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Our file-no.: 12276-83

June 5, 2009

Yukon Public Utilities Board  
Box 31728  
Whitehorse, Yukon  
Y1A 6L3

Att: Ms. Wendy Shanks  
Board Chair

Dear Ms. Shanks:

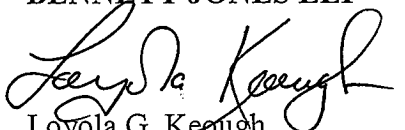
**Re: Yukon Energy Corporation ("YEC")  
2008-2009 General Rate Application  
Reply Argument**

In accordance with the Board's procedural schedule for the referenced proceeding, please find enclosed herewith the Reply Argument of the Yukon Electrical Company Limited.

Should you have any questions regarding the above, please do not hesitate to contact the undersigned.

Yours truly,

**BENNETT JONES LLP**

  
Loyola G. Keough  
Counsel for Yukon Electrical

**YUKON UTILITIES BOARD  
YUKON ENERGY CORPORATION  
2008-2009 GENERAL RATE APPLICATION  
REPLY ARGUMENT OF YUKON ELECTRICAL COMPANY LIMITED**

1. **INTRODUCTION**

In accordance with the Board's Schedule regarding the referenced Yukon Energy Corporation ("YEC") General Rate Application ("GRA") the Yukon Electrical Company Limited ("Yukon Electrical") received Arguments from YEC, the City of Whitehorse ("CW"), the Utilities Consumers' Group ("UCG") and Leading Edge Projects Inc. ("LE"). While Yukon Electrical's Final Argument correctly anticipated a number of positions that would be advanced by YEC, certain matters raised in the referenced Final Arguments warrant a response.

In addition, while Yukon Electrical is generally supportive of a number of the positions advanced by other Interveners in these proceedings, a general area of concern arising from certain of the Intervener submissions relates to what appears to be a misunderstanding of the nature and scope of the current proceeding, as well as, the scope of the Board's jurisdiction. In a number of instances, which will be detailed below, certain Interveners request that the Board issue directions in the context of this specific GRA, which would apply to both YEC and Yukon Electrical. As the Board will readily appreciate, this proceeding deals solely with YEC's GRA and Yukon Electrical is not an Applicant in this process. As such, it is not possible for the Board to issue Decisions or Directions regarding Yukon Electrical in the context of this proceeding, and regarding which Yukon Electrical would clearly have had no notice and no opportunity to respond. As such, the requests by certain Interveners that the Board issue directions that would apply to Yukon Electrical must be denied in their entirety.

While Yukon Electrical will attempt to address all material matters raised by YEC, the failure to address any specific matter should not be interpreted as

concurrence with the positions advanced by YEC on any such issues. To the contrary, unless expressly stated, Yukon Electrical's views remain those as expressed herein and in its Final Argument. For ease of reference, Yukon Electrical will again use the numbering reflected in the Board's Issue List, even though this will mean that certain sub-areas will be skipped.

## **2. SYSTEM SALES AND GENERATION**

### **B. Sales Forecast and Forecasting Methodology**

#### **(i) Wholesale Sales to YECL**

In Argument Interveners commented upon the fact that Yukon Electrical was not consulted and did not have any input into the wholesale sales forecast presented by YEC in these proceedings. Yukon Electrical agrees that it is indeed unfortunate that YEC did not consult with it as part of developing its wholesale forecast for the current GRA. As acknowledged by YEC, it utilizes a different methodology from Yukon Electrical in order to derive this forecast. While YEC's approach may indeed be "simple and straightforward" it does not utilize accepted statistical methodologies and does not account for weather normalization. Yukon Electrical submits that the approach used by YEC does not result in a rigorous and supportable forecast.

As noted above, while the Board cannot issue a Direction to Yukon Electrical in the context of these proceedings, the Board can direct YEC to work with Yukon Electrical to develop an appropriate forecast of wholesale sales for purposes of future GRAs. Yukon Electrical remains of the view that it is in a better position to derive such a forecast of consumption by its customers, than is YEC using its "top-down" review of Yukon Electrical's forecast (YEC Argument, p. 14).

Yukon Electrical also notes that YEC takes the position that it has no reason to develop optimistic forecasts (p. 9). As will be discussed below, YEC's capital

forecast and its aggressive pursuit of numerous major capital projects is entirely dependent on its forecast of local growth. While YEC appears to be well out ahead of such growth actually firming up, the subject forecasts provide the basis for much of what YEC is proposing to do in the way of capital projects. This may lead YEC to be overly optimistic.

