 subsequently adopted bylaws approving the LILO arrangements. As part of the referendum
12 process, the City of Prince George undertook an information program to ensure the citizens of
13 Prince George were aware of what was being proposed in the LILO arrangements.

14 FEI is not aware of whether the City of Prince George conducted a public consultation process
15 with regard to the new Operating Agreement. FEI did not conduct a public consultation process
16 with regard to the new Operating Agreement as it believes one is not required. The new Operating
17 Agreement is consistent with the terms of the Village of Keremeos Operating Agreement, which
18 by BCUC Order C-8-14, the BCUC approved to be the basis of comparison for all future operating
19 agreement applications.

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1 **B. FEI-PRINCE GEORGE FRANCHISE AMENDMENT AGREEMENT**

2 **3.0 Reference: FEI-Prince George Franchise Amendment Agreement**

3 **Exhibit B-1, p. 1 (Application), Appendix B, p. 2**

4 **Franchise Amendment Agreement Expiry**

5 On page 1 of the Application, FEI states:

6 FEI has exercised its early termination right in the LILO agreement, which also
7 terminates the Franchise Amendment Agreement, effective October 31, 2021.
8 [Emphasis added]

9 On page 2 of the 2004 FEI-City of Prince George Franchise Amendment Agreement, FEI
10 states:

11 Expiry. The Franchise Agreement is renewed to extend the expiry date to October
12 31, 2021 and to adjust the payment and other dates contained in Section 5 of the
13 Franchise Agreement.

14 3.1 Please reconcile the above noted statements by clarifying whether the early
15 termination of the LILO agreement also terminates the Franchise Amendment
16 Agreement or that the Franchise Amendment Agreement was set to expire
17 October 31, 2021 regardless.

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19 **Response:**

20 The Franchise Agreement was set to expire on October 31, 2021 regardless of whether the early
21 termination right was exercised.

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25 3.2 Please explain whether FEI considered continuing with the LILO agreement while
26 replacing the 2004 Franchise Amendment Agreement with a new Operating
27 Agreement.

28 3.2.1 If not, why not.

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30 **Response:**

31 Yes, FEI did consider continuing with the LILO agreement while replacing the 2004 Franchise
32 Amendment Agreement with a new Operating Agreement. However, the financial analysis
33 indicated that continuing with the existing LILO agreement was not in the best interests of FEI
34 and its customers, so FEI exercised its early termination right.

35