CREATIVENERGY

14 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 Reply Argument into the above noted Application, in accordance with Order G-247-20.

Yours sincerely,

Rob Gorter
Director, Regulatory Affairs and Customer Relations

Enclosure.

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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

Reply Argument

October 14, 2020

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1. Introduction

1. Following the streamlined review process hearing held on October 2, 2020, Creative Energy Mount Pleasant Limited Partnership ("**CEMP**") filed its written Final Argument with the British Columbia Utilities Commission ("**Commission**") on October 6, 2020.

2. The Commercial Energy Consumers Association of British Columbia ("**CEC**") is the only intervener to submit a Final Argument in this proceeding, as filed on October 9, 2020.

3. It is important to note that the CEC does not act for or represent the interests of the one and only ratepayer of the proposed Mount Pleasant DCS, being the Owner of the Main Alley Development who is developing and will own five buildings at the property. We reiterate that the Owner of the Main Alley Development will be the only customer and only ratepayer of the Mount Pleasant DCS.

4. The CEC's information requests in this proceeding focused primarily on seeking clarification of evidence provided in the Application and on whether the ratepayers of Creative Energy Vancouver Platforms Inc. ("**CEVP**") are exposed to any risks as a result of CEMP's Mount Pleasant DCS project.[1]

5. The submissions in the Final Argument of the CEC shifted away from, and did not address at all, the matter of potential risk to CEVP ratepayers, and instead focused on the matter of potential risks to what the CEC describes as "future ratepayers" of the Main Alley Development, where such future ratepayers are identified by the CEC as tenants of the Main Alley Development or potential future buyers of the whole or a part of the Main Alley Development.

6. Notwithstanding the CEC's evident scepticism and suggestion that "the Application, and evidence on the record, presents something of a dilemma for the Commission"[2], the CEC is unable to identify a reason why the Application should not be approved. The CEC therefore "recommends that the Commission approve the Application as filed"[3] subject only to two conditions.

7. With respect to the two conditions proposed by CEC, CEMP confirms that (1) it will report to the Commission on project developments at the Mount Pleasant DCS if and as requested by the Commission, and (2) CEVP has already committed to submit a transfer pricing policy and code of conduct to the Commission.[4]

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[1] See CEC IR No. 2 to CEMP in particular.

[2] CEC Final Argument, paragraph 77.

[3] CEC Final Argument, paragraph 1.

[4] Ex. B-5, response to BCUC IR 53.7.

8. Although the CEC recommends the Commission to approve the Application as filed, the CEC makes some submissions that are not properly founded. CEMP addresses those matters in reply, below, as it may assist the Commission's understanding.

2. Reply to specific CEC submissions

9. At paragraph 2 of their Final Argument, the CEC sets out recommendations the CEC suggests the Commission address in future regulations and guidelines for TES.

10. CEMP notes that a Commission proceeding[5] is presently underway to review the TES Guidelines, however, the proceeding is in abeyance at this time due to the ongoing COVID-19 pandemic. CEVP is an intervener in that review and intends to actively participate when the proceeding resumes.

11. At paragraph 13 of their Final Argument, the CEC submits that once the conditions for a CPCN are triggered, it is appropriate for the Commission to provide a thorough assessment according to established guidelines.

12. CEMP replies that the form and extent of regulation should always be tailored to the extent of need for regulation. Paragraphs 24 to 36 of CEMP's Final Argument review how the *Utilities Commission Act*, the foundational principles articulated by the Commission in its AES Inquiry Report and the Commission's CPCN Guidelines all validate that where the conditions for requiring a CPCN are triggered, the Commission should use the least amount of regulation needed to protect the ratepayer.

13. As articulated by the Commission in its AES Inquiry Report and in the CPCN Guidelines, the form of regulation should consider the level of expenditure (the expenditure in this case is less than the threshold for exempt Stream A TES), the number of customers (in this case, there is only one customer), and the sophistication of the parties involved (in this case the Owner is very sophisticated). Absent such considerations, the costs of regulation can outweigh the benefits of regulation and regulation can impede competitive markets. As stated by the Commission, regulation should not impede competitive markets.[6] CEMP articulated the above perspective in section 4 of the Application, and has been consistent on this throughout the proceeding.

