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City of Coquitlam

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

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Decision and Order G-114-21

April 16, 2021

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

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Executive summary

On May 16, 2019, the City of Coquitlam (City) filed an application with the British Columbia Utilities Commission (BCUC) for Reconsideration and Variance of Order G-80-19 and accompanying reasons for decision dated April 15, 2019 (Original Decision) in the matter of FortisBC Energy Inc.'s (FEI) Application for Use of Lands under Sections 32 and 33 of the *Utilities Commission Act* (UCA) in the City of Coquitlam for the Lower Mainland Intermediate Pressure System Upgrade (LMIPSU) Projects (Reconsideration Application).

The LMIPSU Projects involve construction of a new Nominal Pipe Size (NPS) 30 Intermediate Pressure (IP) gas line (NPS 30 Pipeline) that runs through the cities of Coquitlam, Burnaby and Vancouver. The new NPS 30 Pipeline will replace FEI's aging and leaking existing NPS 20 IP gas line (NPS 20 Pipeline),[1] which, when decommissioned, FEI will abandon in place, pursuant to a decision of the BCUC in Order C-11-15 (LMIPSU CPCN) in which it granted a CPCN approving the LMIPSU Projects.

On June 28, 2018, FEI applied to the BCUC for Use of Lands under Sections 32 and 33 of the UCA in the City of Coquitlam for the LMIPSU Projects (Original Application). The Original Application related to a disagreement between FEI and the City, whereby the City had indicated to FEI that it was withholding formal sign-off of engineering / alignment drawings for the LMIPSU Projects unless FEI agreed to certain conditions. Following a review of the Original Application, the BCUC by Order G-80-19 and accompanying reasons for decision dated April 15, 2019 (Original Decision), made the following Directives:

1. Pursuant to section 121 of the UCA, it is affirmed that FEI is authorized to abandon the decommissioned NPS 20 Pipeline in place.
2. Pursuant to section 32 of the UCA, upon request by the City in circumstances where it interferes with municipal infrastructure, the costs of removal of any portion of the decommissioned NPS 20 Pipeline shall be shared equally between FEI and the City.
3. The City's request that FEI should be required to repair and repave the whole 5.5-kilometre section on Como Lake Avenue curb to curb is denied.

In the Reconsideration Application, the City seeks recission of Directives 1 and 2 of the Original Decision in their entirety. In the first phase of this Reconsideration (Reconsideration Initial Phase), the Panel considered the BCUC's jurisdiction under sections 121 and 32 of the UCA, and found in Order G-75-20 and accompanying reasons for decision (Reconsideration Initial Phase Decision) that the BCUC had the jurisdiction to authorize that the decommissioned NPS 20 Pipeline be abandoned in place,[2] and dismissed the City's request to rescind Directive 1 of the Original Decision.[3] Further, the Panel found in the Reconsideration Initial Phase Decision that section 32 of the UCA applies in circumstances concerning the removal of the abandoned pipeline and that the BCUC had the jurisdiction in the Original Decision to impose a cost allocation formula on FEI and the City with respect to the removal of the abandoned NPS 20 Pipeline.[4]

The City further alleges that the BCUC erred in that it failed to provide procedural fairness by deciding Directive 2 of the Original Decision, that the costs of removal of any portion of FEI's abandoned NPS 20 Pipeline shall be shared equally between FEI and the City, in the absence of evidence and submissions from the parties on the matter.[5]

[1] FEI Use of Lands in the City of Coquitlam proceeding, Exhibit B-1, p. 6.
[2] Order G-75-20 and reasons for decision, p. 13.
[3] Ibid., p. 15.
[4] Ibid., p. 17.
[5] Exhibit B-1, pp. 4-5.

In this final phase of the Reconsideration (Reconsideration Final Phase), the Panel considers the City's application to rescind Directive 2 of the Original Decision.

The Reconsideration Final Phase scope is to determine "the cost allocation formula which applies when the City requests FEI to remove any portion of the NPS 20 Pipeline, which has been abandoned in place" (Cost Allocation Formula) and this scope has been clearly communicated to all participants in the proceeding, including, specifically, the City and FEI. The scope of the Reconsideration Final Phase is not merely to consider whether or not to rescind Directive 2 of the Original Decision, as was originally requested by the City in its Reconsideration Application.

The scope of the Reconsideration Final Phase does not include consideration of whether there were any issues of procedural fairness in the Original Proceeding. Even if there had been any procedural unfairness in the Original Proceeding, a matter on which the Panel continues to make no determination, this is now irrelevant as both FEI and the City have been given ample notice that the Cost Allocation Formula is at issue and ample opportunity to submit evidence and arguments. This matter is no longer at issue; the matter at hand is solely the Cost Allocation Formula.

The Panel permitted the introduction of new evidence in this Reconsideration Proceeding. The City filed evidence with respect to cost allocation formulas applied to the removal of utility infrastructure in BC and other jurisdictions. It also filed evidence explaining why it will replace mains in City streets, and regarding the impacts of abandoning the decommissioned NPS 20 Pipeline in place.[6] FEI filed evidence regarding cost allocation formulas contained in agreements between FEI other municipalities in BC.[7]

The Panel gives no weight to the majority of the evidence introduced by the City and FEI in this proceeding, as the circumstances are not sufficiently comparable to the removal of the abandoned NPS 20 Pipeline. However, the Panel gives the Burnaby Terms of Reference significant weight in determining the Cost Allocation Formula. The Burnaby Terms of Reference is an agreement reached between FEI and the City of Burnaby (Burnaby) that specifically addresses the allocation of costs arising from a request by Burnaby for FEI to remove portions of the abandoned NPS 20 Pipeline. Further, the City acknowledges in its submissions that the Burnaby Terms of Reference has terms "nearly identical" to the City's position in this Reconsideration Final Phase.

Pursuant to sections 99 and 32 of the UCA, the Panel varies Directive 2 of Order G-80-19 to read as follows:

2. Upon request by the City that FEI remove a portion of the abandoned NPS 20 Pipeline to accommodate a reasonable municipal purpose:

    a) FEI shall remove the requested portion of the NPS 20 Pipeline; and

    b) FEI shall be responsible for the costs of removing and disposing of that portion of the NPS 20 Pipeline referred to in (a) above and the City shall be responsible for the costs of excavation, backfilling and surface restoration except to the extent that such costs are greater as a result of the removal of the NPS 20 Pipeline.

The Panel considers it appropriate that FEI shall remove portions of the abandoned NPS 20 Pipeline when requested by the City so long as the request is for a reasonable municipal purpose; for example, as the City suggests, replacing old pipe with new pipe prior to failure, which requires additional space to install the new pipe while the old pipe remains in service, or adding new pipe to accommodate growth.

[6] Exhibit B-12.
[7] Exhibit C1-9.

The Panel considers it appropriate that FEI shall be responsible for the costs of removing and disposing of portions of abandoned NPS 20 Pipeline requested by the City for a reasonable municipal purpose. In general, utilities pay for the entire cost of the assets they use to deliver utility service and recover those costs from the ratepayers who receive the service. With respect to who pays for the cost of removing and disposing of decommissioned utility assets, the Panel sees no distinction in this case between assets removed immediately after decommissioning versus assets abandoned after they were decommissioned and removed some time later. FEI has the same responsibility to pay for the cost of removing the abandoned NPS 20 Pipeline as it would have done if the asset were removed immediately after decommissioning.

The Panel considers it appropriate that the City shall be responsible for the cost to excavate any trench required to expose the pipeline, to backfill the trench and to restore the surface afterwards (together Excavating, Backfilling and Restoration Costs), except to the extent that these costs are greater as a result of the removal of the abandoned NPS 20 Pipeline. The abandoned pipeline is only being removed because of a reasonable municipal purpose, which the City acknowledges would "plainly" be in the same area as the abandoned pipeline[8]. While it is reasonable for FEI to pay for the removal and disposal of its abandoned pipeline to accommodate a municipal purpose, it is not reasonable for FEI also to pay for costs which the City would in any event have to incur to accommodate its own purpose.

The Panel disagrees with the City's interpretation of the BCUC's continuing jurisdiction over decommissioned assets. The Panel does not, as submitted by the City, anticipate the BCUC approving individual, case-by-case requests by the City to FEI to remove abandoned NPS 20 Pipeline in the normal course. However, if the City and FEI disagree on whether such a request is to accommodate a "reasonable municipal purpose," the BCUC's continuing jurisdiction over FEI's decommissioned assets allows the BCUC to resolve the dispute under section 32 of the UCA. It is the Panel's expectation that FEI and the City will make all reasonable efforts to resolve disputes between themselves and that such applications to the BCUC should be used as a last resort.

[8] City Final Argument, p. 6.

1.0 Introduction

On May 16, 2019, the City of Coquitlam (City) filed an application with the British Columbia Utilities Commission (BCUC) for Reconsideration and Variance of Order G-80-19 and accompanying reasons for decision dated April 15, 2019 (Original Decision) in the matter of FortisBC Energy Inc.'s (FEI) Application for Use of Lands under Sections 32 and 33 of the *Utilities Commission Act* (UCA) in the City of Coquitlam for the Lower Mainland Intermediate Pressure System Upgrade (LMIPSU) Projects (Reconsideration Application).

In the Reconsideration Application the City seeks an order that the BCUC rescind Directives 1 and 2 of the Original Decision in their entirety.

1.1 Background

The LMIPSU Projects involve construction of a new Nominal Pipe Size (NPS) 30 Intermediate Pressure (IP) gas line (NPS 30 Pipeline), operating at 2,070 kilopascals, that starts at the Coquitlam Gate Station and proceeds in a westerly direction through the cities of Coquitlam, Burnaby and Vancouver and ends at the East 2nd Avenue Woodland Station in Vancouver. The new NPS 30 Pipeline will replace FEI's aging and leaking existing NPS 20 IP gas line (NPS 20 Pipeline),[9] which, when decommissioned, FEI proposes to abandon in place.

By Order C-11-15 dated October 16, 2015 and its accompanying decision, the BCUC granted FEI a Certificate of Public Convenience and Necessity (CPCN) for the LMIPSU Projects (LMIPSU CPCN). The LMIPSU CPCN approved FEI's plans to abandon the NPS 20 Pipeline in place;[10] no interveners commented on the abandonment plans and the City did not participate in that proceeding.

On June 28, 2018, FEI applied to the BCUC for Use of Lands under Sections 32 and 33 of the UCA in the City of Coquitlam for the LMIPSU Projects (Original Application). The Original Application related to a disagreement between FEI and the City, whereby the City had indicated to FEI that it was withholding formal sign-off of engineering / alignment drawings for the LMIPSU Projects unless FEI agreed to the following conditions:

- FEI must, at its own cost, remove approximately 380 metres of the abandoned NPS 20 Pipeline if the pipe ultimately conflicts with a planned City project that may proceed within three to five years, and patch the pavement to temporarily restore the road; and
- FEI must agree to repave (including replacing lower layers of asphalt) the entire width of Como Lake Avenue for 5.5 kilometres after completion of the Project, and to provide security in the form of a letter of credit in the amount of $6 million for all the paving work.[11]

Following a two-phase review process of the Original Application, the BCUC in the Original Decision made the following Directives:

1. Pursuant to section 121 of the UCA, it is affirmed that FEI is authorized to abandon the decommissioned NPS 20 Pipeline in place.
2. Pursuant to section 32 of the UCA, upon request by the City in circumstances where it interferes with municipal infrastructure, the costs of removal of any portion of the decommissioned NPS 20 Pipeline shall be shared equally between FEI and the City.
3. The City's request that FEI should be required to repair and repave the whole 5.5-kilometre section on Como Lake Avenue curb to curb is denied.

[9] FEI Use of Lands in the City of Coquitlam Proceeding, Exhibit B-1, p. 6.
[10] FEI LMIPSU CPCN - Order C-11-15 and Decision dated October 16, 2015, p. 24.
[11] FEI Use of Lands in the City of Coquitlam Proceeding, Exhibit B-1, pp. 1-3.

