

## I INTRODUCTION

On December 11, 1985 the Commission ordered that the hearing into various matters in dispute between West Kootenay Power and Light Company, Limited ("WKPL") and British Columbia Hydro and Power Authority ("B.C. Hydro") scheduled to proceed on that day be adjourned. The issues which the hearing had been called to deal with were as follows :

- I. The application of WKPL pursuant to Sections 28, 32, 88 and 100 of the Utilities Commission Act filed November 7, 1985;
2. The complaint of WKPL pursuant to Section 64 of the Act filed November 22, 1985 in connection with the applicability of B.C. Hydro Rate Schedule 1211;
3. The application by B.C. Hydro to establish new rates with respect to proposed General Wheeling Agreement filed November 29, 1985;
4. The complaint of WKPL in connection with B.C. Hydro's proposed General Wheeling Agreement rates.

(together, the "Issues")

This Decision sets out the basis for the Commission's adjournment of the hearing and identifies the conditions to be met pending a single hearing at which the Issues which remain unsettled will be resolved.

## II BACKGROUND

The aforementioned Issues have been the subject of discussion between WKPL and B.C. Hydro for a number of years. The history of WKPL's purchases of power from B.C. Hydro is particularly complex. These purchases began in 1978 pursuant to a "once only" agreement dated November 29, 1978 which provided for the sale of power at \$1.00/kilowatt per month based on nominated capacity plus plant incremental costs for thermal supply (Exhibit M, Tab 1). Thereafter, each year WKPL and B.C. Hydro entered into new "once only" agreements for the sale and purchase of power. The price had steadily increased so that by 1984/85 it had reached \$3.782/kilowatt per month.

After the Commission was established in September of 1980, B.C. Hydro filed with the Commission Rate Schedule 3807 covering rates, including terms and conditions applicable to annual arrangements with WKPL. By filing this rate each year, B.C. Hydro accepted that the rate was just and reasonable pursuant to Section 65 of the Utilities Commission Act.

During the period that B.C. Hydro has been supplying power to WKPL pursuant to "once only" annual arrangements, the parties have from time to time, attempted to negotiate a longer-term contract to govern acquisitions of power from B.C. Hydro by WKPL. Commencing in June of 1984, a renewed effort was made to resolve the long-term issue (Exhibit B to Exhibit S). This effort was continued until a November 12, 1985 meeting between the chief executive officers of the two companies failed to produce an agreement.

During the course of the 1984/85 negotiations, on July 10, 1985, B.C. Hydro advised WKPL that it would not enter into another "once only" annual contract. On October 18, 1985, B.C. Hydro advised that if a new long-term rate was not agreed on, B.C. Hydro's Rate Schedule 1211 would be applied to WKPL.

On November 7 and 22, 1985, WKPL sought interim orders from the Commission compelling B.C. Hydro to wheel power and to supply power based on Rate Schedule 3807. The Commission, acting on B.C. Hydro's assurance that Rate Schedule 1211 was the most appropriate of its existing filed rate schedules to apply to WKPL issued Interim Orders G-88-85 and G-89-85, which respectively compelled B.C. Hydro to wheel power and to supply it on the basis of Rate Schedule 1211. These Orders were intended to ensure WKPL could obtain sufficient power to serve its customers on an uninterrupted basis.

Against this background, the parties have now brought all of the Issues before the Commission. By Order G-91-85, the Commission directed that all the Issues were to be heard on December 11, 1985. On November 26, 1985 B.C. Hydro applied for an adjournment of the hearing and that application was heard as a preliminary matter on December 11, 1985.

### III REASONS FOR DECISION

B.C. Hydro's application was primarily founded on its contention that its counsel did not have the people necessary to support him "in preparation of filed testimony, for preparation of document requests, (or) the preparation of interrogatories" (see Transcript pg. 9). In responding to questions from the Commission, counsel indicated that this state of affairs arose because of a conscious decision of B.C. Hydro to reduce staff, with the result that B.C. Hydro is not able to respond effectively to the normal regulatory requirements of the Commission (Transcript pg. 10-11).

B.C. Hydro's second basis for seeking the adjournment was that a hearing should not take place until after WKPL had answered a series of questions which B.C. Hydro had not previously but now wished to put to WKPL.

