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November 23, 2018
File No.: 292470.00030/14797

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Via Email

British Columbia Utilities Commission
Sixth Floor, 900 Howe Street
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Attention: Mr. Patrick Wruck, Commission Secretary

Dear Sirs/Mesdames:

Re: FortisBC Alternative Energy Services Inc. (“FAES”) 2018/2019 Revenue Requirements and Cost of Service Rates Application for the Thermal Energy Service to Delta School District No. 37 - Project No. 1598949 (the “Application”)

We write to provide FortisBC Alternative Energy Services Inc.’s (“FAES”) reply to the Delta School District (“DSD”) on the remaining procedural steps for this proceeding, pursuant to the BCUC’s request in Exhibit A-8.

The DSD’s argument in favour of further process - the purported need for additional responses to IRs, followed by further IRs and more expert evidence - does not withstand scrutiny.

Initial Comments on the DSD’s Push for More Process

In evaluating the DSD’s push for still more evidence and process (more documents, more IRs, further expert evidence etc.) on top of an already robust evidentiary record, the BCUC should be cognizant that delay is an end unto itself for the DSD. The DSD had indicated at the procedural conference that it had budgeted this year (July 2018 to June 2019) based on paying a Market Rate that doesn’t even cover the ongoing costs of providing service (let alone recovering any of the millions of dollars in costs it has deferred for the past five years).¹ At the same time, delay is detrimental to FAES. Remaining on interim rates for a prolonged period of time brings business uncertainty for FAES, as does the unresolved issue of the growing balance in the District

¹ Transcript Volume 1, page 27, “Thirdly, I would say that -- and this is a fact which should inform and which colours this entire proceeding, it seems to me -- should FAES be granted the relief that it’s seeking, the impact on my client’s financial position is going to be very significant. As you may be -- as the panel may be aware, school boards are legislatively prohibited from running deficits year to year. So the estimated \$1 million in additional costs that will result from a switch to the cost of service rate at this time is going to have to come out of the program budget by which the district operates its schools.”

Deferral Account (“DDA”) that FAES must continue to finance. FAES submits that the process to date has been more than adequate, and there is ample evidence on the record for the BCUC to determine the issues. The DSD’s budgeting issues should be considered in the BCUC’s final order as appropriate, not by way of drawing the process out unnecessarily to the detriment of FAES. Closing the evidentiary record at this time will allow the BCUC to meet its mandate to “facilitate the just and timely resolution of the matters before it”.²

DSD IR 2.3.3

FAES responded to this IR in full.

The context for this IR was as follows: FAES had pointed out in its Rebuttal Evidence that the analysis conducted by Mr. Cleveland had used the incorrect data because he hadn’t accounted for a negotiated change in the scope of the project that post-dated the CPCN Application.³ The DSD then asked FEI to complete a table by providing for each DSD site the “output capacity”:

(a) to be installed and operated by FAES and included in FAES' cost of service as of the CPCN Application filing, and

(b) as of the July 2013 change in configuration described in Appendix "B".

FAES did answer this question. The “output capacity” of equipment is synonymous with the nameplate capacity, which is what FAES provided for the current configuration of the system. FAES indicated that similar information “did not exist for the original configuration in the CPCN filing”, since the design at that time was preliminary only. FAES’ response quoted evidence from the CPCN Application to back that up.⁴

DSD IR 2.6.3, 2.6.3.1, 2.6.3.3 and 2.6.3.3.1

FAES responded to these questions in full. The DSD’s complaint is, in reality, that it does not like the answer.

² *Administrative Tribunals Act*, s.11. “11(1) Subject to an enactment applicable to the tribunal, the tribunal has the power to control its own processes and may make rules respecting practice and procedure to facilitate the just and timely resolution of the matters before it.”

³ This shouldn’t have come as a surprise. Mr. Cleveland noted on page 9 of his evidence in Exhibit C1-6 that the project now includes two additional sites. Along with Mr. Cleveland’s evidence filed in Exhibit C1-6, on page 349 of Mr. Geyer’s evidence, the DSD filed a copy of the FAES IRs from the 2015/16 revenue requirement proceeding that provided a comparison of the expected equipment by site and the actual equipment by site. Mr. Geyer also included on page 311 of his evidence in Exhibit C1-6 an email that made reference to this renegotiation.

