

IN THE MATTER OF THE UTILITIES  
COMMISSION ACT, SBC 1980, c. 60

and

IN THE MATTER OF AN APPLICATION BY  
BRITISH COLUMBIA HYDRO AND POWER  
AUTHORITY

DECISION

March 24, 1981

Before R. Smith, Deputy Chairman,  
D.B. Kilpatrick and J.D.V. Newlands, Commissioners

The Application of British Columbia Hydro and Power Authority dated January 26, 1981 was heard on March 18, 19 and 20, 1981 in Vancouver, British Columbia.

The division of the Commission comprised R. Smith, Deputy Chairman; D.B. Kilpatrick, Commissioner; and J.D.V. Newlands, Commissioner.

TABLE OF CONTENTS

	<u>Page No.</u>
APPEARANCES	(i)
LIST OF EXHIBITS	(ii)
I. INTRODUCTION	1
II. APPLICATION	2
III. ORDER	9

APPEARANCES

R.J. GIBBS	Commission Counsel
D.C. DUFF	for Applicant, British Columbia Hydro and Power Authority
R.B. WALLACE	for Council of Forest Industries of British Columbia
MS. H.L. MALKIN	for Fording Coal Limited
M.A. CLEMENS	for ERCO Industries Limited
HEARING SECRETARY	D. Leach
COMMISSION STAFF	A.C. Michelson
COURT REPORTER	Allwest Reporting Ltd.

LIST OF EXHIBITS

	<u>Exhibit No.</u>
Affidavit of Proof of Publication of Notice of Hearing	1
Application to amend Schedule of Rates	2
Transmission Customers	3
- Sheet A-1, Bulk Customers - Existing Contracts	
- Sheet A-2, Bulk Customers - Contracts Under Negotiation or In Renewal Process	
- Sheet B-1, Customers on Rate Schedule 1821 - Existing Contracts	
- Sheet B-2, Customers on Rate Schedule 1821 - Contracts Under Negotiation or In Renewal Process	
British Columbia Hydro and Power Authority (W.D. Mitchell, General Counsel) February 23, 1981 letter enclosing documents as described	4
British Columbia Hydro and Power Authority (W.D. Mitchell, General Counsel) March 11, 1981 letter enclosing three sample letters to be issued to Transmission customers	5
British Columbia Hydro and Power Authority Tariff Page (Original Page C-54)	6
British Columbia Hydro and Power Authority Tariff Page (First Revision of Page C-54)	7
Excerpts from Contract dated July 1, 1975 between British Columbia Hydro and Power Authority and Rayonier Canada (B.C.) Limited (Pages 7, 8, 9, 10)	8

LIST OF EXHIBITS  
(cont'd)

Exhibit  
No.

British Columbia Hydro and Power Authority  
Annual Report 1979/80 (for the year ended  
March 31, 1980)

9

## I. INTRODUCTION

The British Columbia Hydro and Power Authority (B.C. Hydro"), a crown corporation, provides electric distribution service throughout the Province of British Columbia, with the exception of the Southern Interior and certain isolated locations. In addition, B.C. Hydro provides natural gas service in Greater Vancouver and the Fraser Valley, butane-air gas in Greater Victoria and operates a local and terminal rail freight service in Greater Vancouver and the Fraser Valley.

B.C. Hydro was formed in the early 1960's with the amalgamation of the British Columbia Electric Company Limited and the British Columbia Power Commission. During the 1970's the revenue has grown from approximately \$214 Million in 1970 to \$916 Million in 1980 with a corresponding increase in assets from approximately \$2.1 Billion in 1970 to \$6.0 Billion in 1980.

The Intervenorors were represented by Mr. R.B. Wallace, Council of Forest Industries of British Columbia, Mr. M.A. Clemens, ERCO Industries Limited, and Ms. H.L. Malkin, Fording Coal Limited.

## II. APPLICATION

B.C. Hydro by Application dated January 26, 1981 pursuant to Section 67(4) of the Utilities Act applied to the Commission to recover increased water rentals from its distribution customers effective February 1, 1981 in the amount of \$14.8 Million.

