

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER G-118-08**

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

**and**

**A Complaint from CEG Energy Options Inc. concerning the Determination by Terasen Gas Inc. of the  
Total Delivery Requirement Calculation that is administered as part of Rate Schedule 36**

**BEFORE:**

L.F. Kelsey, Commissioner  
P.E. Vivian, Commissioner

August 14, 2008

**O R D E R**

**WHEREAS:**

- A. By letter dated February 7, 2008 counsel acting on behalf of CEG Energy Options Inc. ("CEG") filed a complaint with the British Columbia Utilities Commission ("Commission") and requested that the Commission issue an Order to permit CEG to exercise its audit right under Section 15.09 of Rate Schedule 36 and to grant access to the accounting books and records of Terasen Gas Inc. ("Terasen Gas") related to the calculation of the Total Delivery Requirements ("TDR") for the period beginning August 1, 2007 and ending October 31, 2007; and
- B. The Commission reviewed the correspondence between CEG and Terasen Gas as well as with the Commission during the period from October 22, 2007 to July 17, 2008; and
- C. After reviewing CEG's letter dated March 13, 2008, the Commission considered that there was enough evidence to direct Terasen Gas to comply with CEG's request and issued Commission Letter L-8-08 dated March 18, 2008; and
- D. By letter dated June 4, 2008 Terasen Gas outlined the process involved in determining the TDR and pointed out that although CEG claimed a financial loss there was no evidence to substantiate that claim; and
- E. By letter dated June 13, 2008, CEG's counsel agreed that as a result of Terasen Gas' incorrect calculation in the determination of the TDR, CEG was unable to deliver to its customers the full amount of gas that it had reserved and hedged. CEG's counsel stated that the unrealized revenue shortfall amounted to \$295,908 and requested that the Commission issue an Order under Section 25 of the Utilities Commission Act that would transfer this sum to CEG; and

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- F. By letter dated July 7, 2008 Terasen Gas argued that CEG did not actually suffer a financial loss but only a lost financial opportunity; and
- G. By letter dated July 17, 2008 CEG sent a letter to the Commission reiterating CEG's position and disputing the position of Terasen Gas as set out in its letter dated July 7, 2008; and
- H. The Commission sent information requests to CEG and Terasen Gas on August 1, 2008. CEG and Terasen Gas responded to these questions on August 8, 2008; and
- I. The Commission has reviewed CEG's complaint and relied upon this information and representations made by CEG and Terasen Gas.

**NOW THEREFORE** the Commission, for the reasons outlined in the Reasons for Decision attached as Appendix A to this Order:

- 1. Declines to order a further audit of the Terasen Gas forecast for the period of August 1, 2007 to October 31, 2007.
- 2. Concludes that it has not jurisdiction to adjudicate on the complaint for payment of damages.

**DATED** at the City of Vancouver, in the Province of British Columbia, this            14<sup>th</sup>            day of August 2008.

BY ORDER

*Original signed by:*

L.F. Kelsey  
Commissioner

Attachment

A Complaint from CEG Energy Options Inc. concerning the calculation of the  
Total Delivery Requirement Calculation by Terasen Gas Inc under Rate Schedule 36

**REASONS FOR DECISION**

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The Customer Choice program for commercial customers is based on Rate Schedule 36 whereby each Gas Marketer supplies gas to its customer group based on a normalized forecast or Total Delivery Requirement ("TDR") which is the product of an algorithm developed by Terasen Gas Inc. Terasen Gas Inc. ("Terasen Gas" or "TGI" or "Terasen") calculates the TDR and develops a forecast for each Gas Marketer three months before it is finalized. Each Gas Marketer receives preliminary calculations daily for review and reaction before the actual number is crystallized and gas supply by the Gas Marketer must be arranged.

TGI is solely responsible for calculating the TDR and in this case, for the period August 1, 2007 to October 31, 2007 was also in the process of updating the algorithm. TGI provided daily preliminary TDR calculations between May 1, 2007 and July 13, 2007. CEG Energy Options Inc. ("CEG") did not question the normalized actual calculations or indicate a discrepancy in the TDR until September 24, 2007 which was well within the delivery period. By letter dated October 22, 2007, CEG notified TGI that there was an error in the calculation and sought approximately \$500,000 in financial compensation.

