In the Matter of:

THE YUKON ENERGY CORPORATION ("YEC")
2012 - 2013 GENERAL RATE APPLICATION

REPLY OF
THE CITY OF WHITEHORSE ("CW" OR "THE CITY")

DECEMBER 12, 2012

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1. Introduction

1. The City of Whitehorse (the City) filed argument with the Yukon Utilities Board (the Board) in these proceedings November 28, 2012 on a limited number of issues of concern to its citizens and businesses. Concurrently on November 28, 2012, the Applicant, Yukon Energy Corporation (YEC) filed argument as well as intervenors Leading Edge Projects Inc. (LE), the Utilities Consumers Group (UCG), the Yukon Conservation Society (YCS) and the Yukon Electrical Company Limited (YECL). The City will reply to a number of issues raised by the Applicant and other intervenors. The absence of reply on any particular issue raised by any party does not constitute agreement with that party's position on that issue.

2. YEC's argument appears to be voluminous but, in fact, is largely repetitive of much of its evidence.[1] Furthermore, the lack of paragraph numbering in YEC's argument has made it difficult to refer with precision to those parts of YEC's argument with which the City disagrees. In this reply, the City would have preferred to follow the same section numbering employed in the City's argument but much of YEC's argument either requires no reply or does not pertain to the issues of concern to the City.

2. System Sales

2.1 Wholesale Sales Forecast

3. In argument, YEC considered that "no substantive issues have been raised that call into question the reasonableness of the Application's forecast of YECL wholesales to supply YECL retail sales and established YEC wholesales during the test years."[2] YEC's conclusion is incorrect as the City raised the issue of YEC's wholesale forecast and the process used to develop YEC's forecast at the hearing[3] and in argument.[4] Prior to the hearing, the interrogatory process clearly

[1] In particular, YEC Argument pages 1 – 14 add nothing of substance to these proceedings
[2] YEC argument, Section 1.1, page 16
[3] Tr. page 62, line 11 - page 66, line 5
[4] City of Whitehorse Argument, paragraphs 4 - 6, pages 1 - 3

disclosed the disconnect between YEC's wholesale sales forecast and the forecast supplied by YECL.[5] YECL, in argument raised issues with YEC's wholesale forecast:

> "It is troubling to Yukon Electrical that it has reviewed YEC's Wholesale Sales forecast and is unable to fully understand or reconcile it with its own forecasts. Further, YEC's Wholesale Sales forecast is plainly flawed as it does not properly account for the unavailability of Fish Lake generation. YEC's forecast assumes that both Fish Lake units would be fully operational for 2013, whereas Fish Lake Unit 1 is not anticipated to be back in service until Q3 of 2013, with result that YEC's forecast understates Wholesale Sales and may result in inappropriate ERA charges being assessed due to forecasting error."[6]

4. With respect to the issue of Fish Lake, the City notes that YECL's argument is directed towards whether Fish Lake generation is included in YEC's forecast. Since YECL does not indicate that its own wholesale purchases forecast for 2013 should be revised as a result of Fish Lake's in-service date of 3Q 2013,the City submits that YEC's wholesale sales forecast should be adjusted to the purchases provided by YECL and all other forecasts dependent on the wholesale sales forecast adjusted accordingly.

2.2 Whitehorse Copper Tailings (WHCT)

5. YEC's argument reviewed its evidence submitted in the hearing and summarized this evidence as proving its case for serving WHCT:

> i. YEC has consistently served all major industrial customers in Yukon since securing its franchise in 1987;
>
> ii. 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.[7]

[5] e.g. Exhibit B-5, CW-YEC-1-6 (a), YECL-YEC-1-3 (a), Exhibit B-9, YECL-YEC-2-2(a) Attachment 1
[6] YECL Argument, paragraph 19, page 7
[7] YEC argument, Section 1.2, pages 18-19

6. The City finds that whether or not the first assertion is correct, this alone is not determinative of the issue of which utility is entitled to serve Whitehorse Copper Tailings.