Concurrently in its Application B.C. Hydro stated,

*"B.C. Hydro's Transmission Rate customers require, under terms of contracts with all such customers, 365 days notice of any increase in rates. Consequently B.C. Hydro cannot, without being in breach of the terms of its contracts, pass on any rate increase to such customers at this time."*

This revenue foregone is approximately \$7.4 Million.

The Commission by Order No. G-9-81 dated February 2, 1981 approved the increase sought by B.C. Hydro (approximately 0.089¢/kwh) and concurrently, pursuant to Sections 64 and 70 of the Act, called a public hearing to commence on March 18, 1981 to determine if provisions in the contracts between B.C. Hydro and its Transmission customers are unduly discriminatory and whether such contracts should be appropriately amended by Commission Order.

The Commission also ordered B.C. Hydro to arrange for the publication of the Notice of Hearing in one issue each of the Vancouver Sun, the Vancouver Province, the Times-Colonist



in Victoria and local newspapers circulated generally in its service area by February 13, 1981. An Affidavit (Exhibit 1) was filed to show that this Order had been carried out.

Initially B.C. Hydro did not propose to tender any evidence but, in response to a request by Commission Counsel, made available Mr. G. Barnett, Manager of Rates and Costs.

The Transmission customers as a group provided approximately 18% (\$120.4 Million) of the electric revenue received by B.C. Hydro in the year ending March 31, 1980. Within this group the Schedule 1821 customers contributed \$45.2 Million with the balance of \$75.2 Million being received from the "Bulk" customers.

The above two groups can be further subdivided into those having contracts in place and whose contracts are under negotiation or in the renewal process.

With regard to the Schedule 1821 customers 21 have contracts executed with the remaining 16 under negotiation or in the process of renewal; there are 10 Bulk customers with existing contracts and 12 Bulk customers whose contracts are under negotiation or in the renewal process.

In the Schedule 1821 contracts two customers have contracts which provide for 365 days notice whereas in the

case of the Bulk customers with existing contracts all customers have the 365 days notice provision.

In the contracts for both groups a clause exists which states that any reference to revenue, rate, minimum guarantee or payment for electricity shall be considered as exclusive of surcharges, sales tax and other taxes.

During cross-examination Mr. Barnett acknowledged that failure to recover the increased water rentals would result in reduced profit, increased borrowing or a combination of both.

Mr. Barnett further acknowledged that, since this was an unanticipated cost increase, any deficiency would need to await a general rate increase before it could be recovered from B.C. Hydro's other classes of customers.

It is the Commission view that if the increase or any portion of it is not recovered, it will result in reduced cash flow available to B.C. Hydro and hence increase the requirement for funds. Furthermore, since B.C. Hydro uses as a criteria "times interest coverage" to determine its revenue requirements, the impact will be felt by all of B.C. Hydro's customers if the Transmission customer rates can only be adjusted on 365 days notice.

Moreover, since the water rental fee is to increase again in January 1982, the actual revenue deficiency will be greater than the aforementioned \$7.4 Million.

However, the Commission also appreciates the benefits to the large industrial consumer in being able to predict with a reasonable degree of reliability the cost of electricity a year in advance. This benefit does not in itself necessarily result in undue preference if the components of the rates are known in advance.

The Commission in particular considered the evidence developed through the cross-examination and argument of ERCO Industries Limited but noted that ERCO did not lead any evidence to permit the Commission to make a determination of the impact of the increased electrical cost.

The Commission also considered the submissions, evidence developed through cross-examination and the argument of Mr. R.B. Wallace, Counsel for the Council of Forest Industries of British Columbia (COFI).

With regard to the positions taken by COFI, the Commission recognizes the relevance of some of the ancillary matters raised and in particular the question as to whether a single element of a contract can or should be dealt with in isolation; namely, the 365 day notice provision.

The Commission concludes that certain aspects can be considered on their own merits and this is of particular importance when a corporation, be it B.C. Hydro or any other corporation, has by statute changed from one set of criteria to another.

