

6 October 2020

Via E-filing

Ms. Marija Tresoglavic
Acting Commission Secretary
BC Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC V6Z 2N3

Dear Ms. Tresoglavic:

**Re: British Columbia Utilities Commission (BCUC, Commission)
Creative Energy Mount Pleasant Limited Partnership (LP)
Application for a Certificate of Public Convenience and Necessity (CPCN) to Acquire, Operate
and Expand a Thermal Energy System for Cooling in the Main Alley Development (Application)**

Creative Energy Mount Pleasant LP writes to submit its Final Argument into the above noted Application, in accordance with Order G-247-20.

Yours sincerely,



Rob Gorter
Director, Regulatory Affairs and Customer Relations

Enclosure.

BRITISH COLUMBIA UTILITIES COMMISSION

**Application for a CPCN to
Acquire, Operate and Expand a Thermal Energy System for
Cooling in the Main Alley Development**

Creative Energy Mount Pleasant LP

Final Argument

October 6, 2020

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1. Introduction and Application

1. The Application requests the British Columbia Utilities Commission (“**Commission**”) to grant a certificate of public convenience and necessity (“**CPCN**”) to Creative Energy Mount Pleasant Limited Partnership (“**CEMP**”) to acquire, operate, modernize and expand a thermal energy system (the “**Mount Pleasant District Cooling System**” or “**Mount Pleasant DCS**”) to provide cooling to the Main Alley Development in the Mount Pleasant Neighbourhood of the City of Vancouver.
2. The specific requests for approval are set forth in section 1.2 of the Application and also in the draft order provided in Appendix A of the Application.
3. Following the streamlined review process held on October 2, 2020, the Commission Panel issued Order G-247-20 setting out the regulatory timetable dates for final arguments, and also in the cover letter setting out six matters that the Panel requests CEMP and interveners to address in their final argument submissions. CEMP addresses the six specific matters set out by the Panel in the appendix attached to this Final Argument.

2. The need for the Mount Pleasant DCS project

4. A property development project in the Mount Pleasant area of Vancouver at Main Street and 5th Avenue (the “**Main Alley Development**”) requires thermal energy for space cooling.
5. The Main Alley Development project consists of five buildings, including the renovation of two existing buildings and the construction of three new buildings.
 - The Owner¹ of the Main Alley Development is designing its development to comprise mainly commercial / light industrial use buildings with a technology heavy focus that will have high demand for cooling year-round, and also a residential tower which is also being designed with space cooling.
 - There is existing cooling equipment in one of the buildings at the Main and 5th Avenue site. The cooling equipment was originally installed to serve the cooling demand of a banking data centre. The equipment was designed with substantial redundancy to ensure reliable cooling to the banking data centre operations. The equipment is presently supplying cooling to the two existing buildings at the site;

¹ Westbank Projects Corp. has partnered with Mount Pixel Projects Limited Partnership (together, the “**5th & Main Partnership**”) to construct the Main Alley Development. The 5th & Main Partnership is the beneficial owner of all of the lands comprising the Development. The entities 111 East 5th Property Inc., 110 East 5th Property Inc., 130 East 4th Property Inc., and 2015 Main Property Inc. are the registered owners of the various lands that comprise the Development, and which hold registered title in trust for the beneficial owner, the 5th & Main Partnership. Each of the registered owners is owned through the 5th & Main Partnership and as such the same ownership group owns the entirety of the development site and is collectively the sole **Owner** of the Main Alley Development. For greater certainty, CEMP is not designing, constructing or owning the buildings of the Main Alley Development.

however, the banking data centre is no longer in service such that the cooling equipment is underutilized presenting an opportunity.

6. The need for, scope and timing of cooling service to each of the five buildings of the Main Alley Development is defined by the Owner. CEMP assists the Owner to optimize the parameters of the cooling requirements; however, for greater certainty it is the Owner that determines the cooling requirements based on the Owner's plans for use of the space, building architecture, building envelope design, exposure to solar energy, etc., and in compliance with applicable codes and standards also.²
7. **Key Point: The Owner of the Main Alley Development determines the cooling requirements of the development.**
8. The Owner considered its options for serving the cooling requirements, and under the Owner's prerogative and commercial interest, has chosen to design the buildings of the Main Alley Development to connect to a central district cooling system ("DCS") that will leverage the existing cooling equipment and the space where that equipment is located.
9. Section 2.3 of the Application outlines indicative alternatives that were available to the Owner for comparison purposes. The benefits to the Owner that stem from approval of the Application are reviewed in section 3.3.6 of the Application, and summarised in Table 7 of the Application.
10. The Owner further benefits from the central DCS configuration of the proposed Mount Pleasant DCS by saving valuable space in the other four buildings that would otherwise be occupied by cooling equipment under the distributed in-building alternative.³ The evidence is clear that the Owner is correct to choose the Mount Pleasant DCS solution as set out in the Application.
11. CEMP and the Owner have therefore entered into agreements (the **Construction and Purchase Agreement** provided at Appendix B of the Application and the **Contribution Agreement** at Appendix C) setting out the terms under which the Owner will transfer its existing cooling assets to CEMP, and CEMP will modernize and expand the equipment to serve the cooling requirements, as defined by the Owner, of the five-buildings of the Main Alley Development.
12. The Construction and Purchase Agreement provides for the coordination of the Owner's five-building project and CEMP's project to acquire, modernize and expand the central cooling plant to serve the cooling requirements of the five buildings as specified by the Owner.

