



bcuc
British Columbia
Utilities Commission

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November 24, 2021

Sent via email/eFile

CITY OF RICHMOND – RECONSIDERATION AND VARIANCE OF G-170-21 EXHIBIT A-2

Anthony Capuccinello Iraci
City Solicitor
City of Richmond
6911 No. 3 Road
Richmond, BC V6Y 2C1
acapuccinelloiraci@richmond.ca

**Re: City of Richmond – Application for Reconsideration and Variance of BCUC Order G-170-21 – Project
 No. 1599261 – Regulatory Timetable and Public Notice**

Dear Mr. Capuccinello Iraci:

Further to your October 15, 2021 filing of the above-noted application, enclosed please find British Columbia Utilities Commission Order G-343-21 establishing a regulatory timetable.

Sincerely,

Original signed by:

Patrick Wruck
Commission Secretary

GS/dg
Attachment

cc: Mr. Ian Webb
 Lawson Lundell LLP
 iwebb@lawsonlundell.com

Ms. Diane Roy
Vice President, Regulatory Affairs
FortisBC Energy Inc.
gas.regulatory.affairs@fortisbc.com



ORDER NUMBER
G-343-21

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

and

City of Richmond
Application for Reconsideration and Variance of BCUC Order G-170-21

BEFORE:

D. M. Morton, Panel Chair
M. Kresivo, QC, Commissioner
R. I. Mason, Commissioner

on November 24, 2021

ORDER

WHEREAS:

- A. On October 15, 2021, pursuant to section 99 of the *Utilities Commission Act* (UCA), the City of Richmond (City) filed with the British Columbia Utilities Commission (BCUC) an application for Reconsideration and Variance of Order G-170-21 (Application);
- B. By Order G-170-21 dated May 31, 2021, and accompanying reasons for decision dated July 23, 2021, the BCUC issued its decision regarding the City's Application for an Order pursuant to section 36 of the UCA regarding the relocation of FortisBC Energy Inc. (FEI) operating gas mains in three locations where conflicts occurred with the City's new storm sewer system (Offset Projects). The BCUC ordered, among other things, that FEI complete the Offset Projects in accordance with all applicable regulations, as well as in accordance with the Letter Agreement applicable to each Work and the Terms and Conditions of Order – Construction, and that such Terms and Conditions be modified as set out in paragraph 2 of Order G-170-21;
- C. In its Application, the City requests that the BCUC exercise its powers under section 99 of the *Utilities Commission Act* to reconsider and rescind paragraph 2 of Order G-170-21;
- D. Part V of the BCUC's Rules of Practice and Procedure provide the Rules for the reconsideration process (Reconsideration Rules); and
- E. The Panel has reviewed the Application and considers that a public hearing process is warranted, in accordance with section 29 of the Reconsideration Rules.

NOW THEREFORE the BCUC orders as follows:

1. A public hearing process is established for the review of the Application, in accordance with the regulatory timetable as set out in Appendix A to this order.

2. The City is directed, as soon as reasonably possible, but no later than Friday, December 10, 2021 to:
 - a. publish the Public Notice, attached as Appendix B to this order, on its website and social media channels. Weekly reminder notices on each platform must be published until the conclusion of the intervener registration period on Friday, January 7, 2022;
 - b. provide a copy of the Application and this order to any taxpayer groups known to the City; and
 - c. provide a copy of the Application and this order to all parties who participated in the FEI's Annual Review for 2022 Rates proceeding.
3. In accordance with BCUC's Rules of Practice and Procedure, parties who wish to actively participate in this proceeding, must submit the Request to Intervene Form, available on the BCUC's website at <https://www.bcuc.com/get-involved/get-involved-proceeding.html>, by Friday, January 7, 2022, as established in the regulatory timetable attached as Appendix A to this order.

DATED at the City of Vancouver, in the Province of British Columbia, this 24th day of November 2021.

