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ORDER NUMBER
G-104-18

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

SSL-Sustainable Services Ltd.
Status as a Public Utility under the *Utilities Commission Act*

BEFORE:
D. M. Morton, Panel Chair/Commissioner
B. A. Magnan, Commissioner

on June 5, 2018

ORDER

WHEREAS:

A. On December 16, 2015, the British Columbia Utilities Commission (BCUC) received a complaint from a resident of the City of Langford (the City) regarding energy services in a subdivision provided by SSL-Sustainable Services Ltd.'s (SSL) geothermal system;

B. SSL has not been granted a Certificate of Public Convenience and Necessity, nor has it made an application for approval of rates for public utility service under the Stream B criteria of the BCUC's Thermal Energy System (TES) Regulatory Framework Guidelines (TES Guidelines). SSL has also not been granted Stream A status per the TES Guidelines;

C. The BCUC reviewed the complaint and the information provided by SSL in its response letters and on June 9, 2016 via Order G-87-16, and pursuant to section 83 of the *Utilities Commission Act* (UCA), another panel made the order that initiated this proceeding to determine whether SSL is a public utility under the UCA (Proceeding);

D. A workshop and procedural conference were held on January 18, 2017. SSL, the City, FortisBC Energy Inc. (FEI) and BCUC staff made submissions at the procedural conference;

E. By Order G-12-17 dated January 31, 2017 and Order G-22-17 dated February 23, 2017, the BCUC established further regulatory timetables for the Proceeding, which included the filing of information packages and information requests to both SSL and the City;

F. By Order G-135-17 and as amended by Order G-138-17, the BCUC established a regulatory timetable for written final and reply arguments to be filed concurrently by all parties. The orders provided for an oral argument phase subject to the Panel's determination on the need to have one, after written final and reply arguments were received;

G. SSL, the City and FEI submitted written final and reply arguments. The City requested an oral argument phase and SSL supported the City's request. FEI submitted that it saw no need for an oral argument phase, but stated it would participate in one if the BCUC considered it to be of benefit;

H. By Order G-3-18 dated January 8, 2018, the BCUC established an oral argument phase for Tuesday, February 20, 2018. SSL then made a request to reschedule the oral argument phase and the BCUC amended the regulatory timetable for it to take place on Friday, March 9, 2018;

I. On Friday, March 9, 2018, the BCUC held an oral argument phase and SSL, the City and FEI participated;

J. The BCUC has reviewed and considered the evidence filed in this proceeding and the final, reply and oral arguments from all parties and finds that a determination is necessary.

NOW THEREFORE pursuant to the *Utilities Commission Act* and for the reasons attached as Appendix A to this order, the BCUC orders as follows:

1. SSL is a public utility as defined in section 1 of the UCA and is therefore subject to regulation under the UCA by the BCUC.

2. SSL is directed to file with the BCUC, within 90 days of this order, an application seeking required regulatory approvals for its rates and operating system. SSL must include in its application a submission on whether or not the agreement between SSL and the City is a franchise agreement as defined in the UCA, and if it is subsequently determined to be a franchise agreement, the rationale for BCUC approval of the franchise agreement allowing for inclusion of the associated fees in rates to be recovered from ratepayers.

3. Pursuant to section 90 of the UCA, the current rates that SSL charges to its customers are made interim as of the date of this order for a period of the lesser of i) 90 days or ii) the filing of its first application to the BCUC. Any differences between the interim and permanent rates that are determined by the BCUC are subject to refund/recovery, with interest at the average prime rate of SSL's principal bank for its most recent year, in the manner as set out by a BCUC order that establishes permanent rates.

4. SSL is directed to consult with BCUC staff prior to making its first application with the BCUC.

5. SSL is directed to file interim tariff pages for endorsement within 15 days of the date of this order.

DATED at the City of Vancouver, in the Province of British Columbia, this 5th day of June, 2018.

