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

and

An Application by West Kootenay Power Ltd.
to Reconsider Commission Order No. G-6-97
pertaining to the Retail Access and Unbundled Tariffs Hearing

BEFORE: M.K. Jaccard, Chairperson; and)
L.R. Barr, Deputy Chairperson) March 11, 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 letter dated February 28, 1997, West Kootenay Power Ltd. ("WKP") requested that the British Columbia Utilities Commission ("the Commission") rescind Order No. G-6-97 and set down in its stead, a hearing to consider WKP's Transmission Access Application, filed with the Commission November 27, 1996 and the British Columbia Hydro and Power Authority's Wholesale Transmission Services Application, filed with the Commission February 17, 1997; and
- C. WKP proposed that this new hearing also commence on April 1, 1997; and
- D. By way of letter dated March 3, 1997, the Commission sent a letter to all Registered Intervenors to the Retail Access and Unbundled Tariffs hearing asking for comments on WKP's request; and
- E. The Commission received submissions from 16 Registered Intervenors; and
- F. The Commission reviewed WKP's request and the submissions received against its general criteria for determining whether or not a reasonable basis exists for requiring reconsideration.

NOW THEREFORE the Commission orders that the request for reconsideration of Commission Order No. G-6-97 is denied. The Commission's Reasons for Decision are attached hereto as Appendix A.

DATED at the City of Vancouver, in the Province of British Columbia, this 12th day of March, 1997.

BY ORDER

Original signed by:

Dr. Mark K. Jaccard
Chairperson

Attachment

Order/RA/WKP Reconsider

**Request by West Kootenay Power Ltd.
for a Reconsideration of Commission Order No. 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 February 28, 1997, West Kootenay Power Ltd. ("WKP") requested that the British Columbia Utilities Commission ("the Commission", "BCUC") reconsider Commission Order No. G-6-97, dated January 24, 1997, which set down a public hearing into the issues of retail access and unbundled tariffs. In particular, WKP requested that the Commission rescind Order No. G-6-97 and set down in its stead, a hearing to consider WKP's Transmission Access Application, filed with the Commission November 27, 1996 and the British Columbia Hydro and Power Authority ("B.C. Hydro") Wholesale Transmission Services Application, filed with the Commission February 17, 1997. WKP proposed that this new hearing also commence on April 1, 1997.

On March 3, 1997, the Commission sent a letter to all Registered Intervenors to the Retail Access and Unbundled Tariffs hearing asking for comments on WKP's request. The Commission received submissions from 16 Registered Intervenors. A list of these submission is attached to this document as Appendix 1.

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

In support of its request, WKP stated that holding the Retail Access and Unbundled Tariff Hearing, as characterized by the Revised Issues List issued January 29, 1997, would unnecessarily delay the disposition of its application and thus delay generation competition and customer choice in British Columbia. WKP argued that the generic policy concerns related to this issue had already been extensively canvassed in the Electricity Market Structure Review ("EMSR") and in other jurisdictions. WKP suggested that a review of the relevant literature, the EMSR and other regulatory precedents, would provide complete and satisfactory evidence with respect to the generic issues. Further, to the extent that the Commission determined that more evidence was required with respect to generic issues, WKP suggested that the Commission could conduct a written process.

With respect to more specific issues, WKP suggested that they could best be addressed against a specific utility application. WKP argued that, in the absence of such an application, it could be anticipated that many irrelevant issues would be raised.

Finally, WKP argued that regulatory efficiency and consistency suggested that the proposed hearing consider both WKP's Application and B.C. Hydro's Wholesale Transmission Access Application.

Several parties supported WKP's request, either in whole or in part. These parties tended to argue that the desirability of retail access could best be assessed in the context of a specific proposal. For example, B.C. Hydro stated that "the Commission's ability to determine the desirability of retail access in this province is greatly enhanced if it is considering specific models or proposals as opposed to debating broad issues in a vacuum." Similarly, the Council of Forest Industries, the Mining Association of B.C. and the Electrochemical Producers (collectively the "Industrial Customers") stated that "a proceeding which was directed to specific proposals would be more expeditious and would permit dealing with generic issues in a defined context, which is highly desirable". At the same time, both these parties and others stated that if the Commission were to grant WKP's request, the hearing must be postponed one month in order to allow Intervenor's to shift the focus of their efforts.

Those parties not in support of WKP's request argued that WKP had not demonstrated that the scheduled hearing is either redundant or unnecessary. Although they recognized that policy issues had been canvassed during the EMSR, they noted that the EMSR Report had recommended against the implementation of retail access at that time. In addition, the Association for the Advancement of Sustainable Energy Policy ("AASEP") stated that the Commission had promised that the EMSR would not be the last opportunity to have input into the development of a policy on retail access and that several participants to the scheduled hearing had not been participants to the earlier Review.

AASEP also argued that the Commission should be reluctant to reconsider procedural decisions. They noted that the B.C. Labour Board adopted the position that procedural decisions will only be reconsidered on the basis of a denial of natural justice. AASEP maintained that the WKP application for reconsideration does not meet the threshold criterion that there has been an error in fact or law.

