



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-6-11**

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

and

An Application by Terasen Gas Inc.
for Approval of a Service Agreement for Compressed Natural Gas Service
and
for Approval of General Terms and Conditions for
Compressed Natural Gas and Liquefied Natural Gas Service

BEFORE: A. A. Rhodes, Panel Chair/Commissioner
D. A. Cote, Commissioner
D. Morton, Commissioner
January 14, 2011

O R D E R

WHEREAS:

- A. On December 1, 2010, Terasen Gas Inc. (Terasen) applied to the British Columbia Utilities Commission (Commission), pursuant to sections 59 to 61 of the *Utilities Commission Act* (Act), for approval of a Compressed Natural Gas (CNG) Fueling Station Installation and Operating Agreement dated December 3, 2010 (WM Agreement) between Terasen and Waste Management of Canada Corporation (Waste Management) (the Application);
- B. In the Application, Terasen also sought acceptance of the expenditures required to provide compression and dispensing service for CNG under the WM Agreement pursuant to section 44.2 of the Act;
- C. In the Application, Terasen also sought approval of General Terms and Conditions (GT&Cs) for compression and dispensing service for CNG Service and transportation, delivery, fuel storage and dispensing service for Liquefied Natural Gas (LNG) Service that would be used for future service agreements with customers pursuant to sections 59 to 61 of the Act;
- D. Terasen sought an expedited process for approval of the WM Agreement, requesting a permanent rate on or before January 14, 2011, or alternatively, an interim rate approval on or before that date;

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- E. By Order G-181-10, the Commission established an expedited written hearing process in respect of the WM Agreement, and established a written hearing process on a regular timetable for the remainder of the Application;
- F. The Commission Panel has considered the Application and submissions filed in the expedited written public hearing process and concludes that it should approve the WM Agreement as a Tariff Supplement on an interim basis providing that all references to Vehicle Compensation and Energy Efficiency and Conservation (EEC) incentive grants are removed and subject to Terasen filing the amended agreement in standard Tariff Supplement form on a non-confidential basis.

NOW THEREFORE pursuant to sections 59-62, 64 and 90 of the Act, the Commission orders, for the Reasons for Decision that is Appendix A to this Order:

1. The Commission approves on an interim basis the WM Agreement as a Tariff Supplement, providing that all references to EEC funding and Vehicle Reimbursement are removed and Terasen files the amended agreement and the financial schedules that support the rates in it on a non-confidential basis.
2. Terasen will file the amended WM Agreement in standard Tariff Supplement format.
3. Terasen shall keep costs and revenues related to the WM Agreement segregated and kept sufficiently distinct so as to be severable, in the event that the Commission Panel determines that final approval of the WM Agreement is not warranted.
4. Any differences between the interim rate and the permanent rate will be recovered from or repaid to Waste Management with interest.
5. The Commission will continue to hold confidential the WM Agreement and the financial schedules in Appendix E of the Application as filed to date.

DATED at the City of Vancouver, in the Province of British Columbia, 14th day of January, 2011.

BY ORDER

Original signed by:

A.A. Rhodes
Panel Chair/Commissioner

Attachment



IN THE MATTER OF

**An Application by Terasen Gas Inc.
for Approval of a Service Agreement for Compressed Natural Gas Service
and
for Approval of General Terms and Conditions for
Compressed Natural Gas and Liquefied Natural Gas Service**

REASONS FOR DECISION

**With respect to
Approval of a Service Agreement for Compressed Natural Gas**

JANUARY 14, 2011

BEFORE:

**A. A. Rhodes, Panel Chair/Commissioner
D. A. Cote, Commissioner
D. Morton, Commissioner**

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1.0 INTRODUCTION

These Reasons for Decision and the accompanying Order relate to a draft Compressed Natural Gas (CNG) Fueling Station Installation and Operating Agreement dated December 3, 2010 (WM Agreement) between Terasen Gas Inc. (Terasen) and Waste Management of Canada Corporation (Waste Management) (Exhibit B-1-2). Under the WM Agreement, Terasen will install, operate and maintain a fueling station for CNG on Waste Management's premises. Terasen submitted the WM Agreement to the British Columbia Utilities Commission (Commission) on a confidential basis, as part an application dated December 1, 2010 (Application) which also includes approval of General Terms and Conditions (GT&Cs) for CNG Service and for Liquefied Natural Gas (LNG) Service, and for the capital expenditures related to the WM Agreement.

