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British Columbia  
Utilities Commission

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July 30, 2020

Sent via email/eFile

<b>CITY OF COQUITLAM - RECONSIDERATION AND VARIANCE OF G-80-19      EXHIBIT A-11</b>
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Ms. Stephanie James  
City Solicitor  
City of Coquitlam  
3000 Guilford Way  
Coquitlam, BC V3B 7N2  
[sjames@coquitlam.ca](mailto:sjames@coquitlam.ca)

**Re:      City of Coquitlam – Application for Reconsideration and Variance of Order G-80-19 in the matter of the FortisBC Energy Inc. Application for Use of Lands under Sections 32 and 33 of *the Utilities Commission Act* in the City of Coquitlam for the Lower Mainland Intermediate Pressure System Upgrade Projects – Project No. 1599008 – Further Regulatory Timetable**

Dear Ms. James:

Further to your May 16, 2019 filing, enclosed please find British Columbia Utilities Commission Order G-202-20 with reasons for decision, establishing a further regulatory timetable for the review of the above-noted application.

Sincerely,

*Original signed by:*

Marija Tresoglavic  
Acting Commission Secretary

/ae  
Enclosure



**ORDER NUMBER**  
**G-202-20**

IN THE MATTER OF  
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

City of Coquitlam Application for Reconsideration and Variance of Order G-80-19 in the matter of the FortisBC Energy Inc. Application for Use of Lands under Sections 32 and 33 of the *Utilities Commission Act* in the City of Coquitlam for the Lower Mainland Intermediate Pressure System Upgrade

**BEFORE:**

R. I. Mason, Panel Chair  
W. M. Everett, QC, Commissioner

on July 30, 2020

**ORDER**

**WHEREAS:**

- A. On May 16, 2019, pursuant to section 99 of the *Utilities Commission Act* (UCA), the City of Coquitlam (City) filed with the British Columbia Utilities Commission (BCUC) an application for Reconsideration and Variance of Order G-80-19 (Reconsideration Application);
- B. By Order G-80-19 and accompanying reasons for decision dated April 15, 2019, the BCUC issued its decision regarding FortisBC Energy Inc.'s (FEI) application for use of the City's lands for the construction and operation of the Lower Mainland Intermediate Pressure System Upgrade Projects (LMIPSU Projects), including the disposition of the Nominal Pipe Size (NPS) 20 Pipeline which FEI proposed to decommission (Original Proceeding). The BCUC ordered, among other things, the following:
  1. Pursuant to section 121 of the UCA, it is affirmed that FEI is authorized to abandon the decommissioned NPS 20 Pipeline in place; and
  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;
- C. In its Reconsideration Application, the City requests that the BCUC reconsider and vary Order G-80-19 on the grounds that the BCUC erred in law 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 UCA, to abandon in place FEI's decommissioned NPS 20 pipes located in Como Lake Avenue (Jurisdiction Issue); and

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;
- D. The City further alleges that the BCUC erred in law by specifying a cost allocation formula which applies when the City requests FEI to remove any portion of the NPS 20 Pipeline, which has been abandoned in place (Cost Allocation Formula). The City submits that the BCUC made that decision arbitrarily and based on an unfair process, and that had the BCUC sought evidence and submissions from the parties on this issue, it is likely that an alternative approach could have been devised.
- E. By Order G-150-20 dated June 11, 2020, the BCUC established a regulatory timetable, which included City submissions on further process, including whether it seeks to file additional evidence respecting the Cost Allocation Formula, and if so, a description of the nature and scope of such evidence and why the City considers the evidence to be admissible.
- F. By letter dated June 24, 2020, the City provided its proposal of evidence which it submits should be admitted in respect of the Cost Allocation Formula. By July 2, 2020, British Columbia Hydro and Power Authority, Commercial Energy Consumers of BC and FEI provided their respective submissions on the City's proposed evidence. By letter dated July 9, 2020, the City provided its reply submission; and
- G. The BCUC has reviewed the submissions of the parties and considers that establishing a further regulatory timetable is warranted.

**NOW THEREFORE** the BCUC orders as follows:

1. The City is permitted to file its proposed evidence in respect of the Cost Allocation Formula as outlined in its submission dated June 24, 2020.
2. A further regulatory timetable is established, as set out in Appendix A and for the reasons set out in Appendix B.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 30<sup>th</sup> day of July 2020.

