

1997-6

YUKON UTILITIES BOARD

DECISION 1997 - 6

May 26, 1997

**IN THE MATTER OF the Public Utilities Act
Revised Statutes, 1986, c. 143, as amended**

and

**An Application by Yukon Energy Corporation
and the Yukon Electrical Company Limited**

AN ORDER IN THE MATTER OF the Public Utilities Act
Revised Statutes, 1986, c. 143, as amended

and

A Joint Application by Yukon Energy Corporation and
The Yukon Electrical Company Limited

BEFORE: B. Morris, Chair)
G. Duncan) May 26, 1997

ORDER 1997-6

WHEREAS:

- A. On April 11, 1997, Yukon Energy Corporation ("YEC") and Yukon Electrical Company Limited ("YECL") (the "Companies") filed submissions that:
1. Current rates for 1997 be made as interim refundable and retroactive to April 1, 1997, and that the Board direct the Companies to file an application with the Board by October 1, 1997, to finalize the 1997 rates and confirm new rates for 1998/99;
 2. The payment of Rider G rebates to Territorial and Federal Government General Service customers pursuant to Board Order #1996-8 be suspended effective for billings issued on or after May 1, 1997, until such time as the Faro mine resumes normal mine and mill operations as a Rate Schedule 39 customer of YEC, or until the Board determines final rates for 1997 and the 1998/99 GRA, whichever is earlier;
 3. An interim refundable general rate surcharge of 20% be applied to the base rates for all classes of service effective for billings issued on or after May 1, 1997, and continuing thereafter until such time as the Faro mine resumes as a Rate Schedule 39 customer of YEC, or until the Board determines final rates for 1997 and the 1998/99 GRA, whichever is earlier; and
 4. The following be confirmed with respect to the application for existing approved rates for the purchase of power from YEC for use at the Faro mine:
 - a. In the event that the Faro mine ceases to take power from YEC for a period of less than 12 consecutive months and YEC is then asked to resume power supply to the Faro mine, it is confirmed that the owner of the Faro mine is required to pay the minimum monthly bills set out in Rate Schedule 39 (Industrial Primary) for each month during such period, including months when the Faro mine ceased to take power from YEC.
 - b. Site Maintenance Energy (Rate Schedule 40) is available to the Faro mine only in the event that this facility continues after shut down to take power from YEC pursuant to Rate Schedule 39 for a period of at least six consecutive months, and in the event that all of the other conditions set out in Rate Schedule 40 are satisfied.

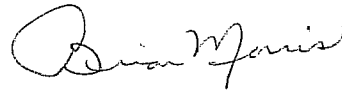
- B. The Board caused a Notice of Public Hearing to be published and following an exchange of Information Requests and Responses, a public hearing was held on May 12 and 13, 1997. Information Responses were reviewed and the oral evidence was considered

NOW THEREFORE the Board orders as follows:

1. Current rates for 1997 are hereby made as interim refundable and retroactively adjustable to April 1, 1997
2. An interim refundable general rider surcharge of 20% be applied to the base rates for all customer classes of service effective for billings issued on or after June 1, 1997, and continuing thereafter until such time as the Faro mine resumes as a Rate Schedule 39 customer of YEC, or until the Board determines final rates for 1997.
3. The payment of Rider G rebates to Territorial and Federal Government General Service customers pursuant to Board Order #1996-8 be suspended effective for all billings issued on or after June 1, 1997, until such time as the Faro mine resumes normal mine and mill operations as a Rate Schedule 39 customer of YEC or until the Board determines final rates for 1997.
4. YEC/YECL will comply with all directions given in Appendix A attached to this Order.

Dated at the City of Whitehorse, in the Yukon Territory, this *16* day of May, 1997.

BY ORDER



Brian Morris
Chair

Appendix A to Board Order 1997-6

YEC/YECL 1997 Interim Refundable Rate Application

INTRODUCTION AND BACKGROUND

On April 11, 1997, in response to the closure of the Faro mine and the notice that Anvil Range Mining Corporation ("ARM") will not continue to take electric power from YEC effective April 1, 1997, Yukon Energy Corporation ("YEC") and The Yukon Electrical Company Limited ("YECL") ("Companies") filed an application ("Application") that current rates for 1997 be made as interim refundable and retroactively adjustable to April 1, 1997. The Companies also requested that the Board direct them to file an application by October 1, 1997 to finalize 1997 revenue requirements and to file a 1998/99 General Rate Application ("GRA").

