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British Columbia Utilities Commission
Sixth Floor, 900 Howe Street
Vancouver, B.C.
V6Z 2N3

Attention: Ms. Laurel Ross, Acting
Commission Secretary and Director

Dear Ms. Ross:

**Re: Creative Energy Vancouver Platforms Inc.
Application for Approval of Northeast False Creek Connection Agreement**

I am counsel to FortisBC Energy Inc. (“FEI”).

FEI has reviewed the responses provided by Creative Energy Vancouver Platforms Inc. (“Creative Energy”) to FEI’s information requests in this proceeding. Creative Energy has not answered eight of those requests: FEI IRs: 1.1, 1.1.1, 2.1, 2.2, 2.3, 2.3.1, 2.4 and 2.4.1. Although FEI views each of its information requests as relevant, the purpose of this letter is to request that the Commission direct Creative Energy to provide full and adequate responses to FEI IRs 2.1, 2.2, 2.3, 2.3.1, 2.4 and 2.4.1.

Creative Energy objects to these information requests primarily based on its view that they are “beyond the scope of this proceeding”. This position reflects an unduly narrow view of the proceeding and the Commission’s jurisdiction over the terms and conditions of connection to the Northeast False Creek (“NEFC”) Neighbourhood Energy System (“NES”).

This proceeding is the latest in a series of applications brought by Creative Energy for approval of its NEFC NES and the manner under which Creative Energy proposes to provide public utility service. In three previous decisions¹, the Commission has rejected instruments brought forward by Creative Energy that would result in mandatory connection to the NEFC NES.

¹ Commission Orders C-12-15, G-88-16 and G-151-16

The *Utilities Commission Act* (“UCA”) provides the Commission with broad jurisdiction over the terms of connection to a non-municipal public utility, including when and how customers connect to them. The Commission’s jurisdiction is not limited to what appears in a Connection Agreement and/or Customer Service Agreement if other obligations on the customer arise by other channels. Examining what legal arrangements exist *apart from* the Connection Agreement and/or Customer Service Agreement is as relevant in terms of affecting customer connection as terms reflected within the four corners of the agreements before the Commission.

Creative Energy has previously suggested that it could be possible to “circumvent Commission oversight ... with ... alternate business arrangements”² or, in other words, achieve mandatory connection without the need to have the Commission approve a “privilege”, “concession” or “franchise” pursuant to section 45(8) of the UCA. In the second Commission proceeding regarding the NEFC NES, Creative Energy took a very narrow view of what constituted a franchise requiring approval, arguing that the franchise was limited to the agreement that the City of Vancouver and Creative Energy had submitted for approval; it did not seek approval for a side agreement with the City that contained all of the mandatory connection provisions originally rejected by the Commission in the first proceeding. In FEI’s view, if Creative Energy is applying a similarly narrow view to the consideration of the terms of connection, it would similarly be incorrect.

Information requests 2.1, 2.2, 2.3, 2.3.1, 2.4 and 2.4.1 sought to understand whether customers in NEFC would be compelled to sign the Connection Agreement and/or Customer Service Agreement and take public utility service from Creative Energy. If Creative Energy enjoys no such benefit, Creative Energy has the opportunity to explain that. However, the current response is caveated so as to be premised on Creative Energy’s assessment of relevance, with which FEI disagrees: “There are no agreements between Creative Energy and the CoV *that are relevant to this proceeding*.”³ In FEI’s submission, any agreement or alternate arrangement that confers the benefit of mandatory connection on Creative Energy, or act to compel the customers in NEFC to sign the agreements that Creative Energy seeks approval for, is relevant to this proceeding and requires production.

FEI’s information requests also probe the uncertainty Creative Energy has introduced respecting its view of mandatory connection. In this proceeding, Creative Energy stated that “...there is no mandate to connect...”⁴ and, in response to a CEC information request, that “[t]he decision to connect and to enter into the Connection Agreement does not stem from a mandatory connection, de facto or otherwise”.⁵

² Reply Submissions of Creative Energy, September 28, 2015, para. 147

³ Exhibit B-8, Creative Energy Response to FEI IRs 2.3 and 2.4

⁴ Exhibit B-4, Creative Energy procedural submissions, November 23, 2016

⁵ Exhibit B-7, Creative Energy Response to CEC IR 7.1

These statements are at odds with the publically available materials that FEI put to Creative Energy in FEI's information requests, including City of Vancouver rezoning decisions and the Official Development Plan for NEFC.

Creative Energy's evidence also appears to depart from its prior statements that it would not develop the NEFC NES at all without mandatory connection. Creative Energy had stated, for instance:

Without mandatory connection, the risk associated with securing customer load will make it difficult for a public utility to invest the capital necessary to establish a low carbon NES.

... Creative Energy is unwilling to assume the investment risk (and potential competitive disadvantage) associated with committing to a new neighbourhood-wide technical solution ... or committing in advance to significant neighbourhood-wide performance requirements for low carbon energy to serve all NEFC customers, without the NE Bylaw.⁶

Either customers in NEFC are mandated to connect to Creative Energy's NES or Creative Energy has determined that it is comfortable with assuming investment risk that was unacceptable to it about nine months ago. Creative Energy did not respond to FEI's requests for clarification on this point.

At the end of the day, the parties will be able to address the significance of the evidence provided in final argument. However, FEI will only have a fair opportunity to advance its arguments if there is a complete evidentiary record. For these reasons, FEI respectfully requests that the Commission direct Creative Energy to provide full and adequate responses to FEI IRs 2.1, 2.2, 2.3, 2.3.1, 2.4 and 2.4.1.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

[Original signed by]

Matthew Ghikas

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⁶ Final Submissions of Creative Energy, March 29, 2016, paras. 45 and Appendix A, paragraph 26.