

---

## CITY OF KELOWNA

### MEMORANDUM

**Date:** February 21, 2001  
**File No.:** 5520-01  
**To:** City Manager  
**From:** Electrical Utilities Manager  
**Subject:** **Wholesale Power Purchase Agreement – West Kootenay Power Ltd.**

---

#### **RECOMMENDATION**

THAT the City of Kelowna enter into a new 5 year contract with West Kootenay Power Ltd. for the supply of power to the City of Kelowna's electrical utility in accordance to the terms and conditions outlined in the report of the Electrical Manager dated February 21, 2001;

AND THAT the Mayor and City Clerk be authorized to execute the contract documents.

#### **BACKGROUND**

The City of Kelowna along with the other Interior Municipal Electric Utilities (City of Penticton, City of Nelson, City of Grand Forks, District of Summerland and Princeton Light & Power) have finalized their negotiations with their wholesale supplier West Kootenay Power (WKP) in order to re-new their Agreement for the Supply of Electricity, Wholesale Service.

The Interior Municipal Electrical Utilities (IMEU) have been negotiating with WKP since June 1999. The Agreement was accepted by the IMEU in December 2000 but as a final stage of due diligence the IMEU were awaiting final acceptance from their solicitor Mr. Brain Wallace and the legal firm of Bull, Housser & Tupper.

The negotiations have been long and extensive as they included detailed discussion with not only Kelowna but also Penticton, Grand Forks, Nelson, Summerland and Princeton. Over the past 20 months a number of meetings have been held in Trail, Penticton and Kelowna. . Each Municipality had a number of issues and in combination with other priorities made it a fairly lengthy negotiating process.

The previous agreement was signed July 1<sup>st</sup>, 1987 with a termination date of June 30, 1992. The City has extended/amended this original agreement 3 times since that date. With a potentially de-regulated market option lurking in BC, both parties felt it was necessary to sit down and review, negotiate and possibly set out some new contract terms.

For your assistance I have summarized a few main points of the new agreement as it compares to the previous contract which expired in 1999.

#### **Minor changes to this new agreement Vs the old agreement include:**

- Reconfiguring the Contract Terms in General
- Service Area Definition
- Limits on Other Supply
- Supply Characteristics
- Installation of Facilities
- Demand Period
- Billing Adjustments
- Commission Approval

**Major changes and additions to the new agreement are:**

**1. Access Principals Agreement**

This is a new clause to the agreement and probably the most important for us as municipalities. The IMEU negotiated through a "Negotiated Settlement Process" (NSP) in September 1998 with WKP and the British Columbia Utilities Commission (BCUC), the right to leave its current electricity supplier (given proper notice) if the market appears to be beneficial for the municipalities and return back to its original supplier if and when the market is non-beneficial. During the NSP, WKP and the BCUC concluded that when you look at WKP's hydraulic generation all IMEU members are in a unique situation because they actually have rights to a "Stranded Benefit" with their currently supplier instead of having to pay for a "Stranded Asset"

**2. Duty to Act Prudently in Arranging for Electricity Supply**

This is a new clause indicating the Company has a duty not to be imprudent when arranging for the supply of electricity and the Company will be liable to the Customer for any loss, injury, damage or expense caused to the Customer if the BCUC determines that the company has failed to meet its duty to be imprudent.

**3. Liability, Indemnity, Limitations and Requirements for Notice**

Old – The previous contract had a couple of clauses that granted mutual indemnity to WKP and the wholesalers for damage or injury resulting from other operators.

New - The proposed contract will now put onus on the Company for direct loss or damage to physical property of the Customer, resulting from willfull misconduct or negligent acts or omissions by the Company. It also indicates that if the Customer has given notice to the Company of a potential claim within 30 days it will have to act upon that claim. Claims must be a single occurrence and greater than \$10,000.00

**4. Billing Adjustments**

This is a new clause added to capture suspension or reduction in Service, which may automatically create a peak Demand on the monthly power bill. The Company has agreed to mutually agree on an adjustment if an occurrence like this should happen. The adjustment shall be determined in consideration of weather conditions and previous load experience.

WKP felt this new agreement had to be put in place particularly after the IMEU were successful in negotiating a set of "Access Principals Agreement" (APA) in September 1998. This new APA would allow all municipalities to leave their current supplier with the appropriate notice and then allow them to come back whenever they wanted too.

It should be noted that as part of our Public, Private, Partnership RFP it was identified that the current supplier of electricity was providing the best deal for the City for wholesale power and the City should renew its contract with WKP.

In conclusion the IMEU group are very please with the new terms of this agreement and will be making specific recommendations of acceptance to each of their individual Council's over the next few weeks.

---

Rod Carle, Electrical Utilities Manager

cc. Director of Works & Utilities