

IN THE MATTER OF
the Utilities Commission Act
S.B.C. 1980, c. 60, as amended

and

IN THE MATTER OF
an Application by
Vancouver Island Gas Company Ltd. and
Victoria Gas Company (1988) Ltd. and
Commission Orders No. G-98-90 and G-106-90

DECISION

February 8, 1991

BEFORE:

N. Martin, Commissioner and
Chairman of the Division
H.J. Page, P.Eng., Commissioner
K.L. Hall, P.Eng., Commissioner

TABLE OF CONTENTS

<u>No.</u>	<u>Page</u>
APPEARANCES	(i)
LIST OF EXHIBITS	(ii)
1.0 INTRODUCTION	1
2.0 MAJOR ISSUES	2
2.1 Relocation Costs	2
2.1.1 Explanation of the Issue	2
2.1.2 Views of the Company	2
2.1.3 Views of the Municipalities	2
2.1.4 Discussion of Views	2
2.1.5 Commission Decision on Relocation Costs	3
2.2 Timing of Municipal Approvals	4
2.2.1 Explanation of the Issue	4
2.2.2 Views of the Company	4
2.2.3 Views of the Municipalities	5
2.2.4 Discussion of Views	5
2.2.5 Commission Decision on Approval Timing	6
2.3 Use of Public Lands/Definition of Highways	7
2.3.1 Explanation of the Issue	7
2.3.2 Views of the Company	7
2.3.3 Views of the Municipalities	7
2.3.4 Discussion of Views	8
2.3.5 Commission Decision on Use of Public Lands	8
2.4 "Double Maining"	8

2.4.1 Explanation of the Issue	8
2.4.2 Discussion	9
2.4.3 Commission Decision on "Double Maining"	9

TABLE OF CONTENTS
(cont'd)

<u>No.</u>		<u>Page</u>
2.5	As-Built Drawings	9
	2.5.1 Explanation of the Issue	9
	2.5.2 Views of the Company	10
	2.5.3 Views of the Municipalities	10
	2.5.4 Discussion of Views	11
	2.5.5 Commission Decision on As-Built Drawings	11
3.0	OTHER ISSUES	13
3.1	Definition of Gas	13
	3.1.1 Discussion	13
	3.1.2 Commission Decision on Definition of Gas	13
3.2	Approval of Franchise Fees	14
	3.2.1 Discussion	14
	3.2.2 Commission Decision on Approval of Franchise Fees	14
3.3	Indemnity	14
	3.3.1 Discussion	14
	3.3.2 Commission Decision on Indemnity	15
3.4	Force Majeure	15
	3.4.1 Commission Decision on Force Majeure	15
3.5	Commitment to Build	16
	3.5.1 Discussion	16
	3.5.2 Commission Decision on Commitment to Build	16
3.6	Operating versus Franchise Fees	16

3.6.1 Discussion	16
3.6.2 Commission Decision on Operating versus Franchise Fees	17

TABLE OF CONTENTS
(cont'd)

<u>No.</u>		<u>Page</u>
3.7	Local Considerations	17
	3.7.1 Discussion	17
	3.7.2 Commission Decision on Local Considerations	17
3.8	Interim Agreement	18
	3.8.1 Discussion	18
	3.8.2 Commission Decision on Final versus Interim	18
3.9	Commission Jurisdiction	18
	3.9.1 Discussion	18
	3.9.2 Commission Decision on Commission Jurisdiction	19
4.0	PRO-FORMA INTERIM OPERATING AGREEMENT	20
	4.1 Discussion	20
	4.2 Approved Agreement	20

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Commission Staff

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LIST OF EXHIBITS

<u>No.</u>	<u>Exhibit</u>
Application of Vancouver Island Gas Company Ltd.	1
Application of Victoria Gas Co. (1988) Ltd.	2
Commission Order dated December 4, 1990	3
Commission Order No. G-106-90	4
Affidavit of Publication	5
Initial prepared Evidence on behalf of Vancouver Island Gas Company Ltd.	
and Victoria Gas Co. (1988) Ltd.	6
Response to Information Request 1	7
Supplementary Evidence of Applicant	8
Amended Operating Agreement	9
Work Activity to date in various Municipalities	10
Engineering Drawings	11
Centra Gas Detailed Gas Charts	12
Mr. Guenther's Qualifications	13
Letter dated January 25, 1981	14
Summary of Evidence of N. Deck	15
Summary of Evidence of H. Leighton	16
Processing Costs for Permits in Nanaimo	17
Current SPI 3-2-2 and SPI 3-3-2 Manuals	18
Company Standard Practice Manual 1985, Three pages	19
Page Five from Company's Tender Package	20
Section of the Engineers Act	21
Submission by Sunshine Coast Regional District and Covering Letter	22
Evidence of Mr. MacKay and Mr. Ashford	23
Resume of Mr. Leighton	24
Resume of Mr. Deck	25

Excerpt from Tender Document	26
Section 2 of General Conditions	27
Draft Clause 36(a)	28
Gas Safety Act Regulations	29

LIST OF EXHIBITS
(cont'd)

<u>No.</u>	<u>Exhibit</u>
Excerpt from Municipal Act	30
Gas Main Length and Pipe Cost Comparison	31
Analysis of Nanaimo's Tax Revenue	32
Schedule of Metres of Main	33
Centra's Draft Extension Policy	34
Centra Gas Forecast Municipal Taxes	35
Estimate of Total Revenues from Gas Sales	36
Estimated Tax Revenue from Campbell River	37
Difference in Cost of Depth of Cover	38
Excerpt from the Rate Stabilization Agreement	39
Revised Section 13	40
Gas Distribution System Cost Comparison	41

Centra Gas Victoria Inc. and Centra Gas Vancouver Island Inc.
Section 37 Operating Agreements February 8, 1991

1.0 INTRODUCTION

On November 30, 1990, Vancouver Island Gas Company Ltd. and Victoria Gas Company (1988) Ltd. ("the Company") filed Applications to the Commission seeking approval of Interim Operating Agreements to enable commencement of construction of natural gas distribution facilities in some 19 municipal areas on Vancouver Island and the Sunshine Coast ("the Municipalities"). Four other Municipalities not seeking agreements were represented by Counsel at the hearing. The Company advised that effective January 21, 1991, there had been a name change and that "the Company" was now Centra Gas Victoria Inc. and Centra Gas Vancouver Island Inc.

The Applicants sought approval under Section 37 of the Utilities Commission Act which provides for the granting of an Operating Agreement where a public utility has been granted distribution rights, and cannot come to an agreement with the Municipality on the use of Municipal thoroughfares and lands. Distribution rights were granted to the Company by the Minister of Energy, Mines and Petroleum Resources under Section 19(1)(b) of the Utilities Commission Act in early 1989.

The Application was originally set for public hearing on January 7, 1991 by issuance of Commission Order No. G-98-90 which also set a Pre-Hearing Conference for December 12, 1990. As a result of that meeting, the public hearing was adjourned until January 28, 1991 pursuant to Order No. G-106-90.

Following the issue of the second Commission Order, considerable efforts were made by the Applicants and the Municipalities in an

attempt to reach agreement on the terms and conditions of a pro-forma Interim Operating Agreement ("the Agreement"). Consensus was reached on a number of the terms and conditions, although not all matters were resolved. As a result of those efforts only a limited number of major items and some other items were left to be resolved at the public hearing.

The hearing commenced in Victoria on January 28, 1991, and continued until mid-day on January 30, 1991.

2.0 MAJOR ISSUES

2.1 Relocation Costs

2.1.1 Explanation of the Issue

At issue is the responsibility for the cost of any future gas system relocation required by Municipal construction activity. However, since the relocations in question depend primarily on the depth of installation of the gas system, the issue is primarily related to the cost of the construction of the gas system. Increased cost will result where the Municipalities request a depth beyond that planned by the Company. The number of locations and the extent of extra depth will determine the amount of the increased costs.

2.1.2 Views of the Company

The Company proposes to install its system in keeping with its Standard Practice Instructions ("SPI's") filed as Exhibit 18. However, in cases where the Municipality has specific plans within the next five years, the Company is prepared to either install its system to a depth established by the Municipality or bear the relocation costs (T 467, Exhibit 28).

2.1.3 Views of the Municipalities

The Municipalities' view is that where they request that the Company install at a specified depth (limited to 90 cm maximum cover) and the Company complies with this request, then the Municipality will bear relocation costs, although none would be expected (T 493, Exhibit 40).

