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YUKON UTILITIES

SEP 15 2006

BOARD

YUKON UTILITIES BOARD		
EXHIBIT C3-5		
DAY	ENTERED BY	DATE
	UCG	Sept 15/06

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

**Re: Yukon Energy Corporation 20-Year Resource Plan 2006-2025
UCG Comments on Minister's August 29th Letter and Whether YESAB
Legislation Precludes the YUB from Considering Environmental and Socio-
Economic Issues**

Dear Deana:

Please consider the following UCG submission to the Board. Although the group has sent out a news release regarding discontinuing our active participation on the above proceeding, this issue was already researched and developed, so here it is!

UCG requests all information continue to flow to us as we will remain an intervenor in the process. If the Board has the courtesy to give our professionals a level of comfort that they will be treated and paid adequately as professionals then we can provide a ratepayer/consumer intervention that is not only valuable in assisting the Board, but necessary

Yours truly,

Roger Rondeau
President

UTILITIES CONSUMERS' GROUP SUBMISSION

In its Board Order 2006-7, the Board directed parties to provide comments on two issues:

1. The Minister of Justice's August 29th letter to the Board; and
2. Whether the review by the Yukon Environmental Socio-Economic Assessment Board (YESAB) precludes the YUB from considering environmental, social and economic issues in this proceeding.

Minister's Letter of August 29th

The Utilities Consumers' Group feels that the Minister's letter contains two distinct parts worthy of comment.

The Minister states in her letter that:

It is our government's understanding that no final decision has been made to implement any of the proposed projects. However, the Resource Plan and the input received as a result of your review will be valuable in assisting YEC in planning and decision making in future.

The UCG believes that the Minister is addressing the issue raised at the Pre-Hearing Conference regarding the inadequacy of YEC to manage the planning and execution of larger facility projects. Given the Minister's ultimate responsibility for whatever the publicly-owned utility does, it is evident that the Minister believes that there is still planning to undertake after the Board's current review before any project implementation can take place.

While there are some projects that YEC thinks are on a priority list to implement, it is obvious that the Minister wants to make sure that the utility has the benefit of the YUB review prior to proceeding with anything. It could be that the YUB review will result in a re-prioritization of these projects. At the very least, no decisions can be finalized until all project-specific reviews have been completed. This implies that a review under Part 3 of the *Public Utilities Act* would need to be completed as well before anything is implemented.

This feeds into the UCG position that the YUB should place a moratorium on spending on any of the projects proposed within the resource plan until the review processes are completed. While YEC suggests that preliminary spending could take place without increasing rates, we submit that it is still ratepayer money they are spending.

If YEC decides to request funding from its parent company, Yukon Development Corporation, it is ratepayer money they are using. It is ratepayer money that sits in the coffers of YDC so it should only be spent on something that benefits ratepayers. At the same time, taking money out of the retained earnings of the utility to pay for costs of cancelled projects hurts the utility's financial position and so it hurts the ratepayer.

The Minister continues on to say:

Of course, any specific projects to be implemented by YEC will be subject to various regulatory approvals and reviews. In addition, we would like to note that prior to the implementation of any proposed significant energy projects by YEC (e.g. construction of the Carmacks to Stewart transmission line), it is the government's intention to refer the details of such projects to the YUB for review and recommendation under the provisions of Part 3 of the Public Utilities Act.

It is obvious that the Minister's intention is to make significant energy projects subject to a review under Part 3 of the *Public Utilities Act*.

In its September 8th submission, YEC states that Part 3 of the Act is not applicable to this proceeding because it is not referenced by the Minister's letter of June 5th. While the process outlined by YEC on how a project becomes part of a Part 3 review is all very interesting, the Minister's August 29th letter clearly indicates that the Part 3 review needs to take place. The UCG agrees.

The UCG submits that there needs to be a clear understanding of the YUB's mandate for this current review proceeding. If the YUB's mandate is to review the resource plan and provide comments / recommendations to the Minister, then the YUB should be expected to provide its recommendations regarding the overall plan without having to issue any decisions regarding the need for any specific project within the proposed resource plan. The need for any project could be determined as part of a formal Part 3 review.

While YEC suggests that the \$3 million threshold for project review is "defined" in the Minister's directional letter of June 5th, it should be noted that the Ministers says that a public review must be conducted on the proposed 20-year resource plan "with emphasis on" near-term projects costing \$3 million or more. While it may help the Board in understanding the importance that the Minister might have for some projects, it is an illogical stretch to suggest that the Minister was defining any type of monetary threshold that would preclude the YUB from reviewing any proposed project under Part 3 or any other part of the *Public Utilities Act*.

Overlap of Roles with YESAB

During the Pre-Hearing Conference, the Board said that it was interested in parties' views on whether the review provided by the Yukon Environmental and Socio-Economic Assessment Board (YESAB) "precludes" the Yukon Utilities Board from considering environmental, social and economic issues in this proceeding.

