



PUBLIC INTEREST ADVOCACY CENTRE
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March 15, 2010

Yukon Utilities Board
Box 31728
Whitehorse, Yukon
Y1A 6L3

Attention: Shay Smart, Executive Secretary

**Re: YEC Responses to Information Requests
Board Review of Yukon Energy Corporation Application for an Energy
Project
Certificate and an Energy Operation Certificate regarding the Proposed
Mayo Hydro
Enhancement Project**

Dear Ms. Smart:

The Utilities Consumers' Group is in receipt of the responses to information requests submitted by Yukon Energy Corporation on March 8, 2010.

In reviewing YEC's responses to UCG's requests, it is apparent that appropriate responses have not been provided in all cases. UCG respectfully requests that the Yukon Utilities Board consider and provide a ruling on the following, presumably after providing the applicant some time to review our requests and provide further answers.

UCG notes that the timeline for this hearing process, and in particular the need to provide oral argument at the end of the hearing, make the interrogatory process even more important than when, for example, parties could follow up on inadequate responses by way of undertakings at the hearing, to be reviewed prior to compiling written submissions.

NOTICE OF MOTION

The Utilities Consumers' Group requests that the Board issue an Order to the

effect that:

Yukon Energy Corporation shall be required to provide all materials requested by the Utilities Consumers' Group by way of information requests that it has not provided to the Board's satisfaction.

In support of this Notice of Motion, the Utilities Consumers' Group provides for consideration by the Board (and all other parties to the proceeding) the following facts, information, comments, opinions, arguments and questions:

- On March 8, 2010, Yukon Energy Corporation (YEC) submitted responses to information requests related to its submitted Mayo B Certificates Application.
- The general principle that proceedings before the Board should be transparent and open to the public requires that all relevant materials be available on the public record. The need for transparency is especially important where the material is directly relevant to setting revenue requirement and rates for a regulated monopoly such as YEC.
- The requested evidence is relevant to the consideration of the issues and unless the most compelling reasons can be advanced by YEC, an overarching public interest in disclosure should prevail.
- There has been no assertion of harm resulting from the disclosure of the requested information to the public record.
- The regulation of public utilities must be carried out in as transparent a process as possible. Only very exceptional circumstances should justify the exclusion from the public record of material that is used in rate-setting. UCG respectfully submits that YEC has not demonstrated exceptional circumstances.
- With respect to specific interrogatory responses, the UCG submits the following:

1. UCG-YEC-1-1

YEC's response to part (a) references a footnote although no footnote is provided. In response to part (b), YEC did not respond to the question asked.

The intent of part (b) was to understand the negotiations that were undertaken under the Federal Green Infrastructure Fund (GIF) Guidelines and whether the reality of a proper regulatory review period was incorporated into the agreed upon deadlines. While UCG understands that parties are obligated to meet terms and conditions of agreements, the intent of the question was to learn more

about how those terms and conditions were determined, who was involved in negotiating these terms and conditions, and the timing of these negotiations.

UCG requests that YEC be directed to provide the footnote related to part (a) and that YEC provide the requested details of how the timeframes incorporated into the Federal Funding Agreement were determined.

2. UCG-YEC-1-3

YEC failed to fully respond to part (c) of this information request.

YEC was asked to provide details of the specific review that was conducted of the Mayo B project during the Board's review of YEC's Resource Plan. All that was provided in response was how YEC made note of the Mayo B project in its proposed Resource Plan. The intent of the question was to get YEC's interpretation of how the Mayo B project was specifically subject to review in 2006 when the Resource Plan was reviewed.

UCG requests that YEC be directed to fully respond to the question asked and provide specifics of how the Mayo B project was subject to review by the Board and other parties in 2006.

3. UCG-YEC-1-5

YEC failed to fully respond to parts (b), (e), (f), (i) and (k) of this information request.

In part (b), YEC was asked to provide details of the electricity customer base served by the Mayo-Dawson grid. Despite YEC's indication that the proposed Mayo B project is not being proposed to supply the customer base of the Mayo-Dawson grid, UCG would like to know specifics of the current customer base and their load in order to better understand the proposed operations and the justifications that YEC makes for the Mayo B project.