The Application also requested the following:

- (a) The payment of Rider G rebates to Territorial and Federal Government General Service customers pursuant to Board Order 1996-8 be suspended effective for billings issued on or after May 1, 1997, until such time as the Faro mine resumes normal mine and mill operation as a Rate Schedule 39 customer of YEC, or until the Board determines final rates for 1997 and the 1998/99 GRA, whichever is earlier; and
- (b) An interim refundable general rider surcharge of 20% be applied to the base rates for all classes of service effective for billings issued on or after May 1, 1997 and continuing thereafter until such time as the Faro mine resumes as a Rate Schedule 39 customer of YEC, or until the Board determines final rates for 1997 and the 1998/99 GRA, whichever is the earlier; and
- (c) The following be confirmed with respect to the application of existing approved rates for the purchase of power from YEC for use at the Faro mine:
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 - b. Site Maintenance Energy (Rate Schedule 40) is available to the Faro mine only in the event that this facility continues after shut down to take power from YEC pursuant to Rate Schedule 39 for a period of at least six consecutive months, and in the event that all of the other conditions set out in Rate Schedule 40 are satisfied.

Pursuant to Board Order 1997-5 a public hearing on the Application was held on May 12 th and May 13 th, 1997.

The current rates, tolls and charges of YEC and YECL are as set out in Schedule "A" to Board Order 1996-8 and resulted from the 1996/97 GRA and subsequent negotiated settlement. That process resulted in large rate decreases for Commercial, Municipal and Government customers.

Residential rates did not increase despite the fact that these rates paid only 80% of the costs to serve the residential class (only 72% of the full cost after rate relief). While recoveries of \$3.5 million from the Curragh settlement and Faro mine re-opening could have been used to further reduce rates instead of being used to create the Diesel Contingency Fund, the existence of the bill relief program meant that the residential customers would not receive any reduction and the only beneficiaries would be YEC's shareholder.

The forecasts used in the 1996/97 General Rate Application assumed that ARM would continue to be a customer throughout 1997 providing revenues of almost \$15 million to cover its share of the cost of service. While certain diesel, operating and debt costs could be avoided, according to the Application (as revised May 9, 1997), if the Mine stayed down, the net reduction in earnings from April 1 to December 31, 1997 would be \$6,243,000. This amount does not take into consideration any potential ARM bad debt for pre-April power use or any reductions in Residential and Commercial sales due to the impact of the shutdown on the Yukon economy, as such adjustments have been left for the final application expected in the Fall.

SURCHARGE RIDER

According to Mr. McWilliam, President of YEC:

"Shutdown of the Faro mine constitutes an emergency for YEC and its customers, due to the loss of significant revenue starting April 1st. Each month that the Faro mine remains shut down, and is not a Rate Schedule 39 customer, causes very significant losses for YEC, which clearly affect YEC's financial integrity; and it aggravates future rate shock for other Yukon customers.

Without relief, the losses caused by the Faro mine closure will wipe out all of YEC's \$5.1 million that were projected in 1997 earnings, based on the '96-97 settlement and related Board orders. Failure to grant interim relief quickly will cause future rate shock by delay of necessary action to recover these losses from the remaining customers, in accordance with past decisions of the YUB. This emergency indicates an urgent need for rate increases to recover at least a significant share of the projected '97 losses." T.31.

The revised Application requests a 20% interim refundable general rider surcharge as at June 1, 1997. This surcharge is expected to be reviewed and adjusted at a hearing later in 1997 but is designed to recover most of the YEC lost earnings over a 19 month period to December 31, 1998. It should be noted that full recovery of the YEC lost earnings in 1997 would require a 32% increase at this time. In fact, there was a wide range of rate impacts put forth at the hearing, ranging from a 4.4% increase if YEC was not allowed to earn any net income in 1997, to 85.2% if an interim rate was not approved and the full return on equity had to be collected over the last two months of the year.

