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Via E-file

February 23, 2021

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

File No.: 4.2.7(2021)

Attention: Patrick Wruck  
Commission Secretary

Dear Mr. Wruck:

**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  
Resubmission of Revised Agreement in Consideration of BCUC Order G-307-20**

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On December 1, 2020, the British Columbia Utilities Commission (BCUC) issued Order G-307-20 whereby it did not approve the application by Pacific Northern Gas (N.E.) Ltd. (PNG) for approval of the 2019 Franchise Agreement (Proposed 2019 Franchise Agreement) between PNG and the City of Fort St. John (the City) (Application). The Decision accompanying Order G-307-20 identified concerns with certain provisions contained in the Proposed 2019 Franchise Agreement, as identified by the Panel reviewing the Application.

Further, Order G-307-20 included provision to adjourn the proceeding for a period of 90 days to allow PNG and the City to consider changes to the Proposed 2019 Franchise Agreement. Specifically, Directive 2 of Order C-307-20 stipulates the following:

2. The Panel adjourns the proceeding for 90 days to provide PNG, should it so choose, the opportunity to renegotiate the Proposed 2019 Franchise Agreement with the City and submit a revised version to this Panel.

While PNG was disappointed that the Proposed 2019 Franchise Agreement was not approved, PNG does appreciate that the Decision provides clarity on a number of matters pertaining to franchise agreements that may have been considered unclear and inconsistent in the past, and considers that the Decision will continue to be a useful guide into the future.

### **Amended Terms for Proposed 2019 Franchise Agreement**

In the intervening period, PNG and the City have taken the opportunity to give consideration to the Decision accompanying Order G-307-20 and to the Panel's determinations and recommendations contained therein. PNG is pleased to advise that it has come to agreement with the City on amended terms for the Proposed 2019 Franchise Agreement that address the identified concerns and recommendations.

Specifically, PNG and the City have agreed to the following revisions to the Proposed 2019 Franchise Agreement:

- Establishing the date of BCUC approval as the start date of the agreement (cover page and clause 4.1);
- Explicit reference to BCUC approval of future renewals (clause 4.2);
- Explicit requirement for BCUC approval of future interim operating arrangements (clause 4.3);
- Addition of expiration to operating provisions in absence of a new agreement of BCUC-imposed terms and conditions (clause 4.7);
- Removal of reference to additional costs prescribed under the City's Fees and Charges for Various Municipal Services Bylaw (clause 5.1);
- Removal of provisions around additional costs related to line relocations requested by the City (clause 5.11); and
- Removal of provisions around removal of works and related costs upon abandonment as may be requested by the City (clause 8.1).

For clarity, accompanying this letter please find a revised draft of the Proposed 2019 Franchise Agreement marked-up to present a comprehensive tracking of the noted revisions.

### **Matter of Clarification**

At this time, PNG would like to draw the BCUC's attention to a recommendation contained in the Decision that was found to cause some confusion. Specifically, PNG notes that the Decision contained two instances that recommended amending clause 4.3 to include the text "or termination" as specified in section 4.6 of the Decision.

This recommendation can be found on page (iii) of the Executive Summary, and again on page 27 of the Decision:

- From page (iii):

The Panel recommends that PNG (N.E.) amend clause 4.3 to include the text “or termination” as specified in section 4.6 of this Decision.

- From page 27:

The Panel recommends that PNG (N.E.) amend clause 4.3 to include the text “or termination” as specified in section 4.6 of this Decision.

However, the Panel discussion under section 4.6 of the Decision does not include a specification to amend clause 4.3 to include the text “or termination”. Consequently, in the preceding discussion under “Amended Terms for Proposed 2019 Franchise Agreement” PNG has taken the referenced amendment to clause 4.3 to more correctly have referenced clause 4.7, as:

- The Panel Discussion supports modifying clause 4.3 to make interim operating agreements subject to BCUC approval (as agreed to in response to BCUC IR 11.4); and
- The Panel Discussion also supports modifying clause 4.7 to make it applicable to the event that the franchise agreement expires or is terminated (as agreed to in response to BCUC IR 11.5).

### Recommended Future Process

PNG submits that the agreed-to revisions to the Proposed 2019 Franchise Agreement, as summarized in the discussion above, comply with the determinations and recommendations of the Decision accompanying Order G-307-20. On this basis, PNG submits that the Proposed 2019 Franchise Agreement, as revised, can be considered to be in the public interest and should be approved. Following approval, the City will proceed to seek proper approval of the franchise in compliance with section 22 of the *Community Charter*, after which PNG would submit the final version of the Proposed 2019 Franchise Agreement to the BCUC for final approval.

