



ORDER NUMBER
G-161-16A

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

and

Shannon Wall Centre Rental Apartments Limited Partnership
Rate Application for the Shannon Estates Thermal Energy System

BEFORE:

R. D. Revel, Panel Chair/Commissioner
D. M. Morton, Commissioner

on November 7, 2016

ORDER

WHEREAS:

- A. On May 24, 2016, Shannon Wall Centre Rental Apartments Limited Partnership (SWCRA) filed an application for rates under sections 59-61, 89 and 90 of the *Utilities Commission Act* (UCA) for the Shannon Estates Thermal Energy System (SETES) located at 7199 Granville Street, Vancouver, BC, which provides space heating, space cooling and domestic hot water service to the development called Shannon Mews & Apartments (Application);
- B. The City of Vancouver required connection to a thermal energy system as a precondition for the development of Shannon Mews & Apartments. On April 21, 2016, by Order C-4-16, the Commission granted a Certificate of Public Convenience and Necessity for SWCRA to own and operate the SETES at a total estimated capital cost of approximately \$7.5 million;
- C. The Shannon Mews & Apartments development is being constructed in two phases and once complete will include approximately 600 residential rental and strata units and two commercial units;
- D. Construction of Phase I is complete and as of March 18, 2016, 176 of the 216 units have been rented and 59 of the 62 strata units have been sold. As of April 1, 2016, 143 of the approximately 322 Phase II strata units have been presold. Phase II construction is expected to be completed sometime in 2018;
- E. The SETES requests approval for, among other things, the terms and conditions as set out in Appendix A to the Application, as amended during the proceeding, and the following rates:

Variable Rate	
Space Cooling	\$0.0518 per KWh
Space Heating	\$0.1036 per KWh
Hot Water	\$0.1036 per KWh & \$2.584 to \$3.239 per 623 Gallons
Fixed Rate	

Capacity	\$0.0489 per sq. foot per month
Meter Charge	\$9.50 per month
Rate Ride	
Sustainment Capital Fund	2-15 % of total bill to a maximum of \$20 per month or \$200 per year

- F. For a customer occupying a 775 square foot unit, consuming 350 kWh of space cooling, 3750 kWh of space heating, and 1000 kWh of hot water heating, the annual bill relating to the fixed and variable rate would be \$1080. The maximum annual Rate Rider set at \$200 results in a maximum annual bill of \$1280 or on average \$107 per month;
- G. For a customer occupying a 2000 square foot unit consuming 850 kWh of space cooling, 12000 kWh of space heating, and 3850 kWh of hot water heating, the annual bill relating to the fixed and variable rate would be \$2974 without consideration of the water charge. The maximum Rate Rider set at \$200 results in a maximum annual bill of \$3174 or on average \$264 per month;
- H. On May 27, 2016, the Commission, by Order G-77-16, granted interim relief to invoice customers effective June 1, 2016, on a refundable basis pending a final determination and established a regulatory timetable for the written review of the Application. Order G-77-16 also directed SETES to provide a copy of the order, electronically where possible, to each strata corporation and to all tenants and owners of units at Shannon Mews & Apartments;
- I. On June 1, 2016, the Commission amended the order and issued Order G-77-16A to correct, among other things, the number of units in the development from 281 to 600 to reflect both Phase I and Phase II;
- J. Fortis Alternative Energy Services Inc. and Robert Peden registered as interveners;
- K. In accordance with the regulatory timetable established by Order G-77-16A, SETES filed its Reply Submission on July 15, 2016, which included a request to hold certain portions of its Reply Submission as confidential (Confidential Filings);
- L. The Reply Submission, including the confidential portion, introduced a significant amount of new evidence. For that reason, by Order G-118-16 dated July 20, 2016, the Commission reopened the evidentiary record of the proceeding to allow for additional regulatory process. Order G-118-16 also approved SETES's request to hold certain parts of its submission as confidential but directed that it also file a redacted public version;
- M. On September 7, 2016, SETES filed its final reply submission;
- N. On October 11, 2016, the Commission received a letter from Mr. Fox, a Phase II owner, representing himself and other owners. In his letter, Mr. Fox's claims, among other things, that adequate notice was not provided to all the affected parties for the review of the Application;
- O. Mr. Fox requests that the Commission provide the following relief: (i) direct the SETES to provide a copy of Order G-77-16A to all owners, (ii) defer its final determination until all units in Phase II have been sold while allowing SETES to continue to charge interim rates, (iii) allow for new intervener registration, (iv) allow for further process to review the Application and the evidence on the record, and (v) be granted access to the Confidential Filings;
- P. On October 24, 2016, SETES filed a submission on Mr. Fox's letter and on October 31, 2016, Mr. Fox filed a reply;

- Q. The Commission has considered Mr. Fox's requests and the subsequent submissions and finds for the reason of procedural fairness the evidentiary record for the review of the Application should be reopened.

