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Utilities Commission

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July 25, 2019

Sent via email/eFile

CREATIVE ENERGY BEATTY/EXPO PLANTS CPCN AND REORGANIZATION EXHIBIT A-33

Mr. Rob Gorter
President and CEO
Creative Energy Vancouver Platforms Inc.
Suite 1 - 720 Beatty Street
Vancouver, BC V6B 2M1
rob@creative.energy; info@creative.energy

Re: Creative Energy Vancouver Platforms Inc. – Application for Certificate of Public Convenience and Necessity for the Expo–Beatty Plants and Reorganization – Project Number 1598962 – Information Request No. 2 on the Specified Scope

Dear Mr. Gorter:

Further to your April 26, 2019 revised filing of the above-noted application, enclosed please find British Columbia Utilities Commission Information Request No. 2 on the specified scope. In accordance with the regulatory timetable established by Order G-159-19, please file your responses on or before Thursday, August 15, 2019.

Sincerely,

Original signed by:

Patrick Wruck
Commission Secretary

/aci
Enclosure

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Creative Energy Vancouver Platforms Inc.
Application for a Certificate of Public Convenience and Necessity for
the Expo and Beatty Plant Project and Approvals Related to Reorganization

INFORMATION REQUEST NO. 2 ON THE SPECIFIED SCOPE
TO CREATIVE ENERGY VANCOUCER PLATFORMS INC.

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A. ADDITIONAL FINANCIAL SECURITY

1.0 Reference: ADDITIONAL FINANCIAL SECURITY
Exhibit B-24, British Columbia Utilities Commission (BCUC) IR 3.4
Consent of Surety (Agreement to Bond)

In response to BCUC IR 3.4, Creative Energy Vancouver Platforms Inc. (Creative Energy) states:

> Evidence and acceptability of the performance bond are requirements of the Amended and Restated TDA. If the BCUC wishes to receive a copy of this information, Creative Energy is amenable to providing it for reporting purposes.

1.1 Is Creative Energy prepared to provide a "Consent of Surety" (Agreement to Bond) stating the ability to provide 50 percent performance bond in the event that a Certificate of Public Convenience and Necessity (CPCN) is granted, subject to the condition that such a consent is provided?

1.1.1 If so, what surety company will Creative Energy's broker be utilizing to provide the bond?

2.0 Reference: ADDITIONAL FINANCIAL SECURITY
Exhibit B-24, BCUC IR 4.2; Exhibit B-25, Commercial Energy Consumers Association of British Columbia (CEC) IR 9.4, 9.9; Security Association of Canada, Contract Surety; Exhibit B-23, Appendix 3
Amount of Additional Financial Security

In response to BCUC IR 4.2, Creative Energy states:

> Default would occur if the Developer becomes insolvent, <u>fails to pay costs in relation to the Beatty Plant that are the Developer's responsibility</u> under the TDA, or otherwise fails to complete the Beatty Plant in accordance with the TDA. [*Emphasis Added*]

In response to CEC IR 9.4, Creative Energy states:

> Creative Energy would draw on the performance bond to settle any accounts payable
>
> owing by the Developer to contractors and suppliers to the Proposed Project before any material litigation costs would arise in respect of those accounts payable. [*Emphasis Added*]

In response to CEC IR 9.9, Creative Energy states:

> A performance bond is the most relevant type of construction bond to fulfill the BCUC Panel's requirement for additional financial security. It protects Creative Energy not only in the event of the Developer's non-payment to contractors and suppliers but also in event of failure to deliver the project in accordance to the terms and conditions of the Trust and Development Agreement (TDA) (e.g., failure to deliver the required scope). [*Emphasis Added*]

Surety Association of Canada provides the following information regarding performance bonds and labor and material bonds[1]:

> A performance bond is a bond that guarantees that the bonded contractor will perform its obligations under the contract in accordance with the contract's terms and conditions.
>
> A labour and material payment bond guarantees that the bonded contractor will pay all claimants for goods and/or services supplied for the bonded project. [*Emphasis Added*]

2.1 Please confirm, or explain otherwise, that additional financial security presented in Appendix 3 of the Exhibit B-23, is both 50 percent performance bond and 50 percent labor and material bond.

2.1.1 If not confirmed, in your explanation, please discuss why Creative Energy considers that the proposed financial security provides protection in the event of the Developer's non-payment to contractors and suppliers.

