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VIA ELECTRONIC MAIL

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**Attention: Patrick Wruck, Commission Secretary and Manager, Regulatory Support**

Dear Sirs/Mesdames:

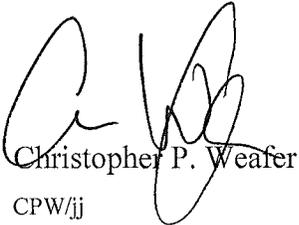
**Re: FortisBC Energy Inc. ~ Application for Use of Lands under Sections 32 and 33 of the Utilities Commission Act in the City of Coquitlam for the Lower Mainland Intermediate Pressure System Upgrade (“LMIPSU”) Projects ~ Project No.1598963**

We are counsel to the Commercial Energy Consumers Association of British Columbia (the “CEC”). Attached please find the CEC’s Final Submissions with respect to the above-noted matter.

If you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Yours truly,

**OWEN BIRD LAW CORPORATION**



Christopher P. Weafer

CPW/jj

cc: CEC  
cc: FortisBC Energy Inc.  
cc: Registered Interveners

**COMMERCIAL ENERGY CONSUMERS  
ASSOCIATION OF BRITISH COLUMBIA**

**FINAL SUBMISSIONS**

**FortisBC Energy Inc. ~ Application for Use of Lands under Sections 32 and  
33 of the Utilities Commission Act in the City of Coquitlam for the Lower  
Mainland Intermediate Pressure System Upgrade Projects  
Project No.1598963**

**January 10, 2019**

**Commercial Energy Consumers Association of British Columbia**

**FortisBC Energy Inc. ~ Application for Use of Lands under Sections 32 and 33 of the  
Utilities Commission Act in the City of Coquitlam for the Lower Mainland Intermediate  
Pressure System Upgrade Projects  
Project No.1598963**

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**COMMERCIAL ENERGY CONSUMERS ASSOCIATION  
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System Upgrade (“LMIPSU”) Projects  
Project No.1598963**

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The Commercial Energy Consumers Association of BC (“CEC”) represents the interests of ratepayers consuming energy under commercial tariffs in applications before the BC Utilities Commission (“BCUC” or “Commission”).

FortisBC Energy Inc. (“FEI” or the “Company”) applies to the Commission for resolution of a dispute between the Company and the City of Coquitlam (“COC”) which addresses two disagreements. These include:

- a) Repavement of certain lanes of Como Lake Road; and
- b) Removal of 5.5 km. of Nominal Pipe Size (“NPS”) 20 Intermediate Pressure (“IP”) pipeline that is planned for abandonment.<sup>1</sup>

The CEC participated in the LMIPSU Certificate of Public Convenience and Necessity (“CPCN”) proceeding (the “CPCN Application”).

The CEC is participating in the Application for Use of Lands under Sections 32 and 33 of the *Utilities Commission Act* (“UCA”) in the COC for the Lower Mainland Intermediate Pressure System Upgrade Projects (the “Application”).

The CEC provides the following submissions for review and consideration by the Commission panel.

**SUMMARY AND RECOMMENDATIONS**

1. The CEC submits that the Commission has the authority to resolve the current dispute between FEI and the COC.
2. The CEC recommends that the Commission deny the COC’s requirement for curb to curb repaving of the full 5.5 km of Como Lake Avenue.
3. The CEC recommends that the Commission encourage FEI to provide a maximum of \$1 million towards the COC’s repavement of the full segment, or confine FEI’s obligations to Scenario 3.

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<sup>1</sup> FEI Final Submissions page 1

4. The CEC is of the view that it is cost effective and safe for the pipeline to be abandoned in place according to the decision in the original CPCN.
5. The CEC recommends that the Commission find that the Operating Agreement is applicable to decommissioned pipes, and recommends that the Commission deny the COC's request to remove the pipes approximately 5.5 km of NPS pipe planned for abandonment, unless the COC requests that the pipe be removed under the terms of the Operating Agreement.
6. The CEC recommends that the Commission adopt FEI's view of the cost allocation in the event that FEI removes its pipe at the request of the COC under the Operating Agreement.
7. The CEC submits that it is important that Commission consider the issue of precedent with regard to the rest of FEI's system including the impacts of a decision accepting the COC's proposals in making its determinations regarding the current issue.

## **1. Introduction**

8. CEC has reviewed the submissions of FEI and the COC. The CEC generally adopts the submissions of FEI as submissions which appropriately define the legal authority of the Commission in regards to the issues the Commission has asked to be addressed in Phase Two of this proceeding:
  - a) COC is demanding that FEI repave all four lanes of Como Lake Road for the entire length of the Project in the COC, and make repairs to the subgrade, rather than repaving affected areas in accordance with COC's own repaving standards. The cost of the additional, work that would be borne by ratepayers is substantial – increasing repaving costs from approximately \$601 thousand to \$4.573 million.
  - b) COC is demanding that FEI remove all at once, and at FEI's sole cost and therefore ratepayer's expense, 5.5 kilometres of the NPS 20 IP gas line that is being abandoned pursuant to the certificate of public convenience and necessity ("CPCN") for the Project. The cost of this work is estimated to be \$77.5 million. COC's justification for removing anything more than a 380 metre segment of this gas line is speculative, at best. COC's approach would very likely see ratepayers bearing significant costs unnecessarily.
9. The CEC agrees with the framing of the issues as set out in paragraphs 1 through 5 of FEI's Final Submission.

## **2. BCUC Authority to Decide Dispute**

10. FEI outlines the criteria authorizing the Commission to decide the current dispute between FEI and the COC in Part 2 of its Final Argument.

11. The CEC agrees with FEI’s framing of the Commission’s authority to decide the dispute. There is no question, FEI has a CPCN as described in paragraphs 9 and 10 of the FEI submissions. Specifically, Order C-11-15 found the LMIPSU Project and FEI’s abandonment plan as proposed for in the CPCN Application is appropriate, as noted in the CPCN decision at pages 23 and 24.
12. The CEC is also in full agreement with the FEI Final submission at paragraph 13 where FEI states:
  13. The inclusion of the phrase “on the conditions that the gas utility and the municipality agree to” does not allow a municipality to veto activity that the BCUC has determined is in the public interest and necessity or to otherwise hold a public utility and its ratepayers for “ransom” when executing that work. Sections 32 and 33 of the UCA come into play when an agreement on the conditions of use of public spaces is outstanding. Section 32 makes the BCUC the final arbiter of disputes over the terms of use, ensuring that public utilities are able to use municipal public places to provide a valuable service on reasonable terms. Section 32 protects the utility – and ultimately the utility customers who pay all costs of service – from unreasonable municipal requirements, while ensuring fair treatment of municipalities.

