



**ORDER NUMBER  
G-270-21**

IN THE MATTER OF  
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

Pacific Northern Gas Ltd.  
Certificate of Public Convenience and Necessity for the Western Transmission Gas System Reactivation  
and Recommissioning Project Application and Deferral Account Increase Application

**BEFORE:**

T. A. Loski, Panel Chair  
M. Kresivo, QC, Commissioner  
E. B. Lockhart, Commissioner

on September 14, 2021

**ORDER**

**WHEREAS:**

- A. On March 5, 2021, Pacific Northern Gas Ltd. (PNG) submitted two applications (collectively, the Applications) to the British Columbia Utilities Commission (BCUC):
1. An application to the BCUC pursuant to sections 45 and 46 of the *Utilities Commission Act* (UCA), seeking approval of a Certificate of Public Convenience and Necessity (CPCN) for the Western Transmission Gas System Reactivation and Recommissioning Project (CPCN Application); and
  2. An application regarding Allocation of Reactivated Capacity and Approval of Large Volume Industrial Transportation Rate Request for Increase to Reactivation Project Development Costs Deferral Account (Deferral Account Application);
- B. In the CPCN Application, PNG also seeks approval under sections 59-61 of the UCA for the following:
1. Four firm Transportation Service Agreements (TSAs) for service to be provided under PNG's Large Volume Industrial Transportation Rate tariff; and
  2. Three service agreements for Transportation on Interconnection Facilities (Interconnection Agreements);
- C. By Order G-116-21 dated April 19, 2021, the BCUC established a regulatory timetable for the review of the Applications, which included one round of BCUC and intervener information requests (IRs) and further process to be determined;
- D. By Order G-189-21, dated June 20, 2021 the BCUC amended the regulatory timetable to include two further rounds of IR's and final arguments for the TSA, Interconnection Agreements and Deferral Account Application;

- E. By Order G-232-21, dated July 30, 2021, the BCUC further amended the regulatory timetable to include final arguments for the CPCN Application;
- F. By Order G-236-21, dated August 10, 2021, the BCUC approved the TSA's and the Interconnection Agreements. By Order G-237-21 dated August 10, 2021, the BCUC approved the Deferral Account Application;
- G. On August 18, 2021, the BCUC received a request to intervene from the Gitxaala First Nation (Gitxaala). On August 19 and August 20, 2021, the BCUC received letters of comment from the Gitxaala (Exhibit E-2 and Exhibit E-2-1) regarding the adequacy of consultation respecting the Project, and other information. Gitxaala requested a two-month extension to the regulatory timetable;
- H. On August 20, 2021, PNG filed its final argument with respect to the CPCN Application;
- I. By letter dated August 23, 2021, the BCUC requested submissions from the parties to the proceeding regarding whether Gitxaala should be granted intervenor status and, if so, the appropriate regulatory process;
- J. On August 26, 2021, PNG filed its submission regarding Gitxaala's request to intervene and extend the regulatory timetable. On August 30, 2021, the intervenors filed their submissions and, on September 1, 2021, PNG filed its reply submission regarding Gitxaala's request to intervene;
- K. On September 13, 2021, Gitxaala filed an additional letter of comment in response to the submissions of PNG and intervenors;
- L. Rule 9.03 of the BCUC's Rules of Practice and Procedure states that "The BCUC, in its discretion, may allow late requests for intervenor status. Unless otherwise specified by the BCUC, once a late request for intervenor status is accepted, the late intervenor may only participate from that point onward in the proceeding"; and
- M. The BCUC has reviewed the submissions and considers that the following determination is warranted.

**NOW THEREFORE**, pursuant to the Rule 9.03 of the BCUC's Rules of Practice and Procedure and for the reasons outlined in Appendix A to this order, the BCUC denies the Gitxaala's request for intervenor status.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 14<sup>th</sup> day of September 2021.

