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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-146-15A**

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**IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473**

and

**FortisBC Alternative Energy Services Inc.
Application for Approval of the Fiscal 2015/16 Revenue Requirements and
Cost of Service Rates for Thermal Energy Service
to Delta School District Number 37**

BEFORE: D. M. Morton, Commissioner

September 18, 2015

O R D E R

WHEREAS:

- A. On November 28, 2011, FortisBC Energy Inc. (FEI) applied to the British Columbia Utilities Commission (Commission) for a Certificate of Public Convenience and Necessity (CPCN) to construct and operate an energy system to provide thermal energy to Delta School District Number 37 (Delta SD). The application sought, among other things, the approval of rates and the rate design contained within the Energy System Rate Development Agreement;
- B. By Order G-31-12, and accompanying decision, dated March 9, 2012, the Commission approved the provision of thermal energy service to the Delta SD subject to proof of assignment to an affiliate. FEI filed proof of assignment on March 16, 2012, to its affiliate FortisBC Alternative Energy Services Inc. (FAES) and the Commission issued Order C-3-12 granting a CPCN to FAES. The Commission also approved the annual rate setting mechanism proposed by FAES whereby FAES is to file a revenue requirements application annually, including the forecast balance of the Delta SD deferral account and the forecast of thermal demand to establish the cost of service (COS) rate for the upcoming contract year, from July 1 through June 30;
- C. By Order G-71-12, dated June 5, 2012, the Commission approved the rate design but denied approval of the rate;
- D. By Order G-88-12, dated June 25, 2012, the Commission approved the market rate mechanism as well as the COS rate for fiscal 2012/13;

- E. By Order G-81-12, dated May 23, 2013, the Commission approved the COS rate for fiscal 2013/14 and determined that the date for filing the annual affiliate charges to be no later than July 31, of each year;
- F. On March 25, 2015, FAES requested a 30-day extension to file the Delta SD fiscal 2015/16 Revenue Requirements and Cost of Service Rate for Thermal Energy Service (Application) as resource constraints and staffing changes prevented FAES from filing the Application by the March 31 deadline;
- G. On March 27, 2015, the Commission granted approval for the 30-day extension;
- H. On April 29, 2015, pursuant to sections 59-61 of the *Utilities Commission Act* and Commission Order G-31-12, FAES applied for approval of the COS rate for thermal energy services for the Delta SD during fiscal 2015/16, which runs from July 1, 2015 to June 30, 2016; and
- I. The Commission reviewed the Application and has determined that additional information is necessary before a determination on whether the rates applied for are just and reasonable under sections 59-60 of the *Utilities Commission Act*.

NOW THEREFORE in accordance with sections 59-61 of the *Utilities Commission Act*, the British Columbia Utilities Commission orders:

1. FortisBC Alternative Energy Services Inc. (FAES) to provide additional information pertaining to:
 - a. the forecast Cost of Service rate and forecast deferral balance for each historical fiscal year,
 - b. a submission on whether the definitions contained in the Rate Agreement for “District Deferral Account” should mean the cumulative difference between the forecast annual cost of service and forecast revenues or actual revenues,
 - c. a submission on how it intends carrying out the rate setting mechanism going forward, and
 - d. a submission on the 2 percent variance justification as contemplated in the CPCN decision.

All as outlined on page 4 of the Reasons for Decision (Reasons), attached as Appendix A to this Order.

2. FAES is directed to include, in its Compliance Filing, a submission on whether it is necessary to amend the Rate Agreement to address the issue of the Rate Rider recovery mechanism, as outlined on page 5 of the Reasons.
3. FAES is directed to update, in its Compliance Filing, its 2015-2016 market rate and corresponding financial schedules by incorporating the April 2015 natural gas index value as shown in BCUC IR 1.4.3.

