



**IN THE MATTER OF**

**FORTISBC ENERGY INC.  
APPLICATION FOR APPROVAL OF OPERATING TERMS  
BETWEEN  
THE DISTRICT OF COLDSTREAM AND FORTISBC ENERGY INC.**

**REASONS FOR DECISION**

**August 29, 2012**

**BEFORE:**

L.F. Kelsey, Commissioner  
C.A. Brown, Commissioner  
N.E. MacMurchy, Commissioner  
B.A. Magnan, Commissioner  
D.M. Morton, Commissioner

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## 1.0 BACKGROUND

FortisBC Energy Inc. (FEI or the Company) is the successor to Terasen Gas Inc. (Terasen), BC Gas Utility Ltd. (BC Gas) and Inland Natural Gas Co. Ltd. (Inland). On October 10, 1967, the British Columbia Public Utilities Commission granted Inland a Certificate of Public Convenience and Necessity (CPCN) approving the construction and operation of transmission and distribution facilities in the Village of Princeton, the District of Coldstream (the District, the Municipality) and the District of Peachland. On August 30, 1968, Inland and the Municipality entered into an Operating Agreement, with a term of 21 years (the 1968 Agreement). On January 28, 1991, BC Gas and the Municipality entered into a Franchise Agreement, with a “Primary Term” from August 12, 1989 to August 11, 1999 and the option to renew on a year to year basis to a maximum term of 21 years (the 1991 Agreement). This option to renew was exercised each year until the expiration of the 1991 Agreement on August 11, 2010. By Orders C-7-10, C-2-11, C-10-11, C-1-12 and C-9-12 the British Columbia Utilities Commission (the Commission) approved five extensions to the terms and conditions of the 1991 Agreement. The most recent extension (the Existing Agreement) is effective until December 31, 2012.

In 2002, the Union of British Columbia Municipalities (the UBCM) facilitated the formation of the BC Gas Franchise/Operating Agreement Committee (the Committee), comprised of UBCM members in the BC interior whose agreements with BC Gas contained franchise and operating agreements. The objective of the Committee was to recommend to members proposed operating terms with BC Gas to replace those agreements that were expired or expiring in the future.

The following is an excerpt from the Committee’s Terms of Reference,<sup>1</sup> which specifies the goals of the Committee’s Working Group.

### Goals

1. To develop an agreement which provides:
  - Stability and predictability in revenue
  - Fairness to the taxpayers (in actuality and perception)
  - Equity between BC Gas and the 46 impacted municipalities, and between BC Gas and other Gas providers.
2. To negotiate a “best deal” on behalf of the 46 municipalities based on the principle of “win-win” between the parties for both the operational and financial terms of the agreement.
3. To maximize overall revenues, at a minimum cost to taxpayers.
4. To rationalize the revenues received under the provisions of the franchise agreement with other revenue sources, and the cost of funding the municipalities operations.
5. To ensure that the operation provisions provide the necessary legal and liability protection for municipalities while protecting the short and long run use of the municipal property.
6. To focus on a solution with respect to Gas, however, the solution could be applied to other utilities based on the particular needs of any municipality.

In 2005, Terasen and the Committee successfully negotiated the terms of a pro-forma operating agreement (the Pro-

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<sup>1</sup> BC Gas Franchise / Operating Agreement Committee, Working Group. Terms of Reference (December 2002). Included in the Coldstream Comments.

forma Agreement) and using this as a template, negotiated new operating agreements with 10 municipalities whose operating agreements had expired on December 31, 2005.<sup>2</sup>

Since 2006, Terasen (and subsequent to March 2011, FEI) successfully negotiated new operating agreements containing terms substantially similar to the Pro-forma Agreement with 11 municipalities.<sup>3</sup>

## 2.0 FEI APPLICATION

On February 27, 2012, FEI applied to the Commission under section 32 of the *Utilities Commission Act* (the Act) for approval of operating terms between the Municipality and FEI (the Application). FEI submitted that it was unable to agree on terms of an operating agreement with the Municipality, despite several rounds of negotiations.

The following are excerpts from section 32 of the Act:

### Use of municipal thoroughfares

32 (1) This section applies if a public utility

(a) has the right to enter a municipality to place its distribution equipment on, along, across, over or under a public street, lane, square, park, public place, bridge, viaduct, subway or watercourse, and

(b) cannot come to an agreement with the municipality on the use of the street or other place or on the terms of the use.

(2) On application and after any inquiry it considers advisable, the commission may, by order, allow the use of the street or other place by the public utility for that purpose and specify the manner and terms of use.

The Application noted that pursuant to section 45(2) of the Act, FEI is deemed to have a CPCN to operate its system in the Municipality and to construct and operate extensions. The following are related excerpts from section 45 of the Act.

### Certificate of public convenience and necessity

45 (1) Except as otherwise provided, after September 11, 1980, a person must not begin the construction or operation of a public utility plant or system, or an extension of either, without first obtaining from the commission a certificate that public convenience and necessity require or will require the construction or operation.

(2) For the purposes of subsection (1), a public utility that is operating a public utility plant or system on September 11, 1980 is deemed to have received a certificate of public convenience and necessity, authorizing it

(a) to operate the plant or system, and

(b) subject to subsection (5), to construct and operate extensions to the plant or system.

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<sup>2</sup> Town of Oliver (Order C-7-06), District of 100 Mile House (Order C-8-06), City of Cranbrook (Order C-9-06), Town of Creston (Order C-10-06), City of Fernie (Order C-11-06), City of Grand Forks (Order C-12-06), District of Hudson's Hope (Order C-13-06), City of Kimberly (Order C-14-06), Town of Osoyoos (Order C-15-06), City of Rossland (Order C-16-06).

<sup>3</sup> Village of Chase (C-1-07), Westbank First Nation (C-3-07), Village of Warfield (C-2-08), Village of Midway (C-4-10), Town of Princeton (C-6-10), District of Peachland (Order C-8-11), City of Sparwood (Order C-11-11), Village of Lumby (Order C-12-11), City of Greenwood (Order C-2-12), Village of Clinton (Order C-7-12), District of Mackenzie (Order C-8-12).

(3) Nothing in subsection (2) authorizes the construction or operation of an extension that is a reviewable project under the Environmental Assessment Act.

(4) The commission may, by regulation, exclude utility plant or categories of utility plant from the operation of subsection (1).

(5) If it appears to the commission that a public utility should, before constructing or operating an extension to a utility plant or system, apply for a separate certificate of public convenience and necessity, the commission may, not later than 30 days after construction of the extension is begun, order that subsection (2) does not apply in respect of the construction or operation of the extension.

The operating terms proposed in the Application (the FEI Operating Terms) are described as being substantially similar to the terms in the Pro-forma Agreement. FEI stated in the Application that their general approach is to reach agreements that are “substantially similar to the agreements already negotiated with other municipalities” for the following reasons:

1. Standardizing the rights and responsibilities of both FEI and the municipalities provides value to FEI’s ratepayers.
2. Changes diminish FEI’s ability to negotiate future agreements.
3. Standardized and consistent agreements provide operational certainty and consistency.

The Application outlined 26 revisions proposed by the Municipality to the FEI Operating Terms (the Specific Terms in Dispute) and noted that “...FEI agrees with four of the revisions, agrees that two others are acceptable with some modification, and considers that seven others are not necessary since the matter is addressed elsewhere in the agreement.” FEI submitted that they disagree with the remaining 13 items. A summary of the 26 Specific Terms in Dispute is included in Appendix A.1.

