

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

and

**An Application by Yukon Electrical Company Limited
For Approval of Revenue Requirements for 2008 and 2009**

Before:	W. Shanks, Chair	)	May 25, 2009
	J. Woodland	)	
	R. Hancock	)	
	K. Avery	)	

BOARD ORDER 2009-6

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 April 30, 2008, Yukon Electrical Company Limited (YECL) filed with the Board an Application, pursuant to the Act and Order-in-Council 1995/90, for approval of its forecast revenue requirements for the 2008 and 2009 test years and approval of certain deferral accounts (Application).
- C. On May 20, 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 June 12, 2008, in the City of Whitehorse, Yukon.
- E. On June 20, 2008, the Board issued Order 2008-5 which, among other matters, established a proceeding schedule for the Application and granted Intervenor status to:
 - i. Yukon Energy Corporation (YEC)
 - ii. City of Whitehorse (Whitehorse)
 - iii. Utilities Consumers’ Group (UCG)
 - iv. Yukon Conservation Society (YCS)
 - v. Department of Energy, Mines and Resources, Government of Yukon
 - vi. John Maissan

- F. On October 7, 2008, the Board held an oral public hearing in the City of Whitehorse.
- G. The Board considered the extensive evidence and written argument and reply argument of the parties respecting the Application.
- H. On February 12, 2009, the Board issued Board Order 2009-2 with Reasons for Decision.
- I. Subsequent to the release of Board Order 2009-02, the Board reminded parties respecting the filing of applications for cost awards;
- J. The Board received applications for cost awards from:
 - i. Whitehorse
 - ii. UCG
 - iii. John Maissan, resident of City of Whitehorse
 - iv. YECL
- K. The Board received comments on the applications for cost awards from:
 - i. UCG
 - ii. YECL
- L. In its correspondence to the Board dated April 17, 2009, UCG submitted that YECL failed to apply for costs prior to the deadline set by the Board. The Board finds that all above applications and comments were received by the deadlines set by the Board.
- M. The Board has reviewed all applications for costs 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 set out in previous cost awards contained in Appendix A to Board Order 2006-7, Board Order 2007-7, 2007-8, 2007-9, 2005-17 and 2005-16.
- 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 utilities rates.
- O. After careful consideration, the Board has assessed the cost applications on the principles outlined above.

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

A. INTERVENOR COSTS

1. City of Whitehorse (Whitehorse)

Whitehorse Claiming:

Brownlee LLP Fees & GST	\$42,297.41
Garbutt Consulting Inc.	\$37,422.18

Total Costs Claimed	\$79,719.59
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Comments

Whitehorse was represented by Tom Marriot of Brownlee LLP (Brownlee), legal counsel and its technical and regulatory analyst, Garbutt Consulting Inc. (GCI).

In its cost claim application, 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. Whitehorse respectfully requested that the Board consider a review of the “*long-standing maximum hourly rate of \$225, in light of undeniable inflationary increases since 1995*”, and further submitted its cost claim at an hourly rate of \$250 per hour for both legal and consulting services, to reflect Whitehorse’s agreements with Brownlee and GCI. Whitehorse referred to the Alberta Utilities Commission’s (AUC) recent review and update of its Scale of Costs, noting that the review resulted in a substantial increase to the AUC’s Scale of Costs. In the alternative, Whitehorse requested that the Board order cost recovery at least at the \$225 per hour level.

The Board notes it has the discretion to award costs at a rate higher than that expressed in the Scale of Costs if 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 Board is not convinced that the Application in question was of such complexity to merit exceeding the fee set out in the Scale of Costs. The Board will apply a professional fee of \$225 per hour to the hours claimed by Whitehorse for professional services which are approved by the Board.

Regarding the hours submitted by Whitehorse for professional services rendered by Mr. Marriott of Brownlee, the Board denies the claim for costs of 4.1 hours of Mr. Marriott’s time used to summarize Decision 2009-2, as evidenced in Brownlee invoice no. 327766. The Scale of Costs applies to hours associated with preparing, attending, and concluding the proceeding in question; it does not apply to those hours incurred after the decision has been rendered. Likewise, the Board denies the claim for costs of 4 hours of Mr. Garbutt’s time used to summarize Decision 2009-2 for the City of Whitehorse, as evidenced in GCI invoice no. 2009-08.

