



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

and

Application by West Kootenay Power Ltd.
for Approval to Restructure its Street Lighting Rate Schedules

BEFORE: P. Ostergaard, Chair)
L.R. Barr, Deputy Chair) April 15, 1999
K.L. Hall, Commissioner)

O R D E R

WHEREAS:

- A. On March 6, 1998, West Kootenay Power Ltd. ("WKP") applied to the Commission for approval to restructure its Street Lighting Rate Schedule 50 which would provide for cost-based unbundling of the rate into energy, maintenance and capital components; and
- B. Following the filing, WKP met with certain customers, specifically the City of Kelowna ("the City"), to discuss the rates for street lighting; and
- C. On December 1, 1998, WKP filed proposed revisions to Rate Schedule 50 – Street Lighting Service and Rate Schedule 51 – Outdoor Lighting and asked the Commission to set down the Application for a written hearing process; and
- D. On December 10, 1998, the Commission issued Order No. G-106-98 establishing a written hearing process; and
- E. On December 29, 1998, the City of Kelowna wrote the Commission asking that the proposed Street Lighting rates be made interim, and that WKP be asked to refund a portion of the charges that WKP had billed with respect to the provision of street lighting maintenance but which the City had held in arrears; and
- F. On January 14, 1999, the Commission issued Order No. G-5-99 and Letter No. L-2-99, which denied the City's requests that the proposed Street Lighting rates be made interim, and that a portion of the charges that WKP had billed the City be reduced on a retroactive basis; and
- G. On January 27, 1999, the Commission received a submission on WKP's Application from the Corporation of the City of Rossland; and
- H. On March 3, 1999, the Commission received a submission on WKP's Application from the Village of Keremeos; and
- I. On March 19, 1999, the written hearing established by Commission Order No. G-106-99 concluded with the filing by WKP of its reply argument. Other participants in the hearing were the City of Kelowna, the Corporation of the City of Greenwood, and the Hedley Improvement District; and
- J. On March 26, 1999, the City submitted a "Point of Clarification for the Record"; and

K. The Commission has considered all the evidence filed in this proceeding.

NOW THEREFORE the Commission orders as follows:

1. The Commission approves WKP's Application as filed effective June 1, 1999 and attaches its Reasons for Decision as Appendix A to this Order.
2. WKP is directed to file the required tariff pages with the Commission by May 15, 1999.
3. WKP is to inform all affected customers of the changes to Rate Schedule 50 – Street Lighting and Rate Schedule 51 – Outdoor Lighting.

DATED at the City of Vancouver, in the Province of British Columbia, this 20th day of April 1999.

BY ORDER

Original signed by:

Lorna R. Barr
Deputy Chair

Attachment

APPLICATION BY WEST KOOTENAY POWER LTD. FOR APPROVAL TO
RESTRUCTURE ITS STREET LIGHTING RATE SCHEDULES

REASONS FOR DECISION

1.0 INTRODUCTION

1.1 Background and Overview

West Kootenay Power Ltd.'s ("West Kootenay Power", "the Utility") street lighting rates (Rate Schedule 50) were unbundled in the 1980s, defining energy, maintenance, and capital components. The rates for each type of service were designated as Type I through Type III, respectively. That is, Type I service provided energy for lights that are customer owned and maintained, while Type II service included maintenance by West Kootenay Power for these customer-owned fixtures. Type III lights were owned and maintained by the Utility.

At the time, the energy component of the unbundled rate was set to reflect marginal rather than average embedded costs. This meant that "upstream facilities" (for example, transformers, primary lines, substations, and transmission lines) were not directly reflected in the commodity costs. The result was a distortion of the maintenance and capital components, which has worsened over time as across-the-board increases have been applied to all three elements of the rate.

Although the street lighting class, as a whole, continues to pay rates roughly reflective of its cost of service (a revenue-to-cost ratio in the range of 0.9 to 1.1 may be deemed acceptable), the revenue-to-cost ratios for each of the unbundled components have now moved too far from 1.0. This misallocates cost responsibility within the class, to the effect that some customers overpay relative to the costs they impose, while other customers underpay.

