



**ORDER NUMBER
G-212-24**

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

and

Kelowna OWS Utility Inc.
Complaint filed by Strata EPS 7397

BEFORE:

B. A. Magnan, Panel Chair
W. M. Everett, KC, Commissioner

on August 9, 2024

ORDER

WHEREAS:

- A. On December 28, 2022, a complaint was filed on behalf of Strata EPS 7397 (Strata) regarding the thermal energy services the Strata receives from Kelowna OWS Utility Inc. (Kelowna OWS);
- B. On November 7, 2023, by Order G-302-23, the British Columbia Utilities Commission (BCUC) directed Kelowna OWS to file a Third-Party Engineer Report no later than 90 days following the BCUC's approval of the terms of engagement for a proposed form of agreement for the retainer of a qualified and independent third-party engineer (Third-Party Engineer Retainer Agreement);
- C. On December 8, 2023, Kelowna OWS filed with the BCUC the Third-Party Engineer Retainer Agreement, which establishes four Focus Areas as the scope of work to be completed by Falcon Engineering Ltd. (i.e. Focus Areas 1, 2, 3 and 4);
- D. On April 18, 2024, by Order G-118-24, the BCUC amended the deadline for Kelowna OWS to file the completed Third-Party Engineer Report. Order G-188-24 established deadlines of April 30, 2024, May 30, 2024, and June 27, 2024, for filing of Focus Areas 2, 3, and 4, respectively;
- E. On April 29, 2024, Kelowna OWS filed the Third-Party Engineer Report for Focus Area 2;
- F. On May 9, 2024, Kelowna OWS filed an extension request to file the Third-Party Engineer Report for Focus Area 3;
- G. By letter dated May 14, 2024, the BCUC granted Kelowna OWS an extension to file the Third-Party Engineer Report for Focus Area 3 to July 2, 2024, and on June 25, 2024, Kelowna OWS filed the Third-Party Engineer Report for Focus Area 3;

- H. By letter dated July 11, 2024, the BCUC amended the deadline for filing the Third-Party Engineer Report for Focus Area 4 to August 29, 2024;
- I. On July 18, 2024, Kelowna OWS submitted an extension request to file the Third-Party Engineer Report for Focus Area 4 to December 13, 2024, ten (10) business days after the estimated completion date for the corrective actions (November 29, 2024). In the letter, Kelowna OWS provides an update on the implementation of corrective actions to the Kelowna OWS TES, and indicates that it will take several months to complete them; and
- J. The BCUC has reviewed Kelowna OWS' submissions filed on July 18, 2024, and considers that an amendment to the filing deadline of the Third-Party Engineer Report for Focus Area 4 is not warranted.

NOW THEREFORE for the reasons outlined in the decision accompanying this order, the BCUC orders as follows:

1. Kelowna OWS's extension request to file the Third-Party Engineer Report for Focus Area 4 ten (10) business days after the estimated completion date for corrective actions of November 29, 2024, is denied; and
2. Kelowna OWS is directed to file the Third-Party Engineer Report for Focus Area 4 with the BCUC by August 29, 2024.

DATED at the City of Vancouver, in the Province of British Columbia, this 9th day of August 2024.

BY ORDER

Original signed by:

B. A. Magnan
Commissioner

Attachment

DECISION

1.0 Introduction

1.1 Background

On December 28, 2022, the Strata filed a complaint with the BCUC regarding the reliability of the thermal energy services provided by Kelowna OWS. The Strata claims that the thermal energy service is unreliable and unsafe, in part due to the repeated failure of the heat pump components of Kelowna OWS' TES that began in December 2021 (Complaint).¹ Following an initial review of the Complaint by BCUC staff, the BCUC, by Order G-176-23, established a proceeding to hear the Complaint.

1.2 Third-Party Engineer Investigation

On November 7, 2023, by BCUC Order G-302-23, Kelowna OWS was directed to file a third-party engineer report (Third-Party Engineer Report or Report) in respect of the root cause(s) of the unreliable and inadequate operation of the TES and the space heating provided to the Strata including, among other things, identification of the root cause(s) of equipment failures as well as an assessment of the criticality and priority of corrective actions identified at the time. In accordance with Directive 2 of Order G-302-23, Kelowna OWS was directed to file the Third-Party Engineer Report no later than 90 days following the BCUC's approval of the terms of engagement for a proposed form of agreement to retain a qualified and independent third-party engineer (Third-Party Engineer Retainer Agreement).

