

17 March 2020

BCUC File 63155

Via E-filing

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

Dear Mr. Wruck:

**Re: British Columbia Utilities Commission (BCUC, Commission)
Application Respecting Disposition of the Pendrell Street Thermal Energy System (Application)**

1. Introduction

This Application requests the approval of the British Columbia Utilities Commission (“**Commission**”) for the transfer from Creative Energy Developments Limited Partnership (“**Creative Energy Developments LP**”) to its wholly owned subsidiary Creative Energy Pendrell LP (“**Creative Energy Pendrell LP**”) of the thermal energy system assets and operations located at 1770 Pendrell Street (the “**Pendrell Street TES**”).

2. The Pendrell Street TES

The Pendrell Street TES consists of thermal energy utility equipment and operations located within a rental apartment building at 1770 Pendrell Street, Vancouver. The Pendrell Street TES serves the thermal energy requirements for space heating and domestic hot water of the on-site apartments and shared spaces in the apartment building only. The owner of the apartment building at 1770 Pendrell Street is the only customer of the Pendrell Street TES; the TES does not serve any other buildings or customers.

On March 28, 2018, Creative Energy Developments LP registered the Pendrell Street TES with the Commission as a Stream A TES in accordance with the Commission’s TES Regulatory Framework Guidelines.¹ Commission Order G-109-18 dated June 14, 2018 accepted the Stream A registration and granted exemption from sections 44.1, 45 and 59-61 of the *Utilities Commission Act* (“**UCA**”) for the Pendrell Street TES.

¹ The TES Regulatory Framework Guidelines are established pursuant to Commission Orders G-127-14 and G-27-15.

3. Corporate Reorganizations involving Creative Energy

Creative Energy Developments LP is a limited partnership of Creative Energy Canada Corp. (“**Creative Energy Canada**”)² and Emanate Energy Solutions Inc. (“**Emanate Energy**”)³. The partners have formed Creative Energy Developments LP to develop, finance and manage urban energy infrastructure projects in North America including in British Columbia. The plan is for Creative Energy Developments LP to identify, develop and finance potential project opportunities. For those projects that will proceed forward to construction and/or applications for regulatory approvals as required, a separate wholly-owned subsidiary limited partnership or company will be established to pursue the individual project. The intent is that each individual energy project is constructed, owned and operated by a separate wholly owned subsidiary of Creative Energy Developments LP. This structure will provide separation and transparency of costs between each project, and also between each project and the parent Creative Energy Developments LP.

For example, the Creative Energy Vancouver Platforms Inc. (“**Creative Energy Vancouver**”) steam utility will become a wholly-owned subsidiary company of Creative Energy Developments LP as part of the corporate reorganization of Creative Energy Vancouver recently approved by Commission Order C-1-20.

In the case of the Pendrell Street TES, Creative Energy Pendrell LP is the wholly owned subsidiary of Creative Energy Developments LP that has been formed for the purpose of owning and operating the Pendrell Street TES.

Transferring the Pendrell Street TES from Creative Energy Developments LP to Creative Energy Pendrell LP aligns with the overall corporate organization structure outlined above and also provides better separation of the ownership, operation and financial reporting of the Pendrell Street Stream A TES from the activities and interests of Creative Energy Developments LP. The transfer of the Pendrell Street TES accomplishes the following:

- facilitates transparent financial reporting for the Pendrell Street TES to the Commission and the customer; and
- separates the ownership of regulated Stream A assets from the non-regulated assets and interests of Creative Energy Developments LP.

The Pendrell Street TES has already been transferred to Creative Energy Pendrell LP. Creative Energy Developments LP and Creative Energy Pendrell LP completed the documentation for the transfer, for the reasons outlined above, prior to seeking the BCUC’s approval due to misunderstanding the scope of exemptions for Stream A TES. It was not understood at the time that the exemption for Stream A TES does not include the section of the UCA requiring a public utility to first obtain the Commission’s approval before transferring a TES to a wholly-owned subsidiary. If the Commission does not approve this application, the parties will be able to reverse the transfer of the Pendrell Street TES.

² Creative Energy Canada is the parent company of Creative Energy Vancouver Platforms Inc., which is the approximately 50-year old steam distribution utility serving over 200 buildings in downtown Vancouver.

³ Emanate Energy is a wholly-owned subsidiary of the InstarAGF Essential Infrastructure Fund.

4. Approvals Requested

Pursuant to section 52 of the *Utilities Commission Act*, Creative Energy Developments LP requires Commission approval to dispose of its interest in the Pendrell Street TES, including to a wholly-owned subsidiary.⁴ Accordingly, Creative Energy Developments LP requests the approval of the Commission pursuant to section 52 for the disposition of 100% of its interests in the Pendrell Street TES to Creative Energy Pendrell LP.

Additionally, Creative Energy Pendrell LP has completed and we enclose for filing the New Owner Attestation Requirements form, in accordance with Appendix D of the TES Guidelines.⁵ Assuming the Commission grants the requested section 52 approval and on basis of the completed New Owner Attestation Requirements, we also request that the Commission rescind directive 2 of Order G-109-18 and issue a new directive requiring Creative Energy Pendrell LP to provide the annual reports going forward.

A draft order is provided in Appendix 1 to this Application for the Commission's consideration.

5. Transferring the Pendrell Street TES to Creative Energy Pendrell LP will have no detrimental affect

Section 52(1)(a) of the *Utilities Commission Act* states that "[e]xcept 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." The Commission typically approves s. 52 dispositions if the Commission is satisfied that the disposition will not detrimentally affect ratepayers.

