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BY ELECTRONIC FILING

British Columbia Utilities Commission
6th floor, 900 Howe Street
Vancouver, B.C. V6Z 2N3

Attention: Erica M. Hamilton
Commission Secretary

Dear Sirs/Mesdames:

Re: Terasen Gas Inc.
Application for a Certificate of Public Convenience and Necessity for the Tilbury Property Purchase

We enclose on behalf of Terasen Gas Inc. Final Submissions in respect of the above mentioned matter.

Twenty hard copies of same will follow by courier.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

[Original signed by Christopher Bystrom]

Christopher Bystrom

CRB/fxm

Encs

IN THE MATTER OF

THE UTILITIES COMMISSION ACT, R.S.B.C., 1996, CHAPTER 473

AND

AN APPLICATION BY TERASEN GAS INC.

FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR

TILBURY PROPERTY PURCHASE

SUBMISSIONS OF TERASEN GAS INC.

JANUARY 22, 2010

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SUBMISSIONS OF TERASEN GAS INC.

JANUARY 22, 2010

I. INTRODUCTION

1. Terasen Gas Inc. ("TGI" or the "Company") is applying to the British Columbia Utilities Commission (the "Commission") pursuant to Section 45 of the *Utilities Commission Act*[1] for a Certificate of Public Convenience and Necessity ("CPCN") for the acquisition of the former Weyerhaeuser Northwest Hardwoods Mill site (the "Property") adjacent to the Tilbury Liquefied Natural Gas ("LNG") Facility. TGI has entered into a Contract of Purchase and Sale with Weyerhaeuser Company Ltd. ("Weyerhaeuser" or the "Vendor") dated September 4, 2009, amended by the Modification and Ratification Agreement dated October 23, 2009,[2] to purchase the Property. The Contract is conditional upon (among other things) obtaining Commission approval. The acquisition of the Property is required to provide greater certainty with respect to the Tilbury LNG Facility's on-going compliance with the mandatory Canadian Standards Association Standard CSA Z276-2007 ("CSA Z276") and future revisions to this Standard.[3] Therefore, once acquired, the Property will be incorporated into the Tilbury LNG Facility operations.

2. The Tilbury LNG Facility is a valuable and important resource for TGI's service to its customers.[4] To continue operating, the Tilbury LNG Facility must remain compliant with mandatory safety standard CSA Z276.[5] The closure of Weyerhaeuser's Northwest Hardwoods Mill and the Property being put on the market means that new development of the Property is inevitable. There is a real risk that any new development by a third-party will increase the risk of operating the Tilbury LNG Facility, creating significant uncertainty with respect to compliance with CSA Z276. Given the importance of the Tilbury LNG Facility, it is in the best interest of rate payers to have certainty with respect to its continued operation.

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[1] R.S.B.C. 1996, Chapter 473.

[2] Exhibit B-1, at 3. The Contract is at confidential Exhibit B-1, Appendix 2. Please also see confidential Exhibit B-1-2 and Exhibit B-1-3.

[3] Compliance with CSA Z276 is required by Section 12(3) of the *Pipeline Regulation*, B.C. Reg. 360/98. See Exhibit B-1, at 11-12.

[4] Exhibit B-1, at 7, 21-22. See also Exhibit B-2, BCUC IRs 1.4.1, 1.4.2, 1.5.1 and 1.5.5 (offering further explanation to statements on pages 21-22 of Exhibit B-1).

[5] Exhibit B-1, at 11-12.

3. The evidence in this proceeding shows that acquiring the Property in fee simple is the only way for TGI to obtain certainty with respect to limiting development on the Property. With a minimal impact on customers' rates of $0.013 per GJ on average,[6] the purchase of the Property is a cost-effective means of facilitating the Tilbury LNG Facility's ongoing compliance with CSA Z276. TGI therefore submits that the purchase is in the public interest and that the CPCN should be granted.

4. The remainder of these submissions first consider the justification of the purchase and other benefits of purchasing the Property, followed by a consideration of the alternatives to the purchase explored in the Application and Information Requests. The Submissions will then consider the other potential benefits of the Property, project costs and rate impacts, and First Nations consultation. Any issues raised by Intervenors in argument will be addressed in reply.

II. PROJECT JUSTIFICATION

5. TGI submits that the purchase of the Property is justified on the basis that it is the only way for TGI to have the necessary certainty with respect to limiting development on the Property, which in turn is the most cost effective means of facilitating the Tilbury LNG Facility's ongoing compliance with CSA Z276. This section will briefly address the importance of the Tilbury LNG Facility, the nature of CSA Z276, the risk assessments related to CSA Z276 and how the purchase of the Property will provide certainty with respect to the development of the Property.