B.C. Hydro also spoke to the terms of the adjournment. It was their position that Interim Order G-88-85, made in response to WKPL's application of November 7, 1985, should be maintained in force and that the interim rate for wheeling should be that currently in force pending a determination of a new rate after hearings. Finally, B.C. Hydro submitted that the interim rate to be charged to WKPL for purchased power pending a hearing should be based on Rate Schedule 1211. B.C. Hydro acknowledged that this rate would increase WKPL's cost of acquiring power from B.C. Hydro by 150% over what it would have been under Rate Schedule 3807.

Neither WKPL, nor the City of Kelowna, the Corporation of the City of Grand Forks, the Corporation of the City of Penticton, the Corporation of the District of Summerland, the Corporation of the City of Nelson or Westar Timber Ltd., all of whom banded together in a common intervention, objected to the adjournment on any of the Issues relating to wheeling charges or the continuation of Interim Order G-88-85. The sole issue they took with respect to adjournment revolved around the power purchase rates. Their primary position was that the hearing should proceed forthwith. In the alternative, they submitted that if an adjournment was granted, the status quo should be maintained regarding the cost of power purchases from B.C. Hydro, pending a hearing of WKPL's November 22nd complaint. They maintained that the status quo was best maintained by continuation of Rate Schedule 3807 at the level it had been in 1984/85. They accepted that since B.C. Hydro had been granted an interim 3.75% by the Commission in respect of all of its other rates pending a general rate hearing, it would be appropriate to similarly increase Rate Schedule 3807 on an interim basis only.

The Commission notes that all parties agreed that a new hearing date should be established to hear the wheeling Issues. In Order G-91-85, the Commission indicated that it considered all the Issues should be heard together. Accordingly, adjournment of the wheeling Issues strongly argues for adjournment of the power purchase Issues as well.

More important, however, is the Commission's concern that to proceed to hear the complex Issues raised in the case with respect to the purchase of power where one party is completely unprepared to proceed, would be to risk the establishment of rates which might be unjust and unreasonable. Such rates might impose a wholly unwarranted expense on the customers of either B.C. Hydro or WKPL. The Commission is not willing to proceed at this time where such a risk exists and has accordingly concluded that B.C. Hydro's application for an adjournment must be granted.

WKPL made clear that it was willing to proceed with respect to all of the Issues. WKPL had its policy witness, Mr. J.A. Drennan, and its technical witnesses Messrs. R.G. Siddall and S.A. Ash present in the hearing room and prepared to give evidence. Of most significance, it was prepared to proceed with its complaint regarding the application of Rate Schedule 1211 to its power purchases. Accordingly, the Commission considers that WKPL should not be faced with a rate substantially greater than Rate Schedule 3807 prior to having an opportunity to have its complaint heard. If B.C. Hydro had wanted Rate Schedule 1211 to apply for 1985/86, it was under an obligation to be in a position to proceed on December 11, 1985. Moreover, there was a complete lack of evidence to indicate a change of circumstances justifying the major change to the status quo represented by Rate Schedule 3807, so that the Commission has no basis at this time for concluding that rates which were deemed by B.C. Hydro to be just and reasonable in the past (see Exhibit R, attached) should now be replaced with substantially higher rates. The interim conditions set out below are designed to reflect the Commission's decision to maintain the status quo.

In the circumstances, the Commission concludes that if a substantial increase to WKPL is to be avoided pending the hearing, Rate Schedule 1211 should not be used, even on an interim basis, for power purchased from B.C. Hydro. While other possibilities were suggested, the Commission considers that maintenance of the status quo is best achieved by reinstituting Rate Schedule 3807 increased by 3.75% to reflect B.C. Hydro's general interim rate increase, pending the hearing of WKPL's complaint with respect to Rate Schedule 1211.

The Commission emphasizes its concern that there are real issues with respect to the appropriate rates both for wheeling and power purchases which remain unresolved. The Commission noted in its opening remarks that it would have expected the parties to have reached agreement between themselves on these issues. The Commission continues to believe that a negotiated settlement is the preferred route and urges the parties to examine their respective positions to see if settlement can be achieved. If settlement is not possible, however, the Commission does not wish this Interim Order to continue to govern the relationship between the parties. Accordingly, the Commission has decided to establish a hearing date of April 8, 1986.

The Commission intends to proceed with any of the issues the parties have not managed to resolve between themselves on that date. The Commission anticipates proceeding at that time regardless of what other commercial or regulatory demands are upon the parties. To insure that each party is ready to proceed the Commission directs that each party file direct evidence no later than February 14, 1986 and that intervenors file Notice of Intention to Intervene and any evidence they intend to adduce no later than March 7, 1986. If any further filing dates or pre-hearing processes are desired by counsel, they should contact Commission counsel to see what additional dates, if any, need be arranged.

