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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-68-10

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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 Reconsideration of Order G-28-10 regarding
a Certificate of Public Convenience and Necessity
for the Tilbury Property Purchase**

BEFORE: A.J. Pullman, Panel Chair/Commissioner
M.R. Harle, Commissioner

April 9, 2010

O R D E R

WHEREAS:

- A. On October 28 2009, Terasen Gas Inc. (Terasen Gas) applied (the Application) to the British Columbia Utilities Commission (the Commission), pursuant to section 45 of the *Utilities Commission Act* (the Act), for a Certificate of Public Convenience and Necessity (CPCN) for the purchase (the Tilbury Property Purchase) of a parcel of land known as the Northwest Hardwoods Site located at 6939, 7150 Tilbury Road, and 7505 Hopcott Road in the Tilbury Industrial Area of Delta, BC (the Property) adjacent to the Tilbury LNG Facility; and
- C. The Commission determined that the Application would be reviewed by a Written Public Hearing; and
- D. By Order G-28-10 dated February 23, 2010, the Commission determined that the Tilbury Property Purchase was in the public interest and that a CPCN should be granted to Terasen Gas for the Tilbury Property Purchase subject to the conditions set out in that Order and the Reasons for Decision attached as Appendix A thereto; and
- E. By letter dated March 9, 2010, Terasen Gas filed an Application for Reconsideration (Reconsideration Application) of Order G-28-10; and
- F. The Reconsideration Application states that the original Contract of Purchase and Sale for the Property has been amended to extend the date for obtaining Commission approval until April 23, 2010; and
- G. By letter dated March 10, 2010, the Commission sought comments from Interveners regarding the Terasen Gas proposal to compress the normal two-phase reconsideration application process into one-phase and a proposed timetable; and
- H. By letter and by email dated March 11, 2010, Interveners advised that they did not oppose a single phase process for the hearing of the Reconsideration Application, but requested an extension to the proposed timetable; and

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- I. By letter dated March 12, 2010 Terasen Gas advised that the revised timetable proposed by the Interveners was acceptable to Terasen Gas; and
- J. By Order G-44-10 dated March 15, 2010, the Commission Panel ordered that it would hear the Reconsideration Application by way of a written process and established a timetable for the filing of submissions; and
- K. The Commission Panel has considered the Reconsideration Application and the evidence and submissions filed and has determined that the Reconsideration Application should be granted on the conditions proposed by Terasen Gas in the Reconsideration Application, subject to the substitution of January 1, 2014 for January 1, 2013 in condition 3(e) proposed by Terasen Gas for the reasons set out in the Reasons for Decision attached to this Order as Appendix A.

NOW THEREFORE pursuant to section 99 of the Act, the Commission orders as follows:

1. Order G-28-10 is varied by rescinding paragraphs 2-7 and substituting the following paragraphs:
2. The total cost of the Property will be allocated as follows:
 - a. An amount equal to \$3.3 million, based on the current gross valuation less the estimated cost of subdivision and sale of the land south of Tilbury Road; and
 - b. The balance valued at the sum of all the costs of the transaction less the amount established in (a) above.
3. At the Contract closing date, the balance determined under 2(b) shall be captured in a non-rate base deferral account attracting allowance for funds used during construction (AFUDC) until being added to rate base in the appropriate land account on January 1, 2012.
4. At the Contract closing date, the amount of \$3.3 million determined under 2(a) will be captured in a non-rate base deferral account attracting interest. In addition, the following conditions will apply:
 - a. Terasen Gas will provide semi-annual reporting to the Commission with respect to its efforts to subdivide and sell the portion of the Property south of Tilbury Road, including updated estimates of its costs to subdivide and plans to achieve a cost-effective sale. The first report shall be filed on December 1, 2010 and shall continue until the Commission has approved the sale of the subdivided property or otherwise orders that no further reporting is required.
 - b. All costs of subdivision and sale will be captured in the deferral account.
 - c. The sale of the portion of the Property south of Tilbury Road will be subject to further Commission approval.
 - d. If the Commission approves the sale of the portion of the Property south of Tilbury Road, the proceeds of sale will be applied to the deferral account to offset the balance in the account with any positive balance returned to customers or negative balance recovered from customers.
 - e. If Terasen Gas has not achieved subdivision and sale of the portion of the Property south of Tilbury Road by January 1, 2014, then the balance in the account will enter into rate base, subject to a finding of imprudence on behalf of Terasen Gas in its efforts to achieve subdivision and sale.