The Board obtains its powers from the *Public Utilities Act*, being Chapter 143 of the Revised Statutes of Yukon, 1986, as amended. Section 7 of Order-in-Council 1995/90 ("OIC") requires that YEC wholesale rates charged to YECL be sufficient to recover YEC costs that are not recovered from its other customers. Consequently, the Board must allow a joint application to pass through the lost revenues to YECL's customer rates.

Section 63 of the Act provides as follows:

The board may, in any matter before it,

- (a) make such interim orders on appropriate terms as it may deem necessary to facilitate its inquiry or to prevent serious harm occurring prior to its decision, and
- (b) reserve further direction either for an adjourned hearing or for further application.

However, Section 28.(1) states:

No public utility shall charge any rate for the supply of the service for which it is franchised other than the rate set by the board pursuant to this Act unless, 90 days before it proposes to charge a different rate,

- (a) a statement showing the new rate is filed with the board, and
- (b) a notice showing the new rate is sent by mail or delivered to each municipality within which the service is provided and to the Executive Council Member.

While Section 63 of the Act permits the Board to “make such interim orders ... to prevent serious harm occurring prior to its decision ...”, Section 28 of the Act appears to state that the Board must wait for the expiry of the 90 day period referred to in that section.

There is an issue therefore as to whether Section 63 or Section 28 governs the Board’s decision in consideration of this application.

The Board is of the opinion that Section 63 must override the provisions of Section 28 in order to prevent “serious harm occurring prior to its decision.” To rule otherwise could mean that the harm may well have become irreparable by the time the 90 days expired.

Pursuant to Sections 17 and 18 of the Act, the Commissioner in Executive Council, passed Order-in-Council 1995/90 ("OIC"). Section 2 of the OIC states that: "The Board must include in the rates of Yukon Energy Corporation provision to recover a normal commercial return on Yukon Energy Corporation's equity, less one half of one percent (.5%)."

Pursuant to Section 17 (1) of the Act, the Board must comply with Section 2 of the OIC.

Therefore there is no question that the Board must allow YEC to recover the previously approved return on equity of 10.75%. The only issue appears to be at which point in time must the Board allow YEC to recover its return on equity. Is it at the time of the interim application or at the time of the final order? Section 29(d) does provide that in cases of excess revenue received or deficiencies incurred, the Board "shall by order approve the method by which and the period during which any excess revenue received or deficiency incurred is to be used or dealt with" [emphasis added].

The Board is of the view that the statutory obligation only arises at the time of the making of the final order. However, the Board must be mindful of avoiding "serious harm" to YEC prior to its final decision and also must consider the potential impact of even more significant rate increases later in the year if some action is not taken at this time.

For the reasons cited above, the Board approves the application for an interim refundable general rider surcharge of 20% applied to the base rates for all classes of service effective for billings issued on or after June 1, 1997 and continuing thereafter until such time as the Faro mine resumes as a Rate Schedule 39 customer of YEC, or until the Board determines final rates for 1997.

DIRECTIONS FROM THE COMMISSIONER IN EXECUTIVE COUNCIL

Section 17 (3) of the Act allows the Board to request a review of the OIC. The Commissioner in Executive Council can either suspend or continue the operation of the OIC pending the completion of a review, or confirm, vary or revoke the OIC.

As mandated by OIC 1995/90, the current rates were approved as part of a negotiated settlement to give YEC a 10.75% Return on Equity in 1997 (\$5.002 million). These rates were based on the assumption that the industrial class customer would generate revenue of \$14.82 million in 1997. The reason for a rate increase at this time is the loss of that industrial class customer and the resulting loss of revenue. However, it has not been made plain that the 20% increase will simply allow the crown corporation to recover 80% of the profit required by the OIC. Cross-examination by the Board Counsel showed that, in the past, this profit has been used to pay dividends and rate relief. The dividends were reinvested in the corporation but there is a real question as to whether it is appropriate to request a 20% rate increase in order to pay a portion of it back in the form of rate relief. In addition, YEC testified that, in this emergency situation, it would be able to defer payment of principal on the flexible term note and cut back on capital programs, thus reducing its need for reinvestment of dividends at this time.

The Board is presently prevented by Section 2 of the OIC from disallowing YEC its return of 10.75%. Due to the significant rate increases caused by this Application, the Board intends to request that the Commissioner in Executive Council review the possibility that Section 2 be varied to permit a lower return on equity for YEC in 1997.

