

## YUKON UTILITIES BOARD

**IN THE MATTER OF** the *Public Utilities Act*, R.S.Y.  
2002, c. 186;

**AND IN THE MATTER OF** an application by the  
Yukon Energy Corporation seeking approval of its  
2012-2013 General Rate Application.

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### REPLY ARGUMENT OF THE YUKON ELECTRICAL COMPANY LIMITED

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#### I. INTRODUCTION

1. Having reviewed the arguments filed by the Applicant, Yukon Energy Corporation ("YEC"), and the Interveners, the City of Whitehorse ("Whitehorse"), the Utilities Consumers' Group ("UCG"), Leading Edge ("LE"), and the Yukon Conservation Society ("YCS") (together the "Interveners") in respect of YEC's 2012-2013 General Rate Application (the "Application"), the Yukon Electrical Company Limited ("Yukon Electrical") respectfully submits the following arguments in Reply. Yukon Electrical's silence on any issues not raised in this Reply Argument should not be taken as its agreement therewith. To the contrary, unless expressly stated, the positions advanced by Yukon Electrical in its Argument remain its views on the matters before the Board. Where terms are used but not defined herein, they bear the meaning attributed to them in Yukon Electrical's Argument.

2. Yukon Electrical will limit its submissions herein predominantly to those matters it addressed in its Argument and will again make reference to the Table of Contents of the Application in structuring its argument below. In general, Yukon Electrical notes that many of the Interveners appear to share Yukon Electrical's concerns in respect of such matters as service to Whitehorse Copper Tailings; the Diesel Contingency Fund; the Energy Reconciliation Adjustment and Wholesale Sales Forecast relied upon by YEC in support thereof; and, YEC's failure to consult with Yukon Electrical in respect of matters having material impacts on Yukon Electrical and its customers.

3. Given Yukon Electrical's significant interest in the conduct of proceedings before this Board and the Board's process in respect thereof, Yukon Electrical is compelled raise certain

procedural concerns with the Board notwithstanding that the Application before the Board is not Yukon Electrical's. In particular, Yukon Electrical notes that most of the YCS' Argument is in the nature of new evidence and not proper argument as it is wholly unsupported by any evidence on the record. YCS had an opportunity to file Intervener Evidence in this proceeding and chose not to. Under the circumstances, Yukon Electrical respectfully submits that little, if any weight, should be given to the positions advanced by YCS in its Argument. Similarly, the UCG makes sweeping policy statements and recommendations to the Board without any support for, or analysis of any potential costs and benefits of such recommendations.<sup>1</sup>

## II. ARGUMENT

### 2.2.1 – Wholesale Sales Forecast

4. At page 16 of its Argument, YEC suggests:

In summary, no substantive issues have been raised that call into question the reasonableness of the Application's forecast of YECL wholesales to supply YECL retail and established YEC wholesales during the test years. The wholesales sales forecast to YECL as it relates to YECL retail sales has been examined in detail by all parties, including evidence on YEC consultations carried out with YECL. As in the past, YEC's forecast of these sales has tended to equal or exceed forecasts provided by YECL, and such forecasts have also continued to be sensitive to expected hydro generation by YECL.

5. With respect, the assertion that no substantive issues have been raised that call into question the reasonableness of YEC's Wholesale Sales Forecast is plainly false. As demonstrated during Yukon Electrical's cross-examination of YEC and as set out at para. 19 of Yukon Electrical's Argument, Yukon Electrical has reviewed YEC's Wholesale Sales forecast and is unable to fully understand or reconcile it with its own forecast. Further, the forecast is flawed because (i) it does not properly account for the unavailability of Fish Lake generation; and (ii) the impacts of weather normalization have been incorrectly applied to the forecast. In both cases, the result is to understate the forecast with the result that, as discussed in further detail below, inappropriate ERA charges may be assessed to the detriment of Yukon Electrical and its customers.