The following chronology of events and summary of the correspondence among Terasen Gas, CEG and the British Columbia Utilities Commission ("the Commission") outline the issue in detail:

**1. Letter dated October 22, 2007 from CEG to Terasen Gas**

CEG pointed out to Terasen Gas that there was a significant discrepancy between CEG's calculation and Terasen Gas' determination of the Total Delivery Requirement. This is the only interval, the August 1, 2007 to October 31, 2007 period, of the thirteen periods where there has been a significant discrepancy. In this timeframe, the TDR for CEG is 16 percent or nearly 1,600 GJ/d lower than CEG's forecast quantity and represents a total discrepancy for the Delivery period in question of 140,000 GJ. After this time, CEG contends that the TGI quantities move back in alignment for the November 1, 2007 entry date.

CEG argued that since the gas quantity had been reserved and hedged for CEG's customers, excess gas had to be sold off system and realized significantly lower spot market prices that resulted in a loss to CEG but a gain to the Commodity Cost Reconciliation Account ("CCRA") and Midstream Reconciliation Account ("MCRA") of about \$500,000.

**2. Letter dated November 13, 2007 from Terasen Gas to CEG**

Terasen Gas took the position that Rate Schedule 36 does not obligate it to review or recalculate a delivery requirement once it is finalized. The Customer Choice Workshop held in March 15, 2007 reviewed the timing of the preliminary delivery requirement in detail. The purpose of this advance information is to provide Gas Marketers with an opportunity to supply feedback that would help to identify any potential errors. Once this

preliminary delivery requirement is finalized the review process ends and the Gas Marketers are to then arrange gas supply.

In the case of the delivery requirement for the period August 1, 2007 to October 31, 2007, TGI's position is that the daily preliminary requirement from May 1 to July 13 was provided to CEG but CEG did not respond for a period of 74 days. It was not until September 24 that CEG realized that there was an issue.

Terasen Gas investigated the complaint and determined that an improvement in the allocation algorithm would result in an increase of 421 GJ/d or 5 percent of the total calculated volume requirement. It concluded that the difference in volume between the initial and the revised calculations should not be considered an issue as it falls within a reasonable range of forecast error for this type of estimate.

Terasen Gas took the position that a reasonable opportunity was afforded CEG to review the delivery requirements for the period August 1 to October 31, 2007 and stated that the fault lies with CEG for not taking advantage of this process.

In addition to the above comments, Terasen Gas identified a number of issues that required a more direct response as follows:

1. CEG claimed that Terasen Gas failed to prioritize a response to its request for review of the delivery requirements calculation for the period August 1 to October 31 and that Terasen Gas was insufficiently responsive to inquiries. However CEG was advised by TGI that the work would require some time to complete and work was in process preparing the next delivery requirement calculation. Since this task required identical resources, priority was given to the assignment already in progress.
2. CEG compared its forecast to that of Terasen Gas but in TGI's view it is impossible to compare the accuracy without knowing how CEG's forecast was prepared. CEG claimed that the delivery requirement volume was understated for the period under review by about 1,600 GJ/day or 16 percent. TGI considered the difference would be no more than a 5 percent over the amount calculated in July.
3. CEG claimed a financial loss as a result of supplying a lower volume than was hedged for the August to October 2007 period. Under Rate Schedule 36, Gas Marketers are required to meet the delivery requirements set by Terasen Gas and it is the Gas Marketer's responsibility to manage that commitment. TGI indicated that it is not responsible for the level of hedging under Section 23 of Rate Schedule 36.
4. CEG claimed a financial loss which was offset by a corresponding financial gain to the MCRA and CCRA as a result. In Terasen Gas' opinion, it is not possible to realize a financial gain to these accounts as suggested by CEG.

In conclusion, Terasen Gas suggested that CEG was afforded a reasonable opportunity to review the delivery requirements for the period August 1, 2007 to October 31, 2007 as a preliminary delivery requirement was provided for review on each day for a total of 73 days before finalization on July 14, 2007.

**3. Letter dated December 4, 2007 from CEG to Terasen Gas**

CEG considered that it had a contractual right to review Terasen Gas' books and records as per section 15.09 of Rate Schedule 36.

