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BRITISH COLUMBIA UTILITIES COMMISSION

ORDER NUMBER G-104-06

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

and

An Application by Terasen Gas Inc.
for Reconsideration of Order No. G-98-05 and Reasons for Decision
Denial of Recovery of Inland Pacific Connector Development Costs

BEFORE: L.F. Kelsey, Commissioner
L.A. Boychuk, Commissioner
August 23, 2006

O R D E R

WHEREAS:

A. The Commission, by Order No. C-11-99, approved a Certificate of Public Convenience and Necessity for Terasen Gas Inc. ("Terasen Gas", then BC Gas Utility Ltd.) for the Southern Crossing Pipeline ("SCP") project. The Order also approved a Firm Tendered Transportation Service Agreement ("TSA") for approximately 52.5 MMcfd of SCP capacity from Yahk or Kingsvale to Huntingdon with each of British Columbia Hydro and Power Authority ("BC Hydro") and PG&E Energy Trading, Canada Corporation ("PG&E"). The Order also accepted for filing a Peaking Gas Purchase Agreement ("Peaking Agreement") with each of BC Hydro and PG&E; and

B. On December 5, 2002, Terasen Gas advised the Commission that PG&E was encountering financial difficulties and applied for Commission approval of a set of transactions that were designed to preserve the value of the SCP capacity contracted to PG&E for Terasen Gas and its customers. By Letter No. L-48-02 dated December 5, 2002, the Commission stated it was prepared to approve certain transactions related to SCP capacity held by PG&E, including the termination of the PG&E TSA and Peaking Agreement; and

C. Letter No. L-48-02 also addressed certain other requests made by Terasen Gas. The Letter stated that if the Inland Pacific Connector ("IPC") project was deferred substantially, the Commission was prepared to receive and review an application for the recovery of IPC development expenditures from Terasen Gas customers based on the value that IPC expenditures have had for customers, including the contribution to the arrangement with Northwest Natural Gas Company ("NWN"); and

D. By Order No. G-9-03, the Commission approved the cancellation of the TSA with PG&E and approved a TSA for SCP capacity with NWN; and

E. On June 1, 2005, Terasen Gas applied for Commission approval of several matters that were the subject of Terasen Gas' December 5, 2002 application and Commission Letter No. L-48-02 (the "Application"). These matters included the potential recovery of IPC development costs from customers; and

F. Commission Order No. G-55-05 established a written hearing process to review the Application and set down a Regulatory Agenda for the review; and

…/2

G. By Commission Order No. G-98-05 dated October 6, 2005 and attached Reasons for Decision, the Commission rendered its Decision on the Application, which included denial of the request for the recovery of IPC development costs from Terasen Gas customers; and

H. By application dated March 21, 2006, Terasen Gas applied for reconsideration and variance of the portion of Order No. G-98-05 and Reasons for Decision that denied recovery of IPC development costs from Terasen Gas customers (the "Reconsideration Application"); and

I. By letter dated March 31, 2006, in accordance with its two phase process for dealing with a reconsideration application, the Commission established a written hearing process for the Reconsideration Application, for the initial screening phase to address the issue of whether a reasonable basis exists to allow the reconsideration. If the Commission determines in the first phase that a reconsideration is warranted, the reconsideration would proceed to the second phase where the Commission hears full arguments on the merits of the Reconsideration Application; and

J. The Commission received submissions from Weyerhaeuser Company Ltd., Teck Cominco Metals Ltd., Zellstoff Celgar Limited and Canadian Forest Products Ltd. (the "Inland Industrials"), B.C. Old Age Pensioner's Organization et al., the Commercial Energy Consumers Association of British Columbia and BC Hydro. None of the submissions supported Terasen Gas' request for a reconsideration of Order No. G-98-05 and Reasons for Decision; and

K. Terasen Gas filed written reply comments on May 6, 2006; and

L. The Commission has considered the Reconsideration Application and the written submissions received in relation to its first phase process and the criteria for determining whether a reasonable basis exists to allow the reconsideration and has determined that Terasen Gas has not established a prima facie case that is sufficient to warrant full reconsideration of the matter by the Commission, as set out in the Reasons for Decision that are attached as Appendix A to this Order.

NOW THEREFORE the Commission denies Terasen Gas' Reconsideration Application.

DATED at the City of Vancouver, in the Province of British Columbia, this 23rd day of August 2006.

