

In the Matter of:

**THE YUKON ENERGY CORPORATION (“YEC”)
2008 - 2009 GENERAL RATE APPLICATION**

**ARGUMENT OF
THE CITY OF WHITEHORSE (“CW” OR “THE CITY”)**

MAY 22, 2009

1. Overview

1. Introduction

The Yukon Energy Corporation (“YEC”) filed with the Board a 2008-09 GRA dated October 6, 2008, which included an application for interim refundable rates effective November 1, 2008. The interim rate application included an increase to the runoff rate for residential customers while proposing reductions to the rate for the first block of residential energy consumption¹. Although YEC proposed a reduction to first block rates for the General Service class², there was no corresponding increase proposed to the runoff rate for the General Service class³.

The proposed rate decreases were due to connection of the Minto mine as an industrial customer. By letter dated October 17, 2008, the Board invited comments from interested parties with respect to the request for interim refundable rates. The City of Whitehorse (the City or CW) along with other interested parties, opposed the residential rate restructuring proposals on the basis that these matters were best left to a Phase II proceeding⁴.

In Order 2008-16, the Yukon Utilities Board stated that it agreed with interested parties that rate restructuring initiatives were a Phase II matter. The Board approved a 5.98% decrease to the base rates of all rate classes, except Rates 39 and 32, effective December 1, 2008. By letter dated

¹ Ex. B-2, Application, p. 7, YEC Reply to Interim Rate Application. October 22, 2008

² Ex. B-2, Application, p. 3

³ Ex. B-2, Application, p.4-13

⁴ See the City’s letter dated October 21, 2008. Although not alluded to in this letter, the City has several other concerns with the current proposal to selectively increase only residential runoff rates. These concerns include issues of fairness of treatment among rate cases, the validity of the assumptions underlying the proposal, whether there may be viable alternatives to the proposal such as increasing green generation of all kinds in combination with demand side management initiatives, the movement towards pricing based on the incremental cost of diesel without corresponding evidence that the cost of providing the power during the test periods will require diesel generation, the effect of the rate increase on consumers and their behaviors and the question of whether a movement to burning fuel oil for residential space heating would be a net benefit or detriment to the environment.

February 23, 2009,⁵ the YUB confirmed that it would only consider revenue requirement matters in these proceedings.

YEC applied for an increase to its revenue requirement of \$226,000 in 2008 and a decrease of \$483,000 in 2009.⁶ The City of Whitehorse (“the City”) considers that the applied-for revenue requirements appear to be reasonable before examining the components in depth. However, the City also must consider the interests of its residents and strive to ensure that the revenue requirement approved by the Yukon Utilities Board is not higher than required to meet the objectives of reliable service at the lowest possible cost.

The City has examined the Application and the rest of the evidentiary record and it submits that, in some instances, YEC has projected costs that are higher and revenues that are lower than should be reasonably expected. In examining the Application, the City has pursued a limited number of issues that are of concern to its citizens. The absence of argument on any particular issue does not constitute agreement with any party’s position on that issue. The City’s detailed and specific submissions regarding areas of concern with the proposed revenue requirement are set out below. The Issues as set out in Order 2009-1 Appendix B are provided in brackets.

2. Wholesale Sales to YECL (Issue 2 b. i)

In Order 2009-2, the Board increased the 2008 and 2009 sales forecasts of Yukon Electrical Company Limited (“YECL”) from those included in its application. In response to the Board’s directions, YECL reflected these increased sales in its compliance filing filed April 6, 2009. The increases in sales resulted in increased forecast wholesale purchases from YEC.⁷ However, in YEC’s updated filing of April 24, 2009, YEC did not update its wholesale sales forecast to reflect the Board’s determinations in Order 2009-2 or YECL’s compliance filing.⁸ YEC confirmed that

⁵ Ex. A-10

⁶ Ex. B-2, Application, Table 3.1, page 3-2

⁷ Tr. p.238, lines 3-11 and Tr. p. 239, lines 7-20; Ex. C2-7, line 2,

⁸ Tr. p.239, line 21 to Tr. p.240, line 1

its forecast primary (wholesale) sales to YECL and YECL's forecast of total purchases from YEC are forecasts of the same number but are essentially separate and distinct forecasts.⁹ This likely results from the differing methodologies employed by YEC and YECL for forecasting primary sales.¹⁰

The City is concerned with the lack of communication between YEC and YECL with regards to forecasting wholesale sales. YEC seems to have a history of considering their wholesale forecasting to be superior to YECL's methods. YEC states:

16 In the resource plan
17 hearing, a considerable more level of
18 discussion was had about the wholesale
19 forecasting matter between the two utilities.
20 There was an undertaking that was provided that
21 showed the forecast, long-term forecast,
22 prepared by each utility in relation to actuals
23 over time.
24 But, nonetheless, at that
25 point in time, Yukon Energy had started to --