**4. Letter dated December 21, 2007 from Terasen Gas to CEG**

Terasen Gas stated that Rate Schedule 36, Section 15.09 provided the opportunity for both TGI and a Gas Marketer to audit transactions. However in Terasen Gas' view the term "transaction" did not include or contemplate a review of the process for determining the delivery requirements. The term transaction is limited to gas sale, purchaser and exchange agreement calculations. Audit rights afforded a Gas Marketer under Section 15.09 of Rate Schedule 36 relate to transactions identified above. Therefore Terasen Gas would not allow CEG's request to audit the process to determine delivery requirements.

**5. Letter dated January 8, 2008 from Lawson Lundell LLP ("LLL") representing CEG to Terasen Gas**

LLL indicated that CEG disagrees with Terasen Gas' position with respect to Section 15.09 of Rate Schedule 36 and maintains that that CEG has the right to audit. In addition, it is CEG's opinion that Section 15.09 is intended to preserve transparency in the deregulation of the gas marketing process as well as provide parties with the right to inquire into quantitative discrepancies that may occur. It is CEG's view that TGI's interpretation of the defined term "Transaction" does not reflect the spirit or intent of Section 15.09.

*"A party shall have the right , at its own expense, upon reasonable notice and at reasonable times, to examine the books and records of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment or computation made under Rate Schedule 36 or the Rates Schedule 36 Service Agreement."*

In CEG's opinion, the above phrase in Section 15.09 clearly relates to a "Transaction" as defined in Section 2.10 (xx) of Schedule 36. If there were no audit right, Terasen Gas could effectively set Total Delivery Requirements with impunity. Therefore CEG seeks to invoke its right to audit TGI's "books and records" under Section 15.09.

**6. Letter dated January 18, 2008 from Terasen Gas to CEG**

Terasen explained the opportunity that was available to Gas Marketers in advance of setting the firm daily gas delivery requirement. On May 1, 2007 Terasen supplied this preliminary data to CEG for the August 1 to October 31, 2007 period and there was a 74 day window for CEG to bring any issue to the attention of Terasen (September 24, 2007).

Section 15.09 of Rate Schedule 36 describes a stand alone audit arising out of "Transactions" which arise out of Article XV Marketer Billing, Payment and Netting. Terasen does not consider that the determination of the daily delivery requirement falls under the definition of a "Transaction" or Article XV. Therefore Terasen will not agree to CEG's request to audit the determination of the daily delivery requirement.

## **7. Letter dated February 7, 2008 from LLL to the Commission**

On February 7, 2008 LLL, acting on behalf of CEG, filed a complaint with the Commission and requested the Commission issue an Order to permit it to exercise audit right under Section 15.09 of Rate Schedule 36 and grant access to Terasen Gas' books and records related to the calculation of the TDR for the period beginning August 1, 2007 and ending October 31, 2007.

Rate Schedule 36, Section 15.09 states the following:

*"A party shall have the right, at its own expense, upon reasonable notice and reasonable times, to examine the books and records of the other party only to the extent reasonably necessary to verify the accuracy of the statement, charge, payment or computation made under Rate Schedule or Rate Schedule 36 Service Agreement."*

CEG reiterated that without this audit provision Terasen Gas could set TDR with impunity.

## **8. Letter dated March 13, 2008 from Terasen Gas to CEG**

Terasen Gas stated that it has not changed its position on the issue of accuracy of forecasts or in relation to CEG's request for an audit. However Terasen did indicate that it contacted Mr. Kirby Morrow of CEG on February 21, 2007 with an offer to review the calculation process used in determining the TDR in an attempt to resolve the issue. The objective was to demonstrate to CEG that the calculation process produced a reasonable estimate of delivery requirements. However CEG responded that such a meeting would not satisfy CEG as its goal was to extract financial compensation from Terasen Gas in respect of this matter.

TGI maintained that it has adequately addressed this issue and if CEG continues to pursue a financial compensation claim for breach of contract then CEG should pursue this claim in the court. The Commission process should not be used as a mean of discovery in advance of such a claim. It was also Terasen Gas's view that the Commission should have no further role in this matter.

## **9. Letter dated March 13, 2007 from CEG to the Commission**

CEG indicated that the infrastructure developed by TGI for the Customer Choice Program is not being contested. However CEG is challenging the data input used in the algorithm for the August allocation. CEG considered that TGI utilized inconsistent and erroneous adjustment factors that resulted in significant anomalies to recent quarterly and monthly allocations. There were erratic discrepancies between CEG marketer groups for this period in question and previous periods and this appeared to be caused by different factor adjustments that were used for individual CEG marketer groups.

