

THE COMPETITION TRIBUNAL

IN THE MATTER OF THE *COMPETITION ACT*, R.S.C. 1985, c.C-34, as amended, and *the Competition Tribunal Rules*, SOR/94-290, as amended (the "*Rules*");

IN THE MATTER OF an inquiry pursuant to subsection 10(1)(b) of the *Competition Act* relating to the proposed acquisition of ICG Propane Inc. by Superior Propane Inc.;

IN THE MATTER OF an Application by the Director of Investigation and Research for orders pursuant to s.92 and other provisions of the *Competition Act* consequential thereto.

BETWEEN:

THE DIRECTOR OF INVESTIGATION AND RESEARCH

Applicant

- and -

SUPERIOR PROPANE INC. and ICG PROPANE INC.

Respondents

AFFIDAVIT

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COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE	
FILED	NOV 29 1999 <i>SF</i>
REGISTRAR - REGISTRAIRE	
<i>Calgary, Alta 144(a)</i>	

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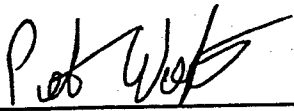
Respondents

AFFIDAVIT OF STEPHEN COLE, COLIN O'LEARY, JAMES P. TUTTLE AND ERIC FERGIN

I, STEPHEN COLE, of the City of Toronto, in the Province of Ontario, I, COLIN O'LEARY, of the City of Mississauga, in the Province of Ontario, I, JAMES P. TUTTLE, of the City of _____, in the State of _____, and I, ERIC FERGIN, of the City of Toronto, in the Province of Ontario MAKE OATH AND SAY:



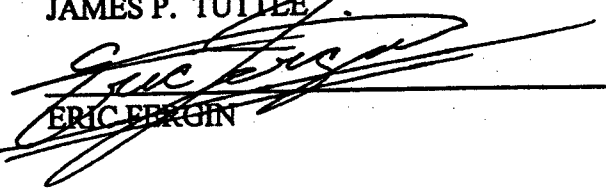
1. Attached hereto and marked as Exhibit "A" is the experts' report by the Cole Valuation Partners Limited and A.T. Kearney firms. This report represents the work, conclusions and opinions of Cole Valuation Partners Limited and A.T. Kearney.

SWORN before me at the City
of Toronto, in the
Province of Ontario, this 5th day of
October, 1999



A Commissioner of Oaths, Etc.

**Peter Gordon Westcott, a Commissioner, etc.,
Province of Ontario, while a student-at-law.
Expires May 31, 2002.**

)
)
) STEPHEN COLE
) 
)
) COLIN O'LEARY
) 
)
)
) JAMES P. TUTTLE
) 
) ERIC BERGIN

This is Exhibit "A" referred to in the Affidavit of STEPHEN COLE, COLIN O'LEARY, JIM TUTTLE, and ERIC FERGIN, sworn before me this 5th day of October, 1999.



A Commissioner of Oaths, Etc.

**Peter Gordon Westcott, a Commissioner, etc.,
Province of Ontario, while a student-at-law.
Expires May 31, 2002.**

Tribunal File NO. CT - 98/2

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BETWEEN:

THE DIRECTOR OF INVESTIGATION AND RESEARCH

Applicant

- and -

SUPERIOR PROPANE INC. and ICG PROPANE INC.

Respondents

AFFIDAVIT OF STEVEN COLE, COLIN O'LEARY, JAMES P. TUTTLE AND ERIC FERGIN

I, STEVEN COLE, of the City of Toronto, in the Province of Ontario, I, COLIN O'LEARY, of the City of Mississauga, in the Province of Ontario, I, JAMES P. TUTTLE, of the City of ~~Atlanta~~ Atlanta, in the State of ~~Georgia~~ Georgia, and I, ERIC FERGIN, of the City of Toronto, in the Province of Ontario MAKE OATH AND SAY:

1. Attached hereto and marked as Exhibit "A" is the experts' report by the Cole Valuation Partners Limited and A.T. Kearney firms. This report represents the work, conclusions and opinions of Cole Valuation Partners Limited and A.T. Kearney.

SWORN before me at the City
of Atlanta in the
Fulton County, this 5th day of
October, 1999

STEVEN COLE

COLIN O'LEARY
James P. Tuttle

JAMES P. TUTTLE

ERIC FERGIN

Melinda Williams
A Commissioner of Oaths, Etc.

Notary Public, Fulton County, Georgia
My Commission Expires Dec. 2, 2001

- 3 -

Notary Public, Fulton County, Georgia
My Commission Expires Dec. 2, 2001

This is Exhibit "A" referred to in the
Affidavit of STEVEN COLI,
COLIN O'LEARY, JIM TUTTLE,
and ERIC FERGIN, sworn before
me this 5th day of October, 1999.

Melinda L. Williams
A Commissioner of Oaths, Etc.

