



**Apex Utilities Inc.**

**Application to Approve Village of Boyle Asset Acquisition**

**June 25, 2024**

**Alberta Utilities Commission**

Decision 28831-D01-2024

Apex Utilities Inc.

Application to Approve Village of Boyle Asset Acquisition

Proceeding 28831

June 25, 2024

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The Commission may, no later than 60 days from the date of this decision and without notice, correct typographical, spelling and calculation errors and other similar types of errors and post the corrected decision on its website.

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## **1 Decision summary**

1. In this decision, the Alberta Utilities Commission considers whether to approve an application from Apex Utilities Inc. to acquire the entirety of the gas distribution assets owned by the Village of Boyle used to provide gas distribution service within the municipal boundaries of Boyle. After consideration of the record of the proceeding, and for the reasons outlined in this decision, the Commission finds that the approval of the application is in the public interest. However, because of the material rate increase that Boyle customers will experience as a result of the transaction, the Commission directs Apex to implement rate mitigation measures for Boyle customers.

## **2 Introduction**

2. On February 12, 2024, Apex applied to the Commission for approval of a purchase and sale agreement made between Boyle and Apex, where the entirety of the gas distribution assets owned by Boyle would be purchased and transferred to Apex and merged with its existing gas utility assets. Additionally, Apex applied to the Commission for the approval of a franchise agreement conditional on the closing of the asset transaction, as well as a franchise fee rate schedule that would apply to gas distribution service provided by Apex within the municipal boundaries of Boyle. These requests for approval were made pursuant to sections 26, 35, 36 and 49 of the *Gas Utilities Act*, Section 45 of the *Municipal Government Act* and Part 3 of the *Alberta Utilities Commission Act*.

3. After issuing notice of the application on February 14, 2024, the Commission received statements of intent to participate (SIP) from the Consumers' Coalition of Alberta (CCA), the Office of the Utilities Consumer Advocate (UCA), the Federation of Alberta Gas Co-ops Ltd. and Gas Alberta Inc.

4. On March 19, 2024, the Commission granted an Apex motion to dismiss the SIPs of the Federation and Gas Alberta Inc. because the interests of those organizations in this proceeding were purely economic, which is not the type of interest the Commission recognizes in assessing standing to participate.<sup>1</sup> As part of that ruling, the Commission struck documents filed as part of the Federation's SIP.

5. On March 19, 2024, the Commission established a process schedule that included information requests (IRs), written argument and reply argument.

6. On March 20, 2024, the UCA indicated that due to a consultation process with Apex, it required no further process and accordingly did not intend to ask IRs, nor did it intend to file

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<sup>1</sup> Exhibit 28831-X0022, AUC letter – Ruling on Apex motion to dismiss SIPs and to strike evidence, March 19, 2024.

written argument.<sup>2</sup> On March 27, 2024, the CCA filed a similar letter, indicating that it required no further process.<sup>3</sup> The Commission proceeded with a single round of IRs and closed the record of the proceeding on May 7, 2024.

### 3 Background

7. Boyle owns and operates a natural gas distribution utility that serves approximately 500 customers within the municipal boundaries of Boyle and the applied-for transaction will transfer all of the assets owned by Boyle to Apex, where they will be merged with Apex's existing gas utility assets.<sup>4</sup> On February 7, 2024, Apex and Boyle entered into a purchase and sale agreement that established a purchase price of \$2.3 million.<sup>5</sup> Apex indicated that initially all Boyle customers will be classed in Apex's existing Rate 1 and will be subject to the franchise fee rider.<sup>6</sup>

8. Included in the Boyle gas distribution assets are a purchase meter station, a farm tap, a town border station, approximately 3.9 kilometres (km) of high-pressure pipeline and approximately 28 km of medium-pressure distribution piping. The Boyle assets are interconnected and obtain natural gas from the NOVA Gas Transmission Ltd. system, owned by TC Energy Ltd.

9. Apex and representatives from Boyle, including members of Boyle's village council and administration, began to meet on the potential transaction beginning in June 2022. Apex met with the mayor of Boyle and village council in April and May 2023, before hosting a joint town hall session on October 16, 2023, to discuss the proposed acquisition and to address any questions or concerns.<sup>7</sup> Approximately 25 residents attended the joint town hall session and asked a variety of questions focusing on the impacts to their gas bills, service quality and the benefits of the transaction.<sup>8</sup> Following the joint town hall session, village council tabled, debated and approved the first reading of the bylaw approving the franchise agreement on October 18, 2023. On November 15, 2023, village council held a second and third reading of the bylaw, approving and passing it such that it would come into force following the Commission's approval.<sup>9</sup>

10. In accordance with Rule 029: *Applications for Municipal Franchise Agreements and Associated Franchise Fee Rate Riders*, Apex published a newspaper notice, which included notice of the transaction, the franchise agreement and the franchise fee rider, in the *Town and Country This Week* on October 24, 2023, and October 31, 2023. Both Apex and Boyle stated that neither had received any written objections or concerns related to the transaction, the franchise agreement or the franchise fee rate rider.<sup>10</sup>

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<sup>2</sup> Exhibit 28831-X0025, UCA letter No further process, March 20, 2024.

<sup>3</sup> Exhibit 28831-X0027, Apex Boyle – update to AUC, March 27, 2024.

<sup>4</sup> Exhibit 28831-X0001, application, paragraph 1.

<sup>5</sup> Exhibit 28831-X0001, application, paragraph 5.

<sup>6</sup> Exhibit 28831-X0001, application, paragraph 13.

<sup>7</sup> Exhibit 28831-X0001, application, paragraphs 47-50.

<sup>8</sup> Exhibit 28831-X0045, AUC-AUI-2024APR01-002(e) Attachment 1, PDF page 44.

<sup>9</sup> Exhibit 28831-X0001, application, paragraph 51.

<sup>10</sup> Exhibit 28831-X0001, application, paragraph 52; Exhibit 28831-X0015, Letter of Support, February 27, 2024.

11. In a newspaper article attached to the application,<sup>11</sup> the chief administrative officer for Boyle was quoted explaining that rising costs and changing regulations for the maintenance of utility infrastructure was one of the main motivators for selling its system to Apex. Additionally, he noted that roughly 75 per cent of the distribution system is approaching the end of life in the next decade, and the estimated cost of replacing the aging assets is about \$9.5 million.<sup>12</sup> In response to a Commission IR, Apex agreed that the estimated cost of replacing the Boyle assets is approximately \$9.5 million in current dollars.<sup>13</sup> Boyle was of the view that bearing the burden of the upcoming replacement costs would not be viable for a utility with a customer base of roughly 500, but would be much more viable for Apex, a company with more than 80,000 customers.<sup>14</sup> In addition to the impending replacement costs, at the joint town hall session, the mayor of Boyle noted that the village was not collecting enough to cover the costs of operating the gas system, despite the fact that rates had recently increased. Accordingly, the mayor noted, Boyle gas rates would need to increase once again to be able to fund the upcoming replacement costs.<sup>15</sup>

12. In its application, Apex explained that it will manage the costs of the acquisition through the revenue provided under its 2024-2028 performance-based regulation (PBR) plan and will increase Apex's province-wide current rate base of \$477.5 million by \$2.5 million. This increase equates to a 0.5 per cent increase in Apex's total rate base.<sup>16</sup> Further, upon the closing of the transaction, Apex will have gained approximately 500 new customers, and the rates that will be charged to those customers will be sufficient to recover the incremental costs associated with the addition of the Boyle assets.<sup>17</sup> Consequently, Apex has not applied to the Commission for a rate base adjustment to incorporate the Boyle assets into its 2024 rate base or rates, nor has Apex applied for a change in its going-in rates for the 2024-2028 PBR term.<sup>18</sup> Accordingly, the acquisition of the Boyle assets will have no impact on the distribution rates charged to existing Apex customers.

#### 4 Issues and discussion

13. In this proceeding Apex has applied for the following three approvals:

- An order approving the merger and consolidation of the Boyle assets with Apex's existing gas distribution assets, pursuant to Part 2 of the *Gas Utilities Act* and Part 3 of the *Alberta Utilities Commission Act*.
- An order approving the franchise agreement (conditional on the closing of the asset transaction), pursuant to Part 5 of the *Gas Utilities Act*; Part 3, Division 3, of the *Municipal Government Act*; and Part 3 of the *Alberta Utilities Commission Act*.

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<sup>11</sup> Exhibit 28831-X0001, application, Appendix E, Village of Boyle Letter Attaching *Town and Country This Week* Franchise Notice.

<sup>12</sup> Exhibit 28831-X0001, application, Appendix E, PDF page 55.

<sup>13</sup> Exhibit 28831-X0044, AUI-AUC-2024APR01-002(a).

<sup>14</sup> Exhibit 28831-X0001, application, Appendix E, PDF page 55.

<sup>15</sup> Exhibit 28831-X0045, AUI-AUC-2024APR01-002(e) Attachment 1, PDF page 44.

<sup>16</sup> Exhibit 28831-X0001, application, paragraph 17.

<sup>17</sup> Exhibit 28831-X0001, application, paragraph 31.

<sup>18</sup> Exhibit 28831-X0001, application, paragraphs 17-18.

- An order approving the franchise fee rate rider schedule applicable to Boyle customers, pursuant to Part 4 of the *Gas Utilities Act* and Part 3 of the *Alberta Utilities Commission Act*.<sup>19</sup>

14. As an initial point, and prior to considering whether Apex has met the applicable test for each of the above approvals, the Commission has considered whether Apex's application will result in overall rate increases for Boyle customers.

15. While Apex is acquiring the Boyle system using the overall envelope of funds provided through the PBR3 plan and the transaction will not impose any additional costs on existing Apex customers, Apex stated that the transaction will have a financial impact on existing Boyle customers.

16. Apex provided a calculation of the total bill for a typical Boyle customer, which included commodity costs and the municipal charges determined by Boyle's village council, including its recently applied-for franchise fee of 20 per cent. When accounting for these charges, Apex showed that the total bill impact for Boyle customers will be significant, as shown in the table below.

**Table 1. Total bill comparison for Boyle customers<sup>20</sup>**

	Comparison of 2023 annual bills			Comparison of 2024 annual bills		
	Apex bill	Boyle bill	Variance	Apex bill	Boyle bill	Variance
	(\$)		(%)	(\$)		(%)
Distribution charges <sup>21</sup>	927	856	8	1,039	856	21
Commodity charges <sup>22</sup>	894	761	17	867	746	16
Municipal charges <sup>23</sup>	243	0	N/A	270	0	N/A
<b>Total charges</b>	<b>2,064</b>	<b>1,617</b>	<b>28</b>	<b>2,177</b>	<b>1,601</b>	<b>36</b>

17. Table 1 compares the existing Boyle rates to Apex's approved 2023 and 2024 rates, essentially showing the bill increase for an average Boyle customer upon the closing of the asset transaction. As shown in the table, if an existing Boyle customer's bill is compared to Apex's 2024 approved rates, the total bill difference will be 36 per cent, with a 21 per cent difference in distribution charges and a 16 per cent difference in commodity charges. When comparing the existing Boyle rates to the 2023 approved rates (as was Apex's proposed methodology for a bill comparison), the total difference is 28 per cent, with an eight per cent difference in distribution charges and a 17 per cent difference in commodity charges.

