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November 28, 2012

Yukon Utilities Board
Box 31728
Whitehorse, Yukon
Y1A 6L3

Attention: Mr. Bruce McLennan, Chair

Dear Mr. McLennan:

Re: Yukon Energy Corporation 2012-2013 General Rates Application
UCG Final Argument

Enclosed are the final argument submissions of the Utilities Consumers' Group in the above noted proceeding.

Please contact me if you have any questions regarding the above.

Yours truly,

Michael Janigan
Counsel for UCG

YUKON UTILITIES BOARD

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

and

IN THE MATTER OF Yukon Energy Corporation's General Rate Application for 2012 and 2013

FINAL ARGUMENT OF

UTILITIES CONSUMERS' GROUP

November 28, 2012

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I. INTRODUCTION and OVERVIEW

The Utilities Consumers' Group

1. The Utilities Consumers' Group ("UCG") is a not-for-profit organization registered as a society in the Yukon since 1993. UCG represents residential and small business ratepayers in regulatory proceedings, conducts research, makes submissions, communicates with active stakeholders, including government, and helps consumers concerning any type of problem with utility service providers.

UCG Approach to this Proceeding

2. This submission summarizes positions of UCG for the Yukon Utilities Board's (the "Board") consideration. Per the Chair's opening comments on the first day of the oral hearing, UCG's final arguments follow the evidence outline contained in Yukon Energy Corporation's ("YEC") Application. It should not be assumed that UCG is in agreement with YEC's position on any issue for which UCG has not provided specific comment in this argument. Where UCG has not specifically addressed an issue, it is believed that the Board has the benefit of arguments of other intervenors and the extensive record in this proceeding to make informed decisions.

3. UCG views YEC's General Rate Application as an application for approval of revenue requirements for calendar years 2012 and 2013. Ultimately, the purpose of the Board's review is to ensure that the revenue requirement to be recovered in rates allows adequate, reliable and affordable supply, transmission and distribution of electricity in the Yukon. Without adequate cost of service evidence to support proposed rate adjustments, UCG submits that the Board does not have the evidentiary record to support any of the proposed rate-related adjustments submitted by YEC. Ongoing adjustments to rates and rate riders causes confusion and bill instability that Yukon ratepayers are looking to avoid.

4. The public review of YEC's General Rate Application has raised many important issues for current and longer term consideration. Of particular concern to UCG is the lack of a comprehensive and multi-stakeholder approach to the development of the General Rate Application. UCG submits that the Board should consider making very specific directions to YEC in this regard as part of its decision on this proceeding.

5. Specifically, UCG is concerned with the continued inability of YEC and YECL to work together on a more complete application and analysis of the impacts on electricity end-users. This is all the more concerning given the recommendations and directions that the Board has provided both YEC and YECL over the last few years in this regard. UCG submits that what is needed in the Yukon is a coordinated effort protocol or partnership between the two utilities.

6. UCG submits that given that rates are set on a Yukon-wide basis, the utilities should be required to file annual consolidated operating results so that comparisons can be made to the allowed costs of service and revenue recovery. At the very least, YEC and YECL should be directed to avoid submissions of individual rate applications since, to some degree, all customers pay the same combined rates.

7. UCG is also concerned with the lack of cooperation that YEC displayed during this proceeding with respect to providing requested information. UCG submits that it should not be necessary for intervenors to continually submit motions regarding incomplete responses to information requests and incur these additional costs. Likewise, during an oral hearing, it does not assist the Board or intervenors to have YEC continually refer to documents in unspecified regulatory proceedings that the questioner can try to look up on their own. YEC's uncooperative efforts were never more evident than when UCG was requesting information related to average revenue requirements allocated to the residential class[1].

8. UCG submits that one way to help control the costs of these regulatory proceedings is to have the YUB direct YEC to be more forthcoming with requested information and to agree to provide the information they reference rather than have intervenors search and incur additional costs.

II. SUMMARY OF UCG's PRIMARY ARGUMENTS

9. UCG suggests that YEC's pattern of regulatory behaviour is most unsatisfactory and continued acceptance by the Board at this juncture might be tantamount to an effective repeal of the well-recognized principle of avoidance of rate retroactivity. Given YEC's refusal to even estimate what the revenue requirement might be for the first 4 months of 2012, UCG submits that once a 2012 revenue requirement is determined, YEC should, at a minimum, be denied recovery of revenue requirement associated with the 2012 rate year prior to the date of the first interim rate order.

10. UCG submits that YEC must be directed to change their budgeting and application processes to allow for reviews of their budgets and general rates applications in advance of the effective dates of the test years. This is standard operating procedure in other jurisdictions in which utilities are just as busy if not busier than YEC.

11. Planning for an efficient and effective regulatory review of utility revenue requirements and rates should include comprehensive stakeholder input, not only in the review stages of a proposed filing, but also during the development of a filing.

12. There appears to be considerable evidence that YEC randomly picks and chooses among the decisions and directives of the Board to determine which ones merit compliance and which may be delayed or simply ignored. This is totally inappropriate behaviour for a regulated utility. UCG urges that the Board's Decision in this matter contain an appendix with a checklist of YEC responsibilities and duties prescribed in the Decision. Unless those responsibilities are met, the Board should not entertain a future GRA application.

13. Submissions related to revenue requirement and rates approval in the Yukon should be a joint undertaking between the YEC and YECL with input from government entities (e.g., the Energy

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[1] Transcript Volume 2, pages 297-298.

Solutions Centre) as opposed to a process that each entity undertakes on its own without regard for other stakeholders.

14. UCG submits that once YEC's 2012 and 2013 revenue requirements are established by the Board, existing rates should continue to be applied until the Board makes a determination on rates following the completion of a Phase 2 review based on the allowed 2012 and 2013 revenue requirements. UCG submits that a deferral account should be established to record the revenue surplus / deficit realized in 2012 and 2013 pending the results of a Phase 2 review.

15. Given the commitment of YEC to work with Yukon Electrical Company Limited ("YECL") to assemble cost of service and other Phase 2-related evidence by June 2014, UCG submits that any adjustments to rates and charges applied to the bills of Yukon ratepayers be deferred until after the Phase 2 evidence has been reviewed.

16. It may be that the result of a Phase 2 cost of service analysis is that the industrial rates determined by OIC 2012/68 do not recover the full costs incurred on behalf of industrial customers pursuant to OIC 1995/90. Under that scenario, the Board will have to determine who should bear the cost of the deficiency.

17. If the Phase 2 review indicates that the industrial rates established by the Yukon government do not recover the full cost of service for that class, then UCG submits that the Yukon government, not the non-industrial ratepayers, should be held liable for the revenue deficiency in the event that the preferred policy is to continue to charge industrial customers artificially lower rates. UCG contends that the utility's franchise obligation to serve should not carry with it an implicit obligation on the part of ratepayers to subsidize that service.

18. UCG submits that the Board should consider whether firm sales should be governed by available hydro generation as an effective means to control the use of expensive diesel generation. UCG submits that on-site generation should be considered as a more practical alternative for the transient industrial loads that are attracted to the Yukon.

19. UCG submits that YEC should study the use of weather normalization for load forecasting and results reporting so that load variances resulting from weather can be isolated.

20. Load forecasting for the 15,000 or so non-industrial customers of electricity in the Yukon should be undertaken in a comprehensive way by YEC and YECL in full cooperation, not, as is currently the case, in a piecemeal and apparently inconsistent manner.

21. Load forecasting and planning for load growth should account for the base, non-industrial load separately from the more transitory industrial load potential so as to protect longer term ratepayers from adverse rate impacts associated with capital spending made necessary for the purpose of meeting short term industrial loads. With respect to planning for industrial loads, UCG advocates a go-slow approach until future demand can be more fully assessed, rather then making major capital investments in anticipation of unknown potential loads.

22. Any conclusive review of a plan to expand on the facilities operated by YEC, should include a review of both YEC's and YECL's existing facilities, resources, and plans to determine

whether they can provide reliable electrical power generation to meet the forecast load requirements in the Yukon.

23. The Board should consider the engagement of an independent expert to assist in the benchmarking of the cost components of YEC and YECL operations to appropriate comparators within North America. The Board and intervenors require this information to assess the performance of these utilities relative to industry standards and to assist in the important task of adjudicating the prudency of utility decision-making.

24. UCG submits that there is no reason why a Performance-Based Regulation (PBR) mechanism could not be considered following the completion of a Phase 2 review and several compelling reasons to do so. It appears to UCG that there are considerable asymmetries in information between YEC and the Board and intervenors that make it difficult to ensure that YEC is carrying on operations in an efficient manner. PBR can alleviate the difficulty associated with that regulatory duty by incorporating a formula that provides both ratepayer protection together with a productivity dividend and a financial incentive on the part of YEC to become more efficient. As well, there should be a considerable reduction in regulatory costs which are significant considering the size of the customer base.

25. UCG submits that there is no evidence on record to validate the existing environment of two utilities serving the distribution ratepayers of the Yukon. UCG encourages the Board to direct YEC to provide evidence that alternative ownership scenarios have been evaluated and pursued where viable in future reviews of specific capital projects and in the annual reviews of YEC's Resource Plan.

26. UCG submits that there has not been enough customer impact analysis evidence placed on the record to fully inform the Board what is happening to revenue-to-(true)-cost ratios nor the end user's bill.

27. All significant capital projects should be designated by the Yukon government as regulated projects pursuant to Part 3 of the *Public Utilities Act* (or by equivalent government order for review) so that they can be individually reviewed by the YUB and stakeholders prior to significant investment and construction. In the case of large, time sensitive projects such as the Carmacks-Stuart Transmission Line Project, an ongoing audit process can be implemented to ensure project transparency and to provide ongoing approval as the project develops, while allowing the project to proceed without undue delay.

28. While it is understandable that YEC will need to spend some money on detailed engineering to properly define capital projects and on regulatory proceedings, any money spent should be held with all other project management costs in a deferral account and not rolled into rate base until the Board first approves the need and then later approves any expenditure for recovery in rates.

29. UCG submits that any project proposed to be included in a utility's rate base requires a sound rationale that must include a business case analysis (without recourse to government funding in order to offset costs and eliminate impact), an analysis of the natural environmental impact and the alternatives to the project.

30. UCG encourages the Board to direct YEC to provide evidence that alternative ownership scenarios have been evaluated and pursued where viable in future reviews of specific capital projects and in the annual reviews of YEC's Resource Plan.

III. RECOVERY OF REVENUE REQUIREMENT

31. On April 27, 2012, YEC submitted an application to the Board requesting approval of forecast revenue requirements for 2012 and 2013 as well as approval of an interim refundable rate rider effective July 1, 2012. Beyond approval of its revenue requirement for 2012 and 2013, YEC is also seeking recovery for any revenue shortfall arising in 2012 from rates charged its customers up to the date of the approval of the revenue requirement[2].

32. UCG notes that YEC waited until nearly 4 months of 2012 had passed before submitting an application to the Board to approve a 2012 revenue requirement. YEC also requested an interim rate adjustment be approved for implementation within 9 weeks of its application.

33. UCG submits that this is not the standard to which a publicly-owned utility should operate from a regulatory perspective. YEC knew well in advance of its application date that it wanted to apply for an increase in rates.

34. While interim refundable rate adjustments were granted by Board Orders 2012-5 and 2012-10, UCG submits that in order to consider the reasonableness of YEC's request, the Board must consider the prevailing utility practice when it comes to approval of retroactive rates[3].

35. Most jurisdictions in Canada and the United States have adopted a forward-looking test year as the basis for approving a regulated company's revenue requirement. There are a number of reasons for the adoption of this method. First, it reduces the risk on the utilities of being unable to recover for capital and operating expenses already committed, as is the case when the test year is backward looking and historical. Secondly, it provides more fairness to ratepayers in that they are aware of the rate they are actually paying, and the expenses associated with the rate charged affect the rates in the year for which the ratepayer is billed. In other words, there are no generational issues in the recovery of revenue requirement.

36. The practice of limiting retroactive recovery of revenue requirement from a period predating the regulated companies rate application or subsequent rate order has been considered by Canadian tribunals and courts. The 1978 Supreme Court of Canada Decision in *P.U.B. v. City of Edmonton*[4], set out in the judgment of Estey, J. , the standard approach to the setting of rates on a prospective basis applicable to the *Gas Utilities Act of Alberta*:

> *"The statutory pattern is founded upon the concept of the establishment of rates in futuro for the recovery of the total forecast revenue requirement of the utility as determined by the Board. The establishment of the rates is thus a matching process*

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[2] Response to UCG-YEC-1-1 and Transcript Volume 1, page 158.
[3] OIC 1995/090 – Section 3 - Normal principles to apply
[4] [1979] 1 S.C.R. 684

whereby forecast revenues under the proposed rates will match the total revenue requirement of the utility. It is clear from many provisions of The Gas Utilities Act that the Board must act prospectively and may not award rates which will recover expenses incurred in the past and not recovered under rates established for past periods.[5]*"*

37. As is illustrated in Exhibit C3-24, Tabs 1, 2 and 3 in this proceeding, cases arising at the Ontario Energy Board (OEB) are indicative of the seriousness associated with the avoidance of retroactivity in ratemaking. In the referenced decisions, the OEB was not simply considering circumstances wherein the rates applications were being filed mid-way through a year when new rates were being sought for the entire year (such as the case here) but rather that the utilities' tardy filings necessitated the making of an order after the proposed in-service date of the rates order sought. The OEB noted in the Tilsonburg Hydro Inc. Decision (EB-2008-0246, Exhibit C3-24, Tab 3):

"…As the Board has stated on many occasions, even if there are no legal impediments, the Board does not condone retroactivity….It is not reasonable to expect customers to be burdened with retroactivity."

38. In this case, YEC wishes to rely on sec. 29 of the *Public Utilities Act*[6] to allow consideration of revenues and costs throughout the financial year in a way that allows the Board to give effect to an excess or deficiency if just and reasonable to do so[7]. The Board may also consider the matter of undue delay in making such decision[8].

39. There is little to commend the approach of YEC in relation to the timing of this application. YEC seems heedless of the ratemaking principles challenged by the retroactivity, and the effect of seeking recovery of any deficiency in revenue requirement after the expenses have occurred. In essence, YEC pleads an inability to adequately assemble a rate application in a timely manner, and the fact that the Board always lets YEC file late. YEC witness, Mr. Osler noted the following at the oral hearing:

"The filing reflects two sets of facts. One, the set of facts that Mr. Morrison described leading to the ability to file in this particular instance when the Board of directors was able to deal with it and subsequent finalizing it and all the things that had to take place.

The second set of facts that were taken into consideration were the precedents of how this has been dealt with in Yukon as recently as the previous GRA which, similar to the applications in this instance, involved in the year 2008 two filings - one by Yukon Electrical in April, if I'm not mistaken, and one by YEC in I think October. In each instance, the filings were for the full calendar year. And as they have been in my recollection ever since I've been in Yukon over the years, this has never been an issue.[9]*"*

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5 Ibid at p. 690
6 Revised Statutes of the Yukon, 2002, c. 186
7 Ibid, sec. 29(b)
8 Ibid, sec. 29(c)
9 Transcript Volume 1, page 168.

40. UCG submits that the process for preparing and filing an application is substantially the same for regulated utilities applying for rates on a cost of service basis. YEC is a regulated utility that spends $983,000[10] for regulatory consulting outside of the costs associated with its burgeoning management component.

41. It would even appear that the timing of YEC's preparation itself guarantees a retroactive result. YEC adamantly admits in transcript that it purposely does not initiate its internal budget deliberations early enough to ensure that a general rates application could be made prior to the start of a test year[11]:

> *A. MR. MORRISON: We commence work on the budget process at YEC in the summer of 2011.*
> *Q. And the date that you commenced that work, would that have been early enough to ensure that an application could have been made prior to the 2012 year?*
> *A. MR. MORRISON: Absolutely not.*

42. UCG submits that this appears to be a lack of management ability on the part of YEC to adhere to the expectations in every other jurisdiction in which regulators and stakeholders have opportunity to adequately review and test assumptions related to revenue requirements prior to their effective date. UCG submits that Yukon ratepayers should not continually be faced with the instability and uncertainty associated with interim rate adjustment on top of interim rate adjustment that may or may not be retroactively changed in the future.

43. UCG suggests that this pattern of regulatory behaviour is most unsatisfactory and continued acceptance by the Board at this juncture might be tantamount to an effective repeal of the well-recognized principle of avoidance of rate retroactivity. Given YEC's refusal to even estimate what the revenue requirement might be for the first 4 months of 2012[12], UCG submits that once a 2012 revenue requirement is determined, YEC should, at a minimum, be denied recovery of revenue requirement associated with the 2012 rate year prior to the date of the first interim order. UCG estimates this to be approximately 40% of the allowed revenue requirement.

44. YEC testified during the oral hearing that it did not delay its GRA application in order for OIC 2012/68 to be enacted in advance[13]. UCG finds it an extraordinary coincidence that a piece of legislation that normally takes months to produce was enacted the day before YEC's GRA application (which also takes months to produce) and that YEC's application was able to include references and impacts of OIC 2012/68. UCG submits that only the most gullible of minds would accept YEC's position that it was not consulted during development of OIC 2012/68 prior to its issuance on April 26, 2012 and that YEC was not directed to incorporate the impacts of OIC 2012/68 in its application by the Yukon government since it is physically impossible to incorporate the impacts of OIC 2012/68 within an application within 24 hours. UCG submits that this type of interference by the Yukon government amounts to a diminishing of the YUB's jurisdiction and effectiveness.

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10 Response to YUB-YEC-1-8.
11 Transcript Volume 1, page 169.
12 Transcript Volume 1, pages 174-176.
13 Transcript Volume 1, page 183.

45. The *Public Utilities Act* is very specific on the timing of and filing requirements when rate adjustments are proposed. Section 28 of the *Act* states:

No public utility shall charge any rate for the supply of the service for which it is franchised other than the rate set by the board pursuant to this Act unless, 90 days before it proposes to charge a different rate,

(a) a statement showing the new rate is filed with the board; and

(b) a notice showing the new rate is sent by mail or delivered to each municipality in which the service is provided and to the Minister.

