

YUKON UTILITIES BOARD
THE YUKON ELECTRICAL COMPANY LIMITED
REVIEW AND VARIANCE OF BOARD ORDER 2014-06
REPLY ARGUMENT OF THE YUKON ELECTRICAL
COMPANY LIMITED

December 11, 2014

I. INTRODUCTION

1. In accordance with the procedural schedule established by the Yukon Utilities Board ("**Board**" or "**YUB**") for phase one of The Yukon Electrical Company Limited's ("**Yukon Electrical**") application for review and variance ("**R&V**") of Board Order 2014-06 (the "**R&V Application**"), Yukon Electrical has received submissions from the Utilities Consumers' Group ("**UCG**") and Yukon Energy Corporation ("**YEC**" or "**Yukon Energy**" and together with the UCG, the "**Interveners**").
2. In this Reply Argument, Yukon Electrical will not attempt to respond to every single point raised by the Interveners, particularly if the matter was fully addressed in the initial R&V Application. Rather, Yukon Electrical will focus on the significant points raised by each of these Interveners. However, a failure to comment on any specific point should not be interpreted as concurrence with the views expressed by the Interveners. To the contrary, unless expressly stated, the positions of Yukon Electrical remain as reflected in its earlier submissions to the Board on this matter, including in the R&V Application. Defined terms used in the R&V Application will also be used herein, if not otherwise defined.
3. The UCG provided submissions on each of the four GRA Rulings that were the subject of the R&V Application. YEC's submissions were limited solely to the ROE Ruling and the Equity Ratio Ruling. For convenience, in this Reply Argument, Yukon Electrical will follow a similar format to the R&V Application and will discuss items in the following order: (1) the R&V test and the UCG's comments on retroactive ratemaking; (2) the Bi-Fuel Ruling; (3) the COLA Ruling; and (4) the ROE and Equity Ratio Rulings.

II. THE R&V TEST

4. At the outset of the UCG's submissions, the UCG describes the two-phase process that the Board follows when considering any R&V Application. While the UCG accurately describes the process, the UCG also makes two comments relating to the application of phase one of the test that Yukon Electrical will respond to.

5. First, the UCG states that when considering phase one of the R&V test, the applicant must "show that there is evidence upon the record of proceeding that compels such a conclusion in the absence of the issues involved."¹ In relation to Yukon Electrical's request for R&V of the Bi-Fuel Ruling, Yukon Electrical has argued that there has been a "fundamental change" in circumstances since Board Order 2014-06. Such arguments, by definition, must be based on more than simply the "evidence upon the record of proceeding", but on the additional evidence that Yukon Electrical provided and the new circumstances that Yukon Electrical has described in the R&V Application. Information that was not known, and which could not have been known, at the time of the Subject Application can certainly support a Review and Variance Application that is based on changed circumstances.
6. Second, the UCG also questions the Board's authority to grant the relief requested by Yukon Electrical in this R&V Application, as the UCG states that this may amount to "retroactively chang[ing] final rates[.]"² The UCG has not provided any authority or justification for this assertion other than its opinion that this may be the case. Yukon Electrical submits that the simple fact that rates for the 2013-2015 test period were established by Board Order 2014-06 cannot logically lead to the conclusion that the Board is now barred from hearing the R&V Application, or from granting the relief requested. Such a scenario would effectively bar a utility from ever being able to apply for a Review and Variance of similar Board decisions. To grant relief as a result of a Review and Variance process that is expressly provided for in the legislation is not retroactive ratemaking.

III. THE BI-FUEL RULING

7. At the outset of the UCG's submissions on the Bi-Fuel Ruling, the UCG states:

In its Order 2014-06, the Board denied YECL's request to add the proposed bi-fuel project to [the] rate base "because it was a first-of-its-kind project to be proven through demonstration on a single unit before proceeding to conversion of the remaining units while ensuring that a reliable supply of natural gas is available and the performance of the entire facility is acceptable."³

8. Yukon Electrical submits that this statement is simply incorrect. While the Board did "take into account" the fact that the project was a first-of-its-kind project, the Board denied Yukon Electrical's request because of the Board's concerns regarding the lack of a competitive tender process for the storage and vapourization services.⁴
9. Yukon Electrical further submits that many of the UCG's other comments on the Bi-Fuel Ruling similarly mischaracterize Yukon Electrical's position on the R&V

¹ UCG Submissions at page 2 [emphasis added].

² UCG Submissions at page 2.

