



Suite 1600 Cathedral Place  
925 West Georgia Street  
Vancouver, BC  
Canada V6C 3L2  
T: 604.685.3456

January 17, 2019

E-filed

British Columbia Utilities Commission  
Sixth Floor, 900 Howe Street  
Vancouver, BC V6C 2N3

Attention: Patrick Wruck, Commission Secretary

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

Ian Webb  
D: 604.631.9117  
F: 604.694.2932  
iwebb@lawsonlundell.com

Dear Mr. Wruck:

We write on behalf of the City in connection with the FEI Application to the Commission for Use of Lands under Sections 32 and 33 of the *Utilities Commission Act* in the City of Coquitlam for the LMIPSU Project. We enclose the City's Reply Argument.

Yours very truly,

LAWSON LUNDELL LLP

Ian Webb  
IDW  
Enc.

cc. Stephanie James, City of Coquitlam  
Regulatory Affairs, FortisBC Energy Inc.

---

**BRITISH COLUMBIA UTILITIES COMMISSION**

**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 Project  
Project No. 1598963**

---

**City of Coquitlam**

**Reply Argument**

**January 17, 2019**

---

## TABLE OF CONTENTS

<b>1. Introduction.....</b>	<b>1</b>
<b>2. Reply to Final Argument of FEI.....</b>	<b>1</b>
2.1. Project Issue 4 (Removal of the decommissioned NPS 20 Pipeline) .....	1
2.2. Project Issue 5 (Repair and repaving of damage to Como Lake Avenue caused by FEI’s Project).....	5
<b>3. Reply to Final Argument of CEC.....</b>	<b>7</b>
<b>4. Conclusion .....</b>	<b>8</b>

## **1. Introduction**

1. This Reply Argument of the City of Coquitlam (the "**City**") replies to the Final Arguments of FortisBC Energy Inc. ("**FEI**") and the only other intervener in the proceeding - the Commercial Energy Consumers Association of British Columbia ("**CEC**").
2. The City's Final Argument fully addresses all of the arguments FEI and the CEC put forward in their Final Arguments. Moreover, the CEC's Final Argument does little more than adopt the submissions of FEI,<sup>1</sup> and so to avoid duplication this Reply Argument focuses on replying to the FEI Final Argument. Accordingly, this Reply Argument will be short, and is structured to provide a road map as to where in the City's Final Argument specific arguments of FEI and CEC have already been addressed.
3. The City reiterates that the remaining two Project Issues before the British Columbia Utilities Commission ("**BCUC**") in Phase Two of this proceeding both turn on the terms and conditions of an agreement FEI's predecessor and the City negotiated in the 1950s. That agreement, the 1957 Operating Agreement<sup>2</sup>, came into existence in the context of a utility regulatory landscape that—both in the 1950s and currently—is designed to balance competing public interests. The 1957 Operating Agreement reflects that landscape, and FEI's and the City's respective areas of jurisdiction, responsibility and expertise. After reviewing FEI's Final Argument, the City maintains that FEI's position on the remaining two Project Issues necessitates interpretations of the 1957 Operating Agreement that are not supportable either on the plain wording of the agreement or on the evidence FEI has submitted.

## **2. Reply to Final Argument of FEI**

### **2.1. Project Issue 4 (Removal of the decommissioned NPS 20 Pipeline)**

4. FEI address Project Issue 4 in Part Four of its Final Argument (pages 20-42). FEI's arguments regarding Project Issue 4 are organized around four points as stated in

---

<sup>1</sup> CEC Final Argument, paragraph 8.

<sup>2</sup> A copy of the 1957 Operating Agreement is included as an attachment to FEI's Application (Ex. B-1).

paragraph 40 of FEI's Final Argument. The City replies to each of those four points below.

*FEI's first point is that "abandonment of the NPS 20 IP gas line was a term of the Project CPCN, such that it was inappropriate for the City to demand that the NPS 20 IP gas line be removed as a condition of approving the Project Engineering Drawings."*

5. The City replies that abandonment of the NPS 20 Pipeline was not a "term" of the certificate of public convenience and necessity ("**CPCN**") the BCUC granted pursuant to Order No. C-11-15. The CPCN granted for the LMIPSU Project is reproduced in paragraph 5 of the City's Final Argument, and this argument of FEI is addressed in section 2.1.2.2 of the City's Final Argument.
  
