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Via E-File

March 9, 2020

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

File No.: 4.2 (2020)

Attention: Patrick Wruck  
Commission Secretary and Manager, Regulatory Services

Dear Mr. Wruck:

**Re: Application by AltaGas Canada Inc. (ACI) and PSPIB Cycle Investments Inc. (PSPIB) for Approval to Acquire a Reviewable Interest in Each of Pacific Northern Gas Ltd. and Pacific Northern Gas (N.E.) Ltd.  
Applicants' Final Argument**

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On behalf of ACI and PSPIB, accompanying please find the Final Argument of the applicants in the referenced proceeding that has been uploaded to the BCUC website.

Yours truly,

A handwritten signature in black ink, appearing to read 'Verlon Otto', is written over a light grey circular stamp.

Verlon G. Otto

Encl.

**ALTAGAS CANADA INC.  
- and -  
PSPIB CYCLE INVESTMENTS INC.**

**APPLICATION TO THE BRITISH COLUMBIA  
UTILITIES COMMISSION  
for  
Approval to Acquire a Reviewable Interest in Each of  
Pacific Northern Gas Ltd. and Pacific Northern Gas (N.E.) Ltd.**

**JOINT WRITTEN FINAL ARGUMENT OF  
ALTAGAS CANADA INC. and PSPIB CYCLE INVESTMENTS INC.**

**March 9, 2020**

**IN THE MATTER OF** the *Utilities Commission Act*, RSBC 1996, c 473, as amended;

**AND IN THE MATTER OF** an Application by AltaGas Canada Inc. and PSPIB Cycle Investments Inc. for Approval to acquire a reviewable interest in each of Pacific Northern Gas Ltd. and Pacific Northern Gas (N.E.) Ltd.

To: British Columbia Utilities Commission  
Suite 410, 900 Howe Street  
Vancouver, British Columbia V6Z 2N3

## A. INTRODUCTION

1. In keeping with the British Columbia Utilities Commission's ("**BCUC**" or "**Commission**") March 3, 2020 amended regulatory timetable,<sup>1</sup> AltaGas Canada Inc. ("**ACI**") and PSPIB Cycle Investments Inc. ("**Purchaser**") jointly submit the following written argument in respect of the application by ACI and Purchaser (collectively the "**Applicants**") seeking Commission approval for Purchaser to acquire a reviewable interest in each of Pacific Northern Gas Ltd. ("**PNG**") and Pacific Northern Gas (N.E.) Ltd. ("**PNG(N.E.)**") (the "**Application**").

## B. APPLICATION BACKGROUND

2. The Applicants jointly submitted the Application on November 19, 2019, whereby ACI (formerly known as AltaGas Utility Holdings (Pacific) Inc.<sup>2</sup>) and Purchaser (an entity in which the Public Sector Pension Investment Board will indirectly hold an approximate 80% economic interest and the Alberta Teachers' Retirement Fund Board will indirectly hold an approximate 20% economic interest) requested approval from the Commission for an order authorizing the Purchaser to acquire a reviewable interest in PNG and PNG (N.E.).
3. PNG and PNG(N.E.) own and operate natural gas distribution businesses and are public utilities under the *Utilities Commission Act*<sup>3</sup> (the "**Act**") and as such are regulated by the Commission. PNG is a direct, wholly-owned subsidiary of ACI, and PNG(N.E.) is an indirectly wholly owned subsidiary of ACI. ACI is not a public utility under the Act, nor is it regulated by the Commission.
4. The Application provided that the reviewable interests in each of PNG and PNG(N.E.) will be obtained through the arrangement agreement between the Applicants entered into on October 20, 2019 (the "**Arrangement Agreement**") pursuant to which Purchaser will acquire all of the issued and outstanding common shares of ACI ("**Common Shares**") for \$33.50 in cash per Common Share (the "**Arrangement**" or "**Share Transaction**").<sup>4</sup> The Arrangement will be carried out as a plan of arrangement under section 192 of the *Canada Business Corporations Act*,<sup>5</sup> and its completion is subject to customary closing conditions for an arrangement transaction of this nature.<sup>6</sup>
5. The BCUC and the BC Old Age Pensioners' Organization, Active Support Against Poverty, Disability Alliance BC, Council of Senior Citizens' Organizations of BC, and Tenants Resource

<sup>1</sup> Exhibit A-5, Order G-38-20, Appendix A.

