

# FASKEN

Fasken Martineau DuMoulin LLP  
Barristers and Solicitors  
Patent and Trade-mark Agents

550 Burrard Street, Suite 2900  
Vancouver, British Columbia V6C 0A3  
Canada

T +1 604 631 3131  
+1 866 635 3131  
F +1 604 631 3232

fasken.com

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**Matthew Ghikas**  
Direct +1 604 631 3191  
Facsimile +1 604 632 3191  
mghikas@fasken.com

## Electronic Filing

British Columbia Utilities Commission  
Suite 410, 900 Howe Street  
Vancouver, BC V6Z 2N3

**Attention: Ms. Marija Tresoglavic, Acting Commission Secretary**

Dear Sirs/Mesdames:

**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**

We enclose for filing in the above proceeding FortisBC Energy Inc.'s Final Submission pursuant to the established regulatory timetable.

Yours truly,

**FASKEN MARTINEAU DuMOULIN LLP**

*[Original signed by]*

Matthew Ghikas  
Personal Law Corporation

MTG/gd  
Enclosures



**BEFORE THE BRITISH COLUMBIA UTILITIES COMMISSION**

**IN THE MATTER OF THE *UTILITIES COMMISSION ACT***

**R.S.B.C. 1996, CHAPTER 473**

**and**

**CITY OF COQUITLAM APPLICATION FOR RECONSIDERATION AND  
VARIANCE OF BRITISH COLUMBIA UTILITIES COMMISSION ORDER  
NO. G-80-19**

**Submission of FortisBC Energy Inc. on Reconsideration**

**December 23, 2020**

FASKEN MARTINEAU DuMOULIN LLP  
Matthew Ghikas and Tariq Ahmed

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## PART ONE: INTRODUCTION

1. BCUC Order G-75-20 affirmed that the British Columbia Utilities Commission (the “BCUC”) had jurisdiction to (a) allow FortisBC Energy Inc. (“FEI”) to abandon in place the decommissioned Nominal Pipe Size 20-inch intermediate pressure (“NPS 20 IP”) gas line; and (b) impose a cost allocation formula on the parties. While the City of Coquitlam (the “City”) has appealed BCUC Order G-75-20, neither that order nor the original order, BCUC Order G-18-19, has been stayed. The only matter left for the BCUC to determine is *how* costs of removal should be allocated between the parties. Specifically, this final phase of the reconsideration proceeding addresses paragraph 2 of BCUC Order G-80-19, in which BCUC determined:

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.

2. The cost sharing ordered in the proceeding (the “Original Proceeding”) that culminated in BCUC Order G-18-19 fairly balances the interests of FEI customers and the City. Notably:

- The BCUC approved the abandonment, rather than removal, of the existing NPS 20 IP gas line as part of the certificate of public convenience and necessity (“CPCN”) for the Lower Mainland Intermediate Pressure System Upgrade Projects (the “LMIPSU Project”) because it found that it was in the public interest to do so, citing a variety of cost, environmental and social impacts. The City would thus be the proximate cause of the removal.<sup>1</sup> It is equitable to require the City to share in the cost of work undertaken for the City and at the City’s request.
- The cost sharing provides appropriate incentives for the City to act reasonably in making a request to remove the NPS 20 IP gas line. The need for effective incentives in this case is borne out by the City’s actions and the BCUC’s findings

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<sup>1</sup> Exhibit C1-12, City-FEI IR 1.1.1.

that the City's position on the need to remove the entirety of the gas line was "vague and imprecise".<sup>2</sup>

- Cost sharing between FEI and the City will incent both parties to work collaboratively to take advantage of opportunities to capture efficiencies in areas such as scheduling and execution of work, resulting in cost savings and benefits to both the City and FEI customers.<sup>3</sup>

3. FEI respectfully submits that the BCUC should uphold its allocation order in paragraph 2 of BCUC Order G-80-19 as being in the public interest.

4. This submission is organized around the following key points:

- (a) Part Two reviews the legitimate cost, environmental and social considerations that underpinned the BCUC's 2015 approval to abandon in place the NPS 20 IP gas line, and the City's unreasonable positions regarding its removal;
- (b) Part Three explains why the BCUC's cost allocation is fair and provides the correct incentives;
- (c) Part Four explains that the City's "jurisdictional review" is not compelling, since:
  - FEI's modern operating agreements, of which the City makes no mention in its "jurisdictional review", are a more pertinent point of reference. They overwhelmingly provide that the municipality pays for all of the costs for changes it requires to any FEI facilities;
  - The examples that the City has provided in the "jurisdictional review" concern relocations. If relocations are a relevant analogy as the City now suggests, then it would be more logical to refer to the relocation provisions

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<sup>2</sup> BCUC Order G-80-19, Decision, page 16.

<sup>3</sup> Exhibit C1-12, City-FEI IR 1.1.1.

in the parties' own operating agreement<sup>4</sup> (the "Operating Agreement");  
and

- There are problems with how the City has characterized its examples;
- (d) Part Five describes the 2018 agreement (the "Burnaby Terms of Reference") that FEI negotiated with the City of Burnaby ("Burnaby"). These terms reflected FEI's objective of reaching early agreements with municipalities (Coquitlam included) that would facilitate FEI proceeding with the LMIPSU Project work on schedule and in accordance with the LMIPSU Project's CPCN;
- (e) Part Six explains why the City's arguments that the BCUC's cost sharing order creates regulatory burden and impedes emergency response are baseless;
- (f) Part Seven explains why third party removal requests can be addressed under existing arrangements and need not be addressed as part of this reconsideration proceeding; and
- (g) Part Eight explains that cost allocation was at issue and addressed by the parties in the Original Proceeding, meaning there was no error by the BCUC in addressing the issue as alleged by the City.

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<sup>4</sup> The operating agreement between the City and FEI's predecessor dated January 7, 1957 is included as Appendix B to BCUC Order G-80-19.

## PART TWO: LMIPSU PROJECT BACKGROUND

5. The BCUC determined in 2015, based on evidence about cost, environmental and social impacts, that the NPS 20 IP gas line should not be removed as part of the LMIPSU Project. The BCUC's findings and the associated term of the 2015 CPCN for the LMIPSU Project authorizing abandonment in place mean that the City is the proximate cause of any removal. It also means that, from a public interest standpoint, the City should be discouraged from requiring FEI to remove the gas line unless there are legitimate public interest considerations justifying the cost, environmental and social impacts of doing so. The evidence suggests that the BCUC's cost allocation will play an important role in achieving that outcome. FEI elaborates below.

### A. THE BCUC APPROVED ABANDONMENT AS PART OF THE CPCN BASED ON COMPELLING EVIDENCE

6. The CPCN for the LMIPSU Project, BCUC Order C-11-15, approved FEI's abandonment plan for the NPS 20 IP gas line. The CPCN decision was express and unequivocal:<sup>5</sup>

The Panel approves FEI's abandonment plans and discontinuance of [cathodic protection] as proposed for both the Coquitlam Gate and Fraser Gate IP Projects. The steps FEI plans to take to minimize environmental and social impacts are appropriate as they are both cost effective and result in a minimum of disruption. Further, the Panel notes that the interveners raised no concerns concerning pipeline abandonment. [Emphasis removed.]

7. The BCUC made a considered decision based on the law governing abandonment and evidence on the merits of doing so in this instance.

8. The applicable legislation contemplates abandonment in place. Specifically, section 40 of the *Oil and Gas Activities Act*<sup>6</sup> requires compliance with the *Pipeline Regulation*. Section 11 of the *Pipeline Regulation*<sup>7</sup> provides that a pipeline must be abandoned in accordance with CSA Z662 and the area must be restored in accordance with the requirements of the

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<sup>5</sup> BCUC Order C-11-15, Decision, p. 24.