NOW THEREFORE for the reasons set out in Appendix A to this order, the British Columbia Utilities Commission orders as follows:

1. The evidentiary record for the review of the Shannon Estates Thermal Energy Utility (SETES) Rates Application (Application) is reopened and the regulatory process is to proceed in accordance with the Regulatory Timetable as set out in Appendix B to this order.
2. In accordance with the Regulatory Timetable attached as Appendix B to this order, SETES must provide a copy of this order and attached reasons for decision, electronically where possible, to each strata corporation and to all tenants and owners of units at Shannon Mews & Apartments, that on or before November 16, 2016, meet one of the following conditions:
 - a. is the owner on title;
 - b. have entered into a rental agreement with Shannon Wall Centre Rental Apartments Limited Partnership;
 - c. is an established strata corporation; and/or
 - d. have entered into a binding purchase contract for a future unit on the site.

This includes Phase I and Phase II, as well as to any persons who have entered into a contract of purchase or sale for a strata unit.

3. Any additional affected parties who wish to participate in the proceeding as interveners, from this point forward, are to register with the Commission by completing a Request to Intervene Form, available on the Commission's website at <http://www.bcuc.com/Registration-Intervener-1.aspx>, by the date established in the Regulatory Timetable attached as Appendix B to this order and in accordance with the Commission's Rules of Practice and Procedure. Further information on how to get involved is set out in Appendix C to this order.
4. The Application and supporting materials must be made available to the public for inspection at Shannon Wall Centre Rental Apartments Limited Partnership, 3502-1088 Burrard Street, Vancouver, BC. The Application and supporting materials will also be available at the British Columbia Utilities Commission, Sixth Floor, 900 Howe Street, Vancouver, BC and on the Commission's website at www.bcuc.com.

DATED at the City of Vancouver, in the Province of British Columbia, this 14th day of November 2016.

BY ORDER

Original Signed By:

R. D. Revel
Commissioner

Attachments

Shannon Wall Centre Rental Apartments Limited Partnership
Rate Application for the Shannon Estates Thermal Energy System

REASONS FOR DECISION

Background

On May 24, 2016, Shannon Wall Centre Rental Apartments Limited Partnership (SWCRA) filed an application with the British Columbia Utilities Commission (Commission) for rates for the Shannon Estates Thermal Energy System Utility (SETES or Utility) requesting, among other things, approval for both the rates and the terms and conditions for the Utility (Application).

On April 21, 2016, prior to filing the Application, the Commission granted a Certificate of Public Convenience and Necessity to SWCRA to own and operate the SETES at a total estimated capital cost of approximately \$7.5 million.

The TES is to provide space heating, space cooling and domestic hot water to approximately 600 residential customers and up to two commercial customers in the two phased development called Shannon Mews & Apartments located at 7199 Granville Street, Vancouver, BC.

By Order G-77-16 dated May 27, 2016, the Commission granted interim relief to invoice customers effective June 1, 2016, on a refundable basis pending a final determination and established a regulatory timetable for the written review of the Application which included one round of information's requests (IRs), final submissions by the interveners and a reply by the Utility. Order G-77-16 also directed the Utility to provide a copy of the order, electronically where possible, to each strata corporation and to all tenants and owners of units at Shannon Mews & Apartments.

On June 1, 2016, the Commission amended the order and issued Order G-77-16A to correct, among other things, the number of units in the development from 281 to 600 to reflect both Phase I and Phase II.

In accordance with the regulatory timetable established by Order G-77-16A, SETES filed its reply on July 15, 2016, which included a request to hold certain portions of its reply as confidential, which the Commission granted (Confidential Filings). The reply, including the confidential portion, introduced a significant amount of new evidence. For that reason, by Order G-118-16 dated July 20, 2016, the Commission reopened the evidentiary phase of the proceeding to allow for process around the new evidence and any issues that had already been raised.

The Commission established a regulatory timetable that included an additional round of IRs, final submissions by the Utility and the interveners and an opportunity for the Utility to file a reply. On September 7, 2016, SETES filed its final reply submission.

Mr. Fox's letter

On October 11, 2016, the Commission received a letter from Mr. Fox, a Phase II owner, representing himself, other Phase I and II owners as well as certain strata corporations. In his letter, Mr. Fox claims, among other things, that notice was not provided to all the affected parties in the review of the Application and that owners were misled about the thermal energy system by the Vendor's Disclosure Statement (VDS) when they were sold

strata units. Specifically, Mr. Fox claims that that VDS did not disclose that the TES will be owned by SETES; a third party that is related to the vendor.