### **3.0 REGULATORY PROCESS**

On February 29, 2012, the Municipality’s legal counsel filed a letter (the Municipality Letter) to the Commission with the following comment over the regulatory process by which the Application should be reviewed:

*As the Application does not seem to propose a process by which the Commission is to consider the Application or by which the parties (and the District in particular) may pursue the matter, I [the Municipality’s legal counsel] am writing to enquire as to whether the Commission has any particular proposal for pursuing this matter, and ask that I be advised accordingly.*

On March 7, 2012, Commission staff met with the Municipality’s legal counsel and representatives from FEI to discuss the regulatory process and timetable for the Application. Subsequently, the Commission issued Order G-32-12 on March 8, 2012, establishing a written hearing process and a timetable for further submissions from FEI and the Municipality on the Application.

### **4.0 MUNICIPALITY’S COMMENTS ON THE APPLICATION**

On March 21, 2012, the Municipality filed the comments on the Application (the Coldstream Comments) in which they outlined their position on each of the Specific Terms in Dispute.

The Municipality highlighted that the Pro-forma Agreement was neither approved nor endorsed by the UBCM but

rather the UBCM provided resources and acted as a facilitator during the negotiations between the municipalities and FEI.

On March 21, 2012, the Municipality also filed Information Requests to FEI (the Municipality IRs).

## 5.0 FEI RESPONSE TO THE COLDSTREAM COMMENTS

On April 4, 2012, FEI filed the response to the Coldstream Comments (the FEI Response) in which they further outlined their position on the Specific Terms in Dispute. On April 4, 2012 FEI also filed Information Requests to the Municipality (the FEI IRs) and their response to the Municipality IRs (the FEI IR Response).

The Municipality filed the response to the FEI IRs on April 20, 2012 (the Coldstream IR Response).

## 6.0 FEI FINAL ARGUMENT

On June 4, 2012, FEI filed the final argument submissions (the FEI Final Argument), including updated operating terms reflecting any changes made to the FEI Operating Terms since the Application (the Revised FEI Operating Terms). The FEI Final Argument sought the following three Commission approvals under section 32 of the Act:

1. Approval of the Revised FEI Operating Terms.
2. A 20-year term from July 1, 2012.
3. The Revised FEI Operating Terms may be reviewed and revised by the Commission, upon application by FEI or the Coldstream, should the Commission determine that a significant revision is required.

The FEI Final Argument addressed three issues as follows:

### 1. Application of Section 32

FEI submitted that the application of section 32 of the Act is appropriate to the Application and noted the following:

- (a) Under section 32 of the Act, the Commission has the jurisdiction to make the orders requested by FEI in the Application;
- (b) Section 32 of the Act grants the Commission broad discretion over the use of municipal highways and other public places by a utility; and
- (c) Under section 36 of the Act, the Commission also has jurisdiction to make the orders requested by FEI in the Application.

### 2. Operating Terms Are in the Public Interest

FEI submitted that the Revised FEI Operating Terms are in the public interest as they are substantially similar to the Pro-forma Agreement which FEI has entered into, and the Commission subsequently approved, with 21 other municipalities since 2006.

### 3. Specific Terms in Dispute

FEI submitted additional comments on several of the outstanding Specific Terms in Dispute.

## 7.0 COLDSTREAM REPLY TO FEI FINAL ARGUMENT

On June 11, 2012, the Municipality filed the reply to the FEI Final Argument (the Coldstream Reply) and addressed the following issues:

1. The Municipality expressed concerns that the Revised FEI Operating Terms both increase the power of FEI to undertake works in public places and limit the ability of the Municipality to exercise its authority. The Municipality submitted that the powers granted to FEI are in excess of those granted under the 1967 CPCN, the 1968 Agreement and the 1991 Agreement.
2. The Municipality submitted that the importance placed on the Pro-forma Agreement by FEI is misplaced and commented specifically on the following points:
  - a. The Municipality submitted that they are unaware of any proceeding whereby the Commission has approved a standardized agreement with FEI applicable to all municipalities and further indicated their understanding to be that the Commission would make decisions based on the specific circumstances in each municipality.
  - b. The Municipality highlighted various questions raised and comments made by the Commission in Orders C-7-06 and C-8-06 relative to the Pro-forma Agreement. They argued that these comments do not provide a “strong endorsement” of the Pro-forma Agreement.
3. In relation to the application of section 32 of the Act, the Municipality requested that the Commission consider each Specific Term in Dispute based on their individual merits. Specifically, the Municipality requested that the Commission consider FEI’s historical operations in the Municipality’s public places, as per the terms of the 1968 Agreement and the 1991 Agreement.

The Coldstream Reply included the Municipality’s proposed operating terms (the Municipality Operating Terms).

## 8.0 FEI REPLY TO THE COLDSTREAM REPLY

On June 18, 2012, FEI filed the reply argument submissions (the FEI Reply) and made the following general remarks:

### 1. Consistency is in the public interest

FEI highlighted citations from the Ontario Energy Board (the OEB) and the Alberta Energy and Utilities Board (the AEUB) whereby they have pointed to the merits of standardized agreements. FEI submitted that, while they are open to modifications to the standardized agreement, “[Coldstream] has not demonstrated the particular local conditions in Coldstream that make the proposed Operating Terms unreasonable.”

FEI requested that, should the Commission identify changes to the Revised FEI Operating Terms, those changes that are specific to the Municipality are distinguished from those that have a broader relevance to other municipalities.

### 2. The Revised FEI Operating Terms place a “narrow and appropriate” limitation on the authority of the Municipality

FEI highlighted that the Revised FEI Operating Terms only exempt FEI from compliance with the Municipality’s bylaws that conflict with the Revised FEI Operating Terms and / or other legislation directing FEI. Specifically, FEI expressed concern that a clause requiring FEI to comply with all Municipality bylaws would not be in the public interest as it would require FEI to comply with such bylaws as the Building Code

and Building Bylaw, for example, in their operation of the natural gas distribution and transmission system within public places.

3. Intermediate pressure and transmission pressure pipelines should be included in the operating terms.

FEI addressed three points related to this issue:

- a) The Commission has jurisdiction to impose terms with respect to moves of the gas system within municipal streets and the cost allocation of such moves.
- b) The Municipality does not have a right to the cost allocation contained in Section 12 of the *Oil and Gas Act General Regulation*.
- c) The public interest requires that the intermediate transmission pressure pipelines be included in the operating terms. Further, the cost allocation proposed by FEI in Section 8.2 of the Operating Terms is in the public interest.

FEI also submitted final comments on several of the Specific Terms in Dispute.

## 9.0 COMMISSION DETERMINATION

### Application of Sections 32, 36 and 45 of the Act

The Commission agrees with FEI that section 32 of the Act is applicable for the review of this Application. FEI, by virtue of Section 45(2) of the Act, is deemed to have a CPCN that does not expire. FEI has the authority under section 45(2) of the Act to operate the plant or system and to construct and operate extensions to the system; therefore, it meets the requirements of section 32 of the Act for review of the Application.

