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Re: Yukon Energy Corporation ("Yukon Energy" or "YEC") Submission on Yukon Electrical Company Limited ("Yukon Electrical" or "YECL") Application for Review and Variance of Board Order 2014-06 (the "R&V Application")

1. INTRODUCTION

In response to the October 30, 2014 invitation of the Yukon Utilities Board ("Board" or "YUB") for comment by November 20, 2014 on the R&V Application, Yukon Energy submits the following comments that are limited to Section V of the R&V Application wherein Yukon Electrical submits that, due to an error in jurisdiction, fact or law, the Board should vary the following:

1. the Board's decision in Board Order 2014-06 (the "Board Order") to deny YECL's request for a 46 basis point equity risk premium on top of the British Columbia Utilities Commission ("BCUC") benchmark return on equity ("ROE") (the "ROE Ruling"); and
2. the Board's decision in the Board Order to deny YECL's request for a 4 percentage point increase to its common equity ratio (the "Equity Ratio Ruling").

Yukon Energy understands that current comments are limited to an "initial screening" where Yukon Electrical must establish a "prima facie case" sufficient to warrant full consideration by the Board, including that the claim of error is substantiated on a prima facie basis and the error has significant material implications.[1]

In order to clarify the issues to be addressed regarding the 13 pages covered in Section V of the R&V Application, Yukon Energy has summarized in section 2 below YECL's six asserted grounds for the R&V Application regarding the ROE and Equity Ratio Rulings. Based on the issues raised, Yukon Energy submits that it is relevant to clarify the evidence before the Board in the current proceeding as well as relevant background of prior Board decisions that sets the context for the current proceeding - and this clarification and context is provided in section 3 below, prior to Yukon Energy's comments on the R&V Application in section 4 below.

Yukon Energy's interest in this matter relates entirely to support for an effective and consistent generic cost-of-capital formula approach that is efficient from a regulatory efficiency perspective for utilities in Yukon with a relatively small customer base.

[1] Board Rules, s. 31(1), s. 31(3) and s. 32(5). These rules are referenced in the R&V Application at paragraphs 4 and 5. Yukon Energy notes that Section V of the R&V Application does not claim a fundamental change in circumstances or facts since Order 2014-06.

Yukon Energy submits that the R&V Application has not established, based on the evidence then available to the Board, a prima facie case for varying either the ROE Ruling or the Equity Ratio Ruling.

2. YECL R&V GROUNDS RE: ROE AND EQUITY RATIO RULINGS

Yukon Electrical notes in Section V of its R&V Application that the Board Order has recognized that a utility's ROE and capital structure are linked, and asserts in part B of Section V the following six specific grounds for its R&V Application regarding both the ROE Ruling and the Equity Ratio Ruling:

1. **"The Board committed errors of law and jurisdiction by failing to set a fair return on rate base for Yukon Electrical" -** YECL asserts that the Board did not meet the "comparability test"[2], which requires consideration for the returns awarded to utilities in other jurisdictions. YECL quotes from the Board Order that the Board "had not relied upon the results of generic proceedings from other jurisdictions". YECL asserts that the evidence shows that the ROE and capital structure awarded to YECL in the Board Order "was the same as utilities in BC with lower business risk, and was lower than utilities in the NWT with comparable business risk."[paragraph 114]

2. **"The Board committed an error of law by applying the wrong test to determine a fair return for Yukon Electrical" -** YECL asserts that the Board applied the wrong test in determining that YECL had not established a prima facie case to quantify a risk premium over the BCUC benchmark utility, and states that there is no legislation, nor any regulation, that requires Yukon Electrical to "establish a prima facie case to quantify a risk premium" over the BCUC benchmark utility - and YECL states that it is not aware of any prior Board decision that has imposed such a requirement.[paragraph 115]

   Additionally, YECL asserts that the Board determined that the capital structure and risk premium awarded to YEC should be the overriding factor in setting YECL's cost of capital without regard for particular considerations that drive the cost of capital sought by YEC, a government owned utility.[paragraph 116]

