

1.0 BACKGROUND

On August 5, 1992, a Division of the British Columbia Utilities Commission ("the Commission") issued its Decision ("the Decision") and Order No. G-63-92 on the Revenue Requirement Application of BC Gas Inc. ("BC Gas", "the Applicant") (Appendix 1). The hearing was the Commission's first public review of a revenue requirement application by the new BC Gas entity, created by the privatisation of the Lower Mainland Gas Division of British Columbia Hydro and Power Authority ("B.C. Hydro") and its merger with Inland Natural Gas Co. Ltd.

On September 4, 1992, BC Gas applied under Section 114 of the Utilities Commission Act ("the Act") for a reconsideration and variance of certain portions of the Revenue Requirements Decision and Order ("the Reconsideration Application", "the Application") (Appendix 2). On the same day, BC Gas applied under Section 92 of the Act to extend the date by which the new Tariff Schedules, resulting from the Decision, were to come into effect.

Section 114(1) of the Act states:

"The commission may reconsider, vary or rescind a decision, order, rule or regulation made by it, and may rehear an application before deciding it."

On September 11, 1992 the Commission issued Order No. G-84-92 (Exhibit 2) asking for written submissions from Registered Intervenors or Interested Parties to the Reconsideration Application. The Order stipulated that these submissions were to be filed with the Commission by October 5, 1992 and that BC Gas was to file its written reply by October 19, 1992. The Order also postponed the implementation of the new Tariff Schedules.

Oral argument on the Application commenced on October 26, 1992 and concluded on October 27, 1992.

2.0 PRELIMINARY ISSUES

2.1 Preliminary Issue of Standing in the BC Gas Application

Counsel for the Office and Technical Employees' Union ("OTEU") requested that the OTEU be granted status as an Interested Party in this proceeding. The OTEU had not been a party in the Revenue Requirement hearing which resulted in the Decision and Order that are the subject of the Reconsideration Application. Counsel for the OTEU argued that it should be allowed to participate in this proceeding because one of the issues under consideration, namely, the impact of the Decision on employee levels, had a direct effect on its members. Counsel for those Intervenor who argued against the request submitted that only parties to the original hearing should be entitled to participate in this Reconsideration hearing. After hearing and considering the various submissions on this matter, the Reconsideration Division of the Commission ("Reconsideration Division") granted the OTEU status in this proceeding. In reaching this decision the Reconsideration Division stated that:

"The Commission does not take this decision lightly. However, the Commission does not feel that granting status in this particular instance would disadvantage the other parties in this preliminary stage of the proceedings. If unanticipated arguments are raised by the Office and Technical Employees' Union, the Commission will provide the opportunity for other parties to respond." (T. 21)

2.2 Preliminary Issue Concerning Different Division of the Commission

The members of the Division of the Commission which heard the original Revenue Requirements Application ceased to be Commissioners prior to the filing of the Reconsideration Application. Counsel for one of the Intervenor groups argued that a different Division of the Commission does not have the authority to reconsider a Decision made by a previous Division (T. 199). The Reconsideration Division does not find support for this argument in the Act. Sections 5(2) and 5(3) of the Act provide for the establishment of Divisions of the Commission. A Division of the Commission heard and determined the Revenue Requirement Application. In Section 114 of the Act the term "Commission" is used. There is no restriction in that section to the Division that heard the original application. Therefore, a different Division of the Commission may be established to hear an application for reconsideration.

3.0 GUIDING PRINCIPLES FOR RECONSIDERATION

In Order No. G-84-92, as clarified by Commission letter dated September 25, 1992 (Exhibit 12), the Commission explicitly stipulated that submissions should address the following issues:

- *Should there be any 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 BC Gas Application for Reconsideration, a subset of these items, or additional items?*

In the circumstances of this Application, the Reconsideration Division decided that, before a determination was made to proceed further with the merits of the Reconsideration Application, there should be an initial determination on whether or not the Application was of a type that should proceed to further examination. A reason for following this procedure in this case was the fact that a different Division of the Commission had to be constituted to hear the Reconsideration Application. The Reconsideration Division is prepared to examine issues of merit in detail, but only after it has first been shown that the claims made in the BC Gas Reconsideration Application justify such an examination. The examination of merit would be especially costly and time consuming in this case because the Reconsideration Division, in the interests of fairness, may be required to review or rehear much, if not all, of the evidence heard by the previous Division. Thus, a separation of preliminary examination and the hearing of arguments on issues of merit could lead to substantial time and cost savings for BC Gas shareholders and ratepayers, for intervenors and for interested parties, if it is determined that a second phase of reconsideration is not required for some or all of the claims in the BC Gas Application.

The Commission's powers of reconsideration under Section 114 of the Act are discretionary. The Commission does not have permanent guidelines or criteria to determine whether to accept an application to reconsider a Decision. Counsel for BC Gas argued that the Commission should interpret its discretion broadly. In contrast, several Counsel representing different intervenor groups submitted that there should be some limitation to the scope of a reconsideration. In particular, they argued that the Commission should not allow an applicant to redo or reargue its case simply because it did not like the Decision. Intervenors reviewed reconsideration criteria adopted by the Canadian Radio-Television and Telecommunications Commission and the National Energy Board ("NEB"), among other tribunals.

Generally, the criteria applied by those Tribunals suggest that BC Gas should demonstrate on a prima facie basis one or more of the following:

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

The Reconsideration Division accepts these four points as forming a reasonable basis for requiring reconsideration, but the Commission will exercise its discretion to reconsider in other situations where it deems there to be just cause. However, the Reconsideration Division does not take the decision to reconsider lightly. The Commission's discretion to reconsider and vary should be applied with a view to ensuring consistency and predictability in the Commission's decision making.

In both the written submissions and the oral argument during the preliminary proceeding on the BC Gas Reconsideration Application, the Reconsideration Division was presented with a number of arguments opposing the reconsideration. The following arguments are rejected.

- (i) It was argued that examination of the merits of any of the BC Gas reconsideration items would require a completely new hearing because each item cannot be examined in isolation from all other evidence in the hearing (T. 204). The Reconsideration Division is sympathetic to this argument in general; there is a great danger in examining individual components of a Decision outside the context of the entire Decision and all the evidence and testimony. However, the Reconsideration Division does not wish to rule out the possibility that there are some reconsideration items that can be dealt with in isolation. An example could be an obvious arithmetical error.
- (ii) It was argued that a reconsideration hearing on merits would be too costly for intervenors, and that natural justice would be in jeopardy without their participation (T. 206). Again the Reconsideration Division is sympathetic, but it would be wrong to deny a justifiable reconsideration application on that basis. If the applicant can convince the Commission that

there are legitimate grounds for reconsideration, the Commission must pursue that course, even if those who intervened in the first hearing are no longer able to participate.

- (iii) It was argued that reconsideration requests must pass more rigorous tests than that required at the original hearing (T. 187). While the Reconsideration Division does agree that reconsideration and variance must be undertaken with great caution, it does not agree that somehow the standards of persuasion are different (i.e. more stringent) in a reconsideration hearing.
- (iv) It was argued that because participants should have confidence in the finality of Commission decisions, there should not be a reconsideration (T. 209). The Reconsideration Division agrees that confidence in the finality of Commission decisions is important. However, it is also important that participants have confidence in the ability of the Commission to consider and rectify errors, if such errors are convincingly demonstrated and have significant financial or operational impact. Therefore, finality of Commission decisions is not a sufficient argument to deny reconsideration.
- (v) It was argued that because BC Gas has made known its intention to apply for a 1993 rate increase, there is no need for a reconsideration of the 1992 Revenue Requirements Decision (T. 192). The Reconsideration Division does not agree. The opportunity to correct an error in 1993 is not a sufficient argument to let such an error stand in 1992.

4.0 REQUIREMENTS FOR RECONSIDERATION ON MERIT

In its Reconsideration Application, BC Gas requested reconsideration and variance of specific portions of Sections 5 and 7 of the Commission's Decision dated August 5, 1992 and variance to paragraphs 1, 2 and 3 of the related Commission Order No. G-63-92.

BC Gas did not present new evidence or argue that there were changed circumstances, neither did it argue that a new principle had arisen as a result of the Decision. The Applicant submitted that the Commission made fundamental and material errors in its Decision. The onus is on the Applicant to demonstrate these claims on a prima facie basis.

