

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

and

**An Application by Yukon Electrical Company Limited
for Approval of Revenue Requirements for 2008 and 2009**

Board Order 2008-5 Reasons for Decision

1.0 Intervenor Status

The Board received written requests for Intervenor status in this Application from the following parties:

Yukon Energy Corporation (YEC)
City of Whitehorse
Utilities Consumers' Group (UCG)
Yukon Conservation Society (YCS)
Department of Energy, Mines and Resources, Government of Yukon
John Maissan, Leading Edge Projects Inc.

The Board received a written request for Observer status from Mr. Paul Kishchuk, Vector Research.

All parties other than UCG, YCS and Mr. Kishchuk appeared at the Pre-Hearing Conference.

In its request for Intervenor status dated June 5, 2008, UCG indicated that it did not intend to appear at the Pre-Hearing Conference or the public hearing into the Application, but intended only to make Information Requests and to submit Argument.

At the Pre-Hearing Conference, YECL questioned whether UCG's proposed involvement properly qualified as an intervention. No other concerns were raised at the Pre-Hearing Conference with respect to the requests for Intervenor or Observer status.

Based on the transcript of the Pre-Hearing Conference, UCG responded to YECL's submissions in its correspondence to the Board dated June 17, 2008.

To be an Intervenor, the Board agrees with UCG that it is not necessary for the party to be fully involved in all aspects of the proceeding. In this case, UCG has clearly indicated that it wishes to request information in writing from YECL and make submissions in Argument, though it does not intend to participate in the public hearing. The Board is satisfied that it is appropriate for UCG to be granted Intervenor status for these reasons.

As there were no other concerns raised with the requests by interested parties, the Board has granted Intervenor status to the following parties for this proceeding:

YEC
City of Whitehorse
UCG
YCS
Department of Energy, Mines and Resources, Government of Yukon
John Maissan, Leading Edge Projects Inc.

The Board has granted Observer status for this proceeding to Paul Kishchuk, Vector Research.

2.0 Issues List

Although YECL indicated that it might suggest different rankings for some issues — e.g. capital structure — as the proceeding unfolds, it did not object to or suggest immediate changes to the Issues List.

YEC provided a document entitled, “Preliminary Issues List — YEC Additions”, which suggested additional issues or sub-issues in Sections 1-4 and 6-8 of the Preliminary Issues List. YEC added an additional section to the beginning of the Issues List (“Overview”), with a corresponding change in the number of all subsequent sections of the Issues List. YEC ranked all of its suggested issues or sub-issues as “High”, with the exception of the need for a deferral account (“Rate from Yukon Energy”) and when it applies in Section 3 (Purchase Power), which YEC ranked as “Medium”. YEC indicated that it ranked these additional issues according to the criteria set out in the Board’s letter of June 10, 2008.

Mr. Maissan also suggested some additional issues. He suggested a number of sub-issues related to diesel fuel costs (including the effects of electric heating on increased diesel peaking), staffing levels (labour costs), the suitability of automatic meter reading for net and smart metering.

YECL responded that all of these additional issues appeared, at this time, to be captured in the broader headings of the Preliminary Issues List. Although YECL agreed that they appeared to be issues that parties could explore in Information Requests and cross-examination at the hearing, YECL did not consider it necessary for the Board to revise the Issues List.

The Board is satisfied that the additional issues and sub-issues suggested by YEC and Mr. Maissan appear to be relevant and may be explored in the proceeding. The Board also considers it helpful to amend the Issues List to some extent to reflect these additional issues and sub-issues and their associated rankings. Generally, the Board accepts the rankings proposed by YEC.

Accordingly, the Board has prepared a Final Issues List, which is attached as Appendix C to Order 2008-5. The Board reminds parties that the Issues List is intended to facilitate consideration of the Application by focussing on the most significant and material issues, but is not necessarily exhaustive of the issues that

may ultimately be considered by the Board, nor necessarily determinative of the ultimate importance of the issues in the Board's final decision on the Application.