   YECL states that the Board was required to consider the fair return standard in determining a fair return for YECL, that this requires the Board to have regard for cost of capital determinations in respect of utilities other than just YEC, and that the Board Order provides no indication that the Board did so. [paragraph 117]

3. **"The Board committed an error of fact or law by overlooking or disregarding Yukon Electrical's extensive evidence regarding its business risk relative to other utilities (besides YEC)" -** YECL asserts that (a) the Board overlooked or misapprehended specific and uncontroverted evidence provided by YECL comparing it with Fortis Energy and made a finding of fact contrary to the evidence [cites (YUB-YECL-33(b) page 4 of 5], and (b) in reducing awarded ROE relative to utilities in other jurisdictions while maintaining YECL's capital structure, the Board

[2] Comparability – a utility be permitted to earn as large a return for its investors as they would receive if they were investing the same amount in other securities possessing an attractiveness, stability and certainty equity to that of the company's enterprise.

overlooked or misapprehended the evidence provided by YECL regarding its increased business risk. [paragraph 119]

4. **"The Board committed an error of fact or law by failing to apply the stand-alone principle in setting Yukon Electrical's capital structure" -** YECL asserts that section 3 of OIC 1995/90 requires the Board to set YECL's rates in accordance with principles established in Canada for utilities, that the stand-alone principle is one such principle, that the Board relied upon its prior rejection of the stand-alone principle in Appendix A to Board Order 2009-02 in rendering the Equity Ratio Ruling, and that the Board thereby failed to comply with OIC 1995/90. [paragraph 121]

5. **"The Board committed an error of law or jurisdiction by unfairly deviating from its recent prior capital structure rulings" -** YECL asserts that the Board, without prior notice or explanation or rationale, abandoned its past rulings[3] that the BCUC generic cost of capital (GCC) model is a precedent for this jurisdiction and that when using the BCUC GCC a risk premium is required for Yukon utilities. YECL notes, relying on BCUC Order G-47-14 issued on March 25, 2014, that FortisBC Inc. ("FBC") continues to have a 40 basis point ROE premium over the BCUC benchmark, that the YUB used this FBC premium in determining YECL's ROE premium in Decision 2009-02, and that no evidence was provided in the current GRA that would justify a reduction in this previously approved ROE premium. [paragraph 122]

   YECL further asserts that the failure to provide specific prior notice of its intention to abandon previously accepted principles or processes has resulted in a procedurally unfair process for YECL and YECL has been deprived of its right to natural justice including knowing the case it has to meet. [paragraph 123]

6. **"The ROE Ruling and Equity Ratio Ruling errors have significant material implications" -** YECL estimates the "annual financial impact" of the above alleged "errors" at approximately $1,545,000 for the test period (with 42.6% or $658,000 due to the Roe Ruling, and the balance due to the Equity Ratio Ruling). [paragraph 124]

3. CLARIFICATION OF EVIDENCE AND CONTEXT

Yukon Energy submits that the issues raised in the R&V Application regarding the ROE and Equity Ratio Rulings require clarification as to the evidence that was before the Board in the current proceeding, as well as relevant background that sets the context for the current proceeding.

The R&V Application references the Board's prior decisions in Orders 2009-02 and 2009-08, and asserts that the Board has abandoned its prior decisions that the BCUC generic cost-of-capital (GCC) model is a precedent for this jurisdiction and that when using the BCUC GCC a risk premium is required for Yukon utilities.

[3] The referenced Board rulings are: Appendix A of Board Order 2009-8 (paragraph 252 and 282) and Appendix A of Board Order 2009-02 (page 29).

Relevant background and context on these matters requires review of the evidence available at the time of the 2008/09 YEC and YECL GRAs versus the evidence available at the time of the most recent YEC and YECL GRAs. In summary, the earlier 2008/09 GRA decisions relied on evidence for the same BCUC GCC model with the latest annual benchmark ROE updates per that model; however, the most recent GRAs could no longer use the earlier BCUC GCC model because it was being concurrently reviewed and modified by the BCUC and final BCUC decisions on its updated model occurred in two stages (one subsequent to the YEC GRA evidence, and the other subsequent to the YECL GRA evidence).

