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YUKON UTILITIES BOARD

**IN THE MATTER OF
the *Public Utilities Act*
Revised Statutes of Yukon, 2002, c. 186, as amended**

and

**AN APPLICATION BY YUKON ENERGY CORPORATION
FOR AN ENERGY PROJECT CERTIFICATE AND AN
ENERGY OPERATION CERTIFICATE REGARDING THE
PROPOSED MAYO HYDRO ENHANCEMENT PROJECT (MAYO B)**

P R O C E E D I N G S

**Volume 3
April 8, 2010**

Whitehorse, Yukon

1 Proceedings taken at hearing held at the Yukon Inn,
 2 4220 4th Avenue, Whitehorse, Yukon.

3 -----

4 Volume 3

5 April 8, 2010

6	B. McLennan	Chair
	R. Laking	Vice-Chair
7	R. Hancock	Board Member
	K. Avery	Board Member
8	J. Woodland	Board Member
9	G. Bentivegna	Board Counsel
	D. Ward	Board Staff
10	S. Smart	Board Staff
11	J. Landry	Yukon Energy Corporation
12	K. Kellgren	City of Whitehorse
13	M. Buonaguro	Utilities Consumers Group
14	S. Wright	Yukon Conservation Society
	J. Pinard	
15	A. Middler	
16	J. Babyn	Yukon Electrical Company Limited
	C. Steinbach	
17	D. Gerbrandt CSR(A)	Court Reporters
18	B. Ball CSR(A) RPR CRR	

19 -----

20 THE CHAIR: So before we begin the
 21 argument portion of this hearing, is there any undertakings?

22 MR. LANDRY: Yes, Mr. Chairman, there's
 23 one --

24 THE CHAIR: Or any preliminary matters I
 25 meant to say.

09:09

1 MR. LANDRY: There is a response to an
2 undertaking. That's what we have this morning, and if I can,
3 I'll just read it into the record, if that's fine with the
4 Chair.

5 THE CHAIR: That will be fine.

6 MR. LANDRY: This undertaking was made to
7 Board counsel to provide further description of what is
8 included in the 19.53 million shown as estimated indirects in
9 the Kiewit contract costs in Table 1 of CW-YEC-1-5. So the
10 YEC response is as follows: (as read)

09:10

11 "Over 90 percent of this 19.53 million
12 for indirects is accounted for by the
13 following two components:

14 1. Schedule based costs consisting of:

15 (a) staff wages;

16 (b) pick-ups and transportation at
17 site;

18 (c) flights;

19 (d) survey and supplies;

20 (e) safety supplies and incentives;

21 (f) bus from Mayo to Whitehorse.

22 2. Temporary construction costs
23 consisting of:

24 (a) office and camp set-up and rental;

25 (b) maintenance and carpenter shop

09:10

Closing Argument By Mr. Landry

1 set-up and rental;
2 (c) equipment mobilization and
3 demobilization; and
4 (d) support equipment for camp."

5 That's the end of that undertaking. And for the court
6 reporter, we'll make sure that we send her a copy of that in
7 case I read it too fast.

8 THE CHAIR: Okay. Thank you very much.

9 Are there any other preliminary matters?

10 Hearing none, Mr. Landry, if you would like to proceed to
11 argument.

09:11

12 CLOSING ARGUMENT BY MR. LANDRY:

13 MR. LANDRY: Thank you, Mr. Chairman.

14 Just as a couple of starting points,
15 Mr. Chairman, we have produced for the record an aid to
16 argument. It has been handed out, and we provided some
17 copies to the registrar. It is entitled "Aid to Argument Re
18 References." And in talking to the registrar I understand
19 that that should be marked as the next exhibit, B10.

20 THE CHAIR: Yes. So marked.

09:12

21 **EXHIBIT D10 - YEC DOCUMENT ENTITLED**

22 **"AID TO ARGUMENT RE REFERENCES."**

23 THE CHAIR: You may proceed.

24 MR. LANDRY: Thank you. Mr. Chairman, I'll
25 also, in effect, be referring to, in my argument, the Terms

Closing Argument By Mr. Landry

1 of Reference that you referenced in your opening comments,
2 and I will, as I've done with the references, try to
3 effectively give argument to each section of the Terms of
4 Reference. And for the purposes of my argument, I have
5 effectively looked at the more detailed Terms of Reference,
6 which was in the December 18th, 2009 letter from the Minister
7 to the Board.

8 THE CHAIR: Thank you.

9 MR. LANDRY: As you can see from the aid to
10 argument that has been handed up to you by the registrar,
11 that once again follows along the various subheadings, and it
12 provides for the Board and its advisors and other intervenors
13 effectively the key references, both in the application, the
14 IRs and the transcript, which deals with each of the major
15 subheadings that you have been asked to report upon.

09:13

16 THE CHAIR: Thank you.

17 MR. LANDRY: Now, Mr. Chairman, to quote
18 from both the December 18th, 2009 Terms of Reference and the
19 ones that were adjusted on February 15th, 2010, and I quote:

20 "The purpose of the review and hearing
21 is to obtain the YUB's report and
22 recommendations on the potential
23 benefits, costs, risks and customer
24 impacts that influence whether Mayo B
25 should proceed as proposed by YEC."

09:13

Closing Argument By Mr. Landry

1 Now, sir, Mayo B as proposed by YEC was
2 described as follows by Mr. Morrison at the outset of YEC's
3 opening statement, and that's, for the record, Exhibit B8,
4 and I quote:

5 "an outstanding legacy asset for Yukon
6 ratepayers"

7 "a \$120 million renewable hydro
8 enhancement asset that will cost
9 ratepayers only \$36.5 million spread
10 over 65 years"

11 "an asset costing ratepayers over these
12 65 years less than 9 cents per kilowatt
13 hour to displace diesel energy
14 generation costing more than 25 cents
15 per kilowatt hour, resulting in cost
16 savings for ratepayers in every year of
17 its operation"

18 "an asset that will not increase
19 electricity rates."

20 That's how it was described by Mr. Morrison in the opening.

21 Now, Mr. Morrison's basic summary of Mayo B
22 benefits, costs, and customer impacts of Mayo B remain
23 solidly intact after examining all of the details and
24 reviewing all of the risks which have been discussed during
25 the past two days of the hearing. On this basis Yukon Energy

09:14

09:15

Closing Argument By Mr. Landry

1 concludes that the Board can now report to the Minister and
2 recommend that Mayo B should proceed as proposed by Yukon
3 Energy.

4 Now, to support the Board's report in this
5 regard, and as I indicated to you, sir, Yukon Energy's
6 argument will briefly address each of the specific aspects of
7 the Mayo B project that the Board was originally asked by the
8 Minister to review in section 3 of the December 18th, 2009
9 Terms of Reference.

10 The YUB shall report and make recommendation
11 about the necessity for Mayo B and its timing and design.

09:16

12 Now, Mr. Chair, dealing at a high level,
13 Mr. Morrison's opening statement clearly described both the
14 necessity for Mayo B as well as its proposed timing. He
15 emphasized the necessity for Mayo B to be in service by 2012,
16 both to supplant costly baseload diesel generation and to
17 capture the extraordinary Federal no-cost funding available
18 for Mayo B subject to its substantial completion by, as you
19 heard, March 31st, 2012.

20 Again I would quote from the opening statement
21 of Mr. Morrison. He stated, and I quote:

09:16

22 "At its core, Mayo B reflects an
23 extraordinary opportunity to reduce
24 diesel generation in a cost effective
25 and timely manner to the benefit of

Closing Argument By Mr. Landry

1 ratepayers in the near as well as the
2 longer term."

3 "Even though Mayo B provides an
4 additional 10 ..."

5 -- and this is a point that was emphasized on a couple of
6 occasions, and I think it is worth pointing out at this point
7 in time --

8 "Even though Mayo B provides an
9 additional 10 megawatts of winter
10 generating capacity to the grids, the
11 main purpose or need for Mayo B through
12 2019 and beyond is to provide a source
13 of economical renewable energy to
14 supplant baseload diesel generation
15 requirements rather than to provide
16 additional capacity."

17 And again going further from those opening comments, and I
18 quote:

19 "Yukon Energy has been clear that
20 notwithstanding the forecast load
21 growth, it could not proceed at this
22 time with the Mayo B project without
23 the significant no-cost capital
24 contributions by both the Federal and
25 Yukon governments.

09:17

09:17

Closing Argument By Mr. Landry

1 Now, Yukon Energy's evidence has also reviewed
2 the process for selecting the final design for Mayo B project
3 taking into account all relevant considerations and
4 information so as to meet this need. The project's design as
5 proposed by YEC, including the proposed modified water regime
6 with enhanced minimum flows to protect the fish and fish
7 habitat, has been well tested and can be recommended today by
8 the Board.

9 Now, going through again, if we take the Terms
10 of Reference that were provided to you on December 18th,
11 Mr. Chairman, and, like I say, those Terms of Reference are
12 actually highlighted in the aid to argument handed up earlier
13 as Exhibit B10, and if we start under section 3 of those
14 Terms of Reference, which has a subheading entitled "Specific
15 Aspects of the Project to be Reviewed," I would like to talk
16 a little bit about the first under that subheading which, and
17 I'll quote, it says:

18 "The public need for Mayo B under
19 various reasonable electric load
20 forecasts including near term
21 requirements related to Minto,
22 Bellekeno," which is the Alexco mine,
23 "and Carmacks Copper mines and to any
24 other potential major industrial
25 customers and the effects of the

09:18

09:19

Closing Argument By Mr. Landry

1 project on the rates of customers."

2 That's the quote from the Terms of Reference.

3 The application sets out reasonable electric
4 load forecasts, including near term -- and when I say "near
5 term" I mean from 2012 to 2018 -- requirements related to
6 Minto, Alexco, and Carmacks Copper mines that drive the
7 public need for Mayo B to be in service by 2012 and describes
8 how Mayo B as proposed by YEC with the committed government
9 funding for this project will provide material and beneficial
10 effects on the rates of ratepayers, of customers.

09:20

11 These electric load forecasts have been
12 thoroughly tested, and with one of the projects, and I mean
13 specifically Carmacks Copper, the application tested and
14 analysed what would result if the load either materialized or
15 did not materialize. These forecasts build upon the recent
16 2009 load forecasts for YEC and YECL as approved by the Board
17 in the recent GRAs.

18 Based on these load forecasts and the supply
19 capabilities of current and committed generation resources,
20 the evidence in this hearing has clearly confirmed that with
21 or without Carmacks Copper the integrated grid system is
22 moving to a point by 2012 where, without the development of
23 new renewable resources, there will be an ongoing need to use
24 diesel to provide baseload energy requirements, and given the
25 high cost reality of diesel generation that we all heard

09:20

Closing Argument By Mr. Landry

1 about, it will have a material adverse impact on the rates of
2 customers and this adverse impact on customer rates will
3 continue to grow as system requirements continue to grow.

