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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)
BCUC Project No. 1599008**

On behalf of the City of Coquitlam (the **City**), we write to provide the City's submissions on further process in relation to the Application as requested by the BCUC pursuant to BCUC Order G-75-20.

Background

On May 16, 2019, pursuant to section 99 of the *Utilities Commission Act (UCA)*, the City filed with the BCUC the Application seeking reconsideration and variance of Order G-80-19. The grounds for the 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 has 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 *UCA*, as set out in the Application.

For ease of reference, paragraphs 1 and 2 of Order G-80-19 provide as follows:

1. Pursuant to section 121 of the *UCA*, it is affirmed that FEI is authorized to abandon the decommissioned NPS 20 Pipeline in place.
2. Pursuant to section 32 of the *UCA*, upon request by the City in circumstances where it interferes with municipal infrastructure, the costs of removal of any portion of the decommissioned NPS 20 Pipeline shall be shared equally between FEI and the City.

In addition to the alleged error of law by the BCUC in finding that section 32 of the *UCA* provides the BCUC with jurisdiction to make an order in the nature of paragraph 2, in the Application (at pages 12-13) the City further submitted that the BCUC made an error in specifying 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.

As submitted on page 13 of the Application, there will be no need to reconsider the cost allocation methodology component of 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 the circumstances at issue. In such case, paragraph 2 will be rescinded along with the cost allocation component of it rendering the cost allocation issue moot.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 the circumstances 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, the City's position would then be that the cost allocation methodology should be reconsidered and evidence considered in that connection.

Accordingly, the City submitted in the Application and in Exhibit B-2 dated June 20, 2019 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.

Pursuant to Order G-150-19 dated July 8, 2019, at paragraph 2, the BCUC agreed and made the following Order:

The potential need for new evidence regarding the cost allocation methodology for the removal of the decommissioned NPS 20 Pipeline is adjourned, pending a determination on the BCUC's jurisdiction under section 32 of the *UCA*, as outlined in the Application.

BCUC Request for Submissions on Further Process

The BCUC requested that the City and parties provide submissions on further process to address the following matters:

1. Whether the BCUC's determination on the cost allocation formula was made based on fair process; and
2. If the BCUC determines that the evidentiary record should be re-opened with respect to the cost allocation formula:

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- What is the appropriate regulatory process, including proposed timelines; and
- The nature and scope of any additional evidence to be filed, and why this evidence could not have been filed as part of the Original Proceeding.

The City's Submissions

The City submits that the BCUC should continue the adjournment ordered by Order G-150-19 because there is not a final determination on the BCUC's jurisdiction at this time.

As noted in the cover letter to the Application, the City filed and served on the BCUC a Notice of Application for Leave to Appeal from Order No. G-80-19, paragraphs 1 and 2. The City, the BCUC and the respondents to the Application for Leave to Appeal agreed to hold the leave application in abeyance until the BCUC issues its decision on the Application. The BCUC has now made its decision as set out in the Order G-75-20 Decision.

The City confirms that it is now resuming pursuit of its appeal to the Court of Appeal of the pertinent determinations made by the BCUC in the Order G-80-19 and Order G-75-20 Decisions. The City's leave application and related materials will be served on the BCUC in due course.

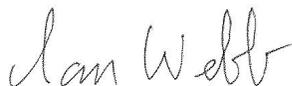
Pursuant to section 102(1) of the *UCA*, the City's appeal to the Court of Appeal does not of itself stay or suspend the operation of the BCUC's decision, but the Court of Appeal may grant a suspension, in whole or in part, until the appeal is decided, on the terms the court considers advisable.

The City submits that it would not be an efficient use of the BCUC's resources to proceed with reconsideration of the cost allocation formula specified in paragraph 2 of Order G-80-19 when the BCUC's jurisdiction to make such an order is under appeal. In the circumstances, the City requests that the BCUC continue the adjournment ordered by Order G-150-19 until the appeal is decided.

The City further submits that there is no urgent need to proceed with reconsideration of the cost allocation formula at this time.

Yours very truly,

LAWSON LUNDELL LLP



Ian Webb

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