

IN THE MATTER OF THE ENERGY ACT
AND
IN THE MATTER OF AN APPLICATION BY
WEST KOOTENAY POWER AND LIGHT
COMPANY, LIMITED

DECISION

MAY 30, 1980

Before Norman R. Gish, Chairman,
R. John Ludgate, Deputy Chairman,
D.B. Kilpatrick, J.D. King and F.E. Walden,
Commissioners,

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APPEARANCES

P.W. Butler J.A. Angus	for West Kootenay Power and Light Company, Limited
D.C. Duff	for B.C. Hydro and Power Authority
G.D. Gillis	for Canadian Cellulose Company, Limited
J.E. Ogilvie	for City of Kimberley
D.M.M. Goldie, Q.C. M. Allan	for Cominco Ltd.
R.J. Bauman	for The Corporation of the City of Grand Forks The Corporation of the City of Penticton The Corporation of the District of Summerland The City of Kelowna
D. Roberts	for The Corporation of the City of Nelson
P.A. Gall	for Consumers' Association of Canada (B.C. Division)
R.B. Wallace	for Atco Lumber Limited Hadikin Bros. Lumbering Ltd. Kalesnikoff Lumbering Company Limited Kootenay Forest Products Limited Louisiana-Pacific Canada Limited

APPEARANCES CONTINUED

R.B. Wallace (Con't)	for Pope and Talbot Limited - Grand Forks Division - Midway Division Slocan Forest Products Limited T & H Sawmills Limited Weyerhaeuser Canada Ltd. Wyndel Box & Lumber Co. Ltd.
G. Gould	for Princeton Light & Power Company, Limited
L. Wanjoff	On His Own Behalf
R.J. Gibbs, Q.C.	Commission Counsel

LIST OF EXHIBITS

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WEST KOOTENAY POWER AND LIGHT COMPANY LIMITED

CERTIFICATE APPLICATION

DECISION DATED MAY 30, 1980

BACKGROUND

On January 3, 1980 West Kootenay Power and Light Company, Limited (hereafter described as "WKPL") filed an application pursuant to Section 32(1) of the Energy Act (now section 30(1) of the Energy Act Chapter 108 RSBC 1979) for a Certificate of Public Convenience and Necessity approving an agreement with its parent company Cominco Ltd. ("Cominco").

The application was based upon a proposed Plants and Surplus Energy Agreement (which was subsequently executed and is hereafter cited as the "Agreement") whereby WKPL would acquire the exclusive use of three of Cominco's hydroelectric plants on the Kootenay River for a period of 25 years through a long-term lease. The Agreement provided WKPL with an option to purchase those plants and to purchase from Cominco power surplus to Cominco's needs and was contingent upon Cominco being granted exemption from the provisions of the Energy Act pursuant to the then Section 105(3), now Section 101(3). The Cominco Application was heard immediately following the WKPL Application.

The application for the Certificate of Public Convenience and Necessity was heard commencing April 22, 1980 and was completed April 30, 1980 in Vancouver, British Columbia.

The generation and transmission of electric power within the WKPL service area is both unusual and complex, involving the integration of various WKPL/Cominco inter-company agreements, the Canal Plant Agreement with B.C. Hydro and the Columbia River Treaty. There are therefore, multiple interests to be considered in the use that is made of the limited publicly-owned natural resources represented by the stream-flow and storage capacity of the Kootenay and Pend d'Oreille River Systems.

The Energy Act provides that the Commission shall not give its approval for a certificate unless it determines that the privilege, concession or franchise proposed to be granted is necessary for the public convenience and properly conserves the public interest. The Commission has determined that the following are the issues to be resolved, keeping in mind that WKPL is a wholly-owned subsidiary of Cominco and in such a clearly non-arms-length relationship all agreements between the parent and its subsidiary must be thoroughly examined:

- Security of Supply and Cost of Power
- Arbitration
- Price
- Financial Integrity
- Surplus Power
- Future WKPL Access to Power from Plants 5 and 6.

SECURITY OF SUPPLY AND COST OF POWER

The Agreement provides for the lease by WKPL of Plants No. 2, 3 and 4 for a period of twenty-five years, with an option to purchase these plants at a future price to be determined by arbitration. In view of the relationship between WKPL and its parent company Cominco, the option to purchase may never be exercised, particularly in light of the absence of any tangible or significant incentive for Cominco to support WKPL in such an endeavor.

