



PUBLIC INTEREST ADVOCACY CENTRE
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Michael Buonaguro
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June 30, 2010

BY EMAIL

Yukon Utilities Board
Box 31728
Whitehorse, Yukon
Y1A 6L3

Attention: Shay Smart, Executive Secretary

Re: YEC Mayo B Enhancement Project Review - Cost Claims

Dear Ms. Smart:

The Utilities Consumers' Group ("UCG") is in receipt of cost claims that have been submitted by the City of Whitehorse and the Yukon Energy Corporation. Attached are UCG's comments on these cost claims for the Board's consideration. UCG is in receipt of the cost claim of YCS, but will not be making comments on it.

Yours truly,

A handwritten signature in blue ink, appearing to be 'M. Buonaguro', is written above the typed name.

Michael Buonaguro
Encl.

YEC Mayo B Enhancement Project Review - Cost Claims

City of Whitehorse

On page 4 of its Board Order 2009-11 on cost claims related to Phase 1 of YEC's General Rates Application, the Board stated the following with respect to the cost claim of the City of Whitehorse:

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.

According to its cost claim, the City of Whitehorse is looking to recover a total of \$39,504.87 in legal and consultant fees and disbursements. UCG submits that, at a minimum, a total reduction in the range of **\$4,000 to \$6,000** from this cost claim should be made for the following reasons:

Summary of Professional Fees Claimed – Form U2

- In its cost claim, the City claims a total of 93.05 hours @ \$175 for Ms. Kellgren's time. This 93.05 hours total is derived by adding up the Brownlee invoices dated February 25, 2010 (18.20 hours), March 30, 2010 (29.95 hours), April 28, 2010 (51 hours) and May 28, 2010 (0.90 hours) and subtracting 7 hours from the April 28, 2010 invoice for travel time. **UCG submits that an additional 0.5 hours from the April 28, 2010 invoice and 0.90 hours from the May 28, 2010 invoice should be disallowed since they pertain to time charges incurred well after the end of argument and are related to reporting back to the City.** This would reduce Ms. Kellgren's time claim to 91.65 hours.

- In its cost claim filed October 7, 2009 with respect to Phase 1 of YEC's General Rates Application, the City claimed an hourly wage of \$90 per hour for Ms. Kellgren but in the more recent Mayo B proceeding, the City is looking to recover \$175 per hour for the same lawyer with now 2 years of experience. UCG considers this to be an extraordinary hourly wage increase, particularly in the absence of a specific justification for such. While another year's experience as a lawyer warrants a wage adjustment, nearly doubling the hourly wage does not seem fair to ratepayers. **UCG recommends that the hourly wage allowed to be recovered from ratepayers for Ms. Kellgren's time should be reduced to something in the range of \$110 to \$140 per hour.**
- When combined, the time and hourly wage reductions would reduce the City's cost claim by several thousand dollars, the specifics depending upon the precise hourly rate allowed.

February 25, 2010 invoice from Brownlee LLP

- Given that there is no explanation provided for some of the Other Charges, UCG submits that "Photocopies" (**\$1.20 + \$0.06 GST**), "Laser Printing" (**\$80.10 + \$4.01 GST**) and "Postage" (**\$3.08 + \$0.15**) are not recoverable from Yukon ratepayers since they are assumed to be normal overhead costs recovered in the fee for services.

February 25, 2010 invoice from Garbutt Consulting

- While there are details of hours claimed by Mr. Dannacker, there are no details for Mr. Garbutt's claimed 9.25 hours.

March 26, 2010 invoice from Garbutt Consulting

- While details are provided for activity conducted during hours claimed, there appears to be overlap in the 6.25 hours claimed by Mr. Garbutt and the 23 hours claimed by Mr. Dannacker.

March 30, 2010 invoice from Brownlee LLP

- Given that there is no explanation provided for some of the Other Charges, UCG submits that "Photocopies" (**\$0.30 + \$0.02 GST**), "Laser Printing" (**\$205.80 + \$10.29 GST**) and "Postage" (**\$1.00 + \$0.05**) are not recoverable from Yukon ratepayers since they are assumed to be normal overhead costs recovered in the fee for services.

April 26, 2010 invoice from Garbutt Consulting

- While details are provided for activity conducted during hours claimed, there appears to be overlap in the 3.75 hours claimed by Mr. Garbutt and the 17.75 hours claimed by Mr. Dannacker.
- With respect to disbursements, UCG submits that Yukon ratepayers should not have to pay for "Parking Commerce Place March 31, 2010" (**\$11.90 + \$0.60 GST**) nor the "Telephone" charges (**\$2.40 + \$0.12 GST**) since there is no explanation of how these costs were incurred to prepare argument.

April 29, 2010 invoice from Brownlee LLP

- Given that there is no explanation provided for some of the Other Charges, UCG submits that "Photocopies" (**\$8.10 + \$0.41 GST**), "Laser Printing" (**\$116.10 + \$5.81 GST**) and

“Postage” (**\$1.79 + \$0.09**) are not recoverable from Yukon ratepayers since they are assumed to be normal overhead costs recovered in the fee for services.

- While the Scale of Costs allows for the recovery of accommodation costs during hearing days, it excludes the costs of meals and other related charges. Without fully explaining how the telephone calls are connected to the preparation of argument, UCG submits that none of the telephone call charges should be recovered from Yukon ratepayers. This would eliminate **\$56.66** (including GST) from the disbursements claimed.

May 28, 2010 invoice from Brownlee LLP

- Given that there is no explanation provided for some of the Other Charges and the hearing had already been completed, UCG submits that “Photocopies” (**\$0.90 + \$0.05 GST**), “Laser Printing” (**\$4.20 + \$0.21 GST**) and “Postage” (**\$1.57 + \$0.08**) are not recoverable from Yukon ratepayers since they are assumed to be normal overhead costs recovered in the fee for services and the hearing was completed.