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01 only started to move towards amending, if you
02 like, or adjusting the wholesale forecast to
03 reflect what it had seen as, in a mathematical
04 sense, of sort of persistent underforecasting.
05 It showed up in '06 and just changing the
06 monthly distributions.
07 By '07 Yukon Energy had
08 actually started to insert an additional amount
09 into the forecast because the numbers were just
10 not holding up. The actuals were coming in
11 persistently above the level of forecast to the
12 point that it only made sense that we try to
13 add an additional factor to those numbers.¹¹

⁹ Tr. p.235, line 22 to Tr. p.237, line 1

¹⁰ Ex. B-11, YECL-YEC-1-19

¹¹ Tr. p.245 line 16 to p.246, line 13

With regard to the 2009 YECL hearing, YEC stated that it did not believe YECL's forecasts of wholesale sales were reasonable.¹² As for the current application, YEC did not discuss its wholesale sales forecasts assumptions with YECL prior to filing its application.¹³ YEC also states that it is not apparent that overall wholesale forecasting would necessarily be improved through prior access to the YECL forecast sales data."¹⁴ There is, however, no question that YEC acknowledges the relevance of the YECL information, as evidenced in this statement from its argument in the YECL hearing:

“YECL's purchase power forecasts are clearly relevant to Yukon Energy's forecast of wholesales, particularly as regards firm or primary wholesales. Consistency in these forecasts as between the utilities is therefore important.”¹⁵

The City notes that the change to YECL's sales forecasts for 2008 that was directed by the Board resulted in a YECL calculation of purchases in its compliance filing of 263,765 MWh¹⁶ for 2008 that is remarkably similar to the preliminary actual of 263,820 MWh¹⁷ reported by YEC. In the City's view this suggests that the wholesale sales forecasts approved by the Board (and as amended by the Board based on intervenor input) in Decision 2009-2 are reliable. The 2009 wholesale sales forecast in the YECL compliance filing, 267,747 MWh is also very similar to the YEC forecast for 2009 (266,926 MWh¹⁸).

The YECL forecasts have now been approved by Board Order 2009-5 issued May 21, 2009. The City submits that it makes little sense for there to be two different regulatory forecasts for the same sales approved by the Board within a few months of each other. This is particularly so given that the two utilities are about to embark on a joint Phase II exercise. The City submits that in the

¹² Tr. p. 246, lines 18-22

¹³ Ex. B-11, YECL-YEC-1-19(g)

¹⁴ Ex. B-11, YECL-YEC-1-19(f), (h), (j), (k)

¹⁵ YEC Argument in YECL 2008-2009 General Rate Application, page 43

¹⁶ Ex. C2-7, Revised Schedule 3.1 and Tr. p.239

¹⁷ Tr. p.251, line 4-6

¹⁸ Ex B-10, Schedule 11, line 31.

08 everything. And it would make sense if
09 everybody could agree to try and get the things
10 that the utilities can agree on, such as the
11 wholesale sales, as one package.
12 There are two utilities
13 in this instance, though, and they would have
14 differences of opinion, as the Board has seen
15 in the two filings that were made. So a little
16 bit of patience may be required for everyone to
17 sort of settle down and get used to, okay,
18 everybody's been back before the Board, the
19 Board has made some decisions on various
20 matters, including forecasting, and maybe it's
21 possible for the staff and the two utilities to
22 now get together and not be concerned about
23 differences of point of view.
24 It would be certainly
25 desirable, but we have to see if that objective
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01 can be achieved.

The City notes above that YEC references its own comments from its opening statement in this matter. YEC stated the following as part of its opening statement:²⁰

15 Finally, in the interest
16 of controlling future regulatory costs in the
17 Yukon, we also propose that the utilities
18 examine potential future options where YEC and
19 YECL once again can work together, as in the
20 1996 and 1997 and earlier GRAs, to address
21 revenue requirement, cost of service, rate
22 design, and other matters in a single
23 integrated hearing process.

The City notes YEC issued virtually the same statement in its letter to YECL dated May 1, 2009.²¹
The City agrees with YEC that it is a very desirable objective for YEC and YECL to once again

²⁰ Tr. p.36, lines 15-23

²¹ Ex.B-13, p.2

work together, as in the 1996 and 1997 (and earlier GRAs). The City submits that to the benefit of the ratepayers of the Yukon, duplication of costs would be alleviated or eliminated and many economies of scale realized from a joint facilitation of revenue requirement, cost of service, rate design, and other matters in a single integrated hearing process. The City also notes there appears to be a willingness from both utilities to pursue this matter.

However, in the above quote from pages 252 and 253 of the transcript, Mr. Osler states that it may be possible for the two staffs to work together toward this goal but that, “we have to see if that objective can be achieved.”

The City recommends that the Board direct YEC and YECL jointly to assess the feasibility of the two utilities holding a single integrated hearing process to address revenue requirement, cost of service, rate design and other matters. The two utilities should be directed to provide a report addressing all matters regarding this potential integration by December 31, 2009.

