

YUKON UTILITIES BOARD

IN THE MATTER OF the *Public Utilities Act*, R.S.Y. 2002, c. 186;

AND IN THE MATTER OF an application by the Yukon Energy Corporation seeking approval of its 2012-2013 General Rate Application.

FINAL ARGUMENT OF THE YUKON ELECTRICAL COMPANY LIMITED

I. INTRODUCTION

1. By application dated April 27, 2012, the Yukon Energy Corporation ("YEC") submitted to the Yukon Utilities Board (the "Board") its General Rate Application ("GRA") for the 2012-2013 test years (the "Application").¹ The Yukon Electrical Company Limited ("Yukon Electrical") intervened and actively participated in the proceeding convened by the Board to consider YEC's GRA as Yukon Electrical and its customers will be directly and materially impacted by the Board's decision in respect of the Application. Yukon Electrical acquires the bulk of its electricity supply from YEC and its purchase power expenses from YEC constitute a significant portion of its revenue requirement.² Further, Yukon Electrical shares common Rate Schedules with YEC and is YEC's sole wholesale customer, with Yukon Electrical accounting for approximately 75% of energy sales in the Yukon.³ As the direct service provider to the majority of customers in the Yukon, Yukon Electrical is responsible for direct customer contact, including with respect to rate structure and design, as well as, reliability issues. Accordingly, Yukon Electrical has a responsibility to its customers to ensure that the costs incurred by YEC are reasonable and appropriate in the circumstances.

2. Yukon Electrical does not propose to address all matters covered in YEC's Application, Information Requests and oral evidence; however, the failure of Yukon Electrical to address any specific matter should not be interpreted as concurrence with YEC's position and Yukon Electrical expressly reserves its right to address all matters in reply argument if the need arises. Rather, Yukon Electrical will limit its submissions and comments to matters of most significance

¹ Exhibit B-1.

² YECL Request For Intervener Status, Exhibit C1-2.

³ Application, Exhibit B-1 at p. 2-17, Table 2-1.

to it and its customers. In particular, Yukon Electrical will address the following matters having a very direct impact on Yukon Electrical: (i) service to Industrial Customer Whitehorse Copper Tailings; (ii) the Diesel Contingency Fund; (iii) the Energy Reconciliation Adjustment; and (iv) YEC capital projects impacting on Yukon Electrical. In accordance with the Chair's request, reference is made to the numbering from the Table of Contents of the Application in the argument below.

3. As outlined in further detail below, Yukon Electrical respectfully submits that YEC is seeking approval of a number of matters that will have material impacts on Yukon Electrical and its customers. It is of particular concern to Yukon Electrical that YEC prepared and filed its Application including such matters as the Energy Reconciliation Adjustment and the Diesel Contingency Fund with little, if any, consultation with Yukon Electrical. Yukon Electrical submits that such matters could have been addressed in a more administratively efficient manner had detailed consultation taken place in advance of the filing of the Application and subsequent hearing.

II. ARGUMENT

2.2.2.3 – Whitehorse Copper Tailings [Eagle Industrial Minerals]

4. At p. 2-6 of its Application, YEC indicates that it expects "that Whitehorse Copper Tailings would commence service in Q3 of 2013 as an industrial customer of Yukon Energy" and that its "expected forecast load requirement for 2013 is 4.8 GW.h per year from the start of July to the end of November with 2.0 MW of peak demand." As outlined in further detail below, Whitehorse Copper Tailings is a customer located within Yukon Electrical's deemed franchise area and YEC has no right to provide service to this customer, nor has it made any specific application to the Board for any relief from what is plainly an infringement of Yukon Electrical's rights under the *Public Utilities Act*, R.S.Y. 2002, c. 186 (the "Act").

