

UTILITIES CONSUMERS' GROUP
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November 21, 2011

Yukon Utilities Board
Box 31728
Whitehorse, Yukon Y1A 6L3

Attention: Deana Lemke, Executive Secretary

**Re: Yukon Energy Corporation / Yukon Electrical Company Limited
Application for Approval of the Rider F — Fuel Adjustment Rider and Deferred Fuel
Price Variance Policy**

Dear Ms. Lemke:

Please find enclosed the reply argument submissions of the Utilities Consumers' Group with respect to the above noted matter.

Yours truly,

Roger Rondeau
Utilities Consumers' Group

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 an application by Yukon Energy Corporation
and Yukon Electrical Company Limited for Approval of the Rider F —
Fuel Adjustment Rider and Deferred Fuel Price Variance Policy

REPLY ARGUMENT OF

UTILITIES CONSUMERS' GROUP

November 21, 2011

INTRODUCTION

1. The Utilities Consumers' Group ("UCG") filed its Final Argument on November 14, 2011 with respect to Yukon Energy Corporation's ("YEC") and Yukon Electrical Company Limited's ("YECL") application for approval of the Rider F - Fuel Adjustment Rider and Deferred Fuel Price Variance Policy. UCG received copies of final arguments submitted by YEC/YECL and Leading Edge Projects Inc.

REPLY TO LEADING EDGE ARGUMENT

2. On page 1 of its argument, Leading Edge states that it is not convinced that Section 8 of OIC 1995/90 must apply to actual fuel consumed, but believes that it is within the Board's jurisdiction to interpret this clause. UCG agrees that it has been the utilities that have been the interpreters of the intent of the OIC and that the Board has the jurisdiction to make this interpretation. UCG maintains that applying GRA-approved fuel volumes would serve the purpose of the OIC by protecting the companies and the ratepayers from fuel price variances that are outside the realm of forecasts.
3. On page 7 of its argument, Leading Edge recommends *"That the Board order the Utilities to apply the DCF calculation procedure to each and every month in 2011 for the integrated system by adding the last approved WAF hydro generation figures to the Mayo A long term average hydro generation figures; OR in the alternative to order the Utilities to provide an updated integrated system DCF to the Board for review and approval and to require the Utilities to apply this to 2011 retroactively once approved"*.
4. UCG agrees with Leading Edge that the DCF mechanism needs to be reviewed to ensure that the entire integrated hydro system is incorporated into the calculations. UCG submits that the DCF should have been replenished during some of the 2010 and 2011 years, i.e., that diesel has been on the margin in some months relative to the long-term hydro availability and that diesel will very likely be on the margin in some months during the 2011/2012 winter season. Without the proper information, it is impossible to test the utilities' methods regarding this mechanism. It is precisely for such reasons that the UCG does not trust the way in which such tools as the Rider F and the DCF are managed by the utilities nor how they have been regulated in the past.
5. In its Reasons for Decision in Board Order 2007-5, the Board determined that *"the Yukon regulatory environment is one that prefers a direction of standardized utility practice in regard to rates. Such standardized utility practice includes providing a full COS calculation when designing new rates. The process to complete the necessary studies for the cost of service calculation, prepare the application and obtain regulatory approval for new rates can be protracted" and that the Board is of the view that "due to the articulating nature of a COS study, rates cannot be developed in isolation"*¹.

¹ Board Order 2007-5, Reasons for Decision, page 5

6. UCG submits that simply reviewing escalation rates without considering impacts on the revenue recovery of Board-approved rates would not result in rates that are supposed to be designed to recover established revenue requirements from customer classes.

REPLY TO YEC/YECL FINAL ARGUMENT

7. On page 2 of their argument, YEC /YECL state that:

This proceeding is defined in large part by Section 8 of OIC 1995/90. Section 8 of OIC 1995/90 provides that Yukon Energy and Yukon Electrical can adjust their rate to retail customers, major industrial customers and isolated industrial customers so as to reflect fluctuations in the prices for which the two utilities pay for diesel fuel, without the requirement for specific application to, and approval from, the Board (see YUB-YEC/YECL-2-2(b)). In effect, pursuant to current policy and existing practice the Companies must be permitted (without need for, application to, or approval from the Board) to adjust their rates “so as to reflect fluctuations in the prices for which the two utilities pay for fuel”. The adjustment mechanism, as directed, applies to all fuel consumed, not just GRA forecast fuel.

As noted in YUB-YEC/YECL-2-5(c) and (d), the principle basis for, and rationale underlying, the Yukon Rate Policy regarding the fuel price adjustment mechanism is to provide for stability relative to swings in fuel prices and address risks inherent in forecasting diesel fuel price. Absent a Rider F mechanism the utilities would have to base their forecast costs and rates for each GRA on “best guesses” as regard to fuel prices, and subsequent to customer rates being so determined, actual earnings of the utilities would be affected each time fuel prices change. To the extent that fuel costs are material to the utility’s overall earnings, major changes in fuel prices would lead to pressures for new GRA hearings (either to lower rates or to raise rates in response to fuel price changes).

