



ORDER NUMBER
G-160-18

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

and

Shannon Wall Centre Rental Apartments Limited Partnership
Application for approval of the disposition of its interest
in the Shannon Estates Thermal Energy System to Shannon Estates Utility Ltd.

BEFORE:

D. J. Enns, Commissioner/Panel Chair

on August 28, 2018

ORDER

WHEREAS:

- A. On March 13, 2018, Shannon Wall Centre Rental Apartments Limited Partnership (SWCRA) filed an application with the British Columbia Utilities Commission (BCUC), pursuant to section 52 of the *Utilities Commission Act* (UCA), for approval of the disposition of 100 percent of its interest in the Shannon Estates Thermal Energy System (SETES) and relevant UCA approvals, to its wholly-owned sister subsidiary Shannon Estates Utility Ltd. (SEUL); and consequential orders of the BCUC to reflect SEUL assuming all rights and obligations of SWCRA in relation to the SETES (Application);
- B. By Order C-4-16 dated April 21, 2016, pursuant to sections 45 and 46 of the UCA, the BCUC granted SWCRA a Certificate of Public Convenience and Necessity to own and operate the SETES at an estimated total capital cost of \$7.5 million;
- C. By Order G-77-16A dated June 1, 2016, the BCUC approved interim and refundable rates for SWCRA effective June 1, 2016;
- D. By Order G-190-17 dated December 19, 2017, the BCUC set rates and rate structure for SWCRA on a permanent basis effective from June 1, 2016 to December 31, 2019;
- E. By Order G-68-18 dated April 3, 2018, the BCUC established the regulatory timetable for the review of the Application, which included one round of Information Requests (IR), deadline for letters of comment, deadline for SWCRA to respond to letters of comment and further process to be determined;
- F. By Order G-91-18 dated May 11, 2018, the BCUC established a further regulatory timetable, which included SWCRA's responses to questions submitted in letters of comment, and a transcribed workshop to be held on June 11, 2018 with the agenda attached to that order;

- G. By Order G-110-18 dated June 14, 2018 and Order G-121-18 dated July 6, 2018, the BCUC established a further regulatory timetable, which included SWCRA's response to the letter of comment from Mr. Duffy and response to Mr. Duffy's request to submit further comment;
- H. By Order G-133-18 dated July 20, 2018, the BCUC denied Mr. Duffy's request to provide comment on SWCRA's June 21, 2018 submission and closed the evidentiary record for the proceeding; and
- I. The BCUC has reviewed the Application and the evidence filed in the proceeding and considers that approval is warranted.

NOW THEREFORE pursuant to section 52 of the UCA and for the reasons attached as Appendix A, the BCUC orders as follows:

- 1 The Application by SWCRA for approval of the disposition of its interest in the SETES to SEUL is approved.
- 2 The approval granted is subject to the following condition:
 - 2.1 SWCRA and SEUL enter into a Statutory Right of Way agreement that ensures that SEUL can keep and maintain its solar panels and other equipment on the roof of the Rental Building, owned by SWCRA, at no charge to SEUL ratepayers.

DATED at the City of Vancouver, in the Province of British Columbia, this 28th day of August 2018.

BY ORDER

Original signed by:

D. J. Enns
Commissioner

Attachment

Shannon Wall Centre Rental Apartments Limited Partnership
Application for approval of the disposition of its interest
in the Shannon Estates Thermal Energy System to Shannon Estates Utility Ltd.

REASONS FOR DECISION

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1.0 Introduction

1.1 Background

On March 31, 2018,¹ Shannon Wall Centre Apartments Limited Partnership (SWCRA) filed on behalf of itself and Shannon Estates Utility Ltd. (SEUL) (together the Applicants) an application with the British Columbia Utilities Commission (BCUC) for approval of the disposition of 100 percent of its interest in the Shannon Estates Thermal Energy System (SETES) to SEUL.² This includes consequential orders of the BCUC to reflect SEUL assuming all rights and obligations of SWCRA in relation to SETES (Application). SWCRA intends to transfer all rights and obligations of SETES to a newly incorporated subsidiary known as SEUL, which will be wholly owned by Wall Financial Corporation (WFC).³

It is proposed that SEUL will operate as a stand-alone utility under the *Utilities Commission Act* (UCA). The proposed transfer will provide better separation of the ownership of the SETES from the unregulated rights of assets and interests of WFC.⁴

SWCRA is a development in the City of Vancouver consisting of ten buildings, including restored heritage buildings, new townhomes and suites, a rental apartment building, parks and grounds and related infrastructure.⁵ WFC owns all shares of the general partnership Shannon Wall Centre Rentals GP Inc. (SWCRGP) and all shares of SWCRA, the limited partnership.⁶

