



ORDER NUMBER
G-94-25

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

and

Creative Energy Vancouver Platforms Inc.
New Plant Premises and Interconnection Infrastructure Capital Expenditures

BEFORE:

M. Jaccard, Panel Chair
E. A. Brown, Commissioner
E. B. Lockhart, Commissioner

on April 10, 2025

ORDER

WHEREAS:

- A. On September 25, 2024, Creative Energy Vancouver Platforms Inc. (Creative Energy) applied to the British Columbia Utilities Commission (BCUC), pursuant to section 44.2(1)(b) of the *Utilities Commission Act* (UCA)(Application), for acceptance of a schedule of capital expenditures. Creative Energy anticipates making the expenditures to complete the construction of the structure that will house its new steam plant at 720 Beatty Street in Vancouver (New Plant Premises) and to connect Creative Energy's future steam generating electric boilers and associated equipment (Decarbonization Plant) to its existing steam plant (Interconnection Infrastructure);
- B. Creative Energy requests acceptance of a capital expenditure schedule of \$38.5 million to complete the construction of the New Plant Premises and to install the Interconnection Infrastructure;
- C. By Orders G-269-24, G-304-24 and G-337-24, the BCUC established and amended a regulatory timetable for review of the Application, which included, among other things, intervenor registration, BCUC and intervenor information requests (IRs), Panel IRs, letters of comment, Creative Energy responses to IRs, and final and reply arguments;
- D. The following parties registered as intervenors: British Columbia Old Age Pensioners' Organization et al., BC Sustainable Energy Association, Commercial Energy Consumers Association of British Columbia, Residential Consumer Intervenor Association, and Wall Financial Corporation; and
- E. The BCUC has considered the Application, evidence and submissions of the parties and makes the following determinations.

NOW THEREFORE for the reasons outlined in the decision accompanying this order, and pursuant to section 44.2 of the UCA, the BCUC orders as follows:

1. Creative Energy's capital expenditure schedule of \$38.5 million to complete the construction of the New Plant Premises and to install the Interconnection Infrastructure is rejected.
2. Creative Energy is directed to file an application with the BCUC for approval of any low carbon service rate at least six months before Creative Energy's requested effective date for the low carbon service rate.

DATED at the City of Vancouver, in the Province of British Columbia, this 10th day of April 2025.

BY ORDER

Electronically signed by Mark Jaccard

M. Jaccard
Commissioner

Creative Energy Vancouver Platforms Inc.
New Plant Premises and Interconnection Infrastructure Capital Expenditures

DECISION

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Executive Summary

On September 25, 2024, Creative Energy Vancouver Platforms Inc. (Creative Energy) applied to the British Columbia Utilities Commission (BCUC) for acceptance of a schedule of capital expenditures (Expenditure Schedule) pursuant to section 44.2(1)(b) of the *Utilities Commission Act*. Creative Energy anticipates making the capital expenditures to complete the construction of the building space that will house its new steam plant at 720 Beatty Street in Vancouver (New Plant Premises) and to connect Creative Energy's future steam generating electric boilers and associated equipment (Decarbonization Plant) to its existing steam plant (Interconnection Infrastructure) (Application).

The approvals sought in the Application relate to other recent BCUC decisions made regarding Creative Energy. In 2018, Creative Energy applied to the BCUC for a CPCN to construct and operate a new steam plant located at 720 Beatty Street (New Beatty Steam Plant). As part of the New Beatty Steam Plant project, Creative Energy entered into a Trust and Development Agreement (TDA) with a developer seeking to redevelop a portion of the 720 Beatty Street property (the Developer). The TDA established the terms under which Creative Energy would transfer to the Developer its rights to the portion of the 720 Beatty Street property that is surplus to its needs in exchange for the Developer funding the construction of the New Beatty Steam Plant, the New Plant Premises and new offices for Creative Energy. Under the terms of the TDA, Creative Energy's portion of the costs to construct the New Beatty Steam Plant, the New Plant Premises and new offices for Creative Energy is limited to \$15 million. The BCUC issued the CPCN to Creative Energy in 2020.

In 2021, Creative Energy applied to the BCUC for a CPCN to construct and operate two electric steam boilers, an electric substation and related equipment (Decarbonization Plant). The Decarbonization Plant is to be housed within the New Plant Premises, which must therefore be completed before Creative Energy is able to install and commission the electric boilers and associated equipment which make up the Decarbonization Plant. The BCUC issued the CPCN to Creative Energy in 2022.

Creative Energy states that it was informed by the Developer, in January 2024, that the Developer was experiencing challenges with respect to its development project at the 720 Beatty Street property and that the Developer asked Creative Energy to pause its work on the New Beatty Steam Plant. Later in July 2024, the Developer informed Creative Energy that it had experienced a funding shortfall and was no longer able to complete construction of the New Plant Premises. Creative Energy explains that the Developer's inability to complete the New Plant Premises results in a delay to the in-service date for the Decarbonization Plant. To ensure that the Decarbonization Plant can be completed and placed into service as soon as possible, Creative Energy seeks acceptance of the Expenditure Schedule. Creative Energy estimates that the completion of the Decarbonization Plant will be delayed by at least two years if it does not fund the completion of the New Plant Premises.

Following review of the evidence and submissions in this proceeding, the Panel finds that Creative Energy making the expenditures referred to in the Expenditure Schedule would not be in the public interest. Accordingly, the Panel rejects the Expenditure Schedule. The Panel does not accept that it is necessary for Creative Energy to take on the responsibility of costs, which are the responsibility of the Developer under the TDA, to avoid a potential delay in the Decarbonization Plant in-service date. Creative Energy acknowledges that its rights and remedies under the TDA remain outstanding, and the Panel encourages Creative Energy to find a suitable resolution to the delays in the New Plant Premises. Without any resolution between the Developer and Creative Energy pursuant to the rights and remedies of the TDA, the Panel considers there to be significant uncertainty with respect to the magnitude of costs which may ultimately become the responsibility of Creative Energy and its ratepayers should the Panel accept this Expenditure Schedule.

1.0 Introduction

On September 25, 2024, Creative Energy Vancouver Platforms Inc. (Creative Energy) applied to the British Columbia Utilities Commission (BCUC) for acceptance of a schedule of capital expenditures (Expenditure Schedule). Creative Energy anticipates making capital expenditures to complete the construction of the building space that will house its new steam plant at 720 Beatty Street in Vancouver (New Plant Premises) and to connect Creative Energy's future steam generating electric boilers and associated equipment (Decarbonization Plant) to its existing steam plant (Interconnection Infrastructure) (Application).

Pursuant to section 44.2(1)(b) of the *Utilities Commission Act* (UCA), Creative Energy seeks acceptance of a schedule of expenditures of \$38.5 million to 1) complete construction of the New Plant Premises (\$31.0 million), and 2) install the Interconnection Infrastructure (\$7.5 million).¹

1.1 The Applicant

Creative Energy is the owner and operator of a thermal energy system serving approximately 200 customer buildings in downtown Vancouver. Thermal energy is generated at Creative Energy's steam plant at 720 Beatty Street (Existing Steam Plant) and is distributed to customer buildings by approximately 14 kilometers (km) of buried steam distribution piping. Construction of the steam distribution piping began in 1968, with the last major expansion of steam piping completed in the mid-1990's.²

The indirect beneficial shareholder of Creative Energy is Creative Energy Holdings Limited Partnership. Westbank Holdings Ltd. (through its subsidiary Creative Energy Canada Platforms Corp.) and Emanate Energy are the limited partners of Creative Energy Holdings Limited Partnership.³

1.2 Regulatory Process and Participants

The BCUC established and amended a regulatory timetable for the review of the Application. The regulatory process included:

- Filing of supplemental information by Creative Energy;
- Intervener registration;
- One round of BCUC and intervener information requests (IRs);
- One round of Panel IRs;
- Filing of an evidentiary update by Creative Energy;
- Creative Energy responses to IRs;
- Letters of comment;
- Final arguments by Creative Energy and interveners; and
- Reply argument by Creative Energy.

¹ Creative Energy Final Argument, p. 17, para. 47.

² Creative Energy 2024 Long-Term Resource Plan proceeding, Exhibit B-1, p. 2.

³ Exhibit B-8, BCOAPO IR 5.2. The Panel notes that, on February 26, 2025, Emanate Energy filed an application with the BCUC related to a corporate reorganization that occurred on January 1, 2025 impacting the corporate structure of Creative Energy's indirect equity holders: Emanate Energy Corporate Reorganization Amendment to Order G-200-24 proceeding, Exhibit B-1. Westbank continues to have an indirect equity interest in Creative Energy following this reorganization.

The following parties registered as interveners in this proceeding:

- British Columbia Old Age Pensioners' Organization et al. (BCOAPO);
- BC Sustainable Energy Association (BCSEA);
- Commercial Energy Consumers Association of British Columbia (the CEC);
- Residential Consumer Intervener Association (RCIA); and
- Wall Financial Corporation (WFC).

The BCUC did not receive any letters of comments.

1.3 Legislative Framework

A public utility may file an expenditure schedule with the BCUC containing a statement of capital expenditures the public utility has made or anticipates making during the period addressed by the schedule.⁴ The BCUC must accept an expenditure schedule filed under section 44.2 of the UCA if the BCUC considers that making the expenditures referred to in the schedule would be in the public interest. The BCUC may also accept or reject part of an expenditure schedule.

In determining if the expenditure schedule in this Application is in the public interest, section 44.2 (5) of the UCA states that the BCUC must consider the following:

- (a) the applicable of British Columbia's energy objectives,
- (b) the most recent long-term resource plan filed by the public utility under section 44.1, if any,
- (c) the extent to which the schedule is consistent with the applicable requirements under sections 6 and 19 of the *Clean Energy Act*,
- (d) if the schedule includes expenditures on demand-side measures, whether the demand-side measures are cost-effective within the meaning prescribed by regulation, if any, and
- (e) the interests of persons in British Columbia who receive or may receive service from the public utility.

The Panel notes that considerations (c) and (d) above are not relevant to this decision. Sections 6 and 19 of the *Clean Energy Act* apply only to British Columbia Hydro and Power Authority (BC Hydro) or "prescribed utilities," and there are no demand-side expenditures in the expenditure schedule.⁵ Creative Energy is not a prescribed utility.

1.4 Glossary of Key Terms

There are several key terms referred to throughout this decision. To facilitate understanding the issues that arose during the review of this Application, it is important to establish the definitions of these key terms at the outset.

Existing Steam Plant: Creative Energy's central steam generating equipment and building at 720 Beatty Street. The Existing Steam Plant is the sole source of thermal energy generation connected to the underground steam

⁴ Section 44.2(1)(b) of the UCA.

⁵ Exhibit B-1, p. 13., para. 50.

distribution piping system operated by Creative Energy (Creative Energy's steam distribution piping system is known as the Core Steam Distribution Network).⁶

New Beatty Steam Plant: the steam generating equipment to be procured and installed in a new building (the New Plant Premises, defined below), also located at 720 Beatty Street. The BCUC issued a Certificate of Public Convenience and Necessity (CPCN) to Creative Energy in 2020 for the construction and operation of the New Beatty Steam Plant, as well as the renovation of the Existing Steam Plant.⁷ The New Beatty Steam Plant is to be housed within the New Plant Premises (as defined below).