CEG provided sample data in graphical and tabular form to support its position. CEG suggested that if the TDR was calculated today based on current factors used by Terasen the result would be more consistent with past calculations and the more current computation.

In order to more clearly solidify its position, CEG requested that the Commission direct Terasen to recalculate the CEG delivery requirements for the August period with CEG customers under contract in that period utilizing data factor adjustments applied to determine delivery requirements for November 2007.

It was CEG's contention that the reduction in delivery requirements for August 1 to October 31, 2007 required CEG to sell its surplus volume allocation on the spot market, resulting in a loss. The difference between the spot price and the customer price applied against the volume reductions resulted in an unrecovered loss to CEG of \$500,000. The Terasen MCRA and CCRA accounts enjoyed an equivalent benefit of approximately \$500,000 by purchasing incremental spot gas and reselling it to CEG customers.

#### **10. Commission Letter L-8-08 dated March 18, 2008**

After reviewing CEG's letter dated March 13, 2008, the Commission considered that there was enough evidence to direct Terasen Gas to comply with CEG's request as stated in its Letter as follows:

*"CEG requests that the BCUC direct Terasen to recalculate the CEG delivery requirements for the August period utilizing data factor adjustments that were utilized to determine CEG's delivery requirements for November 2007. CEG also requests that all the data used for this revised allocation are provided to CEG and the Commission for review."*

#### **11. Letter dated June 4, 2008 from Terasen Gas to the Commission**

Terasen responded to CEG by stating that both TGI's gas cost account Commodity Cost Reconciliation Account ("CCRA") and Midstream Cost Reconciliation Account ("MCRA") are treated as direct flow through to the customer without a mark-up. Therefore there was no incentive for Terasen to influence gas costs that flow through the two accounts.

Rate Schedule 36, which must be signed by the Gas Marketer in order to participate in the Commodity Unbundling Program for both residential and commercial customers, required that Terasen Gas be solely responsible for the calculation of delivery requirements. This agreement did not obligate Terasen Gas to review or recalculate a delivery requirement once it was finalized.

As Terasen already pointed out in its letter to CEG dated November 13, 2007, the Gas Marketer calculations were expected to fall within a +/- 15 percent range of forecast accuracy. The allocation algorithm may be updated in the normal course of business and the resultant volume changes to the supply requirement may be greater than what would be expected to occur.

The Marketer Supply Requirement included only those customers remaining enrolled by a Gas Marketer at the end of the 12<sup>TH</sup> calendar day of the month prior to the scheduled date of gas delivery to the designated customers. A premise factor was calculated for each customer that is to receive a portion of total system gas supply. Premise factors are then recalculated once each year in July and implemented at the same time as the approved Annual Contracting Plan. The algorithm then converts billed consumption into calendar month equivalents for a 12 month period. If there is data missing then forecast monthly use rates are applied to construct the missing information. Once the premise numbers are calculated, Gas Marketers will not experience

a change in calculated volume until the recalculation occurs again in the following year. The objective is to protect Gas Marketers from a volume change from the calculated level for an entire year. Much of this process was created and has been in use since the implementation of the Customer Choice program beginning November, 2004.

The Residential Customer Choice Program received two refinements effective April 2007. The first refinement, requested by Gas Marketers was for more timely estimates of the Marketer Supply Requirements or TDR. Therefore on May 1, 2007 Gas Marketers began to receive a daily preliminary delivery requirement. The second modification refined the algorithm used to calculate the Marketer Supply Requirement so that it more accurately reflected consumption by customer than the allocation algorithm that was used prior to that time.

The two refinements were implemented effective April 2007. Beginning May 1, 2007 on a daily basis, the preliminary delivery requirements for the August/October 2007 period were distributed to Gas Marketers. In addition, the algorithm to calculate the Marketer Supply Requirement was significantly refined to more accurately calculate consumption by customer.

Although the daily delivery requirements for the August – October 2007 period that incorporated the above refinements were provided to all Gas Marketers so that there was an opportunity to review this information no Gas Marketer provided any feedback questioning the accuracy of the calculations before they were finalized in mid-July. Terasen conducted a regular review of the algorithm in October, 2007 and found that it did not process the billed consumption history properly for all customers. The problem was primarily caused by a change in the customer mix from the May to August 2007 entry period when 499 commercial customers were added. The issue was corrected and a new version of the algorithm or third algorithm was applied to determine the November 2007 – January 2008 Marketer Requirement calculation.