BY ORDER

Original signed by

D. M. Morton
Commissioner

Attachment

SSL-Sustainable Services Ltd.
Status as a Public Utility under the *Utilities Commission Act*

REASONS FOR DECISION

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1.0 Background

1.1 Proceeding

On December 16, 2015, the British Columbia Utilities Commission (BCUC) received a complaint from a resident of the City of Langford (the City) regarding energy services in a subdivision (Westhills) provided by Sustainable Services Ltd.'s (SSL) geothermal system. SSL responded to the BCUC letters on January 27, 2016 and April 13, 2016, providing its interpretation of the "public utility" definition in section 1 of the *Utilities Commission Act* (UCA) and details on its operations. The BCUC reviewed the complaint and the information provided by SSL in its response letters and on June 9, 2016 via Order G-87-16, and pursuant to section 83 of the UCA, a different BCUC panel made the order that initiated this proceeding to determine whether SSL is a public utility under the UCA (Proceeding).

The City has provided a useful summary of the background to the establishment of the geothermal system that is the subject of this Proceeding. In summary, the City's Westhills Green Community Master Plan calls for development to meet Leadership in Energy and Environmental Design (more commonly known as LEED) certification standards. Part of that master plan set out resource efficiency objectives, one of which was for the development of a district energy system which could use geothermal resources as a source of energy.[1]

In April 2010, the City entered into a partnering agreement with SSL. The partnering agreement provides that it is a partnering agreement as defined in the Community Charter and it is not an agreement granting an exclusive or limited franchise of any kind, and is not intended to make the City and any other party or parties, joint venturers or partners with respect to any enterprise. In June, 2010, the City adopted Multi Utility Bylaw 1291, 2010.[2]

SSL confirms that the Westhills Community Energy System (CES) is "constructed, owned, operated and maintained by SSL… as part of a Services Agreement with the City of Langford and consistent with the terms and conditions of Bylaw 1291, 2010, which establishes the CES as a municipal service entirely within its own boundaries."[3]

1.2 Regulatory process

The City, FortisBC Energy Inc. (FEI) and FortisBC Alternative Energy Services Inc. registered as interveners in the Proceeding. A workshop and procedural conference were held in Victoria BC on January 18, 2017, pursuant to the regulatory timetable established by Order G-171-16. SSL, the City, FEI and BCUC staff made submissions at the procedural conference, including the BCUC staff submission of Exhibit A2-1 which is a summary of key legal issues relevant to the consideration of SSL's status as a public utility under the UCA.

On January 31, 2017, the BCUC issued Order G-12-17 establishing a regulatory timetable for the Proceeding, followed by its reasons for decision on February 9, 2017. Further regulatory timetables for the Proceeding were established by Orders G-22-17, G-135-17, G-138-17, G-3-18 and G-34-18, several of which were established in response to requests from both SSL and the City to amend the regulatory timetable to allow for more time to address scheduling conflicts. The regulatory process included the filing of information packages by SSL and the City, information requests (IRs) on the information packages, Panel IRs to SSL, the City and FEI, written arguments and oral arguments.

[1] The City's Final Argument, p. 3.
[2] Ibid., pp. 3–7.
[3] Exhibit B-5, p.2.

2.0 Public utility

2.1 Legislative provisions

The following sets out the key legislative provisions at issue in this proceeding.

Public utility legislative provisions

Section 1 of the UCA defines public utility as follows:

> "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, or
> >
> > (b) the conveyance or transmission of information, messages or communications by guided or unguided electromagnetic waves, including systems of cable, microwave, optical fibre or radiocommunications if that service is offered to the public 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…

Section 8 of the Community Charter provides as follows:

> (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.

In Exhibit B-5, SSL states that:

> Section 2 of the City's Multi Utility Bylaw No 1291, 2010 (the "Bylaw") clearly establishes the Multi Utility including water and energy services as a municipal service. Section 3 of the Bylaw establishes a service area entirely within the City's boundaries in which both the water and energy services may be provided. Sections 4 and 6 of the Bylaw provide that the energy services must be provided in accordance with the terms and conditions set out in the Bylaw and that the rates to be charged are those set out in the Bylaw. Section 7 of the Bylaw provides that the City may provide the services directly or through another person or organization.[4]

[4] Exhibit B-5, pp. 3–4.

Paramountcy legislative provisions

Section 8 of the Community Charter 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 Community Charter 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.

Section 121 of the UCA 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
>
> (b) relieves a person of an obligation imposed under this Act or the Gas Utility Act.