5. Pursuant to s. 77(2) of the Act, Yukon Electrical is deemed to have been granted a franchise subject to any terms and conditions that have been imposed on or accepted by the Yukon Electrical Company Limited pursuant to the *Electrical Public Utilities Act* immediately before the coming into force of the Act. In accordance with Section 1 of the *Yukon Power Corporation Regulation (1987)*, O.I.C. 1987/071, passed pursuant to the Act, the Board was directed to approve without recommending any terms or conditions, the granting of a franchise to the YEC to own and operate in the Yukon equipment and facilities for the production,

generation, storage, transmission, sale, delivery or furnishing of electricity to or for the public or any corporation for compensation "in areas where such services are not already provided by The Yukon Electrical Company Limited or the Yukon Hydro Company Limited." Stated otherwise, that Yukon Electrical has an existing franchise area is acknowledged in s. 77(2) of the Act, and any existing franchise rights that YEC may have can only be for areas where the production, generation, storage, transmission, sale, delivery or furnishing of electricity is not already being provided by Yukon Electrical. As acknowledged by Mr. Morrison in cross-examination, Whitehorse Copper Tailings is located in Whitehorse, an area in respect of which Yukon Electrical already provides service.⁴ Simply stated, Whitehorse Copper Tailings is a customer located within Yukon Electrical's existing deemed franchise area.

6. YEC's position seems to be that, notwithstanding that Whitehorse Copper Tailings is geographically located within Yukon Electrical's service area, YEC is nevertheless entitled to serve Whitehorse Copper Tailings because it is a "major industrial customer"⁵ as defined under the *Rate Policy Directive (1995)*, O.I.C. 1995/090, and served under the Industrial Primary Rate Schedule 39 set out in Schedule "A" thereto. YEC believes that all industrial customers "are customers of the generating utility."⁶ With respect, this assertion is not only wholly unsupported, but it is untenable and should be rejected by the Board. Mr. Morrison was unable to point to any legislative provisions in support of YEC's position because there is no legislative or regulatory support for such position. Indeed, as admitted by Mr. Morrison, Rate Schedule 39 is expressly stated to be available "Throughout the service areas of Yukon Energy Corporation...and The Yukon Electrical Company Limited served by the Whitehorse, Aishihik, Faro and Mayo-Dawson systems"⁷ (emphasis added). Yukon Electrical respectfully submits that it is plain that both YEC and Yukon Electrical may serve major industrial customers, provided such customers are within the utility's deemed franchise area under s. 77 of the Act or in an area in respect of which the Board has granted a new, or altered an existing, franchise pursuant to s. 21 of the Act.

7. YEC attempts to support its position based on the suggestion that "it has served all industrial customers since the NCPD transfer in 1987."⁸ Mr. Morrison, of course, confirmed that both the Minto Mine and Alexco Mine industrial customers that it serves are not located within

⁴ Transcript at p. 108, lines 14 to 19.

⁵ Defined under the *Rate Policy Directive (1995)*, O.I.C. 1995/090, as meaning "a customer engaged in manufacturing, processing, or mining, whose peak demand for electricity exceeds 1 MW, but it does not include an isolated industrial customer."

⁶ Transcript at p. 109, lines 13-18.

⁷ Transcript at p. 114, lines 4-17.

⁸ Letter from YEC dated November 1, 2012, Exhibit B-15.

Yukon Electrical's service area.⁹ Although YEC suggested that it served Whitehorse Hospital as an Industrial customer,¹⁰ it should be noted that (i) YEC provided only secondary sales to the Whitehorse Hospital;¹¹ and (ii) that the Whitehorse Hospital plainly does not fall within the meaning of a major industrial customer as it is not engaged in manufacturing, processing or mining. Accordingly, Yukon Electrical respectfully submits that what may have historically been agreed upon in respect of secondary sales to the Whitehorse Hospital is of no assistance to YEC or the Board in considering whether YEC is entitled to serve Whitehorse Copper Tailings.

