

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

and

**General Rate Application for 2008-09 by
Yukon Energy Corporation**

BEFORE: W. Shanks, Chair) December 7, 2009
 K. Avery)
 J. Woodland)

BOARD ORDER 2009-11

WHEREAS:

- A. Pursuant to Section 56 of the *Public Utilities Act* (Act), the Yukon Utilities Board (Board) may “order to whom or by whom any costs incidental to any proceeding before the Board are to be paid and may fix the costs to be paid”;
- B. On October 6, 2008, Yukon Energy Corporation (YEC) filed with the Board an Application, pursuant to the *Public Utilities Act* and Order-In-Council 1995/90, requesting an Order approving forecast revenue requirements for the 2008 and 2009 test years of \$29.217 million for 2008 and \$31.599 million for 2009 (General Rate Application or Application);
- C. On December 19, 2008, the Minister of Justice authorized the Board to incur the expenses necessary to conduct a public hearing into the Application, pursuant to Section 50 of the Act;
- D. The Board held a pre-hearing conference on January 7, 2009 in Whitehorse;
- E. On January 20, 2009, the Board issued Order 2009-1 which, among other matters, established the issues list for the proceeding and granted intervenor status to:
 - a. Yukon Electrical Company Limited (YECL)
 - b. City of Whitehorse
 - c. Utilities Consumers’ Group (UCG)
 - d. John Maissan
 - e. Peter Percival
 - f. Erin Giesbrecht
 - g. Laura Cathers;

- F. On May 5, 2009, the Board held an oral public hearing in the City of Whitehorse, Yukon. The Board notes that although Peter Percival, Erin Giesbrecht and Laura Cathers were granted intervenor status, they did not participate in the hearing;
- G. The Board considered the extensive evidence and the written argument and reply of the parties respecting the Application;
- H. On September 8, 2009, the Board issued Board Order 2009-8 with Appendix A, Reasons for Decision;
- I. Subsequent to the release of Board Order 2009-8, the Board reminded parties respecting the filing of applications for cost awards;
- J. The Board received applications for cost awards from:
 - a. City of Whitehorse
 - b. UCG
 - c. John Maissan
 - d. YECL
 - e. YEC;
- K. The Board received comments on the applications for cost awards from City of Whitehorse, UCG, and YECL;
- L. In its correspondence to the Board dated October 14, 2009, UCG stated that the YEC claim for costs did not have supporting documentation attached and that UCG could not make effective comments on the reasonableness of YEC's cost claim without the documentation. UCG requested that the Board, in accordance with the *Intervenor Costs Award Policy*, direct YEC to file copies of all receipts, vouchers, invoices and time logs pertaining to all costs identified in YEC's cost claim, and extend the time for comments on these costs. The Board allowed for a response from YEC to the request and for a reply by UCG. After considering the request and submissions, the Board directed YEC to file the supporting documentation to its hearing costs submission and granted an extension of time for comment on the YEC cost claim.
- M. The Board has reviewed all applications for costs and comments of the parties based on the criteria set out in Schedule 1 to the Yukon Utilities Board *Intervenor Costs Award Policy* (Scale of Costs), established by section 33 of the Board's Rules of Practice, Board Order 1995-02 dated November 10, 1995, as well as, the principles relating to cost awards set out in previous Board Orders, in particular, Appendix A to Order 2007-6, and Orders 2005-16, 2005-17 2007-7, 2007-8, 2007-9 and 2009-06;
- N. However, the Board did not review any replies from parties to other parties' comments with respect to their cost claims, as these were unsolicited and the cost process is not a reiterative process. An application for costs must supply all necessary information in relation to the costs claimed;

- O. Costs claimed by parties are subject to stringent scrutiny by the Board, as costs are awarded against a utility and charged to the customers of the utility through the utility's rates;
- P. After careful consideration, the Board has assessed the cost applications on the principles outlined above and has made the adjustments set out below.

