

1984-1

THE YUKON ELECTRICAL PUBLIC UTILITIES BOARD

IN THE MATTER OF The Electrical Public Utilities Act, being Chapter E-2.1 of the Yukon Territory, 1972 as amended and the Public Sector Compensation Restraint (Yukon) Act, being Chapter 31 of the Acts of the Yukon Territory, 1982, as amended.

AND IN THE MATTER OF Applications by The Yukon Electrical Company Limited and Yukon Hydro Company Limited for a review and variance of portions of Electrical Public Utilities Board Order Number 1983-3, dated November 14, 1983.

YUKON ELECTRICAL COMPANY LIMITED

and

YUKON HYDRO COMPANY LIMITED

Application For Review And Variance

of Decision 1983-3

Order Number 1984-1

January 16, 1984

I. BACKGROUND

A. Introduction

By application in writing dated December 8, 1983 Yukon Electrical Company Limited and Yukon Hydro Company Limited (the Company) applied to the Board pursuant to Section 35 of the Electrical Public Utilities Act to review and vary certain portions of Board Order 1983-3.

B. The Application

The Company's Application contained the following:

"1.01 The Yukon Electrical Company Limited and Yukon Hydro Company Limited (the Company) hereby apply to the Yukon Electrical Public Utilities Board (the Board) pursuant to Section 35 of The Electrical Public Utilities Ordinance for:

a) a review of Order Number 1983-3 in respect of the findings of fact and direction found on pages 5 and 6 of the Order wherein the Board stated:

'The Board is not persuaded by the argument advanced by Yukon Electrical and accordingly the Board has reconsidered its Interim Order 83-2 and determined that 1983 rates should not be increased to recover additional costs of purchased power from Northern Canada Power Commission (NCPC) in 1983 but rather only an amount sufficient to recover any increase in the cost or the quantity of petroleum used in the supply of electricity as provided in Section 9(2) of the Act.

THE BOARD DIRECTS YUKON ELECTRICAL TO DETERMINE THE AMOUNT OF "FUEL AND PURCHASED POWER CLAUSE REVENUE" COLLECTED BY IT IN 1983 PURSUANT TO INTERIM ORDER 1983-2 SEGREGATING THE

AMOUNT BETWEEN THE PORTION ATTRIBUTABLE TO INCREASES IN THE COST OF POWER PURCHASED FROM NCPC AND THE PORTION ATTRIBUTABLE TO INCREASES IN THE COST OR THE QUANTITY OF PETROLEUM USED BY YUKON ELECTRICAL AND YUKON HYDRO. THE BOARD ALSO DIRECTS YUKON ELECTRICAL TO PROVIDE TO THE BOARD WITHIN 15 DAYS OF THE DATE OF THIS ORDER, A PROPOSED METHOD BY WHICH THE PORTION OF THE FUEL AND PURCHASED POWER CLAUSE REVENUE ATTRIBUTABLE TO THE COST OF POWER PURCHASED FROM NCPC SHOULD BE RETURNED TO ITS CUSTOMERS. THE BOARD CONSIDERS THAT THIS AMOUNT SHOULD BE RETURNED TO YUKON ELECTRICAL'S CUSTOMERS BEFORE DECEMBER 31, 1983.';

- b) a review of Order Number 1983-3 in respect of the findings and direction made by the Board at pages 11 through to 14 of the Order in respect of the cost of debt and preferred equity and the fair return on common equity;
- c) a variance of Order Number 1983-3 in the manner and for the reasons stated below, and for any other reasons advanced by the Company at the time of hearing this application."

"2. BACKGROUND AND SUPPORTING FACTS

2.01 On December 9, 1982 The Public Sector Compensation Restraint (Yukon) Act (The Restraint Act) was enacted and provided that:

"9(1) For the purposes of the Electrical Public Utilities Act and subject to subsection (2), the rates that a public utility may charge for the supply of electricity shall not, in relation to any classification of user,

- (a) Exceed before December 31, 1983 the amount that is 6% greater than the rates that are charged when this Act comes into force, and
- (b) exceed before December 31, 1984, the amount that is 5% greater than the rates that are permitted under paragraph (a).'