1.2 Reconsideration Application

In the Reconsideration Application, the City seeks reconsideration and variance of Directives 1 and 2 of the Original Decision. The City is not seeking any reconsideration or variance of Directive 3 of the Original Decision.[12] The City seeks in this Reconsideration Application that the BCUC rescind Directives 1 and 2 of the Original Decision in their entirety.[13] The City submits that the grounds for reconsideration are that in making Directives 1 and 2, the BCUC erred in law by:

1) Finding that the BCUC had jurisdiction to authorize FEI, within the meaning of the term "authorization" as used in section 121 of the UCA, to abandon in place FEI's decommissioned NPS 20 pipes located in Como Lake Avenue; and

2) Finding that section 32 of the UCA provides the BCUC with jurisdiction to specify the manner and terms under which the City may request FEI to remove any portion of the NPS 20 pipes abandoned in place.

The City further alleges that the BCUC also erred in that it failed to provide procedural fairness by deciding Directive 2, that the costs of removal of any portion of FEI's decommissioned NPS 20 Pipeline shall be shared equally between FEI and the City, in the absence of evidence and submissions from the parties on the matter.[14]

1.3 Regulatory Process

By Order G-114-19 dated May 29, 2019, the BCUC established a regulatory timetable for the review of the Reconsideration Application. FEI, British Columbia Hydro and Power Authority (BC Hydro), Pacific Northern Gas Ltd. (PNG) and the Commercial Energy Consumers Association of British Columbia (CEC) registered as interveners in the proceeding.

By Order G-150-19 dated July 8, 2019, the BCUC established a further regulatory timetable for the review of the Reconsideration Application, and also directed: "The potential need for new evidence regarding the cost allocation methodology for the removal of the decommissioned NPS 20 Pipeline is adjourned, pending a determination on the BCUC's jurisdiction under section 32 of the UCA, as outlined in the Application."[15]

As a result, this Reconsideration Application has proceeded in two phases as set out below in this decision.

Reconsideration Initial Phase

The first phase of the review of the Reconsideration Application (Reconsideration Initial Phase) considered the BCUC's jurisdiction under sections 121 and 32 of the UCA. Following an initial regulatory process in the Reconsideration Initial Phase, the Panel found in Order G-75-20 and accompanying reasons for decision (Reconsideration Initial Phase Decision) that the BCUC had the jurisdiction to authorize that the decommissioned NPS 20 Pipeline be abandoned in place,[16] and dismissed the City's request to rescind Directive 1 of the Original Decision.[17]

Further, the Panel found that section 32 of the UCA applies in circumstances concerning the removal of the decommissioned and abandoned pipeline and that the BCUC had the jurisdiction in the Original Decision to

[12] Exhibit B-1, p. 2.
[13] Ibid., p. 13.
[14] Exhibit B-1, pp. 4-5.
[15] Order G-150-19, Directive 2.
[16] Order G-75-20 and Reasons for Decision, p. 13.
[17] Ibid., p. 15.

impose a cost allocation formula on FEI and the City with respect to the removal of the decommissioned and abandoned NPS 20 Pipeline.[18]

Reconsideration Final Phase

In this final phase of the review of the Reconsideration Application (Reconsideration Final Phase), the Panel considers the City's application to rescind Directive 2 of the Original Decision, which provides that pursuant to section 32 of the UCA, upon request by the City in circumstances where it interferes with municipal infrastructure, the costs of removal of any portion of the decommissioned NPS 20 Pipeline shall be shared equally between FEI and the City.

In the Reconsideration Initial Phase Decision, the Panel sought submissions from parties on the following matters which had been adjourned by Order G-150-19:

1. Whether the BCUC's determination on the cost allocation formula was made based on fair process; and
2. If the BCUC determines that the evidentiary record should be re-opened with respect to the cost allocation formula,
    - What is the appropriate regulatory process, including proposed timelines; and
    - The nature and scope of any additional evidence to be filed, and why this evidence could not have been filed as part of the Original Proceeding [proceeding for the review of the Original Application].

On April 23, 2020,[19] the City submitted that reconsideration of the cost allocation formula should continue to be adjourned pending the outcome of the City's appeal of the Original Decision. FEI, BC Hydro and the CEC made submissions by April 30, 2020, and the City replied on May 7, 2020. Further to those submissions, the Panel, by Order G-150-20 and reasons for decision dated June 11, 2020, determined that it was appropriate to continue with the Reconsideration Final Phase.

By Order G-150-20 dated June 11, 2020, the Panel established further regulatory process to address the remaining issue of the cost allocation formula with respect to the removal of the abandoned NPS 20 Pipeline (Cost Allocation Formula). The Panel stated it was willing to consider allowing the introduction of new evidence with respect to the Cost Allocation Formula, and sought submissions from the City on the nature of its proposed additional evidence and its admissibility.[20]

Following submissions from the parties, by Order G-202-20A and reasons for decision dated July 30, 2020, the Panel permitted the introduction of new evidence.[21]

The City filed evidence in this Reconsideration Final Phase with respect to cost allocation formulas applied to the removal of utility infrastructure in BC and other jurisdictions. Additionally, the City provided evidence explaining why it will replace mains in City streets, and regarding the impacts of abandoning the decommissioned NPS 20 Pipeline in place.[22]

[18] Order G-75-20 and reasons for decision, p. 17.
[19] Exhibit B-6.
[20] Order G-150-20 and reasons for decision, p. 2.
[21] Order G-202-20A and reasons for decision, p. 2.
[22] Exhibit B-12.

FEI also filed evidence regarding cost allocation formulas contained in agreements between FEI and other municipalities in BC.[23]
Both the City and FEI responded to BCUC and intervener information requests (IR) on their evidence.

The filings of the City's and interveners' Final Arguments and the City's Reply Argument, were completed by January 18, 2021.[24]

On January 26, 2021, FEI filed comments on the City's reply argument,[25] and the City filed its response to FEI's comments on February 2, 2021[26].

2.0 Scope of the Reconsideration Final Phase

In the Reconsideration Application, the City states:[27]

> The City requests that the BCUC rescind paragraphs 1 and 2 of Order No. G-80-19 in their entirety.

The scope of the Reconsideration Final Phase dealing with the City's application to rescind Directive 2 was communicated to all parties in this proceeding in Order G-202-20A in which the Panel: [28]

> …[determined] that further regulatory process to review the Cost Allocation Formula is warranted and [directed] that the City be permitted to file its proposed evidence in respect of the Cost Allocation Formula as outlined in its submission dated June 24, 2020. [Emphasis removed]

In Order G-202-20A, the Panel defined the term Cost Allocation Formula as "a cost allocation formula which applies when the City requests FEI to remove any portion of the NPS 20 Pipeline, which has been abandoned in place."[29]

In its reply, the City states:[30]

> For complete clarity, the underlined words below are under reconsideration in this Reconsideration Final Phase, and the nonunderlined words are not:
>
> [Emphasis added by the Panel]
>
> > Pursuant to section 32 of the UCA, upon request by the City in circumstances where it interferes with municipal infrastructure, the costs of removal of any portion of the decommissioned NPS 20 Pipeline shall be shared equally between FEI and the City.
> >
> > [Emphasis added by the City]

The City, on the basis of the above submission, seeks to limit the scope of the Reconsideration Final Phase. In particular, it submits that, to the extent an intervener requests in its final argument that the BCUC reconsider

[23] Exhibit C1-9.
[24] For clarity, all references to arguments in this Decision refer to the arguments specified above, and not the arguments filed in the Reconsideration Initial Phase in 2019.
[25] Exhibit C1-14.
[26] Exhibit B-19.
[27] Exhibit B-1, p. 13.
[28] Order G-202-20A and reasons for decision, p. 2.
[29] Ibid., p. 1.
[30] City Reply, p. 3.

further findings the BCUC made in its Orders G-80-19 or G-75-20, such requests ought to have been made as separate applications for reconsideration in accordance with the BCUC's Rules of Practice and Procedure. The City adds that FEI and the CEC did not request to add further alleged errors for consideration, and pursuant to the BCUC's Rules of Practice and Procedure any such request is "well out of time." [31]

Panel Discussion

The Panel made clear in its Order G-202-20A to the participants setting out the process for the Reconsideration Final Phase that the scope is the Cost Allocation Formula, this term being defined in Order G-202-20A as the "cost allocation formula which applies when the City requests FEI to remove any portion of the NPS 20 Pipeline, which has been abandoned in place."

The Reconsideration Final Phase scope is not, therefore, merely to consider whether or not to rescind Directive 2 of the Original Decision, as was originally requested by the City in its Reconsideration Application. The Panel in this Reconsideration Final Phase considers not just whether it would be in the public interest to rescind the Cost Allocation Formula set out in Directive 2 of the Original Decision, but, if not, then in the light of the evidence submitted in this proceeding whether there is a variation or an alternative cost allocation formula that could be applied in the public interest.

Further, the Reconsideration Final Phase scope is not limited to considering only the words "costs of removal of any portion of the decommissioned NPS 20 Pipeline shall be shared equally between FEI and the City" emphasized by the City in its reply argument. The definition of Cost Allocation Formula which was communicated to the participants in Order G-202-20A is not limited to "circumstances where [the abandoned NPS 20 Pipeline] interferes with municipal infrastructure," as specified in Directive 2; rather, the Reconsideration Final Phase Scope includes any request made by the City to FEI to remove any portion of the NPS 20 Pipeline regardless of the reason for the request.

Furthermore, section 99 of the UCA provides that the BCUC on application or on its own motion, may reconsider a decision of the BCUC and may confirm, vary or rescind the decision. In the Panel's view this section provides broad scope to the Panel in a reconsideration hearing and supports its determination that the scope of the Reconsideration Final Phase is not limited in the manner submitted by the City.

Both the City and FEI submitted evidence that is directly or indirectly relevant to the Cost Allocation Formula, including legislation, agreements and other precedents from BC and other Canadian jurisdictions, and all participants' arguments directly addressed the Cost Allocation Formula.

For the foregoing reasons, **the Panel confirms that the Reconsideration Final Phase scope is to determine "the cost allocation formula which applies when the City requests FEI to remove any portion of the NPS 20 Pipeline, which has been abandoned in place" and that this scope has been clearly communicated to all participants in the Reconsideration Final Phase proceeding, including, specifically, the City and FEI.**

2.1 Third-party requests for removal

Directive 2 of the Original Decision states:[32]

> Pursuant to section 32 of the UCA, upon request by the City in circumstances where it interferes with municipal infrastructure, the costs of removal of any portion of the decommissioned NPS 20 Pipeline shall be shared equally between FEI and the City. [Emphasis Added]

[31] Ibid.
[32] Order G-80-19, Directive 2.

In its evidence, the City states:[33]

> the BCUC did not address how FEI's NPS 20 pipe removal costs are to be allocated in circumstances where the requested removal is to accommodate third party infrastructure (e.g., to accommodate TELUS, Shaw or BC Hydro infrastructure)

The City adds that in the event of planned construction for a third-party project which conflicts with FEI's abandoned NPS 20 Pipeline, City staff would direct the third party to approach FEI about addressing the conflict.[34]

FEI's Position

FEI submits that the requirement for removal of abandoned NPS 20 Pipeline at the City's request to accommodate the needs of third parties was not addressed in any detail in the City's argument, and is not directly relevant to and has not been raised as an issue by a third party in this proceeding. Accordingly, FEI submits that the matter does not need to be addressed in this proceeding. FEI adds that the issue of removal of abandoned NPS 20 Pipeline to accommodate a third party does not require special treatment and can be addressed between FEI and any third party as it arises.[35]

In reply, the City submits that its argument fully addresses the argument raised by FEI.[36]

Panel Determination

The Panel declines to consider third-party requests to FEI to remove portions of abandoned NPS 20 Pipeline in this decision.

The matter of third-party requests to remove abandoned NPS 20 Pipeline has not been at issue in this proceeding. The Panel addresses third-party requests here solely for clarity, because the City refers to them in its evidence, and FEI addresses the matter in argument.

Directive 2 of the Original Decision, the matter which is at issue in this Reconsideration Final Phase, makes no reference to third-party requests, and refers only to a "request by the City in circumstances where [any portion of the decommissioned NPS 20 Pipeline] interferes with municipal infrastructure."

The City did not refer to third-party requests in its Reconsideration Application, and no participant has specifically requested that the Panel include them in scope, either in their submissions preceding the procedural Order G-202-20A setting out the Reconsideration Final Phase scope or since.

The Panel is satisfied with FEI's submission that third-party requests do not require special treatment, and as a result does not see a compelling reason to include such requests in the scope of this Reconsideration Final Phase.

[33] Exhibit B-12, p. 4.
[34] Exhibit B-13, p. 26.
[35] FEI Final Argument, p. 24.
[36] City Reply, p. 9.

