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June 30, 2008

Mr. David Bursey
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Barristers & Solicitors
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Re: Dockside Green Energy LLP ("DGE")
Certificate of Public Convenience and Necessity for the District Energy System

Application for Reconsideration of
BCUC Order No. C-1-08 dated April 17, 2008 ("Order")

Further to DGE's May 30, 2008 application for reconsideration of Commission Order No. C-1-08, enclosed is Order No. C-3-08 and Reasons for Decision.

Yours truly,

Original signed by:

Erica M. Hamilton

cms
Enclosure

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BRITISH COLUMBIA UTILITIES COMMISSION

ORDER NUMBER C-3-08

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IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and
an Application by Dockside Green Energy LLP
for Reconsideration of Certain Provisions of
Commission Order No. C-1-08 and Reasons for Decision

BEFORE: L.F. Kelsey, Panel Chair and Commissioner
P.E. Vivian, Commissioner
A.A. Rhodes, Commissioner

June 30, 2008

O R D E R

WHEREAS:

A. By letter dated December 21, 2007, Dockside Green Energy LLP ("DGE") applied to the Commission for a Certificate of Public Convenience and Necessity ("CPCN") to construct and operate a district energy system ("DES") to provide energy service to the Dockside Green development ("Dockside Green") currently being built on the Inner Harbour in Victoria, B.C. and for approval of Service Agreements, Terms and Conditions of Service and levelized rates (the "Application"); and

B. By Order No. G-8-08 dated January 11, 2008, the Commission established a Written Public Hearing and Regulatory Timetable; and

C. By letters dated January 11 and February 15, 2008, the Commission issued Information Requests No.1 and No. 2 to DGE; and

D. By letters dated January 21 and March 6, 2008, DGE filed responses to Information Requests No. 1 and No. 2; and

E. By e-mail dated January 23, 2008 SunGen Sustainable Developments Inc. filed a request for Intervenor status; and

F. By letter dated March 11, 2008 DGE filed its final submission; and

G. By letter dated March 20, 2008, DGE filed responses to outstanding questions from Information Request No. 1; and

H. By Order No. C-1-08 (the "Order") the Commission granted a CPCN to DGE for the construction and operation of a DES to provide hydronic energy service at Dockside Green as set out in the Application, subject to the following conditions ("Conditions"):

…/2

1.1 Any extraordinary capital expenditures or operating and maintenance expenses, natural gas and/or any other fuel commodity costs that are incremental to the costs included in the revenue requirements estimate presented in the Application and are required in order that the thermal energy generation system referred to as the Nexterra Plant fulfills the role described for it in the Application and supporting material, will not be included in DGE rate base and revenue requirements and will not be recovered in DGE customer rates.

1.2 Any extraordinary capital expenditures or operating and maintenance expenses, natural gas and/or any other fuel commodity costs that are incremental to the costs included in the revenue requirements estimate presented in the Application and are required in order to obtain, process, handle or replace the fuel source for the district energy system, including the cost of gas that is used because wood supply is not available or the cost of wood supply to the extent it exceeds the price set out in the Binding Letter of Intent with Three Point Properties LLP that is Attachment 7.1 in Exhibit B-2, will not be included in the DGE rate base and revenue requirements and will not be recovered in DGE customer rates.

1.3 DGE has provided written confirmation to the Commission that it accepts the conditions to the CPCN, within 60 calendar days of the date of this Order; and

I. By letter dated May 30, 2008 DGE requested, pursuant to section 99 of the Utilities Commission Act (the "Act") that the Commission reconsider and vary its Order to remove the Conditions (the "Reconsideration Application"); and

J. By letter dated June 4, 2008, the Commission accepted the position of DGE that the matter should proceed directly to a reconsideration and the Commission established a reconsideration of the Conditions, by way of a Written Public Hearing, based on the merits of the matter as set out in the Reconsideration Application; and