A. Importance of the Tilbury LNG Facility

6. The Tilbury LNG Facility, commissioned in 1971, is a key component of the Coastal Transmission System ("CTS"). The LNG Facility provides the following main functions and benefits to gas customers:

a. Gas Supply Portfolio: The Tilbury LNG Facility provides an important peaking service in the TGI gas supply portfolio, allowing re-delivery during extreme or extended cold weather events and enabling TGI to match supply with peak winter demands in a cost-effective manner. TGI estimates that the replacement costs for the Tilbury LNG Facility peaking supply range from $9 to $11 million per year. This service also reduces the risk of increasing prices and price volatility at the trading point during peak demand periods.[7]

b. System Capacity: The Tilbury LNG Facility is an important on-system capacity resource for the CTS, providing 150 mmcfd of send out capacity and pressure support during

[6] Exhibit B-6, BCUC Confidential IR 2.5.1.

[7] Exhibit B-1, at 7, 20-22. Exhibit B-2, BCUC IR 1.4.1.

high- demand periods. To replace this on-system capacity, there would be costly system improvements required.[8]

c. Security of Supply, Reliability and Operational Flexibility: The Tilbury LNG Facility provides a range of benefits that contribute to security of supply, reliability and operational flexibility, such as mitigating potential temporary operational problems associated with the pipeline infrastructure supplying the Terasen systems, offering alternate system capacity and supply to customers in the event of capacity reduction or interruption due to operational problems, pipeline damage, or maintenance on the CTS, and providing an additional resource for upstream pipeline balancing and quick response to upset conditions.[9]

7. Given the importance and value of the Tilbury LNG Facility in serving customers, it is prudent for TGI to take cost-effective action to ensure that it remains in compliance with the mandatory requirements discussed below.

B. CSA Z276

8. Section 12(3) of the *Pipeline Regulation*, B.C. Reg. 360/98 requires that the Tilbury LNG Facility be in compliance with CSA Z276, which governs the production, storage, and handling of LNG.[10] The standards for LNG facilities have become more stringent over the years since the Tilbury LNG Facility was first constructed.[11] Under Clause 4.2 of CSA Z276, new standards are generally not applied retroactively to the design and construction aspects of existing facilities. Clause 4.2 of CSA Z276 states, however, that existing LNG plants, such as the Tilbury LNG Facility, “may remain in use, provided that they do not constitute a significant risk to life or adjoining property."[12] This is a mandatory legal requirement with which TGI must demonstrate compliance in order to continue operating the Tilbury LNG Facility.

C. Risk Assessments

9. In order to demonstrate compliance with CSA Z276, two risk assessments have been conducted with respect to the Tilbury LNG Facility. Both risk assessments resulted in significant improvements to reduce the off-site risks.[13] As the latest risk assessment opined, the Tilbury LNG Facility did not pose an unacceptable risk to the public with certain improvements in

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8 Exhibit B-1, at 22. Exhibit B-2, BCUC 1.4.2, 1.4.3.
9 Exhibit B-1, at 21.
10 Exhibit B-1, at 11.
11 Exhibit B-1, at 12.
12 Exhibit B-1, at 12. A copy of the applicable provisions of CSA Z276 was attached in Exhibit B-1, Appendix 4.
13 Exhibit B-1, at 13.

place.[14] This conclusion, however, was based on the land use of the adjacent properties at the time of the assessment. If the land use changes on these properties, the risk could change and the Tilbury LNG Facility could become non-compliant with CSA Z276.[15]

10. The closure of the Weyerhaeuser hardwood mill plant and the potential sale of the Property to a third-party developer represent a real risk to the Tilbury LNG Facility's compliance with CSA Z276. As described in the Application, over the past 50 years, the land on Tilbury Island has progressively shifted from use as farmland to industrial use. The South West end of the Island is now used for light industrial development, while the North East end is heavy industrial. The prospect of this type of development continuing on Tilbury Island is therefore very real. The development of the Property consistent with the trend of development on Tilbury Island would increase the risk profile of the Tilbury LNG Facility and threaten its ongoing operation.[16]

D. Acquisition of the Property

11. As explained in section 4.5 of the Application and outlined below, the acquisition of the Property is the only way for TGI to have certainty with respect to limiting development on the Property in order to facilitate the Tilbury LNG Facility's ongoing compliance with CSA Z276.

