BRITISH COLUMBIA
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ORDER
NUMBER G-66-06

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

and

Application by Pacific Northern Gas Ltd.
(PNG-West and Granisle)
for Approval of 2006 Rates

BEFORE: L.A. Boychuk, Panel Chair
and Commissioner June 9, 2006

O R D E R

WHEREAS:

A. On November 30, 2005, Pacific Northern Gas Ltd. ("PNG", "PNG-West" and "Granisle") filed for approval of its 2006 Revenue Requirements Application (the "Application") to amend its rates on an interim and final basis, effective January 1, 2006, pursuant to Sections 89 and 58 of the Utilities Commission Act (the "Act"); and

B. The Application proposes to increase delivery rates to all customers, except Methanex Corporation ("Methanex") and West Fraser-Kitimat ("West Fraser"), as a result of decreases in cost of service and decreased deliveries to most customer classes. Methanex and West Fraser have contracts in place that provide for fixed demand charges over the term of the contracts; and

C. Methanex closed its methanol/ammonia complex in Kitimat in November 2005 and the Methanex contract terminated effective March 1, 2006 ("Methanex closure"). PNG's 2006 margin forecast includes fixed demand charges for January and February 2006 under the terms of the Methanex contract; and

D. In its Application PNG forecasts a 2006 revenue deficiency of approximately $5.2 million, which is mainly due to a reduction in revenues of approximately $10.4 million resulting from the Methanex closure. This revenue reduction is partly offset by PNG crediting to its cost of service $5.6 million from the contract termination payment of $23.3 million that Methanex paid to PNG on February 28, 2006; and

E. Following a consideration of submissions on the review process for the Application the Commission, by Order No. G-134-05 dated December 16, 2005, scheduled an NSP for the review of the PNG Application and established a Regulatory Timetable as proposed by PNG and supported by the BC Old Age Pensioners Organization et al. ("BCOAPO"); and

F. Order No. G-134-05 also approved for PNG an interim refundable rate increase in the delivery rates for all classes of customers as filed in the Application effective January 1, 2006, except Methanex and West Fraser. That Order also approved permanent Gas Supply Cost Recovery Rates for sales service customers effective January 1, 2006. The Order also approved the PNG-West company use rate of $0.305/GJ as an interim rate effective January 1, 2006; and

G. The Negotiated Settlement discussions were held in Vancouver on March 13 to 15, 2006 and a proposed Settlement Agreement that would reduce PNG's revenue deficiency to $4.091 million was circulated to the Intervenors and PNG for comments; and

H. Following a review of the comments on the proposed Settlement Agreement, the Commission Panel considered that a further process should be established to review and consider Item 1, "Methanex Termination Payment", of the proposed Settlement Agreement. Accordingly, by Order No. G-40-06 dated April 7, 2006, the Commission approved a BCOAPO request for an additional round of information requests and established a timetable for information requests, information responses, submissions by PNG, Intervenor submissions and a PNG reply; and

I. By Letter No. L-19-06 dated May 17, 2006, the Commission Panel sought further specific written submissions from those parties who had submitted written argument based on the evidentiary record established in this proceeding. Letter No. L-19-06 contained Commission Panel questions and established a timetable for written responses by PNG and BCOAPO to questions relating to their submissions, the filing of a response by BCOAPO and Mr. Childs and a reply by PNG. The Commission Panel indicated that it would consider the additional submissions based on the evidentiary record for this proceeding prior to making a decision on PNG's Revenue Requirements Application and the proposed Negotiated Settlement; and

J. The Commission Panel has reviewed the submissions made by PNG, BCOAPO and Mr. Childs, the proposed Settlement Agreement for PNG-West and the letters of comment received from the Intervenors; and

K. The Commission Panel has determined that in view of the position of BCOAPO, the Commission Panel does not have a proposed Settlement Agreement before it for approval and it therefore is not in a position, as outlined in the attached Reasons for Decision, to render a decision without further process, including a decision in relation to Item 1 of the proposed Settlement Agreement; and

L. The Commission Panel concludes that before establishing a further process, the views of parties must be obtained in an effort to establish the most effective and efficient process possible at this stage, including submissions on appropriate steps and timing for either an oral and/or written hearing process, the issues to be considered, confirmation of the issues that may have been resolved during the NSP, and the nature of any evidence to be filed and justification therefore.

