

2005-4

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

**and**

**An Application by Yukon Energy Corporation  
for Approval of 2005 Revenue Requirements**

**BEFORE:**                    B. Morris, Chair            )    February 21, 2005  
                                  W. Shanks                    )  
                                  R. Hancock                )  
                                  M. Phillips                )

**BOARD ORDER 2005-4**

**WHEREAS:**

- A.    On December 13, 2004, Yukon Energy Corporation ("YEC", "the Company") filed with the Yukon Utilities Board ("the Board"), pursuant to the *Public Utilities Act* ("the Act"), and *Order-In-Council 1995/90*, an Application requesting an Order granting new rates for Secondary (interruptible) Energy and the Faro Mine site, on an interim refundable basis, effective with consumption January 1, 2005 ("the Application"); and
- B.    The Application proposes the creation of a new Income Stabilization Trust and does not request any increase in firm rates charged to residential and commercial customers in 2005; and
- C.    The Application proposes for Secondary (interruptible) Energy, a new quarterly rate-setting mechanism to maintain the retail rate at 70 percent of the customers' avoided cost of fuel oil. This will result in a retail rate of 5.5 cents per kW.h. as of January 1, 2005; and
- D.    The Application also proposes for the Faro mine site, to change the current rate schedule to the normal General Service - Government rate; and
- E.    By Order 2004-1, the Board approved an interim refundable increase in rates to Secondary (interruptible) Energy customers and to the Faro mine site as requested in the Application. Board Order 2004-1 further scheduled a Workshop into the Application for January 13, 2005 and a Pre-hearing Conference for January 14, 2005; and
- F.    By Order 2005-2, the Board scheduled an oral public hearing into the YEC Application for April 18, 2005 in Whitehorse, Yukon and issued a regulatory timetable and a final issues list; and

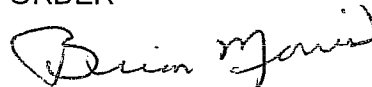
- G. On February 8 and February 10, 2005 respectively, the Utilities Consumers' Group ("UCG") and Mr. Percival filed separate Notices of Motion regarding a meeting that was held between YEC and some Secondary Energy customers; and
- H. On February 15 and 16, 2005 respectively, Mr. McMahon and Yukon Electrical Company Limited commented on the UCG and Percival Notices of Motion; and
- I. On February 16, 2005 YEC replied to the Notices of Motion and confirmed that a meeting had occurred between YEC and an intervenor representing some Secondary Energy customers; and
- J. The Board has reviewed the Notices of Motion from UCG and Mr. Percival and the related submissions.

**NOW THEREFORE** the Board orders with Reasons for Decision attached as Appendix A that:

- 1. In the event that the meeting between YEC and the Secondary Energy customers results in a rate setting proposal for Secondary Energy customers that differs from that contained in the Application, YEC is to immediately provide the Board and all intervenors with copies of all documents including emails exchanged between YEC and the Secondary Energy customers relating to such revision.
- 2. If YEC intends to hold any future meetings with its Secondary Energy customers on matters relating to the proposed rate change to the Secondary Energy customers while the Application is before the Board, YEC is to notify all intervenors in advance of such meetings and in fairness to all parties, the Board expects that all intervenors will be invited to attend.
- 3. The Motions of UCG and Mr. Percival are otherwise dismissed.

**DATED** at the City of Whitehorse, in the Yukon Territory, this 28<sup>th</sup> day of February 2005.

BY ORDER



Brian Morris  
Chair

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

**and**

**An Application by Yukon Energy Corporation  
for Approval of 2005 Revenue Requirements**

**Reasons for Decision**

**1.0 Background**

On December 13, 2004, Yukon Energy Corporation ("YEC", "the Company") filed with the Yukon Utilities Board ("the Board"), pursuant to the *Public Utilities Act* ("the Act"), and *Order-In-Council 1995/90*, an Application requesting an Order granting new rates for Secondary (interruptible) Energy and the Faro Mine site, on an interim refundable basis, effective with consumption January 1, 2005 ("the Application").

By Order 2004-1, the Board approved for YEC the requested interim refundable rate increases and set the current firm rates charged to residential and commercial customers as interim effective January 1, 2005. Order 2004-1 also scheduled a Workshop and a Pre-hearing Conference into the Application for January 13, 2005, and January 14, 2005, respectively.