46. According to YEC's Application[14], notifications of its filing were sent to Yukon Electrical Company Limited as well as intervenors in the 2009 Phase II Rate Application and 2008/2009 General Rate Application hearing. UCG submits that not only does YEC's application ignore the legislative requirements for 90 days advance notice of a rate change, but YEC needs to be directed to ensure that interested parties as well as municipalities ultimately impacted by proposed rate increases are notified as soon as applications are submitted. UCG submits that it is not enough to wait for a Notice to be published in local newspapers before municipalities are notified of a pending cost increase to them due to the processes they must follow to allow for participation in any review.

Lack of Consultation

47. YEC confirmed during oral testimony that it did not conduct stakeholder consultations with intervenors, YECL, First Nations, municipalities, etc. on the contents of the GRA prior to filing including proposals related to new policies contained within the application (planning cost accounting, DSM accounting, etc.) because it has not been a practice in the Yukon for either utility to do consultation prior to filing an application with the YUB[15].

48. While YEC's approach to its regulation does not surprise UCG, it ignores the fact that consultations are an important part of regulatory evolution and appears to require firm direction from the YUB to consult stakeholders prior to submitting something to the regulator. Given the widespread acceptance in other jurisdictions of stakeholder consultations prior to applications being submitted, UCG submits that this is a normal principle to apply to regulatory processes.

49. UCG submits that the YUB should not have to direct a regulated utility to consult and inform their applications with views from stakeholders directly impacted by the proposals. Without consultations, YEC is encouraging a more confrontational approach to regulatory proceedings than is warranted.

50. YEC appears to be oblivious to recent history where the YUB had to direct them to undertake consultations including:

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14 Application Cover Letter dated April 27, 2012, page 2

15 Transcript Volume 1, pages 178-179.

i. In its Order 2009-2 dated February 19, 2009, the YUB directed YECL, in conjunction with YEC, to consult with stakeholders and develop a policy paper with respect to Independent Power Producers to be included as part of YECL's and YEC's next GRA.

ii. In its Order 2009-2 dated February 9, 2009, the YUB directed YECL in conjunction with YEC, to consult with stakeholders and develop a policy paper with respect to DSM initiatives and include this policy paper as part of YECL's and YEC's next GRA.

iii. This same direction with respect to DSM was included in Board Order 2009-8 dated September 8, 2009.

51. UCG submits that planning for an efficient and effective regulatory review of utility revenue requirements and rates should include comprehensive stakeholder input, not only in the review stages of a proposed filing, but also during the development of a filing. YEC was negligent in this regard, especially in regards to input from ratepayers and YECL.

52. For the future, UCG submits that submissions related to revenue requirement and rates approval in the Yukon should be a joint undertaking between the YEC and YECL with input from government entities (e.g., the Energy Solutions Centre) and end-use stakeholders as opposed to a process that each entity undertakes on its own without regard for others. The timing of these submissions should be in advance of the test years for which they apply.

IV. RATE BASE AND CAPITAL EXPENDITURES

53. YEC is seeking approval of mid-year forecast rate base of $223.020 million and $241.738 million for 2012 and 2013 respectively, including costs for capital works projects brought into service (or forecast to be brought into service) since the 2008/2009 General Rate Application, as well as deferred costs. This includes spending for 8 major capital projects (i.e., projects with total costs over $1 million) forecast to be in service in the test years with a total net rate base cost of $66.1 million (after offsetting third party contributions of $128.5 million). Other capital spending on property, plant and equipment in rate base in the test years is forecast at $5.426 million for 2012 and $7.107 million for 2013 (with customer contributions of $0.4 million in each test year). Based on the new Planning Cost Accounting Policy, YEC is also seeking approval to include in rate base spending to date for deferred costs projects.

54. YEC testified at the oral hearing that the proposed $14.6 million (47%) increase in revenue requirement between 2009 and 2013 is significantly driven by the higher return on rate base ($3.6 million) and higher depreciation / amortization costs ($3.1 million)[16] which are both resulting from the proposed additions to rate base and the proposed policies addressing how deferred project costs are treated.

55. In response to UCG-YEC-1-47(a), YEC indicated that the tests it uses to justify the feasibility of a proposed capital project are that (a) the project is required to maintain service levels and as

[16] Transcript Volume 2, page 210.

a reinvestment in assets, or (b) the project will help to reduce rates as compared to other alternatives. When asked at the oral hearing to provide details of the justifications for the projects proposed to be added to rate base in 2012 and 2013, YEC was unable to provide anything on specific projects to assist the YUB or intervenors in understanding YEC's rationale for undertaking these projects[17]. YEC testified that there were cost savings resulting from the Carmacks-Stewart transmission line, Mayo B construction and the Aishihik 3rd Turbine projects but no specific information was provided in this proceeding which outlines what the net savings were to ratepayers.

56. UCG submits that YEC's propensity to under-forecast or to experience overages in its capital budget is an understandable if not predictable consequence of the pass-through approach to regulation. In the absence of a mechanism that provides either significant reward for accurate budget forecasts or a significant penalty for inaccurate forecasts, the incentive for YEC to accurately forecast its capital expenditure budget is weak at best.

57. UCG recommends that the Board impose greater regulatory incentives for YEC to control its capital expenditures and stick to its budget. For example, the capital costs allowed in the test years should be the lesser of actual and projected costs. Alternatively, the Board should reduce capital costs by 10 percent for rate setting purposes.

58. UCG submits that the Board must at least ensure that the following questions are answered on capital expenditures before allowing the costs to be recovered in rates:

- Were the costs prudently incurred? That is, was the project initiated based on a comprehensive review of alternative ways to spend the money available to get the same results?
- Will ratepayers receive enough benefit (i.e., lower bills, improved system, etc.) in the short and long-term to justify the costs or will the utility use up the benefits in other ways?
- If actual costs are higher than forecast, were these extra costs incurred due to mismanagement of the project? Who should be responsible for paying for cost overruns?
- How do the actual costs compare to cost estimates that were discussed in the public consultation phase of the project? If the utility determined that it had "public agreement" to proceed with the project, does it think that this agreement still exists under a higher price tag? The burden of proof lies with the utility.
- Should ratepayers pay for costs of satisfying the complaints that are raised during construction that should have been addressed during project development? One example of this is the extra costs that may be incurred to satisfy the concerns of placer miners and First Nations.
- What risk management efforts have been put in place by YEC (e.g., fixed price contracts) to ensure ratepayers would be protected from cost overruns?

59. As well, UCG submits that all capital projects that are required to allow for future revenues should not be included in rate base until those future revenues are realized. In particular, costs

[17] Transcript Volume 2, pages 213-216.

related to feasibility (e.g., technical studies) should be omitted from rate base. UCG submits that YEC should be directed to identify all of these costs before the rate base is finalized.

60. UCG submits that good resource planning builds credibility. UCG submits that there has not been a compelling demonstration of need for the capital projects included in YEC's application. It is questionable whether any investor (other than the Yukon government) would consider building any of the larger capital projects as a good investment without further information. UCG submits that, when evaluating projects proposed by YEC, the Board must distinguish between the "business as usual" capital budget and the budget for special projects.

61. UCG submits that there has not been an adequate and fair consideration of alternatives. There has been no rigorous testing of even the alternatives identified by YEC. There is very little evidence on alternative uses of money that will be made available for capital expenditures. Yukon ratepayers cannot rely on project promoters like YEC to present a balanced view since they want the project included in rate base so that financial returns on investment to the utility are increased and realized sooner rather than later. It is up to the intervenors and the Board to review and challenge what is being put forward by YEC.

62. UCG is quite concerned that, given YEC's recent management experience with large capital projects (e.g., the Mayo-Dawson transmission line), ratepayers and taxpayers will be on the hook for costs that appear to have no solid business basis at this point.

63. Without knowing the short and long term rate impacts of all the projects identified in YEC's application, it is impossible for any party to fully support any of the proposed projects. While YEC may submit preliminary estimates of long-term savings to electricity ratepayers, UCG has concerns that the long-term savings identified by YEC are presented strategically to better present the proposed projects. By way of example, the Carmacks-Stuart Transmission project was presented as a present day offset of costs versus benefits, with an overall benefit to ratepayers. In truth, the costs were borne up front by YEC and rolled into rate base immediately, committing ratepayers to pay the full cost of the project over the course of 50 years whereas the benefits accrue over time depending on a variety of factors including mine commitments, fuel prices, and the impact of other projects. UCG is quite concerned that, given the state of the Yukon economy, the adverse short-term impacts on the utility and tax bills of Yukoners could be too much for many to absorb.

64. Given the Auditor General's conclusions with respect to YEC's management of the Mayo-Dawson City Transmission System Project, UCG submits that no further work on the proposed capital projects proceed prior to the Board approving the need for each project and establishing guidelines regarding ongoing reporting on each of these projects prior to, during and after construction. UCG submits that establishing Major Projects Management Reporting would go a long way toward keeping transparent tracking of major projects.

65. The Board's initial task in this proceeding with respect to capital projects is to determine the need for any of the projects in YEC's application. While it is understandable that YEC will need to spend some money on detailed engineering to properly define projects, any money spent should be held in a project management deferral account and not rolled into rate base

until the Board first approves the need and then later approves any expenditures for recovery in rates.

66. UCG submits that the Board's primary concern when evaluating project proposals is the cost and benefits of the proposed spending to the YEC ratepayers.

67. From a due diligence perspective, UCG submits that the Board consider as a priority that YEC's direct customer base is quite small – approximately 1,300 residential, 450 general service, and 1 wholesale customer – which represents approximately 11% of all electricity customers in the Yukon. Any projects undertaken in the Yukon, whether paid for by electricity ratepayers or these same Yukoners as taxpayers, will be a financial burden to all Yukoners including the approximately 13,000 customers of YECL. UCG urges the Board to step back from the detail and consider the bigger picture when making any decisions regarding costly investment where viable alternatives exist. While UCG understands that there may be other possible justifications for projects (e.g., green energy concerns / policies), absent a directive to weigh such other tests along with or in priority to cost effectiveness (which UCG assumes is the Board's primary purview), the Board should remain focussed on cost effectiveness.

68. UCG submits that the benefits of mine load sales can be acquired at no cost and little risk to the majority of ratepayers and YEC itself during periods of surplus generation by attaching the mines with dedicated lines, the costs of which would be borne entirely by the mines themselves, a scenario YEC accounts for in its 20-year Resource Plan.

69. A significant concern for UCG regarding industrial loads is determining the utility's obligation to serve an industrial customer and the costs to serve these loads.

70. Under the *Public Utilities Act*, a utility is required to supply the utility controlled by them to all persons within the area covered by the utility, except where the company may lawfully refuse to supply the utility.

71. To UCG's knowledge, the only restrictions on YEC's obligation with respect to the supply of electricity to industrial customers are:

a) OIC 1995/90 (and OIC 2012/68) which stipulates that the costs of supplying major industrial customers and isolated customers will be, either through a special rate class or through specific contracts with the industrial customer, isolated from other ratepayers, and

b) Section 33 of the Act which prohibits the Board or the Commissioner in Executive Council from requiring the utility to build an extension of service if the costs are not justified, unless the Commissioner agrees to pay any costs that are not justified and underwrite any expenditures that are not reasonably warranted under the section.

72. UCG submits that the Board should not only determine whether YEC has an obligation to serve industrial customers but also whether YEC should be looking to spend today's ratepayers' money on "potential" opportunities. It is unclear at this point how new industrial loads will even be assessed for cost of service.

73. YEC appears to believe that it should start spending ratepayer money now on activities related to potential industrial loads that may or may not occur. History suggests that industrial loads arrive in the Yukon after a long ramp up of interest / activity so there does not appear to be a need to rush into any projects at this time.

74. UCG advocates a go-slow approach until future demand can be more fully assessed. Alternative supply plans need to be fully evaluated.

75. At the oral hearing, YEC could still not confirm the final cost of the Carmacks-Stewart Transmission Project – Stage 2 that was energized in June 2011 (now 17 months ago)[18]. With capital contributions from the Federal and Yukon governments capped at $41.9 million, UCG submits that this project should not be allowed in rate base until (1) the final costs are determined, and (2) the impact on ratepayers is determined in light of the claim that this project results in costs savings.

76. YEC could still not confirm the final cost of the Mayo Hydro Enhancement Project that was commissioned in December 2011 (nearly a full year ago) nor could YEC confirm what the ultimate impact on rate base (and ratepayers) will be as a result of this project. UCG submits that this project should not be allowed in rate base until (1) the final costs are determined, and (2) the impact on ratepayers is determined in light of the claim that this project results in costs savings.

77. YEC could still not confirm the final cost of the Aishihik 3rd Turbine project that was commissioned in December 2011 (nearly a full year ago) nor could YEC confirm what the ultimate impact on rate base (and ratepayers) will be as a result of this project. UCG submits that this project should not be allowed in rate base until (1) the final costs are determined, and (2) the impact on ratepayers is determined in light of the claim that this project results in costs savings.

78. YEC testified that any project review pursuant to Part 3 of the *Public Utilities Act* requires an Order-in-Council designating a project as a "regulated project" under the *Public Utilities Act* and that, while YEC claims to not make recommendations to the Minister regarding which projects should be reviewed (or not reviewed), the Minister makes the decision regarding Part 3 reviews based on the information that YEC provides on a regular basis[19].

79. This positioning by YEC conflicts with previous positions it has taken and recommendations that have been made in this regard.

80. Within its 20-Year Resource Plan 2006-2025, YEC committed to bring all projects with anticipated costs of $3 million or more before the Board for review. In its January 15, 2007 Report to the Commissioner in Executive Council on YEC's 20-Year Resource Plan, the YUB indicated its belief that YEC's commitment to bring capital projects of $3 million or more to

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[18] Transcript Volume 2, page 217.
[19] Transcript Volume 2, pages 218-219.

the Board for review stemmed from the Auditor General's *Mayo-Dawson City Transmission System Project Report*, dated February 2005 which stated the following (Recommendation 35):

> *The Yukon Energy Corporation should request that the responsible minister seek an order from the Commissioner of the Executive Council to designate future major capital projects as regulated projects, in accordance with the Public Utilities Act, so that such projects are reviewed by the Yukon Utilities Board and public hearings are held, if necessary, before the projects proceed. The minister may wish to consider proposing legislative amendments to require that all major capital projects be reviewed by the Yukon Utilities Board prior to approval.*
>
> *Management's response. The Corporation is proposing to establish a process that would require projects greater than $3 million to receive prior approval by the Yukon Utilities Board.*

81. Given the smaller rate base in the Yukon compared to many Canadian utilities, and given the relatively small number of ratepayers in Yukon, the Board determined that a lower threshold would be more appropriate in the future. The YUB recommended that the threshold for capital expenditures to be reviewed by the Board be set at $1 million[20].

82. UCG submits that given that YEC has all of the information regarding its major capital projects and understands the YUB's purpose in regulating the utilities in the interest of the utilities and ratepayers and the YUB's position regarding the review of capital projects costing $1 million or more, it seems rather naïve for YEC to assume that participants in this proceeding would not assume that these major capital projects are discussed with the Minister and the issue of the need for a Part 3 review is also discussed. Understanding that the YUB regulates YEC and can make directions to the utility, UCG submits that YEC should be directed to recommend to the Minister that all capital projects costing in excess of $1 million dollars should be reviewed per Part 3 of the *Public Utilities Act* and that YEC should be proactive in its efforts to have major capital projects reviewed by the YUB in advance of construction. At the same time, the YUB should use its authority under section 17(4) of the *Public Utilities Act* to transmit to the Minister a request that the Commissioner in Executive Council issue a direction to review all major capital projects.

<u>Rate Base Treatment of Failed Capital Project Expenses</u>

83. YEC is proposing to transfer $27 million in deferred study costs into rate base for 2012 and $27 million again in 2013[21]. These deferred study costs represent spending on capital projects that were to be developed but have been stopped as unable or not warranted to be completed for a variety of reasons. The money spent by YEC in the development attempt is proposed to be put into rate base with a resultant earning of return on rate base over the proposed amortization period.

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[20] YUB Report to Commissioner in Executive Council re YEC 20-Year Resource Plan, January 15, 2007, Page 28
[21] Transcript Volume 2, page 272.

84. UCG submits that YEC appears confused about the nature of rate base assets and how expenditures qualify for rate base treatment. The *Public Utilities Act* provides as follows:

> *32(1) The board, by order, shall determine a rate base for the property of a public utility used or required to be used to provide service to the public, and may include a rate base for property under construction, or constructed or acquired, and intended to be used in the future to provide service to the public.*

85. It seems clear that the study costs for abandoned projects are not "used and useful" in the normal way that rate base assets must be to attract a return on investment. UCG submits that no utility property shall be deemed used and useful until it is providing actual utility service to the customers.

86. YEC's witness Mr. Morrison had these responses with respect to the Atlin project study costs[22]:

> *Q. Okay. Will this project be pursued during the test years?*
> *A. MR. MORRISON: No, it will not, sir.*
> *Q. And are there any savings or financial benefits to ratepayers during the test years as a result of the costs incurred for this project?*
> *A. MR. MORRISON: Mr. Chair, I'm not quite certain how to answer that, you know, because I think we've been pretty clear that the project had to get stopped. And I don't -- I don't know how to consider a question that says is there a benefit to a project that isn't going forward. <u>Of course there isn't</u>.*

87. Later, YEC witness, Mr. Mollard confirmed that Atlin expenditures were among the deferred study costs proposed for inclusion in rate base[23]:

> *Q. Okay. And is Atlin among those deferred study costs?*
> *A. MR. MOLLARD: Yes*

88. UCG submits that ratepayers should pay only for costs associated with facilities that actually provide service to them. Abandoning the "used and useful" rule results in intergenerational inequities because present and future customers are not necessarily the same group. In addition, consumers are forced to pay for projects that the utility never finishes. Utilities are tempted to "build and buy everything in sight" resulting in wasteful management decisions.

89. With respect, there are two aspects to YEC's application to recover its deferred study costs. The first is whether the expenditures have been prudently made. UCG will be addressing this issue in relation to the projects set out in this application that have been pursued and are now abandoned. If the expenditures are found to be prudent they may be recoverable either by the addition of their costs to the revenue requirement, or, more likely, their recognition in a deferral account and amortization over a number of years. In the latter case, the predominant position of regulators is to permit utilities to recover the amounts invested in a cancelled project but

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22 Transcript Volume 2, page 269.
23 Transcript Volume 2, page 273.

prohibit any return on the investment. This is accomplished by amortizing the loss over a period of years without placing the balance in the rate base, thereby allowing a return of, but not on, the investment. In this manner, investors and ratepayers share the burden of cancellation costs.

