

Loyola G. Keough  
Partner  
Direct Line: 403.298.3429  
e-mail: keoughl@bennettjones.com  
Our File No.: 12276-86

November 5, 2010

Yukon Utilities Board  
Box 31728  
Whitehorse, Yukon  
Y1A 6L3

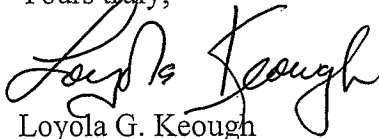
Att: Mr. Bruce McLennan  
Chair

Dear Mr. McLennan:

**Re: Yukon Electrical Company Limited ("YECL") and  
Yukon Energy Corporation ("YEC")  
2009 Phase II Rate Application  
YECL Separate Reply Argument on Phase II Issues**

Please find attached the Yukon Electrical Company Limited's Reply Argument filed in accordance with the Board's Schedule.

Yours truly,



Loyola G. Keough  
Attachs.

**YUKON UTILITIES BOARD**  
**YUKON ELECTRICAL COMPANY LIMITED and**  
**YUKON ENERGY CORPORATION**  
**2009 PHASE II RATE APPLICATION**  
**YUKON ELECTRICAL COMPANY LIMITED**  
**REPLY ARGUMENT**

**1. INTRODUCTION**

As with the Argument-in-Chief submitted by Yukon Electrical Company Limited ("YECL"), this Reply Argument constitutes YECL's response to the two separate and distinct matters addressed in these proceedings and regarding which agreement was not reached with YEC. As indicated previously, the first of these matters relates to Rate Design, with the second addressing YECL's separate Rider D Application that was filed with the Board on March 1, 2010.

As noted in YECL's joint Reply submission, the failure by YECL to specifically address any matter advanced by parties herein regarding these subjects should not be interpreted as agreement with the positions presented by any other party. To the contrary, unless expressly stated, the positions being advanced by YECL remain as included in its Application, Information Responses and Testimony, as well as its Argument-in-Chief. YECL will separately address each of these two matters in the Reply that follows.

**2. RATE DESIGN**

As anticipated, a number of parties made extensive comments on the issue of Rate Design as part of their Arguments submitted in this proceeding. Surprisingly, both Whitehorse and the UCG are advocating the status quo, versus the adoption of any of the Rate Design alternatives put forth by YECL, YEC or LE. An interesting observation with respect to the positions of Whitehorse and the UCG is that their reasons for opposing any of the alternatives advanced by other parties appear to align fairly well

with the positions put forth by YECL in support of Rate Design Option B as described in detail in the Joint Application and associated Information Responses. It appears that these parties recognize the inappropriate price signals that would be sent by adopting options which reduce first block rates at a time when system costs are expected to increase, while at the same time materially increasing the run off block rates.

In this regard, Whitehorse notes that decreasing the first block rates could incent customers in this rate block to consume more energy, which would be contradictory to the purported signal the Rate Design is intended to send (p. 5). YECL concurs with this view, which is why it characterized the price signals that would be sent by the other options tabled herein (other than Option B) as perverse.

Likewise, these parties appear to appreciate the concern expressed by YECL with respect to rate shock and the unfair impact this would have upon certain customers within a rate class. Additionally, it appears that Whitehorse recognizes the concerns with revenue stability as noted by YECL in its Argument (p. 8-9).

YECL also notes that in its Argument (p. 15) the UCG indicates that, in its view, the Utilities are acting too soon as there is no evidence to prove that diesel will be on the margin and therefore a new Rate Design needed. Once again, this thinking is aligned with the views of YECL to the extent that it is not supporting a significant and immediate change as part of the initial step to eventually move to a Rate Design that will ultimately reflect a scenario when diesel is, in fact, on the margin. The measured approach being advanced by YECL herein is intended to begin Rate Design adjustments today, to signal customers that production costs will increase if consumption is not controlled as we move into the future (Argument p. 4). YECL reiterates the view that such a measured and orderly approach is consistent with providing correct economic signals without resulting in rate shock, at a time when the cost impacts are not actually being seen on the system.