2.1.4 Discussion of Views

The difference between the two positions is that the Company wishes to limit the need for extra depth to locations where public works are scheduled within five years. By contrast, the Municipalities believe they should be able to specify the depth at any location where

public works are anticipated, regardless of the timing of those works. In recognition that their proposal will increase the amount of gas system requiring extra depth, they have agreed to limit the specified depth to 90 cm cover. If this cover should prove inadequate to prevent relocation, the Municipalities are prepared to pay for the relocation.

The Municipality witnesses stated that up to 25 percent of extra depth situations would require the depth of cover to exceed 75 cm (T 416-417). These witnesses also stated that in most Municipalities, running lines for the gas mains were available which would place the mains outside the portion of the road allowance likely to be affected by future road reconstruction (T 418-420). The Commission believes that this testimony is important in that it provides some understanding of the potential costs of the alternative solutions to the relocation cost issue.

2.1.5 Commission Decision on Relocation Costs

Considering that the Municipalities have control of the choice of running line and that only some 25 percent of mains installed under roads requiring future upgrading would need to be relocated if installed with 75 cm cover, the Commission believes it would be fair to both parties if the proposed wording for Section 13 contained in Exhibit 40 is adopted with the following changes:

Firstly, that the figure of 90 cm is reduced to 75 cm. Secondly, that a further provision is added so that where the Municipality has specific plans within five years, it may specify the depth of cover without limit as offered by the Company in Exhibit 28. These changes are reflected in Sections 13A and 13B of the Agreement contained in Section 4.2 of this Decision.

2.2 Timing of Municipal Approvals

2.2.1 Explanation of the Issue

At issue is the turn-around time for Company plans submitted to the Municipality for approval. Such approval is required prior to commencement of construction.

The Company indicated that it would require some 6,900 approvals for plans for distribution mains and service connections during 1991. Both parties agreed that this level of activity placed a serious incremental workload on the Municipal engineering departments.

The City of Nanaimo filed evidence (Exhibit 17) that it required up to 3.5 man hours to process one permit at a cost of \$85. The Company disagreed with this evidence. It felt that processing plan approvals on a regular basis and in batches of similar plans would reduce the time and cost to a fraction of this amount.

2.2.2 Views of the Company

In consideration of its construction schedule, the Company is requesting that approvals for mains be normally done within fifteen clear days. For services, it wishes approvals within five clear days. Clear days are essentially working days. The Company is concerned that if approvals are not provided expeditiously, construction will be delayed, and the economics of the project severely affected (T 72).

The Company expressed sympathy for the concerns of the Municipality over the additional costs that may be incurred in processing a large number of permits in a short time frame. However, counsel for the Company expressed an opinion that

everyone must make appropriate commitments if the project is to succeed. He stated:

"The Province and Federal levels of government have made substantial contributions. The utilities have agreed to accept lower returns in the early years. Timely approval of plans within set and reasonable time periods is what the Municipalities must bring to the table".
(T 471)

In its filed evidence in Exhibit 8, the Company pointed out the substantial tax contribution that the project would bring to the Municipalities in future years. It estimated this at \$2.8 million in year three of the project and at \$40 million total over the first ten years of project life.

2.2.3 Views of the Municipalities

The Municipalities are prepared to provide approvals only on a best efforts basis. They are concerned that if a large number of plans are submitted over a short period of time, it will not be possible to meet a fixed schedule, and plans would be passed by default without a proper review. This is a particular problem for smaller Municipalities where staffing for the permit approval process may be as little as only a portion of one person's time. In the absence of franchise fees, the Municipalities proposed a one-time charge of 3 percent of the construction costs as an administration fee to cover their anticipated additional costs.

2.2.4 Discussion of Views

There is general agreement that examination and approval by the Municipalities of plans specifying proposed construction, and inspection of the gas distribution system is both desirable and necessary. It becomes a matter of practical consideration of how this is to be accomplished. It may be understandable that the Company takes the position that timely approval of plans is something the Municipalities should "bring to the table", but it must be recognized that unless some additional personnel can be brought on stream to assist the Municipalities, "timely approval" can only be attained at the expense of other Municipal priorities. Those whose applications for other projects are shelved because of preferential

queuing for Company applications would rightly complain they were being unfairly discriminated against. The possibility of superficial skimming and perfunctory approvals by the Municipalities is equally unacceptable. As systems are important utility works, the approval process must not just be seen to be done; it must be diligently done.

The Commission believes that approvals must be completed both expeditiously and thoroughly in order to satisfy the concerns of the Company and the Municipalities. The Commission recognizes that the Municipalities may be disadvantaged by the timing

proposed by the Company and believes that this issue might be more easily resolved if funds were made available in the construction year to enable the Municipalities to hire the extra manpower required by the incremental workload involved in reviewing the Company's plans. Such funds are typically provided from franchise fees.

In its filed evidence (Exhibit 8) the Company suggested that some provision might be worked out which would allow the Municipality to receive some of the future tax revenues by way of a discounted prepayment in the year of construction. This proposal was not reviewed in detail during the hearing.

In analyzing Exhibit 36, the Company's Estimate of Gas Sales, it is noted that the levy of 1 percent on revenue in lieu of business taxes for the Municipalities as a group, and which would become due and payable during the first five years of the project in which the taxes are payable (i.e. 1992 to 1996), total some \$807,700 on a discounted basis using a discount rate of 12 percent. A prepayment of some portion of this amount could be of material assistance to the Municipalities to help defray out-of-pocket expenses during the construction year.

2.2.5 Commission Decision on Approval Timing

The Commission accepts that the Company must have a well defined approval process to allow for the expeditious planning and construction required to complete the project before the 1991/92 heating season. Therefore, the Commission approves the Company's wording for Section 14 of the Agreement (Exhibit 8) which provides for approval within 15 clear days for mains and 5 clear days for service connections.

The Commission finds that the Municipalities' request for an administration fee of 3 percent of construction costs is not appropriate, because of the negative impact on the economics of the project.

While the Commission concludes that the Company's offer of prepaid taxes could be of assistance to the Municipalities, the prepayment process may be restricted by other legislation. The Commission believes that prepayment on a discounted basis of the

1 percent taxes on revenue estimated for the year 1992-1996 inclusive (estimated at approximately \$800,000 based on Exhibit 36) is an adequate amount to address the Municipalities' concerns. Accordingly, the Commission directs the Company to inform the Municipalities that these funds would be available and to meet with the Municipalities to develop a plan for prepayment within the confines of the Municipal Act and any other relevant legislation.

Prior to implementation, the Commission directs the Company to report on progress towards finalizing a prepayment plan by March 1, 1991 and to submit the prepayment plan to the Commission for regulatory approval once finalized. Because of the urgency of the acceptance of such a plan, the Commission will make available staff to facilitate completion of the plan.

2.3 Use of Public Lands/Definition of Highway

2.3.1 Explanation of the Issue

Although discussed as separate issues during the hearing, these two issues are closely linked since by definition any land not a highway is either private or public land. At issue is the Municipalities' right to limit access to public lands both through narrowing the definition of highway and subsequently tightening control of access to public lands.

2.3.2 Views of the Company

The Company is concerned that project costs may be increased by arbitrary Municipal decisions disallowing the installation of gas systems on public lands. To increase the number of cases where

access is assured, the Company wishes to include reference to "other public ways" in the definition of highways.

2.3.3 Views of the Municipalities

The Municipalities want the words "and any other way open to public use" removed from the definition of Highway. This would effectively mean these "other ways" would be then

simply "public lands". They then wish to retain the discretion to refuse the Company access to public lands. In cases where other public utilities have been granted access, permission would not be unreasonably withheld.

2.3.4 Discussion of Views

Given that there are not likely to be a large number of situations where public lands are suitable for gas system installation but have not yet been used for other utilities, the Company's risk appears small.

More significantly, the Municipalities are entrusted with the stewardship of public lands and must make decisions on their use based on a wide range of factors. Even in cases where other utilities are present in public lands, installation of any further utilities may well be inappropriate. The Commission concludes that the discretion for the use of public lands must lie with the Municipalities. In the event that the Company believes that a Municipality is unreasonably denying access to public lands, the Company can apply to the Commission for a decision under Section 38 of the Utilities Commission Act.

2.3.5 Commission Decision on Use of Public Lands

The words "and any other way open to public use" should be removed from the definition of highway to permit Municipal discretion on the use of these types of public lands. The Commission adopts the wording for Section 21 of the Agreement contained on page 4 of the testimony of Mr. MacKay (Exhibit 23). These changes to the Company's proposed agreement (Exhibit 9)

are reflected in the Agreement contained in Section 4.2 of this Decision.

2.4 "Double Maining"

2.4.1 Explanation of the Issue

This section is entitled "Double Maining" as that is the heading of Section 24 of the draft Agreement (Exhibit 9) and it was that description that was used throughout the hearing.