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4. FAES is directed to provide, in its Compliance Filing, a further breakdown of the \$41,000 specialized contractor costs to indicate the proportion allocated to resolving operational issues with the heat pumps.
5. FAES is directed to provide to the Commission, by March 31, 2016, a report on the progress of the optimization of the system.
6. FAES, in its Compliance Filing, is directed to submit the thermal energy details for each of the 19 sites, as outlined on page 9 of the Reasons.
7. The Compliance Filing is due to the Commission within 45 days of the date of this Order. Delta SD may provide a submission on items addressed in sections 2.2.1 and 2.2.2 of the Reasons within two weeks of FAES' Compliance Filing. FAES may provide a reply within one week of Delta SD's submission.
8. The Commission will make further determinations subsequent to FAES' Compliance Filing and submissions in Directive No. 7.

DATED at the City of Vancouver, In the Province of British Columbia, this 29th day of September 2015.

BY ORDER

D. M. Morton
Commissioner

Attachment

FortisBC Alternative Energy Services Inc.
Application for Approval of the Fiscal 2015/16 Revenue Requirements and
Cost of Service Rates for Thermal Energy Service
to Delta School District Number 37

REASONS FOR DECISION

1.0 INTRODUCTION

On April 29, 2015, FortisBC Alternative Energy Services Inc. (FAES) filed an application for approval of the Fiscal 2015/16 Revenue Requirements and Cost of Service Rates for Thermal Energy Service to Delta School District Number 37 (Application). The rate calculated for the fiscal year 2015/16, which runs from July 1, 2015 to June 30, 2016, is \$0.184/kWh. This compares to the applied for market rate of \$0.069 (after the rider discount) to be charged to the Delta School District (Delta SD) in the same period.

The Commission has reviewed the Application, along with the accompanying evidence and finds that additional information is necessary before a determination on whether the rates applied for are just and reasonable under sections 59-60 of the *Utilities Commission Act*. Accordingly, the remainder of these Reasons address the issues arising in the course of this proceeding, along with specific information directed to be filed in a Compliance Filing that is due within 45 days of this decision.

Following the Compliance Filing, the Delta SD will be given the opportunity to file its submission based on this additional evidence.

2.0 ISSUES ARISING

2.1 Switching to COS rate

FAES explains that Delta SD has been, and currently is, paying the market rate, which is based on the initial market rate incremented by the natural gas index for British Columbia, less a negotiated rate rider. FAES also indicates that the Delta SD has not given notice that it intends to switch to the cost of service (COS) rate at this time.¹

According to the FortisBC Energy Inc. Application for a Certificate of Public Convenience and Necessity and Approval of Contracts and Rate for Public Utility Service to Provide Thermal Energy Service to Delta School District Number 37 (CPCN application), the market rate was considered a “transitional” rate, devised to represent a reasonable approximation of Delta SD’s thermal energy costs in the absence of the FAES project. Any difference between the revenues collected from Delta SD while they are paying the market rate, and the forecast cost of service is accumulated in the Delta SD 37 Deferral Account for amortization into the COS rate at the time the switch occurs.

¹ Exhibit B-1, p. 2.

Although, there is no set time that the switch to COS must be made, FAES indicated that as long as the switch is deferred, the difference between the market rate and COS will continue to flow to the deferral account.² At the time of the CPCN application, FAES (then FEI) expected that a reasonable transitional period from the market rate to a COS rate was within 2-5 years.³

FAES estimates that the balance of the Delta SD deferral account will be \$1.408 million, including interest, by June 30, 2016, compared to the original forecast in the CPCN application of \$228 thousand. FAES submits that a large part of this variance is due to the fact that the CPCN was submitted by FEI, an entity that generates enough taxable income to take advantage of the capital cost allowance (CCA) tax, benefits from this project. However, since the Commission directed the assignment of this project to an affiliate, FAES does not generate enough taxable income to recognize these amounts in current taxes. Accordingly, FAES forecasts a balance of \$2.2 million of tax loss carry forward to be recognized in future years.⁴