### 3. Issues for Resolution

13. A section of the LMIPSU project will be constructed in Como Lake Avenue in the COC.<sup>2</sup>
14. Como Lake Avenue is a critical corridor for the local community and region.<sup>3</sup>
15. FEI’s proposed work in Como Lake Avenue includes, but is not limited to, the following:
  - the construction of a new approximately 5.5km 30-inch intermediate pressure gas pipeline (“NPS 30 Pipeline”) along Como Lake Avenue from Mariner Way to the border with the City of Burnaby; and
  - the permanent decommissioning of the existing 60-year-old, 5.5km 20-inch intermediate pressure gas pipeline (“NPS 20 Pipeline”) that is currently in service in the same section of Como Lake Avenue.<sup>4</sup>
16. The parties agree that section 8 of the Operating Agreement governs and determines FEI’s obligations with respect to repaving, but disagree as to its meaning.<sup>5</sup>
17. This proceeding addresses two of five major issues that have been identified for resolution. These include the:

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<sup>2</sup> COC Final Argument page 1

<sup>3</sup> COC Final Argument page 3-4

<sup>4</sup> COC Final Argument page 1

<sup>5</sup> FEI Final Argument page 7

- Repair and repaving of damage to Como Lake Avenue caused by the Project; and
- Decommissioning/Removal of the decommissioned NPS 20 pipeline.

#### **REPAIR AND REPAVING OF COMO LAKE ROAD**

18. The CEC generally adopts the submissions of FEI in regard to the interpretation of the Operating Agreement as set out in paragraphs 15 through 38 of the FEI submissions.

#### **Anticipated Extent of Damage**

19. FEI indicates that Project will only disturb portions of Como Lake Avenue, and will not damage the entire width of the four lane road.<sup>6</sup>
20. FEI believes that the NPS 30 IP gas line trench construction activities will be confined to a 2.5 meter wide trench, which is less than two lanes of Como Lake Avenue.<sup>7</sup> They provide evidence that lateral cuts are unlikely and will not impact curb and outside lanes, and the construction footprint is contained.<sup>8</sup> Damage related to abandonment will be limited to a bell hole within a single lane approximately every 300 meters.<sup>9</sup>
21. FEI cites work in Vancouver and Burnaby as examples of how they have confined damage and repaved where damage occurred.<sup>10</sup>
22. Conversely, the COC is of the view that it is not possible that the damage will be limited to two lanes.<sup>11</sup> They state that:

‘It is not possible that the damage will be limited to the two middle lanes’.<sup>12</sup>

and that:

‘It is a fact FEI’s Project will result in damage to all four lanes of Como Lake Avenue. The City’s position is that FEI must repair and repave the whole of the 5.5 km section of Como Lake Avenue, curb to curb, to reinstate the paving to an acceptable standard at the end of FEI’s Project.’<sup>13</sup>

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<sup>6</sup> FEI Final Argument page 9

<sup>7</sup> FEI Final Argument page 9

<sup>8</sup> Exhibit B-14, BCUC 1.13.1 and 1.13.2 and Exhibit B-16, Coquitlam 1.1. series

<sup>9</sup> Exhibit B-16, Coquitlam 1.1.6

<sup>10</sup> Exhibit B-12, page 15-16

<sup>11</sup> Exhibit C1-11, COC Response to CEC 1.6.5.

<sup>12</sup> Exhibit C1-11, COC Response to CEC 1.6.5

<sup>13</sup> COC Final Argument page 24

23. They outline their reasons for the expected damage in BCUC 1.14.2.<sup>14</sup>
24. The COC also provides images of work undertaken by FEI in the City of Vancouver and the City of Burnaby to demonstrate in Attachment 7 to the COC's response to BCUC IR2.14.3.<sup>15</sup>



25. The CEC submits that the evidence provided by the COC suggests that there is indeed potential for the construction to extend beyond the 2.5 metre wide trench, or even beyond two lanes, but falls well short of supporting the 'impossibility' of confining damage to areas anticipated by FEI, or even the likelihood of extended damage.
26. The CEC submits that it is not a 'fact' that the Project will result in damage to all four lanes of Como Lake Avenue, and particularly to the entire continuity of all four lanes of Como Lake Avenue.
27. The CEC submits that FEI has significant experience in implementing installation of pipelines in city streets and that the Commission should factor this into their deliberations.
28. The CEC recommends that the Commission determine that there is potential for damage to extend beyond FEI's anticipated 2.5 meter trench, but dismiss the COC's position that such damage is a foregone conclusion.
29. The CEC recommends that the Commission require FEI to comply with the Operating Agreement and repair all damage that can be reasonably determined to have been caused by FEI.

### Repair

30. Both parties agree that under Section 8 of the Operating Agreement, FEI is required at its costs to reinstate the paving or surface on public property that it has disturbed to as good a

<sup>14</sup> Exhibit C1-10, COC Response to BCUC 2.14.2

<sup>15</sup> Exhibit C1-10, COC Response to BCUC 2.14.3

state of repair as it was prior to the disturbance and in accordance with reasonable specifications laid down by, and subject to the supervision of, the Municipal Engineer".<sup>16</sup>

31. Repairing is addressed in Section 9 of the Agreement which states:

In the placing, constructing, renewal, alteration, repair, maintenance, removal, operation and use of the said works the Company shall not destroy or damage the property of the Corporation except as it is authorized to do so by this agreement or by the Corporation; but, if at any time the Company does destroy or damage the property of the Corporation, the Company shall bear the cost of repairing the same in such a manner as to leave the same in as good a state of repair as it was in prior to the doing of such destruction or damage and to the reasonable satisfaction of the Municipal Engineer.<sup>17</sup>

32. The COC's position is that the construction of the 5.5 km NPS 30 pipeline will involve numerous cuts through the pavement, including lateral cuts which extend to the curb that will end the pavement's ability in the area of the cut to flex and distribute loads, and degrade the overall strength and longevity of the pavement. Repairs lead to the development of water penetration and potholes. Additionally, the subgrade will be undermined and degraded by erosion and heavy equipment during the construction period.<sup>18</sup> All of the above would result in increased maintenance costs to the COC.

33. In CEC 1.8.1 the COC points out that:

Merely repairing the pavement to look like it did prior to construction does not restore the pre-existing structural strength or longevity of the pavement. The longitudinal pavement joints and lateral cuts and numerous patches will over time crack, settle and create potholes and bumps that would not otherwise have occurred and which will impose ongoing maintenance costs on Coquitlam. Reinstating the pavement to its preconstruction condition means restoring it in such a way that the ongoing costs to Coquitlam are obviated.<sup>19</sup>

34. The CEC agrees with the COC on this point.

35. The COC's view appears to be that the only possible way to leave the roadway in equivalent condition is to repave the entire length and width of the 5.5 km section.

36. FEI argues that such extensive work is unnecessary in that the impacts do not affect the entire roadway and that FEI has presented a reasonable approach to repairs. Additionally they consider that the COC is demanding a 'betterment'<sup>20</sup> rather than a repair, contrary to Section 8 of the Operating Agreement.

