



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
Regarding British Columbia Hydro and Power Authority
Proposed Consolidation, Amalgamation or Merger (Sections 52, 53 and 72)

BEFORE: P. Ostergaard, Chair)
K.L. Hall, Commissioner) April 17, 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. Commission Letter No. L-1-02 requested B.C. Hydro to provide a response; and
- C. On January 31, 2002, B.C. Hydro responded; and
- D. On February 25, 2002, the OPEIU replied to the response by B.C. Hydro; and
- E. As the OPEIU reply raised new issues and arguments, the Commission granted B.C. Hydro the opportunity to make a further submission, with a final reply to be made by the OPEIU; and
- F. B.C. Hydro made its submission on March 8, 2002 and the OPEIU submitted its final reply on March 22, 2002; and
- G. The Commission has considered all of the information before it.

NOW THEREFORE the Commission orders as follows:

- 1. The December 21, 2001 Application is denied.
- 2. Reasons for Decision are attached as Appendix A to this Order.

DATED at the City of Vancouver, in the Province of British Columbia, this 17th day of April 2002.

BY ORDER

Original signed by:

Peter Ostergaard
Chair

Attachment

REASONS FOR DECISION

1.0 BACKGROUND

On December 21, 2001 the Commission received an Application from the Office & Professional Employees' International Union, Local 378 ("OPEIU") 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").

The OPEIU provided a copy of a Request for Expressions of Interest ("RFEI") issued by B.C. Hydro inviting qualified parties to develop joint venture/partnership type arrangements for services currently provided by three B.C. Hydro service units; Customer Services, Vehicle Fleet Services, and Westech Information Systems, Inc. ("Westech"). Customer Services is a Strategic Business Unit of B.C. Hydro providing meter reading, billing, payment and collection and call handling services to B.C. Hydro customers. Fleet Services is a division of B.C. Hydro providing vehicle management and repair services to B.C. Hydro and to entities outside of B.C. Hydro. Westech is a wholly-owned subsidiary of B.C. Hydro providing information systems consulting and support services to B.C. Hydro and other clients.

In its January 31, 2002 submission, B.C. Hydro agreed with the Commission that Section 52 of the Act has no application to B.C. Hydro by virtue of Section 32(7)(x) of the Hydro and Power Authority Act. B.C. Hydro also noted that an arrangement to transfer assets to a joint venture or partnership is not within the scope of Section 53 of the Act, and confirmed that, if it did propose a transaction to which Section 53 applied, it would come forward to the Commission for approval.

The OPEIU February 25, 2002 letter submitted that Section 32(7)(x) does not exempt Westech because, as a separate legal entity, it does not fall within the definition of "authority" as defined by the Hydro and Power Authority Act. The OPEIU contends that Westech itself is a public utility, subject to Section 52 of the Act because it is part of an integrated and publicly owned system and provides a range of essential services to B.C. Hydro. B.C. Hydro agreed that Westech is a separate legal entity but stated that it is not a public utility, as defined in the Act or otherwise.

The OPEIU alternatively submitted that, should the Commission find that Sections 52 and 53 do not apply, the proposal requires review and consideration by the Commission as part of its general jurisdiction to regulate public utilities, focussing on the public interest.

2.0 COMMISSION FINDINGS

Section 52 of the Utilities Commission Act states:

- “52 (1) Except for a disposition of its property in the ordinary course of business, a public utility must not, without first obtaining the commission's approval,
- (a) dispose of or encumber the whole or a part of its property, franchises, licences, permits, concessions, privileges or rights, or
 - (b) by any means, direct or indirect, merge, amalgamate or consolidate in whole or in part its property, franchises, licences, permits, concessions, privileges or rights with those of another person.
- (2) The commission may give its approval under this section subject to conditions and requirements considered necessary or desirable in the public interest.”

Section 32 of the Hydro and Power Authority Act states:

- “32 Despite any specific provision in any Act to the contrary, except as otherwise provided by or under this Act, the authority is not bound by any statute or statutory provision of British Columbia
- (7) The following Acts and provisions apply to the authority: . . .
- (x) the Utilities Commission Act, except sections 50, 51(c), 52, 57(2), 95 and 98;”

The Commission finds 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.