BY ORDER

Original signed by:
L.F. Kelsey
Commissioner

Original signed by:
L.A. Boychuk
Commissioner

Attachment

Terasen Gas Inc.
Application for Reconsideration of Order No. G-98-05

REASONS FOR DECISION

1.0 INTRODUCTION

1.1 2002 Terasen Gas Application and Letter No. L-48-02

On December 5, 2002, Terasen Gas Inc. ("Terasen Gas", "TGI", then BC Gas Utility Ltd.) applied to the Commission for approval of a set of transactions that were designed to preserve the value of the Southern Crossing Pipeline ("SCP") capacity contracted to PG&E Energy Trading, Canada Corporation ("PG&E"), in reaction to Terasen Gas' concerns relating to financial difficulties that PG&E was experiencing at the time (the "2002 Application", Exhibit B-2). Terasen Gas filed the 2002 Application on a confidential basis and requested Commission consent to the arrangements "as early as possible."

Commission Letter No. L-48-02 that was also dated December 5, 2002, summarized the set of transactions and confirmed that the Commission was prepared to approve these transactions, stating:

> "The purpose of the set of transactions, which BC Gas proposes in the Application, is to preserve the value of the SCP capacity currently held by PG&E. In all the circumstances, it is essential that the transactions be completed without delay. Recognizing that the evidentiary portion of the BC Gas 2003 Revenue Requirements Proceeding is closed, the Commission is treating the Application as a new order of business. The effect of the transactions will have a nominal, if any, impact on 2003 rates for BC Gas. For commercial reasons, the Commission will hold this letter confidential until January 1, 2003."

Commission Order No. G-9-03 subsequently approved the set of transactions.

The 2002 Application also requested Commission approval of several matters that were related to the SCP, some peripheral matters and another matter involving Terasen Inc. related to costs associated with a potential new Inland Pacific Connector project ("IPC"), i.e. whether these development costs could be recovered from regulated customers in the event that the project did not proceed (Exhibit B-2, p. 2, Item 7). In Letter No. L-48-02, the Commission did not grant the approval of the recovery of IPC development costs from customers. Development of the IPC project was continuing, and the Commission concluded that it would be premature to make a determination on the disposition of IPC costs. The Commission stated:

> "If the IPC project is deferred substantially, the Commission is prepared to receive and review an application for approval to recover some or all IPC expenditures from Terasen Gas customers based on the value that IPC expenditures have had for customers, including the contribution to the present arrangement with NWN."

1.2 2005 Terasen Gas Application and Order No. G-98-05

On June 1, 2005 Terasen Gas filed an application (the "2005 Application") with the Commission seeking approval of several transactions that were related to the 2002 Application and Commission Letter No. L-48-02. The matters in the 2005 Application included the treatment of payments and revenue related to the PG&E transportation service agreement and its termination, the termination of the SCP transportation service agreement

and peaking agreement that British Columbia Hydro and Power Authority ("BC Hydro") had assigned to Terasen Inc., and the recovery of IPC development costs from Terasen Gas customers.

The Commission established a written hearing process to review the June 2005 Application. Terasen Gas filed the 2002 Application as Exhibit B-2 in the 2005 proceeding. The 2002 Application had originally been filed in 2002 on a confidential basis, but in the 2005 proceeding it was provided on a non-confidential basis and marked as an exhibit.

Commission Order No. G-98-05 with appended Reasons for Decision dated October 5, 2005 ("Decision") provided the determinations of the Commission respecting the 2005 Application. In that Decision the Commission granted all but one of the several approvals sought by Terasen Gas, denying the portion of the 2005 Application that sought recovery of IPC development costs from Terasen Gas customers.

1.3 Reconsideration Application and Regulatory Process

By Application dated March 21, 2006, Terasen Gas applied for reconsideration and variance of that portion of the Decision that denied recovery of IPC development costs from Terasen Gas customers (the "Reconsideration Application").

By letter dated March 31, 2006, the Commission established a written comment process on the Reconsideration Application, to address the first phase issue of whether a reasonable basis exists to allow a reconsideration. An application for reconsideration by the Commission proceeds in two phases. In the initial screening phase, the applicant must establish a prima facie case sufficient to warrant full consideration by the Commission. Based on the submissions in the first phase, the Commission generally applies the following criteria to determine whether or not a reasonable basis exists for allowing reconsideration:

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

Where an error is alleged to have been made, in order to advance to the second phase of the reconsideration process, the application must meet the following criteria:

- the claim of error is substantiated on a prima facie basis; and
- the error has significant material implications.

If the Commission determines in the first phase that a reconsideration is warranted, the reconsideration proceeds to the second phase where the Commission hears full arguments on the merits of the reconsideration application.

The Commission received written submissions dated April 20, 2006 from B.C. Old Age Pensioners' Organization et al. ("BCOAPO"), and from Weyerhaeuser Company Ltd., Teck Cominco Metals Ltd., Zellstoff Celgar Limited and Canadian Forest Products Ltd. (the "Inland Industrials"). By letter dated April 18, 2006 BC Hydro advised that it did not have specific comments on the Reconsideration Application, and by letter dated April 21, 2006 the Commercial Energy Consumers Association of British Columbia advised that it supported the submissions of BCOAPO.