The Developer: 720 Beatty Limited Partnership, a subsidiary of Westbank Holding Ltd.⁸ The Developer is redeveloping the land at 720 Beatty Street that is described in the TDA (defined below) as surplus to the needs of Creative Energy.⁹

Trust and Development Agreement (TDA): an agreement between the Developer and Creative Energy, pursuant to which Creative Energy transfers to the Developer the property rights to the land at 720 Beatty Street that are surplus to the needs of Creative Energy, in exchange for the Developer funding the construction of the New Beatty Steam Plant, as well as the Developer constructing the building space to house the New Beatty Steam Plant and constructing new offices for Creative Energy.¹⁰ Pursuant to the TDA, Creative Energy is responsible for up to \$15 million of the cost to procure and install the New Beatty Steam Plant, to construct the building space to house the New Beatty Steam Plant (i.e. New Plant Premises, as defined below), and to construct new offices for Creative Energy. The Developer is responsible for costs in excess of \$15 million.¹¹

New Plant Premises: the building space that will house the New Beatty Steam Plant. Both the New Plant Premises and the adjacent Existing Steam Plant are located at 720 Beatty Street.¹² In addition to housing the New Beatty Steam Plant, the New Plant Premises is designed to house the Decarbonization Plant (as defined below). Construction of the New Plant Premises is the responsibility of the Developer, pursuant to the TDA. The cost to complete construction of the New Plant Premises, as provided in the Application, is estimated to be \$31.0 million.¹³

Interconnection Infrastructure: the equipment necessary to connect the Decarbonization Plant electric boilers, to be housed in the New Plant Premises, to the Existing Steam Plant. The cost to construct the Interconnection Infrastructure is estimated to be \$7.5 million.¹⁴ Some components of the Interconnection Infrastructure would

⁶ Creative Energy Application for a Certificate of Public Convenience and Necessity for Beatty-Expo Plants and Reorganization, Decision and Order G-38-19 dated February 19, 2029, p. 5.

⁷ Creative Energy Application for a Certificate of Public Convenience and Necessity for Beatty-Expo Plants and Reorganization, BCUC Decision and Order C-1-20 dated March 5, 2020 (Order C-1-20).

⁸ Exhibit B-4, Attachments to 2.1 Amended and Restated Trust and Development Agreement, p. 5.; Exhibit B-8, BCOAPO IR 5.2. The Panel notes that, although the "Developer" is defined as "720 Beatty Limited Partnership" in the TDA, Creative Energy defines "Developer" as "Westbank Projects Corp." in its Application (Exhibit B-1, p.3, para. 8). In this decision, the Panel refers to 720 Beatty Limited Partnership as the Developer.

⁹ Exhibit B-1, p. 3, para. 8.

¹⁰ Exhibit B-4, Attachments to 2.1 Amended and Restated Trust and Development Agreement, pp. 5-6.

¹¹ Exhibit B-4, Trust and Development Agreement, section 8.1(a).

¹² Exhibit B-1, pp. 2-3, para. 1 & 7.

¹³ Exhibit B-1, p. 2, para. 2.

¹⁴ Ibid.

have been built as part of the New Beatty Steam Plant under the TDA.¹⁵ The value of the scope elements that are not incremental to the scope of work under the TDA is approximately \$6.41 million.¹⁶

Expenditure Schedule: the combined cost to complete construction of the New Plant Premises and to install the Interconnection Infrastructure, for which Creative Energy seeks acceptance from the BCUC. Creative Energy seeks acceptance of an expenditure of \$38.5 million, which is the combined cost of these two items.

Decarbonization Plant: steam generating equipment consisting of two electric boilers, an electric substation and associated equipment. The BCUC issued a CPCN to Creative Energy in 2022 for the Decarbonization Plant¹⁷. The New Plant Premises is intended to house the two new electric boilers of the Decarbonization Plant, as well as the steam generating equipment of the New Beatty Steam Plant. The operation of the electric boilers that make up the Decarbonization Plant will rely on New Beatty Steam Plant equipment, such as water softening, chemical treatment, condensate capture and de-aeration.¹⁸

1.5 Previous BCUC Decisions Regarding the New Beatty Steam and Decarbonization Plants

This section provides background information regarding the New Beatty Steam Plant and Decarbonization Plant to explain how these two Creative Energy projects are related to one another, the sequence of BCUC decisions and specific considerations for each project. As noted above, both the New Beatty Steam Plant and the Decarbonization Plant are to be housed within the New Plant Premises, which must therefore be completed before Creative Energy is to install and commission either plant.

New Beatty Steam Plant Project

In 2018, Creative Energy applied to the BCUC for a CPCN to construct and operate the New Beatty Steam Plant and to renovate the Existing Steam Plant. Creative Energy explained that the New Beatty Steam Plant Project provided an opportunity to address issues with the Existing Steam Plant, such as conformance to modern standards for seismic and fire resistance, and availability of suitable office space for staff. It also submitted that it needed to replace some of the natural gas fired boilers because they were at or near the end of life.¹⁹

As part of the New Beatty Steam Plant project, Creative Energy entered into the TDA with the Developer.²⁰ The TDA established the terms under which Creative Energy would transfer to the Developer its rights to the portion of the 720 Beatty Street property that is surplus to its needs in exchange for the Developer funding the construction of the New Beatty Steam Plant, the New Plant Premises and new offices for Creative Energy. The parties estimated that the New Beatty Steam Plant would cost approximately \$53.1 million. However, under the terms of the TDA, Creative Energy's portion of the costs to construct the New Beatty Steam Plant, the New Plant Premises and new offices for Creative Energy is limited to \$15 million.

The BCUC issued the CPCN to Creative Energy in 2020.²¹ The original design for the New Beatty Steam Plant project included the substantial renovation of the Existing Steam Plant and the construction of a new, smaller off-site steam generating plant within BC Place Stadium (Original Design). The Original Design for the New

¹⁵ Components that were planned to be procured and installed as part of the New Beatty Steam Plant include: water softening system, steam header and tie-in to the existing steam distribution system, and safety relief vent piping. See Exhibit B-4, Attachment 3.3.b, Basis of Estimate – Interconnection Infrastructure.

¹⁶ Exhibit B-7, BCUC IR 6.5.

¹⁷ BCUC Order C-5-22.

¹⁸ Creative Energy Application for a Certificate of Public Convenience and Necessity for the Core Steam System Decarbonization Project, Decision and Order C-5-22 dated September 15, 2022 (Order C-5-22), p. 34.

¹⁹ Order C-1-20, p. 30.

²⁰ Creative Energy Application for a CPCN for the Beatty-Expo Plants and Reorganization proceeding, Exhibit B-1-2, Exhibit B-23.

²¹ BCUC Order C-1-20.

Beatty Steam Plant project included the purchase of two new natural gas-fired steam boilers to replace Creative Energy's three oldest natural gas-fired steam boilers. The order issuing the CPCN stated that BCUC approval is required for any changes to the TDA with respect to boiler numbers, any individual or total boiler capacity or their location. That order also stated that the issuance of the CPCN was subject to the total cost to be added to Creative Energy's rate base after completion of the project being limited to \$15 million. Requests for any expenditures in addition to this limit must be filed with the BCUC for review and approval.²²

New Beatty Steam Plant Project Material Change

In 2022, Creative Energy sought approval of material changes for the New Beatty Steam Plant related to new boiler locations and capacities.²³ The following material changes were proposed:

- Instead of the Original Design, Creative Energy proposed to pursue an alternative design, which included four new boilers and steam plant equipment in the New Plant Premises (Final Design);
- Under the Final Design, none of the Existing Steam Plant boilers would be retained, there would be no steam plant in BC Place Stadium and the Existing Steam Plant would be decommissioned once the New Beatty Steam Plant was constructed and commissioned;
- The total cost estimate of the Final Design of the New Beatty Steam Plant increased to approximately \$74 million. However, Creative Energy's costs to be included in rate base remained \$15 million, pursuant to an amended TDA filed with the BCUC.
- The total cost estimate of the Final Design does not include the cost to construct the New Plant Premises.

Creative Energy explained that once the Developer began working on the detailed design and pre-construction planning for the Original Design, it realized that some challenges it had previously identified with the Original Design could be resolved by the Final Design. The Developer and Creative Energy completed significant study work and concluded that the Final Design was a lower risk and lower cost approach as compared to the Original Design.²⁴

Under the Final Design, Creative Energy expected the New Beatty Steam Plant to be in-service by the first quarter of 2024.²⁵

The BCUC approved the material changes to the New Beatty Steam Plant project.²⁶

Decarbonization Plant Project

In 2021, Creative Energy applied to the BCUC for a CPCN to construct and operate two electric steam boilers, an electric substation and related equipment (Decarbonization Plant), to be located in the New Plant Premises, and for the acceptance of an expenditure schedule for Creative Energy's contribution to BC Hydro's costs to construct a new 1.2 km high voltage transmission line between the New Plant Premises and BC Hydro's Murrin Substation. The Decarbonization Plant and the new transmission line are collectively known as the Decarbonization Plant Project.

²² Ibid.

²³ Pursuant to the terms of BCUC Order C-1-20.

²⁴ Creative Energy Beatty-Expo Plants Redevelopment Final Design proceeding, Exhibit B-4, BCUC IR 1.1 & 2.1.

²⁵ Creative Energy Beatty-Expo Plants Redevelopment Final Design proceeding, Exhibit B-1, p. 4.

²⁶ Creative Energy Expo-Beatty Plants Redevelopment Project, Order C-1-20 Compliance Filing, Decision and Order G-360-22 dated December 13, 2022 (Order G-360-22).

Creative Energy submitted that the Decarbonization Plant would enable Creative Energy to generate low carbon steam to support its customers' compliance with current and future regulatory requirements to reduce greenhouse gas (GHG) emissions from buildings. Creative Energy stated that it is obliged to provide this low carbon service to both retain existing customers and attract new ones.²⁷

Creative Energy explained that it intended the steam generating capacity of the two electric boilers to supplement the steam generation provided by the new natural gas-fired boilers installed as part of the New Beatty Steam Plant. The total estimated cost of the Decarbonization Plant was approximately \$37.5 million, which included Creative Energy's contributions to the new transmission line to be built and operated by BC Hydro. The \$37.5 million cost estimate for the Decarbonization Plant Project did not include the federal and provincial grants discussed below. The application for the CPCN did not report any cost associated with siting the Decarbonization Plant components in the New Plant Premises.²⁸

Creative Energy stated that the project was eligible for approximately \$13.3 million in grant funding from the federal and provincial governments.²⁹ The federal government would contribute up to 25 percent of total eligible Decarbonization Plant costs, while the provincial government would fund up to 50 percent of the cost of the new BC Hydro transmission line. To qualify for federal government funding, Creative Energy must displace approximately 85,000 megawatt hours (MWh)/year of natural gas generated steam to serve existing customers.³⁰ To qualify for provincial government funding, Creative Energy must install more than 5 megawatts (MW) of new electricity load.³¹

The BCUC issued the CPCN to Creative Energy in 2022, noting that the Decarbonization Plant responds to the City of Vancouver's low carbon policy to reduce GHG emissions by transitioning away from complete reliance on the combustion of a carbon-intensive fuel source to produce thermal energy.³² Although the capacity of the electric boilers exceeded what the BCUC thought would be required "in the coming years", the BCUC concluded that the electric boiler capacity was appropriately sized because of the need to meet the eligibility criteria of both the federal and provincial grants.³³ The order issuing the CPCN directed Creative Energy to file a material change report in the event of changes that would reasonably be expected to have a significant impact on the project schedule, cost or scope.³⁴

Decarbonization Plant Project Material Changes

Creative Energy filed a material change report on the Decarbonization Plant Project in 2023. Creative Energy noted that the capital cost estimate for the Decarbonization Plant Project had increased from \$37.5 million to \$52.6 million, and it proposed changes to the project scope, including the purchase of a second transformer to be installed in the new electric substation housed within the New Plant Premises.³⁵

²⁷ Creative Energy Application for a CPCN for the Core Steam System Decarbonization Project proceeding, Exhibit B-1-1, p. 18.

