

# 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

December 19, 2018  
File No.: 240148.00860/16550

**Tariq Ahmed**  
Direct +1 604 631 4983  
Tahmed @fasken.com

## By Electronic Filing

British Columbia Utilities Commission  
Sixth Floor, 900 Howe Street  
Vancouver, BC V6Z 2N3

**Attention: Mr. Patrick Wruck, Commission Secretary**

Dear Sirs/Mesdames:

**Re: 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 (LMIPSU) Projects  
Project No. 1598963**

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

Yours truly,

**FASKEN MARTINEAU DuMOULIN LLP**

*[Original signed by]*

Tariq Ahmed  
TVA/vde

Enc.



**BEFORE THE BRITISH COLUMBIA UTILITIES COMMISSION**

**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**

**FINAL SUBMISSION OF FORTISBC ENERGY INC. ON PHASE TWO ISSUES**

**December 19, 2018**

<b>PART ONE: INTRODUCTION .....</b>	<b>1</b>
<b>PART TWO: THE BCUC’S AUTHORITY TO DECIDE THIS DISPUTE .....</b>	<b>3</b>
A.    FIRST CRITERION SATISFIED: FEI HAS A CPCN AND THE RIGHT TO OPERATE IN COQUITLAM .....	3
B.    SECOND CRITERION SATISFIED: THE PARTIES CANNOT COME TO AN AGREEMENT .....	5
<b>PART THREE: REPAVING COMO LAKE AVENUE .....</b>	<b>7</b>
A.    INTRODUCTION .....	7
B.    OPERATING AGREEMENT ONLY REQUIRES FEI TO REINSTATE DISTURBED PORTIONS .....	8
C.    THE PROJECT WILL ONLY AFFECT PORTIONS OF THE ROAD .....	9
D.    FEI WILL REINSTATE DISTURBED AREAS TO MUNICIPAL SPECIFICATIONS AND REPAIR ANY DAMAGE .....	11
E.    THE CITY WANTS A \$4 MILLION BETTERMENT, NOT REINSTATEMENT AND REPAIR .....	13
(a)    The City Acknowledges it is Asking for a Betterment .....	13
(b)    The City’s Demands Exceed the City’s Paving Specifications .....	14
(c)    The City is Requiring FEI to Do Work that the City Wouldn’t Otherwise Do .....	17
(d)    The City’s Demands Would Unduly Impact FEI Customers .....	18
F.    THE BASIS FOR FEI’S INITIAL OFFER TO CONTRIBUTE \$3.2 MILLION AS PART OF AN OVERALL RESOLUTION NO LONGER EXISTS .....	18
<b>PART FOUR: ALLOCATION OF NPS 20 IP GAS LINE REMOVAL COSTS .....</b>	<b>20</b>
A.    INTRODUCTION .....	20
B.    IT WAS INAPPROPRIATE FOR THE CITY TO CONDITION ITS APPROVAL OF PROJECT DRAWINGS ON REMOVING THE NPS 20 IP GAS LINE .....	21
(a)    The CPCN is Unequivocal – FEI is to Abandon the NPS 20 IP Gas Line in Place .....	21
(b)    Section 121 of the <i>UCA</i> Prevents the City from Impeding or Superseding the <i>UCA</i> and CPCN .....	21
(c)    The CPCN Was a Real and Considered Order Based on Evidence .....	23
C.    THE OPERATING AGREEMENT ALLOWS THE CITY TO REQUEST REMOVAL, BUT SPECIFIES A COST ALLOCATION .....	27
(a)    Sections 4 and 5(a) of the Operating Agreement Apply to the NPS 20 IP Gas Line .....	27
(b)    Response to the City’s Arguments that Section 5(a) is Inapplicable .....	28
(c)    The BCUC Should Endorse FEI’s Calculation of the “Original Installed Cost” for the Allocation Formula .....	31

D. THE SAME ALLOCATION APPROACH IS STILL REASONABLE IF THE OPERATING AGREEMENT IS INAPPLICABLE .....32

(a) If the Operating Agreement is Inapplicable, the City Should Pay All the Cost, or Alternatively it is Up to the BCUC to Decide .....33

(b) The City’s Claim is Based on an Incorrect Assessment of the Parties’ Legal Rights and Obligations .....33

(c) Using the Allocation Methodology Under the Operating Agreement is Fair.....36

E. THE CITY HAS PROVIDED INSUFFICIENT JUSTIFICATION TO INCUR THE SIGNIFICANT COST OF REMOVING NPS 20 IP GAS LINE .....37

(a) The City Does Not Currently Need the Space .....37

(b) The City May Never Need the Space.....37

(c) It is More Efficient to Remove Segments in Parallel with Future Work .....39

(d) The Significant Cost of Removal Compounds the Unfairness to FEI/FEI Customers of Requiring Removal in the Circumstances .....41

**PART FIVE: CONCLUSION .....43**

## PART ONE: INTRODUCTION

1. In its application on June 28, 2018,<sup>1</sup> FortisBC Energy Inc. (“FEI”) sought an order from the British Columbia Utilities Commission (the “BCUC”) pursuant to sections 32 and 33 of the *Utilities Commission Act*<sup>2</sup> (the “UCA”), to resolve a dispute between FEI and the City of Coquitlam (the “City” or “Coquitlam”) arising from the BCUC-approved<sup>3</sup> Lower Mainland Intermediate Pressure System Upgrade Projects (the “LMIPSU Project” or the “Project”). BCUC Order G-144-18A established a two phase review process. Phase One was concluded by BCUC Order 158-18. This Final Submission addresses Phase Two, which addresses two disagreements:

- (a) Coquitlam is demanding that FEI repave all four lanes of Como Lake Road for the entire length of the Project in the City, and make repairs to the subgrade, rather than repaving affected areas in accordance with Coquitlam’s own repaving standards. The cost of the additional, unnecessary work that would be borne by FEI customers is substantial – increasing repaving costs from approximately \$601 thousand to \$4.573 million.
- (b) The City is demanding that FEI remove all at once, and at FEI’s sole cost, 5.5 kilometres of the NPS<sup>4</sup> 20 IP gas line<sup>5</sup> that is being abandoned pursuant to the certificate of public convenience and necessity (“CPCN”) for the Project. The cost of this work is estimated to be \$77.5 million. The City’s justification for removing anything more than a 380 metre segment of this gas line is speculative, at best. Its approach would very likely see FEI customers bearing significant costs unnecessarily.

---

<sup>1</sup> Exhibit B-1.

<sup>2</sup> R.S.B.C. 1996, c. 473.

<sup>3</sup> Decision on Application for a Certificate of Public Convenience and Necessity for the Lower Mainland Intermediate Pressure System Upgrade, Order C-11-12 15 (the “CPCN Decision”).

<sup>4</sup> NPS refers to Nominal Pipe Size in inches.

<sup>5</sup> “NPS 20 IP gas line” refers to the existing 20-inch intermediate pressure gas pipeline located in Coquitlam, Burnaby and Vancouver.

2. The long-standing operating agreement between the parties<sup>6</sup> (the “Operating Agreement”) is a full answer to both of these demands.

3. As described in Part 3 of this Final Submission, section 8 of the Operating Agreement requires FEI to reinstate affected areas of pavement, not to repave undamaged portions of the road.

4. As described in Part 4 of this Final Submission, section 5(a) of the Operating Agreement includes a cost allocation methodology, which requires the City to pay for the bulk of the cost of removing the NPS 20 IP gas line. The City disputes the applicability of section 5(a) of the Operating Agreement, calling the NPS 20 IP gas line “garbage” that will be trespassing on municipal land. The City is off-base. FEI is authorized to abandon the NPS 20 IP gas line in place, and in the absence of the existing Operating Agreement, it would be expected that the City would be responsible for all of the costs of any removal that it requires. In the alternative, it would be reasonable to apply the same allocation as set out in 5(a) of the Operating Agreement even if the BCUC were to determine there is a gap in the Operating Agreement.

5. FEI’s position is fair to FEI/FEI customers and the City. By contrast, Coquitlam is seeking to use this Project as a means of offloading the cost of road upgrades on to FEI customers in a manner that was never contemplated by the Operating Agreement and would result in a windfall to the City. The City also wants FEI customers to bear significant gas line removal costs based on speculation about a potential need for some – but even then, the City admits likely not all – of the gas line to be removed years into the future. FEI submits that the BCUC should grant FEI’s Application on the terms sought.

---

<sup>6</sup> Exhibit B-12, FEI Phase Two Evidence, Appendix A.

## **PART TWO: THE BCUC'S AUTHORITY TO DECIDE THIS DISPUTE**

6. Sections 32 and 33 of the *UCA* provide statutory authority for the BCUC to set the terms of FEI's use of public spaces in the City for the purposes of constructing the Project. Section 32 of the *UCA* provides as follows:

### **Use of municipal thoroughfares**

32 (1) This section applies if a public utility

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

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

(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.

7. Section 33 of the *UCA* (titled "Dispensing with municipal consent") would also provide the necessary authority.

8. In addition, in the Final Agreed Terms and Conditions,<sup>7</sup> the parties agreed that if they were unable to resolve a matter relating the Final Agreed Terms and Conditions, that the BCUC could make a determination on the matter under sections 32 and 33 of the *UCA*.

### **A. FIRST CRITERION SATISFIED: FEI HAS A CPCN AND THE RIGHT TO OPERATE IN COQUITLAM**

9. The first condition of section 32 is that FEI must have "the right to enter a municipality to place its distribution equipment on, along, across, over or under a public street, lane, square, park, public place, bridge, viaduct, subway or watercourse". FEI meets this condition. Specifically, FEI has the right to construct and operate its system, and extensions to

---

<sup>7</sup> Attachment to Exhibit C1-5.

that system, under its CPCNs and the provisions of the *UCA* and the *Gas Utility Act*<sup>8</sup> (the “*GUA*”).

