



**ORDER NUMBER**  
**G-111-17**

IN THE MATTER OF  
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

Stargas Utilities Ltd.  
Application for Reconsideration and Variance of Order G-59-17

**BEFORE:**

R. I. Mason, Panel Chair/Commissioner  
D. M. Morton, Commissioner

on July 20, 2017

**ORDER**

**WHEREAS:**

- A. On December 16, 2016 and April 27, 2017, respectively, the British Columbia Utilities Commission (Commission) issued Order G-192-16 and Order G-59-17 with reasons for decision in the matter of Stargas Utilities Ltd.'s (Stargas) September 26, 2016 Application to Vary Delivery Rate, Amend Cost of Service Formula and Approve Replacement Term Financing/Redemption of Preferred Shares (2016 Delivery Rate Application);
- B. On May 15, 2017, pursuant to section 99 of the *Utilities Commission Act*, Stargas filed an application for reconsideration and variance of Directive 11 contained within Order G-59-17. Stargas seeks a reconsideration of the Commission's determination pertaining to the refund of \$6,000 to Stargas' customers relating to fiscal 2015 and 2016 preferred share dividend overpayments (Application for Reconsideration);
- C. By Order G-81-17 dated May 24, 2017, the Commission established that the Application for Reconsideration shall proceed to Phase 2 as a written process, and set out a regulatory timetable for review of the application, which included a process for intervener arguments and Stargas reply argument;
- D. The regulatory timetable was amended by Order G-84-17 dated May 29, 2017, following the receipt of a deadline extension request by the Silver Star Property Owners Association (SSPOA); and
- E. The Commission reviewed Stargas' Application for Reconsideration and the final and reply arguments of the parties and considers it appropriate to vary Order G-59-17.

**NOW THEREFORE** pursuant to section 99 of the *Utilities Commission Act* and for the reasons attached as Appendix A to this order the British Columbia Utilities Commission orders as follows:

1. Stargas Utilities Ltd.'s (Stargas) request for reconsideration and variance of Order G-59-17 (Application for Reconsideration) is approved. The requirement of Directive 11 to refund \$6,000 to Stargas's current customers related to fiscal 2015 and 2016 preferred share dividend overpayments is rescinded.
2. Provided customers have been refunded the \$6,000 in a previous billing, Stargas is approved to rebill its customers this amount within 60 days from the date of this order by means of a one-time bill charge.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 20<sup>th</sup> day of July 2017.

BY ORDER

*Original signed by:*

R. I. Mason  
Commissioner

Attachment

Stargas Utilities Ltd.  
Application for Reconsideration and Variance of Order G-59-17

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**REASONS FOR DECISION**

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**1.0 Background**

In 2002, the British Columbia Utilities Commission (Commission) approved for Stargas Utilities Ltd. (Stargas) the issuance of \$400,000 of cumulative preferred shares, and established that the dividend rate on the preferred shares be calculated using the Commission's benchmark rate of return plus 75 basis points.<sup>1</sup>

In 2012, the Commission approved the inclusion of forecast preferred share dividends of \$41,000 in Stargas' fiscal 2013 revenue requirement, based on the Commission's then benchmark rate of return of 9.5 percent plus 75 basis points.<sup>2</sup>

On September 26, 2016, Stargas filed an application with the Commission to Vary Delivery Rate, Amend Cost of Service Formula and Approve Replacement Term Financing/Redemption of Preferred Shares (2016 Delivery Rate Application). During that proceeding, Stargas acknowledged that it calculated the return on its preferred shares incorrectly in two prior fiscal years. Specifically, after including Stargas' 75 basis point premium, Stargas erroneously used a rate of 10.25 percent instead of 9.5 percent when calculating dividends on \$400,000 of preferred shares in fiscal 2015 and 2016.<sup>3</sup> The total overpayment to the preferred shareholders was \$6,000 over the two years.<sup>4</sup>

On April 27, 2017, the Commission issued Order G-59-17 with reasons for decision with respect to the 2016 Delivery Rate Application. Among other things, Order G-59-17 established a permanent delivery rate of \$5.77 per gigajoule (GJ) compared to \$7.38 per GJ, as set in 2012,<sup>5</sup> for all customers effective November 1, 2016, as modified by the directives in the order. Order G-59-17 also made certain directives relating to the preferred share dividend overpayments.

