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December 23, 2024

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC
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Attention: Patrick Wruck, Commission Secretary

Dear Patrick Wruck:

Re: FortisBC Energy Inc. (FEI)

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

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

On November 28, 2024, FEI filed the Application referenced above. On December 11, 2024, 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 Ilva Bevacqua, Manager of Regulatory Compliance and Administration at (604) 592-7664.

Sincerely,

FORTISBC ENERGY INC.

Original signed:

Sarah Walsh

Attachments

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A. BACKGROUND

1.0 Reference: Application for Approval of the FEI-West Kelowna Operating Agreement

Appendix A, p. 1

Agreement History

Page 1 of the FortisBC Energy Inc. (FEI) operating agreement with the City of West Kelowna, dated November 27, 2024 (Operating Agreement), contains the following 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 [the City of West Kelowna];

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 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.

1.1 Please explain whether the Operating Agreement is intended to replace an existing agreement between FEI and the City of West Kelowna.

1.1.1 If yes, please provide the expiry date of the existing agreement, and a summary of any differences between the terms and conditions of the existing agreement and the Operating Agreement, as well as blacklined mark-up copy of the existing agreement.

1.1.2 If no, please explain what terms and conditions currently govern FEI's use of Public Places in conducting its business within the City of West Kelowna. In the response, please discuss whether FEI is currently paying any other fee to the City of West Kelowna in exchange for the rights to use Public Places in conducting business, outside of an existing agreement.

1.1.3 If no, please clarify why FEI is applying for approval of a new Operating Agreement now.

Response:

FEI and the City of West Kelowna do not currently have an existing agreement in place.

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1 Prior to 2007, what is now known as the City of West Kelowna was governed as a rural area under
2 the Central Okanagan Regional District. In December 2007, the Westside District Municipality
3 was established and officially became a City in 2015.

4 Currently, there are no overall formal terms and conditions which govern FEI's use of Public
5 Places in conducting its business within the City of West Kelowna. However, at this time FEI must
6 apply for and pay for permits from the City of West Kelowna for construction works and when
7 such a permit is approved, the City of West Kelowna attaches a term sheet. The term sheet is
8 specific to the permit being issued and the works being performed, but generally provides the City
9 of West Kelowna's approval and consent to the works in so far as they relate to the use of
10 municipal lands, interference with public works, or other matters under the jurisdiction of the City
11 of West Kelowna. The term sheet also provides FEI with the City of West Kelowna's permission
12 to construct, use and maintain the specified works subject to certain conditions, including the
13 following:

- 14 • dates for commencement and completion of the works;
- 15 • that FEI is required to maintain a certain level of liability insurance;
- 16 • who is responsible for the cost of the works;
- 17 • any requirements around traffic and pedestrian management;
- 18 • site restoration requirements; and
- 19 • adherence to material, procedural and safety requirements, regulations and standards.

20 Under the current circumstances, there is uncertainty related to the timelines for approval and
21 issuing of permits which can and has resulted in inefficiencies. Such inefficiencies can, over time,
22 contribute to higher overall costs to FEI's customers as well as dissatisfaction with FEI's ability to
23 complete works in a reasonable timeframe. Without an operating agreement, there are no
24 specified timelines for the City of West Kelowna to review, process and issue permits to FEI. As
25 a result, at times FEI has experienced delays to permit approvals which have resulted in delays
26 and inefficiencies to commencing and completing works, including the challenges of scheduling
27 and rescheduling of FEI crews and resources. The typical turnaround time for permits has been
28 observed to be longer than other municipalities in this region, with complex projects taking 3 to 4
29 weeks to receive approval. The terms of the Operating Agreement allow for more certainty with
30 respect to permit timelines and for more efficiency as they specify a 10-day turnaround for permits.
31 In addition, the Operating Agreement terms remove the need for FEI to pay permit fees and FEI
32 would no longer need to apply for permits for simple services. Therefore, under the proposed
33 Operating Agreement, interactions between the City of West Kelowna and FEI will be more
34 streamlined and efficient, and will provide for improved coordination and scheduling of works to
35 the benefit of both parties.

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FEI staff and staff at the City of West Kelowna began discussions in 2007 with respect to the potential for entering into an operating agreement. The operating agreement terms that formed the basis of the initial discussions between FEI and the City of West Kelowna had previously been negotiated between FEI and the Union of British Columbia Municipalities (UBCM Proforma Operating Agreement) which was approved by the BCUC.¹ In 2014, the BCUC issued Order C-8-14 which directed that the operating agreement between FEI and the Village of Keremeos become the basis for comparison for future operating agreement applications (Keremeos Terms).

Periodic contact took place between FEI and the City of West Kelowna staff regarding terms to an operating agreement over the ensuing years, including FEI presenting information to staff in both 2019 and 2023. In early 2024, the City of West Kelowna expressed a renewed interest in pursuing an operating agreement; as a result, more frequent discussions and engagement began taking place between the parties.

FEI and the City of West Kelowna have now entered into the proposed Operating Agreement to set out the terms and conditions by which FEI will conduct its day-to-day operating procedures in the City of West Kelowna. This includes activities such as new construction, maintenance, and emergency response. The City of West Kelowna is one of the fastest growing municipalities in the Interior and is the only municipality in the Interior that does not have an operating agreement with FEI in place.

