

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

and

**An Application by Yukon Electrical Company Limited
for Approval of Interim Refundable Rates for 2008 and 2009**

BEFORE: W. Shanks, Chair) July 16, 2008
 R. Laking)
 R. Hancock)
 J. Woodland)

BOARD ORDER 2008-6

WHEREAS:

- A. On April 30, 2008, Yukon Electrical Company Limited (YECL) filed with the Yukon Utilities Board (Board) an Application, pursuant to the *Public Utilities Act* (Act) and *Order-in-Council 1995/90*, for approval of its forecast revenue requirements for the 2008 and 2009 test years and approval of certain deferral accounts (General Rate Application or Application).
- B. The Application also requests approval of an Interim Refundable Rate Rider, Rider R, and Temporary Refund/Surcharge Rider, Rider G, commencing July 1, 2008, applicable to all YECL and Yukon Energy Corporation (YEC) retail customers excluding Secondary Energy Rate 32 and Industrial Primary Rate 39 (Interim Application).
- C. On May 16, 2008, the Board issued Board Order 2008-4 providing notice of the Application, setting a Pre-Hearing Conference for June 12, 2008, and proposing a proceeding schedule for the Application, including a proposed public hearing commencing on October 7, 2008.
- D. The Pre-Hearing Conference was held on June 12, 2008, in Whitehorse, at which the Board determined it would consider YECL's Interim Application according to the following written process:

Submissions from Parties	June 20, 2008
Reply by YECL	June 27, 2008

- E. On June 20, 2008, the Board issued Board Order 2008-5, which addressed procedural and other matters arising during the Pre-hearing Conference and confirmed the written process for the Interim Application.

- F. By way of an e-mail dated June 20, 2008, the City of Whitehorse requested an extension of the time to file its submission on the Interim Application to June 23, 2008.
- G. By way of a memorandum dated June 20, 2008, the Board granted the extension requested by the City of Whitehorse.
- H. The Board received written submissions on the Interim Application from YEC, John Maissan, the Utilities Consumers' Group (UCG), and the City of Whitehorse.
- I. On June 27, 2008, the Board received a reply from YECL.

NOW THEREFORE, the Board orders as follows, with Reasons attached in Appendix A:

1. The Board approves an increase of 5.0% to existing primary base rates to be applied effective August 1, 2008, in the form of Interim Refundable Rider R.
2. Secondary Energy Rate 32 and Industrial Primary Rate 39 customers are excluded from the Interim Refundable Rider R approved in this Order.
3. The Board denies the request for Temporary Refund/Surcharge Rider, Rider G.

DATED at the City of Whitehorse, in the Yukon Territory, the 17th day of July 2008.

BY ORDER



Wendy Shanks
Chair

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Reasons for Decision

1.0 Interim Application and Views of Parties

At the Pre-Hearing Conference held on June 12, 2008, participants expressed mixed views on YECL's request for 2008-09 interim rate increases (Interim Application) and established a written process to consider the Application that was confirmed in Board Order 2008-5.

YEC, UCG, and the City of Whitehorse submitted that the Interim Application should be denied in its entirety. Mr. Maissan recommended "a single interim refundable rider of 5% starting July 1, 2008,"¹ primarily on the basis of his view that some increase in YECL's rates was likely and that interim rates would contribute to rate stability.

UCG objected to an interim rate increase on the basis that YECL had not filed its General Rate Application by October 31, 2007, as previously recommended by the Board in the report on YEC's 20-Year Resource Plan.

YEC objected to the Interim Application in principle, submitting that it was inconsistent with the requirements of the *Public Utilities Act* (Act) as well as the approach to interim rate increases previously taken by the Board. YEC submitted that the present record before the Board was "wholly inadequate to justify interim rates"² and referred to the criteria recently applied by the predecessor of the Alberta Utilities Commission (AUC).³ In summary, YEC submitted that YECL had not established both that the forecast revenue deficiency for 2008 was probable and material **and** that the interim rate increase was necessary to ensure YECL's financial integrity or to ensure the continued safe operation of its system. YEC supported this overall submission with detailed reference to a number of cost and revenue items in the Application, questioning the amounts and magnitudes of the changes forecast by YECL.

