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December 16, 2013

Yukon Utilities Board
Box 31728
Whitehorse, Yukon Y1A 6L3

Attention: Mr. Bruce McLennan, Chair

**Re: Yukon Electrical Company Limited – 2013 - 2015 General Rates Application
UCG Reply Argument**

Dear Mr. McLennan:

Enclosed are the reply argument submissions of the Utilities Consumers' Group in the above noted proceeding.

If there are any questions concerning the contents of this submission, I would ask that they be directed to me by email at mjanigan@piac.ca or by phone at (613) 562-4002 ext 26.

Yours truly,

Michael Janigan
Counsel for UCG

cc (by email): Yukon Electrical Company Limited
Registered Intervenors

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 Yukon Electrical Company Limited's
General Rate Application for 2013, 2014 and 2015

REPLY ARGUMENT OF

UTILITIES CONSUMERS' GROUP

December 16, 2013

INTRODUCTION

1. The Utilities Consumers' Group ("UCG") filed its Final Argument on December 2, 2013 with respect to Yukon Electrical Company Limited's ("YECL") 2013-2015 General Rates Application. Final arguments were also submitted by YECL, Yukon Energy Corporation (YEC), Leading Edge Projects, the Yukon Conservation Society and the City of Whitehorse.

2. UCG has confined its reply argument to the arguments submitted by YECL.

REPLY TO YECL ARGUMENT

3. YECL states in its argument (paragraph 1) that, in its view, the extended period between rate cases is a reflection that cost of service regulation has been working well in the Yukon. UCG submits that this is not the view of YECL's ratepayers who are looking for the utilities to adopt forward-looking test years as the basis for approval of their revenue requirements. As is stated in our final argument, UCG believes that revenue requirement and, in turn, rates need to be set prospectively in order to attempt to match the costs that are embedded in the rates with the time period in which the rates are in effect. Consumers must know the costs of their energy use decisions in real time without having to worry about retrospective adjustments to the rates. UCG also submits that there are several compelling reasons why a Performance-Based Regulation mechanism should be considered following the completion of a Phase 2 review.

4. UCG is also concerned with the significant number of major capital projects completed between 2009 and 2013 which must be reviewed retrospectively because of the long time period between YECL's general rates applications. UCG submits that this puts an excessive burden on the limited resources of intervenors who are trying to provide the YUB with valuable input to their decision making process.

5. UCG submits that YECL needs to be directed to investigate alternative mechanisms (e.g., performance-based regulation) to the cost of service / ROE standard that it has grown comfortable with over the last few decades. At Exhibit C3-24, Tab 26 from YEC's 2012-2013 GRA proceeding (Alberta Utilities Commission, Decision 2012-237 dated September 12, 2012), the Alberta Utilities Commission states:

> *In its February 26, 2010 letter, the Commission stated that the rate regulation initiative:*
> *... proceeds from the assumption that <u>rate base / rate of return regulation offers few incentives to improve efficiency, and produces incentives for regulated companies to maximize costs and inefficiently allocate resources</u>. In addition, rate-base / rate of return regulation is increasingly cumbersome in an environment where some companies offer both regulated and unregulated services and where operations that were formerly integrated have been separated into operating companies, some of which require their own rate and revenue requirement proceedings. These changes in the structure of the industry, occasioned by the introduction of competition in the retail and generation/production segments of the electricity and natural gas industries, have*

> *resulted in additional negative economic incentives for companies regulated under rate base rate of return regulation. These conditions complicate the task for regulators who must critically analyze in detail management judgments and decisions that, in competitive markets and under other forms of regulation, are made in response to market signals and economic incentives. The role of the regulator in this environment is limited to second guessing. Traditional rate-base / rate of return regulation provides few opportunities to create meaningful positive economic incentives which would benefit both the companies and the customers. The Commission is seeking a better way to carry out its mandate so that the legitimate expectations of the regulated utilities and of customers are respected.*

6. UCG submits that performance-based regulation will allow YECL to make its own decisions about capital expansion without micro-management and, at the same time, take responsibility when things go awry. Now, ratepayers are the insulation for every excess or mistake.

7. UCG notes that there are real concerns with regulatory costs associated with both the presentation and testing of evidence associated with issues that are to be determined in this proceeding. While YECL is a relatively small regulated utility, the issues raised by the application touch upon matters of some complexity and importance, many of which have been visited by regulators in other jurisdictions, both in Canada and the United States.

8. In UCG's view, it is helpful for the Board to consider regulatory alternatives to resolving issues in a different manner to that suggested by the regulated utility and to have the utility respond to the same. This is ordinarily done by referring the applicant's witnesses to relevant documents setting out the approach and requesting comment upon the same from the witnesses.

9. YECL in their argument (paragraph 6) rather flippantly suggests that this should be done by the production of intervenor expert witnesses rather than inquiries to their witnesses as to the legitimacy of the utility's position in light of the course of action taken elsewhere.

10. While counsel for YECL concedes that regulatory decisions may be of evidentiary value in argument[1], UCG submits that the strategy of YECL is to largely quarantine regulatory practice outside the YUB's jurisdiction as a kind of kryptonite potentially injurious to its interests. UCG submits that YECL is both incurious and dismissive of any learning experience.

11. In UCG's view, the YECL approach is singularly unhelpful. UCG can produce experts to testify as to issues of rate retroactivity, treatment of costs that are to be closed to rate base, demand side management and other issues if that is desired or required by YECL's insistence that anything of relevance stops at the territorial border. However, this appears to UCG to be adding a layer of costs that are not necessary in a jurisdiction the size of the Yukon.

