

1998-10

AN ORDER IN THE MATTER OF the Public Utilities Act
Revised Statutes, 1986, c. 143, as amended

and

Utilities Consumers' Group Complaint and
Request for a Review and Variance

BEFORE: B. Morris, Chair)
G. Duncan, Vice Chair) December 16, 1998

ORDER 1998-10

WHEREAS:

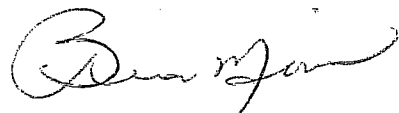
- A. By letter dated June 30, 1998, the Utilities Consumers' Group ("UCG") filed a Complaint to the Board pursuant to s. 44(1)(c) of the Public Utilities Act and a request for a Board investigation of the Complaint pursuant to s. 46 of the Act. The Complaint relates to the Yukon Energy Corporation ("YEC") and the Yukon Electrical Company Limited ("YECL") (collectively referred to as the "Utilities," the "Companies").
- B. The complaint was served on the utilities and their reply was received.
- C. The Board reviewed the complaint, supporting arguments, and related documents.

NOW THEREFORE THE BOARD orders as follows:

- 1. The Board dismisses the complaint for the reasons cited in Appendix A attached hereto.

Dated at the City of Whitehorse, in the Yukon Territory, this 23rd day of December, 1998.

BY ORDER



Brian Morris
Chair

YUKON UTILITIES BOARD

REASONS FOR DECISION

UTILITIES CONSUMERS' GROUP COMPLAINT

1. THE UCG COMPLAINT

By letter dated June 30, 1998, the Utilities Consumers' Group ("UCG") filed a Complaint to the Board pursuant to s. 44(1)(c) of the Public Utilities Act and a request for a Board investigation of the Complaint pursuant to s. 46 of the Act. The Complaint relates to the Yukon Energy Corporation ("YEC") and the Yukon Electrical Company Limited ("YECL") (collectively referred to as the "Utilities," the "Companies").

UCG alleges that information in the Companies' filing of the 1997 annual forecast with the Yukon Territorial Water Board ("YTWB") and transcript excerpts from the 1996/97 GRA Hearing provide evidence that the Companies had a secret internal policy to keep Aishihik Lake two feet above the licensed water level, consciously misleading intervenors and the Board.

2. STATUTORY PROVISIONS

The applicable sections of the Act are as follows:

- "44. (1) *Any person may file a complaint with the board respecting*
- (a) the rates of a public utility,*
 - (b) a proposed rate change,*
 - (c) the manner in which a public utility provides service,*
 - (d) the areas to which a public utility provides service, or*
 - (e) the conditions imposed by a public utility to establish, construct, maintain, or operate an expansion of service.*
- (2) *A copy of every complaint filed with the board shall be served upon the public utility to which it applies within the time fixed by the rules of the board.*
45. (1) *Subject to section 50, where a complaint is made to the board, the board has the power to determine, generally, whether any action on its part shall or shall not be taken.*
- (2) *The board may decide not to deal with a complaint where it appears to the board that*

- (a) *the complaint is one that could or should be more appropriately dealt with under another Act,*
 - (b) *the subject matter of the complaint is trivial, frivolous or vexatious,*
 - (c) *the complaint is made in bad faith or*
 - (d) *the complaint is not within the jurisdiction of the board.*
- (3) *The board may decide not to deal with a complaint where it is of the opinion that the facts upon which the complaint is based occurred more than six months before the complaint was filed, unless the board is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.*
- (4) *Where the board decides not to deal with a complaint, it shall advise the complainant in writing of the decision and the reasons for it.*
46. *Subject to section 45, the board shall, without undue delay, investigate every complaint.*

3. DISCUSSION

A. Background

UCG filed a complaint on May 2, 1995 in which it alleged that the decision by utility management to make early releases of water in 1993 and 1994 was imprudent and cost the ratepayers some \$3 million (the "Water Complaint"). On November 17, 1995, the Utilities filed a General Rate Application. On November 29, 1995, the Board decided it would deal with the Water Complaint in conjunction with the GRA and heard extensive testimony at the March, 1996 hearing. Subsequently, the Utilities and the UCG submitted written final argument to the Board on this issue. The Board issued Order 1996-9 on October 7, 1996, with written reasons.

