

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-88-03



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IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473
and

Terasen Gas (Vancouver Island) Inc.
Application for Reconsideration of the June 5, 2003 Decision in the matter of
Centra Gas British Columbia Inc. 2002 Rate Design Application

BEFORE: R.H. Hobbs, Chair)
L.A. Boychuk, Commissioner) December 24, 2003
R.J. Milbourne, Commissioner)

O R D E R

WHEREAS:

- A. On June 5, 2003, the Commission issued Order No. G-42-03 and its Decision (available for reference at www.bcuc.com) in the matter of the 2002 Rate Design Application of Centra Gas British Columbia Inc. (“the Decision”); and
- B. Centra now does business under the name of Terasen Gas (Vancouver Island) Inc. (“TGVI”); and
- C. On October 14, 2003, TGVI applied (“TGVI Application”) to the Commission for reconsideration and variance of one part of the Decision; and
- D. On October 20, 2003, the Commission issued Letter No. L-51-03 inviting Intervenor to comment on the issue of whether the TGVI Application met the threshold for reconsideration and setting out a timetable for Intervenor submissions and reply submissions by TGVI; and
- E. The Commission received a submission from BC Hydro on October 31, 2003 with respect to the TGVI Application; and

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F. The Commission has considered the TGVI Application and the submissions all as set forth in the Reasons for Decision attached to this Order.

NOW THEREFORE, pursuant to Section 99 of the Utilities Commission Act, the Commission orders as follows:

1. The Commission allows the TGVI Application for reconsideration as set out in the attached Reasons for Decision.
2. New evidence is not required and will not be allowed in the TGVI Application for reconsideration; TGVI and Intervenor may file argument in respect of the Application for reconsideration according to the following schedule:

TGVI Argument	January 19, 2004
Intervenor Argument	February 2, 2004
TGVI Reply Argument	February 9, 2004

DATED at the City of Vancouver, in the Province of British Columbia, this 24th day of December 2003.

BY ORDER

Original signed by:

Robert H. Hobbs
Chair

Terasen Gas (Vancouver Island) Inc.
Application for Reconsideration of the June 5, 2003 Decision in the matter of
Centra Gas British Columbia Inc. 2002 Rate Design Application

REASONS FOR DECISION

1.0 INTRODUCTION

On September 30, 2002, Centra Gas British Columbia Inc. (“Centra”) filed a Rate Design Application (“the Rate Design Application”), that proposed rate design principles for 2003 and beyond and approval of final rates for all proposed classes of customers except ACR-2 Pioneer Rate Class customers and those customers with rates determined by existing agreements. The Commission reviewed the Rate Design Application by way of an oral public hearing that took place on February 5, 2003, February 7, 2003 and from March 3 through March 6, 2003. Centra’s Final Argument was received on March 17, 2003, Intervenor submissions were received by March 28, 2003, and Centra’s Reply Submissions were received on April 7, 2003. On April 25, 2003, shareholders of BC Gas Inc., Centra’s parent company, approved a change to its company name to Terasen Inc. and Centra was renamed Terasen Gas (Vancouver Island) Inc. (“TGVI”). The Commission issued its Decision on the Rate Design Application, along with Order No. G-42-03 on June 5, 2003 (together “the Decision”). Recognizing that both “Centra” and “TGVI” refer to the same entity, these Reasons for Decision will use TGVI unless the reference is to a quote from the Decision or to evidence in which the name Centra appears.

The Decision approved, among other things, a permanent rate for Firm Transportation (“FT”) service of \$1.074/GJ effective January 1, 2003. As well, natural gas was supplied to the Island Cogeneration Plant (“ICP”) under the Transportation Service Agreement between TGVI and British Columbia Hydro and Power Authority (“BC Hydro”) made as of March 7, 2001 (“BCH TSA”). For the interim period between the ICP’s Commercial Operation Date of April 12, 2002 and December 31, 2002, the Decision approved the interim ICP rate, \$0.890/GJ, as permanent, for FT service provided to BC Hydro for natural gas supplied for operation of the ICP despite an agreement between TGVI and BC Hydro to retroactively adjust the interim rates to the final rates approved by the Commission.

On October 14, 2003, TGVI applied (“TGVI Application”) to the Commission for reconsideration and variance of one part of the Decision. The TGVI Application alleges that the Decision, in establishing an effective date for final rates under the BCH TSA that differs from the effective date agreed to by the parties to that agreement,

introduced a principle that had not been raised in the proceeding leading to the Decision. TGVl submits that the effective date for the new BC Hydro tolls was not the subject of discussion in the proceeding since there was an agreement between the parties, and no party had suggested that a date other than that in the BCH TSA.

On October 20, 2003, the Commission issued Letter No. L-51-03 inviting Intervenor's comments on whether the TGVl Application met the threshold for reconsideration and establishing a timetable for Intervenor submissions and reply submissions by TGVl. The Commission received a submission from BC Hydro on October 31, 2003 with respect to the TGVl Application. TGVl did not file a reply to BC Hydro's submission.

2.0 GUIDING PRINCIPLES FOR RECONSIDERATION

Section 99 of the Act states:

“The commission may reconsider, vary or rescind a decision, order, rule or regulation made by it, and may rehear an application before deciding it.”

