

C3-4

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YUKON UTILITIES

SEP 05 2006

BOARD

September 1, 2006

Yukon Utilities Board
Whitehorse, Yukon
Attention: Deana Lemke, Executive Secretary

YUKON UTILITIES BOARD		
EXHIBIT C3-4		
DAY	ENTERED BY UCG	DATE Sept 5/06

Dear Ms. Lemke:

Re: Stakeholders Costs and Interim Funding

The Utilities Consumers' Group (UCG) is sending you some information which I consider important enough for the Board to quickly review before you make your September 8 determination:

- National Energy Board Report on Engaging Canadians (Namely Consumers)
- Another law firm I have contacted by E-mail to represent UCG in this process

Further to the comment the Board Chair made during the Pre-Hearing regarding the Board not having the jurisdiction to offer interim funding. I would argue that under your mandate of Section 56 of the Act and the ability to set your own rules of practice, the Board has such jurisdiction if you so choose. As I stated at the pre-hearing, Schedule 1 Rules of Practice Board Order 1995-2 concludes: "In case where a party can advance persuasive argument that the level of *consumer contribution* is inadequate given the complexity of the case the Board may adjust the scale to meet unique circumstances."

You cannot deny that UCG meets this criteria and has made every attempt to hire legal expertise in the Yukon, but nobody wants to touch it without some level of comfort. Your latest cost award decisions severely limited intervenors and thus has made regulatory experts very apprehensive to take on any consumer representation in the future.

Thank you for the opportunity to make this brief representation.

Sincerely yours,



Roger Rondeau
President

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Engaging Canadians

Your feedback is important to us! That is why the National Energy Board is committed to ensuring that stakeholders are effectively engaged in the Board's public processes. These processes are designed so that decision makers are presented with the complete range of views required to make fully-informed decisions in the Canadian public interest.

The following opportunities currently exist for interested parties to present their views on NEB initiatives:

- [Drilling and Production Regulations](#)
- [Amendments to the Cost Recovery Regulations](#)
- [Mackenzie Gas Project](#)
- [Surveys](#)

Drilling and Production Regulations

The National Energy Board, Natural Resources Canada, the Province of Newfoundland and Labrador, the Province of Nova Scotia, the Canada-Newfoundland and Labrador Offshore Petroleum Board, the Canada-Nova Scotia Offshore Petroleum Board, and the Department of Indian Affairs and Northern Development are collaborating to develop goal oriented *Drilling and Production Regulations* under the *Canada Oil and Gas Operations Act* and the federal and provincial versions of the Offshore Accord Acts. If you are interested in commenting on, or being involved in this project, please view the documents under *Acts and Regulations, Canada Oil and Gas Operations Act, Regulations and Guidelines* for additional information.

Mackenzie Gas Project - GH-1-2004

Application for construction and operation of the Mackenzie Gas Pipeline

- [Pre-Hearing Planning Conference Information - 23 November 2005 \[HTML\]](#)

Becoming an intervenor is not the only way to participate in the NEB process. Persons and organizations can provide their views to the NEB at the public hearings by way of an oral statement.

Secondly, despite a certain independence from a regulatory organization, the Consumer Advocate is nevertheless more or less tied to the organization's interests and cannot benefit from the same latitude as independent consumer protection agencies, pertaining to the defense of interests of the group he is supposed to represent. Even if the Consumer Advocate is separated from the rest of the Board and that certain provisions aiming at preserving this independence are put in place, the Consumer Advocate is nevertheless a member of the Energy Board. In this case we believe that the Consumer Advocate could oppose with more difficulty certain positions of the regulatory organization if the latter made a decision that is potentially disadvantageous to consumers. The question we submit here is: If the Board votes in favour of the industry as opposed to consumers, would the Advocate have the absolute right to oppose himself to this decision? We are not convinced that the Consumer Advocate would be able to act as independently as a consumer group pertaining to strategic orientations.

Thirdly, the Consumer Advocate could lessen the efficiency of the Canadian consumer movement in the field of energy transportation by reducing their opportunity of developing their own expertise in the field. This expertise can only be developed through direct intervention by consumer interest defense groups. If the latter cannot directly intervene in debates surrounding the transportation of energy and cannot therefore develop an expertise, they cannot adequately give constructive and useful advice to the Consumer Advocate, since the latter would benefit from an informational one-sidedness which would be in his favour. It is our opinion that such a situation would lessen the chances that the decisions made by the organization are to the consumers' advantage.

