



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

IN THE MATTER OF
An Application by

British Columbia Hydro
and Power Authority
for Rate Schedule 3808

and Revised Power Purchase Agreement with
West Kootenay Power Ltd.

DECISION
April 22, 1993

BEFORE:

Dr. M.K. Jaccard, Chairperson
L.R. Barr, Deputy Chairperson
K.L. Hall, Commissioner

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EXECUTIVE SUMMARY

In the Commission's view, the B.C. Hydro/WKP relationship is best characterized as a hybrid, in which WKP is partly a customer of B.C. Hydro and partly an independent utility. As a customer, WKP has the right to a specified amount of electricity from B.C. Hydro at the rates extended by B.C. Hydro to comparable transmission customers. As an independent utility within British Columbia, WKP has the responsibility for its own resource planning and the right to meet all of its growing electricity requirements with purchases from B.C. Hydro at rates that are reflective of fair market arrangements.

On October 1, 1993 Rate 3807 will be terminated and replaced by a new rate comparable to the rate applied to other B.C. Hydro transmission customers (currently Rate 1821), and an amended Power Purchase Agreement. The new rate will be called Rate 3808, described herein as "modified Rate 3808". The new energy and demand charges will be identical to those of Rate 1821. From October 1, 1993 to September 30, 1995, the Demand Ratchet will be 50 percent. Thereafter it will rise in equal annual increments to 75 percent by 2000.

To accompany Rate 3808, the Commission directs B.C. Hydro and WKP to negotiate an amended Power Purchase Agreement. To guide the negotiations, the Commission presents its views, based on the hearing evidence, on items of controversy in recent negotiations between B.C. Hydro and WKP. On or before August 1, 1993, B.C. Hydro and WKP are to report on their negotiations and present their respective views on any items of disagreement. Other parties will then be allowed to comment on the outcome of these negotiations. By October 1, 1993, the Commission will issue a final Decision on the terms of the amended Power Purchase Agreement.

Modified Rate 3808 will have a 200 MW Customer Demand Limit, taking effect after a two year transition period. From October 1, 1993 to September 30, 1995, there will be no limit on the energy and capacity which WKP will be able to purchase under modified Rate 3808. After October 1, 1995, excess demand charges may be applied by B.C. Hydro to WKP consumption that exceeds the 200 MW Customer Demand Limit, if such consumption is not pursuant to a separate agreement between B.C. Hydro and WKP.

For service above 200 MW that is offered pursuant to a separate agreement between B.C. Hydro and WKP, the rates shall be those established by negotiations between B.C. Hydro and WKP on a utility to utility basis. Such agreements shall be filed with the Commission pursuant to Section 67 of the Act. The Commission will ensure, upon receipt of a filed agreement, that the terms and conditions thereof, including the rates therein, are reflective of fair market arrangements.

(ii)

To ensure alternative supply market opportunities for WKP, the Commission directs B.C. Hydro to provide WKP with reasonable wheeling access, at rates reflective of fair market arrangements, for non B.C. Hydro electricity supplies intended to serve WKP's customers, be these supplies intra or extra provincial.

The Commission declines jurisdiction in the demand billing dispute and energy nomination dispute applications of WKP.

The Commission issued a letter on February 26, 1993 outlining the principle elements of this Decision to assist WKP and intervenors in the WKP Revenue Requirements hearing which began on March 8, 1993 (Appendix D).

1.0 INTRODUCTION

British Columbia Hydro and Power Authority ("B.C. Hydro") supplies power to West Kootenay Power Ltd. ("WKP") under B.C. Hydro's Electric Tariff Rate Schedule 3807 ("Rate 3807"), filed with the British Columbia Utilities Commission ("the Commission"). Purchases under Rate 3807 are in accordance with the terms and conditions of the Power Purchase Agreement ("the PPA") between B.C. Hydro and WKP, dated October 15, 1986, also filed with the Commission.

On December 11, 1992, B.C. Hydro applied to the Commission for Orders that would terminate Rate Schedule 3807 and the October 15, 1986 PPA, and replace them with a proposed Rate Schedule 3808 and a new PPA, on an effective date to be determined by the Commission.

Under Commission Order No. G-119-92, dated December 17, 1992, the Application was set down for a public hearing to commence at 9:00 a.m. on Monday, February 8, 1993, in Castlegar, B.C. The hearing was completed with Final Argument in Vancouver on February 19, 1993.

On February 26, 1993 the Commission issued a letter (Appendix D) which presented the principal elements of the final Decision, so as to assist WKP with its Revenue Requirements hearing in early March, 1993.

1.1 Background

WKP is an electric utility authorized to generate, transmit and distribute power within a radius of 150 miles of Rossland, B.C. The company serves some 116,000 customers in an area extending from Princeton in the west to Creston in the east and from the U.S. Boundary north to Kelowna and Kaslo. Approximately 40 percent of the customers are served indirectly through the sale of power to municipal distribution utilities in the communities of Grand Forks, Kelowna, Nelson, Penticton and the District of Summerland and through a private company, Princeton Light and Power Company, Limited ("PLP"), serving Princeton and vicinity.

Electricity is supplied primarily by WKP from its own four plants on the Kootenay River, purchases from Cominco Ltd. ("Cominco") and purchases from B.C. Hydro. The major growth in the system is in the Okanagan and, increasingly, electricity to serve this area must be moved

long distances from the generating sources on the Kootenay River or purchased from B.C. Hydro.

WKP began the development of hydroelectric energy in the West Kootenay area with the construction of a dam and generating facilities on the Kootenay River in 1898. This plant was reconstructed in 1928. Three more plants were built on the river in 1907, 1929 and 1932. These three plants were subsequently purchased from Cominco by WKP in 1982. Cominco constructed other hydroelectric plants on the Kootenay River at Brilliant in 1944 and at Waneta on the Pend d'Oreille River in 1954. WKP operates and maintains these plants for Cominco under an operating agreement.

Shortly after the formation of B.C. Hydro in 1962, Canada entered into the Columbia River Treaty ("the Treaty") with the United States. The Treaty sets out how the downstream benefits derived from the construction of dams controlling the flow and storage of water on the Columbia and Kootenay River systems are to be allocated. In August 1972 B.C. Hydro, Cominco and WKP entered into the Canal Plant Agreement. In this agreement B.C. Hydro gave average peak and average energy entitlements to Cominco and WKP to September 30, 2005, in return for water rights on the Kootenay River. If the agreement is not extended or renewed, WKP is entitled to resume independent operation of its hydroelectric plants under its existing water licenses. These water licenses pre-date the Treaty so that any entitlement under the Canal Plant Agreement would not be affected by any water diversion from the Kootenay River that may take place under the Treaty.

In 1974, B.C. Hydro constructed the Canal Plant on a canal by-passing the four WKP plants on the Kootenay River. In 1981, Cominco and WKP executed the Canal Plant Sub-Agreement which specifies the division of annual capacity and energy entitlements to be received from B.C. Hydro based on the historic average generation of the WKP and Cominco plants. The Canal Plant Agreements integrate the WKP and Cominco facilities with the B.C. Hydro grid, and is made necessary partly because of water regulation required by the Treaty and partly because of the construction of the Kootenay Canal Plant by B.C. Hydro. To provide maximum efficiency in the use of the water resource at the Canal Plant, effective control of Kootenay River water flow rests with B.C. Hydro and the power available to WKP and Cominco is no longer related to the production of their respective power plants. Agreements determine their monthly capacity and

energy entitlements. Subsequent to the Treaty, B.C. Hydro also constructed a plant at 7-Mile on the Pend d'Oreille River.

In addition to the facilities actually in place, an opportunity exists to construct additional generating facilities at both the Brilliant and Waneta dam sites. Whether these facilities should be constructed by Cominco, WKP, B.C. Hydro or a private developer will be a matter of public policy and certification by the B.C. Government.

The following table summarizes the existing capacity of the seven dams:

Location	Owner	Name Plate Capacity
<u>Kootenay River</u>		
Plants No. 1, 2, 3, 4	WKP	190 MW
Canal Plant	B.C. Hydro	530 MW
Brilliant	Cominco	125 MW
<u>Pend d'Oreille River</u>		
Waneta	Cominco	375 MW
7-Mile	B.C. Hydro	600 MW

The locations of the hydroelectric generating facilities are shown on the attached map.

1.1.1 WKP Power Resources

In 1991 WKP negotiated two new power supply agreements with Cominco to replace a Consolidated Sale of Surplus Power Agreement which had covered the period from 1980 to 1991. The first of these, the Long-Term Firm Power Supply Agreement, provides for the purchase by WKP of 75 annual average MW from Cominco, on a firm take-or-pay basis until September 30, 2005. WKP is entitled to utilize, on an hourly basis, any unused Cominco capacity at no cost.

The second agreement, the 1999 Firm Power Supply Agreement, provides for the purchase by WKP of a further 38 average annual MW from Cominco, on a firm take-or-pay basis, until December 31, 1999. This second block of power is higher in price than the first block purchased under the long-term agreement.

Purchases of power by WKP from B.C. Hydro are largely for seasonal peaking purposes and vary from maximum levels in the winter months to zero in some of the summer months, resulting in a low load factor. In 1992 WKP had a peak load of approximately 600 MW, while the four WKP plants on the Kootenay River have a total installed capacity of only 190 MW. WKP's own resources, therefore, supplied only about 32 percent of its capacity requirements. Purchases from Cominco supplied a further 42 percent of the capacity requirements and purchases from B.C. Hydro were 26 percent (Exhibit 55).

Energy sales of 2,480 gigawatt hours ("G.Wh") were supplied 55 percent from WKP's own generation facilities, 35 percent was purchased from Cominco and 10 percent from B.C. Hydro. The chart on the map illustrates the sources of capacity and energy for WKP's power supply in 1992.