18. Before considering the different components (distribution, commodity and municipal) of the customer bill increases, the Commission observes from Table 1 that Boyle customers would face a significant bill increase post-acquisition as compared to current bills. The Commission

<sup>19</sup> Exhibit 28831-X0001, application, paragraphs 2-4.

<sup>20</sup> Exhibit 28831-X0031, AUI-AUC-2024APR01-001(a), Attachment 1. Charges are based on a customer consuming 107 GJ annually.

<sup>21</sup> Distribution charges consist of a fixed delivery charge, a variable delivery charge and the GST on those charges.

<sup>22</sup> Commodity charges consist of the transmission cost, default supply provider administration charges, the gas cost, the federal fuel charge and the GST on those charges.

<sup>23</sup> Municipal charges consist of property tax, franchise fee charges and the GST on those charges. No variance for municipal charges was calculated as existing Boyle customers currently do not pay municipal charges.

generally considers that a 10 per cent increase on a total bill basis to be the threshold potentially indicative of customer rate shock; Boyle customer rate increases would exceed that 10 per cent threshold by a wide margin should the Commission approve Apex's application. The reasons for this increase and its effect on Apex's application are discussed below.

#### 4.1 Boyle asset transaction

19. The Commission applies the "no-harm test" in assessing whether to approve a disposition outside the ordinary course of business under Section 26(2)(d) of the *Gas Utilities Act*. The no-harm test requires the Commission to examine the asset transaction in the context of both potential financial and service level effects to customers in terms of whether it will adversely affect rates or the quantity or quality of service, among other things.<sup>24</sup> Under the no-harm test, the Commission weighs the potential positive and negative impacts of the transaction to determine whether the balance favours customers or at least leaves them no worse off, having regard to all of the circumstances of the case. If the Commission determines there is no harm to customers, it will approve the transaction.<sup>25</sup> If the Commission concludes that customers may be harmed, the Commission will consider whether any identified harms can and ought to be mitigated through appropriate approval conditions.<sup>26</sup>

20. The Commission finds that there are a number of positive impacts from the transaction. In particular, the Commission finds that the Boyle transaction:<sup>27</sup>

- reflects that the Village of Boyle no longer has the desire to be in the gas utility business;
- will not increase the rates for other existing Apex customers, nor will it impact the quality of service for existing customers;
- may allow existing Boyle customers to experience an increase in service quality and they will likely benefit from Apex's expertise in owning and operating gas distribution utility assets in Alberta;
- provides Boyle customers with retailer options they did not previously have, as they will have the opportunity to choose Apex as the regulated retailer or a competitive rate company as their natural gas provider; and
- will allow for the Boyle system to be replaced without requiring the village to subsidize the replacement with tax dollars.<sup>28</sup>

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<sup>24</sup> Decision 28137-D01-2023: Canadian Utilities Limited, Corporate Reorganization Under Section 101 of the Public Utilities Act and Section 26 of the Gas Utilities Act, Proceeding 28137, April 27, 2023, paragraph 13; Decision 20329-D01-2015: ATCO Electric Ltd., Disposition of Land and Buildings Located in Grande Prairie and Lloydminster, Proceeding 20329, September 16, 2015, paragraphs 66-70.

<sup>25</sup> Decision 28137-D01-2023, paragraph 13.

<sup>26</sup> Decision 2006-056: AltaLink Investment Management Ltd. and AltaLink Management Ltd., Macquarie Transmission Ltd., SNC-Lavalin Transmission Ltd., OTPPB TEP Inc., 3057246 Nova Scotia Company, SNC-Lavalin Energy Alberta Ltd., and TE-TAU, Inc., Proceeding 15133, Application 1434687, June 13, 2006, PDF pages 9-10.

<sup>27</sup> Exhibit 28831-X0044, AUI-AUC-2024APR01-001(b).

<sup>28</sup> Exhibit 28831-X0045, AUI-AUC-2024APR01-002(e), Attachment 1 (Confidential), PDF page 44.



21. That said, the Commission observes that the transaction would have an immediate bill impact for existing Boyle customers as they would experience higher rates upon approval of the transaction.

22. Apex stated that once existing Boyle customers are transferred to Apex's Rate 1, there will be a distribution rate increase of approximately eight per cent.<sup>29</sup> In response to a Commission IR, Apex explained that this eight per cent increase was based on a comparison to the 2023 approved Rate 1, rather than the approved 2024 rates. When comparing the existing Boyle rates to the approved 2024 rates, Apex showed that the distribution bill increase for customers in 2024 compared to their 2023 rates is much greater at 21 per cent.<sup>30</sup> Apex stated that because Boyle did not conduct an annual escalation of its rates between 2023 and 2024 (i.e., to account for inflationary pressures, meaning that the 2024 rates were identical to the 2023 rates), if a rate comparison must be done, Boyle rates should be compared to Apex's 2023 approved rates and not its 2024 approved rates.<sup>31</sup>

23. In submitting that the asset transaction would result in no harm, Apex noted that the existing rates in Boyle are unsustainable as they do not adequately recover the costs associated with the operation of the utility. Apex submitted that there is no alternative to a rate increase for Boyle customers because the Boyle distribution system is aging and is facing replacement costs of approximately \$9.5 million and because existing Boyle rates already result in an operating shortfall. Referring to the distribution charges in Table 1 above, Apex noted that the Commission has already approved these rates and deemed them to be just and reasonable. With respect to the commodity charges in that table, Apex noted that those charges are based on the gas cost recovery rate acknowledged by the Commission on a monthly basis.

24. The Commission generally agrees that conducting a rate comparison between a regulated utility and an unregulated utility will not provide a straight comparison as an unregulated utility has a greater choice of what costs or proportion thereof to pass through to customers. For example, both Boyle and Apex highlighted that existing rates in Boyle are unsustainable as they do not adequately recover the costs associated with the operation of the utility. However, the Commission considers that the appropriate comparison is to use the approved 2024 rates (as opposed to the 2023 rates as was done by Apex) to the existing Boyle rates, because Boyle customers will actually experience the rate increases that come from being placed on the 2024 approved rates. While a substantial portion of this increase is driven by the municipal charges established at the municipality's discretion (as discussed further in the next section of this decision), the Commission finds that the total bill increase, excluding municipal charges, is still a large increase at 19.08 per cent,<sup>32</sup> and is in the range of values considered to be rate shock by the Commission.

25. In response to rate increases beyond the threshold indicative of rate shock, the Commission has previously found that rate mitigation measures are appropriate to promote stability and ease rate shock.<sup>33</sup> In response to a Commission IR, Apex stated it would not be appropriate to implement rate mitigation strategies given the circumstances of the transaction. In

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<sup>29</sup> Exhibit 28831-X0001, application, PDF page 8, paragraph 33.

<sup>30</sup> Exhibit 28831-X0031, AUI-AUC-2024APR01-001(a), Attachment 1, Tab "Sch 2," cell I32.

<sup>31</sup> Exhibit 28831-X0044, AUI-AUC-2024APR01-001(a), PDF page 3.

<sup>32</sup> Exhibit 28831-X0031, AUI-AUC-2024APR01-001(a), Attachment 1, Tab "Sch 2," cell I41.

<sup>33</sup> For example, see Decision 20818-D01-2015: FortisAlberta Inc., 2016 Annual Performance-Based Regulation Rate Adjustment Filing, Proceeding 20818, December 17, 2015, paragraph 138.

its recommendation, Apex considered that the bill increase was on the verge of the Commission's threshold for rate shock.<sup>34</sup> However, given the Commission's preference for using the current rates in a bill comparison, the expected bill increase is well above the Commission's typical threshold for rate shock, as the bill calculations provided by Apex show that a typical Boyle customer is expected to pay 21 per cent more on the distribution portion of the bill and 19 per cent more for distribution and commodity charges.<sup>35</sup> Accordingly, implementing rate mitigation measures is appropriate under these circumstances.

26. Overall, the Commission finds that the transaction has met the no-harm test because the benefits of the transaction to Boyle customers will outweigh the negative impacts, including the immediate increase in Boyle customer bills, provided that the significant rate increase for Boyle customers is mitigated through an approval condition of more gradual rate increases.

27. While the Commission has previously approved rate increases above the typical 10 per cent rate shock threshold as exceptions in unique circumstances, the Commission attempts to avoid this, when possible, in order to protect customers. Therefore, the Commission directs Apex to implement a rate mitigation strategy, such as a rate rider, for customers in Boyle to promote rate stability and ease rate shock. This rate mitigation strategy should limit the maximum bill increase in the distribution portion of the bill to 10 per cent and the distribution rates should be adjusted twice annually, once on January 1 and again on July 1. If Apex is unable to update Boyle customers' rates by July 1, 2024, due to the timing of this decision, the Commission directs Apex to begin transitioning Boyle customers to the approved rates (inclusive of the rate mitigation measure) on August 1, 2024. Therefore, the Commission approves the transaction, subject to the filing of post-disposition documents reflecting the implementation of the rate mitigation measures set out above. However, if such an approach is not feasible for Apex, the Commission directs Apex to file a compliance application by **July 26, 2024**, which includes a rate mitigation proposal for customers located in Boyle.

#### **4.2 Franchise agreement and rate rider**

28. In this section of the decision, the Commission considers Apex's applications for approvals of both the franchise agreement and the franchise fee rate rider schedule.

29. In the proposed franchise agreement (which is based on the approved natural gas franchise agreement template referred to in Rule 029), Apex agrees to pay Boyle a franchise fee, which would be calculated as 20 per cent of Apex's revenue from its distribution tariff, excluding any amounts collected or refunded through other rate riders, as shown on the franchise fee rider schedule.<sup>36</sup> The proposed franchise fee is estimated to result in a \$17.21 monthly charge for an average residential customer using 120 gigajoules per year.<sup>37</sup> As mentioned in Section 3 of this decision, Apex published a newspaper notice, which included notice of the transaction, the franchise agreement and the franchise fee rider in accordance with Rule 029.

30. As shown in an attachment to Apex's response to a Commission IR, approval of the franchise agreement and the franchise fee rate rider would result in an average Boyle customer paying \$270.23 annually in municipal charges. The charge associated with the franchise fee

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<sup>34</sup> Exhibit 28831-X0044, AUI-AUC-2024APR01-001(c), PDF page 9.

<sup>35</sup> Exhibit 28831-X0031, AUI-AUC-2024APR01-001(a), Attachment 1, Tab "Sch 2," cells I32 and I41.

<sup>36</sup> Exhibit 28831-X0001, application, Appendix B, PDF page 47.

