

**IN THE MATTER OF YUKON ENERGY  
2023-2024 GENERAL RATE  
APPLICATION**

**REPLY ARGUMENT  
YUKON ENERGY CORPORATION**

**April 2, 2024**

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**TABLE OF CONTENTS**

**1.0 INTRODUCTION ..... 1**

**2.0 REPLY SUBMISSION OF YEC ..... 1**

**2.1 GENERAL REPLY REGARDING INTERVENOR ARGUMENTS ..... 1**

    2.1.1 Punitive, Arbitrary or Unsupported Requests..... 1

    2.1.2 Matters Outside the Scope of the Application..... 3

**2.2 YEC’S SPECIFIC REPLY TO INTERVENOR ARGUMENTS ..... 4**

    2.2.1 Specific Reply to JM Argument..... 4

    2.2.2 Specific Reply to UCG Argument..... 8

    2.2.3 Specific Reply to NY Argument ..... 18

**3.0 CONCLUSION ..... 24**

## **1.0 INTRODUCTION**

Final Arguments with regard to Yukon Energy Corporation's ("YEC") 2023-2024 General Rate Application ("GRA" or "Application") were filed on March 22, 2024 by John Maissan ("JM"), Utilities Consumers' Group ("UCG") and Nathaniel Yee ("NY") (collectively, the "Intervenors").

In this Reply Argument, YEC provides brief, preliminary comments on several requests or recommendations made by the Intervenors that are punitive, arbitrary, or unsupported by the evidence on the record of this proceeding, or that are otherwise outside the scope of YEC's Application and therefore irrelevant to the matters to be determined by the Yukon Utilities Board ("Board" or "YUB"). YEC then responds in more detail to certain specific assertions or recommendations made in each of the Intervenors' Final Arguments. To be clear, however, YEC's silence on any specific aspect of an Intervenors' Final Argument should not be interpreted as acceptance of the Intervenors' position.

## **2.0 REPLY SUBMISSION OF YEC**

### **2.1 GENERAL REPLY REGARDING INTERVENOR ARGUMENTS**

As a preliminary matter, YEC responds to the following requests and recommendations made by the Intervenors:

- Requests by UCG and NY for disallowances or reductions to various components of YEC's forecast test year revenue requirements that would be punitive or arbitrary, or that are otherwise unsupported by any evidence on the record before the Board in this proceeding; and
- Various further requests or recommendations made by Intervenors that are outside the scope of this GRA proceeding, and therefore irrelevant to the matters to be determined by the Board.

#### **2.1.1 Punitive, Arbitrary or Unsupported Requests**

As outlined below, UCG and NY have asked the Board to disallow or reduce various components of YEC's forecast test year revenue requirements in a manner that would be punitive or arbitrary, or that is unsupported by any of the evidence that is before the Board in this proceeding. Such requests or recommendations must be rejected by the Board.

Examples of such requests include:

- **2021 Fuel Cost Rebate:**<sup>1</sup> UCG asserts that 2021 rates over-recovered \$3.215 million, because YEC's actual costs for Fuel and Purchased Power were lower than the costs approved by the Board. Based on that assertion, UCG submits that the Board should direct YEC to reconcile this amount and return it to ratepayers.

This request relating to prior year performance is inappropriate and punitive, and is also contrary to the prospective regulatory framework established under the *Public Utilities Act* (the "PUA") that the Board is required to apply. Even if the Board had any jurisdiction under

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<sup>1</sup> UCG Argument, paragraph 93, page 15.

the *PUA* to entertain this request (which it does not), UCG's specific reference to Fuel and Purchased Power "over-recovery" of \$3.215 million ignores (among other things) the reality that YEC's 2021 actual sales and generation were less than the approved forecast, resulting in YEC's 2021 actual revenues being \$5.523 million lower than approved.<sup>2</sup>

- **Test Year Non-Fuel O&M Costs:**<sup>3</sup> UCG's review of Application non-fuel O&M test year costs consist mainly of references to increased costs, and unsupported assertions that the increases are unsustainable and unjustified/unexplained and should in many instances be nullified or waived.

These requests are arbitrary and wholly unsupported by the evidence that is before the Board in this proceeding. They are of no assistance to the Board.

- **Capital Costs:**<sup>4</sup> UCG's review of Application proposed capital cost additions to rate base in the test years includes unsupported assertions that spending is unnecessary, unsustainable, or not adequately planned or managed, and that such costs should be denied or held in WIP until actual costs are accounted for, or the assets are used and useful, or until the next GRA.

These requests are arbitrary and wholly unsupported by the evidence that is before the Board in this proceeding. They are of no assistance to the Board. Prospective revenue requirement applications under the *PUA* must include a forecast of capital costs to be included in rate base for projects to be completed before or during the test years. There is no reasonable basis to assert that such forecast costs should be kept in WIP.

- **Upgrading of YEC Diesels:**<sup>5</sup> NY asserts that the Board should not count 3.02 MW of YEC diesel upratings towards YEC's N-1 requirement "as it seems very likely that safety and reliability have been compromised."

As with the UCG requests summarized above, this request is arbitrary and wholly unsupported by the evidence that is before the Board in this proceeding. It is similarly of no assistance to the Board.

YEC has provided detailed explanations regarding the test runs and assessments that were performed to confirm dependable capacities from its diesel units.<sup>6</sup> YEC also explained further at the hearing and in its responses to undertakings that it performs test runs and updates dependable capacity on an ongoing basis, including external assessment on units to determine whether the units have limitations and whether work needs to be done.<sup>7</sup> There is no basis to question the expertise of YEC and its engineering staff to do this.

There is no evidence to support the distrust that NY has expressed for YEC's diesel upratings. His submissions on this issue should be rejected.

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<sup>2</sup> Application, Table 2.1, line 47 (Exhibit 1, PDF p. 42).

<sup>3</sup> UCG Argument, paragraphs 103 to 122, pages 16-17.

<sup>4</sup> UCG Argument, paragraphs 123 to 150, pages 18 to 20, 67.

<sup>5</sup> NY Argument, paragraphs 67-85.

<sup>6</sup> NY-YEC-1-2 REVISED, Exhibit 4, PDF pp. 2-3.

<sup>7</sup> See, for example, March 5, 2024 Transcript, page 294, lines 5-14; Undertakings #18, #42 and #43.

### **2.1.2 Matters Outside the Scope of the Application**

The Intervenors' Final Arguments include multiple requests or recommendations that are outside the scope of YEC's Application and this GRA proceeding. They are therefore irrelevant to the issues to be determined by the Board in this proceeding, and should be disregarded. The YEC GRA is not an appropriate forum for dealing with such requests or recommendations, which include Intervenor submissions on the following matters that are outside the scope of the Application's proposed revenue requirement for the test years:

- JM's recommendations for future GRAs and grid planning development issues (including ongoing grid load growth and energy transition issues); IPP/Microgrid policy; added future secondary and summer sales exploration; business in a better way as proposed by YEC; completion of projects that are forecast to remain in WIP during the test years (e.g., BESS, Atlin project); and future grid modelling development.
- UCG's reiterated recommendations for YUB directions on stakeholder consultation requirements; review of YEC resource plans; and other proposed measures prior to submission of revenue requirement applications.<sup>8</sup>

In further response to these UCG recommendations, it is important to emphasize that not only does YEC comply fully with all requirements for party engagement that are established within the GRA process itself, but that YEC also separately undertakes extensive efforts each year to engage with First Nation governments, municipalities, local interest groups and the public about its energy plans as well as individual projects that YEC is exploring or pursuing affecting individual communities. This additional engagement includes but is not limited to consultation related to regulatory processes such as licensing/permitting and associated environmental and socio-economic assessments. During GRA proceedings, YEC invariably reports to the Board on the results of these ongoing engagement activities for any specific projects whose costs are to be considered in test years – and, separate from GRAs, the Board and interested parties are also engaged when the Board is required to report to the Yukon Government on specific projects (e.g., the recent Board reviews and reporting on the BESS and Atlin EPA projects).

