

 **SSPOA** Silver Star Property Owners Association.

August 30, 2017

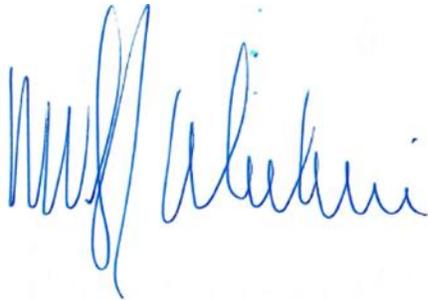
Patrick Wruck, Commission Secretary
BC Utilities Commission
900 Howe St,
Vancouver, BC
V6Z 2S9

Dear Sir:

**Stargas Utilities Ltd. –Application to Include Additional Costs in the 2016
Delivery Rate Application - SSPOA Final Argument per Order G-128-17**

Please find enclosed the Final Argument of the Silver Star Property Owners Association as requested in Order G-128-17.

Regards



Mike Waberski Chair, SSPOA Utility Services Committee

Copy: Sandy Cook SSPOA President and Committee members

Stargas Utilities Ltd. – Application to Include Additional Costs in the 2016 Delivery Rate Application – SSPOA Final Argument

Introduction

The Silver Star Property Owners Association (SSPOA) is submitting comments to the Commission per the procedural schedule established by BCUC Order G-128-17. The SSPOA was an intervenor in the Delivery Rate Application and the subsequent reconsideration request made by Stargas (Reconsideration Proceeding).

After the beginning of the Reconsideration Proceeding the SSPOA received a request to comment on the Stargas request for additional costs to be added to the Delivery Rate Application Rider Account (DRARA), the current proceeding.

These matters were beyond our expertise and we therefore retained regulatory counsel in each case. All filings made on behalf of the SSPOA were reviewed and approved by the SSPOA, and our committee members assisted in drafting, including PACA claims. The SSPOA therefore takes exception to the comments on our PACA submission by Stargas in Exhibit B-3 and asks that its PACA submissions be treated in the normal course, i.e., off of the public record and, like Ex. B-1-1, available upon request and justification.

While the proceedings to date have dealt with complicated legal, procedural and ratemaking policy issues, the consequences of the proposed added costs to the ratepayers at Silver Star have become quite clear to us as laypersons. As a result, at this point the SSPOA is proceeding with limited assistance from counsel. The complicated process and issues have been a challenge for our Association, and we certainly appreciate the assistance that the Commission and especially the guidance our counsel (the law firm Norton Rose Fulbright) have given the SSPOA.

Our submissions are divided into three parts:

- 1) The Reconsideration Proceeding's regulatory and legal costs,
- 2) Additional administrative costs,
- 3) Applying section 118(2) of the UCA and PACA Considerations.

In short:

- 1) The Reconsideration Proceeding regulatory and counsel costs should be denied, or at least significantly reduced, because the reconsideration proceeding was only necessary due to Stargas errors. First, by forgetting to make the benchmark rate adjustment. Second, by failing to address the benchmark issue despite being confronted with it by the SSPOA's argument. Third, by incurring regulatory costs which the SSPOA feels is disproportionate to

the amount at issue. Ratepayers should not have to pay for excessive costs in a proceeding that could have been avoided.

- 2) Concerning the disputed administrative costs, the SSPOA respectfully disagrees with the Commission's view that these costs arose due to unforeseeable facts, once the implications of Stargas' various Delivery Rate Application refilings are considered. As they were foreseeable costs, Stargas should not be able to claim via a second "kick at the can", as described earlier.
- 3) Concerning the use of section 118(2) of the UCA, the SSPOA understands that the contemplated direct funding (i.e., outside of the concerned utility's revenue requirement) should be used in rare circumstances, but we feel is justified in these circumstances.

The SSPOA provides detailed comments below.

1) Reconsideration Proceeding Regulatory and legal counsel costs

At the outset of the request for reconsideration the SSPOA has asked "what is the root cause of the problem?" The answer is that Stargas failed to take note of a change in the Commission's benchmark rate of return, and as such, overpaid their shareholders \$6,000. The SSPOA recognizes that the Commission ruled against the SSPOA's position in Order G-111-17 concerning whether Stargas ought to have been expected to apply to amend its delivery rate.

