



**LETTER L-59-13**

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**VIA EMAIL**

[jkennedy@png.ca](mailto:jkennedy@png.ca)

October 3, 2013

Ms. Janet P. Kennedy  
Vice-President, Regulatory Affairs & Gas Supply  
Pacific Northern Gas Ltd.  
1185 West Georgia Street  
Suite 950  
Vancouver, BC V6E 4E6

Dear Ms. Kennedy:

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

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By British Columbia Utilities Commission (Commission) Order G-131-13 dated August 23, 2013, the Commission issued its Decision on the Pacific Northern Gas (N.E.) Ltd. [PNG (N.E.)] 2013 Revenue Requirements Application, pursuant to sections 59 to 61 of the *Utilities Commission Act*.

By letter dated September 20, 2013, PNG (N.E.) filed a request for Reconsideration of Order G-131-13 with respect to capital additions (Reconsideration Request). PNG (N.E.) submits that:

"In particular, PNG(N.E.) seeks a reconsideration and variance of the Commission's determination in Section 6.1 Capital additions of the Decision which states that "no explanation was provided" for \$808,000 of capital additions. As such, the Panel considered PNG(N.E.)'s capital additions request to be \$8.499 million plus \$525,000 in overheads instead of the \$9.308 million plus \$525,000 in overheads noted in PNG(N.E.)'s Revenue Requirement Application and has effectively disallowed \$808,000 of 2012 capital projects incurred in 2012 that were not completed by year end and were to be included in rate base during Test year 2013."

An Application for Reconsideration by the Commission proceeds in two phases:

**Phase One:** In the interest of regulatory efficiency and fairness, the application undergoes an initial screening phase where the Commission determines if there is a sufficient prima facie case to warrant a Reconsideration. If the Commission determines that there is a sufficient prima facie case, it will order a Reconsideration of the application and move to Phase Two.

**Phase Two:** If the Commission determines that a full Reconsideration is warranted, Phase Two begins where the Commission hears arguments on the merits of the Reconsideration application.

The Commission hereby establishes Phase One of the Reconsideration process. This will proceed by way of written comments addressing whether PNG (N.E.) has put forward reasonable bases to warrant the Reconsideration process proceeding to Phase Two. The Commission Panel invites participants to make submissions on the following questions:

1. Should there be a Reconsideration of Order G-131-13 by the Commission? The Commission generally applies the following criteria to determine whether or not a reasonable basis exists for allowing the reconsideration:
  - i. The Commission made an error in fact or law. If using this rationale, please provide support that the claim of error is substantiated on a prima facie basis and the error by the Commission has significant material implications;
  - ii. There has been a fundamental change in circumstances or facts since the Decision;
  - iii. A basic principle was not raised in the original proceedings; or
  - iv. A new principle has arisen as a result of the Decision.

Where an error has been made, in order to advance to the second phase of the Reconsideration process, the application must meet the following criteria:

- i. The claim of error is substantiated on a prima facie basis; and
  - ii. The error has significant material implications.
2. If there is to be a Reconsideration, should the Commission hear new evidence and should new parties be given the opportunity to present evidence?

The Phase One assessment process for the Reconsideration application will be as follows:

ACTION	DATE
Participants' comments provided to the Commission and copied to PNG (N.E.)	Wednesday, October 9, 2013
PNG (N.E.) responds to Participants' comments	Friday, October 11, 2013

Written comments in Phase One should address whether the threshold for Reconsideration has been met, rather than the substance of the issues. Following the completion of the Phase One written submission process, the Commission will determine whether or not it should order a Reconsideration of Order G-131-13. If the Reconsideration proceeds to Phase Two, the parties will then be requested to address the substance of the issues that the Commission approves for Reconsideration.

Yours truly,

Erica Hamilton

LR/kbb

cc: PNG (N.E.) 2013 RRA Registered Interveners  
Enclosures

## **Reconsideration and Appeals**

An intervenor's role does not necessarily end with the announcement of the Commission's decision. If the utility or an intervenor believes the Commission made a significant error, they may raise the issue again for further scrutiny by way of a reconsideration or an appeal. It is important to realize, however, that an intervenor cannot have a decision reconsidered or appealed merely because he or she is unhappy with the result of the decision. Rather, the intervenor must be able to identify a specific error which the Commission made in arriving at its decision.

The *Utilities Commission Act* provides three remedies for parties who wish to challenge a Commission decision. An application can be made to the Commission to reconsider its own decision under Sections 99 and 100 of the *Utilities Commission Act*. Under Section 101(1), an appeal of the decision can be made to the Court of Appeal for British Columbia on the grounds that the Commission has made an error of law or jurisdiction in reaching its decision. A third remedy is a complaint to the Ombudsman. If a party is dissatisfied with the Commission's procedure, a complaint can be made. However, only procedural issues will be reviewed by the Ombudsman.

## **Commission Reconsideration**

An application for reconsideration by the Commission proceeds in two phases. In the interests of both efficiency and fairness, and before the Commission proceeds with a determination on the merits of an application for reconsideration, the application undergoes an initial screening phase. In this phase the applicant must establish a *prima facie* case sufficient to warrant full consideration by the Commission. The first phase, therefore, is a preliminary examination in which the application is assessed in light of some or all of the following questions:

- Should there be a reconsideration by the Commission?
- If there is to be a reconsideration, should the Commission hear new evidence and should new parties be given the opportunity to present evidence?
- If there is to be a reconsideration, should it focus on the items from the application for reconsideration, a subset of these items or additional items?

The Commission then issues an order which invites registered intervenors and interested parties to comment on the application for reconsideration by addressing those questions set out in the order. The order also specifies the process to be followed which is either by written submissions and reply by the

applicant or by written submissions and oral argument.

After the first phase evidence has been received, 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 proceedings; or
- a new principle has arisen as a result of the Decision.

In addition, the Commission will exercise its discretion to reconsider, in other situations, wherever it deems there to be just cause.

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 necessary, the reconsideration proceeds to the second phase where the Commission hears full arguments on the merits of the application. The applicant and the intervenors may appear before the Commission at this stage to argue why the original decision should or should not be varied or overturned. Finally, after considering these arguments, the Commission renders its decision on the reconsideration application.

## **The Court of Appeal for British Columbia**

The second means of challenging a Commission decision is by way of the Court of Appeal for British Columbia. Unlike the reconsideration process, however, the court is quite restricted in terms of the nature of the errors which it can address. The Court of Appeal for British Columbia will consider only alleged errors of law or jurisdiction.

An appeal to the Court must be launched within 30 days after the Commission has issued its Decision. However, it is necessary first to seek the court's leave for the appeal. The court will normally grant leave only if other remedies have been exhausted. Therefore, the appellant should also apply for a reconsideration by the Commission.

If a participant chooses to pursue an appeal, the procedures become quite complex and formal. Normally, lawyers become involved at this stage, as their knowledge of court procedures and legal arguments tends to be very useful. It is not necessary, however, to hire a lawyer in order to make an appeal in court.

### **The Ombudsman**

If a customer is not satisfied with the Commission's handling of a complaint, he or she may contact the provincial Ombudsman's Office to review the process used. The Ombudsman has the authority to review the processes used by the Commission, including the process for resolving complaints. The Ombudsman generally has the power to recommend reconsideration of a matter because of an error in procedure, but cannot overturn a Commission decision.

**Figure 4-2  
OPPORTUNITIES AND MECHANISMS  
FOR PARTICIPATING IN COMMISSION ACTIVITIES**

