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CANADA



BRITISH COLUMBIA  
UTILITIES COMMISSION

ORDER  
NUMBER G-36-96

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

and

An Application by West Kootenay Power Ltd.  
for Approval of Energy Supply Contracts, Energy Transmission Contracts  
and Energy Related Agreements

**BEFORE:** M.K. Jaccard, Chairperson; and )  
K.L. Hall, Commissioner ) April 18, 1996

**O R D E R**

**WHEREAS:**

- A. On March 11, 1996 West Kootenay Power Ltd. ("WKP") applied to the Commission, pursuant to Sections 57, 59, 85.1 and 85.3 of the Utilities Commission Act ("the Act"), for an Order approving Energy Supply Contracts, Energy Transmission Contracts and Energy Related Agreements ("Brilliant Agreements") concerning the output of the Brilliant Plant; and
- B. By Commission Order No. G-27-96, the Brilliant Agreements were set down for review and proceeded before the Commission at a public hearing in Castlegar, B.C. from April 9-11, 1996; and
- C. On April 9, 1996 WKP applied for an accounting order ("Accounting Application") to mitigate the rate impact of the Brilliant Agreements by amortizing the deferred income taxes on its balance sheet; and
- D. The Commission has considered the Brilliant Agreements and Accounting Application and evidence adduced thereon, all as set forth in the Reasons attached as Appendix A to this Order.

**NOW THEREFORE** the Commission orders as follows:

1. The Commission finds that the Brilliant Agreements are not in the public interest by reason of the fixed price term in years 30 to 60.

2. The parties are invited to make the necessary amendments to the Agreements to permit a market-related adjustment to the price to take effect after the expiration of the first 30 years of the 60 year term. In the event that the parties choose to make such amendments to the Brilliant Agreements, the Commission is prepared to accept the amended Brilliant Agreements for filing.
3. If the parties do resubmit the Brilliant Agreements for filing, the Commission accepts WKP's proposal to amortize the deferred income tax balance and to apply for a pass-through of the additional costs associated with the transaction after the final financing of the Brilliant Plant is determined.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 18th day of April, 1996.

BY ORDER

*Original signed by:*

Dr. Mark K. Jaccard  
Chairperson

## REASONS FOR DECISION

### 1. APPLICATION

#### 1.1 Background

West Kootenay Power Ltd. ("WKP") owns four hydro-electric plants on the Kootenay River and is a public utility regulated pursuant to the provisions of the Utilities Commission Act ("Act"). Cominco Ltd. ("Cominco") owns hydro-electric plants at Brilliant on the Kootenay River and at Waneta on the Pend d'Oreille. WKP has been purchasing electricity from Cominco under two power purchase contracts. In 1982, Cominco was exempted from regulation (the "1982 Exemption Order") as a public utility under Part 3 of the Act. The 1982 Exemption Order and all subsequent Exemption Orders recognized Cominco's historical relationship as an electricity supplier to WKP's customers, including a condition requiring Cominco to grant a right of first refusal to WKP to purchase the Brilliant and Waneta Plants. Recognizing the changed conditions noted below, on March 29, 1996 the Minister of Finance and Corporate Relations issued a revised Exemption Order to Cominco (Exhibit 14).

The Columbia Basin Trust ("CBT") is a corporation created under the Columbia Basin Trust Act to invest in assets for the ongoing economic, environmental and social benefit of the region. Columbia Power Corporation ("CPC") is a wholly-owned crown corporation of the Province of British Columbia, created to manage and develop any hydro-electric assets purchased by the Province from Cominco and to participate in power projects in the region (Exhibit 19). On December 21, 1995, Cominco gave WKP notice pursuant to the right of first refusal and on February 9, 1996 it agreed to sell its Brilliant Plant to CPC. A report prepared in February, 1996 by Acres International Limited concludes that a further 80 years of service can reasonably be expected from the Brilliant Plant (Exhibit 1A, Appendix B).

WKP's generating capacity is insufficient to meet its firm load and it wishes to acquire a long-term supply of capacity and energy to replace its power purchases from Cominco under the two contracts which expire in 1999 and 2005.