12. Purchasing the Property in fee simple will give TGI immediate control over its development and eliminate the current risk of third-party development on the Property that would threaten compliance with CSA Z276, and therefore provide TGI with operational certainty for the Tilbury LNG Facility.[17] Should governing issues change in the future, such as changes to regional seismicity and more prescriptive requirements in CSA Z276, having fee simple ownership over the Property will give TGI the corresponding ability to impose more strict requirements on the Property.[18]

13. TGI cannot predict when another opportunity to purchase the Property will be available, or at what cost, and believes that it is a favourable time to make the acquisition. The worldwide economic recessionary climate, the slowdown in the forest industry, and the real estate market

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[14] Confidential Exhibit B-1-1, Appendix 6, at 7-6. The recommended improvements were made: please see Exhibit B-1, at 13-14.

[15] Exhibit B-1, at 14; Exhibit B-2, BCUC IR 1.1.6.

[16] Exhibit B-1, at 14, 18; Exhibit B-2, BCUC IR 1.1.6.

[17] Exhibit B-1, at 19; Exhibit B-3, CEC IR 1.5.1.

[18] Exhibit B-1, at 19.

in the Lower Mainland, particularly for industrial and commercial properties, created the opportunity to purchase the Property at a reasonable price. The reasonableness of the price was substantiated by the Opinion of Value provided by CBRE.[19] Please also see TGI's responses to BCUC Confidential IRs 1.2.1 to 1.3.2 with respect to the issue of the cost of the Property.[20]

14. As set out on page 30 of the Application, the financial impact of the Property acquisition on a typical residential customer will be about $1 per annum.[21]

15. TGI received questions from Intervenors about the future possibility of retiring the Tilbury LNG Facility or disposing of the existing site and the Property.[22] TGI expects to keep the Property (except for the portion south of Tilbury Road that TGI is investigating subdividing) indefinitely and for at least as long as the Tilbury LNG Facility is in service.[23] The Tilbury LNG Facility is an important and valuable resource and TGI plans to maintain it so that its expected life is indefinite, even though from an accounting perspective the remaining composite life of the Tilbury LNG Facility is in the order of 20 years.[24] While TGI does not at this time foresee the need to retire the Tilbury LNG Facility, in the event the need arose, TGI would likely seek to replace it with expanded LNG storage, liquefaction and sendout capabilities on the same site.[25] In the unlikely scenario that TGI sought to dispose of the existing land and facilities or the Property or both, such a disposition would require approval from the Commission. Whatever the possible scenario, TGI would be pursuing the resource options that it believed at the time to be cost-effective to ratepayers.

16. In summary, the purchase of the Property meets the need to eliminate the risk of incompatible development on the Property and provide operational certainty for the Tilbury LNG Facility. The cost of the acquisition is reasonable, has a minimal impact on rates and is justified by the need to facilitate the Tilbury LNG Facility's ongoing operation and continue the benefits it provides to the system and rate payers.

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[19] Exhibit B-1-1, Confidential Appendix 8, at page 3. Please also see Exhibit B-2, BCUC IR 1.3.6.

[20] Exhibit B-2-1.

[21] Please see Exhibit B-6, attachment to BCUC IR 2.5.1 (an update to Exhibit B-1-1, confidential Appendix 9) for financial assumptions, cost of service and cash flow impacts over a 25-year period.

[22] Exhibit B-2, CEC IR 1.4.1 to 1.4.3; Exhibit B-1, BCOAPO IR 2.1.1 to 2.1.3.

[23] Exhibit B-1, at 30. Please also see Exhibit B-5, BCOAPO 2.1.1, 2.1.2 and 2.1.3.

[24] Exhibit B-2, CEC IR 1.4.1 and 1.4.2.

[25] Exhibit B-2, CEC IR 1.4.2.

E. Other Potential Benefits

17. There are other potential benefits to purchasing the Property beyond compliance with CSA Z276. With the growing demand for LNG storage, the Property could facilitate the siting of future LNG facilities associated with expansion.[26] The potential for additional cost-effective peaking supply and redelivery to TGI's market from the Pacific North West is limited, making the potential for expansion a valuable resource.[27] The Property would also enhance TGI's ability to add buffer storage tanks to facilitate and support the LNG market for transportation use.[28] TGI has a LNG transportation tariff rate in place as a five-year pilot program. During this program, TGI will be assessing the market demand, which may trigger the need for buffer storage tanks.[29] At the present time, TGI does not have specific development plans for any such facilities, but is monitoring and assessing market conditions.[30]

III. ALTERNATIVES

18. This section will address the alternatives to the purchase of the Property explored in the Application and responses to Information Requests. The alternatives identified are (a) to do nothing, (b) to upgrade the Tilbury LNG Facility, (c) to rely on negotiations and discussions with neighbours to limit the future use of the Property, (d) to rely on zoning or development permit restrictions to limit the future use of the Property, and (e) to use a restrictive covenant or easement to limit the future use of the Property. As discussed below, all of these alternatives fail to provide the operational certainty with respect to compliance with CSA Z276 or are not cost-effective.