Mr. Fox requests that the Commission provide the following relief: (i) direct the Utility to provide a copy of Order G-77-16A to all owners, (ii) defer its final determination until all units in Phase II have been sold while allowing the Utility to continue to charge interim rates, (iii) allow for new intervenor registration, (iv) allow for further process to review the Application and the evidence on the record, and (v) be granted access to the Confidential Filings.

SETES's submission

In its submission to Mr. Fox's letter dated October 24, 2016, SETES clarifies that its intent is to have a single rate class for Phase I and Phase II as this is representative of the common residential nature throughout Shannon Mews & Apartments.

The Utility explains that it provided a copy of Order G-77-16A to all Phase I strata owners and to tenants of Shannon Mews & Apartments in accordance with Order G-77-16A, but that it had not provided notice to individuals who have entered in a purchase and sale agreement in Phase II. SETES explains that it understood the spirit of Order G-77-16A was to deliver a copy to those who have used, or have the opportunity to use [Phase I] service from the Utility which became operational in late 2015. SETES also explains that the Phase I and Phase II strata corporations were not in existence at the time Order G-77-16A was issued and were therefore not recipients of that order.

SETES submits that ample opportunity was made for all current customers to participate in the review of the Application and that it is not possible for every eventual customer to take part in the initial rate setting process. SETES recommends against the relief sought by Mr. Fox, including delaying the issuance of a final order until 100 percent of the Phase II units are sold, explaining that this will create a hardship for the Utility and ever more strongly for the existing customers.

SETES concludes by stating that the evidence has already been examined by the Commission and the interveners and Mr. Fox will have to go through great lengths and cost to obtain an expert review of the same quality as the one already completed.

Mr. Fox's reply to SETES's submission

Mr. Fox, in reply to SETES's submission dated October 30, 2016, argues that the Applicant, SWRCA, and Shannon Condominium Holdings Ltd. (vendor) are related parties working together for their mutual benefit and as such should be viewed as one entity for the purposes of the Application. Mr. Fox then raises several issues regarding the VDS including claims of missing or misleading information and questioning the ownership of the TES. Mr. Fox also raised several issues relating specifically to costs as set out in the Application.

Mr. Fox notes that SETES acknowledged that it did not provide notice to Phase II owners and therefore adequate notice was not provided. With regard to the notice provided to Phase I owners, Mr. Fox makes reference to the short period of time between the notice being provided and the deadline for intervenor registration and further highlights that parties did not actually start to ask questions before they received their first bill several months after the registration deadline. Mr. Fox submits that given those circumstance a reasonable opportunity to participate in the process was not provided.

Mr. Fox concludes by summarizing the requested relief as set out in the October 11, 2016 letter.

Commission determination

Jurisdiction

The Panel does not dispute that the vendor and the owner of the utility may be related parties but does not agree that they should be viewed as one entity for the purposes of the Application.

The Commission does not have jurisdiction over issues related to VDS and therefore will not address those matters, including issues raised regarding missing or misleading information or about who owns the TES. Of relevance to this Application, the Commission has the jurisdiction under the *Utilities Commission Act* (UCA) for, among other things, setting rates under sections 59-61 of the UCA and establishing reserve funds under section 57 of the UCA.

Relief Sought

- (i) Direct the Utility to provide a copy of Order G-77-16A to all owners

Although there is a significant amount of evidence on the record, the issue at hand is whether or not adequate notice of the Commission's proceeding to review the Application was provided. The common law procedural principles of natural justice and procedural fairness apply to the Commission as an Administrative Tribunal which include adequate notice being provided to affected parties.

Given that the rates proposed in the Application are to be applied to both Phase I and Phase II, and the Utility has confirmed that notice was not provided to Phase II owners, the Panel finds that adequate notice was not provided by the Utility to all the affected parties. **For this reason, the Panel directs that the evidentiary record for the review of the Application be reopened.**

SETES must provide a copy of this order and attached appendices to each strata corporation and to all tenants and owners of units at Shannon Mews & Apartments. This includes owners of both Phase I and II as well as all the parties that previously received a copy of Order G-77-16A and any persons who have entered into a contract of purchase and sale for a strata unit.

Although the Panel disagrees with Mr. Fox's position that the parties who were sent Order G-77-16A were not provided with a reasonable opportunity to participate in the process, the Panel finds merit in requiring notice be sent to customers previously notified given they did not begin paying for service until several months after the proceeding started and therefore may not have been aware of the significance of the Application. Furthermore, at the time notice was originally sent, the Strata Corporations were not established and therefore were not able to participate. In the Panel's view, providing notice again does not require an unreasonable effort on the part of the Utility and will ensure procedural fairness to all the affected parties.

