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October 27 , 2008

Yukon Utilities Board
Box 31728
Whitehorse, Yukon
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Attention: Wendy Shanks, Chair

**Re: Utilities Consumers' Group Final Argument Re:
YECL 2008-09 General Rate Application**

Dear Ms. Shanks:

The UCG submits the following final argument for the above process.

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

Yours truly,

Roger Rondeau

C.c. All interested parties

Utilities Consumers' Group Final Argument Re: Yukon Electrical General Rate Application

<u>1. General</u>

1. The final argument comments which follow will be outlined under a heading structure. No particular heading is of more importance to our organization.

2. The UCG submits the YECL has not taken the best interests of their customers in acquiring the debt debenture from their parent company, rate of return amount, nor capital structure proposal. Furthermore, YECL proposes to seriously inflate its rate base in the two test years by proposing several expensive capital projects that are not necessary at this time to secure safe, reliable and cost-effective electricity.

<u>2. Fair Rate of Return and Capital Structure</u>

3. The UCG submits that the benchmark rate of return suggested in the Yukon Electrical application should be denied.

4. The results on how this return was determined was never filed as evidence as stated by Ms. McShane during cross-examination (Transcripts p. 147 lines 3-5):

Q Mr. Rondeau: Is any of this evidence before the Board from these other rate cases?
A. Ms. McShane: No but all of the decisions are available.

After considerable research, UCG has found no evidence on the EUB decisions being provided for this proceeding. Regardless of this fact, using the EUB generic return as a benchmark has not been proven to have any common ground with determining the YECL rate. Alberta electrical companies most often have different rate structures, including preferential shares which are no longer accepted in this jurisdiction. As a matter of evidence, the BCUC benchmark is lower than this request.

5. Also under cross examination(transcripts p.141-142) Ms.McShane stated that a generic tool or benchmark is commonly being used as it is generally a cheaper method. She goes on to testify this is not her normal practice, nor normal business practice to use a single method in determining a fair rate of return.

6. The latest information (Friday, October 24, 2008) that UCG has identifies that 30 year long term Canada bonds are now at 4.051, not 4.55 as provided in McShane testimony. Ms. McShane in cross examination, agreed that the long term interest is deteriorating since her written testimony(Transcript p.149 and p. 150 lines 1-15). Her evidence further stated the bond rates are 15 basis points lower today producing a proposed ROE of 9.1% (Transcript p.150 line 12-13). **More recent results in 50 basis points lower for the long term bonds than the McShane testimony, producing an ROE of 8.75%.**

7. Under cross examination, Ms. McShane concurred that the latest average allowed return in Canada in 2007 was ***8.71 per cent.*** (Transcript p.158, lines 25-30) as per

YUB-YECL 35(b). She qualified her statement that these were allowed return averages, not necessarily the returns earned. This would give the latest comparable earnings test.

8. Evidence Section 8 Attachment 1-1 Schedule 5 p.3 of 3 shows for 2007 year the Canadian utilities equity risk premium test to be averaged at 4.36 with a average long term yield of 4.3(which is comparable to the most recent update of long term securities). This risk premium test gives a rate of ***8.62 per cent*** (4.26+4.36).

9. Under cross examination, Ms. McShane stated that in her expectations, the Beta for electrical companies in Canada should be somewhere between 0.6 and 0.7 (Transcript p. 158, lines 1-2). She then went on to disclose that market cost for equity would be 6.5 (Transcripts p. 164 line 5). If one uses the Capital Pricing Asset Model (provided in YECL-YUB 35(b) the formula gives a return of between 8.16 (4.26+0.6x6.5) and 8.81(4.26+0.7x6.5). The half way point using this method would be ***8.485 per cent.*** UCG submits that its research shows that the Beta for electrical regulation is much lower than suggested by Ms. McShane.

10. UCG submits that the above evidence would conclude a fair rate of return for the YECL application at somewhere between 8.485 and 8.71.

11. Ms. McShane under cross-examination agreed that utilities regulated under rate of return generally receive a lower rate of return than companies regulated under price caps or other regulatory methods (transcript p.164, lines 6-17).. With rate of return regulation more of the burden for risk is placed on the ratepayer (transcript p.154, lines 7-14).

