

**IN THE MATTER OF
the *Public Utilities Act*
Revised Statutes of Yukon, 2002, c. 186, as amended**

**Review of Yukon Utilities Board Order 2009-02 and
Appendix A- Reasons for Decision**

BEFORE:	W. Shanks, Chair	)	June 30-, 2009
	R. Hancock	)	
	J. Woodland	)	

BOARD ORDER 2009- 07

WHEREAS:

- A. On April 6, 2009, the Yukon Utilities Board (Board) received an application for review and variance of Board Order 2009-02 and Appendix A, Reasons for Decision (Decision) from Yukon Electrical Company Limited (YECL). The Decision issued on February 19, 2009 contains the Board's findings and directions regarding YECL's 2008-09 General Rate Application.
- B. In its review and variance application, YECL requests a review and variance of the Board's determinations relating to the rate case reserve and Fish Lake hydro, on the basis that the Board committed errors of law or jurisdiction.
- C. On April 20, 2009, the Board sent a letter to the parties who participated in the YECL 2008-2009 General Rate Application seeking comments on the preliminary question as to whether the Board should review the parts of its decision relating to the Rate Case Reserve and Fish Lake hydro. YECL was provided with an opportunity to reply to the other parties' comments.
- D. The Board received comments on the review and variance application from the Utilities Consumers' Group (UCG), John F. Maissan, Yukon Energy Corporation (YEC), as well as a reply from YECL.
- E. The Board may review, change or cancel any of its decisions or orders, under section 62 of the *Public Utilities Act*.
- F. The Board adopted section 62 Review Guidelines which set out that the Board uses a two-phase system for applications for review and variance. The first phase is the initial screening phase or the preliminary question stage where the applicant must establish a *prima facie* case sufficient to warrant full consideration by the Board in a second phase on the merits. In the case of an alleged error, the application must show that the error is substantial on a *prima facie* basis and has significant material implications.

- G. The Board has considered the YECL review and variance application and the submissions of the parties in light of the above-noted provisions of its section 62 Review Guidelines.
- H. The Board has decided that YECL has not established a *prima facie* case sufficient to warrant full consideration by the Board in a second phase on the merits. Furthermore, YECL has not shown on a *prima facie* basis that the Board committed substantial errors of law or jurisdiction in its determinations regarding the Rate Case Reserve and Fish Lake hydro. As a result, the Board need not decide that an error has significant material implications.

NOW THEREFORE, for the reasons set out in the attached Appendix A, the Board denies the YECL review and variance application dated April 6, 2009.

DATED at the City of Whitehorse, in the Yukon Territory, the 2nd day of July, 2009.

BY ORDER



Wendy Shanks
Chair

Appendix A
Yukon Utilities Board
Reasons for Decision
Board Order 2009-07

A. BACKGROUND

On February 19, 2009, the Yukon Utilities Board (Board) issued Board Order 2009-02 and Appendix A, Reasons for Decision,(Decision) regarding the YECL 2008-09 General Rate Application (GRA). In this Decision, the Board stated the following on the Rate Case Reserve account, at pages 35 and 36, and Fish Lake hydro at page 11, respectively:

Rate Case Reserve

The Board finds that the uncontested evidence before the Board is that YECL, at the time of the 1996-97 GRA proceeding, had a deferral account, Rate Case Reserve, which by 2005 had accumulated in it the amount of \$450,000. The purpose of this account was to defray the costs of rate applications. In addition, YECL never asked the Board for approval to close this deferral account. The Board is of the view that YECL had to obtain approval to withdraw funds from this account or to close the account and convert the funds to retained earnings.

The Board considered the reasons given by YECL for its action regarding the deferral account, Rate Case Reserve. The Board finds it unreasonable that YECL unilaterally decided that the closing of this account was consistent with the treatment followed by YEC in its 2005-06 GRA. YECL has not provided to the Board any explanation for this position. Also, in the Board's view, Board Order 2005-17 does not support the YECL decision in this matter as this Order related to the YEC 2005 Revenue Requirement and directed YEC to revise the amount in its cost deferral account and to include the allowed hearing costs. Further, as the account was established and by 2005 YECL had not been before the Board with a GRA for a number of years, it would have been reasonable for YECL to assume that YECL would need the funds to defray the costs of a rate case when it filed its next GRA. The Board is supported in its findings by the fact that YECL is now seeking a deferral account, Rate Case Reserve of \$750,000 for the test years. As a result, the Board directs YECL to re-establish the Rate

Case Reserve Account with the initial balance of \$450,000 carried over from 2005 as the beginning balance in 2008 and allow provisions of \$150,000 for each of 2008 and 2009 to establish an ending balance in 2009 of \$750,000. YECL in its refilling must adjust its revenue requirement accordingly.