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5. Terasen Gas will defer the property taxes related to the Property until January 1, 2012 and recover them in rates over a three-year amortization period.
6. Terasen Gas will allocate those incremental revenue requirement items which can be reasonably identified as necessary to bring the Property into its required condition to be capitalized to the appropriate land account and to expense any other costs that fail to meet this criterion.
7. Terasen Gas will report to the Commission, by January 1, 2012, potential opportunities that might generate any revenue from the land north of Tilbury Road outside the heat flux zone, while remaining compliant with CSA Z276 and the costs Terasen Gas anticipates would be required to realize any such potential opportunities.
8. Terasen Gas is to file a written confirmation of its acceptance of the above conditions within 5 working days of the date of this Order, failing which the Reconsideration Application is dismissed.

DATED at the City of Vancouver, in the Province of British Columbia, this 9th day of April 2010.

BY ORDER

Original signed by:

A.J. Pullman
Panel Chair/Commissioner

Attachment



IN THE MATTER OF

**AN APPLICATION BY TERASEN GAS INC.
FOR RECONSIDERATION OF ORDER G-28-10 REGARDING
A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
FOR THE TILBURY PROPERTY PURCHASE**

REASONS FOR DECISION

April 9, 2010

BEFORE:

A.J. Pullman, Panel Chair/Commissioner
M.R. Harle, Commissioner

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1.0 INTRODUCTION

This is an application by Terasen Gas Inc. (Terasen Gas) for a reconsideration of British Columbia Utilities Commission (Commission) Order G-28-10 (the Order) dated February 23, 2010. In the Order, the Commission determined that the application of Terasen Gas for the approval, pursuant to section 45 of the *Utilities Commission Act* (the Act), of its purchase of a parcel of land known as the Northwest Hardwoods Site in the Tilbury Industrial Area of Delta (the Tilbury Property Purchase) was in the public interest and that a Certificate of Public Convenience and Necessity (CPCN) should be granted to Terasen Gas subject to certain conditions.

The conditions were set out in paragraphs 2-7 of the Order as follows:

2. Terasen Gas agrees to allocate the total cost of the Property between:
 - (a) that which is not required to comply with CSA Z276 (the land south of Tilbury Road) and that which is required to comply with CSA Z276 as follows:

The residual value of the land south of Tilbury Road will be determined at its current gross valuation less the sum of:

 - (i) the estimated cost of subdivision and sale,
 - (ii) estimated property taxes for the period from the Contract closing date until January 1, 2012, and
 - (iii) estimated short term interest expense from the Contract closing date until January 1, 2012; and
 - (b) the balance of the Property (all that lying north of Tilbury Road) will be valued at the sum of all the costs of the transaction less the residual value of the land south of Tilbury Road established above.
3. Terasen Gas agrees that at the Contract closing date, the value of the balance of the Property shall be captured in a non-rate base deferral account, with the balance attracting AFUDC [Allowance for Funds Used During Construction] until being added to rate base in the appropriate land account on January 1, 2012.
4. Terasen Gas agrees to defer only the property taxes related to that part of the Property that lies north of Tilbury Road and to recover them in rates over a three-year amortization period.
5. Terasen Gas agrees to allocate those incremental revenue requirement items which can be reasonably identified as necessary to bring that part of the Property that lies north of Tilbury Road into its required condition to be capitalized to the appropriate land account and to expense any other costs that fail to meet this criterion.
6. Terasen Gas agrees to report to the Commission, by January 1, 2012, potential opportunities that might generate any revenue from the land north of Tilbury Road outside the heat flux zone, while remaining compliant with CSA Z276 and the costs Terasen Gas anticipates would be required to realize any such potential opportunities.

7. Terasen Gas is to file a written confirmation of its acceptance of the above conditions within 10 working days of the date of this Order, failing which the Application for a CPCN is refused.

2.0 RELIEF SOUGHT

Terasen Gas seeks an order granting the Reconsideration Application, varying the Order and substituting the following conditions for the conditions set out in paragraphs 2-7 of the Order:

1. The total cost of the Property will be allocated as follows:
 - a. An amount equal to \$3.3 million, based on the current gross valuation less the estimated cost of subdivision and sale of the land south of Tilbury Road; and
 - b. the balance valued at the sum of all the costs of the transaction less the amount established in (a) above.
2. At the Contract closing date, the balance determined under 1(b) shall be captured in a non-rate base deferral account attracting allowance for funds used during construction (AFUDC) until being added to rate base in the appropriate land account on January 1, 2012.
3. At the Contract closing date, the amount of \$3.3 million determined under 1(a) will be captured in a non-rate base deferral account attracting interest. In addition, the following conditions will apply:
 - a. Terasen Gas will provide semi-annual reporting to the Commission with respect to its efforts to subdivide and sell the portion of the Property south of Tilbury Road, including updated estimates of its costs to subdivide and plans to achieve a cost-effective sale. The first report shall be filed on December 1, 2010 and shall continue until the Commission has approved the sale of the subdivided property or otherwise orders that no further reporting is required;
 - b. all costs of subdivision and sale will be captured in the deferral account;
 - c. the sale of the portion of the Property south of Tilbury Road will be subject to further Commission approval;
 - d. if the Commission approves the sale of the portion of the Property south of Tilbury Road, the proceeds of sale will be applied to the deferral account to offset the balance in the account with any positive balance returned to customers or negative balance recovered from customers; and
 - e. if Terasen Gas has not achieved subdivision and sale of the portion of the Property south of Tilbury Road by January 1, 2013, then the balance in the account will enter into rate base, subject to a finding of imprudence on behalf of Terasen Gas in its efforts to achieve subdivision and sale.
4. Terasen Gas will defer the property taxes related to the Property until January 1, 2012 and recover them in rates over a three-year amortization period.
5. Terasen Gas will allocate those incremental revenue requirement items which can be reasonably identified as necessary to bring the Property into its required condition to be capitalized to the appropriate land account and to expense any other costs that fail to meet this criterion.
6. Terasen Gas will report to the Commission, by January 1, 2012, potential opportunities that might generate any revenue from the land north of Tilbury Road outside the heat flux zone, while remaining compliant with CSA Z276 and the costs Terasen Gas anticipates would be required to realize any such potential opportunities.

(Exhibit B-1, p. 11)

The British Columbia Old Age Pensioners Organization *et al.* (BCOAPO) and the Commercial Energy Consumers Association of British Columbia (CEC) oppose the relief sought by Terasen Gas in the Reconsideration Application (Exhibit C1-2, p. 2; Exhibit C2-2, p. 1).

For the reasons that follow, the Reconsideration Application is granted and Order G-28-10 is varied by substituting the conditions proposed by Terasen Gas for the conditions set out in paragraphs 2-7 of Order G-28-10, subject to substituting January 1, 2014 for January 1, 2013 in proposed condition 3(e) and Terasen Gas filing written confirmation of its acceptance of the conditions as amended within 5 working days of the date of the Order issued concurrently with this Decision.

3.0 PROCEDURAL HISTORY

Terasen Gas filed the Reconsideration Application pursuant to section 99 of the Act by letter dated March 9, 2010 stating that it was unable to accept the conditions of the Order and seeking a review and variance of the Order. It acknowledged the Commission's normal two-phase reconsideration process, but asked for a compressed process which would result in a Commission determination in time to allow Terasen Gas to decide, by April 15, 2010, whether to waive the condition precedent of Commission approval in the Contract of Purchase and Sale.

Terasen Gas states that Weyerhaeuser has agreed that the BCUC Condition Date can be moved back to April 23, 2010 and that it requires the Commission's determination in respect of the Reconsideration Application by April 15, 2010. Consequently it proposed that the Commission's two-phase procedure be addressed as a single step with the March 9, 2010 letter being treated as its submission with respect to both phases. In addition to its submission and a Supplemental Book of Authorities, it included as Appendix additional evidence with respect to the subdivision of the land south of Tilbury Road (Exhibit B-1, p. 3).

By letter dated March 10, 2010 the Commission sought the views of the Interveners as to their views on the compressed process and timetable proposed by Terasen Gas (Exhibit A-1).

By letter dated March 11, 2010 BCOAPO stated that it did not oppose collapsing the two-phase procedure for reconsideration. It noted that submissions on the admission of new evidence generally occur in the first phase and commented that new evidence referred to evidence that was not available when the evidentiary record was being generated. It also noted that the notion of subdividing the Property was raised in the original application, filed on October 28, 2009, and that the discussions with the Corporation of Delta on conditions of subdivision could have been part of a prudent development of cost estimates. Notwithstanding its comments, it did not oppose the admission of the new evidence. In fact, it commented that it may rely on that evidence (Exhibit C1-1).

By email of the same date CEC endorsed and supported the submissions of BCOAPO (Exhibit C2-1).

By Order G-44-10 dated March 15, 2010 the Commission accepted the Terasen Gas request for a single-phase process and established a regulatory timetable (Exhibit A-2).

4.0 THE GROUNDS FOR RECONSIDERATION

Terasen Gas applies for reconsideration and variance of Conditions 2, 3, 4 and 5 in the Order on the following grounds:

1. The Commission erred in law and fact in determining, despite its finding that Terasen Gas's only option was to purchase the Property in its entirety, that the portion of the Property south of Tilbury Road was not used and useful, and thus erred by excluding a portion of the Property purchase price from rate base;
2. The Commission correctly treated subdivision costs, and property taxes and short term interest in respect of the whole Property until January 1, 2012, as costs of service recoverable from customers. However, the Commission erred in law and fact in pre-determining the amount of these costs recoverable in rates based on Terasen Gas's preliminary estimates, rather than allowing Terasen Gas to seek recovery of actual costs as part of future revenue requirements application(s); and
3. The Commission erred in law and fact in requiring the shareholder to bear property taxes and short-term interest expense on the portion of the Property south of Tilbury Road after January 1, 2012, without any evidence that subdivision and sale will reasonably occur prior to January 1, 2012.

