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September 26, 2019

E-Filed

British Columbia Utilities Commission  
Sixth Floor, 900 Howe Street  
Vancouver, BC V6C 2N3

Attention: Mr. Patrick Wruck, BCUC Secretary

**Re: Creative Energy Vancouver Platforms Inc. ("Creative Energy")  
Application to the British Columbia Utilities Commission ("BCUC") for a CPCN and  
Approval of Corporate Reorganisation  
Project No. 1598962**

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Dear Sir:

On behalf of Creative Energy, we enclose Creative Energy's reply argument on the specified scope for filing in accordance with the timetable established by BCUC Order No. G-196-19.

Yours very truly,

LAWSON LUNDELL LLP

Ian Webb  
Encl.

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**BRITISH COLUMBIA UTILITIES COMMISSION**

**Creative Energy Vancouver Platforms Inc.  
Application for a Certificate of Public Convenience  
and Necessity for Beatty-Expo Plants and Reorganization  
Project No. 1598915**

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**Creative Energy Vancouver Platforms Inc.  
Reply Argument on Specified Scope**

**September 26, 2019**

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## 1. Introduction

1. This reply argument of Creative Energy Vancouver Platforms Inc. (“**Creative Energy**”) replies to the one intervener argument submitted in respect of the changes that have been made and the explanations Creative Energy has provided to address the BCUC Panel's requirements as set out in Directive 3 of Order G-38-19 (the “**Specified Scope**”):
  - Commercial Energy Consumers Association of British Columbia (“**CEC**”) Final Argument on the Specified Scope as filed with the BCUC on September 19, 2019.
2. Overall, the CEC Final Argument on the Specified Scope, and in particular the summary Recommendation section of their argument at page 2, demonstrates the same failure to carefully review the evidence and fully consider the inherent trade-offs in available alternatives as the CEC's Final Argument submitted in the main part of this proceeding.<sup>1</sup>
3. The CEC continues to suggest that there might be one or more better alternatives<sup>2</sup> to the Proposed Project, without providing an indication of what those alternatives might be. There are no such better alternatives. This lengthy and detailed review proceeding has verified Creative Energy’s assessment that there is only one feasible alternative being the “Alternative” defined and described in section 14 of the Application. The Alternative is a feasible option, but it would cost more than double the amount of Creative Energy’s portion of the cost of the Proposed Project and it would involve significantly more risk to Creative Energy and its customers than the Proposed Project.
4. Creative Energy maintains all of its arguments and reply arguments previously submitted in this proceeding.

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<sup>1</sup> Refer to our submissions on this point in the Introduction section of our Reply Argument dated December 10, 2018.

<sup>2</sup> For example, refer to CEC’s reference to “many scenarios” at page 5 of the CEC Final Argument on Specified Scope.

## **2. Item-by-Item Reply to CEC Final Argument on Specified Scope**

### **2.1. Scope Item I.i.**

5. This item requires Creative Energy to request a specific change to the Trust and Development Agreement to eliminate clauses regarding the potential secondary capital expenditure related to increases in capacity. This change has been made in the Amended and Restated Trust and Development Agreement.<sup>3</sup>
6. The CEC agrees that the changes Creative Energy has submitted to the BCUC in respect of this item meet the requirement of Order G-38-19.<sup>4</sup>

### **2.2. Scope Item I.ii.**

7. This item requires provision of additional financial security such as a performance or construction bond for an appropriate amount and duration. The parties to the Trust and Development Agreement have agreed to an additional financial security in the form of a performance bond with a face value of \$10 million that must be obtained from a licenced surety company and that must be in place from before any material work begins at Beatty Street until the "Stabilization Date" (as defined in the Trust and Development Agreement).
8. The CEC agrees that the form of additional financial security (performance bond), the amount of the performance bond (\$10 million), and the duration of the performance bond (from before any material work begins at Beatty Street until the "Stabilization Date") are acceptable and satisfactory.<sup>5</sup>
9. The CEC recommends that the BCUC should condition any approval for the Proposed Project on the inclusion of the performance bond as proposed by Creative Energy. Creative Energy confirms that it would have no objection to such a condition.