Under Section 99 of the Act, the authority of the Commission to allow a reconsideration is discretionary. To determine if there is a reasonable basis to allow a reconsideration, the Commission assesses an application for reconsideration to determine if the applicant has demonstrated the existence, on a *prima facie* basis, of one or more of the following:

1. an error in fact or law;
2. a fundamental change in circumstance or facts since the decision;
3. a basic principle that had not been raised in the original proceedings; or
4. a new principle that has arisen as a result of the decision.

The Commission exercises its discretion to reconsider in other situations, where it considers there to be just cause. However, the decision to allow a reconsideration is not taken lightly. The Commission's discretion to reconsider and vary a decision or order is applied with a view to ensuring there is consistency and predictability in the Commission's decision-making.

For a reconsideration hearing to proceed, the reconsideration applicant is required, through reference to the Decision, to establish that:

1. the claim of error appears to be substantiated on a *prima facie* basis; and

2. the error has significant material implications.

3.0 TGVI Application for Reconsideration

The TGVI application seeks a reconsideration of that part of the Decision relating to the effective date of the new tolls. TGVI notes that the BCH TSA provides that the final tolls approved by the Commission in the Rate Design Proceeding of TGVI “will be made effective retroactive to the Service Commencement Date” and that both parties had agreed that the new tolls were to be effective April 12, 2002.

As noted above, TGVI submits that the Commission’s consideration of, and choice of, an effective date that differs from the effective date agreed by the parties to the BCH TSA introduced a principle that had not been raised in the proceeding leading to the Decision. TGVI submits that the effective date for the new BC Hydro tolls was not the subject of discussion in the proceeding since there was an agreement between the parties. TGVI notes that no party had suggested that a date other than April 12, 2002, should be the effective date of the tolls and claimed that the Commission deprived TGVI of the opportunity to address the reasonableness of such adjustment.

TGVI also suggests that the Decision was inconsistent with other parts of the June 5, 2003 Decision in that BC Hydro will not contribute to recovery of the Revenue Deficiency Deferral Account (“RDDA”) in the period between April 12 to December 31, 2002.

TGVI, therefore, submits that the Commission should reconsider the effective date of the new tolls for BC Hydro.

In its letter dated October 31, 2003, BC Hydro provides four reasons why the claim of error is not substantiated on a *prima facie* basis:

- A. BC Hydro disagrees with TGVI’s suggestion that the tolls do not include an element for RDDA recovery and suggested that the interim tolls, which the Commission established as permanent for the period April 12 to December 31, 2002 includes \$0.141/GJ paid by BC Hydro toward RDDA reduction;
- B. BC Hydro notes that s. 2.8 of the Special Direction provides that the Commission shall fix the rates charged by TGVI to its customers for the period beginning January 1, 2003, and maintains that it would be contrary to s. 2.10(j) of the Special Direction to permit recovery of RDDA prior to January 1, 2003;
- C. BC Hydro suggests that the Commission was well aware of the retroactivity provision in the BCH TSA with TGVI; and

- D. BC Hydro notes that the retroactivity provision in the BCH TSA is based upon tolls being established utilizing the full fixed-variable cost of service methodology and suggests that it would be inequitable and contrary to the terms of the BCH TSA for TGVl to obtain a retroactive toll not determined in accordance with the required methodology.

BC Hydro submits that the criteria for reconsideration have not been met and that the alleged error does not have significant material implications for TGVl.

BC Hydro also suggests that the reconsideration should be delayed until after the Court of Appeal decision given that BC Hydro is asking that Court to find that the recovery of RDDA should not be included in the transmission tolls charged by TGVl to BC Hydro.

The Reconsideration Panel has considered the submissions of TGVl and BC Hydro and finds that a *prima facie* case has been established concerning the effective date of the new tolls. The Reconsideration Panel accepts TGVl's submission that the decision relating to the effective date of the new tolls was made without parties having been given an opportunity to comment. Although the Commission may have been well aware of the retroactivity provision in the BCH TSA, parties were not given notice that the effective date may be an issue, nor were they provided an opportunity to comment on what the effective date should be before a decision was made.

Accordingly, the Reconsideration Panel will exercise its discretion to proceed to the second phase and will hear argument on the merits of TGVl's application on whether the original decision concerning the effective date of the new tolls should be varied. The Reconsideration Panel does not consider that further evidence is required or appropriate in this instance.

The Reconsideration Panel intends to proceed with the second phase examination by way of written argument to consider the following questions:

- Did the Commission err in concluding that "Although the parties had agreed to retroactively adjust the interim toll to the final rates approved by the Commission in this Decision, the Commission believes that it is more reasonable to avoid the retroactive adjustment?" If so, should the effective date be varied?

5.0 RECONSIDERATION PROCESS

The Reconsideration Panel will consider the issues discussed above by way of written argument as described below:

- TGVI is to file any additional argument it may wish to make in support of the application for reconsideration by Monday, January 19, 2004;
- Intervenors may file argument with respect to the reconsideration application by Monday, February 2, 2004; and
- TGVI may file reply argument by Monday, February 9, 2004.

For greater certainty, as noted above, the Reconsideration Panel does not consider that further evidence is required or appropriate.