A. Do Nothing

19. A "do nothing" approach does not provide operational certainty for the operation of Tilbury LNG Facility and is thus not acceptable.

20. In the Information Requests, it was suggested that the mere presence of the LNG facility would be sufficient to deter development.[31] TGI considers this to be similar to a "do nothing" approach. If the mere presence of the LNG facility were sufficient to deter investment, this would

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[26] Exhibit B-1, at 23.
[27] Exhibit B-2, BCUC IR 1.5.1 and 1.5.5.
[28] Exhibit B-1, at 23-24.
[29] Exhibit B-1, at 24 and Exhibit B-2, CEC IR 1.10.2.
[30] Exhibit B-2, BCUC IR 1.5.1 to 1.5.5; Exhibit B-3, CEC IR 1.15.1 to 1.15.3.
[31] Exhibit B-2, BCUC IR 1.1.2 and Exhibit B-2-1 BCUC Confidential IR 1.2.1

be reflected in the market price of the Property, which it is not.[32] A developer would be entitled to develop the Property within the full range of uses permitted by the Delta zoning restrictions. It is not reasonable to suggest that developers would forego potential economic gain to accommodate the restrictions on the Tilbury LNG Facility, with which they are not obliged to comply.[33] TGI requires more operational certainty than can be provided by merely hoping that potential developers would pursue opportunities on the Property consistent with the operation of the Tilbury LNG Facility.

21. With the prospect of development of the Property likely if TGI does not complete the purchase, TGI submits that the benefits that the Tilbury LNG Facility provides to customers demand that proactive action be taken to ensure the Facility's continuing operation. Doing nothing unreasonably risks non-compliance with CSA Z276 or the need to take much more costly alternatives, such as upgrading the facility, and forecloses the additional benefits of acquiring the Property.

B. Upgrades to the Facility

22. Over the years, TGI has managed the risks at the Tilbury LNG Facility in part by making physical changes to maintain compliance with CSA Z276.[34] The physical improvements have included extensive ground improvement, the installation of a close-in spill containment high dike, the relocation of the LNG pumps within the high dike, the realignment of the tank outlet line, the installation of an inner tank valve, and the extension of a high expansion foam system.[35] To ensure compliance with CSA Z276 without regard to developments on neighbouring properties, however, would require major capital expenditures such as a replacement of the existing LNG tank with a tank of very different design (likely a full containment tank). A preliminary estimate for the cost of such a tank is $90 million. The cost is many times more than the proposed Property purchase and is therefore not a cost-effective option to ensure compliance with CSA Z276.[36]

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[32] See confidential Exhibit B-1, Appendix 8 –Broker Opinion on Value.
[33] Also see Exhibit B-2, BCUC IR 1.2.3.
[34] Exhibit B-1, at 13-14.
[35] Exhibit B-1, at 13-14; Exhibit B-3, 1.4.1.
[36] Exhibit B-1, at 20; Exhibit B-3, CEC IR 1.14.1 and 1.14.3.

C. Negotiations and Discussions with Neighbours

23. TGI has also managed the risks at the Tilbury LNG Facility in part by engaging in proactive negotiations with neighbours where necessary.[37] The Information Requests inquired into whether relying on negotiations and discussions could be an alternative to purchasing the Property.[38] This alternative, however, fails to provide the necessary operational certainty for the Tilbury LNG Facility.

24. The success of TGI's negotiations to date is largely due to the fact that the operations on adjacent industrial facilities have remained relatively unchanged. Thus, negotiations with neighbouring owners have only been necessary in one instance where a change in the planned location of an administration building on the adjacent site owned by Canadian Pacific ("CP"), now Seaspan, was required.[39]

25. TGI, however, does not believe that negotiations with neighbours will provide the operational certainty required for the Tilbury LNG Facility, as the operations of its neighbours change over time, or neighbouring properties are sold and the intended use changes. In particular, TGI does not believe this approach would work with a developer or with a number of smaller business owners because of the significant potential impact on the use of the Property. TGI would inevitably be in a weak bargaining position and would be risking non-compliance with CSA Z276 and the continued operation of the Tilbury LNG Facility. Even if successful on one occasion, TGI may be required to enter into negotiations for restrictions on land use with multiple parties or each time ownership of the Property changed.[40]

26. Therefore, relying on negotiations and discussions with neighbours does not provide the operational certainty required for the continued operation of the Tilbury LNG Facility and is not a feasible alternative.

