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Creative Energy Vancouver Platforms Inc.

Application for Certificate of Public Convenience and Necessity for the Expo–Beatty Plants and Reorganization

Decision and Order C-1-20

March 5, 2020

Before:
Dennis Cote, Panel Chair
D. J. Enns, Commissioner
M. Kresivo, QC, Commissioner

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1.0 Introduction

1.1 Background

On June 29, 2018, Creative Energy Vancouver Platforms Inc. (Creative Energy or Company) filed an application with the British Columbia Utilities Commission (BCUC) for a Certificate of Public Convenience and Necessity (CPCN) to construct and operate new and renovated steam plant works and related facilities at Creative Energy's existing site at 720 Beatty Street in Vancouver and at an adjacent site within BC Place Stadium (Proposed Project), approval of its proposed Corporate Reorganization and additional approvals related to the Proposed Project (Application). On February 19, 2019, after due process, the BCUC issued its Decision with accompanying Order G-38-19 (February 2019 Decision). The BCUC Panel determined that moving forward with the Proposed Project, as outlined in the Application, did not represent a reasonable exchange for the utility and its customers and, as filed, was not in the public interest.¹

In its Decision, the BCUC considered the merits of the Proposed Project and acknowledged it had some positive attributes, but these were offset by a number of attributes and issues arising within the proceeding that upon examination made the Proposed Project less attractive. These resulted in the Application being rejected in its original form. However, the Panel invited Creative Energy to file a revised application for the CPCN and outlined a number of changes or explanations it would require before considering approval of the Proposed Project and other elements of the Application. Specifically, the Panel stated that approval of the requested CPCN would require Panel approval of the following changes and explanations:

1. Changes and Explanations related to the Trust and Development Agreement:
 - i. Elimination of clauses dealing with the potential secondary capital expenditures related to increases in capacity;
 - ii. Provision of additional financial security such as performance or construction bond for an appropriate amount and duration; and
 - iii. Creative Energy to provide an explanation in response to the Panel's concerns with respect to whether the 80.4 percent baseline efficiency as claimed by Creative Energy is accurate as 25 percent of the fuel savings from the Clear Sky economizer accrue to the Company. In the event this cannot be adequately explained, Creative Energy is required to outline what it is prepared to do to ensure the predicted fuel savings are achieved.
2. Other Requirements:
 - i. Development of a comprehensive Contingency Plan to deal with identified issues;
 - ii. Confirmation that Ellis Don and WSP have been or will be engaged to take on the Proposed Project. In the event an agreement with either of them cannot be reached, the Panel will make any CPCN subject to Creative Energy confirming the selection of a General Contractor and Design Engineering Company with the requisite experience that is acceptable to the BCUC;
 - iii. Completion and submission of a Preliminary Project Schedule and within 60 days of engaging the General Contractor, a detailed Project Schedule outlining the construction and operation schedule, including critical dates of key events, a chart of major activities showing the critical path (e.g. GANTT chart), and the timing of approvals required from other agencies;
 - iv. Removal of land from the Deferral Account proposal; and

¹ Order G-38-19 and Decision, p. 54

- v. Filing of an executed B.C. Pavilion Corporation (PavCo) Statutory Right of Way (SRW) Agreement with a 5-year notice provision.

In addition, because of the complexities related to the Proposed Project and the potential impacts if problems were to occur, the Panel found it would be appropriate to apply a reporting regimen in this instance. Accordingly, the Panel signaled that Creative Energy would be required to adhere to a schedule of reporting on various aspects of the Proposed Project implementation process with details to be provided if and when the CPCN is approved.²

1.2 Approvals Sought

On April 26, 2019, Creative Energy filed revisions to the Application for a CPCN for Beatty-Expo Plants and Approval of Corporate Reorganization (Revisions to the Application), in response to BCUC February 2019 Decision.

In its Revisions to the Application, Creative Energy seeks the following approvals:

- Pursuant to sections 45 and 46 of the *Utilities Commission Act* (UCA), a CPCN for the construction and operation of the following components of the Proposed Project at an estimated total capital cost of \$53.1 million:
 - the Expo Plant, including facilities to interconnect steam, condensate and fuel oil services between the Expo and Beatty Plants; and
 - the Beatty Plant renovation.

Given that Creative Energy's portion of the total project cost is limited to \$15 million, Creative Energy proposes that the BCUC include a condition on its CPCN approval that Creative Energy's rate base shall increase by \$15 million as a result of the Proposed Project. This is subject to adjustments as approved by the BCUC for additional costs (inclusion in rate base) in connection with, (i) any change orders requested by Creative Energy, or (ii) project delays caused by Creative Energy, subject to prudence review. As explained in the Application, Creative Energy will, in a future application, request approval of rates to enable Creative Energy to recover its costs for the Proposed Project.³

Further, Creative Energy seeks the following approvals:

- Pursuant to sections 56 and 60 of the UCA, approval to establish a regulatory deferral account to record the undepreciated net book value of the Creative Energy assets that are to be retired as part of the Proposed Project, excluding land; and
- Pursuant to sections 60 and 61 of the UCA, approval of a new long-term customer service agreement between PavCo and Creative Energy for heating service to the BC Place Stadium.

In addition, Creative Energy seeks approval of the following steps related to a corporate reorganization involving Creative Energy:

- Amalgamation involving a public utility requiring BCUC endorsement and the Lieutenant Governor in Council (LGIC) consent pursuant to section 53 of the UCA;
- Corporate structure changes requiring BCUC approval, including:
 - Repurchase and issuance of shares in a public utility, pursuant to section 50 of the UCA;

² Order G-38-19 and Decision, pp. 54-57.

³ Exhibit B-23, Section 2.

- Disposition of shares or other property of a public utility, other than in the normal course of business, pursuant to section 52 of the UCA;
- Transfer of shares in a public utility that results in a person acquiring a viewable interest in the public utility, pursuant to section 54 of the UCA; and
- Disposition of Creative Energy’s interest in “Trust Property” (as defined in the Application, the Trust Property is the interest in the lands, spaces and improvements on 720 Beatty Street and 701 Expo Boulevard, Vancouver, including all development rights that are surplus to the requirements of the utility), pursuant to section 52 of the UCA.⁴

1.3 Regulatory Process

The initial regulatory process was established by Order G-128-18 dated July 13, 2018, and included a workshop, one round of Information Requests (IR) with further process to be determined.

The following parties registered to participate as interveners in the proceeding:

1. BC Pavilion Corporation (PavCo);
2. Commercial Energy Consumers Association of British Columbia (CEC);
3. FortisBC Alternative Energy Services Inc. (FAES); and
4. FortisBC Energy Inc. (FEI).

The following persons and organizations registered as interested parties:

1. Mr. James Lee;
2. The City of Vancouver (City); and
3. Emanate Energy Solutions Inc.

While the proceeding was underway, the Panel engaged Grover, Elliott & Co. Ltd. as an independent appraiser to conduct a valuation of the land associated with the Application and to provide an expert report to the Panel. The regulatory process continued with filing of the Land Value Assessment Report by Grover, Elliott & Co. Ltd, a second round of IRs, one round of IRs to Grover, Elliott & Co. Ltd., one round of Panel IRs as well as written final and reply arguments. Following Creative Energy’s filing of its Reply Argument on December 10, 2018, the CEC submitted a request to file a sur-reply. The BCUC requested Creative Energy to make submissions with regard to CEC’s sur-reply request and invited CEC to provide a reply argument. After review of the filed submissions, the Panel determined that both CEC sur-reply submission and Creative Energy’s submission regarding the CEC’s request were to be added to the evidentiary record.

On February 19, 2019, the BCUC issued its February 2019 Decision, with the following determinations:

- Creative Energy’s Application was not approved at that time;
- Creative Energy was invited to file a revised application addressing the Panel's concerns, within one year from the date of the Decision, failing which the Application would be dismissed. The Panel specified the changes and explanations required for the BCUC approval of the requested CPCN; and
- As the CPCN related approvals have not been granted and given that Creative Energy request is for all approvals in the Application to be considered as whole, the Panel did not consider the proposed Corporate Reorganization. If Creative Energy addresses the specified changes and explanations required

⁴ Exhibit B-23, pp. 9, 100–102; Appendix O.

for the approval of the requested CPCN, the Panel will rule on the proposed corporate reorganization at that time.

Following filing of the Revisions to the Application, the BCUC determined it appropriate to proceed with the review of the Revisions in accordance with the regulatory timetable as outlined by the Order G-107-19. In addition, the BCUC determined that the scope for the further review process will be limited to those required changes and explanations specified within its February 2019 Decision. These are detailed within Section 1.1.

As stipulated by Order G-107-19, review of the Revisions to the Application included BCUC and Intervener IR No. 1 on the Scope, Creative Energy Response to IR No. 1 on the Specified Scope, with further process to be determined.

By Order G-159-19 dated October 12, 2019, the BCUC established a further regulatory timetable for the review of the Revisions, including BCUC and Intervener IR No. 2 on the Specified Scope, Creative Energy response to IR No. 2 on the Specified Scope, Creative Energy and Intervener Final Argument, and Creative Energy Reply Argument.

Subsequent to filing of Final and Reply Arguments, the BCUC issued Panel IRs to Creative Energy seeking further clarification on a number of issues.

On October 15, 2019, Pacific Centre Limited (PCL) submitted a letter with respect to Creative Energy's Application and PCL B.C. Supreme Court proceeding (S-197775, Vancouver Registry) against Creative Energy, Westbank Projects Corp. (Westbank or Developer), Emanate Energy Solutions Inc. and John Doe Partnership (the Partnership) (the Court Proceeding), requesting, on behalf of its client PCL, that the BCUC grant permission for PCL to apply for reconsideration of the February 2019 Decision.

By letter dated October 17, 2019, the BCUC requested that PCL particularize the grounds for the reconsideration. The BCUC also requested Creative Energy and registered interveners provide written submissions in response to PCL's filing, and PCL provide its reply submission.

On October 24, PCL filed its submission, a request for relief, requesting, i) PCL be given permission to pursue a reconsideration of the February 2019 Decision, and ii) a stay or suspension of further steps in the review of the Application;

On October 30, 2019 and October 31, 2019, respectively, Creative Energy and the CEC filed their submissions in response to PCL's filing, and PCL filed its reply response on November 7, 2019. By order G-332-19 dated December 18, 2019, the BCUC denied PCL's application for reconsideration and request to suspend the review of the Application.

On December 23, 2019, the BCUC issued Panel IR No. 2 on the Specified Scope to Creative Energy, seeking further clarifications on several issues. In addition, registered interveners were invited to file submissions on Creative Energy's responses to the Panel IR No. 2, and Creative Energy to file rebuttal submissions, if any. On January 14, 2020, CEC filed a letter stating it has no comments on the Creative Energy's Responses to the Panel IR No. 2.

1.4 Legislative Requirements

Detailed information about the applicable sections of the UCA is presented in Appendix A.

2.0 Requirements for Changes and Explanations in the February 2019 Decision

As outlined in Section 1.1, approval of the requested CPCN is contingent upon the Panel's acceptance of required explanations and changes as outlined in its February 2019 Decision. These are examined in the following sections.

2.1 Changes and Explanations Related to Trust and Development Agreement

2.1.1 Clauses Dealing with Potential Secondary Capital Expenditures

Within the February 2019 Decision, the Panel raised concerns with respect to Creative Energy's proposal to include within the Trust and Development Agreement (TDA) a requirement for additional payments to be made by Creative Energy in the event of increased aggregate steam output in excess of agreed upon amounts. Specifically, a payment of \$70,000 per MW (to a maximum of \$525,000) would be made by Creative Energy if there was an increase to the aggregate steam output of the new plant above 139 MWs within 20 years of the service commencement date. The Panel found that the addition of a further capital expenditure in the event there was an increase capacity at the Beatty Plant was not in the public interest. The February 2019 Decision required Creative Energy to remove clauses within the TDA concerning secondary capital expenditures related to increases in capacity.⁵

Creative Energy has confirmed that such clauses have been removed from the TDA and potential secondary capital expenditures have been removed from the revised approvals sought. Creative Energy has provided an Amended and Restated TDA reflecting these changes.⁶

Panel Determination

Creative Energy has removed the clauses related to potential secondary capital expenditures as requested. The Panel finds the removal of said clauses to be acceptable, thereby satisfying the stated requirements.

2.1.2 Provision of Additional Financial Security Such as a Performance or Construction Bond

A further concern of the Panel was with the indemnification of Creative Energy under the TDA. While the Developer is required to indemnify Creative Energy under the TDA, the Panel pointed out that the issue with any such agreement is whether or how it can be relied upon. It was acknowledged that a comfort letter as proposed by the Developer⁷ would be helpful but it would still leave Creative Energy with considerable risk it would not have "operating as a utility or developing its own site." Because of this, the Panel considered the comfort letter inadequate to deal with the potential risk faced by Creative Energy and found that a performance or construction bond would provide the appropriate financial assurance.⁸

As filed in the Revisions to the Application, the parties to the TDA have agreed to the Panel's condition and have added the requirement for additional financial security to be provided by the Developer into the Amended and Restated TDA. The clauses added are as follows:

PERFORMANCE BOND

- a) The Developer (a) will neither commence the demolition of the exterior walls, foundation or roof of the building within which the Existing Plant is situate nor shutdown the

⁵ Order G-38-19 and Decision, pp. 50-52.

⁶ Exhibit B-23, Appendix 2, p.1.

⁷ As defined in Exhibit B-23, Appendix 2-1, Amended and Restated TDA, p.8

⁸Order G-38-19 and Decision, p. 50.

Existing Plant until it has obtained a performance bond from a licensed surety company in respect of the Developer's obligations under this Agreement in an amount equal to 50% of the cost of the construction of the New Plant (estimated at \$20,000,000), to a maximum of \$10,000,000, and will maintain such performance bond until the earlier of (a) the Stabilization Date and (b) the date legal title to the Lands is transferred to the Nominee pursuant to Section 6.7. Notwithstanding the foregoing, the Developer will be permitted to remove or demolish equipment or improvements on the Lands in accordance with the provisions of this Agreement prior to obtaining a performance bond in accordance with the provisions of this Section 9.4, so long as any such removal or demolition does not impact the exterior walls, foundation or roof of the building within which the Existing Plant is situate or require a shutdown of the Existing Plant.

b) If the Developer fails to maintain the performance bond as required in this Section 9.4, then, without limiting any rights or remedies available to Creative Vancouver, the Developer shall have 15 days after notice in writing thereof is delivered by Creative Vancouver to the Developer to cure any deficiency in maintaining the performance bond, failing which, Creative Vancouver shall have the right, exercisable on 10 Business Days' notice, to require the transfer of legal title to the Lands to the Nominee pursuant to Section 6.7. For greater certainty, the Nominee will be required to transfer the legal title to the Airspace Parcels to Creative Vancouver pursuant to Section 7.2(e). During any period where the Developer fails to maintain the performance bond as required in this Section 9.4, and until such default is cured or legal title to the Lands is transferred to the Nominee pursuant to Section 6.7, Creative Vancouver may require that the Developer suspend all construction activities on the Lands.⁹

As outlined in the preceding clauses, the additional financial security will be in place for a period commencing with either the shutdown of the Beatty Plant or the commencement of demolition of exterior walls, the foundation or the roof of the existing building. It will be in place until either the transfer of legal title of the lands or the Stabilization Date,¹⁰ whichever is earlier. Creative Energy notes that construction of the Expo Plant poses no risk to the existing Beatty Street utility or its operations and therefore, there is no need for additional financial security. This is because the Developer is responsible for all costs related to the Expo Plant until completed and Creative Energy makes no instalment on the project until service commencement.