SWCRA owns two assets, both of which form part of Shannon Estates: the SETES and the Rental Building. The Shannon Estates development is to be completed in 2018 or early 2019 at which time SETES will serve 600 residential units, and two commercial tenants.⁷ Currently, 330 residential units have yet to be occupied.⁸

SETES “serves thermal energy requirements for space heating, space cooling, and domestic hot water of the residences and other areas of a fixed number of buildings within Shannon Estates.”⁹ SWCRA is a public utility under the Stream B criteria of the BCUC’s Thermal Energy System (TES) Regulatory Framework Guidelines (TES Guidelines).

SWCRA was granted a Certificate of Public Convenience and Necessity (CPCN) through BCUC Order C-14-16 dated April 21, 2016, which authorizes the operations of the utility, existing and planned capital assets.

1.2 Review of the Application and regulatory process

The review of the Application was completed subject to the regulatory timetable as set out in Order G-68-18 and was subsequently amended through Orders G-91-18, G-110-18 and G-121-18. The regulatory process included one round of Information Requests.

¹ Exhibit B-1, p. 3.

² Ibid., p. 5.

³ Exhibit B-1, Appendix C.

⁴ Transcript, pp. 5–6; Exhibit B-1, p. 6.

⁵ Order G-190-17, p. 1.

⁶ Exhibit B-1, p. 3.

⁷ Ibid.

⁸ Transcript, p. 9.

⁹ Exhibit B-1, p. 3.

No interveners registered for the proceeding; however, six interested parties provided letters of comment:¹⁰

1. P. Lim
2. G. Cameron
3. J. Digby
4. D. Chow
5. M. Lui on behalf of Cartier House Strata Council (EPS 2412)
6. G. Duffy on behalf of Coach House Strata (EPS 2413)

to which the Applicants responded on May 4, 2018.¹¹ The Applicants provided a further response to questions raised in the letters of comment¹² on June 8, 2018.¹³

A transcribed workshop was held on June 11, 2018 at which the Applicants, Shannon West Strata EPS2413 Coachhouse and Shannon Wall Strata EPS2412 were represented.¹⁴ Following the workshop, Mr. Duffy provided a list of additional questions,¹⁵ to which the Applicants responded on June 21, 2018.¹⁶

A subsequent request for a sur-reply was made,¹⁷ which was denied through Order G-133-18 on July 20, 2018.

1.3 Approvals sought

The Applicants seek the following approvals from the BCUC:

- a) approval under section 52 of the UCA for the disposition of 100 percent of SWCRA's interests in the SETES to SEUL;
- b) approvals of consequential orders to reflect SEUL assuming all rights and obligations of SWCRA in relation to the SETES:
 - i. an amendment to the SETES CPCN to record SEUL as the new owner and operator of the SETES;
 - ii. an order exempting SEUL from the requirement to file long-term resource plans pursuant to section 44.1(3) of the UCA;
 - iii. an order that Order G-190-17 approvals in relation to rates and the SETES Tariff shall apply to SEUL; and
 - iv. an order that the BCUC directives to SWCRA in Order G-190-17 Decision shall apply to SEUL.¹⁸

The Applicants state that the consequential orders requested in item b, listed above, are contingent on the BCUC granting the approval sought in item a.¹⁹

¹⁰ Exhibits E-1 to E-6.

¹¹ Exhibit B-3.

¹² Exhibit E-6.

¹³ Exhibit B-3-1.

¹⁴ Transcript, Appearances.

¹⁵ Exhibit E-6-1.

¹⁶ Exhibit B-4.

¹⁷ Exhibit B-5.

¹⁸ Exhibit B-1, p. 6.

¹⁹ Ibid.

1.4 Legislative and policy considerations

The transfer of interests sought by the Applicants is governed by section 52 of the UCA which states:

- 1 Except for the disposition of its property in the ordinary course of business, a public utility must not, without first obtaining the commission's approval,
 - a. dispose of or encumber the whole or a part of its property, franchises, licences, permits, concessions, privileges or rights, or
 - b. by any means, direct or indirect, merge, amalgamate or consolidate in whole or in part its property, franchises, licences, permits, concessions, privileges or rights with those of another person.
2. The commission may give its approval under this section subject to the conditions and requirements considered necessary or desirable in the public interest.

As approved by Order C-4-16, SWCRA is exempt from having to file a long-term resource and energy conservation plan pursuant to section 44.1 (3) of the UCA.

