



**ORDER NUMBER
G-270-23**

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

and

Shannon Estates Utility Ltd.
Compliance Investigation of Disconnection Notice

BEFORE:

A. K. Fung, KC, Panel Chair
A. C. Dennier, Commissioner
M. Kresivo, KC, Commissioner

on October 12, 2023

ORDER

WHEREAS:

- A. On April 26, 2023, the British Columbia Utilities Commission (BCUC) received a complaint filed on behalf of Strata EPS 2412 (Strata), located at 1515 Atlas Lane, Vancouver, BC, V6P 0C9, regarding a disconnection notice issued by Shannon Estates Utility Ltd. (SEUL) to suspend thermal energy services to the Strata's common areas, lobbies, and cooling of the electrical distribution room (Disconnection Notice) (collectively, the Complaint);
- B. SEUL is a wholly owned subsidiary of Wall Financial Corporation and is a single purpose corporation established to own and operate the Shannon Estates Thermal Energy System (SETES) located at 57th Avenue and Granville Street in Vancouver, BC. The SETES provides space heating, space cooling, and domestic hot water heating to 387 strata units, 213 rental apartments, one freehold residential building, the common areas of each of the buildings, including two swimming pools, and two commercial tenants;
- C. In the Complaint, the Strata alleges SEUL utilized Strata property and resources, including the use of its parkade exhaust fans and water, for SEUL's own operations. The Strata further alleges that it has been solely billed for a shared utility room (amongst multiple strata corporations served by SEUL) and that SEUL denied the Strata's request to establish a separate account where it would be billed for its own consumption;
- D. On April 26, 2023, the BCUC commenced a compliance investigation regarding the Disconnection Notice and on May 2, 2023, issued Order G-100-23, prohibiting SEUL from disconnecting the Strata's thermal energy services pending further order of the BCUC;
- E. By letter dated May 5, 2023, SEUL indicated that it assumed that the BCUC would be reconsidering Order G-100-23;
- F. By letter dated May 25, 2023, the BCUC requested SEUL and the Strata to file supplementary information regarding the Complaint and received responses on June 2, 2023, and June 8, 2023, respectively; and

G. The BCUC has reviewed the Complaint, supplemental information, and responses and finds the following determinations are warranted.

NOW THEREFORE for the reasons for decision set out in Appendix A, and pursuant to section 83 of the *Utilities Commission Act*, the BCUC orders as follows:

1. SEUL's application to reconsider Order G-100-23 is summarily dismissed.
2. The Complaint is dismissed.

DATED at the City of Vancouver, in the Province of British Columbia, this 12th day of October 2023.

BY ORDER

Original signed by:

A. K. Fung, KC
Commissioner

Attachment

Shannon Estates Utility Ltd.
Compliance Investigation of Disconnection Notice

REASONS FOR DECISION

1.0 Introduction

Shannon Estates Utility Ltd. (SEUL) is a wholly owned subsidiary of the Wall Financial Corporation (Developer) and is a single purpose corporation established to own and operate the Shannon Estates Thermal Energy System (SETES) located at 57th Avenue and Granville Street in Vancouver, BC. SETES is classified as a Stream B TES under the British Columbia Utilities Commission (BCUC) TES Framework Guidelines.

The SETES provides space heating, space cooling, and domestic hot water heating to 387 strata units, 213 rental apartments, one freehold residential building, the common areas of each of the buildings, including two swimming pools, and two commercial tenants. SEUL provides the following customer information regarding its thermal energy services:

Figure 1 – SEUL Thermal Energy Services by Customer¹

Phase	Building Name	Address (Vancouver, BC)	Rental or Strata?	Number of Units	Thermal Services Received		
					Heating	Cooling	Domestic Hot Water
1	Shannon Mews & Apartment	1515 West 57 th Avenue	Rental	215	Y	N	Y
1	Cartier	1515 Atlas Lane	Strata (EPS2412)	41	Y	Y	Y
1	Churchill	1515 Atlas Lane	Strata (EPS2412)	14	Y	Y	Y
1	Mansion	1520 Atlas Lane	EPS2414	6	Y	Y	Y
1	Gatehouse	1501 Atlas Lane	Freehold	1	Y	Y	Y
1	Coachhouse	1525 Atlas Lane	Strata (EPS2413)	3	Y	Y	Y
2	Adera	7228 Adera Street	Strata (EPS5056)	77	Y	Y	Y
2	Hudson	7128 Adera Street	Strata (EPS5056)	90	Y	Y	Y
2	Beverly	1561 West 57 th Avenue	Strata (EPS5055)	84	Y	Y	Y
2	Wilshire	1571 West 57 th Avenue	Strata (EPS5055)	71	Y	Y	Y

¹ Exhibit B-1, p. 2.

1.1 Complaint

On April 19, 2023, SEUL issued a letter to Strata EPS2412 (Strata), a SEUL customer, stating that the Strata's failure to remit payment of a \$46,997.86 outstanding balance within 10 days will result in a disconnection of utility services to the Strata's common areas, corridors, lobbies, and cooling of the electrical distribution room (Disconnection Notice).²

On April 26, 2023, the BCUC received a complaint from the Strata regarding the issuance of the Disconnection Notice by SEUL (Complaint).

In the Complaint, the Strata submits the following³:

- i. SEUL is using the Strata's parkade exhaust fans to "charge/prime the utility". The Strata claims that SEUL is utilizing an estimated \$8,000 per year of electricity for operation of the parkade fans;
- ii. SEUL is using Strata water to fill the utility's cooling tanks;
- iii. Quadlogic Meters Canada Inc. (QMC) administers the metering and billing of the Strata's thermal energy consumption. The Strata states that its request to SEUL to separate common utility room usage as a separate account was denied with no further explanation; and
- iv. The Strata requests SEUL to disclose all other Strata property and resource usage since 2015.

2.0 Legislative Framework

On May 19, 2023, the BCUC established the review of this Complaint pursuant to section 83 of the UCA, which states:

If a complaint is made to the commission, the commission has powers to determine whether a hearing or inquiry is to be had, and generally whether any action on its part is or is not to be taken.

3.0 Regulatory Process

On April 27, 2023, in response to the Complaint, the BCUC commenced a compliance investigation into SEUL's intent to suspend supply of contracted services, including thermal energy to the Strata. The BCUC issued Staff Questions to SEUL requesting, among other things, a list of specific areas, services, and number of residences that would be impacted by a disconnection of thermal energy services; any associated safety risks; and the impact of disconnection to any connected infrastructure or other strata corporations at the premises.

On May 1, 2023, SEUL sought an extension for the filing of its response to the Complaint, which was granted by the BCUC.

On May 2, 2023, the BCUC prohibited SEUL from any disconnection of the Strata's thermal energy services pending further order of the BCUC.⁴

² Exhibit A2-1, p. 4.

³ Exhibit A2-1, pp. 2-3.

⁴ BCUC Order G-100-23.

On May 3, 2023, SEUL filed a response to the Complaint.⁵ Additionally, on May 5, 2023, SEUL filed a submission stating that it “assume[s] the BCUC is reconsidering its Order G-100-23 directing that ‘SEUL is prohibited from any disconnection of the Strata’s thermal energy services pending further order of the BCUC’”.⁶

On May 19, 2023, the BCUC appointed a panel to review the Complaint.

On May 25, 2023, the BCUC issued a request for supplemental information to SEUL and the Strata and the BCUC received submissions from SEUL and the Strata on June 2 and June 8, 2023, respectively.

We review the various allegations raised in the Complaint below.

