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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-177-13**

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

and

**Pacific Northern Gas (N.E.) Ltd.
Application for Reconsideration of Order G-131-13**

BEFORE: D.A. Cote, Panel Chair/Commissioner
C.A. Brown, Commissioner October 28, 2013
C. van Wermeskerken, Commissioner

O R D E R

WHEREAS:

- A. On August 23, 2013, the British Columbia Utilities Commission (Commission) issued Order G-131-13 concurrently with its Decision [PNG(N.E.) Decision 2013] on the Pacific Northern Gas (N.E.) Ltd. [PNG(N.E.)] 2013 Revenue Requirements Application (RRA) pursuant to sections 59 to 61 of the *Utilities Commission Act* (UCA);
- B. By letter dated September 20, 2013, PNG(N.E.) filed a request for Reconsideration of Order G-131-13 with respect to the Commission determination on approved 2013 capital additions (Reconsideration Request);
- C. By Letter L-59-13 dated October 3, 2013, the Commission established Phase One of the Reconsideration process and sought written submissions addressing whether PNG(N.E.) put forward reasonable bases to warrant the Reconsideration process proceeding to the second phase. A Reconsideration follows two phases, with the first phase assessing the merits of the application to warrant a full Reconsideration in the second phase;
- D. By letter dated October 10, 2013, the Commission received written submissions from PNG(N.E.) where it asserted that the Commission made an error of fact in determining the approved 2013 capital additions in the PNG(N.E.) Decision 2013. The Commission did not receive submissions from any other Participants in the PNG(N.E.) 2013 RRA proceeding;

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- E. The Commission Panel has reviewed the submissions and determines that, although PNG(N.E.) has not established the alleged errors of fact on a *prima facie* basis, the Commission Panel is exercising its discretion to reconsider as there is just cause.

NOW THEREFORE pursuant to section 99 of the *Utilities Commission Act* and for the Reasons set out in Appendix A to this Order, the Commission orders as follows:

1. The Pacific Northern Gas (N.E.) Ltd. request for Reconsideration of Order G-131-13 is approved, including an \$808,000 increase to 2013 capital additions.
2. Pacific Northern Gas (N.E.) Ltd. must include the 2013 revenue requirements impact of the \$808,000 increase in 2013 capital additions in a short-term interest bearing deferral account, to be fully amortized into rates in 2014.

DATED at the City of Vancouver, in the Province of British Columbia, this 28th day of October, 2013.

BY ORDER

Original Signed By:

D.A. Cote
Commissioner

Pacific Northern Gas (N.E.) Ltd
Application for Reconsideration of Order G-131-13

REASONS FOR DECISION

Background

Pacific Northern Gas (N.E.) Ltd. [PNG(N.E.)] has applied to the British Columbia Utilities Commission (Commission) to vary Commission Order G-131-13 dated August 23, 2013, and the Decision issued with that Order. PNG(N.E.)'s Application has been made pursuant to section 99 of the *Utilities Commission Act*. PNG(N.E.) seeks a Reconsideration and variance to the approved capital expenditures of \$8.5 million plus \$526,000 of overhead for Fort St. John/Dawson Creek (FSJ/DC) for 2013 to be increased to include a further \$808,000 of 2012 carryover capital projects that were not completed by year end. If the Commission denies this Reconsideration request, the Applicant will be impacted in that the \$808,000 will not be eligible for a return on capital to the Applicant.

Test for Reconsideration

The process for an application for Reconsideration is outlined in the Participants Guide to the British Columbia Utilities Commission, and occurs in two phases. In the first phase, the applicant must establish that a reasonable basis exists for the Reconsideration. To advance to the second phase, the applicant must meet one of the following criteria:

- the Commission has made an error of fact or law;
- there has been a fundamental change in the circumstances or facts since the Decision; or
- a new principle has arisen as a result of the Decision.