…/3

NOW THEREFORE the Commission orders as follows:

1. BCOAPO and other registered intervenors are to file comments related to further process, issues and evidence by Friday, June 16, 2006.

2. PNG is to file reply comments by Monday, June 19, 2006.

DATED at the City of Vancouver, in the Province of British Columbia, this 13th day of June 2006.

BY ORDER

L.A. Boychuk
Panel Chair and Commissioner

Attachment

An Application by Pacific Northern Gas Ltd.
(PNG-West and Granisle)
for Approval of 2006 Rates

REASONS FOR DECISION

1.0 THE APPLICATION

On November 30, 2005, Pacific Northern Gas Ltd. ("PNG", "PNG-West" and "Granisle") filed for approval of its 2006 Revenue Requirements Application (the "Application") to amend its rates on an interim and final basis, effective January 1, 2006, pursuant to Sections 89 and 58 of the Utilities Commission Act (the "Act"). The Application proposes to increase delivery rates to all customers, except Methanex Corporation ("Methanex") and West Fraser-Kitimat ("West Fraser"), as a result of decreases in cost of service and decreased deliveries to most customer classes. Methanex and West Fraser have contracts in place that provide for fixed demand charges over the term of the contracts.

Methanex closed its methanol/ammonia complex in Kitimat in November 2005 and the Methanex contract terminated effective March 1, 2006 ("Methanex closure"). PNG's 2006 margin forecast includes fixed demand charges for January and February 2006 under the terms of the Methanex contract. In its Application, PNG forecasts a 2006 revenue deficiency of approximately $5.2 million, which is mainly due to a reduction in revenues of approximately $10.4 million resulting from the Methanex closure. This revenue reduction is partly offset by PNG crediting to its cost of service $5.6 million from the contract termination payment of $23.3 million that Methanex paid to PNG on February 28, 2006.

2.0 THE REGULATORY PROCESS

PNG had discussions regarding the review process for the Application with the BC Old Age Pensioners Organization et al. ("BCOAPO") and staff of the Ministry of Energy, Mines and Petroleum Resources, who were the active intervenors in the review of the PNG 2005 revenue requirements application (the "Parties"). By letter dated December 13, 2005, PNG advised the Commission that the Parties were of the view that the Application should be subject to a Negotiated Settlement Process ("NSP") and provided a draft Regulatory Timetable for information requests, information responses, a 2005 year-end update to the Application and NSP discussions commencing the week of March 13, 2006 (Exhibit B-2). The draft Regulatory Timetable did not include a provision for Intervenor evidence and related information requests and responses. On December 14, 2005 BCOAPO filed a letter of support for an NSP and PNG's proposed Regulatory Timetable (Exhibit E-1).

By Order No. G-134-05 dated December 16, 2005 (Exhibit A-1), the Commission approved for PNG an interim refundable rate increase in the delivery rates for all classes of customers as filed in the Application effective January 1, 2006, except Methanex and West Fraser. Order No. G-134-05 also scheduled an NSP for the review of the PNG Application and established a Regulatory Timetable for information requests and information responses with NSP discussions to commence on March 13, 2006 as proposed by PNG and supported by BCOAPO.