4.0 Particulars of the Complaint

Parkade Exhaust Fans

The Strata states that SEUL utilizes its parkade exhaust fans to “charge/prime the utility” and this was a design feature implemented by SEUL.⁷ Electricity for the parkade exhaust fans is paid for by the Strata, who then recoups costs from other Lot 1⁸ strata corporations in accordance with a cost-sharing arrangement registered on title, to which SEUL is not a party.⁹ The Strata submits that SEUL utilizes Strata electricity costing approximately \$8,000 per year and that there are no joint agreements with respect to the management or upkeep of the parkade exhaust fans.⁷ Further, the Strata claims that Lot 1 strata EPS 2414, owned by the Developer, has refused to pay its proportionate share for electricity.⁹

SEUL confirms that the Strata’s parkade exhaust fans are used to support heat recovery for, and improve efficiency of, the SETES.¹⁰ The dual uses of the Strata’s parkade exhaust fans (for both Strata and SEUL purposes) have been in place since the development was built and are not new.¹¹ SEUL states that the operation of the parkade exhaust fans for SEUL utility purposes was studied in 2019 by Nemetz (S/A) & Associates Ltd.¹² and that the Developer has been in negotiations with the Phase 1 strata corporations on cost sharing matters, which include the Strata’s parkade exhaust fans. SEUL submits that it proposed that SEUL would pay for a portion of the Strata’s electricity usage with respect to the use of the parkade exhaust fans, including retroactive compensation for usage dating back to 2016. However, SEUL states that the Strata has not responded to SEUL’s cost sharing proposal.¹³

The Strata states that SEUL proposed informal cost sharing offers in late 2019, initially at 50 percent, but subsequently negotiated up to 66.6 percent, for the electricity attributable to SEUL’s use of the Strata’s parkade exhaust fans. The Strata submits that SEUL did not provide any formal agreements or compensate the Strata in accordance with the verbal agreement. Subsequent to the Strata’s follow-up in September 2020 regarding the proposed cost-sharing arrangement, SEUL responded in November 2020 that the Developer intended to initiate

⁵ Exhibit A2-1, p. 38.

⁶ Exhibit A2-1, p. 45.

⁷ Exhibit A2-1, p. 2.

⁸ Lot 1 entities are comprised of: the Strata, EPS 2413, and EPS 2414; Exhibit C1-1, p. 3.

⁹ Exhibit C1-1, p. 8.

¹⁰ Exhibit B-1, p. 6.

¹¹ Exhibit A2-1, p. 38.

¹² Exhibit A2-1, p. 39.

¹³ Exhibit A2-1, p. 39.

arbitration over various cost-share disputes between the Strata and the Developer.¹⁴ Consequently, the Strata “did not engage with the Developer’s recent e-mails regarding other cost-sharing issues prior to the commencement of arbitral proceedings two months ago, because [the Developer] had previously stated categorically that it would not agree to a global settlement of all cost-sharing issues...”¹⁵

Supply of Water to SEUL’s Cooling Tower

The Strata submits that, upon notification of relatively high-water consumption for the period of June-July 2021 from the City of Vancouver, it discovered that SEUL was utilizing the Strata’s supply of water to provide make-up water to SEUL’s cooling tower. The Strata submits that SEUL refused to reimburse the Strata for water usage during the period that it says the cooling tower was connected to the Strata’s water system.¹⁶

SEUL explains that its cooling tower is located on the roof of the Shannon Mews and Apartments rental apartment building (Rental Building) and states that the cooling tower is not supplied through the Strata’s City of Vancouver water service.¹⁷ SEUL further states that the cooling tower is supplied by the City of Vancouver water service billed to the Rental Building, which is subsequently reimbursed by SEUL. SEUL explains that in 2021, the cooling tower was connected to the Strata’s water system in error for a period of “a couple of months” until the error was discovered, at which time the cooling tower was disconnected from the Strata’s water system.¹⁸ SEUL did not comment on the reimbursement of water usage raised by the Strata.

Common Utility Room Usage

The common utility room is a concrete room located in the Strata’s parkade and is owned by the Strata.¹⁹ The Strata states the common utility room (also referred to as “electrical room” or “electrical distribution room”) contains equipment for electrical transformation and distribution, as well as fire protection equipment.²⁰ Further, the common utility room is used to distribute electricity to the Strata building, to other Lot 1 strata corporations, and to the shared parkade equipment used by multiple strata corporations and the Rental Building.

