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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-4-04

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**IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473**

and

**An Application by Terasen Gas Inc.
for Approval of Lease Arrangements with the City of Nelson**

BEFORE: L.A. Boychuk, Commissioner)
L.F. Kelsey, Commissioner) January 8, 2004

O R D E R

WHEREAS:

- A. On December 9, 2003, Terasen Gas Inc. ("Terasen Gas") applied to the British Columbia Utilities Commission ("the Commission") for approval to enter into Lease-In-Lease-Out ("LILO") arrangements with the City of Nelson ("the City"), and to establish the mode of regulation under which the Terasen Gas rates will be set to take these arrangements into account; and
- B. The LILO Application arises out of the existing Terasen Gas Franchise Agreement, which has been in place since 1980, and which provides an option for the City to "buy-out" the existing natural gas distribution system within the City's boundary in the event that the parties cannot agree on the terms of a franchise renewal; and
- C. The City would enter into a 35-year capital lease with Terasen Gas for the natural gas distribution system within the City's boundary. Title to the assets remains with Terasen Gas but the value of the City's rights in the lease would be set at \$8 million. The City would pre-pay 95 percent of this value to Terasen Gas as rent due under the lease; the remaining 5 percent would be paid to Terasen Gas over the life of the lease. After establishing the capital lease, the City would lease back the operation of the distribution system to Terasen Gas through a 17-year operating lease. The terms of the operating lease require Terasen Gas to make annual payments to the City over the 17-year term; and
- D. The municipal review process met the requirements of Commission Letter No. L-55-03; and
- E. The Commission has reviewed the LILO Application and finds that the arrangements should be approved.

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NOW THEREFORE the Commission orders as follows:

1. The Commission approves for Terasen Gas the December 9, 2003 LILO Application to enter into the proposed lease arrangements with the City of Nelson, specifically:
 - a. pursuant to Section 52 of the Utilities Commission Act (“the Act”), the encumbrance of property under the Capital Lease between Terasen Gas and the City and the terms of that lease;
 - b. pursuant to Section 52 of the Act, the encumbrance of property under the Additions Option Agreement between Terasen Gas and the City and the terms of that agreement;
 - c. approval to enter into the Operating Lease between Terasen Gas and the City;
 - d. the determination of the rates of Terasen Gas on the basis that the revenue requirement of Terasen Gas be established with the property that is the subject of the Operating Lease with the City and the Additions Option Agreement with the City being in rate base at its depreciated value, being subject to normal depreciation, and earning a normal return on rate base;
 - e. the annual Operating Lease payments from Terasen Gas to the City and the payments from the City to Terasen Gas pursuant to the Capital Lease are to be accounted for as non-utility transactions;
 - f. the interest rate for the deemed debt required for regulatory reconciliation purposes in the City of Nelson LILO arrangements be set for future Revenue Requirement Applications at a rate equal to the Terasen Gas cost of long term borrowing (including issue costs) at the time of closing of the City of Nelson LILO transactions;
 - g. the principle implicit in the LILO arrangements that future material changes in accounting standards, taxes or financing terms that affect the LILO transactions, or the accounting for them, will not result in a change to the rates paid by customers nor will such events adversely affect Terasen Gas and its shareholders; and
 - h. recovery of the costs incurred related to these transactions, including all Development Costs and Closing Costs and the costs of this Application, in the manner described in Section 3.6 of the LILO Application, inclusive of crediting any reimbursed Development Costs to Terasen Gas’ cost of service in the year in which they are received.

DATED at the City of Vancouver, in the Province of British Columbia, this 21st day of January 2004.

BY ORDER

Original signed by:

Lori Ann Boychuk
Commissioner