4 Attachment D of the application, and that's,
5 for the record, at page D-6, estimates that this new diesel
6 generation from 2012 to 2017 with Carmacks Copper connected
7 could drive up overall costs without Mayo B by 15 to 25
8 million dollars representing on the order of 30 to 40 percent
9 above present Yukon-wide consolidated revenue requirements
10 for both YEC and YECL. 09:21

11 Based on the models provided in response to
12 YUB-YEC-1-25 (a) -- those are the sheets that we looked at in
13 some detail over the last couple of days -- new diesel
14 generation over this same near-term period without Carmacks
15 Copper connected could drive up overall costs by 5 to 17
16 million; 10 tend over 30 percent above present consolidated
17 revenue requirements. So this clearly shows that either with
18 or without the Carmacks Copper there is a serious need to be
19 looking at this diesel generation issue.

20 Now, while Mayo B is a capital-intensive hydro 09:22
21 project, over its life the cost to ratepayers, forecast to be
22 less than 9 cents per kilowatt hour on a levelized basis in
23 2012 dollars, will be materially less than the cost to serve
24 that same load with diesel, which is forecast, as you heard,
25 at 26 cents per kilowatt hour in 2012 dollars.

Closing Argument By Mr. Landry

1 Based on present values over its 65-year life,
2 Mayo B's levelized cost to ratepayers are forecast to range
3 from 6.69 cents per kilowatt hour to 7.59 cents per kilowatt
4 hour with, and those numbers are with and without added Mayo
5 Lake storage, compared to a present value levelized benefit
6 to ratepayers of 26 cents per kilowatt hour for savings in
7 incremental diesel generation costs, which yields a positive
8 cost benefit ratio for ratepayers of between 3.4 and 3.9
9 times Mayo B costs, and I reference for that to the record
10 CW-YEC-1-5 (b).

09:23

11 As Mr. Osler indicated, Mayo B is not a
12 panacea and will not completely mitigate the adverse rate
13 impacts that will result from the expected continuing
14 requirement for baseload diesel driven by ongoing load growth
15 and the limits of Yukon's existing renewable generation
16 resources. However, Mayo B is a very positive step towards
17 reducing these impacts on ratepayers.

18 As Mr. Morrison testified, anticipated Yukon
19 load growth, including potential major industrial customer
20 loads beyond those included in the application forecasts,
21 points clearly to a need for a number of new renewable energy
22 generation projects. Basically it is simply a matter of
23 time. Load growth is a reality. Even with Mayo B, diesel is
24 coming.

09:24

25 I would like to take you to, and you don't

Closing Argument By Mr. Landry

1 have to necessarily bring it up for reference, but for the
2 record, I would like to talk a little bit about YUB-YEC-1-25,
3 Attachment 1, which was the Excel spreadsheet that was used
4 extensively during the hearing and the need for diesel in
5 2012 and subsequent years.

6 Just focussing on 2012 as an example, and
7 using that spreadsheet, diesel required in 2012 to meet the
8 load at Carmacks Copper on the system. First of all, without
9 Mayo B, there will be \$15.1 million of diesel generation, or
10 approximately 57 gigawatt hours of generation. With Mayo B 09:25
11 on, the requirement will be reduced by approximately \$7
12 million, or approximately 26, 27 gigawatt hours. So the
13 overall cost savings when you take into account Mayo B of
14 approximately \$3.8 million in 2012 before considering any
15 flexible debt cap on unit costs. And, of course, as this
16 attachment shows, these savings increase to approximately
17 \$5.8 million by 2017, when the mine loads for the purpose of
18 the forecast are assumed to start declining.

19 Now, without Carmacks Copper, again
20 referencing the same attachment, without Carmacks Copper, 09:26
21 \$4.9 million of diesel will be required in 2012 without Mayo
22 B; with Mayo B in service will reduce this requirement by
23 \$4.2 million. So an overall cost saving to ratepayers of
24 1.1 million in 2012 before considering any flexible debt cap
25 on unit costs, and these savings increase to approximately

Closing Argument By Mr. Landry

1 \$3.2 million by 2017.

2 I think it's very important to point out to
3 the Board that the application presents a very conservative
4 forecast. Only three mines are included in the forecast:
5 Minto, which is currently operating; Alexco, which is at a
6 relatively advanced stage of development and expected to
7 commence mill and mine operation between June and August of
8 this year; and Carmacks Copper, which is through its YESAB
9 process and recently secured its Quarts Mining licence.

10 The forecast only incorporates the current
11 forecast loads for those mines and which are projected to end
12 in 2018 and does not include any other new industrial loads
13 at these or other mines after that point.

09:27

14 Now, despite this very conservative forecast,
15 there will still be a requirement for baseload diesel after
16 2018 when no mine loads are assumed for the purposes of this
17 forecast, and that requirement is expected to steadily
18 increase thereafter.

19 Simply put, Mr. Chairman, in both the near
20 term and over the longer term, there is a need to have
21 renewable generation resources in place to displace the
22 requirement for diesel generation. In other words, in the
23 context of this hearing, there is a clear public need for
24 Mayo B and also for subsequent new renewable resources.

09:28

25 Now, I would like to turn to the second part

Closing Argument By Mr. Landry

1 of the Terms of Reference, which is sub item (b) in section 3
2 of the December 18th, 2009 letter, and that sub item (b)
3 reads, and I quote:

4 "The capability of existing and
5 currently committed new transmission
6 and generation facilities to provide
7 reliable electric power generation to
8 meet the forecast load requirements,
9 taking into account the new planning
10 criteria as proposed by the YEC and
11 recommended by the YUB."

09:29

12 Now, Mr. Chairman, subject to the outcome of the
13 new LOLE analysis to be developed for the integrated grid,
14 the evidence confirms the capability of existing and
15 currently committed new transmission and generation
16 facilities to provide reliable electric power generation to
17 meet the forecast load requirements, taking into account the
18 planning criteria adopted by YEC as well as the criteria
19 recommended by the YUB and also considering the current
20 systems capabilities to supply increased energy loads as
21 forecast.

09:30

22 Now, without Mayo B, YEC is forecast to have
23 sufficient capability to meet the peak load from a capacity
24 perspective under the N minus 1 test until 2017. Mayo B
25 would simply add a further 10 megawatts of peak capability to

Closing Argument By Mr. Landry

1 this system. And for that reference, Mr. Chairman, I
2 indicate YUB-YEC-1-11.

3 Now, without Mayo B, existing and currently
4 committed generation and transmission for the integrated grid
5 can supply the electric energy, and we're talking kilowatt
6 hours here, necessary to supply the forecast load to 2019
7 with or without the forecast industrial loads.

8 So the capability is there today to supply
9 those loads but is noted to supply the growing load without
10 new renewable generation would require steadily increasing
11 the amount of diesel generation requirement each year.
12 Again, I reference for the record YUB-YEC-1-41.

09:31

13 Now, in response to this specific aspect of
14 the project and the Terms of Reference that I referenced
15 earlier, it is important to emphasize Mayo B is not a project
16 being justified on a need to meet winter peak capacity
17 planning requirements. It is being built and justified
18 solely based on the renewable energy that it will provide to
19 the system to displace some of the baseload diesel generation
20 at a significantly lower cost, reducing the cost that
21 ratepayers would otherwise have to bear.

09:32

22 Although there is no doubt that there are
23 capacity benefits arising from the Mayo B project, these
24 capacity benefits have not been taken into account in the
25 economic analysis supporting Mayo B. And I would ask the

Closing Argument By Mr. Landry

1 Board to look carefully in relation to this point at Mr.
2 Osler's evidence at transcript pages 245 to 247.

3 Now, my general points under this section of
4 the Terms of Reference deal effectively, in my view, with
5 items (iii) and (iv) of paragraph 3 (b) in the Terms of
6 Reference, and just to make a couple of quick comments for
7 the record on those sub items, re item (iii). Well, let me
8 quote from the Terms of Reference. (iii) says, and I quote:
9 (as read)

10 "The effect the completion of Mayo B is
11 expected to have on the ongoing use of
12 diesel generation at various locations
13 under various reasonable electric load
14 forecasts."

09:33

15 I think you would agree with me, sir, that I
16 have dealt with those in the comments that I have made
17 generally under section (b).

18 And 3 (b) (iv) of the Terms of Reference
19 states, and I quote: (as read)

20 "Other implications of Mayo B to the
21 system reliability, customer rates, and
22 economic growth of the Yukon."

09:33

23 As I've indicated, Mr. Chairman, Mayo B will
24 also enhance system reliability and also impact positively
25 customer rates, and it can be easily seen that it also

Closing Argument By Mr. Landry

1 promotes economic growth in the Yukon, both through its
2 construction itself of a \$120 million project and thereafter
3 through its beneficial effects on customer rates.

4 Now, I would, however, like to add a couple of
5 points in relation to the first two sub items under section 3
6 (b) of the Terms of Reference. And the first one that you're
7 asked to look at, and I quote again, is:

8 "The implications of approving Mayo B
9 prior to the environmental and
10 socio-economic assessment and
11 regulatory approval of the Mayo Lake
12 drawdown (including how, if at all,
13 Mayo B's expected impact on YEC and its
14 customers differs according to whether
15 the Mayo Lake Drawdown is permitted or
16 not)."

17 Mr. Chairman, even absent Mayo Lake, the
18 evidence clearly demonstrates that Mayo B remains an economic
19 project that will provide very significant net benefits to
20 ratepayers throughout the life of the project. And, of
21 course, I refer back to the comments that I made generally
22 under sub item (a) of the Terms of Reference.

23 Accordingly, whether or not Mayo Lake is
24 approved will not impact the viability of Mayo B. It remains
25 a very good project for Yukon, and it is prudent to proceed

09:34

09:35

Closing Argument By Mr. Landry

1 with Mayo B today prior to regulatory approval of the Mayo
2 Lake drawdown project.

3 Achieving the additional one metre of drawdown
4 at Mayo Lake will serve to increase the benefits to
5 ratepayers arising from the Mayo B projects, and its costs
6 are included in the \$120 million capital cost budget for Mayo
7 B that was reviewed in some detail over the last couple of
8 days.

9 As noted in the application and in the opening
10 statement, Mayo Lake will on average displace a further
11 4 gigawatt hours, which is approximately worth a million
12 dollars per year of diesel requirements, having an added
13 beneficial impact on rates as well as lowering greenhouse gas
14 emissions.

09:36

15 As noted in the application over the 65-year
16 life of Mayo B, the present value benefit of the Mayo Lake
17 drawdown as proposed approximates approximately \$20 million.

18 Now, the second sub item under section 3 (b)
19 is, and I quote:

20 "The relationship between Mayo B and
21 the CSTP Stage 2 completion."

09:36

22 Sir, at a very high level, Mayo B and the
23 Carmacks-Stewart Transmission Stage 2 can be viewed as
24 interdependent projects, integrally linked as part of the
25 single Legacy Project funding from Canada through the Green

Closing Argument By Mr. Landry

1 Infrastructure Fund.

2 The two-project package formed the basis for
3 YEC's application for this funding, and each project
4 supported Yukon's ability to secure the overall Federal
5 funding that was critical to each project proceeding at this
6 time.