K. By copy of its letter dated June 4, 2008, the Commission provided an opportunity for the Intervenor of record to comment on DGE's request for reconsideration of Conditions in the Order; and

L. The Intervenor did not file comments; and

M. By letter dated June 6, 2008, DGE confirmed that was is content to rely on its submission dated 30 May 2008 for the purpose of the Commission's reconsideration of the Conditions in the Order; and

N. The Commission has considered the matter and determined that Commission Order No. C-1-08 should be varied.

NOW THEREFORE pursuant to Section 99 of the Act, the Commission orders that Commission Order No. C-1-08 is varied as follows:

1. Sections 1.1, 1.2, 1.3 and 2 are removed.

2. Section 11 should be read so as to reflect the removal of the Commission determinations and directions set out in Sections 1.1, 1.2, 1.3 and 2 only and should include all other directions in the Reasons for Decision attached as Appendix A to Commission Order No. C-1-08 and Appendix A to this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 30th day of June 2008.

BY ORDER

Original signed by:

L.F. Kelsey
Commissioner

Attachment

Application by Dockside Green Energy LLP
for Reconsideration of Certain Provisions of
Commission Order No. C-1-08 and Reasons for Decision

REASONS FOR DECISION

1.0. BACKGROUND

1.1 Brief Summary of the CPCN Application

On December 21, 2007 Dockside Green Energy LLP ("DGE") applied ("the Application") to the British Columbia Utilities Commission ("BCUC", "Commission") for:

(a) a Certificate of Public Convenience and Necessity ("CPCN") to construct and operate a district energy system ("DES") to provide energy service to the Dockside Green development currently being built on the Inner Harbour in Victoria, and

(b) approval of:

- a levelized rate base
- forecast revenue requirements, including:
  - a deemed capital structure of 40% equity, 60% debt
  - an allowed return on equity of 9.62%
  - long term debt financing at 6.5%
  - forecast operating costs
- accounting treatment of:
  - depreciation of plant assets
  - a 20 year levelized rate structure
  - rate design
- Service Agreement Terms & Conditions [Tariff]

The Dockside Green development is, if not unique, at least rare in its commitment to environmental and energy sustainability relative to current standards of development.

Dockside Green is a mixed residential, office, retail and industrial development with a planned total floor space of 129,658 square meters (approximately 1.4 million square feet) on fifteen acres of formerly contaminated industrial land in Victoria. The project is to be developed in nine phases over seven years and the first phase of residential condominiums is now complete.

The developer of the project is the Dockside Green Limited Partnership ("Dockside Green LP" or "Developer"), which is owned by Vancity Capital Corporation ("Vancity") and Windmill West Properties LLP ("Windmill").

The Developer intends to construct a biomass facility to provide hot water heating to Dockside Green and has established a private utility company, DGE, as the district energy system utility to operate a wood-waste gasification system (the "Waste Wood Facility"). DGE is jointly owned by Corix Utilities Inc. ("Corix"), Terasen Energy Services Inc. ("TES"), Vancity and Windmill. Corix, Windmill, and TES each own a 17 percent interest in DGE and Vancity owns the remaining 49 percent. Corix is experienced in the ownership and operation of utility and district energy systems, and DGE has contracted with Corix to provide utility operations (Exhibit B-1, pp. 2-8).

The Dockside Green project will be a sustainable development certified by the Canada Green Building Council's Leadership in Energy and Environmental Design ("LEED"™) green building rating system (Exhibit B-1, p. 30). LEED certification involves certification and credits in five principal LEED categories: sustainable sites, water efficiency, energy and atmosphere, materials and resources, and indoor environmental quality. LEED-Platinum is the highest of the four possible levels of LEED certification (Exhibit B-1, p. 7; Exhibit B-2, p. 1), and is the expected rating for the Dockside Green development.