3.0 THE PROPOSED SETTLEMENT AGREEMENT

The Negotiated Settlement discussions were held in Vancouver on March 13 to 15, 2006. The following Intervenors participated: BCOAPO, Robin Austin, MLA-Skeena, Mayor Talstra of Terrace, Neil Helland and counsel for the Haisla Nation. Following the conclusion of the negotiations, a proposed Settlement Agreement that would reduce PNG's revenue deficiency to $4.091 million was circulated to those who participated in the settlement discussions. By letter dated March 28, 2006, PNG advised the Commission that the final copies of the proposed Settlement Agreement and letters of comment would be forwarded to the Commission for review and made public on March 31, 2006. The letter asked the Commission to issue an order approving the proposed Settlement Agreement on an interim or permanent basis by April 7, 2006 to coincide with the Gas Supply Cost Recovery Rates that were approved effective April 1, 2006. The letter also advised that "one of the parties may be making a request to have one matter dealt with by the Commission that would not change the overall 2006 cost of service agreed to for the PNG-West division". The proposed Settlement Agreement included Bill Comparison Tables for residential and small commercial customers that indicated the proposed rates for delivery charges and gas supply cost recovery rates effective April 1, 2006 would be less than the rates that prevailed at the end of 2005.

Letters of comment on the proposed Settlement Agreement were received from the BCOAPO, the Haisla Nation, Robert W. Childs, Mayor Talstra of Terrace, Robin Austin, MLA-Skeena and the Kitimat Chamber of Commerce. In its letter of comment dated March 29, 2006, BCOAPO advised that it did not accept the proposed Settlement Agreement and in particular Item 1 which "represents the fundamental gist of the agreement in that it purports to transfer the entire shortfall arising from Methanex leaving the PNG-West system to the residential and small commercial customers." BCOAPO stated that it did not have any objection to the remainder of the proposed Settlement Agreement and had no objection to PNG's request to have the rates that would arise from the proposed Settlement Agreement approved on an interim basis, pending resolution of the allocation of the Methanex revenue shortfall. In the letter, BCOAPO expressed the BCOAPO position as follows: "[It] is BCOAPO's position that the question of the proper allocation of the revenue shortfall arising from Methanex leaving the PNG-West system should properly be addressed by a Commission panel and should not be the subject of a negotiated settlement." BCOAPO also expressed the view that an oral hearing and a full 2006 Revenue Requirements proceeding was not necessary. It suggested that the issue could be resolved in a written hearing process with an additional round of information requests to PNG-West to ensure that all necessary and appropriate evidence is before the Commission.

Robert Childs' comments were similar to those of BCOAPO, except that he recommended that "the 06/01/01 Interim Rates remain in effect until a Final Commission Ruling is made." The Haisla Nation accepted PNG's commitment to work with the Haisla Nation and took no position on the remainder of the proposed Settlement Agreement. Mayor Talstra in his letter of comment dated April 5, 2006, found the proposed Settlement Agreement to be acceptable provided that the new rates, including gas supply costs charges remain in effect throughout 2006. In his letter dated April 6, 2006, Robin Austin did not agree with PNG's proposal that the lost revenue from the Methanex contract should be downloaded to residential and commercial customers and requested a written hearing to resolve this issue. The Kitimat Chamber of Commerce in its email dated April 6, 2006 repeated its protest to PNG's increased delivery charges and asked for the review process to continue.

By letter dated April 3, 2006, PNG requested that the Commission approve rates arising from the proposed Settlement Agreement on either a permanent basis or on an interim basis pending review of the issue raised in BCOAPO's letter of comment dated March 29, 2006. In support of its request that the Commission approve the 2006 NSP rates on a permanent basis, PNG cited previous Commission decisions on the allocation of revenue reductions to PNG's customers and suggested that by allocating the revenue reduction to the remaining customers the Commission would carry out its statutory duty consistent with past practice. PNG further submitted that allocating any of the remaining revenue deficiency to PNG's shareholders would contravene Section 59(5)(b) of the Act. PNG recommended that the Commission issue an Order on April 7, 2006 reconfirming its past practice and approving the NSP 2006 rates on a permanent basis. In the alternative, PNG submitted that should the Commission decide to conduct a hearing as requested by BCOAPO, then the BCOAPO "has effectively become the applicant in this situation" and should be directed to file evidence upon which all parties should be given an opportunity to issue information requests to BCOAPO.