BY ORDER

Original signed by:

D. M. Morton
Commissioner

Attachments

City of Richmond
Application for Reconsideration and Variance of BCUC Order G-170-21

REGULATORY TIMETABLE

Action	Date (2021)
City Publishes Notice of the Application	Friday December 10
Action	Date (2022)
Intervener Registration	Friday January 7
City of Richmond Argument	Thursday, January 13
Intervener Argument	Thursday, January 27
City of Richmond Reply Argument	Thursday, February 10



We want to hear from you

CITY OF RICHMOND APPLICATION FOR RECONSIDERATION AND VARIANCE OF BCUC ORDER G-170-21

On October 15, 2021, the City of Richmond (City) filed an application with the British Columbia Utilities Commission (BCUC) for Reconsideration and Variance of Order G-170-21. In Order G-170-21 and the accompanying reasons for decision dated July 23, 2021, the BCUC issued its decision regarding disputed terms between FortisBC Energy Inc. (FEI) and the City regarding the relocation of FEI's operating gas mains in three locations where conflicts occurred with the City's new storm sewer system. In its Application, the City requests that the BCUC reconsider and rescind paragraph 2 of Order G-170-21.

Order G-170-21, attached as Appendix C, and the accompanying reasons for decision dated July 23, 2021 are available on [the BCUC's website](#).

HOW TO PARTICIPATE

- Submit a letter of comment
- Register as an interested party
- Request intervener status

IMPORTANT DATES

- **Friday, January 7, 2022** - Deadline to register as an intervener with the BCUC

For more information about the Application, please visit the [Proceeding Webpage](#) on bcuc.com under "Regulatory Activities – Current Proceedings." To learn more about getting involved, please visit our website at www.bcuc.com/get-involved or contact us at the information below.

GET MORE INFORMATION

City of Richmond



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**ORDER NUMBER
G-170-21**

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

and

City of Richmond
Application for an Order pursuant to Section 36 of the *Utilities Commission Act* (UCA)

BEFORE:

D. M. Morton, Panel Chair
R. I. Mason, Commissioner
E. B. Lockhart, Commissioner

on May 31, 2021

ORDER

WHEREAS:

- A. By letter dated April 1, 2021, the City of Richmond (City) applied to the British Columbia Utilities Commission (BCUC) pursuant to section 36 of the *Utilities Commission Act* (UCA) regarding the relocation of FortisBC Energy Inc. (FEI) operating gas mains in three locations where conflicts occur with the City's new storm sewer system (Offset Projects). The City requests that the BCUC direct FEI to complete the Offset Projects by June 30, 2021, and on the terms set forth in the form of Order (Application);
- B. There is no operating agreement between the City and FEI;
- C. The Application includes copies of three Letter Agreements (each a Letter Agreement) regarding the Offset Projects dated August 31, 2020. On September 4, 2020, FEI sent the City a revision to one of the Letter Agreements. Schedule A attached to each Letter Agreement contains FEI's standard terms and conditions (Terms and Conditions);
- D. The parties have not reached agreement on the Terms and Conditions;
- E. By letter dated April 20, 2021, the BCUC invited the City and FEI to provide oral submissions on a suitable regulatory process for the review of the Application, and to outline the chronology of contract negotiations to date;
- F. On Friday April 23, 2021, a procedural conference was held;
- G. By Order G-121-12 dated April 26, 2021, the BCUC established a regulatory timetable for a streamlined review process, which took place on May 21, 2021 and consisted of written submissions and an oral hearing;
- H. On May 7, 2021, FEI submitted a response to the City's Application, including proposed revised Terms and Conditions (Revised Terms) sent to the City on April 27, 2021 in Appendix B;