D. Reliance on Zoning Restrictions

27. Several Information Requests inquired into whether an alternative is to rely on Delta's development permit powers or zoning bylaws to ensure the compliance of the Tilbury LNG

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[37] Exhibit B-1, at 17.
[38] Exhibit B-2, BCUC IR 1.2.3.
[39] Exhibit B-2, BCUC IR 1.2.1 and 1.2.3.
[40] Exhibit B-2, BCUC IR 1.2.2; 1.2.3.

Facility.[41] Even assuming Delta's cooperation, this alternative would not provide the operational certainty required for the Tilbury LNG Facility.

28. With respect to development permits, Delta is a creature of statute and its jurisdiction is limited. Under the *Local Government Act*,[42] a development permit for land designated as a development permit area can regulate or restrict development for certain purposes. These purposes do not include restricting development in areas adjacent to an LNG storage facility. Consistent with the *Local Government Act*, the designation permit area for the lands of Tilbury Island do not impose any restrictions on development in areas adjacent to an LNG storage facility. It is therefore not possible to rely on the development permit process to control development on the Property in order to maintain compliance with CSA Z276.[43]

29. TGI is not in a position to speculate on Delta's potential approaches to zoning bylaws. Nonetheless, zoning bylaws are, of course, a political act and may change over time as administrations come and go or as the needs of the day change. Any bylaw restricting the use of property on Tilbury Island would lead to winners and losers depending on the nature of the restriction. Thus, even if Delta were to pass a bylaw today that restricted use of the Property to reduce the risk of the Tilbury LNG Facility's non-compliance with CSA Z276, there could be no assurance that the bylaws would not change in the future, perhaps due to lobbying from owners who feel unduly restricted in the use of their properties.

30. Relying on Delta's municipal powers is therefore not feasible and, in any case, would not provide TGI with the operational certainty it needs to maintain the Tilbury LNG Facility's compliance with CSA Z276.

E. Restrictive Covenant or Easement

31. Both the Commission and CEC questioned whether obtaining a restrictive covenant or an easement is a viable alternative.[44] Obtaining or imposing a restrictive covenant, however, is an inferior option compared to purchasing the Property in fee simple.[45]

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[41] Exhibit B-2, BCUC IR 1.4.4 and Exhibit B-3, CEC IR 1.1.2.
[42] R.S.B.C. 1996, c. 323.
[43] Exhibit B-2, BCUC IR 1.4.4.
[44] See, e.g. Exhibit B-2, BCUC IR 1.1.1 and Exhibit B-3, CEC IR 1.6.1.
[45] The acquisition of an "easement" is, in effect, substantially the same as acquiring a restrictive covenant.

32. The option of having Weyerhaeuser register a restrictive covenant on the Property was not available. The Vendor was seeking to divest itself completely of the Property and TGI does not believe that the Vendor was interested in registering a restrictive covenant that could potentially impair its ability to do that. Therefore, the only option available would be for TGI to purchase the Property, register a restrictive covenant and then sell the Property again. There are several reasons why this is not a cost-effective alternative.[46]

a. A restrictive covenant would make the Property potentially unattractive to potential purchasers, because the restrictions imposed would result in a lower intensity of use than would be permitted under the zoning bylaws, thereby diminishing the value of the Property. For example, TGI would need to limit the amount of people that could be assembled or occupy any structures on the Property, and the duration of the restrictive covenant would be for as long as the LNG Facility was located on the adjacent property.

b. A restrictive covenant is not the equivalent of fee simple ownership. A restrictive covenant will not provide the operational certainty that ownership in fee simple would provide. Nor would a restrictive covenant provide TGI with flexibility for future expansion of the existing LNG Facility, if required.

c. If TGI's only interest in the Property is a restrictive covenant, the owner of the Property would have exclusive use and possession of the Property. The Property owner might lease the Property or grant other rights in respect of it that would permit other parties to use it. TGI would have to monitor the use of the Property, and if the restrictive covenant were breached, it would have to seek to enforce the restrictive covenant by making an application to the Court for an injunction ordering the owner to stop the use or activity that is in violation of the restrictive covenant. Injunctive relief is not an "as of right" remedy for TGI and a Court would not necessarily grant TGI an injunction to stop the offending use or activity. This could result in TGI being out of compliance with the requirements of CSA Z276.

