

Yukon Utilities Board

Board Order 2022-08
Appendix A: Reasons for Decision
July 12, 2022

Process Summary

1. On July 3, 2022, the Yukon Utilities Board (the Board) received a notice of motion from the Utilities Consumers' Group (UCG), an intervener, asking the Board to consider postponing the oral hearing and arguments in the above noted proceeding to at least October 31, 2022.
2. UCG provided the following reasons to support its motion:
 - (a) The Minister of Justice and Attorney General's May 18, 2021 Terms of Reference for the review of the Electricity Purchase Agreement (EPA) state that the general purpose of the investigation is to obtain the YUB's report and recommendations on the potential benefits, costs, risks and customer impacts that influence whether the Agreement should proceed as proposed by YEC.
 - (b) In response to Information Request UCG-YEC2-4 (a) in the proceeding, YEC stated that the dates contained in the amended EPA for satisfaction of the conditions precedent in Section 2.1(d)(i) to (ix) of the EPA have been extended. Therefore, UCG submitted that the date for completing the conditions precedent for each of the conditions precedent under Section 2.1(d)(i) to (ix) has not been met "in accordance with the schedule in the Amended Application."
 - (c) UCG cited other IR responses pertaining to the funding plan, sources of funding and revised cost estimates in further support of its motion.

UCG submitted: "Given the above information, achieving the obligation of the Board to report and make recommendations on the costs, risks and customer impacts, UCG submits these cannot be fulfilled without these necessary conditions being met and made available to the public for scrutiny."

3. The Board issued a schedule for comments and reply regarding the UCG motion. In accordance with the schedule, YEC provided its response on July 6, 2022, and the Board received the UCG reply on July 8, 2022.
4. In its comments, YEC submitted that there is no basis for delaying the proceeding. To support its position, YEC stated:
 - (a) The extension of the conditions precedent do not prevent the Board from fulfilling its mandate to report and make recommendations to the Minister on YEC costs, risks and customer impacts related to the EPA.
 - (b) The timing for the Board to provide its report and recommendations is 180 days from the date the Board receives the final version of the EPA. The amended EPA was submitted on April 12, 2022 and the report is due by October 18, 2022.
 - (c) Although notice was provided to the Board on June 10, 2022 that the dates for completing specific conditions precedent were extended by mutual agreement,

this notice does not change the date that the final amended EPA was previously provided to the Board.

5. In its July 8, 2022 reply, UCG stated that the YEC response did not satisfy their concerns and that the uncertainties of not knowing the final outcomes of the conditions precedent renders the Board’s process moot. UCG cited information on the record to support the uncertainties related to the EPA. It added that the Board can request from the Minister a time extension to submit its report and that there was no urgency, as related environmental authorizations do not come into effect until March 31, 2023.

Views of the Board

6. The Board denies UCG’s motion to postpone the oral hearing and argument of this proceeding. The Board has considered the purpose of the proceeding, documents available on the record of the proceeding, the contents of the motion from UCG, the response from YEC and the reply from UCG in making its determination regarding the motion.
7. In a May 21, 2021 referral letter regarding the purpose of the proceeding, the Minister of Justice and Attorney General directed the Board to carry out a public review of the EPA and to “provide a report within 180 days of when the Agreement is finalized and provided to the Board by YEC.” The Terms of Reference that accompanied the referral letter specifically prescribe:

1. The general purpose of the review and hearing is to obtain the YUB's report and any recommendations on the potential benefits, costs, risks and customer impacts that influence whether the Agreement should proceed as proposed by YEC.

...

3. The YUB shall report on, and make recommendations about, the necessity for the Agreement, its timing, and proposed terms and conditions, with particular regard to:

- a. The public need for the Agreement under various reasonable electric load forecasts.

- b. The effect of the proposed commitments on the rates of customers and the reliability of electricity service provided to customers.

- c. The capability of existing and currently committed and expected generation and transmission facilities including thermal generation facilities to provide reliable electric power generation to meet the forecast load requirements in (a) and the effect of the Agreement on this capability.

d. The risks associated with the Agreement, including its potential impacts on YEC and rates for customers and on the reliability of electricity service provided to customers.

e. Evidence that all reasonable alternative options have been considered, and that proposed spending commitments have been selected on reasonable grounds.

f. Whether it is prudent to enter into the Agreement as proposed at this time.

8. The Board considers that there are three reasons for denying the UCG motion. First, the Minister's terms of reference did not specify that the conditions precedent in the EPA be satisfied before the Board can proceed with a review the EPA. The referral letter and the terms of reference both refer to the 180-day deadline for the Board to provide the Minister a report. The 180-day period commenced when YEC filed the amended EPA with the Board on April 21, 2022. The Board is under direction to provide the Minister with a report 180 days from that date.
9. Second, in the Board meeting its obligations to investigate the amended EPA and provide a report to the Minister under Section 18.1 of the *Public Utilities Act*, the Board must make its determinations based on the best available information before it, or that may be reasonably be made available to it, until the evidentiary portion of the proceeding is closed. While the Board generally agrees with the UCG that having all the information regarding the conditions precedent when they are satisfied would make the record for this proceeding more fulsome, that information is not currently available, nor will all of the conditions precedent be satisfied by the October 2022 date suggested by the UCG. As noted in YEC's June 10, 2022 letter, the last conditions precedent for environmental authorizations is not expected to be satisfied until March 31, 2023.
10. Third, the Board finds that the terms of reference specify that the Board provide its recommendations based on the EPA and the expected or potential implications of the EPA. The terms of reference require the Board to investigate the expected benefits, costs, risks and customer impacts that influence whether the agreement should proceed (such as Term of Reference 1 and Term of Reference 3.d). While the Board's review is not solely based on the contents of the EPA itself, the Board can fulfill its mandate in proceeding with an oral hearing at this time to test the EPA and other information that is reasonably available.
11. Notwithstanding the foregoing, UCG can present its positions in argument as to whether information relating to unfulfilled conditions precedent present challenges or limitations to the Board's recommendations to the Minister.