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<sup>1</sup> For example, at para. 23 of its Argument, the UCG suggests that the Board consider the engagement of an independent expert to assist in the benchmarking of YEC and Yukon Electrical cost components. No support is given for the need for such an endeavour and Yukon Electrical respectfully submits that the costs of such an endeavour could easily outweigh its benefits particularly given that most utilities in North America are not comparable to those in the Yukon. Additionally, at paragraph 24 of its Argument, UCG suggests that a Performance Based Regulation ("PBR") mechanism be considered. Again, no consideration is given to the costs associated with moving to PBR or even to whether such a mechanism is suited to the unique circumstances faced by the utilities in the Yukon. Yukon Electrical respectfully submits that such an initiative would require extensive expertise and involve extensive consultations and directions from the Board, all of which would come at a significant cost. In summary, Yukon Electrical submits that these and other unsupported recommendations made by the UCG are without merit at this time and should be rejected by the Board.

6. Notably, Yukon Electrical was not the only party who has raised issues in respect of the reasonableness of the YEC's Wholesale Sales Forecast. At paragraphs 151 to 158 of its Argument, the UCG the UCG appears to agree with Yukon Electrical's concerns in respect of the impacts of weather normalization on the forecast. Additionally, at paragraph 148, the UCG summarizes its other concerns with YEC's Wholesale Sales Forecast, as follows:

While YEC states that it considered new YECL information affecting YEC non-industrial wholesale loads for individual test years, UCG submits that there is not enough information on the record to confirm that YECL (the service provider to the vast majority of non-industrial customers) is in agreement with changes that YEC has made to YECL's forecast. UCG submits that this not only leads to questions about the dependence the YUB can place on YEC's load forecast but also illustrates the uncooperative nature of the relationship between the Yukon's two electricity utilities.

[Emphasis added]

7. Additionally, at paragraph 6 of its Argument, Whitehorse echoes concerns with YEC's wholesale sales forecast as follows:

Given the importance of wholesales to system sales, the City submits that YEC should make an effort to understand YECL's forecasting methods with the objective of validating YECL's Wholesale Sales forecast. YECL is the utility that serves its retail customers and is in the best position to forecast the retail customers' needs. The City considers that the Board should direct YEC to provide detailed support for its Wholesale Sales forecast in future applications.

While Yukon Electrical agrees with the tenor of the concerns raised by Whitehorse, which are consistent with Yukon Electrical's own concerns as well as those of the UCG, Yukon Electrical respectfully submits that the Whitehorse's proposed alternative Wholesale Sales Forecast is unsupported and should be rejected by the Board. Specifically, at the end of paragraph 6 of its Argument, Whitehorse asserts that "the Wholesale sales forecast should be 286,357 MWh, for 2012 and 289,755 MWh for 2013." With respect, Whitehorse's rough calculations are flawed and should be rejected by the Board. Its estimates do not account for growth adjustments or weather normalization impacts. Furthermore, they are based on preliminary numbers that Yukon Electrical does not support. As outlined in further detail below in Section 4.6 regarding the Energy Reconciliation Adjustment, Yukon Electrical submits that, if anything, YEC's Wholesale Sales Forecast is understated, not overstated as suggested by Whitehorse. Yukon Electrical respectfully requests that YEC be directed to consult with Yukon Electrical to reach an agreed upon Wholesale Sales Forecast to be filed by YEC in its Compliance Filing.

### 2.2.2.3 – Whitehorse Copper Tailings [Eagle Industrial Minerals]

8. It should be noted, that YEC's Argument offers no legal analysis in support of its position that it should be entitled to serve Whitehorse Copper Tailings, a customer located within Yukon Electrical's service area. As demonstrated in cross-examination of YEC and as outlined in paragraph 8 of Yukon Electrical's Argument, i) both YEC and Yukon Electrical may serve major industrial customers; ii) Whitehorse Copper Tailings is a customer located within Yukon Electrical's deemed franchise area; and iii) Yukon Electrical not only owns and operates the power line to Whitehorse Copper Tailings, but Yukon Electrical also served Whitehorse Copper Tailings from the late 1960s to the mid 1980s. Nevertheless, YEC continues to suggest that it should be entitled to serve Whitehorse Copper Tailings and states at pages 18-19 of its Argument:

In addition to confirming the basis for the proposed wheeling and the fact that YEC has consistently served all major industrial customers in the Yukon since securing its franchise in 1987, the evidence also confirms that, under any YEC revenue requirement approved by the Board for 2013, the rates required in 2013 by YEC to recover that revenue requirement will need to be increased if YECL rather than YEC was to serve WHCT.