Legal title to the lands passes following Stabilization Date (following completion of the Proposed Project) and no further indemnities are required for risks arising from Creative Energy holding title to the lands. Moreover, Creative Energy notes that following the Stabilization Date the value of the lands and accumulated assets associated with the remainder of the development provide adequate security.¹¹

With respect to the financial security amount Creative Energy states that the total value of the work on the Beatty Plant (including contingency and overhead but excluding demolition, civil work and building modifications and financing costs) is \$18.3 million which has been rounded to \$20 million in the Amended and Restated TDA. Creative Energy was questioned about the noted exclusions as to whether it may have warranted consideration in setting the appropriate amount of financial security. The Company stated, "it is not reasonable or appropriate for Creative Energy to demand financial security from the Developer in relation to the costs of the Developer's project" and a performance bond does not normally cover financing costs during construction. However, Creative Energy also pointed out that rounding the amount of the bond to \$20 million effectively allows for an additional 10 percent contingency over and above the project contingency.¹² Creative Energy states that Marsh Canada Ltd. (Marsh) has been retained as their surety broker. The Beatty Plant part of the project is planned to be built over 21 months and according to Creative Energy, at any given point in time the outstanding accounts

⁹ Exhibit B-23, Appendix 2, Amended and Restated TDA, p. 38.

¹⁰ As defined in Exhibit B-23, Appendix 2-1, Amended and Restated TDA, p.12.

¹¹ Exhibit B-23, Appendix 3, p. 4; Exhibit B-24, BCUC IR 2.1.

¹² Ibid, Appendix 3, p. 5-6; Exhibit B-5, BCUC IR 37.17; Exhibit B-24, BCUC 2.2.

payable would not exceed \$10 million which is the maximum coverage. Creative Energy states that a 50 percent performance bond is the most common form of security for construction projects and the cost is approximately \$400,000 for the first year and an additional \$50,000 per year extension. The total estimated cost is expected to be around \$500,000. Creative Energy states that requiring additional financial security or a longer duration “would be unnecessary and wasteful given the risk mitigation and other security already provided pursuant to the Trust and Development Agreement.”¹³

Creative Energy states that a Consent of Surety or Agreement to Bond is not required at the contract tendering stage and is not required given Article 9.4 of the Amended and Restated TDA. This requires the Developer to demonstrate an actual bond is in place prior to significant work being undertaken at the Beatty Plant. However, if the BCUC were to consider there to be a need for such assurance, it suggests approval be conditioned as follows:

Demolition of the exterior walls, foundation or roof of the building within which the Existing Plant is situate shall not commence nor shall the Existing Plant be shutdown until the performance bond required in accordance with Article 9.4 of the TDA has been obtained and provided to the Commission.¹⁴

Position of the Parties

The CEC states that it has reviewed the evidence and has no issue with the amount of the performance bond and is satisfied with the duration. Concerning the costs associated with the performance bond, the CEC states “it is neither necessary nor appropriate for the Commission to provide significant consideration to the costs of the Developer.” The BCUC’s primary role is to consider impact on the ratepayers, the utility and conservation, and availability of safe, secure reliable energy. The CEC recommends that the BCUC condition any approval of the Proposed Project on the inclusion of a performance bond.¹⁵

Panel Determination

Creative Energy has confirmed that it will file a performance bond in accordance with conditions outlined in the BCUC February 2019 Decision. The Panel is satisfied the timing of the start of the performance bond is appropriate as it does not allow any work affecting the operation of the existing plant to be conducted prior to the coverage period and adequately covers the period of time where major demolition will occur requiring the existing plant to be shut down. The Panel is also satisfied with keeping the performance bond in place until either the Stabilization Date or the date where legal title to the lands is passed to the Nominee.¹⁶ This serves to mitigate risk to Creative Energy over this period and provides protection for existing ratepayers. The Panel is also satisfied that the amount of financial security (maximum coverage of \$10 million) provided for in the performance bond is adequate. Creative Energy has provided that at any given point in time the outstanding accounts payable will not exceed this amount and thus, will serve to mitigate the utility’s risk. Given these provisions, the Panel agrees with the CEC and finds that both the time duration and the dollar amount covered by the performance bond are adequate.

Of concern to the Panel is that Creative Energy has not provided the BCUC with confirmation that Consent of Surety can be procured from a Surety. Creative Energy has submitted that such consent is not required as the Developer is required to do so under Article 9.4 of the Amended and Restated TDA. The CEC also raised this issue and as noted above, recommends that the BCUC condition any approval of the Proposed Project on the inclusion of a performance bond, a requirement to which Creative Energy has agreed.

¹³ Exhibit B-23, Appendix 3, p. 5-6; Exhibit B-5, BCUC IR 37.17; Exhibit B-24, BCUC 2.2; Creative Energy Final Argument, Sec. 2, p. 9.

¹⁴ Exhibit B-28, CEC 1.1.

¹⁵ CEC Final Argument #2, pp. 4-5.

¹⁶ As defined in the Amended and Restated TDA, Exhibit B-23, Appendix 2-1, Section 6.7.

A further concern to the Panel is the closeness of the parties to the agreement and given this, the circumstances under which Creative Energy (the Obligee) would declare default under the performance bond. This issue was explored in IRs where Creative Energy was asked under which circumstances it would declare default under the bond and take action with the Surety. Creative Energy responded that default would occur if the Developer became insolvent or failed to pay costs for which the Developer was responsible under the Amended and Restated TDA or failed to complete the plant under the Amended and Restated TDA. Creative Energy states that in such circumstances it would take appropriate action.

The Panel determines that Creative Energy's confirming it will file a performance bond in the amount of \$20 million and a duration beginning with the shutdown of the Beatty Plant or demolition of the structure housing it and continuing until the transfer of legal title of the lands or the Stabilization Date is reasonable and protects the interests of ratepayers. However, as noted, there remains a concern with confirmation that such a performance bond can and has been procured. To mitigate this concern the Panel conditions our approval of the CPCN on Creative Energy providing evidence of such a performance bond being in place prior to any demolition of the exterior walls, foundation or roof of the building within which the existing plant is situated.

The Panel accepts there is some risk with respect to Creative Energy calling the bond to be in default where appropriate. However, the Panel accepts Creative Energy's submissions at face value and fully expects them to act in the best interests of the ratepayer if such circumstances were to occur.

2.1.3 Explanation Related to Baseline Efficiency Claims

In the February 2019 Decision, the Panel expressed concern with the accuracy of the baseline efficiency used to estimate the fuel cost savings that would result from the Proposed Project. In the view of the Panel accuracy is important as it has a material effect on the rate impact, currently estimated to be 3.7 percent in 2023.¹⁷

The Panel's concerns relate specifically to Creative Energy's stated 80.4 percent baseline efficiency which assumes that the existing Clear Sky economizer at the Beatty Plant is permanently removed as part of the Proposed Project. The economizer reduces natural gas consumption through the recovery of waste heat from flue gases. It was installed by an outside firm (Clear Sky) at its own cost, in 2003. Clear Sky and Creative Energy share the fuel cost savings on a 75-25 basis. Creative Energy explains that economizer is at the end of its design life, its performance has deteriorated, and it requires significant ongoing maintenance. The cost of removal is the responsibility of Clear Sky and since the economizer must be removed before the work on the existing building structure can commence, Creative Energy intends to take advantage of Clear Sky's obligation to remove the economizer, such that it is completed by 2023.¹⁸

To estimate the fuel cost savings that would result from the Proposed Project, Creative Energy compared the expected efficiency of the plant at the completion of the project (84 percent), against the baseline efficiency of the plant, once the Clear Sky economizer has been removed (80.4 percent).¹⁹ By calculating the difference between the two, the reduction in natural gas costs can be estimated and the impact of the fuel savings on customer rates can be assessed; the greater the efficiency gains, the greater the fuel cost savings and therefore, the lower the impact of the Proposed Project on customer rates.

The issue identified by the Panel was that it appeared Creative Energy had failed to address the fact that by removing the Clear Sky economizer, the Company would no longer accrue the 25 percent fuel cost savings from its agreement with Clear Sky. As a result, the estimated 3.7 percent rate impact could be inaccurate.²⁰

¹⁷ Order G-38-19 and Decision, p. 34.

¹⁸ Ibid., p. 31; Exhibit B-23, Appendix 4, pp. 2-3; Creative Energy Reply Argument on Specified Scope, pp. 3, 5.

¹⁹ Creative Energy Reply Argument on Specified Scope, p. 5.

²⁰ Order G-38-19 and Decision, p. 56.

The Panel stated that if Creative Energy filed a revised application, approval of the requested CPCN would require, in part, an explanation as to whether the 80.4 percent baseline efficiency is an appropriate baseline when considering the fuel cost savings accruing from the Clear Sky economizer. In the event this could not be adequately explained, the Panel directed Creative Energy to outline what it is prepared to do to ensure the predicted fuel savings are achieved. The Panel also noted that Creative Energy does not propose to install secondary economizers at the renovated Beatty Plant, even though the plant will continue to meet 40 percent of the system load, and the addition of economizers could improve efficiency and increase fuel cost savings. The Panel expressed the view that secondary fuel economizers should be considered because they could improve efficiency and increase fuel cost savings.²¹

Creative Energy filed its Revisions to the Application which provides clarification on the expected efficiency improvement resulting from the Proposed Project. Creative Energy states that the current efficiency of the Beatty Plant is estimated at 82.7 percent, before accounting for the sharing of the economizer benefits between the two parties. After accounting for this division of benefits, the current effective efficiency of the plant, from the standpoint of the customers, is estimated at 81 percent (Alternate Baseline Efficiency).

The Table 1 below compares the rate impact based on the previously stated 80.4 percent efficiency and the Alternate Baseline Efficiency of 81 percent. In both cases, the expected efficiency of the plant at the completion of the Proposed Project is assumed to be 84 percent. Relying upon the Alternative Baseline Efficiency of 81 percent rather than 80.4 percent results in an estimated net bill impact increase of 4.1 percent compared to the 3.7 percent previously estimated.²²

Table 1: Alternate 2023 Rate Impact Analysis

Scenario Description	Baseline efficiency used in Application – assumes the Clear Sky equipment has been removed by 2023	Alternate baseline efficiency – uses effective efficiency as at 2019
Plant Gate Efficiency in the absence of the Proposed Project	80.4%	81.0%
2023 Steam Tariff Impact	+15.6%	+15.6%
2023 FCAC Impact	-4.2%	-3.6%
Net 2023 Bill Impact	+3.7%	+4.1%

With respect to further increase of the Proposed Project’s plant gate efficiency by adding secondary economizers to the Beatty Plant, Creative Energy states that new economizers at the renovated Beatty Plant are not included in the scope of the Proposed Project, and under the terms of the Amended and Restated TDA, Creative Energy would bear the incremental cost of any such discretionary scope changes. Nonetheless, Creative Energy states that if the CPCN application is approved, it will consider the costs and benefits of adding one or more economizers to the renovated Beatty Plant at the detailed design stage.²³

In its negotiations with the Developer, the agreed upon approach throughout was that Creative Energy would generally receive a “like for like” arrangement in which the new plant and equipment would meet largely the same specifications as the existing plant. To further illustrate the point, Creative Energy provides two tables

²¹ Order G-38-19 and Decision, pp. 3, 44.
²² Exhibit B-23, Appendix 4, pp. 2, 4.
²³ Ibid., Appendix 4, p. 5.

comparing the annual contribution of the boilers to the steam load with their respective economizer arrangements for the current Beatty Plant (Table 2) and the Proposed Project (Table 3).²⁴

Table 2: Proportion of Annual Load met by each Boiler and Economizer Arrangement for Current Plant Operation (as of June 2019).

Current Plant Operations as of June 2019			
Boiler #	Annual Contribution to Steam Generation ⁴	Primary Economizer?	Secondary Economizer?
1	6%	No	No
2	4%	No	No
3	20%	No	Yes
4	39%	Yes	Yes
5	3%	No	No
6	28%	Yes	No

Table 3: Proportion of Annual Load Met by each Boiler and Economizer Arrangements after the Proposed Project.

Creative Energy Boilers After Proposed Project			
Boiler #	Annual Contribution to Steam Generation ⁵	Primary Economizer?	Secondary Economizer?
Beatty 3	10%	No	No
Beatty 5	3%	No	No
Beatty 6	27%	Yes	No
Expo 1	30%	Yes	Yes
Expo 2	30%	Yes	Yes

Creative Energy submits that after completion of the Proposed Project it will have two plants that, in combination, will meet substantially the same specifications as the current Beatty Plant, albeit with newer, higher-efficiency equipment. Overall, it will have more annual steam generation from boilers that can take advantage of primary and/or secondary economizers.²⁵

Creative Energy states that it has considered adding a secondary economizer to the renovated Beatty Plant but as the CPCN application for the Proposed Project has not been approved, it has not invested significant resources in investigating the potential benefits either as a scope change or a future addition after the completion of the Proposed Project. Based on a high-level analysis Creative Energy acknowledges there may be a marginal benefit to installing a secondary economiser. However, further analysis is required as it may be more

²⁴ Exhibit B-24, BCUC IR 5.5.

²⁵ Exhibit B-24, BCUC IR 5.5.

cost-effective to consider adding secondary economizers as part of a future boiler replacement project rather than as part of the Proposed Project.²⁶

Position of Parties

CEC

The CEC describes Creative Energy’s logic “essentially poses that the economizer must be removed before the Proposed Project can begin and its replacement should be attributable to the Proposed Project” as faulty reasoning. Its view is that the Proposed Project has little to do with the inclusion or value of the economizer that can be in place under many scenarios. The CEC argues that economizer fuel savings should not be attributed to the project as the savings can be easily achieved if there were no Proposed Project.

The CEC states that it considers Creative Energy’s revised analysis using the Alternate Baseline Efficiency yielding a 2023 bill impact of 4.1 percent to be “more accurate” compared to the analysis provided in the original Application. That said, it considers the 4.1 percent rate impact, as opposed to the 3.7 percent originally estimated, to be significant. At a minimum, the 4.1 percent bill impact should be relied upon by the BCUC when making determinations regarding the costs to ratepayers and the value of the Proposed Project.

The CEC states that even though high-level analysis shows that it could be marginally beneficial to install secondary economizers at the renovated Beatty Plant, Creative Energy has not investigated the potential. The addition of a secondary economizer could be an appropriate scope change for the Proposed Project and the CEC states this option should also be considered as a baseline. The CEC estimates that a new secondary economizer would result in a baseline efficiency of 83.1 percent, and this would be a better comparison.²⁷

Creative Energy Reply

Creative Energy is clear that the economizer is at the end of its design life and its performance has deteriorated. Further, because it is located on a roof that is to be replaced, it must be removed before the Beatty Plant renovation begins.²⁸

Creative Energy submits that the evidence does not demonstrate that the rate impacts are more significant than what could be accomplished without the Proposed Project as claimed by the CEC; it demonstrates the opposite. Creative Energy explains that the analyses of the Proposed Project and the Alternative produces different rate impacts depending on the baseline assumptions used. The choice of a different baseline starting point does not increase the costs of the Proposed Project nor the resulting rates. Instead, it only impacts the rate impact relative to the rates required under the baseline assumptions chosen. Creative Energy submits that the evidence demonstrates there is no other option where it can deliver comparable benefits to customers and the public at lower cost or lower risk.²⁹

Concerning the addition of a second economizer, Creative Energy states that the CEC’s proposed approach would require the analysis to assume the existing economizer is first removed and a new economizer installed at an estimated cost of \$1.4 million. This would be done before considering the options to address the issues with the sub-standard building and the replacement of the oldest end-of-life boilers, which are inaccessible. This, in Creative Energy’s view would be an imprudent investment and would not change the conclusion that the Proposed Project is far better for customers than any feasible alternative.³⁰

²⁶ Exhibit B-24, BCUC IR 5.10, 5.5.

²⁷ CEC Final Argument on Specified Scope, p. 5-6.

²⁸ Creative Energy Reply Argument on Specified Scope, p. 3.

²⁹ Ibid., pp. 7-8.

³⁰ Ibid., pp. 6-7.