In time, this misallocation has become manifest in the maintenance charge for Type II lighting. In the fall of 1997, the City of Kelowna ("Kelowna", "the City") – which has about half of the street lights in West Kootenay Power's service territory (99.5 percent of which are Type II) – raised concerns with West Kootenay Power that it was overpaying for its maintenance costs. On March 6, 1998, West Kootenay Power sought to address this issue by filing its Street Lighting Rate Restructuring Proposal, which "rebundled" its street lighting tariffs. This Application was not acted upon, since the Utility indicated to Commission staff that it wished to undertake further consultations with its customers – particularly the City of Kelowna.

On July 29, 1998, Kelowna filed a complaint with the Commission concerning West Kootenay Power's street lighting tariff. In that letter, Kelowna indicated that it wished to be switched completely to Schedule 50 Type I service (a request it had made to the Utility on May 29, 1998), with a separate agreement to pay West Kootenay Power for maintenance on an as-spent basis.

In a letter dated August 28, 1998, West Kootenay Power stated that, in its view, such an arrangement would violate section 63 of the *Utilities Commission Act* ("the Act"), which states:

"63 A public utility must not, without the consent of the commission, directly or indirectly, in any way charge, demand, collect or receive from any person for a regulated service provided by it, or to be provided by it, compensation that is greater than, less than or other than that specified in the subsisting schedules of the utility applicable to that service and filed under this Act and the regulations."

West Kootenay Power expressed concern that it would be in contravention of the Act if it offered maintenance to Kelowna on a fee-for-service basis, while providing maintenance on a tariffed basis to other street lighting customers.

In the same letter, West Kootenay Power noted that Kelowna could switch to Type I service if it takes the necessary steps (as defined in the tariff) to isolate its equipment from the Utility's system. In short, this would require the installation of approved isolation devices.

Also, in its letter dated July 29, 1998, Kelowna asserted that West Kootenay Power should be directed to compensate the City for the difference between the tariff amount associated with Schedule 50 maintenance and the actual value of maintenance work performed since the beginning of 1993.

With respect to this concern, West Kootenay Power stated in its August 28, 1998 letter that it had undertaken a review of its street lighting tariff during the development of its March 6, 1998 Application. Following the same principles that the Utility used in its 1997 Rate Design and New Service Options Application (namely, that rates should reflect the cost of service; that rate unbundling should ensure that the revenue recovered for each unbundled component of service is charged at rates that reflect the cost of service for each component; and, that rates should be postage-stamped), West Kootenay Power determined that the current Type II rates over-recover for maintenance, but under-recover for energy and other costs. In the case of Kelowna, these misallocations have partially offset one another, although the net result has been over-payments by the City.

Further, West Kootenay Power accepted that non-postage-stamped maintenance allocations would tend to favour Kelowna, since the City's street lights are located in a compact geographical area and are relatively

inexpensive to maintain. By extension, smaller and more isolated communities can expect higher costs if maintenance is billed on an as-spent basis.

On September 24, 1998, Commission staff met with both West Kootenay Power and Kelowna to seek solutions to the City's concerns. At that meeting, it was determined that the City and West Kootenay Power would make formal application to the Electrical Inspection Branch to obtain a waiver from the requirement for isolation devices, thereby allowing Kelowna to switch to Type I service in a cost-efficient manner. It appears that this application was never made, since Kelowna determined that its street lights do not contain the fuses that might have allowed its request for a waiver to be successful.

There was also considerable discussion at the September 24, 1998 meeting regarding West Kootenay Power's concerns that providing maintenance on a fee-for-service basis might contravene section 63 of the Act. In a letter dated September 29, 1998, Commission staff indicated that, in its view, the requirements of section 63 could be satisfied with a waiver from the Commission.

However, it was noted at that time that such a waiver would likely lead to customers in low-maintenance-cost areas choosing to have separate service agreements with West Kootenay Power, while customers in high-cost areas (typically smaller and more rural accounts) would continue to opt for tariffed rates. In time, this would lead to a rise in the tariffed rate for maintenance, as the rate moved up to reflect the average cost of service for remaining customers.

On December 1, 1998, following discussions with Kelowna, West Kootenay Power filed an Application to Restructure Street Lighting Rate Schedules. This Application, which is built on the rates contained in West Kootenay Power's March 6, 1998 Application, is described in Section 1.2 of this Decision. At the same time, Kelowna withdrew its July 29, 1998 complaint.

