CREATIVENERGY

9 April 2021

Via E-filing

Mr. Patrick Wruck
Commission Secretary
BC Utilities Commission
Suite 410, 900 Howe Street
Vancouver, BC V6Z 2N3

Dear Mr. Wruck:

Re: British Columbia Utilities Commission (BCUC, Commission)
Creative Energy Vancouver Platforms Inc. (Creative Energy)
Application for Heating Rates for the Heating Thermal Energy System and Cooling Rates for the District Cooling System at the Vancouver House Development – Project No. 1599048

Creative Energy writes to submit its Reply Argument in the above noted proceeding.

For further information, please contact the undersigned.

Sincerely,

Rob Gorter
Director, Regulatory Affairs and Customer Relations

Enclosure.

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British Columbia Utilities Commission

Creative Energy Vancouver Platforms Inc.

Application for Heating Rates for the Heating Thermal Energy System and Cooling Rates for the District Cooling System at the Vancouver House Development

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Creative Energy Vancouver Platforms Inc.

Reply Argument

April 9, 2021

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1 Introduction

1. On March 12, 2021, Creative Energy Vancouver Platforms Inc. (**Creative Energy** or **CEV**) filed its written Final Argument with the British Columbia Utilities Commission (**BCUC** or **Commission**) in the matter of the joint review of our Applications for Heating Rates for the Heating Thermal Energy System (**TES**) and Cooling Rates for the District Cooling System (**DCS**) at the Vancouver House Development.

2. 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 (**BCOAPO**) and the Commercial Energy Consumers Association of British Columbia (**CEC**) submitted Final Arguments in this proceeding on March 26, 2021.

3. The BCOAPO sets out that it represents the interests of residential energy consumers in British Columbia, and more specifically in this process the interests of Creative Energy's residential ratepayers.

4. The CEC sets out that it represents the interests of ratepayers consuming energy under commercial tariffs in applications before the Commission.

5. We are compelled to note that neither the BCOAPO nor the CEC acts for or represents the interests of either of the two customers of the TES and DCS, which are the only two ratepayers for the services provided by these two utilities pursuant to only one class of service. The two ratepayers are:

    (1) The Strata Corporation in control of Building 2, which is the high-end residential tower at the Vancouver House Development. The members of the Strata Corporation (being the owners of units in Building 2) pay strata fees that fund the Strata Corporation's expenses including for services provided to the Strata Corporation by the two district energy systems; and

    (2) Howe Street Property Inc., which is the owner in control of Buildings 1, 3 and 4, the low-rise commercial buildings at the Vancouver House Development. Howe Street Property Inc. leases space within those buildings to commercial tenants under market-based leases for commercial uses.

6. We note also that the Panel in this proceeding directed Creative Energy:

    - By Order G-264-19, to "[p]rovide by email or mail, notice of the Application and this order to all registered interveners in the Creative Energy 2018-2022 Revenue Requirements Application and all affected customers, including all parties that have purchased units in the Vancouver House Development and any tenants of the Vancouver House Development."; and

    - By Order G-233-20, to "provide the public notice, attached as Appendix B to this order, accompanied by this order and the Regulatory Timetable, as set out in Appendix A to this order, as well as a copy of the Applications to all affected customers of the Development …. In addition, Creative Energy is directed to post a notification of this public notice in all major entry ways to the Development as soon as reasonably possible …."

7. Creative Energy confirms compliance with both of the above directives. We note that neither of the two ratepayers nor any other party potentially interested as an end-user of the thermal energy provided has expressed any concern with the interim rates, or with the provision of service generally.

