

2006-2

**IN THE MATTER OF the Public Utilities Act
Revised Statutes of Yukon, 2002, c. 186, as amended**

and

**Request of Patrick McMahon for the Board to
Review and Vary Order 2005-16**

BEFORE: Wendy Shanks, Vice Chair) February 16, 2006
Michael Phillips, Member)
Richard Hancock, Member)

BOARD ORDER 2006-2

WHEREAS:

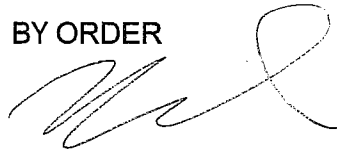
- A. On January 4, 2006, Mr. Patrick McMahon filed an Application to the Yukon Utilities Board ("Board") to review and vary Order 2005-16, specifically the Board's Cost Award Decision re: Rate Application by Yukon Energy Corporation for Approval of 2005 Revenue Requirements.
- B. In his application, Mr. McMahon notes Section 62 of the *Public Utilities Act* ("Act") that provides "The board may review, change, or cancel any decision or order made by it, and may rehear any application or complaint before deciding it."
- C. By letter dated November 7, 1996, the Board issued guidelines for an application for review pursuant to Section 62 of the Act (Attachment 1 to this Order). The guidelines provide parties to proceedings before the Board with information as to both the grounds for review and the content of applications for review. The Board applies the following criteria to determine whether a reasonable basis exists for accepting a review under Section 62 of the Act:
 - i. the Board has made an error in jurisdiction;
 - ii. the Board has made an error in fact or law;
 - iii. there has been a fundamental change in circumstances or facts since the decision or order;
 - iv. a basic principle has not been raised in the original proceedings;
 - v. a new principle has arisen as a result of the decision or order; and
 - vi. such other grounds as the Board determines require a review.

NOW THEREFORE the Board orders as follows:

1. The Board has considered the application having regard to criteria set out in the guidelines and considers that no further process is necessary in the circumstances.
2. The Board notes that it determined in Board Order 2005-14 that only "the party being asked to pay," namely, Yukon Energy Corporation, was to receive the cost award applications and that no further input was being sought by the Board.
3. The Board has concluded that the application does not meet any of the criteria for accepting a review under Section 62 of the Act and that no useful purpose can be served by the undertaking of a more extensive process of review.
4. The request for a review and variance of Board Order 2005-16 is denied.

DATED at the City of Whitehorse, in the Yukon Territory, this 23rd day of February 2006.

BY ORDER



Wendy Shanks
Acting Chair

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:
Your File:

November 7, 1996

TO ALL PARTICIPANT OF
YEC/YECL 1996/97
GENERAL RATE APPLICATION

Dear Sirs and Madams:

RE: Utilities Consumers' Group Correspondence to the Board and
Applications for review pursuant to Section 62 of the Public
Utilities Act

The Board has received two letters from the Utilities Consumers' Group ("UCG") dated October 21, 1996 and October 24, 1996 respectively requesting a review pursuant to Section 62 of the Public Utilities Act of the Board's Order 1996-7 dated June 11, 1996 relating to the 1996/97 General Rate Application of Yukon Energy Corporation/Yukon Electrical Company Limited ("YEC/YECL"). Specifically, the Board is being asked to reconvene the YEC/YECL 1996/97 GRA to:

1. Conduct a further investigation of alleged excess earnings in 1995; and
2. Investigate "the legalities" of the YEC/YECL transfer of \$0.5 million from the Low Water Reserve Fund to profits in 1995. Mr. Rondeau subsequently, in a telephone call to the Board office advised that 1995 should read 1994.

In addition, the Board has received a copy of a letter from UCG dated October 23, 1996 for an accounting update for the 1996 year to date for the monies allocated by the Board to the Energy Management budget. It is not clear whether this letter forms part of the requested Section 62 review.

All parties to proceedings before the Board will be aware that Section 62 of the Act provides the Board with the discretion to determine whether it will grant a review. It does not, however, provide any guidance as to the grounds for review or the content of the application for review. Section 27 of the former Rules provided guidance as to the content of Section 62 applications. The present Rules do not.

The Board considers it timely, therefore, to provide parties to proceedings before the Board with guidance as to both the grounds for review and the content of applications for review.

A. GROUNDS FOR REVIEW

The Board will consider the following as grounds for review under Section 62 of the Act:

- (i) the Board has made an error in jurisdiction;
- (ii) the Board has made an error in fact or law;
- (iii) there has been a fundamental change in circumstances or facts since the decision or order;
- (iv) a basic principle has not been raised in the original proceedings;
- (v) a new principle has arisen as a result of the decision or order;
- (vi) such other grounds as the Board determines require a review.

B. CONTENT OF THE APPLICATION FOR REVIEW

The Application for review should as a minimum set forth the following:

- (a) the grounds upon which the application is based;
- (b) a brief statement of facts supporting the alleged ground(s) for review;
- (c) if new evidence is sought to be filed, a statement of the nature and purpose of the evidence;
- (d) any further matter that the applicant believes will assist the Board in reaching a decision to grant a review.

C. PROCEDURE

The Board will use a two phase system for applications for review. Such a process is attractive as it enables certain applications to be dealt with expeditiously and economically. An application for review will be subject to an initial screening phase where the applicant must establish a prima facie case sufficient to warrant full consideration by the Utilities Board. In the first phase, the Board will assess an application having regard to some or all of the following questions:

- Should there be a review by the Board?
- If there is to be a review, should the Board hear new evidence and should the parties be given the opportunity to present evidence?

- If there is to be review, should it focus on the items from the application for review, a subset of those items or additional items?

Upon receipt of an application for review, the Board will issue an order inviting registered intervenors and interested parties to comment on the application for review by addressing those questions set out in the order and further specifying a process to be followed which is either by written submissions with reply by the applicant or by written submissions and oral argument. In the case of an alleged error, in order to advance to the second phase of the process, the application must show that:

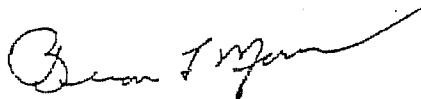
1. The claim of error is substantiated on a prima facie basis; and
2. The error has significant material implications.

If there is a second phase, then the Board will hear full arguments on the merits of the application.

D. THE UCG LETTERS

The letters received from the UCG provide insufficient detail to enable the Board to determine whether it should grant a review pursuant to Section 62 of the Act. Accordingly, the Board directs that UCG refile its application having regard to the grounds for review and the information to be contained in the application set forth in this letter.

Yours very truly,



Brian L. Morris
Yukon Utilities Board

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