



bcuc
British Columbia
Utilities Commission

Patrick Wruck
Commission Secretary

Commission.Secretary@bcuc.com
bcuc.com

Suite 410, 900 Howe Street
Vancouver, BC Canada V6Z 2N3
P: 604.660.4700
TF: 1.800.663.1385
F: 604.660.1102

August 8, 2018

Sent via eFile

**FEI LMIPSU PROJECTS FOR COQUITLAM GATE
EXHIBIT A-5**

Ms. Diane Roy
Vice President, Regulatory Affairs
FortisBC Energy Inc.
16705 Fraser Highway
Surrey, BC V4N 0E8
diane.roy@fortisbc.com;
gas.regulatory.affairs@fortisbc.com

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 – Reasons for Decision

Dear Ms. Roy:

Further to the British Columbia Utilities Commission Order G-144-18A released on August 1, 2018, enclosed please find the reasons for decision.

Sincerely,

Original Signed by:

Patrick Wruck
Commission Secretary

/aci

Enclosure



bcuc
British Columbia
Utilities Commission

FORTISBC ENERGY INC.

Application under Sections 32 and 33 of the *Utilities Commission Act* for Use of Lands in the City of Coquitlam for the Lower Mainland Intermediate Pressure System Upgrade Projects

Reasons for Decision

August 8, 2018

Before:

D. A. Cote, Panel Chair/Commissioner

W. M. Everett, QC, Commissioner

TABLE OF CONTENTS

Page no.

1.0 Background1

2.0 Regulatory process to date.....1

2.1 Statutory provisions2

3.0 Whether the proceeding should be a two-phase process.....3

3.1 Position of the parties3

3.2 BCUC determination.....5

4.0 Participation of interveners.....6

4.1 Position of the parties6

4.2 BCUC determination.....7

5.0 Confidentiality of information7

5.1 Position of the parties7

5.2 BCUC determination.....8

1.0 Background

On October 16, 2015, the British Columbia Utilities Commission (BCUC) issued Order C-11-15 approving a Certificate of Public Convenience and Necessity (2015 CPCN), granting FortisBC Energy Inc. (FEI) approval for the Lower Mainland Intermediate Pressure System Upgrade Projects (LMIPSU Project or Project). A component of the LMIPSU Project is a new Nominal Pipe Size (NPS) 30 Intermediate Pressure (IP) gas line that starts at the Coquitlam Gate Station and proceeds in a westerly direction through the cities of Coquitlam, Burnaby and Vancouver, and ends at the East 2nd Avenue Woodland Station in Vancouver.¹

On June 28, 2018, FEI filed an application with the BCUC pursuant to sections 32 and 33 of the *Utilities Commission Act* (UCA) for orders setting the terms for FEI's use of the City of Coquitlam's (City) lands (Coquitlam Segment) for the construction and operation of LMIPSU Project (Application). FEI states that in the period since the issuance of the 2015 CPCN it has worked with the City to obtain engineering drawing approvals and other approvals and permits that it requires.

In the Application, FEI states that the City and FEI appeared to have resolved what it describes as key technical issues related to the Project, which have been documented in the "Terms Agreed To". In spite of substantial resolution of the "Terms Agreed To," the City has declined to provide formal approval of the engineering drawings and the Traffic Management Plans for the Coquitlam Segment of the LMIPSU Project unless FEI first agrees to the following two conditions (City's Demands):

1. FEI repaves the entire width of a 5.5 kilometre segment of Como Lake Avenue, at an estimated cost of \$5 million and provides security in the form of a letter of credit in the amount of \$6 million, despite FEI's construction only disturbing primarily two out of four lanes; and
2. FEI removes, at its own cost (estimated at \$5.5 million); approximately 380 metre segment of the NPS 20 IP gas line that is authorized to be abandoned in place, despite the provisions of the Operating Agreement between the parties dated January 7, 1957 (Operating Agreement).²

FEI submits that the parties are at an impasse on the City's financial demands, which challenges FEI's ability to address the NPS 20 IP gas line integrity issues in a timely and cost effective manner. FEI further submits that it requires confirmation from the BCUC that it can proceed with the Coquitlam Segment of the LMIPSU Project based on the "Terms Agreed To" before August 31, 2018 in order to avoid delays in completing construction through the Coquitlam Segment, which will result in increased construction costs.³

2.0 Regulatory process to date

The City is the only registered Intervener in this proceeding.

