

# CREATIVENERGY

May 21, 2024

E-FILED

British Columbia Utilities Commission  
Suite 410, 900 Howe Street  
Vancouver, BC V6Z 2N3

Attn: Patrick Wruck, Commission Secretary

**Re: Emanate Energy Solutions Inc. – Application for Approval to Acquire Additional Units of Creative Energy Holdings Limited Partnership and Shares of Creative Energy Holdings GP Ltd.**

We are writing on behalf of one of our limited partners, Emanate Energy Solutions Inc. (**Emanate Energy**), to submit the enclosed application by Emanate Energy for the following BCUC Orders pursuant to section 54(8) of the *Utilities Commission Act*:

1. an order approving Emanate Energy to acquire additional Class A (common) units of Creative Energy Holdings Limited Partnership and a corresponding proportion of common shares in its general partner, Creative Energy Holdings GP Ltd., which will increase to approximately 54.5% the percentage of voting shares of the public utilities in the Creative Energy Group indirectly controlled by Emanate Energy; and
2. an order approving Emanate Energy to acquire additional Class A units of Creative Energy Holdings Limited Partnership and a corresponding proportion of shares in its general partner, Creative Energy Holdings GP Ltd. from time to time (including in response to a May 2024 capital call, as applicable) pursuant to the terms of the Second Amended and Restated Creative Energy Holdings Limited Partnership Agreement and the Amended and Restated Shareholder Agreement of Creative Energy Holdings GP Ltd., each as further amended from time to time, which will further increase the percentage of voting shares of the public utilities in the Creative Energy Group indirectly controlled by Emanate Energy.

For efficiency and convenience of all parties, Emanate Energy has asked Creative Energy to file its application with the BCUC and to serve as the primary point of contact for any correspondence from the BCUC regarding its application.

Emanate Energy presently has a reviewable interest in the public utilities in the Creative Energy Group. Pursuant to BCUC Order C-1-20, in 2020 Emanate Energy indirectly acquired control of voting shares of the public utilities in the Creative Energy Group through its acquisition of a 50% ownership interest in Creative Energy Developments Limited Partnership, which was then the parent organization of the public utilities in the Creative Energy Group. Pursuant to a reorganization effected in July 2021, Creative Energy Holdings Limited Partnership became the parent organization in the structure, with Creative Energy Developments Limited Partnership as a wholly owned subsidiary, and ownership of Creative Energy Holdings Limited Partnership

corresponding with the former ownership of Creative Energy Developments Limited Partnership. Creative Energy Holdings Limited Partnership is controlled by its general partner, Creative Energy Holdings GP Ltd.

As a result of the circumstances set out in the attached application, Emanate Energy is acquiring additional Class A units of Creative Energy Holdings Limited Partnership and a corresponding proportion of shares in its general partner, Creative Energy Holdings GP Ltd., which will increase the percentage of voting shares of the public utilities in the Creative Energy Group that Emanate Energy indirectly controls, requiring the BCUC's approval pursuant to section 54(8) of the Act.

The BCUC has already conducted a rigorous review of Emanate Energy at the time of its proposed acquisition of a reviewable interest in the Creative Energy Group public utilities. Given the context in which the application is brought, as discussed in the application, Emanate Energy proposes that a public hearing process is not necessary in this case. This would be consistent with the BCUC's past approach to section 54(8) applications. The BCUC granted its approval in Order G-92-12 to a section 54(8) application by Corix Infrastructure Inc. within 10 days after the receipt of the application and without a public process or written reasons.

Please do not hesitate to contact the undersigned if you have any questions about the application.

Yours truly,

Peter Andreasen  
Director, Regulatory Affairs

**THE PROVINCE OF BRITISH COLUMBIA  
BRITISH COLUMBIA UTILITIES COMMISSION**

In the Matter of an Application  
by Emanate Energy Solutions Inc. for Approval to  
Acquire Additional Units of Creative Energy Holdings Limited Partnership and Shares of its  
General Partner, Creative Energy Holdings GP Ltd.

