



Verlon G. Otto  
Director, Regulatory Affairs

Pacific Northern Gas (N.E.) Ltd.  
750 – 888 Dunsmuir Street  
Vancouver, BC V6C 3K4  
Tel: (604) 691-5680  
Fax: (604) 697-6210  
Email: votto@png.ca

Via E-file

August 20, 2020

B.C. Utilities Commission  
Suite 410, 900 Howe Street  
Vancouver, BC V6Z 2N3

File No.: 4.2.7(2020)

Attention: Marija Tresoglavic  
Acting Commission Secretary

Dear Ms. Tresoglavic:

**Re: Pacific Northern Gas (N.E.) Ltd.  
Application for Approval of the 2019 Franchise Agreement between  
Pacific Northern Gas (N.E.) Ltd. and the City of Fort St. John  
Applicant's Final Argument**

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Accompanying, please find the written Final Argument of Pacific Northern Gas (N.E.) Ltd. in the referenced proceeding.

Please direct any questions regarding the application to my attention.

Yours truly,

*Original on file signed by:*

Verlon G. Otto

Enclosure

**PACIFIC NORTHERN GAS (N.E.) LTD.**

**APPLICATION  
to the  
BRITISH COLUMBIA UTILITIES COMMISSION**

**FOR APPROVAL OF THE 2019 FRANCHISE AGREEMENT BETWEEN  
PACIFIC NORTHERN GAS (N.E.) LTD. AND THE CITY OF FORT ST. JOHN**

**APPLICANT'S FINAL ARGUMENT**

**August 20, 2020**

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## 1 OVERVIEW

1. On December 10, 2019, Pacific Northern Gas (N.E.) Ltd. (PNG(NE)) filed an application (Application) with the British Columbia Utilities Commission (BCUC) for approval of a proposed franchise agreement (2019 Franchise Agreement) with the City of Fort St. John (City).

2. PNG(NE) and the City first entered into a franchise relationship, which grants PNG(NE) the exclusive right, franchise and privilege to operate and supply gas within the boundaries of the City, in August 1952.<sup>1</sup> Most recently, this relationship was established by a franchise agreement, dated December 8, 1997 (1997 Franchise Agreement), which was approved by the BCUC by Order C-4-98.<sup>2</sup>

3. The 1997 Franchise Agreement had a term of 21 years, and expired on December 7, 2018.<sup>3</sup> While the parties had commenced negotiations of a new franchise agreement, this new agreement had not been finalized at the time of expiry of the 1997 Franchise Agreement. As such, the parties entered into an Interim Operating Agreement, dated December 3, 2018 (Interim Operating Agreement),<sup>4</sup> to preserve the status quo of the parties' relationship while the parties concluded negotiations of the new franchise agreement and put this agreement to the BCUC for approval.<sup>5</sup>

4. The parties agreed to the terms of the 2019 Franchise Agreement.<sup>6</sup> The form of the proposed 2019 Franchise Agreement is different from the former 1997 Franchise Agreement, as it has been harmonized with other franchise agreements entered into by PNG(NE) and its parent company (Pacific Northern Gas Ltd. (PNG)) with other municipalities and approved by

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<sup>1</sup> Exhibit B-1, Application, Appendix A (the proposed 2019 Franchise Agreement), Recital A.

<sup>2</sup> Exhibit B-1, Application, Appendix B (the 1997 Franchise Agreement).

<sup>3</sup> Exhibit B-1, Application, Appendix A (the proposed 2019 Franchise Agreement), Recital B. See also Appendix B (the 1997 Franchise Agreement), clause 6.

<sup>4</sup> Exhibit B-1, Application, Appendix C (the Interim Operating Agreement).

<sup>5</sup> Exhibit B-6, PNG(NE) Response to BCUC IR 11.3.

<sup>6</sup> Exhibit B-1, Application, Appendix A (the proposed 2019 Franchise Agreement), s. 2.1(b).

the BCUC.<sup>7</sup> However, substantively, the proposed 2019 Franchise Agreement is in many ways very similar to the 1997 Franchise Agreement.

5. After the filing of the Application, the BCUC established a public hearing process and Regulatory Timetable, pursuant to Order G-36-20, on February 28, 2020. PNG(NE) has responded to two rounds of Information Requests with respect to its Application from the BCUC.<sup>8</sup>

6. One Intervener has participated in this proceeding, the British Columbia Old Age Pensioners' Organization, Active Support Against Poverty, Disability Alliance BC, Council of Senior Citizens' Organization of BC and Tenants Resource and Advisory Centre, collectively known as BCOAPO et al. (BCOAPO), also putting Information Requests to PNG(NE).<sup>9</sup> On June 22, 2020, BCOAPO confirmed that "after careful consideration of the record", it "has no objection to PNG(NE)'s request for approval of the 2019 Franchise Agreement including the amendments the Utility and the City have agreed to implement".<sup>10</sup>

7. It is respectfully submitted that the evidentiary record, including PNG(NE)'s Application and responses to Information Requests, confirms that the approvals that PNG(NE) seeks should be granted. This approval is supported by the sole Intervener involved in the proceeding, the BCOAPO.

8. While this Final Argument summarizes key points in this respect, PNG(NE) relies on the evidentiary record as a whole.

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<sup>7</sup> Exhibit B-1, Application, p. 2.

<sup>8</sup> See Exhibit A-4 and A-6, BCUC IRs to PNG(NE).