As stated in its Argument (p. 6), Yukon Electrical is of the view that the recently approved wholesale purchase forecast for Yukon Electrical for both the 2008 and 2009 Test Years should also be used by YEC for its wholesale sales. Yukon Electrical notes that CW (p. 5) also supports the use of this consistent approach to determining YEC's wholesale sales for the Test Years.

**E. Use of Available Hydro Surplus and Impact of Base Load Requirements**

Based on the Intervener Arguments submitted herein, it appears that other parties share Yukon Electrical's concern that YEC has failed to address the impacts associated with constructing major facilities to meet what are, at most, short-term needs, even if these loads unfold as YEC speculates they will. Yukon Electrical reiterates its view that YEC must address the residual impacts on customers of owning and operating long-term infrastructure as part of project development; and simply cannot rely upon a general assertion that forecast wholesale load growth will require the additional generation in any event. As noted by Yukon Electrical, there is simply no evidence to support this general assertion.

As will be discussed below in the context of the Capital Projects being pursued by YEC, a comprehensive business case should be provided by YEC for each such Project prior to it moving forward with the expenditure of funds, including feasible study costs. Yukon Electrical remains of the view that an assessment of the residual impact on customers is a critical component of assessing YEC's proposals reflected herein. In summary, the Board should not sanction YEC moving forward with its proposed Capital Projects based on the limited information reflected on the

record and absent the above-referenced assessment of long term customer impacts, as part of a comprehensive business case.

#### **F. Impact of Minto Mine and Other Possible Mine Customers**

As will be discussed in greater detail below, Yukon Electrical is very concerned that YEC is indeed relying upon the Board's review of YEC's 20 Year Resource Plan several years ago and the recommendations made with respect thereto, as constituting the Board's "review" of several major Capital Projects. In this regard, Yukon Electrical notes that it was in the context of YEC's same 20 Year Resource Plan that YEC made the commitment to seek YUB review, prior to construction of any Capital Projects costing \$3 million or more (see Resource Plan Report to Commissioner in Executive Council, p. 1). Yukon Electrical notes that the Board itself reduced this financial threshold for prior Board review. Yukon Electrical submits that it is disingenuous for YEC to commit to seek YUB review of such Projects in the context of the Resource Plan proceeding and then subsequently suggest that the same Resource Plan process in fact constitutes such review.

In this regard, Yukon Electrical also notes that as part of the Resource Plan process the Minister of Justice noted that it was the Government's understanding that no final decision has been made to implement any of the proposed Projects and that any specific Projects to be implemented by YEC will be subject to various regulatory approvals and reviews, including pursuant to Part III of the *Public Utilities Act* (see Resource Plan Report, p. 3). It was on the basis of these commitments that Yukon Electrical did not challenge any specific projects in the context of the 20 Year Resource Plan proceeding, as it was clear that further review was contemplated by both YEC and the Government. However, now we see YEC advancing positions that it relied solely upon the Resource Plan Report to support it moving forward with numerous Capital Projects, even though the need and economic viability of such Projects have not been established.

**G. Demand Side Management Programs**

No further comment beyond the views expressed in Yukon Electrical's Argument (p. 8) are required on this matter.

**3. REVENUE REQUIREMENT**

**C. Non-Fuel Operating and Maintenance Expenses**

Yukon Electrical agrees with the observation made by the UCG that the approach taken by YEC in bringing forward this Application creates a false appearance of rate decreases (p. 7). As noted by Yukon Electrical in its Argument (p. 8), YEC has adopted a number of measures in the context of these proceedings which conceal what is really happening with its rates. As noted, absence the adoption of such measures YEC would not be seeing the purported rate decreases. Yukon Electrical submits that it is critical for the Board to understand what is actually occurring as it examines YEC's requests herein. In order to do so, the Board must examine the actual evidence on the record and the costs included in YEC's GRA. In doing so, it should not be distracted by the optics of a rate decrease. Rather, the Board must ensure that all of the costs put forward are reasonable and appropriate, prior to being approved. As with its Argument, Yukon Electrical will provide specific responses to a number of items.

