British Columbia Utilities Commission

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ORDER NUMBER
G-283-23

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

and

Creative Energy Vancouver Platforms Inc.
Fuel Cost Adjustment Charge and Rate Rider

BEFORE:
T. A. Loski, Commissioner

on October 20, 2023

ORDER

WHEREAS:

A. On March 31, 2023, Creative Energy Vancouver Platforms Inc. (Creative Energy) filed with the British Columbia Utilities Commission (BCUC) an application seeking approval of an updated Fuel Cost Adjustment Charge (FCAC) of $19.40 per thousand pounds steam (/M#) from 19.90/M# effective May 1, 2023 to October 31, 2023. Further, Creative Energy requests approval of a FCAC Rate Rider of $2.00/M# effective May 1, 2023 to December 31, 2023 (Application);

B. Creative Energy's proposed FCAC is based on the 12-month forecast of fuel costs totaling $24,975,574, using the 2022/2023 steam load forecast of 1,144,000/M# for the 2022/2023 Gas Year approved by Order G-345-22A dated November 29, 2022;

C. By Order G-97-23, dated April 27, 2023, the BCUC approved the FCAC and FCAC Rate Rider as proposed in the Application, on an interim and refundable basis, effective May 1, 2023. Order G-97-23 also established a public hearing and regulatory timetable for review of the Application. The regulatory timetable included, among other things, public notice, intervener registration, BCUC and intervener information requests (IRs), Creative Energy responses to IRs, and submissions on further process;

D. On May 25, 2023, the Commercial Energy Consumers Association of BC (CEC) registered as the sole intervener for this proceeding;

E. Creative Energy and the CEC filed Final Arguments on August 4, 2023 and August 18, 2023, respectively. Creative Energy filed Reply Argument on August 25, 2023; and

F. The BCUC has reviewed the evidence and arguments in this proceeding and finds the following determinations to be warranted.

NOW THEREFORE the BCUC orders as follows:

1. Creative Energy is approved to charge the FCAC rate of $19.40/M#, effective May 1, 2023 to October 31, 2023 on a permanent basis.
2. Creative Energy is approved to charge the FCAC Rate Rider of $2.00/M#, effective May 1, 2023 to December 31, 2023 on a permanent basis.
3. Creative Energy must inform its customers of the approved changes to the FCAC and the FCAC Rate Rider in a timely manner by way of a bill insert or bill message included with the next bill.
4. Creative Energy must file with the BCUC, within 15 days of the date of this order, amended tariff pages in accordance with the terms of this order.
5. Creative Energy is directed to file with the BCUC, by no later than January 15, 2024, amended tariff pages reflecting the expiry of the FCAC Rate Rider approved in Directive 2 above.

DATED at the City of Vancouver, in the Province of British Columbia, this 20th day of October 2023.

BY ORDER

Original signed by:

T. A. Loski
Commissioner

Attachment

Creative Energy Vancouver Platforms Inc.
Fuel Cost Adjustment Charge and Rate Rider

REASONS FOR DECISION

1.0 Introduction

1.1 Background and Approvals Sought

Creative Energy Vancouver Platforms Inc. (Creative Energy) is a gas-fired thermal energy system (TES), with fuel oil back up, that serves more than 200 customers in downtown Vancouver. Creative Energy recovers its fuel expenses on a flow-through basis from its customers through two BCUC-approved fuel cost charges:

1. A Fuel Cost Adjustment Charge (FCAC), and
2. An FCAC Rate Rider.[1]

Generally, the FCAC is approved by the BCUC on an annual basis in advance of Creative Energy's Gas Year, beginning November 1 of each year. The FCAC is set based on forecast annual fuel costs divided by forecast annual load at that time.[2]

Variances between Creative Energy's forecast and actual fuel costs are recorded in a Fuel Cost Stabilization Account (FCSA). Balances in the FCSA are distributed or collected from customers through an FCAC Rate Rider, which is charged on a dollar per thousand pounds steam (M#) basis.[3]