Further to the LEED-Platinum certification of the project, DGE will use a wood-waste fired gasification system provided by Nexterra Energy Corp. ("Nexterra") capable of delivering 2 MW thermal heat ("MWth") for residential/commercial district heating. The energy derived from the system is intended to reduce the greenhouse gas emissions that would otherwise be produced from energy used at the development (Exhibit B-1, p. 7; Exhibit B-2, Attachment 9.3, p. 4). DGE confirms that Nexterra has offered a fixed price turn key contract for the gasification plant, back-up boiler and building, and that Dockside Green LP will provide the site preparation, road access, landscaping and all required utilities to the central heating plant. DGE further confirms that, with respect to the Nexterra plant, the only areas of uncertainty arise from changes to the specifications or scope of the project required by DGE (Exhibit B-2, p. 9).

Nexterra will guarantee the heat generation capacity and emissions for the gasification system and will provide a one year warranty covering the system and its components (Exhibit B-1, p. 18). DGE states that biomass for the gasification plant will be supplied from local sources and, at the time of the Application, there is a draft 20-year fixed price agreement between DGE and a local supplier to supply wood waste (Exhibit B-1, p. 38). DGE states that in addition to this draft agreement it has identified several alternate sources of supply should these be required. The system will have a 3.4 MWth natural gas back-up system that will provide peaking capacity and back-up heat when the gasification plant is not in operation. The Application states that, as a requirement of the LEED-Platinum designation, any credits or monetary value assigned to greenhouse gas emissions at Dockside Green will be owned by the Developer (Exhibit B-1, p. 33). DGE will meter energy use at the building level and will bill each strata as a separate customer. Each strata will sub-meter energy use for the purpose of allocating energy costs within the strata (Exhibit B-1, p. 8).

Technology Early Action Measures ("TEAM") funding from the federal Department of Natural Resources will provide partially repayable assistance of $1.5 million. TEAM funding supports projects that are designed to demonstrate technologies that mitigate gas emissions and sustain economic and social development (Exhibit B-1, pp. 52-53).

In addition to serving the customers within the Dockside Green development, DGE will be seeking to serve customers in close proximity to, but outside of, the project ("Off-site" customers) in order to earn incremental revenues and reduce the cost of serving the Dockside Green customers. Although DGE states that it has received expressions of interest from other nearby developments and is engaged in other nearby prospects, the only Off-site customer currently forecast to be served by DGE is a Delta Hotel. DGE currently has a Memorandum of Understanding ("MOU") with the Delta Hotel and DGE assumes that the Delta Hotel MOU will be converted into a sales agreement with no material changes (Exhibit B-1, pp. 20-21).

DGE states that the requested capital structure of 40 percent equity and 60 percent debt and target ROE of 9.62 percent provide the utility owner an opportunity to earn a fair return on invested equity taking into consideration various risks associated with the enterprise (Exhibit B-1, pp. 48-49). DGE provides a table showing the capital structures and risk premiums for some other British Columbia utilities and submits that DGE's business risk is directionally higher than established utilities because "…DGE is a new business venture employing emerging technology, in which the exact nature of future customer needs is difficult to estimate with precision" (Exhibit B-4, p. 6).

1.2 Highlights of the Decision

By Commission Order No. C-1-08 dated April 17, 2008 (the "Order") the Commission granted a CPCN to DGE, subject to the following conditions:

1.1 Any extraordinary capital expenditures or operating and maintenance expenses, natural gas and/or any other fuel commodity costs that are incremental to the costs included in the revenue requirements estimate presented in the Application and are required in order that the thermal energy generation system referred to as the Nexterra Plant fulfills the role described for it in the Application and supporting material, will not be included in DGE rate base and revenue requirements and will not be recovered in DGE customer rates.

1.2 Any extraordinary capital expenditures or operating and maintenance expenses, natural gas and/or any other fuel commodity costs that are incremental to the costs included in the revenue requirements estimate presented in the Application and are required in order to obtain, process, handle or replace the fuel source for the district energy system, including the cost of gas that is used because wood supply is not available or the cost of wood supply to the extent it exceeds the price set out in the Binding Letter of Intent with Three Point Properties LLP that is Attachment 7.1 in Exhibit B-2, will not be included in the DGE rate base and revenue requirements and will not be recovered in DGE customer rates.