RATE SCHEDULE 39

Rate Schedule 39 is applicable to "all major industrial customers engaged in manufacturing, processing or mining with electric service capacity in excess of 1,000 kW, except those customers served under Rate Schedule 40 (Site Maintenance Energy)." [emphasis added] The word "customer" is not defined in the rate schedule but it is defined in the Electric Service Regulations, (March 19, 1996) which defines "customer" to mean "a person, firm, corporation, association or organization which has applied for or is receiving the provision of service by the utility ...". The Act itself does not define the term "customer". In the Board's view, a customer is either receiving service or has made application to receive service. It is the Board's understanding that ARM no longer receives service from the utility. Nor has it applied for service. Therefore, in the Board's view, ARM is no longer a customer and as such, Rate Schedule 39 does not apply to it.

Even if Rate Schedule 39 did apply to ARM, the Board notes that there is no provision anywhere in Rate Schedule 39 allowing a person to be charged a minimum monthly charge if that person is off the system for twelve (12) months or less. Nor do the Electric Service Regulations provide for a

minimum monthly charge, although they do provide for payments arising upon reconnection (s4.18).

In the Board's opinion, the "minimum monthly bill" described in Rate Schedule 39 only applies to a person who is a customer. Therefore, the Board is of the view that the Companies cannot require this minimum monthly charge pursuant to Rate Schedule 39 from a customer who leaves the system but returns within twelve (12) months.

RE-APPLICATION FOR SERVICE

The practice of requiring charges which otherwise would have been incurred if the customer had not left the system and wants to reconnect is not without precedent in Canada. Section B of the Terms and Conditions of service in the B.C. Hydro and Power Authority Electric Tariff states:

"If a service agreement is terminated by a customer, whether or not there is an actual disconnection by B.C. Hydro, and if the prior customer or spouse, servant or agent of that person applies for a new service agreement on the same rate schedule within 12 months of the most recent termination date for the same premises, then the applicant shall pay the greater of:

- (a) the costs that B.C. Hydro estimates that it will incur in making the restoration or reconnection of the service, or
- (b) the sum of the minimum charges which a customer would have paid between the time of termination and the time of application for a new service agreement on the residential rate schedule."

In the Board's view, this type of fee is a reasonable response to concerns about "gaming" the system. That is, it is a reasonable response to the problems caused when customers who are responsible for a significant portion of a utility's costs and revenues disconnect from and reconnect to the system as they see fit, leaving other customers or the utility to bear the costs of operating that system. Such "gaming" jeopardizes the financial stability of utilities and can leave other customers vulnerable to "rate shock" by way of large increases in electrical rates.

Rate Schedule 39 provides that the minimum monthly bill will be the sum of the Demand Charges and the monthly Fixed Charge. According to the Application, the amount that Anvil Range would have paid if it had not left the system is approximately \$439,900 per month and would go a long way towards alleviating the proposed rate increase.

However, a Reconnection Fee should be in effect before the customer makes its decision to leave the system. If a customer accepts service pursuant to the rates and terms of conditions under a specific rate schedule, it would be difficult for the customer to subsequently argue that it should not be bound by those terms and conditions if it leaves the system for a period of less than twelve (12) months. While it may be of serious concern that the customer is using the system to the detriment of the utility and all other ratepayers, Rate Schedule 39 as currently written does not prohibit a customer from leaving the system. Nor does it require the customer to pay minimum monthly charges if it leaves the system. Thus, if the customer leaves the system under the current rate schedule, it would appear that the customer could come back on the system at any time without

penalty or without having to pay any form of minimum monthly charge for the period of time during which it was off the system

If the Companies are dissatisfied with the existing situation in connection with Rate Schedule 39, the Companies should apply for amended Electric Service Regulations which have terms and conditions for the Industrial class similar to those in Section B of the B.C. Hydro and Power Authority tariff noted above. If a new rate schedule is in effect when ARM joins the system again, then it would be bound by the terms and conditions of the revised rate schedule, but from any future date when it decides to leave the system.

