

Re: LETTER FROM THE UNION OF BRITISH COLUMBIA MUNICIPALITIES  
204 - 604 BLACKFORD STREET, NEW WESTMINSTER  
FRANCHISE FEES

Appearing on the agenda for the August 2, 1977 meeting of Council is a letter from the U.B.C.M. regarding franchise fees. Following is a report from the Municipal Treasurer on this matter.

RECOMMENDATION:

1. THAT this report be referred to the U.B.C.M. with the request that they once again approach the Department of Municipal Affairs to give consideration to the repeal of Sections 333 and 429 of the Municipal Act, and also to making machinery taxable for general as well as other purposes, and that B. C. Hydro be required to pay grants in lieu of taxes to the regional districts, regional hospital districts, Assessment Authority and the Municipal Finance Authority to bring them into conformity with other taxpayers.

\* \* \* \* \*

28 July 1977

File: 01-12-43

TO: MUNICIPAL MANAGER

FROM: MUNICIPAL TREASURER

RE: FRANCHISE FEES

On the Council agenda of 2 August 1977 appears a letter dated 21 July 1977 from the U.B.C.M. concerning a public hearing of the B.C. Energy Commission with respect to franchises and gas utilities.

Municipal franchises are governed by Sections 574 to 577 of the Municipal Act, which reads:

- "574. (1) The Council, by by-law adopted with the assent of the electors and the approval of the Lieutenant-Governor in Council, may
- (a) enter into or ratify or adopt agreements granting to any person an exclusive or limited franchise for any term of years not exceeding twenty-one years for the operation on the highways within the municipality of motor-buses, motor-vehicles, tram-cars, electric trolley-buses, or other vehicles as a public utility for the carriage of passengers;
  - (b) enter into or ratify or adopt agreements granting to any person an exclusive or limited franchise for any term of years not exceeding twenty-one years for the supplying of gas, electrical energy, water, or telephone service to the inhabitants of the municipality.

- (2) Notwithstanding clause (b) of subsection (1), an agreement entered into pursuant to that clause for supplying gas may, with the approval of the Lieutenant-Governor in Council, be renewed for a further term of years, not exceeding twenty-one years, without the assent of the electors.
575. Any by-law adopted under clause (a) of section 574, and any agreement entered into, ratified, or adopted thereby, may prescribe how and along what routes and between what termini motor-buses, motor-vehicles, tram-cars, electric trolley-buses or other vehicles shall operate, and may reserve or create power to prescribe the same from time to time, and may fix fares for the carriage of passengers, or reserve or create power to fix the same, and, without limiting the foregoing, may, subject as aforesaid, prescribe the other terms, conditions, and restrictions, including payments to or by the municipality or municipalities for and in connection with any such franchise.
576. Any by-law adopted under clause (b) of section 574, and any agreement entered into, ratified, or adopted thereby, may prescribe how and where mains, poles, and wires shall be installed, and may reserve or create power to prescribe the same from time to time, and may fix such rates for the supplying of gas, electrical energy, water, or telephone service, and may reserve or create power to fix the same, and, without limiting the foregoing, may, subject as aforesaid, prescribe the other terms, conditions, and restrictions, including payments to or by the municipality or municipalities for and in connection with any such franchise.
577. A municipality being party to any agreement entered into, ratified, or adopted pursuant to a by-law adopted under section 574 may, by action in any Court of competent jurisdiction, enforce the carrying-out of such agreement and every term and provision thereof, in so far as it affects that municipality, as though such agreement related solely to the municipality instituting such action. Any other municipality being a party to any such agreement may apply to be added as party either as plaintiff or defendant to any such action, and in the discretion of the Court may be added accordingly."

I am given to understand that the reason for the hearing is that there are 45 communities in B.C. which have franchise agreements with the Inland Natural Gas Company for which they receive 3% of annual gross revenues of the second preceding year, generated within their communities, plus normal realty taxation, to wit, school, regional district, regional hospital district, Municipal Finance Authority and Assessment Authority rates on the taxable assessed values of lands, improvements and machinery, plus general purpose rates on the taxable assessed value of lands and improvements together with a payment in lieu of realty taxes, business licences and business taxes of 1% of the gross revenues of the second preceding year, generated by the company within municipal boundaries in place of normal taxation on transmission lines, pumping stations, etc. I gather that some of these franchise agreements have expired or are about to expire, and some of the municipalities are endeavouring to obtain a franchise payment of larger than 3%. I have been told, too, that the franchise fees were given to encourage the municipalities to allow the company to operate in their municipalities to help the municipalities with any costs they may have been put to with respect to the transmission and service lines.