Counsel for BC Gas, at the Reconsideration hearing of October 26, 1992 claimed:

"...errors of law in some cases which have occurred because there's no evidence. We're dealing in some cases with errors of fact. The facts in front of the Commission have just been misconstrued or misunderstood. We're dealing with situations where there are inconsistent findings in the Commission's decision." (T. 33)

Counsel for some of BC Gas' major industrial customers characterized the BC Gas complaint as being, in reality, a disagreement with the conclusions reached by the Commission:

"And I suggest to you that most of the matters raised by Mr. Johnson (Counsel for BC Gas) are not errors in either law or fact, that he was talking in almost all cases, although he described them as errors of fact, about differences of interpretation or application of the facts. That is, disagreements as to the conclusions to be reached on the basis of the facts." (T. 144)

A similar view was expressed by most of the other Intervenors. Counsel for the OTEU alone supported the BC Gas Reconsideration Application with respect to *"...all findings which require BC Gas to reduce its level of employment..."* (T.129)

In assessing the validity of the claims by BC Gas, the Reconsideration Division reviewed the Application, the August 5, 1992 Revenue Requirements Decision and the submissions presented at the October 26 and 27, 1992 hearing. Evidence presented in the original Revenue Requirements hearing was not examined.

With the onus of demonstration with the Applicant, the Reconsideration Division has determined that a claim would advance to a future hearing on merit (the possible second phase of reconsideration established in Order No. G-84-92) if it met the following criteria:

- (i) The claim of error appears to be substantiated, based on reference to the Decision and on submissions and argument before this Reconsideration hearing; and
- (ii) The error has significant material implications.

5.0 FINDINGS

In its Reconsideration Application BC Gas, on a number of occasions, drew inferences from silence in the Decision with respect to evidence and argument. However, it is the view of this Reconsideration Division that silence by the Commission can be equally interpreted as acceptance or rejection of evidence and cannot be interpreted as ignoring evidence. If the evidence was before the Commission, it is presumed, subject to proof to the contrary, that the Commission considered the evidence. The Commission may have decided, in its judgement, to accept all, some, or none of each piece of evidence. The Commission has not committed an error by failing to detail in its Reasons for Decision the weight it attributed to each piece of evidence before it. A Reasons for Decision document that actually passed judgement on every piece of evidence or argument in a lengthy public hearing would be an enormous document, of questionable value to the public interest.

The findings of the Reconsideration Division given in the following paragraphs follow the paragraph numbering used by BC Gas in its Reconsideration Application.

Corporate Vision

Paragraph 1

BC Gas claims that "*the Commission erred in deciding that its role included that of 'reviewing the appropriateness of the Utility's vision, its mandate' and confirming or altering the 'vision of management'.*" It is the role of the Commission to assess vision or direction inasmuch as these may have implications for customer rates.

Operating Expenses

Paragraphs 2, 3, 4 and 5

The financial and operational impacts implied by these four paragraphs are detailed under Paragraph 6.

Paragraph 6

- 6(a) BC Gas claims inconsistency in the Commission's use of data from different years as a base for comparison. The Decision discloses (page 59) that the Commission was frustrated with the quality and comparability of data. It was thus forced to weigh the

appropriateness of available data from each year and to use its discretion in the selection of the most appropriate base in each case, as it was entitled to do. This is not an error but a matter of judgement.

- 6(b) In this paragraph BC Gas argues that it was inconsistent for the Commission to have ordered a reduction in 1992 expenditures because the Commission found BC Gas to be a relatively efficient utility. However, it is not inconsistent to find that a relatively efficient utility should reduce expenditures. Moreover, while the Commission concluded that BC Gas had been a relatively efficient utility, it also noted that the Key Performance Index was of limited use in validating the utility's revenue requirement application for 1992 (Decision, page 90). The Commission's decision is a matter of judgement.
- 6(c) BC Gas here claims that the Commission *"failed to adequately review overall trends in costs."* The statement is clearly an opinion of BC Gas, not a demonstration of error.
- 6(d) Essentially, this paragraph claims that the Commission *"failed to make use of the evidence before it"* and *"ignored the overall trends in costs displayed in the evidence before the Commission, and ignored the evidence which compared BC Gas to other utilities."* The Commission had the right, in using its judgement, to assess the appropriateness of BC Gas cost trends over time and the appropriateness of comparisons of BC Gas with other utilities. Moreover, the Decision made clear that the Commission was cognizant of the special circumstances behind the 1991 O&M figures when it selected 1991 as an appropriate base for setting 1992 approvals (Decision, page 59).
- 6(e) BC Gas claims inconsistency and error on the part of the Commission with respect to O&M activities and the 1992 budgets which it approved. The Commission clearly has a responsibility to ensure that global resource commitments are needed and efficient. Therefore, it is consistent for the Commission to endorse individual O&M activities while relying on global ratios to judge overall efficiency.
- 6(f) BC Gas claims that the Commission failed to consider other reasons for an increased number of employees in 1992 relative to 1989, other than for repatriation of B.C. Hydro services and customer growth. In its Decision the Commission is not obliged to comment on every factor considered. However, in this case, comments on pages 66 to 68 make it clear that it did consider other reasons for increases in the number of employees.

6(g), 6(h), 6(i), 6(j)

The claims in these sub-paragraphs are that the Commission *"failed to recognize ... to give adequate regard"*; *"failed to take into account"* and *"placed undue reliance"*, all with respect to evidence on appropriate employee levels. These claims of error are really disagreements with Commission judgement.

- 6(k) BC Gas claims that the Commission failed to take into account employee-related costs charged out to Non-Regulated Businesses ("NRB's"). The Decision is silent on this topic, possibly because of the relatively insignificant nature of the item. Silence in the Decision does not mean that the Commission failed to take the matter into account.
- 6(l) BC Gas claims that the Commission ignored Exhibit 24 as depicted on page 69 of the Decision. It is difficult to support such a claim when the Commission prominently displayed a chart of inflation adjusted O&M costs per customer in its Decision. The Commission merely drew a different conclusion from the chart than BC Gas may have wished, as the Commission was entitled to do.

- 6(m) BC Gas claims that the Commission accepted the 1992 plant additions and overhead capitalization and then on no basis and no evidence reduced the amount to plant additions by \$1.1 million. The Reconsideration Division recognizes this argument as similar to that already raised in paragraph 6(e). Thus, the comments of the Reconsideration Division on 6(e) are equally applicable here. Moreover, BC Gas' claim fails to recognize the discussion contained in the Decision related to inadequate justification of plant additions (Decision, page 24). The Commission qualified its acceptance of the 1992 plant addition activities by the specific adjustments contained in Appendix "H" of the Decision.

- 6(n) BC Gas claims that the Commission's comments relating to the BC Gas contracts with its trade union were *"inappropriate and fail to recognize the economic circumstances"* at the time they were signed. There is no demonstration of error. Moreover, the Commission's decision to approve already signed union contracts was obviously unaffected by the allegedly inappropriate comments.

- 6(o) BC Gas claims that the Commission's comments relating to increases in non-executive management salaries *"fail to recognize the economic circumstances present when increases were granted."* The role of the Commission is to combine evidence in a hearing with its knowledge and make judgements. The judgement of the Commission included consideration of the economic circumstances present when the increases were granted (Decision, page 70). BC Gas has not demonstrated error.

- 6(p) BC Gas claims that the Commission incorrectly characterized the issue of corporate donations. The Commission had the authority, and the obligation, to make a judgement on the appropriate level of corporate donations to be funded by customers, based on its assessment of the evidence.

- 6(q) BC Gas claims that, in making its decision with respect to the utility's Executive Pension Plan, the Commission started *"from an incorrect initial conclusion"* (that the plan began in 1988) *which influenced the balance of the comments."* Assuming there is an error as to the start date, this Reconsideration Division finds that there is no apparent link in the Decision between the date of commencement of the plan and the Commission's Decision on page 85. The impact of the alleged error is, in any case, immaterial.

- 6(r) The claim is that the Commission's conclusions regarding the Executive Pension Plan *"were influenced by other findings ... not supported by evidence in the hearing."* The Application makes clear that the statement to which BC Gas refers as being unsupported is the statement in the Decision that the compensation of executives closest to retirement has gone up the most (page 85). The Commission, in its judgement, made a ruling concerning the inclusion in the rates of the pension cost of the salary bonus portion of an executive's compensation. This it was entitled to do. A review of Section 5.8.6 of the Decision shows that the Commission considered many factors in coming to its conclusion that executive bonuses should not be included in the ratepayers' funding of the Executive Pension Plan. Furthermore, the Commission stated that it may consider inclusion of the bonus in future years (Decision, page 85). There is nothing in the Decision or in the submissions of Counsel for BC Gas to indicate that there would be a material impact on the 1992 revenue requirement.

