Dean Thomas Fox

[redacted]

October 30, 2016

B.C. Utilities Commission
900 Howe Street
Sixth Floor
Vancouver, B.C. V6Z 2N3

Dear Sirs/Mesdames:

Re: Shannon Estates Thermal Energy System Rate Application - Reply to the Applicant's Response dated October 24, 2016.

Relationship Between Applicant and Vendor

In our submission dated October 11, 2106, we argued that the Applicant, Shannon Wall Centre Rental Apartments Limited Partnership, and Shannon Condominium Holdings Ltd., (referred to in that submission as the "Vendor"), are related parties working together for their mutual benefit. The Applicant has not disputed this. A review of its Response discloses that it has adopted the role of, relied on documents and advanced arguments of and for the benefit of the Vendor. It is our position that the Applicant and the Vendor have admitted that they are related parties working together for their mutual benefit. As such, they should be viewed as one entity for all purposes of the rates application. In this Reply I will refer to the Applicant and Vendor collectively as the Applicant/Vendor ("A/V").

It is our position that the material omissions and misrepresentations outlined in our October 11, 2016 submission are the omissions and misrepresentations of the A/V together.

Admissions by A/V in Response

The A/V did not challenge and should be taken to have admitted the following:

- Owners were materially misled by different descriptions of the TES in ss. 3.9(b)(5) and 4.3(s) of the A/V's Disclosure Statement ("DS");

- The omissions and misleading information in the DS led owners to believe that they would own the TES, in particular, but not limited to, being told that they would pay for construction, inspection, maintenance, repair and operating costs of the TES (DS s.4(3)(s));

- The A/V did not disclose to owners that the TES would be owned by a for-profit third party, or that it would employ a for-profit billing agent and pass on those costs to owners;

- The profits to the A/V will rise in perpetuity; we cannot determine the accuracy of the figures in the A/V's Response without access to the redacted information;

- Long after this hearing commenced and after owners received their first bill from the Applicant in August, 2016 and began complaining, the A/V acknowledged its disclosure failures by issuing a Third Amendment to Disclosure Statement that disclosed for the first time:

    - Connection to the TES is mandatory

    - Owners will be required to set up an account with the billing provider by completing a "Billing Enrolment Form"

- "Strata Lot Owners must agree to the Customer Agreement and complete registration with the TES in a timely fashion…"

- Monthly billing will "… including but not limited to each meter start and end reading for the billing period, approved utility billing rate(s), service charges, applicable taxes, a fixed capacity charge, variable consumption charge(s), account set up fee." (Third Amendment to Disclosure Statement)

- In my submission dated October 11, 2016, the need for an offset to the capital of the TES was raised. The amount is estimated to be $4,500,000 ($7500/unit x 600 units). The A/V's Reply is silent on the offset, suggesting agreement. However, they argue against disclosure of the redacted information where evidence of an offset would be found, if it exists;

- The A/V did not dispute that owners will pay for the TES at least twice. It was a permitting requirement of the City of Vancouver. Permitting and other project costs are included in the determination of the purchase price of units. It is being paid for a second time through the capital levy (see DS s. 4.3(s));

- The A/V's omissions and misrepresentations deprived owners of the opportunity to inquire into all aspects of the TES and to participate in the UC's rate setting hearing, if they chose to do so.

Areas of Disagreement With A/V

It is submitted that the following arguments of the A/V are unsupported by evidence:

- The A/V states that the writer represents 10 parties. In fact, the Churchill/Cartier and Coachhouse strata council members are among the listed parties. They are authorized to represent all owners, who total 58. They have authorized the writer to represent all owners in the Churchill, Cartier and Coachhouse buildings. Together with the two Phase 2 owners, these submissions are made on behalf of 60 owners. We believe more owners would support our position. However, they are unaware of this application and our participation. Without knowing who else as purchased units, we are unable to inform them;

- The A/V claims that "…it is not possible for any one strata to own the TES" and "…it is unlikely that the Strata Corporations will cooperate in such a manner to ensure portions of the TES … are maintained and operated …". The A/V offers no explanation for these self-serving assertions. It is possible for parties with a mutual interest to work together. The A/V seem to be doing so;

- The A/V states "… we are unable to reach the same conclusion as Mr. Fox on the profit to SWCRA …". It is precisely because of disagreements like this one that my clients wish to participate fully in the hearing. They have been unable to do so because their access to the redacted financial information remains barred by the UC;

- The A/V writes "To bring further clarity…" and then points to DS s.3.9(b) as providing that clarity. However, not even they can explain how this section clarifies anything, since no attempt is made to explain what it means, how it meshes with the other subsections of s. 3.9 or how it informs owners of the essential fact of ownership of the TES by a for-profit third party.