On December 18, 1998, the Commission issued Order No. G-106-98, which established a written hearing process for West Kootenay Power's Application to Restructure Street Lighting Rate Schedules.

On December 29, 1998, Kelowna wrote to the Commission objecting to delays in the process and, in particular, to West Kootenay Power's proposed implementation date of July 1, 1999 for the tariffs contained in its Application. Specifically, Kelowna asked that the Commission undertake two actions: (1) grant an interim approval to West Kootenay Power's Application, at least as it applies to the City; and (2) order West Kootenay Power to compensate the City for what it believes to be excessive maintenance charges for the period from June 1, 1998 (the date when Kelowna wrote to West Kootenay Power requesting that its Rate Schedule 50 account be switched to Type I).

On January 14, 1999, the Commission issued Order No. G-5-99 and Letter No. L-2-99. These documents rejected Kelowna's application for interim approval of West Kootenay Power's proposed street light restructuring, and directed West Kootenay Power to forego collecting any interest or penalties on the amount with respect to past maintenance that Kelowna has held in arrears up to February 1, 1999. West Kootenay Power was also directed to continue maintenance of Kelowna's street lights, and to ensure that they were in good working order as at April 30, 1999. At the same time, the Commission stated that it would endeavour to dispose of – and, to the extent that doing so is in the public interest, implement – West Kootenay Power's Application as swiftly as possible.

The written hearing process continued according to the timetable described in Order No. G-106-98 and concluded with West Kootenay Power's reply argument, which was filed on March 19, 1999. The City of Kelowna then filed correspondence containing two "points of clarification for the record" dated March 29, 1999.

1.2 Description of the Application

West Kootenay Power's Application to Restructure Street Lighting Rate Schedules, filed on December 1, 1998, contains a number of significant revisions to the Utility's Street Light Rate Restructuring Proposal filed on March 6, 1998:

1. West Kootenay Power currently provides maintenance service at average embedded postage-stamp rates to Schedule 50 customers served under Type II (customer-owned, company-maintained) and Type III (company-owned and maintained) service. West Kootenay Power is proposing to amend Type II service so that the maintenance component is no longer provided at postage-stamp embedded cost rates. Instead, Type II service is proposed to include maintenance service on an as-spent basis, with charges in accordance with West Kootenay Power's Revised Code of Conduct and Transfer Pricing Policy (dated May 25, 1998).
2. Type III lighting (i.e., company-owned and maintained) has been closed and unavailable to new customers for about ten years. However, Schedule 51 (Outdoor Light) customers have retained the option for company-owned and maintained lighting service throughout this time. To rationalize this inconsistency, West Kootenay Power has proposed two actions. First, Schedule 50 Type III service will be re-opened to all customers. Second, Schedule 51 will be eliminated, with all customers currently served under Schedule 51 switched to Schedule 50. This transfer will result in no more than a \$0.05 per month rate increase for most customers, and a rate decrease for many customers. West Kootenay Power is proposing that the net revenue loss (roughly \$30,000) be credited against the annual restructuring rate decreases mandated in Order No. G-15-98.

3. Street lighting service is currently available only to government and community associations. With this Application West Kootenay Power is proposing to make Schedule 50 available to all customers for all standard-size lighting.

The rates proposed by West Kootenay Power have remained unchanged between the March 6, 1998 and December 1, 1998, Applications. The proposed street light rate design is based on West Kootenay Power's 1997 Unbundled Cost of Service Analysis, adjusted for the 1.1 percent general rate increase approved for 1998.

West Kootenay Power has suggested that its proposed changes be made effective July 1, 1999.

2.0 DESIGN OF THE RATES

The Cost of Service Analysis ("COSA"), from which the rates for this Application were derived, was also the basis for West Kootenay Power's 1997 Rate Design and New Service Options Application. That Application was disposed of through the Commission's Negotiated Settlement Process, with the resulting Settlement Agreement specifically stating that no rate design precedents had been established. The same COSA (inflated by 1.1 percent, as in the extant Application) also formed the basis for rates in West Kootenay Power's 1998 Transmission Access Application, which was the subject of a public hearing.