The City of Whitehorse fully agreed with, and adopted, the submission of YEC.

¹ June 19, 2008 correspondence from Leading Edge Projects Inc. (John Maissan), page 2.

² YEC submission, June 20, 2008, page 1.

³ Alberta Energy and Utilities Board, Decision 2005-099, *ATCO Gas 2005-2007 General Rate Application—Interim Rate Application* (August 29, 2005)

[http://www.auc.ab.ca/portal/server.pt/gateway/PTARGS_0_0_326_274_327_43/http%3B/aucContent/publishedcontent/publish/auc_home/regulatory_process/orders_and_decisions/decisions/2005/2005_099.aspx]

YECL disagreed with the criteria put forward by YEC, but focussed its reply on the fact that if some interim rate increase is not approved for 2008, YECL may be denied a reasonable opportunity to recover its prudent costs for 2008 as they may be finally approved by the Board after the hearing into the General Rate Application. In other words, if an interim order is not granted during 2008, YECL submitted that it would be unable to recover the 2008 revenue requirement that is ultimately found by the Board to be just and reasonable. YECL discounted YEC's submission on that basis that it was not founded on the terms of the Board's governing legislation, was inconsistent with the practice in other jurisdictions such as Alberta and the Northwest Territories, and would be unfair to YECL.

YECL emphasized that:

... interim refundable rates are intended to keep both the ratepayer and the applicant utility whole, in the sense that only the amounts ultimately approved by the Board will actually be collected in the end result.⁴

YECL added that the regulators referenced by YEC:

... address the likelihood of having to deal with controversial or contested issues in an application by granting less than 100% of the requested increase on an interim refundable basis.⁵

Noting the recent approach of the Northwest Territories Public Utilities Board, YECL amended its Interim Application to request that the Board set 2008 interim refundable rates to collect only 80% of the 2008 forecast revenue increase.

2.0 Findings of the Board

As noted by YEC, the Board's jurisdiction to make interim orders is expressed in Section 63 of the Act.

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]

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 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

⁴ YECL Reply, June 27, 2008, page 2.

⁵ Ibid, page 3.

ability of the utility to implement and recover the final revenues determined by the Board to be just and reasonable in the test period.

While the Board finds the criteria suggested by YEC to be helpful, 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.

As all parties acknowledge, the merits of YECL’s requested revenue requirements for 2008 and 2009 will be fully tested in the process outlined in Board Order 2008-5. Any difference between amounts collected according to interim refundable rates and those finally approved by the Board will be refunded to, or recovered from, YECL’s customers, as the case may be. 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 the 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.

They are balanced, however, by the following considerations:

- As noted by the UCG, YECL did not file its 2008-09 General Rate Application by October 31, 2007, which would have allowed the Board and parties to consider 2008 revenues and costs in a more timely way in 2008 and may have reduced some of the uncertainties expressed by YEC. The Application was filed only well into the second quarter of 2008
- Parties have raised serious concerns in relation to significant issues that do contribute to the uncertainty of outcome on which they base their objections to the Interim Application.
- Most jurisdictions do not grant interim orders for recovery of 100% of forecast revenue requirement increases, but grant some percentage to minimize the turbulence of rate changes over short periods.

Taking all of these considerations into account, and noting the proposal of Mr. Maissan, the Board considers that it is just and reasonable and in the public interest to approve interim refundable rates for YECL according to an increase of 5% on existing base rates, effective August 1, 2008.

Owing to the timing of the Application, the Board is not persuaded that it is just and reasonable to approve Rider G, which was proposed to recover revenues for the period January 1 to June 30, 2008.

The Board is of the view that, until the merits of the General Rate Application are determined, these interim refundable rates promote rate stability, allow YECL to operate safely, and result in interim rates that are fair, just and reasonable to both the utility and consumers and are in the public interest.