² SRP Transcript, p. 20, line 20 to p. 23, line 1.

³ SRP Transcript, p. 74, line 26 to p. 75, line 8.

13. **Key point: CEMP is designing the upgrades to the Mount Pleasant DCS to serve the cooling requirements of the Main Alley Development as specified by the Owner.**
14. The Mount Pleasant DCS is being designed by CEMP to serve only the five buildings of the Main Alley Development and will have one single customer being the Owner of all five of those buildings.
15. **Key point: The Mount Pleasant DCS will have only one customer, being the Owner of the Main Alley Development who is developing and will own five buildings at the property. The Owner of the Main Alley Development will be the only customer and only ratepayer of the Mount Pleasant DCS.**
16. The Mount Pleasant DCS covered by the requested CPCN in this Application does not include any extension to connect to any other developments outside the boundaries of the Main Alley Development. The DCS will only connect to customers outside the bounds of the Development if the extension has a positive or neutral impact to the existing customer and the Owner consents. Any such extension would be the subject of a separate filing with the Commission as required.
17. **Key point: CEMP does not propose to invest in the Mount Pleasant DCS in advance of need, rather, it is investing in the DCS plant according to the most cost-effective phased approach to serve the contracted need defined by the Owner who will be the only customer of the DCS.**

3. The Applicant

18. CEMP has been established for the sole purpose of owning, operating and upgrading the Mount Pleasant DCS to serve the cooling requirements of the Main Alley Development.
19. The corporate organization chart for CEMP, and explanation of CEMP's affiliation, or lack thereof, to the partners of the Owner undertaking the Main Alley Development is provided in the response to BCUC IR 38.1.⁴
20. CEMP is an affiliate of Creative Energy Vancouver Platforms Inc. ("CEVP"), which has owned and operated the steam utility in downtown Vancouver for approximately 50 years.
21. CEMP itself does not have any staff at this time.⁵ CEVP staff will work on the Mount Pleasant DCS project, including engineering, operational, maintenance and administrative functions.

⁴ Ex. B-5.

⁵ The requirement for full-time operating staff may be filled by individuals hired as CEMP employees. Refer to Ex. B-3, response to BCUC IR 20.5 and Ex. B-5, response to BCUC IR 48.1.

22. CEVP ensures that its core steam rates do not subsidise the rates of other projects in the Creative Energy family, or vice versa, by directly assigning staff time spent on each project, and by allocating residual general and administration costs to all projects using the BCUC-approved Massachusetts formula.

4. Approvals Sought

23. The Application is for a CPCN to acquire, operate and expand the Mount Pleasant DCS, and for approval of two forms of customer service agreement.

(a) The request for a CPCN

24. In considering whether to grant the requested CPCN, it would be appropriate for the Commission Panel to consider why a CPCN is required in these circumstances.
25. Under section 45(1) of the *Utilities Commission Act*, a person must not begin the construction or operation of a public utility plant or system, or an extension of either, without first obtaining from the commission a certificate that public convenience and necessity require or will require the construction or operation.
26. Where a CPCN is required before constructing, operating or extending a public utility plant or system, the matters to be considered and extent of inquiry the Commission may undertake into the request for a CPCN are very flexible.
27. Under the Commission's Thermal Energy System ("**TES**") Guidelines,⁶ most TES similar in size to the Mount Pleasant DCS are exempt from the requirement for a CPCN.
28. The Mount Pleasant DCS would be a Stream A TES, exempt from section 45 of the *Utilities Commission Act* and the requirement to obtain a CPCN, except that it will serve buildings across a road, an alley and a property line.⁷
29. If the Mount Pleasant DCS was a Stream A TES (that is, if the project was the same as planned in all respects except that it does not cross a road or a property line), CEMP would be exempt from section 45 of the *Utilities Commission Act* and exempt from the requirement to obtain a CPCN to acquire, operate and expand the DCS as planned. CEMP would only be required to submit to the Commission a Stream A TES attestation form.

