



IN THE MATTER OF  
the Utilities Commission Act, R.S.B.C. 1996, Chapter 473

and

An Application by the Office & Professional Employees' International Union, Local 378  
for Reconsideration of Commission Order No. G-28-02 and Reasons for Decision dated April 17, 2002

**BEFORE:** P. Ostergaard, Chair )  
K.L. Hall, Commissioner ) July 11, 2002

**O R D E R**

**WHEREAS:**

- A. On December 21, 2001, the Commission received an application from the Office & Professional Employees' International Union, Local 378 ("OPEIU", "Union") requesting that the Commission hold a public hearing into proposals by British Columbia Hydro and Power Authority ("B.C. Hydro") to enter into joint venture/partnership arrangements to provide services, in that such arrangements would violate Sections 52 and 53 of the Utilities Commission Act ("the Act"); and
- B. After receiving submissions and reply from the parties, the Commission issued Order No. G-28-02 and Reasons for Decision denying the application for a public hearing; and
- C. On June 7, 2002, the Union filed an Application pursuant to Section 99 of the Act for reconsideration of Commission Order No. G-28-02 and Reasons for Decision ("the Reconsideration Application"); and
- D. On June 21, 2002, the Commission received a written submission on the Reconsideration Application from B.C. Hydro; and
- E. On June 28, 2002, the Union filed its reply to the submission; and
- F. The Commission has considered the Union's Reconsideration Application, the B.C. Hydro submission and the Union's reply as set forth in the Reasons attached to this Order.

**NOW THEREFORE** the Commission denies the June 7, 2002 Reconsideration Application for the reasons set out in the Reasons for Decision, attached as Appendix A to this Order.

**DATED** at the City of Vancouver, in the Province of British Columbia, this 12<sup>th</sup> day of July 2002.

BY ORDER

*Original signed by:*

Peter Ostergaard  
Chair

Attachment

## **REASONS FOR DECISION**

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### **1.0 BACKGROUND**

On June 7, 2002, the Office and Professional Employees' International Union, Local 378 ("OPEIU", "Union") filed an Application pursuant to Section 99 of the Utilities Commission Act ("the Act") for reconsideration of Commission Order No. G-28-02 and Reasons for Decision issued by the British Columbia Utilities Commission (the "Commission") dated April 17, 2002 (the "Decision"). That Decision denied the OPEIU Application of December 21, 2001 requesting that the Commission hold a public hearing into proposals by British Columbia Hydro and Power Authority ("B.C. Hydro") to enter into joint venture/partnership arrangements to provide services currently provided by three B.C. Hydro service units: customer services, vehicle fleet services, and Westech Information Systems, Inc. ("Westech"). The Commission found that Section 52 of the Act does not apply to B.C. Hydro by virtue of Section 32(7)(x) of the Hydro and Power Authority Act and that Section 53 of the Act does not apply to the joint venture/partnership-type arrangements contemplated in the Requests for Expressions of Interest ("RFEI") issued by B.C. Hydro. The Commission also found that Westech is not a public utility under the Act and that the Commission does not have adequate jurisdiction to hold public hearings on the disposition of assets, which are not covered by the Act, because of the exemption to Section 52.

In making its Reconsideration Application, the OPEIU took account of the criteria the Commission considers when assessing whether there is a reasonable basis for reconsideration.

The OPEIU submits that there are three grounds for reconsideration:

1. There has been a fundamental change in circumstances of B.C. Hydro's RFEI proposal since the Decision.
2. The Commission's finding that Westech is not a public utility under the Act has created a new principle which could have significant, far-reaching effects in regard to the Commission's ability to regulate public utilities.
3. The Commission has erred in refusing to exercise its jurisdiction to review B.C. Hydro's RFEI proposal and order a public hearing into the matter for the following reasons:
  - (i) the Commission improperly interpreted Section 52 of the Utilities Commission Act.
  - (ii) the Commission failed to properly interpret its general jurisdiction to regulate public utilities, pursuant to Part 3 of the Utilities Commission Act.

- (iii) the public had a legitimate expectation that the Commission would fulfill its legislated mandate to uphold the “best interest” of the public.
- (iv) the Commission misapplied the direction given by the Court of Appeal in *B.C. Hydro v. B.C. Utilities Commission*, [1996] B.C.J. No. 379 (B.C.C.A.) (“the Court of Appeal Judgment”).

B.C. Hydro responded to the Reconsideration Application on June 21, 2002 and the OPEIU filed its final reply on June 28, 2002.