The Commission believes, however, that this choice of heading for Section 24 has been the source of considerable misunderstanding between the parties. More correctly, what is covered by Section 24 is a description of the maining policy to be adopted in order to satisfy Municipal concerns about cutting of pavement and Company concerns about the most economic system design.

2.4.2 Discussion

By the end of the hearing, both parties had agreed in principle on a revised wording to Section 24. This wording was canvassed on the record during cross-examination of the Municipal panel by both Commission Counsel and Company Counsel (T 422-426). As a result, the Municipalities accepted the revised wording (T 513). The Company requested minor changes to this wording to cover intersections and limiting pre-installed service stubs to new subdivisions (T 473).

2.4.3 Commission Decision on "Double Maining"

The Commission accepts these refinements as fair to both parties. The Commission does not, however, accept the Company's argument about retaining the reference to approval of single maining not being unreasonably withheld. The Commission believes that in cases where the Company feels it is being treated unreasonably by the Municipality, it can apply to the Commission for relief under Section 38 of the Utilities Commission Act.

The Commission believes the revised Section 24 entitled "Maining" in the Agreement contained in Section 4.2 of this Decision, accurately reflects the agreement outlined above.

2.5 As-Built Drawings

2.5.1 Explanation of the Issue

At issue is the form of certification as to accuracy of the as-built drawings which the Municipality requires be submitted after completion of each installation.

2.5.2 Views of the Company

The Company proposes that the design drawing be amended in the field by the foreman in charge of the installation crew. Both the foreman and his supervisor would sign a form of affidavit incorporated into the header information of the design drawing. This would indicate whether the work was completed "as drawn" or "as amended".

The Company is concerned (Exhibit 8) that to go beyond this standard practice would increase costs if it meant having all as-built drawings certified by a Professional Engineer as requested by the Municipality. It argued forcefully that the Company as a whole stands responsible for the correctness of its records.

The Company is further concerned (Exhibit 8) that the presence of an Engineer's seal may, in future, lull excavators into placing excessive reliance on the drawing thereby becoming less careful in locating underground gas installations as required by the Gas Safety Act Regulations.

2.5.3 Views of the Municipalities

The Municipalities are concerned that in view of the large amount of installation work planned by the Company over a relatively short time, and the fact that most of it will be done by contractors, there is an increased likelihood that the quality of work will suffer. They went so far as to state that if the Company, as opposed to contractors, were installing the system they might be prepared to agree there is no need for stamping of as-built drawings by a Professional Engineer (T 379). Besides their concern about the accuracy of information on a drawing compiled by a contractor

foreman, the Municipalities have concerns for the potential damage to Municipal works which may go unreported by the contractors (T 378).

2.5.4 Discussion of Views

The Commission believes that this is primarily a cost issue. The Municipalities stated at page 5 of Exhibit 14:

"... the cost to the Company would be less than the cost of paying the Municipality for the cost of inspections by the Municipality, which could be dispensed with if certified as-builts were available."

Mr. Leighton in his written evidence (Exhibit 16) stated that although there was provision for Nanaimo to charge the Company for inspection services in the franchise agreement for the existing system, Nanaimo had felt that the franchise fees reasonably covered inspection costs and had never made such a charge. The Commission concludes that the requirement for certification of as-builts was intended to answer the concern over the cost of inspection in the absence of franchise fees. The Commission shares the concerns of the Municipalities about the need for adequate inspection. It is essential to ensure a high standard of gas system installation, to safeguard Municipal works, and to ensure records accurately reflect actual construction.

2.5.5 Commission Decision on As-Built Drawings

The Commission, in Section 2.2.5 of this Decision, has instructed the Company to make available to the Municipalities, funds from a prepayment of the one percent tax on revenue, which would become due and payable during the early years of gas system operation. The Commission believes the funds so provided would be sufficient to provide for the level of Municipal inspection required to safeguard Municipal works and the safety of the public.

To provide some additional confidence in the accuracy of as-built drawings, the Commission, in Section 4.2 of this Decision, has included new wording in Section 29B of the Agreement. This change requires that in situations where field conditions have required a design location change of greater than one metre horizontally or a reduction in cover below the minimum required by the design drawing, then the Company shall submit an as-built drawing certified by a Professional Engineer.

The Commission, in determining the extent of a location change that should require certification, notes that the Gas Safety Act Regulations consider a range of within 0.5 metres measured horizontally from either side of the indicated pipe location to be at the excavator's risk.

3.0 OTHER ISSUES

3.1 Definition of Gas

3.1.1 Discussion

The Municipalities were concerned that the Company's definition was too broad. Specifically, they were concerned that the inclusion of "methane" in the definition might fetter the ability of a Municipality to develop a land-fill gas project and profitably market the methane produced.

The Company is seeking the exclusive rights for the distribution of gas in the Municipalities but is prepared to wheel gas produced by land-fill or other projects through its system (T 165). There is a precedent for land-fill gas distribution on the Lower Mainland - B.I.O. Gas Industries ("BIO Gas") is a private company that currently collects gas from land-fill sites in Richmond and North Vancouver and distributes the gas in each case to a single industrial customer. The gas distribution facilities of the local gas company (BC Gas Inc.) are not used in either of these cases. The Commission has granted BIO Gas an exemption from certain provisions of the Utilities Commission Act ("the Act") which might prove onerous for a relatively small gas business such as this. In so doing, the Commission was satisfied that the operations of BIO Gas provided no threat to the exclusivity rights of BC Gas Inc.

3.1.2 Commission Decision on Definition of Gas

The Commission is satisfied that it has adequate jurisdiction under the Act to ensure the fair treatment of gas distribution companies

and land-fill gas producers alike. The Commission sees no need at this time to alter the definition of gas.

3.2 Approval of Franchise Fees

3.2.1 Discussion

The Municipalities were concerned that the need for having franchise fees approved by the Commission for recovery from the Company's customers was not in the best interests of the Municipalities.

The Company stated that 3 percent of gross revenues amounts to 50 percent or more of the projected return on equity being recovered by the utility and that payment of these sums without recovery would financially restrict the Company and impair its ability to raise capital (Page 4, Exhibit 8).

3.2.2 Commission Decision on Approval of Franchise Fees

The Commission accepts the arguments put forward by the Company. Utility regulators are normally required to safeguard the Company's ability to raise capital. To do otherwise may not be in the public interest. The Commission, in this case, concludes that clause 7(c) of the proposed Agreement (Exhibit 9) requires no changes.

3.3 Indemnity

3.3.1 Discussion

The Company proposes to indemnify the Municipalities for any liability to which the Municipality is exposed as a result of negligence or fault of the utility. Further, the Company is looking at

the possibility of having its contractors include the Municipalities as a named insured under the contractors' liability insurance policies.

The Municipalities are prepared to accept the Company's indemnity proposal on the condition that they are included as a named insured under the contractors' liability insurance policies. Alternatively, if this does not prove feasible, the Municipalities wish to have the

wording of Section 63 changed so that they are not out of pocket as a result of any claims that may be advanced.

3.3.2 Commission Decision on Indemnity

In reaching a decision on this issue, the Commission has attempted to avoid the uncertainty resulting from the Company's position that it did not believe that adding the Municipalities as a named insured would be a problem, but at the same time was not in a position at the time of the hearing to say that a problem would not exist. The Company was reluctant to insert a covenant into the Agreement which would depend upon the attitude of a third party over which it held no control (T 445).

As a result, the Commission has decided to broaden the wording of the indemnity provisions. The effect of the change is to require a Municipality to be named as co-insured in a contract of indemnity unless the Company deems such to be unreasonable. In the latter event, the Company is required to indemnify the Municipality, its officers, employees, elected and appointed officials, contractors and agents against damages and losses caused or contributed to by the negligence or other default of its contractors, in addition to those resulting from the negligence or other default of the Company, its servants or agents. The revised wording can be found in sections 63A and 63B of the Agreement contained in Section 4.2 of this Decision.

3.4 Force Majeure

3.4.1 Commission Decision on Force Majeure

During the course of the hearing, agreement was reached on the final wording of Section 61. This revised wording is reflected in the approved Interim Operating Agreement contained in Section 4.2 of this Decision

3.5 Commitment to Build

3.5.1 Discussion

The Municipalities stated that this is a concern primarily for smaller communities "up-Island" and on the Sunshine Coast (T 499). These communities would like some commitment that they will be served with gas eventually.

In cross-examination, the Company committed to the incorporation of its 3 year plan into the operating agreements as a commitment to build (T 131). Company counsel subsequently withdrew this offer on behalf of the Company (T 478) and suggested that the Municipalities were protected by Section 39 of the Utilities Commission Act ("the Act"). Company counsel cited the examples of Woss and Winter Harbour where the Commission had conducted hearings under Section 39 of the Act with the result that service was extended to these communities.

