

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

and

IN THE MATTER OF  
Applications by  
UtiliCorp United Inc.; and  
UtiliCorp British Columbia Ltd.; and  
West Kootenay Power and Light Company, Limited

DECISION

June 30, 1987

Before:

M. Taylor, Chairman  
D.B. Kilpatrick, Commissioner  
B. Sullivan, Commissioner

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## APPEARANCES

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D.J. WOLF	Vice President – Finance and Treasurer
J.E. FRANKLIN	Vice President – Engineering
J.E. SAMAYOA	Director of Regulation and Taxes

WEST KOOTENAY POWER AND LIGHT COMPANY, LIMITED

J.A. DRENNAN	President and Chief Executive Officer
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COMINCO LTD.

R. STONE	Vice President, Finance
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ELECTRIC CONSUMERS ASSOCIATION

R. FRENCH	Office of Public Counsel, Missouri
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B.C. UTILITIES COMMISSION

DR. W.R. WATERS	Professor, Faculty of Management Studies, University of Toronto
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## I BACKGROUND

West Kootenay Power and Light Company, Limited ("WKPL") is an electric utility regulated under the provisions of the Utilities Commission Act ("the Act"). WKPL was incorporated by an Act of the British Columbia Legislature on May 8, 1897 and is authorized to generate, transmit and distribute power within a radius of 150 miles of Rossland, British Columbia. WKPL serves residential, commercial, irrigation, street lighting and industrial customers in an area roughly described as extending from Princeton in the west to Creston in the east and from the U.S. Boundary north to Kelowna and Kaslo. WKPL supplies wholesale power to electric utility operations conducted by the cities of Grand Forks, Kelowna, Nelson and Penticton and the District of Summerland. Princeton Light and Power Company, Limited, a privately-owned utility serving Princeton and vicinity, purchases its electric power requirements from WKPL.

WKPL is a wholly-owned subsidiary of Cominco Ltd. ("Cominco"), which owns all of the common shares and about 30% of the preferred shares outstanding. The balance of the preferred shares were held by Canadian Pacific Enterprises Limited, until October 1986 the controlling shareholder of Cominco, and itself a subsidiary of Canadian Pacific Limited. In October 1986 Canadian Pacific Limited sold its 52.5% interest in Cominco. A consortium headed by Teck Corporation acquired 31% of the outstanding Cominco shares and an underwriting group headed by Dominion Securities acquired 21.5% for subsequent resale to the public. The consortium, of which Teck controls 50%, comprises Teck Corporation, Metallgesellschaft Canada Limited, and M.I.M. (Canada) Inc. Thus, effective control of Cominco and thereby of WKPL, has passed from Canadian Pacific Limited to Teck Corporation.

Cominco is a world class industrial organization engaged in mining and smelting operations, primarily of lead and zinc, and is also a major producer of chemicals and fertilizers. The location of its operations in the West Kootenay region of British Columbia was partly a result of the availability of inexpensive and plentiful hydro-electric energy.

Cominco acquired control of WKPL in 1916. In 1947 WKPL sold Plants 2, 3 and 4 to Cominco. The related water licenses and permits were necessarily transferred to Cominco at that time. Shortly thereafter WKPL transferred the Waneta water license to Cominco. Cominco currently holds water licenses similar to those of WKPL, covering the use of specified volumes of water to produce electric power at Brilliant and Waneta, and the storage of water in Kootenay Lake. The storage license provides that Cominco must comply with the Order of the International Joint Commission ("I.J.C.") of November 11, 1938 and amendments, which govern water levels in Kootenay Lake. Several intervenors expressed serious concern over the prospect of foreign control of WKPL's water rights. Those concerns are considered as a separate and specific issue in Section VI, Subsection 8 of this Decision, under the heading "WKPL's water licenses".

The Sale of Surplus Power Service and Exemption Order (the "Exemption Order") issued by the Government of British Columbia in 1982 (Appendix I) exempted Cominco from regulation under most of the provisions in Part 3 of the Act, subject to certain conditions. Pursuant to those conditions, Cominco sold three of its existing five power plants, with the related water licences and permits, to WKPL for \$20 million; gave WKPL an option to construct additional generation at the remaining sites; undertook to provide WKPL 75 average annual megawatts on a firm basis to 1990; and gave WKPL the right of first refusal to buy the remaining power plants and any power generated which was surplus to Cominco's requirements, until the year 2005. The \$20 million for the three plants, was paid through the issue by WKPL of 200,000 Common Shares at a par value of \$100 each. Relating to its Exemption Order, Cominco also undertook to inform the Minister of Energy, Mines and Petroleum Resources of its long-term plans to reduce Cominco's equity in WKPL to not more than 50 %.

In addition to generation from WKPL's own facilities and purchases from Cominco, the balance of WKPL's energy requirement is purchased primarily from the British Columbia Hydro and Power Authority ("B.C. Hydro").

Cominco has played a key role in the efficient, economical and effective development of the hydro-electric resource in this region of British Columbia and the benefits of its industry have been of significant value to its customers, employees, shareholders and the overall economy of the Province.

B.C. Hydro, a provincial Crown corporation, owns and operates the Canal Plant on the Kootenay River. B.C. Hydro is a public utility under the Act. The construction of the Canal Plant was undertaken to optimize the total generating capacity of the Kootenay River system. Under the Canal Plant Agreement entered into in August 1972, B.C. Hydro gave average peak and average energy assurances to Cominco and WKPL to the year 2005 as an entitlement in exchange for water rights on the Kootenay River.

The WKPL/Cominco integrated system consists of the following generation plants:

<u>Plant Name</u>	<u>Capacity</u> MW	<u>Energy Entitlement</u> GWh*	<u>Location</u>
Lower Bonnington	41.4	329.3	Kootenay River
Upper Bonnington	59.4	429.6	Kootenay River
South Slokan	53.2	422.9	Kootenay River
Corra Linn	51.2	343.2	Kootenay River
Brilliant **	128.9	853.4	Kootenay River
Waneta **	373.9	2465.4	Pend d'Oreille River

\* Source : Canal Plant Sub-Agreement

\*\* Cominco facilities

UtiliCorp United Inc. ("UtiliCorp"), a Missouri corporation, is an integrated investor-owned utility listed on the New York and Pacific Stock Exchanges, engaged directly through its operating divisions in the sale and distribution of natural gas and electricity to both wholesale and retail customers. UtiliCorp's predecessor company, Missouri Public Service, has been engaged in providing utility services for over 70 years. In May 1985 the shareholders of Missouri Public Service approved the change in the company's name to UtiliCorp United Inc. At that time UtiliCorp served over 500,000 customers through three

operating divisions. Those included Missouri Public Service, headquartered in Kansas City, Missouri, providing electric and gas service throughout 222 communities covering approximately 12,500 square miles within Missouri; Kansas Public Service, acquired in 1984, headquartered in Lawrence, Kansas, providing gas service to 21,000 customers in Lawrence, Kansas; and Peoples Natural Gas, acquired in 1985 and headquartered in Council Bluffs, Iowa, providing gas service throughout 288 communities in the States of Iowa, Nebraska, Minnesota, Colorado, Kansas and a few customers in Michigan and South Dakota. As indicated by the Applicant during the hearings, two further acquisitions were in progress and pending at that time. These included Northern Minnesota Utilities, a gas utility headquartered in Cloquet, Minnesota (subsequently acquired in 1986), and West Virginia Power, an electric utility headquartered in Fairlea, Virginia (acquired in 1987).

At the time of the hearings UtiliCorp employed approximately 1,900 persons in its three divisions and 25 employees in the corporate offices located in Kansas City, Missouri. The family of Richard C. Green, President and Chief Executive Officer owned approximately 12% of the shares, with the balance being widely held.

As of August 31, 1986, UtiliCorp had assets of \$709,000,000 (U.S.) and operating revenues and net income for the 12 months ended August 31, 1986, of \$497,362,000 (U.S.) and \$29,610,000 (U.S.), respectively. Those assets included 13 generating units with electric generation capacity of 916,000 kilowatts, and more than 6,500 pole miles of transmission and distribution lines and 13,500 miles of gas mains.

## II THE APPLICATIONS AND HEARING

This Decision is issued in response to two Applications, the first being the September 12th, 1986 Application of UtiliCorp United Inc. of Kansas City, Missouri, U.S.A. ("UtiliCorp") and UtiliCorp British Columbia Ltd. ("UtiliCorp B.C."), pursuant to Section 61 of the Act, requesting an Order approving the acquisition by UtiliCorp B.C. of all of the issued and outstanding Common and Preferred Shares of WKPL. UtiliCorp B.C. is a wholly-owned subsidiary of UtiliCorp. The second Application is that of WKPL dated September 16, 1986, seeking the approval of the Commission to register on the books of WKPL the transfer of Common and Preferred Shares from Cominco and the Preferred Shares from Canadian Pacific Enterprises Limited to UtiliCorp or UtiliCorp B.C.

The Commission ordered a public hearing into these Applications commencing on November 3, 1986 at Trail, B.C. The hearing reconvened at Penticton, B.C. and concluded at Kelowna, B.C. on February 6, 1987.

The Commission decided that the quality of the hearings and the evidence introduced thereto would be enhanced by the presence of an independent expert financial witness to respond to questions by all parties to the hearing and by the filing of his independent direct evidence. The Commission therefore requested Dr. W.R. Waters to "prepare and file direct evidence with respect to his assessment of the Application as filed and the financial impacts of the proposed purchase of WKPL by UtiliCorp United Inc. on WKPL, its customers, and on UtiliCorp Inc. itself" (Exhibit 28).

Dr. Waters received an M.B.A. degree in Business Administration from the University of Toronto in 1962, an M.B.A. in Economics and Finance from the University of Chicago in 1964 and a Ph.D. in Finance from the University of Chicago in 1976. He has been a full-time member of the faculty at the University of Toronto since 1965 and is currently Professor in the Faculty of Management Studies, specializing in studies of the financial markets, investment analysis and the economics of enterprise.

Since 1968 Dr. Waters has also been actively engaged in research and consulting on the regulation of public utilities and has made some 45 appearances before national and provincial regulatory boards and commissions. His full curriculum vitae is filed as Appendix I to Exhibit 29. Dr. Waters undertook a review of the evidence filed by the Applicants prior to the hearings. He attended the proceedings for several days, during which he was cross-examined on both his filed evidence (Exhibits 29 and 71) and on his testimony as expert financial witness. Both his evidence and his presence at the hearings were most helpful, and greatly appreciated by the Commission.

For the guidance of intervenors, in opening the hearing the Chairman of the Commission put on the record the six issues or criteria identified by the Commission as the appropriate basis for its decision with respect to the 1982 application by T.M.A. Western Resources Ltd. ("T.M.A.") to purchase Inland Natural Gas Co. Ltd. under Section 61 of the Act. It is important to note that such criteria, while a useful guide to the public interest, cannot be rigidly applied in every case since the circumstances may be significantly different in each case. The criteria applied in the T.M.A. case were as follows:

1. The Utility's current and future ability to raise equity and debt financing will not be reduced or impaired.
2. There is no violation of existing covenants the effect being detrimental to the customers.
3. The conduct of the Utility's business, including the level of service, either now or in future, will be maintained or enhanced.
4. The Application is in compliance with appropriate enactments and/or regulations.
5. The structural integrity of the assets will be maintained in such a manner as to not impair utility service.
6. The public interest is being preserved.

In reviewing these Applications, however, the Commission is guided by all relevant sections of the Act, with particular regard to Section 61(8) which provides, "The Commission may give its approval under this Section subject to

conditions and requirements it considers necessary or desirable in the public interest, but the Commission shall not give its approval under this Section unless it considers that the public utility and the users of the service of the public utility will not be detrimentally affected."

The Applications were made pursuant to Sections 61(6) and 61(4) of the Utilities Commission Act which are contained in Appendix A of this Decision. Section 61(6) provides "No person shall acquire or shall acquire control of such numbers of any class of shares of a public utility as in themselves or together with shares already owned or controlled by the person and his associates, cause him to have a reviewable interest in a public utility unless he has obtained the commission's approval."

Section 61(4) provides that a public utility shall not, without the approval of the commission register on its books a transfer of shares in the capital of the utility where the registration would cause any person to have a reviewable interest. Reviewable interest is defined by the Act to be an interest in excess of 20% of the outstanding voting shares of the utility.

The Commission interprets the provisions of Section 61 of the Act as requiring that the proposed acquisition not detract from WKPL's ability to provide ongoing service of the quality that its customers have the right to expect and at rates which are fair to those customers and to the utility itself. The Commission concludes that it is the intent of these sections, regardless of the ownership, to preserve the authority of the Commission to regulate WKPL effectively and in the public interest.

#### Absolute Commitments and Objectives of the Applicants

During the proceedings and as an integral part of their Applications, UtiliCorp United Inc. and UtiliCorp B.C. filed in Exhibit 66A a statement of the commitments and objectives to be undertaken by both companies in the event their Applications were approved. Exhibit 66A is attached to this Decision as Appendix B.



The purpose, effectiveness and enforceability of the commitments and objectives contained in Appendix B have been addressed by the Commission in the body of this Decision, in conjunction with its assessment of the particular issues to which they relate.

### III FOREIGN OWNERSHIP

In the current Canadian scene there are no legislative measures or even guidelines, at either the federal or provincial level, prohibiting or limiting foreign investment in what are generally regarded as essential services such as public utilities. Such matters of policy, being clearly in the government domain, are outside the Commission's capacity or jurisdiction.

At the hearing of the Applications by UtiliCorp and WKPL the question of foreign ownership of Canadian public utilities, predictably and understandably occupied a central and overriding concern of almost all of the participants, numbering at times up to 700. Throughout the hearing this issue, which was invariably expressed as "pro-Canadianism" rather than "anti-Americanism", formed the focal point of opposition to the Applications under review. To deal effectively with these Applications it has therefore been necessary for the Commission to determine to what extent the nationality of the proposed purchaser, UtiliCorp United Inc., should be a factor in this Decision.

It is clear that in British Columbia a foreign corporation seeking to purchase a reviewable interest in a public utility must obtain approval from both the federal agency, Investment Canada, and the British Columbia Utilities Commission. It is important to recognize that the federal and provincial agencies responsible for reviewing foreign ownership of a provincial public utility have separate and unique mandates. In the present case the jurisdiction to control foreign investment solely on the basis of nationality clearly resides with the federal government and the federal agencies charged with that responsibility.

UtiliCorp has sought and by letter dated December 24, 1986 has received from Michel Cote, Minister responsible for Investment Canada, the necessary federal approval to acquire control of West Kootenay Power and Light Company, Limited. In that letter, attached as Appendix C to this Decision, the Minister concludes that UtiliCorp's investment in WKPL is "likely to be

of net benefit to Canada". He noted that the Commission was engaged in public hearings concerning the same Application and recognized the dual but distinct federal and provincial mandates with the observation that "... my decision under the Investment Canada Act has a different basis than that which governs the B.C.U.C., and has, therefore, no bearing on the ultimate decisions of the Commission pursuant to its legislation".

#### Commission Jurisdiction with Respect to Foreign Ownership

The jurisdiction of this Commission in the Applications before it in this case is set out in Section 61 of the Utilities Commission Act. In the Commission's view, while the foreign origin of a proposed purchaser of a reviewable interest in a domestic public utility is clearly the exclusive concern of the federal government, Section 61(8) of the Act indicates that any detrimental effects arising from whatever source including, in this case, the foreign origin of the proposed purchaser and which are reasonably attributable to such ownership, are proper matters for review and decision by this Commission.

Accordingly, in approaching this Decision the Commission has focussed its consideration of the foreign ownership question on an evaluation of the potential detrimental effects, if any, on WKPL and its customers arising from the proposed ownership by UtiliCorp. The test for detrimental effects attributable to the American ownership factor has accordingly been applied by the Commission where appropriate, to each of the issues raised by the UtiliCorp Application. The Commission would note that it is only one of a number of government agencies collectively involved in and responsible for the protection of the public interest in this case. Also involved are the provincial Comptroller of Water Rights and such Ministries as Energy, Environment, Agriculture and Attorney General.

#### IV THE BIDDING PROCESS

A major cause for the strong expressions of concern and opposition to the sale of WKPL by members of the Electric Consumers Association ("E.C.A."), an organization with over 7,100 paid-up members as at February 4, 1987, and indeed all of the intervenors at the hearing was the bidding process undertaken by Cominco through the auspices of Burns Fry Limited. The latter was retained as Cominco's exclusive financial advisor and intermediary. The Commission views the failure of Cominco and Burns Fry to adequately inform and prepare the members of the affected public for the introduction of a process that was predictably sensitive and entirely foreign to them, as a serious if not inexcusable oversight and lack of judgement. It was, in the Commission's view, largely responsible for the understandable but time-consuming opposition that prevailed throughout the proceedings.

The hearings produced no evidence that the bidding process, as prepared and circulated to all prospective bidders was illegal. There was, however, ample evidence of widespread lack of public knowledge of critically important features of the bidding process. In particular, Burns Fry failed to ensure public understanding that the second stage of the planned two-stage process would not be mandatory. The public clearly did not realize that if Cominco found the spread between the highest first stage bid and any other bids to be so great as to render, in Cominco's judgement, the more refined second stage unproductive and unjustifiably costly to the other bidders, then there would be no second stage.

Cominco's decision to execute that right and omit, for all bidders except UtiliCorp, the expected second stage, together with the appearance of undue haste in the process, gave rise to the genuine and in the circumstances understandable public outrage that emerged at the hearings, largely on the basis of subsequently unsubstantiated rumours that UtiliCorp's bid had been both pre-emptive and late.

In the absence of any evidence of illegalities, however, and in the face of the reality that the Commission was confronted with only the UtiliCorp application, upon which it is required by law to hear and rule, the Commission proceeded with the hearings as planned. Accordingly, the bidding process and possible alternative bids are not issues in this Decision.

## V THE SCOPE OF COMMISSION JURISDICTION

The Applications of UtiliCorp and WKPL raise some fundamental issues for British Columbia and indeed for Canada. A number of these fall directly within the jurisdiction of the Commission and are discussed in more depth below. It is important to note, however, that there are a number of issues which at times were addressed openly in the hearing over which this Commission has no jurisdiction.

Perhaps the most important of these is the general question of foreign ownership in Canada. As is noted elsewhere in this Decision, the Federal Government, and, in particular, Investment Canada, have the responsibility for establishing policy with respect to the extent to which foreign ownership in general and in the energy sector in particular are compatible with Canada's interests. Closer to home, the Provincial Government has the overriding responsibility to take whatever policy initiatives it feels are necessary to ensure that the application of Canada's policies in British Columbia are consistent with the economic objectives of British Columbia. It is not for this Commission to determine policy with respect to such fundamental issues.

