

2005-17

**IN THE MATTER OF the Public Utilities Act
Revised Statutes of Yukon, 2002, c. 186, as amended**

and

**An Application by Yukon Energy Corporation
For the approval of the November 17, 2005, compliance filing**

BEFORE: W. Shanks, A/Chair) December 14, 2005
 R. Hancock)
 M. Phillips)

BOARD ORDER 2005-17

WHEREAS:

- A. On October 18, 2005, the Yukon Utilities Board ("Board") issued Board Order 2005-12. The Order, in part, directed the Yukon Energy Corporation ("YEC") to file, within 30 days, the appropriate schedules from Section 7 of the Application for Board approval of the YEC 2005 Revenue Requirements and 2005 revenue shortfall;
- B. On November 17, 2005, YEC filed the schedules from Section 7 of the Application for approval pursuant to Board Order 2005-12; and
- C. The Board has reviewed the schedules as filed.

NOW THEREFORE the Board orders as follows with Reasons attached as Appendix A that:

- 1. With the exceptions noted below, the Board approves the 2005 Revenue Requirements and 2005 revenue shortfall as filed.
- 2. YEC is to record \$650,000 as its total hearing cost allowable expense. Any excess hearing-related expenses incurred by the utility are not to be recovered from the ratepayer or to be included in the 2005 revenue shortfall, in terms of the drawdown for the Faro Mine dewatering account for 2005 or any future years.
- 3. YEC is to revise the amount in the 2005 hearing cost deferral account to include the allowed hearing cost of \$650,000 and the actual cost awards in Board Order 2005-16.

4. The allowed 2005 revenue shortfall will be recalculated to include the revised allowed amounts in the 2005 hearing cost deferral account granted in this Order and in Board Order 2005-16.
5. Disposition of any balances in cost recoveries from Chant Construction will be determined based on the evidence before the Board at a future date.

DATED at the City of Whitehorse, in the Yukon Territory, this 21st day of December 2005.

BY ORDER

A handwritten signature in black ink, appearing to read 'W. Shanks', written over a horizontal line.

Wendy Shanks
Vice-Chair

**IN THE MATTER OF the Public Utilities Act
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For the approval of the November 17, 2005, compliance filing**

Reasons for Decision

1.0 Background

On December 13, 2004, Yukon Energy Corporation ("YEC", "the Company") filed with the Yukon Utilities Board ("the Board"), pursuant to the *Public Utilities Act* ("the Act"), and *Order-In-Council 1995/90*, an Application requesting an Order granting new rates for Secondary (interruptible) Energy and the Faro Mine site, on an interim refundable basis, effective with consumption January 1, 2005 ("the Application").

By Board Order 2004-1 dated December 20, 2004, the Board set the current residential and commercial firm rates as interim effective January 1, 2005, and approved an interim refundable increase in rates to Secondary (interruptible) Energy customers and to the Faro mine site as requested in the Application. Board Order 2004-1 further scheduled a Workshop on the Application for January 13, 2005, and a Pre-hearing Conference for January 14, 2005.

The oral public hearing into the YEC Application was held from April 18 to April 21, 2005. The filing of YEC's Argument was on May 6, 2005. Intervenor Argument was filed on May 20, 2005, and YEC Reply Argument was filed on May 27, 2005.

On October 18, 2005, the Board issued Board Order 2005-12 as its decision on the YEC Application. The Order, in part, directed the YEC to file, within 30 days, the appropriate schedules from Section 7 of the Application for Board approval of the YEC 2005 Revenue Requirements and 2005 revenue shortfall.

On November 17, 2005, YEC filed the schedules from Section 7 of the Application for approval pursuant to Board Order 2005-12.

2.0 Submissions

The YEC filing on November 17, 2005, included a request for approval for of its hearing costs in the amount of \$860,000 (approximate costs).

By letter dated, November 28, 2005, the Board requested a more detailed breakdown of YEC's hearing costs. In response to the Board's request, YEC filed a letter dated November 30, 2005, which provided YEC's explanation for the increases in its hearing costs, together with a Table which compared its original estimate, with the updated estimate in Exhibit B1-23 and the amount in the November 17, 2005, filing. YEC had filed Exhibit B1-23 on April 8, 2005.

By letter dated December 7, 2005, YEC provided comments on the Intervenor cost applications.

In support of its request for the hearing costs claimed in its November 17, 2005, filing, YEC submitted the following:

A. 2004 Costs

These costs increased by 8 percent after the Application was filed due to additional 2004 costs required to prepare and file the Application and to prepare for the January 2005 Workshop. YEC's original estimate for these costs was \$300,000 which was increased to \$325,000 in Exhibit B1-23. The latter amount remains the same in the November 17, 2005, filing, according to the YEC letter dated November 30, 2005.