<sup>9</sup> See Exhibit C1-2, BCOAPO IRs to PNG(NE).

<sup>10</sup> Exhibit C1-3, BCOAPO Comment on Further Process, dated June 22, 2020, p. 2.

## 2 THE JURISDICTION OF THE BCUC

9. The BCUC has requested that PNG(NE) address in this argument “[t]he appropriate jurisdiction for the BCUC to approve a franchise, and the appropriate jurisdiction for the BCUC to approve the terms of a franchise agreement”.<sup>11</sup>

10. PNG(NE) submits that the jurisdiction of the BCUC with respect to the Application comes from sections 45(7) through (9) of the *Utilities Commission Act*, RSBC 1996, c. 473 (UCA). These sections of the UCA state:

(7) Except as otherwise provided, a privilege, concession or franchise granted to a public utility by a municipality or other public authority after September 11, 1980 is not valid unless approved by the commission.

(8) The commission must not give its approval unless it determines that the privilege, concession or franchise proposed is necessary for the public convenience and properly conserves the public interest.

(9) In giving its approval, the commission

(a) must grant a certificate of public convenience and necessity, and

(b) may impose conditions about

(i) the duration and termination of the privilege, concession or franchise, or

(ii) construction, equipment, maintenance, rates or service,

as the public convenience and interest reasonably require.<sup>12</sup>

11. These sections provide that a franchise granted by a municipality to a public utility will not be valid unless approved by the BCUC, and that the BCUC must grant a certificate of public convenience and necessity (CPCN), with respect to a proposed franchise, where it is satisfied

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<sup>11</sup> Exhibit A-9, BCUC Letter to PNG(NE), July 31, 2020, p. 1.

<sup>12</sup> Emphasis added.

that the franchise is “necessary for the public convenience and properly conserves the public interest”.

12. PNG(NE) filed the Application under section 45(7) of the UCA. This is also the provision that the BCUC relied upon in approving the 1997 Franchise Agreement, by way of Order C-4-98. Additionally, the BCUC has approved a number of other franchise agreements involving PNG(NE) or PNG pursuant to section 45(7). Within the past five years, for example, the BCUC has issued the following orders to PNG(NE) or PNG, pursuant to section 45(7): Order C-1-15 (City of Dawson Creek); Order C-1-16 (City of Prince Rupert); Order C-3-16 (Village of Fraser Lake); Order C-3-18 (District of Fort St. James); and Order C-4-18 (Village of Pouce Coupe).<sup>13</sup>

13. In Information Requests, the BCUC asked PNG(NE) its views on whether it had a deemed CPCN under section 45(2) of the UCA.<sup>14</sup> As noted above, PNG(NE) has been operating in the City of Fort St. John, under the terms of a franchise agreement, since 1952. As this predates September 11, 1980 (the date included in section 45(2) of the UCA), it is PNG(NE)’s view that it has a deemed CPCN under section 45(2) of the UCA.<sup>15</sup>

14. However, it is not clear to PNG(NE) that this deemed CPCN is, on its own, sufficient to authorize the franchise relationship between PNG(NE) and the City (though, if the BCUC disagrees and is satisfied that it is sufficient, PNG(NE) is agreeable with this conclusion). It is PNG(NE)’s reading that section 45(2) of the UCA provides for a deemed CPCN that authorizes PNG(NE) to operate its plant or system, and to construct and operate extensions. However, this section does not appear to approve the validity of a franchise granted to PNG(NE) by a municipality (and the exclusivity that goes along with such a franchise), particularly with section 45(7) expressly providing that such a franchise will not be valid without BCUC approval. As a result, and to ensure that it has the necessary approvals, PNG(NE) has sought approval of its franchise with the City under this provision, despite the existence of its deemed CPCN.<sup>16</sup>

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<sup>13</sup> Exhibit B-3, PNG(NE) Response to BCUC IR 1.1.

<sup>14</sup> Exhibit B-6, PNG(NE) Response to BCUC IR 10.1.

<sup>15</sup> Exhibit B-6, PNG(NE) Response to BCUC IR 10.1.

<sup>16</sup> Exhibit B-3, PNG(NE) Response to BCUC IR 5.3.

15. PNG(NE) notes that this interpretation is consistent with the fact that the BCUC has previously issued PNG(NE) CPCNs approving franchise agreements with the City, despite the existence of a deemed CPCN. For example, the 1997 Franchise Agreement was approved under s. 45(7) in May 1998 (well post-September 11, 1980), at a time when PNG(NE) had a deemed CPCN under section 45(2).<sup>17</sup>

16. Beyond sections 45(7) through (9) of the UCA, PNG(NE) notes that section 23(1)(g) provides that the BCUC “has general supervision of all public utilities and may make orders about ... other matters it considers necessary or advisable for ... the proper carrying out of [the UCA] or of a contract charter or franchise involving use of public property or rights”.<sup>18</sup>

17. This section refers to the BCUC making an order relating to the “proper carrying out of” a franchise agreement. While PNG(NE) and the City have a lengthy history of being involved in a franchise relationship, the proposed 2019 Franchise Agreement arises from a negotiation between the parties, as opposed to being a renewal of the 1997 Franchise Agreement. Correspondingly, the proposed 2019 Franchise Agreement reflects the creation of a new franchise agreement. In this respect, the recitals of the 2019 Franchise Agreement, state that the City “has now agreed to grant [PNG(NE)] a new franchise for the distribution and sale of natural gas ...”.<sup>19</sup> As section 45(7) of the UCA directly contemplates “approval” of a franchise, as opposed to the “carrying out” of that franchise, it is PNG(NE)’s view that section 45(7) is the appropriate provision to rely upon.

