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

Dear Sirs/Mesdames:

Re: Final Argument of the Shannon Ratepayers Group
Shannon Estates Thermal Energy System Rate Application

Introduction

In the interests of brevity, I will not address every point of disagreement with the submissions of the Applicant, including its Final Argument. Where the positions of the applicant and SRG differ, the Commissions is asked to prefer those found in the expert evidence of Ms. Gail Tabone, EES Consulting, the other evidence and argument of SRG and that of Mr. Gerrard Duffy, intervener.

The following matters will be address specifically herein:

1 Issues not adequately addressed by the applicant;

2 Rate Competitiveness

3 Avoided Capital Costs

4 Regulatory Costs

Issues Not Adequately Addressed by The Applicant

Ms. Tabone pointed out that there were many issues that were not adequately addressed by the Applicant. This was also argued by FortisBC Alternative Energy Services Inc. (FAES) in its Final Submission. They include the following:

i SWCRA does not provide an equitable balance of risk and cost between the utility and ratepayers

ii SWCRA does not provide transparent treatment of controllable costs

iii SWCRA has not adequately addressed the potential for rate shock

iv Rates are high compared to business as usual

v There is no basis to find that rates are just and reasonable

Despite filing an updated application, the applicant did not address the inadequacies pointed out by FAES and SRG.

Rate Competitiveness

Rate competitiveness is a measurement available to the Commission to ensure that a utility does not abuse its monopoly power. However, in its Final Argument (p. 16), the Applicant attempts to the counter the argument of SRG and several other parties, arguing that the competitiveness of its rates is not relevant. Its position then, is that its rates may be extremely high and bear no relation to the rates of other customers receiving the same services in similar circumstances. This thinking is characteristic of a monopoly, which the applicant is. It is wrong in principle and it is wrong in law.

The applicant relies on a strained interpretation of s. 2.4.4 (iii) of the TES Guidelines and the phrase "new service area". This section confirms the importance of rate competitiveness. The words "new service area" do not restrict the Commission's statutory mandate to protect the public interest and, in particular, under ss. 59 and 60 of the British Columbia *Utilities Commission Act* ("Act").

As a regulated utility and a monopoly, the applicant is subject to regulatory oversight of its rates. The BCUC's stated mission is:

> "…to ensure that ratepayers receive safe, reliable, and non-discriminatory energy services at fair rates from the utilities it regulates, and that shareholders of those utilities are afforded a reasonable opportunity to earn a fair return on their invested capital."

Section 60 of the Act states, in part:

> **60** (1) In setting a rate under this Act
>
> (a) the commission must consider all matters that it considers proper and relevant affecting the rate,
>
> (b) the commission must have due regard to the setting of a rate that
>
> (i) is not unjust or unreasonable within the meaning of section 59,

Section 59 of the Act states, in part:

> **"59** (1) A public utility must not make, demand or receive
>
> (a) an unjust, unreasonable, unduly discriminatory or unduly preferential rate for a service provided by it in British Columbia, or
>
> (b) a rate that otherwise contravenes this Act, the regulations, orders of the commission or any other law.
>
> (2) A public utility must not
>
> (a) as to rate or service, subject any person or locality, or a particular description of traffic, to an undue prejudice or disadvantage, or"

Given that the Commission must consider all matter that it considers proper and relevant affecting rates and it must have due regard to the setting of rates that are not unjust or unreasonable, rate competitiveness is a relevant consideration.

Rate competitiveness is of particular importance because the applicant is a monopoly. For this reason, the overall profitability of the applicant must be carefully determined for rate setting purposes to avoid profitability being based on its monopoly power.

In its Final Argument (p. 16) the applicant references the Commission's Decision on ForitsBC Inc's 2012- 2013 Revenue Requirements Application and argues that "… the BCUC confirmed that it does not have a statutory mandate to ensure that the utilities under its jurisdiction have similar rates …" We agree. The Commission's mandate is not to ensure 'similar rates'. It is to set rates that are fair and reasonable and in this regard, the competitiveness of the monopoly applicant's rates is a relevant consideration.

A final point concerning the FortisBC Decision is that FortisBC is a public company conducting business in a competitive marketplace where customers as well as the Commission will evaluate its rate competitiveness. The applicant is a monopoly and the Commission's role in ensuring just and reasonable rates is the only check on its monopoly power.

We refer the Commission to the expert evidence of Ms. Gail Tabone, EES Consulting, (p. 2) for her analysis of the applicant's rate competitiveness.