It should be noted that Section 6 (1) of the OIC requires the Board to ensure that rates charged to major industrial customers be sufficient to recover the costs of service to that customer class and that the costs of service must be determined by treating the whole Yukon as a single rate zone. The Board is not required to decide upon the effect of the wording of Section 6 (1) in this decision as it is determined that ARM is not a "customer" under the Electric Service Regulations. (It is also not a customer under the definition of "customer" found in the OIC). The Board leaves open the question of whether the wording of the OIC would require it to compel ARM to pay its full cost of service for the year if it returns to the system as a customer.

RATE SCHEDULE 40

The wording of Rate Schedule 40 specifically states that "Site Maintenance Energy" is applicable only to major industrial customers engaged in manufacturing, processing or mining, with an electric service capacity in excess of 1,000 kW", which satisfy certain conditions set forth in the rate schedule, including that:

"(2) YEC and YECL are satisfied that the customer's facility has not had any manufacturing, processing or mining activity for a period of at least six consecutive months, and that this non-productive status is expected to continue at the facility for at least a further six consecutive months after Site Maintenance Energy is first provided."

That Rate Schedule 40 contemplates that the customer be an existing Rate Schedule 39 customer is supported by the Resumption of Production part of Rate Schedule 40. That provision provides as follows:

"Immediately upon the resumption of any level of production from the facilities, all energy (kW.h) and power (kV.A) recorded at the customer's facilities will be billed under the standard industrial Rate Schedule 39 including all fixed charges or any applicable contract in effect at that time."

Condition (2) in the Rate Schedule 40 is presumably intended to prevent a major industrial customer from gaming the system.

The only troublesome wording in Rate Schedule 40 is found in the first paragraph where there is a reference to "Qualified, potential customers". The Board would read the words "potential customers" as relating to potential customers being served under Rate Schedule 39 and not for

potential customers in general. The reason for this interpretation is the use of the word "Qualified" and the reference to the rate schedule as being only applicable "to major industrial customers" as defined by the rate schedule which is a similar definition to that in Rate Schedule 39. Rate Schedule 39 applies to major industrial customers "except those customers served under Rate Schedule 40 Site Maintenance Energy".

Accordingly, the Board agrees with the Companies that Site Maintenance Energy (Rate Schedule 40) is available to the Faro mine only in the event that this facility continues after shut down to take power from YEC pursuant to Rate Schedule 39 for a period of at least six consecutive months, and in the event that all of the other conditions set out in Rate Schedule 40 are satisfied.

1998/99 GENERAL RATE APPLICATION

This Application is made on an interim basis to reflect the urgency of the situation and also the uncertainty of continued shutdown of the Mine. The Companies ask that current rates for 1997 be made as interim refundable and retroactively adjustable to April 1, 1997.

The Companies also suggest that a combined 1997 rate finalization and 1998/99 GRA application in October would be cost-effective and that the situation regarding ARM would be clarified by then. This may well be so, but the Board suspects it is too early for the Companies to know at this time whether higher rates will be required after 1997, and such a combined application could likely not be heard until some time in 1998, after due notice and intervals for workshops, information requests and responses. If the ARM situation is more clear by the Fall, it should be dealt with as soon as possible.

For these reason, the Board will not order the Companies to file a 1998/99 GRA at this time, but does order that that current rates for 1997 be made as interim refundable and retroactively adjustable to April 1, 1997 and that an application to finalize 1997 rates be made at the earlier of October 1, 1997 or when the Mine re-opens and the uncertainties are removed.

RIDER G

Rider G currently applies a 4.16% surcharge to Industrial customers and a 10.41% refund to General Service, Provincial and Federal Govt. customers to deal with 1996 rate redesign (refunds to other classes were completed in 1996). An eighteen month collection period was allowed in order to mitigate the impact to ARM but now that the Mine is not paying the surcharge, the Companies propose to suspend the Government refunds in order to offset approximately 80% of this lost revenue.

As the suspension is temporary in order to see if the Mine will resume operations and electricity payments, the Board believes the application should be approved, effective June 1, 1997. However, it should be recognized that the loss of the refund will cause the rate increase to be 10% higher for these customers.

