



ORDER NUMBER

G-29-17

IN THE MATTER OF

the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

Seascapes Strata Corporation BCS 776

Application for Reconsideration and Variance of Order G-172-16

BEFORE:

B. A. Magnan, Panel Chair/Commissioner

W. M. Everett, QC, Commissioner

on March 3, 2017

ORDER

WHEREAS:

- A. On November 28, 2016, the British Columbia Utilities Commission (Commission) issued Order G-172-16 and accompanying Reasons for Decision approving, among other things, the 2016 revenue requirement in respect of Superior Propane Ltd.'s (Superior) operation of the Seascapes Strata Corporation BCS 776 (Seascapes) grid system;
- B. On December 22, 2016, Seascapes filed an application for reconsideration and variance of Order G-172-16 pursuant to section 99 of the *Utilities Commission Act*. Seascapes seeks a reconsideration of the Commission's determinations regarding insurance costs and the oversight of the cost of gas on the basis that the Commission erred in its interpretation of the facts or law and, as a result, has approved rates that are unjust and unreasonable (Reconsideration Application);
- C. By letter dated January 17, 2017, the Commission established the first phase of the reconsideration process wherein the Commission requested written submissions from Superior addressing whether Seascapes has put forward a *prima facie* case sufficient to warrant a full reconsideration by the Commission through the initiation of the second phase of the reconsideration process. Seascapes was also given the opportunity to respond to Superior's submissions;
- D. On January 27, 2017, Superior filed its submissions on the Reconsideration Application and on February 8, 2017, Seascapes responded to Superior's submissions; and

E. The Commission has reviewed the submissions and makes the following determinations on the Reconsideration Application.

NOW THEREFORE pursuant to section 99 of the *Utilities Commission Act*, for the reasons attached as Appendix A to this order, the Commission orders as follows:

1. The second phase of the reconsideration process is established for Seascapes Strata Corporation BCS 776's (Seascapes) application for reconsideration and variance of the Commission's determination on insurance costs in Order G-172-16.
2. Seascapes' application for reconsideration and variance of the Commission's determination in Order G-172-16 regarding the oversight of the cost of gas is dismissed.
3. The Regulatory Timetable for the second phase of the reconsideration process, attached as Appendix B to this order, is established. Seascapes and Superior Propane Ltd. are granted leave to introduce new evidence on insurance costs in accordance with the Regulatory Timetable.

DATED at the City of Vancouver, in the Province of British Columbia, this 3rd day of March 2017.

BY ORDER

Original signed by:

B. A. Magnan
Commissioner

SW/kn

Seascapes Strata Corporation BCS 776
Application for Reconsideration and Variance of Order G-172-16

REASONS FOR DECISION

1.0 INTRODUCTION

1.1 Background

Superior Propane Ltd. (Superior) installed a propane grid system at the Seascapes Strata Corporation BCS 776 (Seascapes) residential development in 2004 pursuant to a commercial agreement, including an undertaking to supply propane to the Seascapes development for 15 years. The British Columbia Utilities Commission (Commission), by Order G-133-15, determined that Superior was a public utility, within the definition of the *Utilities Commission Act* (Act) for its operations of the Seascapes propane grid system and directed Superior to file a revenue requirement and rate application (Rate Application) for the grid system. The Commission, by Order G-172-16 and accompanying Reasons for Decision dated November 28, 2016, approved, among other things, the 2016 revenue requirement of \$75,293 and rate structure in respect of Superior's operation of the Seascapes' grid system (Rate Decision).

On December 22, 2016, Seascapes filed an application pursuant to section 99 of the Act for reconsideration and variance of Order G-172-16 (Reconsideration Application).

Seascapes is seeking a reconsideration and variance of the following determinations made by the Commission in the Rate Decision on the basis the Commission erred in its interpretation of the facts or law and, as a result, has approved rates that are unjust and unreasonable.

