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June 28, 2018

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

Attention: Mr. Patrick Wruck, Commission Secretary and Manager, Regulatory Support

Dear Mr. Wruck:

Re: FortisBC Energy Inc. (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 (IP) System Upgrade (LMIPSU) Projects – Coquitlam Gate IP Project (the Application)

FEI is filing this Application with the British Columbia Utilities Commission (the Commission), pursuant to sections 32 and 33 of the *Utilities Commission Act* (UCA) to resolve two narrow, but important, issues that have arisen between FEI and the City of Coquitlam (City or Coquitlam) in the lead up to construction of FEI's Commission-approved¹ LMIPSU Projects.

Dispute Over Two Financial Conditions

FEI and Coquitlam have a long-standing operating agreement (Operating Agreement), which contemplates FEI seeking the City's approval of work and the City not unreasonably withholding its approval. After months of negotiations, the parties have resolved many technical issues, and FEI has made a significant financial "community contribution". Nonetheless, Coquitlam has conditioned formal sign-off of FEI's engineering (alignment) drawings on FEI agreeing to assume financial responsibility for millions of dollars of work that the City wants done, but that is not required to complete the Commission-approved LMIPSU Project. The City's financial demands, in addition to being costly for our customers, are at odds with the Operating Agreement.

Obtaining the certainty that the Project can proceed based on the engineering drawings is of immediate and critical importance to the Company and our customers. At the same time, FEI believes that agreeing to Coquitlam's financial conditions would represent an

¹ On October 16, 2015, the British Columbia Utilities Commission (the Commission) issued its Decision and Certificate of Public Convenience and Necessity (CPCN) Order C-11-15 approving the LMIPSU Projects.

unreasonable burden on FEI and our customers, given the significant cost, FEI's existing public interest approval, and the Operating Agreement. Accordingly, FEI is submitting this Application for approval to proceed with the LMIPSU Project in Coquitlam on the basis of the engineering drawings and other apparently non-controversial technical terms, without having to meet the City's two onerous financial conditions. This approach will ensure the technical requirements of the City are met, while avoiding an unwarranted windfall to the City at the expense of FEI and our customers.

Proposed Process

Section 1.3 of the Application addresses what FEI believes is the appropriate Commission review process. In essence, the Project schedule makes it very important for FEI to have certainty regarding the technical terms before August 31, 2018. There is no reason why the resolution of the City's additional financial demands should hold up the Project. The parties have resolved outstanding technical issues relating to the Project, and resolving the City's financial demands is less urgent. The fair and efficient way to proceed is in two phases:

- In the first phase, the Commission can confirm, in short order and with limited process, FEI's ability to proceed with the Project according to the engineering drawings and the technical terms jointly documented by the parties.
- The City's two financial demands can then be addressed in a second phase on a less-expedited timeline, involving any other parties that the Commission considers appropriate.

This approach (i) mitigates the Project risk associated with continued uncertainty; (ii) respects the City's technical input on the Project; (iii) recognizes that confirmation of the technical terms can occur with the involvement of FEI and Coquitlam alone; and (iv) allows the Commission time to undertake the necessary process to resolve the merits of the City's two financial demands that would have a material impact on FEI's customers.

Request for Confidentiality

FEI is filing certain appendices in this Application on a confidential basis, pursuant to Section 18 of the Commission's Rules of Practice and Procedure regarding confidential documents established by Order G-1-16. The information in those appendices is either commercially sensitive or should be safeguarded for asset security reasons. The public disclosure of commercially sensitive information could prejudice contractual negotiations for this Project and future projects, to the detriment of FEI and our customers. The disclosure of sensitive technical information jeopardizes the safety and security of assets and infrastructure owned by FEI, the City, and third parties.

For clarity, the City already has the information in question, but FEI has no objection to the confidential appendices being made available to the City of Coquitlam upon executing the Commission's standard Confidentiality Declaration and Undertaking Form. Similar treatment should be accorded to related information produced throughout the regulatory review process.

If further information is required, please contact the undersigned.

Sincerely,

FORTISBC ENERGY INC.

Original signed:

Diane Roy

Attachments

cc (email only): City of Coquitlam:

- Jozsef Dioszeghy (jdioszeghy@coquitlam.ca);
- Mark Zaborniak (mzaborniak@coquitlam.ca).



FORTISBC ENERGY INC.

**Application under Sections 32 and 33 of
the *Utilities Commission Act* for Use of
Lands in the City of Coquitlam
for the
Lower Mainland Intermediate Pressure
System Upgrade Projects**

June 28, 2018

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CONFIDENTIAL

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1. INTRODUCTION AND OVERVIEW

1.1 INTRODUCTION

FortisBC Energy Inc. (FEI) is applying, pursuant to sections 32 and 33 of the *Utilities Commission Act* (UCA), for an order from the British Columbia Utilities Commission (BCUC or the Commission) resolving a narrow, but important, dispute between FEI and the City of Coquitlam (City or Coquitlam). The dispute relates to the terms of use of public lands in Coquitlam for a Commission-approved natural gas pipeline integrity project, the Lower Mainland Intermediate Pressure System Upgrade Projects (LMIPSU Project or Project). FEI and City staff have substantially resolved key technical issues relating to the construction of the NPS 30 IP gas line portion of the Project in Coquitlam, including gas line alignment, terms of a traffic management plan, and various protocols. However, the City has indicated that it is withholding formal sign-off of engineering / alignment drawings¹ unless FEI agrees to two conditions that are, in essence, requirements for FEI to assume financial responsibility for over \$10.5 million of additional work (City's Financial Demands). FEI views the City's Financial Demands as excessive.

The specific orders sought are articulated in the draft final orders provided in Appendix A-1. The orders will allow FEI's pipeline integrity work to proceed on a timely basis and in a cost-effective manner based on the parties' existing operating agreement and on resolved technical terms. The proposed two-phase regulatory process set out in Section 1.3 below will allow for the Commission's prompt confirmation of agreed technical terms and gas line alignment details, and the resolution of the City's Financial Demands over a less compressed timeline.

1.2 OVERVIEW

On October 16, 2015, the Commission granted a Certificate of Public Convenience and Necessity for the LMIPSU Project by Order C-11-15 and its accompanying decision (the CPCN). A component of the LMIPSU Project is a new NPS² 30 IP gas line operating at 2070 kilopascals that starts at the Coquitlam Gate Station in Coquitlam, proceeds in a westerly direction through Coquitlam, Burnaby, and Vancouver and ends at the East 2nd Avenue & Woodland Station in Vancouver. The NPS 30 IP gas line³ will replace approximately 20 kilometres of existing NPS 20 IP gas line, which is nearing the end of its useful life. In granting the CPCN, the Commission found the Project to be in the public interest⁴ and considered the time sensitivity and integrity

¹ Formal approval is provided by the City stamping the alignment sheets, and it is the stamping that has been withheld.

² NPS refers to Nominal Pipe Size in inches.

³ "NPS 30 IP gas line" refers to the new 30-inch intermediate pressure gas pipeline to be constructed through Coquitlam, Burnaby and Vancouver.

⁴ Decision, page 67.

1 drivers for the Project⁵. The Commission also approved FEI’s abandonment plans as proposed
 2 for the Project, which call for FEI to abandon existing gas lines in place.⁶

3 The City and FEI have an existing operating agreement dated January 7, 1957 (Operating
 4 Agreement), which is included in Appendix B. It sets out the terms and conditions on which FEI
 5 uses the City’s public spaces. Under the Operating Agreement⁷, FEI is required to submit to the
 6 City plans and specifications showing the location, size, and dimension of FEI’s gas lines and
 7 related infrastructure and to obtain the approval of the City Engineer before proceeding with
 8 construction. This approval, which the parties sometimes refer to as the “Utility Permits”, is
 9 obtained in the form of the City approving/stamping the Main Construction Order (MCO)
 10 Alignment Drawings⁸ (Engineering Drawing Approvals). The Operating Agreement provides,
 11 however, that the City Engineer’s approval is not to be unreasonably withheld or delayed.⁹

12 FEI and the City have been engaged in discussions regarding the Project since 2013. FEI and
 13 the City have discussed the City’s concerns regarding the anticipated impact that the
 14 construction phase of the LMIPSU Project will have on the City and its residents. In the period
 15 since the Commission issued the CPCN, FEI has worked with the City to obtain the Engineering
 16 Drawing Approvals as well as the additional permits and approvals that the City wishes FEI to
 17 obtain. The time spent has been valuable to the extent that the parties appear to have resolved
 18 key technical issues relating to the construction of the NPS 30 IP gas line. Technical staff at
 19 FEI and the City have documented these resolutions in a document called “Terms Agreed To”,
 20 which is included in confidential Appendix C. FEI understands that the City’s technical staff still
 21 need to discuss some of those terms with colleagues, but FEI is currently optimistic that the
 22 “Terms Agreed To” will be finalized shortly.