In its reply argument, Creative Energy reiterates that the economizer is at the end of its design life and it must be removed before the Beatty Plant renovation begins.³¹

Panel Determination

The primary concern raised by the Panel with respect to Creative Energy's baseline efficiency estimates is whether they are accurate and if not, the impact this has on fuel savings and customer rates. Further, if these estimates proved to be incorrect and overstated, the Panel requested Creative Energy to outline what it was prepared to do to ensure the predicted fuel savings were achieved.

Creative Energy acknowledges the discrepancy with regards to the Clear Sky economizer and has revised its assessment of the baseline efficiency to account for the 25 percent of the fuel cost savings that are currently accruing to the Company from it. The analysis provided shows that once this is taken into account completion of the Proposed Project will result in a 4.1 percent rate increase, as opposed to the 3.7 percent originally estimated and no further solutions were put forward to ensure the predicted fuel savings were achieved. As pointed out by the CEC, this amount is approximately 10 percent higher than originally estimated and it believes the Panel should reject the Proposed Project based on these increased impacts on rates. The Panel disagrees. This variance, while not inconsequential, is not so significant to justify denying approval to a project affording significant benefit to ratepayers over the medium to long term. Thus, in spite of the fact that Creative Energy offered no solution to the fuel savings shortfall the Panel finds that when the benefits of having a renovated plant at the Beatty location and a new Expo Plant are considered, the incremental rate impact increase from 3.7 percent to 4.1 percent remains reasonable and in the public interest.

Creative Energy has provided further clarification of its reasons for why the Clear Sky secondary economizer cannot reasonably continue to operate once construction of the Proposed Project commences, given both its age and its location on the roof of the Beatty Plant. The Panel accepts these explanations noting that even if the Proposed Project were not undertaken there would be a need to decommission and remove the secondary economizer due to its deteriorating condition.

Creative Energy has acknowledged that there may be a marginal benefit to installing secondary economizers at the Beatty Plant, but in the absence of a CPCN approval, it has not explored the option fully. This is because under the terms of the Amended and Restated TDA, Creative Energy would be responsible for the incremental cost of any discretionary scope changes and therefore, further analysis would be required to explore the benefits and justify any additional cost to ratepayers. Creative Energy states that in negotiating the TDA with the Developer the agreed-upon approach was that Creative Energy was to generally receive a "like for like" plant; that is a new plant with new equipment meeting largely the same specifications as Creative Energy's existing plant. Creative Energy has demonstrated that with respect to secondary economizers, the proportion of the steam load met by boilers with secondary economizers will account for 60 percent of the load. The Panel accepts that this is generally "like for like" to what exists today and as pointed out by Creative Energy, it will be further supplemented by the use of higher efficiency equipment.

The Panel determines that Creative Energy has adequately addressed the Panel's concerns with respect to the accuracy of the baseline efficiency and has provided a satisfactory explanation as to why, at this time, it does not propose to install secondary economizers at the renovated Beatty Plant.

³¹ Creative Energy Reply Argument on Specified Scope, p. 3

2.2 Other Requirements

2.2.1 Development of a Comprehensive Contingency Plan

Restart Problems

In the February 2019 Decision, the Panel raised a number of concerns with respect to the lack of a fulsome contingency plan to address potential restart problems at the Beatty Plant following the first and second shutdowns. While it was acknowledged that some work had been completed on logistics and sourcing suppliers for temporary facilities, the Panel was not satisfied that this was adequate due to the potential impact on ratepayers if there was a restart problem. A key identified missing element from what Creative Energy had put forward was the lack of information on the time required to put corrective measures in place in the event of a failed restart. This would be critical in determining the timing of corrective measure decisions and the amount of potential back-up required to address the impacts if a restart failed. Given Creative Energy's acknowledgement that such a problem could occur and the potential impact on ratepayers, the Panel found the Application lacking "with respect to the provision of a detailed contingency plan outlining the actions to be taken in the event of an unforeseen shutdown or a failed start-up." The Panel ordered that, as a condition of acceptance of the application for the CPCN, a comprehensive contingency plan be developed to deal with identified issues.³²

Creative Energy reports that it has engaged the TES Group of Edmonton Alberta (TES Group), which has significant experience in the area of developing and implementing plans to provide temporary steam production measures for industrial applications. The TES Group has assisted the utility with its development of a contingency plan with the overall objective of positioning Creative Energy to be able to quickly bring in and deploy temporary boilers if required. As stated by Creative Energy, the contingency plan "confirms a temporary boiler site plan, a rental and logistics plan, and outlines timelines, engineering requirements, high level cost estimates and preliminary risk register. That said, the contingency plan does not include more detailed items such as detailed piping design of the boiler tie-ins, or a full risk assessment of temporary boiler connection and operation as these be addressed in concert with the detailed design of the project following CPCN approval."³³

A key consideration in developing a contingency plan is the system's load requirements. Creative Energy states that the peak load of its steam system is 593,000 pounds per hour (PPH) which is expected to decline by 2022. Since the Expo Plant with a capacity of 400,000 PPH will be completed prior to work beginning on the Beatty Plant this leaves a shortfall of approximately 193,500 to meet 100 percent of the winter peak load. This would leave the desired back-up steam capacity in the range of 210,000 to 250,000 PPH in the contingency plan which allows for some redundancy for those critical periods during the project. It is proposed that this be met by a total of three rental boilers in the range of 75,000 to 85,000 PPH.³⁴

Creative Energy states that the time required for temporary boilers to be ordered, delivered to the 701 Expo site, tied-in, commissioned and fired is 10 weeks. The planned restart date for each of the two Beatty Plant shutdowns in 2021 and 2022 is September 16th and the date for deciding upon the need for temporary boilers in either year is by July 1st. On or before that date, the project status will be reviewed and if any risk to customer service is identified, the Temporary Boiler Subproject will be initiated. This will involve the immediate order of up to three temporary boilers. Creative Energy states that the decision to rely on temporary boilers is at its sole discretion but it will report to the BCUC each summer on whether to implement the Temporary Boiler Subproject and provide a rationale for its decision.³⁵

Creative Energy was requested to explain whether the Proposed Project would continue if the BCUC was to grant a CPCN subject to the condition that temporary boilers are on-site and commissioned for one or more of

³² Order G-38-19 and Decision, pp. 28-30, p. 57.

³³ Exhibit B-23, Appendix 5, pp. 1-2.

³⁴ Ibid., Appendix 5-1, p. 26; Exhibit B-24, BCUC 9.2.

³⁵ Exhibit B-24, BCUC 11.1, 11.1.1 and 11.1.2.

the Beatty Plant restarts. It responded that it is appropriate for the Developer to bear the incremental risks arising from construction of the Proposed Project and the Developer's building and, in keeping with the Amended and Restated TDA, accepts that the Developer should pay the costs to, (i) reasonably mitigate those risks and, (2) rectify the situation if a risk materializes. In Creative Energy's view, the additional measures suggested by the question would not be to mitigate heightened risk but are suggested to be required regardless of the actual risk assessment during the project. It believes the additional measures are unlikely to be necessary and therefore, excessive. However, Creative Energy did agree that the Proposed Project would still proceed under the Amended and Restated TDA if the BCUC were to condition CPCN approval on having one temporary boiler with 82,500 PPH of steam generating capacity onsite, tied in and available to support service prior to the first planned Beatty Plant restart. Creative Energy could still require one or more additional temporary boilers to be delivered and be in service on 10 weeks' notice if it considers there to be a risk to service.³⁶

Under this contingency Creative Energy states that if the Beatty Plant is not able to restart there would be 400,000 PPH available from the Expo Plant and 82,500 PPH from the temporary boiler. In its view, the 482,500 PPH of capacity under normal temperature conditions would be sufficient to serve the load until early December plus there would be an option to bring in more temporary functional boiler capacity which could be delivered and made available to customers within a 10-week period.

In addition to these contingency responses Creative Energy notes that Boiler #6 with a functional capacity of 170,000 PPH is largely untouched throughout the shutdowns. In its view, the risk of a failed restart is almost entirely mitigated by having the Expo Plant in service and the general preservation of Boiler #6. Boiler #6 is reported to be:

the newest boiler in the plant, is in excellent working order, can be driven by a steam-powered forced draft fan and a steam-powered feedwater pump (located underneath the boiler) and a freestanding flue adjacent the boiler and to the east.

With the other noted contingencies and Boiler #6 in place, the resulting 652,500 PPH in capacity could serve the customer load through the winter.³⁷

Creative Energy explains that Boiler #6 will be temporarily shut down and will not be decommissioned or altered in any material way although it will have some connections adjusted. It further explains that the risk to Boiler #6 is much lower than those associated with other parts of the plant as it is located in a separate plant area away from where the abatement and demolition is being conducted. The only changes in relation to Boiler #6 that might impact its restart are centred on completing the re-piping of feedwater headers as well as disconnecting the boiler from power and the timing of the connection to temporary construction power. With respect to these changes, Creative Energy explains:

The construction power connections are a fine detail in the construction sequence which will be designed and scheduled during the detailed design. In any event, as the connections are temporary in nature, they can be installed quickly and would likely be scheduled to fall towards the end of the first shutdown, to minimize the potential for interference with abatement and demolition work.

The feedwater connections must naturally follow the abatement of the feedwater lines. This work will also be designed and scheduled during the detailed design, but as the dedicated feedwater pump for Boiler #6 is not being touched, Creative Energy fully expects that the feedwater piping for Boiler #6 can be isolated from the other feedwater piping, and re-instated at any point during the first shutdown if it was needed.

³⁶ Exhibit B-28, BCUC IR 5.1.

³⁷ Ibid., BCUC IR 4.1 and 5.1.

Because of the low risks surrounding the restart of Boiler #6 and the minor work to initiate the restart, it is expected to be scheduled two weeks in advance of the planned restart but this could be advanced if the boiler was needed.³⁸

Scope of the Contingency Plan

Creative Energy has confirmed that the information provided in Appendix 5-1 of Exhibit B-30 cannot be described as a complete contingency plan and has also acknowledged that the plan prepared by the TES Group is not the “fully executable and well defined contingency plan identified in the Execution Strategy.”³⁹

Creative Energy instead describes the Contingency Planning process as follows:

Contingency planning evolves over the life of the project. In advance of obtaining necessary approvals of the Proposed Project, designs are developed to a Class 3 level. Likewise, the Contingency Plan has been developed to a similar level. The Contingency Plan submitted does not address all the granular details of bringing in temporary boilers, as there are significant costs associated with developing the fine details. Incurring such costs prior to project approval is not justified.

The Contingency Plan submitted in Exhibit B-23 does prove the overall feasibility of the approach, and outlines the work and timelines to develop an actionable plan. Creative Energy believes this is an appropriate level of refinement at this stage of the project and aligns with our needs and requirements at this time.

Creative Energy confirms that it intends to engage the TES Group to further develop the details of an actionable Contingency Plan and if a CPCN is granted for the Proposed Project, it is prepared to commit to delivering all aspects of the Contingency Plan and adopt recommendations made by the TES Group. It anticipates filing the final version of the plan in accordance with the reporting requirements as laid out in BCUC’s Order granting the CPCN for the Proposed Project.⁴⁰

Position of the Parties

CEC

The CEC submits that for the BCUC to understand the proposal risks and if the Contingency Plan is sufficient to mitigate risks, the condition assessment of the system, and the overall plant risk assessment are key items that should have been available. Moreover, Creative Energy should have developed its Contingency Plan to a fully executional status in its Execution Strategy and has not provided a Contingency Plan as set out in the BCUC’s requirements.⁴¹

Noting that Creative Energy have already confirmed their acceptance, the CEC states that the BCUC should condition any CPCN approval by requiring Creative Energy to have one boiler with 82,000 PPH capacity on site and available until the Beatty Plant has been successfully restarted. The CEC disagrees with Creative Energy’s assertion that there was essentially zero risk related to a restart after the second shutdown submitting that there is always some additional risk associated with a shutdown. However, it submits that the risks related to the shortage of steam for generating capacity are largely addressed.⁴²

³⁸ Exhibit B-30, pp. 2-5.

³⁹ Exhibit B-25, CEC IR 24.1 and 24.3.

⁴⁰ Exhibit B-24, BCUC IR 7.1, 7.5, 7.6 and 7.8.

⁴¹ CEC Final submissions, pp. 7-11.

⁴² *Ibid.*, pp. 8-9.

While the CEC does not object to a finding that no additional capacity is required, it recommends that if the BCUC decides there is additional need for capacity that the CPCN be made conditional on this requirement and any costs be borne by the Developer. However, the CEC also submits that the evidence does not support the view that Creative Energy has proven that the risks being mitigated would be confined to those in existence and notes that construction projects can clearly create new unforeseen costs. Overall, the CEC submits that Creative Energy has not fulfilled its obligations concerning requirements for the Contingency Plan.⁴³

Creative Energy Reply

With respect the detail in the Contingency Plan, Creative Energy responds that the level of detail it has provided is appropriate for this stage of the Proposed Project. To provide 100 percent of the detail in the Contingency Plan would require the master project to be defined to the same level. It argues that this must be done in concert with the detailed design of the entire project. This will occur once the CPCN is approved and in any case is consistent with the BCUC CPCN Guidelines.⁴⁴

Panel Determination

In the February 2019 Decision, the Panel raised a key issue regarding the development of Creative Energy's Contingency Plan. The lack of contingencies to mitigate the risk in the event of there being problems with restarting the Beatty Plant following shutdowns. Creative Energy has engaged the TES Group and provided explanations for steps to take to ensure that the interests of its ratepayers are adequately protected. The Panel has reviewed Creative Energy's submissions and finds that the explanations it has provided and the contingencies are not adequate to mitigate the potential risks identified with a plant restart.

As described by Creative Energy, the current peak power requirements over the winter are 593,000 PPH. Of this, 400,000 PPH will be supplied by the Expo Plant, which will be operational prior to significant work being undertaken at the Beatty Plant. This results in a need for approximately 210,000 to 250,000 PPH back-up steam capacity (allowing for some redundancy) to cover the risk associated with an inability to start up the refurbished Beatty Plant. To address this shortfall, Creative Energy has outlined a plan involving up to three temporary boilers (with capacity in the range of 75,000 to 85,000 PPH), which could be ordered to be in place and operational in the event of difficulty with the scheduled restart date of September 16, 2021. However, this would involve a decision being made by July 1 of 2021 and 2022 for each of the shutdowns. As outlined by Creative Energy, the decision to implement the outlined contingency will be its sole decision.

The Panel accepts that the explanations provided by Creative Energy with respect to the relatively minor project impacts to Boiler #6 and the resultant reduction of the potential risks when the plant is restarted. We also acknowledge that it is possible to identify some of the issues that might delay a restart as early as July 1. However, the reduction of risk related to the start-up and making a decision on the need for temporary boilers does not eliminate the risks. As alluded to by the CEC, there is always the possibility unexpected difficulties with the Proposed Project being incurred in the 10 weeks leading up to the restart date or there being challenges bringing Boiler #6 online in a timely fashion. If difficulty with either or both of these types of events were to occur along with the early onset of colder weather, the Expo Plant could potentially have much higher demand than it is able to handle.

Given the potential for unexpected restart difficulties, the Panel is not persuaded that the contingencies as proposed by Creative Energy adequately protect the interests of its ratepayers. **Therefore, the Panel does not approve the Beatty Plant restart section of contingency plan as proposed by Creative Energy.** However, the Panel notes that Creative Energy has indicated that it would be acceptable for the BCUC to condition approval of the CPCN on there being one temporary boiler with 82,500 PPH capacity onsite for the first planned Beatty Plant

⁴³ CEC Final Submission, p. 10.

⁴⁴ Creative Energy Reply Argument, p. 9.

restart. This increase in reliable capacity would serve to further mitigate potential restart problems. In the view of the Panel, this, while not totally mitigating the risk, provides sufficient comfort that ratepayers' needs will be met in the event of a later start-up or there being additional temporary boilers ordered and placed in service. Therefore, the Panel has conditioned granting of the CPCN on there being a temporary boiler with a 82,500 PPH capacity on site and operational for the first restart. The costs of this are to be borne by the Developer as the Panel finds the additional capacity onsite a prudent cost that reduces risk and better protects ratepayers and therefore should have been part of the Proposed Project.