COLE VALUATION PARTNERS LIMITED
Chartered Business Valuators

ATKEARNEY

Commissioner of Competition v. Superior Propane Inc. et al

**Comments on the Rebuttal Affidavit
Prepared by Schwindt, Globerman and Kemp**

Commissioner of Competition v. Superior Propane Inc. et al

**Comments on the Rebuttal Affidavit
Prepared by Schwindt, Globerman and Kemp**

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October 4, 1999

PRIVILEGED AND CONFIDENTIAL

Mr. Neil Finkelstein
Davies, Ward & Beck
Barristers & Solicitors
44th Floor
1 First Canadian Place
Toronto, Ontario
M5X 1B1

Dear Mr. Finkelstein:

Re: Commissioner of Competition v. Superior Propane Inc. et al

**Comments on the Rebuttal Affidavit Prepared by Schwindt,
Globerman and Kemp**

INTRODUCTION

You have requested our comments on the Rebuttal Affidavit Prepared by Messrs. Schwindt, Globerman and Kemp dated September 14, 1999 (the "Rebuttal Affidavit") concerning the following reports:

- "Quantification of the Efficiency Gains Resulting from the Merger of Superior Propane and ICG Propane", August 17, 1999, A.T. Kearney.
- "Quantification of the Efficiency Value Resulting from the Merger of Superior Propane and ICG Propane", August 17, 1999, Cole Valuation Partners Limited ("CVPL").

These reports are referred to collectively herein as "the Cole/Kearney Report". The terms used herein are the same as in the Cole/Kearney Report unless otherwise noted.

We understand that you require our comments for the purposes of filing with the Competition Tribunal in respect of an application made by the Commissioner of Competition regarding the merger of Superior Propane Inc. ("Superior") and ICG Propane Inc. ("ICG").

SUMMARY COMMENTS

We remain confident in the conclusions, assumptions, analysis and methodologies contained in the Cole/Kearney Report. Based upon our fieldwork, management interviews, detailed review of operations and source documents, and the other work and analysis described under "Scope of Work", we do not believe that the Cole/Kearney Report was "excessively optimistic." Very little of this scope of work appears to have been done by the authors of the Rebuttal Affidavit.

Our summary comments regarding the Rebuttal Affidavit are set out below:

- the Rebuttal Affidavit concurs with or does not take exception to the great majority of the opinions and findings in the Cole/Kearney Report;
- the range of \$381 million to \$421 million remains our opinion as the Efficiency Value range. While the Rebuttal Affidavit points to certain minor changes in the Efficiency Gains, it does not alter the range opinion set out in the Cole/Kearney Report;
- the Cole/Kearney Report has considered the risk of achievement in respect of each Efficiency Gain, which is reflected in a range of +/- 5% of the total Efficiency Gains reflected;
- the risk associated with anti-competitive effects is equal to or greater than that of the Efficiency Gains. To the extent the Efficiency Gains are discounted for the types of contingencies raised by the Rebuttal Affidavit, any anti-competitive effects should be discounted in the determination of present value by at least as much. In the Cole/Kearney Report, the net present value of the Efficiency Gains was computed at discount rates commensurate with their risk for comparison with the net present value of any anti-competitive effects of the merger;
- A.T. Kearney and CVPL spent approximately 4,500 man hours in preparation of the Cole/Kearney Report, and the scope of the Cole/Kearney Report is both substantial and extensive, particularly in light of the very limited scope of work which appears to have been done in support of the Rebuttal Affidavit;
- in addition to the Efficiency Value of \$381 million to \$421 million, some \$13 to \$21 million of efficiencies have not been included due to concerns about specifically quantifying them. They are noted in

Appendix E of the Cole/Kearney Report. These provide a cushion when considering potential reductions in the Efficiency Gains;

- the Rebuttal Affidavit scope of work appears limited. It seems that Messrs. Schwindt, Globerman and Kemp did not undertake substantial:
 - field work;
 - direct, independent research; or
 - management interviews.
- the comments in the Rebuttal Affidavit are generally generic, without detailed analyses of the specific circumstances of this matter. It is essentially only a critique;
- without deducting management fees from the corporate centre Efficiency Gains, the Rebuttal Affidavit findings are only approximately 17% below the Efficiency Gains in the Cole/Kearney Report. Even that 17% lacks practical analytical support based on the actual business operations of Superior and ICG, for the reasons outlined in this Report; and
- the Rebuttal Affidavit states¹ or implies things like “it is not obvious why the Cole/Kearney Report concludes in a certain fashion”; or asks rhetorical questions, such as “is this simply a pecuniary gain?” Upon further review, we confirm our view that, subject to the Revisions herein (set out in Appendix E), the Cole/Kearney Report is correct in its conclusions about the Efficiency Gains that are likely to be achieved as a consequence of this merger, and not likely to be achieved in its absence.

SCOPE OF REVIEW

In preparing our comments, we have relied on the information listed in Appendix A.

¹ See Appendix F for a summary of quotations from the Rebuttal Affidavit.

LIKELIHOOD OF ACHIEVING MERGER EFFICIENCIES

Overview

- As discussed in the Summary Comments above.

