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VIA E-FILING

Patrick Wruck
Commission Secretary
BC Utilities Commission
6th Floor 900 Howe Street
Vancouver, BC V6Z 2N3

Reply to: Leigha Worth
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Our File: 7678

Dear Mr. Wruck:

Re: Creative Energy Vancouver Platforms Inc. (Creative Energy) 2018-2022 Revenue Requirements Application (the Application) Project No. 1598938

We make the following Final Submissions on behalf of our client groups the BC Old Age Pensioners' Organization, Active Support Against Poverty, Council of Senior Citizens' Organizations of BC, Disability Alliance BC, and the Tenant Resource and Advisory Centre, known collectively in regulatory processes including this one as "BCOAPO et al." We continue to act as counsel this group of community-based organizations who collectively represent the interests of low and fixed income Creative Energy residential consumers in British Columbia and as such will be directly affected by this proceeding.

Introduction

On December 1, 2018, Creative Energy Vancouver Platforms Inc. ("Creative Energy") filed its 2018-2022 Revenue Requirements Application. In the months that followed, Creative Energy then filed Errata, Supplementary Information, submissions on IR Scoping, Responses to two rounds of IR's; and its Final Argument. These documents were filed in support of the Utility's application for Commission approval of a multi-year index based ratemaking mechanism ("IBR") for fiscals 2018 through 2022.

In this process, Creative Energy has referred to itself as operating in a competitive market for thermal energy under "continuous pressure to minimize costs, maximize reliability and provide

excellent customer service.”¹ BCOAPO notes that while, at the point of entry, Creative operates in a limited competitive market in that a prospective customer can choose between the Utility or one of its competitors, after the building is added to any thermal system such as the one provided by Creative, they become a *de facto* monopoly: no one realistically sees the provider as continuing to operate in a competitive market in regards to that customer building. It is also important to note from a ratepayer perspective those who buy or rent in Creative-serviced buildings have no individual right to seek out and then receive a competitor’s service, no matter how unhappy they are with their rates, the reliability of their service, or the quality of the customer service they receive.

BCOAPO does not purport to know why Creative chose to use the word competitive to describe its operations but we think it important to put on the record that the use of the word “competitive” cannot alter the reality that beyond the point of purchase, they are effectively a monopoly operating under far different conditions than those present on an open and competitive marketplace.

Creative’s Proposal

It seems trite to mention it but schemes such as PBR’s require that the regulator engage in an inquiry to determine what the applicant utility’s actual rate base is: what it should be allowed to charge in the application year based on their observed and projected costs². This calibration is necessary to ensure it addresses concerns regarding the fairness of the pricing going forward should the applicant be allowed to enter into a period of relatively light-handed regulation. That is part of the give and take inherent to this compact: balancing the rights and needs of the ratepayer with the desire of the utility to minimize the burden of its regulatory oversight and BCOAPO has seen nothing in this process or in any other that would negate the need for that calibration to take place.

In BCOAPO’s view, it is essential to calibrate the first year of any indexed plan, no matter what it is called, with the actual rate base: the actual return on equity and debt and the actual capital

¹ Creative Final Argument, paragraph 2.

² Peter Navarro, The Simple Analytics of Performance-Based Ratemaking: A Guide for the PBR Regulator, 13 Yale J. on Reg. (1996) at 107. Available at: <http://digitalcommons.law.yale.edu/yjreg/vol13/iss1/3>

depreciation. In our submission, this is known. Absent any information to the contrary, it is more than reasonable to use the 2017 actual closing rate base as 2018's opening one and that is what we submit should be used to determine the 2018 capital costs and taxes (equity, debt, depreciation, associated income and capital taxes for 2018) rather than a forecast.

8.0 Reference: Exhibit B1, page 8, and Appendix 1, Schedules 2-11, Base IBR Rate

The first referenced page states:

Base IBR Rate

The IBR Revenue Requirements is 5.11% lower than the 2017 Approved Revenue Requirements. Therefore using the approved 2017 load forecast, the Base IBR Rate is 5.11% lower than the 2017 Rate (see Appendix 2).