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<sup>16</sup> Exhibit C1-11, COC Response to CEC 1.6.2

<sup>17</sup> FEI Final Argument page 8

<sup>18</sup> City of Coquitlam Final Argument page 30

<sup>19</sup> Exhibit C1-11 COC Response to CEC 1.8.1

<sup>20</sup> FEI Final Argument page 13

37. FEI points out that it does not expect to have lateral cuts and damage will be limited and/or mitigated for pavement markings, traffic loops and general wear and tear.<sup>21</sup>
38. It is FEI's understanding that a seam in asphalt pavement is standard industry practice for trench restoration of utility projects and has been previously accepted by the COC for other third party work.
39. FEI does not anticipate that paving covering only a portion of a lane will create issues for motorists, roadway management or other concerns.<sup>22</sup>
40. The CEC submits that the COC has not provided convincing evidence that FEI could not effectively repair the damage it causes in effecting its Project, particularly where the parties are disputing the requirement for certain damage, such as lateral cuts.
41. The CEC submits that it is important that FEI provides a sufficiently robust repair to meet its obligations under the Operating Agreement.
42. FEI has repeatedly acknowledged its responsibilities under Section 8 of the Operating Agreement to repair any and all damage to property<sup>23</sup> to the condition prior to the disturbance, including any damage to subgrade.<sup>24</sup>
43. The CEC submits that the issue of whether or not curb to curb repair is required for the length of the roadway in question should depend on the actual state of the damage, and not on a set of assumptions which are currently under dispute between the two parties.

#### COC Specifications

44. In FEI's view, reasonable specifications for repair would include the standards that the COC generally applies when repaving: the COC's paving specifications.<sup>25</sup>
45. FEI states that it would repair all damage caused by its work in accordance with the COC's Paving Specifications.<sup>26</sup> FEI confirms that it intends to leave Como Lake Avenue in equal or better condition than it was immediately prior to the Project in accordance with the COC's Paving Specifications and FEI's obligations under the Operating Agreement.<sup>27</sup>

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<sup>21</sup> FEI Final Argument page 10

<sup>22</sup> Exhibit B-15, CEC 1.4.1.1

<sup>23</sup> Exhibit B-15, CEC 1.3.1

<sup>24</sup> Exhibit B-15, CEC 1.2.3

<sup>25</sup> FEI Final Argument page 14

<sup>26</sup> Exhibit B-15, CEC 1.3.1.1

<sup>27</sup> Exhibit B-15, CEC 1.3.1

46. In response to BCUC 1.15.2 questioning on whether the COC's Paving Specifications represent "reasonable specifications" in the context of the wording in section 8 of the 1957 Operating Agreement the COC does not provide a direct answer. Rather they state that:

The City's response to BCUC IR 14.2 above provides the reasoning for the City to require FEI to repave Como Lake Avenue. With regard to how FEI has described the repaving methodology (i.e. Scenario 2, on pages 12 to 15 of Exhibit B-12), the City believes that there is a much more efficient way to complete the paving work. For example, it would make more sense to complete the paving of the middle two lanes as the NPS 30 is being installed and traffic control measures are in place. These middle lanes could then be used to manage traffic when the outside lanes are being paved.

47. In response to BCUC 1.15.2.1 requesting that they summarize the specifications they consider reasonable they state:

The City believes that the paving specifications it has provided to FEI are reasonable.

48. The CEC agrees with FEI's position, and submits that the COC's paving specifications are an appropriate interpretation for the required repairs in the context of Sections 8 and 9 of the Operating Agreement.

49. The CEC submits that the COC's unwillingness to discuss the appropriateness of the COC's paving specifications as a standard for repair undermines their position in requiring FEI to conduct paving at the levels proposed by the COC.

50. FEI believes that its projected pavement restoration specifications meet the COC's Paving Specifications,<sup>28</sup> but that the COC's demands exceed its own paving specifications in two significant respects:

- Repaving of all four lanes; and
- Performing subgrade work on the whole road width.<sup>29</sup>

51. In their Final Submissions, FEI provides the COC's paving specifications and requests that the BCUC take note of the pavement restoration depth and normal restoration width.<sup>30</sup>

52. The COC disputes the FEI position in their response to CEC 1.9.1. The CEC inquired directly if the COC's requests exceed its own specifications. They state that:

The City's request for FEI to repave the 5.5kms of Como Lake Avenue does not exceed the City's specifications. It is worth noting that there are no recent utility jobs in Coquitlam that compare with the LMIPSU project in terms of the length of the project, the location of the

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<sup>28</sup> Exhibit B-15, CEC 1.4.1.1

<sup>29</sup> FEI Final Argument page 14

<sup>30</sup> FEI Final Argument page 12

project (urban area, arterial highway), and the scope of the construction within each block (including the length of the construction trench that will be open at any given time).<sup>31</sup>

53. They go on to discuss various concerns.
54. The CEC submits that the COC's simple assertion is not convincing evidence that their requests do not exceed their own specifications. The CEC submits that if the COC's specifications are consistent with that being requested of FEI, the evidence should be easy to produce.
55. In BCUC 1.15.3 the COC states that:

‘The City did not increase its specifications on October 12, 2016. On that date and previous to that date the City's published Supplemental Specifications to Master Municipal Construction Documents stated that 50 millimeter thickness is the requirement for the depth of the asphalt key for arterial roads, such as Como Lake Avenue’.<sup>32</sup>

56. The CEC does not find the COC's response to be convincing.
57. FEI asked the COC if other third parties are required to undertake curb to curb paving following service cuts, to which the COC did not respond directly.<sup>33</sup>
58. The CEC inquired if COC policy requires itself to repair and repave all lanes, or only those disturbed/damaged by the activity. The COC responded as follows:

The City's practice with regard to repair of utility cuts depends on various factors for the given situation. The City will typically plan its work as much as possible so that utility work happens prior to when paving happens. For example, the City will repair water mains, sewer mains, and service connections prior to paving a roadway. This methodology reduces the amount of pavement cuts in a roadway. When there is a more minor utility repair, the City will consider the overall impacts to the City's ratepayers so that the life cycle costs are minimized. This consideration by the City will take into account such factors as ongoing maintenance costs and life-cycle impacts related to the pavement cut in the roadway compared to the capital cost of a curb to curb repair. Where the City decides to only make the repair within an area that is less than ‘curb to curb’ the City does so with the implication that it will be the City that will be responsible for the ongoing maintenance and safety of the roadway.<sup>34</sup>

59. The CEC interprets the above response to indicate that the COC does not require ‘curb-to-curb’ repairs as a matter of policy when it is conducting its own repairs to COC roadways.
60. The CEC submits that this is a telling situation.

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<sup>31</sup> COC Response to CEC 1.9.1

<sup>32</sup> Exhibit C1-10, COC Response to BCUC 1.15.3

<sup>33</sup> FEI Final Argument page 15

<sup>34</sup> Exhibit C1-11, COC Response to CEC 1.6.6

61. The CEC submits that the evidence is that the paving specifications outlined by the COC for this project exceed their own paving specifications and those for other projects.
62. FEI points out that there is evidence of 310 utility cuts along the roadway that have been repaired.<sup>35</sup>
63. The CEC recognizes that the COC may justifiably make decisions for itself that weigh the increase in up-front costs versus increases in ongoing maintenance costs, and that no such trade-off is appropriate to be provided to a third party.
64. However, the CEC submits that such situations would be accounted for in the COC's paving specifications that it uses for third parties.
65. Overall the CEC finds FEI's evidence with regard to COC repair requirements is considerably more credible than that of the COC.

