



**ORDER NUMBER**  
**G-273-20**

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

and

Creative Energy Developments Limited Partnership  
Application for the Disposition of the Pendrell Street Thermal Energy System Assets

**BEFORE:**

T. A. Loski, Panel Chair  
E. B. Lockhart, Commissioner  
B. A. Magnan, Commissioner

on October 28, 2020

**ORDER**

**WHEREAS:**

- A. On March 17, 2020, Creative Energy Developments Limited Partnership (Creative Energy Developments) applied to the British Columbia Utilities Commission (BCUC) pursuant to section 52 of the *Utilities Commission Act* (UCA), for approval for the disposition of 100 percent of its interests in the thermal energy system located at 1770 Pendrell Street (Pendrell Street TES) to its wholly owned subsidiary Creative Energy Pendrell LP (Creative Energy Pendrell) (Application);
- B. On August 28, 2014, the BCUC issued Order G-127-14 approving the Thermal Energy Systems Regulatory Framework Guidelines (TES Guidelines) and on March 2, 2015, revisions to the TES Guidelines were approved by Order G-27-15;
- C. By Order G-109-18, dated June 14, 2018, pursuant to section 88(3) of the UCA and by the advance approval of the Lieutenant Governor in Council (Order in Council 400), the BCUC ordered as follows:
  - 1. In accordance with the TES Guidelines, the Pendrell Street TES is exempt from sections 44.1, 45 and 59 to 61 of the UCA;
  - 2. Creative Energy Developments must file an annual report for the Pendrell Street TES with the BCUC in accordance with Stream A annual reporting guidelines, as provided in Appendix B of the TES Guidelines;
- D. Creative Energy Developments requests that if the Application is approved, the BCUC rescind directive 2 of Order G-109-18 and issue a new directive requiring Creative Energy Pendrell to file all future annual reports for the Pendrell Street TES;

- E. By Order G-112-20, dated May 12, 2020, the BCUC established a public hearing process and regulatory timetable for the review of the Application, which consisted of public notice, BCUC information requests (IRs), Creative Energy Developments response to IRs, letters of comment and submissions on further process;
- F. Creative Energy Developments filed its responses to BCUC IRs on June 11, 2020, and filed its submission on further process on June 18, 2020;
- G. The Commercial Energy Consumers (the CEC) and British Columbia Old Age Pensioners' Organization *et al.* (BCOAPO) filed letters of comment on June 11, 2020 and June 18, 2020, respectively;
- H. By Order G-170-20, dated June 24, 2020, the BCUC established a further regulatory timetable, which consisted of intervener registration, intervener IR No. 1 and BCUC IR No. 2, Creative Energy Developments responses to IRs and the filing of written and reply arguments;
- I. The CEC and BCOAPO registered as interveners in the proceeding; and
- J. The BCUC has reviewed the Application, the evidence and submissions by all parties in this proceeding and makes the following determinations.

**NOW THEREFORE** pursuant to sections 52 and 99 of the UCA, and for the reasons attached as Appendix A, the BCUC orders as follows:

1. Creative Energy Developments is approved to dispose 100 percent of its interests in the Pendrell Street TES to its wholly owned subsidiary, Creative Energy Pendrell.
2. Directive 2 of Order G-109-18 is varied to read:

Creative Energy Pendrell must file annual reports for the Pendrell Street TES with the BCUC in accordance with Stream A annual reporting guidelines, as provided in Appendix B of the TES Guidelines.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 28<sup>th</sup> day of October 2020.

BY ORDER

*Original signed by:*

T. A. Loski  
Commissioner

Attachment

**Creative Energy Developments Limited Partnership**

**Application for the Disposition of the Pendrell Street Thermal  
Energy System Assets**

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**Reasons for Decision**

October 28, 2020

Before:  
T. A. Loski, Panel Chair  
E. B. Lockhart, Commissioner  
B. A. Magnan, Commissioner

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## 1.0 Introduction

### 1.1 Background

On March 28, 2018, Creative Energy Developments Limited Partnership (Creative Energy Developments) filed an application with the British Columbia Utilities Commission (BCUC) to register the Pendrell Street TES as a Stream A TES in accordance with the BCUC's Thermal Energy Systems Regulatory Framework Guidelines (TES Guidelines).<sup>1</sup>

By Order G-109-18 dated June 14, 2018, the BCUC exempted Creative Energy Developments from sections 44.1, 45 and 59 to 61 of the *Utilities Commission Act* (UCA) for the Pendrell Street TES. Pursuant to Order G-109-18, Creative Energy Developments is required to file an annual report for the Pendrell Street TES with the BCUC in accordance with Stream A annual reporting guidelines, as provided in Appendix B of the TES Guidelines.