8. Both the CEC and BCOAPO recommend the Commission to approve the proposed revenue requirements, rate design, levelized cost recovery and Customer Service Agreements for the TES and DCS – notably:

    - The BCOAPO submits that "the TES and DCS rate bases are acceptable for rate-setting purpose, and that calculations of the TES and DCS revenue requirements are acceptable for rate-setting purposes with potential minor adjustments to the cost of debt and DCS administration charge."[1]

    - The CEC recommends that the Commission approve the rates as filed for both the Heating TES and the Cooling DCS.[2]

    - The BCOAPO indicates that "there is no specific evidence on the record that would support a disallowance of costs" and it agrees with Creative Energy that "reporting errors in budgets do not rise to the level of imprudence in terms of project management and delivery, and that the actual variances are within the tolerances specified in the BCUC's CPCN capital cost estimate guidelines."[3]

    - The CEC "has examined the record and does not find evidence of grievous mismanagement or material concerns" and it agrees that "the omission of various predevelopment costs in the initial Stream A application, and of AFUDC in the CPCN application… does not constitute mismanagement at the threshold required for a prudency review".[4] The CEC recommends that the Commission approve the Capital and Development costs as outlined in the Evidentiary Update.[5]

9. The BCOAPO and CEC each offer a number of submissions and proposed future considerations or reporting requirements and with limited exceptions do not propose any variance to our requested approvals in the Applications.

10. Notwithstanding the overall acceptance of the BCOAPO and CEC to the proposed rates and rate design for the TES and DCS, the genesis of certain of their submissions indicate some reluctance that Creative Energy considers unfounded. We address such matters in reply below as it may assist and/or confirm the Commission's understanding.

[1] BCOAPO Final Argument, p. 3
[2] CEC Final Argument, para. 1-2
[3] BCOAPO Final Argument, pp. 5-6
[4] CEC Final Argument, p. 10, para. 55
[5] CEC Final Argument, p. 10, para. 56

2 Cost of Service

2.1 Administration Costs – Massachusetts Formula Allocation

11. The BCOAPO refers to the BCUC's approval of the three-factor Massachusetts formula in its Order G-227-20 Decision into Creative Energy's 2019-2020 RRA for the Core Steam and NEFC service areas and it "urge[s] this Panel to consider this as a potential adjustment to CE's applied-for RRA and rates, subject to the Utility somehow adequately addressing the issue in Reply."[6]

12. The Order G-227-20 Decision, dated September 2, 2020, followed the date of the filing of both the DCS Rates Application (Exhibit B-6) and of the filing of the TES Rates Evidentiary update (Exhibit B-5). We thus contemplated the possible effect of the pending decision on pages 9-10 of each of those filings in describing the administration costs presented as indicative at that time. We proposed to provide an evidentiary update on allocable amounts in response to IRs as necessary. We confirm that the DCS and TES Rates Models attached to the response to BCUC IR No. 2, filed on December 18, 2020, were updated to reflect allocable amounts based on the Massachusetts formula approved under Order G-227-20.

2.2 Cost of Capital – Debt Interest Rate

13. The BCOAPO questions Creative Energy`s assertion that its assumption of a 4 percent cost of debt is still a reasonable assumption for interest rates for rate-setting purposes. It refers to the cost of Creative Energy`s current debt facilities of between 3.07% and 3.7% (as reviewed in the response to BCUC IR 34.3). BCOAPO urges the Commission to reject a 4 percent cost of debt and instead direct that a 3.7 percent cost of debt be used for rate-setting.[7]

14. We refer in reply to the caveat we provided in the response to BCUC IR 34.3 directly following the reference to the short-term interest rates noted above, which is reproduced below:

> "These short-term interest rates do not reflect Creative Energy's risk regarding interest rates and should not be used for rate setting purposes, especially for a multi-year application. Creative Energy believes that the cost of debt for regulatory purposes should be based in part on a long-term risk factors also and that Creative Energy takes on interest rate risk."

15. The 4 percent cost of debt is the most recently approved rate from Creative Energy's 2020 Core and NEFC Rate application. Creative Energy recognizes that interest rates have decreased during 2020 and there is uncertainty surrounding when they will increase to pre-pandemic levels. A review of cost of debt for rate-setting purposes will also form part of the scope of the Generic Cost of Capital proceeding initiated under Order G-66-21. We maintain that a 4 percent cost of debt remains reasonable for setting the rates at issue in the Applications in consideration of all such factors.