7 As noted in the application, in response to
8 interrogatories, the interconnection of the grids as provided
9 by CSTP Stage 2 is required to ensure that the power
10 generated can be used in either the WAF or Mayo Dawson grid
11 to meet load requirements that arise. Completion of CSTP
12 Stage 2 was therefore a precondition to proceeding with Mayo
13 B. 09:37

14 It should also be noted that YEC requires the
15 CSTP interconnection to be completed by approximately
16 February or March of 2011 to provide access to summer surplus
17 generation during that portion of Mayo B project construction
18 when the Mayo A will need to be taken offline. Absence the
19 interconnection at that time and access to surplus hydro
20 generation on the WAF grid, diesel generation would be
21 required if, indeed, the Carmacks-Stewart Stage 2
22 transmission project was not online. 09:38

23 Now I would like to turn to section 3 sub (c)
24 of the Terms of Reference, which, and I quote, is asking you
25 to take particular regard to:

Closing Argument By Mr. Landry

1 "The risks facing Mayo B and their
2 potential impacts on rates for
3 customers including but not limited to
4 the risks arising from..."

5 and then there are a number of items enumerated thereunder.
6 The first item enumerated is, and I quote:

7 "Changes to general economic, market or
8 financial conditions."

9 Mr. Chairman, the timing of the Mayo B project
10 has meant that its costs are benefitting from current market
11 conditions. For example, YEC was able to conclude a
12 construction contract with a major hydro developer that it
13 may not have been able to secure, just by where the general
14 market conditions were at the time. And, of course, that is
15 Peter Kiewit & Sons, which is one of the foremost hydro
16 developers in North America of this type.

09:39

17 Also, prices for materials such as steel are
18 lower, and YEC was also able to conclude a favourable
19 turbine/generator contract with a reputable company, ABB,
20 which was eager to get into the North American utility market
21 with its foreign sourced turbine at the scale relevant to
22 Mayo B. These were all very positive timing-related issues
23 that worked in YEC and the ratepayers' favour.

09:39

24 Now, mining operations and the related mine
25 loads included in YEC's load forecasts from Mayo B are

Closing Argument By Mr. Landry

1 sensitive to general economic and relevant market conditions
2 and they can affect whether and when mines commence
3 operation, how long they operate, and whether they shut down.
4 However, despite the recent economic downturn, the
5 development of mining operations in Yukon has not slowed, and
6 that's what the evidence shows you, Mr. Chairman. And I
7 would refer you specifically to Mr. Morrison's evidence
8 relating to mining-related issues and the interest that has
9 been shown by mining companies with Yukon Energy. And the
10 page reference for that is pages -- are pages 252 and 253.

09:40

11 Still under this subheading of general
12 economic, market or financial conditions and the risks that
13 relate to that, there are market risks that include the risks
14 of increases of cost of capital, as well as increases in the
15 cost of long-term debt.

16 Now, YEC, as you've heard in the evidence, has
17 received favourable short-term financing for the purposes of
18 financing on the short term of Mayo B construction and it is
19 now also in the process of securing long-term financing at a
20 time when, as we all know, interest rates are considered to
21 be very favourable from a historical perspective.

09:41

22 Now, going to the second subheading under the
23 risk section of the Terms of Reference, that is 3 (c) (ii)
24 which states, and I quote:

25 "Any mitigation measures and/or

Closing Argument By Mr. Landry

1 modifications to project design or
2 schedule required by the environmental
3 and socio-economic assessment and
4 regulatory approvals."

5 Now, Mr. Chairman, the evidence you heard
6 indicated that the YESAB process is nearing completion and
7 YEC is diligently working with all decision bodies, both
8 Federal and territorial, to review and address any issues or
9 concerns with the project. You heard that YEC is confident
10 that no material change in the overall budget, mitigation, or 09:42
11 modifications to project design is expected due to the
12 regulatory review process. Now, the schedule for the initial
13 approvals needed to start land-based construction by June 1st
14 is the major outstanding regulatory risk for Mayo B.

15 YEC has been working with YESAB and can note
16 that YESAB has been very responsive and understands the
17 timing requirement for this project. It has conducted a
18 thorough review of the project, and in its draft screening
19 report it has provided a determination which includes 74
20 terms and conditions that Yukon Energy and the decision 09:43
21 bodies, between the two of them, would be following.

22 At a high level, YEC testified that the
23 issues, terms and conditions provided by YESAB in the draft
24 screening report are consistent with YEC's project proposal
25 and that there is now a reasonable expectation that the YESAB

Closing Argument By Mr. Landry

1 final report recommendations will be received by the first
2 week of May of 2010.

3 There is simply no reasonable expectation
4 today that the YESAB final report will introduce any material
5 new issues. The mitigation measures proposed by YESAB in its
6 draft screening report are consistent with those measures
7 included in YEC's project proposal.

8 As you heard, the only material cost item for
9 YEC in the draft screening report recommended terms is
10 related to the requirement for a "rearing channel," and the 09:44
11 estimated cost that Mr. Osler testified to was approximately,
12 give or take \$50,000, \$300,000.

13 I think it's important to point out, given
14 some of the evidence that you've heard and some of the
15 questioning, that this habitat compensation option
16 specifically was included in YEC's project proposal to YESAB
17 and, as Mr. Osler has indicated, is easily accommodated in
18 the project budget within owners contingencies.

19 Again dealing with the risk section in the
20 Terms of Reference, paragraph 3 (c) (iii) which, and I quote, 09:44
21 is:

22 "The timelines and other conditions
23 contained in the Federal Agreement."

24 As you have heard, Mr. Chairman, the Federal
25 funding agreement between YEC and Canada requires that Mayo B

Closing Argument By Mr. Landry

1 be substantially complete by March 31st, 2012. This deadline
2 coincides with the timelines YEC was already working towards
3 to have renewable generation resources in place by 2012 to
4 meet growing load requirements on the system that would
5 otherwise have to be supplied by diesel.

6 YEC has been clear since its initial project
7 proposal filed with the YESAB in February 2009 that it
8 requires two summer construction seasons to construct Mayo B.
9 YEC has also been clear that to complete the project in the
10 time frames required to have it in service by March 31st,
11 2012, construction must start in May or early June of 2010.

09:45

12 From a risk perspective, which is what this
13 section of the Terms of Reference is dealing with, you've
14 heard that YEC's biggest risk today is obtaining the permits
15 and licences required to meet the June construction start
16 date. YEC is doing everything it can to ensure that the
17 project is completed within the required time frames.

18 Now, obviously one of the authorizations
19 required for that construction start date is the energy
20 certificate from the Minister that is the subject matter of
21 this Part 3 Application, hence the need for the timing that
22 has been dealt with at some length during this application
23 process.

09:46

24 Apart from the timelines that we have spoken
25 about, there are no material concerns that have been raised

Closing Argument By Mr. Landry

1 regarding any other conditions contained in the Federal
2 agreement, and that's really a response again to the Terms of
3 Reference and the issues that the Minister has asked this
4 Board to look at.

5 The fourth sub item under section 3 (c) of the
6 Terms of Reference is, and I quote:

7 "Load forecasts, both industrial and
8 residential, not being realized"
9 and the risks related to that.

10 Mr. Chairman, the application, IRs, and
11 hearing testimony addressed in detail, as you've heard, the
12 risks of load forecasts not being realized and specific
13 measures to protect ratepayers against the risk of the
14 Carmacks Copper load being delayed or not materializing.

09:47

15 To address these and other rate risks
16 regarding Mayo B, you've heard that YEC intends to arrange
17 flexible debt financing with YDC for Mayo B similar to the
18 current YEC flexible term debt long-term loan arrangements
19 related to Whitehorse No. 4.

20 With the provision of flexible debt financing,
21 Mayo B net generation revenue requirement costs will be
22 capped at 10 to 11 cents per kilowatt hour of net generation.
23 This arrangement will mitigate load risk relating to future
24 loads being less than what is forecast in this application.
25 What this means is from a load perspective this approach will

09:48

Closing Argument By Mr. Landry

1 be that any load risk is not expected to create any upward
2 pressure on overall near-term retail rates and that rate
3 customers are protected specifically against rate increase
4 risks related to the delay of the Carmacks Copper load.

5 Now, another subheading relating to risks
6 under paragraph 3 (c) is item (v) which is entitled:

7 "Unanticipated cost overruns or project
8 financing capability."

9 Now, Mr. Chairman, as you've heard, this risk
10 issue was dealt with in detail in the evidence. The evidence 09:49
11 clearly demonstrates that between YEC and its consultants the
12 projected costs for the Mayo B project have been scrutinized
13 in detail. Further, YEC has been able to firm up the
14 turbine/generator equipment costs, and it has also developed
15 a construction contract with a top hydro developer for an
16 Alliance model approach wherein both YEC and Kiewit will
17 shoulder project risks such as risks of cost overruns. And
18 this model was described in detail in the application and
19 IRs, and I provided the reference in the aid to argument and
20 I would also ask the Board to look carefully at the evidence 09:50
21 of Mr. Osler at pages 191 to 197 of the transcript where he
22 dealt, in some detail, with this risk issue.

23 The final item under (c) of paragraph 3 of the
24 Terms of Reference relates to:

25 "The possibility that the Mayo Lake

Closing Argument By Mr. Landry

1 Drawdown does not proceed."

2 As I stated earlier, Mayo B remains a viable and
3 economic project absent the availability of the additional
4 one-metre drawdown at Mayo Lake and that the additional
5 drawdown serves really just to enhance the benefit of a
6 project that is already justified and economic.

7 Now, the last major subheading under sub 3 of
8 the Terms of Reference sub item (d) asks this Board have
9 particular regard to, and I quote:

10 "What, if any, alternatives to Mayo B
11 might be advisable given reasonable
12 load assumptions and risk assessment."

09:51

13 And then it says:

14 "In particular, the YUB shall report
15 on..."

16 and there is two sub items under (d), and I would like to
17 deal with that item in general and also to deal specifically
18 in answer to each one of those subheadings.

19 In general, the evidence confirms that there
20 is no alternative today to Mayo B that might be advisable
21 given the timing and other conditions required to displace
22 diesel generation by 2012 with access to comparable no-cost
23 funding. The evidence also demonstrates that YEC followed a
24 prudent path consistent with the Resource Plan as reviewed
25 and recommended by the Board in its 2007 report to select and

09:51

Closing Argument By Mr. Landry

1 proceed with Mayo B to the point where it can be ready to
2 proceed by June 1st, 2010.

3 Along this path, YEC has examined alternatives
4 that include wind and geothermal, longer-term resource
5 options for which YEC continues to do leading studies. YEC
6 also examined various possible hydro development options and
7 sites. Mayo B was selected for ongoing development planning
8 in the summer of 2008 based on the past studies of Mayo B
9 options as well as a review of other near-term options within
10 the scale and timelines relevant to YEC in 2007 and 2008.

09:52

11 It's also important to note, Mr. Chairman,
12 that YEC continues to examine a range of renewable resource
13 options beyond Mayo B for both the near and longer term
14 potential development.

15 Now, in relation to the specific items listed
16 under section 3 (d) in the Terms of Reference, I would like
17 to make a couple of points. In relation to the first one,
18 which is, and I quote:

19 "Possible alternative configurations
20 for timing and structure of the Mayo B
21 as proposed by YEC."