3.0 Hearing Cost Process

After summarizing the Hearing Cost Process at the Pre-Hearing Conference, the Board canvassed parties present as to whether they are considering retaining legal counsel and/or technical consultants. In addition to YECL and YEC, the City of Whitehorse indicated that it is considering retaining professional assistance for the proceeding. YEC indicated that it is still considering whether it would seek costs of its participation in the proceeding.

For purposes of the Hearing Cost Process, all parties intending to retain professionals are required to file with the Board the retainer letters for these professionals on or before **July 14, 2008**.

4.0 Proceeding Schedule

Parties did not raise any immediate concerns with the proceeding schedule proposed by the Board in Order 2008-4, although YECL properly reserved its right to request more time to file responses to Information Requests if necessary.

With respect to whether Argument and Reply should be oral or written, YECL expressed a preference for oral argument and YEC expressed a preference for written argument following the typical court model of the Applicant first filing argument, then all Intervenors filing their Arguments and the Applicant having a right of reply. In part, YEC's preference was based on its request for additional historical information from YECL, which the Board has dealt with below. YECL suggested that the Board could leave the determination of whether argument should be oral or written to later in the proceeding.

In light of these submissions, the Board will leave the determination of whether argument and reply will be oral or written until the public hearing of the Application.

As noted above, at the Pre-Hearing Conference, YEC requested that YECL provide additional historical information. YEC indicated that if YECL did not provide this information before Information Requests, YEC would be requesting it during that process. Specifically, YEC requested that YECL provide the key Schedules from the Application, where actuals are compared to forecast, back to 1998 — the year following YECL's last GRA — or another date determined to be appropriate by the Board. In that respect, YEC suggested the year 2000 would be appropriate, which was the year back to which YEC was required to provide historical information when it came before the Board in 2005. YEC identified the following Schedules as being the key Schedules for which more historical information should be provided, on the basis that it has been more than 10 years since YECL has been before the Board for a full assessment of its revenue requirement in a GRA: Schedules 1.1, 2.1, 3.1, 3.2, 4.1, 4.2, 5.1, 5.3, and 8.1 to 8.6.

YECL submitted that the onus is on it to establish the reasonableness of its tariff and it was satisfied with the information provided in the Application. YECL also noted that it provides annual reports on finances and operations to the Board. YECL also

questioned the relevance of 10 year old information to the reasonableness of its current 2008-2009 forecasts. YECL advised the Board that an information system change in 2004 would make comparing data from before 2005 too difficult without significant re-casting by YECL, which could require several weeks of additional work. YECL indicated that it could easily provide comparable actuals for 2005 and respond to specific Information Requests when they are made.

The Board has not presently been persuaded that historical information for all 10 years since YECL's last GRA is relevant or helpful in assessing the forecasts for the 2008 and 2009 test years. The Board acknowledges that YECL bears the onus of establishing the reasonableness of its Application. However, the Board agrees that some additional historical information is relevant and would be helpful. In particular, the Board considers that for certain items such as load forecasts and continuity of capital additions, five years of historical data are helpful. Therefore, the Board considers that actuals for 2003-2005 should be provided to assist the Board and parties in assessing the Application.

The Board acknowledges YECL's concern that pre-2005 data are not in a comparable format. Therefore, the Board has determined that YECL shall provide complete historical information (i.e. all Application Schedules) only for 2005. For 2003 and 2004, the Board has determined that YECL shall provide updated information only for the specific Schedules identified by YEC — i.e. Schedules 1.1, 2.1, 3.1, 3.2, 4.1, 4.2, 5.1, 5.3, and 8.1 to 8.6. The Board directs YECL to provide all of this information on or before July 4, 2008. If YECL requires more time to provide this information, it may request an extension from the Board.

In light of this direction, the Board considers that the proceeding schedule should be slightly adjusted to allow sufficient time for all parties to submit Information Requests to YECL. Therefore, the deadline for submitting Information Requests to YECL will be extended to July 16, 2008. The Board has also changed the date for filing Intervenor Evidence to August 19, 2008, as the original date of August 18, 2008, is a statutory holiday. All other dates in the proceeding schedule will remain the same for the time being.

