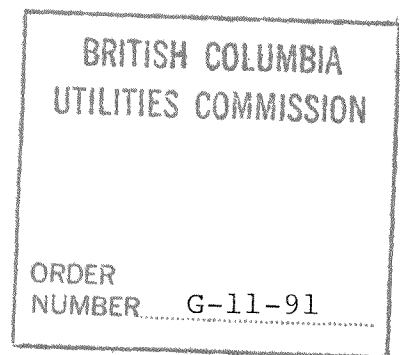




IN THE MATTER OF the Utilities Commission
Act, S.B.C. 1980, c. 60, as amended

and

IN THE MATTER OF Commission Decision and
Order No. G-77-90

BEFORE: J.G. McIntyre,)
Chairman;)
H.J. Page,)
Commissioner; and) January 30, 1991
K.L. Hall,)
Commissioner)

ORDER

WHEREAS:

- A. By Commission Order No. G-77-90 dated October 17, 1990 the Commission issued its Decision ("the Decision") into Hemlock Valley Electrical Services Ltd.'s ("HVES") May 31, 1990 Rate Application; and
- B. By letter dated November 8, 1990, HVES requested ("the Request") the Commission to reconsider certain aspects of the Decision, pursuant to Section 114 of the Utilities Commission Act ("the Act"); and
- C. Commission Order No. G-84-90 accepted the HVES Request and required Registered Intervenors to make any additional representations in writing by November 28, 1990 which was subsequently extended to December 21, 1990; and
- D. On January 8, 1990 HVES replied to the responses made by the Hemlock Valley Ratepayers' Association and Strata Corporation NW1282; and
- E. The Commission has reviewed the information and evidence filed regarding the Request.

NOW THEREFORE the Commission orders as follows:

1. The Request, by HVES to vary the October 17, 1990 Commission Decision and Order No. G-77-90, is denied and the Commission's Reasons for Decision is attached as Appendix A.
2. The Commission reaffirms and orders HVES to proceed with refunds to customers along with other directions incorporated in its October 17, 1990 Decision and Order No. G-77-90.

DATED at the City of Vancouver, in the Province of British Columbia, this 30th day of January, 1991.

BY ORDER


John G. McIntyre
Chairman

/lm
BCUC/ORDER/HVES-Order No. G-77-90

IN THE MATTER OF a Request for Reconsideration by
Hemlock Valley Electrical Services Ltd. and
Commission Order No. G-77-90

REASONS FOR DECISION

1.0 INTRODUCTION

Following a public hearing on September 24 and 25, and by Commission Order No. G-77-90 dated October 17, 1990 the Commission issued a Decision with respect to Hemlock Valley Electrical Services Ltd.'s ("HVES") May 31, 1990 Rate Application. As part of this Decision, the Commission ordered that rate base costs be phased-in over three years.

By letter dated November 8, 1990, HVES requested the Commission to reconsider certain aspects of the Decision, pursuant to Section 114 of the Utilities Commission Act, submitting that:

1. Reconsideration is appropriate because it was not provided an opportunity to deal with the phase-in issue at the Hearing; and
2. Once the Commission determined that there was a rate base and that a just and reasonable return on it was 13 percent, the Commission was obliged to permit HVES an opportunity to recover sufficient revenue to capture that return.

HVES requested that the same letter stand as its submission with respect to the identified issues, including its argument that the Commission's concerns with respect to "rate shock" are misplaced.

The Commission reviewed the Request and, by Commission Order No. G-84-90, accepted the Request and advised Registered Intervenors that any representations should be filed on or before November 28, 1990.

Responses were received on November 28, 1990 from the Hemlock Valley Rate Payers' Association ("HVRA") and Strata Corporation NW1282. Both Intervenors made their own Requests for Reconsideration as well. These Requests were not granted but the

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Commission did extend the time for filing of submissions on the HVES Request to December 21, 1990 to enable HVRA's legal counsel to complete a detailed review and submit legal argument.

The HVRA's December 21, 1990 submission argued that the Commission did not exceed its jurisdiction when it ordered phased-in rate base costs and that the October 17, 1990 Decision should not be replaced.

