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File No.: 240148.00642

British Columbia Utilities Commission  
6<sup>th</sup> Floor, 800 Howe Street  
Vancouver BC V6Z 2N3

**Attention: Erica M. Hamilton**  
**Commission Secretary**

Dear Sirs/Mesdames:

**Re: Terasen Gas Inc. (“TGI”), Terasen Gas (Vancouver Island) Inc. (“TGVI”) and Terasen Gas (Whistler) Inc. (“TGW”) (collectively “Terasen Utilities”) Return on Equity and Capital Structure Application Reply Submission on Request for Interim Relief**

This submission on behalf of the Terasen Utilities is in reply to the June 12 submission of the Commercial Energy Consumers Association of British Columbia (“CEC”), the June 8 submission of the Joint Industry Electricity Steering Committee (“JIESC”), the June 15 submission of the British Columbia Old Age Pensioners’ Organization (“BCOAPO”) and the June 8 submission of Zellstoff Celgar Limited Partnership (“Zellstoff”). The Terasen Utilities are not aware of any other submission relating to the request for interim relief.

Page 1 of the May 15, 2009 Application (the “Application”) sets out that the Application is made pursuant to sections 59 and 60 of the *Utilities Commission Act* (the “Act”) and the second paragraph on that page says:

“The Terasen Utilities request that the Commission determine an increased return on common equity (“ROE”) for TGI for rate-setting purposes, and that the so determined ROE for TGI be used in establishing the ROE of TGVI and TGW used for rate-setting. The Terasen Utilities request that the revised ROEs for TGI, TGVI and TGW be effective July 1, 2009.”

Page 2 of the Application sets out a request for interim relief, which is further addressed at pages 30 and 31 of the Application, where it says:

“The evidence in this Application demonstrates that the return on equity currently allowed for the Terasen Utilities is inadequate and less than a fair return. The current benchmark ROE of 8.47%, which is used in establishing the allowed ROEs of the three Terasen Utilities, does not allow them an opportunity to earn a fair return as required under the Act, and as a result the current rates which reflect the inadequate allowed ROEs are not fair, just or reasonable.

A hearing to consider the matters addressed in this Application will not be completed at an early date, and the Commission decision on this Application will follow later. The Terasen Utilities request interim relief effective July 1, 2009. If interim relief is not granted, and if the relief requested in this Application is not effective until after the Commission decision on this Application, the Terasen Utilities would be denied the opportunity to earn a fair return until subsequent to the date of that decision. Such a result would be unfair and unreasonable.

TGI and TGW request, pursuant to section 89 of the Act, that their existing rates be made interim effective July 1, 2009 until permanent rates can be established incorporating the Commission' decision on this Application.

TGVI requests, pursuant to section 89 of the Act, that effective July 1, 2009 its cost of service under the Special Direction be made interim, and subsequently be adjusted to reflect the increase in its allowed ROE resulting from the Commission's determinations in this proceeding. Granting the interim relief requested will preserve the ability of Intervenor to take issue with the evidence presented in the Application while providing the Terasen Utilities with the opportunity to earn a fair return. The Terasen Utilities respectfully submit that the requested interim relief should be granted.”

In the Application the Terasen Utilities seek interim relief that maintains the existing rates, while allowing the effective date of a change to the return on equity to be July 1, 2009. In other words, the Terasen Utilities are not seeking to have their rates increase on July 1; but rather are seeking to have the Commission order interim relief (as quoted above) that preserves an opportunity to earn a fair return.

In the Application TGI also seeks to have a 40% deemed common equity component in its capital structure for rate-setting purposes, with effect from January 1, 2010. The interim relief sought by the Terasen Utilities relates only to the request that the revised ROEs for TGI, TGVI and TGW be effective July 1, 2009; the request for interim relief does not relate to the requested change in capital structure of TGI.