If the above was not so, the public interest would not be protected inasmuch as the previous statutory requirements no longer existed and yet the new statutory provisions had not become operative. In essence the corporation would be left in a vacuum.

On the basis of the evidence the Commission is concerned as to whether or not the Transmission class is in fact a homogeneous class or whether two distinct and separate classes may exist within the group, namely, the Schedule 1821 customers and the Bulk customers.

The Commission has not dealt with this question in this proceeding but would observe that this is the type of matter which must be dealt with, preferably upon receipt of a clear and concise proposal from B.C. Hydro which can be considered by the Commission and the customers affected.

It may be that this matter can be considered during the course of the Application for rate relief which Mr. Barnett

indicated would be filed during the latter half of 1981. An argument can also be made that this and related matters could be dealt with at an alternate time in order that the Application for rate relief can be heard and decided expeditiously.

It is the Commission belief that it is appropriate that certain class or classes of customers have, when possible, reasonable advance notice of rate increase which result from costs which may reasonably be determined to be within the knowledge of the utility. The Commission concludes, however, that it may be unduly preferential for a class or classes of customers to have a preferred position on significant costs which clearly are not within the former category.

In large measure B.C. Hydro has endeavoured to ensure all of its customers are treated equally in this situation and accordingly have incorporated an appropriate clause in the Transmission customers contracts as set out on page 4 of this Decision.

If this clause had included water rental fees, which have been stable for a considerable period of time, the circumstance which necessitated the hearing would not have existed.

In considering the appropriate Order to be made the Commission, even though as a general matter it believes the

DISSENTING OPINION OF ROBERT SMITH

While I agree in general with the findings of my colleagues I cannot agree with their conclusions.

I concur with the finding that

*"... it is unduly preferential for a class or classes of customer to have a preferred position on significant costs which are clearly not within the former category."  
(this "former category" being known or reasonably determined costs) (Page 7)*

However I cannot conclude from the evidence, that industrial users have entered into long-term sales contracts in which the notice clause forms a substantive and integral part in determining price. No evidence was submitted by intervenors indicating specific financial hardship resulting from a pass-through of the water rental fees, and, in fact, my colleagues agree (Page 5) that "ERCO did not lead any evidence to permit the Commission to make a determination of the impact of this cost".

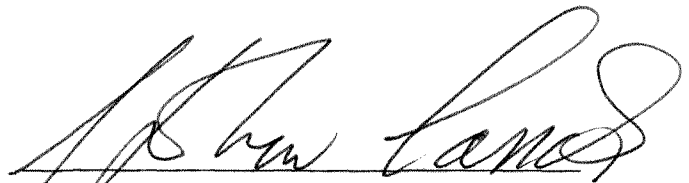
On the other hand Mr. Barnett acknowledged that failure to recover the increased water rentals would result in reduced profit, increased borrowing or a combination of both. (Page 4)

protection afforded the Transmission customers may be unduly preferential. However, it would not be in the public interest at this time to remove an element of the contract upon which they have relied.

DATED at the City of Vancouver, in the Province of British Columbia, this 24th day of March, 1981.



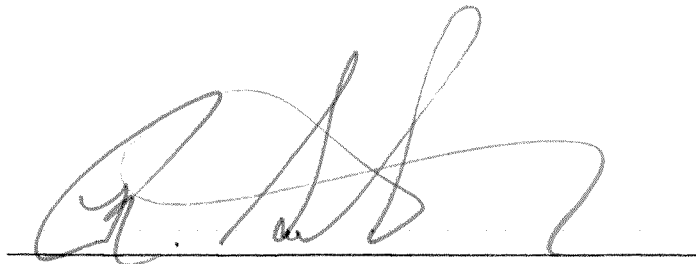
D.B. Kilpatrick, Commissioner



J.D.V. Newlands, Commissioner

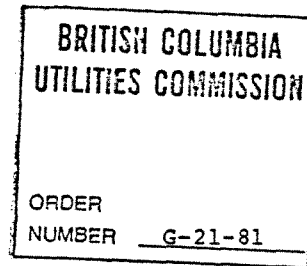
It appears to me that the above statements lead to the conclusion that failure to pay the increased water rental fees by the Industrial users creates a very strong probability that all or part of such (approximately) \$7.4 million will become a burden on other classes of consumer. The industrial users have not demonstrated that financial hardship will result from withdrawal of the 365 day notice clause, and as this has been unanimously found to be unduly discriminatory, I believe that the clause should be set aside and B.C. Hydro ordered to collect the appropriate increased water rental fees commencing April 1, 1981.