⁶ The Commission established the TES Guidelines pursuant to Order No. G-27-15.

⁷ Refer to section 4 of the Application. A site plan showing the locations of the five buildings and the DCS distribution piping crossing the road, alley and property line is provided in Figure 2 of the Application, at page 8. It is not clear why the crossing of a road is a criterion for Stream A vs. Stream B TES treatment under the TES Guidelines. The Main Alley Development includes multiple properties adjacent and across a road and an alley, with all properties controlled by the same entity (the **Owner**) as explained in note 1 above. CEMP will have statutory rights of way to ensure it has appropriate access to the DCS central plant, distribution lines and related equipment.

30. Stream A TES are exempt from the requirement to obtain a CPCN because in the case of Stream A's the public interest is preserved by competition and long-term service contracts. The Mount Pleasant DCS proposal is the result of the Owner's prerogative and commercial interest in the competitive marketplace, and service will be provided pursuant to long-term service contracts, the same as the circumstances of a Stream A TES. The crossing of a road, an alley and a property line does not by itself give rise to a need for stringent regulation of the Mount Pleasant DCS.
31. Furthermore, when a CPCN is required, such as for a Stream B TES, the matters to be considered and extent of inquiry the Commission may undertake are very flexible.
32. In fact, section 46(2) of the *Utilities Commission Act* provides that the Commission has a discretion whether or not to hold any hearing at all on an application for a CPCN.
33. CEMP further submits that consideration of this request for a CPCN should have due regard to the foundational principles and guidelines set out in the Commission's Alternative Energy Services ("**AES**") Inquiry Report,⁸ which are the foundation of the Commission's regulation of TES pursuant to the TES Guidelines. The AES Inquiry Report articulates key principles and guidelines for determining whether regulation is required and, if so, the form of regulation:⁹
- Only regulate where regulation is required.
 - Regulation should not impede competitive markets.
 - Where regulation is required, use the least amount of regulation needed to protect the ratepayer.
 - The benefits of regulation should outweigh the costs.
34. Where regulation is required, the AES Inquiry Report sets forth that the form of regulation should:¹⁰
- provide adequate customer protection in a cost-effective manner;
 - consider administrative efficiency;
 - consider the level of expenditure, the number of customers, the sophistication of the parties involved and the track record of the utility in undertaking similar projects; and

⁸ The AES Inquiry Report was issued under Order G-201-12.

⁹ *Ibid*, at sections 2.1 and 2.2.

¹⁰ *Ibid*, at section 2.2.

- require the provision of sufficient information to allow the Commission to assess the new business activity, and any rates to be set, against BC's Energy Objectives and the requirements of the *Utilities Commission Act* and the *Clean Energy Act*.

35. The Commission's CPCN Guidelines similarly call for flexibility and the tailoring of regulation to the specific circumstances:

"The guidelines do not alter the fundamental regulatory relationship between utilities and the Commission. They provide general guidance regarding the Commission's expectations of the information that should be included in CPCN applications while providing the flexibility for an application to reflect the specific circumstances of the applicant, the size and nature of the project, and the issues raised by the application. An applicant is expected to apply the guidelines in a flexible and reasonable manner that reflects the spirit and intent of the guidelines."

36. **Key points:**

- **In considering this requested CPCN, the Commission Panel ought to consider the level of expenditure (the expenditure is less than the threshold for exempt Stream A TES), the number of customers (there is only one customer), the sophistication of the parties involved.**
- **The Owner is very sophisticated and has extensive experience in property development. The Owner has expert engineering and design consultants supporting specification of the cooling requirements of the Main Alley Development and verifying CEMP's designs and that the cost estimates for the DCS phases are reasonable.**
- **Therefore, regulation should be very light handed and focused on those specific factors that triggered the requirement for a CPCN; that is, matters arising from the DCS serving buildings across a road and a property line.**

37. With reference to the six specific matters the Commission requested CEMP to address in Final Argument, as provided in the attached Appendix, CEMP respectfully submits that inquiry into those six matters is not consistent with the "use the least amount of regulation needed to protect the ratepayer" principle for this case where there is a single, very sophisticated customer that has control and expertise to specify its cooling requirements to be served by the DCS, and the parties have negotiated and agreed to long-term contracts.

