



DLA Piper (Canada) LLP
Suite 2800, Park Place
666 Burrard St
Vancouver BC V6C 2Z7
www.dlapiper.com

P. John Landry, Q.C.
john.landry@dlapiper.com
T +1 604.643.2935
F +1 604.605.3588

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DELIVERED BY EMAIL

Mr. Richard Buchan, Chair
Yukon Utilities Board
Box 31728
Whitehorse, Yukon Y1A 6L3

Dear Mr. Buchan:

Re: Yukon Energy Corporation (Yukon Energy or YEC) Submission for the referral of the Electricity Purchase Agreement (EPA) with Tlingit Homeland Energy LP (THELP) to the Yukon Utilities Board (Board) for review under s. 18(1) of the *Public Utilities Act* – UCG Motion to postpone YEC-THELP EPA hearing

On July 3, 2022, Utilities Consumers' Group (UCG) filed a Notice of Motion with the Board seeking postponement of the hearing process for the Atlin EPA proceeding scheduled for July 19, 2022. Yukon Energy's response to the UCG motion is provided below.

Summary of UCG Notice of Motion

UCG's motion references YEC's response to UCG-YEC-2-4 summarizing deferral of dates for satisfaction of several EPA conditions precedent to dates beyond the scheduled hearing date. UCG states that the Board's obligation to report and make recommendations "cannot be fulfilled without these necessary conditions being met and made available to the public for scrutiny."

UCG requested that the date of postponement for the hearing "at the earliest, be set October 31, 2022 when most of the information will be presented, with the exception of the YESAB report." UCG noted that "...the Board has been given 180 days from the date of the final EPA submission...", and that "...this allows until mid-December for the Board report to be filed" (YEC assumes UCG based this mid-December timeline on the June 27, 2022 date when YEC submitted responses to 2nd round IRs).

Yukon Energy Response

There is no basis for delaying proceeding with the oral hearing and argument as requested by UCG.

First, the conditions precedent being extended do not prevent the Board from being able to report and make recommendations on YEC costs, risks and customer impacts related to the EPA as prescribed in the Minister's direction. Yukon Energy notes the following evidence in particular:

- YUB-YEC-1-1(a-b) AMENDED notes that risks related to fulfillment of the conditions precedent have minimal if any impact on YEC, on the rates for customers, or on the prudence of proceeding with the EPA at this time. As reviewed in the referenced IR response and Section 4.3 of YEC's April 2022 Submission, the EPA provides for management of YEC risks identified in the conditions precedent. The conditions precedent remaining unresolved at the time of the hearing do not preclude the Board from assessing the EPA as directed by the Minister based on the available information provided by YEC in its Submission.
- Prior to YEC's April 8, 2022 request to postpone the hearing to accommodate project design changes and required amendments to the EPA, the Board was proceeding with the original hearing date with knowledge that none of the conditions precedent would be satisfied before the start of the hearing.¹ This situation remains unchanged today, and the hearing can proceed accordingly.
- Yukon Energy provided further explanations regarding the impact of the conditions precedent to the amended EPA in the response to YUB-YEC-2-10, YUB-YEC-2-27 and YUB-YEC-2-28, indicating that changes to Conditions Precedent due dates will not have a material impact on the Project. Impacts on Yukon Energy and Yukon ratepayers are clearly defined in the EPA, and can be fully assessed by the Board based on the information filed.

Second, with regard to timing for the Board to provide its report and recommendations – UCG incorrectly asserts that the date for the Board to provide its report and recommendations is in mid-December.


- The Terms of Reference note that the Board has 180 days from the date the YUB receives the final version of the Agreement from Yukon Energy. The revised and amended EPA was finalized on April 12, 2022 and provided to the Board on April 21, 2022 along with related documents requested by the Board. This provides the Board with approximately 6 months from the April 21 date (or until October 18, 2022 to provide its report and recommendations).
- Although YEC gave notice to the Board on June 10 that dates for completing specific conditions precedent included in the amended and restated EPA were extended by mutual agreement between the parties² – the extension of the

¹ Most conditions precedent dates in the Original EPA were from the outset at the end of May or later. Responses to CW-YEC-1-7, JM-YEC-1-23 and JM-YEC-1-24 confirmed that the remaining conditions precedent had been referred to May 31, 2022.

² Notice of the conditions precedent was provided to the Board in correspondence dated June 10, 2022. This correspondence was also provided in response to YUB-YEC-2-10.

conditions precedent does not change the date on which the final amended and restated EPA was provided to the Board (i.e., the April 21, 2022 date). The 180 days commences from the April 21, 2022 date – not from the date of notice to the Board that the conditions precedent are extended (or the incorrect June 21, 2022 date provided in UCG's motion).

Yours truly,
DLA Piper (Canada) LLP
Per:

A handwritten signature in black ink, appearing to be 'P. Landry', written in a cursive style.

P. John Landry, Q.C.
PJJ:lph