

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

and

**An Application by Yukon Electrical Company Ltd.
and Yukon Energy Corporation
for approval of the YEC & YECL Rider F —
Fuel Adjustment Rider & Deferred Fuel Price Variance Policy**

BEFORE: B. McLennan, Chair) February 27, 2012
 R. Laking)
 R. Hancock)

BOARD ORDER 2012-01

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 June 30, 2011, the Yukon Electrical Company Ltd. (YECL) and the Yukon Energy Corporation (YEC) (jointly, the Companies) filed an application (Application) with the Yukon Utilities Board (Board) seeking an Order from the Board for approval of the YEC & YECL Rider F – Fuel Adjustment Rider & Deferred Fuel Price Variance Policy;
- C. The Board issued Board Order 2011-10 which set out a written process and schedule for this proceeding. In that Board Order, the Board directed Intervenors to register with the Board by August 8, 2011;
- D. On August 16, 2011, the Board issued Board Order 2011-11 granting Intervenor status to the Utilities Consumers’ Group (UCG) and John Maissan, Leading Edge Projects Inc. (LE). The Board also amended the process schedule;
- E. Information Requests (IRs) were submitted to the Companies by August 16, 2011. Information responses were received from the Companies on September 6, 2011;
- F. The Board received motions from the UCG and LE requesting the Board order the Companies to provide adequate responses to certain specified IRs;

- G. On September 13, 2011 the Board issued a memorandum to the Companies and Intervenors regarding the process for responding to the UCG and LE motions. The Board also suspended the process schedule for argument and reply;
- H. The Board issued Board Order 2011-12 on October 5, 2011 directing the Companies to provide further responses to specific IRs and to respond to further IRs from the Board. The process schedule was amended to accommodate information responses from the Companies and to set out new deadlines for argument and reply;
- I. On December 22, 2011, the Board issued Board Order 2011-15 approving of the YEC and YECL Rider F – Fuel Adjustment Rider and Deferred Fuel Price Variance Policy with the direction that outstanding Deferred Fuel Price Variance Account balances be adjusted over a 12-month period when balances exceed +/- \$200,000. In reaching their decision, the Board considered the evidence and the written Argument and Reply Argument of the Parties respecting the Application;
- J. The Board received applications for cost awards from:
1. UCG
 2. John Maissan, LE
 3. YEC;
- K. At the time of issuing this Order, no cost application was received from YECL;
- L. The Board received comments on the applications for cost awards from UCG in a letter dated February 7, 2012;
- 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 Board's *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 Board Orders 2005-16, 2005-17 2007-7, 2007-8, 2007-9, 2009-06, 2009-11, 2010-09, 2011-07, 2011-08, and 2011-09;
- N. 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; and
- O. After careful consideration, the Board has assessed the cost applications on the principles outlined above and has made adjustments as set out below.

INTERVENOR COSTS

1. Utilities Consumers' Group

UCG Claiming:

Consulting Services Provided by P. McMahon (Fees and HST) \$ 3,152.70

Total Costs Claimed **\$ 3,152.70**

Comments

UCG was represented by Patrick McMahon, consultant. In its cost application, UCG submitted that Mr. McMahon was an experienced consultant in the energy and regulatory industry. His services were performed at a rate of \$60/hour and included review of the application, review of supporting materials, review of the pertinent regulatory legislation, research in other jurisdictions, liaising with the UCG, preparing IRs, preparing the notice of motion and further IRs, and preparing final argument and reply.

The hours claimed for IRs and review of information responses, and 13.5 for argument, reply and follow up. This amounts to a total of 46.5 hours. No additional professional fees or disbursements were submitted to be approved.

The Board finds that Mr. McMahon's consulting fees are reasonable and are accepted as submitted. UCG's IRs and arguments were of assistance to the Board, as referenced in Board Order 2011-15, including UCG's submissions on Rider F filing requirements.

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

Patrick McMahon \$60/hour x 46.5 hrs	\$ 2,790.00
HST (13% of \$2,790.00)	\$ 362.70

Total Costs Awarded to UCG: **\$ 3,152.70**

2. John Maissan

John Maissan claiming:

Consulting (Fees and GST) \$ 1,084.13

Total Costs Claimed **\$ 1,084.13**

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 stated that he is a registered professional engineer in the Yukon and held senior engineering positions with YEC for about 14 years. He added that he has a broad familiarity with the regulated electrical utilities of the Yukon and their technical issues. Mr. Maissan, as an Intervenor, “studied the Policy filing, reviewed the supporting materials, reviewed the legislation governing the Diesel Fuel Price Variance Account and Rider F, prepared Interrogatory Requests on the Policy filing, studied the IR responses, prepared and submitted Written Argument, and prepared and submitted Reply Argument.”

For “illustrative purposes” Mr. Maissan included an hourly rate of \$35/hour and acknowledged that the rate is subject to the Board’s discretion. The hours claimed are 15.5 for preparation and 14 for argument and reply.

UCG commented on Mr. Maissan’s application. UCG stated that reference in the Board’s decision to the submissions made by Parties is made for completion of the record and does not necessarily indicate the relevance of particular submissions.

The Board finds that Mr. Maissan’s consulting fees are reasonable for the work done and awards the full hours requested. The Intervenor submissions were of assistance to the Panel in addressing a number of issues raised — for example, the timing for Rider F filings and the threshold for Diesel Fuel Price Variance adjustments. The Board exercises its discretion and increases Mr. Maissan’s suggested hourly rate from \$35/hour to \$50/hour.