On March 11, 1996, WKP applied to the British Columbia Utilities Commission ("Commission") pursuant to the applicable provisions of the Act, in particular Section 59 and Sections 85.1 and 85.3, for an Order to approve Energy Transmission and Energy Supply Contracts and related Agreements ("Application", "Brilliant Agreements"). This Application assumes that a joint venture of the Columbia Power Corporation and Columbia Basin Trust ("CPC/CBT") will purchase the Brilliant Plant from Cominco and the Brilliant Agreements would enable WKP to purchase the output of the Brilliant hydro-

electric plant from this joint venture. While WKP is waiving its right of first refusal to purchase the Waneta Plant if the Application is approved, it has preserved its right of first refusal of the Brilliant Plant in the Brilliant Power Purchase Agreement. If this Application is not approved, WKP may elect to exercise its rights pursuant to the right of first refusal with Cominco. As a result, WKP is seeking Commission approval of this Application before April 26, 1996.

Under Sections 85.1 and 85.3 of the Act the Commission's jurisdiction is to determine whether the Transmission and Energy Supply Contracts are not in the public interest. If the Commission finds that the contracts, in whole or in part, are not in the public interest it has jurisdiction to make various Orders as described in Section 85.3(2) and (3).

A public hearing into the Brilliant Agreements was held on April 9-11, 1996 in Castlegar, B.C. The participants included individuals and representatives of the WKP service area municipalities, consumer interests and community groups. Representatives of CBT, CPC and Cominco also attended.

## **1.2 Terms of Agreements**

The Brilliant Agreements which WKP has filed for approval reflect the March 10, 1996 Memorandum of Understanding between WKP and CPC (Exhibit 1A, Tab 5A). They are required in order to purchase the power generation of the Brilliant Plant from the new owner and to set out the new relationships necessitated primarily because of that change in ownership.

### **Brilliant Power Purchase Agreement ("BPPA")**

This agreement constitutes an Energy Supply Contract pursuant to Section 85.3 of the Act between WKP and the owner of the Brilliant Plant for the supply of the generation output of the Brilliant Plant from May 1, 1996 to 2056. Until the Canal Plant Agreement expires in September 2005, the capacity and energy to be purchased by WKP pursuant to the terms of the Brilliant Power Purchase Agreement are the entitlements set out in the Canal Plant Agreement, being approximately 130 MW of capacity and 850 GW.h of energy. The purchases are on a take-or-pay basis over the 60 year term of the agreement at a price which is fixed relative to the initial and ongoing capital costs and expenses of the plant, and which bears no direct relationship to the prevailing market price at any given time (Exhibit 1B, Tab 1, p. 8, and T3: 445-6).

#### Brilliant Management Agreement

This agreement between WKP and the CPC/GBT is necessary to continue the maintenance, operation and management of the Brilliant Plant by WKP, with a management fee of 15% applied to all reasonable and necessary costs incurred by WKP under the agreement.

#### Residual Power Purchase Agreement

The agreement is an Energy Supply Contract between WKP and Cominco to September 30, 2005 for the difference between the supply of firm energy and capacity from the two existing power purchase contracts and the Brilliant entitlement. The price is on a take-or-pay basis and is the same as that set out in the existing 1999 Firm Power Supply Agreement.

#### Waneta Management Agreement

The Waneta Management Agreement between WKP and Cominco accounts for the sale of the Brilliant Plant to a new owner and continues the maintenance, operation and management of the Waneta Plant and related facilities by WKP under the same terms as the previous management agreement.

#### 1996 Facilities Sharing Agreement

This new facility sharing agreement among WKP, Cominco Ltd. and the CPC/GBT is necessary to optimize the use of transmission services. The terms are similar to the existing facility sharing agreement between WKP and Cominco.

#### Transmission Transfer Asset Agreement

This agreement between WKP and Cominco is made pursuant to Section 59 of the Act to allow for the transfer of transmission assets made necessary by the purchase of the Brilliant Plant by CPC/GBT.

#### 1996 Interconnection Agreement

This Interconnection Agreement among WKP, Cominco, and the CPC/GBT is required to accommodate the sale of the Brilliant Plant and the exchange of transmission lines and to provide for the continued operation of the interconnected transmission systems.

### 1996 Canal Plant Subagreement

The 1996 Canal Plant Subagreement between WKP, Cominco and CPC/CBT accounts for the allocation of Cominco/WKP generation entitlements under the Canal Plant Agreement.