That said, as laypersons we continue to find it difficult to rationalize the fact that Stargas could be compensated for the cost of fixing a mistake on its part, at customers' expense. The SSPOA also feels that \$5,500 in cost over a \$6,000 matter, where Stargas themselves are the root cause, is disproportionate and imprudent.

The SSPOA is also concerned that Stargas did not take advantage of the opportunity to deal with the matter during the delivery rate proceeding. The Commission asked information requests on this point and the SSPOA addressed it in argument:

In fact, Stargas inadvertently declared dividends that exceed its authorized return from May 2011 through to May 2016, not having noted the results of the Commission's benchmark decision....

The current calculation of a fair return to Stargas' shareholder comes with a significant regulatory burden. It is expensive to administer, creates confusion among all parties, and produces errors on the part of at least Stargas, if not others. Specific examples are its overpayment of dividends (which must be refunded or otherwise accounted for going forward)...¹. [emphasis added]

¹ SSPOA Delivery Rate Application Final Argument, pp. 16-17.

Stargas was silent on the appropriateness of any refund, and could have but did not raise retroactive ratemaking issues in its Reply Argument despite using counsel. Stargas' Reconsideration Proceeding was accordingly a second opportunity to argue the issue and, even though Stargas was successful, customers should not be expected to pay for the cost of two proceedings when one could have done the job. It is therefore unfair to pass its cost on to ratepayers. These costs should be entirely rejected, or at least substantially reduced.

2) G-128-17 (Item B) – Administrative costs of Refund

Stargas argues that the cost to post the credits will amount to \$1,000 to post 1,200 separate entries.

Stargas is currently processing the credit to customers called for in Order G-59-17, providing them a refund based on their consumption through November 2016 to March 31, 2017, interest on that amount together with related GST and PST as well as each ratepayers' share of the dividend refund (it the subject of reconsideration). Each customer will see either four or five separate credits on their May invoice (a number do not pay PST so that they will not see a PST refund amount) so that Stargas administrative staff will post approximately 1,200 separate entries in its billing routines. That work is underway- preparation of the spreadsheet summarizing the necessary detail was undertaken by accounting staff at the approved rate of \$69.24 per hour (4 hours) under executive direction (1 hour) so had a cost B-1 of \$421.00 and 10 hours at the administrative rate have been incurred in posting approximately 3/5m of the data- a cost of \$245 at the approved administrative rate. Stargas estimates that its cost (not otherwise allowed for in the determination of rates will approximate \$1,000 and submits that it equitably ought to be allowed within the Delivery Rate Application Regulatory Account. ²

During the Delivery Rate proceeding, Stargas revised the \$6.81 proposed in the initial application to \$6.98 at the close of the proceedings.³ It should be noted, had Stargas' request been approved as filed, Stargas would have had to process the same number of 1,200 entries (albeit at a debit). It is unfair to argue now that there should be compensation of \$1,000 because it was a credit rather than a debit when the effort involved is the same.

The SSPOA therefore respectfully disagrees with the Commission's finding that the administrative burden of the decision reflected "new facts". One way or the other, Stargas was going to have to implement the Commission's decision. Stargas should be expected to have included that fact in its forecast, or to have updated its forecast during the application when Stargas proposed to amend its rates itself, as shown above. The standard that the Commission should apply is not whether Stargas or Okanagan Funding Ltd. (OKF) anticipated the administrative cost of implementing a Commission Order, or was in the habit of doing so, but rather whether a typical utility should have reasonably expected administrative effort following a rate case. In the circumstances, there are therefore no new or unknowable facts that would justify new costs.

² Ex. B-1 Page 1

³ Order G-59-17 Ex. B-13 Page 3

Absent new, unknowable facts, Stargas should bear the risk of preparing incomplete forecasts because:

- (i) that is what, in part, justifies its ROE, and
- (ii) Stargas gets to keep the benefit of any over-forecasting.

The SSPOA maintains that the \$1,000 claim should be denied. Stargas should not continue its attempts to “top up” its forecasts to avoid all forecast risk.

3) Applying Section 118(2) of the UCA and PACA Considerations

In Order G-128-17 the commission stated:

“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 SSPOA understands the Commission to request comments from the SSPOA on whether the Commission should directly fund the regulatory costs of the Reconsideration Proceeding.