12. UCG maintains that while the inputs to the accepted regulatory paradigm may differ, the latter should not be distorted simply to accrue a shareholder advantage. UCG submits that YECL

[1] Transcript Volume 1 – November 4, 2013, pages 145-146

departs from accepted norms in its approach to issues such as rate retroactivity, not on the basis of need but convenience.

13. In its argument (paragraph 7), YECL criticizes intervenors for attempting to solicit comments from the YECL witnesses to documents with which they are not familiar. UCG submits that YECL is purposely vague in this attack of intervenors because they are wrong. As far as UCG is concerned, all of the documents that were referenced during UCG's cross-examination of YECL witnesses should have been well known by the witnesses.

- The three Ontario Energy Board decisions referenced by UCG during questioning related to utilities being retroactively denied recovery of revenue requirement due to applications made during the proposed test year (EB-2008-0241, EB-2008-0246 and EB-2009-0177) and excerpts from the Yukon Government Department of Health 2010 report "Dimensions of Social Inclusion and Exclusion in Yukon" were all part of the public record of the YEC 2012-2013 GRA proceeding to which YECL was a registered intervenor. To claim that the witnesses did not know these documents is a reflection of the lack of adequate preparation on material that was already on the public record and related to issues that were raised during the information request process.

- Likewise, to suggest that YECL's witnesses were not familiar with YUB Order 2009-2 – Reasons for Decision dated February 12, 2009, the BCUC Decision dated May 10, 2013 on Stage 1 of the Generic Cost of Capital Proceeding, YECL's 2010 - 2012 Key Performance Indicators Reports to the YUB, the YUB Report to Commissioner in Executive Council dated January 15, 2007 on the Application by YEC for Review of its 20-year Resource Plan 2006-2025, the Alberta Utilities Commission Decision 2012-237 dated September 12, 2012, and YUB Order 2009-8 dated September 8, 2009 is simply the lack of preparation by the witnesses on issues that were obviously raised during the information request process.

- UCG submits that referencing decisions and reports from other proceedings is an acceptable practice of the YUB as well as other regulatory jurisdictions. UCG's reference to the Ontario Energy Board Report – Cost of Capital for Ontario's Regulated Utilities dated December 11, 2009 (EB-2009-0084) was simply another report on cost of capital which was assumed to have been reviewed by YECL's witnesses who chose to represent themselves and their internal review of cost of capital instead of relying on the expertise of an outside consultant. In fact, the expert evidence prepared by Kathy McShane for YECL's 2008-2009 GRA (as filed by YECL in this proceeding at YUB-YECL-33(b), Attachment 1) refers repeatedly to the cost of capital methodology and automatic adjustment mechanism used by the Ontario Energy Board. Intervenors should not be held responsible for the lack of preparation of utility witnesses.

- Given that one of YECL's DSM consultants was a former member of the Ontario Energy Board, UCG submits that it should not be blamed for raising standards established in Ontario by referring to the Ontario Energy Board Guidelines for Electricity Distributor Conservation and Demand Management and the Ontario Energy Board Demand Side Management Guidelines for Natural Gas Utilities. UCG assumed that this consultant was brought forward as a witness based on their extensive background on energy issues in other jurisdictions, especially Ontario.

14. UCG submits that it is inappropriate to attack intervenors for trying to verify that proposals put forward by the utilities are based upon the best practices within the industry. UCG submits that it does not help the YUB make decisions in the best interest of Yukon ratepayers if the utilities continually rely on arguments based on "it has always been done this way" and the ostrich head-in-the-sand approach to industry best practices which limit reviews to what has happened in the Yukon and Alberta. Again, intervenors should not have to be responsible for inadequate witness preparation.

15. YECL submits in its argument (paragraph 7) that the Board must establish a fair and reasonable return and capital structure for YECL based on the evidence on the record to these proceedings and that this return cannot be impacted by the level of achieved return over the past non-test years. UCG considers it absurd that any utility would not expect a regulator and intervenors to rely on the utility's actual operating results to determine whether the decisions (on return and capital structure in this case) were fair and reasonable. UCG submits that the returns earned by YECL in the years since its last general rates application have been excessive to the point of having YECL recover extraordinary returns over and above the "risk premium" that YECL has fought to maintain. The actual returns also illustrate how adequate the current capital structure is in affording YECL opportunities to secure financing.

16. UCG submits that the excess earnings by YECL in all the years since its last General rates Application clearly demonstrates that YECL can and does realize efficiencies when it will benefit their shareholders outside of a regulatory review process. UCG submits that it is the Board's responsibility to ensure that the same standard of operations is given by YECL to their customers. To prevent this gaming and provide incentive for YECL to maintain fairness, a productivity factor should be incorporated within YECL's revenue requirement. UCG submits that a productivity factor reduction of 2% would be appropriate.

17. As was outlined in UCG's argument, YECL has not raised any additional valid arguments (paragraph 9) why it is entitled to recover its proposed revenue requirement for the full 2013 period, especially the period prior to July 1, 2013 when its interim rates became effective.

18. UCG reiterates that YECL should be prevented from collecting for revenue requirement arising in 2013 beyond what has already been recovered in approved rates and rate riders. The fact that rates were made interim by Board Orders 2013-5 is in no way conclusive or curative of this failure to follow standard ratemaking principles.

19. As has been outlined in UCG's argument, YECL's listing of perceived regulatory efficiencies (YECL argument paragraph 9) is simply smoke and mirrors:

- YECL filing for a 3-year test period half way through the first test year should hardly be applauded as being efficient from a regulatory perspective. Instead of dealing with forecast test years, the YUB and intervenors have to spend an excessive amount of time dealing with the retroactivity of YECL's requests. Because of the 3-year test period, parties have to address the accuracy of the forecasts going out to 2015 and must address actual capital expenditures for the last 4 years because of the extent of the delay in making this application. YECL should have been working with YEC to file a combined 2012-2013 or 2013-2015 general rates application but UCG submits that the excessive returns actually being realized by YECL under existing rates had them purposely avoiding any review process. UCG submits that regulatory inefficiencies have been amplified in this process.