Hearing Costs

Paragraph 7

The claim that the Commission *"failed to give appropriate consideration to the complexity of the Application"* in disallowing a portion of hearing costs is an argument about the Commission's judgement.

Actual Capital Structure

Paragraph 8

BC Gas claims that the Commission's finding of 33 percent common equity in BC Gas' capital structure is inter-related to its determination that 33 percent is an appropriate common equity component. Furthermore, BC Gas claims that the capital structure should be found to contain 37.5 percent common equity and that this inter-relatedness should therefore lead the Commission to deem 37.5 percent to also be an appropriate common equity component. The Commission has the authority to determine actual capital structure and the authority to deem an appropriate common equity for ratemaking purposes that may differ from that of the actual capital structure, as acknowledged by Counsel for the Applicant (T. 73).

Paragraph 9

The following items from the BC Gas Application for Reconsideration concern the Commission's use of consolidated financial statements in its analysis versus the use of "legal" or non-consolidated financial statements.

- 9(a) The use of consolidated financial statements is claimed by BC Gas to be in error because BC Gas' majority-owned subsidiary, Trans Mountain Pipeline Company Ltd. ("TMP") is not regulated by the Commission but by the NEB. It is apparent from the Decision (Chapter 7) that the Commission heard these arguments during the original hearing and judged them inferior to other arguments. There is no demonstration of error.
- 9(b) The claim is that the Commission "*did not state that BC Gas should not be committed to economic development within the Province*" and, at the same time, it chose the use of the consolidated financial statement which, in BC Gas' view, "*will have the effect of hindering the participation of BC Gas in the economic development of the Province.*" Although the Commission did not state that BC Gas should not be committed to economic development, there is no error if part of the Decision lessens the utility's economic development activity. Not all economic development activity initiated by BC Gas may be judged by the Commission to be in the public interest.

9(c), 9(d)

The Commission is claimed to have taken an "*unduly narrow view of the public interest*" in "*failing to consider the effect the use of consolidated financial statements will have on involvement of BC Gas in the economic development of the province.*" Whether or not the Commission's view of the public interest is "*narrow*" is a matter of judgement and not error.

9(e), 9(f)

BC Gas claims that an unfounded belief that "*the effective control of the subsidiary by the parent implies that the subsidiary's assets can be managed to support the parent*" led the Commission to choose the use of the consolidated financial statement in BC Gas' case. The statement quoted from the Decision (pages 119, 120) is clearly a generic statement of inter-corporate relations. It is clear from the Decision that a great deal of the evidence heard related to the specific corporate relationship between BC Gas and TMP, both public utilities, each regulated by a separate public body (i.e. the Commission and the NEB). The Commission, after hearing this evidence, judged the consolidated statement the most appropriate in the case at issue, as it was entitled to do. The issue of consolidated versus unconsolidated financial statements is one that is examined by most public utility commissions, and is decided after careful weighing of evidence.

9(g) The Commission, it is claimed, "*failed to refer to evidence*" supporting its statement that "*changes in the circumstances of the Company (BC Gas) and the evolution of capital markets makes the use of consolidated financial statements more appropriate now.*" As noted previously, it is not a demonstration of error to point out that the Decision does not always reference or contain specific evidence to support judgements of the Commission. The Commission has the discretion to decide how much rationale it will provide for every element of a decision. It can be noted, however, that the Decision contains indications that the Commission was aware of the changed circumstances of BC Gas (e.g. page 5 of the Decision.)

9(h) BC Gas claims that "*the Commission was in error in attributing \$69 million of common equity to support the BC Gas investment of \$56 million in the shares of Trans Mountain.*" As previously noted, the Commission decided on the use of the consolidated statement, as it was entitled to do after weighing the evidence. It also heard expert testimony concerning the appropriate adjustments to make to the consolidated statements to reflect BC Gas' investment in TMP. The Commission accepted this evidence. It is not an error.

9(i) This paragraph claims that the Commission's conclusion as to the common equity present in BC Gas was "*inconsistent with the facts and in error.*" The argument that the Commission's conclusion is inconsistent with the facts, is based upon the premise that the Commission was incorrect in using the consolidated financial statements. As noted above, this was a judgement of the Commission, made after hearing all of the evidence and arguments.

9(j) In this paragraph, BC Gas objects to the Commission stating that the Applicant deemed "Utility - Other Investments" to be financed 37.5 percent through equity. BC Gas claims the correct statement should have been that rate base and "Utility - Other Investments" were both funded by an equal common equity component, being 37.5 percent. At the reconsideration hearing Counsel for BC Gas claimed that this distinction demonstrated a misunderstanding of the evidence before the Commission, but then admitted that "*nothing financial turns on this wording*" (T. 94).

- 9(k) Items 9(k) and 9(l) represent an alternative argument by BC Gas. In 9(k) BC Gas claims that even if one accepts the Commission choice of the consolidated financial statement as the correct starting point, the *"finding that the capital structure of the Utility contains approximately 33.0 percent common equity"* is flawed because the Commission *"failed to consider the adjustments to rate base by the Commission elsewhere in the Decision."* From a prima facie examination of the facts as presented in the Decision, the Reconsideration Division concurs with BC Gas. It appears that, in calculating the common equity the Commission did not take into account its own reduction in rate base. With this factor taken into account, the percentage common equity currently in the Company calculates to 33.7 percent instead of the approximately 33.0 percent stated in the Decision.

This Reconsideration Division of the Commission is prepared to correct this error and to vary the Decision on this particular item without a further hearing. This Division of the Commission accepts, based on the consolidated financial statements, that the common equity component of BC Gas is 33.7 percent.

As addressed in paragraph 8, the Commission has the authority to determine actual capital structure and the authority to deem an appropriate common equity for ratemaking purposes that may differ from that in the actual capital structure. Therefore, the above determination has no impact on the Commission's finding, in the August 5, 1992 Decision, concerning the appropriate BC Gas common equity component for ratemaking purposes.

- 9(l) BC Gas claims that the Commission *"failed to appropriately take into account the evidence given by Dr. Waters"* at an earlier NEB hearing and that, to be consistent, the same argument should have been applied at the Commission hearing. The appropriate treatment of unrealized after tax gains is a matter of Commission judgement. The acceptance by the Commission of part of Dr. Waters' evidence does not constrain it to accept all evidence given by him at all hearings.

Appropriate Capital Structure

Paragraph 10

Paragraph 10 relates to the Commission's finding that 33 percent was an appropriate common equity component for BC Gas. The paragraph alleges that the Commission *"failed to adequately assess the business risks of the utility operations of BC Gas"* as claimed explicitly in the succeeding paragraphs. The matter of business risk is assessed throughout Chapter 7. The assessment of business risk is central to the determination of an appropriate equity component and commission panels typically spend considerable time reviewing the elements that make up business risk.

