



**bcuc**  
British Columbia  
Utilities Commission

Suite 410, 900 Howe Street  
Vancouver, BC Canada V6Z 2N3  
**bcuc.com**

**P:** 604.660.4700  
**TF:** 1.800.663.1385  
**F:** 604.660.1102

Creative Energy Vancouver Platforms Inc.

## 2021 Revenue Requirements Application for the Core Steam System

---

### Decision and Order G-349-21

November 30, 2021

Before:

A. K. Fung, QC, Panel Chair  
K. A. Keilty, Commissioner  
B. A. Magnan, Commissioner

## TABLE OF CONTENTS

Page no.

<b>Executive Summary</b>	<b>i</b>
<b>1.0 Introduction</b>	<b>1</b>
1.1 Background	1
1.1.1 Organizational Structure	1
1.1.2 Recent BCUC Proceedings	3
1.2 Regulatory Process	4
<b>2.0 Decision Framework and Overarching Principles</b>	<b>5</b>
<b>3.0 Proposed IAC/TPP and Identified Issues</b>	<b>8</b>
3.1 Resource Sharing	9
3.2 Cost Allocation Methodology	15
3.3 Overall Panel Determination on the Proposed IAC/TPP	18
<b>BCUC ORDER G-349-21</b>	
<b>APPENDIX A List of Acronyms</b>	
<b>APPENDIX B List of Exhibits</b>	

## Executive Summary

On December 1, 2020, Creative Energy Vancouver Platforms Inc. (Creative Energy) filed an application with the British Columbia Utilities Commission (BCUC) seeking approval of a proposed Inter-Affiliate Conduct and Transfer Pricing Policy (Proposed IAC/TPP) in respect of all BCUC-regulated Thermal Energy Systems (TES) that are part of the Creative Energy Group, as shown in Appendix A to the proposed policy. The Proposed IAC/TPP was filed as part of Creative Energy's 2021 revenue requirement application (RRA) for the core steam system (Core Steam System) (Application).

On October 29, 2021, the BCUC issued a separate decision with respect to Creative Energy's 2021 RRA for the Core Steam System. This decision addresses the balance of the Application, namely, Creative Energy's request for approval of the Proposed IAC/TPP.

In assessing the adequacy of the Proposed IAC/TPP, the Panel addresses the following key issues:

- Whether the current sharing of resources among affiliates in the Creative Energy Group is appropriate;
- The appropriate method to allocate shared costs among affiliates in the Creative Energy Group; and
- Whether the Proposed IAC/TPP should be approved in its current form.

The Panel views that the primary purpose of any inter-affiliate code of conduct and transfer pricing policy should be to minimize or constrain the potential for cross-subsidization of activities as between affiliates, particularly where such cross-subsidization occurs at the expense of ratepayers of regulated entities.

In reviewing the Proposed IAC/TPP, the Panel is guided by the applicable overarching principles from the BCUC Retail Markets Downstream of the Utility Meter Guidelines (RMDM Guidelines) and the BCUC report for the Alternative Energy Solutions Inquiry (AES Inquiry Report),<sup>1</sup> as acknowledged in the Proposed IAC/TPP. In particular, the Panel finds the following principles from the AES Inquiry Report to be relevant in the determination of whether the Proposed IAC/TPP adequately protects the interests of impacted ratepayers:

- Where activities involve sharing of resources between regulated and non-regulated affiliates, an approved code of conduct and transfer pricing policy must require minimal sharing of resources between regulated and non-regulated affiliates and use of the full cost to provide the service or market pricing, whichever is higher.<sup>2</sup>
- All costs and services provided both between regulated and non-regulated affiliates and between regulated affiliates must be fully disclosed to the BCUC.<sup>3</sup>

**The Panel does not approve Creative Energy's Proposed IAC/TPP as filed, as it does not adhere to the principle of ensuring minimal resource sharing between regulated and non-regulated businesses.** In making this determination, the Panel makes the following key findings:

- Creative Energy Developments Limited Partnership (CEDLP), the parent company of Creative Energy, is a "non-regulated business (NRB)" as the term is used in the RMDM Guidelines and AES Inquiry Report.

---

<sup>1</sup> Report on the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives, Report dated December 27, 2012 (AES Inquiry Report).

<sup>2</sup> AES Inquiry Report, p. 21.

<sup>3</sup> AES Inquiry Report, pp. 21, 25–26.

Despite the statement by Creative Energy purporting to limit the Proposed IAC/TPP to BCUC-regulated entities within the Creative Energy Group, it is clear the Proposed IAC/TPP is intended to apply to transactions between CEDLP and its regulated affiliates.

- The resource sharing provision within the Proposed IAC/TPP that allows CEDLP and its affiliates, including Creative Energy, to freely share employees, equipment and services is not consistent with the principle from the AES Inquiry Report that there should be minimal sharing between regulated and non-regulated affiliates. While the Proposed IAC/TPP identifies the certain benefits of resource sharing, the Panel is not persuaded that these benefits to the regulated entities are appropriately balanced by the increased risks associated with unlimited resource sharing with the non-regulated businesses.
- As stated in the AES Inquiry Report, a code of conduct and transfer pricing must require the use of the full cost to provide the service or market pricing, whichever is higher, where non-arms length transactions occur between regulated and non-regulated affiliates. The definition of Cost Recovery Basis as set out in the Proposed IAC/TPP does not reflect this principle.
- It is unclear whether the labour rates used by Creative Energy reflect the higher of market pricing or full cost recovery.

As a result of the findings and determinations above, the Panel also makes the following directions to Creative Energy:

- **Creative Energy is directed to provide in its next RRA for the Core Steam System further evidence demonstrating how its labour rates are reflective of the higher of market pricing or full cost recovery where resources are shared with non-regulated affiliates;**
- **By no later than the time of filing of its 2023 RRA for the Core Steam System, Creative Energy must cease sharing its staff resources with its non-regulated affiliates, to the extent that those staff allocate more than a minimal amount of their time to activities of its non-regulated affiliates; and**
- **Creative Energy must request advance BCUC approval, unless otherwise ordered, for any material cost or resource sharing by Creative Energy with any non-regulated affiliate. When seeking such approval, Creative Energy must provide the basis and any justification for the proposed amounts of the cost or resource sharing.**

With respect to resource sharing between regulated affiliates, the Panel does not have any concerns with respect to the current level of resource sharing at this time and accepts that this level is appropriate. The Panel finds Creative Energy's use of the existing BCUC-approved Massachusetts Formula to address cost allocations between regulated affiliates to be appropriate. However, to ensure greater transparency of cost sharing between BCUC-regulated TES moving forward, the Panel considers it appropriate and important to continue to monitor the cost allocation methodology employed by Creative Energy and accordingly **directs Creative Energy to file its total annual gross costs as part of its future RRAs for the Core Steam System.**

Recognizing that an appropriate transitional period will be required for Creative Energy to make changes to its organization structure in order to enable it to ensure a proper separation of its business activities and resources, the Panel does not see value in Creative Energy resubmitting another IAC/TPP until its organization structure can properly reflect the principles set out by the Panel. Nevertheless, the Panel encourages Creative Energy to file a revised IAC/TPP for review and approval by the BCUC at such time as its organization changes are complete and provides guidance to Creative Energy on the development of such a revised policy in Section 3.3 of the decision.

## 1.0 Introduction

On December 1, 2020, Creative Energy Vancouver Platforms Inc. (Creative Energy) filed an application with the British Columbia Utilities Commission (BCUC) seeking approval of a proposed Inter-Affiliate Conduct and Transfer Pricing Policy (Proposed IAC/TPP) in respect of all BCUC-regulated Thermal Energy Systems (TES) that are part of the Creative Energy Group as shown in Appendix A to the proposed policy. The Proposed IAC/TPP was filed as part of Creative Energy's 2021 revenue requirement application (RRA) for the core steam system (Core Steam System) (Application).

The BCUC issued a separate decision with respect to Creative Energy's 2021 RRA for the Core Steam System.<sup>4</sup> This decision addresses the balance of the Application, namely, Creative Energy's request for approval of the Proposed IAC/TPP.

In this decision, the Panel sets out the key issues to be decided, provides an overview of the relevant evidence, reviews specific elements of the Proposed IAC/TPP and outlines the reasons for the Panel's determinations. Specifically, the Panel addresses the following key issues related to the Proposed IAC/TPP:

- Whether the current sharing of resources among affiliates in the Creative Energy Group (as defined in Section 1.1.1 below) is appropriate;
- The appropriate method to allocate shared costs among affiliates in the Creative Energy Group; and
- Whether the Proposed IAC/TPP should be approved in its current form.

## 1.1 Background

In this section, we provide an overview of the organizational structure of the Creative Energy Group followed by a summary of recent BCUC proceedings that have referred to transfer pricing and/or a code of conduct for Creative Energy.

