



IN THE MATTER OF  
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

A Request by Westcoast Energy Inc.  
for Disclosure of the Specified Maximum  
in the CTS Support Agreement

**BEFORE:** P. Ostergaard, Chair )  
L.R. Barr, Deputy Chair )  
F.C. Leighton, Commissioner ) March 25, 1999  
K.L. Hall, Commissioner )

**O R D E R**

**WHEREAS:**

- A. On December 11, 1998, BC Gas Utility Ltd. ("BC Gas") applied to the Commission pursuant to Section 45 of the Utilities Commission Act ("the Act"), for a Certificate of Public Convenience and Necessity for the Southern Crossing Pipeline ("SCP") Project; and
- B. On January 13, 1999, BC Gas applied for Commission approval of a Bypass Transportation Agreement with British Columbia Hydro and Power Authority ("B.C. Hydro") dated November 27, 1998 for service on BC Gas' Coastal Transmission System ("CTS"); and
- C. In a letter dated January 13, 1999, B.C. Hydro filed a CTS Support Agreement, made November 27, 1998, among B.C. Hydro, BC Gas and BC Gas Inc., and requested that the "Specified Maximum", as defined in the CTS Support Agreement, be kept confidential on the basis that disclosure could adversely affect its position and that of its customers; and
- D. In its February 11, 1999 submission regarding BC Gas' December 11, 1998 Southern Crossing Pipeline Application, Westcoast Energy Inc. ("Westcoast") requested that the Commission direct BC Gas to fully disclose the "Specified Maximum" in the CTS Support Agreement; and
- E. Commission Order No. G-21-99 provided that B.C. Hydro would, and other parties could, file submissions by March 3, 1999 regarding the Westcoast request for disclosure of the Specified Maximum in the CTS Support Agreement. Westcoast had until March 12, 1999 to reply; and

- F. B.C. Hydro, BC Gas and BC Gas Inc. filed submissions dated March 3, 1999, with the Commission pursuant to Order No. G-22-99; and
- G. The Westcoast submission dated March 12, 1999, in reply to the March 3, 1999 submission of B.C. Hydro, stated that Westcoast had not received any submission from BC Gas on the matter. Westcoast also stated that it is in the context of the SCP proceeding that it seeks disclosure of the Specified Maximum; and
- H. Commission Order No. G-30-99 dated March 16, 1999, amended Order No. G-22-99 by changing the date by which Westcoast could file a written reply on the request for disclosure of the Specified Maximum in the CTS Support Agreement to Monday, March 22, 1999. The Commission also provided copies of the BC Gas and BC Gas Inc. submissions to Westcoast; and
- I. Westcoast filed a further submission dated March 22, 1999; and
- J. The Commission has considered the request for disclosure and the submissions that have been received, and has made a determination in the matter.

**NOW THEREFORE** the Commission orders that the request by Westcoast for disclosure of the Specified Maximum in the CTS Support Agreement is denied, for the reasons set out in the Reasons for Decision that form Appendix I to this Order.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 25<sup>th</sup> day of March, 1999.

BY ORDER

*Original signed by:*

Peter Ostergaard  
Chair

Attachment

BRITISH COLUMBIA HYDRO AND POWER AUTHORITY  
BC GAS UTILITY LTD.  
BYPASS TRANSPORTATION AGREEMENT WITH BRITISH COLUMBIA HYDRO AND POWER AUTHORITY  
SOUTHERN CROSSING PIPELINE PROJECT APPLICATION

Request by Westcoast Energy Inc. for  
Disclosure of the Specified Maximum in the CTS Support Agreement

**REASONS FOR DECISION**

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**1.0 INTRODUCTION**

On December 11, 1998, BC Gas Utility Ltd. ("BC Gas") applied for a Certificate of Public Convenience and Necessity ("CPCN") for the Southern Crossing Pipeline ("SCP") project. The SCP Application indicated that BC Gas had agreed with British Columbia Hydro and Power Authority ("B.C. Hydro") on a bypass rate for transportation service on BC Gas' Coastal Transmission System, and that the bypass agreement was independent of the SCP project and agreements relating to it. Commission Order No. G-121-98 determined that the bypass agreement will be reviewed separately from the SCP Application. BC Gas applied on January 13, 1999, for approval of the Bypass Transportation Agreement.

On January 13, 1999, B.C. Hydro filed the CTS Support Agreement and the Put Option Agreement made among B.C. Hydro, BC Gas and BC Gas Inc., but deleted the "Specified Maximum" as defined in the CTS Support Agreement and requested that the Specified Maximum be kept confidential (Exhibit BCH-1). By letters dated January 20, 1999, BC Gas and BC Gas Inc. stated that they did not object to the release of the CTS Support Agreement (which excluded the Specified Maximum) if disclosure was necessary in the interest of reviewing the SCP Application. BC Gas Inc. stated that the CTS Support Agreement was primarily between it and B.C. Hydro, and that approval of the agreement was not being sought (Exhibit BCG-6). The Commission attached a copy of the CTS Support Agreement, with the Specified Maximum deleted, to its January 28, 1999 letter to BC Gas and Registered Intervenors in the SCP proceeding (Exhibit BCUC-4).

In response to a request from Westcoast Energy Inc., Commission Order No. G-22-99 established a timetable for written submissions on the disclosure of the Specified Maximum in the CTS Support Agreement.