<sup>2</sup> AltaGas Utility Holdings (Pacific) Inc. changed its name to AltaGas Canada Inc. on September 5, 2018.

<sup>3</sup> RSBC 1996, c 473, as amended.

<sup>4</sup> Neither the Purchaser nor ACI will seek to recover the acquisition premium resulting from the Share Transaction from PNG or PNG(N.E.)'s customers: Exhibit B-7, BCOAPO IR Response 1.3, at pdf 3.

<sup>5</sup> RSC 1985, c C-44, as amended.

<sup>6</sup> Exhibit B-1, Application, at pdf 4, para 3.

Advisory Centre (“**BCOAPO**”), the sole registered intervener in the proceeding, each directed information requests (“**IRs**”) to the Applicants on February 3, 2020<sup>7</sup> and February 7, 2020,<sup>8</sup> respectively. The Applicants filed responses to the BCUC and BCOAPO IRs on February 21, 2020.<sup>9</sup>

6. Although no direct evidence was filed on the record of the proceeding by the intervener, in this written argument the Applicants have attempted to address the matters raised by the BCUC and BCOAPO in their respective IR responses, and in the written argument below.

**C. TEST FOR APPROVAL UNDER THE UTILITIES COMMISSION ACT**

7. Section 54 of the Act provides, in part:

54(7) A person must not acquire or acquire control of such numbers of any class of shares of a public utility as

- (a) in themselves, or
- (b) together with shares owned or controlled by the person and the person’s associates,

cause the person to have a reviewable interest in a public utility unless the person has obtained the commission's approval.

8. As noted in the Application,<sup>10</sup> the Commission has previously indicated that the focus of its review of any acquisition of, or acquisition of control of, a public utility under section 54 of the Act should be on the effect of the acquisition upon the public utility, the customers of that utility and the regulation of the public utility by the Commission in the public interest.<sup>11</sup> The Commission has developed and used the following criteria for conducting reviews under section 54 of the Act:<sup>12</sup>

- (a) the utility’s current and future ability to raise equity and debt financing should not be reduced or impaired;
- (b) there should be no violation of existing covenants that will be detrimental to utility customers;
- (c) the conduct of the utility’s business, including the level of service, either now or in the future, will be maintained or enhanced;
- (d) the application is in compliance with appropriate enactments and/or regulations;
- (e) the structural integrity of the utility assets will be maintained in such a manner as to not impair utility service; and
- (f) the public interest will be preserved.

9. For the reasons set out below, the Applicants submit that the Purchaser’s acquisition of a reviewable interest in PNG and PNG(N.E.) through the Share Transaction satisfies all of the above criteria, and that the BCUC should approve the Application as filed.

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<sup>7</sup> Exhibit A-4, BCUC IR.

<sup>8</sup> Exhibit C1-2, BCOAPO IR.

<sup>9</sup> Exhibit B-6 BCUC IR Response; Exhibit B-7, BCOAPO IR Response.

<sup>10</sup> Exhibit B-1, Application, at pdf 12, para 37.

<sup>11</sup> See, for example, April 30, 2007 Commission Order No. G-49-07 Reasons for Decision page 7 (the “**Fortis Decision**”).

<sup>12</sup> Fortis Decision, page 7-8.