Terasen requested expedited approval of the WM Agreement as a Tariff Supplement by January 14, 2011, because Waste Management has ordered 20 CNG fueled trucks and requires service commencing on January 24, 2011. (Exhibit B-1, p. 2) Order G-181-10 established a written public hearing to review the Application and a Regulatory Timetable that incorporated an expedited process for the WM Agreement.

British Columbia Sustainable Energy Association (BCSEA) was the only Intervener who made a Final Submission. BCSEA supports an interim Order approving the WM Agreement, with approval interim because the extremely short timeframe for review of the contract did not allow for adequate consideration of the complex issues raised.

For the Reasons set out below, the Commission Panel declines to approve the WM Agreement as it was filed. The Commission Panel concludes that any approval at this time must be on an interim basis, in order to adequately examine whether the business model proposed is in the public interest and whether the Fueling Charges set out in the WM Agreement meet the requirements under sections 59 and 60 of the *Utilities Commission Act* (Act). The Commission Panel approves an amended service agreement on an interim basis, providing the WM Agreement is changed by removing all references to Vehicle Reimbursement and Energy Efficiency and Conservation (EEC) incentive grants and it is filed in standard Tariff Supplement format on a non-confidential basis.

Due to constraints of time and confidentiality, and considering that the Commission Panel has determined that approval of an amended WM Agreement at this time is on an interim basis only, these Reasons for Decision are presented at a relatively high, overview level.

2.0 WM AGREEMENT

The WM Agreement was negotiated between Terasen and Waste Management. Waste Management is purchasing 20 vehicles for its fleet which will run on CNG instead of diesel. The agreement sets out that Terasen will provide CNG compression and dispensing service to Waste Management, with a minimum monthly "take-or-pay" quantity (contract demand) of 1,583 GJ. The initial term of the agreement is 10 years and Terasen has an option to renew the contract for an additional 10 years. The rate for CNG service was calculated based on the estimated capital cost of the fueling station amortized over 20 years and the take-or-pay quantity of 1583 GJ per month, plus forecast maintenance expenses.

The cost of installing the fueling station on Waste Management's property at 2330 United Boulevard in Coquitlam is estimated at \$737,044. Terasen states that the rate in the agreement is sufficient to cover the cost of service over the initial term, and that other provisions adequately protect other ratepayers from risk. Waste

Management will be charged for all natural gas delivered to the fueling station under normal delivery tariffs and rates. (Exhibit B-1, pp. 46-50)

The section on Vehicle Reimbursement in the WM Agreement defines the terms and conditions under which Terasen will provide EEC incentive funding for the incremental cost of purchasing 20 CNG vehicles. In the Application, Terasen states that it is not seeking approvals for EEC funding or any costs that are intended to be recoverable from existing customers. (Exhibit B-1, pp. 1, 2, 47)

Terasen filed the WM Agreement and the related financial schedules in Appendix E of the Application on a confidential basis. (Exhibit B-1-1)

3.0 RATE, TERMS AND CONDITIONS OF WM AGREEMENT

The WM Agreement is the first agreement that Terasen has filed as a Tariff Supplement to offer CNG fueling as a regulated service for a target market of return to base fleets of buses, heavy-duty and vocational trucks. The WM Agreement has been negotiated by Terasen and Waste Management under the CNG fueling rate structure proposed in the Application whereby Terasen constructs and operates a fueling station on the customer's site and the cost of building and operating the facility is to be recovered from the customer under a "take-or-pay" model. This model sets a rate that is intended to recover the forecast cost of Terasen building and operating the CNG fueling facility and sets minimum volumes to be paid for by Waste Management over the term of the WM Agreement. The Commission Panel is concerned that there are certain costs that have not been included in the calculation of the rate and that there are potential risks that other ratepayers may be exposed to, and therefore approval is being granted on an interim basis allowing these issues to be fully examined in the ongoing written hearing.

