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May 22, 2009

VIA E-MAIL

Yukon Utilities Board
Box 31728
Whitehorse, Yukon
Y1A 6L3

Attention: Deana Lemke

Re: YEC 2008-2009 General Rate Application – UCG Submissions

Dear Ms. Lemke:

Please find enclosed the submissions of UCG in the above noted proceeding.

Yours truly,

Michael Buonaguro
Counsel for VECC
Encl.

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 2008 and 2009

FINAL ARGUMENT OF

UTILITIES CONSUMERS' GROUP

May 22, 2009

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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 the Proceeding

2. This submission summarizes positions of UCG for the Yukon Utilities Board's (the "Board") consideration. It should not be assumed that UCG is in agreement with the Yukon Energy Corporation's ("YEC") position on any issue for which UCG has not provided specific comment on 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 2008 and 2009. Ultimately the purpose of the Board's review is to ensure that the revenue requirement to be recovered in rates ensures 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. UCG respectfully submits that ongoing adjustments to rates and riders without accurate underlying cost allocation information causes confusion and instability that Yukon ratepayers should be protected from.

4. UCG submits that once YEC's 2008 and 2009 revenue requirements are established by the Board, existing rates should continue to be applied until the Board makes a determination on rates following the upcoming Phase 2 review. UCG a deferral account be established to record the revenue surplus / deficit realized in 2008 (which has been reduced, according to YEC's update, to a $30,000 surplus[1]) and 2009 (which YEC submits by way of update is a $1.331 million surplus) pending the results of the Phase 2 review.

5. Given the apparent commitment of YEC to work with Yukon Electrical Company Limited ("YECL") to assemble cost of service and other Phase 2-related evidence,[2] 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.

6. 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

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[1] Exhibit B-10 page A4

[2] Exhibit B-13

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.

7. Specifically, UCG is concerned with the failure of YEC and YECL to work together on integrating, if not joining their applications and analysis of the impacts on electricity end-users, particularly 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. While UCG acknowledges that YEC appears to have proposed to YECL that they work together towards a joint filing via their letter to YECL dated May 1, 2009, UCG notes that a) the letter suggests to UCG that it was only two days before the oral hearing of its two year rate case that YEC has seriously proposed working together with YECL, despite clear direction from the Board over the last several years that YEC and YECL need to coordinate their efforts, and b) YECL has not, to UCG's knowledge, responded..

8. 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.

II. SUMMARY OF UCG's PRIMARY ARGUMENTS

9. 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.

10. 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) as opposed to a process that each entity undertakes on its own without the cooperation of other stakeholders.

11. It may be that the result of the Phase 2 cost of service analysis is that the industrial rates determined by OIC 2007/94 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. In UCG's submission the failure of the Yukon Government to account for unallocated revenue requirement as a result of OIC 2007/94 preventing full recovery from Industrial customers should not necessarily require the Board to recover the shortfall from other ratepayers.

12. 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. On-site generation should be considered as a more practical alternative for the transient industrial loads that are attracted to the Yukon.

13. 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.

14. 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.

15. 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 than making major capital investments in anticipation of unknown potential loads.

16. 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.

17. UCG submits that a demand-side management plan is a necessary component of a comprehensive load and facilities forecasting effort, given the long term nature of effective DSM programs. As indicated in its response to UCG-YEC-1-20, YEC "has not in its current GRA contemplated or budgeted for these activities". YEC also indicates that "further direction from the Board would be required related to the following: (a) The scale of activities anticipated to be undertaken by the utilities; and (b) Confirmation that some form of deferral account for expenditures, presumably targeted for disposition at the next GRA". UCG submits that the Board should require the utilities to come forward with proposals in this regard rather than to further delay moving forward on DSM.

18. A joint interested party panel should be implemented to promote more efficient use of energy over the longer-term through DSM, and YEC should be directed to work with YECL and the Yukon government to implement an ongoing DSM program for all electricity ratepayers in the Yukon. UCG submits that stakeholders must continue to focus on energy conservation, efficiency and communities. UCG recommends that stakeholders develop an on-going Energy Conservation Action Plan that provides for a wide range of energy efficiency and conservation measures to assist residents in dealing with the high cost of energy in the Yukon. The Action Plan can also provide support for local initiatives identified through community energy planning initiatives.

19. UCG submits that there is no reason why a PBR mechanism with an earnings sharing mechanism could not be considered following the completion of a Phase 2 review.

20. UCG submits that there is no evidence on record to validate the existing environment of two utilities serving the distribution ratepayers of the Yukon.

21. UCG submits that the Board should direct that a joint depreciation study be conducted for both YEC and YECL in order to determine depreciation methodologies and rates that will be consistently applied to both utilities for the purpose of setting rates and regulatory reporting.

22. 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.

23. Given the commitment of YEC to work with YECL to assemble cost of service and other Phase 2-related evidence, UCG submits that any adjustments to rates and charges to be applied to the bills of Yukon ratepayers should be deferred until after the Phase 2 evidence has been reviewed and a Board decision issued. This deferral, UCG submits, would include deferral of the proposed changes to the second block "runoff" rates proposed by YEC.

24. 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 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.

25. 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.

26. 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.

27. 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.

