

HIGHWAYS CROSSING PIPELINES – WHO PAYS?

**Presented at the BC Expropriation
Association 2012 Fall Seminar
By**

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****The opinions expressed in this presentation are those of the
author only, not of the City of Surrey.**



This Act is Current to September 26, 2012

OIL AND GAS ACTIVITIES ACT

[SBC 2008] CHAPTER 36

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"oil and gas activity" means

- (a) geophysical exploration,
- (b) the exploration for and development of petroleum, natural gas or both,
- (c) the production, gathering, processing, storage or disposal of petroleum, natural gas or both,
- (d) the operation or use of a storage reservoir,
- (e) the construction or operation of a pipeline,
- (f) the construction or maintenance of a prescribed road, and
- (g) the activities prescribed by regulation;

"permit" means a permit issued under section 25 and includes any conditions imposed on a permit;

"permit holder" means

- (a) a person who holds a permit, and
- (b) a person, if any, who is the holder of a location with respect to that permit;

"pipeline" means, except in section 9, piping through which any of the following is conveyed:

- (a) petroleum or natural gas;
- (b) water produced in relation to the production of petroleum or natural gas or conveyed to or from a facility for disposal into a pool or storage reservoir;
- (c) solids;
- (d) substances prescribed under section 133 (2) (v) of the *Petroleum and Natural Gas Act*,
- (e) other prescribed substances,

and includes installations and facilities associated with the piping, but does not include

- (f) piping used to transmit natural gas at less than 700 kPa to consumers by a gas utility as defined in the *Gas Utility Act*,
- (g) a well head, or
- (h) anything else that is prescribed;

"pipeline permit" means a permit that includes a permission to construct, maintain or operate a pipeline;

"pipeline permit holder" means a permit holder of a pipeline permit;

Part 3 — Oil and Gas Activities

Division 1 — Permits

Permit required

21 Subject to section 23, a person must not carry out an oil and gas activity unless

(a) either

- (i) the person holds a permit that gives the person permission to carry out that oil and gas activity, or
- (ii) the person is required to carry out that oil and gas activity by an order issued under section 49, and

(b) the person carries out the oil and gas activity in compliance with

- (i) this Act and the regulations,
- (ii) a permit issued to the person, if any, and
- (iii) an order issued to the person, if any.

Obligations in carrying out oil and gas activities

- 35** (1) In carrying out oil and gas activities and related activities, a permit holder or a person entering land under section 23 must minimize
- (a) damage and disturbance to the sites of those activities, and
 - (b) waste.
- (2) A pipeline permit holder must make reasonable efforts to ensure that its oil and gas activities do not prevent access to or use of a highway, road, railway or public place.
- (3) A pipeline permit holder, as soon as reasonably possible after constructing a pipeline, must restore, in accordance with the regulations, if any, the land and surface disturbed by the construction.

Pipeline crossings

76 (1) Subject to subsection (3), a person must not

(a) construct

- (i) a highway, road or railway,
- (ii) an underground communication or power line, or
- (iii) any other prescribed work, or

(b) carry out a prescribed activity

along, over or under a pipeline or within a prescribed distance of a pipeline unless

(c) the pipeline permit holder agrees in writing to the construction or the carrying out of the prescribed activity, either specifically or by reference to a class of construction projects or activities,

(d) the commission, by order issued under subsection (2), approves the construction or the carrying out of the prescribed activity, either specifically or by reference to a class of construction projects or activities, or

(e) the construction or prescribed activity is carried out in accordance with the regulations.

(2) The commission, on application by a person referred to in subsection (1), may issue an order for the purposes of subsection (1) (d) and in doing so may impose any conditions that the commission considers necessary to protect the pipeline.

(3) The commission must approve

- (a) the construction referred to in subsection (1) (a), and
- (b) the carrying out of a prescribed activity under subsection (1) (b)

by the government or a municipality, but may impose conditions referred to in subsection (2) in the order issued under that subsection.

(4) The commission, for the purposes of deciding whether to issue an order under subsection (1) or impose conditions under subsection (2), may require a pipeline permit holder to submit information regarding the pipeline permit holder's pipeline.

(5) The commission may order a pipeline permit holder whose pipeline is the subject of an order issued under subsection (2) to do one or both of the following:

(a) with the approval of the Lieutenant Governor in Council, relocate the pipeline to facilitate the construction or prescribed activity approved by the order issued under subsection (2);

(b) take the actions specified in the order that the commission considers necessary to protect the pipeline.

(6) In relation to an order of the commission referred to in subsection (5), the Lieutenant Governor in Council

(a) may order that a person other than the pipeline permit holder must pay the costs, or a portion of the costs, incurred in carrying out the commission's order, or

(b) may approve the payment of any of those costs from the consolidated revenue fund.

(7) If there is an inconsistency between an order or an approval made under subsection (6) and a regulation made under section 99 (1) (m.1), the order or approval prevails to the extent of the inconsistency.

General

99 (1) The Lieutenant Governor in Council may make regulations as follows:

- (a) prescribing activities for the purposes of the definition of "oil and gas activity" in section 1 (2);
- (b) prescribing substances for the purpose of paragraph (e) of the definition of "pipeline" in section 1 (2) and prescribing exclusions for the purposes of paragraph (h) of that definition;
- (c) prescribing regulations under a specified enactment for the purposes of paragraph (f) of the definition of "specified provision" in section 1 (2);
- (d) prescribing circumstances for the purposes of section 6 (2);
- (e) respecting the application of the *Public Inquiry Act* for the purposes of section 12;
- (f) prescribing authorizations for the purposes of section 18 (2) (c) (i);
- (g) prescribing periods of time for the purposes of section 32;
- (h) respecting the disclosure of records, reports and plans referred to in section 38;
- (i) requiring that natural gas be gathered, and processed if necessary, and that the natural gas or liquid hydrocarbons extracted be marketed or injected into an underground reservoir for storage or for any other purpose;
- (j) prescribing actions for the purposes of section 53;
- (k) prescribing decisions for the purposes of the definition of "determination" in section 69;
- (l) prescribing activities and methods for the purposes of section 75;
- (m) prescribing works, activities and distances for the purposes of section 76 (1) and requirements for the purposes of section 76 (1) (e);
- (m.1) respecting how costs incurred in relation to**
 - (i) the construction of anything referred to in section 76 (1) (a),**

- (ii) the carrying out of an activity under section 76 (1) (b), or
- (iii) the relocation referred to in section 76 (5) (a) and any actions referred to in section 76 (5) (b)

are to be allocated between the pipeline permit holder and the person doing anything referred to in subparagraphs (i) to (iii) of this paragraph;

(n) respecting the application of the *Mines Act* to the exploration, development and production of oil sand, oil sand products, oil shale and oil shale products;

(o) respecting surveying to be carried out with respect to an oil and gas activity;

(p) respecting information for the purposes of section 77;

(q) respecting the carrying out of activities under a master licence to cut, as defined in section 47.4 (1) of the *Forest Act*, by a permit holder, an applicant for a permit or a person carrying out an activity under an approval, as defined in section 9 (1) of this Act;

(2) The following do not apply to a master licence to cut, as defined in section 47.4 (1) of the *Forest Act*, held by a permit holder, an applicant for a permit or a person carrying out an activity under an approval, as defined in section 9 (1) of this Act:

(a) the *Forest and Range Practices Act* and the regulations and standards made under that Act;

(b) the *Forest Practices Code of British Columbia*, as it read immediately before section 177 of the *Forest and Range Practices Act* came into force, and the regulations made under that Code.