23 Nevertheless, the City has conveyed that it will not formally issue the Engineering Drawing
 24 Approvals (i.e., approve/stamp the MCO Alignment Drawings) unless FEI agrees to the
 25 following two additional costly conditions (referred to above as the City’s Financial Demands):

- 26 1. FEI must agree, at an additional cost to FEI of at least \$5 million, to repave (including
 27 replacing lower layers of asphalt) the entire width of Como Lake Avenue for 5.5
 28 kilometres after completion of the Project (Extra Paving), and to provide security in the
 29 form of a letter of credit in the amount of \$6 million for all the paving work. The Extra
 30 Paving goes well beyond the work that FEI would have to do to restore Como Lake
 31 Avenue to its pre-Project work condition. It also goes beyond FEI’s obligations under the
 32 Operating Agreement; and

⁵ Decision, page 7 and 52.

⁶ Decision, pages 23 and 24.

⁷ Section 3, Operating Agreement.

⁸ MCO alignment drawings (MCO Engineering Drawings) are detailed drawings that provide the alignment and design of the proposed pipeline to be installed.

⁹ See paragraph 2 of the Operating Agreement.

1 2. FEI must, at its own cost, remove approximately 380 metres of the abandoned NPS 20
2 IP gas line¹⁰ if the pipe ultimately conflicts with a planned City project that may proceed
3 within 3 to 5 years from now¹¹, and patch the pavement to temporarily restore the road.
4 The high-level cost estimate of this work is approximately \$5.5 million. The Operating
5 Agreement allows the City to request the removal, but also expressly requires the City to
6 pay the majority of the removal cost. The City is trying to change the agreed allocation
7 (Removal Cost Re-allocation).

8 The parties are at an impasse on the City's Financial Demands. While FEI recognizes the need
9 to be flexible in working with municipalities, FEI considers the City's Financial Demands to be
10 excessive in the circumstances.

11 Withholding the Engineering Drawing Approvals despite the substantial resolution of the
12 technical matters as set out in the "Terms Agreed To" is adding to the Project risk. The LMIPSU
13 Project is underway in adjacent municipalities. The impasse with Coquitlam risks interfering
14 with FEI's ability to perform the work in Coquitlam on a coordinated and continuous basis with
15 the rest of the LMIPSU Project. It challenges FEI's ability to address the NPS 20 IP gas line
16 integrity issues in a timely and cost effective manner.

17 As such, FEI respectfully requests orders from the Commission under sections 32 and 33 of the
18 UCA in the form outlined in the draft final orders sought provided in Appendix A-1. The draft
19 final orders contemplates the Project proceeding on the basis of the technical terms as reflected
20 in the "Terms Agreed To" (which include the alignment drawings and the Traffic Management
21 Plan), but rejecting the City's Financial Demands. It also provides that the parties are at liberty
22 to apply for resolution of any disputes arising from the Orders or the Project.

23 **1.3 PROPOSED PROCESS**

24 FEI respectfully submits that the process for hearing this Application can, and should mitigate
25 the risks to the Project schedule and potential for increased costs. Confirmation that FEI can
26 proceed based on the "Terms Agreed To" is the key to accomplishing this objective, and an
27 order in that regard is required on or before August 31, 2018, for the reasons set out below in
28 Section 2.2.

29 Although the City is making the formal issuance of the Engineering Drawing Approvals
30 conditional on FEI's acquiescence to the City's Financial Demands, the Extra Paving and the
31 Removal Cost Re-allocation are not critical path items from the perspective of timely execution
32 of the LMIPSU Project. A reasonable approach would be for the Commission to proceed in two
33 phases.

¹⁰ "NPS 20 IP gas line" refers to the existing 20-inch intermediate pressure gas pipeline located in Coquitlam, Burnaby and Vancouver.

¹¹ The scope of the work and schedule to undertake the work is still in the very early stages of development and lacks sufficient detailed engineering information to determine if a conflict will result.

- 1 • the first phase would involve making an early determination, on an expedited basis with
2 only the involvement of FEI and the City, of FEI’s right to proceed based on the “Terms
3 Agreed To”; and
4
- 5 • the second phase would address the City’s Financial Demands on a less compressed
6 timetable, with intervener participation if the Commission determines it is appropriate.

7 This two-phase approach would prevent risk to the Project schedule associated with the
8 Commission review process and any potential for delays to the review process becoming
9 leverage to the detriment of FEI and its customers.

10 Phase two will involve consideration of only two narrow issues, which turn on the terms of the
11 Operating Agreement and project details. FEI believes a Streamlined Review Process (SRP)
12 would provide an appropriate and efficient review process to assess the City’s Financial
13 Demands, while providing an opportunity for input from affected parties.

14 It should also be noted that the Commission has already issued Information Requests to both
15 parties on these matters in the context of FEI’s Material Change Report. The parties’ respective
16 responses were filed on a confidential basis, but are available to the Commission for reference
17 and, if appropriate, filing as exhibits.

18 FEI proposes the following regulatory timetable in Table 1 below, which reflects the approach
19 discussed above. A draft procedural order reflecting the proposed regulatory process and
20 timetable is provided in Appendix A-2.

21 **Table 1: Proposed Regulatory Timetable**

ACTION	DATE (2018)
Phase 1	
BCUC requests (i) confirmation from City regarding agreed and outstanding issues and (ii) the City’s submissions on process	July 6
City responds to BCUC request for confirmation of agreed and outstanding issues and provides submissions on process	July 17
Commission issues order regarding authorization to proceed on agreed technical terms and procedural timetable for remainder of process	August 31
Phase 2	
Filing of City of Coquitlam Evidence (if any) regarding City’s Financial Demands	September 14
Streamlined Review Process regarding City’s Financial Demands	September 28

22

23 In the event the Commission determines that it is preferable to decide the merits of the City’s
24 Financial Demands together with confirming the technical terms, FEI respectfully requests that
25 the timetable be accelerated such that an SRP addressing all matters occur well before August
26 31, 2018, to meet the Project timing requirements.

1 **1.4 CONFIDENTIALITY OF CERTAIN APPENDICES**

2 As noted in the cover letter to this Application, pursuant to Section 18 of the Commission's
3 Rules of Practice and Procedure regarding confidential documents established by Order G-1-
4 16, FEI has filed certain of the appendices to this Application on a confidential basis. The
5 information in those appendices is either commercially sensitive or should be safeguarded for
6 asset security reasons. The public disclosure of commercially sensitive information could
7 prejudice contractual negotiations for this Project and future projects, to the detriment of FEI and
8 our customers. The disclosure of sensitive technical information jeopardizes the safety and
9 security of assets and infrastructure owned by FEI, the City, and third parties.

10 The City already has the information and documents in question, but FEI has no objection to the
11 confidential appendices being made available to the City or to intervener groups representing
12 customers, if the Commission determines that participation by interveners is necessary, upon
13 executing the Commission's standard Confidentiality Declaration and Undertaking Form.
14 Similar treatment should be accorded to related information produced throughout the regulatory
15 review process.

16 **1.5 ORGANIZATION OF APPLICATION**

17 This Application is organized as follows:

- 18 • Section 2 describes the background to this Application, including the issuance of a
19 CPCN, the status of the Project, and FEI's engagement with Coquitlam;
- 20 • Section 3 describes the resolution of the technical matters;
- 21 • Section 4 discusses the merits of the City's Financial Demands, explaining why the
22 demands are excessive; and
- 23 • Section 5 is FEI's conclusion.

24

1 **2. BACKGROUND**

2 This section provides the background to this Application. It highlights the fact that FEI has been
3 granted a CPCN for the Project, the status of the Project, and the fact the parties have been
4 negotiating for some time to resolve technical issues and the City's Financial Demands.