Therefore, the Board awards costs as follows:

INTERVENOR COSTS

1. City of Whitehorse

City of Whitehorse Claiming:

Brownlee LLP (Fees, Disbursements and GST)	\$50,438.36
Garbutt Consulting Inc. (Fees, Disbursements and GST)	\$34,870.24
Total Costs Claimed	\$85,308.60

Comments

The City of Whitehorse was represented by Mr. Tom Marriot of Brownlee LLP (Brownlee), legal counsel, and Mr. Greg Garbutt and Mr. Keith Dannacker of Garbutt Consulting Inc. (GCI), technical and regulatory analysts.

In its cost claim application, the City of Whitehorse confirmed that pursuant to the Scale of Costs, legal counsel and consultants are allowed a maximum hourly rate of \$225, and noted that this rate has been in effect for all hearings commencing on or after September 1, 1995. The City of Whitehorse used a rate of \$250.00 per hour for both legal and consulting services arguing that the rates in the Scale of Costs are out of date "in light of inflation over the past 13 years" and as rates in the Scale of Costs are "considerably lower than rates routinely recovered through Alberta rates". Also, the City of Whitehorse stated that it was not basing its request for the increased fees on the complexity of the YEC 2008-09 General Rate Application.

In its letter of October 26, UCG submitted that, at a minimum, a total of \$18,284.44 should be disallowed from the City of Whitehorse's cost claim for professional fees above the Scale of Costs. In addition, UCG asked the Board to disallow from the legal fees claimed the hours spent preparing briefs for City Council because it was not prudent, in that it did not appear to result in any specific direction to Brownlee LLP nor did it contribute to the Board's decisions in this proceeding. Also, UCG submitted that participants are not entitled to recover professional fees for travel time to the pre-hearing and hearing. Regarding disbursements, UCG further submitted that disbursements for meals, printing, photocopying costs, file duplication, scanning, postage and parking mileage should be disallowed for the following

reasons. UCG argued that such disbursements were not substantiated as being reasonably and necessarily incurred, some disbursements were included in normal overhead costs and some disbursements were not recoverable under the Scale of Costs.

The Board notes that it has the discretion to award costs at a rate higher than that expressed in the Scale of Costs in cases where the cost applicant makes a persuasive argument that the level of consumer contribution is inadequate given the complexity of the case. In this case, the City of Whitehorse clearly stated that its request for a higher rate is not based on the complexity of the YEC 2008-09 General Rate Application. The Board does not accept the arguments of the City of Whitehorse. The Board applies a professional fee of \$225 per hour in keeping with the Scale of Costs.

Regarding the hours submitted by Whitehorse for professional services rendered by Mr. Marriott of Brownlee, the Board denies the claim for costs of 11 hours of Mr. Marriott's time used to travel to the pre-hearing and hearing even if the time was charged at ½ the hourly rate. The Scale of Costs does not provide for travel time. Likewise, the Board denies the claim for costs of 9.75 hours of Mr. Garbutt's time used to travel to the pre-hearing and hearing.

Also, the Board disallowed 18.5 hours of K. Kellgren at \$90.00 and 2.25 hours for A. Preda at \$ 200.00 as these costs were not substantiated in the cost application. No explanation was provided as to the qualifications of these persons and reasons for using their services. In addition, the Board denies the 7.5 hours spent by Mr. Marriott preparing and revising briefing notes to the Council of the City of Whitehorse as these hours did not add value to the proceeding and were not prudently incurred because time was claimed for discussions with staff from the City.

Regarding disbursements, the Board notes that the Scale of Costs specifically mentions that the hourly professional fee includes all meals, and section 2 states that meals and other charges are excluded under the category of "disbursements". Accordingly, meal expenses claimed by Brownlee LLP and the GCI under disbursements are denied. Also, section 2(c)(2) of the Scale of Costs provides a fee of \$0.10/copy while Brownlee LLP charged \$0.30. Therefore, photocopying fees were reduced. The Board disallowed all costs for paper, printing, file duplication, parking not related to hearing travel, and mileage for meetings.

