

Nathaniel Yee
PO Box 89,
Faro, YT Y0B1K0

29-Aug, 2024

Ms. Lesley McCullough, Acting Chair
Yukon Utilities Board
Box 31728
Whitehorse, Yukon Y1A 6L3

Comment on YEC's Cost Claim, 2023-24 YEC GRA

1) Redacted Information.

There are a number of redacted or partially redacted items in YEC's cost claim for the 2023-24 GRA. In a number of these redacted items, YEC is claiming costs for work that is irrelevant to the GRA. In others, the reasoning behind the redaction is unclear to me. I will provide a few examples below, from the the redacted document submitted by YEC, compared to the unredacted version that I also received:

An easy example on PDF p.30 of the cost claim:

10/16/23	PJL	Review material regarding [redacted] irrelevant to GRA.	0.50
----------	-----	---	------

where the original invoice of course said "irrelevant to the GRA."

10/16/23	PJL	Review material regarding [redacted] relevant to GRA.	0.50
----------	-----	---	------

Is it acceptable to make something irrelevant to the GRA "relevant" so that it can be part of a cost claim?

Similarly, with this redacted item on PDF p. 20, one might be led to believe that this was all relevant to YEC's GRA. It wasn't.

07/25/23	JKH	Telephone call with Mr. Landry regarding GRA planning; preliminary review of cover letter [redacted] and draft of YEC's interim rate filing;	0.60
----------	-----	--	------

However, the original makes it clear that this is not all relevant to YEC's GRA:

07/25/23	JKH	Telephone call with Mr. Landry regarding GRA planning; preliminary review of cover letter [redacted] for AEY GRA and draft of YEC's interim rate filing;	0.60
----------	-----	--	------

These are clearly redacted not to protect anyone's privacy or for any valid reason. They are, however material alterations that serve to add irrelevant costs to this GRA proceeding. No, these hours have not been removed from claimed hours.

And for a couple of longer ones, I am only including the unredacted versions, with the formerly redacted text boxed/highlighted.

PDF p. 43:

01/15/24	JKH	Consider and respond to Mr. Najmidinov's correspondence regarding revised draft of response to YUB follow-up question regarding emergency operation of rented diesel units; follow-up correspondence with Mr. Osler and Ms. Pollitt-Smith regarding attachments to revised IR responses; review and consider Mr. Ritchie's further comments on draft response to follow-up question; review letter from YESAB regarding Designated Office authority over assessment of Whitehorse diesel permit renewal ; review Mr. Najmidinov's further comments on draft response to follow-up question, and correspondence to team regarding potential further revision; review Ms. Cunha's revisions to draft response to follow-up question on public engagement, prepare further revised draft, and correspondence to team regarding same; Teams meeting with Mr. Epp, Mr. Najmidinov, Mr. Osler, Ms. Pollitt-Smith and Mr. Landry regarding status of revised IR responses; prepare draft of cover letter to YUB regarding filing of revised IR responses, and correspondence to Mr. Osler and Ms. Pollitt-Smith regarding same; commence further review and consideration of Mr. Yee's evidence, and potential approach to responding to it ; review Mr. Osler's revisions to draft cover letter to YUB, prepare further revised draft,	4.50
----------	-----	--	------

YEC is correct in realizing that reviewing this letter form YESAB is not relevant to the GRA, but removing it from the invoice while still charging it to the GRA is simply wrong.

YEC argued that permitting issues were unrelated to the GRA process and should be taken up with the Department of Environment. If issues between YEC and Environment are unrelated to the GRA as YEC has claimed, a letter that I wrote to the Minister of Environment should not figure into YEC's GRA cost claim. Knowing this, YEC removed reference to it, but did not remove the associated costs.

01/23/24	JKH	Review Mr. Osler's revisions to draft preface to YUB-YEC-2-001, prepare further revised draft, and correspondence to Mr. Osler regarding same; review further correspondence of Mr. Najmidinov and Mr. Osler regarding costs timeline for WH2 Update project; review correspondence regarding Mr. Yee's letter to Minister about Faro diesel units ; Zoom meeting with Mr. Osler and Mr. Landry regarding Mr. Yee's letter and development of draft response to YUB-YEC-2-001; Teams meeting with GRA team regarding same;	3.50
----------	-----	--	------

Consider and respond to Mr. Milner's correspondence regarding history of discussions with CTFN about SLESP project, and further correspondence with Mr. Milner regarding same; review Mr. Milner's draft of opening remarks, and correspondence to Mr. Milner regarding same; further review and consider materials in preparation for meetings with Mr. Milner and Mr. Murchison; review revised Exhibit List issued by YUB; hearing preparation meeting with Mr. Milner and Mr. Osler; further hearing preparation meeting with Mr. Murchison and Mr. Osler; conference with Mr. Landry regarding status of hearing preparation.