B. CONTINGENCY PLAN

3.0 Reference: CONTINGENCY PLAN
Exhibit B-23, Attachment 5-1, p. 16; Exhibit B-24, BCUC IR 7.5
TES Group Recent Rental Boiler Experience

In response to BCUC IR 7.5, Creative Energy states:

> Creative Energy is the party responsible for implementing the Contingency Plan. However, the TES Group will develop, coordinate and implement (if needed) the Contingency Plan on behalf of Creative Energy, and the Developer is responsible for the costs of developing and implementing (if needed) the Contingency Plan. [Emphasis added]

Page 16 of Appendix 5-1 of Exhibit B-23 provides an overview of the TES Group's recent rental boiler experience:

[1] https://www.surety-canada.com/en/surety_resources/contract-surety/index.html

- **Cariboo Pulp & Paper – Quesnel, BC**
  - 2018 – 3-month Rental Boiler Installation
  - Design & installation of rental boiler tie ins
  - Sourcing & selection of 1 X 75,000 pph, 395 psi trailer mounted rental boiler
  - Shipping, setting, assembly and commissioning of rental boiler

- **Imperial Oil Strathcona Refinery – Edmonton, AB**
  - 2019 – Rental Boiler Study
  - Sourcing & selection of 2 X 75,000 pph, 750 psig S/H trailer mounted rental boilers
  - Code Compliance evaluation of rental boilers for Canadian industrial installation (ABSA, CRN, CSA acceptance)

3.1 Please provide examples of the TES Group's experience in developing, coordinating and implementing temporary rental steam boilers. In your response please include:

- Description of the project(s) inclusive of the number of boilers and capacities;
- The manner in which TES Group established the need for rental boilers;
- A description of rental boiler(s) supplier(s) and location(s) for the examples chosen;
- How the rental boiler lead-time(s) from order to delivery and commissioning was determined;
- Whether the boilers were used and the duration for which the temporary boilers were in use; and
- The role(s) of TES Group, for example, developing the project, coordinating and implementing the project, managing the project, etc.

3.1.1 For each example, please discuss the lessons learned and how they have been applied to the proposed Contingency Plan.

4.0 Reference: CONTINGENCY PLAN
Exhibit B-24, BCUC IR 8.5, 10.1, 19.3
Beatty Plant Shutdowns

In response to BCUC IR 8.5, Creative Energy states:

> The intention is to make a decision by July 1 of each year, which is 2.5 months in advance of each respective Beatty Plant restart date, as to whether there is any real chance that temporary boiler capacity is going to be needed and what the duration of the need will be. This informs how many temporary boilers might be needed and the length of the rental.

4.1 In the event that a decision is made on July 1st of 2021 and 2022, stating that temporary boilers are not required and the restart of the Beatty Plant fails, please explain Creative Energy's proposed plan for providing service to its customers.

In response to BCUC IR 19.3, Creative Energy provides a description of the work required during each shutdown.

4.2 Please detail the work to be completed between July 1, 2021 and the first restart of the Beatty Plant.

4.2.1 Please discuss the risks and the proposed mitigation if the work is not completed on

time or faces issues, and Creative Energy decides on July 1, 2021 not to install temporary rental boilers.

In response to BCUC IR 10.1, Creative Energy states:

> For clarity, the intention is to build the three-level parkade structure on 701 Expo at roughly the same time as the Expo Plant, and use that to house the fuel storage tanks and temporary boilers (if needed).

4.3 Please confirm, or otherwise explain, whether the 2.5-month lead-time for the temporary rental boilers assumes that the temporary rental boilers are to be located in the parkade.

4.4 Please discuss whether the design of the parkade will allow for access of the temporary boilers.

4.4.1 If the temporary rental boilers face access restrictions to the parkade, please explain whether there is an alternative location available to Creative Energy to locate the temporary boilers.

5.0 Reference: CONTINGENCY PLAN
Exhibit B-24, BCUC IR 17.5; Exhibit B-25, CEC IR 12.3
Temporary Boilers On-site for Beatty Plant Restart

In response to BCUC IR 17.5, Creative Energy states:

> Temporary boilers were not part of the base project specification or cost, and were always considered part of contingency. <u>The Developer is responsible for these costs, should they be required</u>…
>
> The estimated cost of having temporary boilers on site for the entire 53 month construction period is $13.5 million. Creative Energy reiterates that it is neither necessary nor cost effective to incur such cost.
>
> <u>Requiring temporary boilers on site for the entire construction period would be a fundamental change to the TDA, warranting reconsideration by the parties of the existing mechanisms in the TDA that minimise and allocate risks</u> (e.g., financing restrictions, insurance, indemnities, performance bond, project sequencing, etc.). Moreover, having temporary boilers on site for the entire construction period would reduce risks that exist now and are presently borne by customers, and therefore <u>it would be appropriate to consider whether a portion or all of the costs of such temporary boiler project should be recovered from customers in rates</u>. [Emphasis added]

In response to CEC's IR 12.3, Creative Energy provides the cost of having rental boilers on site for three scenarios:

Cost for a single shutdown (assume on-site for 8 months)	$1,750,000
Cost for two shutdowns (assume on-site for 18 months)	$4,250,000
Cost for entire 53 month construction period	$13,525,000

5.1 In the event that a CPCN is granted subject to the condition that temporary rental boilers are on-site and commissioned for one or more of the Beatty Plant restarts, please explain whether Creative Energy would continue with the Proposed Project.

