



**LETTER NO. L-11-04**

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Dear Ms. Maxey and Mr. Thomson:

Re: Terasen Gas Inc.  
Complaint by the Heating Ventilating Cooling Industry Association  
Non-Compliance of Commission Directives

With respect to the September 22, 2003 complaint filed by the Heating Ventilating Cooling Industry Association of British Columbia, the Commission has reviewed the complaint and the evidence submitted by both parties, pursuant to Commission staff information request dated January 22, 2004.

The Commission's Decision is attached as Appendix A.

Yours truly,

*Original signed by:*

Robert J. Pellatt

RJP/cms  
Enclosures

Terasen Gas Inc.  
Complaint by the Heating Ventilating Cooling Industry Association  
Non-Compliance of Commission Directives

**DECISION**

**1.0 BACKGROUND**

On September 22, 2003, the Heating Ventilating Cooling Industry Association of B.C. (“HVCI”) filed a complaint alleging non-compliance by Terasen Gas Inc. (“TGI”, “Utility”) with certain directives in the BC Utility Commission’s (“BCUC”, “Commission”) Revenue Requirements Decision of February 4, 2003 (“Decision”). The complaint was in two parts.

- A) “Compliance with the determination to separate the Utility and Inc web sites.” (HVCI complaint page 4) and,
- B) “Non-compliance with Transfer Pricing Policy (“TPP”) and Code of Conduct (“CoC”)” (HVCI complaint page 10)

The complaint referred in general to the potential confusion between Utility activities and non-Utility activities as shown on the Utility website, and to management procedures with respect to communicating and enforcing compliance with the Utility TPP and the CoC. These policies, developed in response to the Commission’s April 1997 Guidelines for Retail Markets Downstream of the Utility Meter (“RMDM Guidelines”), govern the relationship between a utility and any affiliated but non-regulated businesses (“NRBs”). HVCI’s complaint indicated that a primary concern was the transfer of brand identity between a public utility and an NRB.

With regard to the website, discussed in section 7.4 on page 45 of the Decision, the Commission noted that comingling of advertisements for non-utility programs with utility information on the website may create or add to confusion in the minds of ratepayers about which activities are supported by the Utility and which are not.

The Commission made the following directive:

**“To avoid such potential confusion, BC Gas is directed to remove all non-utility material from the Utility website. A link may be provided to a separate BC Gas Inc. website and from the BC Gas Inc. website to the Utility website.”**

With regard to the TPP and CoC, discussed in the same section and page of the Decision, the Commission made the following directive:

**“BC Gas is also directed to review its management procedures with respect to the TPP and CoC, to ensure they are effectively communicated to all new and existing employees and that they have been understood and agreed to by those employees. BC Gas is to include in its annual compliance report a detailed statement of how it has communicated and reinforced the need for compliance with the TPP and CoC by all employees.”**

A chronology of events with respect to this complaint is as follows:

September 22, 2003	HVCI filed its complaint with the Commission.
September 30, 2003	BCUC acknowledged the complaint and set out a timetable whereby TGI would reply by November 24 and the complainant would respond by December 4, 2003.
October 8, 2003	HVCI complained to the Commission that the timetable is contrary to the RMDM Guidelines in which utilities have a month to respond.
October 10, 2003	The Commission explained to HVCI that its complaint is under review pursuant to sec.83 of the Utilities Commission Act.
November 12, 2003	KPMG, external auditor for TGI, submitted its Review Engagement Report to TGI and noted that the HVCI complaint is under review by the Commission.
November 24, 2003	TGI responded to the HVCI complaint.
November 28, 2003	HVCI requested a meeting with Commission staff. This meeting was to take place on December 4 but was later cancelled. HVCI was requested to respond in writing only.
December 8, 2003	HVCI submitted its rebuttal to TGI's response after receiving an extension to the December 4 deadline.
January 21, 2004	The Commission sent an Information Request (IR) to HVCI.
January 22, 2004	The Commission sent an IR to TGI.
February 3, 2004	HVCI responded to the Commission IR.
February 4, 2004	TGI responded to the Commission IR.

## **2.0 DISCUSSION**

### **2.1 Website**

Since the Decision, BC Gas Inc. has changed its corporate name to Terasen Inc. ("TI"). Each subsidiary includes the word Terasen in its name.

BC Gas Utility has become TGI. In addition to work undertaken to comply with the direction in the Decision, the corporate rebranding necessitated the design of a new website. TGI in reply to a BCUC inquiry stated that, with the aid of a consultant, it examined a number of alternate infrastructures for setting up websites.

The final corporate decision was to maintain the existing separate Terasen Pipelines and Terasen Gas (Vancouver Island) infrastructures and to use the existing TGI expertise, software and hardware where possible for all other affiliated company requirements. This means that TGI now administers the websites for TGI, TI, Terasen Waterworks, Terasen Utility Services and Terasen International. TGI claims that this decision allows for significant efficiencies in development and maintenance costs. TGI cross-charges for these administrative services and is being reimbursed by TI through an annual payment of \$100,000. TGI has provided some evidence that this amount exceeds the actual cost to TGI and therefore provides a benefit to the TGI ratepayers.