The Delta SD submits that it is not contractually obligated to switch from the market rate to the COS rate “unless and until the [Delta SD] determines that such an election would be in its own best interest.”⁵ The Delta SD also submit that it is procedurally unfair for the Commission to consider issuing an order to enforce such a switch at this time and that such intervention by the Commission would unduly interfere with the contractual allocation of risk in the Energy System Rate Development Agreement between FEI and the Delta SD (Rate Agreement).⁶ FAES “does not wish to take a position” on the matter of the Commission directing a switch to COS rates, “in the absence of particular facts on which to make an informed submission.”⁷

FAES confirms that the financial risk associated with the potential non-recovery of the deferral account will be borne by its shareholders and that it will endeavor to work with the Delta SD to achieve a mutually desirable approach if and when it were to seek approval from the Commission to switch to the COS rate.⁸ However, FAES also emphasize that ultimately, the circumstances under which it may seek permission of the Commission to switch to the COS rate are expressly described in writing in the Rate Agreement. FAES further submits that the issue of the switch to COS “should not be addressed further in this proceeding.”⁹

Commission Discussion

The balance in the Delta SD deferral account has grown more quickly than expected because of a greater than expected difference between the market rate and the cost of service incurred. The market rate is lower than originally anticipated and the cost of service is much higher. Unless those circumstances change and/or Delta SD switches to the COS rate, the balance in the deferral account is likely to continue to increase. Both parties agree that responsibility for any balance remaining in the deferral account at the end of the initial term will be borne

² FAES 2014/15 RRA for Delta SD, Response to BCUC IR 1.1.4.

³ FEI CPCN and Rate Approval for Delta SD Decision dated March 9, 2012 (CPCN Decision), p. 51.

⁴ Exhibit B-4, BCUC IR 1.2.1.

⁵ Delta SD Final Argument p. 2.

⁶ Rate Agreement effective June 5, 2012, approved under Commission Order G-71-12, p. 3.

⁷ Exhibit B-4, BCUC IR 1.2.8.

⁸ Exhibit B-4-1, Erratum to BCUC IR 1.2.8.

⁹ FAES Reply Argument, p. 3.

by FAES' shareholder if Delta SD does not renew its service.¹⁰ This is a clarification that was much needed in this proceeding given that FAES, in the past, has advised the Commission that the deferral "account will ultimately be recovered from the Customer."¹¹

In its submission, the Delta SD addresses its concern about the potential switch from the market rate to the COS rate, including whether the Commission could or should direct such a switch. The Commission previously approved the market rate, acknowledging that the contracts were negotiated in good faith by two sophisticated parties. The Panel confirms that it will not address the COS rate switch at this time, as so doing would impact those agreements.

2.2 Cost of Service

2.2.1 Forecast versus actual Cost of Service

In its Application, FAES describes the process by which the annual rate setting mechanism is to be established for the Delta SD. Specifically, FAES refers to the CPCN decision where the Commission approved FAES' proposal to file an annual revenue requirements application which includes the forecast of costs and thermal energy demands to establish the COS rate for the upcoming year. FAES also committed to provide the forecast balance of the Delta SD deferral account along with its forecast amortization for the upcoming fiscal year.¹²

According to the original CPCN application, the deferral mechanism was specifically described as to:

"record the annual difference between actual revenues and cost of service in the SD37 Deferral Account to ensure *forecast* variances are recovered from, or credited to, this specific customer."¹³ [emphasis added]

Furthermore, the Rate Agreement define the cost of service rate to be a function of the *forecast* annual cost of service¹⁴ and therefore it can be construed that the deferral account is meant to capture cumulative difference between the *forecast* annual cost of service and actual revenues.

However, in Delta SD's final submission, it stated that the deferral account "was designed to track the amount by which the *actual* cost of the thermal energy service...exceeded the market rate..."¹⁵ [emphasis added]

¹⁰ Exhibit B-4, BCUCIR 1.2.5.

