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IN THE MATTER OF  
the Utilities Commission Act,  
S.B.C. 1980, c. 60, as amended

and

IN THE MATTER OF  
Applications by  
Fort Nelson Gas Ltd.

and

Colony Pacific Explorations Ltd.

DECISION

June 24, 1985

M. Taylor, Chairman  
J.D.V. Newlands, Deputy Chairman  
D.B. Kilpatrick, Commissioner  
N. Martin, Commissioner

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## APPEARANCES

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T. DENNIS DEVITT	Colony Pacific Explorations Ltd.
PATRICK D. LLOYD	Inland Natural Gas Co. Ltd.
FRANK SMITH	I.C.G. Utilities (British Columbia) Ltd.
GEORGE DYNES	Northland Utilities (B.C.) Limited
PHIL ASHER	Appearing on his own behalf
DAVID BENNETT	Appearing on his own behalf
GORDON A. FULTON	Commission Counsel

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R.J. FLETCHER	Commission Staff
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W.R. HARPER	Hearing Officer
ALLWEST REPORTING LTD.	Court Reporters

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## INTRODUCTION

Fort Nelson Gas Ltd. ("FNG") is a British Columbia corporation which owns and operates a natural gas transmission and distribution system that serves the community of Fort Nelson and immediately adjacent areas. Fort Nelson Gas is a wholly-owned subsidiary of Colonial Oil & Gas Limited ("Colonial"), another B.C. corporation, which is primarily a resource company.

On March 26, 1985, FNG applied to the British Columbia Utilities Commission ("the Commission") for approval under Section 61(4) of the Utilities Commission Act ("the Act"), to register on its books the transfer of all of the issued and outstanding voting shares of FNG from Colonial to Colony Pacific Explorations Ltd. ("Colony Pacific").

On April 2, 1985, Colony Pacific applied under Section 61(7) and (8) for the approval of acquisition of all of the issued and outstanding voting shares in FNG. The Commission concluded that the public interest required that the Applications be heard in a public forum and by Order No. G-29-85 set down a hearing for May 2, 1985, in Fort Nelson, B.C.

Colonial has been seeking to sell FNG, as the result of a commitment to the bank requiring that some of Colonial's debt be retired. While there have been a number of interested parties, Colony Pacific submitted the first formal offer which was rejected by Colonial. Colonial proposed a counter-offer which resulted in a second offer by Colony Pacific. Inland Natural Gas Co. Ltd.



("Inland") submitted a lower offer just prior to final approval and acceptance of Colony Pacific's second offer of \$1,450,000 (see Exhibit 24).

On July 9, 1982 Section 61 of the Act was amended to read as it does today. This expansion of the Act changes the framework of review for the Commission and while previous Commission decisions were reached under the same Act, the instruction from the Act was different. Specifically, Section 61(8) explicitly directs the basis for consideration to be given by the Commission with the words, ". . . the commission shall not give its approval under this section unless it considers that the public utility and the users of the service of the public utility will not be detrimentally affected."

Accordingly, in its review the Commission focussed on the concerns that relate to the potential for detrimental effects on the utility and its customers in the future. These include :

- the utility's ability to finance future requirements ;
- continuation of existing covenants that would preserve the customers' interests ;
- the utility's ability to maintain the required level of service into the future ;
- compliance of the application with pertinent legislation and regulations ; and
- preservation of the public interest.

These concerns have been appraised by the Commission on the basis of its assessment of the relative strengths and weaknesses of both FNG and Colony Pacific and their potential impact on the future welfare of the utility and its customers.

Fort Nelson Gas Ltd.

FNG serves some 1300 residential and commercial customers and 2 industrial customers, and has operated for over 20 years. The utility has expanded the system to meet what has been to date rather modest growth. While the Applicant testified that no major capital requirements are foreseen in the immediate future, it was acknowledged that there would be a need to replace or reinforce some sections of the existing transmission system over time. Moreover, the Applicant indicated some major possible expansion when the load warrants it, to serve potential new development north and west of the Village of Fort Nelson.

In the past FNG has been supported by substantial inter-company advances from its parent in order to finance its capital expansion, and from time-to-time long-term financing has been provided by Great-West Life Assurance Company. It is apparent to the Commission that the financial capacity and integrity of the owner of FNG will continue to be important to enable the utility to maintain its quality of service.

