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January 17, 2017

British Columbia Utilities Commission  
Sixth Floor, 900 Howe Street, Box 250  
Vancouver, BC, V6Z 2N3  
Attn: Laurel Ross, Acting Commission Secretary  
By Web Posting

Dear Madam:

Re: Creative Energy Vancouver Platforms Inc. Application for Approval of Northeast False Creek (NEFC) Connection Agreement (Terms and Conditions)  
BCUC Project No.3698881  
BCSEA-SCBC Final Submissions

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These are the submissions of the interveners BC Sustainable Energy Association and Sierra Club BC pursuant to the regulatory timetable established by Order G-169-16<sup>1</sup> dated November 24, 2016. In summary, BCSEA-SCBC support interim and final approval of the Connection Agreement pursuant to sections 59-61 and 89-90 of the *Utilities Commission Act*.

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<sup>1</sup> Exhibit A-5.

## **I. Introduction**

### **A. BCSEA and SCBC**

Members of BCSEA and SCBC are current or potential ratepayers of, or tenants of ratepayers of, Creative or potential competitors of Creative for energy services. They want the energy they purchase to be safe, cost-effective, efficient and low-carbon. BCSEA-SCBC also participate as non-profit public interest environmental and sustainable energy organizations. BCSEA-SCBC support district energy systems (DES) where they provide a low-carbon alternative to conventional heating systems.

### **B. Procedural History of the Application**

The current application has a lengthy procedural history.

On April 17, 2015, Creative Energy applied to the Commission for a Certificate of Public Convenience and Necessity (CPCN) for Phase 1 of a Low Carbon Neighbourhood Energy System (NES) for the Northeast False Creek (NEFC) and Chinatown Neighbourhoods of Vancouver. In addition, Creative Energy sought approval of a Neighbourhood Energy Agreement (Original NEA) between Creative Energy and the City of Vancouver. The Original NEA referenced an exclusive franchise granted by CoV to Creative Energy to provide thermal energy services in the NEFC and Chinatown areas.

Further, of significance to the present proceeding, Creative Energy also sought approval of a form of Connection Agreement, including a Schedule A, Customer Service Agreement, and a Schedule D, Statutory Right of Way.<sup>2</sup> For convenience, this will be referred to as the April 2015 version of the Connection Agreement. The form of Connection Agreement was to be executed between Creative Energy and developers. As described by the Commission, the key terms provided by the proposed Connection Agreement are:

- “1. The process for developers to apply for connection (consistent with the proposed CoV bylaw);
2. Design guidelines and a review process to ensure compatibility with the NES;<sup>3</sup>
3. A rate tariff, set out in Schedule A to the Connection Agreement; and
4. Provisions for statutory rights of way.”<sup>4</sup>

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<sup>2</sup> The form of Connection Agreement was filed as Schedule 6 at pdf p.298 of Exhibit B-1 in the Commission’s Project No.3698836, located at [http://www.bcuc.com/Documents/Proceedings/2015/DOC\\_43609\\_B-1\\_CreativeEnergy\\_NES-NEFC-CPCN-Appl.pdf](http://www.bcuc.com/Documents/Proceedings/2015/DOC_43609_B-1_CreativeEnergy_NES-NEFC-CPCN-Appl.pdf).

<sup>3</sup> A document titled “Creative Energy NES, Building Compatibility Design Guide – May 2015” was filed in the CPCN proceeding and is located at [http://www.bcuc.com/Documents/Proceedings/2015/DOC\\_43684\\_B-3\\_Building-Design-Compatibility-Guide.pdf](http://www.bcuc.com/Documents/Proceedings/2015/DOC_43684_B-3_Building-Design-Compatibility-Guide.pdf). The document includes as Appendix 3 a “Building Service Application Sample.”

<sup>4</sup> Decision and Order C-12-15, p.54.

During the CPCN proceeding, the Urban Development Institute (UDI) criticized certain aspects of the Connection Agreement. Creative Energy updated the Connection Agreement in response to some of these criticisms and declined to change it regarding other criticisms.<sup>5</sup>

In Decision and Order C-12-15 dated December 8, 2015, the Commission issued a CPCN to Creative Energy to construct and operate a Neighbourhood Energy System (NES) in the NEFC Area (excluding the Chinatown area) within the City of Vancouver. The Commission denied approval of the Original NEA due to the exclusive franchise feature.

