



BRITISH COLUMBIA
UTILITIES COMMISSION

ORDER
NUMBER G-27-99

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

IN THE MATTER OF
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

An Application by West Kootenay Power Ltd.
for Approval of Access Principles

BEFORE: P. Ostergaard, Chair)
L.R. Barr, Deputy Chair)
K.L. Hall, Commissioner) March 10, 1998
P.G. Bradley, Commissioner)

O R D E R

WHEREAS:

- A. On July 31, 1998, West Kootenay Power Ltd. ("WKP") filed an Access Principles Application ("APA") for Commission approval; and
- B. On August 13, 1998, the Commission issued Order No. G-73-98 establishing that the APA would proceed through the use of an Negotiated Settlement Process to be held September 23 and 24, 1998; and
- C. On September 23 and 24, 1998, the negotiations were held, resulting in a proposal to which there was limited agreement; and
- D. By letter dated October 15, 1998, the Commission determined that the public hearing into WKP's Transmission Access Application was to commence with an examination of evidence concerning the Utility's APA; and
- E. At the outset of the public hearing on October 19, 1998, several submissions were heard concerning the disposition of the APA, including suggestions that the negotiations be resumed; and
- F. On October 21, 1998, the Commission ordered, from the bench, that the APA negotiations be continued on November 3, 1998, in Vancouver; and
- G. The negotiations were held as ordered, resulting in a Proposed Settlement Agreement ("PSA"); and
- H. Parties to the negotiations were canvassed as to whether they endorsed or dissented from the PSA; and
- I. A letter of dissent was received from Columbia Basin Trust; and
- J. A letter was received from the British Columbia Hydro and Power Authority ("B.C. Hydro") stating that it did not oppose the PSA provided that it was not seen as setting a precedent for B.C. Hydro; and
- K. On November 16, 1998, the PSA was circulated to all Registered Intervenors as well as the Commission Panel. In the cover letter attached to the PSA, parties were canvassed as to the acceptability of the PSA, the desirability of a hearing, and, if held, whether that hearing should be oral or written; and

- L. In response to this letter, the Association for the Advancement of Sustainable Energy Policy indicated that the PSA was not acceptable. In addition, certain parties indicated a preference for an oral hearing; and
- M. On November 30, 1998, the Commission canvassed Registered Intervenors as to their level of participation if an oral hearing were held; and
- N. On December 10, 1998, the Commission reviewed the responses; and
- O. On December 14, 1998, the Commission issued Order No. G-113-98 setting down an oral hearing into the PSA to commence February 10, 1999, in Kelowna; and
- P. The hearing was held as ordered.

NOW THEREFORE the Commission orders as follows:

1. The PSA with respect to WKP's Access Principles Application is accepted with the notice deadline of March 1, 1999, on page 2 amended to read April 1, 1999 and is attached as Appendix A to this Order. Nothing in the PSA provides a precedent for other utilities or circumstances.
2. WKP is directed to file a report by December 31, 1999, that discusses, at a minimum, the progress made in consultations with interested parties concerning alternative rate structures or arrangements that will foster the development of the most efficient supply sources and encourage conservation measures, the Utility's views on possible amendments to the principles embodied in the PSA, and the merit of using rate design measures to promote a competitive generation market in the WKP supply area.

DATED at the City of Vancouver, in the Province of British Columbia, this 10th day of March, 1999.

BY ORDER

Original signed by:

Peter Ostergaard
Chair

Attachment

**West Kootenay Power Ltd. Access Principles Application (“APA”)
Proposed Settlement Agreement**

PURPOSE

Through its Transmission Access Application, West Kootenay Power proposes to open its transmission system to all Eligible Customers. The goal of open access is to encourage the development of a competitive generation market resulting in efficient resource allocation. The purpose of the APA is to ensure that this occurs in a way that results in the Fair Treatment of Utility shareholders, of customers who remain with Utility supply and of Eligible Customers who choose to obtain some or all supply from non-Utility resources.

DEFINITIONS

Commission means:

The British Columbia Utilities Commission.

Eligible Customer means:

Those West Kootenay Power bundled service customers eligible for transmission access as determined by the Commission from time to time.

Embedded Cost of Power means:

West Kootenay Power’s cost of generation related transmission assets, generation assets, power purchase contracts, market purchases and other costs of power as determined by the Commission from time to time.

Fair Treatment means:

- (i) For shareholders, the opportunity to earn a rate of return on equity does not change as a result of the exit, partial exit or re-entry of Eligible Customers;
- (ii) For customers who remain with Utility supply, the exit, partial exit or re-entry of Eligible Customers must, at a minimum, make them no worse off than if Eligible Customers had always remained with the Utility. Any payments, made by Eligible Customers to ensure that those customers who remain with Utility supply are made no worse off, will be allocated by the Utility in such a way that no customer class is made worse off. Each remaining customer class is made no worse off if their rates for bundled service are no higher after an Eligible Customer makes its election. The rates before election are determined by a prospective calculation of the Utility’s total net revenue requirement allocated to customer classes using embedded cost methodologies as accepted by the Commission from time to time. Similarly, the rates after election are calculated prospectively considering the change in total net revenue requirement due to the change in load, again allocated to customer classes using embedded cost methodologies as accepted by the Commission from time to time;
- (iii) For Eligible Customers,
 - a) the maintenance of West Kootenay Power’s obligation to serve continues for an Eligible Customer as long as the Eligible Customer elects to receive embedded cost service from West Kootenay Power for all or part of its load;

- b) the right to elect to leave the embedded cost service of West Kootenay Power in whole or in part;
- c) the right to return to West Kootenay Power's embedded cost service as set out under the Re-entry Provisions; and
- d) notwithstanding the general principle that remaining customers are to be made no worse off by the exit of Eligible Customers, the right to take with them any benefits accruing from their load characteristics (that is, size and load factor), without additional payment or compensation to customers who remain on Utility supply.