18. Consistent with this, in the BCUC’s Order and Reasons C-8-03, with respect to an Application by Terasen Gas for Approval of an Operating Agreement<sup>20</sup> with the City of Penticton, the BCUC noted that the applicant’s prior franchise agreement (approved by Order

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<sup>17</sup> Granted on May 26, 1998, by Order C-4-98. Exhibit B-6, PNG(NE) Response to BCUC IR 10.1.

<sup>18</sup> Emphasis added.

<sup>19</sup> Exhibit B-1, Application, Appendix A (the proposed 2019 Franchise Agreement), Recital C.

<sup>20</sup> While this Application involved approval of an “operating agreement”, the applicant sought approval under section 45 of the UCA on the basis that the agreement sought a privilege or concession (Appendix A, p. 6).

C-17-80) had a 21 term and had expired. As such, the application was appropriately brought under section 45 as opposed to section 23(1)(g).<sup>21</sup>

19. In summary, PNG(NE) submits that section 45(7) of the UCA is the appropriate jurisdiction for the BCUC to rely upon in approving the franchise between PNG(NE) and the City, as well as to approve the specific terms of the 2019 Franchise Agreement. In the alternative, if the BCUC disagrees and concludes that section 23(1)(g) is applicable (on its own, or in conjunction with section 45(7)), PNG(NE) confirms that it is agreeable with the 2019 Franchise Agreement being approved under this section.<sup>22</sup>

### **3 THE 2019 FRANCHISE AGREEMENT**

20. As noted in the Overview above, PNG(NE) and the City have been in a franchise relationship since 1952. Leading up to the expiry of the 1997 Franchise Agreement, in December 2018, the parties undertook a renegotiation of their arrangement, ultimately agreeing on the terms set out in the proposed 2019 Franchise Agreement.

#### **3.1 The Necessity of a Franchise Agreement**

21. PNG(NE) is seeking approval from the BCUC of a franchise agreement, as opposed to an operating agreement. Unlike an operating agreement, the 2019 Franchise Agreement grants PNG(NE) with the “exclusive right, franchise and privilege” to enter the public lands in the City to “place, construct, lay, operate, use, maintain, renew, alter, repair, extend and/or remove PNG(NE)’s works” and “supply and distribute gas” within the City.<sup>23</sup>

22. As PNG(NE) and the City desire exclusivity in their relationship, a franchise agreement is necessary.<sup>24</sup>

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<sup>21</sup> Order and Reasons C-8-03 (September 2, 2003), Appendix A, p.7.

<sup>22</sup> Exhibit B-3, PNG(NE) Response to BCUC IR 1.1.

<sup>23</sup> Exhibit B-1, Application, Appendix A (the proposed 2019 Franchise Agreement), clause 3.1 (emphasis added).

<sup>24</sup> Exhibit B-6, PNG(NE) Response to BCUC IR 10.3.

### **3.2 The 2019 Franchise Agreement is Necessary for Public Convenience and Conserves the Public Interest**

23. The proposed 2019 Franchise Agreement is both necessary for the public convenience and properly conserves the public interest.

24. The benefits to the 2019 Franchise Agreement, as between PNG(NE) and the City, are demonstrated by the fact that each party has agreed to the form of the agreement. Additionally, in agreeing to the terms of the 2019 Franchise Agreement, PNG(NE) considered the interests of its customers in Fort St. John and its ratepayers, as well as the interests of the public interest more generally.<sup>25</sup> With respect to the City, PNG(NE) notes that the *Community Charter*, SBC 2003, c. 26, the statute under which the City is authorized to approve a franchise with a gas utility, links the City's authority determining "the public interest of their communities".<sup>26</sup>

25. If approved, the 2019 Franchise Agreement will provide a number of benefits, which include the following:

- a. The 2019 Franchise Agreement sets out the rights and obligations of PNG(NE) and the City with respect to PNG(NE)'s operation in Fort St. John. Defining these terms and conditions provides certainty and predictability to the parties' relationship and the parties' responsibilities. It also reduces the risk of a dispute or misunderstanding of the parties, to the benefit of PNG(NE) and the City, as well as customers and ratepayers.
- b. In the event there is a dispute between the parties, the 2019 Franchise Agreement also sets out a cost and time-effective dispute resolution process, involving negotiations and arbitration.

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<sup>25</sup> Exhibit B-7, PNG(NE) Response to BCOAPO IR 1.1.

<sup>26</sup> *Community Charter*, SBC 2003, c. 26, s. 1(2), 3 and 22(1)(d).

