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Via E-File

June 15, 2020

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

File No.: 6.1.14.1 (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
Response to BCUC IR No. 2**

Accompanying, please find a copy of PNG(NE)'s responses to BCUC Information Request No. 2 on the referenced application.

Please direct any questions regarding the attached to my attention.

Yours truly,

Original on file signed by:

Verlon G. Otto

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. 2 TO PACIFIC NORTHERN GAS (N.E.) LTD.

**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.

Response:

PNG(NE) submits that without any intervening action, when the 1997 Franchise Agreement expired on December 8, 2018 (without renewal or a purchase and sale), section 59 of the 1997 Franchise Agreement would apply.

Section 59 provides:

59. **Use of Distribution System After Termination.** If the term of this Agreement expires without renewal or a purchase and sale as provided for in Part 11, or upon the termination of this Agreement pursuant to a notice of termination from the Municipality under Section 57, the Distribution System shall remain in the Company. The Distribution System may be used by the Company in its business or removed in whole or in part as it shall see fit and the Distribution System may remain in, on or under all the Highways within the Municipality and the Company may enter in, upon and under to use, break up, dig, trench, open up and excavate for the purpose of maintenance, renewal, repair, removal or operation of the Distribution System, or any part thereof, but not for extension thereof, provided that the Company shall in so doing comply with and be bound by the provisions of Sections 11 through 30, 32 through 48, 57 through 59 and 61 through 63 of this Agreement, notwithstanding the termination of this Agreement.

Under this section, the distribution system remains with PNG(NE) and may be used by it, removed in whole or in part, or left in place. PNG(NE) may continue to repair and maintain the system, but cannot extend the system. PNG(NE) must continue to comply with sections 11 through 30, 32 through 48, 57 through 59 and 61 through 63 of the 1997 Franchise Agreement. Other sections, like section 2 (Grant of Operating Rights), 3 (Exclusivity of Operating Rights), 4 (Enforcement of Operating Rights), 7 (Establishment of Operating or Franchise Fee) and 8 (Payment of Operating or Franchise Fee) would no longer be in force, having expired with the 1997 Franchise Agreement.

The Interim Operating Agreement provides that "in compliance with section 59" of the 1997 Franchise Agreement, in the interim period until a new agreement can be ratified, certain terms will apply. The terms set out confirm:

- (a) PNG(NE)'s works in the municipality remain the property of PNG(NE) and shall remain in the public lands;

- (b) The works may be used for the purpose of the business or removed in whole or part at PNG(NE)'s sole discretion; and
- (c) PNG(NE) may continue to use public lands for the purpose of its business, may enter upon the public lands to maintain, operate, install, construct, renew, alter, or place works “provided that the Company continues to operate in a manner consistent with the terms and conditions of the [1997 Franchise Agreement] as if the term had been extended” (emphasis added).

PNG(NE) submits that the Interim Operating Agreement was intended to operate as a full extension of the 1997 Franchise Agreement, and that the reference to PNG(NE) needing to continue to “operate in a manner consistent with the terms and conditions of the [1997 Franchise Agreement]” encompasses all matters, such as paying franchise fees. This is consistent with PNG(NE)'s response to BCUC IR 2.1.

PNG(NE) is of the view that section 59 of the 1997 Franchise Agreement was not “sufficient”, as section 59 was intended to apply to situation where the parties are not in the process of negotiating a new franchise agreement, and it instead sets out the “way forward” once the franchise relationship has come to an end.

In contrast, in the present situation, PNG(NE) and the City of Fort St. John were in the process of negotiating a new franchise agreement when the 1997 Franchise Agreement expired and the parties wished to continue the franchise relationship. As such, the Interim Operating Agreement was intended to be an extension of the 1997 Franchise Agreement as a whole, though they confirm that they are consistent with the “spirit” of section 59 of the 1997 Franchise Agreement, in terms of what would happen with the works, etc. That is, PNG(NE) wanted its rights of exclusivity to continue, and the City of Fort St. John wanted to continue to receive franchise fees, through the interim period.