### FEI Pro-forma Agreement

The Commission notes the Municipality's concerns over the emphasis placed on the Pro-forma Agreement by FEI and is in agreement with the Municipality that, with regard to applications made pursuant to section 32 of the Act, the circumstances in each municipality should be considered to determine the appropriate terms and conditions on an individual basis. The Commission has reviewed submissions from both parties and has included its determination on each of the Specific Terms in Dispute in Appendix A.1.

The Commission does not agree with comments made by the Municipality in the Coldstream Reply that questions raised and comments made by the Commission specific to the Pro-forma Agreement do not provide a "strong endorsement" of the Pro-forma Agreement. Instead, such questions and comments are part of the regulatory process that the Commission engages in prior to issuing orders and decisions. In the Commission's view, that FEI has successfully negotiated new operating agreements that are substantially similar to the Pro-forma Agreement with 21 municipalities, each with individual circumstances, since 2006 provides strong support for the merits of the Pro-forma Agreement.

### Oil and Gas Activities Act

Section 8.1 of the Revised FEI Operating Terms deals with requests by FEI when they require Municipal Facilities to be altered, changed or relocated. Section 8.2 deals with requests by the Municipality when they require the same of FEI's Company Facilities. Both Section 8.1 and 8.2 require that the party making the request pay for all of the costs. The Municipality has noted in several submissions that the requirement in Section 8.2 that the Municipality "...agrees to



pay for all of the costs for changes to the affected Company Facilities” forces them to abandon their rights under the *Oil and Gas Activities Act* (the OAGA Act). The *Oil and Gas Activities Act General Regulation* provides the opportunity for cost sharing between specific parties when particular conditions are met. In the Commission’s view, the Municipality does not abandon its rights under the OAGA Act, given that Section 5.1 of the Revised FEI Operating Terms requires FEI to comply with “all Federal and Provincial laws, regulations and codes.”

#### Specific Terms in Dispute

The Commission has reviewed submissions from both parties and has included its determination on each of the Specific Terms in Dispute in Appendix A.1.

**The Commission approves the Revised FEI Operating Terms, as amended by the Commission and set out in the attached Appendix A.1 and Appendix B.**

**The Commission considers that a term of twenty years is appropriate for the new Operating Agreement and is effective from July 1, 2012.**

**FEI and the Municipality are to file with the Commission an endorsed Operating Agreement in accordance with the terms approved by the Order accompanying the Reasons for Decision and consistent with Appendix B.**

**The terms of the Operating Agreement may be reviewed, upon application by FEI or the Municipality, should the Commission determine that a significant revision is required.**

**The amendments to the Operating Agreement, as directed by the Commission and set out in the attached Appendix A.1 and Appendix B, are to be incorporated into future operating agreements between FEI and municipalities.**