Finally, AASEP argued that WKP had not shown any prejudice that it would suffer if the Commission proceeds as originally planned. In contrast, other parties would not have been provided with sufficient notice to respond to the changed schedule and would not be able to prepare to address the specific details of the WKP and B.C. Hydro Applications. Accordingly, any change to the proceeding at this time would be inconvenient. These concerns were echoed by the Consumers Association of Canada, B.C. Branch *et al.* ("CAC(BC)") and Enron Capital and Trade Resources Corp.

The CAC(BC) also argued that there were a number of general issues that need to be canvassed with respect to ensuring an appropriate transition to a fully competitive market. The CAC(BC) expressed concern that the hearing envisioned by WKP would focus on the particulars of WKP's Application at the expense of more generic issues. As well, the CAC(BC) suggested that some of the items contained in WKP's application might not be within the Commission's jurisdiction to determine and that these items should be canvassed in a generic hearing. Although supporting the thrust of WKP's request, B.C. Hydro expressed similar concerns with respect to jurisdiction.

4.0 COMMISSION FINDINGS

Based on the criteria for reconsideration set out above, the Commission is not satisfied that the issues raised by WKP and others for reconsideration of Commission Order No. G-6-97 provide a sufficient basis to warrant reconsideration of this Order. Accordingly, the request for reconsideration of Commission Order No. G-6-97 is denied.

Nonetheless, based on the submissions which the Commission has received in support of WKP's request, it has become apparent that some parties are unclear as to the Commission's expectations with respect to this hearing.

The Commission expects that two inter-related questions will be addressed in this hearing. The first question is whether or not retail access in some form is desirable for British Columbia at this time. The second question is, if retail access in some form is desirable, what should that form be and over what time frame should it occur.

Several parties who expressed support for WKP's proposal appeared concerned that the Commission's Decision would be limited to a simple finding that retail access, of an unspecified form, is or is not desirable, but would not provide information as to the specific form which is desirable. While the Commission agrees that certain questions can only be addressed in regards to a specific application, particularly questions related to actual rate contained in the tariff, the Commission expects that, if it were to find retail access desirable at this time, significant determinations could be made as to the specific form of retail access, as a result of this hearing. In coming to this expectation, the Commission notes that, in order for it to answer the question of whether retail access is desirable, it must examine various options for implementing retail access and unbundling tariffs. As indicated previously, both the WKP Transmission Access Application and the B.C. Hydro Wholesale Transmission Services Application are considered resource documents for this hearing and will be considered part of the record of this hearing. The Commission expects that both these documents, as well as its own previous experience with wholesale transmission access, will prove helpful in this regard.

Accordingly, if the Commission were to find retail access desirable, and if the evidence adduced at the hearing allows, the Commission expects to be able to give specific directions in a number of areas. Such directions would be helpful to both utilities bringing forward specific applications and to other parties. These areas include, but are not limited to, the following.

1. Eligibility, including which customers should be made eligible for retail access and, if it is determined that not all customers should be eligible, simultaneously, the timing under which retail access may be extended to other customers.
2. Service Offerings, including the specific kinds of transmission services which should be offered.
3. Physical Operation of the System, including how the system should be structured to ensure all market participants are treated fairly, within the limits of the Commission's jurisdiction.
4. Stranded Costs and Benefits, including how stranded costs should be determined and apportioned amongst market participants.
5. Social and Environmental Concerns, including direction as to the role utilities may play with respect to these issues.

The Commission shares the concern of those parties who wish to see a speedy disposition of both WKP's Transmission Access Application and B.C. Hydro's Wholesale Transmission Services Application. Therefore, the Commission plans to set down a public hearing into each of these applications. It is proposed that the hearing into WKP's application will commence Monday, September 15, 1997 and that the hearing into B.C. Hydro's application will commence Monday, September 29, 1997. Both hearings will be the subject of future Commission Orders.

Finally, in its letter, WKP suggested that the issue of interim approval for B.C. Hydro's Wholesale Transmission Service Application should be canvassed at the prehearing conference scheduled for March 14, 1997. The Commission has already set in place a process for the disposition of this matter and will not be asking for further comments at the prehearing conference.

APPENDIX 1

**West Kootenay Power Ltd. Reconsideration Request
Submissions Received**

Original Request

1. West Kootenay Power Ltd. , Letter dated February 28

Comments in Response

1. Association for the Advancement of Sustainable Energy Policy
2. British Columbia Hydro and Power Authority
4. City of New Westminster
5. Comox Valley Energy Research Group
3. Consumers Association of Canada (B.C. Branch) *et al.*
6. Council of Forest Industries, the Mining Association of B.C. and the Electrochemical Producers
7. Enron Capital and Trade Resources Corp.
8. Fording Coal Inc.
9. Interior Municipal Electric Utilities
10. Kootenay Okanagan Electric Consumers Association
11. Office of Professional Employees' International Union, Local 378
12. Peace River Regional District
13. Powerhouse Developments Inc.
14. Princeton Light and Power
15. TransCanada Energy Ltd.
16. TransMountain Pipe Line Company Ltd.