

May 20, 2020

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 (Reconsideration Application)
BCUC Project No. 1599008**

On behalf of the City of Coquitlam (the **City**), we write to provide the City's further submissions on further process in relation to the Reconsideration Application, as requested by the BCUC pursuant to correspondence dated May 11, 2020 (Ex. A-9).

We confirm that in the City's original submission on further process (Ex. B-6) the City requested that the BCUC continue the existing adjournment ordered by Order G-150-19 until the City's appeal to the Court of Appeal is decided. For greater certainty, the City requests that the BCUC maintain paragraph 2 of Order G-150-19 for a further period of time until the appeal is decided, at which time the City will make a submission to the BCUC on whether (i) the remaining issues for reconsideration by the BCUC have been rendered moot by the Court of Appeal's decision, or (ii) the City requests the BCUC to resume reconsideration of the remaining issues including consideration of additional evidence for example.

The remaining issues under reconsideration (**Remaining Issues**) relate to whether the BCUC erred by deciding in Order G-80-19, in the absence of evidence and submissions from the parties on the matter, that the costs of removal of any portion of the decommissioned NPS 20 pipes shall be shared equally between FortisBC Energy Inc. (**FEI**) and the City. As summarised in the City's Ex. B-6 submission, the Remaining Issues are identified on pages 12-13 of the May 16, 2019 Reconsideration Application as follows:

“In addition to the error of law in finding that section 32 provides the BCUC with jurisdiction, the City further submits that the BCUC made an error in specifying in

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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. The City submits that the BCUC made that decision 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. There was no evidence or discussion in the proceeding regarding an equal sharing of FEI's costs to remove the NPS 20 pipes.

The BCUC stated that its intention for requiring the City to share equally FEI's costs to remove its decommissioned pipes was that it "lessens the likelihood of the City making unnecessary or unreasonable requests for removal of the NPS 20 Pipeline, thereby avoiding unnecessary disruption to the City's streets and public spaces and any resulting cost and inconvenience to the residents, commuters and businesses." Had the BCUC sought evidence and submissions from the parties in regards to this issue, it is likely that an alternative approach could have been devised that reasonably avoids unnecessary disruption and cost, has greater regard for the City's rights and jurisdiction respecting Como Lake Avenue, and does not require the City to pay half of FEI's cost to remove FEI's decommissioned pipes.

The City submits that 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 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. Accordingly, the City suggests that reconsideration of the cost allocation methodology component should be adjourned pending final determination of whether section 32 applies."

We had understood that the BCUC accepted that position pursuant to paragraph 2 of Order G-150-19 which provides as follows:

"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."

As outlined in the Reconsideration Application, in the extract above, the adjournment was proposed to be in place until there is a final determination of whether section 32 applies either by the BCUC on reconsideration or the Court of Appeal on appeal.

Specific Panel Requests

In Ex. A-9 the BCUC Panel requests the City to address the following matters specifically.

The Panel notes that none of the parties provided a submission on further process to address the first matter set out in Order G-75-20 namely whether the cost allocation formula was determined through an unfair process. Neither does the City suggest in its letter of April 23, 2020 that this matter be addressed following proceedings before the Court of Appeal.

Further to the general comments above, the City confirms that (i) it requests the BCUC to continue the adjournment ordered by paragraph 2 of Order G-150-19 until the appeal is decided, (ii) the purpose of continuing the adjournment is so that the BCUC can determine, following the Court of Appeal's decision, whether to proceed with reconsideration of the Remaining Issues or whether such reconsideration has been rendered moot, and (iii) the City is proposing that such matters be addressed following the Court of Appeal's decision.

The Panel requests that the City advise whether it intends to continue to pursue this ground of reconsideration or whether it is abandoning this ground as a separate basis for reconsideration.

The City is not abandoning its application for reconsideration in relation to the Remaining Issues. The City requests that the BCUC continue its existing adjournment order in relation to reconsideration of the Remaining Issues until the appeal is decided, at which time such matters will be further considered as needed.

The Panel requests submissions on why administrative efficiency is not better promoted by requiring the parties to complete the determination of all issues in the reconsideration process at this time so the Court of Appeal could deal with all appealable issues in one rather than possible multiple proceedings.

In the normal course, appeals to the Court of Appeal are to proceed within 30 days of the decision appealed from. Where there is a reconsideration process, as there is under the *Utilities Commission Act*, a person is expected to avail of the reconsideration process before moving forward with an appeal.

In the present case, Order G-80-19 was issued on April 15, 2019 and the reconsideration process resulting in Order G-75-20 spanned nearly 11 months. The City does not have the right to defer its appeal of decisions the BCUC made pursuant to Orders G-80-19 and G-75-20 until the BCUC makes a decision on the Remaining Issues. The City is proceeding at this time with its appeal of decisions the BCUC made pursuant to Orders G-80-19 and G-75-20.

The question therefore is whether it would be reasonable for the BCUC to discontinue the adjournment it ordered in paragraph 2 of Order G-150-19 and proceed with the reconsideration in relation to the Remaining Issues while the BCUC's jurisdiction over the Remaining Issues is

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before the Court of Appeal. The City maintains that such an approach would not be the most efficient use of resources. The City also notes that there is no urgent need for the BCUC to proceed with reconsideration of the Remaining Issues at this time, and that no intervener is opposed to continuing the adjournment.

Yours very truly,

LAWSON LUNDELL LLP

A handwritten signature in black 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