To resolve these issues, FEI requests that the BCUC establish a two-phase review process for the Application; phase one addressing the approval to proceed with the Coquitlam Segment of the LMIPSU Project, in

¹ Exhibit B-1, p. 1.

² Ibid., pp. 2–3.

³ Ibid., pp. 3, 7.

accordance with the “Terms Agreed To” (Phase One) and phase two addressing the City’s Demands (Phase Two).⁴

By letter dated July 11, 2018, the BCUC requested submissions from the City and FEI regarding the regulatory process for review of the Application and specifically requesting that:

1. The City confirms that it concurs with the description of the agreed and outstanding Project issues as outlined in in sections 4 and 5 of the Application (Project Issues).
2. If the City is not in agreement with the description of the Project Issues, the City is requested to submit its position on the issues or provide additional information on issues it believes have not been raised.
3. The City provides submissions on the regulatory process and timetable.
4. FEI provides a reply to the City’s submission on the Application and process.⁵

By letter dated July 19, 2018, the City filed its submission regarding the regulatory procedure for the Application. In its letter, the City confirmed the immediate issues are those identified and summarised in the Project Issues, as follows:

1. Protocols and processes to guide FEI and the City's interactions relating to the LMIPSU Project;
2. Traffic management plans;
3. Engineering drawings;

Project Issues 1-3 will be referred to herein as the (“Terms Agreed To” Issues)

4. Removal of 380 metres of the decommissioned NPS 20 IP gas line under Como Lake Avenue between North Road and Clarke Road in the Burquitlam area; and
5. Repair and repaving of damage to Como Lake Avenue caused by the Project.

Project Issues 4 and 5 will be referred to herein as the (City’s Demands Issues).

The City does not support FEI’s proposed two-phase approach and submits that all the Project Issues should be determined by the BCUC in one decision on the basis of a public process.⁶

By letter dated July 24, 2018, FEI filed its reply to the City’s letter of July 19, 2018.

FEI and the City also made submissions on the appropriate form of confidentiality order regarding certain documentation produced relevant to this proceeding.

2.1 Statutory provisions

FEI makes this Application pursuant to sections 32 and 33 of the UCA, which provide as follows:

⁴ Ibid., pp. 3–4.

⁵ Exhibit A-2.

⁶ Exhibit C-1-1, pp. 3–4.

Use of municipal thoroughfares

32 (1) This section applies if a public utility:

- (a) has the right to enter a municipality to place its distribution equipment on, along, across, over or under a public street, lane, square, park, public place, bridge, viaduct, subway or watercourse, and
- (b) cannot come to an agreement with the municipality on the use of the street or other place or on the terms of the use.

(2) On application and after any inquiry it considers advisable, the commission may, by order, allow the use of the street or other place by the public utility for that purpose and specify the manner and terms of use.

Dispensing with municipal consent

33 (1) This section applies if a public utility

- (a) cannot agree with a municipality respecting placing its distribution equipment on, along, across, over or under a public street, lane, square, park, public place, bridge, viaduct, subway or watercourse in a municipality, and
- (b) the public utility is otherwise unable, without expenditures that the commission considers unreasonable, to extend its system, line or apparatus from a place where it lawfully does business to another place where it is authorized to do business.

(2) On application and after a hearing, for the purpose of that extension only and without unduly preventing the use of the street or other place by other persons, the commission may, by order,

- (a) allow the use of the street or other place by the public utility, despite any law or contract granting to another person exclusive rights, and
- (b) specify the manner and terms of the use.

3.0 Whether the proceeding should be a two-phase process

3.1 Position of the parties

FEI

FEI refers to the BCUC 2015 CPCN decision which approved the LMIPSU Project to replace the existing NPS gas line, which is nearing the end of its useful operating life and is experiencing an increasing frequency of gas leaks. The decision states in part:

The Panel accepts that repair or rehabilitation of the Coquitlam Gate IP pipeline [existing NPS 20 IP gas line] is required to address pipeline integrity issues resulting from increased frequency of actual and projected gas leaks due to non-preventable corrosion. Further, the Panel agrees that rehabilitation or replacement is required to ensure FEI is compliant with the OGC requirements

to prevent, remediate the cause or contain and eliminate spillage as required of a permit holder under section 37(1) of the OGAA [Oil and Gas Activities Act].⁷