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

Under Scale of Costs Section 3:

John Maissan fees \$50/hr x 29.5 hrs	\$ 1,475.00
GST	\$ 73.75
Total Costs Awarded to Mr. Maissan:	\$ 1,548.75

APPLICANT COSTS
Yukon Energy Corporation
YEC Claiming:

Davis LLP (Fees and Disbursements)	\$ 2,734.82
InterGroup Consultants Ltd. (Fees)	\$19,974.25
Total Costs Claimed	\$ 22,709.07

Comments

In its cost claim, YEC noted that steps were taken to avoid duplication in the joint application with YECL. YEC stated that it “took the lead in preparation of the Policy document as well as interrogatory responses, argument and reply.” Costs were incurred in order to prepare, draft, review and file IRs, written final argument and reply argument. YEC did not include costs for preparation of the initial policy document.

YEC retained Davis LLP to represent it in this proceeding and professional fees were charged at \$225/hour for 8 hours of preparation and for 4 hours of argument, reply and follow-up, for a total of 12 hours. Total disbursements exclusive of GST were claimed in the amount of \$34.82 for long distance telephone and fax charges and internal photocopying.

Consulting costs were included for InterGroup Consultants Ltd. (Intergroup) in the total amount of \$19,974.25 for 155.3 hours of consulting services. Hours incurred were 130.25 for preparation and 25.0 for argument, reply and follow-up. The consulting services were primarily provided by Cam Osler, Patrick Bowman, Mona Pollitt-Smith and Hamid Najmidinov. The work of these consultants related to research and technical analysis, drafting argument and responses to interrogatories; with additional staff providing support and production services.

UCG submitted that utilities should be more transparent and cooperative when dealing with parties who are seeking information that informs the decisions of the Board and a minimum total of \$5,654.15 should be deducted from YEC's costs.

UCG commented that the YEC has in the past charged legal fees at an hourly rate in excess of the rate allowed in the Board's current Scale of Costs. YEC has not included legal fees in excess of the Scale of Costs, but UCG argues that \$1,800.00 in the legal fees that exceed the claimed in YEC's cost claim application should not be claimable in present or future revenue requirements.

UCG stated that there are no supporting vouchers for Davis LLP disbursements.

UCG referred to previous Board Orders 2009-11 and 2011-08 and the Scale of Costs and commented that YEC has disregarded Board directions in including support from clerical, administrative and production staff services in its cost recovery. Any costs incurred other than Cam Osler, Patrick Bowman and Mona Pollitt-Smith are also duplicative and should be regarded as administrative regulatory support.

Regarding the professional fees charged by Davis LLP, 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 legal fees claimed do not

exceed the Scale of Costs and the hours are reasonable given the nature of the proceeding.

The Board has reviewed the information provided by YEC for Davis LLP disbursements. Section 2 of the Scale of Costs indicates that claimant's costs for photocopying is up to \$.10 per copy and that charges for disbursements are to be supported, where appropriate, by vouchers. The cost claim does not state the number of photocopies made. There are no supporting vouchers provided to indicate the nature of the disbursements claimed. These disbursements are considered normal overhead costs recovered in the professional fees provided by David LLP and are not approved.

The Board considers that professional fees of any staff other than Cam Osler, Patrick Bowman, Mona Pollitt-Smith and Hamid Najmidinov have not been supported, as the services of additional staff relate to support services. Hours and costs claimed for additional staff from September 2, 2011 to November 14, 2011 were as follows:

Jolene Mollard: 1.5 hrs x \$67/hr:	\$ 100.50
Jolene Mollard: 12 hrs x \$69/hr:	\$ 828.00
Anita Horvat: 2.5 hrs x \$57/hr:	\$ 142.50
Anita Horvat: 1 hr x \$59/hr:	\$ 59.00
Jennifer Olson: 25 hrs x \$79/hr:	\$1,975.00
Total:	\$3,105.00

The costs claimed for services provided by these additional staff members are considered administrative in the overhead charges implicit in the normal operation of a professional office under Section 1 of the Scale of Costs. The Board denies these costs claimed for administrative support.

Additionally, the descriptions of the services in the time sheets provided by Cam Osler, Patrick Bowman, Mona Pollitt-Smith and Hamid Najmidinov show duplication in the consulting services provided. As a result, the Board exercises its discretion and further reduces the InterGroup Consulting Ltd. professional fees by 20%.

In the InterGroup Consulting Ltd. invoice of October 31, 2011, the total number of hours for Mona Pollitt-Smith do not match the time sheets provided for October 2011, 65.50 versus 64.50 respectively. The Board finds that Ms. Pollitt-Smith's hours claimed are reduced by 1 hour at \$120/hour to reflect the hours claimed in the time sheets.

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

Legal Services Provided by Davis LLP

Professional Fees: \$225/hour x 12 hrs \$ 2,700.00

Intergroup Consulting Ltd.

Professional Fees:

\$19,974.25 - \$120.00 - \$3,105.00 = \$16,749.25

(\$16,749.25 reduced by 20%)

\$13,399.40

Total Costs Awarded to Yukon Energy Corporation:

\$16,099.40

NOW THEREFORE the Board Orders as follows:

YEC and YECL shall each pay half the following amounts to Intervenor identified and the Government of the Yukon within 30 days of the issuance of this Order. The Board directs YEC to amortize its awarded hearing-related costs and its portion of the costs of Intervenor and the Government of the Yukon. The Board directs YECL to allocate its portion of the costs of Intervenor and the Government of the Yukon to its hearing costs reserve account.

Utilities Consumers' Group	\$ 3,152.70
John Maissan	\$ 1,548.75
Yukon Energy Corporation	\$16,099.40
Government of the Yukon	\$28,250.00
Total Costs Awarded:	\$49,050.85

Dated at the City of Whitehorse, in the Yukon Territory, the 27th day of February 2012.

BY ORDER



Bruce McLennan
Chair