



**ORDER NUMBER
G-322-20**

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

and

Application for Reconsideration and Variance of Order G-227-20 Directive 4(h)
in the matter of the Creative Energy Vancouver Platforms Inc.
2019-2020 Revenue Requirements Application for the
Core Steam System and Northeast False Creek Service Areas

BEFORE:

K. A. Keilty, Commissioner

on December 8, 2020

ORDER

WHEREAS:

- A. On December 19, 2019, Creative Energy Vancouver Platforms Inc. (Creative Energy) filed with the British Columbia Utilities Commission (BCUC) its 2019-2020 Revenue Requirements Application (RRA) for the core steam system (Core Steam System) and Northeast False Creek (NEFC) service areas (2019-2020 RRA Application);
- B. On September 2, 2020, the BCUC issued Order G-227-20 and the accompanying decision in the matter of the 2019-2020 RRA Application (RRA Decision). In the RRA Decision, the BCUC issued, among other things, Directive 4(h), which states, “Creative Energy is directed to reduce the allowed return for 2020 by \$21,503 based on a mid-year After-tax Regulatory Pension Asset Account balance of \$268,202.”
- C. On October 19, 2020, Creative Energy filed an application for reconsideration and variance of Order G-227-20 Directive 4(h) (Reconsideration Application);
- D. In the Reconsideration Application, Creative Energy requests that the BCUC vary Directive 4(h) to allow Creative Energy to calculate the allowed return in 2020 based on “the correct inputs” to calculate the mid-year After-tax Regulatory Pension Asset Account balance for 2020;
- E. Part V of the BCUC’s Rules of Practice and Procedure, which are attached to Order G-15-19, sets out the Rules for the reconsideration process (Reconsideration Rules);
- F. By letter dated November 12, 2020, the Panel invited registered interveners in the Creative Energy 2019-2020 RRA proceeding to provide written submissions on the matter and provided Creative Energy the opportunity to reply to the submissions received;

- G. On November 17, 2020, the BCUC received a submission from the Commercial Energy Consumers Association of British Columbia (CEC) and Creative Energy filed its reply submission on November 18, 2020;
- H. The BCUC has reviewed the Reconsideration Application and the submissions from all parties filed in the proceeding and determines that approval is warranted.

NOW THEREFORE for the reasons set out in Appendix A of this order and pursuant to section 99 of the *Utilities Commission Act*, the BCUC directs that Directive 4(h) of Order G-227-20 is varied to state: “Creative Energy is directed to reduce the allowed return for 2020 by \$526 based on a mid-year After-tax Regulatory Pension Asset Account balance of \$787,743.”

DATED at the City of Vancouver, in the Province of British Columbia, this 8th day of December 2020.

BY ORDER

Original signed by:

K. A. Keilty
Commissioner

Attachment

Application for Reconsideration and Variance of Order G-227-20 Directive 4(h)
in the matter of the Creative Energy Vancouver Platforms Inc.
2019-2020 Revenue Requirements Application for the
Core Steam System and Northeast False Creek Service Areas

REASONS FOR DECISION

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Executive Summary

The British Columbia Utilities Commission (BCUC) issued its decision on the Creative Energy Vancouver Platforms Inc. (Creative Energy) 2019-2020 Revenue Requirements Application (RRA) for the core steam system and Northeast False Creek service areas on September 2, 2020. Creative Energy filed an application on October 19, 2020, requesting that the BCUC reconsider and vary of Directive 4(h) in the BCUC order issued concurrently with the RRA decision.

Creative Energy seeks relief to adjust the approved 2020 forecast revenue requirement using the actual 2019 December 31 Pension Asset and the actual employer contributions for 2020 to calculate its mid-year After-tax Regulatory Pension Asset Account balance. The requested adjustment has the effect of increasing Creative Energy's allowed return by approximately \$21,000.

While the Commercial Energy Consumers Association of British Columbia submits that Creative Energy should not be allowed to update the information, it acknowledges that if the information was actually available at the time of the RRA decision then the BCUC has the latitude to allow the information to be submitted into evidence.

Creative Energy explains the method it used for calculating the mid-year After-Tax Regulatory Pension Asset Account differed from the BCUC's interpretation in the RRA decision. Creative Energy submits that it could have informed the BCUC during the proceeding of the balance of the Pension Asset what the 2020 employer contributions were going to be, but did not do so because that information was not needed as part of its proposals based on a different interpretation.

In considering this request, the Panel accepts the information and updated calculations provided by Creative Energy. The language in the RRA decision has the effect of agreeing that the BCUC would have used the 2019 December 31 Pension Asset to determine the 2020 mid-year After-tax Regulatory Pension Asset Account balance if it was available. Further, the BCUC noted in the RRA decision that Creative Energy only provided actual employer contributions for 2019. Using actual employer contributions for 2020 is appropriate since the equivalent information for 2019 was used for calculating the 2019 mid-year After-tax Regulatory Pension Asset Account balance. Accordingly, the Panel approves Creative Energy's request to vary Directive 4(h) of the RRA decision.