- 10(a) BC Gas claims that the Commission "*failed to consider the increased business risk to which the utility operations of BC Gas are subject as a result of deregulation and other changes in the natural gas industry.*" As noted previously, silence by the Commission cannot be interpreted as failure to consider evidence or failure to consider general business circumstances with which the Commission could be expected to be familiar.
- 10(b) It is claimed by BC Gas that there was an error in one part of Dr. Waters' evidence concerning business risk and that the Commission failed to take this into account, despite the fact that the error was demonstrated in cross-examination at the original hearing. If an error by Dr. Waters was demonstrated in cross-examination, one must assume that the Commission took it into account in determining risk. The fact that the Commission refers to Dr. Waters' evidence, and bases some of its judgement on that, is not an indication that the Commission failed to take the alleged error into account in its Decision.
- 10(c) BC Gas claims that the Commission "*failed to take into account the lack of appropriate analysis*" by Dr. Waters. Silence by the Commission with respect to the alleged lack of appropriate analysis by Dr. Waters does not imply that the Commission failed to take into account the claimed deficiency. Moreover, in setting the appropriate equity component at 33 percent, after Dr. Waters had recommended 32.5 percent (Decision, page 113), the Commission showed that it was not relying solely on the evidence of Dr. Waters, but was exercising its judgement based on the evidence before it.
- 10(d) In this paragraph, BC Gas claims that the Commission ignored the Company's need for a financial profile which would permit it to access capital markets under adverse conditions and improperly failed to deal with the "*imperatives of the capital attraction and financial integrity standards.*" In support of this claim the utility makes much of the Commission's statement on page 123 of the Decision: "*If a genuine difficulty develops the Commission will consider interim actions to ensure the utility will be capable of serving the public interest.*" What is unsaid in the Application is that this sentence immediately follows the Commission's statement: "*It is the Commission's belief that the weather constitutes a special circumstance.*" It is the view of this Reconsideration Division that the Commission's offer of interim actions relates to the impact of abnormal weather and results from the utility's failure to adopt adequate weather normalizing procedures. Furthermore, BC Gas admits, in this same paragraph of its Application, that the Commission considered the imperatives of capital attraction and financial integrity in making its Decision. BC Gas disagrees with the Commission's judgement on what this consideration would imply.
- 10(e) BC Gas claims that "*the Commission failed to adequately consider the desire of the Provincial Government*" as expressed in the Resale Restriction Agreement of 1989, alleging that "*the Commission did not provide a rationale for why a minimum common equity component in the Capital Structure of 35 percent was no longer desirable.*" The Commission is not obliged to provide every reason it may or may not have considered in arriving at a judgement which it was entitled to make and which, in the course of its business, it is frequently required to make.
- 10(f) BC Gas claims that the Decision "*suggests that an updating of the Company's evidence indicated a reduction in the common equity component associated with gas distribution utilities*", when an "*updating of the evidence of Dr. Morin relating to gas distribution utilities showed, on average, an increase in the common equity component.*" The Decision quote cited by BC Gas (page 121) does not refer to *reductions* or *increases* in *averages*, but simply to whether or not updated evidence from Dr. Morin shows the common equity component of gas distribution utilities to be above or below 40 percent. This BC Gas claim makes inferences that are not supported by reference to the Decision.

- 10(g) BC Gas claims that the Commission failed to take into account specific attributes of Table 12B of Exhibit 43 in the original hearing. Silence by the Commission with respect to all attributes of that evidence cannot be interpreted as "*failing to take into account*." The Decision does not claim that Table 12B refers to utility operations. The Commission merely cites it as one of the pieces of evidence used in arriving at its conclusion.
- 10(h) BC Gas claims that the Commission "*incorrectly concluded (page 122) that Exhibit 173 shows that utility income before interest and taxes is greater than that for the consolidated company, indicating the utility's ability to issue debt has been negatively affected by the NRB*." The observation by the Commission with respect to Exhibit 173 is unlikely to have affected its determination of the appropriate equity component, given the other comments in this section of the Decision. The Commission clearly stated the components that it considered to be decisive in deeming the appropriate level of common equity (Section 7.6). The Commission's comment on Exhibit 173 is a final sentence in a series of supporting points; it begins with the words, "*In addition, ...*".

Other Issues

Paragraph 11

BC Gas claims that the Commission misunderstood evidence related to a sum of \$35.8 million associated with the purchase from B.C. Hydro of the Lower Mainland gas assets. The claim is that the Commission has incorrectly assumed that tax savings were not associated with the \$35.8 million premium. This is one interpretation of an ambiguous sentence. The sentence in question is on page 107 of the Decision. It states, "*First, the acquisition premium of \$176.8 million, shown in the application includes \$35.8 million attributable to capitalized losses and a tax agreement adjustment not related to the acquisition financing of the Lower Mainland gas assets*." BC Gas assumes in paragraph 11(a) that the phrase "*not related to the acquisition financing of the Lower Mainland gas assets*" refers to both the capitalized losses and the tax agreement adjustment. This leads to the claims in 11(b), 11(c), and 11(d). This Reconsideration Division of the Commission finds that another interpretation of the sentence is that the final phrase only refers to the tax agreement adjustment. This is consistent with, and explains, the Commission's insertion of the quote at the top of the page, in which Mr. Kleven of BC Gas states, "*We claim capital cost allowance on the total value of the assets*." In any event, it is recognized that the acquisition premium is not in the rate base. Therefore, this issue has no material impact.

Paragraphs 12 and 13

In these paragraphs BC Gas takes issue with statements in the Decision (pages 107 and 121) related to the possible use of rate base assets to guarantee non-rate base activities. In particular, BC Gas argues that it is incorrect for the Commission to "*say that rate base assets are guaranteeing non-rate base activities*." Also, BC Gas points out that Section 22 of the Hydro and Power Authority Privatisation Act provides that the Commission shall not review or reconsider Purchase Money Mortgages financing approved by the Lieutenant Governor in Council. Neither of the claims in paragraphs 12 and 13, if substantiated, has material impact for the 1992 revenue requirement. BC Gas can present argument for correction of the issue in its next revenue requirement hearing.

Relief SoughtParagraphs 14 to 21

In these paragraphs BC Gas restates the relief sought pursuant to the preceding paragraphs.

6.0 DECISION

The request of BC Gas for Reconsideration and Variance of the August 5, 1992 Decision, resulting from the BC Gas 1992 Revenue Requirements Application, is denied with one exception.

The BC Gas claim under paragraph 9(k) is accepted. In calculating BC Gas' common equity the Commission did not take into account its own reduction in rate base. With this factor taken into account, the percentage of common equity in the Company, based on consolidated financial statements, is determined to be 33.7 percent instead of the approximately 33.0 percent stated in the Decision.

In view of the Reconsideration Division's findings, it is not necessary to address the other issues identified in Order No. G-84-92 relating to procedures to be adopted in a hearing on merit.

The Applicant is responsible for its hearing costs and those of the Commission. These costs are not to be recovered in customer rates.

The provisions of Order No. G-63-92 stand. BC Gas is to implement the required refund with interest in the customer billing cycles commencing January 1, 1993 pursuant to item 4 of Order No. G-84-92.

The accompanying Order No. G-112-92 gives effect to this Decision.

DATED at the City of Vancouver, in the Province of British Columbia this day of November, 1992.

M.K. Jaccard
Chair

L.R. Barr
Deputy Chair

F.C. Leighton
Commissioner

IN THE MATTER OF THE "UTILITIES COMMISSION ACT"
S.B.C. 1980, CHAPTER 60, AND
AMENDMENTS THERETO

AND IN THE MATTER OF AN APPLICATION BY
BC GAS INC. TO AMEND ITS SCHEDULE OF RATES

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VANCOUVER, BRITISH COLUMBIA
V6Z 2N3

APPLICATION FOR RECONSIDERATION AND VARIANCE

BC Gas Inc. ("BC Gas"), pursuant to section 114 of the Utilities Commission Act, applies for reconsideration and variance of certain portions of the Decision of the British Columbia Utilities Commission ("Commission") dated August 5, 1992 (the "Decision") relating to the Revenue Requirements Application of BC Gas and applies for variance of Commission Order G-63-92.

The portions of the Decision which BC Gas seeks to have reconsidered and varied are sections 5.0, 5.2, 5.3, 5.6, 5.7, 5.8.6, 5.9, 5.10, 7.1, 7.2, 7.3, 7.4 and 7.6.

BC Gas seeks variance of paragraphs 1, 2 and 3 of Commission Order G-63-92 so that the Order will conform with the determination of the Commission on the Application for Reconsideration and Variance of the Decision.

In support of this Application BC Gas submits:

1. The evidence before the Commission was that BC Gas is committed to assist in the economic development of the province. This is noted in the Decision at page 6. The Commission erred in deciding that its role included that of reviewing the "appropriateness of the Utility's vision, its mandate" and confirming or altering the "vision of management". While it is appropriate for the Commission to determine if management's decisions have been imprudent or unreasonable and thereby adversely affected the customers of the utility or the public interest, it is not the role of the Commission to confirm or alter the vision of management. A common thread throughout the Decision of August 5, 1992 is the apparent belief of the Commission that it knows better how to manage BC Gas than the actual management of the company. This apparent belief has led the Commission to conclusions which in many case are not supported by the evidence, or are based on only selected portions of the evidence, before the Commission.

Operating Expenses

2. In section 5.10 of the Decision (page 87) the Commission found a reduction of \$3.28 million in the proposed O & M budget of BC Gas to be appropriate. In addition, the Commission reduced plant additions in rate base by \$1.1 million to reflect reduced overhead capitalized relative to the O & M adjustment of \$3.28 million. The effect of the two adjustments is to reduce the approved expenditures of BC Gas for 1992 by \$4.38 million below those budgeted by BC Gas.

