



BRITISH COLUMBIA
UTILITIES COMMISSION

ORDER
NUMBER G-14-90

PROVINCE OF BRITISH COLUMBIA

BRITISH COLUMBIA UTILITIES COMMISSION

IN THE MATTER OF the Utilities Commission
Act, S.B.C. 1980, c. 60, as amended

and

IN THE MATTER OF an Application by
British Columbia Hydro and Power Authority

BEFORE: J.G. McIntyre,)
Chairman;)
J.D.V. Newlands,)
Deputy Chairman;) February 6, 1990
N. Martin,)
Commissioner; and)
W.M. Swanson, Q.C.,)
Commissioner)

O R D E R

WHEREAS British Columbia Hydro and Power Authority ("B.C. Hydro") applied on October 6, 1989 ("the Application"), pursuant to the Utilities Commission Act and in particular Section 114, for reconsideration of the Commission's Decision and Order No. G-61-86 ("the Decision") pertaining to Matters in Dispute between B.C. Hydro and West Kootenay Power Ltd. ("WKP"); and

WHEREAS the Commission requested B.C. Hydro to provide additional information to the Application, the response to which was received on October 23, 1989; and

WHEREAS the Commission requested from and WKP responded to the Application documents on November 2, 1989 and stated that it was willing to enter into a long-term power purchase contract with B.C. Hydro in accordance with the principles set out in the Decision; and

WHEREAS the Commission requested from registered intervenors to the 1986 public hearing, a response to the B.C. Hydro and WKP documents; and

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WHEREAS the Commission requested B.C. Hydro to respond to the WKP and registered intervenor responses which was received on January 10, 1990; and

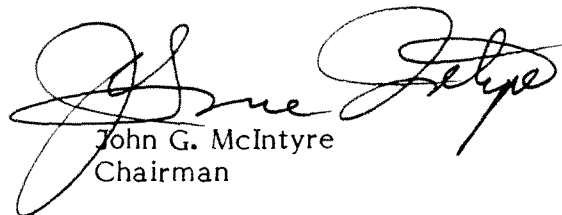
WHEREAS the Commission has reviewed and considered the information and responses.

NOW THEREFORE the Commission Orders as follows:

1. The Application by B.C. Hydro to the Commission for reconsideration of its Decision and Order No. G-61-86 is denied. The Reasons for Decision are attached as Appendix A.

DATED at the City of Vancouver, in the Province of British Columbia, this 6th day of February, 1990.

BY ORDER


John G. McIntyre
Chairman

APPENDIX A

In the Matter of an Application to Reconsider
Commission Decision and Order No. G-61-86

REASONS FOR DECISION

British Columbia Hydro and Power Authority ("B.C. Hydro"), by letter dated October 6, 1989, pursuant to Section 114 of the Utilities Commission Act applied to the Commission to reconsider its Decision dated October 15, 1986 entitled "Matters in Dispute between British Columbia Hydro and Power Authority and West Kootenay Power and Light Company, Limited". This Decision was directed to the resolution of the specific issues in dispute between B.C. Hydro and West Kootenay Power and Light Company, Limited, now West Kootenay Power Ltd. ("WKP") which had precluded completion of the longer-term contractual arrangements desired by both parties. The Decision focussed essentially on the determination by the Commission of just and reasonable rates for power and wheeling services to be provided by B.C. Hydro to WKP for a transition period, together with the appropriate terms and conditions to be associated with the rates in both the transition period and longer-term periods of the required contract. The Decision provided the principles upon which the contract was anticipated to be drawn, while leaving the actual choice of words to the parties. This hearing was originally set for December 11, 1985, but was adjourned to April 18, 1986 ("Adjournment Decision" dated December 15, 1985) and further adjourned to May 12, 1986 as a result of extensive evidence filed by B.C. Hydro on March 25, 1986.

In its letter dated October 6, 1989, B.C. Hydro specifically requested the Commission to reconsider its conclusion as stated on page 25 of its October 15, 1986 Decision, namely:

"Beyond 1990 the Commission concludes that the principles employed in determining the power purchase rate should be the same as those used to determine the rates applicable to other B.C. Hydro customers."

The quotation must be considered in the context of the Commission Summary and Conclusion which is as follows:

"2.5 Commission Summary and Conclusion

The Commission's jurisdiction to determine a just and reasonable rate for sales by B.C. Hydro to WKPL is accepted by all parties. Under the Act, the Commission may only approve rates which are just, reasonable and not unduly discriminatory. Accordingly, whether WKPL is viewed as a customer of B.C. Hydro in the traditional rate-making sense or is viewed as a competing utility, B.C. Hydro can only charge a rate which, in the judgement of the Commission and in the particular circumstances, is just, reasonable and not unduly discriminatory. For this reason, the Commission believes it is not essential to precisely characterize the nature of the relationship between B.C. Hydro and WKPL.

