



ORDER NUMBER
G-128-17

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

and

Stargas Utilities Ltd.
Application to Include Additional Costs in the
2016 Delivery Rate Application Regulatory Account

BEFORE:

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

on August 18, 2017

ORDER

WHEREAS:

- A. On June 6, 2017, Stargas Utilities Ltd. (Stargas) applied to the British Columbia Utilities Commission (Commission) for approval of the following additional costs in its 2016 Delivery Rate Application Regulatory Account:
- Regulatory and legal counsel costs related to the Stargas Application for Reconsideration and Variance of Order G-59-17 (First Reconsideration and Variance of Order G-59-17), not to exceed \$5,500 (Item A);
 - Administrative costs of approximately \$1,000 related to processing refunds directed by Order G-59-17 (Item B); and
 - Legal counsel costs of \$10,000, representing a portion of the difference between the approved legal counsel costs as explained in the Reasons attached to Order G-59-17 and the final legal counsel costs of Stargas' September 26, 2016 Application to Vary Delivery Rate, Amend Cost of Service Formula and Approve Replacement Term Financing/Redemption of Preferred Shares (Item C) (together, the Application);
- B. On June 21, 2017, the Commission issued a letter to the Silver Star Property Owners Association (SSPOA), inviting submissions on the Application. Specifically, the Commission requested comments on:
- (i) a regulatory review process and regulatory timetable,
 - (ii) whether the requested amounts should be deferred for consideration until Stargas' next application for a delivery rate, and
 - (iii) any other matters;

- C. The Commission received a submission from the SSPOA on July 10, 2017, and a reply submission to SSPOA from Stargas on July 14, 2017;
- D. By Order G-111-17 dated July 20, 2017, the Commission issued a decision approving the First Reconsideration and Variance of Order G-59-17. As part of its decision, the Commission rescinded its original determination that Stargas was required to refund \$6,000 to its current customers related to fiscal 2015 and 2016 preferred share dividend overpayments;
- E. On July 17, 2017, SSPOA filed an application for a Participant Assistance/Cost Award (PACA) in the amount of \$1,428 related to the First Reconsideration and Variance of Order G-59-17;
- F. By letter dated July 21, 2017, Stargas provided its comments on the PACA application, stating that it would be “unwarranted and punitive” to ask Stargas to bear this cost;
- G. The Commission’s Reconsideration Criteria sets out a two-phase process for reconsideration requests to the Commission. In the first phase, the applicant must establish a *prima facie* case that the Commission should proceed with a reconsideration. If the Commission finds that a sufficient *prima facie* case has been made, the reconsideration proceeds to the second phase where the Commission hears arguments on the merits of the application; and
- H. The Commission reviewed the Application and the submissions of the parties, and considers the Application to be a request for reconsideration and variance of Directives 8 and 9 of Order G-59-17. The Commission makes specific determinations for each of the items sought in the Application, as explained in the reasons attached as Appendix A to this order.

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

1. For Item A and Item B listed in the recitals above, a *prima facie* case has been established and the reconsideration will proceed to the second phase of the reconsideration process.
2. Stargas’ application for reconsideration and variance of Item C is dismissed, as explained in the reasons for decision attached as Appendix A to this order.
3. The regulatory timetable for the second phase of the reconsideration process of Items A and B is established, as set out in Appendix B to this order.

DATED at the City of Vancouver, in the Province of British Columbia, this 18th day of August 2017.

BY ORDER

Original signed by:

R. I. Mason
Commissioner

Attachments

Stargas Utilities Ltd.
Application to Include Additional Costs in the
2016 Delivery Rate Application Regulatory Account

REASONS FOR DECISION

1.0 BACKGROUND

1.1 Overpayment of preferred share dividends

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.¹

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.²

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, as it had failed to take note of a change in the Commission's benchmark rate of return.³ The total overpayment to preferred shareholders was \$6,000.⁴

On April 27, 2017, the Commission issued Order G-59-17 with respect to the 2016 Delivery Rate Application. Among other things, Order G-59-17 directed that Stargas refund its current customers the \$6,000 it had overpaid its preferred shareholders (Refund), on the basis that the overpayment had also been over collected from ratepayers.⁵

On May 15, 2017, Stargas filed an Application for Reconsideration and Variance of Order G-59-17 (First Reconsideration and Variance of Order G-59-17), seeking reconsideration and variance of the Refund directive contained within Order G-59-17. Following a regulatory process which included intervener and Stargas reply arguments, the Commission issued Order G-111-17 on July 20, 2017, approving the First Reconsideration and Variance of Order G-59-17, and rescinding the Refund directive contained within Order G-59-17. Additionally, Stargas was approved to rebill its customers the \$6,000, provided that customers had been refunded the \$6,000 in a previous billing. The Commission determined that, while Stargas had indeed overpaid its preferred shareholders in two prior fiscal years, the issue is separate from whether just and reasonable rates have been collected from ratepayers in those years.⁶ The amount of preferred share dividends included in the delivery rate charged was based on the Commission's prevailing benchmark rate of return when the delivery rate was set,

¹ Order G-80-02, Stargas Utilities Ltd. Application for Approval of Rate, Tariff and Ownership Changes.