HVES replied to the submissions on January 8, 1991 and reiterated its position.

2.0 JURISDICTION

The argument made on behalf of HVES has as its essence the jurisdiction of the Commission, and it is set out in the letter dated December 14, 1990.

On page 2 of that letter, Section 65(4) of the Act is quoted in its entirety, as are Sections 66(1) (a) and (b). The submission then goes on:

"The words of Section 65(1)(b) [reference should be 65(4)(b)] and Section 66(1)(b) of the Act are a clear statutory direction to the Commission on how to determine a just and reasonable rate. In our respectful submission, in the presence of clear language, the Commission may not disregard those statutory provisions and substitute its own opinion of what is just or reasonable in any given case."

It is the Commission's view that the submission is flawed in that it evidently invites the Commission to ignore the clear language of Sections 65(4)(a) and 65(4)(c), and concentrate instead only on Section 65(4)(b) which supports the position of HVES. The Commission holds that in fixing a rate it must have due regard to the whole of Section 65. Section 66(1)(b) makes this abundantly clear:

"the Commission shall have due regard, among other things, to the fixing of a rate that is not unjust or unreasonable, within the meaning of Section 65."

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Counsel for HVES placed considerable reliance on a judgment in the Supreme Court of Canada regarding British Columbia Electric Railway Co. Ltd. v. The Public Utilities Commission of British Columbia et al (1960) S.C.R. 837. In argument for reconsideration he states:

"While there is no relevant judicial consideration of Sections 65(4) and 66(1) of the Act, the words of those sections are virtually identical to Section 16(1) of the Public Utilities Act ..."

This statement is refuted by Counsel for HVRA at pages 3 and 4 of her argument (letter dated December 21, 1990). There she points out that Section 65(4)(c), which contains the words "unjust or unreasonable for any other reason" is a specific provision in the current legislation not contained in the earlier Act.

There is another reason why the Supreme Court judgment is not applicable to this case. In that case, the Public Utilities Commission had set, in September 1952, an allowable rate of return on rate base of 6.5 percent. Some six years later, in July 1958, the Commission refused consent to the filing of a rate which, if consented to, would not have resulted in a rate of return exceeding that earlier approved. It was this fact to which the Supreme Court took exception in its judgment. HVES attempts to create a parallel situation by submitting that the Commission lacked the "jurisdiction to introduce additional factors and approve a rate which deviated from that which it had previously determined would yield a fair return on invested capital".

The point which seems to be missed is that the Commission's Decision of October 17, 1990 must be taken as a whole and should be read and understood as such. It is not a decision on rate of return, followed by decisions at a later time on other matters. The phase-in is an integral part of the finding on just and reasonable rates. The Decision as a whole should make it abundantly clear that the Commission had concerns about "the nature and quality (of service) furnished by the utility". The impact on the customers of a large percentage increase suddenly imposed was another example of an "other reason" [Section 65(4)(c)] to which the Commission gave due regard in deciding to phase-in the increase in three steps. The Commission was not prepared to grant an immediate increase in the amount requested by the Applicant, but granted instead a modest increase initially and

set a target for an allowable rate of return which HVES could work towards, together with suggestions and commentary on how the company might improve its operation.

3.0 RATE SHOCK

Separate from the request by HVES to have the Commission reconsider its decision with respect to jurisdictional issues, HVES further requested that the Commission reconsider its decision with respect to the issue of phasing in the proposed rate base costs as a result of potential rate shock to customers. HVES submitted that it was not provided an opportunity to deal with the phase-in issue at the hearing and sought the opportunity to address the issue in its Reconsideration Application. The submission of HVES in this regard is brief, as follows:

"HVES respectfully submits that the Commission's concerns with respect to 'rate shock' are misplaced in the context of this case. None of the intervenors argued that the rate increase being sought disrupted their financial planning or was in any other way rendered more onerous by its suddenness. Certainly the intervenors opposed the increase in general but not because it was happening all at once but rather because they disputed the need for it at large. HVES respectfully submits that the focus of their concern likely results from the fact that while the percentage increase sought is significant, the absolute dollar impact as set out in the hearing notice is not sufficient to induce real hardship of the kind that might make it appropriate for the Commission to consider relief from 'rate shock'. This is particularly the case for those customers (which is most of them) for whom their mountain residence is a weekend or holiday residence only.