"2.02 On June 10, 1983 the Company applied to the Board to have the Board fix and approve just and reasonable rates, tolls or charges for electrical service supplied to its customers.

2.03 Commencing June 1, 1983 the Company was allowed by the Board to increase its billings to customers to cover the increased cost of electricity purchased from the Northern Canada Power Commission, which purchase price had increased in April, 1983.

2.04 The Board allowed a further interim increase in rates effective with September 1, 1983 billings to recover increases in the Company's other costs.

2.05 On October 12, 1983 the Board held public hearings, at which time the Board heard evidence and other submissions from the Company.

2.06 At the request of the Board, the Company provided an opinion of legal counsel respecting the proper interpretation of The Restraint Act.

2.07 On November 14, 1983 the Board issued Decision 1983-3."

C. Notice of Hearing of The Application

A notice of public hearing of the application was placed in

the Whitehorse Star and the Yukon News on December 7, 1983 and notification was sent by letter to all intervenors who had participated in the public hearing held on October 12, 1983.

D. Hearing

The Board convened a hearing on December 14, 1983 in Conference Room 1B of the Yukon Government Administration Building, Whitehorse to consider the Company's application. The Board was represented by Jim Pollock - Chairman, Robert Laking - Member, Margaret Willis - Member, and Bill Stephen of the firm Stephen Johnson Chartered Accountants, who acted as the Board's consultant. In addition Gloria Roman, Executive Secretary and Fran Mason, Assistant were on hand to assist the Board.

E. Appearances & Witnesses

The Yukon Electrical Company Limited was represented by its counsel C.K. Sheard. Messrs. R.H. Choate, Vice President, A.J. Pullman, Vice President and Controller, R.G. Jones, Manager of Rates and Forecasting and G.K. Bauer, General Manager presented evidence on behalf of the Company and responded to questions on cross examination.

No intervenors participated in the proceedings.

F. Exhibits

Refer to Appendix A.

In addition to the exhibits filed at the hearing, the Company provided certain additional information to the Board under date of December 19, 1983.

II. DECISIONS

In its application the Company presented argument in support of its application and requested that the Board vary Decision 1983-3 and thereby:

- (1) Not require the refund of revenue received in 1983 from the increase in the cost of purchased electricity from the Northern Canada Power Commission (NCPC) and allow the recovery of increased costs of purchased electricity from NCPC as they may occur from time to time;
- (2) Accept that the permitted percentage increases under The Restraint Act are on an annualized basis;
- (3) Include as the appropriate embedded cost of debt and fair return on common equity for the Company, the embedded cost of debt and return on common equity allowed to the Company's parent, Alberta Power Limited, and;
- (4) Allow the Company to charge 1984 rates commencing with all billings rendered on and after January 1, 1984, for all consumption on or after December 1, 1983.

The Board has now concluded its review of the issues raised in the Company's application and sets out its findings with respect to each of the arguments advanced by the Company in its application.

- a) "3.01 The Company submits that the Board has incorrectly interpreted the provisions and intent of The Restraint Act. A proper interpretation of the Act would have resulted in a finding that the Fuel and Purchase Power Cost Adjustment is not a "rate" for the purposes of The Restraint Act, or in the alternative, if the Fuel and Purchase Power Cost Adjustment is a "rate", then it is a rate which, prior to December 9, 1982, was allowed to change with every change in the cost of purchased power from The Northern Canada Power Commission and is not subject to the limitations imposed by the Restraint Act."

The matter of whether or not the fuel and purchase power cost adjustment is a rate was discussed in cross examination.

Commencing at page 28 of the transcript (Tr.) Mr. Jones was asked the following questions and gave the following answers:

"MR. STEPHEN: And, so then immediately after the June 1st increase, what would the -- or, what was the amount of the adjustment in terms of cents per kilowatt hour?

MR. JONES: I'll give you it in terms of the absolute amounts...for Whitehorse, as I mentioned, it's 1.3 cents. For Area 1, 1.7 cents; for Keno City, 1.634 cents; for Haines Junction, 2.5 cents; for Ross River it was 3.2 cents; for Watson Lake, 2.58 cents; Old Crow, 8.03 cents; and Area 2, 2.32 cents.