The parties clearly differ in their view as to how the Commission should determine what is just, reasonable and not unduly discriminatory. Both B.C. Hydro and WKPL would have the Commission consider the history of the relationship between the parties but would have the Commission draw very different conclusions from that history. In essence, B.C. Hydro's view of that history leads them to conclude that it would be just and reasonable to charge WKPL on an incremental cost basis. B.C. Hydro implied that, although this was unlike the treatment afforded any of its other customers, it was not unduly discriminatory because of the unique historical relationship between the parties. WKPL, on the other hand, argued that a review of the history simply underlines the need to treat WKPL as any other customer would be treated.

Thus, in the Commission's view the dispute comes down to this: Is it unduly discriminatory for B.C. Hydro to structure its rates to WKPL based on the greater of opportunity cost and marginal cost when it does not treat its other customers in this way?

The Commission believes that the principal factor tending to support distinguishing between the principles used to set WKPL rates and those of other B.C. Hydro customers, is that WKPL has other supply sources available to it, including expansion of its own generating capacity, Cominco surplus power, and purchases from other utilities.

In practical terms, WKPL's alternate supply sources in the short-term are limited. A two to five year lead time is required for WKPL to expand its own generating capacity. Access to supply from other utilities is uncertain, given the absence of a general third party wheeling arrangement and WKPL's transmission constraints. Supply from Cominco is limited and uncertain. On the basis of the evidence presented at the hearing, it appears to the Commission that WKPL will be a captive customer of B.C. Hydro for some of its needs, at least until the end of the decade.

Other factors deemed pertinent by the Commission and which distinguish WKPL from other B.C. Hydro customers are:

1. In recent years, WKPL has provided electrical energy at rates considerably lower than in the rest of British Columbia. The communities served by WKPL have, in part at least, developed as a result of those low rates.
2. WKPL has required and will continue to require primarily a peaking service from B.C. Hydro until 1990 at least.
3. B.C. Hydro will likely have a firm surplus of energy and capacity until the end of the decade and possibly beyond.

The Commission has concluded that the low rates enjoyed in the WKPL service area will not exist indefinitely. WKPL has indicated that even if their proposed rates were accepted, WKPL rates would equal those of B.C. Hydro by 1995 (Exhibits #64 and 64A). Unless less costly alternative sources are found, the Commission concludes that the issue is not whether WKPL's rates will in fact approach those of B.C. Hydro, but only how quickly.

WKPL's peaking requirements also make it unique amongst the major purchasers from B.C. Hydro. There is currently no large customer under either Rate Schedules 1821 or 1211 with a load factor as low as WKPL's. The load factor improves as WKPL requirements from B.C. Hydro grow. Clearly, supply availability from Cominco affects WKPL's load factor with regard to purchases from B.C. Hydro. It also appears that, at least until the end of the decade, B.C. Hydro will have a firm surplus of capacity and energy. Thus, there are no direct costs to Hydro of supplying WKPL during this period but rather only that cost represented by sales foregone in the export market.

From the evidence, the Commission is of the view that all of the foregoing factors should remain reasonably constant until at least the end of the decade but may well alter fundamentally after that time. The Commission therefore concludes that a rate can not be determined that will be appropriate for the whole term of the contract. Accordingly, the Commission has developed a transitional rate for the period to 1990. Section 3 of this Decision details the basis for the transitional rate. In Section 4, the terms and conditions necessary to make that rate just and reasonable during the transitional period, have been specified by the Commission.

In summary, the Commission concludes that during the transitional period, fairness to both parties will be ensured by rates that are considerably lower than those in existing Schedules 1211 and 1821 and only marginally lower than Schedule 3807. Moreover, economic efficiency and the public interest should be adequately supported during this period by the terms and conditions set out in Section 4.0 of this Decision and relating to the transitional rates determined by the Commission.

Beyond 1990 the Commission concludes that the principles employed in determining the power purchase rate should be the same as those used to determine the rates applicable to other B.C. Hydro customers. The contract should, therefore, provide for renegotiation of the rate after 1990. In negotiating with respect to rates for the period beyond 1990, the parties should bear in mind the Commission's conclusion that the long-term rate should not be based on incremental costs. The Commission concludes that the terms and conditions attached to the transitional rate should reflect the unique characteristics of the B.C. Hydro/WKPL relationship, and should remain for the long-term."

By letter of October 23, 1989, B.C. Hydro stated that "The relief B.C. Hydro is seeking is an Order that states that in the light of changed circumstances, Commission Order No. G-61-86 is amended to the effect that Power Purchase agreements between WKP and B.C. Hydro reflect the long term cost of new supply resources."

In response to B.C. Hydro's Application the Commission requested a response from WKP and upon receipt thereof a response from the Municipalities and other interested parties. By letter dated January 10, 1990, B.C. Hydro responded to the positions taken by the other party and participants.

Conclusions

The changed circumstances relied upon by B.C. Hydro do not go to the heart of the decision, and accordingly do not warrant altering the principles to be used to determine the just and reasonable rates to be charged WKP. It is unduly discriminatory for B.C. Hydro to structure its rates to WKP based on the greater of opportunity cost and marginal cost when it does not treat its other customers in this way.

In the result, the Commission denies the request by B.C. Hydro and reiterates its conclusion as set forth on page 25 of the 1986 Decision. Beyond 1990 the Commission concludes that the principles employed in determining the power purchase rate should be the same as those used to determine the rates applicable to other B.C. Hydro customers.