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<sup>3</sup> Ex. B-23, Appendix 2.

<sup>4</sup> CEC Final Argument on Specified Scope, page 3.

<sup>5</sup> *Ibid*, pages 3-4.

### 2.3. Scope Item I.iii.

10. This item requires Creative Energy to provide an explanation 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 Creative Energy. The requested explanation is provided in Exhibit B-23, Appendix 4, and Creative Energy has fully responded to all questions about baseline efficiency and the Clear Sky economizer equipment.
11. The CEC's submissions in respect of this scope item appear to accept Creative Energy's explanations and calculations of baseline efficiency; however, the CEC's arguments under this Scope Item are inconsistent and not well organized, necessitating the following line-by-line reply to each of the CEC's arguments.

#### **CEC argument**

*"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."*

#### **Creative Energy response**

The existing economizer is at the end of its design life, its performance has deteriorated and it requires significant ongoing maintenance. It is located on the roof of the building housing the Beatty Plant and office space at 720 Beatty Street, a structure that is known to have poor seismic and fire resistance. The economizer must be removed before the Beatty Plant renovation component of the Proposed Project begins because that work includes demolition and replacement of the walls and roof of the sub-standard building.

The Proposed Project includes new economizers at the Expo Plant. The Alternative, as defined and described in section 14 of the Application (and Table 11), includes new

economizers at the Beatty Plant.

**CEC argument**

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

**Creative Energy response**

It is not clear what the CEC means by “value and inclusion of the economizer”. The drivers for the Proposed Project are set out in section 9 of the Application, and the components of the Proposed Project are set out in section 10. The only feasible alternative to the Proposed Project is an in-situ equipment replacement strategy referred to in this proceeding as the “Alternative”. The Proposed Project includes new economizers at the Expo Plant. The Alternative includes new economizers at the Beatty Plant.

**CEC argument**

*“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 response**

The Proposed Project includes new economizers at the Expo Plant. The Alternative includes new economizers at the Beatty Plant. The costs and efficiency improvements of those respective investments are appropriately included in the evaluation of both the Proposed Project and the Alternative as has been done in the Application. For the sake of argument, an alternative approach would be to instead assume the

Clear Sky economizer unit is replaced or capital invested to upgrade the unit as part of the baseline,<sup>6</sup> and then treat the avoided capital cost as one of the benefits of the Proposed Project, and remove such costs and savings from the Alternative. This would require one to assume that a decision to install a new economizer at the existing plant has been made (even though it has not), and that it would be rational to install a new economizer on the roof of a 70 year old building with poor seismic resistance and inaccessible end-of-life boilers within. The outcome would be unchanged – there would be no change to the conclusion that the Proposed Project is much better for customers.

#### **CEC argument**

*“Creative Energy provides an alternate Plant Gate Efficiency of 81% (under current conditions) instead of the 80.4% used in the application. This demonstrates a Net 2023 Bill Impact of 4.1% 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.”*

#### **Creative Energy response**

Figure 1 at page 4 of Appendix 4 of Exhibit B-23 makes clear the basis for the plant gate efficiency used in the Application (80.4% as at 2023 after the assumed retirement and removal of the Clear Sky economizer at the end of 2019) versus an alternate baseline using the current efficiency (81.0% as at 2019) before the assumed retirement and removal of the Clear Sky economizer at the end of 2019. Both of those baselines are equally accurate, and either baseline can be used for comparing the Proposed Project and the Alternative. Obviously, the same baseline must be used to compare the two project alternatives.

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<sup>6</sup> As explained in the responses to BCUC IRs 1.15.1 and 2.85.11, and reviewed in paragraphs 80-82 of Creative Energy’s Reply Argument dated December 10, 2018.

The Alternative is assumed to have the same efficiency as the Proposed Project.<sup>7</sup> Using the higher baseline efficiency (81.0% as at 2019) would mean that both the Alternative and the Proposed Project provide the same but a smaller efficiency improvement relative to the higher baseline efficiency. Using such higher baseline efficiency has no bearing on the conclusion that the Proposed Project is far better for customers than the Alternative.