Pertinent to the present proceeding, the Panel in Order C-12-15 also denied approval of the Connection Agreement under sections 59-61 of the *Act*, saying that the Panel required more information from Creative Energy.<sup>6</sup> The Commission invited Creative Energy to resubmit a Connection Agreement at the time of its next rate application, and directed Creative Energy to provide evidence on the following topics to support approval of the Connection Agreement:

- “1. A comparison of the statutory right of way provisions of tariffs of other similar utilities, with a view of supporting that this provision is in the public interest and meets the standards applicable in sections 59-61 of the UCA.
2. A fulsome analysis of an alternative to the requirement that developers must not apply for a building permit until Creative Energy has approved the developer’s design.
3. A revised section 2.2 that indicates that the requirement to have exclusive end-use is a part of the CoV policy and bylaws, and that the developer is required to comply with such policy/bylaws.
4. Evidence that the design guidelines and review process is consistent with other similar utilities.
5. Evidence that the other terms and conditions of concern raised by UDI and others do not go further than necessary in order to provide like service by other utility operators.”<sup>7</sup>

On February 5, 2016, Creative Energy applied to the Commission for approval of a Restated and Amended NEFC and Chinatown NEA under section 45 of the *Act*.

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<sup>5</sup> Decision and Order C-12-15, p.54-55. A revised September 8, 2015 version of the Connection Agreement and Schedules A and D was filed by Creative Energy as Exhibit 31 during the course of the CPCN proceeding: [http://www.bcuc.com/Documents/Proceedings/2015/DOC\\_44527\\_B-31\\_Creative\\_updated-connection-agreement.pdf](http://www.bcuc.com/Documents/Proceedings/2015/DOC_44527_B-31_Creative_updated-connection-agreement.pdf). A further revised September 17, 2015 version of the Connection Agreement and Schedules A and D was filed by Creative Energy as Exhibit B-44 in furtherance of an undertaking made during the oral hearing: [http://www.bcuc.com/Documents/Proceedings/2015/DOC\\_44624\\_B-44\\_CreativeEnergy\\_Untakings.pdf](http://www.bcuc.com/Documents/Proceedings/2015/DOC_44624_B-44_CreativeEnergy_Untakings.pdf).

<sup>6</sup> Decision and Order C-12-15, p.55.

<sup>7</sup> Decision and Order C-12-15, p.55

On April 12, 2016, Creative Energy filed with the Commission pursuant to sections 59 to 61, 89 and 90 of the *Act* a 2016-2017 Revenue Requirements Application (RRA) for steam service, a rate design and RRA for NEFC hot water service. Pertinent to the present proceeding, instead of filing a revised Connection Agreement together with the 2016-2017 RRA as contemplated in Order C-12-15, Creative Energy chose to file a revised Connection Agreement separately,<sup>8</sup> which it did on June 15, 2016.

On June 15, 2016, Creative Energy applied<sup>9</sup> under sections 59 to 61 of the *Act* to the Commission for approval of a revised Connection Agreement and Schedules. For convenience, this will be referred to as the June 2016 version of the Connection Agreement. This application initiated the current proceeding. Creative Energy also sought interim approval of the Connection Agreement and Schedules under sections 89 and 90 of the *Act* by July 15, 2016. In response to the topics listed by the Commission in Decision and Order C-12-15, the application includes the following appendices:

- Appendix 2 – Comparison of Statutory Right of Ways approved by the BC Utilities Commission
- Appendix 3 – Evidence regarding Design Guidelines
- Appendix 4 – Connection Agreement Concerns
- Appendix 5 – Corix Revised Agreement
- Appendix 6 – TELUS Garden – Residential SRW.

On June 16, 2016, the Commission issued Decision and Order G-88-16 denying Creative Energy's application for approval of the Restated and Amended NEFC and Chinatown NEA. The Commission denied approval of mandatory connection within the franchise area. On July 6, 2016, Creative Energy applied for reconsideration of Order G-88-16.

On July 11, 2016, the Commission adjourned the current proceeding<sup>10</sup> pending the outcome of Creative Energy's application for reconsideration of Order G-88-16.

On September 26, 2016, by Decision and Order G-151-16 the Commission denied reconsideration of Order G-88-16.

On September 30, 2016, by Order G-153-16 the Commission reopened the current proceeding regarding Creative Energy's form of Connection Agreement.

On November 1, 2016, Creative Energy filed in the current proceeding<sup>11</sup> a revised NEFC Connection Agreement, including Schedules A and D. For convenience this will be referred to as

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<sup>8</sup> Exhibit B-1, pdf pp.2-3.

<sup>9</sup> Exhibit B-1.

<sup>10</sup> Order G-109-16, Exhibit A-2.

