



October 20, 2017

Sent via email/eFile

APPROVALS RELATED TO THE REORGANIZATION OF CAL-GAS INC. EXHIBIT A-4
--

Honourable David Eby
Attorney General
PO BOX 9044, Stn. Prov Govt
Victoria, BC V8W 9E2
JAG.Minister@gov.bc.ca

Re: Application for Approvals Related to Cal-Gas Inc. – 1598928

Dear Attorney General Eby:

On September 20, 2017, the British Columbia Utilities Commission (Commission) received an application from 2028098 Alberta Ltd., Superior Plus Corporation, Superior General Partner Inc., Superior Plus LP and on behalf of Cal-Gas Inc. (Cal-Gas) and Canwest Propane ULC (collectively, Applicants) for approval of certain steps related to the reorganization involving Cal-Gas (Cal-Gas Reorganization) pursuant to sections 52, 53 and 54 of the *Utilities Commission Act* (UCA) (Reorganization Application). One of the steps in the Cal-Gas Reorganization involves the amalgamation of a public utility, Cal-Gas, with 2028098 Alberta Ltd. and Canwest Propane ULC (Amalgamation) and requires the consent of the Lieutenant Governor in Council (LGIC), pursuant to section 53 of the UCA.

The Commission held a hearing for the purpose of inquiring into the Application and hereby submits its report to the LGIC, which includes its findings and an opinion that the Amalgamation is beneficial in the public interest.

The Commission encloses the following documents in support of the described:

- Panel Report as Appendix A
- Draft Commission Order as Appendix B
- Application dated September 20, 2017

Documents filed in connection with this matter are available on the proceeding webpage, which can be found on our website at www.bcuc.com under "Current Applications."

Sincerely,

Original signed by:
Ian Jarvis for:

Patrick Wruck
Commission Secretary

LR/dg
Enclosures

cc: Mr. Paul Wieringa, Executive Director
Ministry of Energy, Mines and Petroleum Resources
Paul.Wieringa@gov.bc.ca

The Honourable Michelle Mungall, Minister
Ministry of Energy, Mines and Petroleum Resources
EMPR.Minister@gov.bc.ca

Application for Approvals Related to the Reorganization of Cal-Gas Inc.

PANEL REPORT

Regarding Amalgamation of Cal-Gas Inc., 2028098 Alberta Ltd. and Canwest Propane ULC

1.0 INTRODUCTION

On September 20, 2017, the British Columbia Utilities Commission (Commission) received an application from 2028098 Alberta Ltd. (2028098), Superior Plus Corporation (SPC), Superior General Partner Inc. (SGP), Superior Plus LP (SPLP) and on behalf of Cal-Gas Inc. (Cal-Gas) and Canwest Propane ULC (Canwest ULC) (collectively, Applicants) for approval of certain steps related to the reorganization involving Cal Gas (Cal-Gas Reorganization) pursuant to sections 52, 53 and 54 of the *Utilities Commission Act* (UCA) (Reorganization Application). One of the steps in the Cal-Gas Reorganization involves the amalgamation of a public utility, Cal-Gas, with 2028098 and Canwest ULC (Amalgamation) and requires the consent of the Lieutenant Governor in Council (LGIC) pursuant to section 53 of the UCA.

1.1 Background

Cal-Gas

Cal-Gas is a public utility regulated by the Commission and provides propane service to residential customers in Kicking Horse Mountain resort area and Canyon Ridge estates near Golden, BC. As at September 30, 2016, Cal-Gas had 151 customers at Kicking Horse and 30 customers at Canyon Ridge.

Previous application to the Commission

On April 4, 2017, the Commission received a separate application for approval of the following transactions:

1. Application by Gibson Energy ULC (Gibson) and 2028093 for approval of the sale of a reviewable interest in Cal-Gas from Gibson to SPLP (Interim Sale) and from SPLP to 2028093 (Final Sale), pursuant to section 54 of the UCA.

This sale of a reviewable interest in Cal-Gas is an outcome of the sale of Canwest ULC, given that Canwest ULC owns all of the share capital of Cal-Gas.

2. Application by Superior, 2028093, Canwest ULC and Cal-Gas regarding the amalgamation of 2028093, Canwest ULC and Cal-Gas (Previous Amalgamation Applicants), pursuant to sections 52 and 53 of the UCA (Previous Amalgamation Application).
3. Application by SPLP and Cal-Gas (Previous Transfer Applicants) for several approvals, including the transfer of public utility assets and approvals under the UCA from Cal-Gas to SPLP, pursuant to section 52 of the UCA (Previous Transfer Application).