**(i) Reserve for Injuries and Damages**

With respect to this matter, Yukon Electrical agrees with the observation made by CW that the criteria employed by YEC are loose and informal (p. 12). Yukon Electrical is likewise concerned with the lack of due diligence with respect to the Reserve and the items included therein that has been exhibited by YEC.

The brief comment by YEC in its Argument (p. 21-22) with regard to the Reserve for Injuries and Damages does not respond to the positions explored during cross-examination, even though YEC could have and should have understood that this matter was of concern to parties. Notwithstanding, Yukon Electrical reiterates its view that YEC should be required to develop explicit criteria that would govern the inclusion of amounts in the Reserve. As indicated in its Argument (p. 9) Yukon Electrical is of the view that the criteria it introduced via Exhibit C-1-9 herein should appropriately be mandated for use by YEC. In addition, while YEC makes reference to the \$1,000 materiality threshold in its Argument, Yukon Electrical submits that this level is inadequate for YEC and reiterates its view that a materiality threshold in the order of \$15,000 - \$20,000 is more appropriate.

Yukon Electrical also reiterates its view that the Board should carefully scrutinize each of the items YEC seeks to include in the Reserve to determine whether or not they should properly be included therein.

Finally, YEC's request to increase the provision included in the Reserve has not been demonstrated as being required or necessary and should not be approved.

**(ii) Brushing**

In its Argument YEC did not address this matter even though it was raised as an item of concern. Yukon Electrical reiterates the views expressed in its Argument (p. 10-11) and nothing further is required.

**D. Rate Base**

**(i) Depreciation and Amortization**

In its Argument (p. 24) YEC confirms that it has no plans to update its current Depreciation Study. In this regard, Yukon Electrical notes the observation made by

the UCG (p. 14) that the internal opinions of YEC are not adequate evidence on the appropriateness of the current Depreciation Rates. Yukon Electrical agrees with these views. However, Yukon Electrical also notes that the UCG requests that the Board direct YEC and Yukon Electrical to conduct a joint Depreciation Study. As stated above in the Introduction, it is not possible for the Board to issue a Direction to Yukon Electrical in the context of YEC's GRA. Furthermore, even if the Board had the jurisdiction to do so, such Direction would be absolutely unnecessary, as Yukon Electrical has recently completed a Depreciation Study in the context of its own General Rate Application. No such Direction to Yukon Electrical should issue from the Board in the context of these proceedings.

Yukon Electrical remains of the view that the Board should direct YEC to conduct a full Depreciation Study for presentation in its next GRA. YEC's views on this matter should be provided as part of its Compliance Filing in these proceedings.

#### **H. Rate Case Costs**

The Argument presented by YEC (p. 24-25) removes any ambiguity that YEC is seeking to treat its rate case costs in a manner completely different from that recently directed by this Board for Yukon Electrical in the context of its 2008/2009 GRA Reasons for Decision. The sum total of YEC's justification for distinct treatment appears to be that it is not and has never requested that a specific permanent Rate Case Reserve be established for it. YEC does nothing to explain why it should be treated differently from Yukon Electrical and why it should not be required to establish a Reserve which would include an annual provision and be brought forward for final disposition at the time of YEC's next GRA. While YEC may indeed be seeking to continue the approach it has previously used with respect to the Rate Case Reserve, Yukon Electrical submits that to allow such treatment would be entirely inappropriate in the circumstances.

Yukon Electrical reiterates its view that YEC should be treated in the same manner as Yukon Electrical with respect to the establishment of a Rate Case Reserve in the manner directed by the Board for Yukon Electrical in Board Order 2009-2 and the Reasons for Decision attached thereto. There is simply no basis that would support any different treatment. Yukon Electrical has fully addressed the other points made by YEC on this matter in its Argument and, as such, these points need not be repeated here.

#### **I. Service Quality Indicators/Need for Performance Monitoring**

As noted in Yukon Electrical's Argument (p. 13) YEC's performance in recent years has been at unacceptable levels and, as such, YEC should be required to provide information to the Board on an ongoing basis, via quarterly filings, which would indicate its performance level, as measured against generally accepted Key Performance Indicators. In this regard, the information provided should include data with respect to YEC's Generation and Transmission functions, in order to ensure that the information provided is meaningful.

