



**ORDER NUMBER
G-207-19**

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

and

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

BEFORE:

R. I. Mason, Panel Chair
W. M. Everett, QC, Commissioner
B. A. Magnan, Commissioner

on August 29, 2019

ORDER

WHEREAS:

- A. On February 6, 2019, FortisBC Energy Inc. (FEI) applied (Application) to the British Columbia Utilities Commission (BCUC) for interim and permanent approval of an operating agreement dated January 17, 2019, entered into between the Corporation of the City of Kamloops (Kamloops) and FEI (Initial FEI-Kamloops Operating Agreement);
- B. FEI (through its predecessor company Inland Natural Gas Co. Ltd) and Kamloops entered into a franchise agreement approved by Order C-14-80, which expired on February 14, 1998. FEI (through predecessor company BC Gas Utility Ltd.) and Kamloops subsequently entered into a Standard Form Franchise Agreement dated February 25, 1998, approved by BCUC Order C-7-98, which expired on February 14, 2019;
- C. By Order G-33-19 dated February 13, 2019, the BCUC granted interim approval of the Initial FEI-Kamloops Operating Agreement;
- D. On June 3, 2019, FEI amended its Application by seeking permanent approval of a revised version dated May 31, 2019 of the Initial FEI-Kamloops Operating Agreement (Revised FEI-Kamloops Operating Agreement), based on terms of the operating agreement between FEI and the City of Kelowna (terms approved by BCUC Order G-99-19). In addition, FEI sought BCUC approval to use the Revised FEI-Kamloops Operating Agreement as the basis for comparison in subsequent operating agreement applications with Interior municipalities;
- E. By Order G-132-19, dated June 14, 2019, the Panel established a public hearing process providing for public notice and intervener registration for FEI customers in the City of Kamloops regarding the operating agreement between Kamloops and FEI. No applications to intervene were received by the registration deadline of July 19, 2019;

- F. By Order G-176-19, dated July 31, 2019, the Panel established a public hearing process to address FEI's request to use the Revised FEI-Kamloops Operating Agreement as the basis for comparison in subsequent operating agreement applications with Interior municipalities;
- G. On August 6, 2019, FEI filed a letter (Letter) seeking to withdraw its request for approval to use the Revised FEI-Kamloops Operating Agreement as a basis for comparison for operating agreements with Interior municipalities; and
- H. The Panel has reviewed the Application and the Letter and considers the following determinations are warranted.

NOW THEREFORE, the BCUC orders as follows:

1. Pursuant to section 23(1)(g) of the *Utilities Commission Act* (UCA), the Revised FEI-Kamloops Operating Agreement, dated May 31, 2019 between FEI and the City of Kamloops, is approved on a permanent basis.
2. Pursuant to section 88.1 of the UCA, FEI's application for approval to use the Revised FEI-Kamloops Operating Agreement as a basis for comparison in subsequent operating agreements with Interior municipalities is dismissed.
3. Pursuant to section 99 of the UCA, Order G-176-19, dated July 31, 2019, and the associated regulatory timetable are rescinded.

DATED at the City of Vancouver, in the Province of British Columbia, this 29th day of August 2019.

BY ORDER

Original signed by:

R. I. Mason
Commissioner

Attachment

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

REASONS FOR DECISION

1.0 Background

FortisBC Energy Inc. (FEI) (through its predecessor company Inland Natural Gas Co. Ltd) and the Corporation of the City of Kamloops (Kamloops) entered into a franchise agreement approved by British Columbia Utilities Commission (BCUC) Order C-14-80, which expired on February 14, 1998. Subsequently FEI (through its predecessor company BC Gas Utility Ltd.) and Kamloops entered into a new franchise agreement, dated February 25, 1998, which was approved by BCUC Order C-7-98 and expired on February 14, 2019.

FEI and Kamloops entered into a new operating agreement dated January 17, 2019 (Initial FEI-Kamloops Operating Agreement). By application dated February 6, 2019, FEI sought approval of the Initial FEI-Kamloops Operating Agreement from the BCUC, pursuant to sections 23(1)(g) and 89 of the Utilities Commission Act (UCA) (Application). By Order G-33-19 dated February 13, 2019, the BCUC approved the Initial FEI-Kamloops Operating Agreement on an interim basis until the Panel reached a final determination on the Application.