In summary, the Board awards costs to Whitehorse as follows:

Legal Services Provided by Brownlee LLP:

Legal Fees: (162.05 hours– 18.5 hours) x \$225	\$32,298.75
Disbursements: \$5,368.49 – \$871.33	\$4,497.16
GST	\$1,839.80

Consulting Services Provided by GCI:

Professional Fees: (122.75 hours – 9.75 hours) x \$225	\$25,425.00
Disbursements : \$2,522.26 – \$132.80	\$2,389.46
GST:	\$1,390.72

Total Costs Awarded to the City of Whitehorse:	\$67,840.89
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2. UCG

UCG Claiming:

Legal Services Provided by PIAC

Legal Fees	\$12,307.50
Disbursements	\$5,564.36
GST	\$893.50

Consulting Services Provided by P. McMahon

Professional Fees	\$13,450.00
Disbursements	0
GST	\$672.50
Total Costs Claimed	\$32,887.86

Comments

UCG was represented by Mr. Michael Buonaguro, legal counsel from PIAC and Mr. Patrick McMahon, consultant. In its cost award application, UCG submitted that Mr. McMahon was a skilled consultant with relevant general knowledge of the industry and an extensive background in the history of the Yukon energy sector in support of the requested rate of \$50.00 an hour.

The Board finds that Mr. Buonaguro's professional fees were reasonable and accepted as submitted. However the Board has reduced from his disbursements the costs related to his certificate for permission to act of \$471.59 plus \$23.50 of related GST as these disbursements are not allowed under the Scale of Costs.

Regarding the consulting services of Patrick McMahon, the Board has chosen to exercise its discretion provided for in the Scale of Costs to reduce the hours submitted by Patrick McMahon by 25%. The reasons for the reduction are as follows. The Board finds that the preparation hours claimed by Patrick McMahon were not reasonable in light of the intervention presented by UCG and the issues raised by the Application. As a result, some of the fees claimed were not prudently incurred. Furthermore, although fees for attendance for Patrick McMahon were not claimed, Patrick McMahon claimed time on hearing days to review the transcript. The Board determined that this time claimed added little value to the proceeding.

In summary, the Board awards costs to UCG as follows:

PIAC	
Professional Fees	\$12,307.00
Disbursements: \$5,564- \$471.59	\$5,092.41
GST	\$869.97
Patrick McMahon (216 hours – 54 hours)x \$50.00	\$8,100.00
GST	\$405.00
Total Costs Awarded to UCG:	\$26,774.38

3. John Maissan, Resident of City of Whitehorse
Mr. John Maissan, Resident of City of Whitehorse, claiming:

Consulting	\$4,768.75
Disbursements	\$1,630.34
GST	\$238.44
Total Costs Claimed	\$6,637.53

Comments

Mr. Maissan's cost application was evaluated as that of an intervenor under section 3 of the Scale of Costs and the applied for costs are being considered on the basis that he is a resident of the City of Whitehorse. In his cost application, Mr. Maissan states that he is a registered professional engineer in the Yukon and has held senior engineering positions with Yukon Energy for about 14 years. He added that he has a broad familiarity with the regulated electrical utilities of the Yukon and their technical issues.

Regarding the hourly rate applicable to Mr. Maissan's cost claim, under the Scale of Costs, the Board has the discretion to set the hourly rate for intervenors, taking into account the value of the intervention in helping the Board come to its decision. The Board found Mr. Maissan's submissions to be useful in addressing a number of the issues before the Board in this Application. Based on the quality of Mr. Maissan's intervention in this particular proceeding and considering the issues raised by this Application, the Board has chosen to exercise its discretion and adjust Mr. Maissan's hourly rate to \$50 an hour. The Board notes, however, that each intervention is evaluated on an individual basis and the hourly rate awarded in this instance does not constitute a guarantee that future interventions will be valued at the same rate. The Board reduced the number of hours claimed by 5 hours as attendance for participation in the YEC workshop and at the pre-hearing are excluded from the Scale of Costs for cost claims considered under section 3 of the Scale of Costs.

In summary, the Board awards costs to Mr. Maissan as follows:

Under Scale of Costs section 3:

John Maissan fees (136.25 hours-5 hours) x \$50.00	\$6,562.50
GST	\$328.13
Disbursements (including GST):	\$1,630.34
Total Costs Awarded to Mr. Maissan:	\$8,520.97

YECL

YECL Claiming:

Bennet Jones LLP	\$34,110.00
Disbursements	\$2,556.00
ATCO Electric - Disbursements	\$1,828.53
YECL - Disbursements	\$1,820.71
Total Costs Claimed	\$40,315.24

Comments

YECL retained Bennett Jones LLP to represent it in this proceeding and the professional fees were charged at \$225.00 an hour. Disbursements were claimed by Bennett Jones LLP, ATCO Electric and YECL.

