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BRITISH COLUMBIA UTILITIES COMMISSION

ORDER NUMBER G-154-15

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

and

Pacific Northern Gas (N.E.) Ltd. – Dawson Creek Division
Application for Approval of AltaGas Ltd. Industrial Firm Transportation Service Agreement
and Proposed RS 7 Industrial LNG Firm Transportation Service Tariff

BEFORE: H. G. Harowitz, Commissioner September 24, 2015

O R D E R

WHEREAS:

A. On June 16, 2015, Pacific Northern Gas (N.E.) Ltd. [PNG(N.E.)] applied to the British Columbia Utilities Commission (Commission) for approval of an Industrial Firm Transportation Service Agreement (TSA) between PNG(N.E.) and AltaGas Ltd., as well as a proposed new Rate Schedule 7 Industrial Liquefied Natural Gas (LNG) Firm Transportation Service Tariff (RS 7) (together, the Application), with a target in-service date of October 1, 2015;

B. On July 13, 2015, the Commission issued Order G-117-15 establishing a regulatory timetable to accommodate PNG(N.E.)'s target in-service date, which included one round of information requests (IRs) followed by written final and reply arguments;

C. Order G-117-15 also directed PNG(N.E.) to file certain additional information to supplement the Application, pursuant to which PNG(N.E.) submitted a supplemental filing on July 17, 2015;

D. The following interveners registered in the proceeding: British Columbia Old Age Pensioners' Organization, *et al.* (BCOAPO), BC Sustainable Energy Association and Sierra Club of BC (BCSEA), and FortisBC Energy Inc.;

E. On July 28, 2015, the Commission issued Order G-128-15 which directed PNG(N.E.) to re-submit part of its supplemental filing related to the calculation of AltaGas' cost to bypass PNG(N.E.)'s service area. Order G-128-15 also included an amended regulatory timetable which, among other things, provided for a separate round of IRs focused solely on PNG(N.E.)'s re-submitted information on the AltaGas bypass costs;

F. PNG(N.E.) filed its final argument on August 25, 2015;

G. BCOAPO and BCSEA filed their final arguments on August 31, 2015. Both parties expressed general support for Commission approval of the TSA with AltaGas and the proposed RS 7 rate but submitted that RS 7 should not be limited to LNG customers;

H. PNG(N.E.) filed its reply argument on September 3, 2015; and

I. The Commission considered the Application, evidence and submissions of the parties as set forth in the proceeding.

NOW THEREFORE pursuant to sections 59 to 61 of the *Utilities Commission Act* and for the reasons attached as Appendix A to this order, the British Columbia Utilities Commission orders as follows:

1. The Industrial Firm Transportation Service Agreement (TSA) between Pacific Northern Gas (N.E.) Ltd. [PNG(N.E.)] and AltaGas Ltd.(AltaGas) and the negotiated rate to be charged to AltaGas is approved.

2. The proposed Rate Schedule 7 Industrial Liquefied Natural Gas (LNG) Firm Transportation Service Tariff (RS 7) is denied. PNG(N.E.) must file with the Commission by no later than 30 days from the date of this order, a revised tariff and rate schedule that establishes terms and conditions of service under which other customers in addition to AltaGas may take service. As part of the filing, PNG(N.E.) must address the concerns outlined by the Panel in the Reasons for Decision attached as Appendix A to this order regarding the structure of the proposed RS 7.

DATED at the City of Vancouver, in the Province of British Columbia, this *24th* day of September 2015.

BY ORDER

Original signed by:

H. G. Harowitz
Commissioner

Pacific Northern Gas (N.E.) Ltd. – Dawson Creek Division
Application for Approval of AltaGas Ltd. Industrial Firm Transportation Service Agreement
and Proposed RS 7 Industrial LNG Firm Transportation Service Tariff

REASONS FOR DECISION

1.0 INTRODUCTION

On June 16, 2015, Pacific Northern Gas (N.E.) Ltd. [PNG(N.E.)] applied to the British Columbia Utilities Commission (Commission) for approval of an Industrial Firm Transportation Service Agreement (TSA) between PNG(N.E.) and AltaGas Ltd. (AltaGas), as well as a proposed new Rate Schedule 7 Industrial Liquefied Natural Gas (LNG) Firm Transportation Service Tariff (RS 7) (together, the Application).

