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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** C-15-06

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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.
for Approval of an Operating Agreement
with the Town of Osoyoos**

BEFORE: L.F. Kelsey, Commissioner)
L.A. Zaozirny, Commissioner) August 10, 2006

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

WHEREAS:

- A. On January 12, 2006, Terasen Gas Inc. ("Terasen Gas") applied to the British Columbia Utilities Commission ("the Commission") for approval of an Operating Agreement with the Town of Osoyoos ("the Municipality") ("the Application"); and
- B. The Franchise Agreement approved by Commission Order No. C-2-79 expired on September 25, 1998; and
- C. By way of successive extension agreements, the term of the Franchise Agreement was extended to December 31, 2004; and
- D. In its Application, Terasen Gas advised that it undertook negotiations with the Union of British Columbia Municipalities ("UBCM") Operating Agreement Committee to establish the terms of a new form of Operating Agreement. In 2005 Terasen Gas successfully negotiated a pro-forma Operating Agreement with the UBCM and using this agreement as a template, negotiated new Operating Agreements with those municipalities with Operating Agreements which expired on December 31, 2005 (collectively the "Municipalities"); and
- E. The Application requests approval of a 20-year Operating Agreement between Terasen Gas and the Municipality from January 1, 2006 to December 31, 2025 that sets out the terms and conditions, including a

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3 percent operating fee, under which Terasen Gas shall exercise its rights to use the public places of the Municipality in conducting its business of distributing gas within the Municipality; and

- F. Commission Order No. C-7-03, which approved a District of Salmon Arm and Terasen Gas Operating Agreement and Addendum, directed Terasen Gas to seek a method in future agreements to convert the operating fee to a charge on utility margin; and
- G. The Commission issued Information Request No. 1 to Terasen Gas on February 20, 2006, including questions related to the impacts of the proposed operating fee on rate stability and requesting an explanation of how such a fee based on Terasen Gas revenue fairly compensates the Municipalities for the costs incurred as a result of Terasen Gas' use of the streets and other public places within the Municipalities; and
- H. Terasen Gas responded to the Commission's Information Request No. 1 on March 9, 2006. Terasen Gas provided historical franchise fee information and discussed five operating fee options (Option 1-5) which were all rejected by the Municipalities; and
- I. The Commission issued Information Request No. 2 on March 28, 2006 and Terasen Gas responded on April 13, 2006. In IR No. 2, Terasen Gas analyzed an operating fee calculation using a base year methodology and provided additional information as to why Options 2, 4 and 5 in IR No. 1 were rejected; and
- J. In a letter dated May 9, 2006, the Commission sought further submissions from Terasen Gas, the UBCM and the Municipalities to support or justify how the public interest is better served through an operating fee, as proposed, compared to Option 5, described as a "Hybrid Approach" whereby customers in Rate Classes 1-3 would pay a margin based fee and all other customers would continue to pay a franchise fee based on revenue of 3.09 percent; and

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K. From May 17, 2006 to May 26, 2006 the Commission received submissions from Terasen Gas, the City of Rossland, the District of Hudson's Hope, the City of Kimberly, the City of Fernie, the City of Grand Forks, the Town of Oliver and the City of Cranbrook. Other interested parties such as the City of Kelowna, the City of Nelson and Mr. Greg McCormick also provided submissions to the Commission. Among other things, Terasen Gas and the Municipalities stated that the agreements are "package deals" with a considerable amount of compromise involved, including the fees agreed to within the package, and outlined their significant concerns to the added complexity, costs, communication and need to renegotiate if a margin fee were imposed; and

L. The Commission has reviewed the Application and the related submissions presented to it and has determined that the Operating Agreement with the Town of Osoyoos should be approved.

NOW THEREFORE the Commission, pursuant to Section 45 of the Utilities Commission Act the Commission approves the Operating Agreement as filed.

DATED at the City of Vancouver, in the Province of British Columbia, this 29th of August 2006.

BY ORDER

Original signed by

L.F. Kelsey
Commissioner