



ORDER NUMBER
G-271-23

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

and

Cambie Gardens Energy Limited Partnership
Complaint filed by S.U.C.C.E.S.S. Affordable Housing Society and the City of Vancouver

BEFORE:

D. A. Cote, Panel Chair
E. A. Brown, Commissioner
M. Jaccard, Commissioner

on October 12, 2023

ORDER

WHEREAS:

- A. On June 30, 2023, the British Columbia Utilities Commission (BCUC) received a complaint filed by S.U.C.C.E.S.S Affordable Housing Society (SUCCESS) and the City of Vancouver (City) (collectively, the Complainants), regarding the inability to reach an agreement with Cambie Gardens Energy Limited Partnership (CGE) on the rates and terms for the delivery of thermal energy services from the CGE Thermal Energy System (TES) (Complaint);
- B. By letter dated August 3, 2023, in accordance with Section 2.3.3 of the TES Regulatory Framework Guidelines, the BCUC provided CGE an opportunity to respond to the Complaint;
- C. On August 18, 2023, CGE responded to the Complaint, seeking, among other things, an order from the BCUC removing the City from the proceeding on the basis that the City is not a customer and is a competitor; and the BCUC order that the City has no standing to participate in the Complaint as it is not a customer of the CGE TES;
- D. By letter dated August 28, 2023, the BCUC requested SUCCESS and the City to provide a reply submission;
- E. By letter dated September 13, 2023, SUCCESS and the City replied to CGE's letter dated August 18, 2023, including submissions on the standing of the City in the Complaint; and
- F. The BCUC has considered the submissions and determined we will hear the complaint.

NOW THEREFORE pursuant to section 83 of the *Utilities Commission Act* and for the reasons outlined in Appendix B of this order, the BCUC orders as follows:

1. A proceeding is established to hear the complaint, pursuant to the regulatory timetable as outlined in Appendix A to this order.
2. The City is a party to the complaint.
3. CGE is to provide the information specified in Section 6 of the Reasons for Decision attached to this order as Appendix B.

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

BY ORDER

Original signed by:

D. A. Cote
Commissioner

Attachment

Cambie Gardens Energy Limited Partnership
Complaint filed by S.U.C.C.E.S.S. Affordable Housing Society and the City of Vancouver

REGULATORY TIMETABLE

Action	Date (2023)
CGE to file further information	Thursday, October 26
BCUC Information Request (IR) No. 1 to CGE and the Complainants	Wednesday, November 15
CGE IR No. 1 to the Complainants	Monday, November 20
Complainant IR No.1 to CGE	Monday, November 20
CGE and Complainant responses to IR No. 1	Monday, December 4
Further process	To be determined

Cambie Gardens Energy Limited Partnership
Complaint filed by S.U.C.C.E.S.S. Affordable Housing Society and the City of Vancouver

REASONS FOR DECISION

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1.0 Introduction

On June 30, 2023, S.U.C.C.E.S.S. Affordable Housing Society (SUCCESS) and the City of Vancouver (City) (jointly the Complainants) filed a complaint with the BCUC pursuant to section 83 of the *Utilities Commission Act* (UCA) relating to the lack of agreement with Cambie Gardens Energy Limited Partnership (CGE) on the rates and terms for the delivery of space heating and hot water to serve SUCCESS at 603 West 59th Avenue, Vancouver, BC (Complaint).¹

The City is the owner of an air space parcel (ASP) in one of two buildings of Parcel A of Phase 1 of the Cambie Gardens Development at the Pearson Dogwood site in Vancouver. SUCCESS leases the ASP from the City in a building in which CGE is the sole energy utility providing space heating and hot water (Service).²

Onni Pearson Dogwood Development Limited Partnership (Onni), of which CGE is a subsidiary, constructed the Cambie Gardens development in which the Thermal Energy System (TES) is located.³

The CGE TES is an exempt Stream "A" TES pursuant to BCUC Order G-373-21. The CGE TES provides thermal energy services to a total of three customers: SUCCESS, a Residential Strata, and a Commercial retail section retained by Onni Property Management Ltd.

