BRITISH COLUMBIA UTILITIES COMMISSION

IN THE MATTER OF

WEST KOOTENAY POWER LTD.

APPLICATION
TO SELL ITS HYDROELECTRIC GENERATION ASSETS

DECISION

October 26, 2001

Before:

Peter Ostergaard, Chair
Paul G. Bradley, Commissioner
Barbara L. Clemenhagen, Commissioner

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COMMISSION ORDER NO. G-112-01

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1.0 BACKGROUND

1.1 The Application

West Kootenay Power Ltd. ("WKP", the "Utility") is an investor-owned electric utility providing wholesale and retail service in the west Kootenay and south Okanagan regions of British Columbia. It is a public utility regulated by the British Columbia Utilities Commission ("the BCUC", "the Commission") in accordance with the Utilities Commission Act (the "Act", the "UCA"). Effective October 22, 2001, the Utility changed its name to UtiliCorp Networks Canada (British Columbia) Ltd., but for the purposes of this Decision the acronym WKP will be used. WKP owns four hydroelectric plants on the Kootenay River with a combined rated capacity of about 214 MW. With winter peak loads approaching 700 MW, most of WKP's energy and capacity needs are met through power purchase contracts and agreements.

The Application, as amended, seeks BCUC approval of the sale by WKP of the four hydroelectric power plants and related facilities to Kootenay River Power Corporation ("KRP"), and the sale back to WKP of the output of these plants under a 60-year power purchase agreement. If the transactions proceed, KRP would be, as a result of share purchases, 50 percent owned by each of Columbia Power Corporation ("CPC"), a provincial Crown Corporation, and CBT Energy Inc., a wholly-owned subsidiary of the Columbia Basin Trust ("CBT"). CPC and CBT Energy Inc. are collectively referred to as the Columbia Joint Venture ("CJV").

The transactions would be completed by the execution of three principal agreements:

1. The <u>Asset Transfer Agreement ("ATA")</u> (Exhibit 1, Tab 10) among WKP, KRP, and Kootenay Hydro Services Ltd. ("KHS") contains the terms of transfer of the plants and related assets to KRP, which at this stage in the sequence of agreements would be a WKP subsidiary. This agreement also requires KHS to offer continued employment to WKP's generation staff.

2. The <u>Share Purchase Agreement ("SPA")</u> [Exhibit 1, Tab 11, as amended in Exhibit 1C, Tab 3] provides for the purchase of the shares of KRP from WKP by CPC Kootenay Holdings Ltd., and CBT Kootenay River Power Corp., which are wholly-owned subsidiaries of CPC and CBT. As a condition of completion of the SPA, WKP needs to transfer its management responsibilities for the Cominco-owned Waneta power plant to KHS. The SPA also specifies that certain other ancillary agreements must be signed or modified, and that all government approvals, including BCUC approvals, must be obtained before payment is made.

3. The <u>Power Purchase Agreement ("PPA")</u> [Exhibit 1, Tab 12, as amended in Exhibit 1C, Tab 2] sets the price and terms of the agreement between KRP, as owner of the plants, and WKP for the purchase of the output of the plants. The key provisions of the amended PPA are:

   - a 60-year term;
   - no price escalation to market pricing in years 25 to 30;
   - no market component of the price for upgrade power for the first 30 years; and
   - pricing formula after 30 years depends on pricing policy and regulation in effect at that time.

The modifications to the PPA were developed during the hearing, and are subject to the approval of the Boards of CPC and CBT Energy Inc., and the Treasury Board of the Provincial Government.

Minister's Order No. M-22-0102, dated April 10, 2001, exempts the Columbia Joint Venture and the four Kootenay River power projects from regulation under Part 3 and Section 71 of the Act, subject to certain conditions. With the Order, the four plants, the electricity they generate, and their new owners would not be subject to further BCUC regulation if the Commission approves the ATA, SPA, and PPA.

The generation and transmission infrastructure in the Kootenay/Lower Columbia River region is complex. WKP, British Columbia Hydro and Power Authority ("B.C. Hydro"), Cominco Ltd. ("Cominco") and CPC own and/or operate electrical facilities. Therefore, the Application requests approval of several additional agreements and amendments to existing agreements that establish the rights, roles, and responsibilities of these four companies. They include energy and capacity rights at the plants, management of the Brilliant and Waneta plants by WKP, the power purchase arrangement at Brilliant, and operational and interconnection arrangements. The ancillary agreement approvals requested are included in Volume 2 of the Application (Exhibit 1) and summarized at Tab 8, Volume 1 of the Application. Consequential changes to the performance-based rate making regulatory regime, approved by the BCUC for WKP through 2002, would also be required.

Two issues emerged as paramount considerations in the Commission's review process. One is the treatment of the proceeds of the sale of assets. As noted in the response to BCUC Information Request 5.2, the original cost of the assets is $75 million and the net book value is approximately $60 million. With total proceeds of $120 million, the premium or gain on sale, is $60 million ($45 million after tax). WKP asks that this premium be allocated to its shareholder. Specifically, under Section 60 of the Act, WKP is applying to exclude the effect of the gain on the sale from the calculation of WKP's ongoing revenue requirement. Although the agreed-upon price for the plants is $120 million, as noted in Exhibit 2E, WKP subsequently found capital expenditures of approximately $6 million that were not taken into account. Consequently, the purchaser would receive an additional $6 million in assets at no extra cost and the gain would be reduced accordingly.

The other issue revolved around the statutory parameters that the Commission is to use in adjudicating the Application. Subsection 54(9) of the Act establishes the criteria for reviewing share transfers:

> "54(9) The commission may give its approval under this section subject to conditions and requirements it considers necessary or desirable in the public interest, but the commission must not give its approval under this section unless it considers that the public utility and the users of the service of the public utility will not be detrimentally affected."

In the proceedings, this came to be referred to as the "no harms to ratepayers" test.

Section 52 of the Act sets broader criteria in Commission reviews of other types of transactions, including property dispositions:

> "52 (1) Except for a disposition of its property in the ordinary course of business, a public utility must not, without first obtaining the commission's approval,
>
> (a) dispose of or encumber the whole or a part of its property, franchises, licences, permits, concessions, privileges or rights, or
>
> (b) by any means, direct or indirect, merge, amalgamate or consolidate in whole or in part its property, franchises, licences, permits, concessions, privileges or rights with those of another person.
>
> (2) The commission may give its approval under this section subject to conditions and requirements considered necessary or desirable in the public interest."

WKP clarified in its opening remarks at the public hearing that the full gain on sale must be allowed to go to WKP's shareholder as a condition of WKP's participation (T1: 14) and that the agreements should be accepted or rejected in their entirety (T1: 19).

Specifically, the Application requests:

1. Approval for WKP to enter into of each of:

   (a) the Asset Transfer Agreement;

   (b) the Share Purchase Agreement; and

   (c) the Power Purchase Agreement.