Previously, the BCUC approved an FCAC of $19.90/M# effective November 1, 2022, and an FCAC Rate Rider of $2.00/M#, effective February 1, 2022 to January 31, 2023.[4] Creative Energy's natural gas contracting plan, where it obtains natural gas supply and delivery from FortisBC Energy Inc. (FEI) under Rate Schedule 7 (an interruptible rate) was approved by the BCUC in 2019.[5]

On March 31, 2023, Creative Energy filed with the BCUC an application seeking approval of an updated FCAC of $19.40 /M# effective May 1, 2023 to October 31, 2023 (Application). In the Application, Creative Energy also requests approval to charge an FCAC Rate Rider of $2.00 per M# from May 1, 2023 through December 31, 2023. The requested rate rider is expected to recover by the end of 2023 the current balance in Creative Energy's FCSA, which includes certain costs associated with the use of fuel oil and natural gas at a penalty rate during a winter storm in December 2022.[6]

[1] Exhibit B-1, p. 1.
[2] Ibid.
[3] Ibid.
[4] BCUC Orders G-334-22 and G-55-22, dated November 24, 2022 and February 28, 2022 respectively.
[5] BCUC Letter L-22-19, dated May 30, 2019.
[6] Exhibit B-1, p. 1.

1.2 Legislative Framework

Sections 59 to 61 of the *Utilities Commission Act* (UCA) pertain to the setting and amendment of rates. Pursuant to section 60(1)(a) and (b) of the Act, when setting rates, the BCUC must take into account all matters that it considers proper and relevant affecting the rate, and, amongst other things, must have due regard to setting a rate that is not unjust and unreasonable. Section 60(1)(b.1) states that the BCUC may use any mechanism, formula or other method of setting the rate that it considers advisable and may order that the rate derived from such a mechanism, formula or other method is to remain in effect for a specified period. Further, pursuant to section 61(4) of the UCA, a public utility may file with the BCUC a new schedule of rates the utility considers to be made necessary by a change in the price, over which the utility has no effective control.

1.3 Regulatory Process

On April 27, 2023, the BCUC approved Creative Energy's requested rates on an interim and refundable basis and established a public hearing and regulatory timetable for review of the Application.[7] The regulatory timetable included, amongst other things, public notice, intervener registration, and one round of BCUC and intervener information requests to Creative Energy.

On May 25, 2023, the Commercial Energy Consumers Association of BC (CEC) registered as the sole intervener in the proceeding.

Creative Energy and the CEC filed Final Arguments on August 4, 2023 and August 18, 2023, respectively. Creative Energy filed Reply Argument on August 25, 2023.

2.0 Reduction of the FCAC

Positions of the Parties

In the Application, Creative Energy requests a decrease to the FCAC of $0.50 per M# from $19.90 per M# to $19.40 per M# effective from May 1, 2023 to October 31, 2023.[8] Creative Energy submits that the projected FCAC is driven mostly by what FEI charges for its Rate Schedule 7, which was adjusted by FEI on January 1, 2023. To account for the adjustment in FEI rates, Creative Energy submits that a decrease in the FCAC to $19.40/M# effective May 1, 2023, is warranted. Absent a decrease to the FCAC, the balance of the FCSA would decrease due to an over-recovery of actual fuel costs.[9]

The CEC submits that it is appropriate for the FCAC to reflect the newer FEI rates being charged to Creative Energy and recommends that the BCUC approve the reduction in the FCAC to $19.40/M#.[10]

Panel Determination

The Panel finds that approval of an FCAC of $19.40 /M# effective May 1, 2023 to October 31, 2023 is warranted. As noted above, Creative Energy's fuel expenses are recovered on a flow-through basis and a reduction in the existing FCAC to $19.40/M# appropriately reflects changes in the gas costs Creative Energy pays under FEI's Rate Schedule 7 and limits the potential for over-recovery of fuel costs by Creative Energy.

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[7] BCUC Order G-97-23, dated April 27, 2023.
[8] Exhibit B-1, p. 1.
[9] Ibid., p. 2; Exhibit B-3, BCUC IR. 1.1.
[10] CEC Reply Argument, p. 3.