Under the "take-or-pay" model, the customer commits to pay for the contracted service over the 10 year term of the agreement even if the volume taken is less than the committed minimum level. It does not attempt to recover the cost of any incentive grants provided by Terasen to Waste Management. The term of the agreement is set to match the lifetime of the fleet vehicles that will be serviced by the CNG fueling station. The rate is calculated based on the capital cost of the fueling station over an amortization period of 20 years and the minimum "take-or-pay" quantity. (Exhibit B-1, pp. 12-14)

Terasen expects that actual consumption by Waste Management will be higher than the "take-or-pay" quantity. Under the model proposed in the Application, this excess throughput will be charged at a reduced rate for volumes in excess of 115 percent of the contracted minimum commitment. (Exhibit B-1, p. 14)

Consistent with Terasen's standard practice, 14 percent of the operating and maintenance expense is capitalized and added to rate base, and the capitalized amount is amortized at 2.7 percent per year reflecting an amortization period of 37 years. (Exhibit B-1, p. 57) Consequently, it appears that some of these costs will not be recovered from Waste Management over the term of the WM Agreement.

There is a long history of experience with the Natural Gas Vehicle (NGV) market in Terasen's service area dating back over 25 years during which time Terasen installed, owned and maintained CNG fueling facilities under both a regulated service offering model and under a non-regulated business model. Terasen's participation has not been to the exclusion of other market participants who have also provided fueling services. (Exhibit B-1, p. 9; Appendix A-2, pp. 7-13)

Currently Terasen provides natural gas supply for 16 NGV stations in British Columbia through either Rate Schedule 6 or Rate Schedule 25. (Exhibit B-1, Appendix A-2, pp. 12-13) In addition, a new rate schedule, Rate Schedule 26, was recently approved by Order G-141-09 in Terasen's 2010/11 Revenue Requirements Negotiated Settlement Agreement. Under these rate schedules, Terasen delivers natural gas to CNG fueling stations, but does not provide the CNG fueling service.

The ownership of CNG fueling stations is also a business that Terasen undertook on a regulated basis in the past without success. Terasen left the business in 1999. (Exhibit A-4, Order G-143-99, p. 1) Terasen's previous regulated service offerings focused on providing public CNG fueling stations for high-mileage light duty vehicle conversions. (Exhibit B-1, Appendix A-2, p. 7)

Terasen attributes past success and failure to gain market acceptance to fluctuations in the market price of natural gas, the availability of Original Equipment Manufacturer (OEM) vehicles, the cost of conversions, introduction of hybrid electric vehicles and the availability of incentives from both the utility and from the government. (Exhibit B-1, Appendix A-2, pp. 7-12)

Terasen's position is that the business model and the rate structure proposed in the Application and used for the WM Agreement are fundamentally different from Terasen's previous experience with NGVs on two fronts. The first is that the proposed service is based on a legal relationship with the customer with a "take-or-pay" commitment and the second is the intention to insulate the existing customers from risk. The contractual relationship with the customer provides for fueling facilities that are dedicated to the customer with minimum volume "take-or-pay" requirements and the rate in the contract is intended to ensure the recovery from Waste Management of all the costs of service incurred over the course of the contract. (Exhibit B-3, BCUC IR 2.1)

Terasen also states that provision of regulated CNG fueling service will help the NGV market gain traction and that Terasen's provision of these regulated services will complement the involvement of other market participants. (Exhibit B-1, p. 3) Terasen believes that it is appropriate for it to re-enter the business at the current time given the attractiveness of current natural gas prices as compared to that of alternative fuels such as diesel and given the energy objectives of the provincial government and government policies that favour a reduction in GHGs. (Exhibit B-1, p. 3, 34, 45) In addition to incentives, Terasen states that it is necessary for it to provide a regulated CNG fueling service with rates negotiated on an individual basis with each customer, as it did with Waste Management, in order to build market penetration.