In very few cases, unrelated charges were correctly moved to “not claimed hours” but in many (most) cases this did not happen.

There are redacted or partially redacted items that were charged to this GRA on pages 20, 22, 30, 32-34, 40-41, 43-47, 57-62, 71-72. In redacted items YEC hides other costs that are not related to this GRA, such as issues and correspondence with YESAB, the Department of Environment and Yukon News, among other things. The full collection of relevant unredacted pages will be provided to the Board in a separate email and provided to the full list at the discretion of the Board.

Recommendation 1:

What YEC has chosen to redact is not private or sensitive information, but in many cases text indicating that these items or portions of them are not chargeable to the GRA. This while failing to reduce claimed hours correspondingly. If the Board believes that it is reasonable to use, deal with or act on this false document then any hours and associated costs that include redacted information should be disallowed. This comes out to 78.5 hours, and \$26,299. (72.9hrs @ \$350, 5.6hrs @ \$140)¹ Of course there is no legitimate reason for any redaction in YEC's cost claim for costs charged to a public hearing. While removing cost items unrelated to the GRA may be part of the Board's role, YEC's material alteration of a document to hide unrelated costs and thereby prevent the Board from efficient and accurate completion of this task is an entirely more serious matter.

¹ See PDF p.17: Accounting for “not claimed hours” While 20.85 appears for “not claimed hours”, actually only 17.85 hours are not claimed. Note that in Nov 2023 and Feb 2024, the full hours of the invoice are claimed. YEC has put the hours in “not claimed” and failed to subtract them from “claimed” and the hours totals do not add up correctly. This mistake is irrelevant when the all hours and costs for redacted or partially redacted items are removed as I have recommended. Otherwise it would need to be addressed.

2) Is it OK to alter invoices from subcontractors in order to get paid more?

While it might not seem to be a big thing for YEC to charge ratepayers for a few extra hours – or even 78.5 extra hours at \$350/hr, there is a bigger issue here. More significant than the amounts involved, is YEC’s knowingly presenting altered documents to the Board in this cost claim.

An invoice was materially altered to make work that was irrelevant to the GRA appear to be relevant to the GRA, and this was submitted to the Board.

I really didn’t want to have to go here, but in order to proceed with YEC’s cost claim, I ask that the Board view it in relation to 366(2) of Canadian Criminal Code.

- *Making false document*

(2) Making a false document includes

- **(a) altering a genuine document in any material part;**
- *(b) making a material addition to a genuine document or adding to it a false date, attestation, seal or other thing that is material; or*
- **(c) making a material alteration in a genuine document by erasure, obliteration, removal or in any other way.**

(c) is most relevant, (a) also.

YEC has provided the Board with a false document, with a number of material alterations. In removing select parts of the invoice, YEC has significantly changed the meaning and interpretation of many elements in their cost claim. The idea of 366(2) is to prevent the alteration of documents in ways that are meant to deceive, which is exactly what YEC has done.

If the Board believes altering invoices to get paid more is an acceptable practice, please explain.

If the Board believes that making a false document is an acceptable practice, please explain.

Recommendation 2:

That the Board evaluate this cost claim / false document which includes the materially altered invoice in relation to Canadian Criminal Code Sections 366, 367 and 368 and award no costs whatsoever to YEC. Given 366(2) discussed above and 366(1) and 368(1)(a)², the entire claim document should be rejected. YEC’s material alterations have made their entire cost claim into a false document, and there is no provision for accepting and using or acting on any portion of a false document as if it were genuine. It only takes one material alteration to make a false document, and of course there are many.

2 Use, trafficking or possession of forged document
368 (1) Everyone commits an offence who, knowing or believing that a document is forged,
(a) uses, deals with or acts on it as if it were genuine;

and

Forgery
366 (1) Every one commits forgery who makes a false document, knowing it to be false, with intent
(a) that it should in any way be used or acted on as genuine, to the prejudice of any one whether within Canada or not; or

3) Time wasted due to incorrect and incomplete information throughout the process, from IRs to the hearing and into the cost claim.