#### **Existing Condition of the Roadway**

66. FEI engaged WSP Canada Inc. ("**WSP**") to undertake a pre-construction assessment of Como Lake Avenue between North Road and Pinnacle Street, representing the 5.5 km length of the project.
67. The WSP report indicated that an estimated 32% of the total pavement area along the length of the project has noticeable distresses recorded in the survey. These were considered to be especially evident in the curb or outside lanes of Como Lake Avenue and Spuraway Avenue; additionally, several sections of these roadways will likely need a full width rehabilitation treatment or extensive repairs within the next 5 to 10 years.<sup>36</sup> WSP counted a total of 577 instances of distress in the surveyed portion of Como Lake Avenue, covering an area of 25,871 square metres.<sup>37</sup>
68. In BCUC 2.14.1, the Commission requested the COC to comment on whether the COC agrees with the assessment that several sections of roadway will likely need full width rehabilitation treatment or extensive repairs within the next five to ten years. The COC identified two sections totalling 2 kms of Como Lake Avenue that are in need of full width repaving within the next five years. Additionally, the COC identified certain sections which were repaved at a later date than specified in the report.<sup>38</sup>
69. The CEC requested the COC to discuss the current condition of the roadway in CEC 1.6.7. It provided a summary in Attachment 1.

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<sup>35</sup> FEI Final Argument page 17

<sup>36</sup> Exhibit B-12, page 3

<sup>37</sup> FEI Final Submission page 16

<sup>38</sup> Exhibit C1-10 COC Response to BCUC 2.14.1



- Scenario 2 is for paving over and repair of four lanes as requested by the COC <sup>43</sup>; and
  - Scenario 3 is for Two Lane Paving (Scenario 1 with additional paving over 2 full lanes).
78. The capital costs under Scenario 1 are \$601,000<sup>44</sup>, and total costs for both installation and repaving activities for the bell hole excavations are estimated to be approximately \$706,379.<sup>45</sup> The Present Value is \$710,000.<sup>46</sup> FEI provides the details of its methodology in its response to the COC 1.5.1
79. The estimated capital cost of Scenario 2 is approximately \$4,573,000<sup>47</sup> and the Present Value is \$5,402,000.<sup>48</sup> FEI provides the details of its methodology in its response to the COC 1.7.1.
80. The estimated capital cost of Scenario 3 is approximately \$959,000.<sup>49</sup>
81. The CEC submits that the cost differentials between Scenario 1 and 2 are very significant, and that it is not appropriate for FEI ratepayers to pay significantly more than is required under the Operating Agreement to repair the area to its pre-Project condition.
82. The CEC submits that the cost differentials are substantially less significant between Scenario 1 and Scenario 3.
83. The CEC submits that Scenario 3 may represent a reasonable compromise that extends the repair to cover a natural break point.
84. The COC does not recognize Scenario 3 as being an adequate option.<sup>50</sup>
85. The CEC recognizes the inherent cost effectiveness and long term value from undertaking roadway improvements during a time when construction is being undertaken. It is less disruptive overall to coordinate the pavement repairs with the LMIPSU project.<sup>51</sup>
86. The CEC submits that it could be cost-effective for COC to conduct or arrange for its required repairs and improvement work to be undertaken during the period in which FEI is disturbing the pavement.

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<sup>43</sup> The City agrees that Scenario 2 provides a generally correct overview of the City's preferred scenario, but submits that the relative sizes and dimensions of certain objects are misleading (COC response to BCUC 1.15.5.)

<sup>44</sup> FEI Final Submission page 18

<sup>45</sup> Exhibit B-15, CEC 1.2.1

<sup>46</sup> FEI Final Submission page 18

<sup>47</sup> Exhibit B-12, page 14

<sup>48</sup> FEI Final Submission page 18

<sup>49</sup> Exhibit B-12, page 18

<sup>50</sup> Exhibit C1-10, COC Response to BCUC 2.15.6.1

<sup>51</sup> Exhibit C1-1-, COC Response to BCUC 2.15.5.1.1.

87. The CEC notes that in an effort to resolve outstanding issues with the COC, FEI considered a contribution of \$3.2 million towards the paving of Como Lake Avenue from curb to curb in support of the COC's objective to repair the subgrade below the asphalt and completely repave Como Lake Avenue. The COC's repair and paving would occur after FEI had repaired and paved the portion of the road damaged by the project.<sup>52</sup>
88. FEI no longer intends to offer a \$3.2 million contribution to the COC as part of any paving scenario<sup>53</sup> for the reasons outlined in its Final Arguments at pages 18 and 19.
89. The CEC submits that it is disappointing that the COC and FEI were unable to reach an agreement that would likely have resulted in a reduction of the overall costs being delivered to the combined taxpayer/ratepayer base.
90. The CEC submits that it could be worthwhile for the COC and FEI to reconsider the options for repaving the entire length and width of the corridor at a maximum contribution of \$1 million from the utility. This contribution exceeds the cost of 2 lane paving.
91. The CEC submits that the evidence is that a contribution of more than \$1 million is effectively a transfer of cost from taxpayers to ratepayers.

**CEC Conclusion on Repair and Repaving of Como Lake Road**

92. Neither section 8 or other portions of the Operating Agreement require FEI to do more than repair the damage done to the roadway to equal or better condition than it was prior to the construction.
93. Given the clear obligation, the COC's argument for requiring the repaving of all four lanes of Como Lake Avenue as a precondition for permitting the work logically relies on a conclusion that:
  - a) all four lanes of Como Lake Avenue will by necessity be damaged for the full length of the roadway, and
  - b) that FEI either cannot or would not undertake necessary and adequate repairs in the event it occurred; and
  - c) there would be no adequate recourse in the event that FEI did not undertake sufficient repairs.
94. The CEC submits that there is no persuasive evidence to support any such findings.

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<sup>52</sup> Exhibit B-12, page 8

<sup>53</sup> Exhibit B-15, CEC 1.2.2

95. The CEC submits that there is risk that the damage will extend beyond that anticipated by FEI. However, the CEC submits that this risk is almost entirely mitigated by the provision that FEI will make such repairs to the extent necessary and in accordance with Section 8 of the Operating Agreement.
96. The CEC is of the view that FEI has clearly demonstrated its willingness and commitment to conduct repairs to all portions of the roadway that it damages.
97. The CEC did not find any convincing evidence on the record to suggest that FEI would not or could not conduct repairs to cover the extent of any damage.
98. The CEC recommends that the Commission determine that should damage extend beyond the 2.5 meter trench it can be anticipated that FEI will conduct repairs at its own cost.
99. The CEC submits that the existing condition of the roadway is generally less than good and that the demand for full curb-to-curb repaving would appear to be a grasp by the COC to have FEI ratepayers cover the costs of COC obligations.
100. The CEC submits that to require FEI to undertake repaving in the order of \$4.5 million essentially results in a transfer of liability from COC taxpayers to FEI ratepayers.
101. The CEC submits that FEI should not be required to repave the entire width of the affected roadway unless the damage is actually created and not merely proffered as put forth by the COC.
102. The CEC recommends that the Commission deny the COC's requirement for curb to curb repaving of the full 5.5 km of Como Lake Avenue.
103. The CEC recommends that the Commission encourage FEI to provide a maximum of \$1 million towards the COC's repavement of the full segment, or confine FEI's obligations to Scenario 3.