BY ORDER

*Original signed by:*

T. A. Loski  
Commissioner

Attachment

Pacific Northern Gas Ltd.  
Certificate of Public Convenience and Necessity for the Western Transmission Gas System Reactivation  
and Recommissioning Project Application and Deferral Account Increase Application

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**REASONS FOR DECISION**

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**1.0 Introduction**

On March 5, 2021, Pacific Northern Gas Ltd. (PNG) submitted two applications (collectively, the Applications) to the British Columbia Utilities Commission (BCUC):

1. An application to the BCUC pursuant to sections 45 and 46 of the *Utilities Commission Act* (UCA), seeking approval of a Certificate of Public Convenience and Necessity (CPCN) for the Western Transmission Gas System Reactivation and Recommissioning Project (Project) (CPCN Application); and
2. An application regarding Allocation of Reactivated Capacity and Approval of Large Volume Industrial Transportation Rate Request for Increase to Reactivation Project Development Costs Deferral Account (Deferral Account Application);

In the CPCN Application, PNG also sought approval under sections 59-61 of the UCA for the following:

1. Four firm Transportation Service Agreements (TSAs) for service to be provided under PNG's Large Volume Industrial Transportation Rate tariff; and
2. Three service agreements for Transportation on Interconnection Facilities (Interconnection Agreements).

By Order G-116-21 dated April 19, 2021, the BCUC established a regulatory timetable for the review of the Applications, which included one round of BCUC and intervener information requests (IRs). By Order G-189-21, dated June 20, 2021 the BCUC amended the regulatory timetable to include two further rounds of IR's and final arguments for the TSA, Interconnection Agreements, and Deferral Account Application. By Order G-232-21, dated July 30, 2021, the BCUC further amended the regulatory timetable to include final arguments for the CPCN Application. By Order G-236-21, dated August 10, 2021, the BCUC approved the TSA's and the Interconnection Agreements. By Order G-237-21 dated August 10, 2021, the BCUC approved the Deferral Account Application.

On August 18, 2021, the British Columbia Utilities Commission (BCUC) received a request to intervene from the Gitxaala First Nation (Gitxaala). On August 19 and August 20, 2021, the BCUC received letters of comment from the Gitxaala (Exhibit E-2 and Exhibit E-2-1) regarding the adequacy of consultation respecting the Project, and other information. Gitxaala requests a two-month extension to the regulatory timetable;

By letter dated August 23, 2021, the BCUC requested submissions from the parties to the proceeding on the following:

1. Whether Gitxaala should be granted intervener status.
2. If intervener status is granted, whether:
  - a. intervention should be limited to the filing of a written final argument only, or
  - b. the record of this proceeding with respect to First Nations consultation should be reopened to allow for a review of the adequacy of consultation with the Gitxaala. If so, what is the appropriate regulatory process and timing to allow such a review?

On August 26, 2021, PNG filed its submission regarding Gitxaala's request to intervene. On August 30, 2021, the interveners filed their submissions and, on September 1, 2021, PNG filed its reply submission regarding Gitxaala's request to intervene.

On September 13, 2021, Gitxaala filed an additional letter of comment in response to the submissions of PNG and interveners.

These reasons for decision outline the Gitxaala request to intervene and extend the regulatory timetable; the parties' submissions regarding Gitxaala's request to intervene and further regulatory process; and the Panel's determination on these matters.

## **1.1 BCUC Rules of Practice and Procedure**

The BCUC Rules of Practice and Procedure (Rules)<sup>1</sup> outline the process for requests for intervener status in a proceeding. Pursuant to section 9.02 of the Rules, requests for intervener status must be received by the BCUC by the registration deadline established in the regulatory timetable for the proceeding. With respect to late requests for intervener status, section 9.03 states:

The BCUC, in its discretion, may allow late requests for intervener status. Unless otherwise specified by the BCUC, once a late request for intervener status is accepted, the late intervener may only participate from that point onward in the proceeding.

## **2.0 Gitxaala's Request to Intervene and Extend the Regulatory Timetable**

On August 18, 2021, Gitxaala filed a request with the BCUC to intervene in the proceeding and, on August 19 and August 20, 2021 Gitxaala filed supporting letters of comment. Gitxaala states that it has serious concerns over the adequacy and lack of meaningful consultation regarding both the Salvus to Galloway Project and the Project, and seeks an extended regulatory timeline.<sup>2</sup> Gitxaala also states that "Gitxaala was not able to share its interest and concerns in the Salvus to Galloway proceeding, on account of Gitxaala retaining counsel for this matter after the final decision was already made. Regardless, Gitxaala wishes to have its concerns on record regarding both projects, which are inextricably linked."<sup>3</sup>

On August 20, 2021, the BCUC issued a letter to Gitxaala requiring further information in order to act upon the requests outlined in the letters of comment, specifically:

- (i) An explanation of the reasons for the late request to intervene in this proceeding;
- (ii) The specific extension to the regulatory timetable Gitxaala is seeking; and
- (iii) The additional Letter of Comment to the extent it differs from (i) and (ii).