10. FEI’s infrastructure in the municipality, including the existing NPS 20 IP gas line, is covered by CPCN granted by BCUC’s predecessor to FEI’s predecessor in 1955,<sup>9</sup> and FEI’s deemed CPCN pursuant to section 45(2) of the *UCA*.

11. FEI’s authority to construct the LMIPSU Project, and to abandon the NPS 20 IP gas line in place, derives from the CPCN granted by the BCUC pursuant to Order C-11-15. A component of the LMIPSU Project is a new NPS 30 IP gas line.<sup>10</sup> The NPS 30 IP gas line 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 BCUC found the Project to be in the public interest<sup>11</sup> and considered the time sensitivity and integrity drivers for the Project.<sup>12</sup> The BCUC also approved FEI’s abandonment plans as proposed for the Project, which call for FEI to abandon existing gas lines in place.<sup>13</sup>

12. The *GUA* affirms FEI’s rights as a gas utility to operate in Coquitlam under its CPCNs. It contemplates a public utility agreeing with a municipality as to the conditions of use of public spaces. Section 2 of the *GUA* provides in part:

2(2) A gas utility to which a certificate of public convenience and necessity is granted after April 14, 1954 under the *Utilities Commission Act* or the legislation that preceded it is authorized and empowered, subject to the *Utilities Commission Act*, to carry on its business as a gas utility in the municipality or rural area mentioned in the certificate.

2(3) Without limiting subsection (1) or (2), a gas utility authorized under either of those subsections may do one or all of the following:

---

<sup>8</sup> R.S.B.C. 1996, c. 170.

<sup>9</sup> Exhibit B-1, FEI Application, Appendix B, p. 2.

<sup>10</sup> “NPS 30 IP gas line” refers to the new 30-inch intermediate pressure gas pipeline to be constructed through Coquitlam, Burnaby and Vancouver.

<sup>11</sup> CPCN Decision, p. 67.

<sup>12</sup> CPCN Decision, pp. 7 and 52.

<sup>13</sup> CPCN Decision, pp. 23 and 24.



(a) produce, generate, store, mix, transmit, distribute, deliver, furnish, sell and take delivery of gas;

(b) construct, develop, renew, alter, repair, maintain, operate and use property for any of those purposes;

(c) 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 on, along, across, over or under any public street, lane, square, park, public place, bridge, viaduct, subway or watercourse

(i) in a municipality, on the conditions that the gas utility and the municipality agree to,

(ii) ...

13. The inclusion of the phrase “on the conditions that the gas utility and the municipality agree to” does not allow a municipality to veto activity that the BCUC has determined is in the public interest and necessity or to otherwise hold a public utility and its ratepayers for “ransom” when executing that work. Sections 32 and 33 of the *UCA* come into play when an agreement on the conditions of use of public spaces is outstanding. Section 32 makes the BCUC the final arbiter of disputes over the terms of use, ensuring that public utilities are able to use municipal public places to provide a valuable service on reasonable terms. Section 32 protects the utility – and ultimately the utility customers who pay all costs of service – from unreasonable municipal requirements, while ensuring fair treatment of municipalities.

**B. SECOND CRITERION SATISFIED: THE PARTIES CANNOT COME TO AN AGREEMENT**

14. The second condition for invoking section 32 of the *UCA* is that FEI “cannot come to an agreement with [Coquitlam] on the use of the street or other place or on the terms of the use.” There is an Operating Agreement. The dispute is thus over:

(a) the proper interpretation of the repairing requirements in the Operating Agreement (section 8), and specifically whether it is reasonable for Coquitlam to require FEI to do more than is required by the City’s paving specifications; and

- (b) whether or not sections 4 and 5(a) of the Operating Agreement apply to the removal of the NPS 20 IP gas line, or if the BCUC decides the Operating Agreement does not apply (i.e., there is a gap), then what is the reasonable outcome.

### **PART THREE: REPAVING COMO LAKE AVENUE**

#### **A. INTRODUCTION**

15. The parties agree that section 8 of the Operating Agreement governs and determines FEI's obligations with respect to repaving, but disagree as to its meaning.<sup>14</sup> FEI plans to repave all portions of the road that are disturbed by the trenching, as well as repair any other damage. The City is demanding that FEI pave the entire width of the 5.5 kilometre section of Como Lake Avenue, and to perform road remediation beyond replacing the top two inches of asphalt (the "Extra Paving"). In this Part, FEI makes the following points:

- First, the Operating Agreement requires FEI to reinstate disturbed portions of the roadway, and repair damage, not to improve undisturbed portions.
- Second, the Project will only affect a portion of the width of Como Lake Avenue, not the whole width.
- Third, FEI's proposal will reinstate the disturbed areas to their pre-Project work condition, in the manner specified in the City's own paving specifications.
- Fourth, the additional road improvements sought by the City would represent an unwarranted windfall to the City at the expense of FEI/FEI customers.
- Fifth, the original basis for FEI's offer to contribute \$3.2 million towards the cost of road improvements Como Lake Avenue as part of an overall arrangement with the City no longer exists, now that the City cannot withhold approval of Project Engineering Drawings.

---

<sup>14</sup> Exhibit C1-11, CEC-City Phase Two IR 1.6.2: "The City's position on roadway restoration required as a result of FEI's Project is that s.8 of the 1957 Operating Agreement requires FEI to: '...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'."

**B. OPERATING AGREEMENT ONLY REQUIRES FEI TO REINSTATE DISTURBED PORTIONS**

16. Section 8 of the Operating Agreement (quoted below) addresses “reinstating” disturbed paving after FEI performs work:

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. [Emphasis added.]

17. The Operating Agreement also addresses “repairing” any “damage” to City property:

9. In the placing, constructing, 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 a 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. [Emphasis added.]

18. There are several elements of note in these provisions:

- First, section 8 is dealing with “reinstating” any “disturbed” portions, whereas section 9 is dealing with “restoring” “damage”. The only reason to have two sections is if these terms mean something different. It is clear from the context of these sections that the “disturbed” portion is the portion that has been

excavated, and that “reinstating” means to address the excavated portion. Damage is a more general concept, differing from the excavation itself. It could occur as a result of excavation (e.g., damage to a water line), or outside of the excavated area.

- Second, the requirements imposed by the City must be “reasonable specifications”, i.e., they cannot be unreasonable. The City has its own Supplementary Specifications Master Municipal Construction Document repaving specifications, which FEI is prepared to meet. The City is, in effect, arguing that its own specifications are not “reasonable specifications” in this case.
- Third, both “reinstating” and “restoring” involve returning something to the condition it was in before, not betterment.

19. All of these observations are relevant when assessing the positions of the parties, and are discussed in turn below.

### **C. THE PROJECT WILL ONLY AFFECT PORTIONS OF THE ROAD**

20. The Project will only disturb portions of Como Lake Avenue, not the entire width of the four lane road.

21. The NPS 30 IP gas line trench construction activities will be confined to a 2.5 metre wide trench, which is less than two lanes of Como Lake Avenue. Decommissioning and abandonment of the NPS 20 IP gas line will involve excavation of small bell holes approximately every 300 metres within a third lane.<sup>15</sup>

22. The City speculates that there will be other damage to the curb lanes due to many lateral cuts for relocation of utilities and other services that cross the Project route,

---

<sup>15</sup> Exhibit B-12, FEI Phase Two Evidence, p. 4.

changes to pavement markings, changes to the in-pavement traffic loops during construction, and “excessive wear and tear” from FEI’s equipment.<sup>16</sup> However, FEI’s evidence is:

- ***Lateral cuts are unlikely:*** FEI does not anticipate that it will be making lateral cuts or impacting the curb and outside lanes of Como Lake Avenue. FEI anticipates that work on the service lines will be completed within the trench area only.<sup>17</sup> This is how the Project has played out in Vancouver. The construction footprint is contained within the one or two lanes as planned for this construction work. In general, construction impact has not occurred outside of the planned construction workspace.<sup>18</sup>
- ***Low impact approach to pavement markings:*** In the City of Burnaby and City of Vancouver, FEI’s construction contractor minimized damage to the pavement through the use of hydro-blasting or surface grinding. This practice, which is a standard practice, mitigated damage to the pavement. Full depth paving repairs to address changes to pavement markings are likely not required due to the installation technique.<sup>19</sup>
- ***Traffic loops will be repaired:*** FEI will repair pavement damage caused by removal and reinstatement of traffic loops in accordance with the City’s paving specifications.<sup>20</sup>
- ***Wear and tear is confined to construction footprint:***
  - FEI’s construction contractor will be performing gas line locate and installation (operating heavy construction equipment) activities for the NPS 30 IP gas line within the construction workspace, which is essentially

---

<sup>16</sup> Exhibit C1-8, City Phase Two Evidence, p. 9.

<sup>17</sup> Exhibit B-14, BCUC-FEI Phase Two IR 1.13.1; Exhibit B-16, City-FEI Phase Two IR 1.1.2.

<sup>18</sup> Exhibit B-14, BCUC-FEI Phase Two IR 1.13.2.

<sup>19</sup> Exhibit B-14, BCUC-FEI Phase Two IR 1.13.1; Exhibit B-16, City-FEI Phase Two IR 1.1.10.

