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April 30, 2010

**VIA ELECTRONIC MAIL**

British Columbia Utilities Commission  
Box 250, Sixth Floor, 900 Howe Street  
Vancouver, BC  
V6Z 2N3

**Attention: Erica M. Hamilton, Commission Secretary**

Dear Sirs/Mesdames:

**Re: Terasen Gas (Whistler) Inc. (TGW) 2010 and 2011 Revenue Requirements and Rate Design Application - Project No. 3698579**

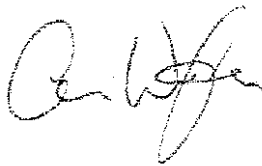
We are counsel for the Commercial Energy Consumers Association of British Columbia ("CEC"). Attached please find the CEC's Final Submission pertaining to the above-noted matter.

A copy of this letter and attached Final Submission has also been forwarded to TGW and the intervenors by e-mail.

If you have any questions regarding the foregoing, please do not hesitate to contact the undersigned

Yours truly,

**OWEN BIRD LAW CORPORATION**



Christopher P. Weafer  
CPW/jlb  
cc: CEC  
cc: TGW  
cc: Registered Intervenors

TERASEN GAS (WHISTLER) INC. ("TGW")  
APPLICATION FOR REVENUE REQUIREMENTS AND RATES  
FOR 2010 AND 2011

COMMERCIAL ENERGY CONSUMERS ASSOCIATION OF BRITISH COLUMBIA ("CEC")  
SUBMISSION

April 30, 2010

1. **Summary**

The Commercial Energy Consumers Association of British Columbia (“CEC” has reviewed the submission of Terasen Gas Whistler filed April 16, 2010 (the “Final Submissions”) and is generally supportive of the submissions set in relation to the standard revenue requirement requests of TGW set out in Part One Elements of Proposed Rates. As to the Part Two “Whistler Conversion Costs” the CEC submits that the Company was imprudent in incurring costs which ought too have been allocated directly to customers who caused the costs. It is contrary to any reasonable interpretation of the term “prudent” to have customers who maintain proper permitted and functioning, convertible appliances to bear cost increased beyond the budgeted, and capped, CPCN costs. This is particularly inappropriate when these costs were originally identified as costs to be incurred by the responsible customers. To approve the costs and allow a rate of return on the expenditures when the option existed, and when the requirement had been published to customers in advance of commencing work, is not appropriate nor justifiable on the evidence in this proceeding.

The CEC does not take issue with TGWs request for rates except to the extent that those rates include the costs for specific customers which should be a charge to those specific customers and not a charge to be borne by all customers. The CEC recommends that the Commission deny recovery of those charges and require TGW to file in compliance for rates less the customer conversion costs which would properly be charges to specific customers.

2. **Gas Sales & Transportation Demand**

The CEC does not take issue with the TGW evidence and position laid out in Section A of its Final Submission Paragraphs 8, 9 & 10.

3. **Cost of Gas**

The CEC does not take issue with the TGW evidence and position laid out in Section B of its Final Submission Paragraphs 11 to 16.

4. **Operating and Maintenance Expenses (O&M), Other Revenue and TGV Transport Charge**

The CEC does not take issue with the TGW evidence and positions laid out in Section C of its Final Submission Paragraphs 17 to 21.

5. **Taxes**

The CEC does not take issue with the TGW evidence and positions laid out in Section D of its Final Submission Paragraphs 22 to 23.

6. **Rate Base**

The CEC does not take issue with the TGW evidence and the positions laid out in Section E of its Final Submission, Paragraphs 24 to 32. The CEC does take issue with positions laid out in Paragraphs 33 to 35.

The CEC does take issue with TGW with respect to its intent to recover from customers the conversion costs that represent costs which properly should have been the responsibility of customers who caused the costs and not all customers generally. The CEC submits it is not prudent management of the utility to fail to follow through on notification of customers that certain costs are a customer responsibility. TGW reserved the right to return to the specific customers after conversion and charge them for their appropriate costs. This was apparently done for some customers and not others, which creates a question of unfairness and discrimination when such collection is not completed. These costs do not properly belong as a collection requirement from ratepayers in general.