In part (e), YEC was asked to provide a comparison of the cost per MW of the proposed Mayo B project with the cost of installing new site-specific diesel generation. Despite the fact that YEC is, in part, justifying the Mayo B project insofar as it displaces other forms of generation (diesel), YEC asserts that "it is not meaningful, for the purpose of assessing ratepayer cost per kWh of useful energy, to compare capital cost per MW of a hydro generation unit with the capital cost per MW of a diesel generation unit". UCG believes that the requested information is required from YEC so that UCG (and others) may undertake meaningful analysis of the alternatives to the proposed project. If, for example, the cost per MW of the proposed project is materially higher than the

alternative of site specific diesel generation, then the justification for the proposed project requires quantifiable justification other than cost-effectiveness.

In part (f), YEC was asked to explain how the Federal government's contribution to the proposed Mayo B project would be less than \$53.3 million. In the referenced CW-YEC-1-2, YEC refers to the total commitment of \$71 million and maintaining that amount but does not speak specifically about the commitment to Mayo B funding. UCG is looking for information specific to the proposed Mayo B project on what would cause the proposed Federal funding amount to be lower for Mayo B.

In part (i), YEC was asked to provide details by cost component of costs incurred to date for the proposed Mayo B project for each historical year and estimated for subsequent years. In response, YEC refers to a breakdown of the overall budget and a discussion of project cash flow projections. Given that the costs incurred to date are being accounted for in a deferral account, UCG would like to see how much has been spent to date in each of the project components that YEC has identified in its budget.

In part (k), YEC was asked to provide details of how YEC determined that the proposed project would only qualify for \$53.3 million of the \$71 million available from the Federal government. YEC indicated that it was all based on the estimated Eligible Costs as filed in the application for Federal funding. UCG submits that without providing a copy of the application for Federal funding and the cost allocation contained therein, YEC has failed to respond to the request.

UCG requests that YEC be directed to fully respond to the requests submitted under parts (b), (e), (f), (i) and (k) of this information request.

4. UCG-YEC-1-6

YEC failed to fully respond to parts (a), (c), (d) and (e) of this information request.

In part (a), YEC was asked to provide a copy of the third party review of the \$120 million cost estimate for the proposed Mayo B project. YEC declined to provide the requested third party review because, in their view, it was no longer relevant. Given that YEC relies on this study, to some degree, to justify moving forward with the proposed project and intervenors do not have the resources available to hire independent project evaluators, UCG submits that it is quite relevant, even if as a guide to how the project may have changed since the study was done. While the project may have been refined over the last year (as any project would), UCG submits that some of these refinements were probably as a result of this study. Without knowing the expert opinion of the project in January 2009, UCG is being denied access to available expertise from which to build its arguments for the upcoming hearing.

In parts (c), (d) and (e), YEC was asked to provide additional information on capital projects completed over the last 15 years, currently underway or currently proposed valued at over \$1 million, so that UCG can examine YEC's management record on major capital projects in order to provide opinions on the proposed \$120 million project. According to the Minister's December 18, 2009 letter of direction, the YUB is to review "risks facing Mayo B and their potential impacts on rates for customers". UCG submits that the track record of how the costs of previous major projects were managed is an important issue to address in this proceeding. While YEC indicates that they couldn't put the information together by March 8, 2010, UCG submits that it would be sufficient to have the information available by the end of March.

UCG requests that YEC be directed to fully respond to parts (a), (c), (d) and (e) of this information request.

5. UCG-YEC-1-10

YEC failed to respond to parts (a) and (b) of this information request.

In parts (a) and (b), YEC was asked to provide its knowledge of the sources of revenue to the Yukon Development Corporation and how YDC's contribution to the financing of the proposed Mayo B project meets conditions within the Yukon Development Corporation Act. UCG submits that since YDC is a significant financial partner for the proposed project, information regarding its contributions is within the scope of this proceeding. According to the Minister's December 18, 2009 letter of direction, the YUB is to review "risks facing Mayo B and their potential impacts on rates for customers" including "project financing capability" which UCG submits includes the financing that has been proposed from YDC. The information request seeks to find out as much about YDC's sources of revenue and contribution restrictions as is known by YEC and its officers so that informed submissions can be made to the Board in this regard.