8. Notably, YEC confirmed that it is Yukon Electrical that owns and operates the power line to Whitehorse Copper Tailings.¹² YEC equally confirmed that it was well aware of the fact that Whitehorse Copper Tailings was previously served by Yukon Electrical from the late 1960s to the mid 1980s.¹³ Nevertheless, instead of having Yukon Electrical serve this customer located within its service area with its existing facilities, YEC is proposing to wheel power over Yukon Electrical's existing facilities so that it can provide service to Whitehorse Copper Tailings.¹⁴ Not only is YEC's position contrary to law, but it defies common sense and is not in the public interest. Though initially resistant, Mr. Morrison appeared willing to agree that wheeling power over another's facilities can introduce some inefficiencies, at least in respect of administrative matters, such as billing, and the potential for duplication of work where crews from both YEC and Yukon Electrical may be required to attend to a particular outage.¹⁵

9. Yukon Electrical made it known to YEC that it intends to serve Whitehorse Copper Tailings and requested that YEC amend all necessary schedules in its Application to reflect that Yukon Electrical would be serving Whitehorse Copper Tailings.¹⁶ YEC declined to do so and, in its letter dated November 1, 2012, YEC suggested that it would be beneficial to ratepayers if YEC serves Whitehorse Copper Tailings.¹⁷ Yukon Electrical respectfully submits that YEC's suggestion that ratepayers will save \$210,000 in 2013 if YEC (as opposed to Yukon Electrical) serves Whitehorse Copper Tailings is unfounded. As confirmed in cross-examination, YEC's calculations are based on currently approved rates and assume that Yukon Electrical is not going to file a general rate application for 2013. YEC agreed that if Yukon Electrical files a GRA for the 2013 test year, Whitehorse Copper Tailings volumes would be forecast by Yukon

⁹ Transcript at p. 115, lines 14-20.

¹⁰ Transcript at p. 113, lines 12 to 16.

¹¹ *Ibid.* at line 15.

¹² Transcript at p. 115, line 25 to p. 116, line 8; and Transcript p. 207, lines 10 to 14.

¹³ Transcript at p. 115, lines 21 to 24.

¹⁴ Letter from YEC dated November 1, 2012, Exhibit B-15.

¹⁵ Transcript at p. 116, line 25 to p. 118, line 6.

¹⁶ Letter from Yukon Electrical dated October 12, 2012, Exhibit B-15.

¹⁷ Letter from YEC dated November 1, 2012, Exhibit B-15.

Electrical and the net impact would be the same irrespective of which utility provides service to Whitehorse Copper Tailings.¹⁸ That is, as long as the costs of serving Whitehorse Copper Tailings are properly forecast in a test year, the savings suggested by YEC are illusory. As the Board is no doubt aware, Yukon Electrical has already filed a letter with the Board indicating its intention to file a GRA in respect of the 2013 test year.

10. Notably, even if YEC could demonstrate that there would be a ratepayer costs savings associated with it providing service to a particular customer within Yukon Electrical's service area, Yukon Electrical respectfully submits that the Board is without jurisdiction to approve service by YEC of a customer within Yukon Electrical's service area that Yukon Electrical is willing and able to provide service to.

11. For all the above reasons, Yukon Electrical respectfully requests that the Board (i) confirm that Whitehorse Copper Tailings is rightfully a customer of Yukon Electrical; and (ii) direct YEC to remove Whitehorse Copper Tailings volumes from its forecast for the test years and that its revenue requirement be adjusted accordingly.

3.6.2 – Diesel Contingency Fund

12. At p. 3-29 of the Application YEC explains that Diesel Contingency Fund ("DCF") is "maintained to address ongoing fluctuations in diesel requirements (and related fluctuations in rates, up or down) that ratepayers would otherwise be exposed to due to annual water availability." It operates "to smooth rate impacts so that ratepayers are not subject to ongoing rate instability from year to year depending on whether it is a flood or drought year." Notably, however, YEC confirmed under cross-examination that volumes associated with Yukon Electrical's Fish Lake hydro facilities have not been included in the forecast of long-term average generation in YEC's proposed DCF methodology.¹⁹ Further, YEC confirmed in its response to Undertaking # 24 that the DCF, as it previously existed, included volumes associated with Yukon Electrical's Fish Lake and the total fund was administered by YEC. As well, by way of Undertaking # 23 to the Board, YEC provided a continuity schedule of the DCF from its inception in 1996 to December 31, 2011, which table clearly demonstrates the administration by YEC of Yukon Electrical net withdrawals.