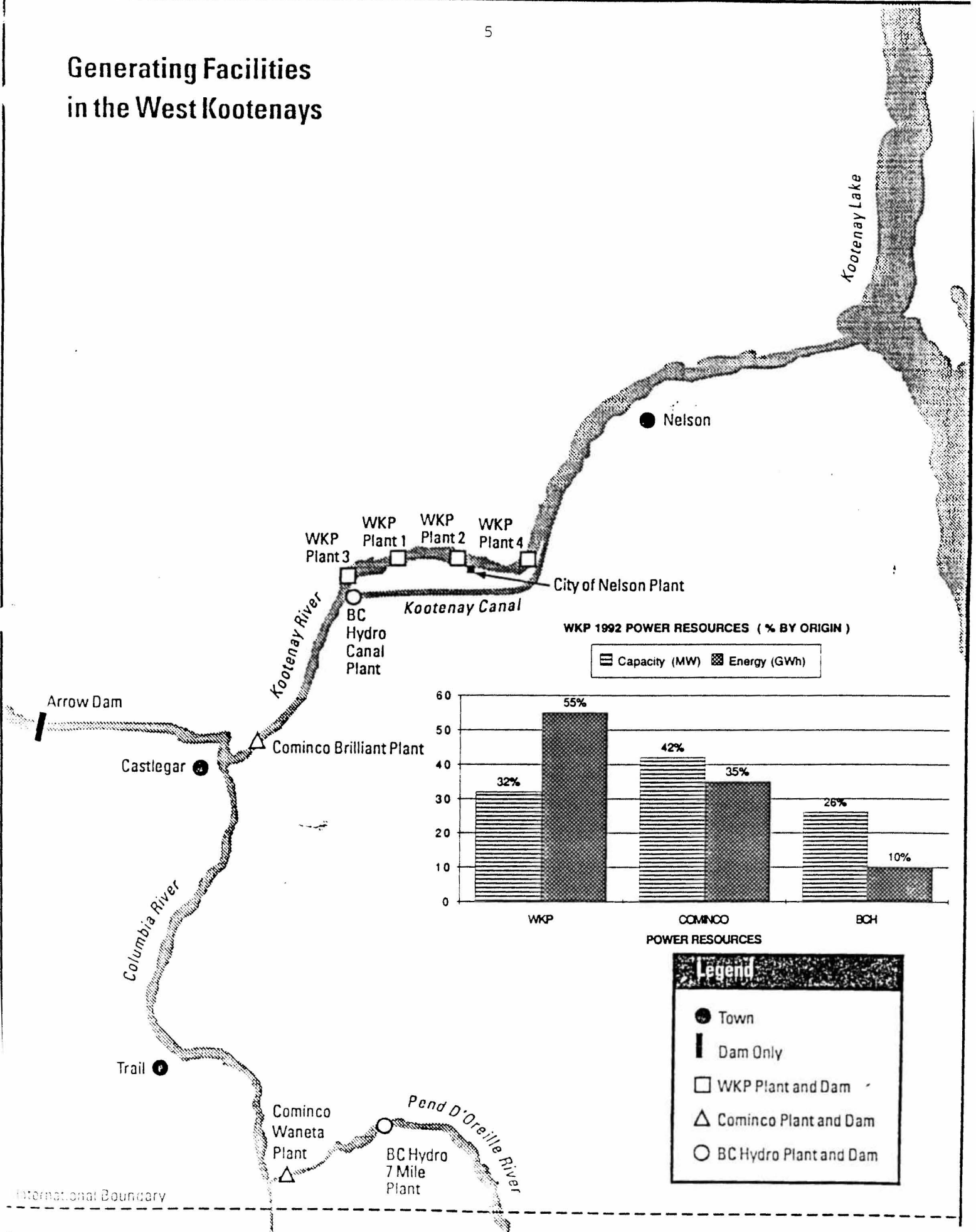
The area served by WKP is expected to have an increasing need for electricity due mostly to its growing population. The major growth area is centred in the South Okanagan. Sales are forecast to increase 8.6 percent over the next five years, from 2,480 G.Wh in 1992 to 2,693 G.Wh in 1997, alleviated only by any reduction in power consumption achieved through Demand Side Management ("DSM") programs.

1.2 The Period 1986 to 1992

1.2.1 The 1986 Commission Decision

The rates, terms and conditions of a long-term PPA between B.C. Hydro and WKP became the subjects of a public hearing in 1986. Following the issuance on October 15, 1986 of the Commission Decision and Order No. G-61-86, B.C. Hydro and WKP signed the PPA. The Commission Decision set the rates, terms and conditions for a transitional period to expire at the end of 1990. In the 1986 Decision, the Commission concluded that beyond 1990 the principles employed in determining the power purchase rate should be the same as those used to determine the rates applicable to other B.C. Hydro customers. The Commission directed both parties to enter into a long-term contract which recognized a transitional period to the end of 1990, followed by a conventional period to the end of 2005.

Generating Facilities in the West Kootenays



For the transitional period, the rate for electric power purchased was based on a demand charge of \$3,500 per MW per month and an energy charge equal to the sum of energy charges in Rate Schedules 1821 and 1899. Rate 1821 is B.C. Hydro's standard industrial rate for transmission service customers and Rate 1899 was the water rental fee. These two Rates have since been consolidated into the present Rate 1821. A further provision was that there be a Demand Ratchet clause. This provides that the demand charge for monthly billing purposes shall be for the highest demand set in the current month, or a charge equal to a percentage of the highest billing demand set in any one of the preceding 11 months, whichever is the highest value. This percentage was set at 0 in 1986 and increased to 50 percent over five years.

Future changes in the rates were to be limited to, and applied on, the same percentage basis as any future approved changes in Rate Schedules 1821 and 1899.

The Order also set out firm wheeling rates covering the transmission of WKP energy over the transmission facilities of B.C. Hydro to Vernon, Creston and Princeton. WKP was required to make firm nominations for both capacity and energy, and for wheeling requirements, on a five year rolling basis. There was also a 90 percent take-or-pay provision for energy nominations, but not for capacity. For both excess energy and excess capacity requirements there was a 10 percent penalty provision. However, these penalties were to be applied only under certain specific circumstances.

In 1989 B.C. Hydro applied to the Commission for a Reconsideration of elements of the 1986 Decision. In early 1990 this was denied.

1.2.2 The Gas Turbine Plant

In its 1986 Decision the Commission emphasized that the rates set by its Order were transitional rates set for the purpose of settling a dispute. The Decision also emphasized that this did not relieve WKP from its over-all responsibility for obtaining the lowest-cost, secure long-term source of supply.

In response to this direction, WKP undertook a resource study in 1987 which indicated that a gas turbine would be the lowest-cost alternative source of new supply. WKP applied on December 15, 1987 to the Minister of Energy, Mines and Petroleum Resources for an Energy

Project Certificate for a gas-turbine plant to be installed in the South Okanagan area. The Minister of Energy, Mines and Petroleum Resources, with the concurrence of the Minister of Environment and Parks, referred the Application to the Commission for review at a public hearing. Following a number of delays and amendments to the Application, the hearing was eventually held in Oliver, B.C. commencing November 22, 1988.

In its Report, issued February 24, 1989, the Commission recommended that, subject to the negotiation of a long-term natural gas fuel contract, and subject to certain environment-related conditions, the Application be approved for construction, but only at a site more suitable than that within the Village of Oliver as proposed in the Application. If an alternative site could not be located, and if the above conditions could not be met, the Commission recommended that the preferred resource for WKP would be continued power purchases from B.C. Hydro in accordance with the terms and conditions of the 1986 Decision. The government chose not to issue the conditional certificate due to the large uncertainties remaining with the Application.

1.2.3 The Principles of Agreement

In the early months of 1990, B.C. Hydro and WKP began negotiations for new rates, terms and conditions, but were unable to agree before the end of the transition period. Consequently, the Commission extended the transition period rates under Rate 3807 to September 30, 1991, by Commission Order No. G-22-90. New negotiations began in 1991 when B.C. Hydro and WKP mutually attempted both to revise the rate for power purchases and to establish a new inter-utility relationship. This resulted in the "*WKP/B.C. Hydro Principles of Agreement 1991 to 2010*" ("the POA") which set out, in a manner that was not legally binding, a proposed new rate and its supporting terms and conditions. The POA, dated September 27, 1991, was filed with the Commission on October 8, 1991. Commission Order No. G-96-91 accepted the filing and established a deferral account for an approved interim rate for supply to WKP at the previous level of Rate 3807 effective October 1, 1991 until such time as a power purchase agreement based on the POA was negotiated by the parties and given approval by the Commission.

B.C. Hydro and WKP expended considerable time and effort in an attempt to reach an agreement based on the POA. However, it became apparent in August of 1992 that an impasse had been reached. On August 10, 1992, WKP advised the Commission that the parties had been unable to reach a mutually acceptable agreement and requested a Commission Inquiry under Section 97 of

the Utilities Commission Act ("the Act"). On August 11, 1992, B.C. Hydro advised both WKP and the Commission that the negotiations had failed, that it was discarding the POA and that it would be filing an application for a new rate.

In the POA, the parties articulated their intention to "*. . . co-ordinate their planning so that their customers would enjoy the benefits available from a 'single utility' approach towards facilities and programs.*" They also agreed that "*. . . the relationship between the parties will be on an inter-utility commercial transaction basis.*" (Exhibit 1, Appendix C).

The POA contemplated a two-tier rate for the power purchased by WKP from B.C. Hydro. The initial demand and energy charges in Block 1 were to be each equal to approximately 63 percent of the charges in Rate 3807. The maximum Block 1 demand was set out in a table commencing at a total of 113 MW in 1992, building up to a maximum of 200 MW in year 2000, and then declining to 0 by year 2010. The annual energy allowance was to be set at 246 G.Wh in 1993, 179 G.Wh in 1994, 220 G.Wh in 1995 and rising to 580 G.Wh in year 2000, before dropping to 0 in year 2010, as shown in the following table.

The initial Block 2 demand rate was to be set at 155 percent of Rate 3807 and the Block 2 energy rate at 129 percent of Rate 3807. Both the Block 2 demand and energy rates were related to B.C. Hydro's long-run incremental cost. The Block 1 and Block 2 estimates for demand and energy, added together, were equal to WKP's five year rolling nominations for power.

The rates for Block 1 demand and energy were to increase over time by the same percentages as B.C. Hydro's standard industrial Rate 1821, plus an additional 1.5 percent increase at the time of each general revenue requirement increase. The rates for Block 2 demand and energy charges were to increase on October 1 of each year by the Consumer Price Index for B.C. for the previous twelve month period. The POA rates were designed to bring the total cost of B.C. Hydro purchases to WKP over the life of the agreement to approximately 5 percent less than they would have been under a continuation of Rate 3807.