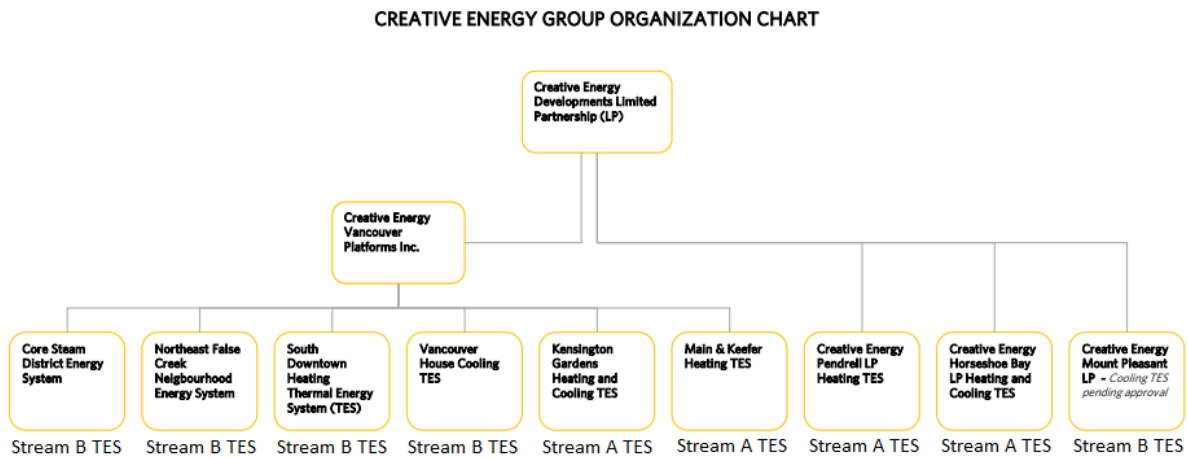
### 1.1.1 Organizational Structure

Figure 1 below, reproduced from Appendix A to the Proposed IAC/TPP, provides the organization chart for the Creative Energy Group as at the Application filing date:

---

<sup>4</sup> Creative Energy 2021 Revenue Requirements Application for the Core Steam System, Decision and Order G-310-21A, dated October 29, 2021.

**Figure 1: Creative Energy Group Organization Chart<sup>5</sup>**



As the above chart shows, the Creative Energy Group includes the following entities and TES:

- Four Stream A TES;<sup>6</sup>
- Five Stream B TES;<sup>7</sup>
- Creative Energy, as the owner and operator of two Stream A TES and four Stream B TES as shown above; and;
- Creative Energy Developments Limited Partnership (CEDLP), the parent company, which is not regulated by the BCUC.<sup>8</sup>

The entities and TES shown in the organization chart are collectively referred to as the Creative Energy Group. For clarity, Creative Energy is a separate legal entity but the six TES that it currently owns and operates are not separate legal entities, while CEDLP and the three TES that CEDLP owns and operates are established as separate legal entities. Creative Energy's approach to and current practice of sharing resources amongst the Creative Energy Group are described in Section 3.1, below.

Creative Energy's predecessor was a company called Central Heat Distribution Limited, which had operated the Core Steam System substantially unchanged since it first received BCUC approval for the grant of a certificate of public convenience and necessity (CPCN) to construct and operate the system in 1968.<sup>9</sup> The Core Steam System refers to the steam production plant at 720 Beatty Street and the associated distribution network serving more than 200 buildings in downtown Vancouver and supplying thermal energy to Creative Energy's Northeast False

<sup>5</sup> From Appendix A of the Proposed IAC/TPP Policy, which is filed in Appendix C of the Application. "Stream A TES" and "Stream B TES" annotations added by the BCUC.

<sup>6</sup> Stream A TES is a category of TES that is exempt from certain sections of the UCA, including rate setting provisions, in accordance with BCUC's Thermal Energy System Regulatory Framework Guidelines, Appendix A to Order G-27-15.

<sup>7</sup> Stream B TES is a category of TES that is regulated similar to other public utility systems and in accordance with BCUC's Thermal Energy System Regulatory Framework Guidelines, Appendix A to Order G-27-15.

<sup>8</sup> Exhibit B-4, BCUC IR 30.2. As stated on page 9 of Exhibit B-1, CEDLP is a partnership of Creative Energy Canada Platforms Corps. (Creative Energy Canada) and Emanate Energy Solutions Inc., which are subsidiaries of Westbank Holdings (Westbank) and InstarAGF Essential Infrastructure Fund (InstarAGF), respectively.

<sup>9</sup> Creative Energy 2015-2017 RRA, Decision and Order G-98-15 dated June 9, 2015 (2015-2017 RRA Decision), p. 12.

Creek (NEFC) hot water system.<sup>10</sup> In 2013, the BCUC approved Creative Energy Canada's proposed acquisition of Central Heat after determining that the utility and the users of its service would not be detrimentally affected by the acquisition.<sup>11</sup> Central Heat was subsequently renamed Creative Energy Vancouver Platforms Inc. (or Creative Energy, as defined in this decision) after the acquisition.<sup>12</sup>

Since the acquisition, Creative Energy has undertaken significant business expansion as is shown in the organizational chart above. This expansion includes adding additional load for the NEFC service area served by the Core Steam System,<sup>13</sup> adding other TES owned and operated by Creative Energy,<sup>14</sup> and adding TES subsidiaries of CEDLP.<sup>15</sup>

On March 5, 2020, the BCUC approved, subject to certain conditions, Creative Energy's application for a CPCN for the Expo-Beatty Plants and Reorganization, which included: approval to upgrade Creative Energy's Beatty Plant, and to construct a new Expo Plant and associated facilities as part of its Core Steam System (Expo-Beatty Plants Redevelopment Project); as well as approvals related to Creative Energy's corporate restructuring.<sup>16</sup> Since that time, Creative Energy has remained a wholly-owned subsidiary of CEDLP, which is itself a partnership of Creative Energy Canada and Emanate Energy Solutions Inc.<sup>17</sup>

### **1.1.2 Recent BCUC Proceedings**

As noted, since 2014, Creative Energy has undertaken significant business expansion, which includes adding additional load for the NEFC service area served by the Core Steam System and adding other TES owned and operated by Creative Energy. As these expansion plans were canvassed in the Creative Energy 2015-2017 RRA proceeding, the BCUC directed Creative Energy to file a cost allocation methodology with the BCUC to address resource sharing, cost allocation policies and the BCUC's concerns on potential cross-subsidization between Core Steam System customers and the customers of the other TES.<sup>18</sup> The BCUC has since reviewed Creative Energy's

---

<sup>10</sup> Exhibit B-1, p. 9.

<sup>11</sup> Order G-190-13 dated November 21, 2013.

<sup>12</sup> By Letter to the BCUC, dated July 15, 2014.

<sup>13</sup> The BCUC granted a CPCN to Creative Energy to serve new developments in Northeast False Creek by Order C-12-15, dated December 8, 2015.

<sup>14</sup> The BCUC granted a CPCN to Creative Energy for the South Downtown Heating TES by Order C-1-19, dated May 3, 2019; The BCUC granted a CPCN to Creative Energy for the Vancouver House Cooling TES by Order C-2-20, dated April 1, 2020; The BCUC exempt Creative Energy from certain sections of the UCA for its 2200 Kingsway TES (Kensington Gardens) by Order G-41-17 dated March 21, 2017 in accordance with BCUC's Guidelines for Stream A TES; The BCUC exempt Creative Energy from certain sections of the UCA for its Main & Keefer TES by Order G-101-15 dated June 18, 2015 in accordance with BCUC's TES Guidelines for Stream A TES.

<sup>15</sup> The BCUC granted a CPCN to Creative Energy Mount Pleasant LP for the Mount Pleasant District Cooling System by Order C-5-20, dated December 3, 2020; The BCUC exempt Creative Energy Horseshoe Bay LP from certain sections of the UCA for the Horseshoe Bay Heating and Cooling TES by Order G-145-20, dated June 11, 2020 in accordance with BCUC's TES Guidelines for Stream A TES; The BCUC exempt CEDLP from certain sections of the UCA for the Pendrell Street TES by Order G-109-18, dated June 14, 2018 in accordance with BCUC's TES Guidelines for Stream A TES.

<sup>16</sup> Creative Energy Application for a Certificate of Public Convenience and Necessity for Beatty-Expo Plants and Reorganization, Decision and Order C-1-20 dated March 5, 2020.

<sup>17</sup> Exhibit B-1, p. 9.

<sup>18</sup> Creative Energy 2015-2017 RRA Decision, p. 34.

cost allocation methodology in the Creative Energy 2016-2017 RRA for the Core Steam System and NEFC,<sup>19</sup> 2018-2022 RRA for the Core Steam System<sup>20</sup> and 2019-2020 RRA for the Core Steam System and NEFC.<sup>21</sup>

During the proceeding to review Creative Energy's 2019-2020 RRA for the Core Steam System and NEFC, Creative Energy stated that it intended to file a transfer pricing policy in its next RRA, which is the current Application, for BCUC review and approval.<sup>22</sup>

In 2020, the BCUC approved an application from CEDLP to transfer its interests in the Pendrell Street TES to its subsidiary, Creative Energy Pendrell LP, a regulated affiliate of Creative Energy.<sup>23</sup> CEDLP stated in that proceeding that Creative Energy intended to file a code of conduct and transfer pricing policy with its 2021 RRA, which is the current Application.<sup>24</sup> CEDLP also noted that Creative Energy would be responsible for the filing of the code of conduct and transfer pricing policy because it is the legal entity that employs the staff that have responsibilities to other projects and utilities in the Creative Energy Group.<sup>25</sup> The BCUC noted in its decision that an approved code of conduct and transfer pricing policy would have assisted the BCUC in the review of that application as many of the topics explored during the regulatory process would be expected to be governed by the code of conduct and transfer pricing policy.<sup>26</sup>

Later in 2020, the BCUC granted a CPCN to Creative Energy Mount Pleasant Limited Partnership (CEMP) to acquire, operate and expand the Mount Pleasant district cooling system to provide cooling to the Main Alley Development.<sup>27</sup> Among other directives in that decision, the BCUC directed CEMP to file its code of conduct and transfer pricing policy with the BCUC at the same time as it files its application for rates for cooling service.<sup>28</sup> As shown in Figure 1, CEMP is a subsidiary of CEDLP and an affiliate of Creative Energy. CEMP identified in that application that Creative Energy would provide ongoing operation, maintenance, administration and regulatory services for the Mount Pleasant district cooling system.<sup>29</sup>

## 1.2 Regulatory Process

In accordance with the regulatory timetables established by the BCUC, the Panel reviewed the Application through a public written hearing, which included two rounds of BCUC and intervener information requests (IRs) and written final and reply arguments.<sup>30</sup>

---

<sup>19</sup> Creative Energy 2016-2017 RRA for the Core Steam System and NEFC and Rate Design for NEFC, Decision and Order G-167-16 dated November 18, 2016, Section 2.4.