By Order G-190-17 dated December 19, 2017, the BCUC approved a pegged rate structure for SWCRA under the provisions of sections 59-61 of the UCA. In that Order, SWCRA was directed to file an application to set rates under a levelized rate structure by no later than June 30, 2019.

The BCUC considered the following criteria while evaluating this Application:

1. The utility's current and future ability to raise equity and debt financing, such that it not be reduced or impaired;
2. There be no violation of existing covenants that would be detrimental to customers;
3. The conduct of the utility's business, including the level of service either now or in the future will be maintained and enhanced;
4. The Application is in accordance with appropriate enactments and/or regulations; the structural integrity of the assets will be maintained in such a manner as to not impair the utility services;
5. The public interest will be preserved.²⁰

2.0 Nature of transaction

It is proposed that the CPCN granted through Order C-14-16 be transferred to SEUL. The book value of assets included under the CPCN as of April 26, 2018 is \$3,686,693²¹ and the total estimated cost of the SETES infrastructure on its completion is \$7,500,000.²²

The Applicants state that it will not seek to recover any transaction costs incurred in connection with the transfer from ratepayers of SETES and that the transfer will not result in any adverse change or detrimental effects on SWCRA existing ratepayers. The Applicants further state: "Contract services provided to SETES by SWCRA will be maintained at current cost."²³ The Applicants state that the proposed transfer will simplify the

²⁰ Transcript, p. 2.

²¹ Exhibit B-2, Section 1.2.

²² Exhibit B-2-1, Section 1.3.

²³ Ibid., Section 1.4.

“ownership, regulatory, managerial and administrative aspects of SETES and facilitate reporting to the Commission.”²⁴ The Applicants further state that the proposed transfer will not result in any detrimental effect on ratepayers”²⁵ and:

- SEUL will operate the SETES in a safe and responsible manner with no significant changes;
- The owner/operator of the SETES will continue to be regulated by the BCUC and there will be continued compliance with applicable regulatory requirements respecting the safe and proper operation of the SETES;
- The structural integrity of the assets and operations of the SETES will be maintained;
- there will be unaffected continuity of TES²⁶ services provided;
- There will be no adverse impact on the ability of the owner/operator of the SETES to operate and maintain its assets in terms of both financial strength and access to support services; and
- There will be no impact on rates for TES services.²⁷

3.0 Position of the parties

Letters of comment

Seven letters of comment were received, in which four of the parties opposed the proposed transfer. The following concerns were noted:

- The consultation process suffered from a lack of transparency and notice. (Chow, Duffy)²⁸
- SWCRA is currently operating under an interim rate established under Order G-190-17 and it is suggested that the proposed transfer from SWCRA await the determination of a permanent rate. (Lim, Duffy)²⁹
- Shannon Estates is not yet fully occupied and concerns are noted (Lim, Chow, Duffy)³⁰ that there are “330 people who are not yet represented in this discussion.”³¹ It is submitted that the proposed transfer await the completion of the development. (Duffy)³²
- Solar panels which constitute part of the assets of SETES are located on the roof of the Rental Building. Concerns are expressed as to the potential impact on rate payers should SEUL be sold, if charges for the space on which the solar panels were to increase, if the Rental Building were to be sold or if the solar panels were to be relocated. (Duffy)³³

²⁴ Exhibit B-1, p. 8.

²⁵ Ibid.

²⁶ TES is an abbreviation of Thermal Energy Systems

²⁷ Exhibit B-1, p. 8.

²⁸ Exhibits E-4, E-6.

²⁹ Exhibits E-5, E-6.

³⁰ Exhibits E-1, E-4, E-6.

³¹ Transcript, p. 20, lines 24-25.

³² Exhibit E-6.

³³ Ibid., E-6-1, Transcript, p. 16, lines 25-26.

Applicants response to letters of comment

The Applicants state that on March 22, 2018, it provided notice to current SETES customers and those who had purchased units in Shannon Estates Phase II that an application had been filed with the BCUC and directing recipients to the BCUC's Current Proceedings web page.³⁴ The notice indicated inquiries could be directed to Quadlogic Meters Canada. A second notice was provided in accordance with Order G-68-18 on April 9, 2018.³⁵ In neither case were responses to the notices received.³⁶

In response to requests to delay the proposed transfer, pending the establishment of a permanent rate and the achievement of full occupancy of Shannon Estates, the Applicants state:

Customers suggested the proposed transfer to SEUL should not be finalized prior to the next rates application required by June 30, 2019 and the completion of the final phase of the Shannon Estates development (anticipated by early 2019) because, in their view, the transfer will increase the complexity and cost of the upcoming rates application. A customer also commented that the benefits of the proposed transfer are not apparent. Contrary to these expressed concerns, the proposed transfer will simplify ownership, regulatory, administrative and financial reporting aspects of the SETES, which will increase efficiency and ultimately simplify the SETES regulatory obligations and reporting. The transfer will improve relevance and transparency of the information to be reported to the Commission and customers in the upcoming rates application by isolating the SETES operations in SEUL versus reporting financial information that might be co-mingled with SWCRA's rental apartment operations. No additional costs are expected as a result of the transfer of the SETES to SEUL that would increase the rates in the upcoming rates application as the transfer is simply an internal reorganization of the assets and operations of the SETES into a single purpose related company.³⁷

With respect to concerns raised regarding effects of a sale of assets by the developer or the relocation of the solar panels currently positioned atop the Rental Building, the Applicants respond that the solar panels will remain as currently situated. SWCRA further refers to the provisions of Section 6 of the SETES Tariff, which state that no component of SETES may be moved without the permission of the utility, and that the utility will not be required to remove any such component. Addressing the potential effects on ratepayers that may arise as a result of relocating the solar panels, SWCRA states "SETES rates can only be increased by order of the Commission and the Commission's mandate is to ensure that the rates are not unjust or unreasonable."³⁸

It is further noted that in the event a future owner of the Rental Building attempted to impose a charge on the SETES, the utility is under no obligation to comply and "Moreover, the Applicants expect that the Commission would not allow such costs to be recovered in SETES rates."³⁹

An undertaking, such as that proposed by Mr. Duffy, is unnecessary in the view of the Applicants but suggest:

...the Commission's Order approving the proposed transfer could include the condition that SWCRA and SEUL enter into a statutory right of way agreement ensuring SEUL can keep and maintain its solar panels and other equipment on the roof of the Rental Building at no charge to SEUL.⁴⁰

³⁴ Exhibit B-3, Section 2-1.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Exhibit B-3, p. 2.

³⁸ Exhibit B-4, p. 2.

³⁹ Ibid., pp. 2-3.

⁴⁰ Ibid., p. 3.

Workshop

Position of interested parties

At the workshop convened June 11, 2018, the Applicants provided an overview of the transaction⁴¹ reiterating that the “transfer will provide better separation of the ownership of Shannon Estates thermal energy system from the unregulated assets and interests of Wall Financial Corporation...”⁴² and matters of public interest, principally to do with improving accountability of the utility.⁴³

Mr. Duffy, supported by Parker and Turner⁴⁴ reiterated concerns regarding lack of clarity of the consultation process and financial reporting,⁴⁵ and noted again that a significant number of future owners would be affected by the transfer of SETES to SEUL.

Concerns were also raised regarding the potential impact on ratepayers should the Rental Building be sold at some time in the future, given that the solar panels which form part of the TES are situated on its roof.⁴⁶

Following the workshop, it is proposed (Duffy) that WFC indemnifies rate payers over the life of the utility “for all future costs that might accrue with respect to all SETES assets transferred as a consequence to a 3rd party sale” and “that this undertaking be done in perpetuity, or so long as the utility is in operation.” (Duffy)⁴⁷

Applicants reply

In opening comments, the Applicants state that the proposed transfer of SETES to SEUL should proceed without delay⁴⁸ and:

- The transfer will improve the accountability of the utility;⁴⁹
- There will be no impact on rates or service levels;⁵⁰ and
- By virtue of its ownership of certain strata lots within the development, it would be contrary to its interests to have utility rates increase.⁵¹

The Applicants submit that it has recently filed its annual report to the BCUC that discloses its “financial model” reporting requirements,⁵² which have been met through the filing of its revenue requirements to the BCUC.⁵³ SWRCA is also prepared to provide further disclosure of non-confidential financial information.⁵⁴

In response to the concerns expressed regarding the siting of the solar panels and the degree to which a sale of the rental building might affect their siting, the Applicants responded that:

⁴¹ Transcript, p. 5.

⁴² Ibid., p. 8, pp. 5–6.

⁴³ Ibid., p. 6.

⁴⁴ Ibid, pp. 12–16.

⁴⁵ Ibid., pp. 9–10.

⁴⁶ Ibid., p. 19

⁴⁷ Exhibit E-6-1.

⁴⁸ Transcript, p. 12.

⁴⁹ Ibid., pp. 5–6.

⁵⁰ Ibid., p. 15.

⁵¹ Ibid., pp. 15–16.

⁵² Ibid., p. 21.

⁵³ Ibid., p. 23.