<sup>37</sup> Exhibit 28831-X0001, application, Appendix E, PDF pages 54-55.

accounts for the majority of the municipal charges on a customer's bill. As specified in Table 1 above, municipal charges account for almost half of the 36 per cent increase.<sup>38</sup>

31. When considering a franchise agreement, the Commission considers whether the agreement "is necessary and proper for the public convenience and properly conserves the public interests" as set out in Section 49(2) of the *Gas Utilities Act*. In considering this provision, the Commission has confirmed it will review the agreement from a general perspective:

In considering whether to approve the franchise agreement, the Commission must determine the proposed agreement is necessary and proper for the public convenience, and properly conserves the public interests, as set out in Section 49(2) of the *Gas Utilities Act*. In making this determination, the Commission's review is focused primarily on provisions that may cause concern with respect to the public interest or to ensuring rates are just and reasonable. Franchise agreements are reviewed from a more general perspective than a utility's costs and rates, as a municipality's council is accountable to its ratepayers for the franchise fees that it implements.<sup>39</sup>

32. In considering the proposed franchise fee, the Commission's role is not to substitute its view on an appropriate franchise fee for that of the municipality, but rather to determine whether the level of the fee would result in an unreasonable burden on customers' utility bills; part of that assessment is to consider whether the previously approved cap on franchise fees will be exceeded.<sup>40</sup>

33. Under sections 35 and 36 of the *Gas Utilities Act*, the Commission is authorized to fix just and reasonable rates, including those related to the franchise fee rider schedule.

34. The Commission accepts that the right granted to Apex by Boyle to provide distribution service to construct, operate and maintain the gas distribution system, and to use lands owned, controlled or managed by the municipality to provide this service, is necessary and proper for the public convenience and properly serves the public interest based on the following:

- The municipality's council has determined to grant the utility the right to provide utility service in the municipality.
- The municipality and the utility consent to the franchise agreement.
- No person has objected to the franchise agreement.

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<sup>38</sup> Exhibit 28831-X0031, AUI-AUC-2024APR01-001(a), Attachment 1, Tab "Sch 2."

<sup>39</sup> Decision 27722-D01-2022: ATCO Gas and Pipelines Ltd. Franchise Agreement with Red Deer County for the Hamlet of Springbrook (October 25, 2022), paragraph 8. Decision 27722-D01-2022 was rescinded in Decision 28058-D01-2023: ATCO Gas and Pipelines Ltd. Franchise Agreement with Red Deer County for the Hamlet of Springbrook, Proceeding 28058, March 9, 2023, because the applicable franchise agreement was never signed by Red Deer County. Nevertheless, the Commission agrees with the quoted statements in Decision 27722-D01-2022, paragraph 8.

<sup>40</sup> See, for instance, Decision 26309-D01-2021: ATCO Gas and Pipelines Ltd., Franchise Agreement with the Town of Taber, Proceeding 26309, February 19, 2021, paragraph 10.

- The franchise agreement complies with the requirements set out in the applicable legislation, including that the term does not exceed 20 years and the agreement was advertised.<sup>41</sup>

35. Regarding the increased municipal charges that would result from the transaction, Apex noted that the franchise fee is determined entirely at Boyle's discretion, and is permissible so long as it falls under the cap of 35 per cent established by the Commission. Additionally, Boyle has the option to adjust the franchise fee on an annual basis.<sup>42</sup> These are charges that are not currently present in the existing Boyle rates and would be new revenue to Boyle, which would be used to the benefit of Boyle residents. For this reason, in Apex's view, the inclusion of municipal charges in any rate comparison is misleading because Boyle customers will indirectly benefit from the charges. The Commission agrees that customers indirectly benefit from these charges, and, for the purposes of this decision, any rate comparison should be done without considering the impact of municipal charges. It is for this reason that the Commission in the previous section of this decision has not assigned any weight to a rate comparison analysis that includes municipal charges.

36. As discussed above, a substantial portion of the bill increases for Boyle customers will be from the municipal charges that have been established entirely by Boyle's village council. The Commission's practice has been to approve the applied-for franchise fee rate rider as long as it is under the prescribed cap of 35 per cent and, in this case, village council has established a franchise fee rate rider percentage of 20 per cent. In other words, the franchise fee line item on customers' bills will be 20 per cent of the distribution charges (consisting of fixed, variable and demand charges) and transmission costs. The Commission notes that Boyle is able to adjust this rate annually, subject to Commission approval.

37. Overall, the Commission is satisfied that Apex has met the test specified under Section 49 of the *Gas Utilities Act*. Accordingly, the Commission approves the franchise agreement. The Commission is also satisfied in the circumstances that approval of the franchise fee rider schedule satisfies Section 36 of the *Gas Utilities Act* and therefore approves the franchise fee rider of 20 per cent, effective on the first day after it has received Commission approval. The Commission has adjusted the franchise fee rate rider schedule in Appendix 4 to reflect the approvals in this decision.

38. Prior to any change in the level of the franchise fee pursuant to the franchise agreement, customers shall be notified as outlined in Section 6 of Rule 029.

## 5 Order

39. It is hereby ordered that:

- (1) The Commission approves the merger and consolidation of the Village of Boyle's assets with Apex Utilities Inc.'s existing gas distribution assets, subject to the filing of post-disposition documents reflecting the implementation of rate mitigation measures, which limit the distribution bill increase to 10 per cent for

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<sup>41</sup> Exhibit 28831-X0001, application, Appendix A.

<sup>42</sup> Decision 20069-D01-2015: AltaGas Utilities Inc. et al., Approval of New Standard Natural Gas Distribution System Franchise Agreement Template, Proceeding 20069, March 20, 2015, paragraph 33.

customers in the Village of Boyle and are adjusted twice annually, once January 1 and again on July 1. The rate increase for Village of Boyle customers is to take effect on July 1, 2024, or August 1, 2024, should an implementation date of July 1, 2024, be unfeasible due to the timing of the decision. Should Apex Utilities Inc. be unable to implement the rate mitigation measures specified by the Commission, Apex Utilities Inc. is directed to file a compliance application by July 26, 2024, which includes a rate mitigation proposal for customers located in the Village of Boyle.

- (2) The Commission approves the franchise agreement, as set out in [Appendix 3](#) and the franchise fee rate rider schedule applicable to Village of Boyle customers, as set out in [Appendix 4](#).

Dated on June 25, 2024.

**Alberta Utilities Commission**

*(original signed by)*

Douglas A. Larder, KC  
Vice-Chair

**Appendix 1 – Proceeding participants**

<b>Name of organization (abbreviation) Company name of counsel or representative</b>
Apex Utilities Inc. (Apex or AUI) Stikeman Elliott LLP
Consumers' Coalition of Alberta (CCA)
Office of the Utilities Consumer Advocate (UCA) Russ Bell & Associates Inc.

<p>Alberta Utilities Commission</p> <p>Commission panel D.A. Larder, KC, Vice-Chair</p> <p>Commission staff A. Culos (Commission counsel) M. Logan C. Robertshaw</p>
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## Appendix 2 – Summary of Commission directions

This section is provided for the convenience of readers. In the event of any difference between the directions in this section and those in the main body of the decision, the wording in the main body of the decision shall prevail.

1. In this decision, the Alberta Utilities Commission considers whether to approve an application from Apex Utilities Inc. to acquire the entirety of the gas distribution assets owned by the Village of Boyle used to provide gas distribution service within the municipal boundaries of Boyle. After consideration of the record of the proceeding, and for the reasons outlined in this decision, the Commission finds that the approval of the application is in the public interest. However, because of the material rate increase that Boyle customers will experience as a result of the transaction, the Commission directs Apex to implement rate mitigation measures for Boyle customers. .... paragraph 1
2. While the Commission has previously approved rate increases above the typical 10 per cent rate shock threshold as exceptions in unique circumstances, the Commission attempts to avoid this, when possible, in order to protect customers. Therefore, the Commission directs Apex to implement a rate mitigation strategy, such as a rate rider, for customers in Boyle to promote rate stability and ease rate shock. This rate mitigation strategy should limit the maximum bill increase in the distribution portion of the bill to 10 per cent and the distribution rates should be adjusted twice annually, once on January 1 and again on July 1. If Apex is unable to update Boyle customers' rates by July 1, 2024, due to the timing of this decision, the Commission directs Apex to begin transitioning Boyle customers to the approved rates (inclusive of the rate mitigation measure) on August 1, 2024. Therefore, the Commission approves the transaction, subject to the filing of post-disposition documents reflecting the implementation of the rate mitigation measures set out above. However, if such an approach is not feasible for Apex, the Commission directs Apex to file a compliance application by **July 26, 2024**, which includes a rate mitigation proposal for customers located in Boyle. .... paragraph 27

## Appendix 3 – Franchise agreement

[\(return to text\)](#)



Appendix 3 -  
Franchise agreement  
(consists of 28 pages)



## Appendix 4 – Franchise fee rate rider schedule

[\(return to text\)](#)



Appendix 4 -  
Franchise fee rate ride  
(consists of 3 pages)

**NATURAL GAS DISTRIBUTION SYSTEM FRANCHISE AGREEMENT**

**2023**

**BETWEEN:**

**Village of Boyle**

---

**- AND -**

**Apex Utilities Inc.**

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**NATURAL GAS DISTRIBUTION SYSTEM FRANCHISE AGREEMENT**

BETWEEN:

**Village Of Boyle,**  
a municipality located in the Province of Alberta  
(the “**Municipality**”)

OF THE FIRST PART

– and –

**Apex Utilities Inc.,**  
a corporation having its head office at the City of \_\_\_\_\_,  
in the Province of Alberta  
(the “**Company**”)  
OF THE SECOND PART

**WHEREAS** the Municipality desires to grant and the Company, collectively the “**Parties**”, desires to obtain an exclusive franchise to provide Natural Gas Distribution Service within the Municipal Service Area on the terms and conditions herein contained;

**NOW THEREFORE** in consideration of the mutual covenants and promises herein contained, the Parties hereby agree as follows:

**1) Definitions and Interpretation**

Unless otherwise expressly provided in this Agreement, the words, phrases and expressions in this Agreement will have the meanings attributed to them as follows:

- a) “**Agreement**” means this Natural Gas Distribution System Franchise Agreement;
- b) “**Alternative Course of Action**” shall have the meaning set out in paragraph 14 (c);
- c) “**Commission**” means the Alberta Utilities Commission (AUC) as established under the *Alberta Utilities Commission Act* (Alberta);
- d) “**Company**” means the Party of the second part to this Agreement and includes its successors and permitted assigns;
- e) “**Construct**” means constructing, reconstructing, upgrading, extending, relocating, or removing any part of the Natural Gas Distribution System;

