

Yukon Utilities Board

Board Order 2023-06

Appendix A: Reasons for Decision

March 9, 2023

ERRATUM

[*Erratum noted at the end of this document]

Appendix A to Board Order 2023-06

Reasons for Decision

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1. Summary

1. On May 18, 2021, the Minister of Justice directed the Board, by letter, pursuant to subsection 18(1) of the Public Utilities Act (Act), to perform a detailed review of the Electricity Purchase Agreement (EPA) being developed between Yukon Energy Corporation (YEC) and Tlingit Homeland Energy LP (THELP) to acquire power from the Atlin Hydro Expansion project. The letter included Terms of Reference, which set out the purpose and the specific aspects of the Electricity Purchase Agreement to be reviewed. It stipulated that the Board hold a public review and submit its report within 180 days of when the EPA was finalized and provided to the Board by YEC.
2. The Minister stated that section 50 of the Act requires ministerial approval in advance of any inquiry or public hearing under the Act and, with the May 18, 2021 letter, granted approval for the public review.
3. In January 2022, YEC filed an application regarding the YEC-THELP EPA (Application).
4. YEC submitted its amended Application to the Board on April 20, 2022.
5. On October 18, 2022, the Board issued its Report to the Yukon Minister of Justice on the Yukon Energy Corporation Electricity Purchase Agreement with Tlingit Homeland Energy LP, under section 18 of the Act (Report).
6. The Board received costs claims from Nathaniel Yee and YEC within 30 days of the issuance of the Report.
7. This Appendix A addresses these costs claims related to the proceeding leading to the issuance of the Report.
8. 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.

2. Intervener costs

9. In Board Order 2022-02,¹ the Board granted intervener status to ATCO Electric Yukon, the City of Whitehorse, John Maissan, Nathaniel Yee, and the Utilities Consumers' Group. Nathaniel Yee submitted a costs claim within the timelines specified in section 3.1 of the Board's Scale of Costs. ATCO Electric Yukon, the City of Whitehorse, John Maissan, and the Utilities Consumers' Group did not submit costs claims.

¹ Board Order 2022-02: Yukon Energy Corporation application for the referral of the Electricity Purchase Agreement with Tlingit Homeland Energy Limited Partnership by its general partner Tlingit Homeland Energy Limited to the Yukon Utilities Board for review under subsection 18(1) of the Public Utilities Act, February 17, 2022.

2.1. Unrepresented Intervener, Nathaniel Yee

10. Nathaniel Yee claimed the following costs:

Fees	\$ 1,575.00
Attendance honorarium	<u>\$ 200.00</u>
Total amount claimed	\$ 1,775.00

11. Nathaniel Yee submitted a claim for 45 hours for preparation, argument and reply argument at the hourly rate of \$35.00. This totalled \$1,575.00. He also claimed an attendance honorarium of \$200.00 for four half-days of attendance at the hearing. Mr. Yee submitted that he believed that his ideas and approach added value to the process. He added that the Board was in agreement with a number of his conclusions.

2.2. Board costs award

12. Mr. Yee's costs claimed are subject to section 4.3 of the Scale of Costs for his participation as an unrepresented intervener at the hearing. In addition, because this is Mr. Yee's second intervention in an application before the Board, the Board, exercising its discretion, finds that an hourly rate of \$35.00 is reasonable. Mr. Yee participated in the proceeding by making information requests, attending the hearing, and filing argument and reply argument. Mr. Yee's submissions primarily related to whether YEC considered or provided information on any viable or reasonable alternative options to the Electricity Purchase Agreement with Tlingit Homeland Energy LP. However, he also addressed the other questions put forward by the Minister in the context of the evidence presented in the proceeding. The intervention assisted the Board in reaching its determinations. Further, the hours claimed are not excessive for the tasks undertaken in the proceeding.

13. In summary, the Board awards costs to Nathaniel Yee as follows:

Nathaniel Yee

Fees	\$1,575.00
Attendance honorarium	<u>\$ 200.00</u>
Total costs awarded	\$ 1,775.00

3. Applicant costs – Yukon Energy Corporation

3.1. Costs claim

14. Yukon Energy Corporation claimed the following costs:

DLA Piper (Canada) LLP (fees and disbursements)	\$ 37,071.83
InterGroup Consultants Ltd. (fees and disbursements)	\$150,237.74
KPMG (fees)	\$ 1,290.00
YEC disbursements	\$ 7,369.86
Total amount claimed	\$195,969.43

15. YEC retained DLA Piper LLP as legal counsel, InterGroup Consultants Ltd. (InterGroup) as its primary regulatory consultant and KPMG as accountant consultant to provide support in the preparation of IR responses. YEC also claimed disbursements in the total amount of \$7,369.86. In its costs claim, YEC submitted that all costs as applied for are reasonable and necessarily incurred in order to prepare and support its Application in the original proceeding and that the costs claimed are in accordance with the Scale of Costs.

16. P. John Landry of DLA Piper LLP provided legal services, with assistance provided by Jason Herbert. YEC claimed legal fees for P. Landry and J. Herbert at the hourly rate of \$350.00 as they have more than 20 years of experience. The total hours claimed are 67 hours for preparation, 17 hours for attendance and 15 hours for argument and reply argument. The total fees claimed for legal services are \$33,978.00. Disbursements of \$3,093.83 are also claimed for airfare, accommodation, parking and taxi.