### 1.2 Application

On March 17, 2020, pursuant to section 52 of the UCA, Creative Energy Developments applied to the BCUC on behalf of itself and Creative Energy Pendrell Limited Partnership (Creative Energy Pendrell)<sup>2</sup> (together the Applicants), for approval for the disposition of 100 percent of Creative Energy Developments' interests in the Pendrell Street TES to Creative Energy Pendrell, a wholly owned subsidiary of Creative Energy Developments (Application).<sup>3</sup>

As part of the Application, Creative Energy Developments filed a completed New Owner Attestation Requirements form, in accordance with section 2.3.4 and Appendix D of the TES Guidelines.<sup>4</sup>

#### 1.2.1 The Applicants

##### *Creative Energy Developments Limited Partnership*

Creative Energy Developments is a limited partnership of Creative Energy Canada Corp. (Creative Energy Canada) and Emanate Energy Solutions Inc. (Emanate Energy). The partners have formed Creative Energy Developments to develop, finance and manage energy infrastructure projects. Creative Energy Developments states that the intention is for Creative Energy Developments to identify, develop and finance potential project opportunities. For those projects that will proceed forward to construction and / or applications for regulatory approvals as required, a separate wholly owned subsidiary limited partnership or company will be established to pursue the individual project. The intent is that each individual energy project is constructed, owned and operated by a separate wholly owned subsidiary of Creative Energy Developments.<sup>5</sup>

##### *Creative Energy Pendrell Limited Partnership*

Creative Energy Pendrell is a wholly owned subsidiary of Creative Energy Developments, which has been formed for the purpose of owning and operating the Pendrell Street TES.<sup>6</sup> As shown in Figure 1 below, the ownership of

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<sup>1</sup> Order G-27-15 dated March 2, 2015, Appendix A (TES Guidelines).

<sup>2</sup> Exhibit B-2, BCUC IR 1.1.

<sup>3</sup> Exhibit B-1, Section 1, p. 1.

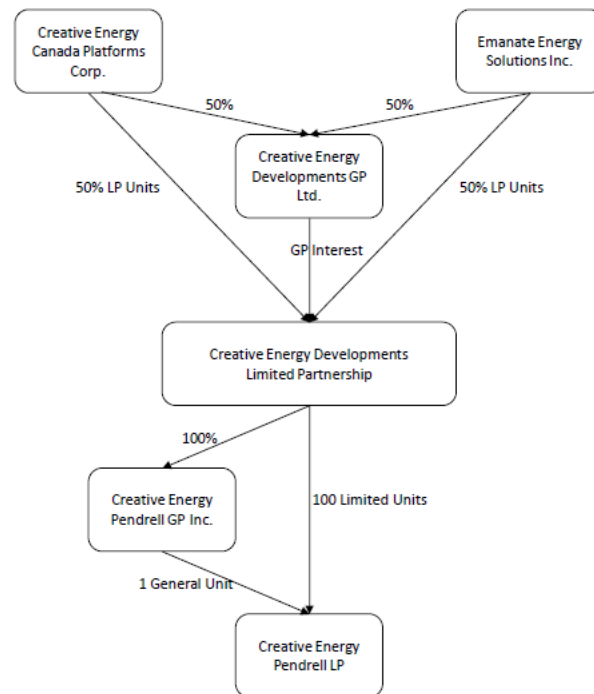
<sup>4</sup> TES Guidelines, Section 2.3.4, p. 16; Appendix D, p. 1.

<sup>5</sup> Exhibit B-1, Section 3, p. 2.

<sup>6</sup> Ibid.

Creative Energy Pendrell is split into two classes of Units: (i) the Class A (Limited) Units of which 100 are issued and held by Creative Energy Developments; and (ii) the Class A (General) Units of which one is issued and held by Creative Energy Pendrell's general partner, Creative Energy Pendrell GP Inc.<sup>7</sup> The sole General Unit in Creative Energy Pendrell GP Inc., is held by Creative Energy Developments. As such, Creative Energy Pendrell is a wholly owned subsidiary of Creative Energy Developments.<sup>8</sup>

**Figure 1 – Organizational Chart for Creative Energy Developments and Creative Energy Pendrell<sup>9</sup>**



### *Creative Energy Vancouver Platforms Inc.*

At the time of Application, Creative Energy Vancouver Platforms Inc. (CEVP) was a separate entity to the Applicants and was affiliated to the Applicants through Creative Energy Canada Corp. Pursuant to completion of transactions approved by the BCUC pursuant to Order C-1-20<sup>10</sup>, CEVP is now a subsidiary of CEDLP.<sup>11</sup>

The employees of CEVP are responsible for the operations and management decisions for Creative Energy Developments and for the Pendrell Street TES.<sup>12</sup>

<sup>7</sup> Exhibit B-2, BCUC IR 2.1.

<sup>8</sup> Ibid.

<sup>9</sup> Exhibit B-2, BCUC IR 2.1.

<sup>10</sup> Decision and Order C-1-20, *Creative Energy Vancouver Platforms Inc. Application for Certificate of Public Convenience and Necessity for the Expo-Beatty Plants and Reorganization*, dated March 5, 2020.

<sup>11</sup> Exhibit B-2, BCUC IR 9.1.

<sup>12</sup> Ibid., BCUC IR 12.2.

