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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-77-06

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**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 28, 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 Intervenor 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 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 Intervenor. The Commission Panel determined that in view of the position of BCOAPO, the Commission Panel did not have a proposed Settlement Agreement before it for approval and it therefore was not in a position, as outlined in Order No. G-66-06 and 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
- K. By Order No. G-66-06 the Commission Panel also concluded 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 that stage and established a timetable for the filing of comments by BCOAPO and other registered intervenors and PNG reply comments, 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; and
- L. The Commission Panel has reviewed the submissions made by PNG, BCOAPO and Mr. Childs and concludes that a further process, as set out below, is required before it can decide the Application.

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NOW THEREFORE the Commission orders as follows:

1. The evidentiary record is closed.
2. PNG is to file its Argument by Friday, July 7, 2006.
3. Registered intervenors are to file their Argument by Monday, July 17, 2006.
4. PNG is to file Reply Argument by Monday, July 24, 2006.

DATED at the City of Vancouver, in the Province of British Columbia, this 30th day of June 2006.

BY ORDER

Original signed by

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

Following a consideration of submissions on the review process for the Application the Commission, by Order No. G-134-05 dated December 16, 2005 (Exhibit A-1), 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 British Columbia Old Age Pensioners Organization et al. (“BCOAPO”). 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.

The Negotiated Settlement discussions were held in Vancouver on March 13 to 15, 2006 and a proposed Settlement Agreement that reduced PNG's revenue deficiency to \$4.091 million was circulated to the Intervenor and PNG for comment. In the Reasons attached to Commission Order No. G-66-06, the Commission summarized the submissions received on the proposed Settlement Agreement, the responses received from PNG and Intervenor to written questions asked by the Commission Panel in Letter No. L-19-06 and the Commission determination on those submissions.

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

The Commission Panel only intends to refer to certain responses to Letter No. L-19-06 and submissions filed by BCOAPO and the PNG reply. BCOAPO's response was that Item 1, "Methanex Termination Payment", of the proposed Settlement Agreement 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. BCOAPO stated 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 submitted that 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 was now required (BCOAPO Response, May 29, 2006, pages 1 and 2). In paragraph 1 of its response dated June 2, 2006, BCOAPO again reiterated its position that there is no proposed Settlement Agreement before the Commission at this time.

In its Reply Submission dated June 6, 2006, PNG addressed BCOAPO's most recent submissions on the absence of a settlement and the need for further evidence and process. In PNG's submission, no further information was 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 its Reasons for Decision and Order No. G-66-06, the Commission Panel noted that BCOAPO's submissions made it clear that there is no agreement before the Commission Panel to approve. The Commission Panel stated that it was 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.

The Commission Panel also determined that it was not in a position to decide the Application, including Item 1 of the proposed Settlement Agreement, without further process. In an effort to establish an effective and efficient process, the Commission Panel requested submissions from all parties related to appropriate steps and timing for either an oral and/or hearing written process, the issues to be considered, confirmation of the issues that may have been resolved during the NSP, and the nature of any proposed evidence to be filed and a justification for such evidence.

On the basis of BCOAPO's May 29 and June 2, 2006 submissions, it appeared 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 sought to confirm whether any or 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.

In all the circumstances, the Commission Panel stated that it did 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, therefore, required a detailed explanation of the nature of any further evidence proposed and a justification for such evidence. By Order No. G-66-06, the Commission Panel requested 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.

4.0 SUBMISSIONS IN RESPONSE TO COMMISSION ORDER NO. G-66-06

BCOAPO, Mr. Childs and PNG filed submissions in response to Order No. G-66-06 and the Commission Panel's request.

In BCOAPO's view, there are two separate but related issues related to Item 1 of the proposed settlement agreement:

1. the proper regulatory treatment of the revenue requirement shortfall from the loss of Methanex; and,
2. the appropriate application of the Commission's decision with respect to (1).

BCOAPO considers that the issue of the proper regulatory treatment of the revenue shortfall arising from the loss of Methanex is a legal question requiring a Commission decision with respect to the statutory requirements of the Act as judicially interpreted and considered in the light of PNG's present situation. BCOAPO does not believe that it can usefully add anything further to the submissions already before the Commission on this issue. BCOAPO states that "once the commission's decision has been issued, the remaining issues could be easily resolved ...". BCOAPO's submission appears, therefore, to contemplate a prior Commission decision on this issue before proceeding further with and attempting to resolve the second issue..

BCOAPO advocates an oral hearing to address the two separate but related issues arising with respect to Item 1 of PNG's proposed settlement agreement. BCOAPO states that it would be prepared to call evidence on the appropriate allocation of the Methanex revenue shortfall at such a hearing and would be prepared to respond to information requests, if the Commission so required, and that it should be open to PNG to file such further evidence as it considers appropriate on this issue. BCOAPO attempts to justify its request to file this evidence by stating that "what is presently before the Commission does not appropriately address this issue".

With respect to any issues that may have been resolved during the NSP, BCOAPO's position is that "final resolution of any of these issues is dependent on the Commission's decision with respect to the appropriate regulatory treatment of the Methanex revenue shortfall".

Mr. Childs submits that a written hearing process would be more appropriate and expedient and that it should include an initial round of written negotiating positions by PNG and participating intervenors followed by a second and final round of revised negotiating positions, as appropriate. He also proposes a number of issues to be considered in this process.

PNG also proposes a written process based on the evidentiary record established to date. PNG submits that there is an extensive evidentiary record before the Commission on which the Commission can make a decision with respect to the Application.

5.0 COMMISSION DETERMINATION

The Commission Panel notes that there have been three rounds of information requests to date and opportunities for submissions and that BCOAPO had not previously requested that it be allowed to file evidence when given the opportunity to do so when the Commission Panel sought submissions to establish a process to consider Item 1 of the proposed settlement document.

Although BCOAPO has requested the opportunity to file further evidence, BCOAPO has not explained or provided any substantive justification for the introduction of new evidence at this stage to the extent required by Order No. G-66-06.

Not having received submissions in response to its request in Order No. G-66-06 that could assist the Commission Panel in understanding the nature and extent of evidence that BCOAPO considers would be helpful in the decision-making process, the Commission Panel concludes that no further evidence is necessary and that the further process to consider the Application will be a written process consisting of Argument by PNG, Intervenor Argument and PNG Reply Argument.

The Commission Panel has stated that it “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” (G-66-06, Appendix A, p. 9 of 10). Therefore, in order to avoid the possibility of improperly narrowing the scope of argument, the Commission Panel does not accept PNG’s alternate proposal to allow PNG to simply confirm that the applied for cost of service for rate making purposes is as set out in the regulatory schedules attached to the proposed settlement agreement.

While the Commission Panel understands that BCOAPO considers the record to be complete to allow the Commission to make a ruling related to the issue of the proper regulatory treatment of the revenue requirement shortfall from the loss of Methanex, the Commission has stated in the Reasons for Decision related to Order No. G-66-06, that this would be tantamount to a separate and “advance ruling” which the Commission does not consider to be appropriate in the circumstances. The Commission Panel will consider the submissions filed and will deal with issues raised by parties, as appropriate, in its Decision following this further process to consider PNG’s 2006 Revenue Requirements Application.

Commission Direction

1. PNG is to file its Argument by Friday, July 7, 2006.
2. Registered Intervenors are to file their Argument by Monday, July 17, 2006.
3. PNG is to file Reply Argument by Monday, July 24, 2006.