- The A/V claims that notice of the hearing was given to Phase 1 owners. This occurred in the second week of June, 2016. The deadline to apply for Registered Intervener status was June 20, 2016. The Cartier and Churchill strata council was formed on July 25, 2016 and the Coach House strata council was formed on August 2, 2016. The first TES bill was received in early August, 2016, at which time my clients began asking questions about the TES. Notice to Phase 1 owners

may have complied with the language of the Order but it did not, in all of the circumstances, comply with the intent of the Order to give notice and a reasonable opportunity to participate in the process.

Hardship

There would be little or no hardship if the UC makes the requested orders, for the following reasons:

- Interim rates can continue to be used;
- Debit/credit balances will be relatively small and, given the purchase prices of units, owners are unlikely to find a debit balance burdensome;
- Delivery can be made to the addresses provided, including email addresses given to the A/V when the Agreement of Purchase and Sale was executed; if a unit is resold, it will be the responsibility of the seller to address a potential future credit/debit with the purchaser;
- There is no proof that a short delay will necessitate a larger contingency fund. If so, it would be minimal;
- The delay will be short. On October 30, 2016, I was informed in a telephone conversation with a representative at the A/V presentation centre that there are 15 unsold units from a total of approximately 362 units. The number of unsold units is now 4%, down from 13% at the time of my first written submission on October 11, 2016.

Notice: Failure to Comply With BCUC Order G-77-16A

The A/V failed to comply with Order G-77-16A (the "Order") for the following reasons:

- This Application and the Order applies to approximately 600 residential customers (Recital B). The Order states that a copy shall be provided "…to each strata corporation and to all tenants and owners of units…" (Order, para. 4). The Application and Order are broad in scope.

  The A/V argues (Response p. 2), that I misrepresented Order G-77-16A and gives its understanding of the amended Order:

  > "Commission Order G-77-16A (Exhibit A-2) notes the amendment is "correcting recitals B and I" for consistency with Exhibit B-1. The original application (Exhibit B-1) includes all phases and types of customers and was not primarily only for apartments units."
  > (emphasis added)

  The A/V admits that their Application and the Order cover "all phases and types of customers" in the development. This language is broad in scope.

  The UC Order specified that all "owners of units" were to be given a copy of the Order. The UC's intent was to give notice to people who were known to the A/V and who would be affected by the application. It was not meant to be read narrowly so that the A/V could avoid giving a copy of the Order to owners of unit whose legally binding contracts of purchase and sale had not yet reached the completion date.

The A/V's explanation for not giving a copy of the Order to owners whose Agreements of Purchase and Sale had not yet reached the completion stage is found in their Response:

> "Individuals who have entered into a purchase and sale agreement, at the date of the Order, were not sent the order due to their tentative nature but would not have met any
>
> opposition from the SWCRA to participate as Registered Interveners or Interested Parties."
> (Response, p. 3); (emphasis added)

The A/V's Agreement of Purchase and Sale contains the following language:

> "Upon acceptance of this offer by the Vendor, this Agreement of Purchase and Sale including Exhibit 1 attached hereto shall become a binding contract for the purchase and sale of the Strata Lot in accordance with the terms hereof."

The A/V's reason for not giving a copy of the Order to owners who had executed the A/V's Agreement of Purchase and Sale is directly contradicted by the express wording of the A/V's Agreement of Purchase and Sale.

Finally, by acknowledging my clients' Registered Intervener eligibility, the A/V admits that those who executed Agreements of Purchase and Sale that have not reached the completion date are "…directly or sufficiently affected by the Commission's decision…" (BCUC Rules of Practice and Procedure, s.9.04). The A/V knew or should have known that they were "owners of units" and entitled to be given a copy of the Order, under its terms.

- The A/V did not explain its artificial differentiation between units 'sold' (UC Information Request No. 1) and units 'pre-sold' (A/V Response to Information Request No. 1). The A/V's artificial distinction is inconsistent with the express language of the Order. The failure to give a copy of the Order to everyone to whom it had sold units was a failure to comply with the Order.

Conclusion

Prior disclosure was not made by the A/V. Further, it failed to comply with the UC's Order with respect to notice of this application. A short delay will not cause hardship to the A/V who can continue to charge the interim rates. Any delay will be short as evidenced by the fact that the project has advanced from 87% to 96% sold in less than three weeks.

It is requested that the UC make the orders requested in my submission of October 11, 2016, on the basis that the project is, at 96%, substantially sold. My clients should be granted Intervener status, given access to all redacted information and to all relevant financial and other relevant information in the A/V's possession or control for the sole purpose of preparing submissions.

All of which is respectfully submitted this 30th day of October, 2016,

Dean Thomas Fox