¹⁸ Transcript at p. 119, line 13 to p. 121, line 11.

¹⁹ Transcript at p. 42, lines 9 to 20.

13. It is not clear to Yukon Electrical why YEC has unilaterally decided to remove Yukon Electrical's Fish Lake hydro facilities from the DCF and to cease its administration of the total fund on behalf of all customers. From Yukon Electrical's perspective, the intent of the DCF is to address hydro generation availability throughout the Yukon and there would clearly be administrative efficiency gains if the fund is administered holistically by YEC.

14. As the DCF is currently proposed, whereas fluctuations in YEC hydro generation are mitigated by the DCF mechanism, hydro fluctuations in Fish Lake generation are not afforded the same treatment. This inconsistency is further compounded by the fact that diminished hydro availability from the Fish Lake units would result in increased wholesale purchases from YEC, which, in turn, could potentially result in increased Energy Reconciliation Adjustment ("ERA") charges to Yukon Electrical and its customers as acknowledged by Mr. Osler in cross-examination.²⁰ As is plain from its response to YUB-YEC-1-30(a), YEC did not consult with Yukon Electrical in respect of the proposed DCF, which, as far as Yukon Electrical and its customers are concerned, is fundamentally changed from the historical DCF structure.

15. For all the above reasons, Yukon Electrical submits that YEC's approach to the DCF in excluding Fish Lake from the DCF is unreasonable and should be rejected by the Board. Yukon Electrical respectfully requests that the Board direct YEC to work in consultation with Yukon Electrical to include appropriate Fish Lake generation volumes to be factored into the DCF in YEC's Compliance Filing and administered by YEC.

4.6 – Wholesale Rates and the Energy Reconciliation Adjustment

16. YEC has indicated in its Application that diesel is on the margin and it has proposed to invoke the Energy Reconciliation Adjustment ("ERA") mechanism in accordance with its proposed amended Wholesale Sales Rate Schedule 42.²¹ Whereas YEC was previously directed by the Board to address all issues with respect to Rate Schedule 42 in a joint Phase II proceeding with Yukon Electrical,²² YEC has instead decided to propose significant amendments to Wholesale Sales Rate Schedule 42 without consulting Yukon Electrical, and to seek approval of such amendments in its own 2012-2013 Phase I GRA. As above noted, in its response to YUB-YEC-1-30(a), YEC confirmed that it had not consulted with Yukon Electrical specifically with respect to the submissions in the current Application regarding the DCF, the definition of "diesel on the margin", or the ERA.

²⁰ Transcript at p. 134, line 18 to p. 135, line 4.

²¹ Application, Exhibit B-1 at pp. 4-11 to 4-13.

²² Board Order 2009-8, Appendix A, Section 4.2.5.

17. Yukon Electrical has many grave concerns with respect to the ERA mechanism. YEC has confirmed that there will be an ERA charge to Yukon Electrical when there is a positive system load growth variance and a positive wholesale sales variance between actuals and GRA forecast and a credit to Yukon Electrical when there is a negative system load variance and a negative wholesales sales variance between actuals and GRA forecast.²³ Additionally, YEC indicates that greater and greater incremental use of diesel is anticipated, which may result in ERA charges that have a material impact on Yukon Electrical and its customers.²⁴

18. While YEC has indicated that it is willing to bear the risk for changes in diesel volume driven by retail and industrial load variations, which will be reflected in YEC's Income Statement,²⁵ Yukon Electrical respectfully submits that absorbing the risk for diesel volumes in this manner does not allow a utility to recover its prudently incurred costs from customers. Furthermore, whereas YEC's forecast risk on its Industrial and Retail customers is relatively small, the forecasting risk for Yukon Electrical is much more significant when considering that Yukon Electrical accounts for approximately 75% of energy sales in the Yukon.²⁶ The forecast risk for Yukon Electrical and its customers is even more pronounced given that the forecast against which ERA charges are assessed is one prepared independently by YEC with minimal consultation with Yukon Electrical.²⁷

