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August 28, 2018

FAES 2018/19 RR & CoS TES
DELTA SCHOOL DISTRICT EXHIBIT A-7

Via eFile

Dionysios Rossi and Erika Lambert-Shirzad
Delta School District No. 37
c/o Borden Ladner Gervais LLP
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Re: FortisBC Alternative Energy Services Inc. – 2018/2019 Revenue Requirements and Cost of Service Rates Application for the Thermal Energy Service to Delta School District No. 37 – Project No. 1598949 –Information Request No. 1 to Delta School District

Dear Dionysios Rossi and Erika Lambert-Shirzad:

Enclosed please find British Columbia Utilities Commission Information Request No. 1 to Delta School District. In accordance with the regulatory timetable, please provide your electronic response no later than Wednesday, September 26, 2018.

Sincerely,

Original signed by:

Patrick Wruck
Commission Secretary

/yl
Enclosure



FortisBC Alternative Energy Services Inc.
2018/2019 Revenue Requirements and Cost of Service Rates Application
for the Thermal Energy Service to Delta School District No. 37

INFORMATION REQUEST NO. 1 TO DELTA SCHOOL DISTRICT

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A. AFFIDAVIT NO. 1 OF FRANK GEYER

- 1.0 Reference: Content of evidence**
Exhibit C1-6, Affidavit of Frank Geyer dated August 10, 2018;
Exhibit B-1, Appendix E, Rate Development Agreement and Energy System
Service Agreements; Exhibit A2-1

On pages 2 through 7 of Mr. Geyer’s affidavit he describes the chronology of events and discussions between Delta School District No. 37 (DSD), FortisBC Alternative Energy Services Inc. (FAES) and other parties prior to FAES (then FortisBC Energy Inc.) filing the Application for a Certificate of Public Convenience and Necessity for Approval of Contracts and Rate for Public Utility Service to Provide Thermal Energy Service to DSD (CPCN Application) with the British Columbia Utilities Commission (BCUC).

On pages 7 through 11 of Mr. Geyer’s affidavit, he describes the chronology of events and discussions related to the negotiation of the Rate Development Agreement (RDA) and the Energy System Service Agreements (ESSA) leading up to the filing of the CPCN Application with the BCUC.

On pages 11 through 14 of Mr. Geyer’s affidavit, he describes the chronology of events and discussions related to the CPCN Application proceeding, the BCUC’s issuance of the CPCN Application Decision and Order G-31-12, and the BCUC’s issuance of Order G-88-12 approving the calculation of the cost of service (COS) rate.

On pages 14 through 19 of Mr. Geyer’s affidavit, he describes the chronology of events and discussions related to the “economic feasibility of the Project”, the cost risks of the COS model, and the design of the Project subsequent to the BCUC’s issuance of Order G-88-12.

On pages 19 through 28 of Mr. Geyer’s affidavit, he describes the discussions which occurred between DSD, FAES and other parties during the time period of FAES filing the 2014/15 COS Rate Application with the BCUC and the 2015/16 COS Rate Application proceeding. These discussions were related to the market rate (MR), COS rate and the District Deferral Account (DDA) balance.

On pages 28 and 29 of Mr. Geyer's affidavit, he describes the discussions between DSD and FAES between April 26, 2017 and September 11, 2017.

In *Crestbrook Pulp and Paper Co. v. Columbia Natural Gas*, (1978) D.L.R. (3d) 248 (BCCA), provided as Exhibit A2-1, it states the following on pp. 253-254:

I am unable to distil from s. 87 any jurisdiction in the Commission to adjudicate between persons with a view to granting or refusing relief of the sort sought here. The essence of what Crestbrook seeks is a judgment for money paid under a mistake of fact, or for money paid for the use of Crestbrook, or for damages for breach of contract. The claims all sound in contract: see *Health Labour Relations Association of British Columbia v. Hospital Employees Union*, a case decided in this Court on February 21, 1978, and not yet reported, and *Rural Municipality of Storthoaks v. Mobil Oil Canada Ltd.* (1975), 55 D.L.R. (3d) 1 at pp. 10-11, [1976] 2 S.C.R. 147 at p. 160, [1975] 4 W.W.R. 591, cited there. In order to make out its case Crestbrook does not have to rely on the Act. It founds upon the contract, and relies upon the common law. While a contract may be filed and approved as part of a rate schedule, it does not thereby lose its identity as a contract: see ss. 23, 39 and 53 and also the definition of "rate" in s. 1. Similarly, if a utility sues a customer for the price of gas sold, the basis of its claim is the contract of sale and not a provision of the Act. It follows that s. 87 contains no words that are apt to empower the Commission to grant the relief sought. The gist of Crestbrook's claim is not that Columbia "has done, is doing, or has failed to do any act, matter or thing required to be done by this Act, or any other general or special Act, or by any regulation, order, by-law, or direction made hereunder".

