

# **Yukon Utilities Board**

**Board Order 2017-08**

**Appendix A: Reasons for Decision**

**October 18, 2017**

## **A Introduction**

This Appendix sets out the Yukon Utilities Board's (Board) process to address the Court of Appeal of Yukon's judgement, *Yukon Energy Corporation v Yukon Utilities Board, 2017 YKCA 15*; the YEC 2017-18 General Rate Application (current GRA); and the process schedule going forward.

On September 12, 2017, the Court of Appeal of Yukon released its judgement on an appeal by Yukon Energy Corporation related to certain aspects of Board Order 2015-06. That judgment set aside the order of the Board related to the issues of the Diesel Contingency Fund (DCF) and the wholesale rates provision in Section 7 of Rate Policy Directive, OIC 1995/90 (the Energy Reconciliation Account or ERA). The Court 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 payment made by Yukon Energy attributable to Yukon Electrical's above-forecast wholesale purchases of electricity."

## **B Questions for Discussion**

The Board issued a letter on September 22, 2017, asking parties to comment on:

- (1) What process should be established to address the Court's judgement and the scope of issues that need to be addressed to give effect to the Court's directions to the Board?

In addition, comments were requested on the following specific issues with respect to the current GRA that was filed with the Board on June 22, 2017:

- (2) Is there any effect of the judgment on the current GRA, the DCF mechanism contained in the current GRA, and the Energy Reconciliation Adjustment mechanism?
- (3) How should the Board proceed with respect to the GRA — for example, if amendments to the application are required, and any effects on the current oral hearing schedule from November 28 to 30, 2017?
- (4) Any comments parties may have regarding the impact of the judgment on the use of long-term averages for forecasting hydro generation.

Parties were asked to provide comments by September 28, 2017.

The Board received comments from John Maissan, the Utilities Consumers' Group (UCG), the City of Whitehorse (CW), ATCO Electric Yukon (AEY) and Yukon Energy Corporation (YEC).

The Board has summarized the comments on the four questions as follows:

1. What process should be established to address the Court's judgement and the scope of issues that need to be addressed with respect to giving effect to the Court's directions to the Board?

John Maissan stated that he did not follow the details of YEC's appeal and deferred to YEC and those who have followed the matter in detail.

UCG submitted that the review process would be easier for all parties if YEC was directed to submit either a stand-alone application that reflects the impact of the Court of Appeal judgement, which includes: the changes that must be made to the compliance filing originally submitted and approved in 2013, what impact this will have on ratepayers going forward, and the submission of updated evidence in the current 2017-18 GRA application to reflect the Court of Appeal decision.

CW said that if the Court of Appeal decision does result in changes to any 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 current GRA to be maintained.

AEY submitted that it will participate in any process established to address the Court's judgement but any such process should be separate from the current GRA. In addition, AEY stated it understands that any process and decision of the Board to address the judgement of the Court is likely to have implications for the current GRA; as such, if the Board determines that the Court's judgement is best addressed within the current GRA, then AEY requests the establishment of further process (IRs and evidence) to appropriately test and understand the potential implications on AEY and its customers.

YEC noted a formal order must be prepared and approved by the Court documenting the Court's decision on the appeal including the direction to the Board. YEC further submitted it is willing to work with the Board to ensure that the direction of the Court is implemented in the most efficient and fair way. Yukon Energy's suggestion for process is as follows: Yukon Energy will file for the Board's consideration a submission which includes an updated Rate Schedule 42 that reflects the direction of the court and includes appropriate analysis demonstrating the impact on the parties from implementation of the updated schedule. The Board can then establish a timeline for comments by intervenors and for Yukon Energy's reply to the intervenors' comments.

2. Is there any effect of the judgment on the current GRA, the DCF mechanism contained in the current GRA, and the Energy Reconciliation Adjustment mechanism?

Specific comments on this item were only provided by CW, AEY and YEC.

CW stated 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 current GRA 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.

As noted above in response to the first question, AEY stated that any process and decision of the Board to address the judgement of the court is likely to have implications for the current GRA.

YEC responded that the ERA will be dealt with in the process established to implement the Court's decision. Therefore, there is no need to adjust or amend the current GRA application to address the Court's judgment. It later added that the way in which the DCF operated was not an issue before the Court and therefore its decision does not impact the DCF mechanism as filed in the current GRA, nor does it affect YEC revenue requirement for the test years.

3. How should the Board proceed with respect to the GRA — for example, if amendments to the application are required, and any effects on the current oral hearing schedule from November 28 to 30, 2017?

John Maissan stated a strong preference to maintain the current GRA process schedule laid out by the Board in Board Order 2017-04.

UCG stated that it believed that the original hearing dates could not be maintained and recommended a procedural schedule in its submission.

CW responded that it appears to them 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 current GRA to be maintained.

AEY submitted that Question 1 and 3 are within the purview of the Board and should be tested and dealt with within the process or processes established by the Board.

YEC responded that, for the reasons stated in response to Questions 1 and 3, the Court's decision has no impact on the current oral hearing schedule.