Please direct any questions regarding this submission to my attention.

Yours truly,

*Original on file signed by:*

Verlon G. Otto

cc: Janet Prestley, Director of Legislative and Administrative Services  
City of Fort St. John (e-mail only)

Enclosure

THIS AGREEMENT made as of the                    day of                    2021~~19~~.

**Commented [VO1]:** As per Panel Determination per "Section 4.2 Start date of the Proposed 2019 Franchise Agreement" of BCUC Decision and Order G-307-20, start date will be date of BCUC approval.

**BETWEEN:**

**THE CITY OF FORT ST. JOHN**, in the Province of British Columbia, a Municipality under the *Local Government Act* of the Province of British Columbia (hereinafter referred to as the "Municipality")

**OF THE FIRST PART**

- and -

**PACIFIC NORTHERN GAS (N.E.) LTD.**, a body corporate duly incorporated under the laws of the Province of British Columbia, and having an office in the City of Vancouver, in the Province of British Columbia (hereinafter referred to as the "Company")

**OF THE SECOND PART**

**WHEREAS:**

- A. By an agreement dated August 14, 1952, between the Company and the Municipality the Company was granted a franchise to furnish, distribute and sell natural gas within the Municipality for an initial term for an initial term of twenty (20) years, which commenced August 15, 1954, which was extended by agreement of the parties for a further period of ten (10) years and again for a further period of eleven (11) years ending on August 15, 1995;
- B. Desiring an update to the terms and conditions set forth in the initial agreement dated August 14, 1952, the Company and the Municipality entered into negotiations, and in the intervening period the Company operated its natural gas distribution system within the Municipality by consent granted by the Municipality, the result being that the Company and the Municipality entered into a new agreement dated December 8, 1997 for a period of twenty one (21) years ending December 7, 2018;
- C. Desiring a further update to the terms and conditions, the Municipality has now agreed to grant to the Company a new franchise for the distribution and sale of natural gas within the Municipality on the terms and conditions set forth in this Agreement; and
- D. The Council of the Municipality has introduced a bylaw which would authorize the Mayor and the Corporate Officer of the Municipality to enter into this Agreement on behalf of the Municipality.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

**ARTICLE I**  
**DEFINITIONS**

- 1.1 In this Agreement, including the preamble hereto where the context requires, the plural means the singular and vice versa, the pronoun "it" means one of the parties and the following words have the meanings ascribed:
- (a) "Commission" means the British Columbia Utilities Commission as it exists by virtue of the *Utilities Commission Act* of British Columbia;
  - (b) "Council" means the Council of the Municipality;
  - (c) "Engineer" means the Municipal Engineer of the Municipality or the person designated by the Council of the Municipality to exercise the powers of the Engineer;
  - (d) "gas" means natural gas, manufactured gas, liquefied petroleum gas or a mixture of any of them but does not include liquefied petroleum gas that is distributed by means other than a pipeline;
  - (e) "Public Lands" means the public streets, lanes, highways, squares, parks, public places, bridges, viaducts, subways or watercourses, owned by or under the jurisdiction and control of the Municipality, or any of them, within the boundary limits of the Municipality, as such limits presently exist or as the same in the future may be extended; and
  - (f) "works", "its works" and "the Company's works" means the gas mains and pipes and other equipment and appurtenances on, in, under and through Public Lands for transmitting, mixing, distributing, delivering, furnishing or taking delivery of gas and the words shall be taken as applying to that part of the Company's transmission system lying within the Municipality.

**ARTICLE II**  
**CONDITIONS PRECEDENT**

- 2.1 This Agreement and the obligations of the Company and of the Municipality hereunder shall be subject to the following:
- (a) the adoption by the Council of the Municipality of the by-law authorizing it to enter into and adopt this Agreement, as per the authority granted under the *Community Charter Act* of British Columbia, Part II, Division 1, Section 8 (1) to (3), and Part III, Division 1, Section 22; and
  - (b) such approvals or orders of the Commission as may be required to be obtained by the Company under Part 3 of the *Utilities Commission Act*.