3.5.2 Commission Decision on Commitment to Build

Section 39 of the Act applies only where the Company is doing business in the Municipality. Section 40 of the Act applies where the Company is not doing business in the Municipality. In either case, the Commission is satisfied that it has adequate powers to address the concerns of any Municipality that may subsequently complain about a failure of the Company to extend service. The Commission believes there is no need at this time to include specific commitments to build in the Agreement.

3.6 Operating versus Franchise Fees

3.6.1 Discussion

The Municipalities wanted Section 7 of the proposed agreement (Exhibit 9) to clearly indicate that it contemplated either an operating or a franchise fee throughout (T 516). The Company had, prior to the hearing, attempted to cover this concern through specifying

an operating or franchise fee in clause 7(a). This is an issue on which the parties agree, but the draft wording may not be as precise as necessary to give the Municipalities comfort.

3.6.2 Commission Decision on Operating versus Franchise Fees

In the Agreement contained in Section 4.2 of this Decision, the Commission has replaced all Section 7 and Section 8 references to "operating" fees with references to "operating or franchise" fees.

3.7 Local Considerations

3.7.1 Discussion

The Municipalities raised the issue that some Municipalities may have individual and unique concerns about their roads or other matters within their jurisdiction which are not explicitly addressed in the proposed agreement (Exhibit 9).

The Company, in answer to a Commission staff information request on this issue, proposed that site specific issues be handled by a letter of explanation clarifying the Company's intentions with respect to particular problems or areas of concern (Exhibit 7).

3.7.2 Commission Decision on Local Considerations

The Commission believes that there are many considerations which could arise during the life of the Agreement which either could not have been foreseen or else were very narrow in scope. The Commission expects that all utilities subject to its general supervision will address these considerations as they arise and work out solutions in the public interest. The Commission believes that it

has sufficient powers under the Act to ensure this is done. The Commission therefore concludes that no specific additional wording is required in the Agreement.

3.8 Interim Agreement

3.8.1. Discussion

The Company, in its Applications (Exhibits 1 and 2), has requested that in the event the parties are unable to negotiate a final Agreement to replace the Interim Operating Agreement within six months, the Interim Operating Agreement should be made final at that time.

The Municipalities have requested that no time limit be placed on the interim aspect of the Operating Agreement to ensure that the Company will continue to have an incentive to negotiate a final Agreement (T 519).

3.8.2 Commission Decision on Final Versus Interim

The Commission denies the Company's Application to have the Interim Operating Agreement made final after six months. The Commission instructs the Company to report to the Commission on the status of negotiations towards final Agreements commencing June 30, 1991 and every three months thereafter. In the event that any of the Municipalities advise the Company in writing that they are prepared to accept the Interim Operating Agreement as final, the Commission is prepared, upon an Application by the Company, to make that particular Agreement final.

The Commission believes that it is not in the public interest at this time to order that the Agreement be made final after six months.

3.9 Commission Jurisdiction

3.9.1 Discussion

Company Counsel argued that if the Commission were to remove certain words such as "not to be unreasonably withheld" from Section 24 (Exhibit 9) in making a determination on the form of the approved Interim Operating Agreement contained in Section 4.2. of this Decision, then their ability to consider the issue of reasonableness upon an Application by

the Company under Section 38 of the Utilities Commission Act ("the Act") would be fettered (T 483). In his submissions he did not refer to Section 66 of the Agreement which provides that the Agreement is subject to, among other laws, the Utilities Commission Act.

Both counsel for the Municipalities acknowledged that, notwithstanding the wording of the Agreement, the Company would have a right to apply under Section 38 of the Act if the Municipalities adopted an unreasonable position (T 489, 508, 509). Mr. McDannold, on behalf of his clients, referred the Panel specifically to Section 66 of the Agreement as well (T 508, 509). While Company counsel addressed Section 24 of the Agreement and Mr. Anderson was speaking of Section 21 of the Agreement, both sections in Exhibit 9 contain the word "unreasonably".

Commission Counsel summarized the interpretation of the issue by the Municipalities (T 530) by pointing out that Section 66 of the proposed agreement (Exhibit 9) clearly indicates that the Utilities Commission Act applies, "notwithstanding anything to the contrary in this Agreement". Consistent with this is the Section 57 wording (Exhibit 9) indicating only disputes not within the Commission's jurisdiction would be subject to arbitration.

3.9.2. Commission Decision on Commission Jurisdiction

The Commission is satisfied that it has full jurisdiction to consider the matter of reasonableness at a later date if necessary.

4.0 PRO-FORMA INTERIM OPERATING AGREEMENT

4.1 Discussion

Because of the number and complexity of the issues covered in this hearing, the Commission believes it necessary to include an approved Agreement as part of this Decision. The approved Agreement contained in Section 4.2 following is based on Exhibit 9. It contains all of the wording changes arising from the individual decisions laid down in Sections 2.0 and 3.0 of this Decision.

4.2 Approved Agreement

In conclusion, the Commission approves the following amended Pro-Forma Interim Municipal Gas Operating Agreement for use by the Company and the Municipalities pursuant to Section 37 of the Utilities Commission Act.

**PRO-FORMA
INTERIM MUNICIPAL
GAS OPERATING AGREEMENT**

TABLE OF CONTENTS

SECTION(S)	SUBJECT	PAGE(S)
PART 1	DEFINITIONS	
Sec. 1	Definition	
PART 2	OPERATING RIGHTS	
Sec. 2	Grant of Operating Rights	
Sec. 3	Exclusivity of Operating Rights	
Sec. 4	Enforcement of Operating Rights	
Sec. 5	Prohibition of Municipal Distribution	
PART 3	TERM	
Sec. 6	Term of Agreement	
PART 4	OPERATING OR FRANCHISE FEES	
Sec. 7	Establishment of Operating or Franchise	
Fees		
Sec. 8	Payment of Operating or Franchise Fees	
PART 5	OBLIGATION TO CONSTRUCT	
Sec. 9	Obligation to Construct	
Sec. 10	Failure to Construct	
PART 6	PLANS AND APPROVALS	
Sec. 11	Company's Five-Year Plan	
Sec. 11A	Schedule of Construction	
Sec. 12	Annual Updated Plans	
Sec. 12A	Municipal Co-Operation	
Sec. 13A	Depth of Cover	
Sec. 13B	Reconstruction of Municipal Works	
Sec. 14	Approval to Construct	
Sec. 15	Approval to Maintain and Repair	
Sec. 16	Emergency Maintenance and Repair	
Sec. 17	Tests, Surveys and Photographs	
Sec. 18	Construction Plans and Specifications	
PART 7	USE OF HIGHWAYS AND PUBLIC LANDS	

Sec. 19	Permission to use Highways
Sec. 20	Excavation on Highways
Sec. 21	Permission to use Public Lands

PART 8

CONSTRUCTION

Sec. 22	Design
Sec. 23	Location of gas mains
Sec. 24	Double Maining
Sec. 25	Standards of construction
Sec. 26	No interference with Public Services
Sec. 27	Back-filling

TABLE OF CONTENTS

SECTION(S)	SUBJECT	PAGE(S)
PART 9	AS-BUILT PLANS, RIGHT-OF-WAY AGREEMENTS AND CONNECTION REPORTS	
Sec. 28	As-built plans of trunk water and sewer mains	
Sec. 29	As-built plans of Distribution System	
Sec. 29A	As-built plans of Service Connections	
Sec. 29B	Certification of As-built plans	
Sec. 30	Right-of-Way agreements	
Sec. 31	Connection reports	
PART 10	EXTENSION, REMOVAL OR	
RELOCATION		
Sec. 32	Extension of Distribution System	
Sec. 33	Additions, Repairs or Alterations to Public Services	
Sec. 33A	Hazardous Conditions	
Sec. 34	Damage to Distribution System by Municipality	
Sec. 35	Temporary Closure or Diversion of Distribution System	
Sec. 36	Highway Closure	
Sec. 37	Relocation, Plans and Specifications	
Sec. 38	Reimbursement for Relocation	
Sec. 39	Relocation not Necessitated by Municipality	
PART 11	SUPPLY OF GAS	
Sec. 40	Company's Obligation to Supply Gas	
Sec. 41	Service Agreements with Consumers	
Sec. 42	Gas Quality	
Sec. 43	Gas Rates	
Sec. 44	Delivery of Gas to Consumer	
Sec. 45	Service Connections	
Sec. 46	Location of Service	
Sec. 47	Connection	

Sec. 48	Consumer Risk Priority of Allocation
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PART 12	MUNICIPAL RIGHT TO PURCHASE
Sec. 49	Right to Purchase
Sec. 50	Exclusion of Transmission System
Sec. 51	Date of Purchase
Sec. 52	Purchase Price
Sec. 53	Fair Market Value
Sec. 54	Terms of Payment
Sec. 55	Collapse of Purchase
Sec. 56	Termination of Agreement Upon
Purchase	

TABLE OF CONTENTS

SECTION(S)	SUBJECT	PAGE(S)
PART 13	ARBITRATION	
Sec. 57	Arbitration	
Sec. 58	Award Final and Binding	
Sec. 59	Costs	
PART 14	TERMINATION OF AGREEMENT	
Sec. 60	Default by Company	
Sec. 61	Force Majeure	
Sec. 62	Use of Distribution System after Termination	
PART 15	GENERAL	
Sec. 63A	Company Indemnity	
Sec. 63B	Contingent Indemnity	
Sec. 64	Municipality Indemnity	
Sec. 64A	No liability for approval of plans and drawings	
Sec. 64B	Amendment	
Sec. 65	Notice	
Sec. 66	Governing Law	
Sec. 67	Construction	
Sec. 68	Subsequent Agreement	
Sec. 69	Assignment	
Sec. 70	Renewal	

MUNICIPAL GAS OPERATING AGREEMENT

THIS AGREEMENT made the____ day of _____, 1991.

