



IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

A Request by Westcoast Energy Inc.
for Disclosure of the Undisclosed Premiums
in the Peaking Gas Purchase Agreements

BEFORE: P. Ostergaard, Chair)
L.R. Barr, Deputy Chair)
K.L. Hall, Commissioner) March 25, 1999
F.C. Leighton, Commissioner)

O R D E R

WHEREAS:

- A. On December 11, 1998, BC Gas Utility Ltd. ("BC Gas") applied to the Commission, pursuant to Section 45 of the Utilities Commission Act ("the Act"), for a Certificate of Public Convenience and Necessity ("CPCN") for the Southern Crossing Pipeline ("SCP") Project; and
- B. By letter dated January 8, 1999, BC Gas filed copies of Peaking Gas Purchase Agreements with British Columbia Hydro and Power Authority ("B.C. Hydro") and PG&E Energy Trading, Canada Corporation ("PG&E Energy Trading") dated November 27 and November 30, 1998, respectively, and requested that specific terms on pricing and supply arrangements be kept confidential on the basis that disclosure could adversely affect the price or supply of gas to BC Gas and its customers in the future; and
- C. In its February 11, 1999 submission Westcoast Energy Inc. ("Westcoast") requested that the Commission direct BC Gas to fully disclose the undisclosed premiums in the Peaking Gas Purchase Agreements and the "Specified Maximum" in the CTS Support Agreement; and
- D. Commission Order No. G-21-99 dated February 22, 1999, provided that BC Gas would, and other parties could, file submissions by March 3, 1999 regarding the Westcoast request for disclosure of the premiums in the Peaking Gas Purchase Agreements. Westcoast had until March 12, 1999 to reply; and
- E. BC Gas, B.C. Hydro and PG&E Energy Trading filed submissions dated March 3, 1999, with the Commission pursuant to Order No. G-21-99; and

- F. The Westcoast submission dated March 12, 1999, in reply to the March 3, 1999 submissions of B.C. Hydro and PG&E Energy Trading, stated that Westcoast had not received any submission from BC Gas on the matter; and
- G. Commission Order No. G-29-99 dated March 16, 1999, amended Order No. G-21-99 by changing the date by which Westcoast could file a written reply on the request for disclosure of the premiums in the Peaking Gas Purchase Agreements to Monday, March 22, 1999. The Commission also provided a copy of the BC Gas submission to Westcoast; and
- H. Westcoast filed a further submission dated March 22, 1999; and
- I. The Commission has considered the request for disclosure and the submissions that have been filed and has made a determination in the matter.

NOW THEREFORE the Commission orders as follows:

1. The request by Westcoast that the Commission direct BC Gas to fully disclose the undisclosed premiums in the Peaking Gas Purchase Agreements is approved only with respect to the previously undisclosed information in Sections 5.1 and 5.3 of the B.C. Hydro Peaking Gas Purchase Agreement, and is otherwise denied, for the reasons set out in the Reasons for Decision that form Appendix I to this Order.
2. BC Gas is directed to provide copies of Sections 5.1 and 5.3 of the B.C. Hydro Peaking Gas Purchase Agreement to Westcoast and all other Registered Intervenors in the SCP proceeding on or before Monday, March 29, 1999.

DATED at the City of Vancouver, in the Province of British Columbia, this 25th day of March, 1999.

BY ORDER

Original signed by:

Peter Ostergaard
Chair

Attachment

BC GAS UTILITY LTD.
SOUTHERN CROSSING PIPELINE PROJECT

Request by Westcoast Energy Inc. for
Disclosure of Premiums in Peaking Gas Purchase Agreements

REASONS FOR DECISION

1.0 INTRODUCTION

On January 8, 1999, BC Gas Utility Ltd. (“BC Gas”) filed copies of Peaking Gas Purchase Agreements (the “Peaking Agreements”) with British Columbia Hydro and Power Authority (“B.C. Hydro”) and PG&E Energy Trading, Canada Corporation (“PG&E Energy Trading”). BC Gas filed the Peaking Agreements as energy supply contracts pursuant to Section 71 of the Utilities Commission Act (the “Act”) and requested that certain pricing terms and supply arrangements be held confidential (Exhibit BCG-7, Tab WEI, IR 23). BC Gas severed the portions of the Peaking Agreements which it wished to keep confidential and on January 8, 1999, provided copies of these “blacked out” versions to Registered Intervenors in the Southern Crossing Pipeline proceeding. On February 5, 1999, pursuant to Section 71 of the Act, B.C. Hydro filed the “blacked out” version of its Peaking Agreement.