<sup>20</sup> Creative Energy 2018-2022 RRA for the Core Steam System, Decision and Order G-205-18 dated October 25, 2018, Section 3.1.2.

<sup>21</sup> Creative Energy 2019-2020 RRA for the Core Steam System and NEFC, Decision and Order G-227-20 dated September 2, 2020, Section 3.1.

<sup>22</sup> Creative Energy 2019-2020 RRA for the Core Steam System and NEFC, Exhibit B-1, p. 18.

<sup>23</sup> Order G-273-20 dated October 28, 2020.

<sup>24</sup> CEDLP Application for the Disposition of the Pendrell Street Thermal Energy System Assets, Exhibit B-5, BCUC IR 19.2.

<sup>25</sup> CEDLP Application for the Disposition of the Pendrell Street Thermal Energy System Assets, Exhibit B-5, BCUC IR 19.1.

<sup>26</sup> CEDLP Application for the Disposition of the Pendrell Street Thermal Energy System Assets, Order G-273-20 with Reasons for Decision, Appendix A, p. 14.

<sup>27</sup> CEMP Application for a Certificate of Public Convenience and Necessity to Acquire, Operate and Expand a Thermal Energy System for Cooling in the Main Alley Development, Decision and Order C-5-20, p. 1.

<sup>28</sup> Directive 1(i) of Order C-5-20.

<sup>29</sup> CEMP Application for a Certificate of Public Convenience and Necessity to Acquire, Operate and Expand a Thermal Energy System for Cooling in the Main Alley Development, Exhibit B-3, BCUC IR 2.1.1.

<sup>30</sup> Orders G-11-21A and G-88-21.



The following three interveners registered and actively participated in the proceeding:

- Residential Consumer Intervenor Association (RCIA, formerly Residential Consumer Intervenor Group – RCIG);
- Commercial Energy Consumers Association of British Columbia (CEC); and
- BC Old Age Pensioners’ Organization, Council of Senior Citizens’ Organizations of BC, Disability Alliance BC, and Tenant Resource and Advisory Centre (BCOAPO).

The BCUC did not receive any letters of comment.

## **2.0 Decision Framework and Overarching Principles**

In April 1997, the BCUC issued the Retail Markets Downstream of the Utility Meter Guidelines (RMDM Guidelines), which addressed affiliate transactions between regulated utilities and their non-regulated businesses (NRBs).<sup>31</sup> In December 2012, the BCUC published its report of the Alternative Energy Solutions Inquiry (AES Inquiry Report).<sup>32</sup> The AES Inquiry Report confirmed the ongoing applicability of the principles set out in the RMDM Guidelines.

The Proposed IAC/TPP states that it has been prepared in consideration of the RMDM Guidelines and AES Inquiry Report and, where applicable, the Proposed IAC/TPP is intended to support their objectives and general principles.<sup>33</sup> The Proposed IAC/TPP also notes that Affiliates of CEDLP (as defined in the policy) do not provide goods and services downstream of the utility meter; however, the policy identifies that the RMDM Guidelines provide general principles and objectives applicable to transfer pricing in transactions between a utility and its non-regulated affiliates generally.<sup>34</sup> According to Creative Energy, CEDLP is not a “non-regulated business” or “NRB” as those terms are used in the RMDM Guidelines and AES Inquiry Report as it does not provide any products or services to the public, whether downstream of the utility meter or otherwise.<sup>35</sup>

In Appendix B to the Proposed IAC/TPP, Creative Energy identifies the following as applicable objectives and principles:<sup>36</sup>

### RMDM Guidelines

- There must be no subsidy of unregulated business activities, whether undertaken by the utility or its non-regulated business (NRB), by utility ratepayers.
- The risks associated with participation in the unregulated market must be borne entirely by the unregulated business activity, that is the risks must have no impact on utility ratepayers.

---

<sup>31</sup> Retail Markets Downstream of the Utility Meter Guidelines dated April 1997 (RMDM Guidelines). Retrieved from: <https://www.bcuc.com/Documents/Guidelines/RMDMGuidelns.pdf>

<sup>32</sup> Report on the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives, Report dated December 27, 2012 (AES Inquiry Report).

<sup>33</sup> Exhibit B-1, Appendix C, PDF pp. 57–58.

<sup>34</sup> Exhibit B-1, Appendix C, PDF p. 58.

<sup>35</sup> Exhibit B-8, BCUC IR 62.1.

<sup>36</sup> Exhibit B-1, Appendix B to Appendix C.

- The most economically efficient allocation of goods and resources for ratepayers should be sought.

#### RMDM Guidelines – Transfer Pricing Principles

- The operating costs of non-regulated activities are not to be reflected in the utility's cost of service.
- The costs of developing new business ventures are to be charged to and recovered from the NRB.
- The accounting costs are to be transparent and will normally fully recover costs for all services, including overhead, space, employee benefits, inconvenience, and a profit margin where appropriate. If the service provided by the utility to the related-NRB could also be obtained from an independent supplier, the price paid by the related-NRB to the utility should be no less than the competitive market price and will never be below the incremental cost.
- The financial costs of each business are to be borne by the specific business. In the exceptional case where the utility provides guarantees for NRBs, the utility must be given financial compensation.
- Utilities will be required to file periodic reports which demonstrate that they are adhering to the transfer pricing policy. The form and timing of the report will be determined by the BCUC.

#### AES Inquiry Report – Affirmation of RMDM Guidelines

- There must be no subsidy of unregulated business activities, whether undertaken by the utility or its NRB, by utility ratepayers and this principle is extended to apply to regulated businesses.

The Proposed IAC/TPP further states that its overall purpose is “to provide for the benefit of economies of scale while also preventing customers of regulated businesses within the Creative Energy group from cross-subsidizing competitive or non-regulated activities of affiliated businesses.”<sup>37</sup>

The Proposed IAC/TPP defines “Affiliate” as:<sup>38</sup>

- i) a partnership, joint venture, or corporation in which [CEDLP] has a controlling interest or that is otherwise subject to the control of [CEDLP];
- ii) a partnership, joint venture, or corporation deemed by the BCUC to be an affiliate for the purposes of this Policy; and
- iii) an operating unit or division of any partnership, joint venture or corporation referred to in clauses i) or ii) above.

---

<sup>37</sup> Exhibit B-1, Appendix C, PDF pp. 56–57.

<sup>38</sup> Exhibit B-1, Appendix C, PDF p. 59.

The Proposed IAC/TPP defines “Creative Energy” as CEDLP, the non-regulated entity,<sup>39</sup> whereas this decision has defined Creative Energy as Creative Energy Vancouver Platforms Inc. Where quotes from the Proposed IAC/TPP have been included in this decision, such as the definition of Affiliate referred to above, the Panel has identified the applicable entity.

### *Panel Determination*

In assessing the adequacy of the Proposed IAC/TPP, we view that the primary purpose of any inter-affiliate code of conduct and transfer pricing policy should be to minimize or constrain the potential for cross-subsidization of activities between affiliates, particularly where such cross-subsidization occurs at the expense of ratepayers of regulated entities. We find the following applicable principles from the AES Inquiry Report, in addition to those already articulated in the Proposed IAC/TPP above, to be relevant in our determination of whether the Proposed IAC/TPP adequately protects the interests of impacted ratepayers:

- Where activities involve sharing of resources between regulated and non-regulated affiliates, an approved code of conduct and transfer pricing policy must require minimal sharing of resources between regulated and non-regulated affiliates and use of the full cost to provide the service or market pricing, whichever is higher;<sup>40</sup> and
- The adoption in the AES Inquiry Report of the RMDM Guideline that all costs and services provided both between regulated and non-regulated affiliates and between regulated affiliates be fully disclosed to the BCUC.<sup>41</sup>

As the AES Inquiry Report states, a proposed code of conduct and transfer pricing policy must address these principles.

As will be evident in our discussion in the following subsections, we find that the Proposed IAC/TPP fails to adhere to these principles.

Contrary to Creative Energy’s submission, the Panel finds that CEDLP is a non-regulated business as contemplated in the RMDM Guidelines and AES Inquiry Report. The Proposed IAC/TPP states that CEDLP “develops and finances urban energy infrastructure in North America including in British Columbia. Its vision is to become a North American leader in sustainable district energy systems.”<sup>42</sup> The Proposed IAC/TPP goes on to acknowledge the following:<sup>43</sup>

A subsidiary operating an energy project may be subject to regulation as a public utility, may be partially regulated in certain respects, or may not be regulated depending on the applicable regulations and guidelines in place in the jurisdiction where the project is located. [emphasis added]

---

<sup>39</sup> Exhibit B-1, Appendix C, PDF p. 60.

