

1998-9

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

and

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

**BEFORE:** B. Morris, Chair )  
G. Duncan, Vice Chair ) December 1, 1998

**ORDER 1998-9**

**WHEREAS:**

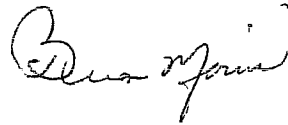
- A. By letter dated January 15, 1997, the UCG made two applications to the Board. The first was an application for a review and variance of Board Order 1996-7 pursuant to s. 62 and a request for a Board investigation pursuant to s. 48 of the *Public Utilities Act* R.S.Y., c143, as amended (the "Act") (the "First Application"). The second was a complaint regarding the Low Water Reserve Fund ("LWRF") pursuant to ss. 44, 45, and 46 of the Act (the "Second Application"). Both applications relate to the Yukon Energy Corporation and the Yukon Electrical Company Limited (collectively referred to as the "Utilities," the "Companies").
- B. The Board considered the application for a review and variance, the application for an investigation and the complaint, and reviewed the materials cited in the applications.
- C. The Board reviewed all previous Orders with respect to the Low Water Reserve Fund and the Diesel Contingency Fund and requested additional information from the Companies.
- D. Submissions and replies to the submissions were invited from all parties. UCG and YEC made the only responses and the Board considered these submissions.

**NOW THEREFORE THE BOARD** orders as follows:

1. The application for a review and variance of Board Order 1996-7 is dismissed.
2. The Board denies the request for an investigation with respect to the Low Water Reserve Fund.
3. The Board's reasons for this Order are cited in Appendix A attached hereto.

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

**BY ORDER**

A handwritten signature in dark ink, appearing to read "Brian Morris", written in a cursive style.

Brian Morris  
Chair

**Appendix A****YUKON UTILITIES BOARD****REASONS FOR DECISION****UTILITIES CONSUMERS' GROUP APPLICATION TO  
REVIEW AND VARY BOARD ORDER 1996-7 AND COMPLAINT  
WITH RESPECT TO THE LOW WATER RESERVE FUND****I BACKGROUND FACTS****A. The UCG Applications**

The Utilities Consumers' Group ("UCG") originally filed three (3) letters with the Board dated October 21, 23 and 24, 1996. The letters requested a review of Board Order 1996-7 pursuant to s. 62 of the *Public Utilities Act*, R.S.Y. c 143, as amended (the "Act"). By letter dated November 7, 1996, the Board issued guidelines for s. 62 requests for review of Board orders (the "Guidelines") and asked the UCG to refile its request since the letters provided insufficient detail to enable the Board to determine whether it should review the Order.

By letter dated January 15, 1997, the UCG made two applications to the Board. The first was an application for a review and variance of Board Order 1996-7 pursuant to s. 62 and a request for a Board investigation pursuant to s. 48 of the Act (the "First Application"). The second was a complaint regarding the Low Water Reserve Fund ("LWRF") pursuant to ss. 44, 45, and 46 of the Act (the "Second Application"). Both applications relate to the Yukon Energy Corporation and the Yukon Electrical Company Limited (collectively referred to as the "Utilities," the "Companies").

**(i) The First Application**

The First Application is composed of three (3) parts:

- 1) The first part alleges that the Utilities made excess profits in 1995. Included in this part of the application are the arguments that:
  - (a) the Utilities were given performance bonuses they should not have received; and
  - (b) the Utilities did not "bargain in good faith" during the negotiated settlement process in 1996 because they did not present allowed versus actual return on common equity ("ROE") numbers until after the workshop and negotiated settlement discussions.

This part of the application is made pursuant to s. 62 of the Act.

- (2) The second part requests an investigation as to whether the Utilities saved money by using less diesel generation than forecast in 1995 and, if so, why those savings were not placed in the Low Water Reserve Fund. This part of the application is made pursuant to s. 48 of the Act; and
- (3) The third part requests an accounting of the \$100,000 allowed for both 1996 and 1997 Demand Side Management (“DSM”) so stakeholders can understand how the DSM budget was allocated and spent. It appears that this part of the application is also made pursuant to s. 48 of the Act.

