



bcuc
British Columbia
Utilities Commission

Patrick Wruck
Commission Secretary

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July 21, 2017

STARGAS ADDITIONAL DELIVERY COSTS 2016 DRARA EXHIBIT A-5

Sent via email

Mr. M.A. Blumes
President and Director
Stargas Utilities Ltd.
2475 Dobbin Road, Unit 3
West Kelowna, BC V4T 2G3
stargas@shaw.ca; info@stargas.ca

**Re: Stargas Utilities Ltd.
Application for Reconsideration and Variance of Order G-59-17**

Dear Mr. Blumes:

The Commission has received the attached application for Participant Assistance/Cost Award funding from the Silver Star Property Owners Association with respect to the subject proceeding.

Section 14 of the Commission's participant Assistance/Cost Award Guidelines¹ provides that the party being asked to pay a cost award will have ten working days to comment on a cost award application. Please provide any comments that Stargas may have on the enclosed application by Friday, August 4, 2017.

Sincerely,

Original signed by:

Patrick Wruck
Commission Secretary

BG/cms
Enclosure
cc: utilities@sspoa.ca

¹ Order G-97-17.

Participant Assistance/Cost Award Application

In accordance with the British Columbia Utilities Commission (Commission) Participant/Assistance Cost Award (PACA) Guidelines, a PACA Application form must be received by the Commission within 30 calendar days following the last event in the proceeding (or such time as the Commission Panel directs). Please file the completed form through email to commission.secretary@bcuc.com, or via mail, courier, or personal delivery to the Commission Secretary, Box 250, 900 Howe Street, 6th Floor, Vancouver, BC, V6Z 2N3.

Proceeding name: Stargas Utilities Ltd. Reconsideration and Variance of Order G-59-17 Application		Date: July 14, 2017
Participant contact information		
Organization or Individual Name: Silver Star Property Owners Association (SSPOA)		
City: Silver Star Mountain Resort, Vernon	Province: B C	
Email: utilities@sspoa.ca	Phone number: 250 307-6611	
For organizations only - Representative contact information		
Name: Michael Waberski		
City: Silver Star Mountain Resort, Vernon	Province: B C	
Email: : utilities@sspoa.ca	Phone number: same	
Also representing (if applicable):		
Additional information		
Is the participant an intervener in this proceeding? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If no, please state how the participant is directly or sufficiently affected by the Commission's decision in this matter; or describe the participant's experience, information, or expertise relevant to this matter that would contribute to the Commission's decision-making.		
If the participant is not an intervener in this proceeding, and the participant is not an individual or Commission regulated entity, please provide the following information:		
<ol style="list-style-type: none"> 1. A description of the organization's mandate and objectives 2. A description of its membership, including the membership process, if any, and the constituency it represents 3. The types of programs and/or activities it carries out 4. The identities of any authorized representatives and addresses 5. Any other information the Commission has requested 		

Please address each of the factors from Section 4.3 of the BCUC PACA Guidelines preferably citing examples from the proceeding.

- (a) Has the participant contributed to a better understanding by the Commission of the issues in the proceeding?

Yes. The SSPOA's submission through our counsel carefully addressed the relevant jurisprudence on retroactive ratemaking, and the associated significant issue of whether the Commission is powerless to order a utility to refund amounts it has collected in error.

Despite being key to Stargas' argument, neither retroactive ratemaking nor the implications of its request were addressed in any detail. In other words, Stargas' submissions opened a can of worms for the Commission, and Stargas' brevity did all parties a disservice. In the absence of any background, it fell to our counsel to provide it, in order to oppose Stargas' request.

Beyond our counsel providing substantive background, the SSPOA feels we provided the Commission with the benefit of a contending point of view.

- (b) To what degree will the participant be affected by the outcome of the proceeding?

A significant proportion of the SSPOA members are also Stargas customers, who are entitled to benefit from the refund ordered in the Commission's original decision. The reconsideration and variance application directly affects whether they will receive this refund.

- (c) Are the costs incurred by the participant fair and reasonable?

Yes. The SSPOA's response considered complex and highly legal issues of procedural fairness, and utility regulators' ratemaking practices and policy. The time spent by counsel was necessary to understand and respond to the issues raised by Stargas' application. Given the complexity of the law associated with retroactive ratemaking, despite the application centering on the single issue of the refund, the assistance of counsel was absolutely necessary to articulate a complete response.

- (d) Has the participant joined with other groups with similar interests to reduce costs?

Yes. The SSPOA is the only intervener. Its appearance on behalf of multiple major Stargas customers and strata buildings, and the associated internal coordination by our association, led to a far more efficient proceeding than might have otherwise been the case.

- (e) Has the participant made reasonable efforts to avoid conduct that would unnecessarily lengthen the duration of the proceeding, such as ensuring participation was not unduly repetitive?

Yes. As Stargas noted repeatedly, the retroactive ratemaking issue proceeded past the first prima facie stage directly to the detailed second stage of review. Being the second stage of review, a complete submission concerning why the law governing retroactive ratemaking supports, and does not prohibit, the Commission's decision was necessary.

A shorter response was not possible because there were multiple issues at play (threshold, procedural fairness and efficiency, retroactive ratemaking, statutory interpretation, and policy implications). The SSPOA feels that the space used for each issue was reasonable. The SSPOA took time to ensure that its response was relevant and addressed the issues raised by Stargas' argument, without raising new questions that would further draw out proceedings.

