



Refer to: T. D. Marriott Q.C.  
Direct Line: 780-497-4868  
E-mail: tmarriott@brownleelaw.com  
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Our File No.: 71310-0023

September 28, 2017

Yukon Utilities Board  
Box 31728  
Whitehorse, Yukon Y1A 6L3

Attention: Mr. Robert Laking, Chair

**Re: City of Whitehorse Comments on Court of Appeal of Yukon Judgment re: Board Order 2015-06**

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Further to the letter from the Yukon Utilities Board (“YUB”) dated September 22, 2017 requesting comments from parties on the Yukon judgment regarding the Court of Appeal decision on Board Order 2015-06 below are the requested comments on behalf of the City of Whitehorse (“City”), including the City’s responses to the three questions posed by the Board in its letter.

The City took no part in the appeal, but it has reviewed the Court of Appeal decision. As the City understands it, at the heart of the dispute in the Court of Appeal was a difference in interpretation of the phrase “recover its costs” as used in section 7 of Order in Council 1995/90 (“OIC”). The Court of Appeal has directed that the “single available reasonable interpretation of s. 7 of the OIC” is that the rates should be set “sufficient to enable Yukon Energy to get back everything it reasonably paid for generating the electricity it sells to Yukon Electrical and would not otherwise recover from other customers.”<sup>1</sup> The Court has remitted the matter back to the Board “with directions to set a wholesale rate that enables Yukon Energy to recover all of its diesel generation costs, which costs include any net DCF payment made by Yukon Energy attributable to Yukon Electrical’s above-forecast wholesale purchases of electricity.”<sup>2</sup>

In answer to the Board’s Question 1, it appears to the City that if the Court of Appeal decision does result in changes to any of the mechanisms or processes listed in that question, it would be feasible and appropriate to deal with the Court’s directions in a separate proceeding dealing with diesel generation costs, and for the current schedule for the General Rate Application to be maintained. The effect of the Court’s directions, if any, on the mechanisms, or processes listed in the Board’s Question 1 or on the Board’s ultimate decision on the GRA would flow from the decision in the separate diesel generation costs proceeding. If the GRA decision is released prior to the other decision, the GRA decision would just have to note a potential adjustment flowing

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<sup>1</sup> *Yukon Energy Corporation v. Yukon Utilities Board*, 2017 YKCA 15, at para. 62

<sup>2</sup> *Ibid*, para. 71  
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**BROWNLEE LLP**  
*Barristers & Solicitors* EST. 1935

2200 COMMERCE PLACE | 10155 102<sup>ND</sup> STREET  
EDMONTON, AB CANADA | T5J 4G8  
TEL. 780.497.4800 | FAX 780.424.3254

from the pending decision. If the diesel generation costs decision is issued prior to the GRA decision, then the GRA decision can reflect any impacts of that decision.

As the City understands it, there are no directions in the Court of Appeal decision concerning the use of long-term averages for forecasting hydro generation, so in answer to the Board's Question 3, at this time the City does not see the Court of Appeal decision impacting that issue.

Yours truly,

BROWNLEE LLP  
PER:

THOMAS D. MARRIOTT, Q.C.