2.2 Public utility arguments

Definition of Public Utility and interpretation principles

The definition of "public utility" in section 1 of the UCA contains two components. The first component of the definition is subsection (a) which provides a broad expansive definition capturing those who own or operate 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.

The second component of the definition provides for certain exceptions for those captured by the first part of the definition. In order to be a public utility under the UCA, a person must be included within the first component of the definition and not excluded by the second component. This proceeding is concerned with the exception in subsection (c) of the definition. The definition of "public utility" does not include a municipality or regional district in respect of services provided by the municipality or regional district within its own boundaries.

Subsection (c) has been referred to by the parties in this proceeding as the Municipal exclusion or simply the exclusion.[5]

All the parties agree that SSL is the person who owns and effectively operates facilities and equipment for the geothermal system for compensation[6]. The Panel agrees and finds as a fact that SSL is a person who falls within the first component of the definition set out in subsection (a) of the definition. Therefore, the narrow issue for determination by the Panel is whether the second component of the definition on Municipal exclusion applies to SSL such that it does not meet the requirements for the definition of public utility and is thereby not subject to regulation under the UCA.

All the parties agree that in interpreting the definition of public utility in the UCA, the following principle applies:

> The words of an Act are to be read in their entire context, and in their grammatical and ordinary sense, harmoniously with the scheme of the statute, the object of the statute, and the intention of the legislature.

In addition, the parties agree with this additional principle: "The principle must be applied to find harmony, coherence and consistency between statutes dealing with the same subject matter". The Panel agrees with these principles of interpretation and will apply them.

Municipal exclusion arguments

The City submits that in examining the meaning of the words in the Municipal exclusion in the second component of the public utility definition, the Panel should not look solely at the words used in the exclusion, but also look at what the BCUC's role is as taken from reading the whole of the UCA and the jurisdiction the legislature has given to municipal and local governments with respect to their ability to provide services to their own geographic areas.[7]

The City submits that the interpretation task before the Panel should be conducted within the framework that underpins utility regulation in North America. It submits that all parties agree that this utility service cannot bypass regulatory oversight as it is a monopolistic utility.[8] However, the point of contention is whether that oversight can be provided by a local government when the local government does not itself own and operate, or owns or operates the equipment and facilities.[9] The City submits that a harmonious reading of the provisions of the Community Charter, particularly subsection 8(2), and the UCA should for public policy reasons allow a local government to regulate should it choose to do so.

SSL submits that “there is nothing in the definition of ‘public utility’ nor elsewhere in the Act that says that in order to be excluded from the definition of ‘public utility’ a municipal service must be provided by a municipality either directly, by a wholly owned subsidiary of a municipality, or by another organization only if it uses municipally-owned infrastructure.” It further submits that “the only legislative provision in any piece of legislation that addresses the method by which a municipal service such as this district energy service may be provided by a municipality is section 8(2) of the Community Charter, which specifically allows that such a service may be provided through another organization.”[10]

[5] FEI Final Argument, p. 1, the City Final Argument, p. 14, SSL Final Argument, p. 3.
[6] Transcripts Volume 2, SSL Oral Argument p. 38, the City Oral Argument pp. 54–55, FEI Oral Argument p. 78.
[7] Ibid., the City Oral Argument pp. 51–52.
[8] Ibid., the City Oral Argument p. 52.
[9] Ibid., the City Oral Argument pp. 52–53.
[10] SSL Final Argument p. 3.

The City submits that there is no dispute that the services being provided are within the municipal boundaries of the City and that the City is a municipality for the purposes of section 29 of the *Interpretation Act*. The City submits that the only question at issue then is whether the services are provided by the City. The City then submits that the fact that the services are provided by the City through a partnering agreement with SSL does not disqualify the City from relying on the Municipal exclusion. In addition, the City submits that "the fact that SSL owns much of the infrastructure and equipment does not take the service outside one in respect of which the services are provided by the municipality."[11]

More specifically, with regard to the Municipal exclusion, the City submits that it is noteworthy that the first component of the definition of public utility uses the words "a person who owns or operates" whereas the second component does not contain those words. The City submits that if the drafters of the legislation intended that to benefit from the Municipal exclusion a municipality also had to own or operate the equipment or facilities, then the words of the statute would have said "except municipalities who own or operate equipment or facilities".[12]