3. Fuel Costs (Issue 3 b)

In its Updated Filing, YEC noted that the Board, in Order 2009-2, had accepted YECL’s forecast of \$0.96/liter for diesel fuel costs. YEC provided a recalculated Minto “Fixed” Rider F based on YECL’s approved forecast diesel fuel cost of \$0.96/liter and YEC’s unapproved forecast of \$1.14/liter.²² YEC indicated that it had not adjusted the fuel costs in its updated revenue requirement to reflect current fuel prices.²³ YEC gave the following reasons:

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- 13 Q No. I think I understand that you said that
14 the updates were done, but they didn't update
15 the forecast for fuel?
16 A MR. OSLER: Okay.
17 Q And I guess really the question is why not?

²² Ex. B-10, pages A2 – A3

²³ Ex. B-10, Attachment A1, Schedule 12, line 12

18 A MR. OSLER: All right. In terms of
19 fuel price or fuel volume, there would be no
20 rationale to change the forecast for fuel
21 volume unless you were changing either the
22 sales or some capability with respect to your
23 non-fuel generation, and there wasn't any
24 changes in those things.
25 With respect to the fuel

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1 price, I mean, the approach that we have taken
2 and others have taken is that we took the best
3 price forecast available at the time we made
4 the filing, and we go forward with that price
5 given that the Rider F process is there to deal
6 with the variances that will immerge inevitable
7 between the GRA forecast and the final price.
8 So that's the position that's been taken in
9 hearings of this nature to do with fuel price.

The City agrees that YEC may be right, that the Rider F mechanism will, in the long run, keep the utility and customers whole by correcting for any differences between the GRA forecast fuel prices and actual fuel prices. However, the nature of a deferral account is that it may give rise to inter-generational inequities from year to year and send incorrect price signals to customers. It is a fact that YEC's 2009 forecast fuel price is too high by both the measure of current prices²⁴ and by the measure of the 2009 fuel price forecast approved for YECL. YEC's fuel price forecast is not the "the best price forecast available" and should not be approved on that basis alone.

YEC explained that fuel costs, secondary sales revenues, and fixed industrial Rider F amounts would all require adjustment if YEC's forecast were changed. YEC stated "The combined impact of the above is an adverse impact on the revenues required from firm rates of approximately \$0.448 million (i.e., the 2009 rate reduction proposed by YEC in this case would be only \$0.886

²⁴ Ex. B-11, CW-YEC-1-16 (e)

million, instead of the proposed \$1.334 million)”.²⁵ However, the increase in revenue requirement would be offset, in practice, to customers by a decrease in Rider F and by decreases to the actual secondary sales rate. Consequently, the City does not accept YEC’s proposition that its fuel price forecast should be accepted on the basis that its forecast decreases revenue requirement.

YEC’s reluctance to adjust its fuel price forecast raises problems of consistency with YECL as well as possible difficulties to allocate costs in a joint cost of service study with “apples and oranges” assumptions. The City considers that a joint cost of service requires that the two utilities have common assumptions, including a common forecast for the cost of diesel fuel. The best forecast available for regulatory purposes is the fuel price forecast approved for YECL in Order 2009-2, or \$0.96/liter.

4. Insurance for Reserve for Injuries and Damages (RFID) (Issue 3 g.)

YEC provided the following revenue requirement pertaining to insurance requirements, appropriations and charges to the RFID.²⁶

Table 4.1

Insurance and Reserve for Injuries & Damages
 (\$1000)

	Actual 2005	Actual 2006	Actual 2007	Forecast		Forecast	
				Existing 2008	Proposed 2008	Existing 2009	Proposed 2009
Insurance	\$ 909	\$ 813	\$ 814	\$ 914	\$ 914	\$ 952	\$ 952
Reserve Appropriation	100	100	100	50	50	50	150
One-time Transfer	744				463		
Less: Application of fire gain funds	(744)				(463)		
Total RFID	\$ 1,009	\$ 913	\$ 914	\$ 964	\$ 964	\$ 1,002	\$ 1,102

²⁵ Ex. B-11, CW-YEC-1-16 (e)

²⁶ Ex. B-2, Application Table 3.1, page 3-13

In an information response, YEC provided the following continuity schedule for its RFID:²⁷

