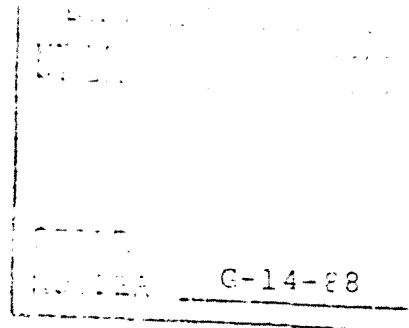




PROVINCE OF BRITISH COLUMBIA

BRITISH COLUMBIA UTILITIES COMMISSION



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

and

IN THE MATTER OF Inland Natural Gas Co. Ltd.
and an Inquiry into Complaints respecting
Transportation Service to Large Industrial Customers

BEFORE: J.D.V. Newlands,)
Deputy Chairman; and) February 16, 1988
N. Martin,)
Commissioner)

ORDER

WHEREAS Mr. W.J. Grant, Director of Engineering for the Commission was empowered by Section 93 of the Utilities Commission Act to review complaint matters pertaining to transportation rate schedules and transportation service on the Inland Natural Gas Co. Ltd. ("Inland") system; and

WHEREAS the inquiry into complaints respecting transportation service to large industrial service customers on the Inland system took place on January 27, 1988 in Vancouver; and

WHEREAS Mr. Grant submitted his report to the Commission on February 5, 1988; and

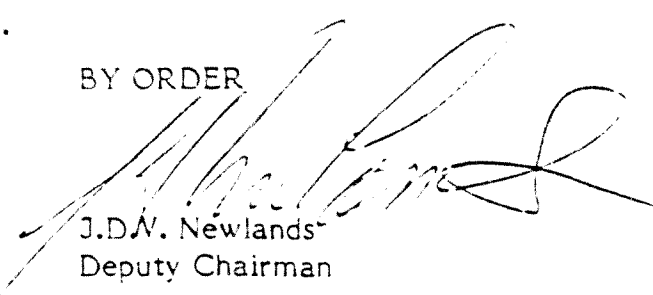
WHEREAS the Commission has reviewed the report and is satisfied that the recommendations are appropriate and in the public interest.

NOW THEREFORE the Commission Orders Inland Natural Gas Co. Ltd. as follows:

1. Approval is granted to the Recommendations contained in the Inquiry into Complaints Respecting Transportation Service to Large Industrial Customers on the Inland Natural Gas Co. Ltd. System. The Report is attached as Appendix A.
2. Inland is ordered to make the required changes to its filed Gas Tariff Rate Schedules 11, 12, 15, 16, 17, 18, 19, 20, 21 and 22 in accordance with Recommendations contained in the Report and submit the appropriate revisions to the Commission for acceptance and filing no later than March 15, 1988.

DATED at the City of Vancouver, in the Province of British Columbia, this 17th day of February, 1988.

BY ORDER


J.D.V. Newlands
Deputy Chairman

Attachment

INLAND NATURAL GAS CO. LTD.

Inquiry Into Complaints Respecting
Transportation Service to Large Industrial Customers

A handwritten signature in dark ink, appearing to read 'W.J. Grant', with a long horizontal flourish extending to the right.

W.J. Grant
February 5, 1938

INLAND NATURAL GAS CO. LTD.

Inquiry Into Complaints Respecting
Transportation Service to Large Industrial Customers

W.J. Grant
February 5, 1988

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INLAND NATURAL GAS CO. LTD.

Inquiry Into Complaints Respecting
Transportation Service to Large Industrial Customers
held in the Utilities Commission Hearing Room
at 10:00 a.m., January 27, 1988

LIST OF ATTENDEES

<u>Name</u>	<u>Firm</u> (Representing)
Raymond McDonald	Northwood Pulp & Timber Ltd.
Brian Wallace	Bull, Housser & Tupper (Industrial Customers)
David Kay	Husky Oil Operations Ltd.
Wayne Silk	Unocal Canada
Gary Hudson	Mobil Oil
Donald Bews	Mobil Oil
Joseph Pelrine	Davis & Company (Mobil Oil)
Gordon Dittmer	Petro-Canada
Harry Scott	Wainoco Oil Corporation
Dick Gathercole	B.C. Public Interest Advocacy Centre
Victoria Wong	Lawrence & Shaw (Consumers, Crestbrook)
Don Fairbairn	Inland Natural Gas Co. Ltd.
Cal Johnson	Russell & DuMoulin (Inland)
David Masuhara	Inland Natural Gas Co. Ltd.
Bill Arthur	Inland Natural Gas Co. Ltd.
Simon Wong	B.C. Utilities Commission
William Grant	B.C. Utilities Commission
Paul Gronert	B.C. Utilities Commission