-3-

The 1% of gross revenue factor as prescribed by Section 333 of the Municipal Act (too lengthy to quote here) applies to the taxation of transmission lines and appurtenances of telephone companies, closed circuit television companies, electric light companies, electric power companies, water companies and gas companies. Section 429 specifically prohibits municipalities from charging business taxes on these facilities.

The terms of reference of the enquiry are:

1. What is the nature and purpose of franchise fees, and are they in the public interest?
2. If such fees are in the public interest, what is the appropriate level and how should that level be determined?
3. If such fees are in the public interest, should they be displayed as a separate item on the face of the bill issued by the gas utility to its customers or continue to be included in the general tariff structure?

It will be noted that the terms of reference confine the Board to matters of franchises concerning gas utilities. The residents of Burnaby are supplied with gas by B.C. Hydro, which does not pay franchise fees to any municipality in B.C.

A franchise is an exclusive right and Council at no time has ever given this right to B.C. Hydro with respect to its gas operations or, for that matter, its electricity operations. Nor has one been given to the B.C. Telephone Company. Nor can I find that either of the companies pay franchise fees to any municipality in this Province.

In view of this there is not much point in filing a brief with the Energy Commission. However, since the U.B.C.M. is interested in this subject, they might find it possible to use this opportunity to once again pursue the matter of taxation of public utilities.

B.C. Hydro is in a class by itself. It pays full taxation for school purposes on all its properties, including gas and electricity transmission lines and appurtenances. It gives grants in lieu of taxes for municipal purposes in the same manner that it would be taxable if it were a private utility. It does not pay taxes for regional district, regional hospital district, Assessment Authority and M.F.A. purposes. We think it should.

The other utilities pay all mill rates except that they pay 1% of the gross revenue of the second preceding year generated in the municipality in lieu of taxation on transmission lines, business taxes and business licences relative to these facilities (this latter applicable to Hydro).

If, instead of the 1% gross revenue grant, the public utilities, including Hydro, were to pay general purposes taxes on the assessed values of the related facilities, the following would be the picture:

ITEM	26
MANAGER'S REPORT NO.	53
COUNCIL MEETING	Aug. 2/77

	1977 General Purposes Improvement Assessments \$	Taxation @ 75% of Improvements at 19.140 Mills \$	1% of Gross Revenue of 1975 \$
B.C. Hydro - electrical	18,903,261	271,356.31	169,926.12
- gas	6,416,292	92,105.87	99,397.41
B.C. Telephone	12,596,476	180,822.41	90,386.91
Vancouver Cablevision	630,730	9,054.13	15,398.81
West Coast Cablevision	24,075	345.60	4,330.14
	<u>38,570,834</u>	<u>553,684.32</u>	<u>379,439.39</u>

It will be noted that in some cases the 1% revenue exceeds the amount of taxation based on realty assessments. No doubt this is what the Legislature envisioned when this form of taxation came into being in the 1950s. Nevertheless, in aggregate, Burnaby receives \$174,244.93 less than it would if the properties were taxed in the ordinary way. Additionally, Burnaby would gain in business licence revenues. A calculation of this amount is being made and will be passed on to the U.B.C.M. if this report is approved.

This matter was included in the Municipality's brief to the Commission of Inquiry on Property Assessment and Taxation, as was the fact that machinery is taxable for school, regional district, regional hospital district, Assessment Authority and M.F.A. purposes and not for general purposes taxes, a rather strange situation in that machinery receives service from only one of the Boards named, the Assessment Authority, whereas it receives services from the Municipality such as police and fire protection.

RECOMMENDATION

1. THAT this report be referred to the U.B.C.M. with the request that they once again approach the Department of Municipal Affairs to give consideration to the repeal of Sections 333 and 429 of the Municipal Act, and also to making machinery taxable for general as well as other purposes, and that B.C. Hydro be required to pay grants in lieu of taxes to the regional districts, regional hospital districts, Assessment Authority and the Municipal Finance Authority to bring them into conformity with other taxpayers.

*B. D. G. J. S.*  
MUNICIPAL TREASURER

BM:gw