6. At footnote 43 and paragraph 48 of FEI's Final Argument, FEI references section 45(9) of the *Utilities Commission Act ("**UCA**")* as the BCUC's authority to place terms on a CPCN. FEI's reference to s. 45(9) is not correct. Section 46(3) of the *UCA* is the correct reference for the BCUC's power to attach terms and conditions to a CPCN for the construction and operation of public utility plant or system (like the LMIPSU Project), as follows:
 

46(3) Subject to subsections (3.1) to (3.3), the commission may, by order, issue or refuse to issue the certificate, or may issue a certificate of public convenience and necessity for the construction or operation of a part only of the proposed facility, line, plant, system or extension, or for the partial exercise only of a right or privilege, and may attach to the exercise of the right or privilege granted by the certificate, terms, including conditions about the duration of the right or privilege under this Act as, in its judgment, the public convenience or necessity may require.
  
7. It is evident that the terms that may be attached to a CPCN (for the construction or operation of a proposed facility, line, plant, system or extension or part thereof) relate to the right to construct or operate such plant or system. The City submits that the

BCUC clearly did not attach to the CPCN granted for the construction and operation of the LMIPSU Project pursuant to Order No. C-11-15 the term that, as a condition of exercising the right to construct and operate the project FEI must abandon the NPS 20 Pipeline in place, as FEI argues. Clearly the BCUC did not order nor imply that FEI may construct and operate its LMIPSU Project (to replace the old and leaking NPS 20 Pipeline) if and only if FEI obtains the necessary property rights and abandons the NPS 20 Pipeline in place. If that was the BCUC's intention, Order No. C-11-15 and the associated Decision would have made that eminently clear.<sup>3</sup> In paragraph 42 of its Final Argument, FEI acknowledges that the actual words of the BCUC in its Order No. C-11-15 Decision do not support FEI's position -- FEI says there that the BCUC's actual words must be restated "in other words" to support FEI's position.

*FEI's second point is that "the Operating Agreement allows the City to request that FEI remove the NPS 20 IP gas line once it has been abandoned in place, but also provides for a cost allocation methodology that requires the City to pay the majority of the costs."*

8. The City replies that the 1957 Operating Agreement does not provide FEI with rights to leave the decommissioned NPS 20 Pipeline in place. The City's request that FEI remove its NPS 20 Pipeline from the City's property once it has been decommissioned is not a request pursuant to s. 4 of the 1957 Operating Agreement and the cost allocation formula in s. 5 of the agreement does not apply. This argument of FEI is fully addressed in section 2.1.2.1 of the City's Final Argument.

*FEI's third point is that "even if the City is correct (which it is not) that removal of abandoned pipe is not covered by the Operating Agreement, then the City could be expected to pay the entire cost of the removal. In the alternative, the fair and reasonable outcome under section 32 of the UCA is still to adopt the same allocation methodology as under the Operating Agreement."*

---

<sup>3</sup> In fact, the BCUC said that it "approves FEI's abandonment plans... as proposed" subject to compliance with all applicable regulatory requirements.

9. The City replies that this FEI argument has no basis in law. If FEI does not have the necessary property rights to abandon its decommissioned NPS 20 Pipeline in Como Lake Avenue (and section 2.1.2 of the City's Final Argument demonstrates that FEI does not have such property rights), the NPS 20 Pipeline will be on the City's property without any right to be there (i.e., trespassing) and subject to removal at FEI's cost.
10. As demonstrated in the City's Final Argument, FEI's rights to place and operate the NPS 20 Pipeline in Como Lake Avenue for the purpose of supplying natural gas to the public do not include the right to abandon the pipe there once it has been permanently decommissioned and will never again be used or useful for providing gas utility service to the public. The rights FEI has do not authorize the use of the City's real property for storage of decommissioned pipes. There is no basis in law for FEI's position that the land owner is responsible for the cost of removing FEI's permanently decommissioned equipment that is not specifically authorized to remain on such land. FEI has confirmed that the NPS 20 Pipeline will remain its property and responsibility after it is decommissioned.<sup>4</sup>

*FEI's fourth point is that "the City has provided insufficient justification for demanding the immediate removal of the entirety of the NPS 20 IP gas line pipe at a cost of tens of millions of dollars."*

11. The City replies that this FEI argument is fully addressed in section 2.1.3 of the City's Final Argument. The City is open to an approach that coordinates the removal of NPS 20 pipe with the City's utility projects; however, FEI has refused the City's proposals and suggestions for compromise.<sup>5</sup>

---

<sup>4</sup> City's Final Argument, paragraph 25.

<sup>5</sup> City's Final Argument, section 2.1.3, paragraphs 57-61.