¹¹ FAES Delta SD Fiscal 2014/15 RRA, Response to BCUCIR 1.1.4.

¹² Exhibit B-1, pp. 1-2; CPCN decision, p. 49.

¹³ Ibid., p. 54.

¹⁴ Rate Agreement effective June 5, 2012, approved under BCUC Order G-71-12, Section 1.1, definition of "Cost of Service Rate", p. 3.

¹⁵ Delta SD Final Submission, pp. 4-5.

Commission determination

FAES is adjusting the *forecast* COS in each of the past fiscal periods to *actual* COS. This approach is inconsistent with the terms of the Rate Agreement and the rate design approvals that were previously granted in the original CPCN decision. The original CPCN application stated:

“In order to help minimize the potential balances in the deferral account that may arise due to variances between *forecasts* of costs and actual costs, FEI will be adjusting the cost of service rate for changes in natural gas rates and electricity rates at the time that the BCUC approves changes to those rates.”¹⁶ [emphasis added]

The Panel interprets that the original proposal is to only “true-up” the natural gas and electricity components of the revenue requirement, not every element in the COS. In the Panel’s view, and as evidenced in the CPCN decision, the purpose of the annual revenue requirement application is for the Commission to review and then approve the *forecast* COS for the upcoming year, an approval mechanism that has long been the case in a regulatory environment with a forward looking test year. The action of retrospectively adjusting all of the forecasts to actual costs incurred renders the Commission’s annual approval of forecast costs to be moot.

In the CPCN application, FEI envisioned that “the rate setting review process for the SD may evolve over time”¹⁷ and further submits that it “does not need to provide justification for the [COS variables] unless there is a forecast rate change which exceeds the greater of 2% or CPI from the previous year.”¹⁸ Based on the Delta SD’s submission and FAES’ calculations, it is unclear to the Panel whether FAES and the Delta SD have made alternate arrangements to the rate setting mechanism subsequent to the Commission’s CPCN decision. Equally, it is unclear on how the 2 percent variance, as suggested in the CPCN application, is to be applied. **For further clarity, the Panel directs FAES to provide the following information in its Compliance Filing, to the Commission:**

- 1. A table showing the forecast revenue requirements (by line item), the forecast COS rate, and forecast deferral balance approved by the Commission, with reference to the Commission Order granting the approval, for each historical fiscal year. Comparatively, FAES is also directed to repeat this information showing actuals for the same period. A comparison and discussion on the impact of the Delta SD deferral account is also expected.**
- 2. A submission on whether the definitions contained in the Rate Agreement for “District Deferral Account” should mean the cumulative difference between the forecast annual cost of service and forecast revenues or actual revenues.**
- 3. A submission on how it intends carrying out the rate setting mechanism going forward, whether a variance to the original CPCN decision (particularly on how the Delta SD deferral account balance is to be calculated), and an amendment to the Rate Agreement if necessary.**

¹⁶ CPCN application, p. 43.

¹⁷ Ibid., p. 39.

¹⁸ CPCN decision, p. 49.

4. A submission on the 2 percent variance justification as contemplated in the CPCN decision, and whether this mechanism should apply going forward.

The above information is to be submitted to the Commission as part of FAES' Compliance Filing, within 45 days from the date of this decision. Following the Compliance Filing, the Delta SD will be given the opportunity to file its submission based on this additional evidence, and FAES the opportunity to reply.