(b) Approval of Customer Service Agreements (CSAs)

38. One of the CSA's is in respect of service to the M3 lands, which is where the Mount Pleasant DCS is located, and the other CSA is in respect of service to all other buildings of the Main Alley Development. Both forms of CSA are based on a standard form CSA the Commission has reviewed in other proceedings, except for certain adjustments required by the Owner.
39. The variances in the CSAs relative to the standard form reviewed previously relate to approval rights for the Owner in respect of any proposed extensions to the DCS to serve buildings off-site the Main Alley Development, and provisions giving the Owner a conditional right to purchase the DCS upon termination of the CSA.
40. The variances are reviewed in section 2.2.2 of the Application.
41. **Key point: The Application seeks approval of the two forms of CSAs, as noted. The unique terms of each of the two CSAs are required by the Owner, and CEMP supports these terms as appropriate in these circumstances. The Application otherwise does not seek approval of rates for cooling service.**
42. The Owner requires these provisions of the two CSAs, and any changes as a condition to the Commission's approval could result in the Owner electing to terminate the Construction and Purchase Agreement.¹¹

5. Condition Precedent with the Construction and Purchase Agreement

43. As set out in Article 2 of the Construction and Purchase Agreement, the obligation of CEMP to carry out the transactions contemplated by the agreement is conditional upon obtaining, by no later than December 6, 2020, the necessary approvals of all governmental authorities, including the Commission, to allow for the construction and operation of the DCS in accordance with the agreement. That means all phases of the DCS project.
44. Under the Construction and Purchase Agreement and in accordance with its terms for coordinated phasing of work,
 - the Owner commits to undertaking, diligently proceeding with, and completing construction of the Development including all five buildings,¹² and
 - in coordination with the Owner's project, CEMP commits to acquiring, operating and upgrading the DCS to serve all five buildings of the Development.

¹¹ Ex. B-3, the responses to BCUC IRs 29.1 and 29.2.

¹² Construction and Purchase Agreement, s. 3.1.

45. Satisfaction of the condition precedent is critical to enabling the parties to move forward.
46. If all of the approvals requested in this Application are not in place, or if the agreed expansions of the DCS remain contingent on future regulatory approvals, neither the Owner nor CEMP will have the unconditional certainty needed to proceed with their respective interrelated projects.
47. Regulatory certainty is required at the outset, in the form of CPCN approval for all phases, so that CEMP can declare satisfied the condition precedent, thereby committing unconditionally to the project required under the agreement.
48. The Owner requires certainty that CEMP has all approvals in place, in the form of CPCN approval for all phases and approval of the CSAs, so that the Owner can design the Main Alley Development buildings to connect to the centralized DCS and without their own in-building cooling equipment. The design work for a commercial building typically commences 4-5 years before occupancy, such that the Owner requires certainty well in advance of construction and occupancy that CEMP has regulatory approval in place to enable it to supply cooling from the DCS.
49. **Key points:**
 - **Approval of this Application as requested will enable CEMP to unconditionally commit to completion of the Mount Pleasant DCS project in accordance with the Construction and Purchase Agreement, which in turn enables the Owner to move forward with designing and building its preferred design for the Main Alley Development as set forth in the Construction and Purchase Agreement.**
 - **Partial approval of the Application such that the agreed expansions of the DCS remain contingent on future regulatory approvals will frustrate the Owner's plans and certainly will not serve the interests of the Owner who is the only customer of the DCS.**

6. Appropriate Consultation has been completed

50. As outlined in section 3.5.3 of the Application, over 1,400 notifications were distributed via Canada Post targeting individuals living within 100 meters of the Main Alley Development and of the DCS internal to the development.
51. CEVP staff hosted a public open house in Mount Pleasant to share details of the DCS project, to engage and solicit feedback and provide an opportunity to ask questions.

52. Four local community members were walk-up attendees to the open house in response to signage at the open house on the day. Attendees reviewed the display material and were able to ask questions and provide comments to the project team. Each attendee was invited to fill out a comment form. Four attendees provided comment forms, all of which were supportive of the project.
53. **Key point: Appropriate consultation with the public has been completed. No concerns have been raised by the public and all feedback received has been positive.**

7. Socio-economic considerations and support for BC's Energy Objectives

54. The cooling system that currently serves two of the existing buildings within the Main Alley Development has been in operation for roughly 35 years with no adverse affects. The planned modernization and expansion of the Mount Pleasant DCS will consist of similar equipment and operating procedures and likewise is not expected to have any adverse effects on the physical, biological and social environment. In addition, by centralizing cooling equipment the Mount Pleasant DCS will make use of existing under-utilized equipment and avoid the need otherwise for cooling towers and other equipment within and on the rooves of each of the buildings of the Development, which will lessen any perceived affects related to noise and water vapour emissions in comparison, however unlikely.
55. With respect to British Columbia's energy objectives, a limited subset of the objectives are applicable to the Mount Pleasant DCS. The Mount Pleasant DCS is consistent with and advances those objectives as reviewed in section 3.5.2 of the Application and elaborated in the responses to BCUC IRs 28.1 and 28.2.