3.0 FCAC Rate Rider

In addition to the requested change in the FCAC, Creative Energy requests approval to charge an FCAC Rate Rider of $2.00 per M# from May 1, 2023 through December 31, 2023. Creative Energy submits that this would allow it to recover the current balance in the FCSA by the end of 2023.[11]

As shown in Figure 1, below, the balance in the FCSA as at the end of February 2023 was approximately $1.99 million or 8 percent of the total annual forecast fuel cost of $24.9 million. The two main contributors to the balance are: (1) fuel costs incurred during a winter storm in December of 2022 where natural gas supply under FEI's Rate Schedule 7 was curtailed, and (2) a CleanBC grant, which Creative Energy received in November 2022. The Panel first considers the appropriateness of recording these items in the FCSA for collection from/distribution to customers, before then considering the appropriate quantum of an FCAC Rate Rider, if any.

Figure 1 – Balance in the FSCA[12]

	Incremental Additions November – January 2023				**Balance End of Period**	**Threshold**
Month	Natural Gas (FEI invoice – FCAC recovery – FCAC Rate Rider)	Natural Gas (Curtailment)	Fuel Oil	Clean BC Grant	$	% of 2022/23 Fuel Cost
Oct-22	n/a				$2,331,379	9.3%
Nov-22	$(373,541)	n/a	n/a	$(875,238)	$1,082,600	4.3%
Dec-22	$(705,758)	$2,119,973	$902,619	n/a	$3,399,434	13.6%
Jan-23	$(796,699)	n/a	n/a	n/a	$2,602,735	10.4%
Feb-23	$(527,539)	n/a	n/a	n/a	$1,989,827	8.0%

3.1 Appropriateness of the Costs Recorded in the FCSA

Positions of the Parties

<u>December 2022 Fuel Costs</u>

In December 2022, Creative Energy was operating under an approved gas contracting strategy, which stipulated that natural gas service would be received from FEI under Rate Schedule 7 General Interruptible Service, a rate applicable to large volume customers that have the ability to switch to an alternate energy source. The BCUC accepted the contracting strategy as being in the public interest pursuant to BCUC Letter L-22-19, dated May 30, 2019.

On December 20, 2022, FEI curtailed Creative Energy for a four-day period due to supply constraints as a result of cold weather, consistent with the provisions of Rate Schedule 7. During this period, Creative Energy utilized both its backup fuel oil (diesel) supply and natural gas from FEI under a penalty rate. Creative Energy states that as a consequence of this action, it was required to pay FEI $2.1 million for natural gas at a penalty rate in

[11] Exhibit B-1, p. 1.
[12] Ibid., p. 4, with errata correction of January and February 2022 to January and February 2023.

addition to incurring $902,619 in fuel oil costs.[13] These amounts were applied to the FCSA, which caused the balance in the FCSA to increase significantly.
Creative Energy submits that the events of December 2022 were exceptional and created circumstances that affected all forms of infrastructure across the region and were beyond Creative Energy's control.[14] Creative Energy submits that it was proactive in monitoring the weather event and obtained commitments from fuel suppliers to cover its fuel oil requirements for the duration of the curtailment. Despite these commitments, weather conditions prevented trucks from leaving supply yards, and significant driver absenteeism prevented fuel suppliers from delivering fuel.[15] Creative Energy states that due to these circumstances it elected to burn natural gas and incur Rate Schedule 7 penalties after due consideration for the overall safety of Creative Energy's customers and the financial implications of the decision.[16] Creative Energy submits that its actions were prudent and in the best interest of customers. As such, Creative Energy argues that it is reasonable and appropriate to recover costs associated with the Rate Schedule 7 penalty amount in the FCSA from ratepayers.[17]

Creative Energy notes that since the 2022 storm, its circumstances have changed sufficiently to warrant a review of its gas contracting strategy. Specifically, changes in the amount of fuel oil storage available on site as well limitations on the size of fuel oil delivery tankers have increased risks associated with Creative Energy's backup fuel supply. In response, Creative Energy states that it has had discussions with FEI regarding securing firm capacity that would significantly mitigate any further natural gas curtailment risk.[18]