**2.0 Stargas reconsideration application**

On May 15, 2017, Stargas filed an application for reconsideration and variance of Directive 11 contained within Order G-59-17 (Application for Reconsideration). The Application for Reconsideration is made pursuant to section 99 of the *Utilities Commission Act* (UCA). Directive 11 of Order G-59-17 reads as follows:

Stargas is directed to refund a total of \$6,000 to its current customers, related to fiscal 2015 and 2016 preferred share dividend overpayments within 60 days from the date of this order by means of a one-time bill credit.

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<sup>1</sup> Order G-80-02.

<sup>2</sup> Order G-157-12.

<sup>3</sup> 2016 Delivery Rate Application, Exhibit B-2, BCUC IR 7.2.

<sup>4</sup>  $(10.25 \text{ percent} - 9.5 \text{ percent}) \times \$400,000 \times 2 \text{ years} = \$6,000$

<sup>5</sup> Order G-157-12.

Stargas submits its reconsideration application on the basis that the Commission's order to issue a refund to customers is an error in law, in that the order "offends the [common law] prohibition against retroactive ratemaking."<sup>6</sup>

Stargas submits that while it failed to note a decrease in the Commission's benchmark rate of return in 2015 and 2016 and consequently overpaid its preferred shareholders, it is "a separate matter from whether Stargas properly charged customers the approved delivery rate in 2015 and 2016."<sup>7</sup> Stargas argues it was not required to annually adjust its delivery rate for any costs that varied from the forecast amounts upon which the delivery rate of \$7.38 per gigajoule was set.<sup>8</sup> Stargas submits the Commission's direction to refund the \$6,000 in Order G-59-17 is "a direction that Stargas' delivery rate be reduced from \$7.38 per gigajoule to \$7.29 [per gigajoule] in 2015 and 2016."<sup>9</sup>

Accordingly, Stargas requests that Order G-59-17 be varied to rescind Directive 11, and should the Commission approve its Application for Reconsideration, Stargas be permitted to recover the \$6,000 which it will credit to customers in its May 2017 billing through a rebilling.<sup>10</sup>

### 3.0 Applicable legislation and Reconsideration Criteria

Section 99 of the UCA states:

The commission, on application or on its own motion, may reconsider a decision, an order, a rule or a regulation of the commission and may confirm, vary or rescind the decision, order, rule or regulation.

The Commission has published Reconsideration Criteria regarding its process for hearing and determining an application for reconsideration. The criteria, in general terms, provide that the process proceeds in two phases. The first phase requires the applicant to establish a *prima facie* case that the Commission has made an error of fact or law and that the alleged error has significant material implications. The Commission will exercise its discretion in determining whether an applicant has established a *prima facie* case and in doing so may consider whether:

- the Commission made an error of fact or law,
- there has been a fundamental change in circumstances in facts since the decision,
- a basic principle had not been raised in the original proceeding, or,
- a new principle has arisen as a result of the decision.<sup>11</sup>

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<sup>6</sup> Exhibit B-1, pp. 2-3.

<sup>7</sup> Ibid., p. 2.

<sup>8</sup> Ibid.

<sup>9</sup> Ibid., p. 3.

<sup>10</sup> Ibid.

<sup>11</sup> A Participants' Guide to the B.C. Utilities Commission, pp. 36 -37.

In the event the applicant establishes a *prima facie* case, the Commission will then proceed to the second phase in which it hears full arguments on the merits of the reconsideration application.

#### **4.0 Reconsideration process**

Pursuant to Order G-81-17 dated May 24, 2017, the Commission considered the Application for Reconsideration and determined that a *prima facie* case was made and that the application shall proceed to Phase 2 of reconsideration directly. Furthermore, and as amended by Order-84-17 dated May 29, 2017, the Panel established a regulatory timetable for Phase 2 of the reconsideration process, which provided for intervenor and reply arguments.

The Silver Star Property Owners Association (SSPOA) filed its argument on June 9, 2017, and Stargas filed its reply argument on June 12, 2017.