7. Conclusion

Option Consommateurs believes that it is in the public's best interest that groups representing consumers are able to be heard before the National Energy Board, because the latter's decisions have an important impact on Canadian consumers. It is therefore important for the Board to hear various points of view enabling it to make more educated decisions that are in the best interest of the public.

Moreover, new information from the energy sector leads us to believe that the Board will soon be called upon to play a more important role in a not so distant future. Indeed, from the perspective that the Canadian and American Governments are thinking of increasing their mutual energy market relationship, more specifically pertaining to the transportation of electricity through among others a North-American energy policy, it is of the utmost importance that Canadian consumers, especially residential consumers, be heard by this major public decision maker.

Option Consommateurs firmly believes that the best way to increase representation of residential consumers before the National Energy Board is to ensure the direct participation in Board activities of groups dedicated to defending and promoting consumers' interests. Because of the high cost of such a participation and the limited financial means of consumer advocacy groups, the most appropriate way to ensure this representation is adequate provision for fees pertaining to this participation.

a client of TransCanada Pipelines. From that time onwards, clients of transporters will no longer be homogeneous but rather mixed, as long as each one has a separate consumer profile and very specific needs. More and more, it is expected that the interests of new pipeline transporter clients, those of important industrial consumers and of front line agents, will be represented before the National Energy Board. We have also noticed that the Industrial Gas Users Association (IGUA), as well as many important energy agents, has for a long time played an active role in the TransCanada Pipelines *Toll Task Force*.

As provincial entities unbundle local gas distributor services and as the latter become « wholesalers » of sorts for their franchise's natural gas agents and end of the line consumers, there will no longer be a valid reason why distributors should continue to represent clients before the National Energy Board, as they have done up until now. On the contrary the Board will now become the place where debates between different consumer categories are held, similarly to the Ontario Energy Commission and the Régie de l'énergie du Québec, with the difference that the number of intervenors and the diversity of interests will be far greater.

5. Representing residential consumers before the Board : Problems and comparisons

5.1. Conceptual justification of economic regulations and of the financing of participants

At the onset, it seems proper to repeat the motives that are the basis for the existence of economic regulation organizations and the participation of intervenors with different interests. The regulated company is a natural monopoly whose clients, consequently, are captive: they have to go through that particular company to have their needs met pertaining to energy transport and distribution. Two sorts of behaviors can be a consequence of the implementation of regulation by an organization such as the National Energy Board. First of all, since the information on the company's costs and revenue is released by the company itself, the temptation is very strong to take advantage of the one-sided flow of information which is the logical consequence. The frequent repercussion is under estimated sales forecasts, which unnecessarily increases the cost of rights as well as end of the year surplus earnings that are distributed among shareholders.

In this connection, since the rate of return on the base rate is regulated, the company's objective will then be to increase the rate base by over-investing its capital (Averch-Johnson effect). Sales estimates originating from this information one-sidedness will justify additional investments².

The difficulty with economic regulation organizations such as the National Energy Board is that administrative tribunals are submitted to the same burden of proof as civil courts. In particular, members of a panel, commission members or managers, whatever they are called, have to base their decisions on proof. To counterbalance this information one-sidedness, the regulator's staff contributes to the process by making sure that the files are sufficiently complete to enable decision makers to make the best decisions possible. However, this could also be achieved by

² Please note that the behaviors presented here are without any nuance and that regulated companies are subtle when they go before economic regulation organizations. Nevertheless, these behaviors can be observed through the eyes of experts.

enabling the participation of intervenors in these hearings. These participants, whether they are residential, industrial or environmentalists, have interests that are in general far different from those of the regulated company (for example reducing operating costs) and want those interests to be known by the regulator. As long as they have enough informational and financial resources, these intervenors can be useful in these debates and influence the first instance regulator.