ORDER

**RE: City of Surrey Application dated April 4, 2011
for an order under section 76(1) of the *Oil and Gas Activities Act***

Section 76 Oil and Gas Activities Act

Issued to:

The City of Surrey
14245 – 56th Avenue
Surrey, B.C. V8X 3A2
Attention: Anthony Capuccinello, Assistance City Solicitor

With Notice to:

FortisBC
c/o Taylor Jordan Chafetz, counsel for Fortis BC
1010-777 Hornby Street
Vancouver, B.C. V6Z 1S4
Attention: Rod Seig, counsel for FortisBC

APPROVAL

1. Pursuant to section 76(1)(d) of the *Oil and Gas Activities Act*, I, Ken Paulson, hereby approve, subject to the condition(s) set out herein, construction and prescribed activities conducted by the City of Surrey after the date of this Order along, over, under or within the prescribed distance of the pipeline owned and operated by FortisBC (the "Pipeline") in the area extending along 152nd Street approximately between the intersection of 54A Avenue and 152nd Street and the 152nd Street Serpentine River Bridge in Surrey, British Columbia.

CONDITIONS

2. Prior to commencing any of the approved construction and prescribed activities, the City of Surrey must provide FortisBC with reasonable notice of the work to be completed and consult with FortisBC regarding the work as required in order to ensure that FortisBC may determine and undertake any action necessary to protect the Pipeline.

A handwritten signature in black ink, appearing to be "Ken Paulson", written over a horizontal line.

Ken Paulson, P. Eng.
Chief Operating Officer
Oil and Gas Commission

DATED AT THE CITY OF VICTORIA, In the Province of British Columbia, this 20th day of July, 2012



February 4, 2011

Anthony Capuccinello,
Assistant City Solicitor. The City of Surrey
14245-56 Avenue
Surrey, B.C. V3X 3A2

Dear Mr. Capuccinello and Ms. Leroi

Re: Reasons for Decision and General Order 2011-02

Enclosed please find a copy of the subject order related to highway and bridge construction work at and near the intersection of 48th Avenue and 168th Street in the City of Surrey, British Columbia. The Reasons for Decision are also attached.

Should you have any questions on this matter, please contact Mr. Ken Paulson, Chief Engineer and Deputy Commissioner (250)-419-4404.

A handwritten signature in black ink, appearing to read 'Ken Paulson', written over a horizontal line.


Ken Paulson P. Eng.
Chief Engineer/ Deputy Commissioner
BC Oil and Gas Commission

Cc: Alex Ferguson, Commissioner, CEO
Paul Jeakins, Deputy Commissioner

IN THE MATTER of an application for issuance of an Order to the City of Surrey pursuant to section 76(1)(d) of the *Oil and Gas Activities Act* for highway and bridge construction work at and near the intersection of 48th Avenue and 168th Street in the City of Surrey, British Columbia

GENERAL ORDER 2011-02

- 1 Under Section 76(1)(d) of the *Oil and Gas Activities Act*, I hereby order that:
 - a) The highway and bridge construction work as applied for by the City of Surrey in its application dated November 05, 2010 is approved;
 - b) The City of Surrey may proceed with the work or any portion of the work approved under paragraph 1(a) subject to confirmation from Terasen Gas that the pipeline has been appropriately modified or altered to accommodate the work or any portion of the work; and
 - c) The City of Surrey shall develop plans and schedules for the work, in consultation with Terasen Gas, which provide reasonable and mutually agreed upon time frames for all work to be performed by Terasen Gas.
- 2 This order takes effect at the time and date of issuance.



Ken Paulson, P.Eng.
Chief Engineer and Deputy Commissioner
Oil and Gas Commission

DATED AT the City of Victoria, in the Province of British Columbia, this 4th day of February 2011.



Reasons for Decision

February 4, 2011

Re: City of Surrey Application for Orders under Section 76(1)(d) and 76(5) of the *Oil and Gas Activities Act* Respecting Bridge and Highway Construction and Maintenance Work At and Near 168th Street and 48th Avenue in the City of Surrey, British Columbia

Application

The City of Surrey (Surrey) applied to the Oil and Gas Commission (Commission) on November 05, 2010 seeking

- (a) Approval of the Commission, pursuant to section 76(1)(d) of the *Oil and Gas Activities Act*, to construct and carry out the Highway Construction and Activity at, on or through the Pipeline Crossing Location, or at, on or through such other location that Surrey may determine and the Commission shall approve;
- (b) An order, that Terasen or the owner of the Pipeline, shall carry out and perform on or before February 01, 2011, or, in the alternative, on or before a date set by the Commission, all Pipeline Work required as a result of the Highway Construction and Activity along, over or under the Pipeline at, on and through the Pipeline Crossing Location which might disturb the Pipeline or which necessitates realigning, raising or lowering the Pipeline or excavating material from over or around it, or adding casings or other appurtenances to it, as deemed necessary by Terasen or the owner of the Pipeline, for the protection of the Pipeline;
- (c) Costs of this proceeding; and
- (d) For such further and other Orders, declaration or directions as the Commission seems just.

Relevant Legislation

Oil and Gas Activities Act Section 76

Oil and Gas Activities Act General Regulation Sections 11 and 12

Pipeline and Liquefied Natural Gas Regulation Sections 3 and 6

Details of these sections appear in the attachment.

Section 76(1) of *Oil and Gas Activities Act*

In order for Surrey to be able to carry out the planned bridge and road work (the work) at or near 168th Street and 48th Avenue in the City of Surrey, Terasen must agree in writing to the work or they must receive an order providing approval for the work from the Commission.



Section 76(1) of the *Oil and Gas Activities Act* (OGAA) establishes that a person must not construct a highway, road or railway or carry out a prescribed activity along, over or under a pipeline or within a prescribed distance of a pipeline unless

- the pipeline permit holder agrees in writing to the construction or the carrying out of a prescribed activity, or
- the Commission, by order, approves the construction or the carrying out of the prescribed activity.

Is the planned work caught by section 76(1)(a)?

Section 76(1)(a) of the OGAA applies to the construction of a highway or road along, over or under a pipeline. In addition, the section applies to prescribed activities.