## (ii) The Second Application

The Second Application is composed of two (2) parts:

- (1) The first part requests an investigation as to whether actual diesel generation in 1994 was less than forecast and, if so, whether the Utilities incorporated the savings as profits rather than placing the savings in the LWRF. There are three (3) subparts to this part of the application:
  - (a) That the matter was not dealt with as part of the General Rate Application hearing and negotiated settlement discussions in 1996 (the “1996/97 GRA”) because the issue was deferred to the Aishihik Lake Water Complaint proceedings in the context of the LWRF being used as a vehicle for profit making at the cost of using stored water;
  - (b) That there needs to be further investigation as to whether the Utilities made a commitment in the 1993/94 GRA to place all diesel savings into the LWRF; and
  - (c) That there needs to be further investigation to determine whether the Utilities should have consulted with the Board rather than interpreting Board Order 1993-8 as it did with respect to the LWRF being “dormant” in 1993 and 1994.

If the Board investigation indicates funds are owing to ratepayers because the Utilities incorporated the savings as profits rather than placing the savings into the LWRF, the UCG asks the Board to determine the best method of returning those amounts to ratepayers.

- (2) The second part requests an investigation as to the status of the DSM amounts allowed by the Board for 1996 and 1997. If the Board determines funds are owing to ratepayers, the Board should determine the best method of returning the funds to ratepayers.

## **B. Background to the UCG Applications**

UCG filed a complaint on May 2, 1995 in which it alleged that the Utilities mismanaged the storage of water at the Aishihik Reservoir in 1993 and 1994 (the "Water Complaint"). On June 29, 1995, the Board issued Order 1995-1 which set interim rates for the Utilities effective July 1, 1995. 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.

The 1996/97 GRA consisted of a workshop, negotiated settlement process and public hearing in March 1996. A negotiated settlement was reached on most, but not all issues (the "Settlement"). The Settlement included the establishment of a Diesel Contingency Fund (the "DCF"). The settlement was considered by the Board at an oral public hearing commencing March 18, 1996. The Board heard submissions regarding the Settlement from proponents of the Settlement. Parties that did not agree with certain aspects of the Settlement were allowed to present evidence and cross-examine witnesses. UCG dissented on certain aspects of the Settlement, including the ROE. After hearing the evidence and arguments, the Board decided to accept the Settlement and issued Board Orders 1996-6 approving the revenue requirement and 1996-7 approving certain cost of service matters.

At the March, 1996 hearing, the Board also heard testimony related to the Water Complaint. 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.

## **C. Events Since the UCG Application**

On April 1, 1997, following receipt of the UCG Applications, the Board retained the services of Stephen Johnson, Chartered Accountants, to review all Board Orders that deal with the LWRF. Stephen Johnson delivered its report to the Board (the "Stephen Johnson Report"), stating that the Board had been consistent in its rulings with regard to the LWRF and recommending that the Board ask the Utilities to provide a schedule comparing forecast and actual diesel costs for each year from 1991 to 1995 for the purpose of determining whether a significant credit is due to rate payers.

By letter dated May 1, 1997, the Board asked the Utilities to provide certain information, including a continuity schedule of the Companies' forecast and actual diesel costs for 1991 to 1995. The Board also asked the Utilities to confirm the opening balance of the DCF and the current "cap" and "negative cap" on the DCF.

By letter dated June 24, 1997, the Utilities responded to the Board's May 1, 1997 letter. The Utilities submitted that the issue of the 1994 diesel generation savings was dealt with at length as part of the Water Complaint and there was no new evidence. As such, in the view of the Utilities, the matter has already been fully examined and there is no need for a further examination by the Board. The Utilities also submitted that the UCG's request for a variance of orders related to the 1996 GRA and the Water Complaint had been dealt with by the Board's letter of November 7, 1996 in which the Board concluded there was not sufficient detail to enable the Board to determine whether it should grant a review.

Notwithstanding those submissions, the Utilities provided the information requested by the Board in Attachment "A" to the June 24, 1997 letter. At page 1, the Utilities describe how they calculated the \$500,000 balance of the LWRP as at December 31, 1995. At page 2, they describe differences between the DCF and LWRP. At pages 4 to 6, the Utilities note some practical difficulties in calculating the amounts described in Table 1A to Attachment "A". Table 1A is a "hypothetical calculation" of additions to and withdrawals from the LWRP for the years 1991 to 1995 (The Utilities have taken the position the LWRP was "dormant" during the 1993-1995 time period per their interpretation of Board Order 1993-8). Table 1A indicates that the net addition to the LWRP during the period 1993 to 1995 would have been \$391,000 (1993 (-\$29,000), 1994 (-\$29,000), and 1995 (+\$449,000)). At page 5 of Attachment "A", the Utilities state the cap for the DCF is \$4,040,046 and, at page 6, that the "negative cap" is -\$4,040,046.