As such, the Interim Operating Agreement was necessary to extend the current arrangement, until such time as a new agreement could be negotiated and approved by the BCUC.

PNG(NE) observes that this approach, that of entering into interim arrangements when negotiation of a franchise renewal extends beyond the term of the current franchise agreement, is consistent with that taken by both PNG(NE) and its parent, Pacific Northern Gas Ltd. (PNG), in other recent franchise renewals. Specifically, in the renewal of PNG's franchise arrangements with the City of Prince Rupert (approved under BCUC Order C-1-16) and in the renewal of PNG(NE)'s renewal of franchise arrangements with the Village of Pouce Coupe (approved under BCUC Order C-4-18), the BCUC did not raise any concerns with the use and necessity of an interim operating agreement to extend the current arrangements until such time as new agreements could be negotiated and approved by the BCUC.

- 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.

Response:

Please see the response to Question 9.3.

- 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.

Response:

PNG(NE) and the City of Fort St. John have a pre-existing franchise relationship, as set out by the terms of the 1997 Franchise Agreement. This 1997 Franchise 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. As was noted in response to Question 9.1 above, the Interim Operating Agreement is 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. PNG(NE) continues to rely on the authority granted to it by the approval of the 1997 Franchise Agreement. Further, section 41 of the UCA provides:

No discontinuance without permission

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. (emphasis added)

With the expiration of the 1997 Franchise Agreement, PNG(NE) was of the view that it could not simply “cease” operating under its franchise, nor were the parties interested in 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.

If PNG(NE) is incorrect in its authority to enter into the Interim Operating Agreement to extend the terms of the 1997 Franchise Agreement, and its ability to collect franchise fees after December 8, 2018, PNG(NE) respectfully requests that the BCUC approve the Interim Operating Agreement and the payment of franchise fees thereunder, as part of this proceeding. Again, the Interim Operating Agreement was drafted in a manner to extend the same terms as the 1997 Franchise Agreement, to preserve the status quo on an interim basis, and was entered into by agreement between the two directly impacted parties (PNG(NE) and the City of Fort St. John).

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 of Fort St. John, including a 3% franchise 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.¹

¹ 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.

**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.

Response:

PNG(NE) notes that the original franchise agreement with the City of Fort St. John was entered into in August 1952. As PNG(NE) was operating its system in the City of Fort St. John prior to September 11, 1980, it likely has a deemed CPCN with respect to the construction and operation of this system and any extensions, pursuant to section 45(2) of the UCA.

PNG(NE) notes that this deemed CPCN also existed when the CPCN for the 1997 Franchise Agreement was approved on May 26, 1998 under section 45(7) of the UCA (per BCUC Order C-4-98).

Section 2 of the *Gas Utility Act*² 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:

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,

² http://www.bclaws.ca/civix/document/id/complete/statreg/96170_01

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.

Response:

As set out in the preamble to this question, section 45(2) of the UCA deems PNG(NE) as having a CPCN, authorizing it to “operate the plant or system” in the City of Fort St. John, as well as to “construct and operate extensions to the plant or system” (subject to section 45(5)).

Further, as set out in the preamble, Section 2 of the *Gas Utility Act* (GUA) provides:

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) ...

These provisions grant PNG(NE) various rights with respect to its ability to operate in the City of Fort St. John. However, unlike the proposed 2019 Franchise Agreement, these provisions do not grant PNG(NE) the “exclusive right, franchise and privilege” to do these things.

As PNG(NE) and the City of Fort St. John desire this exclusivity, it is necessary for this to come from the proposed 2019 Franchise Agreement.

- 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.

Response:

A review of past Orders of the BCUC with respect to Operating Agreements and Franchise Agreements indicates that in recent years there has been a move towards Operating Agreements. In particular, PNG(NE) notes that FortisBC Energy Inc. (FEI) has moved to Operating Agreements, taking the position that it has the right to operate in municipalities by virtue of deemed CPCNs and, as such, its agreements with the municipalities do not need to provide a “privilege, concession or franchise”.