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
1	1 (e) Company Facilities	<p>“ “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”;</p>	<p>“ “Company Facilities” means FortisBC’s facilities, including pipes, buildings, structures, valves, signage, <del>storage facilities</del>, machinery, vehicles and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution and transmission system”;</p>	<p>“ “Company Facilities” means FortisBC’s facilities, including pipes, <del>buildings, structures,</del> valves, signage, <del>storage facilities</del>, machinery, <del>vehicles</del> and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution <del>and transmission</del> system”;</p>	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p><u>Transmission System</u></p> <p>In the Commission’s view, the inclusion of the term “transmission system” in the definition is appropriate.</p> <p>FEI, by virtue of section 45(2) of the Act, is deemed to have a CPCN that does not expire. FEI has the authority under section 45(2) to operate the plant or system and to construct and operate extensions to the system. The CPCN granted to Inland in 1967 required the “construction and operation by [Inland] of transmission and distribution facilities to supply natural gas” to Municipality.</p> <p>In addition, the 1991 Agreement granted FEI “... the full power, right and liberty to place, construct, renew, alter, repair, maintain, operate and use its pipes and other equipments and appliances... for mixing, <b>transmitting</b>, distributing, delivering, furnishing, selling and taking delivery of gas upon , along, across, over or under any public thoroughfare, highway, road, street, land, alley, square, park, public place, bridge, viaduct, subway or watercourse in the Municipality...as may be necessary or convenient for the purposes of supplying and conducting gas to the consumers thereof.”</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					<p><u>Other Proposed Revisions</u></p> <p>The Commission does not agree with the Municipality's position that the definition proposed by FEI would allow them to construct works in public places that are not connected to the natural gas system. The definition directly specifies that Company Facilities are those that are "...used to maintain, operate, renew, repair, construct and monitor a natural gas distribution and transmission system." The Commission considers it appropriate that all facilities used for this purpose should be included in the definition to ensure that FEI is not impeded from acting in accordance with the set terms.</p>
2	1 (o) New Wok	<p>"New Work" means any installation, construction, repair, maintenance, alteration, extension or removal work of the Company Facilities in Public Places except;</p> <p>(i) routine maintenance and repair of the Company Facilities that does not involve any cutting of asphalted road surface;</p>	Same as FEI Application Operating Terms	<p>"New Work" means any installation, construction, repair, maintenance, alteration, extension or removal work of the Company Facilities in Public Places except;</p> <p>(i) Routine <u>work and maintenance, field testing, installation, removal</u> and repair of the Company Facilities <del>that does not involve any cutting of asphalted road surface</del></p>	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>The Commission notes that the main difference between the definition of New Work in the Revised FEI Operating Terms and the Municipality Operating Terms concerns the installation or repair of Service Lines. The Municipality objects to the exclusion of Service Lines from the definition of New Work.</p> <p>Section 6.1 of the Revised FEI Operating Terms relates to New Work. Section 6.2 of the Revised FEI Operating Terms relates to the installation, removal or repair of Service Lines. In the Commission's view, given that New Work and Service Lines are dealt with in separate Sections of the Revised FEI Operating Terms, it is</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
		<p>(ii) installation or repair of Service Lines whether or not such installation or repair involves cutting of asphalted road service; or</p> <p>(iii) emergency work;</p> <p>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;</p>		<p><u>provided that;</u></p> <p>a. <u>Such</u> installation or repair of <del>Service Lines whether or</del> <u>does not such</u> installation or repair involves cutting of asphalted road service; <u>and or</u></p> <p>(iii) emergency work;</p> <p>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;</p>	<p>appropriate that the installation or repair of Service Lines is excluded from the definition of New Work.</p> <p>The Commission notes the Municipality’s concerns regarding the definition of Company Facilities and its impact on the definition of New Work. This is addressed in the Commission determination on Issue #1.</p>
3	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	Only minor change to (a): “conflict with <del>terms of</del> these terms or limit any rights or concessions granted to FortisBC by the Municipality under these terms; or”	The following sentence is added to the end of the first paragraph: “...are in direct conflict with provincial or federal legislation governing the operations of FortisBC.”	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>The Commission notes section 121 of the Act, which states the following:</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
		<p>comply with such Municipal bylaws, standards and policies that:</p> <ul style="list-style-type: none"> <li>(a) conflict with terms of these terms or limit any rights or concessions granted to FortisBC by the Municipality under these terms; or</li> <li>(b) conflict with other legislation governing FortisBC.</li> </ul> <p>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.”</p>		Section (a), (b) and the final paragraph are deleted	<p>121 (1) Nothing in or done under the Community Charter or the Local Government Act</p> <ul style="list-style-type: none"> <li>(a) supersedes or impairs a power conferred on the commission or an authorization granted to a public utility, or</li> <li>(b) relieves a person of an obligation imposed under this Act or the <i>Gas Utility Act</i>.</li> </ul> <p>Section 121 of the Act requires that a municipality may not enact bylaws, standards and policies that conflict with an authorization granted to a public utility. Therefore, the Commission considers that paragraph (a) and (b) add clarity to the scope of the agreement in regards to any bylaws that might otherwise apply to FEI’s operations in public places.</p> <p>The Commission considers that the final paragraph adds clarity to the Revised FEI Operating Terms to ensure that fair requirements and standards are applied to FEI’s work in the Municipality’s public places.</p>
4	6.1.1 Notice for New Work	Remove “if required by Municipality.” Change made in Application Operating Terms.	Same as FEI Application Operating Terms	Same as FEI Application Operating Terms	<b>Issue resolved between parties.</b>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
5	6.1.3 Municipal Approval for New Work	“(a) the proposed location of the New Work conflicts with existing Municipal Facilities, existing third party facilities or Planned Facilities; or”	Same as FEI Application Operating Terms	“(a) the proposed location <u>or design</u> of the New Work conflicts with <del>existing Municipal Facilities, existing third party facilities or</del> Planned Facilities, <u>the Municipality’s Official Community Plan or other bylaws, standards or policies of the Municipality; or</u> ”	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>The Commission considers that the addition of “other bylaws, standards or policies of the Municipality” is redundant as this appears in Section 6.1.3(b) of the Revised FEI Operating Terms.</p> <p>In the Commission’s view, the addition of the Official Community Plan is unnecessary for two reasons.</p> <p>First, the Municipality noted in the Coldstream Comments that “The OCP is a fundamental tool in guiding the future development of the District and, under the <i>Local Government Act</i> municipal bylaws must be consistent with the OCP.” Given that the Municipality’s bylaws are consistent with the OCP, the Municipality has grounds to object to New Work under Section 6.1.3(b) to the extent that the New Work does not conform to Municipal bylaws, standards or policies.</p> <p>Second, Section 6.1.3(a) of the Revised FEI Operating Terms provides that the Municipality may object to New Work on the grounds that the New Work conflicts with “Planned Facilities”. Therefore, to the extent that any New Work conflicts with Planned Facilities included in the Municipality’s Official Community Plan, a means for objection is already provided in the Revised FEI Operating Terms.</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
6	<b>6.1.3 Municipal Approval for New Work</b>	Section (d) not included in FEI Application Operating Terms.	Same as FEI Application Operating Terms	The following is added:  “(d) the Municipality, acting reasonably, considers that the nature, design, type or location of the proposed New Work will cause undue interference or disruption to, or substantially affect the appearance or current use of, and Public Place or is otherwise not in the best interests of the public;”	<b>The revision proposed by the Municipality is not approved.</b>  The Commission considers the proposed revision unnecessary as the Municipality is provided grounds to object to New Work in Sections 6.1.3 (a) and (b) of the Revised FEI Operating Terms if that New Work conflicts with existing or planned facilities, does not conform to Municipal bylaws, standards or policies and/or is likely to compromise public safety. Also, the addition of “not in the best interests of the public” is unnecessary as FEI is already required by Section 3 of the Revised FEI Operating Terms to carry out work and operations “with the due care and attention that is necessary to safeguard the interest of the public...”.
7	<b>6.1.3 Municipal Approval for New Work</b>	“...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...”	Same as FEI Application Operating Terms	The following is removed: “...provided such objections are reasonable...”	<b>The revision proposed by the Municipality is not approved.</b>  The Municipality noted that the statement that “such objections are reasonable” is “unnecessary and poorly defined” yet proposed similar wording to Section 6.1.3(d). In the Commission’s view, it is appropriate that all objections to New Work are reasonable, to ensure that FEI is not unnecessarily impeded from acting in accordance with the terms of agreement.
8	<b>6.2 Notice of Service Lines</b>	“FortisBC shall provide the Municipality with notice of its intent to install, remove or repair	Same as FEI Application Operating Terms	The following is removed:  “FortisBC’s request for the	<b>The revision proposed by the Municipality is not approved.</b>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
		<p>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 three (3) 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.”</p>		<p>location of the Municipality’s utilities shall be deemed to be a notice of FortisBC’s intent to install, remove or repair Service Lines.”</p>	<p><b>The Commission directs that all locate information requests sent by FEI expressly state FEI’s intention is to install, remove and / or repair Service lines at the location under consideration.</b></p> <p><b>The Commission directs FEI to make the aforementioned change to all locate information requests sent to municipalities.</b></p> <p>The Municipality submitted that the ‘locate information requests’ are inadequate notification as they do not specify FEI’s intent to install, remove or repair Service Lines. FEI submitted that ‘locate information requests’ provide sufficient notification of their plans regarding Service Lines and that any additional notification would unnecessarily increase the costs to FEI’s ratepayers.</p> <p>The Commission is in agreement with FEI that the requirement to send a second notification in addition to the ‘locate information requests’ would unnecessarily increase costs to ratepayers.</p> <p>However, the Commission agrees with the Municipality’s argument that the ‘locate information requests’ do not provide sufficient information as to FEI’s intent to install, repair and/or remove Service Lines. This hinders the Municipality’s right to object to such work in instances where they are uncertain as to what work is actually being performed. Therefore, the Commission directs that all ‘locate information requests’ sent by FEI expressly state in the ‘description</p>



Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					of the work' Section FEI's intention to install, remove and / or repair Service Lines at the location under consideration.
9	<b>6.4.1. Specific Work Requirements Remove Materials</b>	"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."	Same as FEI Application Operating Terms	<p>The following is added to the end of the Section:</p> <p>"All work carried out by FortisBC on Public Places shall:</p> <ul style="list-style-type: none"> <li>(a) Comply with all federal, provincial and municipal laws and regulations;</li> <li>(b) Be carried out diligently in a good and workmanlike manner in accordance with sound engineering practices;</li> <li>(c) Not damage or interfere with existing third party or Municipal Facilities or other equipment or improvements over, under or adjacent to the Public Places;</li> <li>(d) Be conducted and completed to the reasonable satisfaction of the Municipality; and</li> <li>(e) Not unduly interfere with the public use and</li> </ul>	<p><b>The addition of (a) is not approved.</b> Section 5.1 of the Revised FEI Operating Terms requires FEI to comply with all Federal and Provincial laws in addition to Municipal bylaws, standards and policies, other than those conflicting with the Revised FEI Operating Terms.</p> <p><b>The addition of (b) is approved, in part. The Commission directs FEI to include the following in Section 6.4 of the Revised FEI Operating Terms:</b></p> <p style="text-align: center;"><b>All work carried out by FortisBC on Public Places shall be carried out in accordance with sound engineering practices.</b></p> <p><b>The Commission directs FEI to incorporate the aforementioned revision into future operating agreements with municipalities.</b></p> <p>The Commission agrees that the inclusion of "sound engineering practices" is required to ensure that the appropriate professional judgement is applied by FEI in its engineering within the Municipality. The Commission disagrees with the inclusion of "...diligently in a good and workmanlike manner ..." as this is a broad statement that adds little clarity to the Revised FEI Operating Terms.</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
				<p>enjoyment of the Public Places.”</p>	<p><b>The addition of (c) is not approved.</b></p> <p>The Municipality is provided grounds to object to New Work that conflicts with existing Municipal Facilities, existing third party facilities and/or planned facilities in Section 6.1.3(a) of the Revised FEI Operating Terms.</p> <p>The Commission considers it more appropriate to outline FEI’s obligations in the unlikely event that work performed by FEI results in damage to Municipal Facilities. Such obligations are outlined in Section 6.4.3 of the Revised FEI Operating Terms.</p> <p>In the Commission’s view, it is not appropriate to include ‘third party facilities’ in this section under consideration as indemnity against third party claims is covered in Section 10.1.1 of the Revised FEI Operating Terms.</p> <p><b>The addition of (d) is not approved.</b> In the Commission’s view, this is a broad term that adds little clarity to the Revised FEI Operating Terms. Section 6.4.2 of the Revised FEI Operating Terms provides that any restoration of the surface or subsurface by FEI must be “...in accordance with the specifications set out by the Municipality.” Section 6.4.3 further specifies that any damage to Municipal Facilities must be conducted in accordance with 6.4.2, i.e. “...in accordance with the specifications set out by the Municipality.”</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					<p><b>The addition of (e) is not approved.</b> Section 3 of the Revised FEI Operating Terms requires FEI to carry out all work in a manner that protects the interest of the public.</p>
10	6.4.4 Municipal Repairs Upon Default	Section not included in Application Operating Terms	Same as FEI Application Operating Terms	<p>The following Section is added: “ 6.4.4 Municipal Repairs Upon Default  If FortisBC fails to restore the surface or subsurface of a Public Place and when required by Section 6.4.2, or fails to repair Municipal Facilities as and when required by Section 6.4.3, the Municipality may, but is not required to, carry out and complete such restoration or repair at the cost of FortisBC and, despite anything to the contrary in Section 6.4.2. FortisBC shall be responsible for any repairs and maintenance of the surface repair for a period of three (3) years.”</p>	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>Section 6.4.2 of the Revised FEI Operating Terms requires FEI to carry out restoration work on surfaces and subsurface “without unreasonable delay” and “in accordance with the specifications set out by the Municipality”. Section 3 of the Revised FEI Operating Terms requires FEI to carry out their obligations under the terms within “reasonable time frames”.</p> <p>Given FEI’s obligations under Sections 3 and 6.4.2 as noted above, the proposed revision is, in the Commission’s view, unnecessary.</p> <p>The Commission is in agreement with FEI that they should not be held responsible for the maintenance of restoration work performed by the Municipality.</p> <p>The Commission also highlights that the proposed revision is ambiguous, as it relates to Section 6.4.3. Section 6.4.3 requires FEI to notify and reimburse the Municipality for any damage to Municipal facilities, as opposed to FEI performing restoration work. Therefore, there is no requirement to “...repair Municipal Facilities</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					as and when required by Section 6.4.3” as noted in the proposed addition of Section 6.4.4.
11	6.4.5 WCB Coverage	Section not included in Application Operating Terms	Same as FEI Application Operating Terms	<p>The following Section is added:</p> <p>“ 6.4.5 WCB Coverage</p> <p>FortisBC shall at its own expense procure, carry and pay for, or cause to be procured, carried or paid for, full Workers’ Compensation Board coverage for itself and all workers, employees, servants and others engaged in or upon any work or service which is the subject matter of these terms. FortisBC shall comply with all regulations and safety rules of the Workers’ Compensation Act and ensure that all such safety rules and regulations are observed during the performance of any work under these terms.”</p>	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>Section 5.1 of the Revised FEI Operating Terms requires FEI to comply with all Federal and Provincial laws. All incorporated entities, such as FEI, are required by law to register with WorkSafeBC. Therefore, pursuant to Section 5.1 of the Revised FEI Operating Terms, FEI is required to register with WorkSafeBC.</p> <p>Section 118 of the <i>Workers Compensation Act</i> (the WC Act) provides for the designation of one employer at a multi-employer site to be the prime contractor. The “prime contractor” is defined in the WC Act as follows:</p> <ul style="list-style-type: none"> <li>(a) the directing contractor, employer or other person who enters into a written agreement with the owner of that workplace to be the prime contractor for the purposes of this Part, or</li> <li>(b) if there is no agreement referred to in paragraph (a), the owner of the workplace.</li> </ul> <p>Section 118 of the WC Act further notes:</p> <ul style="list-style-type: none"> <li>(2) The prime contractor of a multi-employer workplace must</li> </ul>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					<p>(a) ensure that the activities of employers, workers and other persons at the workplace relating to occupational health and safety are coordinated, and</p> <p>(b) do everything that is reasonably practicable to establish and maintain a system or process that will ensure compliance with this Part and the regulations in respect of the workplace.</p> <p>(3) Each employer of workers at a multiple-employer workplace must give to the prime contractor the name of the person the employer has designated to supervise the employer's workers at that workplace.</p> <p>The revision proposed by the Municipality extends beyond FEI's legal obligations under the WC Act with the inclusion of "...others engaged in or upon any work of service which is the subject matter of these terms." This statement would require FEI to be responsible for other employers' workers or contractors when FEI is not the prime contractor. In the Commission's view, it is not in the public interest to increase FEI's responsibilities beyond what is required by the WC Act.</p>
12	6.7 Removal of Company Facilities	Section not included in Application Operating Terms	Same as FEI Application Operating Terms	The following Section is added: " 6.7 Removal of Company	<b>The revision proposed by the Municipality is approved, in part.</b>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
				<p>Facilities</p> <p>FortisBC shall notify the Municipality from time to time if FortisBC no longer requires any Company Facilities located above the surface of the ground in any Public Place and, at the request of the Municipality, shall, within a reasonable period of time and at its cost, remove such surface Company Facilities, repair any damage caused by such removal and restore the surface of the Public Place. If FortisBC fails to repair any damage and restore the Public Place, the Municipality may carry out such work at the cost of FortisBC.”</p>	<p><b>The Commission directs FEI to add the following paragraph to the end of Section 6.4.1of the Revised FEI Operating Terms:</b></p> <p style="text-align: center;"><b>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 or repair.</b></p> <p><b>The Commission directs FEI to incorporate the aforementioned revision into future operating agreements with municipalities.</b></p> <p>In the Commission’s view, a provision regarding disused Company Facilities is reasonable, in order to ensure that obsolete Company Facilities in public places are dealt with appropriately and in a timely manner.</p> <p>The Commission is in agreement with the Municipality that Section 6.4.2 of the Revised FEI Operating Terms does not specifically address the removal of unused FEI facilities and thus it would be appropriate to modify Section 6.4.2 of the Revised FEI Operating Terms to include removal of unused above-ground facilities, as directed by the Commission above.</p> <p>The revision ordered by the Commission above is reduced in scope as compared to the revision proposed by the Municipality for the following reasons:</p> <ul style="list-style-type: none"> <li>• Section 3 of the Revised FEI Operating Terms already requires FEI to carry out their</li> </ul>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					<p>obligations under the terms within “reasonable time frames”.</p> <ul style="list-style-type: none"> <li>• The restoration of surface and subsurface is covered in Section 6.4.2 of the Revised FEI Operating Terms.</li> <li>• The repair of damage to Municipal Facilities is covered in Section 6.4.3 of the Revised FEI Operating Terms.</li> <li>• The proposed revision that “...the Municipality may carry out such work at the cost of FortisBC” is not approved as Section 3 of the Revised FEI Operating Terms requires FEI to carry out their obligations under the terms within “reasonable time frames”. Any disputes regarding compliance with the terms of agreement should be dealt with in accordance with the dispute resolution mechanisms outlined in Section 17 of the Revised FEI Operating Terms.</li> </ul>
13	<b>7.1 Notice of Closure of Public Places</b>	“If the Public Places are expropriated by an expropriating authority and FortisBC is required to remove the Company Facilities then the Municipality shall promptly notify FortisBC of the expropriation.”	Same as FEI Application Operating Terms	Full paragraph is deleted.	<p><b>The revision proposed by the Municipality is approved, in part.</b></p> <p><b>The Commission directs FEI to revise Section 7.1 of the Revised FEI Operating Terms to conclude with the following sentence:</b></p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					<p><b>This provision is applicable when the Municipality receives official notice of expropriation or otherwise becomes aware of expropriation through communications with the expropriating authority.</b></p> <p><b>The Commission directs FEI to incorporate the aforementioned revision into future operating agreements with municipalities.</b></p> <p>The Commission agrees with the Municipality that FEI could be included in the definition of “owner” per the <i>Expropriation Act</i>. Section 1 defines “owner,” in relation to land, as:</p> <ul style="list-style-type: none"> <li>a) a person who has an estate, interest, right or title in or to the land including a person who holds a subsisting judgment or builder's lien,</li> <li>(b) a committee under the Patients Property Act,</li> <li>(b.1) an attorney under Part 2 of the Power of Attorney Act,</li> <li>(b.2) a guardian, executor, administrator or trustee in whom land is vested, or</li> <li>(c) a person who is in legal possession or occupation of land, other than a person who leases residential premises under an agreement that has a term of less than one year;</li> </ul>



Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					<p>Pursuant to Section 6 of the <i>Expropriation Act</i>, an expropriating authority must serve notice on each owner. However, FEI notes that they are unable to register ownership interest in the Land Title Office to ensure that an expropriating authority will know of its interest when doing a land title search. Therefore, whether or not FEI is likely to receive expropriation notice is a function of the knowledge and experience of the staff at the expropriating authority.</p> <p>The Commission notes that the definition of “Public Places” per the Revised FEI Operating Terms could include those that are not owned by the Municipality and may instead be owned by provincial or federal entities. Therefore, it is not appropriate that the Municipality is obliged to notify FEI of expropriation when they may not have received or be entitled to receive notification themselves.</p> <p>In the Commission’s view, in instances where the Municipality receives official notice of expropriation or otherwise becomes aware of expropriation through communications with the expropriating authority, the obligation to inform FEI would only require minimal effort and resources on their part and is therefore reasonable to be included in the terms.</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
14	8.1 Facility Changes Required By FortisBC	<p>“FortisBC may provide Notice to the Municipality that it requires Municipal Facilities to be altered, changed or relocated to accommodate its requirements.</p> <p>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.”</p>	Same as FEI Application Operating Terms	<p>The following is added at the end of the first paragraph:</p> <p>“Provided that such request does not:</p> <ul style="list-style-type: none"> <li>• Conflict with the Municipality’s Official Community Plan or other bylaws, standards or policies of the Municipality;</li> <li>• Conflict with the location of any Planned Facilities; or</li> <li>• Compromise public safety;”</li> </ul>	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>The Commission notes that Section 8.1 of the Revised FEI Operating Terms deals with requests by FEI that they require Municipal Facilities to be altered, changed or relocated. Section 8.2 deals with requests by the Municipality that they require the same of FEI’s Company Facilities. Section 8.1 and 8.2 are reciprocal, with the exception of a sentence regarding the OAGA Act in Section 8.2. There is no equivalent sentence to be included in Section 8.1 as the OAGA Act relates to the safety of pipelines as opposed to Municipal Facilities.</p> <p>Both Section 8.1. and 8.2 require the party whose facilities are requested to be altered, changed or relocated to comply “...to the extent that it is reasonably able to do so...” Therefore, if it is unreasonable for the Municipality to comply with FEI’s requests that conflict with Planned Facilities or municipal bylaws, the conflict should be dealt with in accordance the dispute resolution terms outlined in Section 17 of the Revised FEI Operating Terms.</p> <p>The Commission considers the third point unnecessary as Section 3 of the Revised FEI Operating Terms requires FEI to carry out work and operations “with the due care and attention that is necessary to safeguard the interest of the public...”.</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
15	9.2 Communication and Coordination Activities	Remove requirement to 'meet' each year to "will be invited to meet". Change made in Application Operating Terms.	Same as FEI Application Operating Terms	Same as FEI Application Operating Terms	<b>Issue resolved between parties.</b>
16	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."	Same as FEI Application Operating Terms	The following is added at the end of the paragraph:  "Neither FortisBC nor the Municipality shall be liable to each other in any way for indirect or consequential losses or damage, or damage for pure economic loss, howsoever caused or contributed to, in connection with these terms."	<b>The revision proposed by the Municipality is not approved.</b>  In the Commission's view, it is not in the public interest to have a contractual limitation that may result in all FEI ratepayers bearing the burden of damages that would otherwise be the Municipality's legal responsibility. Also, the revision proposed by the Municipality deals with liability arising from the use of public places by FEI to store its equipment. Therefore, the Commission considers that the proposed revision is not an explicitly mutual restriction on liability, further supporting that it is not in the public interest.
17	10.4 Insurance	Section not included in Application Operating Terms	FEI has added the following Section:  "10.4 Insurance  FortisBC shall obtain at its own	Same as FEI Revised Operating Terms.	<b>Issue resolved between parties.</b>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
			expense General Commercial liability insurance for bodily injury, death and property damage with minimum amount \$5 million per occurrence and name the Municipality as an additional insured on such policy.”		
18	10.5 Environmental Liabilities	Section not included in Application Operating Terms	Same as FEI Application Operating Terms	<p>The following Section is added:</p> <p>“FortisBC shall assume all environmental liability, including but not limited to liability for cleanup of any hazardous substances which it brings or deposits or causes to be brought or deposited onto any Public Place is uses under these terms. For certainty, FortisBC is not liable for any hazardous substances which may be or are present in, or under, along or around the Public Places which were not brought or deposited, or caused to be brought or deposited onto the Public Places by FortisBC, or which were brought or deposited by any party who FortisBC is not responsible or at law. For the</p>	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>Section 5.1 of the Revised FEI Operating Terms requires FEI to abide by all applicable laws. This would include the <i>Environmental Management Act</i> (the EM Act). The following are excerpts from the EM Act.</p> <p><b>Section 45</b></p> <p><b>Persons responsible for remediation of contaminated sites</b></p> <p>(d) a person who</p> <p>(i) transported or arranged for transport of a substance, and</p> <p>(ii) by contract, agreement or otherwise caused the substance to be disposed of, handled or treated in a manner that, in whole</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
				<p>purposes of this Sections, “hazardous substances” means any hazardous substances and includes, but is not limited to, radiation, petroleum products and byproducts, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any law, ordinance, rule, regulation, by-law or code, whether federal, provincial or municipal.</p>	<p>or in part, caused the site to become a contaminated site;</p> <p><b>Section 46</b></p> <p><b>Persons not responsible for remediation</b></p> <p>(e) an owner or operator who</p> <p>(i) owned or occupied a site that at the time of acquisition was not a contaminated site, and</p> <p>(ii) during the ownership or operation, did not dispose of, handle or treat a substance in a manner that, in whole or in part, caused the site to become a contaminated site;</p> <p>The Commission considers that under Section 45 of the EM Act FEI could be held responsible for remediation of contaminated sites, when applicable.</p> <p>Section 10.1 of the Revised FEI Operating Terms provides the following indemnity by FEI to the Municipality:</p> <p>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...loss or damage to property caused by FortisBC</p> <p>The Municipality submitted that Section 10.1.1 does not protect the Municipality against legal or</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					<p>administrative sanctions for environmental offences; however, the Commission considers that Section 10.1.1 is appropriate as it refers to “all claims” in respect to “loss or damage to property”.</p> <p>The revision proposed by the Municipality requires FEI to “assume all environmental liability”. This differs from Section 10.1 of the Revised FEI Operating Terms, in which FEI indemnifies the Municipality “...except to the extent contributed by negligence or default of the Municipality or Municipal Employees.” The Commission does not consider it to be in the public interest for FEI to assume all liability in instances where there may be shared liability due to negligence by the Municipality.</p>
19	<b>12 OTHER APPROVALS, PERMITS OR LICENSES</b>	“Except as specifically provided in these terms, the Municipality will not require FortisBC to seek or obtain approvals, permits or licenses.”	Same as FEI Application Operating Terms	“Except as specifically provided in <u>these terms or as required by Municipal bylaws, provincial or federal legislation</u> <del>these terms</del> , the Municipality will not require FortisBC to seek or obtain approvals, permits or licenses.”	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>The proposed revision is not approved as it places undue restrictions on FEI’s operations.</p> <p>The Commission is in agreement with FEI that the proposed revision would reduce the benefit that ratepayers obtain from the agreement. For example, FEI would be required to obtain permits and pay the applicable permit fees in order to comply with <i>Building and Plumbing Bylaw No. 1442</i>.</p> <p>The following is an excerpt from the Act:</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					<p><b>Relationship with Local Government Act</b> 121 (1) Nothing in or done under the Community Charter or the Local Government Act</p> <p>(a) supersedes or impairs a power conferred on the commission or an authorization granted to a public utility, or</p> <p>(b) relieves a person of an obligation imposed under this Act or the Gas Utility Act.</p>
20	13.1.1 Municipal Work	“Before the Municipality undertakes any construction or maintenance activity which is likely to affect a part of the Company Facilities, it must give FortisBC notice not less than 10 days before commencing such construction or maintenance activity.”	Same as FEI Application Operating Terms	“Before the Municipality undertakes any construction or maintenance activity which <u>will require modification to</u> <del>is likely to affect a part of the</del> Company Facilities, it must give FortisBC notice not less than <del>10</del> <u>3</u> days before commencing such construction or maintenance activity.”	<p><b>The proposed revision to include “will require modification to” is not approved.</b></p> <p><b>The Commission directs FEI to make the following revision to Section 13.1.1 of the Revised FEI Operating Terms:</b></p> <p><b>Before the Municipality undertakes any construction or maintenance activity which is likely to affect a part of the Company Facilities, <i>excluding routine maintenance and repair that does not involve any cutting of asphalted road surface</i>, it must give FortisBC notice not less than 10 days before commencing such construction or maintenance activity.</b></p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					<p><b><i>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.</i></b></p> <p><b>The Commission directs FEI to incorporate the aforementioned revision into future operating agreements with municipalities.</b></p> <p>The Commission agrees with FEI regarding the symmetry between Section 6.1.3 and 13.1.1 of the Revised FEI Operating Terms. Section 6.1.3 of the Revised FEI Operating Terms provides the Municipality with 10 days after receiving FEI's notice of New Work to object. Section 13.1.1 requires the Municipality to give FEI 10 days notice of municipal work.</p> <p>However, the Commission is in agreement with the Municipality that a 10 day notice period for routine maintenance activities is not appropriate. The Commission notes that the definition of New Work excludes "... routine maintenance and repair of the Company Facilities that does not involve any cutting of asphalted road surface." Therefore, the Commission considers a 3 day notice period for routine maintenance to be more appropriate. This is consistent with Section 6.2 of the Revised FEI Operating Terms that requires FEI to provide no less than 3 days notice to the</p>



Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					<p>Municipality of its intent to install, remove or repair Service Lines.</p> <p>In the Commission’s view, it is appropriate that the Municipality notify FEI of all Municipal work that is ‘likely’ to affect a part of the Company Facilities as the Municipality may not be aware in all circumstances of what construction or maintenance will in fact require modification to the Company Facilities.</p>
21	13.1.8 Municipal Work	<p>“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.”</p>	Same as FEI Application Operating Terms	<p>The word “directly” is added:</p> <p>“The Municipality shall notify FortisBC of any new bylaws, standards or policies adopted or passed by the Municipality that are likely to <u>directly</u> affect FortisBC’s operations in Public Places.”</p>	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>In the Commission’s view, it is important that the Municipality advise FEI of any new bylaws, standards or policies that are likely to impact FEI, to ensure FEI complies with Section 5.1 of the Revised FEI Operating Terms.</p>
22	14.1 Definition of Costs	<p>“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: ...</p> <p>d) in the case of loss of gas or re-lights, the cost of the commodity as determined by the</p>	Same as FEI Application Operating Terms	Both (d) and (e) are deleted.	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>The Commission considers it appropriate that both FEI and the Municipality are entitled to recover the costs outlined in Section 14.1 incurred as a result of damage caused by the other party.</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
		<p>length of time that the gas is leaking, size of pipe and hole and the pressure; and</p> <p>e) in the case of water, electrical or sewer, cost of supplying alternate service.”</p>			
23	14.3.1 Cost Verification Procedures	“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: ... ”	Same as FEI Application Operating Terms	<p>A \$50,000 threshold is added as follows:</p> <p>“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, <u>and that exceed \$50,000 in value</u>”:</p>	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p><b>The Commission directs FEI to amend the Revised FEI Operating Terms to conclude (a) and (b) with the word “or,” to clarify that only one cost verification procedure can be requested in each situation.</b></p> <p><b>The Commission directs FEI to incorporate the aforementioned revision into future operating agreements with municipalities.</b></p> <p>The Municipality seeks to avoid the transaction costs associated with Section 14.3.1 for costs below a \$50,000 threshold. The revision proposed by the Municipality means that disputes regarding costs below \$50,000 would be dealt with in accordance with the dispute resolution mechanisms outlined in Section 17 of the Revised FEI Operating Terms. Section 17 requires</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
					<p>disputes to be resolved in a structured mediation conference, followed by referral to arbitration or to the Commission, where applicable.</p> <p>In the Commission’s view, cost verification is not always well-suited to mediation or arbitration. Also, whether the cost verification procedures as per Section 14.3.1 are more or less expensive than the dispute resolution procedures as per Section 17 will depend on the specifics of each individual situation and thus the benefit of the \$50,000 threshold proposed by the Municipality to the ratepayers is not evident. For that reason, the Commission takes the view that the \$50,000 threshold proposed by the Municipality is not in the public interest.</p> <p>The Commission notes that Section 14.3.1 of the Revised FEI Operating Terms is ambiguous as it does not specify whether either party can request more than one of the three cost verification procedures. In the Commission’s view, only one cost verification procedure should be employed in each instance and therefore the Commission directs FEI to amend the Revised FEI Operating Terms.</p>
24	<b>15.7 (c) Continuity In The Event No Agreement Is Settled</b>	“FortisBC may continue to use Public Places within the Municipality for the purposes of its business. FortisBC’s employees, may enter upon all	Same as FEI Application Operating Terms	The end of the sentence is modified as follows:  “... provided that FortisBC	<p><b>The revision proposed by the Municipality is not approved.</b></p> <p>In the Commission’s view, the collection and remittance of the operating fee is not appropriate upon expiry of</p>