2.2 Procedural Fairness Matters

The Panel has previously stated: [37]

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

The Reconsideration Final Phase Scope therefore does not include consideration of whether there were any issues of procedural fairness in the Original Proceeding. Even if there had been any procedural unfairness in the Original Proceeding, a matter on which the Panel continues to make no determination, this is now irrelevant as both parties have been given ample notice that the Cost Allocation Formula is at issue and ample opportunity to submit evidence and arguments. This matter is no longer at issue; the matter at hand is solely the Cost Allocation Formula.

3.0 Regulatory Framework

The provisions in the UCA applicable to this Reconsideration Final Phase are sections 99 and 32 of the UCA, which are set out below.

Reconsideration

99 The commission, on application or on its own motion, may reconsider a decision, an order, a rule or a regulation of the commission and may confirm, vary or rescind the decision, order, rule or regulation.

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.

The Panel has already found that section 32 of the UCA provides the BCUC with the authority to specify a cost allocation formula in respect of the removal of all or any part the NPS 20 Pipeline.[38]

4.0 Evidence of Cost Allocations from Canadian Jurisdictions

The Panel in this section, considers the weight to be given to the following evidence introduced by the City and FEI regarding cost allocation formulas:

[37] Order G-202-20A and reasons for decision, p. 2.
[38] Order G-75-20 and reasons for decision, p. 17.

(a) evidence of precedents from Canadian jurisdictions outside BC;

(b) evidence of precedents within BC; and

(c) evidence regarding the Burnaby Terms of Reference.

4.1 Precedents from Canadian Jurisdictions outside BC

The City refers to the following legislation from Canadian jurisdictions.

The *Canadian Energy Regulator Act* (CER Act) [39] in its final argument. Sections 241, 242, 313, 314 and 327 of the CER Act are outlined in Appendix A.

Section 15 (b) of the Alberta Utilities Commission (AUC) Franchise Agreement Template for Electric utilities provides in part:[40]

> The cost of any relocations referred to in Article 15a) shall be recovered on a specific municipal based rider or any other method approved by the Commission, or if such a rider or other method is not approved by the Commission, the Municipality shall be responsible for such costs.

Section 14 (a) (ii) of the AUC Standard Gas Franchise Agreement Template provides in part:[41]

> Providing the Municipality is not the developer requesting the relocation for commercial or residential resale to third parties, the Company will bear the expenses of the required relocation.

Section 15 (b) of the Ontario Energy Board (OEB) Model Franchise Agreement provides:[42]

> If the Gas Company decommissions any other part of its gas system, it shall have the right, but is not required, to remove that part of its gas system. It may exercise its right to remove the decommissioned parts of its gas system by giving notice of its intention to do so by filing a Plan as required by Paragraph 5 of this Agreement for approval by the Engineer/Road Superintendent. <u>If the Gas Company does not remove the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in any highway, the Corporation may remove and dispose of so much of the decommissioned gas system as the Corporation may require for such purposes and neither party shall have recourse against the other for any loss, cost, expense or damage occasioned thereby.</u> If the Gas Company has not removed the part of the gas system it has decommissioned and the Corporation requires the removal of all or any part of the decommissioned gas system for the purpose of altering or improving a highway or in order to facilitate the construction of utility or other works in a highway, the Gas Company may elect to relocate the decommissioned gas system and in that event Paragraph 12 applies to the cost of relocation. [Emphasis added]

[39] SC 2019, c 28, s 10.
[40] Exhibit B-12, Appendix 1, AUC Franchise Agreement Template for Electric, pdf page 40.
[41] Exhibit B-12, Appendix 2, AUC Standard Gas Franchise Agreement Template, pdf page 90.
[42] Exhibit B-12, Appendix 6, OEB Model Franchise Agreement, pdf pages 117-118.

Section 12 of the OEB Model Franchise Agreement provides: [43]

> Pipeline Relocation
>
> a) If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, the Corporation deems that it is necessary to take up, remove or change the location of any part of the gas system, the Gas Company shall, upon notice to do so, remove and/or relocate within a reasonable period of time such part of the gas system to a location approved by the Engineer/Road Superintendent.
>
> b) Where any part of the gas system relocated in accordance with this Paragraph is located on a bridge, viaduct or structure, the Gas Company shall alter or relocate that part of the gas system at its sole expense.
>
> c) Where any part of the gas system relocated in accordance with this Paragraph is located other than on a bridge, viaduct or structure, the costs of relocation shall be shared between the Corporation and the Gas Company on the basis of the total relocation costs, excluding the value of any upgrading of the gas system, and deducting any contribution paid to the Gas Company by others in respect to such relocation; and for these purposes, the total relocation costs shall be the aggregate of the following:
>
> i. the amount paid to Gas Company employees up to and including field supervisors for the hours worked on the project plus the current cost of fringe benefits for these employees,
>
> ii. the amount paid for rental equipment while in use on the project and an amount, charged at the unit rate, for Gas Company equipment while in use on the project,
>
> iii. the amount paid by the Gas Company to contractors for work related to the project,
>
> iv. the cost to the Gas Company for materials used in connection with the project, and
>
> v. a reasonable amount for project engineering and project administrative costs which shall be 22.5% of the aggregate of the amounts determined in items (i), (ii), (iii) and (iv) above.
>
> d) The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company, except where the part of the gas system required to be moved is located in an unassumed road or in an unopened road allowance and the Corporation has not approved its location, in which case the Gas Company shall pay 100% of the relocation costs.

In response to a BCUC IR, with respect to the OEB Model Franchise Agreement the City states:

> The document is the OEB's proposed Model Franchise Agreement. Model agreements simplify and reduce the effort required by all parties to reach an approved agreement for the utility's use of municipal property to provide service in the municipality. The OEB's Model Franchise Agreement serves as a starting point for the negotiations between the municipality and utility for a franchise agreement. Municipalities in Ontario are not required by the OEB to use the model agreement without variation. Where an Ontario municipality and a gas company agree to a franchise agreement that includes sections 15 and 16 of the OEB's Model Franchise Agreement, then the parties would have the rights and obligations set out therein by agreement. [Emphasis in original][44]

[43] Exhibit B-12, Appendix 6, OEB Model Franchise Agreement, pdf pp 117-118.
[44] Exhibit B-13, BCUC IR 7.1

The City's Position

The City submits that to its knowledge "there is no precedent from another Canadian jurisdiction of a government or regulatory body requiring a municipality or other landowner to pay a portion of a gas utility's costs to remove its permanently decommissioned infrastructure where the municipality or other landowner requires removal to accommodate its infrastructure project." The City concludes that the cost allocation methodology ordered by the BCUC pursuant to Order G-80-19 "is not reasonable in that it is not supported by any comparable precedent in Canada." [45]

The City's view is that the considerations for placing and relocating operating public utility infrastructure are quite different than those for abandoning or removing permanently decommissioned pipes. Nevertheless, the City submits the weight of the evidence it submitted "clearly establishes the guiding principle that the pipeline company should bear a greater share or all of its costs of relocating its operating pipeline where the relocation is required to accommodate the infrastructure of a municipality."[46]

The City adds that the CER Act outlines the power of a federally regulated pipeline company to construct, maintain operate and abandon pipelines, and the company's corresponding obligations to compensate landowners. The City submits that the "overarching principle" set out in section 314 of the CER Act is that "landowners are to be kept economically whole and fully compensated for the taking of their lands for the company's operations, pipelines or abandoned pipelines." The City observes that legislation from other jurisdictions is not binding on the BCUC, but that it is important that the BCUC give weight to the principles applied in comparable circumstances in relevant jurisdictions. [47]

FEI's Position

FEI submits that the BCUC "should give no weight to the jurisdictional review provided by the City."[48]

FEI submits that the City's submissions with respect to its jurisdictional review contain two fundamental errors; that public interest considerations do not apply to abandoned infrastructure, and that FEI is motivated by "its private interest in its own bottom line." FEI explains that the BCUC gave consideration to the public interest when ordering the abandonment of the NPS 20 Pipeline, and that additional costs incurred by FEI to remove the NPS 20 Pipeline would ultimately be recovered from FEI's ratepayers, not from FEI's shareholder. [49]

FEI notes that there are a number of jurisdictions where the municipality is responsible for all the costs of relocating utility infrastructure, including the Alberta Utilities Commission's franchise templates for electric and gas utilities. FEI adds that it would make more sense to look at provisions from operating agreements the BCUC has approved between public utilities and municipalities than it would to look to other jurisdictions and industries.[50]

FEI submits that, to the extent analogies to cost allocation formulas for relocation of in-service infrastructure are relevant, the parties' own 1957 operating agreement between the City and FEI (Coquitlam Operating Agreement) would be a logical point of reference, and if this were used, the City would be responsible for the largest share of the removal cost. [51]

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[45] City Final Argument, pp. 13-14.
[46] Ibid., pp. 14-15.
[47] Ibid., p. 16.
[48] FEI Final Argument, p. 19.
[49] Ibid., pp. 18-19.
[50] Ibid., pp. 17-19.
[51] Ibid., p. 17.

The City submits in reply that its submissions in this regard are fully addressed in its argument, with one exception. The City disagrees with FEI's assertion that expenditures by FEI to remove decommissioned the NPS 20 Pipeline are a cost of providing utility service and are recoverable from FEI ratepayers, and states that this is not a foregone conclusion. The City adds that utilities typically recover forecast asset retirement costs in rates during the operating life of the asset while it is "used and useful" for the utility, and if this is the case for the NPS 20 Pipeline, then FEI has already recovered the asset retirement cost from ratepayers and further recovery of expenses would be "double recovery." Alternatively, the City submits that if this is not the case, it would be appropriate for the BCUC to consider disallowing recovery of such expenses if FEI is not able to provide a reasonable explanation.[52]

The CEC's Position

The CEC submits that the City's jurisdictional review evidence is of little persuasive value as the statutory basis under which the BCUC operates is not the same as that in other jurisdictions, and, more to the point, the BCUC has the Coquitlam Operating Agreement on record. The best that can be said of the City's jurisdictional review is that "there are different approaches taken in different jurisdictions." [53]

Panel Discussion

The City says, and no intervener disagrees, that the considerations for abandoned infrastructure are different to the considerations for operating infrastructure. The Panel agrees; operating infrastructure used in the active provision of service to customers will be considered differently to abandoned assets when evaluating whether its presence on public lands is in the public interest. As a result, the Panel gives no weight to the evidence of legislation in Canadian jurisdictions outside BC which addresses relocations of operating, or in-service, public utility infrastructure as the circumstances are not sufficiently comparable to the removal of decommissioned pipeline and the appropriate Cost Allocation Formula which is the issue in this Reconsideration Final Phase. For the same reasons, the Panel gives no weight to the AUC's franchise template agreements.

The City has provided evidence of examples where abandoned utility infrastructure is addressed in certain provisions of the CER Act. The CER Act appears to have clear jurisdiction over abandoned pipeline infrastructure and may:

- permit a utility to abandon a pipeline on another's land (section 241(1))
- impose conditions on the utility (section 241(4))
- take any measure to ensure utility has the ability to pay for the abandonment of a pipeline and related expenses (section 242(1))

Further the CER Act provides that:

> Utilities must make compensation to landowners (section 314), and
>
> CER must determine the compensation for landowners if no agreement is reached between the utility and the landowner (section 327(1))

The Panel notes that the provisions of the CER Act do not apply in British Columbia to utilities operating intra-provincially and have no application to FEI or the City in this matter.

[52] City Reply, pp. 8-9.
[53] CEC Final Argument, p. 13.

The City relies in part on its interpretation of this evidence to support its position that "landowners are to be kept economically whole and fully compensated for the taking of their lands for the company's operations, pipelines or abandoned pipelines." [54] However, the City offers no evidence of specifics, such as cases decided under the CER Act, which would demonstrate that the City's interpretation is correct, in particular with regard to the concepts of being "kept economically whole" or being "fully compensated."

Further, the Panel is also cautious with the comparison given the CER Act appears to refer to utilities having the right to "acquire, lease and take" land, whereas a BCUC CPCN gives utilities the power to "use" lands. In the Panel's view these are different circumstances, and undermine the notion that the CER Act is a comparable precedent in this proceeding.

For the foregoing reasons the Panel gives no weight to the provisions of the CER Act regarding abandonment of utility infrastructure and compensation to a landowner in considering the Cost Allocation Formula in this Reconsideration Final Phase.

