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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-6-14**

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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 Casa Del Mila Oro Geothermal and
Casa Del Mila Oro Geothermal**

BEFORE: L.F. Kelsey, Commissioner
N.E. MacMurchy, Commissioner
D.M. Morton, Commissioner January 16, 2014
R.D. Revel, Commissioner
C. van Wermeskerken, Commissioner

O R D E R

WHEREAS:

- A. On May 15, 2013, the British Columbia Utilities Commission (Commission) received a complaint from a customer of Casa Del Mila Oro (CDMO) Geothermal regarding energy services at Casa Del Mila Oro Resort, located at 5401 Lakeshore Drive, Osoyoos, British Columbia;
- B. CDMO Geothermal has not applied for, nor been granted, a Certificate of Public Convenience and Necessity nor has it made application for approval of rates for public utility service. To the date of this Order contact from the complainant and to the date of this Order, CDMO Geothermal was not operating under regulatory oversight under the *Utilities Commission Act* (UCA);
- C. On May 30, 2013, and on September 19, 2013, the Commission Secretary sent letters to Christopher Stewart operating as CDMO Geothermal requesting specific information about CDMO Geothermal in order to determine if it is a public utility under the UCA. Responses were received but the requested information was not provided;
- D. On October 29, 2013, the complainant provided the Commission with a copy of an invoice dated January 1, 2013 from CDMO Geothermal with a business address of 47-5401 Lakeshore Drive, Osoyoos, BC and addressed to the complainant for payment of a rate charged for "Geothermal Utility Service";
- E. On November 29, 2013, by Order G-200-13, the Commission established a hearing to determine whether CDMO Geothermal is a public utility under the UCA;

- F. On December 9, 2013, the Commission received a response from Manuel Azevedo, counsel for Christopher Stewart in which Mr. Azevedo submits that CDMO supplies geothermal heating and cooling services (Services) to some strata lot owners at the strata complex KAS2860, commonly known as Casa del Mila Oro, located at 5401 Lakeshore Drive, Osoyoos, BC, pursuant to contractual terms negotiated between CDMO and individual strata owners. CDMO further submits that it is not operating as a public utility under the UCA for the following reasons:
- i. CDMO is not required, as a matter of law, such as BC Hydro, to offer its services to the public or to the Owners;
 - ii. The public or the Owners cannot as a matter of law, demand the Services;
 - iii. CDMO is not bound at law to supply the Services to the public or the Owners;
 - iv. CDMO does not owe a duty to the public or the Owners to supply the services; and
 - v. CDMO is not impressed with a public interest;
- G. In response to Order G-200-13 two additional strata lot owners provided the Commission with copies of invoices for “Geothermal Utility Services”;
- H. 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 for
- (a) the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, steam or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation...” [Emphasis added];
- I. The Commission has reviewed the information provided to date by CDMO Geothermal, the complainant and interested parties, and finds that CDMO Geothermal is operating as a public utility as defined by the UCA.

NOW THEREFORE pursuant to section 41-43 of the *Utilities Commission Act*, the Commission orders as follows:

1. The person, or the person’s lessee, trustee, receiver or liquidator who owns or operates the Geothermal heating and cooling facilities known as Casa Del Mila Oro (CDMO) Geothermal is operating as a public utility as defined by the *Utilities Commission Act* (UCA).
2. CDMO Geothermal is directed to file the information requested in the Commission Secretary’s May 30 and September 19, 2013 letters to CDMO Geothermal that have not already been provided (attached as Appendix A to this Order) on or before 4:00 pm February 14, 2014.

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3. CDMO Geothermal must provide legal ownership status, income tax statements or audited financial statements for the past 3 years and a summary of operating and maintenance expenses by year, as well as an assessment of work or repairs performed to date and any planned work or repairs, including identification of current deficiencies of the system if any. The summary and assessment must be provided on or before 4:00 pm February 14, 2014.
4. CDMO must familiarize itself and comply with its obligations under the Utilities Commission Act, of particular note, CDMO is obliged to provide safe, and reliable service to its customers.
5. CDMO Geothermal must provide a copy of this Order and attached Reasons for Decisions to all of its customers.

DATED at the City of Vancouver, in the Province of British Columbia, this 16th day of January 2014.

BY ORDER

Original signed by:

D.M. Morton
Commissioner

Attachment

Person(s) doing business as Casa Del Mila Oro Geothermal and
Casa Del Mila Oro Geothermal

Reasons for Decision

The December 9, 2013, submission from Legal Counsel on behalf of Mr. Stewart and Casa Del Mila Oro (CDMO) Geothermal states that Mr. Stewart, doing business as CDMO Geothermal supplies “geothermal heating and cooling services (the “services”) to some strata lot owners at the strata complex...commonly known as Casa del Mila Oro....The services are provided pursuant to contractual terms negotiated between individual residential owners (“Owners”) and CDMO [geothermal].”