<sup>20</sup> Exhibit B-16, City-FEI Phase Two IR 1.1.7.

defined as the two inside lanes of Como Lake Avenue and not the curb and outside lanes of Como Lake Avenue. FEI does not anticipate that its construction contractors will cause wear and tear on the curb and outside lanes.<sup>21</sup> FEI's subcontractors will not be using large excavators and other heavy construction equipment to make changes to the in-pavement traffic loops for the purposes of adhering to the Traffic Management Plans. Large equipment is not needed.<sup>22</sup>

- The existing pavement in the curb lanes has been in place for many years and has already been subject to heavy daily use by large vehicles. They show wear and tear already.<sup>23</sup>

23. The City also argues that seams in the pavement from trench restoration have longer term impacts. The City calls FEI's approach to reinstating the excavation disturbance and repaving "superficial". There are two answers to this argument. First, FEI explained that "a seam in asphalt pavement is standard industry practice for trench restoration for utility projects and has previously been accepted by the City for other third party work. FEI does not anticipate that paving that covers only a portion of a lane will create issues for motorists, roadway management or other concerns." Second, the approach that FEI is proposing to use is what is mandated by the City's own paving specifications.<sup>24</sup>

**D. FEI WILL REINSTATE DISTURBED AREAS TO MUNICIPAL SPECIFICATIONS AND REPAIR ANY DAMAGE**

24. FEI's Phase Two Evidence describes the approach that FEI will take to repaving work. FEI will return all disturbed areas to their pre-Project work condition according to the City's paving specifications. It will repair any damage. This meets the requirements under the Operating Agreement.

---

<sup>21</sup> Exhibit B-16, City-FEI Phase Two IR 1.1.1.

<sup>22</sup> Exhibit B-16, City-FEI Phase Two IR 1.1.1.

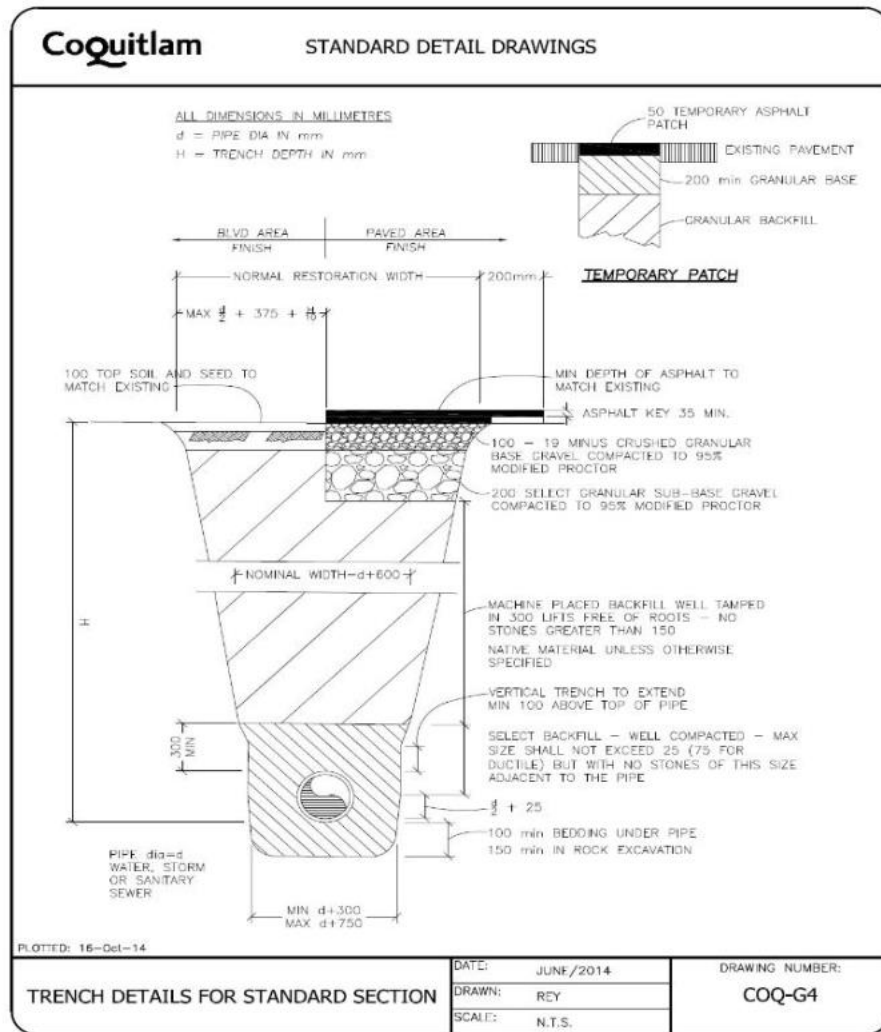
<sup>23</sup> Exhibit B-16, City-FEI Phase Two IR 1.1.4.

<sup>24</sup> Exhibit B-14, BCUC-FEI Phase Two IR 2.12.1

25. The relevant figure from the City’s paving specifications outlining the standard specifications for repairs of trenches is Figure Coq-G4. It is inserted below. The BCUC should take note of two elements in particular:

- the pavement restoration depth over the width of the trench only needs to match the existing asphalt depth; and
- the “Normal Restoration Width” extends only 200 millimetres beyond the edge of the trench (called the Asphalt Key).

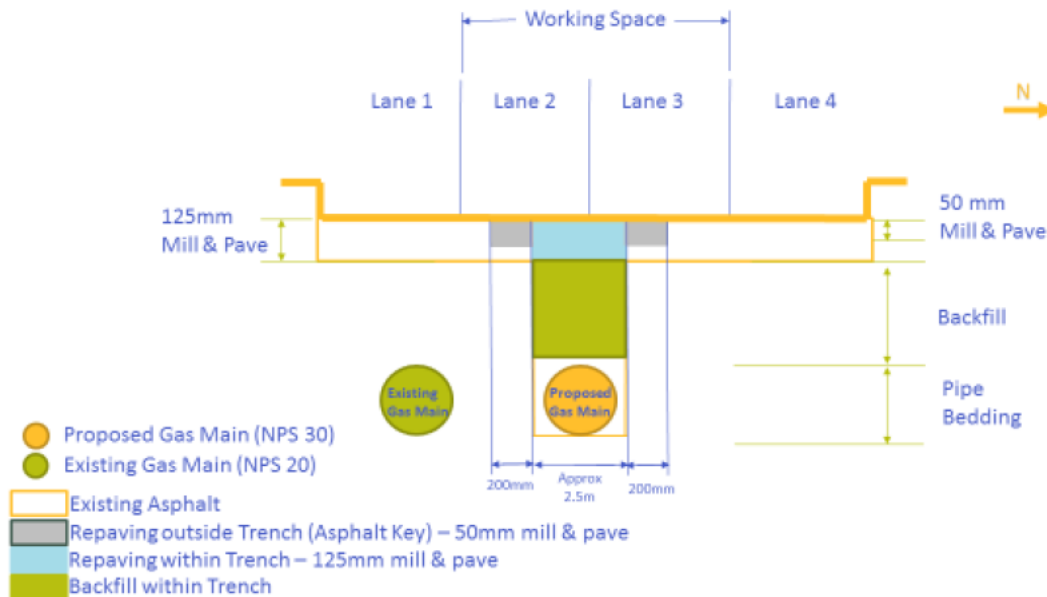
**Figure 2-1: City Paving Specification for Trenches, COQ-G4 Specification to MMCI**





26. FEI provided a technical description of how it would meet those requirements in section 2.4 of its Phase Two Evidence. The work is illustrated in the following figure from page 10. It shows, for instance, how the trenching work is confined to less than two lanes of the road.

**Figure 2-3: Scenario 1: Cross Section Drawing**



**E. THE CITY WANTS A \$4 MILLION BETTERMENT, NOT REINSTATEMENT AND REPAIR**

27. The City's demands escalated over time, and were expressed as conditions of the City Engineer signing off on FEI's Engineering Drawings for the Project. The Extra Paving demanded by the City would represent betterment and exceeds its own paving specifications. The City is treating FEI differently than others. The unwarranted windfall to the City would come at an additional, and unnecessary, cost of approximately \$4 million<sup>25</sup> for FEI customers.

**(a) The City Acknowledges it is Asking for a Betterment**

28. The City admits that "It is likely that once Como Lake Avenue is repaved it will be in a better condition than it is today."<sup>26</sup> FEI submits that this is a certainty, not just "likely". The

<sup>25</sup> FEI's estimate is approximately \$4,573,000, based on the approach described on pp. 14-15 of Exhibit B-12, FEI's Phase Two Evidence.

<sup>26</sup> Exhibit C1-10, BCUC-City Phase Two IR 2.14.2.2.

deteriorated state of the roadway is well documented, as discussed later in this section. The City even acknowledged that over a third of the 5.5 kilometre length is slated to be resurfaced within five years regardless.<sup>27</sup> The City's admission of the obvious fact that it is asking for improvements demonstrates that its demands exceed the Operating Agreement, which requires that FEI "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." Repaving the entire width of the roadway exceeds this contractual requirement.

**(b) The City's Demands Exceed the City's Paving Specifications**

29. As discussed previously, the second aspect of section 8 of the Operating Agreement is that the restoration of disturbed areas must also be "in accordance with reasonable specifications laid down by, and subject to, the supervision of, the Municipal Engineer." FEI has submitted above that "reasonable specifications" would include the standards that the City generally applies when repaving, i.e., the City's paving specifications. The City's demands exceed its own paving specifications in two significant respects.