1.0 Introduction

1.1 Background

On September 2, 2020, the British Columbia Utilities Commission (BCUC) issued its decision in the matter of the Creative Energy Vancouver Platforms Inc. (Creative Energy) 2019-2020 Revenue Requirements Application (RRA) for the core steam system (Core Steam System) and Northeast False Creek (NEFC) service areas (RRA Decision).¹

In the RRA Decision, the BCUC approved, among other things, rates for 2020 for the Core Steam System on a permanent basis with various adjustments to the 2020 forecast revenue requirement.²

Included among the adjustments, in Subsection 3.1 of the RRA Decision, the BCUC found that Creative Energy had not calculated the mid-year After-tax Regulatory Pension Asset Account and related return correctly for 2020 based on the BCUC's determinations in the 2015-2017 Core Steam System Decision.³ In Tables 15 and 16 of the RRA Decision (reproduced below) the BCUC updated the calculations to reflect the 2015-2017 Core Steam System Decision, based on the following:⁴

1. The Panel uses the 2018 December 31 Pension Asset as the opening balance since the 2019 audited Financial Statements are not on the evidentiary record; and
2. Since Creative Energy did not provide forecast employer contributions for 2020 or otherwise request adjustments to the After-tax Regulatory Pension Asset for 2020, the Panel sets the 2018 forecast contributions equal to the approved forecast pension expense.

Table 15 – 2020 After-tax Mid-year Regulatory Pension Asset

	Forecast 2020
December 31 Pension Asset (pre-tax) reported on the audited financial statements (Opening Asset)	\$ 367,400
Employer Contributions	242,519
Approved Forecast Pension Expense ¹	(242,519)
Additions to Asset	-
Closing Asset	367,400
Average of Closing Actual and Forecast	367,400
Tax Rate ²	27%
After-tax Mid-year Balance	\$ 268,202

¹ 2020 Approved Forecast Pension Expense subject to the recalculation of pension costs allocated to the Core Steam System and NEFC, respectively, based on the (newly) approved three factor Massachusetts Formula, Section 3.1

² Taken from Exhibit B-9, BCUC IR 55.1.1

Table 16 – Adjustment to 2019 Allowed Return

	Before 2020 Adjustment	After 2020 Adjustment	Impact on Allowed Return
After-tax mid-year balance	\$ 800,780	\$ 268,202	
Equity of 42.5%	340,332	113,986	
Allowed Return on Equity of 9.5%	\$ 32,331	\$ 10,829	\$ (21,503)

¹ Order G-227-20 and accompanying decision dated September 2, 2020.

² RRA Decision, p. 24.

³ Creative Energy 2015-2017 Revenue Requirements Application Decision and Order G-98-15 dated June 9, 2015.

⁴ RRA Decision, p. 26.

Accordingly, Directive 4(h) of the order issued concurrently with the RRA Decision stated:

Creative Energy is directed to reduce the allowed return for 2020 by \$21,503 based on a mid-year After-tax Regulatory Pension Asset Account balance of \$268,202.

1.2 Reconsideration Application and Relief Sought

On October 19, 2020, Creative Energy filed an application for reconsideration and variance of Directive 4(h) (Reconsideration Application). Creative Energy requests that the BCUC vary this directive and permit Creative Energy to calculate the allowed return in 2020 using the “the correct inputs” in the calculation of the mid-year After-tax Regulatory Pension Asset Account balance for 2020.

Creative Energy submits:

The Panel’s commentary acknowledges that the correct input to this calculation ought to be based on the audited figure from 2019. Creative Energy notes that there was no purpose for Creative Energy, nor request otherwise, for either the 2019 audited Financial Statements to be placed on the evidentiary record or for the specific 2019 audited figure for the December 31, 2019 Pension Asset [of \$1,020,900] to have been reported in evidence. We do note, incidentally, that our 2019 Annual Report, which included the audited financial statements, was filed with the Commission in June 2020 as a separate compliance matter and in advance of the Order G-227-20 Decision.⁵

Creative Energy also states that in calculating the balance of the After-Tax Pension asset for 2020, it is able to include actual employer contributions of \$358,919, including solvency contributions, as prescribed by its actuary for 2020.⁶

Using these two inputs, Creative Energy submits that its allowed return for 2020 should be reduced by \$526, rather than \$21,503, as stated in Directive 4(h) and its mid-year After-tax Regulatory Pension Asset Account for 2020 should be \$787,743.⁷ Creative Energy states that the approximately \$21,000 impact of the adjustment is material to the utility.⁸

1.3 Regulatory Framework and Review Process

Section 99 of the *Utilities Commission Act* (UCA) provides that “the commission, on application or on its own motion, may reconsider a decision, an order, a rule or a regulation of the commission and may confirm, vary or rescind the decision, order, rule or regulation.”

Part V of the BCUC’s Rules of Practice and Procedure attached to Order G-15-19, establishes the rules regarding a reconsideration. Specifically, Rule 29.04 states that the BCUC will determine the regulatory process for a reconsideration hearing, which may include any procedural directions the BCUC considers appropriate.

