



IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

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

BEFORE: B. A. Magnan, Panel Chair/Commissioner
H. G. Harowitz, Commissioner January 29, 2015
K. A. Keilty, 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 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 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 (Reconsideration Application);
- D. 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;

**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER** G-11-15

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- E. 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;
 - F. On September 24, 2014, comments were received from Stratawest Management Ltd. on behalf of the Strata owners of Strata Plan BCS 776 (Seascapes) on the Reconsideration Application;
 - G. On October 1, 2014, Superior Propane submitted a response;
 - H. On October 30, 2014 the Commission issued Order G-167-14 establishing Phase Two for Superior Propane's Reconsideration Application and setting out the Regulatory Timetable;
 - I. On October 31, 2014 a Reconsideration Panel was appointed to conduct the reconsideration proceeding;
 - J. On reviewing the evidence in the original proceeding, the Reconsideration Panel determined that a document that was considered by the Panel in the original proceeding was inadvertently not disclosed to the parties in the original proceeding;
 - K. On December 10, 2014, a letter was sent to the parties disclosing the document and asking for the parties to comment on the effect of late disclosure of the document on the proceeding;
 - L. The Reconsideration Panel received comments from the parties; and
 - M. The Panel has considered all the submissions made during the reconsideration including commentary on the late disclosure of the document and finds that the late disclosure of the document enclosed with the letter of December 10, 2014 requires G-91-14 to be set aside.
1. **NOW THEREFORE**, pursuant to section 99 of the *Utilities Commission Act* and for the Reasons attached to this order, the British Columbia Utilities Commission orders the reconsideration be granted and that Order G-91-14 be set aside.

DATED at the City of Vancouver, In the Province of British Columbia, this 29th day of January, 2015.

BY ORDER

Original signed by:

B. A. Magnan
Panel Chair / Commissioner

Attachment

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REASONS FOR DECISION

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 (Reconsideration Application). By Order G-167-14, the Commission established Phase Two for Superior Propane's Reconsideration Application. On December 10, 2014, the parties were advised of an undisclosed document used in the original decision was inadvertently not disclosed to the parties and the Reconsideration Panel requested comments on the effects of the late disclosure of the document.

1.0 NON-DISCLOSURE OF DOCUMENT

In its letter of comment dated December 18, 2015, Superior submits "it is the respectful submission of Superior that there is no available remedy to the late disclosure of the document, and that the Order G-91-14 must be immediately rescinded or set aside."¹

Superior relies on multiple decisions which have determined that lack of disclosure of documents during the original proceeding would be "a clear breach of procedural fairness amounting to an error in law and failure of jurisdiction..."²

Stratawest Management Ltd., on behalf of Seascapes, argued "that the late filing of the letter in question, while unfortunate, is not relevant and has no effect on these proceedings."³

Commission Determination

The Panel considered all the comments and evidence available from both parties concerning the arguments made. After due consideration, **the Panel finds that the lack of disclosure of the document used in the original proceedings is a breach of procedural fairness and hereby grants the reconsideration and orders that Order G-91-14 be set aside.**

2.0 COMPLAINTS PROCESS

The Panel is aware of the lengthy time it has taken from the time of the original complaints through the original order and the reconsideration process as well as the commentary period on the non-disclosure of a document used in arriving at the determinations in the original order.

¹ Exhibit B-5, Superior Letter of Comment, p. 1.

² Ibid., p. 6.

³ Exhibit C1-3, Seascapes Letter of Comment, p. 1.

Commission Discussion

The Panel recognizes the need to have a full review of all the evidence used in the original application and the subsequent reconsideration. The Panel also recognizes that in any new consideration, the parties should be allowed to submit any additional evidence they deem would add to the necessary evidence for said consideration. Therefore, the Panel suggests the Commission review the complaints in a most expeditious manner.