<sup>11</sup> Exhibit B-1-1.

the October 2016 Connection Agreement.<sup>12</sup> Creative Energy says the (October 2016) Connection Agreement is revised to reflect Order G-151-16, Order C-12-15 and Order G-88-16.<sup>13</sup> As a result of this filing, the application is comprised of the October 2016 Connection Agreement in Exhibit B-1-1 together with the June 15, 2016 argument and evidence in Exhibit B-1 on the topics listed in Order C-12-15.

In a submission dated November 17, 2016, FEI expressed concern that the November 1, 2016 version of the Connection Agreement “continues to expressly prohibit Creative Energy’s customers from obtaining service from any other public utility for domestic hot water or space heating service (see, for example, Clause 2.3 [14]).”<sup>15</sup> FEI argued that this “continue[s] to provide Creative Energy with the type of exclusivity that has been rejected by the Commission in the previous Creative Energy/NEFC proceedings.”

In response to FEI on this point, Creative Energy argued in a November 23, 2016 submission that Clause 2.3 is not a mandatory connection provision but instead “restrict[s] customers from obtaining service from other utilities should they decide to connect to the NES.”<sup>16</sup> BCSEA-SCBC concur with Creative Energy on this point.

On November 24, 2016, by Order G-169-16 the Commission established a regulatory timetable providing for intervention applications, a single round of information requests (IRs) and final written argument. Interventions were filed by FortisBC Energy Inc. (FEI), FortisBC Alternative Energy Services (FAES), Commercial Energy Consumers (CEC), and BCSEA-SCBC.

Information requests were filed by December 19, 2016 and Creative Energy responded on January 4, 2017.

In response to information requests from Commission staff, Creative Energy made or committed to make several further revisions to the wording of the Connection Agreement and the Customer Service Agreement. In these submissions the term “Connection Agreement” will include those additional revisions.<sup>17</sup>

### **C. The Scope of the Proceeding**

In its IRs to Creative Energy, FEI asked a number of questions regarding the City of Vancouver’s mandatory connection requirements and any agreements between Creative Energy

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<sup>12</sup> The Connection Agreement in Exhibit B-1-1 states “Draft: October 19, 2016” [pdf p.4 for the clean version and pdf p.72 for the blackline version]. The other versions of the Connection Agreement do not appear to be dated.

<sup>13</sup> Exhibit B-7, CEC 1.1.

<sup>14</sup> Clause 2.3 of the October 2016 Connection Agreement is subtitled “No Alternate System or Service Provider.” The same clause with the same number, 2.3, is in the June 2016 Connection Agreement. The June 2016 wording is revised from the November 2015 wording in which the clause was numbered 2.2.

<sup>15</sup> Exhibit C2-2.

<sup>16</sup> Exhibit B-4.

<sup>17</sup> Exhibit B-5, BCUC 1.1; 2.2; 3.1; 4.4; 6.3.

and the City of Vancouver.<sup>18</sup> Creative Energy declined to respond, on the ground that the mandatory connection topic is beyond the scope of the current proceeding. Creative Energy acknowledged that “By Order G-151-16, Order C-12-15, and Order G-88-16, the Commission denied approval of a franchise granted by the City of Vancouver to Creative Energy.”<sup>19</sup> However, Creative Energy emphasized that in the current proceeding it “is seeking approval for terms and conditions for service to customers from infrastructure approved by the CPCN granted in Order C-12-15.”<sup>20</sup>

By letter of January 6, 2017, FEI asked the Commission to direct Creative Energy to respond to the questions regarding mandatory connection and agreements between Creative Energy and CoV.<sup>21</sup> On January 12, 2017, the Commission denied the request. The Commission states:

“Creative Energy is seeking interim and final approval of the Connection Agreement in the above-noted proceeding [the current proceeding], pursuant to section 59-61 of the *Utilities Commission Act* (UCA), as submitted November 1, 2016. The information FEI seeks relates directly to agreements between the City of Vancouver and Creative Energy for the North East False Creek Neighbourhood Energy System (NEFC NES). Any agreements that Creative Energy holds regarding the NEFC NES that are not linkages in the above-noted proceeding and are not pursuant to sections 59–61 of the UCA, are therefore considered out of the scope of this proceeding.”<sup>22</sup>

BCSEA-SCBC understand this ruling to mean that the scope of the current proceeding

- is limited to the proposed form of Connection Agreement (including the Schedules) and to whether the Connection Agreement complies with sections 59-61 of the *Act*, i.e., is not unjust, unreasonable, unduly discriminatory or unduly preferential, and
- excludes any agreements between Creative Energy and CoV that are not referenced in the Connection Agreement and are not ‘rates’ within the meaning of sections 59-61.

