

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-52-09**

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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 (Whistler) Inc.
For Approval to Amend its Schedule of Rates
Effective January 1, 2009
And for a Return on Equity and Capital Structure**

BEFORE: P.E. Vivian, Panel Chair
A.J. Pullman, Commissioner May 15, 2009
M.R. Harle, Commissioner

O R D E R

WHEREAS:

- A. On October 3, 2008, Terasen Gas (Whistler) Inc. ("Terasen Whistler" or "TGW") applied to the British Columbia Utilities Commission (the "Commission") for adjustment to its rates effective January 1, 2009 and for approval of a Return on Equity ("ROE") and Capital Structure (the "Application"); and
- B. Following a review of the Application through a written hearing process the Commission Panel issued its Decision and Order G-35-09 on April 7, 2009 that did not accept the Application as filed and required a number of adjustments; and
- C. In Directive 5 of Order G-35-09, the Commission Panel accepted TGW's request to defer amounts in respect of conversion costs on a gross basis but directed TGW to reduce the amount deferred by \$1.076 million being the amount of prior year losses available for carry back at the start of 2009. A similar Commission Panel statement was made on page 28 of the Decision; and
- D. On April 17, 2009, TGW filed a Reconsideration Application of the Decision and Order G-35-09 pursuant to section 99 of the Utilities Commission Act (the "Act") on a mistake of fact that the \$1.076 million referenced was the tax benefit of a carry back and that the tax benefit was not returned to customers. TGW stated that the direction results in TGW being denied proper recovery of \$1.076 million in conversion costs; and
- E. TGW stated that the evidence shows that it had taxable income in years prior to 2009 and in 2009 it was projected to incur a loss of \$3.764 million for income tax purposes that could be carried back and/or carried forward. In the amendments to the Application, TGW carried back \$1.076 million of the 2009 loss against taxable income of prior years, which resulted in a \$344.3 thousand income tax refund being credited to customers in setting 2009 revenue requirements. The remainder of the income tax loss would be applied to reduce 2010 and 2011 income taxes; and

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- F. Pursuant to its Guidelines for Reconsideration of its Orders, an application for reconsideration by the Commission Panel typically proceeds through two phases. Following the completion of a Phase one comment process, the Commission Panel decides whether or not a reconsideration should proceed. If the reconsideration proceeds to the second phase, the parties are allowed to address the substance of the issues that the Commission Panel approves for reconsideration; and
- G. By Letter L-29-09, the Commission Panel informed TGW and the one registered intervener, the British Columbia Old Age Pensioners' Organization *et al.* ("BCOAPO"), that the first phase would not assist the Commission Panel in making a decision and would result in an unnecessary expenditure of time and resources for all parties. The Commission Panel found that TGW was able to establish on a *prima facie* basis that there was a potential likelihood of an error in fact or law in the direction to TGW on page 28 of the Decision to decrease the amount of the conversion costs by \$1.076 million. The Commission Panel concurred with TGW's view that the Reconsideration Application is very limited in scope and therefore decided to proceed directly to the second phase of the reconsideration. The Commission Panel was also of the view that, in that situation, submissions from TGW and BCOAPO would not assist the Commission Panel in making a decision; and
- H. The Commission has considered the Reconsideration Application and reviewed the relevant sections in the Decision and Order G-35-09.

NOW THEREFORE pursuant to section 99 of the Act, the Commission Panel orders for TGW:

1. The request in the Reconsideration Application to strike out the following sentence on page 28 of the Decision is approved:

"However, the Commission Panel directs TGW to reduce the amount deferred by \$1.076 million being the amount of prior years' losses available for "carry back" at the start of 2009."

2. The request in the Reconsideration Application to revise Directive No. 5 of Order G-39-05 to strike out part of the sentence is approved:

"Commission Panel accepts TGW's request to defer amounts in respect of conversion costs on a gross basis and directs TGW to reduce the amount deferred by \$1.076 million being the amount of prior year's losses available for "carry back" at the start of 2009."

DATED at the City of Vancouver, In the Province of British Columbia, this 15th day of May 2009.

BY ORDER

Original signed by:

P.E. Vivian
Panel Chair and Commissioner