



LETTER NO. L-39-04

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. CANADA V6Z 2N3
TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

ROBERT J. PELLATT
COMMISSION SECRETARY
Commission.Secretary@bcuc.com
web site: <http://www.bcuc.com>

Log No. 6722

VIA E-MAIL

regulatory.affairs@terasengas.com

July 29, 2004

Mr. Scott Thomson
Vice President, Finance and Regulatory Affairs
Terasen Gas Inc.
16705 Fraser Highway
Surrey, B.C. V3S 2X7

Dear Mr. Thomson:

Re: Terasen Gas (Vancouver Island) Inc.
Application for Approval of Municipal Gas Operating
Agreement with the District of Highlands
and Municipal Gas Operating Order with the District of Sooke

On June 30, 2004, Terasen Gas (Vancouver Island) Inc. ("TGVI") applied for Commission approval of a Municipal Gas Operating Agreement with the District of Highlands ("Highlands") and a Municipal Gas Operating Order with the District of Sooke ("Sooke"). In reviewing the application, the Commission is concerned about the protracted delay in applying for approval of these arrangements.

In response to the application for the Municipal Gas Operating Agreement with Highlands, we enclose Commission Order No. C-7-04 which approves the Agreement subject to TGVI filing an executed copy of Bylaw No. 188. Two copies of the Municipal Gas Operating Agreement will be stamped, accepted for filing effective March 28, 2003 and returned after the copy of the Bylaw is filed.

The Commission denies TGVI's request for an Order in the form of the document that has been provided for Sooke. In part, this is because the document contains several provisions that would be more suitable in an agreement between the parties than in a Commission Order. Examples include Section 61 (Default by Company), Section 71 (Assignment) and Section 72 (Renewal). Moreover, the situation as to whether or not there is an agreement between the utility and municipality and the provisions of such an agreement, are generally material to the operation of sections 32, 33, 36 and 45(7) of the Utilities Commission Act. The Commission suggests that the document be restructured as an agreement between TGVI and Sooke, and refiled in fully executed form. The filing should include a copy of the bylaw or other authority under which Sooke approved the agreement.

The Commission notes that the terms of the Municipal Gas Operating Order for Sooke differ in several respects from those of the Pro-Forma Interim Municipal Gas Operating Agreement that was approved by the Commission's February 8, 1991 Decision. Potentially significant differences include the following:

- Sections 15, 16 and 17 appear to increase the extent to which TGVI is responsible for the cost of relocating portions of the distribution system due to municipal activities (except when Section 16 has applied).
- Section 23 makes TGVI liable for payment of the fair market value of a right-of-way to use Public Lands (not including Highways).
- Section 62 (Force Majeure) only protects TGVI from Sooke terminating the arrangement due to default by TGVI.

In the event the refilled agreement with Sooke contains similar terms, TGVI will be expected to show that the agreement “is necessary for the public convenience and properly conserves the public interest.” Noting that several of TGVI’s other Municipal Gas Operating Agreements contain “most favoured nations” clauses like Section 70 of the Sooke document, TGVI should identify its total exposure if these provisions remain in the arrangement with Sooke.

Yours truly,

Original signed by:

Robert J. Pellatt

JBW/cms
Enclosures