3. As noted by the Commission at page 70 of the Decision, "Payroll costs of approximately \$80 million in 1992 are the

largest single expense for the Utility aside from the cost of gas". A reduction of \$4.38 million from budget can only be achieved on an ongoing basis by a reduction in payroll expenses with an attendant reduction in the number of employees.

4. At pages 66 and 67 of the Decision the Commission compared the number of employees of BC Gas in 1989 to the number of employees in 1992. At page 67 the Decision states:

"Assuming the utility maintained the level of efficiency that existed in 1989, the manpower requirement would have been 1,430 employees compared with the actual employee count (net of B.C. Hydro employee equivalents) of 1,510 employees. ... The difference of 80 employees represents approximately \$4 million in salaries in 1992".

The Commission went on to say:

"Although the Commission recognizes the limitations in the foregoing estimates, it has concerns about the efficiency and necessary level of employees required by BC Gas, particularly since economies of scale were expected".

Appendix H, page 1, also refers to a reduction of costs associated with 80 employees.

5. The Commission's Decision, if not varied, will cause the Company to reduce its number of employees, as the Commission has suggested should be done. If the Company fails to do so it effectively will be refusing to recognize a finding by the Commission, and will be subject to potential criticism and disallowance of expenditures in its next Revenue Requirements Application.

6. The Commission's Decision relating to operating expenses is flawed in many respects, including the following:

- (a) the Decision inconsistently uses data from different years as a base upon which to compare expenditures;
- (b) the Commission found BC Gas to be a relatively efficient utility (page 90) but reduced expenditures although there was no evidence before the Commission of inefficiency;
- (c) as noted at page 59 of the Decision it was the evidence of BC Gas that "analysis of historic data of BC Gas is difficult and reviewing overall trends is a much more meaningful approach". At page 60 the Commission stated "... it believes that a review of the trend ... is essential in determining whether the forecast increases are acceptable". Although the Commission made that statement it failed to adequately review overall trends in costs which clearly demonstrated that BC Gas is efficient and the operating expenses budgeted for 1992 were reasonable.
- (d) the evidence in the hearing allowed the Commission to review trends in the costs of BC Gas over time and also allowed the Commission to compare the efficiency of BC Gas with other utilities. The Commission failed to make use of the evidence before it and instead compared the 1992 operating expenses with operating expenses in 1991 and stated "it should set an overall increase in O & M costs based on its knowledge of actual activities, plus a general understanding of cost inflation in the industry and in the economy"

(page 87). Such a basis for setting operating expenses for 1992 is unreasonable in that it ignored the fact that 1991 was an extraordinary year (as addressed by Company witnesses and as found by the Commission at page 63 of Decision), ignored the overall trends in costs displayed in the evidence before the Commission, and ignored the evidence which compared BC Gas to other utilities;

- (e) the Commission endorsed the individual activities to be undertaken in operations and maintenance (page 63) and the capital activities (page 25) of the Company but then reduced operating expenses and capital additions without reference to particular activities. Endorsing activities while reducing the approved level of expenses and overheads capitalized is inconsistent and in error;
- (f) the Commission stated at page 66 that valid comparisons could be made between the number of customers per employee in 1989 and 1992 if one adjusted for the repatriation of employees for services undertaken previously by B.C. Hydro and the increased number of employees required to meet customer growth. Such a comparison is not valid in that it fails to take into account that the number of employees of BC Gas increased for reasons other than the repatriation of services and customer growth. The evidence of BC Gas provided reasons for increases in the number of employees other than repatriation of services and customer growth. The Commission failed to consider the other reasons for the increase in the number of employees;

- (g) an example of the increased number of employees of the Company since 1989 is the increased activities in the gas supply department and in the marketing area for sales to industrial customers on the BC Gas system and customers off the BC Gas system. These activities, and the costs associated with them, provide a material benefit to the core market customers of BC Gas through the procedure for the allocation of gas supply costs by lowering the cost of gas to customers. The use of customers per employee as the method of measuring efficiency as used in the Commission's Decision fails to recognize the savings in gas supply costs resulting from activities such as this. Rather than considering such employees and costs as contributing to the number of employees and the operating expenses of the Company, such employees and costs should be considered as gas supply costs which do not affect operating expenses. The significant changes which have occurred in these and other areas of the company do not permit reasonable comparison of historic customer per employee ratios. The Commission has erred in its examination of staffing and operating expenses by failing to give adequate regard to the cost reductions and revenue benefits to be received by the customers of BC Gas from activities such as this;
- (h) the Commission at pages 64 and 67 states that economies of scale and synergistic cost reductions were anticipated as a result of the acquisition of the Lower Mainland Gas Division. In making those comments the Commission has failed to take into account the evidence of BC Gas that it acquired an operating division and not a complete company. The Commission's comments also

fail to take into account the fact that prior to the acquisition of the Lower Mainland Division many employees of that division had taken early retirement which required replacement of those individuals subsequent to the acquisition;

- (i) the Decision relates manpower levels and operating expenses to levels of customer satisfaction, without taking into account the fact that changes in manpower levels have related to matters other than customer satisfaction. Moreover, the Commission placed undue reliance on a customer satisfaction survey in finding that BC Gas had reached saturation in customer satisfaction in 1990 and that the customer to employee ratio in 1989 should be the base for future employee levels. The evidence of BC Gas was that the customer satisfaction level results were not absolute, but only directional;
- (j) at page 68 the Commission states that it cannot ignore Exhibits 16 and 24 which demonstrate that the average number of customers per employee has shrunk from 430 in 1989 to 387 in 1992. That comparison fails to take into account the repatriation of services from B.C. Hydro discussed at pages 66 and 67 of the Decision (which by itself revises the customers per employee to 407); fails to take into account the need to augment the employment levels due to early retirement at the Lower Mainland Gas Division; fails to take into account increased responsibilities and changes in the environment in which the Company operates; fails to take into account that BC Gas has added programs which provide revenue to the Company; fails to take into

account that employee additions may be a more cost effective means of undertaking certain activities; fails to take into account increased regulatory measures such as integrated resource planning and demand side management; and fails to take into account the evidence which established that the projected level of employees per customer in 1992 was the most efficient level of any utility to which BC Gas was compared in the evidence before the Commission;

- (k) the comparison of number of customers per employee in 1989 and 1992 also fails to take into account the employee related costs which are charged out to NRB,s by the Company; and how those costs have changed since 1989. This effect on employment levels was not raised in questioning by Commission Counsel or any other party;
- (l) in examining changes in the levels of manpower from 1989 to 1992 the Commission at page 68 stated "another measure is the O & M cost per customer" but the Commission failed to consider O & M cost per customer over that period of time. Having stated that it cannot ignore Exhibit 24 (as depicted on page 69) the Commission did ignore the chart which showed that on an inflation adjusted basis the per customer operating and maintenance costs of BC Gas have decreased since 1989;
- (m) the Commission accepted the 1992 plant additions (page 25) and accepted the overhead capitalization of the Company (page 27) but then determined "That a reduction of \$1.1 million should be taken out of plant additions in rate base to reflect reduced overhead capitalized

relative to the O & M adjustment" made by the Commission. Having accepted the 1992 plant additions and the overhead capitalization there was no basis, and no evidence before the Commission, upon which the Commission could properly reduce plant additions by \$1.1 million. The Commission's Decision does not provide any explanation of the areas in which capital expenditures were considered to be excessive by \$1.1 million;

- (n) the comments of the Commission at page 71 relating to the contracts BC Gas has with its unions are inappropriate and fail to recognize the economic circumstances present when BC Gas entered into those collective agreements. There was no evidence before the Commission which suggested that the union contracts were other than reasonable at the time they were settled;
- (o) the comments of the Commission at page 71 relating to non-executive management salaries fail to recognize the economic circumstances present when increases were granted to management personnel. There was no evidence before the Commission which suggested that the increases in management salaries were other than reasonable at the time they were implemented;
- (p) with regard to corporate donations the Commission incorrectly characterized the issue. At page 86 of the Decision, the Commission said "The issue is not the size of the donations at this time. It is whether the utility customers should pay for the amount after an allocation to non-utility functions". In fact the

issue is the size of the donations that should be allowed for utility purposes, which is demonstrated by the allowance of only \$100,000. The donations budgeted of \$203,000 were not found to be unreasonable nor imprudent and should be allowed unless so found;