As the table shows, the POA would result in the B.C. Hydro/WKP relationship being transformed over an 18 year period. There would be no WKP purchases from B.C. Hydro at the customer rate by 2010.

Year Ending September 30	Maximum Block 1 Demand (MW)	Allowance Annual Energy (GW.h)
1992	113	199
1993	124	246
1994	102	179
1995	116	220
1996	129	273
1997	143	337
1998	157	396
1999	163	435
2000	200	580
2001	175	568
2002	175	568
2003	177	560
2004	183	586
2005	189	614
2006	151	491
2007	113	368
2008	76	246
2009	38	123
2010	0	<u>0</u>
		6989

There was general agreement between the parties on the principles and two-tier rate set out in the POA. However, the agreement collapsed when the parties failed to agree on a number of conditions in the revised PPA. In response to an information request from the Wholesale Customers as to which issues were still outstanding when negotiations on the revised PPA broke down, B.C. Hydro replied that the major issues involved monthly nomination, pre-scheduling, exports and storage (Exhibit 3, Question 6, p. 1).

WKP wanted to remove the monthly nomination requirement that B.C. Hydro stipulated in the revised PPA. B.C. Hydro claimed that WKP was either unable or unwilling to meet inter-utility pre-scheduling arrangements requested by B.C. Hydro and did not offer a reasonable energy nomination procedure as an alternative. Exports and storage were sensitive issues because WKP would not agree to an explicit provision in the proposed contract which required that energy purchased from B.C. Hydro be used only to supplement WKP's own resources to meet its domestic needs and was not to be removed from the WKP service area, and that energy purchased by WKP from B.C. Hydro was not to be stored.

WKP indicated that it did not accept that there were so many areas of disagreement. In its view, the only remaining issue at the time negotiation ceased concerned pre-scheduling of nominations and the associated penalties (T. 950, 951).

1.3 The Application

B.C. Hydro applied on December 11, 1992 for Orders that:

- "(a) Electric Tariff Rate Schedule 3807 ("Rate 3807"), filed with the British Columbia Utilities Commission ("BCUC"), be terminated and replaced with Rate Schedule 3808 ("Rate 3808") attached hereto as Appendix A;*
- (b) its Power Purchase Agreement (the "PPA") with West Kootenay Power Ltd. ("WKP") dated 15 October 1986, also filed with the BCUC be terminated and be replaced with a new PPA (the "New PPA") substantially in the form attached hereto as Appendix B; and*
- (c) the rate to be charged WKP for electricity supplied from and including October 1, 1991 to and including the day immediately preceding the day the BCUC determines as the effective date of Rate 3808 and the New PPA be calculated in accordance with Rate 3807 and the PPA, as amended from time to time during the said period."*

In its Application, B.C. Hydro argued that Rate 3807 was intended to be effective for the transition period only. It contended that the continuation of Rate 3807, along with the associated terms and conditions of the PPA, was now *"unfair, unjust, unreasonable, insufficient and unduly discriminatory for several reasons"* (Exhibit 1, p. 6). B.C. Hydro described these reasons as follows.

- (i) Circumstances have changed. B.C. Hydro was in a supply surplus position in 1986 and remained so until 1990. B.C. Hydro is now in a reasonable load/resource balance.
- (ii) WKP was expected to be captive to B.C. Hydro as a source of supply to 1990 due to lack of wheeling and to lead times required for resource acquisition and development. The transition period was designed to give WKP time to become less dependent on B.C. Hydro. Instead, WKP's reliance on B.C. Hydro grew during the transition period.
- (iii) The PPA allows WKP to schedule the purchase of firm energy without having to pay for capacity.

- (iv) The long-term capacity nominations, combined with the 50 percent ratchet provisions of the PPA, were designed to give B.C. Hydro reasonable estimates of WKP's requirements, but have proven to be ineffective.
- (v) WKP requires only partial supply from B.C. Hydro and, with access to other sources, WKP's requirements are more unpredictable than for other customers. In spite of this, WKP's demand ratchet is only 50 percent, while for other transmission customers the demand ratchet is 75 percent.
- (vi) The PPA requires long-term energy nominations with a 90 percent take-or-pay provision. This has presented difficulties to both B.C. Hydro and WKP.
- (vii) B.C. Hydro's cost-of-service studies indicate that Rate 3807 and the PPA recover only about 50 percent of the embedded costs of supplying WKP.

1.3.1 Proposed Rate Schedule 3808 and the New PPA

Rate Schedule 3808, as applied for by B.C. Hydro, is a modified version of B.C. Hydro's Rate 1821, the rate applicable to major transmission customers. In presenting the proposal for B.C. Hydro, Mr. Epp stated:

"Rate 1821 and the old Power Purchase Agreement have only been modified as necessary to provide a fair return to B.C. Hydro, for consistency with other customers' contracts, and to provide for West Kootenay Power's unique characteristics as a utility purchaser from B.C. Hydro." (T. 153)

Under Rate 3808, the demand charge component would increase 12 percent over the present Rate 3807 but the energy charge would remain the same. The requirement for ten year capacity nominations would be relaxed to five year nominations. The requirement for ten year energy nominations on a 90 percent take-or-pay basis would be changed to weekly pre-scheduling given two days in advance. There would be a 25 percent excess charge on energy taken in excess of pre-scheduled amounts and on capacity taken in excess of nominations.

Under Rate 3808 there would be a capacity limit of 115 MW (the "Customer Demand Limit"). If WKP exceeded this limit it would pay an annualized ratcheted demand charge plus a 25 percent penalty. The demand ratchet on any purchased capacity would increase from 50 percent under Rate 3807 to 75 percent, becoming the same as for B.C. Hydro's other major transmission customers.

Therefore, for demand above 115 MW, WKP would face a cost determined by the effect of the 75 percent demand ratchet and the 25 percent penalty charge. These two effects are demonstrated in the following table. The combination of the Demand Ratchet and the Excess Demand Charge could result in a total cost of approximately 11.5 times the unit demand charge on consumption over the Customer Demand Limit.

**Effect of Demand Ratchet on Cost of Additional
Unit of Peak Demand**

Per Unit Demand Charge for 1 Peak KW	= 1.00
Ratcheted Per Unit Charge for the Next 11 Months at 75 Percent Ratchet: 11 x .75 x 1	= 8.25
Normal Demand Charge for Additional Unit of Peak Demand	<u>= 9.25</u>

**Effect of 25 Percent Excess Demand Charge
on Cost of Additional Unit of Peak Demand**

25 percent Excess Demand Charge: .25 x 9.25	= 2.31
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The 115 MW was WKP's average capacity requirement from B.C. Hydro during the 1985-1990 transition period, which was the time allowed by the Commission for WKP to plan to reduce its reliance on B.C. Hydro. B.C. Hydro stated that 115 MW was not the total limit of capacity that B.C. Hydro would sell to WKP but only the limit that B.C. Hydro proposed to sell under Rate 3808 without WKP incurring penalties.

The proposed PPA allowed WKP to export any of its own energy if it wished, but it prohibited the export or storage of energy purchased from B.C. Hydro. If WKP were to export while taking energy from B.C. Hydro, it would incur an excess charge. However, WKP would be free to export from its own sources of supply when it was not taking energy from B.C. Hydro.

2.0 PRINCIPLES OF RATEMAKING BETWEEN B.C. HYDRO AND WKP

2.1 The B.C. Hydro/WKP Relationship: Utility to Customer or Utility to Utility?

The basic requirement of this Decision is to set the rate at which WKP purchases electricity from B.C. Hydro. However, what may seem like a straightforward Decision is, in reality, fraught with complexity. The relationship between WKP and B.C. Hydro is certainly unique in British Columbia and it is also a relationship that does not completely match situations elsewhere in North America. This section describes the principal elements of the WKP/B.C. Hydro relationship.

There are many examples in Ontario or the U.S. Northwest where a large generating utility (Ontario Hydro, Bonneville Power Authority) sells electricity to local distribution utilities. In these cases, the local distribution utility is generally treated as if it were comparable to a major industrial customer, paying a price that reflects the average cost to the generation utility of producing that electricity and delivering it at high voltages. While some of these local distribution utilities have limited generation capability, they are generally not expected to engage in significant resource planning and resource development in the future. This responsibility is left to the generation utility. In British Columbia the relationship between B.C. Hydro and the municipal distribution utility of New Westminster is of this type.

Although there are similarities, WKP does not completely fit the model of a local distribution utility.

- (i) Unlike local distribution utilities, such as New Westminster's, the WKP service territory is distinct from that of B.C. Hydro. Thus, WKP has local distribution utilities within its service territory (Penticton, Princeton, Nelson, Kelowna, etc.) but the WKP service territory is considered to be outside of the B.C. Hydro service territory.
- (ii) WKP generates more than half of its electricity requirements and purchases most of the rest from Cominco; only about 10 percent of its energy is currently provided by B.C. Hydro. In contrast, the New Westminster utility purchases all of its electricity from B.C. Hydro, just as most Ontario distribution utilities purchase all of their electricity from Ontario Hydro.

- (iii) The customers of WKP are charged lower rates than customers of B.C. Hydro, largely because of the low cost of power from WKP's and Cominco's largely depreciated hydro resources. The New Westminster utility is required by contract to charge the same rates as B.C. Hydro (T. 584).
- (iv) WKP has historically acknowledged its responsibility to plan and develop generation resources, a responsibility generally not imposed on local distribution utilities (e.g. New Westminster). This responsibility was emphasized in the B.C. Utilities Commission Decision of October, 1986.

"The Commission maintains that although WKP is not an incremental customer, WKP is nevertheless a utility with the responsibility and obligation to undertake system planning functions." (p. 41)

Thus, B.C. Hydro differs from Ontario Hydro and Bonneville Power Authority by being fully integrated as a large operator, wholesaler and distribution utility. WKP is distinguished from other local distribution utilities since it is a generator of a significant portion of its power requirements and it acts as a wholesaler of power to other local distribution utilities.

