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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 in response to the letter of Mr. Rossi filed late Friday on behalf of the Delta School District.

The DSD has filed with its written argument two new sur-rebuttal expert reports, dated January 31, 2019 and February 1, 2019. This contradicts BCUC Order G-228-18 dated November 30, 2018. The approach the DSD has taken to have new expert evidence introduced - waiting for 10 weeks until after FAES has filed its final submission - is procedurally unfair and prejudicial to FAES. The BCUC should reject the DSD’s new evidence, and take the necessary steps to prevent further prejudice to FAES.

The BCUC Order Was Considered and Unequivocal

In Order G-228-18, issued 10 weeks ago, the BCUC explicitly (a) determined that further information on the very matters that the DSD is now attempting to file new evidence was unnecessary, (b) closed the evidentiary record, and (c) established a timeline for the exchange of written arguments. The BCUC directed as follows:

The Panel considers the evidence gathered on the Application through the three rounds of IRs, DSD evidence and FAES rebuttal evidence to be sufficient. The Panel also notes that neither party indicated that an oral hearing is necessary. Accordingly, the Panel directs that the **evidentiary record be closed** and that the hearing proceed to written arguments in accordance with the regulatory timetable attached as Appendix A.

In making this order, the BCUC had considered the DSD's arguments that further evidence was required on the design of the system. Indeed, the DSD's argument had been:

SD requires full and adequate responses to each of its Information Requests so that it can provide complete and accurate evidence to the BCUC in the Application proceedings in support of the relief it seeks.

...

DSD submits that once FAES has provided full and adequate responses to DSD's outstanding Information Requests, and DSD has had a reasonable opportunity to review the responses provided, the parties should be afforded the opportunity to provide further submissions to the BCUC regarding the further regulatory process to be followed. To this end, DSD notes that, following its review of any additional information provided by FAES, further information requests and/or the submission of additional expert evidence may be warranted.¹

The BCUC's Reasons for Decision recounted the DSD's submissions on this point at length. It addressed specifically, for instance, the DSD's argument that more information on modelling was necessary:

The Panel finds that FAES has adequately responded to these IRs. The Panel considers FAES' filing of the JCCLP energy model for the Neilson Grove Elementary School to be sufficient evidence of JCCLP's energy modelling, and we agree that the cost to obtain any further energy models is not justified, as such additional information will not provide probative value to the Panel in its decision-making process. The Panel agrees with FAES that this proceeding is a rate hearing, not a construction claim, and finds it unreasonable to pursue additional energy modelling analysis or other operational data beyond what has already been filed.² [Emphasis added.]

The DSD's new evidence continues to attempt to treat this proceeding as a construction claim, in the guise of a rate proceeding.

The Approach the DSD Has Taken in Introducing New Evidence is Procedurally Unfair

The way in which the DSD has gone about filing the new evidence is also problematic.

The BCUC's order was unambiguous, and the DSD received it on November 30, 2018. Yet, over the intervening 10 weeks, the DSD never mentioned the possibility of seeking reconsideration of the BCUC order. Rather, the DSD waited until two weeks after FAES had filed its final argument and filed the evidence in tandem with their submissions. They based

¹ Reasons for Decision, p.2.

² Reasons for Decision, p.5.

their final submissions on the new evidence, presupposing that the BCUC accepts their request to reopen the record.

The inevitable result of accepting the DSD's request would be the need for further evidence from FAES (FAES does not agree with the DSD's new evidence). There would be further delay in the resolution of this matter - all in relation to system performance allegations that are premised upon speculation, non-existent GHG performance metrics and matters that the BCUC has already determined aren't probative. We reiterate our concern from our November 23, 2018 reply letter on process (Ex. B-10) that delay and more process serves the DSD's interests, while being detrimental to FAES. This latest action by the DSD only re-confirms our conviction that the DSD regards delay as an end in and of itself.

The DSD's Request Should Be Dismissed and the New Evidence Expunged

The BCUC had concluded that further evidence on these matters was unnecessary, and nothing has changed to justify reconsideration and variance of the order. The DSD's actions in filing new evidence the way it did are procedurally unfair and should be discouraged. We respectfully request that the BCUC make the following direction as soon as possible:

1. The DSD's February 1, 2019 letter and its attachments be rejected for filing, and not be posted on the BCUC's website;
2. The DSD be directed to file a new submission with all reference to the new evidence removed by Tuesday February 5, 2019 at noon; and
3. The timetable for FAES to reply to that revised submission be extended to provide FAES with a full two weeks to respond, as originally contemplated by the approved timetable.

FAES appreciates the BCUC's prompt consideration of this request. It is difficult for FAES to write reply argument on the current timeline when the DSD's own written argument is based on information that is not on the evidentiary record.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

[Original signed by]

Matthew Ghikas
Personal Law Corporation

/MG

cc D. Rossi, Borden Ladner Gervais LLP