09:53

22 Sir, during the current proceeding no one has
23 challenged the project's structural configuration nor the
24 enhanced minimum low flows as proposed for the Mayo River
25 downstream of the Wareham Control Structure.

Closing Argument By Mr. Landry

1 YEC has provided information on alternative
2 configurations for Mayo B in the YESAB project proposal and
3 in the current Part 3 Application, and I just, for the
4 reference, refer you to attachment A2, pages A2-4 to A2-8,
5 which provide excerpts from the YESAB filing. This
6 information notes that over the years various project
7 concepts for Mayo B have been considered.

8 Now, the Mayo B project has advanced through
9 the feasibility stages of studies when various alternative
10 configurations were studied related to the powerhouse
11 location; conveyance options, i.e., a canal or a penstock;
12 alterations to the Mayo Lake operating regime; and various
13 potential configurations and flow regimes to maximizing the
14 generation potential of the project while ensuring good
15 environmental conditions were maintained in the Mayo River.
16 And that is documented within the evidence that I referred
17 to.

09:54

18 The second item on paragraph 3 (d) of the
19 Terms of Reference, which I will make a couple of comments
20 on, states:

09:55

21 "Whether it is prudent to build Mayo B
22 at this time."

23 Mr. Chairman, the evidence clearly demonstrates
24 that Mayo B is a well thought out project. It has gone
25 through the required Resource Planning exercises endorsed by

Closing Argument By Mr. Landry

1 this Board in its report to the Minister regarding its
2 20-year Resource Plan back in 2007.

3 There is a significant identified need that
4 we've talked about in detail related to the reduced surplus
5 hydro generation and the need to find new sources of
6 renewable generation to meet the ongoing baseload diesel
7 requirements forecast to be required by 2012.

8 As we've noted in the evidence, there are no
9 other renewable resource projects of a similar scale that
10 could produce the same quantity of energy as Mayo B that 09:56
11 could be advanced through the feasibility planning stages,
12 licensed, and built to be in service in the 2012 time frame.
13 The availability of the Federal government funding towards a
14 significant portion of the costs of this project also
15 presented a once-in-a-lifetime opportunity to put in place a
16 significant legacy infrastructure project that combine the
17 enhancement of an existing asset with the interconnection of
18 the WAF and Mayo Dawson grids.

19 Mr. Chairman, given the evidence that you have
20 heard at this proceeding, it would be imprudent not to 09:56
21 proceed with this project.

22 In closing, Mr. Chairman, I would just like to
23 make a couple of comments relating to the issues that were
24 raised by YCS in its letter to the Board back I believe about
25 a month ago after the Kiewit contract was signed and the

Closing Argument By Mr. Landry

1 evidence that you heard yesterday.

2 May I start this by saying for somebody like
3 myself that appears before regulatory tribunals very often
4 that I have empathy for a lay-type of intervenor like YCS and
5 trying to come up to speed with the type of technical
6 information that is inevitably brought before boards such as
7 this. And I would also say that Yukon Energy has shown in
8 the past and continues to support intervenors to be actively
9 involved processes such as this to test all applications that
10 Yukon Energy brings before this Board.

09:57

11 Unfortunately, Mr. Chairman, as I'm sure the
12 members of the Board understand, the letter that was sent to
13 the Board by the YCS got a life of its own outside of this
14 process. Given what we heard yesterday and the letter
15 itself, it arose because YCS was surprised, I think was the
16 words we heard yesterday, that Yukon Energy had entered into
17 a contract with Kiewit prior to the close -- and these are my
18 words -- of these proceedings.

19 Ignoring for the moment the issue of who said
20 what and the suggestions that were put in the opening
21 statement, the difficulty with the letter and what arose
22 after the letter -- and the Board can read the press that was
23 put in as an exhibit yesterday. The problem with that is
24 that the suggestion of surprise unfortunately is not in
25 keeping with the evidence that was before this tribunal.

09:58

Closing Argument By Mr. Landry

1 The evidence that was before you and had been
2 before you since the application was sent to you by the
3 Minister was indeed that contracts would be entered into
4 prior to this proceeding finishing. It was clearly set out
5 in the application -- the references have been put in
6 there -- that in fact there would be contracts entered into
7 with the contractor, an MOU contract, a contract entered into
8 with a turbine supplier, and ultimately a contract entered
9 into with the contractor prior to this process being
10 completed. There should have been no surprise. That
11 evidence was clearly on the record at the time. That created
12 its own problem and frustrations, as you can hear, from Yukon
13 Energy.

09:59

14 Another issue that arose out was an issue
15 relating to the evidence of YCS, and you can see again this
16 in the press clipping, where there was a suggestion that
17 Yukon Energy was dewatering Mayo River. That allegation,
18 which is in both the YCS evidence and in some of the press
19 reports, is just categorically incorrect, and the evidence
20 was on the record to show that that was not the case.

10:00

21 Yukon Energy is not dewatering Mayo River. In
22 fact, the proposal presented by Yukon Energy -- and this was
23 evidence on the record; it's in the YESAB draft screening
24 report -- is that the minimum flows on the Mayo River will be
25 increased, not decreased, in the relevant section from, you

Closing Argument By Mr. Babyn

1 heard yesterday, 2.8 CMS to 5 CMS during the winter and 6 CMS
2 during the summer.

3 So it was those two issues that created the
4 difficulties that arose after the letter was filed, and that
5 is the reason why the points were made in the opening. Again
6 I emphasize that is not an attempt to suggest that Yukon
7 Energy does not appreciate having intervenors before this
8 process. It's really an attempt to say that Yukon Energy
9 respects this process, and it was important to emphasize to
10 this Board what was the evidence that was on the record at 10:01
11 that time.

12 So, Mr. Chairman, with those comments, that is
13 the conclusion of Yukon Energy's argument.

14 THE CHAIR: Thank you very much,
15 Mr. Landry.

16 I guess we still have time here before the
17 break. So YECL, did they want to make any arguments? If you
18 can come up to the ...

19 You can proceed when you're ready, Mr. Babyn.

20 CLOSING ARGUMENT BY MR. BABYN:

21 MR. BABYN: Good morning.

22 THE CHAIR: Can you introduce yourself for
23 everybody?

24 MR. BABYN: Sure. I will. Good morning,
25 Mr. Chair, members of the Board. My name is Jerome Babyn,

Closing Argument By Mr. Babyn

1 and I'm with Yukon Electrical Company, and we'll be making
2 our final statement.

3 In accordance with the Board schedule
4 regarding Yukon Energy Corporation's Mayo B application, the
5 Yukon Electrical Company participated in the process through
6 a submission of a number of interrogatories, review of
7 interrogatories by other intervenors, including the City of
8 Whitehorse, the Utilities Consumer Group, the Yukon
9 Conservation Society, as well as those of the Yukon Utilities
10 Board, and we did an examination of the responses provided by 10:03
11 Yukon Energy Corporation. In addition, we attended this
12 hearing and reviewed hearing transcripts as they were
13 available. And further on, we will talk a little bit about a
14 number of matters that we feel warrant some comment.

15 In addition, Yukon Electrical is generally
16 supportive of a number of the positions advanced by other
17 intervenors in this proceeding which serve to ensure that the
18 best interests of ratepayers are taken into consideration in
19 the application. In fact, it's obvious from the nature of
20 many of the questions asked that intervenors are concerned 10:03
21 about the project's scope, the potential project benefits,
22 the ability of the proponent to deliver the project as
23 applied for and ultimately cost overruns that may be passed
24 on to ratepayers.

25 While Yukon Electrical will provide comment on

Closing Argument By Mr. Babyn

1 certain of these areas, the failure to address any specific
2 matter should not be interpreted as concurrence with the
3 positions advanced by YEC on any of these issues.

4 In a number of IRs, Yukon Electrical and other
5 intervenors were looking for clear articulation of the
6 benefits of Mayo B to ratepayers. Once one navigated the
7 trail of references provided by YEC, it became clear that two
8 benefits that this project hinge on are that it is a
9 renewable energy source rather than diesel generation, and
10 that as a result there would be an offset of greenhouse gas 10:05
11 emissions that would result, you know, had diesel been chosen
12 as an option. And these are important benefits that should
13 be considered.

14 However, there are no more important -- there
15 are other aspects that are just as important to this project,
16 including a proper detailed analysis of the alternatives, a
17 realistic load forecast as well as a detailed project
18 management plan.

19 On the surface, customers are led to believe
20 that the no-cost capital contribution provided by the 10:05
21 government have to be taken advantage of. That does not
22 preclude the fact that even with this aspect firmly in place
23 there are many other factors that could render the project as
24 not in the best interest of customers over the long term.

25 Yukon Energy is on the record in this

Closing Argument By Mr. Babyn

1 proceeding, as well as in the public media, as saying that
2 this project will not cost ratepayers anything.

3 Yukon Electrical is concerned that ratepayers
4 may be confused by these statements as YEC's application,
5 pages 34 to 45, include several fine footnote references.
6 They present many scenarios where, in fact, customers could
7 be exposed to increased costs.

8 Yukon Electrical is also aware that this
9 application before the Board is not for inclusion of Mayo B
10 costs into rate base. However, intervenors and the Board 10:06
11 must be satisfied that key points are not excluded from the
12 record.

13 Although the Carmacks-Stewart Transmission
14 Project Stage 2, or the CSTP 2, as I'll refer to it, is not
15 the focus of the application, it cannot be thought of in
16 isolation from Mayo B project as YEC has linked them together
17 on many occasions throughout its application and have
18 certainly been the topic of discussion over the last couple
19 of days. In fact, YEC indicates that with Mayo B, and
20 through the connection of the two grids by the CSTP 2, there 10:06
21 will be an opportunity to move surplus power where it is
22 required.

23 Yukon Electrical, in its IR-YECL-YEC-1-4 and
24 in several questions it asked in the 2008-2009 YEC GRA
25 proceeding, asked YEC for the specific benefits that the grid

Closing Argument By Mr. Babyn

1 connection will provide to the WAF grid. These questions
2 were not answered adequately. In other words, the connection
3 of the Mayo B may provide very little technical benefit to
4 the vast majority of customers in Whitehorse and area.

5 Many people have told us that they believe
6 that the Whitehorse grid would receive some very significant
7 support from the Mayo hydro in the event that there was an
8 outage on the WAF grid. However, this has not been confirmed
9 by YEC.

10 Based on Yukon Electrical's experience,
11 projects such as Mayo B and the CSTP 2, due to the low
12 voltage of the system, a 69 kV line tied to the 138, and
13 because of the vast kilometres of transmission infrastructure
14 moving into the southern Yukon, it would provide very little
15 in the way of reliable improvements or redundancy for the
16 majority of the customers on the WAF grid.

10:08

17 If one considers reliability as one of the
18 cornerstones of a utility's obligation to serve, then this
19 fact should be of great concern to all Yukon customers and of
20 significant importance to the approval of the Mayo B project.

