

UTILITIES CONSUMERS' GROUP

Box 9300
29 Wann Road
Whitehorse, Yukon Y1A 4A2
email: rroudeau@northwestel.net

December 21, 2011

Yukon Utilities Board
Box 31728
Whitehorse, Yukon Y1A 6L3

Attention: Deana Lemke, Executive Secretary

**Re: Consultation regarding the review and update of Yukon Utilities Board
Scale of Costs and Rules of Practice**

Dear Ms. Lemke:

1. The Utilities Consumers' Group (UCG) submits the following in response to the Board's request for comments on changes to the Scale of Costs and other provisions of the Rules of Practice.
2. In its November 8, 2011 letter, the Board indicated that the proposed changes to the Scale of Costs and the Rules of Practice are intended to update the Scale of Costs and bring the Rules into line with current practice of the Board. UCG submits that any changes should be based on the "best practices" for regulators.

General Comments

3. UCG submits that it should be made very clear in the Board's updated Scale of Costs and Rules of Practice that all conditions apply equally to the costs incurred by the utilities that can be recovered from ratepayers, not just the costs of intervenors.
4. UCG submits that any costs claimed by the utilities that are subsequently disallowed by the YUB should be considered unreasonable and therefore not recoverable from Yukon ratepayers. UCG submits that the utilities should be required to exclude these disallowed costs from its revenue requirement and only recover the costs from shareholders. UCG submits that the utilities must be instructed to make no allowance for these extra costs in present or future revenue requirements related to the services provided to Yukon ratepayers and to make transparent accounting entries showing the related credits. To recover disallowed costs through rates cancels the intention of a disallowance.
5. UCG submits that any hourly rates charged by lawyers and consultants above the fee allowed by the YUB should not be recovered from Yukon ratepayers since they should not be held liable for any costs above what the Board has already deemed a fair and reasonable contribution by ratepayers.
6. The significance of this over-charge issue was most recently displayed during the GRA Phase 2 proceeding where time charges for a particular lawyer were based on an hourly rate of \$675. This was 3 times the maximum rate allowed to be recovered from ratepayers, yet there appeared to be

2.

no follow up to ensure that these excess fees not recovered in a cost award were not recovered from ratepayers through base rates charged to Yukon ratepayers.

7. Since there is typically a considerable amount of utility staff time and resources dedicated to a regulatory proceeding, UCG submits that the utilities should specifically identify any time or costs associated with the efforts of their own staff. UCG submits that any costs incurred to support a regulatory proceeding (staff time, use of internal resources, overhead, etc.) should be identified and amortized over a 3-year period along with all other regulatory-related costs instead of expended in the year incurred.

8. UCG submits that the utilities should be required to provide detailed dockets of staff time spent on regulatory proceedings and the associated costs (including all internal resources and overheads) so that all regulatory proceeding-related costs are properly treated per the Board's policies. Once reviewed and agreed upon, these costs should be removed from the utilities' revenue requirement and amortized per Board policy.

9. UCG submits, since it is the ratepayer that pays for all the regulatory costs, including those of the Board, that transparency in these costs also become part of the overall cost award decision. Accordingly, the YUB should identify and separate all costs for Board members, staff, consultants, legal, transcription fees, meeting facilities, etc. Professionals of the Board should adhere to the same scale of costs as all other parties to the proceedings.

10. UCG submits that the Board should review how it conducts regulatory proceedings in order to reduce costs incurred by parties and charged to ratepayers. For example:

- the Board should look into the possibility of paying once for hearing transcripts and then making them available for downloading from its public web site at the end of each hearing day (or shortly thereafter) in order to avoid any duplicative costs for transcripts being incurred by multiple parties;
- courier costs be minimized by directing parties to make every effort to transfer materials electronically whenever possible to avoid unnecessary costs; and
- oral testimony of witnesses by teleconference rather than flying them in.

11. Parties should be reminded that submitted receipts need to be legible in all aspects. UCG submits that the Scale of Costs could be updated in this regard.

12. As is the case in most other jurisdictions, the Board should also consider identifying a utility intervening in another utility's application as generally ineligible for costs, unless this intervention is, in the discretion of the YUB, deemed for the benefit of their ratepayers.

Rules of Practice

13. The rules, generally, are straight forward. Accordingly, we have little concern here with the exception of the above bullets in #10 that should be identified.

14. As well, witness summonses (s.17) and employment of expert witnesses should be strengthened to entitle intervenor availability. This section of the rules should incorporate, that with approval from the Board, to issue summonses or hire an expert witness, the costs for such actions

will be recoverable through the cost awards application. A letter of comfort from the Board to the witness or expert would secure such personnel to research and effect testimony. The reason behind this is that if the occasion arises that an intervenor requests a summons (i.e. of a specific utility personnel, past or present or YEC/YDC board personnel, etc.) or an expert witness (for example, to speak in response to a specific rate of return methodology or cost of service methodology) , most intervenors do not have the up-front financial resources to pay for such.

