

**YUKON ENERGY CORPORATION (“YEC”)
2021 GENERAL RATE APPLICATION**

**ARGUMENT OF
THE CITY OF WHITEHORSE**

October 12, 2021

INTRODUCTION

1. This argument is filed on behalf of the City of Whitehorse (“CW” or the “City”) which participates in this proceeding on behalf of the City and its residents, and is guided by what it considers to be in the best interests of the City as a corporation as well as what is in the best interests of its citizens.
2. On November 20, 2020, Yukon Energy Corporation (“YEC”) filed an application with the Yukon Utilities Board (the “Board”), pursuant to the *Public Utilities Act* and Order-In-Council 1995/90, requesting an order approving a forecast revenue requirement for 2021 (the “Application” or “YEC’s Application”).¹ YEC’s Application sought approval of forecast revenue requirements of \$75.135 million, representing an increase of \$10.971 million for 2021 over revenues from existing rates and riders of \$64.164 million, with a total increase of \$25.342 million for 2021 over the 2018 approved revenue requirement.²
3. This proceeding was set by the Board to consider YEC’s Application. The City has been an active participant in this proceeding, confirming its intention to participate as an intervener on December 30, 2020³ and being granted intervener status by the Board on January 12, 2021.⁴
4. Representatives from the City, including its legal counsel Mr. Thomas Marriott, Q.C. and consultant Mr. Russ Bell, attended the virtual public workshop put on by YEC on January 8, 2021.⁵ Subsequent to that workshop, the City filed round 1 information requests to YEC on the record of this proceeding on January 29, 2021.⁶ YEC responded to those requests on March 4, 2021.⁷ The City also filed round 2 information requests to

¹ Exhibit B-1

² Exhibit B-1, pdf page 48

³ Exhibit C3-1

⁴ Exhibit A-4, Board Order 2021-01

⁵ Exhibit B-2, YEC 2021 GRA Public Workshop presentation, Jan 8, 2021

⁶ Exhibit C3-2

⁷ Exhibit B-6

YEC on August 10, 2021,⁸ with YEC responding to those requests on August 24, 2021.⁹

5. The City filed evidence prepared by Mr. Russ Bell on its behalf on September 10, 2021 (the “City’s Evidence” or “Mr. Bell’s Evidence”).¹⁰ YEC filed rebuttal evidence that provided, amongst other things, comments on the City’s Evidence on September 17, 2021 (the “Rebuttal Evidence” or “YEC’s Rebuttal Evidence”).¹¹
6. A virtual oral hearing on YEC’s Application was held in Whitehorse on September 27-29, 2021. The City attended the virtual hearing, cross-examined the evidence panel presented by YEC and seated a witness, Mr. Russ Bell, to speak to the evidence he prepared on behalf of the City. As shown on Appendix “A” to the City’s Evidence and discussed by Mr. Bell in testimony,¹² Mr. Bell is a professional accountant and has over 35 years’ experience in the utility industry.
7. In examining and addressing YEC’s Application, the City and its consultant, Mr. Bell, pursued a limited number of issues that are of concern to the City’s citizens. The absence of argument on any particular issue does not constitute agreement with any party’s position on that issue.
8. The issues put forth in this argument include those that were raised in information requests, those addressed in Mr. Bell’s evidence and commented on by YEC in its Rebuttal Evidence and those discussed over the course of the hearing. These issues include the following: a) rental of diesel generation units; b) normalization of sales; c) brushing costs; d) herbicide use; e) recovery of legal costs; and f) use of updated forecasts. The City will discuss each of these issues in turn.

⁸ Exhibit C3-3

⁹ Exhibit B-22

¹⁰ Exhibit C3-6

¹¹ Exhibit B-30

¹² Transcript, Volume 3, page 472, commencing at line 15

ARGUMENT

a. Diesel Generation

9. In the Application, YEC has included a forecast of \$3.834 million for rental diesel costs in the test year.¹³ As noted in the City’s Evidence, this is an increase of \$2.768 million (266%) over 2018 actual results of \$1.048 million.¹⁴ The forecasted amounts relate to fifteen 1.8 MW diesel generation units and two spares, for a total of 17 rental diesel generation units.¹⁵
10. YEC first installed rental diesel generation units for the 2017 - 2018 winter.¹⁶ YEC has characterized its decision to use rented diesel units at that time as “the only option available to address the identified N-1 dependable capacity shortfall” and stated that “there was no time available to develop any permanent or owned resource option.”¹⁷
11. In the City’s Evidence, Mr. Bell raises a concern with the lack of information provided by YEC in support of its decision to continue to use rental diesel units during the test year, some four years after they were initially installed. Specifically, Mr. Bell takes issue with YEC not providing a business case related to its decision to proceed with the use of rental diesel generation units, noting that “YEC did not provide anything that looks like a business case” and further, that “[a]ll that was provided were disparate notes.”¹⁸
12. In the City’s evidence, Mr. Bell provides his opinion of what a business case should contain in a utility context.¹⁹ On that point, Mr. Bell notes the following:²⁰
 - “a business case should demonstrate that the chosen option provides safe and reliable service as the least cost option over the life of the assets.”

