

## 1. Mayo Secondary Thermal Generation / Mayo Rentals:

4.9 MW – Maximum operating / production capacity submitted to YESAB for assessment in 2023. This was the capacity of the project presented to YESAB, the First Nation of Na-Cho Nyäk Dun (FNNND), Mayo and the general public.

7.2 MW – This was the capacity presented to the Board in the 2023-24 GRA proceeding. Customers were charged for this capacity.

9.0 MW – This was the capacity actually installed, five 1.8 MW rental diesel generators, for total nameplate capacity of 9.0 MW. This full capacity was installed in 2023 and permitted as two projects, 4.9 MW in 2023 and 4.1 MW in 2024-25.

- a) Why did YEC tell the First Nation of Na-Cho Nyäk Dun that this was a 4.9 MW project, while informing the Board it was a 7.2 MW project?
- b) The First Nation asked for clarity about generation capacity in the 2023 YESAB as follows:

“Through response to an information request, it is understood that while the total generation capacity of the generators to be installed will be well over 5MW, they will never be run to exceed 4.9MW. FNNND expects this output limitation to be binding through regulatory requirements. The context of thorough energy planning within a timeframe is necessary here to ensure we do not approach a situation where more than 4.9MW is required from this backup system without effects having been assessed and regulated at that scale beforehand.”

Yukon Energy Response on August 28, 2023:

“Yukon Energy fully expects that the requested maximum operating capacity of 4.9 MW will be prescribed and enforceable under the Air Emissions Permit that is issued for the project.”<sup>1</sup>

In its response, YEC confirms that permit will be for 4.9 MW, but seems careful not answer the First Nation’s concern that “they will never be run to exceed 4.9 MW.” Is it intentional that YEC did not mention that this same project is being presented as 7.2 MW project in the GRA, regardless of the 4.9 MW permit? In not mentioning the 7.2 MW capacity, is YEC providing clear and correct information in response to FNNND’s concerns about maximum output of the project, or could this answer be misleading?

- c) Please explain how assessing and permitting what is called a 7.2 MW project in the GRA as a 4.9 MW project supports the objectives and principles of YESAA and the Environment Act.

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1 YEC Evidence Attachment 35-50, pdf p. 9-10

- d) YEC explains how and why it split the full 9.0 MW capacity into two separate assessments as follows:

“Yukon Energy initially decided to assess the Mayo Secondary site for 4.9 MW of capacity, so that the assessment could be completed by the Mayo Designated Office of YESAA and an Air Emissions Permit could be issued as soon as possible without the need for an Executive Committee level screening.”<sup>2</sup>

and

“After the initial permit was issued for 4.9 MW of permitted operating capacity at Mayo Secondary, Yukon Energy began work to pursue further assessment and permitting in order to expand the site’s permitted capacity by another 4.1 MW, from 4.9 MW to 9.0 MW, through the Mayo Secondary Thermal Capacity Expansion Project (2024-0177) .”<sup>3</sup>

As YEC notes, the project was split to avoid a more time consuming Executive Committee level screening required at 5.0 MW and above. How does project splitting in this manner support the purposes and intentions of YESAA and the Environment Act?

- e) Given YEC’s statement that 4.9 MW was chosen to avoid an Executive Committee screening, was the project ever intended to be limited to just 4.9 MW?
- f) Should YEC have been open with the First Nation about the reasoning behind a 4.9 MW assessment being immediately followed by a 4.1 MW assessment for the same project?
- g) Please explain why the project was presented to YESAB, FNNND, the Village of Mayo, and Environment as a 4.9 MW operating-capacity project, while it was presented to the Board as a 7.2 MW project, where YEC sought cost recovery for 7.2 MW.
- h) Provide the dollar amount included in 2023 and 2024 revenue requirement for Mayo Secondary capacity, and show how this dollar amount corresponds to rental charges stated in the GRA.
- i) Please provide the dollar amount included in 2023 and 2024 revenue requirement for Mayo Secondary capacity exceeding 4.9 MW.
- j) In YESAB 2023-0090 concerning the first 4.9 MW of the split project, a YESAB IR (IR1.3) asked YEC to “...please confirm that the operation of the Project will not exceed 4.9 MW at any time, even during emergencies.”<sup>4</sup>

YEC Response:

“As outlined in the response to IR1.1a, Yukon Energy is seeking authorization from the Yukon

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2 YEC Reconsideration Evidence PDF p.39

3 YEC Reconsideration Evidence PDF p.41. The same splitting plan is also described in the middle paragraph of PDF p. 29 starting with “Mayo Secondary would become the new generation facility...”