(Exhibit B-1, pp. 4-5)

4.1 Ground 1-All of the Property is Used and Useful Until Subdivided and Sold

Terasen Gas submits that the Commission's Reasons for Decision were inconsistent in that the Commission accepted in its Decision that Terasen Gas' only options were to purchase the Property in its entirety or to do nothing, while at the same time finding that "the evidence is that the land south of Tilbury Road will not be required or used for utility purposes" and "...the land south of Tilbury Road has never been (nor will it ever be) used to provide utility service..." On the basis of these findings the Commission excluded a portion of the costs of the total Property from rate base.

Terasen Gas submits that, since the Property was only available for purchase as a single parcel, as of at the acquisition date, the portion of the Property south of Tilbury Road will be used and useful because its acquisition permits the acquisition of the portion of the Property North of Tilbury Road.

Terasen Gas also addresses the "inequity" of requiring a portion of the purchase price to be excluded from rate base upon Terasen Gas' acquisition of the Property under a scenario where an application to subdivide might be denied. Terasen Gas

submits that it is a matter of law that whether the Property is capable of subdivision is at the discretion of the Corporation of Delta and that Terasen Gas has no right to subdivide the Property.

Terasen Gas observes that should the Corporation of Delta decline (possibly “for decades”) to allow the subdivision, its shareholder’s capital (over \$15 million) would be tied up in the Property for as long as a “buffer zone” is required for the Tilbury LNG Facility.

Terasen Gas submits that its shareholder has no opportunity to earn its regulated return on its investment in the Property for two reasons:

1. the Commission’s Order precludes Terasen Gas from earning a return in respect of a significant portion of the Property purchase price; and
2. as discussed in the context of Ground 3, Terasen Gas’s shareholder is also being required to shoulder a portion of the property taxes and debt carrying costs incurred in respect of the Property after January 1, 2012.

Terasen Gas points out that its shareholder will in fact earn a *negative* return after January 1, 2012 on its invested equity in that portion of the Property excluded from rate base, and further submits that the regulated rate of return was established by the Commission to meet the fair return standard, and that by limiting the effective return on the equity investment in the Property to a level that is lower than the regulated return, the Order fails to meet the fair return standard (Exhibit B-1, pp. 7-10).

BCOAPO submits that this is not an error for several reasons.

BCOAPO notes that (i) the evidence is clear that more land was being acquired than was required for CSA Z276 compliance, (ii) Terasen Gas does not contest the fact that the Section [the parcel south of Tilbury Road] is “surplus” (sic), and (iii) that by proposing to subdivide and sell the Section to be removed from rate base Terasen Gas in effect implies that it is not useful for utility purposes.

BCOAPO points out that Terasen Gas’ statement that the Commission found that Terasen Gas’ *only* option was to purchase the Property in its entirety in order to comply with CSA Z276 was not entirely true, and that the Commission went on in its decision to find that the main issue for determination in whether to grant the CPCN was the mitigation options. Further, BCOAPO submits that the finding on Terasen Gas’ options is founded on the premise that the Section could and would be subdivided and sold to mitigate the cost of the purchase. The conditions with respect to the Section strongly support this interpretation of the finding. In other words, the cost-benefit analysis for the project as a whole was based on the representations and estimates provided by Terasen Gas about the mitigation of the purchase price.

BCOAPO submits that upon reviewing Terasen Gas' Reconsideration Application, it now appears that these "representations [about subdivision] were speculative [sic] at best," and that it is now apparent to BCOAPO that Terasen Gas did not actually believe it could or would mitigate the purchase price by subdividing and selling the Section before it entered into rate base on January 1, 2012.

BCOAPO cites the following passages from the Reconsideration Application:

- Terasen Gas considers it more likely that it will not be able to meet all of the requirements for subdividing the Property and then successfully concluding the sale until after January 1, 2012 (p. 6);
- Terasen Gas's evidence was that subdivision and sale is unlikely to occur until *after* January 1, 2012. It may not occur at all (pp. 13-14); and
- Terasen Gas's speculation that it may not be able to subdivide the Property "for decades" (p. 9).