The City also provided evidence that the OEB Model Franchise Agreement addresses abandoned infrastructure, in that it appears to provide that municipalities have the right to remove abandoned assets, but does not appear to obligate the utility to pay for such removal (section 15(b)).

However, the OEB Model Franchise Agreement is at best indicative, as it is only a model or template agreement, and there is no evidence of circumstances where it has actually been implemented. For that reason, the Panel gives no weight to the OEB Model in considering the Cost Allocation Formula in this Reconsideration Final Phase.

Generally, in respect to the City's evidence of precedent in other Canadian jurisdictions, the Panel agrees with CEC's submission that the best that can be said of the City's jurisdictional review is that "there are different approaches taken in different jurisdictions."

4.2 Precedents within BC

FEI introduced evidence of several examples of operating agreements between FEI and municipalities in BC, which it submits include terms regarding the allocation of costs arising from the alteration and relocation of FEI infrastructure.[55]

In 2005, FEI (then Terasen Gas Inc.) negotiated the terms of a new form of operating agreement with the Union of BC Municipalities (UBCM) Operating Agreement Committee (UBCM Terms), which included a cost allocation between FEI and municipalities for facilities changes whereby municipalities pay for all costs where the municipality requires alteration, changes or relocation of FEI facilities. The UBCM Terms have been applied to ten Operating Agreements between FEI and municipalities.[56]

Section 11.1.1 of the UBCM Terms provides that FEI will pay municipalities an operating fee:[57]

> Terasen Gas agrees to pay to the Municipality a fee of three percent (3%) of the amount received by Terasen Gas for provision and distribution of all gas consumed within the Boundary Limits of the Municipality. Such amount will not include any amount received by Terasen Gas for gas supplied or sold for resale.

[54] City Final Argument, p. 16.
[55] Exhibit C1-9, p. 4.
[56] Ibid., pp. 4-5.
[57] Ibid., pdf p. 31.

In 2014, the BCUC approved an Operating Agreement with the Village of Keremeos (Keremeos Terms), with cost allocation terms similar to the UBCM Terms. The BCUC also approved the Keremeos Terms as the basis for comparison for future operating agreements. FEI notes the BCUC has approved over 40 operating agreements that follow the Keremeos Terms, albeit sometimes with minor variations.[58]

FEI states that section 14.2 (b) of the operating agreement between FEI and the City of Surrey (Surrey) (Surrey Operating Agreement) provides as follows with regards to abandonment:[59]

> If the Municipality reasonably determines that Company Facilities left in place must be removed to accommodate Municipal Projects, Third Party Projects or Utilities, the Municipality may by written notice to FortisBC require FortisBC to remove such Company Facilities, provided that:
>
> i. FortisBC shall coordinate the removal of such Company Facilities with the Municipality;
>
> ii. FortisBC shall obtain the applicable approvals and permits under this Agreement; and
>
> iii. FortisBC shall be responsible for the costs of removing and disposing the Company Facilities, but excluding the costs of excavation, backfilling and surface restoration.

In Order G-18-19 and its accompanying decision dated January 29, 2019, the BCUC determined:[60]

> …that an Operating Fee shall be included as a term in the [Surrey] Operating Agreement as it finds that such inclusion is in the public interest.

and specified:[61]

> …that the Operating Fee in the [Surrey] Operating Agreement will be calculated as 0.7 percent of FEI's delivery margin for customers located within City boundaries, and that the [Surrey] Operating Agreement will include as a term the version of section 12.1 provided in FEI's Application, as it finds that this is in the public interest.

The City's Position

The City submits that, with the exception of the Surrey Operating Agreement, none of FEI's historical and modern operating agreements (Other Operating Agreements) contain provisions governing the removal or abandonment of permanently decommissioned pipes.[62]

The City's position is that the terms of FEI's Other Agreements governing the relocation of operating FEI pipelines do not apply to the removal of permanently decommissioned FEI pipes. The City states that the BCUC has already determined in Order G-80-19 that the Coquitlam Operating Agreement does not apply to a request for removal of permanently decommissioned pipes, and that the terms of the Coquitlam Operating Agreement are the same in all material respects as the terms for relocation of operating FEI pipelines in FEI's Other Operating Agreements.[63] [Emphasis Added]

The City notes that the Surrey Operating Agreement is FEI's only operating agreement with a municipality that includes provisions governing the decommissioning, abandonment and removal of FEI pipelines. The City

[58] Ibid., p. 5.
[59] Ibid., p. 7; "Municipality" refers to Surrey, "Company" and "FortisBC" refer to FEI.
[60] FEI and City of Surrey – Approval of Terms for an Operating Agreement Order G-18-19 and Decision dated January 29, 2019, p. 16.
[61] Ibid., p. 35.
[62] City Final Argument, p. 20.
[63] Ibid., pp. 20-21.

submits that section 14 of the Surrey Operating Agreement provides substantially similar terms as the Burnaby Terms of Reference (discussed below in this Decision), in that it:[64]

- allows FEI to leave its decommissioned pipes in Surrey's lands if the pipes are underground and made safe, and
- requires FEI to subsequently remove and dispose of any such decommissioned pipes if Surrey reasonably determines they must be removed to accommodate municipal or third party infrastructure and, in such case, removal and disposal shall be at FEI's cost, *excluding* excavation, backfilling and surface restoration costs.[Underlining in City's submission] [Italics added by Panel]

The City emphasizes that the terms FEI agreed to with Surrey are nearly identical to the City's position in this Reconsideration Final Phase.[65]

FEI's Position

FEI submits that most of its BCUC-approved operating agreements address the allocation of costs associated with any changes to its infrastructure initiated by a municipality, and that this includes "both in-service and abandoned infrastructure." With the exception of the Surrey Operating Agreement, all of FEI's over 60 municipal operating agreements approved since 2006 include a cost allocation formula whereby the municipality agrees to pay for all of the costs for changes to FEI's "Company Facilities," which include decommissioned assets. FEI submits these Other Operating Agreements demonstrate that the City "obtained a favourable cost allocation" in the Original Decision. [66]

The City in its reply did not specifically respond in this regard other than to say the issue is fully addressed in its argument.[67]

The CEC's Position

The CEC acknowledges the BCUC's finding in Order G-80-19 that the cost allocation provision in the Coquitlam Operating Agreement is not applicable as it does not include provisions regarding the allocation of costs arising from the City's request for removal of abandoned pipeline. However, the CEC submits that it was a matter for the parties to negotiate in 1957 and it would not be fair and reasonable to pass all costs, as argued by the City, onto ratepayers, and in doing so "in effect adding terms to the [Coquitlam Operating] Agreement which were ignored at the time."[68]

The City submits in reply that the BCUC has already made findings regarding the applicability of the Coquitlam Operating Agreement, and that these findings are not under reconsideration. Further, the City submits that the CEC's inferences in relation to the lack of an agreement allowing FEI to abandon decommissioned assets in the City are at odds with the "law of real property and also the law of expropriation in Canada." Specifically, if FEI's predecessor in 1957 wished to leave NPS 20 pipes in the City's lands when they were decommissioned, it was the utility's responsibility to negotiate and obtain such rights; it did not. [69]

[64] Ibid., p. 22.
[65] City Final Argument, p. 22.
[66] Ibid., pp. 14-16.
[67] City Reply, pp. 8-9.
[68] CEC Argument, p. 17.
[69] City Reply, p. 4.

Panel Discussion

The Panel in this section, considers the weight to be given to FEI's Other Operating Agreements with municipalities and to the Surrey Operating Agreement.

Other Operating Agreements

FEI's Other Operating Agreements are agreements entered into between FEI and individual municipalities in BC which have been approved by the BCUC in the context of the UCA and, as such, provide some helpful contextual background for the Panel's consideration of the Cost Allocation Formula in this Reconsideration Final Phase. The Panel agrees with FEI that all its operating agreements since 2006 address removal of abandoned infrastructure on request of a municipality, because the Panel reads the term "Company Facilities" in the Other Operating Agreements to refer to decommissioned as well as in-service assets.

However, unlike the Surrey Operating Agreement (discussed further below) the Other Operating Agreements appear to provide that the municipalities receive a three percent operating fee from FEI. The UBCM Terms explicitly provide for such an operating fee, and FEI submits that all its operating agreements since then other than the Surrey Operating Agreement are based on the UBCM Terms. While it is not stated explicitly in the UBCM Terms, the Panel can only assume that FEI is paying some unspecified portion of the three percent fee to the municipalities as consideration for municipalities agreeing to pay the costs associated with removal of abandoned pipelines. By contrast, the City receives no such operating fee from FEI. As a result, FEI's Other Operating Agreements are not directly comparable as a precedent for the Cost Allocation Formula.

For these reasons, the Panel gives no weight to FEI's Other Operating Agreements in considering the Cost Allocation Formula in this Reconsideration Final Phase.

Surrey Operating Agreement

The Surrey Operating Agreement was approved by the BCUC in recent times and includes a term specifically addressing cost allocation in the event of a request from the municipality for FEI to remove abandoned infrastructure. The BCUC approved the Surrey Operating Agreement pursuant to section 32 of the UCA as FEI and Surrey were unable to reach agreement on certain terms under the agreement. The term regarding the costs of removing abandoned FEI infrastructure was not in dispute in that proceeding. [70]

Historically, Surrey, like the City of Coquitlam, did not receive a fee in their operating arrangements with FEI's predecessor. As a result of the recent BCUC decision,[71] Surrey now receives an operating fee from FEI. However, the operating fee FEI pays to Surrey is designed to compensate Surrey for certain forgone permits and fees rather than as compensation for the use of public lands in Surrey, and therefore has no application to the cost of removing abandoned infrastructure. The Panel considers that the difference in the purpose of the operating fee between the Surrey Operating Agreement and FEI's Other Operating Agreements makes the former a more comparable precedent when considering the Cost Allocation Formula.

The Panel notes Surrey and the City of Coquitlam are similar in that they are large municipalities in BC that have not historically received an operating fee from FEI. Further, Surrey and FEI negotiated and reached agreement on the cost of removing abandoned FEI infrastructure. While the Surrey Operating Agreement is not determinative, the Panel gives it some weight as it provides helpful context in its consideration of the Cost Allocation Formula in this Reconsideration Final Phase.

[70] Order G-18-19 and Decision dated January 29, 2019.
[71] Ibid.

4.3 City of Burnaby Terms of Reference

FEI has entered into an agreement with the City of Burnaby (Burnaby) dated March 15, 2018 (Burnaby Terms of Reference) which is a LMIPSU Project-specific agreement that addresses, in part, the removal of portions of the abandoned decommissioned NPS 20 Pipeline.

The Burnaby Terms of Reference contains the following provisions:[72]

> 2. Subject to the City's commitment as outlined in paragraph 1 above, FortisBC agrees to:
> …
> e. With the intention of limiting cost exposure to City taxpayers, accept the following obligation and responsibility for the abandoned 20 inch gas line, separate from the obligations described in paragraph 2(a) to 2(e), inclusive:
>
> > If the City reasonably determines that the 20 inch gas line must be removed to accommodate a municipal project, third party project or utilities, the City may by written notice to FortisBC require FortisBC to remove such portion of the 20 inch gas line, provided that:
> >
> > i. FortisBC will coordinate the removal of such portion of the 20 inch gas line with the City;
> >
> > ii. FortisBC will obtain all applicable approvals and permits required to remove such portion of the 20 inch gas line outlined in (i) above; and
> >
> > iii. FortisBC will be responsible for costs of removing and disposing of that portion of the 20 inch gas line outlined in (i) above and the City will be responsible for the costs of excavation, backfilling and surface restoration except to the extent that such costs are greater as a result of the removal of the 20 inch gas line than they have would been for the excavation, backfilling and surface restoration for the municipal project, third party project or utilities.

With regards to the Burnaby Terms of Reference, FEI states: [73]

> The Burnaby Terms of Reference are a LMIPSU Project-specific agreement that address, in part, the NPS 20 IP gas line…Under both agreements [Burnaby Terms of Reference and Surrey Operating Agreement], FEI bears the cost of removing its asset, excluding the costs for excavation, backfilling and surface restoration (which the municipality bears). Under the Burnaby Terms of Reference, FEI's obligation for removal costs includes the incremental costs of excavation, backfilling and surface restoration that result from the removal of the NPS 20 IP gas line.

