

UTILITIES CONSUMERS' GROUP

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February 7, 2012

Yukons Utilities Board
Box 31728
Whitehorse, Yukon
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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**

UCG Comments on Cost Claims

Dear Ms. Lemke:

General

1. The Utilities Consumers' Group is in receipt of the cost claims submitted by Leading Edge Projects on January 16, 2012 and Yukon Energy Corporation on January 20, 2012. Given that the Board's Cost Awards Policy requires applications for cost awards to be made by filing a written application with the Board within 30 days of the Board's rendering of the Decision (i.e., December 23, 2011), UCG submits that any cost claims submitted after January 22, 2012 should not be considered recoverable from Yukon ratepayers. Given the obvious participation of Yukon Electrical Company Limited in this process, UCG submits that YECL should be required to identify its related costs so that they can be excluded from any cost recoveries through electricity rates paid by Yukoners. UCG submit these costs be borne by YECL shareholders, not ratepayers.

2. While most of UCG's comments on cost claims for this proceeding are related to the claim of YEC, we would like to make one comment regarding the Leading Edge application. On page 2 of his claim, Mr. Maissan states that "*Confirmation of the relevancy of his participation to the issues under consideration by the Board can be found in the Board's Appendix A, Reasons for Decision to Board Order 2011-15. Leading Edge's IRs and positions on various matters were specifically referenced by the Board in its decision*". UCG submits that references made by the Board in its decisions to submissions made by various parties is more for completion of the record rather than any indication of relevance of the submissions. While it is important that the Board recognize the various positions and points of view being put forth at any proceeding, it would be inaccurate to suggest that any viewpoint is more relevant to another just because of the number of times a party is mentioned in a decision. As far as UCG can see, references to Leading Edge in the Reasons for Decision to Board Order 2011-15 are simply acknowledgements of submissions that may or may not have influenced the Board's final positions.

Submission on YEC Cost Claim

3. In its cost claim, YEC applies to recover a total of \$22,709.07 in legal and consultant fees and disbursements. It is not clear to UCG why YEC has used an altered version of the Form U1 in its claim (i.e., they have excluded the column which identifies GST charges) so we assume that the total costs include GST and can be identified as \$21,627.69 + \$1,081.38 GST.

4. UCG is concerned with YEC's excessive use of consultants to complete and support these types of filings. YEC appears to be using consultants to structure policy of the utility without fully utilizing the in-house management staff that are already on high payroll. The result is that simple concepts are made complicated and complex costing much more time and money to review, regulate and implement. **Accordingly, UCG submits that any consultant costs for review or setting of policy by the companies be paid by the shareholders, not the ratepayers.**

5. It is not clear from YEC's cost claim how much time was spent on this application by in-house staff but these costs should be identified and taken off the rate base.

6. If the Board chooses not to handle the Utility costs as requested in #4 above, then we have these issues we wish to identify:

- i. YEC notes in its cost claim that Order 2011-12 directed the utilities to provide further responses to the IRs specified in Appendix A to that Order, and to respond to further IRs from the Board as attached as Appendix B to that Order. UCG submits that the ongoing non-disclosure position of YEC in this and previous proceedings results in additional costs being incurred because YEC does not want to provide relevant information up front. UCG submits that the Board consider sending a clear message that the utilities should be more transparent and cooperative when dealing with parties (including the Board) who are seeking information that clearing informs the decisions of the Board. UCG submits that YEC's shareholder should shoulder these costs.
- ii. UCG submits that, in this option, a minimum total of **\$5,654.15** (assumed to be **\$5,384.91 + \$269.24 GST**) from YEC's cost claim should be disallowed and not recovered from Yukon ratepayers.

Legal Costs

- iii. As has been the case with past proceedings, YEC has been charged legal fees at an hourly rate in excess of the rate allowed in the Board's current Scale of Costs and considered a fair and reasonable contribution by ratepayers. Even though YEC has not included legal fees in excess of the Scale of Costs in its cost claim, UCG submits that all of the **\$1,800.00** in legal fees that were charged at above-Scale hourly rates (assumed to be \$1,714.29 + \$85.71 GST) should not be recovered through rates charged to Yukon ratepayers but instead recovered directly from YEC's shareholder. Without firm direction from the Board in this regard, UCG submits that it is too easy for YEC to simply recover these excessive costs through existing rates and then plead that they have not been able to recover their allowed rate of return. UCG submits that YEC should be instructed to make no allowance for the extra \$1,800.00 in fees not claimable in present or future revenue requirements related to the services of Davis LLP.