The CEC concurs with Creative Energy and submits that Creative Energy appropriately utilized natural gas to meet its demand requirements and undertook reasonable efforts to minimize the cost and disruption to customers during the curtailment.[19] The CEC states that it does not find any areas of clear concern in Creative Energy's actions either before or during the curtailment period; rather Creative Energy acted prudently and in the best interests of its customers under trying circumstances.[20] The CEC recommends that the BCUC approve the recovery of the storm-related fuel costs to be included in the FCSA as proposed by Creative Energy.[21]

Moving forward, the CEC recommends that the BCUC direct Creative Energy to model the FEI curtailment risks associated with taking service under Rate Schedule 7 in terms of frequency and duration, to connect this analysis to the relevant weather conditions, and integrate this with appropriate curtailment responses including (1) customer restraint potentials, (2) steam send out constraints with minimal customer consequences, (3) existing fuel oil and fuel supplier back up availability and reliability, (4) potential shared fuel oil back-up (location, availability, deliverability and reliability), and (5) customer based heat storage back up options.[22]

It is the CEC's view that Creative Energy should be able to model weather in a manner that avoids future storm conditions being "unexpected and/or unusual". The CEC submits that such modeling could also consider the impacts of climate change.[23]

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13 Exhibit B-1, p. 3.
14 Exhibit B-3, IR 2.1.
15 Ibid., p. 5.
16 Creative Energy Final Argument, p. 5.
17 Ibid., p. 6.
18 Exhibit B-3, BCUC IR. 2.10.
19 CEC Final Argument, p. 5.
20 Creative Energy Final Argument, p. 8.
21 Ibid., p. 10.
22 CEC Final Argument, p. 10.
23 Ibid., p. 13.

The CEC recommends that the BCUC also direct Creative Energy to engage with its customers in order to establish whether or not customer curtailment could be an option for relieving some load during future supply constraints.[24]
Creative Energy argues that the CEC's recommendation that it be required to model curtailment risks is overly prescriptive, falls outside the scope of this proceeding, and should be dismissed as such a requirement would impose an unnecessary regulatory burden on the utility.

On the matter of the CEC's proposed engagement with customers, Creative Energy submits that it has assessed the prudency of its decision-making relating to the events of December 2022. Part of this assessment has considered whether a more formal approach to curtailment may be appropriate. Creative Energy submits it will continue to explore this option and will seek BCUC approval if applicable.[25]

CleanBC Grant

Creative Energy's customers pay the cost of British Columbia's carbon tax, which is levied on natural gas used at the TES. Creative Energy states that it submitted an emission reduction plan in 2020 in order to be eligible for the CleanBC Industrial Incentive Program, which "encourages cleaner industrial operations by reducing carbon tax costs for facilities that can demonstrate their operations are among the lowest emitting for their sector compared to world-leading greenhouse gas emissions benchmarks."[26] Each year, the grant is calculated based on actual emissions from the previous year. In November 2022, Creative Energy recorded a credit of $875,238 in the FCSA in relation to receipt of the CleanBC Grant.[27]

Creative Energy submits that the proposed treatment of the grant amount adheres to the overall objectives of the CleanBC Grant and is a benefit that should accrue to customers through a reduction in the FCSA balance, as these customers are responsible for paying the carbon tax via the FCAC.[28]

The CEC submits that this is a fair and appropriate allocation for these monies and recommends that the BCUC approve the inclusion of the CleanBC Grant in the FCSA.[29]

Panel Determination

The Panel considers the actions taken by Creative Energy in December 2022, including the decision to utilize natural gas at a penalty rate, to have been prudent and reasonable given the circumstances. As a result, **the Panel finds it is appropriate to include both the fuel oil costs and penalty rate gas expenses in the FCSA.**

The Panel also finds inclusion of the CleanBC Grant in the FCSA to be appropriate as the intent of the grant is to offset costs associated with carbon taxes paid through the FCAC.