On May 4, 2006 Terasen Gas replied to the submissions of BCOAPO and the Inland Industrials.

2.0 GROUNDS IN RECONSIDERATION APPLICATION

Terasen Gas submits that the Commission in its Decision erred in law and in fact, introduced a principle or test for the determination of recovery of IPC development costs that had not been raised in the proceeding, and failed to address the central issues before it. The Reconsideration Application is based on seven grounds. The Commission notes that there is some overlap in the Grounds and that as a consequence, there is some repetition in the Commission's response to address these Grounds.

2.1 Grounds 1 and 2

In the Reconsideration Application, Terasen Gas states Ground 1 as follows:

> "Terasen Gas properly relied on the Commission's conclusions and the evidence in the 2002 proceeding. The 2002 material was before the 2005 Commission panel as Exhibit B-2 in the 2005 proceedings."

In the Reconsideration Application, Terasen Gas states Ground 2 as follows:

> "The Commission Panel ignored, or failed to properly take into account, the Commission's conclusions and evidence in the 2002 proceeding. In particular, the 2005 Commission Panel ignored, or failed to properly take into account, the benefits that customers received from the NWN transactions."

In support, Terasen Gas quotes a portion of Commission Letter No. L-48-02 as follows:

> "The transactions are likely to reduce the BC Gas revenue from the PG&E SCP capacity in 2003 and 2004, notwithstanding efforts to mitigate the losses. However, over the term of the transaction, BC Gas revenue will increase significantly, for the benefit of customers. The charges to be paid by NWN are substantially greater than those in the Transportation Agreement with PG&E."

Terasen Gas also quotes portions of its 2002 Application, as follows:

> "The demand charges paid by NWN significantly exceed the current SCP tolls paid by PG&E, and also locks the value in long term. In the short to medium term the demand charges exceed the current market value of the capacity, however they do reflect the cost NWN would have expected to pay as an IPC shipper" (Exhibit B-2, pp. 1,2, Item 6).

> "There is no new capital investment associated with these arrangements, however BC Gas Utility is expected to realize a minimum increase in net revenues associated with the SCP capacity of $2.7 million per annum beginning in 2004. The net present value of these arrangements to BCGUL is expected to be between $20 and $35 million based on the fixed revenue streams contracted and accounting for BCGI recovery of IPC development costs. The proposed transactions are in the interest of BCGUL and its customers in maximising current and future value and reducing the risk of non recovery of SCP revenues" (Exhibit B-2, p. 2).

> "The net benefits that would flow to BCGUL's customers are summarised in the Proforma shown in Attachment 3. In the Base Case it is expected that the net revenues will increase by at least $2.6 million per annum over the current arrangement, and the net NPV of the arrangements are in excess of $20 million depending on the degree IPC development costs are recovered.

> BCGUL customers will realize very significant long term financial benefits over the projected benefits of the existing SCP arrangements. This is a direct result of the development work on the IPC projects and assignment of the NWN IPC commitment to the available SCP capacity. It is reasonable that BCGUL shareholders recover the IPC development costs as a result of this value transfer. BCGUL shareholders have increased the risk that IPC will be delayed or even cancelled as a result of this value transfer to BCGUL customers" (Exhibit B-2, p.8, Item 8).

In its reply submission dated May 4, 2006, Terasen Gas summarized Grounds 1 and 2 as follows:

> "Grounds 1 and 2 notes that TGI relied on the Commission's conclusions and the evidence in the 2002 proceeding, notes that the 2002 material was before the 2005 Commission Panel as an exhibit in the 2005 proceedings, and then says that the Commission Panel ignored, or failed to properly take into account, the conclusions and evidence in the 2002 proceedings and in particular ignored or failed to take into account the benefits that customers received from the NWN transactions."

In Argument, the Inland Industrials submit that the recovery of Terasen Inc. IPC costs from Terasen Gas customers would be an extraordinary outcome for several reasons:

- IPC was a Terasen Inc. project that was deliberately developed outside the utility rate base, without an application for regulatory review and approval of the project as a utility project;
- Terasen Gas' first attempt to recover IPC costs was through a confidential ex parte application in 2002 and, at that time, the Commission reserved the debate over the disposition of IPC costs to a future proceeding. The "principles" for the recovery of IPC costs that Terasen Gas says were established in 2002 were never subjected to a proper hearing or finalized, and the confidential process calls into question the validity of any principles that may lead to customers bearing costs that were established without the customers being heard; and
- In the 2005 Application, Terasen Gas bundled together a collection of unusual transactions related to SCP capacity along with a request to recover IPC costs.

