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September 19, 2019

VIA ELECTRONIC MAIL

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**Attention: Patrick Wruck, Commission Secretary and
Manager, Regulatory Support**

Dear Sirs/Mesdames:

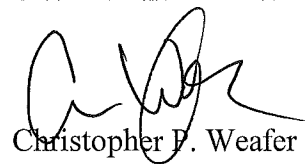
**Re: Creative Energy Vancouver Platforms Inc. ("Creative Energy") ~ Application for a
Certificate of Public Convenience and Necessity for the Beatty-Expo Plants and
Reorganization ~ Project No. 1598962**

We are counsel to the Commercial Energy Consumers Association of British Columbia (the "CEC"). Attached please find the CEC's Final Submissions with respect to the above-noted matter.

If you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Yours truly,

OWEN BIRD LAW CORPORATION



Christopher P. Weafer

CPW/jj
cc: CEC
cc: Creative Energy
cc: Registered Interveners

**COMMERCIAL ENERGY CONSUMERS
ASSOCIATION OF BRITISH COLUMBIA**

FINAL SUBMISSIONS

**Creative Energy Vancouver Platforms Inc. Application for a Certificate of Public
Convenience and Necessity for the Beatty-Expo Plants and Reorganization**

Project No. 1598962

September 19, 2019

**COMMERCIAL ENERGY CONSUMERS ASSOCIATION
OF BRITISH COLUMBIA
FINAL SUBMISSIONS**

**Creative Energy Vancouver Platforms Inc. Application for a Certificate of Public
Convenience and Necessity for the Beatty-Expo Plants and Reorganization**

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INTRODUCTION

The Commercial Energy Consumers Association of BC (“CEC”) represents the interests of ratepayers consuming energy under commercial tariffs in applications before the BC Utilities Commission (“BCUC” or “Commission”).

On June 29, 2018, Creative Energy Vancouver Platforms Inc. (“Creative Energy”) filed an application with the BCUC for a Certificate of Public Convenience and Necessity (“CPCN”), pursuant to sections 45 and 46 of the *Utilities Commission Act* (“UCA”), to construct and operate new and renovated steam plant works and related facilities at Creative Energy’s existing site at 720 Beatty Street in Vancouver and at an adjacent site within BC Place Stadium (the “**Proposed Project**”), along with additional approvals required in connection to the Proposed Project. Further, pursuant to sections 50 and 52 – 54 of the UCA, Creative Energy sought approval of steps related to a corporate reorganization involving Creative Energy (the “**Application**”).

On February 19, 2019 the BCUC issued Order G-38-19 and Decision on the Proposed Project (the “**Decision**”).

The Decision denied the Application and Creative Energy was invited to reapply addressing the Commission’s concerns within 1 year of the Decision.

In Order G-38-19 at page 3 of 3, the Commission identified the following areas to be addressed, which were subsequently identified as the Scope for the future processes. In BCUC Order G-38-19, these included:

- “1. *Changes and explanations related to the Trust Agreement:*
 - i. *Elimination of clauses dealing with the potential secondary capital expenditures related to increases in capacity;*
 - ii. *Provision of additional financial security such as performance or construction bond for an appropriate amount and duration; and*
 - iii. *Creative Energy to provide an explanation in response to the Panel’s concerns with respect to whether the 80.4 percent baseline efficiency as claimed by Creative Energy is accurate in light of the fact that 25 percent of the fuel savings from the Clear Sky economizer accrue to the Company. In the event this cannot be adequately explained, Creative Energy is required to outline what it is prepared to do to ensure the predicted fuel savings are achieved.*

2. *Other Requirements:*

- i. *Development of a comprehensive Contingency Plan to deal with identified issues;*
- ii. *Confirmation that Ellis Don and WSP have been or will be engaged to take on the Proposed Project. In the event an agreement with either of them cannot be reached, the Panel will make any CPCN subject to Creative Energy confirming the selection of a General Contractor and Design Engineering Company with the requisite experience that is acceptable to the BCUC;*
- iii. *Completion and submission of a Preliminary Project Schedule and within 60 days of engaging the General Contractor, a detailed Project Schedule outlining the construction and operation schedule, including critical dates of key events, a chart of major activities showing the critical path (e.g. GANTT chart), and the timing of approvals required from other agencies;*
- iv. *Removal of Land from the Deferral Account proposal; and*
- v. *Filing of an executed PavCo Statutory Right of Way Agreement with a 5-year notice provision.”*

collectively, the “**Scope Items**”).

