

**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER** G-78-09

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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 Inc. ("Terasen Gas"), Terasen Gas (Vancouver Island) Inc. ("TGVI") and  
Terasen Gas (Whistler) Inc. ("Terasen Whistler") (collectively the "Terasen Utilities")  
for Return on Equity and Capital Structure

**BEFORE:** A.J. Pullman, Panel Chair  
D.A. Cote, Commissioner  
M.R. Harle, Commissioner

June 24, 2009

**O R D E R**

**WHEREAS:**

- A. By letter dated May 15, 2009, the Terasen Utilities filed with the British Columbia Utilities Commission (the "Commission") pursuant to sections 59 and 60 of the *Utilities Commission Act* (the "Act"), an application for Return on Equity and Capital Structure (the "Application"); and
- B. The Terasen Utilities applied for an increased Return on Equity ("ROE") for rate-setting purposes, and that the so determined ROE for Terasen Gas be used in establishing the ROE of TGVI and Terasen Whistler used for rate-setting. The Application requests that the revised ROE be effective from July 1, 2009. In addition Terasen Gas applied for an increase of the equity ratio in its Capital Structure to 40 percent effective January 1, 2010; and
- C. The Terasen Utilities further request that the Commission set their current rates as interim, effective July 1, 2009, until such time as permanent rates are established; and
- D. After the Procedural Conference on June 9, 2009 to hear submissions on the appropriate regulatory process and comments on the preliminary regulatory timetable, the Commission issued Order G-70-09 establishing an Oral Hearing process for the review of the Application and a final Regulatory Timetable. Order G-70-09 also established a schedule for written submissions on the subject of Terasen Utilities' request for interim rates. The deadline date for submissions by Intervenor was June 15, 2009 and the date for Reply Submission by Terasen Utilities was on or before June 22, 2009; and

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- E. Submissions were received from the Joint Industry Electricity Committee (“JIESC”), Zellstoff Celgar Limited Partnership (“Zellstoff Celgar”), Commercial Energy Consumers Association of British Columbia (“CEC”), and the British Columbia Old Age Pensioners Organization *et al.* (“BCOAPO”). All four Submissions opposed Terasen Utilities’ request for interim relief. Terasen Utilities’ Reply Submission was received by the Commission on June 18, 2009; and
- F. The Commission Panel has reviewed the submissions by all Parties and has concluded that Terasen Utilities’ request for relief should be approved.

**NOW THEREFORE** the Commission orders, for the Reasons attached as Appendix A to this Order, as follows:

1. Pursuant to section 89 of the Act, the Commission approves the request of Terasen Gas and Terasen Whistler that their respective current rates be set as interim, effective July 1, 2009.
2. Pursuant to the provisions of the Special Direction, changes to the allowed ROE from this proceeding are be treated as changes to TGV’s cost of service, effective July 1, 2009.

**DATED** at the City of Vancouver, In the Province of British Columbia, this 24<sup>th</sup> day of June 2009

BY ORDER

*Original signed by:*

Anthony J. Pullman  
Panel Chair

Attachment

A Request by  
Terasen Gas Inc. ("Terasen Gas"), Terasen Gas (Vancouver Island) Inc. ("TGVI") and  
Terasen Gas (Whistler) Inc. ("Terasen Whistler") (collectively the "Terasen Utilities")  
for Interim Rate Relief

**REASONS FOR DECISION**

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**Background**

In their Return on Equity and Capital Structure Application (the "Application"), Terasen Utilities request, in part, that the British Columbia Utilities Commission (the "Commission") determine an increased return on common equity ("ROE") for Terasen Gas for rate-setting purposes, and that the so determined ROE for Terasen Gas be used in establishing the ROE of TGVI and Terasen Whistler used for rate-setting. Terasen Utilities request that the revised ROEs for Terasen Gas, TGVI and Terasen Whistler be effective July 1, 2009. Pursuant to section 89 of the *Utilities Commission Act* (the "Act"), Terasen Gas and Terasen Whistler request that their existing rates be made interim effective July 1, 2009 until permanent rates can be established incorporating the Commission's decision on this Application. TGVI requests, also pursuant to section 89 of the Act that effective July 1, 2009 its cost of service under the Special Direction be made interim, and subsequently be adjusted to reflect the change in its ROE resulting from the Commission's determinations on the Application. The request for interim relief does not relate to the requested change in capital structure of Terasen Gas (Exhibit B-1, pp. 1-2, p. 31).

