

**REBUTTAL EVIDENCE OF YUKON ENERGY CORPORATION**

2023/24 General Rate Application  
before the Yukon Utilities Board

February 8, 2024

## **YUKON ENERGY REBUTTAL EVIDENCE**

### **1.0 INTRODUCTION**

On January 11, 2024, Nathaniel Yee filed a 28-page submission with the Yukon Utilities Board (Board), accompanied by 57 pages of supporting documents comprising 22 separate attachments.

That submission, together with its attachments, is described as Mr. Yee's Intervenor Evidence. However, Mr. Yee's submission consists largely of argument, making various allegations of fraud against Yukon Energy Corporation (YEC).

Mr. Yee's allegations of fraud are frivolous and vexatious, and entirely without merit.

It is, of course, Mr. Yee's right to express his disagreement with any evidence or submissions provided by YEC in this proceeding, and to present any relevant intervenor evidence or make any relevant arguments in response that he would like the Board to consider. However, it is wholly inappropriate for Mr. Yee, in the guise of filing intervenor evidence, to level unsupported allegations of fraud against YEC – including reputable and hard-working YEC employees who are individually named in his materials – in the context of this regulatory proceeding before the Board.

YEC acknowledges that the allegations in Mr. Yee's January 11<sup>th</sup> submission appear to be concerned to a large extent with Mr. Yee's interpretation of information that YEC has provided to the Board in this GRA Application and its responses to Information Requests in this proceeding regarding YEC's forecast costs for diesel generation units rented to ensure it will have sufficient capacity to satisfy N-1 dependable capacity requirements. However, significant portions of Mr. Yee's submission are concerned with matters that are collateral to YEC's GRA Application, and that have no relevance to the matters properly in issue before the Board in this proceeding. That includes various allegations that appear to be focused on YESAB assessment and permitting processes previously followed when the Yukon Government issued amendments to YEC's former Air Emissions Permit No. 60-010 (which is no longer in effect as it has been superseded by YEC's current air emissions permits, copies of which were provided to the Board in YUB-YEC-1-35 REVISED Attachments 3 to 7).

YEC is not responding specifically to each of Mr. Yee's allegations that relate to matters that are irrelevant to the issues that are properly before the Board in this proceeding. This is not the proper forum for Mr. Yee to raise the numerous allegations that it appears he is seeking to advance about previous YESAB assessment and Yukon Government permitting proceedings among other matters that have nothing to do with the Board's review and approval of YEC's revenue requirement for the 2023 and 2024 test years. That material is irrelevant, and the Board should disregard it.

Rather, YEC's rebuttal evidence below is focussed on responding to what appears to be the main thrust of Mr. Yee's submission: his allegation that YEC has knowingly provided false information in this GRA

proceeding regarding its forecast costs for diesel generation units that are rented to ensure that YEC has sufficient capacity available to satisfy N-1 dependable capacity requirements.

To be clear, however, YEC wishes to emphasize that it disputes all of Mr. Yee's fraud allegations, and denies that it ever knowingly provided "false information" to the Board or to the public as alleged by Mr. Yee or otherwise.

## **2.0 YEC REBUTTAL**

### **2.1 YEC RESPONSE TO MR. YEE'S EVIDENCE GENERALLY**

As noted above, the main thrust of Mr. Yee's "evidence" appears to be his allegation that YEC has knowingly provided false information in this GRA proceeding regarding its forecast costs for diesel generation units that are rented to ensure that YEC has sufficient capacity available to satisfy N-1 dependable capacity requirements. It appears to be Mr. Yee's argument that these forecast costs for diesel rentals in excess of permitted diesel operating capacity should be excluded from YEC's revenue requirement, because YEC allegedly knows it will not in fact operate these diesel rentals during an N-1 event or any other emergency, and because YEC has purportedly misrepresented its actual intentions to the Board and to the public.

The allegation that YEC has knowingly provided false information about its intention to use its rental diesel units if and when needed to respond to an emergency situation is completely inappropriate and an abuse of this hearing process. There is no evidence to support this allegation. It is frivolous and vexatious, and should be dismissed summarily by the Board.