INLAND NATURAL GAS CO. LTD.
Inquiry Into Complaints Respecting
Transportation Service to Large Industrial Customers

A. BACKGROUND

Inland initiated transportation service for its large industrial customers in October 1985. The transportation service is intended to allow industrial customers to contract directly with producers or brokers for their own supply of natural gas, rather than being obligated to purchase commodity directly from Inland. At that time Inland was the first distributor utility in British Columbia to offer transportation service to its customers.

The initial schedules of the utility were put in place by the Commission on an interim basis. They were a matter of complaint by industrial customers from inception. The Commission took various actions to improve the tariffs during the course of calendar 1986, but by October 1986 detailed formal complaints were filed by industrial customers. These complaints were accommodated to allow direct sales to occur effective the contract year commencing November 1, 1986. The Commission then determined that it would deal with the complaints and other transportation matters as Phase I of its Rate Design Hearing for Inland. That hearing proceeded in the first half of 1987 and culminated in a Decision of the Commission dated June 17, 1987.

The June Decision of the Commission dealt with many contentious terms of transportation service offered by Inland. The Commission directed that Inland amend its transportation schedules significantly in several areas. During the course of the hearing, the number of transportation schedules offered by Inland expanded considerably so that Schedules 15 through 22 are now entirely devoted to transportation service for large industrial customers.

The industrial customers provided another detailed complaint with respect to the Inland transportation tariffs on October 29, 1987. This complaint followed the issuance of Inland's revised transportation schedules on October 21, 1987.

The Commission determined that it would deal with this complaint through an inquiry by W.J. Grant under Section 93(2) of the Utilities Commission Act. That clause allows the Commission to act on the report of the person appointed to make the inquiry.

On November 24, 1987 various interested parties were requested to make submissions on the Terms and Conditions within the Inland Large Industrial Sales and Service Tariffs which might be in conflict with previous Commission directions. Submissions were received from Mr. R.B. Wallace on behalf of the industrial customers, Ms. E.S. Decter on behalf of a group of producers, and Mr. J.M. Pelrine on behalf of Mobil Oil. Inland responded to those submissions by correspondence dated December 10, 1987 and December 24, 1987.

The inquiry into these matters was held on January 27, 1988. The form of the inquiry was a round-table discussion of the issues with all parties participating. Mr. Gathercole, on behalf of residential and commercial customers generally, joined the meeting for those issues which he felt had significant impact on his clients.

B. DISCUSSION

Two issues could potentially thwart the government initiatives to encourage a competitive market in the purchasing of natural gas. These issues revolved around the force majeure conditions imposed by the transportation tariffs and the indemnification requirements under Article 6 of the Transportation Agreements (in the event that Inland had insufficient natural gas to meet its firm commitments as a result of failure of supply by transportation customers). Due to the importance of these issues they were addressed first at the inquiry.

B.1 Force Majeure

The force majeure clause provides Inland with broad Force Majeure coverage in the event of a failure by the utility to provide natural gas. The clause provides virtually no force majeure coverage to producers delivering gas under transportation service unless Westcoast declares force majeure. The clause also amends the previous force majeure clause offered to industrial customers so that an industrial customer can no longer claim force majeure for events such as an explosion at the industrial plant.

Mr. Wallace argued that Inland had not met the intent of the Commission's directions in its June 17, 1987 Report. On page 17 of that report the Commission stated that,

"A force majeure provision is intended to provide relief for contractual obligations where events occur beyond control of the contracting party. Inland's concern that shippers may not offer adequate diversity of gas supply is not a force majeure question but one of whether adequate back-up supply is provided sufficient to reduce the risk of a failure of gas supply in reasonable circumstances. Inland has required this diversity of gas supply under applicable schedules. Inland is therefore directed to remove Article 12.3 from the Schedule 15 Transportation Agreement and similar provisions in other agreements."

Mr. Pelrine argued that the obligation to deliver gas by producers should be no different from the obligations of Inland's dominant sales gas supplier, Westcoast. The arguments of Mr. Wallace and Mr. Pelrine were supported by the producer group.