- f) “**Consumer**” or “**Consumers**” as the text may require, means any individual, group of individuals, firm or body corporate, including the Municipality, with premises or facilities located within the Municipal Service Area from time to time that are provided with Natural Gas Distribution Service by the Company pursuant to the Company’s Delivery Tariff;
- g) “**Core Services**” means all those services set forth in Schedule “A” of this Agreement;
- h) “**Delivery Tariff**” means the rates and Terms and Conditions of service approved by the Commission from time to time on an interim or final basis, as the case may be, for the Company to deliver Natural Gas to the Consumer;
- i) “**Electronic Format**” means any document or other means of communication that is created, recorded, transmitted or stored in digital form or in any other intangible form by electronic, magnetic or optical means or by any other computer-related means that have similar capabilities for creation, recording, transmission or storage;
- j) “**Extra Services**” means those services set forth in Schedule “B” that are requested by the Municipality for itself or on behalf of its citizens and provided by the Company in accordance with paragraph 7 of this Agreement;
- k) “**GUA**” means the *Gas Utilities Act* (Alberta);
- l) “**Intended Time Frame**” shall have the meaning set out in paragraph 14 (c);
- m) “**Maintain**” means to maintain and keep in good repair any part of the Natural Gas Distribution System;
- n) “**Major Work**” means any Work to Construct or Maintain the Distribution System that costs more than \_\_\_\_\_ (\$ \_\_\_\_\_) Dollars;
- o) “**MGA**” means the *Municipal Government Act* (Alberta);
- p) “**Modified Plans**” shall have the meaning set out in paragraph 14 (c)(ii);
- q) “**Municipality**” means the Party of the first part to this Agreement;
- r) “**Municipal Compensation**” shall have the meaning set out in paragraph 20;
- s) “**Municipal Service Area**” means the geographical area within the legal boundaries of the Municipality where the Company has been granted rights hereunder in connection with, among other matters, Natural Gas Distribution Service, as altered from time to time;
- t) “**Municipal Property**” means all property, including lands and buildings, owned, controlled or managed by the Municipality within the Municipal Service Area;
- u) “**Natural Gas**” means a combustible mixture of hydrocarbon gases;



- v) **“Natural Gas Distribution Service”** means the delivery of Natural Gas in accordance with the Company’s Delivery Tariff;
- w) **“Natural Gas Distribution System”** means any facilities owned by the Company which are used to provide Natural Gas Distribution Service within the Municipal Service Area, and without limiting the generality of the foregoing, will include all mains, pipes, conduits, valves and all other installations used and required for the purpose of delivering Natural Gas to the Consumer within the Municipal Service Area and includes any Natural Gas transmission lines owned by the Company within the Municipal Service Area;
- x) **“NOVA Gas Transmission Ltd. (NGTL)”** means NGTL and its successors, as applicable, for purposes of paragraph 5 g) of this Agreement. For greater certainty, the provisions of paragraph 5 g) may only apply in relation to franchises held by ATCO;
- y) **“Operate”** means to operate the Natural Gas Distribution System, or to interrupt or restore service in any part of the Natural Gas Distribution System, in a safe and reliable manner;
- z) **“Party”** means any party to this Agreement and **“Parties”** means all of the parties to this Agreement;
- aa) **“Plans and Specifications”** means the plans, drawings and specifications reasonably necessary to properly assess and review proposed Work prior to issuance of any approval that may be required under this Agreement;
- bb) **“Term”** means the term of this Agreement set out in paragraph 2;
- cc) **“Terms and Conditions”** means the terms and conditions contained within the Delivery Tariff in effect from time to time for the Company as approved by the Commission;
- dd) **“Work”** means any work to Construct or Maintain the Natural Gas Distribution System; and
- ee) **“Work Around Procedures”** shall have the meaning set out in paragraph 14 (c)(ii).

The words “hereof”, “herein”, “hereunder” and other words of similar import refer to this Agreement as a whole, including any attachments hereto, as the same may from time to time be amended or supplemented and not to any subdivision contained in this Agreement. Unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders. References to provisions of statutes, rules or regulations will be deemed to include references to such provisions as amended, modified or re-enacted from time to time. The word “including” when used herein is not intended to be exclusive and in all cases means “including without limitation”. References herein to a section, paragraph, clause, Article or provision will refer to the appropriate section, paragraph, clause, article or provision of this Agreement. The descriptive headings of this Agreement are inserted for convenience of reference only and do not constitute a part of and will not be utilized in interpreting this Agreement.

2) **Term**



- a) Subject to sub-paragraph 2(b), this Agreement will be for a minimum term of ten years, commencing on the later of:
- i) 1st day of February, 2024 ; and
  - ii) the first (1<sup>st</sup>) business day after both of the following have occurred:
    - A. the Commission has approved and acknowledged this Agreement; and
    - B. Council of the Municipality has passed third reading of the applicable adopting bylaw.
- b) This Agreement will expire on the 1st day of February, 2034.
- c) It is agreed this Agreement supersedes and replaces any prior Natural Gas franchise agreements between the Municipality and the Company.

### 3) Expiry of Term of Agreement

- a) Provided the Company gives written notice to the Municipality not less than twelve (12) months prior to the expiration of the Term of its intention to negotiate a new franchise agreement, at any time following the expiration of the Term, and if the Municipality has not provided written notice to the Company to exercise its rights to purchase the Natural Gas Distribution System, either Party may submit any items in dispute pertaining to a new franchise agreement to binding arbitration by the Commission.
- b) Subject to subparagraph 3c) of this Agreement, upon expiry of the Term, this Agreement will continue in effect pursuant to the provisions of the MGA.
- c) Commencing one (1) year following the expiration of the Term of this Agreement, unless either Party has invoked the right to arbitration referred to in subparagraph 3a) , or the Municipality has given written notice to purchase the Natural Gas Distribution System, this Agreement will be amended to provide the following:
- i) Fifty percent (50%) of the franchise fee otherwise payable under this Agreement to the Municipality will be held back and deposited in trust in an interest bearing trust account by the Company, for the sole benefit of the Municipality. The trust money along with all accumulated interest will be paid to the Municipality immediately upon execution of another Natural Gas Franchise Agreement with the Company, or if the Municipality purchases the Natural Gas Distribution System, or if the Company transfers or sells the Natural Gas Distribution System, or upon further Order of the Commission.
- d) In the event a franchise agreement template is approved by the Commission during the Term of this Agreement and the provisions are materially different from the provisions of this Agreement, the Parties may, by agreement in writing, amend this Agreement to conform to such franchise agreement template.

**4) Grant of Franchise**

- a) Subject to the terms and conditions hereof, the Municipality hereby grants to the Company the exclusive right within the Municipal Service Area to:
- i) provide Natural Gas Distribution Service;
  - ii) Construct, Operate, and Maintain the Natural Gas Distribution System; and
  - iii) use portions of roads, rights-of-way, and other lands owned, controlled or managed by the Municipality which have been designated by the Municipality for such use and which are necessary to provide Natural Gas Distribution Service or to Construct, Operate and Maintain the Natural Gas Distribution System.
- b) Subject to subparagraph 4c) , and to the terms and conditions hereof, the Municipality agrees it will not, during the Term, grant to any other person, firm or corporation, the right to Construct, Operate and Maintain any natural gas distribution system nor the exclusive right to use the portions of the roads, rights-of-way and other lands owned, controlled or managed by the Municipality which have been designated by the Municipality for such use and which are necessary to provide Natural Gas distribution service or to Construct, Operate and Maintain a Natural Gas distribution system, for the purpose of delivering Natural Gas in the Municipal Service Area for Consumers, so long as the Company delivers the Consumers' requirements of Natural Gas.
- c) The Company agrees to:
- i) bear the full responsibility of an owner of a Natural Gas distribution system and to ensure all services provided pursuant to this Agreement are provided in accordance with the Delivery Tariff, insofar as applicable;
  - ii) Construct, Operate and Maintain the Natural Gas Distribution System;
  - iii) use designated portions of roads, rights-of-way, and other lands including other lands owned, controlled or managed by the Municipality necessary to Construct, Operate and Maintain the Natural Gas Distribution System, including the necessary removal, trimming of trees, shrubs or bushes or any parts thereof; and
  - iv) use the Municipality's roads, rights-of-way and other Municipal Property granted hereunder solely for the purpose of providing Natural Gas Distribution Service and any other service contemplated by this Agreement.



5) **Franchise Fee**

a) Calculation of Franchise Fee

In consideration of the rights granted pursuant to paragraph 4 and the mutual covenants herein and subject to Commission approval the Company agrees to collect from Consumers and pay to the Municipality a franchise fee. The Parties agree s. 360(4) of the *MGA*, as amended, does not apply to the calculation of the franchise fee in this Agreement. For each calendar year the franchise fee will be calculated as a percentage of the Company's actual total revenue derived from the Delivery Tariff, including without limitation the fixed charge, base energy charge, demand charge, but excluding the cost of Natural Gas (being the calculated revenues from the Natural Gas cost recovery rate rider or the deemed cost of Natural Gas and Natural Gas supply related riders) in that year for Natural Gas Distribution Service within the Municipal Service Area.

For the first (1<sup>st</sup>) calendar year or portion thereof of the Term of this Agreement, the franchise fee percentage will be 20 percent (20 %).

By no later than September 1<sup>st</sup> of each year, the Company will:

- i) advise the Municipality in writing of the total revenues that were derived from the Delivery Tariff within the Municipal Service Area for the prior calendar year; and
- ii) with the Municipality's assistance, provide in writing an estimate of total revenues to be derived from the Delivery Tariff within the Municipal Service Area for the next calendar year.

b) Adjustment to the Franchise Fee

At the option of the Municipality and subject to Commission approval, the franchise fee percentage may be changed annually by providing written notice to the Company. If the Municipality wishes to amend the franchise fee percentage, then the Municipality will, no later than November 1<sup>st</sup> in any year of the Term, advise the Company in writing of the franchise fee percentage to be charged for the following calendar year. Upon receipt of notice, the Company will work with the Municipality to ensure all regulatory requirements are satisfied on a timely basis and agrees to use best efforts to obtain approval from the Commission for implementation of the proposed franchise fee percentage as and from January 1<sup>st</sup> of the following calendar year.

If the Municipality provides written notice at any other time with respect to a franchise fee change, the Company will implement the new franchise fee percentage as soon as reasonably possible.

c) Notice to Change Franchise Fee

Prior to implementing any change to the franchise fee, the Municipality will notify its intent to change the level of the franchise fee and the resulting effect such change will have on an average residential Consumer's annual Natural Gas bill through publication of a notice once

in the newspaper with the widest circulation in the Municipal Service Area at least forty five (45) days prior to implementing the revised franchise fee. A copy of the published notice will be filed with the Commission.

d) Payment of Franchise Fee

The Company will pay the Municipality the franchise fee amount billed to Consumers on a monthly basis within forty-five (45) days after billing Consumers.

e) Franchise Fee Cap

The franchise fee percentage will not at any time exceed thirty five percent (35%) without prior Commission approval.

f) Reporting Considerations

Upon request, the Company will provide to the Municipality, along with payment of the franchise fee amount information on the total Delivery Tariff billed, the franchise fee percentage applied, and the derived franchise fee amount used by the Company to verify the payment of the franchise fee amount as calculated under this paragraph 5.

g) Franchise Fees Collected from NOVA Gas Transmission Ltd. Customers

In the event certain customers in the Municipal Service Area connected to the Company's Natural Gas Distribution System are customers of the NOVA Gas Transmission Ltd. (NGTL), a franchise fee will be collected from such customers by NGTL in accordance with NGTL's applicable tariff and such franchise fee once remitted to the Company will be aggregated with the franchise fee as calculated in paragraph 5 a) to be dealt with in accordance with paragraph 5 d).

**6) Core Services**

The Company agrees to provide to the Municipality the Core Services set forth in Schedule "A". The Company and the Municipality may amend Schedule "A" from time to time upon mutual agreement.

**7) Provision of Extra Services**

Subject to an agreement being reached, the Company agrees to provide to the Municipality the Extra Services, if any, set forth in Schedule "B", as requested by the Municipality from time to time. The Company is entitled to receive from the Municipality a reasonable amount for full compensation for the provision of the Extra Services in accordance with Schedule "B". The Company and the Municipality may amend Schedule "B" from time to time upon mutual agreement.