In the Commission's last decision relating to return on equity and capital structure [March 2, 2006] the Commission Panel said at page 7:

“The Commission's mandate is to ensure that ratepayers receive safe, reliable and non-discriminatory energy services at fair rates from the public utilities it regulates, and that shareholders of those public utilities are afforded a reasonable opportunity to earn a fair return on their invested capital. The process to establish a fair return and just and reasonable rates is enshrined in the UCA where “the commission must consider all matters that it considers proper and relevant affecting the rate” and in doing so it must have due regard to the setting of a rate that “is not unjust or unreasonable” within the meaning of section 59 (of the Act) [UCA, s.60 (1)(a) and (b)(i)].”

As acknowledged by the Commission Panel, public utilities regulated by the Commission are to be afforded a reasonable opportunity to earn a fair return on their invested capital. The Terasen Utilities have included in the Application evidence that demonstrates that their current allowed returns on equity, as determined through Commission's automatic adjustment mechanism, are not adequate, with the result that the Terasen Utilities will not earn a fair return on the capital invested in gas distribution assets unless relief is granted.

None of the four Intervenors who filed submissions dispute the Commission's jurisdiction to grant the interim relief requested. Rather, the four Intervenors submit that the Commission should not grant interim relief.

There are statements made in the Intervenors' submissions that are not correct, or mischaracterize facts. Those statements, and the response thereto of the Terasen Utilities is set out below.

- (a) The second paragraph of the BCOAPO submission says the “Terasen Utilities have made application to this Commission Panel asking it to grant, on an interim basis, their ROE increase and debt/equity ratio restructuring requests as of July 1, 2009”.

Of the three Terasen Utilities, only TGI is seeking a change in its debt/equity ratio; TGI does not seek interim relief in respect of that request.

- (b) The JIESC in the second paragraph of its submission says “It is JIESC’s position that the interim rate increase should not be granted” and “granting the proposed interim rate increase at this time is contrary to basic principles of fairness”. In the last paragraph on page 1 and the first paragraph of page 2 it also refers to an “interim rate increase”.

The Terasen Utilities are not seeking to have rate increases immediately flowed though to customers. While the Terasen Utilities do seek interim relief effective July 1, it is in the nature of making the current rates interim.

- (c) In paragraph No. 2 of its submission the CEC refers to the existing negotiated settlement agreement respecting TGI and says that “it is inequitable that Terasen would seek and receive an adjustment for a period of six months of the 2008/2009 settlement period”.

The CEC acknowledges that the negotiated settlement agreement (“NSA”) approved by Commission Order G-33-07 does not preclude Terasen from applying for a variation in its equity thickness and ROE, but suggests that doing so is in some manner contrary to the NSA. The fact is that page 18 of Appendix A of Order G-33-07 (the NSA) specifically states that the NSA:

“... does not preclude the Company from making an application to the Commission for a variation in its equity thickness if appropriate”

and

“... does not preclude the Company from making an application to the Commission for a variation in the generic ROE mechanism and the Company’s allowed ROE”.

- (d) The CEC suggests, at a number of points in its submission, that the Terasen Utilities are seeking retroactive rates.

The Application was filed with the Commission May 15. ROE-related relief is sought effective July 1. TGI seeks a change in its capital structure effective from January 1, 2010. All relief sought in the Application is

sought with an effective date after the Application. All relief sought is prospective in nature, no retroactive relief is sought as no relief relates to a period prior to the filing of the application.

The JIESC submits that if the Commission makes an interim rate increase order [as noted above the Terasen Utilities seek relief in the nature of making the current rates interim] it is suspending the ordinary requirements for a hearing under section 58(1) of the Act. The JIESC goes on to submit that this is an extraordinary remedy, since it suspends the right to participate in the rate approval process and make submissions to the Commission. The JIESC also submits that “any change, interim or permanent, should only be made after all parties, not just Terasen, have had an opportunity to present evidence for consideration by the Commission”. Zellstoff makes a similar submission when it says that “it is not appropriate to pre-suppose the merits of their argument through the application of interim rates”.