The City's Position

The City submits that, under the terms of the Burnaby Terms of Reference, FEI "will be responsible for all removal costs and also for any incremental costs of Burnaby caused by the presence of the decommissioned pipes", whereas Burnaby "will be responsible for its base costs of excavation, backfilling and repaving because Burnaby will already be doing such work for the municipal infrastructure project requiring NPS 20 pipe removal." The City adds that, in relation to the NPS 20 Pipeline, the Burnaby Terms of Reference has terms "nearly identical" to the City's position in this Reconsideration Final Phase.[74]

[72] Exhibit C1-9, Appendix A, p. 5; "City" refers to Burnaby, "FortisBC" refers to FEI; "20 inch gas line" refers to the NPS 20 Pipeline
[73] Exhibit C1-12, FEI Response to City IR 2.2
[74] City Final Argument, pp. 19-20.

FEI's Position

FEI submits the BCUC can legitimately consider the Burnaby Terms of Reference in determining an appropriate cost allocation, but notes that FEI obtained the benefit of timely and effective cooperation from Burnaby and avoided the cost to FEI's ratepayers of "disputes such as this one" with the City of Coquitlam. [75]

The City submits in reply that FEI's assertions with respect to the circumstances and consideration of the Burnaby Terms of Reference are not reliable as they are not supported by evidence and have not been tested in this proceeding.[76]

FEI adds that the City was aware of the cost allocation terms contained in the Burnaby Terms of Reference, as FEI offered the City the same terms on a number of occasions prior to filing the Original Application. However, FEI states that the City did not accept these terms and instead demanded that FEI bear all removal costs.[77]

The City submits in reply that FEI misses the point; FEI asserts that the City was aware of the terms of the Burnaby Terms of Reference, but the City submits it was not aware that the BCUC intended to order a cost allocation formula in the Original Decision.[78]

The CEC's Position

The CEC notes that "Burnaby and FEI were able to reasonably negotiate a satisfactory arrangement on matters which are at issue in the City's ongoing disagreement with FEI, and did so on terms that were offered to the City."[79]

Panel Discussion

The Burnaby Terms of Reference is an agreement reached between FEI and Burnaby that specifically addresses the allocation of costs arising from a request by Burnaby for FEI to remove portions of the abandoned NPS 20 Pipeline.

Further, the relevant terms of the Burnaby Terms of Reference are almost identical to the Surrey Operating Agreement, which, as stated above, provides the Panel with some helpful context in considering the Cost Allocation Formula.

The Burnaby Terms of Reference regarding cost allocation for removal of abandoned FEI pipeline are not determinative of the Cost Allocation Formula in this Reconsideration Final Phase. However, the Burnaby Terms of Reference are more specifically relevant to the present circumstances than the Surrey Operating Agreement as it is an agreement negotiated between FEI and Burnaby, a large lower mainland municipality bordering on the City in which FEI is also abandoning the NPS 20 Pipeline. Further, the Burnaby Terms of Reference also contain negotiated terms that specifically address the allocation of the cost of removal of portions of the abandoned NPS 20 Pipeline upon request by Burnaby. Finally, the City acknowledges in its submissions that the Burnaby Terms of Reference has terms "nearly identical" to the City's position in this reconsideration Final Phase.

For the foregoing reasons, the Panel gives the Burnaby Terms of Reference significant weight in determining the Cost Allocation Formula in this Reconsideration Final Phase.

[75] FEI Final Argument, p. 20.
[76] City Reply, p. 9.
[77] FEI Final Argument, p. 21.
[78] City Reply, p. 9.
[79] CEC Argument, p. 16.

5.0 Allocation of Costs

In this section the Panel determines the appropriate Cost Allocation Formula to apply to the removal of portions of the NPS 20 Pipeline made at the request of the City.

In response to the following question posed by BCUC staff:

> In a hypothetical situation where the cost allocation specified in the Burnaby Terms of Reference was applied to the removal of the NPS 20 Pipeline in the City, please provide a high level estimate of (i) the percentage of costs, and (ii) the dollar value of costs, that would be allocated to FEI and to the City.

FEI provided the table below.[80]

	Burnaby Terms of Reference		Directive 2 of Order G-80-19		City Position in Original Proceeding	
	FEI	City	FEI	City	FEI	City
Gas Line Removal Costs ($ millions)	11.0	0.0	5.5	5.5	11.0	0.0
Percentage of Gas Line Removal Costs	100	0	50	50	100	0
Other Construction Costs ($ millions)	0.0	49.3	0.0	49.3	49.3	0.0
Percentage Other Construction Costs	0	100	0	100	100	0
Total Costs ($ millions)	11.0	49.3	5.5	54.8	60.3	0.0
Percentage of Total Costs	18	82	11	91	100	0

FEI states the table above "provides a comparison of the cost allocation specified in the Burnaby Terms of Reference as well as the cost allocation specified in Directive 2 of Order G-80-19 where FEI removes the 5.5 kilometres of NPS 20 IP gas line. In addition, the table shows the allocation of costs FEI understands to have been sought by the City of Coquitlam in the Original Proceeding." [81]

FEI estimates that the cost to remove and dispose of the 5.5 kilometres of NPS 20 Pipeline between Coquitlam Gate Station and North Road mostly along Como Lake Avenue once it has been exposed would be approximately $11 million. This includes: [82]

- cutting the gas line into approximately 10 metre lengths (550 sections);
- lift, handle, wrap (coal tar), haul/transport;
- disposal fee (to approved disposal site);
- traffic control; and
- City contractor demobilization / mobilization back to the site.

[80] Exhibit C1-10, BCUC IR 2.3.
[81] Ibid.
[82] Ibid.

FEI adds, for clarity, that the costs of excavation, backfilling and surface restoration (which are estimated to be $49.3 million) are not included in the $11 million estimate, for consistency with the cost allocation specified under the Burnaby Terms of Reference as well as the cost allocation specified in Directive 2 of Order G-80-19 (Original Cost Allocation Formula), and based on the assumption that the City would be performing that work as part of its infrastructure project. [83]

The City's Position

The City submits that requiring the City to pay half or any portion of FEI's costs to remove abandoned pipe has no connection to ensuring that FEI, as a public utility, is able to use municipal public places to deliver natural gas service, noting that FEI is able to use and is using space in Como Lake Avenue for its new NPS 30 Pipeline.[84]

The City also submits that there was and remains no basis for the BCUC's consideration that the ordered cost allocation formula is required to avoid unnecessary or unreasonable requests for removal that would otherwise result in unnecessary disruption and inconvenience to the residents, commuters and businesses. The City adds that "Plainly any excavation to remove decommissioned NPS 20 pipes to accommodate municipal infrastructure would be in the same area as where the street is being excavated for the municipal infrastructure project." The City notes that sections of the NPS 20 Pipeline would only be removed either with the agreement of FEI or by decision of the BCUC, and therefore "unnecessary or unreasonable" removal is not possible. [85]

The City adds that FEI has not produced evidence to demonstrate that sharing the removal costs for NPS 20 Pipeline is necessary to incent the City to act reasonably. The City acknowledges that FEI cites the current situation with the City as an example where a municipality made unreasonable demands on FEI as a result of the perceived lack of incentive to consider total project costs.[86]

The City describes as "an alarming proposition" that it should be required by the BCUC to pay any portion of FEI's costs to remove decommissioned NPS 20 Pipeline, which remain FEI's property and responsibility, to enable the City to use its own land for municipal purposes, transferring FEI's costs and responsibilities to the City and its taxpayers.[87]

The City submits that it "must be made economically whole for having its lands in effect expropriated for FEI to abandon its large and contaminated decommissioned pipes and for being required to go through additional undefined regulatory processes and construction planning processes each time the City needs a portion of NPS 20 pipe removed to accommodate an infrastructure project."[88]

The City affirms its view that removing the NPS 20 Pipeline at the outset is expected to be lower cost than removing segments when required later through a "fragmented, piecemeal approach."[89]

The City's position is that FEI should be required to pay "any and all incremental costs of the City that result from FEI's decommissioned pipes remaining in Como Lake Avenue, including the additional costs the City will incur when the pipes have to be removed."[90] The City states that FEI should be required to pay:[91]

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[83] Ibid.
[84] City Final Argument, p. 6.
[85] City Final Argument, pp. 6-7.
[86] Ibid., p. 7
[87] Ibid., pp. 7-8.
[88] Ibid., p. 13.
[89] Ibid, p. 10.
[90] Ibid., p. 11, quoted from Exhibit B-12, pdf pp 146-147.
[91] Ibid., p. 12, quoted from Exhibit B-15, response to FEI, IR 1.1.

1. FEI's own costs to remove the decommissioned NPS 20 pipes when so directed; and
2. any and all incremental costs of the City that result from FEI's decommissioned pipes remaining in Como Lake Avenue.

The City submits it would not incur the following costs if the decommissioned NPS 20 pipes were removed promptly after the NPS 30 Pipeline goes into service: [92]

a) any costs due to delay caused by FEI or its contractors in relation to removing NPS 20 pipes when required;

b) costs related to regulatory proceedings to obtain BCUC approval for removal of portions of the decommissioned NPS 20 pipes and approval of costs; and

c) additional costs if the City is required to undertake a more expensive alternative to its preferred project in order to avoid NPS 20 pipes.

The City agrees that incremental costs under item (a) above could be largely avoided if the City and FEI agree to a schedule to remove the NPS 20 Pipeline as required, and FEI and its contractor abide by the schedule. However, costs under items (b) and (c) above would not be avoided. [93]

FEI's Position

FEI submits that the Original Cost Allocation Formula "fairly balances the interests of FEI customers and the City." The BCUC approved the abandonment of the NPS 20 Pipeline because it found it was in the public interest to do so, thus the City would be the proximate cause of its removal and it is equitable the City should share in the cost of work undertaken "for the City and at the City's request." [94] The Original Cost Allocation Formula "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."[95]

The City submits in reply that FEI's "perspective of overall equity" with respect the abandonment of NPS 20 Pipeline is wrong. The City submits that in its Order G-80-19 the BCUC "ordered that FEI has to remove the decommissioned NPS 20 pipes upon request by the City in circumstances where it interferes with municipal infrastructure," and accordingly FEI must remove pipe as necessary to accommodate the City's needs. The City submits that these "terms" are not by agreement with the City; FEI did not negotiate for and does not have by contract the property rights that Order G-80-19, affirmed by Order G-75-20, purports to give FEI. The City submits that the overarching principle is: "the City is to be kept economically whole and fully compensated for the taking of its lands if this pipeline is abandoned in the City's lands pursuant to BCUC Order." [96]

FEI adds that the Original Cost Allocation Formula provides "appropriate incentives for the City to act reasonably" in making requests to remove the abandoned NPS 20 Pipeline, and will incent both parties to work collaboratively to achieve cost savings and benefits to both parties. [97] FEI submits there is "every indication" that this cost allocation formula will provide necessary discipline for the City. FEI notes that the City has previously insisted on the full removal of the abandoned NPS 20 Pipeline, despite the possibility that the City may never need all of the space occupied by the NPS 20 Pipeline. FEI submits that the City's evidence on this point is "vague

[92] Ibid.
[93] City Final Argument, p. 12, quoted from Exhibit B-15, response to FEI IR 1.1.
[94] FEI Final Argument, pp. 1-2.
[95] Ibid., p. 10.
[96] City Reply, p. 5.
[97] FEI Final Argument, pp. 1-2.

and imprecise," and that the City has never stated that the entire 5.5 km length of the NPS 20 Pipeline in Coquitlam will be an obstacle. [98]

The City submits in reply that a financial disincentive is not necessary to avoid what might be perceived as an unnecessary request for removal of the NPS 20 Pipeline as there can be no such thing given the terms of the BCUC's orders. The City adds that the only support offered by FEI for its position in this respect is the City's request for FEI to remove the entire NPS 20 Pipeline once it is decommissioned. [99]

FEI adds that the Original Cost Allocation Formula is reasonable because having the City pay half of the cost of removal "reduces the cost to all natural gas customers for work undertaken for the City and at the City's request." FEI notes that the Original Cost Allocation Formula is more favourable to the City than what is provided for under the Coquitlam Operating Agreement for relocations at the City's request. FEI submits that it would still be a fair and reasonable outcome for costs associated with removal to be allocated the same way that relocation is addressed under the Coquitlam Operating Agreement, and that the BCUC may still consider the terms of the Coquitlam Operating Agreement when considering the cost allocation formula.[100]
The City submits that, if the BCUC has the jurisdiction, by order, to authorize FEI to abandon decommissioned NPS 20 Pipeline in the City's lands and set the terms for subsequent removal, then "there is to be no balancing of interests or sharing of financial impacts"; rather, the City is "to be kept economically whole and fully compensated for the regulatory taking, or expropriation, of its lands." [101]

