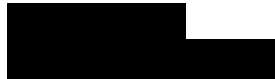




July 5, 2022

Sent via email

Letter L-28-22



Re: Creative Energy Inc. – Complaint filed by M.D. – British Columbia Utilities Commission Decision

Dear 

The British Columbia Utilities Commission (BCUC) writes regarding your complaint request submitted on April 12, 2022, regarding Creative Energy Inc. (Creative) and specific noise concerns. The BCUC first investigated this matter in relation to a complaint you (Complainant), filed on December 27, 2018 (Complaint) where you expressed concerns regarding noise nuisances being generated by Creative's plant located near your property. The Complaint was reviewed by the BCUC and found that Creative reasonably responded to the issues raised and was not in contravention of any BCUC orders or its Tariff. In your correspondence of April 12, 2022, you state that the additional correspondence should be considered as a new complaint against Creative and "process accordingly". Further stating, "I would like to complain about the 1) constant low-frequency sound wave; and 2) vibrations observed at my home that emanate from Creative Energy's plant at 720 Beatty Street in Vancouver."

As an administrative tribunal, the BCUC follows its own process for a number of procedures, including complaints. The BCUC is not a mediator of disputes; rather, it is an independent regulatory agency of the Provincial Government that operates under and administers the *Utilities Commission Act* (UCA).

Based on our review of your complaint request and related correspondence provided in this matter, the BCUC sees no indication that the information provided within your correspondence constitutes a new complaint or warrants further investigation at this time. As such, the complaint request is dismissed, and the matter remains closed.

Review Process

As with any complaint request, and pursuant to the BCUC Complaints Guidelines, the BCUC must first determine if a complaint request falls within the BCUC's jurisdiction before continuing with the BCUC complaint process.

The BCUC receives written complaints from customers about regulated utilities and ICBC's basic automobile insurance rates and attempts to resolve these complaints where they fall within the BCUC's jurisdiction. It is at the BCUC's discretion (under the UCA) to determine what action, if any, to take on a complaint.

Jurisdiction

With respect to the regulation of noise in the City of Vancouver (COV), the *Vancouver Charter* is applicable and, in particular, section 323, which provides, in part:

By-laws respecting nuisances, noise, and other matters

323. The Council may make by-laws:

Nuisances may be prohibited

(a) for preventing, abating, and prohibiting nuisances;

Disturbing noises

(b) for regulating the making or causing of noises or sounds anywhere within the city which disturb, or tend to disturb, the quiet, peace, rest, enjoyment, comfort, or convenience of the neighbourhood, or of persons in the vicinity, or which, in the opinion of the Council, are objectionable or liable to disturb the quiet, peace, rest, enjoyment, comfort, or convenience of individuals or the public; and may make different regulations or prohibitions for different areas of the city; and for providing for exceptional cases, where such noises may, with the permission of the Mayor or an official of the city designated by by-law, be permitted for limited periods, and for providing that the owner or occupant of any real property shall be deemed to be responsible for any noise emanating or which has regularly emanated from such real property and shall be liable to the penalties provided in the by-law; no penalty shall be imposed upon any person as owner without such person being given a reasonable opportunity to show cause why such penalty should not be imposed;

Background

On December 27, 2018, the BCUC received a Complaint from you regarding noise emissions allegedly emanating from Creative's plant at 720 Beatty Street, Vancouver.

In the Complaint, you alleged that the plant generated constant noise and vibrations inside your property. Further stating that "[t]he company is aware of the disturbance it causes and operates end-of-life equipment as stated in a document filed to BCUC: https://www.bcuc.com/Documents/Proceedings/2018/DOC_52016_B-1_CreativeEnergy-CPCN-Beatty-and-Expo-Plants-Application.pdf"

After a review of the Complaint, BCUC staff noted that Creative conducted an onsite investigation and confirmed that there were no rotor imbalances in the plant equipment causing any noise. Further, BCUC staff recommended that you direct any noise complaints to the COV. BCUC Staff closed the Complaint and informed you that based on the evidence it appeared that Creative reasonably responded to the issues raised and was not in contravention of any BCUC orders or its Tariff.

On February 14, 2022, you requested the Complaint regarding noise emissions from Creative's plant at 720 Beatty Street, Vancouver, be reopened. Within the February 14, 2022, correspondence, you stated:

As recommended, I directed the complaint to the City of Vancouver. The answer I got from the City is that the noise emanating from the plant is not regulated by the city bylaws...Based on the above, I believe that BCUC's recommendation was incorrect and the resolution of the complaint needs to be restarted (based on section 23 of Utilities Commission Act). Also that as I indicated in 2019, on multiple occasions BCUC did intervene when noise levels were infringing on individuals' right to enjoy their property (precedence). Currently and for the past 3 years, I believe, my constitutional rights are infringed upon. [sic]

Generally, the BCUC complaint process allows for the reopening of a complaint when new evidence is brought to the BCUC by a complainant or a Utility that was not available or brought forward to the BCUC at the time the initial complaint was reviewed; This includes new facts that have arisen since the BCUC review of the initial complaint that may have a material bearing on the complaint or where a change in circumstance material to the complaint has occurred since the initial complaint was reviewed. The correspondence did not provide adequate evidence to support reopening your initial noise complaint. Based on this, the complaint remained closed.

