

# **Yukon Utilities Board**

Board Order 2023-20

Appendix A: Reasons for Decision

September 7, 2023

## Introduction

1. On June 20, 2023, the Yukon Utilities Board (Board) issued Board Order 2023-11 approving the Yukon Energy Corporation (YEC) 2022 Low Water Reserve Fund (LWRF) Report and Energy Reconciliation Adjustment Filing (Original Proceeding). In its application, YEC sought approval of two proposals: (1) LWRF transfers and LWRF balances as provided in Attachment 1 of the filing, the amount calculated by YEC being \$7.151 million, to be transferred from YEC into the LWRF, providing a closing balance in the LWRF as of December 31, 2022 of \$9.895 million owed to customers; and (2) Energy Reconciliation Adjustment (ERA) calculations and a \$0.170-million ERA payment from ATCO Electric Yukon (AEY) to YEC for 2022.
2. In Appendix A to Board Order 2023-11: Reasons for Decision, the Board made the following findings:

### Scope

16. At the outset, it is important to determine the scope of this application. In that regard, the Board notes that the relief requested is for approval of the 2022 LWRF transfers, the 2022 LWRF balance at the end of 2022, and the 2022 ERA charge from YEC to AEY. Further, in Appendix A to Board Order 2022-03, the Board found that “a revised term sheet could not be filed until after OIC 2021/16 was in force and the Board is satisfied that the term sheet complies with the OIC. The Board does not find the use of the 2019 term sheet unfair to customers as it is trued-up to actuals...”

17. The Board also considered the following statements from the LWRF Term Sheet submitted with YEC’s compliance filing to Board Order 2022-03:

YEC thermal generation savings (excess) are calculated on an annual basis for the LWRF based on the variance between actual thermal generation and LTA thermal generation at the actual YIS load. The actual YIS load for this assessment is net of long-term average annual (i.e., expected) availability for all renewable sources other than YEC hydro generation, including Fish Lake hydro, and IPP renewable generation. (Footnote removed; underlining added)

18. The Board also considered the following statement in the decision to the compliance filing to YEC’s 2021 GRA:

YEC’s requested changes to YEC’s rate riders, Rate Schedule 39 Industrial Primary Fixed Charge, RS39 Fixed Charge true-up, and Low Water Reserve Fund (LWRF) Term Sheet are also approved, effective August 1, 2022. (Underlining added)

19. The Board has reviewed the application, the IR Responses and submissions from the parties. The Board has verified the calculations contained in Tables 1-1 and 1-2 of the application and finds that the LWRF

calculations are consistent with the term sheet approved in Board Order 2022-07.

20. The Board did not accept the UCG submissions and calculations regarding the 2022 transfers to the LWRF because these calculations are inconsistent with the most recent approved LWRF Term Sheet. Specifically, the use of the 2021 GRA-approved LTA thermal generation quantity is inappropriate as the approved LWRF Term Sheet states that “YEC thermal generation savings (excess) are calculated on an annual basis for the LWRF based on the variance between actual thermal generation and LTA thermal generation at the actual YIS load.” (Underlining added)

21. Accordingly, the Board approves the 2022 LWRF report as filed.  
(Footnotes omitted)

3. On July 9, 2023, Utilities Consumers’ Group (UCG) filed a Review and Variance Application of Board Order 2023-11: Yukon Energy Corporation 2022 Low Water Reserve Fund Report and Energy Reconciliation Adjustment (Review Application). UCG submitted that the Board committed errors in fact, law or jurisdiction when making the rulings in paragraphs 20 and 21 of Appendix A to Board Order 2023-11: Reasons for Decision set out above, and UCG alleged that the process followed by the Board in making these rulings was unfair to the ratepayers.

### **Test for review and variance**

4. Section 62 of the *Public Utilities Act* (Act) states that the Board may review, change, or cancel any decision or order made by it and may re-hear any application or complaint before deciding it.
5. The Board adopted section 31 of its Rules of Practice (Rules) regarding applications for review under section 10 of the Act. In considering a review application, the Board uses a two-phase system which enables applications to be dealt with expeditiously and economically. An application for review is subject to an initial screening phase (phase 1) where the applicant must establish a prima facie case sufficient to warrant full consideration by the Board. If the application for review alleges error, the applicant also must show that the error has significant material implications.

### **Views of the Board**

6. Regarding this Review Application, the Board determined that it did not need comments from the registered parties to the Original Proceeding for the following reasons. The error in fact, law or jurisdiction alleged in the Review Application

pertains to the weighing of evidence by the Board in the Original Proceeding. As such, in making a decision on phase 1, the Board will consider the record of the Original Proceeding. By proceeding in this manner on phase 1 of the review test, the Board is acting expeditiously and in an economic manner in dealing with the Review Application.