10:08

21 Yukon Electrical was not formally consulted
22 and did not have input per se into the wholesale sales
23 forecast presented by YEC in these proceedings. We've heard
24 during the hearing that YEC's load forecast is conservative
25 and is somewhat based on industrial load growth, which by its

Closing Argument By Ms. Kellgren

1 nature can be transient and can negatively impact customers
2 who are left behind when the mines go away.

3 Although asked for, there is no evidence on
4 the record that Mayo B and the CSTP No. 2 will improve
5 reliability for Yukon customers on the WAF grid and, in fact,
6 it would decrease reliability potentially by exposing
7 customers to potential power quality disturbances that are
8 not uncommon with the addition of industrial customers to any
9 grid.

10 Mr. Chair and members of the Board, this
11 concludes my statement on behalf of Yukon Electrical and I
12 thank you for your time this morning.

13 THE CHAIR: Thank you very much,
14 Mr. Babyn, for your presentation.

15 I would call on the City of Whitehorse for
16 their arguments.

17 CLOSING ARGUMENT BY MS. KELLGREN:

18 MS. KELLGREN: Good morning, Mr. Chair, Board
19 members. As many of you know, the City of Whitehorse
20 represents approximately 75 percent of the Yukon's
21 residential population and commercial interests, and it is in
22 the interest of these ratepayers and the municipality itself
23 that the City has intervened in this matter.

24 Based upon the information and assumptions
25 provided by YEC in its application, information responses and

10:09

10:10

Closing Argument By Ms. Kellgren

1 through cross-examination, the City is largely in favour of
2 the Mayo B project and submits that the Board should provide
3 a report to the Minister that is in favour of certification
4 of this project.

5 The city's support of this project is based
6 primarily on two factors: One, the availability of
7 significant funding and contributions for this project and
8 the risk-reducing flexible financing that YEC has indicated
9 that YDC has committed itself to; and two, the displacement
10 of diesel generation on the grid with the long-term positive 10:11
11 environmental and financial effects.

12 However, and as noted by YEC and my friends
13 before me, with this project comes attenuating risks. It is
14 the risks of this project that the City requests the Board to
15 address in its recommendations to the Minister in the hopes
16 that the Minister will issue the energy project certificate
17 with certain conditions imposed upon YEC as contemplated
18 within section 42(1)(b) and 42(2) of the *Public Utilities*
19 *Act*.

20 It is the city's understanding based on 10:11
21 statements made by YEC's panel during cross-examination that
22 many of these conditions are already contemplated by YEC.
23 However, the City would feel more comfortable if these
24 matters formed conditions of the energy project certificate
25 and were mandated by the Minister as opposed to simply

Closing Argument By Ms. Kellgren

1 forming the best intentions of YEC at present.

2 The City would like the Board to recommend
3 that the following conditions be included in the energy
4 project certificate for Mayo B issued by the Minister.
5 First, YEC has indicated in cross-examination that they
6 intend to bring a new general rate application prior to Mayo
7 B coming into service. The City would like this to be a
8 condition of the certificate.

9 Second, the City would like the YUB to
10 recommend that YEC be required to perform an updated LOLE
11 analysis prior to this new rate application. The City wishes
12 to have the necessary information available to the Board at
13 the next rate application with respect to how much diesel
14 capacity is still required on the integrated grid and whether
15 there is, in fact, any opportunity to delay refurbishment of
16 certain diesel generation facilities as discussed by YEC
17 during cross-examination or whether mothballing or
18 decommissioning any diesel generation facilities is required
19 or possible at that time.

20 Third, the City requests the details of the
21 proposed flexible financing instrument with YDC be finalized
22 and made public at the time of the new general rate
23 application. This is to allow intervenors to properly
24 examine the terms of this debt arrangement and the conditions
25 thereof.

10:12

10:13

Closing Argument By Ms. Kellgren

1 Fourth, in light of YEC's confirmation that
2 any greenhouse gas emissions from Mayo B would, at most, be
3 negligible, the City would like the YUB to encourage the
4 Minister to direct YEC to properly market and sell available
5 carbon credits with the assumption, as confirmed by YEC
6 during cross-examination, that these sales would be a revenue
7 credit and that ratepayers would thus ultimately reap the
8 benefit of such sales.

9 Further, although not necessarily a further
10 condition of the Mayo B certificate, the City would like to
11 see YEC make a stronger commitment to developing DSM
12 measures, including canvassing the possibility of investment
13 and smart metering infrastructure.

10:14

14 The City is in agreement with YCS that
15 additional generation is not always the answer. As stated by
16 the YEC panel and then once again by my friend this morning,
17 the Mayo B project is not a panacea for the problems
18 associated with diesel generation. And with the
19 acknowledgment that DSM measures are not strictly within the
20 confines of the certification application in that the City
21 does not submit that DSM measures could replace the future
22 need for the Mayo B project at this time. The City believes
23 that YEC must now make a stronger commitment to implementing
24 DSM measures.

10:14

25 The City would also like to support the Yukon

Closing Argument By Ms. Kellgren

1 Conservation Society's submissions with respect to the
2 desirability of exploring and instituting other forms of
3 green generation or green energy in the future. However, the
4 City notes that wind power does not appear to be a reasonable
5 alternative to the Mayo B project at this time on the basis
6 that Mayo B is substantially funded by the Federal and
7 provincial governments with the reality that ratepayers will
8 be bearing only a portion if we take YEC's assumptions less
9 than one-third of the costs associated with Mayo B.

10 As acknowledged by YCS in our very brief
11 cross-examination, the same is not true with respect to any
12 current proposal for a wind power facility. The City is not
13 against wind power or any other renewable resource. Quite
14 the opposite is true. However, at this time it becomes a
15 question of what the ratepayers can reasonably be expected to
16 bear.

10:15

17 The City would like to encourage YEC to
18 consider wind power, along with other green alternatives, to
19 diesel generation going forward in the hopes that these
20 sources of power, along with DSM measures, will complement
21 Mayo B and eventually do away with the need for diesel
22 generation on the grid altogether.

10:16

23 In closing, the City notes that the Federal
24 funding agreement is subject to some rather strict timelines,
25 as noted by my friend earlier as well, which YEC has stated

Closing Argument By Ms. Kellgren

1 requires them to begin construction in May or early June of
2 this year. As such, the City submits that the deliberations
3 of this Board and the recommendations to the Minister should
4 not consider delaying the project while other alternatives
5 are canvassed in greater depths or to allow for parties to
6 further investigate the needs and effects of this project.

7 It is the city's position that this project
8 should either (a) be certified in an expedient fashion to
9 allow YEC to meet the deadline imposed by the Federal
10 financial agreement; or (b) to decline to certify the
11 project, much as an either/or option.

10:16

12 It is the city's position that the former,
13 namely the application for certification of the Mayo B
14 project, be allowed with the caveats that the City proposed,
15 that the city's proposed conditions be included in the
16 certification. This should allow, as discussed by
17 Mr. Morrison, YEC to proceed with this project in an
18 efficient manner, incurring only prudent costs, which will
19 then be subject to review in a future GRA.

20 Thank you.

10:17

21 THE CHAIR: Thank you very much.

22 Mr. Buonaguro, do you know how long your
23 argument is, approximately, because we're 15 minutes before
24 recess, and so we can either recess now and come back or we
25 can finish -- make your arguments.

Closing Argument By Mr. Buonaguro

1 MR. BUONAGURO: Yes, that's fine.

2 Good morning. I can tell you it's eight pages
3 and that if I go over 15 minutes, it won't be by much. So I
4 think it's worth it to just go on.

5 THE CHAIR: No, go ahead and proceed.

6 It's a good use of time.

7 CLOSING ARGUMENT BY MR. BUONAGURO:

8 MR. BUONAGURO: Thank you.

9 I would first like to thank the Board on
10 behalf of the Utilities Consumers Group for the opportunity
11 to participate in this hearing process. It is our hope that
12 the Board has been assisted by our participation to the
13 interrogatory and oral hearing phases of this proceeding and
14 that the Board will find our final submissions helpful in its
15 deliberations.

10:18

16 According to the Minister's Terms of
17 Reference, the purpose of this review and hearing is to
18 obtain the YUB's report and recommendations on the potential
19 benefits, costs, risks, and customer impacts that influence
20 whether proposed Mayo B project should proceed as proposed by
21 Yukon Energy.

10:18

22 UCG respectfully submits that the particular
23 circumstances surrounding this proceeding serve to narrowly
24 define what the Board is being asked to do.

25 UCG submits, and it is plainly conceded by

Closing Argument By Mr. Buonaguro

1 Yukon Energy, that the project at a cost of \$120 million to
2 ratepayers is simply not feasible. The realities of the
3 current customer base and the existing infrastructure are
4 such that the benefits from the proposed Mayo B project
5 simply cannot outweigh the costs from a ratepayer
6 perspective. As a result, this project can only come before
7 this Board as feasible on the precondition that the bulk of
8 the costs would be provided by third parties and not by
9 ratepayers. In this case, that external funding comes from,
10 as we've heard repeatedly, the Federal and territorial
11 governments, who together have committed up to \$83.5 million
12 in funds, financing approximately 70 percent of the estimated
13 cost of the proposed project.

10:19

14 The Federal and territorial governments have
15 committed these funds on the basis of a criteria other than
16 cost-effectiveness including consideration of such factors as
17 economic development, the reduction of greenhouse gas
18 emissions, increasing the availability and/or reliability of
19 Canada's clean energy supply, increasing the availability of
20 renewable and other clean energy, and improving air quality.
21 And those are found in the application at Appendix E14 and
22 F1.

10:20

23 In relaying the funding commitment to these
24 various factors, there's no commitment to any particular
25 threshold or targets to be met by the project, such that

Closing Argument By Mr. Buonaguro

1 there's no basis for the Board, this Board, to evaluate the
2 relationship between the stated criteria for the funding and
3 the level of funding committed. And there's a transcript
4 reference as Volume 1, pages 146 to 148 for discussion about
5 whether or not there are thresholds involved in this funding.

6 As a result, it is clear, UCG submits, that
7 the Board is not being asked to review the appropriateness of
8 the Federal and territorial decisions to commit \$83.5 million
9 in funds to this project. Rather, UCG submits, this Board
10 can only be asked to make recommendations relating to whether 10:20
11 the remaining spending on the project estimated at \$36.5
12 million can be passed on to ratepayers in an appropriate
13 manner and, if so, how.

14 To that end, UCG would like to make the
15 following submissions with respect to some of the issues that
16 the Board should consider when deciding on the
17 appropriateness of the Mayo B project spending with
18 recommendations on how those issues could be dealt with. I
19 wasn't going to say this explicitly, I thought it may have
20 been implicit, but YEC all said it, so I'm going to too. 10:21

21 Similar to what they've said, the failure of
22 UCG to comment on any particular issue or piece of evidence
23 should not be construed as necessarily supporting their
24 position on it. Rather, we are looking to focus on certain
25 specific issues that we are interested in in terms of how

Closing Argument By Mr. Buonaguro

1 this Board should view the project and recommendations on how
2 those issues can be dealt with.

