



Docket **LP13-103**

Order **LP13-007**

**IN THE MATTER** of a  
review of Order LP13-003 issued by the  
Commission on September 20, 2013.

**BEFORE THE  
COMMISSION**

On Wednesday, the 16th day of October, 2013

**John Broderick, Acting Vice-Chair**

**Michael Campbell, Commissioner**

**Peter McCloskey, Commissioner**

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# Order

IN THE MATTER of a review  
of Order LP13-003 issued by the Commission on  
September 20, 2013.

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# Reasons for Order

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## 1. INTRODUCTION

(1) In Order LP13-003, issued by the Commission on September 20, 2013, the Commission found that Tignish Co-operative Association, Limited (the Corporation) contravened sub-section 5(1) of the Lands Protection Act (the Act) when it acquired parcels #447292, #791392 and #420448 without approval of the Lieutenant Governor in Council;

(2) On September 27, 2013 the Commission noted an error in the Order referring to “a penalty in the form of \$50.00”.

## 2. FINDINGS

(3) Section 12 of the Island Regulatory and Appeals Commission Act (*the IRAC Act*) reads as follows:

*The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it, or rehear any application before deciding it. 1991, c.18, s.12.*

(4) In Order LA97-11, In the Matter of a Request for Review of Commission Order LA97-08 by Keir Clark and Marion Clark (Order LA97-11 Clark), the Commission set out in some detail the test to be met on an application for a review or reconsideration of Commission decision:

*The Commission and its predecessor, the Prince Edward Island Public Utilities Commission, have considered in the past the minimum criteria an Applicant must meet before the Commission will exercise its absolute discretion in the matter of reviewing its decisions under s.12 of the Island Regulatory and Appeals Commission Act, and the identical predecessor to s.12, s.16 of the Public Utilities Commission Act. This test has been interpreted consistently by the Commission in its past decisions.*

*As noted in previous decisions, the onus rests upon the Applicant to show that a prima facie case exists which will entitle the Applicant to the review. **A prima facie case will be shown only where the function of review should be exercised to correct an error of the Commission or to meet changed circumstances.***

*Changed circumstances may encompass either a situation which has developed after the decision or where new evidence emerges which was not known or not available at the time the original evidence was adduced. Changed circumstances will dictate a review only if they are material.*

*Finally, the power to review is discretionary and will be exercised sparingly.*

### 3. DISPOSITION

(5) An Order clarifying the penalty assessed by the Commission in Order LP13-003 follows.

IN THE MATTER of an  
alleged contravention of sub-section 5(1) of the  
Prince Edward Island Lands Protection Act (the Act)

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# Order

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**WHEREAS**, pursuant to sub-section 5(1) of the Act,

*A corporation shall not have an aggregate land holding in excess of five acres or having a shore frontage in excess of one hundred and sixty-five feet unless it first receives permission to do so from the Lieutenant Governor in Council;*

**AND WHEREAS**, per telephone conversation on February 17, 2012, and email correspondence on February 21, 2012, the Commission discussed the possibility that Tignish Co-Operative Association, Limited (the Corporation) required Executive Council approval when it acquired parcels #447292, #791392, and #420448 in 2006, 2010 and 1983, respectively, without making application to Executive Council for approval pursuant to the Act to acquire such land;

**AND WHEREAS**, on October 29, 2012, legal counsel for the Corporation, filed three retroactive applications with the Commission to acquire parcels #447292, #791392 and #420448, located in Tignish, Woodvale and St. Felix, respectively;

**AND WHEREAS**, Executive Council subsequently approved the acquisitions on November 27, 2012 (Executive Council Order No. EC2012-696, Executive Council Order No. EC2012-695 and Executive Council Order No. EC2012-697, respectively);

**AND WHEREAS**, by Notice of Intention dated July 25, 2013, the Corporation was advised of the apparent contravention and provided with an opportunity to respond;

**AND WHEREAS** the Commission received a response to the Notice of Intention from the Corporation's legal counsel, dated August 1, 2013;

**AND WHEREAS** the Commission has fully considered the original application, the Notice of Intention, the response thereto from the Corporation's legal counsel and other relevant material before it;

**THE COMMISSION HEREBY FINDS** that the Corporation contravened the **Act** when it acquired parcels #447292, #791392 and #420448 without approval of the Lieutenant Governor in Council;

**THE COMMISSION HEREBY IMPOSES**, pursuant to clause 15.1(1)(a) of the **Act**, a penalty in the form of \$300.00 for the aforementioned contravention of the **Act**;

**THE COMMISSION HEREBY FIXES** October 31, 2013 as the date by which the Corporation must pay the \$300.00 penalty;

**DATED** at Charlottetown, Prince Edward Island, this 16th day of October, 2013.

**BY THE COMMISSION:**

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John Broderick, Acting Vice-Chair

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M.D. Campbell, Commissioner

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Peter McCloskey, Commissioner

**TAKE NOTICE** that any person or corporation that has contravened section 2, 4, 5, 5.3, 6.1 or 6.2 is liable to a penalty, pursuant to Subsection 15.1(1) of the **Act**, of not more than \$10,000;

Pursuant to Subsection 15.1(3): If any person or corporation fails to pay any penalty imposed by the Commission within the time fixed by the Commission for the payment of the penalty, the Commission may make application, without notice to the person or corporation, to a judge of the Supreme Court for an order that judgment for the amount of the penalty or any unpaid portion of the penalty may be entered in the court against the person or corporation.

**AND FURTHER TAKE NOTICE** that Section 12 of the *Island Regulatory and Appeals Commission Act* reads as follows:

*12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it or rehear any application before deciding it.*

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written Request for Review, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13.(1) and 13(2) of the **Act** provide as follows:

*13.(1) An appeal lies from a decision or order of the Commission to the Appeal Division of the Supreme Court upon a question of law or jurisdiction.*

*(2) The appeal shall be made by filing a notice of appeal in the Supreme Court within twenty days after the decision or order appealed from and the Civil Procedure Rules respecting appeals apply with the necessary changes.*