5 **2.1 COMMISSION HAS ISSUED A CPCN FOR THE PROJECT**

6 On October 16, 2015, the Commission granted FEI a CPCN to replace the existing NPS 20 IP
7 gas line, which is nearing the end of its useful operating life and is experiencing an increasing
8 frequency of gas leaks resulting from non-preventable active corrosion. Engineering
9 assessment of the gas line indicated that leak prevention could not be effectively managed by
10 maintenance activities.¹² The Project is necessary to address the safety and integrity of the
11 existing NPS 20 IP gas line and to allow FEI to continue to provide safe, reliable natural gas to
12 its customers.

13 On page 7 of the CPCN Decision, the Commission found that FEI had justified the need to
14 rehabilitate or replace the existing NPS 20 IP gas line:

15 The Panel accepts that repair or rehabilitation of the Coquitlam Gate IP pipeline
16 [existing NPS 20 IP gas line] is required to address pipeline integrity issues
17 resulting from increased frequency of actual and projected gas leaks due to non-
18 preventable corrosion. Further, the Panel agrees that rehabilitation or
19 replacement is required to ensure FEI is compliant with the OGC requirements to
20 prevent, remediate the cause or contain and eliminate spillage as required of a
21 permit holder under section 37(1) of the OGAA.

22
23 FEI committed to replacing the existing NPS 20 IP gas line to mitigate the safety risk associated
24 with external corrosion and to respond to Oil and Gas Commission (OGC) Order 2013-25,
25 issued to FEI on October 30, 2013. In its response to the OGC dated November 13, 2013, FEI
26 determined that the subject gas line was suitable for continued service and was being operated
27 in accordance with the requirements of CSA Z662-11 and that a replacement plan that
28 addresses FEI's requirement as a permit holder under section 37(1)(a) of the *Oil and Gas*
29 *Activities Act* (OGAA) to 'prevent spillage' was being implemented by way of a CPCN
30 application submission for the Project to the BCUC in 2014. If FEI does not undertake gas line
31 replacement within a reasonable timeframe, the OGC could find that FEI has failed to comply
32 with an OGC order and has, therefore, contravened the OGAA.

¹² Decision, p. 4.

1 **2.2 THE PROJECT IS UNDERWAY IN ADJACENT MUNICIPALITIES**

2 The Project is progressing, facilitated by agreements reached with other municipalities and
3 stakeholders. Coquitlam is the only municipality impacted by the Project that FEI has not been
4 able to reach mutually agreeable resolution with on Project related issues, with the City having
5 made its formal Engineering Drawing Approvals conditional on FEI agreeing to the City's
6 Financial Demands.

7 FEI has obtained municipal approvals for the Project and the Engineering Drawing Approvals
8 from the City of Vancouver and the City of Burnaby, consistent with FEI's operating agreements
9 with those municipalities. FEI has also received the required OGC permit¹³ and approvals from
10 other stakeholders such as BC Hydro, Shaw, Telus, and Imperial Oil for the Project. FEI has
11 committed to the construction of the Project within the City of Vancouver and the City of
12 Burnaby within a certain timeframe to accommodate the complex and specific requirements for
13 the Project and other planned development within those two municipalities. Work is currently
14 underway in Vancouver and a portion of Burnaby.

15 FEI was able to achieve significant Project savings by awarding the three segments of the
16 Project (e.g., Vancouver, Burnaby and Coquitlam) to one contractor, with the expectation that
17 the work would be completed on a coordinated and continuous basis. Delays in completing
18 construction through the Coquitlam segment will result in increased construction costs and
19 delays to the de-commissioning and resolution of the integrity issues for both the existing NPS
20 20 IP gas line and the Fraser Gate IP gas line.

21 Coquitlam, by withholding the Engineering Drawing Approvals, is putting the Project completion
22 schedule at risk which may result in cost escalation. Construction in Coquitlam is scheduled to
23 start in early 2019 (weather permitting). FEI requires confirmation that it can proceed with the
24 Project by the end of August 2018 so the contractor and its resources have adequate time to
25 safely and efficiently plan for the start of this complex construction.

26 **2.3 LENGTHY ENGAGEMENT WITH COQUITLAM HAS RESOLVED TECHNICAL** 27 **ISSUES**

28 FEI has undertaken extensive consultation with the City since September 2013 and has
29 involved the City in each of the Project planning design phases.

30 As described in Section 7.3.2.1 of FEI's CPCN application dated December 19, 2014,
31 representatives of the City were consulted on the criteria for route selection, plans for traffic
32 management, noise and environmental mitigation before the CPCN application was filed.

33 Since the Decision in October 2015, FEI has continued working with the City to obtain the
34 Engineering Drawing Approvals and confirm other technical details concerning Project
35 implementation. FEI has had numerous meetings with a variety of City staff and elected

¹³ OGC permit was granted January 12, 2018.

1 officials, and the parties have exchanged correspondence and draft documents on many
2 occasions. Technical staff from the City and FEI have resolved technical issues relating to the
3 construction of the NPS 30 IP gas line portion of the Project, documenting areas of agreement
4 in the jointly prepared “Terms Agreed To”. City technical staff have indicated that they need to
5 consult with colleagues on the “Terms Agreed To” before signing off, but FEI is optimistic that
6 the agreed technical matters will be confirmed.

7 The City has indicated, however, that it is withholding formal approval of the Engineering
8 Drawings pending FEI’s agreement to the City’s Financial Demands.

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

16 **2.4 THE OPERATING AGREEMENT CONTEMPLATES CITY ENGINEER’S** 17 **APPROVAL ACTING REASONABLY**

18 The Operating Agreement is included in Appendix B to this Application. The Operating
19 Agreement sets out the requirement for FEI to obtain approval prior to constructing its gas line
20 and related infrastructure in City public places. It also indicates that approval is “not to be
21 unreasonably withheld or delayed”. Section 2 states:

22 2. Subject to paragraph 3 hereof,¹⁴ before placing or constructing any of the
23 said works on public property, or removing such works, the Company shall
24 submit details thereof in writing to the Corporation’s Municipal Engineer. Such
25 details shall include plans and specifications showing the location, size and
26 dimension of the said works. The Company shall not proceed with such placing,
27 construction or removal of the said works until the Municipal Engineer shall have
28 approved the proposed works, such approval not to be unreasonably withheld or
29 delayed. If such approval is not acted upon within one (1) year then a new
30 approval shall be obtained.

31 Section 2 is contemplating the Engineering Drawing Approvals that are at issue in this instance.

32 Sections 4 and 5 of the Operating Agreement, quoted below, set out a cost allocation formula
33 for situations where the City requires FEI move a gas line. The formula contemplates the City
34 being responsible for the cost, subject to an adjustment based on a portion of the *original book*
35 *value* that changes over time. Applying that formula to an old pipeline like the NPS 20, for

¹⁴ Section 3 deals with situations where approval of the Corporation’s Municipal Engineer is not required, and is not applicable here.

1 which the original book value is much smaller than the removal cost, results in the City being
2 responsible for most of the cost:

3 4. Upon the written request of the Corporation or the Municipal Engineer on
4 its behalf, the Company shall change the location (in which in the case of pipe
5 means any change of either or both of line and elevation) of any part of the said
6 works on public property to some other reasonable location on public property,
7 and shall carry out each such change with reasonable speed.

8 5. (a) If the part of the said works of which the location is changed as
9 provided in paragraph 4 hereof was (i) installed as to both line and elevation in
10 accordance with the approval or instructions of the Municipal Engineer, or (ii) was
11 installed as to line in accordance with the approval or instructions of the
12 Municipal Engineer and was laid at a depth of at least 18 inches under a roadway
13 paved with at least two inches of concrete or asphalt; or (iii) was installed as to
14 line in accordance with the approval of the Municipal Engineer and is being
15 changed because its line is no longer satisfactory to the Corporation, the
16 Corporation shall bear and pay to the Company the entire cost of the change less
17 an amount equal to two (2) per cent of the installed value on the Company's
18 books of any of the said part of the said works which the Company takes out of
19 service as a result of the change multiplied by the number of years during which
20 it has been in service.

21 (b) If the said part of the said works was not installed, or installed and laid, in one
22 of the manners specified in clause (a) of this paragraph, the cost of such change
23 shall be shared between the Corporation and the Company in such a manner as
24 they may mutually agree and in default of agreement in such a manner as shall
25 be settled by arbitration pursuant to the "Arbitration Act".