By letter dated April 4, 2006, BCOAPO commented on PNG-West's brief review of past Commission decisions and submitted that the question of how section 59 of the Act should be applied in PNG-West's current situation is a matter that requires determination by the Commission after hearing submissions from appropriate parties. BCOAPO agreed that the record was "essentially complete". While it did not propose to adduce further evidence, BCOAPO did request further Commission process on the main issue. The request involved a round of information requests to ensure that relevant information, which was not included in the formal record but referred to in the course of the NSP by PNG, became part of the public record. BCOAPO acknowledged that absent this procedural step, this information could not be referred to by the parties given the confidentiality requirements of the NSP.

The BCOAPO letter concluded with the comment: "In BCOAPO's submission, its suggested process would result in a more focused and efficient consideration of the main issue than that proposed by PNG-West in its April 13, 2006 letter."

The Commission reviewed the proposed Settlement Agreement for PNG-West and the letters of comment received. It accepted the BCOAPO request for a further process. By Order No. G-40-06, the Commission established a process to review and consider Item 1, "Methanex Termination Payment", of the proposed Settlement Agreement. Order No. G-40-06 provided for an additional round of Intervenor information requests to PNG-West and set a filing deadline for Intervenor requests of April 18, 2006 with a PNG information response deadline of April 24, 2006. Order No. G-40-06 also reminded the parties that in accordance with the Commission's NSP Guidelines, settlement discussions are without prejudice and confidential. Unless otherwise agreed to by the parties involved in the NSP, the additional information requests of BCOAPO and any other Intervenors, were to be based on the evidence filed in the proceeding and publicly available information. The Commission did not agree with PNG-West's characterization of BCOAPO as an effective applicant in this situation and, accordingly, the Commission did not direct BCOAPO to file evidence. Order No. G-40-06 also set a timetable for submissions related to Issue 1 with a PNG filing deadline of April 28, 2006, followed by Intervenor submissions of May 4, 2006 and a PNG Reply of May 9, 2006.

4.0 SUBMISSIONS ON ITEM 1 OF THE PROPOSED SETTLEMENT AGREEMENT

PNG filed its submission on April 28, 2006. PNG states in its April 28, 2006 submission that: "…there is a statutory obligation upon the Commission to fix rates that permit PNG the opportunity to recover all of its costs of providing service, including the fair rate of return on common equity approved for PNG by the Commission. Rates that are insufficient to enable a utility to recover its cost, including a fair and reasonable return, are unjust and unreasonable under the Utilities Commission Act." PNG cites as the leading case authority *Hemlock Valley Electrical Services v. British Columbia (Utilities Commission)* (1992), 66 B.C.L.R (2d) 1 (C.A.) which, in turn, is based on the Supreme Court of Canada's decision in *British Columbia Electric Railway Co. Ltd. v. Public Utilities Commission of BC,* [1960] S.C.R. 837 ("*Hemlock Valley*" and "*B.C. Electric*", respectively). In PNG's view these decisions focus on what are now substantially the provisions found in Sections 59(1), (4), (5) and 60(1) of the Act (PNG April 28, 2006 submission, paragraphs 4-12).

PNG also quotes the Commission's findings from a 2002 PNG Revenue Requirements Decision with respect to a 2002 revenue reduction from the methanol plant shutdown in 2001 and a new negotiated agreement with Methanex (the "2002 Decision"). The 2002 Decision noted that the allocation of the revenue deficiency from Methanex to the other customers is consistent with previous actions of the Commission. The 2002 Decision also found that rates to all customer classes remained affordable at that time (PNG April 28, 2006 submission, paragraph 17).