- **Repave all four lanes:** the City has required that all four lanes be repaved (14.0 metre width) without regard to the actual disturbance to the road surface.<sup>28</sup>
- **PLUS perform subgrade work on the whole road width:** rather than a financial contribution towards repaving, the City has required FEI not only to pave the entire 14.0 metre width of the 5.5 kilometre section of Como Lake Avenue, but also to perform road remediation (repair the subgrade below the asphalt) to replace 125 millimetres of subsurface materials and pavement across all four lanes of Como Lake Avenue without regard to the disturbance to the road surface for an estimated total width of 14.0 metres along the entire length of 5.5 kilometres of Como Lake Avenue.<sup>29</sup>

---

<sup>27</sup> Exhibit C1-10, BCUC-City Phase Two IR 2.14.1; Exhibit C1-12, FEI-City Phase Two IR 1.6.1.

<sup>28</sup> Exhibit C1-10, BCUC-City Phase Two IR 1.14.2; Exhibit C1-11, CEC-City Phase Two IR 1.6.5.

<sup>29</sup> Exhibit B-1, Application, p. 17; Exhibit C1-10, BCUC-City Phase Two IR 1.15.1.

30. FEI asked the City directly “Is it the City’s standard practice to require other third party utilities to undertake curb to curb paving following lateral utility or service cuts?” The City did not answer the question directly. Rather, Coquitlam said: “There are no recent third party utility jobs in Coquitlam that compare with the LMIPSU project in terms of the length of the project...”.<sup>30</sup> The City’s paving specifications are not limited to small pavement cuts, and they apply, with slight variations, to arterial and side roads.<sup>31</sup> Moreover, the fact that Como Lake Avenue already has many pavement cuts supports the reasonable inference that the City is treating FEI differently.

***The Extent of the Betterment is Significant Given the State of the Pavement***

31. The betterment being demanded by the City as a condition of signing off on the Project Engineering Drawings was and is significant given the distressed condition of the roadway today.

32. FEI obtained an independent report on the condition of the roadway from WSP Canada Ltd. (“WSP”), which has expertise in asset management, roadway infrastructure and pavement management. The WSP Report confirms many existing pavement distresses, especially in the curb or outside lanes of Como Lake Avenue and Spuraway Avenue. It identified that several sections of these roadways will likely need a full width rehabilitation treatment or extensive repairs within the next five to ten years. The WSP Report stated in part:<sup>32</sup>

Typically, the service life of an arterial pavement will depend on the pavement structure, sub-surface conditions, and traffic loading on the roadway; these items were not assessed or evaluated during this survey. Depending on these factors, the distresses evident in a pavement, and the level of service expectations of the municipality, the typical service life of a municipal arterial pavement in the Lower Mainland region can likely range between 12 to 40 plus years, with many arterial pavements typically seeing rehabilitation cycles in the range of 20 to 30 years. A more detailed structural and traffic loading

---

<sup>30</sup> Exhibit C1-12, FEI-City Phase Two IR 1.4.6.

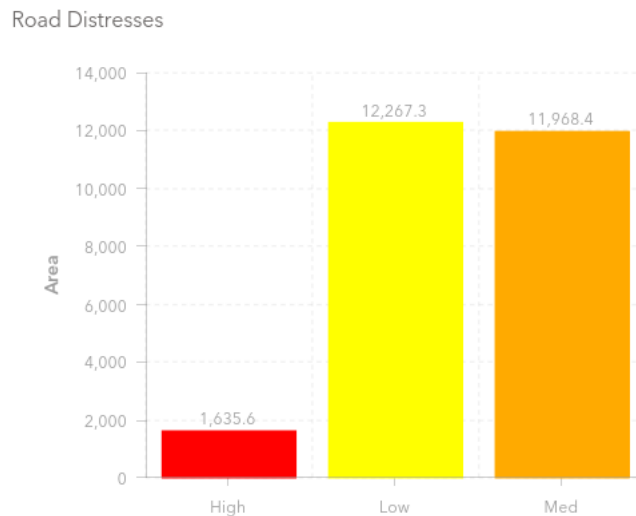
<sup>31</sup> Exhibit B-16, City-FEI Phase Two IR 1.2.1.

<sup>32</sup> Exhibit B-12, FEI Phase Two Evidence, Appendix B, p. 9.

assessment would be required to determine recommended rehabilitation treatments and timing for the pavements along this route.

In our opinion, based on the observed surface conditions of the pavements, including the type, severity, and scope of distresses observed along Como Lake Avenue and Spuraway Ave, several sections of these roadways will likely need a full width rehabilitation treatment or extensive repairs within the next five to ten years.

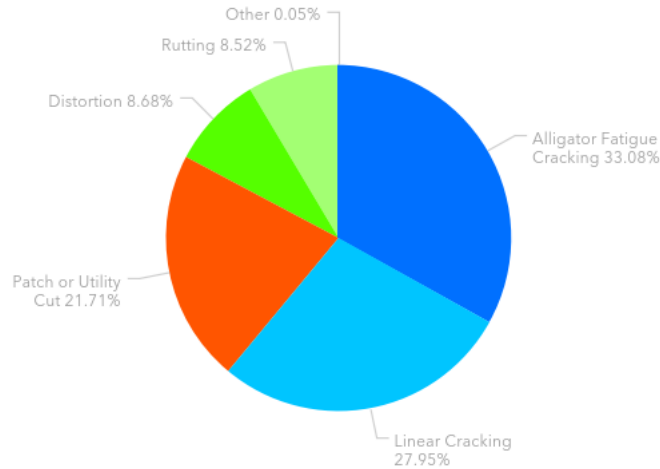
33. WSP counted a total of 577 instances of distress in the surveyed portion of Como Lake Avenue, covering an area of 25,871 square metres. The types and severity of distress identified by WSP were summarized in a table on pages 6 and 8 of the WSP Report, and are depicted in the following two figures.<sup>33</sup> More than half of the identified road distresses are rated medium or high. The photos starting at page 11 of the WSP Report show examples of deterioration.



---

<sup>33</sup> FEI Phase Two Evidence, Appendix B (WSP Report Appendix A).

Road Distress Types



34. The City confirmed that over a third of the 5.5 kilometre length of the Project is slated to be resurfaced within five years regardless of the Project.<sup>34</sup>

**(c) The City is Requiring FEI to Do Work that the City Wouldn't Otherwise Do**

35. The City is requiring FEI to do work that the City wouldn't undertake if it was paying the bill. Utility cuts represent 310 of the 577 instances of distress identified by WSP, covering 5,617 square metres of the surveyed area.<sup>35</sup> WSP's photos include examples of where pavement cuts have been repaired. Despite the current extent of these utility cuts, the City has only identified 2 kilometres of the 5.5 kilometres of the roadway as being "in need of full repaving within five years". Otherwise, the City seems perfectly prepared to accept a road with existing utility cuts and other wear and tear, characterizing the current, well-worn state of the road as follows: "All other sections are considered acceptable to the City. The City considers roads that are analyzed based on assessed condition and available funding resulting in optimum network condition as 'acceptable' for service."<sup>36</sup> FEI submits that the litmus test that the City applies for whether or not a road needs to be repaved and the subsurface replaced in its entirety at this time should not depend upon who is paying the cost of the repaving and repair.

---

<sup>34</sup> Exhibit C1-10, BCUC-City Phase Two IR 2.14.1; Exhibit C1-12, FEI-City Phase Two IR 1.6.1.

<sup>35</sup> Exhibit B-12, Appendix B, WSP Report, pp. 6 and 8.

<sup>36</sup> Exhibit C1-10, BCUC-City Phase Two IR 2.14.1.

**(d) The City’s Demands Would Unduly Impact FEI Customers**

36. The costs of the City’s Extra Paving demands are excessive and unduly impact FEI customers. The relative impacts of the two approaches are shown below (FEI’s plans are Scenario 1; the City’s demand is Scenario 2).<sup>37</sup>

	Scenario 1	Scenario 2
Capital Cost \$000’s	\$601	\$4,573
Levelized Rate Impact \$ / GJ	\$0.000	\$0.002
Annualized Cost of Service \$000’s	\$43	\$324
Present Value of Incremental Cost of Service for 50 Years \$000’s	\$710	\$5,402

37. In short, the City is trying to get FEI and its customers to pay for work that is unrelated to the Project and that much of which the City would otherwise undertake in any event within five years. As discussed above, this outcome is contrary to the Operating Agreement. It would be unreasonable even in the absence of an Operating Agreement.

**F. THE BASIS FOR FEI’S INITIAL OFFER TO CONTRIBUTE \$3.2 MILLION AS PART OF AN OVERALL RESOLUTION NO LONGER EXISTS**

38. The Commercial Energy Consumers Association of British Columbia (“CEC”) asked why FEI had initially offered to contribute \$3.2 million to the repaving costs. The answer is that, at the time, the City’s refusal to approve the Project Engineering Drawings was putting the Project schedule and cost at risk. FEI’s proposed \$3.2 million contribution towards the City’s repair and repaving of Como Lake Avenue “was part of an overall proposal to resolve the outstanding issues with the City so that FEI could obtain the permits and approvals from the City to proceed with the construction of the NPS 30 IP gas line.”<sup>38</sup> There was value to FEI customers if the outstanding issues related to the Project could be resolved for a reasonable amount of money and allow the Project to proceed on schedule. However, the City responded to this offer with a significantly greater demand, necessitating an application to the BCUC. FEI has had to incur internal and external costs in support of its application to the BCUC to obtain

---

<sup>37</sup> Exhibit B-12, FEI Phase Two Evidence, p. 19.

