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VIA EMAIL

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December 22, 2011

FEI DELTA SCHOOL DISTRICT 37
THERMAL ENERGY SERVICE CONTRACTS CPCN
EXHIBIT A-5

Ms. Diane Roy
Director, Regulatory Affairs –Gas
FortisBC Energy Inc.
16705 Fraser Highway
Surrey, BC V4N 0E8

Dear Ms. Roy:

Re: FortisBC Energy Inc.
Project No. 3698648
Application for Certificate of Public Convenience and Necessity
for Approval of Contracts and Rate for Public Utility Service to
Provide Thermal Energy Service to Delta School District Number 37

Further to your November 28, 2011 Application for a Certificate of Public Convenience and Necessity, enclosed please find Commission Order G-223-11 and Reasons for Decision.

Yours truly,

Alanna Gillis

/elm

Enclosure

cc: Registered Interveners
(FEI-SD37-TES-RI)

Registered Interveners-2012-13 Revenue Requirements
(FEU-2012-13RR-RI)

Registered Interveners-AES Inquiry
(FEI-AES-RI)



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**BRITISH COLUMBIA
UTILITIES COMMISSION**

**ORDER
NUMBER G-223-11**

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IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

An Application by FortisBC Energy Inc.
for a Certificate of Public Convenience and Necessity for
Approval of Contracts and Rate for Public Utility Service to Provide Thermal Energy Service
to Delta School District Number 37

BEFORE: L. O'Hara, Panel Chair/Commissioner
R. Revel, Commissioner December 22, 2011
D. Morton, Commissioner

ORDER

WHEREAS:

- A. By Commission Order G-141-09 dated November 26, 2009, the British Columbia Utilities Commission (Commission) approved for FortisBC Energy Inc. (FEI, then Terasen Gas Inc.) a Negotiated Settlement Agreement (NSA) for the 2010 and 2011 Revenue Requirements and Delivery Rates proceeding which included approval for the provision of Alternative Energy Services (AES) defined to include geo-exchange, solar thermal and district energy systems;
- B. The NSA accepted General Terms and Conditions Section 12A: Alternative Energy Extensions (GT&C 12A) as the economic screening tool for AES projects and provided that FEI could make application for acceptance of project-specific contracts as a rate under the Alternative Energy class of service. The NSA also provides that when the Commission reviews these AES applications the Commission may review and adjust the economic test and GT&C 12A;
- C. The NSA prescribed that the Certificate of Public Convenience and Necessity (CPCN) threshold of \$5 million would apply to AES projects brought forward in 2010 and 2011;
- D. On October 7, 2011, FEI filed an application with the Commission for approval, pursuant to sections 59-61 of the *Utilities Commission Act* (Act) and Commission Order G-141-09, of Thermal Energy Services (TES) contracts between FEI and Delta School District Number 37 (Delta SD) and a new rate for thermal energy services provided to Delta SD under those contracts (Initial Filing);
- E. In the Initial Filing, FEI proposed to own and operate the thermal energy systems located on the Delta SD sites as agreed with Delta SD, and sought acceptance of an expenditure schedule on the project costs pursuant to section 44.2 of the Act;

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- F. In the Initial Filing, FEI requested interim approval of the rates and rate design contained within the contracts by October 31, 2011 as the price established for the installation of the thermal facilities was contingent on the Commission granting approval by November 1, 2011;
- G. On October 25, 2011, via Commission Order G-179-11, the Commission denied FEI's request for interim approval and directed FEI to advise the Commission if it intended to proceed with the Initial Filing as filed, notwithstanding the denial of the interim approval, or withdraw the Initial Filing;
- H. On November 28, 2011, FEI filed an application for a Certificate of Public Convenience and Necessity for the construction and operation of thermal energy projects at 19 individual sites for the Delta SD, under sections 45 and 46 of the Act, and for the approval of rates and rate design established by an Energy System Rate Development Agreement and individual Energy System Service Agreements entered into between FEI and Delta SD, as just and reasonable rates under sections 59-61 of the Act (Application);
- I. The Thermal Energy Upgrade Project (Project) described in the Application will provide thermal energy upgrades that involve the replacement of conventional boilers with high efficiency, condensing boilers at eight sites, the conversion of existing thermal plants to geo-exchange systems at 11 sites, and the retrofit or replacement of existing mechanical infrastructure at all 19 sites;
- J. The Project will take place over two years with a total estimated cost of \$6.5 million, of which Delta SD will be contributing \$1.357 million as a Contribution in Aid of Construction;
- K. FEI will own, operate and maintain the new thermal facilities and will develop a single pooled cost-of-service based rate, developed pursuant to FEI's GT&C 12A, for thermal energy consumed with provision that the rate initially charged will be a market-based rate to facilitate the transition from the Delta SD's current costs of energy to the cost-of-service rate;
- L. FEI proposes that the Application be reviewed in a written hearing process and requests approval of the Application effective March 1, 2012 on the basis that the design build contract that FEI has entered into with Johnson Controls L.P., on which the Project costs and timeline are based, is contingent upon the Commission approving the Application by March 1, 2012;
- M. By Commission Order G-205-11, dated December 2, 2011, the Commission established a written public hearing and regulatory timetable for the registration of Interveners and for the review of the Application. The Order also determined that FEI's request for an incremental 50 basis point risk premium in the cost of service was not developed sufficiently to support the request and FEI was directed to provide by Friday December 9, 2011 supplemental evidence in this regard. FEI filed the supplemental evidence as directed.
- N. The Commission considers that the economic test and GT&C 12A should be reviewed.