PNG concludes its submission as follows:

> 23. To allocate any of the net revenue deficiency resulting from the termination of the Methanex contract to PNG's shareholders, as advocated by BCOAPO, would contravene sections 59 and 60 of the Utilities Commission Act and be inconsistent with previous Commission decisions.
>
> 24. PNG requests that the Commission approve the March 15, 2006 Settlement Agreement in its entirety, including Item 1.

The BCOAPO filed its Reply Argument on May 4, 2006. BCOAPO agrees that *Hemlock Valley* and *B.C. Electric* are applicable to the regulation of utilities in British Columbia; however, it submits that the Commission must consider how these decisions should be applied to a utility in PNG's situation. BCOAPO quotes from the judgment of Martland J. in *B.C. Electric* where he states in part, "The rate to be imposed [under what is now section 60 of the Act having regard to what are now subsections 59(5)(a) and (b) of the Act] shall be neither excessive for this service nor insufficient to provide a fair return on rate base. There must be a balancing of interests." BCOAPO further submits that ***Hemlock Valley*** and ***B.C. Electric*** must be considered in the light of ***ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)***, 2006 SCC 4 ("***ATCO***"). BCOAPO argues that the Supreme Court in Canada in ***ATCO*** **"**…has appropriately set out a balance between shareholders and ratepayers in the allocation of the revenue requirement shortfall that the utility faces" and urges the Commission to follow the approach in ***ATCO*** (BCOAPO May 4, 2006 submission, paragraphs 27-38).

BCOAPO concluded its submission as follows:

> 45. For all these reasons BCOAPO submits that approval of Item 1 of the Settlement Agreement would result in rates to residential customers which are not just and reasonable.
>
> 46. The Commission should not approve Item 1 of the Settlement Agreement.

Mr. Childs also filed a submission on Item 1. He expressed the view that the remaining customers should not be solely responsible for the revenue shortfall arising from the Methanex closure. At the end of his submission, he made the following suggestions:

> (1) PNG recover 100% of their audited costs to physically supply gas to customers.
>
> (2) The rest of the Methanex closure shortfall should be shared equally between the PNG shareholders and the remaining customers, provided that the gas delivery charge does not exceed:
>
> (i) the existing proposed average increases in Hydro, ICBC insurance rates or property taxes.
> (ii) the cost of inflation by more than 100%.

PNG filed its Reply Submission on May 9, 2006. It noted that with the exception of Item 1, all other aspects of the proposed Settlement Agreement had been agreed to by the parties. It took issue with a number of the factual assertions made by the BCOAPO, distinguished ***ATCO*** on the basis that ***ATCO*** did not involve the setting of just and reasonable rates and submitted that ***Hemlock Valley*** and ***BC Electric*** remain the governing law. It pointed out that ***Hemlock Valley*** was cited with approval in ***TransCanada Pipelines Ltd. v. Canada (National Energy Board)***, [2004] FCA 149.

PNG also took issue with Mr. Childs' submissions relating to the interpretation of Sections 59 and 60 of the Act and submitted that a number of Mr. Childs' submissions were inaccurate or irrelevant. PNG concluded its Reply as follows:

> 25. To allocate any of the net revenue deficiency resulting from the termination of the Methanex contract to PNG's shareholders, as advocated by BCOAPO and Mr. Childs, would result in rates that do not permit PNG to recover its costs of providing service and would therefore contravene sections 59 and 60 of the Utilities Commission Act.
>
> 26. PNG reiterates its request that the Commission approve the March 15, 2006 Settlement Agreement in its entirety, including Item 1.

By Letter No. L-19-06, the Commission Panel sought further specific written submissions from those parties who had submitted written argument based on the evidentiary record established in the proceeding. Letter No. L-19-06 contained Commission Panel questions and requested that PNG and BCOAPO, as appropriate, file further written responses that relate to their written submissions, by Monday, May 29, 2006 and that BCOAPO and Mr. Childs, if he so wished, file a response by Friday, June 2, 2006. The letter also provided for PNG to file a reply by Wednesday, June 7, 2006. The Commission Panel indicated that it would consider these additional submissions based on the evidentiary record for the proceeding prior to making a decision on PNG's Revenue Requirements Application and the proposed Negotiated Settlement.