7. With respect to the second of YEC's assertions, YEC's evidence is far from clear as to how the revenue requirement and revenues of either YEC or YECL would vary under each other's proposals. For example, YEC's argument cited just above appears to contradict its subsequent argument that:

> "The forecast purchased power in the Application excludes provision for re-purchase of power wheeled over YECL's distribution system to serve WHCT (see Exhibit B-15 and Section 1.1 of Part 2 of this Argument), and this will be corrected in the compliance filing."[8]

8. YECL bases its argument that YECL should serve WHCT on the following propositions:

   i. Whitehorse Copper Tailings is geographically located within Yukon Electrical's service area. Both YEC and Yukon Electrical may serve major industrial customers, provided such customers are within the utility's deemed franchise area under s. 77 of the Act or in an area in respect of which the Board has granted a new, or altered an existing, franchise pursuant to s. 21 of the Act.;[9]

   ii. Yukon Electrical owns and operates the power line to Whitehorse Copper Tailings;[10]

   iii. Whitehorse Copper Tailings was previously served by Yukon Electrical from the late 1960s to the mid 1980s.[11]

   iv. Because Whitehorse Copper Tailings is a customer located within Yukon Electrical's deemed franchise area, YEC has no right to serve this customer, and YEC's position that it can and should serve this load is contrary to law.[12].

[8] YEC argument, Section 2.1, page 20
[9] YECL argument, paragraph 6, page 3
[10] YECL argument, paragraph 8, page 4
[11] YECL argument, paragraph 8, page 4
[12] YECL argument, paragraphs 4- 8, pages 3-4, and paragraph 10, page 5

9. The City does not dispute that YECL owns and operates the line that serves WHCT nor the historical assertions of either YEC or YECL with respect to the provision of service to identified customers.

10. YECL has pointed to and appears to have accurately quoted from section 77 (2) of the *Public Utilities Act*[13], and section 1 of the *Yukon Power Corporation Regulation* (1987), O.I.C. 1987/071, in support of its argument that only it has the right to serve Whitehorse Copper Tailings. O.I.C 1987/071 does direct the Board to approve the granting of a franchise to Yukon Power Corporation to provide electrical services in areas "where such services are not already provided by the Yukon Electrical Company Limited". It also seems clear that, prior to the O.I.C. directing the Board to grant YEC's predecessor a franchise, YECL had provided service to Whitehorse Copper. [14]

11. Neither YEC nor YECL have referred to nor produced any Board Order or document issued by the Board actually conferring or granting a franchise to YEC. To date, YEC has not cited any legislation regulation or Order-In-Council that may have amended or otherwise affected the scope of YEC's franchise. The City, and no doubt the Board, will be very interested in anything of this nature that may be cited by YEC in reply.

12. In the event that the Board determines that it has jurisdiction to choose either YEC or YECL to provide service to Whitehorse Copper Tailings, in the City's view, neither utility has made a convincing case that its proposal would provide the most benefits to this customer in particular or the combined customers of both utilities.

13. In its argument, the City recommended that the Board hold a short written proceeding where the net costs and benefits to end use customers can be fully evaluated to resolve this issue. The City only became aware of YECL's intention to file a 2013 GRA after filing argument in these

[13] R.S.Y.2002,c.186
[14] See for example, Order 1985-2.

proceedings.[15] If the timing of YECL's GRA permits, this issue could be efficiently resolved as part of that proceeding.

3. Depreciation, Amortizations and Deferral Accounts

3.1 Regulatory Costs

14. The UCG made the following submission with respect to the costs of regulatory proceedings:

> "UCG submits that one way to help control the costs of these regulatory proceedings is to have the YUB direct YEC to be more forthcoming with requested information and to agree to provide the information they reference rather than have intervenors search and incur additional costs."[16]

15. The City agrees that a utility's responsiveness to information requests has a bearing on the costs incurred by intervenors. The City is confident that the Board will consider this issue among others when it assesses costs for these proceedings in any future cost decision related to these proceedings.