HVCI alleged that TGI has not carried out the separation as directed in the Decision. Some examples cited by HVCI are:

a) same terasen.com website home page with different URL (Uniform Resource Locator) such as:

- (i) [www.terasen.com/Gas/default](http://www.terasen.com/Gas/default)
- (ii) [www.terasen.com/Inc/default](http://www.terasen.com/Inc/default)

b) inclusion of all the entire Terasen group of companies under [www.terasen.com](http://www.terasen.com);

c) the website developer Habanero Consulting Group, in its press release dated April 25, 2003 (filed by HVCI with its complaint), states that it "replace[d] six individual corporate websites ...with a single website that united all the lines of business under the new Terasen brand."

d) the web address on monthly bills to customers and Utility stationery is [www.terasen.com](http://www.terasen.com);

e) TGI has used a single internal link on every page to the Inc pages instead of an external link to a separate site.

HVCI concluded that the website remains a corporate website with all the information for the regulated utility, and the non-regulated parent company and the NRBs consolidated on it.

HVCI contended that the confusion for a website visitor remains because no clear understanding can be established that the group of companies is made up of separate entities governed by different rules for doing business. HVCI submits that 266 links stream utility customers through all the NRB pages on the site. This confusion, in the view of HVCI, leads to unfair market dominance by NRBs from the marketing boost they receive and create potential cross-subsidies from ratepayers.

TGI responded that the utility has a separate website at [www.terasengas.com](http://www.terasengas.com) and has removed all non-utility information since August 2003. The unique file name for TGI is [www.terasen.com/Gas/default.htm](http://www.terasen.com/Gas/default.htm). TGI interpreted the Commission direction as not to mean complete physical separation of web content for the various websites on separate infrastructure which would be inefficient and result in higher costs for all parties.

Habanero clarified on TGI's behalf that "Terasen.com is a family of independent websites, one for each business, united by a common brand....Users can visit a unique site for Terasen Inc. and each line of business including Gas (Utility), Pipelines, Waterworks, International, and Utility Services." The content of each site is completely insulated.

TGI reasoned that it was directed to separate the website so that no visitor to the site might draw improper inferences as to the superiority of NRB service providers versus third party contractors. In the Utility's view, it has complied and therefore the website has no information on other companies in the Terasen group. There is no direct link between the TGI website and any of the NRB sites. There is a direct link between the TGI website and that of TI, and also the reverse. TGI advised the Commission that the reference was changed to [www.terasengas.com](http://www.terasengas.com) on bill fronts in November 2003, and on the bill reverse side with the use of new bill stock in February, 2004. The website reference was also changed on all stationery items starting January 9, 2004 (TGI response to BCUC IR, pp.7-8).

## **2.2 Code of Conduct and Transfer Pricing Policy**

In order to protect ratepayers from any liability associated with an unregulated activity, the Commission requires each utility to bring forward for approval a code of conduct for the relationship between the utility and its NRBs, or the utility and any division within the utility which offers unregulated goods or services. Each utility develops

its own code of conduct that reflects its particular circumstances but codes typically include employment of utility personnel including career training and development, procedures for sharing and costing of resources, treatment of confidential information by all employees and accounting, allocation and reporting. The policy must also ensure that no financial risk from the unregulated activities accrues to the utility. A complete description of the requirements for a utility code of conduct can be found in section 5.3 of the RMDM Guidelines.

When a relationship between a public utility and an affiliated NRB exists to the extent that the relationship affects ratepayers, the Commission may require a utility to develop a transfer pricing policy to regulate the interface between the utility and the affiliated NRB. The Commission must be convinced that such policy will ensure that ratepayers are held harmless from any unregulated activities. The requirements of a utility's transfer pricing policy are described in Section 5.2 of the RMDM Guidelines.

Following the issuance of the RMDM Guidelines, TGI (then BC Gas Utility) developed a CoC and a TPP. The Commission subsequently approved these policies and they are in effect for TGI. The Commission notes that in the TGI documents and internal audit submitted in response to this complaint, TGI refers to these policies as the "BCUC Policies".

HVCI alleged that TGI is not in compliance with the CoC and TPP and is deficient in complying with the direction in the Decision with respect to the TPP and CoC. HVCI provided several examples based in its understanding of direction given to employees and the scope of the compliance audit. The examples included reference to cross charging of work, referring customers to an NRB and the small sample size in the compliance audit (HVCI Sept. 22 complaint, pp. 10-14).

TGI countered that the issues in the examples were either not issues in fact or have been addressed. With regard to the audit, TGI submitted the sample size was appropriate due to the low level of material transgressions (and thus a high level of compliance). The Utility believes this is in accord with the Commission's regulatory approach that customers are not willing to pay for onerous levels of third party monitoring when there is little additional benefit to be derived.

HVCI in its Rebuttal Summary of Dec. 8, 2003 (page 1) identifies "...our real and cogent concerns about monopoly ratepayer funded brand value being transferred free of charge, through the web presence and identity channel, to the non regulated entities."