² Order G-157-12, Stargas Utilities Ltd. Application to Alter Rates.

³ 2016 Delivery Rate Application, Exhibit B-2, BCUC IR 7.2.

⁴ Order G-59-17 and Reasons for Decision in the Stargas Utilities Ltd. Application to Vary Delivery Rate, Amend Cost of Service Formula and Approve Replacement Term Financing/Redemption of Preferred Shares.

⁵ Order G-59-17, Appendix A, p. 22.

⁶ Order G-111-17, Appendix A, p. 7.

and that Stargas was under no obligation to make an application to the Commission to amend its delivery rate based on subsequent changes to the Commission's benchmark rate of return.⁷

1.2 2016 Delivery Rate Application regulatory and legal counsel costs

During the 2016 Delivery Rate Application proceeding, Stargas was approved to establish a 2016 Delivery Rate Application Regulatory Account. It was further approved to record in that account legal counsel costs of \$16,500 and Stargas' internal time of \$13,853 related to the 2016 Delivery Rate Application proceeding, among other things.⁸

2.0 STARGAS APPLICATION

On June 6, 2017, Stargas submitted an application to include additional costs in the 2016 Delivery Rate Application Regulatory Account (Application). The Application requested approval of the following additional costs:

- Regulatory and legal counsel costs related to the First Reconsideration and Variance of Order G-59-17, not to exceed \$5,500 (Item A);
- Administrative costs of approximately \$1,000 related to processing the Refund (Item B); and
- Legal counsel costs of \$10,000, representing a portion of the difference between the approved legal counsel costs explained in the reasons for decision attached to Order G-59-17, and Stargas' final actual costs (Item C).

3.0 APPLICATION REVIEW PROCESS THUS FAR

To ensure a fair and efficient process, the Commission invited submissions on the Application from the intervener in the 2016 Delivery Rate Application proceeding, the Silver Star Property Owners Association (SSPOA), and a reply submission from Stargas. Specifically, the Commission requested comments on (i) a regulatory review process and regulatory timetable, (ii) whether the requested amounts should be deferred for consideration until Stargas' next application for a delivery rate, which it is directed to file by July 31, 2019,⁹ and (iii) any other matters.

The Commission received a submission from the SSPOA on July 10, 2017, and a reply submission from Stargas on July 14, 2017.

4.0 PARTIES' SUBMISSIONS

4.1 Regulatory review process and regulatory timetable

SSPOA submits that the Application is a request for reconsideration and variance of Order G-59-17 but that it "fails to use that label."¹⁰ SSPOA argues that the Application seeks to reverse multiple parts of Order G-59-17, adding to those costs "already approved by the Commission." SSPOA notes that the Commission's

⁷ Ibid., p. 6.

⁸ Order G-59-17, Appendix A, p. 15.

⁹ Order G-59-17.

¹⁰ Exhibit C1-2, p. 1.

reconsideration process provides an efficient mechanism to handle this type of request, while still providing “procedural protections”¹¹ to Stargas customers, and submits that the Commission’s two phase reconsideration process should apply.¹²

In its reply, Stargas does not respond to SSPOA’s submission of whether the Commission should treat the Application as an application for reconsideration. Stargas does submit, however, that the Commission should make its determinations “based upon [the] submissions now before it”¹³ and “without further proceedings.”¹⁴

4.2 **Defer consideration until the next application for a delivery rate**

SSPOA does not support deferring consideration of the requested amounts until Stargas’ next delivery rate application. SSPOA submits that it would be “difficult and time-intensive for customers to look back on regulatory costs incurred several years earlier and show why, in context, they may have been excessive, duplicative, or other inefficient,” and “weakens the onus on Stargas to justify the reasonableness of the regulatory cost component of its rates.”

Stargas also submits “a speedy resolution to the matters at hand best serves the affected parties” and, as stated above, that the Commission should make its determinations “based on submissions now before it.”¹⁵

4.3 **Other matters**

SSPOA submits its general concerns with Stargas’ conduct following the 2016 Delivery Rate Application proceeding and argues that the Commission should “require Stargas to pay its own regulatory costs, as well as those of interveners” for any unsuccessful application for reconsideration and variance.¹⁶

Stargas does not respond to SSPOA’s submission on this issue.