4 EX8 Intervenor Evidence PDF p.38 / Attachment D

Government to operate up to 4.9 MW of fossil fuel-fired electrical generating equipment at any one time at the Project site. As with all Yukon Energy thermal generating stations, any use of the installed Capacity higher than the Air Emissions Permit Operating Capacity threshold would require approval by the authority having jurisdiction, in this case the Yukon Government Environment Department. If ever required, such approval might be granted in an emergency and would be subject to the provisions of YESAA in this regard (i.e., Section 49(1) and 49(2)).”<sup>5</sup>

Has Yukon Energy ever requested or received the required approval from Environment to exceed assessed and permitted capacities? If an approval to exceed assessed and permitted capacities was ever issued, did it reference YESAA 49(1)?

- k) In its cost claim, YEC appears to reference “potential significance of IR response provided to YESAB in June 2023, and correspondence with Mr. Osler and Mr. Landry regarding same;”<sup>6</sup>.

From the cost claim:

to NY’s evidence, and potential significance of IR response provided to YESAB in June 2023, and correspondence with Mr. Osler and Mr. Landry regarding same;

Please confirm that the IR response mentioned refers to IR1.3 above, and please describe potential significance and provide any non-privileged correspondence referenced. If this item in the cost claim refers to a different IR response provided to YESAB in June 2023 (though no other assessments had IRs in that timeframe) please provide that IR and response, and any non-privileged correspondence.

- l) YEC’s proposal for YESAB 2023-0090 for the first 4.9 MW states the following: “Operation: Operation of EPA Approved Tier 2 Caterpillar 3516C Diesel Generators up to a maximum operating capacity of 4.9 MW, during peak demand (winter) and during emergencies to complement hydro power and other thermal resources on the Yukon’s electrical grid, also known as the Yukon Integrated System (YIS).”

This text was carried through to the Decision Document: “Maximum operating (production) capacity of 4.9 MW during peak demand (winter) and during N-1 emergencies”.

Please identify the legal authority, permit condition, Decision Document, written approval, or other authorization that YEC relies on for including 7.2 MW of Mayo Secondary rental diesel capacity in the 2023/24 GRA revenue requirement.

- m) In response to NY-YEC-1-17 in the 2023-24 GRA, YEC states the following:

“Consistent with the YESAB proposal, the 2023/24 GRA includes five rental units in Mayo, including one spare unit based on forecast peak demand and available

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5 IR1.3 in from YESAB 2023-0090, also in EX8 NY Evidence PDF p. 38

6 YEC Cost Claim Application 2023-24 GRA PDF p. 47

dependable capacity for 2023/24 and 2024/25 winter. YEC will operate up to 4.9 MW capacity at any one time, including during winter peak hours while the remaining capacity is available during emergencies such as N-1 events.”

Please explain how saying “the remaining capacity is available during emergencies such as N-1 events.” is “consistent” with “Maximum operating (production) capacity of 4.9 MW during peak demand (winter) and during N-1 emergencies”. Where does the Decision Document or YESAB 2023-0090 allow “remaining capacity” to be available in emergencies?

- n) How is the “five rental units in Mayo, including one spare unit” described in the GRA and in the IR response actually consistent with YESAB 2023-0090? Where in the Decision Document or in YESAB 2023-0090 is the “one spare unit” mentioned? Where in the YESAB proceeding is this configuration described, and how does this configuration correspond to either a 4.9 MW or a 7.2 MW capacity?

## 2. Whitehorse Diesel

The provision allowing operation of 12 MW of “emergency” rental diesel expired March 31, 2022, and a new amended permit was issued on May 11, 2022 that made no mention of 12 MW of emergency rental diesel, and limited diesel site capacity to “16.15 MW from five diesel generators” and 13.13 MW from LNG.

- a) In Attachment 23 YEC states “No, we are not asking to add more thermal capacity in our proposal”

And in Attachment 24 YEC writes “As part of our ongoing work to provide Yukoners with sustainable, reliable, and cost-effective electricity, Yukon Energy will be submitting a proposal to the Yukon Environmental and Socio-economic Assessment Board (YESAB) to renew its existing air emissions permit in Whitehorse. This permit is needed to run the diesel and liquefied natural gas (LNG) generators at the Whitehorse Rapids Generating Station on Robert Service Way. We are not asking to add more thermal capacity in our proposal.”