**ARTICLE III**  
**RIGHTS GRANTED**

- 3.1 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.
- 3.2 During the term of this Agreement, the Municipality will not itself supply or distribute gas within the boundary limits of the Municipality nor grant any right, licence, privilege, concession or franchise to any other person, firm, corporation or utility, to supply or distribute gas within the boundary limits of the Municipality, or to enter in, upon and under Public Lands to place, construct, lay, operate or use mains, plants, pipes, conduits and/or other equipment for the purpose of distributing gas within the boundary limits of the Municipality.

**ARTICLE IV****TERM**

- 4.1 The initial term of this Agreement shall be for a period of twenty one (21) years commencing on ~~December 1, 2018~~, 2021 and expiring on ~~November 30, 2039~~, 2042.
- 4.2 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, including Commission approval. The parties agree to use their best efforts to obtain any such approvals and permissions.
- 4.3 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, 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.
- 4.4 This Agreement may be terminated by the Municipality upon the occurrence of any of the following events:
- (a) the Company admits its inability to pay its debts generally as they become due or otherwise acknowledges its insolvency;
  - (b) the Company starts proceedings or takes any action to commence or executes an agreement to authorize its participation in any proceeding:
    - (i) seeking to adjudicate its bankruptcy or insolvency;
    - (ii) seeking liquidation, reorganization, arrangement, protection, relief or composition of it or any of its property or debt or making a proposal with respect to it under any law relating to bankruptcy, insolvency, reorganization or compromise of debts or other similar laws; or

**Commented [VO2]:** As per Panel Determination per "Section 4.2 Start date of the Proposed 2019 Franchise Agreement" of BCUC Decision and Order G-307-20, start date will be date of BCUC approval.

**Commented [VO3]:** Added as per Panel Determination as per "Section 4.6 Renewal and termination clauses" of BCUC Decision and Order G-307-20

**Commented [VO4]:** Added as per response to BCUC IR 11.4 and per Panel Determination as per "Section 3.0 Interim Operating Agreement" and "Section 4.6 Renewal and termination clauses" of BCUC Decision and Order G-307-20

**ARTICLE IV**

**TERM**

(continued)

- (iii) seeking the appointment of a receiver, trustee, agent, custodian or other similar official for it or for any substantial part of its assets or if a creditor seeks the appointment of a receiver, trustee, agent, custodian or other similar official for any substantial part of its assets; and such proceeding is not dismissed, discharged, stayed or restrained within twenty (20) days of the Municipality becoming aware of it.
- 4.5 Either party may terminate if the other breaches any term, provision, obligation hereunder and such breach is a material breach and has not been cured within sixty (60) days of receipt of notice of such breach. A party will not be considered to be in default if such matter has been referred to commercial arbitration in accordance with this Agreement, the outcome of which is pending.
- 4.6 Upon one party giving notice to the other of termination of this Agreement, the parties shall negotiate in good faith to enter into a new agreement with respect to the terms and conditions under which the Company may use the Public Lands. In the event that such negotiations break down and in the opinion of one or other of the parties acting in good faith that settlement is unlikely, either party may give notice to the other of its intention to apply to the Commission to seek resolution of the terms and conditions applicable to the Company's continued operations and construction activities within the Municipality.
- 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:
  - (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.

**Commented [V05]:** Added as per response to BCUC IR 11.5 and per Panel Determination as per "Section 4.6 Renewal and termination clauses" of BCUC Decision and Order G-307-20

**ARTICLE IV**

**TERM**

(continued)

- (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.

**ARTICLE V**

**ENTRY UPON PUBLIC LANDS**

- 5.1 Subject to the provisions of Sections 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, as amended from time to time,~~ and shall take all reasonable precautions to minimize damage and obstructions, and shall restore any Public Lands and any improvements thereto that may be affected by its works substantially to their former condition in accordance with the Municipality's Subdivision and Development Servicing Bylaw, as amended from time to time, and shall maintain any such Public Lands at its own expense to that standard for a period of one (1) year.