Yukon Energy Corporation

Davis LLP Costs

Legal Fees – Time Charges

YEC's cover letter to its cost claim indicates (on page 3) that Davis LLP fees "also include consultations with Jason Herbert relating to issues arising in the application and Mr. Herbert's potential attendance at the Part 3 Application hearing. Mr. Herbert has appeared on a number of occasions before the Yukon Utilities Board in previous YEC applications". UCG submits that Mr. Herbert's time claims should be treated similar to those of any "administrative support" that the Board has disallowed from recovery from Yukon ratepayers. This would result in at least a **\$630.00** reduction to YEC's cost claim.

UCG submits that any time charges from Mr. Landry after final arguments have been submitted should not be recovered from Yukon ratepayers. UCG submits that this results in a **\$675.00** reduction to YEC's cost claim for time charged by Mr. Landry for "follow-up".

Legal Fees – Disbursements

In its cost claim, YEC is asking Yukon ratepayers to pay \$2,592.47 in disbursement costs incurred by Davis LLP for this proceeding. It appears to UCG that YEC continues to ask Yukon ratepayers to pay for meals and beverages when the YUB has clearly established that these costs are not recoverable and should not be claimed.

According to the Scale of Costs, the hourly fee paid to legal consultants "will be deemed to include and cover all overhead charges implicit in the normal operation of professional office including meals". The only exceptions "subject to tests of reasonableness and the mandatory submission of appropriate supporting vouchers" are the reasonable and prudent actual costs incurred for:

- (1) Transcript
- (2) Accommodations – during hearing days only and excluding meals and other charges
- (3) Airfare, at economy or less, to and from the hearing, applicable only when attendance is required.

According to the Scale of Costs, the Board will consider reimbursement of the reasonable actual costs incurred for other charges directly related to the preparation and circulation of evidence, argument and reply provided they are fully explained and, where appropriate, supported by vouchers:

- (1) Courier and postage.
- (2) Computer charges (access to databases, etc.) for access external to the applicants operations.
- (3) Long distance telephone and fax
- (4) Photocopying - At claimant's costs or \$.10/copy whichever is the lesser.
- (5) Road travel - A mileage allowance of \$.27/kilometre may be claimed by participants living in the Yukon but not in the locale where the hearing is held. This is payable only for the hearing days.

According to the Scale of Costs, there will be no reimbursement of taxi fares and parking charges except for necessary costs (taxi, parking, etc.) for transportation from and to airports with respect to attendance at hearings.

In its April 23, 2010 invoice, Davis LLP claims \$4.51 + \$0.23 in unexplained / unjustified disbursements for expenses (telephone and photocopying) that should not be allowed to be recovered. UCG submits that YEC is fully aware that all costs put forward for recovery from Yukon ratepayers need to be justified. **UCG submits that this \$4.74 be disallowed from recovery from ratepayers.**

In its May 27, 2010 invoice, Davis LLP claims \$121.25 + \$6.06 in unexplained / unjustified disbursements for expenses (binding, telephone and photocopying) that should not be allowed to be recovered. UCG submits that YEC is fully aware that all costs put forward for recovery from Yukon ratepayers need to be justified. **UCG submits that this \$127.31 be disallowed from recovery from ratepayers.**

In a "pro forma" breakdown of Mr. Landry's disbursements attached to the June 7, 2010 invoice from Davis LLP, Mr. Landry is claiming \$1,433.06 in "travel charges" which include \$114.85 (+ \$5.11 GST) for meals at Giorgio's Cuccina and the Westmark, \$348.90 (+ \$17.45 GST) for a rental car in Whitehorse, \$103.78 (+ \$5.19 GST) for gas for the rental car, and "accommodation" charges that includes \$14.53 for unexplained telephone charges, \$133.20 for meals and \$65.80 for drinks in the Westmark lounge. **UCG submits that all of these charges totalling \$808.81 should not be allowed to be recovered from Yukon ratepayers.**

InterGroup Consultants

InterGroup – Time Charges

According to YEC's cost claim, InterGroup is claiming a total of 820.8 hours for a total cost of \$109,207.25.

On page 10 of its Board Order 2009-11 on cost claims related to Phase 1 of YEC's General Rates Application, the Board stated the following with respect to the cost claim of YEC:

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.

Based on the information provided in YEC's cost claim, again there does not appear to be sufficient justification to allow YEC to recover any professional fees for anyone other than Cam Osler, Patrick Bauman and Mona Pollitt-Smith who account for 679 of the claimed hours and \$88,202.00 of the claimed time costs. **UCG submits that \$11,858.25 of claimed time costs for supporting staff should be eliminated from YEC's cost claim allowed by the Board and not recovered from Yukon ratepayers.** While InterGroup provided a few more resumes for its staff, it did not explain how duplication of effort and other support efforts have been

avoided.

InterGroup – Disbursements

In its cost claim, YEC was asking Yukon ratepayers to pay \$5,756.75 + GST in disbursement costs incurred by InterGroup for this proceeding.

Regarding InterGroup's claim for \$514.80 in internal photocopying charges, there is no evidence provided regarding whether these charges are based on InterGroup's costs or \$0.10 per copy nor which one is the lesser. UCG submits that without adequate support documentation on pages and pricing (despite the Board's direction), none of these costs should be recovered from ratepayers. **UCG submits that YEC's cost claim should be reduced by \$514.80 + 25.74 GST and that none of these costs are recovered from ratepayers.**

While many of the submitted receipts were not very legible, there remains some question about whether the \$45.65 claimed in taxi fare was indeed related to air travel.