To be clear, the agreements (if any) that are excluded from the scope of the current proceeding are of interest because they impose or reference, or are alleged to impose or reference, mandatory connection requirements, the topic that was at the core of Decision and Order G-88-16 and Decision and Order G-151-16 (denying reconsideration of G-88-16). In BCSEA-SCBC’s view, the exclusion of such agreements from the scope of the current proceeding is consistent with, and supported by, the Panel’s reasons for decision in G-151-16 in which the Panel stated that the CoV can achieve its objective of establishing a DES in NEFC by, in addition to an alternative approach, enacting a mandatory connection NES Bylaw “entirely independently from the NEA and any related agreements.”<sup>23</sup>

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<sup>18</sup> Exhibit C2-4.

<sup>19</sup> Exhibit B-8, FEI 2.1.

<sup>20</sup> Exhibit B-8, FEI 1.1.

<sup>21</sup> Exhibit C2-5.

<sup>22</sup> Exhibit A-9, underline added.

<sup>23</sup> Decision and Order G-151-16, Appendix A, p.23, pdf p.27.

## II. Argument

The Connection Agreement was first considered by the Commission in the CPCN proceeding. The CPCN Panel's description of the function of the Connection Agreement remains pertinent:

“The Connection Agreement sets out the legal framework for the relationship between the utility and the developer of lands and the end use customer that will be connected to the NES. The connections and service agreements are required by all who will be connected to and take service from the NES in NEFC to ensure compatibility of the building systems with the NES, to permit Creative Energy to install infrastructure on developer's lands to serve only that development and to allow success to Creative Energy.”<sup>24</sup>

BCSEA-SCBC submit that the test for approval of the Connection Agreement under section 59-61 of the *Act* is the test expressed previously by the CPCN Panel as follows:

“The key issue is whether the Connection Agreement, as a tariff, represents an undue prejudice or disadvantage or an agreement that is not “regularly and uniformly extended to all persons under substantially similar circumstances and conditions for service of the same description.”<sup>25</sup>

As noted above, the Panel in the CPCN decision denied approval of the Connection Agreement (as it was then worded) because the Panel required more information from Creative Energy. The CPCN Panel directed Creative Energy to provide evidence on five topics, quoted above, to support approval of the Connection Agreement. In BCSEA-SCBC's respectful submission the current Panel's review of the Connection Agreement should focus on those five topics and whether, all things considered, the Connection Agreement, as a tariff, meets the test set out above. Accordingly, the following submissions are organized by the five topics.

### 1. Statutory Right of Way

As stated above, in Decision and Order C-12-15, the Commission directed Creative Energy to provide a comparison of its proposed statutory right of way provisions with the statutory right of way (SRW) provisions of tariffs of other similar utilities, “with a view of supporting that this provision is in the public interest and meets the standards applicable in sections 59-61 of the UCA.”

In Appendix 2 of Exhibit B-1, Creative Energy provides a comparison of its proposed form of SRW (CE SRW) with the Commission-approved SRWs used by FAES in the Telus Garden district energy system and by Corix Multi-Utility Services Inc. (Corix) for the neighbourhood energy system at UBC.<sup>26</sup> BCSEA-SCBC submit that these are valid comparators. Further, while the comparison is based on the June 2016 CE SRW, the October 2016 CE SRW (sought to be approved) is effectively the same as the June 2016 version; the only difference being a minor

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<sup>24</sup> Decision and Order C-12-15, Reasons for Decision, p.54, pdf p.60.

<sup>25</sup> *Ibid.*, quote from section 59 of the UCA.

<sup>26</sup> Exhibit B-1, pdf p.148.

wording change in section 26.<sup>27</sup> BCSEA-SCBC are satisfied that Creative Energy's evidence of the comparison between the June 2016 CE SRW and the other two SRWs applies equally to the October 2016 CE SRW. BCSEA-SCBC submit that the comparison in Appendix 2 responds appropriately to the Commission's request.

Creative Energy concludes that "The results of the comparison suggest that the CE SRW does impose certain additional requirements on the Grantor and Grantee, but is not substantially dissimilar from other SRWs." BCSEA-SCBC concur with that conclusion. In their view, the ways in which the CE SRW differs from the other SRWs do not diminish the merit of the CE SRW in terms of the public interest and the requirements of sections 59-61 of the *Act*.

The 'no alternate system' clause in the CE SRW (section 7)<sup>28</sup> warrants discussion because of FEI's contention that it creates a mandatory connection requirement contrary to previous Commission decisions. Both the Telus Garden SRW (section 6) and the UBC SRW (section 3(f)) have clauses that parallel the CE SRW 'no alternate system' clause.<sup>29</sup> BCSEA-SCBC are satisfied that from a public interest and sections 59-61 perspective the 'no alternate system' clause in the CE SRW and in the Commission-approved FAES Telus Garden SRW and Corix UBC SRW (s.3(f)) are materially the same and therefore satisfy the concern implied by the CPCN Panel regarding the SRW.