**Commented [V06]:** Removed as per Panel Determination as per "Section 4.3 Payment of pavement degradation fees and charges" of BCUC Decision and Order G-307-20

**ARTICLE V**  
**ENTRY UPON PUBLIC LANDS**

(continued)

- 5.2 The Company, during the progress of construction, maintenance or the operation of its works within the boundary limits of the Municipality, will place and maintain such warning signs, barricades, lights or flares on, at or near the site of any such work so as to give reasonable warning to the public, in accordance to BC Ministry of Transportation and Infrastructure "Traffic Management for Work on Roadways", as amended from time to time.
- 5.3 The Company, as soon as practicable, shall file with the Engineer a tentative schedule of construction and a plan showing the general layout of any proposed works, including mains, valves and regulator stations.
- 5.4 In every instance where the Company proposes to enter Public Lands, the Company will submit to the Engineer for approval, an application in writing stating the Company's purpose, the date and time when the Company proposes to commence construction of the proposed works, and the length of time estimated to complete the proposed works, together with plans and specifications showing the size, dimensions and location as to line, specified depth plus or minus 150 mm, and the placement of the proposed works, including the relationship of the proposed works to the then Municipal services if "as-built" drawings showing the location of the latter are available to the Company at the office of the Engineer. The Engineer shall not withhold approval unreasonably.
- 5.5 In the event that the Engineer disapproves or fails to approve an application by the Company submitted pursuant to Section 5.4 or any plans or specifications submitted in connection therewith, or otherwise directs the line, elevation or placement of any proposed works or any part thereof elsewhere or in some other manner than specified, the Company may apply to the Council for approval, or may appeal to the Council against any such direction, as the case may be. The Company may thereafter refer the decision of the Council to arbitration in accordance with Article X. The Company shall not proceed with any portion of the proposed works until the Engineer, Council or a board of arbitration has approved the proposed works. If the Company does not act upon such approval within 6 months from the date thereof, the Company shall make a new application.

**ARTICLE V**  
**ENTRY UPON PUBLIC LANDS**

(continued)

- 5.6 The Company shall, wherever reasonably possible, locate its gas mains in lanes rather than in the streets and main thoroughfares, in accordance with the Municipality's Subdivision and Development Servicing Bylaw, as amended from time to time.
- 5.7 The Company shall give at least seven (7) clear days' notice to the Engineer of its intention to enter upon Public Lands pursuant to an approval obtained under Section 5.4 or Section 5.5, except in case of emergency, in which event the Company may act, giving as much notice to the Engineer as may be practicable in the circumstances.
- 5.8 The Company shall notify the Municipality in writing, on a monthly basis, of the completion of installation of a connection for the supply of gas, giving the name of the consumer, the date on which the connection was made, and the legal description or civic address of the land to which the connection has been made.
- 5.9 The Company shall, as often as the Engineer reasonably requires, deliver to the Engineer "as-built" drawings of the Company's works showing the location of the same with such detail as to line, specified depth, plus or minus one hundred and fifty (150) mm, and size as may enable the Municipality to locate such works. Where the Municipality can provide the Company with "as-built" drawings of its own services, the Company shall supply "as-built" drawings of its works to the same scale. If no municipal "as-built" drawings are available, the Company shall supply "as-built" drawings of its works to the scale used by the Company for its purposes.
- 5.10 If the Engineer, in advance of the commencement of any work by the Company, requests the Company to supply photographs showing the condition of the surface of Public Lands prior to the placing or construction thereon or thereunder of any of its works, the Company shall cause to be taken, and shall supply to the Engineer such photographs. Each photograph shall be so labelled as to identify the location shown, and shall be dated, and shall carry the name and address of the photographer, who shall sign each print so supplied to the Municipality.

**ARTICLE V**  
**ENTRY UPON PUBLIC LANDS**

(continued)

5.11 Upon the request of the Engineer, the Company shall change the location (which, in the case of pipe, means any change of either or both of line and elevation) of any part of its works upon, along, across, over or under Public Lands to some other reasonable location upon, along, across, over or under Public Lands. If the part of the works of which the location is changed as hereinbefore provided was (i) installed as to both line and elevation in accordance with the approval or instructions in writing of the Engineer, or (ii) was installed as to line in accordance with the approval or instructions in writing of the Engineer and was laid at a depth of at least eight hundred (800) mm under a roadway paved with at least fifty (50) mm of concrete or asphalt, or (iii) was installed as to line in accordance with the approval or instructions in writing of the Engineer and is being changed because its line is no longer satisfactory to the Municipality, the Municipality shall bear and pay to the Company the entire cost of the change less an amount equal to 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. ~~Provided, however, that notwithstanding that the said part of the works was installed, or installed and laid, in one of the manners specified, 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.~~

**Commented [V07]:** Removed as per Panel Determination as per "Section 4.4 Cost with respect to line relocations" of BCUC Decision and Order G-307-20

**ARTICLE V**  
**ENTRY UPON PUBLIC LANDS**

(continued)