**CEC argument**

*“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% and the CEC submits is a better comparison.”*

**Creative Energy response**

This approach proposed by the CEC would not make the comparison any more “apples to apples” than the comparison provided in the Application. This CEC proposal would not improve the analysis; it would require the analysis to assume that Creative Energy first removes the existing economizer on the roof of the building at 720 Beatty Street and installs a new economizer on that roof (at an estimated cost of \$1.4 million<sup>8</sup>), before considering the options to address the issues with the sub-standard building and to replace the oldest end-of-life boilers that are inaccessible within that building.

The approach proposed by the CEC would therefore meet the definition of an imprudent investment.

<sup>7</sup> Application, page 80. Page 4 of Appendix 4 of Exhibit B-23.

<sup>8</sup> Application, section 14, Table 11.

The baseline used in the Application to compare the Proposed Project to the Alternative does not assume that a new economizer has been installed at the Beatty Plant because both the Proposed Project and the Alternative include major upgrades or replacement of the sub-standard building structure. The approach proposed by the CEC is not rational, and would not in any event change the conclusion that the Proposed Project is far better for customers than any feasible alternative.

**CEC argument**

*“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.*

*...The [CEC] recommends that the Commission deny the Proposed Project based on the increased costs to ratepayers and marginal customer benefit.”*

**Creative Energy response**

The evidence does not demonstrate that rate impacts are more significant to what could be accomplished without the Proposed Project; the evidence demonstrates quite the opposite. Analyses of both the Proposed Project and the Alternative will produce different estimated rate impacts depending on the baseline assumptions used (in this case, the baseline plant efficiency assumption). Obviously, the same baseline assumptions must be used to compare the two feasible project options. The choice of a different baseline starting point does not increase the costs of the Proposed Project nor the resulting rates; it only impacts the rate impact relative to the rates required under the baseline assumptions chosen.

Assuming a higher baseline plant efficiency (either by using 81.0% as at 2019, or by

using the irrational assumption of 83.1% as proposed by the CEC) simply means that both the Alternative and the Proposed Project result in a smaller, but still equal, efficiency improvement as a result of new modern boilers and controls. The differences between the project options remain that the Proposed Project is less than half the cost and significantly lower risk than the Alternative.

The evidence demonstrates that there is no other option (not even the status quo approach of in-situ equipment replacement) where Creative Energy can deliver comparable benefits to customers and the public at lower cost or lower risk.

#### **2.4. Scope Item II.i.**

12. This item requires the development of a detailed Contingency Plan outlining the actions to be taken in the event of an unforeseen shutdown or a failed start-up of the Beatty Plant during construction.
13. The CEC submits the following in relation to the information Creative Energy has submitted in response to this requirement of Order G-38-19:
  - the risks related to a shortage of steam generating capacity are largely addressed;<sup>9</sup>
  - it would be reasonable for the BCUC to find that Creative Energy has largely fulfilled its duty with regard to contingency planning, but has not completely mitigated all risks;<sup>10</sup>
  - CEC would not object to a finding by the BCUC that no additional capacity is required beyond that proposed in Creative Energy's contingency plan.<sup>11</sup>

<sup>9</sup> CEC Final Argument on Specified Scope, middle of page 9.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*, top of page 10.

14. Notwithstanding the above endorsements by the CEC, the CEC also says that “overall, the CEC submits that Creative Energy has not fulfilled its obligations with respect to developing the required Contingency Plan”.<sup>12</sup>
15. It appears that the shortcoming alleged by the CEC is that the engineering and contingency plan information submitted by Creative Energy in this proceeding is not to a 100 percent detailed design level. Creative Energy responds that it has provided information to the appropriate level of detail at this stage of the project. A 100 percent detailed contingency plan would require a 100 percent level of definition on the overall master project, which does not exist at this time. As stated in paragraphs 31 and 32 of our Final Argument on Specified Scope, detailed engineering and the granular details of the contingency plan must be done in concert with the detailed design of the entire project, which will follow CPCN approval. Furthermore, the level of detail submitted in this proceeding is consistent with the level of detail required by the BCUC’s CPCN Application Guidelines.
16. In regards to a potential BCUC consideration of a requirement for additional temporary boiler capacity beyond that committed to in the contingency plan put forward by Creative Energy, the CEC says there is no substantial evidence to support Creative Energy’s position that such additional capacity could only be to mitigate existing risks.<sup>13</sup> To the contrary, the evidence supporting the point is summarised in the figure that Creative Energy provided in its evidence and argument<sup>14</sup> and that the CEC reproduced at the top of page 8 of its argument. Given that evidence, what risk would be addressed by a requirement to have additional temporary boiler capacity on site even without any indication of a delayed restart of the Beatty Plant? The CEC cites (i) construction running behind schedule, which is already fully covered by the contingency plan, and (ii) extreme weather conditions, which is clearly an existing risk.