FEI also refers to its long standing Operating Agreement with the City dated January 7, 1957, which sets out the terms and conditions upon which FEI uses the City's public spaces. It requires FEI to submit plans and specifications regarding the proposed work and to obtain the approval of the City Engineer before proceeding with construction. The Operating Agreement also provides that the City Engineer's approval is not to be unreasonably withheld or delayed.⁸

Since the 2015 CPCN decision, FEI has worked with the City to obtain the City Engineer's approval for engineering drawings and confirmation of other technical details concerning the Project's implementation. FEI states that the City and FEI technical staff have resolved the technical issues as documented in the jointly prepared "Terms Agreed To," subject to the City technical staff consulting with colleagues before signing off on the document.⁹

However, as stated in Section 1.0 of these reasons, the City is now indicating that it will withhold its formal approval of the "Terms Agreed To" pending FEI's Agreement to the City's Demands Issues.¹⁰

FEI, in the Application, states it is proceeding with the LMIPSU Project in the cities of Vancouver and Burnaby pursuant to FEI's operating agreements with those cities. FEI has also received the required Oil and Gas Commission permit and approvals from other stakeholders such as British Columbia Hydro and Power Authority, Shaw Communications Inc., Telus Corporation and Imperial Oil Limited for the LMIPSU Projects.¹¹

FEI states that it was able to achieve significant savings by awarding the Vancouver, Burnaby and the City's segments of the LMIPSU Project to one contractor, with the expectation that the work would be completed on a coordinated and continuous basis. Construction in the City's segment is scheduled to commence in early 2019 (weather permitting) and FEI requires confirmation that it can proceed with the Project by August 31, 2018, to allow adequate time for the contractor and its resources to safely and efficiently plan the start of the complex construction. FEI states that the City, by withholding its approval of the Coquitlam Segment of the LMIPSU Project, is putting the completion schedule at risk. Delays in completing construction through the Coquitlam Segment will result in increased construction costs and delays to the de-commissioning and resolution of the integrity issues for both the existing NPS 20 IP gas line and the Fraser Gate gas line.¹²

FEI submits the City's Demands Issues are excessive in that they involve significant sums of money and are unrelated to the technical "Terms Agreed To," which FEI now seeks approval of in order to commence construction. Further, FEI submits the City's Demands Issues are not in accordance with the provisions of the Operating Agreement between FEI and the City.¹³

FEI requests the BCUC to establish a two-phase review process for the Application; Phase One addressing the approval to proceed with the Coquitlam Segment of the LMIPSU Project, in accordance with the "Terms Agreed To" and Phase Two addressing the City's Demands.

⁷ Exhibit B-1, p. 6.

⁸ Ibid., p. 2.

⁹ Exhibit B-1, pp. 7-8.

¹⁰ Ibid., p. 8.

¹¹ Ibid., p. 7.

¹² Ibid., p. 7.

¹³ Ibid., pp. 16-17.

The City

The City states it fully appreciates that aging infrastructure of FEI needs to be upgraded to ensure the safety of the natural gas distribution network and that the BCUC has granted the 2015 CPCN for the LMIPSU Project.¹⁴

The City does not support FEI's proposed two-phase review process and submits that the Project Issues should all be determined by the BCUC in one decision on the basis of a process open to the public.¹⁵ The City submits that each of the Project Issues is significant, interrelated with the other matters and needs to be addressed to mitigate the impacts of the LMIPSU Project on the City's infrastructure and the community to the extent reasonably possible. It states that the City's Demands Issues are urgent and does not see any difference between those issues and the "Terms Agreed To" Issues which FEI seeks to have separately determined in Phase One.¹⁶

The City argues that FEI has not sufficiently justified its proposed two-phased approach and does not provide specific information on the urgency of the regulatory process. The City proposes the next step should be to allow the City to submit its proposals for the five identified issues (the three "Terms Agreed To Issues" and two City Demand Issues) by August 3, 2018. The City then suggests a single process which would include its proposals in relation to each of the Project Issues followed by one round of Information Requests (IR) and final arguments by all participants on a schedule that would accommodate a BCUC decision by mid-October 2018.¹⁷

FEI Reply

In reply, FEI submits that it saved several million dollars on the base construction price as a result of allowing its contractor to plan, procure, coordinate, construct and manage the Vancouver, Burnaby and the City's segments of the LMIPSU Project as a single unencumbered scope of work. FEI submits it will incur additional project costs if it does not give its contractor notice to proceed with the Coquitlam Segment in early September 2018, which will likely also result in project delays.