## **REMOVAL OF NPS 20 IP PIPELINE**

### **Introduction**

#### City of Coquitlam

104. The COC's position is that the entire 5.5 km of NPS 20 pipeline in Como Lake Avenue should be removed at this time, and has made removal of the NPS 20 IP gas line a condition of signing off on the Project Engineering Drawings.<sup>54</sup>
105. In particular, the COC identifies a section of approximately 0.38 km between North Road and Clarke Road which is needed for the installation of a new water main and sanitary sewer.

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<sup>54</sup> FEI Final Argument page 21

106. The COC is of the view that removal of the entire length of pipeline should be undertaken as the full removal will be required at some point<sup>55</sup> in the future. If the NPS 20 pipeline is left in place, the COC believes it will be an obstacle for future utilities.<sup>56</sup> The COC points to the planned growth of the COC and the need for additional underground space.
107. Since FEI retains ownership and responsibility for NPS 20 pipeline, the COC considers that costs should be borne by FEI.
108. The COC points out that FEI does not dispute its long term responsibility for the pipeline.
- ‘FEI’s Vice President of Market Development & External Relations, Mr. Doug Stout, has confirmed that the decommissioned NPS 20 Pipeline will remain FEI’s responsibility and that FEI will remove it if it interferes with municipal infrastructure’.<sup>57</sup>
109. Most importantly the COC argues that FEI does not have the right to leave a decommissioned pipeline in place.
110. The COC’s rationale hinges largely on the difference between pipelines delivering gas and those that are decommissioned, which it views as being stored on municipal property.
111. The COC’s rationale and view of the applicable law is provided at pages 11-18 of its Final Argument, and is founded generally on the concept that there is no law requiring the COC to allow for pipeline abandonment. Their logic is as follows:
- a) The Oil and Gas Commission’s jurisdiction to order the removal (or allow abandonment in place) is pursuant to the *Oil and Gas Activities Act* (“**OGAA**”), and is not applicable because the pipeline is not in Provincial Crown land, but is in land owned and controlled by the COC.
  - b) The *Gas Utility Act* (“**GUA**”) does not permit FEI to leave the decommissioned NPS 20 pipes in place because the rights to occupy municipal lands provided in the act are expressly subject to the terms agreed to by the municipality. In this case, it is the 1957 Operating Agreement.
  - c) The 1957 Operating Agreement does not permit FEI to leave its decommissioned pipes in place, because the prescribed purposes do not include permanent storage of decommissioned pipes that will never be used for the purposes of supplying natural gas to the public.<sup>58</sup> The COC is of the view that the 1957 Operating Agreement does not apply to the removal of decommissioned pipes.<sup>59</sup>

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<sup>55</sup> COC Final Argument page 9

<sup>56</sup> COC Final Argument page 9

<sup>57</sup> COC Final Argument page 9

<sup>58</sup> COC Final Argument pages 13-14

<sup>59</sup> Exhibit C1-12 COC Response to FEI 1.1.2

- d) The BCUC does not have jurisdiction to grant FEI ‘property’ rights to facilitate abandonment in place of the decommissioned NPS 20. None of sections 32, 33 nor 45/46 provide jurisdiction for the BCUC to grant ‘property rights.’<sup>60</sup> Sections 32 and 33 do not apply to decommissioned pipes that are not useful for supplying gas. Section 45 (CPCNs) applies to construction and operation and not to decommissioned pipe. Nor does it permit the BCUC to grant ‘property rights’ on municipal lands. The BCUC does not have authority to expropriate land for the permanent storage of decommissioned pipes.
  - e) Rules governing the abandonment of pipelines including the applicable CSA standard, the OGAA and applicable environmental protection regulations relate to safety and protection of the environment, and not to property rates in municipal lands.
  - f) The COC has the legislative and common law authority to request that FEI remove the 5.5 km NPS 20 pipeline, and the COC has done so in writing.
  - g) There is no legislative or other basis requiring the COC to contribute to FEI’s cost of removal.
  - h) Section 121 of the UCA does not apply because the CPCN for LMIPSU did not grant binding conditions for pipeline abandonment<sup>61</sup> which are conditional on having the necessary legal rights.
112. Additionally the COC argues that removing the full 5.5 km of pipeline is cost-effective for the following three reasons:
- a) Reinstatement of Como Lake Avenue’s condition will be cost effective if pavement impacts are dealt with in an integrated time period;
  - b) Construction costs will likely increase over time; and
  - c) Removal will avoid costs related to making the pipe safe from collapse.<sup>62</sup>

FortisBC Energy Inc.

113. FEI’s view of the issue is that the COC should not have conditioned their approval of Project Engineering Drawings on the removal of the pipeline because FEI has authorization from the CPCN, which is supported by Section 121 of the UCA.
114. FEI is prepared to undertake the removal of any portion of the NPS 20 IP gas line, including the entire 5.5 kilometers, if the COC exercises its rights under the Operating Agreement and

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<sup>60</sup> COC Final Argument page 15-16

<sup>61</sup> COC Final Argument page

<sup>62</sup> COC Final Argument page 21

requests such removal. FEI has not agreed to the COC's proposal that FEI bear the entire cost of the removal.<sup>63</sup>

115. FEI submits that:

- the CPCN was unequivocal in its determination as to the plans for abandonment;
- Section 121 of the UCA prevents the COC from impeding or superseding the UCA and CPCN; and
- The CPCN was a real and considered order based on evidence.

116. FEI also notes that the COC had ample opportunity to participate in the CPCN and could have applied for reconsideration but did not do so.

117. FEI is of the view that the COC is entitled to direct FEI to remove the NPS 20 IP gas line, but argues that FEI is not required to bear the full costs of doing so.

118. In particular, FEI considers that Sections 4 and 5(a) of the existing Operating Agreement govern the decommissioning and cost allocation methodology for pipeline removal. They provide their argument at pages 28-30 of their Final Argument. FEI notes that there is nothing in the definition of 'said works' that excludes decommissioned pipes from other company pipes.<sup>64</sup>

119. FEI also points out that unless Section 4 applies to removal of a decommissioned pipe, then the BCUC could reasonably interpret that the COC has no right at all to require FEI to remove the pipe.<sup>65</sup>

120. Moreover, FEI asserts that if it is found that the Operating Agreement does not cover the removal of abandoned pipe, then it 'stands to reason that having been placed in accordance with the Operating Agreement, the COC does not have a right, after the fact, to require that the placed works be removed'. With the removal being at the COC's request then the COC should cover the entirety of the cost.<sup>66</sup>

121. Despite these arguments, FEI believes a fair option would be to revert to the methodology established in the Operating Agreement.