Stargas' claim in its response to the SSPOA's submission, that there should be "symmetry" between its efforts and the SSPOA's response, is mistaken, at least insofar as it expects shorter SSPOA submissions. Rather, complete and helpful Stargas submissions should have been expected at the beginning. Instead, Stargas demonstrated a superficial understanding of the legal concept underpinning its request, and no awareness of the policy implications the Commission's decision might have. The funding day calculation for typical funding in accordance with Sections 4.1 and 4.2, if one is provided.

The jurisdiction of the Commission to order refunds from utilities is a very important issue for the Commission. So too is a clear understanding and articulation of the doctrine of retroactive ratemaking. PACA funding is necessary for customers to be able to participate meaningfully in response to complex legal issues like these. The award requested is deliberately less than might be permitted by the Rules, both in terms of the quantum of counsel fees, and the restriction by our association to request only our counsel fees. It should be granted.

- (f) Any other matters appropriate in the circumstances.

In spite of our lack of experience in these matters, the SSPOA submits that our efforts through counsel have been of value to the Commission in these proceedings.

Summary of Professional Fees

Professional Fees Information (if applicable)					
Name: Matthew Keen					
Firm/Company: Norton Rose Fulbright Canada LLP					
Professional Role ¹ : Legal Counsel					
Years Since Call/Years of Experience (as applicable): 10					
Daily Rate (based on an 8-hour day): \$2550					
CV: <input type="checkbox"/> attached or <input checked="" type="checkbox"/> submitted in the last 12 months					
<p>Tasks completed (written):</p> <p>Mr. Matthew Keen of Norton Rose Fulbright LLP assisted with the preparation of the SSPOA's argument, submitted in response to Stargas' application for reconsideration and variance of Order G-59-17 (Exhibit B-1).</p> <p>The SSPOA is claiming a half day of Mr. Keen's time, amounting to \$1,428, per the chart below. This amount is less than the SSPOA would otherwise be entitled to, given that Mr. Keen and his firm invested significantly more time than claimed under this estimate. The SSPOA would be pleased to provide Mr. Keen's invoice under separate cover, upon request.</p> <p>1. Specify one of the following: legal counsel, consultant, specialist, expert witness, or case manager.</p>					
Tasks completed (oral/in-person):					
	Days	Daily Rate	GST	PST	Row Total
Proceeding	1/2	\$2550	\$63.75	\$89.25	\$1428.00
Preparation					
Column Total					
Total Funding Requested					\$1428.00
<p>Explanatory notes, if any:</p> <p>The amount at issue is \$6,000 and would normally not be the subject of significant submissions, much less a PACA request. Conversely, it is extraordinary for a utility to make application to reconsider a Commission decision concerning such a small amount, as well as request recovery of the comparable costs of preparing the application, and the associated counsel costs.¹</p> <p>The SSPOA is claiming for a PACA award because the principle is important: Stargas should expect opposition, at its expense, to unreasonable requests. That is, Stargas should not expect to intimidate customers away from opposing unreasonable reconsideration requests because doing so would increase Stargas' costs (and thereby customers' rates). That conduct is abusive and customer participation should be encouraged in response.</p>					

Also, the issue is important to Stargas customers in the long-term. During the recent delivery rate hearing, Stargas management repeatedly emphasized its lack of regulatory sophistication to excuse refilings and errors. It is easy to imagine that further errors, leading to refund requests, may arise in the near future. Making clear that the Commission is empowered to order refunds to customers following utility errors is therefore an important issue for Stargas' customers, and their participation should be encouraged even if the amount at issue is small.

As noted above, the SSPOA submits that any PACA award should be to the account of the shareholder in these circumstances, and not make their way into ratepayer fees. This is because of three reasons:

- The forecast for 2017 regulatory costs is already set under the Commission's recent delivery rate order.²
- This is a cost that the shareholder should bear in any event, given the unreasonableness of Stargas' request. Stargas should have responded to the retroactive ratemaking issue in the delivery rate hearing when it was raised by both the Commission and the SSPOA. That would have been much more cost-effective.
- The SSPOA supports a policy of Stargas paying for customers' PACA costs in unsuccessful reconsideration requests generally, in line with Alberta practice and the SSPOA's submission of July 10.

1. Per the June 6 request of Stargas, that the SSPOA responded to under separate cover on July 10.

2. The SSPOA submitted comments on whether Stargas should recover counsel and staff costs related to the retroactive ratemaking reconsideration request by adding them to the 2016 Delivery Rate Application Regulatory Account on July 10, 2017. The principles articulated there apply equally to the PACA award requested here.

Summary of Disbursements and Other Costs

Please include all receipts and invoices where applicable.

Eligible Cost	Amount Claimed	GST	PST	Total
Postage/courier/delivery				
Telephone/long distance				
Printing/photocopying				
Foregone earnings (Maximum of \$250 per proceeding day per person)				
Child care (Maximum of \$75 per proceeding day per person)				
Meals				
Vehicle mileage (\$.53/km)				
Airfare				
Hotel				
Private accommodation (\$30.00/night)				
Taxi				
Parking				
Other (please specify)				
Other (please specify)				
Other (please specify)				
Total Disbursements and Other Costs				
Explanatory notes, if any:				

Summary of Costs

Total Professional Fees	\$1428.00
Total Disbursements and Other Costs	
Total Costs	\$1428.00

Please use this space for any comments about the participant's cost award application not addressed elsewhere in this form (if applicable).

The applied-for taxes cannot be recovered by the participant through an Input Tax Credit

Cost award payable to:	Norton Rose Fulbright Canada LLP
Mailing address:	1800 – 510 West Georgia Street Vancouver, B C V6B 0M3