



ORDER NUMBER
G-52-17

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

on April 6, 2017

ORDER

WHEREAS:

- A. On May 24, 2016, Shannon Wall Centre Rental Apartments Limited Partnership (SWCRA), filed an application with the British Columbia Utilities Commission (Commission) under sections 59-61, 89 and 90 of the *Utilities Commission Act* for approval of the terms and conditions and rates for the Shannon Estates Thermal Energy System (TES) located at 7199 Granville Street, Vancouver, BC, which provides space heating, space cooling and domestic hot water service to the Shannon Mews & Apartments development (Application);
- B. On April 21, 2016, by Order C-4-16, prior to the filing of the Application, the Commission granted SWCRA a Certificate of Public Convenience and Necessity (CPCN) to own and operate the Shannon Estates TES at a total estimated capital cost of \$7.5 million. Under the Commission's TES Regulatory Framework Guidelines SWCRA required a CPCN as the TES did not meet the criteria as a Stream A TES, even though its estimated cost was below the threshold, due to the development requiring multiple municipal building permits on multiple sites with shared infrastructure;
- C. The Shannon Mews & Apartments development is being constructed in two phases. 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;
- D. On June 1, 2016, by Order G-77-16A, the Commission established a regulatory timetable for a written hearing process for the review of the Application which included intervenor registration, one round of Information Requests (IRs) followed by written submissions and granted interim relief to invoice customers effective June 1, 2016, on a refundable basis pending a final determination;
- E. Order G-77-16A also directed SWCRA to provide notice of the Application to each strata corporation and to all tenants and owners of units at Shannon Mews & Apartments;
- F. Fortis Alternative Energy Services Inc. and Robert Peden registered as intervenors;

- G. On July 15, 2016, SWCRA filed its reply submission which included a confidential financial model that introduced a significant amount of new evidence;
- H. On July 20, 2016, because of the new untested evidence, by Order G-118-16, the Commission reopened the evidentiary phase of the proceeding, on a limited scope, as it found benefit in the new evidence forming part of the evidentiary record. Order G-118-16 established a regulatory timetable which included a second round of IRs followed by written submissions;
- I. On October 11, 2016, after SWCRA had filed its reply submission, the Commission received a letter from Mr. Fox, a Phase II owner, representing himself and other owners (Shannon Ratepayers Group or SRG) claiming that adequate notice was not provided to all the affected parties for the review of the Application and requested, among other things, that the Commission: (i) direct SWCRA to provide a copy of Order G-77-16A to all owners, (ii) allow for new intervenor registration, and (iii) allow for further process to review the Application and the evidence on the record;
- J. After receiving submissions on SRG request, on November 14, 2016, by Order G-161-16A, the Commission reopened the evidentiary record for the review of the Application and established a regulatory timetable which included intervenor registration and submissions on the further process;
- K. Order G-161-16A also directed SWCRA to provide notice to each strata corporation and to all the tenants and owners of Phase I and Phase II units of the Shannon Mews & Apartments before November 16, 2016, who met certain conditions as set out in directive 2 of Order G-161-16A;
- L. SRG; Michael Lui; Gerald Duffy; Douglas and Tong Chow; Martin Parker and Michael Sakamoto registered as interveners;
- M. After considering the submissions on further process received from SRG and SWCRA, on December 19, 2016, by Order G-193-16, the Commission established a regulatory timetable that allowed SWCRA to file an Updated Application no later than February 6, 2017, and provided dates for a third round of IRs and submissions on whether any further process is necessary to review the Application prior to the filing of final written submissions;
- N. On February 23, 2017, and later updated on March 2, 2017, SRG filed a submission proposing a written hearing process that included dates for SRG to file expert evidence, IRs on that evidence and final submissions. SRG was the only intervenor to file a submission on further process;
- O. On March 7, 2017, SWCRA in its submission on further process did not object SRG filing expert evidence; however, SWCRA amended certain dates and requested that placeholder dates be provided to allow it to file rebuttal evidence if needed;
- P. On March 11, 2017, SRG filed an objection to SWCRA's submission on further process stating that SWCRA is not presently in a position to assess the need for rebuttal evidence;
- Q. On March 6, 2017 and March 15, 2017, SWCRA requested extensions to filing its responses to IR No. 3, which the Commission granted by letters dated March 7, 2017 and March 15, 2017, respectively; and
- R. The Commission has considered the submissions received and finds that establishing a regulatory timetable for the final review of the Application is warranted.