UCG requests that YEC be directed to fully respond to parts (a) and (b) of this information request.

6. UCG-YEC-1-18

YEC failed to respond to this information request.

In this request, YEC was asked to provide copies of meeting notes and other materials related to the consultations with stakeholders. YEC's response appears to indicate that there was to be a limit as to what was requested. UCG submits that all notes and discussion documents from all consultations related to

the proposed Mayo B project will lead to a better understanding of exactly what information has been put in front of stakeholders, the specific issues raised by the stakeholders, when these consultations were conducted and who was involved. UCG submits that this additional information will assist the Board to respond to the Minister's request and all intervenors to focus on issues that require additional review.

YEC's references its response to UCG-YEC-1-23 in which it claims (without reasons) that presentation materials related to stakeholder meetings is confidential and not available for release. UCG submits that the legislation that governs a public body such as YEC is the Access to Information and Protection of Privacy Act and there does not appear to be any legal reason why the requested information could not be provided.

UCG requests that YEC be directed to fully respond to this information request.

7. UCG-YEC-1-22

YEC did not respond to the information requested.

YEC was asked to explain how the consultations on the proposed project aided the decision making process for any electricity ratepayer outside of the Mayo area. YEC responded with a note of benefits to ratepayers rather than how information was provided to ratepayers outside the Mayo area to allow them to make a determination on the value to them of all components of the proposed project. UCG submits that YEC's claimed "public involvement" falls short of being adequate for a project of this magnitude. The requested information is needed to verify or refute this assumption.

UCG requests that YEC be directed to fully respond to this information request.

8. UCG-YEC-1-23

YEC failed to respond to this information request.

YEC was asked to provide copies of all notes and presentation materials related to meetings with the NND Lands and Resource Department, the NND Project Agreement Working Team, and with the broader community to inform them of the proposed Mayo B project. YEC claims (without reasons) that notes and presentation materials related to meetings with the NND Lands and Resource Department, the NND Project Agreement Working Team, and with the broader community to inform them of the Project are confidential to NND and YEC and therefore not available for release.

UCG submits that the legislation that governs a public body such as YEC is the Access to Information and Protection of Privacy Act and there does not appear to be any legal reason why the requested information (which apparently does exist) could not be provided.

UCG requests that YEC be directed to fully respond to this information request.

9. UCG-YEC-1-24

YEC failed to respond to parts (a) and (b) of this information request.

YEC was asked to provide copies of all Contribution Letters of Agreement with FNNND and copies of all notes and presentation materials related to the meetings of the Technical Working Group. YEC claims (without reasons) that the agreements are not available for public release and that all notes and presentation materials related to meetings of the Technical Working Group, other than those made public through the YESAB process, are confidential to NND and YEC.

UCG submits that the legislation that governs a public body such as YEC is the Access to Information and Protection of Privacy Act and there does not appear to be any legal reason why the requested information (which apparently does exist) could not be provided.

UCG requests that YEC be directed to fully respond to parts (a) and (b) of this information request.

10. UCG-YEC-1-27

YEC failed to respond to part (a) of this information request.

YEC was asked to provide details of the likelihood that the growth in electricity demand in the Mayo area will be anything but minimal. YEC did not provide any information related to the Mayo area but chose instead to refer to the proposed integrated grid only. UCG submits that the requested information is needed in order to develop arguments related to the “public need for Mayo B under various reasonable electric load forecasts”, “implications of Mayo B to the system reliability, customer rates and economic growth in the Yukon” and alternatives to Mayo B that might be advisable “given reasonable load assumptions and risk assessments” as directed by the Minister.

UCG requests that YEC be directed to fully respond to part (a) of this information request.

Should you have any questions on this submission, please do not hesitate to contact me.

Yours very truly,

A handwritten signature in blue ink, appearing to be the initials 'MB' followed by a horizontal line.

Michael Buonaguro
Counsel for UCG