

**IN THE MATTER OF the *Public Utilities Act***

**and**

**An Application by Yukon Electrical Company Limited  
for Approval of Revenue Requirements for 2016 and 2017**

**BEFORE:** R. Laking, Chair ) July 4, 2016  
A. Fortin )  
M. Hannam )  
B. King )

**BOARD ORDER 2016-03**

**WHEREAS:**

- A. On May 11, 2016, Yukon Electrical Company Limited (YECL), carrying on business as ATCO Electric Yukon, filed an application with the Yukon Utilities Board (Board), pursuant to the *Public Utilities Act*, and Order-In-Council 1995/90, requesting an order approving a forecast revenue requirement for 2016 and 2017 (Application);
- B. The Board issued Board Order 2016-01 on May 27, 2016, in which the Board set out a process schedule, pending ministerial approval. In that schedule, interested persons had until June 17, 2016 to register for this proceeding and to provide comments on YECL's proposed interim rates. YECL was granted the opportunity to reply to those comments by June 21, 2016;
- C. The following persons registered in this proceeding by the participation closing date of June 17, 2016:
  - Yukon Energy Corporation (YEC),
  - Utilities Consumers' Group (UCG),
  - City of Whitehorse,
  - Yukon Conservation Society (YCS),
  - John Maissan;
- D. In its registration letter dated June 17, 2016, UCG indicated that it had contacted the Pacific Economics Group (PEG) to help UCG determine if it was possible to benchmark the costs and productivity of YECL. Notwithstanding, UCG submitted that it did not have sufficient funds to retain PEG and requested a letter of comfort from the Board.

Subsequently, UCG clarified that it was requesting that the Board issue a letter to PEG so it can be assured that it has an opportunity to access recovery of its costs through the cost claims process set by the Board for all invested parties, the same as in prior hearings. UCG also indicated that the process schedule would need to be altered to allow for a series of interrogatories to determine if benchmarking was possible;

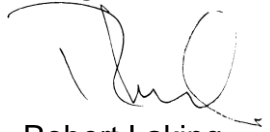
- E. On June 20, 2016 the Board invited parties to comment on the UCG request by Monday, June 27, 2016, and UCG to reply to these submissions by Thursday, June 30, 2016;
- F. On June 21 and 27, 2016, YECL filed comments on the UCG request. On June 27, 2016, YEC filed comments in relation to the UCG request. UCG replied to those comments on June 28 and 30, 2016; and
- G. The Board has considered the UCG request and submissions from parties.

**NOW THEREFORE**, based on the reasons set out in Appendix A, the Board orders as follows:

The Board denies the UCG request for a letter of comfort to the Pacific Economics Group to assure it that it will be able to access recovery of its costs through the Board's cost claims process. As a result, the need for a revision to the proceeding schedule has not been substantiated at this time.

**DATED** at the City of Whitehorse, Yukon, this 4<sup>th</sup> day of July 2016.

BY ORDER



Robert Laking  
Chair

# Appendix A to Board Order 2016-03

## Reasons for Decision

### 1. Submissions of the parties

With respect to its proposal to retain PEG as a consultant, the UCG in its registration letter dated June 17, 2016 submitted the following:

UCG has also contacted the Pacific Economics Group (PEG) requesting the possibility to retain them to help us determine if it is feasible to benchmark the costs and productivity of ATCO Electric Yukon/Yukon Electric Company Limited. PEG has given us a preliminary review from the data available for the ATCO Electric Yukon/Yukon Electric Company Limited available from the Yukon Utilities Board website and the present application. They contend that the annual report, financial statements, and the key performance indicators provide a good amount of data, but fall short in several areas. Therefore a series of interrogatories and past history data would be necessary to first determine if a benchmarking is possible, comparing AEY with similar sized companies in Canada.

The problem here is that UCG does not have sufficient funds to retain this consultant group which has vast experience in benchmarking electrical utilities throughout North America. We request a **letter of comfort** that the YUB will entertain this new experience and forward regulatory thinking offered to most other jurisdictions. We would also request the need to **alter the schedule** in order for this to take place, specifically in the time span between IRs and responses and time to analyze and prepare evidence on this very important aspect of scrutiny. [highlighted for emphasis]

On June 21, 2016, YECL submitted that UCG had failed to provide any substantiation for its benchmarking request or how the request would assist the Board and interveners in testing of the Application. Furthermore, as stated in the UCG's submission, there is no indication that a benchmarking exercise is even feasible in the circumstances. YECL pointed out that the issue of benchmarking was previously dealt with in Board Order 2014-06<sup>1</sup>, where the Board rejected benchmarking YECL to other utilities in North America for the following reasons:

The Board and interveners test the evidence filed by each utility by way of information requests and questioning at a hearing. Intervenors may also hire technical experts to assist them in preparing their cases and provide evidence during a proceeding. In addition, the Board has the assistance of technical staff in reviewing the evidence filed by a utility. Further, the Board recognizes that Yukon utilities operate in an environment that is unique to the rest of North America and that any results from a benchmarking of other North American utilities is quite unlikely to result in relevant benchmarks. Accordingly, the Board rejects this recommendation.<sup>2</sup>

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<sup>1</sup> Board Order 2014-06: An Application by YECL for Approval of Revenue Requirements for 2013 through 2015 inclusive, April 23, 2014

<sup>2</sup> Appendix A to Board Order 2014-06, Reasons for Decision, Section 5.5.1.1 Views of the Board.