²⁸ Creative Energy Application for a CPCN for the Core Steam System Decarbonization Project proceeding, Exhibit B-1, Sections 6 - 7.

²⁹ Order C-5-22, p. 11.

³⁰ Ibid., p. 10.

³¹ Ibid., p. 11.

³² Ibid., p. 18.

³³ Ibid.

³⁴ Order C-5-22, Appendix A, p. 1.

³⁵ Creative Energy Core Steam Decarbonization Material Change Report (No. 1) proceeding, Exhibit B-1, p. 1 of 13.

Creative Energy explained that the project cost increases were due in part to the scope change noted above, as well as inflation, higher foreign exchange costs and the fact that BC Hydro's costs to build the transmission line to Murrin substation had increased from \$17 million to \$23.7 million.³⁶

Creative Energy filed a second material change report on the Decarbonization Plant Project in 2024, noting that the overall project capital cost had increased to approximately \$60.3 million.³⁷ Creative Energy stated that inflationary pressures and increases in the cost of labour contributed significantly to this overall project cost increase.³⁸

1.6 Trust and Development Agreement

This section provides summaries of the obligations of Creative Energy and the Developer under the TDA. In its 2018 application for a CPCN for the New Beatty Steam Plant, Creative Energy emphasized that the TDA was a key component of the proposed project. Creative Energy described the TDA as follows:

A key component of the proposed [New Beatty Steam Plant] project is the Trust and Development Agreement between Creative Energy and the Developer of the areas adjacent to and above the existing steam plant at 720 Beatty Street. This agreement provides for Creative Energy to transfer to the Developer, for improvement by the Developer, the portion of the lands and airspace that is surplus to the needs of Creative Energy in its operation as a utility. Following redevelopment, Creative Energy will retain fee simple ownership in one or more air space parcels for the refurbished Beatty plant and new office space, along with statutory rights of way for any utility infrastructure located on the redevelopment property. The Trust and Development Agreement also establishes roles and responsibilities for the Proposed Project, including the allocation of project costs and risks.³⁹

Creative Energy explained during the BCUC's review of the 2018 New Beatty Steam Plant CPCN application that the Developer and Creative Energy had agreed that, to reduce the overall bill impact of the New Beatty Steam Plant project, Creative Energy would be responsible for \$15 million in related costs and the Developer would pay the balance.⁴⁰ The \$15 million cost to Creative Energy stipulated in the TDA is a negotiated amount in consideration of the following:⁴¹

- the avoided future cost for replacement of equipment at or near end of life;
- the long-term benefits of the New Beatty Steam Plant Project to existing customers in the form of continued service reliability and increased system efficiency;
- the risks to Creative Energy, its existing customers and its shareholders that Creative Energy will not be able to retain or acquire customers if it must significantly increase customer bills; and
- the ability for the Developer to develop the land at 720 Beatty Street that is surplus to the needs of Creative Energy.

Creative Energy filed an amended TDA with the BCUC in 2022, when it sought approval of material changes to the New Beatty Steam Plant project. In its decision accepting the material changes to the New Beatty Steam Plant, the BCUC found that the Final Design complied with Order C-1-20 and considered the TDA, as amended,

³⁶ Ibid., p. 7 of 13.

³⁷ Creative Energy Final Argument, p. 14.

³⁸ Ibid.

³⁹ Creative Energy Application for a CPCN for the Beatty-Expo Plants and Reorganization proceeding, Exhibit B-1, p. 2.

⁴⁰ Ibid., p. 62.

⁴¹ Ibid.

to continue to be in the public interest.⁴² The BCUC also noted that it was satisfied that the capital costs to be included in Creative Energy's rate base would remain at \$15 million under the Final Design.⁴³

1.6.1 Creative Energy Obligations

The TDA states that "Creative Energy shall, subject to BCUC approval, be responsible for payment of the sum of \$15,000,000 in connection with the construction of the New Plant Premises, the Project Utility Infrastructure and the New Office."⁴⁴ The "Project Utility Infrastructure" refers to the New Beatty Steam Plant, or in other words all the natural gas-fired boilers and associated steam generating equipment housed in the New Plant Premises. The "New Office" refers to approximately 4,000 square feet of office space to be constructed for the benefit of Creative Energy by the Developer.⁴⁵ Creative Energy is required to pay the Developer \$15 million in two installments; \$9 million at the Temporary Service Commencement Date and \$6 million at the Final Service Commencement Date.⁴⁶ The Temporary Service Commencement Date occurs when the New Beatty Steam Plant is completed and put into service using a temporary control room, temporary utility connections and temporary flue stack.⁴⁷ The Final Service Commencement Date occurs when permanent utility connections and flue stack are installed, approximately 2.5 years after the Temporary Service Commencement Date.⁴⁸

Creative Energy is responsible for managing the design and construction of the major equipment in the New Beatty Steam Plant (e.g. new natural-gas fired boilers, pumps, chemical treatment, electrical and control equipment, etc.).⁴⁹

1.6.2 Developer Obligations

Pursuant to the TDA, the Developer agreed to construct the New Plant Premises and new offices for the benefit of Creative Energy. The Developer also agreed to pay for all costs of the New Beatty Steam Plant, as well as the New Plant Premises and new offices, that exceed \$15 million.⁵⁰

1.7 Why is Creative Energy seeking acceptance of an expenditure schedule?

Creative Energy states that it was informed by the Developer, in January 2024, that the Developer was experiencing challenges with respect to its development project at the 720 Beatty Street property and asked Creative Energy to pause its work on the New Beatty Steam Plant. The Developer indicated that although it had been unable to secure the funding to continue with its proposed office development project at 720 Beatty Street, it had secured sufficient funding to complete construction of the New Plant Premises.⁵¹ Then, in July 2024, the Developer informed Creative Energy that it had experienced a funding shortfall and was no longer able to complete construction of the New Plant Premises to the point of obtaining an occupancy permit.⁵²

Creative Energy explains that the Developer's inability to complete the New Plant Premises results in a delay to the in-service date for the Decarbonization Plant, because it is to be housed inside the New Plant Premises. To ensure that the Decarbonization Plant can be completed and placed into service as soon as possible, Creative

⁴² Order G-360-22, pp. 9-10.

⁴³ Ibid.

⁴⁴ Exhibit B-7, BCUC IR 19.1.

⁴⁵ Exhibit B-4, Attachment 2.1, TDA, p. 10.

⁴⁶ Exhibit B-7, BCUC IR 19.1.

⁴⁷ Creative Energy Beatty-Expo Plants Redevelopment Final Design proceeding, Exhibit B-4, BCUC IR 3.5.

⁴⁸ Ibid., BCUC IR 3.1.

⁴⁹ Exhibit B-4, Attachment 2.1, TDA, Schedule G Responsibilities Matrix.

⁵⁰ Exhibit B-4, Attachment 2.1, TDA, p. 6.

⁵¹ Exhibit B-1, pp. 4-5, para. 17.

⁵² Ibid., p. 5, para. 21.

Energy seeks acceptance of an expenditure schedule of \$38.5 million: \$31.0 million to fund the completion of the New Plant Premises construction and \$7.5 million to install the Interconnection Infrastructure.⁵³

Creative Energy delivered a notice of default under the TDA to the Developer in August 2024, in anticipation of the Developer's imminent failure to continue to fund the construction of the New Plant Premises.⁵⁴ In response to the notice of default, the Developer informed Creative Energy that it was committed to continue working on the New Plant Premises until it had exhausted its available funding, which it expected would be the end of November 2024. Creative Energy then conditionally withdrew the notice of default, without prejudice to its right to reinstate the notice and pursue its legal and equitable rights and remedies immediately.⁵⁵

The Developer indicated to Creative Energy that, once it ran out of funds in November 2024, it was unlikely to secure additional financing until after it had redesigned and obtained rezoning for the office development project at 720 Beatty Street. The Developer stated that, if it submitted rezoning applications by December 2024, it expected the rezoning process to be completed sometime between January and June 2026.⁵⁶

Creative Energy believes that a significant portion of the expenditures in the Expenditure Schedule are the responsibility of the Developer under the TDA, because they are expenditures necessary to complete the New Plant Premises. Creative Energy states that it intends to address these amounts as part of future negotiations with the Developer regarding the TDA, or to otherwise seek to recover these costs from the Developer, but that it cannot wait for those processes to conclude. It submits that the urgency of the situation in which it finds itself means that it cannot wait to file this Application.⁵⁷

1.8 Scope of Proposed Expenditure Schedule

Creative Energy seeks BCUC acceptance of an Expenditure Schedule (\$38.5 million) to fund the construction of both the New Plant Premises (\$31.0 million) and the Interconnection Infrastructure (\$7.5 million). The following section describes the proposed scope and activities in the Expenditure Schedule.

New Plant Premises

Creative Energy expects the construction of the New Plant Premises to be approximately 80 percent complete at the time that the Developer expends its remaining funds. The New Plant Premises consists of a concrete core and shell structure adjacent to the Existing Steam Plant. The core and shell provide the structure within which the New Beatty Steam Plant, the Decarbonization Plant and the Interconnection Infrastructure will be housed.⁵⁸ Creative Energy summarizes the scope of work that must be completed in order to receive an occupancy permit for the New Plant Premises, including:⁵⁹

- Retain trade contractors to complete site work related to, among other items: i) HVAC and plumbing systems, ii) electrical systems, iii) structural steel and concrete, iv) glazing, v) architectural finishes;
- Purchase material and equipment required to complete the New Plant Premises;
- Retain engineering consultants to complete design, field engineering, and construction administration activities; and,

⁵³ Ibid., p. 6, para. 28.

⁵⁴ Exhibit B-7, BCUC IR 19.4.

⁵⁵ Ibid.

⁵⁶ Exhibit B-1, pp. 5-6, para. 24.

⁵⁷ Exhibit B-1, p. 3, para. 11.

⁵⁸ Exhibit B-4, Attachments to 3.3, p. 2.

⁵⁹ Exhibit B-1, pp. 8-9, para. 35.

- Retain a construction manager or general contractor to operate the construction site.

Creative Energy states that if the Expenditure Schedule is approved, it expects the Developer will remain responsible for the construction of the New Plant Premises, while Creative Energy will assume responsibility for funding the construction costs.⁶⁰

Interconnection Infrastructure

Creative Energy explains that the Decarbonization Plant was designed to rely on the pumps, water treatment systems and other equipment of the New Beatty Steam Plant. As progress on the New Beatty Steam Plant has been put on hold indefinitely due to the Developer's funding shortfall, Creative Energy proposes to design and construct infrastructure to connect the steam output of the electric boilers in the Decarbonization Plant to the adjacent Existing Steam Plant. The scope of the Interconnection Infrastructure includes retaining contractors and purchasing materials for the following:⁶¹

- Steam piping connecting the new electric boilers to the existing distribution steam network;
- New water softeners, and associated plant for treatment and connection to raw water supply;
- Temporary piping from the new water softeners to the Existing Steam Plant deaerator system and distribution pumps; and
- Associated equipment with new electric boilers, including safety relief piping, compressed air system, blowdown/condensate tank, air supply fans, control systems.