9. Yukon Electrical submits that YEC is again attempting to unfairly characterize itself as the low cost provider without providing the full context for its suggestions that there will be rate increases in the event that Yukon Electrical serves Whitehorse Copper Tailings. Yukon Electrical submits that YEC's claim that its revenue requirement will need to be increased if YECL rather than YEC was to serve WHCT is incorrectly premised and is misleading. As confirmed in cross-examination and as outlined in Yukon Electrical's Argument, YEC's calculations and purported rate increase are based on currently approved rates and assume Yukon Electrical is not going to file a general rate application for 2013. YEC agreed that if Yukon Electrical files a GRA for the 2013 test year, and WHCT volumes are included in YECL's revenue requirement, then YEC's rate increase will be completely offset by YECL's rate decrease. That is, as long as the costs of serving WHCT are properly forecast by the utility that serves WHCT, then the net impact to Yukon ratepayers is the same irrespective of which utility provides service to WHCT.<sup>2</sup>

10. Notably, none of the Interveners supports YEC's position that it should be entitled to provide service to Whitehorse Copper Tailings. For example, in paragraph 10 of its Argument, Whitehorse indicates that either YEC or Yukon Electrical should file a separate application to

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<sup>2</sup> Yukon Electrical Argument at para. 9.

evaluate the net costs and benefits associated with service to Whitehorse Copper Tailings. Whitehorse further recommends "that the costs and revenues attributable to serving Whitehorse Copper Tailings be removed in the compliance filing pending a Board hearing on this matter."<sup>3</sup> In addition, in section 7 of its Argument, LE recommends that "the Board considers the facts of the situation and the arguments of all parties to decide which utility is to serve Eagle Industrial Minerals and to ensure that the ratepayers are not disadvantaged either way."<sup>4</sup> Finally, at paragraph 167 of its Argument, the UCG states:

...UCG sees no evidence that provides YEC with the rights to serve Whitehorse Copper Tailings or any other industrial customer. The UCG submits that it appears to be rather redundant to have YEC serve a load to which YECL already has an existing service line.<sup>5</sup>

11. Both Whitehorse and LE agree that, in the very least, YEC should remove Whitehorse Copper Tailings costs and revenues from this Application as part of its compliance filing. UCG goes a step further in fully supporting that Whitehorse Copper Tailings should be served by Yukon Electrical. The UCG also correctly understands that the alleged cost savings to ratepayers suggested by YEC should it serve Whitehorse Copper Tailings as opposed to Yukon Electrical are incorrectly premised. For example, the UCG indicates at paragraphs 165 and 166:

As was confirmed during the oral hearing, YEC's savings calculations do not account for potential rate adjustments for YECL in 2013 if Whitehorse Copper volumes are included in its load forecast.

UCG submits that YEC again blocked the ability of ratepayers to understand the issues by raising technical issues to avoid answering a question about how the alleged "savings" would be impacted by a general rates application by YECL.<sup>6</sup>

12. While Yukon Electrical is appreciative of the support shown by the Interveners in respect of this issue, there are some suggestions advanced by the Interveners with which Yukon Electrical does not agree and which merit a response. In particular, at paragraphs 9 and 10 of its Argument, Whitehorse submits that "serving arrangements should be based on the most efficient and effective service to the customer, with regard to the net benefits to all customers of both utilities" and suggests that the Board should determine which utility can provide "the optimum service to WHCT." This leads Whitehorse to its recommendation that this issue be resolved in a separate application by either of the utilities where the net costs and benefits of service to end use customers can be fully evaluated. Similarly, LE recommends that the Board

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<sup>3</sup> Whitehorse Argument at para. 10.

