

3. Memorandum of argument

Part I: A brief statement of facts:

On August 31, 2023, Yukon Energy Corporation (YEC), filed a General Rate Application (GRA) with the Yukon Utilities Board (the Board or YUB) pursuant to the Public Utilities Act and Order-in-Council 1995/90, requesting an order approving a forecast revenue requirement for 2023 and 2024.

The Board held an oral hearing on March 4-7, 2024 in Whitehorse with some virtual attendance.

The record of the proceeding closed April 2, 2024.

Board Order 2024-05 was issued on July 12, 2024 as a result of this proceeding.

The YUB and YEC acknowledged that permitting and capacity limits are the jurisdiction of the Department of Environment and not the Yukon Utilities Board.

YEC also confirmed that capacities presented in the GRA proceeding exceed those permitted by the Department of Environment.

In Board Order 2024-05, the Yukon Utilities Board has allowed YEC to claim and receive payments from customers based on capacity limits that exceed those set by the Department of Environment.

Part II: A statement of the points in issue:

- i. The Yukon Utilities Board (YUB) has erred in law and exceeded its jurisdiction by permitting YEC to claim and receive payments from customers based on diesel generation capacity limits that exceed the limits permitted by the Yukon Department of Environment.
- ii. The Board provided insufficient (no) reason why they have permitted capacities greater than those determined by the Authority Having Jurisdiction, the Yukon Department of Environment to be used in the GRA proceeding.
- iii. The Board's determination of rates based on excessive and unlawful capacity limits is patently unreasonable.
- iv. \$4.1 million per year is currently being charged to customers for capacity that YEC has no authority to operate and has not been assessed or permitted.
- v. \$2.3 million was charged to customers in 2023-24 for unpermitted capacity that YEC had no authority to operate.
- vi. YEC has provided no valid reason why it has not obtained or would not be required to obtain permits that match the capacities of the projects presented to the Yukon Utilities Board. No rationale was provided by YEC or the Board why YEC was presenting a 7.2 MW project to the Board while simultaneously completing the process for a 4.9 MW

permit for the same project.

- vii. As I had stated in my Final Argument document in the GRA proceeding and the Board noted in Board Order 2024-05:

YEC's need for capacity does not exempt it from it from regulation, and should not be accepted by the Board as rationale for including unauthorized capacity in costs. Similarly, YEC's stated commitment to contravening the terms of it's permits is also not acceptable as rationale for including unauthorized capacity in costs. As previously noted, a rates hearing is not the appropriate forum for YEC to be arguing for capacity that has not been authorized by Environment Yukon.

- viii. And also from my Final Argument:

Should the Board choose to consider YEC's argument to exceed existing permit limits established between YEC and Environment Yukon, there are of course a number of issues to consider. As described above, this first includes the Board's authority to accept and allow capacities greater than those accepted by Environment Yukon.

Part III: Reasons why leave should be granted:

- (a) the importance of the proposed appeal generally and to the parties;

The Yukon Utilities Board (YUB) has erred in law and exceeded it's jurisdiction by permitting YEC to claim and receive payments from customers based on diesel generation capacity limits that exceed the limits permitted by the Yukon Department of Environment.

It is in the public interest both for YEC to have permits and assessments that accurately reflect the actual projects, and for customers not to be required to pay for capacity that has not been assessed or permitted, capacity that YEC has no authority to operate even in emergency situations.

- (b) the utility of the proposed appeal in the circumstances of the parties;

- i. Yukon's approximately 23,000 ratepayers are currently paying for capacity that YEC is not authorized to operate and has not been assessed as required under the Yukon Environmental and Socio-economic Assessment Act (YESAA) or permitted by the Department of Environment. This appeal will stop YEC from charging customers for capacity that YEC is not authorized or permitted to operate. \$2.3 million in 2023-24 and \$4.1 million in 2024-25.
- ii. Future issues concerning capacity will be avoided by confirming that the capacity limits established by the Department of Environment are to be respected by other tribunals, and that the Yukon Utilities Board does not have the authority to establish or use capacity limits exceeding those of the Department of Environment.

- iii. YEC will be encouraged to have assessments and permits that accurately reflect the actual projects. For any given project, having the appropriate assessment and permit is in the public interest.
- iv. The Yukon Utilities Board's decision to allow YEC to claim and receive payment for capacity that has not been assessed, permitted or authorized in any other way disincentivizes compliance and undermines the authority of the Department of Environment.

(c) the prospects of success of the proposed appeal;

The applicant's submission record amply demonstrates the alleged errors of jurisdiction and law and accordingly this appeal has substantial merit and public interest on the known facts of the decision.

(d) if applicable, any statutory provision granting a right to appeal with leave.

Public Utilities Act

Appeals

Leave to appeal to the Court of Appeal

69(1) On application to the Court of Appeal within 30 days of a decision or order of the board or within a further time allowed by the Court of Appeal in special circumstances, the Court of Appeal may grant leave to appeal to that court from the order or decision on a question of law or excess of jurisdiction. S.Y. 2002, c.186, s.69

Part IV: The nature of the order requested:

Request that leave to appeal be granted. Also as a self-represented appellant I request that this then be referred to the case management process.

Part V: A table of the authorities to be referred to:

Environment Act

Public Utilities Act

Yukon Environmental and Socio-economic Assessment Act (YESAA)