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BRITISH COLUMBIA
UTILITIES COMMISSION

ORDER
NUMBER G-47-96

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

and

An Application by the British Columbia Public Interest Advocacy Centre,
British Columbia Hydro and Power Authority and the Industrial Customers for
Reconsideration of the Commission's February 16, 1996 Decision into a
Generic Review of Utility System Extension Tests

BEFORE: M.K. Jaccard, Chairperson;)
L.R. Barr, Deputy Chairperson; and) May 22, 1996
K.L. Hall, Commissioner)

O R D E R

WHEREAS:

- A. By Order No. G-50-95 the Commission directed British Columbia Hydro and Power Authority, West Kootenay Power Ltd., BC Gas Utility Ltd., Centra Gas British Columbia Inc., Princeton Light and Power Company, Limited and Pacific Northern Gas Ltd. (collectively referred to hereafter as the "Utilities") to participate in a generic hearing on their tests for approving system extensions ("the System Extension Tests Hearing"); and
- B. A public hearing was held commencing October 30, 1995 with the Commission issuing its Decision on February 16, 1996 ("the Decision"); and
- C. On March 15, 1996 Methanex Corporation Council of Forest Industries and the Mining Association of British Columbia ("the Industrial Customers") filed a Notice of Application for Leave to Appeal the Decision with the British Columbia Court of Appeal ("the Court"); and
- D. On March 18, 1996 British Columbia Hydro and Power Authority ("B.C. Hydro") filed with the Court a Notice of Application for Leave to Appeal the Decision; and
- E. On April 16, 1996 the British Columbia Public Interest Advocacy Centre ("BCPIAC") applied to the Commission, pursuant to Sections 114(1) and 114(2) of the Utilities Commission Act ("the Act"), for reconsideration of the various matters, directions and orders contained in the Decision regarding the recent Court's ruling in B.C. Hydro vs. BCUC, Vancouver Registry No. CA019726; and
- F. On April 19, 1996 the Commission issued Order No. G-35-96 setting out a regulatory timetable for hearing argument on the merits of a reconsideration of the Decision and directing the Industrial Customers and B.C. Hydro, should they wish to initiate a reconsideration of the Decision, to file their applications by May 10, 1996; and
- G. On May 10, 1996 the Industrial Customers applied to the Commission for reconsideration of the Decision; and

- H. On May 10, 1996 B.C. Hydro indicated to the Commission that B.C. Hydro sought a rescission of the Decision; and
- I. On May 22, 1996 the Commission heard oral argument on whether a reconsideration of the Decision should take place.

NOW THEREFORE the Commission orders as follows:

1. The Commission approves the applications for reconsideration of the Decision on System Extension Tests and has determined that it will hear additional oral arguments on which elements of the Decision should be rescinded, amended or left unchanged. The Commission is not prepared to hear additional evidence on the substantive aspects of the Decision but will consider the introduction of new evidence where that will assist in resolving the questions of jurisdiction and implementation. The Commission's Reasons for Decision are attached hereto as Appendix A.
2. The regulatory timetable set out conditionally in Order No. G-35-96 is confirmed. Thus, the Commission requires additional evidence from BCPIAC, the Industrial Customers, and B.C. Hydro by June 3, 1996. Intervenor evidence is required by June 10, 1996. Oral argument on the issues for reconsideration will commence at 8:30 a.m. on June 24, 1996 in the Commission Hearing Room.

DATED at the City of Vancouver, in the Province of British Columbia, this 24th day of May, 1996.

