

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

And

**Review of Yukon Utilities Board Order 2015-06 and
Appendix A – Reasons for Decision**

BEFORE: B. McLennan, Chair) December 31, 2015
 R. Laking, Vice-Chair)
 A. Fortin)
 M. Hannam)
 C. King)

BOARD ORDER 2015-07

WHEREAS:

- A. Pursuant to section 62 of the *Public Utilities Act* and section 31 of the Yukon Utilities Board (Board) *Rules of Practice*, on October 13, 2015, the Yukon Energy Corporation (YEC) filed with the Board an Application for Review and Variance (Review Application) regarding Board Order 2015-06 and Appendix A, Reasons for Decision, dated August 18, 2015. In its Review Application, YEC is requesting that the Board should convene a phase II review on the merits in relation to the Energy Reconciliation Adjustment (ERA) or proceed directly to vary the ERA findings by approving the ERA as provided for in Yukon Energy's April 7, 2015 compliance filing application.
- B. In summary, YEC alleges that the Board erred in law and jurisdiction by interpreting section 7 of Order-in-Council (OIC) 1995/90 in a manner that fails to ensure that the rate charged to the Yukon Electrical Company Limited (YECL) including the ERA is sufficient to enable YEC to recover its costs not recovered from other ratepayers, and cannot invoke the ERA when "drought conditions" exist, thereby preventing YEC from recovering a material amount of its diesel-related costs if drought conditions exist in any given year.
- C. YEC submitted that it met the first stage of a review and the Board should review and vary Board Order 2015-06 and Board Order 2015-01, as requested in the Review Application.

- D. On October 19, 2015, the Board issued a letter requesting comments from parties to the proceeding that resulted in Board Order 2015-06, and affording the applicant for review an opportunity to respond to any comments filed. Comments were received from the Utilities Consumers' Group (UCG) and YECL, opposing the Review Application. YEC replied to the comments from these parties.
- E. Section 31 of the Board's *Rules of Practice* states that the Board will use a two-phase system for applications for review. The first phase is the initial screening phase where the applicant must establish a *prima facie* case sufficient to warrant full consideration by the Board. In the case of an alleged error, in order to advance to the second phase of the process, the applicant for review must show that the claim of error is substantiated on a *prima facie* basis and the error has significant material implications.
- F. The Board has considered the Review Application from YEC and the submissions of the parties in light of the test set out in section 31 of the Board's *Rules of Practice*. The Board has decided that YEC has not shown on a *prima facie* basis that the Board committed an error of law or jurisdiction in its interpretation of section 7 of OIC 1995/90. Therefore, the Board has determined that the Review Application will not advance to the second phase of the process.
- G. As a preliminary matter, the Board determined that it denied YEC's review application of Board Order 2015-01 because the Board considered that YEC's review application of Board Order 2015-01 is out of time for the reasons set out in the attached Appendix A .

NOW THEREFORE, for the reasons set out in the attached Appendix A, the Board dismisses the YEC Review Application for the Board to review and vary Board Order 2015-06.

DATED at the City of Whitehorse, Yukon, the 31st day of December 2015.

BY ORDER



Bruce McLennan
Chair