



BRITISH COLUMBIA  
UTILITIES COMMISSION

ORDER  
NUMBER G-1-01

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

and

IN THE MATTER OF  
Pacific Northern Gas Ltd.

and

An Application by Skeena Cellulose Inc.  
to Modify or Set Aside Commission Order No. G-94-00

**BEFORE:** P. Ostergaard, Chair )  
P.G. Bradley, Commissioner ) January 2, 2001  
N.F. Nicholls, Commissioner )

### **O R D E R**

#### **WHEREAS:**

- A. The Commission, by Order No. G-94-00, approved interim rate increases to Pacific Northern Gas Ltd.'s ("PNG") customers, subject to refund with interest following a public hearing, pursuant to Sections 91 and 58 of the Utilities Commission Act; and
- B. On November 24, 2000 Skeena Cellulose Inc. applied, pursuant to Section 91(3) of the Utilities Commission Act, for an order to modify or set aside Commission Order No. G-94-00 (the "Skeena Application"); and
- C. PNG, Eurocan Pulp and Paper Co. ("Eurocan"), and the Council of Forest Industries' Natural Gas Committee ("COFI NGC") responded to the Skeena Application; and
- D. On December 13, 2000, Skeena Cellulose Inc. replied to the PNG submission; and
- E. The Commission has reviewed the evidence.

**NOW THEREFORE** the Commission dismisses the Skeena Application and denies the relief sought by the Eurocan submission and the COFI NGC submission, with Reasons attached as Appendix A to this Order.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 4<sup>th</sup> day of January 2001.

BY ORDER

Peter Ostergaard  
Chair

Attachment

**PACIFIC NORTHERN GAS LTD.  
Skeena Cellulose Inc. Application  
to Modify or Set Aside Commission Order No. G-94-00**

**REASONS FOR DECISION**

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**BACKGROUND**

On September 28, 2000, Pacific Northern Gas Ltd. ("PNG") filed for approval an application to increase its rates on an interim and final basis, effective October 1, 2000 and January 1, 2001 (the "PNG Application"). An interim increase was sought pursuant to Section 91 of the Utilities Commission Act (the "Act") and final approval pursuant to Section 58 of the Act.

By letter dated October 4, 2000, PNG advised the Commission that it had reached an agreement in principle on a new firm gas transportation service agreement with Methanex Corporation ("Methanex") subject to certain conditions. PNG advised the Commission that the agreement had not been signed by PNG pending Commission action on PNG's request for approval of interim rates effective October 1, 2000.

PNG requested that the agreement in principle be kept confidential until PNG issued a News Release respecting the interim rates and the agreement in principle. In view of the agreement in principle, PNG requested certain changes to the interim rates applied for in the PNG Application and provided the Commission with a revised Summary of Rates.

In addition, PNG asked the Commission to hold its review of the PNG Application in abeyance until December 1, 2000 (the date fixed for finalizing the agreement in principle and reviewing the conditions precedent). PNG further advised that if the conditions precedent were fulfilled, PNG would amend the PNG Application to reflect the terms of the new PNG/Methanex agreement.

By Order No. G-94-00 dated October 6, 2000 (the "Interim Order"), the Commission granted approval to PNG for an interim rate increase to all classes of customers in accordance with Appendix A to that Order, subject to a refund with interest at the average prime rate of PNG's principal bank following a public hearing. The primary purpose of the approval was to reduce PNG's cash flow requirements. Appendix A was the revised Summary of Rates provided by PNG with its October 4, 2000 letter. Rates for transportation service customers and the Delivery Charges for residential and commercial customers were increased by 10 percent. Gas Supply Charges for residential, commercial and other gas sales customers were increased by an average of 11.7 percent to reflect rising commodity costs.

Order No. G-94-00 also provided, among other matters, that a Regulatory Agenda and Timetable for the review of the PNG Application would be determined by the Commission after December 1, 2000.

The Order was granted pursuant to Section 91(1) of the Act without reasons.

By letter dated October 12, 2000 Skeena Cellulose Inc. ("Skeena") and Eurocan Pulp and Paper Co. ("Eurocan") applied to the Commission pursuant to Section 91(3) of the Act to modify or set aside the Interim Order (the "Skeena/Eurocan Application"). The Skeena/Eurocan Application asserted there was no or insufficient evidence of any special circumstances required by Section 91 of the Act before the Commission can make an interim order.