As mentioned above, the SSPOA understands that direct Commission funding should be rare. The SSPOA has considered whether recovering the cost of its participation would serve a public interest purpose, and submits that these circumstances qualify.

First, as reflected in the SSPOA’s PACA submissions, its participation provided assistance in non-routine, complex matters, and the benefit of a contending point of view.

Second, it was important for the Commission to apply its standard rules for Stargas ratepayers in the Reconsideration Proceeding because it was important for Stargas’ customers to have the opportunity to participate in the proceeding. We deserve no more, and no less, protection from monopoly forces, and visibility into ratemaking processes, than do other BC utility ratepayers. However, the circumstances required parties to grapple with complex issues like the “*prima facie* test”, “retroactive ratemaking”, “benchmark ROE” and considering whether the methodology historically prescribed to calculate the shareholder return was equally prescribed to calculate the delivery rate that funds the shareholder return. That regulatory burden was disproportionately heavy relative to the size of the Stargas customer base and, accordingly, our Association’s capacity. In short, customers were caught between unavoidably complex issues and no economies of scale.

It would be unfair for Stargas’ small size to deprive customers access to remedies that are available to other customers under the Commission’s regime. PACA funding is helpful, but of limited assistance, as ratepayers (the SSPOA) ultimately largely pay the PACA awards themselves. Direct Commission funding

in appropriate circumstances encourages both engagement with and direct participation in future Commission processes, consistent with the Commission's mandate.

The same principle also applies to Stargas. Its size, and the serious risk of adverse customer impacts, should not *unduly* deprive it from the opportunity to access Commission review mechanisms – but it must do so reasonably in the circumstances. In some, very rare cases, section 118(2) might extend to utility cost recovery too, to ensure the utility can properly access the legislative regime **without overly burdening customers**. Conversely, where Stargas unreasonably incurs costs, per the SSPOA's comments earlier, they should be to the account of the shareholder, as is standard and uncontroversial practice. **Normal practice, of course, is passing reasonable costs to customers.**

Finally, the SSPOA requests that the Commission include the Reconsideration PACA⁴ and any DRARA PACA costs⁵ in the 2016 Delivery Rate Regulatory Account, subject to its comments above concerning s. 118(2) of the UCA.

Conclusion

For the foregoing reasons, the SSPOA submits that:

- Stargas' regulatory costs incurred in the Reconsideration Proceeding arose from Stargas errors, were disproportionate, and the proceeding could have been avoided had Stargas dealt with the issue in the Delivery Rate Application. The associated claim for \$5,500 should be denied, or if the Commission considers Stargas' reconsideration efforts reasonable, potentially subject to direct Commission funding under s. 118(2). Likewise, the SSPOA's associated PACA claim should be granted and be either the subject of direct Commission funding under section 118(2), or to the account of the shareholder if Stargas' efforts are considered *unreasonable*
- The SSPOA would prefer that its PACA submissions be treated in the normal course, i.e., off of the public record and, like Ex. B-1-1, available upon request and justification.
- Stargas' requested administrative cost increase of \$1,000 should be denied. Stargas' various Delivery Rate Application amendments would have required it to make the same sort of changes that were the result of the Commission's order. The associated effort and cost were not new or unknowable facts, should therefore have been forecast by Stargas and included in an Application update, and Stargas should not receive a second opportunity for a claim now. Forecast ratemaking means that Stargas should not be permitted to engage in repeated "top up" applications that eliminate all risk of under-recovery and inflate regulatory costs.
- There are reasonable circumstances to use section 118(2) to fund regulatory costs in the Reconsideration Proceeding, if the Commission considers that parties' participation was reasonable and added value to the proceeding. It is important that the Commission make its

⁴ Ex. C1-3, \$1,428.

⁵ The SSPOA intends to submit a PACA Application in this proceeding for, again, \$1,428.

processes accessible, even where utility/customer circumstances do not afford sufficient regulatory economies of scale.

- The SSPOA supports the application of section 118(2); the Commission should include both Reconsideration and current proceeding PACA costs in the 2016 Delivery Rate Application Regulatory Account. Unreasonably incurred costs should, as is standard practice, be to the account of the shareholder.