In its letter of October 26, 2009, UCG submitted that, at a minimum, the Board should disallow a total of \$1,467.45 from the cost claims related to costs incurred by YECL prior to October 6, 2008, the date of the filing of the Application. In addition UCG asked that the Board disallow some of the travel costs claimed because these were not substantiated, for example in its February 20, 2009 invoice, Bennett Jones charged YECL for 3 flights to Whitehorse; however, there were no invoices provided for any of the travel expenses (\$1,274.43 + \$57.47 GST) identified on this invoice. Also, UCG submitted that service fees and meals should be disallowed.

Regarding the professional fees, the Board finds that the fees claimed relate to the Application based on the invoices submitted in support of the costs claimed. The Board accepts the hours claimed as reasonable and is of the view that YECL's participation added value to the proceeding. Regarding YECL's disbursements, the Board notes that section 2 of the Scale of Costs does not allow for the claiming of meals. The Board denies the claim for these costs.

In summary the Board awards costs to YECL as follows:

Legal Services provided by Bennett Jones:

Professional Fees:	\$34,110.00
Disbursements:	\$2,556.00
ATCO Electric-Disbursements:	\$1,785.71
YECL-Disbursements:	\$1,788.00
Total Costs Awarded to YECL:	\$40,239.71

APPLICANT COSTS

YEC

Davis & Company (revised 10/11/09)	\$90,947.75,
Disbursements	\$11,121.50
InterGroup Consultants	\$468,117.25
Disbursements	\$39,851.08
MP Consulting	\$4,590.00
YEC- Misc. Supplies & Services	\$ 31,034.37
Total Costs Claimed	\$ 645,661.95

Comments

YEC stated that, as in past GRAs and recent regulatory processes, it retained Davis LLP as legal counsel with P. John Landry providing the majority of the

legal services required. It added that Davis LLP provided assistance to YEC in relation to the preparation, filing and review of its Application and that the professional fees in the cost award application for legal services do not exceed \$225./hour. The hours claimed are 333.21 for preparation, 27 for hearing attendance, and 49.50 for argument, reply and follow up.

YEC submitted that it retained InterGroup Consultants Ltd. (InterGroup), who acted as primary regulatory consultants, and MP Computing. It added that InterGroup assisted YEC with the preparation of the filing and the review process before the Board. Also, YEC explained that InterGroup produced preliminary and final drafts of the Application materials and provided professional services for production of final documents. In addition, InterGroup was involved in responding to interrogatories and preparation and filing of the April 24 Update Filing and the hearing. InterGroup claimed professional fees for Cam Osler, Patrick Bowman and Mona Pollitt-Smith, as well as related analyst and support time and production staff. The hours claimed are 3,961, hearing attendance 82.50, and 351.75 for argument, reply and follow up.

YEC stated that MP Computing provided accounting consultation of approved depreciation rates against forecast capital spending during the test years. Fees were incurred for 20.4 hours at \$225.00 an hour.

YEC claimed in total \$82,006.95 in disbursements. YEC referred to Reasons for Decision in Board Order 2008-1 to support its claim for travel costs related to the preparation of its Application. YEC stated that that the Board had allowed for such costs in that case because “the Board was satisfied that YEC had not made provisions for these costs in its revenue requirement”.

UCG submitted that YEC failed to provide the additional information, as directed by the Board in its letter of November 6, 2009 and YEC did not comply with the Board’s Intervenor Costs Award Policy. UCG added that the YEC did not submit an affidavit of claims for costs.