⁵⁴ Ibid., p.24.

there is some consideration being given to already to formalize and arrangement with respect to the solar panels on the roof of the Rental Building, be it essentially a right of way or a lease or licence or something of that nature.⁵⁵

And further:

requiring or conditioning approval upon the rental building not charging any rent for the solar-panels on the roof. And so we're fine with that being reflected in the Commission's order.⁵⁶

4.0 BCUC determination

The Panel approves the following:

the disposition of 100 percent of SWCRA's interests in the SETES to SEUL, pursuant to section 52 of the UCA including:

- i. the transfer of the SETES CPCN to SEUL to record SEUL as the new owner and operator of the SETES;
- ii. SEUL is exempted from the requirement to file long-term resource plans pursuant to section 44.1(3) of the UCA;
- iii. Order G-190-17 approvals in relation to rates and the SETES Tariff shall apply to SEUL; and
- iv. the BCUC directives to SWCRA in the Order G-190-17 Decision shall apply to SEUL.

The approval is subject to the condition that **SWCRA and SEUL enter into a Statutory Right of Way agreement that ensures that SEUL can keep and maintain its solar panels and other equipment on the roof of the Rental Building at no charge to SEUL ratepayers.**

The Panel finds that the transfer of the CPCN to SEUL is in the public interest and should proceed without amendment.

The Panel summarizes the issues and concerns raised by interested parties through letters of comment and the workshop as follows:

- a. The Applicants have not provided sufficient notice and has not met the level of transparency surrounding the submission of its Application and disclosure of its financial affairs expected by the interested parties;
- b. The approval of the Application should be withheld until next rates application;
- c. The approval of the Application should be deferred until such time as residential units are more fully occupied; and
- d. Provisions should be made to ensure that the solar panels are preserved in their current position and that their operations remain unaffected by a future sale of the residential building.

⁵⁵ Ibid., p. 29.

⁵⁶ Ibid., pp. 29–30.

Each of the concerns and issues are addressed as follows:

1. The Applicants have not provided sufficient notice and has not met the level of transparency surrounding the submission of its Application and disclosure of its financial affairs expected by the interested parties.

The Panel notes that effective public consultation for applications governing material changes is important. Although the Applicants did provide notice on March 22, 2018 and April 9, 2018 of the proposal to transfer SETES to SEUL and thereby the CPCN under which SETES currently operates, the level of consultation did not meet the level of consultation required under Order G-20-15. The BCUC ordered that a workshop be held on June 11, 2018 by Order G-91-18 dated May 11, 2018 and that sufficient notice be provided as an avenue for additional consultation, which, in the Panel's view, has afforded the opportunity for effective consultation.

During the workshop, interested parties were advised of the avenues available to obtain financial information regarding SETES.⁵⁷

2. The approval of the Application should be withheld until next rates application.

The Panel notes that the transfer of SETES to SEUL is subject to the provisions of Order G-190-17 that establishes the current rates, subject to the filing of an application to establish levelized rates to be filed no later than June 2019 and approves the existing tariff rates, terms and conditions.

The Panel finds that the manner in which the BCUC regulates rates remains unaffected by its ownership structure.

3. The approval of the Application should be deferred until such time as residential units are more fully occupied.

The Panel notes that the establishment of SEUL as a stand-alone utility and the transfer of the CPCN to SEUL does not diminish the responsibility of the utility to comply with the UCA and does not alter the utility's regulatory requirements, regardless of the number of residents who currently and may occupy the residential units.

4. Provisions should be made to ensure that the solar panels are preserved in their current position and that their operations remain unaffected by a future sale of the residential building.

The Applicants have proposed, and the Panel has made it a condition of the Order, that a statutory right of way be provided to SEUL to provide for the ongoing location of the solar panels on the roof of the Residential Building at no cost to SEUL ratepayers.

As noted earlier, the BCUC has outlined criteria used in assessing reorganizations as it is proposed in the Application. Through its commitment to operate the utility with no detrimental effects on rate payers, the Panel considers that the transfer of SETES to SEUL does not violate existing covenants and that the utilities' level of service will be maintained. The utility's ability to raise equity and debt financing is unchanged by the transfer and by virtue of the existing assets being rolled over to SEUL, their structural integrity is unaffected.

⁵⁷ Transcript, pp. 24–25.

The Applicants seek approval of the disposition of 100 percent of its interest in SETES to SEUL pursuant to section 52 of the UCA.

Based on the review of the Application and the evidentiary record the Panel finds that **the Application by SWCRA for approval of the disposition of its interest in the SETES to SEUL is approved.**