Any breach by the Company in connection with the provision of any Extra Services contained in this Agreement will not constitute a breach of a material provision of this Agreement for the purposes of paragraph 9.

**8) Municipal Taxes**

Amounts payable to the Municipality pursuant to this Agreement will be (without duplication) in addition to the municipal taxes and other levies or charges made by the Municipality against the Company, its land and buildings, linear property, machinery and equipment.

**9) Right to Terminate on Default**

In the event either Party breaches any material provision of this Agreement, the other Party may, at its option, provide written notice to the Party in breach to remedy such breach. If the said breach is not remedied within two (2) weeks after receipt of the written notice or such further time as may be reasonably required by the Party in breach using best efforts on a commercially reasonable basis, the Party not in breach may give six (6) months notice in writing to the other Party of its intent to terminate this Agreement, and unless such breach is remedied to the satisfaction of the Party not in breach acting reasonably this Agreement will terminate six (6) months from the date such written notice is given, subject to prior Commission approval.

**10) Sale of Natural Gas Distribution System**

Upon the expiration of the Term of this Agreement or the termination of this Agreement pursuant to the terms and conditions hereof or by operation of law or order of a governmental authority or court of law having jurisdiction the Municipality may, subject to the approval of the Commission under Section 47 of the MGA:

- i) exercise its right to require the Company to sell to it the Natural Gas Distribution System within the Municipal Service Area pursuant to the provisions of the MGA, where applicable; or
- ii) if such right to require the Company to sell the Natural Gas Distribution System is either not applicable or has been repealed, require the Company to sell to it the Natural Gas Distribution System. If, upon the expiration of the Agreement, the parties are unable to agree on the price or on any other terms and conditions of the purchase, the unresolved matters will be referred to the Commission for determination.

**11) Provision of Detailed Plans and Equipment**

a) Detailed Plans

The Company agrees to provide to the Municipality for the Municipality's purposes only, the most current set of detailed plan sheets including as-built drawings and specifications showing

the locations (excluding depth) and alignments of the Natural Gas Distribution System, excepting service lines and installations on private property, according to the plan sheets in hard copy and in Electronic Format, where available, together with as many prints of the overall Natural Gas Distribution System as the Municipality may reasonably require. These plans and plan sheets will be updated by the Company on at least an annual basis.

The Municipality will, upon reasonable request, provide to the Company any subdivision development plans of the Municipality in hard copy and in Electronic Format, where available. The subdivision development plans are provided to the Company for the sole purpose of assisting the Company in delivering Natural Gas to the Consumer.

b) Provision of Equipment

The Company agrees to provide the Municipality's fire department with the equipment necessary for the operation of curb boxes and service valves. In case of fire, the service valves may be turned off by the fire department if they reach a fire before the Company's representative. The Municipality will notify one of the Company's representatives of fires which may affect the Natural Gas Distribution System and/or the operations thereof as quickly as reasonably possible or, in the event they cannot reach a Company representative, the Municipality will advise the Company's standby personnel of such fires. The Company will ensure its representatives reasonably cooperate with the Municipality in preventing, controlling and investigating fires involving or affecting the Natural Gas Distribution System.

**12) Right of First Refusal to Purchase**

- a) If during the Term of this Agreement, the Company receives a *bona fide* arm's length offer to operate, take control of, or purchase the Natural Gas Distribution System within the Municipal Service Area, which the Company is willing to accept, then the Company will promptly give written notice to the Municipality of the terms and conditions of such offer and the Municipality will during the next one hundred and twenty (120) days, have the right of first refusal to operate, take control of or purchase the Natural Gas Distribution System, as the case may be, for the same price and upon the terms and conditions contained in the said offer.

Notwithstanding the foregoing, in the event the Municipality fails or refuses to exercise its right of first refusal, the Municipality will retain the right to withhold its consent to an assignment of this Agreement in accordance with paragraph 20 below. For the purposes of this paragraph 12, "operate, take control" will not be construed as including the subcontracting by the Company of only some portions of its operations where the Company continues to be responsible for the performance of this entire Agreement;

- b) If the Municipality does not exercise its right of first refusal and the said *bona fide* offer the Company is willing to accept does not proceed to closure, the Municipality retains its right of first refusal on any other offer.
- c) This right of first refusal applies where the offer pertains only to the entire Natural Gas Distribution System. The right of first refusal does not apply to offers that include any other distribution systems or distribution facilities of the Company located outside of the Municipal

Service Area. If such offer includes other distribution systems of the Company, the aforesaid right of first refusal will be of no force and effect and will not apply.

- d) Where the Municipality exercises its rights to purchase the Natural Gas Distribution System from the Company and thereby acquires the Natural Gas Distribution System, the Municipality agrees, should it no longer wish to own the Natural Gas Distribution System within five (5) years after it acquires the said system and the Municipality receives any *bona fide* offer from an arms-length third party to purchase the Natural Gas Distribution System, which it is willing to accept, then it will promptly give written notice to the Company of the terms and conditions of such offer. The Company will during the next one hundred and twenty (120) days have the first right of refusal to purchase the Natural Gas Distribution System for the same price and upon the same terms and conditions as contained in the said offer.
- e) The Municipality's right of first refusal will not apply where the Company has agreed to transfer the Natural Gas Distribution System to a third party utility company in exchange for certain other assets provided all of the following conditions are met:
- i) the third party utility can demonstrate to the reasonable satisfaction of the Municipality that it meets the necessary technical and financial requirements to own and operate the Natural Gas Distribution System;
  - ii) the only consideration that will be exchanged between the Company and the third party utility company is the transfer and exchange of assets and monetary consideration limited to a maximum of 49% of the net book value of the Natural Gas Distribution System;
  - iii) there is no adverse impact to the Municipality resulting from the transfer and exchange above referenced as determined by the Commission;
  - iv) the Company and the third party utility company obtain all the requisite regulatory requirements prior to completing the transfer and exchange; and
  - v) full compensation is paid to the Municipality for all reasonable costs including administrative and legal costs incurred by the Municipality in ensuring all of the conditions i) through iv) above are satisfied.

### 13) Construction and/or Maintenance of Natural Gas Distribution System

a) Municipal Approval

Before undertaking any Major Work, or in any case in which the Municipality specifically requests any Major Work, the Company will submit to and obtain the written approval from the Municipality, or its authorized officers, of the Plans and Specifications for the proposed Major Work and its location. Approval by the Municipality granted in accordance with this paragraph will be limited to an approval of the location and alignment of the Major Work only, and will not signify approval of the structural design or the ability of the work to perform the function for which it was intended.

Prior to commencing the Work, the Company will obtain such other applicable permits as are required by the Municipality. The Company will notify the Municipality of all Work done within the Municipal Service Area prior to commencing the Work where reasonably practicable. However, only Major Work is subject to a formal approval process.

The Company will obtain prior written approval from the Municipality for any traffic lane or sidewalk closures required to be made at least forty-eight (48) hours prior to the commencement of the proposed Work.

For the purposes of obtaining the approval of the Municipality for Major Work under this Agreement, the Company will provide the Municipality with the Plans and Specifications for the proposed Major Work in Electronic Format (or upon request, the Company will provide the Municipality with a hard copy of the materials). The Plans and Specifications will include a description of the project and drawings of a type and format generally used by the Company for obtaining approvals from municipalities and will illustrate the proposed changes to the Natural Gas Distribution System.

b) Restoration of Municipal Property

The Company agrees when it or any agent employed by it undertakes any Work on any Municipal Property, the Company will complete the said Work promptly and in a good and workmanlike manner and, where applicable, in accordance with the approved Plans and Specifications. Further, and unless otherwise agreed to by the Parties, the Company will forthwith restore the Municipal Property to the same state and condition, as nearly as reasonably possible, in which it existed prior to the commencement of such Work, subject to reasonable wear and tear and to the satisfaction of the Municipality acting reasonably.

The Company will, where reasonably practicable and prudent, locate its pipelines and related equipment in lanes and alleys rather than in the streets and main thoroughfares.

The Company further covenants it will not unduly interfere with the works of others or the works of the Municipality. Where reasonable and in the best interests of both the Municipality and the Consumer, the Company will cooperate with the Municipality and coordinate the installation of the Natural Gas Distribution System along the designated rights-of-way pursuant to the direction of the Municipality. During the performance of the Work, the Company will use commercially reasonable efforts to not interfere with existing Municipal Property and to cause as little damage as possible to the property of others (including the Municipality Property). If the Company causes damage to any existing Municipal Property during the performance of any Work, it will cause such damage to be repaired at its own cost.

Upon default by the Company or its agent to repair damage caused to Municipal Property as set out above, the Municipality may provide written notice to the Company to remedy the default. If the default is not remedied within two (2) weeks after receipt of the written notice or such further time as may be reasonably required and requested by the Company using best efforts on a commercially reasonable basis to remedy the default, the Municipality may undertake such repair work and the Company will be liable for the reasonable costs thereof.

c) Urgent Repairs and Notification to Municipality

If any repairs or maintenance required to be made to the Natural Gas Distribution System are of an urgent nature where the operation or reliability of the Natural Gas Distribution System is materially compromised or potentially materially compromised, the Company will be entitled to conduct such repairs or maintenance as are commercially reasonable without prior notice to the Municipality and, unless otherwise specified by the Municipality, the Company will provide notice to the Municipality as soon as practicable and, in any event, no later than seventy-two (72) hours after the repairs are commenced.

d) Company to Obtain Approvals from Other Utilities

The Company will be solely responsible for locating, or causing to be located, all existing utilities or utility mains, pipes, valves and related facilities in, on or adjacent to the Work site. The Company will notify all other utility operators and ensure utilities and utility mains, pipes, valves and related facilities are staked prior to commencement of construction. Unless the Municipality has staked the location for the utility property, staking will not be deemed to be a representation or warranty by the Municipality the utility or utility property are located as staked. The Municipality will not be responsible for any damage caused by the Company to any utility or any third party as a result of the Company's Work, unless the Municipality has improperly staked the utility property. Approval must be obtained by the Company from the owner of any third party utility prior to relocation of any facility owned by such third party utility.

e) Revised Plans and Specifications

Following completion of the Major Work, the Company will provide the Municipality with the revised Plans and Specifications, updated after construction, in Electronic Format, where available and upon request, the Company will provide the Municipality with a hard copy of the materials within three (3) months of the request. The Company will provide the Municipality with copies of any other revised Plans and Specifications as reasonably requested by the Municipality. For the purposes of this paragraph and paragraph 11, the Company may satisfy its obligations to provide revised Plans and Specifications in Electronic Format by:

- i) advising the Municipality the revised Plans and Specifications are posted to a web-based forum that contains such information; and
- ii) allowing the Municipality access to such web-based forum.

f) Approvals

Where any approvals are required to be obtained from either Party under this paragraph, such approvals will not be unreasonably withheld.