- While additional time may have had to been put into an application update based on 2012 actuals, this would have been time put in by YECL's existing resources (i.e., no extra cost to ratepayers) and an update during the review process would have allowed parties to focus simply on areas directly impacted by an update for 2012 actuals. Updating applications in the midst of review processes with better and more up to date information is such a common occurrence in other jurisdictions, it has become the industry norm in order to allow applications to be filed based on forecasts and to get the process started sooner rather than later in order to avoid the problems associated with retroactive effective dates for rates. The Board need only go back to YEC's 2008/2009 General Rates Application to see where YEC had to be directed (in Board Order 2009-4) to provide an updated package of evidence including its preliminary unaudited 2008 actuals and updates to several interrogatory responses to see how the update process has already been implemented effectively in the Yukon.

- As is outlined in UCG's argument, YECL's use of the result of the BCUC Generic Cost of Capital proceeding (Order G-75-13) issued on May 10, 2013 in its application did nothing to advance the regulatory process. In the absence of guidance from the Phase 2 portion of the BCUC Generic Cost of Capital Proceeding still to come, YECL has decided to propose its own adjustments to the benchmark capital structure. YECL also had the option of making its cost of capital application based on the results of the Alberta generic cost of capital proceeding which was used to set YEC's cost of capital for 2012 and 2013 which would have made the most regulatory sense in order to put both Yukon utilities on the same basis.

20. While YECL makes considerable effort in its argument (paragraphs 8 and 9) to place their delinquency in bringing the current application some five months after the start of the test year within the ambit of the enabling exception provided in the governing statute (Section 29 of the *Public Utilities Act*), the facts speak otherwise.

21. YECL's witness, Mr. Grattan, forthrightly stated that the YECL application was timely as it allowed YECL to have full knowledge of the 2012 numbers for use in projecting 2013 and beyond[2].

22. UCG submits that this is a clear corruption of the forward looking test year principle that has been operative in most jurisdictions for most of the last half century. As noted, it is important in providing the correct rate signals and avoiding rate retroactivity. YECL's new formulation

[2] Transcript Volume 1 – November 4, 2013, pages 136-139

allows for it to have the benefit of historical ratemaking without its accompanying risk, at the expense of its ratepayers.

23. If the delay in filing this application was a necessary feature of regulation, one would see it in place for utilities, large and small, throughout North America. While an attempt to claim that delay was beyond a regulated utility's control may not be unknown, the idea that this delay furthers efficiency on a continuous basis is unique, and stretches credulity.

24. YECL argues (paragraph 10) that even when considering the rate increases arising from this Application in conjunction with other recent rate increases driven by YEC, Yukon ratepayers will not experience rate shock. UCG submits that it is obvious from the evidence in this proceeding (UCG-YECL-5(d), Attachment 1, updated October 31, 2013) that ratepayers are faced with year-over-year bill increases in excess of 10% in 2013 and 2014. In fact, YECL is proposing that <u>the bill for a residential customer using 1000 kWh per month will be increasing by nearly 35% between 2012 and 2015</u> assuming that existing rate relief stays in place and there are no other rate adjustments added by either utility prior to the end of 2015. UCG submits that if YECL does not consider this rate shock, then it is further out of touch from the needs and affordability issues being faced by its customers than were previously assumed.

25. UCG submits that for YECL to argue that it does not consider that any mitigation measures are necessary or appropriate (paragraph 10) reflects a total disregard for ratepayers who will be required to absorb not only the impacts of this current application but also impacts of additional rate impacts resulting from the review of the upcoming Phase 2 application, rate adjustments proposed by YEC, and potentially a reduction in bill relief currently provided through the Interim Electrical Rebate program. Without some sort of mitigation safeguards being put in place, UCG submits that the utilities could be faced with compounded issues related to bad debt, reduced use, late payments and defaults by customers unable to afford the cost of basic electricity requirements.

26. UCG submits that the Board is mandated to make decisions based on the changing economic conditions of the time. The Yukon economy is undergoing a slow down with the closure of several mines, a major decrease in exploration spending, and a slow down in housing development. Even the Whitehorse Tailings project is in jeopardy as demonstrated in the application with delays and uncertainties. UCG submits that the revenue requirements approved for YECL must represent a fair balancing of the interests of consumers and shareholders. Fairness to and avoidance of hardship on consumers must be a critical consideration in general rates proceedings.

<u>Load Forecast</u>

27. UCG submits that YECL's request to have its historical practice of forecasting sales based on a weather normalized three-year average use per customer methodology (paragraph 13) is a request to accept a methodology that is too simplistic and that does not incorporate the realities associated with Yukon-specific load data, does not incorporate adequately determined impacts of current and proposed DSM activities, and fails to gather and use input from stakeholders (especially other utilities with experience in addressing climate normals and current climate

trends). UCG submits that it is an anomaly to have any utility use only 3 years of actual load data in order to adequately forecast weather-normalized loads going forward. UCG submits that the Board need only look to the load forecast of YEC which reflects adjustments for weather conditions based on 10-year average Heating Degree Days.

Whitehorse Copper Tailings Deferral Account

28. UCG submits that YECL's continued request for a Whitehorse Copper Tailings Deferral Account (paragraphs 18 and 19) is based on references to deferral accounts that are in no way similar to the proposed deferral account. UCG submits that the utilities must be held accountable for the accuracy of the forecasts being used to proactively set rates paid by Yukon ratepayers without the safety net of a deferral account that could burden ratepayers in the future. As was stated in argument, UCG submits that given the delay in the start-up of Whitehorse Copper as an industrial customer for YECL, the impact of any forecast error during the test period of 2013-2015 will be minimal so there is no need for a deferral account to protect YECL from its own industrial load forecast.