October 31, 2011 Invoice from Davis LLP
5 hours @ \$375 \$1875.00
5 hours @ \$225 \$1125.00
Excess Charges: \$ 750.00

November 28, 2011 Invoice from Davis LLP
4 hours @ \$375 \$1500.00
4 hours @ \$225 \$ 900.00
Excess Charges: \$ 600.00

December 15, 2011 Invoice from Davis LLP
3 hours @ \$375 \$1125.00
3 hours @ \$225 \$ 675.00
Excess Charges: \$ 450.00

- iv. According to the Scale of Costs, the Board will consider reimbursement of the reasonable actual costs incurred for other charges directly related to the preparation and circulation of evidence, argument and reply provided they are fully explained and, where appropriate, supported by vouchers. While YEC was charged \$124.99 for “Quicklaw Searches” by Davis LLP in its November 28, 2011 invoice, UCG submits that there was no supporting voucher for such a cost.
- v. Similarly, there are no supporting vouchers submitted for Long Distance Telephone (\$32.75), Photocopying – Colour (\$15.60) and Postage (\$2.06) claimed by Davis LLP.
- vi. Without the full explanation required in the Scale of Costs, none of these disbursement costs (total **\$175.40**) should be recoverable from Yukon ratepayers.
- vii. It is unclear from YEC’s cost claim whether any legal costs were incurred to prepare the original application. This should be identified and recovered only through the shareholder.

Intergroup Consultants

- viii. According to Schedule 1 of the Board’s Rules of Practice (Scale of Costs), the Board may “disallow or reduce the costs if a party to a proceeding has failed to comply with a direction of the Board, Board order” and may also “disallow or reduce costs if a party to a proceeding has not been responsive or acted unreasonably in failing to respond to an information request”.

The Scale of Costs also state:

“The Board’s objective in prescribing the scale of costs is to ensure that the costs of hearings are reasonable, relative to the matters involved. Costs are generally awarded against the utility, and charged to the customers of the utility throughout the utility’s rates. For this reason, the Board considers that the costs claimed by parties to a proceeding must be subject to stringent scrutiny.”

- ix. UCG maintains its position that the Board's policies involving costs apply to all parties of a proceeding (applicants and intervenors) and YEC appears to have again ignored directions on disallowance made by the YUB in previous proceedings. UCG submits that principles relating to cost awards were established with the Board's previous Board Orders — in particular, Appendix A to Order 2007-6, Board Orders 2005-16, 2005-17, 2007-7, 2007-8, 2007-9, 2009-06, 2009-11, 2010-09 and 2011-08.
- x. Most recently in Board Order 2011-08 as well as in Board Order 2009-11, the Board disallowed the fees claimed by InterGroup for administrative services including clerical, administrative and production staff because under the Scale of Costs, administrative services are considered part of the overhead charges implicit in the normal operation of a professional office. Such costs are included in the hourly fee paid to a professional under section 1 of the Scale of Costs.
- xi. While it is all very interesting that InterGroup's hourly rates are set separately for all staff members and rates for Principals or Consultants do not include costs for clerical, administrative or research staff support as directly provided for any assignment, it is still a rule under the Board's Scale of Costs that clerical, administrative and production staff services are considered part of the overhead charges implicit in the normal operation of a professional office and included in the hourly fee paid to any professional under section 1. UCG submits that continuing to apply to recover these costs is yet another example of the arrogant approach by YEC to keep driving up the costs being passed on to ratepayers in disregard with directions that the YUB has provided time and time again.
- xii. Contrary to YEC's claim, UCG submits that any costs incurred by anyone other than Cam Osler, Patrick Bowman and Mona Pollitt-Smith are duplicative and should be regarded as administrative regulatory support. The utilities should not be allowed to pay an unlimited number of consultants in order to prepare their applications for regulatory review. Allowing unlimited costs would establish an unreasonable burden for Yukon ratepayers. UCG submits that the following **\$3,503.57 + \$175.18 GST** in support costs should be disallowed from YEC's cost claim:

September 2011

Mollard, Jolene - 1.50 hours - \$100.50

Horvat, Anita - 2.50 hours - \$142.50

October 2011

H.Najmidinov - 6.75 hours - \$573.75

J.Olson - 25.00 hours - \$1,975.00

Mollard, Jolene - 12.00 hours - \$828.00

November 2011

Horvat, Anita - 1.00 hour - \$59.00

7. UCG notes that YEC indicated on page 2 of its cost claim that it was “*seeking approval of only a portion of the costs incurred in relation to the review of the YEC & YECL Rider F – Fuel Adjustment Rider & Deferred Fuel Price Variance Policy*” and that it was not “*not seeking costs for preparation of the initial policy document*”. Since YEC has indicated that at least InterGroup was hired to assist with the preparation of the initial filing, UCG submits that YEC is hiding some of the costs incurred in order to more easily recover these costs through existing rates without allowing the Board to fully review the costs incurred for this application and determine whether Yukon ratepayers are paying excessive amounts. If YEC has incurred costs related to this application, then all of the costs should be included in the cost claim and either allowed to be recovered from ratepayers or disallowed. UCG submits that any costs incurred to hire outside consultants for this procedure that are not included in YEC’s cost claim should be identified and disallowed from recovery from ratepayers.

Should you have any questions, please do not hesitate to contact me.

Yours truly,

Roger Rondeau