(Exhibit C1-2, pp. 3-4)

CEC submits that the Commission did not err in law and fact in determining that the portion of the property south of Tilbury Road was not required or used for utility purposes. CEC points out that that portion of the property south of Tilbury Road is not required or used for utility purposes, and that while a third party may control whether that portion of the property may be subdivided, control as to whether that subdivision and sale occurs is more clearly in the hands of Terasen Gas than it is in the hands of ratepayers. CEC submits that the onus and responsibility should fall on Terasen Gas' shareholders to recover the cost of investment of that property, and that it is consistent with purposes of the *Act* that the Commission ensure that ratepayers are not saddled with costs for unnecessary investments in property that are not used and useful for the purposes of the utility (Exhibit C2-2, p. 2).

In Reply, Terasen Gas submits that BCOAPO has mischaracterized Terasen Gas' submissions on Ground 1 in key respects, and cites five instances where its arguments are premised on an incorrect assessment of the evidence.

In reply to BCOAPO's claim that Terasen Gas agreed the land was superfluous, Terasen Gas submits that Terasen Gas' submission was and is that the land south of Tilbury Road is required (and thus used and useful) for utility service unless and until it is subdivided and sold.

Terasen Gas takes issue with the characterization of its "only option" and states that its reference to "only option" related to the fact that the Property was only available for purchase as a single parcel.

Terasen Gas addresses BCOAPO's statement that "the cost-benefit analysis for the project as a whole was based on the representations and estimates provided by Terasen Gas about the mitigation of the purchase price", and submits that Terasen Gas' position throughout has been that the acquisition of the Property – the whole Property – is cost effective because it is potentially tens of millions of dollars cheaper than having to acquire replacement resources or upgrading or replacing the Tilbury LNG Facility if the Property is purchased and redeveloped by a third party.

Terasen Gas addresses BCOAPO's comment that it's "representations [about subdivision] were speculative [sic] at best," and provides the references in CPCN Application that subdivision may not be possible and was unlikely to occur until after January 1, 2012.

Terasen Gas addresses BCOAPO's discussion of the new evidence included with the Reconsideration Application, and its assumption that Terasen Gas had not had any discussions with the Corporation of Delta until after the close of evidence and cites its evidence that its estimate had been based on its preliminary assessment, but that until such time as Terasen Gas makes an application to the municipality, there is considerable uncertainty regarding the full scope and costs of improvements that will be required to complete the subdivision (Terasen Gas Reply, pp. 2-3).

4.2 Ground 2-Actual Costs, Not Estimated Costs Should be Recoverable in Rates

Terasen Gas submits that the Commission correctly treated subdivision costs, property taxes, and short term interest in respect of the whole Property as costs of service recoverable from customers (the latter two costs only until January 1, 2012, which is addressed in Ground 3). However, it submits that the Commission erred in limiting recovery to Terasen Gas' preliminary estimates, rather than allowing Terasen Gas to include actual costs as part of future revenue requirements applications for recovery in rates.

Terasen Gas submits that these conditions require its shareholder to assume risk of unfavourable variations in those costs that should properly lie with the customer unless they result from some imprudent conduct on the part of Terasen Gas. It reiterates its submission that the cost of subdivision is a customer cost because the sale of the subdivided property was only necessitated by the fact that the larger Property was required to be purchased for compliance with CSA Z276 – a utility purpose. Further, Terasen Gas submits that there is no evidence of any imprudence or inefficiency on the part of Terasen Gas in the way it has pursued subdivision since (i) it cannot even apply for subdivision until after the sale closes, and (ii) it has no control over property taxes or short term interest rates, and (iii) (like subdivision costs) these costs only arise because the whole Property must be acquired to maintain compliance with CSA standards. Terasen Gas submits that the determination of the proper amount of these costs recoverable in rates should occur at the point where Terasen Gas seeks to recover them in rates, when the Commission has evidence before it by which it can assess the reasonableness of Terasen Gas' actions.

Terasen Gas submits that the conditions the Commission imposed on Terasen Gas are unjust and unreasonable, and were imposed in error, and that by prejudging recoverability in the absence of evidence the Commission made an error in law.

Terasen Gas addresses the estimates it made of the costs of subdividing the land south of Tilbury Road and of the likely proceeds of the sale and states that investigations into subdivision and sale up to the Application were preliminary and that further investigations were required. In addition, its estimate of the costs of subdivision and sale were dependent on the requirements of the Corporation of Delta and could only be confirmed through the subdivision application process, which could only begin once the purchase transaction was complete. Terasen Gas submits that it did not hold out the estimated costs of subdivision and sale as an accurate forecast of the costs upon which it was prepared to take forecast risk, especially since the market price of the portion of the Property, the costs of subdivision and sale, and property taxes are all outside its control.