## 2.2. Project Issue 5 (Repair and repaving of damage to Como Lake Avenue caused by FEI's Project)

12. FEI address Project Issue 5 in Part Three of its Final Argument (pages 7-19). FEI's arguments regarding this issue are organized around five points as stated in paragraph 15 of FEI's Final Argument. The City replies to each of those five points below.

*FEI's first point is that "the Operating Agreement requires FEI to reinstate disturbed portions of the roadway, and repair damage, not to improve undisturbed portions."*

13. The City replies that FEI's Final Argument seeks to interpret the terms of the 1957 Operating Agreement in a manner that is inconsistent with FEI's evidence (as summarized in section 2.2 of the City's Final Argument) and would result in a patchwork of extensive repairs to Como Lake Avenue that would leave the community with on-going and long-term negative impacts contrary to FEI's obligations under the 1957 Operating Agreement to reinstate the pavement. This FEI argument is fully addressed in section 2.2 of the City's Final Argument.

*FEI's second point is that "the Project will only affect a portion of the width of Como Lake Avenue, not the whole width."*

14. The City acknowledges that FEI's Project will not damage every square meter of the full 5.5km length of Como Lake Avenue. The City's position is that FEI's Project will result in damage to areas of all four lanes of Como Lake Avenue, and FEI's proposed superficial and *ad hoc* approach to repairing such damage will result in a patchwork of extensive repairs to Como Lake Avenue that would not reinstate the pavement as FEI is required to do under the 1957 Operating Agreement. Reinstating the pavement to its preconstruction condition means restoring it in such a way that the impacts to the public and ongoing costs to the City are obviated. This FEI argument is fully addressed in section 2.2 of the City's Final Argument.

*FEI's third point is that "FEI's proposal will reinstate the disturbed areas to their pre-Project work condition, in the manner specified in the City's own paving specifications."*

15. As submitted in the City's Final Argument and above, FEI's proposed superficial and *ad hoc* approach to repairing the damage it causes to Como Lake Avenue will not leave Como Lake Avenue in its pre-Project condition. FEI's proposed approach will result in a patchwork of extensive repairs that would not reinstate the pavement. Reinstating the pavement to its preconstruction condition means restoring it in such a way that the impacts to the public and ongoing costs to the City are obviated. This FEI argument is fully addressed in section 2.2 of the City's Final Argument.
16. The City's Paving Specifications are fully addressed in sections 2.2.1 and 2.2.4 of the City's Final Argument.
17. The City also notes that in Vancouver and Burnaby, FEI did not follow this minimal patchwork approach that it proposes to employ in Coquitlam.<sup>6</sup> Moreover, the City understands that FEI has agreed to fund \$4 million of road works on the Broadway Avenue corridor in Burnaby after the NPS 30 is constructed and the initial road repairs are made, and that the \$4 million from FEI will fund improvements such as curb and gutter, sidewalks, street lights, and full width road paving.

*FEI's fourth point is that "the additional road improvements sought by the City would represent an unwarranted windfall to the City at the expense of FEI/FEI customers."*

18. The City replies that its requirement that FEI must repair and repave the whole of the 5.5km section of Como Lake Avenue, curb-to-curb, is required to reinstate the pavement in such a way that the impacts of FEI's Project to the public and ongoing costs to the City are obviated. The City's requirement for FEI to repave the 5.5kms of Como

---

<sup>6</sup> FEI's responses to BCUC IRs 12.4.1 and 12.4.2 and FEI's response to City IR 8.1 outline the paving that FEI has done in Vancouver and Burnaby in connection with its LMIPSU Project, which appears to be significantly more than FEI proposes to do in the case of Como Lake Avenue. FEI indicates in its response to City IR 8.1 (note 2 to each of FEI's tables) that there were no lateral cuts outside the trench width in either Vancouver or Burnaby; however, the City expects that FEI's Project in Coquitlam will involve numerous lateral cuts outside the main trench as discussed in paragraph 65 of the City's Final Argument.

Lake Avenue does not represent a windfall because it does not exceed the City's specifications,<sup>7</sup> and the City considers this requirement as reasonable given the damage that will result from FEI's Project and FEI's obligation to reinstate the paving pursuant to the 1957 Operating Agreement. This FEI argument is fully addressed in section 2.2 of the City's Final Argument, and specifically paragraphs 71-72.