BETWEEN:

(the "Municipality")

AND:

CENTRA GAS
110 - 800 Tolmie Avenue
Victoria, British Columbia
V8X 3W4

(the "Company")

WHEREAS:

- A. The Company will enter into Gas purchase contracts for the supply of Gas by pipeline available for the purposes of making Gas available for distribution on Vancouver Island and the Coastal Mainland in accordance with the terms of such contracts;
- B. The Company will construct and operate the necessary facilities, pipelines, mains and pipes for supply and delivery of Gas as herein defined to the Municipality and such consumers as are situated within the Municipality on the terms and conditions in this Agreement;

NOW THEREFORE in consideration of the terms, conditions and covenants in this Agreement, the parties agree as follows:

PART 1 - DEFINITIONS

1. **Definitions.** In this Agreement:

"Clear Days" excludes Saturdays, Sundays, statutory holidays as defined by the British Columbia Interpretation Act and the first and last days in calculating time under this Agreement;

"Commission" means the British Columbia Utilities Commission and any successor commission;

"Distribution System" means fixed equipment and structures including the mains, pipes, valves, fittings, appurtenances, and related facilities used or intended for the purpose of conveying, distributing, mixing, storing and delivering Gas and making it available for use within the Municipality, and includes buildings and structures related to such purpose;

"Gas Main" means that part of the Distribution System comprised of a steel or plastic pipeline and associated control devices through which Gas is conveyed from transmission lines to Service Connections;

"Operating Rights" means the rights granted under Section 2 of this Agreement;

"Gas" means natural Gas, synthetic natural Gas, methane, liquified petroleum Gas in a gaseous form, manufactured Gas or other utility Gases or any of them or any mixtures thereof;

"Lane" means a Highway less than 8 metres in width, providing secondary access to a parcel of land;

"Highway" means a street, road, lane, bridge, or viaduct which is possessed or controlled by the Municipality;

"Municipal Supervisor" means the Municipal Engineer or other person or persons designated by the Municipality to receive notices and issue approvals under this Agreement;

"Municipality" means the Municipality and the territorial area within the boundaries of the Municipality as it exists or as it may be enlarged by boundary extensions or amalgamation, as the context requires;

"Public Lands" means land owned, possessed or controlled by the Municipality, excluding a **Highway**;

"Public Services" means all mains, pipes, wires, valves, and related facilities, buildings, structures and equipment forming part of any sewage disposal, storm drainage, water supply, electrical or other utility service owned or operated by the Municipality or by a public or private utility other than the Company;

"Service Connection" means that part of the Distribution System comprised of a steel or plastic pipe and associated control devices connecting a consumer's meter to a Gas Main;

"Unshrinkable Fill" means fill such as lean concrete as defined by the Canadian Portland Cement Association or its equivalent whose 28-day compression strength does not exceed 0.40 mega pascals.

PART 2 - OPERATING RIGHTS

2. **Grant of Operating Rights.** The Municipality, to the extent that it is empowered, grants to the Company subject to the terms and conditions of this Agreement and subject to compliance with applicable federal and provincial statutes and bylaws of the Municipality, the exclusive right to supply Gas by pipeline to consumers located within the Municipality.
3. **Exclusivity of Operating Rights.** The Municipality shall not grant to any other person the right to supply or deliver Gas by pipeline within the Municipality or the right to use Highways or Public Lands to supply or deliver Gas by pipeline, so long as the Company complies with the terms and conditions of this Agreement and this Agreement remains in force.
4. **Enforcement of Operating Rights.** The Municipality shall reasonably cooperate with and assist the Company in the enforcement by the Company of the Operating Rights against any person not a party to this Agreement who violates the Company's exclusive Operating Rights and the Company shall reimburse the Municipality for its out-of-pocket expenses in this regard.
5. **Prohibition of Municipal Distribution.** The Municipality shall not construct, operate or maintain or cause to be constructed, operated or maintained a Distribution System for the supplying or delivering of Gas by pipeline to the Municipality or its inhabitants or use Highways or Public Lands to supply or deliver Gas by pipeline.

PART 3 - TERM

6. **Term of Agreement.** The term of this Agreement shall be 21 years from the making of this Agreement unless earlier terminated in accordance with this Agreement.

PART 4 - OPERATING OR FRANCHISE FEES

7. **Establishment of Operating or Franchise Fees.** The Municipality may levy an operating or franchise fee inclusive of any administrative fees paid to the Municipality of up to 3% of the Company's gross revenue, not including the Social Services Taxes, or the Goods and Services Tax, from the sale or delivery of all Gas delivered to residential, commercial, institutional and industrial customers within the Municipality through the Distribution System in the preceding calendar year provided that:

- a) the Municipality is authorized by the Legislature to levy an operating or franchise fee;
- b) the retail price per GJ of Gas including the operating or franchise fee does not exceed 90% of the competitive price per GJ of the

lower of oil or electricity to each of the residential and commercial customer classes in the Municipality; and

c) the fee is approved by the Commission for recovery from the Company's customers.

8. **Payment of Operating or Franchise Fees.** The operating or franchise fee if levied, shall be paid by the Company to the Municipality on March 31 of the following year. The fee shall be pro-rated in the event an operating or franchise fee is introduced during a calendar year. For the purpose of establishing the fee, the Company shall provide the Municipality with an independently audited report of the preceding year's Gas sales within the Municipality, prior to July 1 of the following year.

PART 5 - OBLIGATION TO CONSTRUCT

9. **Obligation to Construct.** On or before _____, the Company shall commence the construction of the Distribution System.
10. **Failure to Construct.** If the Company has failed to commence construction of the Distribution System by the date specified in Section 9, the Municipality may on 60 days' notice in writing terminate this Agreement by notice in writing.

PART 6 - PLANS AND APPROVALS

11. **Five Year Plan.** The Company shall initially deliver to the Municipality, not less than 20 Clear Days prior to commencing construction of the Distribution System, a plan showing the location, sequence and timing of the construction of the Distribution System planned by the Company for the next five years, and shall, from time to time but not less than annually, review that plan with the Municipal Supervisor.

- 11A **Schedule of Construction.** Not less than 10 Clear Days prior to commencing construction of the Distribution System the Company shall deliver to the Municipality a schedule of construction and a plan showing the general layout of the proposed Distribution System including Gas Mains, valves and regulator stations but not including Service Connections.
12. **Annual Updated Plans.** The Company shall deliver to the Municipality before March 31 of each year an updated plan of the existing and proposed Distribution System.
- 12A **Municipal Co-Operation.** The Municipality will co-operate with the Company to increase the awareness of applicants for building permits that a check should be made with the Company before construction in the vicinity of the Distribution System.

13A. **Depth of Cover.** Where the Municipality has received an application for approval for the installation of the Distribution System from the Company, the Municipality may:

- (a) request a depth of cover without limit where it has specified its plans for reconstruction within five years of the receipt of the application; or
- (b) request a depth of cover between 60 cm and 75 cm below grade in all other cases.

13B. **Reconstruction of Municipal Works.** The Company shall bear the cost of relocating portions of the Distribution System as necessary for the reconstruction, repair or replacement of the Municipal Highways or Municipal Public Services, unless it has previously complied with the Municipality's requests on depth of cover as set forth in Section 13A(a) and (b) of this Agreement, in which event the Municipality shall bear such costs.