#### **5.0 Parties' submissions**

SSPOA submits that the Application for Reconsideration "must be rejected" for three reasons.<sup>12</sup> This section addresses each of these reasons, including Stargas' reply and a Panel discussion.

##### **5.1 Inappropriate attempt at a second chance to argue the issue**

SSPOA refers to its Final Argument dated February 10, 2017, and Stargas' Reply Argument dated February 17, 2017, filed in the 2016 Delivery Rate Application. SSPOA submits that the Application for Reconsideration is "an inappropriate attempt at a second chance at arguing the issue, after failing to do so in [Stargas' February 17, 2017 Reply Argument]." SSPOA submits that it "raised the issue of a [preferred share dividend overpayment] refund" at that time and Stargas did not "engage with the issue." Accordingly, SSPOA argues that the Application for Reconsideration is a "wasteful duplication" which the Commission should refuse and "dismiss outright."<sup>13</sup>

##### *Stargas reply argument*

In reply to SSPOA, Stargas submits that it was "only in [a] position to consider raising the matter following having read the Commissions Reasons for Decision" and "[u]pon careful review of that document [did] it [then become] apparent that Stargas, the Commission and the [SSPOA] had neither fully nor fairly explored the underlying basis for the proposed refund." Stargas argues that this is affirmed by the Commission's decision to proceed to Phase 2 of a reconsideration application following its *prima facie* test applied in Phase 1.<sup>14</sup>

##### *Panel discussion*

As stated in Section 3.0 of these reasons for decision, the Commission has published Reconsideration Criteria which provides that an application for reconsideration proceed in two phases. In the first phase, the Commission will consider whether a reasonable basis or *prima facie* case exists for allowing reconsideration. Where this has

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<sup>12</sup> SSPOA Argument, p. 1.

<sup>13</sup> Ibid., pp. 1-2.

<sup>14</sup> Stargas Reply Argument, p. 1.

been established, the Commission will direct that the application proceed to the second phase of the reconsideration process.

The Commission, in Order G-81-17, established that the criterion to advance from the first phase has been met. The Panel explains that a *prima facie* case exists in that it agrees with Stargas that due consideration of the proposed refund had not been given in the 2016 Delivery Rate Application proceeding. Therefore, the Panel rejects SSPOA's argument that the Application for Reconsideration is a "wasteful duplication" which should be dismissed.<sup>15</sup>

In the sections that follow, the Panel will consider the remainder of the arguments presented by SSPOA and Stargas on the merits of the Application for Reconsideration, which is phase two of a reconsideration process.

## **5.2 Misinterpreting and misapplying the concept of retroactive ratemaking**

SSPOA submits that the legal basis of Stargas' Application for Reconsideration is "flawed" for a number of reasons, including:

1. Stargas conceded the past rates at issue were "always subject to adjustment by tracking the Commission's benchmark rate of return." SSPOA submits "it is not retroactive ratemaking to enforce the application of a prescribed rate calculation methodology" which is what the Panel's decision in Order G-59-17 does.<sup>16</sup>
2. The "language and context" of Order G-157-12 independently show rates were to be adjusted to track the benchmark return.<sup>17</sup> Referring to section 5.1.1 of that order, SSPOA submits the Commission "would have substituted the reference to the Commission's benchmark return with a fixed number" if share dividends and rate of return in each given year were not intended to be variable amounts.<sup>18</sup>
3. The "well-recognized exception applicable to adjustable and interim rates." Again, SSPOA submits that Stargas "repeatedly told the Commission that it understood its rates were subject to change." SSPOA submits this knowledge renders retroactivity permissible given that "adjustments to 'interim rates'" is a recognized exception to retroactive ratemaking.<sup>19</sup>
4. "Holding out" rate of return as a forecastable cost subject to risk/reward, akin to other revenue requirement components, is "wrong conceptually."<sup>20</sup> SSPOA submits "forecast-based ratemaking encourages utilities to find cost-efficiencies on the items within their control by allowing them to 'overearn' (i.e. the utility shareholders not only receive the utility's authorized return on equity, but any additional profits attributable to more efficient operations)."<sup>21</sup> However, SSPOA submits Stargas has no

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<sup>15</sup> SSPOA Argument, p. 1.

<sup>16</sup> Ibid., pp. 1, 3.

