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April 30, 2020

Sent via email/eFile

<b>PNGNE 2019 FRANCHISE AGREEMENT BETWEEN FORT ST JOHN AND PNGNE      EXHIBIT A-6</b>
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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. 2**

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. 2. In accordance with the Regulatory Timetable established by Order G-84-20, please file your responses on or before Thursday, May 21, 2020.

Sincerely,

*Original signed by:*

Patrick Wruck  
Commission Secretary

/CMV  
Enclosure



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

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**INFORMATION REQUEST NO. 2 TO PACIFIC NORTHERN GAS (N.E.) LTD.**

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**9.0 Reference: COVER LETTER**  
**Exhibit B-1, Appendix C; Exhibit B-3, BCUC IR 2.1-2.2**  
**Interim Operating Arrangements**

In Appendix C 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.) includes a copy of the December 3, 2018 Interim Operating Arrangements Letter to Fort St. John.

In response to British Columbia Utilities Commission (BCUC) Information Request (IR) 2.1, PNG (N.E.) states:

PNG(NE) considers the terms of the Interim Operating Agreement to supersede those of Clause 59, and that the spirit of the Interim Operating Agreement is to have PNG(NE) "operate in a manner consistent with the terms and conditions of the Existing Agreement as if the term had been extended", as noted in provision (c).

In response to BCUC IR 2.2, PNG (N.E.) states:

...the spirit of the Interim Operating Agreement is to have PNG operate in a manner consistent with the terms and conditions of the Existing Agreement as if the term had been extended. In this regard, PNG(NE) has been collecting franchise fees from customers within the City of Fort St. John, and remitting the fees in accordance with Clause 7 of the Existing Agreement.

- 9.1 Please explain if and why, after expiry of the 1997 Franchise Agreement, reliance on Section 59 of the 1997 Franchise Agreement (Use of Distribution System After Termination) was considered insufficient for PNG (N.E.)'s continued operation in the City of Fort St. John. Please include in the response why PNG (N.E.) considered the December 3, 2018 Interim Operating Arrangements Letter was necessary.
- 9.2 Please explain why PNG (N.E.) did not seek BCUC approval of the December 3, 2018 Interim Operating Arrangement Letter with the City of Fort St. John.
- 9.3 Please explain under which section of the *Utilities Commission Act* (UCA) PNG (N.E.) considers that they can collect fees from PNG (N.E.) customers following the expiration of the 1997 Franchise Agreement without prior approval from the BCUC.

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

Section 45 (2) of the UCA states:

For the purposes of subsection (1), a public utility that is operating a public utility plant or system on September 11, 1980 is deemed to have received a certificate of public convenience and necessity, authorizing it

(a) to operate the plant or system, and

(b) subject to subsection (5), to construct and operate extensions to the plant or system.

10.1 Please discuss whether PNG (N.E.) views that it has a deemed CPCN pursuant to section 45(2) of the UCA for the construction and operation of its natural gas system, and extensions thereto, in the City of Fort St. John.

Section 2 of the *Gas Utility Act*<sup>1</sup> states:

Authority and power of gas utilities

2 (1) A gas utility that on April 14, 1954 was carrying on business as a gas utility in a municipality or rural area is authorized and empowered, subject to the *Utilities Commission Act*, to carry on its business as a gas utility in the municipality or rural area.

(2) A gas utility to which a certificate of public convenience and necessity is granted after April 14, 1954 under the *Utilities Commission Act* or the legislation that preceded it is authorized and empowered, subject to the *Utilities Commission Act*, to carry on its business as a gas utility in the municipality or rural area mentioned in the certificate.

(3) Without limiting subsection (1) or (2), a gas utility authorized under either of those subsections may do one or all of the following:

(a) produce, generate, store, mix, transmit, distribute, deliver, furnish, sell and take delivery of gas;

(b) construct, develop, renew, alter, repair, maintain, operate and use property for any of those purposes;

(c) place, construct, renew, alter, repair, maintain, operate and use its pipes and other equipment and appliances for mixing, transmitting, distributing, delivering, furnishing and taking delivery of gas on, along, across, over or under any public street, lane, square, park, public place, bridge, viaduct, subway or watercourse

(i) in a municipality, on the conditions that the gas utility and the municipality agree to,

(ii) ...

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

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<sup>1</sup> [http://www.bclaws.ca/civix/document/id/complete/statreg/96170\\_01](http://www.bclaws.ca/civix/document/id/complete/statreg/96170_01)

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.

10.2 Based on Section 45 (2) of the UCA and Section 2 of the *Gas Utility Act*, please discuss, with rationale, whether PNG (N.E.) considers it necessary for the City of Fort St. John to grant the exclusive right, franchise and privilege.

10.3 Please discuss if PNG (N.E.) and the City of Fort St. John would be agreeable to enter into an Operating Agreement, instead of a Franchise Agreement, and which would not include the provisions specified in Clause 3.1.

10.3.1 If not, please discuss why not.

**11.0 Reference: 2019 PROPOSED FRANCHISE AGREEMENT  
Exhibit B-1, Appendix A, pp. 4-6; Exhibit B-3, BCUC IR 5.4, 5.7  
Article IV: Term**

Clause 4.3 of the 2019 Proposed 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.