RECOMMENDATION

While the CEC recognizes the scope limitations of this proceeding, and confines its submissions to the above items responding to each Scope Item. The CEC stands by its original submissions in conjunction with these submissions and submits that Creative Energy has not provided adequate justification for the Proposed Project and its associated costs, and has not completely addressed the requirements laid out by the Commission in Order G-38-19.

The CEC submits Creative Energy has only partially met the requirements of Order G-38-19 and has instead provided ‘assurances’ to the Commission that the requirements will be met once the approval is in place.

The CEC acknowledges that the undertaking of costs of the Proposed Project prior to Commission approval creates risk for the developer (the “**Developer**”), but submits that these risks are appropriately undertaken by the Developer and are a part of the business of development.

Further, the evidence relating to the Economizer demonstrates that the actual rate increase to ratepayers will be in the order of 4.1%, as opposed to the 3.7% originally identified.

The CEC submits that the increased costs are not justified by the benefits of the Proposed Project.

The CEC remains of the view that the Proposed Project, if negotiated fairly, could have been undertaken at significantly lower cost to ratepayers given the sizeable benefits to the Developer of the Proposed Project.

The CEC recommends that the Commission deny the Application by Creative Energy. What follows are specific responses on the identified Scope Items.

1. Changes and explanations related to the Trust Agreement:

i. Elimination of clauses dealing with the potential secondary capital expenditures related to increases in capacity

Creative Energy has made the required adjustment in the Amended and Restated Trust and Development Agreement¹ and has met the requirement.

The CEC has no issue with the removal of the clauses relating to the secondary capital expenditures.

ii. Provision of additional financial security such as performance or construction bond for an appropriate amount and duration

The parties have agreed to additional financial security under Article 9.4 of the Trust and Development Agreement (“**TDA**”).²

The financial security is in the form of a performance bond with a face value of \$10 million that must be obtained from a licenced surety company. It will cover up to 50% of the expected value of work (estimated at \$20 million) on the component of the Proposed Project to a maximum of \$10 million.³

A performance bond guarantees that the bonded contractor will perform its obligations under the contract in accordance with the contract’s terms and conditions.⁴ It is based on the value of the work to be performed within the Creative Energy plant and will support all the obligations under the TDA to deliver the Proposed Project inclusive of trade payments, materials and labour.⁵

Amount

Creative Energy states that the \$10 million is appropriate because 50% of the contract amount is typical, and because the bond represents additional security on top of the rights Creative Energy already has against the Developer under the TDA. They also note the absence of interim payments and the equivalent structure of a ‘holdback’.⁶

The CEC has reviewed the evidence regarding the amount of the performance bond and finds \$10 million to be acceptable.

¹ Exhibit B-23, Appendix 2

² Exhibit B-23, Appendix 2-1 Amended and Restated Trust and Development Agreement Article 9 Indemnities

³ Article 9.4 of the TDA

⁴ Exhibit B-25, CEC 1.9.4

⁵ Exhibit B-28, BCUC 2.2.1

⁶ Exhibit B-28, BCUC 1.2.2

Duration

The parties have agreed that the performance bond will be in place before any material work begins at Beatty Street and will be in place until the ‘Stabilization Date’.⁷

There is no construction of the Proposed Project after the Stabilization date.⁸

Additionally, Creative Energy has indicated that:

“demolition of the exterior walls, foundation or roof of the building within which the Beatty Plant is situated shall not commence nor shall the Beatty Plant be shut down until the performance bond required in accordance with Article 9.4 of the Trust and Development Agreement has been obtained and provided to the BCUC”.⁹

The CEC is satisfied with the duration of the proposed performance bond.

BCUC Determinations

In its Final Argument Creative Energy states that:

“The cost of the 50% performance bond is approximately \$400,000 for the first year, and \$50,000 per additional year of extension. The total estimated cost to the Developer is about \$500,000, which represents about 2.5% of the total direct budget for the Beatty Plant component of the Proposed Project. This is a material cost to the Developer and, as noted above, provides additional financial security on top of the existing exceptional security already provided to Creative Energy in the Trust and Development Agreement. Creative Energy submits that the 50% performance bond agreed to by the Trust and Development Agreement parties more than meets this requirement of Order G-38-19, and that any further financial security, either in excess of the \$10 million face value of the 50% performance bond or a longer duration of bond security, would be unnecessary and wasteful given the risk mitigation and other security already provided pursuant to the Trust and Development Agreement”.¹⁰

The CEC considers that it is neither necessary nor appropriate for the Commission to provide significant consideration to the costs to the Developer.