Table 4.2

Continuity Schedule – YEC Reserve for Injuries and Damages

	2005 (\$000)	2006 (\$000)	2007 (\$000)	2008 (\$000)
Opening Balance	797	-33	500	463
Additions				
Computer Stolen	4			
Third Party Vehicle Damage - Mayo	1			
Service Truck Fire Loss	1			
Dawson Hse H2O Damage	6			
Marsh Lake Dam Repair	2			
YUB Board Order 2005-12 transfer from Reg Liability	-743			
Takhini Substn Break-In		16		
Kulan Break In		32		
L171 Lightning Arm Failure		11		
L171 Insulator Failure		35		
Whitehorse Hydrant Leak		38		
Unit 63 Vehicle Theft		2		
WH1 Hub and Blade Repair		302		
Aishihik Cable Repair		200		
L174 Broken Pole			38	
Marsh Lake Water Damage			17	
Kulan Warehouse Water Damage			7	
L172 Insulator Failure				40
Rock Creek Crossing				11
Polaris Ranger & Trailer Replacement				9
Repair Outage Damage				25
Streetlight damage				1
Total	-730	633	63	86
Annual Provision	-100	-100	-100	-50
Closing Balance	-33	500	463	500

The City does not take issue with the concept of the RFID. Properly managed, the RFID will minimize customer costs providing an appropriate balance between the cost of liability insurance and the size of the insurance deductible. The RFID also contributes to rate stability by deferring unusual losses in one year to other years when losses may be unusually low. As noted in YEC’s financial statements, “GAAP would require costs to be expensed as incurred and, therefore, expenses in 2006 would have been higher by \$533,000 (2005 – \$86,000 lower).”²⁸ Finally, the RFID is a legitimate function of risk management, which the City notes is under the control of the CFO.²⁹

²⁷ Ex. B-11, YECL-YEC-1-29 (b)

²⁸ Ex. B-11, CW-YEC-1-36 (a) Attachment 2 - (e) Deferred Insurance costs

²⁹ Ex. B-11, LE-YEC-1-32(a) Attachment 1, Position 96-11

The City's first concern is with the RFID of \$50,000 for 2008 and \$150,000 for 2009. This uneven appropriation defeats the rate stability benefits of the RFID. The City notes that appropriations for the previous three years were \$100,000 in each year. The claims against the account, exclusive of the WH1 Hub and Blade Repair and the Aisihik Cable Repair, averaged less than \$100,000 during 2005-7 ($\$131,000 + \$63,000 + \$86,000 \div 3 = \$93,333$), indicating that \$100,000 is likely an appropriate yearly allocation. The City submits that the RFID appropriation should be \$100,000 for each test year.

The City's second concern is that YEC may not have done its due diligence respecting the tradeoffs between the deductible amounts on property insurance, the additional costs of making claims on its existing insurance and the size of uninsured claims. This concern is raised by the WH1 Hub and Blade Repair and the Aisihik Cable Repair in 2005. The former repair exceeded the existing deductible but was not claimed against the insurance because YEC was advised by YEC's insurance broker that a claim would have resulted in an increase in premiums.³⁰ YEC does not provide any evidence concerning what the premium increase would have been had the repair been claimed. The City submits that prudent risk management on an ongoing basis would include a determination of whether making a claim would cause premiums to increase more than the size of the claimed amount. The latter repair was just below the deductible amount, which also raises a question as to whether the deductible amount is too high.³¹

The final concern of the City centers on the discretion of the CFO with respect to charges to the RFID.³² Issues were raised during the hearing respecting the materiality criteria for RFID charges and the criteria for charging repairs to O&M expenses rather than the RFID. The criteria for RFID charges appear to be loose and informal.³³ The City notes the criteria proffered by YECL in this hearing.³⁴ The City submits that these or similar criteria would be useful for YEC's overall risk management function and would protect customers against costs that should be properly

³⁰ Ex. B-11, YECL-YEC-1-29 (c) page 7 of 8

³¹ Ex. B-11, YECL-YEC-1-29 (c) page 7 of 8

³² Ex. B-11, YECL-YEC-1-29 (a)

³³ Tr. p. 113, l. 22 – p. 120, l. 2

³⁴ Ex. C-1-9

claimed from the insurer. The City submits that a direction to this effect would be appropriate at this time, on the understanding that YEC could study the issue and, if it wished, could suggest modifications to the criteria at its next GRA.

The City recommends that the Board direct YEC to perform a comprehensive risk management study to determine, among other matters, whether raising deductible amounts (increasing charges to the RFID) would reduce property insurance costs in a cost-effective manner, whether the deductible amounts provide an appropriate balance between the cost of insurance and probable size of claims and criteria for making charges to the RFID.