According to the Disconnection Notice, the services to be discontinued are for space heating and space cooling of the Strata common areas including common corridors, lobbies, and space cooling for the utility room of the building.²¹ The Strata states that the common utility room is used to distribute electricity to the Strata building, to other Lot 1 strata corporations, and to the shared parkade equipment used by multiple strata corporations and the Rental Building. The Strata states that space cooling for the common utility room is billed to the Strata alone. The Strata requested that space cooling for the common utility room be separately metered and billed such that the costs can be fairly divided amongst other users. That request was denied by SEUL.²²

SEUL confirms that the Strata’s common utility room contains equipment that distributes electricity to other Phase 1 strata buildings. SEUL states that the issue of sharing the common utility room cooling costs is a matter strictly between the Strata (as the SEUL account holder) and the other Phase 1 strata corporations. SEUL installed a separate meter for the utility room cooling service to enable the Strata and other strata corporations

¹⁴ Exhibit C1-1, p. 9.

¹⁵ Exhibit C1-1, pp. 9-10.

¹⁶ Exhibit A2-1, p. 2.

¹⁷ Exhibit A2-1, p. 38.

¹⁸ Exhibit B-1, pp. 5-6.

¹⁹ Exhibit A2-1, p. 17.

²⁰ Exhibit C1-1, pp. 3-4.

²¹ Exhibit A2-1, p. 16.

²² Exhibit A2-1, pdf p. 14.

to develop a cost sharing agreement. SEUL states that, other than installing the separate meter, SEUL has no role in a cost sharing agreement.²³

Risks of Discontinued Service

SEUL states that the Disconnection Notice and subsequent discontinuation of service will only affect common corridors, lobbies, and the utility room of the building. SEUL confirms that individual strata units (residences) in the Strata building would not be impacted. SEUL states that discontinuing service is not expected to affect public safety but acknowledges that residents may experience discomfort and inconvenience when in common areas of the building.²⁴

SEUL notes that if space cooling is not provided to the utility room during times of high ambient temperatures, then equipment in the Strata utility room (not owned by SEUL) could overheat and automatically shut down.²⁵ SEUL further explains that the utility room contains electrical distribution equipment that supplies electricity to multiple Phase 1 strata corporations, and in the event of equipment shutdown, electrical service to those strata corporations would be interrupted. SEUL clarifies that the SETES does not rely on electrical distribution from the utility room.²⁶

The Strata confirms that the utility room is an electrical distribution hub for the Strata and other strata corporations served by the SETES. The Strata states that the utility room contains, and supplies electricity to, the Lot 1 fire protection panel. The Strata submits that discontinuation of space cooling to the utility room by SEUL could potentially cause the fire panel, a life safety system, to overheat and become disabled.²⁷

Legal Proceedings

The Strata states there are no other current legal proceedings between the Strata and SEUL.²⁸ However, SEUL's affiliate, Wall Financial Corporation, and the Strata are engaged in an arbitration proceeding which was launched on April 5, 2023, related to "allegedly unpaid invoices for other cost-share claims (i.e. as between the other Wall Financial Corporation entities as owners of other Lot 1 Entities and as owner of Lot 2)."²⁹ Further, the Strata claims that SEUL instructed QMC to issue the Disconnection Notice on the same day as the Strata's filing of its arbitration defence on April 19, 2023. The Strata denies liability for the alleged \$46,997.86 outstanding balance claimed by SEUL as that sum relates to periods prior to February 2019 and is thus statute barred in consideration of the 2-year limitation period on civil claims pursuant to section 6 of the *Limitation Act*.³⁰

SEUL states it has not initiated court proceedings against the Strata in respect of the Disconnection Notice. SEUL submits it will consider initiating court proceedings against the Strata if the Strata does not pay its outstanding invoices and/or if SEUL cannot utilize the remedies provided by its Thermal Energy Tariff.³¹

²³ Exhibit B-1, p. 4.

²⁴ Exhibit A2-2, pdf p. 17.

²⁵ Exhibit A2-1 pdf pp. 16-17.

²⁶ Exhibit B-1 p. 2-3.