In the end result, YECL submits that its Option B is best aligned with the views expressed by both Whitehorse and the UCG and can be supported on the basis of the common arguments and concerns presented by these parties. While YECL does not

support retaining the status quo, Option B clearly reflects the next best choice to address the extensive concerns enumerated by both Whitehorse and the UCG.

YECL observes that YEC is now advancing a "modified" Option C as its preferred Option as part of its Argument. The evolving nature of YEC's proposal provides a challenge in knowing exactly what to respond to. Fortunately, the modified Option C suffers from the same deficiencies as the original Option C and, as such, was fully addressed as part of Argument-in-Chief, even though this latest option was not disclosed at that point in time.

As part of its justification for adopting modified Option C, YEC appears to be encouraging the Board to engage in social ratemaking. This is surprising. YECL submits that such actions are not within the purview of the Board and suggests that the Board should be reluctant to view its regulatory role as an appropriate instrument for implementing, or more accurately, offsetting potential Government action. In its Argument (p. 33) YEC observes that the current IER may expire and that this may lead to bill increases. YEC notes that the rate reductions in its first block rates would help Yukon customers in this event and mitigate future rate increases. YECL does not agree that taking this type of action is consistent with sending appropriate price signals to customers. To the contrary, to adopt a Rate Design based on speculation regarding what the Government may or may not do in the future is fraught with danger; and would have the Board engage in activities that are supposedly dictated by potential Government action. YECL simply does not see this as the Board's role and would request that the Board discount any speculative Government action as a basis for favouring the modified Option C being advanced by YEC herein. If and when the IER expires, reducing the first block rate now only to see it increase when the IER rate expires at a time when the residential R/C ratio is at approximately 80% will only lead to excessive rate swings in the future. In YECL's view, this is not a reasonable rate design approach.

In its Argument YEC devotes considerable text to an examination of each of the basis put forward by YECL that support the adoption of Option B and which would

likewise lead to a rejection of Options A, C or modified Option C (as well as LE). When these submissions are examined carefully it is clear that they amount to little more than an unsubstantiated assertion that there is no merit in each of YECL's Arguments, with little, if any, evidence to explain why. For example, YEC seeks to cling to the fact that there has been historic tranches for rate blocks in the past as a basis to justify the significant differences in the block rates reflected in its Options. However, this position totally ignores the severe disparity between the block rates that will result from the adoption of YEC's position and the resulting discriminatory treatment of various members within a particular rate class. The fact that step rates have been in place since the early 1990s does not detract from the fact that the significant difference in treatment that would result from the adoption of YEC's recommendation would treat members within a rate class in a very different manner. The severity of the differing treatment is what constitutes undue discrimination.

Likewise, YEC provides no response to explain why severe price signals are required at this time and why a more measured approach cannot be adopted in pursuit of the goal of recognizing that costs will increase when diesel is on the margin. Simply stating that the YEC proposed change is "meaningful" and YECL's is not provides no valid justification.

As with its other Arguments, YEC dismisses YECL's concerns with respect to revenue stability (p. 36). They dismiss this Argument by suggesting that the blocks they are now proposing with modified Option C are equivalent to the Option B blocks. What YEC conveniently omits is the severity of the changes in the block rates themselves, which is the item that would cause significant revenue changes, should a customer move from one block to another. As noted in YECL's Argument (p. 7) the step changes between blocks is indeed severe under YEC's proposed Rate Design Option. In short, YEC has totally failed to address the concerns raised by YECL with respect to adopting Option A or the Option provided by LE. These concerns would apply equally to modified Option C.

In its Argument (p. 1-8) YECL has responded to each of the specific concerns associated with adopting the positions advanced by YEC and Leading Edge herein. Likewise, these submissions detail why the adoption of YECL's Option B constitutes the preferred course of action at this time. YECL does not consider it necessary to repeat these views but would simply endorse them to the Board for its consideration in choosing the appropriate Rate Design Option as part of this Phase II proceeding.

In its Argument (p. 27) YEC appears to be sensitive, and possibly over-sensitive, to its role in developing retail Rate Design. In this regard, YECL submits that the facts show that YECL serves approximately 90% of the customers in Yukon and, as such, is best positioned to develop a Rate Design for such retail customers. The reality is that YEC simply bills its one wholesale customer, being YECL, for approximately 77% of its Revenue Requirement. As such, YECL submits that it is better positioned to decide on the appropriate Rate Design for Yukon, should the debate be reduced to an evaluation of Options being advanced by YECL versus YEC.

