



# CITY OF WHITEHORSE

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December 30, 2011

Yukon Utilities Board  
Box 31728  
Whitehorse, Yukon Y1A 6L3

**Attention: Deana Lemke, Executive Secretary**

Dear Madam:

**Re: Review and Update of Yukon Utilities Board Scale of Costs and Rules of Practice**

Further to the correspondence of the Yukon Utilities Board (the "Board") dated November 8, 2011, the City of Whitehorse (the "City") submits the following comments with respect to the Board's review of its Scale of Costs and Rules of Practice.

As noted in its correspondence dated July 11, 2011 with respect to Board Order 2011-08, the City appreciates the opportunity to participate in proceedings before the Board and submits that its interventions assist the Board in making decisions in the best interests of all ratepayers. However, without the ability to recover its reasonably incurred costs, the City is finding its intervention in these proceedings cost prohibitive. The City submits that the current Scale of Costs is out of step with the market for legal and consulting services and that the Board should update its Scale of Costs to be more reflective of parties' actual costs in proceedings before the Board, as more particularly outlined below.

Professional Fees

The Board's current Scale of Costs, as set out in Schedule I of the Board's Rules of Practice, limits the maximum fee per hour of both legal counsel and consultants to \$225.00 including meals.

The City submits that the Board should adopt a Scale of Fees similar to the one established by the Alberta Utilities Commission whereby the hourly maximum fee for legal counsel is \$350.00 with \$320.00 for lawyers with 8 – 12 years of experience; \$280.00 for lawyers with 5 – 7 years of experience; \$240.00 for lawyers with 4 years or less experience. The City also suggests that the hourly maximum fee for a consultant is \$270.00, with \$230.00 for consultants with 8 – 12 years of experience; \$160.00 for consultants with 5 – 7 years of experience; and \$120.00 for consultants with 1 - 4 years of experience. The City submits that while these specified fees may not always provide full compensation to a utility or intervenor for amounts actually paid for legal services (for example, where a senior lawyer's hourly rate exceeds \$350.00), that such a scale would be more reflective of the current costs incurred by parties to access skilled professional assistance in regulatory proceedings. An increase of \$125.00 to the maximum hourly rate for legal counsel and an increase of \$45.00 to the maximum hourly rate for consultants is not significant at all when one considers that the current maximums were established by this Board over 16 years ago.

It is also our understanding that the Public Utilities Board of the Northwest Territories has approved legal fees for experienced legal counsel at \$350.00 per hour.

The City would also note that travel time, or a portion thereof, is allowed by other regulators<sup>1</sup>. The City pays its legal counsel and consultants ½ time for travel, which the City has excluded from its cost claims in recent proceedings in accordance with the Board's direction. The City submits that compensating professionals for a portion of the time necessarily incurred to travel to an oral hearing is appropriate and that the Board should revise its Scale of Costs accordingly.

### Disbursements

The City also wishes to note that in most of the other jurisdictions canvassed by the Board (where the regulator has established a scale of costs), professional fees recovered are exclusive of meals. Meal expenses incurred during attendance at an oral hearing are specified as allowed disbursements in Alberta (maximum of \$40 per day), Ontario and British Columbia (maximum of \$49 per day), Yukon Government staff are allowed a meal allowance of \$76 per day, while City staff are allowed \$53 per day. The City reimburses its legal counsel and consultants for reasonable costs incurred for meals during an oral hearing, but has excluded these costs from its cost claims in recent proceedings pursuant to the Board's direction. The City submits that such costs are necessarily incurred by those travelling from out of town to attend an oral hearing, and ought to be considered as recoverable disbursements. The City submits that the Board should revise its Scale of Costs and remove any reference to professional fees being inclusive of meals. Meal expenses should be allowed for persons attending an oral hearing, particularly for persons who are travelling from out of town.

In summary, the City submits the following revisions should be made to the Board's Scale of Costs:

1. A scale similar to that adopted by the Alberta Utilities Commission should be adopted for all professional fees incurred by a utility or intervenor. The scale should specify maximums for professionals of varying levels of experience, and the maximum amounts recoverable should be increased to be more reflective of current market rates.
2. Travel time at ½ professional rates should be recoverable for travel to and from oral hearings.
3. Reasonable meal expenses incurred during an oral hearing should be considered to be recoverable disbursements.

Sincerely,

**The City of Whitehorse**

Wayne H. Tuck, P.Eng.  
Manager - Engineering and Environmental Services

c Brian Crist, Director Operations

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<sup>1</sup> For example, in both Alberta and the Northwest Territories (per Decision 2007-15) professionals are entitled to recover ½ time for travel.