90. UCG submits that it is illogical to allow shareholders to earn a return based on the riskiness of their investment, and, at the same time, insulate them from risk by allowing them a return on all substantial recovered expense items.

91. UCG submits that, as is done in other jurisdictions (e.g., Ontario), it would be reasonable to approve an interest rate for deferral accounts equal to the 3-month bankers' acceptance rate, as published on the Bank of Canada's web site. The current interest rate allowed by the Ontario Energy Board is 1.47%.

92. The second aspect involves YEC's adamant insistence that these expenditures belong in rate base. Clearly, they are not assets currently used and useful, and thus, should not be eligible for rate base treatment. OIC 1995/090 clearly directs regulatory practices in line with accepted regulatory principles:

> *Normal principles to apply*
> *3. Except to the extent otherwise stated by this Directive or the Act, the Board must review and approve rates in accordance with principles established in Canada for utilities, including those principles established by regulatory authorities of the Government of Canada or of a province regulating hydro and non-hydro electric utilities.*

93. UCG requests that, whatever its finding on the prudency of expenditures, the Board reject rate base treatment for deferred study costs.

Proposed Planning Cost Accounting Policy

94. In its opening statement, YEC indicated that given the unprecedented levels of planning costs incurred since 2009, an updated planning cost accounting policy is included in the application to ensure that these costs are addressed in a manner that helps to moderate risks, that recognized the need for near term and learning term rate stability, and does not result in undue rate impacts[24].

95. In response to UCG-YEC-1-40(d), YEC indicates that it will begin to recover the costs of studies undertaken as soon as the study is completed regardless of whether a related capital project is initiated.

96. UCG submits that YEC has not provided any evidence from any other jurisdiction where expenditures for preliminary surveys, plans, investigations, etc., made for the purpose of

[24] Transcript Volume 1, page 18, lines 12-18.

determining the feasibility of utility projects under contemplation are not recorded in a deferral account and, if construction results, the costs are transferred to an appropriate utility plant account for recovery.

97. UCG submits that if the $80,576 in deferred costs related to the Communications Strategy Study is related to a 10-year strategic communications plan, then these costs should be amortized over 10 years.

98. Costs related to Marsh Lake Storage, Atlin Storage, Gladstone, Geothermal, and Waste to Energy Work In Progress (WIP) projects, including 2012 forecast spending for the major projects close-out delayed until end of 2012 are proposed to be recovered over a 10-year amortization period. These are current (2011) major WIP projects that close out with costs exceeding $1 million.

99. UCG submits that YEC has presented insufficient evidence to justify the expenses identified in these WIP projects. Ratepayers should not be responsible for mistakes in shareholder management decisions where the cancellation decisions resulted largely from adverse regulatory conditions and public opinion which YEC should have anticipated.

100. While YEC committed at the oral hearing to check for MOUs related to these projects and whether any are still operational but to date[25], there has been no response from YEC. UCG submits that the Board should direct YEC to submit the information that it committed to submit.

101. Irrespective of YEC's duty to render service, UCG submits that the question is whether the cancelled projects were a cost to the utility of rendering the public utility service for the test period. UCG submits that the deferred costs proposed by YEC to be added to rate base do not render any public service and should not be included in rate base.

Marsh Lake Deferral ($4.8 million)

102. According to the Application (page 5-28), spending to the end of 2011 on this project was $3.23 million with forecast spending in 2012 of $0.800 million. YEC is proposing that amounts deferred to the end of 2012 be closed and amortized over 10 years starting in 2013. Spending in 2013 to go into rate base is forecast to be $0.800 million.

103. This project was withdrawn from YEC's 20-year Resource Plan submitted to the YUB in 2006 due to the resistance of local residents to the project.

104. YEC testified that it has spent over $4 million on developing an environmental baseline and on consultation with the residents of Marsh and Tagish lakes. These costs include the services of AECOM Canada and Mr. Forest Pearson who works for AECOM and was the hydro electric resources expert at the Energy Charette hosted by YEC in March 2011. While UCG

[25] Transcript Volume 2, pages 227-228.

appreciates efforts to hire consultants with local connections, UCG submits that it is not appropriate for YEC to hire consultants for projects like the Marsh Lake project when the consultant's family owns property in the flood plain of Marsh Lake. UCG submits that the lack of an independent view on Marsh Lake and hydro electric resources in general taints the effectiveness of the representations made by such a consultant and the relevance of these costs to the project.

105. Given that these deferred costs are related to a capital project costing an estimated $10.5 million[26], UCG submits that these deferred costs should not be capitalized until the Marsh Lake Storage project is placed into service and costs incurred have undergone a thorough prudence review.

Atlin Lake Storage Deferral ($2.2 million)

106. According to YEC's application (page 5-35), the Atlin Lake Storage project was examined as a means of enhancing winter capacity and energy available to the Whitehorse Rapids Generation Station in order to displace higher cost diesel generation that would otherwise be required.

107. YEC confirmed at the oral hearing that despite the fact that they were aware of the opposition to the project by citizens in Atlin and had a legal opinion that was different from that of the BC government regarding the need for a park use permit[27], YEC continued to pursue the proposed project.

108. When asked if there were any savings or financial benefits to ratepayers during the test years as a result of the costs incurred for this project, YEC confirmed that there was absolutely no benefit to a project that was not going forward[28].

109. While the response to YUB-YEC-1-44 includes a breakdown of the total $2.23 million expense by contractor by task for the Atlin Lake Storage Project, YEC has not provided a more detailed breakdown on exactly when these costs were incurred other than to say most was spent prior to 2011. UCG submits that it is evident that YEC continued to incur costs after significant opposition and government permitting issues were identified. YEC admitted to not understanding the land use process in British Columbia[29] and knowing that there were some licensing risks[30]. UCG submits that this helps to explain why YEC did not realize the difficulties to be faced when they were still pushing the Atlin Lake storage project uphill.

110. As noted above, the study costs for the Atlin Lake storage project are not "used and useful" in the normal way that rate base assets must be to attract a return on investment. UCG submits that no utility property shall be deemed used and useful until it is providing actual utility service to the customers.

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26 Response to YUB-YEC-2-7.
27 Transcript Volume 2, pages 262-268.
28 Transcript Volume 2, page 269.
29 Transcript Volume 2, page 270.
30 Transcript Volume 2, page 271.

Gladstone Diversion Deferral ($4.4 million)

111. According to the Application (page 5-28), spending to the end of 2011 on this project was $3.69 million with forecast spending in 2012 of $0.200 million. YEC is proposing that amounts deferred to the end of 2012 be closed and amortized over 10 years starting in 2013. Spending in 2013 to go into rate base is forecast to be $0.500 million.

112. This project was not included in the Resource Plan submitted to the YUB in 2006 and YEC testified that they are still working on the project and working with the Champagne-Aishihik First Nation to determine next steps and whether they're prepared to support the ongoing project.

113. Consistent with the above, the study costs for the Gladstone Diversion project are not "used and useful" in the normal way that rate base assets must be to attract a return on investment. UCG submits that no utility property shall be deemed used and useful until it is providing actual utility service to the customers.

<u>Major Capital Projects</u>

114. In its Application[31], YEC indicates that its total capital expenditures from 2009 through 2011 were just over $201 million with nearly half of that expected to be spent in 2011. YEC indicates that $165 million of this amount was spent on 3 major projects (Mayo B Construction, Carmacks-Stewart Transmission Line Stage 2, and Aishihik 3rd Turbine Construction)[32].

Mayo B Construction

115. As noted above, YEC is unable to confirm the final cost of the Mayo Hydro Enhancement Project that was commissioned in December 2011 (nearly a full year ago) nor could YEC confirm what the ultimate impact on rate base (and ratepayers) will be as a result of this project.

116. While YEC's application indicates that this project's completed cost is forecast at approximately $116.6 million, this total does not include the Mayo Lake Project ($662,000) which YEC testified is undertaken as a result of the Mayo B project[33]. UCG submits that while YEC may budget projects separately, it is not standard utility practice in a regulated environment to not clearly identify all costs being incurred as a result of a project. Regulators require full knowledge of the impacts of approving a project especially if it triggers additional capital expenditures.

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[31] Table 5.1 (page 5-50).
[32] Table 5.2 (page 5-51).
[33] Transcript Volume 2, page 234.

117. UCG is concerned that several other projects have been identified in YEC's application (Table 5.2) that appear to relate at least to some degree to the Mayo Hydro Enhancement Project and / or the resulting operations of the Mayo system:

Mayo Hydro - Substation Enhancements	$10.15 million
Mayo Head Gate Repairs	$ 1.33 million
Wareham Intake Rock Scaling	$885,000
Wareham Spillway Upgrades	$775,000
Mayo Lake Control Structure	$583,000
Wareham Bridge	$571,000
Wareham Dam Core Raise & Improvements	$571,000

118. When asked to identify project detail and cost/benefit analysis of these additional Mayo projects in order to allow the YUB and intervenors to determine the prudence of these expenditures, YEC testified that there was no cost / benefit analysis available on any of these projects, that the projects were required as part of YEC's ongoing capital in the ongoing operation of the system, and that none of these projects are related to serving specific industrial customers[34].

119. UCG submits that YEC's position that these Mayo projects are not related to serving industrial load conflicts with information that is on its own web site[35]:

> *The Mayo A hydro facility has served people in that central Yukon community since 1951. With a capacity of five megawatts of power, it was originally developed to supply electricity to the United Keno Hill Mine at Elsa, located about 45 kilometres north of Mayo. It also supplies power to the communities of Mayo and Keno City and neighbouring areas.*
>
> *The Keno mine closed down in 1989, leaving a surplus of hydro power in Mayo. To make use of this extra power, Yukon Energy built a transmission line from Mayo to Dawson City, some 232 kilometres away.*
>
> ***The Keno mine is operating once again. That, coupled with the growing demand for electricity from all our customer classes, has led us to build a new power house at Mayo (known as Mayo B) with a capacity of an additional 10 megawatts. Mayo B started operating in late 2011***.

120. UCG submits that it was disturbing at the oral hearing that no one on YEC's witness panel was able to provide information on any compatibility issues that needed to be addressed when connecting the Mayo grid with the Whitehorse grid, and how these were overcome and at what cost[36]. The only information YEC could provide was that they would have built the Mayo-Dawson line at a higher voltage if they had thought more about it.

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34 Transcript Volume 2, pages 234-236.
35 http://www.yukonenergy.ca/energy/facilities/hydro/
36 Transcript Volume 2, pages 236-237.

121. UCG submits that none of the Mayo-related projects listed in the Application at Table 5.2 should be added to rate base until a full review can be made regarding not only what the projects entail, but also what benefits ratepayers will realize from these expenditures and how the money was spent in lieu of alternatives available.

Carmacks-Stewart Transmission Line

122. YEC states in its Backgrounder (Exhibit C3-24, Tab 17) that without the construction of the Carmacks to Stewart Line Stage 1, it would have had an additional $1.2 million in costs per year and would have required a rate increase of 3.2% in 2009. YEC also states that without connecting its two grids and without Mayo B and the Aishihik 3rd turbine, it would have incurred additional diesel costs of $7.6 million in 2012 and $8.2 million in 2013.

123. UCG submits that, despite YEC's efforts to dodge the issue[37], these additional costs were actually resulting from the addition of mining loads that are being served power from the grid instead of through alternatives like on-site generation. While YEC suggested during the oral hearing that growth is happening in various sectors, it is obvious that adding the loads of industrial customers over the past several years has been the driving force in investment and the higher use of diesel generation. UCG submits that it is misleading to suggest that any of the costs incurred due to industrial loads should be paid by anyone other than the industrial customers.

Aishihik 3rd Turbine Construction

124. As noted above, YEC is unable to confirm the final cost of the Aishihik 3rd Turbine project that was commissioned in December 2011 (nearly a full year ago) nor could YEC confirm what the ultimate impact on rate base (and ratepayers) will be as a result of this project.

125. In the Application at Table 5.1 (page 5-50), total capital expenditures from 2009 through 2011 for this project are identified as $13.816 million. In YEC's 20-year Resource Plan from January 2006, this project was identified as costing $7.577 million.

126. At the oral hearing, YEC confirmed that the doubling of this project's cost was primarily the result of inadequate project costing by AECOM and significant errors in AECOM's cost estimates[38].

127. YEC confirmed that there are no provisions in the contract with AECOM that provide for any penalty to AECOM due to the significant errors in their cost estimates upon which the YUB initially agreed with proceeding with the project[39]. YEC also confirmed that there were additional costs incurred as a result of AECOM's work (for which they were terminated from the project) in that YEC staff had to spend time and incur costs to complete a job that exceeded

[37] Transcript Volume 2, page 205.
[38] Transcript Volume 2, page 238.
[39] Transcript Volume 2, page 239.

the budget amounts[40]. UCG submits that YEC should be directed to quantify the extra costs incurred as a result of the sub-standard and erroneous work of AECOM and this amount should not be recovered from ratepayers. UCG submits that YEC has not learned from the messages delivered by the Auditor General in its February 2005 reports which were highly critical of the poor project management skills exhibited by YEC.

128. As is the case with the Mayo Hydro Enhancement Project, UCG is concerned that several other projects have been identified in YEC's application (Table 5.2) that appear to relate at least to some degree to the Aishihik 3rd Turbine project and/or the resulting operations of the Aishihik system:

Aishihik Generation Station Redundancy	$6.365 million
Aishihik River Icing Study Mitigation – Bridge	$665,000
Aishihik River Icing Study – Berm	$455,000
Aishihik Elevator Modernization Project	$398,000
Aishihik 3rd Turbine Spare Parts	$368,000
Aishihik Substation Upgrades	$137,000

129. When asked to identify project detail and cost/benefit analysis of these additional Aisihik projects in order to allow the YUB and intervenors to determine the prudence of these expenditures, YEC provided a brief explanation of a couple of the projects but did not provide any information related to cost / benefit analysis available on any of these projects.

130. UCG submits that none of the Aishihik-related projects listed in Table 5.2 should be added to rate base until a full review can be made regarding not only what the projects entail, but also what benefits ratepayers will realize from these expenditures and how the money was spent in lieu of alternatives available.

Enterprise Business System Replacement

131. In response to UCG-YEC-1-56 in the current proceeding and YUB-YEC-1-37 in YEC's 2008/2009 GRA proceeding, YEC addressed the JDE Enterprise Business System and the deficiencies of the system that were being corrected:

1. Integrated system will eliminate duplication of data in key areas such as budgeting, forecasting, inventory and maintenance.
2. New system will have the functionality to track projects against committed costs.
3. New system will have enhanced reporting capabilities that will allow project managers to access data on a more timely basis without intervention from Finance staff.
4. Eliminate manual processes and "work-arounds".
5. Optimize chart of accounts for utility business.

[40] Transcript Volume 2, page 241.

132. Total cost of the replacement system has been estimated to be $3.24 million. During the oral hearing, YEC testified that there had not been any cost/benefit analysis performed on this project and that they had not quantified any savings that have accrued as a result of the institution of the new system[41].

133. UCG submits that without details of the project and related cost/benefit analysis, it is not possible to determine the prudence of these expenditures. Even though systems can reach a point where they must be replaced, UCG submits that there must be some explanation provided as to how the money is being spent, the alternatives considered and the overall impact on the bills of ratepayers prior to approving cost recovery.

Whistle Bend Subdivision Supply

134. In Table 5.1 (page 5-50), total capital expenditures for Whistle Bend from 2011 through 2013 are identified as $5.23 million. In the Application (page 5-18), YEC estimates that the total cost of the project will be a minimum of $12 million with a refinement of project costing planned for 2012 (although at the time of the oral hearing, no refinement in the cost estimate had been completed).

135. While none of the costs associated with the Whistle Bend project will be included in rate base in 2013, UCG is concerned about the level of expenditures (over $5 million by the end of 2013) on a project that has not yet had its scope and cost estimates refined from preliminary estimates and yet YEC is putting this project forward as a general part of capital expenditures assuming that the YUB's approval of capital expenditures will be interpreted as approval of the project no matter what the cost.

136. UCG submits that this is another example of a project that will involve significant capital expenditures during the test years and for which the YUB and intervenors have been provided almost no information in order to determine the prudence of moving forward with these expenditures.

137. UCG submits that the level of capital expenditures expected to be incurred on this project in the test years requires a significant amount of additional review before they are approved as part of YEC's capital budget.

Whitehorse Spillway Improvements

138. In Table 5.1 (page 5-50), total capital expenditures for the Whitehorse Spillway from 2011 through 2013 are identified as $1.246 million. YEC confirmed during the oral hearing that the "budget approval" for this project that is identified in the Application (page 5-17) is simply an internal approval and not an approval by the YUB.

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41 Transcript Volume 2, page 230.

139. YEC also confirmed that this project had not been identified in any previous resource plan reviewed by the YUB.

140. As is the case with the vast majority of projects that YEC has listed in its application, the YUB and intervenors have not been provided with project detail and cost/benefit analysis of this project that would allow a determination of the prudence of these expenditures.

141. UCG submits that the level of capital expenditures expected to be incurred on this project in the test years requires a significant amount of additional review before they are approved as part of YEC's capital budget.

Western Copper Grid Connection

142. In its Application (page 5-22), YEC states that the costs related to the Western Copper Grid Connection project will be fully recovered from Western Copper. In response to UCG-YEC-1-58(b) and (c), YEC indicates that a Power Purchase Agreement had not yet been concluded and a component breakdown of the project's cost was not available at that time. At the oral hearing, YEC confirmed that they had not started addressing the PPA and had absolutely no idea of any of the cost components related to this project[42]. And yet, $1 million in capital expenditures had been identified for 2013 (Table 5.2).

143. Given the uncertainty that remains with respect to a PPA and agreement by western Copper to absorb all costs, UCG submits that the level of capital expenditures expected to be incurred on this project in the test years requires a significant amount of additional review before they are approved as part of YEC's capital budget.

144. UCG submits that Western Copper should be directly charged the $30,233 in deferred costs related to the aerial photo mapping and route selection related to the transmission line to its facilities (Table 5.5) since it will be the only ratepayer gaining any benefit from that expense.

V. SYSTEM SALES AND GENERATION

145. YEC is seeking approval of diesel generation forecast at 66% of long-term average annual levels in 2012 and 59% of long-term average annual levels after 2012.