## **2. RESOURCE ACQUISITION: BPPA VERSUS ALTERNATIVES**

### **2.1 Integrated Resource Plan ("IRP")**

In March 1995, WKP filed its Integrated Resource Plan ("1995 IRP") with the Commission. Subsequently, with its Application, WKP filed an updated Integrated Resource Plan ("IRP update") dated March 1996, in support of the BPPA. WKP indicated that its justification for the need for the BPPA was largely based on its IRP update (T1: 13). As noted by WKP in final argument:

"If it were not for the IRP which has provided focus to what is a very complicated transaction, this hearing could've been a very different hearing with many issues that were inadequately identified and addressed. I submit that the IRP has very effectively focused the application and the hearing on the key issues. West Kootenay Power has actively pursued the IRP process in this proceeding and is of the opinion that a comprehensive IRP should be the cornerstone of all significant resource acquisition decisions before this Commission." (T3: 409).

The 1995 IRP evaluated seven potential supply-side resource portfolios. The existing resources which underpinned all portfolios included power from the Brilliant Plant purchased by WKP under the two existing contracts with Cominco. However, one portfolio involved the termination of the two Cominco contracts and replacing them with the purchase of the Brilliant Plant and a new short-term contract with Cominco. The 1995 IRP did not consider the purchase of power from Brilliant under a new long-term contract and, although the Brilliant Plant purchase portfolio ranked highly in the 1995 IRP, it was not the preferred portfolio.

In the IRP update, WKP evaluated three supply-side resource portfolios: a base portfolio, which was similar to the preferred portfolio from the 1995 IRP, a Brilliant portfolio which contained the BPPA rather than the purchase of the Brilliant Plant, and a market portfolio which evaluated the use of market purchases to meet incremental resource needs.

Both the 1995 IRP and the IRP update evaluated the portfolios for a range of demand forecasts and analyzed the load/resource balance for both capacity and energy for a 20 year planning horizon. The IRP

update filed with the Application selected the Brilliant (power purchase) portfolio as the preferred resource both on financial and on social and environmental grounds.

Based on the review of the IRP update in this hearing, the Commission believes that WKP should be commended on its Integrated Resource Planning efforts. Moreover, the Commission is satisfied that the short-term action plan for 1996, to cover the period between the IRP update and the issuance of the next biennial update, is reasonable and may be generally pursued by WKP with the exception of the currently structured arrangement for the purchase of the output of the Brilliant Plant as discussed in Chapter 4.0.

However, the Commission notes that acceptance of an IRP does not constitute prior approval for expenditures. Specifically, the Commission notes that the turbine upgrade included as a resource in the short-term action plan is dependent on WKP's assumption of favourable economics being borne out by economic studies currently underway (Exhibit 1A, Tab Appendix A, pp. V-4 and VII-2). Similarly, the general level of DSM expenditures may be subject to further review in the context of WKP's February 27, 1996 Revenue Requirements Application.

## **2.2 Power from the Brilliant Plant Compared to Alternatives**

When compared to alternative resources, based on the evaluations in the IRP and on the evidence adduced in the hearing, the power from Brilliant Plant, whether attained through outright purchase of the Plant or a power purchase contract, appeared attractive for several reasons:

- because the BPPA was structured in a way analogous to a lease arrangement, WKP would retain some certainty of the Brilliant Plant as a resource;
- there would be no need for additional transmission resources, nor would there be any risk related to future wheeling charges, since the resource is in WKP's service territory;
- under the BPPA, the Brilliant Plant would be owned by CPC/CBT, and thus would be owned, at least in part, locally;
- the power from the Brilliant Plant represents a manageable block of power relative to the size and certainty of WKP's demand for the period covered by WKP's IRP; and
- the Brilliant Plant was evaluated on social and environmental attributes in the IRP update and, as an existing resource, was considered to be superior to alternative resources in most respects. No party suggested that the analysis presented in the IRP update was insufficient, although some

parties argued that there were fish habitat issues related to the operation of the Brilliant Plant that required further consideration in the BPPA (T3: 490-1; T3: 500).

**The Commission finds that the Brilliant Plant as a resource is adequately justified by WKP's 1995 IRP and the 1996 IRP update.**

### **2.3 The BPPA versus the purchase of Brilliant Plant by WKP**

When compared to the purchase of the Brilliant Plant by WKP, the BPPA appeared to be a favourable option since the financing available to CPC/CBT results in a lower cost of power and rate impact under the BPPA than with the outright purchase of the Brilliant Plant by WKP. This is shown under Tab 6 of Exhibit 1A. This aspect of the Application was not seriously disputed by any intervenor in the hearing.