- 5.12 If the said part of the said works was not installed, or installed and laid, in one of the manners specified above in this section, the cost of such change shall be borne by the Company provided that the Company may refer to arbitration pursuant to Article X the questions (i) whether the circumstances are equitably within the principles exemplified above in this Section and, if the answer is in the affirmative, (ii) the manner in which the Municipality and the Company shall share the cost of such change. In the arbitration the costs of question (i) shall be borne by the Company and the costs of question (ii) shall be dealt with in the usual manner in the award.
- 5.13 Notwithstanding anything hereinbefore contained, if either party shall request the other party to make some temporary change in such other party's works or services in order to facilitate installation, construction, repairs or maintenance by the requesting party, such other party shall, whenever reasonably possible, carry out the change or alteration requested and shall be entitled to charge the requesting party with the cost thereof.
- 5.14 The Company shall design and construct its works in accordance with standards established from time to time for gas pipeline systems by the Canadian Standards Association (Z662 Code), with all applicable requirements of the *Safety Standards Act* and the *Oil and Gas Activities Act* of British Columbia, as same are amended from time to time, all regulations enacted pursuant thereto, and with any and all other applicable Federal and Provincial enactments and Municipal enactments not otherwise inconsistent herewith, regulating such works.
- 5.15 The Municipality will, wherever it is practical and convenient to so do, give reasonable notice to the Company of the time, location and nature or extent of any intended road resurfacing work, any new road construction or any excavation work along any public thoroughfare within the boundary limits of the Municipality. The Company will use its best efforts to schedule any anticipated maintenance, repair, construction or installation work in respect of existing or proposed works situated or to be situated at or near the location specified in such notice, so as to complete such work within the time or times specified in such notice.

**ARTICLE V**  
**ENTRY UPON PUBLIC LANDS**

(continued)

- 5.16 Any information provided to the Municipality by the Company under this Agreement becomes the property of the Municipality and is subject to all requirements and regulations, including disclosure requirements of the *Freedom of Information and Protection of Privacy Act* of British Columbia.

**ARTICLE VI**  
**RESPONSIBILITY FOR DAMAGE**

- 6.1 The Company shall take all reasonable precautions in the construction and operation of its works to avoid damage to Public Lands and the Municipality's property and services.
- 6.2 The Municipality shall take all reasonable precautions to avoid damage to the Company's works including, without limiting the generality of the foregoing, compliance with all applicable requirements of the *Safety Standards Act* and the *Oil and Gas Activities Act* of British Columbia, as same are amended from time to time, all regulations enacted pursuant thereto, and with any and all other applicable Federal and Provincial enactments.
- 6.3 The Municipality shall not undertake any work of its own that may necessitate the exposure of the Company's works without giving the Company seven (7) clear days' notice of its intention to carry out such work, except in the case of emergency, in which event the Municipality may act, giving as much notice to the Company as may be practicable under the circumstances.
- 6.4 The Municipality shall not be liable for any damages suffered by the Company that are caused by the Municipality's reliance upon the accuracy of the Company's drawings supplied to the Municipality in accordance with Section 5.9, provided that the Municipality has complied in all respects with the provisions of Sections 6.2 and 6.3.

**ARTICLE VI**  
**RESPONSIBILITY FOR DAMAGE**

(continued)

- 6.5 The Municipality shall be liable to and shall reimburse the Company for all costs and expenses in making good any damage to the Company's works within the boundary limits of the Municipality to the extent that such damage is caused by the negligence of the Municipality, its servants, agents or contractors. In no event, however, shall the Municipality be liable to the Company for any damages in the nature of loss of profit, nor shall the Municipality be liable to the Company for any damages arising from acts of God, acts of the Queen's enemies, strikes, lockouts, scarcity of labour or materials or from any other cause beyond the control of the Municipality or arising from the negligence of the Company.
- 6.6 The Company agrees with the Municipality that it will protect, indemnify and save harmless the Municipality from and against all actions, proceedings, claims and demands of any corporation, firm, or person against the Municipality and will reimburse the Municipality for all loss, damage and expenses caused to it as a result of, the imprudence or neglect of the Company, its servants, agents or contractors, in the execution of the authorities, permissions and rights hereby to it granted, or in connection with the construction, maintenance or operation of the Company's works within the boundary limits of the Municipality except where the same is caused or contributed to by the negligence or default of the Municipality, its servants, agents or contractors. In no event shall the Company be responsible to the Municipality for any damages arising from acts of God, acts of the Queen's enemies, strikes, lockouts, scarcity of labour or materials or any other cause beyond the control of the Company.