By letter dated November 12, 2020, the Panel invited registered interveners in the Creative Energy 2019-2020 RRA proceeding to provide written submissions on whether the evidence related to the December 31, 2019

⁵ Exhibit B-1, p. 2.

⁶ Ibid., p. 3.

⁷ Ibid.

⁸ Exhibit B-2, p. 1.

audited Pension Asset balance and 2020 actual employer contributions should be allowed. Creative Energy was also provided with the opportunity to reply to the submissions received.

On November 17, 2020, the BCUC received one submission from the Commercial Energy Consumers Association of British Columbia (CEC) and Creative Energy filed a reply submission on November 18, 2020.

2.0 Reconsideration of Directive 4(h)

Position of the Parties

The CEC submits that the Reconsideration Application should be denied because Creative Energy does not identify an error in law or the availability of new information since the issuance of the decision.⁹ The CEC submits that Creative Energy's 2019-2020 RRA was filed nearly a year late, and if it had been completed in early to mid-2019 or before, the 2019 year-end actuals would not have been available to the BCUC. In the CEC's view, Creative Energy should not benefit from the lateness of its application and the information that would not otherwise have been available.¹⁰

Notwithstanding, the CEC submits that the BCUC "could treat the updated information as the equivalent of a compliance filing, if it so chooses..." The CEC states:

To the extent that the information was actually available at the time of Decision as a result of the delay in filing, but not on the evidentiary record could provide some latitude in allowing the information to be submitted into evidence.¹¹

In reply, Creative Energy states that the issue is the interpretation and method it used to calculate the mid-year After-Tax Regulatory Pension Asset Account balance in the 2019-2020 RRA differed from the BCUC's interpretation as articulated in Subsection 2.1 and 3.1 of the RRA Decision. Creative Energy states it could have informed the BCUC during the proceeding of the balance of the Pension Asset and what the solvency contributions were going to be, but submits, there was no need to do so because that information was not needed as part of its proposals based on a different interpretation.¹²

With Creative Energy's current understanding of the correct inputs to the calculation methodology, it submits that the reduction to its allowed return for 2020 of \$21,503 is an erroneous result because the correct input data was readily available.¹³

In the alternative, Creative Energy submits that the CEC is "essentially arguing that the Commission would have made a different determination if Creative Energy had filed a 2019-2020 RRA 'on time', and the Commission should now change the determination it did make, so as to specifically exclude consideration of audited 2019 results."¹⁴

⁹ Exhibit C1-1, p. 7.

¹⁰ Ibid., p. 6.

¹¹ Ibid., p. 7.

¹² Exhibit B-2, pp. 2–3.

¹³ Ibid., p. 3.

¹⁴ Ibid., p. 4.

Panel Determination

The Panel accepts the updated information and updated calculations provided in the Reconsideration Application and directs that Directive 4(h) of Order G-227-20 is varied to state: “Creative Energy is directed to reduce the allowed return for 2020 by \$526 based on a mid-year After-tax Regulatory Pension Asset Account balance of \$787,743.”

Creative Energy seeks relief to allow the utility to adjust its approved 2020 forecast revenue requirement using the actual 2019 December 31 Pension Asset¹⁵ and the actual employer contributions for 2020¹⁶ to calculate the 2020 mid-year After-tax Regulatory Pension Asset Account balance.

As acknowledged by the CEC,¹⁷ the BCUC’s jurisdiction with respect to whether the updated information should be accepted is quite broad. In these circumstances, the Panel agrees with the reasons articulated by Creative Energy and finds it is reasonable to accept the updated information in the Reconsideration Application. In the RRA Decision, the BCUC stated that the 2018 December 31 Pension Asset was used as the opening balance “since the 2019 audited Financial Statements are not on the evidentiary record.” The Panel finds that this language has the effect of agreeing that the BCUC would have used the 2019 December 31 Pension Asset to determine the 2020 mid-year After-tax Regulatory Pension Asset Account balance if it was available.

The Panel notes the CEC’s submission that the 2019 December 31 Pension Asset may not have been available if the 2019-2020 RRA had been filed earlier. However, the actual timing of the filing, which must be accepted, is that the 2019-2020 RRA was filed December 19, 2019, and the 2019 audited financial statements subsequently became available during the proceeding.

Similarly, the Panel notes in setting the 2019 mid-year After-tax Regulatory Pension Asset Account balance and related return, that the BCUC stated, “While Creative Energy only provides actual employer contributions for 2019, use of actual employer contributions is appropriate in the circumstances because the employee contributions are determined based on funding requirements and are outside the control of management.”¹⁸ To the extent that the same information is available for 2020, the Panel sees no reason why it should not be accepted since equivalent information for 2019 was determined to be appropriate for calculating the 2019 mid-year After-tax Regulatory Pension Asset Account balance.

¹⁵ Instead of the 2018 December 31 Pension Asset.

¹⁶ Instead of the 2020 approved forecast pension expense.

¹⁷ Exhibit C1-1, p. 7.

¹⁸ RRA Decision, p. 16.