YEC also has a comprehensive process in place to ensure that the Yukon Integrated System maintains a safe, reliable, and sustainable supply of electricity to meet Yukoners' needs. For example, in YEC's responses to IRs,<sup>9</sup> YEC comments on details of work completed in connection with the 2016 Resource Plan, 10-Year Renewable Electricity Plan, and Atlin EPA and BESS review processes, as well as the work that is underway on the Electricity Supply Plan YEC is developing to identify the resource options that can be implemented in the next 5-10 years to increase the supply of dependable capacity and energy during the winter months and reduce the use of rental diesels. The Electricity Supply Plan will consider the status of projects that were proposed in the 10-Year Renewable Electricity Plan, and will outline a workplan to meet Yukon's electricity needs for the next 10 years. Yukon Energy is also working on a Resource Plan in 2024 and 2025,

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<sup>8</sup> UCG Argument, paragraphs 20-26, pages 5-6.

<sup>9</sup> See, for example, YUB-YEC-1-1 (Exhibit , PDF pp. 214-219) and YUB-YEC-1-35 REVISED (Exhibit 5, PDF pp. 3-39).

which will evaluate Yukon's long-term electricity needs (beyond 10 years) and identify resource options that are best suited to meet those needs.

To the extent that NY also continues to pursue arguments relating to regulatory processes and requirements outside the Board's statutory mandate that are generally irrelevant to the questions properly before the Board in this proceeding, YEC's submissions in response to those arguments (in addition to the submissions previously provided in YEC's Rebuttal Evidence) are set out in section 2.2.3 below.

## **2.2 YEC'S SPECIFIC REPLY TO INTERVENOR ARGUMENTS**

### **2.2.1 Specific Reply to JM Argument**

JM's Final Argument identifies many areas of agreement with YEC's Application. This includes JM's concurrence with or support for YEC's approaches to such matters the timing of rate increases to minimize bill impacts; proposed stabilization mechanisms/deferral accounts; recovery of capital costs for the WH2 Uprate and WH4 Servomotor Replacement Projects, as well as proposed DSM costs; YEC's 60/40 debt-to-equity capital structure; proposed debt costs; and the need for the Board to maintain its practice of setting YEC's ROE in a manner that will be consistent with the Board's decision on AEY's ROE (i.e., to continue to reflect YEC's long-acknowledged higher risks relative to AEY<sup>10</sup>). Exhibit 10, PDF page 11 referenced by JM Argument).

As noted in section 2.1.2 above, JM's Final Argument also includes discussion of several topics that are outside the scope of matters to be determined by the Board in this GRA proceeding regarding test year revenue requirements and rates.

In this section, YEC comments further on five specific recommendations made by JM, three of which are acknowledged to be properly within the scope of this GRA proceeding, and two of which are not:

#### ***In-Scope Recommendations***

- 1. Fuel Price – Blended Thermal Cost Calculation:**<sup>11</sup> JM recommends “that the Board seriously consider a more realistic blended fuel price” than the 90% LNG and 10% diesel proposed in this GRA and approved in earlier GRAs. JM notes that the actual track record of LNG generation is substantially below the LTA blend proposed by YEC, and that a more realistic blended fuel price may be 85% LNG and 15% diesel or even 80% LNG and 20% diesel (either of these changes would increase blended fuel price, increasing test year revenue requirements and also raising future IPP prices per OIC 2019/25).<sup>12</sup>

YEC disagrees with the recommendation for the Board to consider changing the existing 90/10 LNG/diesel blended fuel cost ratio.

OIC 2021/16 requires the blended fuel price to reflect the expected fuel mix for long-term average (LTA) thermal generation used for setting rates and related approved forecast revenue requirements:

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<sup>10</sup> See Exhibit 10, PDF p. 11, referenced in item 16 of JM's Final Argument.

<sup>11</sup> JM Argument, item 5, page 3.

<sup>12</sup> JM Argument, pages 5-6, noting Application 90% LNG and 10% diesel results in forecast blended cost of \$0.2021/kWh, and that 80% LNG and 20% diesel would result in forecast blended cost of \$0.2138/kWh.

- The 90/10 LNG/diesel ratio was adopted to meet this requirement when LNG was added to the grid, based on the expectation that LNG would be heavily used (i.e., well in excess of 90%) during drought or low water conditions, and that thermal generation during drought years is also expected to constitute a very large share of overall LTA thermal generation.
- The 90/10 LNG/diesel ratio also reflects YEC's expectation that in years with higher-than-average water conditions (i.e., most years), diesel usage will exceed 10% for peaking, emergencies, and other specific uses.

JM notes in his Final Argument (page 3) that in the one drought year since LNG was installed (2019), LNG accounted for 94.57% of thermal generation, and that LNG use was much lower in the other non-drought years. However, this is consistent with the expectations noted above that are already reflected in the existing 90/10 ratio. YEC has not recently experienced the kind of periodic multi-year drought conditions that most recently occurred in the last half of the 1990s. As such, YEC expects that increased LNG use, and a progression towards the 90% long-term average ratio, is likely to occur in the future with more years when water is less than average.

YEC also notes that the fact that an LNG unit has been down since October 2023 and was not expected to come back into service until sometime in March 2024 (as referenced in JM's Final Argument, on page 3, based on the transcript of the oral hearing) has no relevance to the LTA average assessment that is required for GRA rate setting purposes for the 2023-2024 test years.

In summary, no evidence has been provided in the current GRA proceeding to support a change for the test year LNG/diesel ratios used for the forecast blended fuel price. There is therefore no basis at this time to changing this ratio by reducing the LNG share and increasing the overall blended fuel price, which would have significant implications both for the Application final rates as well as for future IPP agreement prices.

As part of its ongoing resource planning process, YEC will continue to assess the LTA blended fuel ratios and how these may change in response to YEC's planned mix of LNG and diesel generation capacity, and expected use of LNG and diesel generation under expected Yukon Integrated System (YIS) loads and resource configurations.

- 2. IPP Purchase Cost Deferral Account:**<sup>13</sup> JM recommends that "the Board approve the proposed IPP Purchase Cost Deferral Account to capture the differences between forecast and actual commercial in-service dates and actual vs forecast energy production volumes only." JM also states a concern about including "the difference paid for energy to the IPP and YEC's cost saving based on blended fuel costs".

YEC does not agree with JM's recommendation for the Board to consider modifications to the proposed IPP Purchase Cost Deferral Account.

As illustrated by the examples provided in response to YUB-YEC-1-30,<sup>14</sup> the Application's proposed IPP Purchase Cost Deferral Account addresses:

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<sup>13</sup> JM Argument, item 4, page 2-3.

<sup>14</sup> Exhibit 2, PDF pp. 308-309.

- the variance between forecast IPP energy production and actual annual IPP energy production (which reflects differences in in-service dates as well as other factors affecting differences in annual IPP energy production); and
- YEC's resulting thermal fuel cost saving differences (based on the change in LTA thermal savings<sup>15</sup> and approved blended fuel price) with forecast and actual IPP energy production.

Failure to address differences in LTA thermal fuel cost savings would result in the IPP Purchase Cost Deferral Account over-estimating cost impacts for YEC resulting from differences between forecast and actual annual IPP energy production. Therefore, this additional consideration needs to be included in this deferral account's approval.

The IPP Purchase Cost Deferral Account is also required to provide for variances in other costs covered by OIC 2019/25 beyond those related to purchasing electricity volume under an electricity purchase agreement (such as consultant and legal costs, costs for replacing equipment and infrastructure, and compensation that must be paid to an IPP facility owner if energy is not delivered due to failure of utility infrastructure, as discussed in YEC's response to YUB-YEC-1-32(a)<sup>16</sup>).

The IPP Purchase Cost Deferral Account should be approved as presented in the Application.

- 3. Terms and Conditions of Service Inflation Adjustment:**<sup>17</sup> JM recommends that "the Board decision on the maximum company investment levels in Schedule B parts (a) and (b) to the Terms and Conditions of Service in the AEY GRA proceeding also be applied to YEC." JM notes that AEY did not object to this change, but noted that this would increase revenue requirement.

This recommendation is premature. This issue was raised by the Board prior to AEY's filing of its GRA. As indicated in AEY's GRA, YEC together with AEY have proposed to address any required changes and/or updates to the T&Cs sometime in mid to late 2024, as a standalone limited scope filing.<sup>18</sup>

***Out-of-Scope Recommendations Not Affecting Revenue Requirements***

- 4. Generation – Grid Modelling:**<sup>19</sup> JM recommends "that the Board instruct YEC to explore options to adapt the YECSIM model to be able to fully model the diurnal nature of solar energy or to find a model that can work with YECSIM to do that and bring a viable solution forward in the next GRA." JM believes that solar energy value to the grid in offsetting thermal generation can only be determined accurately by a model capable of time-of-day inputs of load and solar energy.