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<sup>12</sup> *Ibid*, page 10.

<sup>13</sup> CEC Final Argument on Specified Scope, page 10.

<sup>14</sup> Creative Energy Final Argument on Specified Scope, paragraph 26.

**2.5. Scope Item II.ii.**

17. This item requires 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 indicated that it 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 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.
18. The CEC agrees that Creative Energy has provided sufficient assurance that a qualified Design Engineering firm and General Contractor will be retained for the Proposed Project.<sup>15</sup>
19. The CEC also says that it would have been appropriate for Creative Energy to have provided "evidence of further work" in the retention of the required experts, but the CEC does not provide any indication as to what further work Creative Energy could have and should have done in the circumstances. Creative Energy responds that the process it has designed for acquiring these services provides for both competitive acquisition of these services and the required BCUC oversight. Further work at this time would likely only diminish the competition component.

**2.6. Scope Item II.iii.**

20. This item requires completion and submission of a Preliminary Project Schedule and within 60 days of engaging the General Contractor, a detailed Project Schedule. Creative Energy has submitted a detailed preliminary project schedule, though that schedule is now out of date because it assumed CPCN approval would be granted by June 2019, and

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<sup>15</sup> *Ibid.*

committed to submit a detailed project schedule to the BCUC within 60 days of engaging the General Contractor.

21. The CEC agrees that Creative Energy's commitment to submit a detailed project schedule to the BCUC within 60 days of engaging the General Contractor reasonably meets this requirement of Order G-38-19.<sup>16</sup>
22. The CEC also recommends that the BCUC condition any approval on the reporting of "a revised preliminary schedule within 2 months of approval." Creative Energy's commitment is to submit a detailed project schedule to the BCUC within 60 days of engaging the General Contractor. If the BCUC sees value in receiving a revised preliminary schedule, Creative Energy would provide one within 2 months of CPCN approval as proposed.

**2.7. Scope Item II.iv.**

23. This item requires removal of Land from the Deferral Account proposal. This has been done.
24. The CEC agrees that the changes Creative Energy has submitted meet this requirement of Order G-38-19.<sup>17</sup>

**2.8. Scope Item II.v.**

25. This item requires filing of an executed PavCo SRW Agreement with a 5-year notice provision. Creative Energy and PavCo have agreed to amendments to the SRW Agreement to include a 5-year notice provision.
26. The CEC agrees that the changes Creative Energy has submitted meet this requirement of Order G-38-19.<sup>18</sup>

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<sup>16</sup> *Ibid*, page 11.

<sup>17</sup> *Ibid*, page 11.

<sup>18</sup> *Ibid*, page 12.

**3. Conclusions**

27. We maintain and reiterate the conclusions of our previous arguments filed in this proceeding:

- The evidence demonstrates that the “Alternative” as defined and described in section 14 of the Application is the only feasible alternative to the Proposed Project.
- The cost of the Proposed Project to Creative Energy and its ratepayers is less than one-third of the actual cost of the project, and less than half the cost of the Alternative.
- The risks of the Proposed Project to customers are low, and significantly lower than the risks under the Alternative.

28. The arguments put forward by the CEC in this proceeding, including in their Final Argument on Specified Scope, do not change any of the conclusions above.

**All of which is respectfully submitted this 26<sup>th</sup> day of September 2019.**

By:   
Ian D. Webb

**Counsel for Creative Energy Vancouver Platforms Inc.**