Finally, the Commission notes that it has not addressed in any way the comments of WKPL in respect of the retroactive application of B.C. Hydro's November 29, 1985 wheeling application. In the Commission's view, the submissions with respect to retroactivity were premature and the Commission will deal with that question only if the parties have not been able to settle a wheeling rate and the Commission is called upon to resolve it at the April 8, 1986 hearing.

#### **IV            DECISION**

For the foregoing reasons, the Commission will order as follows :

1.            The hearing of the issues is adjourned to April 8, 1986.

2. The Commission will forthwith publish a Public Notice advising of the terms of this Order.
3. WKPL and B.C. Hydro should file written evidence in connection with the Issues not later than Friday, February 14, 1986.
4. Persons wishing to intervene in the hearing should file a Notice of Intention to Intervene and any written evidence upon which they wish to rely not later than Friday, March 7, 1986.
5. WKPL and B.C. Hydro should make available their written evidence and any other material filed with the Commission and relevant to the hearing of the Issues for inspection at their respective regional offices.
6. Interim Order G-88-85 will remain in effect until further order of the Commission.
7. Order G-89-85 is no longer in force or effect.
8. B.C. Hydro will file a new rate schedule relating to power purchases by WKPL, which schedule is to be equivalent to Rate Schedule 3807 plus an interim refundable increase of 3.75% to be applicable during the winter period commencing November 24, 1985.
9. B.C. Hydro will refund to WKPL any monies received by it, if any, from power sales to WKPL in excess of the amount which it would have been entitled to pursuant to the rate established by paragraph 8 of this Order.
10. B.C. Hydro will pay the costs of the Commission in connection with the December 11, 1985 adjournment hearing.

DATED at the City of Vancouver, in the Province of British Columbia, this        day of December, 1985.

M. TAYLOR, Chairman

J.D.V. NEWLANDS, Deputy Chairman

D.B. KILPATRICK, Commissioner

N. MARTIN, Commissioner



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

and

IN THE MATTER OF  
Matters in Dispute between  
West Kootenay Power and Light Company, Limited and  
British Columbia Hydro and Power Authority

ADJOURNMENT DECISION

December 18, 1985

Before :

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

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## APPEARANCES

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Light  
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West Kootenay Power and  
Company, Limited

L.F. HINDLE

British Columbia Hydro and  
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R.J. BAUMAN

City of Grand Forks  
City of Kelowna  
City of Penticton  
City of Nelson  
District of Summerland  
Westar Timber Ltd.

C. SANDERSON

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B. McKINLAY

Commission Staff

W.R. HARPER

Hearing Officer

ALLWEST REPORTING LTD.

Court Reporters

## LIST OF EXHIBITS

	Exhibit No.
Commission Order G-88-85, November 15, 1985	A
Commission Order G-89-85, November 22, 1985	B
Commission Order G-91-85, December 3, 1985	C
Application pursuant to Sections 28, 32, 88 and 100 of the Utilities Commission Act	D
WKPL complaint pursuant to Section 64 of the Utilities Commission Act, S.B.C. 1980, c. 60, as amended	E
November 29, 1985 Application by B.C. Hydro to establish rates with respect to a proposed General Wheeling Agreement with West Kootenay Power and Light Company, Limited	F
December 2, 1985 complaint by WKPL concerning proposed rates with respect to a General Wheeling Agreement	G
Outstanding matters between B.C. Hydro and WKPL	H
Letter dated December 9, 1985 (Farris, Vaughan, Wills and Murphy) from WKPL to B.C. Hydro re : Hearing Agenda	I
Affidavit of Robin G. Siddall	J
Affidavit of Stephen A. Ash	K
Brief of Evidence (WKPL)	L
Document Brief (WKPL)	M
Letter B.C. Hydro to BCUC re : Outstanding matters between B.C. Hydro and WKPL dated November 29, 1985	N
Letter WKPL to BCUC re : Outstanding matters between B.C. Hydro and WKPL dated December 2, 1985	O
Draft Letter WKPL to BCUC dated November 28, 1985 re : Revised Wheeling Rates from B.C. Hydro	P

LIST OF EXHIBITS

(cont'd)

Exhibit  
\_\_No.

Letter dated September 8, 1983 - B.C. Hydro to WKPL

Q

Letter dated December 20, 1984 - B.C. Hydro to WKPL

R

Affidavit of John E. Elliott

S