The Company will ensure all Work is performed in accordance with the requirements of all applicable legislation, rules and regulations. The Company will immediately notify the Municipality of any lien, claim of lien or other action of which it has or reasonably should have knowledge, and will cause the same to be removed within thirty (30) days (or such additional time as the Municipality may allow in writing), failing which the Municipality may take such action as it reasonably deems necessary to remove the same and the entire cost thereof will be immediately due and payable by the Company to the Municipality.

**14) Responsibilities For Cost of Relocations**

- a) Upon receipt of one (1) year's notice from the Municipality, the Company will, at its own expense, relocate to Municipal Property such part of the Natural Gas Distribution System that is located on Municipal Property as may be reasonably required by the Municipality due to planned municipal construction. In order to encourage the orderly development of Municipal facilities and the Natural Gas Distribution System, the Municipality and the Company agree they will meet regularly to:
- i) review the long-term facility plans of the Municipality and the Company; and
  - ii) determine the time requirements and costs for final design specifications for each relocation. Providing the Municipality is not the developer requesting the relocation for commercial or residential resale to third parties, the Company will bear the expenses of the required relocation.
- b) Notwithstanding the foregoing, the Company will not be required to move any part of the Natural Gas Distribution System after receipt of notice from the Municipality in accordance with this paragraph where:
- i) the Company has illustrated to the satisfaction of the Municipality, acting reasonably, an appropriate Alternative Course of Action is available;
  - ii) the Municipality has provided the Company with its written approval of the Alternative Course of Action (which approval may not be unreasonably withheld by the Municipality); and
  - iii) the Company has provided its written undertaking to carry out the Alternative Course of Action promptly and within a sufficiently short period of time so as to ensure the Municipality will be left with sufficient time to complete the said planned municipal construction within the Intended Time Frame (taking into account any delays which the Municipality may encounter as a result of the Company utilizing the Alternative Course of Action).



- c) For the purposes of this paragraph 14, the term “Alternative Course of Action” will mean any course of action that will enable the Municipality to complete the said Municipal construction and will result in a net cost savings to the Company (taking into account all additional costs incurred by the Company in carrying out the Alternative Course of Action and any additional costs which the Municipality may incur and which the Company will be required to pay in accordance with this paragraph 14 and “Intended Time Frame” will mean the period of time within which the Municipality would have reasonably been able to complete the said Municipal construction if the Company would have relocated the Natural Gas Distribution System in accordance with this paragraph 14.

If the Municipality agrees to permit the Company to utilize an Alternative Course of Action, the Company will pay any and all costs incurred in carrying out the Alternative Course of Action and will pay on demand to the Municipality (on a full indemnity basis) any and all costs incurred by the Municipality:

- i) in conducting a review of the Alternative Course of Action to determine whether the Alternative Course of Action is acceptable to the Municipality;
  - ii) in modifying any plans the Municipality may have prepared in respect of the said municipal construction (“Modified Plans”) or in preparing or developing plans and procedures (“Work Around Procedures”) to work around the Natural Gas Distribution System or any improvement, thing, or component utilized by the Company in effecting the Alternative Course of Action; and
  - iii) in the course of conducting the said planned municipal construction where such costs would not have been incurred by the Municipality if the Company had relocated the Natural Gas Distribution System in accordance with this paragraph 14 (including any reasonable additional cost the Municipality may incur in completing the said municipal construction in accordance with the Modified Plans or in effecting any Work Around Procedures).
- d) The following example illustrates the intended application of the foregoing provisions:

Where:

- i) The Municipality requires the Company to move a Natural Gas line so the Municipality can replace its own sewer lines. The cost of moving the Natural Gas line is \$10,000. The cost of carrying out the replacement of the sewer line after moving the Natural Gas line is \$40,000;
- ii) The Company proposes to simply brace the Natural Gas line (at a cost of \$2,000) and the Municipality, acting reasonably, approves of this as an Alternative Course of Action;
- iii) As a result of having to prepare Modified Plans and to prepare and implement Work Around Procedures to work around the braces, the actual cost incurred by the Municipality in replacing the sewer line is \$45,000 (being a net increase in cost of \$5,000);

the Company is required to pay the \$2,000 cost of the bracing together and the additional cost of \$5,000 incurred by the Municipality (resulting in a net savings of \$3,000 to the Company).

In cases of emergency, the Company will take all measures that are commercially reasonable and necessary to ensure public safety with respect to relocating any part of the Natural Gas Distribution System that may be required in the circumstances.

If the Company fails to complete the relocation of the Natural Gas Distribution System or fails to repair or do anything else required by the Company pursuant to this subparagraph without valid justification and in a timely and expeditious manner to the satisfaction of the Municipality's representative, acting reasonably, the Municipality may, but is not obligated to, complete such relocation or repair and the Company will pay the reasonable costs of such relocation or repair forthwith to the Municipality. If the Municipality chooses to complete such relocation or repair the Municipality will ensure such work is completed using the Company's design specifications and standards, as provided by the Company, including the use of good and safe operating practices.

The Municipality is not responsible, either directly or indirectly, for any damage to the equipment which forms part of the Natural Gas Distribution System which may occur during its installation, maintenance or removal by the Company, nor is the Municipality liable to the Company for any losses, claims, charges, damages and expenses whatsoever suffered by the Company including claims for loss of revenue or loss of profits, on account of the actions of the Municipality, its agents or employees, working in, under, over, along, upon and across its highways and rights-of-ways or other Municipal Property other than direct loss or damage to the Company caused by the negligence or wilful misconduct of the Municipality, its agents or employees.

In the event the relocation or any part thereof requires the approval of a third party, the Municipality will use reasonable efforts to assist the Company in any negotiation with such third party to obtain the necessary approval(s).

In the event the relocation results from the demand or order of an authority having jurisdiction, other than the Municipality, the Municipality will not be responsible for any of the costs of such relocation.

#### **15) Natural Gas Distribution System Expansion**

Subject to the Terms and Conditions, and at no cost to the Municipality unless otherwise provided for under the Terms and Conditions, the Company will, on a timely basis, use its best efforts on a commercially reasonable basis to meet the Natural Gas Distribution System expansion requests of the Municipality or a Consumer and provide the requisite facilities for connections for new Consumers to the Natural Gas Distribution System.

## 16) Increase in Municipal Boundaries

Where the Municipality increases its geographical area, through annexation or amalgamation, as understood under the MGA, by the greater of 640 acres and twenty five (25%) percent of the current area or more, the Municipality will have the option to:

- (a) terminate this Agreement provided the Municipality gives notice in writing to the Company of its intention to do so; or
- (b) add the increased area to the Municipal Service Area already served by the Company so that the rights and obligations contained in this Agreement will apply in respect of the Municipal Service Area, including the increased area.

For all other increases to the Municipal Service Area through annexation or amalgamation as understood under the MGA, the rights and obligations contained in this Agreement will apply in respect of the whole Municipal Service Area, including the increased area.

## 17) Joint Use of Municipal Rights-of-Way

### a) Municipal Use

The Municipality will upon written notice to the Company have, for any reasonable municipal purpose, the right to make use of any municipal rights-of-way granted to the Company by the Municipality, provided such use complies with good and safe operating practices, as determined by the Company acting reasonably, applicable legislation, and does not unreasonably interfere with the Company's use thereof, at no charge to the Municipality. The Municipality is responsible for its own costs and any necessary and reasonable costs incurred by the Company including the costs of any alterations that may be required in using municipal rights-of-way.

### b) Third Party Use and Notice

If any third party, including other utilities, desire to jointly use the municipal rights-of-way, the Company agrees it will not grant the third party joint use except in accordance with this paragraph, or unless otherwise directed by any governmental authority or court of law having jurisdiction.

The Company agrees the following procedure will be used in granting permission to third parties desiring joint use of the municipal rights-of-way:

- i) first, the third party will be directed to approach the Company to initially request conditional approval from the Company to use that part of the municipal rights-of-way it seeks to use;
- ii) second, upon receiving written conditional approval from the Company, the third party will be directed to approach the Municipality to obtain its written approval to jointly use that part of the municipal rights-of-way. As a condition of granting its consent, the

Municipality may require such third party enter into an agreement with the Municipality, and such agreement may require such third party pay compensation to the Municipality; and

iii) third, upon receiving written conditional approval from the Municipality, the third party will be directed to obtain final written approval from the Company to jointly use that part of the municipal rights-of-way. Once a joint use agreement has been entered into between the Company and the third party, it will not be subsequently amended without the written consent of the Municipality (which consent will not be unreasonably withheld).

c) Cooperation

The Company and the Municipality agree they will use reasonable efforts to cooperate with each other in encouraging the use of joint trenching and in any negotiations with third parties desiring joint use of any part of the municipal rights-of-way located on Municipal Property.

d) Payment

The compensation paid or to be paid by such third party to the Municipality for the use of the Municipal Property including its rights-of-way, will be determined between the Municipality and the third party.

The compensation paid or to be paid by such third party to the Company for the joint use of any portion of the municipal rights-of-way will be determined between the Company and the third party, subject to the jurisdiction of any governmental authority over the matter and the Municipality's right to intervene in any related regulatory proceeding.

e) Provision of Agreements

Upon reasonable request by the Municipality, copies of these agreements will be updated by the Company and provided to the Municipality at no cost to the Municipality.

**18) Municipality as a Retailer**

The provisions of this Agreement will not in any way restrict the right of the Municipality to become a retailer within the meaning of the GUA.

**19) Reciprocal Indemnification and Liability**

a) The Company will indemnify and save the Municipality, its servants, agents, employees, licensees, contractors and invitees, harmless from and against any and all liability, actions, demands, claims, damages, losses and expenses (including all legal costs and disbursements), including indemnity from and against any claim, loss, cost, demand and legal or other expense, whether in respect of any lien, encumbrance or otherwise, arising out of any Work performed by or for the Company, which may be brought against or suffered, sustained, paid or incurred by

the Municipality, its servants, agents, employees, contractors, licensees and invitees, arising from, or otherwise caused by:

- i) any breach by the Company of any of the provisions of this Agreement; or
  - ii) the negligence or wilful misconduct of the Company, or any of its servants, agents, employees, licensees, contractors or invitees in carrying on its business within the Municipal Service Area.
- b) The Municipality will indemnify and save the Company, its servants, agents, employees, licensees, contractors and invitees, harmless from and against any and all liability, actions, demands, claims, damages, losses and expenses (including all legal costs and disbursements) which may be brought against or suffered, sustained, paid or incurred by the Company, its servants, agents, employees, licenses, contractors and invitees, arising from, or otherwise caused by:
- i) any breach by the Municipality of any of the provisions of this Agreement; or
  - ii) the negligence or wilful misconduct of the Municipality, or any of its servants, agents, employees, licensees, contractors or invitees, in carrying on the business of the Municipality.
- c) Notwithstanding anything to the contrary herein contained, in no event will the Municipality or the Company be liable under this Agreement, in any way, for any reason, for any indirect, special or consequential damages (including damages for pure economic loss, loss of profits, loss of earnings or loss of contract), howsoever caused or contributed to.

## 20) Assignment

In the event the Company agrees to sell the Natural Gas Distribution System to a third party purchaser, the Company will comply with paragraph 10 above. In addition, the Company will request the third party purchaser confirm in writing it will agree to all the terms and conditions of this Agreement between the Company and the Municipality. The Company agrees it will provide to the Municipality a copy of the third party purchaser's confirmation letter.