Relevant background and context for the 2008/09 YEC and YECL GRA decisions include the following:

- Board Order 2009-02 (2008/09 YECL GRA) issued February 12, 2009, in addressing cost of equity, specifically noted as follows (page 29):

  "YECL covers a geographically dispersed area with a relatively small customer base. It is incumbent upon the Board to explore ways that yield regulatory efficiency and yet provide fairness to all interested parties, In this regard, the Board supports a formula-based approach to determining ROE issues...Both YECL and YEC have argued that reference to a formula approach is efficient from a regulatory efficiency perspective. To reference a generic cost-of-capital approach from another jurisdiction, the Board must answer the following questions:

  - Which generic cost-of-capital model should be used and from which jurisdiction?
  - Should a risk premium be applied?
  - If a risk premium is applied, what risk premium level should be applied to YECL?"

- Board Order 2009-02 (page 29) noted three models discussed in that proceeding (NEB, AUC and BCUC), that "the BCUC model has been the most recently reviewed and is not under current review", and that YECL in reply was prepared to accept a return based on the BCUC formula. Based on these points, the Board directed "that the BCUC generic cost of capital is the most appropriate as it has been the most recently reviewed, and is generally accepted by the parties."

- At the time of Board Orders 2009-02 and 2009-08, the Board had evidence it could rely upon regarding the BCUC's rulings regarding the GCC model, the benchmark ROE that then applied, and risk premiums that BCUC had then adopted related to the benchmark ROE for various gas and electric utilities in BC (which the Board then relied upon to establish specific risk premiums for both YEC and YECL for the then test years). Based on this evidence and the BCUC GCC model as then defined, the Board stated (page 29) that it "accepts that when using the BCUC generic cost of capital, a risk premium is required for Yukon utilities." There was no related reference in Board Orders 2009-02 or 2009-08 of any BCUC GCC requirement, or Board requirement, for rulings regarding varying utility capital structure (equity ratio) to reflect varying utility risks.

- On the matter of capital structure, Appendix A to Board Order 2009-02 reviewed (pages 23 to 26) the evidence in that proceeding and (at pages 26 and 27) rejected the stand-alone principle in determining capital structure for YECL based on specific evidence related to YECL:

  - It was noted that YECL confirmed that YECL has operated at a capital structure of approximately 40-43% equity for the years 2003 to 2007; and
  - That the Board is not convinced that the YECL situation or risk profile has changed since its last approved equity ratio of 40% which the Board noted was similar to the more recent (2005) PUBNWT Decision for the equity ratio of NUL(YK).
  - The Board specifically also noted (page 27) that in arriving at its findings on this issue, it did not consider comments in reply arguments relating to PUBNWT Decision 24-2008 (where a 43.5% equity ratio was approved for NUL(YK)) as the Board considered these comments "as new evidence that had not been discussed at the hearing."

- In Board Order 2009-08 (2008/09 YEC GRA) issued September 8, 2009, the Board noted that it continues to be of the view that relying on a generic ROE from a different jurisdiction is the most efficient means of addressing an inherently complex and costly matter, and that it strongly believes that such an approach is the most efficient manner for a jurisdiction such as Yukon.[4] The Board noted (paragraph 281) that the BCUC approach has been successfully applied to both YEC and YECL and has resulted in fair returns to both utilities. Based on this evidence and the BCUC approach as then defined, the Board then determined (paragraph 282) that the BCUC approach is a precedent for this jurisdiction and will continue to be the precedent until otherwise ordered by the Board. The Board directed YEC to use an ROE based on the BCUC approach with the same risk premium that had been previously established in Board Order 2005-12 based on BCUC risk premiums as then applied. Board Order 2009-08 also noted that YEC has maintained a 40% equity ratio in its capital structure since 1992, and approved the continued use of 40% equity.