**D. THE APPLICATION MEETS ALL OF THE COMMISSION'S CRITERIA FOR APPROVAL**

**(a) PNG and PNG(N.E.)'s current and future ability to raise equity and debt financing will not be reduced or impaired**

10. In previous applications under section 54 of the Act, the Commission has found that the financing capability criterion is satisfied where the transferee's parent company has financial capacity, or access to significant financial resources, to ensure the transferee is adequately funded.<sup>13</sup>
11. The Applicants submit that PNG and PNG(N.E.)'s current and future ability to raise equity and debt financing will not be impacted or impaired. From a debt financing perspective, following the Share Transaction, any new debt financing required for PNG and PNG(N.E.) is expected to be obtained directly from ACI, and ACI will continue to access debt markets in the same manner as before the Share Transaction.<sup>14</sup> ACI is currently rated BBB (high) by DBRS Limited ("**DBRS**") and following the public announcement of the Share Transaction, DBRS confirmed its rating and indicated that the Share Transaction will not impact ACI's credit ratings.<sup>15</sup> Further, in response to Commission IR 3.3, ACI confirmed that following the Share Transaction, financing rates associated with any new debt would be determined by market conditions in obtaining third-party rates for PNG and PNG(N.E.), similar to how this activity was historically and is currently administered, and such rates will be subject to Commission approval.<sup>16</sup>
12. From an equity financing perspective, following the Share Transaction any new equity financing required by PNG and PNG(N.E.) will continue to be sought from ACI, and ACI will seek equity financing from the Purchaser and the Purchaser will in turn seek equity financing from the Public Sector Pension Investment Board and Alberta Teachers' Retirement Fund Board (collectively the "**Sponsors**") through Holdco,<sup>17</sup> as required from time to time.<sup>18</sup> As outlined in the Application, the Sponsors are large, diversified and growing Canadian pension funds, with over \$186 billion in cumulative assets under management. The strong financial position of the Sponsors will provide the Purchaser with dependable access to equity capital for ACI.<sup>19</sup> Further, in response to Commission IR 3.2, ACI confirmed that financing rates used in calculating PNG and PNG(N.E.)'s financing costs are currently based on market rates for PNG and PNG(N.E.) and this will continue following the close of the Share Transaction.<sup>20</sup>
13. Finally, as noted in response to Commission IR 3.1, the Purchaser provided copies of the Sponsors' equity commitment letters sufficient to pay the aggregate consideration payable under the Arrangement.<sup>21</sup>
14. Accordingly, the Applicants submit that ACI and the Purchaser have the financial capacity to access significant financial resources to ensure both PNG and PNG(N.E.) are adequately funded. Neither PNG nor PNG(N.E.)'s current or future ability to raise equity and debt financing will be reduced or impaired as a result of the completion of the Share Transaction.

**(b) There will be no violation of existing covenants that will be detrimental to PNG or PNG(N.E.)'s customers**

<sup>13</sup> March 16, 2016 Commission Order No. G-39-16, Reasons for Decision page 16 (the "Fortis Midstream Decision"); See also September 11, 2019 Commission Order No. G-220-19, Reasons for Decision page 4 (the "Corix Decision")

<sup>14</sup> Exhibit B-1, Application, at pdf 13-14, para 42.

<sup>15</sup> Exhibit B-1, Application, at pdf 14, para 43; Exhibit B-6, BCUC IR Response 5.0, at pdf 30-32.

<sup>16</sup> Exhibit B-6, BCUC IR Response 3.3, at pdf 26.

<sup>17</sup> As noted in Exhibit B-1, Application, at pdf 9, Figure 2, Holdco is the parent company of Purchaser.

<sup>18</sup> Exhibit B-1, Application, at pdf 4, 6, 14, paras 1, 29, 44.

<sup>19</sup> Exhibit B-1, Application, at pdf 14, para 44.

<sup>20</sup> Exhibit B-6, BCUC IR Response 3.2, at pdf 25.

<sup>21</sup> Exhibit B-6, BCUC IR Response 3.1, at pdf 11-24.

15. In previous applications under section 54 of the Act, the Commission has found that the continuation of covenants by the utility will preserve the customers' interests and favours granting an approval.<sup>22</sup> In response to BCUC IRs 3.5 through 4.5, ACI confirmed that there will be no changes to PNG or PNG(N.E.)'s covenants, processes, governance policies, and Shared Services model as a result of the Share Transaction.<sup>23</sup> Accordingly, the Applicants submit that the Share Transaction will not result in violations of any existing covenants and, consequently, no corresponding impact to PNG or PNG(N.E.)'s customers.