2.0 Is the Expenditure Schedule in the public interest?

As noted above, Creative Energy seeks acceptance of the Expenditure Schedule to ensure that the Decarbonization Plant can be placed into service as soon as possible. This section explores the following questions:

- What is the impact of a delay to the in-service date of the Decarbonization Plant?
- What is the estimated cost of the Expenditure Schedule and the impact on customer rates?
- Why is Creative Energy unable to rely on the rights and remedies in the TDA?
- Does the Expenditure Schedule align with Creative Energy's long-term resource planning and BC's energy objectives?

This section concludes with the Panel's overall determination with respect to the Expenditure Schedule.

2.1 Impact of Decarbonization Plant Delays

Creative Energy estimates that the completion of the Decarbonization Plant will be delayed by at least two years if it does not fund the completion of the New Plant Premises.⁶² It attributes this delay to the time the Developer needs to design a new, non-office development project at the 720 Beatty Street site, complete the rezoning and development permit process and secure one or more tenants for the development project.⁶³

⁶⁰ Exhibit B-7, BCUC IR 3.1.

⁶¹ Exhibit B-1, pp. 9-11, para. 41.

⁶² Ibid., p. 6, para. 26.

⁶³ Exhibit B-7, BCUC IR 13.1.1.

Creative Energy states that this delay puts the benefits of the Decarbonization Plant at risk in two ways. Creative Energy states there is 1) a risk of losing the grant funding it has secured, and 2) a risk that Creative Energy will not be able to provide its customers with low-carbon service supported by the Decarbonization Project when needed.⁶⁴ The following subsections review these two risks.

2.1.1 Decarbonization Plant Project Grant Funding

Government of BC CleanBC Facilities Electrification Fund

Creative Energy has secured a grant through the Government of BC CleanBC Facilities Electrification Fund (CFEF) for 50 percent of the new transmission line required by the Decarbonization Plant Project, up to a maximum of \$11,350,000.⁶⁵ Creative Energy notes that pursuant to the agreement for the CFEF funds, BC Hydro's construction of the new transmission line to the Decarbonization Plant must be substantially completed by October 31, 2025.⁶⁶ If Creative Energy is not able to comply with its CFEF agreement with BC Hydro, BC Hydro may withhold funds from Creative Energy or require repayment of funds already provided.⁶⁷ However, Creative Energy states, in supplemental information, that BC Hydro has confirmed that the CFEF program is extended to 2033 and it has no concerns with amending the completion date to March 31, 2026 or later, if necessary.⁶⁸

Notwithstanding the extension to CFEF grant funding eligibility, Creative Energy notes that risks to accessing the CFEF remain if the government discontinues the funding program, or if there are insufficient funds in the program when the new transmission line is completed.⁶⁹

Government of Canada Low Carbon Economy Fund

Creative Energy has also secured a grant under the Government of Canada's Low Carbon Economy Fund (LCEF) for 25 percent of eligible expenditures related to the Decarbonization Plant Project, up to a maximum of \$8,600,790.⁷⁰ The deadline to claim funding from the LCEF, stipulated in the agreement between Creative Energy and the Government of Canada, is March 31, 2025. To date, Creative Energy has claimed \$6,288,415.37 in funding.⁷¹

Creative Energy filed a request with the Government of Canada to extend the LCEF funding deadline on October 30, 2024.⁷² Environment and Climate Change Canada staff have informed Creative Energy, however, that the March 31, 2025 funding deadline will not be extended and that there will be no grant funding provided for expenditures incurred after this date.⁷³ Since the Decarbonization Plant Project will not be completed by March 31, 2025, Creative Energy will be unable to claim approximately \$2.3 million of grant funding. Further, Creative Energy states that the federal government may require Creative Energy to reimburse the LCEF amounts received to date if the Decarbonization Plant Project is delayed or compromised.⁷⁴

Creative Energy states that it may be possible to revise the scope of the project defined in the LCEF agreement to maximize the amount of grant funding, for example, by rescoping the project to only include engineering and

⁶⁴ Exhibit B-1, p. 6, para. 25.

⁶⁵ Exhibit B-1, p. 16, para. 58.

⁶⁶ Exhibit B-1, pp. 14-16, para. 57.

⁶⁷ Ibid.

⁶⁸ Exhibit B-4, p. 3; Exhibit B-4, Attachment 1.1.g.

⁶⁹ Ibid.

⁷⁰ Exhibit B-1, pp. 14-16, para. 57.

⁷¹ Exhibit B-7, BCUC IR 8.3.

⁷² Ibid., BCUC IR 9.3.

⁷³ Exhibit B-12, p. 1.

⁷⁴ Exhibit B-1, pp. 14-16, para. 57.

equipment procurement activities.⁷⁵ Creative Energy states that if it can rescope the project sufficiently to support the \$6.3 million of grant funding already provided, the risk of the federal government requesting repayment will be mitigated.⁷⁶ Creative Energy submits that if the Expenditure Schedule is not approved, this would create uncertainty regarding the completion of the Decarbonization Plant Project, which could impact the Government of Canada's acceptance of a revised project scope or an extension to the LCEF deadline.⁷⁷

Positions of the Parties

The CEC acknowledges the potential risks to the grant funding that Creative Energy describes but disputes that the risk is as dire as Creative Energy portrays. It notes that BC Hydro has not indicated any concerns with a delay. Further, Creative Energy acknowledges that it is already not possible to complete the Decarbonization Plant Project by March 31, 2025, because of the Developer's delay in constructing the New Plant Premises. The CEC submits that since the Developer has caused the delay it should bear the resulting costs, and it does not accept Creative Energy's position that risk to the funding should be borne by ratepayers.⁷⁸

BCOAPO points to Creative Energy's delay in informing the federal government of facts or events that may compromise or delay the project.⁷⁹

Panel Discussion

The Panel recognizes that Creative Energy may lose some of the grant funding that it has been awarded for the Decarbonization Plant Project, due to the Developer's inability to complete construction of the New Plant Premises, which in turn hinders Creative Energy's ability to complete the Decarbonization Plant Project. The Panel also recognizes that there is a risk that the federal government may require Creative Energy to repay some, or all, of the grant funds received to date.

The Panel acknowledges that a delay in the Decarbonization Project gives rise to the risk of losing grant funding, which may require the associated costs to be recovered from other sources. However, this is only one of several factors relevant to our overall determination and should not displace the importance of the other factors discussed below.

2.1.2 Creative Energy's Ability to Meet Customer Demand for Low Carbon Energy

Creative Energy states there is a recognized need for the Decarbonization Plant as it will provide low carbon energy to Creative Energy's existing and future customers.⁸⁰

Existing Customers

Creative Energy has identified potential demand for low carbon energy from existing customers, driven by the need to comply with the City of Vancouver's GHG emission limits or the environmental objectives held by individual building owners. The City of Vancouver's Annual Greenhouse Gas and Energy Limits By-Law No. 13472 (By-Law), which came into force on January 1, 2023, established GHG emission limits for existing buildings that have a floor space greater than a specified threshold and the requirement to pay \$350 per tonne of GHG

⁷⁵ Exhibit B-13, BCUC Panel IR 1.3.

⁷⁶ Ibid., BCUC Panel IR 1.4.1.

⁷⁷ Exhibit B-13, BCUC Panel IR 1.5.

⁷⁸ The CEC Final Argument, p. 22.

⁷⁹ BCOAPO Final Argument p. 11.

⁸⁰ Exhibit B-1, p. 14, para. 56.

emissions that exceed the limit. The GHG emission limits are effective January 1, 2026.⁸¹ Creative Energy has identified 16 customer buildings that are subject to the By-Law. Five of these have “indicated they look forward to reviewing more details regarding the [low carbon service] opportunity” to be offered by Creative Energy through its Decarbonization Plant.⁸²

In total, Creative Energy has identified between 29.6 gigawatt-hour (GWh) to 56.9 GWh of combined By-Law compliance-driven and voluntary demand for low carbon energy in 2026.⁸³ Of this, 13.4 GWh is allocated to the 16 customer buildings subject to the By-Law.⁸⁴ If Creative Energy is not able to provide sufficient low carbon energy in 2026 to these buildings, the owners will be liable for approximately \$1.2 million in annual permit fees beginning in 2026.⁸⁵

Creative Energy has informed the City of Vancouver that it plans to use renewable natural gas service purchased from FortisBC Energy Inc. (FEI’s RNG Service) as a temporary bridging measure until the Decarbonization Plant is completed.⁸⁶ Creative Energy submits that, while the City of Vancouver’s Low Carbon Energy Systems policy allows it to use FEI’s RNG Service as an interim measure, this is not a viable long-term substitute for completing the Decarbonization Plant.⁸⁷

Creative Energy states that while customers have shown interest in low carbon energy, only one, the Butterfly Building, has contracted to receive low carbon energy from Creative Energy.⁸⁸

New Customers

Creative Energy has identified potential demand for low carbon service (approximately 18 GWh)⁸⁹ from new customers. However, the buildings most likely to connect are on hold due to “the macroeconomic state of the real estate market or have paused discussions with Creative Energy until Creative Energy can provide further certainty of the availability of its low carbon steam product.”⁹⁰ Creative Energy is unable to provide any specific forecast dates for the connection of a new customer building, given the “uncertainty in the commercial real estate market.”⁹¹ Creative Energy states that thus far it has not lost any opportunities to connect new building developments because of the delay in completing the Decarbonization Plant.⁹²

Positions of the Parties

BCSEA agrees with Creative Energy that while FEI’s RNG Service could provide some interim relief, it would not be a substitute for the Decarbonization Plant. It also submits that delaying the Decarbonization Plant could jeopardize Creative Energy’s ability to attract and retain customers who want or legally require low carbon heating energy.⁹³

⁸¹ Exhibit B-4, p. 5; [City of Vancouver Annual Greenhouse Gas and Energy Limits By-Law No. 13472](#).

⁸² Exhibit B-7, BCUC IR 10.1.

⁸³ Exhibit B-4, p. 6; As a comparison, Creative Energy forecast 374 GWh of demand from all its customers in 2024 (BCUC Order G-272-24, Creative Energy 2024 RRA).

⁸⁴ Exhibit B-4, p. 6.

⁸⁵ Ibid.

⁸⁶ Exhibit B-7, BCUC IR 2.1; Exhibit B-4, p. 15.

⁸⁷ Exhibit B-7, BCUC IR 2.2; Exhibit B-4, p. 16.

⁸⁸ Exhibit B-7, BCUC IR 10.4.

⁸⁹ Exhibit B-4, p. 8.

⁹⁰ Ibid.

⁹¹ Ibid., Exhibit B-7, BCUC IR 11.6.

⁹² Exhibit B-7, BCUC IR 11.1.

⁹³ BCSEA Final Argument, p. 2.

The CEC considers that Creative Energy has been proactive in meeting with the City of Vancouver with respect to the possible delay of the Decarbonization Plant, and in establishing FEI's RNG Service as an appropriate bridging measure. The CEC submits that FEI's RNG Service offers an important opportunity to enable Creative Energy to sort out the New Plant Premises completion with the Developer, without relying on ratepayer involvement.⁹⁴ The CEC also submits that Creative Energy's proposed rate impacts can already be expected to have a negative impact on customer demand.⁹⁵

BCOAPo notes that the City of Vancouver has acknowledged Creative Energy's steam service to be an acceptable decarbonization pathway when produced by either electricity or the FEI's RNG Service.⁹⁶

Panel Discussion

The Panel accepts that Creative Energy will have to provide low carbon energy to certain customers, if those customers are to comply with City of Vancouver GHG emission requirements. As Creative Energy demonstrates, the City of Vancouver By-Law establishes GHG emission limits that require that Creative Energy supply 13.4 GWh of low carbon energy to 16 customer buildings by January 2026, failing which the building owners will be required to pay a combined \$1.2 million in annual permit fees. However, the Panel notes that the City of Vancouver accepts thermal energy generated using FEI's RNG Service as an interim approach for these customer buildings to comply with the GHG emission limits. The Panel also notes that, should Creative Energy elect to offer a low carbon service to specific customers, Creative Energy must seek BCUC approval for the associated low carbon service rate prior to charging its customers for this service. **Accordingly, the Panel directs Creative Energy to file an application with the BCUC for approval of any low carbon service rate at least six months before Creative Energy's requested effective date for the low carbon service rate.** The Panel expects Creative Energy to diligently consult with the 16 identified compliance-driven customers, and any other identified customers interested in this low carbon steam service, prior to submitting any associated rate application to the BCUC.

