

IN THE MATTER OF the *Public Utilities Act*

and

**An Application by Yukon Energy Corporation
for Approval of Revenue Requirements for 2012 and 2013**

BEFORE: B. McLennan, Chair) November 5, 2012
 R. Laking)
 N. Prasad)
 A. Fortin)

BOARD ORDER 2012-10

WHEREAS:

- A. On April 27, 2012, Yukon Energy Corporation (YEC or Company) filed with the Yukon Utilities Board (Board), pursuant to the *Public Utilities Act* (Act), and Order-In-Council 2012/68, an Application requesting an order approving a forecast revenue requirement for the 2012 and 2013 test years, an interim refundable rate rider effective July 1, 2012, and implementation of overall rate adjustments through implementation of Rider J and Rider R (General Rate Application);
- B. On May 4, 2012, the Board issued Board Order 2012-3 providing notice of the General Rate Application and setting a proceeding schedule for the Application;
- C. On May 22, 2012, the Board issued Board Order 2012-4 which set out a written process for submissions regarding YEC's interim rates request and granted intervener status to:
 - Yukon Electrical Company Limited (YECL);
 - John Maissan (Leading Edge or LE);
 - Utilities Consumers' Group (UCG);
 - Yukon Conservation Society (YCS); and
 - The City of Whitehorse (CW);
- D. The Board received comments from LE, UCG and CW and a reply from YEC. In Board Order 2012-05, dated June 7, 2012, the Board approved interim rate adjustments of 6.3% for retail customers and 2.9% for industrial customers on a refundable basis. These interim rate adjustments were implemented through Rider J effective July 1, 2012;

- E. A revised process schedule for the General Rate Application was issued in Board Order 2012-06 for the reasons set out in the order. The dates for the oral public hearing were rescheduled to November 12 to 14, 2012 inclusive. The Board also set dates for written final argument and reply argument of November 28, 2012 and December 12, 2012, respectively. No other dates or process steps were changed;
- F. On October 11, 2012, YEC filed with the Board a request for an interim refundable revenue shortfall rate rider (Rider R) of 6.5% effective January 1, 2013 to be applied to all retail and industrial firm rates (including the 2012 shortfall Rider J and the fixed Rider F). In its request, YEC stated that the process schedule in Board Order 2012-6 will not allow the Board sufficient time to issue an order for this proceeding prior to the end of 2012;
- G. The Board issued a memorandum on October 12, 2012, inviting parties to comment on the YEC request for 2013 interim refundable rates by October 19, 2012 and for YEC to reply by October 23, 2012;
- H. The Board received written submissions from the LE, CW and UCG on October 19, 2012, and reply from YEC on October 23, 2012;
- I. The Board has considered the interim rate request and submissions from parties.

NOW THEREFORE, based on the reasons set out in Appendix A, the Board orders as follows:

The Board approves interim rate adjustments of 3.75% for firm retail and industrial customers through implementation of Rider R effective January 1, 2013. The interim rate adjustments are approved on a refundable basis.

DATED at the City of Whitehorse, in the Yukon Territory, this 5th day of November 2012.

BY ORDER



Bruce McLennan
Chair

Appendix A

Request by Yukon Energy Corporation for Approval of Interim Refundable Rates for 2012

Reasons for Decision

1.0 Interim Rate Request and Views of Parties

YEC requested for 2013 an interim refundable rate increase of 6.5% to be applied to all firm retail and industrial rate classes through a Rate Rider R effective January 1, 2013. Interveners did not endorse the rate increase applied for by YEC.