<sup>40</sup> AES Inquiry Report, p. 21.

<sup>41</sup> AES Inquiry Report, pp. 21, 25–26.

<sup>42</sup> Exhibit B-1, Appendix C, PDF p. 56.

<sup>43</sup> Exhibit B-1, Appendix C, PDF p. 56.

In addition to ownership of a number of BCUC-regulated TES, it is clear that CEDLP is also carrying on other business that is not regulated by the BCUC.

The Panel observes that Proposed IAC/TPP states that it applies to all entities within the Creative Energy Group that are subject to the regulatory jurisdiction of the BCUC, and to their employees, directors and officers.<sup>44</sup> However, the Proposed IAC/TPP also states that “Appendix A provides an organization chart of the Creative Energy group indicating the entities to whom this Policy applies.”<sup>45</sup> [emphasis added] The organizational chart included as Appendix A to the Proposed IAC/TPP includes CEDLP, and there are many references to CEDLP in the proposed policy. Accordingly, the Panel finds that despite the statement purporting to limit the application of the policy to the BCUC-regulated entities within the Creative Energy Group, the Proposed IAC/TPP is also intended to apply to transactions between CEDLP (the non-regulated entity) and its BCUC-regulated affiliates.

Furthermore, the Panel considers that a code of conduct and transfer pricing policy should govern all inter-affiliate or non-arms length transactions, whether those transactions involve regulated and non-regulated parties (although the rules may differ) and not just be limited to a subset of Affiliates as Creative Energy has purported to do in its Proposed IAC/TPP. Where “Affiliate” is used in this decision, the Panel is referring to Creative Energy’s definition of Affiliate in the Proposed IAC/TPP. The Panel, however, considers affiliated entities to be two or more parties that are subject to common control, joint control or common significant influence and use “affiliate” or “affiliated” in this decision to reflect this definition.

### 3.0 Proposed IAC/TPP and Identified Issues

The Proposed IAC/TPP sets out provisions regarding resource sharing among the Creative Energy Group, the applicable cost allocation methodology and transfer pricing, and certain provisions regarding demonstrating compliance with the policy.

As already noted, the Proposed IAC/TPP’s overall stated purpose is to provide for the benefit of economies of scale while also preventing customers of BCUC-regulated businesses within the Creative Energy Group from cross-subsidizing competitive or non-regulated activities of Affiliated businesses.<sup>46</sup> Further, Creative Energy states the objectives of the policy are as follows:<sup>47</sup>

- (a) To provide an environment in which inter-[A]ffiliate economies and efficiencies can be realized to the benefit of all businesses within the Creative Energy Group and their customers;
- (b) To define transparent transfer pricing policies and cost allocation methodology to ensure that customers of regulated businesses within the Creative Energy Group do not cross-subsidize competitive or non-regulated activities of [A]ffiliated businesses; and
- (c) To support efficient and cost-effective regulatory processes through the consistent application of a clear set of policies and methodology to inter-[A]ffiliate transactions and cost allocations, which will in turn promote utility ratepayer confidence in the rates they are charged.

---

<sup>44</sup> Exhibit B-1, Appendix C, PDF p. 57.

<sup>45</sup> Exhibit B-1, Appendix C, PDF p. 57.

<sup>46</sup> Exhibit B-1, Appendix C, PDF pp. 56–57.

<sup>47</sup> Exhibit B-1, Appendix C, PDF p. 57.

In the subsections that follow, we address issues related to the components of the Proposed IAC/TPP, specifically resource sharing and cost allocation methodology. We conclude with our overall determination on the Proposed IAC/TPP as filed in the Application.

### 3.1 Resource Sharing

The Proposed IAC/TPP states that CEDLP and its Affiliates are permitted to freely share employees, equipment, and services on a Cost Recovery Basis<sup>48</sup> and that employees may be transferred among CEDLP and Affiliates.<sup>49</sup>

Creative Energy forecasts 2021 staff time between Creative Energy and CEDLP in Table 1 below and confirms that it employs all staff.<sup>50</sup>

**Table 1: 2021 Forecast Time Allocation and Project Assignment by Role<sup>51</sup>**

	2021 Test Year						
	Time Allocation		Creative Energy Vancouver Platforms				
	Creative Energy Vancouver Platforms	Creative Energy Developments Limited Partnership	Project Assignment			Net Expense Assignment to Core RRA	
			Direct Assignment to CEV Projects (Capitalized)	Expensed to CEV	Net CEV Expense	Direct Assignment	Mass. Form.
Chief Executive Officer	50%	50%	0%	100%	50%	n/a	Yes
VP, Engineering & Projects	30%	70%	100%	0%	0%	n/a	n/a
VP, Business Development (2)	0%	100%	n/a	n/a	0%	n/a	n/a
Chief Financial Officer	50%	50%	0%	100%	50%	n/a	Yes
Director, Regulatory Affairs	80%	20%	0%	100%	80%	n/a	Yes
Director, Operations	100%	0%	0%	100%	100%	n/a	Yes
Director, Engineering	40%	60%	80%	20%	8%	Yes	No
Director, Partnerships (planned)	100%	0%	0%	100%	100%	Yes	No
Mgr. Corporate Development	0%	100%	n/a	n/a	0%	n/a	n/a
Construction Manager	40%	60%	50%	50%	20%	n/a	Yes
Senior Project Manager	0%	100%	n/a	n/a	0%	n/a	n/a
Project Engineer	0%	100%	n/a	n/a	0%	n/a	n/a
Construction Mgr./Proj. Engr.	0%	100%	n/a	n/a	0%	n/a	n/a
Systems Engineer (planned)	50%	50%	0%	100%	50%	n/a	Yes
Engineer in Training	0%	100%	n/a	n/a	0%	n/a	n/a
Controller	60%	40%	0%	100%	60%	n/a	Yes
Accountant	80%	20%	0%	100%	80%	n/a	Yes
Accountant	40%	60%	0%	100%	40%	n/a	Yes
Accountant (planned)	80%	20%	0%	100%	80%	n/a	Yes
Office Coordinator	60%	40%	0%	100%	60%	n/a	Yes
Chief Engineer Steam Plant	100%	0%	0%	100%	100%	Yes	n/a
Steam Plant Crew (11)	100%	0%	0%	100%	100%	Yes	n/a
Distribution Lead	100%	0%	0%	100%	100%	Yes	n/a
Distribution Crew (7)	97%	3%	0%	100%	97%	Yes	n/a

The costs of all staff that are employed by Creative Energy are allocated between Creative Energy and CEDLP, in accordance with the cost allocation methodology set out in the Proposed IAC/TPP.<sup>52</sup> Creative Energy clarifies

<sup>48</sup> Cost Recovery Basis is defined in the Definitions section of the Proposed IAC/TPP. Exhibit B-1, Appendix C, PDF p. 59.

<sup>49</sup> Exhibit B-1, Appendix C, PDF p. 61.

<sup>50</sup> Exhibit B-4, BCUC IR 28.2.

<sup>51</sup> Exhibit B-1, p. 12.

<sup>52</sup> Exhibit B-4, BCUC IRs 36.6, 36.7.

that columns in Table 1 with the heading noting “CEV” could be renamed “Creative Energy (as it is defined in this decision) and other BCUC-regulated affiliates” as some of these costs are then allocated from Creative Energy to other BCUC-regulated TES in the Creative Energy Group.<sup>53</sup>

As shown in the above table, for some employees employed by Creative Energy, 100% of their associated cost is transferred to CEDLP.<sup>54</sup> Creative Energy identifies the rationale for this structure as simply the result of history. Specifically, Creative Energy’s Core Steam System began as Central Heat (now called Creative Energy) and that is where all the employees were historically added over time, and remain presently.<sup>55</sup> Creative Energy acknowledges that there may come a time where it makes sense to transfer Creative Energy employees or a subset of them to CEDLP, for example; however, consideration would need to be given to the costs and material benefits of making this change. Creative Energy states that in contemplation of possible future reorganization of staff, the Proposed IAC/TPP provides for unrestricted movement of employees amongst the Creative Energy Group until such time.<sup>56</sup>

The Proposed IAC/TPP identifies the benefits and risks of resource sharing, with the benefits being increased efficiencies through economies of scale and cost effectiveness, resulting in service levels for each TES comparable to a larger utility and lower rates than if all corporate services were on stand-alone basis for each TES. The risks are identified as the potential cross-subsidization between regulated and non-regulated Affiliates; however, the Proposed IAC/TPP states that this risk is mitigated through the cost allocation methodology and transfer pricing.<sup>57</sup>

For illustrative purposes, Creative Energy provided 2021 forecast cost allocations including the cost allocation methodology from Creative Energy to each TES affiliate and CEDLP, as shown in the following Table 2.<sup>58</sup> Creative Energy identifies that overhead costs directly related to employees such as cellphones costs, training costs, dues and membership costs and office costs are built into the labour rates.<sup>59</sup> Creative Energy’s cost allocation methodology is further discussed in Section 3.2, below.

---

<sup>53</sup> Exhibit B-5, CEC IR 4.5.1.

<sup>54</sup> Exhibit B-4, BCUC IR 28.2.

<sup>55</sup> Exhibit B-8, BCUC IR 62.10.

<sup>56</sup> Exhibit B-8, BCUC IR 62.10.