In the end result, Option B remains the best Option in the overall circumstances and should be adopted by the Board herein.

### **3. RIDER D**

In Argument a number of parties have commented that a consideration of YECL's request for approval of Rider D is premature at this time. These submissions are based on two points. First, diesel is not on the margin in the Test Years and, as such, approval would be premature. Second, the mechanics associated with the operation of Rider D have not been fully worked out and have not been placed before the Board for review. Again, these parties suggest that this results in the request being premature.

While YECL can understand that certain parties would have this simplistic view of the establishment and operation of a Rider, the same cannot be said for YEC. To the contrary, YEC knows, or should know, that the requested Rider D represents the second step of a three step process that would provide YECL with a mechanism to

protect it against a risk for which YEC itself is already covered and regarding which YECL is clearly not already compensated.

The first step involved the approval of a deferral account in which to record balances associated with circumstances where diesel was on the margin and YECL was required to make payments to YEC in accordance with Rate Schedule 42. As noted, this deferral account was approved by the Board as part of YECL's 2008-2009 GRA, Board Order 2009-2. As confirmed by the Board during the cross-examination of the YECL Panel by YEC, the matter of the approved deferral account is not before the Board in this Phase II proceeding.

The second step is to seek approval of a Rider (the Rider D Mechanism) which would allow for variances, positive or negative, which accumulate in the deferral account to be cleared. These steps are intimately linked together, as the approved deferral account would provide no Relief without a Rider mechanism to clear balances. As noted in Argument (p. 8) the Rider D Mechanism will deal with variances between the actual and forecast cost of purchase power for the hydro zone during periods when diesel generation is on the margin and when the Energy Reconciliation Adjustment ("ERA") in Rate Schedule 42 is invoked.

Finally, the third step, which is to follow, is the filing of an actual Rider D Application which would occur at a time when YECL actually seeks to flow through the balances, positive or negative, to customers. It has always been anticipated by YECL that the details of the mechanism that it would propose to implement Rider D would be addressed as part of that detailed Application (not here). YECL did not bring forth these details at this time, as it was unnecessary to do so. However, the fact that YECL did not address detailed questions associated with the mechanism that would be used to clear Rider D does not make it premature and does not mean that it should not be approved as part of this Application. To the contrary, a failure to approve Rider D would frustrate the previously approved deferral account and mean that YECL has no basis upon which it could clear this deferral account at the appropriate time. It is interesting to note that YEC has only now elected to present its position regarding this matter. YEC was aware

of YECL's Rider D Application from the very beginning. YEC did not submit any I.R.s or any evidence in support of its position. YECL had no opportunity to rebut the positions of YEC, which do not have any evidentiary support. YEC should not be permitted to delay the consideration of an issue when it is covered adequately for diesel cost variances whereas YECL is not.

In this regard, and consistent with its belated attempt to revisit the issue of the deferral account itself during the Phase II proceeding, YEC now attempts a "slight of hand" in the presentation of its Argument on this matter to once again attempt to bring the deferral account itself back into play. In its Argument on Rider D, YEC repeatedly and deliberately makes reference to a deferral account and Rider Mechanism as proposed in the YECL Application. This is clearly a mischievous attempt to put the deferral account issue back on the table, even though it was approved as part of YECL's Phase I Application and likewise is clearly not before the Board in this proceeding. YEC's attempts to reopen the approved deferral account should be categorically rejected by the Board, as was done during cross-examination. This inappropriate attempt to broaden the scope of the Rider D Application should be summarily rejected by the Board.

The approach adopted by YEC in this proceeding would have the end result of frustrating the prior Board Decision. YECL submits that YEC is seeking to have the Board achieve its devious "end-goal" of denying YECL Relief indirectly, because it cannot achieve such goal directly. YEC did not Review, Vary or Appeal the approval of YECL's deferral account and now it is seeking to use the "back door" associated with the approval of a Rider D to frustrate the earlier Board Decision. The Board must recognize that without the approval of a mechanism to actually clear balances accumulated in the deferral account it would render such approved deferral account utterly useless. This would be entirely inconsistent with the approval of the deferral account in the first place.

