

**IN THE MATTER OF
the *Public Utilities Act*
Revised Statutes of Yukon, 2002, c. 186, as amended**

And

**An Application by Yukon Energy Corporation
for review of its
20-Year Resource Plan: 2006-2025**

And

**An Application by Yukon Energy Corporation
For approval of the Power Purchase Agreement (PPA)
Between Yukon Energy Corporation and
Minto Exploration Ltd.**

BEFORE: **W. Shanks, Chair) September 12, 2007**
 R. Hancock)
 M. Phillips)

BOARD ORDER 2007-07

WHEREAS:

- A. On June 5, 2006, the Minister of Justice required that the Yukon Utilities Board (YUB or the Board) carry out a review and hold a hearing on Yukon Energy Corporation's (YEC) 20-Year Resource Plan: 2006-2025 (Resource Plan) to address Yukon's major electrical generation and transmission needs.
- B. By Order 2006-7, the Board scheduled an oral public hearing to review the 20-Year Resource Plan, identified the Intervenors and Observers and set out a schedule for the proceedings.
- C. The following Intervenors were recognized by the Board in Order 2006-7:
 - Yukon Electrical Company Ltd. (YECL)
 - City of Whitehorse
 - Utilities Consumers' Group (UCG)
 - Yukon Conservation society (YCS)
 - Peter Percival (Percival)
 - Marsh Lake Local Advisory Council
- D. The Board held the public hearing on November 14, 15 and 16, 2006. The Board received evidence and submissions from YEC and Registered Intervenors. The Board forwarded its report with its recommendations on YEC's Resource Plan to the Commissioner in Executive Council on January 15, 2007.

- E. In accordance with YEC's commitment and the recommendations in the January 15, 2007, report, on February 9, 2007, YEC filed the finalized PPA for review and approval by the Board as a continuation of the 20-Year Resource Plan proceeding.
- F. In Board Order 2007-01, dated February 9, 2007, the Board established a procedural schedule for the PPA proceeding.
- G. In addition to the steps set out in the schedule, the Board also dealt with motions filed by some Intervenors. Board Order 2007-03 was issued regarding these motions. The record for the PPA proceeding closed on April 10, 2007.
- H. On April 30, 2007, the Board issued Board Order 2007-5, denying the application. The Board directed YEC to revise the PPA based on the Reasons and file the revision with the Board by May 31, 2007. The Board encouraged YEC to endeavour, by May 9, 2007, to reach an agreement in principle with Minto Exploration Ltd. (Minto) on the changes required by the Board in order for the Board to approve the PPA. The Board also encouraged YEC to advise the Board of the status of its discussions by that date.
- I. On May 14, 2007, YEC filed amendments to the PPA with the Board. This amended PPA was signed by representatives of YEC and Minto.
- J. The Board reviewed the filing and agreed that it met the intent of Board Order 2007-5. On May 25, 2007, the Board issued Board Order 2006-6 approving the amended PPA.
- K. At the conclusion of the substantive portion of the proceedings and pursuant to Section 56 of the *Public Utilities Act*, the Board requested applications for cost awards from the Applicant and Intervenors for the Resource Plan and the PPA proceedings.
- L. The Board received applications for cost awards as follows:
- YECL application for costs – May 25, 2007 (Resource Plan and PPA)
 - YECL application for costs – May 30, 2007 (follow-up letter to May 25, 2007, submission)
 - YCS application for costs – February 6, 2007 (Resource Plan)
 - YCS application for costs – May 30, 2007 (Resource Plan and PPA)
 - Percival application for costs – May 31, 2007 (Resource Plan and PPA)
 - UCG application for costs – February 15, 2007 (Resource Plan)
 - UCG application for costs – May 31, 2007 (Resource Plan and PPA)
 - YEC application for costs – February 13, 2007 (Resource Plan)