8. UCG submits that a proper perspective on the fuel adjustment mechanism is best gained by ignoring, for the moment, the immediate purpose and attendant policy of the Rider F and focusing instead on the broader question: Can the Yukon Utilities Board delegate its rate-making function to the regulated utilities for any reason not provided for by statute?
9. UCG submits that it is irrational to suggest that the legislature intended to grant the Board, upon which it conferred jurisdiction to protect the public welfare by regulating public utilities, the power to delegate away that jurisdiction to the extent that such utilities could determine their own cost of service including their own interpretation of a "reasonable" rate of return, and then determine for themselves the rates they would charge. Since the purpose of the *Public Utilities Act* is the regulation of public utilities and since the Yukon Utilities Board alone has the jurisdiction to regulate and supervise each public utility with respect to its rates, it follows that the Board can delegate neither all nor any part of its powers, but must supervise and regulate according to the procedures set out in the *Public Utilities Act*.
10. UCG submits that procedural requisites are clear in the *Public Utilities Act* in sections 28 and 29:

28(1) No public utility shall charge any rate for the supply of the service for which it is franchised other than the rate set by the board pursuant to this Act unless, 90 days before it proposes to charge a different rate,

- (a) a statement showing the new rate is filed with the board; and*
- (b) a notice showing the new rate is sent by mail or delivered to each municipality in which the service is provided and to the Minister*

(2) No public utility shall begin to charge a new rate except on receipt from the board of an order or interim order authorizing it to do so.

29 In setting rates that a public utility is permitted to charge,

(a) the board may consider the revenues and costs of the public utility in the financial year in which the proceedings for setting the rates and charges began or in any period immediately following, without considering the allocation of those revenues and costs to any part of that period;

(b) the board may give effect to that part of any excess of revenue received or deficiency incurred that is in the opinion of the board applicable to the whole of the financial year of the public utility in which the proceeding was initiated as the board considers just and reasonable;

(c) the board may give effect to any part of any excess revenue received or deficiency incurred after the commencement of the proceeding as the board determines has been due to undue delay in the hearing and determining of the matter; and

(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.

11. UCG submits that it is difficult to imagine an instance where a rate adjustment might be needed without the current rate being either too high, and, therefore, "unreasonable" and "unjust," or too low, and, therefore, "insufficient". If the current rate were reasonable, then for what purpose would it be modified?
12. When a regulatory agency like the Yukon Utilities Board finds a rate structure to be fair, reasonable and compensatory at a time when fuel costs are at a given level, then any increases or decreases in such fuel costs quickly render such rates unfair or unreasonable regardless of whether fuel costs go up or down. Since changes in the cost of fuel quickly render rates unreasonable, and since the *Public Utilities Act* requires certain procedures for adjustment of unreasonable rates, UCG submits that each rate modification based on changed fuel costs may be made only after a public review process. The authority to modify rates may not be delegated to the utilities.
13. UCG submits if some tweaking is needed to the rates due to fuel price variances, it must be kept simple and transparent, i.e., using the price variance times the GRA-approved volumes of fuel and considering all costs and efficiencies being realized by the utilities.

14. As far as previous approvals of Rider F adjustments are concerned, UCG has seen no evidence that at the time of the rate rider adjustments, any consideration was given to the utilities' changes in income nor to the relationship between rates to be increased and those to remain unchanged. Nor, in fact, to the customer's ability (as distinguished from economic necessity) to pay. In UCG's opinion, a regulatory commission which approves a rate of this kind is coming dangerously close to an abdication of its statutory responsibilities.
15. UCG submits that the utilities' inability to provide a cost of service study and the Board's established view that standardized utility practice requires the provision of a full cost of service study when designing new rates leaves the Board in a position of being asked to approve new rates without following established rate design principles.
16. UCG continues to believe that without supporting cost of service analysis, the utilities have not adequately supported its fuel clause adjustment applications to allow the Board to make a final decision on the applied-for rates. The Board is on record as not advocating a policy of deferring revenues or costs outside of the appropriate recognition period for the purpose of keeping rates stable but supporting the view that if revenues exceed the revenue requirement (as is clearly the case here), then the rates should be reduced ².
17. On page 3 of their argument, YEC/YECL state that:

While fluctuations in fuel costs occur from month to month, the Companies try to implement Rider F changes coincident with other rate changes when practical to reduce administration costs.
18. UCG submits that with a proper and effective fuel procurement management system, the utilities would not need to worry about frequent fuel price changes. Given that the Rider F is supposed to only address fuel price changes, the utilities' worry about fluctuations of overall fuel costs is not relevant to a discussion of Rider F. In the short term, fuel adjustment clauses may lead utilities to pay too high a price for available fuel since these costs can be recouped from the ratepayer.
19. On page 4 of their argument, YEC/YECL state that:

A directive to file a Rider F adjustment within a fixed time period following exceeding a threshold, or to file an adjustment on a regular basis (e.g., quarterly) would not provide the necessary flexibility to adjust to specific situations (such as unresolved GRA proceedings) or changes in circumstances related to swings in fuel prices (that may negate the requirement for a Rider change).
20. UCG submits that the utilities have missed the point. The utilities have not provided enough information to justify any suggested threshold of tolerance for fuel prices so it seems counterproductive to be worried about the frequency of Rider F adjustments given the need to ensure more thorough cost reviews.

