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VIA E-MAIL

trevorcouldwell@chevron.com

July 6, 2007

Mr. Trevor Couldwell
Vice President, Canadian Storage & Trading
Unocal Canada Limited
500 Fifth Avenue S.W.
Calgary, Alberta T2P 0L7

Dear Mr. Couldwell:

Re: Unocal Canada Limited
Application for an Exemption pursuant to Section 88(3)
of the Utilities Commission Act for the Aitken Creek Storage Facility

In response to your October 24, 2006 application to the Commission for an exemption under the Utilities Commission Act for the natural gas storage facility at Aitken Creek, BC, we enclose Certificate of Public Convenience and Necessity Order No. C-6-07.

Yours truly,

Original signed by:

Robert J. Pellatt

RJP/cms
Enclosure(s)

cc: Mr. Chris W. Sanderson
Lawson Lundell LLP
1600 – 925 West Georgia Street, Vancouver V6C 3L2
csanderson@lawsonlundell.com

Registered Intervenors/Interested Parties

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER C-6-07**

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

and

An Application by Unocal Canada Limited
for an Exemption Pursuant to Section 88(3) of the Utilities Commission Act
for the Aitken Creek Storage Facility
and an Application for Expiry of the Interim Certificate of Public Convenience and Necessity

BEFORE: L.F. Kelsey, Commissioner
P.E. Vivian, Commissioner July 6, 2007

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

WHEREAS:

- A. The Commission by Letter No. L-47-06 dated August 25, 2006 advised Unocal Canada Limited (“Unocal”) that it had concluded that Unocal, as owner and/or operator of the Aitken Creek Storage Facility, fell within the definition of a public utility in the Utilities Commission Act (the “Act”); and
- B. On August 31, 2006 Unocal applied to the Commission for orders accepting for filing pursuant to Section 61(1) of the Act six Gas Storage Agreements and General Terms and Conditions for Firm Natural Gas Storage, granting a Certificate of Public Convenience and Necessity (“CPCN”) for the operation of the Aitken Creek Storage Facility pursuant to Section 45 of the Act, and granting a CPCN for the operation of the facility on an interim basis pursuant to Sections 90 and 91 of the Act; and
- C. In the August 31, 2006 application, Unocal advised that it is preparing an application and supporting evidence for an exemption order under Section 88(3) of the Act; and
- D. In the August 31, 2006 application, Unocal requested that the Commission grant the CPCN on an interim basis as soon as possible and without further process, and that the Commission delay any process on the application for a CPCN pursuant to Section 45 until the exemption order application is resolved; and

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- E. By Order No. G-107-06 dated September 8, 2006, the Commission accepted the gas storage agreements and General Terms and Conditions for filing, and granted Unocal a CPCN on an interim basis for the operation of the Aitken Creek Storage Facility as it currently exists, with the CPCN to be effective until Unocal's exemption order application is resolved or the Commission makes another determination on the matter of a CPCN; and
- F. By a submission dated October 24, 2006, Unocal applied to the Commission, pursuant to Section 88(3) of the Act, for an order exempting it from all provisions of the Act; and
- G. Commission Order No. G-155-06 dated December 7, 2006, established a written hearing process and Regulatory Timetable to examine the application for an exemption; and
- H. By letter dated May 14, 2007, the Commission issued Reasons for Decision in response to the application for an exemption, and requested advance approval of the Lieutenant Governor in Council to issue an exemption to Unocal in the form of the draft Order that accompanied the Reasons for Decision; and
- I. By letter dated June 8, 2007, Unocal requested clarification of the Commission's Reasons for Decision and draft Order, and the Commission responded by Letter No. L-47-07 dated June 20, 2007, and provided a revised draft Order; and
- J. In the June 8, 2007 letter, Unocal also requested the interim CPCN for the Aitken Creek Storage Facility be permitted to expire effective the date that Unocal is exempted from Section 45 of the Act (the "Application"); and
- K. By Letter No. L-46-07 dated June 15, 2007, the Commission established a written submission process on the Application; and
- L. By letters dated June 22, 2007, Terasen Gas Inc. and British Columbia Old Age Pensioners' Organization et al. submitted comments on the Application that opposed the request for the interim CPCN to expire; and

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M. By letter dated June 29, 2007, Unocal responded to the comments, and reiterated its request in the Application; and

N. The Commission has considered the Application and the submissions it has received on the matter, and has determined that the Application to permit the interim CPCN to expire should be denied and that the interim CPCN should be amended and replaced by a permanent CPCN for the Aitken Creek Storage Facility, for the Reasons for Decision that are Appendix A to this Order.

NOW THEREFORE the Commission denies the Application to permit the interim CPCN to expire, and pursuant to Sections 45 and 46 of the Act orders that a CPCN is granted to Unocal for the Aitken Creek Storage Facility, as an amendment to and replacement for the interim CPCN granted by Order No G-107-06, effective the date of this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 6th day of July 2007.