<sup>6</sup> S.B.C. 2008, c. 36.

<sup>7</sup> B.C. Reg. 281/2010.



*Environmental Protection and Management Regulation*.<sup>8</sup> “Abandon” is defined in the *Pipeline Regulation* as permanently removing a gas line from service.

9. The case for abandonment was compelling. FEI explained that abandonment was the least impact solution:<sup>9</sup>

FEI selected abandonment of the NPS 20 IP gas line as the least impact end-of-life solution as further explained below. When carrying out abandonment, FEI will identify, manage and mitigate the potential environmental, public or stakeholder legacy issues. FEI does not foresee any significant adverse effects as a result of abandoning the pipeline in place. FEI must comply with all federal and provincial regulatory requirements including the *Environmental Management Act* and associated regulations.

If the NPS 20 IP gas line were removed, the impact from the construction and removal would be similar to constructing another gas line; therefore, leaving the NPS 20 IP gas line in place is the least impact solution.

There were a number of reasons FEI decided to abandon the gas line in place rather than remove it. These include the following:

- Removal would face significant logistical and construction challenges given the urban location and the development that has occurred since the pipe was installed;
- Removal of pipe from parks and sensitive environmental areas could result in environmental impacts;
- Removal would incur traffic impacts for pipe located beneath active roadways;
- Removal of pipe from beneath roads, railways and other utilities increases the risk of damage to third party assets, disrupting services to homes and businesses;
- Removal along residential streets would result in disturbances such as noise and dust; and
- The cost of removal is estimated to be significantly higher than the cost to abandon the pipeline in place.

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<sup>8</sup> B.C. Reg. 200/2010.

<sup>9</sup> Original Proceeding, Exhibit B-14, BCUC-FEI Phase Two IR 2.8.1.1. See also Original Proceeding, Exhibit B-14, BCUC-FEI Phase Two IR 2.7.2; Original Proceeding, Exhibit B-16, City-FEI Phase Two IR 1.10.5.

Abandonment of gas pipelines is governed by CSA Z662 and FEI internal standards. This is an industry accepted process for end-of-life pipeline assets. After commissioning the new NPS 30 IP gas line, FEI intends to responsibly decommission the gas line according to the industry accepted approach for decommissioning end-of-life gas lines as described in the response to BCUC Phase 2 IR 2.7.2.

10. The evidence before the BCUC in the CPCN proceeding addressed the relative merits of abandonment and removal, and highlighted many of the points outlined in the quotation above. Specifically, the evidence was that:

- (a) abandonment in place is an industry standard approach;
- (b) abandonment in place has advantages in terms of cost to FEI's customers;
- (c) removal would cause a second major linear disturbance after installation of the new Nominal Pipe Size 30-inch intermediate pressure ("NPS 30 IP") gas line through the same communities, and compound the impacts from the NPS 30 IP gas line construction immediately prior; and
- (d) removal would involve significantly greater negative impacts in terms of health and safety, community and stakeholder and environmental considerations.

**B. THERE IS EVERY INDICATION THAT COST DISINCENTIVES ARE NECESSARY FOR THE CITY**

11. There is every indication that the BCUC's ordered cost sharing will provide necessary discipline for the City.

12. First, it bears noting that FEI had consulted with the City in the lead up to the CPCN application. The City had every opportunity to participate and make its position known to the BCUC. It had the ability to apply for reconsideration at that time as well, but did not do so. Instead, the City took matters in to its own hands: It made removal of the entire NPS 20 IP gas line at FEI's cost a condition of the City approving/stamping the Main Construction Order<sup>10</sup>

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<sup>10</sup> Main Construction Order alignment drawings are detailed drawings that provide the alignment and design of the proposed pipeline to be installed.

Alignment Drawings (the “Engineering Drawing Approvals”) that were necessary for FEI to construct the new NPS 30 IP gas line for which the BCUC had issued a CPCN.<sup>11</sup> The City’s position made it necessary for FEI to apply to the BCUC in the Original Proceeding for approval to use City lands for the construction of the new NPS 30 IP gas line.

13. Further, despite the City’s insistence on full and immediate removal, every indication is that the City may never need all of the space occupied by the NPS 20 IP gas line. The City has conceded that it had not “evaluated all of the potential scenarios that will occur in terms of future developments within the City, future requirements for utility repairs, or future requirements of utility upgrades, or the needs of other third party utilities.”<sup>12</sup> The City also stated:<sup>13</sup>

While it is reasonable to assume that some of these works can happen with sections of the NPS 20 pipe left in place, it is also reasonable to assume that at some point large sections of the NPS 20 pipe will be an obstacle to future projects undertaken by either the City or another third party utility company.

14. These quotes are characteristic of the City’s vague and imprecise evidence on this point. They are telling in four respects. First, the City has admitted that some of the potential future works that provide its justification for removal could occur without removing the NPS 20 IP gas line. Second, as for the rest, the best that the City has said is that they might become an obstacle “at some point”. Third, the City has never stated that the *whole* 5.5 kilometre gas line length will be an “obstacle”. Fourth, the City is citing third party utility projects, when it is common for utilities to address pre-existing utility infrastructure at their own cost (see Part Seven below).

15. In addition, the City continues to maintain in its submissions and evidence that removal of the entire 5.5 kilometres is necessary, despite the CPCN terms, the BCUC’s findings to

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<sup>11</sup> Coquitlam’s approach of linking the two issues was reflected, for instance, in its comments on the 90% Engineering Drawings. See email correspondence, Original Proceeding, Exhibit B-12, FEI Phase Two Evidence, Appendix F.

<sup>12</sup> Original Proceeding, Exhibit C1-12, FEI-City Phase Two IR 1.2.6.

<sup>13</sup> Original Proceeding, Exhibit C1-12, FEI-City Phase Two IR 1.2.6.

date, and the fact that the only remaining issue in this phase of the reconsideration proceeding is how the costs of removal should be allocated after a reasonable request from the City.

16. In these circumstances, there is a compelling rationale for the City to have the proverbial “skin in the game” when it comes to deciding if and when to ask FEI to remove portions of the NPS 20 IP gas line.

**PART THREE: THE BCUC-DIRECTED COST ALLOCATION METHODOLOGY IS REASONABLE**

17. In the Original Proceeding, FEI set out its view of relevant considerations for cost allocation. As discussed below, those same considerations demonstrate the reasonableness of the cost allocation ordered by the BCUC, such that paragraph 2 of Order G-80-19 should be upheld. The City's arguments to the contrary are unpersuasive.

**A. THE BCUC ALLOCATION IS FAIR, BALANCED AND PROVIDES APPROPRIATE INCENTIVES**

18. The following considerations demonstrate the reasonableness of the BCUC-approved cost allocation:

- (a) FEI has every right, and the necessary approvals, to abandon the NPS 20 IP gas line in place and leave it there. The proximate cause of the removal cost is the City's projects, not FEI's.<sup>14</sup> This would suggest that, if anything, the logical starting point for cost allocation in the absence of an agreement would be that the City should pay for any removal that it requires for its own purposes.
- (b) Having the City pay half of the cost of removal also reduces the cost to all natural gas customers for work undertaken for the City and at the City's request.<sup>15</sup>
- (c) The BCUC-ordered allocation is a more favourable result for the City than what is provided under the Operating Agreement's cost allocation provisions for relocation at the City's request. It would have been, and still would be, a fair and reasonable outcome for costs associated with removal and disposal to be allocated the same way that relocation is addressed under the parties' Operating Agreement. The triggering factor of a relocation and removal are the same — a City project. The City acknowledged this similarity in providing its jurisdictional review, which dealt with relocation or removal of operating infrastructure.<sup>16</sup>

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<sup>14</sup> Exhibit C1-12, City-FEI IR 1.1.1.