On August 20, 2021, Gitxaala filed an additional letter of comment responding to the BCUC's letter and providing further information. In this letter, Gitxaala states that:

The delay in retaining counsel to participate in the proceedings arose for three main reasons:

- Covid-19 has adversely impacted administrative communications;

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<sup>1</sup> [https://www.bcuc.com/Documents/Participant-Info/G-15-19\\_BCUC\\_Rules\\_of\\_Practice\\_and\\_Procedure.pdf](https://www.bcuc.com/Documents/Participant-Info/G-15-19_BCUC_Rules_of_Practice_and_Procedure.pdf)

<sup>2</sup> Exhibit E-2, p. 1.

<sup>3</sup> Ibid., p. 3.

- There have been a number of deaths in the community this past year, which caused administrative office closures; and
- The recent discovery of mass graves at residential school sites in British Columbia and elsewhere in Canada has shell-shocked the Gitxaala, which has translated into the need to process heavy emotions these past months.

For these and other reasons, Gitxaala is requesting a two month extension to the present regulatory timetable.<sup>4</sup>

With respect to consultation regarding the Project, Gitxaala submits:

At this time Gitxaala has not received meaningful or adequate consultation to date with regards to the PNG CPCN Western Transmission Reactivation and Deferral Account Increase Project. Gitxaala takes the responsible management of territorial resources very seriously, and is held accountable by the membership to oversee the responsible management of Gitxaala resources. Gitxaala is determined to see the resources of their unceded traditional territory managed sustainably, for the benefit of future generations, while protecting all evidence of their ancestral heritage on the land, and current cultural usage. In addition, Gitxaala expects to be a participant in economic development discussions connected to the Project.<sup>5</sup>

Gitxaala references the BCUC First Nations Information Filing Guidelines for Crown Utilities<sup>6</sup> and lists the information to be included regarding consultation to date. Gitxaala states that based on these criteria Gitxaala has not received adequate or meaningful consultation for the Project.<sup>7</sup>

Gitxaala further states that:

Overall, Gitxaala is very concerned about the effects and risks of construction and pipeline rupture, as well as the expansion and increased use of this natural gas system. In addition, impacts on salmon upstream within the Skeena watershed risks devastating impact on the salmon numbers throughout Gitxaala territory. Consequently, the Project's impacts outside of Gitxaala's territory are of great interest and concern to Gitxaala, given the central importance of salmon to Gitxaala's way of life, and the fact that events in the eastern portion of the Project area can lead to direct downstream effects in Gitxaala's territory.<sup>8</sup>

...

Gitxaala's comments above are non exhaustive and address gaps in PNG's application that relate to the protection of critical fish and wildlife. It is of the utmost importance that the Commission reserve any decision or permitting related to this project until the Gitxaala's concerns and interests are addressed, as Gitxaala has not yet received meaningful or adequate consultation. Gitxaala looks forward to BCUC's response, and is prepared to bring evidence as an intervener to the proceeding.

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<sup>4</sup> Exhibit E-2-1, p. 1.

<sup>5</sup> *ibid.*

<sup>6</sup> [https://www.bcuc.com/Documents/Guidelines/2010/DOC\\_25327\\_G-51-10\\_2010-First-Nations-Information-Filing-Guidelines.pdf](https://www.bcuc.com/Documents/Guidelines/2010/DOC_25327_G-51-10_2010-First-Nations-Information-Filing-Guidelines.pdf)

<sup>7</sup> Exhibit E-2-1, p. 3.

<sup>8</sup> *Ibid.*, p. 4.

The impacts discussed in this Letter of Comment represent a threat to Gitxaala's constitutionally protected rights and way of life. It is likely an intensive monitoring regime of certain species is required. In addition, Gitxaala requires further information regarding impacts to archaeological areas within the section of the Project within Gitxaala's territory. Further, there has been no meaningful or adequate engagement with regards to economic development or capacity building, despite this large Project crossing and impacting Gitxaala's unceded territory.<sup>9</sup>

### 3.0 Submissions of the Parties

#### 3.1 PNG

PNG submits that Gitxaala should not be granted intervener status in this proceeding, for the following reasons:

- a. Gitxaala did not meet the intervener registration deadline, despite knowing of the proceeding and its timelines.
- b. The Applications have moved beyond the point of intervention now.
- c. Gitxaala's premise for intervention is inaccurate.<sup>10</sup>

PNG states that PNG notified Gitxaala of the then-upcoming application on November 8, 2020 when it emailed Gitxaala a cover letter and fact sheet<sup>11</sup>. The fact sheet identified the summer of 2021 as the "Anticipated BCUC decision" in the matter.<sup>12</sup>