Commission determination

The Panel has considered the submissions and **finds that the Application is a request to reconsider and vary Directives 8 and 9 contained within Order G-59-17**. The Panel agrees with SSPOA that Stargas is asking the Commission to reconsider and vary Order G-59-17, even though the term “reconsideration” was not used in the Application; whether an Application is a reconsideration and variance request is a matter of substance, not of form. In the Application, Stargas is seeking to increase the costs already approved and incorporated into the established delivery rate.

The Panel is supportive of Stargas’ arguments regarding efficiency, but considers that an application for reconsideration and variance should strike the correct balance between holding a fair and transparent process and maintaining regulatory efficiency.

¹¹ Exhibit C1-2, p. 2.

¹² Ibid., p. 1.

¹³ Exhibit B-2, p. 1.

¹⁴ Ibid., p. 2.

¹⁵ Ibid., p. 1.

¹⁶ Exhibit C1-2, p. 8.

5.0 APPLICABLE LEGISLATION AND RECONSIDERATION CRITERIA

Section 99 of the *Utilities Commission Act* (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 or 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.

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.

Commission determination

The Panel finds that the parties have provided their comments on whether the Application, if treated as a request for reconsideration and variance, should pass the *prima facie* test and therefore proceed to a second stage of consideration. SSPOA submits that it is “content” for its submission on the Application to serve as its comments on whether the items in the Application pass the first, *prima facie*, test of a request for reconsideration and variance.¹⁷ SSPOA adds that should the Commission determine that a *prima facie* case has been made for any of the items “on their merits”, then the Commission should seek parties’ further submissions.¹⁸ As noted above, Stargas considers that the Commission should expedite a decision without further process, in order to minimize regulatory costs for all parties.¹⁹ In its reply, Stargas provides arguments as to why each of the three items applied for should be approved.²⁰

Accordingly, the Panel’s determinations regarding the *prima facie* test for each of the three items applied for will be dealt with in Section 6.0 below.

The Panel recognizes that regulatory processes are proportionately more costly for small utilities than for large utilities, and that these costs are, for the most part, ultimately borne by ratepayers. The Panel has sought to find the most efficient regulatory process that will address the Application, while still providing the appropriate transparency and opportunity for parties to surface their concerns. SSPOA has provided significant comments on the items in the Application, but these were made on the basis that a second round of argument would follow for items passing the *prima facie* test. Therefore, **the Panel finds that, should any items pass the *prima facie* test, then a further round of comments would be sought on those items.** However, the Panel strongly

¹⁷ Exhibit C1-2, p. 8.

¹⁸ Ibid., p. 8.

¹⁹ Exhibit B-2, p. 2.

²⁰ Ibid., pp. 1-2.

encourages all parties not to repeat arguments already made, but to supplement them, as these are already on the record in this proceeding, and will receive due consideration by the Panel.

6.0 WHETHER A PRIMA FACIE CASE HAS BEEN ESTABLISHED

6.1 Item A – Regulatory and legal counsel costs

Stargas applies for up to \$5,500 in management and legal counsel costs associated with the First Reconsideration and Variance of Order G-59-17. The Panel notes that Stargas has not included in its request any Participant Assistance/Cost Award funding for SSPOA's contribution to the First Reconsideration and Variance of Order G-59-17 that the Commission may award.

SSPOA contends that Stargas is "entitled to no further compensation for review costs that are reflected in the overall regulatory cost forecast approved by the Commission as part of Stargas' revenue requirement", since Stargas receives its return on equity as compensation for the risk of under-forecasting.²¹ Stargas replies that these costs "could not have been a part of any filing prior to the submission of the request for [r]econsideration."²²

Commission determination

The Panel finds that item A passes the *prima facie* test and will proceed to the second phase of the reconsideration process, as outlined in Section 7.0. The Panel agrees with SSPOA that, under the regulatory compact, Stargas has the opportunity, but not the guarantee, of earning its regulated return. Stargas receives a return on its invested capital in return for its forecasting risk, among other things. Conversely, if Stargas achieves operational efficiencies, its return could increase.

However, the Panel considers that the cost to Stargas of the First Reconsideration and Variance of Order G-59-17 was not reasonably foreseeable at the time of the 2016 Delivery Rate Application, and that the amounts claimed are significant to Stargas and its ratepayers. For these reasons, the Panel considers that the First Reconsideration and Variance of Order G-59-17 constitutes a "fundamental change in circumstances in facts since the decision" and, therefore, a reasonable basis exists for allowing a reconsideration.

6.2 Item B – Administrative costs of Refund

Stargas applies for approximately \$1,000 in costs associated with processing the Refund, which the Commission has, subsequent to this Application, rescinded.²³ The Panel notes that Stargas will presumably face equivalent effort and cost to process the reversal of the customer refund as a result of the First Reconsideration and Variance of Order G-59-17 decision.