Three interveners registered in the proceeding and the following two interveners actively participated: British Columbia Old Age Pensioners' Organization, *et al.* (BCOAPO) and BC Sustainable Energy Association and Sierra Club of BC (BCSEA).

The *Utilities Commission Act* (UCA) states that "A public utility must not make, demand or receive an unjust, unreasonable, unduly discriminatory or unduly preferential rate for a service provided by it."[1] In considering the Application the Panel paid particular attention to two aspects of Section 59 of the UCA. More specifically, would granting approval of RS 7 and the TSA be:

- unduly preferential; and/or
- unduly discriminatory?

2.0 ARE THE APPLIED FOR RS 7 AND TSA UNDULY PREFERENTIAL?

In response to BCSEA information requests (IRs), PNG(N.E.) confirmed that it has a non-arm's length relationship with AltaGas, as PNG(N.E.)'s parent company PNG Ltd. is a wholly-owned subsidiary of AltaGas Utility Holdings (Pacific) Inc. which in turn is a wholly-owned subsidiary of AltaGas.[2]

PNG(N.E.) provides the following comparison of RS 7 versus the two existing industrial tariffs. [3]

[1] *Utilities Commission Act*, RSBC 1996, Chapter 473, section 59.1.a.
[2] Exhibit B-5, BCSEA IR 1.3.1, 1.3.2.
[3] Exhibit B-4, BCUC IR 1.11.1.

Table 1: Comparison of Rate Schedules

Rate Element	RS 4 Industrial Firm Service	RS 5 Industrial Firm Transportation	Proposed RS 7 LNG Industrial Firm Transportation
Basic Charge (per month)	$410.00	$410.00	$410.00
Delivery Charge (per GJ)	$1.465	$1.4651	$0.2050
Company Use Rider (per GJ)	$(0.022)	$(0.0220)	n/a
Interim Rate Adjustment (per GJ)	$(0.066)	$(0.0659)	n/a
Subtotal – Delivery (per GJ)	$1.377	$1.3772	$0.2050
Commodity Cost (per GJ)	$2.678	n/a	n/a
GCVA Rider (per GJ)	$(0.228)	n/a	n/a
Subtotal – Commodity (per GJ)	$2.450	n/a	n/a
Total (per GJ)	$3.827	$1.3772	$0.2050
Contractual Term	n/a	n/a	10 years
Contractual Volume	n/a	n/a	2,685 GJ per day

In light of the non-arm's length relationship between PNG(N.E.) and AltaGas, and the significant rate differential proposed for the delivery charge under RS 7, the Panel considers the question of unduly preferential treatment to be an important issue that merits further discussion in these Reasons for Decision.

2.1 Evidence

The Panel reviewed the evidence in two contexts: justification of the proposed new tariff and rate; and PNG(N.E.)'s conduct during the negotiations with AltaGas.

2.1.1 Justification of the new tariff and rates

PNG(N.E.) provides the following information in support of the proposed TSA and RS 7 with AltaGas:

- The incremental cost of providing the service to AltaGas is not significant and the annual operating costs are minimal, which means a large portion of the revenue received from AltaGas will be realized as margin.[4]
- The payback period for recovering the incremental cost to provide service to AltaGas is estimated at less than two years.[5]
- AltaGas has the option of connecting directly to Spectra Energy's pipeline, thereby bypassing PNG(N.E.) as a service provider.[6]
- Based on calculations provided by AltaGas, the cost for AltaGas to bypass PNG(N.E.)'s service area and connect directly to Spectra's system is less than the rate negotiated as part of the proposed RS 7.[7]
- The negotiated RS 7 rate is higher than the toll PNG(N.E.) offered in 2012 to another arms' length party contemplating a small scale LNG facility.[8]

[4] Exhibit B-1, p. 5.
[5] Exhibit B-4, BCUC IR 1.2.1.
[6] Exhibit B-1, p. 4.
[7] Exhibit B-3, p. 2.