1.3 DGE has provided written confirmation to the Commission that it accepts the conditions to the CPCN, within 60 calendar days of the date of this Order.

2. If any of the conditions in the CPCN for the district energy system are not met, the CPCN is cancelled immediately.

The Commission generally granted approval of other matters requested in the Application, subject to DGE holding a CPCN for the DES, and with the exception of a small change to the Tariff as proposed.

2.0 APPLICATION FOR RECONSIDERATION

By Letter dated May 30, 2008 DGE advised the Commission that it has reviewed the Order and finds it acceptable except for the conditions set out in sections 1.1 and 1.2 of the Order ("Conditions"). "Therefore, DGE requests, pursuant to section 99 of the *Utilities Commission Act* ("Act"), that the Commission reconsider and Vary its Order to remove the Conditions" (the "Reconsideration Application"). DGE cites the following grounds in support of this request for reconsideration:

1. The Commission erred in law by including the Conditions in the Order without giving DGE an opportunity to comment on them.

2. Changed circumstances – recent amendments to the Act require the Commission to consider the British Columbia Energy Objectives.

DGE requested that the Commission consider the request for reconsideration expeditiously as the Dockside Green project is advancing.

3.0 THE RECONSIDERATION PROCESS

In considering a request for reconsideration, the Commission follows the practice outlined in the Commission's Reconsideration Criteria, which is outlined in the Commission's document, "Understanding Utility Regulation, A Participants' Guide to the BC Utilities Commission". Although a request for reconsideration usually proceeds through a two phase process, in the situation at hand the Commission accepted the position of DGE that the matter should proceed directly to a reconsideration and by letter dated June 4, 2008 (Reconsideration Exhibit A-1) established a reconsideration of Order No. C-1-08 according to a written submission process. In considering the DGE request the Commission was of the understanding that DGE did not wish to file any further submissions on this matter, other than a reply to a submission from the Intervenor in the proceeding that considered the CPCN Application, should a submission be filed in this proceeding. The Commission requested that DGE confirm this understanding. By letter dated Friday, June 6, 2008 DGE confirmed that it is "content to rely on its submission dated 30 May 2008 for the purpose of the Commission's reconsideration of the Conditions of the Order" (Reconsideration Exhibit B-2).

One Intervenor registered in the proceeding to consider the CPCN Application for the DES, however, the Commission notes that the Intervenor did not participate actively in the proceeding. The Commission, by copy of its letter of June 4, 2008, provided an opportunity for the Intervenor of record to comment on DGE's request for reconsideration of Conditions of the Order. No comments from the Intervenor were received by the Commission by the June 10, 2008 deadline.

4.0 RECONSIDERATION

4.1 DGE Position

DGE states that there are two reasons which support its request for reconsideration. The Commission considers that these "reasons" address the question of "grounds" that must be met in order for a reconsideration to be warranted.

"(a) The Commission erred in law

The Commission erred in law by including the Conditions in the Order without giving DGE an opportunity to comment on them. Doing so contravenes basic principles of administrative fairness. Specifically, DGE was not given a fair opportunity to know the case it had to meet and was denied a right to be heard on the issues raised by the Conditions" (Reconsideration Exhibit B-1, p. 1).

(b) Changed circumstances - recent amendments to the Act require the Commission to consider the British Columbia Energy Objectives

Recent amendments to the Act require the Commission to consider the "government's energy objectives" in making certain decisions whether to issue a CPCN" (Exhibit B-1, p. 2). DGE acknowledges that the Commission's decision to impose the Conditions was made before these amendments to the Act came into force, but states "the Commission must now have regard to them during this reconsideration" (Reconsideration Exhibit B-1, p. 3).

DGE requests that the Commission delete Section 1 from the Order and identifies the following reasons why the Conditions should be deleted from the Order. The Commission considers that the following reasons are additional grounds, which go to the merits of the Reconsideration Application.