The third or revised algorithm applied to the August to October 2007 period showed that a recalculation for CEG would result in a TDR of 946 GJ/d higher or 11.7 percent (846 GJ/d higher if marketer groups CEG 11 and CEG 14 were excluded in order to provide a direct comparison with the presentation of CEG's data in its March 13, 2008 letter). The revision to the algorithm impacts total TDR and would impact marketers either positively or negatively including the CCRA. Although the overall customer count remained relatively the same, a significant number of customers terminated contracts and 177 new customers enrolled. The increase in volume between August and November 2007 is attributable primarily to an increase of 499 commercial customers. A change in the base forecast and the Annual Contract Plan also contributed to an increase in total volume.

However even though the revised algorithm would impact some Gas Marketers with an increase and others with a decrease, Terasen Gas did not receive any feedback questioning the accuracy of the calculations before they were finalized in mid July. In fact, other than CEG, Terasen has not received any comments from any Gas Marketer to this point.

In addition, Terasen Gas' position is that although the application of the revised algorithm showed that the TDR for the August to October 2007 period would increase by 946 GJ/d, this difference falls within an acceptable range of forecast accuracy to the overall TDR. Therefore no special accommodation should be granted to an individual Gas Marketer since there was a process in place for all the Gas Marketers to follow to correct anomalies if they occurred.



A preliminary delivery requirement is updated daily and provided to all Gas Marketers prior to the final determination of the Marketer Supply Requirement or TDR to assist in the identification of errors prior to the finalized calculation. After this point, the review process terminates to allow a Gas Marketer ample opportunity to arrange for gas supply.

CEG was provided with a daily preliminary delivery requirement estimate from May 1 to July 13 for the period in question, August 1 to October 31, 2007. It was not until September 24, 2007 or 73 days after the initial preliminary delivery estimate that CEG questioned the accuracy of this forecast. Therefore Terasen contends that CEG was provided with ample opportunity to review the forecast but chose not to take advantage of this information until September 24, 2007.

Terasen asserted that the loss claimed by CEG from selling its excess gas on the spot market was not substantiated by any evidence.

Similarly, CEG did not provide proof for its assertion that the CCRA and MCRA benefited by an amount equivalent to the loss alleged to have been suffered by CEG. In TGI's opinion, a change to the calculation does not confer a benefit upon one participant at the cost of another. Therefore there is no corresponding benefit to the MCRA or CCRA.

#### **12. Letter dated June 13, 2008 from LLL to the Commission**

CEG pointed out that it has never accepted the forecast accuracy in the range of plus or minus 15 percent and the Terasen's unilateral assertion does not relieve it from the responsibility to provide CEG with accurate TDR calculations.

CEG claimed that as a result of Terasen's admitted mistake in calculating the TDR, CEG did not deliver to its customers the full amount of spot gas that it had reserved and hedged. This unrealized revenue shortfall amounted to \$295,908  $((\$8.67 - \$5.27) * (92 \text{ days} * 946 \text{ GJ/d}))$  and this lost financial opportunity resulted in a corresponding gain to either the CCRA or MCRA. CEG maintained that this assumption was supported by TGI's letter dated June 4, 2008, page 7, which states that:

*"Additionally, when changes are made to the calculation of the Marketer Supply Requirement, the effect of the change is spread among all gas marketers including Terasen Gas' default commodity offering which makes up the volume with the CCRA."*

Terasen's miscalculation of the TDR has resulted in a significant lost opportunity to CEG and if left unaddressed would defeat the purpose of Schedule 36. This tariff affords CEG two years to provide a written objection following the month of gas delivery.

In view of these issues, it was CEG's position that the Commission has jurisdiction in this matter under Section 25 and Section 38 of the Utilities Commission Act ("UCA") as well as Section 23.06 of rate Schedule 36 which states the following:

*“Any Controversy or claim arising out of or relating to the Rate Schedule 36 Service Agreement or this Rate Schedule shall be determined by the BCUC or by arbitration before a single arbitrator selected by the parties in accordance with the Domestic Commercial Arbitration Rules of the British Columbia Arbitration Centre in Vancouver, British Columbia.”*

Therefore its CEG’s position that the Commission should issue an Order under Section 25 of the UCA that would transfer to CEG the sum of \$295,908. CEG also indicated that it reserves the right to conduct an audit of the books and records of Terasen Gas pursuant to section 15.09 of Rate Schedule 36 and to pursue any other legal remedy to resolve this matter.