BY ORDER

*Original signed by:*

R. I. Mason  
Commissioner

Attachment

City of Coquitlam Application for Reconsideration and Variance of Order G-80-19 in the matter of the FortisBC Energy Inc. Application for Use of Lands under Sections 32 and 33 of the *Utilities Commission Act* in the City of Coquitlam for the Lower Mainland Intermediate Pressure System Upgrade

**REGULATORY TIMETABLE**

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Action	Date (2020)
City to file its proposed evidence as outlined in its submission dated June 24, 2020	Tuesday, August 25
BCUC and intervener Information Requests (IRs) on City's evidence	Tuesday, September 8
City responses to IRs	Tuesday, September 22
Interveners to file their evidence, if any, in response to the City's evidence	Tuesday, September 29
BCUC, City and intervener IRs on interveners' evidence, if any	Tuesday, October 6
Interveners' response to IRs	Tuesday, October 22
City to file rebuttal evidence, if any	Tuesday, October 29
BCUC and intervener IRs on rebuttal evidence, if any	Tuesday, November 12
City response to IRs	Tuesday, November 29
Further process	To be determined

City of Coquitlam Application for Reconsideration and Variance of Order G-80-19 in the matter of the FortisBC Energy Inc. Application for Use of Lands under Sections 32 and 33 of the *Utilities Commission Act* in the City of Coquitlam for the Lower Mainland Intermediate Pressure System Upgrade

## REASONS FOR DECISION

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### 1.0 Introduction

On May 16, 2019, the City of Coquitlam (City) filed an application for Reconsideration and Variance of Order G-80-19 (Reconsideration Application), in the matter of the FortisBC Energy Inc.'s (FEI) Application for Use of Lands under sections 32 and 33 of the *Utilities Commission Act* (UCA) in the City of Coquitlam for the Lower Mainland Intermediate Pressure System Upgrade (LMIPSU) Projects (Original Proceeding) with the British Columbia Utilities Commission (BCUC).

In its Reconsideration Application, the City seeks an order that the BCUC rescind the following directives 1 and 2 of Order G-80-19 in their entirety:

1. Pursuant to section 121 of the UCA, it is affirmed that FEI is authorized to abandon the decommissioned NPS [Normal Pipe Size] 20 Pipeline in place; and
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.

With respect to Cost Allocation Formula, the City further alleges that the BCUC erred in law by specifying a cost allocation formula which applies when the City requests FEI to remove any portion of the NPS 20 Pipeline, which has been abandoned in place (Cost Allocation Formula). The City submits that the BCUC made that decision arbitrarily and based on an unfair process, and that had the BCUC sought evidence and submissions from the parties on this issue, it is likely that an alternative approach could have been devised.<sup>1</sup>

By Order G-75-20 dated April 2, 2020, the BCUC ordered that the City's Reconsideration Application, seeking rescission of the Jurisdiction Issue be dismissed, and requested submissions on further process respecting the remaining Cost Allocation Formula issue and, more particularly, whether new evidence should be admitted with respect to that issue. By letter dated May 11, 2020 and Order G-150-20 dated June 11, 2020, the BCUC requested additional submissions from the parties.

### 2.0 Submissions of the Parties

In its letter dated June 24, 2020, the City submits that, in the Original Proceeding, it was only in final argument that FEI advanced the alternative possibility that the BCUC could specify its own Cost Allocation Formula. The City considers that the BCUC did not have the evidence before it to properly assess fair and reasonable terms for the removal of the decommissioned NPS 20 pipeline.<sup>2</sup>

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<sup>1</sup> Exhibit B-1, p. 12.

<sup>2</sup> Exhibit B-10, pp. 2-3.

To the City's knowledge, there is no precedent from another Canadian jurisdiction directly relevant to the allocation of the gas utility's costs where a municipality requires an abandoned pipeline to be removed from its lands. However, the City proposes to submit evidence of analogous matters 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, including rulings of the Canadian Radio-Television and Telecommunications Commission, and model operating agreements between municipalities and utilities.<sup>3</sup>

FEI refutes the City's claims regarding the Original Proceeding, and submits that cost allocation was directly at issue, highlighting a number of examples in the submission of evidence and argument in that proceeding.<sup>4</sup> FEI adds that introduction of the City's proposed evidence would be inconsistent with BCUC procedures for reconsideration, noting that the City does not explain why the evidence it seeks to introduce "could not have been discovered by reasonable diligence at the time of the Original Proceeding" or that this evidence has arisen since the issuance of the Original Decision.<sup>5</sup> Finally, FEI considers that the evidence the City proposes to submit on the removal of operating infrastructure is less relevant than evidence in the Original Proceeding, namely the Operating Agreement between FEI and the City.<sup>6</sup>

By letter dated June 30, 2020, British Columbia Hydro and Power Authority states it takes no position on the admissibility of the new evidence that the City seeks to file.