Order G-170-21

- I. On May 14, 2021, the City confirmed that it does not agree to the Revised Terms proposed by FEI;
- J. By letter dated May 17, 2021, the BCUC requested oral submissions from parties on the following:
 - 1. In its written submission the City acknowledges the BCUC's jurisdiction to impose the Terms and Conditions that the City proposes. Is it also within the jurisdiction of the BCUC to include in its Order terms and conditions requested by FEI?
 - 2. In the absence of any Terms and Conditions set by the BCUC, parties would have recourse to the courts to adjudicate any disputes that may arise as a result of the work. If it is within the BCUC jurisdiction to do so, is it reasonable and in the public interest to include such Terms and Conditions or are the courts a more appropriate recourse in this circumstance?
 - 3. Parties should include in their arguments: (i) Any precedent where any commission or other regulatory body (not restricted to the energy sector) has determined the allocation of risk between parties on a prospective basis, either through an operating agreement, or on a case by case basis; (ii) All relevant case law;
- K. The City submits that the work must be completed by June 30, 2021; and
- L. The BCUC has reviewed the submissions of the City and FEI, finds that the BCUC has the jurisdiction to order the work and set the Terms and Conditions of that work, and that it is in the public interest to do so and therefore considers the following determinations are warranted.

NOW THEREFORE, with reasons to follow, whether pursuant to section 32 or section 36 of the UCA, the BCUC orders as follows:

- 1. FortisBC Energy Inc. (FEI) is directed to undertake the Offset Projects as specified on the design drawings prepared by FEI and approved by the City's Engineering Planning Department, as provided in Appendix "D" of the Application.
- 2. FEI is directed to complete the Offset Projects in accordance with all applicable regulations, as well as in accordance with the Letter Agreement applicable to each Work and the Terms and Conditions of Order – Construction, attached to each Letter Agreement, being the Terms and Conditions attached to the applicable Letter Agreement dated August 31, 2020 or September 4, 2020 (collectively, the Agreements). Such Terms and Conditions shall be modified as set out below:

Section 1.1 – the description of the location of the Work, currently shown as *Burkeville area*, shall be replaced with one that is more specific to the location, such change to be specific to the area on the applicable Letter Agreement.

Section 11.3 – after the words "right to disclose the same" the following words shall be inserted such that section 11.3 shall read as follows "or which is required to be disclosed in accordance with applicable laws (including without limitation, the Freedom of Information and Protection of Privacy Act (British Columbia))":

OLD 11.3 The obligation of confidentiality set out above shall not apply to material, data or information which is known to the Customer prior to their receipt thereof, which is generally available to the public or which has been obtained from a third party which has the right to disclose the same. The confidentiality covenants of the Customer herein shall survive the termination of this Letter Agreement.

NEW 11.3. The obligation of confidentiality set out above shall not apply to material, data or information which is known to the Customer prior to their receipt thereof, which is generally available to the public

Order G-170-21

or which has been obtained from a third party which has the right to disclose the same, or which is required to be disclosed in accordance with applicable laws (including without limitation, the Freedom of Information and Protection of Privacy Act (British Columbia)). The confidentiality covenants of the Customer herein shall survive the termination of this Letter Agreement.

Section 12 shall be deleted in its entirety and replaced with the following new Section 12:

NEW 12. Limitation of Liability

FortisBC, its employees, contractors, subcontractors or agents are not responsible or liable for any claim, expense, loss, cost, or other liability incurred by the Customer caused by or resulting directly or indirectly from the Work, except and only to the extent that the claim, expense, loss, cost or other liability is directly attributable to the negligence or wilful misconduct of FortisBC, its employees, contractors, subcontractors or agents. Notwithstanding the foregoing in no event shall FortisBC, its employees, contractors, subcontractors and agents be liable for any incidental, special, punitive, or consequential damages of any kind (including, but without limitation, loss of income, loss of profits, or other pecuniary loss), arising directly or indirectly from the Work.

3. The parties are at liberty, but not required, to mutually agree on further revisions to the Terms and Conditions, for example, to change "Customer" to "Municipality" or as otherwise set out in FEI's email to the City dated April 27, 2021.
4. FEI is directed to complete the Offset Projects by June 30, 2021, or such later date as may be agreed to between FEI and the City.
5. The City is directed to pay FEI for the Offset Projects in accordance with the Letter Agreements.

DATED at the City of Vancouver, in the Province of British Columbia, this 31st day of May 2021.

BY ORDER

Original signed by:

D. M. Morton
Commissioner