Moreover, in its interim decision effective July 1, 1990, the Commission permitted rates to increase to a level higher than the Decision permits. Any rate shock which could be anticipated from that level has clearly already occurred. Requiring rates to be lowered from present levels until May 1, 1991 and then bounce them back again would serve only to introduce greater uncertainty for ratepayers. HVES concedes that where interim rates are found to be at a level higher than that necessary to recover the legitimate costs of a utility it is appropriate to order a rebate. It is not appropriate where the Commission confirms that those rate levels were required but now wishes to avoid rate shock."

The response of the HVRA in this regard was received on December 21, 1990 and the reply by HVES was made on January 8, 1991.

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We understand the position of HVRA to be that rate shock did exist and that it was a legitimate concern for the Commission to consider phasing in the rate base costs to avoid that rate shock. HVRA acknowledged that this method is not frequently utilized in B.C., but asserted that in American jurisdictions it is considered a normal method of determining a return on rate base for a utility and for protecting a consumer against rate shock. HVRA pointed to its submission of November 18, 1990 in which the association addressed the social impact of these significant rate increases. They submitted that the Commission was correct in taking into consideration the highly unusual nature of such a large percentage increase in rates and its subsequent decision to lessen the impact through phase-in.

The Commission considers that the level of bills referred to by the accountant for HVES, in the context of reserve for bad debts, when subjected to increases of the Order sought by the Company did indeed constitute rate shock. She stated:

"... some chalets have a thousand dollars a month in electricity. A lot of them have a lot less, about three or four hundred dollars a month in electricity..." (T 362)

In reply to the HVRA submission, HVES argued that phasing in of rate base cost was not a normal method of determining a return on rate base in other jurisdictions. HVES believes that comparable jurisdictions may phase-in rate base costs related to new projects and, if this is done, the reduced return in early years is compensated through additional recovery in later years. HVES submitted that the Commission's Decision is unfair because it does not merely delay recovery of the full return during the phase-in years, but rather denies it entirely. Finally, HVES criticized HVRA for not dealing with the HVES assertion that any rate shock facing customers had already been accounted for in the interim rates effective July 1, 1990 to October 17, 1990.

The Commission disagrees with HVES that the impact of rate shock from a 43.54 percent increase in rates was not sufficient to induce real hardship of the kind that might make it appropriate for the Commission to consider relief from "rate shock". Moreover, with respect to the higher interim rates which were in place between July 1, 1990 and October 17, 1990 the Commission had considered this point previously and had recognized that the reduced energy requirements in the off-season had insulated customers

from the absolute dollar impact that would potentially accrue during the winter period. As well, it is the Commission's normal practice to allow interim, refundable relief to a utility based on "prima facie" data and arguments in its initial Application, with final determination of fair, just and reasonable rates following completion of a public hearing. For that reason, the Commission was prepared to allow substantial interim relief to HVES in the period following the Application and before issuance of the Commission Decision.

4.0 COMMISSION DETERMINATION

The Utilities Commission Act places a duty upon the Commission to balance all the factors which the Act includes as matters for due regard when fixing rates. HVES has emphasized one element; namely, return on the appraised value of the utility's property in terms of typical costs of money in the financial markets. It refers, in reply to argument by HVRA to "...the absolute limitation imposed by Section 65(4)(b)". The Commission does not accept that any such absolute limitation applies, but is of the view that counsel for HVRA, at pages 4 and 5¹, has correctly recognized the breadth of the Commission's mandate.

The Commission therefore denies the request and reaffirms the term of Order No. G-77-90 and the requirements of its October 17, 1990 Decision. HVES is to proceed with refunds to its customers as directed in the Decision.

¹ There is an error in Karen Knott's quote.