The Board's Decision notes that the early releases were made to avoid high water levels and subsequent shoreline erosion in Aishihik Lake, to calibrate release valves and to compensate for restrictions at the Whitehorse Rapids Plant. The Reasons for Decision stated that the issues to be considered were:

1. Were the forecasts of water inflow and load requirements reasonable at the time? (The Board accepted that the shortfall could not have been reasonably forecast).
2. Were the non power producing objectives reasonable? (The Board believed that the objectives were not unreasonable).
3. Did YEC/YECL unreasonably restrict the operation of WH #4? (The Board found that the restrictions were forced outages).

B. New Evidence

The June 30, 1998 UCG Complaint alleges that the Companies consciously misled intervenors and the Board about reduced Aishihik plant generation in the fall and winter of 1995, stating:

“Evidence for this complaint is in the Companies filing to the Yukon Territorial Water Board; Aishihik Water License Y3L5-0307 , 1997 Annual Forecast:

1. page 4, sub 3.1.6 WATER LEVELS AISHIHIK LAKE 1996 which states: According to YECL records, Aishihik Lake levels in 1996 were drawn down to a low of 913.047 m in May and the summer was 913.553m in September. An internal policy decision by YEC/YECL set the target minimum elevation on Aishihik Lake to be 913.028m or 2 feet above LSL.

2. Table 5 SUMMARY OF GENERATION BY UNIT IN 1994-16 AND PARTIAL 1997: the months (Aug./95 to Jan./96) show diesel was used to artificially raise the Aishihik level. This shows the water spilled prior (as argued by UCG in its complaint) had value when the hearing was in process,

Further evidence of misleading information is from the 1996 GRA transcript on page 550, lines 1-12.”

YEC filed a response to the Complaint with the Board on July 6, 1998 and UCG commented on July 7, 1998, also asking the Board to investigate the rationale that a large embedded rock restricts water flows in Aishihik Lake.

C. Discussion

The “new evidence just uncovered by the Utilities Consumers Group” (UCG Press Release, June 29, 1998) to keep Aishihik Lake two feet above the licensed water level was well known during the hearing and thus formed part of the Board’s Decision that the actions by management were not imprudent. It was actually introduced by UCG to support its Final Submission in 1996, as noted in the following excerpt:

“Section 4.2.1 of the report [Note: the 1996 Annual Forecast report for the Aishihik Hydro Plant] indicates that Aishihik is low on available water. “An elevation target of 2 feet above low supply level has been set as the minimum elevation on Aishihik Lake for 1996.” This target was then used to base three inflow scenarios for the rest of 1996.

More information is provided in the next section, 4.2.2: “the operational strategy for 1996 is to use the water available without going below 2995.5 ft.” These statements imply that water levels were constrained at elevation 2995.5 feet which is 2 feet above the licensed minimum.

To examine this for a moment, we note that the report provides no rationale for the constraint. However, UCG knows that 3 former members of the Board attended a YTWB hearing on Dec. 3, 1992 where YEC stated that it would retain 1 to 2 feet of water in the reservoir bank for dry conditions or emergencies. In addition, a large embedded rock located upstream of the Aishihik Lake control structure restricts water flows at elevations below 2995.5 feet. The rock reduces discharges from the structure at elevations below 2995.5 feet, reducing equally the generating capacity which could put at risk the security of WAF capacity during high winter load conditions. Simply put, the 2 feet of water is there but using it will reduce the sustained generating capacity of the plant. The point is that the minimum licensed level of 2993.5 feet is not the true level of constraint, therefore, the lake does not have to "drain" before the water spillage from 1993 and 1994 is validated at diesel displacement value.

UCG submits that the evidence proves that the foot of water spilled in 1993 and 1994 could have been generated at Aishihik during the winter of 1995/96 to displace diesel costs."

UCG's July 7, 1998 letter states the evidence was only used to run scenarios rather than an indication of management policy but the reference is to an "operational strategy" and was clearly set out, at least by UCG, as company policy. At Tab 4 of its Submission, UCG includes this transcript reference:

"Tr. 466 Mr. McRobb:

Q Mr. Byers, can you tell us what the early release policy is?

MR. BYERS: There is no early release policy. There was an operational practice put in place to meet a set of circumstances that took place in those years, and those circumstances arose out of the issues raised by a number of concerned groups, including the regulatory agencies, like DFO, about early releases.

But it's not a policy. It was a reaction or an action, if you will, that the company took in response to concerns at that particular point in time."