- Insurance costs – Based on a quote by an underwriter, Zurich, the Commission approved the amount of \$22,500 annually for insurance costs that Superior is not required to actually make and accepted this amount as the imputed value of insurance coverage (Insurance Cost Issue).
- Oversight of the Cost of Gas – The Commission established a protocol for the purchase of the propane gas from Superior's sister company, which includes no oversight by the Commission of the cost of gas (Oversight of Gas Cost Issue).¹

Subsequently, Seascapes indicated that it was not sure whether the foregoing were errors of fact or law, because it did not have the benefit of legal advice in respect of the Reconsideration Application.²

Superior submits the Reconsideration Application should be dismissed on the basis that Seascapes has failed to put forward a *prima facie* case sufficient to warrant a full reconsideration by the Commission.³

¹ Exhibit B-1, pp. 1 – 2.

² Exhibit B-2, p. 6.

³ Exhibit C1-1, p. 1..

1.2 Applicable Law and Commission Guidelines

Section 99 of the Act provides:

The commission, on application or on its own motion, may reconsider a decision, an order, a rule or a regulation of the commission and may confirm, vary or rescind the decision, order, rule or regulation.

The Commission has published criteria regarding its process for hearing and determining an application for reconsideration. The criteria, in general terms, provides that the process proceeds in two phases. The first phase requires the applicant to establish a *prima facie* case that the Commission has made an error of fact or law and that the alleged error has significant material implications. The Commission will exercise its discretion in determining whether an applicant has established a *prima facie* case and in doing so may consider whether:

- the Commission made an error of fact or law,
- there has been a fundamental change in circumstances in facts since the decision,
- a basic principle had not been raised in the original proceeding, or,
- a new principle has arisen as a result of the decision.⁴

In the event the applicant establishes a *prima facie* case, the Commission will then proceed to the second phase, in which it hears full arguments on the merits of the reconsideration application.

1.3 Regulatory process

Seascapes filed the Reconsideration Application on December 22, 2016.

By letter dated January 17, 2017, the Panel established the process for the first phase of the Reconsideration Application by establishing a timetable for submissions from Superior by January 27, 2017 and a reply from Seascapes by February 9, 2017.

The Panel further directed that the parties' submissions be limited to addressing whether the *prima facie* threshold for the first phase of the reconsideration has been met.

Superior filed its submission on January 27, 2017 and Seascapes filed its reply submission on February 8, 2017.

2.0 RECONSIDERATION ISSUES

2.1 Insurance cost issue

This issue concerns the Commission's determination of Superior's cost of insurance in respect of its operations of the Seascapes' propane grid system.

In the Rate Decision regarding the cost of insurance, the Commission stated, in part, as follows:

⁴ A Participants' Guide to the B.C. Utilities Commission, pp. 36 -37.

The Panel accepts Superior's position. As an unregulated entity, it was solely up to Superior to assume whatever risks it so chose, and to determine if/how it would try to recover insured premiums and/or uninsured losses from customers. However, as a regulated utility, the 'rules of the game' change significantly: Superior is entitled to put in place insurance that protects ratepayers against major losses, and recover those insurance premiums from ratepayers. The Panel understands Superior's position to be that it intends to continue to self-insure up to \$250,000 per incident, and presented the Zurich quote as a proxy for the value of that self-insurance. The Panel is satisfied that the quote from Zurich is a reasonable basis upon which to establish the imputed value of the insurance coverage, and therefore approves the \$22,500 amount for this line item.⁵

Seascapes' submissions

In the Reconsideration Application, Seascapes points to the Commission's statement in the Rate Decision that it "understands Superior's position to be that it intends to continue to self-insure up to the \$250,000 per incident" in respect of the Seascapes development and that Superior presented the quote from Zurich as a proxy for the value of that self-insurance.⁶

Seascapes submits that the Commission, in finding the Zurich quote was a reasonable basis upon which to establish the imputed value of the self-insurance, establishes a *prima facie* case of error in fact or law for reconsideration, for the following reasons:

- While Superior has stated that it is self-insured up to \$250,000 per incident, the Zurich policy quote submitted by Superior has coverage limits of \$2,000,000 for most risks, which is eight times larger than the intended self-insurance;
- It is not clear from the Zurich quote exactly what is being insured or whether the residents of Seascapes should bear the costs;
- The Zurich quote was prepared to not only cover its claims costs, which in effect Superior is underwriting through self-insurance, but also all of its administrative costs, claims management costs of running the insurance company, sales commissions and profit margin. These costs, if Superior is self-insuring, would not be incurred;
- Reliance on the Zurich quote, which is for insurance coverage that was never intended to be purchased by Superior fails to follow the cost of service model the Commission chose to follow in the Rate Decision and is not reasonable because the insurance was never purchased by Superior and, therefore, has no bearing on the actual costs incurred by Superior for self-insurance; and
- The only insurance costs that Superior will incur or expect to incur in respect of the Seascapes development are payments for claims it has or may have to pay, up to the coverage limits for self-insurance.⁷

The Commission-approved insurance cost of \$22,500 represents approximately 30 percent of Superior's total revenue requirement of \$75,293 for 2016. Seascapes submits that the magnitude of the annual insurance cost

⁵ Appendix A to Order G-172-16, Superior Propane Rate Application for Seascapes Grid System Reasons for Decision, p. 11.

⁶ Exhibit B-1, p. 2.

⁷ Exhibit B-1, pp. 3-4.

as a percentage of the total revenue requirement establishes, on a *prima facie* basis, that the alleged error has significant material implications to Seascapes' ratepayers.⁸

Superior's submissions

With respect to the rate setting mechanism, Superior refers in its submission to the following excerpts from the Rate Decision:

In its Application, Superior proposes a rate setting mechanism based on its estimated cost of providing service. When asked about the considerations of any other rate setting mechanisms, Superior responded that it considered cost of service was the most appropriate method to calculate its allowed return...

The Panel accepts Superior's request to establish rates on the basis of its estimated cost of providing service.⁹

Superior submits the fact that the Commission accepted the Zurich quote as a reasonable proxy for insurance costs, especially in the absence of any other evidence on the point, was well within the broad discretionary authority it enjoys under the Act as to the methodology and factors to be considered in determining just and reasonable rates for Seascapes.¹⁰

Superior further submits the evidence in the Zurich quote was reasonable, was clear as to the coverages, was uncontested by Seascapes and that the Commission was entitled to rely on it in determining the insurance cost.¹¹

2.2 Oversight of gas costs issue

This issue concerns whether there is adequate Commission oversight of the cost of the propane gas Superior supplies to Seascapes. The basic cost of the gas delivered to Seascapes is based on the commodity price set on the 15th of each month, by Superior's sister company, Superior Gas Liquids (SGL), from whom Superior purchases the gas.

In the Rate Decision regarding the oversight issue, the Commission stated, in part, as follows:

The Panel approves the request to use the SGL commodity price on the 15th of the month as an acceptable basis upon which to set the basic cost of gas. The Panel agrees with Superior that this method is a practical and simple approach for reflecting the actual costs incurred by Superior in acquiring propane on behalf of Seascapes customers.¹²

Seascapes' submissions

⁸ Ibid., p. 2.

⁹ Exhibit C1-1, pp. 4-5.

¹⁰ Ibid., p. 9.

¹¹ Ibid.

¹² Appendix A to Order G-172-16, Superior Propane Rate Application for Seascapes Grid System Reasons for Decision, pp. 22-23.