FEI commenced negotiations with Kamloops regarding a new operating agreement in December 2018 using the terms of the Village of Keremeos operating agreement (Keremeos Terms) as the starting point.¹ Kamloops was aware of FEI's application for approval of an operating agreement with the City of Kelowna and requested that its Initial FEI-Kamloops Operating Agreement be the same as that which the BCUC determined on a permanent basis for the City of Kelowna.² FEI agreed to that request, given the high degree of similarity between Kamloops and Kelowna, namely they are the two largest interior municipalities in BC that contemplate an operating fee and both municipalities were prepared to accept the Keremeos Terms.³

Subsequent to BCUC Order G-99-19, dated May 3, 2019, approving the terms of a new operating agreement between FEI and the City of Kelowna, FEI and Kamloops revised the Initial FEI-Kamloops Operating Agreement and entered into the Revised FEI-Kamloops Operating Agreement dated May 31, 2019 (Revised FEI-Kamloops Operating Agreement). By letter dated June 3, 2019, FEI filed an amendment to its Application seeking permanent approval of the Revised FEI-Kamloops Operating Agreement and seeking BCUC approval that the Revised FEI-Kamloops Operating Agreement, once approved, be used as the basis for comparison in subsequent operating agreement applications with Interior municipalities.⁴

On August 6, 2019, FEI applied to the BCUC to withdraw its request for approval to use the Revised FEI-Kamloops Operating Agreement as a basis for comparison for operating agreements with Interior municipalities, and to continue to use the Keremeos Terms as the basis for comparison as approved by the BCUC in Order C-8-14.⁵

¹ Exhibit B-1, p. 1.

² Exhibit B-1, p. 2.

³ Exhibit B-1, p. 2.

⁴ Exhibit B-2, pp. 1–2.

⁵ Exhibit B-3, p. 1.

1.1 Regulatory Framework

FEI seeks BCUC approval of the Revised FEI-Kamloops Operating Agreement pursuant to section 23(1)(g) of the UCA which provides as follows:

- (1) The commission has general supervision of all public utilities and may make orders about
 - (g) other matters it considers necessary or advisable for
 - (i) the safety, convenience or service of the public, or
 - (ii) the proper carrying out of this Act or of a contract, charter or franchise involving use of public property or rights.

FEI's application to withdraw its request that the Revised FEI-Kamloops Operating Agreement be used as a basis of comparison in subsequent operating agreements with Interior municipalities is governed by section 88.1 of the UCA which states:

88.1 If an applicant withdraws all or part of an application or the parties advise the commission that they have reached a settlement of all or part of an application, the commission may order that the application or part of it is dismissed.

1.2 Regulatory Process

By Order G-33-19, dated February 13, 2019, the BCUC approved the Initial FEI-Kamloops Operating Agreement on an interim basis until the Panel reached a final determination on the Application.

By Order G-132-19, dated June 14, 2019, the Panel established a public hearing process providing for public notice and intervener registration for FEI customers in the City of Kamloops regarding the Revised FEI-Kamloops Operating Agreement. No applications to intervene were received by the registration deadline of July 19, 2019.

By Order G-176-19, dated July 31, 2019, the Panel established a public hearing process to address FEI's request to use the Revised FEI-Kamloops Operating Agreement as the basis for comparison in subsequent operating agreement applications with Interior municipalities.

2.0 Approval of the Operating Agreement

The Panel notes that the Revised FEI-Kamloops Operating Agreement contains all of the recent BCUC-approved revisions as compared to the Keremeos Terms including those directed by the BCUC in Order G-81-19. The terms are identical to the terms of the FEI-Kelowna Operating Agreement, as agreed between FEI and the City of Kamloops during their negotiation process.

Pursuant to section 23(1)(g) of the UCA, the Revised FEI-Kamloops Operating Agreement, dated May 31, 2019 between FEI and the City of Kamloops, is approved on a permanent basis.

3.0 Withdrawal of FEI's request for approval to use the Revised FEI-Kamloops Operating Agreement as the basis for comparison in subsequent Interior operating agreement applications

In FEI's August 6, 2019 letter withdrawing its request for approval to use the Revised FEI-Kamloops Operating Agreement as the basis for comparison in subsequent Interior municipal operating agreement applications, FEI remarks that the way in which FEI formulated its requested approvals and draft orders in this Kamloops Application has caused the BCUC to interpret FEI's request far more broadly than had been intended.⁶

The Panel notes FEI's acknowledgement that this issue has arisen from the formulation of its requested relief and accepts FEI's apology.

Given the requested withdrawal of the part of the Application related to the basis of comparison in subsequent Interior municipal operating agreements and FEI's undertaking to continue to rely on the Keremeos Terms, the Panel considers that a broader public hearing process is not warranted at this time and would be an inefficient use of resources. The Panel, however, observes that Order C-8-14 directed that the Keremeos Terms be the basis for comparison for all FEI's future operating agreement applications, not only Interior municipal operating agreements.

Pursuant to section 88.1 of the UCA, FEI's application for approval to use the Revised Operating Agreement as a basis for comparison in subsequent operating agreements with Interior municipalities is dismissed.

As a result of the above determination, Order G-176-19, dated July 31, 2019, and the associated regulatory timetable are rescinded pursuant to section 99 of the UCA.

⁶ Exhibit B-3, p. 3.