Achievability

The Rebuttal Affidavit suggests that the Cole/Kearney Report presents an excessively optimistic view of the ability to achieve merger efficiencies, stating:

"the main point is that a base case merger scenario that does not explicitly incorporate contingencies for unanticipated problems and delays in strategy implementation should be seen as an upper-limit, and likely excessively optimistic, estimate of the merger gains that will actually be realized."

Schwindt,
Globerman and
Kemp
September 14, 1999
Pg. 4, para. 1

However, this merger meets the prerequisites for success listed below.

First, our extensive discussions with both ICG and SPI management indicate that merged management will have a clear, shared vision and that the goals and the execution are well planned.

Second, there are suitable pre-merger conditions at the time of the merger; and a post-merger management plan that will enable a successful integration of the companies.

Our analysis below examines both factors.

Pre-Merger Conditions

A.T. Kearney's analysis of 115 mergers between 1993 and 1996 found success to be highly correlated with the five key factors noted below. In summary, all the pre-merger conditions at ICG and Superior are favorable and support the expectation that the Efficiency Gains will be realized:

1. Experience: Previous experience by management of acquiring and successfully integrating companies.
- Superior has previous experience in acquiring propane distribution and installation companies, including Premier Propane. Further, Superior has had the experience in implementing its integration strategy through the integration of the 14 non-overlapping ICG sites earlier this year.

2. **Size:** Success correlates with one firm clearly being the acquirer and having most of its business model survive.
 - Superior's management and operating practices will be adopted by the combined organization. Superior is acquiring a smaller company (1,330 employees for Superior versus 850 for ICG).
3. **Related Business:** A close match between product lines and markets greatly facilitates smooth integration.
 - The businesses of Superior and ICG, the sale and distribution of propane and propane equipment and the servicing thereof, are substantially similar and have substantial overlap in customer service and field operations.
4. **Business Focus:** A single-minded focus on one business. This focus minimizes the possible distraction and diversion of funds to other business lines.
 - Propane distribution is the only business of these companies, thus ensuring no dilution of senior management focus from merger integration.
5. **Financial Strength:** Successful mergers are driven by companies which have the financial strength to both acquire and, if necessary, make subsequent investment in infrastructure, products, employees and customers.
 - Superior has the financial strength to comfortably pay for any likely post-merger expenditure or investment.
 - Additionally, the merger results in significant cash generation from the sale of redundant assets and Efficiency Gains. This will create further financial strength.

Post-Merger Conditions

Studies of merger success indicate that, in addition, to the importance of pre-merger conditions, success is largely driven by actions taken during and after the merger.

The most critical of these actions are:

1. **The Creation of a Clear Vision and Strategy:** Successful mergers require re-visioning during the merger process to recognize and assimilate the capabilities brought by each partner.

- Superior's vision for the combined companies is thorough and well thought out. The plan is well articulated and has been scrutinized in detail over a long timeframe. Superior's plan considers the various departments and facilities. They know what information systems they want to use and how they are going to convert over to the new systems. Superior has devoted significant time in determining its merger integration strategy which has been done at a high level of detail.

The merger is geared towards cost synergies. The benefits from a merger based on cost synergies are more certain of realization than those from revenue synergies. With cost synergies, duplication and inefficiencies are identified and eliminated, and then the remaining operation is run based on the acquirer's operating model. As long as the changes are executed as promptly as possible and there is clear communication, the merged entity settles down once the changes are executed. There is no prolonged need for complex cooperation between merged companies. Instead, ICG will be absorbed into the Superior identity.

2. Clear Determination of Management Responsibilities: Successful mergers promptly identify the new leadership team once they are permitted to commence the implementation process and have responsibilities clearly allocated. This minimizes the uncertainty and chaos surrounding the merger integration.
 - Superior has substantially identified the leadership structure it will employ in the merged organization and is ready to announce it as promptly as practicable after the merger is approved and the positions can be offered to their candidates. They also have substantially identified the structure of second level management positions and can make that announcement at the same time. The company has had considerable time to develop its integration strategy that will allow for announcements to be made early in the integration process. These early announcements will minimize the uncertainty and speculation that sometimes accompanies a merger.
3. Aim for Early Wins: Mergers that are successful generate momentum during the initial phases of the integration by achieving some early wins.
 - There has been a considerable period between acquisition and integration. Superior has had a year to develop its integration strategy. During that time, it has had significant consulting assistance from both CVPL and A.T. Kearney in identifying detailed efficiency opportunities. Because of this significant preparation, Superior will be able to realize substantial benefits early in its integration process.

Some of the early wins include an immediate reduction in marketing expenses, elimination of ICG headquarters rent, reduction in freight costs, reduction in primary transportation costs, rationalization of field inventory and consolidation of some field sites. These early cost savings will provide the opportunity for Superior and ICG people to work together and establish momentum.

