



**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-167-14**

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

and

Person(s) doing business as Seascapes Development and
Superior Propane
Application for Reconsideration of Order G-91-14

BEFORE: L.F. Kelsey, Commissioner
H.G. Harowitz, Commissioner
N.E. MacMurchy, Commissioner October 30, 2014
B.A. Magnan, Commissioner
C. van Wermeskerken, Commissioner

O R D E R

WHEREAS:

- A. On February 26, 2014 and March 25, 2014, the British Columbia Utilities Commission (Commission) received complaints from the Property Manager of a 100-unit strata development property called Seascapes, located at West Vancouver, British Columbia, and a resident of Seascapes, regarding propane services supplied by a division of Superior Plus LP doing business under the name Superior Propane;
- B. On July 10, 2014, following a review of the information provided by Superior Propane, the complainants and interested parties, the Commission issued Order G-91-14 which ordered, among other directives:
 - (i) The person, or the person's lessee, trustee, receiver or liquidator, who owns or operates Superior Propane at Seascapes Strata BCS 776 is operating as a public utility as defined by the *Utilities Commission Act*...
 - (iv) Superior Propane must make application [*sic*] to the Commission for its rates, including a proposal for an appropriate regulatory process to review this application, no later than 30 days from this Order...;
- C. On August 6, 2014, Superior Propane filed a letter with the Commission stating that it is in the course of compiling information required to make the rates application, and has made a request through counsel to meet with Commission staff as suggested in the Order. Superior Propane requested an extension of the date for filing its application to a date to be determined following the meeting with Commission staff;

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- D. On August 7, 2014, the Commission reviewed the request for the application filing date extension and by Order G-113-14 granted the request. The order required that Superior Propane must complete its meetings with Commission staff by August 21, 2014 and Superior Propane must make application to the Commission for its rates, tariff and terms and conditions of service by September 5, 2014;
- E. On September 4, 2014, Superior Propane filed an application with the Commission for reconsideration of Order G-91-14 pursuant to section 99 of the *Utilities Commission Act* (UCA) and a stay of proceedings pursuant to section 77 of the UCA;
- F. On September 18, 2014, the Commission established Phase One of the reconsideration process wherein it requested comments from the two complainants on whether the Commission should proceed to Phase Two of a reconsideration, and a response from Superior Propane;
- G. On September 23, 2014, the Commission issued Order G-145-14 granting a stay of proceedings, specifically the rates application required under Order G-91-14, pending the determination of the reconsideration application;
- H. On September 24, 2014, comments were received from Stratawest Management Ltd. on behalf of the strata owners of Strata Plan BNCS776 (Seascapes) on the reconsideration application;
- I. On October 1, 2014, Superior Propane submitted a response; and
- J. The Commission reviewed the submissions and considers it warranted to proceed to Phase Two of reconsideration.

NOW THEREFORE as set out in the Reasons for Decision attached as Appendix A, the British Columbia Utilities Commission orders as follows:

1. Phase Two of reconsideration is established for Superior Propane's application for reconsideration of Order G-91-14.
2. The Regulatory Timetable for the review of Phase Two of the reconsideration is set out in Appendix A.
3. Phase Two of the reconsideration will focus on the issues contained in Superior Propane's September 4, 2014 application for reconsideration.
4. Evidence and submissions from the proceeding that resulted in Order G-91-14, and submissions made in Phase One of the reconsideration process will be admitted. New evidence will not be heard and new parties will not be given the opportunity to participate in Phase Two.

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5. Superior Propane's compliance with the directives in Orders G-91-14 and G-113-14 will not be considered as part of Phase Two of the reconsideration.

DATED at the City of Vancouver, In the Province of British Columbia, this 31st day of October 2014.