It is noted that the wording of CE SRW section 7 provided in Appendix 2 of Exhibit B-1 omits the phrase "without the prior written consent of the Grantee" that is contained in the June 2016 CE SRW<sup>30</sup> and the October 2016 version CE SRW.<sup>31</sup> However, BCSEA-SCBC are satisfied that this does affect the conclusion that the 'no alternate system' clause in the CE SRW is materially the same as the corresponding clauses in the FAES Telus Garden SRW and the Corix UBC SRW.

## **2. Building Permit Timing**

As stated above, in Decision and Order C-12-15, the Commission directed Creative Energy to provide "a fulsome analysis of an alternative to the requirement that developers must not apply for a building permit until Creative Energy has approved the developer's design." Section 3.2 of the April 2015 Connection Agreement prohibited the Owner from applying for a building permit before Creative Energy has approved the Owner's Building System Application.<sup>32</sup>

Creative Energy's response to the Commission's concern on this point was to delete in the June 2016 Connection Agreement what had been section 3.2 of the April 2015 Connection

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<sup>27</sup> Exhibit B-1-1, pdf p.138

<sup>28</sup> There is also a similar 'no alternate system' clause in the main body of the Connection Agreement, at section 2.3.

<sup>29</sup> Exhibit B-1, Appendix 2, p.8, pdf p.152 of 469.

<sup>30</sup> Exhibit B-1, pdf p.60.

<sup>31</sup> Exhibit B-1-1, pdf p.59.

<sup>32</sup> Exhibit B-1 in the CPCN proceeding, at pdf p.305.

[http://www.bcuc.com/Documents/Proceedings/2015/DOC\\_43609\\_B-1\\_CreativeEnergy\\_NES-NEFC-CPCN-Appl.pdf](http://www.bcuc.com/Documents/Proceedings/2015/DOC_43609_B-1_CreativeEnergy_NES-NEFC-CPCN-Appl.pdf).

Agreement.<sup>33</sup> The deletion continues in the October 2016 Connection Agreement (for which approval is sought). In response to an IR from FEI, Creative Energy confirmed that the proposed Connection Agreement (as revised in June) will not preclude an Owner from applying for a Building Permit prior to obtain Creative Energy's approval of its Building System Application.

BCSEA-SCBC submit that the deletion of what had been section 3.2 is an adequate response to the concern identified by the Commission Panel in the CPCN decision. In BCSEA-SCBC's view, it is not the proper role of the Connection Agreement to purport to allow the public utility (Creative Energy) to prevent the Owner from making an application to the City for a building permit. The Connection Agreement does continue to require the Owner (if it signs the Connection Agreement) to provide its Building System Application to the utility a minimum of 90 days prior to applying for a building permit. That is appropriate, in BCSEA-SCBC's view, because the timing of the Building System Application relates directly to achieving the purposes of the Connection Agreement under the *Act*.

It is noted that in the April 2015 Design Guide under the heading "General Steps to Ensure Building Compatibility to the NES" and the subheading "During Design Stage," order of events puts approval of the Building Services Application prior to the application for a building permit:

- "...6. CE signs off the Building Services Application
7. Developer applies for Building Permit."<sup>34</sup>

The same sequence of events is stated in the October 2016 Building Services Application.<sup>35</sup> BCSEA-SCBC read this wording as descriptive, not prescriptive.

### **3. Exclusive End-Use**

As stated above, in Decision and Order C-12-15, the Commission directed Creative Energy to provide "a revised section 2.2 that indicates that the requirement to have exclusive end-use is a part of the CoV policy and bylaws, and that the developer is required to comply with such policy/bylaws."

Section 2.2 of the April 2015 Connection Agreement, unchanged in the September 8 and 17, 2015 Connection Agreements, is the 'no alternate system or service provider' clause that was renumbered to 2.3 and revised slightly<sup>36</sup> in the June 2016 Connection Agreement and retained unchanged as section 2.3 in the October 2016 Connection Agreement.

BCSEA-SCBC agree with Creative Energy that "In response to item 3 above, evidence related to CoV policy and bylaws and compliance with such policy/bylaws is not evidence that Creative Energy can file to support approval of this Application."<sup>37</sup> Creative Energy continues:

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<sup>33</sup> Exhibit B-1, p.2. The deletion is confirmed at Exhibit B-1, pdf pp.81-82

<sup>34</sup> Exhibit B-8, FEI Attachment 5.1, p.4.