CW disagreed with YEC's premise that granting the full 2013 revenue requirement increase will promote rate stability as CW viewed that the 6.5% rate increase for 2013 interim refundable rates on top of the 6.4% rate increase (2.9% for industrial customers), for 2012 interim refundable rates, would likely result in recovery of an amount greater than the revenue requirement that will ultimately be approved by the Board. CW also stated that YEC has provided insufficient evidence to justify its application. CW requested the opportunity to submit information requests, examine YEC's witnesses at the oral public hearing and be permitted a brief oral argument at the end of the hearing. Alternatively, CW offered that if the Board wishes to deal with the 2013 interim refundable rate request before the oral hearing, a written process with information requests and argument and reply would be sufficient. Finally, if the Board proceeds without further process, other than YEC's reply, CW recommended that Rider J be reduced to 3.2% for retail rates as it would recognize that industrial customers received a 3.4% rate increase at the beginning of 2012 and the Board should only approve a Rider R of 3.25%. CW submitted that its proposed combination of a reduced Rider J and Rider R would promote rate stability.

UCG submitted that an interim rate increase would only be appropriate to protect the short-term financial status of YEC for particular scenarios¹. At the very least, UCG stated that the Board should require a clear showing that the interim rate increase is required to meet an unusual financial need. In addition to the particular scenarios that UCG viewed as appropriate for interim rates, UCG also submitted several reasons as to why the request for interim rates should be denied including:

- YEC's application does not adequately justify the need for another interim increase, nor has YEC demonstrated risk to the financial integrity of the utility.
- There are grounds to dismiss the interim application given the 90-day notice requirements within Section 28(1) of the Act.
- The granting of an increase will bring hardship to some Yukon ratepayers.

¹ The three scenarios proposed by UCG are: 1) YEC is forecasting a dramatic reduction in net income as compared to the previous year; 2) YEC has presented a *prima facie* justification for the proposed rate increase; and 3) the YUB anticipates a final decision on the proposed revenue requirement to be more than 6 months from the starting point of the rate adjustment.

LE did not oppose an interim refundable rate increase, but it did not support the full amount of the increase (6.5%). LE supported an interim rate increase of 5% or less.

YEC replied that the positions taken by UCG and CW do not consider the principles used by the Board in previous interim rate applications. YEC noted that Board Order 2008-6 and Board Order 2012-5 confirmed the Board's jurisdiction to make interim orders under Section 63 of the Act. It added that Board Order 2008-6 set out principles applicable to an interim rate application. YEC further replied that further process was not required as YEC's General Rate Application has undergone two rounds of information requests and 1,036 interrogatories answered by YEC. YEC reiterated that, as with the 2012 Rider J, the justification for the interim rate application is not based on a specific unforeseen change in financial circumstance, but on the reality that a final order on 2013 rates will not be available until well into 2013.

In terms of the magnitude of the rate increase, YEC noted that Rider J has already been approved and thus the CW comment regarding Rider J should not be given any consideration. With respect to the proposed increase for Rider R (2013), YEC reiterated its concerns regarding rate stability. YEC further stated that the arguments raised by CW fail to recognize the "true-up" needed for 2012 rates in 2013 and that the cushion created by only collecting six months of uncollected revenues in 2012 are more than adequate to reasonably accommodate any possible reductions in revenue requirement on both 2012 and 2013. Similarly for 2013, approving the full requested Rider R amount will reduce the need to recover a shortfall regarding final approved 2013 rates.

Finally, YEC noted that²

-- if in the extraordinary case the Board orders a reduction in non-diesel revenue requirement at a level that exceeds the present cushion -- any additional revenue collected under the interim and final rate increase that exceeds the Board's approved 2013 non-diesel costs could be used to increase the percentage of LTA diesel generation costs above 59%.

2.0 Findings of the Board

The Board notes the following from Board Order 2008-6³:

63 The board may, in any matter before it,

(a) make any interim orders on appropriate terms that it may consider necessary to facilitate its inquiry **or** to prevent serious harm occurring before its decision; [emphasis added by Board]

The Board disagrees with YEC that the Board's jurisdiction is practically limited to circumstances in which the utility can demonstrate that its financial integrity will suffer or that the safety of its operations will be compromised. Section 63 is clearly disjunctive, the first consideration being wholly for the Board and whether an interim order would facilitate the Board's inquiry into a rate application. In the Board's view, interim refundable rate orders provide the Board with the flexibility necessary to

² YEC Reply, page 4.

