

SIXTH FLOOR, 900 HOWE STREET, BOX 250  
VANCOUVER, BC V6Z 2N3 CANADA  
website: <http://www.bcuc.com>



**BRITISH COLUMBIA  
UTILITIES COMMISSION**

**ORDER  
NUMBER G-47-15**

TELEPHONE: (604) 660-4700  
BC TOLL FREE: 1-800-663-1385  
FACSIMILE: (604) 660-1102

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

and

Superior Propane  
Status as Public Utility in British Columbia for the Operation  
of a Propane Distribution System at Seascapes Development Ltd.

**BEFORE:** L. A. O'Hara, Panel Chair/Commissioner

March 25, 2015

**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 (Superior);
- B. On July 10, 2014, following a review of information provided by Superior, 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 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 January 29, 2015, the Commission issued Order G-11-15 and ordered that the reconsideration be granted and that Order G-91-14 be set aside as a result of the inadvertent non-disclosure to the parties of a letter dated June 20, 2008 from the Ministry of Energy and Mines (Ministry);

- E. On January 30, 2015, the Chair of the Commission appointed a new panel to conduct the review of the status as public utility for the Superior Propane Distribution System at Seascapes Development Ltd (Exhibit A-1);
- F. On February 12, 2015, the Commission proposed that certain evidence in the prior proceeding, listed in Appendix A, should also be entered into this proceeding without any further process, invited submission from the current and any new parties on three questions, and provided a regulatory timetable in Appendix B (Exhibit A-2);
- G. On February 17, 2015, the Ministry, on behalf of the Province of British Columbia, registered as an intervenor (Exhibit C-1);
- H. On February 24, 2015, Superior raised concerns arising from the intervenor status of the Ministry in this proceeding and requested that a process be set to consider whether Item 1 of Appendix A – the Ministry's June 20, 2008 letter to the Chair of the Commission – should be accepted as evidence in this proceeding (Exhibit B-2) and questioned the jurisdiction of the Commission to continue these proceedings in the absence of a new complaint being received;
- I. By letter dated March 2, 2015 the Panel sought submissions from the parties regarding Superior Propane's concern over the intervenor status of the Ministry in this proceeding;
- J. Superior, the Ministry and Seascapes made submissions; and
- K. The Commission has reviewed the submissions and determines that the process can now continue with the Ministry remaining as an intervenor.

**NOW THEREFORE**, for the Reasons attached to this Order, the British Columbia Utilities Commission orders as follows:

- 1. The Ministry of Energy and Mines will remain as an intervenor.
- 2. The suspension of the regulatory timetable is lifted.
- 3. Parties are requested to make submissions in accordance with the Regulatory Timetable attached as Appendix A on the following:
  - (a) Having set aside its previous order determining that Superior was a "public utility," does the Commission retain jurisdiction to continue with this proceeding in the absence of a new complaint being made by Seascapes or another party to the Commission?
  - (b) Should Item 1 of Appendix A to Exhibit A-2 (the Ministry's June 20, 2008 letter to the Chair of the Commission) be accepted as evidence in this proceeding?
- 4. The Commission will consider further process after receipt of the submissions.

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**DATED** at the City of Vancouver, in the Province of British Columbia, this    25<sup>th</sup>      March, 2015.

BY ORDER

*Original signed by:*

L. A. O'Hara  
Panel Chair / Commissioner

Attachments

Superior Propane  
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**REGULATORY TIMETABLE**

| ACTION                    | DATE (2015)       |
|---------------------------|-------------------|
| Superior submission       | Tuesday, March 31 |
| Intervener submission     | Tuesday, April 7  |
| Superior reply submission | Friday, April 10  |

Superior Propane  
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**REASONS FOR DECISION**

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By letter dated March 2, 2015 (Exhibit A-3) the Panel sought submissions from the parties regarding Superior Propane's (Superior) concern arising from the intervener status of the Ministry of Energy and Mines (Ministry) in this proceeding. This concern was raised in Superior's letter of February 24, 2015 (Exhibit B-2). Submissions have now been received from all parties.

By letter dated February 17, 2015 (Exhibit C1-1), the Ministry provided notice of its registration as an intervener in this proceeding. The letter, in part, states:

As required by the British Columbia Utilities Commission (the "Commission") the Ministry of Energy and Mines (the "Ministry"), on behalf of the Province of British Columbia, hereby registers with the Commission as an Intervener in the referenced proceeding. As this proceeding is directly related to the regulation of public utilities, it is of considerable interest to the Ministry.

The Ministry will monitor the proceeding and may provide submissions as required.