26
27 The Operating Agreement also sets out FEI's obligations with respect to paving. FEI's
28 obligation in Section 8 (below) is to reinstate paving "which it has disturbed". FEI is only
29 disturbing a portion of the width of Como Lake Avenue, not the whole road width:

30 8. The Company shall carry out all work done by it on public property
31 pursuant to this agreement substantially in accordance with the details approved
32 pursuant to paragraph 2 hereof (where applicable) and in a manner reasonably
33 satisfactory to the Municipal Engineer, without undue delay, in a good and
34 workmanlike manner, and so as to cause as little damage and obstruction as
35 practicable, and shall reinstate the paving or surface on public property which it
36 has disturbed in as good a state of repair as it was prior to its disturbance and in
37 accordance with reasonable specifications laid down by, and subject to, the
38 supervision of, the Municipal Engineer. Except in the case of emergency work
39 the time at which all work is carried out shall be subject to the approval of the
40 Municipal Engineer. The Municipal Engineer may require that he shall be given

1 reasonable notice of the proposed time at which any work, other than emergency
2 work, is to be carried out.

3
4 The Operating Agreement also addresses damage to City property. As such, the City is
5 protected in the event that FEI unexpectedly damages the pavement in the lanes of Como Lake
6 Avenue that are not directly impacted by excavation:

7 9. In the placing, constructing, renewal, alteration, repair, maintenance,
8 removal, operation and use of the said works the Company shall not destroy or
9 damage the property of the Corporation except as it is authorized to do so by this
10 agreement or by the Corporation; but, if at any time the Company does destroy
11 or damage the property of the Corporation, the Company shall bear the cost of
12 repairing the same in such a manner as to leave the same in as good a state of
13 repair as it was in prior to the doing of such destruction or damage and to the
14 reasonable satisfaction of the Municipal Engineer.

15
16 These provisions collectively set out a framework that, in FEI's submission, requires the City to
17 issue the Engineering Drawing Approvals in these circumstances.

18

1 **3. SECTIONS 32 AND 33 AUTHORIZE THE BCUC TO SET TERMS**

2 Sections 32 and 33 of the UCA provide statutory authority for the Commission to set the terms
3 of FEI's use of public spaces in the City of Coquitlam for the purposes of constructing the
4 Project.

5 Section 32 of the UCA provides as follows:

6 **Use of municipal thoroughfares**

7 32. (1) This section applies if a public utility

8 (a) has the right to enter a municipality to place its distribution
9 equipment on, along, across, over or under a public street, lane,
10 square, park, public place, bridge, viaduct, subway or
11 watercourse, and

12 (b) cannot come to an agreement with the municipality on the use of
13 the street or other place or on the terms of the use.

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

18
19 Section 33 of the UCA provides as follows:

20 **Dispensing with municipal consent**

21 33. (1) This section applies if a public utility

22 (a) cannot agree with a municipality respecting placing its distribution
23 equipment on, along, across, over or under a public street, lane,
24 square, park, public place, bridge, viaduct, subway or watercourse
25 in a municipality, and

26 (b) the public utility is otherwise unable, without expenditures that the
27 commission considers unreasonable, to extend its system, line or
28 apparatus from a place where it lawfully does business to another
29 place where it is authorized to do business.

30 (2) On application and after a hearing, for the purpose of that extension
31 only and without unduly preventing the use of the street or other place
32 by other persons, the commission may, by order,

1 (a) allow the use of the street or other place by the public utility,
2 despite any law or contract granting to another person exclusive
3 rights, and

4 (b) specify the manner and terms of the use.¹⁵

5
6 The conditions for seeking Commission approval under these sections are met. FEI has the
7 right under its CPCN to construct and operate the Project, including abandoning the NPS 20 IP
8 pipeline in place. The parties cannot come to an agreement on whether the City is entitled to
9 condition the issuance of the Engineering Drawing Approvals on the City's Financial Demands,
10 given the resolution of technical issues as outlined in the "Terms Agreed To" and the terms of
11 the Operating Agreement. The Commission's involvement is necessary to ensure that FEI can
12 execute the approved Project in a timely and cost-effective manner.

13

¹⁵ Similarly, section 36 of the UCA provides that, subject to any agreement between a public utility and a municipality and to the franchise or rights of the public utility, and after any hearing the Commission considers advisable, the Commission may, by order, specify the terms on which the public utility may use for any purpose of its service a highway in the municipality.

1 **4. TECHNICAL MATTERS HAVE BEEN RESOLVED**

2 As described in Section 2.3 above, FEI staff and City staff have been working for a number of
3 months to identify issues of concern for the City regarding the Project, and to document the
4 resolution of those matters. Representatives of FEI and the City have met on a number of
5 occasions, as well as exchanged correspondence and drafts of several documents. After
6 significant progress in recent days, technical staff of the City and FEI jointly developed the
7 “Terms Agreed To” in confidential Appendix C and reached agreement in principle on June 21,
8 2018. FEI understands the City staff representative is circulating the “Terms Agreed To”
9 document internally for final comments, with a response expected shortly. Most of the content
10 of the “Terms Agreed To” has already been the subject of significant discussions and comment
11 by both parties over some time, such that we do not anticipate any materially issues to arise.

12 The “Terms Agreed To” include:

- 13 • protocols and processes to guide the parties’ interaction relating to the Project:
- 14 • Issued for Construction Traffic Management Plans (IFC TMPs) (confidential Appendix
15 D); and
- 16 • Engineering Drawings (confidential Appendix E-1), and the Clarke Road and Como Lake
17 Avenue Engineering Drawing (confidential Appendix E-2).

18
19 These elements of the “Terms Agreed To” are briefly summarized below.

20 **4.1 *PROTOCOLS***

21 Since 2013, FEI and the City recognized that, due to the potentially high amount of municipal
22 infrastructure in the vicinity of the Project, it would be mutually valuable to develop a list of
23 protocols describing the processes and details of interaction between FEI and the City during
24 construction. A list of protocols (included in the “Terms Agreed To”) was developed jointly. The
25 protocols include identifying commercial considerations (cost and invoice details), listing key
26 personnel and their contact information, and stipulating lead times required to manage, relocate
27 or modify municipal infrastructure for the following:

- 28 1. Electrical and street lighting;
- 29 2. Water;
- 30 3. Sewer and drainage;
- 31 4. Streets;
- 32 5. Traffic Management;
- 33 6. Prime Contractor Designation;
- 34 7. QNet – the City’s telecom system;
- 35 8. Engineering Drawings (also referred to as Utility Drawings);
- 36 9. Project Communications; and
- 37 10. Hours of Work and Noise Variance.

1 **4.2 TRAFFIC MANAGEMENT PLANS**

2 In 2016, FEI engaged Great Northern Engineering Consultants Inc. (GNEC) to produce a Traffic
3 Management Strategy that is a high-level traffic and workspace strategy that was accepted by
4 the City as a foundation for further development of traffic management plans. FEI then engaged
5 R.F. Binnie and Associates Ltd. (Binnie) to develop detailed Traffic Management Plans (TMPs)
6 for the Project and in advance of construction so that the gas line contractor would not be
7 delayed in obtaining traffic management permits as the Project progresses. TMPs include traffic
8 control plans, public information plans, temporary civil drawings, temporary electric drawings,
9 and temporary signal timing sheets.

10 Final sealed Issued for Construction (IFC) TMPs, provided by Binnie are provided in confidential
11 Appendix D. They were developed in collaboration with the City and the IFC TMPs were issued
12 to the City on April 10, 2018, for its approval. The City identified several issues on May 15,
13 2018. Those outstanding issues were resolved in a series of discussions over the next several
14 weeks. Conditional approval was verbally received from the City on June 19, 2018, subject to
15 the addition of a conceptual amendment to the Clarke Road TMP to be added as an appendix. .

16 FEI is will follow the IFC TMPs, including the Clark Road conceptual amendment, during the
17 construction of the Project.

18 **4.3 ENGINEERING DRAWINGS**

19 Confidential Appendix E provides a list of engineering drawings, together with copies of the
20 drawings (E-1 and E-2). These drawings are attachments to the “Terms Agreed To”.

21 Under the Operating Agreement¹⁶, FEI is required to obtain the approval of the City before
22 placing or constructing its works in City public spaces and is required to submit plans and
23 specifications showing the location, size and dimension of the FEI’s gas lines and related
24 infrastructure to the City Engineer for approval. As indicated above, the approval that the City
25 Engineer issues to FEI is the approval of Main Construction Order (MCO) Alignment Drawings.