The Panel agrees with Creative Energy that circumstances have changed since its gas contracting strategy was last approved warranting a review of Creative Energy's gas contracting plan. The Panel notes that subsequent to the argument phase in this proceeding, Creative Energy has submitted an application to the BCUC, seeking approval to transition from FEI's Rate Schedule 7, an interruptible service, to FEI's Rate Schedule 5, a firm service. This request will be reviewed by the BCUC in a separate hearing. Consequently, the Panel does not consider the modelling proposed by CEC to be necessary at this time.

[24] CEC Final Argument, p. 10.
[25] Creative Energy Reply Argument, p. 5.
[26] Creative Energy Final Argument, p. 7.
[27] Exhibit B-3, IR 3.7.
[28] Ibid.
[29] CEC Final Argument, p. 13.

3.2 Recovery of the Outstanding Balance in the FCSA

Given the Panel has found the amounts recorded in the FCSA to be appropriate, the Panel will now consider the recovery period for these costs.

Positions of the Parties

In the Application, Creative Energy proposes to amortize the balance of the FCSA over the period ending December 31, 2023, resulting in an FCAC Rate Rider of $2.00/M#. Creative Energy submits that this approach is reasonable, as it is 12-months after the costs were incurred and would allow Creative Energy to maintain the $2.00/M# rate rider value it has been charging its customers since February 2022.[30] Further, Creative Energy submits that the FSCA amortization period should match the annual approach that is generally applied in the overall FCAC rate-setting methodology.[31]

The CEC considers the proposed recovery period to be suitable and not unduly onerous for ratepayers. Therefore, the CEC recommends that the BCUC approve the $2.00/M# FCAC Rate Rider and amortization period as proposed by Creative Energy.[32]

Panel Determination

The Panel considers recovery of the balance in the FCSA by December 31, 2023 to be reasonable, as the requested amortization period would allow Creative Energy to recover its fuel costs in a timely manner, while leaving the quantum of the rate rider unchanged from the rate rider previously approved by the BCUC. **Accordingly, the Panel finds that approval of an FCAC Rate Rider of $2.00/M# effective May 1, 2023 to December 31, 2023 is warranted.**

4.0 Others Matters Arising

Creative Energy's previous FCAC Rate Rider was approved by BCUC Order G-55-22, with an effective date of February 1, 2022 to January 31, 2023.[33] In the four month period following expiry of the previous rate rider and prior to interim approval of the current FCAC Rate Rider requested in Creative Energy's Application, Creative Energy continued to charge its customers a rate rider of $2.00/M#. In total, Creative Energy collected $714,437 from its customers via a rate rider during the February 1, 2023 to April 30, 2023 period.[34] The Panel must consider the appropriate treatment of these funds and whether any further action should be taken by the BCUC in relation to this issue.

Positions of the Parties

Creative Energy acknowledges that it was not explicitly approved to charge an FCAC Rate Rider from February 1, 2023 to April 30, 2023, and that it erred in collecting the rate rider during this period.[35]

Creative Energy submits that at the time of its 2022/2023 FCAC Gas Year application (2022/2023 Application), the balance in the FCSA was not anticipated to fall below the five percent threshold by January 31, 2023, and as

[30] Exhibit B-1, pp. 4–5.
[31] Creative Energy Final Argument, p. 8.
[32] CEC Final Argument, p. 2.
[33] BCUC Order G-55-22, dated February 28, 2022.
[34] Exhibit B-3, BCUC IR 4.1, 4.2; Creative Energy Final Argument, p. 6.
[35] Exhibit B-3, BCUC 4.2.

such, Creative Energy expected to continue to charge the rate rider to ensure sufficient working capital for its operations. Creative Energy had understood the rate rider to have been implicitly extended based on the model provided in the 2022/2023 Application. Further, Creative Energy notes that its approved tariff pages do not specify the time period that the FCAC rate rider applies for nor an end date.[36]

Creative Energy submits that if the BCUC orders the reimbursement of funds collected between February 1, 2023 and April 30, 2023, the funds should be credited back to customers as a one-time adjustment on their bill, and the total value added back to the FCSA and collected from customers over an alternative time period.[37]