The Inland Industrials argue that Terasen Gas had a heavy burden to discharge in order to persuade the Commission that the normal Certificate of Public Convenience and Necessity ("CPCN") regulatory process should be circumvented so that IPC costs can be recovered from customers. In their view, even if Terasen Gas were able to establish the causal connections it claims, the recovery of IPC costs from Terasen Gas ratepayers does not necessarily follow. The Inland Industrials feel that the proper tests for recovery are those associated with a CPCN application, and that the Commission required an appropriate and fair level of proof in these circumstances.

The BCOAPO in its Argument notes that in Letter No. L-48-02 the Commission advised:

> "If the IPC project is deferred substantially, the Commission is prepared to receive and review an application for approval to recover some or all IPC expenditures from Terasen Gas customers based on the value that IPC expenditures have had for customers, including the contribution to the present arrangement with NWN."

BCOAPO submits that this is what the Commission did in arriving at the Decision on IPC costs. BCOAPO also notes that Letter No. L-48-02 was not the result of a public review or any stakeholder input.

In Reply Argument, Terasen Gas responds to the Inland Industrials and BCOAPO by stating that the 2002 application and supporting material were part of the record in the 2005 proceeding and should have been reviewed and taken into account by the Commission in 2005. Terasen Gas goes on to state that Intervenors do not dispute that Terasen Gas customers benefited from the NWN transactions and that the Commission said in 2002 that it was prepared to receive and review an application to recover IPC expenditures from customers.

Analysis

Terasen Gas refers to the statement in Letter No. L-48-02 regarding the benefit to customers. This is substantially the same conclusion reached by the Commission at page 7 of the Decision where it was stated:

> "The cost and benefit projections in the Application also depend on assumptions made by Terasen Gas and there is a large amount of uncertainty in some of the calculated benefits. Nevertheless, this uncertainty is unlikely to overshadow the increased delivery margin revenue that results from re-contracting the PG&E SCP capacity to NWN under a long-term TSA. The Commission concludes that the set of transactions related to PG&E and NWN are likely to have net benefits for Terasen Gas ratepayers.."

However, this conclusion does not automatically entitle Terasen Gas to a determination that it can recover IPC costs from customers. Such a determination would be inconsistent with the statement in Letter No. L-48-02 that an application would be received and reviewed "based on the value that IPC expenditures have had for customers." That is, net benefits from the transactions are a necessary, but certainly not a sufficient, condition for the recovery of IPC costs from customers. There should be a causal connection between the benefits and the IPC expenditures.

Further, the Commission must assess the evidence before it and assign the appropriate weight to be given to the evidence. It was not constrained by any prior assessment of weight to be given to the evidence.

To respond to the claim that the Commission failed to properly take the 2002 evidence into account, it is helpful to review in some detail the material from the 2002 Application that is quoted in the 2005 Application.

In Item 6 on pages 1 and 2 of the 2002 Application, Terasen Gas claims that the NWN demand charges for SCP capacity "exceed the current market value". Webster's definition of "market value" is "a price at which both buyers and sellers are willing to do business". Terasen Gas stated that the demand charges exceed market value, but presented no evidence that the demand charges in the NWN agreement did not result from arms length negotiations with NWN. The NWN demand charges are higher than those in the Firm Tendered Transportation Service Agreement with PG&E dated November 30, 1998, but the capacity contracted to PG&E was associated with an obligation for PG&E to provide 15 days of peaking supply to Terasen Gas under a Peaking Gas Purchase Agreement also dated November 30, 1998 (Order No. C-11-99, Exhibit B-6, BCUC IR 1.4). The NWN charges are lower than the corresponding charges for IPC capacity if that project had proceeded (Exhibit B-2, p. 5, Section 2.2). NWN provided no support for Terasen Gas' claim that NWN agreed to pay more than market value for the SCP capacity.

In the second paragraph of the quote from page 8 of Exhibit B-2, Terasen Gas states that the benefits of the NWN arrangement are a direct result of the IPC development work and the assignment of the NWN IPC commitment to the available SCP capacity, and goes on to refer to this as a "value transfer". In the 2005 Application, Terasen Gas makes similar reference to NWN making "a binding commitment to contract for IPC capacity", and states "by meeting NWN's IPC commitment with existing SCP capacity previously held by PG&E, the project was more likely to be deferred" (Exhibit B-1, pp. 2, 10).

