

1992-8

DECISION OF THE PUBLIC UTILITIES BOARD
AT A PRE-HEARING CONFERENCE HELD IN WHITEHORSE
AT THE YUKON INN ON FRIDAY, THE 25TH DAY OF SEPTEMBER, 1992
WITH REFERENCE TO THE NOTICE OF MOTION OF
YUKON ENERGY CORPORATION

The Yukon Utilities Board, established pursuant to the *Public Utilities Act*, was directed by Order-In-Council 1992\92 to conduct a public hearing with respect to the Yukon Energy Corporation's and the Yukon Electrical Company Limited's proposals in respect of major capital projects and contract commitments required for certain undertakings. These included non-diesel fuel generation, transmission and demand side management during the period 1992 to 2001. The emphasis on the review would be those projects and commitments required by the year 1997. The Order-In-Council sets out the specific areas of the review. The Board was directed, under the Order-In-Council, to hear submissions from any persons or groups or classes of persons who, in the opinion of the Board, have an interest in the matter.

The Board's report is to be sent to the Commissioner in Executive Council by November 1, 1992.

The Yukon Utilities Board (the "Board") conducts its hearings pursuant to the Rules of Practice established by Order-In-Council 1985\1 (the "Rules"). Section 19(1) of the Rules state that the Board may, at any time before the date fixed for a public hearing, request the parties to appear before the Board or any person named by the Board at a time and place mutually acceptable to all parties for a conference prior to a public hearing for the purpose of:

- a) Simplifying the issues, evidence or disposition of the matter;
- b) Admitting certain facts, proving facts by declaration under Oath, or using matters of public record.

This public pre-hearing conference was called by the Board under Section 19 to simplify the issues and evidence and to admit certain facts and, in particular, to deal with the issues of jurisdiction of this Board and relevancy.

The Board heard extensive submissions with respect to the jurisdiction of the Yukon Territory Water Board under the *Northern Inland Waters Act* and the Environmental Assessment Review Process Guidelines Order enacted under the *Department of Environment Act*. This Board is mindful of a fundamental principal in Administrative Law that a Board must act within its jurisdiction and in accordance with the legislation that creates it. In this case, the legislation is the *Public Utilities Act* and Orders-In-Council enacted pursuant to the *Public Utilities Act*.

The Board also recognizes its duties to ensure fairness in procedure and to treat all parties appearing in front of it fairly and without bias. Finally, the Board recognizes that it also has a duty to ensure that its task, already difficult, does not become impossible by dealing with too many collateral and irrelevant issues.

The Board is also mindful of the fact that this is an inquiry process and not an adversarial or trial process. Interventions should be done to assist the Board in reaching its conclusion. The following is the Board's ruling on the application brought by Yukon Energy Corporation to disallow a number of the information requests of Friends of Aishihik & Associates. In coming to its determination the Board has heard from counsel for Yukon Energy Corporation, counsel for the Yukon Electrical Company Limited, counsel for the City of Whitehorse, Rob McIntrye from the Yukon Chamber of Mines, Gary McRobb and Peter Percival from Friends of Aishihik & Associates, and Randy Clarkson appearing on behalf of New Era Electric Corporation. The Board will be relying on the information requests of Friends of Aishihik & Associates dated August 14, 1992 shown in the Board's material as YECREF:FAA-1 (the "first information request")

and Friends of Aiskihik & Associates information request dated August 28, 1992, Board reference 1992-2-16 (the "second information request"). The Board ruling is based on the numbering of the first and second information requests.

FIRST INFORMATION REQUEST

Question 1.

The Board directs this question to be answered on the basis of a determination by cost centre or by community with respect to any available material that can be reasonably obtained.

Question 2.

This question is to be answered with the limitation that it shall be a summary of Yukon Energy Corporation's involvement with enclosures.

Question 3.

This question shall not be answered on the grounds of relevancy.

Questions 4A & 4B.

This question is to be answered.

Question 5.

This question shall not be answered on the grounds of relevancy.

Questions 6, 7 & 8.

These questions are to be answered.

Question 9.

