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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-90-06

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

and

**An Application by
Terasen Gas Inc. (formerly known as BC Gas Inc.)
and Terasen Gas (Vancouver Island) Inc.
for Approval of Tax Loss Utilization Planning**

BEFORE: L.F. Kelsey, Commissioner July 27, 2006
L.A. Boychuk, Commissioner

O R D E R

WHEREAS:

- A. On September 21, 1998, Terasen Gas Inc. ("TGI") informed the Commission of a tax loss utilization plan ("TLUP") that the Terasen group of companies planned to put in place in late 1998 or early 1999; and
- B. TGI had annual taxable income and several non-regulated businesses ("NRBs") had tax losses. The TLUP involved inter-company loans from the NRBs to the legal entity of TGI to create deductible interest expense in the legal entity of TGI and taxable interest income in the NRBs; and
- C. All transactions in the TLUP were considered to be non-utility and were to have no adverse impact on TGI or its customers; and
- D. On November 27, 1998, TGI requested an acknowledgement letter from the Commission confirming that the TLUP had been reviewed and that no concerns had been raised; and
- E. On December 10, 1998, the Commission issued the requested acknowledgement letter to TGI; and
- F. The Commission by Order No. G-34-03 denied a request from TGI for approval to adjust the deferral account of TGI to share equally the reduced tax savings that resulted from the effect of the non-utility TLUP in concert with unanticipated higher gas costs and tax rate reductions; and
- G. On August 17, 2005, Kinder Morgan, Inc ("KMI") and 0731297 B.C. Ltd. applied for the acquisition of common shares of Terasen Inc. On November 10, 2005 the Commission issued its Decision ("KMI Decision") accompanied by Order No. G-116-05 approving the KMI acquisition subject to the conditions contained in the KMI Decision; and

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- H. Section 7.2.1 Ring Fencing of the KMI Decision includes five ring-fencing conditions. The ring-fencing conditions relevant to the TLUP transactions are Conditions 3 (a), 3 (c) and 5. Condition 3 (a) requires that no Terasen Utility will lend to, guarantee or financially support any affiliates of the Terasen Utilities, other than between TGI and TGS, or as otherwise accepted by the Commission. Condition 3 (c) requires that no Terasen Utility will enter into a tax sharing agreement with any affiliate of the Terasen Utility, unless the agreement has been approved by the Commission. Condition 5 requires that no Terasen Utility will engage in, provide financial support to or guarantee non-regulated businesses, unless otherwise approved by the Commission; and
- I. On March 13, 2006 both TGI and Terasen Gas (Vancouver Island) Inc. ("TGVI") (both collectively as "the Utilities") in its filing explains that TGI intends to continue to utilize the TLUP structures and that TGVI anticipates that it will enter into similar arrangements commencing in 2006; and
- J. The Utilities do not believe the TLUP to be "tax sharing agreements". Based on the wording of the KMI Decision it is not clear to the Utilities if the Commission intended that the TLUP transactions be captured by the ring fencing conditions. Since TGVI has not entered into the TLUP transactions in the past, TGVI seeks either an acknowledgement in form similar to that provided by the Commission to TGI in 1998 or, if necessary, Commission approval to enter into the TLUP transactions ("the Application"); and
- K. The Commission has reviewed the Application and considers that the ring-fencing conditions applicable to the TLUP transactions are Conditions 3 (a), 3 (c), and 5. The Commission finds that approval of the TLUP transactions as described by the Utilities are warranted subject to conditions.

NOW THEREFORE the Commission finds that the TLUP transactions are tax sharing agreements and would provide financial support arising from tax benefits to NRBs and the Utilities require approval of the TLUP transactions to satisfy Conditions 3 (c) and 5, and pursuant to Sections 23(1) and 54(9) of the Utilities Commission Act, the Commission orders as follows:

1. The TLUP transactions are approved subject to the conditions that all transactions in the TLUP are to be non-utility and will have no adverse impact on the Utilities or their customers.
2. The Utilities are required to report to the Commission within 45 days of any adverse impact to the Utilities or their customers resulting from the TLUP transactions.

DATED at the City of Vancouver, in the Province of British Columbia, this 27th day of July 2006.

BY ORDER

Original signed by:

L.F. Kelsey
Commissioner