BC Hydro's Position

BC Hydro does not take a position on the Cost Allocation Formula with respect to the removal of portions of the abandoned NPS 20 Pipeline. However, BC Hydro views that an order specifying the allocation of costs for the removal of equipment should generally be made at the time of a request to remove the equipment in the case where there is no operating agreement between the parties. Any such order should depend on the circumstances at that time, such as the reason for removal and whether there are any alternatives.[102]

The City submits it has no submissions in reply, but states it understands from BC Hydro's final argument that BC Hydro supports the BCUC rescinding the Original Cost Allocation Formula. The City also understands that BC Hydro is of the view that the BCUC is the final arbiter of requests for FEI to remove its decommissioned NPS 20 Pipeline.[103]

The CEC's Position

The CEC submits that the Original Cost Allocation Formula was "overly generous to the City" but should be maintained. Alternatively, all removal costs should be borne by the City.[104]

The CEC submits that the BCUC's decision with regards to the Original Cost Allocation Formula is correct and reasonable based on the legislative framework and its obligations under section 32 of the UCA, and is supported by the evidence in the Original Proceeding and in the current Reconsideration Final Phase proceeding. Further, the BCUC's cost allocation formula was a "fair and reasonable interpretation of the most pertinent agreement

[98] Ibid., pp. 6-7.
[99] City Reply, p. 6.
[100] FEI Final Argument, pp. 9-10.
[101] City Reply, pp. 7-8.
[102] BC Hydro Argument, p. 2.
[103] City Reply, p. 10.
[104] CEC Argument, p. 1.

governing the applicable relationship between the parties," the Coquitlam Operating Agreement.[105] The CEC submits that there is persuasive evidence of the need for a clear BCUC direction on costs, and the need to incent responsible behaviour by the City.[106]

As opposed to sharing the costs as set out in the cost allocation formula in the Original Decision, the CEC submits that as the City did not negotiate as part of the Coquitlam Operating Agreement to require FEI to pay for the cost of removal as a term of permitting pipe to be placed, the City accepted that the pipeline would be left in the ground at the end of its useful life and any cost of removal required by the City would be a cost to the City.[107] As a ratepayer representative, the CEC submits that arguably the BCUC "went beyond being fair to the City in allocating the City only half of the costs of removal of the NPS 20 Pipeline where there is no contractual or legal requirement of FEI to share in half of the removal costs." The CEC notes that FEI offered reasonable and fair terms to the City which the City rejected, and submits that the City "should not be rewarded for their intransigence."[108]

The City submits in reply that the applicability of the Coquitlam Operating Agreement to abandonment of decommissioned pipes has already been decided by the BCUC, and is not under reconsideration in this proceeding.[109]

The City further submits that the CEC's "suggested inferences" with respect to the lack of agreement allowing FEI to abandon decommissioned pipes in the City are "at odds with the law of real property and also the law of expropriation in Canada." The City explains that the "overarching principle is: the City is to be kept economically whole and fully compensated for the taking of its lands as a result of the regulatory expropriation effected by the BCUC's order." [110]

Panel Determination

Pursuant to sections 99 and 32 of the UCA, the Panel varies Directive 2 of the Original Decision to read as follows:

> **Upon request by the City that FEI remove a portion of the abandoned NPS 20 Pipeline to accommodate a reasonable municipal purpose:**
>
> **a) FEI shall remove the requested portion of the NPS 20 Pipeline; and**
>
> **b) FEI shall be responsible for the costs of removing and disposing of that portion of the NPS 20 Pipeline referred to in (a) above and the City shall be responsible for the costs of excavation, backfilling and surface restoration except to the extent that such costs are greater as a result of the removal of the NPS 20 Pipeline.**

The following are the Panel's reasons for specifying the above Cost Allocation Formula. The Panel relies on its Reconsideration Initial Phase Decision in which it found that the BCUC has continuing jurisdiction over decommissioned assets,[111] and sets out how this continuing jurisdiction is exercised.

In reaching its decision the Panel considered the general regulatory context for abandoned utility assets, as well as the specific circumstances with regards to the NPS 20 Pipeline abandoned in the City.

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[105] Ibid., p. 7.
[106] Ibid., p. 11.
[107] Ibid., p. 8.
[108] Ibid., p. 9.
[109] City Reply, p. 4.
[110] Ibid.
[111] Order G-75-20 and Reasons for Decision, p. 12.

Regulation of abandoned assets in general

In considering whether to permit a utility to abandon a decommissioned asset in place rather than directing it to be removed, the BCUC determines what is in the public interest, including consideration of the interests of all parties involved. There are significant cost savings to utilities' ratepayers in abandoning decommissioned assets in place rather than removing them. However, the BCUC considers other relevant factors in its public interest evaluation, such as whether the decommissioned asset can be abandoned safely and in an environmentally responsible manner. A municipality's current and anticipated uses of its land on or under which the abandoned assets lie are also relevant considerations of the BCUC. It is important to understand that the BCUC considers the public interest in a broad sense and does not seek merely to minimize the costs to ratepayers associated with the removal of decommissioned utility infrastructure.

The BCUC has the flexibility to re-examine what is in the public interest in response to changing circumstances, including new uses that may arise for the land on or under which abandoned assets lie. A municipality may request a utility to remove abandoned assets if the municipality has a reason to use the land for another purpose, and the BCUC's continuing jurisdiction over decommissioned assets allows it to review whether it remains in the public interest for an abandoned asset to remain in place, and if not, to direct a utility to remove it.

It is normal practice for gas utilities in BC, such as FEI, to have operating agreements with municipalities setting out the terms under which the utilities use municipalities' public lands. While some of FEI's agreements from the 1950's, such as that with the City, do not address abandonment of FEI's assets, all FEI's agreements since 2006 do address the matter. Having such an agreement brings a degree of certainty to municipalities and utilities, and potentially avoids inefficient and expensive regulatory proceedings and potential litigation. FEI has a history since at least 2005, when the UBCM Terms were negotiated, of attempting to bring consistency to its municipal operating agreements, and the Panel considers this has value for regulatory efficiency and serves the public interest.

In circumstances where a utility has an operating agreement with a municipality which includes terms providing for the removal of the utility's abandoned assets and a cost allocation formula for such removal, the BCUC has jurisdiction under the UCA[112] to approve the operating agreement. In considering and approving such an agreement the BCUC determines in advance whether the terms addressing the removal of abandoned assets and the formula for the allocation of costs are in the public interest.

However, in circumstances where a utility and municipality cannot reach agreement on the use of municipal lands, in particular the terms addressing the removal of abandoned utility infrastructure and the formula for allocating the costs of such removal, the parties may apply to the BCUC, pursuant to section 32 of the UCA, to specify the manner and terms of the removal of the abandoned assets and the cost allocation formula.

Regulation of the abandoned NPS 20 Pipeline

With respect to the present circumstances, the BCUC determined in the LMIPSU CPCN Decision that it was in the public interest for the decommissioned NPS 20 Pipeline to be abandoned in place. In making that decision, the BCUC took note of FEI's submission that there were considerable cost savings to FEI and its ratepayers in abandoning rather than removing the entire NPS 20 Pipeline ($3.1 million versus $75 million),[113] and that removal of the decommissioned NPS 20 Pipeline would cause inconvenience including traffic impacts, noise and

[112] Section 23 (1) (g) (ii).
[113] FEI LMIPSU CPCN Order C-11-15 and Decision, p. 24.

dust disturbances on residential streets, and would risk damage to third-party assets. The BCUC also took note that no interveners raised any concerns with the abandonment of the NPS 20 Pipeline.[114]

While the BCUC determined that the decommissioned NPS 20 Pipeline, in whole, may be abandoned in place, the BCUC did not determine that the entire NPS 20 Pipeline would remain abandoned in place forever. On the contrary, the BCUC accepted that portions of that abandoned Pipeline may need to be removed as alternative uses arise for the land where the NPS 20 Pipeline has been abandoned. This is clear from the existence of Directive 2 of the Original Decision, in which the BCUC imposed the Original Cost Allocation Formula in the event that the City requests, in circumstances where it interferes with municipal infrastructure, that any portion of that Pipeline be removed. It is evident the BCUC concluded that while it was in the public interest for the decommissioned NPS 20 Pipeline to be abandoned in place, circumstances could arise whereby it would be in the public interest for portions of the abandoned NPS 20 Pipeline to be removed.

The City submits there are two main purposes for replacing mains on City streets: replacing old pipe with new pipe prior to failure, which requires additional space to install the new pipe while the old pipe remains in service, and adding new pipe to accommodate growth in the City.[115] The Panel, without deciding, accepts, in principle at least, that these reasons are likely valid municipal purposes, and that it may be in the public interest for abandoned NPS 20 Pipeline to be removed to accommodate them.

For these reasons, the Panel considers it appropriate that FEI shall remove portions of the abandoned NPS 20 Pipeline when requested by the City so long as the request is for a reasonable municipal purpose, and the Panel includes this provision in the Cost Allocation Formula specified above.

Allocation of Costs of Removal

In general, utilities pay for the entire cost of the assets they use to deliver utility service and recover those costs from the ratepayers who receive the service. A utility's asset-related costs extend through the entire lifecycle of the asset, from acquisition and installation through ongoing maintenance to eventual decommissioning, removal and disposal. In general, then, utilities pay for the removal and disposal of their decommissioned assets, a cost which would likely be recoverable from the utility's ratepayers.

With respect to who pays for the cost of removing and disposing of decommissioned utility assets, the Panel sees no distinction in this case between assets removed immediately after decommissioning versus assets removed some time after they were decommissioned and abandoned. If the BCUC has permitted a utility to abandon a decommissioned asset in place because to do so was in the public interest at the time, but at a later date the assessment of what is in the public interest changes and the BCUC determines that the asset must subsequently be removed, the utility has the same responsibility to pay for the cost of removing the asset as it would have done if the asset were removed immediately after decommissioning.

And so it is in this case. If a portion of the abandoned NPS 20 Pipeline must be removed at a later date to make way for a reasonable municipal purpose, FEI should pay for the removal of that portion of the pipeline just as FEI would have paid for its removal at the time of its decommissioning if the BCUC had not permitted FEI to abandon it in place.

The Panel disagrees with the CEC's conclusion that, because the removal of abandoned assets was not addressed in the City's 1957 operating agreement with FEI, the City, in effect, accepted it would be responsible for the cost of such removals.[116] The Panel sees no sound basis upon which to draw such a conclusion.

[114] Order C-11-15, pp. 23-24.
[115] Exhibit B-12, pdf p. 147.
[116] CEC Final Argument, p. 8.

There is another aspect to consider in the Cost Allocation Formula. When removing an abandoned pipeline buried underground, there is a cost to excavating a trench to expose the pipeline and a cost to backfilling the trench and restoring the surface afterwards (together Excavating, Backfilling and Restoration Costs). However, the abandoned pipeline is only being removed because of a reasonable municipal purpose, which the City acknowledges would "plainly" be in the same area as the abandoned pipeline.[117]

While it is reasonable for FEI to pay for the removal and disposal of its abandoned pipeline to accommodate such a municipal purpose, it is not reasonable for FEI also to pay for costs which the City would in any event have to incur to accommodate its own purpose. For this reason, the Panel considers it appropriate that the City shall be responsible for any Excavating, Backfilling and Restoration Costs associated with the removal of the abandoned NPS 20 Pipeline to accommodate the City's purpose except to the extent that these costs are greater as a result of the removal of the abandoned NPS 20 Pipeline, and the Panel includes this provision in the Cost Allocation Formula specified above.

This issue is illustrated in FEI's analysis of the hypothetical removal of the entire length of the NPS 20 Pipeline in the City. FEI estimates that the costs to remove this 5.5 km length of pipe would be $11 million. However, including the estimated Excavating, Backfilling and Restoration Costs of $49.3 million, the total cost would be $60.3 million.[118] In this hypothetical situation, the costs arising from the City's request to FEI to remove the entire NPS 20 Pipeline in the City for a reasonable municipal purpose should, in the Panel's view, be allocated on the basis that FEI should be responsible for the estimated $11 million to remove the pipeline, but the City should be responsible for the estimated $49.3 million Excavating, Backfilling and Restoration Costs which it would have incurred in any case to accommodate its own purpose.