Superior submits that the Commission's New User's Guide dated April 16, 2004 (Guide) requires that parties interested in a proceeding can register either as an Interested Party or as an Intervener (Exhibit B-3). Superior further submits that those wishing to be Interveners are expected to advise the Commission of their "specific interest" in the proceeding and are expected to actively participate in the process. Those wishing to be registered as Interested Parties are also expected to outline their "specific interest" but are not expected to actively participate in the process.

Superior submits that the Ministry's registration letter (Exhibit C1-1) plainly suggests that the Ministry does not intend to actively participate and therefore should not be registered or accepted as an intervener. Further, Superior questions the validity of the Ministry's "specific interest" in this proceeding. Superior submits that the general supervision of public utilities lies with the Commission and not the Ministry. The Commission reports annually to the Lieutenant Governor in Council, not the Ministry, and the *Utilities Commission Act* (UCA) makes no reference to the Ministry at all. In addition, the UCA is not mentioned in the comprehensive list of legislation for which the Ministry is responsible as posted on the Ministry's website.

By letter dated March 6, 2015 (Exhibit C1-3), the Ministry submits that it has already been granted intervener status as it registered by the time required by the Commission and its letter (Exhibit C1-1) was recorded as "approved" on the Commission's website. Further, there has been no request for a reconsideration of the decision to accept the Ministry as an intervener.

The Ministry also submits that it has a specific interest in these proceedings. At page 2, the Ministry states:

...it is commonly known that the Ministry often intervenes in Commission matters. To the Ministry's recollection, its interest, and its right to intervene, in those matters has not previously been questioned, and at no time has the Commission refused an application for it to intervene.

As Mr. Barber indicates in his letter of February 17, the Ministry's interest in this matter relates to its interest in the regulation of public utilities. I do not think it necessary for the Ministry to set out in detail its involvement in the development of energy policy having application to public utilities. This is well known to the Commission and the energy industry. I do note, however, s. 5 of the Ministry of Energy and Mines Act, a section assigned to both the Ministry and the Ministry of Natural Gas Development, with respect to their respective roles, which states in part that the "purpose and functions of the ministry are, under the direction of the minister ... to prepare and develop comprehensive policies on energy ... in British Columbia, and to make reports and recommendations for their implementation". A series of energy plans over the years has resulted from this power, the most recent in 2007 {<http://www.energyplan.gov.bc.ca/>}, all of which had implications for public utilities. The Ministry's interest in the issue in this proceeding is evidenced by the fact that it provided the government's position on the application of the earlier version of the Utilities Commission Act to the distribution of propane in a grid system in a letter to the Commission in 2008.

By letter dated March 6, 2015 (Exhibit C2-2), Seascapes states:

...it is Seascapes' understanding that in spite of Superior's submissions to the contrary, the Ministry is charged with oversight of the UCA and it is not uncommon for the Minister of Energy and Mines to put forward amendments to the Act as needed. Therefore, in our view the Ministry has a specific interest in an issue related to interpretation of the Act and should not be denied the right to intervene in this proceeding. Seascapes supports the involvement of the Ministry in these proceedings and believes it may provide greater clarity as to the intent and purpose of the legislation and, in doing so, contribute to a better understanding of the issues.

Superior provided reply submissions to the Ministry by letter dated March 10, 2015 (Exhibit B-4). First, Superior submits that there was no substantive decision or approval by the Commission of the Ministry's registration as an intervenor. Superior also submits that it is now clear that the Ministry intends to actively participate. However, Superior still seeks a ruling on the standing of the Ministry, either as an intervenor or interested party, based upon the issue arising from the Ministry's "specific interest" in the proceeding and what role the Ministry may be afforded if it is granted status.

The Guide published by the Commission, at page 6, provides as follows:

**How do I register with the Commission as an Intervenor or Interested Party for a Public Hearing?**

You can register by outlining in letter form your specific interest in a particular proceeding, who you represent, and whether you want to register as an Intervenor or Interested Party. This information can be sent to us by way of letter, fax, or e-mail in time to meet the deadline set out in the Hearing Order.

- **Intervenors:** Persons who expect to participate in the review or public hearing process should register as Intervenors with the Commission. Intervenors will receive copies of the Application, all correspondence and filed documentation. Intervenors may be active or in-active participants in the public hearing process who receive all the documents in the proceeding.

- **Interested Parties:** Persons not expecting to actively participate should register with the Commission as Interested Parties and will receive a copy of the Application's Executive Summary, all Orders issued, as well as the Commission's Decision.