8.1 Do the "2017 Adjusted Base" figures that appear in the referenced schedules correspond to actual rate base figures? If not, please explain what the "adjustments" refer to.

Response: No, the 2017 Adjusted Base uses the forecast rate base for 2017, approved in the last RRA proceeding.

8.2 Can Creative confirm that it is proposing to use the actual 2017 closing rate base balance as its starting rate base for the proposed plan? If not, please explain why not and provide updated schedules to show actual 2017 closing entries and updated depreciation and continuity schedules.

Response: Creative Energy is not proposing to use the actual closing rate base as its starting base. Creative Energy has not previously and does not propose to use actuals as a basis for setting rates. See Supplemental Information filing, Schedules 4 and 5 for actual 2017 closing entries and updated depreciation and continuity schedules.

In this respect, BCOAPO notes that the Applicant, while not excluding the possibility, has not even committed to using actual rate base for rebasing to actuals in the event that a future IBR/PBR application is submitted.

12.0 Reference: Exhibit B1, Rebasing after the plan

12.1 If the proposal is approved substantially as proposed, does Creative intend to rebase to actuals at the end of the plan?

Response: It is highly likely that actual costs will play a major role in determining the appropriate base upon which future rate case will be based at the end of the plan.

Needless to say, as an intervenor representing residential ratepayers, this is troubling.

Summary Annual Reporting & Mid-Term Review

The Applicant is proposing that it not be required to engage in either annual or mid-term reviews that would allow for intervenor participation.

At all.

Why, one might ask, would the Utility seek to exempt itself from a requirement that is baked into the concept of light-handed regulation, whatever you might call it? Apparently, Creative feels that making “rate adjustment filings” to the BCUC each year along with the annual report and audited financial statements it already provides is an “appropriate level of review”³.

Given the fact that Creative felt it necessary to discuss what it felt were the unjustifiable costs of intervenors’ participation in its recent regulatory processes in this Application (see excerpt below), it begs the question whether this is playing a role in the Utility’s very restrictive and, quite frankly, unacceptable position on whether what is an “appropriate level of review” in its proposed RRA term.

Creative Energy no longer believes that active participation in its rates proceedings by interveners can be justified given the cost of such participation relative to the annual revenues of Creative Energy. Specifically, the rate increase requested in this application will increase revenues, if approved, by approximately \$210,000. The cost of intervenor participation in the 2016-2017 RRA review was approximately \$50,000 or 25% of the increase in revenues the Company is seeking approval for in 2018. The total cost of the 2016-2017 RRA proceeding, not including internal time, was approximately \$170,000, or approximately 85% of the increase in revenues proposed in this Application. Creative Energy respectfully submits that now is the time for the Commission to return to past practices for the review of applications from small utilities like Creative Energy. In particular, proportionality should once again become the overarching consideration in establishing the review process.

It is not in the public interest for the Commission to establish a process that is likely to result in costs that are going to be very

³ Creative Energy Final Argument, para 39, p. 15.

close to the proposed revenue increase. Moreover, Creative Energy submits that the additional costs of intervener participation are costs that are not necessary to ensure an efficient and effective regulatory review of this Application. Creative Energy believes that customers can rely on staff participation in the review of the Application to ensure an adequate record for the Commission to approve fair and reasonable rates.⁴

Upon seeing this in the Application, BCOAPO felt it needed to do its due diligence and followed up with a related IR. In Exhibit B-8, Creative answered BCOAPO IR 1.4.1 indicating that the costs of the 2016-17 RRA review comprised 0.6% of the subject revenue requirement: put another way, 99.4% of the RR were not caused by intervenor participation. BCOAPO submits that the costs of any mid-term review of the proposed scheme, or of any summary reporting required by the BCUC as a condition of approval are likely to be far less than 0.6% of the escalating RRA throughout the term of the plan unless it appears that something is going horribly wrong and, in that case, those increased costs would be completely justifiable.

4.0 Reference: Exhibit B1, Application, page 5, Costs of Intervener Participation

The referenced page states:

Creative Energy no longer believes that active participation in its rates proceedings by interveners can be justified given the cost of such participation relative to the annual revenues of Creative Energy. Specifically, the rate increase requested in this application will increase revenues, if approved, by approximately \$210,000. The cost of intervener participation in the 2016-2017 RRA review was approximately \$50,000 or 25% of the increase in revenues the Company is seeking approval for in 2018.