146. YEC indicates in response to YUB-YEC-1-1 that its Resource Plan Update load forecast was prepared "prior to mid-year 2011" based on information available at that time and that this load forecast had been updated in the 2012/2013 General Rates Application filed in April 2012 for industrial sales forecasts and for actual non-industrial sales. YEC indicated in response to YUB-YEC-2-1 that the load forecast work was commenced in January 2011 and was largely completed in February 2011.

[42] Transcript Volume 2, page 259.

147. YEC indicated during its opening statement that more recent internal forecast updates indicate non-industrial grid load is expected to increase GRA forecast in 2013 by more than 7 gigawatt hours and that industrial growth by the end of 2013, as projected in the GRA, is expected to increase by approximately 33 gigawatt hours over the 2009 forecast[43].

148. While YEC states that it "considered new YECL information affecting YEC non-industrial wholesale loads for individual test years[44]", UCG submits that there is not enough information on the record to confirm that YECL (the service provider to the vast majority of non-industrial customers) is in agreement with changes that YEC has made to YECL's forecast. UCG submits that this not only leads to questions about the dependence the YUB can place on YEC's load forecast but also illustrates the uncooperative nature of the relationship between the Yukon's two electricity utilities.

149. YEC indicated in its opening statement that absent bringing on new, lower cost sources of generation, an increasing portion of new load on the system must be supplied using costly diesel generation[45]. UCG submits that alternative sources of generation, including an extensive DSM program, must be put in place and that not all need to be large-scale hydro-related projects as has been the preference of YEC in the recent past.

150. YEC's application states that for GRA forecast purposes, available preliminary actual results for 2011 were considered and the 2011 actual YECL wholesale sales were adjusted to reflect expected in-service of a new Fish Lake hydro unit #1 in 2013 and to reflect adjustments for weather conditions based on 10 year average Heating Degree Days (HDD). A percentage growth increase of 2.26% per year was then applied to the adjusted 2011 actual wholesale sales (normalized assuming operation of both Fish Lake units) for each of 2012 and 2013 and additional sales were included for 2012 to reflect continuing shut down of Fish Lake Unit #1 until January 2013[46].

151. In response to CW-YEC-1-6(d), YEC admits that the YUB has never approved the use of 10 year average Heating Degree Days as a method of normalizing temperature-sensitive sales forecasts. UCG submits that YEC has not adequately justified the use of a 10-year average and has not presented other methodologies to demonstrate that the 10-year average is superior to other methodologies. UCG further submits that the lack of sufficient evidence prevents the YUB from making an informed decision on what would be the most appropriate and accurate forecasting methodology for YEC to use to adjust the forecasts provided by YECL. UCG submits that it is the responsibility of the applicant to provide the evidentiary basis to support its position. YEC failed to review other scenarios and provide the YUB with the information and statistical support necessary for the YUB to determine that the 10-year average is the most appropriate methodology.

43 Transcript Volume 1, page 14, lines 11-16.
44 Response to YUB-YEC-2-1
45 Transcript Volume 1, page 14, lines 14-17.
46 Application page 2-4, lines 1-7.

152. UCG submits that a 10-year normal HDD forecast is an average of 10 years of historic HDD weather (to remove variability from the historic weather) that is used to project normal, or average, weather conditions into the future. Although normal weather conditions are not likely in the future, the actual weather experienced in the future should be distributed evenly around the normal weather. This normal weather is used for planning and ratemaking purposes.

153. UCG submits that there has been considerable debate in utility regulation on the merits of switching from normalizing rate case test-year billing determinants using a 30-year weather normalization period (i.e., using temperature data from an appropriate location for a defined 30-year period to determine "normal" weather) to using a 10-year weather normalization period.

154. UCG has concerns that YEC's current forecast product, calculated retrospectively, but utilized prospectively, can have an impact on energy prices. The weather normalization process may have a big impact on the determination of test year sales used in a rate proceeding because electricity service and revenues are weather-dependent. At the very least, YEC should have sought input from stakeholders and other utilities on products that may be more representative of climate normals and current climate trends.

155. YEC testified that it was aware that various utilities use various methods to develop a load forecast and that some of these utilities use weather normalization[47]. But YEC did not provide any analysis and gave the YUB an option of a single forecast methodology that YEC feels is appropriate. UCG submits that YEC has failed to justify the YUB supporting this one methodology without knowing the impact and effectiveness of alternative methodologies.

156. UCG questions where YEC's weather normalization analysis is in evidence using data for both a 10-year and a 30-year time period, including 30-year HDD normals, 10-year HDD normals and actual HDDs for the last decade. There is no evidence on the record of this proceeding that the HDD results from using weather data from the past 10 years are much better predictors of the actual HDD experience for YEC in recent years.

157. UCG submits that the YUB need only look as far as the Alberta Utilities Commission Decision 2012-237 (Exhibit C3-24, Tab 26) to see how at least one other regulator requires utilities to use the actual average change in weather normalized use per customer (per class) for the preceding three years as their forecast percentage change in weather normalized use per customer for the upcoming year[48]. This percentage change is to be applied to weather normalized use per customer (actual and projected per class) for the current year to determine the forecast for the upcoming year. UCG submits that this averaging of weather normalized use per customer over the preceding three year period would result in as reasonable a forecast of weather normalized use per customer for the test years as what YEC has proposed.

158. While YEC has testified that it does not forecast its system sales and generation requirements on a weather-normalized basis[49], this averaging process using the 10-year average Heating Degree Days appears to be a piece-meal approach to do just that.

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[47] Transcript Volume 1, page 64, lines 23-25.
[48] Exhibit C3-24, Tab 26 - Alberta Utilities Commission, Decision 2012-237, Page 32, paragraph 145
[49] Exhibit C3-24, Tab 24 - Transcript pages 317-318 – YEC 2008/2009 General Rate Application

159. UCG submits that the Board must satisfy itself that YEC has used an appropriate industry standard methodology to assess energy requirements. The most significant factor for the Yukon is the lack of economies of scale. The large capital and operating costs of providing electricity are spread across vast distances to a small population base. Before any resource planning is done and capital commitments made, the YUB should ensure that stakeholders have an opportunity to provide input on a number of questions that need to be considered in developing a policy framework to guide the generation, transmission and distribution resource development including:

- How do we manage energy development decisions to meet the Yukon's commitments to environmental stewardship, now and in the future?

- What is the most effective way to provide residents of the Yukon with equitable access to affordable and reliable electricity?

- What role should governments play in the energy sector, recognizing the unique nature of the Yukon environment?

- How do we foster an energy sector that is efficient and effective while maintaining public accountability and transparency?

160. In other jurisdictions (e.g., British Columbia), utilities are required to develop multiple resource portfolios for their demand forecasts, each consisting of a combination of supply and demand resources needed to meet the demand forecast.

161. During the review of YEC's 20-year Resource Plan in 2006, YEC's witnesses agreed during the hearing that, in principle, development of multiple resource portfolios is not a bad idea although YEC feels that is not necessarily applied everywhere else.[50] While YEC does not feel that the BC approach is a useful way to describe the options and issues associated with resource planning, UCG submits that YEC needs to be directed to broaden its outlook to consider new approaches, in the same way YEC proposed new planning criteria.

162. UCG submits that YEC and the Yukon government should lead pilot projects to develop alternative energy solutions that provide long-term economic benefits and reduce greenhouse gas emissions. There are a number of potential energy sources including small-scale hydro, combined heat/power systems, and renewable energy sources such as biomass (wood), solar, and geothermal energy.

Whitehorse Copper Tailings

163. YEC confirmed during the oral hearing that it believes that since industrial customers have traditionally been served and are served currently by YEC under Rate Schedule 39, YEC is

[50] Transcript Volume 2, page 141, line 25 to page 42 line 5

therefore entitled to serve Whitehorse Copper Tailing. However, YEC could not identify any legislated mandate to that effect[51].

164. YEC also states that if it served Whitehorse Copper Tailings, ratepayers will save approximately $210,000 in 2013 based on Whitehorse Copper's current load forecast and potentially higher amounts in years after 2013[52].

165. As was confirmed during the oral hearing, YEC's "savings" calculations do not account for potential rate adjustments for YECL in 2013 if Whitehorse Copper volumes are included in its load forecast[53].

166. UCG submits that YEC again blocked the ability of ratepayers to understand the issues by raising technical issues to avoid answering a question about how the alleged "savings" would be impacted by a general rates application by YECL[54]. UCG submits that this ongoing charade of regulatory game playing instead of transparency of options belittles the regulatory process and allows the regulated utilities to provide as little information as what they feel is legally possible.

167. UCG notes that during the oral hearing, YEC was not able to produce any documentation related to its own perceived deemed franchise rights to serve Whitehorse Copper Tailings[55]. In light of this, UCG sees no evidence that provides YEC with the rights to serve Whitehorse Copper Tailings or any other industrial customer. UCG submits that it appears to be rather redundant to have YEC serve a load to which YECL already has an existing service line.

Yukon-Specific Load Data

168. In the Joint Agreement on Outstanding Matters from the 2008/2009 GRA Phase II (Exhibit B-9, Appendix A), YEC and YECL proposed to re-evaluate the cost allocation to various rate classes to ensure the results are consistent with the load characteristics in Yukon.

169. Among other things, YUB Order 2010-13 directed YEC and YECL to collaborate to identify and select appropriate cost-effective measures that will effectively measure actual Yukon-specific customer loads (proxy study) so that the ATCO Alberta models can be calibrated to provide reliable Yukon-specific load information, and to implement these measures prior to the next Phase II Application.

170. YEC testified that it has not even considered acting on this 2 year old direction and do not intend to address it until they initiate the development of the next Joint Phase II Cost of Service / Rate Design application[56]. UCG submits that this will require an extensive effort by the

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51 Transcript Volume 1, pages 112-114.
52 Exhibit B-15 – Attachment to November 1, 2012 YEC Letter to YECL.
53 Transcript Volume 1, page 119.
54 Transcript Volume 1, pages 121-122.
55 Transcript Volume 2, pages 206-207.
56 Transcript Volume 1, pages 186-187.

utilities and, given their claims of being too busy for other initiatives and their record of ignoring stakeholder consultations, UCG submits that YEC should be directed (again) to conduct this work well in advance of the development of a Phase II application and that they be directed to consult stakeholders during the development.

171. UCG submits that this appears to be an example of the failure of YEC and YECL to ensure that the best forecasts are included in the general rates application. UCG submits that the most accurate up-to-date use per customer should be used to allow for an accurate forecast of load growth.

172. Given that approximately 93% of YEC's forecasted sales are firm (i.e., firm wholesale and firm retail), and industrial sales are backed by take-or-pay contracts, YEC is no longer facing the financial and business risk that it may have faced when volatile industrial sales formed a significant portion of its sales forecast. As is argued later in this submission, UCG believes that this contributes to a lower risk premium in YEC's return on equity.

173. To the extent that industrial loads (i.e., major industrial and/or isolated industrial customers) make up part of YEC's load requirement, UCG asserts that the needs of those loads must necessarily be treated separate and apart from YEC's non-industrial load. UCG submits that utility revenue volatility created by transient industrial loads in the Yukon is a significant issue. Per the Rate Policy Directive, industrial rates are to recover 100% of the costs incurred to serve these loads. While the industrial rates are artificially held constant by OIC, the cost of service for industrial loads should still be determined and any revenue surplus / deficiency created by the frozen rates should be isolated to protect the non-industrial classes from any adverse impacts and instability. It may be that the result of the Phase 2 cost of service analysis is that the industrial rates determined by OIC 2012/68 do not recover the full costs incurred on behalf of industrial customers pursuant to OIC 1995/90. Under that scenario, the Board will have to determine who should bear the cost of the deficiency.

174. In the Yukon, industrial customers are synonymous with mines, which by their nature are transitory and unpredictable. Planning for such loads within the load forecast for the rest of YEC's non-industrial customers can result in excessive capital expenditures to account for temporary mine loads, expenditures which could then be left to non-industrial customers to bear. UCG has specific comments on capital projects elsewhere in this submission which highlight the risks involved in combining the mine related requirements and non-industrial load requirements of YEC in planning.

175. UCG questions the apparent position of YEC that it is always good to sell as many kilowatt-hours as possible. UCG submits that the Board should consider whether the forecast of firm sales should be governed by the forecast of available hydro generation as an effective means to control the use of expensive diesel generation. To facilitate such a forecasting scenario, UCG submits that on-site generation should be considered as a more practical alternative for the transient industrial loads that are attracted to the Yukon.

176. UCG submits that YEC should study the use of weather normalization for load forecasting and results reporting so that load variances resulting from weather can be isolated. It was apparent during cross-examination that the witnesses for YEC were not supportive of this approach but UCG submits that this may in part be because they do not understand how weather normalization is effectively undertaken and accepted in other jurisdictions.

Demand Side Management

177. YEC's position on demand-side management (DSM) has always been that if loads develop, further consideration will be given to DSM programming focused on both the reduction of system peak demand and energy conservation, and development of new renewable generation if attractive sites near established utility grids can be identified.

178. In its Order 2009-8, the YUB directed YEC as follows:

> *40. The Board directs YEC in conjunction with YECL, to consult with stakeholders and develop a policy paper with respect to DSM initiatives. YEC and YECL are to jointly lead this process and submit a policy paper (Plan) in their next GRA. Further the utilities are to be cognizant of and work with ESC where necessary so as not to duplicate efforts.*
>
> *41. The Plan should include initiatives developed through negotiations with intervenor groups and communities in the Yukon. The Plan should provide a wide range of energy efficiency and conservation measures that will assist ratepayers in dealing with the high cost of energy in the Yukon and also provide support for local initiatives identified through community energy planning initiatives.*
>
> *42. The Board finds the UCG and LE proposals for deferral accounts in support of the DSM initiatives acceptable and both YEC and YECL can propose appropriate treatment of these accounts at the time of their next GRA.*

179. YEC has not submitted a policy paper with respect to DSM initiatives in this Application. Contrary to YEC's position, UCG believes that given the Board's previous direction, YEC should assume that the Board is looking at approving a policy regarding DSM initiatives before money is spent that YEC proposes to recover from ratepayers.

180. Despite the lack of a DSM policy, in its Application (page 3-15), YEC indicates that an Energy Conservation Department was created in 2011 to work with stakeholders on Yukon-wide energy conservation programs and also focus on YEC's DSM programs. YEC indicates that this required 2 new staff positions to be filled.

181. YEC had no explanation why, if energy conservation is such an important element in helping YEC meet the Yukon's growing energy demands, it has not heavily invested in DSM initiatives prior to this.

182. UCG submits that, despite the fact that YEC could not identify how much had been spent on consultants working on DSM, YEC should be directed to specifically identify all the costs that have been incurred related to DSM activities prior to a formal policy has been approved by the YUB and where in the proposed revenue requirements for 2012 and 2013 net benefits associated with DSM are reflected.

183. UCG submits that the nature of DSM is that it is implemented over time, delivered on a customer-by-customer basis with benefits realized in the generation, transmission and distribution components of an electricity system.

184. The immediate result of most DSM programs is to reduce the energy consumption for the individual consumer with a corresponding short term bill reduction, with a longer term goal of changing consumer consumption and behaviour in general to achieve reduction of system peak demand. At a minimum, sustained DSM programs should reduce the rate of load growth, allowing deferral of capital expenses and the reduced reliance on bill subsidies to the benefit of consumers.

185. UCG notes that YEC factors in a load growth factor in its forecast to account for increased use for existing customers. DSM measures would offset this growth, both directly by reducing existing loads, and indirectly by influencing consumer behaviour.

186. In response to YUB-YEC-1-46, YEC states that DSM programs are individually analyzed for the greatest cost/benefit ratio. YEC has provided costs of various initiatives but has not provided the benefits requested in part (b) to that IR. UCG submits that without cost/benefit studies for the DSM programs, the YUB cannot approve the proposed programs as being in the best interest of ratepayers.

187. In response to YUB-YEC-1-46(d) Attachment 1, YEC states that a $48,000 energy audit of Alexco's Bellekeno mine has been completed with a 50/50 cost sharing agreement. An agreement for an additional 25% contribution from YEC is still pending the implementation of recommendations. UCG submits that despite YEC's testimony that this transfer of directly-assignable industrial customer cost to all ratepayers "is done in other jurisdictions", YEC has not provided evidence where such a program is accepted by any regulator in any jurisdiction. UCG submits that costs incurred for the direct benefit of Alexco should be absorbed by Alexco or YEC's shareholder.

188. In response to UCG-YEC-1-61(c), YEC indicates that DSM cost recovery by class will be pursuant to the approved cost of service. YEC testified that across-the-board rate riders will be used to recover revenue deficiencies in 2012 and 2013 including DSM costs[57]. UCG submits that this contradicts the principle that costs should be collected equitably from those incurring the benefits. UCG submits that YEC should be directed to establish a DSM recovery fee that can be used to recover DSM-related costs on a more benefit-based basis.

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[57] Transcript Volume 2, page 342.

VI. REVENUE REQUIREMENT

189. The substantial rate increase requested in YEC's application, coupled with increasing reliance on the judgment of YEC staff in relation to the prudence of expenditures gives rise to the concern that YEC's application should be more thoroughly tested and subject to independent analysis. UCG recommends that the Board engage an independent expert to benchmark YEC's and YECL's cost components prior to the next rate case to determine the efficiency of their management compared with other North American utilities. Such information would readily highlight problem areas and develop a basis for improvement of cost control by the utilities.

190. YEC has requested approval of the forecast revenue requirement of $39.859 million for 2012 and $45.641 million for 2013, including approval, as required, of the following costs, revenues and other related provisions:

Fuel and Purchased Power Costs

191. YEC's applied for fuel and purchased power costs are $2.203 million and $3.113 million in 2012 and 2013 respectively, including approval to adjust diesel prices used in setting fuel costs to reflect current forecast conditions.

192. In response to UCG-YEC-1-24, YEC provided details of actual prices paid for diesel fuel. For 2009, the Board approved price for Whitehorse was $0.96 per litre and the average price actually paid was only $0.7603 per litre. The difference of 20 cents per litre equates to approximately $97,000 (485,693 litres).

193. UCG submits that overall, 2009 rates have over-recovered on allowed diesel fuel costs and the YUB should direct YEC to identify the over-recovery since 2009 and ensure that this over-recovery is added to the Diesel Contingency Fund.