16. The most significant issue with YEC's regulatory costs is not the quantum of costs incurred by intervenors but YEC's process of recovering the costs awarded in a cost order from customers. YEC's process of amortizing its estimate of proceeding costs within the test period is neither accurate nor does it result in just and reasonable rates. The City's argument demonstrated that YEC over recovered nearly $1,000,000 of hearing costs from 2008 to 2011 ($159,934.72 during the test years and $400,000 in each of 2010 and 2011).[17]

17. The City's recommendation, that YEC establish a Hearing Cost Reserve Account on a going forward basis, is the only way to recover the costs awarded by the Board accurately.

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[15] YUB letter dated November 28, 2012 concerning YECL correspondence regarding upcoming GRA filing and interim refundable rates
[16] UCG Argument, paragraph 8, page 4
[17] City of Whitehorse Argument, paragraph 26, page10

3.2 Diesel Contingency Fund (DCF)

18. In its application to reinstate the DCF, YEC included an ERA charge to wholesale sales.[18] YECL identified "that there will be an ERA charge to Yukon Electrical when there is a positive system load growth variance and a positive wholesale sales variance between actuals and GRA forecast and a credit to Yukon Electrical when there is a negative system load variance and a negative wholesales sales variance between actuals and GRA forecast."[19] YECL further stated:

> "While YEC has indicated that it is willing to bear the risk for changes in diesel volume driven by retail and industrial load variations, which will be reflected in YEC's Income Statement, Yukon Electrical respectfully submits that absorbing the risk for diesel volumes in this manner does not allow a utility to recover its prudently incurred costs from customers. Furthermore, whereas YEC's forecast risk on its Industrial and Retail customers is relatively small, the forecasting risk for Yukon Electrical is much more significant when considering that Yukon Electrical accounts for approximately 75% of energy sales in the Yukon. The forecast risk for Yukon Electrical and its customers is even more pronounced given that the forecast against which ERA charges are assessed is one prepared independently by YEC with minimal consultation with Yukon Electrical."[20] (citations removed)

19. It is quite clear that YEC's statement that "YEC bears the risk for such changes in diesel volume driven by the retail and industrial customer load variations, which will be reflected in the YEC's Income Statement"[21] is misleading. If YECL is correct (and the City does not dispute YECL's analysis), the ERA will minimize YEC's generation risks even further by transferring the risk of wholesale load growth to YECL. The City considers that each utility must bear and manage its own risks, not attempt to transfer its risks to others to bear.

20. If the Board accepts the ERA and DCF as applied for, the City considers that its evaluation of YEC's generation risks as minimal should be revised downwards. This revision will be considered in the section of this reply concerning capital structure.

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[18] Exhibit B1 (b), pages 4-11 to 4-13; and Attachment 3.2, page 3.2-4
[19] YECL argument, paragraph 17, page 7
[20] YECL argument, paragraph 18, page 7
[21] Exhibit B5, YECL-YEC-1-14 (a),

3.3 Reserve For Injuries and Damages (RFID)

21. The UCG suggested raising the threshold for claims to be made to the RFID.

> "Given that the study conducted by Aon Reed Stenhouse Inc indicates that there are minimum thresholds below which the loss is considered operational risk that range from $1,000 to $1 million, UCG submits that standard business practice suggests that the proposed $10,000 threshold is still too low. UCG submits that since the average of the charges to the RFID account over the last 3 years was $64,000, the minimum threshold should be at least $50,000. If the Board agrees to set a new threshold that is higher than $1,000, then all charges to the RFID account below this threshold amount should be eliminated from the RFID account."[22]

22. The City does not oppose a higher threshold to the RFID. However the RFID Policy would still require changes to ensure that the portion of all losses charged to the RFID that are below any new threshold would be charged to YEC and not to the customer, as per the City's argument.[23] The UCG's RFID threshold proposal would also require alteration to the RFID appropriation to reflect the higher appropriation.