#### **4. COST ALLOCATION AND RATES**

##### **A. Overview**

It is indeed unfortunate that, notwithstanding the unanimous opposition to attempting to effect piece-meal changes to rate design in the context of this Phase I proceeding, YEC has continued to persist with its request that the Board make certain limited changes to rate design as part of this case. While Yukon Electrical is encouraged that YEC is prepared to work together to file a joint Phase II Application, Yukon Electrical remains of the view that the proposed piece-meal changes are entirely inappropriate in circumstances where the overall impacts arising from such a fragmented approach have not been discussed or considered. While YEC submits that the proposed changes do not rely on a Cost of Service

Study (p. 29), the point made by Yukon Electrical and other Interveners is that it should rely upon a Cost of Service Study that examines all issues and the full implications of the proposed changes prior to the implementation of a partial change in rate design. Yukon Electrical reiterates its view that the positions being advanced by YEC herein are entirely inconsistent. For example, YEC states that it is not proposing other changes to rate design because it would not do so without a joint review by Yukon Electrical as well (p. 32). Yukon Electrical submits that all rate design changes impact Yukon Electrical and its customers and not just those matters selected by YEC.

In addition, YEC inaccurately suggests that Yukon Electrical's concerns relate mainly to the lack of consultation regarding the changes it is suggesting herein (p. 32). This is only partly correct, as Yukon Electrical has a broader concern with the piece-meal and fragmented approach to rate design being advanced by YEC, which does not take into account all of the impacts upon Yukon Electrical and its customers. These issues go to the root of Yukon Electrical's concerns.

As noted by CW (p. 14) a Cost of Service Study should be a component when designing rates. Yukon Electrical agrees with this view. Furthermore, the UCG notes (p. 3) that without a Cost of Service Study the Board does not have evidence to support the rate changes recommended by YEC. Yukon Electrical also associates itself with this view, as well as the UCG position that the Board should defer any rate changes until after the forthcoming Phase II proceeding has been completed.

Yukon Electrical observes that in its Argument (p. 34), YEC attempts to characterize its proposed rate design changes as an urgent matter that needs to be addressed in these proceedings in order to promote economy and efficiency. However, as detailed in Yukon Electrical's Argument (p. 13-15) YEC's own evidence in these proceedings confirms that no such economy and efficiency can reasonably be expected to be achieved in the current Test Period. In short, YEC's own rationale

for the piece-meal and fragmented approach to rate design is not supported by its own evidence. Yukon Electrical reiterates its request that the Board deny YEC's proposed changes to rate design in this Phase I proceeding. Rather, Yukon Electrical submits that all issues related to Phase II matters are appropriately addressed following the completion of the forthcoming Phase II proceeding that involves Yukon Electrical and its customers, as well as, YEC.

## **5. CAPITAL PROJECTS**

### **A. Capital Works**

Yukon Electrical is disappointed, but not surprised, by the positions advanced by YEC in its Argument with respect to the need for and justification of various major Capital Projects. As mentioned in the Introduction above, it indeed appears that YEC is now relying upon its 20 Year Resource Plan as constituting the "review" of numerous Capital Projects by the Board, even though the commitment made by YEC was made in the context of the Resource Plan proceeding itself. In addition, this position appears to be at odds with that advanced by the Government at the time of the Resource Plan process. As noted by Yukon Electrical in its Argument (p. 16-19), the information available to YEC regarding these Capital Projects at the time of the Resource Plan was limited and certainly not reflective of the update cost forecasts and scope changes that are representative of the current status of many of the aforementioned Projects. As noted by Yukon Electrical, the information presented in the context of the Resource Plan process is of little assistance in assessing the need for and justification of these Projects at this time.

Yukon Electrical submits that each of the major Capital Projects proposed by YEC must be assessed based on current information and the status of the Project today; and not on dated information that was presented several years ago. Equally troubling is the fact that YEC completely fails to acknowledge that no comprehensive business cases have been presented to support these major Capital Projects.

Attempting to string together a partial rationale through the I.R. process, while failing to provide evidence of a firm need or driver, simply does not constitute adequate justification for moving forward with the major Capital Projects contained in YEC's Application.

When dealing with the matter of Capital Projects, Yukon Electrical notes and agrees with several astute observations made by the UCG on this issue. In its Argument (p. 23-27) the UCG observes as follows:

- (1) no compelling demonstration of need has been made for the Capital Projects in this Application;
- (2) YEC seems to be a Project promoter regarding these projects;
- (3) there is a need to know both the short-term and long-term rate impacts associated with these projects;
- (4) there is too much uncertainty with respect to load to justify significant generation projects; and
- (5) YEC is spending money now on projects that may not occur and there is no need to rush.