MR. STEPHEN: And after the requested increase to become effective September 1st, 1983 what was the amount of this adjustment?

MR. JONES: On September 1 ... On the September 1 rates we rolled the fuel and purchased power clause into the rate and the adjustments would have been zero with the exception of Watson Lake and Area 2. We had fuel clause adjustments of .13 cents and .15 cents respectively, which represented changes in the fuel clause riders after June 10th.

MR. STEPHEN: So, given that information it would appear that what you have characterized as a non-rate, if I might use that term, in fact, it became a rate on September 1st.

MR. JONES: Yes, that's correct. And that's consistent with the previous directions of the Board that we incorporate the fuel and purchased power clause adjustments into the base rate at the time of a major rate change.

MR. STEPHEN: Then I take it you would agree, sir, that the fuel and purchased power clause adjustment forms a part of the charge to Yukon Electrical's (sic) customers for power supplied to them, irrespective of what the charge is called.

MR. JONES: Yes, sir."

The Board does not consider that the fuel and purchase power clause adjustment can be considered as something other than a rate for the purpose of the Public Sector Compensation Restraint (Yukon) Act. It is not logical to have a certain charge to a customer considered as something other than a rate on one day and the following day to have that same charge considered as a rate simply due to its incorporation into the Company's rate schedules in a different manner.

With respect to the Company's alternative argument it is the Board's view that the Fuel and Purchase Power Cost Adjustment is a rate which is allowed to change with every change in the cost of purchased power from the Northern Canada Power

Commission or with every change in the purchase price of fuel to the Company but that such changes shall take place only with the approval of the Board. In the Board's view the Public Sector Compensation Restraint (Yukon) Act makes no provision for any such special rate, and accordingly, the Board concludes that the total charges by Yukon Electrical for electricity supplied to customers are constrained by the provisions of the Public Sector Compensation Restraint (Yukon) Act.

b) In Order 1983 - 3, the Board stated

"that in future it does not intend to deal with the pass-through of purchased power costs from Northern Canada Power Commission as it has in the past but rather it will consider such increased costs only in the context of a general rate application."

During the course of the hearing Company witnesses expressed concern about its ability to pass on to its customers future changes in rates charged by NCPC. In particular, they expressed concern about the need for notice of any change in rates due to changes in Fuel and Purchase Power Adjustments.

As stated above, the Board considers that the Fuel and Purchase Power Adjustment is a rate which is allowed to change with every change in the cost of purchase power from the NCPC and with every change in the purchase price of fuel to the Company with the approval of the Board. Therefore, the Board does not consider that the notice provisions of Section 23(2) of the Electrical Public Utilities Act apply when changes are made to the rates being charged by the company as a consequence of changes in either the cost of purchased power from the NCPC or

in the purchase price of fuel to the company.

The Board is prepared to deal with applications by the Company relating to the pass-through of purchase power costs or in the purchase price of fuel to the Company on an expedited basis in order to avoid any undue delay in their implementation.

- c) "3.02 The Company submits that the Board has erred in determining the true intent of the Restraint Act, and should have determined that the intent was to restrict rate increases to 6% during 1983 on an annualized basis, and similarly by 5% for 1984. That it could not have been intended for the Act to be applied in a manner adopted by the Board is borne out by the fact that in order to obtain a 6% rate increase for the entirety of 1983, under the Board's interpretation, would have required the approval of new rates on January 1, 1983. Considering that The Restraint Act was enacted on December 9, 1982, and that the Territorial Government knew that the provisions of Section 23 of the Electrical Public Utilities Ordinance require a 90 day lapse between the filing of an Application and the implementation of new rates, the Board's interpretation of the Act would make it impossible under existing law to obtain even the 6% increase allowed by The Restraint Act."