28. With respect to the Aishihik Third Turbine Proposal, UCG submits that there is not enough information on the record to allow the Board to make any definitive recommendations on this project other than it needs more evaluation and detailed engineering work. Given that the project has no value in terms of meeting the peak demand requirement under the proposed new planning criteria, it cannot be seen as a priority project. This project should be evaluated under Part 3 of the Act. Pursuant to section 39 of the *Public Utilities Act*, UCG submits that this project should be designated as a regulated energy project. UCG submits that YEC should be

encouraged to seek an energy project certificate or energy operation certificate from the Yukon government.

29. 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.

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. ISSUE: TIMING OF APPLICATION, LACK OF JOINT PLANNING

31. On October 6, 2008, YEC submitted an application to the Board requesting approval of forecast revenue requirements for 2008 and 2009 as well as approval of an interim refundable rate rider effective November 1, 2008 (later changed to December 1, 2008).

32. 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, <u>90 days before it proposes to charge a different rate</u>,

(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.

33. YEC waited until over 9 months of 2008 had passed before submitting an application to the Board to approve a 2008 revenue requirement. YEC also requested a rate adjustment be approved for implementation within three weeks of its application.

34. UCG submits that this is not the standard to which a publicly-owned utility should operate from a regulatory perspective. YEC knew in January 2007 that the YUB wanted them to submit a general rates application for review. In its January 15, 2007 Report on Yukon Energy Corporation's 20-Year Resource Plan (page 51), the Board states:

Now is an appropriate time for YEC and YECL to have a complete review of all GRA Phase I and Phase II matters. The Board recommends that YEC and YECL file a full GRA application before October 31, 2007. The application should include a full cost of service, rate design and an update of the Electric Service Regulations. The Board also suggests that YEC and YECL consider a performance-based regulation mechanism. As well, the Board recommends that evidence be provided as to what other utilities provide for Maximum Company Investment and model theirs accordingly.

35. UCG submits that YEC has not adequately explained why it took nearly three years from its last rate case to finally submit a general rates application to the Board. UCG also submits that YEC has failed to provide adequate reasons in response to YUB-YEC-1-20 as to why it did not submit a cost of service study in its 2008-2009 general rates application. YEC asserts that:

> *…the Board's ratemaking mandate has been materially revised since that time by OICs 2007/94 and 2008/149 obviating the need for a cost of service (COS) study in order to deal with YEC's current GRA. As outlined in more detail below, this is the primary reason why YEC did not file a cost of service study as part of its current GRA.*

36. With respect this is a proposition that UCG submits the Board has specifically rejected.

37. UCG submits that the timing of YEC's application was not in compliance of the recommendations of the Board or the provisions of the *Public Utilities Act* and has now put the Board in the position of retroactively approving revenue requirements for test years that have been completed (2008) and well underway (2009). Had the application sought rate increases, the result could have been the aggregation of over a year's worth of revenue deficiency, with a request from YEC that it be collected by rider on top of the requested rate increase.[3] In the present case, the result is the aggregation of over a year's worth of revenue sufficiency, which YEC seeks to refund by way of a rider which UCG suggests creates the false appearance of a large rate decrease.

38. As is noted elsewhere in this argument, UCG is extremely disappointed that YEC waited so long into 2008 before submitting its application to the YUB to approve a 2008 revenue requirement. UCG suggests that the main reason behind YEC's application is to get assets related to service to the Minto mine recorded in return-eligible rate base. UCG submits that when the Board is deliberating on approval of a 2008 revenue requirement, it should consider actual costs incurred, actual kWh sales and a rate base that includes only capital additions related to projects that the Board has previously reviewed and approved for addition to rate base in determining the level of surplus that should be attributed to 2008. Under no circumstances should the Board consider (nor does it appear that YEC is seeking) allowing YEC to recover any deficiency related to 2008, given the stated intent of the filing with respect to capturing the benefits of Minto Mine Revenue on behalf of ratepayers and given the lateness of the filing.

39. 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. UCG notes that the proposal from YEC to YECL appears to support the joint filing of rate applications by the utilities.[4]

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[3] UCG would, under such circumstances, argue that such retroactive rate increases be denied.

[4] Exhibit Number B-13: May 1, 2009 letter from Yukon Energy to Yukon Electrical

IV. ISSUE: SYSTEM SALES AND GENERATION

40. 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 Board 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?

41. 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.

42. During the review of YEC's 20-year Resource Plan, 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.[5] While YEC may 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 broaden its outlook to consider new approaches, in the same way YEC proposed new planning criteria.

43. 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.

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

44. In its response to CW-YEC-1-3, YEC states

Yukon Energy worked with YECL to define the 2008 and 2009 forecasts in late 2007, and ultimately accepted YECL's forecast for 2008 and 2009 for the purposes of business planning. During preparation of Yukon Energy's GRA, it was apparent that the load growth levels assumed for 2009 were below what might be expected for 2009 based on past experience. At the same time, the early months of 2008 were indicating below forecast loads. Consequently, Yukon Energy did not adjust 2008 forecasts upwards during the GRA preparation process, but did adjust 2009 upwards.

45. 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.

46. 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. As is argued later in this submission, UCG believes that this contributes to a lower risk premium in YEC's return on equity.

47. 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 an additional 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 2007/94 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.

48. 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 later in this submission which highlight the risks involved in combining the mine related requirements and non-industrial load requirements of YEC in planning.

49. 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, on-site

generation should be considered as a more practical alternative for the transient industrial loads that are attracted to the Yukon. UCG notes that on site generation, to the extent it would create isolated industrial customers rather than major industrial customers in accordance with the definitions in OIC 1995/090, would have the effect of protecting other customer classes from bearing the costs related to new industrial loads.