2.2.2 Applying the Rate Rider discount

FAES' thermal energy rate for the Delta SD is a function of the initial market rate and incorporates a rate rider discount of \$0.018 cents per kWh. According to the CPCN decision¹⁹ and the Rate Agreement, the annual COS calculation was intended to incorporate the value of the prior year's rate rider discount. Specifically, section 1.1(d)(vi) of the Rates Agreement states that the annual cost of service is to include:

"the annual amount necessary to recover the SD37 Rate Rider discount provided in the immediately prior Annual Period;"²⁰

Commission determination

The methodology used to calculate the Cost of Service in the Application is not consistent with the COS definition in the Rate Agreement. FAES does not currently include a line item in its revenue requirement to recover the previous year's rate rider discount. While the intent of the clause cited above is unclear, the Panel notes that applying that wording when the discount has been already applied to the current year's revenue, as it appears to have been, would have the effect of doubling the Rate Rider discount accrual in the Delta SD deferral account. It is possible that this is the reason why FAES has neglected to include the previous year's Rate Rider discount in any of its COS filings to date.

FAES is directed to include, in its Compliance Filing, a submission on whether it is necessary to amend the Rate Agreement to address this issue. Delta SD will also be given the opportunity to file a submission based on this issue, and FAES the opportunity to reply.

2.2.3 Natural Gas Index

FAES states that the market rate that the Delta SD is currently paying is automatically adjusted monthly by the natural gas index value. In the Application, FAES calculates the forecast market rate for the 2015-2016 fiscal periods by using the January 2015 natural gas index for British Columbia, resulting in a market rate of \$0.069/kWh, after the rider discount. However, the terms of the Rate Agreement refer to the utilization of the "most recent natural gas index value for British Columbia..."²¹ When asked to update the information using the most recent index (April 2015), FAES recalculates the market rate to be \$0.060/kWh.²²

¹⁹ Ibid., p. 54; Rate Agreement, section 1.1, definition of "Annual Cost of Service", p. 2.

²⁰ Rate Agreement, Section 1.1, definition of "Annual Cost of Service", p. 2.

²¹ Rate Agreement, Section 1.1 definition of "Index Value", p. 4.

²² Exhibit B-4, BCUCIR 1.4.3.

Commission determination

In previous COS filings, FAES appears to have used the most recently available index (March or April), and therefore it is unclear why a January index would be used in this Application. The Panel finds that FAES is not in compliance with the Rate Agreement.

In its Compliance Filing, FAES is directed to update its 2015-2016 market rate and corresponding financial schedules by incorporating the April 2015 natural gas index value as shown in BCUC IR 1.4.3.

2.2.4 Operation and Maintenance Cost

FEI stated that its contractor, Johnson Controls L.P. (JCLP), was hired for the installation of the facilities that provide thermal energy to the Delta SD.²³

FAES indicated that they have hired specialized contractors to resolve the operational issues with the heat pumps and further states that of the \$101,000 annual maintenance cost, “the Delta SD staff component of the annual maintenance cost is \$60,000 and the specialized contractors’ component is \$41,000.”²⁴

Commission determination

The Commission understands the need for FAES to hire specialized contractors to resolve operational issues however, based on the \$41,000 total specialized contractor costs, the Commission is still unclear on the specific amount allocated to resolve operational issues with the heat pumps.

The Commission directs FAES to provide, in its Compliance Filing, a further breakdown of the \$41,000 to indicate how much of it is allocated to the specialized contractors resolving operational issues with the heat pumps.

2.3 **Equipment subject to optimization**

In the CPCN Application, FAES summarized the sources of energy needed to meet the thermal energy requirements of the Delta SD and compares the original equipment (Existing Natural Gas), the proposed installed equipment (Contracts), and a pure electricity alternative (Electricity Alternative) on a GJ/Annum basis.²⁵ This summary is shown in Table 2.

²³ CPCN application, p. 1.

²⁴ Exhibit B-4, BCUC IR 1.6.1.

²⁵ Exhibit B-1, p. 11.