<sup>15</sup> Exhibit C1-12, City-FEI IR 1.1.1.

<sup>16</sup> Exhibit B-12, City Evidence, pages 3 and 4.

The BCUC's determinations in the BCUC Order G-80-19 decision with respect to the applicability of the Operating Agreement to the City's request for the removal of the NPS 20 IP gas line do not prevent the BCUC from considering the terms of the Operating Agreement in making its decision on cost allocation in this Reconsideration. Section 3.4.2 of FEI's Phase Two Evidence<sup>17</sup> in the Original Proceeding showed how the formula operates in the context of an old gas line like the NPS 20 IP gas line, for which the original book value is much smaller than the removal cost. It results in the City being responsible for the largest share of the removal cost.

- (d) Sharing removal costs balances FEI's objective of discouraging a municipality from making unnecessary requests for removal of FEI facilities from existing approved locations with the municipality's objective of facilitating development and growth within the municipality.
- (e) Cost sharing between FEI and the City will also incent both parties to work collaboratively to take advantage of opportunities to capture efficiencies in areas such as scheduling and execution of work, resulting in cost savings and benefits to both the City and FEI ratepayers.<sup>18</sup>

## **B. RESPONSE TO THE CITY'S SUBMISSIONS ON COST ALLOCATION**

19. The City has advanced a number of arguments to suggest that allocating any costs to the City is unjustified. FEI submits, for the reasons outlined below, that the City's arguments are unpersuasive and should be rejected.

20. The City argues that requiring it to pay for a portion of removal costs has no connection to ensuring that FEI, as a public utility, is able to use municipal public places to provide

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<sup>17</sup> Original Proceeding, Exhibit B-12.

<sup>18</sup> Exhibit C1-12, City-FEI IR 1.1.1.

a valuable public service, or the public interest.<sup>19</sup> The City is mischaracterizing the BCUC's decision. The BCUC found as follows:<sup>20</sup>

**The Panel finds the public interest is safeguarded by specifying a term pursuant to section 32 of the UCA that provides the costs of removal of all, or a portion of, the NPS 20 Pipeline, upon request by the City, in circumstances where it interferes with municipal infrastructure, shall be shared equally between FEI and the City.** Such a term ensures that FEI, as a public utility, is able to use municipal public places to provide a valuable service as well as the public interest in the convenience and necessity of receiving the delivery of a natural gas service. It also 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. [Emphasis in original.]

21. It is evident that the BCUC's underlying concern was a need to balance the public interest in the use of municipal public places, and the costs that are borne by utility customers for the use of those public places. FEI uses municipal public places for the NPS 20 IP gas line, and under the BCUC's order, a portion of the costs for removal of the gas line will be borne by utility customers, which is a public interest consideration. Requiring the City to pay for a portion of the removal of the NPS 20 IP gas line lessens the likelihood of the City making unnecessary or unreasonable requests for removal of the NPS 20 IP gas line. It is also worth noting that the NPS 20 IP gas line was installed to serve customers, including residents and businesses in the City.

22. The City maintains that there was no basis for the BCUC to conclude that there could be "unnecessary or unreasonable requests for removal".<sup>21</sup> The potential for this to occur is demonstrated by the City's own actions to date. As discussed previously:

- (a) The City refused to provide the Engineering Drawing Approvals for the installation of the new NPS 30 IP gas line unless FEI agreed to remove the NPS 20 IP gas line at its cost, which led to the proceeding;

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<sup>19</sup> City Submission, para. 19.

<sup>20</sup> BCUC Order G-80-19 Decision, page 18.

<sup>21</sup> City Submission, para. 20. See also, para. 21

- (b) Despite the City's insistence that the NPS 20 IP gas line be removed now, the BCUC found that the City's claimed need for the removal was "vague and imprecise";<sup>22</sup> and
- (c) Much of the City's December 2, 2020 submission in this reconsideration is devoted to arguing that the NPS 20 IP gas line should be removed in its entirety, despite the BCUC's determinations to date.<sup>23</sup>

23. The City also states that "Plainly any excavation to remove decommissioned NPS 20 pipes to accommodate municipal infrastructure would be in the same area as where the street is being excavated for the municipal infrastructure project."<sup>24</sup> This assertion contradicts the City's prior position. In the Original Proceeding, the City sought the removal of the entire 5.5 kilometre gas line at the time of decommissioning, in the absence of any municipal project that would require its removal.<sup>25</sup>

24. The City submits that the BCUC retains jurisdiction, which would deter the City from making unreasonable demands.<sup>26</sup> The City has already shown, through its conduct to date (described in Part Two above), that it is undeterred by the BCUC's oversight from making unreasonable demands of FEI and willing to hold-up a BCUC-approved public utility integrity project as leverage. Moreover, the City's argument appears to be premised on the idea that the BCUC would necessarily be involved in every removal. Although the BCUC always retains jurisdiction in the event of disputes, FEI does not interpret BCUC Order G-80-19 as requiring further approval from the BCUC if the parties are in agreement on the removal of the portion of the NPS 20 IP gas line.<sup>27</sup> The cost sharing approach, with its inherent incentives, could avoid the need for any BCUC involvement.

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<sup>22</sup> BCUC Order G-80-19, Decision, page 16.

<sup>23</sup> For example, at paragraph 29 of its submissions, the City states that "removing the NPS 20 pipes completely at the outset is expected to be lower cost than allowing FEI to excavate the road to cut the pipeline into segments, fill the segments with cement, repave the excavations, and remove the segments when required later through a fragmented, piecemeal approach with additional regulatory burden."

<sup>24</sup> City Submission, para. 20.

<sup>25</sup> For example, BCUC Order G-80-19, Decision, p. 12.

<sup>26</sup> City Submission, para. 20.

<sup>27</sup> Exhibit C1-9, FEI Evidence, Question 4.



25. The City's evidence is that it may need to replace water and sanitary mains in areas where there could be a conflict with the NPS 20 IP gas line.<sup>28</sup> FEI has confirmed that it would remove the NPS 20 IP gas line if requested by the City, provided the request from the City satisfies the conditions of paragraph 2 of Order G-80-19.<sup>29</sup> The issue in this phase of the reconsideration is the allocation of the costs of removal.

26. A further reason why it is reasonable for costs to be allocated to the City for a removal that is made at its request is that the City appears to be inclined to require removal of the NPS 20 IP gas line, not only for the purposes of municipal projects, but also to accommodate third party utility infrastructure.<sup>30</sup> This is notwithstanding the City's acknowledgement that the cost to avoid existing utilities is usually borne by the agency installing the new equipment.<sup>31</sup> This issue is described further in FEI's submissions in Part Seven below.

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<sup>28</sup> Exhibit B-12, City Evidence, Mark Zaborniak Evidence, dated August 25, 2020, pages 3 and 4 (PDF pages 147 and 148).

<sup>29</sup> Exhibit C1-10, BCUC-FEI IR 1.1.1.

<sup>30</sup> Exhibit B-15, FEI-City IR 1.5.1.

<sup>31</sup> Exhibit B-15, FEI-City IR 1.4.1.