Colony Pacific testified that the management of the utility would be left intact for the immediate future. Mr. Simington, although 74 years old, would not retire for at least six months and would assume the office of President and select, hire and train his replacement. The operating staff of four located in Fort Nelson, including the local manager, would remain unchanged. It was also proposed that the accounting and office staff of three in Vancouver would move to the Colony Pacific offices.

Unwillingness to identify a specific replacement for Mr. Simington in the testimony regarding ongoing management, and the inability of Mr. Simington to identify, when questioned by his counsel Mr. Dodd, any potential detriments or benefits to the utility from the proposed sale (Transcript pg. 40), provided no assurance to the Commission as to the future of FNG.

#### Colonial Oil & Gas Limited

Based in Calgary, Colonial is an oil and natural gas exploration and resource company of which FNG has been a wholly-owned subsidiary since 1973. During this period, Colonial has experienced substantial growth, primarily in its resource-based investments. By reason of its investment in FNG, Colonial management has utility operating experience as well as general business experience.

It is apparent to the Commission that Colonial needs cash and is willing to sell its subsidiary, FNG, to the highest bidder. This would not only alleviate Colonial's immediate cash problem, but also eliminate potential future cash demands from the utility. The Commission acknowledges and understands Colonial's needs and motivation in its desire to sell the utility. By reason of its obligation under the Act, however, the Commission has a responsibility to ensure that the proposed sale of the utility to Colony Pacific will not lead to detrimental effects on the utility and its customers.

Colony Pacific Explorations Ltd.

Colony Pacific, the potential buyer, is described as a successful "junior resource company" which is listed on the Vancouver Stock Exchange. According to its Annual Report (Exhibit 13), its principal sources of operating revenue arise from investment in joint venture development projects in the mining and petroleum industries. Of these, its oil production leases in the U.S. along with its Blue Moon Mining Venture are the most significant at this time. In addition, Colony Pacific has enjoyed a record of success in raising equity funds, primarily through private placement, and had accumulated cash and short-term deposits prior to the proposed purchase, of approximately one million dollars. The Applicant testified that the balance of funds required to purchase FNG would be financed by the private placement of a convertible debenture which had already been arranged.

The Applicant's investments in the Blue Moon project and U.S. oil leases have begun to provide revenues to Colony Pacific. However, the absence of any projections or forecasts of operating revenues by the Applicant and the continuing degree of dependence for funds on periodic issuance of shares, is a matter of concern to the Commission. While the witness for Colonial testified that in his judgement Colony Pacific was financially strong and had excellent prospects, upon cross-examination his assessment proved to be at best lacking in supporting evidence (Transcript Pgs. 150-157).

The witness for the Applicant, Mr. Churchill, testified as to the very high risk nature of their business (Transcript Pg. 160) and later explained Colony Pacific's reason for purchasing FNG as a desire to "... get involved as well in things of a less risky nature and broaden the base of our company . . . ." (Transcript Pgs. 164-165). While the Commission recognizes that this is perfectly normal and acceptable for "junior resource" companies, some such companies may not, by the very nature of their activity, provide the level of risk, stability and financial integrity appropriate, in the public interest, for 100% ownership of public utilities.

Colony Pacific is located in office accommodation leased in downtown Vancouver. The Commission notes that the only two officers of the Company are on personal service contracts, with their services billed to Colony Pacific by their respective companies. A third person is provided on a part-time basis as secretary/receptionist, by an accounting service. As indicated in Exhibit 21 the management team of two, while young and enthusiastic, possess no utility or operating management experience.

In the public interest the Commission is required to direct its primary attention to the degree of permanence, substance and experience of any intended owner of a public utility. This is particularly so when that utility is clearly going to be dependent on shareholder leadership and support.

While Mr. Churchill testified that Colony Pacific would do anything required to enable FNG to continue to serve its customers adequately, such assurances would normally be supported by a business plan reflecting at least a basic minimum knowledge of the utility industry and general operating management experience. To the extent that the proposed management and organization structure of the utility involves intended hands-on direction or management by Colony Pacific, such knowledge is essential. The witness also revealed a definite lack of knowledge of the B.C. Utilities Commission Act and its legal and financial implications for the Applicant, and a very limited knowledge of rates and service requirements of the FNG Tariff (Transcript Pgs. 173-174).