¹ Exhibit B1-1, p. 1.

² Ibid, pp. 2-3.

³ Exhibit B2-2, p. 6.

The Complainants seek the BCUC's assistance to adjudicate the unresolved issues and to set the rates and terms for the Service.⁴ In accordance with Section 2.3.3 of the TES Regulatory Framework Guidelines, the BCUC provided CGE an opportunity to respond to the Complaint.⁵

Currently, there is an interim agreement dated September 15, 2022, between CGE and SUCCESS. In the interim agreement, the parties agreed that if they could not settle the terms of the final service agreement by September 30, 2022, either party may apply to the BCUC to adjudicate aspects of the service agreement under dispute and set the rates and the terms of service "under the Utilities Commission Act and applicable policies procedures and guidelines for Stream A Thermal Energy Systems."⁶ CGE agrees that the parties to the service agreement, namely CGE and SUCCESS, have been unable to reach agreement on the rates, terms, and conditions of the final service agreement.⁷ CGE has, in addition, requested that the BCUC issue an order confirming that the City has no standing with respect to this matter.⁸

Following CGE's response to the Complaint, dated August 18, 2023, (Response) the BCUC issued a request for the Complainants to respond.⁹ SUCCESS and the City subsequently submitted their reply on September 13, 2023.¹⁰

The Panel has reviewed the submissions of the parties. Noting the lack of a final agreement between the parties, which as outlined in the Thermal Energy Systems Regulatory Framework Guidelines (the TES Guidelines) is a requirement,¹¹ the Panel has determined it is appropriate to hear this Complaint.

The Panel notes that there are four issues arising with the parties' submissions:

1. The City of Vancouver's standing;
2. Confidentiality of information provided by CGE;
3. Proposed review process and related proceeding costs; and
4. Scope of BCUC involvement.

In these reasons for decision, the Panel summarizes parties' submissions where there are issues arising from alternate perspectives regarding the standing of the parties and regulatory process. The Panel provides determinations on such issues in turn.

2.0 City of Vancouver's Standing

CGE submits that the City has no standing in this Complaint proceeding and seeks an order from the BCUC removing it from this proceeding, citing the fact that the City is not a customer of CGE. CGE further submits the City is a competitor of CGE or, alternatively, runs competitive systems, and their participation in this proceeding is not warranted.¹²

⁴ Exhibit B1-1, p. 1.

⁵ Exhibit A-2.

⁶ Exhibit B1-1, Appendix B, Section 2c.

⁷ Exhibit B2-2, p. 4.

⁸ Ibid., p. 5.

⁹ Exhibit A-4.

¹⁰ Exhibit B1-2.

¹¹ Order G-27-15, Appendix A, p. 13.

¹² Exhibit B2-2, p. 2.

The Complainants submit the City's interest in the ASP and the Service to the ASP, as well as its relationship to SUCCESS and future tenants, are more than sufficient to establish the City's standing in the Complaint and the BCUC's review.¹³

Panel Determination

The Panel finds that the City is a party to the proceeding. The City has sufficient interest in the proceeding by virtue of being the owner and landlord of the ASP in which SUCCESS is a tenant and the impact on current and potential future tenants. The Panel therefore declines to remove the City from the proceeding. The Panel will address the City's status as a competitor and the issue of confidentiality of materials to be provided by CGE in Section 3.0 below.

