

YUKON UTILITIES BOARD

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

and

IN THE MATTER OF an application by Yukon Energy Corporation
for approval of escalation of Rate Schedule 39 demand and energy
charges per OIC 2007/94

FINAL ARGUMENT OF

UTILITIES CONSUMERS' GROUP

March 17, 2011

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INTRODUCTION and OVERVIEW

The Utilities Consumers' Group

1. The Utilities Consumers' Group ("UCG") is a not-for-profit organization registered as a society in the Yukon since 1993. The UCG represents residential and small business ratepayers in regulatory procedures, conducts research, makes submissions, communicates with active stakeholders, including government, and helps consumers concerning any type of problem with utility service providers.
2. UCG submits that Yukon Energy Corporation's ("YEC") application for and the review of the proposed adjustments to the demand and energy charges within Rate Schedule 39 does not go far enough to ensure that the Yukon's non-industrial ratepayers and taxpayers are: (1) protected from the costs incurred by the transient nature of mining operations in the Yukon; and (2) credited with revenues recovered by rates set higher than those established to recover YEC's allowed revenue requirement.
3. UCG submits that if YEC wants to change the revenue requirement currently allowed by the Board to be recovered in its rates, then YEC is under an obligation to submit an application to have it adjusted. Otherwise, UCG submits that the incremental revenues to be recovered by higher industrial rates is revenue over and above what was deemed required to pay YEC's allowed costs of service and should be used to reduce non-industrial rates.

Summary of UCG's Position

4. This submission summarizes positions of the UCG for the Yukon Utilities Board's (the "Board") consideration. It should not be assumed that the UCG is in agreement with YEC's position on any issue for which the UCG has not provided specific comment on in this argument. Where the UCG has not specifically addressed an issue, it is believed that the Board has the benefit of the record of this proceeding to make informed decisions.
5. The public review of YEC's proposed Rate Schedule 39 adjustments has raised important issues for current and longer term consideration. Of particular concern is the lack of a cost of service analysis which ensures that the rates proposed to be part of Rate Schedule 39 are based on a comprehensive cost of service study which outlines how non-industrial rates will be reduced to correspond to the incremental revenues earned by YEC. UCG submits that the Board should consider making very specific decisions and recommendations in this regard as part of this proceeding.
6. Ultimately, the purpose of the Board's review is to ensure that any proposed rate adjustments would be a reasonable course of action to ensure that: (1) ratepayers are properly protected from any adverse impacts that have traditionally been associated with the transient nature of large industrial services in the Yukon; and (2) rates continue to be designed to recover the revenue requirement allowed by the Board.

7. UCG submits that there are several risks that have not been considered or quantified in the assessment of the proposed rate adjustment including: (1) the ultimate rate impact the new mines and lines may have on a reallocation of costs as between the major industrial customer rate class and other rate classes (an impact that YEC suggests is probably positive on non-industrial rates without providing definitive analysis on longer term impacts should the mines close prematurely); and (2) the displacement of secondary sales as a result of the addition of mine loads (a negative impact).
8. UCG's submits that there has not been enough evidence presented to convince the Board that the downside for ratepayers / taxpayers of proceeding with the proposed rate adjustment has been clearly identified without taking into account the costs of service that need to be recovered from industrial customers.
9. UCG submits that the review provides an opportunity to not only ensure that the proposed rates are understood from a cost recovery perspective, but also allows for a more comprehensive review of costs and the recovery mechanisms that exist within Rate Schedule 39 to protect ratepayers and taxpayers from getting stuck with higher than expected costs. UCG submits that the review of the proposed rate adjustment was significantly hampered by the lack of a detailed analysis of the impact that industrial customers are having on the operations and costs of YEC.

FIRM MINE RATES

10. The Board has been asked by YEC to approve adjustments to the demand and energy charges of the Firm Mine Rate (Rate Schedule 39). YEC submits that this is simply an administrative effort associated with the Escalation of Demand and Energy Charges clause of OIC 2007/94.
11. The Rate Policy Directive (OIC 1995/90) states that the Board "*must ensure that the rates charged to major industrial power customers, whether pursuant to contracts or otherwise, are sufficient to recover the costs of service to that customer class; those costs must be determined by treating the whole Yukon as a single rate zone and the rates charged by both utilities must be the same*"¹.
12. OIC 1995/90 also states that normal rate setting principles must apply in that the Board must "*review and approve rates in accordance with principles established in Canada for utilities, including those principles established by regulatory authorities of the Government of Canada or of a province regulating hydro and non-hydro electric utilities*"². UCG submits that nothing in OIC 2007/94 overrides the provisions of the Rate Policy Directive.
13. UCG submits that YEC has failed to comply with both of these provisions of OIC 1995/90. The intent of the single rate zone provision is to ensure that when rates are being designed or adjusted, the entire revenue requirement associated with the supply of electricity in all of the Yukon is taken into account and equitably allocated to various rate classes. Normal rate setting

¹ OIC 1995/90, section 6(1).