The rates contained in this Application have been developed on an unbundled basis, as follows:

1. **Commodity** costs are allocated based on the individual energy use of each light type. Because all light types are photocell controlled, they all share the same load characteristics. This means that there is no difference between allocating costs based on energy as compared to demand.
2. Direct maintenance and direct capital (property tax, depreciation, and return) costs – the **Maintenance** and **Capital** components of the rates, respectively – are allocated on a per light basis, since a review by West Kootenay Power of replacement costs for lamps and the entire fixture did not reveal significant or consistent cost differences by light type.
3. The **Basic Charge** (representing indirect costs; or the forecast revenue less the commodity, direct maintenance, and direct capital costs) is allocated on an energy (or demand) basis, since it is made up of upstream plant and allocated maintenance costs.

4. The **Cost Over-Recovery** component of the rate is also allocated on an energy (or demand) basis. This component reflects a very small (\$0.0008 per kW.h) rebate, as directed by Commission Order No. G-15-98.

The Monthly Rate for each type of Schedule 50 service (i.e., Types I, II, and III) are established by rebundling these components. Specifically, Type I and II Monthly Rates represent monthly energy use (a usage figure for each type of light appears in the tariff) times the Commodity cost, plus the Basic Charge, plus the Cost Over-Recovery component. The Type III Monthly Rate is found by adding the Capital and Maintenance components to the Monthly Rates for Type I and II service.

For Type II customers, West Kootenay Power proposes to add maintenance charges to the Monthly Rate on an as-spent basis; postage-stamp maintenance charges would, therefore, apply only to Type III service. The rates for Type II maintenance would be drawn from West Kootenay Power's "Revised Code of Conduct and Transfer Pricing Policy" dated May 25, 1998, with overhead costs described in the tariff itself. The nature and standard of service provided by the Utility (e.g., response time to reported outages) would be the subject of agreements between customers and West Kootenay Power, and charges would vary accordingly.

West Kootenay Power justifies its rate design approach by stating that embedded cost rates have become the "de facto standard of fairness for regulated utilities in British Columbia." In this Application, West Kootenay Power has used postage-stamp principles to recover energy and upstream costs. The Utility claims that this is appropriate since street lights are not metered and, therefore, it is impossible to determine customer-specific energy costs or upstream utilization of common facilities (such as transformers and transmission lines).

West Kootenay Power also contends that it is appropriate to depart from postage-stamp rate making for Type II maintenance costs, since these can be "clearly differentiated based on cost." Recovery of Type II maintenance costs on an as-spent basis represents the closest possible matching of cost causation and recovery, the Utility states, and is "in accordance with rate setting principles employed within the province of British Columbia." West Kootenay Power also argues that its Application meets the fairness criteria in the Act – specifically sections 59(1)(a) and 59(5)(a) – and "the common conception of fairness in commercial transactions" (West Kootenay Power Final Argument, p. 7).

The City of Kelowna endorses the general rate-making approach taken by West Kootenay Power. It notes that determining Schedule 50 Type II maintenance rates on an as-spent basis will allow the City to reduce its costs (City of Kelowna Final Argument, p. 2).

The City of Rossland, while not opposing the Application, states that its taxpayers will face increased costs if Type II maintenance is billed on an as-spent basis (City of Rossland Submission, dated January 27, 1999).

The City of Greenwood is alone among intervenors in recommending that the Commission reject West Kootenay Power's Application. The City of Greenwood argues that the Application, as structured, would force it to choose between poor service – it may have to wait until two or three lights are out before it can afford to call for repairs – or a very high repair bill. As well, the City of Greenwood suggests that there should be “support from West Kootenay Power to help smaller customers with their street light maintenance costs” (City of Greenwood Final Argument, pp. 1 and 2).

3.0 IMPLEMENTATION ISSUES

3.1 Non-Utility Maintenance

According to the terms of this Application, customers may choose to maintain their own lighting fixtures, or have those fixtures maintained by a third party. West Kootenay Power argues that this choice will give customers the flexibility they need to reduce costs (West Kootenay Power Final Argument, p. 3).

Customers would exercise the choice for self or third-party maintenance by electing Type I service; the Application provides for the Utility to sell Type III fixtures to customers wishing to switch to Type I service (West Kootenay Power Reply Argument, p. 1). The proposed tariff stipulates:

“Type I service shall apply only if the Customer system can be operated and maintained, beyond the point of supply of electricity, independently of the Company's system. The installed cost of devices necessary for independent operation shall be paid by the customer. Where Customer owned lighting fixtures are on company owned poles maintenance work shall only be performed by parties qualified to do the work, and authorized by the Company. Type One service may be refused for safety reasons.”