¹³ Exhibit B-1, pdf page 60

¹⁴ Exhibit C3-6, A6, pdf page 3

¹⁵ Exhibit B-1, pdf page 22 (footnote #5)

¹⁶ Exhibit B-30, pdf page 2

¹⁷ Exhibit B-27, CW-YEC-2-6(a), pdf page 12

¹⁸ Exhibit C3-6, A7, pdf page 5

¹⁹ Exhibit C3-6, A8, pdf page 7

²⁰ Exhibit C3-6, A8, pdf page 7

- “[a] business case should include detailed cost estimates of each scenario for the life of the assets in the longest scenario.”
- “[t]he revenue requirement for each option should be developed and the present value of revenue requirement should be determined for each option.”
- “[t]here should also be a robust discussion of the risks and feasibility of each option.”

13. This issue was explored at length during the oral hearing. Notably, YEC did agree that a business case should include the above noted factors put forward by Mr. Bell, albeit with some qualifiers.²¹ For example, YEC indicated that a business case would also take other factors into consideration such as “the long-term strategic plan in terms of development of resources, which then look to drivers such as climate change policy over the long term.”²² YEC also indicated that it uses levelized cost of capacity (“LCOC”) for its financial analysis of new supply options and believed that was a “reasonable proxy” for determining the revenue requirement for each option.²³ Finally, while YEC suggested that there was no easy way to quantify the impact of risks related to two different options, it confirmed that a discussion of those risks can be informative and should be identified.²⁴

14. YEC’s Rebuttal Evidence took issue with Mr. Bell’s conclusions on the basis that Mr. Bell had offered “no evidence that any realistic option other than rented diesels exists to supply this required capacity for the 2021 test year.”²⁵ YEC then went on to take issue with what it perceived as a suggested option by Mr. Bell for a station larger than the 20MW diesel plant option that had been identified in YEC’s 2016 Resource Plan (the

²¹ See Transcript, Volume 1, page 24 lines 9-21; Transcript Volume 1, page 24, line 23 – page 25, line 1; Transcript Volume 1, page 25, lines 2-23; and Transcript, Volume 1, page 26, lines 10-22

²² Transcript, Volume 1, page 24 lines 16-21

²³ Transcript, Volume 1, page 25, lines 16-23

²⁴ Transcript, Volume 1, page 26, lines 4-13

²⁵ Exhibit B-30, pdf page 2

“2016 Plan”).²⁶ Put simply, it is not up to Mr. Bell to provide evidence substantiating other generation options for YEC and the “third option” noted in Mr. Bell’s Evidence was provided as an example of a scenario that should be considered in a proper business case concerning this issue.²⁷

15. During the hearing, YEC referred to its “10-Year Renewable Electricity Plan Technical Report”²⁸ (the “10 Year Plan”) and confirmed that the document represented a “refresh of a long-term resource plan, which looks at how to address [YEC’s] N-1 dependable capacity gap.”²⁹ In discussing the 10 Year Plan, YEC continually referred to the above noted 20 MW diesel plant option that had been included in the 2016 Plan.³⁰ That 20 MW diesel plant option had been eliminated in 2019 after YEC determined that it was not a feasible option.³¹ In that respect, YEC stated that there was opposition towards the 20 MW plant in the vicinity of Whitehorse and also commented on the development of federal and territorial action related to climate change.³²
16. While the information provided during the hearing gives some context for why YEC chose not to proceed with the 20 MW option identified within the 2016 Plan, the record lacks any tangible evidence on how YEC made the determination that it would only rent diesel units after that time and continue to do so into the test year.
17. YEC appears to rely upon the 10 Year Plan as a basis for why it chose to rent diesel generation units. During the oral hearing, YEC referred the Board to Table 3³³ and Figure 20³⁴ from the 10 Year Plan. With respect to Table 3, it was YEC’s position that the information contained therein gave “a good sense of the metrics.”³⁵ YEC then later

²⁶ Exhibit B-30, pdf page 2

²⁷ Exhibit C3-6, A8, pdf page 7

²⁸ See: Exhibit B-9, CW-YEC-1-36(a) Attachment 1, commencing at pdf page 173

²⁹ Transcript, Volume 1, page 32, lines 3-6

³⁰ For example, see Transcript, Volume 1, page 32, lines 7-11; Transcript, Volume 1, page 33, lines 4-9; Transcript, Volume 1, page 37, line 1 – page 38, line 8

³¹ Transcript, Volume 1, page 32, lines 7-11

³² Transcript, Volume 3, page 453, line 9 – page 454, line 10

³³ Exhibit B-9, CW-YEC-1-36(a) Attachment 1, Table 3, pdf pages 220-221

³⁴ Exhibit B-9, CW-YEC-1-36(a) Attachment 1, Figure 20, pdf page 228

³⁵ Transcript, Volume 3, page 402, line 25

provided an explanation to the Board how the various options came to be included in the Table.³⁶