Table 2 - Comparison of Demand Characteristics

	GJ/Annum		Electricity Alternative
	Existing Natural Gas	Contracts	
Electricity	4,684	11,142	38,177
Natural Gas	58,607	13,255	-
Renewable Energy	-	15,164	-
Energy Waste	(25,114)	(1,384)	-
Total Thermal Energy	38,177	38,177	38,177

The expected thermal load has not materialized, and in the Application, total thermal load is now forecast to be 5,701 MWh or 20,524 GJ.²⁶ As a result, , and due to lower than planned utilization of electrically driven heat pumps in delivering thermal energy, FAES' forecast electricity consumption has also not materialized. FAES confirmed that it does not have a direct method of measuring the amount of thermal energy being delivered from the heat pumps but that electricity consumption combined with the Coefficient of Performance for the heat pumps is the method of determining thermal energy delivered by the heat pumps.²⁷ Its 2014/2015 electricity consumption is 242 MWh,²⁸ FAES indicated it could increase utilization of electricity by applying a modified sequence of operation to the current system in order to increase forecast electricity consumption to 305 MWh for 2015/2016.²⁹ FAES anticipates that the operational issues will be resolved before winter of 2015.³⁰

In the second round of information requests, FAES was asked to comment on whether it would be fair to the customer and reasonable for the Commission to temporarily disallow, in the cost of service, a portion of the rate base for heat pumps that are currently underutilized.³¹ FAES submitted that there is no basis in fact or law for the Commission to temporarily disallow in the cost of service a portion of the rate base as suggested by the Commission. It further stated that fairness to customers requires that the rate base include only assets that are used or useful for operation of the utility. FAES submits that the heat pumps in question meet the requirements for inclusion in rate base because they are used for the utility's operation in this case. The fact that they are currently subject to optimization efforts does not provide a basis to exclude these assets, or some portion of their value, from rate base. The assets are being used for the service to the customer, and their use is currently being optimized.³²

²⁶ *ibid*, p. 3, Table 1.

²⁷ Exhibit B-6, BCUCIR 2.3.1

²⁸ Exhibit B-1., Appendix B, Schedule 4, line 4.

²⁹ *Ibid.*, p. 9; Appendix B, Schedule 4, line 4.

³⁰ Exhibit B-6, BCUCIR 2.3.5.

³¹ Exhibit B-6, BCUCIR 2.4.2.

³² FAES Final Submission, p. 5.

Commission determination

The current thermal energy forecast of 20,524 GJ represents approximately 53.8 percent of the original forecast of 38,177 GJ. All else equal, and assuming that the percentage of the thermal load supplied by electricity is the same as in the original forecast, the amount of electricity required to meet this revised thermal load would be approximately 53.8 percent of the original forecast amount of 11,142 GJ, which is 5,990 GJ or 1,664 MWh. However, for 2015/2016, after applying modified control sequences to the sequence of operations, FAES expects electricity consumption to be 305 MWh, or 18.3 percent of the proportion of the revised forecast amount estimated above by the Panel.³³

While the Panel agrees with FAES that the heat pumps are being deployed for the service to the customer and their use is currently subject to an optimization exercise, the Panel finds that if the level of utilization is 18.3 percent, it is substantially less than the design amount. **The Panel directs FAES to include a confirmation of the calculation of 18.3 percent or, in the alternative, provide its own calculation of the expected utilization for 2015/2016.**

The Panel also directs FAES to provide to the Commission, by March 31, 2016, a report on the progress of the optimization of the system.

2.4 Installed Capacity

Page 10 of FEI's CPCN application indicated that the project includes "the use of natural gas as the primary energy source at 8 of the sites and retains natural gas for complementing the energy from heat pumps at the remaining 11 sites."

FAES provided a table of the nameplate capacity of the heat pumps for the sub-set of sites that have heat pumps.³⁴ Further, FAES submits that "the capacity of the new systems was the nameplate capacity of the old boilers" and for the heat pump sites, "the sizing of the heat pumps was matched with the capacity of the existing heat exchangers..." with the intent of the retrofit to "match the existing equipment and to match redundancies with like for like equipment replacement and, where possible, add higher efficiency equipment."³⁵

Commission determination

The evidentiary record is still unclear on exactly how much thermal energy "nameplate" capacity was originally in place and how much exists currently at each site and cumulatively. As such, the Panel is unable to fully determine whether the new equipment is "like-for-like" with respect to the previous equipment.