May 21, 2024

1. This Application requests the following orders of the British Columbia Utilities Commission (**BCUC**) pursuant to section 54(8) of the *Utilities Commission Act (UCA)*:

- (a) an order approving Emanate Energy to acquire additional Class A (common) units of Creative Energy Holdings Limited Partnership and a corresponding proportion of common shares in its general partner, Creative Energy Holdings GP Ltd., which will increase to approximately 54.5% the percentage of voting shares of the public utilities in the Creative Energy group of companies (**Creative Energy Group**) indirectly controlled by Emanate Energy; and
- (b) an order approving Emanate Energy to acquire additional Class A (common) units of Creative Energy Holdings Limited Partnership and a corresponding proportion of common shares in its general partner, Creative Energy Holdings GP Ltd. from time to time in accordance with the operation of the terms of the Second Amended and Restated Creative Energy Holdings Limited Partnership Agreement and the Amended and Restated Shareholder Agreement of Creative Energy Holdings GP Ltd., each as further amended from time to time, which will further increase the percentage of voting shares of the public utilities in the Creative Energy Group indirectly controlled by Emanate Energy.

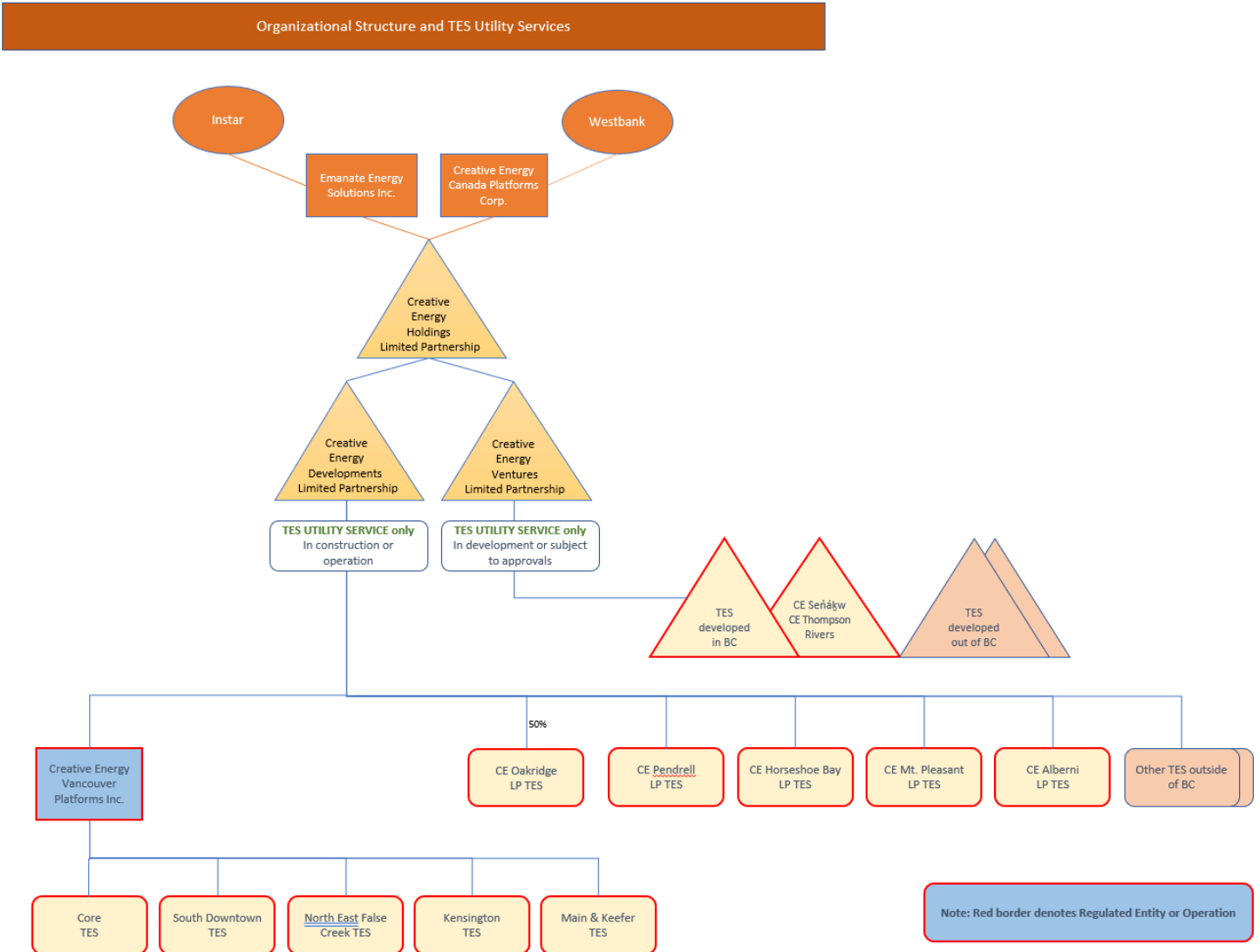
2. Appendix A to this Application provides the requested form of BCUC Order.

