

1998-4

Revised Statutes, 1986, c. 143, as amended

and

A Final Application submitted December 16, 1997 by Yukon Electrical Company Limited

and

A Revised Application submitted April 22, 1998 by Yukon Energy Corporation

BEFORE: B. Morris, Chair)
G. Duncan, Vice Chair)
G. Leslie, Member) June 29, 1998

ORDER 1998-4

WHEREAS:

- A. On December 16, 1997, the Companies, in accordance with Board Orders, filed an application to finalize 1997 rates (the “Final Rates Application”), requesting further rate riders and orders to address ongoing uncertainties related to the Faro mine operations.
- B. On April 22, 1998, YEC filed a Revised Application (the “Revised Application”) requesting Board orders to finalize 1997 rates pursuant to Board Order 1997-6, approve an interim and refundable rate rider, effective for all billings on or after June 1, 1998 and other matters in the Companies’ December 16, 1997 Applications.
- C. Board Order #1998-3 approved a limited scope review to facilitate an early public hearing date and set down a public hearing on the Applications to commence July 8, 1998.
- D. On May 29, 1998 the Board requested submissions from parties to the hearing on certain issues pertaining to the Board’s jurisdiction to finalize 1997 rates.
- E. On June 14 and 15, 1998 the Utilities Consumer’ Group (“UCG”) filed a Notice of Motion requesting that, in order to save hearing costs, the Board confirm 1997 rates as set in the 1996/97 GRA without a hearing process, that the hearing on the 1998 interim rate application be suspended, and that the Companies pay for the costs of the revised 1997 hearing through their corporate profits.

- F. On June 18, 1998 the Board requested submissions on the Motions, to be received by June 26, 1998.
- G. The Board has reviewed the submissions and the evidence filed during the hearing process to date and provides its Reasons for this Order in Appendix A.

THE BOARD THEREFORE orders as follows:

1. Based on the UCG motion, and the Final and Revised Applications, the Board concludes that YECL's rates as approved by Board Order #1996-8 are confirmed as final in accordance with its December 16, 1997 Final Rates Application and, as a result, YECL is excused as an Applicant to the July 8, 1998 hearing.
2. YEC's rates, and the outstanding general rider surcharges approved by Board Order #1998-3, will continue to be interim and refundable pending the finalization of YEC's 1997 rates, to be determined in the July 8, 1998 hearing.
3. The UCG motion to suspend the hearing of the YEC interim rate application for 1998 is hereby denied.
4. The UCG motion to require the Companies to pay for the costs of the hearing through their corporate profits is premature and the Board will hear argument on this issue during the hearing.

Dated at the City of Whitehorse, in the Yukon Territory, this 30th day of June, 1998.

BY ORDER

A handwritten signature in black ink, appearing to be 'Gordon Duncan', written over a horizontal line.

Gordon Duncan
Vice-Chair

Appendix A to Board Order #1998-4

The July 8, 1998 hearing was ordered by the Board to allow for a limited review of the issues directly surrounding the closures of the Faro Mine and their impact on 1997 rates. Board Order #1997-6, after a hearing in response to the first closure of the Faro mine, ordered that the rates of Yukon Energy Corporation ("YEC") and Yukon Electrical Company Limited ("YECL") (the "Companies") for 1997 be made interim and refundable and retroactively adjustable to April 1, 1997. On December 16, 1997, the Companies, in accordance with Board Orders, filed an application to finalize 1997 rates (the "Final Rates Application"), requesting further rate riders and orders to address ongoing uncertainties related to the Faro mine operations. YECL signed the joint application as manager of YEC but noted that, except with regard to any changes in rates payable to YEC, its revenue requirements were not impacted by the closures. YECL therefore requested that its 1997 rates be finalized at levels sufficient to achieve the 1996/97 GRA revenue requirement approved by Board Order #1996-6, together with any rider necessary to flow through any increase in the wholesale power rate charged by YEC.

On December 31, 1997 YECL ceased to be manager of YEC and, as of January 31, 1998, Anvil shut down its mining and milling operations at the Faro mine and is no longer a Rate Schedule 39 customer of YEC.