- (v) The Kootenay Canal Plant Agreement, signed between B.C. Hydro and WKP states that, from 1985 to 2005, the conditions of electricity provision from B.C. Hydro to WKP are to be determined by "*mutual agreement*", a term that is subject to alternative interpretations. In the hearing, B.C. Hydro's policy witness, Mr. Epp, suggested that this term implied that B.C. Hydro only has a temporary and limited obligation to provide electricity to WKP, which terminates in 2005.
- (vi) Finally, the POA signed between WKP and B.C. Hydro in 1992 demonstrated a willingness of WKP management to cease to be a customer of B.C. Hydro by the year 2010. According to the POA, after 2010 WKP would only purchase power from B.C. Hydro at an inter-utility negotiated rate, more likely to reflect the incremental cost of supply to B.C. Hydro.

The above points describe the ways in which WKP is not comparable to a typical local distribution utility in its relationship to B.C. Hydro. However, there are other factors which make it difficult

to conclude that this relationship should be characterized as strictly that which might exist between independent utilities.

- (i) The 1992 Annual Report of B.C. Hydro states that its corporate mission is to "*support the development of British Columbia through the efficient supply of electricity.*" The B.C. Hydro policy witness, Mr. Epp, agreed that this implies a responsibility of B.C. Hydro to all citizens in B.C., including those served by WKP (T. 214).
- (ii) B.C. Hydro has important hydro facilities in the WKP service area, which further suggests a responsibility to the people of the Kootenay region. The issue is complicated as it combines both regulatory and broader public policy concerns. For example, some intervenors from the Kootenay area argued that B.C. Hydro should either be paying more local and regional taxes (a public policy concern) or providing more low priced electricity to WKP (a regulatory concern).
- (iii) The Commission Decisions of 1986 and 1990 emphasized the responsibility of B.C. Hydro to serve WKP and to treat it as a customer. However, as noted above, these two Decisions also emphasized the responsibility of WKP for system planning and development and, moreover, the unique characteristics of the B.C. Hydro/WKP relationship, as demonstrated by the following quotes from the 1986 Decision.

"The Commission believes that the principal factor tending to support distinguishing principles used to set WKP rates and those of other B.C. Hydro customers, is that WKP has other supply sources available to it, including expansion of its own generating capacity, Cominco surplus power, and purchases from other utilities." (BCUC, 1986, p. 23)

"The Commission concludes that the terms and conditions attached to the transitional rate should reflect the unique characteristics of the B.C. Hydro/WKP relationship, and should remain for the long-term." (BCUC, 1986, p. 25)

Thus, the complexity of the B.C. Hydro/WKP relationship was clearly a problem for the Commission, a problem that was not resolved by the 1986 and 1990 Decisions.

"The rates specified by this Decision are intended to provide WKP with a basis for comparison with other supply alternatives, arising from the intensified system planning activity by WKP which the Commission now expects the utility to undertake without further delay." (BCUC, 1986, p. 62)

While the final comment of the 1986 Decision was that WKP should begin intensified system planning, including supply alternatives, the Decision's requirement that B.C. Hydro meet WKP's growing electricity needs at a customer rate effectively precluded system planning (with the exception of transmission and distribution). Because the incremental cost of new electricity in British Columbia is above its average cost from already built facilities, it was more economical for WKP to meet all of its incremental electricity requirements with purchases from B.C. Hydro than to develop generation resources as long as WKP paid only the average embedded costs of B.C. Hydro's facilities.

2.2 Issues Raised in Discussion of Rate 3808

The ambiguity in the relationship between B.C. Hydro and WKP led to very different points of view in this hearing.

2.2.1 B.C. Hydro Position

The B.C. Hydro position in the hearing was that WKP is a utility and that B.C. Hydro is not obligated to treat it as it does other customers. Rates need not be determined by average cost, but may instead reflect B.C. Hydro's incremental supply cost. B.C. Hydro recognized that the Commission Decisions of 1986 and 1990 compelled it temporarily to supply WKP at least in part as a customer. However, B.C. Hydro argued that the term "*mutual agreement*" in the Kootenay Canal Plant Agreement limited the obligation after the year 1985 and, further, that the obligation ended with the agreement's termination in 2005. However, B.C. Hydro acknowledged that its mission statement gave it an obligation to provide electricity to the customers of WKP, since they are British Columbians.

Wallace: *And would you agree that B.C. Hydro generated electric power should be available, providing the appropriate economics are there, to meet the needs of the whole province, not simply particular areas of the province?*

Epp: *Yes."* (T. 214)

B.C. Hydro maintained that because WKP is an independent utility with generation development responsibilities, the obligation to serve only implies service as would occur between freely

negotiating utilities (based on incremental cost) and not that between a utility and its customers (based on average cost). Thus, B.C. Hydro distinguishes between its obligation to WKP, the utility, and its obligation to provide electricity to the customers of WKP.

B.C. Hydro's approach is reflected in the Rate 3808 application. The provision of 115 MW of capacity was selected since it was the average of WKP's demand requirements from B.C. Hydro over the period 1986 to 1990, the transition period referred to in the 1986 Commission Decision. The 115 MW block in proposed Rate 3808 is specified only to the year 2005, but is silent for the period thereafter. Until 2005, the penalty provision in proposed Rate 3808 is designed to force WKP to negotiate the purchase of all requirements in excess of the 115 MW Customer Demand Limit on a utility to utility basis, at rates that reflect B.C. Hydro's revenue opportunities from that electricity, as noted by Mr. Epp in his opening remarks.

"West Kootenay Power will still be able to purchase additional power from B.C. Hydro. West Kootenay, like any other accessible Canadian utility has the advantage, as a utility, of fair market access to B.C. Hydro's surplus that may be potentially exported." (T. 154)

"Should WKP enter into agreements with any other utilities for the purchase of power, B.C. Hydro is willing to wheel that power on B.C. Hydro's transmission lines" (T.151).

In its application and in cross-examination, B.C. Hydro raised cost recovery as a key principle of ratemaking with respect to WKP. B.C. Hydro argued that Rate 3807 only recovered about 50 percent of the cost of serving WKP, based on a four year average over the period 1987 to 1990 (Exhibit 1, Appendix F).

2.2.2 WKP Position

WKP stated in the hearing that it is a customer of B.C. Hydro with the same rights as other customers to acquire electricity from B.C. Hydro at B.C. Hydro's average cost of production. In support of this argument, WKP cited the B.C. Hydro mission statement and the BCUC Decisions of 1986 and 1990.

WKP recognized that purchasing electricity at average cost, as intended by Rate 3807, fails to provide a signal to WKP of the higher incremental provincial cost incurred if B.C. Hydro must

develop additional resources. Therefore, WKP presented the concept of a Resource Development Credit, modelled on an arrangement that has been developed to govern the relations between Bonneville Power Authority and its local distribution utilities.

"The Resource Development Credit is offered as a conceptual idea to take away the disincentive from West Kootenay Power [of] the pricing signal associated with Schedule 3807." (T. 1014)

The Resource Development Credit provides a credit to WKP if it develops resources (demand-side management or supply) that cost less than B.C. Hydro's incremental cost of new supply. WKP would still purchase electricity at prices comparable to those of other customers, but would have an incentive to develop its own demand and supply resources that are cost-effective from a provincial perspective. However, in cross-examination, the WKP witness, Mr. Saleba, recognized that there have been problems in implementing the Bonneville credit program and agreed that the Resource Development Credit was still at a conceptual level (T. 1014).

Finally, WKP suggested that an alternative to the Resource Development Credit would be the pricing structure suggested in the POA (T. 1434). The POA had similarities to B.C. Hydro's 1991 industrial rate proposal in that customers would see a total bill that reflected average cost of supply but with a two-tiered rate. With Block 2 of the two-tiered rate set to reflect B.C. Hydro's long-run incremental cost, Block 1 would be adjusted to a level below average cost, such that the total bill would equal the average cost of serving that customer.

In explaining its willingness to enter into the POA, given its argument that it should have the full rights of other customers of B.C. Hydro, WKP's policy witness, Mr. Ash, claimed that the Decision in the POA to agree to the elimination by 2010 of WKP's customer purchases from B.C. Hydro was done because B.C. Hydro was insistent on that point and WKP felt it had no alternative. Moreover, Mr. Ash pointed out that the POA was silent on what obligations existed, if any, after 2010; for WKP this was considered to protect in part its status as a customer (T. 1187).

WKP was critical of B.C. Hydro's assertion that Rate 3807 only recovers about half of the cost of serving WKP. WKP stated that there are several factors that significantly lower B.C. Hydro's cost of serving it, relative to most other transmission customers. These include: (1) WKP's service territory is close to major B.C. Hydro generation facilities, with consequent lower

transmission costs; (2) WKP takes electricity from B.C. Hydro at a relatively high voltage even for a transmission customer; (3) WKP argues that, as an energy critical system, B.C. Hydro should allocate its costs of service to capacity and energy in a 10/90 ratio, instead of 30/70, thereby reducing the charges to WKP with its high demand and relatively small energy requirements from B.C. Hydro (Exhibit 21, p. 23).

2.2.3 Other Intervenors' Positions

In addition to the positions of B.C. Hydro and WKP, intervenors from the Kootenay region made a plea that the Commission place considerable weight on the regional fairness issue in its consideration of ratemaking principles. Their arguments can be summarized by the following points.

- (i) The Kootenay region has borne a substantial physical impact from the development of B.C. Hydro's hydroelectric generation facilities.
- (ii) Evidence was presented to indicate that B.C. Hydro does not pay local and regional property taxes equivalent to what it would pay as a private corporation (Exhibit 39, T. 843).
- (iii) Because WKP is a private utility, it pays federal and provincial corporate income taxes, which is not the case for B.C. Hydro.
- (iv) For reasons (i) through (iii), intervenors from the Kootenays argued that they should be compensated by either higher grants (in lieu of taxes) from B.C. Hydro or lower rates for WKP purchases from B.C. Hydro (T. 509, 627).
- (v) The location of generation facilities in the Kootenays means that the cost of transmission to that region is less than to B.C. Hydro customers in the Lower Mainland. This was presented as another reason for B.C. Hydro to charge a lower price to WKP for electricity.
- (vi) Much of the growth in WKP sales has occurred in the Okanagan region. This growth requires WKP to seek more electricity from B.C. Hydro or develop its own resources. Because the incremental cost of either these additional purchases or new resources is higher

than the average WKP cost of production, the growth creates an additional upward pressure on WKP rates. Some of the intervenors from the Kootenays suggested that the Commission seriously consider either regional rates for WKP customers, with lower rates for those in the Kootenays where growth has been slower, or separation of the Okanagan region from WKP and its transfer to B.C. Hydro (T. 271, 678, 1381).