## **I. INTRODUCTION**

3. Certain entities within the Creative Energy Group own and operate Stream A and/or Stream B Thermal Energy Systems (**TES**) pursuant to the BCUC's TES Regulatory Framework Guidelines, and are public utilities under the UCA.

4. As shown in Figure 1, below, the regulated TES in the Creative Energy Group are held by entities below Creative Energy Developments Limited Partnership (**CEDLP**), which is wholly owned by Creative Energy Holdings Limited Partnership (**CE Holdings LP**).

**Figure 1: Creative Energy Group Organizational Structure**



5. Immediately prior to the issuance of the capital call referred to at paragraph 17 below, 50% of the Class A (common) units of CE Holdings LP were held by Emanate Energy Solutions Inc. (**Emanate Energy**) and 50% were held by Creative Energy Canada Platforms Corp. (**Creative Canada**).

6. Emanate Energy is a wholly owned indirect subsidiary of the InstarAGF Essential Infrastructure (AIE) LP fund managed by Instar Asset Management Inc. (**Instar**).<sup>1</sup> Instar is an independent alternative asset management firm with an emphasis on North American middle-market opportunities in the infrastructure sector and other alternative real asset categories. Instar has a wealth of experience investing in and directing infrastructure businesses, including power generation, district energy, and renewable energy assets.

<sup>1</sup> <https://instarinvest.com/>

7. In 2020 Emanate Energy acquired indirect control of voting shares of the public utilities in the Creative Energy Group through its acquisition of a 50% ownership interest in CEDLP as approved by BCUC Order C-1-20. CEDLP is now wholly owned by CE Holdings LP.
8. Creative Canada is wholly owned and controlled by Westbank Holdings Ltd.
9. CE Holdings LP was established for the purpose of securing equity from Emanate Energy and Creative Canada to support pursuit and definition of new utility TES projects and may also facilitate short-term inter-affiliate loans to reduce operating lines or to provide for the short-term financing needs of affiliates. CE Holdings LP is controlled by its general partner, Creative Energy Holdings GP Ltd. (**CE Holdings GP**).
10. Emanate Energy, Creative Canada and CE Holdings GP are parties to the Second Amended and Restated Creative Energy Holdings Limited Partnership Agreement (the **Partnership Agreement**). Pursuant to the Partnership Agreement, CE Holdings GP (as general partner of CE Holdings LP) can request Emanate Energy and Creative Canada to contribute funds to CE Holdings LP through capital calls. In return for the contribution of funds, CE Holdings GP will issue partnership units of CE Holdings LP to Emanate Energy and Creative Canada in proportion to their respective contributions to CE Holdings LP. The Partnership Agreement provides for one of the two partners to increase its percentage holding of CE Holdings LP if the other partner opts not to advance its pro rata portion of funds requested by CE Holdings GP through capital calls. In addition, the voting common shares of CE Holdings GP, the general partner of CE Holdings LP that controls the partnership, are “stapled” interests with the limited partnership units of CE Holdings LP, such that if the proportion of limited partnership units held by one limited partner increases, the proportion of common shares in CE Holdings GP held by that limited partner increases by a corresponding percentage.
11. In 2020 through its acquisition of an interest in CEDLP (then the parent entity in the Creative Energy Group), Emanate Energy indirectly acquired a reviewable interest in the Creative Energy Group utilities as approved by BCUC Order C-1-20. To date, Emanate Energy and Creative Canada have each held 50% of the Class A (common) units of CEDLP (for so long as it was the parent entity in the structure) or, after it became the new parent entity in the Creative Energy Group structure in a 2021 reorganization, CE Holdings LP.
12. In this Application, Emanate Energy seeks BCUC approval to acquire additional Class A units of CE Holdings LP (**Class A Units**) and a corresponding proportion of common shares in CE Holdings GP, which will increase the percentage of voting shares of the public utilities in the Creative Energy Group indirectly controlled by Emanate Energy.
13. In addition, Emanate Energy seeks BCUC approval to further increase the percentage of voting shares of the public utilities in the Creative Energy Group that Emanate Energy indirectly controls as a result of future capital calls by CE Holdings GP and issuance of additional Class A Units and a corresponding proportion of common shares in its general partner, CE Holdings GP, from time to time pursuant to the terms of the Partnership Agreement and the Amended and Restated Shareholder Agreement of CE Holdings GP (the **Shareholder Agreement**), each as further amended from time to time, which will further increase the percentage of voting shares of the public utilities in the Creative Energy Group indirectly controlled by Emanate Energy.