Clause 4.7 of the 2019 Proposed 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:

- a) The Company works within the boundary limits of the Municipality both before and after the date of this Agreement shall remain the Company's property and shall remain in the Public Lands.
- b) The Company works may continue to be used by the Company for the purposes of its business, or removed from Public Lands in whole or in part at the Company's sole discretion.
- c) The Company may continue to use Public Lands within the Municipality for the purposes of its business. The Company's employees may enter upon all the Public Lands within the boundary limits of the Municipality to maintain, operate, install, construct, renew, alter, or place Company works provided that the Company continues to operate in a manner consistent with the terms and conditions of this Agreement as if the term had been extended except with respect to the payment of the franchise fee.

- d) The Company will with the support of the Municipality take such steps necessary to seek Commission approvals of the extension of terms and conditions including payment of the franchise fee under the terminated agreement during negotiations of a new agreement.
- e) 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.

In response to BCUC IR 5.4, PNG (N.E.) states:

PNG(NE) considers Clause 4.3 to have broad applicability that provides, at a minimum, for the utility to have continued access to its works, subject to the provisions of Article V, for a one-year period in the event that there is no desire to renew arrangements, or in the event that required approvals are not obtained.

- 11.1 Please discuss, in practical terms, what is allowed for in Clause 4.3 that is not allowed for in Clause 4.7.
- 11.2 Please discuss if PNG (N.E.) and the City of Fort St. John would be agreeable to removing Clause 4.3 in its entirety from the Proposed 2019 Franchise Agreement.
  - 11.2.1 If not, please explain why not.

In response to BCUC IR 5.4, PNG (N.E.) also states:

PNG(NE) submits that, if both parties are interested in continuing arrangements, the parties are likely [to] defer to the latter elements of Clause 4.3, that the utility be able to gain access to its works "... on such other terms as the parties may agree or the Commission, on application, may require." This would imply an interim arrangement similar to the Interim Operating Arrangements entered into by PNG(NE) and the City of Fort St. John for this particular renewal (see Appendix C to the Application).

- 11.3 Please discuss if PNG (N.E.) considers BCUC approval necessary of an Interim Operating Arrangement, as discussed in response to BCUC IR 5.4.
- 11.4 As an alternative to removing Clause 4.3 in entirety, as considered in IR 11.2, please discuss if PNG (N.E.) and the City of Fort St. John would be agreeable to modifying the final provision in Clause 4.3, "...or on such other terms as the parties may agree or the Commission, on application, may require" to explicitly require Commission approval.
  - 11.4.1 If not, please discuss why not.

In response to BCUC IR 5.7, PNG (N.E.) states:

PNG(NE) does consider Clause 4.7 to be valid upon expiration and upon termination of the proposed 2019 Franchise Agreement.

- 11.5 Please discuss if PNG (N.E.) and the City of Fort St. John would be agreeable to modifying the language in Clause 4.7 to explicitly reference expiration and termination.
  - 11.5.1 If not, please discuss why not.

**12.0 Reference: PROPOSED 2019 FRANCHISE AGREEMENT  
Exhibit B-1, Appendix A, p. 9; Exhibit B-3, BCUC IR 6.2  
Article V: Entry Upon Public Lands. Line Relocations**

Clause 5.11 of the 2019 Proposed 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. [*Emphasis added*]

When asked to compare Clause 5.11 with the 1997 Franchise Agreement in BCUC IR 6.2, PNG (N.E.) states:

Clause 35 of the 1997 Franchise Agreement contains provisions for reimbursement of costs incurred by PNG(NE) for removal or relocation of distribution system assets at the request of the Municipality. These provisions are not dissimilar to the provisions contained in Clause 5.11 of the proposed 2019 Franchise Agreement for costs of relocation at the request of the Municipality, other than those incurred specifically to facilitate the Municipality's laying, construction or operation of either storm or sanitary sewer pipes, as addressed in response to Question 6.1.

- 12.1 Please explain why Clause 5.11 contains the cost-sharing provision for the specific line relocation scenario as underlined in the Clause 5.11 preamble above.
- 12.1.1 Please explain why cost-sharing is reasonable for that specific line relocation scenario, but not any other line relocation scenario that is upon request of the City of Fort St. John.
- 12.2 Please discuss why PNG (N.E.) considers the change in cost allocation for line relocations to be reasonable, and necessary, when comparing the 1997 Franchise Agreement to the Proposed 2019 Franchise Agreement.

Section 3 of the *Pipeline Crossings Regulation*<sup>2</sup> describes cost allocation for pipeline crossings as follows:

- (1) Subject to subsections (3) to (5), an enabled person is responsible for all costs incurred by the enabled person in carrying out an enabled action.
- (2) Subject to subsections (3) to (6), an enabled person is responsible for any costs incurred by a pipeline permit holder as a result of the enabled person's carrying out of an enabled action, including, without limitation, costs
  - (a) to realign, raise or lower the pipeline,
  - (b) to excavate material from around the pipeline, and
  - (c) to add casing or other appurtenances that an official considers necessary for the

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<sup>2</sup> [http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/147\\_2012](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/147_2012)

protection of the pipeline.