<sup>57</sup> Exhibit B-1, Appendix C, PDF pp. 61–62.

<sup>58</sup> Exhibit B-4, BCUC IR 30.6.1.

<sup>59</sup> Exhibit B-4, BCUC IR 36.2.

**Table 2: 2021 Forecast Allocations from Creative Energy to each TES Affiliate and CEDLP<sup>60</sup>**

Entity	TES	Description of Costs	Allocation Methodology	Amount
CEDLP	n/a	Management and Admin Costs	Directly Charged	\$ 2,205,020
		IT and other expenses	Directly Charged	\$ 40,080
Creative Energy	Core Steam System	Not available <sup>61</sup>		\$ 5,573,667 <sup>62</sup>
Creative Energy	NEFC	Distribution Service Wages	Directly Charged	\$ 38,390
		O&M Allocation	Massachusetts Formula	\$ 126,201
Creative Energy	South Downtown Heating TES	Distribution Service Wages	Directly Charged	\$ 28,806
		O&M Allocation	Massachusetts Formula	\$ 48,566
Creative Energy	South Downtown Cooling TES	Distribution Service Wages	Directly Charged	\$ 23,045
		O&M Allocation	Massachusetts Formula	\$ 38,133
Creative Energy	Kensington Garden Heating and Cooling TES	Distribution Service Wages	Directly Charged	\$ 51,851
		O&M Allocation	Massachusetts Formula	\$ 46,419
Creative Energy	Main and Keefer TES	Distribution Service Wages	Directly Charged	\$ 17,284
		O&M Allocation	Massachusetts Formula	\$ 14,540
Creative Energy Pendrell LP	Creative Energy Pendrell Heating TES	Distribution Service Wages	Directly Charged	\$ 21,807
		O&M Allocation	Massachusetts Formula	\$ 19,923
Creative Energy Horseshoe Bay LP	Creative Energy Horseshoe Bay Heating and Cooling TES	Distribution Service Wages	Directly Charged	\$ 8,642
		O&M Allocation	Massachusetts Formula	\$ 20,364
Creative Energy Mount Pleasant LP	Creative Energy Mount Pleasant Cooling TES	Distribution Service Wages	Directly Charged	\$ 218,069
		O&M Allocation	Massachusetts Formula	Not available at time of Application as CPCN was not yet approved

<sup>60</sup> Exhibit B-4, BCUC IR 30.6.1, reformatted by the BCUC.

<sup>61</sup> Creative Energy did not provide a similar breakdown by cost allocation methodology for the Core Steam System in Exhibit B-4, response to BCUC IR 30.6.1, as it did for the other TES.

<sup>62</sup> Exhibit B-8, BCUC IR 61.9, Attachment 61, tab IR 61.9, O&M Total for Core Steam System.

Through the proceeding, Creative Energy identified that in addition to the cost allocations noted in the above table, there are costs transferred between Creative Energy and Westbank pursuant to the Trust and Development Agreement for work on Creative Energy's Expo-Beatty Plants Redevelopment Project, including executive employee time billed by Creative Energy to Westbank and allocations with respect to property taxes. As noted previously in this decision, Creative Energy is a wholly-owned subsidiary of CEDLP and CEDLP is a partnership of Creative Energy Canada and Emanate Energy Solutions Inc., which are in turn subsidiaries of Westbank and InstarAGF, respectively.<sup>63</sup>

Creative Energy had earlier filed the Trust and Development Agreement in the Expo-Beatty Plants CPCN and Reorganization proceeding, which resulted in the CPCN granted by the BCUC under Order C-1-20. Creative Energy states that Westbank and InstarAGF are not Affiliates as defined in the Proposed IAC/TPP, nor should they be included as such. Creative Energy states that CEDLP and the Affiliates (as those terms are defined in the Proposed IAC/TPP) share employees, equipment and resources with each other, but not with Westbank or InstarAGF. According to Creative Energy, it does not provide any financing or other financial assistance to the latter two entities. Creative Energy submits that including Westbank and the InstarAGF as Affiliates for the purposes of the Proposed IAC/TPP would mean that employees, resources and information could be shared between the regulated utilities and Westbank and InstarAGF, which is not intended.<sup>64</sup>

With respect to the specific allocation of Creative Energy executive time and property tax allocations to Westbank, Creative Energy takes the position that "[t]his allocation would be out of scope of the TPP. The TPP is specifically related to costs shared within the Creative Energy group of companies. The developer, while a related party, is not part of Creative Energy. The Trust and Development Agreement governs the relationship and cost allocations with the developer."<sup>65</sup> Creative Energy further states that Creative Energy staff do not work on the developer's projects and there is no allocation of costs to the developer.<sup>66</sup>

### *Panel Determination*

In making its determinations regarding the Proposed IAC/TPP, the Panel first addresses resource sharing between regulated and non-regulated affiliates and then addresses resource sharing as between BCUC-regulated affiliates only.

#### Resource Sharing Between Regulated and Non-Regulated Affiliates

The Proposed IAC/TPP states that CEDLP and its Affiliates are permitted to freely share employees, equipment, and services. The Panel finds that this resource sharing provision is not consistent with the principles adopted by the Panel as set out in Section 2.0 of this decision. These principles state that there should be minimal sharing between regulated and non-regulated affiliates.

---

<sup>63</sup> Exhibit B-1, p. 9.

<sup>64</sup> Exhibit B-8, BCUC IRs 62.4, 62.7.

<sup>65</sup> Exhibit B-8, BCUC IR 53.1.

<sup>66</sup> Exhibit B-8, BCUC IRs 62.7, 62.8.



As the evidence shows, out of the total 2021 forecast cost allocations (\$8,540,807)<sup>67</sup> amongst Creative Energy and its affiliates, more than 26% (\$2,245,100)<sup>68</sup> is allocated to CEDLP, the non-regulated entity in the group. This includes the costs of seven Creative Energy employees who currently devote 100% of their time to activities for the sole benefit of CEDLP and an additional four employees who charge more than 50% of their time to CEDLP.<sup>69</sup> In the Panel's view, this amount of resource sharing does not constitute "minimal sharing" between regulated and non-regulated affiliates, and should not be allowed to continue going forward, particularly considering that CEDLP plans to expand its business operations (or has already done so) with respect to investments in non-regulated energy projects. As noted earlier, the Proposed IAC/TPP states that CEDLP's "vision is to become a North American leader in sustainable district energy systems"<sup>70</sup> and goes on to acknowledge the following:<sup>71</sup>

A subsidiary operating an energy project may be subject to regulation as a public utility, may be partially regulated in certain respects, or may not be regulated depending on the applicable regulations and guidelines in place in the jurisdiction where the project is located. [Emphasis added]

The Proposed IAC/TPP further states that CEDLP and its Affiliates are permitted to freely share employees, equipment, and services on a *Cost Recovery Basis* [emphasis added]. As discussed in Section 2.0 of this decision, the Panel considers that where non-arms length transactions occur between regulated and non-regulated affiliates, a code of conduct and transfer pricing must require the use of the full cost to provide the service or market pricing, whichever is higher. In practice, for resources that are shared between Creative Energy and CEDLP, Creative Energy charges labour rates, which include certain direct overhead costs such as office costs, etc. The Panel considers that flowing through actual costs (including labour rates) without a full allocation of all applicable overheads is not reflective of the higher of market pricing or full cost recovery. Further, it is unclear whether the labour rates used by Creative Energy reflect the higher of market pricing or full cost recovery. The current definition of "Cost Recovery Basis" as set out in the Proposed IAC/TPP does not reflect the above principle with respect to transactions between Creative Energy's regulated and non-regulated affiliates. As such, **the Panel directs Creative Energy in its next RRA for the Core Stream System to provide further evidence demonstrating how its labour rates are reflective of the higher of market pricing or full cost recovery where resources are shared with non-regulated affiliates such as CEDLP.**

To the extent that resource sharing that exceeds a minimal amount continues with respect to non-regulated activities that are beyond BCUC oversight, ratepayers of Creative Energy and its regulated or exempt TES bear increased risks arising from those non-regulated activities, as well as increased risk of cross-subsidization of those activities by ratepayers of the non-regulated businesses. The Proposed IAC/TPP identifies the benefits of resource sharing as being increased efficiencies through economies of scale and cost effectiveness, resulting in service levels for each TES comparable to a larger utility and lower rates than if all corporate services were on stand-alone basis for each TES. However, the Panel is not persuaded that these benefits to the regulated entities

---

<sup>67</sup> \$8,540,807 is the sum of the amounts shown in Table 2. Calculation by the BCUC.

<sup>68</sup> \$2,245,100 = \$2,205,020 + \$40,080, which are the two amounts associated with entity CEDLP in Table 2. 26% = \$2,245,100 / \$8,540,807. Calculation by the BCUC.

<sup>69</sup> From Table 1: Seven employees are noted to allocate 100% of their time to CEDLP: VP, Business Development (2); Mgr. Corporate Development; Senior Project Manager; Project Engineer; Construction Mgr./Proj. Engr.; and Engineer in Training. Four employees are noted to allocate more than 50% of their time to CEDLP: VP, Engineering and Projects; Director, Engineering; Construction Manager; and Accountant.

<sup>70</sup> Exhibit B-1, Appendix C, PDF p. 56.

<sup>71</sup> Exhibit B-1, Appendix C, PDF p. 56.

are appropriately balanced by the increased risks associated with unlimited resource sharing with the non-regulated businesses.