YECL submitted that, given that the Board has previously ruled on this matter and nothing had changed in the intervening years, an undefined, lengthened, alternate schedule to accommodate such an exercise is inappropriate. Accordingly, YECL requested that the Board deny the requests of UCG to issue a letter of comfort and alter the established process schedule for this GRA.

In a follow-up letter dated June 27, 2016, YECL reiterated its comments and added that this proceeding can appropriately be tested via the current process schedule approved in Board Order 2016-01.

YEC expressed its overall concern that both of UCG's requests are unclear and submitted that UCG had not provided sufficient information for other parties to understand the overall impacts of these requests with respect to the hearing outcomes, schedule and costs. More specifically, YEC submitted the following concerns with respect to UCG's request:

- A. In relation to a letter of comfort, it appears that UCG is seeking approval of undefined costs to retain PEG to provide benchmarking, which at this time offers unknown value to this proceeding. Moreover, YEC is not aware of any precedent in Yukon for Board approval of intervener funding prior to the commencement of a regulatory proceeding. YEC submitted that once a decision has been issued in a proceeding, the onus is on the applicant to provide sufficient information for the Board to effectively assess its cost claim.
- B. To fund additional evidence and to extend the schedule of this proceeding, for an undefined period of time, would likely add costs to a process that is already expensive. The costs would be borne by ratepayers without providing an assurance that value would be added.

In summary, YEC submitted that UCG's requests are ill-defined and unprecedented in Yukon. Furthermore, YEC submitted that if the Board is concerned about benchmarking or comparability, it may be more efficient to direct the utility to conduct a study and present results in a future proceeding.

On June 28, 2016, UCG submitted replies to the submissions of YECL and YEC. Responding to YECL, UCG asserted that it was requesting a reorganization of the existing process schedule and not an extension. UCG reasserted that more information is needed in order for PEG to determine the feasibility of benchmarking YECL to similar utilities in Canada. UCG stated:

... With more in-depth information PEG would be able to isolate the distribution function which could use the Ontario benchmarking model which has a large number of smaller Canadian distributors.

The other missing benchmarking link mentioned in our submission was the lack of historical data... PEG results would become more accurate to the extent that they are able to incorporate a much longer series of historical plant data.

UCG also set out questions for which PEG would require answers before a proper evaluation could take place. Noting that the Board, in Board Order 2014-06, was referring to benchmarking by a utility, UCG submitted that it was attempting to hire technical experts to assist in preparing its case and providing evidence during YECL's GRA proceeding.

UCG concluded by stating that other jurisdictions have used statistical benchmarking to determine if companies are being efficient and cost-effective with respect to their provision of electricity to their customers.

In a follow-up letter, dated June 30, 2016, UCG offered further clarification regarding its requests. UCG submitted that preparing a benchmarking study comparing YECL's operations expenditures to that of other Canadian utilities is not beyond the scope of this proceeding, where YECL's application for a rate increase is to be tested. UCG added that its proposal for a benchmarking study may result in savings to ratepayers.

UCG offered the following clarification in respect of a letter of comfort:

We are requesting a letter of comfort by the YUB directed to the PEG so they can be assured that they will have the same opportunity to access recovery of their costs through the same cost claims process set by the Board for all invested parties that have participated in prior hearings. PEG is very aware of such regulatory practices for cost claims as they have assisted in interventions in many other areas where the same principles apply. They fully understand that they have to prove to the Board that their costs are reasonable, prudent and practical, just as all applicants must undergo.

## **2. Findings of the Board**

The Board considers it important that a proceeding is tested efficiently and cost-effectively. The Board does not, however, direct parties on how to prepare their case. UCG may retain the experts it considers necessary to present its case; however, the Board cautions UCG that costs incurred in a benchmarking exercise may not be recoverable if the usefulness of such an exercise is unclear or it turns out not to be feasible. The Board notes that UCG acknowledges that it is aware that the Board will apply its cost-recovery regime to cost claims filed. The Board generally assesses costs, after a decision has been issued, on the basis of whether:

- the costs were reasonable, prudent, and directly and necessarily related to the proceeding; and
- the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Board.

The Board does not issue letters to parties stating that parties may recover costs in accordance with its costs regime. This is clearly set out in its provision on costs in the Board's Rules of Practice.

In relation to the recovery of costs, it is important to emphasize that the onus is on the cost applicant to provide sufficient information for the Board to effectively assess its cost claim. Therefore, if UCG retains PEG, the onus will be on UCG to provide sufficient information for the Board to effectively assess the costs related to PEG in its cost claim. The need for information in support of a cost claim applies to all cost-claim applicants.

Moreover, UCG should be mindful of the Board's statement set out in Board Order 2014-06, that the Board recognizes that Yukon utilities operate in an environment that is unique to the rest of North America and that any results from a benchmarking of other North American utilities is quite unlikely to result in relevant benchmarks.

For these reasons, the need for a comfort letter has not been shown and the Board denies UCG's request for the issuance of a comfort letter to PEG. As a result, a revision to the process schedule for this proceeding has not been substantiated at this time.