

1 September 2020

VIA E-FILING

Marija Tresoglavic
Acting Commission Secretary
BC Utilities Commission
6th Floor 900 Howe Street
Vancouver, BC V6Z 2N3



Reply to: Leigha Worth
ED@bcpiac.org
Ph: 604-687-3034
Our File: 7100.910

Dear Ms. Tresoglavic,

**Re: Creative Energy Disposition of the Pendrell Street Thermal Energy System
Application
BCOAPO Final Argument**

We represent the BC Old Age Pensioners' Organization, Active Support Against Poverty, Council of Senior Citizens' Organizations of BC, Disability Alliance BC, and Tenant Resource and Advisory Centre, known collectively as "BCOAPO et al." ("BCOAPO"). The constituent groups of BCOAPO et al. represent the interests of residential energy consumers in British Columbia.

Enclosed please find the BCOAPO's Final Argument with respect to the above-noted matter.

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

Sincerely,

BC PUBLIC INTEREST ADVOCACY CENTRE

Original on file signed by:

Leigha Worth
Executive Director | General Counsel

Encl.

**BC OLD AGE PENSIONERS' ORGANIZATION, ACTIVE SUPPORT AGAINST
POVERTY, COUNCIL OF SENIOR CITIZENS' ORGANIZATIONS OF BC,
DISABILITY ALLIANCE BC, AND TENANT RESOURCE AND ADVISORY CENTRE
("BCOAPO")**

**Creative Energy Disposition of the Pendrell Street
Thermal Energy System Application**

BCOAPO Final Argument

September 1, 2020

Please be advised that we provide the following final argument regarding the above noted application on behalf of our client groups known in this and other regulatory processes as BCOAPO or BCOAPO et al. The constituent groups of BCOAPO et al. represent the interests of residential energy consumers in British Columbia generally but in this process specifically the interests of Creative Energy's residential ratepayers.

INTRODUCTION

On March 17, 2020, Creative Energy Developments Limited Partnership (CEDLP) filed an Application with the British Columbia Utilities Commission (BCUC) seeking approval for the disposition of 100 percent of its interests in the thermal energy system located at 1770 Pendrell Street (Pendrell Street TES) to its wholly owned subsidiary Creative Energy Pendrell LP (CEPLP)¹.

The Pendrell Street TES has been registered as a Stream A TES and granted exemption from sections 44.1, 45 and 59-61 of the *Utilities Commission Act* ("UCA")². The Pendrell Street TES provides the thermal energy for space heating and domestic hot water of the on-site apartments and shared spaces in a rental apartment building at 1770 Pendrell Street.

According to the Application, the Pendrell Street TES has already been transferred to CEPLP prior to seeking the BCUC's approval as at the time of the transfer it was not understood that the

¹ Exhibit B-1, p.3

² Exhibit B-1, p.1

exemption for Stream A TES does not include the section of the UCA requiring a public utility to first obtain the Commission's approval before transferring a TES to a wholly-owned subsidiary.³

The Applicant also request that the Commission rescind directive 2 of Order G-109-18 and issue a new directive requiring CEPLP to provide the annual reports going forward.

A Regulatory Timetable for the review of the Application established by Orders G-112-20 and G-170-20 provided for letters of comments, one round of information requests and written final and reply arguments. In accordance with this procedural order, BCOAPO makes the following submissions regarding the Application.

SUBMISSIONS

BCOAPO has participated in this proceeding to ensure that the approvals sought in this application serve the public interest, and do not detrimentally affect the utility and its residential customers.

BCOAPO has reviewed the Application, the responses to the Information Requests made by the Commission, BCOAPO and Commercial Energy Consumers Association of British Columbia, as well as Creative Energy final argument. BCOAPO is satisfied that there will be no detrimental impact on customers, the utility or the regulatory oversight of the utility⁴.

Creative Energy assures the Commission and its stakeholders in its Final Argument that the transfer of the Pendrell Street TES does not in any way change:

- the assets, operations and performance of the Pendrell Street TES – the TES equipment is the same, and the same individuals will manage and operate the TES and interact with the customer and the Commission;
- the ability of Creative Energy Pendrell LP to operate and maintain the TES assets, in terms of both access to financing as required and access to support services;
- the service and level of service provided to the customer of the TES;
- the terms and conditions of the service provided as set out in the existing customer service agreement; or
- the rates charged to the single customer pursuant to the existing customer service agreement.⁵

³ Exhibit B-1, p.2

⁴ Exhibit B-2 BCUC IR 3.1

⁵ Creative Energy Final Argument, para 16

Creative Energy also confirms that the economic viability, day to day operations and management of the utility projects are not impacted, neither positively nor negatively, by separate legal entities⁶.

Based on the evidence filed in this process, BCOAPO accepts that there are no apparent disadvantages to the transaction other than transaction costs which will not affect rates.⁷

BCOAPO also acknowledges that the transfer provides benefits of transparency and risk management advantages.

Creative Energy has indicated the following benefits of the transaction:

- transparent financial reporting for the Pendrell Street TES; and
- separation of the ownership of regulated Stream A TES assets from the non-regulated assets and interests of CEDLP.⁸

BCOAPO agrees that “transparent financial reporting facilitates rate setting and regulatory oversight”, and that “separation of liabilities supports the ongoing viability of each utility by limiting its exposure to external liabilities”⁹.

In addition to the two key advantages noted above, there may other potential advantages; for example, CEPLP may be protected from any external litigation issues that might arise.¹⁰

During discovery, we were curious whether the payee of the transaction costs expects to enjoy a net financial gain, i.e., the financial benefits that accrue to the payee will exceed the transaction costs paid, as a result of the proposed disposition. According to Creative Energy response:¹¹

The purpose of the transaction is to achieve alignment with the business structure described in section 3 of the Application and elaborated in the response to BCUC IR 11.2. The benefits of such alignment are in the nature of risk management, and have not been quantified as a financial benefit against transaction costs.

Further, Creative Energy states that the disposition will result in no capital gain or loss to CEDLP, nor any change to access to financing.¹²

⁶ Exhibit B-2 BCUC IR 3.1

⁷ Exhibit B-2 BCUC IR 3.2

⁸ Exhibit B-2 BCUC IR 3.1

⁹ Exhibit B-2 BCUC IR 11.2

¹⁰ Exhibit B-6 BCOAPO IR 3.1

¹¹ Exhibit B-6 BCOAPO IR 4.2

¹² Creative Energy Final Argument para 16.

BCOAPO takes no small amount of comfort from Creative Energy's assurance that a Transfer Pricing Policy and Code of Conduct, in accordance with BCUC 2012 AES Report, should be filed and will be filed for approval from the BCUC.¹³

Overall, in our view, there is nothing on the record indicating that this transaction will be detrimental to Creative Energy's residential ratepayers or indeed, any of its ratepayers so BCOAPO supports the Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

Original on file signed by:

Leigha Worth, Executive Director

BC Public Interest Advocacy Centre

Irina Mis, Staff Lawyer

BC Public Interest Advocacy Centre

¹³ Exhibit B-2 BCUC IR 11.4 and Exhibit B-7 CEC 2.1 - 2.2