

IN THE MATTER OF
THE UTILITIES COMMISSION ACT
S.B.C. 1980, c. 60, as amended

and

IN THE MATTER OF APPLICATIONS BY
BRITISH COLUMBIA HYDRO AND POWER AUTHORITY

DECISION

December 4, 1985

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

A P P E A R A N C E S

C. B. JOHNSON	Commission Counsel
D. C. DUFF and L. F. HINDLE	For B.C. Hydro & Power Authority
R. B. WALLACE	For the Council of Forest Industries, and Mining Association of British Columbia, the Electro-Chemical Producers Association of B.C.
R. J. GATHERCOLE	For the Consumers' Association of Canada, Federated Anti-Poverty Groups of B.C., the B.C. Old Age Pensioners' Organization, Local 217-IWA Seniors
K. E. GUSTAFSON B. KONST	For the Corporation of the City of Nelson
D. M. MASUHARA	For Inland Natural Gas Co. Ltd.
C. J. ALLNUTT	For the Management and Professional Employees Society of B.C.
S. WATSON	For the Office & Technical Employees' Union, Local 378
R. L. PEEL	For the International Brotherhood of Electrical Workers, Local 258
J. M. BLACK	On his own behalf
E. MARZOCCO	On his own behalf

1.0 Introduction

On November 28, 1985 the Commission heard submissions on behalf of British Columbia Hydro and Power Authority ("B.C. Hydro") in which B.C. Hydro objected to answering certain information requests made of it prior to the commencement of a public hearing. At the public hearing the Commission will consider whether it should confirm or vary two interim increases granted to B.C. Hydro. The interim increases relate to B.C. Hydro's fiscal years ending March 31, 1985 and March 31, 1986. The Commission also heard submissions on behalf of Intervenorors respecting the objections of B.C. Hydro.

In these Reasons for Decision the Commission provides its views respecting the objections raised by B.C. Hydro.

2.0 Background

By Application dated March 20, 1984 B.C. Hydro applied to amend its electric tariff rate schedules. The schedules were amended effective April 15, 1984 by Commission Order No. G-18-84 authorizing an interim increase of 6.5% subject to review at a public hearing. B.C. Hydro then applied for a further increase of 6.5% to be effective April 1, 1985. In response to an amended Application dated May 13, 1985 the Commission by Order No. G-48-85 authorized an interim increase of 3.75% effective June 13, 1985 subject to review at a public hearing.

By Application dated July 11, 1985 B.C. Hydro applied for an Order of the Commission rescinding paragraph 5 of Commission Order No. G-26-82. Paragraph 5 of that Order had directed B.C. Hydro to create an account to be known as the "Rate Stabilization Account" which account was to be credited with the revenue derived from the export sale of surplus electric energy and from which account there was to be transferred the amount of \$60 million, or such lesser sum as will reduce the account balance to nil, in each of the fiscal years subsequent to March 31, 1982. In response to the Application of July 11, 1985 the Commission issued Order No. G-62-85 which varied paragraph 5 of Order No. G-26-82 to permit B.C. Hydro on an interim basis for fiscal 1986 to record as income additional to \$60 million transferred from the Rate Stabilization Account, export surplus sales of electricity to an amount not exceeding \$130 million before direct expenses. By Order No. G-62-85 the Commission also stated that it would give further consideration to rescinding Order No. G-26-82 on receipt from B.C. Hydro of an acceptable alternative to the present basis of dealing with export surplus sales of electricity, which matter may be an item to be considered at the forthcoming rate hearing.

By Order No. G-77-85 dated September 11, 1985 the Commission ordered that a public hearing pertaining to confirmation or otherwise of the two interim increases which became effective April 15, 1984 and June 13, 1985 was to

commence in Vancouver on November 4, 1985. Order No. G-77-85 also stated:

"B.C. Hydro shall in any event address the following issues:

- (a) forecasts over a period not exceeding 5 years of export surplus sales of electricity and the future use of the Rate Stabilization Account;
- (b) forecasts over a period not exceeding 5 years of domestic sales of electricity;
- (c) the appropriate accounting treatment for under-utilized plant;

and such other matters as are required for the said purposes of the hearing, namely, the confirmation or otherwise of the two interim increases which became effective April 15, 1984 and June 13, 1985."