The City of Kelowna has raised concerns about this provision of the tariff. It argues that since the Electrical Safety Branch will not allow the City of Kelowna to maintain their own lights unless a separate service and disconnect are available, it is not economically viable for the City to utilize Type I service (City of Kelowna Information Request #1, Question 25).

West Kootenay Power does not dispute the City of Kelowna's characterization of the situation, but does note that the system was built without isolation devices in order to reduce initial costs for developers and customers (West Kootenay Power Response to City of Kelowna Information Request #1, Question 25).

The City of Kelowna has proposed two alternative wordings to the tariff description concerning the applicability of Type I service:

“Type I shall apply only if the Customer system is operated and maintained by an existing and/or new holder of a “Utility Permit” with qualified personnel and approved by West Kootenay Power to work on the West Kootenay Power system.

and/or

Type I shall apply only if the Customer system is operated and maintained beyond the point of supply by a West Kootenay Power approved Contractor with approved equipment, safety procedures etc. and is on the West Kootenay Power “Approved Contractor List” and is in good standing with West Kootenay Power at the time this maintenance work is required.”

The City of Kelowna holds a valid “Utility Permit” and “know[s] that West Kootenay Power have an ‘Approved Contractors List’ that allow[s] contractors to work on the West Kootenay Power distribution system” (City of Kelowna Final Argument, pp. 2 and 3).

West Kootenay Power argues that either of the City of Kelowna’s proposals would place its tariff in conflict with the Electrical Code, something it is not prepared to do (West Kootenay Power Reply Argument, p. 2). The City of Kelowna submitted “points of clarification for the record” following West Kootenay Power’s reply argument to refute any impression that its recommendations amounted to a suggestion that West Kootenay Power violate the Electrical Code on behalf of the City.

In a related concern, the City of Greenwood has expressed concerns that West Kootenay Power may simply deny contractors the necessary authorization to do maintenance work. As well, the City of Greenwood argues that West Kootenay Power’s Application contains “no incentive for West Kootenay Power to improve the quality of the ‘capital component’ of the street lights because they do not have to pay for maintaining them” (City of Greenwood Final Argument, p. 2).

3.2 Retroactive Settlements

The City of Kelowna argues that for the five years to 1997, it has been billed “an estimated” \$1 million for maintenance work valued at \$430,126. The City describes this as a subsidy by it to other street lighting customers, and claims that this rate design is neither fair nor reasonable. The City of Kelowna further argues that West Kootenay Power should be made to compensate the City for all over-recovery charges paid since 1993 (City of Kelowna Final Argument, p. 2).

West Kootenay Power disagrees with the “validity of [the City of Kelowna’s] statements in this matter.” However, West Kootenay Power argues that it is not necessary to elaborate on the nature of those

disagreements in this proceeding, since the Commission has already dealt with the issue of retroactive compensation for the City of Kelowna in regard to Rate Schedule 50. Specifically, Commission Letter No. L-2-99 stated that all charges to the City were made in accordance with an approved tariff and, therefore, it is not clear that the amount of the refund requested by the City of Kelowna is justified (West Kootenay Power Reply Argument, p. 1).

3.3 Implementation Date

West Kootenay Power has requested that the changes contained in this Application be made effective July 1, 1999 (West Kootenay Power Cover Letter to December 1, 1998 Application, p. 2). The Utility argues that smaller Schedule 50 customers – who lack the managerial and engineering resources of the City of Kelowna – must be given a reasonable period (two months) to assess their options if the revised tariff is approved (West Kootenay Power Final Argument, p. 7; West Kootenay Power Reply Argument, p. 2).

The City of Kelowna disputes this view. It argues that it cannot afford to wait any longer for the revised tariffs to be put in place. Further, the City states that unless it is compensated for delays, it believes that the new tariff should become effective immediately upon the issuance of this Decision (City of Kelowna Final Argument, p. 4).