18. While Ms. Milojevic stated that she believed the work that was put into the plan was appropriate, it is noteworthy that YEC confirmed that it makes certain assumptions in calculating the LCOC regarding rental prices.³⁷ YEC also confirmed that it never solicited purchase prices for the diesel generation units it was renting³⁸ nor did it consider the purchase and resale of diesel generation units.³⁹ In the absence of this information, it is difficult to envision how YEC completed a thorough analysis of its available options.
19. Similarly, Figure 20 from the 10 Year Plan shows a forecast of how YEC intends to reduce its reliance on rental diesels.⁴⁰ While this information provides some context for YEC’s goals, it does not provide any analysis related to YEC’s use of diesel generation units and certainly fails to rise to the level of what should be included in a proper business case developed by a utility.
20. YEC also appears to rely upon a comparison it provided in response to an information request from the City⁴¹ as the economic justification for renting diesel generation units.⁴² While YEC’s Ms. Milojevic indicated that she would not call the information a business case, it was her evidence that it provided the economic comparison of how rental was an appropriate short term solution.⁴³
21. Put simply, the information provided by YEC in response to the City’s information request also fails to address what should be required of YEC in this situation. While YEC provides an LCOC comparison between rental diesel generation units and a 12.5 MW owned diesel plant option, it again fails to provide all of the information that

³⁶ Transcript, Volume 3, page 458, commencing at line 12

³⁷ Transcript, Volume 1, page 40, lines 11-12

³⁸ Transcript, Volume 2, page 306, lines 17-18

³⁹ Transcript, Volume 2, page 305, line 8

⁴⁰ Transcript, Volume 3, page 400, lines 3-7

⁴¹ Exhibit B-27, CW-YEC-2-6, pdf pages 11-15

⁴² Transcript, Volume 1, page 34, line 23 – page 35, line 3

⁴³ Transcript, Volume 1, page 34, line 23 – page 35, line 3

should be included within a proper business case. While the City takes the position that a singular alternative option (i.e. the 12.5 MW plant) is inadequate when considering an annual expense of \$3.8 million, it should also be noted again that YEC makes certain assumptions when calculating LCOC.⁴⁴ Given that those assumptions are not provided on the record, parties have been denied an ability to test the assumptions. The same can be said with respect to the other items that Mr. Bell and YEC have confirmed should be in a business case.

22. During the oral hearing, YEC also referred to a cold weather event that happened in January of 2020, noting that it discovered its N-1 gap was considerably higher than it thought it was and therefore approached its supplier about renting seven additional diesel generation units.⁴⁵ On this point, YEC submitted that rental was the “only option available” as there “was no other permanent solution that could have been built in less than a year.”⁴⁶
23. While the City recognizes that YEC may have been dealing with a short timeframe following the cold weather event in 2020, it questions whether rental was in fact the only available option. Certainly, there are timelines associated with what YEC has framed as “permanent solutions”. YEC commented on some of those timelines during the hearing in relation to larger owned diesel plants.⁴⁷ However, what YEC has failed to demonstrate is that there was not an option to purchase diesel generation units similar to those being rented. No analysis of this option is available on the record.
24. This is somewhat perplexing given that YEC currently has a diesel replacement project in WIP that includes the design and purchase of new units to replace retired ones.⁴⁸ Given that YEC indicated that this project was underway, the City questions why YEC could not have completed a similar analysis of the option to purchase units to address its identified capacity gap. Such analysis would be relevant in considering the reasonableness of YEC’s decision to use rental diesel units during the test year.

⁴⁴ Transcript, Volume 1, page 40, lines 11-18

⁴⁵ Transcript, Volume 2, page 300, lines 14-21

⁴⁶ Transcript, Volume 1, page 35, lines 15-21

⁴⁷ Transcript, Volume 3, page 454, commencing at line 23 and page 456, lines 11-14

⁴⁸ Transcript, Volume 2, page 307, lines 22-25

25. Further, the City notes that YEC has confirmed that there are two different contracts for rental diesel units, one for the Faro location and one for the Whitehorse location.⁴⁹ Notably, the 10 units for the Whitehorse location were obtained by way of an RFP, but the 7 units obtained by YEC for the Faro location were not.⁵⁰ As the Board can imagine, the City is concerned about the inclusion of forecast costs that have not been subject to a competitive process, especially in the absence of a thorough analysis of the various options available to YEC in respect of the same.
26. As raised during the oral hearing,⁵¹ YEC’s Rebuttal Evidence seems to suggest that Mr. Bell and/or the City bear the onus of demonstrating that there is a viable option or alternative to YEC’s rental of diesel generation units.⁵² Put simply, it is not up to the City, as an intervening party in this proceeding, to submit evidence definitively substantiating another option for electricity generation. It is up to YEC to support all aspects of the Application, including the reasonableness of the elements comprising its revenue requirement and the forecasts put forward for the test year.
27. Based on YEC’s response during the oral hearing,⁵³ it appears that YEC understands that the onus is on the utility to present and defend a reasonable case in relation to this issue. Despite that knowledge, YEC has failed to provide concrete evidence on the record of this proceeding that demonstrates it completed a thorough analysis of available options to address its identified N-1 dependable capacity shortfall for 2021.
28. While YEC has continued to refer to its determination that the 20MW option first identified in the 2016 Plan was not feasible, and has provided simplistic LCOC information related to a possible 12.5 MW option in response to an information request, it has failed to demonstrate that it considered options beyond those two plants in any tangible way.