The Board also notes that the Scale of Costs specifically mentions that the hourly professional fee includes all meals, while section 2 states that meals are excluded under the category of “disbursements”. Accordingly, the \$64.93 in meal expenses claimed by Brownlee and the \$81.63 claimed by GCI under disbursements is denied.

The Board notes that Whitehorse applied a mileage expense of \$0.61/km for a total of \$27.43. Section 2(c)(2) of the Scale of Costs provides a mileage fee of \$0.27/km. Whitehorse's mileage claim will be calculated according to section 2(c)(2) of the Scale of Costs.

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

Legal Services Provided by Brownlee:

Professional Fees: $(146.35 - 4.10) \times \$225$: \$32,006.25

Disbursements: \$3,695.29 – [\$64.93 + (45km x (\$0.61 - \$0.27))]:
\$3,615.06

Consulting Services Provided by GCI:

Professional Fees: $(136.25 - 4.0) \times \$225$: \$29,756.25

Disbursements: \$1,577.67 – \$81.63: \$1,496.04

GST: \$3,343.68

Total Costs Awarded to Whitehorse: \$70,217.28

2. Utilities Consumers' Group (UCG)

UCG Claiming:

Consulting	\$6,755.00
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GST	\$ 337.75
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Total Consulting fees of Mr. R. Rondeau	\$7,092.75
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Disbursements	\$1,210.00
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Total Costs Claimed	\$15,395.50
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Comments

UCG's cost application was evaluated as that of an Intervenor under section 3 of the Scale of Costs. UCG was represented by Roger Rondeau, an individual with over 15 years experience in the energy and regulatory field.

Regarding the hours claimed by UCG, the Board denies UCG's claim for 3 hours used by Mr. Rondeau to review Board Order 2009-2 and associated Reasons for Decision, as well as the 2 hours used to prepare the cost claim. As previously mentioned, the Scale of Costs is not applicable to costs incurred after the decision has been rendered. Further, the Board has chosen to exercise its discretion provided in the Scale of Costs to reduce the hours submitted by UCG by 35% as the hours claimed were excessive because its submissions and its participation were not in the Board's opinion necessarily effective or

focused on the specific issues in this proceeding. The assistance that UCG provided to the Board in making its decision on the Application was limited. UCG also created unnecessary additional process when it submitted evidence that was not its own and that no party, including UCG, spoke to. The Board suggests that the hiring of legal counsel and a consultant may aid in the effectiveness of UCG's future submissions to the Board. As a result, the Board awards costs to UCG on the basis of 122.2 hours.

Regarding the hourly rate applicable to UCG, the Board notes that in Appendix A to Board Order 2006-7, the common non-professional fee that may be award to Intervenor is \$35/hour. The Board has the discretion to vary this rate as it sees fit, based on the value of the intervention. Given the quality of UCG's intervention in this matter, the Board will calculate its award of costs based on an hourly rate of \$35/hour.

Regarding the disbursements claimed by UCG, the Board notes that the cost of photocopying claimed is \$0.05/page higher than that provided for in the Scale of Costs. The amount claimed will be adjusted according to the \$0.10/page provided for in the Scale of Costs.

The Board notes that UCG did not sign, date or complete the Affidavit of Claim for Costs but no other party commented on this procedural oversight. The Board does not find it productive to reduce UCG's claim for this failure but encourages parties to ensure Affidavits of Claim for Costs are completed and signed in future.

The Board notes that UCG did not submit any receipts to support its disbursements; however, the Board will not penalize UCG in this instance.