Indeed, it appears that Mr. Yee has further abused this hearing process by leaking to the media a copy of a letter he sent to the Minister of the Environment repeating the specious fraud allegation that he has made in this proceeding, after his evidence was filed with the Board and before YEC had a chance to respond to it.<sup>1</sup>

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<sup>1</sup> "Yukoner argues Yukon Energy gave false, incomplete info to government", *Yukon News*, January 28, 2024: <https://www.yukon-news.com/news/yukoner-argues-yukon-energy-gave-false-incomplete-info-to-government-7302503>. The *Yukon News* article indicates that Mr. Yee referred specifically to a purported contradiction between a site layout for the Faro diesel plant showing 5 diesel rental units that was included in a February 14, 2023 email from YEC to Environment Yukon (included in NY-YEC-1-14(b) Attachment 1) and another site layout for the Faro diesel plant that shows 7 diesel rental units (included in NY-YEC-1-15(b) Attachment 1); however, those two site layouts were provided for different purposes, and they do not contradict each other. The site layout showing 7 diesel rental units is contained in a report from SLR Consulting (Canada) Ltd. on noise modelling for the Faro Generating Station, which, for that purpose, assumed the presence of 7 units based on the facility's historical operation and the units currently present on site in the winter of 2023/24. In contrast, the figure included in YEC's February 14, 2023 email reflected the possibility that 2 of the existing units in Faro may be relocated in the near term. The timing of the possible relocation of those 2 units has not yet been finalized. As explained further in footnote 7 below, it is possible this could occur before the winter of 2024/25; however, regardless of their ultimate location, YEC forecasts that it will continue to require a total of 20 diesel rental units (excluding spares) on its grid to satisfy N-1 dependable capacity requirements in the winter of 2024/25.

The evidence before the Board consistently shows that YEC can and will operate any of its diesel rental units if and when it may become necessary to do so to protect the welfare, health and safety of Yukoners during an emergency.

The information that YEC has provided in its GRA Application and in response to IRs reflects the distinction between the environmental and socio-economic assessment scheme administered by YESAB under *YESAA* and the separate air emissions permitting process administered by Environment Yukon under the *Environment Act* and *Air Emissions Regulations*. It also clearly and transparently reflects YEC's interpretation and understanding of the implications of exceeding its permitted operating capacity under its current air emissions permits, as addressed by s. 113 of the *Environment Act* and the "unauthorized emissions" provisions of its permits.

In that context, the information that YEC has provided to the Board accurately describes what facilities it forecasts to have available in the 2023 and 2024 test years to satisfy N-1 dependable capacity requirements and to enable YEC to respond to an emergency event.

YEC has accurately described how it would, in fact, deal with an emergency event that requires it to exceed the permitted operating capacity of its diesel units. This is illustrated by the following two concrete examples that have occurred since the conclusion of 2021 GRA proceeding:

- The December 2022 occurrence described in YEC's response to YUB follow-up question #3 to YUB-YEC-1-35 REVISED; and
- More recently, YEC's response to another emergency event that occurred on January 31, 2024, when the Aishihik Generating Station (AGS) experienced a plant outage. That outage again briefly required YEC to exceed its permitted diesel generation capacity in Whitehorse in order to meet demand and ensure uninterrupted service to customers while YEC staff worked to safely bring other resources online focussing on maintaining grid stability, resulting in YEC having to operate all available diesel rental units at the site for a short period of time.<sup>2</sup>

YEC has transparently informed the Board that, in such circumstances, it would exceed its permitted capacity if necessary to prevent harm to public welfare, health or safety, and it would report that

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<sup>2</sup> As a result of the AGS outage, it became necessary for YEC to briefly exceed the permitted diesel generation capacity in Whitehorse for five hours on January 31, 2024 and for a further ten minute period on February 2, 2024, as outlined in the summary table below. This avoided a situation that could otherwise have presented a significant and immediate risk of harm to Yukoners.

| <b>Whitehorse Diesel – Exceedance Summary following January 31, 2024 Emergency Event</b> |                               |                             |   |                           |
|--|-------------------------------|-----------------------------|---|---------------------------|
| <b>Date</b>  | <b>Start Time<br/>(hh:mm)</b> | <b>End Time<br/>(hh:mm)</b> | <b>Capacity Average<br/>Exceedance<br/>(MW)</b> | <b>Duration<br/>(hrs)</b> |
| January 31, 2024   | 07:10                         | 12:10                       | 2.6   | 5.0                       |
| February 2, 2024   | 12:50                         | 13:00                       | 0.5   | 0.17                      |

occurrence to Environment Yukon in accordance with s. 113 of the *Environment Act* and the “unauthorized emissions” provisions of YEC’s current air emissions permits.