On October 31, 1985 the Commission heard a motion brought on behalf of the Industrial Intervenors to adjourn the public hearing of the Applications of B.C. Hydro. The motion to adjourn was supported by other registered Intervenors. Counsel who spoke in favour of the adjournment took the position that the Application material which had been provided by B.C. Hydro was not adequate and that B.C. Hydro's response to information requests were not adequate. Counsel supporting the adjournment made reference to B.C. Hydro's lack of response to the provision in Order No. G-77-85 set out above which directed B.C. Hydro to address certain issues. On the hearing of the motion to adjourn counsel for B.C. Hydro took the position that the Application as filed and the responses to information

requests were adequate. In its decision on the motion the Commission noted that B.C. Hydro had written a letter of October 24, 1985 to the Commission which stated:

"B.C. Hydro submits that information regarding periods subsequent to those test periods is not necessary in order for the Commission to determine the issue before it, notwithstanding the provisions of Paragraph 6 of Order G-77-85 to the effect that such information may be provided."

The Commission also noted that B.C. Hydro, in answer to an information request seeking B.C. Hydro's best assumptions for future export sales and seeking a forecast of domestic electricity sales, both for 1985/86 through 1990/91, had said that "Order G-77-85 does not require B.C. Hydro to provide forecasts of revenues or of the Rate Stabilization Account beyond the test period ending 31 March 1986". The Commission went on to say that the effect of the answer by B.C. Hydro was a refusal to provide forecasts of export surplus sales or domestic sales although the Commission had ordered that it should do so and stated:

"The submission by B.C. Hydro is a misstatement of the Commission Order. The Commission did not order that B.C. Hydro may provide information, it required B.C. Hydro to address certain matters. B.C. Hydro has failed, or refused to do so."

The Commission also stated:

"The Commission has outlined in its hearing Order areas which it requires B.C. Hydro to address. With regard to the forecasts the Commission expects that they will be provided as soon as possible and will be for a five year period."

In Order No. G-90-85 which was made in respect of the adjournment Application the Commission ordered that the public hearing be adjourned from November 4, 1985 to January 6, 1986, set a timetable for the filing of and responding to additional information requests. B.C. Hydro was ordered to respond to relevant information requests by November 20, 1985. The Commission also ordered that B.C. Hydro address, by November 20, 1985, the three issues identified in Order G-77-85.

As of November 28, 1985 B.C. Hydro had provided Volume 5, Parts 1 through 5, in response to information requests. Volume 5 (Part 6) has now been provided. Volume 5 (Part 4) which was made available by B.C. Hydro on November 20 contains B.C. Hydro's response to the requirement that it address the three issues identified in Order G-77-85. It also contains many responses in which B.C. Hydro had objected to answer the information requests posed to it.

The Commission sat on November 28, 1985 to hear the submissions of B.C. Hydro respecting the basis for B.C. Hydro's objections to answering information requests. Intervenors were notified that the Commission would be hearing the submissions of B.C. Hydro on that date and representatives of many of the Intervenors appeared to make submissions.

3.0 The Issues

In its responses, B.C. Hydro provided five grounds upon which B.C. Hydro objected to answer information requests. The first ground was that B.C. Hydro considered that the information requested was not relevant since it related to a period beyond March 31, 1986. In written form the objection was stated to be:

"In B.C. Hydro's submission the information sought for periods beyond the two test years ending 31 March 1985 and 31 March 1986 is not necessary at this time for the Commission to determine the issue before it of the confirmation or otherwise of the interim electric rate increases effective 15 April 1984 and 13 June 1985."

The second ground of objection was that the information request related to labour negotiations. In answer to information requests which B.C. Hydro considered as relating to this subject B.C. Hydro stated:

"B.C. Hydro is preparing to enter collective agreement negotiations and is currently involved in various disputes with organizations representing Hydro employees. In B.C. Hydro's submission, to provide the material sought might prejudice Hydro's position in those proceedings."

The third ground of objection was that B.C. Hydro considered the information requested related to negotiations dealing with the sale in the export market of surplus electrical energy. In its responses B.C. Hydro stated the objection in the following manner:

"B.C. Hydro is concerned that the public provision of certain information relating to export marketing strategies, tactics or meetings held to further them could prejudice the negotiating position of the Province and B.C. Hydro in its dealings with potential customers, U.S. government agencies and other parties claiming an interest in such matters. B.C. Hydro therefore respectfully declines to supply that information.

Because of the operation of BCUC Order No. G-62-85 revenues for export sales subsequent to export revenues reaching \$130 million in August 1985 have no effect on the need for the interim increases for which confirmation is being sought."

B.C. Hydro objected to answering certain information requests on the ground that B.C. Hydro considered that the information request related to its gas operations. In responses that objection was stated as follows:

"The question relates to Gas Operations and B.C. Hydro is not requesting an increase in revenue for its gas services. Therefore the question is not relevant to the confirmation or otherwise of the interim electric rate increases."