OBLIGATION TO SERVE

West Kootenay Power retains the obligation to serve every customer until that customer elects to leave the embedded cost power service of West Kootenay Power. In the event of partial supply customers, West Kootenay Power retains an obligation to serve the portion of a customer's load that remains with the Utility (subject to the provisions set out below under the section entitled Partial Supply). West Kootenay Power retains the obligation to provide transmission and distribution service to all customers within its service territory.

West Kootenay Power also retains the obligation to serve at embedded cost rates any new load entering its service territory, any additional load attributable to its existing customers, and returning Eligible Customers, under the Re-entry Provisions outlined below.

West Kootenay Power will provide short term backup service on a reasonable-efforts basis to Eligible Customers within its service territory for the period required by those Eligible Customers for the unanticipated loss of firm supply. For this service, West Kootenay Power will charge the higher of the market buy price or the cost of the marginal unit in West Kootenay Power's supply portfolio if West Kootenay Power supplies from its portfolio. The price charged will be determined retrospectively and will apply to the full period of service. In addition, West Kootenay Power may charge additional administrative costs reasonably incurred by the Utility to provide this power supply.

It is acknowledged that existing contracts between the Utility and Eligible Customers will not be abrogated. However, it is recognized that West Kootenay Power has a need for notice before the departure of any Eligible Customer and, therefore, it will be desirable if contracts are renegotiated in a timely fashion. In this regard, the City of Kelowna and the City of Nelson will provide notice of intent to leave the Utility or to enter into a new contract for bundled service by April 1, 1999. All other Eligible Customers that have contracts with an expiry date beyond 1999 will provide notice of intent to leave or to enter into a new contract for bundled service at least two years prior to the expiration of their bundled service contracts. Failure to provide such notice of intent to leave will expose these Eligible Customers to any costs imposed on remaining customers, as defined in the Re-entry Provisions below. If after giving notice of intent to stay, the Eligible Customer and West Kootenay Power are unable to conclude a mutually satisfactory contract and one or both parties believes this to be the result of the conduct of the other party, the Commission may be asked to grant protection from any costs implied by other parts of this agreement.

West Kootenay Power will enter into good faith negotiations with any Eligible Customer desiring to enter into a new contract at embedded cost rates. Any new contract will be subject to Commission approval. In any case, West Kootenay Power will include in all new contracts a condition that any Eligible Customer must provide at least two years' notice of early termination, West Kootenay Power will use reasonable efforts to accommodate, in a manner that results in Fair Treatment, a departure such that no stranded cost payment is required.

If such an accommodation cannot be found, Eligible Customers that leave West Kootenay Power during the notice period, taking with them 25% of their prior year's load or less, will pay mitigated stranded costs, if any, for the lesser of the remaining term of the notice period or two years. If an Eligible Customer takes with it more than 25% of its prior year's load, or if an Eligible Customer's monthly load factor in any month decreases by more than 20% as a result of going to market, or if the combined departure of all Eligible Customers' load exceeds 10% in any year of the Eligible Customers' total aggregate load at the end of the previous year, the Eligible Customer will pay mitigated stranded costs, if any, for a period of five years less any part of the notice period during which the Eligible Customer remained with West Kootenay Power for its total load. Within 15 business days of a request, West Kootenay Power will calculate for both a two-year and a five-year period the payments required to ensure that the revenue requirement of remaining customers is not increased from that which is expected to have occurred if the Eligible Customer had not departed early.

New Eligible Customers have the right to be served entirely through an alternate supplier without attracting any of the stranded cost provisions described above.

PARTIAL SUPPLY

An Eligible Customer may elect to meet any or all of its load requirements from West Kootenay Power. If any Eligible Customer elects to meet part of its load requirements from West Kootenay Power, then the rate for partial supply requirements shall be determined so as to ensure that all other customers receive Fair Treatment. For example, if by taking part of its load to market, an Eligible Customer materially worsens the load factor of that portion of its load which remains with the Utility, the Eligible Customer will compensate for these costs consistent with Fair Treatment. In contrast, if an Eligible Customer materially improves its load factor for the portion of its load remaining with the Utility – for example, by taking its peaking requirements to market – the Eligible Customer will realize the benefits of this in the price it pays for its remaining load (to the extent that this can be accomplished in a manner consistent with Fair Treatment and recovery of the embedded cost of service).

In order to satisfy the informational needs of potential partial load Eligible Customers, West Kootenay Power will respond within 15 business days to an Eligible Customer's inquiry about Utility rate changes (both generation and transmission) that the Eligible Customer will face as a result of its partial load election. New rates will be incorporated by reference in a new contract, and subject to Commission approval.

