



Verlon G. Otto
Director, Regulatory Affairs

Pacific Northern Gas Ltd.
2550 - 1066 West Hastings Street
Vancouver, BC V6E 3X2
Tel: (604) 691-5680
Fax: (604) 697-6210
Email: votto@png.ca

Via Web Upload

September 26, 2019

B.C. Utilities Commission
Suite 410 - 900 Howe Street
Vancouver, BC V6Z 2N3

File No.: 4.2.7 (2019)

Attention: Patrick Wruck
Commission Secretary and Manager, Regulatory Support

Dear Mr. Wruck:

**Re: Pacific Northern Gas Ltd.
Code of Conduct and Transfer Pricing Application
PNG Final Submission**

In accordance with the regulatory timetable established under BCUC Order G-208-19, accompanying please find the Final Submission of Pacific Northern Gas Ltd. on its application for approval of its Code of Conduct and Transfer Pricing Policy.

Please direct any questions regarding the application to my attention.

Yours truly,

A handwritten signature in black ink, appearing to read 'Verlon G. Otto', is written over a light grey circular stamp.

Verlon G. Otto

Enclosure

PACIFIC NORTHERN GAS LTD.

**Application to the
British Columbia Utilities Commission
to Update the Code of Conduct and Transfer Pricing Policy**

**FINAL SUBMISSION OF
PACIFIC NORTHERN GAS LTD.**

September 26, 2019

PACIFIC NORTHERN GAS LTD.
APPLICATION TO UPDATE THE
CODE OF CONDUCT AND TRANSFER PRICING POLICY
FINAL SUBMISSION

TABLE OF CONTENTS

A. Introduction	1
B. Purpose of the Compliance Filing	3
C. Form of Policy	3
D. PNG Submissions on Specific Issues Raised.....	4
(a) Applicability.....	4
(b) Cost Collection Procedures and Research and Development Policies	5
(c) Name and Logo	7
(d) Compliance Reporting.....	7
(e) Transfer Pricing Principles.....	8
(f) Complaints Process – Confidential Information	8
(g) Complaints Process – Referral to the BCUC.....	9
(h) Proposed COC - Updated Draft	9
E. Conclusion	10

A. INTRODUCTION

1. On August 15, 2018, the British Columbia Utilities Commission (BCUC) issued Order G-151-18 (Order) and the Reasons for Decision set forth in the Order (Decision 2018-2019) on the Pacific Northern Gas Ltd. (PNG) PNG-West Division 2018-2019 Revenue Requirements Application (Application).

2. PNG's Application included capital expenditures for 2018 and forecast demand for 2019 as they pertained to the Ridley Island Propane Export Terminal (RIPET) Project, a propane export terminal located on Ridley Island, near Prince Rupert. The matter of PNG's Code of Conduct (COC) and Transfer Pricing Policy (TPP) (collectively, COC/TPP) were raised in relation to PNG providing service to the RIPET Project as AltaGas Ltd. (AltaGas), PNG's parent company at that time, was one of the joint venture partners in the project.

3. The applicability of the COC/TPP had also been raised around other recently proposed inter-affiliate transactions, specifically with regard to the following regulatory proceedings:

- In PNG's CPCN application to acquire and operate the North Pine Fuel Gas Pipeline (BCUC Project No. 1598937), the applicability of the COC was raised in the Information Request process. In this application, PNG had proposed acquiring an asset from AltaGas North Pine Limited Partnership (AltaGas NPLP), an affiliate of PNG; and
- In PNG's application for approval of a letter agreement with Triton LNG Limited Partnership (Triton) (BCUC Project No. 1598957), the applicability of PNG's COC in relation to a letter agreement, where AltaGas was one of the Triton partners and also an affiliate of PNG, was raised during the Information Request process.

4. PNG's responses on these matters stated that, while the existing COC/TPP were structured to address non-regulated business (NRB) and reflect considerations of the BCUC's Retail Market Downstream of the Utility Meter Guidelines (RMDM Guidelines), the spirit of these

policies had guided PNG's conduct with its Affiliates for all projects and agreements.

5. PNG notes that as Existing COC/TPP were prepared during 2011 and filed with the BCUC in November 2011 during a time when PNG was a standalone public company with no affiliates. As AltaGas acquired PNG in December 2011, PNG acknowledges that an update to the policies was in order, particularly as they pertain to activities and transactions with related corporate entities.

