



July 17, 2007

Ms. Wendy Shanks, Chair
Yukon Utilities Board,
Box 31728
Whitehorse, YT Y1A6L3

Dear Ms. Shanks:

**RE: YUKON ENERGY CORPORATION APPLICATION FOR AN ENERGY
PROJECT CERTIFICATE AND AN ENERGY OPERATION
CERTIFICATE FOR THE PROPOSED CARMACKS-STEWART
TRANSMISSION PROJECT – INTERVENOR HEARING COSTS**

Pursuant to the Board's Hearing Cost Process Yukon Energy encloses comments regarding intervenor applications for hearing cost awards for the Yukon Energy Corporation Application for an Energy Project Certificate and an Energy Operation Certificate for the proposed Carmacks-Stewart Transmission Project.

Overview of Intervenor Applications for Hearing Cost Awards

Yukon Energy has received three intervenor cost claim forms totaling \$22,397.89 (including \$677.84 GST), as follows:

1. **Yukon Electrical Company Limited (YECL) for \$350.01 (including \$19.81 GST)**
 - a. The amount claimed reflects external legal fees, charged subject to maximum of \$225 per hour for professional fees as provided for in Board Rules of Practice (Order 1995-2).
 - b. YECL also states "If the Board should disallow all or a portion of the \$5,784.96 + GST cost claim submission relating to [their] participation [in] the 20 Year Resource Plan, Yukon Electrical respectfully submits that the disallowed portion of the \$5,784.96 be included with this cost claim".

2. **Utilities Consumers' Group (UCG) submitted claims for \$21,706.63 (including \$658.03 GST)**
 - a. **McMahon consulting fees: \$8,030.00 (no GST claimed)** reflects Patrick McMahon for 73 hours at rate of \$110/hour.
 - b. **Legal fees and expenses: \$5,943.45 in fees and expenses (plus \$301.63 in GST for a total of \$6,245.09)** this reflects 25.4 hours for Micheal Buonaguro's legal fees at \$170 per hour plus travel and disbursements.
 - c. **Rondeau consulting fees: \$5,940.00 (plus \$356.40 GST for a total of \$6,296.40)** reflects Roger Rondeau for 108 hour at \$55 per hour. UCG also provides the Board an "alternative" approach to suggest that if the Board only awards a non-professional rate for Rondeau's time (\$35 per hour) then UCG seeks to claim additional hours for Rondeau (in-house secretarial duties, etc.) that as a result ensure the cost claim is higher than if the \$55/hour proposed rate is applied (a total of 181 hours at \$35 per hour or \$6,335.00 plus \$380.10 GST, for a total of \$6,715.00).
 - d. **UCG internal expenses: \$1,138.15 in invoices for disbursements for transcripts, photocopying, long distance phone and fax, and "miscellaneous".**

3. **Yukon Conservation Society (YCS) for \$341.25 (no GST claimed)**
 - a. The full amount consists of non-professional fees of 9.75 hours at \$35 per hour.
 - b. No other expenses were charged.

Of the three, only YECL and UCG retained third party professional assistance (in each case limited to legal counsel) and provided evidence of costs for professional fees and expenses incurred. YCS and UCG consulting cost claims relate to both fees and expenses that represent non-arm's length services provided by one or more members of the group in question, by parties previously determined by the Board to be in a non-professional status, or by the individual intervenor themselves.

General Comments on Normal Rules for Intervenor Cost Recovery

Subject to normal restrictions as to eligibility (as noted below), Yukon Energy takes no issue with a proper claim for *reimbursement* to intervenors for legal counsel or 3rd party consultants hired and paid for by intervenors (or any reasonable disbursements incurred) as long as the intervenors have met the Board's stated criteria relating to efficient and responsible interventions, avoidance of duplication and non-reimbursements of costs related to a sole business interest.