The City argues that FEI should also be required to pay:

> a) any costs due to delay caused by FEI or its contractors in relation to removing NPS 20 pipes when required;
>
> b) costs related to regulatory proceedings to obtain BCUC approval for removal of portions of the decommissioned NPS 20 pipes and approval of costs; and
>
> c) additional costs if the City is required to undertake a more expensive alternative to its preferred project in order to avoid NPS 20 pipes.

With respect to costs related to item (a), the Panel agrees with the City that the City's costs could be greater as a result of any delay by FEI in removing the required portion of the abandoned pipeline. The Panel expects that FEI and the City will coordinate their plans for removal of pipeline, noting that this is a term explicitly included in FEI's agreement with Burnaby. However, should costs arise due to subsequent delay by FEI, the Panel considers that these costs may be the responsibility of FEI by virtue of the clause in section 2 of the Cost Allocation Formula which states that "the City shall be responsible for the costs of excavation, backfilling and surface restoration except to the extent that such costs are greater as a result of the removal of the NPS 20 Pipeline" [Emphasis added].

The Panel declines to address costs in items (b) and (c) in this Reconsideration Proceeding. Item (b) above presumes that specific BCUC approval is required for the removal of portions of the NPS 20 Pipeline, which it is not; this matter is addressed in section 6.3 below. Item (c) above is outside the scope of this proceeding as it relates to situations where the City does not request the removal of a portion of the abandoned NPS 20 Pipeline. As set out in section 2.0 above, this Reconsideration Proceeding addresses "the cost allocation formula which applies when the City requests FEI to remove any portion of the NPS 20 Pipeline, which has been abandoned in place." [Emphasis added]

[117] Ibid., p. 6.
[118] Exhibit C1-10, BCUC IR 2.3.

6.0 Other Matters Arising

6.1 Final Agreement

The BCUC has determined in the Original Decision that the 1957 Coquitlam Operating Agreement between the City and FEI does not address the removal of abandoned assets, [119]and it was the failure of the City and FEI to reach an agreement on the matter which led to Directive 2 being issued pursuant to Section 32 of the UCA. If Directive 2 of the Original Decision were to be rescinded in its entirety, as the City seeks in its Reconsideration Application, there would be no agreement between the parties on the removal of the abandoned NPS 20 Pipeline. After considerable time and expense in this proceeding and in the Original Proceeding, there would be no agreement on how requests for removal of the abandoned NPS 20 Pipeline should be handled. The City and FEI would be left with no resolution of the allocation of costs and the likelihood of further disagreement and additional regulatory expense.

The Panel has specified the Cost Allocation Formula above, which brings a degree of certainty to FEI and the City with respect to the removal of abandoned NPS 20 Pipeline in the City, and in particular the allocation of costs for such removal. However, the terms specified by the Panel in this decision only resolve the Cost Allocation Formula issue, which the parties were unable to reach agreement upon. The Panel recognizes there are likely additional related operational details which FEI and the City have not yet resolved, and which are not directly at issue in this proceeding. The Burnaby Terms of Reference provides useful guidance. For example, in the Burnaby Terms of Reference FEI agrees to "coordinate the removal" of portions of pipeline and to "obtain all applicable approvals and permits required." [120]

For the foregoing reasons, the Panel finds it would be in the public interest and in the interests of regulatory efficiency for FEI and the City to reach an agreement on the additional detailed operating terms with respect to requests by the City for FEI to remove portions of abandoned NPS 20 Pipeline in the City.

The Panel, as stated in Section 4.3 above, gives significant weight to the Burnaby Terms of Reference providing a relevant precedent for the Cost Allocation Formula. The Burnaby Terms of Reference is an agreement between FEI and a lower mainland municipality which applies specifically to requests for removal of the abandoned NPS 20 Pipeline for reasonable municipal purposes. Further, the allocation of costs in the Burnaby Terms of Reference is entirely consistent with the Panel's findings and determinations in this Decision regarding the appropriate allocation of costs between the City and FEI. **For these reasons, the Panel finds that it would be in the public interest and in the interests of regulatory efficiency if any additional detailed operating terms agreed to between FEI and the City were to be modelled on the Burnaby Terms of Reference.**

As a result, **the Panel requests FEI to file with the BCUC within 90 days of the date of this Order, pursuant to section 23 (1) (g) (ii) of the UCA, the additional detailed operating terms that apply to requests made by the City to FEI to remove any portion of the abandoned NPS 20 Pipeline, which terms should be modelled on the Burnaby Terms of Reference and be entirely consistent with the Cost Allocation Formula specified above.**

The Panel notes BC Hydro's view that an order specifying the allocation of costs for the removal of abandoned utility assets "should generally be made at the time of a request to remove the equipment in the case where there is no operating agreement between the parties."[121] [Emphasis added] The Panel does not disagree. However, in the absence of an operating agreement between the parties addressing the matter of removal of abandoned utility assets, there is considerable risk, as evidenced by this proceeding, that the parties will fail to agree on the reasonableness of the City's requests for removal of the abandoned NPS 20 Pipeline and the appropriate allocation of the resulting costs. Such disagreement may lead to more regulatory costs, and hence

[119] Order G-80-19 and reasons for decision, p. 17.
[120] Exhibit C1-9, Appendix A, p. 5; "City" refers to Burnaby, "FortisBC" refers to FEI; "20 inch gas line" refers to the NPS 20 Pipeline.
[121] BC Hydro Final Argument, p. 1.

the Panel desires that the two parties reach an agreement in advance consistent with the Cost Allocation Formula specified above.

6.2 Future Disputes

The Cost Allocation Formula specified above provides the City and FEI with a degree of certainty with respect to the terms under which requests for the removal of the abandoned NPS 20 Pipeline will be handled in future, and detailed operating terms would further increase that certainty. However, it is still possible that the City and FEI may disagree over the interpretation of the Cost Allocation Formula or the parties' operating terms in specific circumstances.

The Panel recommends that FEI and the City consider how best to resolve such disputes in future, to avoid costly regulation proceedings such as this one. The Panel has no evidence before it regarding whether the parties have already committed to a dispute resolution process in the Coquitlam Operating Agreement, but if not, the Panel recommends the parties consider including one in their detailed operating terms.

The Panel reminds the City and FEI that they may apply to the BCUC to resolve such disputes under section 32 of the UCA, but it is the Panel's expectation that FEI and the City will make all reasonable efforts to resolve disputes between themselves and that such applications to the BCUC should be used as a last resort.

6.3 Regulatory Burden

The City submits that the BCUC's finding in Order G-75-20 that the BCUC retains perpetual jurisdiction over the NPS 20 Pipeline even once permanently decommissioned "effectively mak[es] the BCUC the arbiter of all NPS 20 pipe removal requests on a case-by-case basis forever."[122] The City submits that a requirement for a BCUC process to review and approve each request for FEI to remove portions of its decommissioned NPS 20 Pipeline creates uncertainty around the procedure, timing, and cost of work that the City needs to perform, as well as posing challenges to the City in attempting to properly budget for work.[123]

FEI submits that the Original Cost Allocation Formula does not introduce an onerous BCUC process as the City suggests. FEI confirms that it would remove the NPS 20 Pipeline if requested by the City, provided the request satisfies the conditions of paragraph 2 of the Original Decision, and that paragraph 2 does not require a further BCUC approval to remove a portion of the abandoned NPS 20 pipeline at the City's request, although FEI does recognize the BCUC retains jurisdiction "in the event of disputes." FEI submits that, while such a clarification to paragraph 2 of Order G-80-19 is not required, it does not oppose such a clarification. [124]

FEI adds that it recognizes the additional burden of regulatory process to resolve disputes with municipalities, but views the need for the BCUC to adjudicate as "a last resort when no further reasonable and appropriate alternatives are available to reach an agreement." [125]

The City submits in reply that FEI's submissions are fully addressed in the City's argument.[126]

Panel Discussion

The City submits that the BCUC's continuing jurisdiction over decommissioned utility assets makes the BCUC the arbiter of requests to remove abandoned pipe "on a case-by-case basis forever." While FEI submits that no

[122] Exhibit B-12, p. 4.
[123] Ibid., p. 151.
[124] FEI Argument, p. 22.
[125] Ibid., pp. 22-23.
[126] City Reply, p. 9.

clarification of the BCUC's role is required, it does not oppose such a clarification, and since FEI and the City disagree on the matter, the Panel considers that a clarification is appropriate.

The Panel disagrees with the City's interpretation of the BCUC's continuing jurisdiction over decommissioned assets.

As the Panel has explained above, it is normal practice for gas utilities in BC to have operating agreements with the municipalities in whose land they operate. Such operating agreements may set out the terms on which a municipality may request a utility to remove an abandoned asset on municipal land, and the BCUC will approve such operating agreements under section 23 (1)(g)(ii) of the UCA provided it considers them to be in the public interest. By giving this approval, the BCUC approves in advance a broad category of changes to utility assets which thus do not require the "case-by-case" arbitration by the BCUC as suggested by the City.

FEI's operating agreements approved by the BCUC since 2006 address how requests by municipalities to remove abandoned assets are handled, and thus in normal circumstances the BCUC does not approve such requests on a "case-by-case" basis. The BCUC's continuing jurisdiction over decommissioned assets does, however, ensure that the BCUC is able to resolve disputes between FEI and municipalities should they arise.

The Panel does not anticipate the BCUC approving individual, case-by-case requests of this nature made by the City to FEI in the normal course. However, if the City and FEI disagree on whether such a request is to accommodate a "reasonable municipal purpose," the BCUC's continuing jurisdiction over FEI's decommissioned assets allows the BCUC to resolve the dispute under section 32 of the UCA.

DATED at the City of Vancouver, in the Province of British Columbia, this 16th day of April 2021.

Original signed by:

R. I. Mason
Panel Chair / Commissioner

Original signed by:

W. M. Everett, QC
Commissioner

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ORDER NUMBER
G-114-21

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

and

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

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

on April 16, 2021

ORDER

WHEREAS:

A. On May 16, 2019, pursuant to section 99 of the *Utilities Commission Act* (UCA), the City of Coquitlam (City) filed with the British Columbia Utilities Commission (BCUC) an application for Reconsideration and Variance of Order G-80-19 (Reconsideration Application);

B. By Order G-80-19 and accompanying reasons for decision dated April 15, 2019, the BCUC issued its decision regarding FortisBC Energy Inc.'s (FEI) application for use of the City's lands for the construction and operation of the Lower Mainland Intermediate Pressure System Upgrade Projects, including the disposition of the Nominal Pipe Size (NPS) 20 pipeline which FEI proposed to decommission. The BCUC ordered, among other things, the following:

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

    2. Pursuant to section 32 of the UCA, upon request by the City in circumstances where it interferes with municipal infrastructure, the costs of removal of any portion of the decommissioned NPS 20 Pipeline shall be shared equally between FEI and the City;

C. In its Reconsideration Application, the City requests that the BCUC reconsider and vary Order G-80-19 on the grounds that the BCUC erred in law by:

    1. Finding that the BCUC had jurisdiction to authorize FEI, within the meaning of the term "authorization" as used in section 121 of the UCA, to abandon in place FEI's decommissioned NPS 20 pipes located in Como Lake Avenue; and

    2. Finding that section 32 of the UCA provides the BCUC with jurisdiction to specify the manner and terms under which the City may request FEI to remove any portion of the NPS 20 pipes abandoned in place;

D. By Order G-114-19 dated May 29, 2019, the BCUC established a public hearing process for the review of the Reconsideration Application;

E. By June 13, 2019, the following parties registered as interveners:

- British Columbia Hydro and Power Authority (BC Hydro);
- Commercial Energy Consumers Association of British Columbia (CEC);
- FortisBC Energy Inc. (FEI); and
- Pacific Northern Gas Ltd.;

F. By Order G-75-20 and accompanying reasons for decision, the BCUC ordered that the City's Reconsideration Application seeking that the BCUC rescind Directive 1 of Order G-80-19 be dismissed;

G. By Order G-150-20 dated June 11, 2020, the Panel established further regulatory process to address the remaining issue of the cost allocation formula with respect to the removal of the abandoned NPS 20 Pipeline;

H. On August 25, 2020, the City filed evidence. On September 29, 2020, FEI filed evidence, which was subject to BCUC, City and intervener information requests;

I. On December 2, 2020, the City filed its final argument. By December 23, 2020, BC Hydro, the CEC and FEI filed final arguments. On January 18, 2021, the City filed its reply argument; and

J. The BCUC has reviewed the evidence and arguments filed, and considers varying Directive 2 of Order G-80-19 is warranted.