³ Board Order 2008-6, An application by Yukon Electrical Company Limited for Approval of Interim Refundable Rates for 2008 and 2009, Appendix A – Reasons for Decision, pages 2-3.

accommodate regulatory lag, which might otherwise deprive a utility of a reasonable opportunity to recover its prudent costs. To this extent, the Board agrees with YECL that the Board should be careful not to deny interim rates altogether if doing so could jeopardize the ability of the utility to implement and recover the final revenues determined by the Board to be just and reasonable in the test period.

...

... the Board disagrees with YEC that a “full hearing on the merits” of the Interim Application would be required before the Board can reasonably exercise its discretion to approve interim refundable rates for YECL. First, such an approach could contribute to greater regulatory lag and defeat the purpose of interim refundable rates. Second, while YEC indicated at the Pre-hearing Conference that it would be objecting to YECL’s Interim Application, no party objected to the Interim Application being dealt with in a short written process. It was on that basis that the Board determined at the Pre-hearing Conference and confirmed in Board Order 2008-5 that the Interim Application would be dealt with according to the written process proposed in the Pre-hearing Conference Agenda.

...

The Board agrees with YEC and the City of Whitehorse that several areas of the General Rate Application are controversial and likely to be contested. However, the Board also considers that there is a possibility of a rate increase for 2008 following the hearing into the General Rate Application. Granting an order approving 2008 interim refundable rates will preserve YECL’s opportunity to recover revenues ultimately determined by the Board to be just and reasonable for that year. These considerations support approval of the Interim Application to some extent.

As in Board Order 2008-6, the Board affirms its jurisdiction to make determinations on interim rate requests without the need for an oral public hearing. The Board disagrees with CW and considers that no additional process is needed to decide on the interim rate application as any interim rate granted is on a refundable basis. Based on the submission of the parties to date, the Board observes that there are areas of the General Rate Application that are likely to be contested. In the case of this GRA, YEC has stated that “ ... the current General Rate Application has already seen two rounds of interrogatories with an unprecedented 1036 interrogatories asked and answered by Yukon Energy”⁴. The Board concludes that granting an order approving 2013 interim refundable rates preserves YEC’s opportunity to recover the revenues ultimately determined by the Board to be just and reasonable for that year and these rates may be changed based on the final decision of the Board.

The Board does not accept the submission of UCG that interim rates should only be considered under the three scenarios as highlighted in footnote 1 to this decision. The Board considers that there is a possibility of a rate increase for 2013 and that granting an order for interim refundable rates is justified for the reasons outlined in the previous paragraph.

⁴ YEC Reply, page 2.

The Board considered that YEC is requesting an interim rate increase equal to the full amount applied for in the General Rate Application and that the interveners submitted a range of options from a zero increase to a maximum of 5%⁵. The Board is of the view that, due to the rescheduling of the hearing, a decision on the General Rate Application is unlikely to be issued until sometime in the first quarter of 2013 and that final rates may not be determined before a compliance filing to the decision on YEC's 2012-13 General Rate Application is considered. Such a lag may result in a sudden increase in rates and the Board considers that interim refundable rates promote rate stability. The Board also considered that the interim rate for 2012 in this matter was for a 6-month period or the equivalent to 50% of the requested increase. The Board does not accept the submissions of UCG that no interim rate increase is warranted as the Board may order an increase in final rates and interim rates are on a refundable basis. However, the Board is not prepared to grant the full amount requested as final rates may not be approved as applied for.

Consistent with the decision for 2012 interim refundable rates, and for the reasons stated above, the Board finds that it is just and reasonable and in the public interest to approve 2013 interim refundable rates (Rider R) for YEC of 3.75%, effective January 1, 2013.

⁵ UCG submitted at page 3 that no increase was warranted. CW proposed an interim rate of 50% of the increase requested by YEC and LE supports a Rider R of 5% or less.