On April 22, 1998, YEC filed a Revised Application (the "Revised Application") requesting Board orders to finalize 1997 rates pursuant to Board Order 1997-6, approve an interim and refundable rate rider, effective for all billings on or after June 1, 1998 and other matters in the Companies' December 16, 1997 Application. The Revised Application is also based on the 1997 revenues and costs for YEC and YECL that were adopted in the 1996/97 General Rate Application Settlement Package approved in Board Order 1996-8.

In its Revised Application, YEC proposed numerous initiatives it felt would improve rate stability and lower 1997 and 1998 revenue requirements, including changes in the use of the Diesel Contingency Fund ("DCF") and a reduction of the return on equity for both Companies previously approved by the Board.

On May 29, 1998 the Board requested submissions from parties to the hearing pertaining to the Board's jurisdiction on these issues. With regard to the DCF, the respondents all agreed that there were no specific constraints on the Board's disposition of any balance in the fund, and that the matter could be reviewed.

The Board directs that the use of the DCF as proposed by YEC will be an issue for review in the July 8, 1998 hearing.

With regard to the reduction of the return on equity for both Companies, the consensus is that the Board does not have the ability to eliminate the fair return on equity for a public utility. No party argued that YEC's status as a crown corporation allows the Board to set

less than a fair return. However, YECL notes that it did not request a reduction in its return and that the Board has already approved the fair return for YECL based on the best evidence available at the time. YEC argues that, absent a significant change in YECL's own circumstances, there is no basis for changing the previous decision, which was the product of a "package deal" in the Negotiated Settlement with input from all parties.

YEC argues that, as soon as the Companies' rates became interim because of material circumstances resulting from the mine closure, the effect of Board Order #1996-8 in finalizing 1997 rates, and the return on equity set at that time, is no longer relevant. YECL notes that the return was approved by Board Order #1996-6, which was not made interim. It argues that OIC 1995/90 requires the Board to approve rates in accordance with principles established for utilities in Canada, which includes the opportunity to earn a reasonable return on equity and refutes retroactive ratemaking. YEC argues that OIC 1998/32 also recognizes YECL's right to recover a fair return but that it cannot operate to increase the Board's powers beyond those contained in the governing legislation.

Board Order # 1997-6 made the Companies' 1997 rates interim due to the special circumstances of the Faro Mine closure and the need to impose a refundable 20% surcharge on YEC/YECL and its customers. The Board has reviewed the evidence from the entire process and agrees that the impact of the closures of the Faro Mine do not have a significant impact on YECL's operations. The Board also agrees that reducing YECL's return on equity in the manner proposed by YEC would be inappropriate.

Based on the UCG motion, and the Final and Revised Applications, the Board concludes that YECL's rates as approved by Board Order #1996-8 are confirmed as final in accordance with its December 16, 1997 Final Rates Application and, as a result, YECL is excused as an Applicant to the July 8, 1998 hearing.

However, it may still be possible for YEC to argue that its return on equity can be reduced and, in any case, as noted in its submission, its rates for 1997 must still be finalized. As well, the effect on YEC's 1998 revenue requirements due to the closure of the Faro Mine in January 1998 must still be reviewed, along with its requests for further orders and changes to the use of the DCF and Electric Service Regulations. Therefore, the UCG motion to suspend the hearing of the YEC interim rate application for 1998 is not approved. The July 8, 1998 hearing will proceed to hear the YEC April 21, 1998 Revised Application with respect to YEC's own operations.

UCG's June 15, 1998 motion requested that the Board require the Companies to pay for the costs of the hearing through their corporate profits as they are the ones initiating the revised application. The Board notes that applications to their regulators is the only way that public utilities can change their rates and that previous Board Orders directed that such applications be made. The UCG motion to require the Companies to pay for the costs of the hearing through their corporate profits is premature and the Board will hear argument on this issue at the hearing.

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June 30, 1998

Roger Rondeau
Utilities Consumers' Group
P.O. Box 6086
Whitehorse, Yukon
Y1A 5L7

Dear Mr. Rondeau

RE: The UCG Motions

I enclose a copy of Board Order #1998-4 containing the Board's decision on the UCG Motions.

Yours truly,



Jim Slater

Attachment

L. Bagnell AYC
J. Parker Energy Comm.
M. Wozniak Mayo
B. Newell Whse
R. McWilliam YEC
P. Percival

G. Everitt Dawson
J. McLaughlin AYC
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