The Agreement does provide WKPL with a right to purchase power for a period of twenty-five years at a price substantially less than would likely otherwise have to be paid to B.C. Hydro. However, it appears to the Commission that unilateral termination provisions exercisable by Cominco during the term of the Agreement place WKPL in no better position than before. The Commission therefore, concludes that the Agreement, in its present form, does not significantly enhance WKPL's security of supply.

It is therefore the view of the Commission that, in the public interest, the Agreement must be amended to provide for the sale by Cominco to WKPL of Plants No. 2, 3 and 4 known respectively as Upper Bonnington, South Slocan and Corra Linn; and that this transaction be effected on or before December 31, 1980. Ownership of Plants No. 2, 3 and 4 will provide security of supply covering approximately 70% of WKPL's current energy

requirements at reasonable cost. Purchase of these plants will not in itself result in any increase in consumer rates since ownership will yield a power cost no greater than under the proposed Agreement.

ARBITRATION

The Agreement provides for an arbitration panel of three, to determine the price of the plants when the option to purchase is exercised. The arbitration panel is to consist of one member chosen by WKPL, one member by Cominco with the chairman to be chosen by the first two members.

This proposed arbitration procedure is exposed to the non-arms-length weaknesses inherent throughout the WKPL and Cominco relationship. It also usurps the responsibilities and jurisdiction of the Commission under the Act particularly in the matter of appraising asset values. The Commission has concluded that it is not in the public interest to issue a Certificate of Public Convenience and Necessity on a conjectural basis. The Commission will therefore determine the appropriate price.

PRICE

It was apparent in the hearing that a wide range of values could be attributed to these plants under various methodologies. The Commission finds that the appropriate price to be paid by WKPL for Plants 2, 3 and 4 is logically related

to their operating or functional value within the total Kootenay/Pend d'Oreille system of which they form a part. The price has therefore been determined, on a utility accounting basis, by directly relating the value of Plants 2, 3 and 4 to the value of all Cominco's power plants (Nos. 2 to 6 inclusive valued at \$39.2 million).¹ This relationship is in the proportion that the energy entitlements under the Canal Plant Agreement of Plants No. 2, 3 and 4 (136.4 Avg. MW) bear to the total energy entitlements of Plants No. 2 to 6 inclusive (515.1 Avg. MW).

The Commission concludes that the appropriate price to be paid by WKPL to Cominco for Plants No. 2, 3 and 4 and related transmission facilities be no greater than \$10.4 million.

$$\left(\frac{136.4}{515.1}\right) \text{ Average annual MW} \times \$39.2 \text{ million} = \$10.4 \text{ million}$$

FINANCIAL INTEGRITY

In light of its current financial position it is unlikely that WKPL can finance the purchase price of up to \$10.4 million as well as refinance the short term bank loans, now in excess of \$32 million, without the support of Cominco.

¹Exhibit 44, GHS-15, in the Commission Decision dated March 7, 1980. (WKPL application for rate relief)

The Commission therefore concludes that the realities and practical considerations require that Cominco undertake to facilitate the necessary financing by WKPL of the purchase of Plant Nos. 2, 3 and 4 by one or more of the following:

- i) accepting long term notes bearing reasonable interest
 - ii) guaranteeing appropriate long term outside debt instruments
 - iii) providing for additional equity investment
- or such other means as may be deemed appropriate by Cominco and acceptable to the Commission.

This matter has been dealt with in the Decision on the companion Cominco application for exemption.

SURPLUS POWER

The Commission is concerned about those clauses dealing with the proposed purchase by WKPL of surplus power from Cominco on an interruptible basis. Since the utility's load is firm, such interruptible power appears to be of little or no value to it. Until Cominco's power requirements reach its own forecast levels there is no apparent reason why the surplus power should not be made available to WKPL on a firm basis. Failure to do so will impose additional costs on WKPL to provide additional standby power or power generating facilities.