<sup>17</sup> Ibid., p. 3.

<sup>18</sup> Ibid., pp. 3-5.

<sup>19</sup> Ibid., pp. 5-6.

<sup>20</sup> Ibid., p. 2.

<sup>21</sup> Ibid., p. 6.

control over the benchmark return. Thus, “this is not a circumstance that fits the traditional risk accounted for with forecastable costs.”<sup>22</sup>

### *Stargas reply argument*

Stargas responds by clarifying it “made no admission” that Order G-157-12 “intended rates to be adjusted to track [the Commission’s] benchmark return [on equity].”<sup>23</sup> Stargas submits its “understanding then, and currently” is that the rate charged to its customers is as reflected in its “serially dated tariff pages, signed by the Commission” following formal proceedings.<sup>24</sup>

Stargas disagrees with SSPOA that the language and context of Order G-157-12 suggested that “Stargas had the responsibility and authority to amend its delivery rate outside of and absent confirmation of whatever the adjustment in that rate by the [Commission].”<sup>25</sup> Stargas argues there was “no mechanism by which Stargas would be required, or permitted, to amend or adjust the permanent delivery rate on any basis” in Order G-157-12, and contends that “were there to have been required an adjustment... [O]rder G-157-12 would have included a provision specifying that requirement.”<sup>26</sup> As such, Stargas reiterates that rates charged in each of 2015 and 2016 “whether on an interim or permanent basis, are those reflected in its tariff pages, as duly filed and signed off on by the Commission” and that it “billed its customers the rate reflected in its approved tariff [pages] and collected precisely the rate legislated.”<sup>27</sup>

Stargas further disagrees that it was “aware” that delivery rates were subject to change based on changes to the Commission’s benchmark rate of return. Stargas submits it was not “[u]ntil identified in an [*sic*] Commission Staff information request related to the [2016 Delivery Rate Application] was the impact of the change in the benchmark rate identified by any of the parties to this deliberation.”<sup>28</sup>

Stargas submits it “does not rely on a proposition that rate of return is a forecastable cost subject to risk/reward... [but rather] Stargas relies on the process in place wherein and whereby it interfaces with a regulatory body [the Commission] and in this instance an intervenor to find a basis for whatever the change in its rates and finances.”<sup>29</sup>

### *Panel discussion*

The Panel considered the reasons put forth by SSPOA and also reviewed Order G-157-12 with the accompanying reasons for decision.

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<sup>22</sup> Ibid., p. 7.

<sup>23</sup> Stargas Reply Argument, p. 3.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid., p. 1.

<sup>27</sup> Ibid., pp. 3-4.

<sup>28</sup> Ibid., p. 4.

<sup>29</sup> Ibid., p. 5.

In reviewing that decision, the Panel disagrees with SSPOA that the Commission established a prescribed “rate calculation methodology”<sup>30</sup> in that decision. Rather, the Commission prescribed Stargas’ 2013 revenue requirement, which included a preferred share dividend based on the Commission’s then-prevailing benchmark rate of return. In doing so, the Panel agrees with Stargas that there were no determinations or directives within Order G-157-12 or the accompanying reasons for decision requiring Stargas to adjust its delivery rate based on changes to the Commission’s approved benchmark return on equity. Furthermore, the Panel agrees with Stargas that had Order G-157-12 intended Stargas’ delivery rate to reflect the changes to the benchmark rate of return, it would have explicitly stated so. Therefore, although the Panel acknowledges the argument put forth by SSPOA and the “language and context” of Order G-157-12, it does not find these arguments to be compelling.

The Panel notes Stargas is, unless otherwise directed, under no obligation to make an application to the Commission to amend its delivery rate at any time, nor does it have the jurisdiction to set or amend rates without Commission approval. When changes to the benchmark rate of return occur, it is up to Stargas, or the Commission, to initiate an application for a change to the delivery rate. The application may also be initiated by a complaint if a complainant feels that rates ought to be amended.