Purchased Power

29. YECL argues (paragraph 23) for approval of the capitalization of the incremental purchased power costs incurred for the period during which Fish Lake Unit #1 has been out of service as a result of the catastrophic failure in March 2010. Since YECL has offered no additional basis upon which to agree with this proposal, UCG repeats its argument that the incremental purchased power costs incurred when Fish Lake was out of service served an immediate need just as any source of power might have in an emergency or even maintenance situation and does not provide enduring benefits to ratepayers to qualify as a capital expense. As a result, these costs should not be capitalized.

Fuel Costs

30. Without providing any specific reasoning, YECL argues (paragraphs 29-30) that continued use of the previously approved fuel price flow through deferral with the proposed modifications to address bi-fuel operations at Watson Lake is reasonable and appropriate. UCG submits that the proposal cannot be approved by the Board because the Fuel Adjustment Rider & Deferral Price Variance Policy clearly addresses only variances in diesel fuel (and not any type of equivalent). UCG repeats its argument that the Board cannot approve a change to the methodology for calculating the deferral for fuel used in Watson Lake without changing the Fuel Adjustment Rider & Deferred Fuel Price Variance policy and without having Section 8 of the Rate Policy Directive Order in Council 1995/90 changed to account for LNG.

Operations and Maintenance Expenses

31. YECL argues (paragraph 33) that the totality of the evidence on the record demonstrates the need for all the non-test year staff positions that have been added as well as those that are planned to be added during the 2013-15 test years. UCG submits that there has been no cost/benefit or business case analysis provided for any of these positions from which to make a determination of their appropriateness. UCG is also concerned with the growing number of YECL staff positions that are earning more than $100,000 per year. UCG submits that when compared to the average Yukoner's income level of less than $50,000 per year, YECL's labour costs are getting out of control. If you add in the extraordinary level of consultant and affiliate fees that YECL pays annually, it is no wonder that YECL is asking for more money from ratepayers at every opportunity.

32. YECL argues (paragraph 36) that it is fair to simply add an inflation factor to 2012 non-labour costs to arrive at a legitimate forecast. UCG submits that YECL has consistently incurred non-fuel O&M expenses well in excess of the amounts allowed to be recovered in rates so using an inflated base to determine a forecast is absolutely inappropriate. As stated in argument, of particular concern to UCG is the complete lack of control that YECL has displayed on its Administration and General expenses which are forecast to be over 50% higher in each of the test years versus what is currently allowed to be recovered in rates. UCG repeats its request to lower the overall operations and maintenance budget from the level currently in rates and ensure YECL implements a cost-cutting culture.

33. YECL notes in its argument (paragraph 46) that since its last general rates application, the labour support purchased from ATCO Electric has increased substantially. UCG submits that there is no evidence on the record justifying the skyrocketing allocation of affiliate costs to YECL and there is no evidence explaining why new affiliate costs being incurred between reviews of general rates applications are not held in a deferral account for future review and disposition instead of being expensed and recovered in rates prior to approval.

Taxes Other Than Income

34. YECL appears to believe that this cost area was not the source of much controversy and so should be approved as filed (paragraph 49). UCG submits that YECL has mistaken the requests for information regarding this expense as being in agreement but this is not correct.

35. As noted in its argument, UCG submits that YECL has recovered an additional $62,000 in rates between 2009 and 2012 over the amounts required to be paid for property taxes and has not provided any evidence that proposed capital additions and improvements will result in a reassessment that would impact property taxes paid during the test years. Without the evidentiary backup, UCG submits that YECL should not be granted any increase to property taxes for the test years.

Depreciation

36. YECL argues (paragraph 51) for an end to the Board-ordered pause in its practice of including net negative salvage in its depreciation rates. This proposal is a significant driver of the proposed increases from the previously approved depreciation expense (79% in 2013, 105% in 2014 and 134% in 2015). Regardless of whether the Board agrees with the proposed changes, UCG submits that a one-time acceptance of the results would result in a significant impact on Yukon ratepayers.

37. Regarding the net negative salvage proposal, UCG submits that YECL's proposal is not based on a recommendation from its depreciation consultant and YECL has failed to provide analysis of alternative ways to recognize net negative salvage in the accrual process and each alternative's impact on revenue requirements. UCG questions the need to include negative salvage in the accrual system and the associated collection of revenues before the expense is incurred.

38. While YECL argues (paragraph 59) that there is nothing preventing this Board from approving different approaches to this significant issue for YECL and YEC, UCG submits that there has not been any evidence submitted to justify removing the regulatory consistency for both utilities (YEC and YECL) that the Board has determined in the past to be fair to the utilities and Yukon ratepayers.

39. YECL also argues (paragraph 60) that the net negative salvage request results in a reduction to YECL's rate base and, as a result, a lower return on rate base as compared to status quo of not collecting for net salvage in its depreciation rates. Given the limited amount of asset retirements that have taken place in YECL's history, UCG submits that YECL has failed to provide enough evidence regarding discernable end-of-life and salvage values of abandoned or retired equipment to allowing the proposal to be implemented.

Capital Structure / Cost of Capital

40. There are two main pillars of YECL's submissions as their appropriate capital structure and rate of return on equity. The first is the use of the most recent BCUC Generic Cost of Capital Decision distorted by YECL's unsupported assumptions about how it should be altered to fit YECL. The second is the use of expert evidence introduced in proceedings of over five years ago to support conclusions about YECL's current business position in the market.