⁴ For context, the CPCN design was based on AACE Class 3 cost estimate (-20% / +30%) as required by CPCN Guidelines. FAES provided a description of the level of detail included in the CPCN in its response to DSD IR 1.5.1 in this proceeding, where it included the actual AACE Class 3 characteristics that described the “maturity level of project deliverables” as 10% to 40% complete. As such, in response to the DSD’s IR, FAES provided what it has and reiterated that the CPCN stated on page 29 that “the final analysis of technology alternatives will follow CPCN approval with site specific surveys, detailed design, installation, testing and commissioning.”

All of these IRs relate to one issue: the DSD's request for calculations of a Coefficient of Performance. The DSD argues that it "understands" that most of the information required to respond to these information requests "should either be possessed by FAES or readily extractable from the record of the Application proceedings or related proceedings". The DSD's understanding is wrong, as FAES' responses make clear.

FAES answered these IRs by explaining why it could not perform that calculation. The essence of the response was as follows:

The question asks FAES to provide the thermal energy delivered by its heat pumps or estimate the thermal energy from the heat pumps by solving the above equation using estimated COPs. However, FAES does not individually measure thermal output nor input energy for its equipment. Thermal energy, electricity, and natural gas consumption is measured at the school level only.

Moreover, FAES has not performed any analysis of energy consumption and output for individual equipment. Not only would that analysis require detailed measurement and an allocation of energy consumed by non-thermal devices such as pumps, controls, and fans, but it would provide no operational benefit as the DSD is receiving a service. [Emphasis in original.]

Although the DSD now says it "understands" that the information is readily available to FAES, the DSD's understanding is inconsistent with Mr. Cleveland's concession that "the thermal energy produced by the heat pump-based sources is not directly metered."⁵ As per FAES' response to DSD IR 2.3.3, the CPCN proceeding had not addressed Coefficients of Performance either.

It should be noted that these questions and others cited by the DSD were, in essence, asking FAES to perform the same analysis that Mr. Cleveland had tried to perform in the absence of metered data by individual piece of equipment.⁶ FAES had already stated in its Rebuttal Evidence that the analysis Mr. Cleveland was trying to do could not be performed reliably because of the lack of data by component and the extent of the assumptions that would have to go into such an analysis.⁷ The DSD, in effect, wants FAES to perform an analysis that is inconsistent with the fact that the parties negotiated a single service that applied across all schools.⁸ The thermal energy service concept was premised on individual components having different costs, efficiencies and emissions; the DSD would, however, pay one price.

⁵ Exhibit C1-6, Evidence of Will Cleveland, page 17.

⁶ Mr. Cleveland had been asked to opine as follows: "Question 3: Please compare the original projected cost of energy from heat pump-based sources included in the Project against the actual cost of energy from heat pump-based sources included in the Project."

⁷ Exhibit B-7, pp 27-28.

⁸ Exhibit B-9, response to DSD IR 2.5.1.

DSD IR 2.7.1, 2.8.2, 2.8.3, 2.9.2, 2.11.1 and 2.11.2

The context for these IRs is that MCW Consultants Ltd. (“MCW”), the consultant on which the DSD relies, had opined that it is industry practice to perform detailed energy studies when designing a system. FAES simply pointed out in its Rebuttal Evidence that Johnson Controls (“JCCLP”), the contractor who designed and built the systems, had performed energy studies.⁹ The DSD now wants every study from every school, in order to vet the inputs and model design. FAES submits that this is an unreasonable request for several reasons.

First, this is a rate hearing, with the purpose being to set just and reasonable rates. It is not a construction claim, but is being approached as such by the DSD in this proceeding including with respect to these document requests. In a cost of service rate hearing, prudent conduct on the part of the utility must lead to recovery of costs in rates. The BCUC has long applied a presumption of prudence in the absence of some reason to reverse the onus and the utility’s actions are assessed without the benefit of hindsight. The prudence of FAES’ actions in this case is rooted in hiring an experienced contractor (JCCLP) to do modelling and design the systems based on that modelling. The DSD had been fully aware that FAES was retaining JCCLP for its expertise. Second guessing JCCLP’s choice of study inputs and the design of models that FAES neither designed nor (to the best of FAES’ knowledge) received at the time does not speak to the prudence of FAES’ conduct one way or the other.