**(c) The conduct of PNG and PNG(N.E.)'s business, including the level of service, either now or in the future, will be maintained or enhanced**

16. In previous applications under section 54 of the Act, where the applicant demonstrated that agreements will remain in place, assets will not be impacted, office locations and technical staff will be unaffected, and service levels will be maintained, the Commission in those cases determined that this criterion supporting approval was met.<sup>24</sup> As confirmed by ACI in response to Commission IR 8.1, 8.1.1, and 8.2, the Share Transaction will not change how each of PNG and PNG(N.E.) operate and there are currently no plans to change the office locations, senior management or senior technical staff of PNG or PNG(N.E.).<sup>25</sup> Accordingly, the Applicants submit that the conduct of PNG's and PNG(N.E.)'s businesses, including the level of service, either now or in the future, will not change and thereby be maintained following the Share Transaction.

**(d) The Application is in compliance with appropriate enactments and/or regulations**

17. In previous applications under section 54 of the Act, where an applicant has demonstrated how compliance with reporting and regulatory requirements will be met and maintained in the course of, and subsequent to the transfer, the Commission has found that this criterion is satisfied.<sup>26</sup> The Share Transaction will not close unless and until all required regulatory approvals have been granted.<sup>27</sup> As noted in response to Commission IR 10.1 through 10.3, PNG and PNG(N.E.) will continue compliance and reporting activities to the Commission following the Share Transaction.<sup>28</sup> As noted in response to Commission IR 2.1.1, all applicable regulatory authorizations required prior to closing in the timeline identified in paragraph 10 of the Application are complete, and the only outstanding regulatory requirement – with the exception of the delisting of the shares of ACI - is the approval of the Application by the Commission.<sup>29</sup> Accordingly, the Applicants submit that the Application is in compliance with appropriate enactments and/or regulations.

**(e) The structural integrity of PNG and PNG(N.E.)'s assets will be maintained in such a manner as to not impair utility service**

18. In previous applications under section 54 of the Act, where the applicant demonstrates that the transfer will not result in a change to the operation of the regulated assets, and demonstrates how the applicant will continue to meet its obligations to maintain the integrity of the assets, the Commission has found that this criterion is satisfied. As noted in response to Commission IR 7.1 through 7.8, and Commission IR 10.1, following the completion of the Share Transaction, PNG and PNG(N.E.) will continue to operate as stand-alone entities and will continue to follow all current processes and procedures to maintain the structural integrity of their respective assets following the Share Transaction.<sup>30</sup> Accordingly, the Applicants submit that the structural integrity of each of

<sup>22</sup> May 26, 1993, Commission Order No. G-34-93, Reasons for Decision page 12-13.

<sup>23</sup> Exhibit B-6, BCUC IR Response 3.5 - 4.0, at pdf 26-29.

<sup>24</sup> Fortis Midstream Decision, page 16-17.

<sup>25</sup> Exhibit B-6, BCUC IR Response 8.1, 8.1.1, 8.2, at pdf 44.

<sup>26</sup> Fortis Midstream Decision, page 17.

<sup>27</sup> Exhibit B-6, BCUC IR Response 2.3, at pdf 6.

<sup>28</sup> Exhibit B-6, BCUC IR Response 10.1 – 10.3, at pdf 47 – 48.

<sup>29</sup> Exhibit B-6, BCUC IR Response 2.1.1, at pdf 5.

<sup>30</sup> Exhibit B-6, BCUC IR Response 7.1 – 7.5, 10.1, at pdf 40 – 42, 47.

PNG's and PNG(N.E.)'s assets will be maintained following the Share Transaction and consequently, no impairment to utility service will result from the Share Transaction.