### 1.2.2 Pendrell Street TES

The Pendrell Street TES consists of thermal energy utility equipment and operations located within a rental apartment building at 1770 Pendrell Street, Vancouver.<sup>13</sup> The TES comprises two condensing boilers and all ancillary equipment, including pumps, heat exchangers piping system and electrical equipment.<sup>14</sup> The Pendrell Street TES serves the space heating and domestic hot water requirements of the on-site apartments and shared spaces in the apartment building.<sup>15</sup>

The owner of the apartment building at 1770 Pendrell Street is the only customer of the Pendrell Street TES. The Pendrell Street TES does not serve any other buildings or customers.<sup>16</sup>

### 1.3 Approvals Sought

The Applicants seek approval under section 52 of the UCA for the disposition of 100 percent of Creative Energy Developments' interests in the Pendrell Street TES to Creative Energy Pendrell. If approved, the Applicants also request that the BCUC direct Creative Energy Pendrell to file all future annual reports for the Pendrell Street TES in accordance with Stream A annual reporting guidelines, as set out in the TES Guidelines.<sup>17</sup>

### 1.4 Legislative Framework

The transfer of interests sought by the Applicants is governed by section 52 of the UCA, which states:

- (1) Except for a disposition of its property in the ordinary course of business, a public utility must not, without first obtaining the commission's approval,
  - a) dispose of or encumber the whole or a part of its property, franchises, licences, permits, concessions, privileges or rights, or
  - b) by any means, direct or indirect, merge, amalgamate or consolidate in whole or in part its property, franchises, licences, permits, concessions, privileges or rights with those of another person.
- (2) The commission may give its approval under this section subject to conditions and requirements considered necessary or desirable in the public interest.<sup>18</sup>

The UCA does not outline the criteria by which an application submitted under section 52 of the UCA should be evaluated. However, in assessing applications for disposition of shares pursuant to section 54 of the UCA, the BCUC has applied certain criteria to assist in determining whether there is potential for detrimental effects to the utility and its customers and in a broader sense, to the public interest. In a recent decision regarding Corix Multi-Utility Services Inc.'s (Corix) Application for Disposition of Assets from the Burnaby Mountain District Energy Utility, pursuant to section 52 of the UCA, the BCUC found there to be value in applying the criteria it has established for applications pursuant to section 54 to the review of Corix's application.<sup>19</sup>

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<sup>13</sup> Exhibit B-1, Section 2, p. 1.

<sup>14</sup> Exhibit B-2, BCUC IR 7.2.

<sup>15</sup> Exhibit B-1, Section 2, p. 1.

<sup>16</sup> Ibid.

<sup>17</sup> Exhibit B-1, Section 4, p. 3.

<sup>18</sup> *Utilities Commission Act* [RSBC 1996] Chapter 473.

<sup>19</sup> Order G-220-19, *Corix Multi-Utility Services Inc. Application for Disposition of Assets from the Burnaby Mountain District Energy Utility*, dated September 11, 2019, Appendix A, p. 6.

While Creative Energy Developments' Application is for a disposition of assets, pursuant to section 52 of the UCA, and not a disposition of shares pursuant to section 54 of the UCA, the Panel considers the information provided in accordance with the criteria applied in the review of a sale of utility shares is nevertheless helpful. Therefore, the Panel finds there to be value in applying these criteria in this proceeding.

The criteria are as follows:

1. The utility's current and future ability to raise equity and debt financing not be reduced or impaired;
2. There will be no violation of existing covenants, the effect being detrimental to the customers;
3. The conduct of the utility's business, including the level of service, either now or in future, will be maintained or enhanced;
4. The application be in compliance with appropriate enactments and/or regulations;
5. The structural integrity of the assets be maintained in such a manner as to not impair utility service; and
6. The public interest is being preserved.<sup>20</sup>

## **1.5 Regulatory Process**

By Order G-112-20, dated May 13, 2020, the BCUC initiated a written hearing process and established a regulatory timetable for the review of the Application. The regulatory timetable included one round of BCUC Information Requests (IRs), Creative Energy Developments responses to BCUC IR No. 1, letters of comment and submissions on further process.

On June 11, 2020, the Commercial Energy Consumers (CEC) filed a letter of comment suggesting that the proceeding may be amenable to a streamlined review process with clarifying questions provided to Creative Energy Developments in advance.<sup>21</sup>

On June 18, 2020, BC Old Age Pensioners' Organization *et. al* (BCOAPO) filed a letter of comment suggesting a process which would include an opportunity to register as interveners and an opportunity for interveners to participate in the discovery, either in the form of written information requests or a streamlined review process.<sup>22</sup>

By Order G-170-20, dated June 24, 2020, the BCUC established a further regulatory timetable, which included intervener registration, intervener IR No.1 and BCUC IR No.2, Creative Energy Developments responses to IRs, and the filing of written and reply arguments.

BCOAPO and the CEC registered as interveners in the proceeding and actively participated.

