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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 (Reconsideration Application)
BCUC Project No. 1599008**

In accordance with the regulatory timetable established by BCUC Order G-202-20A, we write on behalf of the City of Coquitlam (the **City**) to submit the City's response to CEC Information Request No. 1.

For clarity, nothing in the City's response to CEC Information Request No. 1 should be construed as an acceptance of the BCUC's determinations on the jurisdictional issues raised in the Reconsideration Application.

Yours very truly,

LAWSON LUNDELL LLP

Ian Webb

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

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**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
BCUC Project No. 1599008**

City of Coquitlam Response to CEC IR No. 1

1. Reference: Exhibit B-12, page 4

2. Precedents from other Canadian Jurisdictions

To the City's knowledge, there is no precedent from another Canadian jurisdiction directly on point in terms of a government or regulatory body requiring a municipality or other landowner to pay a portion of a gas utility's costs to remove its permanently decommissioned infrastructure where the municipality or other landowner requires removal to accommodate its infrastructure project.

- 1.1 Do the precedents cited represent a complete review of Canadian jurisdictions or are they selected from a larger group?

RESPONSE:

The jurisdictional review looked for Canadian precedent for a government or regulatory body requiring a municipality or other landowner to pay a portion of a gas utility's costs to remove its permanently decommissioned infrastructure where the municipality or other landowner requires removal to accommodate its infrastructure project. The research did not find a precedent from another Canadian jurisdiction on that point.

The jurisdictional review also looked for Canadian precedent for a government or regulatory body establishing or proposing cost allocation in the somewhat similar circumstances where a municipality or other governmental authority requires a utility to relocate its operating equipment. If the BCUC does have jurisdiction to order a cost allocation methodology for the circumstance where the City requests FEI to remove its decommissioned NPS 20 pipes and given that there does not appear to be a precedent from another Canadian jurisdiction directly on point, the City's position would be that the BCUC should consider the principles and approach adopted or proposed by governments and regulators in Canadian jurisdictions for somewhat similar circumstances. The City's Jurisdictional Review evidence provides such precedents found by the research.

Please also refer to the response to BCUC IR 1.1.1.1.

1.1.1 If they are selected, please provide a brief discussion of the precedents that were not included.

RESPONSE:

Please refer to the response to CEC IR 1.1 and the response to BCUC IR 1.1.1.1.

1.2 Please confirm that the BCUC is not obligated to follow other Canadian jurisdictions.

RESPONSE:

To be clear and as noted on page 4 of the City's evidence, to the City's knowledge there is no precedent from another Canadian jurisdiction directly on point in terms of a government or regulatory body requiring a municipality or other landowner to pay a portion of a gas utility's costs to remove its permanently decommissioned infrastructure where the municipality or other landowner requires removal to accommodate its infrastructure project.

Please refer to the response to CEC IR 1.1.

2. Reference: Exhibit B-12 page 5

However, the City encloses evidence as to how other Canadian jurisdictions deal with circumstances where municipalities require owners or operators of operating public utility infrastructure to remove or relocate their infrastructure. In the City's submission, these examples illustrate that the BCUC's order for the equal sharing of FEI's NPS 20 pipe removal costs is at odds with the prevailing law in comparable jurisdictions even where the public utility infrastructure is operating and needed to serve utility customers.

- 2.1 Please confirm that the cost allocations between the City of Coquitlam and FEI are already established under conditions where the infrastructure is operating, and briefly describe for the record.

RESPONSE:

Sections 4 and 5 of the Operating Agreement between the City and FEI govern the circumstance where the City requests FEI to move an operating gas pipeline from one location (place A) to another location (place B), where both place A and place B are within the City's public property, and do not apply to the removal of a permanently decommissioned pipe. Please refer to the responses to BCUC IRs 1.1, 1.1.1 and 1.1.1.1. A copy of the Operating Agreement is attached to the Order G-80-19 Decision.

3. Reference: Exhibit B-12, page 150

A requirement for a BCUC process to review and approve each request for FEI to remove portions of its decommissioned NPS 20 pipes creates uncertainty around the procedure, timing, and cost of work that the City needs to perform, as well as posing challenges to the City in attempting to properly budget for work, and also challenges to the City in attempting to schedule its work and that of third parties along Como Lake Avenue. The City is also concerned about the time required for a BCUC review and decision on such matters. Delays would put the City at risk of missing construction windows, and could also expose the City to delay claims from contractors where the work has already been awarded.

Adding BCUC approval as a prerequisite to installing and replacing City utilities along Como Lake Avenue would complicate the City's internal design process as the City would be unable to rely on its designs of proposed work as being "constructible" since those designs could be rejected by the BCUC. Adding a BCUC approval process could also delay the design process resulting in the City missing construction windows. Construction windows along the Como Lake Avenue corridor are carefully planned due to the high traffic volumes, transit routes, and locations of several schools as set out in my previous evidence. Further, where there are "constructible" alternatives and the preferred design is rejected by the BCUC, the remaining options would, by implication, be more difficult and expensive to construct and may require the relocation of in-service utilities. The BCUC's order does not require FEI to pay the increased costs that the City and third parties will incur in exchange for the benefit FEI is afforded by the BCUC allowing FEI to leave its decommissioned NPS 20 pipes in the street at least temporarily.

Further, in an emergency situation (such as a failed water main), the City is required to act quickly and would not have time to prepare an application to the BCUC for approval to commence emergency work. The existing practice for emergency work in proximity to FEI gas mains is to contact FEI inspectors so that they can assist with the emergency work, but there would not be time to obtain the approval of the BCUC.

The benefit that FEI and the BCUC believe that FEI will receive under this arrangement (*i.e.*, FEI being able to leave its decommissioned NPS 20 pipes in City land until they interfere with City or third-party infrastructure) should not come at the City's expense. Rather, the City should be reimbursed by FEI for the City's incremental costs that result from allowing the decommissioned NPS 20 pipes to remain in Como Lake Avenue until their inevitable removal.

- 3.1 Could a process be developed that allowed FEI and the City to work cooperatively to remove portions without BCUC approval, or in a manner that facilitated rapid disposition? Please explain why or why not.

RESPONSE:

Based on our understanding of the BCUC's decisions as explained in the responses to BCUC IRs 8.1 and 8.2, the City and FEI cannot contract out of the perpetual jurisdiction under sections 45 and 46 of the *Utilities Commission Act* the BCUC has proclaimed over the decommissioned NPS 20 pipes.

3.1.1 Would this be acceptable to the City of Coquitlam? Please explain why or why not.

RESPONSE:

Please refer to the response to BCUC IR 8.2 including the City's response to BCUC IR 10.6 in the Order G-80-19 proceeding as referenced therein.

3.2 Would the City of Coquitlam agree that the City could still contact FEI to rectify an emergency situation and seek BCUC approval if necessary at a later date?

RESPONSE:

Based on our understanding of the BCUC's decisions as explained in the responses to BCUC IRs 8.1 and 8.2, the City and FEI cannot contract out of the perpetual jurisdiction under sections 45 and 46 of the *Utilities Commission Act* the BCUC has proclaimed over the decommissioned NPS 20 pipes. The BCUC's decisions do not indicate an exception for an emergency situation.