



LETTER NO. L-49-03

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Log No. 4177

VIA FACSIMILE

October 21, 2003

To: Registered Intervenor

Re: Terasen Gas (Vancouver Island) Inc. ("TGVI")
Application for Reconsideration of the Decision
of the British Columbia Utilities Commission ("BCUC") dated June 5, 2003

On September 30, 2003 counsel for British Columbia Hydro and Power Authority ("BC Hydro") filed an Application for Reconsideration of the Commission's June 5, 2003 Decision into the 2002 Rate Design Application of Centra Gas British Columbia Inc. (now TGVI). The Application (attached) identifies what BC Hydro considers to be two issues where the Commission has made an error in fact, or alternatively, in law. The first issue concerns the calculation of the residual capacity of the transmission system for the purpose of allocating transmission costs. The second issue relates to the allocation of peaking costs.

For each issue raised by BC Hydro, Intervenor

- Intervenor
- are invited to provide comments to the Commission that address the following specific questions:
- Should there be reconsideration by the Commission?
 - If there is to be reconsideration, should the Commission hear new evidence and should new parties be given the opportunity to present evidence?
 - If there is to be reconsideration, should it focus on the items from the application for reconsideration, a subset of these items or additional items?
 - Are there any other pertinent facts or issues regarding BC Hydro's request that the Commission reconsider the Decision and vary it accordingly?

Intervenor

Intervenor's comments should address whether the threshold for reconsideration has been met, rather than the substance of the issue. For a reconsideration hearing to proceed, the reconsideration applicant is required to meet the following criteria:

1. The claim of error appears to be substantiated on a prima facie basis; and
2. The error has significant material implications.

If the Commission agrees to reconsider its Decision, the parties will be allowed to address the substance of the issues that the Commission approves for reconsideration.

A copy of the Reconsideration and Appeals section of the Commission's Participant's Guide, which identifies the criteria that the Commission generally applies to determine whether a reasonable basis exists for allowing reconsideration, is enclosed. Intervenor's comments are to be provided to the Commission and copied to BC Hydro and other Intervenor by October 31, 2003. BC Hydro is to respond to Intervenor comments by November 7, 2003.

Yours truly,

Original signed by:

Robert J. Pellatt

JWF/rt

Attachments

cc: Mr. Russell W. Lusk
Borden Ladner Gervais LLP
Mr. Richard Stout
BC Hydro
Mr. Geoff Higgins
Terasen Gas (Vancouver Island) Inc.
Mr. Cal Johnson
Terasen Gas (Vancouver Island) Inc.
c/o Fasken Martineau DuMoulin

Reconsideration and Appeals

An intervenor's role does not necessarily end with the announcement of the Commission's decision. If the utility or an intervenor believes the Commission made a significant error, they may raise the issue again for further scrutiny by way of a reconsideration or an appeal. It is important to realize, however, that an intervenor cannot have a decision reconsidered or appealed merely because he or she is unhappy with the result of the decision. Rather, the intervenor must be able to identify a specific error which the Commission made in arriving at its decision.

The *Utilities Commission Act* provides three remedies for parties who wish to challenge a Commission decision. An application can be made to the Commission to reconsider its own decision under Sections 99 and 100 of the *Utilities Commission Act*. Under Section 101(1), an appeal of the decision can be made to the Court of Appeal for British Columbia on the grounds that the Commission has made an error of law or jurisdiction in reaching its decision. A third remedy is a complaint to the Ombudsman. If a party is dissatisfied with the Commission's procedure, a complaint can be made. However, only procedural issues will be reviewed by the Ombudsman.

Commission Reconsideration

An application for reconsideration by the Commission proceeds in two phases. In the interests of both efficiency and fairness, and before the Commission proceeds with a determination on the merits of an application for reconsideration, the application undergoes an initial screening phase. In this phase the applicant must establish a *prima facie* case sufficient to warrant full consideration by the Commission. The first phase, therefore, is a preliminary examination in which the application is assessed in light of some or all of the following questions:

- Should there be a reconsideration by the Commission?
- If there is to be a reconsideration, should the Commission hear new evidence and should new parties be given the opportunity to present evidence?
- If there is to be a reconsideration, should it focus on the items from the application for reconsideration, a subset of these items or additional items?

The Commission then issues an order which invites registered intervenors and interested parties to comment on the application for reconsideration by addressing those questions set out in the order. The order also specifies the process to be followed which is either by written submissions and reply by the applicant or by written submissions and oral argument.

After the first phase evidence has been received, the Commission generally applies the following criteria to determine whether or not a reasonable basis exists for allowing reconsideration:

- the Commission has made an error in fact or law;
- there has been a fundamental change in circumstances or facts since the Decision;
- a basic principle had not been raised in the original proceedings; or
- a new principle has arisen as a result of the Decision.

In addition, the Commission will exercise its discretion to reconsider, in other situations, wherever it deems there to be just cause.

Where an error is alleged to have been made, in order to advance to the second phase of the reconsideration process, the application must meet the following criteria:

- the claim of error is substantiated on a prima facie basis; and
- the error has significant material implications.

If necessary, the reconsideration proceeds to the second phase where the Commission hears full arguments on the merits of the application. The applicant and the intervenors may appear before the Commission at this stage to argue why the original decision should or should not be varied or overturned. Finally, after considering these arguments, the Commission renders its decision on the reconsideration application.

The Court of Appeal for British Columbia

The second means of challenging a Commission decision is by way of the Court of Appeal for British Columbia. Unlike the reconsideration process, however, the court is quite restricted in terms of the nature of the errors which it can address. The Court of Appeal for British Columbia will consider only alleged errors of law or jurisdiction.

An appeal to the Court must be launched within 30 days after the Commission has issued its Decision. However, it is necessary first to seek the court's leave for the appeal. The court will normally grant leave only if other remedies have been exhausted. Therefore, the appellant should also apply for a reconsideration by the Commission.

If a participant chooses to pursue an appeal, the procedures become quite complex and formal. Normally, lawyers become involved at this stage, as their knowledge of court procedures and legal arguments tends to be very useful. It is not necessary, however, to hire a lawyer in order to make an appeal in court.

The Ombudsman

If a customer is not satisfied with the Commission's handling of a complaint, he or she may contact the provincial Ombudsman's Office to review the process used. The Ombudsman has the authority to review the processes used by the Commission, including the process for resolving complaints. The Ombudsman generally has the power to recommend reconsideration of a matter because of an error in procedure, but cannot overturn a Commission decision.

**Figure 4-2
OPPORTUNITIES AND MECHANISMS
FOR PARTICIPATING IN COMMISSION ACTIVITIES**

