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November 13, 2018

British Columbia Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC
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Attention: Mr. Patrick Wruck, Commission Secretary and Manager, Regulatory Support

Dear Mr. Wruck:

Re: FortisBC Alternative Energy Services Inc. (FAES)

Project No. 1598949

**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 (DSD) (the Application)**

FAES Submission on Further Process

FAES writes in response to the British Columbia Utilities Commission (BCUC) request for submissions on further process (Exhibit A-8).

Specifically, the BCUC requested submissions on the remainder of the regulatory process, including the following:

- Whether there is a need for additional IRs on the evidence already presented on the record;
- Whether an oral hearing is necessary and why. Parties that specify a need for an oral hearing must indicate what topic(s) should be included in the oral hearing and which witnesses would be providing testimony, and hence be available for cross examination; and
- Whether the argument phase should be in written or oral form.

FAES provides the following submissions on further process and the topics the BCUC requested.

Need for Additional IRs:

FAES submits that the evidentiary record in this proceeding has been fulsome and is sufficient for the Panel to make a determination on the Application. The evidentiary record has been comprehensive with three rounds of information requests; one on the Application, one on the DSD's Evidence, and a further round on FAES's Rebuttal Evidence. FAES submits that the evidence on the record thoroughly explores the topics and issues and has allowed the parties to articulate and explain their respective positions. As such, FAES does not see a need for a further round of information requests and believes the regulatory review process should now proceed to the written argument phase.

Need for Oral Hearing:

FAES submits that an oral hearing in this Application is not required.

As discussed at the Procedural Conference, to date, all DSD proceedings, including the Certificate of Convenience and Necessity application were conducted through written hearing processes.¹ This is typical in the case of small utilities. It particularly stands to reason when sophisticated parties have negotiated a rate design agreement and the costs of proceedings are included in the cost of service.

There are two central issues which the BCUC must decide in this Application, neither of which warrant an oral hearing. The two issues are:

- setting the Cost of Service (COS) rate for the 2018/19 fiscal year; and
- deciding when the appropriate time is for the DSD to switch from the Market Rate to the COS Rate.

The matter of determining the COS Rate is technical in nature and has been thoroughly reviewed through the written process already in evidence in this proceeding. The BCUC has undertaken previous reviews of the cost of service in writing, as part of the revenue requirements process.

Likewise, the matter of determining the appropriate time for the DSD to switch to the COS Rate has been canvassed in the written process already in evidence in this proceeding and is most appropriately now a matter for argument. This issue, at its core, involves applying a written rate agreement negotiated between sophisticated parties and approved by the BCUC. That agreement:

- explicitly permits FAES to apply to the BCUC to request to switch to the COS Rate;
- by virtue of being a BCUC-approved "rate", sets out the only lawful terms and conditions of service that FAES can charge; and
- includes an Entire Agreement clause that, like the *Utilities Commission Act* (UCA) requirement for utilities to follow approved rates, precludes implied terms and collateral terms or representations.

¹ Transcript Vol 1, pp. 10-11.

There is ample evidence on the record at this point – in the Application, IR responses, intervener evidence, intervener IR responses, rebuttal evidence, and FAES responses to IRs on Rebuttal Evidence – for the BCUC to make a decision on whether changing to the COS Rate now is just and reasonable. The BCUC has before it, for example, the financial information that explains:

- the extent to which the DSD has thus far paid less than it had originally anticipated (\$4.284 million);²
- how the DSD’s thermal energy costs will compare to the DSD’s Business As Usual (i.e., pre-Project) thermal energy costs (despite significant amounts being deferred from prior years, they are still favourable);³ and
- the extent to which the DSD and FAES will be better off switching now than delaying the switch by 3, 5 or even 10 years.⁴

Even if (despite the statutory and contractual provisions cited above) the BCUC were to consider all of the background or contextual evidence filed by the DSD, it is worth pointing out that the DSD’s evidence on what was communicated by FAES is based almost entirely on written correspondence that speaks for itself.

As such, an oral hearing would only serve to add costs and lengthen an already lengthy process. Even Streamlined Review Processes and oral hearings confined to particular issues involve significant costs. FAES believes the evidentiary record should be closed and the proceeding move to written final arguments.

Argument Phase:

A written argument phase is most appropriate.

FAES’s argument is based, broadly speaking, on the requirements of the UCA for terms and conditions of service to be approved, the terms of the Agreement, and evidence of the costs of service. However, the DSD’s case is anything but conventional. It appears to be raising a myriad of arguments predicated on legal theories that do not normally arise in regulatory proceedings. It has filed a significant amount of email correspondence, and the correspondence has been characterized by its witness (Mr. Geyer) in a manner with which FAES disagrees. FAES anticipates having to file detailed written submissions to articulate its position. It would be difficult and time consuming (costly) for FAES to address such a wide variety of evidentiary and legal issues without the benefit of also filing written submissions.

If the Panel desires it, FAES would make legal counsel available to address, in person, any follow-up questions that the Panel has after the exchange of written arguments.

FAES proposes that FAES’s written final argument be filed two weeks after the issuance of a BCUC procedural order, followed by written intervener final arguments two weeks later

² Exhibit B-1-1 page 14, line 6.

³ Exhibit B-7, Rebuttal Evidence, page 41, lines 13-15 and page 42, Figure 3.

⁴ Exhibit B-8, Response to DSD IR 1.12.2 on Rebuttal Evidence.

(excluding the week over the Christmas holiday season), and then FAES files written reply argument two weeks after that. FAES proposes the following schedule for the written arguments phase.

Action	Date
BCUC issues procedural order	By Friday, December 7, 2018
FAES Written Final Argument	Friday, December 21, 2018
DSD Written Final Argument	Friday, January 11, 2019
FAES Written Reply Argument	Friday, January 25, 2019

In summary, FAES submits that the evidentiary record is sufficient and should now be closed with the proceeding moving to written final arguments based upon the proposed timetable above or one similarly paced.

If you require further information or have any questions regarding this submission, please contact Grant Bierlmeier at (604) 443-6548.

Sincerely,

FORTISBC ALTERNATIVE ENERGY SERVICES INC.

Original signed:

Doug Slater
General Manager

cc (email only): Registered Parties