The Commission believes that the absence of a take or pay provision in the Agreement is appropriate since surplus energy not required or taken by West Kootenay can readily be sold, stored or exchanged by Cominco with B.C. Hydro, Calgary Power or in the U.S.A. The Commission, however, is cognizant of Cominco's industrial power requirements and concludes that Cominco should not be bound to honour the firm power status for the sale of the surplus energy under "force majeure" circumstances, where this would result in Cominco curtailing its industrial operations.

The surplus energy to be designated as firm to WKPL is as follows:

COMINCO SURPLUS

1980	606 Gwh	1985	456 Gwh
1981	639 Gwh	1986	350 Gwh
1982	710 Gwh	1987	237 Gwh
1983	569 Gwh	1988	114 Gwh
1984	474 Gwh	1989	0 Gwh

Source: WKPL Exhibit 6 Tab 3 - Response to Request for Additional Information by B.C. Hydro.

The provision of this firm energy to WKPL will still leave Cominco with all the energy it will require for its announced expansion and modernization program through 1986. Should this exceed Cominco's requirements, the excess must first be offered to WKPL. This has also been dealt with in the Cominco Decision.

FUTURE WKPL ACCESS TO POWER FROM PLANTS 5 AND 6

The Commission notes that the Agreement provides, in its preamble, that Cominco will support an application by WKPL to expand generating capacity at Brilliant and Waneta. In view of the non-arms-length relationship between the parties and for greater certainty, the Commission believes that a commitment to that effect should be included in the body of the Agreement, and will so order.

The Commission believes that the Agreement must also provide WKPL and its customers with some protection against the loss of low-cost power from the Brilliant and Waneta plants. A commitment must therefore be included whereby Cominco agrees not to transfer its interest in the Brilliant or Waneta plants to any party unless the transfer is first approved by the appropriate regulatory authority.

This matter has been dealt with in the Decision on the Cominco application.

DECISION

The Commission finds that a Certificate of Public Convenience and Necessity provides the basis for the best solution available in the circumstances, and will issue such a certificate and approve the related Agreement, subject to the following conditions:

1. That on or before December 31, 1980, WKPL satisfy the Commission that it is the owner of Plants 2, 3 and 4 and all related and associated generation and transmission facilities, approvals necessarily incidental to full ownership and power to operate, all having been acquired at a price not to exceed \$10.4 million.
2. That on or before September 1, 1980, WKPL enter into and file with the Commission for approval, an Agreement with Cominco providing for the sale of firm power from Plants 5 (Brilliant) and 6 (Waneta), surplus to the industrial requirements of Cominco, on the declining scale shown under Tab 3 of Exhibit 6 in the WKPL certificate hearing, at a price calculated as described in the Agreement, subject only to interruption for use in the industrial operation of Cominco by reasons of force majeure in such circumstances as would otherwise cause an interruption in the industrial operations of Cominco, and providing further that any power in excess of that shown on the declining scale, which is surplus to the requirements of Cominco in its industrial operations, will first be offered for purchase by WKPL at the same price and on the same terms as the "firm surplus", before being disposed of to others.
3. That WKPL advise the Commission on or before the 1st day of May, each year, of its plans for increasing its power supply for the purpose of meeting its expanding load, including its plans for the expansion of Plants 5 and 6.
4. That on or before December 31, 1980, WKPL enter into and file with the Commission for approval such agreements with Cominco as may be reasonably necessary and appropriate for the common use of transmission and switching facilities to the end that the systems owned by each can be operated together as one integrated system.

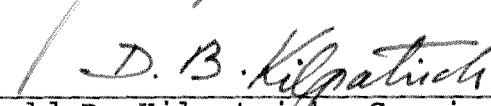
COSTS

The Commission has decided to award out-of-pocket costs for the individual Intervenors in the application and the costs relating to the expert evidence provided by Dr. Melody on behalf of the Consumers' Association of Canada. These costs, together with the out-of-pocket costs incurred by the Commission, will be allocated to West Kootenay Power and Light Company, Limited and to Cominco Ltd. on a 50/50 basis after approval of the amount of such costs by the Commission.


DATED at the City of Vancouver, in the Province of British Columbia, this 30th day of May, 1980.



Norman R. Gish, Chairman

R. John Ludgate, Deputy Chairman

Donald B. Kilpatrick, Commissioner

J. David King, Commissioner

Franklin E. Walden, Commissioner