- 1.1 Please confirm, or explain otherwise, that the purpose of the evidence provided by Mr. Geyer is to show that misrepresentations were made by FAES to DSD regarding: (i) the potential switch from the MR to the COS rate; and (ii) the effectiveness of the systems in terms of providing cost savings, greenhouse gas (GHG) reductions and other system efficiencies.
- 1.2 In consideration of the BCUC's approval of the CPCN, including the rates established by the RDA and ESSAs, and the BCUC's authority established under the *Utilities Commission Act*, what is DSD's view of the BCUC's jurisdiction to adjudicate on allegations of misrepresentation?
 - 1.2.1 As part of the above response, please provide DSD's view of the BCUC's jurisdiction as it relates to any contractual disputes between DSD and FAES as negotiated in the RDA and ESSAs.
- 1.3 Please confirm, or explain otherwise, with reference to the applicable section(s) of the approved RDA, that the approved RDA states that FAES may move from the MR to the COS rate by receiving approval from the BCUC and does not stipulate that the switch must be initiated by DSD or that prior approval is required of DSD before filing with the BCUC.
- 1.4 Please explain, in consideration of the wording contained in the approved RDA and ESSAs, how Mr. Geyer's evidence will assist the BCUC in determining whether to approve FAES' request to switch to the COS rate. As part of this response, please reference specific sections of the approved RDA and ESSAs as support.
- 1.5 Please clarify, based on Mr. Geyer's affidavit, what action(s) and/or relief DSD is seeking from the BCUC. As part of this response, please specifically explain whether DSD is seeking a determination from the BCUC beyond denial of FAES' request to move to the COS rate.

B. AFFIDAVIT NO. 1 OF DONALD POOLE

**2.0 Reference: Content of evidence
Exhibit C1-6, Affidavit of Don Poole dated August 2, 2018;
Exhibit B-1, Appendix E, Rate Development Agreement and
Energy System Service Agreements**

Mr. Poole discusses throughout his testimony the suitability of the heat pump system for the DSD thermal energy project. Mr. Poole states the following on pages 3, 4, and 6:

At that point, I was very concerned about the operating parameters of DSD's existing terminal equipment. As a result of my past experience, I knew that the potential for energy savings is very small when a low temperature heat pump is used to supply energy (heat, in this case) to building that has terminal equipment that is designed for high temperature.

...I was concerned that a number of DSD buildings that had been selected for connection to Geothermal Heat Pump Systems would only be suitable for connection to Geothermal Heat Pump Systems if the high temperature terminal equipment located in such buildings was upgraded to work with the low temperature Geothermal Heat Pump Systems...

...I thought that the design of the Project was proceeding without consideration for the disconnect between low temperature Geothermal Heat Pump Systems and high temperature terminal equipment.

- 2.1 Please clarify if Mr. Poole's submission is that the thermal energy system is unsuitable and/or not performing to specifications as approved in the CPCN.
- 2.2 Please clarify if Mr. Poole's view is that the thermal energy system is not performing in accordance with the requirements in the approved RDA and ESSAs.
 - 2.2.1 If yes, please specifically identify the applicable sections of the RDA and/or ESSAs and explain how the system is in contravention of the requirements.
- 2.3 Please clarify, based on Mr. Poole's affidavit, what action(s) and/or relief DSD is seeking from the BCUC.
- 2.4 Please explain, in consideration of the wording contained in the approved RDA and ESSAs, how Mr. Poole's evidence will assist the BCUC in determining whether to approve FAES' request to switch to the COS rate. As part of this response, please reference specific sections of the approved RDA and ESSAs as support.
- 2.5 Please explain, with reference to the *Utilities Commission Act*, DSD's view on the BCUC's jurisdiction to adjudicate on the issues raised in Mr. Poole's evidence given the approvals previously granted by the BCUC regarding FAES' provision of thermal energy service to DSD.