16. We also observe that this matter was not fully explored through the IR process in this proceeding beyond the evidence referenced above. We submit that if the Commission were to consider the BCOAPO's argument for a reduction to the debt interest rate, in fairness the Commission should also consider the corroborating evidence Creative Energy recently filed in the proceeding to review Creative Energy's 2021 RRA for the Core steam system. A relevant IR

[6] BCOAPO Final Argument, pp. 8-9
[7] BCOAPO Final Argument, p. 9

response can be referred to at Exhibit B-6-1 in that proceeding, which includes a confidential response to BCUC IR 20.4 in relation to this matter.

2.3 Income Tax – Future Tax Rates

17. The BCOAPO recommends the establishment of a Tax Rate Variance Account (**TRVA**) similar to the account approved in Order G-36-21 for Shannon Estates Utility Ltd. (**SEUL**). The BCUC directed the establishment of a TRVA for SEUL based on the rationale that the amount and timing of future income tax rate changes are uncertain and outside the control of the utility and, as such, deferral treatment for variances is appropriate. BCOAPO argues that a TRVA is also appropriate for the TES and DCS due to a suggested alignment to our request for a RCVDA.[8]

18. Creative Energy is agreeable to a TRVA that captures the variance between forecast and actual income taxes over the rate-setting period under our understanding that the contemplated account as defined would only record variances that arise as a direct outcome of tax rate changes.

3 Rate Design

3.1 Capacity charges and Variable Fuel Costs

19. The BCOAPO agrees with Creative Energy that the proposed TES and DCS fixed capacity charge and variable fuel cost charge rate structure is a practical approach.[9]

20. The BCOAPO, however, expresses some reluctance on their part to provide unqualified support for the rate design.[10] In argument BCOAPO offers spurious evidence in relation to the circumstances of different utilities when it claims by comparison that the "fixed/variable split" resulting from our proposed rate design is "unduly high".[11]

21. Contrary to the BCOAPO submission, it is not likely – it is simply not the case at all – that some capital and revenue requirement-related costs to be recovered through the fixed charge would more correctly be classified as energy-driven. We have established this in response to multiple BCUC IRs and we refer again to our Final Argument at section 4.5.1, for example.

22. Further, there is no evidence that the nature of the inherent causality of the cost of service nor of the allocation of costs to the fixed and variable charge component of the rate design leads to any cross-subsidization between the two customers (both of which are new buildings) or perverse consumption incentives for any individual building customer.

23. We highlight once more, as reviewed also in the response to BCUC IR 88.4, that a "fixed/ variable split" is not itself any form of rate design target here. The proposed rate design is structured to fairly align cost recovery with cost causation with a view to the overall benefits of a simple and easy to administer rate design. The proportions of the cost of service that are forecast to be recovered by the variable charge versus the fixed charge are simply an outcome, respectively, of the proportion of the cost of service that varies with customer energy

[8] BCOAPO Final Argument, p. 10
[9] BCOAPO Final Argument, p. 3
[10] BCOAPO Final Argument, p. 12
[11] BCOAPO Final Argument, p. 12

consumption month-to-month (i.e., the fuel and water costs, to be recovered through the variable energy charge) versus the proportion that does not (i.e., all other costs, to be recovered through the fixed capacity charge).

24. Ultimately, the BCOAPO agrees that the proposed rate design is a practical and pragmatic approach. It reinforces this agreement at page 12 of its Final Argument:

- "BCOAPO appreciates and supports CE's astute perspective that in advancing its proposal it has considered the totality of its revenue requirement and rate design framework for cohesiveness and discouraging from natural tendency to assess on a piecemeal basis."

3.2 Equitable balance of risk and incentives to control costs

25. While both the BCOAPO and the CEC support approval of the applied-for rates, each party expresses certain misgivings into the rate design in relation to a perception that the rate design may entail a transfer of risk from the utility to ratepayers or that utility incentives and obligations to control costs will somehow be impaired.

26. The CEC considers that it is appropriate for the Commission to recognize the incentives that exist under a regulatory regime and provide appropriate oversight for the protection of ratepayers.[12] Creative Energy accepts that statement as a fair description of one aspect of the Commission's role and that this proceeding is no exception, and we also impress upon the objective to ensure efficient and cost-effective administration and regulation in particular view of the relatively small scale of the TES and DCS as compared to other utilities regulated by the Commission.