The Operating Agreement will provide mutual benefits for FEI (on behalf of all its customers) and the City West Kelowna. Some of the benefits include, but are not limited to the following:

- Streamlined and more efficient operating practices between FEI and the City of West Kelowna, which will result in FEI being able to serve customers in the city in a more responsive and efficient manner.
- Clearly defined operating practices between the City of West Kelowna and FEI will reduce conflicts and delays related to permit requirements.
- The Operating Agreement provides clear terms and provides certainty to the parties of operating conditions and responsibilities. This certainty will reduce the risk of needing to resolve conflicts through litigation, which could be long and costly.
- Improved planning and coordination of the city's public work with gas infrastructure work whenever possible will likely result in fewer public complaints.
- The parties can improve operating efficiencies by working toward compatible mapping systems.
- Permit applications will be reduced and streamlined, which will reduce administration and permitting timelines for both parties.

¹ On August 10, 2006, the BCUC issued Orders C-7-06, C-8-06, C-9-06, C-10-06, C-11-06, C-12-06, C-13-06, C-14-06, C-15-06, and C-16-06, pursuant to section 45 of the *Utilities Commission Act*, approving the operating agreements based on the UBCM Proforma Operating Agreement terms.

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- Joint planning, construction and on-site safety meetings between FEI and the City of West Kelowna will enhance coordination of work to minimize traffic disruption, align and harmonize work activities where possible, and also demonstrate cooperation, resulting in a more positive relationship between the parties.

1.2 Please provide the applicable section(s) of Community Charter, S.B.C. 2003, or other relevant legislation, which allow for a Municipal council to enter into a licensing and operating agreement with utilities. As part of your response, please address whether section 22(1) of the Community Charter, S.B.C. 2003 applies to this Operating Agreement.

Response:

Section 8(1) of the *Community Charter* provides that a municipality has the same rights, powers and privileges of a “natural person of full capacity”. This provision enables a municipality to enter into a legal agreement such as the Operating Agreement.

Section 22(1) of the *Community Charter* does not apply to the Operating Agreement as it is not a franchise agreement. For clarity, FEI notes that the recitals to the Operating Agreement are not conditions to the agreement (recitals provide context and are not legally binding terms). FEI acknowledges that the language in Recital B appears to correspond with section 22(1) of the *Community Charter*. This language has been carried forward from the Keremeos Terms. If the BCUC prefers, FEI would be open to future operating agreements using simplified language such as “And whereas pursuant to the *Community Charter*, S.B.C. 2003, a municipality may enter into an operating agreement”, or deleting it altogether. However, FEI sees no need to adjust the language in the present instance since recitals are meant to provide context and are not legally binding contractual terms.

1.2.1 Please confirm, or explain otherwise, that any conditions related to these sections have been met in relation to the Operating Agreement.

Response:

As noted in the response to BCUC Staff IR1 1.2, recitals to the Operating Agreement provide context and are not legally binding terms. However, FEI confirms that it has a deemed CPCN to construct and operate gas distribution facilities within the City of West Kelowna pursuant to section 45(2) of the *Utilities Commission Act*. FEI understands from the City of West Kelowna that

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it adopted a resolution directing municipal staff to commence the process of entering into the Operating Agreement. Both FEI and the City of West Kelowna wish to enter into the Operating Agreement as evidenced by its execution by the parties.

1.3 Please confirm, or explain otherwise, that the Operating Agreement will result in a new fee to be collected from ratepayers.

1.3.1 If confirmed, please provide the estimated rate impact.

Response:

Confirmed. The Operating Agreement will result in a new fee to be collected from customers in the City of West Kelowna. The terms of the Operating Agreement with the City of West Kelowna are consistent with the Keremeos Terms approved by the BCUC in Order C-8-14. Section 11 of the Operating Agreement sets out the requirement for FEI to collect a 3 percent operating fee (Operating Fee) on behalf of the City of West Kelowna and remit it to the City of West Kelowna annually. The Operating Fee would be collected from customers in the City of West Kelowna as a line item on their bills based on FEI's total gross revenue (not including any applicable provincial or federal taxes), consistent with the operating agreement terms approved by Order C-8-14, and the operating agreements approved by the BCUC from time to time between FEI and other municipalities in the Interior region of the province.

The Operating Fee is not part of FEI's delivery margin and therefore has no impact on FEI's delivery rates. If approved, once implemented, customers in the City of West Kelowna will see a 3.09 percent increase in their total bill for collecting and remitting the Operating Fee to the City of West Kelowna. The Operating Fee is revenue neutral for FEI as the entire amount collected will be remitted to the municipality.

FEI clarifies that although the Operating Fee is defined as 3 percent of the total Gross Revenue, 3.09 percent will be collected and shown on the customer's bill (before tax). This is because the Operating Fee, in accordance with section 11.1.1 of the Operating Agreement, is calculated at 3 percent of the "total gross revenues" excluding taxes. As the fee is not a tax, it must be part of the total Gross Revenue to which the 3 percent is applied. Therefore, the 3 percent Operating Fee to be remitted to the City of West Kelowna is calculated based on the total bill (before tax) that includes the delivery related charges, the commodity related charges, and the Operating Fee itself. In order to collect 3 percent of the total bill before tax (i.e., total gross revenue), FEI must apply 3.09 percent on the delivery and commodity portion of the customer's bill.