26 FEI has received numerous requests for revision of the Engineering Drawings from the City and
27 FEI incorporated these requests into revisions at the 30, 60, 90 percent review stages prior to
28 issuing the IFC version of the Engineering Drawings. FEI provided IFC Engineering Drawings
29 to the City on May 12, 2017 and selectively amended as required on March 5, 2018 and June
30 20, 2018.

31 On June 14 and June 19, 2018, FEI technical staff met with City technical staff in an effort to
32 resolve outstanding issues. At these meetings, FEI confirmed that it had addressed the
33 remaining technical issues related to the construction of the NPS 30 IP gas line. Conditional
34 approval was verbally received from the City on June 19, 2018, subject to the addition of a
35 conceptual amendment to the alignment of the Clarke Road Trenchless Crossing. FEI has

¹⁶ Section 3.

- 1 updated the Engineering Drawing at this location to reflect the City's requested amendments to
- 2 the Clarke Road Trenchless Crossing (Clarke Road Engineering Drawing). FEI issued the
- 3 Clarke Road Engineering Drawing to the City for its final review and sign-off on June 21, 2018.
- 4 The Clarke Road Engineering Drawing is confidential Appendix E-2.

- 5 The only outstanding issues are the City's Financial Demands. The City has indicated, that it is
- 6 withholding Engineering Drawing Approvals pending FEI's agreement to the City's Financial
- 7 Demands.

- 8

1 **5. THE CITY'S FINANCIAL DEMANDS ARE EXCESSIVE**

2 While FEI has addressed the operational and technical issues the City has raised to date, it has
3 not agreed to the City's Financial Demands so as to secure the Engineering Drawing Approvals.
4 These two conditions are, in essence, significant financial demands that are unrelated to the
5 technical construction aspects of the NPS 30 IP gas line portion of the Project. The estimated
6 total cost associated with these demands is over \$10.5 million. In this section, FEI elaborates
7 on the City's Financial Demands and why the Engineering Drawing Approvals should be issued
8 without those conditions.

9 **5.1 *NPS 20 REMOVAL COST: CHANGING THE ALLOCATION IN THE OPERATING*** 10 ***AGREEMENT***

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

14 Initially, the City had required that FEI remove the entire abandoned NPS 20 IP line, which
15 would have cost tens of millions of dollars. FEI understands from conversations within the past
16 couple of weeks that the City is now focussed on a 380 metre segment of the line.

17 Based on very preliminary information presented by the City to FEI, the City has indicated that a
18 portion of the abandoned NPS 20 IP gas line will conflict with a future municipal utility project.
19 The City is requiring that, as a condition of granting the Engineering Drawing Approvals, FEI
20 agree, at its cost, to remove 380 metres of the NPS 20 IP gas line, and patch the pavement to
21 temporarily restore the disturbed portion of Como Lake Avenue. This work is not required in
22 order to construct the NPS 30 IP gas line.

23 The Operating Agreement gives the City the right to request that FEI remove abandoned pipe,
24 but also contains an allocation methodology that makes the City responsible for the vast
25 majority of those removal costs. FEI has indicated its willingness to remove the 380 metres of
26 abandoned NPS 20 IP gas line. However, FEI has not agreed to the City's proposed cost
27 allocation for the reasons described below.

- 28 • First, agreeing to the City's demand would add significant cost to the Project. FEI
29 estimates that changing the allocation from what is stipulated in the Operating
30 Agreement to meet the City's demand could cost an additional \$5.5 million.
- 31 • Second, removal of the existing NPS 20 IP gas line is contrary to the CPCN approval.
- 32 • Third, the Operating Agreement provides a mechanism to address requests by the City
33 to remove its abandoned gas lines and sets out a formula for the allocation of the cost of
34 removal as between the City and FEI¹⁷.

¹⁷ Paragraphs 4 and 5.

1 **5.2 CITY'S DEMAND THAT FEI PERFORM UNNECESSARY PAVING**

2 The NPS 30 gas line construction activities will be confined to primarily two lanes of Como Lake
3 Avenue. Under the Operating Agreement, FEI is required to restore the pavement disturbed by
4 the Project. The City is demanding Extra Paving, at a significant cost to FEI and our customers.

5 The City's demands with respect to paving have expanded over time. The City was originally
6 requiring that FEI contribute \$3.2 million toward the City's repaving of all four lanes of Como
7 Lake Avenue. In the interest of achieving an overall agreement, FEI had been amenable to
8 considering a contribution that more closely reflected FEI's obligations under the Operating
9 Agreement and the expectations regarding the cost of repaving the portion of Como Lake
10 Avenue that is expected to be disturbed by the Project.

11 However, at a meeting on June 5, 2018, the City informed FEI that rather than a financial
12 contribution, the City was now conditioning the Engineering Drawing Approvals on FEI agreeing
13 to

- 14 • pave the entire width of the 5.5 kilometre section of Como Lake Avenue;
- 15 • perform road remediation beyond replacing the top 2 inches of asphalt; and
- 16 • provide the City a \$6.0 million letter of credit to secure performance of the work.

17

18 The City imposed this new condition despite the fact that the NPS 30 gas line construction
19 activities will be confined primarily to two lanes of Como Lake Avenue and despite FEI's
20 willingness prior to June 5 to make a financial contribution to the City's final repaving of all four
21 lanes of Como Lake Avenue.

22 The City's demand extends well beyond the scope of work required to return the pavement
23 impacted by the Project to as good as a condition as existed prior to the start of construction of
24 the NPS 30 IP gas line as required under the Operating Agreement. FEI also considers the
25 Extra Paving cost to be excessive for customers.

26

1 **6. CONCLUSION AND ORDERS SOUGHT**

2 The final Orders sought (see draft final orders in Appendix A-1) will permit FEI to proceed with
3 the Project within the City of Coquitlam based on the “Terms Agreed To” and the documents
4 appended thereto, while precluding the City from imposing financial conditions that would be
5 both burdensome for FEI and our customers and contrary to the Operating Agreement.

6 The draft Phase 2 final Order sought includes a provision that confirms the parties are at liberty
7 to apply to the Commission for determination of any future disputes arising from the Order or the
8 Project. Prompt approvals and resolution of any future issues will become more critical as
9 construction in Coquitlam nears and gets underway.

10

Appendix A-1

DRAFT FINAL ORDER – PHASE 1
DRAFT FINAL ORDER – PHASE 2



ORDER NUMBER

G-xx-xx

IN THE MATTER OF

the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Energy Inc.

Application under Sections 32 and 33 of the *Utilities Commission Act* (UCA) for Use of Lands in the City of Coquitlam for the Lower Mainland Intermediate Pressure System (LMIPSU) Upgrade Projects

BEFORE:

[Panel Chair]

Commissioner

Commissioner

on Date

PHASE 1 ORDER

WHEREAS:

- A. On October 16, 2015, the British Columbia Utilities Commission (Commission) issued a Certificate of Public Convenience and Necessity (CPCN) by way of Order C-11-15 which granted FortisBC Energy Inc. (FEI) approval for the Lower Mainland Intermediate Pressure System (LMIPSU) Upgrade Projects, which includes, among other things, to construct and operate the Coquitlam Gate Intermediate Pressure (IP) Project (Project);
- B. The Project consists of new a NPS¹ 30 IP gas line operating at 2070 kilopascals that starts at the Coquitlam Gate Station in the City of Coquitlam (City or Coquitlam), proceeds in a westerly direction through Coquitlam, Burnaby, and Vancouver and ends at the East 2nd Avenue & Woodland Station in Vancouver, to replace approximately 20 kilometres of existing NPS 20 IP gas line which is nearing the end of its useful life;
- C. In the Decision accompanying Order C-11-15, the Commission Panel stated:

The Panel accepts that repair or rehabilitation of the Coquitlam Gate IP pipeline is required to address pipeline integrity issues resulting from increased frequency of actual and projected gas leaks due to non-preventable corrosion. Further, the Panel agrees that rehabilitation or replacement is required to ensure FEI is compliant with the OGC requirements to prevent, remediate the cause or contain and eliminate spillage as required of a permit holder under section 37(1) of the OGAA.

¹ NPS refers to Nominal Pipe Size in inches.