BY ORDER

Original signed by:

L.F. Kelsey
Commissioner

Attachment

An Application by Unocal Canada Limited
for an Exemption Pursuant to Section 88(3) of the Utilities Commission Act
for the Aitken Creek Storage Facility
and an Application for Expiry of the Interim Certificate of Public Convenience and Necessity

REASONS FOR DECISION

BACKGROUND

On August 31, 2006, Unocal Canada Limited (“Unocal”) applied to the Commission for a Certificate of Public Convenience and Necessity (“CPCN”) for the operation of the Aitken Creek Storage Facility (the “Storage Facility”) as it currently exists, and a CPCN for the operation of the facility on an interim basis. Unocal requested that the interim CPCN be granted as soon as possible and without further process, and that the Commission delay any process regarding a CPCN under Section 45 of the Utilities Commission Act (the “Act”) until the application for an exemption that it planned to file is resolved. If the Order granting an exemption renders a CPCN unnecessary, Unocal stated that it would withdraw the application for a CPCN under Section 45.

Commission Order No. G-107-06 granted Unocal a CPCN on an interim basis for the operation of the Storage Facility as it currently exists, with the CPCN to be effective until Unocal’s exemption order application is resolved or the Commission makes another determination on the matter of a CPCN.

On October 27, 2006, Unocal applied to the Commission for an Order pursuant to Section 88(3) of the Act exempting it from all provisions of the Act. In the Reasons for Decision that it released on May 14, 2007, the Commission made the following determinations:

“Accordingly, the Commission determines that the requested exemption from all provisions of the Act pursuant to Section 88(3) would not serve the objects and purposes of the Act and would not be in the public interest.”

“...the Commission Panel therefore finds that active regulation of Unocal in its operation of the Storage Facility is not warranted at this time. Rather, regulation on a reporting or complaints basis is the appropriate method of regulation.”

“The Commission concludes that it should approve an exemption for Unocal from Part III of the Act except for Sections 24, 25, 38, 39, 41, 42, 52, 53 and 54 for the Storage Facility. It otherwise denies the request for an exemption from remaining sections of the Act. Unocal will continue to be subject to the Act with respect to the Storage Facility on a complaint basis.

When it was considering what would be the appropriate exemption for Unocal at Aitken Creek, at page 24 of the Reasons for Decision the Commission discussed the inter-relationship between Section 41 of the Act and a CPCN.

“Section 41 refers to the situation where a public utility has been granted, or has been deemed to have been granted, a Certificate of Public Convenience and Necessity (“CPCN”). By Order No. G-107-06 dated September 8, 2006, the Commission granted Unocal ‘a CPCN on an interim basis for the operation of the Aitken Creek Storage Facility as it currently exists, with the CPCN to be effective until Unocal’s exemption order application is resolved or the Commission makes another determination on the matter of a CPCN.’

In the application leading to Order No. G-107-06, Unocal requested that the Commission delay any process on the application for a CPCN for the operation of the Storage Facility until the exemption order application is resolved. Therefore, the CPCN granted on an interim basis will continue in effect after the exemption order is resolved and until a further determination on the CPCN is made by the Commission.”

Section 41 states:

“No discontinuance without permission

41 A public utility that has been granted a certificate of public convenience and necessity or a franchise, or that has been deemed to have been granted a certificate of public convenience and necessity, and has begun any operation for which the certificate or franchise is necessary, or in respect of which the certificate is deemed to have been granted, must not cease the operation or a part of it without first obtaining the permission of the commission.”

On June 8, 2007, Unocal requested (the “Application”) that the interim CPCN be permitted to expire effective the date Unocal is exempted from Section 45 of the Act. Commission Letter No. L-46-07 established a written comment process on the Application.

The Order that accompanies these Reasons for Decision provides further details about the context of the Unocal Application and the written comment process.

APPLICATION

In the Application, Unocal submitted that in its August 31, 2006 filing, it stated that if the exemption order renders a final CPCN unnecessary, it would withdraw its application for a CPCN. Unocal submitted that a CPCN for the Storage Facility will not be required if an exemption order is issued in the form recommended by the Commission, since Unocal would then be exempt from Section 45 of the Act. Accordingly, Unocal requested that the interim CPCN be permitted to expire effective the date Unocal is exempted from Section 45.

SUBMISSIONS OF THE PARTIES

Terasen Gas Inc. (“Terasen Gas”) by letter dated June 22, 2007 opposed the Application. Terasen Gas submits that it is clear from the Reasons for Decision that Unocal should be subject to Section 41 in respect of the Storage Facility, and that the expiry of the interim CPCN will cause Section 41 to be ineffective. That is, without a CPCN being in existence, or deemed to exist, Unocal could cease operation of the facility without Commission permission.

Terasen Gas also anticipates that an order exempting Unocal would be prospective, which suggests that a CPCN is required for the construction of the Storage Facility and its operation prior to the granting of an exemption. Terasen Gas submits that if a CPCN is granted prior to the exemption coming into effect there should be no problem with the application of Section 41.