4. Cost of Capital

4.1 Forecast Cost of Equity

23. In argument, YEC reviewed its application, confirming YEC's employment of a mixture of the AUC generic ROE, the BCUC's 52 basis point risk upward adjustment and the 50 basis point reduction directed by OIC 1995/90 (as amended by OIC 1998/32). YEC considered that its method was "a simplified approach".[24] The City considers that cherry-picking numbers from two different jurisdictions that employ two different methods of determining a fair return on equity is not a simple process. YEC's method can only be considered valid if the numbers are reconciled to account for the differences between the two Commissions' approaches. Not surprisingly, YEC did not perform the necessary reconciliation in its evidence.

[22] UCG Argument, paragraph 207, page 37
[23] City of Whitehorse Argument, paragraphs 36 – 38, pages 15 -16
[24] YEC Argument, page 10

24. YEC relied heavily on Table 1 of CW-1-41(a) to argue that its proposed ROE of 8.77% appears reasonable when compared to the awards made in various jurisdictions.[25] The City submits that the Board should reject any comparable awards approach to setting YEC's ROE. Comparing the awards of regulators who use different methods to reach their conclusions is both circular and superficial. Regulators award a return on equity only after receiving extensive expert evidence and evaluating the business and financial risks of the specific utilities for which the award is made. The Board can only understand the awards of different regulators by undertaking a thorough analysis of all the factors taken into consideration by each regulator. The City does not recommend that the Board undertake such an extensive process in these proceedings.[26] The City does recommend that the Board consistently follow the AUC's method as the only method in evidence in these proceedings that includes both a fair return on equity and an evaluation of the risks faced by the utilities that the AUC regulates. The City's argument followed the AUC's method consistently to determine an appropriate ROE for YEC[27]. The City submits that its recommendation of an ROE of 8.25% for 2012 and 2013 is supportable and follows the appropriate OICs.

4.2 Capital Structure

25. YEC, in argument, considered that its approach to determining a capital structure "retained a simplified approach as described above to minimize the regulatory burden". [28] YEC stated that the 60% debt/40% equity capital structure it proposed was consistent with past practice, as approved by the YUB. YEC acknowledged that its proposed approach to capital structure was "contrary to AUC practice".[29] The City considers YEC's argument to be an admission that it has cherry-picked features of past BCUC, AUC and YUB awards as it desires.

[25] YEC Argument, page 11
[26] Tr. page 104, lines 19 - 20
[27] City of Whitehorse Argument, paragraphs 39-43, pages 16-18
[28] YEC Argument, page 10
[29] ibid., page 10

26. The City recommended that YEC's capital structure should consist of no more than 37% equity.[30] The City's recommendation is also a simplified approach since it is based on the summary of the AUC's capital structure awards in Decision 2011-474, as summarized by YEC.[31] Unlike YEC's proposal, the City's recommendation is consistent with the AUC's methodology of setting a generic rate of return and adjusting a utility's equity thickness for the risks the utility faces. The City submits that YEC's past practice respecting capital structure is irrelevant to the current application as the business and financial risks for YEC of 1990 are unrelated to those facing YEC during 2012.[32] The City's recommendations for both test years are consistent with the AUC's practice of reevaluating the business and financial risks of the utilities it regulates for the test years under consideration.[33]

27. The City's recommendation[34] of a capital structure of no more than 37% equity for 2012 and 2013 is consistent in all respects with the AUC's methods used in Decision 2011-474 and has not been refuted. As noted previously, the proposed ERA mechanism will transfer generation risk due to wholesale load growth to YECL. As this risk was not considered in the City's risk analysis, the City submits that YEC's capital structure should be revised downwards to approximately 36% equity, if the requested ERA is approved.