The CEC submits that the Commission’s primary role is to consider the impact to the ratepayers and the utility and the conservation and availability of safe, secure and reliable energy.

Moreover, the CEC finds that the utility’s ongoing concern for the welfare of the Developer is demonstrative of Creative Energy’s inability to appropriately separate its interests from those of the Developer and illustrates one of the key issues in this proceeding, which is the significant under-representation of ratepayer interests that took place in the negotiations.

⁷ The CEC notes that Article 9.4 of the TDA states ‘the earlier of the stabilization date and the date the legal title is transferred to the Developer

⁸ Exhibit B-24, BCUC 1.1.2

⁹ Creative Energy Final Argument page 16

¹⁰ Creative Energy Final Argument page 9

The CEC recommends that the Commission give little weight to Creative Energy's comments noted above, and instead focus on the risk to the utility and the ratepayers, and the appropriateness of the performance bond provided as a means to mitigate risk.

The CEC recommends that the Commission should condition any approval for this Proposed Project on the inclusion of the bond as proposed by Creative Energy.

- iii. Creative Energy to provide an explanation in response to the Panel's concerns with respect to whether the 80.4 percent baseline efficiency as claimed by Creative Energy is accurate in light of the fact that 25 percent of the fuel savings from the Clear Sky economizer accrue to the Company. In the event this cannot be adequately explained, Creative Energy is required to outline what it is prepared to do to ensure the predicted fuel savings are achieved**

Creative Energy's response to this requirement is contained in Exhibit B-23, Appendix 4.

In its response Creative Energy reiterates its previous logic and essentially poses that the economizer must be removed before the Proposed Project can begin and that its replacement should be attributable to the Proposed Project.

The CEC submits this is faulty reasoning.

The Proposed Project has little to do with the value and inclusion of the economizer, which can be in place under many scenarios.

The CEC submits that the fuel savings that are available from the economizer should not be attributed to the Proposed Project, as these can readily be achieved in the Proposed Project's absence. Removing them from the baseline and then adding them to the Proposed Project is incorrect.

Creative Energy provides an alternate Plant Gate Efficiency of 81% (under current conditions) instead of the 80.4% used in the application.¹¹ This demonstrates a Net 2023 Bill Impact of 4.1%¹² to ratepayers or about 10% higher than the 3.7% originally claimed.

The CEC submits that this analysis is more accurate and that the increase in bill impact is significant.

The CEC submits it is possible that the addition of a new economizer could considerably improve the existing baseline and this option should also be considered as a baseline in order to compare apples to apples.

The New Beatty Plant Gate efficiency would be 83.1%¹³ and the CEC submits is a better comparison.

¹¹ Exhibit B-23, Appendix 4, Table 1 Alternative 2023 Rate Impact Analysis

¹² Exhibit B-23, Appendix 4 Table 1

¹³ Exhibit B-27, CEC 2.11.9

The evidence demonstrates that rate impacts are even more significant relative to what could be accomplished without the Proposed Project.

The CEC submits that the Commission should utilize, at a minimum, 4.1% as the resulting Net Bill Impact when making its determinations regarding the value of the Proposed Project and costs to ratepayers.

Creative Energy has not investigated the potential for a new secondary economizer at the renovated Beatty Street plant even though high-level analysis shows that it could be marginally beneficial¹⁴, and has not quantified the resources that would be required to do so.¹⁵

The CEC submits that this could be an appropriate scope change for the Proposed Project.

The Commission recommends that the Commission deny the Proposed Project based on the increased costs to ratepayers and marginal customer benefit.

2. Other Requirements:

i. Development of a comprehensive Contingency Plan to deal with identified issues

Creative Energy outlines its response to this requirement in its Final Argument at pages 10-15.

Creative Energy engaged TES Group to provide temporary steam production measures for industrial applications.

The Contingency Plan report was provided in Appendix 5-1 of Exhibit B-23.