14. At paragraph 14 of their Final Argument, the CEC submits that "the questioning and final regulation should befit the risks that the Commission deems to be involved and should not necessarily be determined by the criteria triggering the CPCN".

15. CEMP replies that the risks and trigger for the CPCN requirement are two sides of the same coin – the criteria that determine whether a TES is an exempt Stream A or a regulated Stream B are intended to support the principles of the AES Inquiry Report,

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[5] Commission Project No. 1599043.

[6] AES Inquiry Report, as referenced in paragraphs 33-34 of CEMP's Final Argument.

which are the foundation of the Commission's regulation of TES pursuant to the TES Guidelines. A TES that falls within the criteria for Stream A is exempt from regulation because a TES with those characteristics is deemed to be low risk to ratepayers such that registration on an attestation basis, only, is sufficient and cost-effective protection for ratepayers. A TES project that meets all of the criteria for a Stream A TES except for crossing a road or a property line may have incremental risks as a result of such crossing(s); however, the risks that are the same as a Stream A TES are accepted as low and do not warrant regulation. The question is therefore whether the crossing(s) result in incremental risks to ratepayers or potentially the community, and if so how those risks should be mitigated.

16. At paragraphs 18 to 21 of their Final Argument,[7] the CEC submits that the Commission should consider the "likely impacts to future ratepayers", where such future ratepayers are identified as tenants of the Main Alley Development or potential future buyers of the whole or a part of the Main Alley Development. The CEC submits that "to the extent the proposed TES is overly costly, such ratepayers could pay higher than necessary prices."

17. CEMP replies that those submissions of the CEC are fundamentally incorrect in economics and law also. The CEC is proposing that the Commission should in effect regulate the Owner (that is, the ratepayer) in relation to designing the Main Alley Development and specifying cooling requirements,[8] for the purpose of attempting to control rents for lease of the commercial real estate spaces at the development. Rents for lease of commercial real estate are not cost based, and they certainly are not regulated by the Commission. Rents for the commercial real estate spaces at the Main Alley Development, like any commercial real estate, will be negotiated and determined on the basis of fair market value (that is, the price negotiated between the landlord and a willing tenant, neither being under any compulsion and both having reasonable knowledge of relevant facts in respect of the commercial space and related amenities offered (*e.g.*, location and space cooling suitable for technology-focused uses)). Similarly, any sale of the Main Alley Development in whole or in part will be at fair market value, not cost.

18. There is no guarantee that the Owner will be able to recover, through rents or sale proceeds, its costs of the Main Alley Development including its costs of space cooling, and that is entirely appropriate in our competitive market economy. As discussed in CEMP's Final Argument,[9] the Owner appropriately bears the risks and rewards of its

[7] The CEC reiterates the same arguments in paragraphs 46-53, and also in sections D.D), D.E) and D.F) of the CEC's Final Argument.

[8] As outlined in section 2 of CEMP's Final Argument, 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.

[9] CEMP Final Argument, Appendix, specific matter 6.

decisions in regards to its Main Alley Development including its specification of cooling requirements to be served by CEMP.

19. CEMP further replies that paragraphs 74-76 of the CEC's Final Argument, and specifically the absence of any analysis by CEC there, demonstrate their argument about risk to "future ratepayers" is unfounded.

20. At paragraph 27 of their Final Argument, the CEC appears to argue that comparative rates from other DCS is generally the preferred consideration in determining whether a CPCN for a proposed new DCS is in the public interest.

21. CEMP replies that the CEC's assertion is unfounded. The rates of other independent and unrelated utilities are not identified as factors for consideration in the CPCN Guidelines:

- Section 2 (Project Need, Alternative and Justification) of the CPCN Guidelines indicates the costs, benefits and risks of the proposed project ought to be compared to those of <u>any feasible alternatives</u>.

- Section 7 (New Service Areas) of the CPCN Guidelines indicates proposed rates should be compared with <u>other service options that are available to customers</u> in the new service area for rate competitiveness purposes.

Service from the Vancouver House DCS is not a feasible alternative to the Mount Pleasant DCS for cooling the Main Alley Development because it is not available to the Main Alley Development. For the same reason and other reasons also,[10] the indicative rate for cooling service supplied by the Vancouver House DCS is also not a benchmark for a reasonable rate for cooling to serve the requirements of the Main Alley Development.