YUKON UTILITIES BOARD

P.O. Box 6070, 19 - 1114 First Avenue,

Whitehorse, Yukon Y1A 5L7

Telephone (403) 667-5058, Fax (403) 667-5059

Our file no.:

Your file no.:

May 27, 1997

By fax and mail

J. Carroll
Yukon Electrical Company Limited
P.O. Box 4190
Whitehorse, Yukon
Y1A 3T4

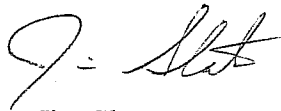
R. McWilliam
Yukon Energy Corporation
P.O. Box 5920
Whitehorse, Yukon
Y1A 5L7

Dear Sirs:

Re: YEC/YECL 1997 Interim Refundable Rate Application

I enclose a copy of Board Order #1997-6 with respect to the above captioned application.

Yours truly,



Jim Slater

Enclosure

cc	K. Forgaard	Fax	668 6518
	Ian Blue	Fax	(416) 360 8877
	Jared Storey	Fax	668 8384
	Larry Bagnell	Fax	668 7574
	G. Everitt	Fax	(403) 993 7434
	Energy Commission	Fax	667 8424
	C. Dean	Fax	(403) 994 3154
	B. Newell	Fax	668 8639
	R. Clarkson	Fax	668 3978
	R. Veale	Fax	668 3710
	R. Rondeau	Fax	633 5210
	P. Percival	Fax	667 2647
	D. MacLean	Fax	667 8601

Amended Appendix A to Board Order 1997-6

YEC/YECL 1997 Interim Refundable Rate Application

INTRODUCTION AND BACKGROUND

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The Board obtains its powers from the *Public Utilities Act*, being Chapter 143 of the Revised Statutes of Yukon, 1986, as amended. Section 7 of Order-in-Council 1995/90 ("OIC") requires that YEC wholesale rates charged to YECL be sufficient to recover YEC costs that are not recovered

from its other customers. Consequently, the Board must allow a joint application to pass through the lost revenues to YECL's customer rates.

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- (a) make such interim orders on appropriate terms as it may deem necessary to facilitate its inquiry or to prevent serious harm occurring prior to its decision, and
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There is an issue therefore as to whether Section 63 or Section 28 governs the Board's decision in consideration of this application.

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The Board is of the view that the statutory obligation only arises at the time of the making of the final order. However, the Board must be mindful of avoiding "serious harm" to YEC prior to its final decision and also must consider the potential impact of even more significant rate increases later in the year if some action is not taken at this time.

For the reasons cited above, the Board approves the application for an interim refundable general rider surcharge of 20% applied to the base rates for all classes of service effective for billings issued on or after June 1, 1997 and continuing thereafter until such time as the Faro mine resumes as a Rate Schedule 39 customer of YEC, or until the Board determines final rates for 1997.

DIRECTIONS FROM THE COMMISSIONER IN EXECUTIVE COUNCIL

Section 17 (3) of the Act allows the Board to request a review of the OIC. The Commissioner in Executive Council can either suspend or continue the operation of the OIC pending the completion of a review, or confirm, vary or revoke the OIC.

As mandated by OIC 1995/90, the current rates were approved as part of a negotiated settlement to give YEC a 10.75% Return on Equity in 1997 (\$5.002 million). These rates were based on the assumption that the industrial class customer would generate revenue of \$14.82 million in 1997. The reason for a rate increase at this time is the loss of that industrial class customer and the resulting loss of revenue. However, it has not been made plain that the 20% increase will simply allow the crown corporation to recover 80% of the profit required by the OIC. Cross-examination by the Board Counsel showed that, in the past, this profit has been used to pay dividends and rate relief. The dividends were reinvested in the corporation but there is a real question as to whether it is appropriate to request a 20% rate increase in order to pay a portion of it back in the form of rate relief. In addition, YEC testified that, in this emergency situation, it would be able to defer payment of principal on the flexible term note and cut back on capital programs, thus reducing its need for reinvestment of dividends at this time.

The Board is presently prevented by Section 2 of the OIC from disallowing YEC its return of 10.75%. Due to the significant rate increases caused by this Application, the Board intends to request that the Commissioner in Executive Council review the possibility that Section 2 be varied to permit a lower return on equity for YEC in 1997.