²⁷ Exhibit C1-1 p. 3-4.

²⁸ Exhibit C1-1, p. 10.

²⁹ Ibid.

³⁰ Exhibit A2-1, pp. 21-23.

³¹ Exhibit B-1, p. 7.

5.0 Other Matters

In addition to the Complaint launched by the Strata, SEUL indicated that it assumes that the BCUC will, as part of this proceeding, reconsider its decision on the stay on disconnection of thermal energy services (Stay Decision). However, SEUL has not proceeded to file an application for reconsideration pursuant to the requirements under Part V of the BCUC's Rules of Practice and Procedure (Rules).

Under Rule 26.02, an applicant seeking reconsideration of a BCUC decision must file an application for reconsideration within 60 days of the original decision. Rule 26.05 requires that an application for reconsideration of a decision must contain a concise statement of the grounds for reconsideration, which must include one or more of the following:

- a) the BCUC has made an error of fact, law, or jurisdiction which has a material bearing on the decision;
- b) facts material to the decision that existed prior to the issuance of the decision were not placed in evidence in the original proceeding and could not have been discovered by reasonable diligence at the time of the original proceeding;
- c) new fact(s) have arisen since the issuance of the decision which have material bearing on the decision;
- d) a change in circumstances material to the decision has occurred since the issuance of the decision;
or
- e) where there is otherwise just cause.

Rule 28.01 provides the BCUC with the discretion to summarily dismiss a reconsideration application on the following ground:

Upon the filing of an application for reconsideration of a decision, the BCUC may, without further process, summarily dismiss the application, in whole or in part, on the basis that it fails to establish, on its face, any reasonable grounds for reconsideration of the decision.

In this case, SEUL has not purported to file an application for reconsideration of the Stay Decision, nor has it provided any grounds for reconsideration by this Panel of that Stay Decision in accordance with the requirements of Rule 26.05. Instead, it purports to proceed on the assumption that the Panel will reconsider the Stay Decision in reviewing this Complaint.

Based on the information submitted by SEUL and the Strata in this Complaint, the Panel finds that, as a result of disconnection by SEUL, several safety issues may arise (e.g. potential fire hazards, loss of temperature control, possible equipment damage, and occupant safety). Further, the Panel notes that SEUL has not provided any evidence to either mitigate these safety concerns, nor has it attempted to contradict them. As such, the Panel is not convinced that SEUL can disconnect the Strata's thermal energy services without creating safety risks to the Strata and other Lot 1 Strata Corporations.

In short, even if we were to overlook the procedural flaws in SEUL's request for reconsideration and consider that request on its merits, we find that SEUL has failed to provide any reasonable grounds for reconsideration of the BCUC's Stay Decision, **Accordingly, the Panel determines that SEUL's reconsideration application with respect to the Stay Decision is summarily dismissed and that the stay on disconnection, as directed by Order G-100-23, remains in effect, and SEUL is prohibited from disconnecting the Strata without prior approval by the BCUC.**

The Panel acknowledges that SEUL's Thermal Energy Tariff permits disconnections in the instances a customer does not pay for consumption; however, in this case, the safety concerns identified above require SEUL to consider an alternative approach to collect any outstanding bills.

6.0 Panel Determination

Notwithstanding the various elements of the Complaint reviewed above, the Panel notes that the core dispute boils down to SEUL's proposed disconnection of the Strata's thermal energy services for non-payment for services, which is currently stayed by Order G-100-23.

With regards to the issues around the parkade fans and supply of water to SEUL's cooling tower, the Panel notes that SEUL and Strata have been or are considering a cost sharing agreement. Such an agreement is outside the scope of this Complaint and is a matter for the parties to negotiate. Accordingly, the Panel will not comment on what should go into such an agreement beyond noting that the concept of a cost sharing arrangement appears to be a sensible solution. Further, the Panel notes that there appear to be several ongoing issues between the parties that are already the subject of arbitration, and pending the outcome of that arbitration and the parties' further negotiations, the Panel declines to opine on their relative merits. **As such, the Complaint is dismissed.**