In the proceeding to review the 2005 Application, Terasen Gas provided the following response to a Commission Information Request:

> "**14.0 Reference: Exhibit B-1, pp. 10-12; Attachments 4, 5**
>
> 14.1 On page 10, Terasen Gas states that NW Natural made a binding commitment during the IPC Open Season to contract for IPC capacity. Did this commitment place NW Natural under any legal obligation to contract for the PG&E SCP capacity when it became apparent that the latter would be available? If it did, please provide a summary of the contractual commitments and timelines, and copies of the supporting documentation.
>
> **Response:**
>
> No, NWN was under no legal obligation to contract for PG&E SCP capacity as a result of its commitment for IPC capacity" (Exhibit B-6, BCUC IR 14.1).

The Commission considered that while the reference to a binding commitment for IPC capacity may be factually correct, it is not relevant to the central question of "the value that IPC expenditures have had for (Terasen Gas) customers".

In the 2002 Application, Terasen Gas stated that as part of the arrangement with NWN for SCP capacity, NWN was released from any ongoing obligation to contract for capacity on IPC (Exhibit B-2, p. 1). In the Reconsideration Application at page 6, Terasen Gas submits that the arrangements with NWN were put in place based on releasing NWN from its IPC commitment.

The IPC Open Season conducted by Terasen Inc. closed June 7, 2001 and the IPC target in-service date was November 1, 2003 (Exhibit B-6, BCUC IR 9.1, 9.5.2). The request from NWN for 44.5 MMcfd of capacity was the only unconditional request in the Open Season that was not from an affiliated company (Exhibit B-6, BCUC IR 9.2). Westcoast Energy Inc. ("Westcoast") announced in October 2002 that there was turnback of T-South capacity effective November 1, 2003 (Exhibit B-6, BCUC IR 9.5.1). Furthermore, Terasen Gas acknowledges that in the first quarter of 2003, development activities on IPC were largely suspended due to changing market conditions causing the deferral and/or cancellation of many planned power generation projects and reduction in industrial load in the region. This substantial shift in the demand forecast resulted in the cancellation or downsizing of the pipeline projects (Exhibit B-1, p. 10). The Firm Transportation Service Agreement with NWN that Order No. G-9-03 approved as Tariff Supplement I-6 was dated January 13, 2003. At the time when NWN agreed to contract for SCP capacity, the prospects of IPC proceeding and NWN being required to fulfill any commitment to contract for IPC capacity, already appeared to have been doubtful.

Similarly, considering the circumstances at the time, the Commission gave little weight to Terasen Gas' claim that the NWN arrangement for SCP capacity increased the risk that IPC would be delayed or even cancelled. Furthermore, and in any event, while Terasen Gas may feel that NWN contracting for SCP capacity made it less likely that IPC would proceed and, hence, represented a loss of value for Terasen Inc., this issue is not relevant to the central question of "the value that IPC expenditures have had for customers".

At several places in the Reconsideration Application Terasen Gas makes a more general statement along the lines that the benefits of the NWN arrangement are "a direct result of the development work on the IPC projects". The statements frequently purport to represent the motives and expectations of NWN when contracting for SCP capacity. The Commission places little weight on Terasen Gas' assertions regarding the motives of third parties.

In its Reply Argument in the 2005 Proceeding, Terasen Gas made the following statement regarding Westcoast's Argument:

> "With respect to the debate about IPC's impact on Westcoast's expansion plans (Pages 4-5) the Company is not surprised by Westcoast's assertions, which are contrary to those of Terasen Gas. Given that Westcoast viewed and continues to view SCP and IPC as a competitive threat to its transmission monopoly, it would be rather surprising for Westcoast to acknowledge the impact IPC had on its market response, timing, or the negotiated settlement in the expansion. However, those at Terasen Gas involved in the negotiations at the time remain convinced that it was an important factor" (Exhibit B-9).

Terasen Gas' comments regarding Westcoast indicate how two parties to a negotiation may have quite different views of each other's positions. A mere assertion as to another's motive, in and of itself, is not persuasive evidence upon which the Commission chose to rely.

Commission Determination

The Commission comments in 2002 regarding the benefits to customers of the set of transactions related to SCP capacity as set out in the quotation from Letter No. L-48-02, have been discussed above. Furthermore, considering the passage of time and the updated information available in the proceeding to review the 2005 Application, there was no requirement for the Commission to consider itself constrained by its earlier comments nor, in the circumstances would it have been appropriate for the Commission to do so.

The Commission rejects the claim that the Commission ignored, or failed to properly take into account, evidence in the 2002 proceeding, particularly the benefits that customers received from the NWN transactions. Terasen Gas' claim that the Commission failed to properly take into account the evidence in the 2002 proceeding is not substantiated. It is the place of the Commission to consider all relevant evidence, to determine the weight that should be given to that evidence, and the Commission was fully justified in giving little weight to unsupported assertions of Terasen Gas. Furthermore, several of the considerations that Terasen Gas raises are not relevant to the central question of the value that IPC expenditures have had for customers.