<sup>4</sup> LE Argument at p. 5.

<sup>5</sup> UCG Argument at para. 167.

<sup>6</sup> UCG Argument at paras. 165-166.

consider which utility is to serve Whitehorse Copper Tailings to "ensure that the ratepayers are not disadvantaged either way."<sup>7</sup> With respect, as regards service to customers within a pre-existing franchise area, the issue is not who can provide the "optimum service" and it is not for the Board to ensure that ratepayers are not disadvantaged by having the incumbent utility provide service to the customer in its franchise area. While Yukon Electrical respectfully submits that it is the best-positioned utility to provide efficient service to Whitehorse Copper Tailings, the issue is one of geography. As Whitehorse Copper Tailings is located within its pre-existing franchise area, Yukon Electrical is entitled, and has a duty, to provide service to Whitehorse Copper Tailings and no further application to the Board is necessary or appropriate. The Board's task is simply to ensure that Yukon Electrical's rates to serve those customers in its service area are just and reasonable and that it provides a safe and adequate service.

13. For all the above reasons as well as those set out in its Argument, Yukon Electrical respectfully requests that the Board (i) confirm that Whitehorse Copper Tailings is rightfully a customer of Yukon Electrical; and (ii) direct YEC to remove Whitehorse Copper Tailings volumes from its forecast for the test years and that its revenue requirement be adjusted accordingly.

### **3.0 – Revenue Requirement**

14. Throughout its Argument, the UCG demonstrates an overall understanding and appreciation of Yukon Electrical's plight respecting YEC's failure to consult with Yukon Electrical on matters that directly and materially impact Yukon Electrical and its customers. However, the UCG states:

UCG submits that given that rates are set on a Yukon-wide basis, the utilities should be required to file annual consolidated operating results so that comparisons can be made to the allowed costs of service and revenue recovery. At the very least, YEC and YECL should be directed to avoid submissions of individual rate applications since, to some degree, all customers pay the same combined rates.<sup>8</sup>

...

Submissions related to revenue requirement and rates approval in the Yukon should be a joint undertaking between YEC and YECL with input from government entities (e.g., the Energy Solutions Centre) as opposed to a process that each entity undertakes on its own without regard for other stakeholders.<sup>9</sup>

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<sup>7</sup> LE Argument at p. 5.

<sup>8</sup> UCG Argument at para. 6.

<sup>9</sup> *Ibid.* at para. 13.

15. Yukon Electrical is of the view that there should be thorough consultation and agreement amongst YEC and Yukon Electrical on matters such as (i) the Wholesale Sales Forecast; (ii) the applicability of the Energy Reconciliation Adjustment mechanism; and (ii) the administration of Diesel Contingency Fund, and submits that a direction from the Board to YEC directing further and better consultation with Yukon Electrical on such matters would be appropriate under the circumstances. Yukon Electrical, however, respectfully submits that the Application before the Board is YEC's and, accordingly, the Board is without jurisdiction to issue directions to Yukon Electrical as part of this proceeding. Furthermore, Yukon Electrical submits that while Phase II applications may be capable of being efficiently prepared and considered on a joint basis, the same cannot be said of applications in respect of the two utilities' applications for approval of their respective revenue requirements. YEC and Yukon Electrical are separate entities with very different corporate structures, assets, costs drivers and businesses and joint applications would be wholly inappropriate and inefficient.

16. In response to UCG's submissions in respect of the alleged retroactive recovery of revenue requirement at paragraphs 31 to 46 of the UCG's Argument, Yukon Electrical respectfully submits that s. 29 of the *Public Utilities Act*, R.S.Y. 2002, c. 186 expressly contemplates that the Board may consider the revenues and costs of the public utility in the financial year in which the proceedings for setting the rates and charges began or in any period immediately following, without considering the allocation of those revenues and costs to any part of that period: s. 29(a) (Emphasis added). It also provides that the Board may give effect to that part of any excess of revenue received or deficiency incurred that is in the opinion of the board applicable to the whole of the financial year of the public utility in which the proceeding was initiated as the board considers just and reasonable: s. 29(b) (Emphasis added). Simply stated, the legislation in the Yukon expressly contemplates the setting of rates based on the revenue requirement of a test year that may have commenced prior to the filing of the rate application. Accordingly, UCG's submissions to the effect that such a practice is impermissible should be rejected.

