



**ORDER NUMBER**  
**F-14-17**

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 November 8, 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. On July 20, 2017 by Order G-111-17, the Commission issued a decision approving Stargas' Reconsideration and Variance of Order G-59-17. As part of it decision, the Commission rescinded its original determination that Stargas was required to refund \$6,000 to its current customers related to fiscal 2015 and 2016 preferred share dividend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 14, 2017, SSPOA filed its 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. By Order G-128-17 dated August 18, 2017 and accompanying reasons for decision, the Commission determined the Application shall be treated as an application for reconsideration and variance of Directives 8 and 9 contained within Order G-59-17. The Commission also made specific determinations for each of the items sought, finding that a *prima facie* case had been established for Items A and B and should proceed to the second phase (Phase Two) of the reconsideration process, and dismissing Item C. Order G-128-17 established the regulatory timetable for Phase Two of the reconsideration process of Items A and B, which included final arguments and Stargas reply argument;
- H. On September 13, 2017, SSPOA filed its application for PACA in the amount of \$1,428 with respect to its participation in this reconsideration proceeding;
- I. 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;
- J. Pursuant to section 118 (2) of the *Utilities Commission Act*, the Commission may pay all or part of the costs of participants in proceeding, if the Commission considers it to be in the public interest; and
- K. After considering the submissions of the parties, the Commission makes the following determinations.

**NOW THEREFORE** pursuant to sections 99 and 118(2) of the *Utilities Commission Act*, and for the reasons attached as Appendix A to this order, the Commission orders as follows:

1. Stargas’ request to include Item A and Item B in the 2016 Delivery Rate Application Regulatory Account is denied. However, the Commission will pay to Stargas for Item B, and to Stargas and SSPOA for their participation in the First Reconsideration and Variance of Order G-59-17 and in this reconsideration proceeding, the following amounts:

Participant	Award
Stargas	\$6,500
SSPOA	\$2,856

**DATED** at the City of Vancouver, in the Province of British Columbia, this 8<sup>th</sup> day of November 2017.

BY ORDER

*Original signed by:*

R. I. Mason  
Commissioner

Attachment

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

REASONS FOR DECISION

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**1.0 Introduction**

On September 26, 2016, Stargas filed its Application to Vary Delivery Rate, Amend Cost of Service Formula and Approve Replacement Term Financing/Redemption of Preferred Shares (2016 Delivery Rate Application). On April 27, 2017, the Commission issued Order G-59-17 and accompanying reasons for decision with respect to the 2016 Delivery Rate Application.

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 a refund directive (Refund) contained within that order. Following a regulatory process, which included the intervener in the 2016 Delivery Rate Application proceeding, the Silver Star Property Owners Association (SSPOA), and Stargas reply arguments, the Commission issued Order G-111-17, dated 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.<sup>1</sup>

On June 6, 2017, Stargas submitted an application to include the following additional costs in its 2016 Delivery Rate Application Regulatory Account (2016 DRARA) approved by Order G-59-17:<sup>2</sup>

- 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 the Stargas' final actual costs (Item C) (together, the Application).

The Commission invited submissions on the Application from SSPOA and a reply submission from Stargas. SSPOA submitted its comments on July 10, 2017 and Stargas submitted its reply on July 14, 2017.

After consideration of the submissions, by Order G-128-17 and accompanying reasons for decision dated August 18, 2017, the Commission determined that the Application is yet another application for reconsideration and variance of Directives 8 and 9 contained within Order G-59-17 (Second Reconsideration and Variance of Order G-59-17). The Commission also made specific determinations for each of the items sought, finding that a *prima facie* case had been established for Items A and B and should proceed to the second phase (Phase Two) of the reconsideration process, and dismissing Item C.<sup>3</sup>

The following sections address Items A and B in the second phase of the reconsideration process.

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<sup>1</sup> Order G-111-17, Appendix A, p. 7.

<sup>2</sup> Order G-59-17.

<sup>3</sup> Order G-128-17.

## 2.0 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.

## 3.0 Phase Two reconsideration process

By Order G-128-17, the Commission established the regulatory timetable for Phase Two of the reconsideration process of Items A and B, which provided for final arguments and Stargas' right of reply.

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, and that the costs of such a reconsideration are disproportionately high for a utility such as Stargas with a small customer base, the Commission referred to section 118(2) of the UCA, which 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 Commission considered that it may be in the public interest for it 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, and asked 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.

## 4.0 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.<sup>4</sup> In its final argument, it submits that costs should be approved because they were "necessary to an equitable resolution" of the 2016 Delivery Rate Application proceeding and therefore, should be included in the 2016 DRARA.<sup>5</sup> In addition, Stargas submits its position that any Participant Assistance/Cost Award

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<sup>4</sup> Exhibit B-1, p. 1; The breakdown of the costs applied for are \$1,500 related to legal counsel and \$4,000 related to executive time at a cost of \$144.26 per hour.

<sup>5</sup> Stargas Final Argument, p. 2.

