



ORDER NUMBER
G-31-19

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

and

FortisBC Alternative Energy Services Inc.
2018/2019 Revenue Requirements and Cost of Service Rates Application
for the Thermal Energy Service to Delta School District No. 37

BEFORE:

W. M. Everett, QC, Panel Chair/Commissioner
A. K. Fung, QC, Commissioner
M. Kresivo, QC, Commissioner

on February 11, 2019

ORDER

WHEREAS:

- A. On February 8, 2018, pursuant to sections 59-61 of the *Utilities Commission Act* (UCA), FortisBC Alternative Energy Services Inc. (FAES) applied to the British Columbia Utilities Commission (BCUC) for approval of its revenue requirements and rates for the thermal energy service to Delta School District No. 37 (DSD) based on a proposed switch from the current market rate to the cost of service (COS) rate of \$0.223 per kilowatt-hour (kWh), effective July 1, 2018, for the fiscal and contract year from July 1, 2018 to June 30, 2019 (Application);
- B. By Orders G-56-18, G-77-18, G-83-18, G-118-18 and G-228-18, the BCUC established a regulatory timetable which included the following: a procedural conference; intervenor registration; BCUC and intervenor information requests (IRs) on the Application; the filing of DSD evidence; BCUC and FAES IRs on DSD's evidence; the filing of rebuttal evidence by FAES; BCUC and DSD IRs on FAES' rebuttal evidence; and written final and reply arguments. The BCUC also approved the existing market rate mechanism and resulting market rate on an interim and refundable basis, effective July 1, 2018;
- C. FAES filed its written final argument on January 11, 2019;
- D. On February 1, 2019, DSD filed its written final argument and two new consultant reports;
- E. On February 3, 2019, FAES filed a letter with the BCUC objecting to the new evidence filed by DSD and requesting that the BCUC reject the new evidence and direct DSD to file a new submission with all reference to the new evidence removed;
- F. DSD responded to FAES by letter dated February 4, 2019 stating that the materials submitted by DSD should be accepted for filing; and

G. The Panel has reviewed the submissions from DSD and FAES and makes the following determinations.

NOW THEREFORE for the reasons attached as Appendix B to this order, the BCUC orders the following:

1. The new evidence and any references to the new evidence contained in DSD's February 1, 2019 final argument will not be considered by the Panel in reaching its decision on the Application.
2. The regulatory timetable established by Order G-228-18 is amended to extend the deadline for FAES' filing of its reply argument, as provided in Appendix A to this order.

DATED at the City of Vancouver, in the Province of British Columbia, this 11th day of February 2019.

BY ORDER

Original signed by:

W. M. Everett, QC
Commissioner

Attachment

FortisBC Alternative Energy Services Inc.
2018/2019 Revenue Requirements and Cost of Service Rates Application
for the Thermal Energy Service to Delta School District No. 37

REGULATORY TIMETABLE

Action	Date (2019)
FortisBC Alternative Energy Services Inc. Written Reply Argument	Tuesday, February 26

FortisBC Alternative Energy Services Inc.
2018/2019 Revenue Requirements and Cost of Service Rates Application
for the Thermal Energy Service to Delta School District No. 37

REASONS FOR DECISION

On November 30, 2018, the British Columbia Utilities Commission (BCUC) issued Order G-228-18 and accompanying reasons for decision directing that the evidentiary record be closed and the proceeding regarding FortisBC Alternative Energy Services Inc.'s (FAES) 2018/2019 Revenue Requirements and Cost of Service (COS) Rates Application for the Thermal Energy Service to Delta School District No. 37 (DSD) (Application) move to written final and reply arguments. In making its determination to proceed to written arguments, the Panel stated the following:

In this proceeding, the Panel is tasked with determining whether or not to approve FAES' request to switch from the current market rate being charged to DSD to the COS rate, and if approved, to determine whether the COS rate as applied for should be approved. In reaching these determinations, the Panel must consider sections 59 to 61 of the UCA [*Utilities Commission Act*], including whether the COS rate is just, reasonable and not unduly discriminatory.

The Panel considers the evidence gathered on the Application through the three rounds of IRs [information requests], DSD evidence and FAES rebuttal evidence to be sufficient.

In accordance with the regulatory timetable attached to Order G-228-18, FAES filed its written final argument on January 11, 2019.

On February 1, 2019, the deadline for DSD to file its written final argument, DSD submitted the following three documents to the BCUC:

- DSD's written final argument dated February 1, 2019;
- Report of Reshape Strategies dated January 31, 2019; and
- Report of MCW Consultants Ltd. dated February 1, 2019.

In response to DSD's submission, FAES filed a letter on February 3, 2019 stating, among other things, the following:

The DSD has filed with its written argument two new sur-rebuttal expert reports... This contradicts BCUC Order G-228-18 dated November 30, 2018. The approach the DSD has taken to have new expert evidence introduced – waiting for 10 weeks until after FAES has filed its final submission – is procedurally unfair and prejudicial to FAES. The BCUC should reject the DSD's new evidence, and take the necessary steps to prevent further prejudice to FAES.

