

IN THE MATTER OF the *Public Utilities Act*

and

**General Rate Application by Yukon Energy Corporation
for Approval of Revenue Requirements for 2017 and 2018**

BEFORE: R. Laking, Chair) August 21, 2017
B. King, Vice-Chair)
A. Fortin)
M. Lang)
P. Fitzgerald)

BOARD ORDER 2017-06

WHEREAS:

- A. On June 22, 2017, Yukon Energy Corporation (YEC) filed an application with the Yukon Utilities Board (Board), pursuant to the *Public Utilities Act* (Act) and Order-In-Council 1995/90, requesting an order approving a forecast revenue requirement for 2017 and 2018 (Application). In addition, in the Application, YEC is seeking approval of:
- to revise Rider F to include pricing related to the delivered cost of LNG, effective January 1, 2017;
 - to revise the DCF Term Sheet regarding the determination of annual expected long-term average thermal generation requirements and fuel costs; and
 - of an interim refundable rate rider (Rider J) for 2017 of 20.05% for retail firm rates and 16.40% for industrial firm rates, which represents an increase of 9.04% for retail and industrial customers, effective September 1, 2017 (interim rate request).
- B. YEC is seeking approval of forecast revenue requirements of \$48.544 million for 2017 and \$49.864 million for 2018. These amounts represent an increase of \$5.348 million for 2017 over revenues from existing rates and riders of \$42.301 million (12.6% increase) and an increase of \$6.585 million for 2018 over revenues from existing rates and riders of \$42.384 million (15.5% increase).
- C. The Board issued Board Order 2017-04 on July 4, 2017, in which the Board set out a process schedule, pending ministerial approval. In that Schedule, interested persons had until July 21, 2017 to register for this proceeding and to provide comments on YEC's proposed interim rate

request. YEC was granted the opportunity to reply to those comments by July 28, 2017.

- D. July 27, 2017, the Board issued Board Order 2017-05, which granted Intervener status to:

ATCO Electric Yukon;
City of Whitehorse;
Utilities Consumers' Group (UCG);
Yukon Conservation Society; and
John Maissan.

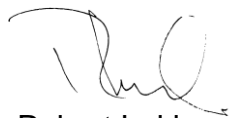
- E. On July 18, 2017, Mr. Maissan commented that the timing of the interim rate request was appropriate. On July 19, 2017, UCG filed submissions on the proposed interim rate request. On July 21, 2017, City of Whitehorse filed submissions on the proposed interim rate request. Both UCG and City of Whitehorse opposed the proposed interim rate request. On July 28, 2017, YEC replied to the submissions of these interveners.
- F. The Board has considered the interim rates request and submissions of the parties.

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

The Board approves an interim refundable rate rider (Rider J) for 2017 of 16.51% for retail firm rates and 12.86% for industrial firm rates, which represents an increase of 5.5% for retail and industrial customers for all electrical consumption on or after September 1, 2017.

DATED at the City of Whitehorse, Yukon, this 21st day of August 2017.

BY ORDER



Robert Laking
Chair

Appendix A Request by YEC for Approval of Interim Refundable Rates for 2017

Reasons for Decision

1. Interim Rate Request

In its 2017-18 general rate application (Application), YEC is seeking approval of an interim refundable rate rider (Rider J) for 2017 of 20.05% for retail firm rates and 16.40% for industrial firm rates, which represents an increase to Rider J of 9.04% for retail and industrial customers, effective September 1, 2017.

YEC submitted that the implementation of the Rider J increase ensures that YEC has a reasonable ability to recover its prudent costs for 2017 as may be finally approved by the Board after a full hearing. YEC added that interim refundable rates provide the necessary flexibility to accommodate regulatory lag between the Application filing date and the date of the final Board order, which helps keep both ratepayers and YEC whole.¹

Under its proposal, YEC submitted that less than one-third of the forecast 2017 revenue shortfall would be collected by this interim Rider J over 2017. Moreover, it contended that YEC's interim refundable rider proposal recognizes that rates arising from the final order in this Application will not be in place until sometime in 2018 because any required "true-up" for 2017 and 2018 will be part of the YUB's final order setting rates arising from this Application.²

2. Intervener submissions

City of Whitehorse and UCG opposed the interim rate request. Mr. Maissan did not take a position on the interim rate request, but stated that the timing of the proposed rate increase seems appropriate. No other submissions on the interim rate request were received.

(a) City of Whitehorse

City of Whitehorse pointed out that the Alberta Energy and Utilities Commission (AEUB)³ held that interim rate applications should be evaluated on the following criteria:

- The identified revenue deficiency should be probable and material;
- All or some portion of any contentious items may be excluded from the amount collected;

¹ June 22, 2017 letter from YEC re application for 2017-2018 GRA, PDF page 2 of 3.

² Application, line 7, page 4-8 to line 21, page 4-9.

³ Predecessor to the present Alberta Utilities Commission.

- Is the increase required to preserve the financial integrity of the applicant or to avoid financial hardship to the applicant?
- Can the applicant continue safe utility operations without the interim adjustment?