FEI also notes that in its submission the City has not identified specific issues with the "Terms Agreed to" "beyond expressing very general disagreement with the protocols and processes, Traffic Management Plans and FEI's Engineering Drawings."¹⁸

3.2 BCUC determination

The Panel determines that the proceeding will follow a two-phase regulatory process.

The Panel agrees with the parties that the scope of the proceeding should focus on all the Project Issues identified by FEI and the City. However, the Panel finds, for the reasons set out below, that there should be a two-phase regulatory process with Phase One addressing the "Terms Agreed To" Issues and Phase Two addressing the City's Demands Issues.

In reaching its determination, the Panel considered the following evidence. FEI has the right under BCUC 2015 CPCN to construct and operate the LMIPSU Project and has the required permits from the OGC and approval from stakeholders. The LMIPSU Project is necessary to address the integrity of an aging pipeline from actual and

¹⁴ Exhibit C1-1, p. 1.

¹⁵ Ibid., pp. 3-4.

¹⁶ Ibid., p. 2.

¹⁷ Exhibit C1-1, p. 4.

¹⁸ Exhibit B-2, p. 5.

projected gas leaks and non-preventable corrosion. FEI has also achieved significant savings in the cost of construction by awarding the Vancouver, Burnaby and the City's segments of the work to one contractor and claims that it will incur additional costs if the contractor is not given notice to proceed. Moreover, FEI has also worked for several years with the City to obtain the City Engineer's approval for the Coquitlam Segment of the LMIPSU Project and states that FEI and the City's technical staff have resolved the technical issues as documented in the jointly prepared "Terms Agreed To," subject to the City's technical staff consultation with colleagues before signing off on the "Terms Agreed To."

In view of these collective points, the Panel is persuaded that there is urgency to it hearing and determining in Phase One of this proceeding whether to permit FEI to proceed with the Coquitlam Segment of the LMIPSU Project on the basis of the "Terms Agreed To" terms. In the view of the Panel, the potential for an escalation of costs due to a delay (not quantified) justifies the need to deal with this matter with urgency, although safety concerns also dictate moving forward with the project and avoiding unnecessary delays. The Panel acknowledges the risk of the increased construction costs have not been quantified by FEI but does not consider there to be sufficient evidence to the contrary to warrant delays due to regulatory process. Moreover, the City has not been persuasive in its justification of why all five of the issues need to all be dealt with at the same time, as opposed to proceeding in two phases as proposed by FEI. In the Panel's view, the City's Demands Issues are not urgent, as they do not have any direct effect on whether FEI can proceed with the Coquitlam Segment of the work and may be decided later in Phase Two of this proceeding.

Resolution of "Terms Agreed To" Issues by FEI and the City

While the Panel has authority to issue a decision, pursuant to sections 32 and 33 of the UCA, to determine the terms on which FEI may use the City's lands for construction and operation of the Coquitlam Segment of the Project, the Panel strongly encourages FEI and the City to work towards a mutually acceptable agreement on the "Terms Agreed To" Issues before the regulatory process for Phase One concludes. The Panel recognizes that FEI and the City have been party to lengthy discussion on these issues and still have an opportunity to reach an agreement on the "Terms Agreed To" Issues. As such, FEI and the City have examined the issues in considerably greater detail than the regulatory timetable for Phase One of this proceeding will permit the Panel in its deliberations.

4.0 Participation of interveners

4.1 Position of the parties

FEI

FEI proposes that Phase One should take place on an expedited basis with only the involvement of FEI and the City, and that Phase Two should have intervener participation if the BCUC determines it is appropriate. FEI believes a Streamlined Review Process would provide an appropriate and efficient review process to assess the City's Demands Issues, while providing an opportunity for input from affected parties.¹⁹

The City

The City does not support FEI's proposed Phase One process where the BCUC would make determinations on certain issues with only the involvement of FEI and the City. The City submits that if the BCUC is going to determine and make orders addressing the matters identified above, it should do so on the basis of an open and

¹⁹ Exhibit B-1, p. 4.

transparent public process. The City further believes that the BCUC should require FEI to provide public notice of its Application in the appropriate newspapers.²⁰

FEI reply

In its reply, FEI submits that the City has never identified another party whose involvement would be required in order to determine the technical matters that need to be resolved in order to allow the LMIPSU Project to proceed on schedule. FEI believes the City's proposal of newspaper publication and Information Requests for technical matters that have already been discussed between FEI and the City for many months will have the effect of extending the process beyond the August 31 date that is so critical for the Project schedule.²¹

4.2 BCUC determination

As outlined above, the Panel has established a two-phase regulatory process for the review of the Application.