12. As well, UCG further submits that YECL has achieved a greater return than that of the average Canadian utility for most of the years since the last GRA (2 per cent higher in the last two years), and therefore has a lower investment and regulatory risk.

13. Furthermore, as YECL has a history of accessing its loan debentures from its parent company to maintain its capital structure, and that this corporation(ATCO) and its corporate affiliates are extremely diversified, this would also lower the economic risk factor. YECL also purchase most of its services from its affiliates, supporting them and benefitting the bottom line of the corporation.

14. During cross examination about deferral accounts (transcript p. 153 lines 22 -28) Ms. McShane stated:

Ms. McShane: So the utility that is able to pass all of its cost on the following year to ratepayers is a lower risk utility and it's going to have a lower rate of return than the utility that has absolutely no deferral account protection whatsoever. In the latter case, it's the utility that's bearing the risk; in the first case it's the customers that are bearing most of the risk- at least on a year-to-year cost of service basis.

Mr. Rondeau: Does YECL have a deferral account?

Ms. McShane: It has some deferral account so it's-

15. Therefore, considering all the above UCG submits that a fair rate of return for

this YECL application would appropriately apply the 8.485 per cent bottom range analyzing three different principal methods as a starting point. Then, lower it accordingly due to the above factors in #10 through 13 at the Boards discretion.

16. It becomes apparent, from the record, that YECL is also attempting to inflate its rate base and thus increase its capital structure equity to debt ratio to align with the model presented by Ms. McShane in her testimony. UCG submits that YECL proposes to borrow its capital from a parent company at an elevated interest (this will be discussed later). At the same time YECL is introducing capital projects which are unwarranted (i.e. new genset in Carcross, a new billing/computer system and a new AMR meter system for every customer in the greater Whitehorse area (each of these capital projects will be discussed later) at this time. Since the hearing last week, our power has gone off 4 times in one week, one time encompassing the whole WAF grid for up to 5 hours. There are greater quality of service problems that neither a new billing program or new meters would rectify.

17. YECL relies on the expert testimony of Ms. McShane to come to its conclusion that it is now time to change its capital structure. She relies on the stand-alone-principle as one of her backbone to this conclusion. Yet YECL receives its debt debentures from the CU corporate conglomerate. YECL also receives its information technology and equipment as well as most other services from affiliates , thus benefit affiliates and the corporate mother bottom line. Under cross- examination by Mr. Rondeau (Transcripts p. 138 lines 7-29 and p.139 lines 1-4) as to wether it is normal practice for other firms to receive their debt financing from their parent companies, she states:

Ms. McShane: *It expects each of those companies to operate on a stand alone basis and each of those companies goes out and raises debt on its own.*

18. UCG submits that this stand-alone principle falls apart when rationalizing YECL's proposal for raising its equity to debt structure as well as receiving a higher rate of return for being a small stand-alone company. Evidence above shows that YECL does not go out and raise debt on its own, nor do they stand alone when doing business with affiliates and mother corporation.

19. UCG refers for consideration that the capital structure of YECL remain the same 60-40 common equity ratio, set to maintain their present infrastructure for a safe, reliable energy and still maintain their financial integrity so that investors will remain interested in providing capital.

3. Cost of Debt

20. YECL meets its financial requirements with loans from its parent company, ATCO Electric, which in turn receives its financing from Canadian Utilities Inc. The corporate profile for this conglomerate is offered in their web site. This is a very diverse corporation and most of the YECL merchandise and expertise come from one of their corporate affiliates. YECL proposes this allows for a better interest rate provided to the junior companies, but there is no evidence presented that this is indeed the case.

21. As a matter of fact, under cross examination Mr. Freedman (Transcript p.326-327)

states that Yukon Electric did not request any loan information from any other financial institution to see if the interest rate charged to YECL by its parent company was the best rate available. This sends up a red flag to ratepayers. He goes on to state that there is no cut for the middle man (ATCO Electric), it is mirrored down to ATCO Electric, then mirrored down to YECL.(Transcripts p. 138 lines 11-28) Further evidence reveals that a 0.05 % fee is charged to YECL above the CU opportunity cost (Transcript p.179, line 25).