The Commission recognizes and accepts as a positive factor, that Colony Pacific apparently has the support of its major shareholders in this Application. The Commission further recognizes that, while their percentage ownership of Colony Pacific is not large, those shareholders if sufficiently motivated in terms of their overall priorities, are of a stature and quality to be of potential assistance to Colony Pacific if required. There was no evidence, however, of any binding contractual arrangements with those shareholders to confirm any direct responsibility for or commitment to the ongoing financial health or success of Colony Pacific.

The Applicant's existing covenants with respect to long-term debt are apparently being maintained. Although its principal creditor was not consulted by the Applicant, there is no evidence on the record to suggest that Great West Life would be less supportive of FNG by reason of the proposed ownership by Colony Pacific. The Commission concludes, however, that the Applicant should have sought and filed specific assurances in this regard, in support of its Application. In the absence of such evidence, the Commission is not prepared to speculate on the matter.

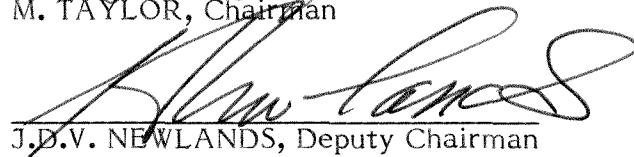
Finally, the Commission concludes that, notwithstanding assurances by Colony Pacific and a commitment to give priority to the needs and interests of the utility and its customers, the evidence presented at this proceeding casts doubt on the ability of Colony Pacific to meet that commitment.

### DECISION

On the basis of the filed evidence and the testimony presented at the hearing, the Commission is unable to conclude, pursuant to Section 61(8) of the Act, that the public utility and the users of the service of the public utility will not be detrimentally affected. The Applications of Fort Nelson Gas Ltd. and Colony Pacific Explorations Ltd., are therefore rejected.

DATED at the City of Vancouver, in the Province of British  
Columbia, this 24<sup>th</sup> day of June, 1985.

  
\_\_\_\_\_  
M. TAYLOR, Chairman

  
\_\_\_\_\_  
J.D.V. NEWLANDS, Deputy Chairman

  
\_\_\_\_\_  
D.B. KILPATRICK, Commissioner

  
\_\_\_\_\_  
N. MARTIN, Commissioner





BRITISH COLUMBIA UTILITIES COMMISSION	
ORDER	
NUMBER	G-55-85

PROVINCE OF BRITISH COLUMBIA  
BRITISH COLUMBIA UTILITIES COMMISSION

IN THE MATTER OF the Utilities Commission  
Act, S.B.C. 1980, c. 60, as amended

and

IN THE MATTER OF Applications by  
Fort Nelson Gas Ltd. and  
Colony Pacific Explorations Ltd.

BEFORE:	M. Taylor,	)	
	Chairman;	)	
	J.D.V. Newlands,	)	
	Deputy Chairman;	)	June 24 , 1985
	D.B. Kilpatrick,	)	
	Commissioner; and	)	
	N. Martin,	)	
	Commissioner	)	

O R D E R

WHEREAS Fort Nelson Gas Ltd. ("FNG") and Colony Pacific Explorations Ltd. ("Colony Pacific") applied March 26, 1985 and April 2, 1985 respectively for the approval of the Commission pursuant to Section 61 of the Act to register on the books of Fort Nelson Gas Ltd. the transfer of all the shares thereof from Colonial Oil and Gas Ltd. to Colony Pacific Explorations Ltd.; and

WHEREAS a public hearing of the Applications was held May 2 and 3, 1985 at Fort Nelson, B.C. as required by Commission Order No. 'G-29-85; and

WHEREAS the Commission has carefully reviewed the Application and the evidence adduced at the hearing.

.../2

BRITISH COLUMBIA  
UTILITIES COMMISSION

ORDER  
NUMBER G-55-85

2

NOW THEREFORE the Commission hereby orders the  
Applicants as follows:

1. The Applications are denied as outlined in the  
Commission Decision issued concurrently with this  
Order.

DATED at the City of Vancouver, in the Province of  
British Columbia, this 24<sup>th</sup> day of June, 1985.

BY ORDER



Chairman