**ARTICLE VII**  
**SUPPLY OF GAS**

- 7.1 The Company shall in the event of a breakdown or interruption in its supply, transmission or distribution of gas, give preference to the requirements of users of firm gas in the following order:
- (i) hospitals and similar institutions,
  - (ii) domestic consumers,

**ARTICLE VII**  
**SUPPLY OF GAS**

(continued)

- (iii) commercial consumers, and
  - (iv) industrial consumers, including large industrial users.
- 7.2 Subject to Section 7.3, to the terms and conditions of the service agreements between the Company and its customers and to the Company's tariffs as filed with and approved by the Commission, but commencing only after construction and putting into service of the facilities so to do, the Company will supply such reasonable quantities of gas as may be required for purchase by its customers within the boundary limits of the Municipality.
- 7.3 The performance by the Company of its obligations under Section 7.2 shall be subject to any event or occurrence not within the control of the Company and which by the exercise of due diligence is unable to prevent or overcome, including, without limiting the generality of the foregoing, any act of God, strikes, lockouts, or other industrial disturbances, acts of the Queen's enemies, sabotage, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, floods, storms, fires, washouts, arrests, restraints of rulers and peoples, civil disturbances, explosions, breakages, or accidents to machinery or pipelines, hydrate obstructions of pipelines or appurtenances thereto, temporary failure or shortage of gas supply, freezing of wells or delivery facilities, well blowouts, cratering, inability to obtain materials or equipment, inability to obtain permits, orders, licences, certificates or other authorizations, order of any court, board or governmental authority having jurisdiction.

**ARTICLE VIII**  
**ABANDONMENT**

- 8.1 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, 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. This obligation shall end with the expiry or earlier termination of this Agreement.

**ARTICLE VIII**

**ABANDONMENT**

(continued)

~~(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.~~

~~This obligation shall end with the expiry or earlier termination of this Agreement.~~

**Commented [V08]:** Removed as per Panel Determination as per "Section 4.5 Cost with respect to abandoned works" of BCUC Decision and Order G-307-20

**ARTICLE IX**

**FRANCHISE FEE**

- 9.1 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.
- 9.2 There shall not be included in any payments made by the Company to the Municipality in accordance with this Section 9.1, any percentage of revenue received by the Company from the sale of gas within the boundary limits of the Municipality for the purpose of resale outside the boundary limits of the Municipality or to a municipal utility within the boundary limits of the Municipality. The Company's obligation to make the payment required under this Section 9.1 on the first day of March, 2040 shall survive the expiration of this Agreement on December 7, 2039 in accordance with Section 4.1.

**ARTICLE IX**  
**FRANCHISE FEE**

(continued)

- 9.3 If the Company fails to make each payment required under Section 9.1, or any portion thereof, to the Municipality when due, interest thereon shall accrue at a rate of interest declared from time to time by the chartered bank in Canada used by the Company, as the rate of interest charged by such bank to its most creditworthy commercial borrowers for loans in Canadian dollars payable on demand and commonly referred to as its "prime rate", plus two percent (2%), from the date when such payment was due until the same is paid.
- 9.4 At the time the Company makes each payment to the Municipality in accordance with Section 9.1, the Company shall deliver to the Director of Finance for the Municipality a statement which sets forth the total volume of gas sold by the Company for consumption within the boundary limits of the Municipality in the immediately preceding calendar year and the total revenues received by the Company in respect of such sales. The statement will also include the total volume of gas and the total revenues received for each class of customer.
- 9.5 For purposes of tracking gas consumed within the boundary limits of the Municipality, the Municipality shall inform the Company, on a timely basis, of any changes made to the boundary limits of the Municipality.

**ARTICLE X**  
**ARBITRATION**

- 10.1 If there is a dispute, difference or question between the parties in connection with the construction, meaning, effect or application of any of the provisions of this Agreement, or of the rights, obligations or liability of the parties hereunder, the parties shall make an honest effort to settle such dispute, difference or question before taking any action in the courts, or referring the matter to arbitration hereunder.

