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April 12, 2018

FAES 2018/19 RR & CoS TES
DELTA SCHOOL DISTRICT EXHIBIT A-3

Via eFile

Mr. Doug Slater
General Manager
FortisBC Alternative Energy Services Inc.
10th Floor, 1111 West Georgia Street
Vancouver, BC V6E 4M3
FAES.Regulatory.Affairs@fortisbc.com

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 Number 1598949 – Regulatory Timetable and Reasons for Decision

Dear Mr. Slater:

Further to your February 8, 2018 filing of the above noted application, enclosed please find Commission Order G-77-18 establishing a regulatory timetable.

Sincerely,

Original signed by:

Patrick Wruck
Commission Secretary

/yl
Enclosure

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ORDER NUMBER
G-77-18

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

and

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

BEFORE:
W. M. Everett, QC, Panel Chair/Commissioner
A. K. Fung, QC, Commissioner
M. Kresivo, QC, Commissioner

on April 12, 2018

ORDER

WHEREAS:

A. On February 8, 2018, pursuant to sections 59-61 of the *Utilities Commission Act* (UCA), FortisBC Alternative Energy Services Inc. (FAES) applied to the British Columbia Utilities Commission (BCUC) for approval of its revenue requirements and rates for the thermal energy service to Delta School District No. 37 (DSD) based on a proposed switch from the current market rate to the cost of service (COS) rate of $0.223 per kilowatt-hour (kWh) effective July 1, 2018, for the fiscal and contract year from July 1, 2018 to June 30, 2019 (Application);

B. In the Application, FAES also requests pursuant to section 89 of the UCA that if the BCUC is unable to render its decision on the Application before July 1, 2018, the BCUC approve the COS rate of $0.223 per kWh on an interim and refundable basis effective July 1, 2018;

C. By Order G-56-18 dated March 8, 2018, the BCUC established an initial regulatory timetable which included a procedural conference to be held on April 5, 2018. Parties attending the procedural conference were requested to address issues related to the appropriate level of intervention in the proceeding, the appropriate regulatory process, and whether the BCUC should approve interim rates at FAES' proposed COS rate effective July 1, 2018; and

D. The Panel has reviewed the Application and considered the submissions made by FAES and DSD at the April 5, 2018 procedural conference and makes the following determinations.

NOW THEREFORE pursuant to sections 59-61 and 89 of the UCA, for the reasons attached as Appendix B to this order, the British Columbia Utilities Commission orders as follows:

1. A regulatory timetable for the review of the Application is established, as set out in Appendix A to this order.

2. Interveners are to register with the BCUC by completing a Request to Intervene form, available on the BCUC's website, by the date established in the regulatory timetable attached as Appendix A to this order, and in accordance with the BCUC's Rules of Practice and Procedure attached to Order G-1-16.

3. The existing market rate mechanism and resulting market rate is approved on an interim and refundable basis, effective July 1, 2018. Any variance between the interim and the permanent rate as determined by the BCUC following final disposition of the Application is subject to refund/recovery, with interest at the average prime rate of FAES' principal bank for its most recent year.

4. FAES is directed to file interim tariff pages with the BCUC within 30 days of the date of this order, for endorsement with the BCUC, reflecting the interim nature of the market rate.

DATED at the City of Vancouver, in the Province of British Columbia, this 12th day of April 2018.

BY ORDER

Original signed by:

W. M. Everett, QC
Commissioner

Attachments

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

REGULATORY TIMETABLE

Action	Date (2018)
Intervener Registration	Wednesday, April 25
BCUC and Intervener Information Request (IR) No. 1 to FortisBC Alternative Energy Services Inc. (FAES)	Wednesday, May 9
FAES Response to BCUC and Intervener IR No. 1	Friday, June 1
Filing of Delta School District No. 37 (DSD) Evidence	Friday, June 22
BCUC IR No. 1 on DSD Evidence	Friday, July 13
FAES IR No. 1 on DSD Evidence	Friday, July 20
DSD Response to BCUC and FAES IR No. 1 on DSD Evidence	Monday, August 13
Filing of FAES Rebuttal Evidence (if applicable)	Monday, August 27
BCUC and DSD IR No. 1 on FAES Rebuttal Evidence (if applicable)	Tuesday, September 11
FAES Response to BCUC and DSD IR No. 1 on FAES Rebuttal Evidence (if applicable)	Tuesday, September 25
Further process	To be determined

