

DATE: September 24, 2021

TO: MAYOR AND COUNCIL

NAME AND TITLE: Kris Dalio, Director of Finance

SUBJECT: FortisBC Energy Inc. Operating Agreement

ATTACHMENT(S): FortisBC Energy Inc. Operating Agreement

RECOMMENDATIONS:

That Council:

1. APPROVES the City of Prince George entering into an operating agreement with FortisBC Energy Inc, in the form attached to the report dated September 24, 2021 from the Director of Finance titled “FortisBC Energy Inc. Operating Agreement”; and
2. AUTHORIZES the Mayor and Corporate Officer to execute the agreement and all documents necessary to complete the transaction.

PURPOSE:

This report is provided to Council to seek approval on the proposed Operating Agreement with FortisBC Energy Inc.

STRATEGIC PRIORITIES:

The Operating Agreement supports Council’s Priorities of “Sustainable Fiscal Management” and “Organizational Excellence”.

OTHER CONSIDERATIONS:

The City’s current Franchise Agreement expires on October 31, 2021. A new proposed Operating Agreement is attached to this report for Council’s consideration.

Operating agreements, which do not grant exclusive rights to FortisBC, have been used to replace franchise agreements as they expire. The grant of deemed Certificates of Public Convenience and Necessity under the *Utilities Commission Act* in the early 1980s resulted in franchise agreements becoming unnecessary.

The overall objective of an operating agreement is to achieve a commercial arrangement that is fair to both the municipality and FortisBC’s customers. The terms of the operating agreement are negotiated as part of an overall package, including the operating fee, operating protocols and other rights and concessions made by each party.

Key Highlights and information about the Operating Agreement

The Operating Agreement requires FortisBC to:

- In its use of public places, comply with all Federal and Provincial laws, regulations and codes as well as Municipal bylaws, standards and policies except to the extent that such Municipal bylaws, standard and policies conflict with the terms of these operating agreements or conflict with other legislation governing FortisBC;
- Provide the Municipalities with emergency contact numbers;
- Assist the Municipalities with locates of FortisBC infrastructure;
- Provide the Municipalities with notice of its intention to perform certain types of work in the public places of the Municipalities; and
- Carry out its operations and restoration of the public places to certain standards specified in the agreements.

The Operating Agreement requires the Municipality to:

- Provide notice to FortisBC when the Municipality undertakes construction or maintenance activities that are likely to affect a part of FortisBC's facilities;
- Assist FortisBC in FortisBC's efforts to reduce unsafe building practices by third parties; and
- Notify FortisBC of any new bylaws, standards or policies adopted or passed by such Municipality that are likely to affect FortisBC's operations in Public Places.

In addition, Municipalities and FortisBC agree to use reasonable efforts to collaborate on construction and maintenance activities to reduce impacts to the public.

The Operating Agreement also provides for the City to receive an operating fee of 3% of the gross revenues from the sale of natural gas within the boundaries of the municipality. This is consistent with the prior Franchise Agreement. The 2021 budget for this fee was \$1,000,000 and these funds are used for general operating purposes.

The Operating Agreement is consistent with the terms of both the Village of Keremeos and the City of Kelowna that were approved by the BC Utilities Commission (BCUC) in 2014 and 2019, respectively. The BCUC has directed these agreements be the basis for comparison for all future operating agreements with municipalities. Kamloops and Spallumcheen are examples of future operating agreements that were also approved under this direction in 2019.

FortisBC Lease-In-Lease-Out (LILO) Agreement

The Operating Agreement is separate from the LILO agreement that was entered into on November 1, 2004. The LILO agreement concerns the natural gas distribution system where the City financed a capital lease through long-term debt and then leased the system back to FortisBC in an operating lease. FortisBC operates the natural gas distribution system and pays semi-annual lease payments to the City. The City in turn applies the lease payments to the debt and places net revenues in a reserve fund.

2021 also marks the end of this debt and FortisBC has the option of purchasing the asset at its unamortized value; or renewing the capital lease and continuing to make semi-annual payments.

FortisBC has recently given notice to the City that they are exercising their right to terminate the Capital Lease and information regarding the outcomes of that decision will be presented at a future meeting of Council.

SUMMARY AND CONCLUSION:

Administration is recommending that Council approve the new FortisBC Energy Inc. Operating Agreement.

RESPECTFULLY SUBMITTED:

Kris Dalio, Director of Finance

APPROVED:

Walter Babicz, City Manager
Meeting date: October 4, 2021