The Board finds no indication that the intent of the legislation was to treat increases by public utilities on an "annualized basis" as suggested by the Company. Company witnesses acknowledged on cross examination that "... the effective date of a rate increase can have a very dramatic effect on the impact that increase has on the revenue of the Company in the year in which the increase takes place." (Tr. p. 32)

The Board notes that any number of rate increases could be described as being 6% on an "annualized basis" depending upon the implementation date of the increase. The Board considers that the effect of the Public Sector Compensation Restraint (Yukon) Act is clear and unambiguous in restricting increases in rates charged by utilities from time to time in 1983 to 6% of the rates prevailing on December 9, 1982 subject to the modification contained in Section 9(2). The Board is therefore constrained by this legislation to limit rate increases as specified in the legislation irrespective of the resulting return on common equity. The Board therefore concludes that it would be inappropriate to consider the increase on an annualized basis.

Company witnesses stated during the hearing that 1983 wage and salary increases to Territorial Government employees were made retroactive to the beginning of the year (Tr. 13) inferring that this action was the equivalent of granting these increases on an "annualized basis". It is the Board's information that 1983 wage and salary increases to employees of Yukon were granted effective April 1, 1983, the date of the collective bargaining agreement.

During the hearing, reference was made to the use of a two year test period (Tr. p. 16) and the fact that they are quite common within the Canada Utility group of companies. The

Board observes that there is specific legislation in place in Alberta dealing with a test period which may be as long as two years. No such legislation exists in Yukon. As stated above, the Board considers the Public Sector Compensation Restraint (Yukon) Act to be clear and as stated in Decision 1983-3,

"The Board considers that averaging the results for 1983 and 1984 would result in Yukon Electrical's customers paying rates in 1984 to compensate the Company for a (sic) shortfall in 1983 earnings caused by the limitations imposed by the Public Sector Compensation Restraint (Yukon) Act."

which the Board considers to be inappropriate.

- d) "3.04 The Company submits that the interpretation given to The Restraint Act by the Board results in a confiscation of property without compensation contrary to all principles of Canadian Law and regulatory fairness. The interpretation afforded by the Board has resulted in the denial to a utility of the recovery of costs imposed upon it from a source and at a level entirely beyond its own control (see Appendix "A" attached). Denying the recovery of costs which are beyond the control of the utility is penalizing the owners of the utility for being in a business which provides an essential service to the public."

The Board recognizes that the Company is providing an essential service to the public and that it should be treated fairly. However, with respect to the years 1983 and 1984 the Board is constrained by the provisions of the Public Sector Compensation Restraint (Yukon) Act.

- e) "3.05 The Company submits that the Board erred in determining that the fair return on common equity and debt cost of Alberta Power Limited are not appropriate costs for use by the Company. Such a finding ignores the fact that regardless of the actual debt costs embedded in the Company's

capitalization, the Company's day to day operating funds and capital requirements are provided by its parent, Alberta Power Limited, which is able to obtain the funds at a far lower cost rate than would be obtainable by the Company alone. Using Alberta Power Limited's approved return on common equity and embedded cost of debt is a recognition that the Company benefits considerably from its association with Alberta Power Limited and the Canadian Utilities Limited group of companies. It is illogical to treat the Company on a stand-alone basis for the determination of its debt cost rate yet at the same time reap the benefits that result from the association with larger utility companies."

On cross examination (Tr. p. 33) Mr. Pullman explained that,

"... at the end of each year, December 31st of each year, the balance on Yukon Electrical's current account from Alberta Power is turned into a note, a 20-year note, I think. And, for administrative purposes, whatever happens to be the bank prime of that day is used as a coupon for the note. As I say, it's largely a mechanism to keep score between the two Companies. It doesn't reflect what the bond market or the preferred share market or the capital is doing on that given day."

Mr. Pullman also acknowledged that the growth in YECO's debt over the past 5 years had not been as great proportionately as that of Alberta Power Limited (APL) and that the cost of debt had been high during that period. (Tr. p. 34)

In addition, Mr. Pullman agreed that as a general rule utilities are permitted to include in their revenue requirements the actual costs incurred by them and not opportunity costs.

The Board is not persuaded that the benefits received from Yukon Electrical's association with Alberta Power

Limited should be recognized by permitting YECO to include in its revenue requirements a notional debt cost rather than the cost actually incurred by the Company. The Board also considers that the debt cost rate established as between Yukon Electrical and Alberta Power Limited does reflect, to a degree, the external cost of capital as it is based on the prevailing bank prime rate. Therefore, the Board considers the rates of 10.51% and 10.22% established as the cost of the Company's debt for the years 1983 and 1984 respectively to be appropriate.

