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June 20, 2019

E-FILED

British Columbia Utilities Commission  
Sixth Floor – 900 Howe Street  
Vancouver, B.C. V6Z 2N3

Attention: Patrick Wruck, Commission Secretary

Dear Mr. Wruck:

**City of Coquitlam**

**Application to the British Columbia Utilities Commission (BCUC) for  
Reconsideration and Variance of BCUC Order No. G-80-19 (Application)**

On behalf of the City of Coquitlam (the City), we write to provide the City's submissions on process in accordance with the regulatory timetable established by BCUC Order G-114-19.

The BCUC requested that the City and interveners provide submissions on proposed process for the public hearing (Reconsideration Hearing) established by Order G-114-19, paragraph 1, to reconsider Order G-80-19 and specifically to address the following matters:

- Whether any new evidence should be permitted and if so, the nature of the evidence;
- Whether the hearing should be wholly, or in part, written, oral, or a combination thereof; and
- If an oral component is considered necessary, any upcoming periods of unavailability.

Firstly, from the City's perspective there is not an urgent need for the Commission to make a final decision on the Application. We are aware that the Commission has a heavy workload this summer, including with two Provincially-directed inquiries underway with community input sessions across the province and workshops this summer. The City would have no objection if the BCUC defers further process for the Reconsideration Hearing until September 2019.

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With respect to the specific items the BCUC requested to be addressed, the City makes the following submissions.

*There is no need for new evidence at this time*

The grounds for the City's Application are that the BCUC erred in law by finding that it has jurisdiction to make Order G-80-19, paragraphs 1 and 2. The Reconsideration Hearing is focused on legal arguments in connection with those asserted errors in law and in particular in relation to the BCUC's interpretation and use of sections 32 and 121 of the *Utilities Commission Act (UCA)*, as set out in the Application.

With respect to the remedy sought, the Application requests the BCUC to rescind paragraphs 1 and 2 of Order G-80-19 in their entirety. The City is not asking the BCUC to replace those paragraphs with new Orders at all. The City is not asking the BCUC to make a discretionary Order, which might require consideration of new facts, nor to exercise its jurisdiction to make examinations and inquiries about facts. The City believes that it should be sufficient for the BCUC to rely on fact evidence that is already on the record in the original proceeding. On this basis, the City does not believe that new evidence is needed and does not intend to submit new evidence.

There is, however, a possible exception to the above submissions regarding new evidence. The Application includes the request that the BCUC rescind paragraph 2 of Order G-80-19 in its entirety on the grounds that section 32 of the *UCA* does not provide jurisdiction to make such Order. In addition to the error of law in finding that section 32 provides the BCUC with jurisdiction, in the Application (at pages 12-13) the City further submits that the BCUC made an error in specifying in paragraph 2 of Order G-80-19 that the costs of removal of all, or a portion of, the decommissioned NPS 20 pipes shall be shared equally between FEI and the City.

As submitted on page 13 of the Application, there will be no need to reconsider the cost allocation methodology in paragraph 2 of Order G-80-19 if the BCUC on reconsideration or the Court of Appeal on appeal concludes that section 32 of the *UCA* does not apply and the BCUC had no jurisdiction to order a cost allocation methodology. In such case, paragraph 2 will be rescinded along with the cost allocation component of it rendering the cost allocation issue moot. In contrast, if there is a final determination that section 32 of the *UCA* does apply to this situation of FEI using the City's highway for abandonment of permanently decommissioned pipes and subsequent removal at the request of the City, with which the City does not agree, reconsideration and variance of the cost allocation methodology should consider new evidence relevant to cost allocation methodology.

Accordingly, the City suggests that (i) reconsideration of the cost allocation methodology component of paragraph 2 of Order G-80-19 should be adjourned pending final determination of whether section 32 of the *UCA* applies, and (ii) consideration of whether to permit new evidence on cost allocation methodology should similarly be adjourned until such final determination has been made.

*The Reconsideration Hearing should be by written hearing process*

An oral hearing is normally convened for the purpose of examining fact witnesses and/or experts to ascertain the pertinent facts and expert opinion. As discussed above, the City believes that it should be sufficient for the BCUC to rely on fact evidence that is already on the record in the original proceeding. On this basis, the City does not believe that new evidence is needed and does not intend to submit new evidence. Therefore, the City does not see any reason to convene an oral evidentiary hearing.

If the BCUC would find an oral argument phase helpful, the City would be pleased to participate.

*Periods of unavailability for an oral component*

The BCUC also requested the City and interveners to address any upcoming periods of unavailability if an oral component is considered necessary. The representatives for the City are unavailable the following dates:

- July 3-5, 8, 10-15 & 29
- August (the City's representatives are not all available at any time in August)
- September 3, 5, 9, 18-19, 26 & 30

*Concluding comments on Reconsideration Hearing process*

The Application requests the BCUC to rescind paragraphs 1 and 2 of Order G-80-19 in their entirety on the grounds that the BCUC does not have jurisdiction to make those Orders. The Application does not ask the BCUC to exercise any discretion to replace paragraphs 1 and 2 with any new Orders at all. The City believes that it should be sufficient for the BCUC to rely on fact evidence that is already on the record in the original proceeding, and that further development of facts, either by way of oral hearing or an information request process, is not necessary. Accordingly, the Reconsideration Hearing should be focused on legal arguments in connection with the asserted errors in law and interpretations of the pertinent legislation.

In the circumstances, the City suggests that the BCUC Panel could identify any questions the Panel might have about the grounds for the Application. The Panel could then seek submissions on its questions either by way of a Panel information request or by way of request for the City and interveners to address the questions in their final arguments. As noted above, the City's representatives would be pleased to participate in an oral argument phase if the BCUC would find oral arguments helpful.

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Yours very truly,

LAWSON LUNDELL LLP

A handwritten signature in blue ink that reads "Ian Webb". The signature is written in a cursive, flowing style.

Ian Webb

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