However, operating agreements do not grant exclusivity (as confirmed by the BCUC in page 1 of the Reasons for Decision accompanying Order G-81-19, in which FEI sought approval of an Operating Agreement with the City of Kelowna). As PNG(NE) and the City of Fort St. John desire exclusivity in the relationship, a franchise agreement, as opposed to an operating agreement, is considered necessary. Please also see the response to Question 10.2.

- 10.3.1 If not, please discuss why not.

Response:

Please see the response to Question 10.3.

**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.

Response:

Clause 4.3 and Clause 4.7 each deal with situations where the proposed 2019 Franchise Agreement comes to an end, and where no replacement agreement is in place. However, the two clauses apply in different (though sometimes overlapping) situations, and provide PNG(NE) and the City of Fort St. John with different ongoing rights and obligations, tailored to meet the various circumstances that could exist when the 2019 Franchise Agreement comes to an end.

While clause 4.7 is intended to apply anytime the proposed 2019 Franchise Agreement comes to an end (provided new terms governing the parties ongoing relationship have not yet been put in place, either through the parties having ratified a new renewal agreement or the BCUC having imposed terms and conditions on PNG(NE)'s continued use of public lands in the municipality), clause 4.3 will also apply in certain specific circumstances, where neither party gives notice of wanting to renew the 2019 Franchise Agreement, or where the parties are unable to obtain BCUC approval for such a renewal. Clause 4.3 creates a form of "transition period", where the parties enter into a one-year operating agreement. By default, this operating agreement will incorporate the terms of Clause V of the 2019 Franchise Agreement, setting out various detailed provisions around PNG(NE)'s continued access to the land; however, the parties can agree to different terms. Unlike clause 4.7, clause 4.3 expressly addresses details of PNG(NE)'s continued access to the public land during this one-year period.

- 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.

Response:

For the reasons set out in Question 11.1, Clause 4.3 and Clause 4.7 each serve useful, and different purposes in the proposed 2019 Franchise Agreement. PNG(NE) and the City of Fort St. John prefer to retain both Clause 4.3 and Clause 4.7 in the proposed 2019 Franchise Agreement, however, both parties are amenable to the changes to wording as proposed in Question 11.4 and Question 11.5.

- 11.2.1 If not, please explain why not.

Response:

Please see the response to Question 11.2.

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.

Response:

As was set out in Question 9.3 above, it is PNG(NE)'s view that BCUC approval of an interim operating agreement is not always necessary (such as in the case of the Interim Operating Agreement entered into between PNG(NE) and the City of Fort St. John in 2018, which merely preserved the status quo while the parties concluded negotiations of a new franchise agreement, which has now been put to the BCUC for its consideration and approval). However, PNG(NE) acknowledges that there may be instances where BCUC approval is necessary or in any event beneficial for the parties to have and, as is returned to in Question 11.4 below, PNG(NE) and the City of Fort St. John are agreeable to modifying Clause 4.3 to explicitly require BCUC approval of the interim agreement contemplated by the parties in this clause.

- 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.

Response:

PNG(NE) and the City of Fort St. John are agreeable to modifying Clause 4.3 to explicitly require BCUC approval of the operating agreement entered into by the addition of the phrase "subject to Commission approval", such that it reads:

- 4.3 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.

- 11.4.1 If not, please discuss why not.

Response:

Not applicable. Please see the response to Question 11.4.

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.

Response:

PNG(NE) and the City of Fort St. John are agreeable to modifying the language in Clause 4.7 to explicitly reference “expiration” and termination, such that it reads:

- 4.7 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:

...

- 11.5.1 If not, please discuss why not.

Response:

Not applicable. Please see the response to Question 11.5.

**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.

Response:

As noted in the response to Question 12.3, under the *Pipeline Crossings Regulation (PCR)*, in the absence of any agreement between PNG(NE) and the City of Fort St. John, the City of Fort St. John would not be required to cover any of PNG(NE)'s costs of removal or relocation of distribution system assets, unless it related to a new highway or road access to a subdivision, in which case costs would be shared.