## **2.0 Transfer**

The disposition of 100 percent of Creative Energy Developments' interests in the Pendrell Street TES to Creative Energy Pendrell was completed on October 10, 2019 (Transfer).<sup>23</sup> Creative Energy Developments states that at

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<sup>20</sup> Decision and Order G-180-08, *Central Coast Power Corporation Sale and Disposition of Utility Assets of Central Coast Power Corporation to Boralex Ocean Falls Limited Partnership*, dated December 5, 2008, p. 13.

<sup>21</sup> Exhibit E-1, p. 1.

<sup>22</sup> Exhibit E-2, p. 2.

<sup>23</sup> Exhibit B-2, BCUC IR 6.1.



the time the Transfer was completed, it did not understand that the exemption granted pursuant to Order G-109-18 did not include the section of the UCA requiring a public utility to first obtain the BCUC's approval before transferring a TES to a wholly-owned subsidiary. This is discussed further in Section 3.4.<sup>24</sup>

As noted above, the Pendrell Street TES comprises two condensing boilers and all ancillary equipment, including pumps, heat exchangers, piping system and electrical equipment.<sup>25</sup> All the TES assets are contained within the 1770 Pendrell apartment building, and the assets do not include any land.<sup>26</sup>

The total book value of the Pendrell Street TES as at December 31, 2019 was \$1,299,272.<sup>27</sup> The actual costs at the time of the Transfer (October 10, 2019) were \$1,143,425, which accounted for the total construction costs of the TES including, predevelopment, engineering and design, equipment, controls, construction and other soft costs.<sup>28</sup> A further \$155,846 was recorded on Creative Energy Pendrell's books after the completion of the Transfer to account for invoices received between October 10, 2019 and December 31, 2019, which were paid for by Creative Energy Developments on behalf of Creative Energy Pendrell.<sup>29</sup>

The invoices paid by Creative Energy Developments comprised \$150,000 to Westbank Projects, which included a passthrough of costs from British Columbia Hydro and Power Authority for connection to the dedicated power supply, as well as engineering costs from Kerr-Wood Leidel for \$2,994 and management time of \$2,852.<sup>30</sup> Creative Energy Developments explains that it initially paid these costs on behalf of Creative Energy Pendrell because the latter did not yet have a bank account. In future, Creative Energy Pendrell will be responsible for all invoices, as it now has its own bank account and sufficient cash flow to pay operating costs.<sup>31</sup>

The costs associated with the transfer are the responsibility of Creative Energy Pendrell. These costs, however, will not be recovered in rates, as the customer's rates have already been set in the existing long-term Customer Service Agreement.<sup>32</sup>

Creative Energy Developments submits that the Transfer does not in any way change:

- the operations and performance of the Pendrell Street TES – the TES equipment is the same, and the same individuals will manage and operate the TES and interact with the customer and the BCUC;
- the ability of Creative Energy Pendrell to operate and maintain the TES assets, in terms of both financial strength and access to support services;
- the service provided to the single customer of the TES;
- the terms and conditions of the service provided as set out in the existing customer service agreement; or
- the rates charged to the single customer pursuant to the existing customer service agreement.<sup>33</sup>

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<sup>24</sup> Exhibit B-1, Section 3, p. 2.

<sup>25</sup> Exhibit B-2, BCUC IR 7.2.

<sup>26</sup> Ibid., BCUC IR 7.2, 7.3.

<sup>27</sup> Ibid., BCUC IR 7.5.

<sup>28</sup> Exhibit B-5, BCUC IR 13.4.

<sup>29</sup> Exhibit B-2, BCUC IR 7.5.

<sup>30</sup> Exhibit B-5, BCUC IR 13.4.

<sup>31</sup> Ibid., BCUC IR 13.7.

<sup>32</sup> Ibid., BCUC IR 13.2.

<sup>33</sup> Exhibit B-1, Section 3, pp. 2-3.

Creative Energy Developments states that the Transfer provides better separation of the ownership of the Stream A TES versus the non-regulated activities and assets of Creative Energy Developments, providing better transparency of reporting to both the BCUC and the customer. Creative Energy Developments submits the Transfer has no detrimental affect such that overall, it is beneficial to the public interest.<sup>34</sup>

### 3.0 Review of Criteria

#### 3.1 Financing

The first criterion requires the public utility's current and future ability to raise equity and debt financing not be reduced or impaired as a result of the transfer.

Prior to the completion of the Transfer, Creative Energy Developments was the owner of the Pendrell Street TES. Creative Energy Developments states that its ability to raise equity is via its shareholders. Creative Energy Developments also has the ability to raise debt financing, however, to date, it has not raised any debt financing.<sup>35</sup>

Creative Energy Developments states the transfer of the Pendrell Street TES to Creative Energy Pendrell does not in any way change the ability of Creative Energy Pendrell to operate and maintain the TES assets in terms of both financial strength and access to support services.<sup>36</sup>

Creative Energy Pendrell is funded by its limited partner, Creative Energy Developments, and all equity and debt for Creative Energy Pendrell will be financed through Creative Energy Developments.<sup>37</sup> Creative Energy Developments states its estimate of maintenance expenses, as factored into the contracted rates for the customer of the Pendrell Street TES, is sufficient to cover any normal wear-and-tear of the TES assets.<sup>38</sup>