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<sup>15</sup> LTA thermal impact estimated at 59% of IPP generation (see YUB-YEC-1-34 (Exhibit 2, PDF p. 317) for explanation as to how 59% thermal displacement benefits determined for 2023-2024 Application).

<sup>16</sup> Exhibit 2, PDF pp. 311-312.

<sup>17</sup> JM Argument, item 17 (corrected), page 11.

<sup>18</sup> YUB issued a letter on March 31, 2023 regarding this specific issue, and a response from utilities was included in AEY's GRA [page of AEY's 2023/24 GRA cover letter].

<sup>19</sup> JM Argument, item 6, pages 3-4.



This recommendation is outside the scope of the current GRA. It would only potentially affect future GRAs, and has no relevance to the test year LTA hydro and thermal generation forecasts in the Application.

Regardless of this, YEC wishes to assure the Board that it will continue to examine options to improve LTA thermal generation assessments for different grid loads and generation mixes (including consideration of IPP and microgrid solar generation). However, the options and benefits for modeling time-of-day inputs of load and solar energy need to remain open and cannot presume any specific outcomes. For example, the significant portion of solar energy generation that occurs during the summer months (as noted in JM's Argument) is unlikely to result in any material displacement of thermal generation because it coincides with a material surplus in other renewable generation that occurs during the same months. Indeed, solar generation in the summer may actually create added annual thermal generation requirements, as a result of the need to use water in Aishihik that would otherwise be saved for winter in order to support system reliability through summer hydro spinning reserve (due to volatility of the grid resulting from solar energy).

- 5. IPP Standing Offer and Micro-Generation Programs – Incremental Thermal Generation Cost Tracking:**<sup>20</sup> JM recommends “that the Board instruct YEC to track all incremental thermal generation costs starting in 2024.”<sup>21</sup> JM notes “that there are a number of incremental thermal generation related costs that YEC incurs (and ratepayers pay for) including insurance, RFID, capitalized costs, production costs, and others, that are not presently being added to the IPP purchase energy price”, and he suggests that tracking all incremental thermal generation costs in addition to fuel price could help parties to redesign the IPP SOP program (and possibly Micro-Generation).

In addition to this recommendation being outside the scope of this GRA proceeding, YEC wishes to emphasize its disagreement with this recommendation.

Today's priority for tracking is to better understand any added thermal generation fuel costs and grid instability costs resulting from added intermittent SOP and Micro-Generation renewable generation.

Tracking of incremental thermal generation costs beyond fuel costs must differentiate between capacity and energy drivers for change, i.e., the current main driver for non-fuel added thermal generation costs is for dependable capacity and bears no relationship to IPP or Micro-Generation renewable generation. In light of this reality, YEC does not see any useful value at this time in tracking all incremental non-fuel thermal generation costs as proposed by JM. If additional capacity or other grid modernization work is determined in the future to be necessary to stabilize the system due to volatility of the grid resulting from IPPs and or microgen,<sup>22</sup> YEC will provide information about those costs to the Board at that time.

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<sup>20</sup> JM Argument, item 7, pages 4-7.

<sup>21</sup> YEC makes no further specific comment in this Reply Argument on other out-of-scope recommendations in this section of JM's Final Argument relating to IPP SOP and Microgrid program policy.

<sup>22</sup> See March 7, 2024 Transcript page 584, line 22 - page 586, line 9.

## **2.2.2 Specific Reply to UCG Argument**

As noted in section 2.1.1 above, UCG's Final Argument contains many unsubstantiated and unwarranted allegations, as well as punitive, arbitrary or unsupported recommendations. UCG's Final Argument also contains many errors in representing the YEC Application, which it is not practicable to fully enumerate here.

In this section, YEC comments selectively on several specific UCG recommendations that would affect different elements of the Application's proposed revenue requirement:

1. **Sales and Generation:** UCG's argument on sales and generation addresses the following specific issues:

- a. **Minto Debt & Revenues:**<sup>23</sup> UCG asserts that the \$4 million debt owed to YEC from Minto industrial operations "should have been added to the sales of Yukon Energy, thus lowering the revenue requirement".

This assertion is simply incorrect, and must be rejected by the Board.

During the oral hearing, Mr. Epp clarified that the amount owing from Minto was under the accounts receivable balance, and that revenues from Minto as an industrial customer from January 1 to mid-May 2023 are included as revenues that offset the 2023 forecast revenue shortfall, even though YEC has not yet received those revenues.<sup>24</sup>

- b. **Wholesales:**<sup>25</sup> UCG refers to differences between YEC and AEY wholesale forecasts, it submits that YEC has underestimated heating growth as well as population growth, and it asserts, in conclusion, that it would be more accurate to use AEY wholesale estimates for the 2024 test year.

These submissions do not reflect the relevant oral hearing evidence on this issue, and should be disregarded by the Board.

During the oral hearing, Mr. Epp reviewed the YEC and AEY forecasts for 2023 (which were close together) and for 2024 (when YEC's forecast was lower than AEY's forecast). Mr. Epp also noted that AEY referred in its evidence during the AEY GRA to seven new large commercial customers to be connected through the end of 2023 and into 2024.<sup>26</sup>

YEC's previously reviewed the evidence relevant to this issue in section 1.1.1 of its Final Argument. That evidence supports YEC's submission that both the AEY and YEC wholesale forecasts are reasonable. Subject to Board approval of an acceptable LTA Fish Lake hydro generation offset as required by OIC 2021/16, YEC submits that a common wholesales forecast for YEC and AEY can be approved as provided based on review of the evidence.

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<sup>23</sup> UCG Argument, paragraph 156.

<sup>24</sup> See March 5, 2024 Transcript, page 220, line 24 - page 221, line 121; also, UCG-YEC-1-22 (Exhibit 2, PDF pp. 158-159).

<sup>25</sup> UCG Argument, paragraphs 14, 58-61.

<sup>26</sup> March 7, 2024 Transcript, page 482, lines 13-22.

- c. **Line Losses:**<sup>27</sup> UCG suggests that line losses should be held at 8.6%, and that the Board should direct YEC to take “a proactive approach to better the power quality and line voltage to decrease line losses.”

These UCG proposals regarding line losses are without merit. They ignore the evidence as well as the normal principles for assessing forecast line losses for rate setting purposes.

The Application forecasts line losses for the test years at 8.8%. This is the same as the 2021 GRA, and is within the range of historical losses for the past three years (9.1% in 2020, 8.4% in 2021, and 9.0% in 2022 as explained at page 2-8 of the Application<sup>28</sup> and UCG-YEC-1-19<sup>29</sup>).

YEC also reviewed the factors impacting line losses and potential options that could reduce line losses in its responses to YUB-YEC-1-13 and UCG-YEC-1-28,<sup>30</sup> noting that cost benefit analysis must be completed to assess options, and Mr. Murchison commented further on this issue during the oral hearing.<sup>31</sup>

- d. **Forecast Hydro Generation for Revenue Requirement:**<sup>32</sup> UCG seeks in this proceeding to revisit the same arguments it has made previously that YECSIM results cannot be tested against actual results, that the use of such models is “onerous, expensive, time consuming and unnecessary”, and that “there is no need for the YECSIM using a complicated formulae and equations to get the results for LTA hydro generation and LTA thermal generation.” UCG proposes a purportedly better method, “utilizing water availability” in each reservoir, with testing using “simple long term average hydro generation...meaning just add up the last 10 years or so of hydro production on the YIS grid and divide by the number of years.” UCG then reviews the 2024 versus 2023 forecasts for actual hydro generation (i.e., not LTA hydro generation) compared to 2021 actual hydro generation as forecast in the 2021 GRA, and asserts that YEC “failed to give a relevant explanation for why the major changes in hydro and thermal for 2024” (referencing the lower expected generation for 2024 versus 2023).

There is no merit to any of UCG’s submissions on this issue, which must be rejected by the Board.

Among other things, UCG’s arguments and proposals on forecast hydro and thermal generation for the test years provide confusing and incorrect references to the Application<sup>33</sup> and other evidence. UCG’s proposed approach also fails to

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<sup>27</sup> UCG Argument, paragraphs 151-154.

<sup>28</sup> Exhibit 1, PDF p. 34.