Intervenors also expressed concern about the implications of proposed Rate 3808 for other principles of ratemaking. It was suggested by some that the 115 MW Customer Demand Limit proposed in Rate 3808 would not allow WKP enough time to find reasonable cost alternatives for demand in excess of 115 MW. If WKP exceeded the 115 MW limit, it would incur high cost penalties from B.C. Hydro which would in turn lead to rate shock. This concern was in part fostered by a community leaders brief, disseminated by WKP prior to the hearing, in which WKP calculated the effect on its customers' rates if it were to continue to meet all of its surplus needs from B.C. Hydro at Rate 3808, including penalties for demand in excess of 115 MW. The total effect was estimated as a one time rate increase of 16.8 percent (Exhibit 43, Tab 1). The counter argument of B.C. Hydro was that it is legitimate to set very high penalties when it is reasonably known that the customer (in this case WKP) has the options and capability to easily avoid them (T. 790). B.C. Hydro argued that WKP has several options to acquire the capacity needed above the 115 MW Customer Demand Limit of the Rate 3808 application, and that these would not lead to dramatic increases in rates (T. 183, 240, 570, 658).

Another concern of B.C. Hydro, WKP and most intervenors was that the rate charged by B.C. Hydro should encourage efficiency of energy resource development in the province. Both B.C. Hydro and WKP admitted that this would have been achieved under the POA but not under current Rate 3807. As noted in Sections 2.2.1 and 2.2.2, B.C. Hydro and WKP presented alternative proposals for achieving the correct pricing signal, based upon their positions on the appropriate relationship between the two utilities. B.C. Hydro would place an effective limit of 115 MW of demand on purchases by WKP at the customer rate. WKP proposed a Resource Development Credit consistent with a total utility/customer relationship with B.C. Hydro. There was no consistent position by intervenors, although again the overriding concern from the Kootenay region was that electricity rates to WKP customers not rise dramatically.

One final concern of B.C. Hydro, WKP and most intervenors was the introduction of stability in the B.C. Hydro/WKP relationship. Over the years, a great deal of time and effort has been

devoted by both utilities and intervenors to ongoing negotiations and disputes. The Commission heard strong argument in the hearing that this Decision resolve the relationship far into the future, so that both utilities could get on with their resource planning and development responsibilities.

3.0 COMMISSION FINDINGS

3.1 The B.C. Hydro/WKP Relationship: A Hybrid

It is the Commission's view that the ratemaking principle that most appropriately reflects the unique relationship between B.C. Hydro and WKP is one which characterizes that relationship as a hybrid, in which WKP is partly a customer of B.C. Hydro and partly an independent utility. While B.C. Hydro has customer obligations to WKP, there are limits to these obligations. Beyond these limits, the relationship is to be that which would exist between two independent utilities. This conclusion in favour of a hybrid characterization plays a predominant role in the Commission's final evaluation of the alternatives presented at the hearing, as detailed in the following sections of this chapter.

3.2 Evaluation of Alternative Options

3.2.1 Rate 3807 with Modifications

WKP argued that the Commission should reject the Rate 3808 Application. This would leave Rate 3807 in place. However, Rate 3807 does not provide WKP with a price signal of the incremental cost to B.C. Hydro of new electricity supply resources. WKP acknowledged this, and in response presented the Resource Development Credit proposal as a companion to a continued Rate 3807.

From the limited evidence in the hearing, the Commission is not confident that the Resource Development Credit could be developed at this time into a workable component of the rates to be charged to WKP.

- (i) The Resource Development Credit concept is predicated on the assumption that the B.C. Hydro/WKP relationship is most appropriately characterized solely as a utility/customer relationship. The Commission does not concur with this interpretation.
- (ii) There are challenges in terms of sharing the risks and costs between WKP and B.C. Hydro (T. 1182).

- (iii) A similar concept, initiated in 1984 by Bonneville Power Authority for its customers, has had, as yet, negligible success (T. 1027). However, it has recently been modified, and the Commission will monitor its future progress.

The Commission believes that the Rate 3807 option, including the Resource Development Credit concept, is inconsistent with the Commission's interpretation of the appropriate relationship between B.C. Hydro and WKP.

3.2.2 Duplicating the Principles of Agreement ("POA")

A second option is for the Commission to reject the Rate 3808 Application as constituted and replace or modify it with a rate that essentially duplicates the major conditions that were agreed to between B.C. Hydro and WKP in the POA. This option has the advantage of recognizing many elements that, as late as 1992, were acceptable to both WKP and B.C. Hydro. In effect, the POA would have resulted in WKP being transformed over 18 years from a customer of B.C. Hydro, with a two-tiered rate structure based on average cost, to an independent utility which only acquires electricity from B.C. Hydro based on the incremental value of that electricity to B.C. Hydro.

As noted, this proposal had an advantage in that the POA was acceptable to both parties. Moreover, the two-tier pricing inherent in the POA is consistent with the Commission's view that marginal consumption should reflect the future costs of new generation facilities. In its 1992 Rate Design Decision the Commission has endorsed such pricing for B.C. Hydro's residential customers and has encouraged B.C. Hydro to refine the concept of a similar Industrial Rate Proposal.

However, while both parties signed the POA, their respective interpretations of its implications have differed. B.C. Hydro and WKP were unable to translate the concepts in the POA into a legally binding PPA. Although there was disagreement at the hearing on the reasons for the eventual breakdown in negotiations, it was clear that there were numerous areas where the parties had inconsistent interpretations of the POA (T. 559, 950, 1273). Furthermore, neither party is in agreement on what the POA implies after the year 2010. Mr. Epp expressed B.C. Hydro's interpretation that there would be no obligation to serve WKP after 2010, while Mr. Ash stated that, because the POA is silent on the post 2010 period, the customer obligations of B.C. Hydro toward WKP would remain (T. 1075, 1187).

There is an important additional challenge in attempting to duplicate the POA in this Decision. Some of the conditions surrounding the prices and quantities in the POA have changed since 1991, and new agreements with respect to these values may be more appropriate. For example, B.C. Hydro's 1993 "The Cost of New Electricity Supply in British Columbia" (Exhibit 2, BCUC Question 25E) shows that B.C. Hydro's estimate of its long-run incremental cost has changed. Special Direction No. 8 from the provincial government changes the calculation of B.C. Hydro's cost of capital. B.C. Hydro has new estimates of the cost of serving WKP and WKP has changed its energy and capacity forecast.

Finally, another concern is that, as noted, the POA contemplated a transformation of the B.C. Hydro/WKP relationship from a 100 percent utility/customer arrangement to a 100 percent utility/utility arrangement. If both parties continued to desire this, the Commission would have explored further how the concepts in the POA could be incorporated in this Decision for the benefit of consumers of each utility. WKP, however, argued in the hearing that it does not wish to lose its status as a customer of B.C. Hydro and previous Commission Decisions have supported, in part, WKP's right to that status.

The Commission rejects the POA as a viable option on which to base this Decision. Firstly, B.C. Hydro and WKP were, themselves, never able to translate the POA into a legally binding PPA. Secondly, there have been numerous changes in circumstances since September 27, 1991 when the POA was signed which materially affect the appropriateness of its provisions, especially with respect to quantities and prices. Finally, the POA is not consistent with the Commission's views as to the appropriate long-term relationship between B.C. Hydro and WKP.

3.3 Modified Rate 3808

3.3.1 Introduction

A key objective in this Decision is to establish a relationship between B.C. Hydro and WKP that is consistent with past practices and agreements, yet can be made workable and predictable into the foreseeable future. In the Commission's view, B.C. Hydro has an ongoing obligation to serve

WKP. The relationship is, however, best characterized as a hybrid in which WKP is to be treated partly as a customer of B.C. Hydro and partly as an independent utility.

As a customer, WKP has a right to a specified amount of electricity from B.C. Hydro at the rates extended by B.C. Hydro to comparable customers. As an independent utility within British Columbia, WKP has the responsibility for its own resource planning and the right to meet all of its growing electricity requirements with purchases from B.C. Hydro at rates reflective of fair market arrangements on a utility to utility basis. The Commission therefore establishes modified Rate 3808 as set out below.

3.3.2 The Limit of B.C. Hydro's Customer Obligation to WKP

In its Rate 3808 application, B.C. Hydro suggested that an appropriate demand limit for its customer obligation to WKP was the average of WKP's demand requirements during the period 1986 to 1990, the transition period specified in the Commission Decision of 1986. However, this rationale for determining the Customer Demand Limit is difficult to justify in view of the Decision that a hybrid relationship is appropriate for the long-term. Indeed, it is problematic to specify any fixed limit because the future validity of this limit depends on assumptions about WKP load growth and WKP resource options.

In modifying the B.C. Hydro proposed Customer Demand Limit of 115 MW, the Commission considered the arguments presented by WKP for the size of Block 1 of the POA. Mr. Ash of WKP pointed out that Block 1 peaked at a maximum level of 200 MW by the year 2000 to ensure that the Block 2 requirement was at least large enough to justify the development by WKP of any of its resource options that were cost-effective relative to B.C. Hydro's long-run incremental cost (T. 1081). Thus, WKP agreed in the POA that its maximum customer reliance on B.C. Hydro would never exceed 200 MW. The Commission also noted that in the period prior to the year 2000, a Customer Demand Limit of 200 MW would further ensure that Rate 3808 could not lead to the dramatic price increases envisioned in the community leaders brief distributed by WKP. While the cost of electricity under modified Rate 3808 with a 200 MW Customer Demand Limit will exceed the cost of electricity under Rate 3807 or the POA, neither of these latter two cover the cost of serving WKP as a customer, as calculated by B.C. Hydro's current cost allocation methodology.

The Commission determines that, after September 30, 1995, the Customer Demand Limit under modified Rate 3808 is to be set at 200 MW. The energy limit is to be determined by WKP's use of the available capacity.