The Commission concludes that it made no error in fact or law with respect to Grounds 1 and 2.

2.2 Ground 3

In the Reconsideration Application, Terasen Gas states Ground 3 as follows:

> "The Commission Panel created and used "definitively" and "certainty" tests at page 17 of its Decision to not approve the application of TGI for recovery of IPC development costs. The use of such tests is inconsistent with the balance of probabilities test used in civil proceedings.
>
> The use of such tests is also inconsistent with and contrary to the Commission's determination in 2002 that the recovery of development costs would be based on the value that the IPC development costs had for customers, including the contribution to the arrangements with NWN. In 2002 the Commission determined that over the term of the NWN arrangements the revenue of TGI would increase significantly, for the benefit of customers."

Terasen Gas submits that the creation and use of "definitely" and "certainty" tests to determine if IPC development costs should be recovered by TGI was an error in law. In addition, the use of such tests introduced into the Decision a new principle that had not been raised, nor advocated by any party, in the proceeding that led to the Commission's decision.

As noted previously, the Inland Industrials argue that Terasen has a heavy burden to discharge in order to persuade the Commission that the normal CPCN regulatory process should be circumvented so that the IPC costs can be recovered from customers. In their view, even if Terasen Gas were able to establish the causal connections it claims, the recovery of IPC costs from Terasen ratepayers does not necessarily follow. The Inland Industrials consider that the proper tests for recovery are those associated with a CPCN application, and that the Commission required an appropriate and fair level of proof in these circumstances.

BCOAPO states that the Commission clearly considered TGI's position as well as the positions advanced by the various intervenors and came to the conclusion, based on all the evidence that "it is not persuaded that there is any certainty that without the prospect of the IPC the eventual results would have been different". BCOAPO suggests that the Commission was referring to TGI's position that the agreement with NWN, along with the resulting significant revenues would not likely have been realized if the IPC project had not been under development and that the Commission was not establishing a new test but rather simply applying its judgment to the evidence before it.

Commission Determination

The Commission acknowledges that its use of the words "definitely" and "certainty" at page 17 of its Decision could create an impression that it had adopted a stricter standard than the balance of probabilities standard used in civil proceedings such as this. However, that impression was unintended and did not flow from the use by the Commission of a stricter standard of proof than is applicable in the proceedings.

The Commission agrees with the Inland Industrials that the recovery of IPC development costs from customers would be an extraordinary outcome in the circumstances. Terasen Gas had never applied for IPC as a utility project. In its Decision the Commission determined on the evidence before it that IPC was initially commenced as a Terasen Inc. project and that it was developed outside the utility rate base. As the Commission also stated in its Decision, Terasen Gas' application was confusing as to which "Terasen" corporate entity initiated the IPC project and was responsible for the risks associated with its development.

This is not a situation where a CPCN had ever been applied-for, let alone been subject to review or approved, and as indicated in Letter No. L-48-02, Terasen Gas would be required to make its case before any comfort could be given concerning the recovery of any IPC costs from customers.

On the basis of the balance of probabilities standard of proof used in civil proceedings, Terasen Gas did not, in the Commission's view, meet its onus to establish a sufficient case for the recovery of the IPC costs from customers.

In conclusion, therefore, notwithstanding the use of the impugned wording, the Commission did not intend to, and in its view did not, establish a new standard of proof for an application of this nature. The Commission was simply intending to express its view that it was not satisfied that Terasen Gas had even come close to proving its case on a balance of probabilities. In the Commission's view, Terasen Gas is placing far too legalistic an interpretation on the Commission's wording. The Commission considered the evidence before it, ascribed appropriate weight to that evidence, and concluded that Terasen Gas had not established that the IPC development expenditures represented value for Terasen Gas customers.

The Commission concludes that it made no error in law with respect to Ground 3.

2.3 Ground 4

In the Reconsideration Application, Terasen Gas states Ground 4 as follows:

> "The Commission Panel failed to determine the extent to which the NWN arrangements were dependent on the IPC development costs, and in doing so the Commission Panel failed to address a central issue that was before it."

Terasen Gas states that a central issue before the Commission in the 2005 proceeding was the extent to which the NWN arrangements were dependent on the IPC development costs. The Commission's 2002 Letter No. L-48-02 raised this as an issue in the last paragraph of page 2. In Terasen Gas' view, the Commission failed to determine the issue and none of the Intervenor comments detracts from Ground 4 as a ground to be dealt with on reconsideration.

Commission Determination

As noted in the Decision, Terasen Gas, in the 2005 Application, presented a number of transactions for approval as a "package" and attempted to construct cause/effect linkages and interdependencies among them. This "bundled" application approach was not accepted by the Commission and the issue of the recovery of IPC costs from ratepayers, in particular, was separated as a discrete issue for review and examination by the Commission.