If Mr. Yee wishes to dispute YEC’s view about its ability to operate in this manner under the *Environment Act* and YEC’s existing air emissions permits, he should do so before the proper regulatory authority. This issue is a matter within Environment Yukon’s jurisdiction, as the regulatory agency responsible for interpreting and applying the air emissions permitting scheme in the *Environment Act* and its regulations. This GRA proceeding before the Board is not the proper forum to adjudicate such a dispute; it would usurp the role of Environment Yukon for the Board to do so.

In any event, Mr. Yee’s personal disagreement with YEC’s views about its ability to operate its available diesel rental units in an emergency does not provide any support for his spurious allegation that YEC has committed fraud.

YEC’s commitment to use diesel rental units as required in an emergency is not altered by the July 20, 2023 Environment Yukon “Regulatory Reminder” cited by Mr. Yee in his evidence. The Regulatory Reminder expressed Environment Yukon’s position that it is unable to provide authorization in a permit for YEC’s diesel generation facilities to operate above the capacity that has been assessed by YESAB. That limitation reflects Environment Yukon’s understanding of its obligation under s. 83 of *YESAA* to implement the various Decision Documents the Yukon Government has issued for YEC’s diesel generation facilities under ss. 75 and 76 of *YESAA*, following the completion of YESAB assessments. However, the Regulatory Reminder makes clear that the *Environment Act* and *Air Emissions Regulations* do not contain processes for managing emergency conditions, and accordingly the Regulatory Reminder does not address the consequences of YEC exceeding its permitted capacity under such conditions.

The only provisions of YEC’s existing air emissions permits that directly address the potential need for YEC to exceed its permitted capacity in an emergency situation are the “unauthorized emissions” provisions. Those provisions require YEC to report any incident of an unauthorized release or emission to an environmental protection officer. This reporting requirement is consistent with s. 113 of the *Environment Act*. If YEC’s operations result in an unauthorized release of air emissions, including the need to temporarily exceed permitted capacity in an emergency situation, YEC must immediately report such an occurrence to Environment Yukon in accordance with this reporting requirement.

Notwithstanding the Environment Yukon Regulatory Reminder, it is YEC’s view that Environment Yukon does have legal authority under s. 90 of the *Environment Act* to grant an emergency amendment to an existing air emissions permit on an expedited basis in response to an emergency described in s. 49 of *YESAA*, without an assessment by YESAB. However, in light of Environment Yukon’s reluctance to exercise that legal authority (as communicated in the Regulatory Reminder), the only practical option currently available to YEC to prevent immediate harm to public welfare, health or safety during an

emergency event is to exceed its permitted operating capacity if and when it becomes necessary to do so and to report that exceedance to Environment Yukon, as YEC has very clearly explained in the materials filed in this proceeding.

In any event, Environment Yukon has informed YEC of its objective to bring YEC's emergency operation of its diesel units within its permitted capacity, so that YESAB may complete an environmental and socio-economic assessment of the potential impact of the emergency operations that will be authorized directly in YEC's permits,<sup>3</sup> notwithstanding the exemption for emergency operations in s. 49 of *YESAA*.<sup>4</sup> YEC is in the process of working with Environment Yukon to achieve this objective. In the meantime, however, YEC has accurately and transparently described in this GRA (and to Environment Yukon) how it would, in fact, operate its diesel units under its existing air emissions permits in the event of an emergency situation that requires it to temporarily exceed its permitted diesel capacity in order to prevent immediate harm to public welfare, health or safety.

In summary, for the purposes of this GRA proceeding, YEC has provided evidence to satisfy the Board that the 20 rental diesel units included in the GRA Application revenue requirements are forecast to be used and useful during the current GRA test years, notwithstanding the fact that their potential use might exceed YEC's permitted capacity in an emergency situation. Those units are not only used and useful, but essential, as was clearly demonstrated by the emergency events in December 2022 and January 2024. The costs of those units are therefore properly included in YEC's revenue requirement.