4. Break Down Cultural Barriers: Successful mergers realize that there are cultural differences between merging companies and take steps to minimize these cultural differences.
 - By having had Geoff Mackey and Peter Jones on ICG's leadership team since December 1998, Superior will have more insight into ICG's culture than occurs in most mergers. This will allow Superior to be appreciative of key issues and facilitate merger communications addressing ICG employees' major concerns.
5. Communicate Effectively: An effective communication plan helps stabilize the combined business and makes the rationale for and impact of the merger clear to employees.
 - The management of both ICG and Superior recognize the importance of ensuring the proper level of communication during the integration period. Indeed, Superior will retain an extra communications person in the corporate headquarters and two extra Regional Team Leaders will be kept on during the integration to ensure that employees have access to their leaders.

Many of the key communication messages and strategies have been developed through the course of announcing the acquisition of ICG last year and planning the integration of the two businesses (and implementing the integration of the 14 non-overlapping locations).

Changing Estimates

The Rebuttal Affidavit states:

"The difficulty of accurately projecting the costs and benefits of a merger is reflected in the changes in the parties' claimed efficiencies over the past twelve months."

As more data and information have been gathered, estimates have naturally changed. The original estimates were based on the work of the Superior Transaction Planning Team, whose primary role was not to estimate the economic Efficiency Gains, but rather to plan the integration for the merger. The study that was conducted principally to quantify the merger savings has been the Cole/Kearney Report.

*Schwindt,
Globerman and
Kemp
September 14, 1999
Pg. 4, para. 2*

The involvement of CVPL and A.T. Kearney has resulted in the consideration of additional areas of efficiency, elimination of non-merger dependent efficiencies and in refining the assumptions and methodologies applied by Superior.

The work product in the Cole/Kearney Report is more thorough than management's earlier business estimates and is specifically geared to s. 96 of the Competition Act. This latter report had the benefit of the joint work product of both management, and, CVPL and A.T. Kearney. The scope of work performed to support the Cole/Kearney Report was not for general business purposes but was specifically for s. 96 of the Competition Act. CVPL and A.T. Kearney brought their collective experience and expertise in management consulting and mergers and acquisitions.

Premier Acquisition

Pages 4 to 6 of the Rebuttal Affidavit compare Superior's projected savings from the Premier acquisition to the Efficiency Gains included in the Cole/Kearney Report. The Rebuttal Affidavit notes that there is no explanation why the savings for the ICG acquisition are higher on a per litre basis than the projected savings for the Premier acquisition.

The Premier projected savings were based on limited information gathered prior to the merger.

The per litre projected savings from the Premier acquisition was a cursory comparison, and not a complete assessment of the Efficiency Gains. As discussed above, the Efficiency Gains result from a rigorous study by CVPL and A.T. Kearney, whereas the projection for the Premier acquisition did not result from such a study. Sufficient data does not exist today to make a rigorous, valid comparison between the Premier and ICG acquisitions proposed efficiencies because data was not collected at a similar level of rigour at the time of the Premier acquisition.

Other factors contribute to the potential for the ICG acquisitions to yield savings in excess of those stated in the Rebuttal Affidavit with regards to the Premier acquisition:

- There is more overlap in geographic territory covered between Superior and ICG than existed between Superior and Premier. As part of the ICG acquisition, a higher proportion of the sites are planned for closure than occurred as a result of the Premier acquisition. Figure 1 below illustrates this. Hence, the field operations savings and customer support are likely to be higher in the case of the ICG acquisition.

Figure 1: Post Merger Site Eliminations

Site Disposition ¹	Premier	ICG
Closed Sites	15	142
Open Sites	22	73
Total Sites	37	215
Ratio of Closed to Open Sites	0.68	1.95

Notes:

(1) Site Dispositions are actual for Premier, planned for ICG. Sources: *Memo from Dave Balicki to John Cooper, February 27, 1999; Cole/Kearney Report, Aug. 17, 1999, Pg. 191, Exhibit 1.*

(2) Closed sites include existing Superior sites closing as a result of the merger redundancy only.

- It is uncertain which activities are included in the Rebuttal Affidavit's definition of customer support for Premier. As a result, there is no evidence that all the activities that we consider to be a part of ICG customer support are considered under the customer support umbrella for Premier insofar as the calculation of cost savings is concerned.

MANAGEMENT INCENTIVES

Comment on the Rebuttal Affidavit

The Rebuttal Affidavit concludes that a projected management fee incentive for Superior management should be deducted from the Efficiency Gains, as follows:

"In effect, the achievement of the \$40 million per year in efficiencies would cost SPI an additional \$12.4 million per year in management fees."

*Schwindt, Globerman
and Kemp
September 14, 1999
Pg. 15, para. 1*

Summary Response

Projected payments under the Management Agreement² are not a real cost relating to the merger of Superior and ICG, and should therefore not be deducted from the Efficiency Gains. Our rationale for this conclusion is:

- ***No Increase in Resources is Required***

No increase in resources, managerial labour, is required for the realization of the fee payments. Indeed, the Rebuttal Affidavit states that the payment of "higher wages for the same labour....should not be 'charged' against the merger":

² See Appendix B for further explanation of the Management Agreement.