Yukon Electrical submits that these views capture many of the concerns associated with the approach YEC has adopted to its Capital forecast and the failure to present full and adequate business cases that would provide a clear demonstration of the need for and justification of the proposed Projects.

As noted in its Argument (p. 17), Yukon Electrical is also concerned with YEC's poor track record regarding forecasting Capital Costs. Its only history with major projects confirms that it has a practice of materially underestimating the potential costs associated with the completion of Capital projects. This concern is enhanced by the fact that such cost overruns would likely be borne in large part by Yukon Electrical's customers. In short, the approach adopted by YEC herein is

unacceptable to customers and YEC should not be permitted to include any costs associated with the forecast major Capital projects in its Rate Base and/or Revenue Requirement, including specifically Study costs, until comprehensive business cases have been presented with respect to each such project and thoroughly examined and tested by the Board and parties.

As noted in its Argument (p. 3), Yukon Electrical supports responsible and measured development of the electricity infrastructure required to respond to reasonably forecast future system requirements. However, this is clearly not the approach that appears to be endorsed by YEC. To the contrary, it indeed does appear to be a "promoter" of both the underlying commercial developments as well as the electricity infrastructure projects that would be required if the commercial projects ever do come to fruition. This is indeed troubling, as YEC appears willing to proceed with such initiatives when the underlying commercial projects themselves are not significantly advanced to show a clear demonstration of need and the electricity infrastructure projects themselves are not economically viable without major Government contributions that have not been secured. In this regard, Yukon Electrical notes YEC's acknowledgement that even with expected Government contributions, a majority of the overall project costs (well above 50%) would still be borne by customers, as well as the risks of cost overruns (1T208-217). The acceptability of such significant costs and risks to customers has not been examined or tested. Yukon Electrical submits that any costs incurred, including for related studies, should be covered by YEC itself or any available Government funding and not by customers.

In this regard, Yukon Electrical notes the inconsistent approaches used by YEC in the pursuit of Capital projects. In the context of its discussions regarding the CSTP Stage I Project (p. 40-46) YEC observes that it adopted a risk management approach to developing this Project; and did not proceed with preliminary engineering until it had the Power Purchase Agreement with Minto in place. In addition, YEC notes that it elected to secure key items, such as the PPA and the

Part 3 Review, prior to committing material costs. YEC goes on to stress the positives associated with this "phased" approach that it used, instead of asking ratepayers to "eat another \$1 million".

What is most interesting, and troubling, is that the approach used by YEC for the CSTP Stage I Project (which itself suffered from material cost increases and scope changes from the time of the 20 Year Resource Plan Review to when the Project was completed), appears to have been completely abandoned for all future projects. Such a "phased" approach to the development has not been adopted for other major infrastructure projects, as YEC has proceeded with significant expenditures without the identified key items being in place. YEC has provided no explanation for adopting such an inconsistent approach to the development of major capital projects.

As noted by Yukon Electrical in its Argument, YEC's assertions that ratepayers will not be adversely affected by the completion of these projects appears to be a significant overstatement of reality. This is particularly true when the project risks of cost overruns would likely be borne by such customers and the associated study costs charged to customers, regardless of whether the projects ever proceed.

As is the case with standard utility practice, Yukon Electrical submits that before any costs are included in Rate Base/Revenue Requirement with respect to all of the major capital projects identified by YEC in its Application, a comprehensive business case must be presented for each project, including a full cost/benefit analysis as detailed in Yukon Electrical's Argument. Only after such business cases are presented and tested will the Board be able to conclude whether the associated costs are reasonable and prudent and hence should be included in Rate Base.

## **B. Deferred Costs**

In its Argument (p. 59) YEC made a passing reference to the development of a Cost/Benefit Analysis with respect to its Deferred Study costs. YEC's position appears to be that it will address all of the concerns identified with respect to these studies and the underlying projects by the time they get to YEC's Board of Directors (1T142). Yukon Electrical submits that this approach provides little comfort with respect to the incurrence of some \$31 million in Deferred Study costs by YEC.