" (a) The Conditions are ambiguous

The meaning of "extraordinary" and "incremental" in the Conditions is unclear in the context in which those terms are used in each condition. The following text is similar in each condition:

Any extraordinary capital expenditures or operating and maintenance expenses ... that are incremental to the costs included in the revenue requirements estimate presented in the Application . . .

DGE does not know how the Commission intends to identify and measure "extraordinary incremental" costs in relation to the thermal energy generation system and the fuel supply. Consequently, DGE does not know how it would implement the Conditions. The uncertain scope of the Conditions makes it difficult for DGE to assess the associated financial risk.

(b) Unfair allocation of risk to DGE

Extraordinary expenditures would normally include expenditures that by their inherent nature are difficult to forecast. If that is the intent in the Conditions, then the justification for requiring DGE to bear this forecast risk is not explained. The evidentiary record before the Commission does not justify allocating extraordinary financial risk to DGE.

DGE's allowed return on equity ("ROE") is not extraordinary - only 100 basis points higher than the ROE the Commission sets for a low-risk benchmark utility. In absolute dollars, 100 basis points at full build-out of the DGE system would equate to approximately $24,000 per year. The 100 basis point risk premium is modest and reasonable for a small utility like DGE, but certainly not adequate to compensate for the extraordinary financial risk imposed by the Conditions. As explained in DGE's response to BCUC Information Request #2, Question 23.1, DGE's equity ratio and level of ROE are comparable to other Commission-regulated utilities that have less risk.

For the setting of rates and service, the law is clear that the BCUC mandate under section 59 of the Act is to balance the interests of the utility as owner and the interests of the ratepayers as service users. The public utility's interest is to receive a fair return on its prudently invested capital, which includes a fair return of the capital through reasonable depreciation and a fair return on the capital through a reasonable return on capital invested. The ratepayers' interest is to receive safe and reliable service under terms and rates that are just and reasonable . . .

The Conditions upset the required balance by imposing unfair financial risk on DGE without a commensurate return on investment. In effect, the Commission is deciding in advance that any "extraordinary incremental" expense identified in the Conditions will not be prudent. DGE will be denied a fair opportunity to recover any such investment even if it is prudent and in the interests of the customers. DGE will not even have the opportunity to demonstrate the prudence of its actions.

(c) The Conditions are unnecessary to protect any public interest

DGE presumes the Conditions are intended to protect the DGE ratepayers from extraordinary costs that DGE may encounter. DGE submits that it is unnecessary and, in fact, punitive for the Commission to prejudge future circumstances by deciding now that DGE must bear those extraordinary costs whatever the circumstances may be. The ambiguity in the Conditions will require DGE to return to the Commission in any event to verify that it is applying the Conditions correctly. The public interest would be better served by reviewing the relevant circumstances at the time the event occurs before making a judgment about how extraordinary incremental costs should be recovered.

DGE is a regulated public utility under the Act. The Commission has comprehensive regulatory powers over DGE to protect customers and the public interest. If DGE incurs extraordinary incremental costs, then the Commission has the authority to review the prudence of those costs before DGE may include them in the rates it will charge its customers. DGE should be allowed a fair opportunity to recover those costs if they are prudent and reasonable. The Commission's authority to review DGE's costs is more than adequate to protect the customers and the public interest. The Commission has not explained why the additional measures in the Conditions are necessary to serve the public interest.

The unique and innovative "green" nature of the Dockside Green development is a prominent feature of the development and will be well known to those who buy property in the development. In fact, the LEED Platinum aspect of the development is likely to be an attraction for many buyers. All buyers will receive extensive disclosure statements outlining the features of the development, including the DGE system. The disclosure statements are governed by the Real Estate Development Marketing Act. DGE will be also distributing information through a website and other means to explain its system. These circumstances do not warrant extraordinary "up front" measures to eliminate all equipment and energy supply risk at the expense of DGE.