## **2.0 COMMISSION FINDINGS**

The Commission will address the grounds for reconsideration in the order in which they appear in Section 1.0 of these Reasons.

### **2.1 There has been a fundamental change in circumstances.**

The OPEIU states that on May 31, 2002 it was informed by B.C. Hydro that the privatization plan had been expanded to include network computing services, shared services, materials management business unit, human resources shared services, and business support services. The privatization plan has been altered in that a joint venture/partnership arrangement appears to have been abandoned. Because of the expanded privatization plans, the Union submits that the factual basis for the Commission’s Decision has fundamentally changed and that a public review of B.C. Hydro’s plans should be conducted by the Commission. B.C. Hydro responded that the facts which were fundamental to the Commission’s Decision have not fundamentally changed.

The OPEIU reply reiterated that the current B.C. Hydro proposal is significantly so different from the situation it presented to the Commission initially, that the Commission’s Reconsideration process should more closely resemble a new Application process than a Reconsideration process.

In considering whether to allow a reconsideration due to a fundamental change in circumstances, the Commission finds that its previous determinations (i.e., Section 52 of the Act does not apply to B.C. Hydro by virtue of Section 32(7)(x) of the Hydro and Power Authority Act, and Section 53 of the Act does not apply to the joint venture/partnership-type arrangements proposed by B.C. Hydro) still apply. If the effect of any final agreement between B.C. Hydro and a third party results in a consolidation, amalgamation, or merger of B.C. Hydro with the third party, then Section 53 of the Act requires B.C. Hydro to make application for approval of the transactions. In such circumstances, the Commission would allow the OPEIU to comment on that application before disposition by the Commission.

**The Commission denies this ground for reconsideration.**

2.2     The Commission's finding that Westech is not a public utility has created a new principle which could have significant, far-reaching effects.

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The OPEIU states that the Commission's decision to exclude Westech from the definition of public utility creates a new policy for the Commission and one of such significance that it demands further review. The Union's concern is that a utility might carve off vital sections of its operations, such that the Commission would lose its ability to regulate the public utility. By way of example, the OPEIU alleges that if B.C. Hydro sold off its Customer Service Division the Commission might be no longer able to set electricity rates in B.C. In addition, it submits that the non-regulated entities would not be required to provide the adequate, safe, efficient, just and reasonable service to the public that is required by Sections 38 and 39 of the Act. According to the Union, other sections relating to undue discrimination and undue delay might also not be applicable.

B.C. Hydro points out that Westech has operated for many years as an unregulated company and that other public utilities have non-regulated subsidiaries carrying on activities which do not fall within the definition of a public utility. B.C. Hydro believes that the Decision confirmed the status quo.

In reply, the OPEIU submits that the privatization or sale of vital sections of the public utility can hardly be called the "status quo".

The Commission's earlier finding that Westech was not a public utility under the Act was the result of a plain reading of the definition of "public utility" under Section 1. Westech does not own or operate equipment or facilities for the production, generation, storage, transmission, sale, delivery or provision of electricity for the production of light, heat, cold or power to or for the public or corporations for compensation. Westech provides services to B.C. Hydro which assist that public utility in providing electrical services for compensation but Westech is not a public utility itself. With respect to the OPEIU's concern that the selling off of divisions of B.C. Hydro will no longer allow the Commission to require B.C. Hydro to establish rates pursuant to the Act or provide adequate, safe, efficient, just and reasonable service to the public at non-discriminatory rates and without undue delay, the Commission requires all public utilities to meet the obligations of the Act whether the services are provided from within the utility or contracted out to a third party. For example, the contracting out of billing services by BC Gas Utility Ltd., Pacific Northern Gas Ltd., and Centra Gas British Columbia Inc. has not relieved those utilities from the requirement to establish rates approved by the Commission and to provide the quality of service dictated by the Commission.

**The Commission denies this ground for reconsideration.**

- 2.3     The Commission has erred in refusing to exercise its jurisdiction to review B.C. Hydro's RFEI proposal and order a public hearing into the matter for the reasons alleged in the OPEIU's Third Ground for reconsideration:
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2.3.1   The Commission improperly interpreted Section 52 of the Act.

The OPEIU submits that Section 32(7)(x) of the Hydro and Power Authority Act only exempts B.C. Hydro from the Commission's review if it disposes of "a part of its property, franchises, licences, permits, concessions, privileges, or rights." The Union believes that this exemption would not extend to a situation where B.C. Hydro disposes of entire service divisions of its enterprise, affecting thousands of its employees.

B.C. Hydro responds that Section 32(7)(x) applies to all dispositions of B.C. Hydro, not just those which are somehow less significant than "entire service divisions of its enterprise".