2. Approval of the transfer by WKP to KRP of all the tangible and intangible property (whether real, personal or mixed, choate or inchoate) owned, leased or held by WKP and used in the generation business, of every kind and description and wheresoever situate including, without limitation:

   (a) the Lower Bonnington Dam, the Upper Bonnington Dam, the South Slocan Dam and the Corra Linn Dam;

   (b) the monthly capacity and energy entitlement of the Plants pursuant to the Canal Plant Agreement among British Columbia Hydro and Power Authority, Cominco Ltd. and WKP dated August 1, 1972 and the Canal Plant Subagreement among WKP, Cominco and Columbia Power Corporation/CBT Power Corp. dated April 4, 1996;

   (c) the Buildings;

   (d) the Equipment;

   (e) the Land Rights;

   (f) the full benefit of the contracts;

   (g) the Warranties;

   (h) the full benefit of the Licences and Permits;

   (i) the intellectual property described in Schedule 5 to the Asset Transfer Agreement;

(j) all Records;

(k) the Deposits and Prepaids;

(l) the Goodwill;

(m) the Falls Creek Dam, the Davis Spring Diversion Structure, and the Rover Creek Dam; and

(n) the Inter-plant Transmission Lines No. 21, 22 and 23 and WKP's interest in the Inter-plant Transmission Line No. 13, all as shown on the Schedules to the Asset Transfer Agreement,

but excluding, in any event, the Excluded Assets (as each such term is defined in the Asset Transfer Agreement).

3. Approval of the transfer by WKP to CPC Kootenay Holdings Ltd. and CBT Kootenay River Power Corp. of all the shares in the capital of Kootenay River Power Corporation held by WKP.

4. Approval of:

(a) the deposit by WKP with the trustee under the Deed of Trust and Mortgage between WKP and The Canada Trust Company (since replaced by Montreal Trust Company of Canada) dated as of March 15, 1983, as supplemented and amended (the "Trust Deed"), of such portion of the net proceeds of the sale of the generation business (derived pursuant to the Asset Transfer Agreement and Share Purchase Agreement) as may be required by the Trust Deed to be so deposited;

(b) the use by WKP of such portion of the net proceeds of the sale of the generation business (derived pursuant to the Asset Transfer Agreement and Share Purchase Agreement) as may be permitted by the Trust Deed to be used for the acquisition or contracting for fixed assets or additional property for WKP's continuing operations, in accordance with the Trust Deed; and

(c) the application by the trustee under the Trust Deed of such portion of the net proceeds of the sale of the generation business (derived pursuant to the Asset Transfer Agreement and Share Purchase Agreement) as is not used by WKP to acquire or contract for fixed assets or additional property for WKP's continuing operations in accordance with the Trust Deed, for the purchase or redemption, on a pro rata basis, of secured debentures of each outstanding series of secured debentures of WKP issued under the Trust Deed, in accordance with the Trust Deed.

5. Approval of the following changes to the regulatory parameters within which WKP currently operates:

(a) adjustment of the target levels for base capital expenditures, operation and maintenance expenses, and other income for the remaining period of effectiveness of the current Performance Based Regulation ("PBR") scheme applicable to WKP;

(b) revision of the power purchase incentive during the 2001 year to exclude power purchases under the Power Purchase Agreement;

(c) adjustment to WKP's revenue requirements for the 2001 year to reflect the reduction of the net book value of the assets transferred to KRP as shown in WKP's depreciation and plant accounts; and

(d) the adjustment of $995,000 of revenue requirement from 2001 with recovery in 2002, subject to a pro rata adjustment for the change in date of closing from June 30, 2001.

6. Approval of the:

   (a) Asset Transfer Agreement dated May 11, 2001;

   (b) Share Purchase Agreement dated May 11, 2001 which contains among other things the following agreements attached as Schedules:

      i) Brilliant PPA Amendment,
      ii) Interconnection Agreement,
      iii) Operations Agreement,
      iv) Power Purchase Agreement,
      v) Transitional Services Agreement,
      vi) Transmission Maintenance Agreement,
      vii) Waneta Management Agreement Subcontract;

   (c) entering into of the Interconnection Agreement between WKP and KRP;

   (d) entering into of the Operations Agreement between WKP and KRP;

   (e) entering into of the Operations Agreement between WKP and CPC/CBT;

   (f) entering into of the Operations Agreement between WKP and Cominco; and

   (g) entering into of the Transitional Services Agreement between WKP and KRP; by WKP, and, as applicable, the performance of WKP's obligations respectively contemplated therein.

7. Approval to exclude the effect of any gain on sale resulting from the transaction from the calculation of WKP's ongoing regulated revenue requirement.

8. Such further and other orders, exemptions or declarations of the Commission necessary to permit and facilitate the transactions.

1.2 The Public Hearing Process

WKP's Application was submitted on March 22, 2001. After a round of information requests and responses, an oral public hearing began on May 29, 2001 in Rossland. Concerns were raised on the first day of the hearing on the nature of the approvals that were being requested, and the status and significance of various agreements. At the request of WKP, and with the support of the Columbia Joint Venture and other participants, the hearing was adjourned on May 30, 2001.

On June 8, 2001, WKP filed updates to its Application, including an Amended and Restated Brilliant Power Purchase Agreement, an Operations Agreement, a Transitional Services Agreement, and a Transmission Maintenance Agreement. By separate letter, WKP requested Commission approval of a letter agreement regarding entitlement to benefits resulting from tailrace improvements at Brilliant, an issue that contributed to the earlier hearing adjournment. In order to expedite the resumed hearing, WKP, with the support of the Columbia Joint Venture, proposed to conduct an information session to inform participants of the substance of the agreements proposed to accomplish the sale of the assets.

The information session was held in Kelowna on July 6, 2001 [Exhibit 2(e)], and the oral public hearing resumed in Rossland on July 16, 2001. On July 19, 2001, the Columbia Joint Venture introduced significant changes to the PPA, in response to concerns that had surfaced in the cross-examination and evidence of the preceding three days. Revised agreements were filed on July 23, 2001 and the hearing both resumed and was completed on July 25, 2001 in Vancouver.

A Written Argument process concluded on August 17, 2001, except for the submission of the Interior Municipal Electric Utilities ("IMEU"), representing five municipally-owned distribution utilities and the investor-owned utility serving Princeton. The IMEU representative requested more time to seek instructions from its members, and was given until August 31 to file its submission. WKP and Columbia Joint Venture replies to the IMEU submission were filed on September 7, 2001.

Several letters of comment were received and filed (Exhibit 15), including letters supporting the sale from the Regional Districts of Kootenay Boundary and Central Kootenay.

Three active intervenors representing residential, commercial, municipal and wholesale customers submitted final arguments. The representative of a coalition of public interest and ratepayer groups[1] ("BCOAPO et al.") states that the Application should be rejected because it is not in the public interest or ratepayer interest but, should the required approvals be obtained, the gain on sale should be shared between the ratepayer and shareholder. The representative of Natural Resource Industries ("NRI") also believes the Application is not in the public interest or ratepayer interest, as ratepayers cannot be assured they will be held harmless. The IMEU recommends rejection of the Application, in part because the terms and conditions could harm ratepayers, and further suggested that WKP be allowed to repair the harms and reapply.