By letter dated December 12, 2023, the BCUC approved Falcon Engineering Ltd. as the Third-Party Engineering Consultant that Kelowna OWS proposed to retain to deliver the Third-Party Engineer Report in accordance with the directives of BCUC Order G-302-23. In the letter, Kelowna OWS was directed to file the Third-Party Engineer Report by March 11, 2024, being no later than 90 days from the Panel's approval of the Falcon Engineering Ltd. as the Third-Party Engineering Consultant.

2.0 Third-Party Engineer Report Filing Deadlines and Extension Requests

The Third-Party Engineer Retainer Agreement provided the scope of work (as detailed in the Directives of Order G-302-23) to be carried out by Falcon Engineering Ltd. in four Focus Areas (Focus Areas 1 to 4). The scopes of each of Focus Areas 1 to 4, are set out in Table 1 below.

¹ Exhibit A2-1, p. 1.

Table 1. Areas of Focus and Scope of Work for Third-Party Engineer Report²

Focus Area	Scope
1	Confirmation that the design capacity of the Kelowna OWS TES is sufficient to serve the peak demand of the Kelowna OWS TES.
2	Evaluation of the current state of the Kelowna OWS TES and identification of the root cause(s) of equipment failures.
3	Review current corrective actions and make new recommendations.
4	Development of a schedule and budgetary costs to implement the critical corrective action(s) identified in the Report for Focus Area 3. The Third-Party Engineer would be required to provide oversight to ensure that corrective actions are undertaken (by Others) in accordance with their recommendations, so the Engineer's time should be included in the Budgetary costs.

On March 12, 2024, Kelowna OWS filed the Third-Party Engineer Report which only included Focus Area 1. Kelowna OWS stated that Focus Areas 2, 3, and 4 of the Third-Party Engineer Report would be completed and filed with the BCUC by mid-April, mid-May, and mid-June of 2024, respectively. On April 8, 2024, following a written request from the BCUC, Kelowna OWS filed a letter explaining that the delays in filing a complete Third-Party Engineer Report were caused by third parties delays in providing information required for the investigation and challenges faced to complete on-site work in a timely manner as a result of coordination requirements with the Strata and contractors. Kelowna OWS also explained that schedule impacts to on-site tests due to weather conditions and the need for further information from different parties as the investigation progressed also contributed to the delay.³

Upon receipt of Kelowna OWS' letter dated April 8, 2024, including reasons for delays in submitting the Third-Party Engineer Report for Focus Areas 2, 3, and 4, , the BCUC, by Order G-118-24, amended the regulatory timetable to further extend the deadlines for filing the complete Third-Party Engineer Report including Focus Areas 2, 3, and 4 to April 30, May 30, and June 27 of 2024, respectively. The BCUC further directed Kelowna OWS to file an extension request with reasons in advance of the deadlines, in the event Kelowna OWS was not able to meet the timelines established in Appendix A of Order G-118-24.

On April 29, 2024, Kelowna OWS filed the Third-Party Engineer's Report for Focus Area 2, which provides an assessment of the conditions and configuration of the Kelowna OWS TES, including identification of root causes of equipment failures.⁴

By letter dated May 9, 2024, Kelowna OWS filed with the BCUC a request for an extension to the deadline for filing Focus Area 3 of the Third-Party Engineer Report from May 30, 2024 (as established by Order G-118-24) to June 30, 2024. Kelowna OWS explained that it was waiting for feedback from Daikin (manufacturer of the heat

² Table by BCUC with information from Exhibit B-4, pp. 2-4.

³ Exhibit B-6, p. 1.

⁴ Exhibit B-9.

pumps) on the Third-Party Engineer Report for Focus Area 2, which was required to complete the Third-Party Engineer Report for Focus Area 3. Kelowna OWS also stated that it could take several weeks to receive feedback from Daikin. Following a review of the extension request, the BCUC granted Kelowna OWS an extension to file the Third-Party Engineer Report for Focus Area 3 to July 2, 2024.⁵

On June 25, 2024, Kelowna OWS filed the Third-Party Engineer's Report for Focus Area 3, which included additional corrective actions and further recommendations to address the root causes of equipment failures identified in the Report for Focus Area 2.⁶