SSPOA notes that the costs are "not insignificant" to Stargas,²⁴ but that Stargas had "ample opportunity to include these costs in its forecast."²⁵

²¹ Exhibit C1-2, p. 5.

²² Exhibit B-2, p. 1.

²³ Order G-111-17.

²⁴ Exhibit C1-2, p. 4.

²⁵ *Ibid.*, p. 5.

Commission determination

The Panel finds that item B passes the *prima facie* test and will proceed to the second phase of the reconsideration process, as outlined in Section 7.0. As noted above, the Panel considers that the First Reconsideration and Variance of Order G-59-17 was not reasonably foreseeable at the time of the 2016 Delivery Rate Application. Also, the administrative costs incurred as a result are significant to Stargas and its ratepayers. For these reasons, the Panel considers that the First Reconsideration and Variance of Order G-59-17 constitutes a “fundamental change in circumstances in facts since the decision” and a reasonable basis exists for allowing reconsideration.

6.3 Item C – Legal counsel costs

Stargas applies for \$10,000 in additional legal counsel costs associated with its 2016 Delivery Rate Application. Stargas submits that its total legal counsel cost incurred on this matter was approximately \$18,500 in excess of the \$16,500 the Commission approved in Order G-59-17.²⁶

SSPOA notes that, if approved, an additional \$10,000 would amount to a 60 percent increase in the legal counsel costs awarded to Stargas.²⁷ SSPOA adds that “no new information is offered to justify” this amount and that this “could have been dealt with during the hearing.”²⁸

Stargas replies that it “did not have an opportunity, during the delivery rate process, to file a revised estimate” of its legal counsel costs, and argues that for Stargas shareholders to incur the full legal counsel cost would be “an unwarranted and inequitable levy.”²⁹

Commission determination

The Panel finds that Item C does not pass the *prima facie* test in the first phase of reconsideration. The application for additional legal counsel costs to be recorded in the 2016 Delivery Rate Application Regulatory Account is dismissed. The Panel notes, unlike Items A and B, the requested increase in legal counsel costs is related solely to the 2016 Delivery Rate Application proceeding. During that proceeding, Stargas has already once requested that its “regulatory costs, including the cost of legal counsel, be subject to a true up process.”³⁰ The Panel noted this on page 15 of the reasons for decision.³¹ Notwithstanding, the Commission only approved an amount for legal counsel costs without any mechanism for subsequent adjustment. In the 2016 Delivery Rate Application proceeding, Stargas had the responsibility to ensure that its estimate of legal counsel fees was reasonably accurate and complete. The Panel agrees with SSPOA³² and considers the request in this Application, to be in essence, the same as Stargas’ previous request for a “true up process”. Accordingly, the Panel considers that the receipt of a new invoice from Stargas’ legal counsel does not constitute a fundamental change in circumstances or facts, even if the amount is material to Stargas’ shareholders.

Finally, the Panel disagrees that Stargas had no opportunity to revise its estimate of legal counsel costs; as in all regulatory proceedings, Stargas could have obtained a revised quote from its legal counsel and submitted it as an evidentiary update prior to the close of evidence.

²⁶ Exhibit B-1, p. 2; \$35,231 - 16,500 = \$18,731.

²⁷ Exhibit C1-2, p. 4.

²⁸ Ibid.

²⁹ Exhibit B-2, p. 2.

³⁰ 2016 Delivery Rate Application, Stargas Reply Argument, p. 22.

³¹ Order G-59-17, Appendix A, p. 15.

³² Exhibit C1-2, p. 3.

7.0 PHASE TWO RECONSIDERATION PROCESS

The Panel is mindful that the costs associated with Items A and B arose as a result of the First Reconsideration and Variance of Order G-59-17, which was ultimately approved by the Commission. While this is not an unusual regulatory process, the costs of such a reconsideration are disproportionately high for a utility such as Stargas with a small customer base. Section 118(2) of the UCA states “if the Commission considers it to be in the public interest, the Commission may pay all or part of the costs of participants in proceedings before the Commission.” The Panel considers that it may be in the public interest for the Commission to exercise its power under section 118 (2) of the UCA and pay for the costs of the participants who were parties to the First Reconsideration and Variance of Order G-59-17.

The Panel, therefore, hereby asks any parties who may have comments on the merits of this approach or objections to the Commission’s application of section 118 (2) to provide comments. The regulatory timetable for this comment process is set out in Appendix B to this order.

Stargas Utilities Ltd.
Application to Include Additional Costs in the
2016 Delivery Rate Application Regulatory Account

REGULATORY TIMETABLE

Action	Date
Stargas Final Argument	Thursday, August 24, 2017
SSPOA Final Argument	Thursday, August 31, 2017
Stargas Reply Argument	Friday, September 8, 2017