17. YEC claimed costs for InterGroup totalling \$150,237.74. This amount included disbursements of \$51.49. It submitted that InterGroup assisted it with preparation of the Application and the drafting, review and finalization of interrogatory responses, preparation and support for the oral hearing process and assisting with argument and reply argument. It stated that the consulting services claimed were primarily provided by Cam Osler, who has over 20 years of experience, at a rate of \$250.00 an hour, and Mona Pollitt-Smith, who has over 15 years of experience, at a rate of \$185.00 an hour. YEC added that other consultants and research staff from InterGroup performed additional tasks including technical analysis, quality assurance review and document production. 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 stated that production costs have been separated from pure administrative costs and are included in this claim. For InterGroup, YEC claimed 609.25 hours for preparation of the Application, 41.50 hours for attendance and 100.50 hours for argument and reply argument. The disbursements claimed for InterGroup related to external printing. These disbursements totalled \$51.49.

18. YEC claimed hourly consulting fees for KPMG of \$1,290.00 for 5 hours of accounting analysis and advice for Atlin EPA, including review of submission to the Board.

19. YEC also claimed disbursements for its participation in the proceeding in the total amount of \$7,369.86. These disbursements included claims of \$3,576.16 for consulting/creative services and newspaper ad services provided by Aasman Brand Communications Inc., \$1,799.70 for external printing of hearing binders from Arctic Star Printing Inc., \$2,362.50 for technical services provided for the hearing on July 19 to 21, 2022, by Upstream Events Inc.

3.2. Board costs award

20. Regarding the legal fees claimed for DLA Piper LLP, the fees are in accordance with the Scale of Costs. In addition, the Board finds that the hours and activities were commensurate with the legal work required related to the Application. Accordingly, the Board awards \$33,978.00 in legal fees for DLA Piper. The disbursements of \$ 2,149.41 for airfare claimed is for business class. The Scale of Costs only allows for economy class or less. Therefore, this disbursement is reduced to \$1,058.00 for an economy class return ticket. The other disbursements for accommodation, parking and taxi are claimed in accordance with the Scale of Costs. Accordingly, disbursements of \$2,002.42 are approved.

21. For InterGroup, the Board finds that the hourly consulting fees claimed for InterGroup consultants are within the Scale of Costs. The Board notes in previous Board orders² that it had concerns with the number of consultants used for InterGroup or duplication of consulting activities. In the current proceeding, InterGroup used four consultants and additional support staff. A review of the detailed invoices of InterGroup show that there is still some duplication in consulting services due to the same or similar tasks being completed by various consultants.

22. Consistent with Appendix A to Board Order 2023-02 and Board Order 2018-09, the Board considers that any document production costs claimed do not fall within the Scale of Costs. Accordingly, the Board has disallowed any production costs claimed for InterGroup.

23. For the above reasons, the Board applies a 10% reduction to the consulting fees claimed for InterGroup. Accordingly, the Board awards \$135,167.62 in consulting fees for InterGroup. Disbursements claimed in the total amount of \$51.49 for external printing are in accordance with the Scale of Costs and are approved.

² For example, see Board Order 2021-13 (erratum), Board Order 2019-03 and Board Order 2018-09.

24. Regarding the consulting fees claimed for KPMG, the Board finds the hourly consulting fees reasonable and directly and necessarily related to YEC's participation in the proceeding. Accordingly, the Board awards \$1,290.00 to YEC for the consulting services provided by KPMG.

25. With respect to claims for disbursements for YEC, the Board finds that the claims for \$3,576.16 for consulting/creative services and newspaper ad services, \$1,799.70 for external printing, and \$2,362.50 for technical services provided for the virtual hearing are in accordance with the Scale of Costs and are approved.

26. For the above reasons, the Board approves disbursements for YEC in the total amount of \$7,369.86.

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

Legal services provided by DLA Piper LLP

Legal fees	\$ 33,978.00
Disbursements	\$ 2,002.42

Consulting services provided by InterGroup Consultants Ltd.

Consulting fees	\$135,167.62
Disbursements	\$ 51.49

Consulting services provided by KPMG

Consulting fees	\$ 1,290.00
YEC disbursements	\$ <u>7,369.86</u>

Total costs awarded **\$179,859.39**

4. Government of Yukon Costs – Yukon Utilities Board

28. 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.

29. The Board directs an award of costs to the Government of Yukon in the amount of \$211,860.68.*

5. Total Costs Awarded

30. The total costs awarded are \$385,637.77 based on the following:

Nathaniel Yee	\$ 1,775.00
Yukon Energy Corporation	\$179,859.39
Government of Yukon (Board costs)	<u>\$211,860.68</u>
Total costs awarded	\$393,495.07

*An error was made in the amount of the Government of Yukon’s hearing related costs of the Yukon Utilities Board specified in this decision. The amount has been corrected from \$204,003.38 to \$ 211,860.68 and the total cost awarded has been corrected accordingly.