4. Any comments parties may have regarding the impact of the judgment on the use of long-term averages for forecasting hydro generation.

CW submitted that 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 4, at this time they do not see the Court of Appeal decision impacting that issue.

AEY provided its comments in response to Question 3 above.

YEC responded that, similar to the DCF mechanism, the determination of long-term average hydro was not an issue before the Court, and therefore, the decision of the Court has no impact on the use of long-term average in the current GRA.

## C Board Determinations

Question 1: What process should be established to address the Court's judgement and the scope of issues that need to be addressed with respect to giving effect to the Court's directions to the Board?

The Board agrees with the positions of the UCG, CW, AEY and YEC that the process to address the Court's judgement and the scope of issues that need to be addressed should be separate from the current GRA process. The findings of the Court with respect to the 2012 wholesale rate, including the DCF adjustment, is best addressed in a separate proceeding because the 2012 adjustment does not impact the 2017-18 GRA. That is not, however, to preclude the decision or any direction from this separate process from impacting or causing any changes to the determinations made in the 2017-18 GRA to the extent necessary to adequately address any implications of the Court's decision on the 2017-18 GRA. This is further discussed under the Board's determinations under Question 2 below.

Question 2: Is there any effect of the judgment on the current GRA, the DCF mechanism contained in the current GRA, and the Energy Reconciliation Adjustment mechanism?

The Board disagrees with the submission of YEC on this issue that there is not any potential impact on the current GRA. Given that the Court of Appeal linked the DCF and ERA, the Board will need a process to deal with these elements of YEC's rates and revenue requirement plus the LTA hydro-generation forecast. The LTA hydro-generation forecast impacts the amounts determined in the DCF/ERA calculations.

The Court of Appeal clearly linked the DCF and ERA when it stated starting at paragraph 63 of its judgement:

The Board approved the revised DCF in Board Order 2015-01. In doing so, it accepted that Yukon Energy's annual diesel generation costs are its generation costs plus its DCF payments, not just its actual diesel costs. It also accepted that the DCF is a customer trust fund, meaning that, when a DCF payment is made, Yukon Energy retains no beneficial interest in the money paid into the fund. It further expressly accepted that the expected diesel costs included in approved rates are based on long-term average hydro generation forecasts provided by YECSIM:

... The Board has previously accepted [long-term average] hydro generation as the basis for [Yukon Energy] [general rate application] forecasts. The 2012-13 [long term-average] forecast was provided by means of [Yukon Energy]'s YECSIM model and was not contested at that time. Moreover, no evidence has been presented in this proceeding that the YECSIM model does not operate as it is intended ...

[64] Other rate stabilization mechanisms for addressing hydro generation variances may well have been available to the Board when it made Board Order 2015-01. However, the revised DCF was the approach that it approved and adopted as an integral part of setting Yukon Energy's rates.

[65] In Board Order 2015-01, the Board also chose to retain the ERA, albeit not as urged by Yukon Energy. As previously discussed, the ERA is a rate stabilization mechanism intended to ensure that Yukon Electrical receives a full pass-through of all incremental costs or savings of diesel generation attributable to higher or lower than forecast wholesale purchases. [underlining added]

The above quote shows that the Court of Appeal acknowledged a link between the DCF, the ERA, and the use of long-term average (LTA) hydro-generation forecasts. Thus, the Board concludes that it must consider that the issues affecting the ERA also affect the DCF and the use of LTA for hydro-generation forecasts and consequently the thermal-generation forecast. The latter three items are active components in YEC's 2017-18 GRA; therefore, there is an effect on YEC's 2017-18 GRA.

Question 3: How should the Board proceed with respect to the GRA — for example, if amendments to the application are required, and any effects on the current oral hearing schedule from November 28 to 30, 2017?

As noted by the Board in its determinations regarding Question 2, the Court of Appeal judgement does have an effect on the current GRA that is before the Board. For the reasons set out in this Appendix, the Board is of the opinion that a separate process should be established to determine the 2012 ERA amount of \$439,000, and further, how these inter-related elements (DCF, ERA, LTA hydro-generation, and consequential thermal generation) should operate going forward (2017 and beyond). The relevant issues regarding these elements should be removed from the current GRA proceeding and determined in the separate process.

Question 4: Any comments parties may have regarding the impact of the judgment on the use of long-term averages for forecasting hydro generation.

Parties that commented on this point stated that the ERA issue was narrow and that there is no relation to LTA hydro-generation forecasts. Due to the Court's findings at paragraphs 63-65, the Board finds that the DCF, ERA, LTA hydro-generation and consequential thermal-generation elements are intertwined and must form part of the separate process to respond to the direction of the Court of Appeal. While the issue under appeal affected the 2012 GRA, the Court's findings have broader implications on the use of long-term hydro generation, the ERA, the DCF and the wholesale rate to be paid by AEY. These issues must be addressed by the Board to ensure that there are just and reasonable rates.

### **Required Steps to Proceed**

As correctly commented on by YEC, the Board must await the preparation, approval and issuance of the order from the Court of Appeal. Once that order is received, YEC is directed to provide correspondence to the Board, within 30 days of issuance of that order, as to when it expects to file a revised application to address the 2012 ERA issue.