Mr. Gathercole pointed out that the core customers were relying on the use of the transportation customers natural gas on the five days of curtailment. He pointed out that those industrial customers had received concessions in their cost of transportation based upon the reliable delivery of the gas during curtailment periods. He therefore felt that the security of gas supply and the

financial risks and conditions of supply should be such that the transportation gas will be equally reliable to that available under utility purchases.

Inland noted that it had been the utility's position throughout the development of transportation service that "those who benefit from the new markets should bear the risk". In justifying the force majeure clause Mr. Johnson stated that new risks should not be passed on to the core market. He therefore argued that the Commission should visit those new risks where they should be allocated.

When pressed to identify any new risks which would justify a more onerous force majeure clause than that which is faced by Westcoast, Inland felt that diversity of gas supply and physical access to the gas supply were two items.

The Commission has already ruled in its previous Decision that the requirement for adequate diversity of gas supply and adequate back-up is accommodated through the independent consultant review of gas supplies and the requirement for first call priority gas as specified in the Transportation Tariffs. Indeed, the producers argued that experience this winter shows that the extensive back-up supplies of the producers direct sales have resulted in more reliable delivery of natural gas to industrial customers under Direct Sales than that available through the B.C. Petroleum Corporation ("BCPC"). Inland argued that other bottlenecks on the Westcoast system were in part responsible for the reduced reliability of the BCPC gas compared to that provided from the producers. In either alternative the fact remains that diversity of gas supply is dealt with elsewhere in the Tariffs and does not pose a new risk which would justify a more onerous force majeure clause.

Inland argued that it had better physical access to pipeline gas supplies from Westcoast under periods of inadequate through-put if the gas is sales gas. They argued that even if Westcoast cut Inland to a level below its contract

demand ("CD"), Inland could always physically take its full CD and thereby leave other customers downstream short. They argued that this would not be the case if industrial gas were in short supply.

While the financial liabilities related to the alternative contracts might be different it is noteworthy that Inland has the same physical access to the Westcoast pipeline in either event.

On the basis of the inquiry held, I recommend that Inland be instructed to provide force majeure for producers under large industrial transportation schedules equivalent to the force majeure rights enjoyed in the Westcoast/Inland Agreement.

The industrial customers also took exception to the changes that Inland has made to its force majeure availability for industrial customers. The new force majeure clause has altered that which existed previously in Schedule 11. This matter was not discussed at the Rate Design Hearing and did not come to the attention of the industrial customers until October 1987. Inland stated that they had consciously reduced the force majeure coverage for the end-use customers to "tighten-up" the force majeure clause. I believe that Inland should have been responsible for alerting the Commission and its industrial customers of the limitations it was writing into the new large industrial customer tariff schedules. As such, I recommend that the force majeure clause be altered to provide the same level of force majeure coverage to end-use customers as that which existed in the old Schedule 11. Inland may seek alteration to the force majeure clause as a separate matter to be addressed in the future, or at a future rate hearing. However, I believe it is important that Inland demonstrate its need for a more stringent force majeure clause and all industrial customers be given an opportunity to state their own views before the Commission alters the force majeure terms for industrial customers.

Two alternative force majeure clauses have been proposed. Mr. Wallace proposed a force majeure clause in his October 29, 1987 submission which is based upon the force majeure clause in the old Schedule 11 which has been modified only where required to reflect the existing contractual arrangements. I believe the industrial customers' proposed force majeure clause is preferable to the alternative proposed by the producer group and reflects the recommended action on this matter.

B.2 Article VI - Indemnification

The arguments against the existing indemnification clause required by Inland revolve around the limitation to claim force majeure and the open-ended liability which could result from the indemnification. The producers were most concerned that because of the existing force majeure clause the producers could become liable for an open-ended expense as a result of what otherwise would be force majeure conditions and items which were beyond the control of the producers. Obviously, the proposed changes to the force majeure clause recommended in Section B.1 will go some way to comfort the producers that items of indemnification are likely to result from conditions which are within the producers control to remedy.

The producers generally, and clearly stated by Mobil Oil, also took exception to the open-ended liability that they could face from the indemnification clause. Mr. Pelrine argued that the expenses related to the indemnification should be limited to direct expenses incurred by Inland. Both Inland and Mr. Gathercole argued that the indemnification should also cover all expenses including consequential expenses. They point out that to not cover these potential liabilities could result in unindemnified expenses by Inland which could later be visited on the core customers.

As a result of the discussion at the meeting I believe the following changes should be made to the indemnification clause:

- It should be clear that the indemnification applies only to non-force majeure events.
- Inland should be required in the indemnification clause to act as a "prudent expert" in its actions to ensure gas supply to needy customers and to minimize the expense incurred in obtaining alternate product.