2.0 GAIN ON SALE

2.1 Background

Since the purpose of the WKP application is to sell the four hydroelectric plants and related facilities to CJV for a purchase price of $120 million, the Utility applied under Section 52 of the Act for an order to approve the transfer by WKP to KRP of all the tangible and intangible property owned, leased or held by WKP and used in the generation business (Application, p. 4).

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1 Including the BC Old Age Pensioners' Organization, Council of Senior Citizens' Organizations of BC, federated anti-poverty groups of BC, Senior Citizens' Association of BC, End Legislated Poverty, and the Kootenay-Okanagan Electric Consumers' Association.

The sale of generation assets would take place in accordance with the Asset Transfer Agreement, and the sale of shares would take place in accordance with the Share Purchase Agreement. However, WKP characterizes the "transaction" as being the entire range of agreements being applied for, stating in its summary that:

> "Since the operation of the assets comprising the generation business will, pursuant to the Power Purchase Agreement, be subject to terms ensuring that customers are kept whole, the anticipated gain on the sale of those assets should be for the account of WKP's shareholder. Such a result is consistent with previous regulatory decisions in British Columbia and Alberta." (Application, p. 30)

It is in this context that WKP has applied under Section 60 of the Act, for approval to exclude the effect of any gain on sale resulting from the "transaction" from the calculation of WKP's ongoing regulated revenue requirement (Application, p. 7). Accordingly, most of its argument with regard to the disposition of the asset sale proceeds deals with the requirements under Section 54 of the Act, which covers the sale of KRP shares, rather than the appropriate value of assets being transferred to KRP.

2.2 WKP and Columbia Joint Venture Submissions

WKP stated that the applicable regulatory principles are that the customers will be kept whole by the terms of the Power Purchase Agreement and ongoing regulation by the Commission (Application, p. 27). Further, the Application states: "There are direct regulatory precedents for the above-described treatment of a gain on the sale of regulated assets in British Columbia, including precedents relating specifically to WKP." (Application, p. 28). The precedents cited relate to sales of shares, not sale of regulated assets.

A Commission staff Information Request questioned the disposition of benefit from a sale of assets rather than a sale of shares. Information Request 16.1 is as follows:

> "WKP states that "Generally in British Columbia, where assets are sold by a public utility … the benefit of any gain, and the risk of any loss, on the sale is for the account of the utility's shareholder." However, the regulatory precedents subsequently referenced relate to the sale of shares of public utility, not the assets.
>
> Q16.1 Does WKP have any examples in B.C. where the assets of a public utility are being sold, and the Commission allowed the entire gain to accrue to the shareholder?
>
> A16.1 The proposed sale of assets is being affected as part of the sale of the entire generation business of WKP which has no impact on customers and is therefore comparable to the sale shares considered in the cited precedents."

One of the comparable sale of share precedents noted by WKP was the sale of its shares by Cominco to UtiliCorp United Inc in 1987 for a premium of 1.7 times book value. WKP noted that:

> "Commission Order G-31-87 approved the transaction. While the Commission did not directly address the disposition of the gain, the entire amount thereof was permitted to accrue to the benefit of Cominco as selling shareholder." (WKP Application, p. 29)

However, at question 17, the Commission staff Information Request notes:

> "One of the absolute conditions of the Commission's approval of the UtiliCorp purchase of WKP's shares was that:
>
> "UtiliCorp United, UtiliCorp B.C., and WKPL will not take any step or adopt any measure which has the direct or indirect purpose or effect of recovering from the customers of WKPL any premium paid over book value by UtiliCorp United or UtiliCorp B.C. for the shares of WKPL." (June 30, 1987 Decision, p. 71)"

WKP's interpretation of this absolute condition cited in the 1987 Decision is:

> "A17.0 The paragraph quoted from the 1987 approval decision was in response to concerns that UtiliCorp or its subsidiaries would attempt to recover from the customers of WKP in rates the excess over net book value paid by UtiliCorp. Any gain that WKP and its parents may realize as a part of this transaction will not be recovered by customers as customers are held harmless by the structure of the PPA as demonstrated throughout the application."

WKP also referred to other jurisdictions which had dealt with similar transactions, noting that the Alberta Energy and Utilities Board ("EUB"), reviewing a similar set of transactions:

> " …determined that since, on balance, customers would be no worse off as a result of the transaction, and since the assets involved remained in regulated service, the transaction did not materially affect the customers. The EUB also considered evidence that certain aspects of the sale potentially benefited those customers. Accordingly, the EUB decided that the gain or premium on the sale should be allocated solely to the account of the shareholders of TransAlta." (Application, p. 29)

In the present Application, the assets do not remain in regulated service; instead the output from the plants is contracted back to WKP.

WKP addressed the issue that those who bear the risk should gain the benefit. In its view, customers have not borne any risk with changes in market value, since the return paid by ratepayers has always been computed by reference to the net book value of these assets, whereas the shareholder has borne the risk associated with fluctuations in the market value of the enterprise (WKP Argument, p. 29).

In its "Summary with Respect to Premium", WKP argues:

> "Taking into account (1) the law of British Columbia; (2) the similarity of the facts in TransAlta; (3) the complete absence of any evidence of harm to WKP customers from the transactions which are contemplated; and (4) the fact that WKP's shareholder has borne the investment risk associated with these assets throughout its 14 years of ownership, WKP submits that the only fair and reasonable disposition with respect to the sale proceeds is, as contemplated in the application, the payment to WKP's shareholder of the difference between market value and book value." (WKP Argument, p. 34)

The Columbia Joint Venture provides the Commission with its views on utility interests and ratepayer interests, as follows:

> "The ratepayers do not own the assets of the utility, they receive service from the assets at a regulated price. Section 54 establishes a balance between the interests of the utility as owner and the interests of the ratepayers as service users. The section requires that both the public utility and the users of the service not be detrimentally affected. A similar balance between the interests of the utility and the ratepayers is established in section 59 for the setting of just and reasonable rates. In essence, section 54 is designed to ensure that the Commission has sufficient authority to review transactions that may affect the interest of ratepayers, but not otherwise interfere with the ability of a utility to deal with its investment." (CJV Argument, p. 5)

2.3 Intervenor Submissions

BCOAPO et al. argues that WKP's proposed treatment of the benefit is inconsistent with established precedents on this point. It refers to the EUB decision and argues that the reasoning that led the EUB to its decision in the TransAlta case would lead to a very different conclusion in the present case, namely that the entire premium should <u>not</u> go to the shareholders. It argues that both policy and precedent support a sharing of the premium between ratepayers and shareholders, and that if WKP is unwilling to accept that sharing, then the Application must be rejected.

The IMEU contends that the ratepayers are entitled to those values for which they have borne the burden and shouldered the risks. It argues that the ratepayer has borne the burden of both a fair return on the investment and the maintenance, upkeep and upgrading for the facilities. The IMEU distinguishes between the proper accounting for the sale of assets to KRP under Section 52 and the sale of shares under Section 54, noting the provision of accounting for losses and gains on sale or disposition of plant in the Commission's Uniform System of Accounts. In the IMEU's view, because CJV is a tax-exempt Crown Corporation, the transaction delivers the benefit of that tax-exempt status as a premium to WKP, and there is neither precedent nor jurisdiction for the BCUC to consider the proper allocation of the tax-exempt premium.