4.1 Please confirm that the cost of intervener participation in the 2016-17 RRA review was approximately 0.6% of the overall revenue requirement. If unable to so confirm, please explain.

Response: Confirmed.

BCOAPO is not persuaded that the arguments advanced by the applicant against any reporting or any mid-term review on the grounds of costs have any merit, nor that its arguments against this reporting on any other basis have any basis in the law, logic, or the duty owed to the public by this Commission. It would, in our submission, be entirely improper to allow this Utility to operate in this manner during a period of light-handed regulation like the proposed IBR.

⁴ Exhibit B-1, pp 5-6.

Further, BCOAPO notes that the applicant will be tracking all costs and loads for its own internal use throughout the plan.

Please provide a complete list of the actual data that Creative plans on tracking during the plan and making available to interested parties at the end of the plan for setting subsequent rates.

Response: All costs and loads will be tracked during the plan. Relevant information that is not commercially sensitive may be shared at the end of the plan.⁵

Though information specific to this application will be tracked and available during the term of the plan, the applicant does not propose or appear to be willing to share it with the Commission* or intervenors, notwithstanding that the information will be readily available.

In anticipation of Creative's anticipated reliance upon its additional filings as sufficient basis upon which the Commission could base an analysis of how the IBR was performing, BCOAPO notes the following IR response:

In response to BCUC IR 19.3, Creative Energy stated the following: "If circumstances change dramatically during the IBR test period, then the IBR mechanism could be reviewed without a formulaic off-ramp trigger."

Please explain how, in the absence of annual reviews or a formulaic off-ramp trigger, the BCUC would be able to assess whether circumstances during the proposed IBR term have changed dramatically. Does Creative Energy believe that its annual report to the BCUC is sufficient for this purpose given that it is filed four months after fiscal year end? If yes, please discuss.

Response: Yes, Creative Energy thinks its annual report to the BCUC is sufficient for the Commission. Creative Energy is proposing rates increases limited to an inflation index for a five-year period in order, in part, to provide predictable and stable rates to customers. Limiting rate increases to inflation for five years increases risks for the Company, and is a significant departure from cost of service regulation. Given market pressures on the Company and this commitment to the IBR Plan, the information provided with the annual report should provide sufficient regulatory oversight to assess the ongoing circumstances of the utility during the IBR Plan.⁶

⁵ Exhibit B-8, BCOAPO IR 1.12.2

⁶ Exhibit B-12, BCUC IR 2.43.5

BCOAPO submits that the information contained in an annual report in may or may not provide a level of detail sufficient for the BCUC's regulatory responsibility to determine whether this IBR, if approved, is tracking with costs as expected.

BCOAPO urges that the Commission require that specific details, financial and other – sufficient for its purposes in conducting its regulatory oversight – be provided annually to the BCUC in the event that no other financial reporting is required to be provided elsewhere as a condition of approval but that there is nothing on the record sufficient to excuse this utility from the controlled, basic, and light-handed intervenor participation that takes place during an Annual or Midterm Review provided the Utility acts in good faith and its plan is well planned and executed.

Lastly in this respect, BCOAPO notes the following:

17.0 Reference: Exhibit B7, BCUC IR 1.19.2 and Exhibit B9, CEC IR 1.21.1

The response to the first referenced IR includes the following:

Response: The Company does not support annual reviews during the IBR term. Annual reviews would not be consistent with the rate setting principles. In particular, annual reviews would not be consistent with the principle that the Commission should use the least amount of regulatory oversight to protect the ratepayer.

The second referenced IR refers to a mid-term review of the IBR plan.

17.1 Is Creative aware of any five-year indexed rate plans that have been approved by any Canadian regulator that have not required any review, annual or mid-term during the term of the plan? If so, please provide details.

Response: No, Creative Energy is not aware of other multi-year plans with the express purpose of reducing regulatory burden as is the case with IBR.⁷

In BCOAPO's view, the Applicant has not provided any reasoning or evidence, compelling or otherwise, sufficient to support of its proposals regarding its reviews or reporting during the proposed term of this RRA, nor is there any reason to abandon an efficient, effective means of regulation that balances the interests of both utility and ratepayer.

