



bcuc
British Columbia
Utilities Commission

Patrick Wruck
Commission Secretary

Commission.Secretary@bcuc.com
bcuc.com

Suite 410, 900 Howe Street
Vancouver, BC Canada V6Z 2N3
P: 604.660.4700
TF: 1.800.663.1385
F: 604.660.1102

March 12, 2020

Sent via email/eFile

PNGNE 2019 FRANCHISE AGREEMENT BETWEEN FORT ST JOHN AND PNGNE EXHIBIT A-3

Verlon G. Otto
Director, Regulatory Affairs
Pacific Northern Gas Ltd.
750 – 888 Dunsmuir Street
Vancouver, BC V6C 3K4
votto@png.ca

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 – Information Request No. 1

Dear Mr. Otto:

Further to your December 10, 2019 filing of the above-noted application, enclosed please find British Columbia Utilities Commission Information Request No. 1. In accordance with the Regulatory Timetable established by Order G-36-20, please file your responses on or before Thursday, March 26, 2020.

Sincerely,

Original Signed By:

Patrick Wruck
Commission Secretary

/mp
Enclosure



Pacific Northern Gas (N.E.) Ltd.
Application for Approval of the 2019 Franchise Agreement with the City of Fort St. John

INFORMATION REQUEST NO. 1 TO PACIFIC NORTHERN GAS (N.E.) LTD.

1.0 Reference: COVER LETTER
Exhibit B-1, Cover Letter, p. 1
Utilities Commission Act

On page 1 of Pacific Northern Gas (N.E.) Ltd.'s (PNG (N.E.)) Application for Approval of the 2019 Franchise Agreement between PNG (N.E.) and the City of Fort St. John (Application), PNG (N.E.) states:

This 2019 Franchise Agreement is submitted for consideration and approval by the British Columbia Utilities Commission (BCUC) pursuant to section 45(7) of the Utilities Commission Act, and as required under Clause 2.1(b) of the 2019 Franchise Agreement.

1.1 Please discuss why PNG (N.E.) has applied for approval of the Application under section 45(7) of the *Utilities Commission Act* (UCA), as opposed to section 23(1)(g).

2.0 Reference: COVER LETTER
Exhibit B-1, Cover Letter, p. 1; Appendix B; Appendix C
Interim Operating Arrangements

On page 1 of Exhibit B-1, PNG (N.E.) states:

Negotiations of the terms of the 2019 Franchise Agreement commenced in advance of the 1997 Franchise Agreement termination date of December 7, 2018, however, finalization has only recently concluded.

In the intervening period, PNG(NE) has continued to serve customers in the franchise area under Interim Operating Arrangements with the City. A copy of these arrangements, dated December 3, 2018, is provided for the BCUC's reference as Appendix C.

In Appendix B of Exhibit B-1, PNG (N.E.) includes a copy of the 1997 Franchise Agreement between PNG (N.E.) and the City of Fort St. John (1997 Franchise Agreement).

In Appendix C of Exhibit B-1, PNG (N.E.) includes a copy of the December 3, 2018 Interim Operating Arrangements Letter to the City of Fort St. John. In the letter, PNG (N.E.) states:

Pacific Northern Gas (N.E.) Ltd. (the Company) and the City of Fort St. John (the Municipality) are in the process of negotiating the terms for the renewal of a franchise agreement (New Agreement). However, finalization of amendments and updates to terms and the legislative process for municipal acceptance and approval of the New Agreement is expected to take some time and will not be obtained prior to December 8, 2018, the expiry date of the franchise agreement dated December 8, 1997 that is presently in place (Existing Agreement).

In consideration of this circumstance, and in compliance with Clause 59 of the Existing Agreement, the Company proposes that the following provisions apply in the interim period until approval of the New Agreement has been ratified.