B.C. Hydro also indicated that it was objecting to certain information requests of the Industrial Intervenors on the ground that those information requests related to rate design matters and were not relevant to the public hearing. During the course of submissions on November 28 it was indicated by counsel for B.C. Hydro and counsel for the Industrial Intervenors that an agreement had been reached respecting the manner of dealing with those information

requests and accordingly the Commission need not deal with that issue.

In deciding the issues before it the Commission must keep in mind the subject matter of the Applications of B.C. Hydro for rate increases, the purpose of the public hearing process and the statutory framework in which the B.C. Hydro Applications are to be considered. The interim rate increases which are being reviewed by the Commission relate to the two fiscal years ending March 31, 1986. The Commission must conduct sufficient examination of the operations of B.C. Hydro to ensure that the rates are and will be fair and reasonable to the customers of B.C. Hydro and will ensure the financial integrity of B. C. Hydro. The Commission must examine B.C. Hydro to ensure that B.C. Hydro is managing its operations in an efficient manner. Those considerations are not unique to B.C. Hydro but rather are present whenever the Commission considers rate applications of public utilities that it regulates.

In the case of B.C. Hydro the Commission must also take into consideration Special Direction No. 1, a regulation made pursuant to Section 3 of the Utilities Commission Act. That Special Direction applies with respect to the exercise of the Commission's powers and functions in connection with B.C. Hydro and includes a statement that "the authority should . . . improve its interest coverage ratio on electric service with reasonable consistency so as to achieve an interest coverage ratio of 1.3:1 on such service by the

1990/91 fiscal year . . .". To comply with the Special Direction the Commission must not only ensure that the rates being proposed will be fair and reasonable in the years in which they apply but also that B.C. Hydro is moving towards the required interest coverage ratio with "reasonable consistency".

During the course of submissions it became apparent that Intervenors were not only seeking answers to questions which B.C. Hydro had objected to answer but were also complaining of B.C. Hydro's lack of adequate answers to questions which B.C. Hydro had purported to answer. An example to which reference was made on November 28 was question 4 posed by the Office and Technical Employees Union. The question and answer are set out below:

"QUESTION

Does B.C. Hydro conduct a cost benefit analysis before submitting tenders for work to outside contractors? If so, what factors or criteria are used to justify contracting out work as opposed to Hydro employees performing this work?

ANSWER

The factors or criteria used to justify contracting out work as opposed to Hydro employees performing this work are set out in Section 14 of the Hydro and Power Authority Act, R.S.B.C. 1979, c. 188, namely:

'14. The authority shall invite tenders by public advertisement, or when impracticable, then by public notice, for the construction and repair of all power plants, except in case of pressing emergency, where delay would be injurious to the public interest or where from the nature of the work it can be more expeditiously and economically executed by the

officers and servants of the authority.'

The Hydro and Power Authority Act also provides the following definition in Section 1:

'"power plant" or "plant" includes all land, water, rights to the use of water, buildings, works, machinery, installations, materials, devices, fittings, apparatus, appliances, offices, furniture and equipment, vehicles, tools, stores and supplies, including office stores and supplies, constructed, acquired or used or adapted, or that, in the opinion of the authority, might be used or adapted for or in connection with the generation or supply of power;'"

B.C. Hydro did not object to answering that question but the answer given is wholly unresponsive to the question. B.C. Hydro did not indicate if it conducted a cost benefit analysis before submitting tenders and did not indicate what factors or criteria are used in such cost benefit analyses. The Commission considers that the answer to the above question and similar unresponsive answers cause unnecessary delays and interfere with a proper and efficient public hearing process. The Commission requires B.C. Hydro to respond in a meaningful way to all questions to which it has not taken objection and in particular to the question set out above.

4.0 Commission's Considerations and Conclusions

The Commission in its Order No. G-77-85 required that B.C. Hydro address forecasts of export surplus sales of electricity and the future use of the Rate Stabilization Account. On October 31, 1985 the Commission noted that it

had required B.C. Hydro to address that matter and went on to order B.C. Hydro to address the issue of future export sales. The submission of B.C. Hydro found under Tab 1 of Volume 5 (Part 4) does not provide any forecast of export sales, although it says that "In recognition that it is a fairly safe assumption that some export sales will be made, B.C. Hydro now includes such an assumption of export sales in its planning".

The Commission believes that it has made it abundantly clear to B.C. Hydro that B.C. Hydro should provide its best estimate of export surplus sales of electricity from the present to March 31, 1991. The Commission directs B.C. Hydro to provide such information as soon as possible.