122. The CEC adopts the submissions of FEI on the allocation of NPS 20 IP gas line removal cost as set out in paragraph 39 through 58 of the FEI submissions. The Commission in Order C 11 15 clearly approved FEI's abandonment plan. COC's holding up of Project Engineering

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<sup>63</sup> Exhibit B-15, CEC 1.1.1

<sup>64</sup> FEI Final Argument page 29

<sup>65</sup> FEI Final Argument page 30

<sup>66</sup> FEI Final Argument page 33

Drawings would appear to be an effort to override, without authority, Section 121 of the UCA. Section 121 precludes the COC from taking such an approach.

123. The CEC supports the FEI submissions in regard to the legal authority of the Commission to make the considered and reasonable decision consistent with the law regarding treatment of decommissioned lines, based on the evidence before it. The CEC would highlight paragraph 48 of the FEI's submissions:

48. Arguing, as the City appears to be doing, that the BCUC lacked jurisdiction to include abandonment of the NPS 20 IP gas line as a condition of the Project CPCN, requires ignoring what is self-evident on the face of the CPCN order and Decision. The BCUC cited section 45 of the UCA in the CPCN Order. Section 45(9) authorizes the BCUC to place terms "as the public convenience and interest reasonably require" on the issuance of a CPCN relating to the construction of the Project. Specifying terms on how FEI was to address the NPS 20 IP gas line as part of the Project went to the core of the BCUC's role as a public utility regulator. The decision had economic implications for ratepayers (abandonment was much cheaper than removal), as well as social and environmental implications (which the BCUC concluded favoured abandonment).

124. The CEC concurs with FEI that it is not a requirement of the CPCN decision by the Commission that each specific term and condition is non-binding unless the BCUC uses the word "order" or "direct". This submission of COC is not reasonable.

125. At paragraph 53 of the FEI submissions they reference the OGAA, SBC 2008 Ch. 36. The COC takes issue with the applicability of the OGAA within pipeline regulations and argues that they may not be applicable to COC lands. The CEC submits that even if the submission is correct, and the CEC does not agree that it is correct, the CEC submits it is reasonable that FEI conduct itself in accordance with the industry accepted practice, CSA Z662 and FEI's internal standards, as well as all the other evidence before the Commission as part of the LMIPSU CPCN application, which the Commission approved.

126. The CEC notes the Commission's order on abandonment in the CPCN proceeding as quoted in paragraph 57 of FEI's submissions:

The Panel approves FEI's abandonment plans and discontinuance of CP as proposed for both the Coquitlam Gate and Fraser Gate IP Projects. The steps FEI plans to take to minimize environmental and social impacts are appropriate as they are both cost effective and result in a minimum of disruption. Further, the Panel notes that the interveners raised no concerns concerning pipeline abandonment.

127. At paragraph 59 of the FEI's submission it notes that the Operating Agreement provided the COC a contractual right to request that FEI remove the abandoned NPS 20 IP gas line under a negotiated allocation methodology that makes the COC responsible for the majority of the removal costs. The CEC agrees with this submission.

128. The COC's interpretation of the Operating Agreement is that the Operating Agreement does not consider the removal of pipeline assets. The CEC notes that at the time of negotiation of the Operating Agreement, the COC, as a sophisticated commercial party, had an opportunity to include in the Operating Agreement provisions relating to the removal of pipeline assets and it is now asking the Commissions to in effect rewrite the Operating Agreement. CEC submits that the Commission should find that the submissions of FEI at paragraphs 62 to 74 provide a reasonable and an appropriate interpretation of the Operating Agreement.
129. The CEC endorses the calculation approach set out by FEI as reasonable and appropriate and the best evidence available to the Commission for interpreting Section 5(a) of the Operating Agreement.
130. The CEC further agrees with FEI that if the Commission does not accept that the Operating Agreement covers the removal of the abandoned NPS 20 IP gas line, that nonetheless the calculation proposed by FEI derived from the Operating Agreement is appropriate and a fair and reasonable cost allocation to be used by the Commission pursuant to a determination under Sections 32 and 33 of the UCA.
131. CEC supports the FEI submissions at pages 83 through 85 that Section 121 of the UCA is a full answer to the COC's reliance on the Community Charter to assert a trespass. The CEC agrees with FEI that the COC has provided insufficient justification to incur the significant cost of removing NPS 20 IP gas line as set out in paragraphs 85 through 102 of the FEI's submissions.

#### The CEC Response to the COC Submissions

132. The COC asserts at paragraph 32 of its Final Submission that the Oil and Gas Commission's jurisdiction to order the removal (or allow abandonment in place) is pursuant to the OGAA, and is not applicable because the pipeline is not in Provincial Crown land, but is in land owned and controlled by the COC. The CEC submits that the powers granted to the Oil and Gas Commission, pursuant to the OGAA, are broad and do not contain a limitation restraining the regulation of oil and gas activities to those occurring on Provincial Crown Land. Further, the issue is somewhat moot as FEI is not seeking removal of the pipeline.
133. The COC asserts at paragraph 33 that the GUA does not permit FEI to leave the decommissioned NPS 20 pipes in place because the rights to occupy municipal lands provided in the GUA are expressly subject to the terms agreed to by the municipality. In this case, it is the 1957 Operating Agreement. As the CEC noted above, the Operating Agreement enabled placement and if the COC was to require removal at the FEI/ratepayer expense as argued now, COC should have expressly required that in the Operating Agreement at the time it was negotiated.
134. The COC also asserts that the 1957 Operating Agreement does not permit FEI to leave its decommissioned pipes in place, because the prescribed purposes do not include permanent storage of decommissioned pipes that will never be used for the purposes of supplying natural

gas to the public. The COC is of the view that the 1957 Operating Agreement does not apply to the removal of decommissioned pipes. Again, if the COC intended for the pipeline to be removed at the FEI/ratepayer expense as argued now, that should have been negotiated into the Operating Agreement.

135. The COC argues that the BCUC does not have jurisdiction to grant FEI 'property' rights to facilitate abandonment in place of the decommissioned NPS 20. None of sections 32, 33 nor sections 45/46 provide jurisdiction for the BCUC to grant 'property rights.' Sections 32 and 33 do not apply to decommissioned pipes that are not useful for supplying gas. Section 45 (CPCNs) applies to construction and operation and not to decommissioned pipe. The CEC submits COC agreed to the pipeline being placed on the property and did not seek a contractual right to require removal the FEI/ratepayer expense. As a sophisticated commercial party, if that was a required term it should have been negotiated. It is a reasonable interpretation of the Operating Agreement that the parties accepted the pipeline could be left in the ground and that the relocation calculation provided in the Operating Agreement covered the cost of removal if that was requested by the COC.
136. The COC in effect submits that section 121 of the UCA does not apply because the CPCN for LMIPSU did not grant binding conditions for pipeline abandonment which are conditional on having the necessary legal rights. The CEC submits that the LMIPSA CPCN specifically and clearly approved FEI's plans, including abandonment, and any interpretation otherwise would require an amendment or appeal of the CPCN. The CPCN is an authorization pursuant to s.121(2)(a), and pursuant to s.121(1)(a), nothing in the *Community Charter* or *Local Government Act* can supersede or impair such an authorization.