NOW THEREFORE the Commission orders as follows:

- 1. In accordance with the provisions of the NSA, within the Alternative Energy class of service, for project-specific contracts with AES customers that will be filed with the Commission for acceptance as a rate the Commission declares the economic test and GT&C 12A for AES projects as interim effective January 1, 2012.

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2. Parties participating in this proceeding may pursue issues regarding the economic test and GT&C 12A for AES projects and whether modifications should be made to the economic test and GT&C 12A through the Information Requests and Argument phases that are scheduled in this proceeding.
3. In recognition that including the economic test and GT&C 12A as issues in this proceeding may have impacted a party's involvement in this proceeding the deadline for Registered Interventions is extended to Thursday, January 5, 2012.

DATED at the City of Vancouver, in the Province of British Columbia, this 22nd day of December 2011.

BY ORDER

Original signed by:

L. O'Hara
Panel Chair/Commissioner

Attachments

FEI Delta School District 37
Thermal Energy Service Contracts CPCN

REASONS FOR DECISION

Background

Commission Order G-141-09 approved the Negotiated Settlement Agreement (NSA) for FEI's (formerly Terasen Gas Inc.) 2010-2011 Revenue Requirements Application. The NSA allowed for FEI to apply for Commission approval of Alternative Energy Solutions (AES) projects and required FEI to apply the economic test outlined in the Application. Parties to the NSA agreed to a proposed GT&C, Section 12A-Alternative Energy Extensions. In accordance with the NSA, project-specific contracts with AES customers would be filed with the Commission for acceptance as a rate, at which time the Commission may review and adjust the economic test and GT&C Section 12A-Alternative Energy Extensions. The NSA also prescribed that the Certificate of Public Convenience and Necessity (CPCN) threshold of \$5 Million would apply to AES projects brought forward in 2010 and 2011.

On November 28, 2011, FEI filed a CPCN for the construction and operation of thermal energy projects at 19 individual sites for the Delta School District Number 37 (Delta SD 37). FEI requested an approval of the Application effective March 1, 2012. By Order G-205-11 the Commission established a written hearing process and regulatory timetable for this proceeding. This review process is taking place concurrently with the Alternative Energy Solutions Inquiry (Order G-118-11), which has the second procedural conference scheduled for January 25, 2012.

Interveners and Interested Parties in the Delta SD 37 proceeding have identified a number of issues, including:

- Clarification of the incentive funding for the Project, e.g. FEI's EEC program for high efficiency boilers, and the Public Sector Energy Conservation Agreement (PSECA);
- FEI's requested risk premium above the benchmark return on equity;
- Whether the proposed back-end loading of the rate structure is reasonable;
- Whether topics such as the cost-of-service model for thermal energy services should be dealt with in this proceeding or in the AES Inquiry proceeding; and
- Whether there is a need for economic regulation of TES.

Commission Decision

The Commission Panel considers that when natural gas service is provided in combination with AES as described in the NSA the identification of the "customer" who will be charged for that service is vague. The Panel further notes that the definition of AES contained in the NSA and in the GT&C Section 12A –Alternative Energy Extensions does not include high efficiency boilers as proposed in the FEI-Delta SD 37 Application. With this Application requesting a final determination by March 1, 2012 there is insufficient time for a separate review process on whether the economic test contained in the NSA and GT&C 12A should be revised. **Accordingly, the Commission Panel declares the economic test contained in the NSA and GT&C Section 12A-Alternative Energy Extensions as interim effective January 1, 2012.** In order for the Commission to receive evidence on whether the economic test contained in the NSA and GT&C 12A should be modified and to what extent, parties participating in this proceeding can pursue these issues in the Information Request and Argument phases that have been scheduled in this proceeding. The review of the FEI-Delta SD 37 Application will examine whether revisions to the definition of AES that are included under GT&C Section 12A – Alternative Energy Extensions are required. The review will also examine whether when natural gas service is provided in combination with AES these are two separate or combined services and who are the appropriate customers.

By declaring the economic test contained in the NSA and the GT&C Section 12A interim, the Commission Panel wishes to ensure that neither the review of the Delta SD 37 Project over the next two months nor the outcome of the matters under review in the AES Inquiry be hampered by this tariff section.