(d) Inequitable treatment among utilities

The Commission has not explained why DGE should bear financial risk that other utilities do not bear. Specifically, other utilities are typically permitted an opportunity to justify the prudence of any extraordinary incremental costs for equipment and energy supply, if and when those costs occur. If the Commission decides the costs are prudent, then the utility is allowed to include them in the rates.

DGE filed a comprehensive application explaining the DGE system, the operation, the service, the forecast costs and the measures that DGE has taken to manage the risk in the contracts with Nexterra and Three Point Properties. DGE has also responded to numerous information requests that elaborate on the information in the application. DGE believes it has done as much or more than other established utilities have done in similar situations to demonstrate the prudence of its actions to date.

Treating DGE in a different manner is inequitable and puts DGE at a competitive disadvantage. There is no basis in economic theory or law to do so in this case. Nor is there a need to do so.

(e) Contrary to the Act, British Columbia Energy Plan, and Energy Objectives

The Conditions impose an unnecessary and unfair burden on DGE that frustrates the attempt to develop an innovative and environmentally-desirable approach to energy supply in an urban setting. This outcome is contrary to the objectives of the recent British Columbia Energy Plan and related policy initiatives. More importantly, the Conditions are contrary to the Government energy objectives as set out in the recently-amended Act.

The DGE system is a district energy system that uses biomass as the fuel. These two elements both have significant environmental benefits compared to a conventional energy system by using fuel and infrastructure efficiently to reduce the environmental footprint. In supplying energy to the Dockside Green development and potentially other customers in the surrounding area, DGE's objective is to make the Dockside Green development greenhouse gas neutral.

The Dockside Green project is targeting a LEED Platinum standard. The project is already recognized as one of the world's leading examples of sustainable development.

In British Columbia, the Province's energy policy objectives are designed to promote energy efficient and greenhouse gas neutral energy projects of this very type. Distributed energy systems have an important role to play in reducing the environmental impact of energy consumption.

The Conditions create an entry barrier for innovative technology. This decision will send a signal to the market place that will discourage investment in innovative energy distribution systems. The default to conventional energy distribution systems will be compelling since the financial risk will be less. This outcome is contrary to the clear intent of the recent amendments to the Act" (Reconsideration Exhibit, pp. 3-8).

4.2 Commission Determination on Grounds for Reconsideration

The Commission will first respond to DGE's grounds in support of the request for reconsideration.

1. The Commission erred in law by including the Conditions in the Order without giving DGE an opportunity to comment on them.

The Commission disagrees with DGE that there was an error in law. The Commission is of the view that the Conditions to the granting of a CPCN for the construction and operation of the DES were not "new ground", as referenced in the Reconsideration Application. The Conditions related to assurances of performance of the "Nexterra Plant" and the wood supply made in the Application and subsequent responses to Information Requests. The Commission, in issuing Order No. C-1-08 was simply imbedding the commitments, contractual arrangements and assurances made by DGE into the CPCN.

2. Changed circumstances – recent amendments to the Act require the Commission to consider the British Columbia Energy Objectives

The Commission agrees with this statement; however, the Commission reminds DGE that it did consider the unique nature of this project, its LEEDS target designation and the project's alignment with the British Columbia Energy Objectives and specifically noted in granting the applied-for capital structure and ROE, "in the Commission's view, the allowed capital structure and ROE should not penalize developments that incorporate DES" (Decision, Appendix A, p. 8). DGE is also reminded that the Commission did grant a CPCN, as requested, albeit with Conditions that are related to undertakings and commitments detailed in the Application. Nevertheless, the Commission acknowledges that the Conditions may, to some extent, create an entry barrier for innovative technology by increasing the financial risk to DGE employing such technology relative to conventional energy systems. As this outcome would appear to be inconsistent with the BC Energy Objectives, the Commission concludes that it needs to reconsider the Conditions in the Order.