41. YECL argues (paragraph 64) that since the BCUC remains the most recently reviewed benchmark for return on equity and equity ratios, it should continue to be used as the benchmark for YECL. UCG submits that while benchmarks established in other jurisdictions can be used in the Yukon, utilities cannot be allowed to make their own adjustments to the benchmark capital structure and returns as YECL is proposing in this application.

42. As UCG has noted in its Final Argument, the BCUC Generic Cost of Capital Decision delivered in May 2013 only provided a formula for use in establishing capital structure and the rate of return on equity for the low risk utility Fortis Energy. In summary, this formula

provided for a capital structure featuring an equity ratio of 38.5% with a rate of return on equity of 8.75% and an Automatic Adjustment Mechanism.

43. Instead of attempting to assess its standing vis-à-vis Fortis Energy, YECL has tried a bizarre back-to-the-future computation looking at making adjustments to the formula that have little relevance to the current conditions and even ignoring the most recent YUB appraisal engaging a risk premium of 46 basis points for YECL over the B.C. low risk utility.

44. After vociferously objecting to the possibility of intervenor evidence untethered to an expert witness percolating into the record, YECL proceeds to rely on evidence from an expert witness produced at a previous hearing without any effort to update. UCG submits that this hardly reinforces the YECL assertion what is sought reflects “the changing world around it” (paragraph 63).

45. UCG submits that there is insufficient evidence offered in this proceeding concerning the differences in the business risk profile of YECL and the BCUC’s benchmark utility (Fortis Energy) to provide an empirical basis to tinker with the BCUC formula.

46. UCG submits that YECL’s argument concerning the changes in the BCUC benchmark equity ratio (paragraph 65) has absolutely no relevance to the decision the Board has to make related to the capital structure of YECL for the 2013-2015 test years. UCG submits that this is simply a desperate attempt by YECL to attach logic to an illogical conclusion that their equity ratio should be higher.

47. While YECL “acknowledges” that its business risks are similar to those experienced by its sister companies (paragraph 66), YECL made a deliberate choice not to submit independent expert cost of capital analysis in this application to support its proposals. UCG submits that there is no evidence other than YECL’s own self-serving opinion that demonstrates significant change in YECL’s business risk from the time of Board Order 2009-2.

48. UCG submits that it is not the regulatory burden that Yukon ratepayers are worried about. UCG submits that Yukon ratepayers are being taxed with excessive burden on their bills due to higher than warranted returns on equity which could have been avoided if YECL had taken the initiative to acquire expert advice that would have clarified the results of the BCUC’s determination of low risk utility returns.

49. YECL continues to randomly tie its proposed 44% equity ratio and risk premium to the results of a cost of capital review conducted by Kathy McShane that used benchmarking results from 2004 in Alberta and 2007 in the Northwest Territories as well as 2008 financial data to establish benchmarks for YECL (paragraph 72). UCG submits that the McShane analysis is now over 5 years old and her evidence supporting a change to the business risk of YECL necessitating a change to the capital structure was implicitly rejected by the Board in maintaining the pre-existing capital structure of YECL.

50. UCG submits that even if a stand-alone theory, rejected in Order 2009-2, was adopted by the Board, there is no expert evidence herein on what YECL’s business risk might be.

51. YECL argues (paragraph 72) that its business risks are somewhat lesser than those of YEC but that they should not be penalized because YEC's management made the "mistake" of not choosing to apply for increases to its historical capital structure. UCG submits that this argument ignores the logical fact that YEC, the Board and intervenors carefully reviewed all aspects of YEC's operations as part of the review of its 2012-2013 General Rates Application and the Board concluded that a fair capital structure for YEC includes a 40% common equity component with a return on equity of 8.75% based upon the Alberta Utilities Commission Generic Cost of Capital Decision.

52. UCG submits that there is no basis for the adjustments sought by YECL to the formula associated with the low risk utility, Fortis Energy, set out in the BCUC's May 2013 Decision. Given YECL's preference to be tied to cost of capital decisions being made by the BCUC, UCG submits that the Board should establish YECL's capital structure with a 38.5% equity component with a related return on equity equal to the 8.75% established as the BCUC Generic Cost of Capital benchmark (i.e., the same return allowed for YEC).

53. YECL argues that it should be granted a deferral account that would allow it to flow through any change to the BCUC's 8.75% return on equity benchmark may arise as a result of the operation of the Automatic Adjustment Mechanism approved for use within British Columbia (paragraph 73). UCG submits that if YECL felt that an Automatic Adjustment Mechanism should be initiated in the Yukon, then YECL should have applied for such a mechanism with relevant supporting evidence. UCG submits that while rates of return recovered through rates must be fair and reasonable, in order to ensure an end result (i.e., rates) that is fair to consumers, the Board must take into account current economic conditions and the effect of rate changes on consumers. UCG also submits that until the need and full impacts of an Automatic Adjustment Mechanism can be reviewed for both YECL and YEC given their operating environment, it is premature to lessen the stability of electricity rates and add another retroactive adjustment to revenue recoveries by the utilities.

54. UCG questions how YECL can justify the implementation of an Automatic Adjustment Mechanism and, in the same application apply for a risk premium on top of the return deemed fair and reasonable. UCG submits that this provides excessive protection against risk for the utility and none for ratepayers.

55. YECL argues (paragraphs 75 and 76) that its forecast debenture rates are reasonable and appropriate. UCG submits that the formulaic approach (120 basis points above long-term Canada bonds) for forecasting future costs of debt for YEC should be used for YECL so that ratepayers are not burdened with additional interest fees related to the financial paper shuffling among YECL and its affiliates. In addition, the experience has been that YECL's forecasts tend to be in error in favour of YECL. The uncertainty of the forecast favours the establishment of a deferral account to deal with any variance.