- (q) the Commission's comments (page 83) regarding the executive pension plan commence with the statement that the executive pension plan was established in 1988 in connection with the formation of BC Gas (referring to Tr. 2126). The transcript reference sets out that the executive compensation plan, not the executive pension plan, was established in 1988. The executive pension plan was established long before the formation of BC Gas (Tr. 1815) and the costs associated with it have been included in revenue requirements filing and annual reports filed since 1970 by Inland Natural Gas Co. Ltd. ("Inland") with the Commission and its predecessors. The definition of earnings in the Plan has included bonuses since 1970. The Commission's comments regarding the executive pension plan start from an incorrect initial conclusion which influenced the balance of the comments;
- (r) The Commission's conclusions regarding the executive pension plan were influenced by other findings relating to increases in the compensation of executives closest to retirement (pages 84 and 85 of the Decision). Those findings are not supported by evidence in the hearing;

Hearing Costs

7. The Commission erred in disallowing a portion of the hearing costs of BC Gas as there was no finding of imprudence by BC Gas. The Application was the first revenue requirement proceeding for BC Gas and thus, it could be expected that considerable resources would be utilized in presenting the Applicant's case. The Commission failed to give appropriate consideration to the complexity of the Application. The disallowances of hearing costs creates uncertainty as to the expectations of the Commission regarding the quality, the level of proof and the level of resources to be devoted to applications of this nature.

Capital Structure

8. The Commission found the capital structure of the utility operations of BC Gas contains approximately 33% common equity. The Commission also found the appropriate common equity component for the utility operations of BC Gas to be 33%. The two conclusions are inter-related. Both findings should be set aside and the Commission should find that the capital structure of the utility operations of BC Gas contains approximately 37.5% common equity and the appropriate common equity component for the utility operations of BC Gas is 37.5%.

9. In finding that the capital structure of the utility operations of BC Gas contains approximately 33% common equity, the Commission used the consolidated financial statements of BC Gas as the starting point to determine the utility capital structure (page 120). The use of the consolidated financial statements, and the calculations relating to the use of the

consolidated financial statements are in error and are flawed in many respects, including the following:

- (a) the "public utility" which the Commission regulates pursuant to the provisions of the Utilities Commission Act is the legal entity "BC Gas Inc.". The financial statements of the public utility are the audited "legal" or "non-consolidated" financial statements of BC Gas (Exhibit 69) and are the correct starting point to examine the public utility regulated by the Commission. The Commission does not regulate Trans Mountain Pipe Line Company Ltd. ("Trans Mountain") and the other legal entities whose assets and liabilities are included in the consolidated financial statements;
- (b) the Commission described the provisions in the agreement between the Minister of Energy, Mines and Petroleum Resources, representing Her Majesty the Queen in Right of the Province of British Columbia and BC Gas ("Resale Restriction Agreement") in which BC Gas identified economic development initiatives in the Province, and the Commission related the Company's view of its economic role in the Province (pages 4 and 6 and Appendix A). In its Decision the Commission did not state that BC Gas should not be committed to economic development within the Province. However, the Commission's determination that the appropriate starting point to determine the utility capital structure is the consolidated financial statements (page 120) will have the effect of hindering the participation of BC Gas in the economic development of the Province. BC Gas will be adversely effected in the following manner:

- (i) the use of consolidated financial statements may have the effect of causing BC Gas to dispose of shares representing its investment in Trans Mountain;
 - (ii) the use of consolidated financial statements will effectively preclude BC Gas from participating in economic developments which involve project financing since the use of consolidated financial statements which included those economic development projects would cause an examination of the financing of the assets of the project rather than the financing of the BC Gas investment in the project;
 - (iii) the use of consolidated financial statements by the Commission will place BC Gas at a competitive disadvantage when compared to utilities whose regulators do not make use of consolidated financial statements and when compared to nonregulated businesses whose economic analyses will relate to the financing of its investment in the project. Those other companies will not be penalized by the use of consolidated financial statements;
- (c) in failing to consider the effect that the use of consolidated financial statements will have on the involvement of BC Gas in the economic development of the province the Commission has adopted an unduly narrow view of the public interest. The Commission has a responsibility to protect the public interest. That public interest includes the interest of the provincial

government and of all residents of the province in the economic development of British Columbia. The public whose interests are to be considered by the Commission are not limited to the customers of BC Gas but are to include all of the public. The Commission failed to adequately consider the interest of the public in the economic development of the province as the Commission concluded that consolidated financial statements should be the starting point for the examination of the capital structure of BC Gas;

- (d) the Commission failed to investigate the effect that the use of consolidated financial statements would have on the participation of BC Gas in the economic development of the province. In failing to so investigate the Commission failed to properly consider all of the public interest;
- (e) the Commission's determination that the consolidated financial statements are the appropriate starting point is based on its belief that the Commission should recognize that "the effective control of the subsidiary by the parent implies that the subsidiary's assets can be managed to support the parent" (pages 119 and 120). That belief is not well founded in the circumstances of BC Gas and Trans Mountain. As the Commission recognizes in its Decision, Trans Mountain is regulated by the National Energy Board. Its primary assets, being its Canadian pipeline operations, must be managed in a manner consistent with the public interest. The ownership of the shares of Trans Mountain by BC Gas does not allow BC Gas to manage the assets of Trans Mountain to support BC Gas. Just as the British

Columbia Utilities Commission would require the assets of BC Gas, or any other utility regulated by it, to be managed in a manner consistent with the public interest; so does the National Energy Board. In fact, Trans Mountain has a subsidiary which is regulated by the British Columbia Utilities Commission. This Commission would not allow Trans Mountain Enterprises to be managed in a way that is designed to support BC Gas, but rather would require that its assets are managed in the public interest. The "economic reality" which the Commission believes it should recognize is based on an implication which is not supported by the evidence and is inconsistent with the real circumstances. As the underlying belief is not well founded, the Commission's determination that the appropriate starting point is the consolidated financial statements is also not well founded;

- (f) the Commission notes that Dr. Waters agreed that if he had begun with the non-consolidated statements, he would not have had to make any of his adjustments. The Commission goes on to say that Dr. Waters rejected the notion that such an approach would have been correct and quotes from Dr. Waters (page 106):

"... The reason for looking at the consolidated financial statements is to see what the implications are of the way in which the owner has financed itself, in this case BC Gas, and whether or not the way in which that financing has been undertaken will have some adverse implications for the ongoing financial integrity of the utility subsidiary that we're talking about" [emphasis added].

The quotation from Dr. Waters identifies the fundamental error in the approach taken by Dr. Waters

and the Commission. BC Gas is not "the owner" of all of the assets set out in the consolidated financial statements. BC Gas is only "the owner" of the assets set out in the non-consolidated financial statements of BC Gas. While it is appropriate to examine the way in which the owner has financed itself, the examination should be an examination of the financing of the assets owned by BC Gas and not an examination of the financing of assets owned by other legal entities which are not subject to regulation by this Commission;

- (g) the Commission recognized that in its Decision of August 6, 1987 relating to Inland, the predecessor to B.C Gas, it concluded that the use of the "legal" or "non-consolidated" financial statements was the appropriate basis for determining the capital structure of the utility operations for regulation by the Commission. The Commission said that changes in the circumstances of the Company and the evolution of capital markets, makes the use of consolidated statements more appropriate now (page 120) but failed to refer to evidence which supported that statement. There was no evidence before the Commission upon which the Commission could properly reach that conclusion;
- (h) the Commission was in error in attributing \$69 million of common equity to support the BC Gas investment of \$56 million in the shares of Trans Mountain. BC Gas does not own the assets of Trans Mountain. The investment of BC Gas in Trans Mountain is limited to shares. The only assets associated with Trans Mountain which are available to persons lending funds to BC Gas are the shares of Trans Mountain owned by BC

Gas. Those shares have a cost of \$56 million (as agreed by Dr. Waters and noted at page 105 of the Decision). The acceptance of the position of Dr. Waters by the Commission effectively attributes \$69 million of equity to an investment of \$56 million;