Terasen Gas addresses the new evidence set out in Appendix “A”, and states that it has held discussions with the Corporation of Delta since the close of evidence, at which the municipality raised the possibility that it may require the widening of Hopcott Road. The widening of Hopcott Road might necessitate Terasen Gas upgrading its transmission pipeline running beneath Hopcott Road and incurring additional costs to customers associated with a transmission pipeline upgrade.

Terasen Gas submits that the conditions in the Order require its shareholder to bear the risk that the Corporation of Delta might impose requirements for subdivision such as a widening of the road allowance which could significantly increase the estimate of subdivision costs included in the Application above the \$500,000 preliminary estimate identified in the Application. Terasen Gas submits that neither it nor its shareholder are property developers, and undertaking this type of activity and the associated risk falls outside of Terasen Gas’ core business. Terasen Gas submits that there is no legal or equitable reason for why its shareholder should bear these risks (Exhibit B-1, pp. 12-13).

BCOAPO points out that Terasen Gas’ estimates are the best available evidence, and that neither the Commission nor the Interveners are in a position to generate contradictory evidence or estimates. Parties should therefore be relatively confident in relying on the evidence provided by the utility. If the primary issue to be determined is the mitigation costs, as the Commission found, then it must be based on the best available evidence.

BCOAPO considers Terasen Gas’ new evidence in Appendix “A” and states that it is “distressed by this evidence.” BCOAPO does not oppose the inclusion of the new evidence as it is clearly relevant to the cost-effectiveness of the purchase and proposed mitigation, and was not available before the close of evidence on October 28, 2009. BCOAPO considers that a prudent estimate of the cost of subdivision would have included discussions with the Corporation of Delta prior to the closing of evidence and ideally before the application was submitted. Knowing the cost of subdivision might significantly

impact the cost effectiveness of the subdivision, which, in turn could impact the overall cost-benefit analysis of the full purchase. BCOAPO states that the new evidence “prejudices our previous position” (Exhibit C1-2, p. 5).

CEC supports the Commission's determination that estimated costs are appropriate to use in determining that which is recoverable in rates with regard to subdivision, costs, property taxes, and short term interest. CEC submits that Terasen Gas provided the best and only evidence on these costs and that Terasen Gas is the party which can perform the appropriate due diligence to prepare the financial forecasts to assess whether this application is in the public interest (Exhibit C2-2, p. 2).

In Reply, Terasen Gas submits that both BCOAPO's and CEC's argument in respect of Terasen Gas' second ground for reconsideration focuses on the reliability of the subdivision estimates, whereas Terasen Gas' position is, in essence, that the Commission should not have predetermined the recoverability of actual subdivision, tax and interest costs based on preliminary estimates that were not developed for that purpose (Terasen Gas Reply, p. 5).

4.3 Ground 3 –Shareholder Improperly Required to bear Property Taxes and Short Term Interest Expense beyond January 1, 2012 Without Evidence that the Property Would be Subdivided and Sold by that Date

Terasen Gas submits that the Commission erred in fact and law in requiring its shareholder to bear property taxes and short-term interest expense on the portion of the Property south of Tilbury Road beyond January 1, 2012, without any evidence that subdivision and sale was possible prior to January 1, 2012.

Terasen Gas states that its uncontradicted evidence was that the process of subdividing and selling a portion of the land involves many steps and a number of approvals. The fact that the particular portion of the Property being considered for sale is adjacent to a slough adds additional considerations to the processes for subdividing and selling. Terasen Gas submits that its evidence was that subdivision and sale is unlikely to occur until after January 1, 2012 and may not occur at all. In these circumstances, requiring the shareholder to bear such carrying costs after January 1, 2012, or any predetermined date, is unjust and unreasonable (Exhibit B-1, pp. 13-14).

BCOAPO submits that Terasen Gas' Reconsideration Application makes it clear that it had “little intention” of pursuing the subdivision and sale to mitigate the cost of the purchase, and that Terasen Gas is attempting to shelter its shareholder should the subdivision and sale fail to materialize. BCOAPO submits that this condition by the Commission was based on the understanding that the subdivision and sale would be pursued to mitigate the cost of the purchase (Exhibit C1 -2, p. 6).

CEC submits that the Commission did not err in law and fact in requiring Terasen Gas' shareholder to bear property taxes and short term interest expense on the portion of the property south of Tilbury Road beyond January 1, 2012. CEC observes that these costs were not related to used and useful assets of the utility and submits that the costs should be

borne by the shareholder in order to incent Terasen Gas' shareholder to move expeditiously to achieve subdivision and sale of the property (Exhibit C2-2, pp. 2-3).