RATE SCHEDULE 39

Rate Schedule 39 is applicable to "all major industrial customers engaged in manufacturing, processing or mining with electric service capacity in excess of 1,000 kW, except those customers served under Rate Schedule 40 (Site Maintenance Energy)." [emphasis added] The word "customer" is not defined in the rate schedule but it is defined in the Electric Service Regulations, (March 19, 1996) which defines "customer" to mean "a person, firm, corporation, association or organization which has applied for or is receiving the provision of service by the utility..." The Act and the OIC define customers as "a purchaser of electricity." In the Board's view the customer is either a purchaser of electricity, receiving service, or has made an application to receive service. It is the Board's understanding that ARM no longer purchases electricity and no longer receives

service from the utility. Nor has it applied for service. Therefore, in the Board's view, ARM is no longer a customer and as such, Rate Schedule 39 does not apply to it.

Even if Rate Schedule 39 did apply to ARM, the Board notes that there is no provision anywhere in Rate Schedule 39 allowing a person to be charged a minimum monthly charge if that person is off the system for twelve (12) months or less. Nor do the Electric Service Regulations provide for a minimum monthly charge, although they do provide for payments arising upon reconnection (s4.18).

In the Board's opinion, the "minimum monthly bill" described in Rate Schedule 39 only applies to a person who is a customer. Therefore, the Board is of the view that the Companies cannot require this minimum monthly charge pursuant to Rate Schedule 39 from a customer who leaves the system but returns within twelve (12) months.

RE-APPLICATION FOR SERVICE

The practice of requiring charges which otherwise would have been incurred if the customer had not left the system and wants to reconnect is not without precedent in Canada. Section B of the Terms and Conditions of service in the B.C. Hydro and Power Authority Electric Tariff states:

"If a service agreement is terminated by a customer, whether or not there is an actual disconnection by B.C. Hydro, and if the prior customer or spouse, servant or agent of that person applies for a new service agreement on the same rate schedule within 12 months of the most recent termination date for the same premises, then the applicant shall pay the greater of:

- (a) the costs that B.C. Hydro estimates that it will incur in making the restoration or reconnection of the service, or
- (b) the sum of the minimum charges which a customer would have paid between the time of termination and the time of application for a new service agreement on the residential rate schedule."

In the Board's view, this type of fee is a reasonable response to concerns about "gaming" the system. That is, it is a reasonable response to the problems caused when customers who are responsible for a significant portion of a utility's costs and revenues disconnect from and reconnect to the system as they see fit, leaving other customers or the utility to bear the costs of operating that system. Such "gaming" jeopardizes the financial stability of utilities and can leave other customers vulnerable to "rate shock" by way of large increases in electrical rates.

Rate Schedule 39 provides that the minimum monthly bill will be the sum of the Demand Charges and the monthly Fixed Charge. According to the Application, the amount that Anvil Range would have paid if it had not left the system is approximately \$439,900 per month and would go a long way towards alleviating the proposed rate increase.

However, a Reconnection Fee should be in effect before the customer makes its decision to leave the system. If a customer accepts service pursuant to the rates and terms of conditions under a specific rate schedule, it would be difficult for the customer to subsequently argue that it should

nor be bound by those terms and conditions if it leaves the system for a period of less than twelve (12) months. While it may be of serious concern that the customer is using the system to the detriment of the utility and all other ratepayers, Rate Schedule 39 as currently written does not prohibit a customer from leaving the system. Nor does it require the customer to pay minimum monthly charges if it leaves the system. Thus, if the customer leaves the system under the current rate schedule, it would appear that the customer could come back on the system at any time without penalty or without having to pay any form of minimum monthly charge for the period of time during which it was off the system

If the Companies are dissatisfied with the existing situation in connection with Rate Schedule 39, the Companies should apply for amended Electric Service Regulations which have terms and conditions for the Industrial class similar to those in Section B of the B.C. Hydro and Power Authority tariff noted above. If a new rate schedule is in effect when ARM joins the system again, then it would be bound by the terms and conditions of the revised rate schedule, but from any future date when it decides to leave the system.

It should be noted that Section 6 (1) of the OIC requires the Board to ensure that rates charged to major industrial customers be sufficient to recover the costs of service to that customer class and that the costs of service must be determined by treating the whole Yukon as a single rate zone. The Board is not required to decide upon the effect of the wording of Section 6 (1) in this decision as it is determined that ARM is not a "customer" under the Electric Service Regulations. (It is also not a customer under the definition of "customer" found in the Act or the OIC). The Board leaves open the question of whether the wording of the OIC would require it to compel ARM to pay its full cost of service for the year if it returns to the system as a customer.