The Panel accepts the importance that Creative Energy places on decarbonizing its steam generating capacity. However, Creative Energy has not demonstrated to the Panel that the voluntary demand for low carbon energy is imminent, nor has it quantified what that demand is or might soon be.

The risk that Creative Energy will not be able to provide its customers with low carbon energy when they require it may be mitigated by using FEI's RNG Service. This risk is, therefore, one factor among several that the Panel considers in its overall public interest determination but is not an overriding one.

2.2 Cost Estimate

Creative Energy estimates a total cost of \$38.5 million to complete the New Plant Premises (\$31.0 million) and the Interconnection Infrastructure (\$7.5 million).⁹⁷ It acknowledges that various factors, such as constructability issues and scope increases, may result in changes to these forecast costs.⁹⁸ Further, Creative Energy acknowledges that the capital cost estimates are missing critical items and, therefore, there is a high risk of cost overruns.⁹⁹ Creative Energy confirms that risks identified in the Risk Register & Response Plan were used

⁹⁴ The CEC Final Argument, p. 26.

⁹⁵ Ibid., p. 23.

⁹⁶ BCOAPo Final Argument, p. 10.

⁹⁷ Exhibit B-1, pp. 2, 20. The cost estimates are in nominal 2024 dollars (Exhibit B-11, CEC IR 4.1).

⁹⁸ Exhibit B-7, BCUC IR 18.1.

⁹⁹ Exhibit B-4, Attachments to 3.5, Risk Register & Response Plan, p. 1.; Exhibit B-7, BCUC IR 19.6.

qualitatively in the determination of contingency in the cost estimates for the New Plant Premises and the Interconnection Infrastructure.¹⁰⁰

Creative Energy specifies that the New Plant Premises cost estimate is a Class B estimate in accordance with the Canadian Construction Association estimate classification system, which Creative Energy states is approximately equivalent to a Class 3 cost estimate of the Association for the Advancement of Cost Engineering (AACE).¹⁰¹ Creative Energy considers the Interconnection Infrastructure cost estimate to be at an AACE Class 5 level of accuracy, which has an expected range of -50 percent to +100 percent.¹⁰²

Creative Energy explains that it prepared the New Plant Premises cost estimate based on the project budget from the Developer and input from the Construction Manager, Peak Construction. It states that trade contracts are in place for the core and shell completion, but no trade contracts have been placed for any further work. Trade contractor pricing has not been obtained for any work not already under contract, and Creative Energy expects that the cost of this work will increase when updated contractor pricing is obtained.¹⁰³ Creative Energy prepared the Interconnection Infrastructure cost estimate with input from trade contractors and engineering consultants.¹⁰⁴

If the Expenditure Schedule is accepted, Creative Energy explains that the Developer will manage the construction of the New Plant Premises and it will review New Plant Premises expenditures when the Developer requests funding.¹⁰⁵ Creative Energy will track the expenditures against the established budget and maintain updated forecasts from the Developer and the site Construction Manager to ensure costs are controlled.¹⁰⁶ Creative Energy states that it expects to implement an agreement with the Developer for the oversight of work and to fund the remainder of the New Plant Premises work.¹⁰⁷ This agreement will relate primarily to funding procedures, including timing and approval of cash and invoice payments, as well as customary terms relating to required security, financing costs and repayment obligations.¹⁰⁸

Creative Energy states that of the \$7.5 million Interconnection Infrastructure costs, approximately \$1.07 million addresses temporary elements that will not be required once the New Beatty Steam Plant is built. The remaining \$6.41 million represents elements that Creative Energy considers are essential for the ongoing operation of the plant and will continue to be needed after the New Beatty Steam Plant is built.¹⁰⁹

Creative Energy notes that if continued expenditures on the New Plant Premises are not initiated once the Developer's funds are exhausted, construction work will be disrupted, leading to a delay in the in-service date of the Decarbonization Plant as well as significant additional costs, including:¹¹⁰

- Site maintenance costs: approximately \$200,000 per month, and
- Demobilization and remobilization: \$1.5 million or more, excluding potential contractor delay charges.

¹⁰⁰ Exhibit B-7, BCUC IR 5.1.

¹⁰¹ Ibid., BCUC IR 18.2.

¹⁰² Exhibit B-4, "Attachments to 3.3", "3.3b Basis of Estimate – Interconnection Infrastructure", p. 2; Exhibit B-7, BCUC IR 18.2.

¹⁰³ Exhibit B-4, p. 21 & "Attachments to 3.3", "3.3a Basis of Estimate – New Plant Premises", p. 1.

¹⁰⁴ Exhibit B-4, "Attachments to 3.3", "3.3b Basis of Estimate – Interconnection Infrastructure", p. 1.

¹⁰⁵ Exhibit B-7, BCUC IR 19.6.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid., BCUC IR 19.10.

¹⁰⁹ Exhibit B-7, BCUC IR 6.5; Exhibit B-10, RCIA IR 6.1.

¹¹⁰ Exhibit B-1, pp. 6-7.

If completion of the New Plant Premises and the Decarbonization Plant is delayed by two years, Creative Energy estimates the financial impact will be a total overall cost increase of \$21.418 million, as the delay would bring several avoidable expenses into scope, including:¹¹¹

- Site maintenance costs (\$200,000 per month): \$4.8 million;
- Storage of equipment (\$19,525 per month): \$468,600;
- Contractor demobilization and remobilization: \$1.5 million;
- Capital cost escalation estimated at 4 percent per year: \$3.42 million; and
- Allowance for funds used during construction (AFUDC) impact on rate base: \$11.507 million.

Creative Energy notes that the TDA provides a cost apportionment mechanism between Creative Energy and the Developer. It adds that, while the TDA does not explicitly reference demobilization or remobilization costs, Creative Energy maintains that the Developer should be responsible for these costs because they relate to the construction of the New Plant Premises.¹¹²

Further, Creative Energy clarifies that the TDA does not give Creative Energy any right to obtain partial ownership of the New Plant Premises, even if the BCUC accepts the Expenditure Schedule and Creative Energy funds the completion of the New Plant Premises.¹¹³

Positions of the Parties

The CEC notes that under a scenario where the costs are recovered from existing ratepayers, the additional revenue requirements of the New Plant Premises and Interconnection Infrastructure would be significant, increasing the costs by more than \$4 million for each of the next five years.¹¹⁴ In the CEC's view, Creative Energy's proposal for the continuing construction of the New Plant Premises with funding backed by ratepayers is highly uncertain.¹¹⁵

BCOAPo submits it is reasonable to expect that Creative Energy will be unable to recover the costs from the Developer, given Creative Energy's own doubts, resulting in ratepayers having to fund the estimated \$38.5 million along with any cost overruns, which could amount to " 'throwing good money after bad money' (i.e. the pursuit of decarbonization at all costs)."¹¹⁶ Combined with the \$15 million already approved by the BCUC, this amounts to a \$53.5 million investment, representing a significant increase in cost without Creative Energy receiving any ownership in the New Plant Premises.¹¹⁷ BCOAPo also points to the magnitude of the unsettled issues that may lead to substantial cost increases and further delays.¹¹⁸ BCOAPo submits that Creative Energy's operations cannot be built on the backs of ratepayers forced to pay such unconscionable costs.¹¹⁹

RCIA notes that the New Beatty Plant and the Decarbonization Plant Project have experienced significant cost overruns, potentially reflecting poor financial control and inadequate project risk management. In particular, the cost estimate of the Decarbonization Plant increased from \$37.5 million in 2021 to \$60.3 million in 2024. The

¹¹¹ Exhibit B-7, BCUC IR 21.5.

¹¹² Exhibit B-7, BCUC IR 21.8.

¹¹³ Exhibit B-8, BCOAPo IR 2.3.

¹¹⁴ The CEC Final Argument, p. 6.

¹¹⁵ *Ibid.*, p. 14.

¹¹⁶ BCOAPo Final Argument, p. 2.

¹¹⁷ *Ibid.*, p. 3.

¹¹⁸ *Ibid.*, p. 4.

¹¹⁹ *Ibid.*, p. 14.

cost estimate for the New Beatty Plant Project increased from \$53.1 million in 2018 to \$74.3 million in 2022.¹²⁰ The dramatic escalation in costs is further compounded by the incremental Interconnection Infrastructure project costs (\$7.5 million).¹²¹

RCIA states that Creative Energy has provided limited assurance these costs will not increase further and fails to provide a risk-adjusted, all-in total cost limit for either the Decarbonization Plant or the New Beatty Steam Plant. The potential for significant increases over and above those incurred to-date is illustrated by Creative Energy's cost estimate for the Interconnection Infrastructure which it classifies as a Class 5 estimate (i.e. the estimate has a potential variance of -50 percent to +100 percent). The potential for further cost escalations relating to the Decarbonization Plant is also not clear.¹²²

Panel Discussion

The Panel observes that acceptance of the proposed \$38.5 million Expenditure Schedule would have a significant impact on Creative Energy's revenue requirements should Creative Energy fail to recover the majority of the costs from the Developer.

The Panel recognizes that rejecting the Expenditure Schedule may also lead to cost implications, estimated at \$21.4 million arising from a two-year delay in the completion of the New Plant Premises and Decarbonization Plant. For example, Creative Energy itemizes storage and maintenance and mobilization charges, the possibility of higher capital costs due to changing market conditions and costs related to AFUDC. However, Creative Energy states that certain delay costs should be the responsibility of the Developer and, therefore, the Panel considers that the magnitude of the cost of delay is uncertain. Moreover, any delay-related costs that Creative Energy may seek to recover from ratepayers in the future would have to be reviewed by the BCUC to ensure that they were prudently incurred.

The Panel is also concerned about the accuracy and completeness of the cost estimate, as well as the high probability that costs will escalate. The Panel notes that the Interconnection Infrastructure cost estimate is completed to an AACE Class 5 level of accuracy, meaning that final costs could increase to as much as double the \$7.5 million estimate. The Panel acknowledges that a future planned agreement between Creative Energy and the Developer could mitigate Creative Energy's exposure to cost overruns. However, this is not yet in place and therefore does not assist Creative Energy or the Panel's review of the merits of the Expenditure Schedule.

The Panel will, in its determination of whether making the expenditures referred to in the Expenditure Schedule would be in the public interest, consider the magnitude and certainty of the costs proposed and the related risks to Creative Energy, recognizing the potential impacts associated with both acceptance and rejection of the Expenditure Schedule. As addressed in Section 2.4 below, acceptance would be a fundamental shift from the premise upon which the CPCN for the New Beatty Steam Plant was approved.

2.3 Rate Impact

If Creative Energy does not recover from the Developer the proposed \$38.5 million to complete the New Plant Premises and the Interconnection Infrastructure,¹²³ and instead recovered these costs from ratepayers, Creative

¹²⁰ As noted in section 1.5 of this decision, the increase in the New Beatty Steam Plant Project costs to \$74.3 million is due to Creative Energy's and the Developer's preferences to pursue the Final Design.