In CEC 1.24.3 Creative Energy confirms that the Contingency Plan prepared by TES is not the 'fully executable and well-defined Contingency Plan' identified in the Execution strategy'.¹⁶

Additionally, they acknowledge that the current Contingency Plan 'does not address all the granular details of bringing in temporary boilers'.¹⁷

Instead, Creative Energy proposes to file a final Contingency Plan in accordance with reporting requirements.¹⁸

The report will include:

1. Condition assessment of existing system;
2. Engineered boiler tie-ins and structural requirements (tender drawings); and

¹⁴ Exhibit B-24, BCUC 1.5.5. and 1.5.7

¹⁵ Exhibit B-29, CEC 2.44.1

¹⁶ Exhibit B-25, CEC 1.24.3

¹⁷ Exhibit B-24, BCUC 1.7.1

¹⁸ Exhibit B-24, BCUC 1.7.8

3. Overall plant risk assessment and temporary boiler risk assessment.¹⁹

The CEC submits that the condition assessment of the existing system, and the overall plant risk assessment and temporary boiler risk assessment are key items that should be available to the Commission in understanding the proposal risks and if the Contingency Plan is sufficient to the task of mitigating such risks.

Creative Energy did not undertake the Contingency Plan details ‘as there are significant costs associated with developing the fine details’. They state that incurring such costs prior to Proposed Project approval is not justified.’²⁰

The significant costs are estimated to be \$60,000 to \$100,000.²¹

The CEC submits that \$60,000 to \$100,000 is not an overly significant cost for a fulsome Contingency Plan in the context of the sizeable nature of this Proposed Project.

Additionally, the CEC submits that with any major construction project there are expected to be significant costs outlaid prior to various approvals.

Creative Energy estimates that a Contingency Plan would require 6 months of time, due to the requirements of additional engineering effort.²²

The CEC submits that it would be appropriate for Creative Energy to have developed the engineering and Contingency Plan to the fully executable status identified in the Execution Strategy and should have done so in response to this requirement.

The CEC submits that Creative Energy has not provided a Contingency Plan as set out in the Commission’s requirements.

With regard to its risk mitigation proposal Creative Energy states initially that:

“It is important not to lose sight of the fact that the new Expo Plant will be in service with 400,000 pounds per hour (**PPH**) of steam generating capacity prior to commencement of any work on the Beatty Plant, and that the Beatty Plant is planned to be shut down during two low-load summer periods and restarted by mid-September of each year. Creative Energy’s historical load data shows that peak loads are most likely to occur between mid-November, which is two months after each of the planned restarts of the Beatty Plant, and late February.”²³

¹⁹ Exhibit B-25, CEC 2.38.1

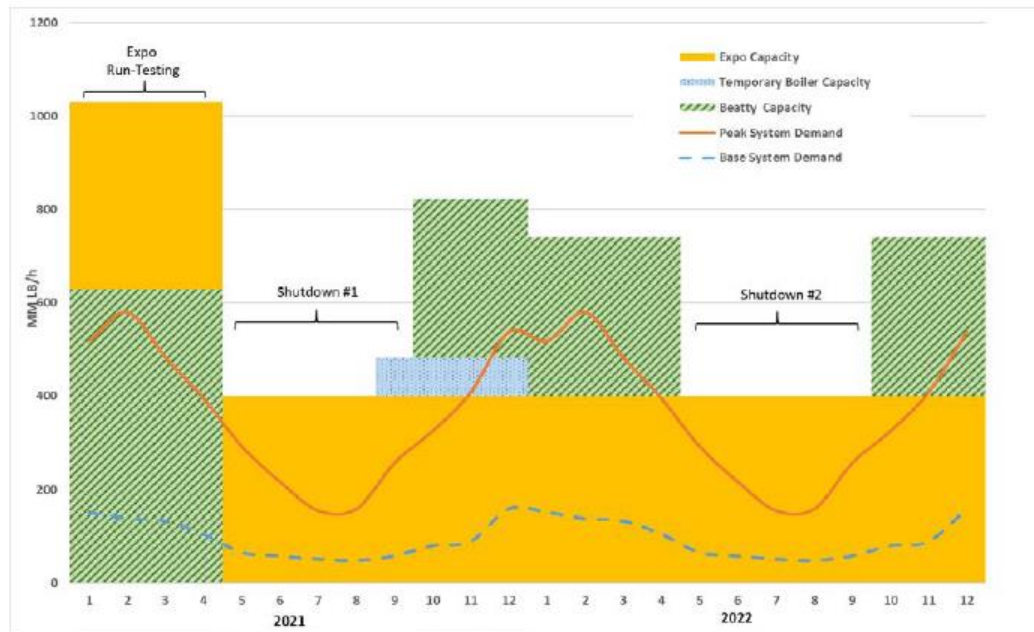
²⁰ Exhibit B-24, BCUC 1.7.1

²¹ Exhibit B-29, CEC 2.37.1

²² Exhibit B-25, CEC 2.38.2

²³Creative Energy Final Argument page 10

They provide the following depiction of their coverage.