YEC has not "provided false information" to the Board or to the public as alleged by Mr. Yee. There is no merit to that allegation. Mr. Yee knows, or ought to know, that YEC incurred its diesel rental costs so that it can and will operate these units if and when required in an emergency situation in order to prevent immediate harm to public welfare, health or safety. Mr. Yee's allegation that YEC incurred these costs in order to defraud anyone merits sanction rather than serious consideration by the Board.

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<sup>3</sup> This objective is reflected by the Minister of the Environment's February 17, 2022 email included as Attachment E to Mr. Yee's evidence, which explains (as cited by Mr. Yee at p. 9 of his evidence): "The [Department of Environment] is updating its processes so that in the future, permits will not allow for the generation of any capacity that has not been included in the YESAA assessment. This will include the capacity associated with generators to be installed and used under emergency (N-1) conditions." YEC is cooperating with Environment Yukon to give effect to this update through its upcoming permitting processes. It is important for the Board to recognize, however, that this update has not yet been fully implemented, and that, in the meantime, the protection of public welfare, health and safety in an emergency, as contemplated by s. 49 of *YESAA*, continues to be YEC's top priority.

<sup>4</sup> Mr. Yee makes reference in his evidence to the former s. 49.1 of *YESAA*, which he correctly notes was repealed in December 2017. That former provision should not be confused with s. 49(1) of *YESAA*, which remains in force, and continues to exempt activities from assessment if they are undertaken in response to an emergency when it is in the interest of public welfare, health or safety or of protecting property or the environment that the activity be undertaken immediately. YEC relies only on s. 49(1) of *YESAA*; the former s. 49.1 has no relevance. In its 2021 GRA decision, which was issued long after the repeal of the former s. 49.1, the Board previously found (Order 2022-03, Appendix A, at par. 105) that: "While YEC's permits limit normal operations to a certain capacity, under Section 49 of the *Yukon Environmental and Socio-economic Assessment Act*, YEC has the ability to operate any available diesel generating capacity in an N-1 event to protect public health and safety." Mr. Yee is now attempting to reargue issues that were fully addressed in the 2021 GRA.

## **2.2 YEC RESPONSE TO SELECTED DETAILS OF MR. YEE'S EVIDENCE**

YEC provides the following further comments responding more specifically to the following details of Mr. Yee's "evidence":

- Mr. Yee's inaccurate characterization of YEC's evidence in this proceeding as purportedly containing "admissions" by YEC that it would check first with Environment Yukon before exceeding its permitted diesel capacity when it is necessary to do so in response to an emergency; and
- Mr. Yee's specific allegations about the descriptions YEC has provided to the Board in this proceeding about its rental diesel facilities in Mayo, Whitehorse and Faro.

### **Reporting to Environment Yukon in the Event of an Emergency**

Mr. Yee's evidence (on p. 9) misstates the response that YEC previously provided to NY-YEC-1-18, when he incorrectly asserts that YEC purportedly "does admit three times that they would have to check with the Department of Environment before running any capacity in response to an emergency." Mr. Yee goes on to imply that after March 31, 2022, YEC "knew" it was no longer able to operate diesels at the Whitehorse plant in excess of licenced capacity even during an emergency.

These assertions are incorrect.

Mr. Yee misrepresents what YEC actually said in the three specific lines he cites (in footnote 24) from YEC's response to NY-YEC-1-18. Those lines do not make any reference to YEC "checking" with the Department of Environment before operating its rental diesel units in an emergency. YEC's response to that IR only says that it will "notify" or "communicate with" the Department, as required under its permits.

As explained above, in the event of an emergency situation that requires YEC to exceed the permitted capacity of its diesel generation units to prevent immediate harm to public welfare, health or safety, YEC would temporarily exceed its permitted capacity as required (at its Whitehorse or other diesel plants) to respond immediately to the emergency. YEC would then report that exceedance to Environment Yukon, as required by its air emissions permits and s. 113 of the *Environment Act*, and Environment Yukon would have the responsibility as regulator to determine what if any consequences should result.