27. However, stemming from apparent confusion into the mechanisms and approval of the RDDA balance, both parties appear to suggest as a remedy that further regulatory oversight beyond the established nature and extent of regulatory rate-making may be required, and they contemplate for example that a lower ROE could be considered or that rates may be reduced on the basis of actual versus forecast amounts.

- The BCOAPO submits that the RDDA and 30-year levelization period are acceptable for rate-setting purposes and "with the express understanding that the RDDA balance will be subject to full BCUC oversight".[13] The BCOAPO also suggests that the RDDA will lower Creative Energy's risk profile such that a 9.5% ROE might be higher than required.[14]

- The CEC considers that "recovering costs on a forecast basis instead of on the basis of actuals can create an incentive for over-forecasting"[15] and that "it could be appropriate for the Commission to compare historical actual costs to the forecast costs in the next rate-setting period for the purpose of making adjustments as the Commission may find

[12] CEC Final Argument para. 83
[13] BCOAPO Final Argument p. 3
[14] BCOAPO Final Argument p. 9
[15] CEC Final Argument para. 160

necessary"[16], with a possible reduction to rates based on its weighting of this issue, for example.[17]

28. These concerns of the BCOAPO and CEC are unfounded. They reflect a misunderstanding of the purpose and operation of the RDDA and/or an unfounded view that Creative Energy's incentives under the proposed rate structure are materially different than other utilities with rates set by the Commission.

29. As we have emphasized on the record of this proceeding, variously[18], and as we continue to rely on as set out in sections 4.2, 4.4 and 4.6 of our Final Argument:

- The utility accepts a degree of risk by recovering operating costs that do not vary with energy consumption through the fixed charge. Creative Energy has the incentive to manage controllable operating costs within the reasonable forecast of costs as accepted by the Commission for the purpose of setting the rate.

- The RDDA allows for a levelized rate structure, and does not guarantee recovery of actual costs. Additions to the RDDA are confirmed and approved by the Commission on a forecast not actual basis; that is, based on forecast cost of service and forecast revenues at approved rates.

- The RDDA is not a means to protect the shareholder from the risk of variances in controllable costs or to absolve utility management from being accountable for variances around reasonable forecasts.

- The proposed RDDA allows for a levelized rate structure, and only addresses any concerns related to retroactive ratemaking that may otherwise arise under rates set to recover less than the annual cost of service during the period of levelization.

30. In summary, and respectfully, we highlight in full our response to CEC IR 17.5:

- As utilities with rates set by the Commission on a cost-of-service basis after proceedings like this one, the South Downtown Heating TES and Cooling DCS have the same incentives to manage costs as other utilities regulated by the Commission on the same basis. That is, the utilities have the incentive to manage costs within the forecasts underlying the approved rates and have the risk of disallowance of any costs the Commission deems to be imprudently incurred.

- Each of Heating TES and DCS system have been prudently and cost-effectively designed and constructed/purchased and Creative Energy has been granted CPCN's for these systems as in the public interest. It is incumbent on Creative Energy to own, operate and maintain each system to provide safe and reliable service to the customers and to charge customers the rates for service approved by the Commission as just and reasonable.

[16] CEC Final Argument para. 161
[17] CEC Final Argument para. 85
[18] Refer for example to the responses to BCUC IRs 80.1, 35.2, 35.3

4 Other Matters

4.1 Reporting

31. The BCOAPO recommends that the Commission direct Creative Energy to file bi-annual update reports on the status of the TES boiler relocation until we file an application for a CPCN for such project, to include a review of the implications of any changes to rate-setting at a high level, including the identification of assets that may no longer be used and useful.[19]

32. We interpret the BCOAPO's recommendation as intending to refer to a semi-annual update report, as the timing of a bi-annual report would be precluded by the contemplated filing of a CPCN within two years for the relocation of the temporary boiler plant.