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

REASONS FOR DECISION

1.0 Background

On February 8, 2018, pursuant to sections 59-61 of the *Utilities Commission Act* (UCA), FortisBC Alternative Energy Services Inc. (FAES) applied to the British Columbia Utilities Commission (BCUC) for approval of its revenue requirements and rates for the thermal energy service to Delta School District No. 37 (DSD) based on a proposed switch from the current market rate to the cost of service (COS) rate of $0.223 per kilowatt-hour (kWh) effective July 1, 2018, for the fiscal and contract year from July 1, 2018 to June 30, 2019 (Application). In the Application, FAES also requests pursuant to section 89 of the UCA that if the Panel is unable to render its decision on the Application before July 1, 2018, the Panel approve the COS rate of $0.223 per kWh on an interim and refundable basis effective July 1, 2018.

In 2011, FAES and DSD negotiated a series of contracts supporting the provision of thermal energy services for an initial term of 20 years. These contracts included an Energy System Service Agreement (ESSA) for each site and an overall Rate Development Agreement (RDA) that pools the costs of providing service to each ESSA into a single COS rate.[1] By Orders G-31-12 and C-3-12, the BCUC approved the provision of thermal energy service to DSD and granted a Certificate of Public Convenience and Necessity (CPCN).

By Orders G-71-12 and G-81-12, the BCUC approved the rate design and rate, including the Market Rate mechanism and the COS rate for 2012/2013. The RDA defines the annual cost of service and the Market Rate. DSD has been charged the Market Rate since the inception of service from FAES. Annual variances between the revenue received by FAES from the Market Rate and the actual cost of service are captured in the District Deferral Account (DDA). FAES states that as of June 30, 2018, the expected balance of the DDA is $3,845,000.[2]

Pursuant to the regulatory timetable established by Order G-56-18, a procedural conference was held on April 5, 2018 to address various issues, including the appropriate level of intervention in the proceeding, whether Participant Funding should be made available to all interveners, the appropriate regulatory process, the nature of evidence intended to be filed by DSD or other parties, and whether the BCUC should approve interim rates at FAES' proposed COS rate if a decision on the Application is not issued by July 1, 2018.

FAES and DSD were the only parties who attended and made submissions at the procedural conference.

Section 2.0 of these reasons for decision outlines the issues raised by FAES and DSD at the procedural conference. This is followed by the Panel's determinations on the regulatory process, the level of intervention, and interim rates in Section 3.0.

[1] Exhibit B-1, p. 7.
[2] Exhibit B-1, p. 17.

2.0 Procedural conference issues

2.1 Intervention and Participant Funding

In Appendix B to Order G-56-18, parties were requested by the Panel to address the following items related to intervention and Participant Funding:

> Whether other parties beyond FAES and DSD should participate in the proceeding, which other parties should be permitted, and why. If other parties are permitted to participate, should there be limitations on the level of participation? For instance, should all parties have the opportunity to intervene and fully participate in the proceeding or would it be more appropriate to limit some parties' participation to letters of comment and/or interested party status?
>
> If other parties beyond FAES and DSD are permitted to intervene in the proceeding, should Participant Funding be made available to those parties and why.
>
> For parties other than FAES and DSD, please indicate whether you would participate if Participant Funding was not made available to you. If you would not participate on that basis, please explain why not.

FAES submission

With regard to intervention, FAES states that it does not object to other parties providing comments as interested parties but that the BCUC should take a "cautious approach" to permitting active intervention. FAES submits that the "mere fact that a party was interested or was intervening in the past really shouldn't mean that it makes sense for it to have ongoing involvement" and any party wishing to intervene "should have to demonstrate an ongoing material interest in the outcome of the application." FAES further submits that because it and DSD are the only parties to the service agreement (i.e. the RDA and ESSA), they are the only parties with a direct interest in the outcome of the proceeding.[3]

Regarding Participant Funding, FAES points to the importance of an efficient process in order to minimize the amount of regulatory costs, stating that these costs will flow into the DDA, the balance of which is growing, and will have to be recovered at some point.[4]

DSD submission

Regarding intervention, DSD submits that a "broad approach, a liberal approach, should be adopted by the Commission because there are broader policy issues that are engaged by this proceeding." DSD provides three reasons for why a broad approach is appropriate:

- The contract between the parties was made possible by a significant contribution of public money in the form of a grant by one or more provincial Ministries.
- DSD operates according to a co-funding model in partnership with the Ministry of Education.