The cost-sharing provision of Clause 35 of the 1997 Franchise Agreement applies solely to cost-sharing in the event that PNG(NE) is directed to remove or relocate its pipeline due to the permanent closure or alienation of a highway. This provision is considered favourable to PNG(NE) as these costs are generally covered by the City of Fort St. John, as compared to the provisions of the PCR where the costs would be shared.

PNG(NE) considers the cost-sharing provisions of the proposed 2019 Franchise Agreement to be more favourable to PNG(NE) than those of Clause 35 of the 1997 Franchise Agreement as the cost of any change directed by the City of Fort St. John would be covered by the City of Fort St. John, with the exception of changes pertaining to the specific line relocation scenario highlighted in the preamble to this question, for which the costs would be shared equally between PNG(NE) and City of Fort St. John. As noted in response to BCUC IR 6.1, this favourable provision has been carried over from recently approved franchise agreements with other municipalities. Further, PNG(NE) submits that the cost-sharing provisions in Clauses 5.11 to 5.13 of the proposed 2019 Franchise Agreement more clearly document responsibility for costs in comparison to the 1997 Franchise Agreement.

- 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.

Response:

Please see the response to Question 12.1.

PNG(NE) submits that the provisions as proposed, whereby the City of Fort St. John fully compensates PNG(NE) for changes directed by the City of Fort St. John other than those changes pertaining to the specific line relocation scenario highlighted in the preamble to this question, which are shared, is more beneficial to PNG(NE) and its customers than a cost-sharing for all changes directed by 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.

Response:

Please see the response to Question 12.1.

Section 3 of the *Pipeline Crossings Regulation*³ 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 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.

³ http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/147_2012

- 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.

Response:

The *Pipeline Crossings Regulation* (PCR) addresses cost allocation between the holder of a pipeline permit and an “enabled person”, that has the ability to carry out certain “enabled activity”, such as constructing roads or carrying out work that disturb the earth, within the vicinity of a pipeline. Under the PCR:

- A municipality (which is a “specified enabled person” under the PCR) is responsible for its costs of carrying out an “enabled activity”, but is not responsible for covering the costs of the pipeline permit holder, unless:
 - The municipality wants to construct a new highway (in which case, the pipeline permit holder costs will be shared between the holder and the municipality); and
 - The municipality wants to construct a new road for access to a subdivision (in which case, the pipeline permit holder costs will be shared between the holder and the municipality).

The PCR provides that this default cost allocation may be varied by agreement between the parties.

Under the PCR, in the absence of any agreement between PNG(NE) and the City of Fort St. John, the City of Fort St. John would not be required to cover any of PNG(NE)'s costs of an enabled activity, other than in the limited exceptions where the enabled activity relates to the construction of a new highway or new road access to a subdivision, certain limited exceptions (specifically, in which case, costs would be shared).

In contrast, under the terms of the proposed 2019 Franchise Agreement:

- PNG(NE) generally carries out work at its own expense;
- However, if a change is requested by the municipality, and the works were previously installed: (i) in accordance with the instructions of the municipal engineer with respect to both line and elevation; (ii) in accordance with the instructions of the municipal engineer with respect to line, and at a specified depth; or (iii) in accordance with the instructions of the municipal engineer with respect to line, and the line is no longer satisfactory to the municipality, the municipality will pay the cost of the change, less 2% of installed value of works taken out of service;
- An exception to the above, if the municipality makes a request to alter elevation to accommodate the laying, construction or operation of storm or sanitary sewer pipes, by a specified amount, the municipality will pay 50% of the cost, less 2% of installed value of works taken out of service.

Generally, the terms of the proposed 2019 Franchise Agreement are considered more favourable to PNG(NE) than the terms of the PCR. As the PCR allows PNG(NE) and the City of Fort St. John to come to a cost-sharing agreement that is different than the terms of the PCR, the cost arrangement set out in the proposed 2019 Franchise Agreement will govern.

- 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).

Response:

PNG(NE) and the City of Fort St. John are not agreeable to the change to Clause 5.11 proposed in this question. PNG(NE) submits that Clause 5.11 is for the benefit of the municipality, and notes that the City of Fort St. John has an express interest in retaining this provision.