22. Ms. McShane under cross examination (transcript p.140 lines 19-25) stated:

> *Mr. Rondeau: Does the Board have a say on the percentage rates of debt that ATCO Electric charges to their subsidiary?*
>
> *Ms. McShane: I'm not sure the extent to which the Board has a say over the rates, I mean, I think they certainly can- as far as I know, they can speak to the principles of what shoud be the cost of debt. I mean, I suppose they have some say in whether or not the costs incurred were prudent or not, because I'm pretty sure that's and issued that's dealt with before other regulators.*

23. It would appear from the cross examination of Yukon Electrical panel that other utilities have to get their regulator to approve debenture rates. (Transcript p. 176 lines 4-5).

> *Mr. Freedman: From an active prospective, ATCO Electric would then seek Board approval, and that process takes a bit longer.*

UCG submits that in order to protect Yukon ratepayers, the same process (i.e. Board approval) should hold true for such debenture requests from YECL and YEC before they are implemented.

24. The loans for the two prior years documented in evidence Schedule 8.2 were at 5.23% in 2005 and 5.07% in 2006. Interest rates and long term government bonds have had very little variation in the 2005, 2006 and 2007(test year). The YECL 2008 loan debenture is projected to be the same as 2007 at 6.6 per cent interest. UCG submits that this is an unfair cost of debt which is transferred to the ratepayer. It should maintain the same rate as the two prior years with perhaps a bit of tweaking, but not 150 basis points as proposed. Without proper evidence in front of the Board to determine if this rate from its parent was a fair market value cost, as no other institution was approached for the opportunity to compare, then this suggests the 6.6% debenture rates proposed by YECL are inflated, are not prudent and therefore this high interest rate should not be passed on to the ratepayer.

4. Cost of Equity

25. As cost of equity is somewhat predetermined or at least impacted by the market cost of debt, UCG submits that the Board must first decide on what is the fair market cost of debt. After this is decided upon, then a fair return on the cost of equity can be better determined by multiplying the risk factor beta.

26. Both the panel members and Ms. McShane agreed that company's receiving rate of return regulation rather than having price caps or other type of regulatory tools have less risk. The risk burden is shifted to the ratepayer. This is also evidenced by cross-examination stating that many times allowed returns are over-earned by the utility

(higher rates are taken by the utilities than what has been determined to be an allowed fair rate of return). YECL received a higher rate of return than the average allowed Canadian utility for nearly every year since the last GRA, showing that this company has very little financial or regulatory risk to place on the cost of equity.

5, Operations and Maintenance/Revenue Requirement

27. YECL application schedule 1 shows a very significant O&M increase of 27.8% in a two year period (2007 actuals to 2009 proposed). Also O&M administrative costs escalate in the two test years (UCG-YECL-19). What is especially diconcerting is associated affiliate and head office costs even though new programs for billing and new metering system is proposed to be implemented.

28. UCG is very concerned that the high cost for operations and maintenance of the Yukon Electrical facilities is not reflected in quality of service. For example in the past week, power has gone off four times, once for 5 hours in some locations. YECL simply uses the rationale that they have been able to hold the line from requesting rate increases since the last GRA some twelve years ago, so they now need to apply these cost increases. It is very important to note that during this same 12 year span YECL received a very healthy rate of return for each of those years (in some years above the allowed return, but nearly always above the average return for Canadian utilities).

29. Although Yukon Electrical stated in the hearing (Transcripts p. 337, lines 19-20) that customer service is a very integral part of their mission, they file no regular customer report to their regulator.

30. Yukon Electrical panel state in the hearing (Transcript p.352) that customers are protected under the Electric Service Regulations. UCG submits that this document offers no customer relief, only security for the utility providers. UCG therefore refers for Board consideration the option for a Consumer Bill of Rights as is offered in most other jurisdictions.

31. Service outage reports, customer complaint reports, and productivity indexes are all vital to the performance measurement of a utility. This is turn is needed to properly determine if an automatic adjustment formula from another jurisdiction applied as a benchmark return on equity is adequate for Yukon Electric. These have not been provided as evidence in the YECL application nor are the economical efficiencies and management efficiencies documented for this application.

32. Only the performance metrics asked for by the Board in YUB-YECL-1 are provided after the fact and these are a dismal record. One does not need these indicators to know that as of late power failures are becoming much more frequent . UCG submits that YECL should not be given the same return nor operations and maintenance budget proposal if they cannot clearly demonstrate that they are operating comparably to the firms they are comparing themselves to in this application. A firm that cannot prove that they are operating with efficient management and the best cost of service for their customers, must not receive the same blessings as firms that produce better service at a lower cost.