² OIC 1995/90, section 3.

principles for any regulated utility imply that cost-based rates are established based on a comprehensive cost of service study. With respect to the proposed changes to the demand and energy charges for industrial customers, YEC has not provided the required comprehensive cost of service study for the Yukon rate zone which identifies the allocation of the allowed revenue requirement (as last approved by the Board) and revenue recovery by rate class.

14. UCG submits that the current application for an adjustment to the firm mine rate counters YEC's own arguments regarding rate setting principles. There has been no evidence submitted on the recovery of the integrated costs of YEC and YECL to allow for a determination that the proposed firm mine rate adjustment ensures that Rate Schedule 39 truly recovers the fully-loaded cost of the service provided and matches the cost allocation / revenue recovery regime last approved by the Board.
15. UCG submits that without an updated comprehensive cost of service study for the Yukon rate zone, YEC has not provided enough information for the Board to determine that the proposed adjustment to the firm mine rate actually ensures that the needs and requirements of all Yukon electricity customers (including proposed industrial customers) are being met at the least cost. Nor has YEC been forthcoming in identifying whether YEC is proposing to recover more than its allowed revenue requirement given that it is raising industrial rates without lowering non-industrial rates to compensate.
16. YEC has testified previously that customers in a given period should pay the costs that are necessary to provide them services in that period.

MR. McMAHON: Q: Thank you. In the Energy Commission report there was a certain amount of discussion on regulatory principles that Mr. Osler had addressed the previous day, and the Commission indicated that an underlying principle of regulation is that customers in a given period should only pay the costs that are necessary to provide them services in that period. Does the panel agree with that principle?

MR. OSLER: A: Certainly in terms of fundamental, normal principles of regulation of rates. One of the major considerations is what they call intergenerational equity. It's got nothing to do with generation of electricity, it's to do with generations of people, and you should be trying to make sure that the costs borne by each set of -- each people in each time period, certainly in terms of -- the word "generation" implies maybe more than the just the test year -- are reflecting the costs that exist to serve them. Just as you try and balance costs over space or between classes, you are trying to balance them between people living in different time periods. So they reflect the costs that are there. That's a fundamental principle, one of many you have to think about and balance in order to come up with rates."³

17. The UCG submits that there is no evidence on record in this proceeding that the rates proposed to be charged to industrial customers still reflect the actual, fully loaded costs of serving the

³ 2005 Revenue Requirement Application, Transcript pages 646-647

industrial class of customer. YEC admits that a cost of service study was not used to determine the proposed rates.⁴

18. UCG submits that the lack of a cost of service study flies in the face of YEC's own arguments that "*it is intended that this rate (Rate Schedule 39) at any time will continue to apply to all Industrial customers, and that it will be adjusted, as required, from time to time to recover COS for the Major Industrial Customer class as it may evolve in future to include mine customers in addition to Minto*"⁵.
19. The UCG submits that YEC did not conduct adequate public consultation on the proposed firm mine rate review in 2009 nor the current application and so did not adequately maintain public accountability, transparency and understanding of the impact of the proposed rate adjustments. YEC has not provided sufficient opportunity for electricity ratepayers to understand the implications of the proposed firm mine rate adjustment.
20. UCG submits that the *Public Utilities Act* provides the Board with jurisdiction over rates which includes in its definition a "*contract of a public utility relating to a rate*". Also, section 31 of the *Public Utilities Act* clearly states that "*Any contract for the supply of a service to a person by a public utility that sets a fixed or variable rate either for a present or future supply of the service is deemed to include a clause under which the board has the jurisdiction, on application of one of the parties, to increase or reduce the rate to a rate that the board considers fair and reasonable.*"
21. UCG submits that the Board must take this opportunity to re-establish the equilibrium in rates and revenue recovery that it established as part of the most recent General Rates Application proceedings involving YEC and YECL. If industrial rates and revenue recovery from industrial customers must be increased, then revenue recovery from non-industrial rates must be reduced.