NOW THEREFORE the BCUC orders that, pursuant to sections 99 and 32 of the UCA, Directive 2 of the Order G-80-19 is varied to read as follows:

Upon request by the City that FEI remove a portion of the abandoned NPS 20 Pipeline to accommodate a reasonable municipal purpose:

a) FEI shall remove the requested portion of the NPS 20 Pipeline; and

b) FEI shall be responsible for the costs of removing and disposing of that portion of the NPS 20 Pipeline referred to in (a) above and the City shall be responsible for the costs of excavation, backfilling and surface restoration except to the extent that such costs are greater as a result of the removal of the NPS 20 Pipeline;

DATED at the City of Vancouver, in the Province of British Columbia, this 16th day of April 2021.

BY ORDER

Original signed by:

R. I. Mason
Commissioner

Provisions of the *Canadian Energy Regulatory Act*

The *Canadian Energy Regulator Act* (CER Act)[127] includes the following provisions, which are addressed in Section 4.1 of this decision*:*

Section 241:

(1) A company must not abandon a pipeline unless the Commission has, by order, granted it leave to do so….

(4) The Commission may, on granting leave to abandon a pipeline, impose any conditions that it considers appropriate.

(5) A company that has been granted leave to abandon a pipeline continues to be liable for the abandoned pipeline under this Act.

Section 242*:*

(1) The Commission may order a company to take any measure, including maintaining funds or security, that the Commission considers necessary to ensure that the company has the ability to pay for the abandonment of its pipeline and to pay any costs and expenses related to its abandoned pipeline.

Section 313*:*

A company may, for the purposes of its undertaking, subject to this Act and to any Special Act applicable to it,

(b) acquire, lease and take from any person any land or other property necessary for the construction, maintenance, operation and abandonment of its pipeline or the maintenance of its abandoned pipeline and sell or otherwise dispose of, or lease, any of its land or property that has become unnecessary for the purpose of the pipeline or the abandoned pipeline.

(i) do all other acts necessary for the construction, maintenance, operation and abandonment of its pipeline or the maintenance of its abandoned pipeline.

Section 314:

A company must, in the exercise of the powers granted by this Act or a Special Act, do as little damage as possible, and must make full compensation in the manner provided in this Act and in a Special Act to all persons interested, for all damage sustained by them by reason of the exercise of those powers.

Section 327*:*

(1) If a company and an owner of lands have not agreed on any matter relating to the compensation payable under this Part, the Commission, on application by a company or any owner, must, by order, determine that matter.

[127] SC 2019, c 28, s 10.

Glossary and List of Acronyms

Acronym	Description
AUC	Alberta Utilities Commission
BC Hydro	British Columbia Hydro and Power Authority
BCUC	British Columbia Utilities Commission
Burnaby	City of Burnaby
Burnaby Terms of Reference	FEI agreement with the City of Burnaby dated Ma7y 15, 2018 which is a LMIPSU Project-specific agreement that addresses, in part, the removal of portions of the abandoned decommissioned NPS 20 Pipeline
CEC	Commercial Energy Consumers Association of British Columbia
CER Act	*Canadian Energy Regulator Act*
City	City of Coquitlam
Cost Allocation Formula	A cost allocation formula which applies when the City requests FEI to remove any portion of the NPS 20 Pipeline, which has been abandoned in place
CPCN	Certificate of Public Convenience and Necessity
FEI	FortisBC Energy Inc.
FEI - LMIPSU CPCN Decisions	Order C-11-15 and accompanying decision dated October 16, 2015
IP	Intermediate Pressure
IR	Information requests
LMIPSU	Lower Mainland Intermediate Pressure System Upgrade
NPS	Nominal Pipe Size
NPS 20 Pipeline	NPS 20 gas line
NPS 30 Pipeline	NSP 30 gas line
OEB	Ontario Energy Board
Original Application	FortisBC Energy Inc. Application for Use of Lands under Sections 32 and 33 of the UCA in the City of Coquitlam for the LMIPSU Projects dated June 28, 2018
PNG	Pacific Northern Gas Ltd.
Reconsideration Application	City of Coquitlam Application for Reconsideration and Variance of Order G-80-19 in the matter of the FortisBC Energy Inc. Application for Use of Lands under Sections 32 and 33 of the *Utilities Commission*

Acronym	Description
	Act in the City of Coquitlam for the Lower Mainland Intermediate Pressure System Upgrade dated May 16, 2019
Surrey	City of Surrey
Surrey Operating Agreement	Operating agreement between FEI and the City of Surrey
UBCM	Union of BC Municipalities
UBCM Terms	Term of a new form of operating agreement with the Union of BC Municipalities Operating Agreement Committee which included a cost allocation between FEI and municipalities for facilities changes whereby municipalities pay for all costs where the municipality requires alteration, changes or relocation of FEI facilities
UCA	*Utilities Commission Act*

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

EXHIBIT LIST

Exhibit No.	Description
COMMISSION DOCUMENTS	
A-1	Letter dated May 22, 2019 - Appointing the Panel for the review of the City of Coquitlam's Application for Reconsideration and Variance of BCUC Order G-80-19
A-2	Letter dated May 29, 2019 – Order G-114-19 establishing the regulatory timetable
A-3	Letter dated July 8, 2019 – Order G-150-19 updating the regulatory timetable
A-4	Letter dated September 5, 2019 – Update regarding Information Requests
A-5	Letter dated September 11, 2019 – Order G-221-19 updating the regulatory timetable
A-6	Letter dated September 27, 2019 – Order G-234-19 establishing a further regulatory timetable
A-7	Letter dated December 20, 2019 – Oral Hearing Cancellation
A-8	Letter dated April 2, 2020 – Order G-75-20 with Reasons for Decision and establishing a further regulatory timetable
A-9	Letter dated May 11, 2020 – Requesting for comments on further process
A-10	Letter dated June 11, 2020 – Order G-150-20 establishing a regulatory timetable with Reasons for Decision
A-11	Letter dated July 30, 2020 – Order G-202-20 establishing a further regulatory timetable with Reasons for Decision
A-11-1	Letter dated July 30, 2020 – Amended Order G-202-20A establishing a further regulatory timetable with Reasons for Decision
A-12	Letter dated September 8, 2020 – BCUC Information Request No. 1 to the City
A-13	Letter dated October 6, 2020 – BCUC Information Request No. 1 to FEI
A-14	Letter dated November 2, 2020 – Order G-277-20 establishing an amended regulatory timetable

A-15	Letter dated November 9, 2020 – Order G-289-20 establishing a further regulatory timetable
A-16	Letter dated January 27, 2021 – Request for Submissions on FortisBC Energy Inc. Comments on City of Coquitlam Reply Argument

APPLICANT DOCUMENTS

B-1	**CITY OF COQUITLAM (THE CITY)** - Letter dated May 16, 2019 - submitting an Application for Reconsideration and Variance of BCUC Order G-80-19
B-2	Letter dated June 20, 2019 – The City submitting comments on process
B-3	Letter dated July 4, 2019 – The City submitting reply comments on process
B-4	Letter dated September 16, 2019 – The City submitting comments on further process
B-5	Letter dated September 25, 2019 – The City submitting reply on further process
B-6	Letter dated April 23, 2020 – The City submission on further process
B-7	Letter dated May 7, 2020 – The City submitting reply on further process
B-8	Letter dated May 20, 2020 – The City submitting reply on further process
B-9	Letter dated June 3, 2020 – The City submitting reply submission on further process
B-10	Letter dated June 24, 2020 – The City submission on further process
B-11	Letter dated July 9, 2020 – The City submitting reply submission on new evidence
B-12	Letter dated August 25, 2020 – The City submitting evidence to support the reconsideration
B-13	Letter dated September 22, 2020 – The City submitting responses to BCUC Information Request No. 1
B-14	Letter dated September 22, 2020 – The City submitting responses to CEC Information Request No. 1
B-15	Letter dated September 22, 2020 – The City submitting responses to FEI Information Request No. 1
B-16	Letter dated October 6, 2020 – The City submitting Information Request No. 1 to FEI on FEI's Evidence
B-17	Letter dated October 28, 2020 – The City will not be submitting rebuttal evidence
B-18	Letter dated November 3, 2020 – The City submitting further clarification

B-19	Letter dated February 2, 2021 – The City submitting comments on FEI comments on City of Coquitlam Reply Argument

INTERVENER DOCUMENTS

C1-1	**FORTISBC ENERGY INC. (FEI)** – Letter dated June 11, 2019 – Request for Intervener Status by Doug Slater
C1-2	Letter dated June 27, 2019 – FEI submitting comments on process
C1-3	Letter dated September 5, 2019 – FEI submitting response to BCUC letter (Exhibit A-2) regarding Information Requests
C1-4	Letter dated September 18, 2019 – FEI submitting response on Further Process
C1-5	Letter dated April 28, 2020 – FEI submitting response on Further Process
C1-6	Letter dated May 27, 2020 – FEI submitting response on Further Process
C1-7	Letter dated July 2, 2020 – FEI submitting comments on Further Process
C1-8	Letter dated September 8, 2020 – FEI submitting Information Request No. 1 to the City
C1-9	Letter dated September 29, 2020 – FEI submitting Evidence
C1-10	Letter dated October 22, 2020 – FEI submitting response to BCUC Information Request No. 1
C1-11	Letter dated October 22, 2020 – FEI submitting response to CEC Information Request No. 1
C1-12	Letter dated October 22, 2020 – FEI submitting response to the City Information Request No. 1
C1-13	Letter dated November 5, 2020 – FEI submitting comments on the City's proposals
C1-14	Letter dated January 26, 2021 – FEI submitting comments on the City's Reply Argument
C2-1	**BRITISH COLUMBIA HYDRO AND POWER AUTHORITY (BC HYDRO)** – Letter dated June 13, 2019 – Request for Intervener Status by Fred James
C2-2	Letter dated June 27, 2019 – BC Hydro submitting comments on process
C2-3	Letter dated September 9, 2019 – BC Hydro does not intend to submit Information Requests to the City
C2-4	Letter dated September 19, 2019 – BC Hydro submitting response on Further Process
C2-5	Letter dated April 30, 2020 – BC Hydro submitting comments on Further Process
C2-6	Letter dated May 27, 2020 – BC Hydro submitting response on Further Process

C2-7	Letter dated June 30, 2020 – BC Hydro submitting comments on Further Process
C2-8	Letter dated November 4, 2020 – BC Hydro submitting comments on the City's proposals
C3-1	**PACIFIC NORTHERN GAS LTD. (PNG)** – Letter dated June 13, 2019 – Request for Intervener Status by Verlon Otto
C3-2	Letter dated September 9, 2019 – PNG does not intend to submit Information Requests to the City
C4-1	**COMMERCIAL ENERGY CONSUMERS ASSOCIATION OF BRITISH COLUMBIA (CEC)** – Letter dated June 13, 2019 – Request for Intervener Status by Christopher Weafer
C4-2	Letter dated June 27, 2019 – CEC submitting comments on process
C4-3	Letter dated September 9, 2019 – CEC does not intend to submit Information Requests to the City
C4-4	Letter dated September 20, 2019 – CEC submitting response on Further Process
C4-5	Letter dated April 29, 2020 – CEC submitting comments on Further Process
C4-6	Letter dated May 27, 2020 – CEC submitting response on Further Process
C4-7	Letter dated July 2, 2020 – CEC submitting comments on Further Process
C4-8	Letter dated September 8, 2020 – CEC submitting Information Request No. 1 to the City
C4-9	Letter dated October 6, 2020 – CEC submitting Information Request No. 1 to FEI on FEI's Evidence
C4-10	Letter dated November 5, 2020 – CEC submitting comments on the City's proposals

INTERESTED PARTY DOCUMENTS

D-1	**OIL AND GAS COMMISSION** – Letter dated June 12, 2019 - Request for Interested Party Status by Dorothy McDaid