STRANDED COSTS AND BENEFITS

West Kootenay Power is not seeking any specific compensation for stranded costs as part of this agreement. Any person may raise the issue of Fair Treatment in any future stranded cost application before the Commission. However, before asking for stranded cost relief, West Kootenay Power is expected to have exhausted all reasonable avenues of stranded cost mitigation. In addition, the amount of any stranded costs attributable to an Eligible Customer's departure will be reduced by any benefits to remaining customers which result from that departure. However, in no case will this confer to a departing Eligible Customer a claim to stranded benefits.

Where a stranded cost or benefit determination is required, the amount of the stranded costs or benefits will be calculated by West Kootenay Power, disclosed to all interested parties, and submitted to the Commission for approval.

West Kootenay Power acknowledges the likelihood that open access may produce stranded benefits. If this is the case, these benefits will accrue to those customers that remain with the Utility. Departing Eligible Customers may not take these benefits with them, either in the form of exit payments or generation entitlements. Departing Eligible Customers retain claim to the inherent benefits implied by West Kootenay Power's low cost power, as provided for in the Re-entry Provisions.

Where a market opportunity to obtain power is available to an Eligible Customer which would not be viable without additional incentives, the Eligible Customer may seek to negotiate a sharing of stranded benefits under the auspices of the Commission. Such negotiations will be conducted pursuant to the Commission's Alternate Dispute Resolution Guidelines as they may exist from time to time.

Stranding caused by transmission or distribution bypass will be the subject of Commission consideration if and when it arises. As in other stranded cost recovery scenarios, West Kootenay Power will be required to have taken all reasonable steps to protect its assets from stranding and such steps will not create obligations or create a greater burden on the Utility than arises from regulatory principles, including prudent investment obligations.

RE-ENTRY PROVISIONS

An Eligible Customer that has previously taken bundled service may, at any time, return to power service from West Kootenay Power at a rate calculated to ensure Fair Treatment, subject to the conditions set out below, West Kootenay Power will make reasonable efforts to accommodate returning Eligible Customers as quickly as possible.

Returning Eligible Customers and new Eligible Customers who initially chose an alternative supplier should receive rates reflecting the embedded cost of service within the lesser of:

- the period in which West Kootenay Power can adjust its supply portfolio to serve these Eligible Customers, consistent with Fair Treatment; or
- two years from the date of their notice to return to West Kootenay Power's supply.

For the interim period (that is, the lesser of the time it takes West Kootenay Power to adjust its supply portfolio or two years) West Kootenay Power may charge rates reflective of its additional cost of serving these Eligible Customers over the interim period, while maintaining Fair Treatment. If market circumstances are such that market energy is reasonably anticipated to be less expensive than West Kootenay Power's embedded cost of power for the interim period, then the Eligible Customers will return to embedded cost tariffs immediately.



IN THE MATTER OF

West Kootenay Power Ltd.

ACCESS PRINCIPLES APPLICATION

DECISION

March 10, 1999

Before:

**Peter Ostergaard, Chair
Lorna R. Barr, Deputy Chair
Kenneth L. Hall, P.Eng., Commissioner
Paul G. Bradley, Commissioner**

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1.0 INTRODUCTION

1.1 Background

West Kootenay Power ("WKP", "the Applicant", "the Company", "the Utility") is an investor-owned electric utility that provides wholesale and retail service in the Kootenay and South Okanagan areas of British Columbia. The Company's headquarters are in Trail, B.C., in the eastern part of the service territory. The more heavily populated Okanagan Valley, in the western portion of the service territory, includes the cities of Kelowna and Penticton. WKP is subject to regulation by the British Columbia Utilities Commission ("the Commission", "the BCUC").

WKP has an annual system peak of over 600 megawatts. The Utility owns four hydro-electric plants on the Kootenay River with a combined rated capacity of 205 megawatts. The remaining energy and capacity requirements are met through a combination of long-term contracts – with Washington Water Power, British Columbia Hydro and Power Authority ("B.C. Hydro"), Cominco Limited, and a joint venture of the Columbia Power Corporation ("CPC") and the Columbia Basin Trust Power Corporation ("CBT") – and short-term market purchases.

On July 31, 1998, WKP filed two distinct applications pertaining to electricity market reform: the Access Principles Application ("APA") and the Transmission Access Application ("TAA"). The APA was very brief, and related primarily to the treatment of generation assets in an open access environment. The TAA concerned the terms and conditions of non-discriminatory access to the transmission system, and the pricing of transmission services.

Commission Order No. G-73-98, dated August 20, 1998, established regulatory agendas for both the APA and TAA. The TAA was reviewed at a public hearing, which began on October 19, 1998, in Kelowna, B.C. The evidentiary portion of the hearing ended on October 21, 1998, with written final argument received thereafter.

The APA became the subject of a Negotiated Settlement Process, held on September 23 and 24, 1998, in Kelowna. These negotiations produced a proposal on which Commission staff sought the final comments of parties to the negotiations by September 30, 1998. On October 2, 1998, this proposal, amended to reflect the comments received, was again sent to negotiation participants, this time seeking their statements of endorsement or dissent. On October 9, 1998, this proposal, along with the letters of endorsement and dissent, were sent to all Registered Intervenors and the Commission Panel.