<sup>35</sup> Exhibit B-8, FEI Attachment 5.1, p.21.

<sup>36</sup> The revision added as an exception: "or as otherwise agreed in writing by the Parties." In BCSEA-SCBC's view, this revision is not material to the response to item 3.

<sup>37</sup> Exhibit B-1, p.2.

“However, Creative Energy will ensure that the parties to the Connection Agreement are familiar with the CoV policy and bylaws. Creative Energy believes that compliance with such policy and bylaws need not be a provision of the Connection Agreement.”<sup>38</sup>

BCSEA-SCBC agree with Creative Energy’s submission in that regard.

Turning to the merits of the section 2.3 ‘no alternate system’ clause, it is noted that this clause is replicated in section 7 of the CE SRW that was addressed in the comparison of the SRWs of Creative Energy and comparator utilities, discussed above. As stated above, BCSEA-SCBC’s view is that the ‘no alternate system’ clause in the CE SRW and in the Commission-approved SRWs of the comparator utilities are materially the same. The same conclusion applies to the ‘no alternate system’ clause (s.2.3) in the body of the Connection Agreement. This is supported by an examination of the Commission-approved Corix UBC Infrastructure Agreement, which has an equivalent ‘no alternate system’ clause in section 5.1(b), which states:

5.1 (b) Subject only to the rights of those Developers or strata corporations whose Buildings are not subject to a Community Energy Covenant, the powers and rights granted to Corix under this Agreement are exclusive to Corix and UBC will not perform, or allow any other Person (except subcontractors and agents of Corix) to perform, any Infrastructure Work or to construct, install or operate the Infrastructure or any other system (not permitted by applicable building regulations or the Design Guide) that would provide Thermal Energy to NDES Customers, to provide the Energy Services or to exercise any other right or privilege granted to Corix under this Agreement, except as necessary during Force Majeure events.”<sup>39</sup>

In conclusion on this point, BCSEA-SCBC submit that the CPCN Panel’s third point has been adequately addressed.

#### **4. Design Guidelines and Process**

As noted above, the Commission in Decision and Order C-12-15 required Creative Energy to provide evidence that its “design guidelines and review process is consistent with other similar utilities.”

Creative Energy provides this evidence in Appendix 3 of Exhibit B-1. In Table 1, Creative Energy compares the CE design review process with the review processes of the City of Vancouver’s Southeast False Creek DES and the City of Surrey’s Surrey City Energy DES.<sup>40</sup> Creative Energy concludes that its design review process is consistent with those of the comparator utilities.<sup>41</sup> BCSEA-SCBC agree with that conclusion.

In Table 2, Creative Energy compares the CE design technical requirements with those of the Corix UBC DES, Surrey City Energy, the City of Richmond’s Richmond Oval DES, and the

<sup>38</sup> *Ibid.*, underline added.

<sup>39</sup> Exhibit B-1, pdf p.201.

<sup>40</sup> Exhibit B-1, pdf p.160.

<sup>41</sup> Exhibit B-1, pdf p.160.

Southeast False Creek DES.<sup>42</sup> Creative Energy concludes that the comparison shows that the NEFC design guidelines are consistent with those of the comparator utilities.<sup>43</sup>

In their information requests, BCSEA-SCBC focused on the comparison of “Systems not acceptable to be used in conjunction with DE” and asked Creative Energy to provide excerpts of the design guidelines to confirm the information provided in Creative Energy’s Table 2. Creative Energy provided the requested excerpts of the design guides for the Richmond Oval DES and the SEFC DES.<sup>44</sup> BCSEA-SCBC are satisfied that the source documents support the results shown in Table 2 regarding ‘systems not acceptable’ and hence support the conclusion that the Creative Energy design requirements in this respect are consistent with those of comparable utilities.

In addition, it was noticed that in Table 2 regarding ‘systems not acceptable’ the description of the UBC DES provisions omits electric baseboard heaters (not being acceptable) although the Corix UTown@UBC TES design guidelines, which were filed in Exhibit B-1, do state on pdf p.355 that “electric baseboards are not permitted.” Creative Energy confirmed this.<sup>45</sup>

It is noted that in all of the filings of successive versions of the Connection Agreement, Schedule B, Design Guidelines, and Schedule C, Building System Application, have been placeholders, with no content provided. However, in the CPCN proceeding Creative Energy filed “for review” a copy of a May 2015 Building Compatibility Design Guide, with a Building Service Application Sample attached as Appendix 3.<sup>46</sup> Similarly, in response to FEI IR 5.1 in the current proceeding Creative Energy filed a copy of an October 2015 Building Compatibility Design Guide, with a Building Service Application Sample attached as Appendix 3.<sup>47</sup> BCSEA-SCBC understand that the Design Guide and the Building System Application are filed for information and not for approval. BCSEA-SCBC would invite Creative Energy to clarify this in its reply submission.<sup>48</sup>

In conclusion regarding the Design Guide, BCSEA-SCBC submit that the Commission should determine that the Creative Energy design guidelines and review process are consistent with those of other similar utilities.

