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CANADA

BRITISH COLUMBIA
UTILITIES COMMISSION

ORDER
NUMBER G-105-93

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

and

An Application by BC Gas Utility Ltd.

BEFORE: M.K. Jaccard, Chairperson; and)
L.R. Barr, Deputy Chairperson) October 28, 1993

O R D E R

WHEREAS:

- A. On October 7, 1993 BC Gas Utility Ltd. ("BC Gas Utility") submitted a draft Option, Assignment and Novation Agreement as Schedule C to the Buy/Sell Gas Purchase Contract which it filed on that date and which was approved by Order No. G-99-93; and
- B. On October 20, 1993, as a result of input from the Canadian Independent Gas Marketing Association and others, BC Gas Utility filed, in revised form, the Option, Assignment and Novation Agreement; and
- C. The Commission has reviewed the revised Agreement and is satisfied that approval is necessary and in the public interest.

NOW THEREFORE pursuant to Section 85.3 of the Utilities Commission Act and the Rules thereunder, the Commission orders as follows:

The Commission approves the Option, Assignment and Novation Agreement as Schedule C to the BC Gas Utility Buy/Sell Gas Purchase Contract approved by Order No. G-99-93, and attached as Appendix A to this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 4th day of November, 1993.

BY ORDER


Dr. Mark K. Jaccard
Chairperson

Attch.

SCHEDULE "C"

THIS OPTION, ASSIGNMENT AND NOVATION AGREEMENT dated as of the _____ day of _____, 1993.

AMONG:

BC GAS UTILITY LTD., a body corporate having an office and carrying on business in the City of Vancouver, in the Province of British Columbia ("Buyer")

AND:

ABC GAS MARKETING LTD., a body corporate carrying on business in the Province of British Columbia ("A/B/M")

AND:

XYZ PRODUCER LTD., a body corporate, carrying on business in the Province of British Columbia ("Producer")

AND:

THE CUSTOMERS OF BC GAS UTILITY LTD., as described in Schedule "B" to the Gas Purchase Contract referenced in Recital C below (collectively, the "Customer")

WHEREAS:

- A. Buyer operates a gas distribution and transmission system in the Province of British Columbia;
- B. A/B/M or Customer has entered into a Natural Gas Purchase Contract, dated _____, 1993, with Producer ("Natural Gas Purchase Contract");
- C. A/B/M and Customer have entered into a Gas Purchase Contract, dated _____, 1993, with Buyer ("Gas Purchase Contract");
- D. A/B/M has acted and acts as agent on behalf of Customer in respect of the contracts referred to above;
- E. A/B/M and Customer (collectively, the "Assignor") and Producer have agreed to provide to Buyer an option to purchase gas directly from Producer upon the terms and conditions specified in this Agreement; and

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- F. Assignor wishes to assign, set over, transfer and convey all of the right, title, interest and obligations of the Assignor in, to and under the Gas Purchase Contract to Producer upon the exercise by Buyer of the option specified in this Agreement:

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

1. This Agreement shall form Schedule "C" to the Gas Purchase Contract.
2. Assignor and Producer hereby grant in favour of Buyer an option (the "Option"), exercisable within the time and upon the terms specified in this Agreement, to purchase gas directly from Producer by way of an assignment by Assignor to Producer of all of Assignor's right, title, interest and obligations in, to and under the Gas Purchase Contract, all upon the terms and conditions specified in this Agreement.
3. The Option shall be triggered upon Assignor and Producer providing Buyer with written notice one hundred and eighty (180) days prior to the termination of the Natural Gas Purchase Contract (the "Termination Date"). The Termination Date must be the last Day in a Contract Year as defined in the Gas Purchase Contract. Following receipt of such written notice, Buyer shall provide Assignor and Producer with written notice at least thirty (30) days prior to the Termination Date of whether or not it intends to exercise the Option. Notwithstanding the above, however, in no event shall any notice be given which results in a Termination Date occurring prior to the last Day of the second (2nd) Contract Year under the Gas Purchase Contract.
4. Upon the exercise of the Option, Assignor shall be deemed to have absolutely and unconditionally assigned, set over, transferred and conveyed to Producer effective the Termination Date all of the right, title, interest and obligations of the Assignor in, to and under the Gas Purchase Contract, to have and hold the same to Producer for its sole use and benefit absolutely, and Producer shall be deemed to have accepted the said assignment effective the Termination Date and to have covenanted and agreed directly with Assignor and Buyer, and each of them, that Producer shall observe, perform, assume and be bound by all of the terms, provisions, covenants and agreements to be observed and performed by Assignor under the Gas Purchase Contract, to the same extent as if Producer had been a party thereto in the place and stead of Assignor, as of and from the Termination Date. In particular but without limiting the generality of the foregoing and

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notwithstanding the terms of the Natural Gas Purchase Contract, upon the exercise of the Option, Producer shall be bound by all of the terms and conditions of the Gas Purchase Contract relating to the volume and price of the gas to be sold to Buyer thereunder as of and from the Termination Date for the remainder of the term of the Gas Purchase Contract.

5. The Option shall automatically terminate if, prior to Buyer giving notice of exercise of the Option in accordance with Section 3, Assignor has entered into an alternate gas supply arrangement with another producer ("Replacement Producer") and concurrently with such arrangement, has provided Buyer with an agreement in the form of this Agreement duly signed by Assignor and Replacement Producer.
6. Notwithstanding the exercise of the Option and the assignment contemplated in this Agreement, Assignor agrees with Buyer that Assignor shall not be released of and from any of its covenants, obligations and liabilities under the Gas Purchase Contract, arising before the assignment.
7. Subject to Section 5, nothing contained in this Agreement shall be taken as authorization for or consent to any further assignment by Assignor or Producer of the right, title, interest and obligations of Assignor under the Gas Purchase Contract.
8. Unless expressly altered in this Agreement and subject to the provisions contained in this Section 8, all terms and conditions of the Gas Purchase Contract continue to be in full force and effect and shall enure to the benefit of and be binding upon the parties to this Agreement and their respective successors and permitted assigns. The parties agree that upon the exercise of the Option the Gas Purchase Contract shall be amended to the extent necessary in order to give effect to the assignment and the assumption by Producer in the place and stead of Assignor of all of its covenants, obligations and liabilities under the Gas Purchase Contract effective the Termination Date, such amendments to include the deletion therefrom of Sections 1.1(b), 1.1(c), 4.2 and 4.3 of the Gas Purchase Contract.
9. The address of Producer for all notices to be sent to it under this Agreement and under the terms of the Gas Supply Contract as assigned to it shall be as follows:

10. Unless otherwise defined in this Agreement, capitalized words and terms utilized in this Agreement shall have the same meanings as defined in the Gas Purchase Contract.

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11. Time is of the essence in this Agreement.
12. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the Province of British Columbia and the laws of Canada applicable therein. and the parties to this Agreement attorn to the jurisdiction of the courts of British Columbia.
13. Each of the parties hereto will at all times and from time to time and upon reasonable request do, execute and deliver all further assurances, acts and documents for the purpose of evidencing and giving full force and effect to the covenants, agreements and provisions in this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

BUYER: BC GAS UTILITY LTD.

A/B/M: ABC GAS MARKETING LTD.

PRODUCER: XYZ PRODUCER LTD.

**CUSTOMER: THE CUSTOMERS OF BC GAS
UTILITY LTD., by their agent, ABC GAS
MARKETING LTD.**

ABC GAS MARKETING LTD.