8. Risk and Risk Mitigation

56. The risks to CEMP, the Owner (and sole customer) and the public have been thoroughly reviewed through the proceeding. The key evidence regarding risks and risk mitigation is as follows:
- The terms of the Construction and Purchase Agreement (Appendix B of the Application), and the Exhibit B-8 summary of agreement terms related to the decision-making process for future phases of the Mount Pleasant DCS project contemplated in the CPCN application.¹³
 - Section 3.4 of the Application.

¹³ Please note that the various summaries of Construction and Purchase Agreement terms provided in this proceeding, such as Exhibit B-8, are intended to assist the reader with understanding the operation of the agreement. Obviously, the actual agreement wording prevails in the event of any real or perceived discrepancy between the actual agreement wording and summary information provided.

- CEMP's responses to BCUC IRs 9.1, 11.8, 12.2, 12.3 and 12.5.
- CEMP's Risk Register for the project as provided in Attachment 47.2 to the response to BCUC IR No. 2.

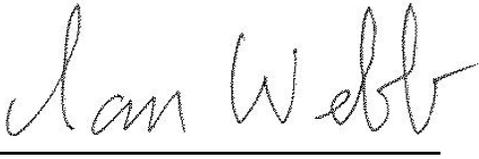
57. The evidence clearly demonstrates that the risks are understood by both CEMP and the Owner. The risks are known, they are low and have been carefully mitigated by the parties through the terms of their agreement. Any material residual risks are within the control of the Owner and are therefore appropriately allocated to the Owner. The Owner agrees as demonstrated through the Construction and Purchase Agreement.
58. As noted, no concerns have been raised by the public for example in relation to the DCS project crossing the public alley or road.

9. Conclusion

59. The Mount Pleasant DCS will have only one customer, being the current owner of the existing cooling equipment at the Main Alley Development site and the Owner of such Development. The Owner fully understands its next best alternative for obtaining cooling for its Development, and has determined that its best option is the Mount Pleasant DCS as set out in this Application.
60. CEMP is designing the upgrades to the Mount Pleasant DCS to serve the cooling requirements of the Main Alley Development as specified by the Owner through the terms and processes set forth in the Construction and Purchase Agreement negotiated by the parties. The Owner is very sophisticated and has extensive experience in property development. The Owner has expert engineering and design consultants supporting specification of the cooling requirements of the Main Alley Development with appropriate input from CEMP.
61. There is no question that the Owner requires cooling for the Main Alley Development and the Mount Pleasant DCS as contemplated is the most-effective option to serve the cooling requirements specified by the Owner.
62. Appropriate consultation with the public has been completed – no concerns have been raised by the public and all feedback received has been positive. The Mount Pleasant DCS as contemplated has no adverse impacts to the public.
63. The submissions in response to the six specific matters requested to be addressed in Final Argument, as provided in the attached Appendix, demonstrate there is no public interest consideration cautioning against approval of the Application or implying that approval should be partial or conditional. Partial or conditional approval would only serve to frustrate the Owner's plans. There is no basis to deny the Owner what it has negotiated for.

64. CEMP accordingly request the Commission to approve the Application as filed.

All of which is respectfully submitted this 6th day of October 2020.

By: 

Ian D. Webb

Counsel for Creative Energy Mount Pleasant LP

Appendix – Specific matters requested to be addressed in Final Argument Submissions

1. The justification of the variance in capital costs on a \$/kW basis for the Mount Pleasant District Cooling System (DCS) versus the Vancouver House DCS

CEMP respectfully submits that it is not incumbent on CEMP to specifically justify the variance in capital costs on a \$/kW basis for the Mount Pleasant DCS versus the Vancouver House DCS. CEMP has responded fully to all of the Commission's requests in regards to this variance, however, it is not incumbent on CEMP to justify the variance to obtain approval of the Application.

CEMP has applied for a CPCN for the Mount Pleasant DCS as set out in the Application. CEMP has clearly demonstrated that CEMP does not propose to invest in the Mount Pleasant DCS in advance of need, rather, its plan is to invest in the DCS plant according to the most cost-effective phased approach to serve the contracted need specified by the Owner who will be the only customer of the DCS.

The Owner is very sophisticated and has extensive experience in property development. The Owner has expert engineering and design consultants supporting specification of the cooling requirements of the Main Alley Development with appropriate input from CEMP. The Owner fully understands its next best alternative for obtaining cooling for its Development, which is not cooling from the Vancouver House DCS. The only feasible alternative is a distributed, building-scale stand-alone option to serve each building in the Main Alley Development with separate cooling systems, an alternative that would be more expensive, occupy space in the other buildings that otherwise could be put to better use, and would require no Commission oversight. That alternative was reviewed by the Owner in a project feasibility study and ultimately disposed of in favour of the DCS approach with CEMP. The Owner has determined, correctly, that the best option to serve its cooling requirements is the approach set forth in the Construction and Purchase Agreement and contemplated in the Application.