Second, the DSD is pushing for significantly more process in the absence of any of the hallmarks one would expect to see on a mismanaged project, suggesting that the DSD’s requests really are in the nature of a “fishing expedition”. The cost of service reflected in the thermal energy service rate, excluding the District Deferral Account (“DDA”) amortization that results from the DSD paying well below cost for five years, is **below** both (a) the cost that the parties had anticipated in 2012; and (b) the DSD’s Business As Usual (i.e, pre-FAES) total cost of thermal energy.¹⁰ And, although the DSD had contracted for a thermal energy service (not a project),¹¹ the project was built within the applicable AACE estimate range.¹² In other words, the DSD wants to explore in greater detail whether there was a flaw in the design even though all of the assets are in use delivering the service, and FAES’ service is beating all cost expectations.

Third, DSD IRs 2.8.2 and 2.8.3 ask for energy modeling that will support the “stated energy savings” at lower water temperatures. The contracts between FAES and the DSD do not include a requirement to meet any “stated energy savings”. The BCUC noted that fact in its CPCN Decision at page 32:

⁹ Exhibit B-7, Rebuttal Evidence, p.29.

¹⁰ Please refer to the responses to DSD IRs 1.12.1 and 1.12.2 on Rebuttal Evidence.

¹¹ Exhibit C1-6, Evidence of Frank Geyer, page 191 DSD response to BCUC IR 1.1.5. “DSD would like to clarify that, from its point of view, the Application pertains to the on-going service of delivering thermal energy to schools, and not merely a specific “project””.

¹² DSD IR 1.5.1.

“While JCLP is contractually required to meet the technical, performance and cost requirements as detailed in the Design Build Agreement, the Commission is not aware of specific clauses in the Service Agreements and RDA between the SD and FEI that set out the anticipated energy savings and GHG reductions. To the extent re-scoping of the geo-thermal systems occurs, the energy savings and GHG emissions reductions may be adversely impacted.”

Fourth, despite the previous points, FAES obtained from JCCLP the model for the Nielson Grove school and obtained permission to file it on a confidential basis (JCCLP’s models are proprietary). The DSD has not identified in its letter any specific failings of the Nelson Grove model.

Fifth, the DSD had only asked MCW to opine on three systems (Delview Secondary, Nielsen Grove Elementary and Richardson Elementary), not every school.¹³ The DSD has not offered a compelling reason as to why, after it had only asked MCW to focus on three schools, it is now appropriate to request more documents related to other schools as well.

Sixth, FAES identified in its response that meeting a sweeping request to provide “all documents and information relied upon by JCCLP to resolve the compatibility of systems” will cause FAES to incur real costs, since JCCLP would charge FAES to undertake that work. It should be understood that, if JCCLP is agreeable, this would involve searching files for a project that JCCLP completed over 6 years ago. The DSD then wants to pose questions about the details that one would expect only JCCLP can answer. To the extent this information can be obtained from JCCLP, it can reasonably be expected to result in costs. While the DSD is dismissive of this concern, the BCUC is generally cognizant of the cost of regulatory process. This is particularly true in the case of small utilities. FAES submits that cost is a particularly compelling consideration in the case where the project was completed within the initial estimate and the cost of service is actually lower than had originally been forecasted and lower than the DSD’s pre-FAES Business As Usual.¹⁴

DSD IR 7.2

This is another instance where the IR was answered, but the DSD doesn’t like the response.

The premise of the DSD’s question was that there is a written document from before the CPCN Application was filed that contains an analysis that “demonstrated that utilizing high-cost heat pumps at 11 of the school sites provided DSD with better ‘value for money’ than utilizing lower-cost condensing boilers at these sites.”

¹³ The relevant question posed by counsel to MCW was “Based on your inspection of the Heat Pump Systems located at Delview Secondary, Nielsen Grove Elementary, and Richardson Elementary, and your review of the mechanical drawings for these systems and relevant BCUC filings regarding these systems, please opine on...”. (Exhibit C1-6).

¹⁴ Please refer to Exhibit B-9, FAES responses to DSD IRs 2.12.1 and 2.12.2 on Rebuttal Evidence.