TGI presented its application for the recovery of IPC costs, based on the NWN arrangements being dependent on the IPC development costs, essentially as an all or nothing proposition. The Commission considered the evidence before it and was not persuaded that "as circumstances evolved, an agreement with NWN to utilize SCP capacity on some reasonable timeline and commercial terms was unlikely" (Decision, p. 16). In its Decision, the Commission stated "the Commission is not persuaded that there is any certainty that without the prospect of the IPC the eventual results would have been different" (Decision, p. 17). This determination, as explained under Ground 3, addressed and disposed of this issue.

The Commission concludes, with respect to Ground 4, that it addressed the issue that was before it, that it did not err in law and nor did it fail to exercise its jurisdiction.

2.4 Ground 5

In the Reconsideration Application, Terasen Gas states Ground 5 as follows:

> "At page 17 of its Decision the Commission Panel said that it did 'not accept the argument that all expenses associated with ICP should be recovered from rate payers'. Although it did not conclude that no expenses associated with ICP should be recovered from rate payers, the Commission Panel failed to determine the quantum or allocation of IPC development costs that should be recovered from rate payers. The Commission Panel failed in its duty to determine the appropriate recovery, saying in its Decision that the allocation would be entirely arbitrary and without evidentiary support. It was incorrect in law to say, as the Commission Panel did, that there was no evidentiary support for the IPC development costs. If the Commission Panel had difficulty determining the appropriate allocation, the Commission Panel should have either determined the issue on the evidence before it, or reopened the evidentiary portion of the proceeding to hear further evidence. Difficulty in determining the quantum of allocation of a recovery is not reason

> for failing to make the determination. The Commission Panel erred in law *or declined to exercise* its jurisdiction in failing to determine the appropriate quantum or allocation of IPC development costs to be recovered."

Terasen Gas' Reply Argument restates Ground 5 as follows:

> "In Ground 5 the Company says that the Commission Panel failed to determine the quantum or allocation of the IPC development costs that should be recovered from ratepayers, although it did not conclude that no expenses associated with IPC should be recovered. This also was a central issue in the 2005 proceedings."

Terasen Gas argues that the Commission did not determine the quantum or allocation of the IPC costs, and submits that the comments of Intervenors do not affect the issues raised in Ground 5.

Commission Determination

In the Reconsideration Application, Terasen Gas sought recovery of IPC development costs amounting to approximately $5.8 million from Terasen Gas customers (Exhibit B-1, pp. 4, 12). In the Decision the Commission stated:

> "The Commission denies the application for the recovery of IPC development costs."

These words should not be understood to mean something other than that the recovery from Terasen Gas customers of all or any IPC development costs was denied.

Ground 5 as described in the Reconsideration Application is that the Commission had a duty to determine a quantum or allocation of IPC development costs that could be greater than zero and less than 100 percent of the amount in the 2005 Application, which would be recoverable from Terasen Gas customers.

Terasen Gas appears to be responding to the following statement at page 17 of the Reasons for Decision to Order No. G-98-05:

> "The Commission is not persuaded that the value in the NWN arrangements results definitively from the IPC project and could not have been negotiated on reasonable commercial terms in some other manner. Therefore it does not accept the argument that all expenses associated with ICP should be recovered from rate payers. No evidence has been advanced to attribute to IPC a defendable portion of any perceived value. Therefore, even if the Panel were to find that some value could be attributable to IPC, the allocation would be entirely arbitrary and without evidentiary support." (emphasis added)

In the 2002 Application, Terasen Gas stated:

> "In the Base Case it is expected that the net revenues will increase by at least $2.6 million per annum over the current arrangements, and the net NPV of the arrangements are in excess of $20 million depending on the degree IPC development costs are recovered" (emphasis added) (Exhibit B-2, p. 8).

Letter No. L-48-02 was non-restrictive when it stated:

> "If the IPC project is deferred substantially, the Commission is prepared to receive and review an application for approval to recover some or all IPC expenditures from BC Gas customers based on the value that IPC expenditures have had for customers, including the contribution to the present arrangement with NWN" (emphasis added).

The quoted paragraph from the Decision does not state that the Commission was of the view that some partial value should be attributed to IPC. Rather, it discusses a hypothetical situation. The Commission, based on the evidence and submissions received, determined that Terasen Gas had not established on a balance of probabilities that any or all IPC costs should be recovered as is reflected in its Order.

The Commission concludes that it made no error in law or declined to exercise its jurisdiction with respect to Ground 5.