RATE SCHEDULE 40

The wording of Rate Schedule 40 specifically states that "Site Maintenance Energy" is applicable only to major industrial customers engaged in manufacturing, processing or mining, with an electric service capacity in excess of 1,000 kW", which satisfy certain conditions set forth in the rate schedule, including that:

"(2) YEC and YECL are satisfied that the customer's facility has not had any manufacturing, processing or mining activity for a period of at least six consecutive months, and that this non-productive status is expected to continue at the facility for at least a further six consecutive months after Site Maintenance Energy is first provided."

That Rate Schedule 40 contemplates that the customer be an existing Rate Schedule 39 customer is supported by the Resumption of Production part of Rate Schedule 40. That provision provides as follows:

"Immediately upon the resumption of any level of production from the facilities, all energy (kW.h) and power (kV.A) recorded at the customer's facilities will be billed under the standard industrial Rate Schedule 39 including all fixed charges or any applicable contract in effect at that time."

Condition (2) in the Rate Schedule 40 is presumably intended to prevent a major industrial customer from gaming the system.

The only troublesome wording in Rate Schedule 40 is found in the first paragraph where there is a reference to "Qualified, potential customers". The Board would read the words "potential customers" as relating to potential customers being served under Rate Schedule 39 and not for potential customers in general. The reason for this interpretation is the use of the word "Qualified" and the reference to the rate schedule as being only applicable "to major industrial customers" as defined by the rate schedule which is a similar definition to that in Rate Schedule 39. Rate Schedule 39 applies to major industrial customers "except those customers served under Rate Schedule 40 Site Maintenance Energy".

Accordingly, the Board agrees with the Companies that Site Maintenance Energy (Rate Schedule 40) is available to the Faro mine only in the event that this facility continues after shut down to take power from YEC pursuant to Rate Schedule 39 for a period of at least six consecutive months, and in the event that all of the other conditions set out in Rate Schedule 40 are satisfied.

1998/99 GENERAL RATE APPLICATION

This Application is made on an interim basis to reflect the urgency of the situation and also the uncertainty of continued shutdown of the Mine. The Companies ask that current rates for 1997 be made as interim refundable and retroactively adjustable to April 1, 1997.

The Companies also suggest that a combined 1997 rate finalization and 1998/99 GRA application in October would be cost-effective and that the situation regarding ARM would be clarified by then. This may well be so, but the Board suspects it is too early for the Companies to know at this time whether higher rates will be required after 1997, and such a combined application could likely not be heard until some time in 1998, after due notice and intervals for workshops, information requests and responses. If the ARM situation is more clear by the Fall, it should be dealt with as soon as possible.

For these reason, the Board will not order the Companies to file a 1998/99 GRA at this time, but does order that that current rates for 1997 be made as interim refundable and retroactively adjustable to April 1, 1997 and that an application to finalize 1997 rates be made at the earlier of October 1, 1997 or when the Mine re-opens and the uncertainties are removed.

RIDER G

Rider G currently applies a 4.16% surcharge to Industrial customers and a 10.41% refund to General Service, Provincial and Federal Govt. customers to deal with 1996 rate redesign (refunds to other classes were completed in 1996). An eighteen month collection period was allowed in order to mitigate the impact to ARM but now that the Mine is not paying the surcharge, the Companies propose to suspend the Government refunds in order to offset approximately 80% of this lost revenue.

As the suspension is temporary in order to see if the Mine will resume operations and electricity payments, the Board believes the application should be approved, effective June 1, 1997. However, it should be recognized that the loss of the refund will cause the rate increase to be 10% higher for these customers.

YUKON UTILITIES BOARD

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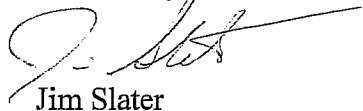
Dear Sirs:

Re: YEC/YECL 1997 Interim Refundable Rate Application

Enclosed herein please find Amended Appendix A to Board Order 1997-6 correcting an error contained in the Appendix forwarded to you yesterday.

The only changes are in the last paragraph of page 4 and in the second full paragraph on page 6. These amendments do not change any of the Board's decisions.

Yours truly,



Jim Slater

Enclosure

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