Section 11 of the *Oil and Gas Activities Act General Regulation* (OGAAGR) defines a ground activity as a disturbance of the earth and further states that a ground activity is a “prescribed activity” for the purposes of section 76(1)(b).

The work proposed by Surrey involves both the construction of highway and ground activities and as such is subject to the requirements set out under section 76 of the OGAA.

Is there agreement under 76(1)(c)?

In a letter from Terasen dated 15 December 2010, Terasen argues that Terasen has agreed in writing that work may proceed subject to an agreement dated June 15, 1957 (the Operating Agreement). Terasen further argues that since an agreement does exist, there is no authority for the Commission to issue an Order to Surrey approving the work. The Commission notes that the Operating Agreement, a copy of which was provided by Terasen, is dated 26 March 1956 and not 15 June, 1957.

In letters dated 17 December 2010 and 20 December 2010, Surrey argues that the Operating Agreement should not be considered by the Commission as its validity, legality, scope, assignability, interpretation, etc. is currently before the Courts.

In a letter from Terasen dated 04 January 2011, Terasen argues that the Commission should consider the Operating Agreement in making a decision on Surrey’s application. Terasen further notes in that letter that “Terasen Gas remains committed to carrying out any relocations of the IP line with reasonable speed. To date we have received only preliminary plans from the City. We require, and have requested, more engineering details and finalized plans in order to carry out further design work.”

The Commission notes that the Operating Agreement provided by Terasen pertains to facilities under the *Gas Utilities Act* and that as such it may not apply to pipelines subject to the OGAA. The Commission further notes that the work proposed by Surrey was not planned or envisioned in 1956 and as such the Operating Agreement is not an agreement for this specific work.

As such, the Commission finds that no written agreement has been provided by Terasen for the planned work. In making this determination, the Commission is not ruling on the validity of the Operating Agreement. Rather, the Commission simply finds that the Operating Agreement is not a written agreement for the work in this instance as required under section 76(1)(c).

Information requested by the Commission

On 07 January 2011, the Commission requested additional information from both Terasen and Surrey. The requested information was received from Surrey on 12 January and Terasen on 18 January. The information sought was to understand the nature of the planned work by both Surrey and Terasen, to determine if engineering work was proceeding by both Surrey and Terasen and to determine whether or not there was still the possibility of Terasen agreeing to the work to be undertaken by Surrey.

The information provided and further correspondence from Surrey dated 20 January and 25 January 2011 demonstrates that discussions and planning are ongoing with regard to the planned replacement of the Terasen pipeline crossing the Nicomekl River. The Commission understands from the correspondence that Terasen is actively planning to replace the existing river crossing with a new directionally drilled crossing for the 219.1 mm intermediate pressure pipeline and that Surrey is providing Terasen with the necessary information for the design of that pipeline.

The Commission notes that Surrey and Terasen have been cooperating in the development of reasonable design options which will allow Surrey to undertake their planned work. As such, it appears that the lack of a written agreement and the application for an order under section 76(1)(d) by Surrey are not related to the technical feasibility of the work by either party. Instead, the correspondence points to the inability of the parties to agree on cost allocations as being the primary reason as to why Terasen has not provided an agreement for this work.

The Commission is mandated under OGAA to ensure the continued safe operation of the pipeline. The allocation of costs for relocations or similar work governed by section 76 of OGAA is determined by the Act and regulations and is not a decision of the Commission

In determining whether or not to issue an Order under section 76(1)(d) the Commission has considered the following:

1. Terasen has not provided a written agreement between the two parties that would cover Surrey's proposed work as set out under 76(1)(c).
2. Engineering work respecting the planned work by Surrey and the necessary relocation work to be undertaken by Terasen has been proceeding and continues to proceed.
3. The pipeline relocation work is required for the continued safe operation of the pipeline as the planned work by Surrey takes place.

Decision under OGAA 76(1)(d)

In consideration of the aforementioned, the Commission has determined that an Order approving Surrey's proposed work should be issued pursuant to section 76(1)(d) of the OGAA. A copy of the Order is attached to these Reasons for Decision.



Ancillary Decisions

Section 76(5) of OGAA

Section 76(5) of the OGAA provides the Commission with the ability to issue an Order to Terasen requiring them to relocate the pipeline and take other necessary actions to facilitate the work planned by Surrey. Such an Order requires the approval of the Lieutenant Governor in Council (LGIC).

As previously noted, the Commission's concerns in this matter pertain to safety. It is evident from correspondence that the primary barrier to an agreement between Surrey and Terasen is not the physical work required for safety of the pipeline, but the allocation of costs. In a letter from Terasen dated 18 January 2011, Terasen notes that "as is our usual practice when dealing with the City of Surrey under the Operating Agreement, we will require the City of Surrey to accept (in writing) their portion of the actual costs, based on the approved design and the final pipeline cost estimate before the IP line construction proceeds." A letter from Surrey dated 20 January 2011 notes that "the determination of what measures must be taken to protect its pipeline and the implementation of those measures are matters for Terasen alone to undertake" and that "it is not open to Terasen to refuse to undertake the necessary pipeline works unless the City agrees to its terms."

The Commission notes that Terasen is obligated through regulation to ensure that their pipeline is designed, constructed, operated and maintained in a manner which assures its continued safe and environmentally responsible operation. Such requirements are found within sections 3 and 6 of the *Pipeline and Liquefied Natural Gas Facility Regulations* (PLNGFR). Section 3 of the PLNGFR requires Terasen to adhere to *CSA Z662 Oil and Gas Pipeline Systems* (CSA Z662) in the design, construction, operation and maintenance of their pipeline. Clause 10.7.2 of CSA Z662 requires that Terasen undertake necessary upgrades to accommodate the work proposed by Surrey or to perform a detailed engineering assessment to determine what (if any) upgrades are required for the protection of the pipeline in light of the work proposed by Surrey.

The Commission further notes that section 6 of the PLNGFR requires Terasen to take all reasonable steps so as not to endanger public safety or the environment when a pipeline is being constructed across, along, over or under a highway or public place.

Finally, the Commission notes that engineering work pertaining to the planned work by Surrey is proceeding by both Surrey and Terasen in the absence of a written agreement.

Given that engineering work is proceeding and that existing regulatory requirements establish the duty and obligation of Terasen to undertake any and all work necessary for the protection of their pipeline in light of any approval issued under 76(1)(d), the Commission finds that an Order under section 76(5) of the OGAA is not required.

As such, the Commission has decided not to issue an Order to Terasen under section 76(5) at this time. In making this decision, the Commission notes that Terasen is required to take the necessary steps for the protection of their pipeline to accommodate the approved work.

Costs of This Proceeding



The Commission has no authority to apportion the costs incurred by either Surrey or Terasen in making the decisions set out herein.