The current permit at the time of these letters to property and business owners was sent, the permit being renewed, did not include any mention of the 12 MW of rental / emergency diesel, while the “renewal” did include it. The “renewal” took the permit from 29.28 MW to 42.0 MW.

Did the renewal permit allowing 42 MW of thermal capacity add or increase capacity in comparison with the existing 29.28 MW permit?

- b) Why was the public not informed that the capacity allowed by the permit renewal would be increased from 29.28 MW to 42 MW?
- c) Why was the possibility of an Executive Committee screening never mentioned to the public?

- d) Attachment 28, presented on March 22, 2023 also does not mention the possibility of an EC screening, and on the slide titled “Our Existing Whitehorse Permit” (Attachments PDF p. 36-37) states “12 megawatts from from diesel generators that can be used during emergencies” and “Existing permit will expire December 31, 2024”

However, the existing permit that was set to expire on December 31, 2024 did NOT contain any mention of the additional emergency 12 MW as that provision had expired and had been removed almost a year earlier.

Why did the YEC presentation claim that 12 MW to be used in emergencies provision was part of the existing permit well after it had been removed?

- e) The “Existing Permit” slide (PDF p. 37) also states “Not asking for anything new or different”. How is a change from 29.28 MW to 42 MW of permitted capacity not “new or different”?
- f) YEC provides similarly problematic information to the public in a community meeting on March 27, 2023, with slides in Attachment 29 (PDF p. 71-72)

Why does YEC make the potentially misleading claim that the “existing permit” allows 12 MW of emergency diesel, when this was not in fact mentioned in the existing permit. When YEC says “Our existing Whitehorse permit” is Yukon Energy expecting this to be interpreted as “our permit that expired last year”?

- g) Why does YEC state “Not asking to add more thermal capacity” when the thermal permitting project is adding the capacity of the previously unpermitted and unassessed rentals, taking the capacity from 29.28 MW to 42 MW?
- h) How does presenting potentially misleading information concerning existing and expired permits and added capacity support the objectives and principles of YESAA and the Environment Act?
- i) Please provide the dollar amount included in 2023 and 2024 revenue requirement for Whitehorse rental diesel, and show how this dollar amount corresponds to rental charges stated in the GRA.
- j) “In any event, as explained in Section 2.1 above, at the time the authorization expired in Yukon Energy’s previous permit for its emergency back-up diesel capacity in Whitehorse, it was Yukon Energy’s understanding that, under normal operating conditions, its permitted site capacity of 16.15 MW from diesel generation could be served by any combination of the permanent and rental diesel units at the site.”<sup>7</sup>

What would lead YEC to believe that “any combination” of the generators could be used, considering that the permit was very specific in limiting normal operations to “five generators running exclusively on diesel fuel at the Whitehorse Station” and “six emergency back-up generators, to a maximum cumulative total of 12 MW (2MW maximum capacity per unit), exclusively on diesel fuel at the Whitehorse Station only in

the event that an N-1 event occurs”. Does the permit mean what it says? Does Yukon Energy have any documentation from Environment that these (or any) permit terms can be selectively ignored or that any combination of generators could be used?

- k) Concerning the 2018 amendment to the Whitehorse permit, allowing a 6<sup>th</sup> rental, YEC's Evidence document states that “...the determination must presumably have been supported by the emergency exemption in YESAA section 49(1).”

Looking at Attachment 16 (PDF p. 33), in explaining why there is no assessment, Environment makes no mention of 49(1) the emergency exemption. Instead, Environment says “The reason is that the rated output is lower than the originally scoped in output, based on nameplate capacity.” In this case, Environment determined that even with the 6<sup>th</sup> generator, the 25.2 MW capacity of the 2011 YESAB and permit would not be exceeded with the additional generator.

Please explain how YEC made the jump from Environment's email stating that “The reason is that the rated output is lower than the originally scoped in output...” to presuming the reason was YESAA 49(1).

- l) Please describe the prudence of YEC basing its interpretation of the utility of YESAA 49(1) on an approval that does not mention 49(1), and explain why YEC claims the 2018 determination “must presumably have been supported by the emergency exemption in YESAA section 49(1)”? Is there legal or factual basis for “must presumably”?
- m) Why did YEC not ask Environment if 49(1) allowed for operation of the diesels, or mention this interpretation in any documents submitted to Environment, particularly when Environment would not re-authorize emergency capacity without an assessment in 2022?
- n) “In that context, Yukon Energy was not expecting Environment Yukon's April 2022 communication that the emergency back-up capacity could no longer be reauthorized under the permit without a new YESAA assessment. In effect, this was a new regulatory requirement.”<sup>8</sup>

If this was a new regulatory requirement, what was the old regulatory requirement and where was it documented? Please provide documentation from Environment or other relevant authorities explaining both the old and the new requirement and how/ when / why this changed.