There exist no provincial policies nor legislation which allow the Commission to conclude that it should have regard to significantly different considerations in assessing these applications than it has in assessing applications in the past. If the applications in this case raise issues which require fundamentally different treatment than has been the Commission's practice in the past, the Government or the Legislature should act to ensure that any shift in policy direction is spelled out clearly for the benefit of the Commission, the utilities it regulates, and the customers of those utilities.

Bearing these comments in mind, the following sections outline the Commission's specific jurisdiction under the provisions of the Act.

1. Jurisdiction to Preserve the Public Interest
2. Jurisdiction Over Cominco Ltd.
3. Jurisdiction Over UtiliCorp United Inc.
4. Jurisdiction Over UtiliCorp B.C. Ltd.
5. Jurisdiction Over WKPL

1. Jurisdiction to Preserve the Public Interest

The Commission is expressly directed to consider the public interest in Section 61(8) of the Act which provides as follows:

"61(8) The Commission may give its approval under this section subject to conditions and requirements it considers necessary or desirable in the public interest, but the Commission shall not give its approval under this section unless it considers that the public utility and the users of the service of the public utility will not be detrimentally affected."

In addition to this section, the Act read as a whole clearly charges the Commission with a responsibility for ensuring that in a utility context, the actions of the companies regulated by it are consistent with the public interest. For these reasons, the Commission believes that it has broad jurisdiction under the Act to ensure that, from the perspective of present utility regulation in British Columbia, the proposed acquisition is not detrimental to the public interest. The Commission has considered whether, in defining the public interest, it should restrict itself to the public in the service area or consider the province as a whole.

Because of the Commission's view of the facts in this case, the Commission's conclusions would not be materially different if the reference area were limited to the service area of WKPL or expanded to include the broader public interest of all citizens of the province. Accordingly, the Commission has approached the problem by considering all potential detriments, whether localized or of a broader nature, and dealt with each in turn.

## 2. Jurisdiction Over Cominco Ltd.

The Commission's jurisdiction over Cominco was addressed in detail in a number of the final submissions, particularly those of counsel for Cominco, UtiliCorp, and the Commission. These arguments addressed whether or not Cominco can be considered a public utility as that term is defined in the Act and also whether Section 61(8) authorizes the Commission to impose terms and conditions on or affecting Cominco should it decide to approve this sale.

A detailed discussion of the relationship between Cominco and WKPL is found in Section VI, Subsection 5 of this Decision. In view of the Commission's conclusions in connection with this relationship, it is not necessary to determine Cominco's precise status under the Act. For the reasons set out in those sections, the Commission does not believe that it is necessary to impose conditions upon Cominco or WKPL and, in light of the Sale of Surplus Power Service and Exemption Order made by the Lieutenant Governor in Council in 1982, accepts that it cannot directly regulate the joint use of facilities between Cominco and WKPL. The Commission does note, however, that in its view, Section 32 of the Act will apply to Cominco and WKPL if the Lieutenant Governor in Council accepts the Commission's recommendation in Section VI, Subsection 5 and amends the Exemption Order to include that section of the Act.

The Commission also notes that it has no jurisdiction whatsoever over the manner in which Cominco chose to sell its interest in WKPL. Thus, the bidding process entered into by Cominco was entirely of its own design. There is nothing in the Act which allows the Commission to set standards or procedures which owners of public utilities should adopt before selling a reviewable interest in those public utilities. Thus, the Commission had no direct control over the bidding process.



### 3. Jurisdiction Over UtiliCorp United Inc.

The Commission has no general jurisdiction over the owners of utilities it regulates and would acquire none if UtiliCorp United became the direct or indirect owner of WKPL. The Commission depends upon its jurisdiction over the utility itself to ensure that the utility is run in the public interest in a responsible and efficient manner.

UtiliCorp United Inc. would come within Commission jurisdiction, of course, to the extent that it had a "reviewable interest" in WKPL and wished to dispose of that reviewable interest in total to another entity. Because of the undertakings given with respect to jurisdiction over UtiliCorp B.C., that jurisdiction extends to UtiliCorp United's shareholdings in UtiliCorp B.C. Accordingly, the Commission has sufficient control over UtiliCorp United Inc. to ensure that control of WKPL will not fall into third party hands without Commission review.

In summary, the absence of direct control over UtiliCorp United is not a change from the present circumstances nor different from that which exists in the context of other utilities under the Commission's control. Legislative change would be required, if it was determined to be desirable for the Commission to have further control over owners of utilities.

### 4. Jurisdiction Over UtiliCorp B.C. Ltd.

UtiliCorp B.C. Ltd. is a British Columbia company incorporated in 1986 for the purpose of holding the shares of WKPL if the sale of those shares by Cominco is approved. Accordingly, the proposed transaction would establish UtiliCorp B.C. as the actual shareholder of WKPL.

The Commission's jurisdiction over UtiliCorp B.C. Ltd. is on the face of it no different than its current jurisdiction over Cominco. That is, the Commission's primary jurisdiction is over the utility, WKPL, and not over its shareholder.

Nevertheless, UtiliCorp B.C. would be subject to the same types of control as Cominco. That is, if UtiliCorp B.C. wishes to sell its interest in WKPL, anyone acquiring a "reviewable interest" would have to obtain the approval of the Commission pursuant to Section 61(8) as is being done in the present case and WKPL itself would have to seek the approval of the Commission pursuant to Section 61(4) in order to register the transfer of the shares on its books. Accordingly, the Commission would continue to exercise control of the ownership of the shares of WKPL.

Because UtiliCorp B.C. is a wholly-owned subsidiary of UtiliCorp United, concern was expressed that the character of the ownership of WKPL could effectively be changed if UtiliCorp United were to sell its holdings in UtiliCorp B.C. to an unknown third party. To alleviate this concern, Counsel for UtiliCorp placed on the record his view that acquisition of a reviewable interest in UtiliCorp B.C. would be subject to Commission approval under Section 61 of the Act and his assurance that UtiliCorp United would willingly participate in such an approval process (Transcript pp. 2853 and 4746 - 4748).

The Commission believes that it should ensure that the ultimate control of WKPL is maintained by an entity which the Commission has had an opportunity to assess. This can be achieved by providing, as a condition of approval, that the sale of a reviewable interest in UtiliCorp B.C. is precluded without the prior approval of the Commission.

##### 5. Jurisdiction Over WKPL

WKPL is a fully regulated public utility in the Province of British Columbia by virtue of the Act. The Commission is unable to conclude that the outcome of the present applications will in any way interfere with the ability of this Commission to regulate WKPL. WKPL will remain fully subject to regulation irrespective of who controls the majority of its shares.

## VI THE ISSUES

The Commission has based its Decision on its conclusions drawn from the evidence filed and examined at the hearings, on each of the following issues:

1. UtiliCorp's Financing Ability
2. UtiliCorp's Acquisition Strategy
3. The Acquisition Valuation
4. Management Control of WKPL
5. The Cominco/WKPL Relationship and Ongoing Operating Agreements
6. WKPL's Rates and Intercompany Charges
7. WKPL's Potential for Exports
8. WKPL's Water Licenses
9. WKPL's Financial and Capital Plans
10. WKPL's Quality of Service
11. Economic Development
12. Public Opposition

As noted heretofore, in its conclusions with respect to each issue the Commission indicates whether or not, in the Commission's judgement, there is potential for detrimental effects to WKPL, its customers and, in the broader sense, to the public interest.

### 1. UtiliCorp's Financing Ability

Several intervenors questioned the ability of UtiliCorp to finance further planned acquisitions because of the substantial acquisition program already accomplished since formation of UtiliCorp in 1984. They expressed concerns that UtiliCorp may already be financially overextended and thereby exposed to levels of financial risk that might lead to detrimental effects on the financial integrity of WKPL. A further concern was expressed that, following acquisition of WKPL, UtiliCorp might suffer economic difficulties leading to

inability or unwillingness to support the ongoing financial needs of WKPL for the future equity infusions required to maintain an efficient capital structure in that utility.

Counsel for UtiliCorp, Mr. Macintosh, in his opening statement stressed that although UtiliCorp itself was a relatively new company, its corporate predecessor Missouri Public Service, has been a successful electric utility operator for over 70 years. He further noted that although UtiliCorp has expanded at a relatively rapid rate since 1984, it has confined its acquisitions to utilities, and in financing those acquisitions has demonstrated responsible financial planning that has enabled the company to preserve an efficient capital structure (Transcript p. 26). He noted that UtiliCorp's capital structure as of August 1986 comprised 43.3% long-term debt, 6.5% preferred stock and 50.2% common equity and that the company planned to achieve a 45-10-45 capital structure following acquisition of WKPL.

In support of its Application, UtiliCorp filed in Exhibit 2 a letter dated October 22, 1986 from its investment bankers and financial advisors, Drexel Burnham Lambert. This evidence addressed the question of the financial integrity of UtiliCorp and its ability to finance the purchase of WKPL. The letter says in part "It is our opinion that UtiliCorp United has sufficient access to the capital markets to prudently finance the acquisition of West Kootenay Power and Light Company and to guarantee the long-term capital expenditures program of West Kootenay Power and Light."

The letter further states that "UtiliCorp United is a substantial corporation" and that "the Company's debt and preferred stock instruments are investment grade, which qualifies the Company's securities for investment by all insurance companies, pension funds and financial institutions as well as the other elements of the institutional investment community".

With respect to financial risk, the Drexel Burnham Lambert opinion is that ". . . it would take a serious and unforeseen business reversal to lower UtiliCorp's coverage ratios to non-investment grade credit levels. The Company has helped to protect itself against such a major reversal through its diversification program. The Company operates in many regulatory jurisdictions, which spreads regulatory risk and reduces the effects of adverse weather and adverse economic conditions." Drexel Burnham Lambert conclude that "The Company's management and the business strategies are highly regarded. The Company's common stock has outperformed the utility industry's indices. The Company has good cash flow and very modest construction requirements."

In further support of the Application, UtiliCorp filed as Exhibit 4 a letter dated October 30, 1986 from Dominion Securities Inc., a major Canadian investment dealer. That letter sets out Dominion's findings as derived from a review of public information on UtiliCorp and West Kootenay, reports from the Canadian bond rating agencies on Cominco, and discussions with the management of UtiliCorp. This led Dominion Securities to conclude that "Based on our review of the above information and on our experience and knowledge of Canadian capital markets, it is our opinion that the support of West Kootenay's debt issuances with the full faith and credit of UtiliCorp, together with UtiliCorp's financial plans for West Kootenay, will result in a lower cost of debt for West Kootenay than would otherwise have been possible under Cominco's ownership or by West Kootenay on a stand-alone basis." Mr. Macintosh suggested that this Dominion Securities conclusion was reached because UtiliCorp's credit rating is higher than Cominco's and because UtiliCorp is prepared to unconditionally guarantee WKPL's debt, whereas Cominco is not.

In cross-examination Mr. R.C. Green, Jr., President and Chief Executive Officer and Mr. J.R. Baker, Senior Vice-President, Corporate Development, were questioned by Mr. Bauman on the reduction in UtiliCorp's credit ratings on its commercial paper and preferred and preference stock following UtiliCorp's acquisition of People's Natural Gas ("PNG"), as reported in

UtiliCorp's 1985 Annual Report. Mr. Green explained that the rating reductions had been limited to UtiliCorp's commercial paper and preferred and preference shares and were in reaction to the sizeable increase in UtiliCorp's short-term debt, incurred to finance the acquisition of the gas utility. He testified that this had not affected UtiliCorp's long-term securities (first mortgage bonds), which continued to carry a triple B rating. He stated that there had not been any noticeable difference in UtiliCorp's cost of short-term borrowing because of the reduced credit ratings, and that those ratings should recover in the near future because UtiliCorp has redeemed all of the preferred shares (Transcript p. 109). Mr. Baker stressed that the rating of commercial paper is short-term by nature and that it is not uncommon, when companies incur substantial short-term debt to finance acquisitions, to see a temporary downgrading of their credit rating on their commercial paper pending refinancing with long-term securities (Transcript p. 111).

When asked by Mr. Bauman if the further projected \$100 million short-term financing required for the planned acquisitions of WKPL, West Virginia Power and the Minnesota division of InterCity Gas would incur further reductions in UtiliCorp's credit ratings, Mr. Green testified there should be no further reduction because the amount involved is small compared to the \$250 million impact of the PNG acquisition and because that transaction has since been fully funded and UtiliCorp has experienced a net positive cash flow over recent months (Transcript p. 112).

In cross-examination by Mr. Scarlett, spokesman for the E.C.A., the Vice-President Finance for UtiliCorp, Mr. Wolf, testified that when the company's audited financial statements for the year 1986 were completed and available, he would be taking them to the rating agencies with a view to having UtiliCorp's credit ratings restored (Transcript p. 2193). In response to Mr. Scarlett's questions on UtiliCorp's ability to finance the remaining planned acquisitions, Mr. Wolf explained that "At the present time UtiliCorp has about \$16 million in short-term investments and we have no short-term debt outstanding at all." He indicated that the approximately \$40 million in

short-term borrowings required to complete the remaining two acquisitions had not yet been undertaken (Transcript p. 2194). The Mellon Bank, however, has agreed to provide the \$60 million (\$80 million Cdn.) funds required for the WKPL acquisition.

During his testimony Dr. Waters, the independent expert witness retained by the Commission, was asked by Mr. Sanderson, Commission Counsel, what would happen to UtiliCorp's plans to sell its common shares and permanently fund the WKPL acquisition, if the market-to-book ratio of the UtiliCorp shares were to drop significantly below the 1.7 to 1 ratio underlying the \$80 million price for WKPL. Dr. Waters indicated that in such a "worst case" situation, UtiliCorp would probably abort the proposed sale of its shares and continue to rely on the line of credit with the Mellon Bank. He pointed out, however, that the interest cost of so doing would be almost entirely offset by the return on equity provided by UtiliCorp's investment in WKPL (Transcript p. 4449). He further anticipated that, under such "worst case" conditions, UtiliCorp would pull back from any further acquisition intentions and concluded that while its capital structure would be weakened thereby, it would not be imperilled and would improve over time (Transcript p. 4450). Dr. Waters also pointed out that, in the formal accounting sense, there would be no impairment of the UtiliCorp book value or the investment by UtiliCorp's shareholders, as long as the market-to-book ratio is something above 1.0 to 1 (Transcript p. 4462).

The Commission believes that, on the evidence before it, there is no reason to doubt UtiliCorp's present ability to finance the remaining planned and as yet outstanding acquisitions including WKPL, and to do so without detriment to its capital structure and financial integrity. Some intervenors, however, expressed serious concerns that UtiliCorp's stated intention to continue its aggressive program of expansion by acquisition would involve financial requirements and risks that would jeopardize the UtiliCorp support required to meet WKPL's own financial needs. They argued that this would have detrimental effects on WKPL.

Much evidence and testimony has been given during the hearing with respect to the importance of maintaining an efficient capital structure as a prerequisite for effective financing at minimum cost, particularly for companies pursuing an aggressive expansion strategy. This was acknowledged by Mr. Baker during his testimony early in the proceedings and subsequently by Dr. Waters, who commented that UtiliCorp management had shown an awareness of that need (Transcript p. 4508).

In recognition of the role of capital structure in meeting WKPL's future financial needs, UtiliCorp has made an absolute commitment to "maintain an efficient capital structure for WKPL and provide equity for that purpose within three months of any request from the B.C.U.C. to that end." In support of WKPL's future financial needs and in recognition that WKPL will not be capable of generating, from its earnings alone, the projected \$92 million in its five-year capital plan (if approved), UtiliCorp has volunteered further absolute commitments; namely, to guarantee WKPL's debt, thereby providing WKPL with UtiliCorp's financing strengths, and to reduce WKPL's dividend payment ratio to UtiliCorp B.C. to 44% of earnings for a five year period, and to retain those dividends in Canada during that period (Appendix B). Counsel for UtiliCorp, Mr. Macintosh, made it clear on the record that both UtiliCorp United Inc. and UtiliCorp B.C. would recognize that these and their other absolute commitments as recorded in Appendix B to this Decision could, if the Commission so required, become conditions to be met by the Applicants (Transcript p. 658).

With respect to the impact of UtiliCorp's guarantee on the cost of borrowed funds to WKPL, Mr. J.A. Macdonald of Dominion Securities advised UtiliCorp's counsel that in his opinion "the minimum reduction in the cost of borrowing would be 25 basis points, or a quarter of a percent" (Transcript p. 2082). It was Dr. Waters' testimony that "if the guarantee has any effect it will be beneficial, but by Canadian standards UtiliCorp and WKPL would probably receive the same credit ratings (Transcript p. 4429). While the opinions of these two experts differ, the Commission is satisfied that, although the



potential benefit of the guarantee may be in doubt, there would be no detrimental effects attributable to this aspect of the UtiliCorp/WKPL financial relationship.

The Commission would note that, in cross-examination by Mr. Bauman, Mr. Baker acknowledged that UtiliCorp's own consolidated five-year capital program involves some \$260 million (Transcript p. 2497) but reiterated UtiliCorp's previous testimony that "the acquisitions program will be made only in light of the ability of the Company to adequately finance and maintain a strong financial position in the marketplace". Mr. Baker further acknowledged that "the check on the Company that keeps you on an even keel financially speaking is an efficient capital structure" (Transcript p. 2499). Those Commissions regulating UtiliCorp would also act to ensure such conditions are maintained.

With respect to WKPL's ability to finance its own ongoing requirements for funds following acquisition by UtiliCorp, the Commission has considered a number of factors upon which WKPL's financial capacity to do so would depend. Supplementing the commitments by UtiliCorp to guarantee WKPL's debt, reduce the dividend payout ratio and retain all dividends for reinvestment in Canada, there would appear to be no major obstacles that would preclude the sale of additional WKPL shares on the open market. UtiliCorp is committed to inject any equity required by the Commission to maintain an efficient capital structure in WKPL, even if UtiliCorp's own financial position were to deteriorate to the extent that it was unable to provide the funds from its own resources. Under such circumstances WKPL could issue shares to the public at large, without necessarily jeopardizing UtiliCorp United's control through UtiliCorp B.C.

The Applicant's chief policy witness, Mr. Green, testified that UtiliCorp's shares are currently traded on the New York Stock Exchange and, upon acquisition of WKPL the shares of UtiliCorp would also be listed on the Toronto Exchange (Transcript p. 54). This did not satisfy some intervenors, who attributed great significance and benefits to local ownership by members of the public in WKPL's service area. In his cross-examination of Dr. Waters, Mr. Gilmour expressed interest in a possible public "float" of WKPL shares to

permit public participation in what he described as "the public interest process". Having previously raised this possibility with the UtiliCorp witness and having received a negative response, he questioned Dr. Waters at length on the position taken by the Ontario Energy Board ("O.E.B.") with respect to such a float in the case of Gulf Oil, filed as Exhibit 120. Dr. Waters, conceding that UtiliCorp B.C. would not have to own 100% of WKPL's shares to protect UtiliCorp's overall interests, testified that although the O.E.B. had a clear preference for a public float of the shares of a utility under its jurisdiction (Transcript p. 4544) they did not require such a float in every case. Mr. Gilmour asked Dr. Waters if in his opinion it was constructive or desirable to maintain a float when, in all matters relating to regulated utilities, the public interest is involved and it is desirable to have public participation and input in the deliberation of (utility) policy (Transcript p. 4541).