More specifically, UCG noted the lack of retainer letters providing a description of the areas on which the lawyer or consultant was engaged to contribute in the proceeding. UCG submitted that, without information that would be set out in retainer letters, Yukon ratepayers should not be liable for some of the costs charged by Davis LLP and InterGroup. It argued that the Board should at a minimum disallow \$56,719.69 plus \$2,835.98 in GST from the YEC claim, as well as, \$54,913.78 plus \$2,745.69 in GST from the Davis LLP as the time charged to YEC was above the maximum hourly rates in the Scale of Costs. Also, UCG pointed to the lack of detail in the Davis LLP invoices respecting some of the individuals who provided professional services and the breakdown of when the time charges were incurred in January, February and June 2009. As a result, these time charges should be disallowed.

UCG further submitted that YEC should provide detailed dockets of staff time spent on the Application and the associated costs so that all GRA-related

costs are properly treated in accordance with the Board's policies.

Also, UCG identified a number of travel related costs that it submitted that the Board should not allow these costs if YEC has not provided supporting vouchers for some of these expenses. In addition, UCG argued that some of these costs were not related to the Application but to rationalization discussions with ATCO during this period and it provided a timeline of these discussions. Also, UCG submitted that the Board should disallow \$ 3,301.88 plus \$165.09 in GST for meals and incidentals as the Scale of Costs does not cover such expenses. With respect to witness training, UCG submitted that insufficient detail was provided respecting this expense.

UCG further submitted that the Board should disallow secretarial, administrative support and clerical fees claimed by InterGroup as these costs are included in the hourly fees paid to consultants, as stated in the Scale of Costs. As a result, it asked that \$ 10,683.75 plus \$ 534.19 in GST be removed from the YEC cost claim. UCG argued that, based on the breakdown of the efforts of individual staff members from InterGroup, there was significant evidence of duplication between the work of these employees and the Board should reduce the hours claimed.

In its letter of November 17, 2009, YECL commented that YEC, without consultation with YECL, chose to bring forward Phase 2 rate matters as part of its Application. Also, it noted that YECL had incurred \$285,438.37 of costs and was awarded \$199,960.66 which included costs for a depreciation study and a capital structure and return on equity study. YECL submitted that a number of the areas of cost claimed by YEC clearly do not appear to qualify for cost recovery but that these are small "when compared to the sheer magnitude of the difference in underlying preparation costs incurred by the respective utilities".

The Board has some general comments regarding the YEC cost application. First, YEC should have filed its supporting information for the professional fees and disbursements claimed at the time it filed its cost application, as it was well aware that the Board scrutinizes an applicant's costs as closely as it scrutinizes intervenor costs. Second, the lack of detail in the description of the time charges for Davis LLP made it more difficult to assess the prudence and reasonableness of the legal fees and of all the fees related to the Application. The Board notes that legal counsel for the intervenors provided details regarding their time charges. Third, the Board notes that the use of other personnel of Davis LLP in addition to Mr. Landry was not explained and their qualifications were not provided. Fourth, InterGroup claimed professional fees for a large number of persons. From the detailed time sheets submitted, the Board determined there was duplication in the services provided by the various analysts. In addition, InterGroup claimed professional fees for support staff and production staff. Fifth, the supporting documents for the disbursements claimed were not organized and, seeing the large amount claimed, it was difficult to ascertain in a number of cases, who incurred the costs and the reason for it, which costs were allowed by the Scale of Costs, and the disbursements that were unsupported.

The Board considered the costs claimed in light of the Application. The Board finds that it was not reasonable or prudent for YEC to focus at least 30% of the Application on Phase 2 rate matters. The Board had made it clear in numerous letters that Phase 2 rate matters would be dealt with in a separate application. The inclusion of Phase 2 rate matters resulted in an inefficient proceeding. Therefore, the Board in the exercise of its discretion reduces the professional fees claimed as set out below.

Regarding the professional fees claimed by Davis LLP of 331.21 hours for preparation, the Board found they were not reasonable considering the lack of detail in the Davis LLP time sheets and that YEC in its costs award application only provided a generic description of the legal services provided at the preparation stage. As noted above, no explanation was provided as to the other personnel from Davis LLP providing services. Therefore, as these costs were unsubstantiated, the 2 hours claimed are denied. As a result, the Board reduces the hours claimed to 405.21 by Davis LLP. Also, considering that the Application contained Phase 2 rate matters, these hours are further reduced by 15%.