YEC incurred unnecessary expenses for themselves and for interveners by providing incorrect or incomplete information throughout the process. It is of course relevant that in a number of instances YEC had provided different information to the YUB than what was provided to other regulators.

Had YEC been consistent in their information, or at least been more transparent about the inconsistencies, many hours would have been saved on all sides.

An example would be the specifications for Faro replacement diesels. In response to an IR, YEC provided specifications for more expensive Tier 4 units than what they were actually planning to install. Their actual plan was to install less expensive Tier 2 units with exhaust treatment to bring Tier 4 equivalency. They insisted on this incorrect information throughout the IR process and the hearing, while simultaneously providing the correct information to other regulators. In an undertaking, YEC finally admitted that yes, the specifications provided to the Department of Environment were correct, and the specifications provided in the GRA process were incorrect. YEC's insistence on providing incorrect information compromised the process and wasted everyone's time.

Also, had YEC been clear from the beginning that in order to meet N-1 requirements they would be contravening permit terms, it would have saved us all lots of time. Instead, YEC attempted to cherry pick from the Utilities Act, YESAA and the "Regulatory Reminder" to claim to be within permitted limits before eventually admitting that yes, they were exceeding permitted capacities in all locations where rental diesel is installed. The hours that YEC spent attempting to hide this were not well spent.

YEC also made the unsupported claim in the GRA that YESAA Section 49 allowed them to exceed permitted limits. They knew of course that this interpretation was not accepted by the Department of Environment, the Authority Having Jurisdiction. Had they been open about this in the first place, they would not have wasted all of our time in claiming the validity of Section 49. Aside from my questions and evidence on the issue, the revised response to YUB-YEC-1-35 included questioning about Section 49 and accounted for 31.3 hours (\$10,955) on the invoice from DLA Piper. If YEC disagrees with Environment Yukon's interpretation of YESAA, the GRA proceeding is certainly not the correct venue for YEC to make this argument.

Despite consistently providing incorrect or incomplete information, on PDF p.3 of their cost claim YEC says that "Significant extra effort was required to address the matters outside of the scope of this proceeding, including unsupported claims and accusations made by Mr. Yee in his evidence and during the hearing preparations and process." "Unexamined" would be more accurate than "unsupported" as the Board has not addressed or given any conclusions on many of the issues that I have highlighted.

And again, none of this supposed extra effort would have been required had YEC been open, consistent and correct in their responses in the first place. Had YEC simply accepted Environment Yukon's interpretation of YESAA and not placed their own incorrect and unsupported interpretation in the GRA, much less effort would have been required. By including what they knew to an incorrect interpretation in the GRA, they brought it into the scope of the proceeding. Their "extra effort" in defending information that they knew to be incorrect did cause added costs for YEC, interveners and the Board.

And back to redacted items on YEC's cost claim, it appears that YEC has tried to bolster their argument about "significant extra effort" required to counter my evidence by yet again "(c) making a material alteration in a genuine document by erasure, obliteration, removal or in any other way."

Looking at PDF p. 72:

03/29/24	JKH	Review revised draft of Reply Argument, review and consider Mr. Landry's comments on initial draft, and prepare further revised draft [redacted] of Reply Argument; further review NY Final Argument to consider issues to be addressed in Reply Argument; correspondence to Mr. Osler, Ms. Pollitt-Smith and Mr. Landry regarding further revised draft of Reply Argument;	7.50
----------	-----	---	------

While actually...

03/29/24	JKH	Review revised draft of Reply Argument, review and consider Mr. Landry's comments on initial draft, and prepare further revised draft <u>of non-NY portions</u> of Reply Argument; further review NY Final Argument to consider issues to be addressed in Reply Argument; correspondence to Mr. Osler, Ms. Pollitt-Smith and Mr. Landry regarding further revised draft of Reply Argument;	7.50
----------	-----	--	------

Why would YEC redact working on "non-NY portions of Reply Argument" if not to imply more time spent on "NY Final Argument"? I make no claims to have a full understanding of YEC's "logic" for their material alterations to the document, but bolstering their "significant extra effort" claim is the first thing that comes to mind. Is there a better explanation?