As well, the basis for the advancement to second stage must show:

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

Applicant Submissions

PNG(N.E.) submits that the Commission erred in fact, in that it "relied upon a listing of 2013 Test Year Capital Expenditures provided in response to BCUC IR 2.50.1 totaling \$8.5 million instead of the \$9.308 million submitted by PNG(N.E.) in its Application and also noted in PNG(N.E.)'s response to BCUC IR No. 2.49.2" [PNG(N.E.) Submissions, October 10, 2013]. Further, the Applicant submits that the Commission Decision erroneously stated that "no explanation was provided" for the \$808,000 discrepancy. Finally, PNG(N.E.) argues that it would be unjust and unreasonable for the Commission to deny the Applicant's opportunity for a fair and reasonable return in capital investment.

Review of the Chronology of Evidence

The evidentiary record of the 2013 Revenue Requirements Application provides the following relevant facts in chronological order respecting Capital Expenditures:

1. PNG(N.E.) in its 2013 Revenue Requirements Application forecasted capital expenditures of \$8.499 million plus \$0.495 million of overhead for FSJ/DC. (Exhibit B-1, FSJ/DC, p. 28)
2. The Applicant was asked to provide a more fulsome explanation of the 2012 Capital Expenditure variances (Exhibit A-4, BCUC 1.54.1). The IR was also a reminder that PNG(N.E.) was directed in the 2012 RRA Decision to provide a more fulsome capital additions forecast for the 2013 RRA.

3. In Exhibit B-3, in response to BCUC IR 1.54.1, PNG(N.E.) ensured that a fulsome capital expenditures variance analysis would be dealt with in the Updated Application.
4. In Exhibit B-1-1, the Updated Application filed on March 4, 2013, PNG(N.E.) suggested a request for approval of capital expenditures of \$9.308 million (an amount which is approximately \$808,000 higher than that forecasted in the initial Application) plus \$0.525 of overhead. (Exhibit B-1-1, Tab 2, pp. 1-3)
5. The Applicant provided a response to IR 1.54.1, which showed a 2012 Capital Additions carry forward of \$765,000 (Exhibit B-1-1, Appendix B, p. 14).
6. In Exhibit A-11, PNG(N.E.) was provided with IR 2.49.2. Commission Staff provided a table for Capital Additions, which contained the net addition of \$9.308 million. The Applicant was asked to complete and/or correct the table.
7. In Exhibit A-11, the Applicant was provided in IR 2.50.1, a 2013 Capital Additions table and asked to complete all fields and/or correct the table, such that the Total at the bottom of the table should equate to the Total for the Test Year 2013 Capital Additions. This table specifically provided space for the inclusion of carry forward projects.
8. PNG(N.E.) provided a Table showing net capital additions for the 2013 Test year of \$9.308 million plus \$525,000 of overhead, in response to BCUC IR 2.49. (Exhibit B-13)
9. In response to BCUC IR 2.50.1, the Applicant provided a table showing net capital additions of \$8.499 million plus \$526,000 of overhead, with no capital addition carry forwards. The carry forward projects cell in the table was left blank by the Applicant.

In its letter of October 10, 2013, written in support of its Reconsideration request, PNG(N.E.) submits that the discrepancy is accounted for in its Updated Application in response to BCUC IR 1.54.1. PNG(N.E.) makes the following submission in its Application for Reconsideration: "The \$765,000 of planned and unplanned 2012 carry-forward capital additions (excluding overheads) noted in this listing pertain solely to 2012 projects that were not completed by year end and were carried over to Test Year 2013. With the allocation of 2012 overheads, the 2012 carryover capital projects total \$808,000."

As noted in item 4 of the Review of the Chronology of Evidence, in its Updated Application, PNG(N.E.) provides a table showing a revised amount for service additions for 2013 of \$9.308 million plus \$0.525 million in overheads. PNG(N.E.) states that the difference pertains solely to the 2012 capital projects carried over to 2013 as WIP amounts. PNG(N.E.) provided no direct explanation as to why these amounts were adjusted upwards and makes no direct link between this amount and the information it provided in answer to BCUC IR 1.54.1. The Panel also notes that PNG(N.E.) acknowledges that "it did not highlight the 2012 WIP that was included as a 2013 gas plant in service addition in its Application Update" (Application for Reconsideration, p. 2).

