

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. V6Z 2N3
CANADA



TELEPHONE: (604) 660-4700
BC TOLL FREE: 1-800-663-1385
FACSIMILE: (604) 660-1102

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

An Application by the Minister of Employment and Investment
Request for Adjournment of the Public Hearing into Retail Access and Unbundled Tariffs

BEFORE: L.R. Barr, Acting Chair; and)
K.L. Hall, Commissioner) April 15, 1997

O R D E R

WHEREAS:

- A. By way of Commission Order No. G-6-97, dated January 24, 1997, the Commission set down a public hearing into the matter of Retail Access and Unbundled Tariffs to commence April 1, 1997; and
- B. By way of a letter dated March 26, 1997 the Minister of Employment and Investment ("the Minister") requested that the said public hearing be deferred, having regard to the appointment of a Task Force to implement electricity market reform; and
- C. The Commission determined that the request by the Minister was a request to reconsider Order No. G-6-97; and
- D. On March 27, 1997 the Commission issued Order No. G-34-97 adjourning generally the public hearing scheduled to commence on April 1, 1997 to allow for the Commission to receive and consider the comments of Registered Intervenors respecting the request of the Minister; and
- E. The Commission asked Registered Intervenors to comment on the Minister's request, to advise the Commission on the appropriate disposition of the West Kootenay Power Ltd. Transmission Access Application, the Complaint filed by certain Rate Schedule 1821 customers and the British Columbia Hydro and Power Authority Wholesale Transmission Services Application, and to advise the Commission with regard to applications for participant assistance in respect of the proceedings under Order No. G-6-97, all by April 11, 1997; and

F. The Commission received submissions from 21 parties, shown on Appendix A to the Reasons for Decision attached to this Order.

NOW THEREFORE the Commission orders as follows:

1. The public hearing scheduled to commence on April 1, 1997 is adjourned indefinitely.
2. The disposition of the Complaint by certain Rate Schedule 1821 customers is deferred indefinitely.
3. Applications for participant assistance in respect of the proceedings under Order No. G-6-97 are to be filed with the Commission no later than May 16, 1997.

DATED at the City of Vancouver, in the Province of British Columbia, this 18th day of April, 1997.

BY ORDER

Original signed by:

Lorna R. Barr
Acting Chair

Attachment

**Request by the Minister of Employment and Investment
for a Reconsideration of Commission Order G-6-97
Setting Down a Public Hearing into
the Issues of Retail Access and Unbundled Tariffs**

REASONS FOR DECISION

1.0 BACKGROUND

By way of letter, dated March 26, 1997, the Minister of Employment and Investment ("the Minister") requested that the British Columbia Utilities Commission ("the Commission", "BCUC") defer a public hearing into the issues of retail access and unbundled tariffs which had been set down to commence April 1, 1997. In making this request, the Minister indicated that he was establishing a task force to advise the government on the best options for implementing market change. Accordingly, the Minister stated that he believed that it would be in the best interests of all parties for the Commission to defer the hearing and allow the government's reform process to unfold as quickly as possible.

The Commission determined that the request by the Minister was a request to reconsider Order No. G-6-97. Accordingly, on March 27, 1997, the Commission issued Order No. G-34-97 adjourning generally the hearing scheduled to commence on April 1, 1997 to allow for the Commission to receive and consider the comments of Registered Intervenors respecting the request of the Minister. In addition, the Commission asked Registered Intervenors to advise the Commission on the appropriate disposition of the West Kootenay Power Ltd. Transmission Access Application, the Complaint filed by certain Rate Schedule 1821 customers and the British Columbia Hydro and Power Authority Wholesale Transmission Services Application, and to advise the Commission with regard to applications for participant assistance in respect of the proceedings under Order No. G-6-97. The Commission received submissions from 21 parties. The list of submissions is attached as Appendix A.