With respect to the scope of the Contingency Plan, the Panel is persuaded that, at this stage of development, the level of detail is satisfactory. Creative Energy has acknowledged that there is still significant work to be done and has committed to preparation of a complete Contingency Plan following approval of the CPCN. Accordingly, the Panel will include a date for completion of a final Contingency Plan as part of its reporting requirements as proposed by Creative Energy.

2.2.2 Confirmation of Selection of the General Contractor and Design Engineering Company

Within the February 2019 Decision, the Panel discussed the importance of having appropriate resources available to manage complex construction and timing issues as well as to ensure that serious coordination and scheduling challenges are met. Based on the information provided by Creative Energy the Panel accepted that WSP, a leading engineering consultant, who have been engaged to complete the schematic design and Ellis Don, a large construction firm who have been working on pre-construction materials have the necessary experience and qualifications to handle such a project. The Panel noted that neither of these contractors has been formally engaged to complete the design and construction phases of the project. Given the status of the Proposed Project this is understandable, but it also highlights the importance of ensuring there are appropriate resources available to fulfill these roles. To provide comfort on this matter the Panel, in the February 2019 Decision, asked for confirmation from Creative Energy that Ellis Don and WSP have been engaged to take on the Proposed Project. In the event that either party could not be engaged, the Panel stated that it would make any CPCN granted on the Proposed Project subject to confirmation of a General Contractor and Design Engineering Company having the requisite experience that was acceptable to the BCUC.⁴⁵

Creative Energy confirms that neither Ellis Don nor WSP have been engaged. Once the CPCN is approved, it is Creative Energy's intention to undertake what it describes as a staged competitive process to secure qualified parties for design engineering services and the role of General Contractor. It is their position that it would not be cost effective to initiate the described competitive processes prior to obtaining a CPCN for the Proposed Project. Once the required CPCN is obtained, Creative Energy intends to employ the competitive process and submit the required information to the BCUC for oversight and acceptance. To complete the first stage, the qualifications of the selected engineering firm will be submitted to the BCUC prior to any work commencing. Once this has been completed and the design documents have been refined, a public Request for Proposal will be issued and interested contractors will be requested to submit records detailing their experience with completing such a project. From these, a shortlist of qualified General Contractors will be developed and submitted to BCUC for approval. Following approval, an Invitation to tender will be issued to those parties accepted by the BCUC and the contract awarded to the firm with a fully compliant tender package that submits the lowest pricing. The name of the selected General Contractor will be reported as part of the regular reporting regimen.⁴⁶

The CEC submits that sufficient assurance has been provided to give comfort to the BCUC that both a qualified Design Engineering Firm and a General Contractor will be retained. However, the CEC recommends that any

⁴⁵ Order G-38-19 and Decision, pp.49-50 and p.57.

⁴⁶ Exhibit B-23, Section 6.

approval of a CPCN for the Proposed Project be subject to the BCUC's approval of the Design Engineering Company and the General Contractor.⁴⁷

Panel Determination

The Panel agrees with the CEC and accepts Creative Energy's proposal for the process to identify potential candidates and select a Design Engineering Company and General Contractor. **Granting of a CPCN for the Proposed Project is subject to the final selection of candidates for both of these roles to have the requisite qualifications and experience that is acceptable to the BCUC.**

2.2.3 Preliminary Project Schedule

In the February 2019 Decision, the Panel noted the importance of having in place a detailed schedule for completion of the Proposed Project. The Panel also expressed concerns with the lack of even a preliminary project schedule and outline of the process to manage it, pointing out the Proposed Project was complex with potential for there being unplanned difficulties. To address this, the Panel required Creative Energy to prepare and submit a Preliminary Project Schedule, and , within 60 days of engaging the General Contractor, Creative Energy was directed to submit a detailed Project Schedule outlining the construction and operation schedule, including critical dates of key events, a chart of major activities showing the critical paths, and the timing of approvals required from other agencies.⁴⁸

Creative Energy states that the ICON Construction Group (ICON) has been engaged to complete pre-construction activities, which include items such as the preliminary scheduling and budgeting. ICON has prepared a detailed Preliminary Project Schedule and submitted it to the BCUC as part of this process. Creative Energy has confirmed that it will submit a detailed project schedule to the BCUC within 60 days of engaging a General Contractor as required by the directive.⁴⁹

The CEC states that it has reviewed the Preliminary Project Schedule and related evidence and is satisfied with the proposal despite being several months out of date at this point. The CEC recommends the Commission condition any approval on the reporting of a revised preliminary schedule within 2 months of approval as outlined in the directive.⁵⁰

Panel Determination

The Panel has reviewed the Preliminary Project Schedule prepared by ICON on behalf of Creative Energy and agrees with the CEC that it is satisfactory and therefore accepts it.

The Panel acknowledges that a General Contractor has not yet been engaged and therefore, at this time, Creative Energy is not able to submit a detailed project schedule as required by directive 2 (iii) of the February 2019 Decision. **Creative Energy is therefore directed to submit a detailed project schedule as a compliance filing, within 60 days of engaging a General Contractor. The detailed project schedule is to outline the construction and operation schedule, including:**

- **Critical dates of key events, including:**
 - **Commissioning and operation dates for the Expo Plant;**
 - **Shutdowns and restarts dates for the Beatty Plant;**
 - **Commissioning date for the 82,500 PPH temporary boiler; and**

⁴⁷ CEC Final Argument #2, p.10.

⁴⁸ Order G-38-19 and Decision, pp. 50 and 57.

⁴⁹ Exhibit B-23, Section 7.

⁵⁰ CEC Final Argument #2, p.11.

- Commissioning date for Boiler #6;
- A chart of major activities showing the critical path; and
- The timing of other approvals.

2.2.4 Removal of Land from Creative Energy’s Deferral Account Proposal

In its Application, Creative Energy stated that the Proposed Project will result in the retirement of assets as well as the removal of land currently in rate base. Creative Energy proposes that these be placed in a deferral account with the determination as to the appropriate amortization period being left for a future revenue requirement. The Panel agreed that with this type of project, asset retirements such as those being contemplated are unavoidable. The Panel also agreed that while this benefited the Developer it also benefited the customer and indicated that it would approve a deferral account for recording non-depreciated assets. However, the Panel also stated that there would be no approval for any amounts of land to be added to the deferral account noting that in such circumstances land that is no longer deemed used and useful is removed from rate base with no further return allowed.

Creative Energy confirms that it agrees with this determination and the BCUC’s requirement that land not be included among those items to be included in the deferral account for future amortization. Specifically, Creative Energy states:

For greater certainty, Creative Energy confirms that its proposal is as follows:

- to remove from rate base the total net book value of retired assets including the land portion, and
- to record in the regulatory deferral account the net book value of retired assets excluding the book value of such land portion (currently estimated to be \$2,589,400 excluding the value of the land portion).⁵¹

The CEC agrees that Creative Energy has fulfilled this requirement.⁵²

Panel Determination

Creative Energy has fulfilled the requirement with regard to the inclusion of land among its asset retirements. Therefore, the Panel accepts that this requirement has been met. **Accordingly, the Panel, pursuant to sections 56 and 60 of the UCA, approves the establishment of a regulatory deferral account to record the undepreciated net book value of the Creative Energy assets that are to be retired as part of the Proposed Project, excluding land.**

2.2.5 Addition of a 5-Year Notice Provision in the SRW Agreement

The February 2019 Decision required Creative Energy to modify the SRW Agreement to include a 5-year notice provision requiring PavCo to advise Creative Energy as to whether it is willing to extend the lease for the Expo Plant beyond the agreed upon 40 years.

Creative Energy confirms it has reached an agreement with PavCo to revise the SRW Agreement and incorporate a 5-year notice provision. Creative Energy has provided language with respect to how this has been incorporated within the SRW and makes the following acknowledgements with respect to this revised wording:

⁵¹ Exhibit B-23, Appendix 8.

⁵² CEC Final Argument #2, p.11.

(a) Creative Energy has no rights or options to renew this Agreement or to extend the Term unless PavCo otherwise expressly agrees in writing to any such renewal or extension following receipt of a request from Creative Energy as contemplated in this Section 3.1 above;

(b) PavCo may consider any such request in its sole and unfettered discretion and PavCo shall have no obligations to agree to any request or proposal for any renewal of this Agreement nor any extension of the Term; and

(c) if PavCo and Creative Energy, each in their respective unfettered discretion, have not executed a Renewal Agreement on or before the date which is sixty (60) months prior to the expiration of the Term, then, unless PavCo and Creative Energy otherwise expressly agree, this Agreement will terminate upon the expiry of the Term.”⁵³

Panel Determination

In the February 2019 Decision, the Panel expressed concern that there was no requirement In the SRW for PavCo to advise Creative Energy of its intentions with regard to renewal of the agreement following the initial 40-year term.⁵⁴ Creative Energy has addressed the Panel’s requirement to our satisfaction and confirms that the SRW Agreement be modified to include a 5-year notice provision requiring PavCo to advise Creative Energy as to whether it is willing to extend the lease for the Expo Plant beyond the agreed upon 40 years.

2.2.6 Reporting Requirements

Given the magnitude of the project and the extended timeline for its implementation, the Panel finds it appropriate to direct Creative Energy to provide regular reporting to the BCUC for the duration of the project, as detailed below.

The Panel directs Creative Energy to provide the following reports:

- 1. Final Contingency Plan;**
 - **The final Contingency Plan is to be filed with the BCUC as soon as practicable, but no later than 6 months before the planned shutdown of the Beatty Plant;**
- 2. Shortlist of Qualified General Contractors;**
 - **A list of qualified candidates for the Design Engineering and General Contractor roles is to be filed with and approved by the Panel within 60 days of this Decision; and**
 - **The name of the successful General Contractor is to be reported in the next Semi-annual Progress Report;**
- 3. Detailed Project Schedule;**
 - **The detailed project schedule is to be filed as a compliance filing within 60 days of engaging a General Contractor; and**
 - **The detailed project schedule is to outline the construction and operation schedule as detailed in section 2.2.3;**
- 4. Semi-annual Progress Report;**

⁵³ Exhibit B-23, Appendix 9, pp. 1-2.

⁵⁴ February 2019 Decision, p.48.

- **Creative Energy must file semi-annual progress reports within 30 days of the end of each semi-annual reporting period, with the first report covering the period ending September 30, 2020. Each report must provide the information set out in Appendix A to this Decision;**
- **Each report is required to detail:**
 - **A project schedule to include updates on the scheduled operation of the Expo Plant, the shutdown and restart dates for the Beatty Plant and the development and implementation of the contingency plan;**
 - **The status of project risks, highlighting the status of identified risks, changes in and additions to risks, the options available to address the risks, the actions that Creative Energy is taking to deal with the risks and the likely impact on the project’s schedule, Creative Energy’s ability to meet customer loads and Creative Energy’s payments to the Developer;**
 - **The status and anticipated timing of Creative Energy’s payments to the Developer, as defined in section 8.1 of the Amended and Restated TDA, detailing any changes to the payment amounts or timing, and the reasons for the changes;**
 - **A summary of accounts payable aging report for Creative Energy on account of the costs and expenses of the project, as defined in sections 3.6 and 8.1 of the Amended and Restated Trust and Development Agreement, prepared as at the end of the reporting period. Creative Energy must identify any significant payment issues (e.g. large outstanding balances, payments over 90 days past due), if any, and Creative Energy’s proposals to mitigate the issues; and**
 - **The status of project permit approvals, highlighting the status of identified permit approvals, changes in and additions to permit approval requirements, the actions that Creative Energy is taking to deal with any changes in and additions to permit approval requirements and the likely impact on the projects’ schedule;**

5. Material Change Reports;

- **A material change is a change in Creative Energy’s plan for the project that would reasonably be expected to have a significant impact on the schedule, cost or scope, such that:**
 - **The restart dates for the Beatty Plant extend beyond September into the fall or winter seasons, and the resulting impacts; and**
 - **In the event of a material change, Creative Energy must file a material change report with the BCUC explaining the reasons for the material change, Creative Energy’s consideration of the project risk and the options available, and actions Creative Energy is taking to address the material change. Creative Energy must file the material change report as soon as practicable and in any event within 30 days of the date on which the material change occurs. If the material change occurs within 30 days of the date for filing a semi-annual progress report, Creative Energy may include the material change information in the progress report;**

6. Final Report;

- **The Final Report must include a breakdown of Creative Energy’s payments to the Developer compared to the costs included in section 8.1 of the Amended and Restated Trust and Development Agreement, and provide an explanation and justification of any variances. The Final Report must be filed at the earliest of either within six months of substantial completion, or the in-service date of the project.**

2.3 Other Issues Arising

2.3.1 Variances from the Amended and Restated TDA

Following the Arguments phase on specific scope items, the Panel issued IRs⁵⁵ to clarify issues related to the Restated and Amended TDA. In one IR it was asked whether a revision would be made to the Restated and Amended TDA if fuel tanks or ancillary equipment were to be located at 701 Expo Boulevard (instead of 720 Beatty Street, as outlined in the Restated and Amended TDA). Creative Energy responded that the precise locations these types of items “...are design details that are subject to change through the detailed design phase...” and revisions to the TDA are not required. In response to a follow-up IR, Creative Energy reiterates this point and states further that the Application does not request approval of the TDA.

Panel Determination

The Panel does not disagree that Creative Energy is technically correct in stating that the Application does not request approval of the TDA. However, the Panel notes that this is less accurate on a substantive level. This is because the terms of the TDA include many essential components that require approval by the Panel either explicitly or implied for Creative Energy to obtain the approvals it is seeking. To this end, the Panel, in rejecting the initial Application, indicated that any future approval would be dependent upon there being certain changes to the TDA. As a consequence, Creative Energy has filed a revised TDA with changes as part of their Application to obtain these approvals. Therefore, while technically, the Panel has not been requested to approve the TDA, the Panel needs to approve the revised terms of the TDA or there will be no approval for the project to proceed.

The Panel’s concern is that Creative Energy’s responses raise an issue with respect to implementation of the Proposed Project. More specifically, that Creative Energy’s responses with regard to design elements specified within the Restated and Amended TDA and the level of change that might occur once the Proposed Project is approved and underway. Schedule C of the Restated and Amended TDA lays out in detail a listing of the boilers, the capacity of each and whether they will be located in the Expo Plant or the Beatty Plant. The Panel has understood that these items will not be open to further change. However, Creative Energy’s responses to Panel IRs have cast doubt on its understanding and provide no assurance that the number of boilers, their capacity and their location will not be subject to change. **Therefore, to provide this assurance, the Panel conditions this CPCN on Creative Energy submitting to the BCUC for approval any changes from the Amended and Restated TDA in boiler number, any individual or total boiler capacity or the location of said boilers either within or between the Beatty and Expo Plants.**

2.4 Other Requested Approvals

2.4.1 Proposed Project Costs to be Added to Rate Base

As outlined in its Application, Creative Energy’s portion of the total Proposed Project is limited to \$15 million. Creative Energy proposes that the BCUC include a condition on its CPCN approval that Creative Energy’s rate base shall increase by \$15 million as a result of the Proposed Project. This would be subject to adjustments as approved by the BCUC for additional costs (to also be included in rate base) in connection with any change orders requested by Creative Energy or project delays caused by Creative Energy. As also explained in the Application, Creative Energy, in a future application, requests approval of rates to enable Creative Energy to recover its costs for the Proposed Project.⁵⁶

⁵⁵ Exhibit A-38, pp. 1-2.

⁵⁶ Exhibit B-1, pp. 7-8.

Panel Determination

The Panel approves Creative Energy’s request to add a condition limiting the total costs related to the Proposed Project to be added to rate base to \$15 million following its completion. The Panel also accepts that there may be a need for additional expenditures due to Creative Energy requesting change orders or causing inordinate project delays. **Creative Energy is directed to file any such requests with the BCUC for review and approval for inclusion in rate base prior to any further additions to rate base being made.**

2.4.2 Long-Term Service Agreement

Pursuant to sections 60 and 61 of the UCA, Creative Energy has applied for approval of a new long-term service agreement between PavCo and Creative Energy for heating service to BC Place Stadium.