<sup>29</sup> Exhibit 2, PDF pp. 151-152.

<sup>30</sup> Exhibit 2, PDF pp. 167-168, 248.

<sup>31</sup> March 5, 2024 Transcript, pages 210-212.

<sup>32</sup> UCG Argument, paragraphs 40-41, 43-54.

<sup>33</sup> In particular, the references in UCG Argument, paragraph 49 to expected 2023 and 2024 YEC generation cannot be sourced to the Application; the reference in paragraph 50 to total generation for 2024 includes secondary sales; and the further reference in paragraph 50 to hydro generation “approved of 508,483 MWh in the 2021 GRA” is a reference to actual hydro generation forecast (that the Board did not ever “approve” or use for the 2021 GRA) rather than the approved LTA hydro forecast of 452,796 MWh per Table 2.2 of the Application.

comply with OIC 2021/16 directions, including the OIC requirements to use LTA hydro and thermal generation forecasts for revenue requirement forecasts that are used to set rates.

As referenced by Mr. Epp and Mr. Osler during the oral hearing,<sup>34</sup> YECSIM model related issues were extensively reviewed and decided upon during the 2017/18 GRA and EPA proceedings that included workshops on the YECSIM model. Continued rearguing of YECSIM model issues does not assist the Board in the current proceeding, and borders on being vexatious.

As confirmed during the oral hearing,<sup>35</sup> YECSIM model work today is done internally by YEC, at minimal incremental cost, with results for the test years provided in Appendix 2.1 of the Application<sup>36</sup> – and with updates if needed when there are significant changes in the load and/or the grid system.

Mr. Epp also provided detailed explanations at the hearing as to why forecast actual hydro generation for 2024 was lower than for 2023 (March 7, 2024 Transcript page 486, line 19 to page 487, line 18).<sup>37</sup> The evidence also consistently indicates that determining actual hydro generation likely to be available cannot reasonably be forecasted beyond about 6 to 18 months.

2. **Non-Fuel O&M Costs:** UCG's argument on non-fuel O&M costs highlights the overall increase, and provides other specific comments only on the cost items reviewed below (without providing any useful comment on the largest cost item, Diesel Rental costs):<sup>38</sup>

- a. **Labour:**<sup>39</sup> UCG's comments on labour costs consist of wanting "better accountability from YEC in how they are increasing FTEs from 100.6 to 119.81 since last GRA, while continuing to utilize their preferred consultant company to do much of their work", and suggesting that YEC "should be prioritizing acquiring a professional hydrologist/engineer on staff who can accurately forecast water availability".

UCG's comments on this major topic are of no potential assistance to the Board, and should be disregarded.

UCG does not refer to or engage in any meaningful way with the detailed explanations regarding the FTE changes that YEC provided in the Application<sup>40</sup> and the IRs,<sup>41</sup> and during the oral hearing (as reviewed in section 2.2.1 of YEC's

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<sup>34</sup> March 5, 2024 Transcript, page 212, line 21 - page 214, line 13.

<sup>35</sup> March 7, 2024 Transcript, page 501, line 23 - page 502, line 2.

<sup>36</sup> Exhibit 1, PDF pp. 44-47.

<sup>37</sup> March 7, 2024 Transcript, page 486, line 19 - page 487, line 18.

<sup>38</sup> UCG Argument, paragraphs 119-121 also comment on Brushing Costs, asserting "not enough information has been given" and asking how YEC determines priorities for transmission versus distribution brushing, and asking what YEC does "with the over charges to ratepayers from over estimating costs in either transmission or distribution brushing."

<sup>39</sup> UCG Argument, paragraphs 106-108. Forecast brushing costs for the test years are slightly lower overall than 2021 approved; UCG assertions about over charging when actuals are less than forecasts for a GRA are without merit.

<sup>40</sup> Application, section 3.3.1 (Exhibit 1, PDF pp. 55-63).

<sup>41</sup> See, for example, YUB-YEC-1-5, YUB-YEC-1-21 and YUB-YEC-1-23 (Exhibit 2, PDF pp. 230-233, 261-263, 265-267).

Final Argument). These issues merit and require serious consideration rather than flippant dismissals that have no basis in any evidence.

UCG's specific recommendation for hiring a professional to forecast water availability ignores all evidence relevant to GRA hydro generation forecasting (see review of Forecast Hydro Generation for Revenue Requirement in paragraph 1.d above, which notes the need to use LTA hydro forecasts versus forecasts of test year water availability, plus the reality that YEC already has this expertise in-house and uses it for YEC SIM and well as short-term hydro generation forecasting).

- b. **Administration (Information Systems,<sup>42</sup> Customer Accounting,<sup>43</sup> Board of Directors,<sup>44</sup> Environmental Management,<sup>45</sup> Resource Planning):<sup>46</sup>** With respect to Administration cost increases for the test years, UCG submits that Information Systems cost increases "should be paid for by the YEC itself" as the new costs spent on improving technology data recording "should be lowering the costs of administration not increasing this cost"; that the Customer Accounting increase should be nullified (considering "YEC just invested in a new customer billing system, but still relies on AEY to administer their billing"); that Board of Directors cost increase of 66% since the last GRA is not understood; that Environmental Management increase should be waived "as the YEC failed to efficiently plan the new licensing [for Aishihik water renewal] resulting in a duplication of 2, 5 and 25 year licensing"; and that all Resource Planning costs should be waived "as this is part and parcel of administrative and staff duties and ratepayers must not pay duplicated costs."

Again, UCG's comments on this topic are of no potential assistance to the Board, and should be disregarded.

On Information Systems, UCG provides no evidence to support its assertions and ignores the evidence regarding increased reliance on technology and the importance (especially for a utility) of keeping data as safe as possible. In any event, the test year forecast costs are also lower than the 2022 actual costs.

On Customer Accounting, UCG asserts that "YEC just invested in a new customer billing system, but yet still relies on AEY to administer their billing" and that "this increase should be nullified." The new billing system referenced by UCG (Oracle CCS) has been installed by AEY as reviewed in AEY's 2023/24 GRA. YEC shares AEY's billing system. As such, YEC is responsible for paying annual subscription fees and related staff training costs needed for the new system; there is no basis to question the reasonableness of those expenses. Despite the fact that YEC shares AEY's billing system, YEC must also still employ staff to read YEC customer meters, answer calls from YEC customers, resolve customer complaints, collect YEC retail arrears, etc. YEC also notes that UCG references the 2023 cost

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<sup>42</sup> UCG Argument, paragraph 110.

<sup>43</sup> UCG Argument, paragraph 111.

<sup>44</sup> UCG Argument, paragraph 112.

<sup>45</sup> UCG Argument, paragraph 114.

<sup>46</sup> UCG Argument, paragraph 115.

increase while ignoring the lower forecast cost for 2024 – as well as any other evidence provided on this cost component.

On the Board of Directors, the 66% referenced cost increase in 2023 was explained in the Application<sup>47</sup> to be primarily due to costs related to replacement of the CEO and President position. The 2024 forecast is \$0.108 million lower than the 2023 forecast, consistent with 2021 and 2022 actual costs.

On Environmental Management, UCG has provided no evidence in support of its assertion that YEC failed to plan efficiently for the Aishihik relicensing; nor do UCG's submissions give any consideration to the current-day relicensing process challenges faced by Yukon utilities (e.g., AEY's Fish Lake Hydro relicensing recently took three separate regulatory processes) as well as utilities elsewhere in Canada. UCG also ignores the evidence<sup>48</sup> that the referenced increase for 2023 environmental management costs is due to more extensive monitoring recommended by YESAB and required by regulatory agencies such as the Water Board, primarily associated with renewal of the Aishihik water licence (i.e., Administration deals with monitoring for the renewed licence, not monitoring needed to secure the renewal), and that the 2024 forecast is lower than the 2023 forecast.

On Resource Planning, UCG provides no evidence at all to support its assertions, and its submission ignores the material cost reductions forecast in 2023 and 2024 compared with 2022 actual costs.