14. **Approval to Construct.** No part of the Distribution System shall be constructed or extended without the approval in writing of the Municipality or of the Municipal Supervisor, such approval not to be unreasonably withheld or delayed. The Municipal Supervisor shall use his best efforts to give timely approval. Approval for construction of any part of the Distribution System excluding Service Connections shall normally be given within 15 Clear Days of receipt by the Municipality of all information required under Section 18. Approval for construction of Service Connections shall normally be given within 5 Clear Days of receipt by the Municipality of all relevant information required under Section 18. Every approval under this section shall expire if not acted upon within six months.

15. **Approval to Maintain and Repair.** Prior to repairing, replacing or removing any part of the Distribution System in a manner that would alter, damage or disrupt any Highway,

Public Land or Public Services, the Company shall obtain the approval in writing of the Municipality or Municipal Supervisor, such approval not to be unreasonably withheld or delayed and normally to be given within 5 Clear Days.

16. **Emergency Maintenance and Repair.** Notwithstanding Sections 14 through 18, in cases of repair or maintenance of the Distribution System which is necessary or prudent due to emergency, or for the urgent safety or preservation of property, no notice need be first given but shall be given as soon as practicable during or after performance of such repairs or maintenance.
17. **Tests, Surveys and Photographs.** The Company shall prior to approval under Section 14 and 15 provide the Municipality or the Municipal Supervisor with such tests, surveys, photographs and plans as the Municipality or the Municipal Supervisor may reasonably require to ensure compliance with this Agreement.
18. **Construction Plans and Specifications.** Prior to constructing or extending the Distribution System, the Company shall file with the Municipality or the Municipal Supervisor detailed plans and specifications, which in the case of Gas

Mains shall be signed and sealed by a Professional Engineer registered to practise in British Columbia, showing:

- a) the size and dimensions of all Gas Mains of the proposed Distribution System, their proposed depth below the surface of the ground, and their proposed locations;
- b) the edge of paving on affected Highways where the Company proposes to cut into paving;
- c) the proposed location and/or elevation of the Gas Mains where they cross existing underground utilities provided all such locations and elevations are requested by and made available to the Company by the Municipality or the applicable public utility;
- d) boundaries and legal descriptions of any private lands affected or within 1.5 metres of the proposed centre line of the Gas Main;
- e) any drawings, profiles, elevations, plans, studies or other materials including locations and elevations of existing underground utilities within 1.5 metres of the proposed centre line of the Gas Mains concerning specific locations which may reasonably be required by the Municipal Supervisor in relation to the protection of persons, property, Highways, Public Lands and Municipal services, such requirements to be submitted to arbitration under Section 57 if not acceptable to the Company; and
- f) the proposed dates of commencement and completion of the proposed work.

PART 7 - USE OF HIGHWAYS AND PUBLIC LANDS

19. **Permission to use Highways.** Subject to the applicable bylaws of the Municipality and to this Agreement, the Municipality grants to the Company permission to enter in, upon and under all Highways within the Municipality and permission to use, break up, dig, trench, open up and excavate the Highways, and therein and thereon to place, construct, lay, operate, use, maintain, renew, alter, repair, extend, replace and remove the Distribution System.
20. **Excavation on Highways.** Notwithstanding prior approval of any work, the Company shall give written notice to the Municipality or the Municipal Supervisor of its intention to break up, dig, trench, open up or excavate in or on any Highway, not less than 3 Clear Days before the beginning of such work unless otherwise authorized by the Municipal Supervisor. The Company shall use its best efforts to give at least 5 Clear Days' notice of such work.

21. **Permission to use Public Lands.** The Municipality may from time to time in writing empower the Company to use public lands for the distribution system. The Municipality shall not unreasonably withhold permission in circumstances where other public utilities have been allowed to use public lands. Where such permission has been granted to the Company, the Municipality shall have the right to require the Company to enter into a registered right of way agreement.

PART 8 - CONSTRUCTION

22. **Design.** The Distribution System shall be designed, installed and maintained to meet or exceed the standards set out in all applicable federal, provincial and municipal enactments, and all Gas pipeline standards set by the Canadian Standards Association.
23. **Location of Gas Mains.** In establishing the location of Gas Mains, the Company shall unless otherwise approved by the Municipal Supervisor in writing, such approval not to be unreasonably withheld:
- a) use Lanes in preference to other Highways;
 - b) use any suitable Gas Main sleeve installed by the Municipality for the Distribution System and shall upon use reimburse the Municipality its cost of providing such sleeve.
24. **Maining.**
- a) A single Gas Main may be installed subject to the provisions of (b), (c) and (d) below.
 - b) The Company, subject to waiver by the Municipality, shall make at least one attempt to bore

beneath the Highway prior to trenching for the installation of Gas Mains, the crossing of intersecting Highways by Gas Mains and for the installation of Services across Highways.

c) Where a portion of the Distribution System is installed in an existing improved Highway, a Gas Main shall be installed on each side of the Highway unless:

i) connecting pipes can be installed across the Highway without trenching; or

ii) connecting pipes can be installed across the Highway with trenching provided that there is not more than one trench every 200 metres, excluding trenches otherwise required for Gas Mains at intersections of that Highway; or

iii) a single Gas Main is approved in writing by the Municipality.

d) Where a portion of the Distribution System is installed in an unpaved Highway Right-of-Way, a single Gas Main may be installed provided that in new subdivisions connecting pipes are installed to the boundary of each future parcel adjoining the Highway.

25. Standards of construction. The Company shall:

a) carry out construction and installation of the Distribution System at its own expense;

b) cause as little damage as is reasonably possible in performing the works authorized to be performed hereunder;

c) use all reasonable efforts to cause a minimum of obstruction or inconvenience during the progress of any of its works;

d) place and maintain such warning signs, barricades, lights or flares at or near the site of any work in progress as will give reasonable warning and protection to members of the public;

e) restore without unreasonable delay the Highways or Public Lands broken up, dug, trenched, opened up or excavated to a condition as nearly as possible as existed immediately before the commencement of such works and repair, at its own expense, any damage that it causes;

f) maintain affected portions of Highways or Public Lands at its expense to the restored standard for three years following restoration;

g) maintain pavement crossing patches for a period of five years;

h) at all times during construction of the Company's works in the Municipality, maintain a local or toll-free number at which the public and the Municipality can make inquiries regarding construction, during business hours;

i) during construction of the Company's works in the Municipality, maintain as reasonably required in the Municipality a representative, other than the contractor, who is authorized and competent to:

i) answer questions from the public about the Distribution System and its construction;

ii) supervise the construction of the Company's works;

j) prior to commencing construction which may significantly interfere with access to properties or traffic on any block of any street, deliver to each household or business a letter describing the work to be done, the anticipated schedule of construction and the telephone number for inquiries.

26. **No interference with Public Services.** Except as expressly authorized by the Municipality or by virtue of any charter or right granted by governmental authority, the Distribution System shall be laid in such a manner as not to interfere with any existing or authorized Public Services located in any Highway.
27. **Back-filling.** When a portion of the Distribution System is installed in a trench crossing a Highway or Lane the Company shall use Unshrinkable Fill under pavement and shall ensure that the surface of the trench remains level with the surface of the adjacent Highway or land for five years.

PART 9 - AS-BUILT PLANS, RIGHT OF WAY AGREEMENTS AND CONNECTION REPORTS

28. **As-built plans of trunk water and sewer mains.** Upon request by the Company the Municipality shall provide the Company with any available "as built" plans of trunk water and sewer mains and if available a computer diskette of these systems which is compatible with the Company's Automated Mapping Facilities system.
29. **As-built plans of Gas Mains.** The Company shall provide the Municipality with scale "as built" plans of the Distribution System excluding Service Connections, referenced to the Legal Survey System, or in the event the Legal Survey System cannot be used, referenced to Integrated Survey Control Monuments in relation to main Distribution System junctions within Highway intersections, if such monuments are in place in the

Municipality, and where available, computer diskettes of the Distribution System. Copies of the field-drawn as-built sketches shall be provided within 30 days of completion of that portion of the Distribution System and the as-built plans shall be provided no later than March 31 of each year, showing portions of the Distribution System excluding Service Connections completed during the prior year. Plans shall be in metric scale and computer diskettes when available shall be in a format compatible with the system of automated Mapping Facilities Management in general use by the Municipalities on Vancouver Island and the Coastal Mainland.

- 29A **As-built plans of Service Connections.** The Company shall, where requested, provide the Municipality, within 30 days of completion of the Service Connection, with copies of the field as-built drawings showing the location of the point where the Service Connection leaves the Gas Main and the point of entry at the boundary of the land with reference to a side lot line.
- 29B **Certification of As-Built Plans.** Where field conditions have required a change to the design drawing submitted for Municipal approval of greater than one

metre measured horizontally from either side of the indicated pipe location or a reduction in cover below the specified minimum, the Company shall submit an As-Built drawing signed and sealed by a Professional Engineer registered to practise in British Columbia.