3.4 Other Issues

Two other issues were raised in this proceeding. First, the Village of Keremeos expressed concern that there is no explicit provision in the Application for West Kootenay Power repurchasing Type I lights (Submission from the Village of Keremeos, dated March 3, 1999). West Kootenay Power has acknowledged that there is no explicit mention of this option in its Application, but confirms that it intends to provide this option at the customer's request (West Kootenay Power Reply Argument, p. 1).

Second, the City of Rossland has proposed that street lights be refurbished and upgraded prior to implementation of the proposed tariffs (City of Rossland Submission, dated January 27, 1999). In a letter dated February 12, 1999, West Kootenay Power responded to the City of Rossland that should its Application be successful, all customer-owned street lighting fixtures will be fully operational and maintained as specified in the existing tariff. However, West Kootenay Power rejects the suggestion that the lights will be refurbished and upgraded, arguing that this would conflict with the user-pay principles of its Application.

4.0 COMMISSION DETERMINATIONS

It is clear from the evidence in this proceeding that the City of Kelowna and other relatively low-cost customers are over-contributing to the total cost of street light maintenance. By extension, some customers are underpaying for the repair and maintenance service that they receive.

West Kootenay Power has proposed a Schedule 50 rate design that combines elements of both postage-stamp and user-pay principles. In the Commission's view, the Utility has justified its design principles against the standards of both common practice and the *Utilities Commission Act*.

The Commission recognizes the adjustment concerns expressed by the City of Greenwood. The provisions of this Application could represent a significant expense to some customers. However, directing West Kootenay Power to provide "help to smaller customers" would represent a continuation of the cross-subsidization of maintenance expenses that this Application seeks to eliminate.

In considering non-utility maintenance issues, the Commission is concerned by the expense faced by customers wishing to switch to Type I service. Moreover, the Commission recognizes that, in practice, the proposed requirements of Type I service go some way to limiting a customer's ability to choose self or third-party maintenance.

That said, the Commission does not believe that the proposals of the City of Kelowna are satisfactory. And while the Commission accepts the City's position that it in no way intended to lead West Kootenay Power to violate the Electrical Code on the City's behalf, the Commission does believe that such a violation would be the practical effect of approving the tariff changes suggested.

The Commission believes that many municipalities would benefit from maintaining their own street lights if an accommodation could be made with the Electrical Inspection Branch that is both safe and efficient. To this end, the Commission suggests that West Kootenay Power and the City of Kelowna work with the Electrical Inspection Branch to find a resolution to this problem that maintains the level of safety that currently exists. The Commission will support this undertaking where it can, and will be prepared to amend the conditions of Type I service when a workable solution is obtained from the Electrical Inspection Branch. Until such an accommodation can be reached, however, the Commission accepts the applicability provisions for Type I service described in West Kootenay Power's proposed tariff.

Considering the concerns of the City of Greenwood, the Commission agrees that inappropriate restraints against qualified contractors performing work under the tariffs is a potential problem, at least to the extent

that Type I service is restricted in the manner described above. However, the Commission believes that such concerns can be dealt with on a complaint basis, should they arise.

The City of Greenwood also expressed concerns that West Kootenay Power has no incentive to improve the quality of its street lights, since it does not have to pay to maintain the lights it owns. In this regard, the Commission notes that the capital component of rates is charged only to Type III service, where maintenance charges are postage-stamped. In the Commission's view, the concerns of the City of Greenwood would be applicable only if Type III service had its maintenance billed on an as-spent basis.

With respect to the retroactive settlements sought by the City of Kelowna, the Commission confirms that this matter has been considered by the Commission already, and was ruled upon in Letter No. L-2-99.

With respect to the concerns of the City of Rossland regarding the condition of lights at the time the proposed tariff is implemented, the Commission agrees with West Kootenay Power that the lights should be operational and maintained in accordance with the existing tariff. The Commission agrees, further, that upgrades and refurbishment are not the responsibility of the Utility.

Therefore, the Commission approves West Kootenay Power's Application as filed. The Commission recognizes that this Decision could have substantial implications for some Schedule 50 customers, and wishes to provide these customers with a reasonable adjustment period during which they may consider the options available to them. However, the Commission also appreciates the City of Kelowna's wish for immediate implementation of the new tariffs. For these reasons, the Commission directs that the amendments sought in West Kootenay Power's Application shall become effective June 1, 1999. West Kootenay Power is directed to file the required tariff pages with the Commission by May 15, 1999.