The Pendrell Street TES is an exempt Stream A TES with a single customer. Pursuant to the transfer, Creative Energy Pendrell LP assumes the entirety of the Pendrell Street TES assets, liabilities and obligations, including any and all related contractual commitments of Creative Energy Developments LP. The disposition will result in no capital gain or loss to Creative Energy Developments LP.⁶

The transfer of the Pendrell Street TES to Creative Energy Pendrell LP does not in any way change:

- the operations and performance of the Pendrell Street TES – the TES equipment is the same, and the same individuals will manage and operate the TES and interact with the customer and the Commission;
- the ability of Creative Energy Pendrell LP to operate and maintain the TES assets, in terms of both financial strength and access to support services;
- the service provided to the single customer of the TES;

⁴ Pursuant to Order G-109-18, Creative Energy Developments LP is exempt from several sections of the *Utilities Commission Act*, but not section 52 which continues to apply.

⁵ Appendix D to the TES Regulatory Framework Guidelines provides the attestation requirements for the new owner upon transfer of TES ownership.

⁶ The transfer would incur a GST charge; however, this GST charge would be fully recoverable as an income tax credit.

- the terms and conditions of the service provided as set out in the existing customer service agreement; or
- the rates charged to the single customer pursuant to the existing customer service agreement.

The transfer to Creative Energy Pendrell LP provides better separation of the ownership of the Stream A TES versus the nonregulated activities and assets of Creative Energy Developments LP, providing better transparency of reporting to both the Commission and the customer. The transfer has no detrimental affect such that it is overall beneficial to the public interest.

6. Proposed Process to Review this Application

In this case, the transfer is of an exempt on-site Stream A TES to a wholly-owned subsidiary. The Pendrell Street TES has one customer under a long-term customer service agreement that will remain unchanged. The one customer of the Pendrell Street TES has been notified of the transfer and has no concerns with the transfer.

We therefore propose that this application may be approved without a public process, just as there is no public process for approval of a Stream A TES registration initially.

For further information, please contact the undersigned.

Sincerely,



Rob Gorter
Director, Regulatory Affairs and Customer Relations

Appendix 1

DRAFT ORDER

WHEREAS:

- A. The Commission, by Order G-109-18 dated June 14, 2018, registered the Thermal Energy System (TES) at 1770 Pendrell Street in Vancouver (Pendrell Street TES) as a Stream A TES, in accordance with the Commission's TES Regulatory Framework Guidelines (TES Guidelines), and exempted the Pendrell Street TES from the application of sections 44.1, 45, and 59-61 of the *Utilities Commission Act* (UCA);
- B. Under the TES Guidelines, Stream A TES are not exempt from section 52 of the UCA which requires Commission approval for among other things disposition of utility property not in the ordinary course of business;
- C. On March 17, 2020, Creative Energy Developments Limited Partnership applied (Application) to the Commission for approval pursuant to Section 52 of the UCA to transfer 100% of its interest in the Pendrell Street TES to its wholly-owned subsidiary, Creative Energy Pendrell LP; and
- D. The Application includes Creative Energy Pendrell LP's attestation to the Commission's requirements upon transfer of TES ownership, in accordance with Appendix D of the TES Guidelines; and
- E. The Commission has reviewed the Application and finds that approval of the Application is in the public interest.

NOW THEREFORE the Commission orders as follows:

- 1. Pursuant to section 52 of the UCA, approval is granted to Creative Energy Developments LP to transfer 100% of its interest in the Pendrell Street TES to Creative Energy Pendrell LP.
- 2. Directive 2 of Order G-109-18 is rescinded.
- 3. Creative Energy Pendrell LP must file an annual report for the Pendrell Street TES with the BCUC in accordance with Stream A annual reporting guidelines, as provided in Appendix B of the TES Guidelines.

DATED at the City of Vancouver, in the Province of British Columbia, this ____ day of _____, 2020.

New Owner Attestation Requirements

APPENDIX A
to Order G-27-15
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APPENDIX D
to TES Regulatory Framework Guidelines
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APPENDIX D REQUIREMENTS UPON TRANSFER OF TES OWNERSHIP

New Owner Attestation Requirements	
Eligibility for Stream A TES Regulation:	<p><input checked="" type="checkbox"/> I/We certify that the proposed TES meets the description of an On-Site TES, as defined in the TES Regulatory Framework Guidelines.</p> <p><input checked="" type="checkbox"/> I/We certify that the proposed TES is associated with an approved single development/building permit.</p> <p><input checked="" type="checkbox"/> I/We certify that the proposed TES capital cost is \$15 million or less.</p>
Customer Disclosure:	<p><input checked="" type="checkbox"/> I/We certify that all customers or potential customers have signed or will sign a long-term contract as described in the TES Regulatory Framework Guidelines.</p> <p><input checked="" type="checkbox"/> I/We certify that the long-term contract include the minimum provisions included in section 2.3.2 of the TES Regulatory Framework Guidelines.</p> <p><input checked="" type="checkbox"/> I/We have provided a "plain-language" explanation to all customers/potential customers of the TES, which includes the minimum provisions included in section 2.3.2 of the TES Regulatory Framework Guidelines.</p> <p><input checked="" type="checkbox"/> I/We will retain all records of customer disclosure in the event of a dispute.</p>
Other Requirements:	<p><input checked="" type="checkbox"/> I/We have determined the Capital Reserve Requirement and will hold sufficient Capital Reserves.</p> <p><input checked="" type="checkbox"/> I/We will retain all records and provide an Annual Report to the Commission by February 15 of each year.</p>



Rob Gorter
Director, Regulatory Affairs and Customer Relations