BY ORDER

Original signed by:

L.F. Kelsey
Commissioner

Attachments

Person(s) doing business as Seascapes Development and
Superior Propane
Application for Reconsideration of Order G-91-14

REGULATORY TIMETABLE

ACTION	DATE (2014)
Superior Propane Phase Two Submission, if any	Thursday, November 6
Complainants' Phase Two Submissions, if any	Thursday, November 13
Superior Propane Reply Submission, only if Complainant(s) file(s) Phase Two Submission(s)	Thursday, November 20

An Application by
Person(s) doing business as Seascapes Development and Superior Propane
for Reconsideration of Order G-91-14

REASONS FOR DECISION

1.0 Background

On July 10, 2014, the British Columbia Utilities Commission (Commission) issued Order G-91-14 by which it ordered, among other directives:

The person, or the person's lessee, trustee, receiver or liquidator, who owns or operates Superior Propane at Seascapes Strata BCS 776 is operating as a public utility as defined by the *Utilities Commission Act...*; and

Superior Propane must make application [*sic*] to the Commission for its rates, including a proposal for an appropriate regulatory process to review this application, no later than 30 days from this Order...

On September 4, 2014, Superior Propane filed an application for reconsideration of Order G-91-14 and a request for a stay of the rates application proceeding that was directed by that Order.

On September 23, 2014, the Commission issued Order G-145-14 which granted the stay of the rates application proceeding pending the determination of the reconsideration application.

These reasons and associated order deal with the reconsideration application.

2.0 Superior Propane's Reconsideration Application

In its September 4, 2014 application, Superior Propane seeks reconsideration of Order G-91-14. Specifically Superior Propane seeks reconsideration of the Commission's finding that Superior Propane is a public utility pursuant to the *Utilities Commission Act (UCA)*, on the basis of two alleged errors.

2.1 Alleged Error One

Superior Propane alleges the Commission made an error of law by erring in its interpretation of the UCA by misapplying principles of statutory interpretation and disregarding applicable provisions of the UCA. Superior Propane cites the following recitals of Order G-91-14:

- G. The UCA defines a public utility as "...a person, or the person's lessee, trustee, receiver or liquidator, who owns or operates in British Columbia, equipment or facilities..."
- H. The UCA defines the "petroleum industry" as "the carrying on within British Columbia of any of the following industries or businesses..."
- I. The UCA defines "petroleum products" as "...gasoline, naphtha, benzene..." [emphasis added]

The UCA states:

... ‘**public utility**’ means a person, or the person's lessee, trustee, receiver or liquidator, who owns or operates in British Columbia, equipment or facilities...

‘**petroleum industry**’ includes the carrying on within British Columbia of any of the following industries or businesses...

‘**petroleum products**’ includes gasoline, naphtha, benzene... [emphasis added]

Superior Propane submits:

The terms ‘means’ and ‘includes’ have distinct legal meanings and cannot properly be replaced by the term ‘as’. Specifically, the legislative use of the term ‘means’, as is used in the definition of public utility under the Act, connotes an exhaustive definition. The legislative use of the term ‘includes’, as is used in the definitions of petroleum industry and petroleum products under the Act, connotes an expansive definition, and that the lists following those definitions was intended by legislators to be non-exhaustive. (Exhibit B-1, para. 19)

2.2 Alleged Error Two

Superior Propane alleges the Commission erred in determining that it is in the public interest for Superior Propane to operate as a utility at Seascapes because “oversight by the Commission is not necessary to protect the interests of Seascapes residents because of existing protections in place.” (Exhibit B-1, paras. 13, 24)

3.0 Reconsideration Process

An application for reconsideration by the Commission proceeds in two phases. In the interests of both efficiency and fairness, and before the Commission proceeds with a determination on the merits of an application for reconsideration, the application undergoes an initial screening phase. In this phase the applicant must establish a *prima facie* case sufficient to warrant full consideration by the Commission. (A Participants’ Guide to the B.C. Utilities Commission, July 2002, p. 36)

The Commission established Phase One of the reconsideration process on September 18, 2014 and requested comments from Superior Propane and the two original complainants (the complainants that incited the proceeding that resulted in Order G-91-14). Submissions were requested on the following questions:

1. Should the Commission reconsider Order G-91-14?
2. If there is to be a reconsideration, should the Commission hear new evidence and should new parties be given the opportunity to present evidence?
3. If there is to be a reconsideration, should it focus on the items from the application for reconsideration, a subset of these items, or additional items?
4. If there is to be a reconsideration, should Superior Propane’s compliance with the directives in Orders G-91-14 and G-113-14 be considered as part of that process?