Deferred Charges - General

56. YECL argues (paragraph 78) that its proposed addition of deferred charges and credits to rate base in the 2013-2015 test years are modest and reasonably incurred. UCG submits that, regardless of the level of deferred charges, all deferred study costs should be removed from rate base and either amortized (if prudent) outside of rate base or rolled into a related capital asset. UCG submits that the utilities should be allowed a return of prudent study expenditures but not on an investment not tied to a physical asset deemed used and useful.

57. UCG notes that YECL omits mention in its argument of the Deferred Study Costs that it has proposed adding to rate base for 2009 through 2012. The same argument applies that these charges should not be included in rate base.

58. YECL argues (paragraph 78) that its proposal is similar to deferred charges for study purposes applied for by YEC in its 2012-2013 GRA and approved by this Board in its Order 2013-01 at paragraph 375. UCG notes that the approval given at paragraph 375 of Board Order 2013-01 was related to specific studies on determining feasibility of two specific thermal sources of electricity supply (waste-to-energy/biomass/biogas) and the Board specifically noted that the ability of ratepayers to pay for studies is not endless.

Rate Case Reserve

59. UCG submits that the mid-year deferred charges balances identified by YECL are heavily influenced by the over-collection that has taken place related to rate case costs and the write-off of the balance in the rate case reserve[3].

60. YECL confirmed that the balance in the rate case costs deferral account was in a credit position (i.e., there had been an over-collection of costs) at the end of every year since 2008 and that YECL has already recovered the costs that it has forecast will be incurred in the current general rates application proceeding as well as the Phase II proceeding anticipated to be conducted in 2014. UCG does not understand how a rate case reserve designed to track approved costs related to regulatory proceedings can have a credit balance at all let alone as big as has been identified by YECL.

61. UCG submits that not only should these costs not be included in rate base (i.e., not an asset with an enduring value) but ratepayers should be credited back with any recoveries that YECL has made on regulatory costs that have not yet been determined for Phase I and Phase II of the current general rates application.

3 YECL 2013-2015 GRA, Schedule 8.8

Diesel Plant Major Overhaul Costs

62. Prior to 2011, YECL continued to defer the costs associated with major cyclical diesel plant overhauls and rebuilds. These costs are written off over a five-year period commencing from the time of the overhaul. YECL states in its application that under IFRS, major overhauls are required to be classified as property, plant and equipment so major cyclical diesel plant overhauls ceased being classified as deferred charges in 2011.

63. UCG notes that the only reason given by the Board for approving this treatment of the Diesel Plant Major Overhaul Reserve in its Order 2009-02 was that no parties objected to the amounts. UCG submits that is not the case in the current proceeding.

64. UCG submits that YECL has not demonstrated that the nearly $1 million in costs incurred in 2008, 2009 and 2010 to be economically viable or prudent. In fact, there doesn't appear to be any evidence on the record of this application related to what costs were incurred and how they were incurred to allow them to be identified as prudently incurred. UCG submits that the same holds true for expenditures forecast for 2013 through 2015.

65. UCG submits that YECL has not provided any evidence to explain why there has been such a dramatic increase in the overhaul costs incurred nor has YECL provided a plan that outlines how the overhaul / rebuild program has and will be implemented.

66. As far as UCG can see, YECL only had the following amounts specifically identified in its application (Chapter 9) as being related to a diesel plant overhaul or rebuild:

2008:	$463,000	(Fish Lake Unit #1 Generator End of Life Rebuild
2012:	$247,000	(Watson Lake Unit #3 Major Overhaul)
2013:	$250,000	(Watson Lake Unit # 6 Major Overhaul)
2014:	$200,000	(Watson Lake Unit #5 Major Overhaul)
2015:	$250,000	(Watson Lake Unit #1 Major Overhaul)

67. UCG submits that there is a lack of evidence to allow for a reconciliation of the overhaul / rebuild projects briefly identified in Chapter 9 of the application and the overhauls / rebuilds identified in Schedule 8.8:

2008:	$427,000
2009:	$354,000
2010:	$213,000

68. UCG submits that the evidentiary record does not support the additions of diesel plant overhauls / rebuilds that appear to be included in YECL's deferred charges and plant additions. UCG submits that these overhaul / rebuild projects should be identified and held out of rate base until proper explanations of their costs can be revealed and reviewed for prudency.

Fish Lake License Renewal Costs

69. YECL forecast spending a total of $1,829,000 between 2011 and 2013 in order to operate and maintain the Fish Lake hydro system (Business Case #28).

70. UCG submits that there is no detail in YECL's evidence that describe what costs were incurred and how they were incurred to allow them to be identified as prudent expenditures. UCG submits that YECL's business case for these expenditures does not address any of the information related to the Board's directions in Order 2009-8:
- economic analysis including preliminary engineering estimates
- discussion of the risks of proceeding with the chosen alternative
- discussion of risks of not proceeding with the chosen alternative; and
- discussion of assumptions included in the business case including escalation factors, loading, financial measures, term of project and associated ancillary costs.

71. UCG submits that a utility that would consider the submitted Business case #28 as enough to explain and justify a nearly $2 million project is simply trying to ram a project into its rate base in order to start earning a return. UCG submits that this project should remain in Work in Progress until actual costs can be properly explained, justified and reviewed for prudency.

Watson Lake LNG Study Costs

72. UCG submits that with such limited detail available, YECL has not met the burden of justifying the recovery of these costs prior to the in-service date of the proposed Watson Lake Bi-Fuel Project. UCG submits that these study costs should remain in Work in Progress until the project has been commissioned and all final costs have undergone a comprehensive prudency review.

Kluane Wind Study

73. UCG submits that the Kluane Wind Study costs submitted by YECL for recovery as a rate base addition starting in 2013 have not been demonstrated to be economically viable nor has there been any reasonable probability established that the project will proceed. UCG submits that these costs should not be included in rate base.