5.2 In the event that a CPCN is granted subject to the condition that temporary rental boilers are on-site and commissioned for the two Beatty Plant restarts, please explain whether Creative Energy and the parties would consider it to be a "fundamental change to the TDA", warranting a

reconsideration of the existing mechanisms in the TDA.

5.3 In the event that a CPCN is granted, subject to the condition that temporary rental boilers are on-site and commissioned for the two Beatty Plant restarts, please confirm, or otherwise explain, that the Developer will be responsible for all of the costs of the Contingency Plan.

5.3.1 If not confirmed, please explain and provide rationale whether Creative Energy would seek to recover a portion or all of the costs of the Contingency Plan from customers in rates.

C. OTHER

6.0 Reference: OTHER
Exhibit B-24, BCUC IR 21.1; Exhibit B-25, CEC IR 9.3, 9.4
Developer's indemnities

In response to BCUC IR 21.1 pertaining to Risks #17 and #25[2] previously identified by Creative Energy, the Company states, "… in the event of any breach, including a delay in payments by the Developer or insolvency of either the Developer or Westbank Holdings, Creative Energy has a claim against the assets of both of them…" [*Emphasis Added*]

In response to CEC IR 9.3, Creative Energy states:

> If the intent of this IR is to request Creative Energy's opinion on the likelihood that the Developer's accounts payable in relation to the Proposed Project could exceed $10 million, Creative Energy is of the view that that is not a plausible scenario. Construction of the Beatty Plant will occur over approximately two years at a total budgeted cost of $18.3 million. Accumulating $10 million in accounts payable in relation to the Beatty Plant project would mean that the Developer has, for example, paid none of its bills for materials and contractors for perhaps a year or more while work continues notwithstanding such non-payment. It is challenging to envision a scenario where suppliers and contractors continue working on the project for a year without payment. [*Emphasis Added*]

In response to CEC IR 9.4, Creative Energy states:

> Creative Energy would draw on the performance bond to settle any accounts payable owing by the Developer to contractors and suppliers to the Proposed Project before any material litigation costs would arise in respect of those accounts payable. [*Emphasis Added*]

6.1 Please confirm, or explain otherwise, that the statements in the preamble above mean, in the event of a "lack of funding or delay in payments" from the Developer, that Creative Energy would allow the Developer's accounts payable in relation to the Beatty Plant for materials and contractors to accumulate (i.e. Creative Energy would not pay, temporarily or otherwise, the Developer's accounts payable in order to allow the construction of the Beatty Plant to continue).

6.1.1 If not confirmed, please describe in detail Creative Energy's plans to pay (temporarily or otherwise) the Developer's accounts payable in order to allow the construction of the Beatty Plant to continue, including the following:

- The maximum amount which Creative Energy would be prepared to pay;

[2] For clarity, Risk #17 is described as "Funding issues – lack of funding or delay in payments" and Risk#25 is described as "Counterparty risk – i.e. WB insolvent."

- The source of Creative Energy's funding (e.g. cash on-hand, short-term investments, other);
- The expected operational or financial impact on Creative Energy's existing steam business, if any, arising from payment of the Developer's accounts payable (e.g. delay in payments of Creative Energy's own, existing steam business accounts payable);
- The amount of time (i.e. the number of months) the work on the Beatty Plant project would be able to continue, up to the maximum amount of which Creative Energy would be prepared to pay; and
- Whether or not Creative Energy's willingness to pay the Developer's accounts payable would be limited to being temporary in nature (i.e. Creative Energy would not be waiving the Developer's responsibility to pay pursuant to the Trust and Development Agreement but seek to subsequently recover the amounts paid from the Developer in some manner).

6.2 Please provide a detailed explanation of when (e.g. after a certain amount of time or after a certain dollar amount) Creative Energy would initiate:

- Claim against the assets of the Developer or Westbank Holdings (i.e. take legal action) or;
- Draw on the performance bond.

6.3 Please provide details of the threshold timing or dollar amount, including how (on what basis) it is or would be set by Creative Energy. If the response is dependent on Creative Energy's plans to pay (temporarily or otherwise) the Developer's accounts payable, please provide a detailed response to all scenarios.