However when certain interested parties don't have the necessary financial resources to participate in these debates, it may then be in the public's interest to reasonably support them if this can enable the regulator to make the decisions that are in the best interest of the public. Financing the participation of certain intervenors, by reducing the discrepancy of financial means and by therefore improving the level playing field between the parties³, helps to eliminate the problems caused by information one-sidedness and lessens its impacts on consumers.

When reading the *National Energy Board Act*, we observe that no provision has been made to enable the Board to grant fees to public service organizations in order to facilitate their participation in their regular activities. The absence of power to our knowledge applies only to the *National Energy Board Act* in this instance when compared to the laws that govern most other economic regulation organizations in Canada and the United States.

In the following sub-sections, we will review the Board's legislation as well as other laws that constitute other similar organizations in Canada pertaining to supporting public participation in these organizations' regular activities. We will also take a look at the practice of Consumer Advocates, through which American states create an organization aiming at the defense and promotion of consumer interests before economic regulation organizations.

5.2. Powers of the Board relating to participation fees : Very limited

According to the Act, the only cases where the Board can legally provide participation fees are those related to a pipeline's, or an international or interprovincial electricity transport line's proposed detailed route or modifications to that route. In these cases, admissible participation fees have to be related to the presentation of observations during a public hearing.

Observations can come from an owner opposed to the proposed detailed route or from another interested party, whether an individual or legal entity, also opposed to that proposed detailed route, without the latter being owners themselves of a land affected by this proposed detailed route, as stated in paragraphs (3) and (4) of Article 34 of the Act:

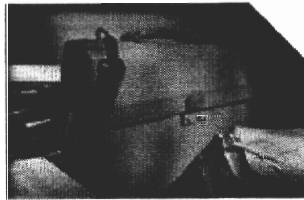
Written statement of interest and grounds for opposition

34. (3) *Where an owner of lands who has been served with a notice pursuant to subsection (1) wishes to oppose the proposed detailed route of a pipeline, the owner may, within thirty days of being served, file with the Board a written statement setting out the nature of the owner's interest in the proposed detailed route and the grounds for his opposition to that route.*

³ Furthermore, please note that the concept of a *level playing field* has more scope than between the regulated company and the intervenors, since it also applies to between the intervenors, the latter having contradictory interests on various subjects.

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Public Utility and Regulatory Law



Team Members ▾

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Lawson Lundell has an extensive practice in public utility law. Members of this group are most active in the energy sector where we act for utilities, major customers and regulators. We also provide public utility advice in the transportation, telecommunications, water utility, and insurance sectors.

In the energy sector we have acted for applicants and intervenors on matters before the British Columbia Utilities Commission (BCUC), the Alberta Energy and Utilities Board (AEUB), the Northwest Territories Public Utilities Board (NWT PUB), and the National Energy Board (NEB). We have been lead regulatory counsel to the largest electric utility in British Columbia since 1991. We provide regulatory advice to a number of significant participants in Alberta's electric industry, and advise a Territorial government in connection with regulated oil and natural gas transportation issues in Alberta and the Northwest Territories. We also have experience in advising Canadian clients in connection with the impact of United States regulatory agencies, including the Federal Energy Regulatory Commission (FERC).

We have also acted for clients before, or advised clients on issues relating to, the Canadian Transportation Agency (CTA); the Canadian Radio-television and Telecommunications Commission (CRTC); and the British Columbia Comptroller of Water Rights.

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For more information contact Chris W. Sanderson, Q.C. at 604.631.9183 or csanderson@lawsonlundell.com in Vancouver.



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Roger Rondeau

From: <csanderson@lawsonlundell.com>
To: <rrondeau@yknet.ca>
Sent: Tuesday, September 05, 2006 8:44 AM
Subject: RE: Yukon Energy 20 year capital hearing

Roger
Please give me a call at 604 631-9183 if you wish to discuss this further.
Regards

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From: Roger Rondeau [<mailto:rrondeau@yknet.ca>]
Sent: August 31, 2006 7:36 PM
To: Chris Sanderson (183) - 14Flr
Subject: Yukon Energy 20 year capital hearing

Sir,

I am president of the **Utilities Consumers' Group** in the Yukon. Our organization is in need of legal representation for the above. We have **limited funding but can apply for cost awards** after the hearing.

roger

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Thank you.