- 2.1 Please identify and explain any difference(s) between the terms specified in Clause 59 (Use of Distribution System after Termination) of the 1997 Franchise Agreement and the terms specified in the December 3, 2018 Interim Operating Arrangements Letter.
- 2.2 Since expiry of the 1997 Franchise Agreement, please explain whether PNG (N.E.) has been (a) collecting franchise fees from PNG (N.E.) customers within the City of Fort St. John and (b) paying franchise fees to the City of Fort St. John.
- 2.3 Please explain whether collection and payment of franchise fees for the City of Fort St. John were included in PNG (N.E.)'s 2018-2019 Revenue Requirements Application. Please indicate for which test year these were included: 2018, 2019 or both.
- 2.4 Please explain whether collection and payment of franchise fees for the City of Fort St. John are included in PNG (N.E.)'s 2020-2021 Revenue Requirements Application. Please indicate for which test year these were included: 2020, 2021 or both.

3.0 Reference: COVER LETTER
Exhibit B-1, Cover Letter, p. 2
Differences from 1997 Franchise Agreement

On page 2 of Exhibit B-1, PNG (N.E.) states:

For the BCUC's reference, PNG(NE) has prepared a blackline comparison of the text of the 2019 Franchise Agreement with the text of its most recently approved franchise agreement (Village of Pouce Coupe, approved under BCUC Order C-4-18) (see Appendix D).

- 3.1 Please identify and explain any substantive differences in the terms of the 1997 Franchise Agreement with the City of Fort St. John and the proposed 2019 Franchise Agreement with the City of Fort St. John.

4.0 Reference: PROPOSED 2019 FRANCHISE AGREEMENT
Exhibit B-1, Appendix A, Article III, p.3
Article III: Rights Granted

Clause 3.1 of the proposed 2019 Franchise Agreement in Appendix A of Exhibit B-1 states:

The Municipality hereby grants to the Company, to the extent that the Municipality is empowered, the exclusive right, franchise and privilege:

(a) to enter in, upon and under all Public Lands to place, construct, lay, operate, use, maintain, renew, alter, repair, extend and/or remove the Company's works;
and

(b) to supply and distribute gas within the boundary limits of the Municipality.

- 4.1 Please explain why PNG (N.E.) considers it necessary for the City of Fort St. John to grant the exclusive right, franchise and privilege.

**5.0 Reference: PROPOSED 2019 FRANCHISE AGREEMENT
Exhibit B-1, Appendix A, pp.4-6; Appendix B
Article IV: Term**

Clause 6 of the 1997 Franchise Agreement in Appendix B of Exhibit B-1 states:

This Agreement is effective December 8, 1997 and shall continue 21 years from such date unless earlier terminated in accordance with this Agreement. [*Emphasis added*]

Clause 4.1 of the proposed 2019 Franchise Agreement in Appendix A of Exhibit B-1 states:

The initial term of this Agreement shall be for a period of twenty one (21) years commencing on December 1, 2018 and expiring on November 30, 2039. [*Emphasis added*]

- 5.1 Please explain the rationale for the selection of the term commencement date (December 1, 2018) of the proposed 2019 Franchise Agreement.
- 5.2 Please explain why the the term commencement date (December 1, 2018) of the proposed 2019 Franchise Agreement is before the expiry of the 1997 Franchise Agreement (December 7, 2018).

Clause 4.2 of the proposed 2019 Franchise Agreement in Appendix A of Exhibit B-1 states:

At any time within two (2) years prior to the expiration of the initial term of this Agreement, and at least one (1) year prior to the expiration of the initial term of this Agreement, either party may give notice to the other that it desires to renew this Agreement for a further term of twenty one (21) years, or such lesser number of years as may be the maximum permitted by legislation at that time and the renewal shall be upon the terms and conditions set out in this Agreement or such other terms as the parties may agree provided that such renewal will be conditional upon obtaining all such approvals and permissions as are at that time required by legislation or regulation. The parties agree to use their best efforts to obtain any such approvals and permissions.

- 5.3 Under the current legislation, does PNG (N.E.) consider the BCUC's approval necessary for a renewal of the franchise agreement?

Clause 4.3 of the proposed 2019 Franchise Agreement in Appendix A of Exhibit B-1 states:

If the 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 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.

