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July 11, 2017

SUSTAINABLE SERVICES LTD. GEOTHERMAL ENERGY SYSTEM STATUS AS A PUBLIC UTILITY	EXHIBIT A2-1
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Sent via eFile

All Parties

Re: Sustainable Services Ltd.– SSL Geothermal Energy System Status as a Public Utility under the *Utilities Commission Act* – 1598884 – Replacement of Commission Submission A2-1

Dear Participants:

Commission staff has become aware that a copy of a BC Hydro Electric Tariff Supplement is attached to the Staff Submission submitted at the Procedural Conference on January 18, 2017 and posted as Exhibit A2-1 on the evidentiary record. The BC Hydro Electric Tariff Supplement was not intended to be included in the Staff Submission and therefore staff submit the attached replacement of Exhibit A2-1 on the evidentiary record.

Other than removing the BC Hydro Electric Tariff Supplement, there have been no changes made to the Staff Submission, as originally submitted at the Procedural Conference on January 18, 2017.

Sincerely,

Original signed by:

Patrick Wruck
Commission Secretary

/kn
Enclosure

A2-1

Staff Submission

Summary of key legal issues relevant to the consideration of SSL-Sustainable Services Ltd.'s (SSL) status as a "public utility" under the Utilities Commission Act

In considering SSL's potential status as a "public utility" as defined by section 1 of the *Utilities Commission Act* (UCA), a number of legal issues appear to be relevant. Commission staff makes the following submission to provide a summary of the issues staff considers relevant in making a finding of SSL's status as a public utility.

Staff Question: Is an energy service provider who enters into an agreement with a municipality pursuant to a municipal bylaw to provide thermal services for compensation to customers located solely within the municipal boundaries of that municipality, not included within the definition of a "public utility" under section 1 of the UCA and therefore exempt from Commission regulation?

In considering this question, staff believe two statutes need to be considered:

1. The Utilities Commission Act (Act)
2. The Community Charter (Charter)

Staff are of the view that the starting point for this analysis should begin with the definition of "public utility" in section 1 of the Act:

The relevant provisions in section 1 provide:

"public utility" means a person, or the person's lessee, trustee, receiver or liquidator, who owns or operates in British Columbia, equipment or facilities for

(a) 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

but does not include

....

(c) a municipality or regional district in respect of services provided by the municipality or regional district within its own boundaries"

Staff submits that SSL is captured by the provisions in subsection (a) of the definition because it is a person that owns and operates equipment and facilities to provide thermal energy to some municipal residents for compensation.

The next issue is whether SSL can bring itself within the exclusion contained within subsection (c) of the definition such that it does not fall within the definition of public utility. Staff submits that SSL does not fit within the exclusion because the service is not being provided by either a municipality or regional district within its own boundaries. Rather, in this case, the service is being provided by another person, SSL, which is a separate corporate body.

If the foregoing analysis is correct, then the next issue is whether there are any provisions in the Charter which override or otherwise exempt SSL from BCUC regulation.

The Community Charter is provincial legislation that provides municipalities and their councils with a legal framework for the powers, duties and functions that are necessary to fulfill their purposes, the authority and discretion to address existing and future community needs, and the flexibility to determine the public interest of their communities and to respond to the different needs and changing circumstances of their communities

Staff submits that the provisions of section 8 of the Charter first need to be examined.

Section 8 of the Community Charter provides:

- (1) A municipality has the capacity, rights, powers and privileges of a natural person of full capacity.
- (2) A municipality may provide any service that the council considers necessary or desirable, and may do this directly or through another public authority or another person or organization.
- (3) A council may, by bylaw, regulate, prohibit and impose requirements in relation to the following:
 - (a) municipal services;

Staff submits that the foregoing provisions of section 8 of the Charter allow a municipality to establish by bylaw a municipal service such as is being provided by SSL. Staff notes that the municipality has passed Bylaw 1291 establishing municipal services for the provision of water and energy. While staff acknowledges the purpose of the bylaw, staff does not agree that the BCUC has no regulatory jurisdiction over SSL simply because of the passing of the bylaw.

Staff's analysis on this point begins with subsection 8(10) which provides:

(10) Powers provided to municipalities under this section

(a) are subject to any specific conditions and restrictions established under this or another Act,
and

(b) must be exercised in accordance with this Act unless otherwise provided.

Section 10 of the Charter also provides:

Relationship with Provincial laws

10 (1) A provision of a municipal bylaw has no effect if it is inconsistent with a Provincial enactment.

(2) For the purposes of subsection (1), unless otherwise provided, a municipal bylaw is not inconsistent with another enactment if a person who complies with the bylaw does not, by this, contravene the other enactment.

Therefore, Commission staff notes that the Charter expressly contemplates that the power granted to municipalities under the Charter can be affected by a provincial enactment to the contrary. Staff submits that the Act does contain provisions to the contrary, particularly section 121 of the Act, with the effect that the BCUC has the ultimate regulatory jurisdiction over SSL.

Section 121 of the Act provides:

“Relationship with Local Government Act

121 (1) Nothing in or done under the Community Charter or the Local Government Act

(a) supersedes or impairs a power conferred on the commission or an authorization granted to a public utility, or

(a) relieves a person of an obligation imposed under this Act or the Gas Utility Act”

Staff submits that section 121 of the Act is a clear expression of legislative intent that the BCUC has the ultimate regulatory jurisdiction over persons who own or operate equipment or facilities for the provision of energy services to the public for compensation if the persons are neither a municipality or regional district serving only within its boundaries. Staff submits that the Commission's jurisdiction over SSL includes the rates to be charged for service and the issuance of certificates of public convenience and necessity among other things.