30. **Right-of-Way agreements.** The Company shall provide the Municipality with copies of all Right-of-Way Agreements entered into by the Company.
31. **Connection reports.** On or before July 31 in each year the Company shall supply to the Municipality a report setting out, for the preceding calendar year:
 - a) the number of Service Connections connected to Gas Mains;
 - b) the name of each consumer;
 - c) the civic address or legal description of each parcel connected;
 - d) the date of connection.

PART 10 - EXTENSION, REMOVAL OR RELOCATION

32. **Extension of Distribution System.** At the request of the Municipality, the Company shall at its expense in accordance with the terms of this Agreement extend the Distribution System within the Municipality (as it exists or as it may be enlarged by boundary extension or amalgamation) to service such areas as are economically feasible, in accordance with criteria established by the Commission.
33. **Additions, Repairs or Alterations to Public Services.**
 - a) If the Municipality intends to make any additions, repairs or alterations to any of its Public Services which in any way affect any part of the Distribution System then the Municipality shall give to the Company not less than 5 Clear Days' notice

thereof, provided that in cases of repair, maintenance or construction which is necessary due to emergency, or for the urgent safety or preservation of the property, no notice need be first given but shall be given as soon as practicable.

b) The Company shall be entitled upon receipt of notice under this Section to appoint a representative to advise in respect to such additions, repairs or alterations and so long as the advice of such representative is complied with by the Municipality, the Municipality shall to the extent of that advice be relieved from all liability in connection with any damage or interference to the property of the Company by reason of such repairs, maintenance or construction.

33A **Hazardous Conditions.** Where the Municipality determines that the Distribution System presents a hazard to the public the Municipality shall as soon as possible notify the Company and may, at the Company's expense, take reasonable steps to eliminate the hazard.

34. **Damage to Distribution System by Municipality.** The Municipality will take all precautions not to unnecessarily injure or damage the Distribution System and, when work under Section 33 is completed, the Distribution System shall be restored at the expense of the Municipality as nearly as possible to its condition immediately before the work was undertaken.
35. **Temporary Closure or Diversion of Distribution System.** In order to facilitate a temporary change in its Public Services, the Municipality may request that a portion of the Distribution System be temporarily closed or diverted and such a request shall not be unreasonably refused by the Company. The Municipality shall bear the direct costs of the temporary closure or diversion, excluding any loss of profit or other indirect loss. This Section shall apply equally to a request by the Company for a temporary closure or diversion of any Public Services.
36. **Highway Closure.** If any Highway under or on which any part of the Distribution System is constructed is permanently closed or alienated by any order, direction or request of the Municipality, the Municipality shall give the Company notice and the Company shall with all reasonable dispatch after receipt of such notice from the Municipality remove and if possible or practicable relocate that part of the Distribution System affected by such closure or alienation. The direct cost of work done by the Company under this Section, less an amount equal to two percent (2%) of the direct cost of any part of the Distribution System which the Company takes out of service as a result of the closure or alienation multiplied by the number of years during which it has been in service, shall be reimbursed by the Municipality, excluding any loss of profit or other indirect loss.
37. **Relocation, Plans and Specifications.** Plans and specifications of work to be done by the Company under Section 36 shall be submitted to and approved by the

Municipality or Municipal Supervisor in accordance with Sections 14 and 18 prior to commencement of the work.

38. **Reimbursement for Relocation.** Prior to claiming reimbursement from the Municipality under Section 36, the Company shall provide the Municipality with a detailed written summary of work done, materials required and expenses incurred.
39. **Relocation not necessitated by Municipality.** If any alteration to or relocation of the Distribution System is necessitated other than as the result of a decision made or requested by the Municipality, the Municipality shall not be liable for any resulting loss, damages or expenses incurred by the Company.

PART 11 - SUPPLY OF GAS

40. **Company's Obligation to Supply Gas.** The Company will contract for a supply of Gas for the purposes of distribution and sale within the Municipality, and shall at all times after the Distribution System is constructed and all required permits and approvals obtained, make available a sufficient quantity of Gas for the reasonable needs of every consumer who connects to the Distribution System.

41. **Service Agreements with Consumers.** The Company's obligation under Section 40 shall be subject to the terms and conditions of a service agreement between the consumer and the Company, and to the proviso that Gas is only required to be supplied to consumers having buildings on property fronting or lying alongside a Gas Main or pipe of the Distribution System.
42. **Gas Quality.** Gas supplied and delivered by the Company pursuant to this Agreement shall at all times be of a quality conforming with applicable provincial and federal laws as enacted from time to time.
43. **Gas Rates.** The rates which the Company will charge for Gas sold to the Municipality or other consumers and the terms and conditions for service shall be as filed with and approved or determined by the Commission, the Lieutenant Governor in Council or other authority.
44. **Delivery of Gas to Consumer.** Where an owner or occupier agrees to enter a service agreement with the Company, the Company shall deliver Gas to the property line of each property fronting the Distribution System and shall provide and install a meter suitably located on the property to be supplied with Gas.
45. **Service Connections.** The Company shall supply and install a Service Connection from the property line to the meter in accordance with the costs and terms set forth in the tariffs of the Company and revisions thereto as filed with and approved by the Commission from time to time.
46. **Location of Service Connections.** The meter and Service Connection shall be located and installed in a manner and at a location selected by the Company and shall remain the property of the Company.
47. **Consumer Risk.** The expense and risk of utilizing Gas after delivery to the property line shall be borne by the consumer and not by the Company unless any loss or damage occasioned

by such utilization or user is directly attributable to the negligence or default of the Company and its servants or agents.

48. **Priority of Allocation.** If the supply of Gas available for distribution within the Municipality is limited, the Company shall, where practical, adhere to the following order of priority in allocating the available supply:

a) critical institutional users including hospitals, extended care facilities and related facilities purchasing Gas pursuant to firm contracts;

b) essential public buildings including police stations, fire stations and public works yards purchasing Gas pursuant to firm contracts;

c) residential users;

d) other users purchasing Gas pursuant to firm contracts;

e) users purchasing Gas pursuant to interruptible contracts.

PART 12 - MUNICIPAL RIGHT TO PURCHASE

49. **Right to Purchase.** The Municipality upon giving at least nine months' notice prior to the date of expiration of this Agreement shall have the right to purchase from the Company all its assets and undertakings used in the Distribution System within the Municipality and all the lands, buildings, plants, equipment, apparatus, vehicles, supply lines, supplies, stocks, tools and machinery and generally all its property and assets forming part of, or actually used or available for use exclusively in its undertaking or business of processing, supplying and distributing Gas to consumers within the Municipality.
50. **Exclusion of Transmission System.** The Municipality shall not be entitled to purchase any part of the business, undertaking or transmission or main pipelines and appurtenances of the Company situate either inside or outside the Municipality which are an integral part of the transmission system bringing Gas to or through the Municipality or which are necessary to the Company in the manufacture, mixing, transportation, storage, distribution, supply or sale of Gas outside the Municipality.
51. **Date of Purchase.** A sale and purchase made under Section 49 shall be deemed to become effective at midnight of the last day of the term of this Agreement.
52. **Purchase Price.** If a sale and purchase by the Municipality under Section 49 takes place the purchase price payable by the Municipality to the Company for the assets and undertaking (the "Price") shall be such as may be agreed in writing between the parties not later than one month after the last day of the term of this Agreement, or within such further time as the parties may agree upon in writing. In the event of failure to agree upon the Price or in the event of failure to agree as to whether or not any item of property is part of the assets or undertaking being sold and purchased then the matter in dispute shall be referred to arbitration pursuant to the

provisions of the Commercial Arbitration Act of the Province of British Columbia. Each party shall appoint one arbitrator and the arbitrators so appointed shall appoint a third, the costs of arbitration to be shared equally by the parties. Any award, determination or decision made under an arbitration held pursuant to this Agreement shall be final and binding upon the parties save as otherwise provided in the Commercial Arbitration Act of the Province of British Columbia.

53. **Fair Market Value.** Whether determined by negotiation or by arbitration the Price shall be the fair market value of the assets and undertaking as a going concern at the effective time of the sale and purchase, but shall not include any amount in respect of any rights or privileges granted to the Company under this Agreement.
54. **Terms of Payment.** The Price shall be paid to the Company within the last day of the term of this Agreement or 90 days after determination of Price, whichever is later, and shall carry interest at the prime rate of the Bank of Montreal then in effect, less one percent, from the last day of the term of this Agreement to the date of payment of the Price.