The Board reserves the right to determine if additional historical information is relevant in specific instances. If parties request specific historical information from YECL in addition to that directed by the Board, the Board will deal with any objections by YECL as they arise.

5.0 Interim Application

Although there were mixed views on YECL's request for interim rate increases, all parties supported the written process for the Interim Application proposed by the Board in the Agenda for the Pre-Hearing Conference. On that basis, the Board confirmed at the Pre-Hearing Conference that parties should follow that written process for the Interim Application.

6.0 UCG Motion

In its June 5, 2008, letter to the Board, UCG expressed its motion in the following terms:

Although UCG realizes that the Board has set a time frame for the review of the above YECL application, we respectfully file the following motion:

That the Yukon Electrical Company Limited General Rate Application be postponed until such time as the YECL comply by filing the necessary documentation so recommended by the Board on page 50 of the 20 Year Resource Plan Recommendations of January 15, 2007; i.e. for:

- 1. the consideration of performance-based regulation mechanism; and**
- 2. the filing of evidence as to what other utilities provide for Maximum Company Investment and model theirs accordingly.**

UCG submits that the utilities not complying with these above recommendations in their application prejudices future proceedings and therefore YECL must report on these activities before any application move forward.

At the Pre-Hearing Conference, both YECL and YEC questioned whether this request should properly be considered as a “motion” on the basis that it did not contain sufficient information as required by Section 19 of the Board’s *Rules of Practice*.

In its written comments in response to the UCG Motion, dated June 17, 2008, YECL reiterated this concern and generally submitted that UCG had provided no basis for the bare requests for more information. In addition, YECL submitted that the first item requested by UCG referred to a “suggestion” made by the Board in its recommendations to the Commissioner in Executive Council in respect of YEC’s 20-Year Resource Plan in a proceeding to which YECL was not a party. YECL submitted that it would be unfair to require YECL to comply with such a suggestion. With respect to the second item requested by UCG, YECL indicated that the Maximum Company Investment Policy was a Phase II matter and not properly within the scope of this Phase I GRA.

UCG did not have the benefit of YECL’s views on the UCG Motion when it filed its further comments on June 17, 2008. However, UCG seemed to rest its request on a general concern that the utilities regulated by the Board comply with the Board’s recommendations — i.e. that if either utility was not required to follow those recommendations, neither of them would. On June 19, 2008, UCG submitted a brief reply to YECL’s written comments in which UCG encouraged the Board to develop its own expert evidence on performance-based regulation (PBR) mechanisms and “to direct their preferred scenario for the YECL to follow in developing their ‘fair’ rate of return.”

The Board acknowledges the concerns expressed by YECL and YEC with respect to the quality of the UCG Motion, which contains very little of the information required of a formal motion by Section 19 of the Board’s *Rules of Practice*. The Board

requires all parties to follow the requirements of its *Rules* in this proceeding, which are intended to assist the Board and other interested parties in understanding the basis for the motion. Parties who do not meet the requirements for motions are at risk of the Board dismissing the motion.

In the present circumstances, the Board will deal with the UCG Motion on its merits, but in doing so, should not be taken as accepting that the UCG Motion conforms to the requirements of Section 19 of the *Rules of Practice*.

The Board is not persuaded that it would be reasonable to direct YECL to bring forward a PBR proposal in the context of the present Application or to develop its own PBR proposal for YECL's response. Nevertheless, the Board expects YECL to bring forward a PBR proposal in the near future as recommended in the 20-Year Resource Plan.

The Board agrees with YECL that the Maximum Company Investment Policy (Investment Policy) is primarily a Phase II issue and will be dealt with, in substance, when YECL files its Phase II application later this year. However, YECL acknowledged that the revenue requirement impacts of its Investment Policy could be explored by parties in the Phase I proceeding and the Board agrees. In order to do so effectively, the Investment Policy must be on the record in this proceeding. Therefore, the Board finds that it is necessary to the proper consideration of the Application for YECL to file its Investment Policy in this proceeding and should do so at the same time as it has been directed to provide the additional historical information above, i.e. July 4, 2008.