The UCG does not believe that anything determined through a YESAB review precludes the YUB from conducting reviews per its broad legislated mandate.

The YESAB and the YUB are independent assessment boards that receive their mandates from very different pieces of legislation. As was raised at the Pre-Hearing Conference, the issue is how the reviews will fit together and impact each other.

The YESAB was created under the *Yukon Environmental and Socio-economic Assessment Act*, which establishes a process to assess impacts of projects and other activities in the Yukon or that might affect the Yukon. This is a requirement of Chapter 12 of the Umbrella Final Agreement and Yukon First Nations' Final Agreements. The YESAB is an independent advisory board which will administer an assessment process that will be carried out by six regional Designated Offices, the Executive Committee of the Board and Panels of the Board.

The YESAB's members include 3 members from Yukon First Nations, 1 member from Government of Yukon and 2 members from the Government of Canada. This appears to be a broader cross-section of the Yukon than what currently sits at the YUB.

The YESAB assessments are to be conducted in a manner that is consistent with the purposes of the *Yukon Environmental and Socio-economic Assessment Act*. The Act's purposes are to:

- 1 Provide a comprehensive, neutrally conducted assessment process applicable in Yukon.
- 2 Require that, before projects are undertaken, their environmental and socio-economic effects are considered.
- 3 Protect and maintain environmental quality and heritage resources.
- 4 Protect and promote the well-being of Yukon Indian persons, their societies and Yukon residents generally, as well as the interests of other Canadians.
- 5 Ensure that projects are undertaken in accordance with principles that foster beneficial socio-economic change without undermining the ecological and social systems on which communities, their residents, and societies in general, depend.
- 6 Recognize and, to the extent practicable, enhance the traditional economy of Yukon Indian persons and their special relationship with the wilderness environment.
- 7 Guarantee opportunities for the participation of Yukon Indian persons and make use of their knowledge and experience in the assessment process.
- 8 Provide opportunities for public participation in the assessment process.
- 9 Ensure that the assessment process is conducted in a timely, efficient and effective manner that avoids duplication.
- 10 Provide certainty to the extent practicable with respect to assessment procedures, including information requirements, time limits and costs to participants.

While YESAB reviews specifically address the impacts that projects have on the broader Yukon, the YUB's reviews, per its mandate under the *Public Utilities Act* and related regulations, look at the impact projects have specifically on energy costs of Yukoners.

In its September 8th submission, YEC states that although the YUB can consider overall environmental issues as part of its assessment of the resource plan, it cannot undertake an in-depth environmental review of any project.

The UCG suggests that the Board has the jurisdiction to inquire into any aspect of a project per section 51 of the *Public Utilities Act* which states:

The board may on its own motion inquire into, hear, and determine any matter or thing respecting the production, transmission, delivery, or furnishing of electricity or gas to the public.

While it needs to avoid any duplication of effort and to understand its own expertise limitations, the YUB has an opportunity to review any aspect of a project.

As part of its September 8th submission, YEC attached excerpts from the British Columbia Utilities Commission's Vancouver Island Generation Project Decision dated September 8, 2003, and its Vancouver Island Transmission Reinforcement Decision dated July 7, 2006. As a preliminary comment, the UCG suggests that it is unfair to a regulator to be asked to formulate positions based on only parts of decisions, observations, etc. from other jurisdictions. How is the YUB supposed to interpret the context of the Commission Panel Chair's comments at the beginning of the Vancouver Island Energy Corporation proceeding without seeing the full text of his message?

The UCG believes that the YUB must thoroughly consider environmental and social costs and benefits of proposed projects and the financial impacts on all Yukon ratepayers. It is our submission that this would be beyond the practical limits of any review by the YESAB. However, it is equally important for the YUB to thoroughly understand the short and long term impacts of any decisions made by the YESAB. The purposes of the *Yukon Environmental and Socio-economic Assessment Act* cannot possibly be achieved without considerable cost.

This raises the question of whether the YUB can legitimately make a determination on the value of any project within the proposed 20-year resource plan without first seeing the results of a YESAB review. The UCG suggests that it can't and shouldn't.

In June 2006, a new Cooperation Agreement was struck between the YESAB and the Mackenzie Valley Environmental Impact Review Board which formalizes these Boards' shared commitment to protecting the people, cultures and environment of Yukon and the N.W.T. The Cooperation Agreement recognizes that the YESAB and the Review Board will exercise their respective powers cooperatively and collaboratively—and in a coordinated manner—when conducting an environmental impact assessment of a project that affects the people and environment of Yukon and the N.W.T.

In order to avoid costly duplication of effort and still conduct a thorough and comprehensive review, the YUB should consider establishing a similar agreement with the YESAB.

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