To be very clear, YEC would not "check with the Department of the Environment" first before taking measures that are necessary to prevent immediate harm to public welfare, health or safety.<sup>5</sup>

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<sup>5</sup> YEC speculates that Mr. Yee may be confused about this because of the response that YEC provided on June 29, 2023 to an information request (IR1.3) from the Mayo Designated Office of YESAB. (Mr. Yee has included the second page of Mr. Ritchie's June 29, 2023 letter to the Mayo Designated Office, which includes YEC's response to IR1.3, as Attachment D to his evidence.) That IR response referred to the possibility of Environment Yukon granting formal approval for operations exceeding permitted capacity during an emergency. It is important to recognize, however, that the IR response was issued three weeks before Environment Yukon's July 20, 2023 Regulatory Reminder, and it reflected YEC's view, as described

The December 2022 occurrence described in YEC's response to YUB follow-up question #3 to YUB-YEC-1-35 REVISED (including YEC's subsequent email exchange with Environment Yukon in January 2023 that is reproduced in YUB-YEC-1-35 REVISED Attachment 8) provides a concrete example illustrating how this process has actually worked in practice at the Whitehorse diesel plant after March 31, 2022. The more recent occurrence described above resulting from the January 31, 2024 AGS outage also provides another concrete example in which YEC responded to an emergency situation precisely in the way it has informed the Board that it would.

In addition to YEC's specific communications with Environment Yukon about the December 2022 and January 2024 occurrences, YEC has had other more general discussions with Environment Yukon about the extraordinary circumstance of exceeding its permitted capacity in an emergency. Based on those communications, it is YEC's understanding that, notwithstanding the Regulatory Reminder, Environment Yukon fully recognizes that the harm that would result if YEC did not temporarily exceed its permitted capacity when necessary to respond to an emergency situation would be much greater than whatever impact might result from the pollutant emissions themselves.

#### **YEC's Description of Rental Diesel Facilities in Mayo, Whitehorse and Faro**

Mr. Yee has made specific allegations that YEC has falsely claimed its ability to operate the following during an emergency:

- 4.1 MW<sup>6</sup> of unpermitted rental diesel capacity in Mayo (pp. 2, 5 and 8);
- 12 MW of unpermitted rental diesel capacity in Whitehorse, in light of the March 31, 2022 expiry of the provision of YEC's former air emissions permit that previously authorized this (pp. 8 and 10); and
- 5.1 MW of unpermitted rental diesel capacity in Faro for winter 2024/25 (p. 8).

There is no merit to the allegations that YEC has provided false information to the Board with respect to its rental diesel capacity that can be operated during an emergency.

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above, that Environment Yukon does have legal authority under s. 90 of the *Environment Act* to grant an emergency amendment to an existing air emissions permit granting such approval on an expedited basis in response to an emergency. In light of Environment Yukon's Regulatory Reminder, however, it is clear that the only practical option available to YEC to prevent immediate harm to public welfare, health or safety during an emergency event is to exceed its permitted operating capacity if and when it becomes necessary to do so, and to report that exceedance to Environment Yukon in accordance with s. 113 of the *Environment Act* and the "unauthorized emissions" provisions of YEC's current permits. Environment Yukon has been made fully aware of YEC's position.

<sup>6</sup> Mr. Yee appears to have arrived at this 4.1 MW figure stated in his evidence based on an incorrect assumption that YEC is claiming a dependable capacity of 9 MW from the Mayo plant from 5 diesel rental units (i.e., his 4.1 MW estimate for unpermitted capacity equals 9 MW minus 4.9 MW permitted capacity). In fact, as noted in footnote 7 below, one of the 5 diesel rental units at the Mayo plant is assumed to be a spare. For the purposes of this GRA Application, YEC is only claiming a dependable capacity of 7.2 MW from the Mayo plant, from 4 diesel rental units. Accordingly, the correct amount of unpermitted diesel assumed in this GRA proceeding for dependable capacity at Mayo is 2.3 MW.



YEC has clearly and transparently acknowledged in this proceeding that the permitted operating capacity that has been authorized by Environment Yukon for diesel generation in Mayo, Whitehorse and Faro under normal operating conditions is:

- 4.9 MW in Mayo under its current Mayo Secondary Thermal Air Emissions Permit No. 60-010-05 (YUB-YEC-1-35 REVISED Attachment 7);
- 16.15 MW in Whitehorse under current Air Emissions Permit No. 60-010-04 (YUB-YEC-1-35 REVISED Attachment 6); and
- 15.5 MW in Faro under current Air Emissions Permit No. 60-010-01 (YUB-YEC-1-35 REVISED Attachment 3).