BCSEA indicated that it supports interim but not final approval of the WM Agreement because it believes the issues raised by the Application are complex and the expedited timeframe allotted for considering the WM Agreement did not allow sufficient time for consideration of these issues. (BCSEA Final Submission, p. 1) BCSEA has indicated that it wishes to explore in further detail the relative merits of other potential alternatives to diesel heavy duty trucks such as plug-in hybrid electric and electric vehicles in addition to other topics. (BCSEA Final Submission, p. 3)

Commission Panel Determination

The issues regarding Terasen providing CNG fueling station service are complex and include, but are not limited to:

- *Clean Energy Act*, S.B.C. 2010 implications;
- whether providing CNG fueling service is an appropriate role for the utility in stimulating demand for NGVs;
- the extent to which other ratepayers benefit;
- whether the risk other ratepayers may bear is appropriate.

Terasen submits that the applicable legal test with regard to its request for approval of the WM Agreement is whether the agreement represents a “just and reasonable rate” pursuant to section 59 of the Act.

The WM Agreement is the result of negotiations between Terasen Gas and Waste Management, and as noted by Terasen, is a package that reflects trade-offs by both parties. The Commission Panel is of the view that, although the WM Agreement may be the result of negotiation between two sophisticated parties and contains trade-offs that may make the agreement a good result for those two parties, the negotiations did not purport to include other ratepayers. As a consequence, customers could potentially be at risk for cost overruns from an agreement they are not a party to and one which they will know nothing about as Terasen proposes to hold it confidential.

The Commission Panel is not convinced that the WM Agreement adequately protects other ratepayers from the risk of under-recovery of costs. The Commission Panel has concerns about the use of forecast costs rather than the use of actual costs, without appropriate provision for contingency, with fixed escalation factors. In the event the actual costs are higher or the escalation factor in the contract is lower than the actual escalation rate, other customers could be at risk for the cost overruns.

Terasen argues that the use of forecast costs was necessary to provide the customer with the desired price certainty. The Commission Panel has a concern regarding whether it is reasonable to expect that the Fueling Charges in the WM Agreement should include a premium for the certainty and risk reduction provided to Waste Management.

Further, if the cost of the CNG fueling station is higher than the estimated cost and since the treatment of capitalized operating and maintenance expense may not fully recover this cost, the Commission Panel is concerned that the rates set out in the WM Agreement may not be just and reasonable.

For the reasons set out, the Commission Panel has determined that approval of the WM Agreement, including the rate, will be on an interim basis, pending final determination. Any differences between the interim rate and the permanent rate will be recovered from or repaid to Waste Management with interest.

The Commission Panel directs that Terasen’s costs and revenues related to the WM Agreement be segregated and kept sufficiently distinct so as to be severable, in the event that the Commission Panel determines that final approval is not warranted.

4.0 VEHICLE REIMBURSEMENT

The section on Vehicle Reimbursement in the WM Agreement defines the terms and conditions under which Terasen will provide EEC incentive funding for the incremental cost of purchasing 20 CNG vehicles relative to equivalent diesel vehicles. In the Application, Terasen stated that Waste Management's proposal for funding to purchase CNG vehicles met the terms and conditions for EEC incentive funding for low-carbon fuel switching, which were approved by Order G-36-09 and the Commission's EEC Decision. (Exhibit B-1, p. 47) In the Application, Terasen states that it is not seeking approvals for EEC funding or any costs that are intended to be recoverable from existing customers. (Exhibit B-1, pp. 1, 2, 47)

Terasen subsequently stated that the Waste Management incentives are included in the Innovative Technologies category and are part of a total portfolio that has already been accounted for within the EEC deferral account additions approved in Terasen's 2010/11 Revenue Requirements Negotiated Settlement by Order G-141-09. (Exhibit B-4, BCUC 1.4.1; Terasen Reply Submission, p. 7) Terasen confirmed that it is unlikely that Waste Management will take service under Rate Schedule 26, and hence become eligible for NGV incentive grants under that Rate Schedule. (Exhibit B-4, BCUC IR 1.6.1, 1.6.3, 1.6.4)