On September 24, 2014, comments were received from Stratawest Management Ltd. on behalf of the strata owners of Strata Plan BNCS776 (Seascapes) (one of the original complainants). Superior Propane replied on October 1, 2014.

4.0 Should the Commission Reconsider Order G-91-14?

The Commission's reconsideration guidelines include the following criteria to determine whether or not a reasonable basis exists for proceeding to Phase Two of reconsideration:

- the Commission has made an error in fact or law that:
 - is substantiated on a *prima facie* basis; and
 - has significant material implications;
- there has been a fundamental change in circumstances or facts since the Decision;
- a basic principle had not been raised in the original proceedings;
- a new principle has arisen as a result of the Decision; or
- the Commission considers there to be other just cause to reconsider its decision.

(paraphrased from A Participants' Guide to the B.C. Utilities Commission, July 2002, p. 37)

As outlined in the section above, Superior Propane alleges that the Commission made two errors.

Seascapes submits that Superior Propane has not met the threshold for reconsideration. Regarding Superior Propane's alleged error one, Seascapes submits "that it is Superior that has failed to interpret the legislation correctly." Regarding Superior Propane's public interest argument, Seascapes submits that it "is of the understanding that the regulation of public utilities is not a choice but a requirement. If this is incorrect we would appreciate our being correctly informed. If this is correct, we consider a discussion of the merits of regulatory protection to be unnecessary... it is our view that Superior has failed to submit any relevant evidence to suggest that Seascapes residents are adequately protected from actions undertaken by our propane gas provider." (Exhibit C1-2, p. 2)

Commission Determination

The Commission finds that Superior Propane in its application for reconsideration has presented a reasonable *prima facie* basis to proceed to Phase Two of reconsideration.

5.0 If there is to be a reconsideration, should the Commission hear new evidence and should new parties be given the opportunity to present evidence? If there is to be a reconsideration, should it focus on the items from the application for reconsideration, a subset of these items, or additional items?

Superior Propane makes no specific submissions regarding these questions. (Exhibits B-1, B-3) Seascapes submits that they "leave it to the Commission to determine the process and whether it is appropriate for new evidence to be allowed." (Exhibit C1-2, p. 3)

Commission Determination

Given that there are no substantial submissions on these questions, the Commission finds no compelling reasons to allow new evidence or new participants or to focus the reconsideration on a subset of or additional items to the items from Superior's application for reconsideration. Accordingly, **in Phase Two of the reconsideration, new evidence will not be heard, new parties will not be given the opportunity to participate, and the reconsideration will focus on the issues contained in Superior Propane's September 4, 2014 application for reconsideration.**

6.0 If there is to be a reconsideration, should Superior Propane's compliance with the directives in Orders G-91-14 and G-113-14 be considered as part of that process?

Seascapes submits "we do believe that compliance with directives in Orders G-91-14 and G-113-14 should be considered as part of the process as they seem to indicate Superior's desire to delay proceedings." (Exhibit C1-2, p. 3)

Superior Propane replied by stating "Superior Propane is participating in the reconsideration process available to it and has complied with all outstanding requirements. In that regard, it bears noting that Order G-91-14 has now been stayed. As such, there is no merit in the Seascapes suggestion of delay." (Exhibit B-3, p. 2)

Commission Determination

Given the submissions of the parties, **the Commission finds no compelling reason to consider Superior Propane's compliance with the directives in Orders G-91-14 and G-113-14 as part of this reconsideration process but may consider the issue at a later date.**