The evidence shows that the current amount of resource sharing between Creative Energy's regulated and non-regulated affiliates does not represent "minimal sharing" and is therefore contrary to the principles set out in the RMDM Guidelines and the AES Inquiry Report. For that reason, that resource sharing should not be allowed to continue going forward. Further, consistent with the RMDM Guidelines and the principles established in the AES Inquiry Report, the Panel considers that all transactions between Creative Energy's regulated and non-regulated affiliates must reflect the full cost to provide the service or market pricing, whichever is higher.

**Accordingly, the Panel directs the following:**

- **By no later than the time of filing of its 2023 RRA for the Core Steam System, Creative Energy must cease sharing its staff resources with its non-regulated affiliates, to the extent that those staff allocate more than a minimal amount of their time to activities of its non-regulated affiliates; and**
- **Creative Energy must request advance BCUC approval, unless otherwise ordered, for any material cost or resource sharing by Creative Energy with any non-regulated affiliate. When seeking such approval, Creative Energy must provide the basis and any justification for the proposed amounts of the cost or resource sharing.**

#### Resource Sharing between Regulated Affiliates

The Panel now addresses resource sharing between BCUC-regulated TES affiliates. Based on the evidence in this proceeding, the Panel at this time does not have concerns about the current level of resource sharing amongst the various BCUC-regulated TES in the Creative Energy Group (which include both Stream A and Stream B TES). The magnitude of the cost allocations to those TES (excluding the largest TES being the Core Steam System) is relatively small, amounting to \$722,040 or 8.5%<sup>72</sup> of the total cost allocations. The Panel accepts that this level of resource sharing between Creative Energy and its BCUC-regulated TES affiliates is appropriate. Furthermore, the Panel considers there are likely to be benefits to all ratepayers of the regulated TES with respect to this resource sharing, particularly in light of the limited size and scope of each TES, which do not warrant the establishment of separate standalone corporate resources.

In accordance with BCUC's TES Regulatory Framework Guidelines,<sup>73</sup> Stream A TES, of which there are currently four within the Creative Energy Group, are exempt from certain sections of the *Utilities Commission Act* (UCA), including rate setting provisions.<sup>74</sup> Stream B TES, of which there are currently five within the Creative Energy Group, are fully regulated by the BCUC.<sup>75</sup> To the extent that Creative Energy's Stream B TES continue to be subject to BCUC-regulation and rate setting, the appropriateness of cost allocations is closely reviewed and examined within the context of each associated RRA filing.

---

<sup>72</sup> From Table 2: \$722,040 equals the sum of the amounts listed under the following TES: NEFC; South Downtown Heating TES; South Downtown Cooling TES; Kensington Garden Heating and Cooling TES; Main and Keefer TES; Creative Energy Pendrell Heating TES; Creative Energy Horseshoe Bay Heating and Cooling TES; and Creative Energy Mount Pleasant Cooling TES. 8.5% equals \$722,040 / \$8,540,807. Calculation by the BCUC.

<sup>73</sup> BCUC's TES Regulatory Framework Guidelines, Appendix A to Order G-27-15. Retrieved from: [https://docs.bcuc.com/documents/Guidelines/2015/DOC\\_42213\\_TES-Guidelines.pdf](https://docs.bcuc.com/documents/Guidelines/2015/DOC_42213_TES-Guidelines.pdf)

<sup>74</sup> BCUC's TES Regulatory Framework Guidelines, Appendix A to Order G-27-15, p. 7.

<sup>75</sup> BCUC's TES Regulatory Framework Guidelines, Appendix A to Order G-27-15, p. 7.

### 3.2 Cost Allocation Methodology

Creative Energy identifies that at present time, it is the only Affiliate that currently transfers costs to other Affiliates, including CEDLP. Creative Energy identifies that the only exception to this is for director's fees, which are incurred by CEDLP and then allocated to Creative Energy and the other TES Affiliates.<sup>76</sup>

The Proposed IAC/TPP summarizes the steps for allocating shared corporate services costs as follows:

**Table 3: Steps for Allocating Corporate Costs<sup>77</sup>**

Item	Step for Allocating Shared Corporate Services Costs
1	Shared Corporate Services costs are first categorized into homogenous categories / services.
2	Costs are then identified as either (i) Directly Assignable Costs; or (ii) Indirect Costs.
3	All Directly Assignable Costs are directly assigned to the appropriate Affiliate or CEDLP <sup>78</sup> .
4	The basis of variability of the Indirect Costs are then assessed by reviewing what causes these costs to change.
5	Indirect Costs are then allocated either: <ul style="list-style-type: none"><li>• Using a functional allocator on the basis of variability in instances where this method is clearly applicable; or</li><li>• Using the Massachusetts Formula for all other instances.</li></ul>

Beginning in 2020, the BCUC granted approval to Creative Energy to use a three-factor Massachusetts Formula for allocating sales, general and administrative expenses based on the following factors: the average gross book value of capital assets or property, plant and equipment; salaries or direct labour expenses; and operating revenues.<sup>79</sup> The Massachusetts Formula is used to allocate indirect costs from Creative Energy to all BCUC-regulated TES Affiliates, including systems owned and operated by Creative Energy and individual subsidiaries of CEDLP. The Massachusetts Formula is not used for cost allocations to CEDLP. All cost allocations from Creative Energy to CEDLP are directly assigned.<sup>80</sup>

#### *Positions of the Parties*

The CEC does not identify any specific issues with the Proposed IAC/TPP, with the exception of the cost allocation methodology, specifically the portion of costs allocated using the Massachusetts Formula.<sup>81</sup> While acknowledging that it has not conducted an analysis of these costs, the CEC estimates that the total costs

---

<sup>76</sup> Exhibit B-4, BCUC IR 30.5.

<sup>77</sup> Exhibit B-1, Appendix C, PDF p. 64. Format modified by the BCUC.

<sup>78</sup> The Proposed IAC/TPP defines Creative Energy as CEDLP whereas this decision defines Creative Energy as Creative Energy Vancouver Platforms. This has been altered as a result.

<sup>79</sup> Creative Energy 2019-2020 RRA for the Core Steam System and NEFC Service Areas, Decision and Order G-227-20 dated September 2, 2020, p. 25.

<sup>80</sup> Exhibit B-4, BCUC IR 30.6.1.

<sup>81</sup> CEC Final Argument, p. 11.

allocated by the Massachusetts Formula are considerable.<sup>82</sup> The CEC accepts that the Massachusetts Formula is appropriate for allocating residual costs that cannot be otherwise allocated, and notes that the BCUC has reviewed the Massachusetts Formula on multiple occasions.<sup>83</sup> However, the CEC submits that the Massachusetts Formula should not become the default means of allocating significant expenditures that might potentially be allocated using other more accurate means.<sup>84</sup> The CEC submits that a large element of judgement may be used in assigning indirect costs and, as such, the risks of the regulated ratepayer subsidizing competitive or non-rate regulated activities of affiliated businesses may be material.<sup>85</sup> The CEC submits that it would be reasonable for positions such as Accounting and Management to keep timesheets in order to assess the validity of the use of the Massachusetts Formula for future review by the BCUC.<sup>86</sup> The CEC also submits that it may be worthwhile for further work to be undertaken to examine where direct costs could be assigned, and identify additional functional allocators that appropriately reflect the benefit to various Affiliates.<sup>87</sup>

Aside from the concerns summarized above, the CEC recommends that the BCUC approve the Proposed IAC/TPP with the caveat that further work is undertaken to improve the allocation of indirect costs before Creative Energy's next revenue requirement filing.<sup>88</sup>

BCOAPO submits that the Proposed IAC/TPP appears reasonable subject to several recommendations.<sup>89</sup>

First, BCOAPO submits that a total corporate annual allocation report that assesses and provides the rationale for the changes in allocated costs between the Core Steam System, its parent, and other regulated Creative Energy subsidiaries is necessary to properly assess its internal cost allocation results. BCOAPO further submits that such a report be filed with the BCUC annually after budget completion to demonstrate transparent and reasonable cost allocation results among Creative Energy's regulated businesses.<sup>90</sup>

Second, BCOAPO recommends that an annual Compliance report be filed with the BCUC confirming that "the costs of staff time and other general and administrative expenses are fairly and properly assigned to the Core revenue requirements and that customers of Core do not subsidize and are not subsidized by either the customers of other Creative Energy projects in operation in Vancouver or any projects in development in Vancouver or elsewhere."<sup>91</sup> Further, in the event that a serious breach of conduct or a material pricing error is identified, BCOAPO submits that it would be appropriate for the BCUC to direct Creative Energy to notify the BCUC within 30 days of the identification of such a breach/error.<sup>92</sup>

---

<sup>82</sup> CEC Final Argument, p. 13.

<sup>83</sup> CEC Final Argument, p. 13.

<sup>84</sup> CEC Final Argument, p. 13.

<sup>85</sup> CEC Final Argument, p. 31.

<sup>86</sup> CEC Final Argument, p. 13.

<sup>87</sup> CEC Final Argument, p. 32.

<sup>88</sup> CEC Final Argument, p. 32.

<sup>89</sup> BCOAPO Final Argument, p. 9.

<sup>90</sup> BCOAPO Final Argument, pp. 9–10.

<sup>91</sup> BCOAPO Final Argument, p. 10.

<sup>92</sup> BCOAPO Final Argument, p. 10.