"It is also possible that a merger will result in increased pecuniary costs as opposed to increased resource costs. For example, as a result of an amalgamation a firm might have to pay higher wages for the same labour. In these circumstances, the increased costs should not be "charged" against the merger because, in fact, no additional resources have been drawn from alternative employment." (emphasis added)

Schwindt, Globerman
and Kemp
September 14, 1999
Pg. 7, para. 2

- ***Distribution of Profits Rather than Compensation***

In fact, the so-called "Management Agreement" is an investment asset of its owners. The owners are primarily, through Enterprise Capital Inc., pension funds, insurance companies, high net worth individuals and investment trusts. They effectively own 72% of the Management Agreement. Enterprise Capital Inc. is a money manager or a conduit for these investors. Therefore, hereinafter when we refer to Enterprise Capital we mean the aggregate of these passive investors' interests.

Neither Enterprise Capital nor the investors manage SPI.

Messrs. Billing, Schweitzer and Mackey are also investors in the Management Agreement. They effectively own 28% of the Management Agreement. All those entitled to receive distributions pursuant to the "Management Agreement" have paid for their interests in it as any investor/owner would. Those interests were purchased from Union Pacific Resources Inc., the previous owner, and payments under the Management Agreement are, in essence, a distribution of profit, rather than compensation.

- ***Pre-dates the Merger***

The Management Agreement was not prepared in contemplation of the merger; in fact, it pre-dated the merger by approximately two years.

These points are discussed further below.

No Increase in Resources is Required

For the management fee to be a real cost of the merger, it must be the real cost of an increase in the management resources required. However there will be no material change in the level of services that management will provide and therefore no increase in the real costs. Grant Billing, Mark Schweitzer and Geoff Mackey are the primary providers of services under the Management Agreement (but not the primary recipients of income distributions from it, as they are primarily received by Enterprise Capital Inc.), and there will be no material change in the level of service they provide.

The Rebuttal Affidavit's assumption that the management fees reflect market-based compensation is not correct. Payments under the Management Agreement result directly from ownership of the Management Agreement rather than services performed.

The Rebuttal Affidavit also proposes that since the Cole/Kearney Report included management incentive compensation for ICG in the Efficiency Gains, incentive fees to the Superior management team under the Management Agreement should be deducted. What the authors of the Rebuttal Affidavit failed to consider is that the ICG incentive compensation relates to a change in resources, while payments under the Management Agreement do not reflect any change in resources and should therefore not be considered.

Distribution of Profits Rather than Compensation

The Management Agreement is an investment or capital asset, so payments emanating from it are distribution of profits which were paid for by the owners in exchange for their investment in the Management Agreement, rather than compensation. The authors of the Rebuttal Affidavit failed to consider the following important factors:

- the majority owner of the Management Agreement, Enterprise Capital (72% owner), is not management of Superior. Enterprise Capital is only a conduit for pension funds, insurance companies, high net worth individuals and investment trusts;
- the current owners of the Management Agreement purchased the rights to it (see Appendix B for the background to the Management Agreement ownership);
- fees payable are paid to the owners of the Management Agreement based on the percentage owned (i.e., 28% to Messrs. Billing, Schweitzer and Mackey and 72% to Enterprise Capital). The payments are accordingly going to parties in their capacity as investors not as management of Superior;
- Messrs. Billing, Schweitzer and Mackey are also part of the management of Superior but they are specifically compensated for this;
- the owners of the Management Agreement have the right to sell their investments in the Agreement. In the case of Messrs. Billing, Schweitzer and Mackey, their rights to sell are defined by the Unitholders' Agreement dated May 27, 1998;

- under the Unitholders' Agreement, an equity interest in the Management Agreement is treated much like one would treat an equity interest in the business itself. Upon the occasion of various triggering events, value is crystallized on the basis of a multiple of average earnings and ownership is transferable. For example, under the Unitholders' Agreement, upon voluntary retirement, a Superior management member may sell (or keep) his interest in the Management Agreement, with the remaining Superior management and then Enterprise Capital having an option to purchase, prior to any sale to a third party. Transfer prices are defined in the Unitholders' Agreement and the incentive portion is generally the initial price paid, plus 7 times the average incentive fees.

The buyout provisions at a multiple of average earnings is a demonstration of the equity nature of the investment, and the reality that payments under the Management Agreement are a distribution of profits, not compensation; and

- investment returns should not be deducted in calculating Efficiency Gains.

The Management Agreement Pre-dates the Merger

The Management Agreement between Union Pacific Resources Inc. (successor to Norcen Energy Resources Limited) and Superior Propane Inc. is dated October 8, 1996.

This Management Agreement has not been revised since its inception, in 1996. The same level of management services are to be provided and the same method to calculate payment is still in place. Because of this constant level of service, any change in the level of the payment is just a pecuniary transfer of resources from the Trust unitholders to the holders of the Management Agreement and should not reduce the Efficiencies.