## II. EQUITY FINANCING OF CREATIVE ENERGY

14. As discussed above and pursuant to of the terms of the Partnership Agreement, CE Holdings GP can issue capital calls to Emanate Energy and Creative Canada for the contribution of funds to CE Holdings LP to fund the requirements of regulated and non-regulated activities in the Creative Energy Group.

15. The Partnership Agreement establishes a standard capital call mechanism whereby CE Holdings GP will issue Class A Units in to Emanate Energy and Creative Canada in return for their respective voluntary contribution of funds, if applicable. CE Holdings GP will issue Class A units to Emanate Energy and Creative Canada in proportion to their respective contributions to CE Holdings LP. Pursuant to the Partnership Agreement, Emanate Energy will be issued more Class A Units in CE Holdings LP than Creative Canada if Creative Canada opts not to contribute funds for any reason and Emanate Energy contributes more than Creative Canada in response to a capital call. Thereafter, because Emanate Energy and Creative Canada are each entitled to contribute funds to CE Holdings LP in response to a capital call in proportion to their existing ownership of Class A Units, Emanate Energy would have the right to contribute a greater percentage of capital call funds than Creative Canada and be issued corresponding higher percentage of Class A Units.

16. In addition, as the Shareholder Agreement contemplates that Emanate Energy and Creative Canada will hold common shares of CE Holdings GP proportionate to their Class A Units of CE Holdings LP, if Emanate Energy increases its pro rata ownership of Class A Units, it must also be issued additional common shares of CE Holdings GP in the same proportion as its holdings of Class A Units of CE Holdings LP.

17. On February 5, 2024, CE Holdings GP issued a funding notice to Emanate Energy and Creative Canada in respect of a capital call (the **February 2024 Capital Call**). Emanate Energy funded its 50% share of the February 2024 Capital Call and was issued partnership units of CE Holdings LP, in accordance with the terms of the Partnership Agreement. Creative Canada subsequently advised CE Holdings GP that it had opted not to fund its 50% share of the February 2024 Capital Call.

18. Discussions ensued between Emanate Energy and CE Holdings GP whereby it was agreed that Emanate would contribute 100% of the shortfall amount not contributed by Creative Canada in respect of the February 2024 Capital Call, but that partnership units would not be issued to Emanate in respect of this contribution at such time, pending further discussion and agreement among the partners. Such discussions have concluded and the partners have agreed that Emanate Energy is entitled to be issued additional partnership units pursuant to the Partnership Agreement corresponding to its additional contributions to CE Holdings LP. After giving effect to the issuance of additional partnership units in CE Holdings LP to Emanate Energy and corresponding common shares in CE Holdings GP, Emanate Energy will indirectly control approximately 54.5% of the voting shares of the public utilities in the Creative Energy Group.