The Company agrees to provide the Municipality with reasonable prior written notice of a sale of the Natural Gas Distribution System to a third party purchaser. The Parties will thereafter meet to discuss the technical and financial capabilities of the third party purchaser to perform and satisfy all terms and conditions of the Agreement, and the compensation payable to the Municipality for all costs including administrative and legal costs relating to providing its written consent to the Assignment("Municipal Compensation").

The Municipality has thirty (30) days from the meeting date with the Company to provide written notice to the Company of its intention to consent or withhold its consent to the assignment of the Agreement to the third party purchaser. The Company agrees the Municipality may provide notice of its intention to withhold its consent to the assignment of this Agreement to the third party purchaser if the Municipal Compensation is inadequate or if the third party purchaser fails to

covenant, in favour of the Municipality, to perform and observe all of the covenants and obligations of the Company to be performed and observed under this Agreement and otherwise solely on the basis of reasonable and material concerns regarding the technical capability or financial wherewithal of the third party purchaser to perform and satisfy all terms and conditions of the Agreement. In this case, such notice to the Company must specify in detail the Municipality's concern.

Should the Municipality not reply within the thirty (30) day period, it is agreed the Municipality will be deemed to have consented to the assignment. The Company further agrees when it applies to the Commission for approval of the sale, it will include in the application any notice received from the Municipality, including the reasons given by the Municipality for withholding its consent. The Municipality will have the right to make its own submissions to the Commission.

Subject to the Company having fulfilled the obligations outlined in the preceding three paragraphs, the Company will be entitled to assign this Agreement to an arm's length third party purchaser of the Natural Gas Distribution System without the consent of the Municipality, subject to paying the Municipal Compensation for the assignment, and having obtained the Commission's approval for the sale of the Natural Gas Distribution System and, the third party purchaser's confirmation in writing that it agrees to all the terms and conditions of this Agreement.

Where the Commission approves such sale of the Natural Gas Distribution System to a third party and the third party provides written confirmation to assume all liabilities and obligations of the Company under this Agreement, then upon the assignment of this Agreement and the payment of the Municipal Compensation for its consent to the Assignment subject to Commission approval, the Company will be released from all its liabilities and obligations thereunder.

The Company will be entitled to assign this Agreement to a subsidiary or affiliate of the Company without the Municipality's written consent. Where the Company assigns this Agreement to a subsidiary or affiliate, the Company will remain jointly and severally liable.

Further, it is a condition of any assignment that the subsidiary, affiliate or third party purchaser, as the case may be, will provide written notice to the Municipality indicating it will assume all liabilities and obligations of the Company under this Agreement.

Any disputes arising under the operation of this paragraph will be submitted to the Commission for determination.

## 21) Notices

- a) All notices, demands, requests, consents, or approvals required or permitted to be given pursuant to the terms of this Agreement will be in writing and will be deemed to have been properly given if personally served, sent by registered mail or sent in Electronic Format to the Municipality or to the Company as the case may be, at the addresses set forth below:
  - i) To the Company:
  - ii) To the Municipality:

- b) The date of receipt of any such notice as given above, will be deemed to be as follows:
- i) In the case of personal service, the date of service;
  - ii) In the case of registered mail, the seventh (7<sup>th</sup>) business day following the date of delivery to the Post Office, provided, however, in the event of an interruption of normal mail service, receipt will be deemed to be the seventh (7<sup>th</sup>) day following the date on which normal service is restored; or
  - iii) In the case of delivery in Electronic Format, the date the notice was actually received by the recipient or, if not a business day, then the next business day.

## 22) Interruptions or Discontinuance of Delivery Service

Subject to its Delivery Tariff, the Company will use its best efforts on a commercially reasonable basis to avoid and minimize any interruption, reduction or discontinuance of Natural Gas Distribution Service to any Consumer. However, the Company reserves the right to do so for any one of the following reasons:

- a) Where the Company is required to effect necessary repairs or changes to the Natural Gas Distribution System;
- b) On account of or to prevent fraud or abuse of the Natural Gas Distribution System;
- c) On account of defective aspects of the Natural Gas Distribution Systems which in the opinion of the Company, acting reasonably, may become dangerous to life or property;
- d) Where required, under the Terms and Conditions, due to a Consumer's non-payment of Natural Gas bills.

To the extent the Company has any planned major interruptions, reductions or discontinuances in Natural Gas Distribution Service, it will notify the Municipality in writing as soon as practicable in the circumstances. For any other major interruption, reductions or discontinuances in Natural Gas Distribution Service, the Company will provide notice (in a format acceptable to the Municipality) as soon as is practicable in the circumstances.

## 23) Dispute Settlement

- a) If any dispute or controversy of any kind or nature arises relating to this Agreement or the Parties' rights or obligations hereunder, the Parties agree such dispute or controversy will be resolved by negotiation, and where such negotiation does not result in the settlement of the matter within thirty (30) days of notice of such dispute being provided by one Party to the other Party, and to the extent permitted by law, the Company and Municipality agree that unresolved disputes pertaining to this Agreement, other than those contemplated in paragraphs 3 and 20 and Section 3 of Schedule "A", or those related to the sale of the Natural Gas Distribution System as contemplated in paragraphs 10 and 12 hereof, or any other matter within the exclusive

jurisdiction of a governmental authority having jurisdiction, will be submitted to arbitration for determination and may be commenced by either Party providing written notice to the other Party stating the dispute to be submitted to arbitration.

The Parties will attempt to appoint a mutually satisfactory arbitrator within ten (10) business days of the said notice. In the event the Parties cannot agree on a single arbitrator within the ten (10) business days, the dispute will be forwarded to the Commission for resolution or determination.

In the event the Commission declines to assist in resolving the dispute or declines to exercise or claim jurisdiction respecting the dispute, both Parties agree to have the dispute resolved by an arbitration panel in accordance with the following procedure.

Each Party will appoint an arbitrator within the ten (10) business days thereafter by written notice, and the two arbitrators will, together, appoint a third arbitrator within twenty-five (25) business days of written notice for arbitration. The dispute will be heard by the arbitration panel within forty-five (45) business days of the written notice for arbitration unless extended by mutual agreement between the Parties. The arbitration panel will render a decision within twenty (20) business days of the last day of the hearing.

Except, as otherwise expressly provided in this Agreement, the provisions of the Arbitration Act (Alberta) (as amended from time to time) will apply to any arbitration undertaken under this Agreement subject always to the Commission's jurisdiction over any matter submitted to arbitration. Pending resolution of any dispute, the Municipality and the Company will continue to perform their respective obligations hereunder.

- b) The Company will advise the Commission of any dispute submitted to arbitration within ten (10) business days of it being submitted and will advise the Commission of the results of arbitration within ten (10) business days following receipt of the decision of the arbitrator(s).

#### **24) Application of Water, Gas and Electric Companies Act**

This Agreement will be deemed to operate as consent by the Municipality to the exercise by the Company of those powers which may be exercised by the Company with the consent of the Municipality under and pursuant to the provisions of the *Water, Gas and Electric Companies Act* (Alberta), as amended.

#### **25) Force Majeure**

If either Party fails to meet its obligations hereunder within the time prescribed, and such failure is caused or materially contributed by an event of "force majeure", such failure will be deemed not to be a breach of the obligations of such Party hereunder, but such Party will use its best efforts on a commercially reasonable basis to put itself in a position to carry out its obligations hereunder. The term "force majeure" will mean any acts of God, strikes, lock-outs, or other industrial disturbances, acts of the Queen's enemies, acts of terrorism (either foreign or domestic), sabotage, war, blockades, insurrections, riots, epidemics, lightning, earthquakes, storms, fires, wash-outs, nuclear and radiation activity or fall-out, restraints of rulers and people, orders of governmental authorities or



courts of law having jurisdiction, the inability to obtain any necessary approval from a governmental authority (excluding the Municipality) having jurisdiction, civil disturbances, explosions, mechanical failure, and any other causes similar in nature not specifically enumerated or otherwise specified herein that are not within the control of such Party, and all of which by the exercise of due diligence of such Party could not have been prevented. Lack of finances will be deemed not to be an event of “force majeure”.

**26) Terms and Conditions**

The Terms and Conditions applicable to the Company and approved by the Commission, as revised or amended from time to time by the Commission, will apply to the Municipality. Nothing in this Agreement is intended to supersede the Terms and Conditions.

**27) Not Exclusive Against Her Majesty**

Notwithstanding anything to the contrary herein contained, it is mutually understood and agreed the rights, powers and privileges conferred and granted by this Agreement will not be deemed to be exclusive against Her Majesty in right of the Province of Alberta.

**28) Severability**

If for any reason any covenant or agreement contained in this Agreement, or the application thereof to any Party, is to any extent held or rendered invalid, unenforceable or illegal, then such covenant or agreement will be deemed to be independent of the remainder of this Agreement and to be severable and divisible from this Agreement. The invalidity, unenforceability or illegality will not affect, impair or invalidate the remainder of this Agreement or any part thereof. The intention of the Municipality and the Company is that this Agreement would have been executed without reference to any portion which may, for any reason or to any extent, be declared or held invalid, unenforceable or illegal.

**29) Amendments**

This Agreement may only be amended by written agreement of the Parties, such amendments to be subject to any regulatory approvals required by law.

**30) Waiver**

A waiver of any default, breach or non-compliance under this Agreement is not effective unless in writing and signed by the Party to be bound by the waiver. No waiver will be inferred from or implied by any failure to act or delay in acting by a Party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other Party.

The waiver by a Party of any default, breach or non-compliance under this Agreement will not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-compliance under this Agreement (whether of the same nature or any other nature).

**31) Confidentiality**

The Company acknowledges the Municipality is governed by the provisions of the *Freedom of Information and Protection of Privacy Act* (Alberta).

IN WITNESS WHEREOF the Parties hereto have executed these presents as of the day and year first above written.

**Village of Boyle**

PER: \_\_\_\_\_

PER: \_\_\_\_\_

**Apex Utilities Inc.**

PER: \_\_\_\_\_

PER: \_\_\_\_\_

## SCHEDULE "A" Core Services

The Company will provide to the Municipality the following basic services as Core Services:

- 1) The Company will deliver Natural Gas to the Consumers in accordance with the Company's Terms and Conditions, the Company's Distribution Tariff, the GUA, any regulations thereto, and any Commission orders and decisions.
- 2) The Company will install all Natural Gas facilities required to provide service to the Consumers in accordance with all applicable regulations, codes, applicable standards and common industry practices.
- 3) As required by legislation, the Company will provide and install all necessary regulators and meters necessary for measuring the Natural Gas supplied to each Consumer.
- 4) The Company agrees to collaborate with the Municipality's emergency response services in an effort to mutually develop emergency response procedures relating to Natural Gas emergencies.
- 5) The Company will provide personnel twenty-four (24) hours a day to investigate and make safe any suspected gas leak inside or outside the Consumer's premises.
- 6) The Company will utilize the services of qualified personnel for designing all Natural Gas facilities to satisfy all applicable regulatory codes and standards, preparing necessary work order plans and monitoring the distribution network pressures to ensure the Company's facilities will satisfy the Consumer's current and future Natural Gas delivery requirements.
- 7) The Company will provide to the Municipality, on request, copies of any and all Natural Gas Distribution Service related written or electronic, where available information or reports required to be filed with the Commission by the Company.
- 8) The Company will provide to the Municipality, upon request and to the extent the information is available, an annual report on the following standards:
  - a) **System Reliability** - will be measured by:
    - i. The number of major outages resulting in a loss of service to Consumers;
    - ii. The number of Consumers affected by each major outage; and
    - iii. The duration of each major outage.
  - b) **Consumer Satisfaction** - will be measured by:
    - i. Company-wide call centre targets and statistics (wait times, abandoned calls, call volumes, etc); and
    - ii. any Consumer complaints received by the Commission.