Revisions to the Computations in the Rebuttal Affidavit

Even if there should be some deduction for payments made pursuant to the Management Agreement (and we do not believe there should be), the Rebuttal Affidavit has substantially miscalculated the payments which will actually go to the managers for the following reasons:

- the Rebuttal Affidavit does not account for Messrs. Billing, Schweitzer and Mackey holding only a 28% interest in the Management Agreement;
- some or all of the income of Superior is likely to be taxable which would dramatically reduce the amount of "distributable cash".

Assuming only the Efficiency Gains are taxed, 28% of the incentive payment is \$1.5 million (see Appendix B, Exhibit B1); and

- even correcting the above, the Rebuttal Affidavit's computations are not in accordance with the Management Agreement³.

Revising their computation for these factors indicates that the payments under the Management Agreement due to the Superior management group for their 28% investment in the Management Agreement would be between \$1.5 and \$2.8 million⁴. However, as earlier stated, we do not believe that this amount or any other amount should be considered a reduction from the Efficiency Gains calculated in the Cole/Kearney Report.

TRAINING, INTEGRATION AND VOLUME LOSSES

The Rebuttal Affidavit comments on the size and complexity of Superior and ICG with regards to the integration task, stating:

"The proposed integration would involve...the integration of a substantial number of ICG's 700 employees into SPI's workforce of 1,300 people,... The business involves the distribution of propane, so integration will require the meshing of two complex networks."

Schwindt,
Globerman and
Kemp,
September 14, 1999,
Pgs. 9-10, para. 6

There will not be a meshing of the networks. Rather, the underlying philosophy of the Superior-ICG merger is the deployment of Superior's business strategy, business structure and systems to service a combined customer base.

The Rebuttal Affidavit questions whether costs for workforce integration should be deducted from the Efficiency Gains, stating:

"...the Kearney Report identifies very few costs attributable to the actual process of integration."

Schwindt, Globerman
and Kemp
September 14, 1999
Pg. 10, para. 1

The Rebuttal Affidavit suggests that since the number of Superior employees will increase from 1,332.5 to 1,776.5 one would expect significant integration costs.

³ Under the Management Agreement the distributable cash flow within each target range should be split as follows: 15%, 25% or 50% as applicable to the holders of the management agreement and the remainder to the unit holders. The incentive percentage should not be increased until the unit holders' required threshold is reached. Schwindt, Globerman and Kemp calculated distributable cash flow per unit without any reduction for the incentive fees and then multiplied and target percentages by the amount of distributable cash flows calculated.

⁴See computations at Appendix B, Exhibit B1.

Training Costs

The Cole/Kearney Report does not reduce the Efficiency Gains for training costs specifically associated with ICG employees for the following reasons:

1. a gradual integration process has been assumed. This reduces training costs, and has also reduced the salary and wages saving claimed as an Efficiency Gain;
2. the ICG staff that will be hired by Superior will already be experienced ICG personnel and, given the substantially similar nature of the businesses, will require little training, if any. Further, ICG employees will be integrated across approximately 90 locations, which will facilitate a local integration by existing Superior staff; and
3. no Efficiency Gain has been included for the reduced costs associated with hiring, as experienced ICG employees are integrated into Superior, in place of what might otherwise be inexperienced new hires.

These factors are explained below.

The two-year gradual elimination of positions takes into account integration costs and by taking this time to integrate, the negative impacts are expected to be minimized. This approach thereby does take into account integration costs by intentionally deferring staff reductions or having excess overlapping staff during the transition. As shown in following table, the merged company does not fully realize the Efficiency Gains from salary savings until the beginning of the third year following the merger. In the first year, only 50% of the salary savings are realized.

Figure 2: Savings from the Elimination of Positions (\$Millions)

Area	Year 1	Year 2	Year 3
Corporate Center	1.26	3.88	4.00
Customer Support	4.19	5.73	8.86
Field Operations	5.80	8.62	8.62
Total	11.25	18.23	21.48

During this first year, the two operations will exist with various levels of duplicate operations in order to facilitate the transition. CVPL and A.T. Kearney have assumed that to aid in the integration, all new positions would be filled immediately and their full costs have been included for the first year. For example, the 60.5 new administrative positions in the branches (described in tab B1 - Field Administration) would be hired immediately at the branch level. However, the ICG call centre employees and business processors who currently manage the ICG customer base would not be fully eliminated until the end of the first year. Thus, the 60.5

employees will be able to adapt to the new systems without the additional customer volume from ICG.

For key positions involved in the management of merging the two companies' operations, we have delayed the elimination of these positions for a full year. These include all employees in the information technology and human resources departments, most of the finance department employees, and employees related to property management.

During the integration period there will be less new hires as ICG employees can fill positions. The lesser integration costs have not been considered an Efficiency Gain.

Integrating an ICG employee will be easier than integrating brand new employees, since ICG employees have experience in the propane industry. As noted in the Cole/Kearney Report:

"the job responsibility of positions will not be materially different, and, accordingly, existing [ICG] employees will not require significant re-training."

Cole/Kearney
August 17, 1999
Pg. 76, para. 5

For example, the ICG drivers and service technicians will have the required safety and driver training and will not need re-training.