2.0 GUIDING PRINCIPLES FOR RECONSIDERATION

The Commission's powers of reconsideration under section 114 of the *Utilities Commission Act* ("the Act") are discretionary. In its May 1995 B.C. Hydro Phase 1 Decision, the Commission set out its general criteria for determining whether or not a reasonable basis exists for requiring reconsideration. The applicant must demonstrate, on a *prima facie* basis, one or more of the following.

1. An error in fact or law (which must have significant material implications);
2. A fundamental change in circumstance or facts since the impugned decision;
3. A basic principle that had not been raised in the original proceeding; or

4. A new principle that has arisen as a result of the impugned decision.

3.0 EVIDENCE

As indicated above, on March 26, 1997, the Minister announced the creation of a task force to bring forward to government a package of electricity market reform proposals. Accordingly, the Minister stated that he believed it would be in the best interests of all parties to defer the hearing.

Although several parties expressed concern about the timing of the announcement, most parties indicated that a deferral was appropriate. In general, those who argued in favour of the deferral argued that potential electricity market reform was a fundamental policy decision which should be made directly by government and not by the Commission. Similarly, some parties indicated that the Commission lacked jurisdiction to undertake the kinds of market reform which certain parties were requesting, so that a deferral to allow government policy to be set was required. Finally, certain parties argued that a deferral was appropriate since very few parties would have the resources to participate in both the task force and a Commission hearing on the same topic.

Those opposed to the deferral argued that considerable expense had been incurred by parties in preparation for the hearing and were concerned that these moneys would be wasted. Further, these parties expressed concern that the terms of reference for the task force were too restrictive.

4.0 COMMISSION FINDINGS

Based on the criteria for reconsideration set out above, the Commission is satisfied that the request from the Minister constitutes a fundamental change in circumstance that has arisen since the issue of Commission Order No. G-6-97. Accordingly, the Commission considers that this provides a sufficient basis to warrant reconsideration of this Order.

With respect to the merits of the request for reconsideration, the Commission has sympathy for those parties who have spent significant sums of money in preparation for the hearing. Nonetheless, the position of the Commission is that fundamental policy decisions of this nature are best made by the government. Accordingly, the Commission accepts the argument of the Minister that, in this instance, it is in the best interests of all parties to defer the hearing until after the completion of the task force or until such other time as the Commission believes appropriate.

Therefore, the Commission determines that the request for deferral of the hearing into Retail Access and Unbundled Tariffs set down to commence April 1, 1997 is deferred indefinitely. Further, given that the hearing is deferred indefinitely, the Commission declines to order parties to complete responses to information requests already received, as some intervenors had asked.

The disposition of the complaint by certain Rate Schedule 1821 customers is deferred indefinitely.

British Columbia Hydro and Power Authority's Wholesale Transmission Services Application and West Kootenay Power Ltd.'s Transmission Access Application will be the subject of future Commission Orders to be issued shortly.

With respect to the issue of participant cost awards, the Commission invites all parties who wish to apply for compensation for costs incurred up to April 11, 1997 to do so no later than May 16, 1997. Some relaxation of the normal criteria may apply due to the exceptional circumstances associated with the deferral of this hearing.

1. The Association for the Advancement of Sustainable Energy Policy
2. The Bonneville Power Administration
3. The British Columbia Hydro and Power Authority
4. The City of Calgary
5. The City of New Westminster
6. The Comox Valley Energy Research Group
7. The Consumers Association of Canada (BC Branch) *et al.*
8. Energy Probe Research Foundation
9. Enron Capital and Trade Resources Corp.
10. Fording Coal Inc.
11. The Grid Company of Alberta
12. The Independent Power Association of British Columbia
13. The Interior Municipal Electrical Utilities
14. The Kootenay Okanagan Electric Consumers Association
15. The Large Industrial Customers
16. The Natural Resources Industries
17. Princeton Light and Power Ltd.
18. Powerhouse Developments Inc.
19. TransAlta Energy Marketing Ltd.
20. West Kootenay Power Ltd.
21. Paul Willis