50. 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.[6] UCG submits that it would be helpful to the Board, in evaluating YEC's performance and earnings from previous years, to be able to review information that isolates over or under earning related to weather. Variations related to abnormal weather conditions are beyond the control of YEC, even though they take one the risk of abnormal weather as most utilities do when their revenues are based, in whole or in part, on throughput. Accordingly it is useful, when looking at historical results, to be able to isolate weather related increases or decreases in revenue as resulting outside the utilities control.[7]

51. 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.

52. The Board has already directed YEC and YECL to submit a joint DSM policy paper in their next GRA, and YEC has already indicated that that filing will be part of what they propose to work on with YECL along with the Phase 2 filing.

53. In its January 15, 2007 Report on Yukon Energy Corporation's 20-Year Resource Plan (page 43), the Board recommends that:

…the Government of Yukon consider commissioning an independent group to study the potential for DSM initiatives in the Yukon and make recommendations. The types of DSM programs, the expected amounts of load reduction or load shifting that could be expected from DSM in the YEC and YECL systems, the implementation costs, and who should be responsible for implementation and continued administration of DSM programs should be part of this study.

54. UCG is not aware of the Yukon government undertaking such a study (save for a limited review during energy strategy discussions in 2008) and YEC admits in response to LE-YEC-1-

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[6] Transcript, oral hearing, Volume 2, pages 312-317.

[7] UCG accepts that it may be the case that weather related variances may not be material in the context of the Yukon's weather patterns; however there is no evidence on the record that that is this case.

20 that it has not carried out any material studies related to energy efficiency programs or DSM programs.

55. YEC submits that energy efficiency and DSM activities focus on end-uses of electricity and that it does not primarily serve end users as these customers are primarily served by YECL. If that is the case, then UCG submits that YEC's end-use customers should be included in YECL's DSM portfolio going forward. Since the impact of end use DSM activity affects generation and transmission needs through reduced load over time, it makes sense to make YECL the primary source for load forecasting as well as DSM initiatives.

56. 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.

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

58. UCG recommends that a joint interested party panel be implemented to promote more efficient use of energy over the longer-term and that YEC be directed to work with YECL, the Yukon government and other stakeholders to implement an ongoing DSM program for all electricity ratepayers in the Yukon. As noted above, YECL, as the direct distributor to the majority of end use customers, would be the most appropriate candidate as the lead stakeholder in this regard.

59. UCG submits that stakeholders, including the Yukon government must continue to focus on energy conservation, efficiency and communities. UCG recommends that stakeholders develop an on-going Energy Conservation Action Plan that provides for a wide range of energy efficiency and conservation measures to assist residents in dealing with the high cost of energy in the Yukon. The Action Plan can also provide support for local initiatives identified through community energy planning initiatives. While YEC indicated in its response to UCG-YEC-1-20 that: "further direction from the Board would be required related to the following: (a) The scale of activities anticipated to be undertaken by the utilities; and (b) Confirmation that some form of deferral account for expenditures, presumably targeted for disposition at the next GRA", UCG submits that it should be up to the utilities to come forward with proposals in this regard rather than to further delay moving forward on DSM.

V. ISSUE: REVENUE REQUIREMENT

60. 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 current application does not contain any proposal for a PBR mechanism. UCG submits that without Board approvals for components of revenue requirement since 2005, YEC has essentially been operating under a PBR mechanism for 2006 and 2007 without common PBR features such as a rate adjustment mechanism and earnings sharing. UCG submits that there is no reason why a PBR mechanism could not be considered following the completion of a Phase 2 review.

61. In particular, UCG submits that an earnings sharing mechanism should be implemented. In its application and in response to UCG-YEC-1-19, YEC indicates that it has over-earned every year since from 2005 to 2007. These previous year over-earnings illustrate that ratepayers should be protected from excessive over earnings in non rate application years through sharing; ideally on a weather normalized basis.

62. 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." UCG submits that the Board should direct that all over-earnings in 2008 and 2009 be credited to ratepayers by way of a revenue requirement reduction.

63. UCG submits that when the Board is deliberating on approval of a 2008 revenue requirement, it should consider actual costs incurred, actual kWh sales and a rate base that includes only capital additions related to projects that the Board has previously reviewed and approved for addition to rate base.

64. In response to UCG-YEC-1-30, YEC indicated that it could not provide information related to the average cost per kWh of generation, transmission and distribution for its various systems since "a substantial component of YEC's costs are not functionalized and separated by system". UCG submits that this breakdown of costs should be made available at the time of the upcoming Phase 2 filing to allow for specific analysis of the efficiency of YEC's operations. In UCG's view it is important that there be transparent information about the differences in costs between distinct parts of YEC's systems, even if those differences do not pass through into different rate classes, in order that ratepayers can be informed about the real cost drivers underlying the unified rates.

65. YEC indicates that increases in labour expense make up $1.244 million, or 62% of the proposed revenue requirement.

66. UCG submits that the increases in labour costs, especially those related to the President, appear high for a depressed economy. 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.[8]

67. UCG submits that the Board should carefully consider the payments being made by ratepayers to members of YEC's Board of Directors given the overlap that still exists with the Board of Directors for YDC. In particular, UCG is concerned with the extra fees paid to the YEC Chair for work that appears to be more politically based than utility based.[9]

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[8] To be clear, disallowance in rates does not necessarily preclude YEC from paying increased costs out of its return. For example, YEC would continue to be bound, presumably, by its collective agreement, the cost of honouring agreement related increases to be borne by the shareholder.