This last item will place an onus on Inland to acquire interruptible sales or service gas, peaking gas, unauthorized overrun gas, fuels other than natural gas, or an orderly emergency curtailment of other industrial users to avoid the potential of system failure to critical customers. However, I agree with Inland and Mr. Gathercole that the liability under this indemnification should cover all costs that are eventually visited on the utility.

B.3 Other Tariff Schedule Issues

In Inland's correspondence of December 10, 1987, the utility makes numerous concessions to the industrial customers complaint of October 29, 1987. I recommend those concessions be reflected directly into all relevant large industrial tariff schedules.

In addition to those issues conceded by Inland there was discussion on several items of the industrial customers submission of October 29, 1987. With respect to Item 2 of the Industrial Submission related to nomination lead times, all parties agreed that a six month nomination lead time should be instituted in all transportation schedules as it relates to transportation service. The 13 month notice would remain for sales schedules and in the event a customer wished to switch from transportation service to sales. This action should provide an impetus to Inland to renegotiate the lead time requirements that are demanded by Westcoast.

Item 6 of the Industrial Submission deals with the return of gas taken by Inland. The tariff currently provides for a return of the gas within 180 days at a time convenient to Company and shipper. It is proposed that the tariff be altered to read "within one hundred and eighty days, but as soon as practical". Further, Inland agreed to receive a Commission instruction to prepare a report on the feasibility of reducing the time-lag in the return of gas to a shorter duration than the existing 180 days.

Item 7 of the Producer Submission deals with balancing of gas volumes. This clause in the transportation schedules has become outdated as new balancing arrangements have come into place on the Westcoast system. Inland, Westcoast and the other customers are in the process of developing new balancing arrangements and Inland will file changes to the schedules as these new arrangements are solidified. This action is acceptable to the industrial customers and the producers.

Item 10 of the Producers Submission deals with the tariff condition that states that if an end-use customer switches back to sales from service, and should Inland be subject to higher gas prices as a result, then the customer may be required to pay a rate higher than the tariff rate for sales gas. Although the industrial customers would prefer this clause be removed, they did not strongly oppose its current inclusion. As this is an item of importance to the Commission and to Government Policy I recommend the clause be left in the tariffs. By so doing the customers will be clearly aware of the potential price liability they face when switching back to sales schedules.

Item 13 in the Producers Submission dealt with the indemnification for revenue versus volume credits from Westcoast, and take-or-pay liability with the BCPC. It is understood that the volume credit mechanism will be instituted on the Westcoast system as a result of the recent National Energy Board ("NEB") Decision. When that is documented to Inland then Inland will apply to alter the tariffs so as to remove that potential indemnity. In the case

of the take-or-pay indemnification, it was agreed by all parties that Inland would write letters to each customer who had obtained an exclusion from take-or-pay liability from the BCPC.

The industrial customers took exception to Inland's requirement for an irrevocable letter of credit in an amount equal to the maximum amount payable by shipper in a transportation agreement for a period of 120 days. Inland pointed out that a letter of credit would only be required from shippers who appeared to be a credit risk. After further discussion with respect to the length of the period that the letter of credit should cover, Inland agreed that 90 days would be sufficient. This alteration to Paragraph 7 of the General Terms and Conditions should therefore be required.

A final matter addressed by the industrial group related to an error in the wording of Clause 14.8 of the Transportation Schedules. The word to in the third last line of Clause 14.8 should be changed to the word by.

Many of the issues that the producers wished to cover were dealt with under the submission of the industrial customers. The residual items addressed by the producers focused on the review of gas supplies and the determination of first call priority gas by Inland. The producers point out that the Independent Gas Supply Consultant will review the gas supplies and provide advice to Inland. Since Inland will not have an opportunity to view the parameters of the gas supply offered by the producers in a particular sale, guidelines need to be established so that the independent consultant can determine what level of first priority gas should be provided. Inland resisted this notion arguing that if producers wish to have a lower requirement for first priority gas they should provide all information to Inland staff. The producers do not agree with Inland since Inland is extending its non-utility investments into oil and gas production and natural gas brokerage.

In the circumstances I believe that Inland must develop a workable first priority review process to conform with Commission directions of June 17,

1987 (pages 23 and 24). That Decision directed Inland to modify its first call priority clause to allow the Company to either increase or decrease the percentage of first call priority gas depending on the diversity of gas supply offered for a particular contract. Inland has changed its tariff wording but not provided a means of making the review operational. If Inland is unwilling to develop a review process which recognizes the confidentiality of the producers, the Commission should reconsider the degree of separation between utility and non-utility activities of Inland. This matter was addressed in the June Decision of the Commission at pages 26 and 27.