During the course of submissions Mr. Duff, on behalf of B.C. Hydro, indicated that B.C. Hydro was preparing certain computer runs regarding export sales and had available elasticity studies respecting those sales. The Commission directs that B.C. Hydro provide to the Commission and to Intervenor the elasticity studies and the computer runs together with related key underlying assumptions, reflecting B.C. Hydro's best judgment as to the practical upper and lower limits of prospective exports to March 31, 1991. B.C. Hydro is further directed to indicate the level within the projected range of export sales which B.C. Hydro considers to be its best estimate of the probable level of such sales. In specifying the key underlying assumptions the Commission

will not expect that B. C. Hydro reveal any information which may significantly affect ongoing negotiations.

In Order No. G-77-85 the Commission directed B.C. Hydro to address the issue of "the appropriate accounting treatment for under-utilized plant". A number of the information requests which B.C. Hydro has refused to answer on the basis that it considers that "the information sought for periods beyond ... 31 March 1986 is not necessary ..." relate to the utilization of plant in fiscal years subsequent to March 31, 1986. In order that there can be a proper examination of the issue of the appropriate accounting treatment for under-utilized plant, the Commission, and Intervenors, must have available information relating to the extent of the utilization of plant in future years. B.C. Hydro is directed to provide information as requested relating to the utilization of B.C. Hydro's facilities for the period up to and including the fiscal year ending March 31, 1991.

The Commission is required by Special Direction No. 1 to determine if B.C. Hydro will achieve an interest coverage ratio of 1.3:1 on electric service by the 1990/91 fiscal year. In order to comply with Special Direction No. 1 the Commission must have available information regarding B.C. Hydro's expected financial position not only for the test years of fiscal 1985 and 1986 but also for the fiscal years to 1990/91. B.C. Hydro is directed to answer information requests which seek such information. That is not to say

that B.C. Hydro need provide detailed expense information for the years beyond March 31, 1986. B.C. Hydro must, however, provide sufficient information to allow the Commission to determine if, given the forecast domestic electricity sales, given the export sales of electricity which may reasonably be expected, and given the use of the Rate Stabilization Account, the required interest coverage ratio will be achieved with reasonable consistency by the 1990/91 fiscal year.

The second ground of objection was that the information requested related to labour negotiations. The Intervenors who addressed that objection indicated that they were not seeking information relating to labour negotiations. As stated by Mr. Allnutt on behalf of M.A.P.E.S. at page 254 of the transcript "... it is certainly our position that matters that are before the Courts or in collective agreement negotiations should not be provided to this hearing because then it would simply become a labour negotiating situation and we don't want that".

As both sides to that issue agree that matters respecting labour negotiations should not be before the Commission, the Commission need not decide the objection on a matter of principle, but rather must examine the individual information requests to which B.C. Hydro has objected, to determine if the information request is relevant to the proceedings. In Schedule "A" to these

Reasons for Decision the Commission has dealt with individual questions.

The third ground of objection was that the information requested related to negotiations dealing with the sale of surplus electrical energy in the export market. Many of the information requests to which objection was taken on that ground were information requests posed by Mr. Gathercole who acts on behalf of the Consumers Association of Canada and other Intervenors. Mr. Gathercole said at page 180 of the transcript that:

" . . . The second aspect in all these questions is that they are specifically not trying, as I have indicated, to get B.C. Hydro to reveal legitimate confidential information. And, if there are negotiations in session, in progress, that B.C. Hydro is concerned that any of this information will impact on, I am certainly prepared to discuss that with Mr. Duff, and I am sure we can work this out".

The Commission does not wish to require that information be made public if it could prejudice the negotiating position of the Province and B.C. Hydro in its dealings with potential customers, U.S. government agencies and other parties claiming an interest in such matters. The Commission, however, is concerned that B.C. Hydro may have refused to provide information which is already public in Canada or in the United States of America on the basis of a widely worded objection. The Commission directs B.C. Hydro and its counsel to confer with Mr. Gathercole and others interested to ensure that material which is relevant and

will be useful in the public hearing is made available while at the same time ensuring that the negotiating position of the Province and B.C. Hydro is not adversely affected.

With regard to the objection that certain information requests relate to gas operations, the Commission agrees with the position taken by B.C. Hydro. The interim rate increases under review by the Commission relate only to the electric operations of B.C. Hydro. In its 1983 Decision relating to B.C. Hydro the Commission did not suggest that there should be an integration of the electric and gas operations. As long as the two services remain separate the costs of providing natural gas service should remain apart from the costs of providing electric service.

