

Suite 1600 Cathedral Place
925 West Georgia Street
Vancouver, BC
Canada V6C 3L2
T: 604.685.3456

December 14, 2018

E-Filed

Ian Webb
D: 604.631.9117
F: 604.694.2932
iwebb@lawsonlundell.com

British Columbia Utilities Commission
Sixth Floor, 900 Howe Street
Vancouver, BC V6C 2N3

Attention: Mr. Patrick Wruck, BCUC Secretary

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

Dear Sir:

On behalf of Creative Energy, we write to provide our comments on the request by the Commercial Energy Consumers Association of British Columbia (“CEC”) to have its sur-reply submission placed on the record of the proceeding, as requested by the BCUC in Exhibit A-25.

We do not oppose the CEC submitting sur-reply to clarify its position and help the BCUC better understand the issues in the proceeding; however, in our view the CEC sur-reply does not clarify its position nor is it helpful. We address each of the CEC’s three matters below.

1) The CEC did not allege “corrupt intent” on the part of Creative Energy

The CEC’s sur-reply continues to allege potential conflicts of interest while also clarifying that the interests at issue are legitimate and not corrupt. The CEC is describing as a potential conflict of interest a situation where there is no conflict of interest. The CEC’s misuse of the term conflict of interest is not helpful. Creative Energy relies on its Reply Argument.

2) Creative Energy Arguments (Page 11) Heading 2.3.2 BCUC Jurisdiction to Allocate Value of “Surplus Property”

The CEC says that the concept of “Surplus Property” is a substantive new concept raised by Creative Energy in Reply Argument. We disagree. As early as the cover letter of the Application, Creative Energy stated the following:

“A key component of the proposed project is the Trust and Development Agreement between Creative Energy and the Developer of the areas adjacent to and above the existing steam plant at 720 Beatty Street. This agreement provides for Creative Energy to transfer to the Developer, for improvement by the Developer, the portion of the lands and airspace that is surplus to the needs of Creative Energy in its operation as a utility. Following redevelopment, Creative Energy will retain fee simple ownership in one or more air space parcels for the refurbished Beatty plant and new office space, along with statutory rights of way for any utility infrastructure located on the redevelopment property. The Trust and Development Agreement also establishes roles and responsibilities for the Proposed Project, including the allocation of project costs and risks. The Agreement is a central governing document for the Proposed Project.”

Section 2 of the Application (Summary of Approvals Sought) identifies approval of the disposition of surplus utility property and rights pursuant to section 52 of the *Utilities Commission Act* as one of the approvals sought. The disposition of surplus property is and has always been a central matter of the Application. What was new in the proceeding was the CEC’s argument that the BCUC should deny or condition approval of such disposition on an appropriation of any gain on disposition of the property to subsidize rates.

While we do not object to the CEC now addressing the law applicable to the CEC’s position so long as the sur-reply is helpful to a better understanding of the issues, we believe that the CEC’s sur-reply regarding the law is a vast oversimplification and not helpful.

The properties at issue in this proceeding can be notionally broken down into five components:

- (i) The “unregulated” land at the south end of 720 Beatty Street, which the BCUC has already approved for disposition with no allocation of any gain to ratepayers.
- (ii) 701 Expo Boulevard which is not used for utility purposes.
- (iii) The airspace above the existing plant which is not used for utility purposes and cannot be disposed of except as part of a larger redevelopment and subdivision of the lands.
- (iv) The existing office space, some of which is used for utility purposes.
- (v) The footprint (or “volume”) of the existing steam plant which is used for utility purposes.

With reference to paragraph 34 of Creative Energy Reply Argument (as quoted by the CEC in its sur-reply), the first three components above will be disposed of as part of the Proposed Project and will not be replaced by Creative Energy.

The fourth component above (the existing office space) will be disposed to the Developer, and the Developer will return equivalent new office space to Creative Energy at no cost to Creative Energy or its ratepayers as explained in Creative Energy’s arguments.

A portion of the fifth component above (roughly the space currently occupied by Boilers #1 and #2) will be disposed to the Developer and replaced with SRW space at BC Place. The costs of the SRW space at BC Place will be offset by operating cost savings at Beatty (primarily reduced property taxes and also a reduction in rate base). But most importantly, the Expo Plant is a critical component for completing the Proposed Project at low risk to customers, and the Developer will subsidize the Proposed Project by more than \$38 million at no cost to ratepayers, including an inducement paid by the Developer to ensure an SRW payment that essentially holds ratepayers whole.

This is not a situation where the utility proposes to increase rates in relation to a closely connected sale of property and replacement of it. To the contrary, ratepayers are more than held whole in connection with the disposition of property currently used for utility purposes. The Proposed Project provides substantial benefits to ratepayers with regards to subsidy of utility costs and assumption of risks by the Developer. The Proposed Project is much better for ratepayers than any alternative.

The CEC's position is the same as in the sentence immediately preceding the sentence that it has underlined in its sur-reply: the CEC asks the BCUC to appropriate the sale proceeds of the property (that CEC presumes exist) to subsidize rates, which is not permissible under *Stores Block*.

3) The CEC Did Not Support the In Situ Equipment Replacement Alternative

The CEC says that Creative Energy's Reply Argument mischaracterizes the CEC's position in regards to the criteria that the CEC submitted must be achieved in connection with Creative Energy renewing its ageing steam plant; however, the CEC does not provide any clarification as to how the analysis in section 2.2 of Creative Energy's Reply Argument might differ from the CEC's position. The table on pages 4-5 of the Reply Argument shows how the CEC's criteria align closely to the Alternative, and there is no other alternative capable of meeting the criteria required by CEC. The CEC statement in its sur-reply that its position has been mischaracterised does nothing to assist the BCUC.

For the above reasons, we submit that the CEC's proposed sur-reply does not clarify the CEC's position nor is it helpful to a better understanding of issues in the proceeding. We suggest that the BCUC either (i) deny the CEC's request for leave to have its sur-reply submission placed on the record, or alternatively (ii) place both the CEC's sur-reply and this Creative Energy submission on the record.

Yours very truly,

LAWSON LUNDELL LLP



Ian Webb