

**IN THE MATTER OF YUKON
ENERGY LOW WATER RESERVE
FUND APPLICATION BEFORE THE
YUKON UTILITIES BOARD**

**APPLICATION BY YUKON UTILITIES CONSUMERS' GROUP (UCG) FOR REVIEW AND
VARIANCE OF BOARD ORDER 2023-11**

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I INTRODUCTION

In Appendix A to Order 2023-11 (Appendix A) regarding Yukon Energy Corporation's ("Yukon Energy" or "YEC") 2022 Low Water Reserve Fund Application, the Yukon Utilities Board ("Board" or "YUB") made the following decisions:

1. #20 The Board did not accept the UCG submission and calculation 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 the actual thermal generation and LTA thermal generation at the actual YIS load."
2. #21 Accordingly, the Board approves the LWRF report as filed.

UCG submits that the Board committed errors in fact or law or in jurisdiction when making these rulings, and that the process followed by the Board in making these rulings was unfair to the ratepayers.

Accordingly, pursuant to section 62 of the *Public Utilities Act*, RSY 2002, c. 186 ("Act" or "PUA"), UCG is applying to review and vary the above noted 2022 LWRF ruling.

II. THE REVIEW AND VARIANCE PROCESS

Section 62 of the Act gives the Board the unfettered discretion to review, change or cancel any decision or order made by it.

Without limiting the Board's discretion under section 62 of the Act, the Board's *Rules of Practice* provide further that the Board may consider reviewing and varying a Board Order on grounds of an error in fact or law or in jurisdiction, or "such other grounds as the Board may determine require a review". The review and variance procedure thus gives the Board the ability to correct any errors or oversights in its Orders, including factual, legal and jurisdictional errors. It also gives the Board the ability to receive and consider additional evidence or submissions to remedy any unfairness in its initial hearing process.

The Board uses a "two-phase system" for review and variance applications. The first phase is an "initial screening phase" where the application must establish a *prima facie* case sufficient to warrant full consideration by the Board. The Board will assess an application having regard to some or all of the following:

1. Should there be a review by the Board?
2. If there is to be a review, should the Board hear new evidence and should the parties be given the opportunity to present evidence?

3. If there is to be a review, should it focus on the items from the application for review, a subset of those items, or additional items?

The applicant must show that the claim of error is substantiated on a *prima facie* basis, and that the error has significant material implications. If there is a second phase, In the case of an alleged error, to advance to the second phase of the process, the then the Board will hear full arguments on the merits of the application. ¹

UCG submits that there is a *prima facie* case for the 2022 LWRF to be reviewed by the Board based on errors in fact, law, or jurisdiction, and based on procedural unfairness and that these errors have significant material implications.

III. GROUNDS FOR REVIEW AND VARIANCE APPLICATION Board Ruling Regarding Approval of 2022 LWRF Report as filed.

Summary Grounds for Review and Variance

A review by the Board ruling regarding the 2022 LWRF is warranted on the following grounds:

1. Error in law and in jurisdiction – The ruling does not comply with the direction in section 4 of OIC 2020-216 “After each financial year of Yukon Energy Corporation, the Board must review and approve the difference between the following:
(a) the amount of thermal generation h needed to meet actual customer requirements for the financial year as a result of any shortfall between the actual renewable generation and the actual customer requirements;

(b)the fuel costs for thermal generation that would have been needed to meet actual customer requirements for the financial year if renewable generation had been consistent with long-term average annual renewable source availability.
2. Error in fact – The ruling assumes, contrary to the evidence, that Yukon Energy Corporation has used the appropriate numbers in their Term Sheet evidence.
3. Materiality- The ruling materially reduces ratepayers' future savings in the LWRF for variations including drought conditions causing more thermal usage in the amount of \$1.3million to \$4 million.

Board Rulings

The Board also considered the following from the LWRF Term Sheet from YEC's compliance filing to Board Order 2022-03:

YEC thermal generation savings (excess)are calculated on an annual

¹ Yukon Utilities Board Rules of Practice, s. 31(1)(a), (b) and (f) [Board Rules].

bases 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.

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..., and Low Water Reserve Fund (LWRF) are also approved, effective August 1, 2022.