Following a review of these submissions, the Commission determined (in a letter dated October 15, 1998) that while significant progress had been made in defining access principles, there remained substantive issues on which agreement had not been reached. Therefore, the Commission directed that the October 19, 1998, hearing into the TAA would begin with a WKP witness panel to address, and be cross-examined on, the Utility's views with respect to access principles.

At the outset of the October 19, 1998, hearing, however, several submissions were heard concerning the disposition of the APA, including suggestions that negotiations could be profitably resumed. No APA evidence was then heard as part of the TAA public hearing process and, on October 21, 1998, the Commission ruled from the bench (T: 441) that negotiations should recommence on November 3, 1998.

These negotiations lasted two days and produced a revised Proposed Settlement Agreement ("PSA") (Exhibit 12). At the conclusion of the negotiations, participants were asked to submit letters of endorsement for, or dissent from, the PSA by November 6, 1998. A single letter of dissent was received from CBT.

As a result of this dissent, Commission staff wrote to participants on November 10, 1998, seeking their input on how best to proceed. All parties that responded to that letter, except CBT, recommended proceeding with the PSA according to the Commission's Negotiated Settlement Guidelines. CBT recommended a written hearing.

On November 16, 1998, the PSA was sent to all Registered Intervenors and the Commission Panel, along with copies of the letters of endorsement and dissent, and participants' responses to Commission staff's letter of November 10, 1998. A proposed covering letter to the PSA, which had been developed as part of the negotiation process, was also included (Exhibit 23). A letter from Commission staff covering this package sought input from all Registered Intervenors on the most appropriate way to proceed with the APA.

On November 24, 1998, the Association for the Advancement of Sustainable Energy Policy ("AASEP") responded to Commission staff's November 16, 1998, letter, indicating that it supported the position of CBT and requesting that the PSA not be approved. This, and a division of opinion about the merits of proceeding with an oral versus a written hearing, prompted the Commission to issue a letter on November 30, 1998, seeking comments from Intervenors on the role that they would anticipate playing in an oral hearing. The Commission stated that it would use this input to determine if an oral hearing would be an efficacious manner in which to proceed.

In light of the comments received in response to both the November 16 and 30, 1998, correspondence, the Commission issued Order No. G-113-98, setting the APA down for a public hearing to commence on February 10, 1999. That hearing, which considered whether the Commission should accept or reject the PSA, lasted one and one-half days and closed with oral argument.

2.0 THE PROPOSED SETTLEMENT AGREEMENT (“PSA”)

The PSA, underlined to signify one minor change to Exhibit 12 made by the Commission as a result of this Decision, is attached to Order No. G-27-99 as Appendix A.

2.1 Description of the PSA

WKP's Transmission Access tariffs define the terms, conditions, and prices of open access on the Utility's transmission system. The purpose of the PSA is to develop a fair enabling framework for open access.

To achieve this purpose, the PSA explicitly defines the meaning of Fair Treatment for each of Utility shareholders, customers who remain with bundled supply, and Eligible Customers. Eligible Customers are those customers who have the right to take unbundled transmission service, as defined in Section 1.2 of the Commission's Decision on the TAA, released concurrently with this Decision.

More specifically, the PSA identifies four key areas where policy definitions are needed to ensure Fair Treatment. These are: (1) the Utility's obligation to serve Eligible Customers; (2) an Eligible Customer's rights should it choose to take only part of its load from non-Utility sources; (3) the treatment of any stranded costs or benefits that may result from an Eligible Customer's partial or total departure from Utility supply; and (4) the re-entry provisions governing an Eligible Customer's return to bundled Utility supply.

In assessing the PSA, Intervenor's raised issues which may be considered under four broad categories: (1) the pricing of Utility supply; (2) the treatment of stranded benefits; (3) the recovery of stranded Demand-Side Management (“DSM”) assets; and (4) issues of general merit and practical application. These will be considered in turn as Sections 2.2 to 2.5.

In addition, B.C. Hydro asked the Commission to make clear that the PSA was made in specific reference to WKP's APA and that nothing in the PSA provides a precedent for other utilities or circumstances (Exhibits 13 and 23).

2.2 Pricing of Utility Supply

The PSA contains several provisions with respect to the pricing of Utility supply. These provisions make plain that Utility supply will normally be priced to reflect the Utility's embedded cost of service.

WKP supported the pricing of Utility supply at embedded rates, stating that current cost-of-service principles should continue to determine rates before and after customers leave Utility supply and that rates for all customers should be based on the average cost of supply (T: 455 and 456).

Both AASEP and CBT opposed the pricing of Utility supply at embedded rates. AASEP's opposition was based on a concern that the pricing of Utility supply at embedded cost rates means that there will be a less-than-desirable amount invested in DSM resources. CBT stated that the pricing of Utility supply at embedded cost rates means that customers and potential competitive suppliers will fail to receive a clear price signal (i.e., one which reflects the Utility's cost of supplying marginal demand) and that this will inhibit the development of a competitive generation market (Exhibit 19, p. 3). CBT stated that this would be unfair to independent power producers, marketers and developers attempting to serve the market (Exhibit 20, p. 2).