24

The CEC submits that construction projects can easily run significantly behind schedule, and it is well within the realm of possibility that the shutdowns and restarts could be delayed, resulting in the shutdowns extending into peak load periods, which themselves can also change depending on weather conditions or other factors.

However, Creative Energy has also provided substantial evidence that even in the scenario where Creative Energy is not able to restart the entire Beatty Plant (following Shutdown #1²⁵) it would have sufficient capacity to serve customer load through to December under average temperatures and through the entire winter with the inclusion of Boiler #6 (170 PPH of functional capacity).²⁶

Any residual risk is further mitigated by the Temporary Boilers Subproject contingency plan to position Creative Energy to be able to quickly bring in one or more additional temporary boilers and make them operational, if necessary.²⁷

The TES plan confirms the feasibility of using temporary boilers to shore up the generating capacity of Beatty and Expo Plants if necessary. The report outlines the work and timelines to develop a refined actionable plan, and confirms a temporary boiler site plan, a rental and logistics plan along with timelines, engineering requirements, high level cost estimates and a

²⁴Creative Energy Final Argument page 12

²⁵ There is virtually no incremental risk from the restart of Boiler 6 following Shutdown #2

²⁶Creative Energy Final Argument page 12

²⁷ Creative Energy Final Argument page 13

preliminary risk register. It does not include certain details that Creative Energy states will be developed in concert with the detailed design of the Proposed Project following CPCN approval.²⁸

The Trust and Development Agreement parties have confirmed that they would accept a condition on CPCN approval requiring Creative Energy to have one temporary boiler with 82,000 PPH of capacity on site at 701 Expo Boulevard tied in and available prior to the first planned Beatty Plan restart until such time as the plant has been successfully restarted and all three boilers are available to be re-fired.²⁹

The CEC submits that the Commission should instate such a condition on any approval of the CPCN.

Creative Energy states that there is essentially zero risk from the restart of Boiler 6 following Shutdown #2 as the only work being done is ductwork to connect the boilers to permanent flues.³⁰

The CEC submits that there is always a certain amount of incremental risk arising from construction activities and it is important to recognize that there is at least some additional risk to the supply of steam energy at this time.

The CEC has reviewed the evidence related to the Contingency Plan and submits that the risks related to a shortage of steam generating capacity are largely addressed.

The CEC submits that it would be reasonable for the Commission to find that the utility has largely fulfilled its duty with regard to contingency planning, but has not completely mitigated all risks.

At page 14 of its Final Argument Creative Energy states that:

“Any requirement by the BCUC to have additional temporary boiler capacity available on site and/or for a longer time period beyond that contemplated by the condition accepted in the response to BCUC SS IR 2.5.1 (and described above) would be truly excessive and mitigate risks that do not arise from the concurrent redevelopment by the Developer of non-utility property at the Expo Boulevard and Beatty Street sites. Rather, such an additional requirement would constitute mitigation of risks Creative Energy has now and would have developing its own site independent of the Developer’s project; for example, the risk of equipment failure unrelated to the coordinated construction of the Developer’s project or the risk of higher than normal loads due to extremely cold weather. Accordingly, if the BCUC was to condition the CPCN on Creative Energy having more temporary boiler capacity on site and/or for a longer time period, the Proposed Project would not proceed under the terms of the Amended and Restated Trust and Development Agreement. Specifically, such a condition would need to be ordered on the specific understanding that the costs of providing such additional temporary boiler capacity would be to the account of Creative Energy and recovered from its customers in rates.”³¹

²⁸ Creative Energy Final Argument page 13

²⁹ Creative Energy Final Argument page 11

³⁰ Creative Energy Final Argument page 10

³¹ Creative Energy Final Argument page 14

The CEC would not object to a finding that no additional capacity is required.

However, the CEC is also of the view that if the Commission determines that additional boiler capacity is required to be on site and/or for a longer time period than that contemplated then the CPCN should be conditioned upon that capacity becoming available, but that these costs should not be borne by the ratepayers.

The CEC does not believe that Creative Energy has proven in any manner that the risks being mitigated would be confined to those already in existence, and submits that there is no substantial evidence to support this position.

