

IN THE MATTER OF the *Public Utilities Act*

and

**Yukon Energy Corporation Part 1 Application Regarding the
Energy Reconciliation Adjustment (ERA)**

BEFORE: R. Laking, Chair) October 30, 2018
B. King, Vice-Chair)
A. Fortin)
M. Hannam)
P. Fitzgerald)

BOARD ORDER 2018-09

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 set the costs to be paid”;
- B. On December 6, 2017, Yukon Energy Corporation (YEC) filed an application with the Yukon Utilities Board (Board), pursuant to Board Order 2017-08. In Appendix A to that Board Order, the Board directed YEC to file a separate two-part application to comply with the direction from the Yukon Court of Appeal and further directions from the Board;
- C. The Board issued a letter dated December 15, 2017, in which it indicated that Part 1 of YEC’s two-part application should be tested in a separate proceeding and through a written process. The Part 1 Application related to the ERA for the 2012 to 2016 period (Application). The Board requested procedural comments from interveners and reply comments from YEC. The Board received comments from the Utilities Consumers’ Group (UCG), City of Whitehorse, and ATCO Electric Yukon (AEY) on January 16, 2018, and reply comments from YEC on January 19, 2018;
- D. The Board issued Board Order 2018-01 on January 29, 2018, outlining a written process which included information requests and responses and written argument and reply argument for the Application;
- E. City of Whitehorse, AEY and UCG participated in the written proceeding by filing information requests, argument and reply argument, in accordance with the process schedule;

- F. After considering the Application, the information responses, the written argument and reply argument of the parties, the Board approved, for the reasons set out in Appendix A to Board Order 2018-05, the ERA amounts as submitted by YEC for each of the years 2012 to 2016 as final in Board Order 2018-05, dated May 4, 2018.
- G. The Board received costs claims from:
 - 1. City of Whitehorse;
 - 2. UCG; and
 - 3. YEC;
- H. The Board has reviewed all of the costs claims;
- I. Costs claimed by the parties are subject to stringent scrutiny by the Board as costs awarded are charged to the customers of the utility through the utility's rates; and
- J. After careful consideration, the Board has exercised its discretion and made the adjustments set out below based on the criteria set out in the Scale of Costs, Schedule 1 to the Board's Rules of Practice, as well as the principles relating to cost awards set out in previous Board Orders — in particular, Appendix A to Board Order 2007-06, and Board Orders 2005-16, 2005-17, 2007-07, 2007-08, 2007-09, 2009-6, 2009-11, 2010-09, 2011-08 2013-08 , 2014-11, 2014-12, 2017-07, 2018-08.

NOW THEREFORE, the Board orders as follows:

INTERVENER COSTS

1. City of Whitehorse

City of Whitehorse Claiming:

Brownlee LLP (fees and disbursements)	\$ 1,511.30
Russ Bell & Associates Inc. (fees)	<u>\$ 3,800.00</u>

Total amount claimed **\$ 5,311.30**

Comments

City of Whitehorse retained Brownlee LLP as legal counsel, and regulatory analyst Russ Bell of Russ Bell & Associates Inc., for the purpose of examining the Application, preparing information requests, reviewing information responses, submitting an argument letter and reply letter and reviewing the arguments of other parties.

In its costs claim, City of Whitehorse submitted that its participation was effective and relevant to the issues at hand. It added that it was a full participant in the proceeding and believed that its participation was warranted and beneficial. City of Whitehorse contended that its costs were reasonably and prudently incurred and that it was diligent and efficient in the presentation of its position.

City of Whitehorse was represented by Thomas D. Marriott of Brownlee LLP. Mr. Marriott has 20-plus years of experience, is senior counsel, and charged the hourly rate of \$350.00. The hours claimed for Mr. Marriott are 3.40 for preparation and .75 for argument and reply. The total fees claimed for Mr. Marriott are \$1452.50. Disbursements of \$58.50 for photocopying were also claimed.

City of Whitehorse submitted that Mr. Bell has extensive experience in regulated industries in Alberta, Northwest Territories and Yukon. In its costs claim, City of Whitehorse claimed the hourly rate of \$200.00 for Mr. Bell. The hours claimed are 19 for preparation. The total claimed for Mr. Bell is \$3,800.00.

Board cost award

The Board notes that City of Whitehorse participated in the Application by reviewing the Application, asking information requests, reviewing information responses, and filing a short letter of argument in which it stated that it did not object to the approval of the Application as filed. This participation contributed to the Board's better understanding of the issues in this proceeding.

Considering the hours claimed for Mr. Marriott and that the legal fees claimed are within the Scale of Costs, the Board finds that the legal fees claimed are reasonable. Accordingly, legal fees are awarded as claimed.

With regard to the consultant fees claimed for Mr. Bell, the fees are within the Scale of Costs. However, considering the limited scope of the Application, the limited number of questions and that Mr. Bell's invoices disclose that he spent 8 hours on reviewing and drafting information requests and 8 hours reviewing information responses, the Board finds that the costs claimed for Mr. Bell are not reasonable. As a result, the Board exercises its discretion to reduce the hours claimed by 30% and awards 13.3 hours. Accordingly, the Board awards fees in the amount of \$2,660.00.