By letter dated June 27, 1997, Stephen Johnson provided its comments to the Board about the Utilities' letter dated June 24, 1997. In it, Stephen Johnson confirmed the Companies' continuity schedule but noted there was no explanation as to why adjustments for 1993 to the end of 1995 were restricted almost entirely to the refunds ordered by the Board. However, the Report noted that the suspension was consistent with the testimony of Mr. Byers regarding the operation of the LWRP in the 1996 hearing. At page 414 of the transcript, Mr. Byers stated:

"The Board's actual findings in relation to that are contained in Section 5.1.4.3, which is at page 70 of the Order 1993-8. And the Board's findings were as follows: The Board agrees with the parties that under the present circumstances a reasonable drawdown of the Low Water Reserve can be effected to reduce rates in the current test years without creating undue risk for future customers. The Board accepts the companies proposal to reduce the Low Water Fund by \$400,000 in 1993 and \$1,400,000 in 1994. However, the Board does not agree with the companies' proposal to use the drawdown directly in the form of rate relief. The Board directs that the reduction in the Low Water Reserve be applied as a reduction to the revenue requirement. And that's the end of the Board's comment on the low water reserve.

We have interpreted the Order as being that they accepted the companies' proposal that they refer to in 5.1.4, that no monies be put in or taken out of the reserve fund in 1993/1994. We regarded the fund as dormant. It has been left dormant. The balance in the fund, of approximately \$500,000, is in the Diesel Contingency Fund."

At page 3, the Report noted that, if the amounts in the Companies' hypothetical calculations were recorded, then the closing balance for the LWRF would be \$397,000 higher. Stephen Johnson felt that the matter would best be dealt with at the next GRA but the Board believes it should be resolved in this Application.

On May 9, 1998 UCG provided excerpts from Board Order 1992-1 and from the Companies' Reply Argument to the Water Complaint.

On September 9, 1998 the Board provided copies of the Stephen Johnson Report and correspondence to the parties to the 1996/97 GRA and Water Complaint proceedings. Only YEC and UCG responded. YEC submitted that the Board has ample basis to conclude that no further review is warranted. There is no new evidence or principle for the Board to consider. UCG responded with quotes from the Stephen Johnson Report and further commentary on the evidence already provided in the Hearing.

On October 23, 1998 UCG provided further transcript reference and concluded that the matters pertaining to the UCG Applications were not specifically dealt with during the 1996 Hearing.

## II. STATUTORY PROVISIONS AND SECTION 62 GUIDELINES

The UCG Applications were made pursuant to sections 44, 45, 46 and 62 of the Act.

- "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.*
48. *The board may, on its own motion, investigate any matter respecting the provision of service by a public utility.*
55. *The board may combine two or more complaints or other matters under this Act and deal with them in the same proceeding where*
- (a) *they relate to the same public utility, or*
  - (b) *they have questions of law or fact in common.*
60. (1) *Except in cases of urgency, of which the board shall be the sole judge, the board shall not without a hearing make any order involving an outlay by, or a loss or deprivation to, a public utility.*
62. *The board may review, change or cancel any decision or order made by it, and may re-hear any application or complaint before deciding it."*

The Guidelines are described in the Board's November 7, 1996 letter. The Board set out a two-step process. First, there is an initial "screening" stage at which the applicant must

convince the Board that there is a *prima facie* case sufficient to warrant consideration by the Board. If the Board is satisfied at the first stage, the Board will hear full argument on the merits of the application (the second stage).

There are six (6) grounds for review:

- (1) the Board made an error in jurisdiction;
- (2) the Board made an error in fact or law;
- (3) there has been a fundamental change in circumstances or facts since the decision or order;
- (4) a basic principle has not been raised in the original proceedings;
- (5) a new principle has arisen as a result of the decision or order; and/or
- (6) such other grounds as the Board determines requires a review.

Section 62 gives the Board the discretionary power to review its orders. The Board, and only the Board, can determine whether a s. 62 review should be allowed. The Guidelines are intended to provide parties with guidance as to the information they must provide and the criteria they must meet when applying for a s. 62 review.