[3] T1: pp. 6-7.
[4] Ibid. p. 9.

- In the event the Application is approved, the impact on DSD's financial position is going to be very significant, as school boards are legislatively prohibited from running deficits year to year. Thus, the estimated $1 million in additional annual costs that will result from a switch to the COS rate would have to come out of the program budget by which the District operates its schools.[5]

FAES reply submission

With respect to DSD's submissions as to why the proceeding engages broader policy issues, FAES responds as follows:

- The fact that a commercial party (i.e. DSD) is a government body in respect of which public policy issues arise in the context of regulation does not mean that it requires different treatment beyond what would typically be applied in a regulatory proceeding.
- The "co-funding" described by DSD was a contribution made through green initiative-type funding, which FAES believes was through the Public Sector Energy Conservation Agreement (PSECA), and the funding was included as a reduction to the initial capital cost of the project. This money has been spent, as the project is built, and there is no suggestion that the money is not being accounted for when the cost of service is being calculated. Thus, in FAES' submission, the issue of co-funding is moot from the perspective of determining the nature of the proceeding or the appropriate level of intervention.
- The financial impact referenced by DSD is significant not only for DSD but for FAES as well. Further, in FAES' view, DSD has been budgeting without regard to the terms of the contract, which is part of the issue.[6]

2.2 Regulatory process and intervener evidence

In Appendix B to Order G-56-18, parties were requested by the Panel to comment on the appropriate regulatory process. DSD and other potential interveners were also asked to indicate whether they intend to file intervener evidence, and if so, to describe the nature of the evidence and the timing of when the evidence would be ready for filing.

FAES submission

FAES submits that the Application can be addressed appropriately through a written hearing process and using the procedural steps outlined on page 3 of the Application, which includes DSD filing evidence, one round of written information requests (IRs), rebuttal evidence, and written arguments. FAES considers a written process appropriate for the following reasons:

- All prior proceedings related to DSD and FAES' contractual arrangement, including the CPCN proceeding when broader policy considerations were at issue, were conducted in writing.
- This proceeding at its core involves the interpretation of a written agreement between sophisticated parties that were represented by legal counsel.
- A written process is most efficient, which is an important consideration given the rising balance in the DDA. FAES points out that even a Streamlined Review Process (SRP) has material costs associated with it in terms of the hearing room and in terms of the parties' involvement and preparation.[7]

[5] T1: pp. 26-27.
[6] T1: pp. 38-40.
[7] T1: pp. 10-12.

In response to the potential option of a Negotiated Settlement Process (NSP) outlined in Appendix B to Order G-56-18, FAES states that it has always been open to a negotiated solution, noting that the parties have conducted negotiations in the past without prejudice. However, FAES submits that "it can be safely stated that the negotiations haven't resulted in an agreement at this point, and they have been going on for quite some time." Further, FAES submits that "there does come a point in any negotiation where it just simply takes a decision to break an impasse, and FAES believes that we are at that point and that further negotiations in a negotiated settlement process will add to the cost, and that really it simply makes sense to move forward at this point and have the matter resolved."[8]

FAES addresses DSD's initial submissions (which are included as Appendix C to the Application) regarding DSD's preference for an oral hearing, as follows:

- With regard to DSD's statements that the proceeding turns on credibility, FAES submits that this position is symptomatic of DSD's desire to look beyond the terms of the commercial agreement between the parties. FAES submits that the written agreement that DSD signed is unequivocal and constitutes the entire agreement between the parties, and relies on Clause 11.8 of the agreement, the Entire Agreement clause.
- With regard to DSD's statements that witnesses are necessary to address prior submissions that FAES made to the BCUC concerning allocation of risk, the agreement, and liability for the deferral account, FAES disputes the necessity of witnesses and relies upon the Entire Agreement clause. To the extent that DSD is referring to things that occurred in prior BCUC proceedings, following the negotiation of the initial agreement, FAES submits that if the evidence in those proceedings could be submitted in writing, there is no reason why evidence in this proceeding could not be submitted in writing as well.[9]

