

IN THE MATTER OF  
THE UTILITIES COMMISSION ACT  
S.B.C. 1980, c. 60, as amended

and

IN THE MATTER OF  
a complaint by Fording Coal Limited  
under Section 64 thereof

DECISION

November 30, 1984

BEFORE:

J.D.V. Newlands, Deputy Chairman,  
and Chairman of the Division  
D.B. Kilpatrick, Commissioner  
R.J. Ludgate, Commissioner

TABLE OF CONTENTS

	<u>Page No.</u>
APPEARANCES	(i)
I. INTRODUCTION	1
II. ISSUES	2
III. DECISION AND ORDER	8
IV. DISSENTING OPINION	10
ORDER NO. G-76-84	

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## I. INTRODUCTION

This matter came before the Commission during the hearing of an Application by Columbia Natural Gas Limited for interim and permanent rate relief heard in Cranbrook, B.C. commencing September 25, 1984. Argument on the matter was heard in Vancouver on October 2 and 3, 1984.

Fording Coal Limited ("Fording"), an industrial customer of Columbia Natural Gas Limited ("Columbia") filed a complaint with the Commission under Section 64 of the Utilities Commission Act on June 20, 1984. The complaint alleged that the rates charged by Columbia for natural gas service to Fording were unjust, unreasonable and unduly discriminatory. The complaint requested that Fording be given relief by reducing the rate charged Fording to one "in line" with rates charged to Columbia's other industrial customers, Cominco Ltd. ("Cominco"), Crestbrook Forest Products Ltd. ("Crestbrook") and Westar Mining Ltd. ("Westar"), under contracts in the industrial class.

During the hearing of evidence and argument on the complaint the question was further refined to relate to a comparison with the rates for service paid under the Westar Mining Ltd. (Greenhills) contract. Fording asked that the Commission declare Fording's existing contract with Columbia unenforceable to the extent that Fording is charged a discriminatory rate compared to the Greenhills rate. The alleged discrimination arose with the commencement of industrial service on July 1, 1983 under an interim contract between Columbia and Greenhills. Fording further requested compensation for an amount related to the differential between the Fording rate and the Greenhills rate based on the volume of gas taken by Fording from the same date in July, 1983.

The Commission, in a letter of August 3, 1984, directed that the Fording complaint would be heard, inter alia, following the hearing of an application for interim and permanent rate relief filed by Columbia to be heard commencing September 25, 1984. A copy of that letter was sent to all industrial contract customers.

At the commencement of the hearing of the rate application in Cranbrook on September 25th, motions were introduced to delay the consideration of the complaint, pending the hearing of other matters related to the industrial contract customers. As a time-saving measure, Fording was given the opportunity to introduce evidence on the complaint issue and to cross-examine witnesses of Columbia on related matters\*. Following the taking of evidence and after hearing from counsel for the interested parties, it was the conclusion of the Commission that sufficient notice of the question and a fair opportunity to adduce evidence had been provided and that the "discrimination" matter could therefore be argued following the conclusion of the rate relief evidence and argument. The following sets out the Commission's considerations and conclusions on the various matters in respect of the Fording complaint.

## II. ISSUES

The Fording contract (Exhibit 16) is "typical", of the long-term gas sales contracts which Columbia negotiated with each of its major industrial customers. The common feature is that all of the contracts were negotiated at arm's-length and all are

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\* References to Exhibits and transcript are from the record of the concurrent hearing of the Rate Application of Columbia.

considered to be within an industrial class of service. The Fording contract has a 15-year term extending to December 31, 1986. In this respect it differs from the other industrial contracts, which have reached the end of their term and are now running on a month-to-month basis or for an indefinite term.