NRI raises the issue as an area of concern in its final argument and questions the structure of the transaction. None of the other intervenors directly addressed the gain on sale of assets in argument.

2.4 Commission Findings

The Commission is concerned that WKP has not differentiated the issue of the value of its shares with the value of its assets on disposition. It is incorrect for the Utility to say that customers do not bear any risks related to market value of utility plant. WKP’s customers have paid for the recovery of invested capital through depreciation charges and for the cost of the capital through the return on equity and interest charges. The customers also paid for the operating, maintenance and administrative expenses and the capital and income taxes associated with those assets. Customers may also be required to pay the loss on the prudent disposition of assets at market prices below the book value.

The Commission requires all public utilities under its jurisdiction to adopt a Uniform System of Accounts. The system is designed to set out the facts in connection with the financing, construction and operation of an electric utility on a basis which will be readily comparable with other electric utilities in Canada and the United States. The accounts are used to record the income and expenses to enable interested parties to see whether the utility has recovered its approved return on equity at the end of its operating year. The accounts are also designed to determine the appropriate treatment of income and expenditures with respect to utility rate applications.

The plant accounts are used to record the original cost of assets purchased by the utility. When those assets are placed in service they become part of the rate base, upon which the utility is entitled to receive a return and to recover the capital it has invested in the form of depreciation charges over the useful life of the asset. When an asset is retired from service, the Uniform System of Accounts specifies that the ledger value less the net salvage value shall be charged to accumulated depreciation, so that customers continue to pay for any unrecovered capital through future depreciation charges, even though the asset is no longer in service.

The same can be applied with respect to extraordinary losses on utility plant, where the Uniform System of Accounts states:

> “182. EXTRAORDINARY PLANT LOSSES
>
> When prior approval from the Commission has been obtained, this account shall be charged with losses on plant abandoned or otherwise retired from service which could not reasonably have been foreseen and provided for. It shall also include extraordinary losses, such as unforeseen damages to plant, which could not have been anticipated and which are not covered by insurance and other provisions.
>
> Application to the Commission for authorization to use this account shall be supported by a detailed explanation of the circumstances leading up to the losses.
>
> With the Commission's approval, amounts charged to this account may be written off to operations by charges to account No. 404, "Amortization".

> The ledger value of the plant retired, less proceeds of salvage and/or insurance recovered shall be charged to the accumulated depreciation or amortization. If all, or a portion, of the loss is to be included in this account, the accumulated depreciation or amortization shall then be credited and this account charged with the amount properly chargeable hereto."

If losses on plant disposition can be at the customers risk, then it follows that gains can be for their benefit. The Uniform System of Accounts states that, if the net salvage value of utility plant (which includes the selling price, if the asset is sold) exceeds the ledger value, the excess, if material, is charged to Account 433, Extraordinary Income. Gains, if any, as a result of extraordinary retirements are also credited to Account No. 433, subject to prior approval of the Commission. The Uniform System of Accounts states that:

> "This account shall be credited with non-typical non-customary, infrequently recurring gains, which would significantly distort the current year's income computed before extraordinary items, if reported other than as extraordinary items."

Forecasts of higher operating expenses or losses, if approved by the Commission as part of the cost of service, protect the utility from risk and require the customers to pay the costs in their rates. Forecasts of higher income serve to reduce customer rates. The concept is supported by Generally Accepted Accounting Principles ("GAAP").

GAAP, in Canada, comprise the accounting recommendations laid out in the Canadian Institute of Chartered Accountants Handbook. Section 3061 of that Handbook states:

> ".52 On disposal of an item of property, plant and equipment, whether by sale, destruction, loss, abandonment or expropriation, the difference between the net proceeds on disposal and the net carrying amount is recognized in income in the period unless there are other aspects of the transaction that would prevent recognition. For example, a sale-leaseback transaction accounted for in accordance with LEASES, Section 3065; and certain transactions more appropriately accounted for as financing arrangements or as cost recoveries."

Recognizing such a gain in the income accounts would enable a utility to receive an appropriate return on equity while applying to reduce the current rate revenue required from customers. Furthermore, GAAP also recognizes that the regulator may decide to defer the gain in order to reduce future rates. As such, Section 3061 of that Handbook states:

> ".53 For rate-regulated operations the regulator may require the difference between net carrying amount and the proceeds on disposal of an item of property, plant and equipment to be considered in the determination of future rates charged to customers. In such circumstances the difference is deferred, provided there is reasonable assurance that:
>
> (a) any excess of net carrying amount over proceeds on disposal will be recovered through future rates; or
> (b) any excess of proceeds on disposal over net carrying amount will serve to reduce future rates."

In its Argument, at page 34, WKP recognized that, "One point is abundantly clear from the facts of this case. This application is unique." However, the Commission finds that the requirements of the Act, coupled with the Uniform System of Accounts and Generally Accepted Accounting Principles, are helpful to it in determining who should receive the gain on sale from this unique sale arrangement. The purpose of the sale is to transfer ownership of WKP assets to the Columbia Joint Venture, a non-regulated entity. As such, the purpose of the transaction is not equal to the sale of shares of a public utility where the assets will remain in regulated service.

However, WKP and CJV argue that the approval of the transfer of the assets to KRP at book value will then allow the sale to become a share transaction and the long-term agreement to sell back the generation output will be equivalent to the assets remaining in regulated service. The transfer of assets to KRP is for the express purpose of creating a back-to-back agreement to sell the shares of KRP and the overall intent of the agreements cannot be ignored.

The precedents that participants have identified are only somewhat useful to the Commission in deciding the issue. In simplistic terms, regulatory precedent and accounting rules indicate that a simple disposition of a utility asset is to the benefit or cost of the ratepayer. Equally, a sale of utility shares to a new owner is generally to the benefit of the original shareholder, provided the utility assets remain in regulated service and no detriment or other public interest exists. While the agreements include features of a disposition of assets and a sale of shares, the Commission finds that this sale is more akin to a disposition of assets.

In accordance with the Uniform System of Accounts, the difference between the net proceeds on disposal and the net book value would normally be credited to Account 433, Extraordinary Income. According to GAAP, that gain could be deferred and later utilized by the Commission in the determination of future rates charged to customers. However, in determining the disposition of this gain on sale, the Commission recognizes the unique nature of the sale whereby the assets are to generate power for the benefit of WKP customers at costs substantially equal to the cost that would exist in regulated service and for a long contract term.

In these unique circumstances, the Commission determines that the customers are entitled to the difference between net book value and original cost. The Commission also determines that the remaining gain should be divided equally between customers and shareholders.