To overcome its concerns, AASEP proposed a model which would see current load served at embedded cost rates and incremental load growth by Eligible Customers priced at the Utility's cost of serving the incremental load (Exhibit 10, pp. 11 and 12, T: 689). AASEP stated that this would require that current embedded cost resources be allocated amongst all customer classes and, for those classes with access to third-party suppliers, allocated within customer classes. Those customers who wished to access market supply could do so for only their incremental load, with current load served at embedded cost rates, or could choose to have some greater portion of their load, up to 100 percent, served at market rates. AASEP proposed that if a customer were to leave Utility supply entirely, the customer would leave behind all rights to the embedded cost power. If the customer later were to decide to return to Utility supply, the customer would not return to the embedded cost rates but would be charged the Utility's incremental cost (T: 689 and 690). AASEP stated that this proposal results in efficient price signals which ensure an efficient allocation of resources and an incentive to invest in all DSM which is cheaper than the Utility's marginal cost of power (T: 689 and 690).

CBT also proposed two-tier pricing of Utility supply and suggested that this could be accomplished in one of two ways. Under CBT's first proposal, the demand for power would be split into two tiers for any customer wishing to leave WKP supply. The price from WKP for supplying the first tier would reflect any system stranded costs or benefits. The price for the second tier would reflect WKP's avoided cost of power. In order to ensure that a customer whose consumption does not change is charged the same

overall cost of electricity as under embedded cost rates, CBT proposed to adjust the first tier price and quantity to produce a revenue neutral outcome at the historical consumption level of the Eligible Customer at the time of departure from WKP supply (Exhibit 19, p. 6).

Alternatively, CBT suggested that WKP could establish a first tier consisting of only existing WKP resources and long-term purchases. The amount of power available from these resources would be prorated among all customer classes, and customers within these classes, with the price reflecting the cost of these resources. The second tier would contain all other resources necessary to meet the expected load and would reflect the cost of these resources (Exhibit 19, p. 7). Customers with access to market supply would then be able to compare the cost of market supply with WKP's price for second tier power. CBT stated that the second approach would be administratively easier and would provide some pricing predictability (Exhibit 21, p. 1).

CBT acknowledged that neither of their proposals is ready for implementation but suggested that the two-tier rate structure should be the focus of a revised application by WKP, based on direction from the Commission (Exhibit 19, p. 7).

Although as noted above, WKP supported the pricing of Utility supply at embedded cost rates (T: 455 and 456), the Utility accepted that consideration of two-tier pricing might be an appropriate topic for some future regulatory proceeding (T: 626). Nonetheless, the Utility identified several problems that would need to be overcome before such a scheme could be successfully implemented. First, the Utility indicated that their analysis suggests that a two-tier pricing system would result in rates for customers who choose to remain with Utility supply that are higher than the average embedded cost of supply (T: 628). Second, WKP stated that a two-tier pricing system would impose additional administrative burdens, including frequent re-estimation of stranded costs in order to determine rates (T: 631) and the establishment of a unique rate for each customer requesting access (T: 632).

In response to the latter issue, CBT maintained that the calculation of a unique rate for each customer is no different in concept from the current situation in which different energy and capacity charges result in a different average rate for each customer (Exhibit 20, p. 3).

2.3 Stranded Benefits

The PSA acknowledges that open transmission access may produce stranded benefits and requires that these benefits accrue to those customers that remain with Utility supply.

WKP supported the retention of stranded benefits by those customers who remain with Utility supply, stating that it would be unfair to permit departing customers to have the opportunity to benefit from market purchases and at the same time give those same customers all the benefits of the low embedded costs of Utility supply (T: 455). More specifically, WKP stated that if a customer chooses to purchase from the market, instead of from WKP at the embedded cost of its resource portfolio, the customer does so accepting all the risks and benefits of market purchase and that customers who decide to continue to rely on WKP's resource portfolio should receive the full benefit of that portfolio (T: 456).

Both AASEP and CBT took exception to the provisions of the PSA relating to stranded benefits. AASEP indicated that it does not accept that the PSA provides sufficient protection of the stranded benefits for core market customers and fears that these protections will be eroded over time (T: 692 and 697). As a result, AASEP indicated that it believes a mechanism that explicitly shares the stranded benefits between remaining and departing customers would be preferable (T: 693 and 697). AASEP maintained that an example of such a mechanism is the pricing model which it proposed and which is discussed in Section 2.2.

CBT stated that it is unfair to deny market access customers stranded benefits while requiring the same customers to pay stranded costs (Exhibit 19, p. 3). More specifically, CBT maintained that market access customers should have the right to continue to consume power from the resources acquired on their behalf that have a higher value (lower cost) than the market (Exhibit 21, p. 7). CBT proposed that Eligible Customers receive these stranded benefits through the purchase of first tier energy from WKP. However, if a customer takes less than its share of first tier electricity, CBT accepted that the customer would leave any stranded benefits behind (Exhibit 19, p. 8). CBT maintained that the loss of stranded benefits in this situation is not unfair since the customer is making the choice to abandon the benefits (T: 583). In addition, CBT indicated that it has not identified any practical way for a customer leaving Utility supply in its entirety to retain its stranded benefits (T: 584).

CBT was unable to identify any jurisdictions where departing customers are allowed to take stranded benefits with them, but noted that in Alberta the distribution companies have been assigned their customers' historical share of resources in place at the time the electricity market restructuring legislation came into effect (Exhibit 21, pp. 7 and 8).