Commission Panel Determination

The Commission Panel is not presently persuaded that Terasen has Commission approval for the incentive grant to Waste Management that is described under Vehicle Reimbursement in the WM Agreement. Directive 2 of Order G-36-09 explicitly rejected expenditures for Natural Gas Vehicles. The Negotiated Settlement approved by Order G-141-09 approved Rate Schedule 26 – NGV Transportation Service and marketing costs in support of NGV. Terasen withdrew its other requests related to NGV. Rate Schedules 6 and 26 provide for NGV incentive grants, but it seems unlikely that Waste Management will use these Rate Schedules. Therefore, the Commission Panel believes that Terasen is at risk of not being able to recover incentive payments to Waste Management in its rates.

Terasen submitted that whether some of the approved funding should be extended to Waste Management is beyond the scope of this proceeding. Terasen argues that the terms and conditions of service set out in the WM Agreement, including the rate, should be considered independently from incentives provided from EEC funding, which Terasen considers to be previously approved. Terasen submits that any matters relating to its use of EEC funding, including the calculation of Total Resource Cost, should be addressed through the established regulatory review process for EEC funding decisions, which includes Terasen's annual EEC reports. Terasen maintains that approval of the WM Agreement is separate from the EEC review process. (Terasen Reply Submission, pp. 7, 8)

The Commission Panel accepts Terasen's position that the incentive payments are outside the scope of the review of the WM Agreement. In that circumstance, it is unclear why the Vehicle Reimbursement section is included in the WM Agreement. Consistent with the views and request of Terasen, the Commission Panel is prepared to proceed with review of the WM Agreement on a narrow basis that does not consider EEC incentives. All references to EEC incentives need to be removed from the agreement to make this clear. If Terasen wishes to provide EEC incentives for CNG vehicles to Waste Management, it can establish a separate incentive agreement.

For the foregoing reasons, the Commission Panel determines that all references to EEC incentive grants and Vehicle Reimbursement must be removed from the WM Agreement before it is approved as a Tariff Supplement.

5.0 CONFIDENTIALITY

In the Application, Terasen submitted that the draft WM Agreement in Appendix D-1 and the related Financial Schedules in Appendix E contain commercially sensitive terms and negotiated rates and therefore have been filed confidentially in accordance with the BCUC Practice Directives related to Confidential Filings. (Exhibit B-1, Cover Letter, p. 1) In a second letter dated December 1, 2010, that it marked as Confidential, Terasen briefly explained why it believes the documents should be confidential. Commission Order G-181-10 accepted the documents on a confidential basis, pending a review of whether it is necessary to hold them confidential. In this Decision, the Commission determines that it will hold confidential the WM Agreement and Financial Schedules that have been filed by Terasen. If Terasen refiles the revised WM Agreement, it and the financial schedules that support the rates in the agreement must be filed on a non-confidential basis.

BCSEA expressed concern that there appears to be an overly broad application of confidentiality regarding certain items in this proceeding. One concern is how the Commission will provide reasons for its decision when relevant information is confidential. The second problem is the impracticality of obtaining confidentiality undertakings from all internal people and external experts with whom BCSEA wished to discuss confidential topics. (BCSEA Final Submission, p. 3)

In response to the BCSEA concerns, Terasen filed its Information Request responses in redacted form. Terasen provided non-confidential responses for five of the eight Information Requests related to the request for confidentiality. (Exhibit B-4, BCUC IR 3.4, 3.5, 3.6, 3.7)

Commission Panel Determination

Terasen states that it seeks to protect its customers by keeping contracts that are the result of commercial negotiations confidential (Exhibit B-4, BCUC IR 3.4). Without going into details that currently are confidential, this refers to protecting the interests of both Waste Management and other Terasen ratepayers.

Terasen provides little in the way of factual information about the specific harm that is likely to result if the WM Agreement and related information are disclosed to the public. The only rates, rate schedules or tariff supplements that Terasen identified as currently being held confidential are gas sales contracts under Rate Schedule 30. (Exhibit B-4, BCUC IR 3.4) The Commission notes that Rate Schedule 30 is for Off-System Interruptible Sales, where Terasen is one of many participants in a competitive natural gas marketplace.