Regarding the disbursements for Davis LLP, the Board has reduced the amount for photocopying to \$0.10 a copy in accordance to the Scale of Costs and disallowed any charges for office supplies and other services. The Board has disallowed meals. Disbursements for travel expenses for meetings other than travel to the pre-hearing and hearing are addressed below.

The Board has disallowed the fees claimed by InterGroup for administrative services including clerical, administrative and production staff because under the Scale of Costs, administrative services are considered part of the overhead charges implicit in the normal operation of a professional office. Therefore, such costs are included in the hourly fee paid to a professional under section 1 of the Scale of Costs. Accordingly, the Board denies the hours included for administrative support.

In addition, the Board disallows the professional fees of any analysts other than Cam Osler, Patrick Bauman and Mona Pollitt-Smith, as no explanation was provided for having additional staff preparing the Application, these fees were unsubstantiated. Also, from the time sheet description of services provided by Cam Osler, Patrick Bauman and Mona Pollitt-Smith, the Board finds that there was duplication in the services provided. Furthermore, the Board will not award costs for time spent on issues relating to Phase 2 rate matters as set out in the reasons above. The Board emphasizes that the time spent on these issues did not add value to the proceeding, as it hindered the efficiency and effectiveness of the proceeding. As a result, the Board further reduces the InterGroup professional fees by 25%.

With respect to disbursements, the Board in the past has exercised its discretion by allowing for the recovery of travel expenses claimed by a utility for the preparation of its application if these costs were reasonable. The

Board has reviewed the travel costs for meetings claimed by Davis LLP, InterGroup and YEC, which amount to \$47,542.94. The Board finds that the costs related to meetings are excessive and unreasonable, even after deleting meal costs and incidental expenses which cannot be recovered under the Scale of Costs. Further, the Board finds that YEC has not supported the need for all the meetings that occurred and for the attendance of the various participants at those meetings. As a result, the Board reduces the travel costs claimed by Davis LLP, InterGroup and YEC for such meetings by one-half.

In addition, the Board disallows all disbursements related to the witness preparation session as the need for such a session was not substantiated and the Board finds these expenses were not prudent or reasonable based on the following. The witnesses for YEC in the Application are experts and have appeared before the Board on numerous occasions. Also, YEC had experienced counsel to guide and prepare its witnesses. Furthermore, the Board highlights the invoice for a facilitator for the two-day session. YEC paid \$ 8,500.00 U.S. to M J Solutions, Inc., a Florida based company, and another \$1,951.62 U.S. for expenses. Also, the Board noted that YEC claimed travel costs for the witness preparation session for an individual who was not a witness at the hearing.

In summary the Board awards costs to YEC as follows:

Davis LLP	
Legal Fees (407.21-2)x85% =344.42 hoursx225	\$77,496.41
Disbursements \$11,121.50- \$4995.08	\$6,126.42
InterGroup	
Professional fees	
Reduction for unsubstantiated personnel \$72,355.50	
25% reduction of remaining fees \$ 98,940.43	\$296,821.31
Disbursements \$39,851.08 - \$15,791.70	\$24,059.38
MP Computing	\$4590.00
YEC- Disbursements \$31034.37- \$ 18699.68	\$12,334.69
Total costs awarded to YEC	\$421,428.21

NOW THEREFORE the Board Orders as follows:

YEC shall pay the following amounts to the intervenors identified and the Government of the Yukon within 30 days of the issuance of this Order. The Board directs YEC to amortize these hearing related costs over 2008 for \$.4 million and the balance in 2009, as set out in its GRA Application. YEC shall include in the Phase 2 application a proposal regarding the proper allocation of the costs in the account to the different rate classes.

City of Whitehorse	\$67,840.89
Utilities Consumers Group (UCG)	\$26,772.38
John Maissan	\$8,520.97
Yukon Electrical Company Ltd.(YECL)	\$40,239.71
YEC	\$421,428.21

Government of the Yukon (Board Costs)	\$75,263.12
Total Costs Awarded:	\$640,065.28

Dated at the City of Whitehorse, in the Yukon Territory, the 8th day of December, 2009.

BY ORDER



W. Shanks
Chair