For Phase One of the proceeding, the Panel determines that FEI and the City will be the only participants.

The Panel has established a regulatory timetable in Appendix A to Order G-144-18A that will operate on a compressed schedule in order to facilitate an expedited decision on the "Terms Agreed To" Issues, as outlined in this decision. The Panel believes that Phase One issues represent bilateral discussions of a detailed and technical nature, whereby the two contesting parties are those that will participate in Phase One of the proceeding. In the Panel's view, the addition of interveners would necessitate the lengthening of the regulatory timetable and does not consider that a complete evidentiary record could not be reasonably achieved before the end of August.

For Phase Two of the proceeding, the Panel determines there will be a written hearing process, with a time set for intervener registration. Further regulatory process will be determined following the completion of intervener registration, as set out in the regulatory timetable in Appendix A to Order G-144-18A.

The Panel believes that Phase Two could benefit from the participation of other parties affected by the City's Demands Issues and will therefore consider requests to intervene. Phase Two of the proceeding will not require a compressed schedule and will permit time for additional process to accommodate such participation. However, the Panel does not agree with the City that public notice in newspapers is required for an open and transparent process. In the Panel's view, posting of the Application on the FEI and City's website will provide adequate notice. **FEI is directed to post notice of the Application to its website as soon as possible**, and the City is encouraged to post on its website.

5.0 Confidentiality of information

5.1 Position of the parties

FEI

In section 1.4 of its Application, FEI requests confidential treatment of certain appendices to its Application, comprising the "Terms Agreed To," traffic management plans and engineering drawings. FEI submits the public disclosure of commercially sensitive information could prejudice contractual negotiations for this Project and future projects to the detriment of FEI and its customers. Furthermore, the disclosure of such technical

²⁰ Exhibit C1-1, pp. 3–4.

²¹ Exhibit B-2, p. 6.

information could jeopardize the safety and security of assets and infrastructure owned by FEI, the City and third parties.²²

The City

The City believes that FEI's request for confidential treatment is overly broad, capturing information that should be available to the public.²³ The City also submits that the responses it provided to BCUC staff Information Requests regarding the LMIPSU Material Change Report on April 6, 2018 (City's IR Response), should be placed on the public record for this proceeding.²⁴

FEI's reply

In response, FEI filed a redacted version of the "Terms Agreed To" document,²⁵ and submits that it does not object to the City's IR Response being placed on the public record, provided it is redacted for commercial sensitivity or asset security reasons.²⁶

5.2 BCUC determination

Given that FEI has agreed to place a redacted version of the "Terms Agreed To" document on the public record, the Panel's determination is not required. The Panel recognizes that certain information may be commercially sensitive or contain elements that should be safeguarded for asset security reasons. With respect to the City's IR Response, the Panel is not in a position determine what specific information would meet the criteria for confidentiality without FEI providing submissions as to whether it requires any redactions for that purpose.

Therefore the Panel directs FEI to identify any proposed redactions for commercial sensitivity or asset security reasons of the City's April 6, 2018 IR responses to BCUC staff questions in the context of the Material Change Report, by Friday, August 3, 2018. Upon receipt of FEI's proposed redactions, the Panel will determine if the redactions are appropriate and if so, will place the City's IR Response on the public record for this proceeding.

DATED at the City of Vancouver, in the Province of British Columbia, this 8th day of August 2018.

Original Signed by: _____

D. A. Cote
Panel Chair / Commissioner

Original Signed by: _____

W. M. Everett, QC
Commissioner

²² Exhibit B-1, p. 5.

²³ Exhibit C1-1, p. 4.

²⁴ Ibid., p. 5.

²⁵ Exhibit B-2, Appendix B.

²⁶ Ibid., p 7.