2.4 Demand-Side Management (“DSM”)

The PSA does not specifically address issues surrounding the provision of DSM programs by the Utility. WKP indicated that it does not consider this to be a flaw with the PSA, stating that the hearing into the PSA is not the appropriate proceeding for evaluating mechanisms to address DSM concerns (T: 459).

In contrast, AASEP indicated that it views the PSA as not being in the public interest because it does not adequately address stranding of past DSM investments and does not encourage the efficient allocation of resources, including future DSM investment and renewables (T: 671). In addition, AASEP stated that the PSA predetermines issues before the Commission as part of the Transmission Access Application (T: 671). Specifically, as discussed in Section 2.2, AASEP objected to provisions in the PSA which would allow a customer who left WKP supply to return to Utility supply at embedded cost rates (T: 674), recommending that the customer instead be charged the Utility's incremental cost of providing power.

AASEP suggested that its public interest concerns could be overcome if the Commission either imposes a two-tier pricing system similar to that proposed in the testimony of AASEP's witness, discussed in Section 2.2, or requires 100 percent of DSM costs to be recovered through the transmission revenue requirement (T: 681). AASEP's evidence and arguments with respect to the recovery of DSM costs form part of the record with respect to WKP's Transmission Access Application. This issue is discussed fully in Section 3.4 of the Commission's Decision with respect to WKP's TAA, dated March 10, 1999.

2.5 General Merit and Practical Application

In addition to discussion on the issues described above, the Commission heard from a number of Intervenor on more general issues. Some endorsed the PSA, even while acknowledging that it may be a little-used first step. These parties emphasized the many issues to which the PSA brings clarity, its value as a symbol of market development, and its use as a vehicle to deliver the inherent benefits of customer choice. They also noted that there is unanimous support for the PSA among customer groups.

Dissenters from the PSA argued that merit requires usefulness, and that markets need real, not symbolic, access to achieve the benefits of competition. These parties took this argument further, suggesting that the PSA is not simply benign, but would impose additional costs on Utility customers, may damage the environment, and could stand as an obstacle to further market development.

The Interior Municipal Electrical Utilities ("IMEU") listed 40 ways in which the PSA brings clarity to the operation and conduct of open access for WKP and its customers (T: 642). The IMEU argued that these 40 points of clarity, in and of themselves, offer a very substantial argument in favour of Commission approval for the PSA (T: 645).

The IMEU also noted that the PSA emerged from negotiations between the Utility and its customers, and urged the Commission to assign considerable weight to that fact (T: 645). WKP also emphasized this

point in their final argument, calling the endorsement of the PSA by all customers “almost determinative” of the issue (T: 620).

WKP used the phrase “almost determinative”, it said, because it recognized that the Commission holds a legislative responsibility to determine if the PSA is in the public interest (T: 620). However, WKP sought to define public interest by suggesting that, from the Commission’s perspective and considering only the issues in this hearing, it should be irrelevant that the PSA does not create competitive opportunities for third party suppliers and improved opportunities for energy efficiency measures (T: 622).

Customer consensus was also used by WKP to address claims by CBT (Exhibit 19, Evidence of J. Smienk, Q. 8) that the PSA, if approved, would be harmful or regressive. WKP argued that it would be “hard to imagine” how an agreement reached between the Utility and all of its customer groups could be regressive (T: 622). And since the PSA is not regressive, this is further reason for the Commission to approve it, WKP argued (T: 623).

Indeed, WKP stated that rejection of the PSA would be a regressive step that would restrict the options of wholesale customers whose contracts will be expiring in the coming years. The Utility argued that the regulatory certainty provided by the PSA is critical to fair and efficient negotiations with these customers and that providing that certainty now does nothing to restrict future proceedings designed explicitly to seek opportunities for third party suppliers or energy efficiency measures (T: 623).

In a related argument, the Consumers Association of Canada (B.C. Branch) et. al. [“CAC (B.C.) et. al.”] argued that efforts to create open access are fine, but that efforts to create a competitive market risk adverse impacts for residential and other captive customers (T: 667 and 668).

A more abstract argument in favour of the PSA was presented by the Joint Industry Electrical Steering Committee (“the Committee”). The Committee conceded that the PSA would create access, not competition, and that access without competition is of little practical value. Nonetheless, the Committee argued that the PSA provides important symbolic value and it consolidates and rewards the efforts of WKP and its customers. It also provides a basis from which to move forward (T: 656 and 657).

In dissenting from the PSA, CBT disputed WKP’s position that customer support for the PSA should be almost sufficient for the Commission to approve it. CBT argued that if customer agreement were sufficient for approval of the PSA, then this hearing – or certainly CBT’s presence at it – was unnecessary (T: 710). Moreover, CBT challenged the strength of customer support for the PSA – describing the endorsements as ‘hollow’, and noting that most customers see the PSA only as a starting point (T: 711).

Expectations that the PSA will have little practical effect were also seized upon by CBT. While acknowledging that the Commission is not a court, CBT noted that courts have a general practice of refusing to grant opinions on general matters, or considering matters that are moot (T: 715). CBT stated that since the PSA would not actually lead to use of WKP's open access tariffs, any benefits which might be derived from the IMEU's 40 points of clarification are purely notional and serve only to make people feel that they are accomplishing some kind of market reform (T: 718).

