

1993-5

YUKON UTILITIES BOARD
INTERIM DECISION 1993-5

JUNE 29, 1993

RE

YUKON ENERGY CORPORATION AND
THE YUKON ELECTRICAL COMPANY LIMITED

YUKON UTILITIES BOARD

INTERIM DECISION 1993-5

TUESDAY, THE 29TH DAY OF JUNE, 1993

IN THE MATTER OF the *Public Utilities Act*,
Chapter 143, R.S.Y.T. 1986, as amended;

AND IN THE MATTER OF a joint application by
Yukon Energy Corporation and The Yukon
Electrical Company Limited to the Yukon
Utilities Board for Orders approving
changes in the existing rates, tolls or
charges for electric light, power or energy
and related services supplied to its
customers within Yukon.

BEFORE:

THE YUKON UTILITIES BOARD

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BOARD MEMBERS

Edith Walters

Chair

Doug Row

Vice-Chair

Vi Campbell

Robert Laking

Gordon Duncan

INTERIM ORDER

Yukon Energy Corporation ("YEC") and The Yukon Electrical Company Limited ("YECL") (jointly referred to as "the Companies") filed a joint application dated March 17, 1993 with the Yukon Utilities Board ("the Board") for an Order of the Board fixing and approving just and reasonable rates, charges or schedules for electric light, power or energy and related services to be supplied by the Companies including Terms and Conditions of Service with respect to the Test Years 1993 and 1994.

In its Decision 1993-1, the Board fixed and approved Rate Schedule YEC-39-Industrial Primary on an interim refundable basis to be effective for consumption on and after April 1, 1993.

By Interim Decision 1993-3 the Board, after hearing submissions, ordered interim refundable rates for all billings on and after June 1, 1993 until final rates arising from the General Rate Application respecting 1993 and 1994 are set by the Board. The Order included Rider G which has a surcharge of 20% to be applied to all energy and demand charges for bills issued on and after June 1, 1993 for Industrial Primary customers. Rider H set out a surcharge of 6.75% to be applied to all customer energy and demand charges for bills issued on or after June 1, 1993 for all customers served other than Industrial Primary.

The Companies have requested that this Board approve a further interim increase of 20% on an across the board basis for bills rendered on or after July 1, 1993 on an interim refundable basis.

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The Board heard submissions on June 23, 1993 with respect to two issues:

1. Did the Board have jurisdiction under the *Public Utilities Act* ("the Act") to make an interim Order for an interim refundable rate increase?
2. If the Board has the jurisdiction to make an interim refundable rate increase Order should such an Order be made at this time.

JURISDICTION

The Board considered written submissions from Curragh Inc. (Curragh) and the Companies. In addition, the Board heard verbal submissions from Ian Blue, Q.C., counsel for Curragh, Don Sabey, Q.C., counsel for YECL, P. John Landry, counsel for YEC, and Bruce L. Willis, Q.C., counsel to this Board.

This Board, reviewed the materials provided to it and heard submissions from counsel on behalf of Curragh, YEC, YECL, and the Board. The Board provided a decision, without reasons, on June 23, 1993 that it had the jurisdiction to make interim Orders including interim refundable rate increases. Subsection 27(a) of the Act states that the Board may make Orders fixing rates of a public utility. Section 28 of the Act sets out three situations for the charging of rates for utility services. These are:

- a) a change to an existing rate which has been approved by the Board;

- b) a change to an existing rate made without Board approval;
- c) the establishment of a rate for a new service with the approval of the Board.

Section 28(1) of the Act deals with changes in rates generally. If the rate is not set by the Board, pursuant to the Act, then the public utility must give 90 days notice before it proposes to charge a different rate.

Section 28(2) of the Act deals with a new rate for a new service. New services can come on-stream by the award of a franchise, pursuant to sections 20 through 22 of the Act.

Section 28(2) of the Act refers to a new rate and further refers to the fact that no public utility shall commence to charge a new rate unless the Board issues an Order or interim Order authorizing it to do so. It is our opinion that the words "commence to charge" indicates to us that the subsection relates to new services for which there is no previous rate. Therefore, if a public utility wishes to introduce a new service it may do so by making an application to the Board and receiving an Order or an interim Order authorizing it to do so. No 90 day notice is required under those circumstances. The reason there is no 90 day provision is that the rate must be approved by the Board.

Section 28(1) of the Act covers two (2) situations:

- a) a public utility makes an application to the Board for a change in rates and the Board sets rates after a public hearing, or
- b) a public utility decides to change a rate without Board approval if they give the required notice under section 28(1) of the Act.