Working Capital

74. While YECL did not conduct a full lead/lag study for the purpose of this Application[4], YECL argues (paragraph 79-82) that its working capital included in rate base in this Application is reasonable and appropriate. This includes the arbitrary increase in O&M lag days from the lag days reported in the 2008 lead lag study (from 5 days for the years prior to 2013 to 7 days in the

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4 YECL Response to UCG-YECL-38

test period) due to YECL's in-house review and update of a single component (salary and wages lead/lag days).

75. UCG submits that refusal to provide any details of the lead/lag study review that would verify that only one component needed to be changed. UCG submits that the evidentiary record does not warrant the proposed change to the lead/lag analysis used to determine working capital.

Capital Additions - General

76. While YECL argues (paragraph 83) that it is requesting approval of forecast capital additions of \$21.6 million in 2013, \$23.3 million in 2014 and \$20.7 million in 2015, UCG submits that this application also addresses the \$36.2 million in capital additions to rate base identified for 2010-2012[5]. This represents increases of 46% (2013 above 2009), 74% (2014 above 2009) and 96% (2015 above 2009) in the rate base being proposed by YECL on which it proposes to earn an increased return. If effect, YECL is proposing to double its rate base over the 6 year period between 2009 and 2015 as well as the associated return on investment.

77. To say that YECL's approach to the pursuit of new capital projects seems largely ad hoc is probably generous to YECL from the standpoint of adjudication as to the regulatory efficiency with which these projects are selected, carried out and/or reported on. At a minimum, UCG believes that a comprehensive review must take place during which projects are selected, tested, and given approval. There should be an opportunity for the Board to assess the reasonableness of a project at a stage where substantial ratepayer expense has not been engaged.

78. UCG submits that it is abundantly obvious that YECL's wish list of capital additions to rate base have to be curtailed and/or rolled into future review applications. UCG submits that to place all of the proposed capital additions into rate base contributes to the rate shock that YECL's application is proposing to deliver to its customers.

79. UCG strongly disagrees with YECL's argument (paragraph 88) that, in their own opinion, it has provided comprehensive support detailing the need for, and benefits of, its capital projects. UCG submits that YECL has fallen short in providing legitimate justification and explanation of most of its actual and proposed capital expenditures. UCG submits that the onus is on YECL to clearly explain and defend all of the capital expenditures that have been made on projects that have not been specifically approved by the Board.

80. UCG submits that a business case captures the reasoning for initiating a project or task. The logic of a business case is that, whenever resources such as money or effort are consumed, they should be in support of a specific business need. The information required for any project's business case includes background of the project, the expected business benefits, the options considered (with reasons for rejecting or carrying forward each option), the expected costs of the project, a gap analysis and the expected risks. To suggest that project development work

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[5] YECL 2013-2015 GRA, Schedule 8.6

that costs millions of dollars does not require the same type of business case as an actual capital project borders on nonsense.

81. UCG submits that YECL has failed to provide an adequate and fair consideration of not only alternative capital projects but also alternative uses of the same level of funds that would deliver the same level of end result. UCG submits that there has been no rigorous testing of even the alternatives identified by YECL.

82. UCG submits that all of YECL's major capital projects should be subject to greater levels of review (i.e., Part 3 reviews) given their cost and impact on the bills of ratepayers. At the very least, YECL should be expected to provide a more robust business case analysis on these projects prior to them being considered for inclusion in rate base.

83. YECL argues (paragraph 89) that capital projects related to generation are necessary in order for it to be able to continue to provide safe and reliable electricity service. UCG submits that YECL has fallen short in providing evidence of how the completed and proposed generation projects have added and/or maintain the reliability and integrity of the power generation system.

Fish Lake Unit #1

84. As noted in UCG's argument, there are $4,564,000 in capital projects associated with Fisk Lake Unit #1 that have been completed or are forecast to be completed after the March 2010 failure of the Fish Lake Unit #1 plant. While YECL's Business Case #2 addresses the $3.9 million Turbine and Building Replacement project, UCG submits that YECL has failed to provide legitimate and comprehensive business cases for the remaining $656,000 in projects associated with this asset.

85. UCG submits that any components of the $4.6 million Fish Lake Unit #1 capital program identified above that have not been justified as part of a business case should not be added to YECL's rate base. UCG submits that a $4.6 million project such as this should be reviewed pursuant to Part 3 of the *Public Utilities Act* and the Board should direct YECL to seek approval to have this project reviewed pursuant to Part 3.

Miscellaneous Overhead Services and New Underground Line Extensions

86. YECL argues (paragraph 90) that few customer projects in the test years are close to being at a final scope and design stage at the time of the Application so forecasts of new service extensions and associated customer contributions (including Miscellaneous Overhead Services and New Underground Line Extensions) are preliminary estimates at best. The confidence in forecast expenditures was further diluted by another set of actual expenditures being presented in response to Undertaking #6 which changed the original "actual" expenditures for "projects in 2011 and 2012 that were originally forecast as part of this category"; whatever that means.

87. From 2008 through 2012, the expenditures on Miscellaneous Overhead Services and New Underground Line Extensions averaged $1,227,600 per year prior to customer contributions[6]. For comparative purposes, YECL's forecast expenditures for new service extensions in its 2008-2009 General Rates Application were $3,141,000 in 2008 and $2,962,000 in 2009[7]. This forecast was significantly above the reported actual expenditures of $1,399,000 in 2008 and $1,005,000 in 2009[8]. UCG submits that this clearly illustrates the difficulty that ratepayers are up against when paying for fictitious and unachievable capital expenditure forecasts for new services when there is no evidence provided that substantiates the level of forecast new services.