- c. The 2019 Franchise Agreement addresses how costs will be shared between the parties, for example with respect to relocations, and confirms how the amount of the franchise fee payable by PNG(NE) to the City is computed, again providing certainty to the parties.
- d. The 2019 Franchise Agreement is drafted in the same form as other approved franchise agreements that PNG(NE) and its parent company, PNG, are currently a party to with other municipalities, providing consistency between municipalities in which PNG(NE) and PNG operate.
- e. The 2019 Franchise Agreement reflects the regulatory compact which benefits the City, as well as PNG(NE)'s customers and ratepayers. The regulatory compact "ensures that all customers have access to the utility at a fair price – nothing more...", that "regulated utilities are given exclusive rights to sell their services within a specific area at rates that will provide companies the opportunity to ensure a fair return for their investors", and that in return for this right of exclusivity "utilities assume a duty to adequately and reliably serve all customers in their determined territories and required to have their rates and certain operations regulated".<sup>27</sup>

26. Additionally, if the 2019 Franchise Agreement is not approved, the above benefits will be lost, and that could result in associated costs. As an example, without clarity in the relationship between the parties, and a cost-effective dispute resolution clause, additional time, effort and costs could be required for further negotiations and dispute resolution. Likewise, if the 2019 Franchise Agreement is not approved, additional negotiations could be required (with the additional effort and costs that go along with this) if an alternative contractual arrangement needed to be reached between PNG(NE) and the City.<sup>28</sup>

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<sup>27</sup> Exhibit B-7, PNG(NE) Response to BCOAPO IR 1.1. See also Exhibit B-3, PNG(NE) Response to BCUC IR 4.1, citing *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, [2006] 1 SCR 140, 2006 SCC 4.

<sup>28</sup> Exhibit B-7, PNG(NE) Response to BCOAPO IR 1.1.

### 3.3 Comments on Specific Provisions of the 2019 Franchise Agreement

#### 3.3.1 Clause 5.11 - Costs with Respect to Line Relocations

27. Clause 5.11 of the proposed 2019 Franchise Agreement sets out responsibility, as between PNG(NE) and the City, for expenses associated with relocations to PNG(NE)'s pipelines. In general, clause 5.11 provides that where the City makes a relocation request,<sup>29</sup> the City will pay the entire cost of the relocation, less an amount for depreciation for any parts taken out of service during the move (referred to in this submission as the Depreciation Amount).<sup>30</sup>

28. The latter half of clause 5.11 creates an exception to the general rule that the City bears the costs of its relocation requests, as follows:

...if at any time the Municipality requires the Company to alter the elevation of any part of the said works to facilitate the laying, construction or operation of either storm or sanitary sewer pipes by not more than one-half of the outer diameter of the storm or sanitary sewer pipe concerned, plus one-half of the outer diameter of the gas pipe concerned, the Municipality shall bear and pay to the Company fifty percent (50%) of the sum arrived at by taking from the cost of the change an amount equal to [the Depreciation Amount].

(the Relocation Costs Exception).

29. With respect to the Relocation Costs Exception, the BCUC has requested that PNG(NE) address why PNG(NE) "should agree to pay any portion of the costs for any line relocations requested by the [City], whether these costs should be recoverable from ratepayers, and why this may be considered to be in the public interest."<sup>31</sup>

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<sup>29</sup> Assuming the pipelines were installed in accordance with approvals from the municipality (see Clause 5.11 of the 2019 Franchise Agreement).

<sup>30</sup> The "Depreciation Amount" is 2 percent "of the installed value on [PNG(NE)]'s books of any of the said part of the said works which [PNG(NE)] takes out of service as a result of the change multiplied by the number of years during which it has been in service". See Clause 5.11.

<sup>31</sup> Exhibit A-9, BCUC Letter to PNG(NE), July 31, 2020, p. 1.

30. The Relocation Costs Exception provides that the City is responsible for only 50% of relocation costs (after taking into account the Depreciation Amount), in a specific situation: where the City requests that PNG(NE) alter the elevation of its pipes to accommodate the City laying storm or sanitary sewer pipe. The scope of the Relocation Costs Exception is further limited by the fact that it only applies to smaller adjustments to the elevation, “by not more than one-half of the outer diameter of the storm or sanitary sewer pipe concerned, plus one-half of the outer diameter of the gas pipe concerned”.<sup>32</sup>

31. PNG(NE) confirms that it is appropriate, and in the public interest, that the utility bear 50% of the costs in this specific circumstance, and that these costs should be fully recoverable from ratepayers, for the reasons described next.

32. First, the City has provided rationale for why it is appropriate that it not bear 100% of PNG(NE)’s costs in the circumstances of the Relocation Costs Exception. Specifically, it has confirmed that the City often incurs incremental costs when undertaking works related to storm and sanitary pipes on account of “additional considerations that must be given to utility infrastructure” located in the immediate vicinity. As these incremental costs are incurred due to the presence of pipelines, the Relocation Costs Exception provides for a sharing of PNG(NE)’s costs in this situation, to offset the additional costs of the City.<sup>33</sup> Of course, the City remains 100 percent responsible for its own costs associated with this type of work.

33. Second, PNG(NE) submits that the Relocation Costs Exception should not be considered in isolation, but rather as one aspect of an overall agreement. As set out above, the proposed 2019 Franchise Agreement was negotiated between PNG(NE) and the City, with an aim of achieving an arrangement that was fair to both PNG(NE)’s ratepayers, and the municipality. These negotiations required each party to make certain concessions to reach an agreement that was satisfactory to both parties. The Relocation Costs Exception represents a

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<sup>32</sup> Proposed 2019 Franchise Agreement, clause 5.11.

<sup>33</sup> Exhibit B-6, PNG(NE) response to BCUC IR 12.4.

benefit that the City negotiated, and that the City has confirmed that it would like to retain.<sup>34</sup> By making this compromise, PNG(NE) was likewise able to negotiate compromises from the City. Similarly, without this benefit, the City may have wished to adjust other terms in the proposed 2019 Franchise Agreement. PNG(NE) submits that, without the agreement of the parties, it would not be appropriate for the BCUC to unilaterally adjust only certain parts of a larger arrangement.