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

Under Scale of Costs Section 3:

$(193 - 5) \times 0.35 = 65.8$ hours to be deducted
 $(193 - 65.8) \times \$35: \$4,452.00$

Disbursements:

Photocopies: $(1000 \times \$0.15) - (1000 \times \$0.10): \$50.00$ to be deducted
 $\$1,210.00 - \$50.00: \$1,160.00$

GST: \$271.85

Total Costs Awarded to UCG: \$5,883.85

3. John Maissan, Resident of City of Whitehorse

John Maissan claiming:

Consulting	\$3,316.25
GST	\$ 165.81
Disbursements	\$1,050.00

Total Costs	\$4,532.06
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Comments

UCG submitted a letter dated March 30, 2009 commenting that the UCG recognizes the importance of having local participation in regulatory proceedings and the need to reimburse time and costs through the UCG's rates. However, the UCG notes the Board has made prior decisions to not award "*any individual member of the public or business intervention cost claims*". UCG further argues that the Board, using its statutory discretion given under the *Public Utilities Act* must be consistent in its interpretation and application of the rules, Scale of Costs, Cost Awards Policy, and hearing cost process. The Board notes that it has frequently allowed costs for various Intervenors. Further, the Board finds that Mr. Maissan's participation in the hearing did not duplicate UCG's intervention.

Regarding the hours claimed by Mr. Maissan, Mr. Maissan intervened as a resident of the City of Whitehorse, and as such his cost claim was evaluated under section 3 of the Scale of Costs. The Board notes that under section 3, the Intervenor cannot claim attendance hours at the proceeding. Mr. Maissan's hours are hence reduced by 21 hours.

Regarding the hourly rate applicable to Mr. Maissan's cost claim, in Appendix A to Board Order 2006-7, the Board indicates that although the common hourly rate allowed for certain Intervenors is \$35/hour, it reserves the discretion to apply a different non-professional fee based on the value of the intervention. The Board found Mr. Maissan's submissions to be of high quality and particularly useful when writing its Decision. Mr. Maissan was an efficient and effective Intervenor. Based on the quality of Mr. Maissan's intervention in this particular proceeding, the Board has chosen to exercise its discretion and adjust Mr. Maissan's hourly rate to \$65/hour. The Board notes, however, that as per Appendix A to Board Order 2006-7, an Intervenor's cost application is assessed on its own merits; the hourly rate awarded in this instance does not constitute a guarantee that future interventions will be valued at the same rate.

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

Under Scale of Costs Section 3:

(94.7 – 21) x \$65: \$4,790.50

GST on hours: \$239.52

Disbursements (including GST): \$1,050.00

Total Costs Awarded to Mr. Maissan: \$6,080.02

B. APPLICANT COSTS

Yukon Electrical Company Ltd. (YECL)

YECL Claiming:

Bennet Jones LLP	\$65,231.06
Foster Associates	\$81,127.48
Gannet Flemming	\$72,845.62
ATCO Electric	\$44,106.11
YECL	\$ 8,535.80
GST	\$13,592.30

Total Costs Claimed \$285,438.37

Comments

YECL retained Foster and Associates to provide expert testimony on return on equity and appropriate capital structure. Ms. K.C. McShane provided oral testimony and supervised the preparation of written testimony. Regarding the hours claimed by Foster and Associates, the Board finds that 393 hours is excessive, considering the focused nature of the issue Foster was hired to comment on, and the degree of Foster's expertise on said issue. Accordingly, the Board has chosen to exercise its discretion under the Scale of Costs and reduce the hours claimed by Foster by 50%. Further, Foster has claimed hours for administrative support. The Board notes that under the Scale of Costs, administrative services are considered part of the overhead charges implicit in the normal operation of a professional office; hence they are included in the hourly fee paid to the professional under Section 1 of the Scale of Costs. Accordingly, the Board denies the 25 hours included for administrative support.

Regarding the hourly rate claimed for Foster, the Board notes that the hours claimed by Ms. McShane are awarded at the rate of \$225/hour, while the hours claimed by the two junior associates involved with the proceedings are awarded at the rate of \$165/hour.

Gannett Fleming Inc. was retained to conduct a depreciation study related to hydro and diesel production, distribution and general plant systems for YECL. Mr. L. Kennedy provided oral testimony and supervised preparation of written testimony, supported by other individuals employed by Gannett Fleming Inc, as necessary. The Board finds no issue with the costs claimed in respect of Gannett Fleming Inc., considering the 10 years of data that had to be reviewed and analyzed for purposes of the depreciation study, as YECL had not been before the Board since 1997.

