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Our File No.: 12276-81

November 13, 2008

Yukon Public Utilities Board  
Box 31728  
Whitehorse, Yukon Y1A 6L3

Att: Ms. Wendy Shanks  
Board Chair

Dear Ms. Shanks:

Re: Yukon Electrical Company Limited ("Yukon Electrical")  
2008-2009 General Rate Application

Yukon Electrical has now had the opportunity to review the Reply Arguments submitted to the Board on November 10, 2008 with respect to the referenced proceeding and finds that it must bring certain matters to the Board's attention in order to ensure that a fair process is maintained and that the decisions of the Board are based on an appropriate record. As will be detailed below, certain portions of the Reply Arguments submitted on behalf of the Yukon Energy Corporation ("YEC") and the City of Whitehorse ("City") inappropriately introduce new evidence into these proceedings, which was not presented on the record of the proceedings and regarding which Yukon Electrical has had no opportunity to provide comment. Yukon Electrical submits that such new evidence that was entered at the Reply Argument stage of the proceedings is not properly before the Board and cannot properly be taken into account in the Board's decision making process.

The new evidence introduced by YEC is as follows:

- (i) Page 22 – when dealing with the matter of non-labour costs, YEC refers to a recent Decision of the Northwest Territories Public Utility Board ("NWTPUB") that was not available or discussed with the witnesses during the course of the subject hearing. As such, the context of such Decision and the evidence that support it were never addressed by the witnesses and this information is not properly placed on the record to these proceedings in Argument. In order for a decision of another tribunal to be part of the record, even during the proceeding (not following it), the subject decision must be put to the witnesses, their familiarity with the subject matter confirmed and questions relating to its relevance and applicability to the present case posed. None of this occurred here. In this regard, Yukon Electrical would observe that it did not seek to selectively direct the Board to certain specific aspects of the same NWTPUB Decisions, notwithstanding the fact that doing so would be very favourable to Yukon

Electrical regarding numerous matters, including O&M expenses, capital projects and deferral accounts. Yukon Electrical appropriately refrained from referencing these Decisions for the reasons outlined above. The actions of YEC, and the City (as detailed below) are inappropriate and these submissions are not properly taken into account by the Board in its decision making process;

- (ii) Page 29 – footnote #8 YEC presents Argument with respect to why it made certain changes to aspects of its revenue requirement back in 2005. There is simply no foundation on the record which supports YEC's presentation of Argument relating to a past hearing;
- (iii) Page 38 – YEC makes reference to a new 2008 benchmark for Fortis when no evidence on this matter was placed on the record to these proceedings.

As a further demonstration of YEC's lack of understanding of what constitutes appropriate evidence during the course of a proceeding, in footnote #7, page 29 YEC portrays the oral testimony provided by Mr. Kennedy relating to the ELG method and the implementation of IFRS as inappropriate "new" evidence. The record clearly indicates that Mr. Kennedy provided this response based on an inappropriate characterization of matters contained in Counsel's questioning of Yukon Electrical's Panel. Furthermore, all oral testimony given during the course of a proceeding in fact constitutes new evidence, which is indeed appropriate.

In its Argument the City also inappropriately introduces new evidence as follows:

- (i) Page 4 – the City discusses the Alberta Utilities Commission's use of trend lines when no such evidence is on the record to these proceedings;
- (ii) Pages 9-10 – the City makes reference to an AUC Decision regarding Harvest Hills, when this Decision was never introduced on the record and no opportunity was provided to the witnesses to comment on the relevance or applicability of this Decision to the circumstances experienced in the Yukon Electrical context;
- (iii) Pages 10-11 – as above, the City comments extensively, but selectively, on the recent NWTPUB Decisions and inappropriately argues what they should mean in the context of the current Yukon Electrical GRA. As above, these Decisions were not available or introduced during the course of the current proceedings and, as such, Yukon Electrical had no opportunity to comment on the relevance or applicability to the current circumstances.

Yukon Electrical submits that the new evidence raised by both YEC and the City cannot appropriately be taken into account by the Board in its decision making process. This Board should obviously require parties before it to respect a fair regulatory process that facilitates the development of a record that can be used by the Board to support its decisions.

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Should you have any questions regarding the above, please do not hesitate to contact the undersigned.

Yours truly,

**BENNETT JONES LLP**

A handwritten signature in black ink, appearing to read "Loyola G. Keough". The signature is written in a cursive style with a large initial "L".

Loyola G. Keough

Counsel for Yukon Electrical Company Limited