- YEC application for costs – May 31, 2007 (Resource Plan and PPA)
- M. The Board received comments on the applications for cost awards as follows:
- UCG comments re YEC'S cost claim – June 6, 2007
 - YEC comments re Intervenor cost applications – June 14, 2007
- N. Although in its July 19, 2007, correspondence to the Board, UCG raised concerns regarding YEC's not meeting deadlines for cost claims to be submitted to the Board, the Board confirms that all above applications and comments were received by the deadlines set by the Board.
- O. The Board has reviewed all applications for costs based on the criteria set out in the Scale of Costs [Schedule 1 of Board Order 1995-2 (the Rules of Practice)], the Hearing Cost Process document that was distributed at the August 30, 2006, Pre-Hearing Conference for the Resource Plan review, and Board precedents in Board Orders 1996-10, 2005-16, 2005-17, and 2006-7.
- P. On July 18, 2007, the Board requested clarification of Mr. Percival's cost application, which was provided by Mr. Percival on July 30, 2007.
- Q. On July 19, 2007, the Board requested further information regarding YEC's cost claim, which YEC provided July 31, 2007.
- R. Costs claimed by parties to a proceeding must be subject to stringent scrutiny. As provided for in the Scale of Costs, costs are generally awarded against a utility and charged to the customers of the utility through the utility's rates.
- S. After careful consideration, the Board has assessed the cost applications on the principles outlined above and has made adjustments as follows:
- Hourly rates under the Scale of Costs for both section 1, Professional Fees, and section 3, Intervenors, were assessed and adjusted with consideration to interventions of a general or non-specific nature and whether subject matter expertise and reasonableness was demonstrated and/or substantiated in cost applications. The cost applications of UCG legal counsel and UCG arm's-length consultant, Patrick McMahon, were deemed to fall under Section 1 of the Scale of Costs. The cost applications of YCS, UCG (Roger Rondeau), and Percival were deemed to fall under Section 3 of the Scale of Costs.
 - Adjustments were made based on the value of a party's contribution to the proceedings. The Board welcomes informed, effective and responsible intervention from Intervenors to test various aspects of an applicant's case, and cost awards are assessed on their own merits. The Board may disallow or reduce costs in some circumstances, based on the criteria outlined below. Pursuant to the Hearing Cost Process document of August 30, 2006, the Board will

grant a cost award for an amount higher than the Scale of Costs only in exceptional circumstances. As the Board noted in Section 3 (Costs) of Appendix A to Order 2006-7, an Intervenor could receive more or less than \$35/hr, depending on the degree to which the Board considers an intervention to be of value to the Board. As in past cost awards, adjustments in cost claims were made on the basis of the following criteria:

- the effectiveness of a party's participation,
 - the relevance of the participation to the issues,
 - whether costs of the party were reasonably and prudently incurred, and
 - the efficiency with which a party's position was presented.
- Pursuant to the Scale of Costs, the Board has not approved an attendance allowance for any of the Intervenors and has adjusted all cost applications accordingly.
 - As provided for in the Scale of Costs, the Board considered the awarding of costs where duplication was found to exist and limited cost awards in these instances.
- T. In the future, the Board encourages Intervenors to consider combining efforts to reduce duplication and costs to ratepayers, particularly in relation to sharing of the resources of hired legal counsel and consultants by Intervenors. The Board strongly encourages Intervenors to combine their efforts in hiring consultants with substantiated subject matter expertise (beyond general subject matter knowledge).

The Board has made determinations for costs to be granted to Intervenors as follows:

1. Utilities Consumers' Group

Cost applications were received for the UCG legal counsel from PIAC; from the UCG consultant, Mr. McMahon; and for Mr. Rondeau.

In considering the cost applications of both the UCG consultant, Mr. McMahon, and the UCG President, Mr. Rondeau, the Board finds that there appears to be a substantial amount of duplication in the items and subject areas billed for. Given that the Board has accepted that UCG hired a consultant, it only follows that a UCG representative would not be compensated for the same work done by the organization's hired consultant and that a UCG representative would not spend a substantial amount of time duplicating and/or reviewing the consultant's work. However, the Board realizes that some review is required by the UCG representative, Mr. Rondeau, and that Mr. Rondeau has general knowledge and non-subject matter expertise in similar areas as the hired UCG consultant, Mr. McMahon, and the Board has made allowances for this in considering the apparent overlap in billings and cost applications.

The Board also notes the UCG cost applications include a request for costs for general office overhead expenses for the UCG. The Board's cost award policy makes no allowance for the awarding of such costs and, as such, none have been awarded.

Roger Rondeau, UCG Consultant

Mr. Rondeau, President of UCG, filed two cost claim approaches for himself, although the Board did not request that two alternatives be filed for its consideration. As Mr. Rondeau's intervention falls under Section 3 of the Scale of Costs, Intervenors, the Board evaluated Mr. Rondeau's first alternative for both the Resource Plan and PPA proceedings. The Board did not consider it appropriate for UCG to advance an alternative claim of greater hours in the event the Board awards Mr. Rondeau a lower per hour fee than claimed. The Cost Award for Mr. Rondeau is adjusted to an hourly rate of \$35/hr. The Board considers that the intervention and Mr. Rondeau's involvement was of a non-specific nature, with no specific subject matter expertise demonstrated or substantiated in his cost application. The Board notes that this is consistent with its past Cost Award for Mr. Rondeau in Board Orders 2005-16 and 1996-10, and sees no further evidence or substantiation from Mr. Rondeau to justify changing this assessment.