The first problem with the premise of the question, as FAES pointed out, was that FAES hadn't referred to heat pumps being better "value for money" than boilers.

The second problem with the DSD's question (and the main reason why it elicited the response that the DSD doesn't like) is because the DSD is again ignoring

- (a) the fact that the DSD was contracting for a service (not a project), and
- (b) how the parties arrived at a mix of technology to provide that service.

The parties considered the DSD's budget for thermal energy and then crafted a solution together, based on a mix of technologies that worked within the budget while delivering GHG reductions.¹⁵ That is why FAES' response returned to the evidence at the time of the CPCN proceeding to note that project mix was negotiated to balance competing objectives of cost and GHG emissions:

During the CPCN process, FEI had characterized the Project as being the "best fit" because:

the DSD has specific objectives, specifications and constraints that have to be met to make any project viable. The DSD and FEI considered the alternatives available within that framework and arrived at a mutually beneficial solution.

The BCUC noted this approach in its 2012 CPCN Decision on page 29:

"FEI has not provided a financial analysis of any technology configurations other than the final proposed solution. (Exhibit B-10, BCUC 2.36.1) FEI notes that the proposed solution is the "best fit" and was arrived at through consultation with the SD. FEI notes that "the DSD has specific objectives, specifications and constraints that have to be met to make any project viable. The DSD and FEI considered the alternatives available within that framework and arrived at a mutually beneficial solution." (FEI Final Submission, p. 4).

FEI notes the Project is a packaged solution and cannot be disaggregated because the procurement price, the CIAC and rate rider are based on negotiations for the entire project. FEI contends that an all geo-exchange solution would likely be too expensive and an all boiler solution would not reduce emissions enough although no specific target reduction amounts were provided. (Exhibit B-3, BCUC 1.22.2)"

The DSD is essentially asking FAES to justify the use of heat pumps in particular instances on the basis of cost, when the reason heat pumps were used was to reduce GHG emissions that would otherwise be associated with the cheaper boiler technology.

¹⁵ Exhibit B-3, FAES response to DSD IR 1.2.5

DSD IR 10.1

FAES also answered this IR.

The evidence regarding the DSD's maintenance and operating practices, in the form of studies undertaken in 2017, was filed much earlier in the process.¹⁶ The DSD is now asking FAES to provide quantitative evidence, data and assumptions to show the extent to which the DSD's maintenance and operating practices have diminished system efficiency. FEI's response was that it did not rely on a quantitative study, and had no intention of retaining an expert now to perform that calculation. A response saying that FAES did not, and could not, quantify the efficiency loss is a full answer to the IR.

Were FAES to have retained an expert and filed a quantitative study, the BCUC would no doubt be hearing from the DSD that they need an opportunity to provide evidence to refute it. This brings us to the key point - the DSD is, in effect, complaining that FAES has not provided more evidence *in support of FAES' own case*. FAES is prepared to rely on the existing evidence that the DSD's operating practices have departed from standard practice, and is not intending to add to the already considerable costs and time associated with this proceeding to augment the existing evidence on this point. There is no prejudice to the DSD from the fact that FAES isn't making that investment in more evidence - the opposite is true.

The DSD's seemingly perverse demand that FAES bolster the Company's case lends credence to FAES' belief that the DSD sees delay as a benefit in and of itself.

Procedural Timetable

Mr. Rossi notes that counsel, DSD representatives and their experts are unavailable December 17 to January 6. While FAES remains concerned about the length of this process, FAES is agreeable to delaying the affected procedural steps to accommodate the DSD's constraint. FAES' proposed timetable could be shifted as follows:

Action	Date
BCUC issues procedural order	By Friday, December 14, 2018
FAES Written Final Argument	Friday, January 11, 2019
DSD Written Final Argument	Friday, February 1, 2019
FAES Written Reply Argument	Friday, February 23, 2019

¹⁶ Exhibit B-3, FAES Response to DSD IR1.2.7, HVAC Health Report for Delview Secondary School, Main and Auxiliary Gym Cold Reports

Conclusion

FAES respectfully submits that the time has come to bring the evidentiary phase of this proceeding to an end. The evidentiary record is more than sufficient to allow a just and timely resolution of the matters before the BCUC.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

[Original signed by]

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/MG

cc D. Rossi, Borden Ladner Gervais LLP