88. Forecast expenditures in the test years for Miscellaneous Overhead Services and New Underground Line Extensions are more than double the historical average ($2,685,000 per year versus $1,227,600). UCG submits that if YECL is basing its forecast on historical experience, then it is artificially over-burdening ratepayers by unnecessarily increasing rate base to benefit its shareholder.

89. Given the complete uncertainty attached to YECL's forecasts, UCG submits that the budget for additions to rate base related to Miscellaneous Overhead Services and New Underground Line Extensions for each of the test years should be limited to the average of the net expenditures over the last 5 years of actual expenditures (i.e., net of customer contributions). UCG submits that these amounts are $1,112,200 for Miscellaneous Overhead Services and $115,400 for New Underground Line Extensions prior to customer contributions.

Carcross 2 MVA Generation Standby Unit

90. YECL argues (paragraph 96) that this project is viable if the Board approves its proposed threshold minimum load of 1 MW and 300 customers to enact the "N-1 planning criteria". UCG submits that YECL has not provided any evidence related to Loss of Load Expectation criterion into its planning criteria (as has been done by YEC) which identifies the potential interruption of service for any customer (forecast of the average number of system outages per year). The LOLE criterion also recognizes the role of transmission reliability. YEC's system-wide capacity planning criteria provides that each transmission system would be planned not to exceed a Loss of Load Expectation of 2 hours/year. Without some comparable evidence from YECL, UCG submits that it is premature to accept the proposed 1 MW / 300 customer threshold conveniently proposed by YECL to justify this project when a business case could not be supported.

91. YECL notes in its argument (paragraph 97) that letters in support of this project have been filed by the Carcross Area Property Owners Association, the South Klondike Local Advisory Council and the Museum of Yukon Natural History. However, as noted in UCG's argument, YECL could not provide any evidence to support any claims in these letters related to tourism initiatives, the reliability issues related to the transmission line to Carcross and Tagish, and that

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6 YUB-YECL-61, Attachment 1
7 YECL 2008-2009 GRA, Schedule 9
8 YUB-YECL-61, Attachment 1

standby power is needed to ensure the success of infrastructure investments by the governments of Canada, the Yukon and the Carcross Tagish First Nation.

<u>Automated Meter Reading</u>

92. YECL argues (paragraph 100) that its cost/benefit analysis for the AMR project shows that customers will benefit from the implementation of AMR with cost savings in 9 years and cumulative savings of $2.2 million over 25 years. As noted in UCG's final argument, this payback period is too long and the savings level too unsubstantiated for such a small customer base and given the rate at which technology changes.

93. UCG submits that YECL's avoidance of issues related to (1) the computer systems, software and training needed to effectively operate an AMR-based system; (2) the concerns raised by parties in every jurisdiction where AMR technology has been introduced about the possible dangers of high-frequency radio waves associated with smart meters; and (3) the issue of allowing ratepayers to keep their analog meters or have the transmitter turned off on their smart meter as was determined most recently in British Columbia raises credibility issues related to the high level business case provided for this $3,863,000 project.

94. Given the obvious duplication / redundancy of effort with YECL's proposed replacement of approximately 12,903 residential and 1,579 commercial conventional meters, UCG submits that YECL has not justified the allowance of this project into rate base.

<u>Watson Lake Bi-Fuel Project</u> (Business Case #6)

95. YECL argues (paragraph 108) that the economic driver to undertake this pilot project is fuel savings of using LNG versus diesel. When comparing the project capital costs to the cumulative fuel savings, a simple project payback of 9 years is shown in YECL's business case.

96. UCG submits that before 9 years time it is highly probable that some other alternative to fossil fuel will be facilitated in the Watson Lake area, therefore the savings will never occur. UCG submits that YECL has not examined other methods of generation for this application, such as wood biomass or run-of-river hydro turbines and YECL has not presented a clear case nor the economics to support this program.

97. UCG submits that YECL has already publicly announced that it is teaming up with the Liard First Nation and the Town of Watson Lake to study the potential of developing hydropower generation within Kaska traditional territory in south Yukon (a study paid for by the Federal government and to be completed by April 2014) to provide electricity to Watson Lake so UCG questions how the Board could be convinced that YECL has compared the proposed bi-fuel project with all the alternatives.

Demand Side Management

98. YECL argues (paragraph 122) that DSM-related savings after the completion of the first year of the plan are 240 MWh and a cumulative 1,487 MWh after the completion of the second year of the plan. The YECL/YEC DSM Plan expects savings of 9.3 GWh after the completion of the fifth year of the plan valued at $1,953,000.

99. UCG submits that these avoided new generation savings do not even come close to the accumulated costs incurred by both utilities to this date and going forward on DSM-related activities. UCG submits that the costs of new positions created for DSM by both companies have not been included in the analysis. UCG submits that the Board must look at the total accumulated costs associated with the development and implementation of the DSM Plan before approving any such costs associated with DSM.

100. As an example of the costs that have not been included in YECL's analysis, UCG refers the Board to YEC's 2012-2013 GRA within which YEC proposed that $3 million (net of contributions) of DSM expenditures be added to rate base on or before the end of 2013. YEC suggested at that time that over 90% of these expenditures were related to DSM planning for which program cost / benefit assessments are not applicable, including the DSM Conservation Potential Review, pilot programs, community engagement, end use surveys, working groups, energy audit and management plan, and public education/communication.

101. UCG submits that the utilities have not adequately addressed the issues of bill impacts, avoided costs and longer term aspects related to their proposed DSM programs to allow the Board to approve them as submitted. Ratepayers must be provided certainties as to who will pay for these costs, who will receive benefits from the DSM programs, and that facilitating marginalized customers will be addressed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 16th DAY OF DECEMBER, 2013.

MICHAEL JANIGAN
COUNSEL, UTILITIES CONSUMERS' GROUP