The City of Fort St. John has noted that when undertaking works related to laying, construction or operation of either storm or sanitary sewer pipes, there are often incremental costs incurred by municipalities due to additional considerations that must be given to utility infrastructure in the immediate vicinity and that this provision allows for certain recourse on this matter. PNG(NE) notes that the identified cost-sharing provision applies to a very specific circumstance, the scope of which is further narrowed by the noted specification that PNG(NE) be required to alter the elevation of its pipeline infrastructure "... 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 ...".

Please also see the response to Question 12.1. PNG(NE) reiterates that the cost-sharing provisions in Clauses 5.11 to 5.13 of the proposed 2019 Franchise Agreement more clearly document responsibility for costs and on this basis may be considered to be more favourable to both PNG(NE) and the City of Fort St. John than those of Clause 35 of the 1997 Franchise Agreement.

- 12.4.1 If not, please discuss why not.

Response:

Please see the response to Question 12.4.

**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.

Response:

As noted in the response to BCUC IR 7.2, PNG(NE) reiterates that 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. PNG(NE) observes that in the 22 years since the 1997 Franchise Agreement was executed, issues around environmental concerns, including asset abandonment and site remediation, have gained greater attention. In this regard, PNG(NE) submits that it is appropriate to address the matter of abandonment in the proposed 2019 Franchise Agreement rather than remain silent on the issue. The City of Fort St. John concurs with PNG(NE) on this matter.

- 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.

Response:

PNG(NE) and the City of Fort St. John are not agreeable to the removal of Clause 8.1 from the proposed 2019 Franchise Agreement. Please see the response to Question 13.1.

13.2.1 If not, please discuss why not.

Response:

Please see the response to Question 13.1.

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.

Response:

PNG(NE) and the City of Fort St. John are not agreeable to the removal of Clause 8.1(b) from the proposed 2019 Franchise Agreement. PNG(NE) submits that Clause 8.1(b) is for the benefit of the municipality, and notes that the City of Fort St. John has an express interest in retaining this provision.

The City of Fort St. John has noted that there can be costly regulatory requirements associated with access to rights of way and to pipeline crossing even after the pipeline in question has been abandoned. Retention of this provision provides flexibility when considering ongoing costs verses removal of abandoned infrastructure. The wording of Clause 8.1(b), specifically that the municipality may “reasonably require” removal of infrastructure and the ability for PNG(NE) to refer the request to arbitration, ensure that the municipality’s requests are not frivolous in nature. Please also see the response to Question 13.1.

13.3.1 If not, please discuss why not.

Response:

Please see the response to Question 13.1 and Question 13.3.

**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.

Response:

In responding to this question, PNG(NE) has identified that the reference to the City of Fort St. John’s “Fees and Charges for Various Municipal Services Bylaw” contained in Clause 5.1 of the proposed 2019 Franchise Agreement would preferably be a more specific reference to the City of Fort St. John’s “Fees and Charges for Various Municipal Services Bylaw – Schedule E – Pavement Degradation Fees and Charges”. PNG(NE) and the City of Fort St. John propose amending the proposed 2019 Franchise Agreement to reflect this change.

For clarity, PNG(NE) and the City of Fort St. John also propose amending Clause 4.7 (e) of the proposed 2019 Franchise Agreement to specifically reference the City of Fort St. John’s “Fees and Charges for Various Municipal Services Bylaw”, so as to read:

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 as prescribed under the Municipality’s Fees and Charges for Various Municipal Services Bylaw.

- 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.

Response:

PNG(NE) submits that it has no reasonable basis on which to make a meaningful estimate of costs it has not paid in the past 10 years.

Please also see the response to Question 14.1.

- 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.

Response:

As per the response to Question 14.2, PNG(NE) has no reasonable basis to determine the cost savings requested. However, PNG(NE) notes that the average franchise fee remittance to the City of Fort St. John for the period 2015 to 2019 was approximately \$253,000. PNG(NE) expects that the costs not paid would be relatively small in comparison to franchise fees.