Holding negotiated service contracts confidential may or may not protect the interests of other ratepayers. The negotiated WM Agreement could potentially leave other ratepayers responsible for a number of financial risks while Waste Management may obtain a fixed rate without paying a premium for this rate certainty. Also, the rate in the agreement is set on a cost-of-service basis, and there is no requirement that Waste Management share the fuel cost savings that it realizes with other Terasen ratepayers.

Terasen states that the test for approval of the WM Agreement as a Tariff Supplement under sections 59-61 of the Act is whether the proposed rate represents a just and reasonable rate. However, section 59 of the Act also states that a public utility must not demand a rate that is unduly discriminatory or unduly preferential, and goes on to say:

“59(2) A public utility must not

- (a) as to rate or service, subject any person or locality, or a particular description of traffic, to an undue prejudice of disadvantage, or
- (b) extend to any person a form of agreement, a rule or a facility or privilege, unless the agreement, rule, facility or privilege is regularly and uniformly extended to all persons under substantially similar circumstances and conditions for service of the same description.”

Section 62 of the Act states:

“A public utility must keep a copy of the schedules filed open to and available for public inspection under commission rules.”

In order to fulfill its responsibilities under the Act, and because transparency is a fundamental principle of sound regulation, the Commission requires public utilities to publically file all approved rates, rate schedules and tariff supplements unless there are very unusual circumstances. For example, the Bypass Transportation Agreements with individual customers under Rate Schedules 22 and 22A are all filed for public inspection.

Terasen has provided no persuasive evidence that the public interest is served by holding confidential a tariff supplement with Waste Management. Certainly the assertion that other ratepayers may benefit from the practice does not provide sufficient justification. The Commission Panel also recognizes the practical considerations raised by BCSEA, and believes that the ability to receive information on a confidential basis should be used narrowly and only when specifically identified, material harm is likely to result from disclosure. Notwithstanding the ability to enter into confidentiality undertakings, the filing of information on a confidential basis is not something that a public utility should resort to overly frequently or broadly. On balance, the Commission determines that the public interest requires disclosure of the tariff supplement with Waste Management.

For these reasons, the Commission Panel determines that, if Terasen refiles the amended WM Agreement as a Tariff Supplement, it must file the contract and the financial schedules that support the rates in the contract on a non-confidential basis.

The Commission will continue to hold confidential the WM Agreement and the related financial schedules that Terasen has filed to date. If Terasen wishes to rely on the financial schedules in Appendix E of the Application to support the rates in the amended WM Agreement, these financial schedules and the Information Requests that relate to them will no longer be confidential.

6.0 FINAL COMMISSION PANEL DETERMINATION

The Commission Panel declines to approve the WM Agreement as it was filed. The Commission concludes that any approval at this time of a service contract with Waste Management must be on an interim basis, so that questions regarding the appropriateness of the rate can be adequately examined. The Commission recognizes the commercial requirements of the customer for CNG service in a timely manner, and so determines that the WM Agreement should be approved on an interim basis, providing it is amended by removing all references to EEC funding and Vehicle Reimbursement and only amended to this extent, and it is filed on a non-confidential basis.

Pursuant to sections 58-62, 64 and 90 of the Act, the Commission orders the following:

- 1. The Commission approves on an interim basis the WM Agreement as a Tariff Supplement, providing that all references to EEC funding and Vehicle Reimbursement are removed and Terasen files the amended agreement and the financial schedules that support the rates in it on a non-confidential basis.**
- 2. Terasen will file the amended WM Agreement in standard Tariff Supplement format.**
- 3. Terasen shall keep costs and revenues related to the WM Agreement segregated and kept sufficiently distinct so as to be severable, in the event that the Commission Panel determines that final approval of the WM Agreement is not warranted.**
- 4. Any differences between the interim rate and the permanent rate will be recovered from or repaid to Waste Management with interest.**
- 5. The Commission will continue to hold confidential the WM Agreement and the financial schedules in Appendix E of the Application as filed to date.**