#### **PART FOUR: THE CITY'S JURISDICTIONAL REVIEW IS NOT COMPELLING**

27. The City relies upon a limited jurisdictional review in support of its position that the City should not pay removal costs. The City states that, to its knowledge, “there is no precedent from another Canadian jurisdiction 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.”<sup>32</sup> The City instead draws an analogy to allocation of costs in the context of relocation of facilities that are in service. It cites what it says are examples from other jurisdictions where the utility pays all or the majority of relocation costs. There are three reasons, outlined below, as to why the City’s jurisdictional review is not compelling.

##### **A. MOST FEI OPERATING AGREEMENTS REQUIRE THE MUNICIPALITY TO PAY FOR MUNICIPALITY-INITIATED CHANGES TO ABANDONED INFRASTRUCTURE**

28. The City is incorrect in inferring from its jurisdictional survey that there are no examples where removal costs for abandoned infrastructure are borne by municipalities. The City does not appear to have considered FEI’s BCUC-approved operating agreements. Most of FEI’s BCUC-approved operating agreements address the allocation of costs associated with any changes to FEI’s infrastructure – including both in-service and abandoned infrastructure – that are initiated by a municipality.<sup>33</sup> The BCUC’s order that FEI and the City share removal costs equally provides a more generous treatment for the City than the cost allocation for relocation that is generally found in FEI’s modern municipal operating agreements.

29. In 2005, as a result of the impending expiry of a number of municipal operating agreements, FEI (then Terasen Gas Inc.) undertook negotiations with the Union of British

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<sup>32</sup> City Submissions para. 36.

<sup>33</sup> At paragraph 54 of its submission, the City also mischaracterizes FEI’s response to an information request. The City cites FEI’s response to Exhibit C1-12, FEI-City IR 1.2.1 for the proposition that with one exception, none of FEI’s operating agreements contain provisions governing removal or abandonment of permanently decommissioned FEI pipes. FEI’s response to that information request dealt with the specific language contained in the City of Surrey operating agreement and noted that FEI is a party to many operating agreements that address cost allocation for alterations, changes or relocations to FEI’s facilities at the municipality’s request, which apply to the removal of decommissioned assets.

Columbia Municipalities Operating Agreement Committee and successfully negotiated terms to a new form of operating agreement (the “UBCM Terms”).<sup>34</sup> Those terms provide as follows:

The Municipality may provide Notice to Terasen Gas that it requires Company Facilities to be altered, changed or relocated to accommodate its requirements. Terasen Gas will comply with the Municipality’s requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. The Municipality agrees to pay for all of the costs for changes to the affected Company Facilities. [Emphasis added.]

30. “Company Facilities” includes decommissioned assets. Decommissioned assets such as abandoned gas lines are pipes and are part of FEI’s natural gas distribution and transmission assets.<sup>35</sup> This provision covers alterations, changes and relocations of Company Facilities, which would include the removal of Company Facilities.

31. On January 12, 2006, FEI applied for approval of ten operating agreements between FEI and municipalities based on the UBCM Terms, which were subsequently approved by BCUC Orders C-7-06 through to C-16-06, dated August 10, 2006.<sup>36</sup> The term regarding cost allocation in each of these agreements was the same as that quoted above from the UBCM Terms.

32. Subsequently, FEI applied for approval of a new operating agreement with the Village of Keremeos (“Keremeos”).<sup>37</sup> The terms to the Keremeos operating agreement (the “Keremeos Terms”) were largely consistent with the UBCM Terms.

33. In the Keremeos application, FEI also requested approval to use the Keremeos Terms as the operating agreement terms that would become the basis for comparison for future operating agreement applications. On July 10, 2014, BCUC Order C-7-14 approved the Operating Agreement between FEI and Keremeos, and on July 24, 2014, BCUC Order C-8-14 approved the Keremeos Terms as the basis for comparison for future operating agreement applications.

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<sup>34</sup> Exhibit C1-9, FEI Evidence, Question 9.

<sup>35</sup> Exhibit C1-10, BCUC-FEI IR 1.3.2.

<sup>36</sup> Exhibit C1-9, FEI Evidence, Question 10.

<sup>37</sup> Exhibit C1-9, FEI Evidence, Question 10.

34. Since that time, the BCUC has approved over 40 operating agreements that follow, albeit sometimes with minor variations, the Keremeos Terms. Section 8.2 of the Keremeos Terms provides as follows:<sup>38</sup>

The Municipality may provide Notice to FortisBC that it requires Company Facilities to be altered, changed or relocated to accommodate its requirements. FortisBC will comply with the Municipality's requests to the extent it is reasonably able to do so and with reasonable speed and dispatch after receipt of written request. The Municipality agrees to pay for all of the costs for changes to the affected Company Facilities. This section 8.2 is an agreement between the Municipality and FortisBC for the purpose of section 76(1)(c) of the *Oil and Gas Activities Act*. [Emphasis added.]

35. In these agreements "Company Facilities" continues to include decommissioned assets. As noted above, decommissioned assets such as abandoned gas lines are pipes and are part of FEI's natural gas distribution and transmission assets.<sup>39</sup> Some of the operating agreements such as the Campbell River operating agreement specifically reference "Company Facilities" as including "FortisBC's facilities, including pipes (live and abandoned)..." [Emphasis added].<sup>40</sup> This is definition highlights that abandoned pipes are "Company Facilities" under these operating agreements.

36. With the exception of the City of Surrey's new operating agreement, all of FEI's over 60 municipal operating agreements approved since 2006 include a similar cost allocation to that found in Section 8.2 of the Keremeos Terms.<sup>41</sup> These other FEI operating agreements reinforce that the City obtained a favourable cost allocation in paragraph 2 of BCUC Order G-80-19.

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<sup>38</sup> Exhibit C1-9, FEI Evidence, Question 11.

<sup>39</sup> Exhibit C1-10, BCUC-FEI IR 1.3.2.

<sup>40</sup> Exhibit C1-9, FEI Evidence, Appendix F, PDF page 355.

<sup>41</sup> Exhibit C1-9, FEI Evidence, Question 12. The City of Surrey Operating Agreement contains a similar cost allocation to the Burnaby Terms of Reference, described below, which require the municipality to bear a portion of the costs for removal of abandoned lines.

**B. THE PARTIES' OWN OPERATING AGREEMENT WOULD BE A BETTER REFERENCE POINT THAN OTHER JURISDICTIONS**

37. In this reconsideration, the City has referenced cost allocation arrangements for the relocation of operating infrastructure in other jurisdictions as evidence of how allocation should occur in the context of removing an abandoned line. The City's reliance on a jurisdictional review comprised of examples of relocation of in-service infrastructure is inconsistent with its original position that relocations were different from removal of abandoned infrastructure, and therefore the Operating Agreement was not relevant to the removal of the NPS 20 IP gas line.<sup>42</sup>

38. To the extent that the analogy to in-service infrastructure is relevant, the parties' own agreement about how to allocate costs for relocations would be a more logical point of reference. The BCUC's determinations in the BCUC Order G-80-19 decision with respect to the applicability of the Operating Agreement<sup>43</sup> do not prevent it from considering the terms of the Operating Agreement in making its decision on cost allocation in the reconsideration. If the Operating Agreement framework is used, the City would be responsible for the largest share of the removal cost.

39. The City's position is that the BCUC should take its cue from regulators such as the Canadian Radio-television and Telecommunications Commission.<sup>44</sup> It would make more sense to look to provisions from operating agreements between public utilities and municipalities that have been approved by the BCUC, including the one between these two parties, than it would to look to other jurisdictions and industries.

**C. THE CITY'S EXAMPLES FROM OTHER JURISDICTIONS DIFFER FROM HOW THE CITY HAS PORTRAYED THEM**

40. The City was also selective in the portions of the jurisdictional review it highlighted in its evidence. As made clear through the information request process, there are a number of

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<sup>42</sup> Original Proceeding, City's Final Argument, paras. 41 and 42.