In the event that Creative Energy Pendrell requires access to funds in an emergency, it is able to access funding from Creative Energy Developments.<sup>39</sup> In a situation where an unforeseen expense arises, Creative Energy Pendrell would provide notification that funding is required and if Creative Energy Developments has sufficient cash on hand, it would fund Creative Energy Pendrell the next business day. If Creative Energy Developments does not have sufficient cash on hand, it would request funding from its partners<sup>40</sup> and would be funded within one to two days.<sup>41</sup>

In summary, Creative Energy Developments submits the utility's ability to raise equity and debt financing is unchanged by the Transfer as Creative Energy Pendrell continues to have access to the financing available to Creative Energy Developments.<sup>42</sup>

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<sup>34</sup> Exhibit B-1, Section 3, p. 3.

<sup>35</sup> Exhibit B-12, BCUC IR 10.2.

<sup>36</sup> Exhibit B-1, Section 5, p. 3.

<sup>37</sup> Exhibit B-2, BCUC IR 10.2.

<sup>38</sup> Exhibit B-5, BCUC 18.4.

<sup>39</sup> Exhibit B-2, BCUC IR 10.2.

<sup>40</sup> As defined in Figure 1 - Organizational Chart for Creative Energy Developments and Creative Energy Pendrell, Exhibit B-2, BCUC IR 2.1.

<sup>41</sup> Exhibit B-5, BCUC IR 18.2.

<sup>42</sup> Exhibit B-2, BCUC IR 3.1, 10.3.

### *Panel Discussion*

The Panel notes that prior to the Transfer, Creative Energy Developments' ability to raise equity and debt financing was via its shareholders, Creative Energy Canada and Emanate Energy. As a wholly owned subsidiary of Creative Energy Developments, Creative Energy Pendrell's ability to raise equity and debt financing is also, ultimately, via Creative Energy Developments' shareholders. As such, the Panel is satisfied the utility's ability to raise equity and debt financing is unchanged by the Transfer.

## **3.2 Compliance with Existing Covenants**

The second criterion requires there be no violation of existing covenants that will be detrimental to the existing customers.

Pursuant to the Transfer, Creative Energy Pendrell has assumed the entirety of the Pendrell Street TES assets, liabilities and obligations, including any and all related contractual commitments of Creative Energy Developments.<sup>43</sup>

On October 24, 2019, Creative Energy Developments assigned its right, title and interest in the Pendrell Street TES to Creative Energy Pendrell, pursuant to the Assignment and Assumption Agreement (Assignment Agreement).<sup>44</sup> Contracts assigned to Creative Energy Pendrell include:

- Statutory Right of Way Agreement (SRW);
- Construction Agreement;
- Residential Rental Customer Service Agreement; and
- All licences, permits, contracts, warranties and guarantees with respect to the construction, operation and maintenance of the Pendrell Street TES.<sup>45</sup>

Creative Energy Developments states an SRW was registered in the Land Title Office on August 31, 2018, which provides the rights required for access, ongoing operation and maintenance, and emergency response for the Pendrell Street TES. Pursuant to the Assignment Agreement, Creative Energy Developments confirms that the SRW has been assigned to Creative Energy Pendrell.<sup>46</sup> Creative Energy Developments further states if the Application is approved, Creative Energy Pendrell will also register a transfer of the SRW in the Land Title Office such that the Land Title Office records properly reflect the assignment.<sup>47</sup>

### *Panel Discussion*

Creative Energy Pendrell has assumed the entirety of the Pendrell Street TES assets, liabilities and obligations, including any and all related contractual commitments of Creative Energy Developments. Therefore, the Panel is satisfied the Transfer will not result in a violation of existing covenants that would be detrimental to the customer.

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<sup>43</sup> Exhibit B-1, Section 5, p. 3.

<sup>44</sup> Exhibit B-2, Attachment 6.2-B.

<sup>45</sup> Ibid., BCUC IR 8.1, Attachment 6.2-B, Schedule A, p. 1.

<sup>46</sup> Ibid., BCUC IR 8.1; Attachment 6.2-B.

<sup>47</sup> Ibid., BCUC IR 8.1.1.

### 3.3 Utility Business Conduct Maintained or Enhanced

The third criterion requires the conduct of the utility's business, including the level of service, either now or in future, will be maintained or enhanced.

Creative Energy Developments states transferring the Pendrell Street TES from Creative Energy Developments to Creative Energy Pendrell aligns with the overall corporate organization structure, whereby projects developed by Creative Energy Developments are constructed, owned and operated by a separate wholly owned subsidiary. Creative Energy Developments submits this provides better separation of the ownership, operation and financial reporting of the Pendrell Street Stream A TES from the activities and interests of Creative Energy Developments.<sup>48</sup>

Creative Energy Developments states the Transfer facilitates transparent financial reporting for the Pendrell Street TES to the BCUC and the customer, and separates the ownership of regulated Stream A assets from the non-regulated assets and interests of Creative Energy Developments.<sup>49</sup> Further, the general oversight, management and administration of the Pendrell Street TES will continue to be executed by employees of CEVP.<sup>50</sup>

In summary, Creative Energy Developments submits the Transfer does not diminish or change the utility's responsibilities under the UCA as a Stream A TES.<sup>51</sup>

#### *Panel Discussion*

The Panel notes the Pendrell Street TES is a Stream A TES, in accordance with the BCUC's TES Guidelines. The Transfer does not in anyway alter the regulatory oversight of the BCUC over Creative Energy Pendrell's assets. To the extent the BCUC currently regulates the operations of the Pendrell Street TES and Creative Energy Developments, it will continue to have the ability to regulate the operations of the Pendrell Street TES and Creative Energy Developments.