3.0 Confidentiality

The Complainants asked the BCUC to require CGE to reply to their December 20, 2022, request for information as outlined in Appendix D of their Complaint. Appendix D is made up of a number of interrogatories concerning the agreement and related costs.¹⁴ CGE states that it has refused to provide this information to the Complainants because it is confidential, noting that the City is a competitor.¹⁵ CGE further states that no disclosure of materials should be made to the City, as they have refused to be CGE's customer.¹⁶ However, if requested by the BCUC, CGE states it is prepared to submit supporting materials to the BCUC in confidence to justify their rates. Responding to each of the points related to rates made by the Complainants, CGE states that it expects the material will show:¹⁷

- a) CGE's cost of service and proposed return on its investment;
- b) That rates include only relevant costs attributable to the Service to SUCCESS with no cross-subsidization of other Onni or CGE costs;
- c) That Onni has paid or will pay for all costs of constructing the ASP in accordance with its contractual and permitting obligations, and that no such costs are included in rates; and it has not attempted to recover any of those costs through the Service rates; and
- d) That Onni and CGE have not attempted to recover any of the costs of building the cooling equipment for the Vancouver Coastal Health and residential units through the Service rates for SUCCESS.

CGE expects to file its financial materials along with a request to the BCUC to maintain such records in confidence, not forming part of the public record.¹⁸

CGE submits that "[d]isclosure of the commercially sensitive financial material while the City remains a participant in this proceeding unnecessarily increases the risk of undue harm and prejudice to Cambie against

¹³ Exhibit B1-2, pp. 1-2.

¹⁴ Exhibit B1-1, p.1.

¹⁵ Exhibit B2-2, p.8.

¹⁶ Ibid., p. 2.

¹⁷ Ibid., pp. 8-9.

¹⁸ Ibid., pp. 8-9.

the interests of its competitors—including the City—and customers. The TES industry in British Columbia is highly competitive. Disclosure of Cambie's proprietary formulas and commercially sensitive costing information would cause competitive harm to Cambie, with little if any public interest benefit.”¹⁹

The Complainants request access to the CGE's financial materials and submit they will file the standard BCUC confidentiality undertaking and keep confidential information in confidence.²⁰

In the Complainants' reply to CGE's Response, the City rejects CGE's claim it is a competitor, or that CGE operates a “competitive system”. The Complainants submit that “Cambie is the sole provider of Service for the residents of the ASP and the other units in the Cambie Gardens Development. The site developer (Onni Pearson Dogwood Development Limited Partnership) established Cambie as subsidiary for the purpose of providing the Service. Cambie did not compete to be the Service provider. The City also does not compete with Cambie in other locations. Cambie has not offered any examples to support its unfounded assertion. Nor did Cambie raise with [sic] this point with City prior to the Response. Cambie has also not explained why operating a “competitive system” is grounds for denying the City standing in this review or access to the relevant information for the Service to the ASP.”²¹

Panel Determination

The Panel finds that CGE has not made a persuasive case for why confidential information should not be shared with the City. CGE has claimed that the City is a competitor but has not explained how they compete or provided examples of where the City and CGE are in competition. Moreover, the City denies CGE's claim stating that it was not a competitor for this location nor was it a competitor of CGE in other locations. **Without having reviewed the information CGE intends to file as confidential, the Panel is not able to determine whether the information CGE intends to file is confidential or ought to be excluded from the City.**

With respect to submitting documents CGE believes should be held confidential from the public, it may file a request for confidentiality pursuant to section 18 of the Rules of Practice and Procedure and the panel will thereafter make a determination on confidentiality.

4.0 Review Process and Proceeding Costs

The Complainants submit a Streamlined Review Process (SRP) in combination with a written process may be appropriate to hear this complaint because the issues are narrow and do not require an extensive record.²² In reply, CGE notes that the BCUC's SRP Guidelines state as a criterion "Is the application, or portions of the application particularly contentious? If so, the Streamlined Review process may not be suitable."

CGE submits that the matters have proven to be very contentious and have been in dispute for over two years, and conclude that an SRP is not an appropriate mechanism for dealing with the complaint.²³

¹⁹ Ibid., p. 9.

²⁰ Exhibit B1-2, p. 4.

²¹ Exhibit B1-2, pp. 2-3.

²² Exhibit B1-1, p. 1.

