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Reference:

In response to BCUC IR 59.11, Creative Energy stated:

The transfer of the beneficial interest in the Trust Property, and the retention by Creative Energy of legal title to the Beatty Street lands, poses certain risks to Creative Energy which would not otherwise be present. The risks are financial in nature and they are generally as follows:

- exposure to liabilities and asset exposure associated with the construction financing for the Developer’s project; and
- exposure to liabilities associated with the Developer’s project generally as a result of Creative Energy being the registered owner of the Beatty Street lands.

These risks are mitigated through the financing restrictions set out in Section 6.2 of the Trust and Development Agreement, and in the various indemnities from the Developer and from Westbank Holdings Ltd. in favour of Creative Energy in the Trust and Development Agreement (see, for example, Section 9.1 of the Trust and Development Agreement).

- 1.0 To the extent the risks described above materialized, what is the mechanism in place to protect Creative Energy and the ratepayers against the liabilities and asset exposure associated with the construction financing for the Developer’s project?

RESPONSE:

Section 6.2 of the Trust and Development Agreement contains restrictions in respect of the Developer’s ability to finance the Developer’s project. These restrictions are designed to mitigate Creative Energy’s exposure to liabilities and asset exposure associated with the construction financing for the Developer’s project. These restrictions require among other things that any financing for the Developer’s project will include covenants from the lenders thereunder:

- (a) not to take any recourse, or pursue any claim or proceeding against Creative Energy, its affiliates or their respective shareholders, directors, officers, employees, agents, successors, and assigns, or against any of the utility assets;**
- (b) to allow Creative Energy to retain the utility assets notwithstanding any realization proceedings against the Developer or foreclosure proceedings against the Developer’s project;**
- (c) if the Developer is in default under such financing and the lender commences realization proceedings, the lender will complete and deliver the new Beatty Plant**

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and the new office space in accordance with the provisions of the Trust and Development Agreement.

Thus, most if not all of the risks associated with the construction financing for the Developer's project are mitigated by the requirement for these specific covenants from any lenders of such financing.

It should be noted that as the registered owner of the Beatty Street lands, Creative Energy will need to execute any mortgage securing any construction financing, and it will not do so without the above covenants in place from the lender.

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- 2.0 With respect to the indemnities from the Developer and Westbank Holdings Ltd., what is the mechanism in place to ensure that the Developer and Westbank Holdings Ltd. have the ability to meet the financial requirements when exposed to the risks? For example, will the Developer and Westbank Holdings Ltd. provide additional financial security such as performance bond and other assets as security?

RESPONSE:

With respect to the Developer, it will have equity in the Trust Property, which Creative Energy will have recourse against if the Developer does not indemnify Creative Energy as required under the Trust and Development Agreement. With respect to Westbank Holdings Ltd., under section 9.3 of the Trust and Development Agreement, Westbank Holdings Ltd. is required to deliver such comfort letter or other document or statement to Creative Energy as is agreed upon in writing by Westbank Holdings Ltd. and Creative Energy from time to time in order to confirm the strength of Westbank Holdings Ltd.'s indemnity. If the reporting requirements of Westbank Holdings Ltd. are not met, then Creative Energy may require that legal title to the Beatty Street property be transferred to a nominee in order to mitigate any risk associated with holding registered title.

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- 3.0 Does Creative Energy retain the ownership of the utility assets during and after the proposed reorganization? To the extent the Developer and Westbank Holdings Ltd., for whatever reasons, are not able to meet the financial requirement to cover the risks Creative Energy is being exposed to, will the utility assets be exposed to claims and potentially affect the ability to provide utility services to the ratepayers?

RESPONSE:

Creative Energy (and its successor amalgamated company after the proposed reorganization) will retain ownership of the utility assets before and after the proposed reorganization. To the extent that any liabilities of the Developer in relation to the Developer's project are proposed to be imposed on Creative Energy, firstly it would be argued that Creative Energy is merely a bare trustee in respect of the Trust Property and that recourse in respect of such liabilities properly flows to the Developer, and secondly to the extent that Creative Energy is actually exposed to any such liabilities it would be indemnified by the Developer and Westbank Holdings Ltd. under the indemnities in the Trust and Development Agreement. The foregoing mitigates any risks that Creative Energy faces in regards to exposure to liabilities that may affect the provision of utility services. As noted in the response to BCUC Panel IR 1.0, Creative Energy will have covenants from any third party lenders for the Developer's project to ensure the utility assets are protected and that any lender will assume the obligations of the Developer under the Trust and Development Agreement in the event the Developer is in default.

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- 4.0 To the extent the Developer and Westbank Holdings Ltd. are not able to finish the Developer's project, what is the mechanism in place to ensure the public interest and the utility services will not be negatively impacted? Who will be responsible for finishing the construction of the new utility assets?