7. Further, the Board will only advance a review application to phase 2 if the applicant has met the criteria for phase 1. The Board is stringent in its application of the phase 1 criteria because the decisions of the Board are final and the costs of any phase 2 proceeding are borne by ratepayers.
8. In accordance with section 31 of the Rules, the Board must determine whether the Review Application meets the criteria for phase 1 of the above-noted review and variance test. First, the Board took note of the UCG's May 23, 2023 submission in the Original Proceeding. In this submission, UCG referenced the fuel costs in the YEC 2021 GRA and its compliance filing of April 14, 2022. It stated that the LTA thermal generation was calculated to be 85,930,000 MWh. Fuel prices used was LNG at \$0.1814/kW.h and diesel weighted average at \$0.2051/kW.h. It added that with the use of this amount of generation, the total fuel cost was forecast to be \$15.788 million, excluding maintenance run-ups. It referred to the LWRF, which is the deferral account that addresses the variance from forecast fuel cost to the actual thermal generation amounts and costs and the forecast fuel. It cited OIC 2021/16. It then pointed to the 2022 LWRF Term Sheet which states that the amount of thermal generation for 2022 was 39,205,000 MWh. UCG argued that the variance between what YEC received from the fuel amounts in the GRA revenue requirement and what they used was 46,725,000 MWh. It submitted that its calculations resulted in a total thermal generation cost refund to the LWRF of \$8,586,654. It also submitted that the Term Sheet results in inaccurate accounting. It should be discontinued for determining the LWRF calculations for this 2022 process and a simple fuel cost reconciliation method should be used.
9. Second, the Board reviewed YEC's reply of May 26, 2023 in which it responded to UCG's submission. It stated that the proceeding was narrow in scope, focused on the 2022 LWRF transfers in accordance with the LWRF Term Sheet approved by the Board. This proceeding did not deal with the GRA or test-year revenue requirements, nor is it intended to revisit or review the LWRF Term Sheet itself. YEC submitted that although UCG challenged the LWRF Term Sheet, it did not provide any evidence that the 2022 LWRF calculations and transfers are not in accordance with the LWRF Term Sheet. It added that UCG's LWRF transfer calculation using the variance between 2021 GRA-approved LTA thermal at 85.930 GWh and the actual net thermal at 39.205 GWh was not in accordance with the LWRF Term Sheet and UCG is introducing a new methodology for

calculating the LWRP transfers. YEC added that the UCG submissions are outside of the scope of this proceeding and ignored the OIC 2021/16 requirements. YEC cited its responses in specific Information Requests (IRs).

10. As noted above, the scope of the Original Proceeding was a request for approval of the 2022 LWRP transfers, the 2022 LWRP balance at the end of 2022, and the 2022 ERA charge from YEC to AEY.
11. Based on the information on the record of the Original Proceeding, the Board considered the May 23, 2023 submission provided by UCG. The Board accepted YEC's evidence contained in its application and IR responses and the submissions in its reply, and it gave this evidence and submissions greater weight than the UCG submission for the reasons set out above.
12. By way of its Review Application, UCG is alleging that the Board erred in fact, law or jurisdiction because its "ruling does not comply with the direction in section 4 of OIC 2020/216". UCG argued that "[t]he ruling materially reduces ratepayers' future savings in the LWRP for variations including drought conditions causing more thermal usage in the amount of \$1.3 million to \$4 million".
13. In support of these allegations, UCG reiterated the information contained in its May 23, 2023 submission and argues that fuel costs in YEC's audited financial statements for 2022 differ from the \$15.788 million for 85,930,000 kW.h for forecast fuel usage in 2022.
14. UCG also referenced Board Order 2015-01 – Appendix A: Reasons for Decision regarding the Yukon Energy Corporation Simulated Integrated Model (YESIM) and submitted that "this renders the Term Sheet invalid and its corresponding results for the LWRP should be annulled."
15. UCG added that the various fuel costs used in different documents demonstrate that YEC "received more revenue for fuel from their revenue requirement in 2022 than what fuel was actually used".
16. No submissions were made in support of the allegation that the Board's process was unfair.
17. A Review Application is not an opportunity for a party to re-argue its submissions in the Original Proceeding because it does not agree with the outcome of the proceeding. The Board finds that, although framed slightly differently, UCG has made the same substantive arguments in its Review Application that are set out in its May 23, 2023 submission. As stated by the Board in Appendix A to Board

Order 2023-11: Reasons for Decision, the scope of the Original Proceeding was limited to consideration of the Term Sheet. Further, the Term Sheet was approved by the Board in Board Order 2022-07 and the Term Sheet complied with OIC 2021/16.

18. For these reasons, the Board finds that the Review Application has not substantiated on a prima facie basis that the Board committed an error of fact, law or jurisdiction or that its process was unfair. Although UCG argued that the errors in the decision have significant material implications, the Board rejects this submission, as the figures used in support of this allegation are not in accordance with the Term Sheet.
19. Accordingly, the Board dismisses UCG's Review Application.