¹²¹ RCIA Final Argument p. 14.

¹²² RCIA Final Argument p. 14.

¹²³ Exhibit B-1, pp. 2, 20. The cost estimates are in nominal 2024 dollars (Exhibit B-11, the CEC IR 4.1).

Energy estimates that annual thermal energy service rates would increase from \$12.58/thousand pounds of steam (M#) in 2024 to \$16.95/M# in 2026, a 35 percent increase.¹²⁴

Creative Energy describes its contingency strategies to manage or offset costs and to mitigate ratepayer impacts, in the event it is unable to recover the costs from the Developer.¹²⁵ Creative Energy would consider rate smoothing measures to mitigate the rate impact of recovering the expenditures, for example to smooth the impact of the expenditures into rates over a few years instead of all at one time.

These figures do not include the potential rate impact of the Decarbonization Plant Project. Under a scenario where the New Plant Premises, Interconnection Infrastructure, and Decarbonization Plant Project are all added to rate base in 2026, Creative Energy estimates that this will result in a rate increase to \$22.71/M#, which is an 81 percent increase as compared to 2024 rates of \$12.58M#.¹²⁶

The following chart, created by BCUC staff using Creative Energy's evidence in this proceeding, illustrates the rate impact of the addition of the Expenditure Schedule and Decarbonization Plant Project costs into rate base in 2026, shown as the approved rates in 2023 and 2024 compared to the forecast rate in 2026. The Decarbonization Plant Project costs assume all grant funding awarded to Creative Energy is retained.¹²⁷

Figure 1: Projected 2026 Rate for Customers Connected to the Core Steam Distribution Network¹²⁸

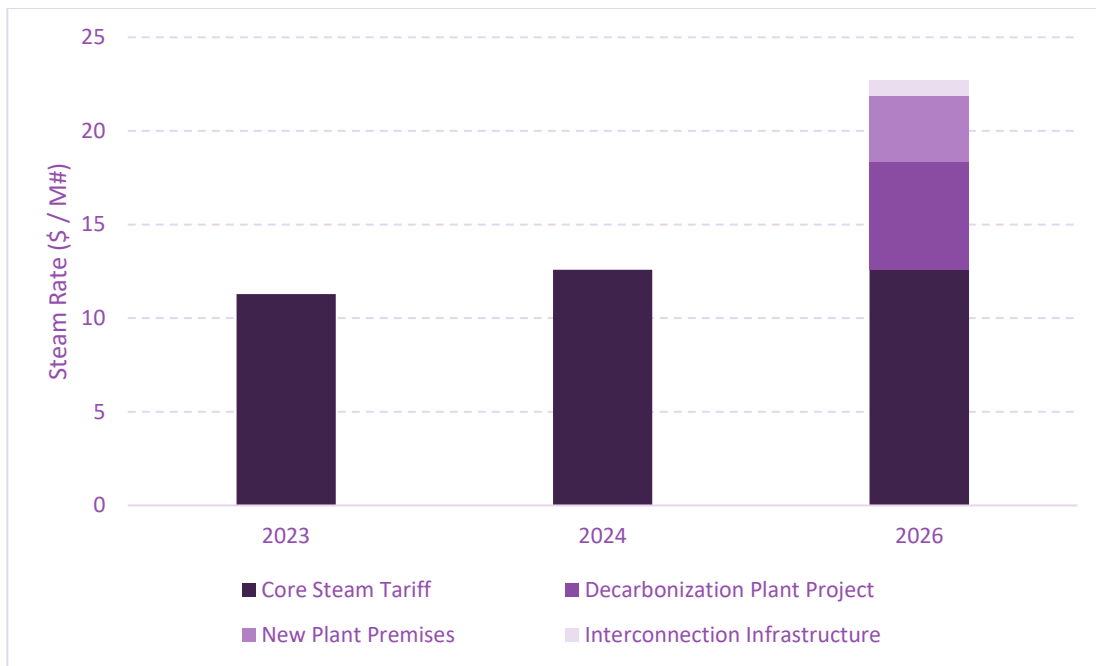
¹²⁴ BCUC staff calculated the increase by adding the incremental rate changes for the New Plant Premises and Interconnection Infrastructure from 2024 to 2026. The rate change for the New Plant Premises is \$3.52/M# (\$16.10/M# - \$12.58/M#) and for the Interconnection Infrastructure it is \$0.85/M# (\$13.43/M# - \$12.58/M#). The total increase of \$4.37/M# was added to the 2024 rate \$12.58/M#, resulting in the 2026 rate of \$16.95/M# or a 34.98 percent increase (Exhibit B-7, BCUC IR 21.3, Attachment: "BCUC-IR-No1 Supporting Schedule for BCUC IR 21.3", p. 1).

¹²⁵ Exhibit B-7, BCUC IR 19.5.

¹²⁶ Ibid., BCUC IR 21.3, Attachment: "BCUC-IR-No.1 Supporting Schedule for BCUC IR 21.3", p. 1.

¹²⁷ Exhibit B-7, Supporting Schedule for BCUC IR 21.3; Creative Energy explains that the total amount added to the rate base for the Decarbonization Project is \$50,696,000. This amount comprises capital expenditure of \$40,348,000 net of grants, and an additional Allowance for Funds Used During Construction (AFUDC) of \$10,349,000.

¹²⁸ 2023 Core Steam Tariff equals \$11.29/M#, which is the average thermal energy rate approved by BCUC Order G-358-23; 2024 Core Steam Tariff equals \$12.58/M#, which is provided by Creative Energy in Exhibit B-7, in response to BCUC IR 21.3. Rate increases due to Decarbonization Plant Project, New Plant Premises and Interconnection Infrastructure based on Creative Energy responses to BCUC IR 21.3.



Positions of the Parties

The CEC submits that Creative Energy’s ongoing and newly proposed rate impacts can already be expected to have a negative impact on customer demand. Further, a greater than ten percent increase to an already expensive project is substantial.¹²⁹

BCOAPO notes that Creative Energy’s ratepayers have experienced rate increases that exceed levels historically considered to be rate shock in the last several years, in part, resulting from investments being made to support its long-term sustainability. Total rate increases have amounted to more than 60 percent since 2019.¹³⁰ BCOAPO submits that Creative Energy might continue to incur costs incremental to the Expenditure Schedule and therefore it should try to stabilize its financial situation before seeking a remedy from the BCUC.

Panel Discussion

The Panel considers the incremental rate impact of the Expenditure Schedule under a scenario where the costs are recovered from ratepayers to be significant, with the primary benefit of avoiding further delay to the Decarbonization Project. Accordingly, the Panel considers that the potential rate impact of the Expenditure Schedule is not justified, given the outstanding Developer responsibility for certain costs under the TDA. Creative Energy’s rights and remedies under the TDA are addressed in section 2.4 below.

The Panel also notes that the costs included in the Expenditure Schedule, should it be accepted, would be in addition to the costs of other capital projects Creative Energy is pursuing, such as the Decarbonization Plant Project and the New Beatty Steam Plant. The rate impact of these other projects would add to the rate impact resulting from Creative Energy’s proposal to fund the Expenditure Schedule.

¹²⁹ The CEC Final Argument, p. 6.

¹³⁰ BCOAPO Final Argument, p. 5.

2.4 Rights and Remedies Pursuant to the TDA

Creative Energy states that it has certain rights and remedies pursuant to the TDA in the event that the Developer defaults on its obligations.¹³¹ Creative Energy explains that these rights and remedies remain outstanding and that discussions with the Developer are on-going. However, Creative Energy submits that, given the Developer's inability to fund the continued construction of the New Plant Premises, it cannot wait until those discussions have concluded, and must seek acceptance of the Expenditure Schedule.¹³²

Creative Energy considers that it has at least two valid claims against the Developer for breach of contract. First, Creative Energy considers that the Developer has committed an anticipatory breach of its obligations to complete the construction of the New Plant Premises and to pay costs in excess of \$15 million. Second, Creative Energy considers that the Developer has breached its obligations under the TDA to use diligent and commercially reasonable efforts to complete construction of the New Plant Premises.¹³³

Creative Energy submits it has diligently asserted its rights under the TDA but the fact remains that the Developer is experiencing liquidity challenges in respect of the project and the Developer's indirect parent company, Westbank Holdings Ltd., appears to be experiencing liquidity issues generally and across its other projects.¹³⁴ Creative Energy argues it is balancing the validity of its claim against the Developer with the likelihood of successfully enforcing any monetary judgement against the Developer based on the amount of mortgage debt on the development project.¹³⁵ Creative Energy is aware that the Developer has a secured credit facility for its development project at 720 Beatty Street in the aggregate principal amount of \$185 million, which had an aggregate principal amount outstanding of approximately \$171 million, plus accrued interest, as of the date of the Application.¹³⁶ If Creative Energy were to successfully pursue a claim against the Developer, any such damages awarded would be an unsecured amount owing from the Developer to Creative Energy and would, therefore, rank behind all secured creditors of the Developer.¹³⁷

Creative Energy believes that the Developer is responsible under the TDA for a significant portion of costs in the Expenditure Schedule, and, therefore, it intends to seek recovery of these costs through negotiations with the Developer.¹³⁸ Creative Energy acknowledges, however, that, even if it is unable to recover anything from the Developer, Creative Energy does not expect to reduce the scope of the New Plant Premises or Interconnection Infrastructure work because the full scope of work is needed to complete and operate the Decarbonization Plant as soon as possible.¹³⁹

Positions of the Parties

The CEC submits that there is a very significant risk that Creative Energy will not be able to recover a significant portion of the costs owed by the Developer, and that these costs could then become ratepayer costs.¹⁴⁰ The CEC recommends that the Panel find that the unresolved issues Creative Energy has presented in this Application, including unresolved TDA issues, represent unwarranted risk to ratepayers and, therefore, to the greater public interest.¹⁴¹

¹³¹ Exhibit B-4, p. 10.

¹³² Exhibit B-1, p. 12, para. 47

¹³³ Exhibit B-7, BCUC IR 19.3.

¹³⁴ *Ibid.*, BCUC IR 19.2.

¹³⁵ *Ibid.*

¹³⁶ Exhibit B-8, BCOAPO IR 2.4.

¹³⁷ *Ibid.*

¹³⁸ Exhibit B-1, p. 3, para. 11.

¹³⁹ Exhibit B-7, BCUC IR 19.5.

¹⁴⁰ The CEC, Final Argument, p. 16.

¹⁴¹ *Ibid.*, p. 31.

RCIA submits that Creative Energy's Application seeks to shift the risk associated with the costs to complete the New Plant Premises and Interconnection Infrastructure to ratepayers instead of pursuing its legal remedies against the Developer or additional funding from the parent signatories.¹⁴² RCIA notes the fact that Creative Energy and the Developer are affiliated entities raises significant concerns regarding conflicts of interest, such that Creative Energy may be reluctant to pursue aggressive legal or financial remedies against the Developer if doing so could harm its parent company or affiliates.¹⁴³

In reply, Creative Energy states that its non-Westbank shareholder, Emanate Energy, is the majority shareholder and that Creative Energy's board of directors has put in place appropriate governance mechanisms to address the fact that Creative Energy's shareholder and the Developer are both Westbank affiliates. For example, mechanisms include the formation of an ad hoc subcommittee to ensure the Westbank-nominated board member does not have input into Creative Energy's decision-making process with respect to recent developments and the dispute with the Developer under the TDA.¹⁴⁴

Panel Discussion

Costs for the New Plant Premises and for equipment now part of the Interconnection Infrastructure, as well as any risk of cost escalation, appear to be the Developer's responsibility under the TDA. The Panel notes that Creative Energy's CPCN for the New Beatty Steam Plant, housed within the New Plant Premises, was issued subject to the total costs added to Creative Energy's rate base being limited to \$15 million. This \$15 million amount is significantly less than the "estimated \$53.1 million for completion of the project and other related costs".¹⁴⁵

The Panel notes that Creative Energy is requesting the BCUC accept an Expenditure Schedule, and that the majority of the costs contained in this Expenditure Schedule are the responsibility of the Developer under the TDA. Creative Energy states that it will seek to recover these costs from the Developer through negotiations. However, there is limited evidence regarding the progress of these negotiations and, therefore, the Panel can only speculate on the success of cost recovery from the Developer. At this time, Creative Energy acknowledges that pursuit of its rights and remedies under the TDA remain outstanding and negotiations with the Developer are on-going.