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
		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 these terms as if the term had been extended except with respect to the payment of the Operating Fee.”		continues to operate in a manner consistent with the terms and conditions of these terms as if the term had been extended <u>including payment of the Operating Fee as required by Section 11.1</u> <del>except with respect to the payment of the Operating Fee.”</del>	the agreement, unless directed by the Commission.
25	<b>15.7 (e) Continuity In The Event No Agreement Is Settled</b>	“Should FortisBC no longer be authorized or required to pay the operating fee under these terms between it and the Municipality or by any other 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.”	Same as FEI Application Operating Terms	The paragraph is modified as follows:  “Should FortisBC <del>no longer</del> be authorized or required to pay the <del>Operating Fee</del> under <u>any new agreement or these terms</u> between it and the Municipality or by any other order of the BCUC, <u>FortisBC shall reimburse the Municipality for any operating fees or rents not paid by FortisBC during the time period commencing on the termination or expiry of these terms until the effective date of the new terms or agreement, as the case may be, at the rate</u>	<b>The revision proposed by the Municipality is not approved.</b>  In the Commission’s view, the collection and remittance of the operating fee is not appropriate upon expiry of the agreement, unless directed by the Commission.

Issue	Section of Operating Agreement	FEI Application Operating Terms	FEI Revised Operating Terms	Coldstream Proposed Operating Terms	Commission Determination
				<p><u>specified in the new agreement or terms , as the case may be shall be free to apply such approval, permit and licence fees, charges and levies it is legally entitled to collect."</u></p>	
26	17.7 Continuation of Obligation	Condition added regarding dispute resolution. Change made in Application Operating Terms.	Same as FEI Application Operating Terms	Same as FEI Application Operating Terms	Issue resolved between parties.

**OPERATING TERMS** for Fortis Energy Inc. (“FortisBC”) in the District of Coldstream

**1. DEFINITIONS**

For the purposes of these terms:

- (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 Design” means the installation and design specifications which meet all applicable Provincial and Federal codes, standards and safety requirements for the gas services in the province of British Columbia, as they relate to approved gas works, system improvements, upgrades, connections and system extensions;
- (e) “Company Facilities” means FortisBC’s facilities, including pipes, buildings, structures, valves, signage, machinery, vehicles and other equipment used to maintain, operate, renew, repair, construct and monitor a natural Gas Distribution and transmission system;
- (f) “Distribution Pipelines” means pipelines operating at a pressure less than 2071 kilopascals (300 psi);
- (g) “FortisBC Employees” means personnel employed by or engaged by FortisBC including officers, employees, directors, contractors, and agents;
- (h) “Gas” means natural gas, propane, methane, synthetic gas, liquefied petroleum in a gaseous form or any mixture thereof;
- (i) “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;
- (j) “Highway” means street, road, lane, bridge or viaduct controlled by the Municipality or Provincial Government of British Columbia;
- (k) “Mains” means pipes used by FortisBC to carry gas for general or collective use for the purposes of Gas Distribution;
- (l) “Municipal Employees” means personnel employed by or engaged by the municipality, including officers, employees, directors, contractors and agents;

- (m) “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;
- (n) “Municipal Supervisor” means the Municipal Engineer or other such person designated by the Municipality to receive notices and issue approval as set out in these terms;
- (o) “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 service; 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;

- (p) “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;
- (q) “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;
- (r) “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;
- (s) “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 these terms, includes a service header and service stubs;
- (t) “Transmission Pipeline” means a pipeline of FortisBC having an operating pressure in excess of 2071 kilopascals (300 psi); and
- (u) “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 these terms:

- (a) the headings are for convenience only and are not intended as a guide to interpretation of these terms;
- (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 shall act in good faith in carrying out these terms and, within reasonable time frames, carry out the obligations under these terms.

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**

FortisBC has the right 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 these terms.



## **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 these terms or limit any rights or concessions granted to FortisBC by the Municipality under these terms; 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 these terms;
- (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 three (3) 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 Secure 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 or 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 to due 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 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.

### **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 promptly 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 promptly 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 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 purposes 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 affect 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 may be invited to 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 these terms 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 these terms 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.

#### **10.4 Insurance**

FortisBC shall obtain at its own expense General Commercial liability insurance for bodily injury, death and property damage with minimum amount of \$5 million per occurrence and name the Municipality as an additional insured on such policy.

### **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. 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 new customers can be included as a part of the annual payment fee.
- 11.1.3.** FortisBC will be responsible for adding those 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 these terms which is in the immediately preceding calendar year. By way of example only, payment made on November 1, 2012 will be the amount received during the 2011 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 these terms. 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 these terms, 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 these terms (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.

## **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 *Gas Safety 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 these terms 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** *(not used)*

**15.2** *(not used)*

**15.3** **Term of Agreement**

These terms will be in effect for 20 years from the date that it comes into effect.

**15.4 (not used)**

**15.5 (not used)**

**15.6 Negotiations on Termination or Expiry of these terms**

Upon expiry of these terms, 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.

**15.7 Continuity In The Event No Agreement Is Settled**

Upon the expiry of these terms, if an agreement has not been ratified or if the BCUC has not imposed new 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 these terms, 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 these terms 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 expiring terms during negotiations of an agreement.
- (e) Should FortisBC no longer be authorized or required to pay the operating fee under these terms between it and the Municipality or by any other 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, these terms, 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 these terms.

## **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 these terms,

- (a) the Municipality may within one year of the change coming into effect propose new terms with respect to only those specific changes and FortisBC agrees to negotiate such terms; and
- (b) failing satisfactory resolution either of the parties will 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 these terms,

- (a) FortisBC may within one year of the change coming into effect propose new 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 these terms, including failure of the parties to reach agreement on any matter arising in connection with these terms, 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 law 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 either FortisBC or the Municipality 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 these terms 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 (not used)**

**18.3 Representations**

Nothing in these terms shall be deemed in any way or for any purpose to constitute either party as the legal representative, agent, partner or joint venture 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 Enurement**

These terms shall be binding upon, enure to the benefit of, and be enforceable by, the successors of the parties hereto.

**18.5 Governing Law (not used)**

**18.6 General**

These terms are subject to the laws of Province of British Columbia and the applicable laws of Canada, and nothing in these terms will be deemed to exclude the application of the provisions of such laws, or regulations thereunder.

**18.7 (not used)**

**18.8 (not used)**

**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 these terms (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 DISTRICT OF COLDSTREAM  
9901 Kalamalka Road  
Coldstream, BC V1B 1L6

(B) If to FortisBC:

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