By Order G-70-09, the Commission established a schedule to receive written submissions from Parties on the subject of Terasen Utilities' request for interim rates. The deadline for Intervenor's submissions was June 15, 2009 and the date for Terasen Utilities' Reply Submission was on or before June 22, 2009.

**Intervenor's Submissions**

All Intervenor's oppose the request for interim rates.

By letter dated June 8, 2009, the Joint Industry Electricity Steering Committee ("JIESC") submitted, in part, that there is no evidence of urgency or special circumstances, and that granting the proposed interim rate increase is contrary to basic principles of fairness. JIESC states that the extraordinary remedy of interim relief suspends ratepayers' fundamental right to participate in the rate approval process and to make submissions on matters which have a substantial impact on their economic interests (Exhibit C11-2).

By letter dated June 8, 2009, Zellstoff Celgar Limited Partnership expressed its opposition to an interim rate increase to be effective July 1, 2009. Zellstoff Celgar submits that the interim relief is not appropriate in the circumstance as Terasen is requesting a break from the existing Commission approved formula based approach to ROE (Exhibit C9-2).

By letter dated June 12, 2009, Commercial Energy Consumers of British Columbia ("CEC") submitted that Terasen Utilities' request is in fact an application for retroactive ratemaking rather than a request for interim relief. Furthermore, CEC submits that all parties had agreement on the equity ratio and the ROE in the Commission approved settlement documents that can be found in Commission Order G-33-07. CEC acknowledges that while the 2008/2009 Negotiated Settlement Agreement ("NSA") did not preclude Terasen

from applying to the Commission for a variation in its equity ratio or ROE, it submits that it is inequitable that Terasen would seek and receive an adjustment for a period of six months of the 2008/2009 settlement period on a retroactive basis (Exhibit C3-2).

By letter dated June 15, 2009, BCOAPO submitted that there is nothing on record that creates any sense of urgency, special circumstances or persuasively demonstrates that the Terasen Utilities are having problems operating or attracting sufficient investment capital at a reasonable cost in these or any other market conditions using their current ROE and capital structure (Exhibit C1-2).

### **Reply Submissions**

In Reply, Terasen Utilities note that there are statements in the Intervenor's submissions that are not correct or mischaracterize facts (Exhibit B-2, pp. 3-4)

Terasen Utilities point out that, contrary to BCOAPO's claim, Terasen Gas is the only utility seeking a change in its equity ratio and that Terasen Gas is not seeking interim relief in this regard. Terasen Utilities also point out that JIESC's claim that it is seeking an interim rate increase is not correct, Terasen Utilities are seeking relief in the nature of making their current rates interim effective July 1, 2009. Regarding CEC's claim that in applying for a variation of its equity ratio and ROE, Terasen Gas is acting in a manner contrary to the existing NSA, Terasen Utilities observe that the NSA specifically provides that it "does not preclude the company from making an application to the Commission for a variation in the generic ROE mechanism and the Company's allowed ROE". Furthermore, Terasen Utilities describe the relief being sought as prospective in nature, contrary to CEC's suggestion that they are seeking retroactive rates.

Terasen Utilities refer to Commission Letter L-13-04 and submit that section 89 of the Act is the appropriate section to review requests for interim relief. Terasen Utilities submit that ordering the interim relief request will be "without prejudice" to all parties to fully develop and argue their respective positions and that the evidence in the Application is *prima facie* evidence that the allowed ROE for the Terasen Utilities should be increased.

### **Commission Panel Determination**

The Commission Panel has reviewed the submissions of the Intervenor and Terasen Utilities and has concluded that the interim rate relief sought by Terasen Utilities should be approved. The Commission agrees with the Terasen Utilities' Reply that the Intervenor's submissions contain statements that are not correct or have mischaracterized facts in that the Terasen Utilities are not requesting an interim rate increase, that only Terasen Gas seeks a change in its equity ratio and that it is not seeking interim relief in respect of its application to change its equity ratio. Nor does the Commission Panel consider the interim relief sought to be retroactive in nature. The Commission Panel accepts Terasen Utilities' submission the application for interim relief should be reviewed pursuant to section 89 of the Act which does not refer to special circumstances. The Commission Panel agrees with Terasen Utilities that a Commission Order approving the requested relief that their current rates be made interim is on a 'without prejudice' basis, and that all Parties will have the opportunity to fully participate in the hearing process and no final order will be made until all evidence has been heard and considered.

The Commission Panel approves the relief to make current rates interim as sought by Terasen Utilities but points out that the effective date for implementing any adjustment that may flow from the Commission's decision will be one of the issues in the proceeding and that all parties will be accorded the opportunity to make submissions thereon.