

13 September 2019

Via E-filing

Mr. Patrick Wruck  
 Commission Secretary  
 BC Utilities Commission  
 Suite 410, 900 Howe Street  
 Vancouver, BC V6Z 2N3

Dear Mr. Wruck:

**Re: British Columbia Utilities Commission (BCUC, Commission)  
 Creative Energy Vancouver Platforms Inc. (Creative Energy)  
 Application for a Certificate of Public Convenience and Necessity (CPCN) to Acquire  
 and Operate a Thermal Energy System (TES) for Cooling at the Vancouver House  
 Development (Application)**

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Creative Energy writes in reply to Commission Order G-222-19, at Exhibit A-2 in the above noted proceeding, with a request, respectfully, for the Commission to reconsider the process and timing for review of the Application.

By way of background, and as summarized in section 1.2 of the Application, Creative Energy is of the view that the scale and circumstances of the Cooling TES provide the Commission with the necessary discretion to review and approve this Application without a public hearing, and that if clarification or further understanding or evidence is required, communications between BCUC staff and Creative Energy could be pursued to support the Commission's review and approval. Creative Energy indicated that it plans to submit a rates application in September for interim approval of cooling service rates, anticipating occupancy at the Vancouver House Development by November 2019 and CPCN approval also by that time.

By Order G-222-19 the Commission Panel established a public hearing into the Application under the following timetable:

Creative Energy Publishes Notice of Application	Thursday, September 26
Intervener Registration	Thursday, October 10
BCUC Information Request (IR) No. 1	Thursday, October 10
Intervener IR No. 1	Thursday, October 24
Creative Energy Responses to BCUC IR No. 1	Thursday, October 24

Creative Energy Responses to Intervener IR No. 1	Thursday, November 7
Further Process	To be determined

Creative Energy observes that the timetable could support a decision by December at the very earliest, noting however that the timetable contemplates the possibility of further process that would push a decision into 2020. The established regulatory timetable for consideration of CPCN approval would make interim approval of cooling service rates by November 2019 extremely challenging.

In its reasons in support of the established process the Panel noted that:

“... whilst at present the Developer is the only customer, the Developer intends to transfer Building 2 to a Strata Corporation and Buildings 1, 3 and 4 will be for commercial use where there will likely be commercial tenants. The Panel therefore finds that an opportunity for affected parties to participate in the hearing is required and additional evidence is needed in order for it to make its determination on the Application, therefore, additional process is warranted.”

Creative Energy acknowledges the Panel’s conclusion that additional evidence is needed for it to make its determination on the Application. However, Creative Energy respectfully submits that a public hearing process with the opportunity for commercial tenants of the developer, strata corporation, and strata unit owners to participate is not necessary and that the Panel’s reasons in support run counter to the Commission’s March 2, 2015 Decision, issued under Order G-27-15, putting into effect the Thermal Energy Systems Regulatory Framework Guidelines at Appendix A to that Order (**Decision**).

In section 2.0 of that Decision, for example, the Commission considered arguments related to the scenario where a TES utility has a strata corporation as a customer. There were arguments made in that proceeding that where the Developer chooses to enter into an agreement with a TES utility based on the Developer’s own objectives, the future strata corporation (which is not yet formed when the Developer enters into such agreement with the TES utility) and the future strata unit owners (which in many cases have not yet purchased the strata unit) need to be protected under the *Utilities Commission Act* particularly since the strata corporation and the strata unit owners would not have been party to the Developer’s agreement with the TES utility. The Commission did not accept that argument because the existence of the agreement with the TES utility must be disclosed to future strata unit owners, and the strata corporation has recourse to the protection afforded by the *Real Estate Development Marketing Act* (REDMA). Any agreement that a strata owner/developer enters into is subject to the disclosure requirements of REDMA.

The Commission made the following determination (Decision, pp. 4-5):

“It has been the case with most greenfield TES applications brought before the Commission to date that the agreements with the TES utility are entered into by the

developer on behalf of the Strata Corporation. In the Panel's view, this does not necessarily imply that there is no alignment of interest between the developer and the Strata Corporation. For the units to remain competitive, the developer must agree to rates that will ultimately be acceptable to the purchasers of the strata units. Similarly, any contribution provided to the TES utility that is recovered from the selling price of the units can only be recovered if the developer ensures that the selling price of the units remain competitive. It is precisely because of this competitive aspect that additional protection of rate regulation is not required."

The Commission determined that there is no evidence that a strata corporation and strata unit owners that will be assuming responsibility for the TES agreement entered into by the developer require any additional protection beyond that afforded by the REDMA and the *Strata Property Act*.

Creative Energy agrees with the conclusions of the Commission in the Decision under Order G-27-15 as they emphasize the associated guiding principles of the Alternative Energy Services (AES) Inquiry Report that seek to properly balance regulatory efficiency with ratepayer protection. Creative Energy believes that all prospective tenants of the Developer and the prospective strata corporation and strata unit owners were (or will be prior to entering into a lease or purchase agreement as applicable) duly informed of the provision of cooling services through a district energy utility and are thereby properly protected and do not need to be informed of the Application.

The relevant disclosure is provided in section 7.2 of our Application, which sets out specifically that the utility provider may be Creative Energy, which is regulated by the BCUC and an entity related to the Developer. Providing notice of the Application for a CPCN for the Cooling TES to known and prospective tenants and strata unit owners that have chosen to purchase under such disclosure is therefore unnecessary, and doing so will likely confuse and frustrate regulatory efficiency, in counter to the reasons and principles summarized above. These parties will be confused because the disclosure previously provided to them stated that their units will have cooling services. Further, the disclosure sets out that the associated rates and service agreements of the district energy utility will be regulated by the Commission, emphasizing further that the cooling services will be provided and underscoring the protection offered.

In summary, the Application at issue is limited to a request for a CPCN for CEV to acquire and operate the Cooling TES with the benefits of doing so set out in the Application. It has been disclosed to prospective tenants and strata unit purchasers that their unit will have cooling provided by a district energy utility, and that the utility provider may be Creative Energy, which is regulated by the BCUC and an entity related to the Developer. Prospective tenants and strata unit purchasers have that information in making their decision to lease/purchase. No further notice nor public hearing process is warranted in respect of this request for a CPCN.

For these reasons, Creative Energy continues to maintain that a streamlined review without a public hearing would be appropriate, while still allowing for additional evidence to be gathered

by Commission staff as necessary. Creative Energy therefore respectfully requests that the Commission reconsider Order G-222-19 in this regard, and upon its variance Creative Energy would commit to provide the Commission with the additional evidence it requires on a timely basis to support a Commission Order approving the Application before the end of October 2019. A decision on that timeline, even if reasons were to follow at a later date, would also support and facilitate Creative Energy's plan to seek interim approval of rates prior to building occupancy in November, 2019.

All of which is respectfully submitted.

Sincerely,

A handwritten signature in black ink, appearing to be 'R. Gorter', with a long horizontal flourish extending to the right.

Rob Gorter  
Director, Regulatory Affairs and Customer Relations