194. UCG submits that with a Rider F (Fuel Adjustment Rider) in place, YEC does not have any incentive to curb diesel fuel expense. YEC is protected financially no matter how much they use or at what price. UCG submits that the YUB should ensure that YEC understands the importance of controlling costs recovered from ratepayers and direct YEC to report quarterly on any over-recovery / under-recovery of allowed diesel fuel expense. UCG also submits that this difference from allowed should be tracked in a variance account that can be addressed at a later date.

Diesel Contingency Fund

195. YEC is requesting approval of changes to the Diesel Contingency Fund (DCF) to update the DCF's ability to protect ratepayers from fossil fuel cost changes due to fluctuations in water availability for hydro generation. The proposed updated approach would permanently switch "on" the DCF through use of a formulaic approach that would automatically adjust forecast annual long-term average hydro generation and related diesel (or other non-diesel fossil fuel) generation to reflect actual grid generation load. Based on this DCF proposal, there will no

longer be a “diesel on the margin” test for activating the DCF. The updated DCF also proposes that any secondary sales revenues after January 1, 2012 would be credited to the DCF.

196. The DCF resulted from monies received in an insurance payout of $744,000 in 2002 relating to the fire at the Whitehorse Rapids hydro plant, with interest accruing annually thereafter. YEC argued in the 2005 revenue requirement proceeding that there is a very low likelihood that the funds in the DCF will be required in the near future due to low water levels as defined in the trust account.

197. Board Order 1996-7 specified how the DCF is to be used, stating that “the fund is only to be used for the purposes of stabilizing rates and offsetting diesel generation cost estimates and the fund is not to be accessed for other reasons, including government subsidy of rates”.

198. YEC testified in the current proceeding that if tolerance limits for its proposed update to the Diesel Contingency Fund need to be changed, they feel that they could simply deal with that using an application other than a General Rates Application[58]. UCG submits that any changes proposed to any rate stabilization mechanism established through a General Rates Application should only be changed through a General Rates Application to ensure that all aspects of YEC’s operations are considered before changing anything on a piece-meal basis.

199. With respect to reporting required with respect to the Diesel Contingency Fund, while an annual report detailing additions and deletions to the DCF is to be filed with the YUB so that the Board may oversee the fund activities, UCG submits that it would be beneficial and more transparent if a narrative would accompany the report to explain the additions and deletions to the DCF. As has been ordered with respect to YEC’s filings with respect to Rider F[59], UCG submits that YEC should be directed when submitting DCF reports to submit these filings to known interested parties to GRA proceedings and include EXCEL spreadsheets in these filings that will assist the Board and intervenors in understanding the supporting calculations of the report. To allow issues to be addressed at the time of the annual filings rather than potentially years down the road at the time of the next GRA, UCG recommends that the Board allow for parties to submit comments on the DCF filings for the Board’s consideration and follow-up.

Non-Fuel Operating and Maintenance Costs

200. YEC has applied for approval of non-fuel operating and maintenance costs forecasted at $17.496 million and $18.385 million in 2012 and 2013 respectively. YEC is also looking for approval of the following matters:

- Approval to apply $0.398 million of the remaining Faro Dewatering Account deferred regulatory liability amounts (related to earlier “de-watering sales” to the Faro mine site) against the current outstanding balance in the Yukon Energy Reserve for Injuries and Damages.

58 Transcript Volume 1, page 53, lines 15-20.
59 Board Orders 2011-15 and 2012-02.

- Approval of new Reserve for Injuries and Damages (RFID) Policy and approval to increase the annual appropriation to the Reserve for Injuries and Damages to $0.195 million from the current $0.100 million level starting in 2012, approval to apply the remaining $0.398 million of one-time funds from the Faro mine Dewatering Deferral Revenues against the RFID balance and approval to amortize $0.180 million of the remaining balance over a five year period.

- In the event there are secondary sales, secondary sales revenues will be credited directly to the DCF.

Faro Dewatering Account

201. Under Rate Schedule 34, YEC collected revenues from the Federal Government for the ongoing shutdown and de-watering power requirements at the Faro mine site. Pursuant to Board Order 1998-5, all revenue received under Schedule 34, less reasonable incremental costs associated with supplying power to the mine site, have been placed in a deferral account for future application to the benefit of customers. YEC argued in the 2005 revenue requirement proceeding that these accounts were set up to the benefit of ratepayers but UCG submits that YEC has not been thorough in explaining how the benefits can be realized by ratepayers.

202. The Faro mine de-watering deferral account has been used to the benefit of ratepayers in that it has provided YEC with a source of no-cost capital, thereby reducing current revenue requirements through a lower rate base than otherwise would occur. UCG submits that the Board should ensure that YEC provides a thorough reconciliation of the actual impact of the proposed drawdown of the Faro mine de-watering deferral account.

Reserve for Injuries and Damages

203. YEC indicates in its evidence that its Reserve for Injuries and Damages balance has grown from negative $111,000 in 2009 to negative $578,000 at year-end 2011[60] (i.e., excess of charges to the RFID compared to appropriations to the RFID).

204. To eliminate the negative balance, YEC has requested approval to apply $398,000 of the remaining Faro Dewatering Account deferred regulatory liability amounts (related to earlier “de-watering sales” to the Faro mine site) against the current outstanding balance, approval of a new Reserve for Injuries and Damages Policy, and approval to increase the annual appropriation to the Reserve for Injuries and Damages to $195,000 from the current $100,000 level starting in 2012. YEC is also seeking approval to amortize the remaining $180,000 balance in the RFID over a five year period.

[60] Application page 3-17.

205. YEC submits in response to YUB-YEC-1-6(a) that the Faro Dewatering Funds were retained for the benefit of ratepayers and transferring $398,000 to the Reserve for Injuries and Damages serves the intended purpose by reducing the revenue requirement that is otherwise required from ratepayers. UCG submits that while the Faro Dewatering Funds are intended for the benefit of ratepayers, there remain questions regarding whether all of the charges included in the RFID account should be included in this account. UCG submits that YEC has provided minimum detail regarding the charges that have been added to the RFID account in 2009, 2010 and 2011[61] so there is not enough information on the record to justify any of these charges.

206. While UCG is questioning the validity of any of the identified RFID charges, UCG specifically questions why replacing a lost tool kit ($2,000) is not simply an operations expense, and why charges related to what appear to be capital projects and or warranty work (e.g., Aishihik Service Building Crane Cable Replacement, Aishihik pole replacement, WH4 Rotor Crack Repair, MH1 Slip Ring Repair, Aishihik Station Transformer, Repair WD6 Premature Failure) are being charged to the RFID account.

207. Given that the study conducted by Aon Reed Stenhouse Inc indicates that there are minimum thresholds below which the loss is considered operational risk that range from $1,000 to $1 million, UCG submits that standard business practice suggests that the proposed $10,000 threshold is still too low. UCG submits that since the average of the 13 charges to the RFID account over the last 3 years was $64,000, the minimum threshold should be at least $50,000. If the Board agrees to set a new threshold that is higher than $1,000, then all charges to the RFID account below this threshold amount should be eliminated from the RFID account.

208. UCG submits that the uninsured losses addressed by the RFID account are, to a significant degree, under control of management and related to YEC's business risk which is a factor in the determination of the allowed return on common equity. If YEC is already compensated for this type of business risk, UCG submits that ratepayers should not be asked to pay it again.

209. Besides increasing the minimum threshold to at least $50,000, UCG submits that the proposed Reserve for Injuries and Damages Policy should be changed as follows:

i. Paragraph 4.1 should be changed to read "Uninsured and uninsurable losses and associated costs will be charged to the RFID if they meet **each of** the following criteria:" and should include the criteria "insurance policy deductible exceeds total value of loss" in order to avoid arbitrary decisions regarding what costs are determined to be related to the RFID.

ii. Since the proposed policy fails to address instances where unanticipated insurance proceeds are received related to any items that have been included in the RFID account, the policy should stipulate that these proceeds will be applied against the RFID account.

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61 Response to YECL-YEC-1-51.

210. In summary, UCG submits that there has not been enough information put on the record to justify the costs that have been charged to the RFID account so there is no need to transfer funds from the Faro Dewatering Account and no need to consider amortizing costs that have not been adequately explained or justified.

Brushing Costs

211. In its Order 2009-08 regarding YEC's 2008/2009 revenue requirements, the YUB directed YEC to undertake a study into brushing activities of similar utilities and report its findings to the Board at the time of its next GRA. The YUB directed YEC in its report to include a written brushing policy that describes comprehensively YEC's approach and explains the manner in which the budget for any year is derived. As is outlined in Order 2009-08, the YUB found that a written policy that outlines the structure of the program and reasons for the structure would enable interveners and the Board to understand the inherent problems that YEC is facing in regard to brushing as well as the reasons underpinning the material increases or decreases that may occur with respect to brushing costs in future GRAs.

212. While YEC provided copies of the studies undertaken and completed in December 2010 and January 2012, they do not intend to turn their minds to development of a formal brushing policy until some time in 2013 which means that there is nothing upon which the YUB and interested parties could base the escalating brushing costs for 2012 and 2013.

213. In its 2008/2009 GRA, YEC's forecast of its brushing costs that caused concern for the YUB and intervenors was as follows[62]:

	Actual 2005	Actual 2006	Actual 2007	Proposed 2008	Proposed 2009
Transmission	$158,000	$117,000	$239,000	$257,000	$377,000
Distribution	$ 14,000	$ 72,000	$ 1,000	$ 40,000	$ 46,000
Total:	$172,000	$189,000	$240,000	$297,000	$423,000

214. In its 2012/2013 GRA, YEC's forecast of its brushing costs is as follows:

	Actual 2009	Actual 2010	Forecast 2011	Proposed 2012	Proposed 2013
Transmission	$387,000	$268,000	$434,000	$505,000	$639,000
Distribution	$ 17,000	$ 16,000	$ 68,000	$ 93,000	$113,000
Total:	$404,000	$284,000	$502,000	$598,000	$752,000

62 2008/2009 General Rates Application page 3-8.

215. Rates approved to recover the 2009 revenue requirement included the recovery of $423,000 in costs related to brushing ($377,000 in transmission, $46,000 in distribution). UCG submits that without a policy that better explains the brushing program and why the costs are escalating above the last allowed amount by 41% in 2012 and 78% in 2013, the YUB cannot allow YEC to haphazardly spend this kind of money.

216. UCG submits that YEC must be directed to follow through on previous directions if it intends on increasing maintenance expenses by implementing a more robust vegetation management program. UCG submits that YEC can't simply be allowed to increase its maintenance expenditures without showing how the brushing activity is designed to improve performance and/or reduce customer outages associated with severe storms. YEC has failed to show how the proposed higher maintenance activities result in lower capital replacement activity. UCG submits that a more definitive policy would allow for better management of these expenditures, making the brushing process more efficient and targeted to the areas of greatest benefit. At the very least, YEC should be directed to file appropriate evidence as to the reasonableness of the vegetation management cycle it plans to use going forward in response to this policy.

217. UCG submits that the 2012 and 2013 budgets for brushing should not be any more than the amount allowed for 2009. This would reduce the revenue requirements for 2012 and 2013 by $175,000 and $329,000 respectively.

218. Given the fact that YEC has not developed a policy based on the consultant studies related to brushing, UCG submits that the $173,227 cost of these studies[63] should not be allowed to be recovered until after the policy has been reviewed by the YUB and implemented.

Consultant Costs

219. In response to YUB-YEC-1-8 (Revised), YEC identifies expenditures on consultants for the years 2009 to 2011 inclusive. One of the consultants that assists YEC in regulatory proceedings, InterGroup Consultants Ltd., is identified as receiving **$3,745,000** (over $1.2 million in each of these 3 years) as follows:

2009	Capital & Deferred	$1,237,000	
	Administration	$ 43,000	
	Regulatory O&M	$ 3,000	$1,283,000
2010	Capital & Deferred	$1,120,000	
	Administration	$ 77,000	
	Regulatory O&M	$ 36,000	$1,233,000
2011	Capital & Deferred	$1,049,000	
	Administration	$ 148,000	
	Regulatory O&M	$ 32,000	$1,229,000

[63] Application Table 5.6, page 5-60.

220. YEC identified **$983,000** in payments to InterGroup over these 3 years related to "Support for Financial and Regulatory" and "Regulatory Consulting Services" and "Resource Planning oversight services". When asked why they don't hire and train the expertise as part of Yukon-based staff instead of asking ratepayers to pay this extraordinary amount of consulting fees to a firm from Manitoba, YEC testified that it's not something they believe they can afford nor get the same value for the dollars that they spend[64]. UCG submits that it's Yukon ratepayers than can't afford the current practice.

221. UCG submits that given the quarter century over which YEC has relied on InterGroup to provide regulatory consulting services and the extraordinary amount of ratepayer money spent on those services, YEC could have provided plenty of incentive and training to have qualified staff based in the Yukon. It is unbelievable that YEC maintains that it needs nearly $330,000 worth of regulatory oversight services annually from a consultant and can't see the benefits associated with hiring and training a local resource.

222. UCG submits that YEC must be directed to curb the duplication of costs being incurred for these regulatory oversight services because ratepayers can't afford to continue paying and watching these payments leave the Yukon. UCG submits that the budget for this type of consultant work should be reduced by 50% in each of 2012 and 2013 as a first step in weaning YEC off their InterGroup dependency.

Staff Costs

223. In its Application (page 3-8, Table 3.4), YEC indicates that its employee level increased from 79 (2009 allowed) to 92 (2011 forecast, 2012 proposed).

224. While YEC provides descriptions of all of these new positions, there has been no cost/benefit or business case analysis provided for any of these positions from which to make a determination of their appropriateness.

225. In response to UCG-YEC-1-25(b), YEC provides a list of staff positions earning more than $100,000 per year. By UCG's count, this list contains 51 in 2009, 53 in 2010, 57 in 2011 and 71 in both 2012 and 2013.

226. UCG submits that 51 positions in 2009 earning more than $100,000 per year represented 65% of YEC's allowed staffing level of 79 and that the 71 positions in 2012 and 2013 earning more than $100,000 per year represents over 77% of YEC's proposed staffing level of 92. UCG submits that these ratios are extremely high and extraordinary for any industry, especially in light of the fact that the average Yukoner's income level is below $50,000.

[64] Transcript Volume 2, page 310.

227. UCG submits that given the extraordinarily high consultant costs being paid for regulatory oversight and administration, YEC should not be rewarded with recovery of all costs related to new staff positions in resource planning or energy conservation. UCG submits that the costs of these positions should be split 50/50 between the shareholder and ratepayers.

228. UCG submits that it is unrealistic to argue that higher wages need to be offered to attract qualified employees when concessions are the rule in other jurisdictions in this shrinking economy. UCG submits that the Board should disallow any proposed increase in labour costs associated with salaries of YEC employees.

229. In response to UCG-YEC-1-26(b), YEC provides details of compensation to its Board of directors. When asked at the oral hearing whether there are members sitting on the Boards of both YEC and the Yukon Development Corporation, YEC responded[65]:

> *A. MR. MORRISON: As -- I'm not sure what the relevance is, but there have been in the past and I think there still might be one or two, but I'm not sure what the point of that is.*

230. As is argued elsewhere in this submission, it is not up to the utility to determine what information an intervenor needs in order to form its arguments. The ongoing arrogance of this utility in this regard continues to promote the adversarial nature of regulatory proceedings in the Yukon which does not provide benefit to any party especially the YUB.

231. UCG submits that the YUB should carefully consider the payments being made by ratepayers directly to members of YEC's Board of Directors (over $109,000 in 2011 and $104,000 in each of 2012 and 2013) given the history of overlap with the Board of Directors for YDC.

232. According to YEC's web site, the 7 members of YEC's Board of Directors are Piers McDonald (Chair), Jason Bilsky, Justin Ferbey, Judy Gingell, Pat Irvin, Diane Lister and Erin Stehelin. According to YDC's web site, the YDC Board of Directors includes 1 member of YEC's Board of Directors (Judy Gingell) and another 8 members (Ray Hayes (Chair), Jacqueline Bazett, Warren Holland, Paul Birckel, John Wierda, Collin Young, Michael Lauer and Joanne Fairlie).

233. UCG submits that the YEC and YDC Boards of Directors should be completely independent to ensure fair and non-biased decisions. Given the existing overlap, UCG submits that the direct and indirect costs of 1 of YEC's Board of Directors should be removed from the 2012 and 2013 revenue requirements to avoid Yukon ratepayers paying for inherent bias.

234. UCG is also concerned with the extra fees paid to the YEC Chair for work that appears to be more politically based than utility based.[66] UCG submits that $30,000 of the fees proposed for the YEC chair should be removed from the 2012 and 2013 revenue requirements to ensure that ratepayers only pay for services rendered with respect to utility services.

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[65] Transcript Volume 2, page 318.

[66] Transcript Volume 2, page 344, line 21 through page 348, line 8

Depreciation and Amortization

235. YEC is seeking approval of depreciation and amortization expenses forecast at $7.813 million for 2012 and $10.012 million for 2013 including the following related approvals:

- Approval of a new planning cost accounting policy proposed to address accumulated deferred costs in Work in Progress.

- Approval of a new Demand Side Management (DSM) accounting policy and related deferred costs to be amortized over the test years.

- Approval to reduce Yukon Energy's depreciation rates for fixed assets to reflect changes in service lives identified in a filed depreciation study.

- An estimated "placeholder" expense of $1.100 million related to costs for the current GRA Application, anticipated to be incurred over 2012 and 2013 for preparation and review of the Application and reimbursement of related intervenor and YUB costs, to be amortized over the 2 test years (2012 and 2013). YEC also seeks approval to adjust the above amount to reflect the full actual amounts incurred or ordered to be reimbursed at the time of the final refiling in the current GRA process, following receipt of all final Orders from the Board.

- Approval of the amortization of regulatory and other related costs incurred over the last several years, including the following:

    - Approval of a forecast cost of $0.859 million related to Yukon Energy's 2011-2030 Resource Plan Update (to be amortized over five years consistent with the anticipated frequency of full Resource Plan updates).

    - A total incurred cost of $0.026 million related to the regulatory review of the Rate Schedule 39 Escalation Proceeding to be amortized over two years.

    - A total incurred cost of $0.313 million related to the regulatory review of the 2009 Phase II Rate Application, to be amortized over two years.

    - A total incurred cost of $0.054 million related to the regulatory review of the Alexco Explorations Power Purchase Agreement, to be amortized over five years which is the currently anticipated economic life of the substantial terms of the PPA.