In its Argument (p. 45) YEC selectively makes reference to YECL's Phase I proceeding and suggests that the current wording does not accord with what was put



forth by YECL in that proceeding. Curiously, YEC ignores a key component of what was on the record regarding the deferral account application. Exhibit B-20, which was introduced by YEC as part of its cross-examination, included a response to an Information Request posed to YECL as part of its 2008-2009 GRA, being YUB-YECL-6. As can be clearly seen from page 2 of that Response, the scope of the deferral account that was requested and the purpose of such deferral account was clearly laid out in detail by YECL. This is the scope of the previously approved deferral account. The Rider D requested herein is entirely consistent with the scope of the deferral account identified in this Information Response. YEC's attempt to selectively use only a portion of the record should likewise be rejected.

As anticipated, YEC submits that the risks to which YECL would be exposed if Rider D is denied are already covered by its approved Return. It is somewhat ironic to see YEC advance this argument, given that it can comfortably pass through these very same costs that it would occur if diesel were on the margin via the existence of the ERA and Rate Schedule 42. Adding to this is the fact that it is YEC, not YECL, who is making the forecasts of when diesel is expected on the margin. YECL has no control over these forecasts. YECL has no control over the manner in which this forecast is derived. The whole process is nothing more than a "black box" to YECL, yet it is expected to bear the consequences of variances.

Likewise, YEC continues to advance arguments related to what occurred in the past when circumstances were dramatically different from what they are today. As noted in Argument, the current circumstances bear no resemblance to the past situations referenced by YEC and provide no guidance or basis upon which YECL's request could or should be denied. In the end result, YECL is simply seeking to have the same treatment and protection for unforecasted circumstances as would be enjoyed by YEC itself.

Equally curious is the fact that YEC appears to suggest that there is no urgency associated with dealing with circumstances where diesel may be on the margin and Rate Schedule 42 invoked. Notably, this is inconsistent with the view that strong price

signals need to be sent immediately via the adoption of Option C (or modified Option C) from a Rate Design perspective, as diesel is forecast to be on the margin in the short term. The fact is that if YEC is correct in its assertion, this issue cannot be deferred and considered as part of some future application that would supposedly involve consultation with and agreement by YEC. Rather, Rider D could be implemented in the near term if the circumstances postulated by YEC in fact come to pass. YECL submits that this is not a situation where the application is either premature or can be deferred to some future process. As noted by YECL, absent the approval of Rider D, should these circumstances actually evolve, it would have little choice but to trigger an expensive Phase I proceeding to address these unknown and unforecastable events, given the significant financial impact that could occur.

On page 46 of its Argument, YEC states: "The reality remains, however, that this "material disconnect" exists in full force for YECL today in Watson Lake and each of its diesel communities ...". YECL submits that there is a significant difference in the magnitude of the risk between Watson Lake, YECL other diesel communities and the Whitehorse-Aishihik-Faro (WAF) system. In fact, the level of risk and the consequences for the Companies is not even comparable. As set out in Appendix 4.1B YECL, page 4.1B-7 of the Application, for the residential non-government rate class, 93% of the total energy sales under this rate class are from customers in the WAF system. YECL does not view the risk from customers in the diesel communities as being at all similar to that under the WAF system.

YECL's request for a rider mechanism to dispense of balances in Board approved deferral accounts associated with diesel generation costs is not uncommon. As noted in Response to Information Request UCG-YEC/YECL-21, YECL states that its proposed Rider D "is intended to reflect the nature of a similar rider", as instituted by Northland Utilities (NWT) Limited ("NWT") called Rider I – diesel generation rider.

In its Argument-in-Chief, YECL has comprehensively addressed the other criticisms leveled by YEC regarding the approval of the applied-for Rider D. These submissions need not be repeated but are reiterated to the Board for consideration.

YECL submits that the requested Rider D should be approved, as filed. This action is entirely consistent with the approved deferral account which arose out of YECL's Phase I proceeding and would simply provide a mechanism to clear the deferral account should positive or negative balances be included therein.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of November, 2010.

  
\_\_\_\_\_  
Loyola Keough  
Counsel for Yukon Electrical Company Limited