By Order G-91-17 dated June 12, 2017, the Commission approved the Interim and Final Sale, pursuant to section 54 of the UCA. On July 28, 2017, the Previous Amalgamation and Transfer Applicants filed a letter seeking to withdraw the Previous Amalgamation and Transfer Applications and applied for an order that the Previous Amalgamation and Transfer Applications be dismissed. By Order G-123-17 dated August 9, 2017, the Commission dismissed the Previous Amalgamation and Transfer Applications, pursuant to section 88.1 of the UCA.

Current ownership structure prior to the Cal-Gas Reorganization

The Applicants confirm that the sale of Canwest ULC from Gibson to SPLP closed on September 27, 2017 following the receipt of Competition Bureau (Bureau) clearance.¹ Accordingly, under the current structure (i.e. before the Cal-Gas Amalgamation) SPLP owns 100 percent of the shares of Canwest ULC, which in turn owns 100 percent of the shares of Cal-Gas. Further, the Applicants note that, as a result of the Cal-Gas Reorganization proposed in the current Application, the Final Sale (i.e. from SPLP to 2028093) is no longer required.²

Competition Bureau

On October 12, 2017, the Applicants filed the public version of the Consent Agreement dated September 27, 2017 between the Commissioner of Competition, SPC and SPLP regarding the acquisition of Canwest ULC (Consent Agreement).³ As part of the Consent Agreement, Superior has agreed to sell retail propane sites and associated assets in 12 markets in order to address the Bureau's concerns. The Applicants confirm that "... under the terms of the consent agreement, the Cal-Gas customers and operations are retained by Superior... They're not part of the divestiture package."⁴

1.2 Regulatory process

By Order G-143-17 dated September 21, 2017, the Commission established a public hearing process and a regulatory timetable for the review of the Reorganization Application. The process included public notice, Commission information requests (IRs) and responses and a transcribed public workshop on October 12, 2017 (Workshop). In addition, Cal-Gas customers were provided the opportunity to file letters of comment. The Commission did not receive any letters of comment, nor did any customers register to attend the workshop.

The above-noted process included a review of all of the steps in the Cal-Gas Reorganization that require Commission approval, including the Amalgamation. The findings and opinion in this Report to the LGIC, however, are specific to the Amalgamation.

2.0 Reorganization Application

2.1 Overall Cal-Gas Reorganization

The Cal-Gas Reorganization is a subset of a larger internal corporate reorganization of the SPC family of companies and includes 14 steps, including the Amalgamation, which will occur in immediate succession.⁵ Upon completion of the Cal-Gas Reorganization, SGP will hold all of the shares of Cal-Gas, which will therefore be an indirect wholly-owned subsidiary of SPC and an affiliate of SPLP. Several of the steps in the Cal-Gas Reorganization require Commission approval and the Amalgamation requires the consent of the LGIC.

The Applicants describe the Cal-Gas Reorganization as an "administrative restructuring that is being undertaken solely for tax and corporate planning purposes." Further, The Applicants state that the Cal-Gas Reorganization has a number of objectives, including:

¹ Exhibit B-2, BCUC IR 1.1, 1.1.1, Workshop Transcript, p. 6.

² Exhibit B-1, p. 1.

³ [Exhibit B-3 Applicant-Consent-Agreement.pdf](#)

⁴ Workshop Transcript, p. 8, Line 11-14.

⁵ Exhibit B-1, pp. 1, 9; Exhibit B-2, BCUC IR 3.1, 3.2.

1. Achieving efficiencies;
2. Reducing exposure to potential general partner liability through divestiture of the Cal-Gas general partnership interest in CanWest Propane Partnership;
3. Further isolating the public utilities within Cal-Gas so that they are unaffected by other Superior operations.
4. Maintaining consistency of the Superior family corporate structure in which limited partnership interests flow through SPLP, and general partnership interest flows through SGP.⁶

2.2 Amalgamation

Step 5 of the Cal-Gas Reorganization involves the amalgamation of Cal-Gas with two other entities, 2028098 and Canwest ULC, with the amalgamated entity continuing to operate as Cal-Gas.⁷ The Applicants confirm that 2028098 is a holding company without any significant assets, liabilities or operations.⁸ With respect to Canwest ULC, the Applicants confirm that it is not currently a shell company or holding company, but it will be one prior to the Amalgamation. The Applicants submit that: “Canwest ULC has assets that are held and operated in conjunction with the business primarily carried on by Canwest Propane Partnership. Any such assets and liabilities would be transferred to Canwest Propane Partnership or another affiliate prior to the amalgamation.”⁹

2.3 Public interest benefits

The Applicants confirm that Cal-Gas will continue to be operated in a manner consistent with past practices after the Cal-Gas Reorganization.¹⁰ With respect to the benefits of the overall Cal-Gas Reorganization, the Applicants submit that there will be incremental regulatory, managerial and administrative efficiencies, including:

1. Simplified corporate ownership of the regulated assets will streamline any review that might be required relative to future potential corporate reorganizations;
2. Corresponding reduction in regulatory costs associated with that simplified corporate ownership;
3. Reduced risk of potential liabilities relating to Cal-Gas’ role as a general partner of Canwest Propane Partnership prior to the Cal-Gas Reorganization;
4. Consolidation of administrative and managerial functions of Canwest ULC and Cal-Gas.¹¹

With respect to the public interest benefits of the Amalgamation step in particular, the Applicants submit that “... it is difficult to assign specific benefit to any one step (given that it is an all-or-nothing proposition and none of the benefits will be realized if the Application is not approved as a whole)...”.¹² However, the Applicants state that the Amalgamation will result in “... a simplified structure, which in our view will reduce cost and administrative work for things like financial reporting, corporate secretarial work, and the filing of tax returns.”¹³

⁶ Workshop Transcript, p. 6.

⁷ Exhibit B-1, p. 4.

⁸ Exhibit B-2, BCUC IR 6.2, 6.2.1.

⁹ Ibid., BCUC IR 6.3.

¹⁰ Ibid., BCUC IR 6.1, 6.1.1.

¹¹ Exhibit B-1, pp. 2–3, 6; Exhibit B-2, BCUC IR 4.5.

¹² Ibid., BCUC IR 6.1, 6.1.1.

¹³ Workshop Transcript, p. 12.

In addition to the public interest benefits, the Applicants confirm that there will be no adverse impacts to the following items as a result of the Cal-Gas Reorganization, which includes the Amalgamation:

1. Measures in place to maintain the structural integrity of the public utility assets;
2. The manner in which Cal-Gas will conduct its business, including the level of service provided to customers at Kicking Horse Mountain Resort and Canyon Ridge;
3. The propane supply process for Kicking Horse Mountain Resort and Canyon Ridge;
4. Credit ratings for Superior Plus Corp. from Moody's and/or Standard & Poor's;
5. The ability of Cal-Gas to raise debt and equity financing;
6. Existing covenants;
7. Existing agreements related to the provision of service regulated by the Commission;
8. The risks (business, financial or other), obligations or exposures of Cal-Gas related to its parent, affiliates or other related entities.¹⁴

Further, the Applicants state Cal-Gas will continue to be a stand-alone entity and accordingly it will essentially be "ring-fenced" from the rest of the Superior family. After the Cal-Gas Reorganization, there will be no cross-subsidization of other businesses of the Superior Family at the expense of the Cal-Gas public utilities and its ratepayers.¹⁵

3.0 Commission findings

The Panel is of the opinion that the Amalgamation, as set forth in the Reorganization Application, is beneficial in the public interest.

As noted above, all steps in the Cal-Gas Reorganization, including the Amalgamation, will occur in immediate succession and will result in SGP holding all of the shares of Cal-Gas, which will therefore be an indirect wholly-owned subsidiary of SPC and an affiliate of SPLP. Given that all of the steps in the Cal-Gas Reorganization will occur in immediate succession, the Panel considers it appropriate to assess the benefits of the Cal-Gas Reorganization as a whole when making its findings on the Amalgamation.

The Panel finds that there are several public interest benefits likely to result from the Cal-Gas Reorganization, and they are summarized in Section 2.3 of this Report. Further, Cal-Gas will continue to operate in the same manner following the Cal-Gas Reorganization and there will be no adverse impact on Cal-Gas or its ratepayers.

The Amalgamation involves two entities other than Cal-Gas, 2028093 and Canwest ULC. As noted above, 2028093 is a holding company without any significant assets, liabilities or operations. Canwest ULC is not currently a holding company as it holds assets in conjunction with the business primarily carried on by Canwest Propane Partnership. However, the Applicants submit that Canwest ULC will be a holding company prior to the Amalgamation as such assets and liabilities will be transferred to other entities. Accordingly, the Panel considers the following condition on any consent of the Amalgamation to be advisable:

Canwest ULC must dispose of its significant assets and liabilities prior to the amalgamation with Cal-Gas and 2028093.

¹⁴ Exhibit B-2, BCUC IR 4.1.

¹⁵ Ibid., BCUC IR 2.2.1.

On the basis that the two entities that will be amalgamated with Cal-Gas will be holding companies prior to the Amalgamation, the Commission finds that these entities do not pose any incremental risk to Cal-Gas or its ratepayers.

DATED at the City of Vancouver, in the Province of British Columbia, this 20th day of October 2017.

Original signed by: _____
D. J. Enns
Panel Chair/Commissioner



bcuc
British Columbia
Utilities Commission

Suite 410, 900 Howe Street
Vancouver, BC Canada V6Z 2N3
bcuc.com

P: 604.660.4700
TF: 1.800.663.1385
F: 604.660.1102

ORDER NUMBER

G-xx-xx

IN THE MATTER OF

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

and

Application for Approvals Related to the Reorganization of Cal-Gas Inc.