In Reply Argument, Creative Energy notes that all interveners generally agree that the Proposed IAC/TPP is reasonable and appropriate for Creative Energy's circumstances.<sup>93</sup> Further, it states that BCOAPO and the CEC's suggestions are unnecessary and do not impede approval of the Proposed IAC/TPP.<sup>94</sup>

Creative Energy submits that the CEC's submissions are counter to the administrative and regulatory benefits afforded by the Massachusetts Formula, which underpin the BCUC approval of its use. It submits that the Massachusetts Formula exists precisely because there is an acknowledged benefit to avoid considerable effort and expense to seek a marginal increase in accuracy of residual costs for allocation purposes. It further submits that the CEC's recommendation that additional work be undertaken to improve the allocation of direct and indirect costs is effectively a recommendation to revisit the use of the Massachusetts Formula and that the recommendation is without basis and will impose unnecessary cost and burden.<sup>95</sup>

Creative Energy identifies that the Proposed IAC/TPP is a policy level document that is rooted in established regulatory and transfer pricing principles and supports cost allocations that are reasonably and consistently determined. Further, the Proposed IAC/TPP sets out that functional allocators can be implemented where applicable to allocate indirect costs using an identified cost causation driver. It submits that the CEC's recommended conditional approval of the Proposed IAC/TPP, pending further work to improve the allocation of indirect costs, is unnecessary.<sup>96</sup>

In response to BCOAPO's recommendations, Creative Energy argues that an annual compliance report along the lines BCOAPO proposes, would in practice be a departure from the regulatory framework for TES in BC and would impose additional and duplicative administrative and regulatory burden, and unlikely to be of any benefit.<sup>97</sup>

### *Panel Determination*

As discussed in Section 3.1 above, the Panel finds that transactions between regulated and non-regulated affiliates should not be based simply on cost allocation; rather, such transactions should be done on the basis of the higher of market value or full cost recovery. As such, the Panel considers cost allocations between regulated and non-regulated affiliates should be considered separately from cost allocations between regulated affiliates. In the former case, the services provided by the regulated affiliate to the non-regulated affiliate must be valued at market value or full cost recovery, whichever is higher. The Panel now addresses the latter category of resource sharing (between regulated affiliates in the Creative Energy Group) in this section.

With regard to the CEC's concerns, similar to the Panel's discussion on Distribution Team Costs in its Decision on Creative Energy's 2021 RRA for its Core Steam System,<sup>98</sup> the Panel does not consider that implementing additional timekeeping systems will necessarily result in more accurate allocation of costs. The Panel finds that

---

<sup>93</sup> Creative Energy Reply Argument, p. 1.

<sup>94</sup> Creative Energy Reply Argument, p. 1.

<sup>95</sup> Creative Energy Reply Argument, pp. 13–14.

<sup>96</sup> Creative Energy Reply Argument, p. 16.

<sup>97</sup> Creative Energy Reply Argument, pp. 6–7.

<sup>98</sup> Creative Energy 2021 Revenue Requirements Application for the Core Steam System, Decision and Order G-310-21A, p. 13. The Panel identified that implementing a timekeeping system for the distribution team costs that tracks all time would be more costly to administer and may not result in any significant improvement in the reasonableness of the forecast allocation.

Creative Energy's use of the Massachusetts Formula to be appropriate because there is a benefit to avoiding the effort and expense to seek a marginal increase in accuracy of residual costs for allocation purposes.

Having reviewed the evidence in this proceeding pertaining to the Proposed IAC/TPP, the Panel is satisfied that Creative Energy's current practices of cost allocation between its BCUC-regulated TES affiliates appear to be generally in line with the RMDM Guidelines and the principles articulated in the AES Inquiry Report, as adopted by the Panel in Section 2.0 of this Decision. Further, as already noted, since 2020 Creative Energy has received BCUC approval to use the three-factor Massachusetts Formula described in Section 3.2 above to allocate indirect costs from Creative Energy to all BCUC-regulated TES affiliates, including TES owned and operated by Creative Energy and individual TES subsidiaries of CEDLP. As a result, the Panel does not have any issues with Creative Energy's use of this general cost allocation methodology between its regulated TES.

With respect to BCOAPO's submissions, the Panel does not consider that BCOAPO's suggestion for specific compliance filings will necessarily result in a more accurate allocation of costs. However, to ensure greater transparency of cost sharing between regulated TES affiliates, the Panel considers it appropriate and important to continue to monitor the cost allocation methodology employed by Creative Energy and accordingly **directs Creative Energy to file its total annual gross costs as part of its future RRAs for the Core Steam System.**

### **3.3 Overall Panel Determination on the Proposed IAC/TPP**

Having reviewed Creative Energy's Proposed IAC/TPP in light of the principles adopted by the Panel in Section 2.0 of this decision, the Panel acknowledges Creative Energy's efforts in developing this proposed policy. **However, the Panel does not approve the Proposed IAC/TPP as filed, as it does not adhere to the principle of ensuring minimal resource sharing between regulated and non-regulated businesses.**<sup>99</sup>

The Panel recognizes that an appropriate transitional period will be required for Creative Energy to make changes to its organization structure in order to enable it to ensure a proper separation of its various business activities and resources. Accordingly, the Panel does not see value in Creative Energy resubmitting another IAC/TPP until its organization structure can properly reflect the principles set out by the Panel in Section 2.0. Nonetheless, the Panel encourages Creative Energy to file a revised IAC/TPP for review and approval at such time as its organizational changes are complete.

To provide guidance to Creative Energy on developing a revised inter-affiliate code of conduct and transfer pricing policy in the future, the Panel considers that any such policy should:

- Incorporate the principles as outlined in Section 2 of this decision, including ensuring provisions are included that limit sharing of public utility resources with non-regulated affiliates and ensure that where resources are shared between regulated and non-regulated entities, they are done so at the full cost to provide the service or market pricing, whichever is higher;
- Govern all inter-affiliate or non-arms length transactions between the BCUC-regulated utility and any affiliate;
- Address cost allocations between affiliated regulated businesses separately from transactions between affiliated regulated and unregulated businesses;

---

<sup>99</sup> AES Inquiry Report, p. 21.

- Consider and strike an appropriate balance between the interests of the ratepayers of the various BCUC-regulated TES in the Creative Energy Group;
- Be developed from the perspective of safeguarding utility ratepayers against the risks of cross-subsidization of the regulated or non-regulated business activities of its affiliates;
- Include a requirement of annual certification of compliance with the policy as part of Creative Energy's Annual Report. We do not consider such a requirement to be overly onerous for a utility of Creative Energy's size and we regard that to be an appropriate best practice and safeguard in light of Creative Energy's organizational structure, including the difference in the degree of regulatory oversight over its Stream A and Stream B TES, and the continuing growth in the number of new Creative Energy affiliates. All of these considerations speak in favour of the need to maintain some degree of scrutiny over compliance with any such policy; and
- Require Creative Energy to file with the BCUC particulars of any instances of significant non-compliance with the policy as part of its Annual Report.

Until such time as Creative Energy files a revised IAC/TPP for BCUC review and approval, the Panel expects Creative Energy to demonstrate in its future RRAs for all of Creative Energy's regulated TES as well as those BCUC-regulated TES that are subsidiaries of CEDLP, how it is adhering to the principle of minimal resource sharing between regulated and non-regulated affiliates. As previously noted, Creative Energy was granted BCUC approval to use the three-factor Massachusetts Formula described in Section 3.2 beginning in 2020 to allocate indirect costs from Creative Energy to all BCUC-regulated affiliate TES, including TES owned and operated by Creative Energy and individual TES subsidiaries of CEDLP. Pending the filing and review of a revised conduct of conduct and transfer pricing policy, the Panel finds the continued use of the Massachusetts Formula by Creative Energy in the interim to be appropriate in the absence of BCUC approval of the Proposed IAC/TPP.

**DATED** at the City of Vancouver, in the Province of British Columbia, this        30<sup>th</sup>        day of November 2021.

*Original signed by:*

---

Anna Fung, QC  
Panel Chair / Commissioner

*Original signed by:*

---

K. A. Keilty  
Commissioner

*Original signed by:*

---

B. A. Magnan  
Commissioner





**bcuc**  
British Columbia  
Utilities Commission

Suite 410, 900 Howe Street  
Vancouver, BC Canada V6Z 2N3  
bcuc.com

P: 604.660.4700  
TF: 1.800.663.1385  
F: 604.660.1102

**ORDER NUMBER  
G-349-21**

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

and

Creative Energy Vancouver Platforms Inc.  
2021 Revenue Requirements Application for the Core Steam System

**BEFORE:**

A. K. Fung, QC, Panel Chair  
K. A. Keilty, Commissioner  
B. A. Magnan, Commissioner

on November 30, 2021

**ORDER**

**WHEREAS:**

- A. On December 1, 2020, Creative Energy Vancouver Platforms Inc. (Creative Energy) submitted its 2021 Revenue Requirements Application (RRA) for the core steam system (Core Steam System) to the British Columbia Utilities Commission (BCUC), seeking approval of 2021 steam rates for the Core Steam System, among other things (Application);
- B. The Application also seeks approval of a proposed Inter-Affiliate Conduct and Transfer Pricing Policy (Proposed IAC/TPP) in respect of all BCUC-regulated Thermal Energy Systems (TES) that are part of the Creative Energy Group as shown in Appendix A to the proposed policy;
- C. By Orders G-11-21A and G-88-21, the BCUC established a regulatory timetable for the review of the Application, which included intervenor registration and two rounds of BCUC and intervenor information requests (IRs) to Creative Energy, followed by written final and reply arguments;
- D. By Order G-310-21A dated October 29, 2021, the BCUC rendered a separate decision approving, among other things, a 2021 average steam rate of \$9.78 per thousand pounds of steam for the Core Steam System, equivalent to a 20.3 percent increase above 2020 approved average steam rates, on a permanent basis, effective January 1, 2021; and
- E. The BCUC has reviewed the evidence and submissions by all parties in this proceeding and makes the following determinations regarding Creative Energy's request for approval of the Proposed IAC/TPP.