3.0 RATEPAYER IMPACTS OF THE PROPOSED SALE

3.1 The Appropriate Test for "No Harms"

WKP argues that the Application should be approved because the customers will be held harmless, from a financial perspective, by the transaction (WKP Argument, p. 8). The CJV also argues that, based on the Commission's authority under Section 54 of the Act, the test for the Commission is whether the change in ownership will result in any net overall detriment to the ratepayers.

BCOAPO et al. argues that there are two alternative tests that could be used by the Commission, the "public interest" test and the "held harmless" test, "…with the latter being a narrower subset of the former". The distinction between the two is characterized by BCOAPO et al. on the basis of whether it is necessary for WKP to show that there is some positive ratepayer benefit from the sale or whether the Application should be approved as long as the ratepayers are held harmless. BCOAPO et al. puts forward the view that the public interest test is the appropriate test to use.

CJV and WKP filed reply arguments arguing that the language in the UCA and legal precedent supported use of the held harmless test, or more precisely "no net detriment" to ratepayers. The CJV argues that the test to be applied should be symmetric in its consideration of risks and opportunities (Reply to the IMEU Argument).

The Commission determines that Subsection 54(9) of the UCA is permissive to allow it to consider public interests, but the section requires the Commission not to give approval if ratepayers will be detrimentally affected. Subsection 52(2) of the UCA is relevant as to the disposition of utility property and it provides the Commission with discretion to approve a disposition with, " …conditions and requirements considered necessary or desirable in the public interest."

3.2 Potential Ratepayer Impacts of the Power Purchase Agreement

In its Application (Exhibit 1), WKP provided Tables 9.1 and 9.2 comparing the impact on ratepayers under the PPA and under continued WKP ownership. Table 9.1 provided a net present value ("NPV") of revenue requirements under continued WKP ownership, and was based on assumptions of inflation at 2.5 percent, WKP's equity return at 10 percent, income taxes at 41 percent in 2001 and 39 percent thereafter, and new debt costs at 8 percent. Table 9.2 provided an NPV of revenue requirements for WKP under the PPA, and was based on assumptions of inflation at 2.5 percent, ongoing cost of KRP debt at 7.2 percent, and an embedded return on equity to KRP of 9 percent. The cost of power was determined according to provisions in the PPA.

The original analyses were based on a 25-year period, and the base case used an 8 percent real discount rate (Exhibit 1, Tab 9; T7: 690). The comparative analyses of the original PPA showed a net benefit to customers of $783,000 at 8 percent (Exhibit 1, p. 52). Using a real discount rate of 10 percent showed a net benefit to customers of $3,237,000, and a real discount rate of 6 percent showed a net cost to customers of $3,233,000 (Exhibit 1, pp. 52-58; Exhibit 1B, Tab 1, p. 19). Exhibit 2L filed by WKP showed significant sensitivity in the original PPA to the assumed future market price of electricity and to the term of the analysis, with the potential for significant harm to customers.

On July 23, 2001, WKP filed the revised PPA, along with a calculation of the impact on customers based on the July 23 revisions, and revised Tables 9.1 and 9.2 showing the WKP revenue requirement with no sale of the generating plants and with the sale (collectively, Exhibit 1C). WKP showed a net present value benefit to customers resulting from the revised PPA of $9,822,000 calculated as shown in the table below.

Source of Benefit or (Harm)	**NPV** ($000)
• Ownership vs. PPA via Tables 9.1 and 9.2 Revised	
First 30 years of the PPA	(5,062)
Second 30 years of the PPA	(2,693)
• Benefit from Upgrades	1,000
• Waneta Management Agreement	0
• Rate Assurance	16,577
Total Benefit	**9,822**

3.3 The Revised PPA versus continued WKP Ownership

Revised Tables 9.1 and 9.2 were based on a WKP return on equity ("ROE") of 10 percent and a sixty-year study period. Revised Table 9.2 incorporated the levelized 10.4 percent KRP rate of return on equity embedded in the revised PPA (T7: 690). WKP filed the results of the analysis in Exhibit 1C and discussed the results based on the first and second 30-year periods.

3.3.1 First 30 Years

Tables 9.1 and 9.2 (Exhibit 1C) showed that the NPV of Revenue Requirements for WKP over the first 30 years of the revised PPA would be $331,795,000 without the sale of the generating plants and $336,857,000 after the sale of the generating plants, a NPV difference of approximately $5 million.

The Commission accepts the WKP analysis for the first 30 years of the proposed PPA, subject to the separate revision discussed in Section 3.5 related to the Waneta Management Agreement.

3.3.2 Second 30 Years

For the second 30 years of the revised PPA, the NPV of Revenue Requirements for WKP is shown to be $40,311,000 without the sale of the generating plants and $45,697,000 after the sale of the generating plants, a NPV difference of $5.386 million. WKP submitted in Exhibit 1C that the assumed harm to customers derived from Tables 9.1 and 9.2 was based on the assumption that markets would continue to be regulated in years 31 through 60. WKP further submitted that if markets are deregulated by year 30 the residual harm would be zero since customers would receive market prices. Consequently in its calculation of the harm to ratepayers, WKP arbitrarily halved the amount, resulting in a harm to ratepayers of $2.693 million. The CJV agreed during the hearing that if the markets were not deregulated during the second 30-year period, the harm to ratepayers would be the full amount (T7: 756).

BCOAPO et al. argues that the potential harm to ratepayers was at least the full amount derived from Tables 9.1 and 9.2 ($5.4 million), and could be even greater. In the view of BCOAPO et al., if markets deregulated and the assets are still owned by WKP then the process of deregulation would include a determination of who benefits from the fact that the market value of the assets is higher than their net book value. BCOAPO et al. states that, in jurisdictions such as Alberta, the benefit has been shared with customers but, if the currently proposed sale is approved, there will be no opportunity for ratepayers to share in such a benefit in future.

The Commission concludes that $5.386 million is a reasonable estimate of the potential for harm to ratepayers in the second 30-year period when the proposed transaction is compared to WKP ownership under continued regulation. Under the deregulation scenario posed by WKP in Exhibit 1C, and consistent with the Commission's findings in Section 2, the proposed transaction would foreclose the option of any future gain on sale being shared with ratepayers. If that potential lost opportunity is included in the analysis the estimate of the potential harm to ratepayers could be much greater. Therefore, the Commission considers the estimate of the $5.386 million harm to ratepayers in the second 30-year period to be a minimum.

3.3.3 Intergenerational Inequity

The Commission is also concerned about the potential for intergenerational inequity with regard to the back-end loading of prices under the PPA. Although, the cost of power rises over time under both the WKP and KRP ownership scenarios, the increases under KRP ownership are lower in the initial years and high thereafter (Exhibit 1C). This occurs at least partly because, under the PPA, KRP will recover less of its return on its investment in the early years of the agreement and more in the later years (T6: 654 and 655; T7: 796).

While the proposed PPA may provide some rate stability through an average ROE that is fixed over the term of the agreement, the shifting of the recovery of the ROE to the later periods of the PPA also creates an intergenerational shift of costs from current customers to future customers. Thus, the PPA creates an intergenerational inequity by allowing current customers to avoid paying their true cost of service, and requiring future customers to pay the costs to serve those current customers. While this aspect of the PPA may benefit current customers, it does so only at the expense of future customers.

