

To: Yukon Utilities Board & All Parties:

From: P. W. Percival, P. Eng.

Re: CORRECTION to my email of yesterday with respect to Mr. Florence's association with the Yukon Water Board

I must apologize to Mr. Florence and to the YUB for stating that Mr. Florence was "a former legal counsel to the Yukon Territorial Water Board". I don't believe this to be correct. I do, however, recall Mr. Florence being in attendance at a Water Board Hearing at which I appeared and at which there was considerable discussion and debate over procedural matters before the chair of Howard MacDonald. I also recall Mr. Florence introducing himself to me as a DIAND lawyer who had come to observe the Water Board's procedures (during, as I remember, a recess when the Water Board had retired to consider an oral notice of motion) and our having a conversation relating to procedural fairness and the application of the principles of Natural Justice.

Again I humbly apologize for providing inaccurate information.

Sincerely,  
P. W. Percival, P.Eng.

The Percivals wrote:

> \*MEMORANDUM\*

> March 31, 2007

>

> To: Yukon Utilities Board & All Parties

>

> From: P. W. Percival, P. Eng.

>

> Re: Appointment of new member to the Yukon Utilities Board

>

> In response to the above referenced appointment and the pdf letter  
> attached to the original email dated March 30, 2007 that states "---  
> the Board's intention to have Mr. Florence participate in the  
decision

> making related to the PPA." I offer the following appreciation for  
the

> Board's careful consideration:

>

> I vehemently oppose and protest having Mr. Florence being involved in  
> any way with this proceeding as an official active member of the  
Board.

>

> Please correct me if I am wrong, but I can find nothing on the record  
> in the form of a Board Order that rescinds Board Order 2007-01  
wherein

> it states that "1. The Board considers the PPA review to be a  
> continuation of the 20-Year Resource Plan Review proceedings;"

>

> While the Board, through its letter to UCG and YECL of 07/02/21 (see  
> last paragraph page 2), has to some extent redefined the process, it  
> has not directly rescinded Board Order 2007-01. Therefore, the Order

> stands as is. In addition, the preamble within the last paragraph  
> of  
> this letter states in part that "--- the Board considers that YEC's  
> PPA application is related to the Resource Plan proceeding, ---" this  
> suggests that the Board will likely rely to some degree on  
> information, evidence, cross examination, testimony and arguments it  
> has heard or received during the Resource Plan proceeding. Indeed,  
> YEC in response to a number of PPA IRs from intervenors and the Board  
> has referred back to evidence YEC filed during the Resource Plan  
> hearing.  
> No Board Member, who has not directly and fully participated in the  
> first part of the process, can now either join the Board for the  
> continuation of the hearing or participate in any way whatsoever in  
> the decision making related to the PPA. To permit Mr. Florence to  
> actively participate at this late date in the proceedings would be a  
> direct violation of the principle of Natural Justice "that only those  
> who have fully heard a proceeding can make a decision".  
>  
> The Board has already made some decisions regarding notices of motion  
> without benefit of input from Mr. Florence and, while he would now be  
> bound by these decisions, these decisions may have been decidedly  
> different had he been involved in their formulation.  
>  
> No matter how well qualified or how proficient a reader Mr. Florence  
> may be it is difficult to believe that he would be able to absorb all  
> of the vast and very complex material that has already been filed  
> with  
> the Board on these matters. This is especially so considering the  
> fact that, as far as I know, Mr. Florence does not have a background  
> in utility regulation.  
>  
> In consideration of the above objection and supporting arguments, I  
> would caution the Board that should a Board Order or Ruling be  
> considered adverse to the interests of the Applicant, YEC could well  
> have an opportunity for appeal to the courts on the grounds that at  
> least one or some of the principles of Natural Justice were not  
> followed.  
>  
> I find it particularly disturbing that the Board would even entertain  
> the idea of injecting Mr. Florence into the proceedings, let alone  
> write to the parties to inform them that "It is the Board's intention  
> to have Mr. Florence participate in the decision making related to  
> the  
> PPA." Surely this letter, or a draft of this letter, was provided to  
> Mr. Florence prior to its distribution to the parties. If that is  
> the  
> case, one could well question why Mr. Florence, with his background  
> as  
> a lawyer called to the bar in the Yukon and with extensive  
> administrative law experience as a former legal counsel to the Yukon  
> Territorial Water Board, would not have recognized the Natural  
> Justice  
> dilemma I believe I have identified above; and thus quashed the  
> letter. On the other hand, if Mr. Florence did not have knowledge of  
> this letter he has been poorly served. In either case, it appears to  
> me that he has certainly now been put in a most untenable position.  
>

> Sincerely,  
>  
> P. W. Percival, P. Eng.  
>  
> PS:  
> Preparing this objection as per the request in Ms Lemke's letter has  
> delayed my preparation of arguments regarding the PPA by one full  
day.  
> I therefore request that the Board extend the dates for the  
> receiving arguments from all parties by one extra day.  
>  
> Deana Lemke wrote:  
>>  
>> Attached, please find a letter from the Yukon Utilities Board  
>> regarding the appointment of a new member to the Board.  
>>  
>>  
>> Deana Lemke  
>>  
>> Executive Secretary  
>>  
>  
>  
>