The Application and evidence in this proceeding further demonstrates that the Mount Pleasant DCS is beneficial to the public interest with respect to socio-economic considerations and alignment to B.C.'s energy objectives.

Therefore, the indicative rates for service for the Vancouver House DCS have had no bearing on the merits of the Mount Pleasant DCS to serve this customer's cooling requirements at the Main Alley Development.

The economic choice of the Owner to proceed with the public utility alternative (that is, under a regulated thermal energy district cooling system) was made upon consideration in part of the indicative rates of the regulated DCS option versus a non-regulated stand-alone option. In this CPCN proceeding, as the responsible, agreed-to public utility provider for the regulated DCS option, CEMP has provided a corroborating assessment of the indicative rates of the Mount

Pleasant DCS relative to the stand-alone option to further satisfy the Commission of the forecast competitive rates relative to the feasible alternative, and has further established the economy of scale of the DCS.

The Owner is sophisticated and experienced in these matters, and considers reasonable the forecast cost of service of the full project to serve all five buildings at the Development.

As reviewed in section 4(a) of this Final Argument, above, the requirement for this CPCN Application arises only due to the Mount Pleasant DCS crossing a road, alley and property line, even considering that the multiple legal parcels to be served are all owned by the same Owner. Thus, if not for that characteristic, the Mount Pleasant DCS would qualify as a Stream A TES and be exempt from the CPCN and rate setting jurisdiction of the Commission under the *Utilities Commission Act*. The exemption of Stream A TES is founded upon an acceptance that for small TES projects with limited customers the public interest is served where project need and rates for service are established through long-term commercial service agreements in response to localized and competitive considerations, as we have here. The overall capital cost of the Mount Pleasant DCS did not itself trigger the Stream B TES classification and therefore need for the CPCN, which underscores that the rates for service would be negotiated and agreed to under contract (pursuant to Stream A exemption) if not for the road and property line crossing.

Accordingly, it is not necessary to consider nor justify the variance between the indicative rates of the Mount Pleasant DCS versus those of the Vancouver House DCS to establish that the Mount Pleasant DCS is in the public convenience and necessity to serve the Owner's specifications for cooling at the Main Alley Development.

As a final thought, for the reasons reviewed in this proceeding including through the testimony of CEMP's representatives at the SRP,¹⁴ the two DCS systems are not comparable in terms of stage and timing of development (greenfield during building construction vs. brownfield retrofit into an older building around operating equipment), predominant end-usage characteristics (residential vs. technology-focused commercial), safety requirements for supervision and operators, and how each of these factors affect design, forecast load, and ultimately the capital and operating costs of the required cooling infrastructure.

We emphasize also that the capital costs of the Vancouver House DCS as reported in the responses to various IRs in this proceeding reflect CEVP's fixed purchase price for the Vancouver House DCS from the Vancouver House developer, which was negotiated in advance of construction. The actual developer cost of that DCS, to CEVP's knowledge, may be in excess of 20 percent higher than the fixed purchase price used to calculate the indicative rates.

¹⁴ SRP Transcript, p. 48, line 4 to p. 54, line 22.

2. The risks to ratepayers associated with over-forecasting, including future capacity needed, the costs of modernization, and of the impacts of improvements to energy efficiency measures, technological changes or regulations.

The concept of risk to ratepayers associated with “over-forecasting” is not applicable in this case.

The Mount Pleasant DCS will have only one customer – the Owner of the Main Alley Development will be the only customer and the only ratepayer.¹⁵

As discussed in section 1 of this Final Argument, above, the need for, scope and timing of cooling service to each of the five buildings of the Main Alley Development is specified by the Owner. CEMP assists the Owner to optimize the parameters of the cooling requirements; however, it is the Owner that specifies the cooling requirements based on the Owner’s plans for use of the space to be cooled, building architecture, building envelope design, exposure to solar energy, etc., and in compliance with applicable codes and standards also. For example, CEMP and the Owner have discussed whether the Mount Pleasant DCS should have N+1 redundancy, and the Owner has decided that such redundancy is not needed.¹⁶

The Owner (who is a sophisticated and experienced property developer, and has expert engineering and design consultants), and not CEMP, models the cooling requirements of the Main Alley Development in consideration of matters such as those outlined above and also in consideration of future changes such as improvements to energy efficiency and technology, etc. CEMP will provide input and support as appropriate, including peer review of the Owner’s consultants to add a second level of expert advice. The Owner (and its consultants) will consider the risks associated with inadequate vs. surplus cooling capacity and redundancy (or not) in future and specifies the cooling requirements to be served. CEMP will design the Mount Pleasant DCS upgrades to serve the Owner’s specifications for cooling,

CEMP accordingly submits that the concept of “over-forecasting” future capacity needed is not applicable in this case where the Owner specifies its cooling requirements based on its own considerations of costs, benefits and risks.