Referring to the arguments of the Committee, CBT argued that the Commission should not approve the PSA simply to reward effort. Instead, the Commission should only reward results that are clearly in the public interest (T: 732).

Like CBT, AASEP raised concerns that the APA would represent an impediment to future market development. These concerns, the organization argued, are sufficient to militate against approving the APA now, with a view to investigating improvements in the future.

AASEP's first concern in this regard is that rights, once vested, can be extremely difficult to revoke. AASEP cited the PSA's re-entry provisions as a possible area of concern in this respect (T: 675). In addition, AASEP argued that the PSA's two year notice period to depart Utility supply would lead to a short-range planning horizon for the Utility, at the expense of both the environment and captive rate payers (T: 678 and 679).

2.6 Commission Determinations

The Commission notes that the PSA is the fruit of negotiations between WKP and its customers as to the rights and obligations of WKP and its customers in an era of increased market access and is supported by all WKP's customers. While the Commission agrees with those parties who argued that the endorsement of the PSA by all customer groups is not sufficient grounds to find that the PSA is in the public interest, in the absence of evidence indicating a clear harm to ratepayers, it is supportive of such a finding.

The Commission does not believe that the parties opposing the approval of the PSA have demonstrated that such approval will lead to rate payer harm either by impeding future market developments or entrenching rights and obligations which may prove difficult to change in the future. This is not to suggest that the Commission believes that the PSA represents an end point with respect to market development. Several parties have indicated desires to see further restructuring of the market – either broadly within the province as a whole or more narrowly within WKP's service area. If this occurs, the Commission expects that further refinements of the rights and obligations of utilities and their customers will need to be undertaken and that repudiation of the PSA in whole or in part is possible. In this regard, the Commission

notes that the PSA was made in specific reference to WKP's APA and that nothing in the PSA provides a precedent for other utilities or circumstances. Nonetheless, by defining the current agreement between WKP and its Eligible Customers as to their respective rights and obligations, the PSA provides a framework in which decisions regarding suppliers may be made by Eligible Customers within WKP's service area.

With respect to the particular concern raised by CBT and AASEP over the pricing of WKP supply, the Commission believes that there is merit to a further examination of two-tier pricing. This is discussed more fully in Chapter 3.0.

With respect to the recovery of DSM costs, this issue is dealt with in full in the Commission's Decision regarding WKP's Transmission Access Application, dated March 10, 1999.

Based on the evidence and argument adduced at the hearing, the Commission is persuaded that the PSA is in the interest of WKP ratepayers. **Therefore, the Commission accepts the PSA, but amends the notice deadline of March 1, 1999, on page 2 to read April 1, 1999.**

3.0 NEXT STEPS

3.1 Further Consultations, Hearings, or Applications

Several Intervenors to this proceeding indicated that they viewed the PSA as encapsulating a transitional set of principles that will need to be re-visited in the future. The IMEU, for example, called the PSA a “useful step forward” in developing open access, but added that not much will have been achieved if it is also the last step. To ensure that further progress is made, the IMEU encouraged the Commission to endorse specific next-steps as part of a direction approving the PSA (T: 648 and 649).

The nature of what, if anything, the Commission should direct by way of next-steps was the subject of considerable comment by both WKP and Intervenors. CBT asked that the Commission reject the PSA and direct WKP to submit an amended application that incorporates access principles based on two-tier pricing. CBT suggested, as well, that this new application's development should proceed using an Open Access Council (“OAC”), as proposed in WKP's TAA. CBT has indicated a willingness to participate in such a process (T: 729).

AASEP argued that under any reasonable assumptions, there would be no need for access principles within the next two years. In the meantime, AASEP proposed that the status quo is acceptable, while work proceeds on a “marginal costing proposal” (T: 704).

WKP argued that the broad issue for further consideration is whether or not utility rate structures are the appropriate means to create opportunities for third party suppliers and energy efficiency measures. WKP characterized such decisions as embodying fundamental changes to rate design principles in current use (such as basing rates on the cost of service) and argued that such changes should be explored in the context of a distinct proceeding with clear terms of reference to examine these issues (T: 736).

WKP supported these comments by arguing that any further process directed by the Commission in approving or rejecting the PSA should include all utilities in B.C. The Utility noted that CBT and AASEP did not argue in this proceeding for the approval of any specific mechanisms. As a result, WKP stated, the Commission could, at most, direct the Utility to file another application designed to foster opportunities for third-party suppliers and energy efficiency measures. However, WKP further asserted that the record before the Commission is inadequate to allow such a direction (T: 624).

WKP did, however, indicate that it would support further development work aimed at finding a mechanism to create opportunities for third party suppliers and energy efficiency measures. It also suggested that an OAC may be an appropriate vehicle for this work, and recommended that funding should be available for participants if an OAC is used to review rate design mechanisms (T: 737 and 738). The CAC (B.C.) et. al. saw competitive opportunities of the type supported by CBT as coming at the expense of residential customers. For that reason, CAC (B.C.) et. al. “[did] not urge the Commission to create a new generic process” (T: 668 and 669).