In reply, the OPEIU argues that Section 32(7)(x) cannot be interpreted as being so broad as to include entire service divisions of B.C. Hydro because, for example, such an interpretation would open the door to B.C. Hydro selling off its entire enterprise in parts, without any review by the Commission.

The Commission's determination that Section 52 of the Act does not apply to B.C. Hydro by virtue of Section 32(7)(x) of the Hydro and Power Authority Act is a plain reading of that section of the Hydro and Power Authority Act. Although the OPEIU finds this legislation undesirable in the present circumstances, the Commission cannot assume jurisdiction without the legislative powers to do so.

**Therefore, this ground for reconsideration is denied.**

2.3.2   The Commission failed to properly interpret its general jurisdiction to regulate public utilities, pursuant to Part 3 of the Act.

The OPEIU argues that the Commission should use its general supervisory powers under Part 3 of the Act to enquire into the conduct of B.C. Hydro's proposed disposition of the business units in question. The Union notes that the general supervisory powers of Part 3 of the Act are not part of the list of exemptions in Section 32 of the Hydro and Power Authority Act and that the legislature intended to ensure that the Commission was in a position to supervise and regulate public utilities. Therefore, the OPEIU believes that the effect of the Commission refusing jurisdiction to review B.C. Hydro's proposals is to completely undermine the legislative intent behind the Act. B.C. Hydro acknowledges that it, like other utilities, will remain fully responsible to the Commission for the adequacy of the services it provides.

The OPEIU reply argues that the Commission's regulation of B.C. Hydro would be limited only to the services that B.C. Hydro continues to provide after the disposition of assets outside of the Commission's jurisdiction.

When the Commission Decision found that it did not have adequate jurisdiction to hold public hearings on dispositions which are not covered by the Act because of the exemption from Section 52 of the Act, the Commission was cognizant not only of the Court of Appeal Judgment but also of the relevance of the general supervisory powers of Part 3 of the Act to an activity which is specifically exempted from the Act. The Commission is of the view that it does not have jurisdiction under its general supervisory powers to hold public hearings on dispositions of assets which are not covered by the Act because of the exemption from Section 52 of the Act. The Commission's powers under Part 3 of the Act to supervise and regulate public utilities continue to exist for activities not exempted from the Act. The Commission will regulate B.C. Hydro to ensure that the rates charged for energy are fair, just and reasonable, and that B.C. Hydro provides safe, adequate and secure service to its customers. This ability will exist even if B.C. Hydro contracts out significant services to third parties. B.C. Hydro acknowledges that it will remain accountable for rates and quality of services.

**The Commission, therefore, denies this ground of reconsideration.**

2.3.3 The public had a legitimate expectation that the Commission would fulfil its legislative mandate to uphold the "best interest" of the public.

In carrying out its statutory responsibilities, the Commission will continue to use its legislative powers to ensure safe, reliable services to customers at fair, just and reasonable rates. The Commission has not created a legitimate expectation that it will hold "a full investigation and public hearing of B.C. Hydro's plans and proposals." It has, however, provided the Union with an opportunity to be heard.

**The Commission, therefore, denies this ground of reconsideration.**

2.3.4 The Commission misapplied the direction given in the Court of Appeal Judgment.

The Commission agrees with the OPEIU that the Court of Appeal both "preserved the Commission's ability to supervise and regulate public utilities in British Columbia" while "not unreasonably impinging on the responsibilities and functions of the directors of a corporation to formulate plans for a utilities (sic) future."

The Commission also agrees with B.C. Hydro that the Court of Appeal found that "In the Decision, the Commission quite properly relied on the B.C. Hydro case to make the point that where the legislature has conferred ultimate jurisdiction on a utility, the Commission ought not to employ its general supervisory powers to interfere with utility management efforts to discharge those responsibilities".

The Commission does, and will continue to, supervise and regulate public utilities in British Columbia to ensure that they meet the requirements of the Act and to ensure they provide safe, reliable, non-discriminatory service to the public at rates which are fair and reasonable to ratepayers, while allowing the utilities a reasonable opportunity to earn a fair and reasonable compensation for the service provided on the

appraised value of their property. As previously identified in these Reasons, B.C. Hydro remains responsible to the Commission for the services it provides to its ratepayers, even if B.C. Hydro contracts with third parties to provide services to it.

**The Commission, therefore, denies this ground for reconsideration.**

### **3.0 COMMISSION DETERMINATION**

**For the reasons given in Section 2.0, the OPEIU's Reconsideration Application is denied.**