55. **Collapse of Sale.** If the Municipality does not complete the purchase of assets and undertaking within 180 days from the last day of the term of this Agreement, or within 90 days from determination of the Price, whichever is later, then the Company and the Municipality shall be released from all obligations to complete the sale and purchase and the Municipality shall pay to the Company all reasonable expenses or costs of the Company incurred in any price arbitration held and all other reasonable legal, accounting and other costs, charges or expenses incurred in connection with such proposed purchase and sale, and the Company shall be entitled to retain or be reimbursed for all profits made in the operation of the undertaking from the time of deemed effective sale.
56. **Termination of Rights and Obligations.** In the event of a sale and purchase by the Municipality under the provisions of Section 49 the rights granted to the Company by this Agreement and the obligations of the Company, other than obligations in relation to events occurring prior to the sale and the sale itself, shall terminate at the time of sale and purchase.

PART 13 - ARBITRATION

57. **Arbitration.** If any dispute or question not within the jurisdiction of the British Columbia Utilities Commission to decide shall arise between the parties, concerning compliance with this Agreement or the meaning or effect of this Agreement or any part of it other than under Section 52, that dispute or question shall be referred to a single arbitrator appointed by the parties or in default of an agreement as to such arbitrator by and under the provisions of the Commercial Arbitration Act of the Province of British Columbia and the arbitration shall be held under the provisions of that Act.
58. **Award Final and Binding.** Any award, determination or decision made under an arbitration held pursuant to this Agreement shall be final and binding save as otherwise

provided in the Commercial Arbitration Act of the Province of British Columbia.

59. Costs. Each party shall bear its own costs and 50% of the costs of the arbitrator and arbitration proceeding under Section 57.

PART 14 - TERMINATION OF AGREEMENT

60. Default By Company. In the event of any failure or neglect by the Company to comply with any of the material terms or conditions of this Agreement which continues without the Company commencing and diligently pursuing remedial efforts for 21 days after receipt of a notice from the Municipality setting forth such default, the Municipality shall have the right by further notice to the Company to terminate this Agreement. The rights of the Municipality under this Section are in addition and without prejudice to any other rights at law or in equity which the Municipality may have against the Company by reason of any breach by the Company of this Agreement.

61. **Force Majeure.** Notwithstanding Section 60, the Company will not be liable to the Municipality and this Agreement shall not be terminable under Section 60 upon inability of the Company to carry out its obligations under this Agreement when such inability is caused by:

a) fire, explosion, lightning, tempest, the elements, adverse weather or climatic conditions, acts of God, war, strikes, lockouts, riots, civil insurrection, impossibility of procuring or receiving Gas, materials, equipment required for the placing, construction, maintenance or operation of the Distribution System or any pipeline or facility for bringing Gas to the boundary limits of the Municipality,

b) failure of Gas supply due to the operation of, or interruption of supply from, the Gas transmission pipelines (including gathering lines) or processing facilities of the supplier(s) of the Company,

c) delays in the construction and operation of the transmission or main pipeline and appurtenances of the Company required to bring Gas from such Gas pipeline to the boundary limits of the Municipality,

d) shortage of labour or materials and delays in or shortage of transportation beyond the reasonable control of the Company,

e) any and all other causes beyond the reasonable control of the Company,

except to the extent any of the foregoing are caused or contributed to by the negligence or other fault of the Company, its officers, employees or agents.

62. **Use of Distribution System after Termination.** If the term of this Agreement expires without renewal or a purchase

and sale as provided for in Section 49, or upon the termination of this Agreement pursuant to a notice of termination from the Municipality under Section 60, the Distribution System shall remain in the Company and may be used by it in its business or removed in whole or in part as it shall see fit and the Distribution System shall remain in, on or under all the Highways within the Municipality and the Company may enter in, upon and under to use, break up, dig, trench, open up and excavate for the purpose of maintenance, renewal, repair, removal or operation of the Distribution System, or any part thereof, but not for extension thereof, provided that the Company shall in so doing comply with and be bound by the provisions of Sections 12 through 31, 33 through 48, 57 through 61 and 63 and 64 of this Agreement, notwithstanding the termination of this Agreement.

PART 15 - GENERAL

63A **Company Indemnity.** Except as specifically provided herein the Company shall indemnify and save harmless the Municipality, its officers, employees, elected and appointed officials, contractors and agents from and against all actions, proceedings, claims and demands by any person and shall reimburse the Municipality for all

damages and expenses, caused or contributed to by the negligence or other default of the Company, its servants or agents in respect of any thing done pursuant or ostensibly pursuant to this Agreement including without limitation the construction, maintenance and operation of the Distribution System and shall require all its contractors to name the Municipality as a co-insured in a contract of indemnity between the Company and its contractor unless the naming thereof is deemed by the Company to be unreasonable.

- 63B **Contingent Indemnity.** In the event that the naming of the Municipality as a co-insured is unreasonable, and except as specifically provided herein, the Company shall also indemnify and save harmless the Municipality, its officers, employees, elected and appointed officials, contractors and agents from and against all actions, proceedings, claims and demands by any person and shall reimburse the Municipality for all damages and expenses, caused or contributed to by the negligence or other default of its contractors in respect of anything done pursuant or ostensibly pursuant to this Agreement including, without limitation, the construction, maintenance and operation of the distribution system.
64. **Municipality Indemnity.** Except as specifically provided herein the Municipality shall indemnify and save harmless the Company, its officers, employees, contractors and agents from and against all actions, proceedings, claims and demands by any person and shall reimburse the Company for all damages and expenses caused or contributed to by the negligence or other default of the Municipality, its servants or agents in respect of anything done pursuant or ostensibly pursuant to this Agreement.
- 64A **No liability for approval of drawings and plans.** The approval of drawings and plans by the Municipality pursuant to this Agreement shall create no liability of the Municipality to the Company.

64B **Amendment.** The parties agree that Parts 6, 7, 8, 9 and 10 of this Agreement will be amended from time to time to accommodate technological change in a manner consistent with good municipal and utility practice. If the parties are unable to agree on such amendments the matter will be submitted to arbitration under Section 57.

65. **Notice.** Any notice required or allowed to be given under this Agreement shall be deemed to have been given to the party to whom it is addressed if it is mailed in British Columbia, in a prepaid registered envelope addressed respectively as follows:

a) If given to the Municipality:

and,

b) If given to the Company:

CENTRA GAS
110 - 800 Tolmie Avenue
Victoria, British Columbia
V8X 3W4

and any notice, demand or request so given shall be deemed to have been received and given three days after the date of mailing thereof. Alternatively, any notice under this Agreement may be delivered by hand to the foregoing addresses and shall be deemed to be received upon the day of delivery.

66. **Governing Law.** Notwithstanding anything to the contrary in this Agreement this Agreement shall be subject to the bylaws of the Municipality, the laws of the Province of British Columbia and the provisions of the Pipeline Act, Gas Utility Act, Utilities Commission Act and the Municipal Act of the Province of British Columbia and the powers of the Commission, and nothing herein shall exclude, or be deemed to exclude, the application of the provisions of the said bylaws and Acts.
67. **Construction.** The division of this Agreement into sections, the insertion of headings, and the provision of a Table of Contents are for the convenience of reference only and are not intended to govern, limit or aid in the construction of any provision. In all cases, the language in this Agreement will be construed impartially.
68. **Subsequent Agreements.** The Company agrees that in the event that it enters into an Agreement between the Company and another municipality served by the Vancouver Island Gas Pipeline which in the opinion of the Municipality is more favourable to that municipality, the entire such Agreement, shall, at the option of the Municipality, be offered to, and may be accepted by, the Municipality in the place of this Agreement.
69. **Assignment.** This Agreement shall be assignable by the Company only with the prior consent in writing of the

Municipality, such consent not to be unreasonably withheld. Subject to the foregoing, this Agreement shall enure to the benefit of and be binding on the parties hereto and their respective successors and assigns.

70. **Renewal.** The Company and the Municipality shall use their best efforts to negotiate a renewal of this Agreement, commencing a minimum of eighteen months prior to termination of this Agreement.

IN WITNESS WHEREOF the parties have hereunto caused their corporate seals to be affixed, attested to by the signature of their officers in that behalf, the day and year first above written.

THE CORPORATE SEAL of)	
_____)	
was hereunto affixed in the)	
presence of:)	
)	
_____)	C/S
Mayor)	
)	
_____))	
Clerk)	

THE CORPORATE SEAL of)	
VANCOUVER ISLAND GAS)	
COMPANY LTD. was hereunto)	
affixed in the presence of:)	
)	
_____)	C/S
Authorized Signatory)	
)	
_____)	
Authorized Signatory)	
)	

DATED at the City of Vancouver, in the Province of British Columbia,
this 8th day of February, 1991.