Service Quality Indicators ("SQI's")

⁷ Exhibit B-13, BCOAPO IR 2.17.1

Service Quality Indicators are tools used during periods of light-handed regulation to assist regulators in fulfilling their responsibilities to ensure that monopolistic utilities are not setting excessive prices, providing an inadequate or unsatisfactory quality of service, or both.

Unfortunately, the Applicant has not proposed any SQIs, nor agreed to track or report any SQIs in support of its IBR proposal for the full term despite widespread acceptance of the importance of SQI's to ensure that customers are not abused during periods of light-handed regulation.

In BCOAPO's view, this distinguishes the Application from all other IBR/PBR proposals approved and not in a good way.

Counsel and the Expert Consultant for BCOAPO have, during their careers, reviewed any number of papers, books, and presentations on such ratemaking schemes and there is not one that we are aware of that fails to recognize that SQI's are an integral part of these schemes. Before this application, we would have said they were universally recognized as essential to customers/ratepayers to ensure that a utility does not attempt to boost its bottom line by cutting costs through decreasing service to its captive customers but now Creative has forced a downgrade in that classification and it can only be said to be overwhelmingly accepted by most.

Regulators approve a wide range of SQI's in various schemes but typical ones include response times to customer inquiries (telephone, e-mail, text, etc.), emergency response time, frequency and duration of service outages, number of customer complaints, resolution of complaints, quality of service in terms of water temperature, etc.

16.0 Reference: Exhibit B7, BCUC IR 1.18.3.1

The referenced IR and response read:

18.3.1 As a condition of approving the IBR mechanism, would Creative Energy be willing to commit that these service quality indicators, as measured annually, will be reported to the Commission?

Response: Creative Energy is not willing to commit to annually measured and reported indicators, and does not see value in the time required to report these. [Emphasis added.]

16.1 Is Creative aware of any other multi-year indexed plans that have been approved in Canada that do not require the tracking and reporting of Service Quality Indices? If so, please provide details.

Response: No, Creative Energy is not aware of other multi-year plans with the express purpose of reducing regulatory burden as is the case with IBR.⁸

BCOAPO submits that the tone and the degree, or lack thereof of responsiveness in this IR Response and others is a fair representation of the Applicant's approach to Intervenor participation in this proceeding as well as any suggestion made that it should be subjected to any of the restrictions and controls widely (not, as we have acknowledged, universally) accepted as key to the necessary balance that must be struck by regulators when considering any IBR/PBR.

Conclusion

BCOAPO would like to note that in any Application to the Commission such as this, the onus is on the Applicant to make its case, not on us as intervenors to refute it. The Utility has, in this regard, failed to submit a plan that strikes something that even approaches a reasonable balance between its interests and its ratepayers'.

Compounding this situation is that rather than being cooperative in an effort to share information with stakeholders like BCOAPO to gain consensus, the Applicant has in our submission, been unresponsive and uncooperative on a number of fronts (e.g., regarding other IBR/PBR plans approved with no SQIs reported). BCOAPO would go so far as to say that Creative has made no realistic attempts to engage with stakeholders on these and some other issues as noted in this Argument and when invited to provide information in support of the applicant's unique proposal, the applicant was unresponsive.

Service Quality Indicators – in BCOAPO's experience – are a necessary and integral component of any PBR/IBR plan and every such plan that has been approved to BCOAPO's knowledge and reporting on actual performance and SQIs, at least at a high, summary level and being subjected to reasonable and on point inquiries by its customers when appropriate during the plan is a standard feature of every approved plan of which BCOAPO is aware.

⁸ Exhibit B-13, BCOAPO IR 2.16.1

BCOAPO asks this Commission Panel reject this Application, inviting the Applicant to refile with provisions for prudent and reasonable reporting, reviews, and SQI tracking and reporting requirements for the SQI metrics that the BCUC considers essential.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

BC Public Interest Advocacy Centre

Original on file signed by

Leigha Worth
Barrister & Solicitor
Executive Director