The CEC recognizes that Creative Energy is entitled to recover the balance in the FCSA, and that in all likelihood the BCUC would have approved the collection of the rate rider during the February to April 2023 time period had it been presented to the BCUC. However, the CEC considers the collection of over $700,000 from Creative Energy's customers in the absence of BCUC approval to be a serious dereliction of Creative Energy's responsibilities, which should not be dismissed as a "mere oversight".[38] The CEC argues that Creative Energy's proposed solution of a one-time bill credit not only fails to hold Creative Energy accountable for its actions, but also creates an illogical situation where customers are reimbursed only to be re-charged at a later date, potentially accruing additional interest charges to the customer.[39] The CEC argues that it would be appropriate for Creative Energy to experience a material penalty for its failure to seek approval as required and recommends that the BCUC penalize Creative Energy in the amount of $45,000, with the penalty amount to be returned to Creative Energy's customers.[40]

Creative Energy submits that charging the rate rider from February to April 2023 was an error and that Creative Energy mistakenly believed the rate rider to have been approved, as the balance in the FCSA was not anticipated to fall below the five percent threshold in its 2022/2023 Application. Creative Energy notes that it has applied to the BCUC for approvals relating to the FCAC Rate Rider on numerous occasions in the period since 2019, and that these applications demonstrate Creative Energy's diligence in administering the FCAC and seeking BCUC approvals as needed. As such, Creative Energy argues that the CEC's characterization of Creative Energy's error as a "serious dereliction" is unfounded and should be dismissed.

Regarding the CEC's recommended penalty, Creative Energy submits that the CEC's proposal does not comply with the requirements of Part 8.1 of the UCA with respect to finding a person has contravened the Act, nor does it comply with section 109.2 of the UCA with respect to proposed penalty amount. Accordingly, Creative Energy submits that the CEC's proposal should be dismissed.[41]

Panel Determination

The Panel considers the collection of an FCAC rate rider from Creative Energy's customers absent BCUC approval to be a serious error. In accordance with section 63 of the UCA, Creative Energy must not, without the consent of the BCUC "directly or indirectly, in any way charge, demand, collect or receive from any person for a regulated service provided by it, or to be provided by it, compensation that is greater than, less than or other than that specified in the subsisting schedules of the utility applicable to that service and filed under this Act." Nevertheless, the Panel appreciates how the circumstances surrounding the approval of Creative's Energy

[36] Exhibit B-3, BCUC IR 4.2; Creative Energy Final Argument, pp. 6–8.
[37] Creative Energy Final Argument, pp. 7–8.
[38] CEC Final Argument, p. 12.
[39] Ibid.
[40] Ibid., p. 13.
[41] CEC Reply Argument, p. 4.

2022/2023 Application and the fact that Creative Energy's approved tariff pages did not specify an end date for the FCAC rate rider may have contributed to this error.

In this particular instance, the Panel finds that no action is warranted with respect to the funds collected via the unapproved rate rider. Creative Energy is entitled to recover its prudently incurred gas costs from its customers on a flow through basis. In the sections above, the Panel has found the amounts recorded in the FCSA to be reasonable and has approved recovery of the FCSA balance through an FCAC Rate Rider of $2.00/M# effective May 1, 2023 through December 31, 2023. Refunding the $714,437 in rate rider funds collected in February to April 2023 through a one-time bill credit, as proposed by Creative Energy, would lead to an absurd result of increasing the balance in the FCSA by a corresponding dollar amount only to have the increased balance recovered from ratepayers in the future. Such an approach increases administrative burden and costs including carrying costs, while providing no benefit to Creative Energy's customers. The Panel considers that this approach may also lead to intergenerational inequity as it is refunding current customers and then collecting from future ratepayers.

With respect to CEC's submission that the BCUC penalize Creative Energy in the amount of $45,000, with the penalty amount to be returned to Creative Energy's customers the Panel notes that the BCUC does not have the jurisdiction to direct where an administrative penalty payment is to be made. Section 109.7 of the UCA directs that all amounts derived from administrative penalties must be paid into the consolidated revenue fund. Although the Panel has found for the above reasons that Creative Energy is technically in breach of Section 63 of the UCA, the Panel does not recommend that the BCUC pursue penalty proceedings against Creative Energy in respect of this breach.