There may will be some limited training to familiarize the ICG employees with Superior specific procedures⁵. This can occur during periods of low utilization (such as summer months) and should not reduce the employee's productivity in the merged company.

The merged company will not add additional explicit (formal training) programs for the integration of employees as was noted in Undertaking 151. On an on-going basis, Superior's cost of training is not expected to increase.

Systems and Site Integration

The Cole/Kearney Report allows for systems and site integration costs.

There will be a gradual integration of the field sites. The Cole/Kearney Report estimated that only 60% of the savings from the operating costs for the eliminated field sites will be realized in the first year. In addition, the ICG IT budget is not eliminated until the second year following the merger. The Cole/Kearney Report states:

⁵ Estimated training times for ICG employees are: Driver - 10.5 hours, Service Technician 17.5 hours, and plant maintenance person - 24.5 hours.

"The ICG IT system will continue to operate until all ICG locations are migrated over to the J.D. Edwards environment. This conversion will likely be completed by the end of the first year following the merger, at which time ICG's IT positions will be eliminated."

Cole/Kearney
August 17, 1999
Pg. 86, para. 4

The Cole/Kearney Report also deducts \$490,000 for the re-branding of trucks, uniforms, and locations as an integration cost.

Volume Losses

The Rebuttal Affidavit suggests that Superior believes there will be volume losses during the integration, stating:

"Indeed, SPI personnel acknowledged that there would likely be volume losses due to 'integration turmoil',"

Schwindt,
Globerman, and
Kemp,
September 14, 1999
Pg. 12, para. 2

During the Examinations for Discovery Mark Schweitzer, President and Chief Operating Officer of Superior, stated:

"The transaction planning team did not contemplate any loss in business," and, "[Superior is not assuming that there will be any volume losses in the merged entity] because the assumption was it was a very conservative risk, when we prepared the original business case, that there may be some temporary customer service disruptions that might initiate customers going to alternative propane suppliers. And with the passage of time and the benefit of very comprehensive planning and thought around how to implement the integration with the two businesses and our experience with integrating the 14 overlapping locations, which we have now completed, we have not experienced any significant customer loss whatsoever as a result of integrating those operations." (emphasis added)

Examination for
Discovery of
William.
Mark Schweitzer
July 6, 1999,
Pgs. 926-7

Furthermore, the Rebuttal Affidavit states:

"Since we have seen nothing to indicate that other distributors would not enjoy similar efficiencies, we would accept the implicit assumption that volume losses would not seriously affect the level of obtainable efficiencies."

Schwindt,
Globerman, and
Kemp,
September 14, 1999
Pg. 12, para.. 3

MERGER SPECIFIC RESOURCE SAVINGS

Other Acquirors for ICG

The Rebuttal Affidavit suggests that ICG's operations might be sold to numerous regional operators and that another purchaser, whether in the propane business or not, could realize the corporate centre savings through the merger of head office activities, stating:

"Arguably, some, perhaps many, of the savings at the customer support and field operations levels are unique to this merger. SPI and ICG are the only national propane distributors operating in Canada. No other single amalgamation would combine as many field operations as would this one. Of course, if ICG's operations were hived off to multiple, regional propane distributors there would be obtainable savings at the field level.

*Schwindt, Globerman
and Kemp
September 14, 1999
Pg.9, para. 1-2*

Head office savings are another matter. Were ICG to be acquired by another firm, no matter whether it was involved in propane distribution, there would be head office savings."

We are not aware of any existing alternative merger proposals for ICG that can reasonably be expected to proceed which could realize the customer support or field operations efficiencies available to Superior. We are also not aware of any other comparably large Canadian purchaser in the retail propane distribution business which, because it was in the same business and enjoyed the same overlapping propane distribution systems, could likely realize these efficiencies.

We further do not believe that head office savings could be achieved by a purchaser who is not in the propane distribution business. For example, ICG was owned by Petro-Canada, but required an independent management team to operate the propane distribution business. Similarly, Superior had a separate stand alone management team when it was wholly owned by Norcen. Since Superior and ICG operated in substantially similar businesses within the same territory, many redundancies are created by the merger and head office savings are possible when the two businesses are combined.

The Rebuttal Affidavit's speculation that ICG might be "hived" off to multiple, regional propane distributors is made in the abstract. No basis for this speculation is given and in any event, savings at the field level might well be offset by increased costs at the head office level, since each operator would require a sufficient leadership team.

Other Comments in the Rebuttal Affidavit Concerning Merger Specific Resources

The Rebuttal Affidavit questions whether the items noted below were merger specific savings. Our responses for these items are included below at the references given.

- Severance - see A1 Corporate Leadership, Severance Costs.
- Skill Levels - see B1 Field Support Administration, Reassignment of Tasks.
- Wellness Program - see A4 Human Resources, Elimination of the Wellness Program.
- Technology Savings - see A5 Information Systems Operations / A6 Information technology Capital Costs.
- Public Company Costs - see A8 Public Company Costs.