5. Cost of Service Study (Issue 4)

Originally, YEC characterized the Application as a “comprehensive” application that, as a result, did not require a Phase II hearing or a cost of service study. YEC’s position was summarized in a response to the Board as follows:

“In the context of the issues being dealt with by the Board in Board 2007-5, and the Board’s legislated mandate in place at that time, the Board’s expectation is clear. The Board clearly expected at that time (as did YEC) that YEC and YECL would file a complete cost of service study and rate design in the next General Rate Application (“GRA”). However, the Board’s ratemaking mandate has been materially revised since that time by OICs 2007/94 and 2008/149 obviating the need for a cost of service (COS) study in order to deal with YEC’s current GRA. As outlined in more detail below, this is the primary reason why YEC did not file a cost of service study as part of its current GRA.”³⁵

By letter to YECL dated May 1, 2009, YEC proposed that the two companies “meet to discuss and plan the joint YEC/YECL Phase II Application, including effective joint consultations with interested parties on those matters and proposals for the Phase II hearing timing and process.”³⁶

YEC stated:

“We understand from the Board’s directives that this joint Phase II Application is required to include cost allocations (joint cost of Service Study) based on the

³⁵ Ex. B-11, YUB-YECL-1-20 a) page 1 of 5

³⁶ Ex. B-13

2009 consolidated revenue requirements of YEC and YECL as approved by the Board), outstanding rate matters that can be addressed at this time (including jointly proposed rate schedules) as well as in future GRAs, and jointly proposed changes to the Electric Service Regulations (Terms and Conditions of Service) including review of options and recommendations as directed by the Board in Order 2007-5 regarding maximum utility investment policy for industrial customers.”

Neither the Board nor intervenors were copied with this letter. The Board and parties other than YECL learned of this amendment to YEC’s position only upon receipt of YEC’s opening statement.³⁷ The City submits that informing the Board and intervenors that it has significantly changed its position in an opening statement provided on the eve of a hearing does not constitute efficient regulatory process for this Phase I Application. Notwithstanding its dissatisfaction with YEC’s process, the City agrees that YEC and YECL should collaborate on a cost of service. The City also agrees with YEC’s and YECL’s suggestion to include customers in this process of developing new rates.³⁸ This will result in an efficient and orderly process including the potential elimination of many contentious issues prior to the joint Phase II hearing.

The City notes that there are a number of matters to be dealt with in the Cost of Service/Phase II process unrelated to the matter of increases across rate classes. YEC refers to directions from Decision 2009-2 regarding DSM and IPP initiatives.³⁹ The City also notes that YEC’s evidence states that current residential fixed charges do not recover their fully allocated costs.⁴⁰ YEC in the Application proposed increases to the energy runoff rate for the residential rate class based on the marginal cost of diesel generation. The City believes that some weight should be given to the cost of service when designing the components of rates. Therefore, the City submits that the Board should provide additional directions that due weight should be given to cost of service when designing the components of rates for a rate class.

6.0 Return on Rate Base

³⁷ Tr. p. 25 line 10 – p. 46 line 17

³⁸ YECL Compliance Filing, p. 2 of 13, lines 11-15

³⁹ Ex. B-13, and Order 2009-2, page 42

⁴⁰ Ex. B-11, CW-YEC-1-11 (a & b)

6.1 Yukon Energy Fair ROE for 2008 and 2009 (Issue 8. b)

For purposes of this Application, YEC proposed that it apply the BCUC formula and Order 2005-12 to determine a fair rate of return on equity. YEC detailed the steps involved and concluded that a fair ROE for the 2008 test year was 8.64%.⁴¹ For 2009, YEC incorporated the generic ROE of 8.47% set by BCUC L-55-08 and the same adjustments as it applied to the 2008 BCUC ROE for a proposed 2009 ROE of 8.49%.⁴² The City submits that the Board should approve both the 2008 and 2009 ROE, as proposed by YEC.

The City takes no issue with YEC's proposal to employ the BCUC formula for both test years. A generic formula provides a fair and objective method of determining what can be a contentious issue that can be costly to the utility and customers to resolve. The City considers that the formulaic approach to ROE provides for an efficient process and serves to reduce regulatory costs. The City agrees with Mr. Osler's assessment of the BCUC method.

“We know that in 2005 everybody around the table said this isn't a precedent, so that's not the issue. But now that the Board has made a determination for both utilities using the same approach, it would be good, from our point of view, if that was viewed as precedential so that we can all rely on that going forward as a simple method.”⁴³

Furthermore, use of the BCUC formula does not constitute a binding precedent as the Board retains the discretion to reject the BCUC formula if changes to a utility's risk profile mean that the BCUC formula does not result in a fair return to the utility. The City considers that continued use of the BCUC formula by the YUB in the absence of any changes in the utility's risk will provide a certain degree of certainty and stability to utility rates on an on-going basis.

⁴¹ Ex. B-2, Application pages 8.2 – 8.4

⁴² Ex. B-11, YUB-YECL-1-15 (d)

⁴³ Tr. p. 567, ll. 7-14

The City recommends that the Board approve YEC's proposed ROE of 8.64% for 2008 and 8.49% for 2009.

6.2 Cost of Debt (Issue 8. c. ii)

YEC's embedded cost of debt consists of a flexible Term Loan of 7% from the Government of Canada, a Promissory Note issued by TD Canada Trust bearing an interest rate of 7.81% and various debt instruments issued by YEC's parent, the Yukon Development Corporation.