<sup>38</sup> Exhibit B-15, CEC-FEI Phase Two IR 2.2.4. See also Exhibit B-14, BCUC-FEI Phase Two IR 2.12.4.

an order allowing FEI to proceed with the construction of the NPS 30 IP gas line.<sup>39</sup> The BCUC's Phase One Decision has now removed the threat of Project delay from the City's refusal to approve the Project Engineering Drawings. The reasonable approach now, with the City's considerable leverage being negated, is to have the issues determined on their merits.

---

<sup>39</sup> Exhibit B-14, BCUC-FEI Phase Two IR 2.12.2.1.

## PART FOUR: ALLOCATION OF NPS 20 IP GAS LINE REMOVAL COSTS

### A. INTRODUCTION

39. This Part addresses the City's demand<sup>40</sup> that FEI remove the NPS 20 IP gas line now at a cost of tens of millions of dollars, and for FEI (and its customers) to bear the entirety of that cost. The City is entitled under the Operating Agreement to direct FEI to remove the NPS 20 IP gas line, but the City is also bound by the contractual cost allocation methodology contained in the Operating Agreement. In the event that the BCUC were to conclude (as the City argues, but FEI disputes) that the Operating Agreement is inapplicable in the circumstances, the City could be expected to pay the entire cost of the removal. In the alternative, it would still be fair and reasonable under section 32 of the *UCA* for the BCUC to adopt the same allocation methodology that is contained in the Operating Agreement.

40. This Part is organized around the following points:

- First, abandonment of the NPS 20 IP gas line was a term of the Project CPCN, such that it was inappropriate for the City to demand that the NPS 20 IP gas line be removed as a condition of approving the Project Engineering Drawings.
- Second, the Operating Agreement allows the City to request that FEI remove the NPS 20 IP gas line once it has been abandoned in place, but also provides for a cost allocation methodology that requires the City to pay the majority of the costs.
- Third, even if the City is correct (which it is not) that removal of abandoned pipe is not covered by the Operating Agreement, then the City could be expected to pay the entire cost of the removal. In the alternative, the fair and reasonable outcome under section 32 of the *UCA* is still to adopt the same allocation methodology as under the Operating Agreement.

---

<sup>40</sup> The City's letter confirming its demand to remove the NPS 20 IP gas line and pay for it is included as Attachment 1 to the City's responses to Exhibit C1-10, BCUC-City Phase Two IRs.



- Fourth, the City has provided insufficient justification for demanding the immediate removal of the entirety of the NPS 20 IP gas line pipe at a cost of tens of millions of dollars.

**B. IT WAS INAPPROPRIATE FOR THE CITY TO CONDITION ITS APPROVAL OF PROJECT DRAWINGS ON REMOVING THE NPS 20 IP GAS LINE**

41. The City made removal of the NPS 20 IP gas line a condition of signing-off on the Project Engineering Drawings.<sup>41</sup> As discussed below, the City's condition was inappropriate in light of the BCUC's CPCN Decision, which was a considered decision based on evidence.

**(a) The CPCN is Unequivocal – FEI is to Abandon the NPS 20 IP Gas Line in Place**

42. The CPCN Decision, Order C-11-15, approved FEI's abandonment plan. The Decision was express and unequivocal: "The Panel approves FEI's abandonment plans and discontinuance of [cathodic protection] as proposed for both the Coquitlam Gate and Fraser Gate IP Projects."<sup>42</sup> In other words, pursuant to the CPCN Decision, FEI must, as a condition of undertaking the approved Project, abandon the NPS 20 IP gas line in place.

**(b) Section 121 of the UCA Prevents the City from Impeding or Superseding the UCA and CPCN**

43. The City's approach of withholding approval of the Project Engineering Drawings was, in essence, seeking to require FEI to ignore an express term of the CPCN Decision in order to be able to carry out the rest of the BCUC-approved Project. Section 121 of the UCA precludes the City from taking that approach.

44. Section 121 provides:

121(1) Nothing in or done under the *Community Charter* or the *Local Government Act*

---

<sup>41</sup> Coquitlam's approach of linking the two issues was reflected, for instance, in its comments on the 90% Engineering Drawings. See email correspondence, Exhibit B-12, FEI Phase Two Evidence, Appendix F.

<sup>42</sup> CPCN Decision, p. 24.

(a) supersedes or impairs a power conferred on the commission or an authorization granted to a public utility, or

(b) relieves a person of an obligation imposed under this Act or the *Gas Utility Act*.

(2) In this section, "authorization" means

(a) a certificate of public convenience and necessity issued under section 46,

45. The *UCA* confers on the BCUC the power to impose terms on a CPCN,<sup>43</sup> which the BCUC exercised by approving abandonment of the NPS 20 IP gas line in the CPCN Decision. In the context of section 121:

- the BCUC's power to impose terms is a "power conferred upon the commission";<sup>44</sup> and
- the CPCN, including terms relating to abandonment, is an "authorization".

The City was purporting to exercise its powers under the *Community Charter* or the *Local Government Act* to override the BCUC's jurisdiction, thereby purporting to "supersede" and "impede" a "power conferred upon the commission". The intent and effect of the City's position was to render Directive 8 of BCUC Order C-11-7 approval meaningless as it relates to the abandonment, thereby "superseding" and "impeding" the CPCN "authorization" conferred upon FEI.

46. In short, the BCUC was correct to allow FEI to proceed with the work unimpeded in accordance with the CPCN Decision, and deal with the City's arguments in Phase Two of this proceeding.

---

<sup>43</sup> Section 45(9) authorizes the BCUC to place terms "as the public convenience and interest reasonably require".

<sup>44</sup> *UCA*, s. 121(1)(a).

**(c) The CPCN Was a Real and Considered Order Based on Evidence**

47. The City responds to this point by questioning the legitimacy of the BCUC's authorization of abandonment of the NPS 20 IP gas line. It implies that either (a) the BCUC either did not make an order at all, or (b) was uninformed in doing so. In fact, the BCUC's requirement was a legitimate, and considered decision. As described below, it reflected the law regarding treatment of decommissioned lines and was based on evidence.

***The City's Assertion that the BCUC Did Not Authorize Abandonment is Untenable***

48. Arguing, as the City appears to be doing,<sup>45</sup> that the BCUC lacked jurisdiction to include abandonment of the NPS 20 IP gas line as a condition of the Project CPCN, requires ignoring what is self-evident on the face of the CPCN order and Decision. The BCUC cited section 45 of the *UCA* in the CPCN Order. Section 45(9) authorizes the BCUC to place terms "as the public convenience and interest reasonably require" on the issuance of a CPCN relating to the construction of the Project. Specifying terms on how FEI was to address the NPS 20 IP gas line as part of the Project went to the core of the BCUC's role as a public utility regulator. The decision had economic implications for ratepayers (abandonment was much cheaper than removal), as well as social and environmental implications (which the BCUC concluded favoured abandonment).

49. The City goes so far as to argue "nor is it clear whether the Commission was intending to make a binding order" based on the fact that the "referenced approval at page 24 did not direct FEI to do anything".<sup>46</sup> In essence, the City is saying that any term or condition attached to any CPCN is non-binding unless the BCUC uses the word "orders" or "directs". This cannot be correct. The CPCN is an approval to construct and if the construction is initiated, all of the terms and conditions of the order are binding on the utility. Moreover, section 121 of the *UCA* references "authorization", not "direction".

50. Order C-11-15 provided in part:

---

<sup>45</sup> Exhibit C1-10, BCUC-City IR 1.11.6.

<sup>46</sup> Exhibit C1-10, BCUC-City IR 1.11.6.

4. FEI is directed to comply with all the directives of the Commission set out in the Decision issued concurrently with this order.

The BCUC's approval of FEI's abandonment plans as proposed was one of those directives (Directive 8).

51. The BCUC was authorized to impose terms on a CPCN. The BCUC clearly authorized FEI to abandon the NPS 20 IP gas line as part of the Project approval.

***There Was Ample Evidence Before the BCUC on the Merits of Abandonment***

52. The idea, which appears to be posited by the City, that the BCUC's CPCN Decision was uninformed is also a non-starter. The BCUC made a considered decision based on the law governing abandonment and evidence on the merits of doing so in this instance.

53. The applicable legislation contemplates abandonment in place. Specifically, section 40 of the *Oil and Gas Activities Act*<sup>47</sup> requires compliance with the *Pipeline Regulation*.<sup>48</sup> Section 11 of the *Pipeline Regulation* 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 *Environmental Protection and Management Regulation*.<sup>49</sup> "Abandon" is defined in the *Pipeline Regulation* as permanently removing a gas line from service.

54. The case for abandonment is compelling. FEI explained that abandonment is the least impact solution:<sup>50</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.

---

<sup>47</sup> S.B.C. 2008, c. 36.

<sup>48</sup> B.C. Reg. 281/2010.

<sup>49</sup> B.C. Reg. 200/2010.

<sup>50</sup> Exhibit B-14, BCUC-FEI Phase Two IR 2.8.1. See also Exhibit B-14, City-FEI Phase Two IR 2.10.5.

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.

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.

55. 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 abandonment in place:

- (a) is an industry standard approach;

- (b) has advantages in terms of cost to FEI's customers;
- (c) would cause a second major linear disturbance after installation of the 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) would involve significantly greater negative risks in terms of Health and Safety, Community and Stakeholder and Environment.