4.3 Forecast Cost of Debt

28. The City proposed a return to the formulaic approach to the forecast cost of debt as a simplification to reduce the regulatory burden, consistent with YEC's approach to ROE. The City's recommendation for the forecast cost of new debt is 3.97% for 2012 and 3.58% for 2013 using this simplified formulaic approach. Of note, UCG reached a very similar conclusion[35].

[30] City of Whitehorse Argument, paragraph 46, page 19
[31] Exhibit B5, CW-YEC-1-41, Table 1
[32] City of Whitehorse Argument, paragraph 44, page 18
[33] See AUC Decision 2011-474, page 53, Table 10
[34] City of Whitehorse Argument, paragraph 46, pages 18 - 19
[35] UCG Argument, paragraphs 375 - 377, pages 63 - 64

5. Other Matters

5.1 Performance-Based Regulation (PBR)

29. No party in these proceedings provided evidence on the issue of PBR. In argument, the UCG raised the issue:

> "UCG submits that there is no reason why a Performance-Based Regulation (PBR) mechanism could not be considered following the completion of a Phase 2 review and several compelling reasons to do so. It appears to UCG that there are considerable asymmetries in information between YEC and the Board and intervenors that make it difficult to ensure that YEC is carrying on operations in an efficient manner. PBR can alleviate the difficulty associated with that regulatory duty by incorporating a formula that provides both ratepayer protection together with a productivity dividend and a financial incentive on the part of YEC to become more efficient. As well, there should be a considerable reduction in regulatory costs which are significant considering the size of the customer base."[36]

30. While the City agrees that PBR may have certain characteristics that make it attractive compared to conventional regulation, no evidence has been provided <u>in these proceedings</u> that any change in the YEC's form of regulation is required <u>for the test years</u>. For example, the CRTC has many years of experience with the price cap form of PBR[37], yet the UCG has not provided any evidence that information asymmetry has been eliminated or that the quality of information provided by utilities to the CRTC improved as a result of price cap regulation. In any case, the quality of the information provided by YEC is a matter the Board will assess in the subsequent Cost Order. Discussing issues that are not part of the proceeding makes for an inefficient process.

31. The City considers that the numerous issues that PBR raises should be the matter for a separate proceeding at the Board's initiative. The timing of any PBR proceeding should depend on whether other jurisdictions have accumulated sufficient experience with PBR applied to utilities comparable to YEC and YECL. In this respect, the AUC has recently issued Decision 2012-237 regarding the form of price cap regulation appropriate for Alberta gas and electric <u>distribution</u>

[36] UCG Argument, paragraph 24, page 6. See also paragraphs 320 – 326, pages 57 - 58
[37] see Telecom Decision CRTC 98-2

utilities. The City concludes that the AUC's PBR initiative would be more applicable to YECL, rather than YEC.

5.2 YEC/YECL Consultation

32. The City raised issues of YEC's lack of co-ordination and consultation with YECL throughout these proceedings.[38] This same issue was also raised by YECL in argument:

> "In summary, Yukon Electrical respectfully submits that YEC prepared and filed its Application including such matters as the ERA, the DCF and service to Whitehorse Copper Tailings with little, if any, consultation with Yukon Electrical. Yukon Electrical submits that such matters could have been addressed in a more administratively efficient manner had detailed consultation taken place in advance of the filing of the Application and subsequent hearing."[39]

33. The City notes that YECL has provided further instances of lack of co-ordination between the two utilities. YEC and YECL operate an integrated generation, transmission and distribution system that requires operational co-ordination and consultation to deliver reliable service to the customer. The City is unable to understand why this co-operation and co-ordination cannot be expanded to deliver consistent and reliable evidence where the two utilities interface. The City submits that the Board should direct YEC to consult with YECL on evidence that involves both utilities at the time of its next GRA. The City further submits that the Board should put YECL on notice that the Board expects YECL to consult YEC on those aspects of its forthcoming GRA that affect YEC.

All of which is respectfully submitted this 12th of December, 2012.

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[38] E.g. Tr. page 46, line 13 – page 48, line 11
[39] YECL Argument, paragraph 25, page 10