⁴⁹ Transcript, Volume 2, page 299, lines 19-20

⁵⁰ Transcript, Volume 2, page 300, line 24 – page 301, line 3

⁵¹ Transcript, Volume 1, page 27, lines 22-25

⁵² Exhibit B-30, pdf page 2

⁵³ Transcript, Volume 1, page 28, lines 7-9

29. In the City’s view, neither intervening parties nor the Board should have to dissect several documents or request relevant and necessary information from YEC in order to determine whether its chosen course of action was reasonable. The information supporting why YEC chose to continue with renting diesel generation units for the test year should be included in a proper business case, addressing the specific items noted by Mr. Bell in the City’s Evidence. Doing so would provide necessary justification to the Board and reduce regulatory burden.
30. The City recognizes that the appropriate approach may include the use of rental diesel generation units. It could also be a mix of rented and owned units. The point is, neither the Board nor intervening parties have any way of knowing what the optimal solution is in the absence of a proper business case.
31. The recommendation provided by Mr. Bell in the City’s Evidence was that costs of diesel rental not be allowed in revenue requirement. Mr. Bell’s recommendation is based on his view that “YEC has not provided adequate evidence that rental is the most cost-effective option to provide safe and reliable service over the life of the assets.”⁵⁴ Mr. Bell confirmed his view that if there is not adequate analysis in evidence to support the rental option, the entire amount of the corresponding costs should be disallowed.⁵⁵
32. While the City agrees with Mr. Bell’s position, it recognizes that the Board may not wish to deny all of the costs forecast by YEC. If the Board is struggling with YEC’s need to address its capacity shortfalls in some manner and feels that to deny YEC any of the forecast costs for 2021 is too onerous, the Board still has wide discretion to disallow a portion of those costs on the basis that YEC has failed to meet its onus with respect to the same. In the City’s view, a denial of costs would send a clear message to YEC that preparing business cases for major projects such as this is a worthwhile and necessary exercise.

⁵⁴ Exhibit C3-6, A11, pdf page 8

⁵⁵ Transcript, Volume 3, page 492, lines 9-12

33. Finally, regardless of the outcome, the City submits that the Board should provide clear direction to YEC with respect to when a business case will be required⁵⁶ and what should be included in the same. In the City’s view, clarity on this issue would contribute to a more efficient regulatory process.

b. Normalization of Sales

34. In the City’s Evidence, Mr. Bell discussed normalization of sales, noting that YEC does not normalize its sales for weather.⁵⁷ When asked in an information request by the City why YEC does not use weather normalized data to derive sales forecasts, YEC responded as follows:

The response to CW-YEC-1-2 states YEC does not provide a weather normalized version of its actual sales to retail and industrial customers. As reviewed in Tab 2 of the Application, YEC directly serves customers only in seven separate communities, accounting for only 10% of 2021 forecast firm YEC energy sales – separate weather normalized analysis for each community’s retail sales by customer class has not been considered to be a worthwhile exercise. With respect to industrial sales forecast, forecasts Yukon Energy Corporation are based on information from each customer and weather normalization is not a relevant factor for consideration.⁵⁸

35. It was Mr. Bell’s view that the above noted response by YEC appeared to be saying that weather normalization was too much work.⁵⁹ Mr. Bell disagreed with this proposition in the City’s Evidence and noted his past experience with weather normalization calculations.⁶⁰ It was Mr. Bell’s evidence that normalizing use per customer would allow YEC to “readily identify trends” and that such information would “facilitate the review of use per customer, and sales, and in fact reduce the regulatory burden of a rate application.”⁶¹

⁵⁶ The City notes that a direction was provided to YECL in Board Order 2014-06, Appendix A: Reasons for Decision at pdf page 76 regarding business cases for completed related projects totaling more than \$500,000

⁵⁷ Exhibit C3-6, A12, pdf page 9

⁵⁸ Exhibit B-27, CW-YEC-2-1(a), pdf pages 3-4

⁵⁹ Exhibit C3-6, A13, pdf pages 9-10

⁶⁰ Exhibit C3-6, A13, pdf pages 9-10

⁶¹ Exhibit C3-6, A14, pdf page 14

36. In its Rebuttal Evidence, YEC again referred to its retail sales (residential, commercial, and other non-industrial and non-wholesale sales) being in seven separate communities that in total account for 10% of the 2021 forecast firm YEC energy sales.⁶² The Rebuttal Evidence then indicated that “[h]istorically, these sales categories are fairly stable, with year over year variances in the area of 3-5%.”⁶³ On that basis, YEC asserts that, “separate weather normalization analysis for the seven community’s retail sales by customer class has not been considered to be a worthwhile exercise nor is there any significant reductions in net regulatory burden to the process.”⁶⁴
37. During the hearing, YEC confirmed that it has never completed weather normalization for the separate communities that it provides retail sales to⁶⁵ nor had it considered the availability of data concerning the same.⁶⁶ Instead, YEC noted that it regularly had staff in the various communities and was in touch with what was going on there.⁶⁷ It was YEC’s position that it was generally more factors on the ground that tend to cause variability in retail sales.⁶⁸
38. Mr. Bell was cross-examined by Board counsel on this issue. While Mr. Bell confirmed that a 3-5% accuracy window was “fairly accurate”, he indicated to the Board that he was “...not convinced that doing a simple regression... at least investigating [this issue], wouldn’t be worthwhile.”⁶⁹ In Mr. Bell’s experience, such a regression was completed on an Excel spreadsheet and only took a few hours a year.⁷⁰
39. In the City’s view, while a 3-5% accuracy range appears to be positive, if there is potential for increased accuracy and a corresponding positive impact on rates (i.e. a decrease) by way of a simple calculation as suggested by Mr. Bell, then that exercise should be completed.