*FEI's fifth point is that "the original basis for FEI's offer to contribute \$3.2 million towards the cost of road improvements Como Lake Avenue as part of an overall arrangement with the City no longer exists, now that the City cannot withhold approval of Project Engineering Drawings."*

19. The City has no comment in regards to this FEI position.

### **3. Reply to Final Argument of CEC**

20. The CEC's Final Argument adopts the submissions of FEI,<sup>8</sup> and the reply submissions above apply equally to the arguments of the CEC.

21. Additionally, we note that the CEC's Final Argument includes misquotes and misunderstanding of the City's evidence and the City's Final Argument, and that these errors have resulted in the CEC coming to unfounded conclusions. The following are only a few examples of these errors.

- In paragraph 22 of the CEC's Final Argument the CEC provides a misquote that is not accurate, and this error of the CEC is a basis for the CEC's unfounded conclusions in its paragraphs 26 and 92 to 103.
- In paragraph 56 of the CEC's Final Argument the CEC states that it is not convinced by the City's evidence regarding the City's Specifications as quoted in the CEC's paragraph 55. The referenced evidence of the City is correct, and FEI in its response to the City's IR 2.1 confirms that the referenced evidence of the City

---

<sup>7</sup> City's Final Argument, paragraph 88; Ex. C1-10, the City's response to BCUC IR 15.3; and Ex. C1-11, the City's response to CEC IR 9.1.

<sup>8</sup> CEC Final Argument, paragraph 8.

is correct. This evidence and FEI's confirmation that is correct is also addressed in section 2.2.4 of the City's Final Argument. The CEC's misunderstanding of the evidence and dismissal of facts confirmed by both the City and FEI is also a basis for the CEC's unfounded conclusions in its paragraphs 92 to 103.

- In paragraph 73 of the CEC's Final Argument the CEC submits that the BCUC should "weigh heavily the existing condition of the roadway in its determinations as to the required repairs". However, FEI's unequivocal evidence is that it will repair pavement damage resulting from FEI's Project in accordance with the City's Specifications regardless of the classification of the road condition (see paragraphs 67 and 72 of the City's Final Argument and FEI's responses to BCUC IRs 11.3 and 12.1, and to the City's IR 1.3).

22. The BCUC ought to give little weight to the CEC's conclusions and opinions that are transparently based on misunderstanding of the evidence.

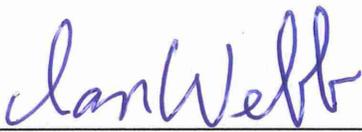
#### **4. Conclusion**

23. In regards to Project Issue 4, the City maintains that nothing authorizes FEI to utilize City lands for storage of permanently decommissioned NPS 20 pipes. There is no basis in law for FEI's position (supported by the CEC) that FEI may leave its permanently decommissioned NPS 20 pipes on the City's land *unless* the 1957 Operating Agreement specifically requires FEI to remove such pipe. The law in Canada is the opposite - FEI's works can occupy the City's lands to the extent authorised, and in the absence of specific authorisation to occupy the lands, the City as owner and regulator of such lands can require FEI to remove its decommissioned NPS 20 pipes at FEI's cost. The City and FEI have not come to an agreement on terms and conditions that would enable FEI to store its decommissioned pipe in Como Lake Avenue until such time as the space is needed for other utilities and for the pipe to be removed in a coordinated manner. Previous endorsements by the Oil and Gas Commission and/or BCUC of FEI's plan to

abandon the NPS 20 Pipeline do not, and cannot, amount to a grant to FEI of the necessary property rights over the City's lands.

24. In regards to Project Issue 5, FEI and the City agree the 1957 Operating Agreement requires FEI to reinstate the City lands disturbed by FEI's Project to their pre-Project condition. The City has exercised its right under the 1957 Operating Agreement to specify the parameters of such reinstatement, and these parameters are consistent with the City's existing Specifications. FEI is challenging that specification. However, the evidence FEI has put forward to advance that challenge not only understates the damage the FEI Project will cause, but also demonstrates a lack of understanding of how pavement operates and the work necessary to reinstate its integrity. The City owns, operates and maintains approximately 1,000 lane kilometers of roads, and employs experts in pavement integrity for such purposes. FEI does not have engineers with expertise in pavement integrity. FEI has not provided any, or sufficient, evidence for the BCUC to substitute its judgment for the City Engineer's judgment under section 8 of the 1957 Operating Agreement.

**All of which is respectfully submitted this 17<sup>th</sup> day of January, 2019.**

By:   
\_\_\_\_\_  
Ian D. Webb

**Counsel for the City of Coquitlam**