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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-81-08

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

and

**An Application by Al Stober Construction Ltd.
for an Exemption from Part 3 of the Utilities Commission Act
for the Supply of Heat from the Landmark Buildings to the Strata Lands**

BEFORE: L.F. Kelsey, Commissioner
P.E. Vivian, Commissioner May 15, 2008

O R D E R

WHEREAS:

- A. Al Stober Construction Ltd. ("ASC"), LTC Holdings Ltd. ("LTC") and T186 Enterprises Ltd. ("T186") are the owners of lands known as the Landmark 3, 4 and 5 Buildings in Kelowna (the "Landmark Buildings"); and
- B. Mode Properties Ltd. ("Mode") is the developer of lands which are adjacent to the Landmark Buildings (the "Strata Lands") that will contain strata units that will be managed by a strata corporation (the "Strata Corporation"); and
- C. The Landmark Buildings have a geothermal heating and cooling system that from time to time generates excess heat; and
- D. Under a Heat Supply Agreement dated September 20, 2007, (the "Heat Supply Agreement") ASC, LTC and T186 have agreed to permit Mode to extend the Landmark Buildings' geothermal heating and cooling system to the Strata Lands so as to permit Mode to extract excess heat for use in the Strata Lands; and
- E. ASC owns the geothermal system in the Landmark Buildings and LTC and T186 have relinquished to ASC any interest in the excess heat energy from the Landmark Buildings; and
- F. ASC has agreed to supply excess heat energy to Mode; and
- G. Mode has agreed to pay the construction costs associated with extending the geothermal system from the Landmark Buildings and to pay an annual fee for the heat; and
- H. The parties agree that the Agreement may be assigned by Mode to the Strata Corporation that will in future be incorporated to manage the Strata Lands; and
- I. The building in the Strata Lands will have enough gas heating capacity to be self-sufficient in the event that the heat supply from ACS fails or is interrupted; and

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- J. By a submission dated October 5, 2007, ASC applied to the Commission, pursuant to Section 88(3) of the Utilities Commission Act (the “Act”), for an order exempting it from regulation as a public utility under the Act (the “Application”); and
- K. Section 88(3) of the Act provides that the Commission may, on conditions it considers advisable, with the advance approval of the Lieutenant Governor in Council (“LGIC”), exempt a person, equipment or facilities from the application of all or any of the provisions of the Act; and
- L. By Order in Council No. 230 dated April 16, 2008 and attached as Appendix 1 to this Order, the LGIC granted advance approval to the Commission to exempt ASC from certain provisions of the Act for the purpose and subject to the terms set out in the draft Commission Order attached to the Order in Council; and
- M. The Commission has considered the Application and has determined that an exemption for ASC from certain provisions of the Act, for the sale by ASC of heat from the Landmark Buildings to the Strata Lands, is in the public interest.

NOW THEREFORE the Commission orders as follows:

- 1. Pursuant to Section 88(3) of the Act and subject to paragraph 2 of this Order and the timely filing with the Commission of a fully executed Heat Supply Agreement, the Commission approves an exemption for ASC from Part 3 of the Act, with respect to the sale by ASC of heat from the Landmark Buildings to the Strata Lands.
- 2. This exemption, granted pursuant to this Order, shall remain in effect until the Commission orders otherwise following the determination of any complaint it receives from a person whose interests are affected.
- 3. ASC is responsible for the safe and proper operation of its facilities, consistent with the requirements of the applicable regulatory authorities.
- 4. ASC is directed to submit an annual letter to the Commission confirming that the sale of heat continues in effect.

DATED at the City of Vancouver, in the Province of British Columbia, this 15th day of May 2008.

BY ORDER

Original signed by

L.F. Kelsey
Commissioner

Attachment

PROVINCE OF BRITISH COLUMBIA
ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No.

230

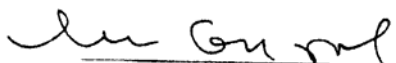
, Approved and Ordered **APR 16 2008**



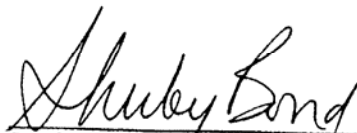
Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor in Council, by and with the advice and consent of the Executive Council, orders that approval is given to the British Columbia Utilities Commission to exempt Al Stober Construction Ltd. from the provisions of the *Utilities Commission Act* for the purpose and subject to the terms set out in the attached draft order of the British Columbia Utilities Commission.



*Attorney General and Minister Responsible
for Multiculturalism*



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- Utilities Commission Act, R.S.B.C. 1996, c. 473, s. 88 (3)
Other (specify):-

October 31, 2007

O/1115/2007/4