### **III. DISCUSSION**

#### **A. The First Application**

##### **(i) "Excess Earnings in 1995"**

As noted above, there are three (3) parts to the First Application. The first part deals with "excess earnings" by the Utilities in 1995. This aspect of the First Application is applied for pursuant to s. 62 of the Act.

The Board must consider whether the UCG has complied with the Guidelines. The Board stated in its November 7, 1996 letter that the October 21, 23 and 24, 1996 letters provided "insufficient detail to enable the Board to determine whether it should grant a review pursuant to Section 62 of the Act." The Board must, therefore, consider whether the additional information provided in the refiled s. 62 application is sufficient to allow it to assess whether UCG has established a *prima facie* case for reconsideration.

UCG relies on two (2) grounds for review. First, it states there "has been a fundamental change in circumstances or facts since the decision or order". Second, it states that a "basic principle" was not raised in the original proceedings.

UCG refers to two changes in circumstances or facts since Board Order 1996-7. The first is Board Order 1996-9 in which the Board concluded the Utilities decision-making forecasts were inadequate. The second changed circumstance or fact relates to the evidence regarding actual vs. forecast earnings for 1995 which the Utilities provided to the Board and intervenors on March 18, 1996 during the oral hearing. UCG submits the late filing of the actual results of operations for 1995 shows the Utilities did not “bargain in good faith” during the negotiated settlement or give sufficient time to review the information and that this represents a changed circumstance or fact.

### **“Board Order 1996-9 and Management Performance Bonus”**

Dealing first with Board Order 1996-9, it is true that Order 1996-9 was issued after Order 1996-7. This does not mean that the new Order constitutes a fundamental change in circumstances or fact with regard to the previous orders.

Nowhere in the UCG Complaint does the UCG argue that there is any new (or changed) evidence, facts, or circumstances other than Order 1996-9 itself. The only evidence referenced in the UCG arguments about the Water Complaint is the evidence from the 1996 hearing. Thus, the Board must decide whether its Order 1996-9 is itself a change in circumstance or fact. **The Board is of the view that Board Order 1996-9 is not a change in circumstance or fact as was intended in the Guidelines. If it is, then every Board order could be the subject of a reconsideration application as the Board issues new orders in the future.**

As well, the Board did not find in Order 1996-9 that the Utilities’ water management decisions were imprudent. The Board found that the quality of information and decision support tools used for making water management decisions was inadequate to maximize the management of stored water for the customers’ benefit. UCG suggests that this finding means that the companies do not deserve a “management performance bonus”. It appears that UCG is equating the fact that actual earnings in 1995 were greater than forecast earnings with a performance bonus. **The Board disagrees. Utilities generally do not get to keep earnings because they are “management performance bonuses.” Rather, Regulators review forecasts of earnings and approve rates allowing the utilities the opportunity to earn a particular ROE – it is neither a ceiling nor a floor.**

### **“Bargaining in Good Faith”**

This issue relates to the filing of the actual results of operations during the 1996 hearing as being an indication of “not bargaining in good faith” and whether this is a changed circumstance or fact. The transcripts indicate that UCG, Board staff, and the Board itself asked questions of the Utilities at the hearing about this evidence. The Board specifically asked for submissions (see GRA 1996/97 Transcript Vol. 3, p. 230 at line 16-23) because

the Board recognized: "This was new information that was not available at the time of negotiations". The Board heard argument and rendered its decision on the Settlement after considering those arguments. According to the transcript, neither UCG nor any of the other proponents of the Settlement took the position at the 1996 hearing that the Utilities did not bargain in good faith during the settlement discussions. **In the Board's opinion there is no evidence that the Utilities did not bargain in good faith. As such, the Board concludes that UCG's allegations do not raise a fundamental change in circumstance or fact.**

### **"Order 1995-1"**

The final aspect of this part of the First Application is the issue of Order 1995-1. UCG suggests that a "basic principle" was not raised during the original proceedings because the Utilities filed the actual 1995 earnings during the 1996 hearing and, as a result, the participants did not have sufficient time to file Order 1995-1 as evidence. It would appear that UCG is suggesting that the Board did not consider Order 1995-1 when it issued Order 1996-7. In fact, the Settlement agreed that the rates made interim by Order 1995-1 should be confirmed as permanent. As well, while there is no mention of Order 1995-1 in Order 1996-7, the Board notes the following transcript reference (Vol. 3, p. 230, line 4):