Proposed Planning Cost Accounting Policy

236. Please refer to section IV – Rate Base for submissions on this proposal.

Proposed Demand Side Management (DSM) Accounting Policy

237. YEC has proposed an accounting approach for the expensing and/or deferral and amortization of DSM costs each year over a ten year period.

238. In response to UCG-YEC-1-18 (Revised) in the current proceeding, YEC indicates that $302,625 in net DSM expenditures incurred prior to 2012 will be amortized over 10 years. UCG submits that this should work out to $30,262.50 per year but YEC states in its application that the costs to be amortized in 2012 and 2013 are $46,000 and $45,000 respectively which includes "return on rate base and amortization".

239. In light of the "used or required to be used" requirement for components of rate base to attract a return on rate base, YEC backtracked during the oral hearing to indicate that because the project is in place and it is generating benefits, YEC considers it to be "used and useful"[67]. UCG submits that YEC has failed miserably in its attempt to justify treating DSM expenditures as rate base items attracting a high return. UCG submits that YEC has provided no evidence that would identify this expense as a legitimate rate base item.

240. YEC testified that it was not aware that other jurisdictions (e.g., Ontario) approve an interest rate for deferral and variance accounts equal to the 3-month bankers' acceptance rate, as published on the Bank of Canada's web site. UCG submits that the YUB should direct YEC to ensure that deferred charges only attract this level of carrying costs – currently 1.47% is allowed by the Ontario Energy Board.

241. YEC agreed during the hearing that when DSM projects result in tangible energy savings, they could be regarded as a substitute for new generation facilities[68] and that demand side management can play a major role in YEC's efforts to reduce diesel on the margins or even diesel as a base generation operation option[69].

242. YEC testified that its application did not include any reduction in load arising from DSM projects or activities[70]. UCG submits that ratepayers are entitled to receive some benefit from these expenses so the YUB should direct YEC to incorporate such a benefit in the revenue requirement.

243. YEC testified that they haven't filed their DSM plan and recognized that they have a commitment to do that with the YUB[71].

244. YEC testified that its proposed DSM accounting policy mimicked what is already being done in many jurisdictions in Canada but only referenced 2 jurisdictions (British Columbia and Manitoba) upon which it based the proposed policy[72]. UCG submits that this provides only a limited sample from which the Board is to make a decision to approve or not.

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67 Transcript Volume 2, pages 336 and 337.
68 Transcript Volume 1, page 31, lines 20-22.
69 Transcript Volume 1, page 32, lines 6-9.
70 Transcript Volume 1, page 32, lines 12-14.
71 Transcript Volume 1, page 33, lines 1-2.
72 Transcript Volume 1, page 34, lines 1-4.

245. YEC refused to provide details of DSM projects that they felt meet the criteria for deferral in the proposed DSM accounting policy[73]. UCG submits that this prevented the effective testing of the proposed policy which, based on the evidentiary record, should be denied.

Depreciation Rates

246. YEC states in its Backgrounder (Exhibit C3-24, Tab 17) that depreciation rate changes in 2005 allows assets to depreciate over longer periods of time and thereby reduce operating costs by $1.2 million per year.

247. In the current application, YEC has asked for updates to the depreciation rates, which – if granted – would reduce depreciation expense by a further $2.4 million per year in 2012 and 2013.

248. In response to UCG-YEC-1-36, YEC states that the proposed changes in depreciation rates decrease the 2012 and 2013 revenue requirements by $2.3 million and $2.4 million respectively since lower depreciation expense is offset by higher return on a higher rate base ($0.066 million higher return in 2012 and $0.205 million higher return in 2013).

249. UCG submits that YEC's calculations related to the net impacts on overall revenue requirements need to be confirmed. YEC confirmed during the oral hearing that the higher rate base related costs will offset the proposed reductions in depreciation expense[74]. UCG submits that the Board should direct YEC to specifically identify the net impact that the proposed change to depreciation will have in each of the test years and going forward since the rate base will remain higher for an extended period of time.

250. In response to UCG-YEC-1-36(c), YEC did not confirm the treatment of vehicle depreciation. During the oral hearing, YEC simply indicated that vehicles were depreciated in accordance with YEC's established rates into income[75]. UCG submits that it remains unclear whether, on an actual basis, vehicle depreciation is expensed as part of gross O&M and then 100% capitalized through direct capitalization. Since proper treatment of vehicle depreciation will affect both the balance sheet and income statement in accordance with generally accepted accounting principles (GAAP), UCG submits that YEC should confirm exactly how it accounts for depreciation.

251. In response to UCG-YEC-1-38(b), YEC indicated that comparable companies were selected on the basis of owning and operating the same type of hydro and electrical generation and transmission assets as YEC. YEC confirmed during the oral hearing that they believe that the utilities used in the comparison for the depreciation study can be identified as similar to YEC. UCG submits that given the studies reference to "comparable companies relied upon in our study included, but was not limited, to the following" (page 10-10), the depreciation study did not identify all of the utilities that were relied upon for the comparison so it is unclear how

[73] Transcript Volume 1, page 35, lines 8-10.
[74] Transcript Volume 2, page 286.
[75] Transcript Volume 2, page 286.

anyone can confirm that all of the utilities used in the study are actually comparable to YEC. UCG questions how some of the utilities actually listed can be compared to YEC given their size, the fact that some are publicly-traded companies, some are generation only utilities, and some operate under US depreciation rules.

252. UCG submits that while it is important to regularly review how utility assets are depreciated, it is equally important to have all Yukon utility assets reviewed at the same time (i.e., including YECL) to ensure consistency. UCG submits that the YUB cannot base its decision regarding the proposed deprecation rate changes on the KPMG analysis of "comparable companies" since there is no evidence that these companies are comparable to YEC's operations.

Placeholder for 2012/2013 GRA Costs

253. With respect to the $1.1 million "placeholder" for costs related to the 2012/2013 GRA Phase I review, YEC testified that it expected the YUB to adjust the revenue requirement allowed for 2012 and 2013 to the actual rate case costs once the Board has issued its cost order related to this GRA[76]. This position was maintained despite the fact that the YUB Order setting approved hearing costs will not be issued until after the compliance filing related to the 2012 and 2013 revenue requirements.

254. While YEC argues that this true-up process has occurred in the past, UCG submits that it is contrary to rate setting principles to allow YEC to simply change the amount of costs that it amortizes in the test years when the YUB has already established the rates to be charged during those years. UCG submits that once the revenue requirements for 2012 and 2013 are established by the YUB, only the 2012/2013 GRA costs approved at that time should be recovered from ratepayers until a decision is made in a subsequent GRA.

Resource Plan Update

255. YEC indicates in its Application that an update was undertaken of its 2006 Resource Plan in 2011 to assist its decision making on new infrastructure projects[77]. YEC indicates that this review assessed impacts on the integrated grid due to the addition of major new assets to the system, updated load forecasts and assessed new generation and transmission options for both the near-term (up to 2015) and longer-term (after 2015) and that it cost $858,906 to complete.

256. While not included in the original application, YEC provided an overview of the Resource Plan Update in response to YECL-YEC-1-18 and provided links to documents that, as far as UCG understands, are still being reviewed as "draft" as part of public consultation sessions in various Yukon communities. As is indicated on YEC's web site:

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[76] Transcript Volume 1, page 73, lines 1-7.
[77] Application page 5.5-9

It is now taking the draft to Yukoners for input. Then the document will be revised based on feedback from the public and will be submitted to the Yukon Utilities Board (YUB)[78].

257. YEC indicated in response to LE-YEC-2-6(a) that the draft updated Resource Plan has been provided for review and comment by the public "and participants in the current GRA proceeding" and that YEC would be considering comments received until mid to late November.

258. UCG submits that it is a stretch to consider the provision of a link to YEC's web site on July 30, 2012 as provision of the Resource Plan Update for review and comment by parties to the current GRA proceeding. UCG submits that the Resource Plan Update has not undergone any review by the YUB and that YEC has not yet applied for any kind of review or approval of the Resource Plan Update. YEC confirmed this position in response to UCG-YEC-2-5 when it stated that "*Resource Plan documents made public to date are not "included" for approval in the GRA per se*".

259. In UCG's opinion, the Resource Plan Update is still a work in progress and can only be regarded at this point to be an internal guideline document created by and for the sole use of YEC's management.

260. UCG submits that despite the fact the YEC is still accepting comments on its draft Resource Plan Update, it plans to continue to use the draft 2011 Resource Plan to frame priorities and options for ongoing new assessments and analysis, without going back to amend or revise the draft as prepared in 2011[79]. This appears to cast the current round of public consultation as a waste of time and money. Given that YEC does not intend to use the public consultations as a means to amend the Resource Plan Update for purposes related to project expenditures during the 2012 and 2013 test years, UCG submits that all costs related to this public consultation should be eliminated from the costs that YEC has proposed for recovery. UCG also submits that if the current draft of the Resource Plan Update is not going to be changed, there is no reason why it could not be subject to Ministerial direction to have the YUB conduct a public review of it.

261. UCG submits that to consider a resource plan that is reviewed and approved by the YUB as a living document that continues to evolve[80] does not give parties to these reviews any sense of comfort that recommendations of the YUB won't be ignored and projects changed based solely on YEC management's discretion. The whole purpose behind a review and the YUB's recommendations is to firm up the plans of the utility based on what is determined to be in the best interests of the utility and ratepayers. To arbitrarily vary from that plan without further public review in light of the established plan should not be tolerated given the costs that ratepayers are regularly asked to absorb with respect to project development costs.

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78 http://www.yukonenergy.ca/about/business/resourceplans/

79 Response to LE-YEC-2-6

80 Response to YCS-YEC-2-7

262. YEC's evidence indicates that it spent $175,097 on the Resource Plan Update in 2010[81], spent another $633,906 on it in 2011 while writing off or transferring the $175,097 spent in 2010[82] and spent another $225,000 in 2012[83]. It is not clear to UCG what happened to the costs identified for 2010 to arrive a total reported cost of $858,906.

263. UCG submits that any justifications for expenditures that are based on the draft Resource Plan Update cannot be considered as sufficient and are simply YEC's own opinions regarding their own projects.

264. For illustration purposes, UCG submits these examples of conclusions and decisions being made based on the draft Resource Plan Update:

i. YEC indicated in response to CW-YEC-1-21(b) that spending in 2012 on the Resource Plan Update was required to "*facilitate decision making on major infrastructure projects by providing new additional information on load forecasts, generation and transmission options as well as an assessment of alternatives*".

ii. YEC indicated in response to LE-YEC-1-40 that the Resource Plan Update "*considered load risks, affordability and flexibility when assessing the various future resource options, highlighting the load risks specific to capital intensive generation options that offer little if any flexibility to adapt to changing load conditions*".

iii. In response to YCS-YEC-1-8, YEC states that the Resource Plan Update "*reviews the impact of the isolated Yukon grid where generation that cannot be used to meet Yukon grid loads is effectively "spilled" (as occurs with surplus hydro generation on this grid) and has no value*" and makes various references to the results of the Resource Plan Update.

iv. In response to YECL-YEC-1-31, YEC indicated that the Resource Plan Update addresses the Whistle Bend connection project and that an "*evaluation on the capacity capability of the system indicated that the previous approach used for WAF was reasonable for the integrated system, subject to the 25 km line L172 between Takhini and Whitehorse being appropriately reinforced within the next few years to eliminate line constraint in this line segment*".

v. In response to YUB-YEC-1-25(a), YEC indicates that the Resource Plan Update recommends completion of the required environmental, engineering and remediation studies related to the Marsh Lake Storage project in order to make a determination whether it is feasible and cost-effective to proceed, recommends that YEC plan within the next 6 to 12 months to reach a final determination regarding whether the Gladstone Diversion project is feasible to pursue at this time based on discussions with local First Nations and regulators, that more recent information suggests that the earliest in-service date for the Mayo Lake Enhanced Storage project is now winter 2014/15, that YEC identify and pursue opportunities for small scale (e.g., 2 to 3 MW) wood biomass pilot project, potentially in

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[81] Application Table 5.4, page 5-56
[82] Application Table 5.5, page 5-58
[83] Application Table 5.6, page 5-60

association with existing wood operations at Haines Junction, and seek funding support for this pilot project, that YEC determine whether it is able to establish LNG generating capability in Whitehorse prior to 2015 with sufficient capacity to displace grid diesel generation under current Base Case grid load forecasts, and determine the feasibility of utilizing LNG in the event that material additional near-term grid loads occur, and that YEC carry out scaled down geothermal investigations and look for funding support for geothermal exploration and studies, and seek funding support for these activities.

vi. In response to YUB-YEC-1-40, YEC indicates that the Resource Plan Update specifically highlights expected challenges related to near and longer term growth in the coming years and the related default diesel generation requirements and costs, and that planning cost requirements since 2009 result from work to address the potential near term requirements for significant new generation to displace expected diesel requirements under potential load scenarios that assume connection of Victoria Gold and/or Carmacks Copper mine loads by as soon as 2015/16.

vii. In response to YUB-YEC-1-49, YEC indicates that the Resource Plan Update indicates that the LNG Transition Portfolio option provides a range of potential benefits relative to the other near-term grid generation options available for potential commitment before 2015 and that there is potential for LNG to displace diesel at off-grid generating sites in Yukon.

265. Without having an opportunity to review a full and final Resource Plan Update and ask clarification questions on its contents, conclusions and recommendations, UCG submits that the Resource Plan Update is incomplete and its costs have not been evaluated for prudency based on any review of a final product. UCG submits that the applied for amortization of the $858,906 spent on the Resource Plan Update is premature and should not be allowed at this time.

266. YEC states in response to LE-YEC-2-6 that "*apart from this YEC GRA proceeding, Yukon Energy is not aware of any process for review by the Board of the 2011 Resource Plan other than processes initiated by ministerial direction pursuant to the Public Utilities Act, e.g., Part 3 proceedings to review designated energy projects*". UCG submits that the expectations of the YUB regarding review of an updated resource plan were made clear nearly 6 years ago.

267. In its report on YEC's 2006 Resource Plan submitted to the Commissioner in Executive Council on January 15, 2007, the YUB recommended that YEC file an update to its resource plan in five years, <u>at the latest</u>, and indicated its expectations that YEC would consult with stakeholders in preparation of its next resource plan.

268. UCG submits that the filing of an updated resource plan is now a year overdue and YEC should be directed to do whatever needs to be done to get Ministerial direction to have a final and complete Updated Resource Plan reviewed by the YUB before any of the costs of capital projects identified in the draft Resource Plan Update are considered for recovery. The YUB should also use its authority under section 17(4) of the *Public Utilities Act* to transmit to the Minister a request that the Commissioner in Executive Council issue a direction to review the updated resource plan.

Rate Schedule 39 Escalation Regulatory Costs ($36,000)

269. In response to UCG-YEC-1-15 in the current proceeding, YEC states that there is no basis to charge costs related to the Rate Schedule 39 Escalation Proceeding solely to the industrial class.

270. In its Reasons for Decision in Order 2010-13, the YUB states that "ideally, a cost of service should be 100% assigned costs, as this would represent 100% cost responsibility" and that "the Board agrees that the costs to serve the larger customers may be more identifiable for the purposes of being directly assigned".

271. UCG submits that any costs that can be directly identified as pertaining to a specific class of customer should be recovered from that customer class. If the YUB believes that legislative barriers prevent the immediate recovery of these costs, then UCG submits that these costs should be stored in a deferral account until the barriers are removed.

272. Since YEC confirmed that costs of serving industrial customers are recovered directly from them through the purchased power agreements[84], UCG submits that the YUB should direct YEC to ensure that all purchased power agreements with industrial customers include a provision for the recovery of regulatory costs that can be attributable to these industrial customers.

2009 GRA Phase II Costs

273. YEC has applied to recover $156,269 in each of 2102 and 2013 (total $312,537) related to the costs allowed in the 2009 GRA Phase II proceeding. Based on the costs allowed by the YUB in its Order 2011-08, the total to be recovered by YEC is $313,879.22.

274. UCG submits that it is not clear how YEC arrived at the $312,538 amount included in its application especially given the transfers / write-offs identified which reduced a total $407,141 expense down to $312,537. UCG assumes that the calculations that YEC has placed within evidence[85] somehow reflect how it has treated the disallowed costs.

275. UCG submits that YEC should be directed to provide a reconciliation to the amounts that should be recovered for this proceeding before anything is approved for recovery in 2012 and 2013 rates.

[84] Transcript Volume 2, page 344.

[85] Application tables 5.4, 5.5, 5.6 and 5.7.

Disallowed Costs

276. Over the last 3 years, the YUB has disallowed YEC from recovering $455,096.32 in costs it has claimed in various regulatory proceedings.

> *Reference – YUB Order 2012-01 (February 27, 2012)*
> *The Board disallowed **$6,609.67** in outside services costs claimed by YEC related to the review of the YEC & YECL Rider F - Fuel Adjustment Rider & Deferred Fuel Price Variance Policy.*
>
> *Reference – YUB Order 2011-09 (July 21, 2011)*
> *The Board disallowed **$3,140.00** in outside services costs claimed by YEC related to the review of the Power Purchase Agreement between YEC and Alexco Resource Corp.*
>
> *Reference – YUB Order 2011-08 (June 28, 2011)*
> *The Board disallowed **$181,197.09** in outside services costs claimed by YEC related to the review of the YECL / YEC 2009 Joint Phase II Rate Application.*
>
> *Reference – YUB Order 2010-09 (September 2, 2010)*
> *The Board disallowed **$39,915.82** in outside services costs claimed by YEC related to the review of YEC's application for an Energy Project Certificate and an Energy Operation Certificate regarding the Proposed Mayo Hydro Enhancement Project.*
>
> *Reference – YUB Order 2009-11 (December 8, 2009)*
> *The Board disallowed **$224,233.74** in outside services costs claimed by YEC related to the review of YEC's 2008/2009 General Rates Application.*

277. Only the $224,000 disallowance per Order 2009-11 is specifically identified in YEC's revenue requirement schedules (reference Application Tab 7, Schedule 5, line 13). Other disallowances are supposedly included under the "Miscellaneous" line in YEC's Statement of Earnings (reference Application Tab 7, Schedule 6, line 13).