As noted by Yukon Electrical in its Argument, the sheer magnitude of the identified Study costs (approximately 20% of YEC's overall Rate Base) should provide a basis for questioning the haphazard approach used by YEC in the pursuit of projects that have no specific documented support or need. YEC's lack of justification for these extensive studies is not acceptable to ratepayers.

As noted in Yukon Electrical's Argument (p. 20), YEC should be required to provide to the Board and parties a comprehensive explanation of each and every study that has been undertaken or is proposed for the full period from 2005-2009, including a justification of the costs and benefits to customers from the pursuit of such studies. Until this occurs, none of the aforementioned Study costs should be accepted by the Board. YEC's statements to the effect that key decisions will be made before the money is actually spent (p. 53) provides no support or justification for the forecast expenditures and, in fact, does not seem to be consistent with YEC's past practice.

## **6. BOARD RECOMMENDATIONS AND DIRECTIVES**

### **F. Recommendations of the Auditor General (Mayo-Dawson Line)**

In its Argument YEC completely failed to address the manner in which it had incorporated a consideration of these recommendations into its pursuit of Major

Capital Projects. Yukon Electrical submits that YEC should be required to provide such an explanation as part of its Compliance Filing in these proceedings.

**7. FINANCIAL SCHEDULES**

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**A. 2008 Actuals**

No further comment is required with respect to this matter.

**8. RETURN ON EQUITY**

**B. Yukon Energy ROE for 2008 and 2009**

In its Argument (p. 22) Yukon Electrical submitted that the approach proposed by YEC herein, with respect to the use of the BCUC's formula to determine Return on Equity should not be viewed as a precedent on a go-forward basis. In this regard, Yukon Electrical notes that both CW (p. 15) and the UCG (p. 29) submit that the BCUC formula is not a binding precedent and that the Board retains discretion regarding this matter in the future. As well, the approaches used by other tribunals should appropriately be considered by the Board as part of subsequent reviews. Yukon Electrical agrees with these views.

In summary, while the use of the BCUC's approach to determining Return on Equity is acceptable for this current GRA, it is not a binding precedent for the future. As noted, Yukon Electrical specifically reserves the right to put forward any approach it considers appropriate to justify a requested ROE in the future.

**9. RESPONSE TO INTERVENERS**

As noted above, the Arguments submitted by certain Interveners seek to have the Board issue directions to Yukon Electrical on various matters in the context of

YEC's GRA. As indicated, this is beyond the scope of this proceeding and the Board's jurisdiction.

In its Argument (p. 4), UCG urges the Board to order YEC and Yukon Electrical to file consolidated operating results. Not only is this beyond the scope of this proceeding, it is wholly impractical, as YEC and Yukon Electrical are separate and distinct companies, with different ownership, etc. While Yukon Electrical is willing to work cooperatively with YEC on matters of common interest (such as the forthcoming Phase II proceeding), it is unrealistic to expect that two separate utilities, who largely perform very different functions, can be treated as a single entity.

The same positions apply to CW's suggestion (p. 8) that the two Utilities hold a single integrated hearing process to address all revenue requirement, cost of service, rate design and other matters. Yukon Electrical acknowledges that it may be desirable to have a single proceeding for both companies in the future, but there are practical limits on the degree of integration that can be achieved.

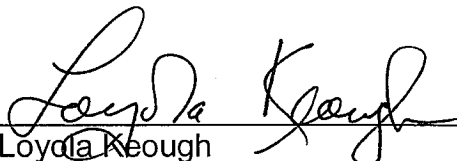
Likewise, LE (p. 9) requests that the Board direct YEC (and YECL if possible) to use the marginal cost of diesel as the value of energy when specifying transformers and any other large piece of electrical equipment. As noted above, it is not possible for the Board to issue such a direction to Yukon Electrical in this proceeding. This appears to be acknowledged by LE.

The UCG (p. 28) also requests that the two Utilities be required to develop consistent plans for the implementation of IFRS. Yukon Electrical is certainly willing to work with YEC and other parties on this matter, but is not properly subject to a Board direction in the current YEC GRA.

Yukon Electrical has previously addressed other matters, such as the conduct of a joint depreciation study, above.

In summary, the decisions and directions of the Board arising from YEC's GRA must be restricted to YEC. The requests of Interveners to do otherwise must be denied.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 5th day of June,  
2009.

  
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Loyola Keough  
Counsel for the Yukon Electrical Company Limited