Section 53 of the Utilities Commission Act states:

- “53 (1) A public utility must not consolidate, amalgamate or merge with another person
- (a) unless the Lieutenant Governor in Council
 - (i) has first received from the commission a report under this section including an opinion that the consolidation, amalgamation or merger would be beneficial in the public interest, and
 - (ii) has, by order, consented to the consolidation, amalgamation or merger, and
 - (b) except in accordance with an order made under paragraph (a).
- (2) The Lieutenant Governor in Council may, in an order under subsection (1)(a), include conditions and requirements that the Lieutenant Governor in Council considers necessary or advisable.
- (3) An application for consent of the Lieutenant Governor in Council under subsection (1) must be made to the commission by the public utility.
- (4) The commission must inquire into the application and may for that purpose hold a hearing.
- (5) On conclusion of its inquiry, the commission must,

- (a) if it is of the opinion that the consolidation, amalgamation or merger would be beneficial in the public interest, submit its report and findings to the Lieutenant Governor in Council, or
 - (b) dismiss the application.
- (6) If a public utility gives notice to its shareholders of a meeting of shareholders in connection with a consolidation, amalgamation or merger, it must
- (a) set out in the notice the provisions of this section, and
 - (b) file a copy of the notice with the commission at the time of mailing to the shareholders.”

The Commission finds that Section 53 of the Act does not apply to the joint venture/partnership type arrangements in the Request for Expressions of Interest issued by B.C. Hydro.

Section 1 of the Utilities Commission Act states:

“(1) **“public utility”** means a person, or the person's lessee, trustee, receiver or liquidator, who owns or operates in British Columbia, equipment or facilities for

- (a) the production, generation, storage, transmission, sale, delivery or provision of electricity, natural gas, steam or any other agent for the production of light, heat, cold or power to or for the public or a corporation for compensation, or
- (b) the conveyance or transmission of information, messages or communications by guided or unguided electromagnetic waves, including systems of cable, microwave, optical fibre or radiocommunications if that service is offered to the public for compensation,

but does not include

- (c) a municipality or regional district in respect of services provided by the municipality or regional district within its own boundaries,
- (d) a person not otherwise a public utility who provides the service or commodity only to the person or the person's employees or tenants, if the service or commodity is not resold to or used by others,
- (e) a person not otherwise a public utility who is engaged in the petroleum industry or in the wellhead production of oil, natural gas or other natural petroleum substances, or
- (f) a person not otherwise a public utility who is engaged in the production of a geothermal resource, as defined in the *Geothermal Resources Act*,”

The Commission finds that Westech Information Services, Inc. is not a public utility under the Utilities Commission Act.

While the original application of the OPEIU focused on Sections 52 and 53 of the Act, the Reply Argument of the Union dated February 25, 2002 expanded the grounds for review to include the Commission's public

interest jurisdiction. The OPEIU recited Sections 21, 23, 24, 25, 26, and 31 of the Act in support of its request that B.C. Hydro's proposal requires review by the Commission as part of its general jurisdiction to regulate public utilities pursuant to Part 3 of the Utilities Commission Act. The submission made reference to the Commission's review of BC Gas' "CustomerWorks" partnership, along with a number of broad public interest concerns.

B.C. Hydro responded to the expanded application of the Union on March 8, 2002 to note that the BC Gas application was made pursuant to Section 52 of the Act, and that the remaining concerns have little or nothing to do with the transactions contemplated in the RFEI.

The Final Reply of the OPEIU on March 22, 2002 references Section 84 of the Act to note that the Commission is not limited in exercising its mandate under one section of the Act by other sections of the Act. The Union asserts that the RFEI would result in the sale of essential portions of B.C. Hydro which would be highly detrimental to all consumers of electricity in British Columbia.

In considering this request to hold a public hearing on general issues of public interest, the Commission has received direction from the Court of Appeal on the applicability of its general supervisory powers. The 1996 Judgement, *B.C. Hydro v. B.C. Utilities Commission*, made determinations about the responsibilities of the Commission to keep itself informed about the conduct of public utility business while not reasonably impinging on the responsibilities and functions of the directors of a corporation to formulate plans for a utility's future. Paragraph 58 of the Judgement stated:

“58 Taken as a whole the *Utilities Act*, viewed in the purposive sense required, does not reflect any intention on the part of the legislature to confer upon the Commission a jurisdiction so to determine, punishable on default by sanctions, the manner in which the directors of a public utility manage its affairs.”

In considering this application, the Commission finds that it does not have adequate jurisdiction to hold public hearings on the disposition of assets which are not covered by the Utilities Commission Act, because of the exemption to Section 52 of the Act. Even if the disposition was reviewable under Section 52 of the Act, the Commission recognizes that many of the public utilities under its jurisdiction have taken actions to outsource significant components of technology, services and customer information services. None of the public policy considerations raised by the OPEIU are considered to be within the jurisdiction of the Commission for review in a public hearing pursuant to the general supervisory responsibilities of the Commission. **The Commission, therefore, denies the Application for a public hearing of B.C. Hydro's initiatives under public interest requirements.**