5.0 RESPONSES TO LETTER NO. L-19-06 AND SUBMISSIONS

PNG, BCOAPO, and Mr. Childs all responded to the questions in Letter No. L-19-06 within the times provided. The Commission Panel only intends to refer here to certain answers of BCOAPO and the PNG reply to those answers. In response to Question 1, ["Is it the fact that parties have agreed to all aspects of the proposed Settlement Agreement, but for Item 1, that brings *Hemlock Valley* into operation?"], BCOAPO's response was "No." It stated that Item 1 was " clearly the major [d]river of the proposed revenue requirement increase" that other items were secondary and that by agreeing to those other items the parties could avoid a full hearing into all aspects of the Application and focus on the major issue. Significantly, BCOAPO states that "…the evidentiary record in this proceeding is not sufficient to allow the Commission to make an appropriate apportionment between the remaining ratepayers and PNG's shareholders of the revenue deficiency resulting from Item 1." It submits evidence with respect to the appropriate return on equity risk premium for PNG post-Methanex and on the methodology for determining an appropriate allocation of the revenue deficiency is now required (BCOAPO Response, May 29, 2006, pages 1 and 2).

In partial response to Question 5 in Letter No. L-19-06 ["… the Commission remains unclear and seeks clarification related to the level of apportionment that BCOAPO suggests would be appropriate, the principles or methodology BCOAPO suggests should be applied, and the evidentiary basis on the record of this proceeding upon which BCOAPO relies to allow the Commission to do so."], after stating its position that there is no proposed Settlement Agreement before the Commission for approval, BCOAPO submits that once the Commission has made its decision on Item 1, the NSP should reconvene and:

> If a Settlement Agreement is reached it would then be presented to the Commission for approval. If no Settlement Agreement is reached the matter would then proceed to an appropriate hearing or, alternatively, it would be open to PNG to amend its application.

The BCOAPO once again submits in its response to Question 5 that there is an insufficient evidentiary record before the Commission to make a decision (BCOAPO Response May 29, 2006, page 2).

In paragraph 1 of its response dated June 2, 2006, BCOAPO again reiterates its position that there is no proposed Settlement Agreement before the Commission at this time.

In its Reply Submission dated June 6, 2006, PNG addresses BCOAPO's most recent submissions on the absence of a settlement and the need for further evidence and process. In paragraph 7 of its Reply under the heading **"BCOAPO's Shifting Position"**, PNG provides the following summary of the BCOAPO position prior to May 29, 2006**:**

7. Prior to its May 29, 2006 filing, BCOAPO's position can be summarized in its own words as follows:

(a) BCOAPO "does not accept Item 1 of the Negotiated Settlement Agreement", <u>but</u> "does not have any objection to the remainder of the proposed Negotiated Settlement Agreement."

(March 29, 2006 letter, page 1)

(b) "it is BCOAPO's position that the question of the proper allocation of the revenue shortfall arising from Methanex leaving the PNG-West system should properly be addressed by a Commission panel."

(supra, page 2)

(c) "BCOAPO is prepared to cooperate in expediting the resolution of this issue. It does not believe that an oral hearing is necessary; certainly a full 2006 Revenue Requirement proceeding is not necessary."

(supra, page 2)

(d) "BCOAPO submits that this issue can appropriately be resolved in a written hearing process, provided that parties are given an opportunity to address an additional round of information requests to PNG-West to ensure that all necessary and appropriate evidence is before the Commission."

(supra, page 2)

(e) "BCOAPO agrees that the record in this proceeding is essentially complete. It would not propose to adduce further evidence. However, it is requesting a limited round of information requests, simply for the purpose of ensuring that relevant information, which is not included in the formal record but which was referred to in the course of settlement negotiations by PNG is a part of the record."