**The Commission finds that the Brilliant Power Purchase Agreement is justified relative to the option of WKP purchasing the Brilliant Plant.**

## **3. COST OF POWER**

### **3.1 Rate Impacts**

While WKP could finance its own acquisition of the Brilliant Plant under conventional financing, the initial impact on customer rates would be between 8.7% and 9.5% (Exhibit 1B BCUC IR #1, Question 1). The Brilliant Power Purchase Agreement is more closely related to a long-term lease and the initial rate impact is approximately 3.0% at May 1, 1996, prior to any efforts to mitigate this rate impact (Exhibit 1A, Tab 6, p. 1).

### **3.2 Deferred Income Tax Amortization**

WKP currently has \$10,578,000 of accumulated deferred income taxes on its balance sheet, as directed by the Commission. These deferred income taxes are currently treated as zero cost capital in WKP's regulatory capital structure.

WKP has applied for approval to amortize this deferred income tax balance into rates to reduce the initial rate impact of the Brilliant Power Purchase Agreement to 0% in 1996 and 1% in each of 1997, 1998 and 1999 (Exhibit 1I and Exhibit 1A, Tab 6, p. 5).



**The Commission accepts WKP's proposal to amortize the deferred income tax balance and to apply for a pass-through of the additional costs associated with the transaction, once the final financing of the Brilliant Plant is determined.**

### **3.3 Cost Elements**

A concern was raised by the Consumers Association of Canada (B.C. Branch) et al. ("CAC(BC) et al.") that "any costs that would not be accepted for rate setting purposes if they were being claimed by CPC/GBT or WKP in the context of a rate hearing should not be accepted as an integral part of the contract." (T3:-460-1). In the view of CAC(BC) et al., this would include elements of the pricing formula in the BPPA such as the return on equity used to determine the capital related charges in the contract pricing formula, and the inclusion of the principal repayment portion of the debt servicing component in the calculation of the return on CPC/GBT's initial equity investment in the Brilliant Plant.

**In the Commission's view, these cost elements of the BPPA are part of a package negotiated by WKP and CPC/GBT. Since the buyer and seller of power under this arrangement are not corporately linked, the Commission finds that the appropriate benchmark to use in evaluating such an energy supply contract is the final price for the power sold, and how that price compares to the cost of comparable energy and capacity which could be obtained from alternative resources, including purchase on the open market. On that basis, the Commission finds that the price anticipated to result from the pricing formula in the BPPA, except where the term of the contract makes such a comparison unreasonable, is acceptable.**

### **3.4 Fixed Price Term**

Some intervenors expressed concern with the potential risks of a fixed price contract. The Kootenay-Okanagan Electric Consumers Association suggested that the price should be tied to a market index from the start (T3: 484). The CAC(BC) et al. suggested that after 30 years the price should be open for renegotiation (T3: 469).

Witnesses for both WKP and CPC/GBT argued that the fixed price condition was an important element for both parties to the contract and that the contract would provide stability and would remain competitive with market prices. However, both acknowledged under questioning that maintaining a fixed price after 30 years was desirable but not essential to their position (T2A: 312, T3: 323, T3: 338).

The Commission is concerned with the extremely long fixed price term. While WKP's IRP and price forecasts presented in the hearing suggest that the contract has a high probability of being favourable to WKP's customers for the next 10 to 15 years, no evidence was presented for periods beyond that.

The Commission recognizes the a minimum fixed price term of about 30 years may be necessary for financing and other key conditions of the contract. However, it is concerned about the possible risks of substantial customer liabilities if market prices decline significantly over the very long term, notably the 30 to 60 year time frame. Rather than face such risks, future generations of WKP customers are perhaps better served by the opportunity for an adjustment of the energy supply contract price to reflect market conditions after 30 years.

**The Commission finds the aspects of the Agreements resulting in a fixed price term continuing beyond 30 years to be not in the public interest.**

#### **4. COMMISSION DETERMINATIONS**

**The Commission finds that the Brilliant Agreements are not in the public interest by reason of the fixed price term in years 30 to 60. The parties are invited to make the necessary amendments to the Brilliant Agreements to permit a market-related adjustment to the price to take effect after the expiration of the first 30 years of the 60 year term. In the event that the parties choose to amend the Agreements to the extent necessary to comply with the Commission's concerns, the Commission is prepared to accept the amended Brilliant Agreements for filing.**