### **3.6.2 – Diesel Contingency Fund**

17. With respect to the Diesel Contingency Fund ("DCF"), YEC indicates that one of the key issues raised and responses provided by YEC is as follows:

**Purpose of the Fund, past practice, and basic operation** – the purpose of the DCF, its past practice when active from 1996 through 1999 (including past application regarding YECL's Fish Lake hydro generation) and its basic operation to stabilize diesel generation

costs included in rates and YEC diesel generation costs each year (when active) have all been extensively addressed and described by Yukon Energy.<sup>10</sup>

18. The above quote relates to YEC's responses to Undertakings 23 and 24 wherein YEC confirmed that (i) the DCF, as it previously existed, included volumes associated with Yukon Electrical's Fish Lake hydro; and (ii) that the total fund was administered by YEC. Additionally, YEC provided a continuity schedule of the DCF from its inception in 1996 to 2011, which schedule clearly demonstrates the administration by YEC of Yukon Electrical net withdrawals. Notwithstanding YEC's confirmation of Fish Lake hydro volumes previously being included in the DCF, YEC has not provided in its Argument any comment on, or proposal in respect of, the treatment of hydro generation levels associated with Fish Lake. As outlined in Yukon Electrical's Argument, YEC did not consult with Yukon Electrical with respect of the proposed DCF, which has adverse implications for Yukon Electrical given that fluctuations in YEC hydro generation are mitigated by the DCF mechanism, but hydro fluctuations in Fish Lake generation are not afforded the same treatment.

19. As YEC appears to remain unwilling to include Fish Lake generation in the DCF, Yukon Electrical's position in its Argument remains unchanged. That is, Yukon Electrical respectfully requests that the Board direct YEC to work in consultation with Yukon Electrical to include appropriate Fish Lake generation volumes to be factored into the DCF in YEC's Compliance Filing and administered by YEC.

#### **4.6 – Wholesale Rates and the Energy Reconciliation Adjustment**

20. In its Argument, YEC has not addressed any of the concerns raised in respect of the Energy Reconciliation Adjustment ("ERA") by Yukon Electrical and other Interveners during their cross-examination of YEC. Notably, the UCG well understands that YEC's proposed ERA imposes undue risk to Yukon Electrical and its customers. At paragraphs 316 to 317 of its Argument, the UCG states:

UCG submits that YEC's proposed treatment of the ERA was developed without any consultation with YECL or other stakeholders and is another illustration of where YEC would rather establish its own regulatory policy and limit discussion on it rather than get input during policy development. Despite the fact that the proposed ERA is expected to have significant impacts on Yukon ratepayers, YEC has not provided any alternative approaches to this mechanism that eliminates more of the risk for which YEC receives compensation through the allowed return on equity.

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<sup>10</sup> YEC Argument at p. 21.



UCG submits that ERA proposal has not been evaluated against alternatives so there is no way to know if this is the best approach. Given the direct impact on Yukon ratepayers of any costs passed through to YECL, UCG recommends that the YUB not approve this proposal until more time has been put into evaluating available alternatives.

21. The UCG is correct that YEC has filed its Energy Reconciliation Adjustment without consulting Yukon Electrical or other stakeholders and Yukon Electrical supports the UCG's recommendation to disallow the ERA mechanism.