- o) While YEC may have presumed that 49(1) was relevant in amending a permit (“...the determination must presumably have been supported by the emergency exemption in YESAA section 49(1)”) how did YEC then come to presume that 49(1) also allowed capacity to be operated with no permit or assessment? Did YEC presume that 49(1) could be used in amending a permit and to operate capacity without a permit?

- p) In Attachment 21, Environment states that an assessment is required because 49.1 (Significant Change) had been repealed. Why did YEC not at this time suggest the utility of 49(1) (Emergency) to Environment, and note that YEC believed (or presumed) that 49(1) allowed operation of the diesels without assessment or permitting, as YEC repeatedly claimed to the Board in the 2021 and 2023-24 GRAs? Please provide all discussion with Environment concerning the utility of YESAA 49(1) in allowing operation of diesel generators above assessed and permitted capacity or in permitting capacity without assessment.
- q) Given that in the evidence provided, YEC made no attempt to invoke 49(1) with Environment to authorize or re-authorize emergency capacity in this instance in 2022, did YEC no longer presume that 49(1) could be used to authorize or re-authorize operation of the diesels without assessment and permitting? What were YEC's presumptions concerning the utility of 49(1) going forward?

### 3. Faro Rental Diesel

15.5 MW – This is the permitted capacity of the Faro generating station through 2023-24, and until January 2026. During the GRA proceeding, YEC insisted to Environment that capacity was not being increased beyond 15.5 MW.

20.6 MW – This was the capacity presented to the Board in the 2023-24 GRA submitted August 31, 2023. Customers were charged for this capacity.

- a) In the GRA, YEC stated that capacity would increase to 20.6 MW<sup>9</sup>, while also saying that no YESAB assessment would be required. Given that YEC was aware as of 2022 that “emergency” capacity did require assessment,<sup>10</sup> and aware of the “Regulatory Reminder” from YESAB 2023-0090 specifically stated that an assessment was required regardless of 49(1), why then did YEC claim in the GRA that this capacity could be added without assessment?
- b) While telling the Board in the GRA that capacity would increase, YEC informed Environment that capacity was not being added, stating in a January 10 email<sup>11</sup> that “We are not asking to increase the assessed site capacity of 15.5 MW, just swapping capacity around to meet operational needs.” and also stating that “we will need fewer YMs (rentals) after the replacement units are installed”.

Why did YEC tell Environment that capacity would not be increased while also telling the Board that capacity would be increased without the need for an assessment?

- c) Why does YEC's Evidence not mention that the GRA itself stated that capacity was increasing by 5.1 MW<sup>12</sup> (to 20.6 MW) at the Faro site and that the GRA also stated that no assessment was needed for this increase<sup>13</sup>?

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9 YEC 2023-24 GRA p. 163 (15.5MW + 5.1 MW)

10 YEC Reconsideration Evidence PDF p.31 YEC notes that “emergency back-up capacity could no longer be reauthorized under the permit without a new YESAA” (This was true since the repeal of 49.1 in 2017)

11 YEC Evidence Attachment 46, in Attachments 35-50, PDF p. 91

12 YEC 2023-24 GRA PDF p. 163

13 YEC 2023-24 GRA PDF p. 163

- d) Please provide documentation of when Environment was informed of the increase to 20.6 MW as described in the GRA.
- e) Please provide the dollar amount included in 2023 and 2024 revenue requirement for Faro rental diesel, and show how this dollar amount corresponds to rental charges stated in the GRA.
- f) Please provide the dollar amount included in 2023 and 2024 revenue requirement for Faro capacity exceeding 15.5 MW.
- g) I wrote a letter expressing my concerns about different regulators receiving conflicting project details from YEC. This letter was to the Minister of Environment and to press, and Yukon News reported on it.<sup>14</sup> The article quotes an email from YEC, “We are currently working to replace that engine. When the engine is replaced, the number of rental diesels needed on site will be less. This is consistent with what has been shared with the department of Environment,” reads the email. Shortly after the article, YEC’s opening statement for the oral hearing includes “Relocation of two diesel rentals from Faro continues to be planned for winter 2024/25 (reducing Faro diesel rentals from 7 units to 5 units) but YEC has not yet finalized assessments for its decision as to where these mobile units will be relocated.”<sup>15</sup>

Why was the relocation of Faro rentals not previously mentioned in the GRA proceeding?

