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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 reply submission on process in accordance with the regulatory timetable established by BCUC Order G-114-19.

Three registered interveners provided submissions on proposed process for the public hearing (**Reconsideration Hearing**) established by Order G-114-19, paragraph 1, to reconsider Order G-80-19. The intervener submissions generally support, or do not oppose, the City's proposals regarding process for the Reconsideration Hearing, with one exception being the City's caveat on its submission that there is no need for new evidence.

FortisBC Energy Inc. (**FEI**) and the Commercial Energy Consumers Association of British Columbia (**CEC**) appear to take issue with the City's proposal (as set out in the bottom three paragraphs of page 2 of Exhibit B-2) that consideration of whether to permit new evidence related to determining a methodology for allocating FEI's costs of removing its decommissioned NPS 20 pipes should be adjourned until there is a final determination on whether the BCUC has jurisdiction to specify such a methodology.

The City reiterates that its submission regarding new evidence is that there is no need for new evidence at this time. The City only put a caveat on that submission because there could be a need for new evidence if and only if there is a final determination that section 32 of the *Utilities Commission Act (UCA)* empowers the BCUC to specify a methodology for allocating to the City a portion of FEI's costs to remove FEI's decommissioned NPS 20 pipes. For greater certainty, the City's proposal is that the BCUC should not at this time determine whether to permit such new evidence and that such consideration should be adjourned until such later date, if necessary.

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Reply to CEC Submission

The CEC submits that "...should the BCUC find that it has the jurisdiction to make the order set out in G-80-19, the CEC submits then it is reasonable that the BCUC made the finding that the costs of removal of all, or a portion of, the [de]commissioned NPS 20 pipes shall be shared equally between FEI and the City and therefore no additional evidence is required."

The City replies that there is no basis for an opinion that it was reasonable for the BCUC to order that the costs of removal of all, or a portion of, FEI's decommissioned NPS 20 pipes shall be shared equally between FEI and the City because there was no evidence and remains no evidence upon which to base such opinion.

Reply to FEI Submission

FEI submits that "The City has not provided a description of the types of evidence it believes may be required, and why this evidence was not available at the time of the initial application. For example, FEI provided estimated costs and scope for the removal of the NPS 20 IP gas line in the course of the initial proceeding, which was the subject of a number of information requests. The City should not be permitted to use the Reconsideration to backfill the record with evidence that it could have provided in the first instance had it chosen to do so."

Firstly, the City confirms that it has not provided a description of the types of evidence that may be required. The City's proposal is that consideration of whether to permit new evidence relevant to cost allocation methodology should be adjourned until a later time, if necessary because there is no need at this time to determine whether to admit new evidence or the nature of new evidence to admit. In general, the evidence would relate to alternative approaches that serve the BCUC's stated objective including review of how similar matters have been addressed in other relevant jurisdictions.

Secondly, in the original proceeding the City did not submit evidence relevant to the BCUC determining such a cost allocation methodology because BCUC determination of such a methodology was not at issue in the proceeding. The original proceeding was initiated by an FEI application in which FEI took the position that allocation of FEI's costs to remove its decommissioned NPS 20 pipes is specified in the terms of the operating agreement between the parties and is not for the BCUC to decide.¹ In final argument, FEI argued in the alternative to its main position that "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."² FEI went on to argue that "In the alternative, section 32 and/or 33 applies in the event that the BCUC were to conclude there is no agreement in place governing this scenario... The BCUC is

¹ FEI Application in original proceeding (Ex. B-1), sections 2.4 and 5.1. FEI's Supplementary Evidence for Phase Two in original proceeding (Ex. B-12), sections 3.4 and 4.

² FEI Final Argument in original proceeding, Part Four, paragraph 40, and paragraphs 75-79.

not bound by any particular allocation, and should assess what is fair and reasonable in the circumstances.”³

Thus, FEI’s original application did not request the BCUC to determine a methodology for allocating costs for removal of the decommissioned NPS 20 pipes. Throughout the proceeding and in final argument FEI opposed the BCUC doing so, as did the City. For the first time in that proceeding, in final argument FEI introduced the possibility, in the alternative, that the BCUC could determine the cost allocation methodology if the BCUC was to determine (against FEI’s arguments) that the operating agreement does not apply to the matter.

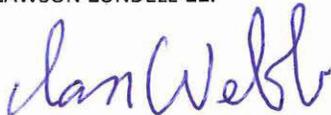
There was no evidence in the original proceeding regarding the merits of different approaches to allocation of FEI’s costs to remove its decommissioned pipes, let alone an equal sharing approach, because determination of a cost allocation methodology was not in issue. It was only in making its final decision on the original FEI application that the BCUC decided to specify a cost allocation methodology. As stated on page 12 of the City’s Reconsideration Application, the BCUC made its decision regarding cost allocation arbitrarily and based on an unfair process. Specifically, that decision was made without notifying the parties that the BCUC intended to order a cost allocation methodology, and without seeking evidence and submission from the parties in regards to the matter.

Conclusion

The City reiterates that in its view there is no need for new evidence at this time. The caveat being that there could be a need for new evidence relevant to cost allocation methodology in a future phase of the Reconsideration Hearing contingent on a final determination regarding the applicability of section 32 of the *UCA*. The City proposes that consideration of whether to permit such new evidence should not be determined at this time and should be adjourned until such later date, if necessary.

Yours very truly,

LAWSON LUNDELL LLP



Ian Webb

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

³ FEI Final Argument in original proceeding, Part Four, paragraph 79.