This question shall not be answered on the grounds of relevancy.

Question 10.

This question shall be answered.

Question 11.

This question shall not be answered on the grounds of relevancy.

Questions 12 & 13 in their entirety.

These questions shall be answered.

Question 14A.

This question shall be answered.

Question 14B.

This question shall not be answered on the grounds of relevancy.

Question 14C.

This question shall be answered.

Question 14D through 14G.

These questions shall not be answered on the grounds of relevancy.

Question 14H.

This question shall be answered.

Questions 15A and 15B.

These questions shall not be answered on the grounds of relevancy.

Question 15C.

This question shall be answered on the basis of the scheme set out by existing Federal or Territorial Government licenses.

Question 15D.

This question shall be answered on the basis that it will be answered within existing license regulation.

Questions 16A & 16B.

These questions are not to be answered on the grounds of relevancy.

Question 17A.

This question shall not be answered on the grounds of relevancy.

Question 18A.

This question shall not be answered on the grounds of relevancy. The Board is aware that it is Bill C-13 and not Bill C-35.

Question 18B.

This question shall not be answered on the basis that it is not fair for a party such as Yukon Energy to have to adopt the opinion of an intervener as a preliminary step to answering the question.

Question 18C & 18D.

These questions are to be answered because the Board is interested in the issue of top storage of the lake.

Question 19.

Yukon Energy shall answer the question, "If there is a plan to lower Aishihik Lake, below 2999 feet above sea level what will be the effect on the existing fish stock?".

Question 19A.

This question is not to be answered as posed.

Question 19B.

This question is to be answered.

Question 19C.

This question is unfair in its present form and shall not be answered.

Questions 19D to 19J.

These questions are to be disregarded. However, Yukon Energy Corporation shall answer the question, "What legal requirements presently exist for mitigation and environmental security for Aishihik Lake and what is the cost of the mitigation and environmental security?"

Question 20A.

This question is to be answered as directed above.

Questions 20B & 20C.

These questions are to be answered in their entirety.

Question 21.

This question is to be answered in its entirety.

Questions 22 & 23.

These questions are to be answered in their entirety.

Questions 24.

Questions 24(a) and 24(d) are to be answered. Questions 24B and 24C are not to be answered on the grounds of relevancy.

SECOND INFORMATION REQUEST**Question 1**

This question shall not be answered. It is not fair and not relevant.

Question 2

This question is not a fair question and is contrary to the Board's duty to be fair to all parties. However, the Board has this question, "Will top storage prevent looking to undeveloped waters such as Drury Creek for development potential?"

Questions 3 to and including 9.

These questions are not to be answered.

Question 10.

This question does not have to be answered as it is beyond the jurisdiction of the Board.

Questions 11A & 11B

These questions do not have to be answered in that the Yukon Energy Corporation will have to comply with any laws of Canada and the Yukon Territory.

Question 11C.

This question does not have to be answered.

Question 12A.

This question does not have to be answered as it is outside the terms of the Order-In-Council and the Board's jurisdiction.

Question 12B

This question does not have to be answered because it does not assist in this inquiry.

Question 13A

This question does not have to be answered in its present form. The Board directs the general answer to the question, "What is the future of Curragh Resources and their mine in Faro?"

Question 13B

This question does not have to be answered.

Questions 13C.

This question does not have to be answered because it is not fair to force a party to answer the question that requires the party to adopt the opinion of an intervenor. It is not a fair and answerable question.

Question 14 in its entirety.

This question is to be answered.

Question 15 in its entirety.

This question is to be answered.

Question 16.

This question does not have to be answered on the grounds of relevancy.

Questions 17 & 18.

These questions are to be answered.

Question 19.

This question is not to be answered on the grounds of relevancy.

Question 20.

This question does not have to be answered.

Question 21.

This question is properly answered at a different kind of inquiry and does not have to be answered on the grounds of relevancy.

Questions 22 and 23.

These questions must be answered.

Question 24.

This question is not to be answered because it is not fair to have a party answer such a leading and opinionated proposition.

Question 25.

This question is not properly asked and will not be answered.