³ UCG Submissions at page 2.

⁴ See Appendix A: Reasons for Decision, Board Order 2014-06 at page 82.

Application. However, Yukon Electrical will only respond to four specific arguments made by the UCG relating to the Bi-Fuel Ruling.

10. First, the UCG states that "YECL does not offer any explanation in its application"⁵ regarding how the evolution of the LNG supply market triggered Yukon Electrical's tendering process. This statement is simply incorrect. Yukon Electrical provided a clear and concise explanation of this matter in paragraph 20 of its R&V Application.
11. Second, the UCG characterizes Yukon Electrical's explanations of the changes in the LNG supply market as "new evidence" and then go on to speculate that this change "appears" to be more about internal deliberation. In Yukon Electrical's submission, the fact that an independent third-party consultant was retained to manage the competitive tendering process, including for developing the evaluation criteria and the associated weightings of each of the bids received, provides convincing evidence that Yukon Electrical's process is both valid and prudent. As noted above, the evidence of changed circumstances is indeed "new" and is entirely permissible in the context of a Review and Variance Application.
12. Third, the UCG takes issue with Yukon Electrical's comparison of the Bi-Fuel Project to the YEC Project. Specifically, the UCG states: (1) that because Yukon Energy's application was already in the hands of the Board, the Board would have been aware of the benefits of the YEC Project at the time Board Order 2014-06 was made; and (2) that the two projects are "completely different projects".
13. Yukon Electrical submits that the UCG has misunderstood the rationale for Yukon Electrical's discussion of the YEC Project. As noted in paragraphs 28 and 32 of the R&V Application, Yukon Electrical's rationale for including this discussion was to address Board concerns that the nine-year sample Bi-Fuel Project payback period would materialize. While the two projects are technically "different" in that YEC is not looking into a dual fuel system, the fact is that, in substance, the projects provide similar benefits to the environment and to ratepayers through the replacement of the use of diesel fuel with the use of LNG. Further, none of the evidence filed in the YEC Project proceeding is on the record of this proceeding. Accordingly, Yukon Electrical submits that the fact that the Board may have had YEC's application for the YEC Project prior to the issuance of Board Order 2014-06 is irrelevant.
14. Fourth, at the end of the UCG's submissions on the Bi-Fuel Ruling, the UCG states:

⁵ UCG Submissions at page 2 [emphasis added].

YECL and its shareholders should continue doing what it feels is best to prove that the benefits [of the Bi-Fuel Project] are in fact realized before applying for any type of recovery from Yukon ratepayers in a future general rates application.⁶

15. In Yukon Electrical's view, the above suggestion by the UCG that Yukon Electrical should continue with the Bi-Fuel Project at the risk of its shareholders is inconsistent with the regulatory compact, with the basic principles of rate regulation for utilities in Canada, and with the basic "presumption of prudence" for costs incurred by utilities. Further to these issues, Yukon Electrical notes it is unable to continue with the Bi-Fuel Project without Board approval of the related changes in the Rider F methodology as outlined in Section 4.2 of Appendix A to Board Order 2014-06.

IV. THE COLA RULING

16. The UCG makes a number of submissions on the COLA Ruling, many of which Yukon Electrical has already addressed in the original R&V Application. However, Yukon Electrical will specifically address three arguments that UCG has made in their submissions on the COLA Ruling. To briefly summarize, these arguments are as follows:

- (a) that the City of Whitehorse ("**CW**") supplied sufficient information during the proceeding that satisfied the Board that the COLA Costs were unreasonable;
- (b) that the law does not require the Board to specifically discuss all evidence on the record, including the New Pension Evidence; and
- (c) that Yukon Electrical's interpretation of AUC Decision 2011-391 does not assist in proving that the Board has committed a *prima facie* error.

A. City of Whitehorse Information

17. On page 3 of UCG's submission, UCG states that CW "clearly brought updated information to the Board's attention prior to it making a decision on the COLA Costs." In Yukon Electrical's respectful submission, this statement is simply incorrect.
18. As stated in the R&V Application, a disagreement over the COLA Costs first arose when counsel for CW asked Yukon Electrical to provide an estimate of Yukon Electrical's DB pension special funding payments using an actuarial assumption of 50% of CPI.⁷ In Yukon Electrical's view, it is difficult to characterize this request as either "clearly br[inging] updated information to the Board's attention" or "satisfying the regulator that the costs are unreasonable". Further, CW's reference to AUC Decision 2011-391 in their final argument is, in Yukon Electrical's view, insufficient evidence to prove to the Board that the COLA

⁶ UCG Submissions at page 3.