The Panel accepts that the Developer's financial difficulties have caused significant challenges for Creative Energy; it certainly appears that the Developer is in breach of its obligations under the TDA. However, the Panel is not responsible for resolving the contractual dispute. The Panel encourages Creative Energy to engage with the Developer to find a suitable resolution to the delays in the New Plant Premises.

2.5 Expenditure Schedule Alignment with Long-Term Resource Planning and Provincial Energy Objectives

In determining whether to accept an expenditure schedule, section 44.2(5) sets out the factors that the BCUC must consider. As noted in section 1.3 above, two of the five factors are not applicable in this proceeding, leaving the remaining three:

- a) British Columbia's energy objectives,

¹⁴² RCIA Final Argument, p. 11.

¹⁴³ Ibid., p. 17.

¹⁴⁴ Creative Energy Reply Argument, p. 6, para. 15.

¹⁴⁵ Order C-1-20, p. 30.

- b) The most recent long-term resource plan filed by the public utility under section 44.1, if any, and
- e) The interests of persons in British Columbia who receive or may receive service from the public utility.

Creative Energy states that the three factors listed above are applicable to the Application.¹⁴⁶ Creative Energy submits that making the expenditures required to complete the New Plant Premises and the Interconnection Infrastructure as soon as possible supports the applicable factors listed under section 44.2(5) of the UCA, primarily subsection 44.2(5)(e).¹⁴⁷ Creative Energy notes that completing the New Plant Premises and the Interconnection Infrastructure will allow Creative Energy to complete the Decarbonization Plant and provide low carbon services as soon as possible, which is in the interest of its current and future customers.¹⁴⁸ Creative Energy also notes that the BCUC acknowledged in granting the CPCN for the Decarbonization Plant that the project is consistent with BC's energy objectives and generally aligns with Creative Energy's 2021 long-term resource plan.¹⁴⁹

Positions of the Parties

RCIA states that under section 44.2 of the UCA, the BCUC must balance the importance of a project aimed at advancing provincial energy objectives with the public interest.¹⁵⁰ RCIA acknowledges that the Decarbonization Plant is consistent with provincial energy objectives; however, the scope of the Expenditure Schedule is completely beyond the scope of the CPCN approving that project.¹⁵¹ Further, RCIA submits that the Expenditure Schedule is not in the public interest, noting that it would set a perilous precedent if utilities were able to shift onto ratepayers the risks related to what appears to be a poorly structured and inadequately secured agreement between Creative Energy and the Developer, particularly when the asset has yet to come into service, and the full costs are unknown, and the utility has failed to exhaust all reasonable mitigation measures and legal recourse.¹⁵²

BCSEA states that delaying completion of the Decarbonization Plant would be contrary to the policy priorities of the federal government, the BC government and the City of Vancouver to reduce GHG emissions from heating buildings.¹⁵³

Panel Discussion

In this section the Panel considers BC's energy objectives and Creative Energy's most recent long-term resource plan. We have considered the interests of persons in British Columbia who receive or may receive service from Creative Energy in sections 2.1, 2.2 and 2.3 above.

In its decision to issue a CPCN to Creative Energy for the Decarbonization Plant, the BCUC found the scope of that project to be consistent with BC's energy objectives because it promoted fuel switching and reduced GHG emissions.¹⁵⁴ As the proposed Expenditure Schedule would allow Creative Energy to put the Decarbonization Plant into service sooner rather than later, the Panel considers the Application to be generally consistent with BC's energy objectives.

¹⁴⁶ Exhibit B-1, p. 13, para. 51.

¹⁴⁷ Ibid., pp. 13-14, para. 52.

¹⁴⁸ Ibid.

¹⁴⁹ Exhibit B-1, p. 14, para. 56.

¹⁵⁰ RCIA Final Argument, p. 8.

¹⁵¹ Ibid., p. 6.

¹⁵² RCIA Final Argument, p. 8.

¹⁵³ BCSEA Final Argument, p. 2.

¹⁵⁴ Order C-5-22, p. 41.

The BCUC is reviewing Creative Energy’s most recent Long-Term Resource Plan (2024 LTRP), which was filed on November 25, 2024. Creative Energy’s submissions in this Expenditure Schedule proceeding do not demonstrate how the Application aligns with the 2024 LTRP. Nevertheless, the Panel has considered the 2024 LTRP, and notes that it identifies FEI’s RNG Service as a transition service to support Creative Energy’s customers’ compliance with the City of Vancouver By-Law.¹⁵⁵

2.6 Overall Panel Determination

Creative Energy states that it must incur the costs outlined in the Expenditure Schedule to complete the construction of the New Plant Premises and install the Interconnection Infrastructure to ensure that the Decarbonization Plant can be placed into service as soon as possible. Creative Energy has identified several advantages of placing the Decarbonization Plant into service as soon as possible, some of which are discussed in this decision. In summary, advantages of the Expenditure Schedule identified by Creative Energy include the following:¹⁵⁶

- Reduces the risk of repayment of grant funding received from federal and provincial programs;
- Provides Creative Energy with the ability to supply low carbon steam to existing customers who must adhere to City of Vancouver GHG emission regulatory requirements, and to existing customers seeking low carbon steam to voluntarily reduce their GHG emissions;
- Provides Creative Energy with the ability to connect new customer buildings that must also meet City of Vancouver GHG emission regulations prescribed to new buildings; and
- Provides incremental steam generating capacity, in addition to Creative Energy’s natural-gas fired steam generating capacity.

As an additional advantage, Creative Energy notes that after the Decarbonization Plant is brought into service, the new electric boilers will increase the reliability of steam generation at the Existing Steam Plant.

Costs are identified as a disadvantage of the proposed Expenditure Schedule. Creative Energy notes that the combined revenue requirement impact of the Expenditure Schedule, the Decarbonization Plant Project and the New Beatty Steam Plant Project is significant.¹⁵⁷ Rates for Creative Energy customers would increase by 81 percent following the addition of these projects; however, this rate increase assumes that Creative Energy will not be able to recover any Expenditure Schedule costs from the Developer, and does not include the use of any deferral accounts as rate smoothing mechanisms.¹⁵⁸

Positions of the Parties

BCSEA supports the BCUC’s acceptance of the Expenditure Schedule and submits that it is in the public interest that Creative Energy’s Decarbonization Plant proceed to completion and implementation as soon as possible.¹⁵⁹

BCOAPO does not support the BCUC’s acceptance of the Expenditure Schedule. BCOAPO submits that it is unreasonable for ratepayers to absorb the risks associated with the costs that are the responsibility of the Developer. BCOAPO submits that Creative Energy has not demonstrated that acceptance of the Expenditure Schedule is in the public interest, and recommends that the BCUC reject the Expenditure Schedule so as to

¹⁵⁵ Creative Energy 2024 Long-Term Resource Plan proceeding, Exhibit B-1, pp. 107-108.

¹⁵⁶ Exhibit B-1, pp. 18-20, para. 67.

¹⁵⁷ Exhibit B-7, BCUC IR 21.4.1.

¹⁵⁸ Ibid., Supporting Schedule for BCUC IR 23.1(iii).

¹⁵⁹ BCSEA Final Argument, pp. 1-2, para. 1.

pause further spending on the New Plant Premises until there is clarity on the future development of the 720 Beatty Street property by the Developer.¹⁶⁰

The CEC recommends that the BCUC reject the Expenditure Schedule.¹⁶¹ The CEC does not accept that the risk in delaying the Decarbonization Plant exceeds the risk that would be borne by ratepayers if the BCUC were to approve the Expenditure Schedule, as it would raise the cost of the Decarbonization Plant for ratepayers.¹⁶²

RCIA submits that the BCUC should reject the Expenditure Schedule.¹⁶³ RCIA acknowledges the benefits of the Decarbonization Plant but submits that those benefits would have accrued to ratepayers at a far lower cost if the Developer had not defaulted on its obligations. Further, the benefits of the grant funding for the Decarbonization Plant would have accrued to ratepayers. RCIA submits that, under Creative Energy's proposed Expenditure Schedule, ratepayers receive no consideration for backstopping costs related to a private dispute between Creative Energy and its affiliates.¹⁶⁴

Panel Determinations

The Panel finds that Creative Energy making the expenditures referred to in the Expenditure Schedule would not be in the public interest. Accordingly, the Panel rejects the Expenditure Schedule. The Panel is not persuaded that the situation in which Creative Energy finds itself warrants accepting the Expenditure Schedule. Accepting the Expenditure Schedule would have profound consequences: the costs are significant, as are the corresponding rate impacts to Creative Energy's ratepayers under a scenario where Creative Energy does not recover certain costs from the Developer, pursuant to the TDA. Further, the Panel is concerned about the risk that the cost to complete the New Plant Premises and the Interconnection Infrastructure will escalate beyond the current estimate of \$38.5 million, which could result in further costs and ratepayer impacts in the future.

The Panel does not accept that it is necessary for Creative Energy to take on the responsibility of costs which are the responsibility of the Developer under the TDA, to avoid both a potential two-year delay in the Decarbonization Plant in-service date and the risk that Creative Energy might be responsible for further costs associated with the delay. The urgency that propelled Creative Energy to seek acceptance of the Expenditure Schedule has – at least to some extent – dissipated: Creative Energy has identified an extension to the provincial CFEF grant funding eligibility and has also identified interim measures to support its customers' compliance with the City of Vancouver's GHG emissions limits.

The Panel emphasizes that the New Beatty Steam Plant CPCN application and associated BCUC approvals relied upon the terms in the TDA that limit Creative Energy's capital cost to \$15 million for the New Beatty Steam Plant, the New Plant Premises and the new offices for Creative Energy. The Panel notes that the Decarbonization Plant CPCN then relied on the New Beatty Plant CPCN. The proposed Expenditure Schedule removes that protection as the default, and, subject to the success of cost recovery from the Developer, imposes significant cost and rate impact to the utility and ratepayers to complete the New Plant Premises. In exchange for assuming responsibility for the proposed scope of work, Creative Energy's ratepayers receive a better chance at limiting the overall delay of the Decarbonization Plant in-service date. With no certainty on the amount and timing of demand for low carbon energy from existing customers however, the Panel is not persuaded that this exchange provides sufficient value for the proposed investment.

Further, the Panel notes that the New Beatty Steam Plant CPCN also relied upon the terms in the TDA that provide Creative Energy with rights and remedies in the event that the Developer is not able to fulfill its

¹⁶⁰ BCOAPO Final Argument, p. 2.

¹⁶¹ The CEC Final Argument, p. 1.

¹⁶² Ibid., p. 19.

¹⁶³ RCIA Final Argument, p. 24.