34. Third, and in any event, PNG(NE) notes that the allocation of line relocation costs are favourable to PNG(NE) and its ratepayers.<sup>35</sup> In the absence of an agreement otherwise, the *Pipeline Crossings Regulation*, BC Reg 147/2012, would apply and provide that the City was not responsible for covering any of PNG(NE)'s costs (subject to a narrow exception where the utility's costs are to be shared 50/50 between the utility and the municipality, where the municipality wishes to construct a new highway or construct a new road for access to a subdivision).<sup>36</sup> In contrast, the City has agreed to be responsible for all of PNG(NE)'s relocation costs where the move is initiated by the City, except for the narrow circumstances of the Relocation Costs Exception (where the parties share PNG(NE)'s costs 50/50).

35. Fourth, PNG(NE) confirms that, in its view, the cost share provisions set out in clause 5.11 are more favourable to PNG(NE), than the provisions of the 1997 Franchise Agreement, which were approved by the BCUC in Order C-4-98.<sup>37</sup>

36. Finally, as noted above, the 2019 Franchise Agreement is harmonized with the format of other recent franchise agreements of PNG(NE). The franchise agreement between PNG(NE) and the Village of Pouce Coupe, for example, which was approved by the BCUC in Order C-4-18, included a cost sharing provision that is, for present purposes, identical to clause 5.11 of the proposed 2019 Franchise Agreement.<sup>38</sup> This harmonization allows for internal

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<sup>34</sup> Exhibit B-6, PNG(NE) response to BCUC IR 12.4.

<sup>35</sup> Exhibit B-6, PNG(NE) response to BCUC IR 12.4.

<sup>36</sup> Exhibit B-6, PNG(NE) response to BCUC IR 12.1 and 12.3.

<sup>37</sup> Exhibit B-6, PNG(NE) response to BCUC IR 12.1.

<sup>38</sup> See Exhibit B-1, Application, Appendix D, clause 5.1 for a blackline highlighting the differences between the proposed 2019 Franchise Agreement and the Pouce Coupe franchise agreement.

consistence, and will assist PNG(NE)'s administration of its franchise agreements,<sup>39</sup> which PNG(NE) submits will logically result in administrative efficiencies.

37. Overall, PNG(NE) confirms that the Relocation Costs Exception is in the public interest, it is appropriate for the utility to bear 50% of relocation costs in this circumstance, and that these costs should be fully recoverable from ratepayers.

### 3.3.2 Clause 8.1 - Abandon Works

38. Clause 8.1 of the proposed 2019 Franchise Agreement allows the City, in certain circumstances, to require that PNG(NE) remove abandoned works if PNG(NE) has ceased to operate those works on a permanent basis. This provision provides as follows:

In the event the Company ceases to operate, on a permanent basis, any part of its works on the Public Lands and has received all required regulatory approvals in respect thereto, the Company shall, at its sole cost,

(a) restore the surface of the Public Lands affected to the same conditions, as far as may be practicable so to do, as the same were in prior to the entry thereon and use thereof by the Company; and

(b) at the request of the Municipality, and subject to the Company's ability to refer the matter to arbitration pursuant to Article X, remove any works that the Engineer may reasonably require the Company to remove.

This obligation shall end with the expiry or earlier termination of this Agreement.<sup>40</sup>

39. The BCUC has asked PNG(NE) to address whether PNG(NE) "should agree at its sole cost to remove abandoned works at the request of the [City], whether this cost should be recoverable from ratepayers, and why this may be considered to be in the public interest".<sup>41</sup>

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<sup>39</sup> Exhibit B-3, PNG(NE) response to BCUC IR 6.1.

<sup>40</sup> Emphasis added.

<sup>41</sup> Exhibit A-9, BCUC Letter to PNG(NE), July 31, 2020, p. 1.

40. PNG(NE) submits that, in the circumstances in which clause 8.1(b) is applicable, and given the safeguards built into this clause, it is appropriate for PNG(NE) to solely bear the costs of removing abandoned works, and that this cost is in the public interest and should be recoverable from ratepayers.

41. If PNG(NE) were to cease to operate part of its works on a permanent basis, this decision would be a business decision undertaken by PNG(NE), and within PNG(NE)'s control. As such, it is PNG(NE)'s view that it is appropriate for it to bear the costs of such a business decision, as opposed to the City.<sup>42</sup>

42. While clause 8.1(b) provides the City with the ability to request the removal of abandoned assets, there are safeguards built into this clause to protect PNG(NE). In this respect, the ability of the City to make such a request is limited by the fact that it may only be one that the City's engineer may reasonably require. PNG(NE) submits that, when this requirement is coupled with the ability of PNG(NE) to refer the request to arbitration, it safeguards against a request from the City from making requests that are unreasonable or frivolous.<sup>43</sup>

43. While the 1997 Franchise Agreement did not contain a similar provision with respect to responsibility for costs associated with removing abandoned works, in the 22 years since the 1997 Franchise Agreement issues around environmental concerns, including asset abandonment and site remediation, have gained greater attention.<sup>44</sup> In PNG(NE)'s experience, this is an issue that has increased in importance for municipalities, and over which municipalities wish to have a greater say. As a result, it is a matter that is properly addressed as part of the 2019 Franchise Agreement, and where the municipalities should be involved in identifying abandoned works that require removal.<sup>45</sup>

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<sup>42</sup> Exhibit B-3, PNG(NE) Response to BCUC IR 7.1.