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

68. In response to UCG-YEC-1-35, YEC indicated that they could not provide a comparison of YEC's forecast revenue requirement in 2008 and 2009 had the conditions and cost levels within the previous management services agreement with YECL / Canadian Utilities been maintained. UCG submits that there is no evidence on record to validate the existing environment of two utilities serving the distribution ratepayers of the Yukon. Given the nature of the relationship between YEC and YECL, UCG submits that it would be appropriate to review alternative structures with a view towards consolidating all distribution functions under YECL.

69. In response to UCG-YEC-1-47, YEC confirmed that current depreciation rates (approved in Order 2005-12) were based on a study conducted by Gannett Fleming related to YEC's plant as of December 31, 2003. Per YEC's response to MCMAHON-YEC-1-16 in the 2005 Required Revenues proceeding, Gannett Fleming's expert opinion is that the completion of full depreciation reviews should be undertaken every 3 to 5 years. The only excuse provided by YEC for not doing a depreciation study for its first GRA in over a decade was study cost related. UCG submits that YEC's internal opinion that there are no "material issues with the currently approved depreciation rates"[10] does not provide the Board or other stakeholders with any comfort that current depreciation rates accurately reflect the plant currently in use. UCG submits that YEC is now outside the upper limit identified by Gannett Fleming such that YEC should be directed to conduct a full depreciation study

70. UCG submits that the Board should direct that a joint depreciation study be conducted for both YEC and YECL in order to determine depreciation methodologies and rates that will be consistently applied to both utilities for the purpose of setting rates and regulatory reporting. UCG submits that any depreciation study undertaken must give due weight to the International Financial Reporting Standards (IFRS) requirements regarding depreciation, including componentization.

71. In response to UCG-YEC-1-1, YEC stated that it does not use service reliability criteria as a policy guideline. UCG submits that it is time that reporting on service quality indicators used to monitor YEC's operations are made publicly available in a transparent way on a more regular basis.

72. Power outages result in businesses losing money because most stores can't complete transactions, and because the power surge can damage electronic equipment, adding repair costs to the mix. The Yukon's ongoing troubles with power outages can turn out to be very expensive.

73. While YEC has provided reports to the Board, and provided those reports in this application as an undertaking in the hearing, UCG submits that in the context of a general rates application YEC should be required to provide evidence on their service reliability in comparison to appropriate targets and program spending designed to meet the targets. This would allow parties to explore the relationship between appropriate service quality targets, the performance

[10] UCG-YEC-1-47(b)

of the company relative to those targets, and the proposed utility spending in relation to improving or maintaining service quality.

74. UCG submits that the Board should ensure that the review of service quality and ongoing reporting of service quality measurements are incorporated into directions given to YEC in this proceeding.

VI. ISSUE: COST ALLOCATION AND RATES

75. UCG submits that no part of OIC 2008/149 prohibits the YUB and other parties from reviewing the cost allocation and rate design of YEC and YECL. At this point, YECL is agreeable to submitting the required cost of service and rate design data.

76. Yukon ratepayers need to rely on the utility regulator to determine how best to set fair and reasonable rates. As was indicated in Board Order 2009-1, the Board has already determined the need for cost of service data when it issued its January 15, 2007 report on YEC's 20-Year Resource Plan:

*Now is an appropriate time for YEC and YECL to have a complete review of all GRA Phase I and Phase II matters. The Board recommends that YEC and YECL file a full GRA application before October 31, 2007. The application should **include a full cost of service**, rate design and an update of the Electric Service Regulations. The Board also suggests that YEC and YECL consider a performance-based regulation mechanism. As well, the Board recommends that evidence be provided as to what other utilities provide for Maximum Company Investment and model theirs accordingly.*

77. Yukon ratepayers have not seen a true cost allocation reckoning 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.

78. 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.

79. 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.

80. 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.

81. 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.

82. 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.

83. 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."[11]

84. 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*

[11] National Energy Board Strategic Plan 2009-2012

long-run marginal costs that should be included in the run-out rates for consideration by the Board.

85. 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.

86. While OIC 2008/149 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. In essence, UCG submits that ratepayers are entitled to know

a) how much of the cost of generating, transmitting, and distributing electricity they are causing,
b) how much more or less than their share of the cost of electricity they are paying,
c) which ratepayers are benefitting from subsidies paid for by others, and
d) to the extent subsidies exist, how the utility expects to eliminate subsidies, or on what basis the subsidies are justified and expected to be maintained.

87. 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 OICs 2007/94 and 2008/149 expire.

88. In response to CW-YEC-1-12, YEC indicated that runoff rates at the time the Application was filed were only 14.39 cents/kWh in the Hydro zone, while the approach approved by the Board in the 1996/97 GRA for setting run-off rates would yield runoff rates approximating of 37.37 cents/kWh. YEC suggested that an increase in the runoff rate of 5.61 cents/kWh (resultant Hydro runoff rate before GST of 21.12 cents/kWh) was a practical first step towards correcting this problem and better achieving the efficiency required by OIC 1995/90.

89. In its application, YEC's states: "The Rate Policy Directive (OIC 1995/90) was amended prior to the filing of this Application to direct that, prior to January 1, 2013, the Board must ensure that rate adjustments for retail customers (as defined in OIC 1995/90) apply equally, when measured as percentages, to all classes of retail customers". UCG submits that one of the clear consequences of the very late filing by YEC is that ratepayers lost the benefit of any changes to cost allocation the proceeding would have required in accordance with the previously Board expected joint cost of service filing in October 2007, assuming that the government would not have stepped in earlier to avoid shifts in costs.