278. During the oral hearing[86], YEC committed to provide details of miscellaneous amounts shown in its Statement of Earnings. In its undertaking response filed on November 19, 2012, YEC indicated that the Regulatory Gain/Loss account contained $65,000 in 2009, $58,000 in 2010 and $248,000 in 2011 and that it exists:

> *…to track a) amounts specifically disallowed by the YUB as part of cost award proceedings and b) other amounts that are not generally claimable due to policy direction of the Board (e.g. Consulting administrative costs). For example, the $0.248 million amount in 2011 is comprised of the following disallowed costs: $0.238 million for the 2008/2009 Phase 2 Rate Application; $0.008 million for the Alexco PPA proceeding and $0.002 million for the Rate Schedule 39 Inflation Update proceeding.*

[86] Transcript Volume 2, page 320.

279. UCG makes the following observations regarding YEC's accounting for disallowed costs:

i. YEC claims to have recorded **$238,000** in disallowed costs related to the 2008/2009 Phase 2 Rate Application. According to Board Order 2011-08 dated June 28, 2011, the YUB disallowed **$181,197.09** in outside services costs claimed by YEC related to the review of the YECL / YEC 2009 Joint Phase II Rate Application ($388,978.97 claimed, $207,781.88 allowed).

ii. YEC claims to have recorded **$8,000** in disallowed costs related to the Alexco PPA proceeding. According to Board Order 2011-09 dated July 21, 2011, the YUB disallowed **$3,140.00** in outside services costs claimed by YEC related to the review of the Power Purchase Agreement between YEC and Alexco Resource Corp. ($22,064.91 claimed, $18,924.91 allowed).

iii. YEC claims to have recorded $2,000 in disallowed costs related to the Rate Schedule 39 Inflation Update proceeding. According to Board Order 2011-07 dated June 27, 2011, the YUB did not identify any costs incurred by YEC that should be recovered with respect to this proceeding since YEC did not submit a cost application.

280. UCG submits that there is inconsistency between what YEC records as disallowed from recovery from ratepayers and what the YUB has determined in its Orders. There is also no discussion by YEC in its undertaking response about the fees over and above the Scale of Costs that its legal and regulatory consultants charge.

281. UCG finds it disturbing that when YEC is charged fees over and above the Scale of Costs by its legal and regulatory consultants, YEC simply includes the excess charges under miscellaneous expense before submitting a cost claim to the YUB[87]. UCG submits that it is unclear whether ratepayers are on the hook for these excess charges or not.

282. UCG submits that YEC should be directed to provide a reconciliation for 2009 through 2012 between costs that have been disallowed by the YUB and/or costs charged by legal and regulatory consultants at rates above the Scale of Costs, and the amounts that YEC has recorded in its Regulatory Gain/Loss account. This reconciliation should include copies of all itemized invoices that YEC has received from its legal and regulatory consultants.

283. To illustrate the significance of the costs charged by legal and regulatory consultants at rates above the Scale of Costs, UCG draws the Board's attention to Phase I of YEC's 2008/2009 GRA proceeding during which the invoices provided by YEC indicate that Davis LLP had charged hourly rates to YEC above the maximum fee allowed in the Board's Scale of Costs. Based on the information provided at that time, UCG's calculations indicate that Davis LLP's time charges to YEC were **$54,913.78 + $2,745.69 GST** above the maximum Scale of Costs rates deemed reasonable for recovery from ratepayers. For Phase 2 of the 2008/2009 GRA, UCG's calculations indicate that Davis LLP's time charges to YEC were **$28,490.00 +**

[87] Transcript Volume 2, page 321.

$1,424.50 GST above the maximum Scale of Costs. That's a total of **$87,573.97** related to the 2008/2009 GRA that YEC has not addressed as a disallowed cost in its statement of earnings.

284. UCG submits that ratepayers should not be held liable for any costs above what the Board has already deemed a fair and reasonable contribution by ratepayers. YEC's management has made the decisions to enter services agreements with legal and regulatory consultants at rates above the maximum recoverable under the Scale of Costs. UCG submits that informed choices like this place the responsibility for excess costs with the shareholder.

Alexco Explorations Power Purchase Agreement Regulatory Costs ($54,000)

285. In response to UCG-YEC-1-16 in the current proceeding, YEC states that there is no basis to charge costs related to the Alexco Explorations Power Purchase Agreement solely to the industrial class.

286. In its Reasons for Decision in Order 2010-13, the YUB states that "ideally, a cost of service should be 100% assigned costs, as this would represent 100% cost responsibility" and that "the Board agrees that the costs to serve the larger customers may be more identifiable for the purposes of being directly assigned".

287. UCG submits that any costs that can be directly identified as pertaining to a specific class of customer should be recovered from that customer class. If the YUB believes that legislative barriers prevent the immediate recovery of these costs, then UCG submits that these costs should be stored in a deferral account until the barriers are removed.

288. Since YEC confirmed that costs of serving industrial customers are recovered directly from them through the purchased power agreements[88], UCG submits that the YUB should direct YEC to ensure that all purchased power agreements with industrial customers include a provision for the recovery of regulatory costs that can be attributable to these industrial customers.

Average OM&A Costs per Customer

289. In response to UCG-YEC-1-25(c), YEC provides average OM&A costs per customer which YEC describes as "of limited value". UCG submits that this, again, illustrates the adversarial and non-cooperative approach to regulatory proceedings promoted by YEC.

290. When asked at the oral hearing if they could provide average OM&A cost per customer using a weighting factor which would allow for the segregation of the costs associated with the wholesale customer, YEC stated that that they could not produce the information and determined that this type of information would not be meaningful to UCG.

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[88] Transcript Volume 2, page 344.

291. Again, UCG submits that it is not up to the utility to determine what information an intervenor needs in order to form its arguments. The ongoing arrogance of this utility in this regard continues to promote the adversarial nature of regulatory proceedings in the Yukon which does not provide benefit to any party especially the YUB.

292. Second, as was explained by UCG's counsel at the oral hearing[89], the requested information is a valuable tool in jurisdictions that have advanced to a stage where performance benchmarking has become a preferred measurement tool for regulators when determining revenue requirements and rates of regulated utilities.

293. UCG submits that YEC should be directed to provide ongoing reporting of performance benchmarking information to the YUB and intervenors on an annual basis that would indicate (for the current year and an average for the last 3 years): (1) average OM&A costs per customer by rate class; and (2) average total revenue requirement per customer by rate class. UCG submits that costs in the previous 3 years most affect rates and there is a temptation for utilities like YEC to talk up the need for cost growth even if their historical costs are low.

294. UCG submits that the YUB may still undertake some traditional prudence reviews but can rely more extensively on benchmarking results to set initial rates and the escalation terms of rate adjustment mechanisms in the Yukon can be moved into the performance-based mechanism for rate setting. This use of benchmarking in ratemaking can materially strengthen performance incentives and thus be considered a component of a broader scheme of incentive regulation.

VII. RATES

295. YEC has requested approval of the following rates to recover 2012 and 2013 revenue:

i. Approval of a 2012 Yukon Energy Revenue Shortfall Rider (Rider J) of 6.40% applicable to all YEC and YECL retail firm rates (with all YECL recoveries from this rider would flow through to YEC), and a Rider J of 2.90% applicable to all major industrial firm rates then in effect pursuant to Order 2011-14, including the fixed Rider F charge of 0.211 cents/kWh.

ii. Approval of a 6.50% Yukon Energy revenue Shortfall Rider (Rider R) charged to all retail and industrial firm rates (including the 2012 shortfall Rider J) starting January 1, 2013 (with all YECL recoveries from this rider flowing through to YEC). The Rider R increase applies to all major industrial rates then in effect, including Rider J and the fixed Rider F charge.

iii. Approval to trigger the Energy Reconciliation Adjustment ("ERA") provision of Rate Schedule 42 on an ongoing basis effective January 1, 2012 and to adjust the specific wording of the ERA as required to reflect updates to the DCF.

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89 Transcript Volume 2, page 315.

296. In its Order 2012-05 dated June 7, 2012, the YUB approved an interim, refundable rate adjustment of 6.4% for retail customers and 2.9% for industrial customers through implementation of Rider J effective July 1, 2012.

297. In its Order 2012-10 dated November 5, 2012, the YUB approved an interim, refundable rate adjustment of 3.75% for firm retail and industrial customers through implementation of Rider R effective January 1, 2013.

298. UCG submits that YEC's opening statement during the oral hearing contrasts the application for significant rate increases by referring to this application as part of its effort to continue development of Yukon's capability to meet ongoing growth with affordable electricity[90] and that the Yukon continues to offer the lowest electrical rates in Northern Canada[91].

299. YEC claimed in its opening statement that it has expanded its transmission and generating capabilities over the past 7 years while reducing rates[92] and has avoided the need for rate increases[93]. UCG submits that this, of course, is quite misleading given the increases in total bills that Yukon ratepayers have had to endure over those same 7 years with YEC's use of rate riders. UCG submits that YEC continues to mislead ratepayers with its inaccurate portrayal of themselves as not being responsible for the increasing cost of electricity in the Yukon. UCG submits that YEC should be directed to communicate with the public using accurate information and not glossed over renditions of reality.

300. YEC continued to mislead Yukoners in its opening statement by taking credit for "ratepayer savings" that either neglected to include ongoing cost pressures of measures taken or simply required nothing more than an administrative adjustment to change how costs are recovered[94].

301. YEC's claim of ratepayer savings of $3 million in 2012 and $2.6 million in 2013 arising from the reduction in diesel generation requirements following the completion of the Carmacks-Stewart Transmission Project, the Mayo B Project and the Aishihik 3rd Turbine Project have not been subjected to detailed evidence or public testing.

302. YEC's claim of ratepayer savings of $1.5 million annually in the test years from the refinancing of Yukon Energy's long-term debt at the end of 2010 required little or no effort and has not been subject of extensive evidence or analysis.

303. YEC's claim of ratepayer savings of $2.3 million in 2012 and another 2.4 million in 2013 arising from reductions requested in the depreciation rates of key generation and transmission assets neglects to include the longer term pain for ratepayers of extending the period for principle and return payments for these same assets.

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90 Transcript Volume 1, page 9, lines 24-25.
91 Transcript Volume 1, page 10, lines 4-5
92 Transcript Volume 1, page 10, lines 13-15.
93 Transcript Volume 1, page 11, lines 21-22.
94 Transcript Volume 1, page 12, lines 2-13.

Rate Impacts

304. UCG is astonished by YEC's inability to produce rate impact information. As it turns out, it was more YEC not wanting to calculate requested rate impacts that ruled the day rather than the lack of available information[95]. UCG submits that cooperation and transparency are concepts that are beyond the mission statement of YEC.

305. Given the proposed 13% bill increase over the test years and the lack of any associated rate mitigation proposals, YEC was unable to comment on what level of bill increase would warrant any type of bill mitigation measure. UCG submits that YEC should be directed to not only address bill mitigation but to develop and implement a policy in this regard.

306. In response to UCG-YEC-1-3(e), YEC states that in the 2008/2009 GRA, YEC applied for rates to be implemented in a manner that was not "across-the-board", reflecting updated information on costs related to the various rate components, while still reflecting the limitations on inter-class rebalancing contained in OIC 2008/149. YEC states that the Board instead concluded that across-the-board rate adjustments were appropriate. However, when asked at the oral hearing where in the YUB's decision in the 2008/2009 GRA the Board concluded that across-the-board rate adjustments were appropriate, YEC was not able to identify anything other than its own inference on what is determined in the Order[96].

307. In Appendix 4.2 of the Application, YEC states that the Yukon Residential bills are competitive with other jurisdictions, as the bills in nine other cities are higher than the existing Yukon Residential bills. UCG submits that without knowing details of the economic, regulatory and political environments within which rates are set in these other cities, there is absolutely no value in comparing the bills paid by Yukoners with the bills paid elsewhere. UCG submits that the effort and cost to produce these types of apples and basketball comparisons is an absolute waste when there is no relevance to justifying the proposed 2012 and 2013 revenue requirements in the Yukon.

308. In response to UCG-YEC-1-5(Revised), the bills for 1000 kWh (before tax rebate, RSF/IER and GST) have increased from $110.50 in 1997 to $156.08 proposed for 2013 which is an overall increase of 41.2% in costs controlled by YEC.

309. During the oral hearing, YEC admitted to having no suggestions on how low income families of the Yukon can address the impact of the proposed bill increases on their disposable income[97]. UCG submits that this leaves the 360 Yukon families living below the low income cut-off (Exhibit C3-24, Tab 19) with little or no hope of being able to handle these proposed bill increases.

310. Despite the fact that affordability was one of the key principles that was reinforced during the Energy Charette hosted by YEC in March 2011, YEC provided no evidence that it is currently

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95 Transcript Volume 1, page 184.
96 Transcript Volume 2, pages 323-324.
97 Transcript Volume 2, page 326.

working with any social agencies to address the needs of low income Yukoners nor does YEC appear aware of any low income assistance programs that exist in other jurisdictions.

311. UCG submits that YEC should be directed to address the difficulties faced by low income ratepayers and develop programs in conjunction with Yukon's social agencies to assist these Yukoners.

312. UCG submits that it makes no sense for YEC to have collections policies in place to accommodate ratepayers when they are in distress and need assistance to get their financial house in order and not let anyone know about it. UCG submits that YEC should be directed to make these accommodations known to ratepayers and ensure that the programs offered by YEC and YECL are consistent.

313. UCG submits that YEC should be directed to ensure that there are no barriers within programs like DSM that prevent any Yukoners from participating and that measures are in place to ensure all Yukoners have an opportunity to participate in programs that will help them control their electricity costs.

Energy Reconciliation Adjustment

314. YEC's proposal is to adjust charges to YECL on a monthly basis to reconcile actual wholesale purchases to YEC's most recent test year forecast purchases during the months when Yukon Energy diesel generation is modified by such variances in wholesale purchases. To the extent that actual wholesale purchases fall short or exceed YEC's most recent test year forecast wholesale purchases, an adjustment to the YECL bills will be made based on the variance in diesel generation costs incurred by YEC as a direct result of actual wholesale purchases falling short or exceeding forecast wholesale purchases. Such adjustment for shortfalls in actual wholesale purchases will be limited to minus 10% of the forecast wholesale purchases in any period.

315. YEC confirmed during the oral hearing that the intent of the ERA is to ensure that YECL receives a full flow-through of the incremental costs of the diesel generation driven by increases in the volume of wholesale sales and also to ensure that YEC is able to recover its costs when diesel is on the margin[98].

316. UCG submits that YEC's proposed treatment of the ERA was developed without any consultation with YECL or other stakeholders[99] and is another illustration of where YEC would rather establish its own regulatory policy and limit discussion on it rather than get input during policy development. Despite the fact that the proposed ERA is expected to have significant impacts on Yukon ratepayers, YEC has not provided any alternative approaches to this mechanism that eliminates more of the risk for which YEC receives compensation through the allowed return on equity.

98 Transcript Volume 1, page 128.
99 Transcript Volume 1, page 129.

317. UCG submits that ERA proposal has not been evaluated against alternatives so there is no way to know if this is the best approach. Given the direct impact on Yukon ratepayers of any costs passed through to YECL, UCG recommends that the YUB not approve this proposal until more time has been put into evaluating available alternatives.

Phase II – Cost Allocation and Rate Design

318. In response to YECL-YEC-1-1, YEC states that the direction in Order 2010-13 to produce a joint YEC/YECL cost of service study within six months of the expiry of OIC 2008/149 is extended by one year to June 30, 2014. At the oral hearing, YEC testified that its expectation was that this cost of service study would be based on revenue requirements approved for 2014[100].

319. UCG submits that, given the real possibility that YECL will soon be submitting a general rates application for 2013 and 2014, and the length of time that is typically needed to develop a joint cost of service study and related rate design, it makes more sense for the YUB to direct that the next Joint Phase II proceeding be based on allowed 2013 revenue requirements.

Performance Based Regulation

320. In its January 2007 Report on YEC's 20-Year Resource Plan, the Board suggested that YEC and YECL consider a performance-based regulation mechanism as part of the next general rates application. YEC's 2008/2009 General Rates Application did not address performance-based regulation and YEC's current application does not contain any proposal for a PBR mechanism.

321. In response to UCG-YEC/YECL-1-4 in Phase 2 of the 2008/2009 GRA proceeding, YEC said that PBR is fundamentally a matter for revenue requirement reviews (not a Phase II application) and that implementing this form of regulation would likely require significant changes to the regulatory framework in the Yukon that have not been assessed. YECL stated that the utilities had not considered or addressed a performance-based regulation mechanism in the 2008/2009 GRA and that existing base rates have been sufficient to recover base revenue up until the requirement for the 2009 GRA.

322. In response to UCG-YEC-1-17 in the current proceeding, YEC simply referred back to the response to UCG-YEC-1-19 in Phase 1 of the 2008/2009 GRA review when asked for details of YEC's efforts (or lack thereof) to date to consider a performance-based regulation mechanism including earnings sharing.

323. Earlier this year, the Alberta Utilities Commission approved a switch to performance-based regulation for electric and gas utility distributors effective January 1, 2013 including YECL's affiliates at ATCO.

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100 Transcript Volume 1, pages 177-178.

324. UCG submits that without Board approvals for components of revenue requirement since 2009, YEC has essentially been operating under a PBR mechanism for 2010 and 2011 without common PBR features such as productivity factors and benchmarking reports. UCG submits that there is no reason why a PBR mechanism could not be considered following the completion of a Phase 2 review.

325. Another feature common to PBR mechanisms is an earnings sharing mechanism. The *Public Utilities Act* states that:

> *29. In setting rates that a public utility is permitted to charge…(d) the board shall by order approve the method by which and the period during which any excess revenue received or deficiency incurred is to be used or dealt with.*

326. UCG submits that YEC experienced significant over-earnings in 2008 and 2009. Within a PBR mechanism, there would be a requirement to ensure that a portion of over-earnings are credited to ratepayers by way of a revenue requirement reduction.

327. UCG submits that no part of OIC 2012/68 prohibits the YUB and other parties from reviewing the cost allocation and rate design of YEC and YECL.

328. UCG submits that Yukon ratepayers need to rely on the utility regulator to determine how best to set fair and reasonable rates. Yukon ratepayers have not seen a true cost allocation reckoning accepted by the YUB since 1996. YEC should be directed to work with YECL to produce true cost of service numbers for rate classes so that all ratepayers can see what unsubsidized rates would be and be able to make practical / specific recommendations to lower costs where they need to be controlled. Given that the majority of ratepayers are residential consumers, they are entitled to understand where utility costs are accumulating and to ensure that the industrial class is indeed creating benefit for other ratepayers as is being claimed by YEC and the government. UCG submits that it is time to identify true revenue-to-cost ratios.