In this context, any concept of “over-forecasting” would be by the Owner and not by CEMP. Any risk associated with such a concept of “over-forecasting” is small and is properly borne by the Owner who is in control of the cooling requirement specifications to be served, is sophisticated, and is the only customer/ratepayer of this utility. The Owner agrees that such risk allocation is appropriate as set forth in the terms of the Construction and Purchase Agreement.

¹⁵ The Mount Pleasant DCS covered by the request CPCN is not planned to connect to any other developments outside the boundaries of the Main Alley Development. The DCS will only connect to customers outside the bounds of the Main Alley Development if the extension has a positive or neutral impact to the existing customer and the Owner consents as required pursuant to the CSA. Such an extension would be subject of a separate filing with the Commission as required.

¹⁶ Ex. B-5, responses to BCUC IRs 45.4.1 and 45.5.

3. The decision-making process for future investments contemplated in the CPCN application, and the BCUC's role, if any, in reviewing such future investments and in assessing the prudence of any such investments.

Decision-making process

The decision-making process for future phases of the Mount Pleasant DCS project contemplated in the CPCN application is set forth in the Construction and Purchase Agreement and summarised in Exhibit B-8.¹⁷ As clearly set out in section 3 of the agreement, and summarized in paragraph 13 of Exhibit B-8, the decision-making process is initiated by the Owner and responded to by CEMP to confirm specification, compatibility and schedule, includes appropriate safeguards as between the obligations of each party in that process, and does not require regulatory oversight.

As discussed in section 5 of this Final Argument, above, approval of this Application as requested will enable CEMP to unconditionally commit to completion of the Mount Pleasant DCS project in accordance with the Construction and Purchase Agreement which in turn enables the Owner to move forward with designing and constructing its buildings to be served with cooling from the centralized Mount Pleasant DCS as set forth in the Construction and Purchase Agreement.

If the Commission was to partially approve the Application such that the future expansions of the DCS required to serve the Main Alley Development remain subject to approval of future CPCN applications, CEMP will not be able to unconditionally commit to providing service which will in turn frustrate the Owner's plans. Such a regulatory regime will not serve the interests of the Owner who is the only customer of the DCS. The Owner is sophisticated, and has negotiated a decision-making process that appropriately protects the Owner's interests, as set forth in the agreed Construction and Purchase Agreement.

Reporting

As discussed in responses to various IRs and during the SRP, CEMP is agreeable to providing reports to the Commission regarding the progress of the modernization and expansion of the Mount Pleasant DCS, if the Commission wishes to be kept apprised.

Assessing Prudence

The roles and responsibilities of the parties and the decision-making process for future phases of the Mount Pleasant DCS to serve the Main Alley Development, as set forth under the Construction and Purchase Agreement, reduce to negligible if not eliminate entirely any risk of CEMP making an imprudent investment in the DCS. The Owner has expert engineering and design consultants supporting specification of the cooling requirements of the Main Alley

¹⁷ See note 13, above.

Development buildings, and can verify CEMP's designs and cost estimates for the DCS phases are reasonable.

Hypothetically speaking, if there were to be cooling assets deemed to be surplus at the Mount Pleasant DCS it is almost inconceivable that this would be due to imprudence on the part of CEMP. This would be due to the Owner's decisions and specifications.

Prudence is a matter that is relevant to public utility rate setting. Given that the Mount Pleasant DCS is considered a Stream B TES, the Commission will set the rates for cooling service and can consider at the time of setting rates any arguments put forward, if any, about imprudence on the part of CEMP. Hypothetically speaking, if such an argument was put forward in a proceeding to set rates for CEMP's cooling service, the issue would be fairness (or equity as referred to with the same meaning during the SRP), as follows:

- Are there surplus assets at the Mount Pleasant DCS?
- If so, are the surplus assets due to:
 - i. imprudence on the part of CEMP, or
 - ii. CEMP following the Owner's specifications for cooling and the Owner possibly then defaulting on its obligations under the Construction and Purchase Agreement?
- If (ii), above, and CEMP believes that there could only be assets deemed surplus due to the Owner's decisions, then there is no imprudence on the part of CEMP and any costs associated with such assets must be recovered in the rates set by the Commission to be charged to the Owner who is the sole customer of the DCS.¹⁸

As discussed at the SRP, the above is the equitable approach and the result would be fair. Moreover, the above is in accordance with regulatory precedent for consideration of prudence in rate setting. The Owner has also accepted these concepts and outcomes through the agreed terms of the Construction and Purchase Agreement.