Creative Energy states that, as part of the Expo Plant project, the Creative Energy service connection to BC Place Stadium will require movement to a new energy transfer station within the stadium. Because of this there was a requirement for a new Steam Service Contract with PavCo. Creative Energy reports that the new Steam Service Contract is substantially the same as its standard steam contract with the rates and terms and conditions for such service being contained in the steam tariff. A notable difference is that it is for 25 years and has a requirement for six months notice to terminate the contract. Creative Energy states that this contract provides greater load certainty as PavCo, like many of its customers, currently has no long-term contract.⁵⁷

Panel Determination

The Panel approves the new long-term service agreement between PavCo and Creative Energy. The Panel finds the new Steam Service Contract to be just and reasonable as it offers greater load certainty thereby reducing the level of risk to other Creative Energy customers.

3.0 Panel Determination on Beatty-Expo CPCN

In accordance with section 45 of the UCA, the Panel finds that the Proposed Project is necessary for the public convenience and properly conserves the public interest. **Based on this and Creative Energy’s commitments as outlined in the sections above, the Panel approves its request for a CPCN for the Beatty and Expo Plants. However, issuance of this CPCN is subject to the following conditions being agreed to and met:**

- 1. Creative Energy providing the BCUC with copies of the performance bond based on the confirmations outlined in Section 2.1.2 of this Decision. Creative Energy must provide evidence of this performance bond being in place prior to any demolition of the exterior walls, foundation or roof of the building within which the existing plant is situated;**
- 2. Creative Energy’s confirmation that at the Developer’s cost there will be one temporary boiler with 82,500 PPH capacity in place and operational at the Beatty plant prior to first planned restart date;**
- 3. A list of qualified candidates for the Design Engineering and General contractor roles being filed with and approved by the Panel within 60 days of this Decision;**
- 4. BCUC approval is required for any changes from what is stated in the Amended and Restated TDA with respect to boiler numbers, their individual or total capacity or their location within or between the Beatty and Expo Plants; and**
- 5. The total cost for the Proposed Project to be added to Creative Energy’s rate base after completion of the project is limited to \$15 million. Requests for any expenditures in addition to this must be filed with the BCUC for review and approval.**

⁵⁷ Exhibit b-1, pp. 94-95; Exhibit B-5, BCUC IR 8.2.

4.0 Corporate Reorganization

Creative Energy's Application also seeks approval of Corporate Reorganization steps involving Creative Energy, Westbank, Emanate Energy and Creative Energy Developments LP. Specifically, Creative Energy seeks approval of the following:

- Amalgamation involving a public utility requiring BCUC endorsement and Lieutenant Governor in Council (LGIC) consent pursuant to section 53 of the UCA;
- Corporate structure changes requiring BCUC approval, including:
 - Repurchase and issuance of shares in a public utility, pursuant to section 50 of the UCA;
 - Disposition of shares or other property of a public utility, other than in the normal course of business, pursuant to section 52 of the UCA;
 - Transfer of shares in public utility that results in a person acquiring a reviewable interest in the public utility, pursuant to section 54 of the UCA; and
 - Disposition of Creative Energy's interest in "Trust Property" (as defined in the Application, the Trust Property is the interest in the lands, spaces and improvements on 720 Beatty Street and 701 Expo Boulevard, Vancouver, including all development rights that are surplus to the requirements of the utility), pursuant to section 52 of the UCA.⁵⁸

These sections of the UCA are outlined in their entirety in Appendix A of this Decision.

Creative Energy states that this Corporate Reorganization is being done to: (1) facilitate both the Proposed Project and the Developer's project, (2) facilitate the development and transfer of assets surplus to the utility needs on a tax efficient basis and (3) for Emanate Energy to acquire an indirect 50 percent interest in the utility.

In the February 2019 Decision, the Panel observed that Creative Energy requested that all approvals within their Application be considered as a whole and no one approval would be needed in the absence of other requested approvals. Put more simply, Creative Energy stipulated that to move forward with the projects and corporate reorganization, all of the requested approvals must be approved. Therefore, because of this stipulation and the fact that no approvals were granted in the February 2019 Decision, the Panel did not address or rule on the proposed reorganization steps. Now that Creative Energy has satisfactorily addressed the concerns with respect to the CPCN, the Panel will address the proposed Corporate Reorganization.

Creative Energy states that the proposed Corporate Reorganization has two main objectives:

1. Separate the interest in Creative Energy's "Trust Property" (the lands, spaces and improvements located on or forming part of the lands that are not the "Utility Assets"), including all development rights associated with Trust Property from the interest in Creative Energy's "Utility Assets" (the premises that house the utility plant and office premises on the lands, ancillary equipment on the lands and rights of way, the new Beatty Plant, the New Office Space and all other utility assets including the distribution system and existing Stream A utilities owned by Creative Energy). This separation is required to facilitate the Proposed Project and the Developer's Project (Developer's Office Tower Project).
2. Facilitate Emanate Energy acquiring an indirect 50 percent equity interest in the Creative Energy utility including only the Utility Assets. The acquisition by Emanate Energy is proposed to be completed as part of the Proposed Reorganization but is otherwise independent of the reorganization steps to facilitate the projects.⁵⁹

⁵⁸ Exhibit B-1, pp. 7-8.

⁵⁹ Ibid., p. 99

Creative Energy states that Emanate Energy is incorporated in Ontario and is a wholly-owned subsidiary of the InstarAGF Essential Infrastructure Fund managed by InstarAGF Asset Management Inc. (InstarAGF). Creative Energy explains that InstarAGF's experience is investing and directing infrastructure businesses. These include power generation, district energy and renewable energy assets. The fund has \$740 million in aggregate equity commitments from investors in North America and Europe and is well capitalized. The fund is described as being focused on "helping urban communities and governments to renew, build and modernize critical infrastructure underpinning the economy while generating stable income and building long-term value for investors." Within British Columbia, the fund presently has investments in Okanagan Wind and in Steel Reef Infrastructure Corp.⁶⁰

Once all the Proposed Corporate Reorganisation steps have been completed and assuming the BCUC grants the requested approvals, it will result in the following:

- The Developer will have ownership and hold the rights to the Trust Property to develop its office tower project in accordance with the Amended and Restated TDA.
- Emanate Energy will hold an indirect 50 percent equity interest in the Creative Energy utility including only the utility assets.
- Creative Canada will hold the other indirect 50 percent interest in the Creative Energy utility including only utility assets.⁶¹

Creative Energy states that the Proposed Reorganisation will enable the Proposed Project⁶² and within the Application, has outlined how the Developer's Project will provide substantial benefits. Moreover, taken by itself, the Proposed Reorganization will result in no material change to Creative Energy's utility business or detrimentally affect its utility service or customer rates. In addition, it is Creative Energy's expectation that having two shareholders will provide benefit in terms of additional expertise, diversity of perspectives, access to capital and an increase in accountability to two independent shareholders.⁶³

The steps for the Proposed Reorganization are outlined in detail in Appendix B of the Application and, as outlined by Creative Energy, all do not require BCUC approvals. The steps that do require approval can be placed in one of four categories:

- i) The repurchase and issuance of shares in a public utility which requires BCUC approval, pursuant to section 50 of the UCA;
- ii) The disposition of shares or other public utility property (other than that occurring in the normal course of business) requiring BCUC's approval, pursuant to section 52 of the UCA;
- iii) Pursuant to section 53 of the UCA, the amalgamation of a public utility requiring BCUC endorsement and the LGIC consent; and
- iv) BCUC approval of the transfer of shares in a public utility resulting in a person's acquisition of a reviewable interest in a public utility, pursuant to section 54 of the UCA.⁶⁴

More specifically, the steps outlined in Appendix B, requiring BCUC approval include the following:

Step 2: Newco acquires a reviewable interest in Creative Energy

This involves a new Creative Canada⁶⁵ subsidiary (Newco) in exchange for shares of Newco, acquiring all issued and outstanding shares of Creative Energy from Creative Canada. This is described as the first of two necessary

⁶⁰ Exhibit B-1, pp. 14-15.

⁶¹ Ibid., pp. 99-100.

⁶² Ibid., p. 100.

⁶³ Exhibit B-5, BCUC IR 59.16.

⁶⁴ Exhibit B-1, pp. 100-101.

steps to increase the tax cost of the land held by Creative Energy in accordance with section 88(1)(d) of the *Income Tax Act*. The Newco acquisition of a reviewable interest in Creative Energy requires BCUC approval under subsections 54(5) and 54(7) of the UCA.⁶⁶

Step 3: Creative Energy and Newco amalgamate

As described by Creative Energy, this step involves amalgamating Creative Energy and Newco to form Creative Energy (2018) following which, the latter will be a public utility pursuant to the UCA. This is identified as the second of two necessary steps to increase the tax cost of the land.

Creative Energy points out that this proposed reorganisation involves Creative Canada acquiring all issued and outstanding common shares of Creative Energy upon amalgamation and this is a reviewable interest requiring BCUC approval pursuant to subsections 54(5) and 54(7) of the UCA.

As outlined in subsections 53(1) and (3) of the UCA, the completion of the proposed amalgamation of the two parties requires Creative Energy to apply to the BCUC for the LGIC's consent to the amalgamation. Pursuant to subsections 53(4) and (5) of the UCA, if the BCUC is of the opinion that the proposed amalgamation would be beneficial in the public interest, it is to submit its report and findings to the LGIC.⁶⁷

Step 4: Restructure the share classes of Creative Energy 2018

This step involves the issuance of new classes of shares by Creative Energy (2018) and exchanging them for the common shares held by Creative Canada. Creative Energy explains that the purpose of this is:

to separate and reflect the current and future value of Creative Energy (2018)'s surplus assets (the "**Property Division**") and residual assets "**Utility Division**" in separate classes of shares to facilitate the development of the surplus assets by the developer and to facilitate Emanate Energy acquiring an indirect 50% equity interest in Creative Energy (2018)'s Utility Division including all residential assets other than the surplus assets.

Creative Energy (2018) will issue new classes of shares to Creative Canada and in exchange will acquire all of the issued and outstanding shares from Creative Canada. The new classes of shares will be preferred shares (Property Preferred Shares) with a value equal to the value of surplus assets and common shares (Utility Common Shares) with a value equal to the fair market value of Creative Energy (2018)'s Utility Division inclusive of the property used for operation of the utility. The issue of these new classes of shares require BCUC approval pursuant to section 50 of the UCA.⁶⁸

Steps 8 and 9: Transfer of a beneficial interest in the Trust Property from Creative Energy (2018) to a partnership with a Westbank affiliate

In Step 8, Creative Energy (2018) forms a partnership (Developer Partnership) with Westbank Projects Corp. (an affiliate of the Developer) where Creative Energy (2018) will hold a 99.99 percent partnership interest in the Developer Partnership and Westbank Projects Corp. will hold the remaining 0.01 percent.

Subsequent to this, in Step 9, Creative Energy (2018) transfers beneficial interest in the surplus real estate property or trust property to the Developer Partnership. Creative Energy explains that the purpose of these two steps is to cause the transfer of the beneficial interest in the trust property to the Developer Partnership,

⁶⁵ As defined in Exhibit B-1, Appendix a, TDA, P.4.

⁶⁶ Exhibit B-1, p. 103.

⁶⁷ Ibid., p. 103.

⁶⁸ Ibid., p. 104.

allowing the affiliate to indirectly hold rights to develop the Trust Property with the legal title still held by Creative Energy (2018) as bare trustee.

Section 52 of the UCA requires BCUC approval to transfer the beneficial interest in the Trust Property to and/ or encumbrance of the Trust Property in favour of the Developer Partnership.⁶⁹

Step 10: Creative Energy (2018) transfers its interest in the Developer Partnership

Step 10 involves transferring its 99.99 percent interest in the Developer Partnership to Property Development Co., another affiliate of the Developer, in exchange for preferred shares in the Property Development Co. These preferred shares will be redeemable, retractable and have a non-cumulative, non-preferential entitlement to dividends and have a redemption price equal to the fair market value of the 99.99 percent partnership interest immediately before the transfer. Creative energy explains that this step is to cause the transfer of the Trust Property from Creative Energy (2018) to the Westbank Affiliate that will develop it.

Creative Energy notes that because the transfer of this 99.99 percent interest in the Developer Partnership is a disposition of property not in the ordinary course of business, it will require BCUC approval pursuant to section 52 of the UCA.⁷⁰

Steps 11 and 12: Creative Canada transfers its Utility Common Shares to Creative Energy Developments LP

The final steps (11 and 12) involve Creative Canada, in exchange for additional LP units in the limited partnership and Creative Canada selling 50 percent of these additional LP units to Emanate Energy, transferring all of its Utility Common Shares of Creative Energy (2018) to Creative Energy Developments LP. This is to facilitate the sale of 50 percent equity interest in Creative Energy (2018)'s Utility Division to Emanate Energy as it acquires its interest indirectly through Creative Energy Developments LP. This transfer of all issued and outstanding Utility Shares will result in Creative Energy Developments LP (by its general partner Creative Energy Developments GP Ltd.) acquiring a reviewable interest in the public utility which requires BCUC approval pursuant to subsections 54(5) and (7) of the UCA.

Creative Energy explains that the general nature of the business to be carried on by Creative Energy Developments LP is to develop, own and operate energy infrastructure projects to generate and deliver energy to its customers and engage in other related activities it deems necessary.⁷¹

Positions of the Parties

Creative Energy

Creative Energy submits that the Proposed Reorganization should be approved as it is in the public interest and will have no detrimental effect on ratepayers or on the BCUC being able to effectively regulate the utility. In support of this, Creative Energy explains that while there are effects related to the Proposed Project, the Proposed Reorganization will result in:

- No change to utility rate base or rates;
- No change to Utility Assets, operations or service;
- No change to Creative Energy Covenants; and
- No change to the financial integrity of the utility.

⁶⁹ Exhibit B-1, pp. 104-105.

⁷⁰ Ibid., pp. 105-106.

⁷¹ Ibid., p. 106.

As a consequence, the “public interest will be preserved by granting the approvals requested in connection with the Proposed Reorganization.”⁷²

Creative Energy states that it is difficult to assign specific benefits to an amalgamation step in isolation from other reorganization steps and in isolation from the decisions and actions that will be enabled by the reorganization as a whole. Unlike a case where two operating companies amalgamating might allow for improved overall administrative efficiency, this amalgamation is not for the purpose of streamlining operations. Instead, the amalgamation is the second of two necessary steps enabling Creative Energy to increase the tax value of the land it holds in accordance with the *Income Tax Act*. As explained by Creative Energy in the following, the amalgamation approach is the most efficient way to increase the tax value of the land:

If the tax cost of the land is not increased as proposed, on any future sale of the property any gain on sale would be based on historical cost and most of the original purchase price of the shares of Central Heat Distribution Ltd. would not offset the gain resulting in double tax to the Developer, which would impact the viability of the project for the Developer.

Therefore, the public interest benefits associated with amalgamation are limited to:

- Enabling the tax cost of the land held by Creative Energy to be increased in accordance with section 88(1) (d) of the *Income Tax Act*, thereby avoiding double tax in the event of the property being sold in the future; and
- Avoidance of an alternative approach that would involve winding-up the utility and be more complex and costly.⁷³

As outlined by Creative Energy, the primary public interest benefits associated with the Proposed Project and amalgamation arise solely from the Developer’s project and cannot be separated. These include the following:

- Improved local air quality as a result of new high efficiency and low-NO equipment at the Expo Plant, decommissioning of the oldest boilers at the Beatty Plant and through the extension of the flues at both the Expo and Beatty Plants;
- Beautification of Expo Boulevard due to the enhanced facade treatment of the new Expo Plant and the office tower development on the west side;
- Creation of a large public plaza between Beatty Street and BC Place; and
- Creation of a significant amount of retail space which, in addition, will also allow for the BC Place Stadium to increase their retail presence along the concourse.⁷⁴

FortisBC Energy Inc.