In Schedule "A" to these Reasons for Decision the Commission provides its directions respecting certain of the information requests which B.C. Hydro has not yet answered. All of the information requests to which B.C. Hydro has objected are not included on Schedule "A" as the Commission expects B.C. Hydro and its counsel to work with Mr. Gathercole and other interested parties in an effort to resolve the requests which B.C. Hydro has objected to answer on the basis that the information, if provided, might have an adverse impact on negotiations respecting export sales. With regard to the information requests on Schedule "A" which B.C. Hydro should answer, B.C. Hydro is directed to provide answers within seven days.

Dated at City of Vancouver, Province of British
Columbia this 4TH day of December, 1985.



M. Taylor, Chairman



J.D.V. Newlands, Deputy Chairman



D. B. Kilpatrick, Commissioner

SCHEDULE "A"

INFORMATION REQUEST

DIRECTIONS OF THE COMMISSION

Volume 5 (Part 1)

B.C.P.I.A.C. No. 3
B.C.P.I.A.C. No. 4
B.C.P.I.A.C. No. 9
B.C.P.I.A.C. No. 22
B.C.P.I.A.C. No. 29

No further response required
No further response required
No further response required
No further response required
B.C. Hydro's best assumptions regarding the volumes and revenues of future export surplus sales for 1985/86 through 1990/91 are to be provided

Volume 5 (Part 4)

B.C.P.I.A.C. No. 7

B.C.P.I.A.C. No. 8

B.C.P.I.A.C. No. 11

Marzocco No. 13

Marzocco No. 14

Marzocco No. 19

B.C. Hydro is to provide a copy of the most recent Corporate Instructions
B.C. Hydro is to provide further detail describing the specific projects or expenses which are to be reduced if such information is available
B.C. Hydro is to provide the B.C. Hydro or consultant's documentation as requested
B.C. Hydro need not answer questions relating to its gas operations
B.C. Hydro is to advise if the expenditure would be written off against electrical revenues or gas revenues but need not provide further information on the gas pipeline
B.C. Hydro need not answer further

INFORMATION REQUEST

Marzocco No. 2

B.C.U.C. Staff No. 1

B.C.U.C. Staff No. 3

B.C.U.C. Staff No. 5

B.C.U.C. Staff No. 6

M.A.P.E.S. No. 1

M.A.P.E.S. No. 2

O.T.E.U. No. 1

O.T.E.U. No. 4

City of Nelson No. II(2)

Volume 5 (Part 5)

B.C.P.I.A.C. No. 25

Marzocco No. 16

B.C.P.I.A.C. Nov. 6 No. 7

DIRECTIONS OF THE COMMISSION

B.C. Hydro need not answer further that portion of the question relating to its gas operations

B.C. Hydro is to provide the information as requested

B.C. Hydro is to provide the information requested showing domestic and export sales on a gross basis and is to identify the factors causing material differences as requested

The staff will rephrase the question

B.C. Hydro is to provide summary forecast data as requested

B.C. Hydro is to answer the question as rephrased at page 261 of the transcript

B.C. Hydro need not answer

B.C. Hydro is to provide a detailed cost analysis of contracting out for the fiscal years ending March 31, 1985 and 1986

B.C. Hydro is to provide a responsive answer

B.C. Hydro is to provide the information as requested

B.C. Hydro need not provide the reviews, memoranda or other documents representing the views of field or district management. The subject of quality of service or system security may be addressed during cross-examination of B.C. Hydro's witnesses

B.C. Hydro is to answer in a manner similar to B.C.P.I.A.C. No. 8 above

B.C. Hydro need not provide the requested documents. Efficiency and security of B.C. Hydro's operations may be explored with B.C. Hydro witnesses

INFORMATION REQUEST

B.C.P.I.A.C. Nov. 6 No. 10

O.T.E.U. No. 3

Industrial Intervenors No. 26

Volume 5 (Part 6)

Marzocco No. 4

B.C.P.I.A.C. Nov 27 No. 4

B.C.U.C. Staff No. 4

Westcoast No. 4

City of Nelson No. IV(4)

Industrial Intervenors No. 9

Industrial Intervenors No. 11

DIRECTIONS OF THE COMMISSION

B.C. Hydro is to provide the information as requested

B.C. Hydro is to provide the requested information to March 31, 1986

B. C. Hydro need not provide its assumptions or forecasts of export revenues on a monthly basis but as noted in the Reasons for Decision it is to provide such information on an annual basis

B.C. Hydro is to provide information respecting the number of customers the Keating substation will serve and the load forecast to 1990/91

No further response required

B.C. Hydro is to provide the information as requested

No further response required

B.C. Hydro need not provide the information as requested

B.C. Hydro is to provide the information as requested for the period to 1990/91

B.C. Hydro is to provide the information as requested