First, the Panel will address the Commission's practice regarding the registration of interveners. The Commission does not have formal or documented rules of practice for interventions. The only guidance provided is that noted by Superior when it references the Guide. However, the Commission has developed a practice that it does not initially screen applications for intervention. In that sense, Superior is correct in saying that the Commission does not exercise a substantive decision-making power by posting registrations for intervention on its website so long as a party registers by the date set for intervention by the Commission. However, even where a party is late in registering for intervention, the Commission typically allows the party to intervene on the condition that the intervener restricts itself to matters that are still open for consideration according to the regulatory timetable.

Once a party has registered as an intervener, it is the Commission's practice to allow other parties to challenge whether a particular intervener should continue to have standing to participate as an intervener. Although this type of challenge is infrequent, the Commission has developed the practice of seeking submissions from the parties as to whether the disputed intervention should be allowed to continue. That practice was followed in this case. The Commission has never required a party to file a reconsideration request when one party seeks to challenge the intervention of another.

The Guide was published by the Commission to inform the public about how to participate in Commission proceedings. The Guide requires a party wishing to participate in a proceeding to advise of whom the party is representing, the nature of the party's specific interest in the proceeding, and whether the party wishes to register as an interested party or intervener by the deadline set out in the Hearing Order.

The distinction in the Guide between registrations for intervener or interested party status is based upon whether or not the party expects to actively participate in the proceeding. The Guide does not require actual active participation as a requirement for intervention. This is made clear where the Guide states: "Intervenors may be active or in-active participants in the public hearing process who receive all the documents in the proceeding." Interested parties, however, only receive copies of certain documents from the proceeding.

Superior has acknowledged that it is now clear that the Ministry intends to actively participate (Exhibit B-4). Therefore, the only remaining issue is a determination of whether the Ministry's specific interest in the proceeding is sufficient to allow it to continue its intervention and in what manner. Once again the Commission does not have formal or documented rules regarding what is a sufficient "specific interest." In practice, the Commission usually employs two broad tests when considering this issue. A party generally only needs to meet one of the two tests.

The first test is whether the party is affected by the outcome of the hearing. However, the Commission has never required a party to be directly affected as a condition of intervention. The second test is whether the party can provide a different perspective to the issues from those affected while also providing a valuable contribution to the proceedings.

The Panel finds that the Ministry has met the second test and will remain as an intervener. There is no need to make a finding on whether or not the Ministry is affected as required under the first test. However, the Panel

notes the Guide does reference the fact that local governments are frequent interveners in Commission proceedings.

The Ministry has intervened in this proceeding on behalf of the Province of British Columbia. The Panel concurs with the submissions of the Ministry from Exhibit C1-3 as set out above. The Ministry can provide a different perspective from both Seascapes and Superior on the matters in issue particularly with respect to policy issues to the extent that they may come into consideration. The Panel expects that the Ministry can and will make a valuable contribution to these proceedings as it has done in past Commission proceedings.

Finally, the Panel sees no reason at this time to restrict the involvement of the Ministry as an intervener from that normally enjoyed by all interveners in a Commission proceeding. The involvement of the interveners in this proceeding will be dictated by the process rulings made by the Panel as this proceeding runs its course.

Therefore, the Panel determines that the suspension of the regulatory timetable should be lifted. The Panel requests submissions from the parties on some of the remaining process issues raised by Superior in its letter of February 24, 2015, namely:

1. Having set aside its previous order determining that Superior was a “public utility,” does the Commission retain jurisdiction to continue with this proceeding in the absence of a new complaint being made by Seascapes or another party to the Commission?
2. Should Item 1 of Appendix A to Exhibit A-2, (the Ministry’s June 20, 2008 letter to the Chair of the Commission) be accepted as evidence in this proceeding?

When providing submissions on the first issue, the parties may wish to consider the effect, if any, of:

- a) the Commission setting aside the Order on its own volition during a reconsideration process rather than the Order being set aside on an appeal or judicial review; and
- b) section 82 of the UCA and subsection 11(1) of the *Administrative Tribunals Act*.

When providing submissions on the second issue, the parties may wish to consider the effect, if any, of the provisions of section 40 of the *Administrative Tribunals Act*.

The timetable for receipt of the submissions is attached as Appendix A to the order accompanying these reasons for decision. After determining these issues, the Panel will seek further confirmation from the parties as to whether further evidence needs to be filed, the need for information requests if further evidence is allowed, and any other necessary process before the receipt of final submissions from the parties on the determination of whether Superior falls within the definition of a “public utility” as set out in section 1 of the UCA.