FortisBC Energy Inc. (FEI) made no final submissions with respect to Creative Energy’s initial Application nor did it participate in process related to the Revisions to the Application. However, it did respond to BCUC’s requests dated September 28, 2018, (Exhibit A-11) for submissions regarding Creative Energy’s request for the BCUC to issue a report to the LGIC on the utility amalgamation component of the proposed corporate reorganization, prior to a final decision being made on other aspects of the Application. In its submissions, FEI points out that Creative Energy’s evidence “is that the amalgamation is beneficial and in the public interest only in as much that it is a component of the broader approvals sought in the Application.” Further, FEI notes that the only specific justification that Creative Energy offers on behalf of amalgamation is there will be no harm to the utility or its ratepayers as the amalgamation is with a shell company. In FEI’s view, it is not clear the proposed amalgamation

⁷² Exhibit B-1, pp.107-110.

⁷³ Creative Energy Final Argument, pp. 54-55.

⁷⁴ *Ibid.*, pp. 55-56.

with a shell company is as benign as is suggested by Creative Energy. This is because it is not occurring in isolation but has been designed to facilitate the rest of Creative Energy's requests. In addition, the effect of the amalgamation will be the creation of a new public utility "and Creative has made no effort (sic) demonstrate that to be as inconsequential as it suggests."⁷⁵

CEC

The CEC's view is, "Emanate Energy has participated in proposing an agreement with Creative Energy which does not conserve the public interest in the utility and Emanate should not benefit by gaining interest in the development value which is being extracted from the utility." CEC submits that its position is that until such time as the public interest in the utility has been conserved through acceptance of BCUC conditions and requirements, the BCUC should not recommend approval of the reorganisation and amalgamation of the utility to the LGIC.⁷⁶

The CEC also submits that the purchase of 50 percent interest by Emanate Energy warrants further consideration. In its view, insufficient information has been made available on the record for assessing the suitability of this shareholder for the utility. The CEC states that it filed a letter on October 15, 2018 where it expressed concerns it continues to stand by. These concerns primarily centre on the lack of disclosure on the amount that Emanate Energy will pay for the 50 percent interest in the utility and what it describes as the general vagueness and uncertainties of Creative Energy's responses to information requests.⁷⁷

Creative Energy Reply

Concerning the CEC's assertion that Emanate Energy "should not benefit from gaining an interest in the development value which is being extracted from the utility," Creative Energy affirms Emanate Energy will have no interest in surplus property or the Developer's Office Tower Project under the Proposed Reorganization. Creative Energy explains that the utility assets remain with Creative Energy (2018) and the Trust Property is transferred to the Developer for that purpose. As outlined in steps 11 and 12 of the Proposed Reorganization, the shares of Creative Energy (2018) will be transferred to Creative Energy Developments LP where Emanate Energy is already a shareholder. As a consequence, Emanate Energy would have no interest in the Trust Property or the Developer's Office Tower project but would acquire indirect equity interest in the utility.⁷⁸

Concerning the sufficiency of the information on the record about Emanate Energy, Creative Energy disagrees with the CEC's view that it is inadequate to assess its suitability as a shareholder. It states that all questions concerning Emanate Energy have been answered and the information on the record is more than enough for the BCUC to be able to understand the shareholder and its interests. In Creative Energy's view, the only 'inadequacy' in the record relates to some of the information requested by the CEC in Exhibit C3-9 that the Panel (in Exhibit A-17) determined there was no need to file.⁷⁹

Panel Determination

Creative Energy's proposed Corporate Reorganization is somewhat unique in that it will result in no significant direct benefits related to the reorganization itself. Instead, the benefits derived relate to the Proposed Project which, because it is inextricably connected to the corporate reorganisation, will not go forward unless the requested approvals related to both Proposed Project and the Corporate Reorganisation are approved. In its submissions, Creative Energy has pointed out that completion of the Proposed Project and the Developers Office Tower Project result in significant public interest benefits. These include improved air quality, beautification of

⁷⁵ Exhibit C4-2, pp. 2-4.

⁷⁶ CEC Final Argument, p. 4.

⁷⁷ Exhibit C3-9, pp. 3-4; CEC Final Argument, p. 13

⁷⁸ Creative Energy Reply Argument, p. 26.

⁷⁹ Ibid., p. 27.

Expo Blvd and creation of a large plaza, as well as providing for additional retail space. The Panel agrees and notes that completion of these projects will enhance the urban landscape significantly.

However, even more important are the benefits provided to Creative Energy ratepayers. As stated in the February 2019 Decision, completion of the Proposed Project will result in significant upgrades being made to Creative Energy's plant and the building housing. Building the Expo Plant will involve having two new boilers replace existing boiler units at or near the end of expected life and the existing Beatty Plant will be replaced and upgraded to modern seismic and fire resistance standards, thereby improving reliability and safety. In addition, the Proposed Project will provide new modern office space to replace existing space which has serious limitations. This work will be done for a cost of \$15 million to Creative Energy, an amount that is significantly less than the estimated \$53.1 million for completion of the project and other related costs. The 4.1 percent impact on rates of this refurbishment is relatively minor when considering future costs likely to be borne by ratepayers if the Proposed Project were not completed. While not directly related to the reorganization itself, the Panel finds that the benefits associated with approval of the CPCN and the Corporate Reorganization are significant and will have a long-term positive impact on ratepayers and the community surrounding the utility.

FEI has raised concerns with respect to whether the proposed amalgamation is benign as described, nor has Creative Energy demonstrated it is inconsequential as has been suggested. The Panel notes that FEI did not pursue this issue in IRs and, because it did not file a Final Argument, it did not clearly specify or expand upon this concern. Given these raised concerns were not further specified, the Panel gives them little weight.

With respect to the CEC's concerns regarding Emanate Energy gaining an interest in the development value of the utility land, Creative Energy has confirmed that Emanate Energy will have no interest in either the surplus property or the Developer's Office Tower Project. It has further explained how the Trust Property will be transferred to the Developer and how Emanate Energy, as a shareholder of Creative Energy Developments LP, would acquire an indirect equity interest in the utility. The Panel accepts Creative Energy's explanation and finds there to be no basis for concern that Emanate Energy will stand to gain by the transfer of the Trust property to the Developer.

The CEC has also raised concerns with respect to the information that has been made available on the record to assess the suitability of Emanate Energy as a shareholder of the utility. The Panel does not agree. The BCUC and the parties have had two rounds of IRs to further understand Emanate Energy's role "as the vehicle for InstarAGF's investment in Creative Energy GP and LP" and the value that it brings to the Proposed Reorganisation. Creative Energy has provided information on InstarAGF and what it brings to the partnership, which in addition to funding includes a wealth of experience in both investing in and directing infrastructure businesses with reference to power generation, district energy and renewable energy assets in Canada and abroad. As stated by Creative Energy, the only information that is not on the record is the amount paid by Emanate Energy to purchase its interest in Creative Energy GP and LP. The Panel has addressed the value of this information in its letter of October 23, 2019, (Exhibit A-17) where we explained why requiring it would not be helpful due the difficulty evaluating other energy projects controlled by Creative Energy Developments LP.

Given the positive benefits related to the Developer's Office Tower Project and the Proposed Project to Creative Energy ratepayers and the broader community, the Panel is of the opinion that the Proposed Amalgamation is beneficial and in the public interest in spite of the benefits directly related to the amalgamation being limited. **Therefore, pursuant to section 53 of the UCA and the inquiry into this matter, the Panel determines subject to Condition #2 in Section 3.0 being confirmed by Creative Energy, it is appropriate for a report summarizing the Panel's findings and this opinion be submitted to the LGIC.**

In addition to securing LGIC approval as required under section 53 of the UCA, Creative Energy has created a number of steps which allow for the amalgamation and corporate reorganization. Each of these must be

approved by the BCUC. Therefore, to allow these to be completed in a timely and efficient manner, the Panel makes the following determinations:

- 1. With reference to Step 2 and pursuant to subsections 54(5) and 54(7) of the UCA, the Panel approves a new Creative Canada subsidiary, Newco acquiring all issued and outstanding shares of Creative Energy from Creative Canada in exchange for shares of Newco.**
- 2. Subject to the LGIC approving the Step 3 amalgamation the Panel makes the following determinations:**
 - I. With reference to Step 4 and pursuant to section 50 of the UCA, the Panel approves Creative Energy (2018) issuing Property Preferred Shares (with a value equal to the value of surplus assets) and Utility Common Shares (with a value equal to the fair market value of Creative Energy (2018)'s Utility Division inclusive of the property used for operation of the utility) to Creative Canada. In exchange Creative Energy (2018) will acquire all of the issued and outstanding shares from Creative Canada.**
 - II. With reference to Steps 8 and 9 and pursuant to section 52 of the UCA, the Panel approves Creative Energy (2018) transferring beneficial interest in the surplus real estate property or trust property to the Developer Partnership.**
 - III. With reference to Step 10 and pursuant to section 52 of the UCA, the Panel approves the transfer of Creative Energy (2018)'s 99.99 percent interest in the Developer Partnership to Property Development Co., an affiliate of the Developer.**
 - IV. With reference to Steps 11 and 12 and pursuant to subsections 54(5) and (7) of the UCA, the Panel approves Creative Canada transferring all of its Utility Common Shares of Creative Energy (2018) to Creative Energy Developments LP in exchange for additional LP units in the limited partnership and Creative Canada selling 50 percent of these additional LP units to Emanate Energy.**

DATED at the City of Vancouver, in the Province of British Columbia, this 5th day of March 2020.

Original signed by: _____
D. A. Cote
Panel Chair

Original signed by: _____
D. J. Enns
Commissioner

Original signed by: _____
M. Kresivo
Commissioner



**ORDER NUMBER
C-1-20**

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

Creative Energy Vancouver Platforms Inc.
Application for a Certificate of Public Convenience and Necessity
For Beatty-Expo Plants and Reorganization

BEFORE:

D. A. Cote, Panel Chair
D. J. Enns, Commissioner
M. Kresivo, Commissioner

on Mach 5, 2020

ORDER

WHEREAS:

- A. On June 29, 2018, Creative Energy Vancouver Platforms Inc. (Creative Energy) filed an application with the British Columbia Utilities Commission (BCUC) for a Certificate of Public Convenience and Necessity (CPCN) pursuant to sections 45 and 46 of the *Utilities Commission Act* (UCA), to construct and operate new and renovated steam plant works and related facilities at Creative Energy's existing site at 720 Beatty Street in Vancouver and at an adjacent site within BC Place Stadium (Proposed Project), and additional approvals required in connection to the Proposed Project (Application);
- B. In addition, pursuant to sections 50, 52, 53 and 54 of the UCA, Creative Energy sought the approval of the steps related to a corporate reorganization involving Creative Energy;
- C. By Order G-128-18 dated July 13, 2018, the BCUC established a regulatory timetable which included a workshop, the first round of BCUC and intervener information requests (IR) with further process to be determined;
- D. By Order G-194-18 dated October 12, 2018, the BCUC established a further regulatory timetable, including filing of the Land Value Assessment Report by Grover, Elliott & Co. Ltd., BCUC and Intervener IR No. 2, a round of BCUC IRs, Creative Energy and Intervener IR No. 1 on the Land Value Assessment Report as well as Final Arguments from the parties and Reply Argument from Creative Energy. By Order G-216-18 dated November 15, 2018, the BCUC issued an amended regulatory timetable, changing dates for Creative Energy final and reply arguments and intervener final argument;
- E. On February 19, 2019, the BCUC issued its Decision with accompanying Order G-38-19 (February 2019 Decision), with the following determinations:

- Creative Energy’s Application is not approved at that time; and
 - Creative Energy is invited to file a revised application addressing the Panel's concerns, within one year from the date of the Decision, failing which, the Application would be dismissed;
- F. On April 26, 2019, in response to the February 2019 Decision, Creative Energy filed revisions to the Application (Revisions to the Application);
- G. In its Revisions to the Application, Creative Energy sought approval for the following:
- Pursuant to sections 45 and 46 of the UCA, a CPCN for the construction and operation of the following components of the Proposed Project at an estimated total capital cost of \$53.1 million:
 - the Expo Plant, including facilities to interconnect steam, condensate and fuel oil services between the Expo and Beatty Plants; and
 - the Beatty Plant renovation;
 - Pursuant to sections 56 and 60 of the UCA, approval to establish a regulatory deferral account to record the undepreciated net book value of the Creative Energy assets that are retired as part of the Proposed Project, excluding lands;
 - Pursuant to sections 60 and 61 of the UCA, approval of a new long-term customer service agreement between B.C. Pavilion Corporation (PavCo) and Creative Energy for heating services to the BC Place Stadium;
 - Approval of the following steps related to a corporate reorganization involving Creative Energy:
 - Amalgamation involving a public utility requiring the BCUC endorsement and Lieutenant Governor in Council (LGIC) consent pursuant to section 53 of the UCA;
 - Corporate structure changes requiring BCUC approval, including:
 - Repurchase and issuance of shares in a public utility, pursuant to section 50 of the UCA;
 - Disposition of shares or other property of a public utility, other than in the normal course of business, pursuant to section 52 of the UCA; and
 - Transfer of shares in a public utility that results in a person acquiring a reviewable interest in the public utility, pursuant to section 54 of the UCA;
 - Disposition of Creative Energy’s interest in “Trust Property” (as defined in the Application, the Trust Property is the interest in the lands, spaces and improvements on 720 Beatty Street and 701 Expo Boulevard, Vancouver, including all development rights that are surplus to the requirements of the utility), pursuant to section 52 of the UCA;
- H. By Order G-107-19 dated May 21, 2019, the BCUC established the specified scope (Scope) for this proceeding and the regulatory timetable for continuation of the regulatory process, including BCUC and intervener IR No. 1 on the Scope, Creative Energy responses to IR No. 1 on the Scope and Creative Energy and intervener submissions on further process, with further process to be determined;
- I. By Order G-159-19 dated July 15, 2019, the BCUC established a further regulatory timetable for the proceeding, including the BCUC and interveners IR No. 2 on the Scope, Creative Energy responses to IRs No.2 on the Scope and final and reply arguments. By Order G-196-19 dated August 22, 2019, the BCUC issued an amended regulatory timetable, changing dates for intervener final argument;

- J. On October 7, 2019, the BCUC issued Panel IR No. 1 on the Scope to Creative Energy. On December 23, 2019, the BCUC issued Panel IR No. 2 on the Scope and invited interveners to file submissions on Creative Energy's responses to Panel IR No.2 and Creative Energy to file rebuttal submissions, if any; and
- K. The BCUC has reviewed the Application, Revisions to the Application and evidence filed in the proceeding and makes the following determinations.