6. Based on the foregoing, the Order included a directive for PNG to submit for approval an updated COC/TPP (Compliance Filing). Specifically, Directive 7 of the Order states:

PNG is directed to file an updated Code of Conduct and Transfer Pricing Policy with the BCUC for approval by December 31, 2018.

7. This same directive was included in section 3.3.1 of Decision 2018-2019.

8. On December 17, 2018, PNG requested a one-month extension on the submission of the Compliance Filing, from December 31, 2018 to January 31, 2019. On December 19, 2018, the BCUC approved PNG's request.

9. On January 31, 2019, PNG submitted its Compliance Filing which included a draft of PNG's Proposed COC as Appendix A.

10. On April 30, 2019, the BCUC issued a letter appointing a Panel to review PNG's Compliance Filing and concurrently issued Order G-94-19 establishing a preliminary regulatory timetable for the review of the submission. The preliminary regulatory timetable had a placeholder of May 16, 2019 for Intervener registration. No parties registered as Interveners in the regulatory proceeding, however, FortisBC Energy Inc. (FEI) registered as an Interested Party.

11. The regulatory process associated with the Compliance Filing consisted of one round of BCUC Information Requests issued on May 30, 2019, and one round of BCUC Panel Information Requests issued on July 25, 2019.

12. The submissions that follow summarize the purpose of the Compliance Filing, discuss the form of the Proposed COC, provide a discussion of specific items raised in information requests, and concludes with an overview of the approval sought by PNG.

B. PURPOSE OF THE COMPLIANCE FILING

13. Consistent with the BCUC's direction, PNG's Compliance Filing has proposed an update to its COC/TPP that addresses interactions between PNG and its Affiliates. PNG submits that the provisions proposed in the Compliance Filing remain generally consistent with the Existing COC/TPP and the RMDM Guidelines, and allow PNG to meet its first and foremost responsibility to protect the interests of its ratepayers.

C. FORM OF POLICY

14. An important consideration in developing PNG's Proposed COC was the appropriate format for the proposed policy. PNG's Proposed COC format has been modelled based on the guidance of the Alberta and Ontario regulators. In PNG's view, the guidance of the Alberta and Ontario regulators on format lends itself to a document structure that: (i) more clearly communicates the underlying principles of the COC policy; and (ii) provides more comprehensive guidance in applying and administering the COC policy than PNG's Existing COC/TPP that is based on the guidance provided by the RMDM Guidelines established in 1997.

15. As submitted in the Compliance Filing, PNG considers it to be both important and relevant for the Proposed COC to have some consistency with the policies of the Affiliates to which it will be applicable. In this regard, PNG notes that the format of the Proposed COC closely aligns with the policies of its sister companies, namely AltaGas Utilities Inc. (AUI) in Alberta and Heritage Gas Limited (Heritage) in Nova Scotia.

16. PNG further notes that the Proposed COC has transfer pricing principles and policies incorporated into it and hence PNG has proposed to discontinue the practice of a standalone

document for the transfer pricing policy.

17. Despite the format of the Proposed COC being considerably different from that of the Existing COC/TPP, PNG considers that the scope and principles addressed remain consistent with guidance provided by the BCUC.

D. PNG SUBMISSIONS ON SPECIFIC ISSUES RAISED

18. PNG's Compliance Filing included a summary of the key sections of PNG's Proposed COC and a high-level discussion of the proposed provisions in consideration of those contained in the Existing COC/TPP.¹ For understanding, PNG also included a summary matrix comparing the language and provisions of the key sections of the Proposed COC to the Existing COC/TPP as an appendix to the Compliance Filing.²

19. The discussion that follows addresses specific provisions of the Proposed COC that were raised by the BCUC in Information Requests.

(a) Applicability

20. The Compliance Filing specified that the Proposed COC would apply to all interactions between PNG and its Affiliates, noting that certain exemptions would apply, including the circumstance where there is a separate agreement between PNG and its Affiliates with respect to the sharing or provision of specific services, resources or personnel that has been reviewed and accepted by the BCUC, and in the provision of regulated services to an Affiliate.³

21. The BCUC sought clarity on two points related to the applicability of the Proposed COC. The first point was to clarify that the purpose of the COC was to ensure that there is no