² Appendix A to Board Order 2007-5, Reasons for Decision, page 10

21. On page 4 of their argument, YEC/YECL state that “*Rider F charges or rebates to customers do not affect the income of the Companies*”. In UCG’s view, anything that impacts revenues recovered by the utilities obviously affects their income.
22. On page 4 of their argument, YEC/YECL state “*Prior to, and throughout, the current process to review the Policy, various parties have raised questions that indicated ongoing confusion regarding the calculation of, and basis for, deferrals to the DFPVA*”. They go on to list “assertions” that they argue do not accurately reflect the intent of the fuel adjustment clause and related deferrals.
23. UCG submits that this, again, is the utilities’ interpretation and should not be considered a statement of fact.
24. On page 5 of their argument, YEC/YECL state “*By contrast, fuel price risks are subject to external market conditions and not within the utilities’ control or ability to forecast*”. UCG submits that the utilities are in control of the prices they pay for diesel fuel and frequency of changes in prices by the purchase contracts that they sign. If the fuel price is also contingent on the amount used, then the utilities are abdicating their responsibility for operational decisions they make on a daily basis.
25. The utilities argue on page 5 of their argument that:

To ensure fuel price risk is fully addressed by the fuel price variance mechanism in Yukon (and in all other jurisdictions where fuel price risk is handled in a similar manner) the policy necessarily applies to all volumes of fuel consumed. If the DFPVA did not apply to all fuel volumes the Companies and ratepayers would not be fully protected from all diesel fuel price variance risk as is clearly contemplated by OIC 1995/90.
26. In UCG’s view, the utilities continue to broaden the interpretation of use. First, the utilities appear to include all uses of diesel fuel under “use” for purposes of the fuel adjustment mechanism rather than only fuel used to actually generate electricity. Second, the utilities have assumed that “*for each actual litre of diesel consumed to generate electricity, the difference between the actual weighted average cost per litre of fuel consumed and the most recent GRA-approved fuel price is recorded in the DFPVA*”. As long as a proper procurement policy is in place and regulated, UCG maintains that applying GRA-approved fuel volumes would serve the purpose of the OIC by protecting the companies and the ratepayers from fuel price variances that are outside the realm of forecasts.
27. On page 5 of their argument, YEC/YECL state “*Material outlining the calculation of Rider F (and related DFPVA balances) has routinely been filed with the Board over the past two decades according to the current policy and practice, and these filings have consistently illustrated that actual diesel fuel consumed (as opposed to fuel consumption levels approved at the last GRA) has been used for the calculation of the DFPVA balance and subsequent Rider F adjustments*”. UCG’s concern with past practice is that the utilities have not enabled public review of its filings to the Board regarding the fuel adjustment mechanism. This lack of transparency is an ongoing issue with respect to the operations of the utilities (as illustrated in the required direction of the Board to the utilities in this proceeding to more fully respond to requests for information). UCG submits that the utilities’ reliance on historical application of the fuel adjustment clause is misguided given

the fact that this current proceeding would not be taking place without the direction in Board Order 2010-13 to provide a written policy, for approval by the Board on how Rider F is to be managed.

28. On page 7 of their argument, YEC/YECL state that alternative approaches to the existing fuel adjustment clause mechanism “*would not be consistent with the risk distribution between the Companies and ratepayers that has existed for more than two decades (including the basis on which the two utilizes have established their revenue requirements and had their risk profiles reviewed by experts and the Board)*”. In UCG’s view, the inequitable risk distribution and the additional risk relief realized by the utilities that has existed since the fuel adjustment clause was enacted is exactly why an alternative process is required.
29. On page 7 of their argument, YEC/YECL state “*Rider F is a fuel price adjustment mechanism that addresses only risk related to change in fuel price from GRA approved forecast fuel prices, and does not address risk (at GRA approved fuel prices) for any changes in diesel generation fuel volume from the GRA forecast*”. In UCG’s view, by incorporating actual diesel fuel used in their calculations related to the fuel adjustment clause automatically relieves the utilities of the risk associated with forecasts of diesel generation fuel volumes. This is the overlap between the Rider F and DCF mechanisms that has become blatantly clear during this proceeding. Diesel fuel use is driven by operational decisions made by the utilities as well as the availability of alternative sources of generation like hydro. UCG submits that the Board needs to see past the misdirection of the utilities’ arguments and clarify how and when these mechanisms should be implemented.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 21ST DAY OF NOVEMBER, 2011.