

COURT OF APPEAL FOR THE YUKON TERRITORY

ORAL REASONS FOR JUDGMENT:

CORAM: The Honourable Chief Justice Finch
The Honourable Mr. Justice Donald
The Honourable Mr. Justice Low

BETWEEN:

UTILITIES' CONSUMER GROUP

APPELLANT

AND:

YUKON UTILITIES BOARD
AND
YUKON ENERGY CORPORATION

RESPONDENTS

ROGER RONDEAU

Appearing for the Appellants

TIMOTHY PRESTON and LENORE MORRIS

Appearing for the Respondent
Yukon Utilities Board

JOHN P. LANDRY

Appearing for the Respondent
Yukon Energy Corporation

REASONS FOR JUDGMENT

[1] FINCH C.J.Y.T. (Oral): This is an application under Rule 5(2) for a review of the order of Mr. Justice Vertes pronounced 8 June 2001. By that order he dismissed two applications by the Utilities' Consumers Group for leave to appeal

orders of the Yukon Utilities Board pronounced on 3 November 1999, that is Order 1999-3, and on 10 November 1999, which is Order 1999-5.

[2] Mr. Justice Vertes set out the circumstances which led to the Board's orders in this way:

[9] In late 1997 and early 1998, YEC requested that the Board finalize its 1997 rates. In the meantime, several other interested parties wanted the Board to review the use and management of the DCF. The concern was that funds from the DCF were being used for general rate relief as opposed to specific diesel cost relief. The Board requested submissions from all interested parties, including the applicant, in 1998. A public hearing was held and the Board issued Order 1998-5 whereby, among other things, the Board confirmed the 1997 YEC rates and provided that funds from the DCF be used to offset extra costs incurred by various customers.

[10] Eventually, in 1999, YEC filed its annual reports for 1996, 1997 and 1998 on the operations of the DCF. The reports were distributed by the Board to interested parties. The applicant responded with its concerns and requested a full review with a process similar to rate hearings. The Board received a response from YEC to these concerns. On November 3, 1999, the Board issued the first order under appeal in this case, Order 1999-3, whereby it approved the reports and the additions and deletions to the DCF for the years 1996 to 1998.

[11] Also in 1999, YEC filed a final rate application for the 1998 rates. The Board solicited written comments from all interested parties including the applicant. After reviewing the written submissions, the Board issued the second order under appeal in this case, Order 1999-5. That Order confirmed the rates for YEC. That Order is being appealed, it is submitted on behalf of the applicant, because it is directly related to Order 1999-3 since it references back to the shortfalls identified by the earlier Order.

[12] Later in 1999, the applicant made applications to the Board for a review and variance of Orders 1999-3 and 1999-5. This was done under s. 62 of the *Act* which provides that the Board may review, change or cancel any decision or order made by it. The Board considered these applications and dismissed them with written reasons.

[3] The learned chambers judge then examined the applicant's grounds of appeal. He held that the first ground did not raise any question of law and that there was no foundation to the allegation of apprehended bias in the Board. He held that neither of the applications for leave to appeal satisfied the requirements of s. 69(1) of the *Public Utilities Act*, which reads:

69.(1) On application to the Court of Appeal within 30 days of a decision or order of the board or within a further time allowed by the Court of Appeal in special circumstances, the Court of Appeal may grant leave to appeal to that court from the order or decision on a question of law or excess of jurisdiction.

[4] The orders refusing leave to appeal were made in the exercise of the judge's discretion. The applicant has not alleged that the chambers judge made any error of principle in the exercise of that discretion, nor it has it alleged any basis on which it could reasonably be said that he exercised his discretion improperly. In my respectful view, there is no basis for interfering with the order refusing leave to appeal. I would dismiss the application for a review of that order.

[5] DONALD J.A.: I agree.

[6] LOW J.A.: I agree.

[7] FINCH C.J.Y.T.: The application for review is dismissed.

FINCH C.J.Y.T.