22. Through cross-examination and in Argument, Yukon Electrical demonstrated that: (i) YEC anticipates greater and incremental use of diesel that will impact Yukon Electrical and its customers; (ii) absorbing risk for diesel volumes does not allow a utility to recover prudently incurred costs from customers; and (iii) YEC's Wholesale Sales Forecast, which is the foundation for the application of the ERA, is understated and includes incorrect assumptions related to the availability of Fish Lake Unit 1, improperly applies the impacts of weather normalization and fails to provide a mechanism for the incorporation of system growth beyond 2013.<sup>11</sup> In summary, Yukon Electrical respectfully submits that YEC is unilaterally proposing an ERA mechanism that will invariably result in material diesel costs passed on to Yukon Electrical and its customers. Although YEC acknowledges that Yukon Electrical will be entitled to recover all ERA charges under Rider D, which would apply to all Yukon Electrical ratepayers,<sup>12</sup> Yukon Electrical respectfully submits that a deferral account administered by YEC could achieve the same objective in a more efficient manner.

23. For the above reasons and as set out in Argument, Yukon Electrical is strongly opposed to YEC's proposed ERA mechanism. As such, Yukon Electrical respectfully requests that the Board disallow YEC's proposed ERA mechanism and, instead, direct YEC to prepare and file a deferral account as part of its Compliance to address increased diesel costs to be administered by YEC and dispensed amongst all ratepayers by YEC.

#### **5.0 – Capital Projects – Specific Impacts on Yukon Electrical**

24. YEC as well as other Interveners have remained silent on the issue of the impacts of YEC's Capital Projects on Yukon Electrical. Yukon Electrical's position remains as set out in its Argument. That is, Yukon Electrical continues to seek direction from the Board that YEC consult with Yukon Electrical in the future to forecast costs to be incurred by Yukon Electrical as a result

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<sup>11</sup> Yukon Electrical Argument at paras. 17-21.

<sup>12</sup> Yukon Electrical Argument at para. 20.

of YEC's capital projects, which costs would be capitalized as part of YEC's capital projects that necessitate the expenditures by Yukon Electrical.

### III. CONCLUSION AND RELIEF SOUGHT

25. As outlined at the outset, the positions outlined in Yukon Electrical's Argument and in this Reply remain its views on the matters before the Board. As outlined above, Yukon Electrical was encouraged to find that a number of the Interveners shared its concerns in respect of such matters as service to Whitehorse Copper Tailings; the Diesel Contingency Fund; the Energy Reconciliation Adjustment and wholesale forecast relied upon by YEC in support thereof; and, YEC's failure to consult with Yukon Electrical in respect of matters having material impacts on Yukon Electrical and its customers. While Yukon Electrical respectfully submits that any Intervener requests for Board directions to be applied to both YEC and Yukon Electrical should be dismissed, Yukon Electrical's view remains that the aforementioned matters could have been addressed in a more administratively efficient manner had YEC undertaken detailed consultations with Yukon Electrical in advance of the filing of the Application and subsequent public hearing. Accordingly, Yukon Electrical is supportive of any directions to YEC to undertake detailed consultations with Yukon Electrical in the future in advance of filing a GRA.

26. In light of the foregoing, Yukon Electrical respectfully requests that its requested relief as set out in its Argument be granted. Additionally, Yukon Electrical requests that YEC be directed to consult with Yukon Electrical to reach an agreed upon Wholesale Sales Forecast to be filed by YEC in its Compliance Filing. For ease of reference, Yukon Electrical has requested in its Argument that the Board:

- (a) confirm that Whitehorse Copper Tailings is rightfully a customer of Yukon Electrical;
- (b) direct YEC to remove Whitehorse Copper Tailings volumes from its forecast for the test years and adjust its revenue requirement accordingly;
- (c) direct YEC to work in consultation with Yukon Electrical to include appropriate Fish Lake generation volumes to be factored into the DCF in YEC's Compliance Filing and administered by YEC;
- (d) disallow the proposed ERA mechanism and direct YEC to prepare and file a deferral account as part of its Compliance Filing to address increased diesel costs to be administered by YEC and dispensed amongst all ratepayers by YEC; and

- (e) direct YEC to consult with Yukon Electrical in the future to forecast costs to be incurred by Yukon Electrical as a result of YEC's capital projects, which costs are to be capitalized to as part of YEC's capital projects that necessitate the expenditures.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of December, 2012.

**BENNETT JONES LLP**



Per: \_\_\_\_\_

Allison M. Sears, Counsel for  
Yukon Electrical Company Limited