d. The ability of TGI to rely on a restrictive covenant in the long-term to control development on and use of the Property is less certain than fee simple ownership. Restrictive covenants are subject to being challenged by property owners as being void if it is not in compliance with the applicable rules, including being against public policy. Moreover, under Section 35 of the *Property Law Act,* R.S.B.C. 1996, c. 377, a landowner may apply to the Court to modify or cancel a restrictive covenant, and a court may do so in certain circumstances.

e. It is difficult to estimate the cost to ratepayers of using a restrictive covenant. The use of a restrictive covenant to attempt to control land use would make the Property unattractive to potential owners/developers/users due to the scope of the easement restrictions which would restrict the land use to lower intensity use. Accordingly, TGI anticipates that the market price for the encumbered Property would be significantly lower than the purchase price that has been negotiated between the TGI and the Vendor. There would presumably be additional costs if the covenant were to be challenged, or removed from title for any reason.

[46] Exhibit B-2, BCUC IR 1.1.1.

33. In summary, the acquisition of the Property in fee simple, unlike relying on negotiating with neighbours, zoning or a restrictive covenant, will provide TGI with the requisite certainty with respect to limiting the development of the Property. The current opportunity to purchase the Property is rare, and it is prudent for TGI to take advantage of this cost-effective opportunity for the benefit of customers.

IV. COST TREATMENT AND FINANCIAL IMPACTS

A. A Rate Base Asset

34. The Property is properly classified as a rate base asset as it provides utility service to existing gas customers. As described above and in Section 4 of the Application, the principal purpose in acquiring the Property is to facilitate ongoing compliance with CSA Z276. As such, the Property will be used to provide services to customers as part of the Tilbury LNG Facility by ensuring that TGI conducts its operations safely and prudently in accordance with applicable external codes and standards. The Property would be properly allocated to the storage function since it will be part of the Tilbury LNG storage facility. The acquired Property will be no different than the existing land on which the Tilbury LNG Facility is located.[47]

35. Using the asset to generate revenues to off-set the cost of service to customers would not change the fact that the Property would be a utility asset.[48] TGI's plans to investigate the potential to earn revenue through low impact activities on the remainder of the Property are intended for reduction of the overall rate impact of the Property acquisition, and are consistent with TGI's goal to acquire the Property to ensure that it meets the mandatory safety standards applicable to the Tilbury LNG Facility.[49] Earning revenues of this type is a common practice. For example, TGI has offices and other operations facilities in a number of locations in which the Company is also a landlord and leases portions of these facilities as office or storage space to third parties. This is the case in Cranbrook, Kelowna, Kamloops, Prince George and Vernon. The revenue generated from these leases is used to partially offset the operating cost for the particular facility.[50] Similarly, using the Property to generate revenue is not inconsistent with it being a utility asset.

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47 Exhibit B-2, BCUC IRs 1.3.4, 1.3.5, and 1.6.1.
48 See, e.g., Exhibit B-5, BCOAPO 2.2.1.
49 Exhibit B-2, BCUC IR 1.9.3.
50 Exhibit B-2, BCUC IR 1.9.2.

36. Because the Property will be used to provide utility service to customers, costs to acquire and own the Property consequently should be funded by ratepayers, not TGI's shareholder, and should be recovered through customer rates.[51]

B. Capital Costs v. Deferred Non-Capital Costs

37. TGI proposes distinct treatments between the capital costs of the Property, and any other costs associated with the owning of the Property, because the closing date for acquiring the Property depends on the receipt of the Certificate of Compliance and is thus uncertain.[52]

38. Since TGI's rates have been set for 2010 and 2011, the capital costs, including the land purchase cost, property transfer taxes, real estate broker fees and legal fees, related transaction fees and taxes, along with any AFUDC recorded after deposits, the final payment and other costs are incurred,[53] will be captured in a non-rate base deferral account. As land costs are non-depreciable, there is no depreciation or amortization period associated with the capital costs of the Property. The capital costs will be added to rate base in January 1, 2012.[54]

39. All non-capital costs incurred prior to January 1, 2012 (except property taxes) are captured in the same non-rate deferral account as the land costs.[55] Property taxes incurred after the contract closing date and prior to January 1, 2012 are captured in TGI's existing Property Tax Deferral Account. The Company proposes a three-year amortization period for the deferred non-capital costs consistent with the current approved amortization period for the existing property tax deferral account. A longer amortization period is not suitable as the account is of a transitional nature and is not expected to be large. Indeed, the difference in terms of rate impact between a three-year amortization and 25-year amortization of the deferred non-capital costs would be $0.001/GJ or less.[56]