- (3) Subject to an order issued under section 76 (6) of the Act and to subsections (4) to (6) of this section, a specified enabled person is not responsible for any costs incurred by a pipeline permit holder as a result of the carrying out of an enabled action.
- (4) The costs referred to in subsection (3) must be shared equally between the specified enabled person and the pipeline permit holder if
  - (a) the specified enabled person is a municipality, and
  - (b) the enabled action is the construction of a new highway within the boundaries of that municipality on either an existing right of way or a newly dedicated right of way.
- (5) The costs incurred by a pipeline permit holder as the result of the carrying out of an enabled action must be shared equally between the enabled person and the pipeline permit holder if the enabled action is the construction of a new road for a subdivision within a municipality.
- (6) The cost allocation rules set out in subsections (2) to (5) may be varied by agreement between the parties.

- 12.3 Please discuss how the *Pipeline Crossings Regulation* is applicable to PNG (N.E.)’s system and operation in the City of Fort St. John.
- 12.4 Please discuss if PNG (N.E.) and the City of Fort St. John would be agreeable to a change in Clause 5.11 that would remove the provision related to cost-sharing of line relocations when required to facilitate the City of Fort St. John’s laying, construction or operation of either storm or sanitary sewer pipes (i.e. the provision in Clause 5.11 as underlined in the preamble above).
  - 12.4.1 If not, please discuss why not.

**13.0 Reference: PROPOSED 2019 FRANCHISE AGREEMENT  
Exhibit B-1, Appendix A, pp. 13-14; Exhibit B-3, BCUC IR 7.2  
Article VIII: Abandonment**

In response to BCUC IR 7.2, PNG (N.E.) states:

PNG(NE) observes that there are no “abandonment” provisions in the 1997 Franchise Agreement.

As described in the Application, for internal consistency, the 2019 Franchise Agreement adopts a format harmonized with that of franchise agreements recently approved by the BCUC for PNG(NE) and for PNG. In recently concluded franchise renewal negotiations, municipalities asserted that they should have a say on the matter of restoration of Public Lands on asset abandonment, hence the provisions of Clause 8.1 were added to the renewed agreements to provide this opportunity.

- 13.1 In light of the fact that there was no “abandonment” provision in the 1997 Franchise Agreement, please discuss why PNG (N.E.) considers it reasonable for PNG (N.E) and the City of Fort St. John to include Clause 8.1 in the Proposed 2019 Franchise Agreement.

13.2 Please discuss if PNG (N.E.) and the City of Fort St. John would be agreeable to a change where Clause 8.1 is removed in its entirety from the Proposed 2019 Franchise Agreement.

13.2.1 If not, please discuss why not.

13.3 As an alternative to removing Clause 8.1 in its entirety, as discussed in IR 13.2, please discuss if PNG (N.E.) and the City of Fort St. John would be agreeable to a change in which Clause 8.1 (b) is removed from the Proposed 2019 Franchise Agreement.

13.3.1 If not, please discuss why not.

**14.0 Reference: PROPOSED 2019 FRANCHISE AGREEMENT  
Exhibit B-1, Appendix A, pp. 14-15; Exhibit B-3, BCUC IR 8.1  
Article IX: Franchise Fee**

In response to BCUC IR 8.1, PNG (N.E.) states:

As described in the Application, for internal consistency, the 2019 Franchise Agreement adopts a format harmonized with that of franchise agreements recently approved by the BCUC for PNG(NE) and for PNG. The provisions around permit fees, licence fees, charges and levies are an element of this standardized format.

At present, payments to the City of Fort St. John that are of a nature described as “permit fees, licence fees, charges and levies” are minimal, and include utility payments (water/sewer) and business licence fees. PNG(NE) does not pay any other costs prescribed under the City of Fort St. John’s Fees and Charges for Various Municipal Services Bylaw, including those described as administrative and finance, planning and engineering, and pavement degradation fees and charges. This arrangement is to prevail during the term of the proposed 2019 Franchise Agreement. [Emphasis added]

14.1 Instead of using the provisions that are an element of the “standardized format”, please discuss if PNG (N.E.) and the City of Fort St. John would be agreeable to a change in Clause 5.1 that would specify the types of permit fees, licence fees, charges and levies that PNG (N.E.) does and does not pay to the City of Fort St. John during the term of the Proposed 2019 Franchise Agreement as specified in response to BCUC IR 8.1.

14.2 Please describe and estimate any cost savings PNG (N.E.) has experienced over the last 10 years resulting from not paying the costs, as noted, prescribed under the City of Fort St. John’s Fees and Charges for Various Municipal Services Bylaw, including those described as administrative and finance, planning and engineering, and pavement degradation fees and charges.

14.3 Please compare any cost savings described in the response to IR 14.2 to the 3% of gross revenues franchise fee that have been paid to the City of Fort St. John over the past 10 years, as specified in Part 4 of the 1997 Franchise Agreement.