In contrast to the 2008/09 GRAs, the available evidence for the Board to consider on these matters changed materially at the time of the more recent YEC and YECL GRAs and Board Orders 2013-01 and 2014-06. Ability to use the BCUC model was severely constrained by the fact that the BCUC was in the middle of its own review of its GCC model (per BCUC Order G-20-12 dated February 28, 2012), that the BCUC benchmark ROE last determined in 2009 was not updated until May 10, 2013 (BCUC Order G-75-13), and that the risk premiums for different BCUC utilities relative to the updated benchmark were not updated until March 25, 2014 (BCUC Order G-47-14). Yukon Energy notes the following with regard to the context of relevant latest YEC and YECL GRA proceedings:

- In Board Order 2013-01 (2012/13 YEC GRA) issued March 25, 2013, the Board confirmed that the use of a generic cost-of-capital model from another jurisdiction is the most efficient method for determining ROE for utilities under the jurisdiction of the Board; however, the Board noted that questions remain as to which generic cost-of-capital model should be used and from which jurisdiction (paragraph 217). Based on the evidence in the proceeding (YEC had filed its GRA in October 2012), the Board noted the following:

[4] Board Order 2009-08, paragraph 280. It is noted that Board Order 2005-12 accepted YEC's proposal to set the fair ROE for test year 2005 by reference to the BCUC formulaic ROE approach. YEC maintained this same approach to set the proposed ROE for 2008 and 2009.

    - The BCUC model had not been updated since 2009, and YEC had therefore turned to the AUC model as its most recent decision covered the years 2011 and 2012 with a ROE benchmark of 8.75%. For this decision, the Board accepted YEC's decision to change models because it provides more up-to-date information and accounts for significant changes in the economy. The Board noted that it may in a future proceeding allow the BCUC model to continue as the precedent if it is current.
    - On the separate question as to whether a risk premium should be applied to the ROE determined in a different jurisdiction, the Board noted: that BCUC determines a generic ROE for a benchmark utility and then applies a risk premium specific to the risk profile for each utility relative to the benchmark; and that the AUC determines a generic ROE and then adjusts for the risk profile for each utility by adjusting the equity thickness. The Board rejected YEC's proposal to apply its previous risk premium based on the BCUC model on the grounds that the risk premium from one model cannot be automatically transferred to the other model, found that the AUC model does not allow for an equity premium (paragraph 227), and therefore determined that no equity premium is allowed for YEC in 2012 and 2013. With respect to comparison of YEC relative to the two Northland utilities, the Board found that no evidence of comparability with YEC was provided other than those two utilities operate in the Canadian north (paragraph 229).
    - The Board noted that there was no evidence in the proceeding to persuade the Board to alter the applied-for and previously approved capital structure of YEC with 40% equity ratio (paragraph 202). The Board further determined that with the 40% equity ratio "...YEC is appropriately compensated for any additional risk premium that it has relative to the Alberta utilities including the existence of its generation assets " (paragraph 228).
- In Board Order 2014-06 (2013-15 GRA for YECL) issued April 23, 2014, the Board reviewed its prior determinations on generic cost-of-capital models, and noted the following:
    - In Board Order 2009-02 the Board set out the questions that need to be answered in relation to applicable generic cost-of-capital models and risk premiums, and noted that YEC was correct that the precedent and practice of the Board is to use a benchmark from another jurisdiction (chiefly British Columbia) and that benchmark is only used to determine the return on equity, not the equity thickness.
    - Regarding the question on the application of a risk premium, the following were addressed in the Board Order:
        - In order to provide context for consistency with its past decisions, the Board noted (page 50) that in Board Order 2009-02 the "benchmark" BC utility used to determine a risk premium for YECL was FortisBC and evidence had previously been submitted regarding the compatibility of this BC utility to YEC. The Board then reviewed at some length the BCUC specific evidence that it had relied on in Board Order 2005-12 in order to determine a risk premium for YEC, i.e., evidence specific to the BCUC generic cost-of-capital model as then approved

and applied by BCUC to various utilities, with additional evidence on YEC to allow the Board to determine risk premium then applicable to YEC per the BCUC model.