On October 19, 2000, the Commission issued Letter No. L-51-00 identifying the special circumstances as follows:

Those circumstances are the financial liquidity issues caused by the July 1, 2000 Methanex plant shutdown and the higher costs of purchasing the natural gas commodity, as noted in the Order, and various news releases copied to your clients by PNG.

In addition the Commission commented:

The increase is refundable with interest following a public hearing, which, in accordance with the Act, will be held as soon as possible. As it would not be productive to hold a hearing until PNG, Methanex, and the Job Protection Commissioner have been given an opportunity to finalize the agreement, the Commission will hold its review of the Application in abeyance until December 1, 2000.

In the closing paragraph the Commission stated:

If you still wish to pursue a formal application, we ask that you expand your application to reflect the information provided to you in this correspondence. You may also wish to address the Commission's Guiding Principles for Reconsideration to the extent they are applicable to your application. Upon receipt of that submission, the Commission will determine what review process should be established for resolution of that application.

On November 24, 2000, Skeena represented by new counsel formally applied to the Commission pursuant to Section 91(3) of the Act and Commission Letter L-51-00 to modify or set aside the interim rate increase granted in the Interim Order (the "Skeena Application"). The Skeena Application is stated not to be an application for reconsideration under Section 99 of the Act. While the Commission has issued Guiding Principles for Reconsideration (the "Guiding Principles") in the context of applications made pursuant to Section 99 of the Act, it has not done so in the case of Section 91(3) applications. Accordingly, the Commission will not address the issue of the applicability of the Guiding Principles in these Reasons.

Skeena seeks to have the Interim Order set aside or modified on the following grounds:

1. Skeena submits that the Commission erred in law by approving the interim rate increase in Order No. G-94-00 in circumstances where the statutory conditions for the Commission to have jurisdiction to grant such interim relief under Section 91(1) of the Act were not satisfied; and

2. Skeena further submits that the Commission erred in law by approving the interim rate increase without fixing its duration or setting a time limit for a hearing to be held and a final decision made, contrary to Section 91(2) of the Act; and
3. Finally, Skeena submits that, since Order G-94-00 was issued by the Commission, additional information has been released to the public which indicates that PNG did not make full and frank disclosure to the Commission of all facts which were relevant to its interim rate application, and this constitutes a fundamental change in the circumstances or facts which were before the Commission at the time it made the Order, such that the Order should be reconsidered.

Skeena seeks the following relief:

1. That the Commission immediately set aside the interim rate increase approved in Order No. G-94-00, pursuant to Section 91(3) of the Act, pending a public hearing in respect of the PNG Application;
2. In the alternative:
  - (a) that the Commission ask PNG to make further submissions to justify whether the interim rate increase should be permitted to stand without modification, as soon as it is known whether or not the PNG/Methanex agreement has been finalized; and
  - (b) that, if PNG is unable to justify the continued necessity of the interim rate increase, the Commission then set aside the interim rate increase pursuant to Section 91(3);or,
3. In the further alternative, that the Commission order that a public hearing be held, pursuant to Section 58(1) of the Act, at the earliest possible time for the purpose of reviewing the October 1, 2000 interim rate increase.

On November 29, 2000, the Commission wrote PNG requesting a response to the Skeena Application by Monday, December 4, 2000 and asked PNG to specifically consider paragraphs 56, 60, 65 and 68 in its response. The Commission also advised that it intended to establish a regulatory agenda leading to a public hearing of the PNG Application at a Commission meeting on December 7, 2000. Further, the Commission directed PNG to provide the Commission with any information it had with respect to its negotiations with Methanex and with the Provincial Government and on any amendments to the PNG Application.

By letter dated December 4, 2000, PNG provided its response on the status of negotiations with Methanex and the Provincial Government and any amendments to the PNG Application. The letter advised that the conditions precedent in the PNG/Methanex agreement in principle had not been fulfilled and recommended that the Commission should set down a Regulatory Agenda assuming the PNG Application as filed subject to the understanding that amendments would be required to address certain matters set forth in the letter. The letter did not comment on paragraphs 56, 60, 65 and 68 of the Skeena Application.

By letter dated December 6, 2000, as clarified by letter dated December 7, 2000, the Council of Forest Industries' Natural Gas Committee ("COFI NGC") also requested that the Commission set aside or modify the Interim Order to disallow the interim rate increase on the basis that the Interim Order constituted an error in law since it was contrary to:

- basis principles of fairness; and
- the rate approval scheme established under the Act.