¹ Compliance Filing, p. 9

² Compliance Filing, Appendix L

³ Compliance Filing, p. 9

preferential access provided to Affiliates to non-Regulated Services that PNG may offer. PNG confirmed that the intent of the Proposed COC is to ensure there is no preferential access to any service offered by PNG, be it a Regulated Service or a non-Regulated Service, stating that as per the BCUC's Code of Conduct Principles i) and ii), the COC should be clear that there will be no preferential treatment and that customers should have equitable access to service. To affirm this, PNG proposed modified language to Section 1.1.1, Purpose of the COC, recital c) and to Section 5.4, Affiliate Activities, of the Proposed COC to reflect this intent.⁴

22. The BCUC also sought clarity on, in the instance where there is an inconsistency or inconsistencies between the COC and items reviewed and approved as part of the revenue requirements application, whether the COC or the BCUC review/approval should take precedence. In response, PNG submitted that the intent of the Proposed COC is not to supersede items reviewed and approved as part of other regulatory processes, including revenue requirements applications. PNG reiterated that while the Proposed COC is intended to apply to all interactions between PNG and its Affiliates, certain exemptions apply, including the circumstance where there is a separate agreement between PNG and its Affiliates with respect to the sharing or provision of specific services, resources or personnel that has been reviewed and accepted by the BCUC, and in the provision of regulated services to an Affiliate. PNG further noted that the applicability of the Proposed COC was addressed in Section 1.2 of the Compliance Filing.⁵

(b) Cost Collection Procedures and Research and Development Policies

23. In the Compliance Filing, PNG noted that the Proposed COC did not incorporate specific guidance contained in the existing COC/TPP on research and development activities and cost collection procedures. This stance was taken as, in PNG's view, specific provisions around the

⁴ BCUC IR 1.1

⁵ BCUC IR 8.1

tracking and transfer of research and development activities and the detailed provisions around cost collection procedures were considered matters of internal administration and not necessary to the policy guidance being provided in the Proposed COC.

24. The BCUC asked PNG to explain the reasons why specific provisions around research and development activities and cost collection procedures should be considered to be internal administration and not subject to the Proposed COC. In response, PNG reiterated the view that specific provisions around the tracking and transfer of research and development activities and the detailed provisions around cost collection procedures are considered matters of internal management and administration, and that it considered it unusual to require such prescriptive direction on accounting for costs as an element of policy guidance provided by the Proposed COC. PNG also observed that neither the RMDM Guidelines, nor the guidance of the Alberta Utilities Commission or the Ontario Energy Board, include such prescriptive direction on accounting for costs.⁶

25. The BCUC also asked if PNG intended to modify its existing provisions around cost collection procedures and research and development activities from those outlined in the Existing COC/TPP. PNG responded that it did not intend to make changes to its underlying principles for tracking and transferring costs, but noted that it may periodically amend its accounting processes to accommodate accounting and accounting system changes and improvements. The underlying principles for tracking time and costs, applying labour benefit and facilities and overhead loadings, allocating vehicle and equipment charges, and invoicing and transferring costs have remained consistent over time.⁷

26. This matter was pursued further in the BCUC Panel Information Requests. The Panel expressed concern that policies concerning cost collection and research and development had

⁶ BCUC IR 4.1

⁷ BCUC IR 4.2

not been incorporated into PNG's Proposed COC. The Panel indicated it was understanding of PNG's position that internal management processes do not warrant inclusion in the Proposed COC, however, the Panel noted that it considers it appropriate that the policies related to these issues be addressed in the Proposed COC. In consideration of the Panel's concerns, PNG acknowledged that the addition of provisions for the matters of cost collection and research and development to the Proposed COC would address the transfer pricing principles established in the RMDM Guidelines. Specifically, PNG acknowledged that adding these provisions would address transfer pricing principle (ii) on development costs, and transfer pricing principle (iii) on transparency of accounting costs. On this basis, PNG conceded and proposed amendments to the Proposed COC for cost collection and research and development activities, including to Section 2.1, Definitions, and to Section 4.4, Cost Recovery, and Section 4.6, Asset and Activity Transfers.⁸

(c) Name and Logo

27. Section 5.5, Name and Logo, of the Proposed COC detailed provisions around an Affiliate's use of PNG's name and logos, similar to the provisions contained in the Existing COC/TPP. The BCUC expressed an interest in additional provisions in the Proposed COC that would will compel PNG to take reasonable steps not to use an Affiliate's logo or other distinguishing characteristics in a manner that could mislead consumers as to the distinction or lack of distinction between the Affiliate and PNG. In response to this concern, PNG proposed amended wording for Section 5.5 to address PNG's use of an Affiliates name, logo or other distinguishing characteristics.⁹