NOW THEREFORE pursuant to sections 45, 46, 50, 52, 53, 54, 56, 60, and 61 of the UCA and for the reasons outlined in the decision issued concurrently with this order, the BCUC orders as follows:

1. Creative Energy's Application for a Certificate of a CPCN for the Beatty Expo Plants is approved subject to the following conditions being agreed to and met:
 - (i). Creative Energy providing the BCUC with copies of a Performance Bond based on the confirmations outlined in Section 2.1.2 of the decision issued concurrently with this order. Creative Energy must provide evidence of this Performance Bond being in place prior to any demolition of the exterior walls, foundation or roof of the building within which the existing plant is situated;
 - (ii). Creative Energy's confirmation that at Westbank Projects Corp.'s (Developer) cost there will be one temporary boiler with 82,500 PPH capacity in place and operational at the Beatty Plant prior to first planned restart date;
 - (iii). A list of qualified candidates for the Design Engineering and General contractor roles being filed with and approved by the Panel within 60 days of this Decision;
 - (iv). BCUC approval is required for any changes from what is stated in the Amended and Restated Trust and Development Agreement (TDA) with respect to boiler numbers, any individual or total boiler capacity or their location within or between the Beatty and Expo Plants; and
 - (v). The total cost for the Proposed Project to be added to Creative Energy's rate base after completion of the project is limited to \$15 million. Requests for any expenditures in addition to this must be filed with the BCUC for review and approval.
2. Creative Energy is directed to submit a detailed project schedule as a compliance filing within 60 days of engaging a general contractor, as outlined in Section 2.2.3 of the decision issued concurrently with this order.
3. Creative Energy is approved to establish a regulatory deferral account to record the undepreciated net book value of the Creative Energy assets that are to be retired as part of the Proposed Project, excluding land.
4. The new long-term service agreement between Creative Energy and PavCo is approved.
5. Creative Energy is directed to comply with the reporting requirements as outline in Section 2.2.6 of the decision issued concurrently with this order.
6. Once Creative Energy has provided confirmation to condition 1(ii) above, a report summarizing the BCUC findings and its opinion is to be submitted to the LGIC.
7. A new Creative Canada subsidiary, Newco, acquiring all issued and outstanding shares of Creative Energy from Creative Canada in exchange for shares of Newco is approved.
8. Subject to the LGIC approving amalgamation, the following reorganization steps are approved:

- (i). Creative Energy (2018) issuing Property Preferred Shares (with a value equal to the value of surplus assets) and Utility Common Shares (with a value equal to the fair market value of Creative Energy (2018)'s Utility Division inclusive of the property used for operation of the utility) to Creative Canada. In exchange Creative Energy (2018) will acquire all issued and outstanding shares from Creative Canada;
- (ii). Creative Energy (2018) transferring beneficial interest in the surplus real estate property or trust property to the Developer Partnership;
- (iii). The transfer of Creative Energy (2018)'s 99.99 percent interest in the Developer Partnership to Property Development Co., an affiliate of the Developer; and
- (iv). Creative Canada transferring all of its Utility Common Shares of Creative Energy (2018) to Creative Energy Developments LP in exchange for additional LP units in the limited partnership and Creative Canada selling 50 percent of these additional LP units to Emanate Energy.

DATED at the City of Vancouver, in the Province of British Columbia, this 5th day of March 2020.

BY ORDER

Original signed by:

D. A. Cote
Commissioner

LEGISLATIVE FRAMEWORK

As stipulated in Section 45 of the UCA, the [BCUC] must not give its approval for a CPCN unless it determines that the privilege, concession or franchise proposed is necessary for the public convenience and properly conserves the public interest. In giving its approval, the BCUC

- a) must grant a certificate of public convenience and necessity, and
- b) may impose conditions about
 - i. the duration and termination of the privilege, concession or franchise, or
 - ii. construction, equipment, maintenance, rates or service, as the public convenience and interest reasonably require.

Section 46 of the UCA stipulates that in deciding whether to issue a CPCN applied for by a public utility other than the authority (as defined in the UCA), the [BCUC] must consider

- a) the applicability of British Columbia's energy objectives,
- b) the most recent long-term resource plan filed by the public utility under section 44.1, if any, and
- c) the extent to which the application for the certificate is consistent with the applicable requirements under sections 6 and 19 of the *Clean Energy Act*.

British Columbia's energy objectives are specified in Section 2 of the *CEA* and include the following:

- a) to achieve electricity self-sufficiency;
- b) to take demand-side measures and to conserve energy;
- c) to generate at least 93% of the electricity in British Columbia from clean or renewable resources;
- d) to use and foster the development in British Columbia of innovative technologies that support energy conservation and efficiency and the use of clean or renewable resources;
- e) to ensure the authority's ratepayers receive the benefits of the heritage assets;
- f) to ensure the authority's rates remain among the most competitive of rates charged by public utilities in North America;
- g) to reduce BC greenhouse gas emissions;
- h) to encourage the switching from one kind of energy source or use to another that decreases greenhouse gas emissions in British Columbia;
- i) to encourage communities to reduce greenhouse gas emissions and use energy efficiently;
- j) to reduce waste by encouraging the use of waste heat, biogas and biomass;
- k) to encourage economic development and the creation and retention of jobs;
- l) to foster the development of first nation and rural communities through the use and development of clean or renewable resources;
- m) to maximize the value, including the incremental value of the resources being clean or

renewable resources;

- n) to be a net exporter of electricity from clean or renewable resources;
- o) to achieve British Columbia's energy objectives without the use of nuclear power;
- p) to ensure the [BCUC], under the Utilities Commission Act, continues to regulate the authority with respect to domestic rates but not with respect to expenditures for export, except as provided by this Act.

Section 56 of the UCA, on depreciation accounts and funds, stipulates:

- 1) If the [BCUC], after inquiry, considers that it is necessary and reasonable that a depreciation account should be carried by a public utility, the [BCUC] may, by order, require the utility to keep an adequate depreciation account under rules and forms of account specified by the [BCUC].
- 2) The [BCUC] must determine and, by order after a hearing, set proper and adequate rates of depreciation.
- 3) The rates must be set so as to provide, in addition to the expense of maintenance, the amounts required to keep the public utility's property in a state of efficiency in accordance with technical and engineering progress in that industry of the utility.
- 4) A public utility must adjust its depreciation accounts to conform to the rates set by the [BCUC] and, if ordered by the [BCUC], must set aside out of earnings whatever money is required and carry it in a depreciation fund.
- 5) Without the consent of the [BCUC], the depreciation fund must not be expended other than for replacement, improvement, new construction, extension or addition to the property of the utility.

Section 60 of the UCA on setting rates specifies:

- (1) In setting a rate under this Act.
 - a) the [BCUC] must consider all matters that it considers proper and relevant affecting the rate,
 - b) the [BCUC] must have due regard to the setting of a rate that:
 - i. is not unjust or unreasonable within the meaning of section 59,
 - ii. provides to the public utility for which the rate is set a fair and reasonable return on any expenditure made by it to reduce energy demands, and
 - iii. encourages public utilities to increase efficiency, reduce costs and enhance performance,
 - b.1) the [BCUC] may use any mechanism, formula or other method of setting the rate that it considers advisable, and may order that the rate derived from such a mechanism, formula or other method is to remain in effect for a specified period, and
 - c) if the public utility provides more than one class of service, the [BCUC] must
 - i. segregate the various kinds of service into distinct classes of service,
 - ii. in setting a rate to be charged for the particular service provided, consider each distinct class of service as a self-contained unit, and
 - iii. set a rate for each unit that it considers to be just and reasonable for that unit, without regard to the rates set for any other unit.
- (2) In setting a rate under this Act, the [BCUC] may take into account a distinct or special area served by a public utility with a view to ensuring, so far as the [BCUC] considers it advisable, that the rate applicable

in each area is adequate to yield a fair and reasonable return on the appraised value of the plant or system of the public utility used, or prudently and reasonably acquired, for the purpose of providing the service in that special area.

- (3) If the [BCUC] takes a special area into account under subsection (2), it must have regard to the special considerations applicable to an area that is sparsely settled or has other distinctive characteristics.
- (4) For this section, the [BCUC] must exclude from the appraised value of the property of the public utility any franchise, licence, permit or concession obtained or held by the utility from a municipal or other public authority beyond the money, if any, paid to the municipality or public authority as consideration for that franchise, licence, permit or concession, together with necessary and reasonable expenses in procuring the franchise, licence, permit or concession.

Section 61 of the UCA on rate schedules specifies:

- (1) A public utility must file with the [BCUC], under rules the [BCUC] specifies and within the time and in the form required by the [BCUC], schedules showing all rates established by it and collected, charged or enforced or to be collected or enforced.
- (2) A schedule filed under subsection (1) must not be rescinded or amended without the [BCUC]'s consent.
- (3) The rates in schedules as filed and as amended in accordance with this Act and the regulations are the only lawful, enforceable and collectable rates of the public utility filing them, and no other rate may be collected, charged or enforced.
- (4) A public utility may file with the [BCUC] a new schedule of rates that the utility considers to be made necessary by a change in the price, over which the utility has no effective control, required to be paid by the public utility for its gas supplies, other energy supplied to it, or expenses and taxes, and the new schedule may be put into effect by the public utility on receiving the approval of the [BCUC].
- (5) Within 60 days after the date it approves a new schedule under subsection (4), the [BCUC] may,
 - a) on complaint of a person whose interests are affected, or
 - b) on its own motion, direct an inquiry into the new schedule of rates having regard to the setting of a rate that is not unjust or unreasonable.
- (6) After an inquiry under subsection (5), the [BCUC] may
 - a) rescind or vary the increase and order a refund or customer credit by the utility of all or part of the money received by way of increase, or
 - b) confirm the increase or part of it.

Section 53 of the UCA regarding consolidation, amalgamation and merger, specifies:

- (1) A public utility must not consolidate, amalgamate or merge with another person
 - a. unless the Lieutenant Governor in Council
 - i. has first received from the [BCUC] a report under this section including an opinion that the consolidation, amalgamation or merger would be beneficial in the public interest, and
 - ii. has, by order, consented to the consolidation, amalgamation or merger, and
 - b. except in accordance with an order made under paragraph (a).
- (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.

- (3) An application for consent of the Lieutenant Governor in Council under subsection (1) must be made to the [BCUC] by the public utility.
- (4) The [BCUC] must inquire into the application and may for that purpose hold a hearing.
- (5) On conclusion of its inquiry, the [BCUC] must,
 - a. if it is of the opinion that the consolidation, amalgamation or merger would be beneficial in the public interest, submit its report and findings to the Lieutenant Governor in Council, or
 - i) dismiss the application.
- (6) If a public utility gives notice to its shareholders of a meeting of shareholders in connection with a consolidation, amalgamation or merger, it must
 - a. set out in the notice the provisions of this section, and
 - b. file a copy of the notice with the commission at the time of mailing to the shareholders.

Section 50 of the UCA regarding approval of issue of securities, specifies:

In this section, "**security**" means any share of any class of shares of a public utility or any bond, debenture, note or other obligation of a

- (1) public utility whether secured or unsecured.
- (2) Except in the case of a security evidencing indebtedness payable less than one year from its date, a public utility must not issue a security without first obtaining approval of the [BCUC] under this section and, if section 54 applies, under that section.
- (3) Without first obtaining the commission's approval, a public utility must not,
 - a. in respect of a security that it has issued,
 - i. increase a fixed dividend or fixed interest rate,
 - ii. alter a maturity date for the issue,
 - iii. restrict the utility's right to redeem the issue,
 - iv. increase the premium to be paid on redemption, or
 - v. make a material alteration in the characteristics of the security, or
 - b. purchase, redeem or otherwise acquire shares of any class of the utility except in accordance with any special rights or restrictions attached to them.
- (4) Subsections (2) and (3) do not apply to the issue of shares under a genuine employee share purchase plan or genuine employee share option plan that has been filed with the [BCUC].
- (5) Without first obtaining the [BCUC]'s approval, a public utility must not guarantee the payment of all or part of a loan or all or part of the interest on a loan made to another person.
- (6) A public utility is not liable under a guarantee given by it after June 29, 1988, in contravention of subsection (5) or of a condition of approval imposed under subsection (7).
- (7) The [BCUC] may give its approval under this section subject to conditions and requirements considered necessary or desirable in the public interest.
- (8) A municipality is not a utility for the purpose of this section.

Section 52 of the UCA regarding approval of issue of securities, specifies:

- (1) Except for a disposition of its property in the ordinary course of business, a public utility must not, without first obtaining the commission's approval,
- a. dispose of or encumber the whole or a part of its property, franchises, licences, permits, concessions, privileges or rights, or
 - b. by any means, direct or indirect, merge, amalgamate or consolidate in whole or in part its property, franchises, licences, permits, concessions, privileges or rights with those of another person.

The commission may give its approval under this section subject to conditions and requirements considered necessary or desirable in the public interest.

Section 54 of the UCA regarding reviewable interests specifies:

(1) In this section

"child" includes a child in respect of whom a person referred to in the definition of "spouse" stands in the place of a parent;

"offeree" means a person to whom a take over bid is made;

"offeror" means a person, other than an agent, who makes a take over bid and includes 2 or more persons whose bids are made jointly or in concert, or who intend to exercise jointly or in concert any voting rights attaching to the shares for which a take over bid is made;

"spouse" means a person who is married to another person, or is living with another person in a marriage-like relationship, and has lived in that relationship for a period of at least 2 years;

"voting share" means a share that has, or may under any special rights or restrictions attached to the share have, the right to vote for the election of directors, and for this purpose **"share"** includes

- a) a security convertible into such a share, and
- b) options and rights to acquire such a share or such a convertible security.

2) For the purposes of this section, persons are associates if any of the following apply:

- a) one of the persons is a corporation
 - i. of which more than 10% of the shares outstanding of any class of the corporation are beneficially owned or controlled, directly or indirectly, by the other person, or
 - ii. of which the other is a director or officer;
- b) each of the persons is a corporation and
 - i. more than 10% of the shares outstanding of any class of shares of one are beneficially owned or controlled, directly or indirectly, by the other, or
 - ii. more than 10% of the shares outstanding of any class of shares of each are beneficially owned or controlled, directly or indirectly, by the same person;
- c) they are partners or one is a partnership of which the other is a partner;
- d) one is a trust in which the other has a substantial beneficial interest or for which the other serves as trustee or in a similar capacity;
- e) they are obligated to act in concert in exercising a voting right in respect of shares of the utility;
- f) one is the spouse or child of the other;
- g) one is a relative of the other or of the other's spouse and has the same home as the other.

- 3) For the purpose of subsection (2), if a person has more than one associate, those associates are associates of each other.
- 4) For the purpose of this section, a person has a reviewable interest in a public utility if
 - a) the person owns or controls, or
 - b) the person and the person's associates own or control, in the aggregate more than 20% of the voting shares outstanding of any class of shares of the utility.
- 5) A public utility must not, without the approval of the [BCUC],
 - a) issue, sell, purchase or register on its books a transfer of shares in the capital of the utility or create, or
 - b) attach to any shares, whether issued or unissued, any special rights or restrictions, if the issue, sale, purchase or registration or the creation or attachment of the special rights or restrictions would
 - c) cause any person to have a reviewable interest,
 - d) increase the percentage of voting shares owned by a person who has a reviewable interest,
 - e) be a registration of a transfer of shares, the acquisition of which was contrary to subsection (7) or (8), or
 - f) increase the voting rights attached to any shares owned by a person who has a reviewable interest.
- 6) Failure of a public utility to comply with subsection (5) does not give rise to an offence if the public utility acts in the genuine belief based on an enquiry made with reasonable care, that the issue, sale, purchase or registration, or the creation or attachment of the special rights or restrictions, would not have the effects referred to in subsection (5) (c) to (f).
- 7) A person must not acquire or acquire control of such numbers of any class of shares of a public utility as
 - a) in themselves, or
 - b) together with shares already owned or controlled by the person and the person's associates, cause the person to have a reviewable interest in a public utility unless the person has obtained the [BCUC]'s approval.
- 8) Except if the acquisition or acquisition of control does not increase the percentage of voting shares held, owned or controlled by the person or by the person and the person's associates, a person having a reviewable interest in a public utility and any associate of that person must not acquire or acquire control of any voting shares in the public utility unless the person or associate has obtained the [BCUC]'s approval.
- 9) The [BCUC] may give its approval under this section subject to conditions and requirements it considers necessary or desirable in the public interest, but the commission must not give its approval under this section unless it considers that the public utility and the users of the service of the public utility will not be detrimentally affected.
- 10) If the [BCUC] determines that there has been a contravention of subsection (5), (7) or (8), the commission may, on notice to the public utility and after a hearing, make an order imposing on the public utility conditions and requirements respecting the management and operation of the utility.
- 11) A proceeding must not be brought against the [BCUC] or the government by reason of the exercise by the [BCUC] of its powers under subsection (9) or (10).
- 12) An offeror who makes a take over bid for shares of a public utility must

- a) file with the [BCUC] a copy of the take over bid and all supporting or supplementary material within 5 days after the date the material is first sent to offerees, and
- b) include in or attach to the take over bid a notice setting out the provisions of this section and stating the number, without duplication, and designation of any shares of the public utility held by the offeror and the offeror's associates.

