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**File No. 551952/000002**

February 4, 2019

**Delivered by Email (commission.secretary@bcuc.com)**

British Columbia Utilities Commission  
Suite 410, 900 Howe Street  
Vancouver, BC V6Z 2N3

**Attention: Patrick Wruck, Commission Secretary**

Dear Sirs/Mesdames:

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

We are in receipt of Mr. Ghikas’ correspondence of February 3, 2019. For the reasons set out below, Delta School District No. 37 (the “DSD”) opposes the relief sought by FAES with respect to the filing of the materials enclosed in its correspondence of February 1, 2019, and maintains that the acceptance of such materials for filing would be both procedurally fair and entirely consistent with B.C. Utilities Commission (“BCUC”) Order G-228-18.

### **PROCEDURAL HISTORY**

It is evident that, should the supplementary expert evidence of MCW Consultants Ltd. and Reshape Strategies not be accepted for filing, DSD will be completely deprived of any opportunity to respond to the information provided by FAES in its IR responses dated November 8, 2019, which FAES produced only after the DSD filed its initial expert reports on August 10, 2018.

As set out in paragraphs 4 to 7 of the DSD’s final submissions, after FAES provided its IR responses on November 8, 2018, the DSD sought additional information from FAES regarding, *inter alia*, the energy models performed by FAES (through its agent, Johnson Controls L.P.) on schools involved in the thermal energy project. By Order G-228-18, dated November 30, 2018, the BCUC denied the DSD’s request for the production of further documents. For the reasons set out below, however, the DSD maintains that Order G-228-18 cannot now be interpreted to somehow also preclude DSD from responding to the evidence that had already been adduced by FAES prior to the Order being granted.

### **SCOPE OF THE ORDER**

FAES seizes on one excerpt in the Reasons for Decision of Order G-228-18 to argue that the DSD should effectively be prohibited from responding to evidence already adduced by FAES in this proceeding. In doing so, DSD submits that FAES has taken the excerpt in question entirely out of

context. To this end, DSD notes that the remarks relied upon by FAES were made by the BCUC in the context of a DSD request for further document production by FAES. The DSD submits that the comments in question were never intended to foreclose the DSD from advancing an entire line of argument on the basis of the existing evidentiary record at the time the Order was pronounced (i.e. that FAES has failed to demonstrate that the capital and operating costs it now seeks to recover as part of its proposed cost of service rate were prudently incurred, which is fatal to its application). Indeed, in its Reasons for Decision, the Panel expressly stated: “The Panel considers FAES’ filing of the JCCLP energy model for Neilson Grove Elementary School to be sufficient evidence of JCCLP’s energy modelling [...]” The sole inference to be drawn from this statement is that the DSD would be permitted to respond to the highly technical evidence that FAES had adduced regarding Neilson Grove Elementary School (and otherwise). Yet, the direct effect of granting FAES the relief that it now seeks would be to preclude the DSD from doing just that.

### **PROCEDURAL FAIRNESS**

The DSD maintains that, given that its original expert reports were submitted prior to the filing of the FAES IR responses, it is evident that the principles of procedural fairness and natural justice, as set out in both the BCUC’s Rules of Practice and Procedure and at common law, dictate that the materials submitted by the DSD on February 1, 2019, should be accepted for filing.

FAES’ position that the DSD was somehow dilatory in seeking leave to adduce the materials in question is incorrect and is belied by the record. To this end, at the time that Order G-228-18 was granted on November 30, 2018, the DSD was unaware of whether it would be possible or necessary to adduce further expert evidence on the basis of FAES’ IR responses. To this end, as set out in its report dated February 1, 2019, it was necessary for MCW Consultants Ltd. to conduct a further site visit of Neilson Grove Elementary School to assess and evaluate the documents disclosed by FAES. To immediately seek reconsideration of Order G-228-18 in this factual context would have risked unnecessarily extending the proceedings, and would no doubt have been strenuously opposed by FAES on this basis.

In the DSD’s submissions to the BCUC dated November 20, 2018, it expressly advised the BCUC that “its representatives, experts, and/or legal counsel would be unavailable between December 17, 2018, and January 6, 2019.” To this end, the DSD confirms that it was only able to obtain an assessment from its experts regarding their evaluation of the materials disclosed by FAES in its IR responses in January 2019, in the midst of preparing its final submissions. Given this, the DSD maintains that, at all times, it has proceeded in the most expeditious and efficient manner possible with respect to this issue.

Rule 4.02 of the BCUC’s Rules of Practice and Procedure provides that the Commission “may do whatever is appropriate and permitted by law to enable it to effectively and completely adjudicate the matter before it.”<sup>1</sup> Similarly, Rule 2 of the Rules of Practice and Procedure provides that the rules must be “liberally construed in the public interest to ensure the fairest, most expeditious and efficient determination of every matter before the BCUC consistent in all cases with the requirements of procedural fairness.” Taken together, the DSD maintains that these provisions,

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<sup>1</sup> Rules of Practice and Procedure, B.C. Utilities Commission Order G-15-19, dated December 17, 2018.

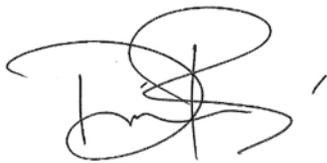
together with the common law principles of procedural fairness and natural justice, dictate that the materials enclosed with the DSD's final submissions on February 1, 2019 be accepted for filing.

In the event that FAES requires a reasonable amount of time to respond to the supplementary expert evidence adduced by the DSD, the DSD does not oppose a brief extension of the deadline for FAES to provide its reply submissions, on that basis. Given that FAES has already advised that it "disagrees" with the MCW Consultants Ltd. and Reshape Strategies supplementary reports, it appears that FAES has already performed an initial assessment of these materials. To this end, there is simply no merit to the FAES's suggestion that any such brief extension of time will unduly delay the proceedings. The DSD has filed its final submissions. The duration of any additional delay is entirely up to FAES.

We trust this clarifies the position of the DSD regarding this matter. Should have you have any questions, please contact the undersigned directly.

Yours truly,

**Borden Ladner Gervais LLP**

A handwritten signature in black ink, appearing to read 'Dionysios Rossi', with a stylized flourish at the end.

Dionysios Rossi

DKR:mec

cc: Matthew Ghikas ([mghikas@fasken.com](mailto:mghikas@fasken.com))