3. **Capital Costs:** As noted above in section 2.1.1 of this Reply Argument, UCG's argument on capital cost additions to rate base in the test years is based on completely unsupported assertions that spending is unnecessary, unsustainable, and not adequately planned or managed, and that YEC's capital costs should be denied or held in WIP until actual costs are accounted for, or the assets are used and useful, or until the next GRA. This includes UCG's specific comments on the following projects:

- a. **WH2 Uprate and WH4 Servomotor Replacement:**<sup>49</sup> UCG asserts that YEC is attempting to rehash costs for these two projects; that "many of these costs are for outside project management costs, owners engineer and internal costs which are unnecessary to perform the duties of a well-paid management and staff at the YEC"; and that the Board has already ruled for denial of these costs in the 2021 GRA, and must again, and must send a message that YEC "will not be allowed to retroactively apply for them at future rate hearings."

These submissions are without merit, and should be disregarded.

YEC's response to YUB-YEC-1-4<sup>50</sup> fully explained why recovery of these previously disallowed costs on a prospective basis, commencing January 1, 2023, as proposed in the Application does not constitute retroactive ratemaking, and that it is proper and appropriate for the Board to consider adding these previously

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<sup>47</sup> Application, page 3-23 (Exhibit 1, PDF p. 71).

<sup>48</sup> Application, page 3-23 (Exhibit 1, PDF p. 71).

<sup>49</sup> UCG Argument, paragraphs 85-86.

<sup>50</sup> Exhibit 2, PDF pp. 225-229.

disallowed costs to rate base prospectively, having regard to the fuller and more comprehensive body of supporting evidence that YEC has put forward in the present GRA.

YEC's Application, its response to YUB-YEC-1-4, and its subsequent detailed response to YUB-YEC-2-1<sup>51</sup> as reviewed in section 3.1.1.2 of YEC's Final Argument provide extensive evidence to justify the Board's review and approval of the previously disallowed costs for these two projects, confirming that the full costs for each project as ultimately scoped and approved by YEC's Board of Directors (in contrast to the more limited scope of what Hatch considered in its preliminary high-level cost estimates) were prudently incurred and resulted in a net cost reduction for the benefit of ratepayers.

UCG's submissions regarding these projects ignore the evidence on the record, and are of no potential assistance to the Board.

- b. **Whitehorse Interconnection:**<sup>52</sup> UCG submits that this project was proposed to support the BESS and the planned addition of 5 MW of replacement thermal generation at the Whitehorse Rapids Generating Station, that the project "remains unfinished as the BESS is not in-service nor is the Whse. 5 MW replacement completed", and that "this cost be placed into WIP until it is proven 'used and useful' for the benefit of ratepayers."

Again, UCG's submissions on this project are without merit, and should be disregarded.

This project has been confirmed for completion and in-service by Q4 2023,<sup>53</sup> and UCG has not identified any basis to question its forecast costs and prudence. On that basis, the project should be included in the 2024 test year rate base.

With respect to UCG's specific argument regarding the BESS not being in-service, YEC notes that the evidence indicates that the BESS is expected to be connected in Q3 2024 for commissioning and subsequent testing on the YIS,<sup>54</sup> even though it has not been proposed to be included in the test year rate base. Accordingly, there is no merit to UCG's assertion that the Whitehorse Interconnection will not be used and useful in 2024 when it is commissioned and in use providing improved stability and reliability of the grid.

- c. **Southern Lakes Enhanced Storage Project (SLESP):**<sup>55</sup> UCG notes that the attempt to develop this project has been accumulating on the books for more than 10 years, and submits that these types of projects should not have even commenced "without first realizing First Nation support and public license". UCG recommends that "half of this project cost must be paid for by the shareholder" as the YEC/YDC Boards "also have acclaimed responsibility for approving such projects."

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<sup>51</sup> Exhibit 7.

<sup>52</sup> UCG Argument, paragraphs 149-150.

<sup>53</sup> March 7, 2024 Transcript, page 539, lines 12-20; page 537, lines 9-17 notes that this project also connects the LNG units.

<sup>54</sup> See YUB-YEC-1-44 and JM-YEC-1-5(b) and (c) (Exhibit 2, PDF pp. 12, 351-353).

<sup>55</sup> UCG Argument, paragraphs 80-81.

UCG's submissions and recommendations concerning this project do not address the extensive body of relevant evidence that is on the record in this proceeding. As such, it is not of any assistance to the Board, and should be disregarded.

As reviewed in YEC's Final Argument (pages 51-56), YEC has provided extensive evidence on what costs were incurred on SLESP and the timing of those costs, with particular reference to the history of YUB reviews and directions in Order 2013-01 and Order 2018-10. Approximately \$7.3 million, representing approximately 73% of total project costs of \$8.784 million, were incurred before the end of 2018 when Order 2018-10 was issued. Order 2018-10 (Appendix A, paragraph 507) accepted that the project may still be viable, while cautioning YEC that if it chose to continue developing the project the onus would be on YEC to demonstrate the prudence of all project expenditures. YEC's Application and the evidence it has presented in this proceeding have demonstrated the prudence of all expenditures incurred both before and after 2018.

UCG's assertion that these types of projects should not have even commenced without first having realized First Nation support and public interest is also of no assistance either to the Board or to YEC. Engagement of First Nations and the public on major resource projects requires undertaking essential planning, environmental and engineering studies and engagement activities before submitting applications for needed regulatory assessments and permitting – and the SLESP costs to date were all undertaken to meet this requirement. As noted previously in YEC's Final Argument (at page 52), it is also important to again emphasize that, as of the time of the June 2018 hearing of YEC's 2017/18 GRA, YEC had received conditional support from the Carcross/Tagish First Nation (C/TFN) to proceed with a YESAB proposal for the SLESP project, subject to completing a benefits agreement for the project.

- d. **Intangible Asset Projects (EAM/PAMMS and others >\$100,000):**<sup>56</sup> UCG submits that all of the intangible asset projects in the Application should “stay in WIP until the next AGM when YEC can clearly demonstrate that they are ‘used and useful’ and therefore accountable to their ratepayers.”

Again, UCG's submissions and recommendations concerning these projects do not address the extensive body of relevant evidence that is on the record in this proceeding.

As reviewed in YEC's Final Argument (section 3.1.3), YEC has provided extensive business case evidence on the requirement, prudence, and used and usefulness of the \$10.016 million of capital costs incurred on the multi-year EAM/PAMMS activities that started in 2018 and were concluded by the end of 2023. Appendix 5.3B of the Application also provides evidence to support including in test year rate base approximately \$0.766 million of costs for five other intangible asset projects with costs exceeding \$100,000.

As with all other capital projects assessed for inclusion in test year rate base for GRA rate setting purposes, intangible asset projects have defined scope and time

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<sup>56</sup> UCG Argument, paragraphs 83-84.



periods to complete capitalized expenditures for achieving in-service. EAM/PAMMS as well as one other intangible asset project are in-service before the end of 2023, and the other four intangible asset projects in Appendix 5.3B will be in-service before the end of 2024.

UCG's submissions on intangible asset costs ignore the evidence in this proceeding and provide no credible or acceptable basis to retain all of these intangible asset project costs in WIP through the test years. Accordingly, UCG's submission on this matter is not of any use or relevance to the Board, and should be disregarded.

- e. **Diesel Replacement and Mayo-Faro Diesel Infrastructure:**<sup>57</sup> UCG submits that project costs for the Faro 5 MW diesel replacement and for the Mayo-Faro Diesel Infrastructure projects "are forecasted and estimated" and therefore should be held in WIP "until the true costs are accounted for and updated." UCG also asserts that costs for (Faro) site preparation for thermal replacement and diesel rentals "were not adequately planned nor managed, resulting in duplication" which UCG requests the Board to scrutinize and "take these duplicated costs out of rate base."

UCG's submissions on these projects are again without merit.

As reviewed in YEC's Argument (Section 3.1.1, page 36), YEC has provided evidence in this proceeding (including updates) to support the costs related to each of these major capital projects for in-service in 2023 or 2024, and no material issues were raised in IRs or at the oral hearing regarding either projects.

UCG's suggestion that these project costs should remain in WIP until final costs are determined is contrary to normal rate setting principles and should be rejected by the Board. This UCG proposal would, without any justification, treat these two projects differently from the usual procedures and provisions adopted for capital project costs in a GRA proceeding, i.e., neither the *PUA* nor past Board decisions provide any basis for the UCG proposal that capital projects must remain in WIP so long as costs are forecast versus final. Further, these two forecast project costs provide considerable reliability, i.e., one project that was being completed in 2023 has updated costs, and the other project forecast costs has 83% of its total accounted for by an EPC contract.<sup>58</sup>

UCG's assertion of duplication in Faro site preparation costs is also unsupported by any evidence, and was not previously raised in this proceeding. It does not merit any consideration by the Board.