PNG further states that:

During the January 13, 2021 meeting, Gitxaala representatives asked questions to which PNG responded at the time, as PNG's meeting notes indicate. The meeting notes reflect that PNG indicated at the meeting that the BCUC review process was public and that anyone was able to register as an interested party or an intervener.<sup>13</sup>

PNG notes that in the circumstances where the proceeding has largely concluded, extensions to requests to intervene should only be granted in exceptional circumstances. PNG submits that Gitxaala's request would prejudice participants, noting the time and effort invested on the basis of the interventions and record as they stood at any given time under the regulatory timetable that had been established. Participants should not be required to duplicate steps already taken or, even if steps are not repeated, adjust the bases on which they proceeded to date. PNG also submits Gitxaala's request would prejudice PNG's ratepayers, noting delay to the Project's timeline could have negative repercussions in terms of the Project, revenues to be derived from it, and the ratepayer benefits that PNG seeks.<sup>14</sup>

PNG submits Gitxaala seems to be seeking intervener status on bases that are not consistent with the scope of this proceeding or the circumstances in it. PNG cites Gitxaala's reference to the Salvus to Galloway Project, for

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<sup>9</sup> Exhibit E-2-1 p. 4.

<sup>10</sup> Exhibit B-19, p. 1.

<sup>11</sup> Ibid., p. 2.

<sup>12</sup> Ibid., p. 3.

<sup>13</sup> Ibid., pp. 3-4.

<sup>14</sup> Ibid., pp. 6-7.

which the BCUC has already made a determination. PNG also submits the “gaps in the Application” Gitxaala suggests are at odds with one of the application’s basic tenets: that the requested decision is not an end point either for environmental or archeological work or for engagement with either First Nations or the public. PNG highlights evidence on the record of the proceeding which address areas of interest to Gitxaala.<sup>15</sup>

PNG also submits the First Nations Information Filing Guidelines for Crown Utilities cited by Gitxaala are not applicable to PNG as it is not a Crown utility but privately owned.<sup>16</sup>

### **3.2 Lax Kw’alaams Band and Metlakatla First Nation**

Lax Kw’alaams Band (Lax Kw’alaams) and Metlakatla First Nation (Metlakatla) submit a fundamental reason to refuse to re-open the hearings at this late stage to consider the alleged failure to consult is the inability of Gitxaala to establish the foundation of their claim to entitlement to consultation, which requires a credible aboriginal right or title interest to the lands in question. Lax Kw’alaams and Metlakatla provide background information regarding Gitxaala’s asserted territorial claims.<sup>17</sup> Lax Kw’alaams and Metlakatla submit it is not sufficient to simply allege some interests somewhere on the pipeline right of way without some identification of where those rights are claimed.<sup>18</sup>

Lax Kw’alaams and Metlakatla submit they will suffer clear prejudice, noting the late challenge of the Gitxaala would require substantial revisions to the hearing schedule. Further, as Lax Kw’alaams and Metlakatla have a financial agreement with PNG, which is contingent on the date of final decision of the BCUC, a delay in that process will cause them financial harm.<sup>19</sup>

Lax Kw’alaams and Metlakatla submit if Gitxaala wish to assert a right to have been consulted by the Crown on the Project, then it would be with the BC Oil and Gas Commission (OGC), and there is no obligation to actually fulfil the duty of consultation on either PNG or the BCUC. Any assessment of the alleged ‘failure of consultation’ would require an assessment of the consultation process of the OGC. Lax Kw’alaams and Metlakatla submit Gitxaala failed to participate in good faith with the OGC, and no explanation for that appears in their submissions.<sup>20</sup>

Lax Kw’alaams and Metlakatla add the asserted reasons for the delay in Gitxaala not retaining legal counsel are not credible.<sup>21</sup> Given the delay, the lack of prior participation and the lack of any substantive evidence put forward by Gitxaala, Lax Kw’alaams and Metlakatla submits Gitxaala’s request should be dismissed.<sup>22</sup>

### **3.3 BC Sustainable Energy Association (BCSEA)**

BCSEA’s view is the threshold question is whether the BCUC believes it could establish an expedited process that would realistically enable Gitxaala to make information requests to PNG and/or to file evidence regarding the adequacy of the Crown’s consultation with Gitxaala regarding the Western Transmission Reactivation Project

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<sup>15</sup> Ibid., pp. 12–13.