BY ORDER

Original signed by:

Dr. Mark K. Jaccard
Chairperson

Attachment

Utility System Extension Tests

**RECONSIDERATION
Phase 1**

**REASONS FOR DECISION
May 24, 1996**

1.0 BACKGROUND

On June 30, 1995, the British Columbia Utilities Commission ("Commission") issued Order No. G-50-95, requiring the largest regulated utilities in the Province - British Columbia Hydro and Power Authority ("B.C. Hydro"), West Kootenay Power Ltd. ("WKP"), BC Gas Utility Ltd., Centra Gas British Columbia Inc., Princeton Light and Power Company, Limited, and Pacific Northern Gas Ltd. to participate in a generic hearing on their tests for approving system extensions ("the System Extension Hearing"). The oral phase of the hearing was held from October 30 to November 9, 1995, with written final argument and replies filed by November 30, 1995. The Commission issued its Decision in this matter on February 16, 1996 ("the Decision").

The British Columbia Court of Appeal issued a judgment on February 23, 1996, regarding a previous appeal by B.C. Hydro regarding the Commission's November 1994 B.C. Hydro Revenue Requirements Decision as it related to the Commission's jurisdiction to make orders regarding B.C. Hydro's Integrated Resource Planning ("IRP") activities. The Commission has subsequently applied for leave to appeal the Court's ruling to the Supreme Court of Canada.

On March 15, 1996 Methanex Corporation, the Council of Forest Industries and the Mining Association ("the Industrials") filed with the B.C. Court of Appeal a Notice of Application for Leave to Appeal the Commission's System Extensions Decision. On March 18, 1996 B.C. Hydro also filed with the B.C. Court of Appeal a Notice of Application for Leave to Appeal the Decision.

On April 16, 1996 the British Columbia Public Interest Advocacy Centre ("BCPIAC") applied to the Commission for reconsideration of the Decision in the context of the B.C. Court of Appeal's recent ruling.

On April 19, 1996 the Commission issued Order No. G-35-96 setting out a regulatory timetable for hearing argument on the merits of a reconsideration of the Decision and directing the Industrials and B.C. Hydro, should they wish to initiate a reconsideration of the Decision, to file their Applications by May 10, 1996. On May 10, 1996 the Industrials applied to the Commission for reconsideration of the Decision and B.C. Hydro indicated that it sought to have the Decision rescinded.

The Commission heard oral argument on May 22, 1996 on whether a reconsideration of the Decision should take place.

2.0 GUIDING PRINCIPLES FOR RECONSIDERATION

The Commission, in its letter of April 19, 1996, indicated that applications for reconsideration should address the following issues:

1. Should there be any reconsideration by the Commission?
2. If there is to be a reconsideration, should the Commission hear new evidence and should new parties be given the opportunity to present evidence?
3. Which elements of the Decision should be reconsidered?"

The Commission's powers of reconsideration under section 114 of the Act are discretionary. In its May 1995 B.C. Hydro Phase 1 Decision, the Commission set out its general criteria for determining whether or not a reasonable basis exists for requiring reconsideration. The applicant must demonstrate, on a prima facie basis, on or more of the following:

1. An error in fact or law (which must have significant material implications);
2. A fundamental change in circumstance or facts since the impugned decision;
3. A basic principle that had not been raised in the original proceedings; and
4. A new principle that has arisen as a result of the impugned decision.

3.0 EVIDENCE

The commission received applications for reconsideration from BCPIAC, B.C. Hydro and the Industrials.

BCPIAC asked for reconsideration of the System Extension Decision on the basis of the Court of Appeal ruling with respect to the Commission's jurisdiction on Integrated Resource Planning. Specifically BCPIAC

asked for reconsideration of those elements of the Commission's Decision which may be in doubt as a result of the Court of Appeal ruling.

B.C. Hydro applied for reconsideration on the basis that the Commission had erred in law in its decision by exceeding its jurisdiction. In support of its application B.C. Hydro claims that :

- The Commission lacks jurisdiction over the distribution extension policies of utilities;
- The Court of Appeal decision found that the commission lacks express policy making powers;
- The Commission lacks legislative authority to direct utilities to consider social costs; and
- The determination of the Commission with respect to the recovery of the UEA allowance was beyond the jurisdiction of the Commission in a generic hearing on Extension Policies and that a fair hearing on this point had been denied.

