



ORDER NUMBER
G-228-18

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

FortisBC Alternative Energy Services Inc.
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

BEFORE:

W. M. Everett, QC, Panel Chair/Commissioner
A. K. Fung, QC, Commissioner
M. Kresivo, QC, Commissioner

on November 30, 2018

ORDER

WHEREAS:

- A. On February 8, 2018, pursuant to sections 59-61 of the *Utilities Commission Act* (UCA), FortisBC Alternative Energy Services Inc. (FAES) applied to the British Columbia Utilities Commission (BCUC) for approval of its revenue requirements and rates for the thermal energy service to Delta School District No. 37 (DSD) based on a proposed switch from the current market rate to the cost of service (COS) rate of \$0.223 per kilowatt-hour (kWh) effective July 1, 2018, for the fiscal and contract year from July 1, 2018 to June 30, 2019 (Application);
- B. By Orders G-56-18, G-77-18, G-83-18 and G-118-18, the BCUC established a regulatory timetable which included the following: a procedural conference; intervener registration; BCUC and intervener information requests (IRs) on the Application; the filing of DSD evidence; BCUC and FAES IRs on DSD's evidence; the filing of rebuttal evidence by FAES; and BCUC and DSD IRs on FAES' rebuttal evidence. The BCUC also approved the existing market rate mechanism and resulting market rate on an interim and refundable basis, effective July 1, 2018;
- C. On November 13, 2018 and November 20, 2018, FAES and DSD, respectively, provided submissions on further process, and FAES filed a reply submission on November 23, 2018; and
- D. The Panel has reviewed the evidence and the submissions made by FAES and DSD and considers that the evidentiary record should be closed and the proceeding should move to written arguments.

NOW THEREFORE for the reasons attached as Appendix B to this order, the British Columbia Utilities Commission establishes the remainder of the regulatory timetable, attached as Appendix A to this order.

DATED at the City of Vancouver, in the Province of British Columbia, this 30th day of November 2018.

BY ORDER

Original signed by:

W. M. Everett, QC
Commissioner

Attachments

FortisBC Alternative Energy Services Inc.
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for the Thermal Energy Service to Delta School District No. 37

REGULATORY TIMETABLE

| Action | Date (2019) |
|---|---------------------|
| FortisBC Alternative Energy Services Inc. (FAES) Written Final Argument | Friday, January 11 |
| Delta School District No. 37 (DSD) Written Final Argument | Friday, February 1 |
| FAES Written Reply Argument | Friday, February 15 |

FortisBC Alternative Energy Services Inc.
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

REASONS FOR DECISION

1.0 Background

On February 8, 2018, pursuant to sections 59-61 of the *Utilities Commission Act* (UCA), FortisBC Alternative Energy Services Inc. (FAES) applied to the British Columbia Utilities Commission (BCUC) for approval of its revenue requirements and rates for the thermal energy service to Delta School District No. 37 (DSD) based on a proposed switch from the current market rate to the cost of service (COS) rate of \$0.223 per kilowatt-hour (kWh) effective July 1, 2018, for the fiscal and contract year from July 1, 2018 to June 30, 2019 (Application). As part of the Application, FAES also applied (pursuant to section 89 of the UCA) for approval of the COS rate of \$0.223 per kWh on an interim and refundable basis effective July 1, 2018, if the Panel is unable to render its decision on the Application before July 1, 2018.

By Orders G-56-18, G-77-18, G-83-18 and G-118-18, the BCUC established a regulatory timetable which included the following:

- A procedural conference held on April 5, 2018;
- Intervener registration;
- BCUC and intervener information requests (IRs) on the Application;
- The filing of DSD evidence;
- BCUC and FAES IRs on DSD's evidence;
- The filing of rebuttal evidence by FAES; and
- BCUC and DSD IRs on FAES' rebuttal evidence.

DSD was the only party to register as an intervener in the proceeding.

As part of Order G-77-18, the BCUC also approved the existing market rate mechanism and resulting market rate on an interim and refundable basis, effective July 1, 2018.

On October 31, 2018, subsequent to the filing of BCUC and DSD IRs on FAES' rebuttal evidence, the BCUC issued a letter requesting submissions from FAES and DSD 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.

On November 13, 2018 and November 20, 2018, FAES and DSD, respectively, provided submissions on further process, and FAES filed a reply submission on November 23, 2018.