**ARTICLE X**  
**ARBITRATION**

(continued)

- 10.2 (a) The party that desires the resolution of any such dispute, difference or question shall give notice in writing to the other setting forth the complaint, and the grounds thereof. If the party to whom notice is given does not enter into discussions within fourteen (14) days, the other may submit such dispute, difference or question to the Commission, if appropriate, or to arbitration pursuant to the *Commercial Arbitration Act* of British Columbia. Alternatively, the party may institute such other proceedings as it may be advised.
- (b) In the event that the parties commence discussions prior to the expiration of the period of fourteen (14) days, the dispute, the difference or question shall not be referred to arbitration, nor shall the parties take any other proceedings until after the expiration of fourteen (14) days from the date of the commencement of such discussions.
- (c) A board of arbitration appointed pursuant to this Article X, shall have jurisdiction and authority to interpret and apply the provisions of this Agreement to the extent necessary for the determination and resolution of any such dispute, difference or question; but such board of arbitration shall not have the jurisdiction or authority to alter or amend any of the provisions of this Agreement.
- (d) The majority decision of such board of arbitration shall be final and binding on the Company and the Municipality. Where there is no majority decision, the decision of the Chairman shall be the decision of such board of arbitration.

**ARTICLE XI**  
**GENERAL**

- 11.1 The conditions in this Agreement shall be governed by and subject to the laws of Canada and the Province of British Columbia, and to the proper authorities and powers of the Commission; and nothing herein contained shall exclude or shall be deemed to exclude the application of such laws, or the jurisdiction of the Commission.

**ARTICLE XI**

**GENERAL**

(continued)

- 11.2 Nothing herein contained shall be construed as relieving the Company from the obligation to observe the terms and provisions of any and all bylaws of the Municipality adopted by the Council thereof, in the bona fide exercise of its legislative authority, but not inconsistent with anything herein contained; and nothing herein contained shall be construed as relieving the Company from the payment of any rates, taxes, or assessments that may be lawfully imposed.
- 11.3 Any notice, request, demand or other communication required or permitted to be given to either party to this Agreement shall be in writing and shall be delivered by hand, e-mail, facsimile transmission or prepaid registered mail (return receipt requested) to the party to which it is to be given as follows:
- (a) if to the Municipality, at:  
The Corporation of the City of Fort St. John  
10631 - 100th Street  
Fort St. John, British Columbia, V1J 3Z5  
Attention: General Manager of Integrated Services  
Tel: (250) 787-8150  
Fax: (250) 787-8181  
E-mail: [integratedservices@fortstjohn.ca](mailto:integratedservices@fortstjohn.ca)  
and
- (b) if to the Company, at:  
Pacific Northern Gas (N.E.) Ltd.  
Suite 750, 888 Dunsmuir Street  
Vancouver, British Columbia, V6E 3X2  
Attention: Vice President, Regulatory Affairs & Gas Supply  
Tel: (604) 691-5680  
Fax: (604) 697-6210  
E-mail: [regulatory@png.ca](mailto:regulatory@png.ca)

**ARTICLE XI**

**GENERAL**

(continued)

- 11.4 Either party may from time to time change its address by written notice to the other party given in accordance with the provisions of this Section. Any notice given by registered mail to either party at the address as specified herein shall be deemed to have been received by such party on the third (3<sup>rd</sup>) business day after which it was so mailed. Any notice sent by e-mail, facsimile or similar method of recorded communication shall be deemed to have been received on the next business day following the date of its transmission. Alternatively, any notice under this Agreement may be delivered by hand to the foregoing addresses and shall be deemed to be received upon the day of delivery.
- 11.5 Each party shall give the other party notice of any application to the Commission in respect of any matter dealt with under the terms hereof or affecting the consumers of gas in the Municipality or affecting the Company's business as a public utility within the boundary limits of the Municipality.
- 11.6 This Agreement shall be binding upon and enure to the benefit of the parties hereto, their successors and assigns and may not be assigned by the Company without the prior written consent of the Municipality, such consent not to be unreasonably withheld.
- 11.7 This Agreement shall supersede all other agreements between the parties, including without limitation, any licenses to occupy granted by the Municipality prior hereto, relating to the sale or distribution of natural gas within the Municipality, effective the day and year first written above.

IN WITNESS WHEREOF this Agreement has been duly executed by the parties hereto as of the day and year first above written.

**THE CITY OF FORT ST. JOHN**

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Lori Ackerman, Mayor

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Janet Prestley, Director of Legislative and  
Administrative Services

**PACIFIC NORTHERN GAS (N.E.) LTD.**

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