Page 4 of the HVCII response of February 3, 2004 describes the central issues of the HVCII complaint as follows:

- “1) the transfer of brand identity from the gas utility to both Terasen Inc and to the non-regulated subsidiaries of Terasen Inc through the blurred consumer perceptions between those entities as fostered by the various webpages that comprise the Terasen website, and
- 2) that this blurring represents an unfair, anti-competitive, and monopolistic cross subsidy from the utility to the parent company and non-regulated entities.”

With regard to these concerns the Commission directs HVCII to the RMDM Guidelines which deal with this subject in detail. HVCII participated in this review. This proceeding determined that utility ratepayers do not own a utility’s corporate name. The corporate name is goodwill which is owned by the company and may be used for multiple purposes. The Commission has the jurisdiction to regulate NRBs, but only to the extent such activities affect ratepayers.

### **2.3 Terasen Gas Compliance Activities**

In response to a BCUC information request, TGI reported the following written directions given to TGI staff with respect to CoC and TPP compliance:

- a) An internal presentation on the policies delivered at the spring 2003 Manager Forums on March 31 and April 2, 2003.
- b) An intranet notice, entitled “Terasen Gas Policies revisited – what you need to know” was provided to all computer-using employees on October 31, 2003.
- c) A quarterly notice, beginning November 10, 2003, provided to all employees by way of a browser screen that appears requesting users to acknowledge their awareness and understanding of the CoC and the TPP.
- d) Beginning on January 1, 2004, a requirement that weekly timesheets be completed with the necessity to check a box that says “I confirm that time recorded complies with the CoC and the TPP”.
- e) On an annual basis, random samples of employees are required to complete and sign-off the Annual Code of Business Conduct Certification, which includes the BCUC-approved policies.
- f) The annual audit plan for 2004 includes an audit of the Review of TGI’s compliance with the Terasen Gas CoC and TPP.
- g) New hires are made aware of the policies during orientation and are requested to read and comply with the policies.

### **3.0 CONCLUSIONS**

At the time of filing the complaint HVCI had some justification for their expressed concern. TGI appeared to be moving very slowly and incrementally towards complying with the directions given by the Commission in the February 2003 Decision.

The Decision contains the statement “*The evidence adduced in the hearing suggests that BC Gas has not treated the TPP with sufficient seriousness and care*”. During 2003, concerns in this regard were reinforced by the Habanero press release, some of the content of the slides used as prompts in the internal TGI presentations, changes in policy regarding directing customers to NRBs and use of the “terasen.com” web name on TGI customer billings and letterhead. TGI has more recently taken a number of steps to correct this situation as outlined herein. However, this slow response is of concern to the Commission Panel. The Commission expects a more rapid and inclusive response to future direction.

#### **3.1 Website**

TGI can now be said to be in compliance with the Commission directive in the Decision with respect to the website. The solution selected by TGI achieves the required Commission objective to avoid potential confusion from a customer perspective. Links exist between the TI corporate website and the TGI website in each direction. These are permissible within the Commission directive in the Decision. There are no direct links between the TGI website and those of the non-regulated businesses.

The Commission Panel accepts that making use of existing infrastructures, software, hardware and employee expertise in designing and operating the websites was a responsible corporate choice to promote efficiencies and to reduce cost.

**The Commission Panel concludes that the changes to the TGI and TI websites are in compliance with the Commission directive in the Decision.**

The Commission Panel notes the several recent changes to website reference on TGI customer material. Although not specifically mentioned in the Decision, the Commission Panel is of the view that given the sensitivity of this



matter, it would be reasonable to expect of TGI that reference to websites on customer material would have been considered and corrected in a more timely manner.

### **3.2 TPP and CoC**

The corporate name and logo are goodwill owned by the parent company and may be used for multiple purposes. The Commission has the jurisdiction to regulate retail market activities downstream of the public utility meter but only to the extent such activities affect ratepayers. The Commission believes that it can effectively control any such effect through the implementation and monitoring of the code of conduct and transfer pricing policies. In its submissions TGI makes numerous references to code of conduct and transfer pricing issues and in doing so refers to BCUC Policies. TGI is reminded that specific policies on these topics were proposed by BC Gas Inc. (now TGI) and approved for its use by the Commission. These policies should be referred to as TGI policies and administered with all the rigor afforded other TGI internal policies.

As outlined above, TGI has taken significant steps to improve the administration of its internal CoC and TPP policies. However, many of these steps occurred after the filing of the HVCI complaint. The Compliance Report filed by TGI in early 2003 was of limited scope. The Compliance Report filed later in 2003 was somewhat more complete. As an ongoing process the Commission looks forward to receiving these reports each year, and expects these to be thorough and complete including summaries of services performed and revenue received, methodology and full details of audits of some specific situations.

**The Commission Panel concludes that with the recent steps taken by TGI, the HVCI complaint with respect to non-compliance with the TPP and CoC has been satisfied.**