- c) **Public Safety** - will be measured by:
- i. the number of customer injuries and/or damages due to Natural Gas Distribution System failure;
  - ii. the number of line hits per total locates completed;
  - iii. the number of line hits as a result of inaccurate locates;
  - iv. the percentage of the area of the Municipality surveyed for leaks and yearly cathodic protection measures;
  - v. the number and nature of calls received from the Municipality and any of its Municipal agencies (including fire department, police department etc.) regarding the Natural Gas Distribution System.
- 9) Once per year, upon request and subject to any applicable privacy legislation, the GUA Code of Conduct Regulation or other rules prohibiting or restricting such disclosure, the Company will provide to the Municipality:
- a) The total number of sites billed within the Municipal Service Area, by Company rate class, per revenue month, for each of the last two (w) years;
  - b) The total gigajoules (GJ) of Natural Gas consumed by Consumers billed within the Municipal Service Area, by Company rate class, per revenue month, for each of the last two (2) years;
  - c) The franchise fee revenue billed to Consumers within the Municipal Service Area, by Company rate class, per revenue month, for each of the last two(2) years;
  - d) Where the Municipality is the customer of record and the Municipality provides a list of those sites to the Company on the form provided by the Company:
    - i. The total number of those sites billed within the Municipal Service Area, by Company rate class, per revenue month, for each of the last two (2) years;
    - ii. The total gigajoules (GJ) of Natural Gas at those sites billed within the Municipal Service Area, by Company rate class, per revenue month, for each of the last two (2) years;
    - iii. The franchise fee revenue billed to those sites within the Municipal Service Area, by Company rate class, per revenue month, for each of the last two (2) years; and
  - e) Such other information as may be agreed upon by the Parties from time to time.

Where privacy legislation, the GUA Code of Conduct Regulation or other rules prohibiting such disclosure prevent the Company from providing the information above, the Company will make reasonable attempts to aggregate the information so as to comply with the applicable rules. The

Company will not be obligated to provide such aggregated information if it believes such aggregation will not allow the Company to comply with the applicable rules.

- 10) Upon request by either Party, the Company will meet with the Municipality. Through a mutual exchange of information the Company will keep the Municipality apprised of the Company's construction and upgrading programs planned for the Municipal Service Area and the Municipality will advise the Company of any issues or plans relating to, or potentially impacting, the Natural Gas Distribution System.

### **SCHEDULE "B" Extra Services**

Nothing in this Agreement precludes the Parties from contracting for Extra Services outside the provisions of this Agreement. In the event the Parties do elect to contract for the provision of Extra Services within the provisions of this Agreement and unless otherwise agreed upon by the Parties, nothing in this Agreement will preclude the Company from sub-contracting with third parties for the provision of Extra Services.

Subject to Commission approval, as may be required, any payments from the Municipality to the Company for Extra Services, if agreed to by the Municipality, may be deducted from the Franchise Fee collected from Consumers and otherwise remitted to the Municipality pursuant to paragraph 5 of this Agreement. The timing and quantum of such payments will be as agreed upon by the Parties and set forth in (insert paragraph number from Schedule B) of this Schedule.



<b>RATE RIDER A</b>	<b>FRANCHISE TAX RIDERS</b>
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### Municipalities

Additions to be made to the rates of customers resident in municipalities that have agreed to accept a percentage of gross revenue of the special franchise tax in lieu of a property tax pursuant to Section 360 of the *Municipal Government Act, 1994, c. M-26.1* (previously Section 14(7) and 14(8) of the *Municipal Taxation Act*).

The percentage shown is to be applied as an addition to the total billings calculated.

<u>Municipality</u>	<u>District</u>	<u>Type</u>	<u>Rate (%)</u>	<u>Decision/Order</u>	<u>Effective Date<sup>1</sup></u> <u>(yyyy-mm-dd)</u>
Hairy Hill	Two Hills	Village	5.00	E95078	1999-01-01
Radway	Westlock	Village	3.00	E90046	1998-03-01

<sup>1</sup> Any bill rendered after this date is subject to the corresponding rate.

		Page 1 of 3 RIDER "A"
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<b>RATE RIDER A</b>	<b>FRANCHISE TAX RIDERS</b>
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### Métis Settlements

Additions to be made to the rates of customers resident in Métis Settlements that have by bylaw approved Utility Services Agreements providing for the payment of annual utility service fees calculated as a percentage of gross revenues.<sup>1</sup> The percentage shown is to be applied as an addition to the total billings calculated.

<u>Métis Settlement</u>	<u>District</u>	<u>Rate (%)</u>	<u>Decision/Order</u>	<u>Effective Date<sup>2</sup> (yyyy-mm-dd)</u>
Buffalo Lake	St. Paul	7.00	U2000-236	2000-07-15
Fishing Lake	St. Paul	5.00	U97153	1998-03-01
Gift Lake	Wabasca	7.00	U2003-378	2003-10-01
Kikino	St. Paul	7.00	U2000-107	2000-05-01

<sup>1</sup> The *Métis Settlements Act* (S.A. 1998 Chapter M-14.3) enables the Métis Settlements General Council to legislate by Policy and Settlement Councils to legislate by bylaw on matters related to the operations of utilities within the settlement areas, including the granting of interests in land, the assessment and taxation of these interests, and the licensing of related activities. [s.222(1); Sch.1, ss.14, 19]. Under Métis Settlements General *Council Public Utilities Policy* (GC-P9804; Alberta Gazette, Nov.30, 1998, p.2221) a Settlement may enter into Utility Service Agreement allowing a utility to use land and provide utility services in the Settlement Area and providing for the utility to pay an all inclusive annual service fee. The fee may be determined as a percentage of gross revenue received from services provided in the Settlement Area. Each of the listed Settlements has entered into a Utility Service Agreement with Apex Utilities. Under the *Public Utility Policy* [s.2.3(3)] the Service Agreement takes effect on being approved by bylaw and by the Alberta Energy and Utilities Board.

<sup>2</sup> Any bill rendered after this date is subject to the corresponding rate.

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<b>RATE RIDER A</b>	<b>FRANCHISE TAX RIDERS</b>
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### Municipalities Governed by Standardized Franchise Agreement

For each calendar year the franchise fee will be calculated as a percentage of the Company's actual total revenue derived from the Gas Distribution Tariff, including without limitation the fixed charge, base energy charge, demand charge but excluding the cost of gas (being the calculated revenues from the gas cost recovery rate rider or the deemed cost of gas) in that year for Gas Distribution Service within the Municipal Area.

<u>Municipality</u>	<u>Type</u>	<u>District</u>	<u>Rate (%)</u>	<u>Decision / Order</u>	<u>Effective Date<sup>4</sup></u> <u>(yyyy-mm-dd)</u>
Athabasca	Town	Athabasca	20.00	28579-D01-2023	2024-01-01
Barrhead	Town	BMW <sup>1</sup>	18.00	28027-D01-2023	2023-04-01
Beaumont	City	Leduc	28.50	25046-D01-2019	2020-01-01
Bonnyville	Town	Bonnyville	20.00	20810-D01-2015	2015-10-01
Bonnyville Beach	Summer Village	Bonnyville	0.00	22812-D01-2017	2017-08-01
Boyle	Village	Athabasca	20.00	28831-D01-2024	2024-06-26
Calmar	Town	Leduc	35.00	27465-D01-2022	2022-07-01
Crystal Springs	Summer Village	Leduc	0.00	23563-D01-2018	2018-06-01
Delia	Village	Hanna	12.00	22936-D01-2017	2017-10-01
Donalda	Village	Stettler	17.50	28635-D01-2023	2024-01-15
Drumheller	Town	Drumheller	27.00	20723-D01-2015	2015-11-01
Elk Point	Town	St. Paul	16.00	28773-D01-2024	2024-01-23
Glendon	Village	St. Paul	4.62	22869-D01-2017	2017-08-18
Grande Cache	Hamlet	Grande Cache	0.00	26045-D01-2020	2021-01-01
Grandview	Summer Village	Leduc	0.00	25356-D01-2020	2020-04-01
Hanna	Town	Hanna	17.50	26094-D01-2020	2021-01-01
Hay Lakes	Village	Leduc	9.00	28608-D01-2023	2024-01-01
High Level	Town	High Level	30.00	20717-D01-2015	2015-10-01
Island Lake	Summer Village	Athabasca	0.00	24366-D01-2019	2019-04-16
Leduc <sup>2</sup>	City	Leduc	27.00	20748-D01-2015	2015-09-01
Leduc <sup>3</sup>	City	Leduc	35.00	20748-D01-2015	2015-09-01
Ma-Me-O Beach	Summer Village	Leduc	0.00	24553-D01-2019	2019-05-22
Mewatha Beach	Summer Village	Athabasca	6.00	20900-D01-2015	2015-10-01
Morinville	Town	BMW	19.00	20594-D01-2015	2015-08-01
Morrin	Village	Drumheller	12.00	28527-D01-2023	2023-11-01
Munson	Village	Drumheller	11.00	2004-291	2004-12-01
Pelican Narrows	Summer Village	Bonnyville	0.00	24140-D01-2018	2019-02-01
Pincher Creek	Town	Pincher Creek	35.00	28629-D01-2023	2024-01-01
Poplar Bay	Summer Village	Leduc	0.00	25470-D01-2020	2020-05-01
Rochon Sands	Summer Village	Stettler	0.00	22861-D01-2017	2017-08-14
St. Paul	Town	St. Paul	27.00	27804-D01-2022	2023-01-01
Stettler	Town	Stettler	30.00	20718-D01-2015	2016-01-01
Sunset Beach	Summer Village	Athabasca	3.00	26780-D01-2021	2021-09-01
Three Hills	Town	Three Hills	9.00	25648-D01-2020	2020-09-01
Two Hills	Town	Two Hills	23.00	26099-D01-2020	2021-01-01
Waskatenau	Village	BMW	8.00	21221-D01-2016	2016-01-01
Westlock	Town	BMW	29.00	28573-D01-2023	2024-01-01
White Sands	Summer Village	Stettler	0.00	2008-130	2008-05-29
Willingdon	Hamlet	Two Hills	6.00	2005-005	2005-01-26

<sup>1</sup> BMW denotes Barrhead, Morinville and Westlock.

<sup>2</sup> Does not apply to service under Rates 3 or 13.

<sup>3</sup> Applies only to service under Rates 3 and 13.

<sup>4</sup> Any bill rendered after this date is subject to the corresponding rate.

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