2.5 Ground 6

In the Reconsideration Application, Terasen Gas states Ground 6 as follows:

> "Contrary to the evidence before it, and in the absence of any evidence to support its conclusion, The Commission Panel found that an agreement with NWN on similar contracting arrangements, would have been likely even in the absence of the IPC development. Such a conclusion is an error in law as there was no evidence before the Commission to support that conclusion."

In the 2005 Application, Terasen Gas stated that it believed that the agreement with NWN would not likely have been realized if the IPC project had not been under development (Exhibit B-1, p. 11).

In the Reconsideration Application, Terasen Gas restates some of the evidence that was before the Commission.

In the Order No. G-98-05 Reasons for Decision at page 16 this issue is addressed:

> "Terasen Gas believes that the agreement with NWN, along with the resulting significant revenues would not likely have been realized if the IPC project had not been under development. Although this is a possibility, Letter No. L-48-02 states that Terasen Gas had a longstanding business relationship with NWN. The Commission is not persuaded that, as circumstances evolved, an agreement with NWN to utilize SCP capacity on some reasonable timeline and commercial terms was unlikely."

Terasen Gas, in its Reconsideration Application, appears to misunderstand the Commission statement, incorrectly characterizing it as "[finding] that an agreement with NWN on similar contracting arrangements, would have been likely even in the absence of the IPC development" (emphasis added). The Commission's conclusion is quite different however. The Commission reviewed all the evidence, including Terasen Gas' longstanding business relationship with NWN and its success in contracting SCP capacity to PG&E and BC Hydro in 1998, well before the IPC project (Exhibit B-1, p. 1). The Commission in Letter No. L-48-02, alluded to these considerations when it referred to the Terasen Gas statement in the 2002 Application that IPC development and marketing efforts were necessary to capture the value for SCP in the NWN agreement, as follows:

> "Nevertheless, BC Gas has a longstanding business relationship with NWN related to matters such as Mist gas storage. Also, BC Gas customers funded activities like the regional resource planning work which concluded that benefits would result from moving gas from Alberta to the Pacific Northwest region."

SCP capacity is one way that NWN could diversify its gas supply portfolio to include Alberta supply.

The Commission, in the 2005 Decision, did not make a "finding without evidence"; it simply observed that there may have been other good reasons for NWN to contract for SCP capacity and that it did not accept the causal link to the IPC development costs claimed by Terasen Gas. The Commission reviewed the evidence before it but was "not persuaded that, as circumstances evolved, an agreement with NWN to utilize SCP capacity on some reasonable timeline and commercial terms was unlikely".

The Commission concludes that it made no error in law with respect to Ground 6.

2.6 Ground 7

In the Reconsideration Application, Terasen Gas states Ground 7 as follows:

> "The Commission Panel misunderstood, or incorrectly characterized, positions of intervenors in the 2005 proceeding……..The Commission Panel's misunderstanding or mischaracterization of Intervenors positions is evidence of an error of law or error of fact."

Commission Determination

The Commission considers this Ground to be without merit, particularly in view of the fact that none of the Intervenors agreed with or supported Terasen Gas' contention that their positions had been misunderstood or mischaracterized, despite the opportunity in this Phase 1 proceeding to do so. In fact, the Inland Industrials state that they are satisfied that the Decision has fairly captured their position. BCOAPO also clarified that although it had been prepared, based on the very specific situation put forward by Terasen Gas to support its application, BCOAPO had also clearly stated that in the normal course of events one would expect the shareholders to take the risk of this particular investment.

In any event, the fact that Intervenors may not have vigorously opposed or challenged Terasen Gas on this or any other issue is not determinative. The Commission had carefully reviewed all of the evidence filed in this proceeding including the prior 2002 filing (Exhibit B-2) and formed its own conclusions, based on the evidence and the weight it gave to certain assertions made by Terasen Gas.

The Commission concludes that it made no error in fact or law with respect to Ground 7.

3.0 CONCLUSION

Terasen Gas applied for reconsideration and variance of that portion of Commission Order No. G-98-05 and Reasons for Decision dated October 5, 2005 that denied recovery of IPC development costs from Terasen Gas customers. The Reconsideration Application set out seven specific Grounds.

The Commission established a written comment process for the Phase 1 review of the Reconsideration Application according to the Commission's procedures for the review of such applications. None of the parties as outlined in Section 1.3 who filed comments supported Terasen Gas' request that the reconsideration proceed to a review of the Reconsideration Application on its merits.

The Commission considered the Reconsideration Application, submissions from Intervenors and the Terasen Gas reply to the submissions.

The Commission finds that for each of the seven Grounds on which the Reconsideration Application is made, the claims that the Commission erred in fact and law, introduced a new principle or test that had not been raised in the proceeding, and failed to address the issue before it are not substantiated on a prima facie basis. The Commission, therefore, denies the Reconsideration Application.