Intervenor Costs

15. Any changes made to existing scales and rules should ensure that participation and funding is transparent, equitable, and certain for intervenors. UCG submits that the purpose of an intervenor cost regime is to permit representation for customers who have a significant interest in the outcome of an application, but either individually, or collectively, do not have the means to raise sufficient financial resources to represent their interests adequately.

16. UCG submits that while the costs of interventions are borne by all ratepayers, so, too, are the benefits shared by all ratepayers. Interventions of various ratepayer groups potentially benefit all customers through the proper and thorough testing of rate applications and facilities proposals.

17. UCG submits that the utilities should also be encouraged by the Board to voluntarily provide “participant support” when undertaking stakeholder consultations / workshops related to applications to the Board or Board recommendations. They could do this by:

- 1 Identifying the particular needs of and resources available to those participating.
- 2 Being aware of the type of input sought from interested persons.
- 3 Considering the availability of financial and human resources to the intervenors.

Scale of Costs – Hourly Rates

18. The Board circulated various tables which outline scales of costs currently being used by the Alberta Utilities Commission, the Ontario Energy Board, the British Columbia Utilities Commission and the Régie de l'énergie du Québec. UCG notes that the highest rates are Alberta and Ontario, while the lowest rates(which most similarly echo present YUB rates) is BCUC. The Quebec rates appear to be in the mid-range, therefore this would be the preference for the UCG.

19. While each of these jurisdictions distinguish the amounts allowed to be recovered by lawyers and consultants based on “years of practice”, UCG submits that it is not clear how the years of practice is actually measured. This is important to identify and categorize.

20. UCG notes that the BC Utilities Commission consider factors such as level of professional achievement, experience before regulatory tribunals, complexity of the issue, and overall contribution of the consultant in determining an appropriate cost award. UCG submits that the YUB should follow a similar transparent process that allows consultants to clarify their expertise and experience to the Board’s satisfaction.

21. The hourly rates awarded for technical workshops and collaborative processes should also be considered, with downward adjustments to reflect the context and the lower overhead associated

4.

with these processes.

22. UCG submits that the YUB should facilitate case management cost awards to be recovered by intervenor groups that do not have a large support staff to assist in regulatory proceedings. Case management is a necessary duty to give direction, ensure time lines are kept, coordinate and centralize focus, as well as tracking the history of all proceedings. The Boards' attachments indicate that other jurisdictions incorporates such provision.

23. We submit that provisions be made allowing intervenors who actively participate in hearings or intervenor representatives who attend hearings to advise legal consultants during hearings, the opportunity to recover these costs.

24. UCG submits that certainty of the rate to be earned in advance of the proceeding (i.e., at the time the intervention is accepted and cost eligibility is granted) is important. It is unfair to legal and energy consultants to find out after the proceeding is over that the claimed rate will only be reimbursed at a lower rate. The discretionary powers of the Board can be maintained through the time charged and effectiveness of the intervention.

25. UCG submits that only hourly rates only be incorporated into the Scale of Costs. UCG does not consider daily rates an effective mechanism.

Scale of Costs – Disbursements

26. From an overall travel cost perspective, UCG submits that airfare at economy rates or less remain the norm. UCG also submits that utilities and their consultants be directed to make use of teleconferencing and web-based meeting facilities for hearing preparation, rather than air travel and hotel accommodations to reduce the costs that Yukon ratepayers are being asked to pay. A cap on travel-related expenses may be required.

27. Accommodation and food costs should be voucher amounts, but have maximum allowable rates for one day prior and hearing days only. As such, UCG's preference for Meals (maximum allowable per day) would be \$49 and for Accommodation (maximum amount allowable per night) \$140. Taxi fares to and from airports as per voucher.

28. The Certificate of Permission to Act is specific to the proceeding for which a lawyer is seeking to recover costs. While a lawyer could not generally seek costs related to a general fee to be a member of the Yukon Law Society, the certificates are issued for each individual proceeding and therefore should be considered a disbursement related to that proceeding.

Cost Awards Policy

29. UCG submits that the Board make the following addendums to their Cost Awards Policy:

- i. a provision that the Board will outline, clearly, reasons for denying specific cost claims;
- ii. a provision that the Board will make a decision on cost claims within a reasonable

5.

time frame. Once final comment on cost claims have been submitted, UCG suggests that the Board commit to issue a decision on cost awards within 30 days; and

- iii. a provision that any respondent named in a costs order shall ensure that the amounts awarded to intervenors are received by the intervenors or their consultants within 30 days of being served with a copy of the costs order.

30. UCG respectfully request the Board design a draft revised Scale of Costs and Rules of Practice allowing further comments from all interested parties.

Please contact me directly if you have any questions regarding these submissions.

Yours truly,

Roger Rondeau
Utilities Consumers' Group