#### **Need for Removal - Space Requirements**

137. The COC is of the view that the 5.5 km length of the NPS 20 pipeline has to be removed at this time.
138. In particular, the COC has identified a 380 meters segment which is urgently required due to the imminent need for the construction of a sanitary sewer and water line.<sup>67</sup>
139. The CEC notes that the COC has deferred installation of its 300 mm water main since 2015, and a 450 mm sanitary main will be deferred until 2021.<sup>68</sup> The COC can continue to defer the water main for as many as another 5-10 years, however the sanitary main must be completed within the next five years.<sup>69</sup>
140. The CEC inquired as to why all 5.5 km of pipeline should be removed at this time when urgency is related to only 380 meters.

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<sup>67</sup> Exhibit C1-11, COC Response to CEC 1.1

<sup>68</sup> Exhibit C1-11, COC response to CEC 1.4.3

<sup>69</sup> Exhibit C1-11, COC response to CEC 1.4.3

141. The COC states that large sections of the pipeline left in place will provide obstacles to immediately upcoming and future installations of COC utilities and third party utilities for decades to come.<sup>70</sup>

142. When asked to describe the works for which the COC requires the use of the entire 5.5 km NPS IP 20 route they state:

A detailed scope of the underground works that the City will need to construct in Como Lake Avenue is very difficult or impossible to provide. However, many of the sanitary and water mains along Como Lake Avenue are older than 50 years (refer to Attachment 1) and many of these will likely be replaced and/or upgraded within 25 years. The actual utility replacement year may be advanced or delayed to coordinate replacement with the City's pavement replacement program, to minimize disruption and take cost advantages.

As noted in the City's response to FEI IR 2.2, there are often requirements for new 3rd party utilities that are not planned or foreseen by the City and arise suddenly. The LMIPSU project is in fact one example of a project that the City did not know about prior to 2014 and urgently requires space in the Como Lake corridor.<sup>71</sup>

143. The COC acknowledges that there is capacity for utility installations at this time, but points out that many of the sanitary and water mains are older than 50 years and will likely be replaced and/or upgraded within 25 years.<sup>72</sup>

144. In response to FEI 1.2.2 and 1.2.3 the COC was unable to provide specific dates or set of works that were anticipated for the longer corridor.

145. The CEC finds the generic nature of the COC's response to these IRs to be unsatisfactory in establishing a need for the immediate removal of the full 5.5 km of decommissioned pipeline.

146. The CEC is of the view that in order to justify the immediate removal of the entire length of pipeline the COC should be able to provide at several specific examples of areas of the pipeline that would be problematic and details of when and why the conflicts where conflicts would arise.

147. FEI postulates in its Final Submissions that the COC may never require the space and points out that the COC has conceded 'that it had not evaluated all of the potential scenarios that will occur in terms of future developments within the COC, future requirements for utility repairs, or future requirements of utility upgrades, or the needs of other third party utilities'.<sup>73</sup>

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<sup>70</sup> Exhibit C1-11, CEC 1.4.6

<sup>71</sup> Exhibit C1-12, COC Response to FEI 1.2.3

<sup>72</sup> City of Coquitlam Final Arguments page 18

<sup>73</sup> FEI Final Argument page 37

148. FEI goes on to assert that the COC's arguments are speculative and vague, lack specific examples, lack explanations for the extent of the removals requested.<sup>74</sup>
149. The CEC has reviewed the evidence provided by the COC for its need for the space.
150. The CEC submits that the COC has not been persuasive in its argument that large sections of the pipeline left in place will provide obstacles to future installations of COC utilities and third-party utilities for decades to come.<sup>75</sup>
151. Additionally, the CEC submits that, even if correct, forecasting a need in 25 years is too long a period to demand the immediate removal of the pipeline.
152. The CEC agrees with FEI and submits that the COC has not supplied sufficient evidence to justify the removal of the pipeline beyond the 380 metres already identified.
153. The CEC agrees with the following FEI statement:

Given the speculative nature of the City's claims regarding the use of the space, removing some or all of the remaining 5.12 kilometres of the NPS 20 IP gas line may prove to be unnecessary. The costs involved are too large to permit the City speculate with ratepayer money in this manner. Furthermore, if the City never utilizes the space occupied by the NPS 20 IP gas line, customers, residents, commuters and businesses will be unnecessarily inconvenienced.<sup>76</sup>

154. The CEC recommends that the Commission find that the COC has not provided persuasive evidence as to the need for the removal of pipeline at this time.

### **Safety**

155. The COC believes that overall safety will be improved by removing the NPS 20 pipe instead of abandoning it in Como Lake Avenue.
156. The COC 's response to BCUC IR 10.6 indicates the presence of the abandoned NPS 20 will increase project risk for works by the COC and third party utilities, which leads to increased costs. Also, there are potentially safety risks to the general public and workers (including the COC's works crews) related to inadvertent disturbance of the coal tar/asbestos coating of the NPS 20 pipe during future work.
157. The CEC notes that specialized contractors could potentially be required resulting in higher costs.<sup>77</sup>

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<sup>74</sup> FEI Final Argument page 37

<sup>75</sup> FEI Final Argument pages 37-39

<sup>76</sup> FEI Final Argument page 39

<sup>77</sup> Exhibit C1-11, COC response to CEC 1.5.4

- 158. FEI's plan to abandon the NPS 20 IP gas line safely in place is an industry accepted process for end-of-life pipeline assets and follows FEI's historical practice.<sup>78</sup> The COC acknowledges that it would be safe from collapse by filling with concrete.<sup>79</sup>
- 159. The Commission approved the proposed abandonment in the original CPCN decision, and the CEC adopts FEI's argument with regard to the consideration and determination of the matter.
- 160. The CEC submits that it is appropriate for FEI to be directed by the Commission to follow accepted industry practices.
- 161. The CEC submits that the abandonment has been approved by the Commission as a consequence of its review of FEI's CPCN application, and the COC has not provided significant evidence to justify its removal on the basis of safety.

**Costs for Removal**

- 162. FEI provides estimated costs for removal of the gas pipeline.

Component	Cost (AACE Class 5)
380 metres (2021)	9.4 million
Remainder of 5.5 km (2024)	77.5 million

80

- 163. The accuracy range for the NPS 20 IP gas line removal AACE Class 5 cost estimate is approximately -50% to +100%, making the lower range for removal of the entire 5.5 km of pipeline at \$43 million, and the upper range of \$170 million.<sup>81</sup>
- 164. The COC argues that removing the full 5.5 km of pipeline is cost-effective for the following three reasons:
  - a) Reinstatement of Como Lake Avenue's condition will be cost effective if pavement impacts are dealt with in an integrated time period;
  - b) Construction costs will likely increase over time; and
  - c) Removal will avoid costs related to making the pipe safe from collapse.<sup>82</sup>

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<sup>78</sup> Exhibit B-14, BCUC 2.7.2

<sup>79</sup> COC Final Argument page 22

<sup>80</sup> FEI Final Argument page 41

<sup>81</sup> FEI Final Argument page 42

<sup>82</sup> Exhibit C1-10, COC Response to BCUC 2.10.1

- 165. They consider it the most cost effective approach on a life cycle basis.<sup>83</sup>
- 166. The CEC submits that the COC was unable to provide significant evidence or commentary to support this position.<sup>84</sup>
- 167. The CEC submits that the costs for removal of the remainder of the 5.5 km are very substantial.
- 168. The CEC submits that it is inappropriate for costs such as the above to be undertaken by FEI and paid for by ratepayers without very good justification, which has not been supplied.
- 169. The CEC agrees with FEI that:

‘The significant cost of removal of the NPS 20 IP gas line would compound the unfairness to FEI customers of requiring them to contribute to the cost of removal based on the City’s vague speculation that removal might avoid “obstacles” in some segments “at some point”’.<sup>85</sup>

**Allocation Formula**

- 170. FEI provides its estimated allocation under the formula in Section 5(a) of the Operating Agreement.
- 171. The calculation is based on the original installed costs of the NPS 20 IP gas line and the final removal costs.