*"Generally, the Board is prepared to accept the settlement proposal. However, we are struggling with one problem, and we are hoping you can help us deal with that problem. That problem is the 1995 rates that were declared interim by Board decision 1995-1."*

*The settlement package as it relates to the 1995 interim rates was negotiated at a time when the utility revenue was forecast. On Monday, yesterday, we were given the actual figures. Those figures indicated that the actual net utility revenues increased from the forecast amounts. This is new information that was not available at the time of the negotiations.*

*We would like to hear oral argument from the parties why there should not be some reallocation of that money; for example, X number of dollars say to the Diesel Fund, X number of dollars to the companies, whatever combination people might like to present argument on." (emphasis added)*

The Board heard the submissions of the parties including UCG, and at Vol. 3, p. 261, line 9, the Board adjourned to consider the arguments. At line 21 the Board states:

*"The Board has very carefully considered the arguments presented to us with respect to this particular issue that did trouble us...The Board accepts the settlement package as it was presented to us..."*

The Board concludes that it considered Order 1995-1 when it approved the Settlement and issued Order 1996-6.

Generally, with respect to the first part of the First Application, the Board concludes that there has not been a fundamental change in circumstances or facts since Board Order 1996-7 was issued, nor is there any evidence that a basic principle was not raised in the original proceedings. Accordingly, the Board concludes that grounds for review of Board Order 1996-7 have not been established with respect to the first part of the First Application and therefore, with respect to this part the Board declines to review its Order.

(ii) **1995 “Over-earnings” and The Low Water Reserve Fund**

Having reviewed its Orders, the Settlement, and the relevant transcripts from the 1996/97 GRA/Water Complaint hearing, the Board makes the following observations:

- (1) Transcripts from March 1996 GRA/Water Complaint Hearing: The excerpts previously referred to in these Reasons would appear equally appropriate to this issue. The transcripts disclose that the Board specifically asked for comments about the 1995 over-earnings and whether those amounts should be placed in the DCF. From Vol. 3, p. 232 to approximately p. 257, there were submissions made to the Board with respect to the 1995 over-earnings. At p. 234, line 16, Mr. Sabey discusses whether the over-earnings should be placed in the DCF. Mr. McRobb suggested the amounts should be placed in the DCF (p. 242, lines 5 - 9). Mr. Clarkson said that putting the over-earnings into the DCF was not a good option (p. 243, lines 16 - 17). As noted above, after hearing those arguments, the Board adjourned and subsequently decided to accept the Settlement without amendment.
- (2) Board Orders and Settlement: The Settlement refers to the initial funding of the DCF. At p. 1, Article 2, the Settlement states *“The initial funding will be determined based upon the funds available as at December 31, 1995. If additional funding becomes available due to other determinations with respect to diesel costs or other utility costs in 1995, the fund will be adjusted.”*

The Board does not specifically mention the issue of “over-earning” in 1995 in its Orders. However, the Settlement document (Exhibit 142) agreed that 1995 interim rates should be confirmed as permanent and Order 1996-7 stated:

*"The Board, being satisfied that the settlement agreement was in the best interests of the public, accepted the settlement package as presented and issued Order 1996-6 which also identified the hearing costs to be included in the Companies' revenue requirement."*

The Board is of the view that it did, in fact, put its mind to the issue of 1995 "over-earnings" during the course of the 1996/97 GRA proceedings and, having heard argument on the issue, concluded it was adequately dealt with by the Settlement. It follows then, that if the Board dealt with the issue of 1995 "over-earnings", and concluded the Settlement adequately dealt with the issue, the Board must have concluded no amounts should have been allocated to the LWRF or the DCF over and above the amounts described in the Settlement, particularly given the Board expressly asked for argument on that very issue.

This application was brought pursuant to s. 48, under which the Board has the discretion as to whether, and to what extent, it will exercise its investigatory powers. The Board concludes that further investigation is unnecessary.

### (iii) DSM Accounting

The third part of the First Application relates to the DSM aspect of the Settlement. UCG would like the Board to investigate how the Utilities spent the approved DSM budget. In its October 23, 1996 letter to the Board, the UCG suggests the Utilities should not have spent the DSM monies without notifying the intervenors pursuant to the terms of the Settlement. In an October 23, 1998 follow-up UCG adds a quote from the transcript purporting to show how the Companies disregarded the Settlement.