If all or a portion of the suggested rate increase appears appropriate after a consideration of the quantum and need factors, the Board must assess certain general public interest factors to see if a rate increase is justified. These include:

- Interim rates should promote rate stability and ease rate shock
- Interim adjustments should help to maintain intergenerational equity.⁴

City of Whitehorse submitted that to set interim refundable rates at a level above what is likely to be ultimately approved puts rate stability at risk. In this Application, City of Whitehorse argued that there is a considerable amount of uncertainty with respect to the questions regarding whether the identified revenue deficiency is probable and material, and whether financial hardship may ensue if the interim rate request is not granted.

City of Whitehorse further submitted that the increased costs outlined in the Application in support of the proposed interim rate request are untested. In particular, City of Whitehorse pointed to the substantial increase in non-fuel O&M costs as being a contentious issue. It also identified that depreciation and amortization expenses were likely to be contentious. City of Whitehorse added that these expenses do not amount to a cash outlay by YEC.

Respecting the need factor, City of Whitehorse argued that part of YEC's forecast revenue deficiency and forecast cost increase for the test years is driven by its proposal for an increase in return on equity (ROE) to 8.83%. City of Whitehorse pointed out that YEC earned a ROE of 8.69% in 2016 compared to the Board-approved ROE of 8.25% for the 2012-2013 test years.

In conclusion, City of Whitehorse asked the Board to deny YEC's interim rate request. Alternatively, City of Whitehorse suggested that YEC should be only allowed to collect a portion of the proposed 9.04% increase for 2017.

(b) UCG

UCG notes that under section 63 of the Act, the Board may "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."

In UCG's view, the crucial test for granting interim relief is whether or not the circumstances warrant such relief on a case-by-case basis. An interim rate increase is an extraordinary remedy and should only be granted, where an actual

⁴ City of Whitehorse registration and comments on interim refundable rate rider letter dated July 21, 2017, page 3.

emergency exists or where necessary to prevent hardship or gross inequity, and where refusal to do so would clearly jeopardize the utility and is detrimental to its ratepayers.

UCG submitted that YEC must demonstrate the following to justify an interim increase in rates:

1. irreparable harm will occur to it if the interim rates are denied and that any perceived harm to YEC outweighs any harm that will result to other parties if the interim rates are allowed;
2. the likelihood of success in getting approval of its revenue requirement as proposed; and
3. the public interest will not be harmed.

Based on a preliminary review of the Application, UCG contends that there is no evidence of any hardship conditions such as the inability to arrange debt financing, a distinctive and sudden decline in revenues, or any evidence that a failure to grant interim relief will result in irreparable harm to the utility. In addition, there is no evidence on the record establishing that the existing revenue deficiency threatens YEC's ability to meet its service obligation due to an inability to pay its current operating expenses or to obtain capital funds to construct necessary new and replacement plants.

UCG requested that the Board only grant the interim rate request if there will be a significant delay in the process leading to a final decision following a full hearing on the merits of YEC's application. It added that all or some portion of contentious items identified during the review process may be excluded from YEC's applied-for revenue requirement.

Furthermore, UCG noted that past YUB decisions on interim refundable rates have provided 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. That being said, UCG submitted that the Board must consider that its recent decision to allow ATCO Electric Yukon (AEY) to raise their rates combined with the impact of this interim rate request results in an obvious rate shock and an affordability issue for Yukon ratepayers. UCG stated that there is no way to guarantee that those who pay the higher interim rates will be the same customers that will receive the refund should the interim rates be deemed excessive when finalized as customers move in and out of the franchise area. UCG also pointed out that ratepayers make ongoing decisions on energy use and related capital investments based in part on the price they pay for the energy. UCG also submitted that it disagrees with the premise that interim refundable rates promote rate stability, stating that a single rate adjustment related to a test year would be appear to be more stable. UCG asserted that the Board must balance the interests of ratepayers with the financial health of the utility.

As a result, UCG submitted that an interim rate increase is not warranted at this time.

3. YEC reply comments

YEC noted the principles to be applied in an interim rate application, were set out in detail by the Board in Board Order 2008-6. It summarized the principles as follows:

- Jurisdiction to make interim Orders under the *Public Utilities Act*: In Appendix A to Order 2008-06 the Board confirmed its jurisdiction to make interim orders under Section 63 of the *Public Utilities Act* stating it is not 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.
- Interim refundable rates provide flexibility to address regulatory lag: The Board noted in Appendix A to Order 2008-04 that “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”. The Board noted that there is no requirement for a full hearing on the merits because such an approach “could contribute to greater regulatory lag and defeat the purpose of the interim refundable rates.”
- Determining quantum of interim refundable rates: With regard to the quantum of interim refundable rates, in Appendix A to Order 2008-04 the Board noted that it 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.” However, the Board also noted that “most jurisdictions do not grant interim orders for recovery of 100% of forecast revenues requirement increases, but grant some percentage to minimize the turbulence of rate changes over short periods”.⁵