The UCG June 30, 1998 Complaint seems to infer that, because the 1997 Annual Forecast later referred to the target minimum elevation as an "internal policy decision by YEC/YECL", the Companies misled the Board. However, the 1996 UCG Submission actually characterized the early release as a secret policy as well, stating as follows:

"EARLY RELEASE POLICY"

It was February, 1996 before anyone other than the companies knew about the early release policy. This was three years after it was apparently developed and 9 months after UCG filed the Complaint on May 2, 1995.

This policy was developed by the companies internally without consultation with any stakeholder and without authorization from any regulator."

The Board notes that there was much discussion during the 1996 hearing as to what constitutes "policy", as shown by the following example starting at Transcript page 466, line 26:

MR. BYERS: Well again, Mr. McRobb, I'll quibble with your use of the word "policy".

The only piece of paper that I'm aware of, that describes the situation and makes reference to the practice that we wanted to observe in responding to these various concerns, is that memo.

Q. Mr. Cowley, I refer you to page 5 of your report, just above the section we were last at, where it says "therefore a policy of early water release was adopted".

Can you explain to us your understanding of that policy, how it relates to what Mr. Byers just said? Can you explain to us what your understanding is?

MR. COWLEY: Can you identify the paragraph, please.

Q. It is the second paragraph on page 5, that starts with "therefore a policy of early water release was adopted".

MR. COWLEY: My choice of the word "policy" wasn't intended to convey a dictated, mandated practice.

What I would refer to here is that, in these circumstances, what they decided to do as a water management decision or a policy decision at the time was to try to soften the effect of the reservoir abruptly becoming full.

Q. Mr. Byers, I refer you to Exhibit 104, page 3; that's the overview from the companies.

Do you see the line right near the top of the page where it says "the companies release water above the minimum license

flows in the spring in accordance with their early release policy"? Do you see where it says that?

MR. BYERS: I see where it says that.

Q. I think I'm a little confused on this, Mr. Byers. It seems everyone refers to a "policy". But as I understand it, you say there really wasn't a policy. Can you clarify this for me.

MR. BYERS: Yes. I guess it depends, Mr. McRobb, on your definition of "policy".

If you use the word "policy" in the context of a formalized written procedure that applies on an ongoing basis until a decision is taken to change that, then that's the context in which I used the word "policy".

I think the context here is a different one. If you want to use the word "policy" in the context of these early releases, it was more of an operational decision taken to remedy a particular situation in a certain set of circumstances. It is not a formalized doctrine, a policy passed by our Board of Directors that says: Thou shalt, in these circumstances, do A, B and C type of thing.

No, it was an operational decision. So in that context if you want to use the word "policy", that's the difference. We are into a debate on semantics, I guess, in a sense. But I don't consider this, in my context, a policy.

In the Board's opinion, the term did not, and still does not, change the substance of the issue. The Companies did not act in an imprudent manner during the water releases and no penalties are appropriate.

The July 7, 1998 letter from UCG also asks why the Companies did not seek approval from the Board for advance clearance of the policy. The issues of regulatory risk and pre-approvals of utility actions were fully discussed in the 1996 UCG Submission. No new material has been presented.

With respect to the Complaint's reference to the value of water, this was also fully canvassed in the hearing. While the Board agreed that, in hindsight, the water had value, it took note of the uncertainties, stated that management's actions were not imprudent, and that, therefore, issues regarding the precise quantities and cost of the water were not relevant.

The Complaint is dismissed.

YUKON UTILITIES BOARD

P.O. Box 6070, 19 - 1114 First Avenue,

Whitehorse, Yukon Y1A 5L7

Telephone (403) 667-5058, Fax (403) 667-5059

Our file no.: 2550

Your file no.:

December 23, 1998

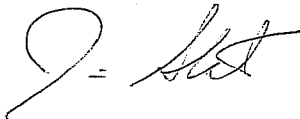
R. Rondeau
Utilities Consumer's Group
P.O. Box 6086
Whitehorse, Yukon
Y1A 5L7

Dear Sir:

Re: UCG's June 30, 1998 Water Management Complaint

I enclose a copy of Board Order 1998-10 containing the Board's decision and reasons for the decision in the above captioned matter.

Yours truly,



Jim Slater

Enclosure

cc	R. McWilliam	Yukon Energy Corporation
	J. Carroll	Yukon Electrical Co. Ltd.
	L. Bagnell	Association of Yukon Communities
	J. McLaughlin	Association of Yukon Communities
	B. Newell	City of Whitehorse
	R. Clarkson	New Era Engineering
	P. McMahon	YTG, Dept. of Ec. Dev.
	P. Percival	