

1998-11

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

and

Edward and Linda Brennan Complaints

BEFORE: B. Morris, Chair)
G. Duncan, Vice Chair)
G. Leslie) December 24 , 1998

ORDER 1998-11

WHEREAS:

- A. By letter received on November 17, 1998, Edward and Linda Brennan (the "Brennans") filed two Complaints with the Board pursuant to s. 44(1)(c) of the *Public Utilities Act*. The first complaint requested the Board to order Yukon Electrical Company Limited ("YECL") (the "utility") to provide electrical service to the Brennan's residential property at Lot 1524, Versluc Meadows. The second complaint asked the Board to order YECL to compensate the Brennans for YECL's use of the land and hindrance over the past 12 years caused by YECL's existing power line and to order the removal of the existing power line from the property.
- B. The complaints were served on the utility and following their replies, a request for additional information was also replied to.
- C. The Board reviewed the complaints and YECL's response to the complaints.

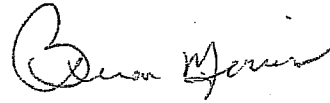
NOW THEREFORE THE BOARD orders as follows:

- 1. The Yukon Electrical Company Limited is ordered to provide electrical service to the Brennan's property at lot 1524, Versluc Meadows at the quoted cost to the Brennans and under the conditions of Electric Service Regulation 5.1.

2. The Board dismisses the second complaint.
3. The reasons for this order are cited in Appendix A attached hereto.

Dated at the City of Whitehorse, in the Yukon Territory, this 24th day of December, 1998.

BY ORDER

A handwritten signature in cursive script, appearing to read "Brian Morris".

Brian Morris
Chair

YUKON UTILITIES BOARD

REASONS FOR DECISION

EDWARD AND LINDA BRENNAN COMPLAINTS

1. THE COMPLAINT

By letter received on November 17, 1998, Edward and Linda Brennan (the "Brennans") filed two Complaints with the Board pursuant to s. 44(1)(c) of the *Public Utilities Act*. The first complaint requested the Board to order Yukon Electrical Company Limited ("YECL") (the "utility") to provide electrical service to the Brennan's residential property at Lot 1524, Versluc Meadows. The second complaint asked the Board to order YECL to compensate the Brennans for YECL's use of the land and hindrance over the past 12 years caused by YECL's existing power line and to order the removal of the existing power line from the property.

YECL requested, in addition to a construction contribution of \$1,118.15, a signed easement for the existing powerline prior to connecting electrical service to the Brennan property, citing Electric Service Regulation 5.1 as the authority for this request.

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

Edward and Linda Brennan made application to YECL to have electrical service provided to a building on the subject lot. Before providing the requested service, YECL required that the Brennans pay a construction contribution of \$1,118.15 including GST and sign an easement for the existing powerline on the subject lot. YECL takes the position that the signing of the easement is required by Electric Service Regulation 5.1 and that that practice is consistent with the terms and conditions of service for all customers. The Brennans state that they are willing to grant to YECL the "normally required easement" to provide service to their dwelling as specified in ESR 5.1, and that they are willing to provide the construction contribution as required.

The Brennans take the position that the easement requested by YECL is not required by ESR 5.1, but rather the easement relates to a power line that had existed on the lands prior to the Brennans purchasing the property in 1986. Since 1986, there has been an ongoing dispute between the Brennans and YECL as to the execution by the Brennans of an easement agreement for the existing line. On December 9, 1993, a caveat was registered by YECL against the Brennans' lot wherein YECL forbade the registration of any transfer affecting such lands or the granting of a certificate of title except subject to the easement claim. Attached to the caveat is a letter dated August 22, 1986, signed by the

Brennans wherein they purport to consent to provide an easement to YECL with respect to the subject lot.

The letter of November 13, 1998, from YECL to the Brennans requesting an executed easement specifically states that it relates to the existing powerline on Lot 1524. That letter cites ESR 5.1 as the authority for YECL's request. The Brennans are of the opinion that ESR 5.1 does not apply to the existing powerline. YECL's reply to the Board's question of whether the requested easement is reasonably required to give YECL the access it requires to provide the new service, states that "It is not our normal practice to secure easement on a powerline right-of-way that is located on a property to serve only that property."

Electric Service Regulation 5.1 states:

"The customer shall grant, or cause to be granted, to the Company, without cost to the Company, such easements or rights-of-way over, upon or under the property owned or controlled by the customer as the Company reasonably requires to provide service to such customer, including extensions thereof."

In the Board's opinion, the intended purpose of ESR 5.1 is to require the customer to grant an easement or right-of-way over that portion of the customer's land that is necessary to provide the service to the customer. It is not to require the customer to provide an easement for the purpose of serving other customers. YECL has acknowledged that it is not the normal practice to secure easements on a powerline right-of-way that is located on a property to serve only that property.

The Board finds on the first complaint that YECL is required, under ESR 5.1, to provide electrical service to the subject lot provided that the Brennans pay the estimated construction contribution.

With respect to the second complaint, the Brennans have asked for an order requiring YECL to pay compensation for trespass and an order compelling YECL to remove the existing line. The Brennans are asking that the Board make a determination as to whether or not the utility has committed a trespass, and if so, the Brennans are asking for an award of damages. The Board does not have the jurisdiction to award damages, whether compensatory, nominal or punitive, for breach of a common-law duty, such as trespass.

With respect to the Brennans' request for an order requiring the utility to remove the existing powerline, YECL claims a right to an easement by virtue of the purported consent of the Brennans. The Board finds that it lacks the requisite jurisdiction to override or extinguish that right.

The second complaint is dismissed.