**NOW THEREFORE** for the reasons provided in the decision issued concurrently with this order (Decision), the BCUC orders as follows:

1. Creative Energy's Proposed IAC/TPP is not approved as filed.
2. Creative Energy is directed to provide further evidence demonstrating how its labour rates are reflective of the higher of market pricing or full cost recovery where resources are shared with non-regulated affiliates in its next RRA for the Core Steam System.
3. Creative Energy is directed to cease sharing, by no later than the time of filing of its 2023 RRA for the Core Steam System, its staff resources with Creative Energy's non-regulated affiliates, to the extent that those staff allocate more than a minimal amount of their time to activities of its non-regulated affiliates.
4. Creative Energy is directed to request advance BCUC approval, unless otherwise ordered, for any material cost or resource sharing by Creative Energy with any non-regulated affiliate. When seeking such approval, Creative Energy must provide the basis and any justification for the proposed amounts of the cost or resource sharing.
5. Creative Energy is directed to file its total annual gross costs as part of its future RRAs for the Core Steam System.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 30<sup>th</sup> day of November 2021.

BY ORDER

*Original signed by:*

A. K. Fung, QC  
Commissioner

## List of Acronyms

Acronym	Description
AES Inquiry Report	BCUC report of the Alternative Energy Solutions Inquiry dated December 2012
Application	Creative Energy Vancouver Platforms Inc. 2021 Revenue Requirement Application for the Core Steam System
BCOAPO	BC Old Age Pensioners' Organization, Council of Senior Citizens' Organizations of BC, Disability Alliance BC, and Tenant Resource and Advisory Centre
BCUC	British Columbia Utilities Commission
CEC	Commercial Energy Consumers Association of British Columbia
CEDLP	Creative Energy Developments Limited
CEMP	Creative Energy Mount Pleasant Limited Partnership
Core Steam System	Creative Energy Vancouver Platforms Inc.'s steam production plant at 720 Beatty Street and the associated distribution network serving more than 200 buildings in downtown Vancouver and supplying thermal energy to Creative Energy's Northeast False Creek hot water system
CPCN	Certificate of Convenience and Necessity
Creative Energy	Creative Energy Vancouver Platforms Inc.
Creative Energy Group	Refers to the entities and TES shown in Appendix A to the proposed policy
Expo-Beatty Plants Redevelopment Project	The project to upgrade Creative Energy's Beatty Plant, and to construct a new Expo Plant and associated facilities as part of its Core Steam System
IAC/TPP	Inter-Affiliate Conduct and Transfer Pricing Policy
IR	Information request
NEFC	Northeast False Creek
NRBs	Non-regulated Businesses
RCIA	Residential Consumer Intervenor Association (formerly Residential Consumer Intervenor Group – RCIG)
RMDM Guidelines	Retail Markets Downstream of the Utility Meter Guidelines
RRA	Revenue Requirements Application
TES	Thermal Energy Systems
UCA	<i>Utilities Commission Act</i>

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

and

Creative Energy Vancouver Platforms Inc.  
2021 Revenue Requirements Application for the Core Steam System

**EXHIBIT LIST**

Exhibit No.	Description
<i>COMMISSION DOCUMENTS</i>	
A-1	Letter dated December 9, 2020 – Appointing the Panel for the review of Creative Energy Vancouver Platforms Inc. 2021 Revenue Requirements Application for the Core Steam System
A-2	Letter dated December 18, 2020 – Request to Creative Energy for further information
A-3	Exhibit removed and replaced with Exhibit A-3-1
A-3-1	Letter dated January 28, 2021 – Amended BCUC Order G-11-21A establishing a regulatory timetable
A-4	Letter dated February 11, 2021 – BCUC Information Request No. 1 to Creative Energy
A-5	Letter dated March 22, 2021 – BCUC Order G-88-21 establishing a further regulatory timetable
A-6	Letter dated April 15, 2021 – BCUC Information Request No. 2 to Creative Energy
A-7	<b>CONFIDENTIAL</b> - Letter dated April 15, 2021 – BCUC Confidential Information Request No. 2 to Creative Energy
A-8	Letter dated August 18, 2021 – Panel Information Request No. 1 to Creative Energy and Further Regulatory Timetable

## **COMMISSION STAFF DOCUMENTS**

- A2-1 Letter dated February 11, 2021 – BCUC Staff Submitting Aitken Creek Gas Storage ULC, British Columbia Utilities Commission Order G-39-16, Aitken Creek Gas Storage ULC Code of Conduct and Transfer Pricing Policy, Compliance Filing June 30, 2016
- A2-2 Letter dated February 11, 2021 – BCUC Staff Submitting FortisBC Energy Inc. Application for Approval of Code of Conduct (COC) and Transfer Pricing Policy (TPP) for Affiliated Regulated Businesses Operating in a Non-Natural Monopoly Environment (ARBNNM), June 27, 2014
- A2-3 Letter dated February 11, 2021 – BCUC Staff Submitting FortisBC Energy Inc., British Columbia Utilities Commission Order No. G-65-15 Compliance Filing – All-Inclusive Code of Conduct and Transfer Pricing Policy, June 30, 2016
- A2-4 Letter dated February 11, 2021 – BCUC Staff Submitting Pacific Northern Gas Ltd., PNG-West Division – 2018-2019 Revenue Requirements Application, Commission Order G-151-18 Directive 7: Code of Conduct and Transfer Pricing Policy, Compliance Filing January 31, 2019

## **APPLICANT DOCUMENTS**

- B-1 **CREATIVE ENERGY VANCOUVER PLATFORMS INC. (CREATIVE ENERGY) - 2021 Revenue Requirements Application (RRA) for the Core Steam System (Application)** dated December 1, 2020
- B-2 Letter dated January 6, 2021 - Creative Energy response to Panel request for further information
- B-3 Letter dated February 26, 2021 – Creative Energy submitting Load Forecast Update and Request for Approval of a Steam Rate Increase
- B-4 Letter dated March 4, 2021 – Creative Energy submitting response to BCUC Information Request No. 1
- B-4-1 **CONFIDENTIAL** - Letter dated March 4, 2021 – Creative Energy submitting confidential response to BCUC Information Request No. 1
- B-5 Letter dated March 4, 2021 – Creative Energy submitting response to CEC Information Request No. 1

- B-6 Letter dated March 4, 2021 – Creative Energy submitting response to BCOAPO Information Request No. 1
- B-6-1 **CONFIDENTIAL** - Letter dated March 4, 2021 – Creative Energy submitting confidential response to BCOAPO Information Request No. 1
- B-7 Letter dated March 4, 2021 – Creative Energy submitting response to RCIG Information Request No. 1
- B-8 Letter dated April 29, 2021 – Creative Energy submitting response to BCUC Information Request No. 2
- B-9 **CONFIDENTIAL** - Letter dated April 29, 2021 – Creative Energy submitting response to BCUC confidential Information Request No. 2
- B-10 Letter dated April 29, 2021 – Creative Energy submitting response to BCOAPO Information Request No. 2
- B-11 Letter dated April 29, 2021 – Creative Energy submitting response to CEC Information Request No. 2
- B-12 Letter dated April 29, 2021 – Creative Energy submitting response to RCIA Information Request No. 2
- B-13 Letter dated August 25, 2021 – Creative Energy submitting response to BCUC Panel Information Request No. 1 and supplementary final submission is included in the Information Request responses and will not be filed separately

#### *INTERVENER DOCUMENTS*

- C1-1 **RESIDENTIAL CONSUMER INTERVENOR GROUP (RCIG)** - Letter dated January 28, 2021 Request to Intervene by Fredrik Ambrosson, Midgard Consulting
- C1-2 Letter dated February 19, 2021 – RCIG Information Request No. 1 to Creative Energy
- C1-3 Letter dated April 15, 2021 – RCIG (Now **RCIA**) Information Request No. 2 to Creative Energy

- C2-1      **COMMERCIAL ENERGY CONSUMERS ASSOCIATION OF BRITISH COLUMBIA (CEC)** - Letter dated February 4, 2021 Request to Intervene by Christopher Weafer, Owen Bird Law Corporation
- C2-2      Letter dated February 18, 2021 – CEC Information Request No. 1 to Creative Energy
- C2-3      Letter dated April 15, 2021 – CEC Information Request No. 2 to Creative Energy
- C3-1      **BRITISH COLUMBIA OLD AGE PENSIONERS' ORGANIZATION ET AL. (BCOAPO)** - Letter dated February 10, 2021 Request for Late Intervener Status by Leigha Worth and Irina Mis
- C3-2      Letter dated February 18, 2021 – BCOAPO Information Request No. 1 to Creative Energy
- C3-3      Letter dated April 15, 2021 – BCOAPO Information Request No. 2 to Creative Energy

*INTERESTED PARTY DOCUMENTS*

- D-1      **Cadillac Fairview** – Submission dated October 6, 2021 Request for Interested Party Status by L. Tummonds