7. **Financing and Capital Structure**

The CEC does not take issue with the TGW evidence and positions laid out in Section F of its Final Submission, Paragraph 36

8. **Accounting and Other Policies**

The CEC does not take issue with the TGW evidence and positions laid out in Section G of its Final Submission, Paragraphs 37 to 51.

9. **Tariff Changes**

The CEC does not take issue with the TGW evidence and positions laid out in Section H of its Final Submission, Paragraph 52.

**PART TWO: WHISTLER CONVERSION COSTS**

10. TGW has acknowledged that to the extent they exceeded the budget for the Conversion project they must now demonstrate to the Commission that the excess costs were prudently incurred<sup>1</sup>.
11. To be clear the Company exceeded the estimate as well as the contingency and cap agreed to by the Company by a significant amount<sup>2</sup>. Further, notwithstanding a requirement to provide quarterly reports to the Commission the Company failed to clearly identify and assess the magnitude of the excess expenditures which failure prevented the Commission, or any impacted stakeholders, an opportunity to raise concerns around the prudence of the Company's expenditures during the course of the project.
12. The CEC submits that the Company acted in an imprudent manner in its management of the costs of the program by failing to allocate the costs incurred to those customers who caused the costs. The Company had in its advance notices identified that customers whose conversion costs were in excess of what was budgeted by the Company – due to deficiencies or poor maintenance, would be charged. The Company nevertheless elected to perform the work, not track the cause of the costs such that the customers could be billed the excess, and instead in this application turn to ratepayers to bear the financial burden of the excess costs by including it in rate base<sup>3</sup>. The approach is discriminatory as the end result is customers in compliance with permitting and safety codes are in effect charged for costs incurred to correct deficiencies of customers in non-compliance. Further, the Company did elect to charge some customers who were "red tagged" and not others exercising discretion as to who should pay direct costs and who should not. That the Company was under no obligation to take on the obligations it

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<sup>1</sup> Transcript Volume 1 page 8

<sup>2</sup> Transcript Volume 1 page 56 lines 5 - 13

<sup>3</sup> Transcript Volume 1 page 170 lines 10 - 21

took on which they now seek to recover in rates, was canvassed by Commission Counsel at pages 250 and 251 of Volume 1 of the transcript.

“MR. FULTON: Q: I’ll move on to another point, Mr. Chairman.

If I can ask you – and I think it’s probably going to be easier here if I distribute a document so that you won’t have to dig into the documents. I’m not suggesting that this be marked an exhibit, Mr. Chairman, because it’s already on the record. But it’s pages 105 to 108 of Exhibit B-5, the IR response to Commission IR 1.37.8.

Now, the response to IR 1.37.8 was to a question as to whether Terasen indicated to customers through a general communication that the company would convert all gas appliances and provide a safe, reliable system to all gas customers and, if so, did that communication mention how matters of obsolete assets, non-convertible assets, non-compliance with the permit codes or other customer-related deficiencies would be addressed. And then you were asked to explain. And if I can get you to skip to page 107, and to the bottom of the page, there is a reference to an information letter which was mailed to each customer. And it quotes from the information letter and notes the exceptions to what would be converted.

**Proceeding Time 9:15 a.m. T12**

And then if you turn over to page 8, the statement appears:

“Customers will be responsible for conversion costs associated with these exceptions. Terasen Gas is currently sourcing appliance parts and will use your existing contact information to reach you if we encounter any problems.”

You will agree with me that Terasen was under no obligation to perform the cleaning and maintenance policies that it ultimately performed. Correct?

MR. GEROW: A: Yes, that's correct.”

13. At paragraphs 56 to 66 the Company sets out legal argument on the definition of just and reasonable rates. The CEC takes no issues with these submissions. The fundamental flaw in the submission is that it ignores the fact that management was not “prudent”. Management ignored the opportunity, and commitment, to allocate costs of the project in excess of budget to customers who caused the cost. That decision was imprudent and is not saved by the legal precedents relied on by the Company.
14. The Company discusses prudence at paragraphs 67 – 78. The CEC asserts that the facts of this case are clearly not within the boundaries of logic found in the cases cited. Here the Company had a choice which was to charge the costs to customers who caused the excess costs. They did not do so. That was imprudent.
15. At paragraph 75 of its submissions the company states: “The real exercise in this Application then becomes for TGW to provide the same justification for the additional costs that the Company ended up incurring”. To the extent these costs could have been allocated directly to customers who caused the costs the company acted imprudently and in a manner unfair to ratepayers who met the criteria for conversion and maintained the equipment and appliances which they were to connect.
16. At page 77 of its submissions the Company correctly identifies the law and manner in which risks should be allocated. The CEC says on these facts the balance falls to allocate imprudently incurred costs to the Company.
17. At paragraphs 79 – 81 the Company sets out its argument as to why the cost cap committed to by TGW, should now be ignored by the Commission. Without commenting on the merits of the submission as to whether the cap is enforceable by the Commission or not, the CEC submits the excess costs incurred were imprudently incurred in any event.
18. It is apparent that the allocation of all costs to customers was followed in the Squamish conversion project as set out in BCUC Order 6-80-06. It is noted that conversion came