³³ 18.3% = (305 MWh/1664 MWh) * 100%.

³⁴ Exhibit B-4, BCUCIR 1.1.1.

³⁵ Exhibit B-6, BCUCIR 2.2.1.

The Commission directs FAES, in its Compliance Filing, to submit a table with the following thermal energy details for each of the 19 sites:

#	SITE NAME	Current Thermal Energy System Type	Original Boiler Installed Capacity (MW)	New Boiler Installed Capacity (MW)	New Heat Pump Installed Capacity (MW)	Total New Installed Capacity (MW)

3.0 LETTER OF COMMENT

On July 23, 2015, Ameresco filed a letter of comment, expressing the concern “that some of the technical issues (specifically the Thermal Load Estimating Error and the Heat Pump Contribution to Thermal Load) point to the applicability of using geo-exchange in existing buildings in lieu of potentially better alternatives such as high efficiency natural gas boilers.”³⁶

It further outlined what it described as thermal load forecasting errors and “well-known thermodynamic obstacles to using geo-exchange as a heat source for existing mechanical systems.” It concluded that “[g]iven the disparity between the forecasted and actual contribution of the heat pumps, which could have been predicted (and assuming that DSD was not contractually required to retrofit the mechanical systems to allow them to accept 50 Deg. C. water for most of the annual load, which is an acknowledged possibility), the prudence of the capital invested in the geo-exchange systems should be considered.”³⁷

FAES submits that “in substance the document is an argument” as it “sets out facts not in evidence, and details of the evidentiary record, in an *attempt* (a failed one) to support positions and opinions regarding FAES’ application and how it should be decided by the Commission.” FAES further submits that “[i]t is the level of detail, the length of the document, and most significantly the extensive evidentiary references, including references to new evidence, to support positions and opinions that make this document an argument. The document is an attempt at advocacy and persuasion, and is not a mere statement of position or comment.”³⁸

FAES also points out that Ameresco has not registered as an Intervener and that “[t]he common law rules of procedural fairness are intended to prevent the kind of ambush that has happened in this proceeding. The Commission should not consider Ameresco’s submission.” Additionally FAES argues that “[t]he unfairness to FAES in the circumstances is aggravated by Ameresco’s references to facts not in evidence, made after the evidentiary record in this proceeding has been closed” and that “[m]oreover, Ameresco’s letter concludes with disparaging remarks about FAES.”³⁹

³⁶ Exhibit E-1, p. 1.

³⁷ Ibid, pp. 4, 5.

³⁸ Exhibit B-8, p. 2.

³⁹ Exhibit B-8, p. 4.

FAES concludes by requesting that the Commission confirm in writing that Exhibit E-1, will not be considered in this proceeding, and that it will be removed from the Commission's website and from the record of this proceeding.⁴⁰

Commission determination

The Panel acknowledge FAES' submission on Exhibit E-1. **However, the Panel is not persuaded that FAES' request that the exhibit be removed from the record of the proceeding should be granted.** The Commission normally does not restrict letters of comment in the manner requested by FAES.

The weight the Panel has accorded Exhibit E-1, is no more than the weight that is normally accorded to a Letter of Comment in any other proceeding before the Commission

4.0 TIMETABLE

The Panel determines that the FAES' Compliance Filing, incorporating all of the directives in these Reasons for Decision, be filed with the Commission within 45 days of the date of this decision. Delta SD may provide a submission on items addressed in sections 2.2.1 and 2.2.2 within two weeks of FAES' Compliance Filing. FAES may provide a reply within one week of Delta SD's submission.

⁴⁰ Ibid, p. 6.