The CEC submits that construction projects can clearly create new unforeseen costs, and/or exacerbate any existing risks and these risks should be mitigated to the extent reasonably possible. Mitigation of such should be attributable to the Developer.

The CEC recommends that if the Commission determines that additional boiler capacity is required, it make the CPCN conditional on this requirement with the explicit constraint that the risks will not be borne by ratepayers.

Overall, the CEC submits that Creative Energy has not fulfilled its obligations with respect to developing the required Contingency Plan.

- ii. **Confirmation that Ellis Don and WSP have been or will be engaged to take on the Proposed Project. In the event an agreement with either of them cannot be reached, the Panel will make any CPCN subject to Creative Energy confirming the selection of a General Contractor and Design Engineering Company with the requisite experience that is acceptable to the BCUC**

Creative Energy has not yet retained a General Contractor.³²

In its Final Argument Creative Energy states that:

“Creative Energy has confirmed that shortly after the BCUC grants CPCN approval for the Proposed Project, Creative Energy will undertake staged competitive processes to secure a qualified Design Engineering firm and General Contractor for the Proposed Project. Creative Energy has committed to a process for obtaining the required BCUC oversight and the competitive acquisition of these services following CPCN approval, and Creative Energy has clearly met this requirement of Order G-38-19.”³³

The CEC has reviewed the evidence and submits that although it would have been appropriate for Creative Energy to have provided evidence of further work in the retention of the required experts, Creative Energy has provided sufficient assurance that a qualified Design Engineering firm and General contractor will be retained to provide the Commission with comfort in this requirement.

³² Exhibit B-29, CEC 2.39.1

³³ Creative Energy Final Argument page 15

The CEC recommends that the Commission make any approval of the CPCN should it decide to approve, subject to Creative Energy confirming the selection of a General Contractor and Design Engineering Company with the requisite experience that is acceptable to the BCUC.

- iii. Completion and submission of a Preliminary Project Schedule and within 60 days of engaging the General Contractor, a detailed Project Schedule outlining the construction and operation schedule, including critical dates of key events, a chart of major activities showing the critical path (e.g. GANTT chart), and the timing of approvals required from other agencies**

In Exhibit B-23, Appendix 7-1, Creative Energy provided a preliminary Proposed Project schedule prepared by Icon.

The schedule is currently out of date as it assumed approval by June 2019.

The CEC has reviewed the schedule and related evidence and is satisfied with the proposal despite being several months out of date at this point.

The CEC recommends that the Commission condition any approval on the reporting of a revised preliminary schedule within 2 months of approval.

Creative Energy states that it:

“will not be able to finalise a detailed project schedule until CPCN approval has been granted for the Proposed Project, detailed design work is completed and a General Contractor engaged. Creative Energy has committed to submit a detailed project schedule to the BCUC within 60 days of engaging the General Contractor, and Creative Energy has clearly met this requirement of Order G-38-19.”³⁴

The CEC accepts the utility’s requirement to have engaged a General Contractor prior to completing the detailed Proposed Project schedule.

Overall, the CEC submits that Creative Energy has reasonably met the standards for this requirement.

- iv. Removal of Land from the Deferral Account proposal**

Creative Energy states that it has removed the land from the Deferral Account proposal as required in Order G-38-19.³⁵

The CEC agrees that Creative Energy has fulfilled this requirement.

- v. Filing of an executed PavCo Statutory Right of Way Agreement with a 5-year notice provision (Scope)**

Creative Energy and PavCo have agreed to an amendment to the SRW to include a 5-year notice provision.³⁶

³⁴ Creative Energy Final Argument pages 15-16

³⁵ Creative Energy Final Argument page 16

The CEC agrees that Creative Energy has fulfilled this requirement.

CONCLUSION

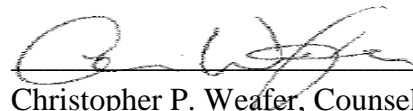
Overall, the CEC stands by its original submission that the Proposed Project should be denied as being not in the public interest.

The CEC submits that in addition to the items outlined in its original submission, Creative Energy has provided evidence that the cost to ratepayers is above that originally identified, and has also failed to adequately all address the requirements in this proceeding such as the provision of a robust Contingency Plan.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

David Craig

David Craig, Consultant for the Commercial Energy
Consumers Association of British Columbia



Christopher P. Weaver, Counsel for the Commercial
Energy Consumers Association of British Columbia

³⁶ Creative Energy Final Argument page 16