⁶² Exhibit B-30, pdf page 4

⁶³ Exhibit B-30, pdf page 4

⁶⁴ Exhibit B-30, pdf page 4

⁶⁵ Transcript, Volume 1, page 50, line 9

⁶⁶ Transcript, Volume 1, page 51, lines 19-25

⁶⁷ Transcript, Volume 1, page 50, lines 13-20

⁶⁸ Transcript, Volume 1, page 50, lines 13-20

⁶⁹ Transcript, Volume 3, page 494, lines 20-24

⁷⁰ Transcript, Volume 3, page 494, line 25 – page 495, line 4

40. While YEC has confirmed that weather information would be available for four of the seven communities noted above,⁷¹ it takes the position that weather is not the largest driver of load in those regions. Instead, it is YEC’s position that “[t]he number of accounts for the YEC service areas, or step changes in the specific requirements for those accounts, is the largest driver of forecast load.”⁷² On that basis, YEC asserts that “... a single variable weather based regression analysis would not be useful for the purposes of deriving an accurate load forecast for these areas.”⁷³ YEC then goes on to provide time estimates for the completion and maintenance of a multivariate regression analysis.⁷⁴
41. YEC’s position is contrary to the evidence provided by Mr. Bell during his oral testimony. Specifically, it is Mr. Bell’s opinion that normalization of sales to weather would provide a forecast based on normal weather and that such information should be used to forecast sales.⁷⁵ Mr. Bell does not suggest the use of a multivariate regression by YEC for this issue.
42. Unfortunately, the information provided by YEC in respect of the number of accounts or step changes being the largest driver of forecast load was only provided by the utility in response to an undertaking. Neither intervening parties nor the Board have had an opportunity to explore the assertion or consider if weather is in fact “not the largest driver of load in these regions”.⁷⁶ In any case, there is no pre-requisite that weather be established as the largest driver of load in order to support a Board direction. It is enough for the Board to find that the simple approach recommended by Mr. Bell would improve forecast accuracy sufficiently to be worth the minimal amount of effort that would be required.
43. In the absence of information demonstrating why weather normalization would not increase accuracy of forecasts, and on the understanding that YEC has never completed

⁷¹ YEC Response to Undertaking #1

⁷² YEC Response to Undertaking #2

⁷³ YEC Response to Undertaking #2

⁷⁴ YEC Response to Undertaking #2

⁷⁵ Transcript, Volume 3, page 495, lines 9-11

⁷⁶ YEC Response to Undertaking #2

such analysis or even considered the availability of data up until the point of this proceeding, the City supports the recommendation put forward by Mr. Bell in the City’s Evidence.⁷⁷ Specifically, with respect to normalization of sales, the City recommends that for its next GRA, YEC should be directed to investigate the use of a simple linear regression to normalize retail sales and use per customer, and to forecast use per customer.

c. Brushing Costs

44. In the City’s Evidence, Mr. Bell raised concerns related to YEC’s distribution brushing costs.⁷⁸ Specifically, Mr. Bell noted a significant reduction in distribution brushing costs for 2019 and YEC’s explanation that such reduction was based on the need to prioritize brushing work on YEC’s transmission system.⁷⁹ On this issue, Mr. Bell raised a concern that YEC may be managing total brushing costs to meet a budget rather than doing the required work and indicated that he has experienced such practice in the past.⁸⁰
45. Mr. Bell’s concern related to problems that can arise when a utility fails to adhere to its vegetation management plan. On this issue, he stated the following:

Brushing is an important portion of maintaining a safe and reliable system. If vegetation is not properly managed, it can result in trees striking power lines, causing outages, and even worse, fires. One does not have to look far to see the devastating fires in California as a result of Pacific Gas and Electric assets causing wildfires.⁸¹

46. In the Rebuttal Evidence, YEC indicated that its decision to allocate resources between distribution and transmission projects in 2019 was based on priorities and the availability of external brushing contractors.⁸² During the hearing, YEC confirmed that the noted priority was in relation to YEC refurbishing its “138-KV backbone

⁷⁷ Exhibit C3-6, A15, pdf page 10

⁷⁸ Exhibit C3-6, commencing at A16, pdf page 10

⁷⁹ Exhibit C3-6, A16, pdf page 11 with reference to CW-YEC-1-18

⁸⁰ Exhibit C3-6, A17, pdf page 12

⁸¹ Exhibit C3-6, A17, pdf page 12

⁸² Exhibit B-30, pdf page 5

transmission line”.⁸³ In short, YEC’s evidence was that when it began work on that project there were issues with accesses to the line, so YEC sent its external brushing crew down to open up the accesses and allow the contractors to access the line and complete the required work.⁸⁴