The Commission finds that this violates a standard principle of rate setting under which customers' rates are based, insofar as practical, on the costs of serving those customers.

3.4 Cost of Upgrade Power

WKP submits that under the revised PPA, it will buy upgrade power at the revised PPA formula price, which reflects a lower cost of capital than WKP's, thus providing a small benefit to customers. WKP, while noting that the magnitude of the benefit is difficult to quantify, has estimated the potential benefit at $1 million. No party argued that this estimate was unreasonable.

The Commission accepts WKP's estimate of a $1 million potential benefit related to Upgrade Power.

3.5 The Waneta Management Agreement

The Waneta Management Agreement between Cominco and WKP currently provides for the maintenance, operation and management of the Waneta Plant and related facilities by WKP. It provides for a 7 percent management fee (Exhibit 1, Tab 8, p. 49). Under this arrangement, WKP realizes net income of about $240,000 per year (T4: 345).

If the sale of the assets is approved, WKP will no longer have the resources to continue managing the plant and will provide termination notice to Cominco. WKP would then enter into an agreement with KRP to assume operation and maintenance of the Waneta Power Plant as subcontractor to WKP (Exhibit 1, Tab 8, p. 49).

WKP recognized that the loss of revenues from the Waneta Management Agreement would affect the financial analysis in the application (T1: 48) by reducing the NPV of the revenue requirements in Table 9.1 (the without sale scenario). Although not explicitly set out in WKP's comparative analysis of the scenarios with and without the sale of the generation assets (Tables 9.1 and 9.2), WKP assumed in the analysis of the no sale case that the Waneta Management Agreement would continue for three years. BCOAPO et al. disputed WKP's assumption in argument.

WKP noted during the hearing that the Waneta Management Agreement was negotiated many years ago and has existed since then (T3: 224). WKP also stated that there was no indication from Cominco that it had any intention to terminate the agreement (T1: 54).

Assuming that the Waneta Management Agreement would continue for ten years rather than three increases the potential revenue to customers by about $1.1 or $1.2 million NPV. Assuming that it would continue for 25 years increases the potential revenue (and increases the potential harm under the sale scenario) by about $2.1 or $2.2 million NPV (T4: 346).

In the Commission's view, because of the existence of the Waneta Management Agreement for many years and lack of any indication that Cominco intends to terminate the arrangement, the assumption of termination after three years is unduly conservative. The Commission considers an assumption that the agreement would continue for ten years to be more reasonable. This assumption would result in an additional loss of revenue of approximately $1.1 million NPV.

3.6 The WKP Return on Equity

As noted in Section 3.2, the Application and the revised analyses assumed a long-term WKP return on equity of 10 percent. WKP submitted during the hearing that this was an extremely conservative assumption. During the hearing, WKP stated that the 20-year average ROE was 12.42 percent and the five-year average was 10 percent (T7: 818). WKP further argues that the assumption of a 10 percent long-term average rate of return was more likely than not to understate the future average rate of return. Dr. Robert Evans, WKP's expert witness, agreed during the hearing that investor expectations in early July of long-term bond yields were approximately 6 percent (T4: 305). Under the Commission's current ROE formula such a long-term bond yield would produce a ROE for WKP of approximately 10 percent.

In the view of the Commission, an assumption of a 10 percent ROE over the term of the agreement is appropriate.

3.7 Rate Assurance

At the pre-hearing workshop held on July 6, 2001, WKP provided materials supporting a benefit to ratepayers of rate assurance based on the fixed equity return to KRP embedded in the PPA. WKP states that analysis by Dr. Evans concludes that "…there is a benefit for WKP customers equivalent to approximately 1-1/2% rate of return on equity as a result of the fixed 9% longterm rate of return to Columbia as set out in the application" (Exhibit 2C). Dr. Evans stated that he considered his analysis to be a fair estimate "…given the possibilities of continuing with West Kootenay in a more or less traditional regulated framework versus the purchase by CPC and a commitment to the 9 per cent" (T4: 286).

Dr. Evans based his conclusion on two separate analyses (Exhibit 2C). The first is an analysis of the differences between yields on long-term and one-year Government of Canada Bonds. Dr. Evans' analysis of the yield spread between short-term and long-term bonds reviewed the average yield spread based on five, ten, fifteen and twenty-year periods. The results of his analysis based on the different time periods were as follows:

Time Period	Average Yield Spread (%)
5–Year Average	1.30
10–Year Average	1.50
15–Year Average	0.80
20–Year Average	0.80

However, in his submission, the 15- and 20-year averages should not be given significant weight because for several years during those periods yield curves were inverted for significant periods of time. Based on the five and ten-year averages, Dr. Evans considered the analysis to suggest a customer benefit of 125-150 basis points (Exhibit 2C, p. 2).

The second part of Dr. Evans' analysis compared the common equity rates of return resulting from the National Energy Board ("NEB") multi-pipeline formula for traditionally regulated pipelines under its jurisdiction and the negotiated 12 percent rate of return for the Alliance Pipeline Ltd. and the Alliance Pipeline Limited Partnership (collectively "Alliance"). On the basis of this analysis, Dr. Evans suggested a customer benefit of 125-175 basis points. Overall, Dr. Evans stated that an assumption of a 150 basis points lock-in benefit would not be unreasonable.

During the hearing, Dr. Evans agreed that customers also bore a risk of a locked-in rate, noting that "…one could think of it as the customers taking the risk that the rate of return might, on a conventional basis, never get to 12 per cent or might indeed drop from the current level" (T4: 314).

At 1.5 percent, WKP estimated the value of this rate assurance at $16.577 million over 30 years (Exhibit 2J). At the time of the filing of Exhibit 2J, the return on equity embedded in the original PPA was 9.0 percent. Revised Tables 9.1 and 9.2 in Exhibit 1C incorporate a return on equity for KRP of 10.4 percent as embedded in the revised PPA (T7: 827). The value of rate assurance in Exhibit 1C is unchanged from the value filed in Exhibit 2J, which is $16.577 million. WKP estimated the value of rate assurance, assuming a lock-in premium of 0.8 percent, at $8.841 million (Exhibit 2J).

BCOAPO et al. argues that Dr. Evans' evidence is flawed and should be given no weight by the Commission. Natural Resource Industries argues that the Application might offer price assurance but that customers still would face price uncertainty over the term of the PPA (Argument p. 4).

Dr. Evans' evidence related to the Alliance Pipeline ROE was based on the assumption that the differential between the Alliance Pipeline negotiated ROE and the common equity rates of return resulting from the NEB multi-pipeline formula for traditionally regulated pipelines represented the lock-in premium. However, in testimony Dr. Evans agreed that he could not know what considerations underpinned the Alliance agreement or that the 12 percent ROE in the Alliance contracts was central to the decision making of the parties to those contracts (T4: 279, 285, 308-309). The Commission considers that part of the analysis to be speculation, and has placed no weight on it.