DSD submission

DSD submits that a "mixed process", which would include multiple rounds of written IRs and evidence followed by oral cross examination, is appropriate, as in its view the relief sought in the Application "engages fundamental issues going to the factual matrix upon which the contract was entered into, as well as collateral representations made, DSD alleges, by FAES to DSD during the course of this agreement."[10]

DSD states that it would like the opportunity to test any evidence adduced by FAES in support of the Application and it would like the opportunity to adduce any of its own evidence that it feels is germane to the proceeding, in the form of both lay and possibly expert evidence.[11]

With regard to lay evidence, DSD states that there are timing issues related to the fact that its two main witnesses, Joe Strain, the former secretary-treasurer of the District, and Frank Guyer, who was largely responsible for negotiating the contract, left the District around the time the Application was filed. In particular, Mr. Strain is out of the country until the end of May, so DSD will not be able to obtain his evidence prior to that time period.[12]

[8] T1: p. 14.
[9] T1: pp. 12-14.
[10] T1: pp. 27-28.
[11] T1: p. 28.
[12] Ibid.

With regard to expert evidence, DSD states the following:

> …it may be necessary for it [DSD] to adduce expert evidence and possibly rebuttal expert evidence in the event that Fortis seeks to adduce any expert evidence of its own. That expert evidence obviously is going to be informed by whatever lay evidence is adduced in this proceeding. I would ask that the panel note that in any procedural order that is subsequently issued.[13]

DSD explains that the expert evidence would include examination of the DDA balance and would address issues of rate design, energy forecasting, and accounting issues pertaining to how the amounts contained in the DDA were arrived at and how the amounts should be calculated on a go-forward basis.[14]

DSD states that it is open to an NSP but does not have any instructions on how the NSP might be structured.[15]

In response to FAES' statements regarding the importance of a cost-effective proceeding, DSD requests that the Panel bear in mind the impact of its decision on DSD's budget for the next 15 years and that the significance of this impact is "worthy of a full hearing, and as much procedural safeguards and opportunities as the Commission can afford."[16]

FAES reply submission

With respect to the expert evidence DSD describes, including rate design, accounting issues and how the DDA balance should be calculated, FAES submits that given such issues are determined by the contract, there is not going to be a useful purpose for expert evidence on these topics. While FAES does not object to such evidence being filed, it states that the evidence "certainly doesn't take on the import that my friend is suggesting would cause us to need to have an oral hearing to deal with experts." Further, FAES states "the factual evidence about the costs is straightforward and the Commission has been amply situated to determine the cost of service in the past years, and has been able to apply the rate design as set out in the contract, and this should be no different."[17]

In response to DSD's submissions on the necessity of an oral hearing, FAES submits the following:

> …the real issue and the theme that's been picked up through my friend's submission, is that they [DSD] want a different agreement, and in my submission, this process is not the place to be arguing for a different agreement, it's the place to enforce the agreement that the parties knew they had from the get-go. And the appropriate process to do that is a written process based on the terms of the agreement that we have in writing before us, as was done in the past.[18]

2.3 Interim rates

FAES submission

FAES submits that there is a very high likelihood that the Panel's decision on the Application will be rendered after July 1, 2018, which is the commencement of the next contract year from a rate-setting perspective; thus, the setting of interim rates is appropriate and the rate should be set at the proposed COS rate. FAES states that

[13] T1: p. 29.
[14] T1: p. 33.
[15] T1: pp. 35-36.
[16] T1: p. 35.
[17] T1: p. 44.
[18] T1: p. 45.

the approach of granting interim rates as applied for on a refundable basis is a common approach. Additionally, FAES submits the evidence on the record shows that the current rates are not even covering the ongoing variable costs of operating the utility, let alone the amortization. The net result is that if the current market rate continues to be charged, there will be a continued accumulation in the DDA over the period in which interim rates are in effect. FAES submits that the central concern in the Application is the growing balance in the DDA and how to deal with it and that the Panel should therefore be establishing interim rates that will "serve the long-term interests of making sure that we manage the balance in that account."[19]

DSD submission

DSD submits that any interim rate that is established should be based on the market rate, not the COS rate, and points to its previous submissions related to the significant financial impact the COS rate would have on DSD's program budget.[20]

3.0 Panel determination

Based on the submissions made at the procedural conference regarding the appropriate regulatory process, the Panel notes that both FAES and DSD agree on the inclusion of certain processes in the regulatory timetable, including written IRs and the filing of evidence by DSD. However, there is disagreement as to the number of rounds of IRs required, the necessity of certain evidence, particularly with regard to the expert evidence described by DSD, and the necessity of an oral hearing. Further, the parties disagree on the appropriateness of parties beyond DSD intervening in the proceeding.