<sup>43</sup> In Order G-80-19 at page 17 the BCUC found that section 4 of the Operating Agreement was not applicable to the City's request that FEI permanently remove all of the abandoned NPS 20 IP gas line within the City.

<sup>44</sup> Exhibit B-13, BCUC-City IR 1.3.1.

instances among the surveyed jurisdictions where the municipality is responsible for *all* of the costs of relocation:

- (a) The Alberta Utilities Commission (“AUC”) Franchise Agreement Template for Electric, Section 15 provides that if “a rider or other method is not approved by the Commission, the Municipality shall be responsible for such costs”.<sup>45</sup>
- (b) The AUC Standard Gas Franchise Agreement Template states that “Providing the Municipality is not the developer requesting the relocation for commercial or residential resale to third parties, the [utility] will bear the expenses of the required relocation”,<sup>46</sup> meaning that where the municipality is the developer requesting the relocation for commercial or residential resale to third parties, it will be responsible for the costs.
- (c) While the City had highlighted a BC Hydro overhead infrastructure allocation (which provides that the municipality pays 50%), the rule is different for underground infrastructure. In that case, the municipality shall pay 100% of dismantling work (less asset renewal or equipment salvage credit).<sup>47</sup> When confronted with the methodology for underground infrastructure, the City conceded that operating overhead electrical infrastructure was not a more appropriate comparator than operating underground electrical infrastructure.<sup>48</sup>

41. The City’s submissions with respect to its jurisdictional review also contain two fundamental errors:<sup>49</sup>

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<sup>45</sup> Exhibit B-12, City Evidence, Appendix 1, AUC Franchise Agreement Template for Electric, PDF page 40; Exhibit B-13 BCUC-City IR 1.4.1.

<sup>46</sup> Exhibit B-12, City Evidence, Appendix 2, AUC Standard Gas Franchise Agreement Template, PDF page 90; Exhibit B-13, BCUC-City IR 1.4.2.

<sup>47</sup> Exhibit B-12, p. 7; Appendix 4, BC Hydro - Municipal Request for Distribution Work, PDF page 106; Exhibit B-13, BCUC-City IR 1.5.1 and 1.5.2.

<sup>48</sup> Exhibit B-13, BCUC-City IR 1.5.2. The City also equivocated when asked about provisions of the Ontario Energy Board Model Franchise Agreement stating that the agreement was a “model agreement” that is not required to be used by the regulator without variation (Exhibit B-13, BCUC-City IR 1.7.1.1).

<sup>49</sup> City Submission, para. 39.

- (a) The City indicates that public interest considerations do not apply to abandoned infrastructure; and
- (b) The City implies that FEI is motivated by “its private interest in its own bottom line.”

42. The City’s first comment overlooks the consideration given by the BCUC, as described in Part Two above, to the public interest in ordering abandonment as part of the CPCN.

43. The City’s second comment mis-applies utility rate-setting principles. Additional costs that are incurred by FEI to remove the NPS 20 IP gas line are costs of providing utility service. They are ultimately recovered from FEI customers through rates, not from FEI’s shareholder. The allocation of costs to the City does not increase FEI’s shareholder’s return, and FEI does not earn any additional return on assets that have been abandoned.<sup>50</sup>

44. FEI submits that the BCUC should give no weight to the jurisdictional review provided by the City.

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<sup>50</sup> FEI only earns a return on the equity portion of the book value of capital assets (rate base). Abandoned assets are fully depreciated (i.e., they have a book value of zero).

**PART FIVE: BURNABY TERMS OF REFERENCE RESULTED FROM A TIMELY AND COLLABORATIVE APPROACH**

45. The BCUC can legitimately consider the Burnaby Terms of Reference in determining an appropriate cost allocation. However, it should be recognized that FEI obtained the benefit of timely and effective cooperation from Burnaby, among other things, in exchange for its agreement, including its agreement on cost allocation.

46. The Burnaby Terms of Reference is a project-specific agreement that addresses construction related matters specific to the LMIPSU Project. It supplements the existing operating agreement between FEI and Burnaby.<sup>51</sup> The Burnaby Terms of Reference reflected FEI's objective of reaching a negotiated agreement with Burnaby on mutually acceptable terms that would allow FEI to proceed with the LMIPSU Project work on schedule and in accordance with BCUC Order C-11-15.<sup>52</sup>

47. The Burnaby Terms of Reference resulted from discussions that took place over a number of years. They were negotiated as a comprehensive package to address LMIPSU Project-specific matters, including the issuance of approval of engineering drawings, approval of traffic management plans, and permit processing times. The Burnaby Terms of Reference also provided certainty for both parties with respect to the abandoned NPS 20 IP gas line and conditions under which Burnaby could require a portion of the gas line to be removed, and the allocation of costs for such removal.<sup>53</sup> One of the benefits of the Burnaby Terms of Reference was that they avoided the cost to FEI (and consequently its ratepayers) of disputes such as this one.

48. The City is critical of FEI for not filing the Burnaby Terms of Reference in the Original Proceeding.<sup>54</sup> FEI has explained that it did not file the Burnaby Terms of Reference because FEI's position in the Original Proceeding was that the Operating Agreement between FEI and the City applied to the removal of the NPS 20 IP gas line (while the City took the position that the Operating Agreement relocation provisions were inapplicable to removal of an abandoned

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<sup>51</sup> Exhibit C1-10, BCUC-FEI IR 1.2.1.

<sup>52</sup> Exhibit C1-10, BCUC-FEI IR 1.2.2.

<sup>53</sup> Exhibit C1-10, BCUC-FEI IR 1.2.2.

<sup>54</sup> City Submission, para. 50.



gas line).<sup>55</sup> Moreover, the City was aware of the terms with respect to the removal of the NPS 20 IP gas line contained in the Burnaby Terms of Reference. FEI offered the City the same terms on a number of occasions prior to FEI filing the application in the Original Proceeding.<sup>56</sup> For example FEI has provided:

- (a) A November 19, 2017 email to the City's General Manager Engineering & Public Works enclosing proposed terms of reference, including the same removal terms found in the Burnaby Terms of Reference;<sup>57</sup> and
- (b) A November 28, 2017 email to the City's Manager, Design and Construction enclosing proposed terms of reference, including the same removal terms found in the Burnaby Terms of Reference.<sup>58</sup>

49. The City did not accept these terms for the removal of the NPS 20 IP gas line.<sup>59</sup>

50. Instead, the City demanded that FEI bear all removal costs<sup>60</sup> (including excavation and backfilling) as a condition of Engineering Drawing Approvals for the new NPS 30 IP gas line, which then required FEI to seek an order from the BCUC to use City lands for the installation of the NPS 30 IP gas line.

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<sup>55</sup> Exhibit C1-12, City-FEI IR 1.2.4.

<sup>56</sup> Exhibit C1-12, City-FEI IR 1.2.4.

<sup>57</sup> Exhibit C1-12, City-FEI IR 1.2.4.

<sup>58</sup> Exhibit C1-12, City-FEI IR 1.2.4.

<sup>59</sup> Exhibit C1-12, City-FEI IR 1.2.4.

<sup>60</sup> In Exhibit C1-10, BCUC IR 1.2.3 FEI included a table that provides a comparison of the cost allocation specified in the Burnaby Terms of Reference as well as the cost allocation specified in paragraph 2 of Order G-80-19 where FEI removes the 5.5 kilometres of NPS 20 IP gas line. In addition, the table shows the allocation of costs FEI understands to have been sought by the City of Coquitlam in the Original Proceeding.