British Columbia Old Age Pensioners’ Organization et al. (“BCOAPO”) by letter dated June 22, 2007 adopted Terasen Gas’ submissions and added that any exemption should be granted on a prospective basis to ensure the applicability of the relevant sections of the Act. BCOAPO submitted that the expiry of the interim CPCN should not be permitted and the exemption not granted until a permanent CPCN is issued or deemed to be issued.

In its reply submission dated June 29, 2007, Unocal repeated its request for the interim CPCN to expire effective the date it is exempted from Section 45. Unocal confirmed that it has not otherwise been granted a CPCN for the Storage Facility, and a CPCN has not been deemed to be granted. Unocal strongly opposes the suggestion that the Commission impose a CPCN on Unocal, on the basis that this would frustrate the Commission's determination that Unocal should not be rate regulated.

Unocal states that the submissions of Terasen Gas and BCOAPO misapprehend the purpose of Section 41 and frustrate the declared intention of the Commission to exempt Unocal from Sections 58 through 64. Unocal submits that the purpose of Section 41 is not to ensure that a public utility continues to provide suitable, non-discriminatory service, but rather is a complement to Section 45 pursuant to which the Commission is required to determine whether a proposed public utility plant is a prudent investment. Section 41 lets the Commission ensure that a public utility does not seek to replace plant in service with more expensive property and recover the higher cost through customer rates.

Unocal questions whether the Commission has the authority to impose a CPCN on a person that does not seek it. Unocal also states that granting a permanent CPCN at this time would not be consistent with statements in the Reasons for Decision and in the first paragraph of the draft exemption Order which indicate that the interim CPCN will continue in effect until an exemption order comes into effect.

COMMISSION DETERMINATION

The Commission believes that it should consider the Unocal Application in two stages; what changes can it order with respect to the CPCN for the Storage Facility and, secondly, what changes, if any, should it make to the CPCN and when should it make them.

No party has questioned the Commission's jurisdiction to permit the interim CPCN to continue in effect, or to let it expire when an exemption order is granted. However, the Commission does not believe that it would be proper to have the interim CPCN remain in effect indefinitely.

With respect to issuing a "permanent" or "regular" CPCN pursuant to Sections 45 and 46 of the Act, the Commission believes that it has authority to make the determination to issue a CPCN for the Storage Facility at this time. In its August 31, 2006 letter, Unocal applied for a CPCN pursuant to Section 45, as well as for an interim CPCN. Subsequent to the release of the Reasons for Decision and draft exemption order, Unocal submitted the Application requesting a determination on the expiry of the interim CPCN. The Commission established a written comment process, has received and considered written submissions on the need for a CPCN for the Storage Facility, and concludes that it should make a determination on the matter.

Turning to the question of what determination it should make, the Commission generally agrees with Unocal that the Reasons for Decision conclude that the active regulation of Unocal in its operation of the Aitken Creek Storage Facility is not warranted at this time, and that the Commission does not wish to impair its ability to ensure that suitable, non-discriminatory storage service will be made available to the public appropriately in the future.

However, the Commission does not entirely agree with Unocal's submission that Section 41 is closely coupled with Section 45 and that it relates primarily to the Commission's rate making responsibilities. Page 22 of the Reasons for Decision includes Section 41 among the sections of the Act that the Commission determined it would not seek to exempt Unocal from, on the basis that these provisions "ensure that suitable storage service will remain available in the future."

The submissions of Terasen Gas and BCOAPO set out their concerns related to the impact if a CPCN does not exist or is not deemed to exist. Terasen Gas specifically refers to Unocal ceasing operation of the storage facility without Commission permission.

Unocal also states that the submissions of Terasen Gas and BCOAPO frustrate the declared intention of the Commission to exempt Unocal from Sections 58 through 64 of the Act. However, no attempt is made to explain the problem in this regard that either Section 41 continuing in effect or a CPCN being in place would cause. The Commission is not persuaded that having a CPCN in effect for the Storage Facility while Unocal is exempt from Sections 45 and 58 through 64 would cause material problems.

The Commission is convinced that Section 41 should continue to apply to Unocal with respect to the Storage Facility and that a CPCN needs to be in place prior to the granting of the exemption Order for Section 41 to be effective. The exemption Order, if granted, will be applied prospectively. The Commission is of the view that if a CPCN is not in place prior to the granting of the exemption Order, then the Commission's intent to have Section 41 apply to the Storage Facility so that service will not cease without Commission approval would be frustrated.

Therefore, the Commission determines that the Application to permit the interim CPCN to expire should be denied, and that a CPCN pursuant to Sections 45 and 46 should be granted to Unocal for the Aitken Creek Storage Facility to amend and replace the interim CPCN, effective immediately.

The Commission will make the appropriate revisions to the draft exemption Order, and will reactivate its request for advance approval of the Lieutenant Governor in Council to grant an exemption for Unocal for the Storage Facility.