19. It is troubling to Yukon Electrical that it has reviewed YEC's Wholesale Sales forecast and is unable to fully understand or reconcile it with its own forecasts. Further, YEC's Wholesale Sales forecast is plainly flawed as it does not properly account for the unavailability of Fish Lake generation. YEC's forecast assumes that both Fish Lake units would be fully operational for 2013, whereas Fish Lake Unit 1 is not anticipated to be back in service until Q3 of 2013, with result that YEC's forecast understates Wholesale Sales and may result in inappropriate ERA charges being assessed due to forecasting error.²⁸ Additionally, the impacts of weather normalization have been incorrectly applied to the Wholesale Sales forecast.²⁹ Under cross-examination by the City of Whitehorse, YEC confirmed that it had applied the total weather normalization correction for YEC's total sales to the wholesale sales forecast, which represent only a portion of the total sales. Again, this leads to further understatement of Wholesale Sales volumes to the detriment of Yukon Electrical and its customers. Finally, YEC confirmed that the

²³ Transcript at p. 122, line 21 to p. 123, line 5.

²⁴ Transcript at p. 130, line 12 to p. 131, line 10.

²⁵ YECL-YEC-1-14.

²⁶ Application, Exhibit B-1 at p. 2-17, Table 2-1.

²⁷ Application, Exhibit B-1 at p. 4-12; Transcript at p. 129, lines 14 to 18.

²⁸ Transcript at p. 131, line 13 to p. 132, line 8.

²⁹ Transcript at p. 65, line 21 to p. 66, line 5; See also YECL-YEC-1-3-A.

proposed ERA has no mechanism to account for system growth on an ongoing basis. That is, the ERA is based on YEC's Wholesale Sales forecast for 2013, but would carry on beyond 2013 into future years. Given that greater and greater incremental use of diesel is anticipated, the failure to account for system growth will invariably lead to increasing ERA charges to Yukon Electrical and its customers. It is respectfully submitted that these deficiencies result in YEC's proposed ERA being based on a Wholesale Sales forecast that is one-sided, overly conservative, and static with the result that material ERA charges (i.e. diesel costs) will be passed from YEC to Yukon Electrical and its customers.

20. It should also be noted that irrespective of the flaws associated with the proposed ERA mechanism and the level of risk passed on to Yukon Electrical and its customers, YEC has stated that Yukon Electrical will be entitled to recover all ERA charges under Rider D, which would apply to all Yukon ratepayers.³⁰ Additionally, YEC confirmed that the objective of the ERA – to ensure that Yukon Electrical receives a full flow-through of the incremental costs of 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 – could have been achieved by establishing a deferral account to be charged to all customers in the Yukon.³¹ Not only could this be established mathematically, but Yukon Electrical respectfully submits that a deferral account would be more administratively efficient to administer than imposing ERA charges on Yukon Electrical, to then be recovered under its Rider D.

21. For the reasons set out above, Yukon Electrical strongly opposes the ERA mechanism as proposed by YEC. Accordingly, Yukon Electrical respectfully requests that the Board disallow the proposed ERA mechanism and direct YEC to prepare and file a deferral account as part of its Compliance Filing to address increased diesel costs to be administered by YEC and dispensed amongst all ratepayers by YEC.

5.0 – Capital Projects – Specific Impacts on Yukon Electrical

22. Yukon Electrical sought clarification from YEC in this proceeding as to how YEC incorporates diesel generation expenses necessitated by its capital projects into the budgets for its capital projects. YEC confirmed that it capitalizes its own diesel generation expenses associated with a particular capital project as part of that capital project.³² YEC also confirmed

³⁰ Letter from YEC dated November 1, 2012, Exhibit B-15; Transcript at p. 127, line 19 to p. 128, line 9.

³¹ Transcript at p. 128, line 17 to p. 129, line 1.