- h) Please provide documentation of the planning of relocating the Faro diesels, and provide references to where this possibility was mentioned in the GRA proceeding documents.
- i) YEC’s legal counsel appears to list review of the Yukon News article in its Cost Claim application<sup>16</sup>. Please provide correspondence and comments concerning the news article and also Mr. Ritchie’s comments if not privileged.

01/29/24	JKH	Review Yukon News article regarding NY's allegations about Faro diesel units; review and consider Mr. Ritchie's comments about draft statement responding to NY's fraud allegations, and further correspondence with Mr. Ritchie regarding same; revise draft high level statement responding to NY's fraud allegations, and further correspondence with Mr. Osler regarding same; further review and consider specific points potentially to be addressed in rebuttal evidence, and further prepare draft comments regarding same;	5.00
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14 <https://yukon-news.com/2024/01/28/yukoner-argues-yukon-energy-gave-false-incomplete-info-to-government/>  
 15 YEC Opening Statement 2023-24 GRA, PDF p. 10  
 16 YEC Cost Claim Application 2023-24 GRA PDF p. 46

#### 4. Specific applicability of YESAA 49(1):

YEC was aware since 2022 that “emergency” capacity needed to be assessed and permitted to be authorized or re-authorized.<sup>17</sup> In 2023, YEC stated that “any use of the installed Capacity higher than the Air Emissions Permit Operating Capacity threshold would require approval by the authority having jurisdiction, in this case the Yukon Government Environment Department”<sup>18</sup> and was also aware in 2023 before submitting the GRA that “The regulator is unable to provide authorization to operate above the assessed capacity in the event of an emergency situation.”<sup>19</sup>

With this in mind:

- a) Please identify each statement in the 2023/24 GRA proceeding (GRA, IRs, oral hearing, final and reply arguments, etc.) where YEC stated, suggested, or relied on the position that YESAA 49 or 49(1) or any other authority allowed rental diesel capacity to be operated above the assessed or permitted capacity limit.
- b) For each statement identified, please identify the factual, legal, and regulatory basis relied on by YEC, and explain how this relates to Environment’s declaration made previous to the submission of the GRA that Environment is “unable to provide authorization to operate above the assessed capacity in the event of an emergency situation”.
- c) Please identify where in the 2023/24 GRA record YEC disclosed to the Board that the Department of Environment had advised YEC that operation above assessed capacity could not be authorized even in an emergency situation.
- d) Does YEC now accept that YESAA 49(1) does not by itself authorize operation above an air-emissions permit limit, and that Environment is also unable to provide such authorization? If not, please provide the legal authority relied on by YEC for the contrary position.

#### 5. General confirmations:

Please confirm the following. If not confirmed, please state YEC’s position and provide supporting documents:

- a) In the 2023-24 GRA, YEC sought recovery from customers for rental diesel capacity exceeding applicable permit limits.
- b) Capacity that exceeded permit limits could not lawfully be operated.
- c) YEC has not identified any document in which Environment Yukon stated that YESAA 49(1) allowed operation above assessed and permitted limits.

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<sup>17</sup> YEC Reconsideration Evidence PDF p.31, what YEC calls a “new regulatory requirement”.

<sup>18</sup> YEC response to IR1.3 , June 29, 2023 from YESAB 2023-0090, referenced EX8 NY Evidence PDF p. 38

<sup>19</sup> Regulatory Reminder from Environment, July 20, 2023, YESAB 2023-0090 referenced EX8 NY Evidence PDF p.31

- d) YEC accepts that the Court of Appeal found that need alone did not resolve the legal issue or make charges for unpermitted capacity lawful, given that the Court stated the need for the generators was “undisputed, situational, and well motivated” but still allowed the appeal.
- e) If the Board disallows costs attributable to unpermitted capacity, YEC is able to calculate the refund or bill credit amount.

## **6. Implementation:**

If the Board disallows costs associated with unpermitted capacity, provide YEC’s proposed method for implementing the adjustment, including:

- a) Total revenue requirement reduction for 2023 including a breakdown by location;
- b) Total revenue requirement reduction for 2024 including a breakdown by location;
- c) Proposed refund or bill credit and how it could be implemented.

Please provide full documentation explaining how revenue requirement reductions were determined and correspond with costs expressed in the GRA proceeding.