(April 4, 2006 letter, page 2)"

At paragraph 9 of its June 6, 2006 Reply, PNG comments as follows:

> "It is disingenuous for BCOAPO to have asked the Commission to make a decision with respect to Item 1 pursuant to this written proceeding after telling the Commission it has no objection to the remainder of the Settlement Agreement, and to then turn around and say it is not in a position to make "meaningful submissions" to the Commission with respect to Item 1, that the Commission now needs to embark on some further process to determine this issue and that after the Commission makes a decision the settlement process should "reconvene" taking into account the Commission's decision…".

In PNG's submission, no further information is needed for the Commission to make a decision on Item 1 and BCOAPO's relative risks theory to apportion the revenue deficiency has no merit (PNG's June 6, 2006 Reply, paragraphs 10-14).

In the "**Conclusion**" of its June 6, 2006 Reply, PNG requests a timely decision by the Commission, without the additional process that BCOAPO is asking for since six months have passed since PNG filed its Application and it has credit facilities that are maturing on July 24, 2006.

6.0 COMMISSION DETERMINATION

The most recent BCOAPO submissions make it clear that there is no agreement before the Commission Panel to approve. Despite how one might construe the BCOAPO's previous statements, the Commission Panel must, at a minimum, accept the position of the primary active Intervenor in the NSP that there is no agreement. The Commission Panel is not prepared to impose a settlement on the parties in this proceeding, which would be the effective result if it accepted the PNG submissions on the proposed settlement. This means that further process is required prior to a decision of the Panel on the Application.

Having determined that a further process is required, the questions then become the nature and extent of such process. Subject to the following comments, the Commission Panel seeks the views of the parties before embarking on such a process in an attempt to ensure that the further process is both efficient and effective.

The Commission Panel is not persuaded that BCOAPO's suggestion that the Panel make a decision on the allocation of the revenue requirement shortfall and then reconvene the negotiated settlement process to take into account the Panel's decision would be an efficient and effective way to proceed at this time. Such a ruling would be tantamount to an "advance ruling" which the Commission Panel is not prepared to make. This is particularly so where there is a risk that any further negotiations might not lead to an agreement and there is the potential for submissions that the "advance ruling" is not binding on another Commission Panel.

On the basis of BCOAPO's May 29 and June 2, 2006 submissions, it appears that Item 1 and now Item 17, "Return on Equity and Capital Structure" of the proposed Settlement Agreement are the aspects of the Application which, in BCOAPO's view, remain in dispute. In an effort to limit the issues and any additional evidence to be adduced in this proceeding, the Commission Panel wishes to confirm whether all other aspects of the Application continue to be accepted by the NSP participants as set forth in the document styled "Negotiated Settlement Agreement" and dated March 15, 2006.

The Commission Panel notes that there have been two rounds of information requests and ample opportunity for all parties to develop an evidentiary record, including with respect to those matters that the BCOAPO now suggests further evidence is required. The Panel agrees with PNG that with respect to the appropriate return on equity risk premium for PNG post-Methanex and on the methodology for determining an appropriate allocation of the revenue deficiency, "…BCOAPO could have and should have put its questions to PNG during the additional round of information requests that it had asked for."(PNG Reply, June 6, 2006, paragraph 10). In all the circumstances, the Commission Panel does not consider it appropriate at this late stage to embark upon a further and more extensive examination of the issues that should have been properly developed by now. The Panel will require a detailed explanation of the nature of any further evidence proposed and a justification for such evidence.

The 2006 interim rates approved by Commission Order No. G-134-05 will continue in place until the Application is resolved.

Commission Direction

The Commission Panel requests that BCOAPO and any other registered Intervenors provide comments on the nature and extent of the further process by Friday, June 16, 2006 and that PNG provide reply comments by Monday, June 19, 2006.