FAES requests that the BCUC direct the following:

- The DSD's February 1, 2019 letter and its attachments be rejected for filing, and not be posted on the BCUC's website;
- The DSD be directed to file a new submission with all reference to the new evidence removed; and

- The timetable for FAES to reply to that revised submission be extended to provide FAES with a full two weeks to respond, as originally contemplated by the approved timetable.

On February 4, 2019, DSD responded to FAES, opposing the relief sought by FAES regarding DSD's February 1, 2019 submissions and stating, among other things, the following:

The DSD maintains that, given that its original expert reports were submitted prior to the filing of the FAES IR responses, it is evident that the principles of procedural fairness and natural justice, as set out in both the BCUC's Rules of Practice and Procedure and at common law, dictate that the materials submitted by the DSD on February 1, 2019, should be accepted for filing.

[...]

In the DSD's submissions to the BCUC dated November 20, 2018, it expressly advised the BCUC that 'its representatives, experts, and/or legal counsel would be unavailable between December 17, 2018 and January 6, 2019.' To this end, the DSD confirms that it was only able to obtain an assessment from its experts regarding their evaluation of the materials disclosed by FAES in its IR responses in January 2019, in the midst of preparing its final submissions. Given this, the DSD maintains that, at all times, it has proceeded in the most expeditious and efficient manner possible with respect to this issue.

Panel Determination

The Panel finds DSD's filing of new evidence as part of its February 1, 2019 final argument to be inappropriate and in contravention of the Panel's determinations in Order G-228-18. **The Panel therefore will not consider the new evidence submitted by DSD or its arguments based on the new evidence.**

The Panel clearly stated in the reasons for decision attached to Order G-228-18 that it considers the evidence gathered in the proceeding to be sufficient to address the requests in the Application, and there has been no change in circumstance which warrants a reversal of that decision.

With regard to DSD's statements in its February 4, 2019 letter, the Panel disagrees that DSD has proceeded in the most "expeditious and efficient manner possible." The Panel issued its decision regarding the closing of the evidentiary record on November 30, 2018, providing DSD with ample time to advise the BCUC of its intentions to file sur-rebuttal evidence before December 17, 2018 (i.e. the start of DSD's stated period of unavailability). Further, DSD opted not to provide notice or request leave to file sur-rebuttal evidence in the entirety of January 2019 and instead waited until the February 1, 2019 final argument deadline to file the sur-rebuttal evidence as part of its final argument. It is clear to the Panel, based on DSD's February 4, 2019 letter, that DSD fully intended to file sur-rebuttal evidence, yet DSD made no attempt to provide notice to or request leave from the Panel to do so prior to the filing deadline for DSD's final argument.

With regard to DSD's assertion that procedural fairness dictates that it should be permitted to file evidence in response to FAES' IR responses, the Panel disagrees. The BCUC Rules of Practice and Procedure state the following:

4.01 In accordance with sections 2.1 and 4(1) of the *Utilities Commission Act*, and sections 11(1) and (2) of the *Administrative Tribunals Act*, the BCUC adopts these rules and will decide the most appropriate and effective management of its resources and the ordering of its proceedings.

4.02 Notwithstanding the procedures provided for in the rules, the BCUC may do whatever is appropriate and permitted by law to enable it to effectively and completely adjudicate the matter before it.

In accordance with the aforementioned Rules of Practice and Procedure, the Panel has determined the most appropriate ordering of the proceeding through its establishment of the regulatory timetables in Orders G-56-18, G-77-18, G-83-18, G-118-18 and G-228-18. At no point in the establishment of these regulatory timetables has the Panel determined it necessary for DSD to file sur-rebuttal evidence.

The Panel acknowledges FAES' requests regarding the treatment of the DSD sur-rebuttal evidence and final argument. However, the Panel considers that taking FAES' proposed approach will only serve to unnecessarily further extend the regulatory process.

The Panel has already stated that it will not consider the new evidence submitted by DSD, or its arguments based on the new evidence, in deciding on the merits of the Application. In making this determination, the Panel has reviewed the new evidence filed by DSD and notes that this new evidence is similar to the evidence already filed by DSD and is related to topics and issues in respect of which the Panel has already found there to be sufficient evidence on the record.

To provide context for the Panel's current determinations and to prevent further unnecessary delays in the regulatory process, the Panel will allow the new evidence and the existing final argument filed by DSD to be posted in the proceeding. However, the Panel will not consider the new evidence, or any references to the new evidence contained in DSD's final argument, when making its determinations on the Application.

The Panel agrees with FAES that the regulatory timetable established by Order G-228-18 should be amended to allow FAES additional time to file its reply argument, as it is reasonable to expect that FAES would have waited to prepare its reply argument until further determinations were made on DSD's February 1, 2019 submissions.

In consideration of the above, the Panel directs that the regulatory timetable established by Order G-228-18 be amended to extend the deadline for filing of FAES' reply argument to February 26, 2019, which is two weeks from the issuance of these reasons for decision. Specifically, the Panel requests that FAES only address in its reply argument DSD's arguments which pertain to the existing evidence on the record. The Panel will not consider the new evidence, or the parties' arguments on the new evidence, in reaching its decision on the Application.