Further and Other Orders

The Commission does not contemplate any further or other orders at this time.

Summary

The Commission has issued General Order 2011-02 to Surrey approving the construction and other prescribed activities necessary for the reconstruction and maintenance of Surrey's highways and roadways in the vicinity of 168th street and 48th avenue in Surrey.

Surrey may proceed with the approved work and Terasen must take the actions necessary for the protection of their pipeline to accommodate the work as set out within the Pipeline and Natural Gas Facilities Regulation. Such work by Terasen and Surrey must be coordinated by both parties to ensure that the integrity of the pipeline is not jeopardized by the actions of either party.

Attachment
Relevant Legislation

Oil and Gas Activities Act [SBC 2008] CHAPTER 36

- 76 (1) *Subject to subsection (3), a person must not*
- (a) *construct*
 - (i) *a highway, road or railway,*
 - (ii) *an underground communication or power line, or*
 - (iii) *any other prescribed work, or*
 - (b) *carry out a prescribed activity*
along, over or under a pipeline or within a prescribed distance of a pipeline unless
 - (c) *the pipeline permit holder agrees in writing to the construction or the carrying out of an activity prescribed for the purposes of paragraph (b), or*
 - (d) *the commission, by order, approves the construction or the carrying out of the prescribed activity.*
- (2) *The commission, in an order issued under subsection (1) (d), may impose any conditions on the approval that the commission considers necessary to protect the pipeline.*
- (3) *The commission must approve*
 - (a) *the construction referred to in subsection (1), and*
 - (b) *the carrying out of a prescribed activity**by the government, but may impose conditions referred to in subsection (2) in the approval issued under subsection (1).*
- (4) *The commission, for the purposes of deciding whether to issue an order under subsection (1) or impose conditions under subsection (2), may require a pipeline permit holder to submit information regarding the pipeline permit holder's pipeline.*
- (5) *The commission may order a pipeline permit holder whose pipeline is the subject of an order issued under subsection (1)*
 - (a) *with the approval of the Lieutenant Governor in Council, to relocate the pipeline to facilitate the construction or prescribed activity approved by the order issued under subsection (1), and*
 - (b) *to take the actions specified in the order that the commission considers necessary to protect the pipeline.*
- (6) *In relation to an order of the commission referred to in subsection (5), the Lieutenant Governor in Council*
 - (a) *may order that a person other than the pipeline permit holder must pay the costs, or a portion of the costs, incurred in carrying out the commission's order, or*
 - (b) *may approve the payment of any of those costs from the consolidated revenue fund.*
- (7) *If there is an inconsistency between an order or an approval made under subsection (6) and a regulation made under section 99 (m), the order or approval prevails to the extent of the inconsistency.*

Oil and Gas Activities Act General Regulation (274/2010)

- 11 (1) *In this section, "ground activity" means any work, operation or activity that results in a disturbance of the earth, including a mining activity as defined in section 1 of the Mines Act, but not including*
- (a) cultivation to a depth of less than 45 cm below the surface of the ground, and*
 - (b) a disturbance, other than cultivation referred to in paragraph (a), of the earth to a depth of less than 30 cm.*
- (2) *A ground activity is a prescribed activity for the purposes of section 76 (1) (b) of the Act.*
- (3) *The following distances are prescribed for the purposes of section 76 (1) of the Act:*
- (a) 40 m, for any activity other than the prescribed activity referred to in subsection (2);*
 - (b) 40 m, for the prescribed activity referred to in subsection (2).*
- 12 (1) *In this section:*
- "approval holder" means a person to whom an approval under section 76 (1) (d) of the Act has been given;*
- "approved action" means the construction or activity approved by an order issued under section 76 (1) (d) of the Act;*
- "specified approval holder" means an approval holder that is the government, a municipality, or the British Columbia Railway Company.*
- (2) *Subject to subsections (4) to (6), an approval holder is responsible for all costs incurred by the approval holder in carrying out an approved action.*
 - (3) *Subject to subsections (4) to (6), an approval holder is responsible for any costs incurred by a pipeline permit holder as a result of the approval holder's carrying out of an approved action, including, without limitation, costs*
 - (a) to realign, raise or lower the pipeline;*
 - (b) to excavate material from around the pipeline, and*
 - (c) to add casing or other appurtenances that an official considers necessary for the protection of the pipeline.*
 - (4) *Subject to an order issued under section 76 (6) of the Act and to subsection (5) of this section, a specified approval holder is not responsible for any costs incurred by a pipeline permit holder as a result of the carrying out of an approved action.*
 - (5) *The costs referred to in subsection (4) must be shared equally between the specified approval holder and the pipeline permit holder if*
 - (a) the specified approval holder is a municipality, and*
 - (b) the approved action is the construction of a new highway within the boundaries of that municipality on either an existing right of way or on a newly dedicated right of way.*
 - (6) *The costs incurred by a pipeline permit holder as the result of the carrying out of an approved action must be shared equally between the approval holder and the pipeline permit holder if the approved action is the construction of a new road for a subdivision within a municipality.*

Pipeline and Liquefied Natural Gas Facility Regulation (281/2010)

- 3 (1) *Subject to subsection (2), a pipeline permit holder must not design, construct, operate or maintain any of the following except in accordance with CSA Z662:*
- (a) the pipeline that is the subject of the permit;*
 - (b) a pumping station or compressor station associated with the pipeline;*
 - (c) an oil storage tank associated with the pipeline.*
- (2) *A pipeline permit holder who constructs a pipeline under agricultural land must ensure the pipeline has a minimum cover of 0.8 metres.*
- (3) *A LNG facility permit holder must not design, construct, operate or maintain a liquefied natural gas facility except in accordance with CSA Z276, unless otherwise specified in this regulation.*
- 6 (1) *If a pipeline is being or has been constructed across, along, over or under a public place or the right of way of a highway, road, railway, underground communication or power line or other pipeline, the pipeline permit holder must*
- (a) take all reasonable steps so as not to endanger public safety or the environment, and*
 - (b) restore, to the extent reasonable in the circumstances, any infrastructure damaged or removed during the construction of the pipeline.*
- (2) *A pipeline permit holder must give notice in accordance with subsection (3) before beginning any work of construction, maintenance or repair of a pipeline along, over or under a public place or the right of way of a highway, road, railway, underground communication or power line or other pipeline.*
- (3) *A notice under subsection (2) must*
- (a) be given to the owner of or authority responsible for the public place, highway, road, railway, underground communication line, power line or pipeline, and*
 - (b) subject to subsection (4), be given at least 5 days before beginning the work, unless the pipeline permit holder and the owner or authority have agreed that the notice is to be provided by another time, in which case the notice must be provided by that other time.*
- (4) *In the case of emergency, work referred to in subsection (1) may be begun immediately after giving notice under subsection (2).*

PIPELINE CROSSINGS REGULATION 147/2012

B.C. Reg. 147/2012

[deposited June 25, 2012]

Contents

1. Definitions
2. Pipeline crossing distances
3. Cost allocation for pipeline crossings

[Provisions relevant to the enactment of this regulation: *Oil and Gas Activities Act*, SBC 2008, c. 36, s. 99.]