This decision does not say anything about the LWRF term sheet being approved on a go-forward basis, only for this specific application.

IV. Grounds for Review

1. We know that grid load, hydro generation and LTA thermal generation have increased significantly from 2018-2021. Please scrutinize this table. ²
2. We know that Yukon Energy received \$15.788 million for 85,930,000Kwhr. for forecast fuel usage in the 2022 year.³ It was part and parcel of the revenue requirement for each of the 2021 and 2022 test years.
3. *From the YEC audited Financial Statements for 2022 under #20 Operations and Maintenance Expense, YEC claims \$11.642 million for fuel.* ⁴
4. From the YEC 2022 Term Sheet for the LWRF Calculations, Expected Thermal in Rates reported to be 78,635,000 Kwhrs., line 16. ⁵ ; resulting in \$14.63 million.
5. From the June 2023 filing of the 2022 YEC Annual Regulatory Schedule to the Board, under Utility Expense as of December 31, 2022, Fuel is reported to have cost \$14.725 million.⁶
6. As UCG has noted before, Yukon Energy appears to use different numbers to represent different schedules as if to utilize the number that best benefits the utility for the prescribed schedule. This inconsistent reporting leaves questions on YEC reporting and regulation. So which one of these is the actual amount for fuel consumed and its resulting costs paid for by the ratepayer?
7. YEC rationalizes their rendition of ESTIMATED (see notes for L 14) LTA Thermal Calculations for line 14 Table 1.1 total grid load net of expected (also not actuals) Fish Lake and IPPs, then deducting O&M usage (i.e. uprates), applying this outcome to Table 2.1-1 GRA 2021 Application which is all assumed and forecasted from the YECSIM. ⁷
8. Board Order 2015-01 Appendix A Reasons for Decision p.14 states: "*However, if YEC is to continue to use the YECSIM model for forecasting, it has to make the model and its' results available for testing because as a public utility its' forecasts and rates proposals that are based on forecasts are subject to testing by interveners and the Board. Providing forecasts which can be tested is essential in setting rates.*"
9. The Board adds on p. 15: "*Whatever model YEC uses to determine LTA hydro generation, DCF calculations or forecast process, that model and its results, or other forecast process must be made available for testing.*"
10. This has never been done!

² Supporting Documents p.2-17 YEC 2021 General Rate Application

³ Order 2022-03 Yukon Energy Compliance Filing: Appendix 1.1-Supporting Table, p.1 1-1

⁴ Yukon Energy Corporation Notes to Audited Financial Statements, p.43

⁵ From line 16a of Term Sheet for 15,704,000 kWhr. yield \$3.22 million for diesel and line 16b for 62,930 kWhr. yielding \$11.4 million for a total of \$14.63 million.

⁶ YEC June 2023 filing, for the 2022 Regulatory Schedule for 2022, p.1

⁷ YEC 2021 Rate Application Table 2.1-1 Appendix 2.1 Note 2. The thermal generation and increase for the added load are based on a polynomial derived from the YECSIM-the simulation model developed for the Integrated grid.

11. Accordingly, UCG submits this renders the Term Sheet invalid and its' corresponding results for the LWRF should be annulled.
12. Regardless of what numbers are used from 2, 3, 4, or 5, these clearly demonstrate Yukon Energy received more revenue for fuel from their revenue requirement in 2022 than what fuel was actually used.
13. Accordingly, this money went into YEC profits rather than the low water deferral account for which #6 of the 2020 OIC and # 7 of same OIC states: "For each financial year of Yukon Energy Corporation, the Board must require YEC (a) to credit the low water deferral account by the amount of the difference in fuel costs for thermal generation approved under subsection (4), if actual renewable source availability is greater than long-term average annual resource availability;" specifically to benefit ratepayers from future drought periods.

V. Relief Requested

For the reasons given above, UCG requests that the Board place \$4.446 million (difference from audited financial statements) or \$1.158 (difference in term sheet reporting) or \$1.063 million (difference from YEC regulatory filing to Board) be added to the LWRF to be used for future ratepayer protection from drought years. It would appear to UCG as the audited version would be the most valid to be correct.