Given the above, and in consideration of the fact that the same employees of CEVP will continue to be responsible for the general oversight, management and administration of the Pendrell Street TES, the Panel is satisfied the conduct of the utility's business, including the level of service, either now or in future, will be maintained as a result of the Transfer.

### 3.4 Compliance with Enactments

The fourth criterion requires the Application to be in compliance with appropriate enactments and/or regulations.

Creative Energy Developments transferred all of its right, title and interest in and to the Pendrell Street TES to Creative Energy Pendrell pursuant to the Contribution Agreement dated October 10, 2019.<sup>52</sup> Section 1.2 of the Contribution Agreement states the agreement "is governed by and shall be construed in accordance with the laws of the Province of British Columbia and the federal laws of Canada applicable therein."<sup>53</sup>

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<sup>48</sup> Exhibit B-1, Section 3, p. 2.

<sup>49</sup> Exhibit B-1, Section 3, p. 2.

<sup>50</sup> Exhibit B-5, BCUC IR 17.1 17.2.

<sup>51</sup> Exhibit B-2, BCUC IR 3.1.

<sup>52</sup> Ibid., BCUC IR 6.2; Exhibit B-2, Attachment 6.2-A.

<sup>53</sup> Ibid., Attachment 6.2-A, p. 2.

Creative Energy Developments states there are no enactments and/or regulations applicable to the Transfer other than the provisions of the UCA and TES Guidelines referred to in the Application.<sup>54</sup>

Section 52(1) of the UCA states, in part, that a public utility must not dispose of or encumber the whole or a part of its property, franchises, licences, permits, concessions, privileges or rights without first obtaining the BCUC's approval.<sup>55</sup> However, the Pendrell Street TES has already been transferred to Creative Energy Developments and the Applicants completed the documentation for the transfer on October 10, 2019, prior to seeking approval from the BCUC.<sup>56</sup>

Creative Energy Developments states that at the time the Transfer was completed, it did not understand the exemption granted pursuant to Order G-109-18 did not include the section of the UCA requiring a public utility to first obtain the BCUC's approval before transferring a TES to a wholly-owned subsidiary. Creative Energy Developments states that if the Application is not approved, the parties will be able to reverse the transfer of the Pendrell Street TES.<sup>57</sup>

### *Position of the Parties*

The CEC submits it would have been preferable for Creative Energy Developments to have requested BCUC approval prior to the Transfer but recognizes that Creative Energy Developments did not initially understand the requirement to seek BCUC approval.<sup>58</sup>

### *Panel Discussion*

Pursuant to the Contribution Agreement, the Transfer was intended to be completed in accordance with the laws of British Columbia and Canada. However, Creative Energy Developments failed to request BCUC approval prior to completing the Transfer. The Panel acknowledges Creative Energy Developments' explanation as to why the Transfer was completed without first obtaining BCUC approval, and accepts that by filing the Application, Creative Energy Developments is now seeking the requisite approvals. However, Creative Energy Developments is a sophisticated party that is well versed in energy regulation and its various companies are regularly before the BCUC with a range of different applications. The Panel expects a party such as Creative Energy Developments to understand and comply with the regulatory regime in which it operates, and to be in full compliance with the UCA at all times.

## **3.5 Structural Integrity of the Assets Maintained**

The fifth criterion requires that the structural integrity of the assets be maintained in such a manner as to not impair utility service.

Creative Energy Developments states the new ownership of the utility will result in no detrimental effect on the customer and the utility's level of service will be maintained. The utility's ability to raise equity and debt financing is unchanged by the Transfer and, by virtue of the existing assets being rolled over to Creative Energy Pendrell, their structural integrity is unaffected.<sup>59</sup> Further, the Pendrell Street TES assets have not been modified prior to, or after, the Transfer.

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<sup>54</sup> Exhibit B-2, BCUC IR 6.6.

<sup>55</sup> *Utilities Commission Act* [RSBC 1996] Chapter 473.

<sup>56</sup> Exhibit B-1, Section 3, p. 2; Exhibit B-2, BCUC IR 7.5.

<sup>57</sup> *Ibid.*, Section 3, p. 2.

<sup>58</sup> CEC Final Argument, para. 45, p. 7.

<sup>59</sup> Exhibit B-2, BCUC IR 3.1.

