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October 10, 2018

VIA ELECTRONIC MAIL

British Columbia Utilities Commission
6th Floor, 900 Howe Street
Vancouver, B.C. V6Z 2N3

**Attention: Patrick Wruck
Commission Secretary**

Dear Sirs/Mesdames:

Re: Creative Energy Vancouver Platforms Inc. (“Creative Energy” or the “Applicant”) Application to the British Columbia Utilities Commission (“Commission”) for a CPCN and Approval of Corporate Reorganization (“Application”) Project No. 1598962

We are counsel to the Commercial Energy Consumers Association of British Columbia (the “CEC”). In accordance with the Commission’s letter dated September 28, 2018 (Exhibit A-11) we are providing the submissions of our client regarding the amalgamation step of the proposed corporate reorganization. We have reviewed Exhibit B-10 which are the submissions of Creative Energy on this issue.

1. The CEC submits that the Commission is not in a position to provide a report to the Lieutenant Governor in Council (“LGIC”) on this matter as to whether or not the proposed amalgamation will be beneficial in the public interest, pursuant to Section 53(5) of the *Utilities Commission Act* (the “UCA”).
2. The Commission is presently reviewing a complicated and detailed Application. The analysis of the Application and the evidentiary record, including a response to information requests on the purchase price payable by Emanate for a 50% indirect interest in the utility, are not complete. Further, there remains a determination on a confidentiality issue raised by the Applicant in regard to a significant matter at issue, the valuation of the underlying real estate. Lastly, Final Submissions remain outstanding. These are timing issues not caused by the Commission but rather by the Applicant. In effect the Applicant controls the timing of the filing of its Application and the timing of responses in the process. It is not the role of the Commission to expedite process at the request of an Applicant.

3. The CEC is not taking the position at this time that the reorganization and steps to be pursued by Creative Energy as set out in its Application will not be in the public interest. It is the CEC's view that it is too early to tell whether the amalgamation would be "beneficial in the public interest", and it is submitted that the Commission is not in a position to make such a determination until its review of the Application is complete.
4. Creative Energy notes in its submissions that pursuant to Section 53(2) of the UCA, the LGIC may issue a conditional report:
 - (2) The Lieutenant Governor in Council may, in an order under subsection (1) (a), include conditions and requirements that the Lieutenant Governor in Council considers necessary or advisable.
5. The CEC submits that a plain reading of Section 53(1)(a)(i) of the UCA requires the Commission to issue a report under this section including an opinion that the consolidation, amalgamation or merger would be beneficial in the public interest. The CEC submits the Commission is not in a position to issue such a report until it has completed its determination on the entire Application.
6. The Commission's report to the LGIC is a clear condition precedent to the LGIC issuing its order under Section 53(1)(a)(ii). It is not logical to conclude that the LGIC can issue an order with conditions and requirements under Section 53(2) which would include the condition precedent of a definitive Commission report being met after issuance of the LGIC order. This is contrary to the plain meaning of Section 53 of the UCA.
7. This interpretation is further supported by Section 53(5)(a), which provides that the Commission must submit its report and findings to the LGIC, or dismiss the application, on conclusion of its inquiry. The Commission's inquiry has not yet reached a conclusion.
8. The CEC has a further concern with Creative Energy's proposed approach. The CEC does not know whether the Commission will be able to issue a final decision on the Application by December 31, 2018, as proposed by Creative Energy in Exhibit B-10. The CEC submits it is more important that the Commission get its decision right, as opposed to fast, notwithstanding the pressure being applied by Creative Energy.
9. The CEC is also concerned with the assertion in paragraph 15 of Creative Energy's letter of October 3, 2018:

Given that the public interest benefits of the Proposed Reorganization and the amalgamation step of it relate to enabling the Proposed Project and the Developer's program to proceed on a basis that isolates the utility from risks associated with the development of the Trust Property by the Developer and on a tax efficient basis, and that the BCUC has not yet determined that the Proposed Project is in the public convenience and necessity, Creative Energy proposes that the BCUC could recommend to the LGIC that it would be advisable to make its consent to the amalgamation condition on the BCUC approving the Application.

10. The CEC is not persuaded that the project "isolates the utility from risks associated with the development". The CEC submits that the Creative Energy responses to Information

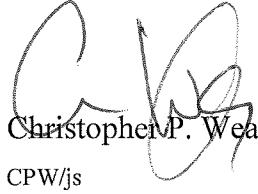
Requests, including responses to the Commission Panel's Information Requests dated October 3, 2018 Exhibit B-9, are sufficiently vague that the utility, and therefore ratepayers, face risks.

11. The CEC would request that in its submissions, Creative Energy clearly and definitively identify what, if any, risks the utility is not isolated from, including, but not limited to, what would constitute a delay caused by the utility which would be a risk borne by the utility. For example, is regulatory delay which is caused as a result of the Application taking more time to complete than estimated by the Applicant a "delay caused by the utility" which would pass financial risk to the utility?
12. The issue of what risks are assumed by the utility should be clearly and unequivocally identified by the Applicant in order for the Commission and others to determine whether the public interest benefits are as proposed. The level, and comfort, of indemnity of the utility for these risks are lacking in the CEC's view. This was highlighted in Exhibit B-9. The responses to the Commission Panel IR 1.1.0 indicates "restrictions are designed to mitigate Creative Energy's exposures." Ratepayers are not only looking for risks to be mitigated but rather for the utility to be fully indemnified.
13. Further response to Information Request 1.2.0 from the Commission Panel indicates that there is a risk that the Developer may not indemnify Creative Energy as required under the Trust Development Agreement. The degree of flexibility in the language is concerning to the CEC. The response to Information Request 1.3.0 highlights that "arguments will be available" for Creative Energy, however, there is no sense of overriding indemnity or protection from the Developer recognizing that the Developer is the primary beneficiary of these transactions. Information Request 1.4.0 from the Commission Panel elicits a response which highlights the minimization of risks to Creative Energy and its customers. The objective of the utility and ratepayers should be the elimination of any risks associated with the project.
14. The CEC encourages Creative Energy to be more specific and detailed as to how the risks to the utility and ratepayers are eliminated, to the greatest extent possible, including indemnification for any related legal costs in pursuing mitigation or indemnities.

All of which is respectfully submitted.

Yours truly,

OWEN BIRD LAW CORPORATION



Christopher P. Weafer

CPW/js

cc: CEC

cc: Creative Energy Vancouver Platforms Inc.