Based on an assessment of the merit of the UCG contribution, and taking into consideration the duplication of work between Mr. McMahon and Mr. Rondeau, the Board has made reductions in the cost applications and awarded the following for Mr. Rondeau: 70% of hours billed after deducting the attendance for the Resource Plan proceeding and 80% of hours billed for the PPA proceeding.

A. 20-Year Resource Plan

First approach claim

20-Year Resource Plan:	248 hrs @ \$55/hr: \$13,640.00
GST:	\$818.40
Disbursements:	\$1,948.84

Award

Awarded hourly rate of \$35.

Deduct attendance time: 24 hours = 224

Deduct unsubstantiated disbursements: \$32.25

Award 70% of hours (224 x .7) = 156.80 hours x \$35/hr = \$5,488.00

GST:	\$329.28
Disbursements:	\$1,916.59

Total 20-Year Resource Plan Award: \$7,733.87

B. PPA

First approach claim

PPA: 85.5 hrs @ \$55/hr: \$4,702.50
GST: \$282.15
Disbursements: \$130.00

Award

Awarded hourly rate of \$35.
Award 80% of hours (85.5 x .8) = 68.4 hours at \$35/hr = \$2,394.00
GST: \$143.64
Disbursements: \$130.00

Total PPA Award: \$2,667.64

Mr. McMahon, UCG Consultant

The Cost Award for Mr. McMahon is adjusted to an hourly rate of \$35/hr. The Board sees that the intervention was of a non-specific nature, with no specific subject matter expertise demonstrated or substantiated in his cost application. While the Board accepts that Mr. McMahon falls within Section 1 of the Scale of Costs as being a consultant, the Board does not consider that the value provided by Mr. McMahon is commensurate with the hourly rate claimed. The Board also notes that the hourly rate of \$35 is consistent with its past cost awards for Mr. McMahon in Board Order 2005-16 and sees no further evidence or substantiation from Mr. McMahon to change this assessment. The Board has evaluated the cost applications of Mr. McMahon and the UCG President, Mr. Rondeau, with regard to merit and apparent duplication, and awards Mr. McMahon 90% of his hours billed for the 20-Year Resource Plan and 80% of hours billed for the PPA proceeding.

A. 20-Year Resource Plan

20-Year Resource Plan: 171 hrs x \$110/hr: \$18,810.00
GST (included)

Reduce hourly rate to \$35.
Award 90% of hours (171 x .9) = 153.90 hrs x \$35/hr = \$5,386.50
GST (included)

Total 20-Year Resource Plan Award: \$5,386.50

B. PPA

PPA: 117 hrs x \$110/hr: \$12,870.00

Reduce hourly rate to \$35.
Award 80% of hours (117 x .8) = 93.6 hours at \$35/hr = \$3,276.00

Total PPA Award: \$3,276.00

Michael Buonaguro, PIAC — UCG Legal Counsel

Mr. Buonaguro claimed an hourly fee of \$170 which appears to be based on his years of experience in relation to the maximum hourly rate of \$225 in the Scale of Costs. The Board finds that Mr. Buonaguro's involvement was helpful to the UCG and made for a more effective intervention.

A. 20-Year Resource Plan

20-Year Resource Plan: 95.1 hrs x \$170/hr:	\$16,167.00
Disbursements:	\$ 2,251.04

Award 100% of hours: 95.1 hrs x \$170/hr:	\$16,167.00
Disbursements:	\$ 2,251.04

Total 20-Year Resource Plan Award:	\$18,418.04
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B. PPA

PPA: 40.7 hrs x \$170/hr:	\$6,919.00
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Award 100% of hours: 40.7 x \$170/hr =	\$6,919.00
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Total PPA Award:	\$6,919.00
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2. Yukon Electrical Company Ltd.

The Board found the intervention of YECL to be representing the broader consumer interest and was not a sole business interest. The Board accepts that the costs YECL incurred prior to its withdrawal as an Intervenor from the 20-Year Resource Plan proceeding were reasonably incurred. The Board accepts the reasoning put forward by YECL regarding its rationale for withdrawing from the 20-Year Resource Plan proceeding and, therefore, accepts that the costs incurred to arrive at this decision were prudent. The Board further acknowledges that YECL's decision to withdraw resulted in potential savings to ratepayers.

The Board awards full costs, as applied for.