- (i) the Commission found that the non-consolidated financial statements of BC Gas show that BC Gas contains 38% common equity (page 102). The 38% common equity equals \$503.5 million of common equity (Exhibit 137, page 5, revised). The non-consolidated legal entity is the public utility regulated by the Commission. The total common equity in the legal entity is \$503.5 million before equity is allocated to support the investment in non-utility operations. Under the Company's capital allocation methodology, non-utility investments are deemed to be funded 45.7% through common equity. The Commission did not find that a 45.7% deemed common equity allocation was unreasonable. After deduction of a 45.7% equity component (\$39.2 million) for the non-utility investment the common equity available to finance the utility rate base and "Utility-Other" is sufficient for a 37.5% common equity component. After deduction of \$73.1 million for the 37.5% common equity component of "Utility-Other" the balance of common equity in the legal entity BC Gas Inc. is \$391.2 million. The Commission did not find that a lesser amount was present in the legal entity regulated by the Commission. The Commission's conclusion that common equity of only \$332,583,000 was present in the public utility (Schedule IV) is inconsistent with the facts and in error;

- (j) the Decision incorrectly states that the non-rate base assets called "Utility-Other Investments" were deemed by the Company to be financed 37.5% through equity which resulted in the residual equity being used to fund rate base. The Decision should have stated that the rate base and "Utility-Other Investments" were both funded by an equal common equity component, being 37.5%;
- (k) in finding that the capital structure of the Utility contains approximately 33.0% common equity, the Commission failed to consider the adjustments to rate base made by the Commission elsewhere in the Decision. It was the evidence of Dr. Waters that in his view the actual capital structure of the Utility was 33% common equity. That calculation was based on a common equity of \$339.8 million to support a rate base of \$1,030.6 million (Exhibit 43, page 37 and page 104 of the Decision). The Commission found the rate base to be \$1,007.8 million. The common equity component, as found by Dr. Waters, is then 33.7% of rate base and contains \$7.2 million of common equity greater than that found by the Commission;
- (l) in accepting the use of the consolidated financial statements the Commission failed to appropriately take into account the evidence given by Dr. Waters at the National Energy Board hearing involving Trans Mountain. The Commission notes at page 105 of the Decision that Dr. Waters agreed in a hearing respecting Trans Mountain he had recognized the unrealized capital gain in the Trans Mountain investment in the shares of BC Gas in his determination of the equity available to

support the non-regulated activities of Trans Mountain. If the assets, liabilities and equity of BC Gas and Trans Mountain are to be consolidated as a starting point in determining the equity available to support the utility operations of BC Gas, then the amount of unrealized capital gain which Dr. Waters recognized as equity of Trans Mountain in the hearing relating to Trans Mountain must also be recognized as equity when consolidated. The unrealized after-tax gain on the shares of BC Gas held by Trans Mountain was \$20.5 million as set out in Exhibit 115. Adding that equity to the \$339.8 million of equity determined by Dr. Waters results in common equity of \$360.3 million or a common equity component of 35.8% when supporting a rate base of \$1,007.8 million.

10. In finding the appropriate common equity component for the utility operations of BC Gas to be 33%, the Commission failed to adequately assess the business risks of the utility operations of BC Gas, relied on the evidence of Dr. Waters without taking into account the fact that he had incorrectly assessed the business risks of the utility operations of BC Gas, failed to adequately consider the need to maintain the financial integrity of the Company and failed to take into account the public interest and the desire for a common equity component of not less than 35% as expressed in the Resale Restriction Agreement. The finding of the Commission that a 33% common equity component for the utility operations of BC Gas was appropriate is flawed in many respects, including the following:

- (a) the Commission failed to consider the increased business risk to which the utility operations of BC Gas are subject as a result of deregulation and other

changes in the natural gas industry. The evidence given by witnesses for the Company relating to the subject was extensive and was not challenged by other evidence. The Commission has failed to consider such evidence, or has failed to adequately address such evidence;

- (b) the Decision refers to the evidence of Dr. Waters (pages 113-115) but the Commission has failed to take into account the fact that the evidence of Dr. Waters was based upon assumptions which were in error. The conclusions of Dr. Waters were based upon an assessment of business risk which assumed that the cost of gas sold by BC Gas was variable and accounts for nearly 58% of utility revenues. At page 24 of Exhibit 43, Dr. Waters said "A drop in revenue of one dollar may be expected to be offset by a drop of 58 cents in expenses. BCGU,s ratio is at a favourable level compared with many other utilities". That assumption was in error as demonstrated in cross-examination of Dr. Waters and in Exhibit 142 which set out that the variable costs of BC Gas are only 28% of revenues, not 58% as assumed by Dr. Waters. The Commission failed to take this major error into account in assessing the evidence of Dr. Waters;
- (c) Dr. Waters attributed the major difference between the risks borne by shareholders in gas distribution utilities and those borne by shareholders in gas pipelines regulated by the National Energy Board or the Alberta Public Utilities Board as the extent to which investors are exposed to the risks of only partial recovery of fixed costs in any given operating period.

Dr. Waters acknowledged that the common equity ratio for Westcoast Energy was 35% and that BC Gas was riskier than Westcoast Energy (Tr. 3131). Dr. Waters failed to undertake an analysis of the deviation in actual revenues from those forecast although in the proceedings relating to AGT Limited Dr. Waters had undertaken such analysis to determine the volatility of earnings. The Commission failed to take into account the lack of appropriate analysis by Dr. Waters;

- (d) the Commission states that it is aware that the Company requires a financial profile which will permit it to access capital markets under adverse conditions (page 122). The Commission acknowledges that this fact was recognized by all witnesses to the hearing including Dr. Waters. Although the Commission stated that it was aware that this was a requirement of the Company, the Commission then ignored that requirement and instead stated that "if a genuine difficulty develops the Commission will consider interim actions to ensure the Utility will be capable of serving the public interest". By failing to deal with the "imperatives of the capital attraction and financial integrity standards" the Commission improperly failed to deal with one element of the capital structure issue before it. The Commission, having heard the issue of the appropriate capital structure for the utility operations of BC Gas, was required to take into account all relevant considerations and to determine the appropriate capital structure in light of all relevant considerations. The "imperatives of the capital attraction and financial integrity standards" were

relevant considerations and should have been taken into account by the Commission;

- (e) the Commission failed to adequately consider the desire of the Provincial government, as expressed by the Minister of Energy Mines and Petroleum Resources representing Her Majesty the Queen in Right of the Province of British Columbia, that the common equity component of the capital structure of the utility operations be not less than 35% (The Resale Restriction Agreement - Appendix A). The 35% minimum common equity component identified in the Resale Restriction Agreement is indicative of government policy, which is part of the public interest, and should be considered by the Commission, particularly since BC Gas was regulated by the Lieutenant Governor In Council ("LGIC") until September 30, 1991. It was in evidence before the Commission that the provincial authorities wished to ensure that BC Gas would be financially strong and able to assist in the development of the province (Tr. 226). The Commission did not provide a rationale for why a minimum common equity component in the capital structure of 35% was no longer desirable to ensure the financial strength of the Company and to allow BC Gas to assist in the development of the province. The Commission's failure to provide a rationale demonstrates that the Commission did not adequately consider the desire of the provincial government;
- (f) the Commission based its Decision on the appropriate common equity component in the utility operations of BC Gas on incorrect conclusions regarding the evidence

before it. At page 121 the Decision states "...when the Company,s evidence was updated, it was shown that the common equity component more usually associated with gas distribution utilities was substantially below this level" (referring to a 40% level). That portion of the Decision suggests that an updating of the Company,s evidence indicated a reduction in the common equity component associated with gas distribution utilities. In fact, an updating of the evidence indicated just the opposite. An updating of the evidence of Dr. Morin relating to gas distribution utilities showed, on average, an increase in the common equity component;

- (g) at pages 121 and 122 the Decision refers to links between equity components, interest coverage ratios and bond ratings. The Decision is referring to Table 12B of Exhibit 43 but fails to take into account that the Table refers to corporate interest coverage ratios and equity components rather than interest coverage ratios and equity components of utility operations. The conclusion of the Commission also fails to take into account that Table 12B demonstrates that the mean interest coverage ratios for the companies depicted on the Table are higher for AA rated bonds than A rated bonds and still lower for BBB rated bonds and debentures;
- (h) the Commission incorrectly concluded (page 122) that Exhibit 173 shows that utility income before interest and taxes is greater than that for the consolidated company, indicating the utility,s ability to issue debt has been negatively affected by the NRB. That

conclusion is incorrect in that Exhibit 173 does not depict the income before interest and taxes of the consolidated company; it shows utility and "legal" earnings before interest and taxes. The conclusion is also incorrect in that it shows that the investment in Trans Mountain has a positive effect; being dividend income of \$5.4 million. The major impact on earnings before interest and taxes has been caused by the acquisition premium, which was found to be in the public interest when the Lower Mainland operations were sold to Inland.