Seascapes sets out its position with respect to the need for greater Commission oversight of gas costs as follows:

As Seascapes understands it, this is the only case where the Commission has deemed it unnecessary to provide some level of oversight of gas prices. All other gas providers are required to go through a review process when the price of gas is to be either increased or decreased. Seascapes submits that the nature of the relationship between Superior and Superior Gas Liquids from whom it purchases alone would suggest that at least some oversight is reasonable. Therefore, Seascapes requests the Commission reconsider this direction and modify it to allow some level of Commission oversight while doing so in a cost effective manner.¹³

Seascapes' concern with the oversight of gas costs is not with the methodology for determining the monthly cost based on the SGL spot price on the 15th of the month. Rather, its concern is that the costs need to be periodically reviewed by the Commission to determine whether they are reasonable and in line with other similar operators.¹⁴

Superior's submissions

Superior submits the evidence before the Commission was that it sourced its propane through the SGL Langley facility in Port Kells and it proposed to use the posted spot price at that facility on the 15th of each month as a component of the Seascapes' energy rate, because it provides a consistent pricing mechanism, which it expects over time will have a neutral impact on Seascapes and Superior.¹⁵

Superior further submits that Seascapes has provided no evidence in support of the claims made in its Reconsideration Application regarding the Commission's oversight of other utilities' gas costs. Superior also states that Seascapes' argument "fails to establish a *prima facie* case for reconsideration, because it completely ignores the Superior evidence that was before the Commission on the Rate Application".¹⁶ Superior notes that this evidence was referenced by the Commission in the Rate Decision as follows:

...there are situations where this pricing method will benefit the Seascapes customers, and there are situations where this pricing method will favour Superior. Over the calendar year this impact is expected to be neutral. Superior further states that the administrative burden of tracking the exact propane cost to Seascapes would offset any benefit to the Seascapes customers.¹⁷

Superior submits that the Commission accepted Superior's position in the Rate Decision that this method of setting the basic cost of gas is a practical and simple approach for reflecting the actual costs incurred by Superior in acquiring propane on behalf of Seascapes' customers and that the Commission concurred with a light handed approach to determining future rates beyond 2016. Superior notes that in the Rate Decision, the Commission "prescribed a mechanism to annually adjust rates for inflation, directed the parties to endeavour to agree on

¹³ Exhibit B-1, p. 5.

¹⁴ Exhibit B-2, p. 6.

¹⁵ Exhibit C1-1, p. 10.

¹⁶ Ibid., p. 11.

¹⁷ Exhibit C1-1, p. 11.

material adjustments to updated estimates, subject always to a revenue requirement application for required rate adjustments, or complaint, as necessary.”¹⁸

Thus, Superior submits that Seascapes has not established a *prima facie* case that the Commission erred in deciding that the evidence did not warrant periodic gas cost review.¹⁹

Commission determination

Insurance Cost Issue

In the Rate Application, Superior had the onus of providing proof, on the balance of probabilities, of its cost of insurance in connection with supplying gas to the Seascapes development, as part of the process of establishing rates that were just and reasonable.

In the Rate Decision, the Commission adopted a cost of service mechanism, based upon best estimates of the cost of providing this service, for setting Superior’s rates. However, the Commission did express the following frustration with the estimates:

More to the point, the Panel considers the method of setting rates based upon best estimates of the cost of providing service to be an established and robust framework. As more fully elaborated upon in the next section the Panel is troubled by both the lack of detailed justification for the cost estimates, and the large disparity of opinion as to what costs and magnitudes are reasonable for inclusion in the base costs. That said, while these problems make it more challenging to arrive at final cost numbers, they do not establish a case for rejecting the framework itself.²⁰

In the Rate Decision, the Commission was satisfied that the Zurich quote was a reasonable basis upon which to establish the imputed value of the cost of insurance. The Commission reached that decision despite:

- The Zurich quote being for a \$2 million coverage limit rather than the \$250 thousand limit of Superior’s intended self-insurance;
- It being unclear whether the coverage in the Zurich quote was similar to Superior’s intended self-insurance;
- The Zurich quote being prepared to not only cover its claims costs, which in effect Superior is underwriting through self-insurance, but also all of its administrative costs, claims management costs of running the insurance company, sales commissions and profit margin, which, if Superior is self-insuring, are costs it is not required to bear; and
- The fact that Superior did not intend to purchase the Zurich insurance and the quote did not, therefore, represent an actual cost Superior would be incurring in its provision of the gas service.

