

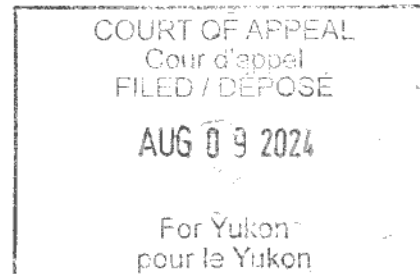
24-YU922

Court of Appeal File No.

COURT OF APPEAL

BETWEEN: NATHANIEL YEE

AND: YUKON ENERGY CORPORATION



Appellant

Respondent

NOTICE OF APPLICATION FOR LEAVE TO APPEAL

Take notice that Nathaniel Yee hereby applies for leave to appeal to the Court of Appeal for Yukon Territory from Board Order 2024-05 of the Yukon Utilities Board pronounced the 12th day of July, 2024, at Whitehorse, Yukon Territory.

1. The appeal is from a:

- ☐ Trial Judgment ☐ Summary Trial Judgment
☒ Order of a Statutory Body ☐ Chambers Judgment

2. This leave to appeal is brought Section 69 of the Public Utilities Act which provides this Court with the discretion to grant leave to appeal from an order of the Board on a question of law or jurisdiction. It provides:

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.

3. Please identify which of the following is involved in the appeal:

- ☒ Constitutional/Administrative ☒ Civil Procedure ☐ Commercial
☐ Family ☐ Motor Vehicle Accidents ☐ Municipal Law
☐ Real Property ☐ Torts ☐ Equity
☐ Wills and Estates

And further take notice that the Court of Appeal will be moved at the hearing of this application for an Order that:

- 1) Yukon Utilities Board Order 2024-05 be quashed.
- 2) That this Board Order be returned for rehearing and revised with consideration of permitted generation capacity limits, ideally with a differently constituted tribunal.
- 3) That any and all costs associated with capacity in excess of what has been permitted by the Yukon Department of Environment be refunded to customers and that rates be adjusted and accordingly.

The grounds of appeal are:

- 1) Yukon Energy Corporation (YEC) has acknowledged that the diesel generation capacities presented in their 2023-24 General Rate Application hearing exceed those permitted by the Department of Environment and assessed under the Yukon Environmental and Socio-economic Assessment Act (YESAA).
- 2) YEC also acknowledged that capacity limits are under the jurisdiction of the Yukon Department of Environment, and not under the jurisdiction of the Yukon Utilities Board.
- 3) 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.
- 4) 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.
- 5) The Board's determination of rates based on excessive and unlawful capacity limits is patently unreasonable.
- 6) Ratepayers are being overcharged by approximately \$4.1 million per year for unassessed and unpermitted capacity, capacity that YEC has no authority to operate even in emergency conditions. This would be around \$180 per customer per year if split evenly among customers.
- 7) Paragraphs below are from Board Order 2024-05 Appendix A:

129. Mr. Yee provided extensive argument regarding permitted capacity for YEC's diesel units at the Faro, Mayo and Whitehorse locations. Mr. Yee discussed his, YEC's, and the Yukon Department of Environment's positions and referenced certain sections of the Environment Act. Mr. Yee made the following recommendation on this matter:

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 its 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.

123. In its reply argument, regarding Mr. Yee's submissions on unpermitted capacity, YEC stated that:

... if there is any conflict between any specific provisions of the Environment Act and YEC's overarching statutory duty under the section 106 of PUA to provide service to customers, YEC's duty under section 106 of the PUA must, as a practical matter, be interpreted as taking precedence over the provisions of the Environment Act – at least during an emergency event that engages the exemption from assessment under section 49 of YESAA.

And under 5.2.9 *Board Findings* also from Board Order 2024-05 Appendix A:

137. Mr. Yee has provided substantial comment on permitted capacity and whether ratepayers should pay for costs related to unpermitted capacity. Mr. Yee also commented on YEC's elasticity when determining the capacity rating of several of its thermal units. These submissions do not provide evidence the Board is able to use to determine the revenue requirement for YEC to provide safe and reliable electric service at rates that are in the public interest. It is incumbent upon YEC to ensure it has all required regulatory approvals, processes, and assets in place to provide that safe and reliable service.

Regarding the capacity issues raised, YEC is directed, in its future applications, to provide a strong industry based and accepted approach on what the manufacturers accept as criteria and evidence for uprating thermal generation units. This can be based on documented industry standards.

8) The Board was correct in ignoring YEC's claim that the Public Utilities Act and the duty to supply power take precedence over the Environment Act (and consequently YESAA) as rationale for ignoring capacity limits established by the Department of Environment.

9) While not endorsing YEC's reasoning for why the Board could ignore established capacity limits, the Board did nonetheless ignore established capacity limits and permit YEC to charge customers for capacity that has not been assessed, permitted or otherwise authorized for use. The Board exceeded its jurisdiction in permitting YEC to exceed capacity limits established by the Department of Environment, the Authority Having Jurisdiction, and provided insufficient (no) reason why it can establish capacities independent of those permitted by the Department of Environment.

The trial/hearing of this proceeding occupied four days.

Dated at Faro, Yukon Territory, this 9th day of August, 2024.

Nathaniel Yee, Appellant

To the respondent(s): Yukon Energy Corporation

And to its solicitor:

This Notice of Leave to Appeal is given by Nathaniel Yee,

whose address for service is:

To the respondent(s):

IF YOU INTEND TO PARTICIPATE in this proceeding, YOU MUST GIVE NOTICE of your intention by filing a form entitled "Notice of Appearance" (Form 2 of the Court of Appeal Rules) in the Court of Appeal registry and serve the notice of appearance on the appellant WITHIN 10 DAYS of receiving this Notice of Application for Leave to Appeal.

IF YOU FAIL TO FILE A NOTICE OF APPEARANCE

- (a) you are deemed to take no position on the application, and
- (b) the parties are not obliged to serve you with any further documents related to the application.

The filing registry for the Yukon Territory Court of Appeal is:

Yukon Court of Appeal
The Law Courts
2134 – Second Avenue
Whitehorse, Yukon Y1A 5H6

Inquiries should be addressed to (867) 456-3821

Fax filings: (867) 393-6212