56. In order to demonstrate the extent to which the BCUC had the necessary evidence to reach a considered decision in the CPCN proceeding, FEI has also filed two of its IR responses from the CPCN proceeding. In one response, FEI had outlined the regulations governing the abandonment of pipelines in BC including CSA Standard Z662, Oil and gas pipeline systems and the *Oil and Gas Activities Act*, and emphasized that FEI must also comply with all federal and provincial regulatory requirements including the *Environmental Management Act* and associated regulations.<sup>51</sup> Another response had addressed the potential adverse effects abandoning the pipe in place would have on future space restrictions, access to right-of-ways, and long-term environmental effects.<sup>52</sup>

***The BCUC's Decision Shows it Considered the Evidence***

57. The BCUC's CPCN Decision reflected its consideration of the issues associated with abandonment:<sup>53</sup>

The Panel approves FEI's abandonment plans and discontinuance of CP 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.

---

<sup>51</sup> Exhibit B-15, BCUC-FEI Phase Two IR Attachment 7.2a.

<sup>52</sup> Exhibit B-15, BCUC-FEI Phase Two IR Attachment 7.2b.

<sup>53</sup> CPCN Decision, p. 24. See also Exhibit B-16, City-FEI Phase Two IR 1.10.5.

***The City Had Every Opportunity to Participate in the CPCN Proceeding***

58. It also 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, but did not do so. It cannot now – years after the fact – question the merits of the BCUC’s decision.

**C. THE OPERATING AGREEMENT ALLOWS THE CITY TO REQUEST REMOVAL, BUT SPECIFIES A COST ALLOCATION**

59. The City has a contractual right under the Operating Agreement to request that FEI remove the abandoned NPS 20 IP gas line, but that right is accompanied by an allocation methodology that makes the City responsible for the majority of those removal costs.

**(a) Sections 4 and 5(a) of the Operating Agreement Apply to the NPS 20 IP Gas Line**

60. The applicable provisions of the Operating Agreement are sections 4 and 5(a), which are quoted below. (Note that the “Corporation” in these provisions is the City; FEI is the “Company”.)

4. Upon the written request of the Corporation [i.e., the City] or the Municipal Engineer on its behalf, the Company [i.e., FEI] 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; [Emphasis added]

61. Section 3.4.2 of FEI's Phase Two Evidence shows 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. The components of the calculation under section 5(a) are summarized later in this section, as is the expected outcome of applying the calculation to the NPS 20 IP gas line.

**(b) Response to the City's Arguments that Section 5(a) is Inapplicable**

62. FEI submits that the various arguments that the City has advanced as to why section 5(a) is inapplicable are without merit. FEI provides its answers to those arguments below.

***The "Said Works" Must Include Abandoned Pipe***

63. Sections 4 and 5(a) apply to "the said works". The City's position is that "...permanently decommissioned pipelines do not fall within the term 'the said works' as used in the agreement."<sup>54</sup> FEI submits that "the said works" include a gas line that has been permanently decommissioned.

64. The definition of "the said works" in section 1 of the Operating Agreement, which is quoted below, specifically includes FEI's "pipes". The NPS 20 IP gas line is still one of FEI's "pipes" even after permanent decommissioning. FEI continues to own the pipeline.

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 Certificate 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")... [Emphasis added]

---

<sup>54</sup> Exhibit C1-10, BCUC-City Phase Two IR 1.11.2.



65. There is nothing in the definition of “the said works” that excludes from the “pipes” those pipes that have been decommissioned. The parties could easily have spelled out “pipes, except for permanently decommissioned pipes”, but did not do so.

66. On the contrary, section 16 of the Operating Agreement provides that “the said works” placed on any public property remain the property of FEI. It confirms that FEI shall be entitled at any time to remove “the said works” subject to the terms of the Operating Agreement. This is entirely consistent with the Operating Agreement applying to “the said works” throughout the time they remain placed on public property. The provision does not state that the Company’s rights with respect to the works end when the works are no longer in-service. Rather, the works were placed in accordance with the terms of the Operating Agreement, and are permitted to remain.

67. The City’s interpretation would introduce a second logical inconsistency in to the Operating Agreement by virtue of the reference to the Operating Agreement applying to “remov[al]”. There is an explicit reference in section 1 to “remove” of “the said works”. It is not possible to “remove” any pipe that has not first been decommissioned, and there would be no reason to remove it unless that decommissioning was permanent.

68. The removal of works is also specifically referenced elsewhere in the Operating Agreement, including Sections 2, 9, 11 and 15.

- Section 2 provides that FEI cannot, among other things, remove the works until the City has approved such removal.
- Section 9 places an obligation on FEI to repair any damage to the City’s property caused by FEI in, among other things, removing the works.
- Section 11 obligates FEI to indemnify and hold the City harmless for damages (other than those caused or arising from any willful act or negligence on the part of the City) caused by or arising out of, among other things, FEI removing the works.

- Section 15 provides that, among other things, removal of FEI works shall not interfere with other works laid down by the City.

***Response Regarding “Change of Location”***

69. The BCUC asked<sup>55</sup> about the use of the phrase “change the location” in section 4 of the Operating Agreement. FEI submits that the overall Operating Agreement and the intention of the parties militate against an excessively narrow reading of these words. Section 4 of the Operating Agreement also applies to the removal of an abandoned gas line.

70. Section 1 of the Operating Agreement is the general provision that describes the activities to which the Operating Agreement is intended to apply. It lists a number of activities to be undertaken, specifically “place, construct, renew, alter, repair, maintain, remove, operate and use its pipes...”. There is no reference in section 1 to “change the location”, suggesting that the concept of “change the location” in section 4 is intended to be encompassed within those other listed activities, such as “remove”, “place” and “construct”. None of those listed terms in section 1 is a perfect match to moving a temporarily decommissioned pipe from one place to another either, yet both parties agree that section 4 would still apply to moving the pipe from one place to another.

71. Another important point is that the parties clearly expressed in section 1 that the Operating Agreement was intended to represent “the conditions upon which the Company may, pursuant to the "Gas Utilities Act" and the said Certificate 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”. Section 6 of the Operating Agreement addresses either party requesting that a temporary change be made to the location of the other party’s work. Unless section 4 applies to removal of a decommissioned pipe, then the BCUC could reasonably interpret the City as having no right at all to require FEI to remove pipe. In other words, a logical extension of the City’s position is that FEI is permitted to simply say “no” to removing

---

<sup>55</sup> Exhibit B-14, BCUC-FEI Phase Two IR 2.8.2.

the NPS 20 IP gas line and the City must simply ask for a relocation each time it becomes necessary. FEI expands on this point later in this submission, in response to the City's argument that the NPS 20 IP gas line will be a "trespass" on municipal property.

72. It would create a rather odd outcome if the Operating Agreement was interpreted such that the question of whether the City had to pay for a portion of the cost turned on whether the pipe was going to be reburied elsewhere. That is, it is illogical for the City to have to share in the cost where the line is moved to a new underground location, but does not have to if the line is disposed of instead. The City is actually better off in the latter scenario relative to the former one. All other things being equal, in the case of a request for a change in the location of an abandoned line, the cost to the City will be less because the cost of the change under section 5 of the Operating Agreement will not include the cost of installing the works in their new location. Removal also means no disruption associated with reinstallation.

**(c) The BCUC Should Endorse FEI's Calculation of the "Original Installed Cost" for the Allocation Formula**

73. Table 3-6,<sup>56</sup> which is copied below, shows FEI's estimated allocation under the formula in section 5(a) of the Operating Agreement. As discussed above, the allocation (amounts shown in lines 6 and 7) is a function of the original installed cost of the NPS 20 IP gas line (line 2) and the final removal costs. The removal costs in Table 3-6 are necessarily only an estimate, since they will only be known for certain after the fact. However, the BCUC has the necessary evidence before it to make a determination on the original installed cost (line 2). A determination in that regard would allow the parties to calculate the final allocation on their own. FEI submits that the original cost estimate that it has provided is reasonable and should be adopted.

---

<sup>56</sup> Exhibit B-12, FEI Phase Two Evidence, p. 33.

**Table 3-6: Estimation of Original Cost, Number of Years Since Installation, Removal Costs and Cost Allocation**

		High Cost		Low Cost	
		5.5 km	380 m	5.5 km	380 m
1	Original Installed Cost 2018\$ millions	\$25.1	\$1.7	\$14.1	\$1.0
2	Original Installed Cost 1957\$ millions	\$2.8	\$0.2	\$1.6	\$0.1
3	No. of Years: Year of Removal minus Year of Installation	67 Years	64 Years	67 Years	64 Years
4	Removal Costs 2021		\$9.4		\$9.4
5	Removal Costs 2024	\$77.5		\$77.5	
6	FEI's Allocation <sup>17</sup>	\$3.8	\$0.2	\$2.1	\$0.1
7	City Allocation	\$73.7	\$9.2	\$75.4	\$9.3

74. FEI described the original cost calculation approach in detail in section 3.4 of its Phase Two Evidence, and in response to several IRs.<sup>57</sup> In essence, since FEI's records do not provide the level of detail necessary to determine the install cost of the NPS 20 IP gas line in 1957, FEI prepared an estimate of the installation cost in current 2018\$ in section 3.4.1 of its Phase Two Evidence. FEI determined the installed value of the NPS 20 IP gas line by itemizing the current NPS 30 IP gas line budget estimate in sufficient detail to provide the granularity necessary for FEI to determine which budget components would not be relevant to gas line construction in 1957, and then applied appropriate factors and assumptions to the relevant budget components. This information provides a reasonable basis for performing the allocation under section 5(a).

**D. THE SAME ALLOCATION APPROACH IS STILL REASONABLE IF THE OPERATING AGREEMENT IS INAPPLICABLE**

75. This section assumes, for the sake of argument only (based on the City's arguments), that the removal of the abandoned NPS 20 IP gas line is not covered by the Operating Agreement.