However, to the extent that the Commission sees merit in pursuing the general proposals of CBT and AASEP, the CAC (B.C.) et. al. agreed with the Utility position on future proceedings, arguing that the only appropriate process is a generic public hearing (T: 666). A generic process is also appropriate, the CAC (B.C.) et. al. suggested, since it would be unproductive to require WKP to bring forward an application based on principles that it has, to date, rejected (T: 540). In the event that such a proceeding were to take place, then the CAC (B.C.) et. al. has said that they will fully participate in it (T: 669).

British Columbia Hydro and Power Authority (“B.C. Hydro”) disputed the need for a generic hearing, although its comments were made in reference to a two-part rate in particular, rather than referring to general mechanisms aimed at creating competitive opportunities for third party suppliers and energy efficiency measures. Specifically, B.C. Hydro argued that a generic hearing would be impractical, since “the type of two tier rate is informed by and determined by the type of market access available in the service area in which the two tier rate would be offered” (T: 640).

Other Intervenor took similar positions. While arguing that there is a need to move forward with “full inquiry, including ADR” on how best to create competition, the Committee suggested that this process should be limited to the WKP service territory. The Committee argued that the circumstances and policy issues of WKP are different from those of a Crown Corporation, and that a generic hearing would risk getting these issues “muddled up”. The Committee also stated that, in its view, the benefits of competition could be achieved in the WKP service area without too much difficulty (T: 659).

The IMEU also argued against a generic hearing which involved broad restructuring questions, recalling that such efforts have been unsuccessful in the past, and suggesting that the Commission would be doing a “disservice” if it embarked down that path again. Nevertheless, the IMEU did indicate that, in its view, it would be extremely valuable for the Commission to direct WKP to meet with interested parties using the Utility’s proposed OAC. This process could develop a series of principles and mechanisms for the Commission’s consideration that might be used to facilitate “marginal cost pricing in the context of open access” (T: 654).

3.2 Commission Determinations

As noted in Section 2.6, the Commission is persuaded that the PSA represents a useful step toward open access. However, the Commission also acknowledges that the current pricing structure imposes a substantial barrier for alternative suppliers as well as discouraging certain DSM options. As a result, the Commission believes that further exploration into the use of rate structure to foster supply competition and to encourage DSM and other conservation measures is appropriate. The Commission believes that this exploration should be directed narrowly at the WKP service area. For the reasons stated by the IMEU, the Committee and B.C. Hydro, the Commission feels that a generic hearing would be both inefficient and inappropriate.

The Commission is, however, unprepared at this time to direct WKP to file an application based on principles which both it and this Commission have not thoroughly explored. The Commission is also not in a position to direct consultation between the Utility and interested parties under the auspices of an Open Access Council, since the Commission declined to direct the creation of an OAC in its Decision on WKP’s Transmission Access Application, released concurrently with this Decision.

Therefore, the Commission requests WKP to work with interested parties to examine alternative rate structures or arrangements that will foster the development of the most efficient supply sources and encourage conservation measures. **In addition, the Commission directs WKP to file a report by December 31, 1999, that discusses, at a minimum, the progress made in these consultations, the Utility's views on possible amendments to the principles embodied in the PSA, and the merit of using rate design measures to promote a competitive generation market in the WKP supply area.**

Dated at the City of Vancouver, in the Province of British Columbia, this 10th day of March, 1999.

Original signed by: _____
 Peter Ostergaard
 Chair

Original signed by: _____
 Lorna R. Barr
 Deputy Chair

Original signed by: _____
 Kenneth L. Hall, P. Eng
 Commissioner

Original signed by: _____
 Paul G. Bradley
 Commissioner

APPEARANCES

G.A. FULTON	British Columbia Utilities Commission, Counsel
D.M. RUSH	West Kootenay Power Ltd.
J. CHRISTIAN	British Columbia Hydro and Power Authority
J. YARDLEY	Columbia Basin Trust
D. CRAIG	Interior Municipal Electric Utilities
R.B. WALLACE J. CHAMPION	Joint Industry Electricity Steering Committee
R.J. GATHERCOLE	Consumers' Association of Canada (B.C. Branch) British Columbia Old Age Pensioners' Organization, Council of Senior Citizens' Organizations of B.C., Federated Anti-Poverty Groups of B.C., Senior Citizens' Association of B.C., End Legislated Poverty, Kootenay Okanagan Electric Consumers' Association
C. REARDON M. ELLISON	Association for the Advancement of Sustainable Energy Policy

C.B. LUSZTIG

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ROBERT H. HOBBS
GEORGE ISHERWOOD
RICK SPIKER

Columbia Basin Trust – Panel

JOSH SMIENK
KEN EPP

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<u>TRANSMISSION ACCESS</u>	
West Kootenay Power Ltd. - Transmission Access Application, as Revised, dated July 1998	1A
West Kootenay Power Ltd. - Transmission Access Application, Information Requests, dated October 1, 1998	1B
West Kootenay Power Ltd. - Transmission Access Application, Direct Testimony, dated October 7, 1998	1C
B.C. Utilities Commission, Orders No. G-29-98 dated March 19, 1998; G-44-98 dated May 6, 1998; and G-73-98 dated August 20, 1998	2
Affidavit of Publication, dated October 14, 1998	3
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West Kootenay Power Ltd. - Revision to the Original Transmission Access Application, dated July 31, 1998	6
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