The City puts forward two reasons for this interpretation. The first is a clear public policy recognition that if local government is providing this service - administering it, regulating it - the BCUC does not. The second reason is to carve out the exception in language wider than "who owns or operates" the assets. The City submits that is why the legislature chose the wider words "in respect of services provided".[13] In this respect, the service can be provided either directly or indirectly by the City or through another organization. The City submits that there is no valid public policy reason why this should not be so.[14]

FEI submits that reading the words of the Municipal exclusion in their ordinary and grammatical sense, leads to no other conclusion than only a municipality or regional district can benefit from the exclusion. This is made clear by the initial words of the exclusion which state "but does not include a municipality or regional district". No other entity is entitled to the exemption regardless of the meaning of the words "in respect of services provided."[15]

With regard to the object of the UCA, FEI submits in its Final Argument that the object of public utility legislation is protection of the public interest:

> The whole tenor of the Act [the precursor to the UCA] shows clearly that the safeguarding of the interests of the public, both as to the identity of those who should be permitted to operate public utilities and as to the manner in which they should operate, was a duty vested in the Commission.[16]

FEI also submits in its Reply Argument:[17]

> Both the City of Langford and SSL provide submissions relating to their view that the regime administered by the City of Langford for the establishment and regulation of SSL and the service it provides is an adequate substitute for Commission regulation - with much of those arguments relying on the Commission's decision in the Spirit Bay proceeding. That proceeding was an application for an exemption from parts of the UCA - not a proceeding convened to determine whether the UCA applies. Indeed, that proceeding supports the conclusion that SSL does not fit

[11] The City Final Argument, p. 14.
[12] Transcript Volume 2, the City Oral Argument pp. 55–56.
[13] Ibid., the City Oral Argument p. 56.
[14] Ibid., the City Oral Argument p. 58.
[15] Ibid., FEI Oral Argument pp. 82–83.
[16] FEI Final Argument, p. 4.
[17] FEI Reply Argument, p. 2.

> within the Municipal Exclusion to the public utilities definition. The balance of that proceeding addresses the question of when an entity - otherwise captured by the public utilities definition - should be exempted from elements of Commission regulation. As an exemption application is not before the Commission in this proceeding and the evidentiary record has not been developed to support a conclusion on that question, those considerations are not immediately relevant.

FEI elaborated on this submission in the oral argument phase[18]:

> There has been considerable evidence and legal argument, both written and oral, related to what -- the question whether SSL should be regulated. And in our submission, and we said this in our written submissions, that's irrelevant to this proceeding. The *Utilities Commission Act*, as you know, contains a mechanism by which any party that fits within the definition of a public utility can seek an exemption from the Commission to be exempted back out. And that's of course under Section 88(3) of the UCA.

Paramountcy issues

The City raises the paramountcy issue and submits that Exhibit A2-1 (BCUC Staff Submission) "points to sub-section 8(10) of the Community Charter, section 10 of the Community Charter and section 121 of the UCA as the basis for the BCUC having 'ultimate regulatory jurisdiction over SSL". The City states that the BCUC Staff Submission "misinterprets the application of the foregoing provisions to the fact pattern in this proceeding." [19]

With respect to the BCUC Staff Submission on paramountcy issues, the City states the following on each section[20]:

- On Section 8(10) of the Community Charter, the City states "the staff submission fails to provide any specific conditions or restrictions that the services in question are subject to."
- On Section 10 of the Community Charter, the City states:

  > There is no provincial enactment to the contrary at issue. Certainly, the staff submission does not point to any such provincial enactment. The provision at issue in this proceeding is the exemption set out in section 1 of the UCA and, again, the test is whether the services are "provided by" the City.

- On Section 121 of the UCA, the City states:

  > This section is irrelevant to the fact pattern at hand. The Commission has not been conferred with any powers to regulate "services provided by" the City. The services at issue are provided by the City through its partnering powers and, accordingly, the services are exempt from Commission regulation pursuant to the exemption set out in section 1 of the UCA.

In its Final Argument, FEI states[21]:

[18] Transcripts Volume 2, FEI Oral Argument p. 76.
[19] The City Final Argument, p. 15.
[20] Ibid., pp. 15–16.
[21] FEI Final Argument, pp. 10–11.