11. The Commission refers to the acquisition premium on pages 107 and 121 of the Decision. The Commission's views that the \$35.8 million is "not related to the acquisition financing" (page 107) and that the source of funds for the additional \$35.8 million attributable to capital losses and a tax agreement adjustment "should be more appropriately financed out of retained earnings" (page 121) is not based on evidence before the Commission and is based on an incorrect understanding of the \$35.8 million.

- (a) the portion of the 35.8 million attributable to capitalized losses was part of the \$741 million paid in September 1988 for the Lower Mainland gas assets;
- (b) all of the \$741 million, including that portion relating to the capitalized losses, was financed by the acquisition financing and the statement at page 107 that it is "not related to the acquisition financing of the Lower Mainland gas assets" is incorrect;

- (c) the portion of the \$35.8 million attributable to the tax agreement is also part of the acquisition price and has been recorded in the books of the Company as an addition to property plant and equipment. This is apparent from Note 8 to the 1990 Annual Report (Exhibit 1, Tab 8), but was not discussed during the hearing;
- (d) at page 121 the Commission finds that the acquisition premium provides value to the Company to the extent that it generates tax savings. In differentiating the treatment of the \$35.8 million from the rest of the acquisition premium the Commission has incorrectly assumed that tax savings were not associated with the \$35.8 million. The tax savings associated with the \$35.8 million were not addressed during the hearing and the Commission's view is based on an incorrect and incomplete understanding of the facts.

12. The statements on page 107 that "BC Gas effectively uses the utility rate base assets to guarantee non-rate base activities" and "A similar issue with respect to a guarantee by Inland of an NRB agreement formed part of the 1986 Inland hearing" are incorrect and are based on an inaccurate understanding of the facts. On page 107 the Commission quotes Mr. Kleven "The purchase price, which went to Hydro and the province, was 741 million dollars, and that's the price of the assets." It is incorrect to say that rate base assets are guaranteeing non-rate base activities since the security relating to the financing of the assets is attached to the assets which were purchased and which are used for utility purposes. There was no evidence in the hearing to the contrary. This is not similar to the issue in the 1986 hearing which involved a

"guarantee" and not "security" and which involved assets of a subsidiary not associated with utility operations.

13. At page 121 the Commission said "With respect to the use of rate base assets to guarantee non-rate base activities, the Commission directs BC Gas to investigate the identified concern and provide a resolution in a timely manner." . As stated above, rate base assets were not used to guarantee non-rate base activities. Moreover, section 22 of the Hydro and Power Authority Privatization Act (quoted at page 3 of the Decision), provides that the Commission shall not review or reconsider an order or approval made by the LGIC. The creation of the PMM financing to which reference is made on pages 107 and 121 and the B.C. Hydro debenture which the PMM's replaced were approved by the LGIC and it are not subject to review by the Commission.

Relief Sought

14. The operating expenses and overhead capitalized in plant additions for 1992 put forward in the Revenue Requirement Application of BC Gas (as revised by the Company) should be accepted and approved for 1992.

15. If the Commission continues to have concerns regarding the employment levels of BC Gas the issue of employment levels can be included as one of the items to be examined in the Management Review to be conducted by an independent consultant under the provisions of the Resale Restriction Agreement.

16. Although the portion of the Commission's Decision relating to Executive Manpower Compensation (beyond Section 5.8.6 Executive Pension Plan, which is addressed above) is also flawed

with incorrect conclusions and the use of selected and incomplete information, the Company is not seeking specific relief relating to Executive Compensation in this Application. Since the Commission recognized that the Deloitte & Touche Study was not sufficiently complete to provide a benchmark for comparison with BC Gas and has directed BC Gas to provide full testimony at the next revenue requirement hearing, the flaws in the Commission's Decision will be dealt with by the Company at that hearing.

17. The comments of the Commission relating to the Executive Pension Plan should be withdrawn as they are based on an incorrect understanding of the facts.

18. The Commission should find that the appropriate starting point to determine the capital structure of the utility operations of BC Gas is the non-consolidated financial statements of BC Gas.

19. The Commission should find that the appropriate common equity component for the utility operations of BC Gas is 37.5%.

20. The comments of the Commission relating to the financing of the acquisition premium and the use of rate base assets to guarantee non-rate base activities should be withdrawn as they are based on an incorrect understanding of the facts.

21. Commission Order G-63-92 should be varied to conform with the findings above, to vary the refund required to be made

by BC Gas, and to put in place new Tariff Schedules conforming with the findings above.

All of which is respectfully submitted.

Dated at Vancouver, British Columbia, this 4th day of September, 1992.

BC GAS INC.

Per:

David M. Masuhara
Vice-President
Legal & Regulatory Affairs

All Notices and communications in connection with this Application should be directed to:

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2. BC Gas Inc. Application for Reconsideration	

APPEARANCES

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R.B. WALLACE	Celgar Pulp Co. Weyerhaeuser Canada Limited Cominco Fertilizers
C.P. WEAVER	Lower Mainland Large Volume Gas Users' Association
K.E. GUSTAFSON	Consumers Packaging Inc . Hiram Walker & Sons Limited Crestbrook Forest Industries Ltd.
D.W. RAWLYK	Energy Resources Management Czar Resources Ltd. Mobile Oil Canada Canadian Association of Petroleum Producers (formerly known as: Independent Petroleum Association of Canada)
R.E. COCKING	Office and Technical Employees' Union

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LIST OF EXHIBITS

	<u>Exhibit No.</u>
Commission Order No. G-63-92 dated August 5, 1992	1
Commission Order No. G-84-92 dated September 11, 1992	2
Commission Order No. G-94-92 dated October 9, 1992	3
International Brotherhood of Electrical Workers-Local 213 ("IBEW") request for Reconsideration dated August 18, 1992	4
Office & Technical Employees' Union ("OTEU") request for Reconsideration dated August 27, 1992	5
BC Gas covering letter and Application for Extension of Time under Section 92 dated September 4, 1992	6
BC Gas Application for Reconsideration under Section 114 dated September 4, 1992	7
Bull, Housser & Tupper, Barristers & Solicitors (R.B. Wallace) request to comment on BC Gas Application dated September 10, 1992	8
W.L. Foley letter against BCUC reconsideration of the BC Gas Application dated September 18, 1992	9
BC Gas letter to the Commission dated September 21, 1992	10
Owen, Bird, Barristers & Solicitors (C. Weafer) letter dated September 23, 1992 in response to BC Gas letter dated September 21, 1992	11
B.C. Utilities Commission letter dated September 25, 1992 itemizing issues to be commented and to be heard on October 26, 1992	12
Russell & DuMoulin, Barristers & Solicitors (C.B. Johnson) request for shortening timetable dated September 30, 1992	13
Owen, Bird letter on timing of hearing dated October 2, 1992	14
Canadian Association of Petroleum Producers submission dated October 2, 1992	15
Russell & DuMoulin, Barristers & Solicitors, (C.B. Johnson) letter expressing concern about further delay dated October 5, 1992	16
Energy Resources Management submission dated October 5, 1992	17
Owen, Bird submission dated October 5, 1992	18
Fort Nelson submission dated October 5, 1992	19
Bull, Housser & Tupper submission dated October 5, 1992	20

Lang Michener, Barristers & Solicitors submission dated October 5, 1992	21
The British Columbia Public Interest Advocacy Centre ("BCPIAC") submission dated October 5, 1992	22
OTEU request seeking full standing dated October 7, 1992	23
Comment by OTEU in response to Commission Order No. G-94-92 dated October 15, 1992	24
Letter from Nichols Mullaly & Waddington, Barrister & Solicitors representing IBEW dated October 16, 1992	25
BC Gas written response to Intervenors' submissions dated October 19, 1992	26
B.C. Utilities Commission acknowledgement dated October 19, 1992 of Minister of Municipal Affairs letter of October 9, 1992	27
Letter, BCPIAC dated October 23, 1992	28
Letter, Owen, Bird comment on OTEU/IBEW submission dated October 23, 1992	29