4. **Other Costs or Other Matters:** YEC provides the following further comments in response to specific UCG recommendations affecting other cost elements of the Application's proposed revenue requirement, or other matters relating to the Application:

- a. **Debt Cost:**<sup>59</sup> UCG asserts that YEC cost of debt for rate base return is borrowed "from themselves or from their shareholder, the Yukon Development Corporation.

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<sup>57</sup> UCG Argument, paragraphs 142-147.

<sup>58</sup> Application, Table 5.1A-1.1, page 5.1A-11 (Exhibit 1, PDF p. 164).

<sup>59</sup> UCG Argument, paragraphs 87-89.

For this, as they act as their own financier, the YEC receives a premium bond fund interest rate.”

These assertions are not accurate. They provide no possible assistance to the Board, and should be disregarded.

As fully explained in the Application (section 3.5.1),<sup>60</sup> in accordance with Board Order 2018-10, the interest rate on new test year debt is set by a formulaic approach based on the long-term Canada Bonds rate plus 120 basis points. This same approach, using external market processes, has been the typical approach used and approved by the YUB for prior year new debt; however, YEC’s debt cost has also been shown to include the YDC Mayo B Promissory Note where special debt cost relief was provided for YEC.<sup>61</sup>

- b. **ROE:**<sup>62</sup> UCG submits that the proposed Rate of Return (which UCG calls “RoR”) increased from \$71 million from the last 2021 GRA to \$90 million in 2024, which is “unsustainable from the ratepayer perspective, amounts accumulate through the years including obscure, unaccountable, and need we add over-earned non-test years.” UCG recommends a 9.15% rate of return (“the prescribed BCUC amount of 9.65% minus the 5 [*sic*] basis points for OIC”) without any risk premium. UCG also submits that the Board “should be looking at altering which regulatory body we use as a formula-based comparator” and references Northland in NWT which was recently given “a 9.3 per cent for RoR” and a “42.5% equity ratio making it riskier than Yukon Energy”.

These submissions are without merit, and should be disregarded by the Board.

In particular, UCG’s assertion that the Rate of Return increased from \$71 million in the last GRA to \$90 million in 2024 is in error:

- o It appears that UCG is mistakenly referencing total Revenue Requirement/Revenue from Table 3.1, not Return on Rate Base. For the same years, Return on Rate Base increased from \$16 million to \$21 million.
- o It also appears that UCG is referencing 2021 Actual, which differs from 2021 GRA Approved. When assessing 2023-2024 GRA forecast increases, the relevant comparator is the 2021 GRA Approved.<sup>63</sup>

When referring to the BCUC and a recommended 9.15% return, it appears that UCG is referencing return on equity (ROE), not Return on Rate Base – and the recommended 9.15% ROE ignores all evidence in the AEY and YEC GRAs related to risk premium determinants. In effect, it appears that UCG is assuming that YEC has the same risk as FBC, a much larger electric utility with less reliance on its own generation and lower share industrial load than YEC (see YEC Argument,

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<sup>60</sup> Exhibit 1, PDF pp. 81-82.

<sup>61</sup> The Mayo B Promissory Note includes provision to reduce, and even to provide negative interest expense, if the Integrated Grid Load is lower than Maximum Grid Load.

<sup>62</sup> UCG Argument, paragraphs 73-76.

<sup>63</sup> The 2021 GRA Approved Return was also \$16 million, but the 2021 GRA Approved Revenue Requirement was \$73 million.

section 2.4.1). This recommendation is unsupported based on the evidence before the Board.

UCG's recommendation to look for an ROE comparator with non-BCUC regulatory bodies, including reference to a recent Northland approved ROE of 9.3%, goes beyond the evidence in YEC's GRA proceeding (as well as the evidence in AEY's 2023-2024 GRA proceeding). At no time in IRs, evidence or cross-examination during the YEC GRA proceeding was this ever identified or proposed as an option, nor was the Northland decision ever referenced, let alone tested. Accordingly, YEC submits that these references cannot be considered by the Board in its review of the evidence regarding YEC's Application.

- c. **RFID Changes:**<sup>64</sup> UCG asserts that YEC is proposing that the RFID annual appropriation starting in 2023 be increased (details are provided), and submits that there is not enough information on the record to justify these costs, and that the status quo should remain "until YEC comes forward with enhanced accountability."

Again, UCG's submissions on this issue are without merit, and should be disregarded by the Board. UCG's suggestion that there is a change in RFID revenue requirement costs is not correct. The Application retains the current annual allocation of \$0.616 million for the test years, in effect retaining an RFID balance by end of 2024 that is close to the 2022 end-of-year RFID balance.<sup>65</sup>

As reviewed in YEC's Final Argument (section 2.2, page 12), the Application also noted the need for a higher appropriation based on actual costs through 2022 and forecast costs for the test years, i.e., an annual allocation of \$1.016 million, which is consistent with a normal GRA adjustment to reflect the 10-year average RFID charge plus amortization over 10 years of the opening RFID balance at the start of the first test year.<sup>66</sup> Contrary to UCG's submission, YEC has provided all information needed to justify applying a normal GRA adjustment to the RFID annual appropriation that would increase the annual allocation to \$1.016 million.

In the event that other Application 2024 test year costs are reduced by updates or other Board decisions, the Application therefore proposes that the RFID annual appropriation starting in 2023 be increased from the current \$0.616 million up to the lesser of (a) a level consistent with the Application's 2024 required rate increase of 14.11% and (b) \$1.016 million/year (i.e., the normal GRA adjustment as explained in the Application).

- d. **Pension Cost:**<sup>67</sup> UCG asserts that ratepayers may be paying for overcontribution amounts to the Defined Pension Deferral Account, and submits that any overcontribution should be used to reduce the revenue requirement for the test years. UCG also suggests that contributions include highly paid administration.

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<sup>64</sup> UCG Argument, paragraphs 116-118.

<sup>65</sup> Application, page 3-25, lines 21-23 (Exhibit 1, PDF p. 73).

<sup>66</sup> Application, page 3-25, lines 26-28 (Exhibit 1, PDF p. 73).

<sup>67</sup> UCG Argument, paragraphs 158-161.

Again, these submissions are without merit, and should be disregarded by the Board.

Mr. Epp explained clearly at the hearing that the referenced overcontributions have no impact on the test year revenue requirements, and that no change to amortization is requested at this time given the small amount of \$22,000 based on preliminary 2023 financial statements.<sup>68</sup>

Mr. Epp also explained that the pension fund was closed approximately 20 years ago, and that any employee starting after that date is part of YEC's RRSP program – so the pension plan covers only a very small portion of YEC's employees.<sup>69</sup>

- e. **Rate Increase and bill impacts:**<sup>70</sup> UCG argues that “these rate increases are not reflective to bill increases maintains that the compound bill impact is more than this 14.11%”, and purports to provide its own calculation of bill increases, asserting further that “a bill increases of nearly 15% over a 10-month period cannot be considered within a reasonable range of inflation.”

Again, these submissions are without merit, and should be disregarded by the Board.

During the oral hearing, Mr. Epp and Mr. Osler explained that the 14.11% rate increase is accurately calculated in Table 4.2 of the application, and that the proposed interim and final rate increases in Table 1 are calculated based on the same base (i.e., pre-GRA rates) and they do add up.<sup>71</sup>

Accordingly, UCG's assertions and its purported bill calculations provided in its Final Argument are incorrect. The correct bill calculations are provided in Table 1 of the Application, as well as in responses to various IRs, including JM-YEC-1-1(a) and UCG-YEC-1-6(c).<sup>72</sup>

- f. **Carbon Tax:**<sup>73</sup> UCG notes that the carbon tax will increase significantly in April 2024, and states “we are unaware that Yukon Energy had the foresight to include this in their application.”

This UCG submission fails to recognize that electric utilities in Yukon do not incur any carbon tax costs. This submission is irrelevant, and should be disregarded.

### **2.2.3 Specific Reply to NY Argument**

NY's Final Argument is directed exclusively at capacity planning issues and costs related to rental and installed diesels. In that regard, NY appears to have retreated from his previous focus on

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<sup>68</sup> March 6, 2024 Transcript, page 364, line 6 - page 365, line 17.

