



SSL-Sustainable Services Ltd.
957 Langford Parkway
Victoria, BC
V9B 0A5

T: (250) 391-7260
F: (250) 391-7268
www.SSL-BC.com
info@SSL-BC.com

May 21, 2020

via email

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

ATTN: Patrick Wruck, Commission Secretary

RE: BCUC Stream A Registration for the Westhills Thermal Energy System – Sustainable Services Ltd.
(SSL) Final Argument

Dear Mr. Wruck,

Please find enclosed our Final Reply Argument for the above-noted proceeding.

Sincerely,

SSL-Sustainable Services Ltd.

Lisa Parkes

Lisa Parkes
Corporate Counsel

cc: Kyle Taylor – Manager, SSL



SSL-Sustainable Services Ltd.
957 Langford Parkway
Victoria, BC
V9B 0A5

T: (250) 391-7260
F: (250) 391-7268
www.SSL-BC.com
info@SSL-BC.com

BRITISH COLUMBIA UTILITIES COMMISSION
**SUSTAINABLE SERVICES LTD. (SSL) - STREAM A REGISTRATION
FOR THE WESTHILLS THERMAL ENERGY SYSTEM**
SSL-SUSTAINABLE SERVICES LTD. FINAL REPLY ARGUMENT
DATED: May 21, 2020

We have reviewed the Final Argument of the BCOAPO dated May 7, 2020. With respect, SSL submits that the BCOAPO has misapplied and misinterpreted section 2.3.5 of the TES Guidelines.

Misapplication

SSL submits that the BCOAPO has misapplied section 2.3.5 for two reasons: first, the way the section is worded, it is clearly meant to apply to TES's that were granted Stream A status on the basis of the criteria set out in Table 1 of section 2.3.1. Section 2.3.5 indicates that a CPCN application will or may be required if an extension results in the total cost of the system exceeding \$15 million, or if the extension results in service to customers on a site different to the site on which the TES is located, certainly implying that the TES being considered had been granted Stream A status due to the cost initially being less than \$15 million and the fact that it was an on-site TES. If this section was meant to apply to a Stream A TES that had been granted Stream A status on the basis of its in-service date, one would have expected the wording to address this possibility in terms of acknowledging that the TES could have already been a multi-site TES (as the in-service date provision doesn't require a TES to be an On-Site TES), making the wording something like "or the sites on which a TES was located at the time of its in-service date." The absence of this language makes it clear that this section is meant to apply to a TES that was granted Stream A status on the basis of application of the Table 1 criteria. This point aside, SSL's second reason for submitting that the BCOAPO has misapplied section 2.3.5 is that it simply can't be applied to SSL because it is not currently a Stream A TES. The section indicates that "TES providers must notify the Commission of any extension to a Stream A TES." The question posed by the Commission: "Whether any extensions to the Westhills TES subsequent to August 28, 2014 result in a requirement for a Certificate of Public Convenience and Necessity, taking into account whether the extension results in service to customers on a site different to the site on which the TES is located (with regard to the definition of 'site' on page 8 of the TES Guidelines)," clearly a reference to section 2.3.5, cannot apply to SSL because it has not, to date, been granted Stream A TES status. If the Guidelines stated that all existing TES's were granted automatic Stream A status as of August 28, 2014, then SSL would be a Stream A TES that one could argue would be subject to section 2.3.5 (although we submit that it would still not be, given the position set out above). However, the subject proceeding is what will make the determination of whether SSL is a Stream A TES. As instructed by the Guidelines and as further directed by the Commission at the conclusion of the SSL as a Public Utility proceeding, SSL has made application to the Commission to be approved as a Stream A TES. Until the Commission makes its determination, SSL will not be a Stream A TES, and SSL would also be unable to comply with section 2.3.5's instruction that a TES notifying the commission of an extension "ensure that the Stream A Extension Application clearly identifies only those areas of the Thermal Energy System that the Applicant proposes to change."

Misinterpretation

All of the foregoing notwithstanding, even in the event that the Commission were to find that section 2.3.5 applies to TES's that are approved as Stream A TES on the basis of their in-service dates, SSL submits that the application of this section does not, in the words of the question posed by the Commission "result in a requirement for a Certificate of Public Convenience and Necessity, taking into account whether the extension results in service to customers on a site different to the site on which the TES is located." Section 2.3.5 says that where a proposed