RESPONSE:

The terms of the Trust and Development Agreement and the sequencing of construction activities are designed to minimize the risks to Creative Energy and its customers due to the Developer's project, including in the event the Developer abandons or is incapable of completing the Developer's project. Section 11.3 of the Application provides a summary of the management of project risks pursuant to the Trust and Development Agreement.

If the Developer abandons or is incapable of completing the Developer's project at any stage of the project, Creative Energy will have received more value in terms of new and upgraded equipment than the costs Creative Energy will have incurred.

The following scenarios provide additional information.

Scenario 1

If the Developer abandons or is incapable of completing the Developer's project before the Expo Plant is commissioned, then work on the new Beatty Plant would not yet have commenced and the full generating capacity of the existing plant would remain available to service customers.

Creative Energy would not yet have made its first payment to the Developer as this payment is not due until the Expo Plant is in service.

Scenario 2

If the Developer abandons or is incapable of completing the Developer's project during Beatty Plant Shutdown #1, the Expo Plant would be in service and available to service customers.

Beatty Plant Shutdown #1 largely involves two major pieces of work: A) abating and demolishing Boiler #1, Boiler #2 and Boiler #3, and B) relocating the gas service to the Beatty Plant.

If the work associated with A) is not completed by the scheduled Beatty Plant Restart #1, this would not impair Creative Energy's ability to provide service to customers because Boiler #4, Boiler #5, Boiler #6 and the Expo Plant would be available for service.

The work associated with B), once started, would need to be completed in order to restart Beatty Plant Boiler #4, Boiler #5 and Boiler #6 to meet peak demand requirements. The risk of completion of utility services to the plant is mitigated by careful planning and

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coordination between the Developer and the utility providers, and by the fact that the majority of the work is completed by the utility providers, not by the Developer.

The final mitigant is the contingency plan to bring in trailer-mounted boiler(s) to provide sufficient capacity to meet peak demand.

Scenario 3

If the Developer abandons or is incapable of completing the Developer's project after Beatty Plant Restart #1, both the Expo Plant and the Beatty Plant would be in service and available to service customers.

Electrical and water services to the Beatty Plant will be relocated during Beatty Plant Shutdowns #2 and #3. As discussed above, the risk of completion of utility services to the plant is mitigated by careful planning and coordination between the Developer and the utility providers, and by the fact that the majority of the work is completed by the utility providers, not by the Developer. During these shutdowns the contingency plan would also be available to bring in trailer-mounted boiler(s) to provide sufficient capacity to meet peak demand.

Creative Energy would not yet have made its second payment to the Developer as this payment is not due until the Beatty Plant is in service on a final basis.

If the Developer is in default under its financing and the lender commences realization proceedings, then the lender will be required to complete the construction of the Beatty Plant. If, despite the foregoing, Creative Energy incurs costs in completing the construction of the Beatty Plant, then it can turn to the Developer and Westbank Holdings Ltd. to indemnify Creative Energy in respect of any such costs.

Please also see the response to BCUC Panel IR 1.0.

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5.0 Please apprise the Panel of the due diligence process completed in the selection of Emanate Energy Solutions Inc. and the findings.

RESPONSE:

Creative Energy Canada first became aware of InstarAGF in connection with a request for qualifications (RFQ) issued by the City of Richmond in 2015 when InstarAGF approached Creative Energy Canada about possibly partnering in the RFQ process. A partnership was not pursued at that time.

InstarAGF approached Creative Energy Canada again in February of 2017 when Creative Energy Canada was shortlisted in an RFQ process conducted by the City of Toronto.

Creative Energy Canada and InstarAGF enter into a nondisclosure agreement in March 2017 and each party commenced due diligence regarding a possible transaction.

Creative Energy Canada's due diligence focused on the following considerations:

- **Alignment of values / industry perspective**
- **Relevant experience of InstarAGF management team and advisors**
- **Size of the InstarAGF Essential Infrastructure Fund and investment criteria, including other investments of the Fund**
- **Composition of investors in the Fund, and process for capital calls from such investors**

Following preliminary due diligence, Creative Energy Canada was satisfied to proceed with further due diligence and negotiations. Following agreement on the general nature of the transaction, Creative Energy Canada and InstarAGF signed an MOU in July 2017 to govern the development of definitive agreements for setting up Creative Energy Developments GP and LP. Further due diligence of both parties continued throughout the development of definitive agreements. Emanate Energy was set up as the vehicle for InstarAGF's investment in Creative Energy Developments GP and LP. All definitive agreements for establishing Creative Energy Developments GP and LP were completed in late January of 2018. Please also see page 1 of Appendix M to the Application.