- D. On June 28, 2018, FEI applied to the Commission, pursuant to sections 32 and 33 of the *Utilities Commission Act* (UCA) for an order setting terms for FEI's use of City lands for the Project;
- E. The Application states that FEI and the City have an existing Operating Agreement that governs FEI's operations in the City, which at a high level provides for advance approval of work by the City, provided that approval cannot be unreasonably withheld;
- F. The Application also states that FEI and the City have been engaged in discussions around the City's requirements for the Project, and have resolved numerous technical matters arising to date, and that the parties have jointly prepared a "Terms Agreed To" document appending engineering (alignment) drawings, and Traffic Management Plans;
- G. The Application also states that, despite agreement in principle to the "Terms Agreed To" and the appended documentation, the City has declined to provide formal approval for the Project engineering drawings per the Operating Agreement unless FEI first agrees to two conditions:
 - 1. FEI paves the entire width of a 5.5 km segment of Como Lake Avenue, at an estimated cost of \$5 million, despite FEI's construction only disturbing primarily two out of 4 lanes; and
 - 2. FEI removes, at its own cost (estimated at \$5.5 million), approximately 380 m segment of the NPS 20 IP gas line that is authorized to be abandoned in place, despite the parties Operating Agreement providing for a sharing of costs in such circumstances;
- H. The Application requests that the Commission establish a two phase review process for this Application, with Phase 1 addressing the approval to proceed with the Project according to the "Terms Agreed To" and the Traffic Management Plans and engineering drawings attached thereto, and Phase 2 addressing the City's two conditions;
- I. By Order G-XX-18 the Commission established a two phase process based on FEI's proposal; and
- J. The Commission has reviewed the Application and the evidence submitted through the Phase 1 review process and concludes that approval to proceed with the Project according to the "Terms Agreed To", including the Traffic Management Plans and engineering drawings attached thereto, is warranted, with the merits of the City's two conditions to be addressed in Phase 2.

NOW THEREFORE the Commission orders as follows pursuant to sections 32 and 33 of the Act:

- 1. FEI is authorized to proceed with the Project within the City of Coquitlam, without further approval from the City under the Operating Agreement or otherwise, based on
 - a. the terms set out in the document "Terms Agreed To" that is appended to the Application, and
 - b. the terms of the documents appended to, and forming part of, the "Terms Agreed To", namely
 - i. the Traffic Management Plans, as may be amended by FEI due to field conditions encountered during construction; and
 - ii. the engineering drawings, as may be amended by FEI due to field conditions encountered during construction;

2. A Commission determination on the remaining issues in the Application, relating to the City's two conditions, will be addressed in Phase 2 of the review process.

DATED at the City of Vancouver, in the Province of British Columbia, this (XX) day of (Month Year).

BY ORDER

(X. X. last name)

Commissioner



ORDER NUMBER

G-xx-xx

IN THE MATTER OF

the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Energy Inc.

Application under Sections 32 and 33 of the *Utilities Commission Act* (UCA) for Use of Lands in the City of Coquitlam for the Lower Mainland Intermediate Pressure System (LMIPSU) Upgrade Projects

BEFORE:

[Panel Chair]

Commissioner

Commissioner

on Date

PHASE 2 ORDER

WHEREAS:

- A. On October 16, 2015, the British Columbia Utilities Commission (Commission) issued a Certificate of Public Convenience and Necessity (CPCN) by way of Order C-11-15 which granted FortisBC Energy Inc. (FEI) approval for the Lower Mainland Intermediate Pressure System (LMIPSU) Upgrade Projects, which includes, among other things, to construct and operate the Coquitlam Gate Intermediate Pressure (IP) Project (Project);
- B. The Project consists of new a NPS¹ 30 IP gas line operating at 2070 kilopascals that starts at the Coquitlam Gate Station in the City of Coquitlam (City or Coquitlam), proceeds in a westerly direction through Coquitlam, Burnaby, and Vancouver and ends at the East 2nd Avenue & Woodland Station in Vancouver, to replace approximately 20 kilometres of existing NPS 20 IP gas line which is nearing the end of its useful life;
- C. In the Decision accompanying Order C-11-15, the Commission Panel stated:

The Panel accepts that repair or rehabilitation of the Coquitlam Gate IP pipeline is required to address pipeline integrity issues resulting from increased frequency of actual and projected gas leaks due to non-preventable corrosion. Further, the Panel agrees that rehabilitation or replacement is required to ensure FEI is compliant with the OGC requirements to prevent, remediate the cause or contain and eliminate spillage as required of a permit holder under section 37(1) of the OGAA.

¹ NPS refers to Nominal Pipe Size in inches.

- D. On June 28, 2018, FEI applied to the Commission, pursuant to sections 32 and 33 of the *Utilities Commission Act (UCA)* for an order setting terms for FEI's use of City lands for the Project;
- E. The Application states that FEI and the City have an existing Operating Agreement that governs FEI's operations in the City, which at a high level provides for advance approval of work by the City, provided that approval cannot be unreasonably withheld;
- F. The Application also states that FEI and the City have been engaged in discussions around the City's requirements for the Project, and have resolved numerous technical matters arising to date, and that the parties have jointly prepared a "Terms Agreed To" document appending engineering (alignment) drawings, and Traffic Management Plans;
- G. The Application also states that, despite agreement in principle to the "Terms Agreed To" and the appended documentation, the City has declined to provide formal approval for the Project engineering drawings per the Operating Agreement unless FEI first agrees to two conditions:
 - 1. FEI paves the entire width of a 5.5 km segment of Como Lake Avenue, at an estimated cost of \$5 million, despite FEI's construction only disturbing primarily two out of 4 lanes; and
 - 2. FEI removes, at its own cost (estimated at \$5.5 million), approximately 380 m segment of the NPS 20 IP gas line that is authorized to be abandoned in place, despite the parties Operating Agreement providing for a sharing of costs in such circumstances;
- H. The Application requests that the Commission establish a two phase review process for this Application, with Phase 1 addressing the approval to proceed with the Project according to the "Terms Agreed To" and the Traffic Management Plans and engineering drawings attached thereto, and Phase 2 addressing the City's two conditions;
- I. By Order G-~~XX~~-18 the Commission established a two phase process based on FEI's proposal;
- J. Phase 1 addressed the approval to proceed with the Project which was granted by the Commission in Order ~~XX~~-18;
- K. In Phase 2, FEI is seeking a Commission order confirming that FEI only be responsible for repaving to the extent required by the Operating Agreement, and that the cost of removing the NPS 20 IP gas line will be allocated as specified in section 5 of the Operating Agreement; and
- L. The Commission has reviewed the Application and the evidence submitted through both phases of the review process and concludes that an order on the terms requested by FEI regarding the two City conditions is warranted.

NOW THEREFORE the Commission orders as follows pursuant to sections 32 and 33 of the Act:

- 1. FEI shall be responsible for repaving only to the extent required by the Operating Agreement. For greater certainty, FEI is not required to repave undisturbed portions of Como Lake Avenue as requested by the City, at its cost or otherwise;
- 2. The City shall not require FEI to post security for any work performed on the Project;

3. The City may request that FEI remove portions of the abandoned NPS 20 IP gas line to the extent contemplated in section 4 of the Operating Agreement, and the cost associated with the removal will be allocated in accordance with section 5 of the Operating Agreement; and
4. FEI and/or the City are at liberty to apply to the Commission to determine any unresolved future disputes arising from this Order or the Project generally.

DATED at the City of Vancouver, in the Province of British Columbia, this (XX) day of (Month Year).

BY ORDER

(X. X. last name)
Commissioner

Appendix A
DRAFT ORDERS

Appendix A-2

DRAFT PROCEDURAL ORDER



ORDER NUMBER

G-xx-xx

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

and

FortisBC Energy Inc.

Application under Sections 32 and 33 of the *Utilities Commission Act* (UCA) for Use of Lands in the City of Coquitlam for the Lower Mainland Intermediate Pressure System Upgrade (LMIPSU) Projects

BEFORE:

Panel Chair/Commissioner
Commissioner
Commissioner

on Date

ORDER

WHEREAS:

- A. On October 16, 2015, the British Columbia Utilities Commission (Commission) issued a Certificate of Public Convenience and Necessity (CPCN) by way of Order C-11-15 which granted FortisBC Energy Inc. (FEI) approval for the Lower Mainland Intermediate Pressure System (LMIPSU) Upgrade Projects, which includes, among other things, to construct and operate the Coquitlam Gate Intermediate Pressure (IP) Project (Project);
- B. The Project consists of new a NPS¹ 30 IP gas line operating at 2070 kilopascals that starts at the Coquitlam Gate Station in the City of Coquitlam (City or Coquitlam), proceeds in a westerly direction through Coquitlam, Burnaby, and Vancouver and ends at the East 2nd Avenue & Woodland Station in Vancouver, to replace approximately 20 kilometres of existing NPS 20 IP gas line which is nearing the end of its useful life;
- C. In the Decision accompanying Order C-11-15, the Commission Panel stated:

The Panel accepts that repair or rehabilitation of the Coquitlam Gate IP pipeline is required to address pipeline integrity issues resulting from increased frequency of actual and projected gas leaks due to non-preventable corrosion. Further, the Panel agrees that rehabilitation or replacement is required to ensure FEI is compliant with the OGC requirements to prevent, remediate the cause or contain and eliminate spillage as required of a permit holder under section 37(1) of the OGAA.

