



IN THE MATTER OF

**BC Gas Utility Ltd.
SOUTHERN CROSSING PIPELINE
PROJECT**

**and Applications from
Westcoast Gas Services Inc.**

**FOR LEAVE TO FILE
REBUTTAL AND ADDITIONAL REPLY ARGUMENTS**

DECISION

January 29, 1998

BEFORE:

**Lorna R. Barr, Chair of the Division
K.L. Hall, P.Eng., Commissioner
F.C. Leighton, P.Eng., Commissioner**

1.0 BACKGROUND

The British Columbia Utilities Commission ("the Commission") has received two applications from Westcoast Gas Services Inc. ("WGS") seeking leave to file further submissions. The first relates to a request to file Rebuttal Argument to the Reply Argument of Consumers' Association of Canada (B.C. Branch) et al. ("CAC(B.C.) et al."), and the second relates to a request to file Reply Argument to the Argument of the Vancouver Island Gas Joint Venture ("VIGJV"). The reasons for the leave applications are set out in letters from WGS's solicitors to the Commission Secretary dated December 19, 1997, January 12, 1998 and January 13, 1998. Leave is sought to file the Rebuttal Argument on the basis that WGS did not anticipate certain submissions raised by CAC(B.C.) et al. and to file the Reply Argument on the basis that the VIGJV Argument was not received by WGS by December 12, 1997 as directed by the Commission

The VIGJV also apparently seeks leave to file Rebuttal Argument to the WGS Reply. CAC(B.C.) et al. has made submissions on the WGS applications to file Rebuttal Argument in a letter dated January 12, 1998.

In the hearing, after receiving the views of participants, the Commission determined that argument would be in written form and would be filed according to the following schedule (T. 19:3374):

December 5, 1997: BC Gas Utility Ltd. ("BC Gas") files its argument.

December 12, 1997: Intervenors file their arguments, and responses to the BC Gas argument.

December 19, 1997: BC Gas and Intervenors file responses to the arguments of Intervenors.

Due to the duration of the Southern Crossing Pipeline ("SCP") proceeding, the number of participants and the extensive record that has been developed, the Commission is of the view that only in very extenuating circumstances should the filing of additional material be approved. In considering the WGS requests, the Commission had access to the record of the proceeding and the subsequent submissions, including those of WGS and CAC(B.C.) et al.

2.0 THE APPLICATION FOR LEAVE TO FILE REBUTTAL ARGUMENT

The application seeks leave to address the jurisdictional arguments raised by CAC(B.C.) et al. with respect to an exemption from regulation (Rebuttal Argument, paragraphs 1 and 2) and with respect to a direction to BC Gas (Rebuttal Argument, paragraphs 3 - 6). The Rebuttal Argument also addresses the merits of the WGS application for a liquified natural gas ("LNG") facility (Rebuttal Argument, paragraphs 7 and 8),

and CAC(B.C.) et al.'s submissions on thermal generation and peak shaving (Rebuttal Argument, paragraph 9).

2.1 The Submissions on Jurisdiction to Exempt WGSi Under Section 88(3) (WGSi Rebuttal Argument, paragraphs 1 and 2)

In Part I, Section A, subsections 1(c) and 1(d) of its Reply Argument, CAC(B.C.) et al. takes the position that it is beyond the jurisdiction of the Commission to request approval of the Lieutenant Governor in Council ("LGIC") to grant an exemption to WGSi under Section 88(3) of the Utilities Commission Act ("the Act"), unless the LGIC has requested the Commission to advise the LGIC on the matter.

The matter of the jurisdiction of the Commission over some of the resource options available to BC Gas, and the jurisdiction of other regulatory agencies over competing options, was raised several times in the hearing. However, the jurisdiction of the Commission over a WGSi LNG facility in British Columbia was not questioned. In its August 19, 1997 letter, WGSi referred to the possibility of WGSi being granted a Section 88(3) exemption. The August 25, 1997 letter from CAC(B.C.) et al. took the position that the BC Gas Integrated Resource Plan and BC Gas' Certificate of Public Convenience and Necessity Application were the only two matters before the Commission, but did not question the Commission's jurisdiction to grant WGSi an exemption pursuant to Section 88(3) of the Act. The Commission's Letter No. L-55-97, dated September 5, 1997, indicated that an exemption for WGSi was "possible".

An examination of the evidentiary record has not identified an occasion where the jurisdiction of the Commission with respect to an exemption for WGSi was questioned. Further, other than CAC(B.C.) et al., no party raised the issue in Final Argument or Reply. On the other hand, WGSi consistently took the position that it was applying for an exemption (T. 10:1677, T. 13:2300, T. 20:3630). Moreover, a review of the CAC(B.C.) et al. response to the application to file Rebuttal Argument, shows that CAC(B.C.) et al. did not address WGSi's submissions regarding the Commission's jurisdiction to grant an exemption pursuant to Section 88(3). Consequently, there appears to be some basis for the WGSi submission that it did not anticipate that this was an issue it needed to address in Final Argument. In all these circumstances, therefore, the Commission grants WGSi leave to submit Rebuttal Argument on the jurisdictional argument regarding an exemption.

2.2 The Submissions on Jurisdiction to Give a Direction to BC Gas (WGSi Rebuttal Argument, paragraphs 3 to 6)

The Commission notes that the Reply Arguments of BC Gas, and the Council of Forest Industries of British Columbia and Cominco Ltd. ("COFI/Cominco") include submissions similar to aspects of Part I,

Section A of the CAC(B.C.) et al. Reply which challenge the Commission's jurisdiction to grant WGSi the Order it seeks in these proceedings with respect to a direction to BC Gas compelling it to negotiate in good faith with WGSi (BC Gas Reply, p. 71; COFI/Cominco Reply, generally).