22. At paragraphs 40 and 43 of their Final Argument, the CEC submits that CEMP did not provide a fulsome answer to a question by the Commission, and "specifically disregard[ed] a request from the Commission for information the Commission considers relevant."

23. CEMP takes exception to those submissions by the CEC. CEMP has fully answered all inquiries from the Commission and from the CEC also. The following IR responses provide the information the Commission requested in relation to comparisons of the costs and indicative rates of the Mount Pleasant DCS to those of the Vancouver House DCS: BCUC IR 6.4, 19.1, 19.2, 22.1, 24.1.1, 24.2, 26.1, 45.8, 48.1, 51.1, 52.1, 57.1, and the responses to Commission Panel IR No. 1. CEMP's witnesses also provided fulsome answers to all questions at the SRP. CEMP did not disregard any request by the Commission for information; quite the opposite is true.

[10] As reviewed in CEMP's Opening Statement at the SRP.

24. Following the close of evidence at the end of the SRP, CEMP appropriately then made submissions in Final Argument about the relevance and materiality to the Application of the evidence comparing the indicative $/kW costs of the subject DCS to another independent 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."

25. For clarity, CEMP has provided extensive evidence explaining this variance as requested by the Commission, including providing a summary of that evidence in Final Argument. However, it is CEMP's position that it is not incumbent on CEMP to specifically justify this variance to obtain approval of the Application. It is entirely appropriate for CEMP to articulate such position in Final Argument.

26. CEMP's Application and the matters addressed in Final Argument properly address the requirements of the applicable regulatory scheme including the legislation and Commission guidelines, as discussed.

27. At paragraph 62 of their Final Argument, the CEC argues that CEMP's submissions in regards to prudency review "appears to be an uncomfortable Catch-22 for the Commission." At their paragraph 64, the CEC expresses concern with the "attribution of prudency risk to the Owner, which is beyond the reach of the Commission."

28. CEMP replies that CEMP and the sophisticated Owner have negotiated an agreement that minimises if not eliminates any chance for surplus DCS capability to be constructed by CEMP in excess of the Owner's specification for cooling. That is not a "Catch-22", an "attribution of prudency risk to the Owner", a dilemma or otherwise a cause for concern for the Commission; it means simply that the Commission does not need to regulate decisions in relation to DCS capability to protect the Owner because the Owner is sophisticated and makes those decisions itself.

29. It is quite straightforward that CEMP designing the DCS to adequately and safely serve the one customer's specifications for cooling is appropriate. Allowing recovery in rates of the costs to provide adequate service to meet the specifications of the customer is not a "Catch-22"; it is normal rate setting in accordance with the requirements of the *Utilities Commission Act*. That is, the requirement for the rate to be a sufficient charge for service of the nature and quality provided by the utility. Moreover, CEMP's submissions accurately state the law in regards to a review the Commission might undertake to consider disallowing utility expenditures alleged to be imprudently

incurred to ensure rates are just and reasonable, as has been endorsed by the Commission.[11]

30. Finally, at paragraph 78 of their Final Argument, the CEC submits that CEMP "has substantial economic interest at stake with regarding to receiving CPCN approval and being enabled to proceed with its development."

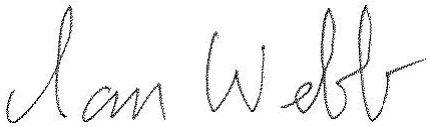
31. CEMP replies that the investors into the Mount Pleasant DCS expect the opportunity to earn the Commission-approved ROE, which by definition is fair and reasonable, necessary to attract investment into energy infrastructure and not excessive.

3. Conclusion

32. The concerns raised by the CEC in their Final Argument are unfounded. Even though the CEC evidently reviewed the Application with a robust skepticism, they are unable to identify a reason why the Application should not be approved and recommend that the Commission approve the Application as filed.

33. CEMP confirms its request for the Commission to approve the Application as filed.

All of which is respectfully submitted this 14th day of October 2020.

By: 

Ian D. Webb

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[11] See, for example, the Commission's Order G-16-09 Decision, sections 2.1.3 and 2.1.4.