TD Loan

Regarding the TD Canada Trust Promissory Note, YEC referred to the onerous repayment terms of this debt as a reason for not refinancing the loan through YDC.⁴⁴ YEC explained:

“The note itself isn't specific on -- doesn't allow for repayment, so we are bound by the terms of the interest act, which requires that we pay the greater of three months' interest or the interest differential. And given today's current low rates, that would be a fairly penal – there would be no point, basically, in negotiating, because we would have to pay the full differential.”⁴⁵

In its document dated May 15, 2009 incorporating answers to undertakings,⁴⁶ YEC provided a calculation demonstrating that the terms of repayment made refinancing this particular debt interest more costly than the payments to maturity. The City has examined this undertaking and has been unable to reproduce from the given assumptions either the cumulative interest payable under existing terms, the three months interest penalty or the interest differential figure.

Further, YEC's interpretation of its legal obligations and terms of repayment are accepted word for word, there should logically be no difference between the amount of interest to be paid under the original terms of repayment to TD, and the amount payable under the “interest differential”

⁴⁴ e.g. YUB-YEC-1-14 and LE-YEC-1-38

⁴⁵ Tr. p. 255 l. 25 – p. 256 l. 5

⁴⁶ See the answer to Undertaking # 6, given at Tr. page 257, line 15

scenario, of interest and penalty to TD, plus interest to the new loan provider. The response to undertaking is at odds with this logic.

As well, the City has examined the legislation and it appears that first, there is no “*Interest Act*” in the Yukon and second, it would appear that the only provision within that legislation that bears any resemblance or relation to the testimony of Mr. Mollard on this issue is section 10 of the federal statute, that is, the *Interest Act*, R.S.C.1985, c.I-15. That section allows for a repayment of principal with the only penalty being three months worth of interest, as opposed to the “interest differential” payment described by the YEC panel. Section 10 reads as follows:

10. (1) Whenever any principal money or interest secured by mortgage on real property or hypothec on immovables is not, under the terms of the mortgage or hypothec, payable until a time more than five years after the date of the mortgage or hypothec, then, if at any time after the expiration of the five years, any person liable to pay, or entitled to pay in order to redeem the mortgage, or to extinguish the hypothec, tenders or pays, to the person entitled to receive the money, the amount due for principal money and interest to the time of payment, as calculated under sections 6 to 9, together with three months further interest in lieu of notice, no further interest shall be chargeable, payable or recoverable at any time after the payment on the principal money or interest due under the mortgage or hypothec.

Exception

(2) Subsection (1) does not apply

(a) to any mortgage on real property or hypothec on immovables given by a joint stock company or any other corporation, nor to any debenture issued by them, for the payment of which security has been given by way of mortgage on real property or hypothec on immovables; or

(b) to any prescribed mortgage on real property or prescribed hypothec on immovables given by a prescribed entity, nor to any prescribed debenture issued by it, for the payment of which security has been given by way of mortgage on real property or hypothec on immovables.

YEC's evidence was that this instrument was acquired in 1996⁴⁷ so if this provision applies, the five year requirement would appear to be met. If the Board finds that this provision does apply to the TD Canada Trust loan then the City submits that the Board should require YEC within a specified short time frame, to either refinance this loan at the lowest available rate, or demonstrate to the Board's satisfaction, why refinancing this loan and paying an additional three months' interest at the original rate would not result in savings. If this section is not the provision of the *Interest Act* referred to by YEC's witness, the City is unable to determine to which provision the YEC witness (Mr. Mollard) was referring. No other provision appears to resemble his description.

From its review of the legislation and case law, however, the City does not believe that section 10 of the *Interest Act* would apply to this TD loan at all. YEC is obviously a corporation, and therefore would appear to be excepted from the operation of subsection 10(1) pursuant to the wording of subsection 10 (2) (a). The case law appears to support the view that if the borrower is a corporation, then section 10(1) of the *Interest Act* would not apply to the loan. In that case, the parties are free to contract under their own terms, including any (or no) terms relating to prepayment penalties. The comments of the Ontario Court of Appeal in *Litowitz v. Standard Life Assurance Company et al.* (1996), 30 O.R. (3d) 579, at 585 (C.A.) at 585 (C.A.); leave to appeal to the Supreme Court of Canada refused: [1996] S.C.C. No. 631 and No. 639] regarding section 10, would seem to support that point:

“Parties to these transactions need to know where they stand and to govern their business affairs accordingly. The statutory right of prepayment [in section 10 of the *Interest Act*] represents a legislative limit on the general principle of freedom of contract. The exemption clause, on the other hand, reflects a legislative choice that freedom of contract should govern where a mortgage is given by a company.”

The cases seem to suggest that section 10 of the Federal *Interest Act* was enacted to protect individuals, and farmers in particular, and not the (notionally) more sophisticated corporations.