4. The recovery of any sunk costs in the event assets become stranded and the appropriateness of any such mechanisms

Please refer to the submissions under matter 3, above.

¹⁸ Alternatively, the costs could be recovered as damages.

5. The relationship between CEMP and the Owner, CEMP's ability to claim damages from the Owner, and whether the relationship between the two parties impacts the likelihood of CEMP successfully claiming any such damages

The corporate organization chart for CEMP, and explanation of CEMP's affiliation, or lack thereof, to each of the partners of the Owner (5th & Main Partnership) undertaking the Main Alley Development, is provided in the response to BCUC IR 38.1.

CEMP is a direct subsidiary of Creative Energy Developments LP ("CEDLP"), an entity which is itself partially owned by Westbank Holdings Ltd. ("Westbank"). Westbank in turn is a partner of the Owner.

At a very simplified level,

- CEMP is ultimately owned 50% by Westbank and 50% by the InstarAGF Essential Infrastructure Fund, each of which is independent of each other.
- The Owner (5th & Main Partnership) is ultimately owned by Westbank and by Mount Pixel Projects LP, each of which is independent of each other.

For greater clarity, CEMP advises that while Westbank is an indirect ultimate shareholder of CEMP, Westbank has no direct involvement with the day-to-day operations of CEMP or CEDLP. The management team and/or directors of CEDLP and CEMP are independent of Westbank and/or the Owner, and further, there are no individuals related to Westbank or the Owner that are employed by CEDLP or CEMP. While Westbank is a 50% shareholder of CEDLP, its influence is limited to 3 director nominations out of a total 6 available seats. CEDLP and CEMP report to, and are governed by their Boards of Directors, of which Westbank is a part of, but Westbank has no direct agency on any discussions that CEMP or CEDLP are involved in regarding new project developments and commercial negotiations.

CEMP can claim damages for breach of the Construction and Purchase Agreement in the event the Owner defaults on its obligations under the agreement.

CEMP further advises that Westbank does not have legal control over CEDLP and CEMP due to its 50% shareholder interest, and the remaining 50% is held by a group independent from Westbank, InstarAGF. Therefore, even if the directors of CEMP were not independent from Westbank/the Owner, corporate governance dictates that Westbank would be unable to influence operations at CEMP to its own benefit, as this influence would negatively impact InstarAGF.

For the sake of argument only, even if the Commission Panel, without any basis, does not fully accept the above submissions and considers there to be a risk that CEMP might not pursue damages from the Owner / sole customer in default of the Construction and Purchase Agreement, the hypothetical risk of such a gratuitous benefit to the sole customer of the Mount Pleasant DCS cannot be an impediment to approval of this Application.

6. The risk to the ratepayers in the event that the Owner ceases to retain ownership of one or more of the buildings contained within the Main Alley Development.

The concept of risk to ratepayers in such event is not applicable in this case, and there is no such risk.¹⁹

The Mount Pleasant DCS will have only one customer – the Owner of the Main Alley Development will be the only customer and the only ratepayer.

If the Owner decides to sell one or more of the buildings in the Main Alley Development, the sale would proceed as a share sale or an asset sale.

- If a share sale, the buyer would acquire the shares of the respective company and all assets and liabilities of the company acquired remain unchanged.
- If an asset sale, the buyer would acquire the building assets only, and the liabilities of the company would remain with the company.

Either way, the price of the acquisition would reflect the fair market value of the company/assets purchased, including the value and risks associated with CEMP's DCS cooling service to the building at the BCUC-approved rates in place.

Hypothetically speaking, if the market considers that there is risk or other concern associated with the building for sale obtaining its cooling from CEMP's DCS at the BCUC-approved rates in place, the market will reflect such matters in a lower purchase price for the building other things being equal. In that way, the consequence of such risk or concern would stay with the Owner. The corollary is also true – if the market considers that there are benefits associated with the building for sale obtaining its cooling from CEMP's DCS at the BCUC-approved rates in place, the market will reflect the benefits in a higher purchase price for the building other things being equal. The Owner appropriately bears the risks and rewards of its decisions in regards to its Main Alley Development.

¹⁹ The submissions in this section clarify and expand upon the general discussion at the SRP at pages 60-61 of the Transcript. The matter should therefore not be considered a rate design issue as postulated during the SRP in that any risk will be capitalized into the sale of any building of the Main Alley Development by the Owner, thereby staying with the Owner, and will not require further consideration in rate setting.