47. Notably, YEC has confirmed that while the brushing costs included in the Application relate only to external brushing, it does have power linemen that are employees of the company that are qualified to do brushing on distribution lines as well.⁸⁵ On that point, YEC has indicated that in 2019 operations staff had been informed about the change in priority for the external brushing crew and knew that they needed to send their staff in to make sure any priority brushing issues in communities were dealt with.⁸⁶ YEC also confirmed that it felt it could hit the priority areas with its own staff that year.⁸⁷
48. While the above provides some reassurance for the City that the safety and reliability concerns raised by Mr. Bell in the City’s Evidence can be mitigated by YEC in the absence of an external brushing crew, the City notes that YEC has confirmed that its maintenance staff are “fully booked”.⁸⁸ The City anticipates that the same can be said of YEC’s linemen, if they are not in fact considered “maintenance staff”, and therefore questions what work may be missed in years when a re-prioritization of brushing work occurs.
49. Despite the foregoing, the City notes that YEC has confirmed that the refurbishment work on its 138-KV backbone transmission line was completed in 2019.⁸⁹ This means that there should be no further brushing issues in relation to the project. YEC also confirmed that there are no projects in the test period that would have a similar impact on varying either the distribution or transmission brushing forecasts.⁹⁰

⁸³ Transcript, Volume 1, page 60, lines 1-6

⁸⁴ Transcript, Volume 1, page 60, lines 8-15

⁸⁵ Transcript, Volume 1, page 58, line 19 – page 59, line 6

⁸⁶ Transcript, Volume 1, page 62, lines 12-18

⁸⁷ Transcript, Volume 1, page 64, lines 5-6

⁸⁸ Transcript, Volume 1, page 149, lines 11-12

⁸⁹ Transcript, Volume 2, page 309, line 10

⁹⁰ Transcript, Volume 2, page 309, line 15

50. In light of the foregoing, the City anticipates that YEC may not be opposed to a direction from the Board as recommended by Mr. Bell in the City’s Evidence. Specifically, Mr. Bell recommended that the Board direct YEC adhere to its brushing strategy and not allocate funds away from one function unless there is explicit evidence that such an allocation would not increase the risk of tree strikes.⁹¹ The City supports that recommendation.

d. Herbicide Use

51. The City is concerned about the use of herbicides both within and outside its municipal boundaries. Put simply, the City’s concerns relate to the potential impact that herbicides would have on wildlife, the natural environment and Yukon residents. The City is concerned about both the short and long-term effects of herbicide use and submits that herbicides should not be used in the absence of clear and unequivocal data demonstrating that there are absolutely no concerns with such use.

52. The City explored the issue of herbicide use by YEC during the hearing and is satisfied with the information provided by YEC. In particular, YEC confirmed that it did not use any herbicides, either within or outside of the City’s boundaries, during the last test period.⁹² YEC also confirmed that it does not plan to use herbicides, either within or outside of the City’s boundaries, during the 2021 test period.⁹³ Finally, YEC confirmed that it considers the City a stakeholder in relation to this issue.⁹⁴

53. While the answers provided by YEC in respect of herbicides certainly seem conclusive of this issue, the City respectfully requests that the Board provide a direction to YEC concerning its use of herbicides. Specifically, the City requests that the Board’s decision in relation to YEC’s Application confirms that YEC has committed to not using herbicides anywhere within its service area during the test period and that YEC

⁹¹ Exhibit C3-6, A18, pdf page 12

⁹² Transcript, Volume 1, page 70, line 22 and page 71, lines 12-14

⁹³ Transcript, Volume 1, page 71, lines 19 and 23

⁹⁴ Transcript, Volume 1, page 72, line 15

shall adhere to that commitment unless it consults with applicable stakeholders and satisfies any questions or concerns they may have.

e. Recovery of Legal Costs

54. During the oral hearing, there was an issue raised in relation to the recovery of legal costs incurred by YEC in connection with the appeal of Board decisions.⁹⁵ Put simply, the issue related to whether legal costs that have been incurred by YEC in connection with such appeals should be recovered through revenue requirement.
55. At present, YEC includes these legal costs in its hearing cost reserve account.⁹⁶ It is YEC’s position that these costs are part of the regulatory process and should be paid for in the same manner as costs related to applications and defence of such applications.⁹⁷ YEC maintains this position regardless of whether or not an appeal is accepted or rejected by the Court of Appeal.⁹⁸
56. While some of the questions put to YEC were of a more general nature, there were also specific questions about costs incurred by YEC in relation to appealing a Board decision addressing demand-side management (“DSM”) costs⁹⁹ incurred by YEC.¹⁰⁰
57. For reference, this issue of DSM costs was addressed in YEC’s 2017/2018 General Rate Application and the Board ultimately denied inclusion of certain YEC DSM costs in its 2017-18 rates by way of Board Order 2018-10.¹⁰¹
58. YEC filed a review and variance application in relation to Board Order 2018-10. The review application was considered by a Board review panel and the Board ultimately issued Order 2019-05, wherein it determined that YEC had not demonstrated that the

⁹⁵ See Transcript, Volume 2, commencing at page 315, line 2 for Ms. Graham’s cross-examination of the YEC panel on this issue; and Transcript, Volume 3, commencing at page 385, line 10 for the Chair’s cross-examination of the YEC panel on this issue