3 Now, I would like to start with some comments
4 on the need for the project. The Board has been asked to
5 report on and make recommendations about the necessity for
6 the proposed Mayo B project and its timing and design under
7 various reasonable electrical forecasts.

8 UCG believes that the Board should be clear in
9 its consideration of the proposed Mayo B project, that the
10 project does not specifically address a need in the sense 10:22
11 that there is a load that will not be met in the near term.
12 According to Yukon Energy's application, and this is at page
13 22, and I'll read the quote:

14 "At its core, the need for the project
15 reflects an opportunity available today
16 to reduce diesel generation in a
17 cost-effective and timely manner.
18 Without the project, existing Yukon
19 generation and transmission facilities,
20 as reviewed in Attachment C, will still 10:22
21 be able to supply forecast WAF/MD grid
22 generation, energy load forecasts for
23 many years to come by relying on
24 existing diesel generation facilities."

25 Also, at page 24 of the application, YEC

Closing Argument By Mr. Buonaguro

1 asserts:

2 "The requirement to proceed with Mayo B
3 at this time is not directly tied to
4 the timing of a specific emergent
5 industrial load such as Minto mine in
6 the case of CSTP Stage 1, but is
7 defined by the opportunity available
8 with ongoing non-industrial load growth
9 plus the existing Minto and emergent
10 Alexco mine loads to secure low risk
11 and cost-effective assets for the near
12 term as well as long-term benefits of
13 ratepayers due to Federal and other
14 funding commitments."

10:23

15 Accordingly, the term "need" relates to the
16 window of opportunity for the project, which is to say that
17 the price tag of the project relative to the Yukon system
18 which it is to serve is so high they can only be contemplated
19 in the context of external capital funding of the type and
20 level that is being proposed by the Federal and territorial
21 government.

10:23

22 As it stands, this project is premised on a
23 Federal government policy decision to advance over
24 \$50 million, a Yukon government policy decision to advance
25 over \$30 million, and a further Yukon government decision

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1 through the YDC to take on the risk that the Carmacks Copper
2 load, or a load of its size, does not materialize as
3 anticipated in the business case. UCG believes that it is
4 appropriate when considering whether to recommend that the
5 proposed project go forward that the YUB specifically note
6 that: (a) The project, at a \$120 million cost, is simply not
7 cost effective given the realities of the existing system and
8 customer base from a ratepayer perspective; (b) That despite
9 the fact that the project is, overall, not cost effective,
10 the Federal and territorial governments have made specific
11 policy decisions resulting in specific advances of funds to
12 the proposed project; (c) That with respect to those
13 advances, the YUB does not purport to provide support for the
14 rationale underpinning the decisions of the Federal and
15 territorial government policy; the Federal and territorial
16 governments remain responsible for those decisions; and (d)
17 That the YUB's role in this proceeding is to examine the
18 remaining cost to ratepayers as a result of the proposal in
19 light of the specific policy decisions advanced by the
20 Federal and territorial governments.

10:24

10:25

21 In summary, in UCG's view the cost
22 effectiveness of the proposed Mayo B project at \$120 million
23 is unchanged by these policy decisions of the two respective
24 governments. Those decisions are political in nature and
25 based on criteria other than cost effectiveness, and

Closing Argument By Mr. Buonaguro

1 therefore fall outside the role of the YUB in this
2 proceeding. As such, the responsibility for those decisions
3 rests with the Federal government, the territorial
4 government, and the YDC.

5 I would like to make some comments with
6 respect to risk associated with the Federal funding. YEC
7 explains that they are under an obligation to substantially
8 complete the proposed Mayo B project by the end of March 2012
9 in order to be eligible for up to \$53.5 million in funding
10 from the Federal government.

10:26

11 In response to UCG-YEC-1-14, lines 23 to 25,
12 YEC states:

13 "Substantial completion under the
14 Federal Contribution Agreement is as
15 defined in that agreement, it 'occurs
16 when the Project can be used for the
17 purposes for which it was intended.'"

18 Now, UCG understands from YEC's evidence, and
19 this is at the same transcript reference, transcript
20 Volume 1, pages 146 to 148 that I referred to earlier, that
21 the Federal funding agreement is not based on any hard
22 targets such that the mere fact that it provides hydro
23 electric energy in lieu of an unspecified amount of diesel
24 generation appears sufficient to warrant the funding.

10:26

25 However, if the intention of the proposed Mayo

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1 B project is to displace diesel generation specifically, UCG
2 would remain concerned that until mine loads are actually
3 added it may be difficult to determine that material
4 displacement has taken place.

5 I would like to make some comments now on the
6 project costs. In response to YUB-YEC-1-31, YEC confirms
7 that the accuracy of the \$120 million cost estimate is within
8 plus 20 percent minus 10 percent of final costs, or between
9 \$108 million and \$144 million. UCG assumes that that amount
10 of the proposed project destined for Yukon Energy's rate base 10:27
11 will be between \$32.85 million and \$43.8 million based on the
12 current estimate.

13 It was confirmed in the oral hearing that,
14 despite the high confidence that YEC expresses with respect
15 to its forecast costs, there is the potential for variability
16 that could result in overruns in costs that would have to be
17 explained.

18 During discussions on cross-examination with
19 respect to the Kiewit contract, which accounts for over
20 \$80 million of the forecast costs, it was determined that 10:28
21 cost overruns will be shared 50/50, and the contingencies
22 identified in the evidence are largely an estimate of the
23 variability in the underlying line-by-line items in the
24 contract. And that discussion is at transcript Volume 1,
25 pages 191 to 195.

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1 Consistent with Yukon Energy's opening
2 statement, UCG submits that it is important to acknowledge
3 that this proceeding is not a general rates application. So
4 while there may be approval of the proposed project concept
5 at this stage, it is not approval of the prudence of the
6 actual spending.

7 UCG submits that if the proposed project goes
8 forward Yukon Energy will need to provide a convincing
9 business case demonstrating the prudence of its actual
10 spending to allow the actual costs to be added to rate base, 10:28
11 particularly to the extent that the final costs are in excess
12 of the costs in this process if that were the case.

13 UCG also submits that if this proposed project
14 does not go forward, any costs incurred outside typical
15 project planning should be absorbed by the utility and not
16 recovered from ratepayers. If the utility has taken upon
17 itself to incur costs for equipment or signed services
18 contracts for anything beyond engineering planning because
19 it's become constrained by a March 2012 deadline, UCG
20 respectfully submits that ratepayers should not be 10:29
21 responsible for these costs if the project does not move
22 forward. However, UCG acknowledges that YEC has provided
23 testimony in this hearing suggesting that the contracts that
24 have been signed are contingent on the various project
25 approvals that are required, such that it is hoped that there

Closing Argument By Mr. Buonaguro

1 should be no such costs. And the discussion of that is at
2 transcript Volume 1, pages 187 to 189.

3 I have a comment with respect to previous
4 Board recommendations with respect to energy project
5 certificates. UCG submits the Board has previously
6 established recommendations on preconditions for awarding
7 Energy Project and Energy Operation Certificates -- for
8 example, that there should be a firm commitment to connect a
9 major industrial load and that there be no adverse impacts to
10 other ratepayers -- without suggesting that it would be okay 10:30
11 to meet one condition and not the other. UCG submits that
12 these are conditions that the Board requires be met before
13 recommending that a project move forward.

14 With respect to the proposal for the Mayo B
15 project, it appears that the YDC has specifically taken on
16 the risk that no new mine load is committed, such that for the
17 purposes of the business case analysis the YUB is expected to
18 assume that a Carmacks Copper-type load exists from 2012 to
19 2018. And that's at transcript Volume 1, pages 156 to 163.
20 UCG would suggest that this amounts to a further policy 10:31
21 decision by the territorial government which effectively
22 would meet that particular condition that has been previously
23 expressed by the Board.

24 With respect to the Mayo Lake drawdown
25 proposal, in response to UCG-YEC-1-2, YEC states, and I think

Closing Argument By Mr. Buonaguro

1 we've heard it again today:

2 "To clarify, the issue of the
3 additional 1 metre drawdown of Mayo
4 Lake is not included in the Mayo B
5 project as defined in OIC 2009/220 and
6 is not included in the Mayo B project
7 under review at the YESAB."

8 UCG submits that the proposed Mayo B project
9 should be evaluated without the additional 1-meter drawdown.
10 To that end, we understand that YEC is confident that the 10:31
11 economics of its proposal justify the project with or without
12 additional drawdown in any event. However, if the Board
13 determines that the Mayo B project proposal cannot be
14 recommended without the additional drawdown, UCG submits that
15 it would appropriate to consider a recommendation that the
16 project certificate be made conditional on YEC obtaining
17 approval for the additional drawdown.

18 I have some comments on the project financing
19 proposal. With respect to the proposed flexible debt
20 financing with YDC, UCG believes that the Board should 10:32
21 consider the proposal at the concept level and not
22 necessarily the detailed level; that is, UCG thinks that it
23 would appropriate for the Board to either approve or reject
24 the concept of a mechanism that defers rate impacts in
25 earlier years to later years to mitigate rate impacts without

Closing Argument By Mr. Buonaguro

1 necessarily tying that approval or rejection to the flexible
2 debt mechanism proposed by Yukon Energy. And there's a
3 discussion of that in the transcript, Volume 1, pages 172 to
4 174.

5 UCG believes that in the event the concept is
6 approved the details of the proposed mechanism and
7 alternatives, such as deferral account treatment, which was
8 discussed briefly in the transcript reference that I
9 mentioned, should be reviewed and presumably considered in
10 the next general rates application. UCG notes, for example,
11 that there would need to be a mechanism for verifying the
12 annual cost benefit analysis proposed by YEC if the project
13 is approved and that, for example, a deferral account
14 mechanism would allow for such a review on clearing the
15 account.

10:33

16 I have some comments on project alternatives.
17 With respect to alternatives, UCG respectfully submits that
18 the nature of this proposal is such that the Board and
19 intervenor hands have been effectively tied in terms of
20 proposing alternatives. Because the project is opportunity
21 based and because that opportunity is tied to the influx of
22 over \$80 million in external funds tied to this particular
23 project, parties are tasked with proposing alternatives that
24 cost in the order of \$36.5 million that generate benefits of
25 the proposed Mayo B project, even though it actually cost

10:33

Closing Argument By Mr. Buonaguro

1 \$120 million.

2 With great respect, the time for proposing
3 alternatives to the project in a useful way would have been
4 at the time a proposal for Federal funding was being
5 considered, such that similar external funding could have
6 been considered for other projects. As it is, the external
7 funding that is available is tied to this project. UCG
8 concedes that in this particular case the result may have
9 been the same or similar in terms of conclusion based on, for
10 example, the shovel readiness of this proposal as compared to 10:34
11 other alternatives. That's at transcript Volume 2, pages 274
12 to 276.

13 Despite the situation UCG has two points to
14 raise for the Board's consideration going forward. Yukon
15 Energy has assumed that only customers isolated from the grid
16 would be supplied by onsite diesel generation with all costs
17 being excluded from YUB consideration for the purpose of
18 Yukon-wide regulated rate setting; which would be in
19 accordance with OIC 1995/90. YEC also states that it has an
20 obligation to serve all customers that request electrical 10:35
21 service within areas presently served by YEC. That was at
22 response to YUB-YEC-1-37 (d), footnote 1.