- AltaGas will be subject to the same monthly balancing processes and procedures in place for PNG(N.E.)'s other customers.[9]

PNG(N.E.) further states that the proposed service:

- will make use of an existing pipeline asset for which the capital costs have been fully recovered, but which will soon be underutilized as the current customer is expected to drop service at the end of 2015;[10] and
- the agreement will have a positive rate impact for all PNG(N.E.) – Dawson Creek customers.[11]

2.1.2 PNG(N.E.)'s conduct during the negotiations

PNG(N.E.) states that it abided by its Code of Conduct for Provision of Utility Resources and Services to Non-Regulated Businesses and Affiliates (which was filed in evidence) and has not provided any information to AltaGas that is in default of its Code of Conduct.[12]

PNG(N.E.) further submits that in the negotiations it was "acting on the best interests of its ratepayers, and AltaGas, a new potential industrial customer, who was considering bypassing the PNG(N.E.) distribution system."[13]

In response to a question as to whether PNG(N.E.) verified information provided by AltaGas, PNG(N.E.) states that "it is not possible for PNG(N.E.) to directly verify the AltaGas assertion. However, PNG(N.E.) made certain judgements about the customer's ability to locate elsewhere based on the customer's existing business operations, PNG(N.E.)'s own experience and ability to connect to the Spectra system, and PNG(N.E.)'s previous experience with requests for service from other potential small-scale LNG facility owners."[14]

In its Supplemental Information filing, PNG(N.E.) provided some insight into their negotiation strategy (excerpts provided below).[15]

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[8] Exhibit B-2, p. 10.
[9] Exhibit B-7, BCUC IR 1.5.2.
[10] Exhibit B-1, p. 5.
[11] Ibid.
[12] Exhibit B-5, BCSEA IR 1.3.3.
[13] Ibid., BCSEA IR 1.3.4.
[14] Ibid., BCSEA IR 1.3.5.
[15] Exhibit B-2, p. 8.

Rate Consideration	Description of PNG(N.E.)'s Analysis
The rate needed to ensure that PNG's other customers would benefit from the addition of the AltaGas load to its system.	PNG(N.E.) used its main extension test model to ensure that the rate being charged to AltaGas would not only cover the costs of providing service to AltaGas but would provide an overall rate reduction for PNG(N.E.)'s other customers in the FSJ/DC service area.
PNG sought the highest possible rate (limited by its existing industrial transportation service rate) given the alternatives available to AltaGas.	PNG(N.E.) recognized that it would have to be competitive with AltaGas' potential alternative locations in order to attract AltaGas on to its system. PNG(N.E.) was able to be competitive as it had available underutilized facilities which were developed and paid for by its contract with Air Liquide to service certain locations within Dawson Creek.
PNG(N.E.)'s perspective was that the two main alternatives for AltaGas were to: (i) relocate its facility outside Dawson Creek and directly connect with Spectra; or, (ii) AltaGas could abandon its project due to poor economics.	With respect to the economics of AltaGas' LNG project, PNG(N.E.) was not privy to that information and therefore had to rely on the representations made to it by AltaGas. PNG(N.E.) does note that its existing industrial transportation service rate, at \$1.38/GJ, would form a material amount (approximately 1/3) of the total acquisition cost of natural gas for conversion to LNG given current commodity costs are below \$3.00/GJ.
PNG believed that AltaGas would have an economic preference to locate in Dawson Creek, as a Dawson Creek location would provide better access to other services including, but not limited to, labour.	In respect of other economic factors affecting AltaGas' choice of a location for its LNG plant, beyond the delivered cost of natural gas, PNG(N.E.) had to rely on a qualitative assessment as it did not have the skills or resources to perform a meaningful quantitative analysis.