**13. Letter dated July 7, 2008 from Terasen Gas to the Commission in Response to Letter from CEG dated July 13, 2008**

Terasen Gas indicated that it had now responded to the Commission’s direction in its Letter L-8-08 (dated March 18, 2008) that requested Terasen Gas to provide Daily Commodity Quantity (“DCQ”) calculations for each of the CEG’s customer groups and the total DCQ for the period from August 1, 2007 to October 31, 2007 utilizing the algorithm that was applied to perform this calculation for the November 1, 2007 to January 31, 2008 period. In the opinion of Terasen Gas, since the Commission has already ruled on the request with its direction of March 18, 2008 the matter is now res judicata and CEG is precluded from requesting that the Commission direct Terasen to again audit Terasen Gas’ books and records.

In Terasen Gas’ view, CEG now characterizes its claim for lost compensation as a “financial lost opportunity” based on the assumption that the error resulted in an equal and corresponding gain to Terasen Gas’ CCRA and MCRA accounts. This “significant lost opportunity” or “unrealized revenue shortfall” amounted to \$295,908.

Terasen Gas explained that CEG’s claim is without legal basis for the following reasons:

1. UCA Section 25 does not apply. There has been no Commission finding that the utility is providing a service that is “unreasonable, inadequate or unreasonably discriminatory” nor does this section of the Act provide the Commission with the authority to make an order for any consequential damages.
2. The calculation of the TDR was to be based on best estimates and improvements to the algorithm and was an iterative process that required an examination and response from the Gas Marketers. Rate Schedule 36 does not identify a level of accuracy or allow for compensation for any failure to provide accurate forecasts. It would be unfair to apply this threshold at this point and impossible considering it was always intended to be a forecast.
3. CEG did not experience actual damages but only a “financial lost opportunity”. Rate Schedule 36 Section 24.01 states that:

*“If no remedy or measure of damages is expressly provided herein or in a transaction, a party’s liability shall be limited to direct actual damages only, such direct actual damages shall be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. Unless expressly provided herein, neither party shall be liable for consequential, incidental, punitive, exemplary or indirect*

*damages, lost profits or other business interruption damages by statute, in tort or on contract, under any indemnity provision or otherwise. It is the intent of the parties that the limitations herein imposed on remedies and the measure of damages be without regard to the cause or causes related hereto, including the negligence of any party, whether such negligence be sole, joint or concurrent, or active or passive."*

In Terasen's view, CEG's claim of "lost financial opportunity" is specifically foreclosed by section 24.01 as are further claims that have yet to be established.

4. Terasen Gas considered the Commission to be an inappropriate forum for adjudicating new claims by CEG due to the expansive nature of the claims, potential need for parties to introduce expert evidence and the need to cross-examine witnesses on evidence. The proper forum would be arbitration before an independent arbitrator pursuant to the Domestic Commercial Arbitration Rules of the B.C. Commercial Arbitration Centre in accordance with Section 23.06 of Rate Schedule 36 or by the courts in accordance with Section 23.04.

**14. Letter dated July 17, 2008 from LLL to the Commission in response to a letter from Terasen Gas dated July 7, 2008**

CEG explained that Terasen had misunderstood CEG's complaint and remedy it is seeking. CEG reiterated its complaint that Terasen used a flawed methodology to calculate the TDR for the period in question which resulted in CEG providing less gas to its customers than it had reserved and hedged. Since the actual load was in excess of the TDR, the shortfall in volumes was provided by Terasen. This shortfall in volumes has a sales value of \$295,908 providing Terasen properly calculated the correct TDR in its letter dated June 4, 2008.

CEG then outlined its request to the Commission for assistance as follows:

1. Obtain an audit as provided by the tariff
2. Require Terasen to rectify an error disclosed by the audit

It is CEG's view, after Terasen Gas undertook an audit which disclosed it had made a methodological error that led to anomalies in the TDR calculation, CEG expected Terasen would rectify the error. However Terasen claimed that CEG had not documented the financial consequence of its error to substantiate its claim.