<sup>43</sup> Exhibit B-6, PNG(NE) Response to BCUC IR 13.3.

<sup>44</sup> Exhibit B-6, PNG(NE) Response to BCUC IR 13.1.

<sup>45</sup> Exhibit B-6, PNG(NE) Response to BCUC IR 13.2 and Exhibit B-3, PNG(NE) Response to BCUC IR 7.2.

44. As with the Relocation Costs Exception, discussed above, PNG(NE) submits that costs associated with removing abandoned works should not be considered in isolation, as they are one aspect of an overall agreement that was negotiated between the parties. The City has indicated that it does not want clause 8.1 (or clause 8.1(b) specifically) removed from the proposed 2019 Franchise Agreement. It has also confirmed that, even when a pipeline has been abandoned the City may incur costly regulatory requirements associated with access to rights of way and to pipeline crossing. Clause 8.1(b) provides the City with flexibility when considering ongoing costs verses removal of abandoned infrastructure. PNG(NE) agrees that it is reasonable for the City to desire this flexibility, particularly when coupled with the safeguards that are built into clause 8.1 to protect PNG(NE).<sup>46</sup>

45. As with the Relocation Costs Exception, PNG(NE) confirms that clause 8.1 is consistent with other recent franchise agreements it has entered into. For example, clause 8.1 in the proposed 2019 Franchise Agreement is identical the abandonment provision in clause 8.1 of PNG(NE)'s franchise agreement with the Village of Pouce Coupe, approved by the BCUC in Order C-4-18.<sup>47</sup> Again, this harmonization allows for internal consistency, and will assist PNG(NE)'s efficient administration of its franchise agreements.

46. PNG(NE) confirms clause 8.1 is in the public interest, it is appropriate for the utility to bear the costs associated with removing abandoned works within the scope of this clause, and any costs in this respect should be fully recoverable from ratepayers.

### **3.3.3 Clauses 4.3 and 4.7 – Renewal and Termination**

47. PNG(NE) notes that the BCUC made Information Requests with respect to clauses 4.3 and 4.7 of the proposed 2019 Franchise Agreement. These clauses address the implementation of an operating agreement (for a period of one year) in the event that the parties do not give notice to renew the 2019 Franchise Agreement or do not obtain approval

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<sup>46</sup> Exhibit B-6, PNG(NE) Response to BCUC IR 13.2 and 13.3.

<sup>47</sup> See Exhibit B-1, Application, Appendix D, clause 8.1 for a blackline highlighting the differences between the proposed 2019 Franchise Agreement and the Pouce Coupe franchise agreement.

of a renewal, and the terms under which PNG(NE) may use public lands within the City following a termination of the 2019 Franchise Agreement.

48. As further described in PNG(NE)'s response to BCUC IR 11.1, it is the view of PNG(NE) and the City that each of these clauses serve a useful and different purpose within the proposed 2019 Franchise Agreement.<sup>48</sup> While the parties would prefer to retain each of these clauses in the 2019 Franchise Agreement, they confirm that they are amenable to changing the wording of these clauses, as proposed by the BCUC in Information Requests, should the BCUC believe this revision is necessary.

49. With respect to clause 4.3, with the addition of the modification proposed by the BCUC, this clause would read as follows (with the underlying highlighting the revision):

If neither party gives notice of renewal of this Agreement or should the parties fail to obtain the requisite approvals and permissions to any renewal of this Agreement, the parties agree to enter into an operating agreement, subject to Commission approval, permitting the Company to gain access to its works for a further period of one (1) year on the terms and conditions set out in Article V of this Agreement or on such other terms as the parties may agree or the Commission, on application, may require.<sup>49</sup>

50. With respect to clause 4.7, with the addition of the modification proposed by the BCUC, this clause would read as follows (with the underlying highlighting the revision):

Upon expiration or termination of this Agreement, if a new agreement has not been ratified or if the Commission has not imposed the terms and conditions under which the Company may use the Public Lands, the following provisions will apply: ...

51. As noted in the Application, the parties have not yet executed the 2019 Franchise Agreement, to minimize the administrative requirements.<sup>50</sup> Should the BCUC find that the

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<sup>48</sup> Exhibit B-6, PNG(NE) Response to BCUC IR 11.2.

<sup>49</sup> Exhibit B-6, PNG(NE) Response to BCUC IR 11.4.

<sup>50</sup> Exhibit B-1, Application, p. 2.

above modifications are needed to the 2019 Franchise Agreement, PNG(NE) and the City will implement these modifications prior to executing it.

### 3.3.4 Payment of Fees and Charges

52. The BCUC has requested that PNG(NE) address why PNG(NE) “should agree to pay any fees and charges, including pavement degradation fees and charges, to the [City] in addition to paying the franchise fee, whether such fees and charges should be recoverable from ratepayers, and how this may be considered to be in the public interest”.<sup>51</sup>

53. Under clause 9.1 of the proposed 2019 Franchise Fee, PNG(NE) is to pay a 3% franchise to the City. This fee is intended to represent “compensation for the use by the Company of the Public Lands and for the exclusive right, franchise and privilege to supply gas within the boundary limits of the Municipality”, in addition to any “rates, taxes or assessments” lawfully imposed by the City. This is consistent with the general purpose of a franchise fee, which is payable as compensation for the exclusive right to operate in the municipality, as well as compensation for use of public spaces.<sup>52</sup>

54. As the franchise fee is intended as compensation for these specific rights only, PNG(NE) submits that it is appropriate and in the public interest for it to pay certain additional fees or charges to the City, and for these amounts to be recoverable from ratepayers.