Definitions

1. In this regulation:

"Act" means the *Oil and Gas Activities Act*;

"enabled action" means the construction or activity that may be carried out by an enabled person;

"enabled person" means a person who, under section 76 (1) (c), (d) or (e) of the Act, may do anything referred to in subsection (1) (a) or (b) of that section;

"ground activity" means any work, operation or activity that results in a disturbance of the earth, including a mining activity as defined in section 1 of the *Mines Act*, but not including

(a) cultivation to a depth of less than 45 cm below the surface of the ground, or

(b) a disturbance, other than cultivation referred to in paragraph (a), of the earth to a depth of less than 30 cm;

"specified enabled person" means an enabled person that is the government, a municipality or the British Columbia Railway Company.

Pipeline crossing distances

2. (1) A ground activity is a prescribed activity for the purposes of section 76 (1) (b) of the Act.
- (2) The prescribed distance for the purposes of section 76 (1) of the Act is 30 m.
- (3) For the purpose of section 76 (1) (c) of the Act, the following requirements are prescribed respecting a person carrying out a ground activity at least 10 m away from the pipeline nearest to the site of the ground activity:
 - (a) subject to subsection (4), the person, before disturbing the earth for the purposes of the ground activity, must

PIPELINE CROSSINGS REGULATION 147/2012

- (i) advise BC One Call of the proposed site of the activity, and
 - (ii) if BC One Call advises that there are one or more pipelines within 30 m of the proposed site of the activity, confirm with each pipeline permit holder that the pipeline is at least 10 m away from the proposed site of the activity;
 - (b) if physical contact is made with a pipeline as a result of the carrying out of the ground activity, the person must notify
 - (i) the commission, and
 - (ii) the pipeline permit holder of the contacted pipeline.
- (4) A person is not required to comply with subsection (3) (a) respecting a ground activity if the person has, for another person, previously determined, in part on the advice of BC One Call, that the nearest pipeline to the proposed site of the ground activity is more than 30 m away from the site.

Cost allocation for pipeline crossings

3. (1) Subject to subsections (3) to (5), an enabled person is responsible for all costs incurred by the enabled person in carrying out an enabled action.
- (2) Subject to subsections (3) to (6), an enable person is responsible for any costs incurred by a pipeline permit holder as a result of the enabled person's carrying out of an enabled action, including, without limitations, costs
- (a) to realign, raise or lower the pipeline,
 - (b) to excavate material from around the pipelines, and
 - (c) to add casing or other appurtenances that an official considers necessary for the protection of the pipeline.
- (3) Subject to an order issued under section 76 (6) of the Act and to subsections (4) to (6) of this section, a specified enabled person is not responsible for any costs incurred by a pipeline permit holder as a result of the carrying out of an enabled action.
- (4) The costs referred to in subsection (3) must be shared equally between the specified enabled person and the pipeline permit holder if
- (a) the specified enabled person is a municipality, and
 - (b) the enabled action is the construction of a new highway within the boundaries of that municipality on either an existing right of way or a newly dedicated right of way.
- (5) The costs incurred by a pipeline permit holder as the result of the carrying out of an enabled action must be shared equally between the enabled person and the pipeline permit holder if the enabled action is the construction of a new road for a subdivision within a municipality.
- (6) The cost allocation rules set out in subsections (2) to (5) may be varied by agreement between the parties.

[Provisions relevant to the enactment of this regulation: *Oil and Gas Activities Act*, SBC 2008, c. 36, s. 99.]

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. **424**, Approved and Ordered **JUN 22 2012**



Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders the following:

- (a) section 5 of the *Energy and Mines Statutes Amendment Act, 2012*, S.B.C. 2012, c. 27, is brought into force,
- (b) the Oil and Gas Activities Act General Regulation, B.C. Reg. 274/2010, is amended
 - (i) in section 5.1 by striking out "authorization" in both places and substituting "approval", and
 - (ii) by repealing sections 11 and 12, and
- (c) the attached Pipeline Crossings Regulation, set out in the attached schedule, is made.



Minister of Energy and Mines and
Minister Responsible for Housing



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Energy and Mines Statutes Amendment Act, 2012*, S.B.C. 2012, c. 27, s. 48
Oil and Gas Activities, S.B.C. 2008, c. 36, s. 99

Other: OIC 595/2010

June 1, 2012

R/300/2012/27

SCHEDULE

PIPELINE CROSSINGS REGULATION

Definitions

1 In this regulation:

“**Act**” means the *Oil and Gas Activities Act*;

“**enabled action**” means the construction or activity that may be carried out by an enabled person;

“**enabled person**” means a person who, under section 76 (1) (c), (d) or (e) of the Act, may do anything referred to in subsection (1) (a) or (b) of that section;

“**ground activity**” means any work, operation or activity that results in a disturbance of the earth, including a mining activity as defined in section 1 of the *Mines Act*, but not including

(a) cultivation to a depth of less than 45 cm below the surface of the ground, or

(b) a disturbance, other than cultivation referred to in paragraph (a), of the earth to a depth of less than 30 cm;

“**specified enabled person**” means an enabled person that is the government, a municipality or the British Columbia Railway Company.

Pipeline crossing distances

2 (1) A ground activity is a prescribed activity for the purposes of section 76 (1) (b) of the Act.

(2) The prescribed distance for the purposes of section 76 (1) of the Act is 30 m.

(3) For the purpose of section 76 (1) (e) of the Act, the following requirements are prescribed respecting a person carrying out a ground activity at least 10 m away from the pipeline nearest to the site of the ground activity:

(a) subject to subsection (4), the person, before disturbing the earth for the purposes of the ground activity, must

(i) advise BC One Call of the proposed site of the activity, and

(ii) if BC One Call advises that there are one or more pipelines within 30 m of the proposed site of the activity, confirm with each pipeline permit holder that the pipeline is at least 10 m away from the proposed site of the activity;

(b) if physical contact is made with a pipeline as a result of the carrying out of the ground activity, the person must notify

(i) the commission, and

(ii) the pipeline permit holder of the contacted pipeline.

(4) A person is not required to comply with subsection (3) (a) respecting a ground activity if the person has, for another purpose, previously determined, in part on the advice of BC One Call, that the nearest pipeline to the proposed site of the ground activity is more than 30 m away from the site.

