

Loyola G. Keough
Direct Line: 403.298.3429
e-mail: keoughl@bennettjones.ca
Our File No.: 12276-81

June 27, 2008

Yukon Utilities Board
Box 31728
Whitehorse, Yukon
Y1A 63L

Attention: Ms. Wendy Sharks
Chair

**Re: Yukon Electrical Company Limited
2008-09 General Rate Application
Response to Submission to Interim Refundable Rate Application**

YUKON UTILITIES BOARD		
EXHIBIT B-3		
DAY	ENTERED BY	DATE
	YECL	June 27/08

Pursuant to the Board's schedule regarding the Interim Refundable Rate Application filed by the Yukon Electrical Company Limited ("YECL") as part of its 2008-09 General Rate Application ("GRA"), detailed below are the Reply comments of YECL.

YECL received initial comments from Leading Edge Projects Inc. ("Leading Edge"), as well as the Yukon Energy Corporation ("YEC"). On June 23, 2008 The City of Whitehorse filed a letter stating that, after discussing the matter with YEC, it supported the positions advanced in YEC's submission. Should any additional submissions exist, YECL reserves the right to reply to same.

Leading Edge agreed that it is appropriate for the Board to establish interim refundable rates, but takes issue with the quantum of such rates. YECL acknowledges that the level of interim refundable rates can always be debated, but submits that the intent in setting such rates is not to duplicate the full testing of the subject Application, which will take place during the forthcoming hearing.

If YECL understands the submission of Leading Edge, it suggests that a single interim, refundable Rider of 5% should be approved. The aggregate increase in Riders requested by YECL equals 8.911%. As such, Leading Edge's position would approve approximately 56% of the amount requested by YECL. YECL considers such an increase to be low; however, for the reasons discussed below, would not object to an interim refundable increase equal to 80% of the requested amount.

YEC filed extensive comments on the subject request which, while referencing various positions that purportedly support the outright denial of YECL's request, ignore several major considerations and does not present a complete view of other key matters. Additionally, YEC seeks to constrain the

Board's discretion to set interim rates in a way that is not supported by the legislation. In the end result, the positions advanced by YEC do not support the denial of YECL's request.

While devoting considerable time to the justification that is purportedly required for granting interim refundable rates, at no point does the YEC acknowledge the Board's overriding legislative mandate to establish just and reasonable rates. Whether by inadvertence or design, YEC would place the Board in a position where its ability to establish such fair and reasonable rates for the 2008 Test Year is irreputably compromised. The Board is going to be establishing a Revenue Requirement for YECL for the 2008 Test Year in the forthcoming proceeding. This decision will establish the amount YECL can appropriately collect in rates for 2008. Given the likely timing of such a decision, absent an interim refundable order, YECL will be deprived of an opportunity to collect its approved revenue requirement. This would constitute a breach of the Board's legislative mandate.

YECL submits that the Board's overriding legislative mandate must guide its decision in the present circumstances. In its submission, YEC does appear to acknowledge that the Board must be fair to both ratepayers and the applicant utility. However, no explanation is provided regarding how a complete denial of YECL's request is fair to the utility. As stated above, absent the approval of interim refundable rates, YECL will be deprived of the opportunity to recover its approved 2008 Revenue Requirement. This is certainly not fair to YECL.

YEC also fails to make reference to the fact that interim refundable rates are intended to keep both the ratepayer and the applicant utility whole, in the sense that only the amounts ultimately approved by the Board will actually be collected in the end result. Clearly, as pointed out by YEC (p. 2), the establishment of interim refundable rates is necessary to facilitate the inquiry by the Board into YECL's 2008 Revenue Requirement. Equally clear is the fact that YECL will be financially harmed if it is deprived of any opportunity to recover the 2008 Revenue Requirement that is ultimately approved by the Board. Again, to do so would constitute an error of law. YEC attempts to establish a test of "urgency", in the sense that some critical situation must exist, before interim rates can be granted. This test has not been used by any regulators referenced by YEC and is not mandated by the *Public Utilities Act*. The legislation simply does not constrain the Board's authority in this manner.

YEC also makes reference to the Alberta EUB (now Alberta Utilities Commission) and the criteria it employs in setting interim refundable rates. However, YEC inexplicably fails to acknowledge that the AUC routinely grants interim refundable rates to the utilities it regulates in circumstances similar to those currently confronting YECL. YECL's parent company, ATCO Electric, is an example of this occurring in practice, including in circumstances where the proceeding to consider an application and for the Commission to render a decision extends into a Test Year. For the reasons indicated above, YECL clearly meets the criteria utilized by the AUC.

In its submission, YEC also devotes considerable time to commenting on specific substantive aspects of YECL's application. YEC then incorrectly asserts that YECL's costs must be scrutinized before being "accepted". YEC should appreciate that this characterization of granting interim refundable rates is entirely incorrect. The approval of interim refundable rates does not in any way "accept" the underlying costs for purposes of establishing final rates. To the contrary, it is expressly

acknowledged and understood that the full GRA will be subject to testing in the upcoming public hearing and that only the final approved Revenue Requirement will ultimately be collected from customers. The granting of interim refundable rates has never been based on a full testing of the subject application, which obviously occurs during the rate proceeding itself.

YEC also conveniently ignores the fact that the very regulators it references address the likelihood of having to deal with controversial or contested issues in an application by granting less than 100% of the requested increase on an interim refundable basis; not by denying any increase outright. This is in fact what happened in current Phase I cases before the Northwest Territories Public Utilities Board, where 80% of the requested increase was authorized by that Board. YEC's propensity to only provide a partial picture to the Board is not helpful to the record.

YEC also makes repeated references to the level of return achieved by YECL in 2006 and 2007 and the rates of return approved for recent periods in other jurisdictions. It appears that YEC is seeking to have matters that are irrelevant to YECL's current application somehow influence the appropriate treatment of YECL in the current case. It is again noteworthy that YEC has failed to mention that in other jurisdictions it apparently considers relevant (such as the Northwest Territories), the regulator saw fit to approve interim refundable rates for applicants before that Board in virtually the same circumstances. YEC does not explain why these items should lead the Board to conclude that an outright denial of YECL's request is fair and reasonable.

In its closing comments YEC refers to the "full consideration by the Board of all factors affecting future rates and rate design in Yukon after 2008." Taken literally, this would include a consideration of YEC's own applications. Surely it is not reasonable to deny YECL interim, refundable ratio because YEC has not yet filed any application with the Board.

YECL fully appreciates that it will have to justify the various requests contained in its GRA in the upcoming Hearing. It is fully prepared to do so. This does not mean that it is not entitled to have rates set on an interim refundable basis at this point in time.

In conclusion, in recognition of the fact that certain matters will likely be contested in the forthcoming hearing, YECL amends its request and asks that interim refundable rates be set at a level equal to 80% of the regulated increase. This approach is consistent with that adopted by Regulators in the jurisdictions referenced by YEC.

Yours truly,



Loyola Keough
Counsel for the Yukon Electrical Company Limited