In its application the Company advised that the Alberta Public Utilities Board had recently awarded Alberta Power Limited a rate of return on common equity of 15%. The Board observes that this rate does not differ materially from rates being awarded at the time it issued Decision 1983-3 and sees no reason to alter its decision in this regard.

- f) "3.06 The Company submits that the Board erred in determining the amount to be refunded by the company to its customers by ordering that the Company refund revenue attributable to the increased cost of purchased power from NCPC during 1983. The Company submits that if any refund is to be made, then the amount of the refund should be calculated as the amount by which the rates exceed the rates allowed under the Restraint Act, and only for such period as the breach of the Restraint Act has taken place."

At page 6 of Decision 1983-3 the Board made the following direction:

"The Board directs Yukon Electrical to determine the amount of "fuel and purchased power clause revenue" collected by it in 1983 pursuant to Interim Order 1983-2 segregating the amount between the portion attributable to increases in the cost of power purchased from NCPC and the portion attributable to increases in the cost or the quantity of petroleum used by Yukon Electrical and Yukon Hydro. The Board also directs Yukon Electrical to provide to the Board within 15 days of the date of this order, a proposed method by which the portion of the fuel and purchased power clause revenue attributable to the cost of power purchased from NCPC should be returned to its customers. The Board considers that this amount should be returned to Yukon Electrical's customers before December 31, 1983." (emphasis added)

The Board wishes to clarify that the only "Fuel and Purchase Power Clause Revenue" referred to by the Board in this direction was that collected pursuant to Decision 1983-2 and accordingly relates only to revenue collected on and after September 1, 1983.

- g) "3.07 The Company submits that the Board erred in denying the Company's request that new rates for 1984 be implemented effective on all billings rendered after January 1, 1984 for consumption after December 1, 1983. The effect of the Board's order to charge new rates for 1984 only effective with billings rendered on or after February 1, 1984 for consumption after January 1, 1984 denies the Company one month of revenue at the increased 1984 rate, reducing its ability to achieve its allowed 1984 revenue requirement."

In its original argument Yukon Electrical stated, that it only becomes entitled to revenue on delivery of customers' bills and that its increases for 1984 could be applied to its billings rendered in January 1984.

The Board considers that a customer becomes liable to pay for electricity when the electricity is consumed and that to apply the increased rates to January 1984 billings may result in consumers paying for part of their December 1983 consumption at 1984 rates. Accordingly, the Board considers that approved rate increases for 1984 shall not be effective on any consumption before January 1, 1984.

- h) "3.08 The Company submits that the Board erred by requesting the Company to consider changes in the design of rates, more specifically requesting the Company to not apply the increase on an across the board basis, for the reason that in order to change some rates by less than 5% in 1984, other rates would have to increase by more than 5% to maintain the same revenue recovery. Being restricted to a 5% increase in 1984 for all customers, such rate design changes cannot be made without prejudice to the Company's ability to recover the allowed revenue requirement.

In Decision 1983-3 the Board stated:

"The Board expects that Yukon Electrical will propose such rate improvements as it considers possible within the constraints of the Act, ensuring that no increase exceeds the 5% maximum."

This statement was made as a consequence of the Board's determination of an allowed revenue requirement for 1984 which was less than the amount requested by the Company. Company. The Board did not intend that the Company make any rate design changes that would prejudice the company's ability to recover its 1984 allowed revenue requirement.