<sup>69</sup> March 6, 2024 Transcript, page 366, line 17 - page 367, line 3.

<sup>70</sup> UCG Argument, paragraphs 31-33.

<sup>71</sup> March 6, 2024 Transcript, page 96, line 19 - page 99, line 16.

<sup>72</sup> Exhibit 2, PDF pp. 3-4, 116, 118-121.

<sup>73</sup> UCG Argument, paragraph 30.

pursuing allegations of fraud against YEC that are entirely inappropriate in a regulatory process such as this one.<sup>74</sup>

At a high level, however, it still appears that most, if not all, of NY's Final Argument simply seeks to restate the same arguments that NY raised previously in the Intervenor Evidence he filed on January 11, 2024,<sup>75</sup> to the extent those arguments are concerned with the inclusion of unpermitted diesel rental capacity in YEC's approved rate base, and purportedly related issues regarding the interpretation and application of the regulatory schemes established under the *Yukon Environmental and Socio-economic Assessment Act* ("**YESAA**") and the *Environment Act* (including the provisions of YEC's air emissions permits issued under that Act) that are within the regulatory purview of agencies other than the YUB (i.e., YESAB and Environment Yukon).

YEC has already provided a detailed response to these arguments in the Rebuttal Evidence it filed with the Board on February 8, 2024.<sup>76</sup> YEC adopts and relies on the Rebuttal Evidence in its entirety as part of this Reply Argument, in response generally to all of NY's submissions in his Final Argument.

As previously submitted in section 4.3 of YEC's Final Argument, YEC also emphasizes that the issues raised by NY are generally irrelevant to the questions properly before the Board in this proceeding, as they are concerned with matters involving other regulatory processes outside the Board's jurisdiction, and they represent an attempt by NY to revisit matters that the Board has already ruled on conclusively in the 2021 GRA concerning the appropriateness of including diesel rentals that are required for meeting N-1 capacity requirements in YEC's rate base.

In particular, in the 2021 YEC GRA proceeding, the Board has already rejected NY's recommendation to disallow YEC's costs for diesel rentals that are needed to close the N-1 dependable capacity gap, even if those rentals are not covered by YEC's existing air emissions permits.<sup>77</sup> There is no reason for the Board to revisit the conclusions it previously reached on this issue in Order 2022-03, including its conclusions:

- that YEC's explanation that it had connected additional diesel rental units to close the N-1 dependable capacity gap was – and continues to be – credible;
- that the rental of these diesel units was – and continues to be – necessary to connect sufficient dependable capacity in the winter to keep customers connected to electricity during an emergency event under cold weather conditions;
- that this action by YEC was – and continues to be – consistent with YEC's statutory obligation under section 106 of the *PUA* to provide service to customers; and
- that the exclusion of the diesel rental units (other than the two spare backup units that are not included in forecast revenue requirement test year costs) would hinder YEC's provision of reliable service.

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<sup>74</sup> In response to Mr. Landry's preliminary oral submissions on this point at the hearing, the Board Chair specifically recognized the inappropriateness in this forum of NY's attempts to advance allegations of that nature: March 5, 2024 Transcript, page 248, lines 18 - page 249, line 25.

<sup>75</sup> Exhibit 8.

<sup>76</sup> Exhibit 9.

<sup>77</sup> Board Order 2022-03, Appendix A, paragraph 108.

In this regard, YEC submits further that if there is any conflict between any specific provisions of the *Environment Act* and YEC's overarching statutory duty under the section 106 of *PUA* to provide service to customers, YEC's duty under section 106 of the *PUA* must, as a practical matter, be interpreted as taking precedence over the provisions of the *Environment Act* – at least during an emergency event that engages the exemption from assessment under section 49 of *YESAA*. No reasonable person would suggest that YEC should ignore its overarching statutory duty under the *PUA* to provide service to customers in such emergency conditions, where a failure to provide electricity service would expose Yukoners to a risk of immediate harm to their welfare, health and safety.

To be clear, however, there is no need for this Board to decide such interpretive questions about the relationship between the *PUA* and the *Environment Act* for the purpose of this GRA proceeding. In this proceeding, it is the Board's clear and unambiguous responsibility to apply the provisions of the *PUA*. As the Board held – correctly – in Order 2022-03, the Board has no jurisdiction over YEC's air emissions permits; its statutory mandate under the *PUA* is to set YEC's just and reasonable rates, and – as the Board found in the 2021 GRA – its analysis and findings must necessarily be limited to its mandate.<sup>78</sup>

It is also important to reemphasize the following comments from YEC's Opening Statement, about YEC's actual operation of diesel rental units exceeding its permitted capacity on the two exceptional occasions when it in fact became necessary to do so since the issuance of Order 2022-03:<sup>79</sup>

“Providing safe and reliable service is the overriding concern that we have – and this drives all of our decision making. With regard to the diesel rentals, the evidence before the Board consistently shows that YEC can and will operate any of its diesel rental units if and when it may become necessary to do so to protect the welfare, health and safety of Yukoners during an emergency. This in fact occurred both in December 2022, when YEC experienced temporary failures of some generation units during a period of extreme cold weather (as reported in response to YUB-YEC-1-35 REVISED, Follow-up Question #3), and once again in January 2024, when an outage event was experienced at the Aishihik Generating Station (as reported in YEC's rebuttal evidence). YEC exceeded its permitted diesel generation capacity in Whitehorse during each emergency in order to protect the welfare, health and safety of Yukoners by ensuring uninterrupted service to customers. YEC has been clear and transparent about this to the Board and to regulators and has acted accordingly.”

In this context, YEC will not repeat every detailed point here that it has already made in its Rebuttal Evidence. However, YEC elaborates on its Rebuttal Evidence by providing the following further comments in reply to two specific points raised in NY's Final Argument:

- 1. Unpermitted Diesel Capacity, “Actual Numbers”:**<sup>80</sup> In his Final Argument, NY provides his own estimate that 21.8 MW of 36 MW of rental diesels has not been assessed, permitted or authorized by the Department of the Environment (Environment Yukon), including 2.3 MW of unpermitted capacity in Mayo, 14.4 MW of unpermitted capacity in

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<sup>78</sup> Board Order 2022-03, Appendix A, paragraph 107.

<sup>79</sup> Exhibit 10, PDF p. 7.

<sup>80</sup> NY Argument, paragraphs 52-66.

Whitehorse, and 5.1 MW of unpermitted capacity in Faro “or elsewhere”.<sup>81</sup> Based on that calculation, NY recommends that “[c]osts for any capacity that exceeds permitted limits or contravenes permit terms should be disallowed, using the figures provided above, with 21.8 MW being the equivalent of 12 rental units.”<sup>82</sup>

Subject to the evidence before the Board that one of the key advantages of diesel rental units is their ability to be moved from one location to another,<sup>83</sup> YEC does not dispute NY’s revised assertion (for the purposes of this GRA) that the correct amount of unpermitted diesel capacity that YEC is seeking to include in its revenue requirements at the Mayo Secondary Thermal plant is 2.3 MW,<sup>84</sup> or his assertion that the amount of unpermitted diesel capacity in Faro is 5.1 MW.

However, NY’s calculation of 14.4 MW of unpermitted capacity in Whitehorse is incorrect and misleading.

NY’s calculation is based on an assumption that YEC’s Air Emissions Permit #60-010-04 for Whitehorse<sup>85</sup> only authorizes a maximum output of 12.3 MW of diesel generation, from the four installed diesel units [10.5 MW in total for WD4, WD5, WD6, and WD7] plus one diesel rental [1.8 MW]. However, that assumption does not accurately describe how the Whitehorse Air Emissions Permit has actually been interpreted and applied by YEC and Environment Yukon.

Air Emissions Permit #60-010-04 specifies a total permitted diesel generation capacity of 16.15 MW for normal operations in Whitehorse. As explained previously in YEC’s response to NY’s motion for further disclosure,<sup>86</sup> that 16.15 MW figure was determined based on the total capacity of five of the original seven permanent diesel units at the site (WD3, WD4, WD5, WD6 and WD7). However, since WD3 has been retired, and since the total rated capacity of the remaining four permanent installed units during the test years is 10.5 MW,<sup>87</sup> it is understood that the current permit authorizes YEC to use rental diesel units in any combination with its permanent installed units in Whitehorse during normal operations up to the 16.15 MW level that has been assessed by YESAB and is specified in the permit. YEC has been very transparent about this, and Environment Yukon has never raised any objection to this interpretation of the existing permit.