In his responses Dr. Waters concluded that, if circumstances permit, it is certainly preferable for the shares of a public utility to be widely held, and that such ownership provides additional financing options. He was unable to conclude, however, that in the present (WKPL) circumstances, there is that urgency or need (Transcript p. 4540). With respect to the public interest process and the question of public participation in policy-making, Dr. Waters concluded that in this (WKPL) situation the public interest aspects are, for the most part, the concern of the regulatory board and that the additional opportunity for public input from shareholders meetings, is probably of secondary importance to direction of the utility in the public interest (Transcript p. 4542).

In its T.M.A. Decision (page 27) the Commission stated that it believed "that it is in the public interest that the shares of a public utility be widely held, notwithstanding current trends and practices. This is not to say that a change in shareholders from a wide to a narrow base automatically precludes an approval under Section 61". The Commission continues to hold that view. In the T.M.A. case the Commission's concerns centered on the narrow shareholder base in combination with the extent of the Applicant's non-utility

activities and experience. Such is not the situation in this case, where WKPL is and would remain the subsidiary of a widely-held parent company.

While the Commission agrees with Mr. Gilmour that a public float of WKPL shares might prove beneficial to the public interest, the Commission also concurs with Dr. Waters' view that there is no evidence suggesting urgency or need at this time. Since difficulties might emerge in the implementation of UtiliCorp's plans for the future financing of WKPL, the Commission requires such an option as a condition for approval of the proposed acquisition.

#### Commission Conclusions

On the basis of the foregoing and the evidence filed by Drexel, Burnham Lambert, Dominion Securities, Shearson Lehman and the bond rating agencies, together with the record of UtiliCorp's actual financing accomplishments since the company was formed in 1984, the Commission concludes there is no basis for assuming that UtiliCorp's proposed ownership of WKPL would jeopardize the ongoing financial integrity of either company. In the Commission's view such an assumption would require, as a prerequisite, the further assumptions that the commitments by UtiliCorp are unlikely to be honoured and impossible to enforce, and that both the U.S. and Canadian economies are likely to suffer significant declines. On the basis of the evidence, the Commission finds that such assumptions have not been supported. Cross-examination by some intervenors with respect to such possibilities understandably involved more speculation than fact. It proved useful to the Commission, however, by ensuring that most if not all pertinent and potentially adverse factors were explored at the hearings.

Towards the end of his testimony Dr. Waters, the only independent financial expert present, was asked if, on the assumption that UtiliCorp's undertakings could be made binding and enforceable, his financial analysis of the proposed acquisition had identified any realistic adverse effects on WKPL or its ratepayers if the proposed acquisition were to proceed. His response to that question was "No, I did not identify any such effects" (Transcript p. 4473).

From a purely financial or economic perspective the infusion of \$80 million of foreign capital into British Columbia would normally be regarded as a benefit to the province, since it relieves sources of capital within the province or other parts of Canada from providing that capital. An equivalent amount from such domestic sources is thereby available for other investment opportunities.

From other than that purely financial perspective, most Canadians would argue that Canadian funding and ownership would be preferable and more in the public interest in this case. The Commission, however, concludes that the decision to selectively permit or bar foreign investment in British Columbia is outside the jurisdiction of the Commission and is clearly a matter of federal government policy. The Commission has therefore focussed on the quality rather than the nationality of the funds.

Accordingly, and in light of all of the testimony and filed evidence with respect to UtiliCorp's financial plans and capabilities, the Commission concludes that there is no significant probability of detrimental effects that can be reasonably attributed to the proposed financing.

## 2. UtiliCorp's Acquisition Strategy

The reasons given by UtiliCorp for selecting WKPL as a desirable acquisition, and for UtiliCorp's overall acquisition strategy, formed an important part of the evidence tested at the hearing. Those reasons were summarized in the filed evidence supporting the Application as follows:

"UtiliCorp has a corporate objective of balancing its services by product, region, climate, and regulatory jurisdiction. The Company has moved toward this objective by acquiring financially sound, well-managed operating utilities. West Kootenay meets these criteria and the acquisition furthers UtiliCorp's objectives by diversifying in all four areas. West Kootenay Power is winter-peaking which should contribute to more levelized earnings and cash flow in winter months. Additionally, as UtiliCorp broadens its base, fluctuations in weather and regulatory factors should have a less significant impact on earnings." (Exhibit 1, Tab A, p. 4)

In his testimony given at the hearing Mr. Green elaborated on that evidence as follows:

"UtiliCorp, for the last couple of years, has had a very specific plan to expand and grow in the electric and gas utility business. This expansion will allow us to spread some of our risks, balance our product, gas and electricity, spread geographically so we're susceptible to different weather patterns, be in different regulatory jurisdictions, and spread our assets out." (Transcript p. 45).

Mr. Green went on to say that the purchase of WKPL would meet each one of those objectives.

In the 1970's, as Missouri Public Service Company, management felt they had experienced high interest rates, high inflation and an unrealistic regulatory climate and wanted to be prepared in case those conditions returned (1985 Annual Report, Exhibit 7). In cross-examination by Mr. Bauman, Mr. Green testified that the policy of reducing risks through investment in utilities as opposed to other industries was formulated by management two years before UtiliCorp was incorporated, after seeing significant signs of deregulation and non-utility investors willing to buy utility properties (Transcript p. 84). Mr. Green emphasized that UtiliCorp's expansion has been confined to the utility industry and that the transactions have been flexible, to react to the seller's needs. He gave as examples the acquisitions of Peoples Natural Gas (an assets purchase) and Kansas Public Service (a stock purchase) (Transcript p. 62). Two other acquisitions under negotiation during the hearing were the U.S. operations of InterCity Gas, a Canadian company (completed in December 1986) and West Virginia Power (closing in February 1987).

In further cross-examination Mr. Bauman questioned UtiliCorp witnesses Green and Baker on their investment decision criteria, as applied in the WKPL decision (Transcript p. 131). In response Mr. Green testified that UtiliCorp first looked at the fundamentals -- "that it was electric, its cost of power, when did it peak, how was it regulated, and some evidence of the calibre of management". Once satisfied with these factors, they reviewed their

own resources, to see what it might cost and whether or not UtiliCorp would be able to pay that cost. They then considered the question of specific pricing, in relationship to what the market was paying for this kind of utility and whether such a price could be justified from the values found. They made certain assumptions about the sale, including that WKPL's management would remain, that utility regulation was comparable to that experienced in the U.S., and that WKPL's tax treatment would be unchanged. Mr. Green stressed that this investment decision by UtiliCorp was made on the fact that WKPL is a well-run utility and that this will be continued. He added that whatever changes the utility business brings them would be coped with, and that even if the current favourable conditions were to change, UtiliCorp was prepared to deal with that and still justify the investment (Transcript p. 136).

In final argument Mr. Scarlett took the position that UtiliCorp's primary activity is not running efficient utilities with earnings tied to productivity, but growth and speculation on existing utility operations. He argued that UtiliCorp's growth was too rapid, with insufficient time for the company to assimilate its takeover targets and that this would increase the risk to WKPL (Transcript p. 4996). In his cross-examination of Dr. Waters, Mr. Scarlett questioned UtiliCorp's future growth possibilities (Transcript p. 4484). Dr. Waters' opinion, however, was that UtiliCorp's strategy was plausible and that such rapid growth does not necessarily lead to instability or high risk, when accomplished by acquiring existing operations in fields of activity in which you already have experience. Dr. Waters further stated that he believed that UtiliCorp had shown an awareness of the need for maintaining a viable capital structure in the circumstances of an aggressive expansion strategy (Transcript p. 4508).

In final argument Mr. Bauman noted that UtiliCorp's acquisition track record is short, and that both UtiliCorp and Dr. Waters agreed that there are new competitive challenges and risks as well as benefits attached to undertaking an

aggressive acquisition policy, during a period of progressive deregulation of natural gas in both the U.S. and Canada. He argued that the Commission should insulate WKPL from these risks by imposing conditions in any approval it might decide to give to the UtiliCorp Application (Transcript p. 4863) and specifically proposed the following three conditions:

- First, that UtiliCorp and UtiliCorp B.C. be required to seek BCUC approval of any future acquisition involving over \$25 million,
- Second, that UtiliCorp B.C. not pledge its shares in WKPL without BCUC approval,
- Third, that UtiliCorp B.C. be deemed to be a public utility for the purposes of Section 61 of the Act.

In cross-examination by Commission Counsel, Mr. Baker testified that UtiliCorp would agree to the second (Transcript p. 3052) and, as filed in Exhibit 66A, has volunteered the third, as possible conditions. UtiliCorp was not prepared, however, to accept the aforementioned first condition and in response to Mr. Bauman's argument, Mr. Macintosh argued that, with three U.S. jurisdictions already having powers to review UtiliCorp's acquisitions, the public interest in this province was unlikely to be served by having this Commission devote its time to reviewing UtiliCorp's acquisitions elsewhere. Dr. Waters was reluctant to say such a condition was warranted unless UtiliCorp had violated some other conditions (Transcript p. 4479). He added that he did not feel that this was an element that was critical to the matter before this Commission (Transcript p. 4480).

In its review and order with respect to UtiliCorp's Application to acquire WKPL (filed as Exhibit 75 in the present proceedings), the Missouri Public Service Commission staff found no evidence that the proposed acquisition would be detrimental to the Missouri ratepayers. It concluded, however, that to prevent such a possibility future acquisitions by UtiliCorp might take more time to review, and put UtiliCorp on notice that any adverse financial impacts resulting from imprudent acquisitions would be borne by the company's

shareholders and not by its ratepayers. Mr. Johnson for Cominco argued that the Commission has never examined the acquisitions or activities of other parent companies and should therefore not single out UtiliCorp for such treatment now (Transcript p. 4906). The Commission concurs with that view.

In his final argument Mr. Anderson provided a useful summary of UtiliCorp's acquisition policy, its possible motivation to build rate base, and the implications for WKPL and its rates in future (Transcript pp. 5094 - 5104). Mr. Anderson was concerned that UtiliCorp would make all possible efforts to maximize its return (by building WKPL's rate base, etc.) before discovering whether the service area could bear the resulting rate increases. His concern was heightened by the fact that UtiliCorp had indicated that "there was room to move" relative to the current low level of rates in comparison to other sources of energy. The Commission agrees with Dr. Waters, however, that what the utility shareholder sees as advantageous investment is not necessarily a detriment to the ratepayer, because "their interests are joined with respect to the efficient and profitable operation of WKPL" (Transcript p. 4512).

#### Commission Conclusions

The expressed concerns and extensive cross-examination by intervenors with respect to the Applicant's acquisition strategy was, in the Commission's view, well presented and very useful in ensuring that no reasonable basis for concern would be overlooked.

In the Commission's view, the history of UtiliCorp's actual performance to date in the implementation of that strategy is too brief to support complete confidence that its apparent successes will necessarily continue in the future. In light of that initial brief but impressive record of success, however, the favourable reaction of the U.S. financial community thereto, UtiliCorp's awareness of the risks involved and of the importance of maintaining an efficient capital structure to which UtiliCorp is prepared to commit, the



UtiliCorp's response to Information Request No. 1 (Exhibit 3) with respect to its bid price for the WKPL shares, indicates that the price was not the result of a formula but was comparable to the prices involved in similar transactions for electric utilities across Canada and the U.S. The multiplier ratio of 1.7 is also comparable to the open market trading multiples (market/book ratios) of other utilities listed in the response. In cross-examination by Mr. Bauman, Mr. Baker concluded that this was an indication that the marketplace had determined that it was a prudent value for WKPL. Mr. Baker further testified that UtiliCorp had just recently placed a one million share offering of its shares at 1.64 times its book value (Transcript p. 144).

Despite this, many people felt the bid was excessive and made reference to a premium of \$20 million, being the difference between a bid of \$60 million reportedly made by the Regional Districts, and UtiliCorp's offer. Reference to that premium is made in the prepared speech used by Mr. G. Abele at meetings organizing the Electric Consumers Association (filed by the ECA as Exhibit 60) as well as by Mr. Scarlett in his submission at the hearing as spokesman for the Kaslo Chamber of Commerce and Kaslo Chapter of the E.C.A. (Transcript p. 792).

When questioned by Mr. Macintosh (Transcript pp. 1943-1944), Mr. Abele acknowledged that his basis for advising potential members of the E.C.A. that the UtiliCorp bid was excessive was that the Canadian bids were significantly lower. He further acknowledged that just because a bid reflects a premium over book value does not mean it is excessive. As noted by the Cominco Panel at Transcript page 3487, the next highest bid had an upper range of \$77.5 million. Mr. G. Cady, Chairman of the Regional District of Central Kootenay, stated that their advisors suggested that the \$60 million figure was a good one to start with and that one of their more respected administrators came up with a figure of \$100 million (Transcript p. 588).

Commission concludes that barring a serious and currently unforeseen economic decline, UtiliCorp's prospects for the continued success of its acquisition strategy are good and should be so recognized.

The Commission further concludes that even if, under adverse economic conditions, UtiliCorp were to be motivated to transfer any adverse impacts on its U.S. operations to the WKPL ratepayers, the careful regulation of WKPL by this Commission would preclude the transfer of any unjustified costs to that utility.

With three U.S. jurisdictions already responsible for reviewing and testing UtiliCorp's acquisition applications in the public interest, using criteria similar to that applied in the B.C. regulatory process, such as efficient capital structure, this Commission concludes that it is neither necessary, appropriate or in the public interest in B.C. to attempt to impose, as a condition for approval proposed by Mr. Bauman, a requirement that UtiliCorp seek the prior approval of this Commission for all future acquisitions involving more than \$25 million. That proposal is accordingly rejected.

The Commission concludes that there is no supportable basis for attributing a net detriment to either WKPL or its customers arising from the acquisition strategy as presented by UtiliCorp.

### 3. The Acquisition Valuation

The purchase price that UtiliCorp will pay to Cominco for the outstanding common shares of WKPL is specified, in Clause 1.2 of the Share Purchase Agreement (Exhibit H of Exhibit 7), as equivalent to 1.7 times the book value of the common equity of WKPL on the Closing Date of the transaction. Based on the WKPL five-year capital plan, the December 31, 1986 book value (consisting of common equity and retained earnings) was estimated to be \$47.8 million [Exhibit 3, Response to Information Request No. 5(a)]. The expected purchase price will therefore amount to 1.7 times \$47.8 million or approximately \$80 million (Canadian).

In cross-examination by Mr. Scarlett, Mr. Baker testified that the magnitude of the indicated acquisition premium would not be significant in terms of UtiliCorp's consolidated balance sheet, and that there would not be a financial impairment of Utilicorp, if in future it should turn out that the premium paid for WKPL was excessive (Transcript p. 2598).

Exhibit 12 illustrates the intended transaction. UtiliCorp will borrow \$60 million (U.S.) short-term at about 7.5%, restructure as permanent equity, and transfer the funds to UtiliCorp B.C. (the Canadian subsidiary of UtiliCorp United) in exchange for preferred shares of that subsidiary. UtiliCorp B.C. will then give the funds to Cominco and receive WKPL shares in return. UtiliCorp B.C. expects to receive dividends from WKPL, but will reduce the payout to 44% of earnings. These dividends will not attract taxes as long as they remain in Canada and, as noted in Exhibit 66A (Appendix B), within the foreseeable future, are to be reinvested in WKPL.

Intervenors were concerned as to why UtiliCorp B.C. made the investment if it really intended to keep the dividends in Canada. In answer to a question at Transcript page 139, Mr. Green noted: "Really our return on investment is going to be the earnings of WKPL, and again it physically doesn't have to flow down to Missouri. It will show that return just when we consolidate our statements. So that's our return on our investment. Now over a time we hope that earnings will increase here. The premium we are paying will be amortized and paid off over time, so that there is a growth in return in the investment over the years, so there is no need to physically have cash to pay on \$60 million. That earnings gives us the benefit we need to continue." Mr. Baker added: "It's in essence as though you make an initial investment and that investment is such that it has an adequate return and you keep plowing back all of that return, or dividends, if you will, to increase your investment."

The premium mentioned by Mr. Green is the difference between the historical cost book value upon which UtiliCorp will be allowed to earn a return and the current market value of WKPL and is more generally known as an acquisition premium. The premium will not actually be recorded on WKPL's books — only on UtiliCorp B.C. books as a component of its investment in WKPL, to be amortized over 35 years.

A major issue in the hearing was whether UtiliCorp would attempt to recover the acquisition premium through WKPL rates. UtiliCorp has stated in its evidence [Exhibit 3, Response to Information Request No. 5(b)] that it will not attempt to recover on the premium and has included this as an absolute commitment in Exhibit 66A. One rationale for the premium paid, and the statement that UtiliCorp would never attempt to earn on it, was given by Mr. Baker at Transcript page 156. "If we should sell our common stock at 1.7 times its book value it would be the same as though we had purchased West Kootenay at book value and sold our common stock at book value." Mr. Baker then agreed that, to the extent that the contribution of West Kootenay's earnings to the consolidated earnings of UtiliCorp have the effect of increasing the earnings per share and thereby the stock market value of those shares, the shareholders are compensated for this.

Dr. Waters' opinion at Transcript pages 4420-4424 was that the transaction will have no impact on the WKPL rate base and that, from a financial and accounting point of view, there is no reason to recover the premium from the ratepayers of WKPL.

It should be noted that UtiliCorp paid a \$30 million premium over book value when it acquired Peoples Natural Gas and gave assurances to the regulatory commissions involved that it would not attempt to recover the premium in the rates. The Decisions of the various commissions [Exhibit 3, Response 3(a)] approved that purchase without making those assurances a condition of their approvals, and agreed that the proper treatment of the premium was not an issue for the acquisition proceedings and should be deferred to the first

subsequent rate case. Accordingly, when UtiliCorp later filed for rate increases in Iowa and Minnesota, it again did not ask for recovery of the premium.

During cross-examination by Ms. Irvine at Transcript page 2174, Mr. Baker acknowledged that it is fairly well established that it is not considered appropriate to recover a premium over book value — only the original cost of a property when it's first devoted to public service.

The Commission would emphasize that regulatory boards in general in both Canada and the U.S.A., and this Commission in particular, do not allow companies to include such premiums in rate base or cost of service.

#### Commission Conclusions

Unless and until actual events suggest otherwise, the Commission accepts the Applicant's assurances and commitment that UtiliCorp will not seek in any way to recover the acquisition premium through the WKPL rates, and is prepared to make this a condition for approval. While recognizing its lack of direct jurisdiction or power of enforcement over UtiliCorp, the Commission concludes that, with its regulatory powers over WKPL undiminished under UtiliCorp ownership, the Commission's powers of determining the rate of return on equity to the owners of WKPL is sufficient to ensure compliance with such a commitment, in the interests of both UtiliCorp's shareholders and the customers of WKPL.