III. ORDER

1. That the fourth paragraph on page 6 of Decision 1983-3 be deleted and the following replaced therefor:

"THE BOARD DIRECTS YUKON ELECTRICAL TO CALCULATE THE DIFFERENTIAL BETWEEN BILLS RENDERED BY THE COMPANY FOR THE PERIOD FROM SEPTEMBER 1, 1983 TO DECEMBER 31, 1983 AND THOSE THAT WOULD HAVE BEEN RENDERED HAD EACH OF THE RATES IN EFFECT DURING THAT PERIOD BEEN THE RATE IN EFFECT ON DECEMBER 9, 1982 PLUS SIX PERCENT THEREOF PLUS THE ADJUSTMENT ATTRIBUTABLE TO THE INCREASE IN THE COST OR THE QUANTITY OF PETROLEUM USED BY YUKON ELECTRICAL AND YUKON HYDRO SINCE DECEMBER 9, 1982. THE BOARD ALSO DIRECTS THAT THE CALCULATED DIFFERENTIAL BE REPAID TO YUKON ELECTRICAL'S CUSTOMERS AS A NEGATIVE ACROSS-THE-BOARD RIDER TO BE APPLIED TO ALL OF ITS 1984 BILLINGS."

2. That the first and fourth full paragraphs of page 17 of Decision 1983-3 as amended on November 29, 1983 be deleted and the following replaced therefor:

"THE BOARD DIRECTS YUKON ELECTRICAL TO FILE BY FEBRUARY 15, 1984, FOR APPROVAL BY THE BOARD, A SCHEDULE OF RATES, TOLLS OR CHARGES DESIGNED TO RECOVER THE APPROVED 1984 UTILITY REVENUE REQUIREMENT AS ADJUSTED PER THE LAST PARAGRAPH OF THIS ORDER WHICH REFERS TO PURCHASED POWER COSTS, SUCH RATES TO BE INSTITUTED EFFECTIVE WITH BILLINGS ON OR AFTER JANUARY 1, 1984 FOR CONSUMPTION ON OR AFTER THAT DATE. IN DESIGNING SUCH REVISED RATES YUKON ELECTRICAL SHOULD BE MINDFUL OF THE PRINCIPLES SET FORTH IN THE BOARD'S REPORT NUMBER 1983-2 DATED MAY 31, 1983 PARTICULARLY AS THEY RELATE TO COST BASED RATES AND COMPLY WITH THE PROVISIONS OF THE PUBLIC SECTOR COMPENSATION RESTRAINT (YUKON) ACT."

"THE BOARD DIRECTS YUKON ELECTRICAL TO CONSIDER INCREASES IN 1984 PURCHASED POWER COSTS IN DETERMINING THE RATES TO BE FILED PURSUANT TO THIS ORDER. THE BOARD ALSO WISHES TO ADVISE THAT IN THE FUTURE IT DOES NOT INTEND TO DEAL WITH THE PASS-THROUGH OF PURCHASED POWER COSTS FROM NCPC AS IT HAS IN THE PAST BUT RATHER IT WILL CONSIDER SUCH INCREASED COSTS ONLY IN THE CONTEXT OF A GENERAL RATE APPLICATION OR A SPECIAL APPLICATION RELATING TO THE PASS-THROUGH OF PURCHASE POWER COSTS."

ON BEHALF OF THE YUKON ELECTRICAL
PUBLIC UTILITIES BOARD



Jim Pollock, R.I.A.
Chairman

APPENDIX AEXHIBITS

EXHIBIT #B-23	Transcript of October 12 Public Hearings
EXHIBIT #B-24	Notice of Public Review
EXHIBIT #B-25	Order 1983-3 dated November 14, 1983
EXHIBIT #B-26	Notice of Appeal in the Supreme Court of Yukon dated November 24, 1983 from Yukon Electrical Company Limited and Yukon Hydro Limited
EXHIBIT #B-27	Letter dated November 28, 1983 from Yukon Electrical Company Limited re reaction to Board Order 1983-3
EXHIBIT #B-28	Letter dated November 30, 1983 from Yukon Electrical Public Utilities Board Executive Secretary to Gary Bauer, Yukon Electric re amendments to Order
EXHIBIT #B-29	Amended page 17 of Order 1983-3 dated November 29, 1983
EXHIBIT #B-30	Letter dated December 2, 1983 from Yukon Electric re request for a public review
EXHIBIT #B-31	Letter to all previous intervenors dated December 2, 1983 re notice of public review
EXHIBIT #B-32	Letter dated December 8, 1983 from Yukon Electric re Details of Application for Review
EXHIBIT #B-33	Yukon Electrical Company Limited - Yukon Companies Combined Two Year Average Returns