Avoided Capital Costs – Actual Financial Benefit to Applicant/Developer

Identity of Applicant/Developer

In the SWCRA Reply to BCUC Panel IR No. 1 (Exhibit B-21, Section B) the applicant/developer clarified that Wall Financial Corp. is the legal and or beneficial owner of the TES and has always been so. A recent confirmation of this fact came in the form of a Wall Financial Corporation Memorandum dated June 6, 2017, from Cameron Foster, Wall Financial Corporation, in which he states "I am pleased to provide you with further clarification on the operation of Shannon's District Energy System (DES) and the invoicing methodology used by our agent, QMC." (copy attached hereto)

It was also clarified that Wall Financial Corp. was the legal or beneficial owner/developer of all phases of the Shannon Wall Centre development. As such, it was in control of all aspects of the development including development costs, marketing/pricing and the sale of all condominium units.

All aspects of Shannon Wall Centre development, including the decision to install a TES with rates to be set by the Commission, avoiding the installation of space heating, water heating and air conditioning equipment in 600 units, were undertaken by one entity, a very sophisticated developer/builder, Wall Financial Corporation. It was aware of the avoided capital cost savings from the outset.

Avoided Capital Costs

The "avoided capital costs" concept will be applicable to some but not all TES projects, depending on the facts in each case. In the present case the applicant was also the developer who

avoided capital costs and this should be taken into consideration by the BCUC in setting rates. The applicant/developer set condominium prices based on competition within the real estate market, not strictly based on the costs to develop the project. Its development costs were lower

by an estimated $4.95 million. Condominium prices reflected the market value of alternative units whose cost to develop did include the cost of space and water heating appliances. By avoiding these development costs the applicant/developer profited by an additional $4.95 million. Having benefitted financially in this amount, it is now seeking to recover the same amount as if it is out of pocket for development costs of $4.95 million when this is not the case.

This is an issue of fairness. It is a fact that the cost of construction/development did not include the cost of space and water heating appliances. This resulted in an estimated savings/extra profit to the applicant/developer of approximately $4.95 million. Sales prices for condos were set according to competition within the real estate market and were not based on the costs to develop the project. The prices reflected the market value of alternative units that did include the cost of space and water heating appliances.

Applicant/Developer's Response on This Issue

The only response from the applicant/developer is contained in its Final Argument where it contends that the argument is not supported by the Act or regulatory principles. It is wrong. Rates would be unjust and unreasonable if the applicant/developer avoided the capital costs of installing space, water heating and cooling appliances and sold the units for prices comparable to units containing these appliances and then recovered a second time the amount by which it profited by not installing the appliances through the rate setting process.

On p. 18 of the Final Argument the applicant/developer states "In fact, the sales price of particular strata unit reflects the market value of the specific unit (not of alternative units) as determined through competition within the real estate market." This is precisely our point. The development cost of a unit does not determine the market value of a unit; competition within the real estate market does. This is why the applicant/developer was able to price units as if they contained the appliances when they did not and profit accordingly.

Supporting Evidence

The applicant/developer argues that SRG has not provided evidence to support its position. We argue that the applicant/developer is in sole possession of this evidence and it is the one who has not provided evidence to support its position. We refer to the following:

i. cost projections for the development;
ii. costs saved by not installing the equipment in question;
iii. pricing methodology that would show that the units were priced below units with the equipment;
iv. market pricing research, marketing planning materials and marketing materials that touted the fact that units prices were lower because of the cost savings in question.

The issue of avoided capital costs was raised in SRG's first letter dated October 17, 2016 (attachment to Exhibit A-8). It states, in part:

> "It (the TES) is a mechanical system owned by the Applicant, a for profit legal entity working in a non-arms-length relationship with the Vendor.
> …
> Among other things, they (ratepayers) are concerned about paying for the TES through the purchase price of their strata units and paying for it a second time under a capital levy.
> …
> My clients question if there was an offset to the deemed capital of the TES. There should be an offset for costs avoided by the developer not installing heating and cooling equipment and hot water heaters in every unit."

This issue has been raised repeatedly since October 17, 2016 by SRG and by other parties. Yet the applicant/developer has not denied or offered any evidence to rebut the facts.