## 5. UDI Concerns

As noted above, the Commission in Decision and Order C-12-15 required Creative Energy to provide evidence that “the other terms and conditions of concern raised by UDI and others do not go further than necessary in order to provide like service by other utility operators.”

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<sup>42</sup> Exhibit B-1, pdf p.161-163.

<sup>43</sup> Exhibit B-1, pdf p.160.

<sup>44</sup> Exhibit B-6, BCSEA 1.3

<sup>45</sup> Exhibit B-6, BCSEA 1.4

<sup>46</sup> Exhibit B-3 in the CPCN proceeding, at

[http://www.bcuc.com/Documents/Proceedings/2015/DOC\\_43684\\_B-3\\_Building-Design-Compatibility-Guide.pdf](http://www.bcuc.com/Documents/Proceedings/2015/DOC_43684_B-3_Building-Design-Compatibility-Guide.pdf).

<sup>47</sup> Exhibit B-8, Attachment 5.1.

<sup>48</sup> If the Design Guide and Building System Application Form are file for approval then BCSEA-SCBC would support approval, as these are consistent with those of comparator utilities.

Creative Energy responded to this point at the time of the June 2016 filing as follows:

“Since the NEFC proceeding, Creative Energy has consulted with or made an effort to consult with Urban Development Institute (UDI) and all the customers expected to connect in 2016 or 2017. Creative Energy believes that it has accommodated the majority of requests of stakeholders for revisions to the Connection Agreement and Schedules, with certain exceptions identified in Appendix 3 [sic<sup>49</sup>], p. 1.”

In its January 4, 2017 response to an information request from CEC, Creative Energy provided the following additional response:

“Creative Energy and its counsel had an in person meeting with the Vice-President and Senior Policy Advisor for the Urban Development Institute (UDI) together with counsel for UDI on or about March 13, 2016, and at that meeting the attendees went through the Connection Agreement and the schedules thereto in its entirety and discussed certain proposed revisions from UDI. Creative Energy implemented a majority of those proposed revisions and they are all contained in the draft of the Connection Agreement that is the subject of this Application. Creative Energy has also consulted with counsel for the Parq casino development in NEFC and has included several comments and proposed revisions from counsel in the draft of the Connection Agreement that is the subject of this Application.”<sup>50</sup>

In Appendix 4 of Exhibit B-1 Creative Energy provides a table titled “Concerns with Connection Agreement, as expressed by Interveners in Information Request #2 [in the CPCN proceeding].”<sup>51</sup> In that table, Creative Energy itemizes the concerns expressed or implied by UDI and FAES regarding the Connection Agreement during the CPCN proceeding. Creative Energy provides corresponding, itemized responses with references to its responses in the CPCN proceeding,<sup>52</sup> including references to comparable provisions in the Corix UBC NDES Energy Services Agreement. Creative Energy identifies four instances in which it has declined to implement an express or implied request.

Having reviewed the table in Appendix 4, BCSEA-SCBC submit that the specific concerns identified in the table have been adequately addressed by Creative Energy. In the four instances in which Creative Energy’s response is not positive, BCSEA-SCBC are satisfied that either the request is not well founded or that the Connection Agreement is not rendered unacceptable under sections 59-61 by the omission.

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<sup>49</sup> Presumably this should read Appendix 4, p.1, i.e., Exhibit B-1, pdf p.164.

<sup>50</sup> Exhibit B-7, CEC 1.2.

<sup>51</sup> Exhibit B-1, pdf p.165.

<sup>52</sup> [http://www.bcuc.com/Documents/Proceedings/2015/DOC\\_44317\\_B-26\\_Creative\\_Response-to-UDI-IR2.pdf](http://www.bcuc.com/Documents/Proceedings/2015/DOC_44317_B-26_Creative_Response-to-UDI-IR2.pdf)

Regarding UDI IR #2 13.1, BCSEA-SCBC agree with Creative Energy<sup>53</sup> that a commitment to a seven day response would not be feasible.