55. In any event, PNG(NE) confirms that it would not be responsible for the payment of certain charges to the City while it is paying a franchise fee under the proposed 2019 Franchise Agreement, and that its payment to the City of these charges has been minimal.<sup>53</sup> While PNG(NE) is responsible for utility payments (for water and sewer) and business licence fees, it

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<sup>51</sup> Exhibit A-9, BCUC Letter to PNG(NE), July 31, 2020, p. 1.

<sup>52</sup> See Order and Reasons G-18-19, FEI and the City of Surrey, Applications for Approval of Terms for an Operating Agreement (January 29, 2019, p. 21.

<sup>53</sup> Under clause 4.7(e) of the proposed 2019 Franchise Agreement, if PNG(NE) is no longer authorized or required to pay franchise fees under the 2019 Franchise Agreement, the City would be “free to apply such approval, permit and licence fees, charges and levies it is legally entitled to collect, as prescribed under the Municipality’s Fees and Charges for Various Municipal Services Bylaw”. In Exhibit B-6, PNG(NE) Response to BCUC IR 14.1, PNG(NE) and the City requested that the underlined portion be added to clause 4.7(e) for clarity.

is generally not responsible for other costs prescribed under the City's Fees and Charges for Various Municipal Services Bylaw. An exception to this is with respect to pavement degradation fees and charges, described below. PNG(NE) has not been responsible for paying, for example, City fees or charges related to administrative matters, finance, planning or engineering. This arrangement is to prevail through the term of the proposed 2019 Franchise Agreement.<sup>54</sup>

56. With respect to pavement degradation fees specifically, PNG(NE) and the City requested in responses to Information Requests, that clause 5.1 of the proposed 2019 Franchise Agreement be revised for clarification, so that it provides as follows:

Subject to the provisions of Clauses 5.11, 5.12 and 5.13, [PNG(NE)] shall carry out all works at its own expense, including all costs prescribed under the Municipality's Fees and Charges for Various Municipal Services Bylaw – Schedule E – Pavement Degradation Fees and Charges.<sup>55</sup>

57. PNG(NE) submits that it is appropriate for it to be responsible for the cost of pavement degradation fees where it is carrying out works, as these fees are intended to compensate the City for damage done to pavement as a result of specific utility work.

58. PNG(NE) submits that it is reasonable for it to have agreed to pay these limited fees and charges (including pavement degradation fees and charges) in addition to a franchise fee, and that these charges are in the public interest and should be recoverable from ratepayers.

### **3.3.5 Commencement Date**

59. The proposed 2019 Franchise Agreement includes a commencement date of December 1, 2018. This date was included to act as only a placeholder.<sup>56</sup> The BCUC has asked PNG(NE) to address "[t]he appropriate start date of the new franchise and the appropriate

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<sup>54</sup> Exhibit B-3, PNG(NE) Response to BCUC IR 8.1.

<sup>55</sup> Exhibit B-3, PNG(NE) Response to BCUC IR 8.1 and Exhibit B-6, PNG(NE) Response to BCUC IR 14.1.

<sup>56</sup> Exhibit B-3- PNG(NE) Response to BCUC IR 5.1.

commencement date of the initial term of the 2019 Franchise Agreement, with consideration given to the earliest date of approval that may be sought from the BCUC”.<sup>57</sup>

60. PNG(NE) and the City request that the BCUC set the start date for the new franchise and the commencement date for the 2019 Franchise Agreement be set at December 8, 2018, the day after the 1997 Franchise Agreement expired. PNG(NE) submits that the BCUC has the ability to grant the franchise and approve the 2019 Franchise Agreement with a past date, and that doing so would ensure continuity in the franchise relationship (which was also the intent of the parties entering into the Interim Operating Agreement). For example, in Order G-17-06, the BCUC considered an Operating Agreement between Terasen and the District of Chetwynd. The parties former franchise agreement had expired on June 30, 2005 (after various extensions), and the parties applied to the BCUC on July 19, 2005 for approval of operating terms. When the BCUC issued its Order approving the agreement on February 2, 2006, it approved a commencement date of July 1, 2005, the day after the prior agreement had filed. This was done at the request of Terasen and the District of Chetwynd.<sup>58</sup>

61. Approving the 2019 Franchise Agreement with a commencement date of December 8, 2018, would also address the question that the BCUC put to PNG(NE), with respect to its authority to collect franchise fees after the expiry of the 1997 Franchise Agreement and recover this amount from ratepayers (which is discussed further below).

62. In the alternative, if the BCUC declines to set the commencement date of the 2019 Franchise Agreement at December 8, 2018, PNG(NE) requests that, if approved, the commencement date be set as of the date of BCUC approval.

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<sup>57</sup> Exhibit A-9, BCUC Letter to PNG(NE), July 31, 2020, p. 1.

<sup>58</sup> Order and Reasons G-17-06, An Application by Terasen Gas Inc. for Approval of Operating Terms for the Supply and Distribution of Natural Gas Service within the District of Chetwynd (February 2, 2006), Appendix A, pp. 1 and 10.