The interim agreement between Columbia and Westar to provide gas for the Greenhills coal mine was entered into in July, 1983 when the coal operations commenced. This agreement was negotiated as an industrial contract within the industrial class, and contains a price for gas which is an average of the price paid by Cominco, Crestbrook and Westar (Balmer operations).\* It is the differential in price between that paid by Fording and that paid by Greenhills that is the basis for the complaint of undue discrimination made by Fording.\*\*

The Fording complaint was opposed by Columbia which took the position that the discrimination question was intertwined with all of the issues related to industrial contracts and as a result the question was more properly considered within the context of a review of these contracts. Columbia further stated that Fording should be prepared to abide by the existing contract until its termination, unless Fording proposed to negotiate a new contract.

Crestbrook took the position that the issue was not one of discrimination but rather related to whether or not Greenhills was receiving a preferential rate in comparison to the other

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\* An interim agreement was accepted for filing by the Commission by Order No. G-49-83 of July 12, 1983 (see Exhibit 30).

\*\* Exhibit 2 shows an average rate of \$3.283/GJ for Fording; \$3.210/GJ for Greenhills.

contracts in the class. Crestbrook further argued that a finding of discrimination in the industrial class which required the adjustment requested by Fording would discriminate against the other members of the class. In this respect it was urged that the Commission have regard to the finding of the British Columbia Energy Commission in October 1975 that, in fact, the negotiated industrial contracts comprised a class of service, free of discriminatory implications. Crestbrook took the position that should the Greenhills contract be found to be unduly preferential or discriminatory it should be amended to put it on the same basis as the other contracts in the class, and that any financial consequences of the adjustment of the Greenhills contract should be borne by Columbia's management rather than passed along to other customers.

Cominco's position was that the complaint had no bearing on Cominco and that the results of any decision should only apply to Greenhills.

Westar opposed the complaint, arguing that there was no discrimination between the two rates, both contracts having been negotiated and the Fording rate being in accordance with the terms of its particular contract. Westar maintained that the Fording contract includes beneficial terms which the Greenhills contract does not contain. Westar further argued that the Greenhills contract was clearly an interim one and approved by the Commission on that basis. Westar, therefore, concluded that there could not be said to be discrimination prior to the signing of a permanent contract and that the complaint was, at least, premature.

The complaint raises a difficult matter for the Commission. Is the question before the Commission in this matter simply whether there is undue discrimination because of the differential in rates between Fording and Greenhills for

similar service on the same lateral, or is the issue broader, involving a reconsideration of the concept of individually negotiated industrial contracts within the same class? The latter position is essentially that taken by Columbia and supported by the other intervenors.

In addition to the comparison with the Greenhills rate, Fording advanced the proposition that the price it was paying was too high because, on any reasonable application of the amount paid for natural gas service since the commencement of service in 1970 under the contract, the capital costs of the lateral had been more than recovered. Fording testified that the initial cost of the line was approximately \$1.6 million and this cost would be exceeded by applying the minimum monthly payment of \$14,000 over the term of the contract to the present date.

The Commission is of the view that this evidence, by itself, does not necessarily indicate that the costs of gas service are too high. The calculation does not take into account many elements of cost which must be covered in any attempt to establish a price which would fully amortize the cost of line and pay associated costs of service over time. It may be that the price is too high even if all the elements were calculated. In Fording's case, however, the price(s) and the volumes specified in the contract do not appear to attempt this, nor is there any provision to adjust the price based on such calculations. The contract does contain provision for a price adjustment reflecting volumes of gas being transmitted through the line above a point known as the "Kaiser Junction". This, however, appears to be the only adjustment in price to flow to the benefit of Fording and reflects a higher utilization of the line by reducing the base price to Fording of volumes of gas above prescribed levels.



The Fording complaint revolves around the issue of whether or not it is unduly discriminatory to Fording that Greenhills, a similar industrial customer, has the advantage of a substantially lower price for gas delivered by the same lateral of the Columbia system. While there are admitted differences in the point of delivery and volumes, and in other features of the respective contracts, there are also similarities in respect of the use and receipt of gas from the same lateral line. The central issue remains, however, the price of gas.