⁴⁷ Ex. B-11, YUB-YEC 1-14 (a)

The City is left with considerable confusion as to the actual terms of repayment that would apply to a refinancing, or whether there simply are no applicable terms.

At the end of the day, if the Board determines that repayment by YEC pursuant to section 10 of the Federal *Interest Act* is not possible or prudent, or if the Board determines that there does not appear to be any contractual right or terms governing early repayment, the City submits that the Board should direct YEC to approach TD Canada Trust to see what actual terms of repayment could be obtained and whether these actual terms of repayment may be better than YEC's assumptions. The Direction should also require YEC to take advantage of any lower cost alternative that may be offered to YEC which would result in savings and incorporate this into a Compliance Filing.

Government of Canada Loan

YEC elaborated on the terms and conditions of the Government of Canada Loan, indicating that the loan is now held by YDC and providing an extensive history of how the loan was acquired.⁴⁸ Furthermore, YDC adjusted the amounts and interest paid on this loan to reflect "the impact of lower WAF sales on Flexible Term Note interest costs."⁴⁹ Based on that evidence, the relationship to the value of assets acquired and the period in time when the loan was acquired, the City has no issue with this loan.

YDC Debt

YEC provided the agreement between YDC and YEC setting out the terms and conditions of how the cost of debt to YEC is calculated. The agreement indicates that the debt is calculated as "120 basis points above the average of long-term Government of Canada Bonds as specified by the Canada Bond Rating Service as at the last previous September 30 prior to the issue of the loan;"⁵⁰

⁴⁸ Tr. p. 257 l. 17 – p. 262 l. 12

⁴⁹ Exhibit B-10, Appendix A page A1, footnote 2

⁵⁰ Ex. B-11, CW-YEC-1-26 a) Attachment 1, page 2

The period for which these funds are advanced is not specified by the agreement but the financial statements indicate that these unsecured advances are “due one year after demand”.⁵¹

During these proceedings, YEC had a great deal of difficulty explaining its parent’s sources of funds and the rates at which YDC might borrow funds. It was not the City’s intention to examine in detail YDC’s operations but to determine if the debt issued by YDC was reasonable compared to that entity’s cost of capital. Any unreasonable deviation from the parent’s cost of capital reflected down to YEC would represent either additional profit to or a subsidy from the parent. During these proceedings, YEC provided information indicating that YDC has multiple sources of capital, so that an objective cost of capital for YDC could be difficult to obtain. Upon receiving this explanation, the City considers that the method set out in CW-YEC-1-26 a) Attachment 1 is appropriate and impartial in this situation where the parent may not have a defined cost of capital. The City further notes that 120 basis points spread above long-term Canada bonds is less than the spreads quoted by YECL’s financial experts in evidence given at that general rate application.

The City has no issues with the components of YEC’s debt instruments issued prior to 2008, as these reflect prior regulatory approvals and contracts. In the Application, YEC proposed two new debt instruments to be issued by YDC during the test years. Both bore forecast coupon rates of 5.28%.

Table 6.2.1
YEC Debt Issued during the Test Years

Instrument	Amount	Issue Date	Coupon Rate
YDC Loan # 17	\$3,515,000	December 31, 2008	5.28%
YDC Loan # 18	\$5,043,000	December 31, 2009	5.28%

However, Mr. Mollard noted during the hearing that the coupon rate for YDC Loan # 17, issued December 31, 2008 was 4.65%.⁵² Whereas the issue amount was revised to \$3,469,000 the City

⁵¹ Ex. B-11, CW-YEC-1-36 a) Attachment 1 note 13, and Attachment 2, note 12

⁵² Tr. p. 256, l. 19

notes that YEC has not revised its forecast coupon rate for YDC Loan #17 in Schedule 13 of the April 24, 2009 updated filing.⁵³ The City notes that the cost of YDC Loan # 17 is listed in updated Schedule 13 as 5.28%. Given that this information was available for at least three months before the update was filed, the City considers that this information should have been included. Furthermore, the City does not understand why YEC updated one debt instrument (the Flexible Term Note) but not Issue #17 for actual 2008 results. The City submits that the cost of 4.65% represents the best possible information for the cost of debt for 2008 upon which the Board should rely in making its decision.

The City notes that YEC has amended its forecast of the amount of issue #18 from \$5,043,000 in the Application to \$4,963,000 in the amended filing. Given YEC's explanation that the size of each issue is determined to preserve YEC's 60/40 debt/equity ratio, the size of Issue #18 is dependent on the Board's determinations in these proceedings. On the other hand, the coupon rate for Issue #18 has not been revised to account for the changes in the long Canada bond rate. The cost of this issue will not affect 2009 revenue requirement as no interest will be paid on this instrument. The City prefers that a realistic coupon rate be inserted for Issue #18 for a complete properly prepared forecast. Therefore, the City submits that YEC should revise the amount and coupon rate of Issue #18 at the time of its compliance filing.