New Complaint

On April 12, 2022, you sent an email to the BCUC stating, “I would like to complain about the 1) constant low-frequency sound wave and 2) vibrations observed at my home that emanate from Creative Energy's plant at 720 Beatty Street in Vancouver.”

In your email of April 12, 2022, you also state that as the COV does not regulate low frequency noise, the BCUC should therefore review the matter. In email correspondence to the BCUC staff, sent between February 14, 2022 and April 12, 2022, you requested the BCUC exercise its powers under section 23 of UCA to review your correspondence as a complaint. Section 23 provides the BCUC with general supervision of public utilities and the ability to make orders in respect of certain items and matters as enumerated in that section.

On February 14, 2022, you submitted a copy of a report offered to you by the COV. The COV's report¹ (Report) included information regarding the COV's assessment of your noise concerns. The Report confirms that the COV found no breach of the COV noise control bylaw which measures maximum allowable mechanical noise at 70dba (daytime) and 65dba (nighttime). The noise control bylaw does not regulate low frequency (C-scale) mechanical noise. Regardless, the COV measured low frequency (C-scale) and found 80.7dbC at 4:50 am. The Report states low frequency c-scale is not regulated by the COV noise control bylaw, which is true; however, the COV regulates noise within the city's boundaries as noted by section 323 of the Vancouver Charter. The fact that the COV did not pass a bylaw setting limits for low frequency C-scale noise does not mean it could not do so. Instead, it means that low-frequency C-scale noise is currently not an issue requiring the COV to pass a bylaw to limit any maximum noise level. In other words, the noise regulator within the COV does not deem it necessary to regulate low-frequency C-scale noise.

You also submitted a COV response to a Freedom of Information (FOI) request you made regarding noise complaints at 720 Beatty Street in Vancouver (FOI Response) over the course of more than ten (10) years. The FOI Response indicates that ten (10) noise complaints were made to the COV concerning 720 Beatty Street within this period. Three (3) complaints were filed by a single complainant within 4 days of December 2011. Three (3) complaints were filed by you. Two (2) complaints related to a low hum and vibration coming from the plant. One (1) complaint related to Creative Energy's release of its pressure valve and one (1) complaint related to exterior building maintenance at 720 Beatty Street.

As you have noted in your material of April 12, 2022, although the COV has passed a noise bylaw 6555 which prohibits sounds greater than 70dB, it has not passed a bylaw that regulates low frequency C-Scale noise. However, this does not mean that COV can not pass a bylaw regulating low-frequency C-Scale noise, rather, it has chosen not to do so despite having the jurisdiction to pass such a bylaw under section 323 of the *Vancouver Charter*.

¹ City-of-Vancouver-response.pdf

While the BCUC has a general supervisory power over the public utilities it regulates, it is the *Vancouver Charter* which provides explicit authority with respect to COV, to regulate the making or causing of noise or sounds anywhere within the city, including in this case the location of the public utility plant. The absence of any regulation or bylaw by the COV does not mean that the BCUC regulates low-frequency C-Scale noise.

The BCUC notes that the utility is not in breach of a COV noise bylaw or any provincial or federal statutes relating to noise emanating from the utility's operations at 720 Beatty Street. There have been few, if any, complaints that the BCUC is aware of regarding the low frequency noise you complain of over the previous ten (10) years, including those to the COV. The BCUC does not find evidence in your Complaint or your submissions in the February 14, 2022, or April 12, 2022, that cause the BCUC to re-open your Complaint and investigate further or to make any orders under section 23 of the UCA in respect of the utility's equipment, as you request.

Determination

The Panel reviewed the correspondence provided and finds that there is insufficient evidence to consider this matter to be a new complaint. Based on our review of your Complaint and related correspondence provided in this matter, the BCUC staff are satisfied that Creative have acted in accordance with the Tariff and the UCA. The BCUC considers the complaint request to be dismissed and the matter remains closed.

Accordingly, your file is now closed.

Office of the Ombudsperson

If you have concerns about how the BCUC handled your complaint, you may wish to contact the Office of the Ombudsperson. The Office of the Ombudsperson receives enquiries and complaints about the practices and services of public agencies within its jurisdiction. Their role is to impartially investigate complaints to determine whether public agencies have acted fairly and reasonably, and whether their actions and decisions were consistent with relevant legislation, policies, and procedures.

If you decide to file a complaint with the Ombudsperson, they will review the BCUC's process to ensure it was fair. Though this may not result in a different outcome for you, the office could request that the BCUC reopen its investigation.

Provided is a link to the Office of the Ombudsperson's website: <https://www.bcombudsperson.ca>. You can also call their office toll-free at: 1-800-567-3247. An employee at the office will be able to assist you and inform you of your options.

Thank you again for contacting the BCUC.

Sincerely,

Original signed by:

Patrick Wruck
Commission Secretary

DD/jm

cc: Rob Gorter: Rob@creative.energy; info@creative.energy