¹ NPS refers to Nominal Pipe Size in inches.

- D. On June 28, 2018, FEI applied to the Commission, pursuant to sections 32 and 33 of the *Utilities Commission Act* (UCA) for an order setting terms for FEI's use of City lands for the Project;
- E. The Application states that FEI and the City have an existing Operating Agreement that governs FEI's operations in the City, which at a high level provides for advance approval of work by the City, provided that approval cannot be unreasonably withheld;
- F. The Application also states that FEI and the City have been engaged in discussions around the City's requirements for the Project, and have resolved numerous technical matters arising to date, and that the parties have jointly prepared a "Terms Agreed To" document appending engineering (alignment) drawings, and Traffic Management Plans;
- G. The Application also states that, despite agreement in principle to the "Terms Agreed To" and the appended documentation, the City has declined to provide formal approval for the Project engineering drawings per the Operating Agreement unless FEI first agrees to two conditions:
1. FEI paves the entire width of a 5.5 km segment of Como Lake Avenue, at an estimated cost of \$5 million, despite FEI's construction only disturbing primarily two out of 4 lanes; and
 2. FEI removes, at its own cost (estimated at \$5.5 million), approximately 380 m segment of the NPS 20 IP gas line that is authorized to be abandoned in place, despite the parties Operating Agreement providing for a sharing of costs in such circumstances;
- H. The Application requests that the Commission establish a two phase review process for this Application, with Phase 1 addressing the approval to proceed with the Project according to the "Terms Agreed To" and the Traffic Management Plans and engineering drawings attached thereto, and Phase 2 addressing the City's two conditions;
- I. FEI states in the Application that there is no reason why the Project should be put at risk by delaying Commission confirmation of the technical terms that the parties have agreed to in principle, since the City's outstanding conditions are essentially financial in nature;
- J. The Commission has determined that the Project timeline does require expedited confirmation of the "Terms Agreed To" and related technical documentation, and that there is less urgency to the resolution of the City's two outstanding demands;
- K. The Commission has determined that a two-phased process to address the Application is necessary. Phase 1 will be an expedited process to consider, based on input from FEI and the City, whether to allow the Project to proceed based on the "Terms Agreed To" and related technical documentation. Phase 2 will address the merits of the City's two outstanding demands in a non-expedited process;
- L. The Commission has determined that a regulatory timetable should be established for Phases 1 and 2.

NOW THEREFORE the British Columbia Utilities Commission orders as follows:

1. A written hearing process including a Streamlined Review Process is established for the Phase 1 and Phase 2 review of the Application. A Regulatory Timetable is set out in Appendix A to this order.
2. FEI is to provide a copy of this Application and Order to registered interveners who participated in the LMIPSU CPCN Application proceeding.

3. The Application, together with any supporting materials, will be available for inspection at FEI Office, 16705 Fraser Highway, Surrey, BC, V4N 0E8. The Application and supporting materials also will be available on the FortisBC website at www.fortisbc.com and on the Commission website at www.bcuc.com.
4. Interveners who wish to participate in Phase 2 of this regulatory proceeding are to register with the Commission by completing a Request to Intervene Form, available on the Commission's website at <http://www.bcuc.com/Registration-Intervener-1.aspx> by the date established in the Regulatory Timetable attached as Appendix B to this order and in accordance with the Commission's Rules of Practice and Procedure attached to Order G-1-16.

DATED at the City of Vancouver, in the Province of British Columbia, this (XX) day of [Month Year].

BY ORDER

Original signed by:

(X. X. last name)
Commissioner

FortisBC Energy Inc.
Application under Sections 32 and 33 of the *Utilities Commission Act* (UCA) for Use of Lands in the City of
Coquitlam for the Lower Mainland Intermediate Pressure System Upgrade (LMIPSU) Projects

REGULATORY TIMETABLE

ACTION	DATE (2018)
<i>Phase 1</i>	
BCUC requests (i) confirmation from City regarding agreed and outstanding issues and (ii) the City's submissions on process	July 6
City responds to BCUC request for confirmation of agreed and outstanding issues and provides submissions on process	July 17
Commission issues order regarding authorization to proceed on agreed technical terms and procedural timetable for remainder of process	August 31
<i>Phase 2</i>	
Filing of City of Coquitlam Evidence (if any) regarding City's Financial Demands	September 14
Streamlined Review Process regarding City's Financial Demands	September 28

Appendix B

JANUARY 7, 1957 OPERATING AGREEMENT

THIS AGREEMENT is made the 7th day of January,
1957

BETWEEN:

THE CORPORATION OF THE DISTRICT OF
COQUITLAM
(hereinafter called "the Corporation"),

OF THE ONE PART,

AND

BRITISH COLUMBIA ELECTRIC COMPANY
LIMITED
(hereinafter called "the Company"),

OF THE OTHER PART.

WHEREAS:

A. Section 3 of the "Gas Utilities Act" reads
as follows:

"3. Every gas utility which at the date when this Act comes into force is carrying on business as such in a municipality or area in unorganized territory shall in such municipality or area, and every gas utility to which a certificate of public convenience and necessity is thereafter granted under the "Public Utilities Act" shall in the municipality or area in unorganized territory mentioned in such certificate, be authorized and empowered to carry on, subject to the provisions of the "Public Utilities Act", its business as a gas utility, and, without limiting the generality of the foregoing, shall be authorized and empowered:-

- (a) To produce, generate, store, mix, transmit, distribute, deliver, furnish, sell, and take delivery of gas;
- (b) To construct, develop, renew, alter, repair, maintain, operate, and use real and personal property for any of the said purposes; and
- (c) To place, construct, renew, alter, repair, maintain, operate and use its pipes and other equipment and

appliances for mixing, transmitting, distributing, delivering, furnishing, and taking delivery of gas upon, along, across, over, or under any public street, lane, square, park, public place, bridge, viaduct, subway, or watercourse upon such conditions:-

- (1) In a municipality as the gas utility and the municipality may agree upon; and
- (ii) In unorganized territory as the Minister of Highways may approve."

B. The Company has obtained from the Public Utilities Commission of British Columbia a Certificate of Public Convenience and Necessity dated the 29th day of July, 1955 and approved by Order in Council made the 23rd day of August, 1955, which Certificate, inter alia, certifies that public convenience and necessity will require the construction and operation by the Company of a project for the supply of natural gas to the public for compensation in the area within the jurisdiction of the Corporation (hereinafter called "the Municipality"), among other places.

C. The parties desire to agree upon the conditions under which the Company may exercise in the Municipality its powers under the "Gas Utilities Act" and the Certificate of Public Convenience and Necessity referred to in Recital "B" hereof.

NOW THIS AGREEMENT WITNESSETH that the parties hereto have mutually agreed as follows:

1. The Corporation and the Company hereby agree that the conditions upon which the Company may, pursuant to the "Gas Utilities Act" and the said Certi-

ificate of Public Convenience and Necessity, place, construct, renew, alter, repair, maintain, remove, operate and use its pipes and other equipment and appliances for mixing, transmitting, distributing, delivering, furnishing and taking delivery of gas (which pipes and other equipment - including gas regulating vaults and vents therefrom and cathodic protection equipment - and appliances are hereinafter called "the said works") upon, along, across, over, or under any public street, lane, square, park, public place, bridge, viaduct, subway, or watercourse in the Municipality (all or any of which are hereinafter called "public property") shall be those set out in the paragraphs hereof numbered 2 to 17 and the Corporation hereby consents to the Company undertaking construction or work on or over any public property in the Municipality in compliance with such terms and conditions.