> The City of Langford has maintained throughout this proceeding that its authority under the Community Charter to provide municipal services is sufficient to override the Commission's jurisdiction over public utilities in British Columbia. FEI disagrees for two reasons: First in FEI's submission, the Community Charter provides no such authority. Second, even if it could be interpreted in that way, the Legislature and the Supreme Court of Canada have conclusively affirmed that any such purported authority is subservient to the Commission's jurisdiction.

FEI further states[22]:

> In response to a Commission information request, the City of Langford stated that in partnering with SSL for the provision of utility service in Westhills it: … exercised its jurisdiction under the Community Charter, including sections 7, 8(3), 11, 18 and 21 of the Community Charter, to create a City service.
>
> Those sections do not include any authority for a municipality to contract with a private third party for the provision of public utility service, outside the purview of Commission jurisdiction. To the contrary, while section 8 of the Community Charter establishes the "fundamental powers" of a municipality to, among other things, "provide any service28 that the council considers necessary or desirable"29, section 8(10)(a) specifically provides that any authority conferred on a municipality under section 8 is subservient to other Acts in force in British Columbia

In the City's reply, it states[23]:

> Properly applied, the purposive approach requires the Commission to read the Municipal Exclusion in harmony with the partnering powers conferred on the municipality pursuant to the Community Charter… A harmonious reading of the two acts is possible. It simply calls for the Commission to recognize that the Municipal Exclusion must be broadly interpreted to include services that are "provided by" a municipality through its partnering powers under the Community Charter… Using the modern approach to statutory interpretation, neither sub-section 10(1) of the Community Charter nor sub-section 121(1)(a) of the UCA are engaged. There is no conflict or incoherency.

SSL's position is that[24]:

> …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.

[22] Ibid., pp. 10–11.
[23] The City Reply Argument, p. 11.
[24] SSL Reply Argument, p. 3.

Decision on Public Utility argument

The Panel finds that SSL is not entitled to the benefit of the Municipal exclusion and is therefore a public utility as defined in the UCA. SSL is subject to regulation by the BCUC and not the City. The Panel agrees with FEI that the object of the UCA is the protection of the public interest by regulating public utilities to ensure that they provide safe and reliable service at reasonable prices. Public utilities tend to operate in monopolistic circumstances which could lead to monopolistic abuse of ratepayers. The BCUC regulates public utilities to ensure that the prices they charge to customers, who are often captive, are reasonable for the level of service provided.

The scheme of the UCA acknowledges that there may be circumstances where an entity is caught by the definition of public utility yet the rationale for regulation is not compelling because the public utility has little or no ability to exercise monopolistic behaviour to the detriment of ratepayers and the public interest. In those situations, the UCA allows the BCUC, with the advance approval of the responsible Minister, to grant exemptions in whole or in part from regulation under the statute.

The Panel will address the interpretation of the Municipal exclusion with its findings on the object and scheme of the UCA. The Panel finds that when the words of the Municipal exclusion are read in their entire context and in their ordinary and grammatical sense, the only entities that can benefit from the Municipal exclusion are municipalities and regional districts. In making this finding, the Panel agrees with the submission made by FEI. The initial words of the Municipal Exclusion make it clear that only a municipality or regional district is entitled to this exclusion in respect of services provided by them. SSL is a corporate entity and is not a municipality or regional district.

To find, as the City and SSL submit, that SSL should be entitled to the benefit of the Municipal exclusion because SSL has entered into a partnering agreement with the City and the City is thereby providing the service through SSL as a vehicle, requires a finding that the City is providing the service. However, the Panel has already found as a fact that SSL owns and operates the equipment and facilities to provide the public utility service. The City has entered into an agreement with SSL to provide the service but that does not grant SSL the same legal status as a municipality. SSL is a separate corporate entity. To find otherwise would require the Panel to ignore the initial words of the exclusion restricting the exclusion to municipalities and regional districts. Therefore the Panel cannot make the finding that SSL can benefit from the Municipal exclusion.

The Panel also agrees with FEI that whether a public utility should be regulated for public policy reasons is not relevant to whether a person meets the definition of a public utility. The scheme of the UCA provides for a consideration of that issue elsewhere and is beyond the scope of this proceeding.

