



LETTER NO. L-42-04

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VIA FACSIMILE
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August 10, 2004

Mr. Allan Chabot
Chief Administrative Officer
The Corporation of the City of Fernie
P.O. Box 190
501 3rd Avenue
Fernie, B.C. V0B 1M9

Dear Mr. Chabot:

Re: Terasen Gas Inc.
Extension of Franchise Agreement Terms
with the Corporation of the City of Fernie

Commission Order No. C-6-83 approved the September 12, 1983 Franchise Agreement ("Franchise Agreement") with the Corporation of the City of Fernie ("City") and granted a Certificate of Public Convenience and Necessity which was to expire on July 24, 2004. The Franchise Agreement, as did a number of the franchise agreements with Interior municipalities, contained an option for the City to purchase Terasen Gas Inc.'s (formerly Columbia Natural Gas Limited) ("Terasen" "Utility") utility business and undertaking within the municipal boundaries. As these agreements terminate, Terasen has been negotiating new Operating Agreements with the municipalities, all with substantially the same new terms and conditions.

On July 13, 2004 the City of Fernie requested that the Commission approve an extension to the terms of the original Franchise Agreement with Terasen. The reason given was that Terasen was attempting, by its actions, to put the City in a position whereby it might lose its purchase option. Terasen had provided the City with a draft extension agreement on July 5, 2004 which included right to purchase provisions with limitations. However, in a December 30, 2003 letter, the City had given notice that it wanted to enter into negotiations on its Franchise Agreement and requested Terasen to extend the Franchise Agreement for one year. On January 14, 2004, Terasen responded that it was premature to pursue short-term extensions of the existing agreement and that, in any case, it would not support one which includes a right to purchase.

In its July 22, 2004 response to the Fernie letter, Terasen stated that the Franchise Agreement gives the City a time limited purchase right which Terasen is not attempting to take away. It is simply not prepared to extend that provision. Terasen also provided its opinion that the Commission does not have the jurisdiction to extend the franchise agreement, absent the agreement of both parties.

Section 16 of the Franchise Agreement states:

"Upon the termination of this Agreement at the expiration of the term without a sale and purchase of the business and undertaking of the Company taking place, the gas system of the Company shall be and remain the Company's property..."

The Commission has made its position clear in previous applications. The Commission issued an L-Letter after a Terasen Gas Inc. (then BC Gas) application in 2001 to establish a standard form of Operating Agreement for all Interior municipalities. Commission Letter No. L-42-02 stated:

“In the normal course of events the Commission would expect the existing Franchise Agreements between BC Gas and individual municipalities to continue in force until their expiry dates, unless BC Gas and the individual municipality mutually agree to changes which they would like to file for approval by the Commission. Where an individual agreement has expired, the Commission expects that BC Gas and the municipality would make every effort to negotiate a new operating agreement. Only if the two parties are not able to agree to a new agreement would the Commission anticipate BC Gas making application to the Commission pursuant to Section 32 of the Utilities Commission Act to have the Commission determined the terms of such an agreement.”

The Commission reiterated its determination in Order No. C-7-03 after a written hearing process with respect to an application for approval of an Operating Agreement with the Corporation of the District of Salmon Arm.

In granting a Certificate of Public Convenience and Necessity, Commission Order No. C-6-83 approved a time-limited Franchise Agreement made between two sophisticated parties. It is not the intent of the Commission to interfere in the terms of such contracts. The Commission therefore declines to approve the request by the Corporation of the City of Fernie for extension of the original terms of the Franchise Agreement.

Yours truly,

Original signed by:

Robert J. Pellatt

RJP/rt

Enclosures

cc: Mr. Ron W. Baker
Terasen Gas Inc.
Mr. Scott Thomson
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