¹⁶⁴ Ibid.

obligations. Creative Energy acknowledges that its rights and remedies under the TDA remain outstanding, and the Panel encourages Creative Energy to engage with the Developer to find a suitable resolution to the delays in the New Plant Premises. Without any resolution between the Developer and Creative Energy pursuant to the rights and remedies of the TDA, the Panel considers there to be significant uncertainty with respect to the magnitude of costs which may ultimately become the responsibility of Creative Energy and its ratepayers should the Panel accept this Expenditure Schedule. Moreover, Creative Energy has not demonstrated that the urgency to supply low carbon steam to its customers is so great that it should bypass pursuing these rights and remedies.

The Panel reminds Creative Energy that it has the BCUC approvals necessary to proceed with the Decarbonization Plant and the New Beatty Steam Plant projects. The delays in the completion of the Decarbonization Plant and the New Beatty Steam Plant appear to be caused by the Developer's inability to meet its obligations under the TDA. The Panel expects Creative Energy to prudently manage the execution of the Decarbonization Plant Project and to diligently resolve delays in the New Beatty Steam Plant. The BCUC's expectations with respect to the costs and benefits to rate payers of the Decarbonization Plant and the New Beatty Steam Plant are established in the respective BCUC decisions for both of those projects.

3.0 Other Issues Arising

3.1 Existing Steam Plant

Creative Energy plans to continue to operate the Existing Steam Plant to serve customers connected to the Core Steam Distribution Network until completion of the New Beatty Steam Plant. It states that the duration that the Existing Steam Plant will remain in-service is unclear because of the uncertainty whether the New Beatty Steam Plant will proceed, regardless of the New Plant Premises Project proceeding.¹⁶⁵

Creative Energy submits that the majority of the boilers in the Existing Steam Plant are near or past the end of their design life, and an operational issue with an existing boiler would likely impact customers connected to the Core Steam Distribution Network.¹⁶⁶ To mitigate this risk, Creative Energy has undertaken a condition assessment of the boilers and supporting equipment at the Existing Steam Plant. The assessment identified maintenance projects to the boilers, feedwater system, venting system, and balance of plant equipment to be completed in 2025 and 2026, which are "necessary to ensure five years of continued safe and reliable operation (2025 to 2029)."¹⁶⁷ Creative Energy estimates the capital investment required for this work to be \$700,000.¹⁶⁸ Creative Energy submits that the proposed capital maintenance plan will maximize safety, reliability, and efficiency of the Existing Steam Plant to the extent possible, but does not change the need to replace the existing boilers.¹⁶⁹ Creative Energy states that the existing boilers operate at low efficiency, require increasing planned and unplanned maintenance, and are more susceptible to unexpected failures than is appropriate for a utility providing thermal services on its scale.¹⁷⁰ Use of FEI's RNG Service would have no impact on these reliability risks.¹⁷¹

Positions of the Parties

¹⁶⁵ Exhibit B-4, p. 17; Exhibit B-11, CEC IR 8.1; Exhibit B-7, BCUC IR 12.3.

¹⁶⁶ Exhibit B-1, pp. 17-19.

¹⁶⁷ Exhibit B-7, Attachment to BCUC IR 15.1, p. 2.

¹⁶⁸ Ibid., Attachment to BCUC IR 15.1, p. 1.

¹⁶⁹ Exhibit B-8, BCOAPO IR 4.1.

¹⁷⁰ Ibid.

¹⁷¹ Exhibit B-4, p. 15.

BCOAPO submits that Creative Energy's statements about the condition of the Existing Steam Plant raise questions regarding the reliability of Creative Energy's plant condition assessment. Specifically, if Creative Energy now requires only an additional \$700,000 of investment to extend the life of the Existing Steam Plant to 2029, some 12 years after its original application to redevelop the plant, BCOAPO states that it cannot help but wonder about the reliability of Creative Energy's characterization of the state of its infrastructure.¹⁷²

The CEC submits that the safe operations of the Existing Steam Plant is a Creative Energy shareholder obligation and should be the first priority for Creative Energy and its customers.¹⁷³

Panel Discussion

The Panel acknowledges Creative Energy's assessment of the Existing Steam Plant provided in this proceeding. The BCUC will review the capital investments needed to ensure the reliable operation of the Existing Steam Plant as part of its review of Creative Energy's revenue requirement applications, and expects Creative Energy to undertake this work in a prudent manner, with consideration not only for the Existing Steam Plant, but also for the next steps for the New Beatty Steam Plant and Decarbonization Projects. Lastly, as noted above in the CEC's submission, the Panel reminds Creative Energy of its obligations as a public utility to provide safe and reliable service to its customers.

DATED at the City of Vancouver, in the Province of British Columbia, this 10th day of April 2025.

Electronically signed by Mark Jaccard

M. Jaccard
Panel Chair/Commissioner

Electronically signed by Elizabeth Brown

E. A. Brown
Commissioner

Electronically signed by Blair Lockhart

E. B. Lockhart
Commissioner

¹⁷² BCOAPO Final Argument, p. 8.

¹⁷³ The CEC Final Argument, p. 27.

Creative Energy Vancouver Platforms Inc.
New Plant Premises and Interconnection Infrastructure Capital Expenditures

LIST OF ACRONYMS

Acronym	Description
2024 LTRP	Creative Energy's most recent Long-Term Resource Plan
AFUDC	Allowance for funds used during construction
Application	Creative Energy's application for approval of a schedule of capital expenditures relating to the construction and connection of its new steam plant
BCSEA	British Columbia Sustainable Energy Association
BCUC	British Columbia Utilities Commission
CEC	The Commercial Energy Consumers Association of BC
Creative Energy	Creative Energy Vancouver Platforms Inc
Decarbonization Plant	Steam generating equipment consisting of two electric boilers, an electric substation and associated equipment
Decarbonization Project	Creative Energy's future steam generating electric boilers and associated equipment
Developer	720 Beatty Limited Partnership
Existing Steam Plant	Creative Energy's central steam generating equipment and building at 720 Beatty Street
Expenditure Schedule	Creative Energy's proposed schedule of capital expenditures (totalling \$38.5 million) relating to the construction and connection of its new steam plant
GHG	Greenhouse gas
GWh	Gigawatt-hour
Interconnection Infrastructure	The equipment necessary to connect the Decarbonization Plant electric boilers, which are housed in the New Plant Premises, to the Existing Steam Plant.

IR	Information request
Km	Kilometer
LCEF	Government of Canada's Low Carbon Economy Fund
New Beatty Steam Plant	The steam generating equipment to be procured and installed in a new building adjacent to the Existing Steam Plant at 720 Beatty Street
New Plant Premises	The building space that will house the New Beatty Steam Plant
Original Design	Creative Energy's plan for a new Beatty steam plant, which included the substantial renovation of the existing steam plant and the construction of a new, smaller off-site steam generating plant within BC Place Stadium
RCIA	Residential Consumers Intervener Association
TDA	Trust and Development Agreement
UCA	<i>Utilities Commission Act</i>
WFC	Wall Financial Corporation

Creative Energy Vancouver Platforms Inc.
New Plant Premises and Interconnection Infrastructure Capital Expenditures

EXHIBIT LIST

Exhibit No.	Description
<i>COMMISSION DOCUMENTS</i>	
A-1	October 2, 2024 – Panel Appointment
A-2	October 23, 2024 – BCUC Order G-269-24 establishing a regulatory timetable
A-3	November 13, 2024 – BCUC Information Request No. 1 to Creative Energy
A-4	November 15, 2024 – BCUC providing information to interveners regarding Information Requests
A-5	November 20, 2024 – BCUC Order G-304-24 amending the regulatory timetable
A-6	December 13, 2024 – BCUC Order G-337-24 establishing a further timetable
A-7	December 17, 2024 – BCUC Panel Information Request No. 1 to Creative Energy
<i>COMMISSION STAFF DOCUMENTS</i>	
A2-1	November 20, 2024 – BCUC Staff submission of email correspondence between BCUC staff and registered interveners
<i>APPLICANT DOCUMENTS</i>	
B-1	September 25, 2024 – CREATIVE ENERGY VANCOUVER PLATFORMS INC. (CREATIVE ENERGY) – New Plant Premises and Interconnection Capital Expenditure
B-2	October 3, 2024 – Creative Energy submitting confirmation of public notice
B-3	October 29, 2024 – Creative Energy submitting confirmation of public notice in compliance with Order G-269-24 Directives
B-4	PUBLIC - November 1, 2024 – Creative Energy submitting redacted Supplemental Information Package Expenditure Schedule
B-4-1	CONFIDENTIAL - November 1, 2024 – Creative Energy submitting confidential Supplemental Information Package Expenditure Schedule
B-5	November 8, 2024 – Creative Energy submitting Evidentiary Update

B-6	November 18, 2024 – Creative Energy response regarding CEC Information Request No. 1 extension
B-7	PUBLIC - November 27, 2024 – Creative Energy response to BCUC Information Request No. 1
B-7-1	CONFIDENTIAL - November 27, 2024 – Creative Energy response to BCUC Information Request No. 19.4.1
B-8	November 27, 2024 – Creative Energy response to BCOAPO Information Request No. 1
B-9	November 27, 2024 – Creative Energy response to BCSEA Information Request No. 1
B-10	November 27, 2024 – Creative Energy response to RCIA Information Request No. 1
B-11	November 29, 2024 – Creative Energy response to CEC Information Request No. 1
B-12	December 11, 2024 – Creative Energy submitting Evidentiary Update
B-13	December 19, 2024 – Creative Energy response to BCUC Panel Information Request No. 1

INTERVENER DOCUMENTS

C1-1	October 14, 2024 - WALL FINANCIAL CORPORATION (WFC) – Request to intervene by Marion Lowe
C2-1	November 4, 2024 - BC SUSTAINABLE ENERGY ASSOCIATION (BCSEA) – Request to intervene by Thomas Hackney
C2-2	November 15, 2024 – BCSEA Information Request No. 1 to Creative Energy
C3-1	November 8, 2024 - BRITISH COLUMBIA OLD AGE PENSIONERS’ ORGANIZATION, ACTIVE SUPPORT AGAINST POVERTY, DISABILITY ALLIANCE BC, COUNCIL OF SENIOR CITIZENS’ ORGANIZATIONS OF BC, TENANTS RESOURCE AND ADVISORY CENTRE (BCOAPO) – Request to intervene by Irina Mis
C3-2	November 15, 2024 – BCOAPO Information Request No. 1 to Creative Energy
C4-1	November 8, 2024 - COMMERCIAL ENERGY CONSUMERS ASSOCIATION OF BRITISH COLUMBIA (CEC) - Request to intervene by David Craig
C4-2	November 14, 2024 – CEC Confidentiality Declaration and Undertaking Forms
C4-2-1	November 14, 2024 – CEC Revised Confidentiality Declaration and Undertaking Forms
C4-2-2	December 11, 2024 – CEC Revised Confidentiality Declaration and Undertaking Form
C4-3	November 11, 2024 – CEC additional Confidentiality Declaration and Undertaking Form

C4-4	November 15, 2024 – CEC Information Request No. 1 to Creative Energy
C4-5	November 18, 2024 – CEC response to Creative Energy letter regarding Information Request No. 1 extension
C4-6	November 25, 2024 – CEC revised Information Request No. 1 to Creative Energy
C5-1	November 8, 2024 - RESIDENTIAL CONSUMER INTERVENER ASSOCIATION (RCIA) – Request to intervene by Abdulrahman Abomazid
C5-2	November 12, 2024 – RCIA Confidentiality Declaration and Undertaking Forms
C5-3	November 15, 2024 – RCIA Information Request No. 1 to Creative Energy
C5-4	December 6, 2024 – RCIA Confidentiality Declaration and Undertaking Form