2.1.3 Interveners' positions

In its final argument, BCOAPO submits the following:

- Because of the non-arms' length relationship, close scrutiny is required to ensure the final agreement does not confer disproportionate benefits to shareholders.[16]
- BCOAPO finds no basis on which to conclude that PNG(N.E.)'s Code of Conduct has been breached.[17]
- PNG(N.E.) did offer a lower rate for a similar project to an arm's length party in 2012.[18]
- If AltaGas bypassed PNG(N.E.) it would have to balance daily instead of on a monthly basis as is done by PNG. BCOAPO views the Spectra daily balancing as more stringent and submit that this may account for

[16] BCOAPO Final Argument, p. 2.
[17] Ibid.
[18] Ibid.

at least part of the reason that AltaGas is willing to pay a premium to take service from PNG(N.E.) instead of bypassing and connecting directly to Spectra.[19]

- Overall, BCOAPO supports PNG(N.E.)'s Application and submits that there are "small but real rate benefits to PNG(NE)'s residential and commercial customers."[20]

BCSEA submits the following in final argument:

- BCSEA does not disagree "in principle" with the concept of a bypass rate which is less than the standard delivery rate; however, the non-arm's length relationship between the two parties gives rise to the question of whether the negotiated rate is acceptable.[21]
- There is no basis for disagreeing with PNG(N.E.)'s assertion that it complied with its Code of Conduct.[22]
- Based on the evidence provided by PNG(N.E.) regarding AltaGas' costs of pursuing the bypass alternative, BCSEA concludes that at a high level the evidence supports the TSA delivery rate.[23]
- BCSEA accepts, at a high level, that the response provided by PNG(N.E.) to BCSEA IR 3.9 in support of the final agreement being a "fair compromise" is supportive of the terms of the TSA.[24]
- In summation, BCSEA does not oppose Commission approval of the Application.[25]

2.2 Panel discussion

The Panel agrees with the interveners that the non-arm's length relationship between the two parties calls for extra care in ensuring that the Application conforms to section 59 of the UCA.

On the basis of the evidence provided, the Panel makes the following findings of fact:

- AltaGas has other, lower cost options than to connect to PNG(N.E.) under the standard industrial transportation service delivery rate.
- PNG(N.E.)'s conduct during negotiations with AltaGas does not show evidence of providing AltaGas any treatment, concession or preference that would not have been afforded any other potential customer under similar circumstances.
- The rate negotiated under the proposed RS 7 is higher than what AltaGas would likely have to pay if it connected directly to Spectra.
- If AltaGas takes the service as provided by the TSA and RS 7, there will be a small but positive rate impact for current customers.

Based on these facts, the Panel concludes that the terms and conditions of the TSA and RS 7 are not unduly preferential.

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[19] Ibid., p. 3.
[20] Ibid., p. 4.
[21] BCSEA Final Argument, p. 2.
[22] Ibid., p. 3.
[23] Ibid., p. 4.
[24] Ibid., p. 5.
[25] Ibid., pp. 7–8.

3.0 IS THE APPLIED FOR RS 7 UNDULY DISCRIMINATORY?

In its Application, PNG(N.E.) states that it "is cognizant of the fact that in order to be non-discriminatory, this special LNG transportation tariff must be made available to other potential LNG liquefaction customers under the same terms granted to AltaGas."[26]

The issue before the Panel is whether RS 7, as applied for, affords appropriate access to other customers so as to not be unduly discriminatory.

3.1 Evidence

PNG(N.E.) provides the proposed form for RS 7 in Appendix B to the Application, a portion of which is shown below.[27]

INDUSTRIAL LNG FIRM TRANSPORTATION SERVICE RATE (RS7)

Applicable

AltaGas Ltd. ("AltaGas") - Dawson Creek Liquified Natural Gas ("LNG") Plant

Conditions

As per the Industrial Firm Transportation Service Agreement dated June 10, 2015 ("TSA") and the General Terms and Conditions for Industrial Firm Transportation Service.