- First, we note that the matter of the relocation of the temporary boiler plant and the implications of such were fully reviewed during the CPCN proceeding for the Heating TES and the applicable Commission directions are established under Order C-1-19. The BCUC has already through its decisions established the reporting and other requirements of Creative Energy in relation to this matter.

- Second, while the future permanent solution to replace the temporary boiler plant of the Heating TES, and the implications thereof, has no bearing on the approvals requested in this Application, the additional reporting suggested by the BCOAPO would serve no practical purpose anyway. The contemplated information into the indicative effect on rates, for example, will not be known until a preferred project is confirmed at which time the CPCN application will be prepared and submitted.

33. The BCOAPO also recommends additional annual reporting into the financial results for the TES and DCS, including continuity schedules that substantiate the opening and closing balances in the RDDA, RCVDA and the contemplated TRVA.[20]

- Annual reporting requirements for these utilities are already established under the orders granting the CPCN's and as per the reporting requirements summarized in the TES Regulatory Framework Guidelines.

- We would be able to accommodate the additional reporting detail of continuity schedules in our annual reports if the Commission considers there to be value to include; we note however that such would then simply supplement and likely be superfluous to the deferral account reporting that will necessarily form part of future rate filings as a direct matter for ongoing cost-recovery.

- We note incidentally that the BCOAPO suggests that such reporting include any unforeseen material variances in the balances in the RDDA. As reviewed above, the concept of variance is not applicable to this account and no variances will be reflected in the account balance.

[19] BCOAPO Final Argument pp. 6-7
[20] BCOAPO Final Argument, p. 11

4.2 Implications of the TES Extension

34. The BCOAPO appears to believe that Creative Energy takes the position that costs and revenues in connection to the TES Extension should not be recognized in rates prior to 2024.[21] Our views on the matter are pragmatic, not positional.

35. Creative Energy has set out that one prudent approach would be to address the future rate impacts of both the system extension and the relocation of the temporary boiler plant (or change in the source of thermal energy) in a single future rates application. As referred to in BCUC IR 92.3, Creative Energy does not plan to file another formal rates application for the South Downtown TES in 2021 in view of the fact that a decision on the present applications is not expected until July or August 2021[22] and in view of the number of other applications Creative Energy has before the Commission also. However, we were explicit also that we would not be opposed to a further rate adjustment for the South Downtown TES when the extension comes into service if there is a cost-effective way to implement such rate adjustment in terms of time and resources required and regulatory efficiency overall.

36. We believe that a cost-effective means to implement a further rate adjustment could be accomplished by way of a compliance filing and an accompanying tariff rate schedule that set out the rate calculation for acceptance and without the need for an application and further regulatory process.

37. If an efficient compliance-based approach cannot be implemented we would then maintain that it would be prudent, fair and efficient in the alternative to consider a rates application for the Extension for the subsequent and necessary rate setting period beginning in 2024. An extension to serve a new customer does not typically prompt an immediate rate filing by the utility.[23]

4.3 Reply to matters raised in CEC Final Argument Part B

38. Creative Energy submits that the matters raised by the CEC in Part B of its final argument are either:

- matters that are not within the jurisdiction of the Commission, or
- matters that the Commission may only consider in deciding whether to issue a CPCN for a proposed new district energy utility.

39. The matters raised by the CEC in its Part B are not within the jurisdiction of the Commission to the extent that the CEC is calling for Commission regulation of the design and specifications of property developments – that is, Commission regulation of the decisions property developers make as to how to heat and cool the strata units/rental units and common areas of their developments. Those are matters within the purview of the developer and also the jurisdiction of the applicable municipality. The municipality regulates, by bylaw and development permit approval, how developments within the municipality's boundaries may be heated and cooled

[21] BCOAPO Final Argument, p. 10

[22] Based on the Commission's target to issue the final decision within 90 days after all final and reply arguments have been submitted.

[23] Refer to the response to BCUC IR 92.4

among other things. Provincial legislation may also establish minimum standards across municipalities in the province.

40. Subject to the scope of permissible options prescribed for heating new developments, the developer will decide among in-unit or building-scale electric resistance heating, in-unit or building-scale natural gas hydronic heating, heat recovery, roof-top solar, geo-thermal, and/or other options. The Commission does not have jurisdiction over any of those options.