Discarding the Alliance analysis leads to reliance only on the bond yield analysis. The evidence based on the bond yield spreads is based on the premise that the lock-in values to investors in bonds are the same as the lock-in values to utility ratepayers. The analysis is also based on the assumption that the return commensurate with the variability of one-year T-bills is a suitable proxy for the return commensurate with the annual variability of allowed rates-of-return on equity. As noted by NRI in Argument (page 4), the return on equity to KRP is only one component of the price to WKP under the revised PPA and does not offer price certainty, insofar as it only fixes one aspect of the rate.

In the view of the Commission, considerable uncertainty exists concerning the value of Rate Assurance. The Commission accepts that Rate Assurance is of some value, but it is not convinced that the value is as high as that recommended by Dr. Evans, nor that it should be based on a limited number of years of data. **In this instance, the Commission accepts a value of Rate Assurance of 80 basis points, based on all of the data provided, which leads to a Net Present Value associated with this potential benefit of $8,841,000.**

3.8 Intervenor Submissions

BCOAPO et al. argues several points with respect to the "public interest" test and the "held harmless" test. It concludes that there is no evidence of any public benefit, but there is no convincing proof that ratepayers will be held harmless. BCOAPO et al. submits several reasons why the Application should be rejected. These are:

- The generation assets would be removed from direct regulatory control;
- Ratepayers would lose their share of the benefits in the event of deregulation;
- The held harmless claim fails with rejection of Dr. Evans' evidence;
- Use of the 10 percent ROE was not supported by Dr. Evans;
- The loss of the Waneta Management Agreement would result in costs to ratepayers; and
- Customers would not receive protection equivalent to continued regulation.

Mr. Gabana argues that the Application should be rejected because it is not in the public interest. Mr. Wait argues that the cost savings, which a Crown Corporation enjoys, should be passed on to customers. He concludes that the sale is detrimental to ratepayers.

NRI argues that the transaction is confusing to customers and wonders how this application holds customers harmless. NRI states that removing the plants from regulation is of great concern to the ratepayers.

The IMEU argues that the revised PPA clearly exposes the ratepayers to risks that, if realized, could significantly harm them. First, the IMEU raises the issue of tax-related risks. It argues that the PPA locks-in a cost of power assuming taxes at current levels paid by WKP, but that future government taxes or charges on KRP could be flowed through the PPA to WKP ratepayers. While the IMEU notes that the BCUC would have jurisdiction to deny WKP the ability to collect the charges in rates, it might have some difficulty rejecting costs imposed by government under contracts that the Commission had previously approved. The IMEU also argues that the PPA locks-in the cost of tax on the return on equity, such that any future tax reductions would not be passed through to customers.

The IMEU believes that there is a potential harm to ratepayers in the termination provisions of the PPA, such that KRP could terminate the agreement with little or no recourse to the ratepayer for restitution to costs of substitute power. The IMEU also raises a concern about the KRP return on equity embedded in the PPA.

The IMEU is concerned that the provisions in the PPA for the sale and purchase of Upgrade Entitlement or Power could harm customers by imposing conditions that could result in the loss of the upgrade power or entitlements. The IMEU also argues that through the PPA, WKP gives up rights to unused capacity that it might have previously been able to sell on behalf of its customers.

Finally, the IMEU argues that under the PPA, WKP and its customers are exposed to the risk of further charges for ancillary services.

Both WKP and the Columbia Joint Venture disputed the potential customer harms cited by the IMEU. The CJV, in reply to the IMEU, stated that the IMEU argument contains "…considerable evidence, in the guise of argument" and that the Commission should give it no weight (pages 1 and 2).

Concerning the impacts of changing tax rates, WKP argued that the IMEU was asking the Commission to consider individual cost items rather than the overall net financial impact on customers. With respect to provisions in the PPA regarding termination of the agreement, Upgrade Power or Entitlement, unused capacity and Ancillary Services, WKP argued that the IMEU's concerns either misinterpreted the PPA or were unsupported by the evidence. The CJV argued that the IMEU's concerns with respect to specific provisions in the PPA were groundless. Concerning early termination of the Agreement, the CJV noted that if KRP chose to terminate the PPA, the Minister's Exemption Order would also expire so that the Commission could regulate the price at which KRP sells its power.

The International Brotherhood of Electrical Workers (Local 213) was able to obtain agreements with WKP and CJV that sufficiently addressed its major concerns about the sale and its impact on their members; however, it did not closely examine the financial impact from a customer point of view.

During the hearing, WKP filed letters in support of the proposed sale from the Regional Districts of Kootenay Boundary and Central Kootenay.

The Commission recognizes the opposition to the proposed sale by intervenors and has included only those costs that it finds to be substantiated in Section 3.9.

3.9 Commission Findings

Based on the Commission's conclusions in the Sections above, the Commission finds that as a result of the issues discussed in this section a potential harm to ratepayers exists, in the order of $1.7 million (net present value) as shown in the following Table.

As noted in Section 3.2, the degree of benefit or harm to ratepayers in original PPA was sensitive to the discount rate used in the analysis, the assumed future market price of electricity, and the term of the analysis. The revisions to the PPA removed or reduced the uncertainties related to the future market price of the electricity and the term. However, in the view of the Commission, the analysis in the Application remains dependent on numerous other forecast assumptions and uncertainties. These include the future ROE of WKP if it retains ownership of the plants, the differential in debt cost between WKP and KRP, operating and maintenance costs of the plants under WKP and KRP ownership, future tax rates and structure, and unforeseen contingencies that may arise under contracts of such long duration as the PPA.

Calculation of Potential Benefit (Harm) to Ratepayers	**NPV** ($000)
• Ownership vs. PPA per Table 9.1 and 9.2 Revised	
First 30 years of the PPA	(5,062)
Second 30 years of the PPA	(5,386)
• Benefit from Upgrades	1,000
• Waneta Management Agreement	(1,100)
• Rate Assurance	8,841
Total Harm	**(1,707)**

The Commission determines that, for the reasons cited in this Chapter and in the absence of any sharing of the gain on the sale, a reasonable estimate of the aggregate total harm to ratepayers is $1.7 million NPV. The actual amount could be significantly greater or less depending on the outcome of future events.

4.0 COMMISSION DETERMINATIONS

All parties agree that this Application is unique. While the purpose of the agreements is to effect the transfer of the four plants to Columbia Joint Venture ownership, the agreements include an asset disposition, a share purchase and a long-term Power Purchase Agreement to offset impacts on ratepayers.

If the Commission were to deal with the agreements in sequence, it would first review the Asset Transfer Agreement, pursuant to Section 52 of the Act, with any conditions and requirements considered necessary or desirable in the public interest. Then the Share Purchase Agreement would require review pursuant to Section 54 of the Act, which requires that the public interest be met and that there must be no detriment to the public utility and the users of the service. The Power Purchase Agreement would be offered in support of both reviews.

However, WKP has asked that the agreements be considered in their aggregate, which the Commission has accomplished in its determination in Chapters 2 and 3 of this Decision. The small potential harm to customers identified in Chapter 3 would be offset by the large customer benefit from the sharing of the gain on sale of assets determined in Chapter 2. Therefore, the Commission concludes that the determinations in this Decision would adequately protect the ratepayers' interests and fairly compensate WKP's shareholder for the proposed sale.