90. 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 for individual utilities without understanding the overall impact on the end user (i.e., YEC and YECL rate adjustments plus government subsidies).

91. Specifically with respect to the proposal to adjust the runoff rates for residential customers, UCG submits that it is premature, based on the current record, to make such changes. The application makes it clear that the underlying rationale for the new block structure is to disincentive ratepayers from using electric space heating; yet YEC admits that it has no information about the number of residential customers using space heating.[12] Accordingly, UCG submits, it follows that YEC does not have information about the circumstances surrounding those customers that use electricity for space heating, such that YEC does not know how many customers there are that will face a sudden increase in rates as a result of their use of electricity for space heating, but whom may not have any ability to switch to non electric means of heating as a result of, for example, being a tenant.

92. Similarly, UCG submits, it is somewhat disingenuous for YEC to propose a revised block structure that affects all and only the residential customers in the Yukon, at the same time that they defend YEC's limited involvement in DSM activities on the basis that YEC does does not primarily serve end users as these customers are primarily served by YECL.[13]

93. UCG submits the following bill calculations as an illustration of what has been / will be happening to the bills paid by residential non-government ratepayers in Whitehorse using 1000 kWh and 1300 kWh per month:

January 2007	1000 kWh	1300 kWh
Customer Charge	$11.90	$11.90
First Block Energy	$98.60	$98.60
Second Block Energy		$31.35
Rider F	$9.64	$12.53
Rider J	$16.50	$21.18
Income Tax Rebate (0.05%)	($0.55)	($0.73)
Rate Stabilization Fund	($37.14)	($37.14)
	$98.95	$137.69
GST (6%)	$5.94	$8.26
Total Bill:	**$107.78**	**$145.95**

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12 UCG-YEC-1-25 c)

13 LE-YEC-1-20 c)

January 2008	1000 kWh	1300 kWh	
Customer Charge	$11.90	$11.90	
First Block Energy	$98.60	$98.60	
Second Block Energy		$31.35	
Rider F	$9.64	$12.53	
Rider J	$16.50	$21.18	
Income Tax Rebate (0.05%)	($0.55)	($0.73)	
Rate Stabilization Fund	($18.57)	($18.57)	RSF reduced 50%
	$117.52	$156.26	
GST (5%)	$5.88	$7.81	
Total Bill:	**$123.40**	**$164.07**	

January 2009	1000 kWh	1300 kWh	
Customer Charge	$11.90	$11.90	
First Block Energy	$85.00	$85.00	Proposed Rates
Second Block Energy		$48.18	Proposed Rates
Rider F	$18.60	$24.18	
Rider J	$14.47	$21.66	
Rider R – YECL (5%)	$4.85	$7.25	New Rider
Rider U – YEC (3.48%)	($3.37)	($5.05)	New Rider Credit
Income Tax Rebate (0.05%)	($0.48)	($0.73)	
Rate Stabilization Fund	($18.57)	($18.57)	
	$112.40	$173.82	
GST (5%)	$5.62	$8.69	
Total Bill:	**$118.02**	**$182.51**	

August 2009	1000 kWh	1300 kWh	
Customer Charge	$11.90	$11.90	
First Block Energy	$85.00	$85.00	
Second Block Energy		$48.18	
Rider F	$18.60	$24.18	
Rider J	$14.47	$21.66	
Rider G – YECL (4.145%)	$4.02	$6.01	
Rider R – YECL (0%)			
Rider U – YEC (3.48%)	($3.37)	($5.05)	
Income Tax Rebate (0.05%)	($0.48)	($0.73)	
Rate Stabilization Fund	($0.00)	($0.00)	RSF Eliminated
	$130.14	$191.15	
GST (5%)	$6.51	$9.56	
Total Bill:	$136.65	$200.71	
January 2010	1000 kWh	1300 kWh	
Customer Charge	$11.90	$11.90	
First Block Energy	$85.00	$85.00	
Second Block Energy		$48.18	
Rider F	$18.60	$24.18	

Rider J	$14.47	$21.66
Rider R – YECL (10.526%)	$10.20	$15.27
Rider U – YEC (3.48%)	($3.37)	($5.05)
Income Tax Rebate (0.05%)	($0.48)	($0.73)
Rate Stabilization Fund	($0.00)	($0.00)
	$136.32	$200.41
GST (5%)	$6.82	$10.02
Total Bill:	**$143.14**	**$210.43**

94. UCG submits that, once the RSF is eliminated in July 2009 and with YECL's rider adjustments approved in Order 2009-5, monthly bills for Whitehorse consumers will have increased 33% since 2007 for those using 1000 kWh per month and 44% since 2007 for those using 1300 kWh per month.

95. UCG submits that this is a significant contrast to promises of energy cost reductions once industrial loads (like the Minto mine) are added. On May 23, 2007, the Minister Responsible for YEC Archie Lang stood in the Legislative Assembly and stated:

"We are certainly looking, with the enhancement of the hydro line, at lower rates instead of subsidization, and a go-forward management plan on how we can educate Yukoners to manage our utilities in a more manageable way. I look forward to the next 12 months and I look forward to being able to ***report to this House in the next 14 months that the rate stabilization fund is no longer needed in the territory because we have rate reductions.*** *Then we move on to managing our resources, working with industry and enhancing the reductions in our energy portfolio to the benefit of all Yukoners."*

96. UCG submits that statements like this by representatives of YEC establish expectations among stakeholders. The 14-month period referenced by the Minister expired in July 2008 without any sign of the rate reductions that would eliminate the need for financial relief from the significant bill increases being realized by Yukoners.