- The Board then noted (page 51), in agreement with UCG, "that no assessment has been provided within this proceeding regarding the comparability of YECL to the BCUC benchmark utility Fortis Energy." The Board noted that the previous risk premium for YECL was based on FortisBC, which is an electrical distribution company. The Board then noted that BCUC Order G-75-13 (the Stage 1 generic cost-of-capital proceeding decision dated May 10, 2013) identified Fortis Energy (the utility for the updated benchmark ROE) as a gas distribution utility, and that "no other comparisons to YECL can be gleaned from the benchmark decision. As a result, the determination of whether a risk premium should be applied is not clear."

- In summary, the Board Order determined that during the course of the YECL 2013-15 GRA evidence that was available for Board review, no BCUC decision was available on the updated risk premium applicable to FortisBC or any other BC utility other Fortis Energy. In this context, the Board stated (page 51) that it "finds that YECL has not established a prima facie case to quantify a risk premium over the BCUC benchmark utility."

- On the matter of the equity ratio, the Board noted the following (at page 54):

  - The Board provided its direction in Appendix A to Board Order 2009-02 on the stand-alone principle and that it has not been persuaded in this proceeding to alter that position; in this regard, the Board has maintained consistency with its prior rulings.

  - The Board has not relied upon the results of generic proceedings from other jurisdictions on the matter of equity thickness (although past reference has been acknowledged regarding other North of 60 utilities), and has used utilities within Yukon in its decision-making. In this proceeding, the Board "accepts the position of YEC that if YEC's business risks are higher than those of YECL, then it would not make sense to approve an equity ratio for YECL higher than that approved for YEC."

  - Although YECL has provided examples of jurisdictions where higher equity thicknesses have been granted, the benchmark utility in the BCUC GCOC proceeding was awarded an equity thickness of 38.5%. The Board considers that the equity thickness presented for the NWT jurisdiction or for the BCUC GCOC benchmark utility is not comparable to YECL. On this basis, the Board "allows YECL to continue to have an equity thickness that is equal to that awarded to YEC - that is, 40 percent - and direct YECL to reflect such in its compliance filing." The Board further notes that YECL has stated that its business risks are consistent with those in its 2008-09 GRA application, and the Board is satisfied that maintaining the same equity thickness it has allowed in YECL's 2008-09 GRA "is fair and reasonable."

4. YUKON ENERGY COMMENTS ON R&V APPLICATION

The R&V Application asserts, in summary, that the Board erred in not granting YECL a risk premium and in not granting YECL an increase in its common equity ratio.

In summary, Yukon Energy submits that the Board Order on these matters is consistent with prior Board rulings to select and implement a generic cost-of-capital model in accordance with principles established in Canada for utilities, based on the evidence then provided to the Board during each proceeding. Accordingly, Yukon Energy submits that the R&V Application has not established a prima facie case for varying either the ROE Ruling or the Equity Ratio Ruling.

On the ROE Ruling, the R&V Application in effect asserts that the Board erred in not considering evidence on risk premiums related either to the earlier non-updated BCUC benchmark generic cost-of-capital model or to non-BCUC jurisdictions. However, the Board's current and past decisions have set out clearly (a) the questions it must address in selecting in any specific proceeding an applicable cost-of-capital model and risk premiums, and (b) that after selecting a specific model in a specific proceeding the Board does not then proceed to consider modifications from other jurisdictions that are not consistent with the selected model.