With respect to SSPOA’s argument concerning interim rates, the Panel agrees with SSPOA that “interim” is “a matter of substance and not form” and retroactivity is permissible relating to interim rates.<sup>31</sup> However, the refund ordered by the Commission in Order G-59-17 related to permanent, not interim, rates. The Panel disagrees that the concepts relating to “forecast-based ratemaking” argued by SSPOA apply.<sup>32</sup> The Panel reiterates that there were no directives or determinations within Order G-157-12 ordering a change in the delivery rate with changes to the Commission’s benchmark rate of return. As such, the rates established by Order G-157-12 were effective until the issuance of Commission Order G-155-16, which established an interim, refundable delivery rate, effective November 1, 2016.

For the foregoing reasons, the Panel rejects SSPOA’s argument that the concept of retroactive ratemaking has been inappropriately applied in the Application for Reconsideration.

### **5.3 Failing on policy grounds**

SSPOA submits that the Application for Reconsideration “fails on policy grounds” in that the Commission “must have the power to not only prescribe just and reasonable rates, but ensure that only those same rates are collected.”<sup>33</sup> SSPOA reiterates that Directive 11 “intends to rectify” an overpayment that was not charged in accordance with the previously set rates and submits “the prohibition against retroactive ratemaking cannot be reasonably interpreted to limit the [Commission’s] ability to ensure proper compliance with its orders.”<sup>34</sup>

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<sup>30</sup> SSPOA Argument, p. 3.

<sup>31</sup> Ibid., p. 5.

<sup>32</sup> Ibid., pp. 6-7.

<sup>33</sup> Ibid., p. 2.

<sup>34</sup> Ibid., pp. 7-8.



Further, SSPOA submits “the common law prohibition [against retroactive ratemaking] should not be interpreted to prevail over the Commission’s statutory public interest mandate to protect captive customers.”<sup>35</sup> SSPOA refers to a 2002 decision of the Energy Utilities Board (EUB) which stated “adjustments made to rectify imprudence or non-compliance [are not] the same as retroactive ratemaking” and the “general prohibition against retroactive ratemaking is intended to further its public interest mandate, not limit it.”<sup>36</sup> Accordingly, SSPOA submits that the refund of \$6,000 in preferred share dividend overpayments “is necessary, and therefore permissible, notwithstanding any retrospective effect, to ensure [proper] compliance [with Commission directives] and the effectiveness of [the Commission’s] regime more generally.”<sup>37</sup>

### *Stargas reply argument*

Stargas responds to SSPOA by reiterating its position that while it “failed to comply with the change in benchmark return as [it] relates [to] the payment of dividends in 2015 and 2016; it submits, however, that [is] not collateral to nor impacting upon the delivery rate applied and charged to customers in each of those years.”<sup>38</sup>

Stargas also reiterates its position that it has billed ratepayers as authorized by the Commission and submits “in doing so, [that it has] earned returns that, too, were just and reasonable.”<sup>39</sup> Accordingly, Stargas concludes that “its error in dividend payments in 2015 and 2016 did not have a cost to ratepayers and that the [Commission’s] decision to refund \$6,000 [to ratepayers] ought, equitably be reversed.”<sup>40</sup>

### *Panel discussion*

As stated in the section above, the Panel is not convinced that a foundation exists on which SSPOA submits Stargas has not complied with the Commission’s 2012 order. The Panel agrees with Stargas that the issue of an overpayment of preferred share dividends is separate from the issue of whether just and reasonable rates have been collected from ratepayers. Stargas has shown that ratepayers were charged just and reasonable rates in fiscal 2015 and 2016, as established by Order G-157-12.

## **6.0 Commission determination**

For the reasons provided above, **the Panel finds it is appropriate to vary Order G-59-17.**

Accordingly, the Panel determines that Order G-59-17 be varied as follows:

- 1. Stargas’ request for reconsideration and variance of Order G-59-17 is approved. The requirement of Directive 11 to refund \$6,000 to Stargas’s current customers related to fiscal 2015 and 2016 preferred share dividend overpayments is rescinded.**

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<sup>35</sup> Ibid., p. 2.

<sup>36</sup> Ibid., p. 8.

<sup>37</sup> Ibid.

<sup>38</sup> Stargas Reply Argument, p. 5.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

2. **Provided customers have been refunded the \$6,000 in a previous billing, Stargas is approved to rebill its customers this amount within 60 days from the date of this order by means of a one-time bill charge.**