97. Given the commitment of YEC to work with YECL to assemble cost of service and other Phase 2-related evidence, UCG submits that any adjustments to rates and charges to be applied to the bills of Yukon ratepayers should be deferred until after the Phase 2 evidence has been reviewed and a Board decision issued.

98. UCG submits that a variance account should be established to track revenue surplus / shortfall resulting from existing rates being applied to actual consumption until rates can be established following the Phase 2 review.

99. 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.

100. In its 2005 revenue requirement application, YEC proposed the implementation of an Income Stabilization Trust Account (IST account) for the purpose of managing cost changes over time and to hold rates stable. YEC proposed that sources of funds for the IST could come from the Diesel Contingency Account (having a balance at the end of 2007 of approximately $856,000) and Dewatering Revenues (with a projected balance of $1.2 million the end of 2007).

101. 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.

102. Under Rate Schedule 34, YEC collects 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, and that the proposed IST account was one means of providing a direct benefit to those ratepayers of the monies collected from prior periods.

103. Board Order 1996-7 specifies 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”.

104. The Board denied YEC’s proposal to set up an IST account and to use the DCF as proposed in the 2005 revenue requirement proceeding. Despite the fact that the Faro mine de-watering deferral account was being used to the benefit of ratepayers in that it was providing YEC with a source of no-cost capital, thereby reducing current revenue requirements through a lower Rate Base than otherwise would occur, the Board decided that the Faro mine de-watering deferral account can and should be drawn down to provide rate stability to customers.

105. In Order 2005-12, the YUB directed YEC, commencing January 1, 2005, to amortize the Faro mine de-watering deferral account credit balance in such a manner as to offset the need for general service rate increases at the amount equal to the revenue shortfall approved by the Board for 2005 to 2007.

106. As argued later in this submission, UCG submits that the DCF and de-watering account reduce YEC’s business risks and this should be reflected in the allowed return on equity.

VII. ISSUE: CAPITAL PROJECTS

107. In her letter to the Board dated August 29, 2006, the Yukon Minister of Justice noted that “prior to the implementation of any proposed significant energy projects by YEC (e.g.,

construction of the Carmacks to Stewart transmission line), it is the government's intention to refer the details of such projects to the Board for review and recommendation under the provisions of Part 3 of the *Public Utilities Act*". While YEC is planning to spend money during the test years on developing the Mayo B project and other large projects, UCG submits that the Board should recognize in its decision its expectation that major projects will be subject to Part 3 review and consider the question of project-related rate impacts.

108. All significant capital projects in the Yukon should be considered regulated projects and subjected to more strenuous review prior to YEC starting construction. UCG submits that the threshold for determining whether a project is significant should be a combination of project value (e.g., $500,000 or more) and ultimate impact on rates.

109. UCG submits that the Board should specifically recommend at what time during the project life any triggered review should take place.

110. UCG submits that any project that YEC cannot justify from a business case / rate impact perspective should be put back on the shelf until they can be justified from a business case perspective, without recourse to government funding in order to offset costs and eliminate ratepayer (as opposed to taxpayer) impact.

111. YEC testified in the review of its 2005 revenue requirement that for significant projects, project cost estimates should be in the +/- 15% range at the time of proposal (transcript page 533) and that the estimating process would take 1 to 2 years (transcript page 534).

112. UCG submits that the cost estimates for any project included in YEC's current application must be assumed to be within the +/- 15% range. Any costs incurred beyond this threshold should be excluded from any recovery through rates.

113. 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?

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

115. 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.

116. UCG submits that the "business as usual" capital budget includes ongoing capital works spending on property, plant and equipment (forecast at $3.803 million for 14 projects proposed to be added to rate base in 2008 and $4.828 million for 2009. The proposed capital works projects budgeted at between $100,000 and $1 million for the 2008 and 2009 period, with $100,000 or more forecast spending in at least one of these two years, total $2.37 million in 2008 and $3.14 million in 2009.

117. UCG submits that this "business as usual" capital budget does not include the five major projects undertaken by YEC since 2005 each with costs in excess of $1 million and have total projected costs over the period 2005 (actual) to 2009 (forecast) of $48.488 million by the end of 2009.

118. 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.

119. UCG is quite concerned that, given YEC's recent 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.

120. 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 are 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 at an

estimated impact in 2010 for the midpoint total project cost of $3.7 million per year, whereas the benefits accrue over time depending on a variety of factors including mine commitments, currently unknown, 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.

121. 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.

122. 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 expenditure for recovery in rates.

123. 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.

124. 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.

125. With completion of Stage 1 CSTP service to Minto mine under Rate Schedule 39 (forecast 6,845 MWh in 2008 and 29,023 MWh in 2009), YEC cannot confirm that any other industrial loads will be added to the system in the next few years.

126. In response to CW-YEC-1-30, YEC states that the main renewable energy project under review at the present time is Mayo B. The YESAB submission with respect to this project notes that it comprises an approximately 10-12 MW powerhouse at a cost most recently estimated at $120 million. The project is targeted for a late 2011 in-service date, and the GRA budget for the test years is $1.7 million 2008 and $6.5 million in 2009.