Creative Energy Developments states that employees of CEVP are responsible for the operations and management decisions for Creative Energy Developments and also for the Pendrell Street TES. These employees have many years of experience in operating and maintaining district energy systems, including those regulated as public utilities in BC as defined under the UCA.<sup>60</sup> The day to day management of Creative Energy Pendrell will be performed by employees of CEVP, including the Chief Executive Officer, Chief Financial Officer, Director of Operations and Controller. The transfer of the Pendrell Street TES to Creative Energy Pendrell does not change anything in that regard.<sup>61</sup>

### *Panel Discussion*

The Panel notes there have been no modifications made to the Pendrell Street TES, either before or after the Transfer, and the TES will continue to be operated by CEVP. As such, the Panel is satisfied that, following the Transfer, the structural integrity of the assets will continue to be maintained in such a manner as to not impair utility service.

## **3.6 Public Interest is Preserved**

The sixth criterion requires that the public interest be preserved.

Creative Energy Developments states the transfer of the Pendrell Street TES to Creative Energy Pendrell is an internal transfer from a parent to a wholly owned subsidiary, and does not in any way change:<sup>62</sup>

- the assets, operations and performance of the Pendrell Street TES – the TES equipment is the same, and the same individuals will manage and operate the TES and interact with the customer and the BCUC;
- the ability of Creative Energy Pendrell to operate and maintain the TES assets, in terms of both access to financing as required and access to support services;
- the service and level of service provided to the customer of the TES;
- the terms and conditions of the service provided as set out in the existing customer service agreement; or
- the rates charged to the single customer pursuant to the existing customer service agreement.<sup>63</sup>

For the reasons set forth above, Creative Energy Developments submits that the Transfer has no detrimental effect. The Transfer is overall beneficial to the public interest in that it provides better separation of the ownership of the Stream A TES versus the non-regulated activities and assets of Creative Energy Developments, providing better transparency of reporting to both the BCUC and the customer.<sup>64</sup>

### *Panel Discussion*

The Panel notes the same individuals employed by CEVP continue to manage and operate the Pendrell Street TES after the Transfer, and there is no evidence to suggest that the level of service provided to the customer will be affected by the Transfer. Creative Energy Pendrell has assumed the entirety of the Pendrell Street TES assets, liabilities and obligations, including any and all related contractual commitments of Creative Energy

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<sup>60</sup> Ibid., BCUC IR 12.2.

<sup>61</sup> Ibid., BCUC IR 12.1.

<sup>62</sup> Creative Energy Developments Final Argument, para. 16., p. 5.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid., para. 17., p. 5.

Developments. Further, as previously discussed, Creative Energy Pendrell will continue to have access to the same level of financing as Creative Energy Developments. Therefore, the Panel is satisfied that the public interest is being preserved.

## 4.0 Other Issues Arising

### 4.1 Transfer Pricing Policy and Code of Conduct

The Applicants confirm there is no Transfer Pricing Policy (TPP) in place for Creative Energy or its companies. Further, they confirm Creative Energy's intention to file a TPP agreement in the next Revenue Requirements application (RRA) for CEVP.<sup>65</sup> Creative Energy Developments states the development of the TPP and a Code of Conduct (COC) will be guided by the principles and guidelines set out in the BCUC's 2012 Report into the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives<sup>66</sup> (AES Inquiry Report) and FortisAlberta Inc.'s Code of Conduct,<sup>67</sup> as approved by the Alberta Energy and Utilities Board in 2005.<sup>68</sup>

Creative Energy Developments states it is appropriate for CEVP to be responsible for the filing of the TPP and the associated COC because it is the legal entity that employs the staff that have responsibilities to other projects and utilities in the Creative Energy family.<sup>69</sup>

Creative Energy Developments states that it is intended that a single TPP and COC brought forward by CEVP will govern transactions to other entities in the Creative Energy family. Certain employees of CEVP perform work for Creative Energy Developments to develop project opportunities in British Columbia and elsewhere and whose costs are directly assigned and not recovered through CEVP's steam utility rates. As previously noted, for Creative Energy Developments projects that will proceed forward to construction and/or applications for regulatory approvals as required, a separate wholly-owned subsidiary limited partnership or company will be established to pursue the individual project. The intent is that each individual energy project is constructed, owned and operated by a separate wholly-owned subsidiary of Creative Energy Developments, and thus the TPP and COC will govern the development and operations-related work of CEVP staff in support of such projects as well. As most staff are employed by a single legal entity but perform work for other legal entities, a TPP and COC will govern and assist Creative Energy in continuing to ensure that utility rates are reasonable and do not result in disproportionate recovery or cross-subsidy between projects.<sup>70</sup>

CEVP expects to file the TPP and COC for BCUC approval with its 2021 RRA in November or December 2020.<sup>71</sup>

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<sup>65</sup> Exhibit B-2, BCUC IR 11.4.

<sup>66</sup> FortisBC Energy Inc. Report into the Inquiry into the Offering of Products and Services in Alternative Energy Solutions and Other New Initiatives dated December 27, 2012.

