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November 17, 2017

British Columbia Utilities Commission
Sixth Floor, 900 Howe Street, Box 250
Vancouver, BC V6Z 2N3

via Email
commission.secretary@bcuc.com

ATTN: Patrick Wruck, Commission Secretary

RE: BCUC – Sustainable Services Ltd. Geothermal Energy System Status as a Public Utility under the *Utilities Commission Act* – SSL Written Reply Arguments

In response to the above-noted proceeding and the regulatory timetable established by Order No. G-138-17, please accept the appended submission of Written Reply Arguments to the Panel on behalf of SSL -Sustainable Services Ltd.

The undersigned may be contacted regarding this submission.

Sincerely,

SSL-Sustainable Services Ltd.

Kyle Taylor
Manager

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cc: Lisa Parkes, Corporate Counsel
City of Langford (c/o L. John Alexander, Cox Taylor)
FortisBC Energy Inc.
FortisBC Alternative Energy Services Inc.

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This submission is in response to the Written Final Arguments provided by FortisBC Energy Inc. ("FEI") dated October 13, 2017.

Introduction

At first blush there may be a certain logic to the position FEI takes that it is possible both for the service being provided to be a municipal service provided by the City of Langford through a Bylaw established pursuant to section 8(2) of the *Community Charter* and for SSL to be found to be a public utility. However, once one delves further into this argument, it becomes clear that it cannot be sustained for two reasons: first, it would lead to the unworkable conclusion that any individual person or company hired by a municipality or other utility service provider to assist it in providing an energy service would be a "public utility" and subject to individual regulation by the Commission, and second, it ignores the public policy considerations behind the "Municipal Exemption" (as defined by FEI in its submissions).

Application of the Definition of Public Utility

FEI states that there is no dispute as to the fact that SSL *"owns and operates most, if not all of the CES equipment."* Leaving aside the issue of whether in fact there is any dispute about this statement, SSL's position is that it is irrelevant who owns the equipment. The definition of "public utility" does not distinguish between those owning equipment used to produce, distribute or sell energy, and those using equipment owned by another to do those same things. In other words, a person or entity that *"operates equipment or facilities for the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, steam or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation"* that is owned entirely by someone else is equally as much as "public utility" as a person that operates their own equipment for those same purposes. Should FEI's position be accepted, then not just SSL, but any company, contractor or individual used by any public utility to provide any part of its utility service would also be a public utility. There is simply no basis in the legislation to apply the definition of "public utility" one way to an entity operating equipment to provide service on behalf of a public utility, and to apply it in another way to an entity operating equipment to provide service on behalf an excluded municipality.

Public Policy Behind the Municipal Exemption

In its final submissions, FEI states that to find that SSL is not a public utility *"would result in the unacceptable outcome that any municipality could partner with a corporate entity for the provision of utility service, bypass the regulatory oversight of the Commission, and deprive the public of the statutorily enshrined protection from undue discrimination and unjust and unreasonable rates that the Legislature intended them to enjoy."* What FEI fails to explain is how lack of Commission regulation in the case of municipalities partnering with other entities would result in unjust and unreasonable rates. The very basis of the Municipal Exemption is that where a municipality regulates the provision of an

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energy service, it is unnecessary (and in fact undesirable) for the Commission to also do so. For FEI's position to be accepted, one would have to believe that when it is providing a municipal service on its own behalf, a municipality can be trusted to protect the interests of its residents (and the Council to be motivated by its desire to receive approval from its constituents and eventually be re-elected), while when the municipality provides the service through another entity under section 8(2) of the *Community Charter* it will not protect its residents interests or be motivated by those same factors. It is obvious, from the Commission's 2016 decision in the proceeding for Spirit Bay Utilities Ltd. (BCUC Project No.3698880), that the Commission itself does not believe this, as it states: *"Therefore, if monopoly characteristics are not present, or are somehow mitigated, for example by an alternative regulatory body, an exemption from regulation under the UCA may be warranted."*

FEI makes the point that if SSL were found to a public utility then nothing would prevent FEI from also *"entering a contract with municipalities across British Columbia similar in substance to the Services Agreement, and then arguing that doing so brought it beyond the jurisdiction of the Commission."* To this SSL has two responses: (1) that is not the case since FEI entering agreements with municipalities is not the same as the City of Langford having established the DES as a municipal service it is providing to its residents through bylaw as permitted by section 8(2) of the *Community Charter*, and (2) if, on the other hand, the service that FEI was to provide in a given municipality were properly established as a municipal service and regulated by the municipality, then it should be exempt from regulation by the Commission.

Conflict and Paramountcy

Finally, FEI, like Commission staff before it, attempts to suggest that there is some kind of conflict between the *Utilities Commission Act* and the *Community Charter* which must, under the provisions of those pieces of legislation be resolved in favour of the *Utilities Commission Act*. In fact, there is no such conflict. The definition of "public utility" in the *Utilities Commission Act* provides for an exemption for a municipality providing a service to its residents, and section 8(2) of the *Community Charter* sets out the manner in which a municipality may provide a service to its residents. There is nothing contradictory in these two legislative provisions and therefore no need to consider issues of paramountcy.

Conclusion

SSL respectfully submits that it should be found not to be a public utility pursuant to the Municipal Exclusion to the *Utilities Commission Act* definition.