⁷ R&V Application at para 37.

Costs are unreasonable. This is particularly true, given that the Board was not involved in the AUC proceeding and did not see or hear any of the relevant evidence.

19. If CW wished to take issue with the COLA Costs and prove to the Board that the COLA Costs were unreasonable, it had ample opportunity to do so during the written evidentiary portion of the GRA proceeding, but chose not to do so. Further, CW has provided no evidence related to the COLA Costs that, in Yukon Electrical's view, could be considered sufficient to displace the presumption of prudence.

B. Discussion of Record Evidence

20. At page 3 of the UCG's submission, the UCG states that "the law does not require the Board to specifically discuss all record evidence" and that, with reference to the New Pension Evidence, "when the Board indicates that it has 'considered all relevant materials of which the record of this proceeding is comprised', it generally means that any evidence on the record has been considered and informed the Board's decision".
21. Yukon Electrical does not dispute that the Board has no legal obligation to specifically discuss every individual piece of evidence on the record in any of its decisions. However, where evidence is uncontradicted and unchallenged, goes to a material issue in the application, and is the only available evidence on that issue, in Yukon Electrical's submission, the Board is obliged to consider and discuss such evidence. To do otherwise constitutes an error of law and/or jurisdiction, as the Board has rendered a decision that is contrary to the only evidence on the record.
22. In Yukon Electrical's view, the UCG has mischaracterized this issue in their submission, where they argue that Yukon Electrical had an opportunity during final and reply arguments for Board Order 2014-06 to bring the New Pension Evidence "front and centre". Given the fact that the New Pension Evidence was unchallenged and was already on the record, Yukon Electrical had no need to specifically flag it for the Board's consideration. However, Yukon Electrical did discuss the New Pension Evidence in its reply argument to the Board Order 2014-06 proceeding. Furthermore, Yukon Electrical properly relied on evidence that was on the record and did not inappropriately attempt to introduce new evidence during Argument. The UCG is simply wrong in its assertions.

C. Yukon Electrical's Interpretation of AUC Decision 2011-391

23. On page 4 of the UCG's submission, the UCG states:

Given that the YUB provided no detail on exactly how it interpreted the AUC Decision [2011-391] nor how it used its interpretation to make its decision in the YECL proceeding, UCG submits that YECL's interpretation does nothing to advance a prima facie case that an error has been made by the YUB.

24. Yukon Electrical submits that its interpretation of the plain wording contained in AUC Decision 2011-391 included in the R&V Application is highly relevant and supports its argument that the Board committed an error of law. The Board's reliance on the AUC's decision speaks for itself and does not require that an "interpretation" be provided before it can trigger the subject R&V Application.

V. THE ROE AND EQUITY RATIO RULINGS

25. Given the significant overlap between YEC's and the UCG's submissions on the ROE and Equity Ratio Rulings, this section will include Yukon Electrical's reply to both Intervener submissions and will be divided up into the five separate grounds for R&V that Yukon Electrical relied on in the R&V Application.
26. At the outset of YEC's comments on the R&V Application, YEC summarizes its position on the R&V Application as follows:

[T]he Board Order [2014-06] on these matters is consistent with prior Board rulings to select and implement a generic cost-of-capital model in accordance with principles established in Canada for utilities, based on the evidence then provided to the Board during each proceeding.⁸

27. As will be discussed in further detail below, Yukon Electrical submits that Board Order 2014-06 is not consistent with prior Board rulings or the principles established in Canada for utilities, and that neither the UCG submissions, nor the YEC submissions provide grounds for the Board to disallow Yukon Electrical's request for relief in this R&V Application.
28. Given that the UCG submissions were broken down into the five specific grounds for R&V that Yukon Electrical has alleged, for convenience, Yukon Electrical will organize this section in a similar manner.
- i. **The Board committed errors of law and jurisdiction by failing to set a fair return on rate base for Yukon Electrical; and**
 - ii. **The Board committed an error of law by applying the wrong test to determine a fair return for Yukon Electrical**
29. To clarify, Yukon Electrical is not arguing that the findings this Board has previously made with respect to YEC cannot and should not be considered when examining how other utilities have been treated. However, Yukon Electrical does submit that such findings are only a factor in the Board's determination, and are not appropriately treated as entirely determinative in that respect.
30. This is particularly true when the circumstances surrounding YEC's 2012-2013 GRA are fundamentally different than for Yukon Electrical's application in at least two respects.