2.1 Extension Requests for Third-Party Engineer Report for Focus Area 4

On July 11, 2024, given the deadline for filing the Third-Party Engineer Report for Focus Area 4 of June 27, 2024, had passed, the BCUC issued a letter to Kelowna OWS to further extend the deadline to file Focus Area 4 of the Report to Thursday, August 29, 2024. In the letter, the Panel noted that the recommendations made in the Report for Focus Area 3 will inform the scope of Focus Area 4, which includes developing a schedule and budgetary costs to implement the critical corrective action(s) identified in the Third-Party Engineer Report for Focus Area 3. Notwithstanding the granting of this extension of the deadline for filing the Third-Party Engineer Report for Focus Area 4 from June 27, 2024, to August 29, 2024, Kelowna OWS, on July 18, 2024, submitted a further extension request to the BCUC to file the Report for Focus Area 4. In its request, Kelowna OWS provides an update on the progress of implementation of some of the work being undertaken and action items needed to correct the performance issues of the Daikin installed equipment. Kelowna OWS submits that "waiting until the corrective actions have been implemented will bring more clarity and will result in a report that has meaning for all [the parties] involved".⁷ Kelowna OWS further states that the action items will take several months to complete, and schedules have not yet been set. Kelowna OWS requests the deadline for filing the Third-Party Engineer Report for Focus Area 4 be extended to ten (10) business days after November 29, 2024 (i.e. to December 13, 2024), which is Kelowna OWS' estimated date to have all corrective actions completed.⁸

Panel Determination

The Panel is concerned that Kelowna OWS is not adhering to the timeline established by the BCUC to complete Focus Area 4 of the Third-Party Engineer Report in respect of its investigation of the Strata's Complaint. The Panel notes that, as directed in BCUC Order G-302-23, the original timeline for filing a complete Third-Party Engineer Report was set for March 11, 2024, being no later than 90 days following the BCUC's approval of the Third-Party Engineer Retainer Agreement.

Following Kelowna OWS's failure to file a complete Third-Party Engineer Report within the 90-day timeline, the Panel took into consideration Kelowna OWS' proposal to amend the timeline for filing the Third-Party Engineer Report by filing separate areas of focus (Focus Areas 1, 2, 3, and 4) on separate dates. Kelowna OWS has filed the Third-Party Engineer Reports for Focus Area 1 on March 12, 2024, for Focus Area 2 on April 29, 2024, and for Focus Area 3 on June 25, 2024. However, Kelowna OWS failed to file the Report for Focus Area 4 by the deadline of June 27, 2024, set by the BCUC, without any prior notice or request for an extension. The BCUC, by letter dated July 11, 2024, established a new deadline of August 29, 2024, for Kelowna OWS to file the Report for

⁵ Exhibit A-17.

⁶ Exhibit B-12.

⁷ Exhibit B-13, p. 1.

⁸ Exhibit B-13, p. 2.

Focus Area 4. Nevertheless, on July 18, 2024, Kelowna OWS submitted a further extension request to the BCUC seeking to further extend the deadline to file the Report for Focus Area 4 to ten (10) business days after November 29, 2024 (i.e. to December 13, 2024), which is Kelowna OWS' estimated date to have all corrective actions completed.

While the Panel has understood and granted requests for extensions, including the deadline to file the Reports for Focus Areas 3 and 4, it considers that the continuing delays are impacting the overall timeline and objectives of the Third-Party Engineer investigation.

The Panel is of the view that Kelowna OWS does not appear to understand the scope of Focus Area 4, which is to develop a forward-looking schedule along with budgetary costs necessary to improve the safety and reliability of the thermal energy service provided to the Strata, in accordance with findings from the Third-Party Engineer's Reports for Focus Areas 1, 2 and 3. In the Panel's view, Kelowna OWS's reasons for seeking a further extension as set out in the updates it provided in its July 18, 2024 request for extension, do not impact its ability to complete the Third-Party Engineer Report for Focus Area 4 by the deadline of August 29, 2024, established in the BCUC letter dated July 11, 2024. In addition, the Panel also notes that Kelowna OWS's proposed deadline for filing the Report for Focus Area 4 appears to be tied to Kelowna OWS' estimated date to have all corrective actions completed, which, in addition to not being necessary to complete and file the Report for Focus Area 4, will add to the Panel's concern that its timelines are not being adhered to in respect of the Complaint.

For the above reasons, **the Panel denies any amendment to the deadline for filing the Third-Party Engineer Report for Focus Area 4 and, accordingly, directs Kelowna OWS to file the Report for Focus Area 4 by August 29, 2024.**

DATED at the City of Vancouver, in the Province of British Columbia, this 9th day of August 2024.

Original signed by:

B. A. Magnan
Panel Chair/Commissioner

Original signed by:

W. M. Everett, KC
Commissioner