2.0 Summary of parties' submissions

2.1 Need for additional IRs

FAES submission

FAES submits that the evidentiary record in the proceeding has been fulsome and is sufficient for the Panel to make a determination on the Application. In FAES' view, the evidence on the record thoroughly explores the topics and issues and has allowed the parties to articulate and explain their respective positions. FAES therefore submits it does not see a need for a further round of IRs and believes the regulatory process should proceed to the written argument phase.¹

DSD submission

DSD submits that it has sought to obtain information from FAES to assess the prudence of the capital costs and other costs related to heat pump-based systems for the project, but that FAES has "failed or refused" to provide DSD with the requested information. Specifically, DSD identifies the following IR responses regarding FAES' rebuttal evidence, filed as Exhibit B-8 (Identified IRs):

- IR 3.3 – DSD submits that FAES did not provide the information requested regarding the impact of the 2013 re-configuration and that FAES instead reproduced a table with the nameplate capacity of the heat pump-based systems.
- IRs 6.3, 6.3.1, 6.3.3, 6.3.3.1 – DSD submits that FAES did not provide full and adequate responses. DSD refutes FAES' response that it is unable to provide the information requested, stating that DSD understands that most of the information required to respond should either be possessed by FAES or readily extractable from the Application proceedings or related proceedings.
- IRs 7.1, 8.2, 8.3, 9.1, 11.1, 11.2 – DSD submits that FAES did not provide full and adequate responses to these IRs which generally concern certain energy models devised by Johnson Controls LP (JCCLP) and JCCLP's analysis. DSD refutes FAES' response to these IRs that the information requested would be too costly to obtain and that the information is irrelevant to the Application proceedings. DSD submits that the question of whether and to what extent FAES complied with its contractual obligation to design the heat pump systems to be operationally compatible with the pre-existing terminal equipment in DSD schools is a central issue and is directly relevant to the question of whether the expenditures associated with those systems were prudently incurred by FAES, and should be recoverable by FAES. DSD expects that it may have further IRs on the underlying assumptions and inputs that formed the basis for the JCCLP energy modelling analysis for the Neilson Grove Elementary School, and that it may request similar information for other schools equipped with heat pump-based systems.
- IR 7.2 – DSD submits that FAES did not provide a full and adequate response regarding the analysis that FAES undertook to determine that utilizing heat pumps were preferable to the use of boilers at Delview Secondary, Richardson Elementary and Neilson Grove Elementary schools.
- IR 10.1 – DSD submits that FAES did not provide a full and adequate response regarding the impact of DSD's actions on system efficiency.²

DSD points to Rule 14.01 of the BCUC's Rules of Practice and Procedure, attached to Order G-1-16, and states that should FAES "fail or refuse to adduce evidence substantiating the assertions it has made" the BCUC should "draw an adverse inference against FAES with respect to the assertions in question."³

¹ Exhibit B-9, p. 2.

² Exhibit C1-11, pp. 1-3.

DSD proposes that the next step in the regulatory process should be a deadline for FAES to respond to the Identified IRs followed by submissions on further process.⁴

FAES reply submission

FAES responds that the process to date has been more than adequate and that there is ample evidence on the record for the BCUC to determine the issues. FAES submits that closing the evidentiary record at this time will allow the BCUC to meet its mandate under section 11(1) of the *Administrative Tribunals Act* which states: “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.”⁵

With respect to DSD’s submissions on the Identified IRs, FAES responds as follows:

- IR 3.3 – FAES has responded to this IR in full. FAES provided the nameplate capacity for the requested equipment which is synonymous with the “output capacity”. With regard to providing the output capacity for the equipment at the time of the FortisBC Energy Inc. Certificate of Public Convenience and Necessity (CPCN) for Approval of Contracts and Rate for Public Utility Service to Provide Thermal Energy Service to DSD application (CPCN Application), FAES was not able to provide the information because it did not exist for the original configuration in the CPCN Application, as the design was only preliminary at that time.
- IRs 6.3, 6.3.1, 6.3.3, 6.3.3.1 – FAES submits that it has responded to these IRs in full and that all of these IRs relate to one issue – DSD’s request for calculations of a Coefficient of Performance (COP). FAES states that DSD’s “understanding” that the requested information should be readily available is incorrect and that FAES explained in the IR responses that it is not able to perform the calculation because it does not individually measure thermal output or input for its equipment. FAES further submits that 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.”
- IRs 7.1, 8.2, 8.3, 9.1, 11.1, 11.2 – FAES submits that DSD’s request for “every energy study from every school” is unreasonable. FAES submits that the proceeding is a “rate hearing, not a construction claim,” and the purpose of a rate hearing is to set just and reasonable rates. FAES submits that in a cost of service rate hearing, prudent conduct on the part of the utility must lead to recovery of costs in rates, and 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.” FAES also submits that DSD is: “pushing for significantly more process in the absence of any of the hallmarks one would expect to see on a mismanaged project,” as 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 the service is beating all cost expectations.”
- IR 7.2 – FAES submits that it has responded to this IR and that it has previously pointed out that the premise of the IR is incorrect.
- IR 10.1 – FAES submits that it has responded to this IR and points to evidence that FAES filed in response to DSD IR 2.7 (Exhibit B-3). FAES submits that 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, but FAES has not relied on a quantitative study and has no intention of retaining an expert now to perform that calculation.⁶

³ Exhibit C1-11, p. 3.

⁴ Ibid.

⁵ Exhibit B-10, p. 2.

⁶ Exhibit B-10, pp. 2-7.