The Board's key principles regarding reimbursement of costs for parties participating in a rate hearing are set out in Board Order 1995-2 including Schedule I; further information is provided in Exhibit A-15 of the Resource Plan (Yukon Utilities Board Hearing Cost Process and Board Order 2006-7 Appendix A). The Board has consistently evaluated fees and other costs based on criteria that include: effective and useful interventions;

relevance of issues raised; significant and sole interest; cooperation of intervenors; financial need; shared costs and alternate funding; and reasonably incurred costs. Board Order 2006-7, Appendix A states that "the Board will consider the value provided by the Intervenor. As the Board Order cited [2006-16] indicate, in the past the norm has been to allow Intervenor \$35/hr.; however, that does not mean that an Intervenor will necessarily receive \$35/hr" (page 2).

Based on the above normal rules for intervenor cost recovery, Yukon Energy submits that only YCS potentially qualifies for full recovery of costs claimed. Specifically in regards to the intervenors claiming recovery of costs:

1. **YECL:** As stated in Board Order 2005-16, "The Board recognizes that the cost of a utility intervening in another utility's proceeding would not normally be recoverable in other jurisdictions as it would represent intervention of a sole business interest." However, in that case the Board viewed YECL intervention as beneficial to ratepayers and not entirely in the sole interest of YECL. In assessing the cost claim, the Board evaluated 50% of YECL's legal fees claimed, of the 50%, YECL was awarded 60% of its legal fees.

In these proceedings, YECL's claim would appear to be based on representing broader consumer interest and not a sole business interest. However, YEC does not agree with YECL in their belief that costs not approved from the Resource Plan Hearing should be considered as part of this process. As previously stated in the Resource Plan Hearing intervenor cost review, approximately 45% of YECL's costs represented the period prior to the filing of the PPA. Fees for this period would not appear to be properly recoverable given YECL in the end elected not to participate in that proceeding, including failing to submit interrogatories or argument.

2. **UCG's costs** reflect three considerations as follows.
 - a. **Legal Counsel and Internal Expenses:** Fees for legal counsel and related disbursements would normally be recoverable, as would UCG internal expenses properly supported by invoices.
 - b. **Rondeau:** In assessing the claim for Rondeau's time, pursuant to the principles set out in Board Order 1995-2 Schedule I, the Board must determine what value the UCG and more particularly Rondeau added to the processes. Regardless as to this determination, there is no justification for Mr. Rondeau's hourly rate to increase beyond a maximum of \$35/hr, reflecting his non third party relationship and non-professional status, which is consistent with previous Board rulings (e.g. BO 2005-16). With respect to the "alternative" calculations for added Rondeau time at a lower rate as presented by UCG that result in greater cost claims despite a lower hourly rate, YEC submits that there is no basis for such claims which reflect hours that are not otherwise justified as compensable with respect to the current proceeding. This is of particular note given such time is not included in the cost claim under the first approach from UCG. Intervenor

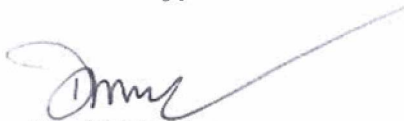
hours related to maintaining an organization or related secretarial functions (to the extent they represent a true investment of time) are not charged to regulatory hearings in any other cases including YCS and should not be so allocated by UCG.

- c. *McMahon*: The cost claim for McMahon represents the largest single intervenor cost item claimed in this proceeding (\$8,030 (no GST claimed), more than 26% above the second highest claim, which is Roger Rondeau). This claim is simply not justified because Mr. McMahon did not attend the hearings, provided no expert evidence, and as such UCG has not demonstrated to the Board support for any payment being made to Mr. McMahon especially since UCG had already secured the contributions of Mr. Rondeau and UCG legal counsel to their intervention. Finally, even if there was such evidence Mr. McMahon has previously been assessed by this Board in a non-professional status at \$35 per hour (and in the 2005 proceeding, when he participated at the hearing, was awarded only 45% of hours claimed).

3. YCS costs would normally be recoverable on all bases, subject only to the non-third-party aspect of the YCS staff costs claimed. In the 2005 hearing, YCS was awarded 95% of fees claimed.

If the Board or their staff have any questions, please contact me at (867) 393-5400.

Yours truly,



David Morrison
President & CEO