127. UCG questions how such a large hydro project such as Mayo B can be considered as a "renewable" energy project. The Clean Air Renewable Energy Coalition is a group of corporate and environmental non-governmental organizations (including BC Hydro, Ontario Power Generation and Toronto Hydro) formed to accelerate the development of Canada's renewable energy industry. The overarching objective of the Clean Air Renewable Energy Coalition is to see Ecologo certifiable, low impact electricity generation in Canada account for 15% of all power generation by 2020. This Coalition considers continued development of wind, (small) hydro, biomass, geothermal and ocean energy as the renewable technologies to be pursued in Canada; it is UCG's understanding a project with the scope of Mayo B would not be considered in the Coalition's portfolio as a "renewable" energy project.

128. UCG submits that there is too much uncertainty with respect to industrial load to justify significant generation projects in the Yukon.

129. In response to CW-YEC-1-31, YEC states that Western Copper provided forecast information to YEC which currently projects an in-service date of 2011, and an expected annual requirement averaging approximately 4 GWh per month (48 GWh per year) with a mine life of at least six years. But, current economic conditions might well lead to some delay in this project's financing and construction.

130. In this same interrogatory response, YEC states that Alexco Resource Corp. indicated to YEC plans to commence mining and milling operations at the Keno Hill property in early 2010, with a resultant electricity load in the 21-25 GWh per year range and a mine life of at least five years. Since the Application was filed, this load information for Alexco has been updated such that it is now expected that grid service will commence at 11.7 GWh for the first 2 years of service and increase to 16.5 GWh for the next three years of service.

131. YEC has indicated that, based largely on their new planning criteria, current assets will not be able to reliably meet forecast loads in the near future. Aside from UCG's comments on load forecasting and treatment of industrial loads found elsewhere in these submissions, UCG further submits that 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.

132. UCG does not see the Aishihik Third Turbine project as being a priority with respect to the near term requirements of YEC.

133. The Aishihik Third Turbine project adds only 600 kW to the capacity of YEC to meet the LOLE planning criteria, and adds 0 MW to the capacity of YEC to meet the N-1 Criteria.

134. YEC indicates that the usefulness of the project is

a) the future availability of this capacity if, for example, a second Aishihik Transmission Line were built, or if a other generation assets were developed so as to reduce the relative weighting of Aishihik generation, and
b) the addition of energy to the WAF grid, potentially yielding benefits such as displaced diesel generation and prolonged secondary sales.

135. YEC indicated during the review of its 20-year Resource Plan that, with 10 MW of mine loads added to the system, ratepayers will experience a net benefit from the addition of the Aishihik Third Turbine project within two to three years of operation. Without mines adding to the base load, the project does not become a ratepayer benefit for approximately 8 years, and over a 20 year period constitute a net loss to the ratepayer. YEC asserts that these approximations are made without regard to the benefit of additional secondary sales. UCG submits that no matter how much in capital contributions are made by third parties, there does not appear to be enough evidence to adequately support pursuing this project as a priority over other projects (such as transmission projects) which would improve the reliability of supply to customers.

136. UCG submits that there is not enough information on the record to allow the Board to make any definitive recommendations on this project other than it needs more evaluation and detailed engineering work. This project should then be evaluated per Part 3 of the Act. Pursuant to section 39 of the *Public Utilities Act*, UCG submits that YEC should submit an application for an energy project certificate or energy operation certificate to the Minister.

137. 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.

138. 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.

139. 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.

140. 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 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.

141. 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.

142. 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.

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

144. UCG submits that alternative ownership scenarios (e.g., First Nation investment or Yukon public investment shares similar to what Air North has implemented) have not been adequately evaluated for the proposed projects. UCG encourages the Board to direct YEC to provide evidence that alternative ownership scenarios have been evaluated and pursued where viable in future Part 3 reviews of specific projects and in the annual reviews of its proposed Resource Plan.

VIII. ISSUE: BOARD RECOMMENDATIONS AND DIRECTIVES

145. UCG submits that it is imperative that YEC move quickly and cooperatively in implementing outstanding Board recommendations and directives, and has referred to specific recommendations and Directives throughout these submissions.

IX. ISSUE: FINANCIAL SCHEDULES

146. In response to YECL-YEC-1-31, 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. UCG submits that the Board does not have enough evidence on the record to include any of the proposed expenditures in the 2008 or 2009 revenue requirements. UCG submits that all costs incurred to meet IFRS requirements should be captured in a deferral account for future review and disposition.

147. 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.

148. 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.

149. As required by the Canadian Accounting Standards Board, Canadian Generally Accepted Accounting Principles for publicly accountable enterprises will transition to IFRS, effective January 1, 2011. 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.

150. 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.

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

- o the one-time administrative cost to switch-over to the IFRS based reporting;
- o the ongoing administrative costs for IFRS reporting including any related incremental costs for required regulatory reporting; and
- o 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.

152. 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.

153. 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.

154. UCG submits that the Board should direct YEC to provide a report during 2009 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.

155. In its decision regarding the 1996-97 GRA, the Board approved a negotiated settlement that included a fair return on equity of 11.25% for both utilities which was lowered to 10.75% for YEC because of the requirement of OIC 1998/32. In 1998, in response to the closure of the Faro Mine, YEC applied to the Board for a reduction in its fair return to 9.138% from the 10.75% level. After the 2005 revenue requirement hearing for YEC, the Board determined 9.05% to be the appropriate return on equity for YEC. UCG submits that this was the approved return level allowed for all years subsequent to 2005 until the Board approves another rate of return.