Nothing in subsection (12) relieves a person from any requirement under the *Securities Act*.

GLOSSARY AND LIST OF ACRONYMS

Acronym / Glossary	Description
Application	Application for a Certificate of Public Convenience and Necessity for Beatty-Expo Plants and Reorganization
BCUC	British Columbia Utilities Commission
CEA	<i>Clean Energy Act</i>
CEC	Commercial Energy Consumers Association of British Columbia
CPCN	Certificate of Public Convenience and Necessity
CPI	Consumer price index
Creative Energy Canada	Creative Energy Canada Platforms Corp.
Creative Energy Developments LP	Creative Energy Canada and Emanate
Creative Energy or Company	Creative Energy Vancouver Platforms Inc.
Developer	Westbank Projects Corp.
ECR	Energy centre
ETS	Energy Transfer Station
F&H	Fosdick & Hilmer
FAES	FortisBC Alternative Energy Services Inc.
FCAC	Fuel Cost Adjustment Charge
FEI	FortisBC Energy Inc.
InstarAGF	InstarAGF Asset Management Inc.
LGIC	Lieutenant Governor in Council
NEFC	North East False Creek
NPV	Net present value
O&M	Operations and Maintenance
PavCo	B.C. Pavilion Corporation
Pinchin	Pinchin Ltd.
RJC	Read Jones Christoffersen Ltd.
ROE	Return on Equity
SRW	Statutory Right of Way

The Beatty plant	Existing plant at Beatty
The City	The City of Vancouver
The Expo plant	A new plant
The Proposed Project	Construction and operation of new and renovated steam plant works and related facilities at Creative Energy's existing site at 720 Beatty Street in Vancouver and at an adjacent site within BC Place Stadium
Trust Agreement	The Trust and Development Agreement
UCA	<i>Utilities Commission Act</i>

IN THE MATTER OF
the *Utilities Commission Act*, RSBC 1996, Chapter 473

and

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

EXHIBIT LIST

Exhibit No.	Description
<i>COMMISSION DOCUMENTS</i>	
A-1	Letter dated July 11, 2018 - Appointing the Panel for the review of Creative Energy Vancouver Platforms Inc. Application for Certificate of Public Convenience and Necessity for the Expo and Beatty Plant Project and Approvals Related to Reorganization
A-2	Letter dated July 13, 2018 – Establishing a Regulatory Timetable and Public Notice
A-3	Letter dated July 17, 2018 – Amending the Panel for the review of the application
A-4	Letter dated July 20, 2018 – Information regarding August 2, 2018 Workshop
A-5	Letter dated August 17, 2018 – Information Request No. 1 to Creative Energy
A-5-1	CONFIDENTIAL Letter dated August 17, 2018 – Information Request No. 1 to Creative Energy
A-6	Letter dated August 22, 2018 – Parties Submissions on Terms of References for an Independent Appraisal of Surplus Land
A-7	Letter dated August 31, 2018 – BCUC response to Creative Energy extension request
A-8	Letter dated September 7, 2018 – BCUC Independent Appraiser’s Reply Comments regarding scope of the Terms of Reference
A-9	Letter dated September 19, 2018 – BCUC response regarding Submissions on the Terms of Reference and Land Value Assessment

- A-10 Letter dated September 26, 2018 – BCUC letter regarding confidentiality of material, with Panel Questions regarding the Amalgamation in Appendix A
- A-11 Letter dated September 28, 2018 – BCUC letter regarding submissions on amalgamation
- A-12 Letter dated October 9, 2018 – BCUC request Creative Energy provide a response regarding CEC’s Information Request No. 1.7.4
- A-13 Letter dated October 10, 2018 – BCUC request Creative Energy file as evidence the Appendices 1-4
- A-14 Letter dated October 12, 2018 – BCUC Order G-194-18 establishing a further regulatory timetable
- A-15 Letter dated October 12, 2018 – BCUC Submitting the Appraisal Report for 720 Beatty Street and 701 Expo Boulevard, Vancouver, BC
- A-16 Letter dated October 23, 2018 – BCUC Order G-203-18 with reasons for decision
- A-17 Letter dated October 23, 2018 – BCUC Response to CEC Request
- A-18 Letter dated October 25, 2018 – BCUC Information Request No. 2 to Creative Energy
- A-18-1 **CONFIDENTIAL** Letter dated October 25, 2018 – BCUC Confidential Information Request No. 2 to Creative Energy
- A-19 Letter dated October 25, 2018 – BCUC Information Request No. 1 to Grover Elliot
- A-20 Letter dated November 13, 2018 – Grover Elliot response to BCUC Information Request No. 1
- A-21 Letter dated November 14, 2018 – Grover Elliot response to CEC Information Request No. 1
- A-22 Letter dated November 14, 2018 – Grover Elliot response to Creative Energy Information Request No. 1
- A-23 Letter dated November 15, 2018 – BCUC Order G-216-18 amending the regulatory timetable
- A-24 Letter dated November 15, 2018 – Panel Information Request No. 1 to Creative Energy
- A-25 Letter dated December 13, 2018 – BCUC request Creative Energy comment regarding CEC’s sur-reply request
- A-26 Letter dated December 18, 2018 – BCUC response regarding CEC’s request for Sur Reply
- A-27 **CONFIDENTIAL** Letter dated February 1, 2019 – BCUC requesting confirmation regarding confidentiality of data
- A-28 Letter dated February 4, 2019 – BCUC response regarding confidentiality of data and statements in Appendix A of Exhibit B-22

- A-29 Letter dated May 21, 2019 – BCUC Order G-107-19 establishing a further regulatory timetable to review Revisions to the Application
- A-30 Letter dated June 12, 2019 – BCUC Information Request No. 1 on the Specified Scope to Creative Energy
- A-31 Letter dated July 15, 2019 – Response to Commercial Energy Consumers’ Request
- A-32 Letter dated July 15, 2019 – BCUC G-159-19 establishing a further regulatory timetable
- A-33 Letter dated July 25, 2019 – BCUC Information Request No. 2 on the Specified Scope to Creative Energy
- A-34 Letter dated August 22, 2019 – BCUC G-196-19 amending the regulatory timetable
- A-35 Letter dated October 7, 2019 – Panel Information Request No. 1 on the Specified Scope to Creative Energy
- A-36 Letter dated October 17, 2019 – Response to Farris LLP Requests for Relief
- A-37 Letter dated December 18, 2019 – BCUC G-332-19 with Reasons for Decision responding to PCL’s application for reconsideration
- A-38 Letter dated December 23, 2019 – Panel Information Request No. 2 on the Specified Scope to Creative Energy

COMMISSION STAFF DOCUMENTS

- A2-1 Letter dated October 17, 2019 – BCUC staff submission - Farris LLP Requests for Relief dated October 15, 2019
- A2-2 Letter dated October 29, 2019 – BCUC staff submission - Farris LLP Reconsideration Permission Request dated October 24, 2019
- A2-3 Letter dated November 8, 2019 – BCUC staff submission - Farris LLP Requests for Relief dated November 7, 2019

APPLICANT DOCUMENTS

- B-1 **CREATIVE ENERGY VANCOUVER PLATFORMS INC. (CREATIVE ENERGY)** – Letter dated June 29, 2018 Application for Certificate of Public Convenience and Necessity for the Expo and Beatty Plant Project and Approvals Related to Reorganization
- B-1-1 **CONFIDENTIAL** Letter dated June 29, 2018 – Creative Energy Submitting **CONFIDENTIAL** Appendix C Financial Model
- B-1-2 Submission dated August 30, 2018 – Creative Vancouver Submitting Amended and Restated Trust and Development Agreement (Fully Executed) – Agreement dated August 10, 2018
- B-2 Submission dated August 2, 2018 – Workshop Presentation
- B-3 Letter dated August 24, 2018 – Creative Energy Comments on Scope of Terms of Reference
- B-4 Letter dated August 31, 2018 – Creative Energy Submitting Extension Request
- B-5 Letter dated August 31, 2018 – Creative Energy Submitting Responses to BCUC IR No. 1
- B-5-1 **CONFIDENTIAL** Letter dated August 31, 2018 – Creative Energy Submitting Responses to Confidential BCUC IR No. 1
- B-5-2 Letter dated September 7, 2018 – Creative Energy Submitting Supplementary Responses to BCUC IR No. 1
- B-5-3 **CONFIDENTIAL** Letter dated September 7, 2018 – Creative Energy Submitting Supplementary Confidential Attachment 36.1 to BCUC IR No. 1
- B-5-4 Submission received September 19, 2018 - Creative Energy Supplemental Response to BCUC IR 19.3 and 19.4, Naviworks file attached
- B-6 Letter dated August 31, 2018 – Creative Energy Submitting Responses to CEC IR No. 1
- B-7 Letter dated September 13, 2018 – Creative Energy Submitting letter regarding material relevant to the Independent Land Value Assessment
- B-8 Letter dated September 28, 2018 – Creative Energy Response to BCUC request for clarification of Confidential Attachment
- B-9 Submission dated October 1, 2018 – Creative Energy Response to Exhibit A-10, BCUC letter regarding confidentiality of material, with Panel Questions regarding the Amalgamation in Appendix A
- B-10 Letter dated October 3, 2018 – Creative Energy Submission on Amalgamation
- B-11 Letter dated October 9, 2018 – Creative Energy reply to CEC regarding clarification of Attachment 4 to letter to Grover Elliot and reasons for confidentiality
- B-12 Submission dated October 10, 2018 - Creative Energy submitting as evidence Appendices 1-3 previously provided to Grover, Elliot & Co. Ltd.

- B-12-1 **CONFIDENTIAL** - Submission dated October 10, 2018 - Creative Energy submitting as evidence Confidential Appendix 4 previously provided to Grover, Elliot & Co. Ltd.
- B-13 Letter dated October 11, 2018 – Creative Energy response to Exhibit A-12 regarding CEC Information Request
- B-14 Letter dated October 15, 2018 – Creative Energy reply submission regarding amalgamation
- B-15 Letter dated October 25, 2018 - Creative Energy submitting Information Request No. 1 to Grover Elliot
- B-16 Letter dated October 31, 2018 – Creative Energy submitting customer survey
- B-17 Letter dated November 8, 2018 – Creative Energy submitting responses to CEC Information Request No. 2
- B-18 Letter dated November 8, 2018 – Creative Energy submitting responses to BCUC Information Request No. 2
- B-18-1 **CONFIDENTIAL** - Letter dated November 8, 2018 – Creative Energy submitting CONFIDENTIAL Attachments 85.12 and 134.1 to BCUC Information Request No. 2 responses
- B-19 Letter dated November 15, 2018 – Creative Energy submitting timetable extension request
- B-20 Letter dated November 19, 2018 – Creative Energy submitting responses to BCUC Panel Information Request No. 1
- B-21 Letter dated December 14, 2018 – Creative Energy submitting response to BCUC regarding CEC’s sur-reply request
- B-22 Letter dated February 1, 2019 – Creative Energy submitting response to BCUC Exhibit A-27 regarding confidentiality of data and statements
- B-23 Letter dated April 26, 2019 – Creative Energy submitting response to BCUC Decision and Order G-38-19
- B-24 Letter dated June 28, 2019 – Creative Energy submitting response to BCUC IR No. 1 on the Specified Scope
- B-25 Letter dated June 28, 2019 – Creative Energy submitting response to CEC IR No. 1 on the Specified Scope
- B-26 Letter dated July 8, 2019 – Creative Energy submitting comments on further process
- B-27 Letter dated July 22, 2019 – Creative Energy submitting response to CEC Specified Scope Information Requests 11.9 and 11.10
- B-28 Letter dated August 15, 2019 – Creative Energy submitting response to BCUC IR No. 2 on the Specified Scope
- B-29 Letter dated August 15, 2019 – Creative Energy submitting response to CEC IR No. 2 on the Specified Scope

- B-30 Letter dated October 11, 2019 – Creative Energy submitting response to BCUC Panel IR No. 1 on the Specified Scope
- B-30-1 Letter dated October 15, 2019 – Creative Energy submitting errata to the responses to BCUC Panel IR No. 1 on the Specified Scope
- B-31 Letter dated October 30, 2019 – Creative Energy submitting response to Requests for Relief
- B-32 Letter dated January 6, 2020 – Creative Energy submitting responses to Panel Information Request No. 2 on the Specified Scope
- B-33 Letter dated January 14, 2020 – Creative Energy submitting no rebuttal response to CEC comment

INTERVENER DOCUMENTS

- C1-1 **CITY CENTRE CARE SOCIETY (CCCS)** Letter dated July 17, 2018 – Request for Intervener Status by James Lee – Changed Status to Interested Party Exhibit D-3
- C2-1 **FORTISBC ALTERNATIVE ENERGY SERVICES INC. (FAES)** Letter dated July 17, 2018 – Request for Intervener Status by Grant Bierlmeier
- C3-1 **COMMERCIAL ENERGY CONSUMERS ASSOCIATION OF BRITISH COLUMBIA (CEC)** Letter dated July 31, 2018 – Request for Intervener Status by Christopher Weafer
- C3-2 Letter dated August 17, 2018 – CEC Information Request No. 1 to Creative Energy
- C3-3 Letter dated August 24, 2018 – CEC Submitting Comments on Scope of Terms of Reference
- C3-4 Letter dated October 4, 2018 – CEC follow up on Information Request to Creative Energy
- C3-5 Letter dated October 4, 2018 – CEC Submitting Comments on Attachment 4
- C3-6 Letter dated October 10, 2018 – CEC Submission regarding Amalgamation
- C3-7 Submission dated October 10, 2018 – David Craig submitting Confidential Undertaking on behalf of CEC
- C3-8 Submission dated October 10, 2018 – Christopher Weafer submitting Confidential Undertaking on behalf of CEC
- C3-9 Letter dated October 15, 2018 – CEC submitting response regarding Exhibit B-13, Creative Energy response regarding CEC request for information
- C3-10 Letter dated October 25, 2018 – CEC submitting Information Request No. 1 to Grover Elliot

- C3-11 Letter dated October 25, 2018 – CEC submitting Information Request No. 2 to Creative Energy
- C3-12 Letter dated December 14, 2018 – CEC response to Creative Energy’s response to BCUC regarding CEC’s sur-reply request
- C3-13 Letter dated June 12, 2019 – CEC submitting Information Request to Creative Energy on the specified Scope
- C3-14 Letter dated July 8, 2019 – CEC submitting comments on further process
- C3-15 Letter dated July 25, 2019 – CEC submitting Information Request No. 2 to Creative Energy on the Specified Scope
- C3-16 Letter dated August 15, 2019 – CEC submitting extension request
- C3-17 Letter dated October 31, 2019 – CEC submitting response to Requests for Relief
- C3-18 Letter dated January 14, 2020 – CEC submitting no comment regarding Creative Energy responses to Panel Information Request No. 2 on the Specified Scope
- C4-1 **FORTISBC ENERGY INC. (FEI)** Letter dated July 25, 2018 – Request for Intervener Status by Diane Roy
- C4-2 Letter dated October 10, 2018 – FEI Submission regarding Amalgamation
- C5-1 **BC PAVILION CORPORATION (BCPC)** Letter dated July 30, 2018 – Request for Intervener Status by Clark Ledingham

INTERESTED PARTY DOCUMENTS

- D-1 **CITY OF VANCOUVER (CoV)** Letter dated July 20, 2018 – Request for Interested Party Status by Ashley St. Clair
- D-2 **EMANATE ENERGY SOLUTIONS INC. (EES)** Letter dated August 1, 2018 – Request for Interested Party Status
- D-3 **CITY CENTRE CARE SOCIETY (CCCS)** – Letter dated August 2, 2018 – Request for Interested Party Status by James Lee – Changed Status from Intervener Exhibit C1-1