SSL-Sustainable Services Ltd.
957 Langford Parkway
Victoria, BC
V9B 0A5

T: (250) 391-7260
F: (250) 391-7268
www.SSL-BC.com
info@SSL-BC.com

extension and the initial cost of the system together exceed \$15 million, “the TES is considered a Stream B TES and a CPCN will be required” (emphasis added). By contrast, the section says that “[a] CPCN may also be required if an extension results in service to customers on a site different to the site on which the TES is located” (emphasis added). The use of “will be required” with respect to cost and “may also be required” with respect to adding sites in the same paragraph of the Guidelines must be seen to be a deliberate distinction, and therefore it is clear that the Commission has the discretion to either require or not require a CPCN in the case of an extension that results in service to customers on a site different to the site on which the TES is located. In its Final Argument, BCOAPO ignores the use of the word “may,” stating in the final line of the last full paragraph on page 5 that the provision of energy service to customers in Westhills’ Paradise Falls subdivision, being “a site different to the one where the main TES is located,” means that “a CPCN is required.” This statement is a clear misinterpretation of the section. Should the Commission find in this case that section 2.3.5 applies to SSL (which again we submit the Commission should not), then SSL submits that the Commission should exercise its discretion to not require a CPCN and to not impose Stream B regulation. On this point, SSL wishes to draw to the Commission’s attention that despite receiving notice of this proceeding and being invited to participate, almost every one of the 520 households receiving energy service from SSL declined to do so. Throughout this process, the Commission received one letter regarding SSL’s heat pump lease (dated January 15, 2020 and signed by two SSL customers), and another letter dated January 20, 2020 which takes a reasoned look at the current situation with SSL’s district energy provision and in the end concludes that it is likely in SSL’s customers’ interest that the lighter Stream A regulation be approved. Despite having a specific invitation to address directly the body that will be determining the level of regulation for SSL moving forward, there was not one letter of complaint or concern about rates, service levels or complaint resolution from any of the other 517 households that receive SSL energy service. SSL submits that the Commission should factor this lack of input and complaint into its decision on SSL’s Stream A application, and that even should the Commission find that section 2.3.5 applies, it should exercise its discretion to not require a CPCN. Stream B regulation and all that it brings with it in terms of added layers of regulation and cost is not needed in SSL’s case because regulation by the City of Langford is clearly working to serve SSL’s customers’ – also the City’s residents’ – interests.

Conclusion

To summarize SSL’s position:

1. Section 2.3.5 does not apply to SSL as it has not been approved by the Commission as a Stream A TES;
2. Even in the event that SSL was currently a Stream A TES, based on the way it is worded section 2.3.5 was clearly not meant to apply to TES that have been recognized as Stream A due to in-service dates before August 28, 2014;
3. As set out in SSL’s Final Argument dated April 23, 2020, the public policy reasons behind the in-service date provision make it non-sensical to try to apply “phased” in-service dates in the way the BCOAPO tries to do. One can only presume that the in-service date basis for recognizing a TES as being Stream A is that it would be unwise and unfair to try to apply stringent and costly regulation to a system that was operating prior to those Guidelines being enacted, when the TES may - as is the case with SSL - have been created under an alternate regulatory scheme. Adding to an existing TES system - whether by way of cost of infrastructure or by expanding the system to more sites - when the cost of the infrastructure and the number of sites was not considered relevant in allowing TES’s to be approved as Stream A on the basis of in-service dates in the first place ignores these public policy considerations. In other words, to say that a TES that had an initial cost of \$20 million and that had customers on 50 sites, and yet was approved as a Stream A TES on the basis of having an in-service date prior to August 28, 2014 that continued to add



SSL-Sustainable Services Ltd.
957 Langford Parkway
Victoria, BC
V9B 0A5

T: (250) 391-7260
F: (250) 391-7268
www.SSL-BC.com
info@SSL-BC.com

customers on 10 more sites with an additional cost of \$2 million after August 28, 2014 then becomes a Stream B TES on the basis of the criteria that were not applied at the time of its approval defeats the very public policy reasons for which the in-service date provision was put in place. To take the BCOAPO's position to the extreme, if this same TES, having an initial cost of \$20 million and having customers on 50 sites, were to do an extremely minor adjustment intended to increase the capacity of the TES at a cost of \$500, this would also result in a switch from Stream A to Stream B regulation. If the cost and on/multi-site criteria were determined by the Commission to not be applicable to TES's that were in operation at the time the Guidelines were enacted, then there is no public policy reason to make them applicable at some other date after that; and

4. Should the Commission find that section 2.3.5 does apply to TES's with in-service dates before August 28, 2014, the Commission should nonetheless exercise the discretion provided in that section to not require SSL to apply for a CPCN. The lack of complaint or input into this process from the 520 households that are receiving and have received energy service from SSL over its 10 years of operation makes clear that existing regulation by the City of Langford, along with the lighter-handed Stream A regulation by BCUC are appropriate in this case. To impose the stronger-handed Stream B regulation would be to needlessly duplicate layers of regulation thereby increasing costs to SSL and its customers.

All of which is respectfully submitted.

Lisa Parkes

Lisa Parkes
Corporate Counsel – SSL-Sustainable Services Ltd.