



BRITISH COLUMBIA  
UTILITIES COMMISSION

ORDER  
NUMBER G-4-90

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 certain costs incidental  
to the conduct of a public hearing of an  
Application by West Kootenay Power Ltd.

BEFORE: J.G. McIntyre, )  
Chairman; )  
J.D.V. Newlands, )  
Deputy Chairman; ) January 16, 1990  
N. Martin, )  
Commissioner; and )  
W.M. Swanson, Q.C., )  
Commissioner )

O R D E R

WHEREAS an Application by West Kootenay Power Ltd. ("WKP") for an Energy Project Certificate to construct and operate a gas turbine generation plant in the Okanagan ("the Project") was heard in a public forum pursuant to specified Terms of Reference and Commission Orders No. G-20-88 and G-94-88; and

WHEREAS the Commission's Report and Recommendations to the Lieutenant Governor in Council ("the Report") dated February 24, 1989 required WKP to provide additional background to final Project cost figures, which information was filed on August 8, 1989; and

WHEREAS on September 26, 1989 the Commission asked Registered Intervenor and Interested Parties to respond to the WKP analysis of costs information no later than October 31, 1989 and WKP responded to Intervenor comments on November 24, 1989; and

WHEREAS the Commission requested WKP to provide an additional breakdown of costs associated with the Project, which information was received on January 12, 1990; and

WHEREAS the submissions were reviewed and considered by the Commission.

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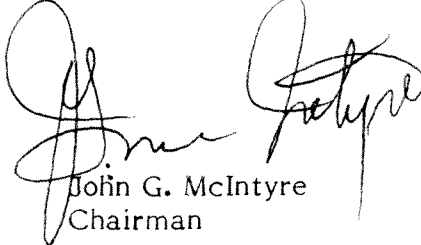
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NOW THEREFORE, in accordance with the Reasons For Decision attached as Appendix A, the Commission orders as follows:

1. The amounts of \$52,000, and \$48,000 relating to legal costs and corporate salary costs respectively are disallowed and not to be recovered from customers.
2. The remaining costs amounting to \$1,406,970 are allowed to be included in a deferred rate base account which will attract AFUDC at the current cost of capital.

DATED at the City of Vancouver, in the Province of British Columbia, this 23<sup>rd</sup> day of January, 1990.

BY ORDER

  
John G. McIntyre  
Chairman

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**APPENDIX A**

**In the Matter of the West Kootenay Power Ltd. ("WKP")  
Gas Turbine Cost Recovery Allocation**

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**REASONS FOR DECISION**

WKP applied for a cost recovery allocation amounting to \$1,506,970. This was supported by a fully documented cost summary breakdown. The summary was circulated to all Intervenor's whose submissions along with those submitted on behalf of WKP have been fully reviewed and considered.

**1. THE APPROPRIATE TEST**

It has been forcefully submitted by and on behalf of many Intervenor's that because the Application of WKP did not meet with success the costs should not be borne by the ratepayers, but by WKP's shareholders. Counsel for the Municipal Intervenor's urged a "fairness" test elementary in the system of jurisprudence that "costs follow the event."

Those tests are applied by judges adjudicating private disputes in court proceedings between individual parties in the adversarial legal system. In such proceedings, there must be a winner and a loser. By contrast, the proceeding conducted before the Commission does not involve an adjudication of private disputes and is not adversarial but inquisitorial in nature. Similarly the appropriate test to be applied by the Commission in allocating costs is different than that applied by the courts. Success or failure is but one circumstance to consider. It is not determinative of the issue.

The appropriate test for recovery of the costs of an energy project application such as here, is whether the costs were prudently or reasonably incurred considering all of the circumstances as they may have varied from time to time. Costs incurred arbitrarily, extravagantly or unnecessarily are not to be recovered from ratepayers.

## 2. MITIGATING CIRCUMSTANCES

While the Commission expresses grave concern over the magnitude of the costs incurred in this proceeding, there are a number of mitigating circumstances that must be considered in determining the reasonableness of the costs.

Firstly, it is said that the Application was premature because prior site approval was not secured. It cannot be overlooked that the Application was not made to the Commission but to Ministries of the Provincial Government. Those Ministries examined the information provided, and must have believed the project to be sufficiently mature to act upon because they initiated the public hearing process by referring it to the Commission. The Terms of Reference, dated June 2, 1988, were issued jointly by the Minister of Energy, Mines and Petroleum Resources and the Minister of Environment and Parks.

Secondly, there was a positive response to the project initially by the Municipal Council of the City of Kelowna, and later by the Council of the Village of Oliver.

Thirdly, much of the ever mounting environmental costs (approaching \$500,000) were not voluntarily incurred. They were made necessary by the absence of any definite emission standards set by the Environment Ministry at the outset, and later by the continual changing of standards up to and during the hearings. While it can be said in hindsight that some of the environmental costs were excessive, that excess cannot be said to have been attributed solely to the fault of WKP, which merely provided that information which was required of it by others, including the intervenors.

Fourthly, a substantial portion of the environmental work done for the Kelowna site also applied to the Oliver site. That made similar costs proportionately less costly in respect of the Oliver location. That benefit may yet be realized if the project is renewed for a new site in the future.

### **3. BASIS OF DECISION**

The project was conceived, studied and advanced by WKP management as a worthwhile and legitimate generation resource addition which, if approved and constructed, would have a positive impact on the rates of its customers. The Commission is satisfied that management of WKP validly held the view that the project was in the best interests of its customers and that it had a reasonable prospect of being approved.

Considering all of the circumstances, the Commission finds that it was prudent for WKP to bring the Application, and that reasonably incurred costs should be recovered.

### **4. COSTS SPECIFICALLY DISALLOWED**

#### **(a) Legal Costs**

Legal fees incurred by WKP were \$146,631, plus disbursements of about \$10,000. A summary breakdown of those fees has been reviewed. The bulk of the fees were for the services and attendance at hearings of two senior counsel at corresponding scales of remuneration. While it is often appropriate for lead counsel to be assisted by a second counsel, it is not common that the second counsel also be of a senior level. The Commission has doubts that a second counsel was necessary at all in these proceedings, and is firmly of the view that even if justifiable, he or she ought to have been a junior counsel or one charging fees at the much lower scale charged by junior counsel.

The Commission does not believe that the ratepayers should bear all of the costs of very expensive legal assistance that was unnecessary. The legal costs sought to be recovered are reduced by the sum of \$52,000.

(b) Management Salaries

To the extent of at least \$48,000 sought to be recovered on account of the salary of WKP's Project Manager, that amount was already projected as an operating expense in the calculation of revenue requirements during the fixing of rates at a prior Rate Application. To recover the amount again as a portion of costs would in effect constitute a double recovery. That amount is disallowed.