The Commission accordingly concludes that the indicated acquisition premium would not in any significant way lead to detrimental effects on WKPL or its customers.

#### 4. Management Control of WKPL

Although the reasons given by intervenors for their opposition to approval of the proposed sale of WKPL differed, most intervenors were particularly concerned that control of their electric utility would leave the service area. It was this that prompted the cities of Trail and Castlegar to urge the Commission to hold hearings on the issue when they first heard of the agreement. In its brief to the Commission (filed as Exhibit 24) the City of Castlegar clearly opposed the sale while Trail simply withheld its support (Transcript p. 840). Both cities recognize the assurances and commitments made by WKPL and UtiliCorp in response to these concerns, and requested that the Commission include them as commitments or conditions for approval in its Order, if the decision was to approve the Application. Other intervenors discounted the usefulness of the commitments either because they felt changing circumstances would negate them or because they doubted the Commission's ability to enforce them.

With respect to control of WKPL, as recorded in Appendix B to this Decision (Exhibit 66A), UtiliCorp has made an absolute commitment to enlarge the present Board of Directors from seven to nine, comprising a majority of five independent local residents, two employees of WKPL and two representatives from UtiliCorp. The present three local directors have agreed to stay on (Transcript p. 51). Mr. Scarlett argued that, notwithstanding this commitment, the ultimate decision-making powers would lie in Missouri and that the five local directors would be quickly replaced if they attempted to act for the interests of the community against those of UtiliCorp (Transcript p. 789). When that possibility was put to him, Mr. Franklin, Executive Vice-President at Missouri Public Service, responded that such behaviour would be extremely damaging to UtiliCorp because the company has to rely on the goodwill of its customers for its well-being and success (Transcript p. 2203).

In cross-examination by Mr. Gathercole, Mr. Drennan, President and Chief Executive Officer of WKPL, testified that there had not been a problem operating with the present WKPL Board, comprising three outsiders, two Cominco and two WKPL employees. As indicated in Exhibit 9, WKPL anticipated that UtiliCorp would have a greater understanding of and sensitivity to problems unique to utilities because of its utility experience in the United States.

UtiliCorp takes the position that control is focussed in the operating policy and decision-making function and that it does not intend to manage WKPL or become involved in day-to-day decision-making (Exhibit 3, Question 6a). The Applicant has also made an absolute commitment to keep WKPL's head office and management function in Trail for 10 years and to maintain them within the service area for as long as UtiliCorp owns the utility (Exhibit 66A).

In cross-examination by Mr. Bauman, Mr. Green testified that to keep overhead down, UtiliCorp's head office employs only 25 people full-time and that he considered the role of that staff to be one of consulting and monitoring (Transcript p. 63). In later cross-examination Mr. Green acknowledged that his belief in the adequacy of his existing head office staff was based on the premise that UtiliCorp will not have to spend a significant amount of time dealing with WKPL problems — the remedy would always be with WKPL management (Transcript p. 436).

UtiliCorp's declared objective is to retain WKPL's present management personnel and to give them a large degree of autonomy. In response to a question by Mrs. Slack, Mr. Baker defined the term "objective" as, in his view, a commitment without any specific term or duration because the future circumstances might require a change (Transcript p. 2166).

Mr. Green explained that UtiliCorp's input would come from having two people on the WKPL board on major policy decisions, an annual budget review, and the review of significant projects where their expertise was needed (Transcript p. 51). He further testified that UtiliCorp had always assumed WKPL management would remain.

It was Dr. Waters' opinion that WKPL's personnel would be independent, although undoubtedly vetted by UtiliCorp as to their competence (Transcript p. 4447). He was not concerned by UtiliCorp's lack of hydro-electric experience, since they would essentially be overseeing the activities of WKPL's operating management at a strategic and policy level. Dr. Waters agreed with Mr. Scarlett that the shareholders and management of one company could conceivably identify a course of action for another (subsidiary) company that might be different from that identified by the shareholders and management of that company (Transcript p. 4511). He stated, however, that in this case the interests of ratepayers of WKPL and the shareholders of UtiliCorp are joined with respect to the efficient and profitable operation of WKPL and are unlikely to diverge meaningfully. He further stated that, to the extent that their interests might diverge, it would probably be on strategy for future expansion, which is an issue typically dealt with by a utilities commission.

Mr. Gathercole raised the matter of the distance of UtiliCorp's head office from WKPL's service area as a potential disadvantage. Mr. Drennan noted that he has been reporting for many years to the head office of Cominco, 400 miles away in Vancouver, and that electronic mail and the telephone should suffice to handle the expected infrequent contacts with UtiliCorp (Transcript p. 1189). Mr. Green agreed that would be the case (Transcript p. 281).

WKPL's status as a subsidiary rather than a division also is an important factor in keeping control in local hands. WKPL would incur none of the overhead or general expenses of UtiliCorp, it would maintain its own records, it would be in a position to issue its own debt and equity, it would remain incorporated under the laws of B.C., and it remains a public utility subject to regulation by the B.C. Utilities Commission and other regulatory agencies. It was Dr. Waters' evidence that the maintenance of WKPL as a separate corporation and the appropriate undertakings by UtiliCorp should insulate WKPL from any changes in UtiliCorp's business risks (Transcript p. 4428).



During cross-examination Mr. French, Office of Public Counsel for Missouri, acknowledged that he did not know of any jurisdiction or powers possessed by the Missouri Public Service Commission which would cause it to put pressure on UtiliCorp to affect its operations in B.C., in an effort to somehow protect the interests of its Missouri customers (Transcript p. 4258).

#### Commission Conclusions

The Commission is satisfied that the Applicant's commitments with respect to the planned makeup of the WKPL Board of Directors, the retention of the WKPL head office in Trail and its declared objectives of retaining and providing maximum autonomy for WKPL management, would permit adequate local input and control to ensure that the utility continues to operate in the interest of the utility's customers and the Kootenay and South Okanagan regions at large. The Commission's direct jurisdiction and powers of enforcement with respect to WKPL will remain undiminished.

The Commission accordingly concludes that there is unlikely to be any reduction in WKPL's management control and autonomy from that which has prevailed under Cominco ownership, that can be reasonably attributed to the proposed sale of the utility. UtiliCorp's interest and activity being entirely in the utility business as distinct from mining and smelting or other non-utility business, the proposed new ownership could, in the Commission's view, lead to a greater degree of understanding and appreciation of utility needs and problems than that experienced during the Cominco regime.

#### 5. The Cominco/WKPL Relationship and Ongoing Operating Agreements

As indicated heretofore in the Background section to this Decision, the relationship between Cominco and WKPL has been of long-standing and fundamental importance to the growth and development of both companies and the economy of the region. Cominco has been able to depend upon WKPL

initially as the supplier of the low-cost hydro-electric energy essential to its smelting operations, and subsequently for the management and operation of Cominco's much larger hydro-electric facilities involved in the Waneta and Brilliant plants. For its part WKPL has been able to depend upon Cominco for an important part of its energy requirements in excess of its own generating capacity, in order to meet the needs of its customers, and at a significant cost advantage over power obtained from B.C. Hydro.

The intervenors as well as the Commission itself recognize the public importance to both Cominco and WKPL of maintaining their ongoing operating arrangements and understandings on a formal basis, following any proposed sale of WKPL. In cross-examination by Mr. Bauman, Mr. Baker testified that "any of the agreements and understandings that have been in existence between WKPL and Cominco will be reduced to contract language" (Transcript p. 238). Mr. Bauman then requested that a list of those arrangements and understandings be provided by either Cominco or WKPL (Transcript p. 238). On November 12, 1986 Counsel for WKPL filed that list as Exhibit 39 (Transcript p. 989) a copy of which is attached to this Decision as Exhibit E.

In its Decision of May 31, 1983 the Commission directed that all future agreements between the utility and Cominco be submitted to the Commission for approval. Pursuant to that direction, on January 9, 1987 WKPL filed draft copies of three operating agreements that were still in the process of negotiation with Cominco at that time. These comprised the Interconnection Agreement, the Facilities Sharing Agreement and the Management Agreement. All were dated January 1, 1987 and filed at the hearing as Exhibits 81, 82 and 83 respectively. These agreements were designed to replace and cover the same operating arrangements contained in the "Omnibus" Agreement, which had been in place between Cominco and the utility since January 1, 1975.

It is important to note that these three new agreements, together with the previously approved Sale of Surplus Power Agreement, had been in place or under negotiation between the companies for some time and were in no way initiated or affected by Cominco's subsequent decision to sell the utility. Following conclusion of the hearings in Kelowna, WKPL filed with the Commission for review and approval, duly executed copies of the aforementioned three operating agreements. A copy of the letter of February 11, 1987 covering that filing is attached to this Decision as Appendix D.

In cross-examination of Mr. Deane, Mr. Bauman questioned the duration or term of the Facilities Sharing Agreement (Transcript p. 3577). Cominco's Counsel Mr. Johnson explained that this agreement does not contain a specific termination date and continues to run as long as the parties continue to nominate the use of the share facilities. He further explained that the only change in the termination provision in the Facilities Sharing Agreement from that in the Omnibus Agreement is an increase in the notice requirement from six months to three years. The Commission notes that this change provides a significant improvement in the opportunity for successful negotiation or, if necessary, provision of alternative facilities in the event of notice of termination by either party.

Another ongoing agreement affecting the relationship between Cominco and WKPL is the Sale of Surplus Power Agreement. That Agreement (filed as Exhibit 15 in these proceedings) provides WKPL with access to Cominco's surplus power supply until September 30, 2005. By letter of May 30, 1986 Cominco offered to firm-up the amount of power available to WKPL under that agreement on a three-year rolling nomination basis. That offer was made as a result of issues arising during the preceding Commission hearing dealing with WKPL's long-term purchases of power from B.C. Hydro. During the UtiliCorp proceedings, however, and as a result of the Commission's October 1986 Decision with respect to the terms and conditions pertaining to WKPL's purchases from B.C. Hydro, Cominco increased its offer to firm-up WKPL's

access to its much cheaper surplus power supply, from a three-year to the five-year nominating basis (Transcript p. 3941).

During cross-examination by Commission Counsel, Mr. Deane volunteered that Cominco was prepared to remove from the Sale of Surplus Power Agreement an important restriction affecting WKPL's access to Cominco surplus interruptible power (Transcript p. 3956). He explained that under the then prevailing arrangement the interruptible energy sold to WKPL must be for immediate resale by WKPL within its service area and that by removing that requirement WKPL will be able to store energy or equichange it for later use in serving its customers. The letter dated March 18, 1987 from Cominco to WKPL confirming the foregoing important changes, is attached to this Decision as Appendix F.

During the proceedings it was suggested that the proposed change in ownership of WKPL would inevitably introduce a "profound change" in the Commission's ability to influence or control the important ongoing relationship between Cominco and WKPL. This argument, which pertained to the Facilities Sharing Agreement, suggested that if Cominco in its own interests gave notice of termination and reclaimed its portion of the integrated facilities, WKPL would be compelled to invest in the replacement facilities required to maintain service to its customers and that this would inevitably lead to higher rates. Arguably, under continued Cominco ownership the Commission could influence such a result by refusing to recognize such facilities in WKPL's rate base. The Commission's power to exert such influence would clearly be lost with any change in ownership of the utility.

The Commission believes that in such circumstances established regulatory practices and tests must be applied to determine the appropriate makeup of rate base. Accordingly, in the Commission's view it would be improper to exclude "used and useful" facilities from rate base in order to achieve a measure of control over the owner of the utility which is otherwise unavailable.

Mr. Deane, Energy Manager of Trail Metals for Cominco, argued that under Cominco's Exemption Order (Appendix I) it is required to have agreements with WKPL for the common use of facilities and in effect to operate those facilities as an integrated system. He further suggested that if the Facilities Sharing Agreement were to be terminated abruptly and not replaced with an equivalent, Cominco would be breaching the Exemption Order and would become subject to regulation as a utility under Part 3 of the Act. Commission Counsel suggested that such a drastic outcome could be avoided by adding Section 32 to the three Sections 45, 51 and 53 of the Act already applicable to Cominco in the Exemption Order. He noted that this would give the Commission the power to arbitrate and if necessary resolve any failure by Cominco and WKPL to negotiate the future ownership of and access to the integrated facilities involved (Transcript pp. 3974 - 77).

#### Commission Conclusions

The Commission concludes that there is a significant public interest inherent in the successful renegotiation of the Shared Facilities Agreement in the event of termination by either party in the future. Exercise of the three-year termination option by Cominco could indeed compel WKPL to invest in the facilities necessary to replace those reclaimed by Cominco for its own purposes. This in turn could impose upon the WKPL ratepayers a significant increase in rates. At the time Cominco's existing Exemption Order was proclaimed, the sale of WKPL by Cominco was not contemplated and no provisions for that eventuality are therefore contained in that Order.

As noted on page 2 of this Decision the supply of energy by Cominco to WKPL is governed until the year 2005 by the terms of the Sale of Surplus Power Service and Exemption Order. The Commission notes, however, that ever since the Exemption Order was issued, the Commission has not had jurisdiction over the actions of Cominco with respect to those facilities which they share with WKPL. As a practical matter this has not proven to be a problem,

presumably because of the community of interest between Cominco and WKPL in the most effective use of those facilities. The Commission's concern is that compatible joint use might emerge as a problem once Cominco ceases to have a vested interest in the financial welfare of WKPL and its customers.

Accordingly, in order to provide the means to introduce additional safeguards for the WKPL customers and the public at large in the event the parties are unable to agree, the Commission will therefore recommend to the Minister of Energy, Mines and Petroleum Resources that the Exemption Order be amended to include Section 32 of the Act. A copy of Section 32 is attached to this Decision as Appendix G.

In summary, the Commission recognizes that all of the foregoing agreements have been freely negotiated between the parties and, in one form or another, have been in place and effectively governing the ongoing relationship between Cominco and the utility. As noted heretofore, they were undertaken well before the decision by Cominco to sell and the subsequent Application by UtiliCorp.

With the exception of the indicated problem with respect to the Facilities Sharing Agreement, the Commission concludes that the existing agreements and understandings between Cominco and WKPL would not be significantly altered or adversely affected by the proposed change in ownership of the utility. Indeed, in the absence of any evidence of concerns by the Applicant in that regard, and in the light of UtiliCorp's commitments to retain and give maximum authority to the management of WKPL, the Commission concludes that existing intercorporate dependencies and relationships would continue as in the past.

Accordingly, in the Commission's judgement no detrimental effects on either the utility, its customers or in the larger sense on the public interest, are likely to arise from the ongoing agreements and relationships as a result of the proposed change in ownership. The recommended addition of Section 32 of the

Act to the existing Cominco Exemption Order would provide reasonable means to ensure that this proves to be so. The Commission concludes that its jurisdiction under the Act with respect to utility operating agreements, is otherwise sufficient to protect the public interest, regardless of ownership.

With respect to the required approval of the three operating Agreements, the Commission will give them careful consideration on their own merits and outside the confines of this Decision, as part of its normal responsibilities under the Act.

#### 6. WKPL Rates and Intercompany Charges

A major and widely-shared concern of the intervenors and the public at large was the possible impact of the WKPL sale on future customer rates. The Share Purchase Agreement between UtiliCorp and Cominco includes a covenant that the financing of the purchase price by UtiliCorp will not result in any increase in rates to the customers of WKPL. In his cross-examination of Mr. Green and Mr. Baker (Panel I), however, Mr. Bauman pointed out that this and the other covenants provided in that agreement are covenants between two private corporations, neither of which is subject to the jurisdiction of this Commission. Mr. Green concurred in Mr. Bauman's conclusion that the only party that could sue UtiliCorp in the event UtiliCorp failed to live up to them, would be Cominco itself. In response, however, Mr. Green testified that UtiliCorp was prepared to give the Commission the same assurances and that UtiliCorp was prepared to live by them (Transcript p. 213).

In subsequent cross-examination by Commission Counsel, these and other covenants were expanded and refined and were categorized by Counsel as either absolute commitments or expressions of specific corporate objectives. The resulting list was accepted by UtiliCorp and with subsequent revisions was filed by the Applicant as Exhibit 66A.

In the Application (Exhibit 1, p. 16) UtiliCorp states "In the longer run we believe that customer rates would be lower as a result of this sale." In cross-examination by Mr. Gathercole, Mr. Baker explained that this did not mean that the rates would decline from present levels, but that WKPL's access to lower financing costs and to UtiliCorp's expertise could keep any required rate increases lower than they might otherwise be under continued ownership by Cominco (Transcript p. 264). As became apparent from subsequent cross-examination by Commission Counsel, significant load growth and implementation of WKPL's 5-year capital plan (if approved) involving expenditures of \$92 million, would inevitably lead to rate increases no matter who owns the utility (Transcript p. 504).

A number of intervenors were concerned that UtiliCorp might attempt to recover the acquisition premium by inflating intercompany charges by UtiliCorp to WKPL. In his submission, Mr. G. Clark, spokesman for the provincial N.D.P. Caucus on energy matters, described this as a potentially convenient way to increase UtiliCorp's return from WKPL (Transcript p. 3298). He believes that such charges would be complex and difficult if not impossible to verify. Mr. Clark concluded that, at very least, the costs of regulation to prevent unreasonable charges would increase. In cross-examination by Mr. Macintosh, however, he acknowledged that since it is WKPL that is regulated, the difficulties would exist with respect to any unregulated owner. He maintained, however, his belief that this was one reason that private utilities were more difficult than public utilities to regulate. Mr. Clark acknowledged that he had no specific knowledge as to whether it is in fact easier for the Commission to regulate public utilities and that he had "made an inference based on extensive academic literature." (Transcript p. 4067).

UtiliCorp has repeatedly testified that any such charges would be for specific services rendered and that no overhead costs would be allocated to WKPL, since it is and will continue to be a separate corporate entity and not a division of UtiliCorp (Transcript pp. 223-224). UtiliCorp is also aware that any



attempt to recover the premium by such methods would be fraudulent and that all such charges are subject to review by this Commission. With regard to the difficulty or complexity of such reviews, pursuant to Section 56 of the Act and to Commission Order G-28-80, all regulated utilities in B.C. are required to maintain their records in conformity with this Commission's Uniform System of Accounts, thereby facilitating the review process.

In response to an information request from the Commission staff (Exhibit 9, question 2) WKPL concluded that access to UtiliCorp's expertise and experience would provide benefits. Mr. Drennan testified that WKPL will not undertake to pay for services by UtiliCorp until it is apparent that there is a benefit to be gained (Transcript p. 1339). Moreover, in cross-examination by Commission Counsel, Mr. Baker committed UtiliCorp to assist WKPL in the preparation of a document which, if the acquisition of WKPL is approved, will be filed with the Commission, setting out the principles on which intercorporate charges will be based (Transcript p. 511). Moreover, Mr. Baker later confirmed that UtiliCorp would not charge WKPL for services unless they had been requested on a consulting basis by WKPL. Such charges would comprise actual UtiliCorp employee wages and fringe benefits without either administration or facilities fees (Transcript p. 2106).