76. If the Operating Agreement does not apply to the removal of decommissioned works as asserted by the City, it stands to reason that having been placed in accordance with

---

<sup>57</sup> Exhibit B-14, BCUC-FEI Phase Two IR 2.10.3-2.10.5; Exhibit B-16, City-FEI Phase Two IR 1.12.1, 1.12.3.

the Operating Agreement, the City does not have a right, after the fact, to require that the placed works be removed.

77. In the alternative, the BCUC could determine a fair and reasonable cost allocation pursuant to section 32 and/or 33 of the *UCA*. The City is incorrect that FEI would have to remove the NPS 20 IP gas line at its own cost in those circumstances. The same allocation approach is still reasonable if the Operating Agreement is inapplicable and the City is not required to pay the entire cost of the removal that would occur at its request.

**(a) If the Operating Agreement is Inapplicable, the City Should Pay All the Cost, or Alternatively it is Up to the BCUC to Decide**

78. If the Operating Agreement does not apply to the removal of decommissioned works as asserted by the City, it stands to reason that having been placed in accordance with the Operating Agreement, the City does not have a right, after the fact, to require that the placed works be removed. In such circumstances, the City would be required to reach a negotiated agreement with FEI on the allocation of costs of the removal. Given that the removal in question would occur at the City's request, it would make sense for the City to pay the entirety of the cost.

79. In the alternative, section 32 and/or 33 applies in the event that the BCUC were to conclude there is no agreement in place governing this scenario, which include the requirement of public lands for the Project, for the reasons set out in Part 2 above. The BCUC is not bound by any particular allocation, and should assess what is fair and reasonable in the circumstances.

**(b) The City's Claim is Based on an Incorrect Assessment of the Parties' Legal Rights and Obligations**

80. The City's position is that, if the Operating Agreement is inapplicable, then FEI will be trespassing with its "garbage" and should have to remedy the "trespass" by removing the entirety of the NPS 20 IP gas line at FEI's sole cost. FEI submits, for the reasons explained

below, that the City has erred in its assessment of the parties' respective legal rights and obligations.

***The 1955 CPCN, the GUA and the Operating Agreement Gave FEI the Right to Place the NPS 20 IP Gas Line and Do Not Require its Removal***

81. The City focuses on the Project CPCN, arguing that the BCUC's order "does not, and could not, grant FEI any new property rights in the City's lands."<sup>58</sup> It further argues: "The Commission's support for FEI's plan [to abandon the NPS 20 IP gas line] must also be implicitly conditional on FEI having the necessary legal rights from the relevant property owner to leave its decommissioned works in place."<sup>59</sup> The City is ignoring three points:

- FEI had rights to place the NPS 20 IP gas line. Those rights originated with its 1955 CPCN, the *GUA*, and Operating Agreement terms governing placement of the NPS 20 IP gas line. The CPCN and the *GUA* gave FEI the right to place assets and operate in the municipality, subject to reaching an agreement with the municipality. ("Place" is among the non-exhaustive list of activities in the *GUA*.) The Operating Agreement represented that agreement on placement. Whatever property rights the municipality might have, those rights have always been subject to FEI's rights to place the pipe.
- There is no provision of (a) the 1955 CPCN, (b) the *GUA*, or (c) any other legislation, that requires gas utility facilities placed in a municipality to be removed after they are decommissioned.
- To the contrary, the *OGAA*, which is part of the overall applicable statutory framework as well, provides for abandonment in place. The step authorized by the Project CPCN – abandonment in place in the manner prescribed by the *OGAA* – involves no change in the current placement.

---

<sup>58</sup> Exhibit C1-10, BCUC-City Phase Two IR 2.11.6.1.

<sup>59</sup> Exhibit C1-10, BCUC-City Phase Two IR 2.11.6.

82. A related City argument is that the list of permitted powers under the *GUA* “do not include the rights to leave decommissioned chattels not being used for permitted Gas Activities on the City’s Land.”<sup>60</sup> The City is glossing over the fact that the list of activities in the *GUA* is non-exhaustive. More fundamentally, as explained above, the express powers listed do include the power to “place” pipe, and none of the 1955 CPCN, the *GUA*, or any other legislation impose any requirement to remove pipe once placed.

***Section 121 of the UCA Is a Full Answer to the City’s Reliance on the Community Charter to Assert a Trespass***

83. There is another compelling answer to the City’s argument that the presence of the NPS 20 IP gas line will represent a trespass. The City is relying on the *Community Charter*, which is one of the referenced statutes in section 121 of the *UCA*. The City states, for example:

The City has legislative and common law authority to require FEI to remove the decommissioned NPS 20 pipe from the City’s lands. The City is both the owner of Como Lake Avenue with common law property ownership rights over the highway lands (codified by s.35(1) of the *Community Charter*), and the level of government with authority to regulate the use of those lands by others (s.36 of the *Community Charter*).

Section 121 of the *UCA* is a full answer to this argument.<sup>61</sup> FEI installed the NPS 20 IP gas line pursuant to a CPCN and a determination that the gas system was in the public convenience and necessity. FEI is abandoning the NPS 20 IP gas line based on another CPCN, a term of which authorizes abandonment in place.<sup>62</sup> The CPCNs granted by the BCUC (or its predecessor), a term of which was that the NPS 20 IP gas line be abandoned in place, is an “authorization” under section 121. The City cannot rely on, or exercise a power under, the *Community Charter* in a manner that purport:

---

<sup>60</sup> Exhibit C1-10, BCUC-City Phase Two IR 1.11.4.1.

<sup>61</sup> Section 121(1): Nothing in or done under the *Community Charter* or the *Local Government Act* (a) supersedes or impairs a power conferred on the commission or an authorization granted to a public utility, or (b) relieves a person of an obligation imposed under this Act or the *Gas Utility Act*.

<sup>62</sup> FEI has addressed in section B(c) above the City’s untenable argument that the CPCN was an invalid or otherwise insufficient authorization of abandonment.

- to “supersede” and “impair” the BCUC’s power to authorize the original placement of the NPS 20 IP gas line, to set appropriate terms on the Project CPCN; and
- to “supersede” and “impair” FEI’s ability to act pursuant to the terms of its Project CPCN.

**(c) Using the Allocation Methodology Under the Operating Agreement is Fair**

84. The following considerations make the case for using the same allocation methodology as in the Operating Agreement, even if the BCUC were to conclude that the Operating Agreement does not apply (it does) or the City is not required to pay all of the costs.

- FEI has every right, and the necessary approvals, to abandon the pipe in place and leave it there. The proximate cause of the removal cost is the City’s projects, not FEI’s. 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 the removal that it requires for its own purposes.
- It would be a fair and reasonable outcome for costs associated with removal and disposal to be allocated the same way as under the Operating Agreement, as there is conceptually little difference between the triggering factor. Because of the installation of the NPS 30 IP gas line, the City is actually better off when a gas line is removed in the sense that it costs less relative to reinstalling the same gas line.
- The inclusion of a cost allocation provision 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. THE CITY HAS PROVIDED INSUFFICIENT JUSTIFICATION TO INCUR THE SIGNIFICANT COST OF REMOVING NPS 20 IP GAS LINE**

85. The City asserts that the entire 5.5 kilometres of NPS 20 IP gas line has to be removed “at some point”, and that it is more cost effective to remove it now rather than later.<sup>63</sup> FEI submits, for the reasons described below, that the City has provided insufficient justification for incurring the tens of millions of dollars required to remove the gas line.

**(a) The City Does Not Currently Need the Space**

86. The City admits that there is still capacity for utility installations even without the removal of the NPS 20 IP gas line: “At this time, in certain segments below Como Lake Avenue, there is capacity for utility installations without the removal of the NPS 20 pipe.”<sup>64</sup>

**(b) The City May Never Need the Space**

87. The evidence is clear that removal of the NPS 20 IP gas line may never be necessary, in which case removing it now would represent a gross waste of money.

88. The City 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.” The City also stated: “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.”<sup>65</sup> This quote is characteristic of the City’s vague and imprecise evidence on this point. It is telling in three respects. First, the City is admitting that some of 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 can say is that they might become an obstacle” “at some point”. Third, the City never states that the *whole* 5.5 km pipe length will be an “obstacle”.

---

<sup>63</sup> Exhibit C1-10, BCUC-City Phase Two IR 2.10.1.

<sup>64</sup> Exhibit C1-10, BCUC-City Phase Two IR 2.10.5.1.

<sup>65</sup> Exhibit C1-12, FEI-City Phase Two IR 1.2.6.

89. In fact, throughout this entire process, and despite ample opportunity to do so:

- The City has not identified any specific sections of the 5.5 kilometre corridor, other than the 380 metre section referenced above, where the potential conflict would arise.
- The City has not provided any specifics as to future projects that would be negatively impacted or unfeasible for use due to excessive depth, insufficient spacing, offset to other adjacent utilities, or other reasons.
- As for the timing of a potential conflict, the City never gets more precise than “at some point”<sup>66</sup> or “sooner or later”.<sup>67</sup>

90. The City did cite the potential need to replace many of its own mains, but that was over a 25 year period and the City could not identify specific facilities that would require replacement:<sup>68</sup>

A detailed scope of the underground works that the City will need to construct in Como Lake Avenue is very difficult or impossible to provide. However, many of the sanitary and water mains along Como Lake Avenue are older than 50 years (refer to Attachment 1), and many of these will likely be replaced and/or upgraded within 25 years.