DATED at the City of Vancouver, in the Province of British Columbia, this 24th day of March, 1981.

A handwritten signature in dark ink, appearing to be 'R. Smith', written over a horizontal line.

R. Smith, Division Chairman





PROVINCE OF BRITISH COLUMBIA

BRITISH COLUMBIA UTILITIES COMMISSION

IN THE MATTER OF the Utilities Commission  
Act, SBC 1980, c. 60

and

IN THE MATTER OF an Application by British  
Columbia Hydro and Power Authority

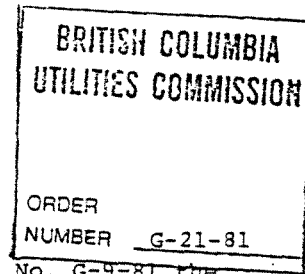
BEFORE: D.B. Kilpatrick, )  
Commissioner; and )  
J.D.V. Newlands, ) March 24, 1981  
Commissioner )

O R D E R

WHEREAS by Order No. G-9-81 dated February 4, 1981 the Commission approved amendments to tariff rate schedules applicable to distribution rate customers of British Columbia Hydro and Power Authority ("B.C. Hydro") so as to enable B.C. Hydro to recover from its distribution rate customers \$14,883,162.00 being the allocated share to the distribution rate customers of increased water rental fees made effective January 1, 1981 by Order in Council No. 2889 dated December 30, 1980; and

WHEREAS B.C. Hydro contended that it was prevented from recovering \$7,436,971.00 being the allocated transmission rate portion of the aforesaid water rental fees from its transmission rate customers by reason of a contractual requirement to give 365 days notice of the increase which would be required to accomplish recovery of the increased water rental fees; and

.../2



WHEREAS by the aforesaid Order No. G-9-81 the Commission ordered that there be a public hearing to determine if provisions in the contracts between B.C. Hydro and its transmission rate customers are unduly discriminatory and whether such contracts should be appropriately amended by Commission Order; and

WHEREAS the Commission heard evidence and the representations of B.C. Hydro and other interested parties during a public hearing in Vancouver on March 18, 19 and 20, 1981; and

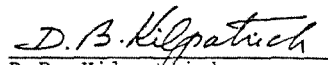
WHEREAS the Commission reserved its decision following conclusion of the said public hearing.

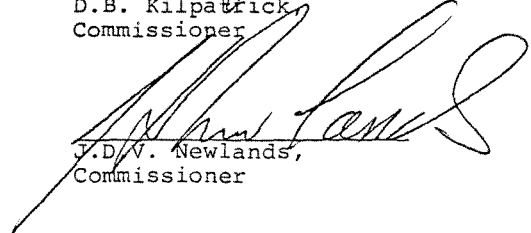
NOW THEREFORE the Commission hereby orders:

1. That it is not at this time in the public interest to declare the contracts between B.C. Hydro and its transmission rate customers unenforceable either wholly or in part.
2. That notwithstanding Paragraph 1 hereof, effective January 1, 1982, B.C. Hydro shall recover water rental fees from the transmission rate customers in the same manner and upon the same terms and conditions as it now recovers surcharges, sales tax and other taxes under the transmission rate contracts.
3. That B.C. Hydro shall provide a copy of this Order to each of its transmission rate customers.

DATED at the City of Vancouver, in the Province of British Columbia, this 24th day of March, 1981.

BY ORDER

  
D.B. Kilpatrick  
Commissioner

  
J.D.W. Newlands,  
Commissioner