The history of the development of the industrial gas sales of Columbia and the treatment of them by this Commission and the predecessor Commission shows that the individually negotiated contracts have been considered, and filed, as tariffs for service in the industrial class. This issue was specifically dealt with in 1975 by the Energy Commission. The decision of the Commission at that time recognized this principle and the same principle has been followed by this Commission to date with respect to Columbia.

A decision to modify the Fording contract, on the basis advanced by Fording, would alter the historic treatment of this class of customer by the Commission. There may be changes to come with respect to this class of service, given the interim nature of the Greenhills contract and the fact that several other contracts are running on a month to month or an indefinite basis. These matters clearly require resolution by Columbia and the industrial customers.

Columbia has initiated discussions with industrial customers to develop a standard contract and tariff for the sale of gas in the industrial class. Exhibit 6 filed by Columbia contains certain material related to this issue, reference to which, on the motion of Crestbrook and Cominco supported by Westar and Fording, was deferred to a future date.

The resolution of the issues raised by Exhibit 6 including a proposed rate for service, may require a redistribution of revenue to be received under each industrial contract, and perhaps a modification to the existing tariffs for other classes of customer.

The Commission has concluded that the matter cannot be resolved by a narrow interpretation of the question. To do so would alter the traditional form of regulation of this class of service on the Columbia system. A modification of the Fording contract on the basis advanced would, the Commission concludes, raise questions of discrimination with respect to the other customers. Any reduction of revenue from one customer in this class might affect all other customers of Columbia, and certainly at least those within the industrial class of service.

Fording's "complaint" may only be that, in light of subsequent events, it entered into an improvident contract, as comparison with the Greenhills rate would indicate. However, as several intervenors suggested, it may be that the Greenhills rate was not properly struck. Certainly it is arguable that the Greenhills rate, which appears to be simply an average of the rates to Crestbrook, Cominco and Westar (Balmer) for service off another lateral of the Columbia system cannot properly be used to justify rates for service on the Fording lateral. Clearly, the Greenhills rate was established on a basis different from that of the other contracts, which reflect negotiated costs of service and gas on the lateral from which service is taken. While examination of the costs of service on the Fording lateral might indicate a more equitable distribution of costs between Fording and Greenhills, the Commission concludes that this is a subject which goes beyond the present matter and could be appropriately resolved in the proposed revision of Rate Schedule 5.

### III. DECISION AND ORDER

The Commission concludes that the rate currently charged to Fording is that determined under its negotiated contract with Columbia and that the contract is the tariff for Fording in the industrial class. With the exception of Greenhills, which was approved by the Commission only as an interim agreement, the other industrial contracts must be similarly interpreted. Until this method of setting base rates in the industrial class is changed, the Commission concludes that rates should not be arbitrarily changed for one member simply because another later member appears to have negotiated a more favourable contract.

The Commission heard argument on the question of undue discrimination based on references to legal authorities and statutory requirements both in Canada and the United States. On the basis of the facts in evidence the Commission has concluded that the issue does not require a determination of what constitutes undue discrimination. Given the nature of the class of service and the practice of determining rates for service on the basis of individually negotiated contracts the argument of Fording may only be, that in light of later circumstances the contract rate is too high.

Accordingly, the Commission cannot find that the rate to Fording is unduly discriminatory and rejects the complaint.

From the evidence, it is apparent that the rate in the Greenhills contract was not determined on the same basis as was that of Fording or the other industrial customers. Because both Fording and Greenhills take service from the same lateral under substantially similar conditions, Greenhills may be enjoying an unduly preferential rate. The Commission concludes, however, that a determination of the level of fair

and reasonable rates and other terms for service off the Fording lateral is necessary before any equitable adjustment can be made, and that until that determination is made it is not fair or reasonable to interfere with the negotiated contracts for service of Fording, Greenhills or, indeed, the other industrial customers.