2.2 Need for an oral hearing and form of argument

FAES submission

FAES submits that an oral hearing is not required. It points to the fact that all previous DSD proceedings, including the CPCN Application, were conducted through written hearing processes. FAES states that the issues in this proceeding – the setting of the COS rate and deciding when the appropriate time is for the DSD to switch from the market rate to the COS rate – are technical in nature, have been thoroughly reviewed, and are most appropriately now a matter for argument. Thus, in FAES’ view, an oral hearing would only serve to add costs and lengthen an “already lengthy process.”⁷

With regard to the form of argument, FAES submits that written argument is most appropriate, as it anticipates having to file detailed written submissions to articulate its position. FAES submits that it would be difficult and time consuming (costly) for FAES to address the wide variety of evidentiary and legal issues that have been raised by DSD without the benefit of also filing written arguments. FAES suggests that if the Panel desires some form of oral argument, FAES would make its counsel available to address in person any follow-up questions that the Panel has after the exchange of written arguments.⁸

FAES proposes a regulatory timetable which contemplates written arguments being filed between the time period of December 21, 2018 and January 25, 2019.⁹

DSD submission

DSD submits that it is generally of the view, based on the evidence adduced to date, that a written hearing and written argument would be appropriate; however, DSD submits that it reserves the right to make further submissions on this issue following its requested review of the outstanding IRs from FAES.¹⁰

DSD disagrees with the regulatory timetable proposed by FAES, and it notes that its representatives will be unavailable between December 17, 2018 and January 6, 2019.¹¹

FAES reply submission

FAES maintains its view that the hearing should proceed to written arguments. It submits that while it remains concerned about the length of the process, it is agreeable to delaying the deadlines for written arguments to accommodate DSD’s timing constraints. FAES therefore proposes a revised regulatory timetable which contemplates written arguments being filed between the time period of January 11, 2019 and February 23, 2019.¹²

3.0 Panel determination

A primary focus of DSD’s submission on further process is its assertion that FAES has failed to respond either in whole or in part to a number of DSD’s IRs on the FAES rebuttal evidence (Identified IRs). As this issue directly impacts the Panel’s determination on the appropriate process going forward, the Panel addresses this issue first.

⁷ Exhibit B-9, pp. 2-3.

⁸ Exhibit B-9, p. 3.

⁹ Exhibit B-9, p. 4.

¹⁰ Exhibit C1-11, p. 3.

¹¹ Exhibit C1-11, p. 4.

¹² Exhibit B-10, p. 7.

Further, as both parties have utilized the same groupings for the Identified IRs, the Panel also uses these groupings when making our findings.

IR 3.3

The Panel finds that FAES has adequately responded to this IR. The Panel accepts FAES' submission that the terms nameplate capacity and output capacity are synonymous; thus, FAES has provided the information requested by DSD for the heat pump systems as of the July 2013 change in configuration. With regard to DSD's request for the output capacity as of the CPCN Application, the Panel finds that it is not reasonable for FAES to provide this information. As was stated in the BCUC's decision on the CPCN Application, the "final analysis of technology alternatives will follow CPCN approval with site specific surveys, detailed design, installation, testing and commissioning."¹³ The Panel considers this to clearly indicate that the information requested by DSD in IR 3.3 regarding the output capacity as at the time of the CPCN filing would not be available and thus it is reasonable that FAES was not able to provide this information.

IRs 6.3, 6.3.1, 6.3.3, 6.3.3.1

The Panel accepts FAES' response that it is unable to provide the requested COP information for the heat pumps due to the fact that FAES does not individually measure thermal output or input energy for its equipment. The Panel considers this explanation reasonable, as FAES is providing a single service to DSD across all schools. Therefore, the Panel finds that FAES has adequately responded to IRs 6.3, 6.3.1, 6.3.3, 6.3.3.1.

IRs 7.1, 8.2, 8.3, 9.1, 11.1 and 11.2

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.

IR 7.2

The Panel finds FAES' response to IR 7.2 adequate. We accept FAES' response in the IR that it could not identify any instances where it stated that the heat pumps would provide DSD "better value for money" and note that DSD did not provide a supporting reference for this statement. Therefore, we agree with FAES that it would not be reasonable to expect FAES to respond to the IR as posed.

IR 10.1

The Panel finds FAES' response to IR 10.1 adequate and we agree with FAES that no additional evidence is required regarding DSD's maintenance and operating practices given the evidence already on the record.

Based on the Panel's review of FAES' responses to the Identified IRs, as provided in Exhibit B-8, and DSD and FAES' submissions filed on November 20, 2018 and November 23, 2018, respectively, the Panel finds that FAES has provided satisfactory responses to the IRs. **For the reasons provided above, the Panel rejects DSD's request for FAES to further respond to the Identified IRs.**

¹³ FortisBC Energy Inc. CPCN for Approval of Contracts and Rate for Public Utility Service to Provide Thermal Energy Service to DSD Decision, p. 29.

In this proceeding, the Panel is tasked with determining whether or not to approve FAES' request to switch from the current market rate being charged to DSD to the COS rate, and if approved, to determine whether the COS rate as applied for should be approved. In reaching these determinations, the Panel must consider sections 59 to 61 of the UCA, including whether the COS rate is just, reasonable and not unduly discriminatory.

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.**