Further, in the redacted version, YEC appears to be claiming costs for working on a reply to allegations in my Evidence document. From PDF p. 58:

02/06/24	AK7585	Researching [redacted] [redacted] [redacted] allegations of fraud [redacted] [redacted] Drafting memo regarding same.	1.60
----------	--------	---	------

However, YEC is actually claiming costs for researching how to punish me for asking difficult questions.

02/06/24	AK7585	Researching <u>legal consequences of self-reps making</u> <u>unsupported</u> allegations of fraud <u>including cost</u> <u>consequences we may be able to impose in this matter.</u> Drafting memo regarding same.	1.60
----------	--------	---	------

This is yet another material alteration of the invoice document. It is also disappointing that when asked difficult questions, rather than simply answering, YEC researches how to punish interveners asking the questions. This behavior is entirely inappropriate and unbecoming of a Crown corporation. Perhaps this is why it was redacted.

Recommendation 3:

- a) That in future proceedings, YEC be directed provide correct and clear information from the beginning. If incorrect or misleading information is provided throughout the process and only corrected in an undertaking if at all, we cannot expect the process to be efficient. While consistently providing incorrect answers, YEC cannot claim the problem is too many questions.
- b) And of course if information given to one regulator actually matched information given to other regulators, things would be much simpler. Were YEC to be consistent, they would not have to spend any time trying to explain such things as their plans, methods and strategy for exceeding permitted limits and contravening permit terms. YEC should be directed provide consistent and valid information to all regulators, thus eliminating the need for YEC to attempt to explain for example, how a project with a 4.9 MW permit is actually a 7.2 MW project for N-1 and cost purposes. I certainly would rather not have to ask quite reasonable questions about this. Had YEC provided the same information to the YUB as was provided to Environment Yukon, my questions and allegations would not exist. When a company charges customers for more than it is permitted to produce, allegations of fraud are reasonable and should be expected – and should also be more thoroughly investigated. That YEC struggled to find responses further validates the relevance and importance of the questions and allegations. In the end, YEC attempted to counter my arguments by claiming in their reply argument that the Utilities Act might take precedence over the Environment Act in certain situations. It does not appear that the Board found value in this idea, despite whatever “extra effort” or creativity YEC may have put into it.
- c) Attempts to punish or intimidate interveners are not acceptable, and this should be made clear to YEC. Accountability to the public comes through YEC answering the questions, even if challenging, and not through attempts to punish or intimidate the questioners.
- d) In future cost claims, YEC should not redact any part of any item that is claimed in costs, and should provide reasoning for anything that is redacted and not claimed in costs. As shown in this document, a material alteration and change of meaning can occur if even a couple of letters are redacted. For example, changing “irrelevant to GRA” into relevant to GRA.
- e) YEC should be reminded that material alteration of a document in order to claim unrelated costs, to bolster an argument or for any reason whatsoever is also not acceptable as noted and explained in section 2) of this document and confirmed by Canadian Criminal Code sections 366-368. And of course YEC’s material alterations also cause additional time and expense in the processing and/or rejecting of YEC’s cost claim. Rejecting YEC’s cost claim would make this point quite well. Failure to reject it would be endorsing the practice of materially altering documents in GRA proceedings.

4) **Conclusions and further notes.**

Did YEC really need to redact mentions of irrelevant items on the cost claim to try for a few extra dollars? Did they really need to try to make it look as though they spent more time replying to me than they did?

While I am of course curious as to YEC's rationale for each and every redacted item, I am aware that there is no provision in the process for YEC or anyone to reply to a comment on a cost claim, or to resubmit or correct a cost claim. Therefore it seems that the obvious question of "What were they thinking?" will remain unanswered.

Due to material alterations of the DLA Piper invoice in YEC's cost claim, it should be rejected by the Board, for the reasons stated in Recommendation 2. No payments for false documents.

If the Board does choose to endorse the material alteration of documents and the use of false documents in these proceedings, and "*uses, deals with or acts on it as if it were genuine*" then Recommendation 1 applies, and the Board will need to explain why false documents are acceptable in GRA proceedings and how these proceedings are not bound by Canadian Criminal Code.

Recommendation 3 applies in either case.

The material alterations that invalidate YEC's cost claim are also indicative of deeper issues at YEC which need to be addressed. The Board should take the initiative towards making this happen through any and all means possible.

What approval chain did this cost claim follow?