Further, the Board views that an application from YEC, which will relate to the separate process to deal with the DCF, ERA, LTA hydro-generation, consequential thermal generation and wholesale rates, should be in two parts. The first part is to address the 2012 ERA adjustment.

Within that part of the application, YEC is to provide evidence as to how the 2012 ERA amount of \$439,000 was derived and whether YEC views that there should be any adjustments to the 2012 amount. The quantum of the ERA for that year has not been tested and will be tested in the separate proceeding.

As stated in Board Order 2105-01 and in Board Order 2015-06, the Board accepted the results of the YECSIM model for DCF purposes but expressed several concerns of using results from YECSIM with respect to ERA determinations. On the record of YEC's 2017-18 GRA YEC made the following statements regarding the applicability of YECSIM results:

... detailed retrospective verifications or tests are not typically undertaken for hydro system planning models similar to YECSIM. Accordingly, YEC has not done such tests of YECSIM.

Actual system operation will differ from planning model simulations in response to operator assessments of, and responses to, specific conditions. Planning models provide a consistent basis to simulate the system operation within the conditions imposed by physics, regulation and operational priorities, in order to supply the estimated loads with the available hydrologic inputs. Such simulations are required for long-term evaluation of system operation under different loads and with varying generation resource options.<sup>1</sup>

...

YEC assesses opportunities to enhance hydro storage for wintertime use through the inflow forecast, load forecast, its ongoing rules of operation, and in response as required to specific circumstance, e.g., capital works and/or interruptions affecting hydro unit operation.

Given recent load and water conditions, there have been few opportunities to assess hydro storage for wintertime use beyond opportunities defined by normal ongoing rules of operation.

Yes – opportunities such as hydro storage enhancement affect YECSIM calculations, and therefore the LTA assessments of hydro and thermal generation used in the GRA and to establish the DCF Term Sheet table approved by the Board.

As noted in the above quote, however, the YECSIM model is limited to specific operation rules when it is used for LTA hydro generation assessment related to GRA hydro and thermal generation forecasts, assessment of new generation resource options, and for GRA-related determinations.<sup>2</sup>

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<sup>1</sup> YUB-YEC-1-49 (a & b).

<sup>2</sup> YUB-YEC-1-50 (a-c).

YECSIM, as a planning model, includes information and decision rules that affect ongoing operational decisions for operation of the YEC system, such as for example, fish flows and lake elevations as per water use licenses. However, as reviewed in detail in Attachment 3.4.3, a long term planning model such as YECSIM does not set to replicate actual past short term operational decisions or to address future short term operational planning.<sup>3</sup> [underlining added for each of the above quotations]

In its application regarding the 2012 ERA amount, YEC is to explain the extent of any adjustments needed to account for the above-noted concerns when it determines the amount payable by AEY to YEC.

The second part of the YEC application is to cover the 2017 period forward. This part of the application will include the DCF, ERA and the use of LTA hydro-generation forecasts for GRA purposes and any consequential impact on thermal generation. In all of its decisions regarding YEC's DCF-ERA applications, the Board stated its concerns that results of the YECSIM model cannot be verified, that it is a planning tool and not a billing engine, and that operational decisions of YEC can affect variables such as losses and in turn affect diesel generation requirements.

YEC's second part of the application is to directly address all the concerns expressed by the Board in Board Order 2015-01 and Board Order 2015-06. YEC must include in its application information demonstrating the inter-relationship between the LTA hydro-generation, the DCF and the ERA, and detailing the pros and cons from each of those that relate to the other elements. Any alternatives to the use of the current DCF and ERA approach should also be included in the application.

As the date for YEC to file its application regarding the above is unknown, the Board must still address the current 2017-18 GRA. As most parties do not favour an indeterminate delay regarding this GRA, the Board directs the following:

1. As January 1, 2017 is the beginning of the test period for the current GRA, the 2017-18 DCF will be held as a placeholder — that is, balances and activity in this account will not be finalized until such time as a final determination is made regarding the separate application in response to the Court of Appeal decision. YEC is to retain the balance (plus interest) in the DCF account until a final determination is made.
2. YEC is to provide an alternative GRA proposal in the current GRA using a short-term hydro-electric generation forecast for the test period. When YEC provides its alternative forecast, it is to provide a copy of the alternative proposal in a clean version and a blacklined version of YEC's entire GRA showing all changes made. YEC is to provide the alternative proposal within 60 days of the issuance of this order. YEC is to provide revisions to all information responses and provide similar treatment (clean and blacklined versions) at the time the alternative application is filed. With the alternative proposal, YEC is to explain all variances between the LTA hydro-generation forecast and the short-term hydro-generation forecast (including any changes in the thermal-

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<sup>3</sup> YUB-YEC-1-51.



generation forecasts) as well as a comparison between the LTA and short-term hydro-generation modelling assumptions.

3. YEC is to remove any DCF references in its alternative application.

The Board will provide a revised process schedule for the current GRA after the alternative proposal, application revisions, and revisions to the first round of information responses are received.