By letter dated December 7, 2000, PNG, among other things, referred to the special circumstances it was relying on (which are found in page 2 of the Application) and responded to paragraphs 56, 60, 65 and 68 of the Skeena Application.

Commission Order No. G-113-00 dated December 8, 2000, established a Regulatory Agenda (the "Agenda") for the PNG Application. The Order provides for an oral public hearing in Terrace to commence on Monday, March 5, 2001.

By letter dated December 13, 2000, Eurocan filed submissions supporting the Skeena Application (the "Eurocan Submission"). Eurocan alleges that the Commission erred in law in granting the Interim Order on the grounds that the Interim Order establishes rates that are:

- unjust and unreasonable contrary to the provisions of Sections 59 and 60 of the Act;
- not supported by the evidence submitted by PNG, and
- unduly prejudicial to the interests of Eurocan and PNG's other large volume industrial transportation service customers.

Finally, by letter dated December 13, 2000, Skeena filed a Reply Submission to the PNG letter dated December 7, 2000.

## **ANALYSIS**

### **A. The Skeena Application**

The Skeena Application seeks relief pursuant to Section 91(3) of the Act for three reasons:

1. the absence of a special circumstance which is required for the Commission to make an interim order under Section 91(1) of the Act;
2. the failure of the Commission to fix the duration of the interim rate increase or to set a time limit for the hearing to be held and a final decision to be made;
3. the failure of PNG to make full and frank disclosure to the Commission of all facts relevant to its interim rate application.

The Skeena Application seeks relief in the alternative as set out in the Background part of these Reasons. The Commission will now address the grounds upon which relief is sought in order.

#### The Absence of a Special Circumstance

The Skeena Application states that the Interim Order did not clearly describe any “special circumstance” which “required” an interim rate increase as is necessary for the Commission to have jurisdiction under Section 91(1). However, Letter No. L-51-00 did describe the special circumstances which the Commission found supported the making of an interim rate increase to all customers. They were “...the financial liquidity issues caused by the July 1, 2000 Methanex plant shutdown and the higher costs of purchasing the natural gas commodity...”.

In its response to the Skeena Application, PNG refers to page 2 of the PNG Application which it says describes four special circumstances. The circumstances include the shutdown of the Methanex plant, the downgrading of PNG debt by both the Dominion Bond Rating Service and the Canadian Bond Rating Service, the reduction of PNG’s line of credit with its banker and the decision by PNG that it would not pay dividends on its Class A and B common shares in the third quarter of 2000 in order to reduce its cash requirements.

Having considered the PNG Application, the Commission determined that special circumstances existed which allowed the Commission to make an order for interim rate relief under Section 91(1). It is also important to note that the Interim Order makes the interim rate increase both interim and refundable with interest. A refund with interest would result in the event that the rate increases sought in the PNG Application were either denied or allowed in an amount less than that provided in the Interim Order.

#### The Failure to Fix the Duration of the Interim Rate Increase

Skeena submits that even if an interim rate increase was required under Section 91(1) due to PNG’s cash flow problems and increased gas prices, the Commission erred in law by approving the interim rate increase without fixing its duration or setting a time limit for a hearing to be held, contrary to Section 91(2). Section 91(2) states that an interim order must not be made for a longer time than the Commission “considers necessary for a hearing and decision”. One of the alternative heads of relief sought by Skeena is that the Commission order that a public hearing be held pursuant to Section 58(1) at the earliest possible time for the purpose of reviewing the October 1, 2000 interim rate increase. By Order No. G-113-00 the Commission has now established a regulatory timetable which provides for the commencement of an oral public hearing in Terrace on March 5, 2001.

In the normal course of events, a regulatory schedule would have been set at the same time that the order for interim relief was made. The delay in doing so in this instance resulted from the unique circumstances involving the negotiations between PNG, Methanex and the Provincial Government. In particular, a PNG/Methanex agreement is conditional on financial support of PNG by the Provincial Government or other parties.

When the Commission consented to PNG's request to hold the PNG Application in abeyance until December 1, 2000 it was aware of the need to minimize the duration of the interim increases. However, the Commission concluded that the possibility of a PNG/Methanex agreement, and its possible long-term benefits for other PNG customers, outweighed the problems associated with a two to three month deferral of the hearing or the inefficiencies and costs of holding two hearings.