Furthermore, the Board directs that YECL must, in future, make an application to this Board to apply any amounts in this account to rate-case proceedings. In general, YECL cannot dispense with any balances in deferral or reserve accounts without prior Board approval.

Fish Lake hydro

The Board is concerned with the YECL's proposed Fish Lake hydro generation forecast of 6.2 GW.h for each of the test years, which is a 3.8-GW.h reduction from the 10 GW.h of generation proposed in YECL's last GRA. The Board notes that YECL's statement that the 10-year average for Fish Lake generation of 7 GW.h is higher than the actual output in six of the last 10 years¹⁷. However, the Board notes that the average generation for the years when output exceeded the 7 GW.h, the average generation for the four years was almost 9 GW.h.

In making a determination on this issue, the Board considered YECL's submission in argument that it is in a new water-licence period and is subject to certain restrictions. Further, the Board accepts YEC's suggestion that the available generation at the Fish Lake hydro plant should be based on all years of available data. Accordingly, the Board finds 8.73 GW.h¹⁸ is reasonable as the base generation for the Fish Lake hydro facility, prior to considering the impact of any downtime due to the Fish Lake hydro rebuilds. Therefore, the Board directs YECL in its refilling to reflect base hydro generation of 8.73 GW.h.

B. YECL Review and Variance Application and submissions of parties

YECL filed a review and variance application of the above-noted portions of the Decision on April 6, 2009. YECL alleges that the Board has committed errors of law or jurisdiction with respect to the rate case reserve and the Fish Lake hydro portions of the Decision.

YECL argues that the portion of the Decision on rate case reserve treats YECL in an inconsistent, prejudicial and discriminatory manner when compared to YEC regarding rate case reserve. It adds that the matter of the rate case reserve originated for both utilities out of a joint proceeding for both YECL and YEC regarding their 1996-97 General Rate Application which resulted in Board Order 1996-06. YECL submits that it "mistakenly interpreted the YUB's 1996-97 Decision as requiring the recording of annual amounts in a Rate Case Reserve" and established a deferral account. It states that it discovered its error during the YEC 2005 Revenue Requirement proceeding in that YEC had adopted a different interpretation of Board Order 1996-06 which was explicitly addressed and approved in Board Order 2005-12. YECL submits that as a result it

reversed the hearing costs previously expensed from 1998-2004 and that it corrected its previous error in its 2005 audited statement and provided the information to the Board in its 2005 annual filing. YECL argues the deferral account was never directed or approved by the Board. Therefore, it did not have to seek permission to discontinue the deferral account and that the Board erred in the Decision that Board approval was required to close the deferral account.

YECL alleges that the Board in rendering its Decision on the forecast for generation from the Fish Lake hydro facility ignored the evidence on the record. It submits that it used a 10-year average of actual generation adjusted for the forecast downtime due to the Fish Lake hydro rebuilds and argues that the Board relied on an arbitrarily selected subset of years within the forecast. YECL noted that footnote 18 is blank.

In response to the YECL review and variance application, UCG submits that, in the years subsequent to the 1996-97 General Rate Application, YECL chose to record annual amounts in its Rate Case Reserve and YEC did not choose to do so after expending the 1996-97 hearing costs. UCG adds that YECL collected revenues from ratepayers to place in the reserve for the years following 1996-97 and expended funds for only those 2 years. UCG argues that, in 2005, YECL chose to take the reserve money and place it into their return or profits for 2005 which it did not belong to shareholders.

With regards to the Fish lake hydro forecast, UCG submits that the evidence was obviously before the Board and the Board chose a different approach than the one YECL favoured.

Mr. John Maissan, in response to the review and variance application, submits Board Order 2005-12 determined the manner in which YEC was to deal with hearing costs and there were no direct comments on a rate case reserve. He adds that YEC did not have a rate case reserve while YECL did and YEC did not collect monies from ratepayers and transfer it to retained earnings, so that there cannot be inconsistent treatment by the Board as it dealt with two different matters. He concludes that the variance should be denied.

In its response, YEC states in its overview that YECL has not identified any error of law or fact which would require the Board to undertake a full review as requested by YECL of the Board's determinations on the Rate Case Reserve and Fish Lake hydro issues. It adds that YECL had not been before the Board for over ten years in a general rate application and these issues were open for review by the Board in the Application. YEC argues that YECL's decision to support the two issues in question with very scant evidence and a dismissive approach in argument does not entitle YECL to suggest that the Board erred in its determinations on these issues.