Accordingly, the correct figure for the amount of diesel rental capacity in excess of YEC’s permitted capacity that is needed to close the N-1 capacity gap and that YEC is seeking to include in revenue requirements in Whitehorse is 10.55 MW,<sup>88</sup> and the correct figure for the combined total of the amount of diesel rental capacity in excess of permitted capacity (at all locations) that YEC is seeking to include in revenue requirements is 17.95 MW.

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<sup>81</sup> NY Argument, paragraphs 55, 65. The 21.8 MW is estimated in the NY Argument to include 2.3 MW at Mayo (paragraph 58), 5.1 MW at Faro (paragraph 64) and 14.4 MW at Whitehorse (paragraphs 59-64).

<sup>82</sup> NY Argument, paragraph 66.

<sup>83</sup> YEC Rebuttal Evidence, Exhibit 9, PDF p. 9, footnote 7.

<sup>84</sup> See YEC Rebuttal Evidence, Exhibit 9, PDF p. 7, footnote 6.

<sup>85</sup> YUB-YEC-1-35 REVISED, Attachment 6 (Exhibit 5, PDF pp. 79-83).

<sup>86</sup> Exhibit 3A, PDF p. 5.

<sup>87</sup> NY-YEC-1-2 REVISED Attachment 1 (Exhibit 4, PDF p. 4).

<sup>88</sup> 26.7 MW of total dependable diesel generation capacity in Whitehorse (including both permanent and rental units) minus 16.15 MW of permitted capacity for normal operations: see NY-YEC-1-2 REVISED Attachment 1 (Exhibit 4, PDF pp. 4-5).

If NY disagrees with the foregoing interpretation and understanding of the effect of YEC's Whitehorse Air Emissions Permit, that is a matter outside the jurisdiction of this Board that is irrelevant to the issues in this GRA, and that he should take up with Environment Yukon.

Aside from NY's miscalculation of YEC's permitted diesel capacity in Whitehorse, NY's recommendation to exclude unpermitted diesel rental capacity from revenue requirements is addressed further below.

- 2. Inclusion of Unpermitted Diesel Capacity in Revenue Requirements:**<sup>89</sup> NY recommends that YEC's need for capacity, and its stated commitment "to contravening the terms of its permits", should not be accepted by the Board as a rationale for including unauthorized capacity in costs [for the test year revenue requirements].<sup>90</sup> As outlined above, if NY had correctly calculated the total of YEC's unpermitted diesel rental capacity at all locations, the effect of this recommendation would be to disallow the costs of 10 of the 20 rental units that YEC is seeking to include in the test years revenue requirements.

This is no merit to this recommendation, which would require the Board to reverse the conclusions it made previously in the 2021 GRA.

YEC has already fully addressed this issue in its Rebuttal Evidence, and will not repeat all of the same points again here. However, as noted in YEC's Final Argument (pages 63-64), it should again be emphasized that "there is nothing new about the fact that there is a difference between YEC's permitted diesel capacity for normal operations and the additional diesel capacity that YEC needs to rent to meet N-1 dependable capacity requirements. This distinction was very well understood in the previous 2021 GRA proceeding, and the YUB dealt directly with Mr. Yee's arguments on this issue in its final decision in that proceeding."

It should also be emphasized that, for the reasons YEC has already detailed in its Rebuttal Evidence,<sup>91</sup> the "Regulatory Reminder" that Environment Yukon included in its July 20, 2023 YESAB Assessment Comment on the Mayo Secondary Thermal Generation Project provides no basis for the Board to revisit the conclusions it reached on this issue in Board Order 2022-03.

Amongst other things, the Regulatory Reminder has no bearing whatsoever on the fact that YEC does not need to have a YESAB assessment to allow it to connect diesel rentals that are required for the purpose of being able to respond to an emergency event under section 49 of YESAA. The impact of the Regulatory Reminder is to make it apparent to YEC that the only practical option at the present time to prevent immediate harm to public welfare, health and safety during an emergency, and to meet YEC's statutory obligation under section 106 of the PUA to provide service to customers, is to exceed its permitted operating capacity when and if it becomes necessary to do so. YEC's existing permit deals specifically with that situation by requiring YEC to report such an event to Environment Yukon, and YEC has provided evidence that it has followed that process when such events

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<sup>89</sup> NY Argument, paragraphs 45-51.

<sup>90</sup> NY Argument, paragraph 51.

<sup>91</sup> Exhibit 9, PDF pp. 5-8, including footnote 5.



have occurred, both in December 2022 and January 2024 – evidence that NY has simply ignored in his Final Argument.<sup>92</sup>

Indeed, YEC’s January 9, 2023 email correspondence with Environment Yukon that YEC has produced in response to the Board’s Follow-up Question #3 to YUB-YEC-1-35<sup>93</sup> provides direct evidence of how YEC did in fact report the December 2022 exceedance event to Environment Yukon in accordance with the “unauthorized emissions” provision of the applicable air emissions permit. As noted in YEC’s response to Follow-up Question #3, Environment Yukon acknowledged receipt of YEC’s report (thanking YEC for its report) and indicated that they would let YEC know if they required any other follow-up; however, Environment Yukon did not require YEC to take any further action in the circumstances.<sup>94</sup> Again, NY has simply ignored this evidence in his Final Argument.

As outlined further in YEC’s Rebuttal Evidence,<sup>95</sup> YEC fully understands that it is Environment Yukon’s present objective to bring YEC’s emergency operation of all of its rental diesel units within its permitted capacity, so that YESAB may assess the potential impact of emergency operations that will be authorized directly in YEC’s permits, notwithstanding the exemption for emergency operations in section 49 of YESAA. However, this is an ongoing process that will take additional time to fully implement. In the meantime, the ongoing interpretation, application and enforcement of YEC’s existing air emissions permits continues to be a matter under Environment Yukon’s regulatory purview, which is outside the Board’s jurisdiction and has no bearing on the issues to be determined by the Board in this GRA.

In effect, it appears that NY is asking the Board to use its rate-setting authority to punish YEC for not yet having brought all of the diesel generation capacity that it requires to meet N-1 dependable capacity criteria within its existing permits. However, that is not the Board’s role or responsibility under the *PUA*. That diesel generation capacity is clearly used and useful, and properly included in YEC’s test years revenue requirements.

Viewing NY’s submissions through the lens of the Board’s statutory mandate under the *PUA*, there is no merit to NY’s recommendation to disallow costs for diesel rentals that are needed to close the N-1 dependable capacity gap, despite the fact that the total dependable capacity of those rentals is not fully covered by YEC’s existing air emissions permit. Nothing has changed in this regard since the Board’s issuance of Board Order 2022-03. The Board must reject NY’s recommendation.

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<sup>92</sup> NY has made further submissions in his Final Argument disputing YEC’s interpretation of the “unauthorized emissions” provisions of YEC’s current permits as well as section 113 of the *Environment Act* (NY Argument, paragraphs 15-19, 23-25). However, NY’s disagreement with that interpretation is a matter outside the jurisdiction of this Board that is irrelevant to the issues in this GRA, and that NY should take up with Environment Yukon. To be clear, YEC very strongly disputes NY’s proposed interpretation of both the “unauthorized emissions” provisions of its permits and section 133 of the *Environment Act* (as well as NY’s proposed interpretation of various other provisions of the *Environment Act*), but this is not the proper forum to adjudicate that dispute, which is of no relevance to the Board’s statutory mandate under the *PUA*.

<sup>93</sup> YUB-YEC-1-35 REVISED, Attachment 8 (Exhibit 5, PDF pp. 90-92).

<sup>94</sup> YUB-YEC-1-35 REVISED – Follow-up Question #3, Exhibit 5, PDF pp. 23-24.

<sup>95</sup> Exhibit 9, PDF p. 6.

**3.0 CONCLUSION**

As set out above and in YEC's Final Argument, all of the evidence necessary for the Board to address the Orders requested is in the record. The Board should grant the Orders that YEC has requested.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

The image shows two handwritten signatures in black ink. The signature on the left is 'Jason Herbert' and the signature on the right is 'P. John Landry'. Both signatures are written in a cursive, professional style.

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Jason Herbert and P. John Landry, K.C.  
Counsel for Yukon Energy Corporation

April 2, 2024