<sup>67</sup> [https://www.auc.ab.ca/regulatory\\_documents/ProceedingDocuments/2005/2005-002.pdf](https://www.auc.ab.ca/regulatory_documents/ProceedingDocuments/2005/2005-002.pdf)

<sup>68</sup> Exhibit B-7, CEC IR 2.1.

<sup>69</sup> Exhibit B-5, BCUC IR 19.1.

<sup>70</sup> Exhibit B-7, CEC IR 2.2.

<sup>71</sup> Exhibit B-5, BCUC IR 19.2; Exhibit B-7, CEC IR 2.2.

### *Position of the Parties*

BCOAPPO states it “takes no small amount of comfort”<sup>72</sup> from Creative Energy Developments’ assurance that a TPP and COC, in accordance with AES Inquiry Report, should be filed and will be filed for approval from the BCUC.<sup>73</sup>

The CEC is satisfied that a TPP and COC will be developed in a reasonably timely manner and its inclusion in the next RRA will provide adequate opportunity for review by the BCUC and interveners.<sup>74</sup>

### *Panel Discussion*

The Panel notes an approved TPP and COC for all Creative Energy utilities would have assisted the Panel in its review of the Application, as many of the topics explored during the regulatory process would be governed by the TPP and COC. This likely would have led to a more efficient regulatory process. However, the Panel acknowledges that CEVP will be filing its RRA for the Core Steam System with the BCUC by November 1, 2020<sup>75</sup> and the TPP and COC will be included in CEVP’s RRA.

#### **4.1.1 CEC Submission Regarding Future Dispositions to Subsidiaries**

The CEC states that, given the role of Creative Energy Developments, it is likely similar projects to the Pendrell Street TES will be undertaken. Therefore, the CEC is of the view it would be “reasonable for Creative Energy to have streamlined review of any dispositions to new wholly-owned subsidiaries.”<sup>76</sup> The CEC submits it may be appropriate for such dispositions to be addressed in the TPP and/or COC to establish appropriate guidelines for accounting and reduce the regulatory burden.<sup>77</sup>

### *Panel Discussion*

As an administrative tribunal, the BCUC has responsibilities and authority under section 11 of the *Administrative Tribunals Act* (ATA) which states that “the tribunal has the power to control its own processes and may make rules respecting practice and procedure to facilitate the just and timely resolution of the matters before it.” Pursuant to its authority under the UCA and ATA, the BCUC established the Streamlined Review Process Policy, Guidelines and Procedures (SRP Guidelines)<sup>78</sup>.

Section 4 of the SRP Guidelines states the decision to initiate an SRP will be made by the BCUC or a division of the BCUC (Panel) and confirmed by order. The decision to hold an SRP is to be made after thorough consideration of the application, the request and preferences of the applicant, the preferences and likely interests of registered interveners and affected parties, as well as any other matter it considers relevant.<sup>79</sup>

As noted in the SRP Guidelines, when establishing the regulatory process for a matter before the BCUC, the BCUC or a panel must consider several factors that may be specific to a given application. This Panel, therefore, does not consider it appropriate to make recommendations or determinations regarding the process by which a

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<sup>72</sup> BCOAPO Final Argument, p. 5.

<sup>73</sup> Ibid.

<sup>74</sup> CEC Final Argument, para. 43., p. 7.

<sup>75</sup> Directive 14, Decision and Order G-227-20 dated September 2, 2020.

<sup>76</sup> CEC Final Argument, para. 46., p. 8.

<sup>77</sup> Ibid., para. 47., p. 8.

<sup>78</sup> Order G-37-12 dated March 22, 2012, Appendix A (SRP Guidelines).

<sup>79</sup> SRP Guidelines, Section 4, p. 5.



future panel should review a matter before the BCUC. Should a future panel consider an SRP to be a suitable process, it has the authority under the UCA and ATA to do so.

With reference to the CEC's recommendation that similar dispositions be addressed in the TPP and / or the COC, the Panel does not consider the inclusion of such guidelines to be appropriate. In the Panel's view, applications submitted to the BCUC for review under section 52 of the UCA should be reviewed on their own merits, taking into consideration factors that may be specific to a given application.

## 5.0 BCUC Determination

The Panel finds the disposition of 100 percent of Creative Energy Developments' interests in the Pendrell Street TES to its wholly owned subsidiary Creative Energy Pendrell:

- does not adversely affect the financial integrity of the operation of the Pendrell Street TES;
- does not violate any existing covenants, the effect being detrimental to the customers;
- maintains or enhances the conduct of the utility business;
- will result in the continued compliance with all relevant covenants and enactments;
- maintains the structural integrity of the assets; and
- preserves the public interest.

**Therefore, Creative Energy Developments' application to dispose 100 percent of its interests in the Pendrell Street TES to Creative Energy Pendrell is approved.** As a consequence, the Panel also finds the Transfer is now in compliance with the UCA.

As the new owner of the Pendrell Street TES, **Creative Energy Pendrell is directed to file the annual reports for the Pendrell Street TES with the BCUC in accordance with Stream A annual reporting guidelines, as provided in Appendix B of the TES Guidelines.**