23 UCG submits that while YEC may have an
24 obligation to serve, it does not have an obligation to serve
25 from a grid if alternative methods are more viable and cost

Closing Argument By Mr. Buonaguro

1 effective for transient loads like those of mines. The pure
2 economics, especially from a ratepayer perspective, of onsite
3 diesel generation are clearly cheaper than the proposed
4 \$120 million project, without external funding. This is one
5 of the alternatives that should have been evaluated more
6 completely before decisions were made to apply for funding
7 for green supply and alternatives.

8 The other issue under alternatives that we
9 would like to raise is Yukon Energy's approach to supply side
10 options only instead of the demand-side solutions that could 10:36
11 be used to displace diesel generation. Yukon Energy's
12 position on demand-side management options was summarized in
13 its 20-year Resource Plan, which noted that to meet capacity
14 requirements "major new DSM initiatives or various other
15 potential new generation technologies are not typically
16 considered by utilities to provide reliable capacity towards
17 meeting near term capacity shortfalls of the type forecast in
18 Yukon." And that's page 4-38 of their Resource Plan
19 application.

20 However, with regard to longer term bulk 10:36
21 planning issues, the Resource Plan noted that Yukon Energy
22 would possibly need to give greater consideration of DSM, in
23 particular where industrial load scenarios provide for
24 sustained 10 megawatt mine loads extending past 2016. At
25 page 12 of the 20-year Resource Plan it was noted in

Closing Argument By Mr. Buonaguro

1 particular that "If loads of this scale and duration develop,
2 further consideration will be given to DSM programming
3 focused primarily on reduction of system peak demand."

4 Despite Yukon Energy's previous position, it
5 doesn't appear to UCG that demand-side options were given
6 proper consideration in their development of the proposed
7 Mayo B project proposal. In particular, UCG is concerned
8 that the demand-side management activities related to the
9 assumed mine loads, with or without input from YEC, has the
10 potential to alter the load assumptions underpinning the
11 economics of the project, as set out under the various
12 scenarios in response on YUB-YEC-1-25.

10:37

13 For example, there was a discussion in the
14 transcript at Volume 2, pages 131, 137 about the possibility
15 that mine loads could come on and then undertake certain DSM
16 measures which could materially affect the energy
17 consumption.

18 Accordingly UCG submits that the Board should
19 consider the ability of the proposal to adapt to changes in
20 the underlying base case relating to DSM measures to continue
21 to provide relief against rate increases associated with the
22 Mayo B spending.

10:38

23 I would like to talk about rate impacts. The
24 various policy decisions affecting this project create a
25 narrow focus for the YUB's role in this proceeding, as I've

Closing Argument By Mr. Buonaguro

1 set out previously, which is to ensure that the project
2 spending after all contributions does not increase rates.
3 Accordingly, the YUB should recommend that a condition of the
4 project be that, as proposed by YEC, any net costs related to
5 the project in any year will not be recovered by YEC until
6 matched by net benefits in subsequent years, whether through
7 the use of flexible debt financing, a deferral account, or
8 some other mechanism. This is, we believe, YEC's general
9 proposition.

10 The YUB could also go on to make explicit what 10:39
11 is already implicit, that the project cannot proceed unless
12 the environmental and socio-economic effects of the project
13 are confirmed and addressed through the YESAB and other
14 regulatory processes.

15 UCG notes that the entire rate impact
16 analysis, included in evidence, is based on revenue
17 projections that rely on the existing rate structure, a
18 structure that is being reviewed in Phase 2 of the YEC
19 2008/2009 GRA proceedings. To the extent that the Board's
20 decision in that proceeding may support a materially 10:39
21 different allocation of costs between customer classes,
22 including industrial customers, that is currently implicit in
23 existing rates, and in recognition of the fact that current
24 restrictions on cost base rates may not persist beyond 2012,
25 the Board should make recommendations that allow for the

Closing Argument By Mr. Buonaguro

1 adaptation of the project proposal to account for possible
2 rate structure changes if and when YEC comes to the Board to
3 account for the project in rates.

4 UCG submits that recommendations that
5 recognize that the rate structure may change and impact on
6 the project's cost benefit analysis and accordingly approve a
7 proposal concept rather than tie it to a specific scenario
8 would be appropriate. For example, it may be that the Board
9 recommends that the project be approved for certificate based
10 on the analysis proposed before it in the application, but do 10:40
11 so by recommending at a high level that the concept of the
12 residual project costs should be funded by ratepayers without
13 related rate increases, such that the proposal can be adapted
14 later if necessary.

15 UCG submits that beyond the impacts of the
16 proposed Mayo B project the Carmacks-Stewart Transmission
17 Project Part 2 and Aishihik Third Turbine costs will also
18 increase rates that will need to be considered in the next
19 general rates application. These and other upward forces on
20 rates should be considered as relevant context if the Board 10:41
21 accepts the general proposal that a 10- or 11 -cent index for
22 mitigation purposes be adopted.

23 So, for example, if rates outside of the
24 impact of the Mayo B project, assuming it's approved, are
25 otherwise going up as a result of other projects, like the

Closing Argument By Mr. Buonaguro

1 Part 2 project and like the Aishihik Third Turbine costs,
2 this would support a lower index, i.e., something closer to
3 10 cents, and therefore more mitigation related to the
4 proposed Mayo B project.

5 In response to YUB-YEC-1-25 Yukon Energy
6 provided the levelized cost of energy for various scenarios
7 relating to the Mayo B project, but not one assuming that
8 Mayo B is not added; i.e., for the existing cost of energy.
9 UCG submits that a more complete analysis, including the LCOE
10 for the Yukon, without the proposed Mayo B facilities is 10:42
11 needed in order to understand how costs are changing,
12 presuming that the proposal is accepted. UCG submits that it
13 would be appropriate to require such a calculation in order
14 to allow the Board, in the event that it approves the
15 proposal, illustrate overall impact of the acceptance of the
16 project rates.

17 And I also have some general comments. First
18 I would like to comment on behalf of UCG on the timing and
19 process of reviewing the proposed Mayo B project. With
20 respect to process, UCG appreciates the fact that the YUB 10:43
21 within certain constraints provided for a hearing schedule to
22 facilitate the proper hearing of this application, while at
23 the same time balancing the need to comply with the
24 Minister's timeline. UCG also recognizes that the need for
25 an application and hearing does not arise until the Minister

Closing Argument By Mr. Buonaguro

1 designates the project for a Part 3 review.

2 However, the evidence is clear that the
3 proposed Mayo B project, as a \$120 million generation
4 project, was always going to require Part 3 review. It was a
5 \$120 million project in February 2009 when Yukon Energy filed
6 a project proposal submission with the Yukon Environmental
7 and Socio-economic Assessment Board's executive committee,
8 but it wasn't until November 25th, 2009 that the Yukon
9 government designated the proposed Mayo B project as a
10 regulated project so that a review under Part 3 of the Act
11 could be conducted.

10:43

12 UCG submits that the Part 3 review of this
13 proposed project was unnecessarily delayed and then crunched
14 into a tight time frame, it appears, because there does not
15 exist a transparent regulatory process required for the
16 submission of the project proposal by an entity, such as YEC,
17 and the timely designation of that project for Part 3 review
18 by the Minister.

19 It is UCG's belief that a Part 3 review
20 process would be most useful if commenced earlier in the
21 process and, if necessary, in stages rather than conducted
22 entirely at the end of the company's planning process. UCG
23 understands that YEC's evidence is that it could not have
24 advanced the proposal in its final form until approximately
25 November of 2009. And that's discussed at transcript

10:44

Closing Argument By Mr. Buonaguro

1 Volume 1, pages 183 to 185.

2 However, UCG respectfully submits that to the
3 extent that the proposal is based on a conceptual framework
4 for the introduction of an amount of costs into rates without
5 rate impact, the YUB's input into issues such as appropriate
6 mechanisms and the amount of external funding that would be
7 required to make the project viable from a ratepayer
8 perspective, could have been useful earlier on in the
9 process, even if that meant the process would be spread out
10 over stages. Given the remarkable scope of the proposed
11 spending, UCG believes that an expanded process, particularly
12 for a project of this scale, would have been appropriate.

10:45

13 Accordingly UCG believes that it would be
14 appropriate for the Board to recommend that a formal process
15 and deadlines for the submission of potential Part 3 projects
16 and a designation of those projects is either requiring or
17 not requiring a Part 3 review be considered by the Minister
18 in order to provide more transparency and predictability with
19 respect to whether and when certain projects are being
20 considered for a Part 3 review and that a process for
21 obtaining recommendations from the Board earlier on in the
22 process, possibly multiple phases, be considered, especially
23 for projects of this magnitude.

10:45

24 I think I may have mentioned this before, but
25 briefly with respect to the YESAB application. UCG

Closing Argument By Mr. Buonaguro

1 respectfully submits that the YUB does not have enough
2 information upon which to make a definitive recommendation to
3 the Minister about the proposed Mayo B project until the
4 environmental and socio-economic effects are determined and
5 the associated impacts on ratepayers are known. We
6 understand, particularly from the evidence and from YEC's
7 opening statement today, that they're very confident about
8 the impacts of any potential decision having been accounted
9 for in their proposal.

10 However, UCG submits that it would be
11 reasonable for the YUB to recommend that any approval of the
12 proposed Mayo B project be interim so that any material
13 changes, if they occur, as required by the YESAB final
14 decision can be considered by this Board.

10:46

15 Lastly, UCG respectfully submits that the
16 territorial government should carefully consider the
17 recommendations of the YUB on the proposed Mayo B project and
18 raises a concern about how previous recommendations appear to
19 have been considered.

20 In it's May 31st, 2007 report to the Minister
21 on the Carmacks-Stewart transmission line project the YUB
22 stated:

10:47

23 "The Board's view is the same as that
24 expressed in the YEC 20-Year Resource
25 Plan Report, that is, YEC should not

Closing Argument By Mr. Buonaguro

1 pursue Stage Two of the CSTP unless
2 there is a firm commitment to connect a
3 new mine load, and under the condition
4 that ratepayers would not be adversely
5 affected."

6 And further:

7 "The Board recommends that Energy
8 Project and Energy Operation
9 Certificates not be issued for
10 Stage Two until such time as the above
11 two conditions are met (there is a firm
12 commitment to connect a major
13 industrial load such as the Carmacks
14 Copper Mine and there will be no
15 adverse impacts to other ratepayers).
16 When the conditions are met, the Board
17 recommends that a joint Part 3 and PPA
18 process take place."

19 Now, prior to the October 2009 issuing of the
20 certificates for the CSTP Phase 2 project there was no firm
21 commitment to connect to a new mine load, as was outlined as
22 a condition by the YUB, nor was there, to UCG's knowledge, a
23 separate Part 3 review or a formal explanation for the
24 departure from the YUB recommendations.