**2.0 SUBMISSIONS**

B.C. Hydro states that it filed the CTS Support Agreement in connection with BC Gas' SCP Application, not in connection with the Bypass Transportation Agreement application, and that disclosure of the Specific Maximum is irrelevant to the Commission's review of the Bypass Transportation Agreement. B.C. Hydro

notes that the applied-for bypass rate is based on accepted bypass methodology, and argues that the support commitment, including the Specified Maximum, is not relevant to review of the bypass rate. B.C. Hydro also argues that, if it proceeds to build a bypass pipeline, the Specified Maximum could be used by others in negotiations to set a minimum price for what they would charge for construction of a bypass pipeline. Consequently, B.C. Hydro states disclosure of the Specified Maximum would be adverse to the commercial interests of B.C. Hydro and its customers.

B.C. Hydro also states that disclosure of the Specified Maximum would reveal commercially sensitive information of a non-utility corporation (BC Gas Inc.), such information not being necessary or relevant to a proper disposition of the bypass rate application.

B.C. Hydro further submits that the parties to the SCP Application are not prejudiced by not knowing the actual amount of the Specified Maximum, and are able to make their arguments in the absence of that information.

BC Gas Inc. supports the request for confidentiality of the Specified Maximum, on the basis that it is commercially sensitive, that the CTS Support Agreement does not affect the amounts to be paid to BC Gas Utility Ltd. under the Bypass Transportation Agreement, and that it is not a factor to be considered in the determination of the appropriate bypass rate.

BC Gas supports the request for confidentiality of the Specified Maximum on the basis that the Commission should keep commercial arrangements confidential if the disclosure might adversely affect the interests of one of the parties to the Agreement. BC Gas states that it is a party to the CTS Support Agreement only because that agreement contemplates the possibility of a temporary assignment of the contracted capacity held by B.C. Hydro under the Firm Tendered Transportation Service Agreement (the “Transportation Agreement”) and of the Peaking Gas Purchase Agreement (the “Peaking Agreement”). BC Gas observes that the CTS Support Agreement does not affect the payments to be made to BC Gas under the Bypass Transportation Agreement. Consequently, BC Gas argues that the CTS Support Agreement is not a “rate” under the *Utilities Commission Act* and is not contrary to a provision of the *Act*.

Westcoast states that it is in the context of the SCP proceedings, rather than the review of the Bypass Transportation Agreement, that it seeks disclosure of the Specified Maximum. As Westcoast interprets the CTS Support Agreement, if BC Gas Inc. is required to make any payment to B.C. Hydro, BC Gas Inc. can, in lieu of making the payment, elect to require B.C. Hydro to assign to it the SCP transportation capacity held by B.C. Hydro and the B.C. Hydro Peaking Gas Purchase Agreement, for up to two years from the in-service date of SCP. Westcoast states that the closer that the Specified Maximum is to the bypass rate provided for in

the Bypass Transportation Agreement, the greater the likelihood that the approved bypass rate will exceed the Specified Maximum and therefore the greater the likelihood that BC Gas Inc. will acquire the SCP capacity.

Westcoast submits that whether it is B.C. Hydro or BC Gas Inc. who will be a shipper on the SCP and provide peaking gas to BC Gas is clearly relevant, as BC Gas has asserted that it has complied with the April 3, 1998 Decision, in part, by entering into the Peaking Agreement with B.C. Hydro.

Westcoast states that, under the terms of the CTS Support Agreement and the Put Option Agreement, it is possible that B.C. Hydro may not be a shipper on the SCP or a provider of peaking gas to BC Gas.

Westcoast also argues that the extent of B.C. Hydro's commitment to the SCP (and whether the pipeline will be used at all by B.C. Hydro to provide peaking service) is central to BC Gas' new CPCN Application, that the level of the Specified Maximum is directly related to this issue, and that intervenors ought not to have to speculate on contract provisions which are clearly relevant.

Westcoast further submits that there is no public interest consideration in the SCP proceeding which provides a basis for non-disclosure of the Specified Maximum. Finally, Westcoast argues that, in negotiations on the price of a bypass pipeline, others would rely on the bypass rate, which is public knowledge, and not the Specified Maximum, to set a minimum price.

### **3.0 COMMISSION DETERMINATION**

Westcoast's application for disclosure appears to address the Specified Maximum in the CTS Support Agreement in the context of both the review of the SCP Application and the review of the Bypass Transportation Agreement application. However, considering Westcoast's statement that its request for disclosure was made in the context of the SCP proceeding, there is no need to consider, in detail, the submissions that oppose disclosure in the context of the Bypass Transportation Agreement application.

With respect to the SCP proceeding, the Commission accepts Westcoast's position that the CTS Support Agreement may result in B.C. Hydro assigning its Peaking Agreement and Transportation Agreement to BC Gas Inc. for the first two years that the SCP is in service. At the same time, the Put Option Agreement appears to give B.C. Hydro the right, after the SCP has been in service approximately two years, to assign its Peaking Agreement and the Transportation Agreement to BC Gas Inc. In its submissions, Westcoast appears to hold a generally similar view of the Put Option Agreement.

Westcoast indicates that it intends to argue that the CTS Support Agreement and the Put Option Agreement reflect negatively on B.C. Hydro's commitment to the SCP, and on the extent to which BC Gas has complied

with the April 3, 1998 SCP Decision. Recognizing that the Put Option Agreement and CTS Support Agreement (except for the Specified Maximum) are public information, the Commission does not consider that knowledge of the Specified Maximum would add materially to Westcoast's ability to make such arguments. Further, in view of the fact that one of the primary signatories to the CTS Support Agreement is a non-regulated corporation (BC Gas Inc.), the Commission is concerned that disclosure of the Specified Maximum could be harmful to its commercial interests.

Therefore, the Commission finds that disclosure of the Specified Maximum would not be in the public interest, and denies Westcoast's request for its disclosure.