329. UCG submits that it is time to shed some light on what is happening to utility costs rather than keep putting it off by artificially shielding ratepayers from true costs. It's time that ratepayers participate in governing the actions of the publicly-owned utility.

330. The approach of YEC has been to put a priority on growing the industrial load while being indifferent to the cost subsidies that may be implicit in the approach. At the oral hearing, YEC (Mr. Osler) noted YEC's basic approach[101]:

> *"The fundamental point in the application is that if we cut back the load of any one of the industrial customers, we have to raise more money from other customers. And if we increase the load from any one of the other customers while the assumptions in the application, other customers have a lower rate increase."*

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[101] Transcript Volume 3, page 487.

331. The idea that industrial customers are beneficial to the system informs the approach of YEC to the extent that it refuses to contemplate assignment of regulatory costs associated with applications primarily concerned with industrial customer issues as noted again by Mr. Osler[102]:

> *"The question of a regulatory proceeding – who is benefitting from it is an interesting question. But I think that given the revenue impacts from the customers we're talking about helping to keep all the rates down, at least an argument could be made that the costs could be allocated the other way."*

332. UCG submits that one of the most important aspects of the Board in regulating the energy sector is to identify the fair cost of providing electricity to Yukon's ratepayers, not only at the total revenue requirement level during Phase 1 of the hearing process, but also at the level of appropriately constructed ratepayer classifications. Whether the government, through subsidies outside the regulatory construct or specific restrictions of the Board's ability to shift costs between customer classes, chooses to deviate from cost causality in the final rates experienced by ratepayers does not derogate from the Board's obligation to identify the fair cost of energy.

333. In performing its regulatory function, the Board must balance the respective interests of the utility and the collective interest of all consumers in rate setting. While avoiding inter-class and intra class subsidies has traditionally been the good of regulation, the Board has been prevented from pursuing this goal by constricting rate policy directives issued by the Yukon government.

334. UCG submits that, to arrive at rates that are just and reasonable, the Board needs to make a cost-based rates determination before entertaining rate-setting objectives such as energy conservation or incentive mechanisms that might move rates away from cost causality.

335. UCG submits that the supply of electricity serves to meet basic human needs such as lighting, cooking, refrigeration and warmth from heating. Access to an essential service is arguably a broad public concern. The supply of electricity can be considered a necessity that is available from a single source with prices set by the Board in the public interest.

336. The National Energy Board provides a definition of "public interest" in its Strategic Plan which UCG submits should be used in the Yukon given the various interests to consider:

"The public interest is inclusive of all Canadians and refers to a balance of economic, environmental and social interests that change as society's values and preferences evolve over time. As a regulator, the Board must estimate the overall public good a project may create and its potential negative aspects, weigh its various impacts, and make a decision."[103]

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[102] Transcript Volume 2, page 345.
[103] National Energy Board Strategic Plan 2009-2012

337. In its June 1992 report on cost of service and rates, the Board made the following recommendations:

- *That a target range for revenue to cost ratios of 90% to 110% be established for all customer classes other than the industrial class, and that the YEC and YECL take the necessary steps to improve the quality of their cost of service studies so that a target revenue to cost ratio of 95% to 105% will be attainable.*

- *That a target revenue to cost ratio of 100% be established for the industrial class.*

- *That the changes to rates required to bring revenue to cost ratios within the ranges established be phased-in over a reasonable period of time, and that the Board monitor the progression of revenue to cost ratios toward the acceptable range in future general rate applications by YEC/YECL.*

- *That the run-out rates for all zones should be adjusted to reflect short-run incremental costs, and that the YEC and YECL should undertake a study for the purpose of identifying long-run marginal costs that should be included in the run-out rates for consideration by the Board.*

338. In its Order 1996-7 (dated June 11, 1996), the Board again directed YEC and YECL to design a rate shift program that would target all customer class revenue / cost ratios of 90% to 110% over a ten year period. UCG submits that there has been little or no work completed in this regard despite the Board's recommendations. While OIC 2012/68 restricts what the Board can do from a rate adjustment perspective, UCG submits that it is important that the Board takes the opportunity of a Phase 2 review to illustrate the cost responsibility of each rate class in relation to the rates charged to provide transparent information to ratepayers who have to evaluate the intervening government policy. UCG submits that the Phase 2 review should be used to direct the utilities to establish a plan to move toward the established revenue-to-cost ratio ranges as the existing OIC 2012/68 expires.

339. UCG submits that there has not been enough customer impact analysis / evidence placed on the record to fully inform the Board what is happening to revenue-to-(true)-cost ratios nor the end user's bill. UCG submits that Board cannot make decisions on rates and rate riders for individual utilities without understanding the overall impact on the end user (i.e., YEC and YECL rate adjustments plus government subsidies).

340. UCG submits that while the industrial rates are artificially held constant by OIC, the cost of service for industrial loads should still be determined and any revenue surplus / deficiency created by the frozen rates should be isolated to protect the non-industrial classes from any adverse impacts and instability. If the Phase 2 review indicates that the industrial rates established by the Yukon government do not recover the full cost of service for that class, then UCG submits that the Yukon government, not the non-industrial ratepayers, should be held liable for the revenue deficiency.

VIII. BOARD RECOMMENDATIONS AND DIRECTIVES

341. UCG submits that there is a disturbing trend associated with the response of YEC to directions from the Board associated with its operations and the preparation of reports and studies that assist in the discharge of the Board's responsibilities. Whether it is working with YECL to review cost allocation to various customer classes, production of a policy paper associated with DSM measures, updates on the marketing of carbon credits or consideration of implementation of performance based regulation, there are few apologies for failures to Board requests. The overall impression left from YEC's response to its delinquencies is that, YEC believes its own priorities take precedence to that of the Board and that there should be no enforcement triggered by its lapses.

342. UCG disagrees. The fundamental purpose of regulation is to align the actions of the regulated utility with the public interest. It is inherently subversive of that role if the regulator's authority can be flouted with impunity.

343. UCG suggests that the Board Decision in this current case be accompanied by an appendix setting out the responsibilities of YEC arising from the Decision with an appropriate timeline. The Board should entertain no further rate applications from YEC until those duties have been fulfilled.

344. In its May 17, 2010 Report to Yukon Minister of Justice regarding YEC's Application for an Energy Project Certificate and Energy Operation Certificate Regarding the Proposed Mayo B Hydro Enhancement Project, the Board indicated that YEC should provide an update on its pursuit of marketing carbon credits in its next GRA.

345. YEC testified that since they had not been directed to provide a report regarding the pursuit of marketing carbon credits, they did not submit anything in its application related to this issue. While YEC made a brief mention to there being no market that for carbon credits from the Yukon, UCG submits that this is considered a poor effort at updating the YUB and interested parties on the efforts that YEC has made in this regard. UCG submits that a more formal direction to YEC in this regard is warranted.

IX. FINANCIAL SCHEDULES

346. In response to YECL-YEC-1-31 in its 2008/2009 GRA proceeding, YEC indicated that it had hired KPMG to provide assistance with the required conversion to International Financial Reporting Standards (IFRS) by 2011 with reporting starting in January 2010. However, YEC refused to provide details of the contractual arrangements with KPMG.

347. In its 2012/2013 General Rates Application, YEC stated that the Canadian Accounting Standards Board has allowed entities that meet the criteria for rate regulated activities to defer transition to IFRS for one year (to years beginning on or after January 1, 2012) and to continue to apply CGAAP until that time. YEC elected to take this deferral option and indicated that it would report under IFRS for the first time in its year ended December 31, 2012.

348. In response to UCG-YEC-1-46 in this current proceeding, YEC confirmed its willingness to defer adoption of International Financial Reporting Standards until January 1, 2013 to allow issues associated with rate regulated accounting under IFRS to be resolved.

349. UCG submits that given the time line established for IFRS reporting, YEC has been slow in its approach to this issue with higher costs being incurred as consultants have been unnecessarily burdened with a tight deadline. Without knowing the contractual arrangements with KPMG, UCG is unable to estimate what the additional cost has been.

350. UCG assumes that YEC's consultants are working to identify the changes impacting YEC's accounting and reporting for external general purpose financial statements and to develop plans to address these changes. While it is not clear at this time what the exact impact of the changes will be, it is clear that there will be impacts on YEC's costs, revenues and the resulting revenue requirement.

351. The adoption of IFRS is expected to change the manner in which utilities perform their accounting and the reporting of financial results, and this may create impacts on distribution rates or other charges. UCG submits that the Board should ensure that both YEC and YECL are developing consistent plans to transition to IFRS. The Board should also be involved in order to determine the effects of the adoption of IFRS on regulatory accounting and rate making, to identify necessary changes to the Board's filing and reporting requirements and rate setting methodologies.

352. UCG submits that the Board should determine whether YEC and YECL will be allowed to use deferral and variance accounts for rate making in appropriate circumstances, whether or not these accounts are recognized under IFRS.

353. UCG submits that the Board must carefully consider the potential impacts and costs related to IFRS including:

- the one-time administrative cost to switch-over to the IFRS based reporting;
- the ongoing administrative costs for IFRS reporting including any related incremental costs for required regulatory reporting; and
- impact on revenue requirement that may arise from changes in rate base and operating costs determinants, driven by changes in the timing of the recognition of expenses.

354. UCG submits that the Board should require utilities to specifically identify financial differences and any resulting revenue requirement impacts that arise from the adoption of IFRS requirements in the utility's first revenue requirement or rates filing after IFRS adoption.

355. UCG submits that rate mitigation or smoothing mechanisms (such as the use of a deferral account and collection of accumulated amounts from ratepayers over a number of years) can be applied to reduce any rate impacts related to the adoption of IFRS, to the extent the Board permits recovery of IFRS-related costs.

356. UCG submits that the Board should direct YEC to provide a report during 2013 on how it will address the IFRS requirements. UCG is especially interested in how YEC intends to address the impact of the requirement to treat 3rd party contributions as deferred income.

X. RETURN ON EQUITY / COST OF DEBT / CAPITAL STRUCTURE

357. YEC is seeking approval of returns on rate base of $12.345 million in 2012 and $14.130 million in 2013, including an allowed rate of return on equity ("ROE") of 8.77% for both 2012 and 2013. YEC is also proposing that the equity component of its capital structure remain at 40%.

<u>Return on Equity</u>

358. YEC has calculated its requested ROE for 2012 and 2013 using the ROE approved by the Alberta Utilities Commission for 2011 because it was the most recent determination for a low risk benchmark. YEC made a deliberate choice not to submit independent cost of capital analysis in this application to support its proposal.

359. In its decision regarding YEC's 2008/2009 GRA, the Board approved a fair return on equity of 8.49% for 2009 based on the BCUC's generic formula for cost of capital. UCG submits that this was the approved return level allowed for all years subsequent to 2009 until the Board approves another rate of return.

360. UCG submits that YEC's rate of return on equity is only partially established by OIC 1998/32 (i.e., the 0.5% reduction for YEC from the "fair return" established by the Board). The reference in the OIC is to the "fair return" established for YEC and YECL assuming they are similar. The Board still must establish a fair rate of return on equity so YEC has applied to establish the fair return using a formula approach as has been used in the past but from a different source.

361. As was confirmed by YEC at the oral hearing[104]:
- the Alberta Utilities Commission of 2011 had two components, one looking at the return on equity and the other one looking at the size of the common equity ratio; and
- the AUC determined the common equity ratio by the business risk of each of the component utilities it was determining and as well their ability to access the market.

362. It is clear in the evidence that YEC did not do cost of capital studies that would justify a mix and match approach between B.C. and Alberta precedents to arrive at a final figure. Without a risk comparison between the low risk utility used from the BCUC and the most recent Alberta ROE from the generic cost of capital hearing, there is no reliable basis for using the existing adjustment mechanism of 52 basis points.

363. UCG thus questions the 52 basis points risk premium that YEC proposes to continue including in its rate of return on equity. In Order 2009-2 regarding the YECL revenue requirement application, the Board accepted that when using the BCUC generic cost of capital, a risk premium is required for Yukon utilities. The question becomes whether a risk premium is

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104 Transcript Volume 2, pages 287-288.

required when using the Alberta generic cost of capital given that the equity thickness they have assumed already incorporates sufficient risk premium.

364. YEC operates generation, transmission and distribution businesses within its franchise area. Electric transmission is generally considered to be the lowest risk utility, followed by distribution and generation. The YEC business mix does not inherently place it as riskier than the range of Alberta utilities considered in the Alberta Decision 2011 (Exhibit C3-24, Tab 26 - Table 10 on page 53).

365. There is also good reason to believe that the past Board adjustment of 52 basis points is likely not required even if the BCUC comparison was used. Business risk is comprised of many elements. For an electricity utility, these elements include the utility's related ability to attract customers and retain its customer base, which affect throughput levels and system load factors. Consumer sentiment, environmental considerations and government policy also play important roles in the determination of the utility’s risk profile. These risk factors determine whether the utility will be able to recover its investments in rate base over time and affect its ability to achieve its allowed return.

366. UCG submits that the evidence establishes that YEC’s business risks have decreased. Given that approximately 93% of YEC’s forecasted sales are firm (i.e., firm wholesale and firm retail), and industrial sales are backed by take-or-pay contract, YEC is no longer facing the financial and business risk that it may have faced when volatile industrial sales formed a significant portion of its sales forecast.

367. UCG submits that YEC is also at a lower risk due to deferral account “safety nets” (e.g., the DCF), ongoing bailouts and contributions by the Yukon government and YDC when trying to get projects in place, and revenue guarantees provided by mechanisms rate relief programs that have been in place. It appears to UCG that the apparent use of the DCF to relieve YEC from operational risk would distinguish YEC from most comparators in a way that may not have been captured previously such that the existing risk premium may be overstated.

368. When establishing an allowable return on common equity to be included in YEC’s revenue requirement calculations, the YUB should use a method that:

(a) results in a return on common equity that is fair to electricity ratepayers;
(b) includes comparisons to
    (i) the returns on common equity allowed for utilities that are peer organizations, and
    (ii) the risk-free rates of return yielded by Government of Canada long-term bonds;
(c) takes into account an equity-risk premium appropriate to the electricity industry and to the regulatory environment enjoyed by the utility; and
(d) takes into account a separate fuel-adjustment mechanism.

369. YEC testified that eliminating the forecast for secondary sales removes risk in that secondary sales will now have no impact on YEC's revenue requirement and further eliminates the risks associated with low water[105].

370. YEC also confirmed that Rider F protects YEC from risk arising from the variability in the price of fuel[106].

371. In the context of the proposed use of the Alberta Generic Cost of Capital Decision, it is to be remembered that the AUC, after it set its generic ROE in that decision, then proceeded to consider the business and financial risk of the individual utilities and to set the common equity ratio accordingly.

372. As UCG has noted above, YEC's 40% equity ratio provides a sufficient estimate of its relative riskiness in the list of utilities examined in the Alberta decision. In other words, if the Board wishes to use the Alberta Decision to set YEC's ROE, the common equity ratio currently in place allows the Board to use the generic ROE of 8.75% without making the BCUC-based 52 point adjustment.

373. UCG submits that if YEC is allowed to use the low risk utility return on equity approved by the Alberta Utilities Commission, then there should not be any add-on of additional risk premium. UCG recommends that the return on equity for 2012 and 2013 be reduced to 8.25% (8.75% - 0.5%).

Cost of Debt

374. In its evidence[107], YEC states that in order to maintain a 60% debt / 40% equity capital structure, $52.149 million in new long-term debt ($19.148 million in 2011, $22.911 million in 2012 and $10.093 million in 2013) is forecast to be provided by Yukon Development Corporation at an interest rate of 5% which is based on most recent external borrowing and assuming guarantee as in the past by the Yukon Government for such external borrowings.

375. In response to UCG-YEC-1-41(d), YEC indicates that the interest rates attached to the unsecured debt from YDC are set based on 120 basis points above the yield on long Canada bonds and that this practice is based upon studies filed with the YUB in the 1991/1992 GRA.

376. YEC indicated in response to CW-YEC-1-38(e) that YDC finances YEC's new long-term debt only if such funds are available from YDC and that if no such funds are available from YDC to finance 2012 and 2013 forecast long-term debts, then YEC will seek funding through the financial markets. YEC testified during the oral hearing that there has been no indication from YDC that funds would not be available[108]. UCG submits that this should mean that the cost of any new date needs to be set based on 120 basis points above the yield on long Canada bonds.

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105 Transcript Volume 1, page 45, lines 2-10.
106 Transcript Volume 1, page 45, lines 15-16.
107 Application pages 3-26 and 3-27 and response to CW-YEC-1-38.
108 Transcript Volume 1, page 99 lines 23-25 and page 100 lines 1-2.

377. In response to an undertaking, YEC testified that the most recent Bank of Canada published rates varied between 2.31% and 2.38%[109]. This would mean that the cost of the new forecast debt would be in the range of 3.51% and 3.58%. UCG submits that any debt costs associated with this new debt should be based on the range of 3.51% and 3.58% and debt costs contained within the application lowered accordingly.

378. In response to CW-YEC-1-38(a), YEC stated that the January 2011 Canada Flex Term Note with outstanding balance of $24.111 million, Yukon Development Corporation's Flexible Promissory Note for Mayo-Dawson with outstanding balance of $14.707 million, YDC's term note with outstanding balance of $20.887 million and YDC's unsecured advances with outstanding balance of $22.186 million were refinanced through YDC's $81.891 million new long-term debt. YEC states that the interest rate for this $81.891 million long-term debt is 4.25%. UCG submits that the cost of this debt should also be set at between 3.51% and 3.58%.

XI. ORDERS IN COUNCIL

379. UCG submits that a Phase 2 review in the Yukon is now due. All ratepayers would benefit from seeing what true cost-based rates would be in order to assist in demand side management efforts, efforts to reduce utility costs (instead of excessively spending on infrastructure to serve a few thousand customers), and to convince the government financial relief will be needed because the benefits from industrial loads have not proven to be effective in reducing rates.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 28th DAY OF NOVEMBER, 2012.

MICHAEL JANIGAN
COUNSEL
UTILITIES CONSUMERS' GROUP

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