

June 24, 2020

E-FILED

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

Attention: Marija Tresoglavic, Acting Commission
Secretary

Dear Ms. Tresoglavic:

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 further process in accordance with the BCUC's Order G-150-20 Decision.

The City commenced this reconsideration proceeding by filing an application for reconsideration and variation of BCUC's Order G-80-19. In its application, the City submitted that the BCUC had erred in three regards in making Order G-80-19 by:

- (1) finding that the BCUC had jurisdiction to authorize FEI, within the meaning of the term "authorization" as used in section 121 of the *Utilities Commission Act (UCA)*, to abandon in place FEI's decommissioned NPS 20 pipes located in Como Lake Avenue;
- (2) finding that section 32 of the *UCA* provides the BCUC with jurisdiction to specify the manner and terms under which the City may request FEI to remove any portion of the NPS 20 pipes abandoned in place; and
- (3) deciding, in the absence of evidence and submissions from the parties on the matter, that the costs of removal of any portion of the decommissioned FEI NPS 20 pipes shall be shared equally between FEI and the City.¹

¹ Application of the City for Reconsideration and Variance of BCUC Order G-80-19, pages 4-5.

The BCUC rendered decisions on issues (1) and (2) by way of Order G-75-20. The City does not accept those decisions of the BCUC and is applying for leave to appeal them to the British Columbia Court of Appeal pursuant to section 101 of the *UCA*.

The remaining issue (3) under reconsideration relates 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 the decommissioned NPS 20 pipes shall be shared equally between FEI and the City.

Pursuant to Order G-150-20, the BCUC invited the City to make submissions regarding the introduction of new evidence with respect to the remaining matter for reconsideration; specifically, to address whether the City seeks to file additional evidence respecting cost allocation and, if so, to provide a description of the nature and scope of such evidence and why the City considers the evidence to be admissible.

The City confirms that it intends to introduce additional evidence with respect to cost allocation, the nature and scope of which is described below. The City reiterates that it did not submit this evidence in the underlying proceeding because BCUC determination of cost allocation was not a live issue within the application that initiated the underlying proceeding nor in the evidentiary phase of the proceeding.

The underlying proceeding was initiated by application of FortisBC Energy Inc (**FEI**), and in its application, throughout the course of the proceeding, and up until FEI's final argument, FEI maintained the position that the allocation of FEI's costs to remove its decommissioned NPS 20 pipes was strictly governed by the terms of the Operating Agreement between the parties, and therefore the BCUC had no jurisdiction to make an order into the matter. It was only in final argument that FEI advanced the alternative possibility that the BCUC could specify its own cost allocation methodology:

This Part addresses the City's demand that FEI remove the NPS 20 IP gas line now at a cost of tens of millions of dollars, and for FEI (and its customers) to bear the entirety of that cost. The City is entitled under the Operating Agreement to direct FEI to remove the NPS 20 IP gas line, but the City is also bound by the contractual cost allocation methodology contained in the Operating Agreement. In the event that the BCUC were to conclude (as the City argues, but FEI disputes) that the Operating Agreement is inapplicable in the circumstances, the City could be expected to pay the entire cost of the removal. In the alternative, it would still be fair and reasonable under section 32 of the *UCA* for the BCUC to adopt the same allocation methodology that is contained in the Operating Agreement.²

In its Order G-80-19 Decision, the BCUC made the following determinations on this matter:

² FEI Final Argument in original proceeding, Part Four, paragraph 39 (underlining added).

- (a) The BCUC agreed with the City that the Operating Agreement does not provide for pipeline abandonment nor does it provide for cost allocation in relation to removal of FEI's decommissioned pipes;³
- (b) The BCUC agreed with FEI that the BCUC has jurisdiction under section 32 of the *Utilities Commission Act* to order terms for removal of the decommissioned NPS 20 pipes, and found that it was appropriate for the BCUC to "specify terms for a fair and reasonable allocation of the cost of the NPS 20 Pipeline removal"⁴; and
- (c) The BCUC determined that the parties shall share equally FEI's removal cost.⁵

The determination (c), above, was made on the basis only of FEI's submission that the BCUC should "assess what is fair and reasonable in the circumstances". The BCUC did not have before it evidence or submissions in relation to what the circumstances might be or what terms might be fair and reasonable in such circumstances. The only reason the Commission gave for allocating some of FEI's removal cost to the City was to "lessen[] the likelihood of the City making unnecessary or unreasonable requests for removal of the NPS 20 Pipeline".⁶ This reasoning implies that the BCUC decided that FEI must abide by any removal request made by the City but to avoid removals that might be considered unreasonable there should be a potent disincentive to the City making any request. No reasons were given as to why it would be appropriate to apply the potent disincentive to requests for removals that are clearly necessary.

The Order G-80-19 Decision also does not address how the request for removal and cost allocation scheme is to operate in circumstances where the requested removal of FEI's NPS 20 pipe is to accommodate third party infrastructure (e.g., regional district, TELUS or BC Hydro infrastructure).

Furthermore, pursuant to the Order G-75-20 Decision the BCUC nullified any concern that FEI might have to comply with a City request for removal of NPS 20 pipe that is deemed to be unreasonable by finding that the BCUC retains perpetual jurisdiction over the NPS 20 pipes even once permanently decommissioned, in effect making the BCUC the arbiter of the reasonableness of removal on a case-by-case basis forever.

Not having had an opportunity to make submissions and provide evidence as to: (i) a fair and reasonable process for the City, FEI and/or the BCUC to confirm a portion of NPS 20 pipe shall be removed, (ii) the rationale for requiring the City to contribute to FEI's removal costs in such circumstances, and (iii) the appropriate allocation of costs, if any, in such circumstances, the City submits that it ought to be permitted to do so at this stage of the reconsideration proceeding.

³ Order G-80-19, page 17.

⁴ *Ibid.*

⁵ Order G-80-19, page 18.

⁶ *Ibid.*

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To the City's knowledge, there is no precedent from another Canadian jurisdiction directly on point in terms of the allocation of the gas utility's costs where a municipality requires an abandoned pipeline to be removed from its lands. However, the City also intends to introduce evidence of how analogous matters have been addressed in other relevant jurisdictions as a means to show that the Commission's proposed 50:50 cost allocation for removal of the decommissioned NPS 20 pipes is neither fair nor reasonable. The City submits that evidence related to how other jurisdictions deal with circumstances where municipalities require owners or operators of operating public utility infrastructure to remove or relocate their equipment will have probative value and anticipates that it may include, among other things:

- rulings of the Canadian Radio-television and Telecommunications Commission regarding the allocation of costs for the relocation of telecommunications infrastructure
- model operating agreements between municipalities and utilities providing for the allocation of costs for infrastructure removal or relocation as between them

Accordingly, the City is contemplating evidence relating to considerations and challenges for a process for the City, FEI and/or the BCUC to confirm a portion of NPS 20 pipe shall be removed and remove it, and a jurisdictional review on the subject of cost allocation.

Yours very truly,

LAWSON LUNDELL LLP



Ian Webb

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