- 5.4 Please explain, with rationale, whether only the terms and conditions set out in Article V of the proposed 2019 Franchise Agreement would apply during this 1-year period described by Clause 4.3.
- 5.5 Please explain if PNG (N.E.) considers the requirement to pay franchise fees, as described in Article IX, Franchise Fee, of the proposed 2019 Franchise Agreement, to be applicable during this 1-year period described by Clause 4.3.
- 5.6 Please explain why the parties enter into an operating agreement during the 1-year period described by Clause 4.3 as compared to a franchise agreement.

5.6.1 In PNG (N.E.)'s view, what are the differences between an operating agreement and a franchise agreement?

Clause 4.7 of the proposed 2019 Franchise Agreement in Appendix A of Exhibit B-1 states:

Upon 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....

5.7 Please explain if PNG (N.E.) considers Clause 4.7 to be valid upon both termination and expiration of the proposed 2019 Franchise Agreement.

**6.0 Reference: PROPOSED 2019 FRANCHISE AGREEMENT
Exhibit B-1, Appendix A, p. 9
Article V: Entry Upon Public Lands**

Clause 5.11 of the proposed 2019 Franchise Agreement in Appendix A of Exhibit B-1 states:

...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 two percent (2%) of the installed value on the Company's books of any of the said part of the said works which the Company takes out of service as a result of the change multiplied by the number of years during which it has been in service.

6.1 Please explain why PNG (N.E.) is responsible for any costs for line relocations when the line relocation is upon the request of the City of Fort St. John.

6.2 Please identify and explain any differences between the proposed 2019 Franchise Agreement and the 1997 Franchise Agreement regarding PNG (N.E.)'s responsibilities for costs for line relocations when the line relocation is upon the request of the City of Fort St. John.

**7.0 Reference: PROPOSED 2019 FRANCHISE AGREEMENT
Exhibit B-1, Appendix A, pp. 13-14
Article VIII: Abandonment**

Clause 8.1 of the proposed 2019 Franchise Agreement in Appendix A of Exhibit B-1 states:

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.

7.1 In the event that PNG (N.E.) ceases to operate any part of its works, on a permanent basis, please describe what PNG (N.E.) considers to be a reasonable request that the City of Fort St. John may make that would result in PNG (N.E.) removing its works at its sole cost.

7.2 Please identify and explain any differences between the proposed 2019 Franchise Agreement and the 1997 Franchise Agreement regarding PNG (N.E.)'s responsibilities for costs when the removal of abandoned works is upon the request of the City of Fort St. John.

**8.0 Reference: PROPOSED 2019 FRANCHISE AGREEMENT
Exhibit B-1, Appendix A, pp. 14-15
Article IX: Franchise Fee**

Clause 4.7 (e) of the proposed 2019 Franchise Agreement in Appendix A of Exhibit B-1 states:

Should the Company no longer be authorized or required to pay the franchise fee under any agreement between it and the Municipality or by any order of the Commission, the Municipality shall be free to apply such approval, permit and licence fees, charges and levies it is legally entitled to collect.

Clause 5.1 of the proposed 2019 Franchise Agreement in Appendix A of Exhibit B-1 states:

Subject to the provisions of Clauses 5.11, 5.12 and 5.13, the Company 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,....

Clause 9.1 of the proposed 2019 Franchise Agreement in Appendix A of Exhibit B-1 states:

As 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 the payment of any rates, taxes or assessments lawfully imposed by the Municipality, the Company shall pay to the Municipality on the first day of March of each year a sum equal to three percent (3%) of the gross revenues (excluding taxes and levies) received by the Company in the immediately preceding calendar year for provision and distribution of all gas consumed within the boundary limits of the Municipality.

8.1 Please identify the types of permit fees, licence fees, charges and levies the City of Fort St. John is entitled to collect from PNG (N.E.):

- i. During the term of the proposed 2019 Franchise Agreement, and
- ii. In the event that franchise fees are no longer payable.

8.2 Please explain the rationale for how PNG (N.E.) and the City of Fort St. John determined the annual Franchise Fee, as described in Clause 9.1 of the proposed 2019 Franchise Agreement, to be equal to three percent (3%) of the gross revenues (excluding taxes and levies).