#### Commission Conclusions

As indicated in its conclusions with respect to UtiliCorp's valuation of the WKPL acquisition and treatment of the indicated acquisition premium, the Commission accepts the Applicant's commitment with respect to recovery of that premium as an appropriate basis for a condition of approval.

With respect to intercorporate charges, the Commission will continue to exercise due diligence in its review of all such charges and will not anticipate or accept any lack of cooperation from UtiliCorp in that respect. Moreover,

the Commission does not foresee any significant increase in regulatory cost attributable to such reviews, or a change in ownership from Cominco to UtiliCorp.

Accordingly, the Commission concludes that the acquisition of WKPL by UtiliCorp will not adversely affect the utility's rates or the level of intercorporate charges currently experienced under Cominco ownership and that there will be no detrimental effects on the utility or its customers attributable to either customer rates or intercorporate charges.

#### 7. WKPL Potential for Exports

WKPL is currently a net purchaser of power and has no surplus power for export. A number of intervenors speculated, however, that with the additional generation possibilities mentioned during the hearing, surplus power could and would be exported to the U.S. (Transcript p. 1265). There was some suggestion that this would not be in the public interest and indeed would be detrimental to Canadian interests. Mr. Scarlett concluded that UtiliCorp's testimony that as long as WKPL was short of power it would not apply to export electricity constituted a contradiction. This was because underutilization of generation facilities costs money, and sensible management would dictate a plan to transfer power seasonally. He argued that UtiliCorp would inevitably undertake power trading arrangements with Bonneville Power Authority ("BPA"), and use WKPL's excess summer power to its own advantage (Transcript p. 795).

In his testimony, however, Mr. Drennan stressed that additional generation does not necessarily make surplus power available for export, as it depends on the timing of construction and whether the additional power could be fully utilized in Canada (Transcript p. 1265). Mr. Green testified that any option to produce surplus power would be undertaken only if the benefits could flow back to the customers of WKPL (Transcript p. 50). Under cross-examination by Commission Counsel he further testified that, even under circumstances

where there appeared to be a very healthy export market, UtiliCorp would not require WKPL to build generating plant specifically for export needs (Transcript p. 447). The UtiliCorp commitment not to divert power from WKPL for UtiliCorp's own use for any export or non-utility purpose was later filed in Exhibit 66A.

Mr. Green suggested that one option might be to have the generating capacity required to meet WKPL's expanding domestic market constructed by some independent company and the power sold to WKPL by long-term contract. He observed that such a situation would mean WKPL would not have to raise the millions of dollars it takes to build the plant and any excess capacity within that unit would not cost the customers money. He acknowledged, however, that under this option WKPL's customers would not get the benefits of any sales of the surplus power (Transcript pp. 450-452), and that any such separate generation company would be a public utility with its operations and rates under the control of the Commission (Transcript pp. 499, 643).

As noted by Mr. Drennan exports of electricity are regulated by both the Federal and Provincial governments and WKPL has no export licenses other than very minor ones needed to supply U.S. Customs houses at the border. He agreed that nothing would change as a result of the proposed sale of WKPL (Transcript p. 1144).

#### Commission Conclusions

The Commission concludes that the control of exports by both levels of government and in particular the fact that export licenses are not issued unless or until domestic Canadian requirements are covered, is sufficient to protect Canadian interests. Moreover, any expansions of WKPL's generating capacity, or the creation of an independent company with such capacity, will continue to require the scrutiny, approval and certificate of public convenience and necessity from this Commission, regardless of who owns the utility.

Accordingly, the Commission finds that no detrimental effects on the utility, its customers or on the public interest at large can be attributed to any future WKPL potential for power exports which, if properly timed and executed, could in fact prove to be a benefit and very much in the public interest.

#### 8. WKPL's Water Licenses

The issue of WKPL's water licenses and the fears of some intervenors and many people attending the hearings that the proposed sale of the utility to foreign owners constituted a threat to Canadian sovereignty of a major resource, were the subject of an extensive review and examination at these proceedings.

In cross-examination by Mr. Woodward, Mr. Baker testified that UtiliCorp had assumed that, because this was a stock purchase rather than an asset purchase, the acquisition would not change the likelihood of WKPL water licenses being renewed (Transcript p. 340). Mr. Macintosh, in response to a question by Mr. Woodward later explained that during the contract negotiations, UtiliCorp's solicitor had spoken with the Water Comptroller, reviewed the relevant legislation and correspondence and was satisfied that the sale had no impact on those licenses (Transcript p. 388).

Mr. R. Brisco, MP in his submission (Exhibit 22), stressed that utilities are controlled and audited by the Commission, regardless of ownership, and that the water levels in Kootenay Lake and the River will not be controlled by U.S. interests. He stated that the WKPL license allows for utilizing the full capacity of the generating facilities and that these do not operate at the capacity 24 hours/day. He also noted that the Kootenay Lake and River are Canada-U.S. Boundary waters under control of the International Kootenay Lake Board of Control and that the utilities must report to the Board. He stated that the ultimate authority is the International Joint Commission and the IJC is familiar with the issues affecting Kootenay West (Transcript p. 682).

Early in the proceedings UtiliCorp recognized the potential for public concern and made an absolute commitment to not play a role in changing the manner of determining water levels in the Kootenay Lake systems or in the River systems (Exhibit 66A). Nevertheless, much time was spent in the hearing on publicly-expressed concern that the sale would transfer control over B.C. water resources to U.S. interests. Mr. Shannon, on behalf of the B.C. Wildlife Federation proved to be very well informed not only with respect to the water licenses, but also the provisions of the Columbia River Treaty. Although especially concerned, he agreed with Mr. Johnson that "... the licenses have value to UtiliCorp only because they entitle WKPL to generate electricity but they can't do anything else with them." (Transcript p. 1388). The Commission notes that the penalty for failure to comply with the licenses can be revocation of those licenses. Revocation would leave UtiliCorp with no access for the generation of power (Transcript p. 1390).

In a letter written on behalf of the Commission, Mr. Sanderson addressed certain questions to the Water Rights Branch. The reply from the Water Comptroller (Exhibit 69) states that Mr. Shannon's concern about new owners creating artificially low water levels is not warranted, due to the International Joint Commission and Columbia River Treaty ("CRT") Agreements and operation by B.C. Hydro under the Canal Plant Agreement (Transcript p. 3024).

In his testimony and subsequent cross-examination Mr. Drennan laid out the following facts:

- (i) WKPL holds water licenses for the operation of its hydro plants under the control of the Water Comptroller. They will remain in WKPL hands and under regulation (Transcript p. 1143).
- (ii) WKPL holds a 1938 IJC order for the operation and control of six feet of storage in Kootenay Lake because the Corra Linn dam affects U.S. water levels. The order sets maximum flood levels only (Transcript p. 1175).

- (iii) B.C. Hydro has responsibility for the Duncan and Libby dams which are upstream of Kootenay Lake and discharge into the Lake and river. They operate the gates in consultation and agreement with the U.S. entities for the release of Columbia River storage. There would be no change if the ownership of WKPL changes (Transcript p. 1176).
- (iv) The Canal Plant Agreement of 1982, like the Sale of Surplus Power Agreement does not expire or become subject to renegotiation until 2005. This Agreement integrates the WKPL and Cominco facilities with the B.C. Hydro grid, partly because of water regulation required by the Columbia River 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 WKPL and Cominco is no longer relative to the production of their respective power plants. Agreements determine their monthly capacity and energy entitlements. WKPL personnel control the Corra Linn dam from the South Slokan centre but essentially B.C. Hydro determines the actual generation at the plants (Transcript p. 1180).

By letter of January 14, 1987 the Commission requested B.C. Hydro's advice on the impact, if any, of the proposed sale of WKPL on the extensive ongoing business dealings between the two utilities. By letter of the same date, B.C. Hydro responded in part "It is therefore B.C. Hydro's view that its contractual and operating concerns and relationships, including electricity exports, with WKPL will be unaltered by the change in ownership". A copy of that letter was filed at the hearings as Exhibit 70 and is attached to this Decision as Appendix H.

The Columbia River Treaty gives Canada, after 20 years, the right to divert some water from the Kootenay River near Canal Flats to the Columbia River headwaters. This would reduce generation on the river between Nelson and Castlegar but WKPL's water licenses predate the CRT so the Canal Plant Agreement has been taking the Duncan, Libby and CRT effects out of the flows. The historical rights to flow and Kootenay Lake storage remain and the entitlement under the Canal Plant Agreement would not be affected by the diversion (Transcript p. 1257).

In their evidence and subsequent cross-examination the Cominco Panel put on the record their understanding of the water licenses arrangements. Cominco, as does WKPL, holds two types of water licenses; one for the production of power at Brilliant and Waneta and the other for the storage of water in Kootenay Lake. The Comptroller of Water Rights in the Ministry of Environment issues and administers all water licenses, which are issued for specific purposes such as irrigation, domestic use, mining, power generation and water storage (Transcript p. 3336). The licenses are non-consumptive and the water, after flowing out of the Kootenay Lake and down the Kootenay River, joins the Columbia River near Castlegar and enters the U.S. about 25 miles south (Transcript p. 3337).

The storage license provides for compliance with the IJC Order of November 11, 1938 (Exhibit 48) and amendments, covering Kootenay Lake water levels. The Columbia River Treaty optimizes generation and flood control on the Columbia to an extent that would have been impossible if Canada and the U.S. had developed their own portions of the River independently. WKPL and Cominco dams are on the Kootenay River and are not directly governed by the Treaty but the Treaty dams upstream do affect and actually improve the water flows (Transcript p. 3339).

Mr. Deane testified that WKPL will continue to hold its existing licenses so UtiliCorp would only indirectly acquire the rights. He emphasized, moreover, that those licenses are strictly limited to power production and storage and cannot divert or use the water in any other way. Mr. Deane concluded that, in a practical sense, while the Canal Plant Agreement remains in place, neither WKPL nor UtiliCorp can directly exercise their water rights (Transcript p. 3340).

The Columbia River Treaty was negotiated in 1964 for a term of 60 years although the flood control provisions continue. A portion of the storage created in Canada is used to create power in the U.S. facilities which is then

split 50/50 between Canada and the U.S. The benefits over a 30-year period were calculated and then Canada sold its portion to the U.S. (Transcript p. 3342). The first project completed under the Treaty was the Duncan Dam in 1968 so renegotiation by the Canadian government will start in 1998. WKPL will not have a role in those negotiations as they have no Treaty facilities (Transcript p. 3344).

#### Commission Conclusions

The Commission concludes that the proposed sale and foreign ownership of WKPL does not constitute a threat to Canadian autonomy over our water resources. The fact is that WKPL's water licenses will remain the exclusive property of the utility (a British Columbia company), applicable only to the use of Canadian water in Canadian generating plants, and limited to the production of electricity and storage of water in Canada.

Barring any regulatory changes at either the federal or provincial level, the Commission, on the evidence, further concludes that the ongoing functions of the provincial Water Comptroller, the International Joint Commission and the provisions of the Columbia River Treaty and Canal Plant Agreement, are such as to preclude any significant detrimental effects on either WKPL or its customers attributable to the proposed change in ownership.

#### 9. WKPL Financial and Capital Plans

One of the criteria applied in the aforementioned T.M.A. Decision was that the structural integrity of the utility's assets must be maintained in such a manner as to not impair the utility's service to its customers. UtiliCorp stated in its Application that it would take all reasonable steps to ensure this and, in addition, that it would cause WKPL to improve existing assets or acquire such new assets as may be appropriate to maintain or enhance service to customers. To aid the Commission in reviewing this issue, WKPL filed its load forecast and five-year plans as Exhibit 11.



Some concern was expressed during the hearing regarding a possible move by UtiliCorp to impose thermal generating plants on the West Kootenay environment. In his opening testimony Mr. Green suggested that one of WKPL's future generating options might be gas turbines (Transcript p. 55). In reaction, Mr. Killough, a resident of Castlegar speaking on his own behalf, observed in his submission that although in periods of peak demand WKPL has to purchase additional power from B.C. Hydro, it was ridiculous to consider coal or gas-fired plants, with their inevitable atmospheric pollution, when surrounded by great surpluses of hydro-electric power (Transcript p. 772). Mr. Scarlett agreed with that position (Transcript p. 794) but was also concerned by other possibilities, including power trading with other utilities or the construction of more dams and the flooding of more valleys. At the same time, however, he questioned UtiliCorp's willingness to guarantee abundant power for the Kootenay area (Transcript p. 791).

In addition to the projects included in its five-year capital plan, WKPL is actually engaged in economic studies on generation and other resource alternatives for future sources of power supply. In cross-examination by Mr. Miles, representing the Sierra Club of Western Canada, Mr. Drennan acknowledged that there is a large list of options for meeting WKPL's future power requirements, including gas turbine, additional generation at Brilliant/Waneta, improved efficiency of existing machinery, load management and peak shaving (Transcript p. 1262).

In response to Commission Information Request No. 2(a) UtiliCorp noted that WKPL's near-term plans involve purchasing as much power as possible from Cominco and B.C. Hydro. They added that, depending on the outcome of the WKPL resource study, if such options as gas turbines for peaking power or purchase of capacity and energy from other utilities such as TransAlta or BPA proved to be feasible, UtiliCorp's experience in both gas turbines and contract negotiation could be useful. Mr. Drennan's testimony supports that opinion.

Under cross-examination by Mr. Scarlett, UtiliCorp acknowledged it had no hydro-electric generation expertise but was strong in coal and gas-fired technology. To Mr. Scarlett's concern that UtiliCorp might bring in an inappropriate source of power simply because they were familiar with it, Mr. Franklin gave assurances that UtiliCorp would not be involved in the day-to-day operation of WKPL. He confirmed that WKPL management would be given total consideration over what alternative future resources to develop and that UtiliCorp would lend its expertise if required but would not bias the generation study report (Transcript p. 2186).

When questioned by Mr. Gathercole Mr. Franklin indicated that UtiliCorp had already made preliminary and purely exploratory contact with BPA and TransAlta to see if energy was available (Transcript p. 2457). Mr. Franklin later indicated that, while additional interconnection with BPA is not being considered in the WKPL study, once UtiliCorp gets involved it can be considered (Transcript p. 2768). When asked by Commission Counsel why UtiliCorp became actively involved in this aspect of the management of WKPL and no other, Mr. Franklin's reason for the active role was the ongoing dispute between WKPL and B.C. Hydro (Transcript p. 2985). He further testified that to date they had not attempted to influence WKPL's views with respect to interpretation of the Commission's Dispute Decision or other local matters (Transcript p. 2991). Mr. Baker agreed that WKPL's operation did not need any additional management function from UtiliCorp (Transcript p. 2982). However, in response to a question Mr. Franklin acknowledged that in order to protect their investment, there could be a point where UtiliCorp would have to have the final say in major decisions (Transcript p. 2979).

During cross-examination of the Cominco Panel, Mr. Anderson filed Exhibit 107 which, among other things, lists the benefits sought in recent years by BPA during ongoing Columbia River Treaty negotiations. These include access for BPA to additional firm storage in B.C. Hydro's reservoirs, and are

The capital plan sets out \$92 million in capital projects expected to be required over the five-year period 1987 - 1991, but excludes the resource generation projects to be evaluated in a study expected to be completed by WKPL in 1987. An earlier version of this plan had been given to prospective bidders as a part of the Information Package distributed by Burns Fry (Exhibit 9).

Although Mr. Franklin had discussed these plans with WKPL and accepted them as reasonable, (Transcript p. 3029), Mr. Baker testified that UtiliCorp had no input into their preparation or the quality of service levels implied by those plans (Transcript p. 478). In cross-examination by Commission Counsel, Mr. Franklin acknowledged that he was not aware that WKPL required BCUC approval for capital projects under Section 51 of the Act (Transcript p. 3030). Mr. Baker, however, stated that this did not diminish UtiliCorp's enthusiasm for the proposed acquisition and that they had no objection to a requirement that WKPL file annually a report on proposed system extensions.

The five-year financial plan reflects the assumptions made in both the load forecast and the capital plan and sets out how WKPL expects to finance the projected expenditures. Exhibit 40, filed by WKPL, forecasts annual savings of \$200,000 to \$500,000 under UtiliCorp ownership. The savings reflect the reduced dividend payout and a lower cost of financing attributed to the UtiliCorp guarantee, both of which stand as absolute commitments by the Applicant as recorded in Appendix B. Exhibit 40, however, also reduced the planned number of preferred shares to be issued, reflecting UtiliCorp's belief that more common shares would strengthen the capital structure. When suggested by Commission Counsel that, for WKPL and other Canadian utilities, preferred shares might be more attractive, Mr. Baker reiterated that if such were to prove to be the case, UtiliCorp would honour its overriding commitment to maintain an efficient capital structure.

evidence of BPA's continuing efforts to obtain increased storage, improved system coordination, or the right to retain the downstream benefits otherwise due to revert to B.C., in return for providing access for B.C. electricity to California markets. Mr. Deane was not prepared to agree that if WKPL sought a tie-line with BPA these objectives would necessarily or inevitably be brought to bear by BPA in their own interest. He did, however, agree that negotiations between BPA and WKPL or Cominco should only be conducted by individuals with a fairly good working knowledge and understanding of the competitive Pacific Northwest marketplace and the concerns and desires of BPA (Transcript pp. 3745-3747).

The Commission does not regard UtiliCorp's preliminary discussions with BPA and TransAlta as an indication that the needs and desires of UtiliCorp will override the knowledge of WKPL management, and views those discussions, although undertaken in the absence of WKPL, as fact-finding and exploratory in nature and not unreasonable in the circumstances.

#### Commission Conclusions

After extensive review, cross-examination and argument the Commission is unable to conclude at this time that the financial and capital plans of WKPL, as filed and addressed during these proceedings, will be adversely affected in any way by the proposed sale of the utility to UtiliCorp. Under any change of ownership it would be unusual and surprising if such plans were not affected in some way but such changes cannot be assumed to be necessarily or inevitably detrimental. Moreover, these plans, together with the generation resource studies currently underway by WKPL, will be reviewed at future public hearings and will remain subject to ongoing Commission approval under the Act.

While the Commission accepts the Applicant's assurances in good faith, the Commission concludes that its authority over WKPL's plant or system extensions under Section 51(3) and the requirement under Section 57 for

approval of the issuance of securities, is sufficient to protect the public interest.