(d) Compliance Reporting

28. Section 7, Compliance Measures, of the Proposed COC addresses matters pertaining to ensuring compliance with the COC, including compliance reporting to the BCUC. An inconsistency

⁸ BCUC Panel IR 1.1 and 1.1.1

⁹ BCUC IR 5.2

was noted in the Proposed COC between the provisions of Section 7.4, Responsibilities of the Compliance Officer, recital e) on the annual Compliance Report, and Section 7.7, Documents to be Provided to the BCUC upon Request. PNG agreed to amend the wording of Section 7.7 to provide clarity on this matter.¹⁰

(e) Transfer Pricing Principles

29. In the Proposed COC, Section 4, Transfer Pricing, details the underlying principles for pricing of resources and services. The BCUC sought clarity as to whether the provisions applied to both resources and services purchased from Affiliates, as well as to resources and services provided to Affiliates. PNG conceded that the provisions applied to both circumstances and proposed amending the wording of Section 4.1, Principles, to clarify this fact.¹¹

30. The BCUC also sought clarity on the provisions of Section 4.3, Pricing Affiliate Services. Specifically, the BCUC asked PNG to confirm that a price would be established based on the greater of cost recovery or fair market value. PNG confirmed that the BCUC interpretation was correct and acknowledged that the wording of the section may not be ideal. For clarity, PNG proposed amended wording for Section 4.3.¹²

(f) Complaints Process – Confidential Information

31. In Section 6.1, No Release of Confidential Information, the Proposed COC stipulates that confidential information must be treated as required under the provisions of the *Personal Information Protection Act* (PIPA). The BCUC queried PNG as to whether it considered the Proposed COC to be fully compliant with PIPA and all other relevant privacy legislation. PNG confirmed that, in its opinion, the Proposed COC was compliant with PIPA and all other relevant

¹⁰ BCUC IR 6.3

¹¹ BCUC IR 9.1

¹² BCUC IR 9.3

privacy legislation.¹³

32. The BCUC further queried whether PNG would be amenable to adding a statement to the Proposed COC to indicate that in the case of inconsistencies, the provisions of PIPA would prevail. PNG indicated it was agreeable to adding such a statement and proposed presenting this statement after recital e) of Section 6.1.¹⁴

(g) Complaints Process – Referral to the BCUC

33. Section 8.3, Referral to the BCUC, of the Proposed COC includes provisions around the complaints process, and specifically when a matter may be referred to the BCUC. The BCUC queried as to whether the provisions of Section 8.3 were fully compliant with the BCUC complaint handling process. In response, PNG conceded that the description of the complaints process laid out in Section 8.3 could be improved to better align with the provisions of the BCUC Customer Complaint Guide and proposed revised wording for Section 8.3 to achieve this.¹⁵

(h) Proposed COC - Updated Draft

34. For reference, PNG provided a revised draft of the Proposed COC marked-up to present a comprehensive tracking of all amendments proposed by PNG in response to BCUC Information Requests, including those detailed in this submission.¹⁶ PNG appreciates the queries raised and clarifications sought through the BCUC and Panel Information Requests and believes that the resultant amendments provide greater clarity to the provisions of the Proposed COC.

¹³ BCUC IR 10.2

¹⁴ BCUC IR 10.2.1

¹⁵ BCUC IR 11.1

¹⁶ Exhibit B-3, PDF Attachment BCUC Panel IR No.1 - PNG Proposed 2019 Code of Conduct - Amended Draft

E. CONCLUSION

35. Consistent with the BCUC's direction, PNG is proposing an update to its COC that addresses interactions between PNG and its Affiliates. While the format of the Proposed COC diverges considerably from that of the Existing COC/TPP, PNG submits that the provisions of the Proposed COC remain generally consistent with the Existing COC/TPP and the RMDM Guidelines, and allow PNG to meet its first and foremost responsibility to protect the interests of its ratepayers.

36. PNG submits that the Proposed COC is just and reasonable and appropriate for PNG's circumstance and should be approved as proposed in this proceeding.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Vancouver, British Columbia this 26th day of September 2019.

PACIFIC NORTHERN GAS LTD.



Janet P. Kennedy

Vice President, Regulatory Affairs and Gas Supply