The Commission therefore orders as follows:

Columbia shall prepare and file, prior to January 31, 1985, cost of service data which will allow the Commission to consider action under Section 64(1) to determine whether the rate charged by Columbia to Greenhills is insufficient within the meaning of the Act.

DATED at the City of Vancouver, in the Province of British Columbia, this 30th day of November, 1984.

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J.D.V. NEWLANDS, Deputy Chairman

*D.B. Kilpatrick*  
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D.B. KILPATRICK, Commissioner

*R.J. Ludgate*  
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R.J. LUDGATE, Commissioner

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\*See Dissenting Opinion by J.D.V. Newlands, Deputy Chairman and Chairman of the Division.

#### IV. DISSENTING OPINION

As stated in the evidence, a contract negotiated in 1971 between Fording Coal Ltd., and Columbia Natural Gas Limited provided for the construction of a 39-mile lateral in order to provide natural gas service to Fording's coal operations in the vicinity of Elkford, British Columbia. This contract was identical to the Special Industrial contracts negotiated between Columbia and its other large industrial customers, with the exception of Greenhills, inasmuch as the contract price represented, from Columbia's perspective, a fair and reasonable compensation for the service rendered by the Utility, or, a fair and reasonable return on the appraised value of its property.

From the perspective of Special Contract customers, the rate was a fair and reasonable charge for the service of the nature and quality provided by Columbia. These contracts, when signed by the respective parties, were accepted for filing on a permanent basis by the Commission.

With specific regard to Fording, it appears to me that the Fording contract contemplates this customer paying a price associated directly with the provision of service from the extension inasmuch as the contract contemplates a reduced rate applicable to Fording as other residential, commercial and industrial customers become users of the system above the "Kaiser Junction."

With regard to Greenhills, this rate clearly does not reflect the provision of service associated with the lateral as the rate is merely the average of rates charged to other large industrial customers, which rates reflect the provision of service from the respective laterals.

On the basis of the evidence, I conclude that the appropriate rate to be applicable for large industrial service from this extension, until at least the expiry of the existing Fording contract is the Fording rate and, accordingly, I find that the interim rate charged by Columbia to Greenhills is unduly preferential.

DATED at the City of Vancouver, in the Province of British Columbia, this 30th day of November, 1984.



J.D.V. NEWLANDS, Deputy Chairman



BRITISH COLUMBIA  
UTILITIES COMMISSION

ORDER

NUMBER G-76-84

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

and

IN THE MATTER OF a complaint by  
Fording Coal Limited  
under Section 64 thereof

BEFORE: J.D.V. Newlands, )  
Deputy Chairman; )  
D.B. Kilpatrick, ) November 30, 1984  
Commissioner; and )  
R.J. Ludgate, )  
Commissioner )

O R D E R

WHEREAS on June 20, 1984 Fording Coal Limited ("Fording") filed with the Commission a complaint alleging that the rates charged by Columbia Natural Gas Limited ("Columbia") for natural gas service to Fording were unjust, unreasonable and unduly discriminatory; and

WHEREAS the Fording complaint came before the Commission during the public hearing of an application by Columbia which commenced at Cranbrook, British Columbia on September 25, 1984; and

WHEREAS the Commission has considered the Fording Coal Limited complaint and the evidence adduced at the hearing and has reached certain conclusions set forth in a Decision containing a dissenting opinion, issued concurrently with this Order;

NOW THEREFORE the Commission hereby Orders as follows:

1. The complaint by Fording Coal Limited is rejected.

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BRITISH COLUMBIA  
UTILITIES COMMISSION

ORDER  
NUMBER G-76-84

2

2. Columbia Natural Gas Limited shall prepare and file, prior to January 31, 1985 cost of service data which will allow the Commission to consider action under Section 64(1) of the Act to determine whether the rate charged by Columbia under the Westar Mining Ltd. (Greenhills) contract is insufficient within the meaning of the Act.

DATED at the City of Vancouver, in the Province of  
British Columbia, this 30th day of November, 1984.

BY ORDER

  
Deputy Chairman