NOW THEREFORE, for the reasons set out in Appendix A to this order, the British Columbia Utilities Commission establishes the regulatory timetable for the remainder of the written review of the Shannon Wall Centre Rental Apartments Limited Partnership's Application for the Shannon Estates Thermal Energy System as set out in Appendix B to this order.

DATED at the City of Vancouver, in the Province of British Columbia, this 6th day of April 2017.

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

The Shannon Wall Centre Rental Apartments Limited Partnership (SWCRA) application for approval of the terms and conditions of service and rates for the Shannon Estates Thermal Energy System (TES) was filed on May 24, 2016 (Application), and due to a set of irregular events during the hearing, the review of the Application by the British Columbia Utilities Commission (Commission) remains ongoing. The irregularities caused the evidentiary record to be reopened on two separate occasions. As a result, the procedural record already includes final submissions from SWCRA, two interveners and two reply submissions from SWCRA.

The most recent regulatory timetable for the review of the Application, pursuant to Order G-193-16, established dates for SWCRA to file an updated application (Updated Application) no later than February 6, 2017, and provided dates for a third round of Information Requests (IR No. 3) to be responded to by SWCRA no later than March 7, 2017. The timetable also provided for submissions, by February 24, 2017, on whether any further process is necessary to review the Application prior to the filing of final written submissions.

On February 23, 2017, in accordance with Order G-193-16, and before SWCRA filed responses to IR No. 3, the Shannon Ratepayer Group (SRG) filed its submission on further process and proposed to file expert evidence approximately three and a half weeks after SWCRA filed responses to IR No. 3. In its submission SRG did not propose further actions or dates but rather recommends further submissions on process after SRG files expert evidence.

On March 2, 2017, SRG amended its submission by adding a date, one week after expert evidence is filed, for IRs on expert evidence. SRG also included a date approximately three weeks later to file responses to those IRs and proposed that SWCRA and interveners file final written submissions approximately three weeks thereafter. SRG's amended submission eliminated the need for further submissions on process as recommended in its original submission. SRG was the only intervener to file a submission on further process.

On March 7, 2017, SWCRA filed its reply submission on further process and did not object to SRG's proposal to file expert evidence. However, SWCRA proposed a regulatory timetable that: (i) extended the date from one week to three weeks for IRs on expert evidence, (ii) included placeholder dates for SWCRA to file rebuttal evidence, if needed, including dates for IRs and responses, (iii) included a date for SWCRA file final submissions prior to intervener final submissions; and (iv) added a date for SWCRA to file a reply submission. SWCRA's proposed timetable allows for approximately two to three weeks between each process.

On March 11, 2017, SRG filed an objection to SWCRA's proposed regulatory timetable stating that rebuttal evidence is not admitted as of right and SWCRA is not presently in a position to assess the need for rebuttal evidence. SRG submits that "[f]ollowing submission of SRG's written testimony/expert report, the Applicant [SWCRA] will be able to consider its position on the need for additional evidence and the form it might take. Absent unforeseen circumstances, this step should lead to closing the evidentiary record."¹

On March 23, 2017, after the Commission granted two extensions to the filing date, SWCRA filed its complete set of responses to IR No. 3 on the Updated Application.

¹ Exhibit C7-13.

Commission determination

The Commission establishes the regulatory timetable for the remainder of the written review of the Application, as set out in Appendix B to Order G-52-17, for the reasons set out below.

The Panel is also cognisant that, in the case of small utilities, hearing costs can add substantially to rates. The Panel will expand further in these reasons, and provide guidance as to its intentions, on its hearing cost concerns and their impact on rates.

Actions and timelines

Expert Evidence

No party has objected to the filing of intervenor expert evidence and therefore the Panel has provided for this in the regulatory timetable.

With regard to timelines, the Panel agrees with SWCRA that one week is not sufficient time for the parties to prepare IRs on expert evidence while at the same time the Panel considers SWCRA's suggested three-week timeline excessive.