The Terasen Utilities submit that their request for interim relief does not suspend the right of any Intervenor to participate in the process; their request does not preclude any Intervenor from presenting evidence; and their request does not cause the Commission to pre-suppose the merits of the arguments of the Terasen Utilities. All parties will have the opportunity to fully participate in the hearing process, and no final order will be made until all evidence is heard and considered. Ordering the interim relief requested will be “without prejudice” to all parties to fully develop and argue their respective positions.

If the Commission denies the request of the Terasen Utilities for interim relief then the result will be prejudicial to the Terasen Utilities, since they will be unable to earn a fair return until the Commission Decision on this Application much later this year. The effect of such a result would be a “suspension” of the rights of the utilities to a fair return, and would “pre-suppose” the merits of the parties arguments, at least during the period from July 1 to the effective date of the Commission’s Decision.

BCOAPO and JIESC submit that there is no urgency or special circumstance in respect of the request for interim relief. CEC and BCOAPO submit that the Terasen Utilities have not persuasively demonstrated that they are having problems attracting capital. The Commission Panel has before it the Application, which the Terasen Utilities submit overwhelmingly demonstrates that the returns on equity currently allowed the utilities are inadequate and do not provide the Terasen Utilities with the opportunity to earn a fair return on capital invested.

In the BC Hydro revenue requirement proceedings in 2004 the Commission, by Order G-8-04, approved BC Hydro’s request for interim rates. JIESC sought reconsideration of that order. By letter L-13-04 the Commission denied that reconsideration application.

In L-13-04 the Commission said:

“The Commission does not grant interim increases merely as a convenience to the utility. The Commission considered the comments concerning process made at the pre-hearing conference but determined that it continues to be appropriate, in this instance, for the Commission to follow its practice of granting the requested interim relief under Section 89 without a process or further input from participants. The Commission considered that BC Hydro had put forth *prima facie* evidence that the relief should be granted and the Commission notes, particularly, that the interim award is subject to refund, with interest, after a hearing. As noted by participants at the prehearing conference, the Commission cannot and should not fully examine all the issues in a utility rate application prior to granting interim relief.”

In the 2008 BC Hydro Revenue Requirement proceeding the Commission again considered a request for interim rates, and also commented on Letter L-13-04. At page 2 of Appendix A to Order G-40-08 the Commission noted that the “JIESC is generally opposed to interim relief for utilities”. At page 3 of that Appendix the Commission said:

“The Commission Panel notes that by Order No. G-8-04 dated January 20, 2004, the Commission granted a BC Hydro F2005/F2006 revenue requirements request for an interim rate increase effective April 1, 2004 pursuant to section 89 of the Act. The Commission received a reconsideration request by the JIESC dated February 12, 2004 that implied that the Commission had made an error in law by not using section 91(1) to determine whether interim relief was appropriate. By Letter No. L-13-04 the Commission responded to the JIESC’s February 12, 2004 reconsideration request and determined that it continues to be appropriate, in that instance, for the Commission to follow its practice of granting the requested interim relief under section 89 without a process or further input from participants.

The Commission Panel considers for the reasons provided in Letter No. L-13-04 that section 89 is the appropriate section of the Act to review BC Hydro’s request for interim rates in the application.”

Section 91(1), which the JIESC in 2004 suggested should be used to determine applications for interim rate relief, does refer to special circumstances. As discussed in the quotation above, the Commission has determined that section 89, which does not refer to special circumstance, is the appropriate section to review requests for interim rate relief.

The Terasen Utilities submit that the evidence in the Application is *prima facie* evidence that the allowed ROE for the Terasen Utilities should be increased. The Terasen Utilities submit that a denial of their request for interim relief would be contrary to a Commission obligation, which was expressed in 2006 as a “Commission’s mandate is to ensure ... that shareholders of those public utilities are afforded a reasonable opportunity to earn a fair return on their invested capital.” [March 2, 2006 Decision on Return on Equity and Capital Structure]

The Terasen Utilities submit that the interim relief requested in the Application should be granted effective July 1, 2009.

Yours truly,

**FASKEN MARTINEAU DuMOULIN LLP**

*Original signed by C.B. Johnson*

C.B. Johnson, Q.C.

CBJ/vde

cc: Intervenors