19. On May 3, 2024, CE Holdings GP issued another capital call (the **May 2024 Capital Call**) to Emanate Energy and Creative Canada. In light of the funding arrangements that were ultimately agreed for the February 2024 Capital Call, Emanate is entitled to contribute approximately 54.5% of the capital call funds in the first instance and to be issued a proportionate number of Class A

Units, and, if Creative Canada opts for any reason not to contribute its pro rata portion of the May 2024 Capital Call funds, Emanate Energy is entitled to contribute the full amount of the May 2024 Capital Call and to be issued a proportionate number of Class A Units and a corresponding percentage of common shares of CE Holdings GP. In the event that Creative Canada opts for any reason not to fund some or all of its proportionate share of the May 2024 Capital Call, Emanate Energy intends to fund any shortfall amount in exchange for additional partnership units in CE Holdings LP in accordance with the Partnership Agreement and additional common shares in CE Holdings GP in accordance with the Shareholder Agreement, which may result in an additional increase in the percentage of voting shares of the public utilities in the Creative Energy Group that Emanate Energy indirectly controls.

20. CE Holdings GP will from time to time issue additional capital calls to Emanate Energy and Creative Canada. At this time, Emanate Energy expects to fund its proportionate share of such capital calls over the near term, and intends to fund 100% of any amount that Creative Canada opts not to contribute in respect of any such capital calls, such that the percentage of voting shares of the public utilities in the Creative Energy Group that Emanate Energy indirectly controls will increase again from time to time in accordance with the Partnership Agreement and Shareholder Agreement.

### **III. APPLICABLE LAW AND RELEVANT PRECEDENT**

#### **A. Acquisition of Additional Control of Creative Energy**

##### ***i. Relevant Provisions of the UCA***

21. Section 54(4) of the UCA defines a “reviewable interest” in a public utility as a person (or a person and the person’s associates) owning or controlling more than 20% of the voting shares outstanding of any class of shares of the public utility.

22. Section 54(8) of the UCA states the following:

Except if the acquisition or acquisition of control does not increase the percentage of voting shares held, owned or controlled by the person or by the person and the person’s associates, a person having a reviewable interest in a public utility and any associate of that person must not acquire or acquire control of any voting shares in the public utility unless the person or associate has obtained the commission’s approval.

23. As it relates to this Application, section 54(8) requires a person with a reviewable interest in a public utility to obtain the BCUC’s approval before acquiring control of additional voting shares of a public utility if the acquisition increases the percentage of voting shares controlled.

##### ***ii. BCUC Decision Criteria for Section 54 Acquisition of Reviewable Interest***

24. In past decisions on proposed acquisition of a reviewable interest in a public utility, the BCUC has applied certain criteria to assist in determining whether there is potential for detrimental effects to the utility and its customers and, in the broader sense, to the public interest. The BCUC



has applied its decision in the matter of an application by Kinder Morgan, Inc. and 0731297 B.C. Ltd. for the acquisition of common shares of Terasen Inc. dated November 10, 2005 (the **KMI-Terasen Decision**) to its review of applications for approval to acquire a reviewable interest in a public utility. In the KMI-Terasen Decision, the BCUC applied specific criteria to assist in determining whether the public utility and the users of the public utility's services will be detrimentally affected by a proposed acquisition. The criteria used were that:

- (a) the utility's current and future ability to raise equity and debt financing not be reduced or impaired;
- (b) there be no violation of existing covenants that will be detrimental to the customers;
- (c) the conduct of the utility's business, including the level of service, either now or in the future, will be maintained or enhanced;
- (d) the application be in compliance with appropriate enactments and/or regulations;
- (e) the structural integrity of the assets will be maintained in such a manner as to not impair utility service; and
- (f) the public interest will be preserved.

25. Furthermore, the BCUC in the KMI-Terasen Decision elaborated on criterion (f) by stating the following:

- (a) the public interest must be considered with respect to the Utilities over which the BCUC has jurisdiction;
- (b) the public interest must be viewed in the context of the scope of the approval that is being requested;
- (c) the BCUC panel concluded that the public interest criterion should not extend beyond issues normally considered by the BCUC for the general regulation of public utilities in the public interest; and
- (d) the BCUC panel concluded that it is appropriate to exclude issues that are more appropriately dealt with by, or that are more properly within the jurisdiction of, other agencies or levels of government.