B. 2005 Costs

The original estimate of \$140,000 to \$150,000 was based on \$40,000 to \$50,000 per month for 3 to 3.5 months. At the time of the filing of Exhibit B1-23 the estimate of \$275,000 to \$325,000 was based on \$75,000 for four months. The earlier estimates were based on global estimates and did not distinguish between internal and external costs. Exhibit B1-23 estimates reflected the substantial added workload to address Information Requests and Intervenor's motions and the need for additional external resources to meet timelines.

The increase in costs to \$526,000 in the November 17, 2005, filing from the amounts in Exhibit B1-23 resulted from:

- (i) an increase in \$9,000 for the first three months in 2005 over the Exhibit B1-23 estimate of \$225,000 for three average months;
- (ii) YEC experiencing a far more extensive and detailed process than it anticipated, resulting in costs of \$265,000 over two months in April and May (the hearing and submissions months); and

(iii) YEC incurring \$27,000 in further work that it had not forecast, including addressing surreply from YECL as well as review of Board Order 2005-12, including initial work on preparing the compliance filing required by Board Order 2005-12, through October 31, 2005.

3.0 Board Conclusions

The Board is concerned with all utility costs, including hearing costs as these costs are ultimately borne by ratepayers. The Board recognized well before the utility made its revenue application to the Board that many years had elapsed since the utility had been before the Board for a review of any nature.

At the time of the filing of the Application on December 13, 2004, YEC estimated its hearing costs to be in the range of \$440,000 to \$450,000. The Board acknowledges that these cost estimates were provided early in the process before the actual nature of the proceeding was fully evident.

As stated earlier in these Reasons, on April 8, 2005, 10 days before the oral hearing, YEC filed Exhibit B1-23. By that time, the written Information Request process and a large portion of the pre-hearing procedural matters had been completed. The Board accepts YEC's updated hearing cost estimate in the range of \$600,000 to \$650,000, as set out in Exhibit B1-23. The Board accepts the increase in costs of some \$200,000 at the outside range, recognizing that the hearing to that date had involved a record number of Information Requests.

In the November 17, 2005, filing, YEC approximates its hearing costs at \$860,000. In the November 30, 2005, letter, which has been referred to earlier in these Reasons, YEC indicates that its updated hearing costs have now reached \$851,000 [costs to October 31, 2005 (final)]. YEC explains the reason for the increase of some \$200,000 in YEC costs since the filing of Exhibit B1-23 in its November 30, 2005, letter. The Board notes that the updated April 8, 2005, estimates were filed approximately 10 days prior to the oral hearing. By this time, the proceeding was well underway and YEC should have anticipated that there may be additional costs based on the positions the parties had taken on various issues up until that time and the unprecedented number of Information Requests. In addition, YEC noted in its December 7, 2005, letter that issues in the proceeding related to only one utility and were focused almost entirely on revenue requirements as there was no proposal to change rates for firm, residential and general service customers.

In Exhibit B1-23, YEC should have provided a more reasonable cost estimate for the timeframe between and including the date of filing of Exhibit B1-23 and the filing of its May 27, 2005, Reply Argument. The Board considers it reasonable that the cost provision for this time frame should have already been provided for in the cost increase of some \$200,000 disclosed in Exhibit B1-23. By noting the

number and nature of the Information Requests and procedural issues that had arisen to date, the nature of the remainder of the proceedings should have been apparent. The Board does not view the extra cost overruns for this time period as reasonably and prudently incurred.

The Board cannot make an award for costs incurred unreasonably or imprudently. The cost overrun noted above would break down to an unacceptably high number of person hours dedicated to this matter.

The Board also notes YEC's poor forecasting of work to be done on preparing the compliance filing. The requirement for this filing was well known in advance and should have been budgeted for in Exhibit B1-23, as it is normal regulatory practice to review the final decision and file updated regulatory schedules. Such practice was followed in during the 1996 YEC-YECL negotiated settlement process.

Although the Board acknowledges that the updated cost estimates for the Board's costs and Intervenor costs were difficult to forecast, the Board expected YEC to accurately forecast its own costs. Similarly, the Board expected Exhibit B1-23 to be a reasonable updated forecast. The Board notes that there were no qualifications in either of the forecasts to alert it to the possibility that the final request for costs might exceed the range YEC provided in Exhibit B1-23. Finally, there was no formal notice given by YEC that its updated forecast was inaccurate between the time it was filed and the time the decision was issued.

Therefore, the Board approves an amount of \$650,000 for costs for YEC in this matter. Expenditures over this amount are denied by the Board.