Accordingly, and in light of the Applicant's absolute commitments to maintain the utility's head office and management function in Trail and to maintain an efficient capital structure, together with its declared objective of autonomy for WKPL management (ref. Appendix B), the Commission concludes that the proposed change in ownership of WKPL will not in itself adversely affect the financial or capital plans of the utility or its pending studies and decisions with respect to future generation resources. The Commission therefore concludes that there are unlikely to be any detrimental effects on the utility or its customers attributable to the influence of foreign ownership on the utility's financial and capital plans, and that existing provisions of the Act afford the Commission an effective and permanent mechanism to review and control the utility's financial and capital plans in the future.

#### 10. WKPL Quality of Service

In the filed evidence supporting this Application, Utilicorp states "The service now provided to customers in the service territory of the Company will be maintained or improved. In addition, UtiliCorp is committed to ensuring the reliability and quality of service offered by the Company and is willing and able to make further investment in the Company to achieve this end." (Exhibit 2, Tab F, p. 7). This broad statement responds to one of the criteria used by the Commission in the T.M.A. Decision that "The conduct of the utility's business including the level of service, either now or in the future, will be maintained or enhanced." The ability of UtiliCorp to finance the expenditures which may be necessary to ensure reliability, and its commitments to give WKPL a significant degree of independence have been explored in other sections of this Decision.

In his cross-examination Mr. Gathercole concentrated on UtiliCorp's policies with respect to quality of service and attempted to determine the company's past record in that regard. In response, Mr. Green stated his belief that WKPL had a very good service record and that UtiliCorp had nothing specific in mind by way of immediate improvements, but indicated that UtiliCorp would support the continuation and possible enhancement of that record over time (Transcript p. 416). Mr. Green's comments, however, were based on interviews with WKPL personnel, and no formal assessment was done by UtiliCorp (Transcript p. 2145). Mr. Franklin testified that the West Kootenay and Missouri service areas were very similar in nature, but was reluctant to go into details about differences such as line losses without more study (Transcript p. 2151).

To Mr. Gathercole's question about UtiliCorp's philosophy with respect to the trade-off between the level of quality of service and the level of rates, Mr. Green responded that it was a matter of evaluation of risk and trying to schedule capital programs over time to keep the system in shape, in order to moderate the impact on rates (Transcript p. 420).

In the evidence filed in support of its Application, UtiliCorp states that it has had a long successful history of providing quality service at reasonable prices (Exhibit 3, Tab 7). Under cross-examination by Mr. Gathercole, Mr. Baker reported that, although in the eighties UtiliCorp experienced no interventions other than by the Consumer Advocate, in the seventies there were interventions by individuals who, while objecting to increases in rates, also praised the quality of service (Transcript p. 422).

In cross-examination of the Cominco panel by Mr. Gathercole, Mr. Stone explained that the criteria listed in the Burns Fry letter (Exhibit 87) and distributed to prospective purchasers, on which all bids received initial evaluation were in part intended to ensure that the prospective buyer's intentions were consistent with the regulatory environment in B.C. (Transcript p. 3392).

In her cross-examination of the Cominco panel, Ms. Helen Overnes posed a significant question by asking "From Cominco's point of view, what benefits would there be to Canadians by the sale of WKPL to a foreign company?" (Transcript p. 3540). In response, and after acknowledging the importance of that question, Mr. Stone said in summary, "we became satisfied that UtiliCorp was an experienced and knowledgeable operator of utilities, that they were responsive to the needs of their customers, and the communities in which they operated. They're technically competent, they're financially sound, and rather met all the criteria that we, and we judge the Commission, would look to for comfort in the ownership of West Kootenay." In response to subsequent questions by Mr. Anderson, Mr. Stone explained that this assessment by Cominco was made on the basis of discussions with the Applicant, their financial advisors, and a review of UtiliCorp's annual reports and other investment media reports on the Applicant (Transcript p. 3692).

In his final argument Mr. Anderson took the position that, while Cominco made a comparative analysis of bids for their own purposes, the company had failed to demonstrate that it had the public interest in mind when it made its comparisons and selected UtiliCorp (Transcript p. 5069). In his view, no one could argue that WKPL's service to the customers would not be adversely affected, because proper analysis might have found a bidder capable of providing equal quality of service without arousing the considerable public opposition by the WKPL ratepayers. He concluded that the service of the utility would be negatively affected by a significant loss of goodwill.

Mr. Anderson, however, did not argue that it was necessary for the Commission to undertake a comparative analysis of all bids. Rather, he felt that there should be guidelines or criteria similar to those in the T.M.A. Decision that any Applicant should follow, prior to the Application.

The Commission notes, however, that the T.M.A. Decision guidelines were precisely the ones used by UtiliCorp in their Application (Exhibit 2, Tab F). The Commission is satisfied that, as long as the potential purchaser

meets those criteria, and any others which may be appropriate in a particular case, the public interest can be protected without imposing onerous conditions on the seller. Mr. Anderson agreed that Section 61(8) of the Act does not require that to qualify for approval there be no detrimental effects whatsoever attributable to a proposed transaction, but that the Commission is required to look at the entire transaction, and if in the Commission's judgement the perceived detriments are offset or exceeded by the potential benefits, then the test for approval has been met (Transcript pp. 5120 - 5121).

Mr. R.W. French appeared on behalf of the Kootenay Okanagan Electric Consumers Association to give evidence on the history of relationships between UtiliCorp and its predecessor company, Missouri Public Service, and the Missouri Public Service Commission, its staff, and the Office of Public Counsel. That evidence (Exhibit 106), focussing on the period between 1979 and 1983, essentially consisted of a series of Orders issued by the Missouri Commission with respect to the Applicant's Missouri Public Service division in that period, and the results of a management audit by the Missouri Commission's staff.

Although Mr. French had not been asked prior to the hearing to comment in his filed evidence with respect to the merits of WKPL as a candidate for acquisition by UtiliCorp, it appeared during cross-examination that Mr. French would have had difficulty with such a task. When asked by Mr. Shannon to rate UtiliCorp he replied "I don't think I'm qualified to make such a determination based on the evidence I have in front of me." (Transcript p. 4200).

Although he highlighted certain issues raised in the Applicant's regulatory history, Mr. French was unwilling to draw conclusions from them. In response to questions by Mr. Macintosh at Transcript page 4324, he testified that, although he had reported that the Commission had disallowed dues paid by the Applicant to two technical research organizations, he did not intend that any



adverse inference should be drawn against the company. He also noted that Appendix 8 of Exhibit 106 raised some concern about quality of service but declined to respond when Mr. Gathercole asked him to compare the Applicant's quality of service with that of other Missouri utilities (Transcript p. 4172). When Mr. Gathercole quoted the company's comments regarding its "long and successful history of providing quality customer service at reasonable prices", Mr. French stated that he had no knowledge of the quality of customer service provided by the company prior to 1981, but was aware of some problems they had experienced in 1982 and 1983. He was not aware of any data or evidence since that time (Transcript p. 4182).

Mr. French noted a number of rate applications where the Commission awarded substantially less than the utility had applied for. Mr. Anderson concluded in argument that such large differences indicated that rate-making in Missouri is a much more adversarial process, which could increase the length and cost of regulation in B.C. at the expense of the ratepayers (Transcript p. 5088). Mr. French, however, had testified earlier that it was neither unusual, nor a common practice in Missouri and that he could not draw any conclusions from it (Transcript p. 4168).

The evidence presented at this hearing was at times somewhat conflicting. During cross-examination by Mr. Bauman, Mr. French stated that the Office of Public Counsel did review UtiliCorp's Application to the Missouri Commission regarding WKPL, but did not express any concerns with respect to the proposed acquisition (Transcript p. 4195). When questioned, however, he agreed that based on UtiliCorp's conduct and reputation before the Missouri regulatory authorities, if the company were to seek to acquire another utility in Missouri, the initial reaction of the Office of Public Counsel would be negative (Transcript p. 4223). Mr. French also testified that the company had experienced more problems with Commission orders than one of the other electric utilities but that each of the utilities had different problems (Transcript p. 4196).

During cross-examination by Commission Counsel, Mr. French commented with respect to the company's reputation in the regulatory context, that once UtiliCorp decided to take a case to hearing, they "take it all the way" (Transcript p. 4366). Several intervenors concluded that this attitude, if maintained by UtiliCorp in B.C., would add unnecessary costs to regulation. Mr. French indicated, however, that the company was not alone in that respect in Missouri and, as noted by the Commission, the conclusions drawn by Mr. Anderson in his argument assume that a utility moving into another regulatory climate is unable to adapt to that different climate (Transcript p. 5090).

The Commission recognizes the importance and high priority that must be given to the maintenance of a quality of service that will both meet the requirements of WKPL's existing customers and encourage economic growth in the Kootenay region.

As indicated by the Commission panel at the hearing during consideration of the quality of service issue, the Commission has some difficulty with any attempt to use evidence on the history of UtiliCorp's experience and performance in the regulatory regime to which the company responds in Missouri, as a necessarily valid indicator of its probable conduct under regulation in British Columbia. To do so is to assume that the Applicant will prove to be incapable of adapting and conforming to a new regulatory climate.

The Commission notes that there was insufficient evidence to support such an assumption and that the Applicant has, in the space of less than five years, managed to adapt to the regulatory regimes in seven different states in the U.S., without apparent evidence of any undue difficulty. The Commission recognizes that the basis for some of the expressed concerns was the evidence of the relatively aggressive history of the Applicant in its response to regulation by the Missouri Public Service Commission. However, the Commission believes that the Applicant's regulatory history in Missouri may be attributable to the relatively adversarial roles accepted as normal by participants in that jurisdiction.

Mr. French, a key witness on the issue of the quality of service in WKPL to be expected under UtiliCorp ownership, appeared to be well informed and knowledgeable of the Applicant's regulatory history in the Missouri jurisdiction, at least for the period since 1981 when he joined the Office of Public Counsel. The Commission feels, however, that Mr. French's own evidence on the role of the Office of the Public Counsel as representing the interests of the ratepayers, has inevitably rendered him adversarial with respect to the Applicant. Moreover, in the Commission's view, his unwillingness to "rate" UtiliCorp as compared to other Missouri utility companies, and his apparent reluctance to express any personal opinions on UtiliCorp's performance, significantly weakens his evidence. His statement that "I don't think I'm qualified to make such a determination based on the evidence I have in front of me" (Transcript p. 4200) leaves the Commission faced with that very task, and as noted by the Commission, without the necessary background knowledge of all the factors which led to the judgements of the Missouri Commission offered by Mr. French as his evidence.

#### Commission Conclusions

The Commission heard no convincing evidence that will support an assumption that, under UtiliCorp ownership, the quality of service provided by WKPL would decline. In light of the Applicant's declared objective No. 3, to "Keep the quality of service as good or better than it is now and than it would have been if Cominco had retained ownership" (ref. Appendix B to this Decision) and in view of the Commission's responsibilities and mandate under the Act to ensure that this objective is met, the Commission concludes that there are no detrimental effects to either the utility or its customers and the public at large, attributable to the quality of service issue.

## II. Economic Development

A number of intervenors took the position that the proposed sale of WKPL to UtiliCorp would have detrimental effects on the economic development of the Okanagan/Kootenay region of the province. In his filed submission at the hearing Mr. Scarlett described UtiliCorp's proposed acquisition of WKPL as a takeover rather than investment in British Columbia. He defined investment as "an infusion of money with a certain degree of risk, into a locality to set up a new business or increase the productivity of an existing one", and concluded that "UtiliCorp proposes to do neither". (Transcript p. 793)

In his evidence, the Vice-President of Finance for Cominco, Mr. Stone, testified that as a result of expenditures of about \$700 million on the zinc plant at Trail and other capital expenditures, commitments and losses, Cominco "found itself with more debt than was appropriate if it was to continue as a viable operation . . . and decided to concentrate on the businesses that it knows best." He explained that "Cominco requires the proceeds from the sale of the shares of West Kootenay Power and from the sale of other assets, to upgrade and develop the operations which are at the core of its business". (Transcript p. 3323)

In his final argument, Mr. Macintosh alluded to Mr. Stone's evidence and argued that the \$80 million influx to the area "is now needed by Cominco for expenditure in its plant, with a resulting probable direct employment benefit for the West Kootenay region." He went on to argue that "This influx of U.S. capital will apparently result in increased employment in this province, or at least in the preservation in this province of Cominco jobs" (that might otherwise have been lost) (Transcript p. 4715).

With respect to UtiliCorp's ability to effectively promote and support the ongoing economic development of the region and the province, in his evidence Mr. Green testified UtiliCorp has given "high priority" to economic

development efforts in the service areas supplied by UtiliCorp's U.S. divisions, "because we see that as a big plus to the communities involved, the customers, and is obviously a benefit to the utility itself." He went on to explain how UtiliCorp proposed to assist WKPL in active economic development endeavours, by supplying economic professionals who, after developing a knowledge of the Kootenay region and its needs by personal contact with existing economic development groups and potential customers, would "hopefully" with such active participation, attract some new businesses or encourage existing ones to expand. (Transcript p. 57)

In his final argument, Mr. Scarlett was clearly skeptical of Mr. Green's testimony, citing UtiliCorp's "almost total ignorance of this area", and expanded this opinion by stating that "UtiliCorp, at least at this time, doesn't have any idea of what the needs of this area are, nor has it expressed any kind of coherent plan as to just what it may do for us." (Transcript p. 5003).

#### Commission Conclusions

The Commission recognizes the importance of the prevailing interest, policies and programs of both the provincial and federal governments in promoting economic development and job creation. It further recognizes the vital role that the availability of low-cost hydro-electric power must continue to play in the economic development of British Columbia. As is developed in other sections of this Decision, the evidence in these proceedings does not suggest that ownership by UtiliCorp would jeopardize the continued availability of low-cost hydro-electric power from WKPL.

While the Commission shares Mr. Scarlett's skepticism with respect to any immediate or early results from participation by UtiliCorp personnel in economic development activity, the Commission concludes that the proposed UtiliCorp activity would not prove to be a detriment to WKPL or its customers.

The Commission further concludes that, although the acquisition itself may not qualify as economic development or create new jobs, the infusion of \$80 million into the region by UtiliCorp and the preservation of Cominco jobs that could otherwise be lost, does not in any way suggest a detriment to the utility or its customers and is clearly in the public interest. The Commission notes that UtiliCorp's commitment to maintain WKPL's head office and management function in Trail would preserve an important number of jobs making a significant contribution to the economy of Trail and the surrounding area.

## 12. Public Opposition

The Commission is acutely conscious of the degree of sincere public concern and at times vehement opposition to the proposed acquisition by UtiliCorp, that was so clearly apparent during the public hearings on this matter. Attendance at the proceedings in Trail, Penticton and Kelowna exceeded by a wide margin anything ever before experienced by the Commission. The Commission should note, however, that the conduct of these proceedings was such that a number of Intervenor's commented for the record that the hearings have provided a fair and thorough opportunity for all concerns and opinions to be heard. Not surprisingly, the audience was particularly sensitive to anything seen as a potential threat to either the quality or cost of such essential services as electricity.

The Utilities Commission Act, which determines the basis on which the Commission carries out its regulatory responsibilities, clearly specifies the Commission's overriding duty to protect the public interest and is silent on the matter of public opinion. It is apparent that the two cannot be the same unless public opinion has been based on public understanding of the same information required for a reasoned determination of what is in the public's best interests overall. In the present case, it is on the record that Cominco made little effort to adequately inform and reassure the affected public on the implications of its plans to sell WKPL. As a result, and before the hearings

even commenced, well-meaning leaders of consumer groups inadvertently created a high level of public opinion in opposition.

The public's fears and concerns, attributable in part to the absence of either guidelines or legislation controlling foreign investment in what are widely regarded as essential industries, in the Commission's view were entirely understandable and justifiable in the circumstances. They were not significantly relieved by the specific absolute commitments offered by the Applicant for that purpose, and of which intervenors were with few exceptions audibly skeptical.

As indicated heretofore in this Decision, the Commission acknowledges and appreciates the interest and assistance provided to the Commission in this unusually difficult and controversial matter by public participation on the scale demonstrated at the hearings, without which some issues of concern to the public might have been overlooked or inadequately considered by the Commission. The extensive exposure of those attending the hearings, to the facts with respect to the many issues involved in the proposed sale of the utility, in the Commission's view did somewhat soften but did not eliminate, public opposition. This was indicated as the hearings progressed, in the recognition by some of the principal intervenors of the Commission's powers and flexibility under the Act, and by their "fall-back" position that, in the event of a Commission decision to approve the sale, such approval should be subject to appropriate conditions of sufficient strength and duration to protect the public interest in the long-term.

#### Commission Conclusion

While recognizing the level of public opposition displayed at the hearings, the Commission concludes that only evidence which was supported by either facts or a reasonable degree of probability, should influence its decision. Accordingly, the Decision on the UtiliCorp and WKPL Applications in this matter has been based upon the Commission's mandate under Section 61(8) of the Act with respect to detrimental effects, together with those criteria developed in the T.M.A. Decision where appropriate.

## VII THE DECISION

The jurisdiction of the Commission in the Applications before it is set out in Section 61 of the Utilities Commission Act. The Commission does not have the jurisdiction to control foreign investment in a public utility solely on the basis of nationality. As noted in Section III of this Decision, however, the Commission has considered whether the foreign origin of the proposed purchaser would have any detrimental effects on WKPL and its customers under Section 61(8) of the Act.

In the Commission's judgement the conclusions reached with respect to each of the issues addressed in this Decision collectively indicate that there will be no net overall detriment to WKPL, its customers, or to the public interest attributable to the proposed purchase of the utility by UtiliCorp, provided that certain conditions are imposed to ensure that WKPL continues to be operated in a manner consistent with the public interest. The Commission further concludes that the proposed acquisition by UtiliCorp satisfies the formally developed criteria applied to protect the public interest in the T.M.A. Decision.

Accordingly, and pursuant to Section 61 of the Utilities Commission Act, the Commission approves the Applications as filed by UtiliCorp and WKPL, subject to the conditions set out below. Those conditions are to be binding, in each case, upon UtiliCorp United Inc., UtiliCorp British Columbia Ltd. and West Kootenay Power and Light Company, Limited and their successors and assigns. These conditions are an integral part of this Decision and approval of the Applications is based in part on the protection of the public interest which they provide.

1. UtiliCorp United, UtiliCorp B.C., and WKPL will not take any step or adopt any measure which has the direct or indirect purpose or effect of recovering from the customers of WKPL any premium paid over book value by UtiliCorp United or UtiliCorp B.C. for the shares of WKPL.