**PART SIX: THE CITY'S REGULATORY BURDEN ARGUMENTS ARE BASELESS**

51. The City has suggested that its reconsideration application should be granted because the BCUC's cost sharing order introduces the need for onerous BCUC process, including in the context of emergencies. These arguments are baseless for the reasons set out below.

**A. FURTHER BCUC PROCESS IS NOT REQUIRED TO IMPLEMENT REMOVAL OF NPS 20 IP GAS LINE**

52. In this reconsideration process, the City has suggested the cost allocation order creates a requirement for the BCUC to review and approve each request for removal of the NPS 20 IP gas line. There are four answers to this suggestion.

53. First, FEI has confirmed that it would remove the NPS 20 IP gas line if requested by the City, provided the request from the City satisfies the conditions of paragraph 2 of Order G-80-19.<sup>61</sup>

54. Second, paragraph 2 of Order G-80-19 addresses cost allocation only. Paragraph 2 does not require a further BCUC approval to remove a portion of the abandoned NPS 20 IP gas line at the City's request. Although the BCUC always retains jurisdiction in the event of disputes, the order does not require further approval from the BCUC if the parties are in agreement on the removal of the portion of the NPS 20 IP gas line. Though FEI does not believe such a clarification is required, FEI would not oppose a clarification to paragraph 2 of Order G-80-19 to that effect.

55. Third, FEI noted in its evidence that its preference is to work collaboratively with other parties, to resolve matters through fair and reasonable negotiation (in this case with the City). This approach is reflected in FEI's negotiated outcome with the City of Burnaby, and FEI's willingness to offer the same terms to the City of Coquitlam before having to ask the BCUC to intervene. FEI recognizes the additional burden of regulatory process that results when a dispute with a municipality is brought before the BCUC for resolution and does not view such applications as an alternative to appropriate incentives to reach agreement. Rather, FEI views the need to

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<sup>61</sup> Exhibit C1-10, BCUC-FEI IR 1.1.1.

have the BCUC adjudicate a dispute between FEI and a municipality as a last resort when no further reasonable and appropriate alternatives are available to reach an agreement. In those cases, the BCUC has jurisdiction to resolve those disputed matters.<sup>62</sup>

56. Fourth, the cost allocation in paragraph 2 of Order G-80-19 ensures that the City is going to be disciplined about making these requests.<sup>63</sup> It will also incent both parties to work collaboratively to take advantage of opportunities to capture efficiencies in areas such as scheduling and execution of work, resulting in cost savings and benefits to both the City and FEI ratepayers.

#### **B. EMERGENCY SITUATIONS CAN BE DEALT WITH UNDER EXISTING BCUC ORDER**

57. Though the City did not refer to the issue in its submission, its evidence raised a related concern with respect to BCUC approval representing an obstacle in the case of emergency work.<sup>64</sup> This argument is without merit.

58. As stated above, paragraph 2 of Order G-80-19 does not require a further BCUC approval to remove a portion of the abandoned NPS 20 IP gas line at the City's request. As a result, there would be no need to seek approval in the context of an emergency.

59. Moreover, FEI described in its evidence that it strives for excellence in safety performance, and does not compromise employee and public safety. FEI would not impede the City's work in an emergency situation in the vicinity of the abandoned NPS 20 IP gas line, and would assist as appropriate with emergency work. To the extent that cost sharing for such work was an issue, it could be addressed after the fact.<sup>65</sup> Again, though FEI does not believe such a clarification is required, FEI would not oppose a clarification to paragraph 2 of Order G-80-19 to that effect.

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<sup>62</sup> Exhibit C1-12, City-FEI IR 1.1.2. See also, Exhibit C1-10, BCUC-FEI IR 1.2.2 and 1.2.4.1.

<sup>63</sup> Exhibit C1-12, City-FEI IR 1.1.1.

<sup>64</sup> Exhibit B-12, City Evidence, Mark Zaborniak Evidence, dated August 25, 2020, pages 8 (PDF pages 152).

<sup>65</sup> Exhibit C1-9, FEI Evidence, Question 5.

**PART SEVEN: THIRD PARTY REMOVAL REQUESTS CAN BE ADDRESSED UNDER EXISTING ARRANGEMENTS**

60. The requirement for removal of the NPS 20 IP gas line at the City's request to accommodate third party utilities represents an issue not addressed with any detail by the City in its submissions, but that it had raised in its evidence. The potential need to accommodate third party utilities does not provide a basis to vary the cost allocation order from the Original Proceeding.

61. First, removal of the NPS 20 IP gas line at the request of a third party is not directly relevant to the reconsideration proceeding, and the issue has not been raised as a concern by a third party in the course of the reconsideration.<sup>66</sup> Accordingly, FEI submits that it does not need to be addressed by the BCUC in this proceeding.

62. Second, the issue of removal to accommodate a third party does not require special treatment for the NPS 20 IP gas line, and can be addressed between FEI and any third parties if it arises. In FEI's experience, where a third party needs FEI to relocate/remove FEI infrastructure to accommodate a third party project (including requirements imposed by a municipality), the third party usually approaches FEI directly to request the relocation/removal of FEI's infrastructure. The third party is typically responsible for the relocation/removal costs.<sup>67</sup> For example:<sup>68</sup>

- (a) If a developer requires a municipal road to be aligned, requiring the gas main to be replaced, the developer pays FEI the full cost.
- (b) If another utility (e.g., TELUS, Shaw, BC Hydro) performs work requiring relocation of FEI infrastructure, FEI charges the other utility for the full cost of the relocation work.

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<sup>66</sup> Exhibit C1-10, BCUC-FEI IR 1.5.1.

<sup>67</sup> Exhibit C1-10, BCUC-FEI IR 1.5.2.

<sup>68</sup> Exhibit C1-9, FEI Evidence, Question 15.

63. Third, the arrangement that FEI has described above is reciprocal among utilities, thus underscoring its fairness. The presence of existing utilities is a consideration and challenge for most utility operators, including FEI. Before FEI designs new infrastructure, it first identifies what is already in the ground and considers if it is more efficient to plan around existing infrastructure. It is common for FEI to plan around existing infrastructure.<sup>69</sup> If it is not more efficient to plan around existing infrastructure, FEI works with third party utilities to minimize potential disruptions and provides reimbursement for costs that may be incurred by the third party utility as a result of FEI's work.<sup>70</sup> In the course of construction of the LMIPSU Project itself, FEI and its contractors encountered dozens of abandoned utilities. FEI was responsible for all costs of identifying and removing abandoned utilities that conflicted with construction of the new gas mains.<sup>71</sup>

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<sup>69</sup> Exhibit C1-9, FEI Evidence, Question 13.

<sup>70</sup> Exhibit C1-9, FEI Evidence, Question 13.

<sup>71</sup> Exhibit C1-9, FEI Evidence, Question 14.

**PART EIGHT: COST ALLOCATION WAS AT ISSUE AND ADDRESSED BY THE PARTIES IN THE ORIGINAL PROCEEDING**

64. Another issue not addressed in any detail by the City in its submissions, but which was referenced in its reconsideration application, is the City's claim that "the BCUC erred by ordering the cost allocation methodology in the absence of evidence and submissions from the parties on the matter."<sup>72</sup> The BCUC has given the City ample opportunity in this reconsideration application to file evidence and make submissions, making this argument moot. However, FEI believes it worth repeating that the City's procedural fairness argument was without merit.