Cost allocation for pipeline crossings

- 3 (1) Subject to subsections (3) to (5), an enabled person is responsible for all costs incurred by the enabled person in carrying out an enabled action.
- (2) Subject to subsections (3) to (6), an enabled person is responsible for any costs incurred by a pipeline permit holder as a result of the enabled person's carrying out of an enabled action, including, without limitation, costs
 - (a) to realign, raise or lower the pipeline,
 - (b) to excavate material from around the pipeline, and
 - (c) to add casing or other appurtenances that an official considers necessary for the protection of the pipeline.
- (3) Subject to an order issued under section 76 (6) of the Act and to subsections (4) to (6) of this section, a specified enabled person is not responsible for any costs incurred by a pipeline permit holder as a result of the carrying out of an enabled action.
- (4) The costs referred to in subsection (3) must be shared equally between the specified enabled person and the pipeline permit holder if
 - (a) the specified enabled person is a municipality, and
 - (b) the enabled action is the construction of a new highway within the boundaries of that municipality on either an existing right of way or a newly dedicated right of way.
- (5) The costs incurred by a pipeline permit holder as the result of the carrying out of an enabled action must be shared equally between the enabled person and the pipeline permit holder if the enabled action is the construction of a new road for a subdivision within a municipality.
- (6) The cost allocation rules set out in subsections (2) to (5) may be varied by agreement between the parties.

Bill 30 just became law on May 31st, 2012.

In brief, highlights of Bill 30 (http://leg.bc.ca/39th4th/1st_read/gov30-1.htm) are that it makes it clear that a municipality cannot be denied an order approving the crossing of a pipeline. More importantly, an accompanying amendment to the *Expropriation Act*, clarifies that the Pipeline Cost Allocation Formula set out in the *Oil and Gas Activities Act General Regulation* (which is very favourable to municipalities) applies despite the *Expropriation Act*.

Excerpts of the portions of Bill 30 I am referring to are as follows and can be found in s.11, s.13 (a) &(b) and s. 20 of Bill 30:

(b) by repealing subsections (2) and (3) and substituting the following:

(2) The commission, on application by a person referred to in subsection (1), may issue an order for the purposes of subsection (1) (d) and in doing so may impose any conditions that the commission considers necessary to protect the pipeline.

(3) The commission must approve

(a) the construction referred to in subsection (1) (a), and

(b) the carrying out of a prescribed activity under subsection (1) (b)

by the government **or a municipality**, but may impose conditions referred to in subsection (2) in the order issued under that subsection.

Related Amendments

Expropriation Act

Explanatory Note

SECTION 20: [*Expropriation Act, section 2*] provides that certain regulations and orders under the **Oil and Gas Activities Act** prevail over provisions of the *Expropriation Act* in the case of an inconsistency.

20 Section 2 of the Expropriation Act, R.S.B.C. 1996, c. 125, is amended by adding the following subsection:

(1.3) Despite subsection (1), if there is an inconsistency between a provision of this Act and a provision of either a regulation under section 99 (1) (m.1) of the *Oil and Gas Activities Act* or an order under section 76 (6) of that Act, the provision of the regulation or order prevails.

Reply to: Mark G. Underhill (Vancouver Office)
 Our File: 10330

VIA FACSIMILE

September 1, 2011

Ministry of Attorney General
 Finance, Commercial & Transportation Division
 PO Box 9289 Stn Prov Govt
 Victoria, BC V8W 9J7

Attention: Fran Crowhurst

Dear Ms. Crowhurst:

Re: **The City of Surrey v. Oil and Gas Commission, Alex Ferguson,
 Ken Paulson and FortisBC Energy Inc.
 S.C.B.C. New Westminster Registry Action No. 136231**

We are counsel for the Oil and Gas Commission ("OGC") in the above captioned matter. We understand that the provincial government, and in particular the Minister of Transportation and Infrastructure (the "Minister"), is uncertain about how section 76 of the *Oil and Gas Activities Act*, SBC 2008, c. 36 ("OGAA") may be interpreted and, more specifically, subsection 76(3), as it applies to the provincial government.

Subsection 76(1) provides as follows:

(1) **Subject to subsection (3)**, a person must not

(a) construct

- (i) a highway, road or railway
- (ii) an underground communication or power line, or
- (iii) any other prescribed work, or

(b) carry out a prescribed activity

along, over or under a pipeline or within a prescribed distance of a pipeline unless

(c) the pipeline permit holder agrees in writing to the construction or the carrying out of an activity prescribed for the purposes of paragraph (b), or

2

(d) the commission, by order, approves the construction or the carrying out of the prescribed activity.

[Emphasis added]

Subsection 76(3) then states:

(3) The commission must approve

(a) the construction referred to in subsection (1), and

(b) the carrying out of a prescribed activity

by the government, but may impose conditions referred to in subsection (2) in the approval issued under subsection (1).

[Emphasis added]

As we understand it, the Minister has a concern that the existence of an agreement between Her Majesty the Queen in Right of the Province of British Columbia (as represented by a Minister of the Crown) and a pipeline permit holder, with respect to the crossing of pipelines by highways, relocations, and related issues, could lead the OGC to refuse to issue an order under section 76(3) on the basis that the pipeline permit holder had consented to do the work (as per section 76(1)(c)).

This will confirm that the OGC interprets subsection 76(1) to be, in its entirety, subject to subsection 76(3). As a result, subsection 76(3) of the Act is not modified or affected by subsection 76(1)(c), such that the existence of the type of agreement referenced above would not affect the express mandatory language of the provision. Further, the term "the government" as it is used in subsection 76(3), refers to Her Majesty in Right of British Columbia, as per section 29 of the *Interpretation Act* (as distinguished from a local government or municipality).

Yours sincerely,

UNDERHILL, BOIES PARKER
LAW CORPORATION INC.

Per:



Mark G. Underhill

MGU/ecc

cc: City of Surrey, Legal Services Division, Attention: Anthony Capuccinello (via fax)
cc: Taylor, Jordan Chafetz, Attention: Donald J. Jordan, Q.C. (via fax)
cc: Client (via email)

- 2 (1) If an expropriating authority proposes to expropriate land, this Act applies to the expropriation, and, if there is an inconsistency between any of the provisions of this Act and any other enactment respecting the expropriation, the provisions of this Act apply.

(1.1) Despite subsection (1), if there is an inconsistency between any of the provisions of this Act and the Nisga'a Final Agreement, as defined in the *Nisga'a Final Agreement Act*, the Nisga'a Final Agreement applies.

(1.2) Despite subsection (1), if there is an inconsistency between a provision of this Act and a provision of a final agreement, the provision of the final agreement applies.

(1.3) Despite subsection (1), if there is an inconsistency between a provision of this Act and a provision of either a regulation under section 99 (1) (m.1) of the *Oil and Gas Activities Act* or an order under section 76 (6) of that Act, the provision of the regulation or order prevails.