²³ Exhibit B2-2, p. 4.

The Complainants submit that if CGE prefers a full formal hearing, then the City and SUCCESS will accept that approach, but state that CGE should bear the additional cost associated with that approach and not pass it onto its customers through rates.²⁴

Panel Determination

The parties seem to be far apart with respect to agreeing on a final contract. Therefore, the Panel agrees with CGE that an SRP process in this instance would not be the most appropriate review process as an SRP works best when there is general agreement among the parties with only a limited number of issues to resolve. In our view, the parties are best served by a written process allowing the parties to present their case through evidence and argument related to that evidence. That said the Panel is mindful that there is a need to be efficient and minimize the process and related costs.

With respect to costs for the hearing of this Complaint, the Panel will take care to manage and minimize such costs to the extent possible. The parties can contribute by remaining focused on the key issues. That said, the Parties will each be responsible for their respective costs. The Panel wishes to clarify that under Section 33.02 of the BCUC's Rules of Practice and Procedure, public utilities, municipalities and participants in a proceeding arising out of a complaint are not eligible for a participant cost award in a proceeding unless otherwise ordered by the BCUC. However, participants who, pursuant to Rule 33.02 are otherwise not eligible may apply for an order granting eligibility, as soon as practicable following commencement of the proceeding.²⁵

5.0 Scope of the Proceeding

The Complainants seek an order from the BCUC pursuant to sections 60 and 61 of the UCA to set the rates and terms for the Service to SUCCESS under a service agreement between SUCCESS and CGE.²⁶

CGE accepts that the BCUC can review the cost base evidence of CGE, which CGE expects to file confidentially with the BCUC, in order to respond to the concerns of SUCCESS.²⁷ However, CGE submits that the BCUC has no role in reviewing and approving, or mediating, the terms and conditions of the service agreement. CGE states that the terms and conditions they have provided to SUCCESS have been widely accepted by a group of customers including TELUS Gardens, SOLO, and Lynn Valley. CGE continues, stating that the "existing Service Agreement contains terms and conditions that have been prepared by awareness that they have been reviewed by the Commission in various proceedings and form a core precedent for use in the TES market environment in British Columbia."²⁸

In reply, SUCCESS states that the examples provided by CGE are irrelevant noting that parties negotiate agreements "based on each party's situation, needs and expectations."²⁹

To support its position CGE cites the BCUC's TES Guidelines complaint process for Stream A TES, which call for the BCUC to not hear complaints other than ones in connection to: (i) Services related to safety and reliability;

²⁴ Exhibit B1-2, p. 5.

²⁵ Rule 33.03 of the BCUC Rules of Practice and Procedure.

²⁶ Exhibit B1-1, p. 2.

²⁷ Exhibit B2-2, p. 5.

²⁸ Exhibit B2-2, p 5.

²⁹ Exhibit B1-2, p. 4.

and, (ii) Rates, fees, and/or charges. CGE further states that the TES Guidelines do not call for the BCUC to hear service agreement complaints about the terms and conditions— other than the ones mentioned above.³⁰

Panel Determination

With regard to the TES Guidelines, the Panel notes the guidance provided in the TES Guidelines states that the BCUC will not consider the propriety of rates that the TES Provider is charging as long as the rate is in accordance with a long-term contract. **Given the absence of an agreed-upon long-term contract in this instance, the Panel finds the propriety of rates to be within the scope of this proceeding.**

The Panel disagrees with SUCCESS's characterization of the examples provided by CGE as being irrelevant. Terms and Conditions applied in similar circumstances in similar TES locations should be given weight. However, given the lack of an agreement as stipulated in the TES Guidelines, the Panel is reticent to totally close the door on a review of relevant terms and conditions. Therefore, the Panel declines to limit the scope of the proceeding at this stage to preclude consideration of the associated contractual terms and conditions, and the relationship between these terms and the proposed rates.

