

IN THE MATTER OF THE YUKON ENERGY CORPORATION
2023-24 GENERAL RATE APPLICATION
Heard before the YUKON UTILITIES BOARD
Reply Argument of Nathaniel Yee

This Reply Argument addresses YEC's Final Argument, and specifically YEC's claims concerning capacity. These issues are addressed more broadly in my Final Argument, and this reply is provided to address specifics and serves as a supplement to my Final Argument.

In Section 4.3 of YEC's Final Argument, YEC uses a Board Order from the 2021 GRA to claim that diesel rental costs should remain in YEC's rate base. The Board Order that YEC cites is based on YEC's claim that Section 49 of YESAA allows it to operate unassessed and unpermitted capacity in response to an emergency.¹

In making this claim, YEC is ignoring the Regulatory Reminder received in July of 2023, which provides clarity on this issue, indicating that Environment Yukon *"...is unable to provide authorization to operate above the assessed capacity in the event of an emergency situation."*²

YEC concludes with *"YEC has been very transparent about all of this. Nothing has changed in this regard since 2021."*

Of course there has been a significant change since the 2021 GRA. In 2021, Environment Yukon had not weighed in on the issue of emergency capacity and assessments, but now they have with the Regulatory Reminder in July of 2023. YEC acknowledged this change in their Rebuttal Evidence noting that Environment Yukon, through the Regulatory Reminder requires all capacity to be assessed, including capacity used in the event of an emergency situation, and that YEC will be exceeding permit terms to operate to the capacity levels claimed in the GRA.³

In 2021 YEC claimed to be authorized to operate unassessed capacity in emergency situations using Section 49, while in 2023 they can make no claim to any authorization whatsoever.

Earlier in YEC's Final Argument, YEC also acknowledged this change by making no claim to have authorization to exceed permitted capacity using Section 49 of YESAA as they had in 2021, or by any other means. They will simply be exceeding permitted capacity and contravening permit terms. *"...notwithstanding the need to use installed back-up diesel rental capacity that exceeds permitted capacity for normal operations."*⁴

1 YUB Order 2022-03 Appendix A Paragraphs 109-110.

2 NY Final Argument pdf p.7, paragraphs 42-44 and Exhibit 8 p.31

3 NY Final Argument pdf p. 4 paragraphs 13-14 and Exhibit 9 pdf p.5 last paragraph.

4 YEC Final Argument pdf p. 21 3rd paragraph.

YEC is asking the Board to approve costs for capacity that has not been authorized by the Department of Environment, and that will contravene YEC's permit terms. Should the Board grant these costs, this would undermine the authority of the Department of Environment and the assessment and permitting process. YEC has provided the Board with the relevant permits,⁵ and yet is asking the Board to ignore the terms specified by those permits and look at specific sections of YESAA and the Environment Act instead. Contravention of permit terms cannot be considered prudent and should not be endorsed by the Board.⁶ And as YEC notes, Environment Yukon, not the YUB is the relevant authority to make determinations on capacities and emergency permit amendments.⁷ Environment Yukon has exercised this authority in issuing the Regulatory Reminder, and regardless of the findings made in the 2021 GRA decision, this authority should be respected by the Board, as shown here and in my Final Argument and summarized in my Recommendations.

Costs should only be approved for authorized capacity, and only authorized capacity should be included in N-1 calculations. If YEC wishes to increase capacity beyond currently permitted limits, this is an issue to be taken up with Environment Yukon, and not in a GRA proceeding. Does the Board respect the authority of Environment Yukon?

Respectfully submitted,

Nathaniel Yee
2-April, 2024

5 Exhibit 2 pdf p. 63-89.

6 NY Final Argument pdf p. 6 paragraphs 26-39.

7 Transcript Volume 2 p. 246, starting line 23 thru p. 247 line 4.