In consideration of the above, **the Panel establishes a regulatory timetable for the review of the Application, as outlined in Appendix A**, which provides for one round of written IRs on the Application, the filing of intervener evidence, one round of written IRs on the intervener evidence, the filing of rebuttal evidence by FAES, and one round of IRs on FAES' rebuttal evidence. At the conclusion of these processes, the Panel will seek submissions on the remainder of the regulatory timetable, including whether additional written evidence or IRs are required and whether an oral hearing is appropriate. In establishing the dates in the regulatory timetable, the Panel has taken into account FAES' periods of unavailability as well as the fact that one of DSD's witnesses who is expected to provide lay evidence is out of the country until the end of May.

The Panel acknowledges DSD's requests to file both lay and expert evidence, as well as its statements that the expert evidence would be informed by the lay evidence. However, the Panel is not convinced that it is necessary for the lay and expert evidence filings to be staggered. DSD describes the lay evidence as being related to statements from two key individuals, Mr. Strain and Mr. Guyer, while the expert evidence is described as being related to the rate design, forecasting and accounting of existing and future balances in the DDA. These types of evidence are very different and should be provided from different sources, as based on DSD's description of Mr. Strain and Mr. Guyer, it does not appear that either individual would be appropriately situated to provide expert evidence on the DDA balance, technical rate design, or accounting matters. The Panel expects that the round of IRs submitted by the BCUC and DSD on the Application will provide the opportunity to investigate issues related to the proposed COS rate, rate design, and the DDA balance and thus expects that DSD will take the evidence gathered through IRs on these topic matters into consideration when determining if expert evidence is required.

[19] T1: pp. 17-18.
[20] T1: p. 36.

The Panel makes no determinations on the appropriate level of intervention at this time and will accordingly assess any request to intervene at the time of receipt, in accordance with the BCUC Rules of Practice and Procedure attached to Order G-1-16. The Panel also notes that as with all BCUC proceedings, Participant Funding is not guaranteed upon acceptance as an intervener, as the merits of each request for Participant Funding are assessed at the conclusion of the proceeding in accordance with the Participant Assistance/Cost Award Guidelines attached to Order G-97-17.

Based on the regulatory timetable attached as Appendix A to the order accompanying these reasons for decision, it is evident that the proceeding will not conclude by July 1, 2018. As such, the establishment of interim rates effective July 1, 2018 is appropriate. The Panel is cognizant of the financial impact that a change from the market rate to the applied for COS rate will have on DSD and the unique budgeting constraints faced by DSD. In light of these unique circumstances and the likelihood that DSD has already set its budget for the upcoming fiscal year, the Panel considers it appropriate to maintain the existing market rate mechanism and resulting market rate on an interim and refundable basis. The Panel also notes that FAES can be kept whole under the market rate as the difference between the COS rate and the market rate will continue to be recorded in the DDA.

Accordingly, the Panel approves the existing market rate mechanism and resulting market rate on an interim and refundable basis, effective July 1, 2018. Any variance between the interim and the permanent rate as determined by the BCUC following final disposition of the Application is subject to refund/recovery, with interest at the average prime rate of FAES' principal bank for its most recent year. FAES is directed to file interim tariff pages with the BCUC within 30 days of the date of these reasons for decision, for endorsement with the BCUC, reflecting the interim nature of the market rate.

The Panel emphasizes that its approval of the market rate on an interim basis is in no way determinative of its final rulings on the Application and that any difference between the interim market rate and the permanent rate established in the Panel's decision on the Application will be subject to refund or recovery by FAES to/from DSD. Further, the Panel cautions DSD that in the event that the COS rate, or some other rate that is higher than the market rate, is approved at the conclusion of the proceeding, the impact of maintaining the existing market rate mechanism on an interim basis will be a further increase to the balance in the DDA, which will result in future increased rates for DSD.