⁸ YEC Submissions at page 8.

31. First, as YEC stated on page 6 of their submissions, since the BCUC GCC model had not been updated since 2009, YEC had to apply the model adopted by the Alberta Utilities Commission. Conversely, and in compliance with Board Order 2009-8,⁹ Yukon Electrical relied on the most recent BCUC GCC decision, BCUC Order G-75-13 released on May 10, 2013, when filing its application. Contrary to both the YEC and UCG submissions, Yukon Electrical also submitted evidence specific to the BCUC GCC model, including evidence relating to the specific BCUC benchmark utility.¹⁰ The Board has previously found that precedents from the BCUC are the most relevant for its purposes and the fact that YEC deviated from past Board practice does not mean that Yukon Electrical should not look to the most recent and relevant BCUC precedent available.
32. Second, as the Board noted in Board Order 2013-01, in YEC's 2012-2013 GRA, YEC provided "no reasonable or tested evidence upon which the Board could support a revision of YEC's capital structure."¹¹ Further, as noted at paragraph 96 of the R&V Application, YEC made a conscious choice to maintain its capital structure and file no evidence to support any change to that structure. This is entirely different than the current proceeding, where Yukon Electrical has provided specific and reasonable evidence that supports its request for a different equity ratio. Yukon Electrical submits that an overriding reliance on what occurred in YEC's 2012-2013 GRA, as opposed to the specific evidence it has provided in this proceeding, constitutes an error of fact or law and is contrary to the principles established in Canada for utilities.
33. Additionally, the UCG's comments further highlight Yukon Electrical's submission that the Board failed to satisfy the "comparability test" where they state that the Board modified the BCUC GCC "by comparison to, and in equivalence with, YEC."¹²
34. While YEC is certainly one of the comparable utilities, there are many other comparable utilities in other jurisdictions that are similar to Yukon Electrical, particularly those in the NWT which have comparable business risk. The fact that the UCG suggests that the Board modified the BCUC GCC "by comparison to, and in equivalence with, YEC" simply reinforces Yukon Electrical's submission that the Board committed errors of law and jurisdiction by failing to set a fair return on rate base for Yukon Electrical and committed an error of law by applying the wrong test to determine a fair return for Yukon Electrical.

iii. The Board committed an error of fact or law by overlooking Yukon Electrical's extensive evidence regarding its business risk relative to other utilities (besides YEC)

⁹ In Board Order 2009-8, the Board held that: "the BCUC approach is a precedent for this jurisdiction and will continue to be the precedent for this jurisdiction until otherwise ordered by this Board" (para 282). See also Section V.v of this Reply Argument for further discussion regarding this principle.

¹⁰ A non-exhaustive list of such evidence includes: YEC-YECL-14, YUB-YECL-31, YUB-YECL-33

¹¹ Appendix A to Board Order 2013-01 at para 201.

¹² UCG Submissions at page 4.

35. Throughout the UCG and YEC submissions on the R&V Application, both Interveners continue to attack Yukon Electrical for providing "no extensive evidence,"¹³ "no evidence to review,"¹⁴ or a "lack of evidence" relating to Yukon Electrical's requested equity ratio and risk premium. Both Interveners also specifically attack Yukon Electrical for having no evidence comparing Yukon Electrical to the updated BCUC benchmark ROE and the "new" BCUC benchmark utility.
36. However, both Interveners appear to have overlooked Yukon Electrical's submissions at paragraph 87 of the R&V Application that "[i]n fact, there was no change in the BCUC benchmark utility between the time of Board Order 2009-2 and the most recent BCUC decision [emphasis added]"; namely a gas utility (and not an electric utility) that has a rate base of \$2.7 billion in 2012.
37. Accordingly, Yukon Electrical submits that the UCG's statements to the effect that Yukon Electrical did not conduct a "careful assessment" comparing itself to the BCUC benchmark utility¹⁵ is simply incorrect, as Yukon Electrical has submitted evidence that specifically addressed the differences in business risks between itself, the BCUC benchmark utility, as well as utilities in other jurisdictions.¹⁶
38. Yukon Electrical also submits that this point entirely addresses UCG's comments regarding Yukon Electrical's reliance on Ms. McShane's evidence. Given the fact that the BCUC benchmark utility has remained constant from the date the McShane evidence was prepared, Yukon Electrical submits that the evidence is neither "dated" nor "irrelevant", particularly since Yukon Electrical has augmented Ms. McShane's evidence with respect to its current business risk.
39. Additionally, as discussed in Sections V.i and V.ii above, Yukon Electrical has submitted evidence specific to the most recent benchmark BCUC GCC model, including evidence comparing itself to the specific BCUC benchmark utility and to utilities in other jurisdictions.
40. On page 8 of YEC's R&V submissions, YEC notes that Board Order 2014-06 included a quote from Board Order 2005-12 that set out the BC and Yukon-specific evidence relied on to determine the risk premium, and that Yukon Electrical provided "no evidence" to address such evidence requirements in its GRA application. Yukon Electrical respectfully submits that, given the evidence Yukon Electrical filed in relation to the most recent benchmark BCUC GCC model, this statement is simply incorrect.