65. As FEI described in its submissions on further process,<sup>73</sup> the City's characterization of the Original Proceeding is inaccurate. The parties had ample notice of the central issue of cost allocation and directly addressed it in evidence and submissions:

- (a) one of the primary issues in the Original Proceeding was the cost allocation for the removal of the NPS 20 IP gas line;
- (b) the parties filed evidence with respect to the cost allocation for the removal of the NPS 20 IP gas line; and
- (c) the parties made submissions with respect to the cost allocation methodology for the removal of the NPS 20 IP gas line.

**A. COST ALLOCATION WAS DIRECTLY IN ISSUE IN THE ORIGINAL PROCEEDING**

66. Cost allocation was a "live issue" in the Original Proceeding. In fact, one of the two primary issues before the BCUC was the responsibility as between FEI and the City for the costs of removal of the NPS 20 IP gas line (the other primary issue was paving work).

67. The parties took differing positions in the Original Proceeding on how removal costs should be allocated. As described in FEI's application in the Original Proceeding (the document that initiated the Original Proceeding), the City refused to formally issue Engineering

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<sup>72</sup> Exhibit B-1, City Reconsideration Application, page 5.

<sup>73</sup> Exhibit C1-7.

Drawing Approvals unless, among other things, FEI agreed to remove the NPS 20 IP gas line at its own cost.<sup>74</sup> In the Original Proceeding, FEI's position was that the Operating Agreement allowed the City to request the removal, but also expressly required the City to pay the majority of the removal cost.<sup>75</sup> FEI's position was that the Operating Agreement gives the City the right to request that FEI remove abandoned gas line, but also contains an allocation methodology that makes the City responsible for the vast majority of those removal costs.<sup>76</sup> "Cost allocation" was specifically mentioned in FEI's application at pages 8 and 16 as the genesis of the application with respect to removal:

FEI had previously requested that the City formally issue the Engineering Drawing Approvals on the agreed technical terms, with agreement to refer the issue regarding cost allocation for the removal of the NPS 20 IP line to the Commission at a future date (the City's request for the Extra Paving post-dated this discussion, as it only arose very recently). The City has declined that proposal. Accordingly, FEI is filing this Application to limit cost and schedule impacts to the Project. ...

...

The City's first significant condition is with respect to the allocation of the cost of removing a portion of the existing NPS 20 IP gas line that FEI has regulatory approval (both BCUC and OGC) to abandon in place. [Emphasis added.]

68. FEI's second filing in the Original Proceeding, its reply submissions on process, also made clear that cost allocation was at issue, noting for example:

- "Moreover, only cost allocation is at issue, and the dispute over allocation has no impact on construction schedule or Project work" [Emphasis added];<sup>77</sup>
- "The City never reconciles its view that the cost allocation for a 380 metre section of the NPS 20 IP line must be resolved immediately with its concession that the cost allocation for the remainder of the same pipe could wait until a future process" [Emphasis added];<sup>78</sup> and

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<sup>74</sup> Original Proceeding, Exhibit B-1, FEI Application, page 3.

<sup>75</sup> Original Proceeding, Exhibit B-1, FEI Application, pages 3, 8 and 9.

<sup>76</sup> Original Proceeding, Exhibit B-1, FEI Application, pages 16-17.

<sup>77</sup> Original Proceeding, Exhibit B-2, page 3.

<sup>78</sup> Original Proceeding, Exhibit B-2, page 3.

- “The fundamental issue of disagreement between the parties is purely financial - how much the City is obligated to contribute towards the movement of a gas line.”<sup>79</sup>

69. In Order G-80-19 in the Original Proceeding, the BCUC referenced the City’s position on who should pay for the cost of removal and properly encapsulated the issue as “the appropriate allocation between FEI and the City of the costs in connection with the removal, in whole or in part, of the NPS 20 Pipeline”:<sup>80</sup>

This unresolved dispute between FEI and the City relates to a disagreement as to whether the entire 5.5 kilometres of the decommissioned NPS 20 Pipeline must, at the City’s request, be removed by FEI at the sole expense of FEI and its ratepayers or whether it may be abandoned in place and portions removed by FEI upon request by the City.

The City takes the position that the entire NPS 20 Pipeline must be removed at the City’s request and at FEI’s sole expense. FEI takes the position that it is entitled to abandon the NPS 20 Pipeline in place on the City’s property, but acknowledges that the NPS 20 Pipeline will remain its property and responsibility after it is decommissioned and that FEI will remove it at the City’s request if it interferes with municipal infrastructure under the cost allocation methodology outlined in section 5(a) of the Operating Agreement.

The overarching issue, in either case, is the appropriate allocation between FEI and the City of the costs in connection with the removal, in whole or in part, of the NPS 20 Pipeline. [Emphasis added.]

70. The Original Application was brought pursuant to sections 32 and 33 of the *Utilities Commission Act* (the “UCA”), which allow the BCUC to specify terms, such as the allocation of costs. Section 32 of the *UCA* provides in part:

... (2) On application and after any inquiry it considers advisable, the commission may, by order, allow the use of the street or other place by the public utility for that purpose and specify the manner and terms of use. [Emphasis added.]

71. Section 33 of the *UCA* provides in part:

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<sup>79</sup> Original Proceeding, Exhibit B-2, page 4.

<sup>80</sup> BCUC Order G-80-19, Decision, page 7.



... (2) On application and after a hearing...the commission may, by order,

- (a) allow the use of the street or other place by the public utility, despite any law or contract granting to another person exclusive rights, and
- (b) specify the manner and terms of the use. [Emphasis added.]

72. Sections 32 and 33 of the *UCA* were referenced in the title of the application in the Original Proceeding. These references also provided clear notice as to what was at issue. It was open to the City to provide submissions and file evidence on the terms of any cost allocation beyond the applicability of the Operating Agreement. Instead of providing submissions on what the “terms of use” should be under sections 32 and 33 of the *UCA*, the City took the position that the BCUC did not have jurisdiction under sections 32 and 33.<sup>81</sup>

73. The fact that the City’s position in the Original Proceeding was that it should bear no costs does not mean that cost allocation was not an issue in the Original Proceeding. Rather, it means that allocation was very much at issue, and the City took the position that the allocation should be 100% to FEI and 0% to the City. The application filed by FEI in the Original Proceeding was premised on the City sharing in (i.e., being allocated a portion of) any removal cost.

74. Accepting the City’s argument that cost allocation was not at issue in the Original Proceeding would require accepting the untenable position that neither (a) FEI bearing 100% of the cost, nor (b) FEI and the City sharing the cost, could be characterized as an allocation of cost.

**B. EVIDENCE WAS SOUGHT AND PROVIDED ON COST ALLOCATION IN THE ORIGINAL PROCEEDING**

75. There was also ample evidence sought and provided with respect to cost allocation in the Original Proceeding. This includes evidence that was provided by the City itself.

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<sup>81</sup> See for example, paras. 43 to 54 of the City’s Final Argument in the Original Proceeding.

76. In fact, the City referenced its proposed cost allocation in an information request response and urged an “equitable” form of cost sharing. The City’s information request response provided in part:<sup>82</sup>

...The City has also pointed out to FEI that the trench restoration cost should not be 100% borne by the City since FEI would have 100% of this cost if it were to remove the NPS 20 pipe when it is decommissioned. The City has proposed cost sharing this work, as shown on a diagram labeled “COQ-G5” on the attached Attachment 3, and which was discussed with FEI staff. However, FEI has refused Coquitlam’s proposals and suggestions for compromise.

In the absence of an equitable agreement with FEI on construction methodology and cost sharing for such work, Coquitlam would prefer that FEI simply remove the NPS 20 pipe immediately once the NPS 30 pipeline is in service. [Emphasis added.]

77. The proposal shown in the referenced diagram provided for a 50%/50% cost sharing to a certain depth, with FEI bearing 100% of the costs further below that depth. This demonstrates that even before the Original Proceeding was initiated, the City was aware of (and apparently accepting of) a more balanced allocation of costs between the parties.