The Panel is cognisant that the Application was filed more than 10 months ago and has been subject to a series of irregular events and now needs to be resolved in the most efficient manner possible while still maintaining procedural fairness. For these reasons, and given the expected limited nature of the expert evidence, the Panel is of the view that two weeks is sufficient time for the parties to file IRs on the expert evidence and a further two weeks is sufficient for SRG to respond to those IRs.

Rebuttal Evidence

The Commission has the jurisdiction, and finds this fact relevant, under section 40(1)) of the Administrative Tribunals Act, S.B.C 2004 to receive and accept any information that is "relevant, necessary and appropriate, whether or not the information would be admissible in a court of law." However, the Panel is of the view that in order for rebuttal evidence to be admissible it should be limited to responding to new issues raised in expert evidence that the applicant could not have reasonably anticipated when it filed the Updated Application.

For regulatory efficiency, the Panel considers that it makes good sense to provide placeholder dates for SWCRA to file rebuttal evidence; however, the Panel stresses that the dates are only placeholder dates and will only be relevant in the event that SWCRA rebuttal evidence is admissible. The regulatory timetable attached as Appendix B includes a timetable option with rebuttal evidence and an option without rebuttal evidence.

The Panel therefore concludes that SWCRA must file notice with the Commission of its intent to file rebuttal evidence no later than June 1, 2017. If notice is not provided the regulatory timetable for the review of the Application will proceed under the without rebuttal evidence option. Further, if SWCRA files rebuttal evidence, the SRG may challenge the admissibility of the evidence, if it has any remaining concerns, at that time.

SWCRA has requested three weeks to prepare its rebuttal evidence after the IR responses on expert evidence have been filed by SRG with a further three weeks for both the parties to file IRs and for SWCRA to file responses. Similar, to its rationale above, in order to ensure the review of the Application proceeds in a timely fashion, and for procedural fairness, the Panel finds that two-week intervals are sufficient time for the parties to file IRs on any rebuttal evidence and for SWCRA to respond to those IRs.

Final submissions

The Panel agrees that SWCRA should file its final submission two weeks in advance of the interveners and should be provided with an opportunity to file a reply submission two weeks after receipt of intervenor submissions.

The Panel recognizes that due to the irregular events surrounding the review of the Application the procedural record already includes final submissions from Fortis Alternative Energy Services Inc. and Mr. Peden and reply submissions from SWCRA.

In the final submissions filed pursuant the regulatory timetable attached as Appendix B the Panel requests FAES, Mr. Peden and SWCRA to clearly identify if any parts of their previous submissions are no longer relevant.

Regulatory process and cost

To date there has been a significant amount of regulatory process for the review of an Application of this size and the Panel notes that process is not without cost and potential impact on rates. The Panel will make a determination on the recovery of regulatory costs during its deliberations; however, the Panel wishes to alert the parties that there is no certainty that all legal and consulting costs will be approved by the Panel. To the extent that these costs are approved by the Panel they will be recovered in rates and therefore paid by customers.

The Panel encourages all parties to consider regulatory costs and seek the minimal regulatory process necessary to address all the parties concerns in a fair and comprehensive manner. The Panel is hopeful that the remaining review of the Application can proceed, without further interruption or additional process, in accordance with the regulatory timetable attached as Appendix B to Order G-52-17.

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

REGULATORY TIMETABLE

ACTION	DATE (2017) With Rebuttal Evidence	DATE (2017) Without Rebuttal Evidence
Intervener to File Evidence	Monday, May 1	Monday, May 1
Commission and Shannon Wall Centre Rental Apartments Limited Partnership (SWCRA) File Information Requests (IRs) on Intervener Evidence	Monday, May 15	Monday, May 15
Intervener Response to IRs on Intervener Evidence	Tuesday, May 30	Tuesday, May 30
SWCRA to File Notice of Intent to File Rebuttal Evidence	Thursday, June 1	
SWCRA Rebuttal Evidence, if admissible	Tuesday, June 13	
Commission and Intervener IRs on SWCRA Rebuttal Evidence, if necessary	Tuesday, June 27	
SWCRA Response to IRs on Rebuttal Evidence, if necessary	Wednesday, July 12	
Letters of Comment Deadline	Friday, July 14	Friday, June 2
SWCRA Final Argument	Wednesday, July 26	Tuesday, June 13
Intervener Final Argument	Thursday, August 10	Tuesday, June 27
SWCRA Reply Argument	Thursday, August 24	Wednesday, July 12