41. Alternatively, the developer may decide to obtain thermal energy from a district energy utility with its own energy generation resources and distribution. The Commission has jurisdiction over such utilities pursuant to the provision of the *Utilities Commission Act* and the Commission's TES Regulatory Framework Guidelines. The Commission's power over the district energy utility's proposed solution to serve such developer's building is the granting or not of a certificate of public convenience and necessity (**CPCN**).

42. If a district energy utility requires and applies for a CPCN to construct and operate utility facilities to serve such development, as requested by the developer, the Commission still does not have jurisdiction over the developer, the developer's decisions nor over the developer's disclosure obligations to prospective purchasers of strata units or prospective tenants of rental units. The developer's disclosure obligations are regulated by other agencies under other legislation.

43. In considering whether to grant such a requested CPCN, of course the Commission may consider whether there is a better alternative to serve the developer's requirements. This is highly unlikely because developers are sophisticated and know their alternatives.

44. Importantly, neither BC Hydro nor FortisBC Energy Inc. provide thermal energy. Obviously, BC Hydro supplies electricity and FortisBC Energy Inc. supplies gas (conventional natural gas and renewable natural gas), and neither supplies thermal energy (neither heat nor cold). Electricity powers the chillers that generate cold, and natural gas may be used as fuel to produce heat in a furnace/water heater/boiler. Electricity and natural gas are not thermal energy and, for greater certainty, are not alternatives to the service provided by thermal energy systems.

45. The CEC's argument about the "small scale" of district thermal energy systems[24] is factually incorrect. District thermal energy systems have substantial economy of scale compared to all thermal energy alternatives – the alternatives to district thermal energy systems are the traditional much smaller in-unit and building-scale heating systems. District thermal energy systems are attractive to developers considering the options for heating and cooling their development because of the economy of scale and also the improved environmental performance that can be achieved at scale.

46. Additionally, the CEC's concerns about Creative Energy's affiliation to Westbank are unwarranted. The CEC has made similar arguments to the Commission in the past and the Commission has consistently given those arguments little or no weight. Further, Westbank is not Creative Energy's parent company since the corporate reorganization approved by Order C-1-20 which was completed last year.

[24] CEC Final Argument, para. 31.

47. Most importantly, though, consideration of whether the public interest is served by constructing and operating a proposed district thermal energy system or an extension thereto to serve the heating/cooling needs of the customers needs to be at the CPCN stage, and not the rate setting stage after a CPCN has been granted and the system built.

48. Both the South Downtown Heating TES and the Cooling DCS have been granted CPCNs, and have been built and are in operation.

49. Once the Commission finds that it is in the public interest for the utility to construct and operate its proposed district energy system and grants a CPCN enabling that to occur, the Commission cannot then set rates for such utility that are insufficient to recover that system's cost of service and the allowed return on equity.

50. That was the decision of the Supreme Court of Canada in *BC Electric Railway Co. Ltd. v. Public Utilities Commission of B.C.* [1960] SCR 837, a copy of which is enclosed with this reply argument, and also the very recent decision of the Commission in its Order G-36-21 Decision at page 27, as referenced in section 1.5.3 of our final argument and paragraph 37 of the CEC's argument.

51. As found by the Supreme Court of Canada and affirmed by the Order G-36-21 Decision, it would not be lawful for the Commission to impose rates that are insufficient to recover the costs of the utility system certificated by CPCN and the allowed return on equity, whether under a rationale of benchmark rates or otherwise.

52. Therefore, consideration of indicative rates of a proposed district thermal energy system versus alternatives that are truly available and feasible needs to be at the CPCN stage, and not the rate setting stage after a CPCN has been granted and the system built.

53. At the rate setting stage the question is whether the proposed rates are sufficient to recover the utility's cost of service and not excessive for the nature and quality of service provided.

All of which is respectfully submitted this 9th day of April 2021.

By: _____

Rob Gorter
Director, Regulatory Affairs and Customer Relations
Creative Energy Vancouver Platforms Inc.