**Table 3-6: Estimation of Original Cost, Number of Years Since Installation, Removal Costs and Cost Allocation**

		High Cost		Low Cost	
		5.5 km	380 m	5.5 km	380 m
1	Original Installed Cost 2018\$ millions	\$25.1	\$1.7	\$14.1	\$1.0
2	Original Installed Cost 1957\$ millions	\$2.8	\$0.2	\$1.6	\$0.1
3	No. of Years: Year of Removal minus Year of Installation	67 Years	64 Years	67 Years	64 Years
4	Removal Costs 2021		\$9.4		\$9.4
5	Removal Costs 2024	\$77.5		\$77.5	
6	FEI’s Allocation <sup>17</sup>	\$3.8	\$0.2	\$2.1	\$0.1
7	City Allocation	\$73.7	\$9.2	\$75.4	\$9.3

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<sup>83</sup> Exhibit C1-10, COC Response to BCUC 2.10.1

<sup>84</sup> Exhibit C1-1-, COC Response to BCUC 2.10.2

<sup>85</sup> FEI Final Argument page 41

<sup>86</sup> FEI Final Argument page 32, Table 3-6

172. The COC does not accept FEI's cost estimates as being accurate. The COC believes that FEI has overestimated the cost of removing the NPS 20 pipe and underestimated the cost of constructing the NPS 20.<sup>87</sup>
173. Additionally, the COC argues that the cost allocation under Section 5 of the Agreement does not apply, as discussed above.
174. The CEC is of the view that FEI has provided adequate evidence to support their calculations necessary in determining the appropriate cost allocation.
175. To the extent that the Commission accepts that Section 5 of the Operating Agreement is applicable, and the cost allocation should be determined, the CEC recommends that the Commission accept FEI's calculations.

#### **Future Removal of the Pipeline**

176. The COC has requested in writing that FEI remove the 5.5 km NPS 20 pipeline.<sup>88</sup>
177. However, the COC and FEI disagree as to the cost responsibility.
178. The CEC adopts the FEI argument with regard to the applicability of costs as noted above.
179. With regard to the cost effectiveness of removal FEI points that:

‘Even if the BCUC were to take the City’s speculation at face value, it would not be cost effective to remove the NPS 20 IP gas line now.

It would only be more cost-effective to remove the 380 metre section of the NPS 20 IP gas line immediately after the NPS 30 IP gas line is in service if the City will coordinate installation of its planned utilities for the same time. Removing the either the 380 metre section or the entire 5.5 kilometres of NPS 20 IP gas line, without coordinating with future infrastructure installations, is less cost-effective. It would also increase the impact to residents, commuters, businesses and FEI’s customers.’<sup>89</sup>
180. They also state that:

Regardless of cost allocation between FEI and the City, for any sections of the NPS 20 IP gas line that may need to be removed to facilitate installation of the City’s or other third party utility infrastructure after commissioning of the NPS 30 IP gas line, the most cost-effective and practical approach would be to coordinate planning and construction efforts in order to remove the identified section(s) of the NPS 20 IP gas line which are in conflict at the same time as the installation of the new utility project. This approach would avoid construction costs

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<sup>87</sup> Exhibit C1-11, COC Response to CEC 1.3.1

<sup>88</sup> Exhibit C1-10, COC response to BCUC 2.10.4

<sup>89</sup> FEI Final Argument page 39

associated with the removal of sections of the NPS 20 IP gas line ahead of time that do not actually conflict with the new utility project.

This approach would also avoid cost inefficiencies associated with mobilizing construction efforts multiple times to the same location to initially remove the NPS 20 IP gas line, and then some time afterward re-establishing new construction work zones, re-implementing traffic management plans, re-cutting the paving, re-excavating the same trench that the NPS 20 IP gas line was previously removed from, and then re-backfilling the trench after installation of the new utility project.<sup>90</sup>

181. The COC also believes that it could be preferable to coordinate the removal of the NPS 20 pipe with COC's utility projects but argues this would pose challenges to the COC, and has requested that FEI provide compensation for various costs. They note that FEI will not agree to these costs.<sup>91</sup>
182. The COC also states that they manage their utility replacement years to coordinate with their pavement replacement programs.<sup>92</sup>
183. Consequently, the COC requests that the BCUC provide encouragement to FEI to negotiate 'an equitable agreement' with the COC that allows FEI to leave the approximately 5.1 km section of the NPS pipeline in Como Lake Avenue between Clarke Road and Mariner Way until the COC determines that a specific section of NPS pipe will conflict with the COC or third party works. The agreement would also specify an efficient construction methodology to be used when a section of NPS 20 pipe has to be removed and the roadway trench restored to the COC's specifications.<sup>93</sup>
184. The CEC submits that it is logical that it would be more efficient to remove segments in parallel with future work.
185. The CEC submits that the COC's ability to manage its utility replacements to coordinate with its repaving activities, along with its preference to find an equitable agreement allowing the 5.1 km to be left in place belies its position that the pipe should be removed at this time.
186. The CEC submits that from a practical and cost efficiency point of view, it would be appropriate for the pipeline to be abandoned and left in place as proposed by FEI.
187. In consideration of the COC's request for FEI to remove the full length of the pipeline, the CEC submits that the costs should be determined under the Allocation Formula pursuant to FEI's legal argument regarding the applicability of Agreement to decommissioned pipelines.

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<sup>90</sup> FEI Final Argument page 40

<sup>91</sup> COC Final Argument page 21

<sup>92</sup> Exhibit C1-10, COC Response to BCUC 2.10.5

<sup>93</sup> COC Final Argument page 23

## **CEC CONCLUSIONS ON PIPELINE REMOVAL**

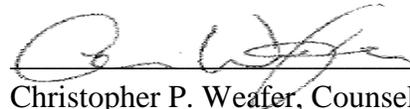
188. The CEC is of the view that it is cost effective and safe for the pipeline to be abandoned in place according to the decision in the original CPCN.
189. The CEC supports FEI's view of the cost allocation in the event that FEI removes its pipe at the request of the COC under the Operating Agreement.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

***David Craig***

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David Craig, Consultant for the Commercial Energy  
Consumers Association of British Columbia



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Christopher P. Weafer, Counsel for the Commercial  
Energy Consumers Association of British Columbia