In the Board Order the Board selected, in a manner consistent with its past rulings, the updated BCUC generic cost-of-capital model benchmark ROE of 8.75% as proposed by YECL and then ruled that it had no evidence on updated risk premiums applicable to YECL based on this updated BCUC benchmark ROE. In this regard, Yukon Energy notes the following:

- The Board's ruling on risk premium in the Board Order is consistent with the Board's prior rulings in setting out the evidence requirements on this matter, and included a quote from Board Order 2005-12 setting out the BC and Yukon specific evidence that was relied upon at that time to determine the risk premium for YEC related to the prior BCUC GCC model.
- The Board's ruling on risk premium reflects the fact that an updated BCUC GCC model was adopted by the Board to determine the benchmark ROE for this proceeding, but no evidence was provided in the proceeding to address the stated evidence requirements for determining an updated risk premium then applicable for YECL related to the updated BCUC benchmark ROE.
- The lack of evidence in this proceeding on updated risk premiums for the BCUC GCC model reflects the fact that at the time of this proceeding the BCUC was still undergoing its own generic review and update of its GCC model, and that BCUC's subsequent risk premium determinations on March 25, 2014 in BCUC Order G-47-14 were not in the evidence reviewed by the Board in this proceeding. YUB-YECL-33(b) page 4 of 5 confirms that the Board during this proceeding had no evidence on approved ROE for FortisBC Inc, FortisBC Energy (Vancouver Island), FortisBC Energy (Whistler), Pacific Northern Gas Ltd. or Pacific Northern Gas (N.E.) Ltd.

- The prior Board Order 2013-1 similarly denied YEC any risk premium based on the evidence then available in that proceeding. BCUC Order G-75-13 determination on an updated 8.75% benchmark ROE was not yet available to YEC or the Board during that proceeding and as a result the AUC GCC model was selected for the proceeding with its recent 8.75% benchmark ROE and no provision (under the AUC model) for any risk premium.
- Yukon Energy submits that the process of selecting a specific generic cost-of-capital model in the Board Order and in prior rulings is in accordance with principles established in Canada for utilities (as required in Section 3 of OIC 1995/90) - and this approach is fair and reasonable and secures the efficiencies and cost savings for Board proceedings that have consistently been stated to be an objective in these matters. Yukon Energy further submits that once a specific GCC model is selected in a proceeding, the Board has consistently and appropriately required evidence based on that model (and only on that model) to determine the final ROE allowed at that time for a Yukon utility - and that a failure to proceed in this manner would undermine the agreed upon objective of selecting a GCC model.

On the Equity Ruling, Yukon Energy submits that the Board had no evidence to review, in prior proceedings or the current proceeding, regarding modification of equity ratios related to either the earlier BCUC benchmark generic cost-of-capital model or the updated BCUC GCC. Further, Yukon Energy submits that in the current proceeding the evidence fully supported the Board's determination of an equity ratio for YECL not exceeding 40%. In this regard, Yukon Energy notes the following:

- Determinations on March 25, 2014 in BCUC Order G-47-14 are not in the evidence reviewed by the Board in this proceeding. Accordingly, Yukon Energy submits that the Board had no basis in this proceeding to modify YECL's equity ratio based on the updated BCUC GCC model.
- In Board Order 2013-01 the Board specifically determined that YEC's equity ratio at 40% was fair and reasonable in the context of past determinations as well as the AUC model evidence. The evidence that YEC has a higher risk that YECL is a matter of long standing that has not been challenged in any recent proceeding. Accordingly, given the Board's ruling in Board Order 2013-01 on YEC's equity ratio, there was no basis in the current proceeding to award YECL an equity ratio higher than 40%.
- Based on the above, Yukon Energy does not agree with YECL's assertion that the Board in the Board Ruling deviated from its recent prior capital structure rulings - to the contrary, the Board Ruling is consistent with determinations in Board Order 2013-01 specifically as well as prior rulings.

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In closing, Yukon Energy's interest in this matter is to support an effective and consistent generic cost-of-capital formula approach. Unfortunately, the two recent Board GRA reviews have been severely constrained by the fact that the BCUC was concurrently completing its review of the BCUC GCC model – and as a result the ROE and equity ratios determined for YEC and YECL were identical notwithstanding the evidence that YEC has a higher risk than YECL. Now that the BCUC generic review is completed, Yukon Energy assumes that the Board will in future will once again have the evidence required under the BCUC GCC to apply both the benchmark ROE and the equity premium applicable to each Yukon utility.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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