78. The City’s response to a Commercial Energy Consumers Association of British Columbia (“CEC”) information request also made clear that cost allocation was at issue, again referencing the City’s proposal:<sup>83</sup>

It is the City’s position that FEI is responsible to pay the costs of removing the full 5.5km length of the NPS 20 pipeline. The City has proposed a compromise where FEI and the City would share the costs related to the removal of the NPS 20 pipe but FEI declined the City’s proposal. Therefore, the City would prefer that FEI simply remove all of the NPS 20 pipe so that it will not expose the City to any increased costs or liabilities. [Emphasis added.]

79. In an information request to the City, the BCUC asked that the City “specifically address the legislative basis for allocation of costs for the removal of the pipeline” [emphasis added]. The City responded in part as follows:<sup>84</sup>

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<sup>82</sup> Original Proceeding, Exhibit C1-10, BCUC-City Phase Two IR 2.10.6.

<sup>83</sup> Original Proceeding, Exhibit C1-11, CEC-City Phase Two IR 1.2.1.

<sup>84</sup> Original Proceeding, Exhibit C1-10, BCUC-City Phase Two IR 2.11.5.1.

The City has legislative and common law authority to require FEI to remove the decommissioned NPS 20 pipe from the City's lands. ...

There is no legislative or other basis requiring the City to contribute to FEI's costs of removing the NPS 20 pipe. As noted above, the 1957 Operating Agreement sets out a contractual cost-sharing mechanism only for changes in location, not removal. Absent a valid legislative authorization or contractual agreement, the City says the decommissioned NPS 20 line will be trespassing on Como Lake Avenue and therefore the entire cost of removing it must be borne by the trespassing pipe's owner—FEI. These ownership rights (to remove trespassing items and recover the removal costs) are codified in section 46(1) of the *Community Charter*. The only basis on which the costs for removal of the decommissioned NPS 20 pipes will be shared by FEI and the City is if those parties voluntarily enter into a cost-sharing agreement. No such agreement has been reached. [Emphasis added.]

80. In other words, the City's evidence was that an allocation of 100% to FEI was the appropriate allocation unless the City agreed otherwise.

81. FEI's also submitted evidence with respect to cost allocation in the Original Proceeding. For example, "NPS 20 IP Removal: Cost Allocation" part of the title of the section of FEI's Phase Two supplemental evidence filing that dealt with removal of the NPS 20 IP gas line.<sup>85</sup>

### **C. THE PARTIES PROVIDED SUBMISSIONS ON COST ALLOCATION IN THE ORIGINAL PROCEEDING**

82. In addition to filing evidence on cost allocation in the Original Proceeding, the parties also made submissions on that issue.

83. The City outlined its position on contributing to removal costs in paragraph 42 of its Final Argument:

There is no legislative or other basis requiring the City to contribute to FEI's costs of removing the decommissioned NPS 20 pipes. As noted above, the 1957 Operating Agreement sets out a contractual cost-sharing mechanism only for changes in location (from place A to place B), not permanent removal of permanently decommissioned equipment. Absent a valid legislative authorization or contractual agreement, the City submits that the decommissioned NPS 20 pipes will be trespassing on Como Lake Avenue and therefore the entire cost of

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<sup>85</sup> Original Proceeding, Exhibit B-12, FEI Supplemental Evidence for Phase 2, pages 20-35.

removing them must be borne by the trespassing pipe's owner—FEI. These ownership rights (to remove trespassing items and recover the removal costs) are codified in section 46(1) of the *Community Charter*. The only basis on which the costs for removal of the decommissioned NPS 20 pipes will be shared by FEI and the City is if those parties voluntarily enter into a cost-sharing agreement. No such agreement has been reached. [Emphasis added.]

84. The City's phraseology "contribute to FEI's costs" and "costs...will be shared" are synonyms for cost allocation.

85. The City also addressed cost allocation in its Final Argument at paragraphs 57 and 58:

... The City has also pointed out to FEI that the trench restoration cost should not be 100% borne by the City since FEI would have 100% of this cost if it were to remove the NPS 20 pipe when it is decommissioned. The City has proposed to FEI staff that the parties share the costs of this work, as shown on a diagram labeled "COQ-G5" on Attachment 3 to the City's response to BCUC IR No. 2; however, FEI has refused the City's proposals and suggestions for compromise.

The City might agree to some cost sharing with FEI in the context of FEI agreeing to an efficient construction methodology that mitigates risks and uncertainties related to FEI causing delays to the City's contractors and minimises disruption to the community. In the absence of such equitable agreement with FEI on construction methodology and cost sharing for such work, the City would prefer that FEI simply remove the 5.5km NPS 20 Pipeline once it has been taken out of service. ... [Emphasis added.]

86. The above excerpts from the City's submissions, along with the information requests cited previously, contradict the City's claim that there had been no notice regarding cost allocation. The City took an absolute position in which it would bear none (i.e., 0%) of the costs for the work that it demanded be undertaken by FEI, and that FEI should bear all (i.e., 100%) of the cost (despite referring to its previous, more balanced cost allocation proposals). It is evident that cost allocation was a key consideration, but that the City's position was that the allocation of costs to it should be zero. An allocation of 0% to the City and 100% to FEI is still an allocation.

87. The BCUC has held "The Commission's discretion to reconsider and vary a decision or order is applied with a view to ensuring there is consistency and predictability in the

Commission's decision-making process. A reconsideration is not a vehicle for applicants or intervenors to reargue their submissions from a hearing simply because they do not agree with the decision."<sup>86</sup>

88. It is evident from the City's evidence in the Original Proceeding, and its submissions throughout, that the City was set on a cost allocation that involved FEI paying the full cost, and refused to acknowledge that the BCUC could specify a cost allocation method under section 32 of the *UCA*. The City was entitled to take this tactical "all or nothing" legal position; however, in doing so, it was assuming the risk that the BCUC would disagree with its position. The City had every opportunity to provide evidence (or submissions) on the matter, even for the BCUC's consideration "in the alternative" (i.e., in the event that the BCUC were to disagree with the City's primary position). The City is, in effect, seeking to use the reconsideration process as a further "kick at the can" after having made a deliberate tactical decision to adhere firmly to a 100%/0% allocation.

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<sup>86</sup> *An Application for Reconsideration of the Commission's Decision Approving the Application by West Kootenay Power Ltd. to Rebuild the No. 44 Transmission Line from Oliver to Osoyoos*, BCUC Order G-93-98, October 29, 1998, Reasons, p. 2. Online: <https://www.ordersdecisions.bcuc.com/bcuc/orders/en/114399/1/document.do>.

**PART NINE: CONCLUSION**

89. The cost sharing ordered in the Original Proceeding balances the interests of FEI customers and the City, and is consistent with the BCUC's determination in the CPCN proceeding that abandonment best protects the public interest. The City would be the proximate cause of any removal, and it is fair for the City to share in the cost of work done at its request. The cost sharing provides appropriate incentives for the City to be disciplined in making a request to remove the NPS 20 IP gas line. It will encourage both parties to work collaboratively and efficiently.

90. FEI respectfully submits that the BCUC should uphold its cost allocation order in paragraph 2 of BCUC Order G-80-19 as being in the public interest.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated: December 23, 2020 *[original signed by Matthew Ghikas]*  
Matthew Ghikas  
Counsel for FortisBC Energy Inc.

Dated: December 23, 2020 *[original signed by Tariq Ahmed]*  
Tariq Ahmed  
Counsel for FortisBC Energy Inc.