The Commission denies WKP's Application. The Commission will not approve the transfer of assets to Kootenay River Power Corporation unless the terms of the sale are restructured to provide for the sharing of the proceeds as determined in Chapter 2. However, since WKP has testified that it will not proceed with the sale unless the WKP shareholder receives 100 percent of the gain on sale, the Commission directs WKP to advise it of the Utility's intentions within one month of the date of this Decision.

Dated at the City of Vancouver, in the Province of British Columbia, this 26th day of October 2001.

Original signed by:
Peter Ostergaard
Chair

Original signed by:
Paul G. Bradley
Commissioner

Original signed by:
Barbara L. Clemenhagen
Commissioner

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BRITISH COLUMBIA
UTILITIES COMMISSION

ORDER
NUMBER G-112-01

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

and

An Application by West Kootenay Power Ltd.
[now UtiliCorp Networks Canada (British Columbia) Ltd.]
to Sell its Hydroelectric Generation Assets

BEFORE:	P. Ostergaard, Chair	)	
	P.G. Bradley, Commissioner	)	October 26, 2001
	B.L. Clemenhagen, Commissioner	)	

O R D E R

WHEREAS:

A. On March 22, 2001, West Kootenay Power Ltd. ("WKP") filed an Application for the sale of its generation assets ("the Application"), pursuant to Sections 50, 52, 54, 60, and 71 of the Utilities Commission Act ("the Act"). In the Application WKP proposes to sell its four hydroelectric plants and related facilities ("the Plants") situated on the Kootenay River to a joint venture subsidiary of the Columbia Basin Trust and the Columbia Power Corporation ("Columbia Joint Venture") for a purchase price of $120 million; and

B. In order to accomplish the sale, WKP first proposes to transfer the Plants to a newly incorporated subsidiary of WKP, Kootenay River Power Corporation ("KRP"), and then sell the shares in KRP to the Columbia Joint Venture; and

C. On completion of the sale, KRP and WKP would enter into a Power Purchase Agreement ("PPA") to sell the output of the plants to WKP at prices specified in the PPA; and

D. The Commission convened an oral public hearing in Rossland, B.C. on May 29, 2001, to hear WKP's Application; and

E. At the request of WKP, with the support of the Columbia Joint Venture, the hearing was adjourned, and later reconvened in Rossland on July 16, 2001 after a Technical Information Session in Kelowna; and

F. On June 8, 2001, WKP filed updates to its Application, being an Amended and Restated Brilliant Power Purchase Agreement, an Operations Agreement, a Transitional Services Agreement, and a Transmission Maintenance Agreement, with the Commission and intervenors; and

G. By separate letter, WKP requested Commission approval of a letter agreement dated June 1, 2001 regarding the Brilliant tailrace issue; and

H. The hearing was completed on July 25, 2001 and the filing of written argument was completed on September 7, 2001; and

I. The Commission has considered the Application and the evidence adduced thereon, all as set forth in the Reasons for Decision issued concurrently with this Order.

NOW THEREFORE the Commission orders as follows:

1. The Commission denies the WKP Application.

2. The Commission will not approve the transfer of assets to Kootenay River Power Corporation unless the terms of the sale are restructured to provide for sharing of the proceeds on sale as determined in Chapter 2 of the Reasons for Decision.

3. The Commission directs West Kootenay Power Ltd. to advise it of the Utility's intentions within one month of the date of this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 26th day of October 2001.

BY ORDER

Original signed by:

Peter Ostergaard
Chair

APPEARANCES

G.A. FULTON	British Columbia Utilities Commission Counsel
G. MACINTOSH, Q.C. D. O'LEARY	West Kootenay Power Ltd.
D. BURSEY	Columbia Power Corporation
J. LANDRY	CBT Energy Inc.
R. CARLE	Interior Municipal Electrical Utilities
M. DOHERTY R.J. GATHERCOLE	BC Old Age Pensioners' Organization, Council of Senior Citizens' Organizations of BC, federated anti-poverty groups of BC, Senior Citizens' Association of BC, End Legislated Poverty, and the Kootenay-Okanagan Electric Consumers' Association
C.B. JOHNSON K. CAIRNS	Cominco Ltd.
P. COCHRANE	Hedley Improvement District/Natural Resource Industries
R. DICKSON	International Brotherhood of Electrical Workers, Local 213
N. GABANA	Himself
G. BROWN	Himself
A. WAIT	Himself

B. MCKINLAY J.W. FRASER R.W. RERIE P.W. NAKONESHNY M.A. GOSLING	Commission Staff
ALLWEST COURT REPORTERS LTD.	Court Reporters & Hearing Officer

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Dr. Robert Evans	Himself
Columbia Joint Venture – Panel	J. SMIENK E. PIETRASZEK L. SIVERTSON V. JMAEFF
G. Brown	Himself

LIST OF EXHIBITS

	Exhibit No.
West Kootenay Power Ltd. Application for the Sale of West Kootenay Power Ltd.'s Generation Assets dated March 22, 2001, as updated May 8 and May 23, 2001, Volume 1	1
Replacement page 6 of Exhibit 1	1A
West Kootenay Power Ltd. letter to B.C. Utilities Commission, dated June 8, 2001 with attachments (four schedules)	1B
Binder of material filed with the Commission on July 23, 2001	1C
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BRITISH COLUMBIA UTILITIES COMMISSION

News Release

1:30 P.M., OCTOBER 26, 2001

BC Utilities Commission Issues Decision on Sale of Kootenay Dams

The BC Utilities Commission has denied the application by West Kootenay Power Ltd. to sell its four Kootenay River dams for $120 million to a joint venture of the Columbia Power Corporation and Columbia Basin Trust. If the sale had proceeded, West Kootenay Power would have bought back the electricity generated at the dams under a 60-year agreement.

West Kootenay Power's participation in the agreements was conditional on its shareholder retaining the full premium on the sale of the dams. However, the Commission has determined that the profits from the sale should be shared with the utility's customers.

The Commission also considered whether the agreements accompanying the proposed sale would be harmful to ratepayers. The review of the proposed agreements suggested that the potential did exist for harm to ratepayers. However, this could be remedied if West Kootenay Power were to agree to share the profits with its ratepayers as set out in the Decision.

In denying the Application, the Commission directed the utility to advise it of its intentions, if any, to reapply after restructuring the terms of the sale to conform with the Commission's determinations.

The Commission's Decision follows seven days of public hearings in Rossland and Vancouver.

West Kootenay Power is an investor-owned electric utility providing wholesale and retail service in the west Kootenay and south Okanagan regions of British Columbia. Effective October 22, 2001, it changed its name to UtiliCorp Networks (British Columbia) Ltd. Columbia Power is a Crown Corporation owned by the Province, and is in joint venture partnerships with the Columbia Basin Trust to invest in and develop power projects in the Columbia Basin. The BC Utilities Commission is an agency of the Provincial Government responsible for regulating energy utilities.

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