YEC submitted that subsequent orders, i.e. Board Order 2012-05, Board Order 2013-05 and Board Order 2016-02, have reinforced the above-noted principles. Furthermore, Board Order 2008-06, as noted above, provides the Board’s considered views on interim rates and fully refutes most of the points advanced by City of Whitehorse and UCG on this matter. It added that the interim rate request is in line with interim refundable rate requests made by YEC or AEY and approved by the Board, during the 2012-13 GRA, AEY’s 2013-15 GRA and AEY’s most recent 2016-17 GRA. YEC further noted that, notwithstanding UCG’s submission that the interim rate increase should be denied for similar reasons to those set out in its current submission, the Board granted the recent AEY interim rate request. YEC added that implementing its interim rate increase, effective September 1, 2017 means that YEC would only be collecting the increased rate

⁵ YEC letter dated July 28, 2017, page 1.

revenues for four months of 2017, and would therefore only receive approximately one-third of the revenue shortfall of \$5.348 million for 2017. YEC further submitted that the Application comprehensively supports and explains the revenue shortfalls that YEC would experience without the interim rate increase.

4. Findings of the Board

The Board's jurisdiction to make interim orders is set out in section 63 of the Act which states, in part,

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;

...

In Board Order 2008-6, the Board states the following in relation to section 63 of the Act:

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 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 considers that the above-noted interpretation of section 63 of the Act is applicable to the interim rate request before it. Although UCG acknowledged the Board's interpretation of section 63 of the Act, it argued, in part, that interim rates should only be granted as an extraordinary remedy in circumstances where the utility can demonstrate that its financial integrity will suffer or that the safety of its operations will be compromised. As previously stated, the Board does not accept that its jurisdiction to grant interim rates is limited to these circumstances.

The Board considers that the purpose of an interim rate is two-fold. First, interim rates provide a smooth rate transition for customers to new rates, in order to minimize rate shock. Second, they provide additional cash flow to the utility to cover increased costs while its rate case is being tested. The Board assesses an interim rate request with this purpose in mind.

In making a decision on an interim rate request, the Board considers the following factors:

- the quantum of the interim rate increase and need for the increase, including the impact of the proposed interim rates and any shortfall in revenue to the utility;
- whether the proposed interim rates promote rates stability and erase rate shock, and whether interim rates help maintain intergenerational equity;
- the need to accommodate regulatory lag to preserve a utility's opportunity recover the revenues ultimately determined by the Board to be just and reasonable for the year to which the interim rates apply; and
- the merits of the applied-for revenue requirements have not been tested.

In the Board's view, the assessment of these considerations results in interim rates that are fair, just and reasonable to both the utility and consumers.

In this interim rate request, YEC is requesting a 9.04% Rider J increase, which represents an approximate 100% increase in 2017 consolidated Rider J revenues, ⁶ from \$6.4 million to \$11.7 million. The Board does not consider germane to its assessment of the quantum of the interim rate increase that the interim rate will only be in effect for four months as interim rates may be in effect until the Board sets final rates for the test period. Further, the Board considers that the quantum of the increase is not supported in light of the issues raised by City of Whitehorse and UCG. In particular, the Board notes City of Whitehorse submission that part of the YEC forecast revenue shortfall and forecast cost increase for the test years is driven by the proposed increase in rate of return. The Board is of the view that intergenerational inequity is to be avoided or minimized and granting the full increase contained in the interim rate request is not likely to do so and may not minimize rate shock.

Further, as all parties acknowledged, the merits of YEC's requested revenue requirements for 2017 and 2018 will be fully tested in the process outlined in Board Order 2017-04. Any difference between amounts collected according to interim refundable rates and those finally approved by the Board will be refunded to, or recovered from, YEC's customers, as the case may be. The Board notes the submissions of UCG and City of Whitehorse that several areas of the Application may be controversial and likely to be contested. However, the Board considers that there is a possibility of a rate increase for 2017 following the hearing into the Application. The Board is of the view that granting an order approving 2017 interim refundable rates will preserve YEC'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 YEC interim rate request to some extent.

On the question of the need to accommodate regulatory lag to preserve a utility's opportunity to recover the revenues ultimately determined to be just and reasonable, the Board notes that YEC did not file its Application until June 2017. Had this Application been filed by October 2016, the Board and parties would

⁶ Application, Table 4.2, page 4-8.

have had an opportunity to consider 2017 revenues and costs in a more timely way and YEC's concerns regarding a revenue shortfall of \$5.348 million for 2017 may have been reduced. The timing of the filing of an application rests with the applicant. Further, the Board is addressing any potential regulatory lag by setting out a fair and efficient process in Board Order 2017-04 for consideration of the Application. The Board considers that the regulatory lag is likely to be of short duration.

Taking all of these considerations into account, the Board denies interim refundable rates based on the recovery of 100% of forecast revenue requirement increase. The Board considers that a 5.5% increase in Rider J for 2017, is just and reasonable and in the public interest. This increase results in a revised interim refundable rate rider (Rider J) of 16.51% for retail firm rates and of 12.86% for industrial firm rates, effective September 1, 2017.