More specifically, on the Rate Case Reserve, YEC submits that YECL does not dispute the facts nor the Board's finding that YECL's previous reference to Board Order 2005-17 "does not support the YECL in this matter." YEC points out that YECL in its review and variance application refers to Board Order 2005-12 which in its view does not support the YECL decision in 2005 as the Board in that Order made no determination in relation to how YECL chose to establish in 1996/97 its Rate Case Reserve. It adds that YEC chose to establish a deferral account for two years and raised the appropriateness

of its actions in its 2005 Application and the Board made its determinations in Board Order 2005-12 in that YEC could proceed to treat its rate case deferred cost reserve as it had adopted after the 1996/97 GRA rulings. However, it argues that the issue of what YECL did in relation to its GRA costs and the appropriateness of its actions were not before the Board at YEC's 2005 hearing and no determination was made in that regard. It submits that this issue was appropriately raised in the YECL 2008-2009 GRA. In summary, YEC submits that YECL has not established a *prima facie* case for its so-called "discriminatory treatment" between YEC and YECL where YECL is being treated differently in an inappropriate manner.

On the Fish Lake hydro issue, YEC submits that there is no merit in YECL's review and variance application because the Board had clearly before it evidence relating to the actual generation from the Fish lake facility, including the specific information regarding long-term average generation filed by YECL in the 1996/97 GRA and the recent information filed by YECL on Fish Lake generation in the Application. YEC cites the portion of the Board's Decision on this issue in which the Board states that its determination is based on "all years of available data".

In its reply, YECL reiterates its position and arguments regarding the alleged discriminatory treatment between itself and YEC regarding the Rate Case Reserve. It also reiterates its allegation that the Board ignored the only evidence on the record and relied on an arbitrarily selected subset of years that was based on absolutely no evidence.

C. Discussion

With respect to the YECL's allegation that the Board in the above-noted part of the Decision on Rate Case Reserve treats YECL in an inconsistent, prejudicial and discriminatory manner when compared to YEC, the Board finds that this allegation is without basis. The Board made its determination on the YECL Rate Case Reserve on the basis of the evidence and arguments submitted in the proceeding on the Application. YECL had the opportunity to provide evidence and make submissions regarding the Rate Case Reserve deferral account.

The facts on which the Board made its decision with respect to the YEC rate case reserve and the YECL determination differ. YEC chose to establish a deferral account for two years and raised the appropriateness of its actions in its 2005 Application and the Board in Board Order 2005-12 decided that YEC could proceed to treat its rate case deferred cost reserve as it had adopted after the 1996/97 GRA rulings. While YECL established a Rate Case Reserve deferral account as a result of the 1996-97 GRA rulings and chose to record annual amounts in its Rate Case Reserve to defray hearing costs from 1996 to 2004 and in 2005 it decided to close this account without any determination from the Board. The Board is not persuaded by YECL's argument that the deferral account in question was not established by the Board and that it did not need to request a decision from the Board to close it.

Further, the Board does not accept YECL's argument that Board Order 2005-12 was applicable to YECL. Rather, the Board finds YEC's argument persuasive that this Order made no determination in relation to how YECL chose to establish its Rate Case Reserve in 1996/97. The Board dealt with the issue of the YECL Rate Reserve Account,

at its first opportunity which was the 2008-2009 GRA Application, as YECL had not filed a GRA with the Board since the 1996-97 GRA Application. The Board gives no weight to the argument that YECL in its 2005 Annual Filing with the Board changed its treatment of its Rate Case Reserve and no party opposed it. The Board does not approve annual filings and does not have proceedings for annual filings. Parties do not have an opportunity to test the contents of an annual filing. It is within a GRA that parties may test the information provided by a utility.

With regard to the Fish Lake hydro forecast, the Board acknowledges that there is a clerical error in the Decision in that footnote 18 is empty. It should have read "The average available generation for the years when available generation exceeded 7.0 GW.h. Please see Footnote 17." The Board corrects the Decision by inserting this text into footnote 18.

The Board noted from the above-noted portion of the Decision on the Fish Lake hydro forecast that it based its decision on all the available information. The Board supports its determinations on this issue by citing the evidence it gave weight to and found persuasive. The Board is not acting in an arbitrary manner because it has evaluated the evidence after it was tested in the hearing and considered it in light of the submission of the parties and found that some of the evidence to be more credible than other parts of it.

As noted by UCG and YEC, the Board had clearly before it evidence relating to the actual generation from the Fish Lake facility, including the specific information regarding long-term average generation filed by YECL in the 1996/97 GRA and the recent information filed by YECL on Fish Lake generation in the Application. A determination on the reasonableness of a forecast is within the purview of the Board. The Board rejects YECL's argument that it acted arbitrarily in this instance.

D. Conclusion

For the above-mentioned reasons, the Board concludes that YECL has not established a *prima facie* case sufficient to warrant full consideration by the Board in a second phase on the merits. Furthermore, the Board concludes that YECL has not established that the Board committed substantial errors of law or jurisdiction in its determinations regarding the Rate Case Reserve and Fish Lake hydro on the *prima facie* case presented by YECL. As a result the Board need not decide that an error has significant material implications. As a result, the Board dismisses the YECL review request dated April 6, 2009 regarding the Decision.