CEG suggested that the Commission is left with the choice of either ordering the refund of \$295,908. based on CEG's determination and Terasen's information or, alternatively, requiring an audit pursuant to Section 15.09 of Schedule 36.

CEG then provided a number of responses to specific submissions in its July 7, 2008 letter as follows:

1. The Commission's letter dated March 18, 2008 was a suggestion and not a final determination.
2. The Commission can and should require Terasen to provide an audit.

3. Terasen failed to provide CEG with the best forecast and Terasen has admitted this failure. The TDR calculations set out in CEG's letter dated March 13, 2008 showed the error in the Terasen forecast. The issue is not the size of the forecasting error but difference between the forecast that was prepared and the forecast that should have been provided. Terasen is responsible for providing a forecast on a consistent basis employing the best technology available.
4. Section 24.01 of Schedule 36 allowed a complaint in connection with an inaccuracy to be made within the 2 year limitation period. CEG has complied with this provision and is seeking *"an accounting for opportunity to serve CEG's customers that was wrongly seized by Terasen"*.
5. The Commission's knowledge of the objectives of Rate Schedule 36 place it in a position to determine the extent of profits Terasen has improperly obtained.

#### Commission Determination

The Commission has reviewed the correspondence and views of each party with the respect to the issues in disagreement and recommendations to the Commission to resolve the dispute. It is the Commission's position that the information provided by Terasen in its letter dated June 4, 2008 satisfies Commission Letter L-8-08 and CEG's request *"to conduct an audit of the books and records of Terasen Gas pursuant to Section 15.09 of Rate Schedule 36"*. Therefore a further audit of the Terasen Gas forecast for the period August 1, 2007 to October 31, 2007 is not required.

The correspondence indicates that the position of CEG has changed markedly from the initial letter dated October 22, 2007 (Item #1) to the final communication on June 13, 2008 (Item #12). In the first letter to Terasen Gas, CEG indicated that the Total Delivery Requirement was 1,600 GJ/d lower or 140,000 GJ for the period in question and the Commodity Cost Reconciliation Account and Midstream Reconciliation Account gained \$500,000 as a result of Terasen's incorrect calculation. CEG stated that it suffered a corresponding loss of the same amount as a result of selling gas that had to be reserved and hedged for its customers at significantly lower spot market prices in the day market. This would seem to indicate that CEG suffered an actual financial loss.

However, in correspondence dated June 13, 2008 CEG accepted TGI's admission that the TDR should have been higher by 946 GJ/d but changed its position on the nature of its loss. It now claims an opportunity cost rather than an actual loss. It states that:

*"CEG accepts Terasen's admission that it made a mistake in calculating the TDR for the Period. CEG maintains, and has previously stated that, as a result of this miscalculation CEG did not deliver the volume of gas that it reserved and hedged for, to its customers at the appropriate Marketer Group Fixed Price. Rather, CEG was not given the opportunity to purchase the full amount of spot market priced volumes at Stage 2, NIT and Huntingdon for the volume of gas it should have supplied to Terasen had its TDR calculation been accurate."*

It is the Commission's position that Terasen Gas is obligated to provide the best forecast possible at the time the forecast is generated, keeping in mind that it is a forecast and that Terasen has structured the forecast review process placing an obligation on the part of Gas Marketer to analyze the calculation and provide the results of its examination back to Terasen. Rate Schedule 36 does not provide a percentage within which the forecast should fall although Terasen Gas and CEG have discussed a +/- 15 percent threshold as the early correspondence

between the two parties would suggest (Items #2 and #13). However it now appears that CEG does not accept this forecast variance in this situation and relies on Terasen's recalculation as the correct forecast even though it may fall within the suggested +/- 15 percent constraint (Item #12).

**The issue between the parties has now become whether CEG suffered direct actual damages, as CEG applied a method of purchasing gas on long term contracts for its customers which may not meet this definition. Therefore the complaint now falls within the interpretation of Section 24.01 of Rate Schedule 36 concerning the meaning of the term "direct actual damages". CEG's claim for compensation therefore should be more properly dealt with by arbitration pursuant to Section 23.06 of Rate Schedule 36 or by a legal proceeding as CEG has a binding contract with Terasen Gas and this dispute is over the interpretation of Rate Schedule 36.**