B.C. Hydro's Rate 3808 application proposes a PPA which has a termination date of 2005. However, this Decision of the Commission seeks to provide long-term stability to the B.C. Hydro/WKP relationship, and 2005 is too soon in terms of utility planning requirements.

The Commission requires that the PPA to accompany modified Rate 3808 have a term of at least 20 years with a provision for negotiated renewals thereafter.

There was concern expressed by WKP and other intervenors that immediate implementation of the Customer Demand Limit would impose short-term problems for WKP. There would be little time for WKP to put in place the necessary peak supply contracts or peak demand reduction measures (e.g. interruptible contracts, water heater controls) to meet its capacity requirements in excess of the Customer Demand Limit. In response to this concern, B.C. Hydro made an offer in the hearing to have no Customer Demand Limit for WKP for the next two years, subject to firm annual nominations (T. 1286). While the increase of the Customer Demand Limit from 115 MW to 200 MW, as directed by this Decision, reduces the concern addressed above, it is not entirely eliminated.

The Commission directs that there shall be no Customer Demand Limit on the B.C. Hydro capacity and energy available for purchase by WKP from October 1, 1993 to September 30, 1995. B.C. Hydro's rates for all service during this period shall be those applicable to services below the Customer Demand Limit, as described in Section 3.3.3 of this Decision. Purchases during this period will also be governed by the amended PPA, referenced in Section 3.3.4 of this Decision.

3.3.3 Conditions of Supply to the 200 MW Customer Demand Limit

B.C. Hydro argued that it had followed the Commission's earlier directions in modelling Rate 3808 after Rate 1821, the general rate applied to transmission customers (ie. industrial

customers and the City of New Westminster). Thus, the energy and capacity charges of Rate 3808 are identical to those of Rate 1821.

The energy and capacity charges of modified Rate 3808 shall be as applied for by B.C. Hydro. Changes in these charges will match those in Rate 1821, or its equivalent.

The nature of WKP's load and its other resources has resulted in B.C. Hydro being primarily called upon to provide seasonal peaking capacity, at a very low load factor. This is why, in 1992, B.C. Hydro supplied 30 percent of WKP's peak capacity requirement, but only 10 percent of its energy requirement. In its application and in the hearing, B.C. Hydro argued that the 50 percent capacity ratchet of Rate 3807 provided an inadequate signal to WKP of the costs to B.C. Hydro of providing seasonal peaking capacity. Other 1821 customers, with much higher load factors, face a 75 percent ratchet, as do the local distribution utilities supplied by WKP (T. 510). WKP argued that, because B.C. Hydro's hydro-based system is rarely capacity critical, peaking requirements from WKP do not incur a high cost. Also, WKP argued that an increase in the demand ratchet from 50 percent to 75 percent would prove costly in the short-term as it has few opportunities to reduce peak demand or acquire peaking resources (T. 1157).

The Commission agrees that, as B.C. Hydro moves toward load balance, and, through short-term exports and exchanges, to a fuller utilization of capacity, a more appropriate level for the demand ratchet is 75 percent, in line with other transmission customers. However, the adjustment of the ratchet should occur gradually, to allow WKP time to evaluate and implement the demand and/or supply peaking options that may prove more cost-effective than meeting peaking requirements under Rate 3808. Therefore, the demand ratchet will increase in equal increments from 50 percent in 1995 to 75 percent by 2000.

October 1, 1995 to September 30, 1996	55 percent
October 1, 1996 to September 30, 1997	60 percent
October 1, 1997 to September 30, 1998	65 percent
October 1, 1998 to September 30, 1999	70 percent
From October 1, 1999	75 percent

After October 1, 1999 the size of the demand ratchet shall be identical to that under Rate 1821.

3.3.4 Establishment of an Amended PPA

The Commission directs B.C. Hydro and WKP to negotiate amendments to the PPA to incorporate the Commission's findings and directions as set out in other sections of this Decision. In addition, B.C. Hydro and WKP are directed to negotiate such further amendments as may be necessary to address those ancillary issues which are of concern to them.

On or before August 1, 1993, B.C. Hydro and WKP shall jointly file with the Commission, and shall serve on each of the other registered intervenors, a report respecting these negotiations. The report shall contain either a copy of the complete draft Amended Power Purchase Agreement (the "Amended PPA"), as agreed to by both B.C. Hydro and WKP, or an incomplete draft Amended PPA, with an identification of those clauses where B.C. Hydro and WKP are still in dispute and the preferred wording of each of these two parties in regard to each such clause. In both instances, B.C. Hydro and WKP may provide such explanations as each of them deem appropriate, both in support of their joint position in regard to clauses that are not in dispute, and in support of their individual positions in regard to clauses that are in dispute.

Following the issuance of this report, the other registered intervenors shall have until August 15, 1993 to file with the Commission their comments on the contents of the report. Following receipt of these comments, the Commission shall issue its Decision with respect to the Amended PPA by October 1, 1993.

To assist in this process, the Commission offers the following observations concerning the evidence presented at the hearing. These observations are not intended to restrict the negotiations between B.C. Hydro and WKP, or the subsequent comments by the other registered intervenors. Instead, they are offered simply to facilitate the resolution of some of the items that, in the context of prior discussions, seemed to be points of contention between B.C. Hydro and WKP.

- (i) With regard to the notice requirements for capacity nominations, the Commission's impression of the evidence submitted to date indicates that a five year notification period is appropriate, on the basis that B.C. Hydro would use reasonable efforts to accommodate changes requested by WKP if such requests are made two years in advance of the proposed changes.
- (ii) With regard to the determination of WKP's annual peak demand, for capacity billing purposes, the Commission's impression of the evidence submitted to date supports the use of the coincident peak method but some adjustment may be required to recognize capacity constraints at various points of interconnection.
- (iii) With regard to the penalty charges for capacity demand taken in excess of the nominated amounts, the Commission's impression of the evidence submitted to date indicates that these charges should not be unduly punitive but should be sufficient to insure prudent resource acquisition by WKP. In this regard, the Commission views the proposed 25 percent charge as excessive.
- (iv) With regard to the billing arrangements under modified Rate 3808, the Commission's impression of the evidence submitted to date indicates that all energy purchases should be associated with capacity purchases.
- (v) With regard to the pre-scheduling of WKP's energy purchase requirements, the Commission's impression of the evidence submitted to date supports the establishment of an energy take-or-pay pre-scheduling requirement with excess energy penalty charges. The Commission's view is based on the evidence that the monthly billing of entitlements and the 50 G.Wh account provide WKP with adequate flexibility, such that prudent scheduling would not result in excess charges. Similar to its view with respect to capacity nominations, the Commission believes the excess charges should not be unduly punitive but should be sufficient to insure prudent scheduling. In this regard, the Commission views the proposed 25 percent charge as excessive.
- (vi) With regard to either the storage or export sales of energy and capacity which WKP purchases from B.C. Hydro the Commission's impression of the evidence submitted to date indicates that such practices should be prohibited if there is sufficient flexibility in the

monthly billing of entitlements and the 50 G.Wh account to accommodate over nominations or prescheduling.

As indicated above, the Commission recognizes that the evidence presented at the hearing was given in a different context than that which will exist as a result of this Decision and the Commission will take this into account when considering further the submissions of B.C. Hydro, WKP and the other registered intervenors in respect of the terms and conditions to be included in the Amended PPA.

3.3.5 WKP Access to B.C. Hydro and Non-B.C. Hydro Resources Purchases Above the 200 MW Customer Demand Limit

One key objective of this Decision is to ensure that provincial electricity resources to meet the needs of B.C. Hydro customers and WKP customers are developed in a manner that is optimal from a provincial viewpoint. B.C. Hydro's policy witness, Mr. Epp, acknowledged B.C. Hydro's obligation to meet the full electricity requirements of the British Columbians served by WKP. Although this Decision creates a Customer Demand Limit of 200 MW, it is the Commission's view that the crown corporation has a further obligation to provide any additional energy that WKP wishes to purchase to serve its customers.

Recognizing the special nature of the relationship between B.C. Hydro and WKP, the Commission directs that any additional agreements between B.C. Hydro and WKP for supply in excess of the 200 MW Customer Demand Limit shall be negotiated on a utility to utility basis, but filed with the Commission for approval pursuant to Section 67 of the Act. The Commission will ensure, upon receipt of a filed agreement, that the terms and conditions thereof, including the rates therein, are reflective of fair market arrangements.

A general indication of fair market arrangements would be B.C. Hydro's opportunity cost, information that is available to the Commission. Thus, for shorter term arrangements, the appropriate indicator may be the value to B.C. Hydro of short-term exports, while for longer term arrangements, the appropriate indicator may be B.C. Hydro's long-run incremental cost. The fairly negotiated rate will provide WKP with the correct price signal of the provincial value of the resources that B.C. Hydro will develop.

To ensure competitive supply opportunities, it is desirable that WKP have access to other potential suppliers. To achieve this, WKP needs reasonable access to wheeling services from B.C. Hydro with wheeling charges that reflect fair market arrangements.

The Commission directs B.C. Hydro to provide WKP with reasonable wheeling access and fair wheeling charges for non-B.C. Hydro electricity supplies intended to serve WKP's customers, be these supplies intra or extra provincial.

3.3.6 Overview

The Commission believes that this Decision establishes the basis for a fair and reasonable business relationship between these two utilities from the following points of view:

- (i) The obligations of B.C. Hydro to WKP are clarified and stabilized.
- (ii) B.C. Hydro receives more revenue from the resources allocated to serving WKP than it would have under the POA or Rate 3807.
- (iii) WKP faces the provincial long-run incremental cost when conducting its integrated resource planning.
- (iv) WKP partly and indefinitely retains its status as a customer of B.C. Hydro, which it would have lost under the POA.
- (v) Relative to the POA, WKP's purchases from B.C. Hydro will be more costly in the short-term but less costly in the long-term, with the continuing guarantee of the 200 MW customer limit. This guarantee reduces the risk that WKP's rates will exceed those of B.C. Hydro in the long-term.
- (vi) The option of obtaining all incremental supply resources from B.C. Hydro reduces the risks to WKP rates if its own resource options prove to be relatively more expensive than originally estimated.

