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VIA COMMISSION E-FILING SYSTEM

British Columbia Utilities Commission
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Attention: Erica Hamilton, Commission Secretary

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Our reference: 16-4001

Dear Madame:

Stargas Utilities Ltd. (Stargas) Delivery Rate – Project No. 3698893 Silver Star Property Owners Association (SSPOA) Response to Stargas Reply Argument

We are legal counsel to the SSPOA and write on its behalf, following the SSPOA's review of Stargas' Reply Argument. The SSPOA has two serious concerns. First, Stargas unfairly proposes to file, and has filed, new evidence in areas where it earlier refused to respond to information requests (IRs). The SSPOA does not seek further process, other than to note that it would be unfair and inappropriate for the Commission to rely on evidence created in response to argument, outside the procedural schedule. Second, the SSPOA requests that the Commission publicly post Stargas' new commodity application, and receive submissions about whether a public hearing is warranted after an opportunity for stakeholder review. The SSPOA elaborates below.

1. NEW WAGE EVIDENCE

It is unfair for an applicant to refuse to respond to IRs on an issue and then, when that shortcoming is noted in argument, offer to buttress its case with new evidence outside the procedural schedule. Stargas does this in para. 25 of its Reply Argument:

However, Stargas will, if the Commission so directs, undertake an updated survey of comparable market rates for services provided by OKF, and will consider any adjustments required to OKF rates to ensure that OKF rates are not in excess of comparable market rates, or retain alternate service providers.

The "survey" content is what BCUC information request (IR) 6.1 requested: "market rates for administrative, accounting and KPMG account manager - senior accounting services in the Vernon area". But Stargas chose to only file a spectrum of KPMG rates in response, claiming that they demonstrated the various applied-for OKF rates provided value.¹ Stargas' new suggestion would short-circuit the Commission's process and provide a second kick at the can, which is inappropriate for multiple reasons:

- The request prejudices the SSPOA, who responded to the case before it. The initial procedural timetable did not provide for intervenor evidence, and the SSPOA did not request it. Its response to Stargas' focus on ill-fitting KPMG rates was to note just that, as well as recent Commission orders about appropriate wages for discrete tasks for small utilities in BC.

¹ Ex. B-8, p. 5.

- The request is procedurally unfair. The Commission is subject to the rules of procedural fairness under common law. A core element of procedural fairness is “*audi alteram partem*”, or “listen to the other side”. Stargas’ approach would deprive the SSPOA from being heard on wages in Vernon – something the SSPOA’s membership is well-positioned to respond to and/or comment upon.
- The request undermines the onus that the applicant ought to bear under the Commission’s regulatory process, a process common across North America. The reason that regulated utilities earn a regulated return is because they assume certain risks. One of those risks is the onus of proving the reasonableness of forecast costs. Receiving the opportunity to create new evidence in response to argument after the close of the evidentiary record significantly erodes the scope of that risk, without any reduction in the scope of the return to the shareholder.
- The request is a further illustration of the undue regulatory cost burden Stargas’ practices are placing upon its customers. Stargas had an opportunity to respond to the BCUC’s IR in the first instance, did so, and should not receive a second – and customers should not pay for the associated process.

Consequently, Stargas’ attempt to create more evidentiary process now should be flatly rejected, and the Commission should decide based on the current record. In the alternative, the SSPOA should be permitted to respond to any further Stargas filing.

2. NEW COMMODITY APPLICATION RE GAS PURCHASE PLAN

At para. 71 Stargas’ Reply Argument again relies on new evidence after refusing to respond to an issue in IRs. Stargas invites the Commission to rely on its same-day February 17 application to “vary and extend” its current gas purchase plan. Until very recently that application was scheduled for “August/September”.² Accelerating the preparation of the new application for the apparent purpose of relying on it in Reply Argument is highly improper, and the SSPOA was obviously unable to address that material in its argument. This prejudice is aggravated by the fact that the Commission typically neither posts such applications, nor convenes public hearings into them. To date the SSPOA has not been able to review the material. Were the Commission to rely on the new application’s content in these circumstances, it would breach its common law procedural fairness obligations.

Also, as above, being permitted to create new evidence in response to argument improperly erodes the onus the applicant ought to bear and is compensated for, and again reflects undue regulatory costs for customers.

Finally, given the customer concern surrounding Stargas’ commodity practices, the SSPOA requests the new application to be posted and comments concerning the need for a public hearing invited, once stakeholders have had the opportunity to review the new application. If any redactions are necessary for reasons of commercial sensitivity, then the Commission should direct Stargas to refile a redacted public version, and establish a process for stakeholders to file appropriate undertakings and receive a full unredacted version under the Commission’s confidential procedures, if they so choose following a review of the redacted version.

Please contact the undersigned if you have any questions.

Yours very truly,

A handwritten signature in black ink, appearing to read "Matthew D. Keen".

Matthew D. Keen

MDK/roe
c. M. Waberski and S. Cook, SSPOA

² Ex. B-15, p. 10.