#### 4 THE INTERIM OPERATING AGREEMENT

63. As noted in the Overview, on December 3, 2018 the parties entered into the Interim Operating Agreement to preserve the status quo of their relationship, while they concluded negotiations of a new franchise agreement, to be put to the BCUC for approval.<sup>59</sup> In the meantime, PNG(NE) has continued to serve its customers in the City, under the terms of this Interim Operating Agreement.<sup>60</sup>

64. The BCUC has asked PNG(NE) to address the basis on which PNG(NE) believes it is able to recover the franchise fee from ratepayers, following the expiration of the 1997 Franchise Agreement.

65. As described above, PNG(NE) and the City have a prior franchise relationship, most recently established by the terms of the 1997 Franchise Agreement. This agreement was negotiated and agreed to by the parties, and approved by the BCUC. It provided for the payment of franchise fees by PNG(NE) to the City. When the parties entered into the Interim Operating Agreement it was intended to operate as a full extension of the 1997 Franchise Agreement, to continue the status quo on an interim basis, until the parties could agree upon the terms of a new franchise agreement, to be submitted to the BCUC for its approval.<sup>61</sup> It was entered into by agreement between the two directly impacted parties, PNG(NE) and the City of Fort St. John.<sup>62</sup> Accordingly, PNG(NE) continues to rely on the authority granted to it by the approval of the 1997 Franchise Agreement, for the payment of franchise fees, and the ability to recover these fees from ratepayers.<sup>63</sup>

66. Further, section 41 of the UCA provides:

**No discontinuance without permission**

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<sup>59</sup> Exhibit B-6, PNG(NE) Response to BCUC IR 11.3.

<sup>60</sup> Exhibit B-1, Application, p. 1.

<sup>61</sup> Exhibit B-6, PNG(NE) Response to BCUC IR 9.3. See also Exhibit B-3, PNG(NE) Response to BCUC IR 2.2.

<sup>62</sup> Exhibit B-6, PNG(NE) Response to BCUC IR 9.3.

<sup>63</sup> Exhibit B-6, PNG(NE) Response to BCUC IR 9.3. See also Exhibit B-3, PNG(NE) Response to BCUC IR 2.2.

[41] A public utility that has been granted a certificate of public convenience and necessity or a franchise, or that has been deemed to have been granted a certificate of public convenience and necessity, and has begun any operation for which the certificate or franchise is necessary, or in respect of which the certificate is deemed to have been granted, must not cease the operation or a part of it without first obtaining the permission of the commission.

67. With the expiration of the 1997 Franchise Agreement, PNG(NE) was of the view that it could not simply “cease” operating, nor were the parties interested in PNG(NE) doing so, and by entering into the Interim Operating Agreement attempted to maintain the status quo until PNG(NE) could seek approval of the new agreement.<sup>64</sup>

68. Further, its PNG(NE)’s view that BCUC approval is not always necessary for interim operating agreements. This includes in the case of the Interim Operating Agreement entered into between PNG(NE) and the City, which merely preserved the status quo while the parties concluded negotiations of a new franchise agreement, with this new agreement now having put to the BCUC for its consideration and approval.<sup>65</sup>

69. Finally, if the 2019 Franchise Agreement is approved with a commencement date of December 8, 2018, this will confirm PNG(NE)’s authority to remit franchise fees to the City, and recover this franchise fee from ratepayers.

70. If PNG(NE) is incorrect in its ability to collect franchise fees after the expiry of the 1997 Franchise Agreement on December 8, 2018, or otherwise its authority to enter into the Interim Operating Agreement to extend the terms of the 1997 Franchise Agreement, PNG(NE) respectfully requests that the BCUC approve the Interim Operating Agreement and the payment of franchise fees thereunder, as part of this proceeding.

71. PNG(NE) notes that the BCUC has previously approved an interim operating agreement between PNG(NE) (then, Centra Gas Fort St. John Inc.) and the City, including a 3% franchise

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<sup>64</sup> Exhibit B-6, PNG(NE) Response to BCUC IR 9.3.

<sup>65</sup> Exhibit B-6, PNG(NE) Response to BCUC IR 11.1.

fee. On June 5, 1997 (after the prior Franchise Agreement expired in August 1995), PNG(NE) applied for approval of this interim operating agreement, which was approved by the BCUC by Order C-4-97. This interim operating agreement applied until the utility and the City could finalize the 1997 Franchise Agreement. See also Order C-11-05 – Approval of Extension to the Terasen Gas Inc. Franchise Agreement with the Town of Oliver, for an example of an application for extension that was brought after the expiration of the initial franchise agreement.<sup>66</sup>

## 5 CONCLUSION

72. In all the circumstances, PNG(NE) requests that the BCUC approve the proposed 2019 Franchise Agreement.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Dated at Vancouver, British Columbia this 20<sup>th</sup> day of August 2020.

PACIFIC NORTHERN GAS (N.E.) LTD.

*Original on file signed by:*

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Gordon Doyle

Vice President, Regulatory Affairs, Legal & Gas Supply

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<sup>66</sup> PNG(NE) also acknowledges that in Order C-11-04 – Approval of the Extension of the Terasen Gas Inc. Gas Franchise Agreement with the District of 100 Mile House, the BCUC stated the following with respect to an extension sought after expiry of a franchise agreement: “The Commission continues to note that Terasen Gas’ extension requests are filed subsequent to the expiry terms of the gas Franchise Agreements. Future extension requests must be filed prior to the expiry terms with extensions that encompass a reasonable negotiating time frame.” However, this requirement may have been, in part, due to the fact that Terasen Gas Inc. had previously sought approval of three extensions from the BCUC with respect to the same franchise agreement.