2. Subject to paragraph 3 hereof, before placing or constructing any of the said works on public property, or removing such works, the Company shall submit details thereof in writing to the Corporation's Municipal Engineer. Such details shall include plans and specifications showing the location, size and dimension of the said works. The Company shall not proceed with such placing, construction or removal of the said works until the Municipal Engineer shall have approved the proposed works, such approval not to be unreasonably withheld or delayed. If such approval is not acted upon within one (1) year then a new approval shall be obtained.

3. The Company may from time to time without

submitting details to or obtaining the approval of the Municipal Engineer but subject to paragraph 8 hereof

- (i) open up any public property for the purpose of carrying out repairs and maintenance to any part of the said works, and
- (ii) place and construct on public property gas service pipes (including valves) from its mains to the premises of its customers; but the Company shall place and construct such service pipes in accordance with any reasonable written instructions, either of general or particular application, that the Municipal Engineer may from time to time give to the Company and shall, if so required in writing by the Municipal Engineer, supply to the Municipal Engineer each month a list of addresses of premises to which service pipes shall have been so placed and constructed during the preceding month.

4. Upon the written request of the Corporation or the Municipal Engineer on its behalf, the Company shall change the location (which in the case of pipe means any change of either or both of line and elevation) of any part of the said works on public property to some other reasonable location on public property, and shall carry out each such change with reasonable speed.

5. (a) If the part of the said works of which the location is changed as provided in paragraph 4 hereof was (i) installed as to both line and elevation in accordance with the approval or instructions of the Municipal Engineer, or (ii) was installed as to line in accordance with the approval or instructions of the Municipal Engineer and was laid at a depth of at least 18 inches under a roadway paved with at least two inches of concrete or asphalt, or (iii) was installed as to line in accordance with the approval or instructions of the Municipal Engineer and is being changed because its line is no longer satisfactory to the Corporation, the Corporation shall bear and pay to the Company the entire cost of the change less an amount equal to two (2) per cent of the installed value on the Company's books of any of the said part of the said works which the Company takes out of service as a result of the change multiplied by the number of years during which it has been in service.

(b) If the said part of the said works was not installed, or installed and laid, in one of the manners specified in clause (a) of this paragraph, the cost of such change shall be shared between the Corporation and the Company in such manner as they may mutually agree and in default of agreement in such manner as shall be settled by arbitration pursuant to the "Arbitration Act".

6. Notwithstanding anything hereinbefore contained, if either party shall request the other party to make some temporary change in such other party's pipes, equipment, plant or appliances installed on, over, under or adjacent to, public property in order to facilitate the installation or construction of new pipes,

equipment, plant or appliances by the requesting party, such other party shall, if it reasonably can, carry out the change or alteration requested and shall charge the requesting party with the entire cost thereof.

7. Before the Corporation stops up or closes to the public for the benefit of some person or corporation other than the Corporation any public property it shall inquire of the Company in writing whether the Company has any of the said works on, over, or under, such public property. If within ten (10) days of receiving such inquiry the Company advises the Corporation in writing that it has any of the said works on, over, or under, such public property, the Corporation shall not so stop up or close such public property until the Company shall have agreed with such person or corporation for the removal, abandonment, or relocation, of the said works at the expense of such person or corporation.

8. The Company shall carry out all work done by it on public property pursuant to this agreement substantially in accordance with the details approved pursuant to paragraph 2 hereof (where applicable) and in a manner reasonably satisfactory to the Municipal Engineer, without undue delay, in a good and workmanlike manner, and so as to cause as little damage and obstruction as practicable, and shall reinstate the paving or surface on public property which it has disturbed in as good a state of repair as it was prior to its disturbance and in accordance with reasonable specifications laid down by, and subject to the supervision of, the Municipal Engineer. Except in the case of emergency work the time at which all work is carried out shall be subject to the

approval of the Municipal Engineer. The Municipal Engineer may require that he shall be given reasonable notice of the proposed time at which any work, other than emergency work, is to be carried out.

9. In the placing, construction, renewal, alteration, repair, maintenance, removal, operation and use of the said works the Company shall not destroy or damage the property of the Corporation except as it is authorized to do so by this agreement or by the Corporation; but, if at any time the Company does destroy or damage the property of the Corporation, the Company shall bear the cost of repairing the same in such manner as to leave the same in as good a state of repair as it was in prior to the doing of such destruction or damage and to the reasonable satisfaction of the Municipal Engineer.

10. If the Corporation shall destroy or damage any part of the said works on, over, or under, public property which was installed

- (i) before the date hereof and is deemed under paragraph 13 hereof to have been property placed, constructed, maintained and operated in accordance with this agreement, or
- (ii) after the date hereof either substantially in accordance with the plans and specifications approved by the Municipal Engineer under paragraph 2 hereof, or substantially in accordance with instructions given under paragraph 3 hereof, whichever is applicable,

the Corporation shall bear the cost of repairing the same in such manner as to leave the same in as good a state of repair as it was in prior to the doing of such destruction or damage and to the reasonable satisfaction of the Company. In all other cases the cost of repairing such destruction or damage shall be borne by the Company.

11. The Company agrees that it will indemnify and save the Corporation harmless against and from all loss, costs, damages, expenses, suits, demands, actions, claims and liabilities of every kind (other than such as are caused by or arise from any wilful act of the Corporation or act of the Corporation amounting to negligence on the part of the Corporation) caused by or arising out of the Company placing, constructing, renewing, altering, repairing, maintaining, removing, operating or using any of the said works upon, along, across, over or under any public property.

12. The parties hereto agree from time to time to execute such further assurances, approvals and consents as may be necessary to carry out the intent of this agreement.

13. The Corporation agrees that all the said works heretofore placed, constructed, maintained and operated within the Municipality shall be deemed to have been property placed, constructed, maintained and operated in accordance with this agreement and that the Company may exercise its said powers in respect of them subject to the terms of this agreement so far as they are applicable thereto.

14. It is hereby mutually agreed that, in the event the Corporation does not have a Municipal

Engineer, the Municipal Clerk will act in the place and stead of the Municipal Engineer in respect of all matters pertaining to or arising out of this agreement.

15. The said works shall be placed, worked upon, or removed, in such manner as not to interfere with any pipe, conduit, wire, duct, manhole, drainage ditch, culvert, or any other structure which shall have been laid down in any public property by the Corporation or under the permission of the Corporation or by virtue of any charter granted by competent authority.

16. The said works and every part of them from time to time placed, constructed or maintained on any public property shall be and remain the property of the Company which shall be entitled at any time to remove the same subject to the terms of this agreement.

17. This agreement shall enure to the benefit of and be binding upon the parties hereto, their successors and assigns.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the day and year first above written.

The Corporate Seal of the Corporation was affixed hereto in the presence of:

"L. J. Christmas"

Reeve

"F. L. Pobst"

Clerk

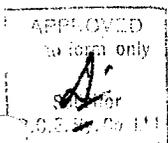
The Common Seal of the Company was affixed hereto in the presence of:

"H. L. Purdy"

Vice-President

"G. G. Woodward"

Secretary



BRITISH COLUMBIA ELECTRIC COMPANY LIMITED

MEMO FROM: R. R. Dodd

3rd April, 1957

TO: Messrs. P. W. Barchard, Our File: 111/56
R. M. Bibbs, G. Hargreaves,
K. F. Kangas, H. T. Libby,
W. C. Mainwaring, C. A.
Manson, J. L. McLean,
H. J. Merilees, H. L. Purdy,
A. B. Robertson, E. H.
Rohrer and O. E. Zwanzig

TR

RE: Corporation of the District of
Coquitlam - Use of Streets for
Natural Gas Pipes

Enclosed herewith please find a copy of the agreement dated 7th January, 1957 entered into with the Corporation of the District of Coquitlam setting out the conditions under which we may use their streets for laying gas pipes.

This agreement is in the standard form and is identical to the Port Moody and Port Coquitlam ones.

The original certified copy together with the by-law approving this agreement is filed in the President's office and a true copy of the by-law with an executed copy of the agreement is available in the legal division file.



RRD:ls

Enclosure

Appendix C

**TERMS AGREED TO BETWEEN PARTIES
(PREPARED JOINTLY BY FEI/CITY)**

FILED CONFIDENTIALLY

Appendix D

TRAFFIC MANAGEMENT PLANS

FILED CONFIDENTIALLY

Appendix E

**ISSUED FOR CONSTRUCTION MAIN CONSTRUCTION
ORDER ALIGNMENT DRAWING LIST**

FILED CONFIDENTIALLY