Further, as has already been stated, the matter of the jurisdiction of the Commission over possible outcomes (other than with respect to an exemption under Section 88(3)) was raised several times at the hearing, most notably in the context of Commission Letter No. L-55-97. For example, at T. 10:1675-1688 the issue of whether there were one or more applications before the Commission was raised. At T. 14:2374, Commission Counsel advised the Commission that subject to the direction of the Commission, all counsel had agreed that the issue of outcomes could be dealt with in Final Argument. Counsel for WGSi took exception to Commission Counsel's comments, submitting that Commission Letter No. L-55-97 was a decision of the Commission and it was up to others to challenge the decision.

At T. 14:2376 Counsel for BC Gas expressed the view that there was nothing in the Letter which purported to be a decision or order.

At T. 14:2456-2458, the issue of possible outcomes is again addressed in an exchange between Counsel for BC Gas and WGSi, which concluded with the Chairperson's Ruling at T. 14:2458, lines 20-23:

"MR. JOHNSON: I'm afraid I have to get into this discussion again. The letter is a letter, and I do not agree with Mr. Arvay's characterization that it's a decision of the Commission. It is not an order. There was no formal application before the Commission. We can deal with all of this in final argument, but I don't wish to be -- Mr. Arvay to leave it that it is incumbent upon some other party to take issue with his position. We can all see what it is. It's a piece of paper with some writing on it, and let's leave it at that.

Mr. ARVAY: Well, I do want to say for the record, as well, that we were very careful to make sure that when we wrote the Commission and sought a decision from the Commission, we copied BC Gas and did all the other intervenors, and everyone had an opportunity to take exception or to respond. And I don't know whether anyone did. I presume they didn't, and it's just a little late in the day for Mr. Johnson to be taking the position that he is right now. I don't want to wade into any long debate now, but --

THE CHAIRPERSON: Yes. We are going to deal with it in final argument and I think that that will be the appropriate time for you to make those arguments again. Thank you."
(T. 14:2457, line 26 to T. 14:2458, line 23)

In the Commission's view, since it directed that the matter of possible outcomes be addressed in Final Argument, WGSi should have anticipated that CAC(B.C.) et al., BC Gas, and others might address the issue in reply to the WGSi Argument. Therefore, the Commission refuses WGSi leave to submit Rebuttal Argument on the jurisdictional issue regarding a direction to BC Gas. In doing so, it nevertheless remains aware of WGSi's position from the submissions of its counsel during the hearing.

2.3 Submissions on the Merits of WGSi's Application for a LNG Facility (WGSi Rebuttal Argument, paragraphs 7 and 8)

Paragraphs 7 and 8 of the Rebuttal Argument can reasonably be viewed as attempts to re-argue the merits of exempting the WGSi facility, and the merits of the facility itself. The evidence of the CAC(B.C.) et al. witness is on the record, and WGSi had earlier opportunities to make these arguments. Therefore, the Commission refuses leave to WGSi to file further submissions on this issue.

2.4 The Submissions on Thermal Generation and Peak Shaving (WGSi Rebuttal Argument, paragraph 9)

Paragraph 9 of the Rebuttal Argument deals with whether the peak shaving from thermal generation (e.g., British Columbia Hydro and Power Authority's Burrard Thermal Plant) can be compared to Demand-Side Management and the Alberta Natural Gas Company Ltd.'s Kootenay Pacific Pipeline Project. CAC(B.C.) et al. took the position in the hearing that they are comparable (T. 23:4076-4078). Hence, WGSi could reasonably have been able to anticipate the issue and should have dealt with it in Final Argument. The Commission, therefore, refuses leave to WGSi to file further submissions on this issue.

2.5 Commission Finding

In summary, the matters WGSi seeks to address by paragraphs 3 through 9 of its Rebuttal Argument should have been anticipated and addressed in Argument filed December 12, 1997. The Commission has not been persuaded that WGSi will suffer any prejudice if the Commission refuses leave to file Paragraphs 3 through 9 of the Rebuttal Argument. The Commission is, however, of the view that there may be a possible prejudice to WGSi if it is not allowed to file paragraphs 1 and 2 of its Rebuttal Argument.

Therefore, the Commission grants leave to WGSi to file Paragraphs 1 and 2 of its Rebuttal Argument, and refuses leave to file the remainder of the Rebuttal Argument.

In granting WGSi leave to file paragraphs 1 and 2, the Commission finds it unnecessary in the circumstances to ask for further submissions from either WGSi or CAC(B.C.) et al., or for submissions from any other party in the proceeding. As noted, no party other than CAC(B.C.) et al. challenged the Commission's jurisdiction to grant the Section 88(3) relief sought by WGSi. Further, there must be finality to the submissions received by the Commission following a hearing.

3.0 THE APPLICATION FOR LEAVE TO FILE REPLY ARGUMENT

WGSi seeks leave to file Reply Argument on January 2, 1998 to the VIGJV's Final Argument on the basis that it did not receive VIGJV's Final Argument until December 19, 1997. The VIGJV does not take issue with WGSi's statement regarding when WGSi received the VIGJV's Argument. **The Commission, therefore, grants leave to WGSi to file Reply Argument to the VIGJV's Argument and accepts the WGSi Reply.**

On January 2, 1998, the VIGJV attempted to file a Rebuttal Argument with respect to the WGSi January 2, 1998 Reply. There is no justification that supports a further round of comment from the VIGJV. **The Commission, therefore, refuses to accept the VIGJV's January 2, 1998 Submission.**

DATED at the City of Vancouver, in the Province of British Columbia, this 29th day of January, 1998.



Lorna R. Barr
Chair of the Division



K.L. Hall, P. Eng.
Commissioner



Frank C. Leighton, P. Eng.
Commissioner