in under budget at \$800,000 on a budget estimate of \$984,000. The precedent demonstrates that the “allocation of cost to customer approach” seems to have created a higher level of discipline on the project. It is recognized the Squamish conversion was much smaller in scope but clearly in that conversion project prudence was evident.

19. At paragraph 82 TGW sets out details of its cost estimate program. What is lacking is the company’s discipline to recognize, in the face of an agreed cost cap, costs should be allocated to customers who cause costs in excess of the forecast no matter how diligent or accurate the forecast may be. This discussion played little role as the project unfolded<sup>4</sup>.
20. At paragraph 91 the Company identifies the unanticipated permit fee of \$550,000. The CEC does not understand how the dominant gas utility operating in British Columbia could not have understood this potential cost but accepts the Company’s explanation and does not oppose recovery of the permit fees.
21. At paragraph 92 – 94 the Company explains the IP/IDP estimate. The CEC does not oppose recover of this underestimation of costs, notwithstanding the failure to establish a contingency related to the risk of loss of the proposed site.
22. At paragraph 101 the Company explains its approach to the audit of permit records and indicates such an audit pre approval of the CPCN of the Project would have been too costly. What is not well explained by the Company is why it was not considered prudent to conduct an audit after approval of the CPCN with a view to (a) obtaining a true sense of the number of unpermitted appliances and (b) solidify its approach to charging those unpermitted customers directly. To have conducted an audit would have assisted in making a convincing argument the project was performed in a prudent manner. To say it was too costly to conduct a more thorough audit, or even a more limited audit, to mitigate risks and then seek recovery of material over expenditure is in the CEC’s view, imprudent<sup>5</sup>.
23. Paragraphs 103 – 107 address the oversight of the Project. Again, what is lacking is any indication the oversight included consideration of allocation of costs to the non compliant

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<sup>4</sup> Transcript Volume 1 pages 163 - 167

<sup>5</sup> Transcript Volume 2 page 274 lines 5 - 13



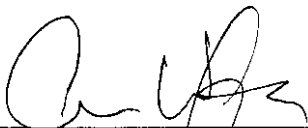
or non permitted customers to ensure the budget, and cap was taken seriously. The submission at paragraph 107 that the Project management and executives also ensured the conversion:

“Enforced customer responsibilities for the conversion costs (ie Red Tags, customer piping deficiencies) in a way that was most beneficial and cost-effective for the Project as a whole”

is not borne out by the results.

24. At paragraphs 109 the Company identifies the four drivers of increased conversion costs. The CEC's submissions above do not need to be repeated here. The costs incurred for unpermitted appliance in excess of forecast and the average time to complete conversion of appliances due to poor condition of appliances and other customer related deficiencies and costs should not be picked up by ratepayers and should be directly allocated to those causing the costs as originally committed to by the utility.
25. In conclusion the CEC submits that the Company was imprudent in incurring costs which ought too have been allocated directly to customers who caused the costs. It is contrary to any reasonable interpretation of the term “prudent” to have customers who maintain proper permitting and functioning convertible appliances to bear the rates increased beyond the budgeted, and capped, CPCN costs when these costs were originally identified as costs to be incurred by the responsible customers. The conversion costs in excess of the budget agreed to in the original CPCN in this application were to a significant extent not utility rate base items but were customer owned appliances. To approve the costs and allow a rate of return on the expenditures is not appropriate nor justifiable on the evidence before the Commission.

All of which is respectfully submitted.



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Christopher P. Weaver  
Counsel to Commercial Energy Consumers  
Association of British Columbia