(PACA) funding for SSPOA's contribution to the First Reconsideration and Variance of Order G-59-17 should be denied, but that if it is approved, then this amount should also be approved for inclusion in the regulatory account.<sup>6</sup>

SSPOA submits the \$5,500 in regulatory and legal counsel costs should be denied "or at least" significantly reduced for three reasons:

- The root cause of the First Reconsideration and Variance of Order G-59-17 was a Stargas' error in "forgetting" to make the benchmark rate of return adjustment;
- The cost of the First Reconsideration and Variance of Order G-59-17 could have been avoided because Stargas could have raised the issue (in reply argument) of retroactive ratemaking before the Commission's decision was issued. However, Stargas did not do so despite using legal counsel; and
- The cost is "disproportionate" and "imprudent" to the amount at issue.<sup>7</sup>

However, SSPOA submits if the Commission were to approve these costs, in whole or part, it finds the use of section 118 (2) is justified and would serve a public interest purpose.<sup>8</sup> In addition, SSPOA supports the application of this section to its PACA funding related to the First Reconsideration and Variance of Order G-59-17 and to this proceeding, which it intends to submit in the amount of \$1,428.<sup>9</sup>

In reply, Stargas disagrees with SSPOA that the costs should not be approved, considering that the reconsideration was due to an "affirmed error" within Order G-59-17.<sup>10</sup> Stargas makes no comment on the application of section 118 (2).

## 5.0 Item B – Administrative costs of Refund

Stargas applies for approximately \$1,000 in costs associated with processing the Refund.<sup>11</sup> In Appendix A to Order G-128-17, 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.<sup>12</sup> However, Stargas clarifies in its final argument that the total approval sought is only \$1,000, as the process of posting the reversal of the refund involved less work than the process of issuing it, and therefore cost only \$108.<sup>13</sup> Stargas submits that these costs should be approved for inclusion in the 2016 DRARA since the management fees approved in the 2016 Delivery Rate Application proceeding did not include any provision for contingencies or resolving "open Commission items" such as this.<sup>14</sup>

SSPOA disagrees with the Commission's findings in Order G-128-17 and submits that the \$1,000 in costs associated with processing the Refund should be denied.<sup>15</sup> In SSPOA's view, irrespective of the Refund, Stargas' management would have had to go through the cost and effort of either refunding or charging customers for the difference between interim and permanent rates. Accordingly, SSPOA submits that Stargas should have included this cost in its

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<sup>6</sup> Ibid.

<sup>7</sup> SSPOA Final Argument, pp. 2-4.

<sup>8</sup> SSPOA Final Argument, pp. 3, 5.

<sup>9</sup> SSPOA Final Argument, p. 6; The Panel notes the Commission received SSPOA's PACA application in this amount on September 13, 2017.

<sup>10</sup> Stargas Reply Argument, pp. 1-2.

<sup>11</sup> Exhibit B-1, pp. 1-2.

<sup>12</sup> Order G-128-17, Appendix A, p. 5.

<sup>13</sup> Stargas Final Argument, p. 2.

<sup>14</sup> Stargas Reply Argument, p. 2.

<sup>15</sup> SSPOA Final Argument, p. 5.

management fee forecast in the 2016 Delivery Rate Application proceeding and it does not support the idea of the Commission funding through section 118 (2) or the inclusion of this amount in the 2016 DRARA.<sup>16</sup>

### *Commission determination*

**The Panel denies Stargas' request to include Item A and Item B in the 2016 DRARA. However, the Panel awards Stargas \$6,500 for Item A and Item B, and SSPOA \$2,856 for PACA funding related to its participation in the First Reconsideration and Variance of Order G-59-17 and this reconsideration proceeding, pursuant to section 118 (2) of the UCA.**

The Panel acknowledges SSPOA's argument that the cost of the First Reconsideration and Variance of Order G-59-17 might have been avoided in some respects, but views that this cost was not reasonably foreseeable at the time of the 2016 Delivery Rate Application.<sup>17</sup> For this reason, the Panel considered whether the costs have been prudently incurred. The Panel finds that \$1,500 in legal counsel costs for the First Reconsideration and Variance of Order G-59-17 are reasonable. Further the Panel finds the total anticipated management hours are reasonable, and that Stargas used the executive rate approved by Order G-59-17. Therefore, the Panel finds the total cost applied for in Item A, up to \$5,500, is reasonable.

With respect to Item B, the Panel disagrees with SSPOA that the Refund cost is the same as Stargas' cost of refunding or charging customers any difference between interim and permanent rates arising from the 2016 Delivery Rate Application proceeding. The Panel considers the amount of time and effort required to process the Refund is in addition to that time, as the Refund required Stargas to review two prior fiscal years' worth of customer consumption data to determine the appropriate level of refund to each customer, compared to a review of seven months of consumption data between the establishment of an interim and permanent delivery, effective November 1, 2016. The Panel considered the number of hours submitted and the managements rates used by Stargas and finds the number of hours to be reasonable and the rates used to be in accordance with the rates approved by Order G-59-17.

**Nevertheless, the Panel finds SSPOA contributed to a better understanding of the issues in this proceeding and also in the First Reconsideration and Variance of Order G-59-17, and approves its PACA funding requests.**

As noted in Order G-128-17, the Panel is mindful that the costs associated with Items A and B and SSPOA's PACA funding are disproportionately high for a utility such as Stargas with a small customer base. In Phase Two of the reconsideration process, no party objected to the Commission's application of section 118 (2) of the UCA for reasonable costs. Considering the magnitude of the cost to be recovered as well as the rate impact, Panel finds it is in the public interest for the Commission to pay for these costs.

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<sup>16</sup> SSPOA Final Argument, pp. 4-5.

<sup>17</sup> Order G-128-17, Appendix A, p. 5.