The Commission did not give any reasons as to why it reached its decision that the quote was a reasonable basis on which to impute Superior’s cost of insurance. In addition, in relying solely on the Zurich quote, the

¹⁸ Ibid., pp. 10-11.

¹⁹ Ibid., p. 12.

²⁰ Appendix A to Order G-172-16, Superior Propane Rate Application for Seascapes Grid System Reasons for Decision, p. 7.

Commission arguably reached that determination without the clear, convincing and cogent evidence necessary to satisfy it that the cost of insurance had been proven on a balance of probabilities. **For the foregoing reasons, the Panel finds that Seascapes has established a *prima facie* case that the Commission erred in fact or law in reaching its determination on Superior's cost of insurance, and directs that the reconsideration proceed on this issue to the second phase for full arguments on the merits of the application.** The Panel further finds that the alleged error has significant material implications to Seascapes' ratepayers, given the \$22,500 approved as Superior's cost of insurance is approximately 30 percent of Superior's total revenue requirement.

The Panel determines that the second phase of this reconsideration will proceed in accordance with the regulatory timetable attached as Appendix B to this order. The Panel further determines that the parties are granted leave to introduce new evidence on this issue in the second phase of this reconsideration.

Oversight of Gas Cost Issue

The evidence before the Commission was that Superior sourced its propane gas through its sister company SGL's Langley facility in Port Kells and it proposed to use the posted spot price at that facility on the 15th of each month as a component of the Seascapes' energy rate, because it provides a consistent pricing mechanism, which it expects over time will have a neutral impact on Seascapes and Superior. Seascapes expressed no concern with that methodology for determining the monthly cost of the gas and it was accepted by the Commission as a practical and simple approach for reflecting the actual costs incurred by Superior in acquiring the gas for the Seascapes ratepayers.

Seascapes concern is that the nature of the relationship between Superior and Superior Gas Liquids, from whom it purchases, alone would suggest that at least some oversight is reasonable and that the Commission erred in fact or law by failing to direct periodic oversight of the cost of the gas.

This Panel finds that there was no evidence before the Commission that there was anything untoward about Superior obtaining the gas supply from its affiliated sister company SGL to warrant the periodic oversight suggested by Seascapes.

This Panel further finds that Seascapes' position that the Commission erred by failing to direct periodic oversight of the gas cost is inconsistent with its concurrence with the concept of a light handed approach to future rates beyond 2016 and regulatory efficiency. In addition, the Commission agreed with the light handed approach and in Order G-172-16 and accompanying Reasons for Decision also provided that Superior would be subject to a specific mechanism for setting the rate each year, which provides a form of continued oversight.

The Panel finds that the Commission's decision as to the method of determining the gas costs and the form of light handed regulation with a specific mechanism for determining future rates was reasonable and that Seascapes has failed to establish a *prima facie* case that the Commission erred by not providing for periodic oversight of the cost of gas, other than as ordered by the Commission in relation to the mechanism for establishing future annual rates. **Accordingly, the Panel dismisses Seascapes application for reconsideration and variance on this issue.**

Seascapes Strata Corporation BCS 776
Application for Reconsideration and Variance of Order G-172-16

REGULATORY TIMETABLE

ACTION	DATE (2017)
Seascapes filing of Evidence on Insurance Costs	Thursday, March 23
Commission and Superior Information Request No. 1 on Seascapes Evidence	Tuesday, April 4
Seascapes response to Commission and Superior Information Request No. 1	Friday, April 21
Superior filing of Rebuttal Evidence on Insurance Costs (if any)	Friday, April 28
Further Process to be Determined	TBD