In summary, these are the City's recommendations for the cost of new debt:

Table 6.2.2
City of Whitehorse recommendations for YEC New Debt

Instrument	Amount	Issue Date	Coupon Rate
YDC Loan # 17	\$3,469,000	December 31, 2008	4.65%
YDC Loan # 18	To be determined	December 31, 2009	to be determined

⁵³ Ex. B-10

7.0 Summary

As a brief summary of the positions put forth in this argument, the City recommends the following with reference to the issues list set out in Order 2009-1, Appendix B:

Issue 2(b)(i) Sales Forecast and Forecasting Methodology – Wholesale Sales to YECL

The City submits that the Board should accept and approve the wholesale forecasts in the YECL compliance filings (263,765 MWh for 2008 and 267,747 MWh for 2009)⁵⁴ as being the best and most reliable forecasts available for this proceeding. (See pages 3-6 of this Argument).

Co-operation Between the Utilities

The City recommends that the Board direct YEC and YECL jointly to assess the feasibility of the two utilities holding a single integrated hearing process to address revenue requirement, cost of service, rate design and other matters and to provide a report addressing all these matters by December 31, 2009.

Issue 3(b) - Fuel Costs

The City submits that the best forecast available for regulatory purposes is the fuel price forecast approved for YECL in Order 2009-2 or \$0.096/liter. (See pages 8-10 of this Argument).

Issue 3(g) – Insurance for Injuries and Damages

The City submits that the RFID appropriation should be \$100,000 for each test year as an uneven appropriation defeats the rate stability benefits of the RFID. (See pages 11-12 of this Argument).

⁵⁴ Now approved by the Board in Board Order 2009-5, issued May 21, 2009.

The City also agrees with YECL that there should be formal criteria regarding what charges are appropriately made to the RFID. (See pages 12-13 of this Argument).

The City recommends that the Board direct YEC to perform a comprehensive risk study to determine, among other matters, whether raising deductible amounts (increasing charges to the RFID) would reduce property insurance costs in a cost effective manner whether the deductible amounts provide an appropriate balance between the cost of insurance and probable size of claims and criteria for making charges to the RFID. (See page 13 of this Argument).

Issue 4 Cost of Service Study

The City agrees that YEC and YECL should collaborate on a cost of service and also agrees with the suggestion by both utilities to include customers in this process of developing new rates. (See page 14 of this Argument).

The City also submits that the Board should provide additional directions that due weight should be given to cost of service when designing the components of rates for a rate class. (See page 14 of this Argument).

Issue 8(b) Yukon Energy Fair ROE for 2008 and 2009

The City recommends that the Board approve YEC's proposed ROE of 8.64% for 2008 and 8.49% for 2009. (See pages 15-16 of this Argument).

Issue 8(c)(ii) Cost of Debt

TD Loan

With respect to this loan, the City cannot accept YEC's evidence with respect to terms of payment and refinancing. If the Board finds that s.10 of the Federal *Interest Act* applies to this TD loan

then the City submits the Board should require YEC within a specified short time frame, to either refinance this loan at the lowest available rate, or demonstrate to the Board's satisfaction why refinancing this loan and paying an additional three (3) months interest at the original rate would not result in savings. (See pages 16-18 of this Argument).

If the Board determines that repayment by YEC pursuant to s. 10 of the Federal *Interest Act* is not possible or prudent, or if the Board determines that there does not appear to be any contractual right or terms governing early repayment, the City submits that the Board should direct YEC to approach TD Canada Trust to see what actual terms of repayment could be obtained and if those actual terms of repayment are better than YEC's assumptions, YEC should be required to take advantage of any lower cost alternative that may be offered and to incorporate this into a Compliance Filing.

Government of Canada Loan

The City has no issue with this loan based on the evidence on the record of this hearing. (See page 19 of this Argument).

The City accepts as reasonable the arrangement between YDC and YEC indicating that debt is calculated as "120 basis points above the average of long-term Government of Canada bonds as specified by the Canada Bond Rating Service as at the last previous September 30 prior to the issue of the loan." (See page 20 of this Argument).

The City however submits that the cost of 4.65% for YDC loan #17 should be incorporated into the compliance filing in accordance with the evidence of Mr. Mollard and the best available information for the cost of debt for 2008 as at the time of the Board's decision. (See pages 20-21 of this Argument).

The City submits that at the time of a compliance filing a realistic coupon rate should be inserted for Issue #18 as discussed in the body of the argument (See pages 21-22 of this Argument).

All of which is respectively submitted on behalf of the City of Whitehorse this 22nd day of May, 2009.

Brownlee LLP
Solicitors for the City of Whitehorse

Thomas Marriott
Wed May 20 23:01:27 2009

A handwritten signature in black ink, appearing to read 'T. Marriott', is written over a horizontal line. The signature is partially obscured by a large, dark, diagonal scribble or stamp.

Per:
THOMAS D. MARRIOTT