In Reply, Terasen Gas characterizes BCOAPO's submissions that Terasen Gas "had little intention of ever pursuing subdivision and sale to mitigate the cost of purchase" and that "Terasen Gas likely did not intend to seriously pursue the subdivision and sale" as false and contradicted by the evidence. Terasen Gas points out that it (i) proposed subdivision as a potential option, (ii) commissioned a professional opinion with respect to the market value of the portion of the Property south of Tilbury Road including an estimate of subdivision costs, (iii) continues to deal with the Corporation of Delta since the close of the record (as is apparent from the new evidence), while (iv) it cannot yet apply for subdivision because it does not own the Property.

In reply to BCOAPO's second argument that Terasen Gas is attempting to shelter its shareholder should the subdivision and sale fail to materialize, Terasen Gas submits that the risk regarding the ability and cost effectiveness of subdivision – a risk that Terasen Gas has been transparent about throughout – and the risks imposed by the other conditions have a high probability of precluding Terasen Gas' opportunity to earn a return on its investment that meets the fair return standard (Terasen Gas Reply, pp. 5-6).

Terasen Gas addresses the Commission's stated concern that Terasen Gas is insufficiently incented to pursue diligently the subdivision and disposition of the portion of the Property south of Tilbury Road. Terasen Gas submits that if the Commission determines on reconsideration that the Property is used and useful and is properly included in rate base, the Commission's apparent desire to enhance the incentives inherent in the rate setting process can be addressed with the proposal set out in paragraphs 1-3 at page 11 of the Reconsideration Application which form paragraphs 1-3 of the Relief Sought particularized above. Terasen Gas submits that under the proposal it would not be earning a return on the amount in the deferral account, so this would eliminate any perceived incentive of the Company not to pursue subdivision and sale.

Terasen Gas also undertakes to report to the Commission on its efforts to subdivide and sell until the sale occurs so that the Commission may oversee those efforts. Further, Terasen Gas submits that the sale itself will be subject to further Commission review so that the Commission can scrutinize Terasen Gas' efforts to obtain the best sale price. If subdivision and sale has not occurred by January 1, 2013, Terasen gas proposes that the cost of the property will enter into rate base. According to Terasen, this ensures that if subdivision and sale are not possible the full Property is reflected in rate base, thus removing this risk from the shareholder. At the same time, however, customers and the Commission have the opportunity to assess the diligence with which Terasen Gas had pursued subdivision and sale. Terasen Gas recognizes that a lack of diligence on its part in pursuing subdivision and sale to facilitate the removal of costs relating to the land south of Tilbury Road from rate base could result in the Commission disallowing from rate base the same costs, but this risk properly remains with the shareholder (Exhibit B-1, pp. 11-12).

BCOAPO submits that Terasen Gas' proposal does not alter its financial motivation to maintain the full value of the property in rate base. While semi-annual reporting and commission approval of the sale provides some additional transparency, it also increases the cost of the subdivision and sale, which may impact the cost effectiveness. Further, one additional year to complete the sale is not adequate to alleviate its concerns, especially since Terasen Gas' own evidence is that subdivision is unlikely before January 1, 2012, and in fact, Terasen Gas has speculated that it could take decades before subdivision is granted, if at all. BCOAPO reiterates its concern that Terasen Gas has little financial incentive to actively pursue the subdivision and sale of the Section, and urges the Commission to impose a "strong mechanism to balance ratepayer and shareholder interests" (Exhibit C1-2, pp. 4-5).

CEC submits that it is not convinced that the January 1, 2013 timeline as proposed by Terasen Gas as a deadline for subdivision and sale failing which the cost of the property will enter into rate base as a satisfactory response to the Commission, or ratepayers', concern (Exhibit C2-2, p. 2).

5.0 RELIEF SOUGHT BY THE INTERVENERS

CEC submits that the Reconsideration Application should be denied and submits that there is no error of law or fact in Order G-28-10. CEC submits that the Commission acted entirely within the discretion granted in Sections 45 and 46 of the Act (Exhibit C2-2, p. 1).

BCOAPO submits that either the CPCN should be denied or that the original decision and in particular the conditions imposed by the Commission should be upheld (Exhibit C1-2, p. 6).

BCOAPO also remains concerned that the purchase of this property effectively creates a regulatory 'put' option by which it means that, regardless of whether the land south of Tilbury Road is sold, Terasen Gas will earn a guaranteed return on all land retained. If, in the future, the value of the land exceeds the regulated return, or if Terasen Gas decides to stop running the plant for any other reason, Terasen Gas will be able to sell the land, retain all the capital gains for the shareholder, and be fairly certain that if they replace this asset, ratepayers will bear the cost. If they do not replace the asset, ratepayers will bear the estimated \$9-11 million peaking supply replacement costs that Tilbury mitigates annually. In addition, ratepayers would likely bear the cost of land remediation.