I therefore recommend Inland develop a review program and report back to the Commission by June 30, 1988.

B.4 Which Schedules to Approve?

In the submission from the industrial customers, Mr. Wallace suggested that the Commission approve only Schedules 21 and 22 for the large industrial customers. He noted that these two schedules are the only ones being used by large industrial customers at this time. Moreover, he did not wish to expend his time and effort reviewing terms and conditions of the several other schedules which are not currently being utilized.

Inland would like to see all the schedules put in place. The utility points out that much work has gone into the development of these schedules and they should be available to customers when choosing sales or transportation service.

I agree with Inland that it would be profitable to approve all of the Schedules, 11 through 22. Since the schedules other than Schedules 21 and 22 have not received the benefit of very detailed review by the industrial customers and the producers, the Commission should recognize that there is some potential for future complaints with respect to these tariffs. The Commission should direct Inland to incorporate all the changes that the utility

has volunteered to make to Schedules 21 and 22, plus the recommendations of the Commission on specific items, into all of its large industrial schedules.

B.5 The Husky Complaint

Husky Oil Operations Ltd. wrote to the Commission on October 19, 1987 advising that a temporary settlement of the term of the Inland/Husky Agreement had been reached. At that time Husky proposed that the matter be resolved at the same time as the industrial customers complaint. I was advised by Mr. Wallace (on behalf of Husky) that Husky and other industrial customers would prefer to raise the matter of long-term contract conditions with the Commission at a future date. Inland agreed with Mr. Wallace and on that basis the matter was not addressed at the January 27, 1988 inquiry.

C. RECOMMENDATIONS

C.1 Force Majeure

- Inland should alter this clause to provide force majeure for producers under large industrial transportation schedules equivalent to the force majeure rights enjoyed in the Westcoast/Inland Agreements.
- The force majeure clause should also be altered to provide the same level of force majeure coverage to end-use customers as that which existed in the old Schedule 11.

C.2 Indemnification

C.2.1 General

All relevant schedules should be changed so that it is clear that:

- Indemnification applies only to non-force majeure events.

- Inland will be required to act as a "prudent expert" in its actions to ensure gas supply to needy customers and to minimize the expense incurred in obtaining alternate product.
- It covers all costs for which the utility could be legally held liable.

C.2.2 Revenue vs Volume Credits

As soon as Inland receives documentation from Westcoast that the volume credit mechanism is in effect as a result of the recent NEB Decision, Inland should apply to remove this indemnity from all relevant tariffs.

C.2.3 Take-or-Pay

Inland should write letters to each customer who has obtained an exclusion from take-or-pay liability from the BCPC.

C.3 Concessions

The concessions made in Inland's correspondence of December 10, 1987 regarding the industrial customers complaint of October 29, 1987 should be directly reflected in all relevant large industrial tariff schedules.

C.4 Nomination Lead Times

- A six-month nomination lead time should be included in all transportation service schedules.
- The 13-month notice should remain for sales schedules and in the event a customer wishes to switch from transportation service to sales.

C.5 Return of Gas

- All relevant schedules should be altered to read:
"within one hundred and eighty days but as soon as practical"
- Inland should submit a report to the Commission on the feasibility of reducing the 180 day period.

C.6 Balancing

Inland should file changes to the relevant schedules as soon as details are finalized with Westcoast.

C.7 Service to Sales

The tariff currently contains a clause stating that if an end-use customer switches from service to sales, and this results in Inland being subject to higher gas prices as a result, then the customer may be required to pay a rate above the sales rate.

This clause should remain as is.

C.8 Letter of Credit

Inland should change the relevant tariffs to show the period to be 90 days.

C.9 First Call Priority

Inland should develop an operational review program and report back to the Commission by June 30, 1988.

C.10 Housekeeping

The word to in the third to last line of clause 14.8 of the Transportation Schedules should be changed to the word by, e.g. Schedule 21, sheet no. 286.

C.11 Schedules

Inland should make all the changes to its tariff necessary to accommodate the recommendations included in this report.

This is to apply to Schedules 11, 12, 15, 16, 17, 18, 19, 20, 21 and 22.

Inland should file all tariff pages, new and revised, by mid-March 1988 at which time the Commission should grant approval.