- (ii) Defer a final determination on the Application until all the Phase II units have been sold while continuing to charge interim rates

Mr. Fox states that as of October 11, 2016, 96 percent of the development is sold and argued that because the Utility can continue to collect interim rates it is not subject to undue harm if the Commission were to wait until all the units were sold before issuing a final determination on the Application. The Panel is not convinced that this is a reasonable approach and will not grant the requested relief for the following reasons:

First, 4 percent of the units remain unsold and in the Panel's view, the interests of those few units are adequately represented by the vendor, who owns the units until such time as they are sold, even if the vendor is a related party to SWSRA.

Second, Phase II is not expected to be completed until 2018 and there is no guarantee that all the units will be sold before that time.

Finally, the Panel is persuaded by SETES's argument that waiting for all the units to be sold would be an undue hardship on the Utility and the current customers. SETES is entitled to a timely review and decision on the Application that was filed in May 2016 and waiting an indefinite period of time seem unreasonable. Furthermore, a large percentage of customers currently taking service occupy rental units which are of a more transient nature than strata owned units and would benefit from a decision on final rates sooner rather than later.

For clarity, interim rates will remain in effect until such time as the Commission issues its decision on the Application and set permanent rates.

- (iii) Allow for new intervenor registration; and
- (iv) Allow for further process to review the Application and the evidence on the record

The Panel establishes a Regulatory Timetable attached as Appendix B to this order which allows for new intervenor registration. All the evidence on the record, including the Application and response to information requests, will remain as part of the evidentiary record and any party who is currently registered as an intervenor does not have to register again. Any other party, including those that filed letters of comments, may now request to register as an intervenor if they wish and participate in the proceeding from that point forward.

The Regulatory Timetable also provides for SETES and any registered intervenor to make a submission on further process. Submissions should address what additional process would best facilitate the efficient further review of the Application in consideration of the substantial body of evidence already on the record. If a written process is proposed, submissions should address if more than one round of information requests is necessary and include suggested dates for filings including dates to file final and reply argument. Parties should keep in mind that the Commission expects a timely review to occur.

In its submission SETES is free to propose a date to file an updated version of the Application reflecting changes identified throughout the information request process if it feels this would facilitate a more efficient review of the evidence.

The Commission will consider the submissions on further process, once filed, and issue an order establishing a further regulatory timetable for the review of the Application giving the interveners an opportunity to address the substance of the Application.

- (v) Access to the confidential filings

Mr. Fox's requests "That the Applicant permit my clients and their expert(s) to review all relevant financial and other relevant information in its possession or control for the sole purpose of preparing submissions to the UC [Commission]."

The Commission understands this to be a request to have access to the Confidential Filing in accordance with the Commission's Rules of Practice and Procedures, Part IV, section 24. The Panel requests SETES to address this request as part of its submission on further process, also in accordance with section 24 of the Rules of Practice and Procedure.

Shannon Wall Centre Rental Apartments Limited Partnership
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REGULATORY TIMETABLE

ACTION	DATE (2016)
SETES to provide notice of the Application	Wednesday, November 16
Intervener registration deadline	Friday, November 25
SETES submissions on further process	Tuesday, November 29
Intervener submissions on further process	Tuesday, December 6
SETES reply on further process	Tuesday, December 13



Shannon Wall Centre Rental Apartments Limited Partnership's Application for Shannon Estates Thermal Energy Systems Rates

How to get involved

Persons who are directly or sufficiently affected by the Commission's decision, or who have relevant experience, information or expertise, and that wish to actively participate in the proceeding can request intervener status by submitting a completed Request to Intervene Form to the Commission by Friday, November 25, 2016.

Persons not expecting to actively participate, but who have an interest in the proceeding, may register as an interested party through the Commission's website. Interested parties receive electronic notification of all documents filed as part of the proceeding's public evidentiary record.

Letters of comment are intended to provide for any member of the public to contribute views, opinions, and impact or potential impact, with respect to the proceeding to the public evidentiary record. Letters of comment must be in the Letter of Comment Form found online at www.bcuc.com. Intervenors are not permitted to file letters of comment.

All submissions received, including letters of comment, are placed on the public evidentiary record, posted on the Commission's website and provided to the Panel and all participants in the proceeding.

For more information, or to find the forms for any of the options above, please visit the "Participate in a Proceeding" page of our website at www.bcuc.com or contact us at commission.secretary@bcuc.com or 604-660-4700.