iv. The Board committed an error of fact or law by failing to apply the stand-alone principle in setting Yukon Electrical's capital structure

¹³ UCG Submissions at page 5.

¹⁴ YEC Submissions at page 9.

¹⁵ UCG Submission at page 5.

¹⁶ See R&V Application at paragraphs 118 and 119.

41. Yukon Electrical respectfully submits that the UCG's comments on the stand-alone principle misapprehend Yukon Electrical's position. Yukon Electrical takes no position on how the principle has been "generally used". Yukon Electrical's position is simply that, as a matter of fact or law, the Board is required to follow and apply the stand-alone principle in accordance with section 3 of OIC 1995/90.
42. Yukon Electrical would further note that the BCUC, in its recent GCC Stage 2 decision, again "acknowledged the long history and importance of the stand-alone principle in Canadian utility regulation."¹⁷

v. The Board committed an error of law or jurisdiction by unfairly deviating from its recent prior capital structure rulings

43. The UCG makes comments in their submissions that Yukon Electrical's case is "dependent on [its] expectation that the YUB will implement past rulings and adjustments based on conditions in commercial and financial markets that have changed."¹⁸ As Yukon Electrical has stated throughout this Reply Argument, this once again mischaracterizes Yukon Electrical's position.
44. Yukon Electrical is not arguing that the Board's capital structure rulings should be "unrelated to current market conditions". In Yukon Electrical's view, in Board Orders 2009-2 and 2009-8, the Board issued plain directions that the BCUC GCC model would be the precedent for the Yukon unless otherwise ordered, and that, when using the BCUC GCC model, a risk premium above the benchmark gas utility was required. In Yukon Electrical's view, the wording of such directions leave no room for a "selective reading" of the 2009 Board decisions, as UCG has suggested Yukon Electrical has done,¹⁹ and Yukon Electrical filed its 2013-2015 GRA application in accordance with such directions.
45. Yukon Electrical also recognizes that, in YEC's 2012 GRA, YEC requested that the Board apply the most recent AUC model because that was the most up-to-date evidence that YEC could rely on. Yukon Electrical takes no position on that fact, other than to note that, in Board Order 2013-1, the Board made no comments that would vacate any of its prior directions from Board Orders 2009-2 and 2009-8 respecting the use of the BCUC GCC model. Accordingly, for the reasons discussed above, Yukon Electrical's position remains that the Board committed an error of law or jurisdiction by unfairly deviating from its prior capital structure rulings.
46. With respect to the Board's rejection of Yukon Electrical's requested risk premium, Yukon Electrical wishes to further point out that the Board had no evidence before it (other than the evidence provided by Yukon Electrical in support of its requested risk premium) to entirely vacate the 46 basis point premium previously awarded.

¹⁷ BCUC GCC Stage 2 Decision (March 25, 2014) at pages 16-17.

¹⁸ UCG Submissions at page 6.

¹⁹ See UCG Submissions at page 4.

VI. SUMMARY

47. For the reasons outlined in the R&V Application and in this Reply Argument, Yukon Electrical respectfully requests that the Board, pursuant to section 62 of the PUA and rule 31 of the Board Rules, convene a phase two review on the merits of the GRA Rulings or proceed directly to:

(b) vacate the Bi-Fuel Ruling;

(c) vacate the COLA Ruling; and

(d) vary the ROE Ruling and Equity Ratio Rulings to grant the relief requested in the GRA.

ALL OF WHICH is respectfully submitted this 11th day of December, 2014

The Yukon Electrical Company Limited

Per:


Bennett Jones LLP