In response to a request from Westcoast Energy Inc. (“Westcoast”), Commission Order No. G-21-99 established a timetable for written submissions on the disclosure of the undisclosed premiums in the Peaking Agreements.

2.0 EVIDENCE

BC Gas does not provide a response to an Information Request regarding the “blacked out” sections of the Peaking Agreements (Exhibit BCG-7, Tab WEI, IR 24). Also, B.C. Hydro does not quantify the amount of the dispatch fee and premium in its Peaking Agreement (Exhibit BCH-5, p. 8). Nevertheless, BC Gas provides an estimate of the cost of peaking gas under the Peaking Agreements in an average year, which presumably includes the price premiums (Exhibit BCG-7, Tab BCUC, IR 10.1). BC Gas also indicates that the current cost of peaking supply at Sumas is higher than that of peaking gas bought under the Peaking Agreements (Exhibit BCG-7, Tab BCUC, IR 15.6).

In its Written Evidence, BC Gas states that it was unable to make arrangements with B.C. Hydro and PG&E Energy Trading for additional peaking supplies at the same terms as in the Peaking Agreements. BC Gas indicates that the reason for what it considers to be the attractive terms of the Peaking Agreements, was the

desire of the suppliers to avoid the 15-day curtailment of service under their Firm Tendered Transportation Service Agreements (the “Transportation Agreements”) (Exhibit BCG-11, pp. 7 and 8). PG&E Energy Trading states that it would have been unwilling to enter into the terms of its Peaking Agreement without the access to a new source of gas supply made available by the Transportation Agreement (Exhibit PG&EET-3, p. 3).

3.0 SUBMISSIONS

BC Gas submits that confidentiality of commercially sensitive pricing arrangements in gas supply agreements allows BC Gas, and other gas distribution utilities regulated by the Commission, to maintain a competitive negotiating position in dealing with suppliers of natural gas. Disclosure of commercially sensitive information would impair the ability of BC Gas to bargain with suppliers for terms that will benefit the core market customers of BC Gas. In the case of the Peaking Agreements, BC Gas argues that another supplier of peaking or seasonal gas might make use of information, which to date has been kept confidential, to its advantage in negotiating for the supply of other gas to BC Gas. Also, other purchasers of gas would be able to evaluate the terms obtained by BC Gas and use that information to the potential detriment of BC Gas when seeking to obtain supplies of gas for which BC Gas was competing.

B.C. Hydro supports the request for confidentiality because peaking gas services are competitive services, and disclosure of pricing information contained in the agreement could prejudice future negotiations with others by both B.C. Hydro and BC Gas. Disclosure would in effect set the maximum price for such services. B.C. Hydro also argues that the premiums would indirectly reveal confidential information about B.C. Hydro projects and costs. Such information would be valuable to competitors in the electricity generation business and to suppliers of energy to B.C. Hydro. B.C. Hydro submits that disclosure would be contrary to B.C. Hydro’s objectives to maintain the lowest cost rates for its customers.

PG&E Energy Trading states that the undisclosed information should be kept confidential because disclosure of such commercial terms is not common practice in the industry, and would make available to competitors of PG&E Energy Trading key provisions with respect to pricing and supply arrangements. Such knowledge would give those competitors an unfair advantage in negotiations with PG&E Energy Trading, and would impair its ability to negotiate effectively with third parties. PG&E Energy Trading also argues that the information disclosed in BC Gas’ filing is sufficient with respect to the nature of the Peaking Agreements, and contains sufficient detail to allow all interested parties to effectively participate in discussions concerning them. Finally, PG&E Energy Trading submits that the harm done to it by disclosure would outweigh any possible public interest benefits.