- (2) This Act does not apply in respect of

(a) an entry on land for the purpose of exercising a power of inspection, investigation or enforcement in the course of administering an enactment,

(b) an entry on land under the authority of an enactment by a land surveyor or a person employed by a land surveyor for the purpose of conducting a survey, soil test or other examination, other than a survey, soil test or other examination conducted for the purpose of an expropriation,

(c) a right exercisable, without payment of compensation, under an exception or reservation to which the title to land is subject, or

(d) an entry on land under section 20 of the *Hydro and Power Authority Act* or section 8 of the *Transportation Act*.

(3) This Act does not apply to expropriations under the *British Columbia Railway Act*, the *Emergency Program Act*, the *Railway Act* and the *Water Act*, except to the extent provided for in those Acts.

(3.1) After the coming into force of this subsection, this Act does not apply to an expropriation under section 11 (2) of the *Park Act* of an interest in land in the form of

(a) rights under a lease, as defined in the *Mineral Tenure Act*, of the recorded holder of the lease,

- (b) rights under a lease, as defined in the *Coal Act*, of the lessee, or
 - (c) rights under a Crown granted 2 post claim of its owner.
- (4) This Act does not apply to replotting under Part 28 of the *Local Government Act*;
- (5) [Repealed 2001-41-2.]
- (6) This Act does not apply to an expropriation under the *Musqueam Reconciliation, Settlement and Benefits Agreement Implementation Act*.



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

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,¹ 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-

¹ 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, 2005.²

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.³

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.

² 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).

³ 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.

DRAFT

BRITISH COLUMBIA OIL AND GAS COMMISSION

In the Matter of s.76 of the Oil & Gas Activities Act, SBC 2008, c. 36, as amended

DRAFT

City of Surrey

Applicant

APPLICATION PURSUANT TO THE OIL & GAS ACTIVITIES ACT

1. The Applicant, the City of Surrey ("Surrey"), a local government, is a body corporate under the laws of the Province of British Columbia.
2. Fortis Energy Inc., formerly known as Terasen Gas Inc., Incorporation No. BC 0778288, ("Fortis"), is a body corporate amalgamated under the laws of British Columbia with a registered office at the 10th Floor-1111 West Georgia Street, Vancouver, BC, V6E 4M3.
3. All right, title and interest in and to 152nd Street in the City of Surrey, British Columbia, is vested in Surrey.
4. A pipeline (the "Pipeline") owned and operated by Fortis is located within 152nd Street and extends along 152nd Street approximately between the intersection of 54A Avenue and 152nd Street and the 152nd Street Serpentine River bridge in Surrey, British Columbia.
5. The Pipeline pressure exceeds 700 kPa.
6. Surrey intends to widen 152nd Street by purchasing a _____ portion of additional lands (the "Additional Lands") at _____ 152nd Street (PID _____) identified in Schedule "A" attached.

7. Surrey intends to construct and carry out a highway overpass over the British Columbia Railway Company railway tracks and corridor(also known as the British Columbia Railway Company Port Subdivision) and highway widening and highway and intersection improvements in Surrey, with construction, works, operations and activities extending approximately 740 meters along 152nd Street and on and through the Additional Lands from the intersection of 54A Avenue and 152nd Street, southward to the 152nd Street Serpentine River bridge (“the Project”).

8. As part of the Project, Surrey must carry out and perform construction, works, operations and activities along, over, under or within a prescribed distance of the Pipeline within the boundaries of 152nd Street (the “Pipeline Crossing Location”) and within the Additional Lands; said construction, works, operations and activities includes, but is not limited to, disturbing earth, clearing and mass excavation, utility adjustment, grading, compaction, dewatering, soil reinforcement, road base preparation, lane marking, landscaping, milling asphalt, importing fill, paving, bridge construction, excavation of ditches and swales, and the construction of retaining walls and flood control works (the “Highway Construction and Activity”).

APPROVAL OF OIL AND GAS COMMISSION SOUGHT

9. Surrey pleads and relies on section 76 of the *Oil & Gas Activities Act*, SBC 2008, c.36, as amended (the "*Oil & Gas Activities Act*"), which states (emphasis added):

Pipeline crossings

76 (1) Subject to subsection (3), a person must not

(a) construct

(i) a highway, road or railway,

(ii) an underground communication or power line, or

(iii) any other prescribed work, or

(b) carry out a prescribed activity

along, over or under a pipeline or within a prescribed distance of a pipeline unless

(c) the pipeline permit holder agrees in writing to the construction or the carrying out of the prescribed activity, either specifically or by reference to a class of construction projects or activities,

(d) the commission, by order issued under subsection (2), approves the construction or the carrying out of the prescribed activity, either specifically or by reference to a class of construction projects or activities, or

(e) the construction or prescribed activity is carried out in accordance with the regulations.

(2) The commission, on application by a person referred to in subsection (1), may issue an order for the purposes of subsection (1) (d) and in doing so may impose any conditions that the commission considers necessary to protect the pipeline.

(3) The commission **must approve**

(a) the construction referred to in subsection (1) (a), and

(b) the carrying out of a prescribed activity under subsection (1)

(b)

by the government or **a municipality**, but may impose conditions referred to in subsection (2) in the order issued under that subsection.

(4) The commission, for the purposes of deciding whether to issue an order under subsection (1) or impose conditions under subsection (2), may require a pipeline permit holder to submit information regarding the pipeline permit holder's pipeline.

(5) The commission may order a pipeline permit holder whose pipeline is the subject of an order issued under subsection (2) to do one or both of the following:

(a) with the approval of the Lieutenant Governor in Council, relocate the pipeline to facilitate the construction or prescribed activity approved by the order issued under subsection (2);

(b) take the actions specified in the order that the commission considers necessary to protect the pipeline.

(6) In relation to an order of the commission referred to in subsection (5), the Lieutenant Governor in Council

(a) may order that a person other than the pipeline permit holder must pay the costs, or a portion of the costs, incurred in carrying out the commission's order, or

(b) may approve the payment of any of those costs from the consolidated revenue fund.

(7) If there is an inconsistency between an order or an approval made under subsection (6) and a regulation made under section 99 (1) (m.1), the order or approval prevails to the extent of the inconsistency.

10. Surrey pleads and relies upon sections 1, 2 & 3 of the *Pipeline Crossing Regulation, B.C. Reg. 147/2012*.
11. Surrey seeks approval of the Oil and Gas Commission (the "Commission") to construct and carry out the Highway Construction and Activity along, over, under or within a prescribed distance of the Pipeline at, on or through the Pipeline Crossing Location, and at, on or through the Additional Lands, or at, on or through such other location that Surrey may determine and the Commission shall approve.
12. In order to maintain the integrity and safety of the Pipeline, it will or may be necessary to realign, raise or lower the Pipeline, to excavate material from around the Pipeline and to add casing or other appurtenances that are considered necessary for the protection of the Pipeline.