**(f) The public interest will be preserved**

19. In respect of preserving the public interest, the Applicants have both confirmed, in the Application, and in response to BCOAPO IR 1.3, that costs associated with the Share Transaction will not be borne either indirectly or directly by PNG, PNG(N.E.), or their respective customers,<sup>31</sup> and neither the Purchaser nor ACI will seek to recover from PNG or PNG(N.E.) customers any acquisition premium, or any fees incurred in connection with the Share Transaction.<sup>32</sup>
20. Having regard to the criteria applied by the Commission in earlier decisions under section 54 of the Act - and in addition to addressing the matters raised by the BCOAPO (as further discussed below) and the BCUC in IRs – the Applicants submit that the customers of PNG and PNG(N.E.) will not be detrimentally affected and that the public interest will be preserved by Purchaser acquiring a reviewable interest in each of PNG and PNG(N.E.) through the completion of the Share Transaction.

**E. THE RECORD ADDRESSES ALL OF THE MATTERS RAISED BY THE BCOAPO**

21. The BCOAPO directed IRs to the Applicants, seeking:
  - (a) to confirm the BCOAPO's understanding of the purchase premium for the ACI shares arising under the Share Transaction;<sup>33</sup>
  - (b) confirmation from the Applicants that the purchase premium would not be recovered from PNG, PNG(N.E.), or their respective customers;<sup>34</sup> and
  - (c) confirmation from the Applicants that the equity risk premium (and by extension the return on equity) for PNG and PNG(N.E.) would not be affected by the Share Transaction.<sup>35</sup>
22. The Applicants respectfully submit that the responses to the BCOAPO's IRs provided all of the requested information and fully addressed the matters raised by the BCOAPO in confirming:
  - (a) the share trading prices for all of the dates requested,<sup>36</sup> and the acquisition premium resulting from the Share Transaction;<sup>37</sup>
  - (b) that neither of the Applicants will apply or seek to recover the acquisition premium from PNG or PNG(N.E.) customers,<sup>38</sup> and that no costs associated with the Share Transaction will be borne indirectly or directly by PNG, PNG(N.E.) or their respective customers;<sup>39</sup> and
  - (c) that PNG and PNG(N.E.) will continue to operate as stand-alone operations and that the Share Transaction will have no impact on the equity risk premiums embedded in the approved return on equity for PNG and PNG(N.E.).<sup>40</sup>

<sup>31</sup> Exhibit B-1, Application, at pdf 5, para 9.

<sup>32</sup> Exhibit B-7, BCOAPO IR Response 1.3, at pdf 3.

<sup>33</sup> Exhibit C1-2, BCOAPO IR 1.1, 1.2, 3.1-4.1, at pdf 2-4.

<sup>34</sup> Exhibit C1-2, BCOAPO IR 1.3, 1.4, 2.1, 5.1, at pdf 3-4.

<sup>35</sup> Exhibit C1-2, BCOAPO IR 1.5, 1.6, at pdf 3.

<sup>36</sup> Exhibit B-7, BCOAPO IR Response 1.1, at pdf 3.

<sup>37</sup> Exhibit B-7, BCOAPO IR Response 1.2, 1.3, at pdf 3.

<sup>38</sup> Exhibit B-7, BCOAPO IR Response 1.3, at pdf 3.

<sup>39</sup> Exhibit B-7, BCOAPO IR Response 1.4, at pdf 4.

<sup>40</sup> Exhibit B-7, BCOAPO IR Response 1.5, 1.6, at pdf 4.

**F. CONCLUSION**

23. For the reasons set out above, the Applicants submit that the Application satisfies all of the Commission's criteria under section 54 of the Act, and respectfully request that the Commission grant the Application as filed, including issuance of an order substantially in the form attached as Schedule "B" to the Application.

ALL OF WHICH is respectfully submitted at Vancouver, British Columbia on March 9, 2020.

**ALTAGAS CANADA INC.**

by its legal counsel

**STIKEMAN ELLIOTT LLP**

Per: < submitted electronically >  
Dennis P. Langen

and

**PSPIB CYCLE INVESTMENTS INC.**

by its legal counsel

**BLAKE, CASSELS & GRAYDON LLP**

Per: < submitted electronically >  
Terri-Lee Oleniuk