Further, the Panel also finds that a harmonious, coherent and consistent reading of the UCA and the Community Charter supports this conclusion. Section 10(1) of the Charter expressly provides that a municipal bylaw has no effect if it is inconsistent with a Provincial enactment. Section 121 of the UCA provides that nothing in or done under the Community Charter impair a power conferred on the BCUC. There is nothing unharmonious, incoherent or inconsistent about the interpretation made regarding the Municipal Exclusion as both the Charter and the UCA expressly recognizes that where an action taken by a municipality is contrary or in conflict with the action taken by the BCUC pursuant to the UCA then the lawful actions of the BCUC prevail.

3.0 Other issues

3.1 Regulatory requirements

During the proceeding, many of the arguments made by the City and SSL relate to the regulation needs of SSL. However, the appropriate form of regulation for SSL is beyond the scope of this proceeding. As a public utility,

SSL may require BCUC approval of its rates as well as a certificate of public convenience and necessity for its operating system. However, the Panel is unable to determine what regulatory requirements exist as much of the information needed to make such a finding is beyond the scope of this proceeding. **As such, SSL is directed to file with the BCUC, within 90 days of the attached order, an application seeking required regulatory approvals for its rates and operating system.** The BCUC's Thermal Energy System guidelines will be a useful tool to assess those needs and the **Panel directs SSL to meet with BCUC staff in advance of making that application**.

SSL is an operating public utility with customers that rely on its services. Under sections 59–61 of the UCA, a public utility generally requires approval of any rates it charges its customers. At this time SSL has made no application to the BCUC for approval of its rates. However, to ensure the ability of SSL to maintain its ongoing operations and ensure the reliability of its services to customers, pursuant to section 90 of the UCA, **the Panel approves, on an interim basis, the current rates that SSL charges to its customers for a period of the lesser of i) 90 days or ii) the filing of its first application to the BCUC. Any differences between the interim and permanent rates that are determined by the BCUC are subject to refund/recovery, with interest at the average prime rate of SSL's principal bank for its most recent year, in the manner as set out by a BCUC order that establishes permanent rates.**

3.2 Franchise agreement

FEI submits that the agreement between SSL and the City "looks very much like a privilege, concession or franchise"[25] which would require BCUC approval to be valid. The City disputes this position, citing the following clause in the partnering agreement:

> **NATURE OF AGREEMENT**
> 3. This is a partnering agreement as defined in the Community Charter. It is not an agreement granting an exclusive or limited franchise of any kind, and is not intended to make the City and any other party, or parties, joint venturers or partners with respect to any enterprise.[26]

FEI highlights that "the municipality has an interest in the financial success of SSL. They receive a 3 percent fee of – gross revenues of SSL."[27] FEI argues that the municipality is realizing a revenue stream from the partnering agreement and this interest removes the disconnect and prevents the City from being "a neutral arbiter of a complaint."[28]

As this matter is beyond the scope of this proceeding, the Panel makes no finding at this time on the issue of whether or not the agreement between SSL and the City is a franchise agreement as defined in the UCA. However, this matter should be addressed in SSL's first application to the BCUC and SSL is directed to include in its application a submission, on whether or not the agreement between SSL and the City is a franchise agreement as defined in the UCA, and if it is subsequently determined to be a franchise agreement, the rationale for BCUC approval of the franchise agreement allowing for inclusion of the associated fees in rates to be recovered from ratepayers.

[25] FEI Final Argument, p.13.
[26] City of Langford Services Agreement, City Document 5.2.
[27] Transcripts Volume 2, FEI Oral Arguments p.84.
[28] Ibid., FEI Oral Arguments p.85.

3.3 Other

Finally, both SSL and the City made submissions about the appropriateness of this proceeding given that the complaint leading to this proceeding was not made by one of SSL's ratepayers. While complaints to the BCUC typically are received from ratepayers of a utility, there is nothing in the UCA that requires a ratepayer to complain before the BCUC can act to investigate, inquire or start a proceeding. The Panel notes that section 24 of the UCA requires the BCUC to keep itself informed about public utilities' compliance with the UCA and section 82 of the UCA provides that the BCUC may act on its own motion, inquire into, hear and determine a matter within its own jurisdiction.