Regarding the disbursements claimed for Brownlee LLP, these are in accordance with the Scale of Costs and the Board finds the disbursements reasonable.

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

Legal Services Provided by Brownlee LLP

Legal Fees:	\$ 1,452.50
Disbursements:	\$ 58.50

Consulting Services Provided by Russ Bell & Associates Inc.

Consulting Fees:	<u>\$ 2,660.00</u>
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Total costs awarded	\$ 4,171.00
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2. Utilities Consumers' Group

UCG Claiming:

Patrick McMahon (Fees and HST): \$ 4,449.38

Total amount claimed \$ 4,449.38

Comments

UCG employed Patrick McMahon as a consultant to assist it in participating in the Application proceeding. UCG stated that Mr. McMahon supported the intervention of UCG by providing extensive consulting services which resulted in an efficient proceeding. UCG added that Mr. McMahon has relevant general knowledge of the utility industry and has an extensive background in the history of the Yukon energy sector. UCG also stated that, while this proceeding was limited in scope, the costs incurred by UCG were reasonable and were directly and necessarily related to UCG's effective participation in this regulatory review. UCG further submitted that it acted responsibly and contributed to a better understanding of the issues before the Board.

With respect to Mr. McMahon's claimed hourly fee of \$225.00, UCG submitted that this rate is well below the maximum rate allowed in the Board's Scale of Costs for a consultant with Mr. McMahon's experience and expertise. It acknowledged that the hourly rate claimed for Mr. McMahon is higher than the rate allowed by the Board of \$150.00 for work performed by Mr. McMahon between May 2016 and December 2016 related to YECL's 2016-17 GRA but this increase in the hourly rate is justified based on Mr. McMahon's additional experience as a consultant in Ontario. The hours claimed for Mr. McMahon are 5.50 for preparation and 12 for argument and reply.

Board cost award

Although the \$225 hourly rate claimed for Mr. McMahon is within the Scale of Costs, the Board emphasizes in the Scale of Costs that the maximum allowable hourly rate for lawyers or consultants will not be awarded as a matter of course. UCG acknowledged that the Application proceeding was limited in scope and that the Board awarded an hourly rate of \$150.00 for Mr. McMahon in the YECL 2016-17 GRA. The Board considers that the additional experience cited by UCG in support of the claimed hourly rate does not relate to proceedings in the Yukon. For these reasons, the Board is not persuaded by the UCG submission that an hourly rate of \$225.00 is warranted for Mr. McMahon in this proceeding. For these reasons, the Board awards a rate of \$160.00 an hour for Mr. McMahon.

UCG's participation was of limited assistance to the Board in this proceeding because UCG raised issues that did not pertain to the proceeding. Given the limited number of issues, the brief argument submitted and that some of the submissions did not address issues raised by the proceeding, the Board finds that the 12 hours claimed for argument and reply are not reasonable. The Board reduces these hours by 15% and awards 15.7 hours in total.

Further, UCG has claimed HST on Mr. Mahon's fees. Since Mr. McMahon's client is resident in Yukon, only the GST applies. Accordingly, the total claim for taxes has been adjusted from 13% to 5% and an amount of \$125.60.

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

Consulting Services

Mr. McMahon Professional Fees and GST:	\$ 2,637.60
Total costs awarded	\$ 2,637.60

3. Yukon Energy Corporation

YEC Claiming:

DLA Piper LLP (Fees of 2380.00 and disbursements of \$34.00) InterGroup Consultants Ltd. (Fees of \$70,344.00 and disbursements of \$1,211.22)	\$ 2,414.00 <u>\$71,555.22</u>
Total amount claimed	\$73,969.22

Comments

In its costs claim, YEC submitted that the claimed amount includes costs incurred for preparation of the December 6, 2017 ERA two-part application to the Board, the responses to Information Requests in February 2018, and argument and reply. It also submitted that all costs as applied for are reasonable and necessarily incurred in relation to its application and the costs claimed are in accordance with the Scale of Costs.

YEC retained DLA Piper LLP as legal counsel, with P. John Landry and J. Herbert providing the legal services. YEC claimed legal fees for Mr. Landry of 2 hours at a rate of \$350.00 an hour for preparation and for Mr. Herbert of 4.80 hours at a rate of 350.00 an hour for preparation. YEC stated that Mr. Landry and Mr. Herbert provided legal services, as required.