BCOAPO addresses Terasen Gas' submission that Order G-28-10 makes Terasen Gas and its shareholder property speculators, which is outside of their core business and suggests that the Supreme Court of Canada decision in *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)* [2006] 1 S.C.R. [140] (ATCO) makes all regulated utilities property speculators by holding that shareholders alone gain or lose from the disposition of utility assets. BCOAPO cites the view of the minority who cite the original AEUB decision with approval at paragraphs 99 and 100 of *ATCO*:

“To award the entire gain to the utility might encourage speculation in non-depreciable property or motivate the utility to identify and dispose of properties which have appreciated for reasons other than the best interest of the regulated business.”

BCOAPO submits that the practical result of *ATCO* for this application is that the Commission should pay very close attention to the acquisition of non-depreciable assets such as real property, and seek to minimize any portion that is not directly used for the provision of utility service (Exhibit C1-2, p. 3).

In reply, Terasen Gas notes that BCOAPO has changed its position to now request that the CPCN be denied and submits that BCOAPO's new position is contrary to the interests of customers which will be best served by acquiring the Property, by providing the certainty required to continue to operate the Tilbury LNG Facility for the long term, and by avoiding the potential for much larger costs in the future.

In reply to BCOAPO's concern around the so-called “put” Terasen Gas submits that disposing of assets requires Commission approval, with the Commission having the ability to impose the necessary conditions to ensure the public interest (Terasen Gas Reply, pp. 1-2).

6.0 COMMISSION DETERMINATION

At page 2 of the Reasons for Decision for Order G-28-10, the Commission Panel stated that “The 5.13 acre portion of the Property south of Tilbury Road will not be required or used for utility purposes (Exhibit B-1, p. 31)” while at page 3 it observed that “Terasen Gas believes that the 5.13 acre portion of the Property south of Tilbury Road is not required for the purposes of maintaining compliance with CSA Z276 (Exhibit B-1, p. 31).”

The Commission Panel accepts Terasen Gas' submission that its Reasons for Decision for Order G-28-10 were inconsistent in that it incorrectly stated that the land south of Tilbury Road will not be required or used for utility purposes whereas the evidence shows that the land will not be required for compliance with CSA Z276.

In addition the Commission Panel accepts Terasen Gas' uncontradicted evidence that the only way that Terasen Gas can acquire the land north of Tilbury Road that will be required for compliance with CSA Z276, is to purchase the Property in its entirety and that in consequence the land south of Tilbury Road will be required to provide utility service until it has been subdivided and sold.

The Commission Panel finds that this represents an overarching reason to grant the reconsideration sought by Terasen Gas and accordingly finds it unnecessary to address Terasen Gas' Grounds 2 or 3.

The Commission Panel has considered BCOAPO's request that the Commission Panel deny the requested CPCN. The Commission Panel agrees with BCOAPO that Terasen Gas' submissions concerning the likelihood of obtaining subdivision approval from the Corporation of Delta became more germane in the reconsideration process than they had been in the original proceeding. Nevertheless the Commission Panel considers that the potential benefits of the acquisition outweigh the costs of the Project, even if subdivision is not authorized by the Corporation of Delta. Accordingly, having considered Terasen Gas' proposed conditions to the CPCN and the submissions of the Interveners thereon, the Commission Panel finds that the acquisition of the Property is in the public interest and grants the CPCN requested, subject to the conditions proposed by Terasen Gas with one exception.

The Commission Panel has considered the Interveners' submissions that the period ending on January 1, 2013 is too short a period of time for the land south of Tilbury Road to remain in a deferral account pending subdivision approval and sale, while it notes that, in its Reconsideration Application, Terasen Gas stated that its evidence was that "subdivision and sale is unlikely to occur until *after* January 1, 2012" (emphasis in original).

The Commission Panel finds that, in light of Terasen Gas' submission, the additional one year is too short a period and determines that the period be extended by another year to January 1, 2014.

Accordingly the Commission Panel amends Terasen Gas' proposed condition 3(e) to read as follows:

"If Terasen Gas has not achieved subdivision and sale of the portion of the Property south of Tilbury Road by January 1, 2014, then Terasen Gas will be permitted to apply to the Commission to add the balance in the account into rate base, and demonstrate the prudence of its efforts to achieve subdivision and sale."

The Reconsideration Application is granted subject to the amendment to proposed condition 3(e) and Terasen Gas filing written confirmation of its acceptance of the conditions as amended within 5 working days of the date of the Order issued concurrently with this Decision.

DATED at the City of Vancouver, in the Province of British Columbia, this 9th day of April 2010.

Original signed by:

A.J. PULLMAN
PANEL CHAIR/COMMISSIONER

Original signed by:

M.R. HARLE
COMMISSIONER