

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

AND

IN THE MATTER OF a Contract Dispute
between West Kootenay Power and Light
Company, Limited and B.C. Timber Ltd.
(formerly Canadian Cellulose Company Limited)

DECISION

September 10, 1982

Before:

M. Taylor, Chairman;
J.D.V. Newlands, Deputy Chairman;
B.M. Sullivan, Commissioner

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APPEARANCES

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BACKGROUND

The hearing held on June 23, 1981, pursuant to Order No. G-36-81, resulted from the inability of B.C. Timber Ltd. (formerly Canadian Cellulose Company Limited), and West Kootenay Power and Light Company, Limited ("WKPL") to reach an agreement as to whether or not "force majeure" provisions should be incorporated in the contract for electric service provided by WKPL to the Castlegar pulpmill and sawmill complex owned by B.C. Timber.

Prior to September, 1980 Cominco Ltd., the parent company of WKPL, supplied electricity to B.C. Timber at its Castlegar operations.

In September of 1980 the Commission, by Order No. G-52-80 accepted for filing, on an interim basis, Rate Schedule 31 "Large Industrial Service - All Districts." This rate applies primarily to the provision of electric power by WKPL to the B.C. Timber mill complex at Castlegar. Subsequently the Commission advised that a period of 30 days should be sufficient for the parties to reach a satisfactory agreement. As an agreement was not achieved the Commission set the matter down for public hearing.

THE EVIDENCE

At the hearing B.C. Timber was represented by Mr. G. Derek Gillis, Counsel, and by Mr. Harry Papushka, Vice-President, Pulp Marketing, who gave evidence to the need for a "force majeure" provision.

WKPL was represented by Mr. J.W.M. Wilson, with evidence given by Mr. J.S. Brook, Treasurer and Chief Financial Officer and Mr. S.A. Ash, Manager, Commercial Affairs. The WKPL witnesses spoke primarily to the inequity which would be created should B.C. Timber's request be granted, primarily the effect on other customers, and to a lesser extent the effect on the shareholders.

Mr. Papushka's evidence was directed to the general applicability of "force majeure" provisions in commercial contracts and the potential impact upon B.C. Timber should the Company enter into a 10 year contract without this provision.

In addition, Mr. Papushka raised the question of the equity of a contract requiring a buyer to take or pay for a commodity with no obligation for financial relief to the purchaser should the seller be unable to deliver.

WKPL did not dispute that other utilities' contracts contain "force majeure" provisions. It is a matter of record that the previous supplier of electricity had accepted a "force majeure" clause in the contract between itself and B.C. Timber.

WKPL's evidence was primarily directed to the recovery of fixed costs incurred in providing service to a customer representing a major load.

WKPL also gave evidence on the Company's flexibility in the enforcement of contract provisions. In the instance of enforcement of "force majeure" should an alternative sale be available, WKPL stated consideration could be given by the Company, in conjunction with the Commission, on relief available to B.C. Timber.

THE DECISION

The Commission finds that customer contracts must be sufficiently extensive in order to deal prospectively with foreseen areas of contention. In the case of unforeseen circumstances, the Commission is in agreement with WKPL's position that a certain degree of flexibility should be maintained in order to resolve problems the causes of which are not specifically reflected in customer contracts. However the tariff must properly reflect the contract as far as that is possible.

In addition, terms and conditions applicable to one rate class should not be unduly advantageous as compared to terms applicable to other rate classes, whose customers experience similar business risks.

In the circumstances of B.C. Timber it is acknowledged that due to the size of B.C. Timber's load, and without "force majeure" relief, B.C. Timber has significant exposure to costs resulting from "force majeure" situations. As B.C. Timber is WKPL's largest industrial load, the magnitude of cost exposure is correspondingly greater than with other WKPL industrial customers.

It is to be noted that there are special historical circumstances surrounding the provision of "force majeure" to this customer as B.C. Timber had previously enjoyed "force majeure" privileges under its contract with Cominco Ltd. These privileges are now intended to be withdrawn by WKPL, a wholly-owned subsidiary of Cominco.

The supplier of electricity has changed, the price has increased, but the actual source of supply has largely remained unchanged. The major change in supply source is the portion of WKPL's supply that is nominated and purchased during the winter months from the B.C. Hydro and Power Authority. In the absence of "force majeure" provisions in the WKPL/B.C. Hydro power purchase agreement, and should B.C. Timber obtain "force majeure" privileges, WKPL would be exposed to fixed costs that were not experienced by Cominco under its contract with B.C. Timber.

After giving consideration to the current and historical circumstances the decision of the Commission is to restore the "force majeure" provisions per Exhibit 1, Tab B in the WKPL/B.C. Timber sales agreement at no additional cost to B.C. Timber or other customers served by WKPL. However, in the months where WKPL buys capacity and energy from B.C. Hydro, the demand charge provision of Rate Schedule 31 shall apply in this period, despite the incidence of "force majeure" causing the failure of B.C. Timber to take the load per the sales agreement.

Should WKPL and B.C. Hydro agree to "force majeure" then B.C. Timber is to be given relief in accordance with that agreement.

This Decision is to remain in effect until such time as the Commission has had an opportunity to give consideration to WKPL's general rate design applicable to all customers.

Amendments to Rate Schedule 31 pursuant to this Decision are to be filed with the Commission and are to be effective October 1, 1982.


DATED at the City of Vancouver, in the Province of British
Columbia, this 10th day of September, 1982.



M. TAYLOR, Chairman



J.D.V. NEWLANDS, Deputy Chairman



B.M. SULLIVAN, Commissioner

LIST OF EXHIBITS

	<u>Exhibit No.</u>
Pre-filed Testimony of B.C. Timber Ltd.	1
West Kootenay Power and Light Company, Limited Submission and Testimony of Mr. S.A. Ash, and Mr. J.S. Brook	2

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