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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER C-8-15**

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IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

FortisBC Energy Inc.
Application for Approval of Operating Agreements
with 26 Municipalities on the Vancouver Island, the Sunshine Coast and the City of Powell River

BEFORE: L. F. Kelsey, Commissioner
H. G. Harowitz, Commissioner June 25, 2015
K. A. Keilty, Commissioner
D. M. Morton, Commissioner

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

WHEREAS:

A. On March 24, 2015, FortisBC Energy Inc. (FEI, Company) applied to the British Columbia Utilities Commission (Commission), pursuant to section 45 of the *Utilities Commission Act* (UCA) for approval of Operating Agreements with 26 municipalities on Vancouver Island, the Sunshine Coast, and the City of Powell River (Application). Listed below are the five municipalities in the Application (collectively the Municipalities) that have no operating agreement or an expired 1991 Pro Forma Agreement with FEI, and distribution and transmission customers within their municipal boundaries;

City of Powell River	City of Port Alberni
City of Campbell River	Municipality of North Cowichan
City of Nanaimo	

B. FEI undertook negotiations, which concluded in the fall of 2014, with the Municipalities and the Association of Vancouver Island and Coastal Communities (AVICC) to establish the terms of a new form of Vancouver Island municipal operating agreement (VIMOA). In October of 2014, each of the Municipalities entered a respective VIMOA with FEI;

C. Section 16.3 of the VIMOA provides that, if not already terminated or expired, any franchise or operating agreement between the Municipalities and FEI is terminated upon the effective date of the new VIMOA between the parties;

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- D. The VIMOA between FEI and the Municipalities is for an initial term of 20 years from the date that it comes into effect and, after the initial term, shall continue indefinitely unless terminated by the parties pursuant to the terms in the VIMOA;
- E. The VIMOA sets out the terms and conditions, including the collection of a three percent operating fee from its customers, under which FEI exercise its rights to use the public places of the Municipalities in conducting its business of distributing gas within the Municipalities;
- F. Bill 4 – 2014 Miscellaneous Statutes Amendment Act (No. 2), 2014 amended the *Vancouver Island Natural Gas Pipeline Act* by repealing, effective January 1, 2015, a section that previously prevented local governments from collecting franchise (operating) fees;
- G. The Municipalities each have one transmission customer facility located within their municipal boundary, and are therefore subject to the terms of the VIMOA and are currently being served by FEI pursuant to specific tariff and service agreements (Agreements) under the FEI Tariff General Terms and Conditions for Gas Transportation Service. The five facilities are:
1. A pulp mill located at 1000 Wave Place, in the City of Nanaimo, B.C.;
 2. A pulp and paper mill located at 8541 Hay Road, in the Municipality of North Cowichan, B.C.;
 3. A pulp and paper mill located in the City of Powell River, B.C.;
 4. A pulp and paper mill located in the City of Port Alberni, B.C.; and
 5. The Vancouver Island Co-Generation Facility located in the City of Campbell River;
- H. There are no provisions in the Agreements allowing FEI to collect operating fees from the five facilities;
- I. Section 12.1.1 of the VIMOA provides that FEI agrees to pay to the municipality an operating fee of three percent “of the gross revenues (excluding taxes) received by FortisBC for provision and distribution of all gas consumed within the Boundary Limits of the Municipality, other than gas consumed by customers from whom the BCUC has not allowed FortisBC to collect the Operating Fee, 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”;
- J. FEI requests an order or directive allowing it to continue to serve the five facilities under the respective rates and Agreements that have been approved by the Commission, without any amendment to rates or charges, and confirmation that the Commission has allowed FEI to not collect the operating fee from them; and
- K. The Commission reviewed the Application and considers that approval of the operating agreements is in the public interest.

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NOW THEREFORE the British Columbia Utilities Commission orders as follows:

1. The operating agreements between FortisBC Energy Inc. (FEI) and the following municipalities are approved as filed, pursuant to section 45 of the *Utilities Commission Act*:

City of Powell River	City of Port Alberni
City of Campbell River	Municipality of North Cowichan
City of Nanaimo	

2. Pursuant to sections 59-61 of the *Utilities Commission Act*, the Commission further approves that FEI continues to provide service to the following facilities in the following municipalities under the current approved existing rates and agreements, without any amendments, until the expiration or termination of the agreements, or further order by the Commission. The Commission confirms that FEI is consequently allowed to not collect a three percent operating fee from these five customer facilities:
 1. The pulp mill located at 1000 Wave Place, in the City of Nanaimo, B.C.;
 2. The pulp and paper mill located at 8541 Hay Road, in the Municipality of North Cowichan, B.C.;
 3. The pulp and paper mill located in the City of Powell River, B.C.;
 4. The pulp and paper mill located in the City of Port Alberni, B.C.; and
 5. The Vancouver Island Co-Generation Facility located in the City of Campbell River.
3. FEI is to implement the collection of the operating fees within a reasonable time, but no later than 90 days from the date of this order. FEI is to coordinate with the municipalities the appropriate communication and notification to customers.

DATED at the City of Vancouver, In the Province of British Columbia, this 26th day of June 2015.

BY ORDER

Original signed by:

D. Morton
Commissioner