26. Although the criteria set out in the KMI-Terasen Decision were developed in a case where an entity (KMI) proposed to acquire all of the voting shares of a public utility, pursuant to Order G-92-12 the BCUC also considered the six criteria in an application for approval pursuant to section 54(8) where a person with a reviewable interest proposed to increase its interest. In that Order the BCUC determined that the six criteria were satisfied without written reasons and granted approval pursuant to section 54(8) without a public hearing.

#### **IV. ANALYSIS**

##### **A. Present Acquisition of Additional CE Holdings LP Units**

27. Emanate Energy intends to acquire additional Class A Units and common shares of CE Holdings GP in respect of the February 2024 Capital Call, which will increase to approximately 54.5% the percentage of voting shares of the public utilities in the Creative Energy Group indirectly controlled by Emanate Energy. Emanate Energy intends to acquire additional Class A Units (and, if applicable, common shares of CE Holdings GP) in respect of the May 2024 Capital Call which, should Creative Canada opt not to contribute its pro rata portion of the May 2024 Capital Call, would increase to up to approximately 58.3% the percentage of voting shares of the public utilities in the Creative Energy Group indirectly controlled by Emanate Energy.

28. Emanate Energy's acquisition of these additional Class A Units of CE Holdings LP and common shares of CE Holdings GP, and thereby a proportionate increase in indirect control of the voting shares of the public utilities in the Creative Energy Group, will not detrimentally affect a public utility or its customers because:

- (a) the ability of utilities in the Creative Energy Group to raise equity and debt financing will not change with Emanate Energy's acquisition;
- (b) Emanate Energy's acquisition will not violate any existing covenants;
- (c) the conduct of business of utilities in the Creative Energy Group, including the level of service, will not change with Emanate Energy's acquisition;
- (d) Emanate Energy is in compliance with the appropriate enactments and regulations with respect to its proposed acquisition;
- (e) the structural integrity of the assets of the utilities in the Creative Energy Group will not change; and
- (f) the public interest is preserved.

##### **B. Emanate Energy's Future Acquisitions of More Control of Creative Energy Group**

29. Emanate Energy expects that there will be additional future capital calls by CE Holdings GP from time to time, and over time Emanate Energy expects to further increase the percentage of voting shares of the public utilities in the Creative Energy Group that it indirectly controls by virtue of the terms of the Partnership Agreement and Shareholder Agreement.

30. For the reasons articulated in the previous section, Emanate Energy further increasing the percentage of voting shares of the public utilities in the Creative Energy Group that it indirectly controls by virtue of the terms of the Partnership Agreement and Shareholder Agreement will not have a detrimental effect on the Creative Energy Group public utilities or their utility customers. These are routine funding steps contemplated by the Partnership Agreement and Shareholder Agreement.

31. With that in mind, Emanate Energy seeks to obtain the BCUC's approval to acquire additional Class A Units of CE Holdings LP and common shares of its general partner, CE Holdings GP in association with ongoing capital calls from time to time, which will further increase the percentage of voting shares of the public utilities in the Creative Energy Group that Emanate Energy indirectly controls in accordance with the operation of the terms of the Partnership Agreement and Shareholder Agreement related to capital calls and associated equity issuances from time to time.

32. Obtaining the BCUC's approval in this Application would alleviate the need for Emanate Energy to seek BCUC approval in advance of each otherwise routine future capital call, promoting regulatory efficiency.

33. This requested BCUC approval would be limited to Emanate Energy acquiring additional units of CE Holdings LP and common shares of CE Holdings GP in accordance with the terms of the Partnership Agreement and Shareholder Agreement related to capital calls and associated equity issuances.