⁹⁶ Transcript, Volume 2, page 315, line 6

⁹⁷ Transcript, Volume 2, page 316, lines 12-15

⁹⁸ Transcript, Volume 3, page 392, line 6

⁹⁹ The appeal costs totaled \$118,968, as provided in YEC’s Undertaking 15

¹⁰⁰ Transcript, Volume 3, page 389

¹⁰¹ See Board Order 2018-10, Appendix A: Reasons for Decision, Section 6.1.4.4 commencing at pdf page 95

Board committed an error of law in Board Order 2018-10 and determined that YEC’s review application would not advance to the second phase of the review process.¹⁰²

59. YEC sought and obtained leave to appeal Board Order 2019-05 from the Yukon Territory Court of Appeal.¹⁰³ The Yukon Territory Court of Appeal heard that appeal on November 19, 2020 and dismissed the appeal on February 5, 2021.¹⁰⁴
60. The City has considered this issue and submits that the recovery of legal costs related to an appeal should be dependent on an analysis of the specific matter. In considering legal costs related to YEC’s above noted challenge of the Board’s decision to not allow certain DSM costs to be included in YEC’s 2017-18 rates, the City submits that YEC should not be allowed to recover those costs from ratepayers.
61. Board Order 2018-10 provided a summary of the background related to this matter and confirmed that the DSM costs at issue had been incurred by YEC contrary to specific directions provided by the Board in Board Order 2014-06. In that Order, the Board approved three DSM projects that had been proposed by YEC and YECL.¹⁰⁵ The Board also specifically stated that it was not approving the DSM program for the five year period requested and instead directed YEC to “make a formal application to the Board before expanding the DSM program elements beyond that approved or beyond 2015.”¹⁰⁶
62. YEC chose to continue with DSM programs beyond 2015 without making an application to the Board¹⁰⁷ and also incurred expenses on DSM projects that did not fall within the three projects approved in Board Order 2014-06.¹⁰⁸ In Board Order 2018-10, the Board disallowed the amounts for inclusion in YEC’s rate base. In making that disallowance, the Board was exercising its discretion under section 32(1) of the *Public*

¹⁰² Board Order 2019-05, paragraph G

¹⁰³ *Yukon Energy Corporation v Yukon Utilities Board*, 2020 YKCA 12

¹⁰⁴ *Yukon Energy Corporation v Yukon (Utilities Board)*, 2021 YKCA 1

¹⁰⁵ Board Order 2018-10, Appendix A: Reasons for Decision, paragraph 477, pdf page 96

¹⁰⁶ Board Order 2018-10, Appendix A: Reasons for Decision, paragraph 477, pdf page 96

¹⁰⁷ Board Order 2018-10, Appendix A: Reasons for Decision, paragraph 478, pdf page 96

¹⁰⁸ Board Order 2018-10, Appendix A: Reasons for Decision, paragraph 479, pdf page 96

Utilities Act,¹⁰⁹ and making a finding that the expenditures were not “used or required to be used to provide service to the public.”

63. In this regard the Board stated:

The Board is not persuaded that YEC should continue to operate DSM projects. YEC has indicated the benefits of expanding the program and submitted that its programs have met or exceeded key performance indicators. However, the Board notes that the Yukon government has DSM incentive programs in place, and the Board is of the view that it is better to leave DSM projects to government, rather than having ratepayers fund these projects. For these reasons, the Board is of the view that continuation of DSM programs by YEC is not necessary. Accordingly, the Board denies YEC’s requests to continue with any DSM programs other than end-of-life streetlight conversions as discussed above.¹¹⁰

64. While there may be situations where an appeal of a Board decision has validity regardless of whether the appeal is successful, the City submits that costs incurred by YEC in relation to this matter are clearly neither prudent nor required to provide service to the public.

65. With respect to prudence, put simply, YEC was put on notice that it may not be able to recover certain DSM related expenses and it still chose to incur those expenses. Moreover, as stated above, the Board’s Decision in Board Order 2018-10 was predicated on the Board’s finding that these expenditures were not used or required to be used to provide service to the public.

66. When it received the decision by the Board (Board Order 2018-10) in relation to its ability to recover those expenses, YEC chose to challenge that decision by way of a review and variance application and a subsequent appeal.

67. This is a classic case of “throwing good money after bad.” In the face of a decision that these expenditures were not used or required to be used in providing service to the public, and that therefore utility ratepayers should not be responsible for the same, YEC

¹⁰⁹ *Public Utilities Act*, R.S.Y. 2002 c. 186

¹¹⁰ Board Order 2018-10, Appendix A: Reasons for Decision, paragraph 482, pdf pages 96-97

now contends that those same ratepayers should be responsible for the costs it incurred in an unsuccessful effort to overturn that decision. Somehow, YEC apparently sees these appeal costs as used or required to be used in providing service to the public. The City disagrees and submits that utility ratepayers received no benefit as a result of these appeal expenditures.