The City also did not explain why the replacement of any of those City mains would necessitate removal of the significant lengths of the NPS 20 IP gas line, as opposed to small sections.

91. Another justification that the City has cited is the potential for third party utilities to be affected. The only specific example is one utility’s “expressed interest” in locating a duct bank in the roadway, and the City has offered no explanation as to if, why or how the installation of a duct bank would even be impacted by the presence of the NPS 20 IP gas line. Moreover, there is a conceptual problem with the City’s desire to require FEI to pay for removal

---

<sup>66</sup> Exhibit C1-10, BCUC-City Phase Two IR 2.10.1; Exhibit C1-11, CEC-City Phase Two IR 1.4.6.

<sup>67</sup> Exhibit C1-8, City Phase Two Evidence, p. 6.

<sup>68</sup> Exhibit C1-12, FEI-City Phase Two IR 1.10.5.1.

necessitated by a third party developer or utility. FEI submits that the City's desire to facilitate another third party utility is an invalid basis for the City to demand that FEI customers pay for the removal of the entire NPS 20 IP gas line. It is a live issue as to whether the third party developer or utility should pay for those costs.

92. Given the speculative nature of the City's claims regarding the use of the space, removing some or all of the remaining 5.12 kilometres of the NPS 20 IP gas line may prove to be unnecessary. The costs involved are too large to permit the City speculate with ratepayer money in this manner. Furthermore, if the City never utilizes the space occupied by the NPS 20 IP gas line, customers, residents, commuters and businesses will be unnecessarily inconvenienced.

**(c) It is More Efficient to Remove Segments in Parallel with Future Work**

93. Even if the BCUC were to take the City's speculation at face value (which it should not), that would not mean that it makes sense to remove the NPS 20 IP gas line now.

94. It would only be more cost-effective to remove the 380 metre section of the NPS 20 IP gas line immediately after the NPS 30 IP gas line is in service if the City will coordinate installation of its planned utilities for the same time.<sup>69</sup> Removing the either the 380 metre section or the entire 5.5 kilometres of NPS 20 IP gas line, without coordinating with future infrastructure installations, is less cost-effective. It would also increase the impact to residents, commuters, businesses and FEI's customers.<sup>70</sup> FEI explained:<sup>71</sup>

Regardless of cost allocation between FEI and the City, for any sections of the NPS 20 IP gas line that may need to be removed to facilitate installation of the City's or other third party utility infrastructure after commissioning of the NPS 30 IP gas line, the most cost-effective and practical approach would be to coordinate planning and construction efforts in order to remove the identified section(s) of the NPS 20 IP gas line which are in conflict at the same time as the installation of the new utility project. This approach would avoid construction

---

<sup>69</sup> Exhibit B-14, BCUC-FEI Phase Two IR 2.7.1; Exhibit B-16, City-FEI Phase Two IR 1.12.2.

<sup>70</sup> Exhibit B-14, BCUC-FEI Phase Two IR 2.7.1.

<sup>71</sup> Exhibit B-14, BCUC-FEI Phase Two IR 2.7.1.

costs associated with the removal of sections of the NPS 20 IP gas line ahead of time that do not actually conflict with the new utility project.

This approach would also avoid cost inefficiencies associated with mobilizing construction efforts multiple times to the same location to initially remove the NPS 20 IP gas line, and then some time afterward re-establishing new construction work zones, re-implementing traffic management plans, re-cutting the paving, re-excavating the same trench that the NPS 20 IP gas line was previously removed from, and then re-backfilling the trench after installation of the new utility project.

95. The City appears to concede that it would “reduce disruption to the public” to coordinate the 380 metre removal with its own project.<sup>72</sup> The same logic would apply to the removal of the remainder of the pipeline as well, i.e., that work, if it ever proves to be necessary, should be coordinated as well.

96. While the City has identified “challenges” to the City associated with the removal of the NPS 20 IP gas line and the installation of new utility projects to be executed in parallel, the City also admits it would be “technically and operationally feasible”.<sup>73</sup> It also admits that coordination with a future project “could potentially provide some net advantages to overall efficiency and cost effectiveness”.<sup>74</sup> When the City abandons its own large diameter pipes (it hastens to add that it doesn’t happen that often), it leaves the pipes in place unless and until removal is required to allow another project to proceed. “When the City requires the space for a new pipe in the alignment of the old pipe, the City will remove and dispose of the old pipe, to make way for the new pipe.”<sup>75</sup>

97. Moreover, some of the “challenges” that the City has identified with coordinating removal with a future municipal project are overstated. For instance, the City has repeatedly suggested that its contractor would have to take special steps to deal with the potential presence of asbestos, which it says would “greatly complicate the contractor’s

---

<sup>72</sup> Exhibit C1-10, BCUC-City Phase Two IR 2.10.10.1.1.

<sup>73</sup> Exhibit C1-10, BCUC-City Phase Two IR 1.10.6

<sup>74</sup> Exhibit C1-10, BCUC-City Phase Two IR 1.10.6

<sup>75</sup> Exhibit C1-11, CEC-City Phase Two IR 1.4.9.

schedule and construction activity, and this would increase costs to the City. This would also cause increased costs for FEI as a result of repeated excavation and repaving in the same area.”<sup>76</sup> FEI explained, however, that: “The standard excavation procedure for working around a natural gas line does not change based upon the coating type used, even if asbestos is thought to be present in the coating.”<sup>77</sup>

**(d) The Significant Cost of Removal Compounds the Unfairness to FEI/FEI Customers of Requiring Removal in the Circumstances**

98. The significant cost of removal of the NPS 20 IP gas line would compound the unfairness to FEI customers of requiring them to contribute to the cost of removal based on the City’s vague speculation that removal might avoid “obstacles” in some segments “at some point”.

99. FEI retained RAM Engineering to prepare an AACE Class 5 cost estimate for the removal of the 5.5 kilometres of NPS 20 IP gas line in an ungrouted and grouted condition, and the effect of the Operating Agreement allocation methodology. The main cost estimate components are summarized in Table 3-3 from FEI’s Phase Two Evidence, along with the 2018 cost.<sup>78</sup> The AACE Class 5 cost estimates, based on removal of the 380 metre segment in 2021 and the remainder of the 5.5 kilometres in 2024 are as follows:<sup>79</sup>

<b>Component</b>	<b>Cost (AACE Class 5)</b>
380 metres (2021)	9.4 million
Remainder of 5.5 km (2024)	77.5 million

---

<sup>76</sup> Exhibit C1-8, City Phase Two Evidence, p. 7. It has cited asbestos in other instances such as Exhibit C1-10, BCUC-City Phase Two IR 2.12.2.

<sup>77</sup> Exhibit C-14, BCUC-FEI Phase Two IR 2.9.4.

<sup>78</sup> Exhibit B-12, FEI Phase Two Evidence, p. 30. See also Exhibit B-16, City-FEI Phase Two IR 1.11.1 regarding the cost differential between grouted and non-grouted pipe.

<sup>79</sup> Exhibit B-12, FEI Phase Two Evidence, p. 33, Table 3-6.

100. The accuracy range for the NPS 20 IP gas line removal AACE Class 5 cost estimate is approximately -50% to +100%.<sup>80</sup> In other words, the lower end of the range for the removal of the 5.5 km is still substantial (at \$43 million). The upper end of the range is over \$170 million.

101. The magnitude of the estimate for removal of the NPS 20 IP gas line reflects the complexity of the work described in Section 3 of its Phase Two Evidence. In general, the approach to remove the NPS 20 IP gas line would be similar to that required for the construction of a new large diameter gas line such as the NPS 30 IP gas line.<sup>81</sup> The significant depth of cover of approximately 1 metre up to 4 metres,<sup>82</sup> interaction with existing third party utility mains and service connections,<sup>83</sup> and traffic interaction,<sup>84</sup> would all add to the complexity and cost. FEI states: “Based on the above high-level analysis of the NPS 20 IP gas line removal, FEI anticipates that scope and construction impacts would exceed those of the NPS 30 IP gas line installation.”<sup>85</sup> FEI expanded on its assessment of the complexity of the project relative to the installation of the NPS 30 IP gas line in response to City-FEI Phase Two IR 1.10.4.<sup>86</sup>

102. FEI submits that an AACE Class 5 removal cost estimate provides a reasonable indication of the order of magnitude of the costs involved. It is sufficient for the BCUC to know that the costs are going to be large.

---

<sup>80</sup> Exhibit C1-11, CEC-FEI Phase Two IR 1.5.1.

<sup>81</sup> Exhibit B-12, FEI Phase Two Evidence, pp. 21-22.

<sup>82</sup> Based on a survey that was completed in 2012 for the 5.5 kilometres of the NPS 20 IP gas line. Exhibit B-12, FEI Phase Two Evidence, p.22.

<sup>83</sup> Exhibit B-12, FEI Phase Two Evidence, pp. 24-25.

<sup>84</sup> Exhibit B-12, FEI Phase Two Evidence, p. 25.

<sup>85</sup> Exhibit B-12, FEI Phase Two Evidence, p. 25.

<sup>86</sup> Exhibit B-16.

**PART FIVE: CONCLUSION**

103. The BCUC should, in FEI's respectful submission, grant the orders sought by FEI as set out in the draft Order appended to the Application. FEI proposals reflect the Operating Agreement, and achieve a fair and reasonable outcome as between FEI/FEI customers and the City. The City's demands regarding road work and removal cost allocation are excessive and would have a direct and unwarranted negative impact on FEI customers.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated:

December 19, 2018

*[original signed by Tariq Ahmed]*

Tariq Ahmed

Counsel for FortisBC Energy Inc.