Westcoast states that, while the Peaking Agreements have been filed under Section 71 of the Act, they have also been filed in support of BC Gas' new CPCN Application for the SCP and are an integral part of BC Gas' new justification for the project. Section 71(5) of the Act provides that an energy supply contract filed under Section 71 "must be made available to the public unless the Commission considers that disclosure is not in the public interest". Westcoast argues that the public interest in this particular case, is not confined to the commercial interests of B.C. Hydro and PG&E Energy Trading. Westcoast notes that BC Gas claims that the Peaking Agreements add \$10 million of net present value benefits to the SCP project, and submits BC Gas should not be able to claim such benefits unless it is prepared to disclose all relevant information and assumptions necessary to substantiate the calculation of such benefits. In this case, where BC Gas is relying on the Peaking Agreements to support its SCP application, it is Westcoast's submission that the public interest requires complete disclosure of the terms of the agreements.

Westcoast states that while the parties to the agreements assert disclosure of the price premiums would reveal "confidential information" which is "commercially sensitive", they provide little further explanation. Westcoast also notes that BC Gas has deleted whole paragraphs and argues that there may be provisions in those paragraphs, in addition to the amount of premiums per se, which are relevant to an assessment of the value of the peaking arrangements.

4.0 COMMISSION DETERMINATION

The Commission has considered each of the severed, or undisclosed, components of the Peaking Agreements with B.C. Hydro and PG&E Energy Trading and finds that they include commercially sensitive information. In considering most energy supply contracts, the Commission has determined that the commercially sensitive information should be held confidential.

In this instance, the Commission has evaluated the undisclosed contents of the B.C. Hydro and PG&E Energy Trading Peaking Agreements against two criteria: first, the importance of the undisclosed information to the SCP proceeding and second, the requirement for confidentiality of that information on the basis of commercial sensitivity. The Commission has reviewed the undisclosed contents of the two agreements and has determined that the only undisclosed information that is relevant to the SCP proceeding is information that relates to BC Gas' assertions of the net present value of the Peaking Agreements in support of the SCP project. This information is contained in Sections 5.1 and 5.3 of the B.C. Hydro agreement and in Section 5.1 of the PG&E Energy Trading agreement. The Commission has evaluated each of these sections to decide if the value of the undisclosed information to the SCP proceeding outweighs the potential for commercial harm to BC Gas, B.C. Hydro and PG&E Energy Trading.

In weighing the merits of confidentiality for commercially sensitive information, compared with public disclosure in the evaluation of the SCP project, the Commission considers that the potential commercial harm to B.C. Hydro and BC Gas is less severe than in the case of PG&E Energy Trading. BC Gas and B.C. Hydro are public utilities regulated by the Utilities Commission. Given the information already in evidence in this proceeding, disclosure of the premiums in the Peaking Agreements would not appear to cause significant harm to the commercial interest of BC Gas. The primary purpose of B.C. Hydro's natural gas contracting is to provide natural gas supply to thermal generating units supplying power to B.C. Hydro. As such, B.C. Hydro, in contrast with PG&E Energy Trading, is likely to have more non-gas alternatives that it can use when BC Gas calls on peaking gas, and hence would have less exposure to a gas supplier or purchaser who was attempting to use disclosed information to gain commercial advantage.

In the case of PG&E Energy Trading, the gas supply is primarily for resale and the disclosure of Section 5.1 of this commercial energy trading company's Peaking Agreement could impose much greater harm.

In the case of the B.C. Hydro Peaking Agreement, the Commission finds that although the undisclosed information in Sections 5.1 and 5.3 is commercially sensitive, on balance disclosure for the purposes of the SCP proceeding outweighs the potential commercial harm to B.C. Hydro. BC Gas is, therefore, directed to disclose these sections of the B.C. Hydro Peaking Gas Purchase Agreement in their entirety.

With respect to Section 5.1 of the PG&E Energy Trading agreement, the Commission finds that in considering the competing interest of confidentiality of commercially sensitive information and public disclosure for the purposes of the SCP review, the public interest is best served by keeping this information confidential.