C. Efforts to Reduce Rate Impact

40. As set out on page 30 of the Application, the financial impact of the Property acquisition on a typical residential customer will be about $1 per annum. Although this customer rate impact is minimal, the Company is investigating options to mitigate the cost impact of the Property on

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[51] Exhibit B-1, at 29; Exhibit B-2, BCUC IR 1.9.7.
[52] Exhibit B-1, at 27 and 29.
[53] With respect to how AFUDC will be calculated, please see Exhibit B-6, BCUC IR 2.4.5 and 2.5.1.
[54] Exhibit B-1, at 29; Exhibit B-2, BCUC IRs 1.7.1 and 1.7.2; and Exhibit B-4, BCUC IR 2.16.2.
[55] Exhibit B-1, at 30.
[56] Exhibit B-1, at 29, Exhibit B-2, BCUC IR 1.7.1 and 1.7.2.

ratepayers. TGI described two potential opportunities and plans for other uses of the Property intended for cost mitigation: (i) renting out a portion of the Property for third party storage; and (ii) subdividing and selling the portion of the Property south of Tilbury Road not required to meet CSA Z276.[57]

41. Any subdivision and sale of the portion of the Property south of Tilbury Road or lease opportunity would be consistent with the primary purpose of facilitating compliance with CSA Z276.[58] The net proceeds from any sale would be used to reduce rate base and net revenues from any lease would be used to reduce revenue requirements, thereby reducing the overall rate impact of the Property acquisition.

42. With respect to the leasing opportunities, a preliminary estimate of savings from the cost mitigating activities is identified in Section 6.3 of the Application as being $200,000 to $300,000 annually. As the cost mitigation activities can only be pursued once the purchase of the property is complete, TGI cannot at this time forecast the degree of success it will have in achieving cost mitigation, or the time it will take to achieve such success.[59] TGI, however, is incented to seek this revenue to maintain its competitive position and customers' trust as a prudent operator of its system.[60] Since these are modest sources of revenue or cost mitigation and not subject to large fluctuations in amount after the mitigation mechanisms have been put in place, a deferral account or true-up mechanism is not necessary.[61]

43. With respect to subdividing and selling the piece of the Property south of Tilbury Road, this option is subject to subdivision approval from the City of Delta[62] and there would be significant costs to undertaking the subdivision and sale.[63] Nonetheless, barring a sudden and dramatic decline in property values, it should be cost-effective based on the opinion of value received by the Company.[64] TGI would conduct a thorough analysis and would only pursue the

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[57] Exhibit B-1, at 31 and Exhibit B-1-1, confidential Appendixes 9 and 10. Please also see: Exhibit B-2, BCUC IR 1.9.1 to 1.9.8; Exhibit B-3, CEC IR 1.10.1 to 1.10.4, 1.17.1, 1.17.2, and 1.18.2; Exhibit B-4, BCUC IR 2.14.1, 2.14.2, 2.14.3, 2.14.5 and 2.14.6; Exhibit B-4-1, BCUC IR 2.14.4.

[58] Exhibit B-1, at 30-32; Exhibit B-2, BCUC IR 1.9.1, 1.9.2, 1.9.3 and 1.9.4.

[59] Exhibit B-2, BCUC IR 1.10.1; Exhibit B-4, BCUC IR 2.14.6.

[60] Exhibit B-2, BCUC IR 1.8.1.

[61] Exhibit B-2, BCUC IR 1.10.1.

[62] Exhibit B-2, CEC IR 1.18.2.

[63] Exhibit B-1-2, Confidential Appendix 8, at page 11.

[64] Exhibit B-1-1, Confidential Appendix 9, page 2; Exhibit B-4-1, BCUC IR 2.14.4.

subdivision and the sale if it continued to be cost-effective to ratepayers.[65] The subdivided portion of the Property would be taken out of rate base and, as noted in the Application,[66] TGI is proposing to allocate the entire proceeds of sale of the portion of the Property south of Tilbury Road to customers (without prejudice to its rights under ATCO in other instances[67]).