FORTIS TO PERFORM WORK

13. Surrey pleads and relies on the Oil & Gas Activities Act and the Regulations made thereunder including, but not limited to, sections 76, 82, 35 (2) and s.21(b)(i) of the Oil & Gas Activities Act and sections 1, 2 and 3 of the Pipeline Crossing Regulation B.C. Reg. 147/2012 and sections 3 and 6 of the Pipeline and Liquefied Natural Gas Facility Regulation B.C. Reg. 281/2010.

14. The Highway Construction and Activity along, over, under or within a prescribed distance of the Pipeline at, on or through the Pipeline Crossing Location and at, on or through the Additional Lands might disturb the Pipeline and necessitate realigning, raising or lowering the Pipeline or excavating material from over or around it, or adding casings or other appurtenances to it, as deemed necessary by Fortis or the owner of the Pipeline, for the protection of the Pipeline. (the "Pipeline Work")
15. In accordance with *Oil & Gas Activities Act* and the Regulations made thereunder, the Pipeline Work to be carried out and performed at on and through the Pipeline Crossing Location and at, on and through the Additional Lands must be carried out and performed by Fortis or the owner of the Pipeline.

WHEREFORE, the City of Surrey applies for, claims and seeks the following:

- (a) approval of the Commission, pursuant to sections 76(2), 76(3) and 76(1)(d) of the *Oil & Gas Activities Act*, to construct and carry out the Highway Construction and Activity at, on or through the Pipeline Crossing Location and within a prescribed distance of the Pipeline, and at, on, or through the Additional Lands, or at, on or through such other location as Surrey may determine and the Commission shall approve;
- (b) an order, that Fortis or the owner of the Pipeline, shall carry out and perform on or before August 31st, 2011, or, in the alternative, on or before a date set by the Commission, all Pipeline Work required as a result of the Highway Construction and Activity along, over or under the Pipeline at, on and through the Pipeline Crossing Location and within a prescribed distance of the Pipeline, and at, on and through the Additional Lands which might disturb the Pipeline or which necessitates realigning, raising or lowering the Pipeline or excavating material from over or around it, or adding casings or other appurtenances to it, as deemed necessary by Fortis or the owner of the Pipeline, for the protection of the Pipeline; and,

(c) for such further and other Orders, declarations or directions as the Commission deems just.

DATED: _____, 201_

ANTHONY CAPUCCINELLO
Solicitor for the Applicant,
City of Surrey

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**Land Title Act
Application**

NATURE OF APPLICATION: Expropriation Notice

NATURE OF CHARGE: Fee Simple

HEREWITH FEES OF: \$ NA

FULL NAME, ADDRESS AND TELEPHONE NUMBER of person presenting application:

Harry Wan, Manager, Expropriation Services
Ministry of Transportation
4D - 940 Blanshard St.
Victoria, BC. V8W 3E6
(250) 387-7589

.....
SIGNATURE OF APPLICANT OR
SOLICITOR OR AUTHORIZED AGENT

Expropriation Act

Form 1

Section 6 (1)

Expropriation Notice

15 07/08/16 11:04:48 01 LM 793929
BDC FILE \$21.75

Expropriation Notice No.
(to be filled in by Land Title Office)

TO: DEAN MING TOYE, BUSINESSMAN
c/o Harry Crosby ✓
Barrister and Solicitor
5052 Victoria Dr.
Vancouver, BC. V5P 3T8

AND: BRITISH COLUMBIA HYDRO AND POWER AUTHORITY
Manager, Property Legal
8th floor, 333 Dunsmuir Street,
Vancouver, BC. V6B 5R3

AND: BC GAS INC. INCORPORATION NO. 74280 ✓
NOW TERASEN GAS INC. INCORPORATION NO. BC0368681
3700 - 2nd Avenue
Burnaby, BC. V5C 6S4



I certify this to be a true copy of the original.

Dated: 9/9/11 Registrar/per: [Signature]

2/2

AND: BANK OF MONTREAL
 The Pavilion
 595 Burrard St.
 Vancouver, BC. V7X 1L7
 Attn: Mr. Mark Wallace

AND: INLAND ENERGY CORP. INCORPORATION NO. 24843 ✓
 c/o Farris & Co.
 25th floor, 700 W. Georgia St.
 Vancouver, BC V7Y 1B3

AND: CIBC MELLON TRUST COMPANY INCORPORATION NO. A35769 ✓
 c/o Stikeman Elliott
 SE CORPORATE SERVICES LTD.
 1700 - 666 Burrard Street,
 Park Place
 Vancouver, BC V6C 2X8

AND: CITY OF SURREY ✓
 SURREY DYKING DISTRICT
 #101 - 17564 -56A Ave.
 Surrey, BC. V3S 1G3

AND: CITY OF SURREY ✓
 c/o City Clerk
 14245 - 56th Ave.
 Surrey, BC. V3X 3A2

AND: HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA
 as represented by the Minister of Transportation
 4D - 940 Blanshard St. Victoria, B.C. V8W 3E6

(the "approving authority")

AND: NEW WESTMINSTER LAND TITLE OFFICE
 300-88 6th Street,
 New Westminster, BC. V3L 5B3

TAKE NOTICE that

1. HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Transportation, 4D - 940 Blanshard St. Victoria, B.C. V8W 3E6 Telephone: (250) 387-7589

(the "expropriating authority")

intends to expropriate land or an interest in land in respect of which DEAN MING TOYE is the registered owner, the particulars of which are as follows:

Civic Address: 7650 - 175TH Street,
Surrey, BC.

and legally described as:

PID: 002-290-863 ✓

PARCEL "ONE" (J102835E) PARCEL "E" EXCEPT: PART DEDICATED ROAD ON PLAN BCP 24390; NORTH WEST QUARTER SECTION 20 TOWNSHIP 8 NEW WESTMINSTER DISTRICT as shown on REFERENCE PLAN OF PART OF PARCEL "ONE" (J102835E) PARCEL "E" EXCEPT: PART DEDICATED ROAD ON PLAN BCP 24390; NORTH WEST QUARTER SECTION 20 TOWNSHIP 8 NEW WESTMINSTER DISTRICT prepared by Kelly Stofer, BCLS, completed on the 16th day of March, 2006, a reduced copy of which is attached hereto as Schedule "A".

2. The nature of the interest in the land intended to be expropriated is fee simple.
3. The work or purpose for which the interest in the land is required is for public highway and other works of service and utility.
4. The approving authority with respect to this expropriation is:
HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA as represented by the Minister of Transportation, 4D - 940 Blanshard St. Victoria, B.C. V8W 3E6 Telephone: (250) 387-7589
(the "approving authority")
5. Where an owner is eligible under section 10 of the *Expropriation Act* to request an inquiry, the Minister and the expropriating authority must be served with a Notice of Request for Inquiry (Form 2), a copy of which is attached hereto, within 30 days after the date this Expropriation Notice is served on the owner.