CDMO Geothermal also submits that it is not operating as a public utility pursuant to the *Utilities Commission Act* (UCA) for the following reasons:

- i. “CDMO is not required, as a matter of law, such as BC Hydro, to offer its services to the public or to the Owners;
- ii. The public or the Owners cannot as a matter of law, demand the Services;
- iii. CDMO is not bound at law to supply the Services to the public or the Owners;
- iv. CDMO does not owe a duty to the public or the Owners to supply the services; and
- v. CDMO is not impressed with a public interest.”

The British Columbia Utilities Commission (Commission) does not agree with CDMO Geothermal’s interpretation of the UCA that it is not a public utility because it is not impressed with a public interest. This is a circular argument. The Commission finds that if a person meets the definition of a public utility it is impressed with a public interest; however, being impressed with a public interest is not in itself, a criterion for defining who is a public utility. The same applies to the duty to supply services in that the duty itself is not the definition of a public utility; rather, if a person meets the definition it is then impressed with the duty to supply services.

According to the UCA, a “public utility” means

“a person, or the person’s lessee, trustee, receiver or liquidator, who owns or operates in British Columbia, equipment or facilities for

- (a) the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, steam or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation, or

- (b) ...

but does not include

- (c) a municipality or regional district in respect of services provided by the municipality or regional district within its own boundaries,
- (d) a person not otherwise a public utility who provides the service or commodity only to the person or the person's employees or tenants, if the service or commodity is not resold to or used by others,
- (e) a person not otherwise a public utility who is engaged in the petroleum industry or in the wellhead production of oil, natural gas or other natural petroleum substances,
- (f) a person not otherwise a public utility who is engaged in the production of a geothermal resource, as defined in the *Geothermal Resources Act*, or
- (g) a person, other than the authority, who enters into or is created by, under or in furtherance of an agreement designated under section 12 (9) of the *Hydro and Power Authority Act*, in respect of anything done, owned or operated under or in relation to that agreement” (emphasis added).

The Commission considers that if the Facility Owner of heat pump facility/system that extracts heat/cold from the ground distributes that heat/cold to individual units within a residential development, and the unit purchasers pay the Facility Owner for the heat/cooling, then the Facility Owner falls within the definition of a “public utility” in the UCA.

Copies of invoices from CDMO Geothermal to several unit owners within the Casa Del Mila Oro Resort were submitted as evidence to the Commission. The invoice from CDMO Geothermal to the complainant expressly states that it charges a rate for “geothermal utility service.” The Commission accepts this evidence as showing that CDMO Geothermal provides heating and cooling to its customers for compensation.

Furthermore, there is no evidence that suggests that CDMO Geothermal is producing a geothermal resource as defined by the *Geothermal Resources Act* (GRA).¹ None of the other exclusions listed in clauses (c) to (g) under the definition of “public utility” apply to CDMO Geothermal either.

The five exclusions listed in the definition of “public utility” in the UCA also help to shed light on the intended scope of the word “public.” In (d), the exclusion of a person who only provides service to themselves, their employees or their tenants (which does not include a lessee for a term of more than 5 years), supports the inference that a provision of service by a developer or facility owner to others (i.e. not themselves, their employees or their tenants) is providing to the public.

In fact, the meaning of “public” in utilities legislation was addressed recently in *TransCanada Pipeline ventures Ltd. v. Alberta (Energy and Utilities Board)*, 2008 ABCA 55, 299 D.L.R (4th) 558. In that case, the Alberta Energy and Utilities Board ruled that the term “public” is intended to be interpreted broadly, and the customer should not lose its status as a member of the public simply by entering into a private contract. The Alberta Court of Appeal upheld this finding. Therefore, the public includes individuals who may have signed an agreement for service, including any future purchasers of units at CDMO who would be required to sign new, or take -over existing, service contracts.

Lastly, while CDMO Geothermal argues that it is not bound by law to supply services to the unit owners, CDMO Geothermal admits that it has a service contract with its customers. While the Commission has not seen the service contract, a contract, by nature, imposes obligations on the parties to the terms of the contract.

For the reasons described, the Commission concludes that CDMO Geothermal, the agent who owns facilities for the production and delivery of heat and cold for compensation to the public, is a Public Utility as defined by the UCA. The Commission requires the requested information to assess the complaints received regarding the service provided by CDMO.

¹ Section 1(1) of the GRA excludes “water that has a temperature less than 80degrees Celsius at the point where it reaches the surface.”