C. REPORT OF RESHAPE STRATEGIES

- 3.0 Reference: **Content of evidence**
Exhibit C1-6, Prepared testimony of Will Cleveland dated August 10, 2018;
Exhibit B-1, Appendix E, Rate Development Agreement and Energy System
Service Agreements

On pages 3 and 4 of Mr. Cleveland's prepared testimony, he provides a number of "project-specific issues and observations."

- 3.1 Please clarify, in consideration of the wording contained in the approved RDA and ESSAs, the relevance of the project-specific issues and observations.
- 3.1.1 As part of the above response, please explain whether Mr. Cleveland's testimony is questioning the appropriateness of the approved project and rate design, and if so, how this testimony is relevant to the current Application given that the project, CPCN and rate design have previously been approved by the BCUC.
- 3.1.2 If Mr. Cleveland's testimony is questioning the appropriateness of FAES' calculation of the actual annual cost of service, please explain, with reference to the applicable section(s) of the approved RDA and ESSAs, if FAES's calculations are in contravention of the agreements (and if so, how).

On pages 9 through 15 of Mr. Cleveland's testimony, he responds to DSD's question as to whether he believes that FEI/FAES made any errors in its thermal energy load forecast when designing the Project.

- 3.2 Please explain the relevance of Mr. Cleveland's testimony on FAES' load forecast projections given that the load forecast was reviewed by the BCUC as part of the CPCN Application proceeding and then reviewed and approved as part of the BCUC's approval of the rate design and rate in Order G-88-12.
- 3.3 Please explain, in consideration of the wording contained in the approved RDA and ESSAs, how Mr. Cleveland's evidence will assist the BCUC in determining whether to approve FAES' request to switch to the COS rate. As part of this response, please reference specific sections of the approved RDA and ESSAs as support.
- 3.4 Please clarify, based on Mr. Cleveland's testimony, what action(s) and/or relief DSD is seeking from the BCUC. As part of this response, please specifically explain whether DSD is seeking a determination from the BCUC beyond denial of FAES' request to move to the COS rate.
- 3.5 Please explain, with reference to the *Utilities Commission Act*, DSD's view on the BCUC's jurisdiction to adjudicate on the issues raised in Mr. Cleveland's evidence given the approvals previously granted by the BCUC regarding FAES' provision of thermal energy service to DSD.

D. REPORT OF MCW CONSULTANTS LTD.

**4.0 Reference: Content of evidence
Exhibit C1-6, Report of MCW Consultants Ltd. dated August 10, 2018;
Exhibit B-1, Appendix E, Rate Development Agreement and Energy System
Service Agreements**

On page 1 of MCW Consultants Ltd.'s (MCW) report, it outlines the issues/matters on which it has been asked to provide an opinion.

- 4.1 Please clarify if MCW's submission is that the thermal energy system is unsuitable and/or not performing to specifications as approved in the CPCN.
- 4.2 Please clarify if MCW's submission is that the thermal energy system is not performing in accordance with the contractual requirements in the approved RDA and ESSAs.
 - 4.2.1 If yes, please specifically identify the applicable sections of the RDA and/or ESSAs and explain how the system is in contravention of the contractual requirements.
- 4.3 Under the assumption that the system is not performing in accordance with the contractual requirements in the RDA and ESSAs, please clarify, based on MCW's report, what action(s) and/or relief DSD is seeking from the BCUC.
- 4.4 Please explain, in consideration of the wording contained in the approved RDA and ESSAs, how MCW's evidence will assist the BCUC in determining whether to approve FAES' request to switch to the COS rate. As part of this response, please reference specific sections of the approved RDA and ESSAs as support.
- 4.5 Please explain, with reference to the *Utilities Commission Act*, DSD's view on the BCUC's jurisdiction to adjudicate on the issues raised in MCW's evidence given the approvals previously granted by the BCUC regarding FAES' provision of thermal energy service to DSD.