#### The Failure of PNG to Make Full and Frank Disclosure

Skeena submits that additional information has been released to the public that indicates that PNG did not make full and frank disclosure to the Commission of all facts which were relevant to its interim application. It submits that this constitutes a fundamental change in circumstances or facts which were before the Commission at the time of the making of the Interim Order and therefore the interim rate increase should be set aside immediately.

In its December 7, 2000 response to the Skeena Application, PNG states that the information contained in its October 26, 2000 News Release which commented on the agreement in principle with Methanex, among other matters, was generally known to the public in August.

Skeena also submits that financial information contained in the October 26th News Release disclosed that PNG had sufficient liquidity to declare a dividend of 84.375 cents per share on its 6 3/4% cumulative, redeemable Preferred Shares, payable on January 1, 2001. It therefore submits that the dividend on the Preferred Shares calls into question the urgency of the interim rate increase.

PNG's response to Skeena's submission on the decision to declare a dividend on the Preferred Shares is that PNG's directors have determined that:

- given PNG's need for access to financial markets;
- the amount of the preferred share dividend; and
- the fact that allowing the preferred share dividend to accumulate may worsen PNG's liquidity problem,

it is prudent to continue to pay the preferred share dividends.

PNG accordingly submits that in all the circumstances, the decision to declare the dividend does not alter any of the special circumstances which gave rise to PNG's application.

The Commission has been generally aware of the deteriorating financial circumstances of PNG as they have evolved during this past year. In fact, the Commission on December 22, 2000 issued Order No. G-117-00 in response to PNG's November 1, 2000 Application for approval of a \$30 million credit facility with the Royal Bank of Canada ("RBC") that includes the pledging of accounts receivable and inventory. This new credit facility replaces PNG's \$35 million unsecured bank demand operating line of credit. RBC requires PNG to make regular reductions in the facility amount, which will form the basis for ongoing support by RBC.

The Commission agrees with PNG that the declaration of the dividends to preferred shareholders does not alter the special circumstances identified in the PNG Application which led to the Interim Order. Therefore, the Commission concludes that the interim rate increase should not be set aside on the basis of the failure to disclose alleged in the Skeena Application.

Further, the Commission expects that the issues with respect to the liquidity of PNG and payments of preferred dividends will be canvassed in detail as part of the upcoming hearing scheduled to commence March 5, 2001. Based on the detailed evidence at the March hearing, the Commission's future Decision and Order will address the financial needs of PNG and may result in some, or all, of the interim relief being confirmed in permanent rates. Any refunds will be made with interest from October 1, 2000.

## **B. The COFI NGC Submission**

COFI NGC asks the Commission to set aside or modify the Interim Order and disallow the interim rate increase on the grounds that it is contrary to basic principles of fairness and the rate approval scheme established under the Act.

COFI NGC argues that PNG, not its customers, should bear the economic risks associated with the utility's liquidity problems, and cites Sections 59 and 60 of the Act, which define the process and criteria for setting just and reasonable rates.

Sections 59 and 60 of the Act refer to the setting of permanent rates after a hearing. The Commission granted the interim increase under Section 91, which requires only that a special circumstance exist. Special circumstances of PNG are documented in the PNG Application and discussed above in the analysis of the Skeena Application. If, after the public hearing and the application of the criteria set out in Section 59(5), the interim rates are found to be unreasonable, any refunds will be made with interest.



**C. The Eurocan Submission**

Eurocan supports the Skeena Application and asks the Commission to reconsider and set aside the Interim Order. Eurocan relies on Sections 59 and 60 of the Act, which refer to the approval of permanent rates.

The Commission is of the view that PNG has established the evidentiary basis required under Section 91 of the Act, to support the Interim Order and that the proper time for the thorough scrutiny and testing of PNG's evidence requested by Eurocan is during the upcoming hearing.

**COMMISSION DETERMINATIONS**

The Commission concludes that there was a sufficient evidentiary basis to grant the interim rate increase. The Commission further finds that any failure by PNG to disclose information to the Commission at the time of its making of the Interim Order was not of such a nature that it impacted on the special circumstances that the Commission found to be the basis for the Interim Order. The Commission has addressed the fact that the Interim Order does not provide for a Regulatory Timetable by issuing Order No. G-113-00. If the PNG Application is denied, or the Commission orders a rate increase in an amount less than that allowed in the Interim Order, the affected ratepayers will be entitled to a refund with interest.

Therefore, the Commission dismisses the Skeena Application. The relief sought by the Eurocan Submission and the COFI NGC Submission is also denied.