BEFORE:

D. J. Enns, Panel Chair/Commissioner

on [Date]

DRAFT ORDER

WHEREAS:

- A. On September 20, 2017, the British Columbia Utilities Commission (Commission) received an application from 2028098 Alberta Ltd. (2028098), Superior Plus Corporation (SPC), Superior General Partner Inc. (SGP), Superior Plus LP (SPLP) and on behalf of Cal-Gas Inc. (Cal-Gas) and Canwest Propane ULC (Canwest ULC) (collectively, Applicants) for approval of certain steps related to the reorganization involving Cal-Gas (Cal-Gas Reorganization) pursuant to sections 52, 53 and 54 of the *Utilities Commission Act* (UCA) (Reorganization Application);
- B. Cal-Gas is a public utility under the UCA and provides propane service to residential customers in Kicking Horse Mountain resort area and Canyon Ridge estates near Golden, BC;
- C. On April 4, 2017, the Commission received a separate application for approval of the following transactions:
 1. Application by Gibson Energy ULC (Gibson) and 2028093 for approval of the sale of a reviewable interest in Cal-Gas from Gibson to Superior (Interim Sale) and from Superior to 2028093 (Final Sale), pursuant to section 54 of the UCA;
 2. Application by Superior, 2028093, Canwest ULC and Cal-Gas regarding the amalgamation of 2028093, Canwest ULC and Cal-Gas (Previous Amalgamation Applicants), pursuant to sections 52 and 53 of the UCA (Previous Amalgamation Application). Pursuant to section 53(1) of the UCA, the amalgamation of a public utility requires the consent of the Lieutenant Governor in Council (LGIC) by order;
 3. Application by Superior and Cal-Gas (Previous Transfer Applicants) for several approvals, including the transfer of public utility assets and approvals under the UCA from Cal-Gas to Superior, pursuant to section 52 of the UCA (Previous Transfer Application);

- D. By Order G-91-17 dated June 12, 2017, the Commission approved the Interim and Final Sale, pursuant to section 54 of the UCA;
- E. On July 28, 2017, the Previous Amalgamation and Transfer Applicants filed a letter seeking to withdraw the Previous Amalgamation and Transfer Applications and applied for an order that the Previous Amalgamation and Transfer Applications be dismissed;
- F. By Order G-123-17 dated August 9, 2017, the Commission dismissed the Previous Amalgamation and Transfer Applications, pursuant to section 88.1 of the UCA;
- G. The Reorganization Application describes the steps for the Cal-Gas Reorganization that require Commission approval under certain sections of the UCA and includes them in the following two categories:
- The amalgamation of Cal-Gas, 2028098 and Canwest ULC, pursuant to sections 52 and 53 of the UCA. The amalgamation requires the consent of the Lieutenant Governor in Council (LGIC) pursuant to section 53 of the UCA;
 - Corporate structure changes, including:
 - The issuance of shares that results in a reviewable interest, pursuant to section 54 of the UCA;
 - Disposal of shares or other property of a public utility, pursuant to sections 52 and 54 of the UCA;
 - Acquisition of control of shares that results in a reviewable interest, pursuant to section 54 of the UCA;
- H. The completion of the Cal-Gas Reorganization will result in SGP holding all of the shares of Cal-Gas, which will therefore be an indirect wholly-owned subsidiary of SPC and an affiliate of SPLP;
- I. By Order G-143-17 dated September 21, 2017 the Commission established a public hearing and a regulatory timetable for the review of the Application;
- J. On October 12, 2017 the Commission held a teleconference workshop to review the Application;
- K. By letter dated October 20, 2017, the Commission issued its report and findings regarding the Amalgamation to the LGIC, with an opinion that the Amalgamation is beneficial in the public interest;
- L. On [date] the LGIC issued Order In Council (OIC) [OIC reference] providing consent for the Amalgamation, subject to the following condition:
- All of the assets and liabilities of Canwest ULC must be disposed of prior to the Amalgamation.
- M. The Commission has reviewed the Reorganization Application and considers that approval should be granted.

NOW THEREFORE pursuant to sections 50-54 of the UCA, and with the advance consent of the LGIC for the Amalgamation by OIC [OIC reference], the Commission orders as follows:

1. The Cal-Gas Reorganization is approved, as set forth in the Reorganization Application.

2. The approval granted is subject to the following conditions that are considered necessary in the public interest:
- The steps in the Cal-Gas Reorganization must occur in immediate succession and result in the ending structure as set forth in the Reorganization Application.
 - Canwest ULC must dispose of its significant assets and liabilities prior to the Amalgamation.

DATED at the City of Vancouver, in the Province of British Columbia, this [XX] day of [Month Year].

BY ORDER

[Name]
Commissioner

Attachment

DRAFT

Insert Ministerial Order when issued

DRAFT