OIC 2007/94 - MAJOR INDUSTRIAL CUSTOMER RATE DIRECTIVE

22. Schedule A to OIC 2007/94 states that "*Demand and Energy charges for the directed changes are to be escalated once each calendar year, starting January 1, 2010, based on the latest percentage increase in the 12 month implicit chain price index for gross domestic product at market prices for Canada as reported by Statistics Canada*". YEC has a commitment to provide the YUB with a letter annually to explain and identify any required adjustment. UCG submits that this does not excuse the Board from ensuring that YEC is only recovering its allowed revenue requirement.
23. If existing rates were established to recover YEC's allowed revenue requirement (currently \$31.031 million per Order 2009-10), then it seems only logical to assume that increasing some rates and revenue recovery should then result in a corresponding reduction of other rates. Without supporting cost of service analysis, UCG submits that YEC has not adequately

⁴ Response to YUB-YEC-1-2(e)

⁵ YEC Final Argument, Minto Mine PPA, page 8

supported its application to allow the Board to make a final decision on the applied-for rates and allow YEC to simply keep this additional revenue in its own private coffers. YEC has admitted that the currently projected incremental revenue for 2011 to YEC if the Board approves the requested escalations to Rate Schedule 39 demand and energy charges is \$123,648⁶. If YEC wants to change the revenue requirement currently allowed by the Board to be recovered in its rates, then YEC is under an obligation to submit an application to have it adjusted. Otherwise, UCG submits that this is revenue over and above what was deemed required to recover YEC's allowed costs of service.

24. UCG submits that YEC confirmed that the "Escalation of Demand and Energy Charges" clause of OIC 2007/94 states that the demand and energy charges to industrial customers "are to be escalated once each calendar year" and that there is no provision in the OIC 2007/94 for demand and energy charges to be reduced or not escalated⁷. UCG submits that this is a flaw in the OIC in that it is contrary to the provisions of the Rate Policy Directive (OIC 1995/90) that requires the Board to set fair and equitable rates that are designed to recover pre-determined costs of service. UCG submits that a mechanism should be established to ensure that non-industrial ratepayers are credited for over-recovery of approved revenue requirements.
25. When it submitted its October 2008 application to the YUB to approve its 2008 and 2009 revenue requirements, YEC indicated that rate reductions were being driven by the extra revenue resulting from the connection of new industrial load (Minto) to the system⁸. In its own October 6, 2008 news release, even the Yukon government stated that it "*promised Yukoners that we would be applying for a rate reduction once the Minto Mine comes on stream and we are meeting that commitment*"⁹.
26. If adding industrial load and its associated revenues results in rate reductions for non-industrial customers, it is only logical that requiring industrial customers to pay more of a fixed revenue requirement will result in continued rate and bill reductions for non-industrial customers.
27. UCG submits that the Board is already on record supporting the proposal that when revenues exceed the revenue requirement, rates should be reduced. When denying YEC's proposed Mine Net Revenue Account during review of the Minto Mine PPA, the Board stated in its reasons for Board Order 2007-5 that "*the Board does not advocate a policy of deferring revenues or costs outside of the appropriate recognition period for the purpose of keeping rates stable. Nor is the Board supportive of the YEC proposed option of using the fund for future investment projects. The Board does support the view that revenues collected from rates should be applied to the COS that derived those rates. Hence if the revenues exceed the revenue requirement, then the rates should be reduced*"¹⁰.

⁶ YUB-YEC-1-2

⁷ UCG-YEC-1-2

⁸ YEC News Release October 6, 2008; 2008/2009 GRA page 1

⁹ Yukon Government News Release, October 6, 2008, #08-242

¹⁰ Appendix A to Board Order 2007-5, Reasons for Decision, page 10

28. YEC indicates that there was no required rate adjustment in January 2010¹¹ but it is not clear whether adequate documentation was submitted to the YUB and shared with the public. YEC indicates in its application that based on the latest data, there is a requirement pursuant to OIC 2007/94 to escalate the Major Industrial Customer demand and energy charges at this time by 2.8%. UCG submits that YEC did not meet the established standards of providing evidence to support its requested rate adjustment by waiting until after questioned on this issue during the current proceeding to submit the documentation needed to support its calculations.
29. UCG questions the adequacy of YEC's public accountability with respect to its December 24, 2009 and November 30, 2010 submissions to the Board regarding adjustments to the demand and energy charges of Rate Schedule 39. It is clear in the *Public Utilities Act* (section 28) that a utility is required to make an application to the YUB 90 days before it proposes to charge a different rate. UCG submits that the 90-day requirement is to ensure that there is adequate time to review rate adjustment proposals before an effective date is determined. UCG submits that the Board should establish a more definitive set of filing guidelines in this regard for the annual reviews of Rate Schedule 39.
30. YEC indicates that it expects that baseload diesel generation will be required on the Mayo Dawson grid over the 2010/2011 winter to supply the overall system load including the Alexco facilities¹². If diesel will be on the margin this winter, UCG questions what will happen to the adequacy of Rate Schedule 39 rates when Alexco ramps up its electricity requirements as they have suggested. If current rate adjustments will be limited to an inflationary adjustment to demand and energy charges, UCG submits that a deferral account should be established to track additional infrastructure and operating costs attributable to Alexco (as Minto was in the past) such as those related to the Carmacks-Stewart transmission line and Aishihik 3.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17th DAY OF MARCH, 2011.

¹¹ UCG-YEC-1-3(e)

¹² UCG-YEC-1-17