33. When questioned about basic economic concept that when demand increases the unit cost of production and delivery should decrease, therfore lower the cost per unit for

ratepayers. Yukon Electrical (Transcript p.328, 329) stated:

Mr. Babyn: I guess that assumes that, as revenues are increasing, that there are no additional costs.

Mr. Rondeau: Cost escalations such as what? Are you telling be there would be costs? (Above the associated capital cost as a very small portion of O&M should accommodate new infrastructure)

Mr. Babyn: The only thing that I am saying is that in our business, usually, in order to have revenues go up, we have to build utility infrastructure to do that. We have to build poles and wires and provide other infrstructure in order to accommodate those other sales. Certainly, when you have the customer finally connected, you have additional revenues coming into the company. But you also have the cost occurring on the other side. So I don't know that I could get there.

On cross-examination by Ms. Bentivegna (Transcripts bottom p.377 to p. 278) we find that most new projects coming on line (Distribution New Extensions) are paid for in Capital Projects listed at less than $75,000. Added to this capital cost for new poles, wires etc .... is a ES&G of 10%.

As this evidence demonstrates , new project infrastructure costs are covered under capital projects amortized over a number of years. Therefore economies of scale would dictate that the unit cost should be lowered with increased revenues from new customers as little O&M costs should be reflected in these presumably new equipment purchases.

5. Capital Costs

34. UCG is very concerned about the percentage increases in capital additions to the rate base as identified in Exhibit C!-15 for both of the two test years. They are far exceeding the average of prior yearly increases which highly inflates the rate base and thus revenue requirement.

35.During cross examination, UCG pointed to three major interests with the proposed capital projects listed for the two test years: the new genset for Carcross, the new computer model for billing and the AMR meters.

36. In cross examination (Transcripts p. 332-333), Mr. Rondeau questioned as to whether the purchase of a genset for Carcross was necessary for safe, reliable service, as the generators in Whitehorse now provide back up for this area. Yukon Electrical then provided a graph, Exhibit B-17, which showed outages in the Carcross-Tagish areas as far more extreme than two comparable. This was used as the YECL panel rationale for this genset purchase, although this evidence was not provided to the Board in the application. Under further cross by Mr. Landry (Transcript p. 365-366) it was identified that no such evidence showing these outages was before the Board, nor were reasons nor analysis as to options given as such. There is also no cost benefit analysis before the Board. UCG notes that the Carcross /Tagish area has far more windstorms as well as flooding which result in more outages. For these reasons, UCG submits there is no justification before the Board for this large expenditure.

37. In cross examination (Transcripts p. 334 to top half of p.337), Mr. Rondeau again

questioned as to whether the new computer billing system was absolutely necessary for safe, reliable service. Yukon Electrical responded with necessity to keep up with their ATCO systems, even though the bills will continue to be generated and printed in Alberta. This new mainframe system is also over 10 years old. Operations and maintenance costs will continue to rise for the two test years as well as third party affiliate costs to implement these programs. In plain simple terms the old system works, why fix something that is not broken, especially when it will cost more to implement and run, in at the very least, the two test years being scrutinized. I received a bill stuffer in the latest billing with the purpose of educating customers on the new billing system. It is very interesting to note that various errors occur on this new billing... so we are getting a new system that already makes errors. UCG submits that the new billing system costs are not prudent and therefore should not be awarded to capital expenditures.

38. Again in cross Mr. Rondeau requested whether the ARM meter exchange program was absolutely necessary to provide safe, reliable, affordable electricity (Transcript bottom half p. 337 to top of p. 342). YECL responds with the benefits of implementing such a system, but then as cross examination proceeds most of these benefits would need further equipment infrastructure or come at more of a cost. In the two tests years although over $4 million is proposed to be spent on the new meters, the costs of implementing and operations is set to increase significantly, both internal and external costs. This program is only set to occur in the greater Whitehorse area, so meter readers and other costs associated with the old system will not decrease. YECL claims the old meters are adequate i.e. are accurate (Transcript p. 337 line 30 and p. 338 line 1-2), but manual reading can result in error. UCG notes that in the billing if an error occurs with an incorrect reading on one bill, it will rectify itself in the next billing period with an accurate reading. UCG submits the present meters work, so if they are not broken why is it required to fix them. The new meters can be installed as needed, in new construction and where old meters are retired. When the ARM is complete, then and only then the remainder of the infrastructure costs needed to implement this new system be approved.