- (vii) Future interaction between WKP and B.C. Hydro has an opportunity to be free of the misunderstandings and the excessive regulatory and negotiation costs of the last decade. First, the electricity price under the 200 MW Customer Demand Limit is determined through B.C. Hydro's rate hearings and resulting changes to Rate 1821. Second, the price for electricity above the 200 MW Customer Demand Limit will be negotiated in the same way that B.C. Hydro or other suppliers negotiate contracts. With Commission oversight, and with wheeling access guaranteed by the Commission, WKP will be in a better position to ensure that negotiated rates are reflective of fair market arrangements.

3.4 The Argument for Regional Principles of Ratemaking

The Commission is not able to accept, at this time, the arguments of those other intervenors who stated that the rate for B.C. Hydro sales to WKP should be based in part upon regional principles of ratemaking. The Commission believes that, if it were to examine the issue of whether or not B.C. Hydro or WKP ratemaking should include regional considerations, this should occur in a forum in which the entire province has an opportunity for input. This process would need to examine several issues.

First, should rates reflect on a regional basis the cost of providing service? Other intervenors argued that because B.C. Hydro has substantial generation facilities located in the Kootenay region, the cost of transmission is lower and this should be reflected in the rates charged to that region, in particular B.C. Hydro's rate to WKP. This issue obviously has implications for all regions of the province, and the Commission determination would set a ratemaking principle for not just B.C. Hydro but also WKP. Indeed, other intervenors also suggested that WKP set regional rates to reflect differences in the cost of serving the Kootenay and Okanagan regions. The issue of regional rates extends beyond B.C. Hydro and WKP to encompass the Commission's approach to ratemaking with respect to all energy utilities in the province.

Second, should rates reflect uncompensated costs that may differ from region to region? Other intervenors argued that B.C. Hydro does not compensate the Kootenay region for the full assessed value of its facilities. B.C. Hydro pays less local and regional tax than would a private firm. Some other intervenors argued that the reservoirs, transmission lines and water flow charges create uncompensated impacts. Again, this issue has implications for all regions of the province.

Third, should rates reflect the comparative economic well-being of different regions? Other intervenors argued that the Kootenays are an economically disadvantaged region in the province, and that rates should be set to help certain regions. This, too, is an issue that cannot be examined in only one region of the province; it has far reaching implications for the ratemaking principles that this Commission applies to the entire province, as well as for public policy initiatives undertaken by government.

Fourth, how are the boundaries determined for each region? Some other intervenors suggested alternative regions within the WKP service area. Because rates could differ significantly between neighbouring regions, this issue can be problematic.

The arguments for regional rates are not without merit. But the Commission is generally aware that there are many counter-arguments and challenges, and these were not examined in detail in the Rate 3808 hearing.

A key concern is the authority for a utility commission to make Decisions that may have significant equity implications for society. This Commission adheres to the general principle that it should diverge from cost-based principles of ratemaking only with extreme caution. To the extent that it can be shown that the issues are primarily of a public policy nature, the Commission should refer the issue to the political process. Thus, for example, the Commission is more likely to be receptive to arguments that regional rates are justified on the basis of cost of service. In contrast, the arguments for (1) additional compensation for the use of local resources and (2) efforts to offset a depressed regional economy must meet stricter criteria. Because these issues are properly the domain of public policy, the Commission must be careful not to interfere with government policies with respect to regional economic development and resource development compensation.

Although the Commission does not accept the arguments that modified Rate 3808 should be in part set in accordance with regional principles of ratemaking, the Commission recognizes the concerns expressed at the hearing. The Commission is open to revisiting this issue in upcoming hearings, preferably hearings in which all regions of the province participate.

3.5 Contractual Disputes Between WKP and B.C. Hydro

3.5.1 The Demand Billing Dispute

On October 14, 1992, WKP made an application pursuant to Section 97 of the Act for the Commission to conduct an inquiry to determine the demand charges applicable to WKP for 1992. By Order No. G-119-92, the matter was referred to this hearing for determination.

The dispute between WKP and B.C. Hydro with respect to the demand charge issue arises from the different views of the two utilities concerning which contractual arrangement should form the basis for the charges. It was the position of WKP that the charges for 1992 should be based on a peak demand calculated using the coincident peak method and not the non-coincident peak method that had been specified as part of the October 15, 1986 PPA. WKP stated that the coincident peak method had been discussed in negotiations with respect to a PPA to support the POA and WKP expected that a revised PPA would be negotiated and applied retroactively. WKP noted that the Commission had issued Order No. G-96-91, establishing a deferral account to collect any charges under Rate Schedule 3807 that were in excess of those under the proposed POA.

Although this might normally be seen as a contractual dispute, WKP argued that the Commission had jurisdiction to settle this dispute since WKP stated that the 1986 PPA had expired September 30, 1991(T. 1446, 1447).

B.C. Hydro claimed that the provisions contained in the PPA of October 15, 1986 between WKP and B.C. Hydro (as amended by Order No. G-22-90) were applicable and that this agreement was not replaced or permanently modified by Order No. G-96-91. With the subsequent collapse of the POA, B.C. Hydro stated that the 1986 PPA was the only approved agreement in effect. As a result, B.C. Hydro maintained that the Commission did not have jurisdiction to determine this matter but that it was a matter for the courts to decide.

3.5.2 Nominations Dispute

On September 4, 1992 WKP applied to the Commission for relief from the take-or-pay provisions of the 1986 PPA for the 1991/92 test year. WKP stated that it had nominated more energy than it required for the 1991/92 operating year due to the effect of four factors: exceptionally warm weather, more energy available from Cominco than had been estimated by Cominco, smaller

demand from Celgar than had been reasonably anticipated, and greater success than hoped for in DSM (T. 1447). When the over-nomination became apparent, WKP stated that it tried to mitigate the \$2.9 million impact by exporting the surplus energy, first through Cominco and then through Powerex. WKP said that it was blocked in both these attempts by B.C. Hydro and claimed that B.C. Hydro exported the energy (T. 1449).

As with the demand billing dispute described above, WKP argued that the Commission had jurisdiction to settle this dispute since the 1986 PPA, which contained the take-or-pay provisions related to nominations, had expired.

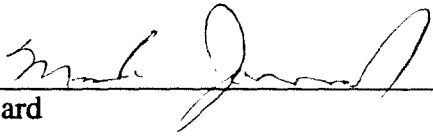
In opposing the Application for relief, B.C. Hydro stated that WKP was actually applying for relief from its own nominations of energy and capacity, which B.C. Hydro characterized as a contractual rather than a rate issue. Furthermore, B.C. Hydro stated that it had been agreed that those nominations would survive no matter the outcome of the negotiations surrounding Rate 3807 and the associated PPA (Exhibit 1, Testimony of Zak El-Ramly, p. 4). As indicated in the preceding section, B.C. Hydro disagreed with WKP's argument that there was no contract in effect at the time of the over-nomination, stating that the PPA was necessarily associated with the rate under which WKP was being charged (T. 1476) and that, therefore, the Commission lacked jurisdiction to decide this matter. B.C. Hydro argued that it was required by law to collect rates which were in effect whether it wished to collect them or not (T. 1475).

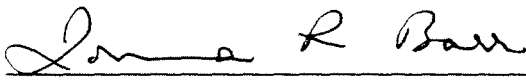
3.5.3 Commission Determination


The Commission believes that the courts should make the decision as to what contractual terms were in place at the time the two matters in dispute arose. Therefore, the Commission declines jurisdiction.

The Commission finds support for its decision to decline jurisdiction in these matters in a recent decision of the B.C. Supreme Court, MacMillan Bloedel v. British Columbia Hydro and Power Authority, unreported, April 12, 1991, Vancouver Registry No. C892798. This case relied on the B.C. Court of Appeal decision in Crestbrook Pulp and Paper v. Columbia Natural Gas Limited (1978) 5 W.W. R.1.

DATED at the City of Vancouver, in the Province of British Columbia this 22nd day of April, 1993.


 Dr. M.K. Jaccard
 Chairperson


 L.R. Barr
 Deputy Chairperson


 K.L. Hall
 Commissioner

SIXTH FLOOR, 900 HOWE STREET, BOX 250
VANCOUVER, B.C. V6Z 2N3
CANADA



**BRITISH COLUMBIA
UTILITIES COMMISSION**

ORDER
NUMBER G-27-93

TELEPHONE: (604) 660-4700
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**AN ORDER IN THE MATTER OF the Utilities Commission
Act, S.B.C. 1980, c. 60, as amended**

and

An Application by British Columbia Hydro and Power Authority

for
Rate Schedule 3808
and

Revised Power Purchase Agreement with West Kootenay Power Ltd.

BEFORE: M.K. Jaccard, Chairperson;)
L.R. Barr, Deputy Chairperson; and) April 22, 1993
K.L. Hall, Commissioner)

WHEREAS:

- A. On October 10, 1991, British Columbia Hydro and Power Authority ("B.C. Hydro") filed for Commission approval an Agreement in Principle ("the Agreement") entered into between B.C. Hydro and West Kootenay Power Ltd. ("WKP") for bulk electricity supply for the period from October 1, 1991 to September 30, 2010. Supply under the Agreement was intended to replace supply under Rate Schedule 3807, the availability of which expired on September 30, 1991 under Commission Order No. G-22-90; and
- B. Commission Order No. G-96-91 established a deferral account and approved an interim rate for supply to WKP at the level previously charged under Rate Schedule 3807 effective October 1, 1991 until final approval of the Agreement was given. The Order included the Agreement and ensuing contract as a separate phase of B.C. Hydro's Rate Design Application and Public Hearing that commenced January 13, 1992; and
- C. WKP and B.C. Hydro were unable to reach agreement into long-term power supply during the public hearing. Commission Order No. G-36-92 authorized the Decision into B.C. Hydro's Application for Rate Design of Electric Tariffs and advised that the matter of Rates and Supply Agreement to WKP would be the subject of a future Commission Order; and
- D. On August 10, 1992, WKP advised the Commission that the parties had been unable to reach a mutually acceptable contract after 11 months of negotiations and requested a Commission Inquiry under Section 97 of the Utilities Commission Act ("the Act"); and
- E. On August 11, 1992, B.C. Hydro notified WKP that the negotiations had failed, that the Agreement must be discarded, and that, in the near future, B.C. Hydro would submit an application to the Commission regarding WKP; and
- F. On September 4, 1992, WKP requested that B.C. Hydro be directed to relieve WKP of take or pay provisions of the October 15, 1986 Power Purchase Agreement for the 1991/92 operating year (the "Nominations Dispute"); and
- G. On October 14, 1992, WKP requested an Inquiry under Section 97 of the Act to determine the Demand Charges applicable to WKP for 1992 (the "Demand Billing Dispute"); and

**BRITISH COLUMBIA
UTILITIES COMMISSION**

ORDER
NUMBER G-27-93

2

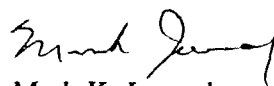
- H. On December 11, 1992, B.C. Hydro applied to the Commission for Orders that terminate Electric Tariff Rate Schedule 3807 and the October 15, 1986 Power Purchase Agreement with WKP and replace them with a proposed Rate Schedule 3808 and new Power Purchase Agreement ("the Application") on an effective date to be determined by the Commission; and
- I. Commission Order No. G-119-92 set the Application down for public hearing which commenced on February 8, 1993 in Castlegar, B.C. and concluded in Vancouver on February 18, 1993; and
- J. On February 26, 1993 the Commission made its preliminary Decision on the Application and issued a letter to all parties to the proceeding.