YEC claimed costs for InterGroup Consultants Ltd. (InterGroup) totalling \$71,555.22. This amount included disbursements of \$1,211.22. It submitted that InterGroup assisted it with preparation of the Application and the drafting, coordination, review and finalization of interrogatory responses, argument and reply. It stated that the consulting services claimed were primarily provided by Cam Osler who has over 20 years of experience at a rate of \$240.00 an hour and Mona Pollitt-Smith who has over 12 years of experience at a rate of \$168.00 an hour. YEC added that other research staff from InterGroup provided quality assurance review and technical analysis, as required. Costs also include services provided by Jolene Gordon, Production Coordinator, with over 12 years of experience and other staff related to document review, production and process tracking. It stated that the hourly rates for all InterGroup staff are claimed in accordance with the individuals' years of experience under the Scale of Costs. YEC claimed for InterGroup 317 hours for preparation of the Application and 38.75 hours for argument

and reply argument. The disbursements claimed for InterGroup were for travel, meals, long-distance telephone calls and photocopies.

Board cost award

Regarding the legal fees claimed for DLA Piper LLP, the fees are in accordance with the Scale of Costs. However, the Board notes that the DLA Piper LLP invoice does not have any description of the legal services provided by Mr. Landry and Mr. Herbert, and the subject of the invoice is “DCF ERA Discussions”. The Board is unable to ascertain whether the legal services pertain to the Part 1 Application in question or to other matters or whether there was duplication of services as legal fees were claimed for two counsel. The onus is on YEC to demonstrate that the legal fees claimed pertain to the Part 1 Application and submit invoices which support the fees claimed. As a result, the Board denies the legal fees claimed for DLA Piper LLP. The disbursement of \$34.00 is also denied as the DLA Piper LLP invoice states that the disbursement is for “Dye & Durham — Agent Fees” but provides no further explanation.

In terms of InterGroup Consultants, the Board disallows the professional fees of any researcher or other analyst because the Board is not satisfied that these services were needed given the consulting services provided by Mr. Osler and Ms. Pollitt-Smith. In addition, the Board considers that document production staff are not consultants, analysts or experts within the meaning of the Scale of Costs. Document production staff is more akin to support staff and the Scale of Costs only permits claims for support staff who are not part of the office staff of the consultants. In this case, the document production staff work for InterGroup; therefore, the Board disallows the consulting costs claimed for InterGroup’s document production staff.

After reviewing the invoices submitted for consulting services provided by InterGroup, the Board finds that the total hours claimed for Mr. Osler of 186.75 and for Ms. Pollitt-Smith of 130.75 were not reasonable given the nature and purpose of the Part 1 Application to approve the quantum of the 2012 ERA and to approve the ERA amount of zero for each of the 2013 to 2016 years. The Part 1 Application consisting of 14 pages was straightforward. The invoices also refer to time spent on preparation for and attendance at GRA filing discussions or working on Part 2 issues and approaches. These matters do not relate to the Part 1 Application proceeding and hours should not be claimed in this proceeding for this work. In addition, based on the descriptions set out in the invoices, the Board is of the view that there was some duplication in the services provided by Mr. Osler and Ms. Pollitt-Smith. Accordingly, the Board finds that the hours claimed for preparation of the Part 1 Application in question, which occurred between October and December 6, 2017, when the Part 1 Application was filed, do not warrant the hours claimed for Mr. Osler and Ms. Pollitt-Smith. The Board exercises its discretion to reduce the number of hours of each of these consultants by 60%. The Board further finds that the hourly consulting fees claimed for Mr. Osler and Ms. Pollitt-Smith are within the Scale of Costs. In summary, the Board awards consulting fees for 74.7 hours at \$240.00 an hour for Mr. Osler in the amount of \$17,928.00 and awards consulting fees for 52.3 hours at \$168.00 an hour for Ms. Pollitt-Smith in the amount of \$8,786.40. Accordingly, the Board awards \$26,714.40 in consulting fees for InterGroup.

With respect to the disbursements claimed for InterGroup, the Board disallows the disbursements of \$579.01 for accommodation, meals and taxi because the Scale of Costs only permits claims for accommodation, meals, and taxis for attendance at a hearing. Further, given the size of the Part 1 Application, the \$602.85 for photocopying is unreasonable. The Board awards 25% of the disbursements claimed for photocopying and awards \$150.71 and \$29.36 for telephone or long distance, for a total of \$180.07 for the InterGroup disbursements.

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

InterGroup	\$ 26,894.47
Total costs awarded	\$ 26,894.47

BOARD COSTS

4. Yukon Utilities Board

The Board costs with respect to the Application proceeding are costs that more appropriately belong to the utility, and ultimately the utility ratepayers than to the Yukon taxpayers. Therefore, all hearing-related costs of the Board are allowed as utility regulatory costs.

The Board directs an award of costs to Government of Yukon in the amount of \$36,935.74.

NOW THEREFORE the Board Orders as follows:

YEC shall pay the following amounts to the interveners identified and the Government of Yukon within 30 days of the issuance of this Order. The Board directs YEC to amortize these hearing-related costs.

City of Whitehorse	\$ 4,171.00
Utilities Consumers' Group	\$ 2,637.60
Yukon Energy Corporation	\$26,894.47
Government of Yukon (Board Costs)	<u>\$36,935.74</u>

Total costs awarded: \$70,638.81

Dated at the City of Whitehorse, Yukon, the 30th day of October 2018.

BY ORDER



Robert Laking
Chair