**2.0 Notices of Motion, Submissions and Replies to Notices of Motion**

The proposed rate change to the Secondary Energy customers was an issue raised by a number of intervenors at the Pre-hearing Conference (Transcript pages 15-18). YEC responded to the concerns and proposed that a meeting be held off-line among YEC, the Secondary Energy customers and anybody that had an interest in the issue including all intervenors (Transcript pages 42-43). Following the YEC proposal, the Utilities Consumers' Group ("UCG") and Mr. Percival also expressed concerns about the impact of the proposed rate change on revenues and submitted that the intervenors and interested parties should be at such meetings (Transcript pages 43-44).

On February 8 and February 10, 2005, respectively, the UCG and Mr. Percival filed separate Notices of Motion regarding a meeting that was held between YEC and some Secondary Energy customers without other ratepayers being present.

The UCG submitted that pursuant to section 68 of the Act, "the Board has the authority to impose a penalty to any person or corporation who does not comply to the provisions of the Act". The UCG also referenced section 7 of the Board's Rules of Practice which states: "Where a party to a proceeding or inquiry before

the Board fails to comply with an Order of the Board, a direction of the Board or these Rules, the Board may take such steps as are necessary to ensure the integrity of the hearing process including disallowance of evidence, making an appropriate Order as to costs or such other steps as the Board considers just and reasonable.”

The UCG requested that the Board order that the Application be postponed until YEC pays a penalty not exceeding \$5,000; all YEC administrative personnel who met with Secondary Energy customers also pay a penalty not exceeding \$1,000 and YEC provide a specific explanation, without undue delay, to all stakeholders of the discussions that were held at that meeting and any analysis that was conducted by YEC resulting from that meeting.

Mr. Percival requested that the Board issue an Order that:

- YEC immediately provide to the Board and all intervenors copies of all information, including internal and external emails, other records of conversations, minutes of meetings, discussion papers, etc. in its possession relating in any fashion at all to the meeting that YEC had with Mr. Baxter (representing the Ad Hoc Group of Business (“AHGB”) a Secondary Energy customer).
- YEC not enter into private side bar unsanctioned “Negotiated Settlement Agreement” type meetings with individual intervenors on matters currently before the Board relating to the Application
- Mr. Baxter immediately provide to the Board and all intervenors copies of all information and notes that he may have taken or subsequently prepared relating to his meeting with Mr. Morrison of YEC.

On February 15 and 16, 2005 respectively, Mr. McMahon and Yukon Electrical Company Limited commented on the UCG and Percival Motions.

On February 16, 2005 YEC responded to the UCG and Percival Motions. YEC submitted that the motions have no merit, there was nothing improper about YEC meeting with the AHGB and the YUB has no jurisdiction to impose fines or other penalties under section 68 of the Act.

### **3.0 Board Conclusions**

The Board considers that the YEC meeting with AHGB was contemplated at the Pre-hearing Conference and YEC agreed to have the meeting open to anybody that has an interest in the issue including all intervenors (Transcript pages 42-43). The Board, however, did not either by Order or direction, schedule a meeting between YEC and all interested parties and intervenors and therefore Section 7 of the Rules of Practice does not apply. Further, putting aside any question of the Board's jurisdiction to impose fines under section 68 of the Act, the failure of YEC to advise others of the meeting, notwithstanding its advice at the Pre-hearing Conference that it would do so, does not, in the Board's view constitute a failure of YEC to comply with any of the provisions of the Act.

The Board finds, however, that as a result of comments made on behalf of YEC at the Pre-hearing Conference, YEC created the expectation among intervenors (and the Board) that if YEC was to arrange a meeting with one or more Secondary Energy customers, YEC would notify all intervenors in advance of the planned meeting and all intervenors would be invited to attend. Accordingly, if the meeting that YEC held with AHGB results in a rate setting proposal for Secondary Energy customers that differs from that contained in the Application, YEC is to immediately provide the Board and all intervenors with copies of all documents including emails exchanged between YEC and the Secondary Energy customers relating to such revision.

Further, If YEC intends to hold any future meetings with its Secondary Energy customers on matters relating to the proposed rate change while the Application is before the Board, YEC is to notify all intervenors in advance of such meetings and in fairness to all parties, the Board expects that all intervenors will be invited to attend.