Rate

Monthly Fixed Charge		
Monthly Basic Charge		$410.00
plus Monthly Minimum Delivery Charge		plus Daily Contract Demand multiplied by days in month multiplied by the Delivery Charge
Daily Contract Demand	2,685	GJ/day
Delivery Charge	$0.2050	/GJ

In the Application, PNG(N.E.) indicates that the target in-service date with AltaGas is anticipated to be October 1, 2015.[28]

In its final argument, PNG(N.E.) sets out its views on the conditions under which RS 7 would be made available to other customers under the same terms granted to AltaGas. These conditions are as follows:

- Attachment to the same pipeline lateral in Dawson Creek that AltaGas will be served from;
- Determination that the revenues collected exceed any costs associated with this service;
- Commitment to significant volume for a term of 10 years or more; and
- Ability to demonstrate that they have siting options or other fuel alternative options that justify the proposed bypass rate.[29]

[26] Exhibit B-1, p. 5.
[27] Exhibit B-1, Appendix B.
[28] Ibid., p. 3.

PNG(N.E.) also states that it no longer considers it necessary to limit access to only liquefaction customers, though PNG(N.E.) continues to view this limitation as desirable.[30]

As discussed in the previous section, both interveners support approval of the Application. With specific regard to the issue of customer access, their positions are as follows:

- BCOAPO notes that PNG(N.E.) has agreed that RS 7 need not be restricted based on end use[31], but BCOAPO makes no comment on specifically how such access would be codified.
- BCSEA takes the position that RS 7 should not be limited to LNG customers, and that RS 7 should not be seen as a model for TSAs beyond connection to the specified lateral pipeline extension.[32]

3.2 Panel discussion

The Panel notes that the final arguments from all parties to this proceeding indicate agreement on the general description of the type(s) of future customers that would have access to RS 7. Further, on review of the evidence, the Panel generally agrees with the category of customers contemplated to take service within the proposed RS 7.

However, the Panel is concerned with the structure of the proposed RS 7 as presented in the Application for the following reasons:

- The title of the rate schedule includes the term “LNG,” which indicates that RS 7 would be limited to industrial firm LNG transportation customers.
- The rate schedule specifically states that the applicability is limited to AltaGas.
- The conditions of the rate schedule specifically refer to the June 10, 2015 TSA with AltaGas and do not provide more general conditions which could be used to objectively assess whether other customers would qualify for service under the tariff, other than referencing the General Terms and Conditions for Industrial Firm Transportation Service.
- The daily contract demand specifies 2,685 GJ/day, which does not allow for other customers to negotiate a different contract demand volume.

In other words, notwithstanding the various parties’ positions that RS 7 will/should be available to other industrial customers, the tariff as currently set out is not accessible to any future customer other than AltaGas. Hence, the Panel finds RS 7 as currently structured to be unduly discriminatory. **The proposed RS 7 is denied.**

The Panel directs PNG(N.E.) to file with the Commission by no later than 30 days from the date of the order attached to these Reasons for Decision, a revised tariff and rate schedule that establishes terms and conditions of service under which other customers in addition to AltaGas may take service. As part of the filing, PNG(N.E.) must address the concerns outlined by the Panel above regarding the structure of the proposed RS 7. At the time of PNG(N.E.)’s filing of the revised tariff and rate schedule, the Commission shall determine further regulatory process.

[29] PNG(N.E.) Final Argument, pp. 7–8.
[30] Ibid.
[31] BCOAPO Final Argument, p. 4.
[32] BCSEA Final Argument, pp. 6–7.

The Panel is also mindful of the anticipated in-service date with AltaGas of October 1, 2015 and acknowledges that there is no disagreement amongst the parties as to the negotiated rate to be charged to AltaGas under the proposed RS 7. For these reasons, **the Panel approves the TSA between PNG(N.E.) and AltaGas and approves the rate to be charged to AltaGas as applied for by PNG(N.E.).**