The Settlement actually stated:

*"The DSM costs identified in the Application are accepted. A working group is to be formed, under terms of reference set by the Board, to make recommendations on energy management, conservation and efficient use programs and rates. The working group will also consider rate methods to encourage industrial self-generation when this will benefit system rates. The working group will also consider joint programs with municipalities. This working group is to be convened within one month following the Decision and a report is to be filed with the Board no later than November 1, 1996."*

The Companies' Application retained the 1994 Board-approved DSM budgets for the 1996/97 test period. The evidence showed that this level of funding would limit the DSM initiatives to communications and information programs. Aside from those parameters,

the Utilities are entitled to decide how they will manage the DSM funds. The Board must be cautious that it does not become involved in the “micro-management” of the Utilities’ business.

**The Board concludes that there is nothing in the Settlement, the Board’s Order and Reasons, nor in the transcripts regarding any requirement that the Utilities obtain intervenor approval or consent before spending the funds allocated to DSM. The Board concludes that an investigation of DSM expenditures is not necessary.**

## **B. The Second Application**

### **(i) “1994 Diesel Savings and the LWRF”**

The Second Application is a complaint by UCG pursuant to s. 44 of the Act, that the Utilities should have placed any savings resulting from the lower than estimated diesel costs in 1994 into the LWRF.

It is readily apparent from the transcripts of the 1996/97 GRA/Water Complaint hearing and UCG and Utilities’ written arguments on the Water Complaint, that this issue was dealt with at some length before the Board prior to the issuance of Order 1996-9. The Board refers to the following examples:

#### **(a) Transcripts:**

- At Vol. 2, p. 271, there is discussion by Mr. McRobb as to Board Order 1993-8 and the operation of the LWRF during 1993 and 1994;
- At Vol. 5, p. 412 to approximately 450, Mr. Byers gave evidence on behalf of the Utilities regarding the operation of the LWRF after 1992, the Utilities’ interpretation of Board Order 1993-8, the balance of the LWRF, and the issue of “diesel savings”.

#### **(b) Water Complaint Argument:**

- At Tab 2 of the UCG’s April 8, 1996 Water Complaint Argument, the UCG dealt extensively with the issue of the 1994 diesel savings and whether the Utilities took those as profits rather than placing the savings in the LWRF;
- Part 2 of the UCG’s Final Submission in reply to the Utilities’ argument again dealt quite extensively with the same issue;
- Similarly, the Utilities dealt extensively with this issue at Tab 2-1 of their April 25, 1996 Water Complaint Argument. We note that the Utilities expressed the view at p. 2-2 of their Argument that this matter was dealt with as part of the 1996 GRA Settlement discussions.

Order 1996-9 is silent as to the alleged diesel cost savings. Similarly, the Reasons make no mention of the issue.

The Board has reviewed the Stephen Johnson Report, the hypothetical calculations made by YEC and submissions received regarding the Report.

**In the Board's opinion, the issue at this stage is whether the Board has already made a decision regarding the alleged 1994 diesel savings. Having reviewed all of the materials described above, the Board concludes that it dealt with this issue as part of the 1996/97 GRA when it approved the Settlement which established the initial contributions from the LWRF to the DCF as being \$500,000. The amount in the LWRF in 1995 was clearly the result of what happened to the LWRF in previous years, including 1994. The Board concludes that since it has already dealt with this issue, it will not deal with the complaint pursuant to s. 45 (2) (b) of the Act.**

**(ii) "Demand Side Management"**

This portion of the Application alleges that a new principle has arisen. The Board ruled on this issue in the context of the First Application and the Board's comments are equally applicable in the context of the Second Application.

**The Board concludes that an investigation of this matter is not necessary.**



**YUKON UTILITIES BOARD**

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

**Whitehorse, Yukon Y1A 5L7**

**Telephone (867) 667-5058, Fax (867) 667-5059**

December 1, 1998

Roger Rondeau, President  
Utilities Consumers' Group  
P.O. Box 6086  
Whitehorse, Yukon  
Y1A 5L7

Dear Mr. Rondeau

**Re: UCG January 15, 1997 Complaint and Applications for a Review and  
Variance and Investigation**

I enclose the Board's decisions on the above captioned matters for your information.

Yours truly,



Jim Slater  
Secretary

Attachment

cc	R. McWilliam	Yukon Energy Corporation
	J. Carroll	Yukon Electrical Company Limited
	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 Economic Development
	P. Percival	