2. UtiliCorp United and UtiliCorp B.C. will not cause and WKPL will not divert power or energy required in any way whatsoever by WKPL's actual or potential customers to any other use and, in particular, may not use or cause to be used such power or energy for an export or non-utility purpose.
3. UtiliCorp United Inc. and UtiliCorp B.C. Ltd. will not themselves and will not cause WKPL to alter the basis or procedures for determining the appropriate water levels in the Kootenay Lake systems or in the river systems which are dammed as part of WKPL's water storage assets.
4. UtiliCorp United and UtiliCorp B.C. will provide WKPL with whatever form of financial support is necessary to allow WKPL to obtain the full benefit of UtiliCorp B.C. and UtiliCorp United's financing ability, including without limitation, guaranteeing the indebtedness of WKPL and providing the full faith and credit of UtiliCorp United and UtiliCorp B.C.
5. UtiliCorp United and UtiliCorp B.C. will not cause WKPL and WKPL will not lend direct financial support to either UtiliCorp United or UtiliCorp B.C. and in particular will not guarantee any indebtedness of theirs or their affiliates.
6. WKPL will reduce its dividend payouts to 44 % of its earnings for the next five years.
7. UtiliCorp United and UtiliCorp B.C. will cause WKPL to elect and maintain a board of directors comprising five independent directors resident within the WKPL service area, two nominees of WKPL management resident in the service area and two nominees of UtiliCorp United.
8. UtiliCorp United and UtiliCorp B.C. will cause WKPL to maintain an efficient capital structure satisfactory to the Commission and UtiliCorp United or UtiliCorp B.C. will contribute equity within three months of any request by the Commission to achieve or maintain the required capital structure. If UtiliCorp United or UtiliCorp B.C. are unable or unwilling to contribute the required equity themselves, they will, without delay, cause WKPL, and WKPL will use its best efforts, to make an offering of and to issue, equity securities to Canadian investors.
9. WKPL will retain its head office and management function in Trail for at least ten years from the date of this Decision and will maintain the head office and management function in the WKPL service area for so long as UtiliCorp United and/or UtiliCorp B.C. own a controlling interest in WKPL.
10. UtiliCorp United will not sell all or part of its shares in UtiliCorp B.C. and UtiliCorp B.C. will not issue securities in such a way as to directly or indirectly convey a reviewable interest as defined in Section 61 of the Act in UtiliCorp B.C. to any other person without the prior approval of this Commission.

11. UtiliCorp B.C. will retain in Canada all dividends paid by WKPL to it in the five years from the date of this Decision.

Any of the foregoing Conditions not stipulating a specific time limit, shall remain in force so long as UtiliCorp United Inc. and UtiliCorp British Columbia Ltd. own WKPL.

The Commission, while regarding the Applicant's corporate "objectives" listed in Appendix B to this Decision as desirable, recognizes that they cannot be fairly imposed as conditions for approval. The Commission will, however, expect UtiliCorp to make every effort to attain them, circumstances permitting.

DATED at the City of Vancouver, in the Province of British Columbia, this 30th day of June, 1987.



M. TAYLOR, Chairman



D.B. KILPATRICK, Commissioner



B.M. SULLIVAN, Commissioner



BRITISH COLUMBIA  
UTILITIES COMMISSION

ORDER  
NUMBER G-31-87

PROVINCE OF BRITISH COLUMBIA  
BRITISH COLUMBIA UTILITIES COMMISSION

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

and

IN THE MATTER OF Applications by  
UtiliCorp United Inc. and  
UtiliCorp British Columbia Ltd.; and  
West Kootenay Power and Light Company, Limited

BEFORE: M. Taylor, )  
Chairman; )  
D.B. Kilpatrick, ) June 30, 1987  
Commissioner; and )  
B.M. Sullivan, )  
Commissioner )

O R D E R

WHEREAS on September 12, 1986 UtiliCorp United Inc. ("UtiliCorp") and UtiliCorp British Columbia Ltd. ("UtiliCorp B.C.") applied pursuant to the provisions of the Utilities Commission Act ("the Act") and in particular Section 61 thereof for an Order of the Commission approving the acquisition by UtiliCorp B.C. of a reviewable interest, being all of the issued and outstanding Common shares and Preferred shares of West Kootenay Power and Light Company, Limited ("WKPL"); and

WHEREAS on September 16, 1986 West Kootenay Power and Light Company, Limited applied for approval of the Commission to register on the books of WKPL the transfer of Common and Preferred shares from Cominco Ltd. ("Cominco"), and the Preferred shares from Canadian Pacific Enterprises Ltd., to UtiliCorp or UtiliCorp B.C.; and

WHEREAS pursuant to a Notice of Public Hearing published in October 1986, the hearing commenced in Trail, B.C. on Monday, November 3, 1986, to continue at Penticton, B.C. on Wednesday, November 12, 1986; and

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WHEREAS the hearing subsequently resumed at Penticton, B.C. on November 24, 1986, adjourning on November 25, 1986 and resumed on January 19, 1987 at Kelowna, B.C., adjourning on Friday, February 6, 1987; and

WHEREAS the Commission has carefully reviewed all of the evidence and arguments on behalf of the Applicants and other interested parties heard in public forum through 25 days.

NOW THEREFORE the Commission hereby orders as follows:

I. The Applications by UtiliCorp United Inc. and UtiliCorp British Columbia Ltd. are approved subject to the following conditions, any of which not stipulating a specified time limit, shall remain in force so long as UtiliCorp United Inc. and UtiliCorp British Columbia Ltd. own WKPL:

1. UtiliCorp United, UtiliCorp B.C., and WKPL will not take any step or adopt any measure which has the direct or indirect purpose or effect of recovering from the customers of WKPL any premium paid over book value by UtiliCorp United or UtiliCorp B.C. for the shares of WKPL.
2. UtiliCorp United and UtiliCorp B.C. will not cause and WKPL will not divert power or energy required in any way whatsoever by WKPL's actual or potential customers to any other use and, in particular, may not use or cause to be used such power or energy for an export or non-utility purpose.
3. UtiliCorp United Inc. and UtiliCorp B.C. Ltd. will not themselves and will not cause WKPL to alter the basis or procedures for determining the appropriate water levels in the Kootenay Lake systems or in the river systems which are dammed as part of WKPL's water storage assets.
4. UtiliCorp United and UtiliCorp B.C. will provide WKPL with whatever form of financial support is necessary to allow WKPL to obtain the full benefit of UtiliCorp B.C. and UtiliCorp United's financing ability, including without limitation, guaranteeing the indebtedness of WKPL and providing the full faith and credit of UtiliCorp United and UtiliCorp B.C.
5. UtiliCorp United and UtiliCorp B.C. will not cause WKPL and WKPL will not lend direct financial support to either UtiliCorp United or UtiliCorp B.C. and in particular will not guarantee any indebtedness of theirs or their affiliates.
6. WKPL will reduce its dividend payouts to 44% of its earnings for the next five years.

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7. UtiliCorp United and UtiliCorp B.C. will cause WKPL to elect and maintain a board of directors comprising five independent directors resident within the WKPL service area, two nominees of WKPL management resident in the service area and two nominees of UtiliCorp United.
  8. UtiliCorp United and UtiliCorp B.C. will cause WKPL to maintain an efficient capital structure satisfactory to the Commission and UtiliCorp United or UtiliCorp B.C. will contribute equity within three months of any request by the Commission to achieve or maintain the required capital structure. If UtiliCorp United or UtiliCorp B.C. are unable or unwilling to contribute the required equity themselves, they will, without delay, cause WKPL, and WKPL will use its best efforts, to make an offering of and to issue, equity securities to Canadian investors.
  9. WKPL will retain its head office and management function in Trail for at least ten years from the date of this Decision and will maintain the head office and management function in the WKPL service area for so long as UtiliCorp United and/or UtiliCorp B.C. own a controlling interest in WKPL.
  10. UtiliCorp United will not sell all or part of its shares in UtiliCorp B.C. and UtiliCorp B.C. will not issue securities in such a way as to directly or indirectly convey a reviewable interest as defined in Section 61 of the Act in UtiliCorp B.C. to any other person without the prior approval of this Commission.
  11. UtiliCorp B.C. will retain in Canada all dividends paid by WKPL to it in the five years from the date of this Decision.
- II. The Application by West Kootenay Power and Light Company, Limited is approved.

DATED at the City of Vancouver, in the Province of British  
Columbia, this 30th day of June, 1987.

BY ORDER



Chairman

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(Replacing RS1979, c. 108 and 401)

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privileges or rights, or by any means, direct or indirect, merge, amalgamate or consolidate in whole or in part its property, franchises, licences permits, concessions, privileges or rights with those of another person.

(2) The commission may give its approval under this section subject to conditions and requirements considered necessary or desirable in the public interest.

1980-60-59; 1982-54-18, proclaimed July 28, 1982, effective July 9, 1982.

**Consolidation, amalgamation and merger**

**60.** (1) A public utility shall not consolidate, amalgamate or merge with another person

(a) unless the Lieutenant Governor in Council has first received from the commission a report under this section including an opinion that the consolidation, amalgamation or merger would be beneficial in the public interest and has, by order, consented to the consolidation, amalgamation or merger, and

(b) except in accordance with an order made under paragraph (a).

(2) Every application for consent of the Lieutenant Governor in Council under subsection (1) shall be made to the commission by the public utility.

(3) The commission shall inquire into the application and may for that purpose hold a hearing, and on conclusion of its inquiry, it shall,

(a) where it is of the opinion that the consolidation, amalgamation or merger would be beneficial in the public interest, submit its report and findings to the Lieutenant Governor in Council, or

(b) dismiss the application.

(4) The Lieutenant Governor in Council may, in an order under subsection (1), include conditions and requirements that he considers necessary or advisable.

(5) Where a public utility gives notice to its shareholders of a meeting of shareholders in connection with a consolidation, amalgamation or merger, it shall set forth in the notice the provisions of this section and shall file a copy of the notice with the commission at the time of mailing to the shareholders.

1982-54-19, proclaimed July 28, 1982, effective July 9, 1982

**Reviewable interests**

**61.** (1) In this section

"offeree" means a person to whom a take over bid is made;

"offeror" means a person, other than an agent, who makes a take over bid and includes 2 or more persons

(a) whose bids are made jointly or in concert, or

(b) who intend to exercise jointly or in concert any voting rights attaching to the shares for which a take over bid is made;

"take over bid" has the same meaning as in the *Securities Act*;

"voting share" means a share which has, or may under any special rights or restrictions attached to the share have, the right to vote for the election of directors and for this purpose "share" includes a security convertible into such a share and options and rights to acquire such a share or such a convertible security.

(2) For the purposes of this section, persons are associates where

(a) one of the persons is a corporation

(i) of which more than 10% of the shares outstanding of any class of the corporation are beneficially owned or controlled, directly or indirectly, by the other person, or

(ii) of which the other is a director or officer,

(b) each of the persons is a corporation and

(i) more than 10% of the shares outstanding of any class of shares of one are beneficially owned or controlled, directly or indirectly, by the other, or

(ii) more than 10% of the shares outstanding of any class of shares of each are beneficially owned or controlled, directly or indirectly, by the same person,

(c) they are partners or one is a partnership of which the other is a partner,

(d) one is the spouse or child of the other,

(e) one is a trust in which the other has a substantial beneficial interest or for which the other serves as trustee or in a similar capacity,

(f) one is a relative of the other or of the other's spouse and has the same home as the other, or

(g) they are obligated to act in concert in exercising a voting right in respect of shares of the utility,

and for the purpose of this definition

(h) "spouse" includes a man or woman not married to each other who are living together and have lived together as husband and wife for a period of not less than 2 years, and "child" includes a child in respect of whom that person stands in place of a parent, and

(i) where a person has more than one associate, those associates are associates of each other.

(3) For the purpose of this section, a person has a reviewable interest in a public utility where he owns or controls, or he and his associates own or control, in the aggregate more than 20% of the voting shares outstanding of any class of the utility.

(4) A public utility shall not, without the approval of the commission, issue, sell, purchase or register on its books a transfer of shares in the capital of the utility or create or attach to any shares, whether issued or unissued, any special rights or restrictions where the issue, sale, purchase or registration or the creation or attachment of the special rights or restrictions would

(a) cause any person to have a reviewable interest,

(b) increase the percentage of voting shares owned by a person who has a reviewable interest,

(c) be a registration of a transfer of shares, the acquisition of which was contrary to subsection (6) or (7), or

(d) increase the voting rights attached to any shares owned by a person who has a reviewable interest.

(5) Failure of a public utility to comply with subsection (4) does not give rise to an offence where the public utility acts in the bona fide belief based on an enquiry made with reasonable care, that the issue, sale, purchase or registration, or the creation or attach-

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ment of the special rights or restrictions, would not have the effects referred to in subsection (4) (a) to (d).

(6) No person shall acquire or shall acquire control of such numbers of any class of shares of a public utility as in themselves or together with shares already owned or controlled by the person and his associates, cause him to have a reviewable interest in a public utility unless he has obtained the commission's approval.

(7) Except where the acquisition or acquisition of control does not increase the percentage of voting shares held, owned or controlled by the person or by the person and his associates, no person having a reviewable interest in a public utility and no associate of that person shall acquire or acquire control of any voting shares in the public utility unless he has obtained the commission's approval.

(8) The commission may give its approval under this section subject to conditions and requirements it considers necessary or desirable in the public interest, but the commission shall not give its approval under this section unless it considers that the public utility and the users of the service of the public utility will not be detrimentally affected.

(9) Where the commission determines that there has been a contravention of subsection (4), (6) or (7), the commission may, on notice to the public utility and after a hearing, make an order imposing on the public utility conditions and requirements respecting the management and operation of the utility.

(10) No proceeding shall be brought against the commission or the government by reason of the exercise by the commission of its powers under subsection (8) or (9).

(11) Every offeror who makes a take over bid for shares of a public utility shall

(a) file a copy of the take over bid and all supporting or supplementary material with the commission within 5 days after the date the material is first sent to offerees, and

(b) include in or attach to the take over bid a notice setting forth the provisions of this section and stating the number, without duplication, and designation of any shares of the public utility held by the offeror and his associates.

(12) Nothing in subsection (11) relieves a person from any requirement of or under the *Securities Act* or its regulations.

1982-54-20, proclaimed July 28, 1982, effective July 9, 1982; 1984-25-66.

~~Appraisal of utility property~~

~~62. (1) The commission may ascertain by appraisal the value of the property of a public utility and may inquire into every fact that, in its judgment, has a bearing on that value, including the amount of money actually and reasonably expended in the undertaking to furnish service reasonably adequate to the requirements of the community served by the utility as that community exists at the time of the appraisal.~~

~~(2) In making its appraisal the commission shall have access to all records in the possession of a municipality or any ministry or board of the government.~~

~~(3) The commission, in making its appraisal under this section, may order that all or part of the costs and expenses of the commission in making the appraisal shall be paid by the public utility, and that the utility pay an amount as the work of appraisal proceeds, and the certificate of the chairman of the commission is conclusive evidence of the amounts so payable.~~

~~(4) Expenses approved by the commission in connection with an appraisal, including expenses incurred by the public utility whose property is appraised, shall be charged by the utility to the cost of operating the property as a current item of expense, and the~~



BRITISH COLUMBIA UTILITIES COMMISSION

BRITISH COLUMBIA UTILITIES COMMISSION

EXHIBIT

66-A

ABSOLUTE COMMITMENTS AND OBJECTIVES  
OF UTILICORP UNITED INC.  
and

HEARING No.

22

ENTERED BY

UTILICORP

DATE

26/3/87

UTILICORP BRITISH COLUMBIA LIMITED

Concerning the Acquisition of  
West Kootenay Power and Light  
Reflecting Testimony Filed and Presented Orally  
in Commission Hearings  
November 1986 - February 1987

Absolute Commitments

UtiliCorp United and UtiliCorp British Columbia will not:

1. Seek to recover the premium paid over book value for West Kootenay Power through West Kootenay's rates or through West Kootenay in any other way.
2. Divert power from West Kootenay Power and the service of its customers for UCU's own use for any other export or non-utility purpose to the prejudice of West Kootenay customers. (won't divert it from West Kootenay customers or some other market)
3. Play a role in changing the manner of determining water levels in the Kootenay Lake systems or in the river systems which are dammed as part of West Kootenay's assets.

UtiliCorp United will:

1. Be listed on the Toronto Stock Exchange.

UtiliCorp United and UtiliCorp British Columbia will:

1. Give full faith and credit and/or a ~~form of~~<sup>(1)</sup> guarantee in order to allow West Kootenay to obtain the benefit of UtiliCorp British Columbia and UtiliCorp United's financing ability.
2. Reduce the dividend payout ratio of West Kootenay Power to UtiliCorp British Columbia to 44% of earnings (this is a 5 year commitment)
3. Elect a Board of Directors for West Kootenay Power that will have five independent local residents, two local West Kootenay appointees and two UCU appointees.
4. Maintain an efficient capital structure for West Kootenay Power and provide equity for that purpose within 3 months of any request from the B.C.U.C. to that end.

(1) words "form of" were deleted, Transcript p. 4765.

5. Keep the head office and management function of West Kootenay Power in Trail for 10 years, and absolutely not move it from Trail within the next 10 years and not move it outside the service area for as long as UBC and UCU own WKPL.
6. Apply to the B.C.U.C. pursuant to Section 61 of the Utilities Commission Act for any sale of UCU's shares in UBC which would constitute a reviewable interest.
7. Provide that dividends paid out of West Kootenay Power into UtiliCorp British Columbia in the first 5 years, remain in Canada.

### Objectives

It is the objective of UtiliCorp United and UtiliCorp British Columbia to:

1. Expand only within the utility business.
2. Maintain as low as possible rates for West Kootenay Power and lower than they would have been if Cominco had retained ownership.
3. Keep the quality of service as good or better than it is now and than it would have been if Cominco had retained ownership.
4. Not replace West Kootenay Power management and <sup>to (2)</sup> give them a large degree of autonomy.
5. Maintain regional offices as they are now.
6. Within the foreseeable future, West Kootenay Power dividends will, to a large extent, be reinvested in West Kootenay Power.
7. Not change the purchasing practices of West Kootenay Power with respect to the purchasing of Canadian and British Columbian goods.

Any commitment above, which does not have a time limit stipulated, runs in perpetuity so long as UtiliCorp United and UtiliCorp British Columbia own West Kootenay Power.

---

(2) the word "to" was added between the words "and" and "give" (Transcript p. 4767).



Our File: 210/U171-1

December 24, 1986

Mr. Richard C. Green, Jr.  
Chairman of the Board  
Utilicorp British Columbia Ltd.  
2500-595 Burrard Street  
P.O. Box 49200  
Vancouver, British Columbia  
V7X 1L1

Dear Mr. Green:

BRITISH COLUMBIA UTILITIES COMMISSION		
EXHIBIT 76		
HEARING No. 12	ENTERED BY UTILICORP	DATE Jan 24/87

Re: Investment by Utilicorp British Columbia Ltd.  
to acquire control of the business carried on by  
West Kootenay Power and Light Company, Limited

We have concluded our review of your application and are satisfied that your investment is likely to be of net benefit to Canada. This constitutes approval of your investment pursuant to the Investment Canada Act.

In considering the proposed transaction, I was cognizant of the fact that your proposal is subject to review by the British Columbia Utilities Commission, and that a public hearings process is well under way to help the B.C.U.C. reach its conclusions. I am sure you will appreciate that my decision under the Investment Canada Act has a different basis than that which governs the B.C.U.C., and has, therefore, no bearing on the ultimate decisions of the Commission pursuant to its legislation.