YEC has also clearly and transparently acknowledged that these permitted operating capacities are less than the total diesel capacity that YEC presently has available at these sites for N-1 dependable capacity purposes. That total diesel capacity was previously detailed in NY-YEC-1-2 REVISED Attachment 1, and includes a total of 20 diesel rental units (excluding spares) at 1.8 MW/unit that are forecast to be required to satisfy N-1 dependable capacity requirements in 2023/24 and 2024/25, as shown in Table 1 of YUB-YEC-1-1, distributed between the three sites.<sup>7</sup>

YEC has been entirely transparent about this. It has not provided false information to the Board.

As explained above, YEC would use its diesel rental units to the full extent it may become necessary to do so in an emergency situation in order to prevent immediate harm to public welfare, health or safety, even if this would result in YEC exceeding its permitted diesel generation capacity, and it would report any resulting exceedance to Environment Yukon in accordance with s. 113 of the *Environment Act* and the “unauthorized emissions” provisions of its air emissions permits.

If Mr. Yee wishes to dispute YEC’s view about its ability to exceed its permitted diesel operating capacity at each site in an emergency situation, that it is a matter within Environment Yukon’s regulatory jurisdiction which he should pursue with Environment Yukon.

YEC has provided the Board with the most accurate information that is currently available about the total capacity of its diesel rental units that would be available to respond to an emergency situation, and it has accurately and transparently explained how it would, in fact, operate those units above their permitted

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<sup>7</sup> One of the advantages of diesel rental units is that they are mobile and can be moved from one location to another. Table 2 of YUB-YEC-1-1 shows 4 diesel rental units (excluding a spare) allocated to Mayo, 9 to Whitehorse (excluding a spare) and 7 to Faro site locations, to provide a total of 36 MW (20 diesel rental units, excluding 2 spares) to meet forecast 2023/24 and 2024/25 winter N-1 dependable capacity requirement. However, YEC expects that some diesel units may be relocated prior to the winter of 2024/25, as reflected, for example, by YEC’s February 14, 2023 email to Environment Yukon in NY-YEC-1-14(b) Attachment 1. Regardless of where each of the rental diesel units is ultimately situated next winter, YEC is committed to ensuring that it will have the dependable capacity in place that will be needed to meet N-1 dependable capacity planning criteria, and a total of 20 diesel rental units (excluding spares) are forecast to be needed for that purpose (as detailed in Table 1 of YUB-YEC-1-1).

capacity if it became necessary to do so to prevent harm to public welfare, health or safety in an emergency situation.

Mr. Yee raises several additional specific allegations about YEC providing purportedly “false and deceptive” information about its diesel generation capacity, but those additional allegations are also without merit. In particular:

- Mr. Yee (at p. 19) questions YEC’s claim that its current air emissions permit allows 16 MW of diesel in Whitehorse, when YEC gave evidence in the 2021 GRA proceeding that its permitted capacity was 14 MW (rounded up from 13.75 MW). However, the current permitted capacity of 16.15 MW for YEC’s diesel facilities in Whitehorse is specifically stated in its current Whitehorse Air Emissions Permit No. 60-010-04 (YUB-YEC-1-35 REVISED Attachment 6). That permit became effective on May 11, 2022, replacing YEC’s former Air Emissions Permit No. 60-010; it was not yet in effect at the time of the 2021 GRA proceeding.
- Mr. Yee (at p. 21) alleges that YEC now claims that FD1 was never derated to 2.4 MW and represents (before retirement) 5.15 MW of the capacity of the Faro Generating Station (FGS). Mr. Yee here is simply ignoring the difference between (a) nameplate capacity of 5.15 MW (as reported in Appendix A of the 10-Year Renewable Electricity Plan) relevant to prior FGS licensing and (b) derated capacity that is relevant for YEC’s internal review of its current dependable capacity.
- Mr. Yee (at pp. 22-24) alleges that YEC was recently engaged in “phantom uprating” of diesel units when Operations recently reviewed and then modified the dependable capacity of certain diesel units. In response to Board directions, NY-YEC-1-2 REVISED fully addressed this issue, describing the tests and modifications recently undertaken by YEC Operations that resulted in an increase in dependable capacity for permanent diesel units across four diesel plants by approximately 3.0 MW for 2023 and 2.7 MW for 2024. In response, Mr. Yee has improperly elected, without any evidence, to allege fraud.