Regarding UDI IR #2 14.3, in BCSEA-SCBC's view Creative Energy's response to UDI IR #2 14.4 is an adequate explanation of why the provision for the Parties to mutually agree regarding contributions in aid of construction does not mean that some developers could pay less than tariff rates for capital contributions.

In Appendix 4, Creative Energy refers to "UDI #2 20.2 and 20.3" on page 23 and again on pages 32 to 33. The references are a bit confusing, apparently due to mis-numbering of the original UDI IRs. In any event, it is understood that UDI was suggesting that in what are now section 6(j) and 9<sup>54</sup> of the CE SRW the Grantee's (Creative Energy's) liability regarding damage to the Building or Lands should extend to Improvements. In Appendix 4, Creative Energy cites its response on this point in Exhibit B-31 of the CPCN proceeding, in which Creative Energy states:

"Creative Energy will not make any revisions to the Form of Statutory Right of Way which would have the effect of making Creative Energy responsible for restoring "Improvements" (as defined in the Form of Statutory Right of Way), which include landscaping, concrete walkways and other surface materials. Creative Energy cannot take on a blanket obligation to repair Improvements, given that the nature of any particular Improvements may be such that it cannot feasibly be replaced (for example, expensive or rare plants and sculptures or other artwork). Creative Energy is obligated to act reasonably in respect of the exercise of its rights under the Statutory Right of Way in relation to the Improvements.

The Grantor under the Form of Statutory Right of Way will know the location of Creative Energy's utility infrastructure on its lands, and will be able to take that into consideration before it installs any Improvements."<sup>55</sup>

BCSEA-SCBC consider the difference between UDI and Creative Energy on this point to be a matter of negotiation regarding business terms, as distinct from a matter of 'right or wrong.' That said, BCSEA-SCBC do not find the wording proposed by Creative Energy to be unreasonable. As a comparison, the Corix UBC SRW appears to impose less-stringent terms on the utility in this respect than does the CE SRW. This is indicated by the comparison in Exhibit B-1, Appendix 2, Table 2 at page 7 regarding "Covenants by Grantee regarding works."<sup>56</sup>

In conclusion regarding item 5, BCSEA-SCBC submit that the evidence establishes that the wording of the proposed Connection Agreement (including Schedules) regarding the points of concern raised by UDI and others is satisfactory and does not go further than necessary in order to provide like service by other utility operators.

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<sup>53</sup> Exhibit B-1, Appendix 4, p.23, pdf p.167.

<sup>54</sup> At the time, they were section 7(j) and 10 of the CE SRW.

<sup>55</sup> Exhibit B-31, pp.1-2, CPCN proceeding:

[http://www.bcuc.com/Documents/Proceedings/2015/DOC\\_44527\\_B-31\\_Creative\\_updated-connection-agreement.pdf](http://www.bcuc.com/Documents/Proceedings/2015/DOC_44527_B-31_Creative_updated-connection-agreement.pdf)

<sup>56</sup> Exhibit B-1, pdf p.151.

## 6. Interim approval

Creative Energy confirmed that it currently provides service to one customer in NEFC.<sup>57</sup>  
Creative Energy states:

“Creative Energy has not entered into a Connection Agreement, Customer Service Agreement or similar agreement with the one customer referred to in FEI 3.1 above. For this reason, Creative Energy requires interim approval of the Tariff for hot water service customers.”<sup>58</sup>

BCSEA-SCBC understand that interim approval of the Connection Agreement would allow Creative Energy and the existing NEFC customer to move ahead with hot water service under approved rates. BCSEA-SCBC support the request of interim approval. If the terms and conditions in the Connection Agreement, including Schedules, change as a result of the final decision then the Connection Agreement with the customer in question could be revised.

## III. Conclusion

BCSEA-SCBC submit that the evidence provided in Exhibit B-1 and in Creative Energy’s responses to information requests, in the context of the revised October 2016 Connection Agreement, meets the requirement of the CPCN Panel for additional information regarding the five topics. BCSEA-SCBC respectfully submit that the Panel should conclude that the October 2016 Connection Agreement<sup>59</sup> meets the test under sections 59-61 of the *Act* in that it does not, as a tariff, represent an undue prejudice or disadvantage nor is it an agreement that is not regularly and uniformly extended to all persons under substantially similar circumstances and conditions for service of the same description. Accordingly, BCSEA-SCBC support Commission approval of the revised Connection Agreement, including the Schedules.

All the above is respectfully submitted.

Yours truly,

William J. Andrews



Barrister & Solicitor

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<sup>57</sup> Exhibit B-8, FEI 3.1.

<sup>58</sup> Exhibit B-8, FEI 3.1.1

<sup>59</sup> Including the Schedules and the revisions Creative Energy committed to during the IR process.