Adverse Inference

The principle was stated in Wigmore, Evidence in Trials at Common Law, Chadbourn Revision (1979), Vol 2, at p 192, as follows:

> The failure to bring before the tribunal some circumstances, documents, or witness, when either the party himself or his opponent claims that the facts would thereby be elucidated, serves to indicate, as the most natural inference, that the party fears to do so; and this fear is some evidence that the circumstance or document or witness, if brought, would have exposed facts unfavourable to the party. These inferences, to be sure, cannot fairly be made except upon certain conditions; and they are also open always to explanation by circumstances which make some other hypothesis a more natural one than the party's fear of exposure. But the propriety of such an inference in general is not doubted.

The applicant/developer has not produced documents or evidence in any other form, which is in its sole control, or offered an explanation for not doing so:

i. disputing that it avoided capitals costs of approximately $4.95 million;
ii. denying that it profited in the approximate amount of $4.95 million on the sale of condominiums over profits that it would have derived from the sale of condominiums containing the equipment and no TES;
iii. asserting that the avoided capital costs were passed on to purchasers in lower condominium prices;
iv. asserting that units were priced below comparable units with the equipment;
v. asserting that marketing plans and marketing materials said that condominium prices were lower than comparable units with the equipment in question.

The Commission is asked to draw the adverse inference that Wall Financial Corp.:

i. avoided capital costs of approximately $4.95 million;
ii. that units were not priced below comparable units with the equipment;
iii. profited in the approximate amount of $4.95 million from the sale of condominiums in excess of profits that it would have derived from the sale of condominiums containing the equipment and not serviced by a TES;

I return to the applicant/developer's argument (Final Argument, p. 18): "In fact, the sales price of particular strata unit reflects the market value of the specific unit (not of alternative units) as determined through competition within the real estate market." This is an admission that the cost of construction was not a principal factor in setting sale prices. This is perfectly logical. Why would a developer reduce unit prices because his development costs were lower. He is in business to make money and extra profit is profit, however it is derived. If the market permits him to sell units without the equipment at the same price as comparable units with the

equipment, he will do so and there is nothing wrong with that. However, it would be unjust and unreasonable for the applicant/developer to apply for a rate that is based in part on the cost of a TES that has been paid for through the sale prices of condominium units. This is not a request for a set-off for unrelated profit/savings. The TES is the substitute for the heating and cooling equipment and hot water heaters in 600 unit.

Regulatory Costs

The position of SRG is that the regulatory account should be disallowed or reduced substantially.

Disallowance

The regulatory costs should be disallowed for the following reason:

i. The claim for $303,960 was part of the revised application submitted in February, 2017. In response to SRG 3.2.6, the applicant/developer said these costs were not included in its CPCN. The CPCN claimed $397,000 for fees/overhead and other soft costs of $368,000. In light of the substantial claim for $765,000 in the CPCN, the bald claim for a further $303,960, not supported by evidence or an explanation of why such a large amount was overlooked in the CPCN should not be allowed.

If not disallowed, the regulatory costs should be reduced for the following reasons:

i. The applicant/developer did not file an application that met the Guidelines.
ii. The applicant/developer's application and revised application were voluminous, lacked clarity and contained nothing new other than the regulatory account claim. It led to more IRs and other process that was necessary.
iii. Stirling Cooper was making its first application of this type and was less efficient as evidenced by its failure to follow the Guidelines and in filing a revised application late in the process.
iv. The applicant/developer was ordered to give notice of the application to owners of units. It chose to give notice only to owners whose purchases had closed at the time of giving notice and not make full disclosure to the Commission. This resulted in efforts by SRG in October, 2016 to reopen the evidentiary phase of the hearing that were opposed by the applicant/developer. This further process was caused by the applicant/developer failure to give proper notice and poor judgment in opposing rate payers' participation.
v. This was followed by the applicant/developer's unsuccessful opposition to allowing rate payers to review the confidential filing. It refused altogether, then offered access to some of the confidential information. Finally, it agreed to give full access. The further process was unnecessary.
vi. The CPCN claimed $397,000 for fees/overhead and other soft costs of $368,000. These claims should be carefully examined to determine if they are in line with an application of this size.

Regulatory Costs Recovery Period

If the regulatory costs are allowed, they should be recovered over a minimum ten (10) year period and the rate rider should be applied to each customer over the same period.

The applicant/developer argues that a longer recovery period would increase financing costs and a larger debt would "…negatively impact the ability of the utility to independently secure low

interest loans." Wall Financial Corp. owns the utility and will be able to secure low interest loans.

All of which is respectfully submitted this 26th day of June, 2017.

Dean Thomas Fox
Counsel for the Shannon Ratepayers Group