Yours sincerely,

Michel Côté

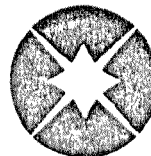
bcc: Gowling & Henderson

Att'n: Mr. Pierre Richard, Q.C.

FEB 16 1987

APPENDIX D

J.W.M. Wilson  
Corporate Counsel



west kootenay power

February 11, 1987

British Columbia Utilities Commission,  
4th Floor, 800 Smithe Street,  
VANCOUVER, B.C.  
V6Z 2E1

Attention: Mr. A.C. Michelson,  
Commission Secretary

Dear Sir:

Re: Operating Agreements between Cominco Ltd. and  
West Kootenay Power and Light Company, Limited


Pursuant to the direction in the Commission's decision of May 31, 1983 that all future agreements between Cominco and the Company be submitted for approval, we enclose for Commission review and approval executed copies of three operating agreements between Cominco and West Kootenay: the Facilities Sharing Agreement, the Management Agreement and the Interconnection Agreement.

To put the documents in perspective, the Facilities Sharing and Management Agreements, together with the previously approved Sale of Surplus Power Agreement (as amended), replace the "Omnibus" Agreement of January 1, 1975. The Interconnection Agreement is new, as interconnection of Cominco and West Kootenay facilities had not previously been provided for in a written agreement.

Several revisions have been made to the draft agreements forwarded on January 9, 1987 to Mr. C.W. Sanderson as Commission Counsel at the UtiliCorp hearing. Marked copies indicating these changes are also enclosed for ease of reference. In my opinion, the changes are not of a substantive nature. Copies of the executed agreements have also been filed as exhibits at the recent hearings in Kelowna on the UtiliCorp application.

We would be pleased to answer any questions the Commission may have in reviewing and approving these agreements.

Yours very truly,

  
J.W.M. Wilson,  
Corporate Counsel

JWMW:kdb  
Encl.

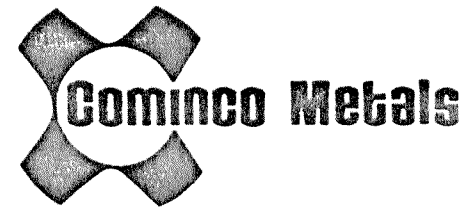
cc G.L. Manuel, Cominco/Vancouver  
R.D. Deane, Cominco/Trail

Arrangements to be Reduced to Writing between West Kootenay and Cominco

1. Provision of tenure to West Kootenay where West Kootenay has facilities on Cominco land.
2. Conclusion of three new agreements to replace the present "Omnibus Agreement", providing for the management of Cominco hydro-electric generation and transmission facilities, the sharing of certain Cominco and West Kootenay facilities, and for the interconnection of the West Kootenay and Cominco systems at certain points.
3. Provision of firm power from Cominco on a three-year rolling basis, in addition to 75 average annual megawatts of firm power up to 1990, to be incorporated as an amendment to the Sale of Surplus Power Agreement.
4. Joint installation of a shared System Control and Data Acquisition (SCADA) system.
5. West Kootenay access to Cominco's transmission line to the United States.

November 10, 1986

BRITISH COLUMBIA UTILITIES COMMISSION		
EXHIBIT 39		
HEARING No. 6	ENTERED BY WKPL	DATE NOV 12/86



A Division of Cominco Ltd.

WJ (Bill) Robertson  
Vice-President Operations  
at Trail  
Tel (804) 384-4130

West Kootenay Power and  
Light Company, Limited  
Waneta Plaza  
8100 Rock Island Highway  
Trail, B.C. V1R 4N7

March 18, 1987

Attention: Mr. J.A. Drennan, President  
and Chief Executive Officer

Dear Sirs:

Re: SALE OF SURPLUS POWER AGREEMENT

1) Five-Year Rolling Firm to West Kootenay

This letter is further to our letter of May 30, 1986 from Mr. W.G. Wilson to yourself, in which Cominco offered to firm up surplus Cominco power for sale to West Kootenay on a three-year rolling basis. Our letter was written in the course of and as a result of issues arising out of a British Columbia Utilities Commission hearing regarding long-term purchases of power by West Kootenay from B.C. Hydro. The offer was intended to assist West Kootenay in resolving the matters then under consideration.

We understand that as a result of the B.C.U.C. decision on that matter, West Kootenay will be bound by nominations to B.C. Hydro two years in advance until 1990, and five years in advance thereafter. We further understand that the availability of firm Cominco power on an advance basis of up to five years would enhance West Kootenay's ability to utilize Cominco's surplus power and minimize its dependence on the more expensive B.C. Hydro power.

In our May 30, 1986 letter, reference was made to additional firming on a three-year basis as that period of time is typical of the time required by Cominco to plan, design, construct and commission a large industrial project. As discussed during the recent BCUC hearing on the proposed Utili-Corp acquisition, Cominco is now prepared to firm a portion of its surplus up to five years in advance, to the extent

500.2/u(1)

COMINCO/W.K.P.L.-Sale of Surplus Power Agree/Mar.18/87

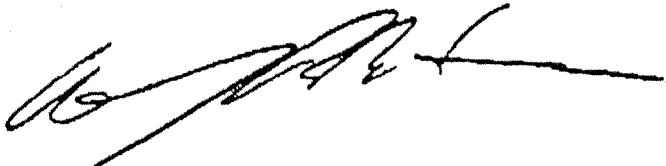
- 2 -

that the amount firmed up each year does not unreasonably restrict Cominco with respect to expanding Cominco industrial loads. Cominco will retain an appropriate buffer, which during the fourth and fifth years of any firming will be equal to one-third of its projected surplus power, or at least 30 aaMW to retain a degree of flexibility. Also, the periods of firming in advance by Cominco are not to be in excess of the nomination periods in which West Kootenay will be firmly obligated to B.C. Hydro.

2. Sale of Interruptible Energy to West Kootenay

This is to confirm also that as discussed during the recent B.C.U.C. hearing on the proposed UtiliCorp acquisition, Cominco is prepared to agree to remove the word "immediate" in Clause 1 (i) of the Sale of Surplus Power Agreement, thereby enabling West Kootenay, if it so chooses, to store or exchange Interruptible Energy purchased from Cominco prior to resale within the West Kootenay service area.

Yours truly,



WJR:ff

1980

UTILITIES COMMISSION  
(Replacing RS1979, c. 108 and 401)

SBC CHAP. 60

~~Commission may set standards~~

- ~~31. The commission may, after a hearing held on its own motion or on complaint,~~
- ~~(a) ascertain and fix just and reasonable standards, classifications, rules, practices or service to be used by a public utility,~~
  - ~~(b) ascertain and fix adequate and reasonable standards for measuring quantity, quality, pressure, initial voltage or other conditions of supplying service,~~
  - ~~(c) prescribe reasonable regulations for examining, testing or measuring a service,~~
  - ~~(d) establish or approve reasonable standards for accuracy of meters and other measurement appliances, and~~
  - ~~(e) provide for the examination and testing of appliances used to measure a service of a utility.~~

~~1980-60-31; 1981-10-21, effective October 26, 1982 (B.C. Reg. 393/83).~~

## Joint use of facilities

32. (1) Where the commission, after a hearing, finds that public convenience and necessity require the use by a public utility of conduits, subways, poles, wires or other equipment belonging to another public utility, and that the use will not prevent the owner or other users from performing their duties or result in any substantial detriment to their service, the commission may, if the utilities fail to agree on the use, conditions or compensation, make an order it considers reasonable, directing that the use or joint use of the conduits, subways, poles, wires or other equipment be allowed and prescribing conditions of and compensation for the use.

(2) Where the commission, after a hearing, finds that the furnishing of adequate service by one public utility or the safety of the persons operating or using that service requires that wires or cables carrying electricity and run, placed, erected, maintained or used by another public utility be placed, constructed or equipped with safety devices, the commission may make an order it considers reasonable, about the placing, construction or equipment.

(3) The commission, by the same or a later order, may direct that the cost of the placing, construction or equipment be at the expense of the public utility whose wire, cable or apparatus was last placed in point of time, or may, in the discretion of the commission, apportion the cost between the utilities.

1980-60-32.

~~Electric and other connections~~

~~33. (1) A public utility shall supply its service to premises situated within 90 m of its supply line or such lesser distance as the commission prescribes suitable for that purpose, on being requested by the owner or occupier of the premises to do so, but before supplying the service or making a connection for the purpose, or as a condition of continuing to supply the service, the public utility may require the owner or occupier to give reasonable security for repayment of the costs, as set out in the filed schedule of rates, of making the connection.~~

~~(2) The commission may, after a hearing and for proper cause, relieve a public utility from the obligation to supply service under this Act or regulations on terms the commission considers proper and in the public interest.~~

~~1980-60-33.~~~~EC 1/84~~



*Guild, Yule, Lane, Sullivan, Mackenzie & Holmes*  
*Barristers and Solicitors*

237.32

C. K. GUILD, Q.C. (1963)  
W. J. SULLIVAN  
R. R. HOLMES  
J. D. TRUSCOTT  
S. L. ENTICKNAP  
M. M. MOSELEY  
C. G. HERB  
B. R. ROSE  
K. A. CAWKELL  
L. N. BAKAN  
A. J. SAUNDERS  
M. M. MACKINNON

W. G. LANE  
K. C. MACKENZIE  
D. W. YULE  
F. J. SLIVINSKI  
I. J. STIRLING  
J. A. HARDY  
P. W. WALKER  
S. R. CAMERON  
D. M. TWINING  
T. L. NYKYFORUK  
C. L. FORTH

P. O. Box 49170  
2000 BENTALL THREE  
595 BURRARD STREET  
VANCOUVER, B.C.  
V7X 1R7

CABLE ADDRESS "MAYERS"  
TELEX 04-54548  
TELEPHONE 604-688-1221  
TELECOPIER 688-1315

January 14, 1987

British Columbia Utilities Commission,  
4th Floor,  
800 Smithe Street,  
Vancouver B.C.,  
V6Z 2E1.

Attn: Mr. A.C. Michelson  
Commission Secretary

Dear Sirs,

RE: Public Hearing  
West Kootenay Power  
and Light Company Limited ("WKPL")  
Proposed Acquisition by Utilicorp  
United Inc. and Utilicorp British Columbia Ltd.  
Our File #5900.7

We acknowledge your letter of January 14, 1987 in the above noted matter.

On behalf of our client, we wish to advise that it is B.C. Hydro's understanding that the change in ownership of West Kootenay Power & Light Company Limited is to be brought about by the sale of all of their common and preferred shares to Utilicorp British Columbia Ltd., a wholly owned subsidiary of Utilicorp United Inc. and that this sale does not alter the existing corporate ownership of physical plant or West Kootenay Power & Light's contractual rights and obligations with B.C. Hydro and others. It is therefore B.C. Hydro's view that its contractual and operating concerns and relationships, including electricity exports, with West Kootenay Power & Light will be unaltered by the change in ownership.

*Guild, Yule, Lane, Sullivan, Mackenzie & Holmes*

2.

We trust that this adequately responds to the Commission's inquiry.

Yours truly,  
GUILD YULE AND COMPANY

  
Per:  
K.C. MACKENZIE

c.c. Mr. C.W. Sanderson  
Lawson Lundell,  
Box 11506,  
2800 - 650 West Georgia St.,  
Vancouver B.C.,  
V6B 4R7.

BRITISH COLUMBIA UTILITIES COMMISSION

EXHIBIT

105

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

HEARING No.

17

ENTERED BY

BCUC

DATE

Jan 28/87

and

IN THE MATTER OF AN APPLICATION BY  
COMINCO LTD. (COMINCO) FOR THE SALE  
OF SURPLUS POWER SERVICE AND AN EXEMPTION  
FROM PROVISIONS OF PART 3 OF THE ACT

SALE OF SURPLUS POWER SERVICE AND EXEMPTION ORDER

WHEREAS during the months of August, September and October, 1981, the British Columbia Utilities Commission (the Commission) heard two complementary applications made, on the one hand, by Cominco for an exemption from the provisions of the Act other than Part 2 and, on the other, by West Kootenay Power & Light Company Limited (WKPL) for a Certificate of Public Convenience and Necessity to purchase certain assets of Cominco;

AND WHEREAS the transactions underlying the applications were a proposed sale by Cominco of hydroelectric Plants Nos. 2 (Upper Bonnington), 3 (South Slocan) and 4 (Corra Linn) on the Kootenay River to WKPL more particularly described in a Sale of Plants Agreement dated the 4th day of June, 1981 (Sale of Plants Agreement) and in an associated agreement entitled Sale of Surplus Power Agreement between Cominco and WKPL dated the 21st day of November, 1980, dealing with electricity generated from Cominco's Plants Nos. 5 (Brilliant) and 6 (Waneta) to WKPL which is surplus to Cominco's requirements;

AND WHEREAS on the 2nd day of April, 1982, the Commission made certain recommendations to the Lieutenant Governor in Council concerning these applications;

AND WHEREAS the Lieutenant Governor in Council has considered the recommendations of the Commission but due to circumstances which have changed since the Commission heard the applications the Lieutenant Governor in Council is unwilling to approve the exemption on the terms and conditions prescribed by the Commission;

AND WHEREAS Cominco is a person who produces a power service primarily for its own purposes under the provisions of the Act;

AND WHEREAS pursuant to section 27 of the Act the Minister of Energy, Mines and Petroleum Resources is empowered to authorize the sale of surplus power service and to exempt the person selling the power service from provisions of Part 3 specified in the order subject to terms and conditions described therein;

AND WHEREAS the Minister considers it to be in the public interest that the proposed sale by Cominco to WKPL of hydroelectric Plants Nos. 2 (Upper Bonnington), 3 (South Slokan) and 4 (Corra Linn) as aforesaid be completed in accordance with the terms of this Order.

THE MINISTER OF ENERGY, MINES AND PETROLEUM RESOURCES pursuant to section 27 of the Act hereby authorizes Cominco to sell its surplus power service in accordance with the provisions of this Order and exempts Cominco from the provisions of Part 3 of the Act with the exception of sections 47, 51 and 53 subject to the following conditions, namely:

CONDITIONS

1. On or before the 31st day of October, 1982, Cominco shall file with the Commission for approval:

- (a) amendments to the Sale of Plants Agreement providing for:

- (i) the transfer of ownership of Plants Nos. 2 (Upper Bonnington), 3 (South Slokan) and 4 (Corra Linn) and all related and associated generation and transmission facilities, together with all licences, permits and approvals necessary to enable the exercise of all rights of ownership and operation, to WKPL for a purchase price of Twenty Million Dollars (\$20,000,000), such consideration to be paid and satisfied by the issue of two hundred thousand (200,000) common shares of WKPL;
    - (ii) the allocation of the purchase price between real property, dams and equipment, and buildings as the parties see fit;
    - (iii) a closing date that will enable the transfer of assets to be completed on or before the 31st day of December, 1982;
    - (iv) the change of Schedule B to reflect the method of payment of the purchase price;

(b) amendments to the Sale of Surplus Power Agreement providing for:

- (i) a procedure whereby WKPL may, until the 31st day of December, 1990, elect to purchase from Cominco, and Cominco shall be required to sell as firm energy up to 75 average annual megawatts, (a.a.m.w.) on a calendar year basis;
- (ii) a right of first refusal to WKPL of any further surplus;
- (iii) a procedure whereby Cominco and WKPL will contract in five year intervals for the sale and purchase of interruptible power during the period commencing on the 1st day of January, 1991, and terminating on the 30th day of September, 2005;
- (iv) the price for power to be paid by WKPL shall be as set out in the Sale of Surplus Power Agreement;
- (v) a force majeure proviso;
- (vi) a mechanism to adjust the price for reasonable actual contribution to replacement of capital costs in Schedule 1;
- (vii) a grant of a right of first refusal in favour of WKPL to acquire Plants Nos. 5 (Brilliant) and 6 (Waneta) or either of them, together with any associated facilities until the 30th day of September, 2005;
- (viii) dates which will permit performance in accordance with the foregoing amendments;

(c) agreements with WKPL for the common use of transmission and switching facilities so that facilities owned by each can be operated together as one integrated system.

2. On or before the 31st day of December, 1982, Cominco shall provide the Commission with evidence of the transfer of ownership of Plants Nos. 2 (Upper Bonnington), 3 (South Slokan) and 4 (Corra Linn) and all related and associated generation and transmission facilities, together with all licences, permits and approvals necessary to enable the exercise of all rights of ownership and operation, to WKPL for a purchase price

of Twenty Million Dollars (\$20,000,000), such consideration to be paid and satisfied by the issue of two hundred thousand (200,000) common shares of WKPL.

3. Cominco shall not sell or otherwise dispose of Plants Nos. 5 (Brilliant) and 6 (Waneta) or either of them without the prior approval of the Commission.
4. (a) WKPL shall forthwith submit to the Commission for its approval proposals to refinance WKPL to provide a better balance of debt and equity in the WKPL capital structure and to convert the sizeable short term bank borrowing into long term debt.  
  
(b) Cominco shall forthwith inform the Minister of its long term plans to reduce Cominco's equity in WKPL to not more than fifty per cent (50%).
5. (a) Cominco shall provide to the Minister not later than the 31st day of July in each year of the term of this Order with a report as to its industrial load requirements and expansion plans projected for a period of five years.  
  
(b) Cominco shall provide to the Minister not later than the 31st day of March in each year during the term of this Order a record of the previous calendar year transactions with WKPL under conditions 1(b)(i), (ii) and (iii).
6. Cominco shall
  - (a) file with the Minister on or before the 31st day of October, 1982, its undertaking to support any application made by WKPL for approval to expand the generating capacity at Plants Nos. 5 (Brilliant) and 6 (Waneta) or either of them, for the purpose of increasing the power supply to WKPL; and
  - (b) provide reasonable assistance to WKPL, not including the provision of or guarantee of funding, for any such application.
7. Cominco shall be permitted to sell to any customer outside of the Province of British Columbia, subject to obtaining an energy removal certificate, or any utility within the Province of British Columbia on an interruptible basis any part of the power service that is surplus to its requirements and to the requirements of WKPL imposed by this Order and the Sale of Surplus Power Agreement.

8. WKPL shall have obtained a Certificate of Public Convenience and Necessity for the purchase of Plants Nos. 2 (Upper Bonnington), 3 (South Slocan) and 4 (Corra Linn).
9. The approval of the Commission pursuant to section 57 of the Act shall be obtained to the issue of 200,000 common shares of WKPL to Cominco, being the consideration for the sale of Plants Nos. 2 (Upper Bonnington), 3 (South Slocan) and 4 (Corra Linn), not later than the 31st day of October, 1982.
10. This Order ceases to have effect on the 30th day of September, 2005.

Dated the 28th day of                      July                      , 1982.

  
Minister of Energy, Mines  
and Petroleum Resources