

NO: **R043**

COUNCIL DATE: **MARCH 23, 2015**

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## REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **March 9, 2015**

FROM: **General Manager, Engineering  
City Solicitor**

FILE: **5400-37**

SUBJECT: **Proposed UBCM Resolution for Routine Highway Maintenance Over Pipelines**

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## RECOMMENDATION

The City Solicitor and Engineering Department recommend that Council:

1. Receive this report as information; and
2. Instruct staff to forward the resolution that is attached as Appendix I to this report to the Union of British Columbia Municipalities (UBCM) with a request that it be included for consideration at the 2015 UBCM Convention.

## INTENT

The purpose of this report is to bring forward for Council's consideration a draft UBCM resolution that resolves that UBCM request the Federal Ministry of Natural Resources to revise the Regulations under the National Energy Board Act such that the Regulations appropriately balance public safety and the continuing need for municipalities to undertake routine highway maintenance without having to first provide notice or obtain a permit from the owner or operator of the pipeline.

## BACKGROUND

Kinder Morgan has taken issue with the City of Surrey and other municipalities filling potholes and undertaking other routine highway maintenance on roads where Kinder Morgan has underground pipeline crossings. Kinder Morgan has reported such activities to the National Energy Board as infractions under legislation.

The City of Surrey does not agree with Kinder Morgan's interpretation of the applicable legislation and has written to the National Energy Board expressing this view.

## DISCUSSION

In a letter dated June 16, 2014 the City of Surrey wrote to the National Energy Board requesting clarification of the existing confusion regarding the application of the Pipeline Crossing Regulations:

Regarding this issue of filling potholes and undertaking other routine highway maintenance, we would like to meet with staff of the National Energy Board as we believe there is some confusion regarding the application of the Regulations cited in your letter. As you can appreciate, timely maintenance of City highways is similarly a matter of public safety. We also understand that the initial approval of the subject Kinder Morgan pipeline to cross City highways under s.108 of the National Energy Board Act (or its predecessor section(s)) would have imposed conditions which presumably would have required the pipeline to be designed and installed at a depth which would permit the City to perform routine maintenance of its highways without delay.

#### Section 108

##### Construction - utility

108. (1) Subject to subsection (4), **no company shall construct a pipeline that passes on, over, along or under a utility** unless a certificate has been issued, or an order has been made under section 58, in respect of the pipeline, **and**

(a) **the certificate or order contains a term or condition relating to that utility;**

(b) the company has been granted leave under subsection (2); or

(c) the company is constructing the pipeline in circumstances specified in an order or regulation made under subsection (4).

##### Authority to grant leave

(2) The Board may, by order, on application, grant a company leave to construct a pipeline that passes on, over, along or under a utility. It may require from the applicant any plans, profiles and other information that it considers necessary to deal with the application.

##### Terms and conditions

(3) **The leave may be granted in whole or in part and be subject to terms and conditions.**

##### Circumstances

(4) The Board may make orders or regulations specifying circumstances for the purposes of para-graph (1)(c).

##### Leave in emergency cases

(5) The Board may grant leave under subsection (2) after construction of the proposed work has commenced if is satisfied that the work was urgently required and, before the commencement of construction, it was notified of the company's intention to proceed with the proposed work.

##### Definition of "utility"

(6) In this section, **"utility" means a highway**, an irrigation ditch, a publicly owned or operated drainage system, sewer or dike, an underground telegraph or telephone line or a line for the trans-mission of hydrocarbons, electricity or any other substance.

We also observe that section 8 of the National Energy Board General Order No.1 Respecting Standard Conditions for Crossings by Pipelines imposes certain conditions which include a

condition that a pipeline crossing a highway shall be located so that it will not obstruct drainage nor interfere with highway traffic or maintenance.

*Crossings of Highways and Utilities by a Pipeline*

8. *The following general conditions shall apply to all crossings of highways or utilities by a pipeline:*
- (6) *The top of the carrier or casing pipe where casing is required shall be not less than 1.3 m below the travelled surface of the highway nor less than 0.8 m below the surveyed or planned elevation of the bottom of the highway ditches and **the pipeline shall be located so that it will not obstruct drainage nor interfere with highway traffic or maintenance**; provided that where it is not practicable to secure the required depth, special construction shall be necessary, which construction shall be subject to the approval of the Board.*
- (9) *The Applicant shall at all times maintain the pipeline in good working order and condition, **so that no damage is caused to any highway or utility, nor their usefulness or safety impaired, nor the full use and enjoyment thereof in any way interfered with.***

*In advance of our meeting we kindly request the National Energy Board provide us with the original approval (and any amendments thereto) approving the installation and construction of the subject Kinder Morgan pipeline through the City of Surrey including all applicable terms and conditions related to permitted highway crossings.*

Despite the City's letter and a subsequent meeting with NEB staff, no clarification has been forthcoming nor is any expected.

**CONCLUSION**

Based on the above, the City Solicitor and the Engineering Department recommend that Council:

- Receive this report as information; and
- Instruct staff to forward the resolution that is attached as Appendix I to this report to the Union of British Columbia Municipalities (UBCM) with a request that it be included for consideration at the 2015 UBCM Convention.

Craig MacFarlane  
City Solicitor

Fraser Smith, P.Eng., MBA  
General Manager, Engineering

FS/AC/SBN/clr

Appendix I – Proposed Resolution for Consideration at the 2015 UBCM Annual Convention

**Proposed Resolution for Consideration at the 2015 UBCM Annual Convention**

**Short Title:           Routine Highway Maintenance Over Pipelines**

**Sponsored by:        City of Surrey**

WHEREAS timely maintenance of municipal highways is a matter of public safety;

AND WHEREAS Kinder Morgan has taken issue with municipalities filling potholes and performing routine maintenance citing Regulations under the National Energy Board Act;

AND WHEREAS the National Energy Board General Order No. 1 Respecting Standard Conditions for Crossings of Pipelines imposes certain conditions which include a condition that a pipeline crossing a highway shall be located so that it will not interfere with highway traffic or maintenance;

AND WHEREAS there is uncertainty and confusion regarding the application of Regulations cited by Kinder Morgan, the effect of National Energy Board General Order No. 1 Respecting Standard Conditions for Crossing of Pipelines and conditions that may have been imposed under the earlier enactments of s.108 of the National Energy Board which provides that any certificate approving a pipeline may contain terms and conditions related to pipelines crossing highways and other utilities;

THEREFORE BE IT RESOLVED that the Union of BC Municipalities request the Federal Ministry of Natural Resources to revise the Regulations under the National Energy Board Act such that the Regulations appropriately balance public safety and the continuing need for municipalities to undertake routine highway maintenance without having to first provide notice to or obtain a permit from the owner or operator of the pipeline.