68. The Yukon Court of Appeal Decision relates the history of the Board’s decisions and directions to YEC with respect to DSM projects¹¹¹ and specifically notes that in the decision accompanying Board Order 2014-06, the Board clearly indicated that it did not approve the DSM program for the five year term requested and that Yukon Energy and Yukon Electrical were to make “a formal application to the Board before expanding the DSM program elements beyond that approved above or beyond 2015”.¹¹²
69. In the end, the Yukon Court of Appeal panel unanimously concluded that there was no merit to YEC’s challenge to the Board’s exercise of its discretion under section 32 of the *Public Utilities Act*, and it dismissed the appeal in its entirety in these words:

As the Hearing Panel was entitled to exercise its discretion under s. 32(1) to decline to approve DSM costs to be part of Yukon Energy’s rate base, and as the Hearing Panel did not take into account any irrelevant factors in exercising its discretion, I conclude that it did not commit an error of law. The Hearing Panel was entitled to decline to approve any of the DSM costs for inclusion in the rate base other than the LED costs it did approve. It follows that the Review Panel did not make an error of law in dismissing Yukon Energy’s review application.

It is for these reasons that I would dismiss the appeal.¹¹³

70. In the City’s view, it would have been prudent for YEC to follow the direction provided by the Board in Board Order 2014-06 and seek the approval of the Board before incurring any of the disallowed DSM expenditures, or any new DSM expenditures. In deciding to proceed in a manner contrary to that direction, YEC took a risk that it

¹¹¹ *Yukon Energy Corporation v Yukon (Utilities Board)*, 2021 YKCA 1, paragraphs 8-18

¹¹² *Yukon Energy Corporation v Yukon (Utilities Board)*, 2021 YKCA 1, paragraph 14

¹¹³ *Yukon Energy Corporation v Yukon (Utilities Board)*, 2021 YKCA 1, paragraphs 33-34

should not be able to download onto utility ratepayers, who had no part in YEC’s decision to proceed in that manner.

71. Further, the disallowed DSM costs were for projects found to not be “used or required to be used in the provision of service to the public.” The City submits that costs incurred to unsuccessfully overturn that result were incurred by YEC entirely in furtherance of its own interests and provided no benefit to ratepayers.
72. Accordingly, the City submits that the YEC’s legal expenses related to its DSM appeal, as shown in YEC’s responses to Undertakings #15 and #31, should not be approved for recovery from ratepayers out of the reserve account or otherwise.

f. Updated Forecasts

73. As a final issue, YEC has provided a number of updates to its forecasts subsequent to filing the Application.¹¹⁴ Board counsel inquired about some of these updates during the oral hearing. For example, YEC was asked questions in relation to its updated costs for its WH4 Ventilation project,¹¹⁵ its Transmission Line Access costs¹¹⁶ and its New Mobile Office Unit costs.¹¹⁷ On those three items alone, the variance amounts to roughly \$1.13 million.¹¹⁸ Again, these are not the only projects where YEC has provided updated forecast costs.
74. Despite the number of updates and corresponding impacts to the forecasted costs for the test year, YEC has made no application to update any of the numbers provided in the Application.¹¹⁹ When asked by Board counsel if any of the updates provided by YEC were amending the number YEC was seeking approval of, YEC confirmed that

¹¹⁴ See Exhibit B-27, YUC-YEC-2-17, pdf pages 161-165

¹¹⁵ Transcript, Volume 3, page 372, commencing at line 13

¹¹⁶ Transcript, Volume 3, page 375, commencing at line 9

¹¹⁷ Transcript, Volume 3, page 376, commencing at line 14

¹¹⁸ See Exhibit B-27, YUC-YEC-2-17, pdf pages 161-162 (WH4 Ventilation = \$600k variance; Transmission Line Access = \$297k variance; and New Mobile Office = \$230k variance)

¹¹⁹ Transcript, Volume 3, page 360, lines 24-25

they were not.¹²⁰ In response to a question about whether YEC would update amounts in its compliance filing, YEC’s Mr. Mollard stated, in part, the following:

... I would be seeking a direction from the Board on what exactly they want updated. Again, that's – we haven't historically done a lot of updates for our compliance filing. It's generally at the direction of the Board. So if it chooses to direct us to update those numbers, we can update them.¹²¹

75. The Board has considered this type of issue in the past. For example, in its decision concerning YEC’s 2012-13 GRA the Board stated the following:

The Board is of the view that the most accurate and current information available at the time of the hearing should be used to make a decision on an application. This allows all parties to make submissions on any new information. Accordingly, the Board directs YEC to update its major industrial sales forecast in its compliance filing to account for the change to the 2012 and 2013 Minto sales forecasts referred to in the hearing.¹²²

76. The City cites the above passage as authority that the Board should take note of the updated forecasts and approve costs commensurate with the most accurate and current information available to it at the time of the hearing. For the Board to approve costs that it now knows are likely to prove inaccurate and overcompensate YEC would be inappropriate and not commensurate with just and reasonable rates. As an example, to approve the forecasts for the projects noted above (WH4 Ventilation, Transmission Line Access and New Mobile Office Unit) as initially applied for instead of the updated forecasts would require ratepayers to pay \$1.13 million more than is likely required to provide utility service.

All of which is respectfully submitted this 12th day of October, 2021.



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¹²⁰ Transcript, Volume 3, page 360, lines 16-20

¹²¹ Transcript, Volume 3, page 360, lines 10-15

¹²² Board Order 2013-01, Appendix A, paragraph 39