By letter dated July 2, 2020, the Commercial Energy Consumers of BC (CEC) submits that the City is seeking a second "kick at the can" after an unfavourable result before the BCUC and in doing so is creating significant additional regulatory costs due to duplication of process, which costs are borne by ratepayers. The CEC further submits that the BCUC's determination on cost allocation was based on fair process and the evidentiary record should not be re-opened at this time. CEC makes similar submissions to those of FEI respecting the BCUC's procedures for reconsideration.<sup>7</sup>

In its reply submission, the City submits that BCUC panels routinely revise their hearing process along the way as needed in support of developing a fulsome record and making the best decision. The City submits that the BCUC made a poor decision on the Cost Allocation Formula because it had an inadequate record in relation to considerations for specifying terms (i.e., methodology) and decided not to reopen the proceeding to gather additional information per common BCUC practice.<sup>8</sup>

### *Panel determination*

**The Panel determines that further regulatory process to review the Cost Allocation Formula is warranted and directs that the City be permitted to file its proposed evidence in respect of the Cost Allocation Formula as outlined in its submission dated June 24, 2020.**

The Panel declines to make a determination on whether there were any issues of procedural fairness in the Original Proceeding. The Panel considers that the admission of new evidence and further process in this Reconsideration Application proceeding address the City's concerns with respect to the alleged procedural unfairness in the Original Proceeding.

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<sup>3</sup> Exhibit B-10, p. 4.

<sup>4</sup> Exhibit C1-7, pp. 2-10.

<sup>5</sup> *Ibid.*, pp. 9-10.

<sup>6</sup> *Ibid.*, pp. 12-13.

<sup>7</sup> Exhibit C4-7, pp. 1-2.

<sup>8</sup> Exhibit B-11, pp. 1-2.

With respect to submissions from the CEC and from FEI that introduction of the City's proposed evidence would be inconsistent with BCUC procedures for reconsideration, the Panel disagrees. The tests set out in section 26.05 of the BCUC's Rules of Practice and Procedure (Rules)<sup>9</sup> apply to the filing of an application for reconsideration. In establishing this Reconsideration Application proceeding by Order G-114-19 dated May 29, 2019, the Panel determined that there are sufficient grounds to proceed with the reconsideration. Nothing in section 26.05 of the Rules precludes the Panel from admitting new evidence in this Reconsideration Application proceeding.

Further, section 29.04 of the Rules states:

The BCUC will determine the regulatory process for the reconsideration hearing, which may include, but is not limited to: ... b) a determination as to whether any new evidence or evidence of a change of circumstances will be permitted on the reconsideration hearing and the timing of submissions on these issues;

The Panel considers this provides it with the discretion to admit evidence it considers may assist in making determinations on the remaining issues before it in this Reconsideration Application.

The Panel's view is that, to bring closure to this matter, it is preferable to consider the City's proposed additional evidence rather than dismiss the request and leave open the possibility that a different decision would have been made in the Original Proceeding had the evidence been introduced. The Panel acknowledges that the matter of the Cost Allocation Formula was at issue in the Original Proceeding, and that evidence was sought and submissions were made. Further, the Panel is cognizant of, and indeed concerned with, the regulatory costs of this Reconsideration Application. However, the Panel is now seized with the matter and considers that there are efficiencies to be gained from providing a complete and final examination of the question of the Cost Allocation Formula.

The Panel determines the following regulatory process for the Reconsideration Application. Following the filing of evidence proposed by the City in its submissions dated June 24, 2020, the BCUC and interveners may file information requests (IRs) on the City's evidence. Following responses to those IRs by the City, interveners will have the opportunity to file evidence.

If intervener evidence is filed, the BCUC, City and interveners may file IRs. The City will then have the opportunity to file rebuttal evidence, also subject to IRs, if desired.

For clarity, the Panel will only be considering the matter of the Cost Allocation Formula and will be taking into account evidence from both the Original Proceeding and the Reconsideration Application proceeding in making its determination. Therefore, in their final arguments, parties may make submissions on evidence in the Original Proceeding as well as the City's new evidence and any intervener's evidence with respect to Cost Allocation Formula.

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<sup>9</sup> Approved by BCUC Order G-15-19 dated December 17, 2018.