In BCUC IR 2.50.1, PNG(N.E.) was asked to complete or correct a table listing the 2013 Test Year gas plant in service additions. In response to this, the Carry Forward Projects section was left blank. PNG(N.E.) acknowledges that it made an error in its response and did not include the \$808,000 in capital carryover projects.

Intervener Submissions

British Columbia Pensioners and Seniors Organization (BCPSO) was an intervener in the original 2013 RRA. BCPSO did not make submissions in this Reconsideration Application.

Commission Panel Determination

The Panel notes that there is inconsistent information between the initial Application and the Updated Application, as well as between the responses to BCUC IR 2.49.2 and 2.50.1. In addition, the Panel notes that the information in BCUC IR 1.54.1 was in response to a question that was retrospective and concerned capital expenditure variances related to 2012 and 2011. PNG(N.E.) made no direct connection between the content of a portion of the information in this response with the change in capital requirements. Given that the 2013 capital plan is prospective, in our view it is reasonable to expect that the Applicant would make any necessary connections between inconsistencies within the evidentiary record.

Second, BCUC IR 2.50.1 clearly specifies a request on behalf of Commission staff to provide a listing of all 2013 projects with a separate section for Carry Forward Projects. The Applicant left this section blank. Therefore, PNG(N.E.) failed to take advantage of a response to IR 2.50.1 that could provide clarity with respect to the Capital Expenditures for the 2013 Test Year.

While the Panel acknowledges that it is not unusual for utilities to carry over incomplete capital projects to a new test year, this should be in a clear and unequivocal manner. This was not done in spite of being afforded an opportunity in its response to BCUC IR 2.50.1.

The Panel finds that there is no Commission error of fact or law, there is no basic principle that was overlooked, or new principle raised. Where evidence is incomplete, unclear or inconsistent, the Panel must resolve inconsistencies based on the evidence before it. To argue that Commission erred in fact, would establish an unreasonably high standard for the Commission to make enquiries of the Applicant, and an unreasonably low standard for an Applicant to provide fulsome and complete information to support its RRA. The Panel's mandate to consider all of the evidence, but the onus is on the Applicant to provide complete information.

In spite of the shortcomings which have been pointed out with respect to the evidentiary record, the Commission Panel considers it to be unjust and unreasonable for PNG(N.E.) to be denied the opportunity to earn a fair and reasonable return on the capital investment it has previously incurred. Because of this, the Panel is exercising its discretion to reconsider as there is just cause. In reviewing the information in response to BCUC IR 1.54.1, we acknowledge that we would have approved the additional amounts had PNG(N.E.) done a better job in preparing its Application, IRs and Final Submissions. **Therefore, the Commission Panel approves PNG(N.E.)'s application for Reconsideration of the Decision and an \$808,000 increase to Capital Additions.**

On October 23, 2013, PNG(N.E.) filed its financial schedules and tariff rate schedules which conform to Order G-131-13, in compliance with the deadline set by Commission Letter L-57-13. Given that the financial schedules and tariff rate schedules conform to Order G-131-13, the additional \$808,000 of 2013 capital additions are not included. Accordingly, the Panel directs PNG(N.E.) to include the 2013 revenue requirements impact of the \$808,000 increase in 2013 capital additions in a short-term interest bearing deferral account, to be fully amortized into rates in 2014.

While making this Decision in favour of PNG(N.E.), the Panel must emphasize that it is the Applicant's responsibility to provide relevant, reliable and clear evidence to support its Application. This did not happen in this Application and the lack of attention to detail resulted in a significant waste of time and expense for both

the Applicant and the Commission. Given that the costs for this Reconsideration process were avoidable, the Panel is of the view that they should be reviewed and justified as part of the 2014 Revenue Requirements Application. **To ensure there is sufficient data to rely upon, the Commission Panel directs PNG(N.E.) to provide a detailed breakdown of the total costs incurred related to this Reconsideration request in its 2014 Revenue Requirements Application.** The recovery of these costs will be determined at that time.