25 UCG acknowledges that the Part 3 process

10:48

10:48

Closing Argument By Ms. Wright

1 contemplates recommendations from the YUB to the government,
2 which the government may accept or reject as it sees fit.
3 However, having engaged stakeholders and the YUB in the
4 public forum to discuss and establish formal recommendations
5 with respect to a specific project or suite of projects,
6 whether in the Resource Plan proceeding or in a Part 3 review
7 proceeding, UCG respectfully submits that it would be
8 appropriate for the government to transparently advise
9 stakeholders if and when it is not following the Board
10 recommendation and its rationale for not doing so.

10:49

11 Subject to any questions the panel might have,
12 those are our submissions on behalf of UCG.

13 THE CHAIR: Thank you very much. Any
14 questions?

15 So we'll take a short 15-minute recess and
16 we'll return at -- I guess by my watch -- 5 after 11.

17 Thank you, Mr. Buonaguro.

18 (ADJOURNMENT)

19 THE CHAIR: Thank you. So I'll call on
20 Yukon Conservation Society to make their arguments.

11:12

21 CLOSING ARGUMENT BY MS. WRIGHT:

22 MS. WRIGHT: Mr. Chair, once again I call
23 upon my -- bringing my inexperience in process here. We did
24 not realize until yesterday that there would be no written
25 argument after this oral hearing. Is this true?

Closing Argument By Ms. Wright

1 THE CHAIR: That is correct.

2 MS. WRIGHT: Okay.

3 THE CHAIR: It's only oral arguments.

4 MS. WRIGHT: It's only oral. And YCS is
5 concerned that there are intervenors who are not here and not
6 participating in this oral hearing. They are registered
7 intervenors and have something to contribute to this process,
8 but by unfortunate circumstances -- well, fortunate for them,
9 they're on holiday -- but we feel that they had something to
10 contribute. And we were under the understanding at one point 11:13
11 that there was going to be written submissions, written
12 arguments at the end. So when -- one of the intervenors that
13 we know most about in particular is John Maisson from Leading
14 Edge. He is in Tasmania right now and will not be back until
15 the end of April.

16 We know that this process needs to move along,
17 we are very cognizant of that, and argument is a particular
18 thing that needs to be responded to, et cetera. So waiting
19 for him to come back to contribute is unfortunate that he
20 will not be able to contribute, and I think he has a lot to 11:14
21 contribute.

22 So it's probably unorthodox, I'm not really
23 sure, but we were hoping that you will consider his final
24 argument from the YEC 2008/2009 GRA. He put in an argument.
25 I don't know if it had -- it's on the website. And there's

Closing Argument By Ms. Wright

1 also a reply argument from John Maisson, so there's two
2 documents, and there was a lot in these documents that talked
3 about -- there are many points that he made in those
4 documents that are relevant to this proceeding, and I would
5 like to make sure that you are able to review those
6 documents.

7 Is that a possibility?

8 THE CHAIR: Well, we've heard -- sorry, go
9 ahead.

10 MS. BENTIVEGNA: Mr. Chair, sorry, maybe if I 11:15
11 can just interject. The fact is Mr. Maisson did register and
12 Mr. Maisson did send a letter saying he wasn't able to
13 participate.

14 Now, it was clear in the notice issued by the
15 Board that this was going to be oral argument, and at this
16 time bringing up argument that was made in another
17 proceeding, I don't think that the Board is able to consider
18 that. That was in the context of that proceeding and those
19 facts. This is a new proceeding and Mr. Maisson, although he
20 registered, did then advise he would not be able to 11:16
21 participate and the Yukon Conservation Society I don't
22 believe can speak for him unless they gave him -- he gave
23 them the mandate, and to bring in at this point argument from
24 another proceeding is very unorthodox.

25 MS. WRIGHT: Okay. I just thought I'd try.

Reply Argument By Mr. Landry

1 THE CHAIR: Thank you.

2 MS. WRIGHT: Okay. I just want to speak
3 just briefly about the YEC brought up about the dewatering
4 issue, and I don't think we have a response to that, but we
5 don't think it really -- that's part of the YESAB process and
6 there's not really -- I think of this process as being a
7 financial risk kind of process and the dewatering of the Mayo
8 River is an environmental and socio-economic, and that's what
9 I feel about that.

10 YCS respectively submits that a wind farm on 11:18
11 Mt. Sumanik would be a much better use of taxpayer and
12 ratepayer money. Simply put, Mayo B has a huge cost and
13 produces only a small amount of money, while at Mt. Sumanik a
14 Mt. Sumanik wind farm can produce the same amount of energy
15 for half the cost.

16 Thank you.

17 THE CHAIR: Thank you very much.

18 So, Mr. Landry, you're prepared to proceed?

19 MR. LANDRY: Yes, Mr. Chair, I am. It
20 might be little disjointed, but I think we can do it and get 11:18
21 it over with now.

22 THE CHAIR: Okay, thank you.

23 REPLY ARGUMENT BY MR. LANDRY:

24 MR. LANDRY: Mr. Chair, probably the most
25 important part of my rebuttal relates to an allegation, and I

Reply Argument By Mr. Landry

1 use that term formally, made by YECL in their argument where
2 they dealt with the issue of WAF reliability. It is one
3 thing to refer to the evidence and questions and answers in
4 the evidence, but to take issue with what effectively is the
5 impact on the connection of the grids and the adding of Mayo
6 B in a way that relies on YECL's experience, I think is the
7 way the representative put it, is inappropriate.

8 These were very sensational comments that YEC
9 fundamentally disagrees with. They're inappropriate in a
10 hearing such as this. If YECL wanted to deal with those
11 issues, they either should have called evidence or should
12 have cross-examined the panel, both of which they made their
13 conscious decision not to do.

11:20

14 YECL is a sophisticated intervenor. They do
15 have and have had in the past counsel and they know better.
16 It's inappropriate and in my submission all statements
17 related to the so-called issues of reliability or potential
18 reliability must be ignored by this Board. There is simply
19 no evidence to support that proposition.

20 Mr. Chairman, in relation to the UCG argument,
21 there were a number of items raised by my friend dealing with
22 Part 3 process, when and if this matter should have been
23 brought forward, and what should be recommended to the
24 government in that regard and a number of other matters which
25 I would call arguments effectively to the government.

11:21

Reply Argument By Mr. Landry

1 What I would say to you is that this is a
2 proceeding that is guided, in fact mandated, by Terms of
3 Reference and those are the items that you must follow in
4 your report and recommendations, and many of the issues
5 outlined by UCG in that regard are not contained within those
6 Terms of Reference and should not form part of any of the
7 items that you will be dealing with in your report.

8 My friend made on a number of occasions the
9 point, I guess, that at \$120 million the Mayo B was not a
10 cost-effective project. For a number of different reasons,
11 as you heard from Mr. Morrison, he indicated that YEC would
12 not have brought forward this project for \$120 million, but
13 in fact what the evidence shows -- and I don't have specific
14 reference to it at this -- oh, maybe I do.

15 I guess I would refer to the application
16 page 14 at footnote 17, and I quote:

17 "With no contributions and a ratebase
18 cost of \$120 million, the LCOE
19 approximates 20 cents per kilowatt hour
20 and is below the cost of incremental
21 diesel generation (26 cents per
22 kilowatt hour); however, as shown in
23 Figure 1, annual Mayo B costs would
24 remain above incremental diesel
25 generation costs for close to the first

11:22

Reply Argument By Mr. Landry

1 25 years of operation at the
2 assumed --"

3 Sorry, I understand a correction was made that that is
4 15 years, but it can be seen in the figure that I mentioned.
5 "... for 15 years of operation at the
6 assumed base case loads (reflecting the
7 assumed loss of all industrial loads by
8 year 8)."

9 Effectively what that is saying is the economic analysis
10 shows that for this type of project it is cost effective in
11 that sense relative to diesel generation. It is just, as
12 Mr. Morrison said, not the type of project given all of the
13 other circumstances that would have been brought forward by
14 Yukon Energy. So from Yukon Energy's perspective it is
15 incorrect to say that it is not cost effective from that
16 point of view.

11:24

17 A big problem with a major capital project
18 such as this, and every jurisdiction faces this, is that when
19 you have high capital costs in the early stages of a project
20 it tends to have a fairly increased set of cost structures
21 which causes its own rate impacts, and you heard discussions
22 of that from both Mr. Morrison and Mr. Osler.

11:24

23 Mr. Buonaguro also raised the concept of some
24 sort of interim decision, Mr. Chairman. First of all you are
25 governed by Part 3 of the Act, as we all know, and there is

Reply Argument By Mr. Landry

1 no provision under that part of the Act which allows for some
2 sort of interim decision however that would be made. You are
3 open to make whatever recommendations that you feel are
4 appropriate governed by, obviously, the terms and conditions
5 of the Terms of Reference, but there is no process under the
6 Part 3 for some sort of interim decision. You are required
7 under that legislation to provide a report with your
8 recommendations according to the Terms of Reference and
9 that's what has to be done.

10 And with those comments, Mr. Chairman, that is 11:25
11 the reply for Yukon Energy.

12 THE CHAIR: I'll recognize Mr. Buonaguro.

13 MS. BENTIVEGNA: Mr. Chair, there's already
14 been reply argument, unless it's something ...

15 THE CHAIR: Yes. That's what I wanted to
16 verify ...

17 MR. BUONAGURO: Sorry. I think this will be
18 properly characterised as a correction. It has to do with
19 Mr. Landry's comments on the scope of the proceeding based on
20 the reference to the Terms of Reference, and I would simply 11:26
21 point out that page 2 of the Terms of Reference at section 6
22 says: (As read)

23 "The YUB may make any other
24 recommendations or provide any other
25 information they consider applies in

1 the circumstances."

2 Simply an addition to the record based -- I think he was
3 slightly mistaken in what he was saying. Thank you.

4 THE CHAIR: Thank you, Mr. Buonaguro.

5 Mr. Landry?

6 MR. LANDRY: Mr. Chairman, I wasn't
7 mistaken. That item in the Terms of Reference is defined
8 effectively by the Terms of Reference that come before it in
9 Part 3 and the submissions that I made to you still stand.

10 THE CHAIR: Thank you.

11:27

11 So before we close, are there any outstanding
12 undertakings that need to be brought forward?

13 MR. LANDRY: Not to my knowledge,
14 Mr. Chairman.

15 THE CHAIR: Okay, thank you very much.

16 So I would like to thank everybody's
17 participation in this hearing and for your excellent
18 information and evidence that you provided to the Board, and
19 we will now close the hearing. Thank you.

20 -----

21 PROCEEDINGS CONCLUDED

22 -----

23

24

25

1 Certificate of Transcript

2

3 We, the undersigned, hereby certify that the foregoing pages
4 1 to 479 are a true and faithful transcript of the
5 proceedings taken down by us in shorthand and transcribed
6 from our shorthand notes to the best of our skill and
7 ability.

8 Dated at the City of Calgary, Province of Alberta, this 8th
9 day of April, 2010.

10

11

12

D. Gerbrandt CSR(A)

13

Court Reporter

14

15

16

B. Ball, CSR(A) RPR CRR

17

Court Reporter

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Vol 2. Page 397, line 23: "megawatts" should read "Negawatts"



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