NOW THEREFORE the Commission orders as follows:

1. The interim rate for supply to WKP established under Order G-96-91 is confirmed as firm to September 30, 1993.
2. The Commission will accept, subject to timely filing by B.C. Hydro, an amended Electric Tariff Rate Schedule 3808 as detailed in the Decision, to be effective October 1, 1993 and will also accept the cancellation of Rate Schedule 3807 effective the same date.
3. B.C. Hydro and WKP will enter into negotiations leading to a revised Power Purchase Agreement to incorporate the findings and directions as set out in the Commission's Decision. On or before August 1, 1993 B.C. Hydro and WKP shall jointly file with the Commission, with copies to Registered Intervenors, a report respecting these negotiations.
4. The Commission declines jurisdiction concerning the Demand Billing Dispute and the Nominations Dispute, as discussed in the Decision.
5. B.C. Hydro and WKP will comply with the other directions incorporated in the Commission's Decision issued concurrently with this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 23rd day of April, 1993.

BY ORDER


Dr. Mark K. Jaccard
Chairperson

GLOSSARY OF TERMS

Capacity (Power)

Rate at which electricity can be instantaneously produced, expressed in kilowatts or megawatts.

Coincident Peak

Peak capacity demand of a customer which coincides with the peak capacity demand established by a system (see **Non-Coincident Peak**).

Customer Demand Limit

Maximum amount of capacity which a customer is allowed to take according to the customer relationship specified by a rate schedule and its supporting power purchase agreement.

Demand Ratchet

Factor which is multiplied by the peak demand in the peak billing period in order to set a minimal billing rate in non-peak billing periods. For example, if the peak demand in January is 100 MW, a Demand Ratchet of .75 results in a minimum demand of 75 MW for billing purposes in all other months.

Demand-Side Resources

Change of practice or equipment that modifies a customer's use of electricity. Demand-side resources include conservation, load management and fuel substitution options.

Energy

Amount of power produced or used over a period of time, expressed in kilowatt hours, megawatt hours or gigawatt hours.

Integrated Resource Planning ("IRP")

Planning process, used by regulated energy utilities, that equally compares options that involve changes in supply resources and changes in energy demand. The outcome of the process is an "integrated resource plan" (usually covering 15 to 20 years) and an "action plan" (usually two years).

Load Factor

Ratio of the average load over a designated period of time to the peak load occurring in that period.

Nominations

Firm energy and/or capacity forecasts required and committed to by the buyer of electricity and which, once received and accepted, the seller is obligated to supply.

GLOSSARY OF TERMS

(Continued)

Non-Coincident Peak

Peak capacity demand of a customer at any time other than when the system peak capacity demand is established (see **Coincident Peak**).

Power Purchase Agreement ("PPA")

Agreement under which the terms and conditions for the sale and purchase of electricity are established. Three versions of a PPA were discussed during this hearing. The first was the PPA established on 15 October in 1986 to support Rate 3807. The second, of which there were several competing versions, was the draft amended PPA to support the two tier rate structure contemplated by the POA. The third PPA contained those draft amendments supporting B.C. Hydro's proposed Rate 3808.

Prescheduling

Short-term (e.g. weekly) energy **Nominations**, generally specified on an hourly basis.

Principles of Agreement ("POA")

Agreement reached between B.C. Hydro and WKP on September 27 1991 to facilitate the establishment of a new **Power Purchase Agreement**.

Storage

Storage of energy within connected systems for delivery at a future time.

Supply-Side Resources

Resources that make possible the provision of increased electricity, or improve the efficiency of the utilities' system, through such options as new power plants, cogeneration facilities and improvements in transmission systems and distribution upgrades.

Take-or-Pay

Contract condition which requires the buyer of the electricity to pay for firm **Nominations** of energy whether or not the buyer takes delivery of the energy.

APPEARANCES

M. MOSELEY	Commission Counsel
A.W. CARPENTER C. SANDERSON	British Columbia Hydro and Power Authority
G.K. MACINTOSH, Q.C.	West Kootenay Power Ltd.
R.B. WALLACE	City of Kelowna; District of Summerland; City of Grand Forks; Celgar Pulp Company; Canpar Industries; Slocan Forest Products; Kalesnikoff Lumber
P. KACIR	City of Nelson
W. GERMAINE	Nelson and District Chamber of Commerce
A. CARREL	The Corporation of the City of Rossland
B. HUTCHINSON	Town of Creston
G. MCDANNOLD	Regional District of Central Kootenay and Kootenay Boundary
E. BEALE	Keremeos Irrigation District and Fairview Heights Irrigation District
J. HALL	Princeton Light & Power Company, Limited
D.F. ANDREWS	Sampower Electric Corporation
C. WEAVER	Consumers' Association of Canada (B.C. Branch); B.C. Old Age Pensioners' Organization; Counsel of Senior Citizens' Organizations of B.C.; Federated Anti- Poverty Groups of B.C.; West End Seniors' Network
D. SCARLETT	Kootenay Okanagan Electric Consumers Association
D. GEORGE	Himself
C. EVANS	M.L.A. - Nelson/Creston
D. SWANSON	Association of British Columbia Irrigation Districts
S. SANTORI	City of Trail

APPEARANCES
(Continued)

J. BLACK	Himself
W. RAMSDEN L. MOSELEY	City of Nelson
R. COFFEY	West Kootenay Economic Coordinating Group
L. PETTIJOHN	British Columbia Chamber of Commerce
F. LAUER	British Columbia Fruit Growers Association
R. HENDERSON	Regional District of Central Kootenay
G. WILLIAMS	Regional District of Kootenay Boundary

B. MCKINLAY D. EMES R. RERIE F. JAMES	Commission Staff
ALLWEST COURT REPORTERS LTD.	Court Reporters & Hearing Officer

LIST OF EXHIBITS

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British Columbia Hydro and Power Authority Application Volume I	1
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Letter from B.C. Hydro's counsel to Commission dated January 29, 1993	5
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Draft contract dated February 4, 1992	61
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Draft contract dated February 25, 1992	63



ROBERT J. PELLATT
COMMISSION SECRETARY

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VIA FACSIMILE

February 26, 1993

Mr. Thom M. Thompson
Manager, Corporate Affairs
British Columbia Hydro and
Power Authority
16th Floor, 333 Dunsmuir Street
Vancouver, B.C.
V6B 5R3

Dear Mr. Thompson:

Re: British Columbia Hydro and Power Authority
Application for Commission Approval - Rate Schedule 3808
and Power Purchase Agreement - West Kootenay Power Ltd.

As you are aware, the hearing of the above-captioned application ended on February 19, 1993.

The Commission has not, as yet, concluded its decision-making process in respect of the B.C. Hydro application. However, for the benefit of B.C. Hydro, and the participants in the forthcoming hearing concerning the West Kootenay Power Ltd. ("WKP") 1992/1993 Revenue Requirements application, the Commission is prepared, at this time, to advise all interested parties of the following elements of its decision.

1. In the Commission's view, B.C. Hydro has an ongoing obligation to serve WKP. The relationship is, however, a hybrid one in which WKP is to be treated partly as a customer of B.C. Hydro and partly as an independent utility.
2. From October 1, 1993 to September 30, 1995, B.C. Hydro's rates for service to WKP shall be comparable to those charged to B.C. Hydro's transmission service customers but with a demand ratchet of 50 percent. There will be no limit on the energy and capacity which WKP will be able to purchase under these rates during this time period.
3. After September 30, 1995, B.C. Hydro's rates for service to WKP shall be as follows:
 - (a) for service below 200 MW, the rates shall be comparable to those charged to B.C. Hydro's transmission service customers, with the demand ratchet increasing in equal steps from 50 percent in 1995 to 75 percent in 2000;
 - (b) for service above 200 MW that is offered pursuant to a separate agreement between B.C. Hydro and WKP, the rates shall be those established by negotiations between B.C. Hydro and WKP on a utility to utility basis; and

- (c) for service above 200 MW that is not made pursuant to an agreement of this type referenced in subparagraph 3(b), the rate will incorporate an excess charge above the rates applicable for service below 200 MW.
4. All of the rates referenced in paragraphs 2 and 3 shall be filed with the Commission pursuant to Section 67 of the Utilities Commission Act. In its forthcoming decision, the Commission shall deal with additional terms and conditions in respect of the services referenced in paragraph 2 and subparagraphs 3(a) and (c). With respect to the service referenced in subparagraph 3(b), the Commission will ensure, upon receipt of a filed agreement, that the terms and conditions thereof, including the rates therein, are reflective of fair market arrangements.
 5. The Commission will also ensure that B.C. Hydro provides WKP with fair wheeling charges for non-B.C. Hydro supplies.
 6. The Commission declines jurisdiction over the demand billing dispute and nomination dispute applications by WKP.

As indicated, these elements will be more fully addressed in the Commission's forthcoming decision, which will be rendered in due course.

Yours truly,



Robert J. Pellatt

RJP/dl

cc: Mr. Robert Hobbs, Corporate Secretary
West Kootenay Power Ltd.
Registered Intervenors