The Panel further notes the following section of the TES Guidelines in the event of a complaint relating to a Stream A TES:

"If warranted, the Commission will initiate a more fulsome regulatory review, and may escalate the complaint to an adjudication process. Escalated review or adjudication may result in the Commission exercising its authority under the UCA, including, but not limited to, lifting the exemptions provided at registration, setting rates or ordering the Stream A TES Provider to improve service." (Emphasis added)

By the attached Order and accompanying Reasons, the Panel has in effect initiated a more fulsome review.

6.0 Additional Information Requested

In its Response, CGE states its willingness to file any information requested by the BCUC, in confidence if necessary.³¹ To provide a basis for review of this complaint the BCUC will require a number of informational documents upon which to base our inquiries.

Accordingly, the Panel orders that CGE file the following information, along with any associated requests for confidentiality as required:

1. If rates are proposed to be the same to all customers of the CGE TES, please provide an explanation for why that is appropriate, given cooling is not part of the Service provided to SUCCESS.
2. Supporting information sufficient to illustrate the following with respect to the rates offered to SUCCESS:³²

³⁰ Exhibit B2-2, p. 3.

³¹ Exhibit B2-2, p. 4.

³² The BCUC understands the two-part rate structure offered to SUCCESS as: an initial basic charge (Basic Charge) of \$2.08 per square foot per year (Exhibit B2-2, p. 7) which will be adjusted each year during the Service term pursuant to the service agreement, and a monthly variable energy charge (Variable Energy Charge) based on actual fuel costs (Exhibit B1-1, Appendix C, Schedule A). The BCUC also notes on page 4 of Exhibit B2-2 that CGE had stated: "Cambie takes the position the Commission should issue a direction that the City is not an appropriate party to this proceeding until such time as it is

- a. A high-level breakdown of the forecast costs and return on investment, for each year in the service agreement term, which CGE considers relevant and attributable to SUCCESS's Service, including descriptions for each amount, why they are relevant and attributable to SUCCESS's Service, how they are escalated or determined and the method(s) used to allocate shared costs, if applicable, with the Residential Strata and Commercial retail customers and any share of Onni's corporate costs;
 - b. Identification of which cost(s) as provided in "a" above, that CGE proposes to recover through: i) the Basic Charge; and ii) the Variable Energy Charge offered to SUCCESS, and why;
 - c. A quantitative and qualitative explanation, where applicable, for how the rates and annual adjustment, as provided in "a" above, demonstrates the rates offered to SUCCESS do not include cross-subsidization of other costs such as the construction of the ASP owned by the City, or the cooling system used to provide cooling service to the Commercial retail and Residential Strata customers;
 - d. A description of how the Variable Energy Charge portion of the proposed rates to SUCCESS will be determined, including an explanation of the following:
 - i. The Fuel cost allocation between SUCCESS, the Residential Strata, and commercial customers;
 - ii. If fuel consumption is metered, a description of the metering equipment as well as their location; and
 - iii. Any other evidence CGE wishes to provide to address the question of fuel costs cross-subsidisation between customers.
3. A copy of CGE's proposed agreement with SUCCESS, including a summary (with reasons) of all differences in the rates and terms and conditions between the agreement offered to SUCCESS and the agreement(s) signed by the Residential Strata and Commercial retail customers of CGE, if any.
 4. Copies of the service agreements CGE has signed with the Residential Strata and Commercial retail customers.
 5. An explanation of the impact of the term of the agreement on the proposed rates to SUCCESS.
 6. An explanation of the ownership and control of thermal energy equipment within the ASP occupied by SUCCESS.
 7. An explanation for how the nature of the contractual relationship between SUCCESS and the City, including the term of the leasing agreement is "material" to the determination of the rates offered to SUCCESS.³³

prepared to be a signatory and be a customer of Cambie, or alternatively submits that the risk premium to Cambie should be increased to reflect the circumstances." (*Emphasis added*).

³³ Exhibit B2-2, p. 3.