SCOPE OF REVIEW

In preparing this report we have relied on the following information:

1. Rebuttal Affidavit Prepared by Messrs. Schwindt, Globerman and Kemp dated September 14, 1999.
2. "Quantification of the Efficiency Gains Resulting from the Merger of Superior Propane and ICG Propane", August 17, 1999, A.T. Kearney.
3. "Quantification of the Efficiency Value Resulting from the Merger of Superior Propane and ICG Propane", August 17, 1999, Cole Valuation Partners Limited.
4. Superior Propane Income Fund Initial Public Offering Prospectus dated September 25, 1996.
5. ICG Propane Income Fund Initial Public Offering Prospectus dated May 29, 1998 (second amended preliminary version).
6. Superior Propane Income Fund Secondary Offering Short Form Prospectus dated August 26, 1997.
7. Superior Propane Income Fund Annual Report for the year ended December 31, 1998.
8. Management Agreement between Superior Propane Inc. and Norcen Energy Resources Limited dated October 8, 1996.
9. Unanimous Shareholders Agreement between Enterprise Capital Management Inc. and Grant Billing and Mark Schweitzer and Geoffrey Mackey and Superior Capital Management Inc. dated May 27, 1998.
10. Unitholders Agreement between the Enterprise Capital LP and the Enterprise Capital FI LP and the Enterprise Capital Trust and the Manufacturers Life Insurance Company and Enterprise Capital Management Inc. and Grant Billing and Mark Schweitzer and Geoffrey Mackey dated May 27, 1998.
11. Invested Capital Purchase Agreement between Union Pacific Resources Inc. and Superior Investment Trust dated May 28, 1998.
12. Management Rights Purchase Agreement between Union Pacific Resources Inc. and the Superior Management Services Limited Partnership dated May 28, 1998.

13. Assignment and Novation Agreement for the Management Agreement between Union Pacific Resources Inc., Superior Management Services Limited Partnership and Superior Propane Inc. dated May 28, 1998.
14. Superior Propane Income Fund Information Circular dated March 1, 1999.
15. Examination for Discovery of William Mark Schweitzer dated July 6, 1999.
16. Commissioners Witness Statements dated August 23, 1999.
17. Branch operating costs as provided by Superior Propane Inc.
18. Truck maintenance costs as provided by Superior Propane Inc.

We also had discussions with the following individuals:

Superior

- Schweitzer, Mark President and Chief Operating Officer
- Balicki, Dave General Manager, Western Operations
- Bell, Howard Fleet Analyst
- Carroll, Andrew W. Team Leader, Fleet & Infrastructure
- Clough, Martin Team Leader, Regulations Safety and Technical Support
- Franklin, Juliette Team Leader, Financial Reporting
- Gill, Terry Team Leader, Human Resources
- Gorla, Kevin Supply Analyst
- Kyle, Ron Manager Supply
- Nazarewich, Jim Team Leader, ETI –Energy Transportation
- Cowie, Nicola Benefits Advisor
- Olexa, Rich Regional Team Leader, Mid-Central Ontario
- Ouimet, Lillian Payroll Advisor

Peter Jones

Senior Vice President & Chief Operating Officer, ICG

(Peter Jones obtained information from a number of individuals at ICG on our behalf).

Jim MacDonald

Chairman & Managing Partner, Enterprise Capital Management Inc.

**EXAMPLES OF LACK OF CLARITY AND RHETORICAL
QUESTIONS IN THE REBUTTAL AFFIDAVIT**

Examples of Messrs. Schwindt, Globerman and Kemp's lack of clarity and rhetorical questions are set out below. All of the issues raised are addressed in this report:

- "There are considerable projected savings attributable to the reassignment of tasks to lower paid staff. This raises a number of questions. Is this simply a pecuniary gain?" *(Page 22, para.2)*
- "We are confident that the projected cost savings are exaggerated, but it is impossible for us to provide precise quantification of the overestimate of the merger's efficiency gains." *(Page 36, para. 2)*
- "We find this puzzling, and Kearney provides no explanation for the variations" *(Page 34, para. 3)*
- "It is not clear whether HR salaries were included in ICG's training budget. If they were, elimination of the budget and elimination of the salaries would involve double counting." *(Page 17, para.1)*
- "In any case, we suspect that there is some muddling of real and pecuniary economies in savings attributable to reassignment of tasks" *(Page 22, para.2)*
- "At least one source of savings is quite questionable" *(Page 23, para. 4)*
- "In short, it is difficult to believe that each remaining site has enough idle capacity to absorb this increase in activity. If they do, Kearney has not shown this." *(Page 25, para. 3)*
- "We do not know if Kearney's estimated branch manager salary increases are compatible with these increased responsibilities." *(Page 27, para. 3)*
- "Several line items are not discussed. This does not imply acceptance of the estimates, but only that no obvious concerns were identified." *(Page 13, para. 1)*
- "Kearney's explanation of how they estimated redundant capacity in this fleet is perfunctory." *(Page 32, para. 3)*