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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 BCOAPO IR No. 1**

Accompanying, please find a copy of PNG(NE)'s responses to BCOAPO Information Request No. 1 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

REQUESTOR NAME: BCOAPO *et al.*
INFORMATION REQUEST ROUND NO: #1
TO: PNG N.E. Ltd. (PNG)
DATE: April 23, 2020
APPLICATION NAME: 2019 Franchise Agreement with the City of Fort St. John

1.0 Reference: General – Consequences of failure to receive BCUC Approval

- 1.1 Please outline the consequences on (i) PNG, (ii) City of Fort St. John, (iii) PNG's customers in Fort St. John, and (iv) PNG's ratepayers, in the event that the BCUC does not approve the instant application.

Response:

If the Application, and therefore the 2019 Franchise Agreement, is not approved, PNG(NE) and the City of Fort St. John (the City) will lose the various benefits provided by the 2019 Franchise Agreement, for which they negotiated and agreed. In agreeing to the terms of the 2019 Franchise Agreement, PNG(NE) considered the interests of its customers in Fort St. John as well as its ratepayers, and the public interest more generally.

The benefits of the 2019 Franchise Agreement include the following, which would be lost if the application is not approved:

- (i) The 2019 Franchise Agreement sets out the rights and obligations of PNG(NE) and the City with respect to PNG(NE)'s operation in Fort St. John. Defining these terms and conditions provides certainty and predictability to the parties' relationship and the parties' responsibilities. It also reduces the risk of a dispute or misunderstanding of the parties, to the benefit of PNG(NE) and the City, as well as customers and ratepayers.
- (ii) In the event there is a dispute between the parties, the 2019 Franchise Agreement also sets out a cost and time-effective dispute resolution process, involving negotiations and arbitration.
- (iii) The 2019 Franchise Agreement addresses how costs will be shared between the parties, for example with respect to relocations, and confirms how the amount of the franchise fee payable by PNG(NE) to the City, again providing certainty to the parties.

- (iv) The 2019 Franchise Agreement is drafted in the same form as other franchise agreements that PNG(NE) and its parent company, Pacific Northern Gas Ltd. (PNG), are currently a party to with other municipalities, providing consistency between municipalities in which PNG(NE) and PNG operate.
- (v) The 2019 Franchise Agreement reflects the regulatory compact which benefits the City, as well as PNG(NE)'s customers and ratepayers. As was set out PNG(NE)'s response to BCUC IR 4.1 (Exhibit B-3), quoting from *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, [2006] 1 SCR 140, 2006 SCC 4, the regulatory compact “ensures that all customers have access to the utility at a fair price – nothing more....”, that “regulated utilities are given exclusive rights to sell their services within a specific area at rates that will provide companies the opportunity to ensure a fair return for their investors”, and that in return for this right of exclusivity” utilities assume a duty to adequately and reliably serve all customers in their determined territories and required to have their rates and certain operations regulated”.

PNG(NE) and the City have each agreed to the form of the 2019 Franchise Agreement, demonstrating that each party sees the benefits of the agreement.

Additionally, with the loss of the benefits outlined above, there are associated costs that could be a negative consequence of the 2019 Franchise Agreement not being approved. As an example, without clarity in the relationship between the parties, and a cost-effective dispute resolution clause, additional time, effort and costs could be required for further negotiations and dispute resolution. Likewise, if the 2019 Franchise Agreement is not approved, additional negotiations could be required (with the additional effort and costs that goes along with this) if an alternative contractual arrangement needed to be reached between PNG(NE) and the City.

2.0 Reference: Exhibit B-1, Application and Exhibit B-3, BCUC IR 1.3.1, Removal of Provision for Municipal Right to Purchase

2.1 Has any municipality ever attempted to exercise its “right to purchase” from PNG in the past? If so, please provide full details.

Response:

PNG(NE) notes that the provision for the municipalities “right to purchase” is a carryover element of agreements executed by Centra Gas British Columbia Inc., PNG(NE)’s predecessor company. This provision is an element of only PNG(NE)’s legacy agreement with the City of Fort St. John and PNG(NE)’s legacy agreement with the District of Taylor. PNG(NE) further notes that there is no “right to purchase” provision in any of the PNG-West franchise agreements. Lastly, PNG(NE) confirms that no municipality has attempted to exercise this right to purchase from PNG(NE) in the past.

2.2 Is PNG aware of any instances in BC that any municipality attempted to exercise the “right to purchase” from any other utility? If so, please provide full details.

Response:

For clarity, PNG(NE) confirms that the 2019 Franchise Agreement will remove the “right to purchase” that previously existed in favour of the City of Fort St. John, and that PNG(NE) sees this revision as a benefit to PNG(NE).

PNG(NE) is aware of other past franchise agreements that contained a right to purchase in favour of a municipality. For example, in Letter L-42-04, the BCUC referenced that a former Franchise Agreement between Terasen Gas Inc. (now FortisBC Inc.) and the City of Fernie “contained an option for the City to purchase [Terasen’s] utility business and undertaking within the municipal boundaries”, “as did a number of the franchise agreements with Interior municipalities” (p. 1). However, PNG(NE) is not aware of any instances in BC where a municipality attempted to exercise a right to purchase from a utility.