The Industrials based their reconsideration application on issues related to interpretation of the commission's mandate and legislative authority. The Industrials maintain that the Commission erred in law in the following respects:

- The Commission's rate regulation mandate does not include the authority to include social costs as directed in the decision;
- The Commission lacks policy making powers; and
- The Commission lacks taxation authority and cannot therefore include social costs that are unrelated to the utilities business in utility rates.

During the hearing, BCPIAC submitted that, at least until a final resolution regarding the Court of Appeal's ruling, the Commission should review the System Extension Decision to determine the extent to which elements should be changed to preserve their intent and to achieve their objectives within what is more clearly the Commission's jurisdiction (T. 7).

B.C. Hydro indicated that its application for reconsideration concerned four aspects of the Decision: the connection of the Decision with IRP, social costing and externalities, the extension policy generally, and B.C. Hydro's Uneconomic Extension policy ("UEA"). B.C. Hydro stated that the Commission had exceeded its jurisdiction to the extent that the directions in the Commission's Decision required compatibility of system extension tests with IRP methodologies. B.C. Hydro also stated that the Commission had no authority to mandate a system extension policy nor to mandate policies on social costing and externalities (T. 38-39). Finally, B.C. Hydro argued that the Commission had exceeded its jurisdiction with respect to the UEA in that the generic Decision on system extension tests contained this element which applied solely to B.C. Hydro.

The Industrials focused on the incorporation of social and environmental considerations in the Commission's Decision and argued that the Commission had exceeded its jurisdiction at the point where social costs were incorporated into rates (T. 26).

The applications for reconsideration were opposed by Pacific Northern Gas Ltd., the Renewable Energy Association ("REA") and West Kootenay Power Ltd. The REA argued that the Commission does have jurisdiction over system extensions and that the Court's IRP ruling does not apply to distribution system extensions (T. 65-6). The REA also argued that the issue of including social costs in system extension tests had been debated during the hearing and consequently did not require reconsideration. WKP argued that it did not perceive a need for a reconsideration but, if there was one, then it should be limited in scope and limited to the reasons that justify the reconsideration. In particular, WKP argued that the issue of connection charges should not be reconsidered (T. 74-5). In reply, the Industrials argued that the direction under connection fees should be reconsidered as it related to the incorporation of social costs in rates.

4.0 COMMISSION FINDINGS

The Commission is satisfied that the issues raised by the parties for reconsideration that arise from the Court of Appeal decision provide a sufficient basis to warrant reconsideration of those aspects of the decision that are affected by that decision. The Commission is also satisfied that the other issues raised for reconsideration, namely those concerning the inclusion of social costs and externalities and the UEA meet the criteria for reconsideration.

The issues raised by the applicants in the Phase 1 hearing are quite broad and the Commission does not anticipate the addition of any new issues to be reconsidered in the Phase 2 hearing. Moreover, as noted at the close of the Phase 1 hearing, the Commission also expects that participants in the Phase 2 hearing will provide in their submissions greater detail on the specific areas of the Decision which they wish to see amended or rescinded, and the specific remedy which they seek.

Most parties indicated that these issues could be reconsidered with either limited or no reference to new evidence. Accordingly, the Commission does not intend to hear new evidence on the substantive aspects of the Decision, but will consider the introduction of new evidence where that will assist in resolving the questions of jurisdiction and implementation.

Finally, the regulatory timetable set out conditionally in Order No. G-35-96 is confirmed. Thus, the Commission requires additional evidence from BCPIAC, the Industrial Customers, and B.C. Hydro by June 3, 1996. Intervenor evidence is required by June 10, 1996. Oral argument on the issues for reconsideration will commence at 8:30 a.m. on June 24, 1996 in the Commission Hearing Room.

Dated at the City of Vancouver, in the Province of British Columbia this 24th day of May, 1996.

Original signed by:

Dr. Mark K. Jaccard
Chairperson

Original signed by:

Lorna R. Barr
Deputy Chairperson

Original signed by:

Kenneth L. Hall, P. Eng.
Commissioner