44. TGI was asked whether it would be willing to enter into a binding agreement to offset ratepayers' cost of service by a fixed amount.[68] TGI submits that such an agreement is not appropriate. First, the principal reason that TGI is seeking to acquire the Property is to facilitate continued compliance with the mandatory safety requirements of CSA Z276. TGI believes the acquisition of the Property is in the interests of customers, regardless of the success in cost mitigation efforts. Second, TGI does not at this time have a way to forecast the degree of success it will have in cost mitigation, or the time it will take to achieve such success. Although TGI has obtained broker opinions of value and of the opportunities for leasing the Property,[69] the amount of time required to subdivide and sell the portion of the Property, or to find interested parties and lease portions of the retained land are not known at this time. As indicated on page 29 of the Application, the cost mitigation opportunities can only be pursued once the purchase of Property is completed and the appropriate regulatory and permitting requirements are met.[70]

45. TGI was also asked questions testing whether it would be appropriate to subdivide and sell part of the Property north of Tilbury Road, but outside the heat flux zone.[71] It would not be in the best interests of customers to subdivide and sell this portion of the Property. While based on the 1999 risk assessment the portion of the Property outside the heat flux zone is not currently required for compliance with CSA Z276, the conditions relating to risk assessments of the facility[72] could change, as they have in the past, which could lead to a wider buffer zone required to maintain compliance with CSA Z276. As described in section 4.2.1 of the Application, the safety requirements applicable to LNG facilities have become increasingly strict since the Tilbury LNG Facility was constructed. While the portion of the Property south of Tilbury Road is such that development on that land should not effect compliance with CSA Z276 in the

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[65] Exhibit B-4, BCUC IR 2.14.5.

[66] Exhibit B-1, at 31, footnote 5.

[67] *ATCO Gas & Pipelines Ltd. v. Alberta (Energy and Utilities Board),* 2006 SCC 4.

[68] Exhibit B-2, BCUC IR 1.8.2.

[69] Exhibit B-1-1, Confidential Appendices 8 and 10.

[70] Exhibit B-2, BCUC IR 1.8.2.

[71] Exhibit B-6, BCUC Confidential IR 2.6.1.

[72] These conditions include seismic ground motion levels, thermal radiation modeling techniques, as well as changes to CSA Z276 and the public's perception of acceptable levels of risk.

future,[73] the same cannot be said with any certainty for the portion of the Property north of Tilbury Road.[74] TGI must manage the Tilbury LNG Facility in a manner which properly addresses the risk of non-compliance with CSA Z276, not only at the present time but in the foreseeable future. To do otherwise would be to unnecessarily and unreasonably risk the ongoing operation of the Tilbury LNG Facility.

46. In addition, the land north of Tilbury Road is important for emergency response capability and managing public safety. For example, this land allows for more effective emergency response to a Level 3 Emergency if the development can be controlled. A Level 3 Emergency is an urgent situation that threatens the entire plant site and/or industrial and community neighbors. The existing land north of Tilbury Road, which is outside the heat flux zone, is currently identified as a marshalling area, where people will evacuate directly to ensure safety.[75]

47. Finally, the land north of Tilbury Road allows TGI to more effectively address increasing stakeholder expectations relating to public safety and security. The property north of Tilbury Road is contiguous to the existing property, and therefore provides a unique benefit for TGI. With any uncontrolled development between the road and the LNG Facility, TGI invariably has much less control and ability to respond to real or perceived threats to public safety and security. TGI has observed a shift toward greater interest in public safety and security by the public, and this has been reflected in extensive media coverage, more visible security threats in industry, and more stringent standards and regulations.[76]

48. In summary, TGI submits that it would pursue the appropriate cost mitigation activities to reduce the cost and rate impact to customers of purchasing the Property. These activities would be consistent with the continued safe operation of the Tilbury LNG Facility and would be beneficial to ratepayers.

73 Exhibit B-4, BCUC IR 2.14.1.

74 Exhibit B-6, BCUC Confidential IR 2.6.1.

75 Exhibit B-6, BCUC Confidential IR 2.6.1.

76 Exhibit B-6, BCUC Confidential IR 2.6.1.

V. FIRST NATIONS CONSULTATION

49. The purchase of the Property does not give rise to a duty for the Crown to consult with First Nations as it is a transfer of previously developed, fee simple land as between private parties.[77] TGI received no information requests with respect to this issue.

VI. CONCLUSION

50. The Tilbury LNG Facility is and will remain a valuable and important resource for customers. Only the acquisition of the Property in fee simple, unlike relying on negotiations with neighbours, zoning or a restrictive covenant, will provide TGI with the requisite certainty with respect to the development of the Property to facilitate the Tilbury LNG Facility's ongoing compliance with CSA Z276. The purchase will have a minimal rate impact and is cost effective. The current opportunity to purchase the Property is rare, and it is prudent for TGI to take advantage of the opportunity for the benefit of customers.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

[Original signed by]

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Matthew T. Ghikas

[Original signed by]

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Christopher Bystrom

Counsel for Terasen Gas Inc.

[77] Exhibit B-1, at 28.