156. UCG submits that without Board approvals since 2005, the components of revenue requirement approved for 2005 remained the approved amounts for 2006 and 2007. As a result, UCG submits that YEC has understated the return levels identified for these years.

157. 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 the two utilities 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 the BCUC formula approach as has been used in the past.

158. UCG submits that there has been no "expert" evidence provided in this proceeding to justify YEC's continued reliance on the BCUC methodology versus methods used in other jurisdictions and how they were considered. While the formulaic approach to establishing the cost of equity is generally accepted, UCG submits that without expert / comparative evidence, it is difficult to ignore the results / advantages of existing formulas used by the National Energy Board, the Alberta Utilities Commission, the Régie de l'Energie de Québec and the Ontario Energy Board. UCG submits that it would be useful to the Board to see the results of using other formulas (despite the fact that some are currently under review) before determining which formula to use. UCG submits that ROE adjustment formulas are always in a state of review.

159. The BCUC first introduced a generic ROE adjustment mechanism in 1994 to annually establish the allowed returns on equity for the utilities it regulates in the province. The 1994 Decision established a return on equity for the benchmark "low risk" utility in British Columbia and BC Gas Utility Ltd. (now Terasen Gas Inc.) was deemed the benchmark low risk utility. The 1994 Decision introduced an automatic adjustment mechanism to reset the annual generic allowed return on equity. The formula introduced at that time adjusted the allowed ROE on a one for one basis with movements in the forecast long-term Government of Canada Bond ("GCB") yield provided the yield had moved more than 50 basis points year over year.

160. Shortly thereafter, the National Energy Board ('NEB") established a generic allowed ROE for the pipelines it regulated in the 1995 Multi-Pipeline Cost of Capital Proceeding (Decision RH-2-94). In the RH-2-94 Decision, the NEB approved an ROE for a low risk, high-grade benchmark pipeline, based primarily on the equity risk premium test. The ROE was set at 12.25% for the 1995 test year and the Board also adopted a formula for adjusting the allowed ROE on an annual basis for 75% of the change in the forecast GCB yield from a base of 9.25%.

161. In 1997, the BCUC recalibrated the ROE adjustment mechanism by Order G-49-97 using a benchmark ROE of 12.25% at a long-term GCB yield of 9.25%. The Order introduced a sliding scale adjustment of 80% of the movement of the forecast yield of the 30 year GCB from a starting point of 9.25%. In that Order the Commission directed that the range of long-term GCB yields over which the adjustment formula will apply was 6% to 12%.

162. In 1999, the BCUC once again examined the generic ROE and automatic adjustment mechanism. In its Order G-80-99, the Commission set the low risk benchmark ROE at 9.50% when the long-term GCB yield was forecast to be 6.00% and fixed the equity risk premium at 350 basis points when the GCB yield was forecast to be below 6.00% and adjusted for 80% of the movement of the long-term GCB yield above 6.00%.

163. In the last hearing into Cost of Capital in 2005 (resulting in Order G-14-06), the BCUC adjusted the starting point for the formula based ROE to 9.145% when the long-term GCB yield is forecast to be 5.25%, modified the sliding scale adjustment factor to 75% of the movement in the GCB forecast from 80% and eliminated the asymmetry in the sliding scale adjustment mechanism above and below 6%.

164. During this period, the Ontario Energy Board ("OEB") in 1997, the Régie de l'Energie de Québec ("Régie") in 1998 and the Alberta Energy and Utilities Board ("EUB") in 2004, adopted formulas substantially similar in design and resulting ROEs to the BCUC and NEB formulas.

165. While there has been some evolution in the parameters and the mechanics of the BCUC formula over the intervening decade and a half, it has converged with the design and ROE produced by the NEB formula. Today the BCUC formula continues to annually adjust allowed ROE by 75% of the movement in forecast 30 year GCB yields, a similar adjustment to the operation of the RH-2-94 formula.

166. UCG also 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 how big a premium is required.

167. 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.

168. 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.

169. In response to CW-YEC-1-1, YEC stated that Yukon Development Corporation (YDC) would assume from YEC the financing risk of the Minto Capital Cost Contribution, and YDC would guarantee to YEC all Capital Cost Contribution payments to be made by Minto to YEC under the Power Purchase Agreement.

170. UCG submits that YEC is also at a lower risk due to deferral account "safety nets" ongoing bailouts and contributions by the Yukon government and YDC when trying to get projects in place, and revenue guarantees provided by mechanisms such as the RSF. 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 in 2005, such that the existing risk premium may be overstated.

171. As stated previously, UCG submits that YEC's 2008 revenue requirement should be based on actual costs incurred during the year. In response to CW-YEC-1-28(b), YEC states its forecast of cost of debt is not based on interest expenses to be actually incurred in the test years but is based instead on a calculation that takes the average cost rate as at January 1 plus the average cost rate at December 31 divided by 2. This calculation reaches back in time (by using the January 1 average cost rate, which is effectively the cost for the previous year) as opposed to looking at interest costs associated with long term debt during the actual year in question.

172. UCG submits that YEC's 2008 revenue requirements should only include the actual interest costs incurred during 2008.

X. CONCLUSION

173. UCG submits that a Phase 2 review in the Yukon is far overdue. 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, analysis of proposed infrastructure spending in relation to limited customer base that characterizes the Yukon and to properly evaluate the need for government relief because the anticipated benefits from industrial loads have not met expectations with respect to reducing rates.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 22nd DAY OF MAY, 2009