



LETTER NO. L-65-06

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Log No. 15194

VIA E-MAIL

compromised@shaw.ca

October 25, 2006

Mr. Tony Sprackett

Dear Mr. Sprackett:

**Re: British Columbia Utilities Commission
Public Information and Release of Personal Information**

This letter is in response to your e-mail inquiry dated June 20, 2006 concerning the release of your personal information. You have expressed concern regarding the publication on the Commission's website of your name and address in the document which you submitted on September 28, 2005, which is considered a "Letter of Comment" in the Commission's public proceeding to review the Kinder Morgan, Inc. application under section 54 of the *Utilities Commission Act* to acquire Terasen Inc. (the "Kinder Morgan proceeding").

The Commission took seriously your concerns and consulted with the Office of the Information and Privacy Commissioner for the Province of British Columbia. We sought that Office's views of the situation where individuals ask that their personal information submitted in a public proceeding be removed from the Commission's website. We identified the public process that had been established and explained how these documents were posted to the website as exhibits in the Kinder Morgan proceeding. We advised the Privacy Commissioner and his staff of the Commission's practice to treat as part of public record all documents received including the letters, petitions and other documents submitted as Letters of Comment in public processes. We also inquired about future proceedings and how we could, on a go-forward basis, handle correspondence received from the general public.

The Office of the Information and Privacy Commissioner for British Columbia reviewed our document filing protocols and discussed the situation with Commission staff. The review confirmed our understanding that documents submitted to the Commission in a public hearing for which public access is provided by a tribunal are outside the scope of the *Freedom of Information and Protection of Privacy Act*. Information in documents submitted to the Commission and related to a public hearing process is considered to be public and is open to the public and accessible to all parties involved in the process. We refer you to Section 61 of the Administrative Tribunals Act, and specifically Section 61(2.1)(e) as follows:

Application of Freedom of Information and Protection of Privacy Act

61 (1) In this section, "**decision maker**" includes a tribunal member, adjudicator, registrar or other officer who makes a decision in an application or an interim or preliminary matter, or a person who conducts a dispute resolution process.

(2) The Freedom of Information and Protection of Privacy Act, other than section 44 (2),

(2.1) and (3), does not apply to any of the following:

- (a) a personal note, communication or draft decision of a decision maker;
 - (b) notes or records kept by a person appointed by the tribunal to conduct a dispute resolution process in relation to an application;
 - (c) any information received by the tribunal in a hearing or part of a hearing from which the public, a party or an intervener was excluded;
 - (d) a transcription or tape recording of a tribunal proceeding;
 - (e) a document submitted in a hearing for which public access is provided by the tribunal;
 - (f) a decision of the tribunal for which public access is provided by the tribunal.
- (3) Subsection (2) does not apply to personal information, as defined in the Freedom of Information and Protection of Privacy Act, that has been in existence for 100 or more years or to other information that has been in existence for 50 or more years.

In the interests of openness, transparency and fairness to all parties, it is the Commission's practice to treat all documents submitted for the Commission's consideration in its written proceedings as "public" documents, with limited and statutory exceptions, and to place these documents as exhibits on the record established for that proceeding. For submissions to have any credibility, and for the Commission to be able to give due consideration to their content, contact information provided must establish an identifiable individual or organization.

The Commission maintains its position that information provided in a Letter of Comment, including the name of the individual and identifying information such as an address, should be disclosed to the applicant and other parties to the proceeding. In fact, this sort of information is required of any intervenor or interested party in a proceeding. For greater certainty, however, the Commission now ensures that an additional sentence is included for notices for public hearings that are published in newspapers. The general wording we include on such notices is:

"All submissions and/or correspondence received from active participants or the general public relating to the Application will be placed on the public record and posted to the Commission's web site."

Accordingly, we do not consider that removal of the personal information which you have identified is warranted. However, given that some time has now passed since the conclusion of the Kinder Morgan proceeding, the Commission considers that it would be appropriate in this instance and in the circumstances to remove from the public website all of the Letters of Comment filed in that proceeding. Hard copies of the correspondence will be maintained in the Commission's Central Files at its offices at 900 Howe Street, Vancouver, BC.

Yours truly,

Original signed by

Robert J. Pellatt

RJP/cms