ATCO Electric costs relate to evidence on load forecast and revenue forecast for YECL and were provided by ATCO Electric's pricing group. As noted in Appendix A to Board Order 2009-2, YECL is a wholly owned subsidiary of ATCO Electric Ltd., a private, investor-owned utility which is a member of the ATCO group of companies. Participation in the proceeding by ATCO Electric was on an inter-affiliate basis, and as such, the hours claimed for services provided by ATCO do not fall under the scope of the Scale of Costs. Further, the Board notes that YECL did not provide a retainer letter, or an adequate invoice to support its claim for costs respecting ATCO Electric. Accordingly, the Board denies all costs claimed for hours respecting ATCO Electric.

In its letter dated April 17, 2009, UCG disputes YECL's claim for business class flights for ATCO Electric personnel, arguing that the Scale of Costs only allows for economy airfare. In its letter dated April 22, 2009, YECL states that the only business class flights "were from Edmonton to Vancouver relating to travel to Whitehorse for the pre-hearing conference." The Board accepts YECL's submission that these flights were mandatory as "no economy fares were available for the times required." The Board notes, however, that additional business class fares appear on the receipts provided by YECL, including flights for two individuals dated June 11, 2008, between Vancouver and Whitehorse as well as flights for three individuals between Whitehorse and Vancouver on October 10, 2008. The Scale of Costs only provides for economy airfare; the Board denies the costs associated with these additional business class flights. As the receipts provided make it difficult to determine what portion of the airfare was for the business class portion of the flight, the Board bases its calculation of economy airfare for these legs on the current cost of booking the same flights approximately one month in advance. For the

three flights between Whitehorse and Vancouver on Air North, a total of \$1,000 is denied. For the two Air Canada flights on June 11, 2008, between Vancouver and Whitehorse, the Board denies a total of \$700.

Bennett Jones LLP represented YECL in this proceeding. Mr. L.G. Keough provided the majority of the legal services, and has extensive experience before regulatory tribunals. Regarding the hours claimed for the services provided by Bennett Jones, the Board notes that student hours cannot be claimed as professional hours. Accordingly, the total number of hours claimed is reduced by 25.

Regarding the costs claimed for YECL's disbursements, the Board notes that Section 2 of the Scale of Costs does not provide reimbursement for office supplies used in preparing materials for the proceeding. YECL has provided receipts for office supplies totaling \$425.42, exclusive of GST. The Board denies the claim for these costs.

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

Consulting Services Provided by Foster Associates:

Professional Fee for Ms. McShane: $170/2 = 85$ hrs
 $85 \times \$225: \$19,125.00$
Professional Fee for Associates: $198/2 = 99$ hrs
 $99 \times \$165: \$16,335.00$
Disbursements: \$5,824.99

Consulting Services Provided by Gannett Fleming:

Professional Fee: \$71,500.00
Disbursements: \$1,345.62

Services Provided by ATCO Electric:

Professional Fee — all hours denied: \$0.00
Disbursements: $\$9,006.67 - (\$1,000 + \$700): \$7,306.67$

Legal Services Provided by Bennett Jones:

Professional Fee: $(281.5 - 25) \times \$225: \$57,712.50$
Disbursements: \$3,178.56

YECL:

Disbursements: $\$8,535.80 - \$425.42: \$8,110.38$
GST: \$9,521.94

Total Costs Awarded to YECL: \$199,960.66

NOW THEREFORE the Board Orders as follows:

YECL shall pay the following amounts to parties identified and that such payments shall be forthcoming within 30 days of the issuance of this Board Order. All hearing costs shall be recorded in the YECL Rate Case Reserve Account. YECL shall include in its Phase II application a proposal regarding the proper allocation of the costs in the account to the different rate classes.

City of Whitehorse	\$ 70,217.28
Utilities Consumers' Group	\$ 5,883.85
John Maissan	\$ 6,080.02
Yukon Electrical Company Ltd.:	\$199,960.66
Government of Yukon (Board Costs):	\$122,503.50

Total Costs Awarded:	\$404,645.31
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Dated at the City of Whitehorse, Yukon, the 28th day of May 2009.

BY ORDER



Wendy Shanks
Chair