The Commission will, therefore, consider DGE's reasons with respect to why the Conditions should be deleted from the Order.

4.3 Commission Reconsideration of Conditions

With respect to DGE's comment above that "[t]he Conditions impose an unnecessary and unfair burden on DGE that frustrates the attempt to develop an innovative and environmentally-desirable approach to energy supply in an urban setting", the Commission reminds DGE of its own assertion that "the BCUC mandate under section 59 of the Act is to balance the interests of the utility as owner and the interests of the ratepayers as service users" (Reconsideration Exhibit B-1, p. 4). DGE states further "[t]he ratepayers interest is to receive safe and reliable service under terms and rates that are just and reasonable" (Reconsideration Exhibit B-1, p. 4). That is, although the Commission must consider the BC Energy Objectives when reviewing a CPCN Application, it is not clear that the Commission is expected to approve an alternative that put at risk the provision of safe, reliable service under terms and rates that are just and reasonable.

In explaining why the Conditions should be deleted from the Order, DGE states that the meaning of "extraordinary" and "incremental" in the Conditions is unclear in the context in which those terms are used in each condition (Reconsideration Exhibit B-1, p. 3). DGE also states that it "presumes the Conditions are intended to protect the DGE ratepayers from extraordinary costs that DGE may encounter. DGE submits that it is unnecessary and, in fact, punitive for the Commission to prejudge future circumstances by deciding now that DGE must bear those extraordinary costs whatever the circumstances may be. The ambiguity in the Conditions will require DGE to return to the Commission in any event to verify that it is applying the Conditions correctly. The public interest would be better served by reviewing the relevant circumstances at the time the event occurs before making a judgment about how extraordinary incremental costs should be recovered" (Reconsideration Exhibit B-1, p. 6). The Commission accepts that the wording of the Conditions does not provide an explicit formula and that a Commission review would likely be needed to determine an amount to be disallowed under the Conditions.

DGE further states "DGE is a regulated public utility under the Act. The Commission has comprehensive regulatory powers over DGE to protect customers and the public interest. If DGE incurs extraordinary incremental costs, then the Commission has the authority to review the prudence of those costs before DGE may include them in rates it will charge its customers" (Reconsideration Exhibit B-1, p. 6).

The Commission is persuaded by the argument that the interests of both the ratepayers and the utility will be properly served by removing the Conditions and instead, as DGE suggests, "reviewing the relevant circumstances at the time the event occurs before making a judgement about how extraordinary incremental costs should be recovered" (Reconsideration Exhibit B-1, p. 6). As noted above, DGE states it "is a regulated public utility under

the Act. The Commission has comprehensive regulatory powers over DGE to protect customers and the public interest. If DGE incurs extraordinary incremental costs, then the Commission has the authority to review the prudence of those costs before DGE may include them in the rates it will charge its customers." The CPCN Application and evidence is very specific about the commitments, contractual arrangements, and assurances made by DGE to mitigate risk and this should prove to be a useful reference for both DGE and the Commission when assessing the prudency of costs before including them in rates. The extent to which the Dockside Green disclosure statement explicitly discusses responsibility for incremental costs related to the thermal energy generation system and fuel supply may also provide a useful reference when considering incremental costs. The Commission is satisfied that this approach will afford DGE the opportunity to demonstrate the prudence of its actions and at the same time address the interests of the ratepayers as service users. Furthermore, the Commission expects that the levelized rate methodology approved for Dockside Green should have the effect of muting the impact of incremental costs on ratepayers. That is, extraordinary incremental costs may result in the rates established under the levelized rate methodology continuing in effect for a longer period of time.

4.4 Commission Determination

The Commission grants a CPCN to DGE for the construction and operation of a DES to provide hydronic energy service at Dockside Green as set out in the Decision, with conditions removed.

The Commission has reviewed Sections 2 through 11 in the Order in the context of the above Determination and finds no reason to change those Sections with the exception that Section 2 is not required and Section 11 must be changed as it relates to the above Commission Determination.