<sup>16</sup> Ibid., p. 13.

<sup>17</sup> Exhibit C1-5, pp. 1-4.

<sup>18</sup> Ibid., pp. 4-5.

<sup>19</sup> Ibid., p. 4.

<sup>20</sup> Ibid., pp. 5–6.

<sup>21</sup> Ibid., pp. 6–7.

<sup>22</sup> Ibid., p. 8.

while maintaining the prospect of a final decision by November 30, 2021. If so, then BCSEA would support such a resolution of the procedural problem.<sup>23</sup>

### **3.4 PNG Reply**

In its reply, PNG confirms that PNG's April 26, 2021 email to Gitxaala provided not only the CPCN Application and the associated Deferral Account Increase Application, as referenced at paragraph 16(b) of Exhibit B-19, but also a copy of Order G-116-2 which referenced the BCUC's request to intervene form.<sup>24</sup>

### **3.5 Gitxaala Additional Letter of Comment**

Gitxaala filed an additional letter of comment which addressed PNG and intervener positions regarding traditional territory, Aboriginal Rights, and the timing of Gitxaala's request.<sup>25</sup>

#### *Panel determination*

#### **The Panel denies Gitxaala's late request to intervene in this proceeding.**

The issue before the Panel is whether Gitxaala can intervene at this late stage or whether it would unduly delay the proceeding. In consideration of these issues, the Panel does not consider Gitxaala has provided sufficient justification to warrant late intervention.

Gitxaala submits it has not received meaningful or adequate consultation regarding the Project. However, the evidence indicates that Gitxaala had been provided ample notice by PNG regarding the BCUC proceeding to review the Project. The consultation logs (filed confidentially) indicate there have been a series of communications between PNG and Gitxaala since November 2020, with the most recent response from Gitxaala in July 2021. The summary of communications does not indicate concerns from Gitxaala regarding its ability to participate in the proceeding, and Gitxaala has not provided a compelling reason as to why it only requested to participate in the proceeding or express concerns at this late stage.

Further, Gitxaala's letters of comment are not entirely or clearly related to the Project, with multiple references to the Salvus to Galloway Project being its main concern. Consequently, it is challenging for the Panel to differentiate the extent to which the issues raised by Gitxaala and the premise for intervention are in scope for this proceeding.

Furthermore, the late involvement of Gitxaala in this proceeding would be prejudicial to PNG, PNG customers, PNG ratepayers and interveners. Gitxaala's participation at this stage of the proceeding would necessitate an extension to the regulatory timetable, particularly if the evidentiary record were to be reopened. The Panel acknowledges that PNG has requested a decision by the BCUC by November 30, 2021 in order to avoid delays to the Project schedule. Further delay to the timetable would challenge the BCUC's ability meeting the requested decision date, which in turn may compromise the timely realization of the purported benefits of the Project, if approved. Such a delay would not be in the interests of PNG's ratepayers or the shippers contracted to receive service from the Project, or the interveners including potential financial harm to Lax Kw'alaams and Metlakatla. As a result, intervention by Gitxaala at this late stage of the proceeding would unduly delay the proceeding.

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<sup>23</sup> Exhibit C3-8, p. 3.

<sup>24</sup> Exhibit B-20, p. 1.

<sup>25</sup> Exhibit E-2-2.



Additionally, the Panel acknowledges the efforts of PNG and interveners to date in participating in the regulatory process in a punctual manner to facilitate the requested decision date.

The Panel also notes that while the BCUC has not made a final determination on whether to grant PNG a CPCN for the Project, the Panel has already made final determinations on two substantive matters relevant to the Project in this proceeding. Namely, approval of the TSA's and the Interconnection Agreements, and approval of the Deferral Account Application. These determinations further demonstrate the disruption to the regulatory process that would occur should a late intervener request be accepted at this stage.

Finally, the Panel notes that consultation does not end with this proceeding, and that PNG acknowledges its ongoing obligation to consult:

PNG has specifically committed to Indigenous community representatives that engagement will be an ongoing process, including direct engagement on specific permits which will require authorization by the OGC and other provincial and federal agencies. PNG anticipates that engagement will be ongoing throughout permitting approvals and detailed design, and if the CPCN is granted, engagement will continue through to completion of the Project.<sup>26</sup>

Having determined that Gitxaala's request to intervene should not be granted, the Panel does not need to address the second question in our letter of August 23, 2021, regarding the scope of intervention.

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<sup>26</sup> Exhibit B-19, para. 35.