39. To summarize, UCG submits that the YECL proposals to purchase the Carcross genset, the purchase of the new billing system and the purchase of the AMR system be denied as capital costs for this application period.

6. Depreciation

39. UCG sumits that by changing their depreciation model from the ASL approach to the ELG approach does not have the balance of customer to shareholder benefit. YEC-YECL-17 states clearly that by changing these methods decreases the depreciation by $391,000 in 2008 and $419,000 in 2009.

40. UCG refers for Board consideration to stay with the ASL approach as this would not impact the return for Yukon Electric while at the same time offering a benefit to the ratepayer.

7. Sales of Property

41. In their first IR response UCG-YECL-6, Yukon Electrical did not wish to reveal any property or land sales. In the Revised response, Yukon Electrical makes little ado to the fact that they sold some $506,000 worth of land and property since the last GRA and

gave all this money to their shareholders.

42. YECL panel members agreed that these properties were placed on the rate base when originally purchased and that taxes and improvements were paid for under yearly O&M charges and revenue requirements. (Transcript p. 342-343). In other words the ratepayer payed for these properties.

43. YECL claims that they can do this because of a court case in Alberta which resulted in non-depreciable property sales going entirely to shareowners. In the History of this Case it states: *"The case concerned the allocation of proceeds from the sale of buildings and land owned by ATCO in downtown Calgary that were no longer needed for the provision of utility services. ATCO is a privately owned natural gas distributor in Alberta that is regulated by the Board and was requested to get Board approval for the sale."*

44. UCG submits, that to our knowledge, Yukon Electrical has not sought regulatory approval by the Board for these transactions. These Yukon Electrical sales of property took place between 1998 and 2000. Now they are using a Court case from Alberta (which in all likelihood have no similarities to the YECL sales) to claim that all proceeds of property sales be given solely to the shareowner. Yukon Electrical has provided no evidence before this Board during these proceedings regarding such a court case. The court case referred to was determined in 2004 and appealed in 2006, long after the YECL transactions. So the YECL assumed that these transactions did not have to be scrutinized nor approved by their regulator. The YECL has not proven to the Board that these properties and land were no longer used or useful for the provision of utility services, and that these sale would not cause any harm to ratepaying customers. Nor has the YECL provided any information that the net Book Value of these properties has been retired and withdrawn from the rate base. As a matter of fact, no such retirement or disposals have been adequately adjusted for these property sales according to YEC-YECL 53(a) Revised Attachment 2.

45.UCG submits that the Board have their legal representatives resolve this issue and have this documented in the Board's reasons for decision.

8. Rate Case Costs

46. UCG submits that the $30,000 preliminary internal work on this rate case be paid for by the Yukon Electrical rate case fund for which Yukon Electrical now conveniently suggest is empty. This is even though Yukon Electrical has not been in front of this Board for some twelve years.
If this is indeed the case, the Company should swallow this internal spending as does other parties in such processes.

47. UCG also submits that the remainder of the $720,000 (for YECL Phase 1 and Phase 11) expenditures be adequately broken-down and identified for the Board and all stakeholders.

9. Overearnings of Return

48. In YUB-YECL-1 page 4 of 4 demonstrates that YECL over-earned in each of the test years following the 1996-97 GRA. YECL also received a greater revenue requirement than forecast for the process.

49. For these same two years as shown in YEC-YECL-11(e) Revised attachment 1, the YECL low-balled its forecasted sales (i.e. its approved actuals were considerably higher than forecasted, resulting in a higher rate of return for Yukon Electrical.

50. In cross-examination of the panel by Mr. Rondeau, the YECL lawyer (Mr. Keough) responded that requirement overearnings could not be returned to the ratepayer due to what he referred to as retroactive rate making.

51. UCG submits that this Board place some type of mechanism in their decision-making to ensure this type of gamesmanship no longer takes place. At the very least any earnings above the allowed return be equally shared by the company and the ratepayer (i.e. this would allow the company incentive to increase productivity, while at the same time benefit the ratepayer).
The gamesmanship of low-balling the sales forecast to increase the revenue requirement must be discouraged.