The purpose of the 90 day notice period is for interested parties or the Board to react to the proposed change.

The Act sets out a complete code for this Board to deal with public utilities. We note that sections 20 to 22 do not require a 90 day notice before a franchise is granted. Section 44 of the Act provides for complaints to the Board respecting the rates of a public utility or a proposed rate change. The purpose of section 44 is to protect the public in the event that a utility gives a 90 day notice of a proposed change without Board approval. Under section 46 of the Act, the Board can investigate a complaint including a complaint pertaining to a proposed rate change. Among the powers given to the Board, under section 47(2) of the Act, are that if there is a settlement of a complaint agreed to in writing, signed by the public utility and the complainant and approved by the Board, the settlement is binding upon the parties and its terms are enforceable as an Order of the Board under the Act.

Section 57 of the Act permits the Board to make any Order authorized under this part on its own motion, or upon a complaint or application of a interested person. We note that section 57 of the Act does not have a 90 day notice requirement. Nor does section 57 state that it is subject to section 28(1) of the Act.

It is our opinion that the Board, as a result of a complaint or by its own initiative, can conduct an inquiry and may make an Order affecting rates without the necessity of a 90 day notice in advance of such an inquiry taking place.

Furthermore, the Board has the powers under section 63(a) of the Act to make interim Orders on appropriate terms as it may deem necessary to prevent serious harm occurring prior to its decision.

The Board is also concerned about hampering its jurisdiction in the cases of an emergency such as the shutdown of Curragh or a major supply problem affecting fuel prices for diesel fuel. If the submission of Curragh is correct then 90 days notice must be given before a hearing takes place including a proposed rate increase to be approved by the Board. The applicant then discovers it has made an error in the rate proposed to be changed. If Curragh is correct 90 days notice must be given before the hearing can take place.

It is the position of the Board that it has the jurisdiction to make an interim rate increase. It is the Board's position in this hearing that it, on its own initiative, can also make an interim rate increase that it feels is just and necessary in the absence of an application from the companies. If there is any question with respect to a 90 day notice being required for this hearing the Board, on its own initiative, has embarked on an inquiry pertaining to an interim rate increase since it feels that adequate public notice has been given.

DECISION WITH RESPECT TO AN INTERIM REFUNDABLE RATE INCREASE

The Board having determined that it had jurisdiction on June 23, 1993 to hear submissions with respect to a proposed interim refundable rate increase the Board heard submissions on June 23, 1993 from the applicants and intervenors.

The Companies produced a joint panel consisting of Mr. Harvey Kerlslake, Mr. William Byers, and Mr. Cam Osler. The panel, having given their evidence in chief, were cross examined by the intervenors, and Mr. Stephen, Board consultant, and Mr. Willis, Board counsel, and members of the Board. The situation with respect to Curragh, the major customer for the Companies,

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continues to change. Initially, in the original GRA filings, the Companies presumed that Curragh, although temporarily shut down would remain on the system. After the Board gave directions to the Companies to refile further evidence with respect to whether Curragh would be on the system during the Test Period, this Board heard submissions that Curragh would not be reopening during the Test Period. The Board then received evidence of a proposal for the Yukon Government to pay a portion of the monies owed by Curragh to YEC for a portion of April, May, June, July and August. A Memorandum of Understanding executed by the Government of Yukon, YEC, and Curragh was filed with the Board. The Board received evidence that up to \$2.4M would be advanced by the Government of Yukon to YEC on the condition that Curragh would pay certain monies to YEC for monies owing for a portion of April through to August subject to Court approval in Ontario.

The position of the Companies is that if these funds are received that they be used to reduce further proposed 1994 charges. Curragh vigorously argued that the projected shortfall which necessitated this interim rate increase was offset by this approximately \$2.4M revenue to the Companies.

The Board, having heard all the evidence including the evidence of Marvin Pelly, Chief Executive Officer of Curragh's Yukon operations and after considering all the material filed, is of the opinion that it requires further information. In particular, the Board is aware that commencing July 13, 1993 it will hear extensive submissions during the General Rate Application including whether or not Curragh will resume operations and, if so, the timing of when it will return to producing revenue to the Companies as a user of power during the Test Period.

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It is the position of this Board that the application for an interim refundable increase be adjourned pending further evidence at the full hearing commencing July 13, 1993. This Board will, after hearing that evidence, make a decision on the interim refundable rate increase on Friday, the 16th day of July, 1993 or, if necessary, on Saturday, the 17th day of July, 1993.

DATED AT WHITEHORSE, YUKON this 29th day of June, 1993.

YUKON UTILITIES BOARD



EDITH WALTERS
CHAIR