A. 20-Year Resource Plan

20-Year Resource Plan:	\$5,040.00
GST:	\$ 302.40
Disbursements:	\$ 744.96

Total 20-Year Resource Plan Award:	\$6,087.36
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B. PPA

PPA: \$7,012.42
GST: \$ 420.74

Total PPA Award: \$7,433.16

3. Peter Percival

The Cost Award for Mr. Percival is adjusted to an hourly rate of \$35/hr under Section 3 of the Scale of Costs. The Board sees that the intervention was of a non-specific nature, with no specific subject matter expertise demonstrated or substantiated in his cost application. The Board notes that this is consistent with its past cost awards for Mr. Percival in Board Order 2005-16 and sees no further evidence or substantiation from Mr. Percival to change this assessment. The Board considered Mr. Percival's intervention useful. However, his cost application included 12 hours for attendance fees (4 hours for the 20-Year Resource Plan, and 8 hours for the CSTP proceeding) which were disallowed according to the Board's Rules of Practice. In addition, as the Scale of Costs indicate, there will be no reimbursement for travel costs for local participants. Therefore, travel from Cowley Creek is disallowed.

A. 20-Year Resource Plan

20-Year Resource Plan: 6.8 hrs x \$125/hr: \$850.00

Awarded hourly rate of \$35.

Award 2.8 hrs x \$35/hr: \$98.00

Total 20-Year Resource Plan Award: \$98.00

B. PPA

PPA: 86.75 hrs x \$125/hr: \$10,843.75

Disbursements: \$24.70

Awarded hourly rate of \$35.

Award 78.75 hrs x \$35/hr: \$2,756.25

Total PPA Award: \$2,271.50

4. Yukon Conservation Society

The Cost Award for YCS has been assessed under Section 3 of the Scale of Costs. The Board sees that the intervention was of a non-specific nature, with no specific subject matter expertise demonstrated or substantiated in its cost application. The Board accepts the hourly rate of \$35, as claimed.

A. 20-Year Resource Plan

20-Year Resource Plan: 127 hrs \$35/hr = \$4,445.00

Deduct Attendance hours: 48.5 hrs (127 - 48.5 = 78.50)
Award 78.50 hrs x \$35/hr = \$2,747.50

Total 20-Year Resource Plan Award: \$2,747.50

B. PPA

PPA: 23.5 hrs \$35/hr = \$822.50
Award 23.5 hrs x \$35/hr = \$822.50

Total PPA Award: \$ 822.50

5. Yukon Utilities Board

A. 20-Year Resource Plan

Total 20-Year Resource Plan: \$151,922.02

B. PPA

Total PPA: \$ 51,364.30

The Yukon Utilities Board's costs with respect to the 20-Year Resource Plan and the PPA are costs that more appropriately belong to the utility, and ultimately the utility ratepayers than to the Yukon taxpayer. Therefore, all hearing-related costs of the Board are allowed as utility regulatory costs.

The Board directs an award of costs to the Government of Yukon in the amount of **\$203,286.32**.

Applicant Costs

Yukon Energy Corporation

YEC submitted a cost claim as follows:

20-Year Resource Plan:	\$473,688.29
PPA:	\$189,014.74

Intervenors have expressed that for this proceeding “legal counsel and consultants used by the Applicant should be subject to the maximum fee of \$225/hr as per Schedule 1.” Intervenors made no such request in previous cost claim processes. The Board finds the request appropriate and adjusted the YEC application to this maximum hourly fee of \$225/hr. YEC is instructed to make no allowance for the extra unclaimable fees in present or future revenue requirement.

On July 18, 2007, YEC was requested by the Board to provide detail on travel. This was provided on July 31, 2007. UCG’s cost application included a question regarding whether travel was booked at economy rates. YEC’s breakdown verifies that all travel was incurred at economy rates. The Board finds that the expenses claimed were prudently incurred.

The Board approves YEC’s costs, as submitted.

A. 20-Year Resource Plan

20-Year Resource Plan:	388.15 hours x \$225/hr=	\$87,333.75
Disbursements:		\$363,757.54

Total 20-Year Resource Plan Award:	\$451,091.29
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B. PPA

PPA:	200.60 hours x \$225/hr=\$	45,135.00
Disbursements:		\$123,371.24

Total PPA Award:	\$168,506.24
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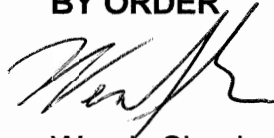
NOW THEREFORE the Board orders as follows:

Yukon Energy Corporation shall pay the following amounts to parties identified and that such payments shall be forthcoming within 30 days of the issuance of this Order. All hearing costs shall be recorded in a Hearing Reserve Account. YEC shall include in its next GRA a proposal as to the appropriate dispensation of the Hearing Reserve Account and a proper allocation of the costs in the account to the different rate classes.

YECL	\$ 13,520.52
UCG	\$ 44,401.05
YCS	\$ 3,570.00
Percival	\$ 2,469.50
Government of Yukon	<u>\$203,286.32</u>
Total Cost Awards:	\$267,247.39

DATED at the City of Whitehorse, in the Yukon Territory, the 25th day of September 2007.

BY ORDER



Wendy Shanks
Chair