³² Transcript at p. 141, line 22 to p. 142, line 2.

that, when forwarded two invoices in the respective amounts of \$59,232.49³³ and \$124,574.68,³⁴ (the “Invoices”) totaling \$184,000.00, for diesel and other expenses incurred by Yukon Electrical as a direct result of YEC’s capital projects, which invoices YEC has refused to pay on the basis that such costs are not attributable to YEC. That is, they are not costs incurred by YEC on the system.³⁵

23. YEC suggests that being disconnected from its supply, on a planned basis for YEC capital projects, is no different from forecasting for outages.³⁶ YEC asserts that these costs should be justified by Yukon Electrical before the Board and should be included in YECL’s revenue requirements.³⁷ Yukon Electrical disagrees with the position taken by YEC’s on this issue for the following reasons. First, these are planned YEC capital projects with material diesel costs and risks associated with operating the Haines Junction plant in isolation on a sustained basis. As a supplier of electricity in the Yukon, it is respectfully submitted that YEC cannot simply abandon its obligations for maintaining supply during extended planned outages that it causes. Second, the projects in respect of which Yukon Electrical issued the Invoices occurred outside of Yukon Electrical’s test period for its last GRA. Yukon Electrical submits that to suggest that Yukon Electrical should have proceeded with a costly GRA filing to increase revenue requirement for two of YEC’s capital projects is simply unreasonable. Third, Yukon Electrical is not renouncing its obligation to supply backup generation during the event of an unplanned outage; however, Yukon Electrical bases its O&M and diesel requirements on historical information, not potential one-off YEC projects over which Yukon Electrical has no control. It is respectfully submitted that YEC is better positioned to forecast such costs in consultation with Yukon Electrical and to capitalize such costs as part of the project, as it does its own costs.

24. In summary, Yukon Electrical takes exception with YEC’s approach and considers that these costs should not be forecasted by Yukon Electrical, nor should they be included in Yukon Electrical’s revenue requirement. While the disputed costs are not in respect of capital projects forming part of this Application, the issue is one that will continue into the future with a number of YEC’s future projects. Accordingly, Yukon Electrical seeks a direction from the Board that YEC consult with Yukon Electrical in the future to forecast costs to be incurred by Yukon

³³ Exhibit C-1-9.

³⁴ Exhibit C-1-10.

³⁵ Transcript at p. 151, lines 16-21.

³⁶ Transcript at p. 150, lines 17-23.

³⁷ Transcript at p. 150, lines 10-14.

Electrical as a result of YEC's capital projects, which costs are to be capitalized to as part of YEC's capital projects that necessitate the expenditures.

III. CONCLUSION AND RELIEF SOUGHT

25. In summary, Yukon Electrical respectfully submits that YEC prepared and filed its Application including such matters as the ERA, the DCF and service to Whitehorse Copper Tailings with little, if any, consultation with Yukon Electrical. Yukon Electrical submits that such matters could have been addressed in a more administratively efficient manner had detailed consultation taken place in advance of the filing of the Application and subsequent hearing. Further, in each of these matters, YEC's proposals evidence serious flaws requiring the Board's attention and intervention. For the detailed reasons set out above, Yukon Electrical respectfully requests that the Board:

- (a) confirm that Whitehorse Copper Tailings is rightfully a customer of Yukon Electrical;
- (b) direct YEC to remove Whitehorse Copper Tailings volumes from its forecast for the test years and adjust its revenue requirement accordingly;
- (c) direct YEC to work in consultation with Yukon Electrical to include appropriate Fish Lake generation volumes to be factored into the DCF in YEC's Compliance Filing and administered by YEC;
- (d) disallow the proposed ERA mechanism and direct YEC to prepare and file a deferral account as part of its Compliance Filing to address increased diesel costs to be administered by YEC and dispensed amongst all ratepayers by YEC; and
- (e) direct YEC to consult with Yukon Electrical in the future to forecast costs to be incurred by Yukon Electrical as a result of YEC's capital projects, which costs are to be capitalized to as part of YEC's capital projects that necessitate the expenditures.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28th day of November, 2012.

BENNETT JONES LLP



Per: _____

Allison M. Sears, Counsel for the
Yukon Electrical Company Limited