# APPENDIX A

**ORDER NUMBER**

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

**and**

**An Application for Orders pursuant to section 54(8) of the UCA**

**BEFORE:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**on \_\_\_\_\_, 2024**

**ORDER**

**WHEREAS:**

- A. On \_\_\_\_\_, 2024, Emanate Energy Solutions Inc. (**Emanate Energy**) filed an application with the British Columbia Utilities Commission (**BCUC**) for approvals pursuant to 54(8) of the UCA in connection to proposed capital calls involving the Creative Energy Group (the **Application**);
- B. Certain entities within the Creative Energy group of companies (**Creative Energy Group**) own and operate Stream A and/or Stream B Thermal Energy Systems (**TES**) pursuant to the BCUC’s TES Regulatory Framework Guidelines, and are public utilities under the UCA.
- C. The regulated TES in the Creative Energy Group are held by entities below Creative Energy Developments Limited Partnership, which is wholly owned by Creative Energy Holdings Limited Partnership (**CE Holdings LP**).
- D. Emanate Energy and Creative Energy Canada Platforms Corp. (**Creative Canada**) are parties to a Second Amended and Restated Creative Energy Holdings Limited Partnership Agreement (the **Partnership Agreement**), which governs the operations of CE Holdings LP, and an Amended and Restated Shareholder Agreement of Creative Energy Holdings GP Ltd. (**CE Holdings GP**), its general partner (the **Shareholder Agreement**).
- E. CE Holdings GP , the general partner of CE Holdings LP, issued a capital call to Emanate Energy and Creative Canada in February 2024. Pursuant to the Partnership Agreement, the

Shareholder Agreement and the agreement of Emanate Energy and Creative Canada, the issuance of Class A units of CE Holdings LP and common shares of CE Holdings GP to Emanate Energy in respect of this capital call will increase its indirect control of the voting shares of the public utilities in the Creative Energy Group to approximately 54.5%.

- F. CE Holdings GP, the general partner of CE Holdings LP, issued a further capital call to Emanate Energy and Creative Canada in May 2024. Pursuant to the Partnership Agreement, the Shareholder Agreement and the agreement of Emanate Energy and Creative Canada, if Creative Canada opts not to fund its pro rata portion of this capital call, the issuance of Class A units of CE Holdings LP and common shares of CE Holdings GP to Emanate Energy in respect of this capital call will further increase its indirect control of the voting shares of the public utilities in the Creative Energy Group to up to approximately 58.3%.
- G. Furthermore, Emanate Energy anticipates that future capital calls by CE Holdings GP may result in further acquisitions of additional Class A units of CE Holdings LP and common shares of CE Holdings GP to Emanate Energy that would further increase its indirect control of the voting shares of the public utilities in the Creative Energy Group.
- H. The Application seeks the following approvals:
  - (a) an order approving Emanate Energy to acquire additional Class A units of CE Holdings LP and common shares of CE Holdings GP in response to issued capital calls issued in February and May 2024, which will increase to up to approximately 58.3% the percentage of voting shares of the public utilities in the Creative Energy Group controlled by Emanate Energy; and
  - (b) an order approving Emanate Energy to acquire additional Class A units of CE Holdings LP and common shares of CE Holdings GP from time to time, which will further increase the percentage of voting shares of the public utilities in the Creative Energy Group indirectly controlled by Emanate Energy in accordance with the operation of the terms of the Partnership Agreement and Shareholder Agreement related to capital calls and associated equity issuances as amended from time to time.
- I. [Summary of regulatory proceeding]; and
- J. The BCUC has reviewed the Application and evidence filed in the proceeding and makes the following determinations.

**NOW THEREFORE** pursuant to section 54 of the UCA, the BCUC orders as follows:

1. Emanate Energy is approved to acquire additional Class A units of CE Holdings LP and common shares of CE Holdings GP as described in the Application; and
2. Emanate Energy is approved to acquire additional Class A units of CE Holdings LP and common shares of CE Holdings GP, which will further increase the percentage of voting shares of the public utilities in the Creative Energy Group that Emanate Energy indirectly

controls in accordance with the terms of the Partnership Agreement and Shareholder Agreement related to capital calls and associated equity issuances as amended from time to time.

DATED at the City of Vancouver, in the Province of British Columbia, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

BY ORDER:

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