Question 26

This question is not to be answered.

Question 27

This question shall be answered.

Question 28

This question shall not be answered.

Question 29

This question shall be answered.

Question 30A & 30B

These questions shall be answered.

Questions 30C & 30D.

These questions shall not be answered on the grounds of relevancy.

Question 31.

This question shall be answered.

Questions 32 through to and including 47.

These questions shall be answered.

Question 48.

This question shall not be answered on the grounds of relevancy.

Question 49 in its entirety and Questions 50, 51, 52 & 53.

These questions shall be answered.

Question 54

Provide details of potential environmental and mitigative costs associated with draining the lake 8 or 9 feet below the 1992 summer level.

Question 55

This question has been previously answered.

Question 56

Provide the advantages and disadvantages associated with developing top storage at Aishihik.

Question 57

This question shall not be answered.

Questions 58, 59 & 60A

These questions are to be answered.

Question 60B

This question is not to be answered.

Questions 61 & 62

These questions shall not be answered.

Questions 63 & 64

These questions are to be answered.

Questions 65 & 66

These questions are not to be answered on the grounds of fairness and irrelevancy. Whatever dealing that an intervenor has under different legislation does not assist the Board in its inquiry. The Board does not wish to get drawn into a history of a party's dealing with another party under different legislation unless the dealings form a relevant basis for the Board's inquiry which in this case questions 65 and 66 do not.

Questions 67 & 68

These questions are to be answered.

Question 69A

This question is not to be answered.

Question 69B & 69C

These questions are to be answered.

Questions 70 through to including 77

These questions are to be answered.

Question 78

This question shall not be answered.

Question 79 - 81

These questions are to be answered.

Question 82

This question is not to be answered on the grounds of relevancy.

Question 83

This question is not to be answered on the grounds of fairness and relevancy.

Question 84

This question is to be answered.

Questions 85 & 86

These questions are not to be answered on the grounds of relevancy and fairness.

Question 87 in its entirety

This question is to be answered.

Questions 88 through to and including 91

These questions are to be answered.

This Board hopes that in future parties to the proceeding will take a less adversarial and argumentative stance and be more co-operative and fair in the questions posed. The Board's ruling at this pre-hearing conference would be the same at any public hearing in that the board must ensure that all parties are treated fairly. It is not fair to preface a question with an opinionated preamble that either has not formed a basis proven before the Board or cannot be answered without adopting the suggested opinion of a party.

The Board makes the following general comments for the benefit of all parties to this and all future proceedings.

The Board expects that all parties who are appearing before the Board will be co-operative in the information request process.

The Board recognizes as a fact of life that lawyers, by their training and professional responsibility to their clients, are cautious and protective.

It is not uncommon that where an enquiry is made by any person (including an intervenor) to a line or operational employee a simple and direct answer results. If the same enquiry is made through senior management and referred to counsel, particularly in the course of a public enquiry or investigation of a large corporate entity, the question and answer will be analyzed and reviewed to the point that the answer becomes complex but reveals as little real information as possible.

Where some parties routinely make unsubstantiated allegations of malafides against senior management or legal counsel of other parties the object of the exercise, assisting the Board in carrying out its functions, gets lost. The party should also realize their own credibility may be affected. Where substantiated allegations are made this Board will treat them very seriously.

This Board reminds all parties that the object of the exercise is to assist the Board.

Where any party wishes to pursue an argument of jurisdiction or relevancy from any perspective the Board approves the procedure used in this case by Yukon Energy.

Where parties find it necessary to amend pre-filed material in any substantive way a brief explanation as to how the error occurred and where appropriate an apology to parties who may have been affected will reduce tensions and maintain credibility.

The Board requests where a party presents complex material and where information requests result in changes to the complex material that a party shall in such an occurrence provide a brief explanation of the effect of the changes for the benefit of all.

DATED at the City of Whitehorse, in the Yukon Territory this 5 day of October, 1992.

A handwritten signature in cursive script, appearing to read 'Edith Walters', written over a horizontal line.

Edith Walters, Chair,
Yukon Utilities Board,
on behalf of the Board