

IN THE MATTER OF the *Public Utilities Act*

and

**Review of Yukon Utilities Board Order 2014-12 and
Appendix A – Reasons for Decision**

BEFORE: B. McLennan, Chair) November 20, 2014
 R. Laking, Vice-chair)
 A. Fortin)

BOARD ORDER 2014-13

WHEREAS:

- A. On August 14, 2014, the Yukon Utilities Board (Board) received an application from the Utilities Consumers' Group (UCG) requesting a review and variance of Board Order 2014-12 (Decision). The Decision issued on August 8, 2014 contains the Board's cost awards to the interveners and applicant for the Yukon Energy Corporation Application for an Energy Project Certificate and an Energy Operation Certificate regarding the Whitehorse Diesel to Natural Gas Conversion Project (Proceeding).
- B. In summary, the grounds on which the review and variance request is based are as follows. UCG alleged that the Board made an error of fact and law in determining the amount of costs awarded to UCG for fees claimed by its legal counsel. It argued that the reduction of travel time from 26 hours to 12 hours and the reduction of 20% of the hours claimed for attendance and argument were wrong in fact and failed to achieve the goal set out in section 2.2 of Schedule 1, Scale of Costs, to the Board's *Rules of Practice* (Schedule 1). With respect to the reduction in the hours claimed for attendance and argument and reply, it stated that its total claim for legal counsel including preparation was 60.25 hours, the hours for attendance and argument and reply were 36.30, and the 20% reduction should have been taken from the 36.30 hours. It submitted that it met the first stage of a review and variance and that no further process was needed to vary the Decision in the second phase of the process.
- C. On August 29, 2014, the Board received an application from the Yukon Conservation Society and Leading Edge Projects Inc. (YCS-LE) also requesting a review and variance of the Decision. In summary, the grounds on which the review and variance request is based are as follows. YCS-LE alleged that the Board made an error in fact and law in its determination of its costs award and that the Decision is not consistent with section 2.2 of Schedule 1. YCS-LE is seeking a review and variance of the reduction in fees claimed for its legal counsel, for Mr. Maissan and for Mr. Pinard. It contended that these reductions are contrary to the rule of natural

justice as the reductions are inconsistent with previous Board Orders, inconsistent among the parties within the Decision, and do not meet the test of fair and reasonable tariff required in section 2.2 of Schedule 1. YCS-LE stated that it supported the UCG review and variance application. It submitted that it met the first stage of the review and variance test and that the Decision should be varied as requested in the second phase of the process.

- D. On September 3, 2014, the Board issued a letter requesting comments from parties to the Proceeding and affording the applicants for review an opportunity to respond to any comments filed.
- E. On September 10, 2014, UCG filed comments regarding the YCS-LE review and variance application. It stated that the reasonableness of the costs incurred by counsel for an intervener must be considered on the basis that the thrust of representation must be a testing of the company's evidence by cross-examination and the use of the company's own evidence to draw different conclusions. Any reductions of costs should consider the time required by reasonable counsel of equivalent experience.
- F. Section 31 of the Board's *Rules of Practice* states that the Board will use a two-phase system for applications for review. The first phase is the initial screening phase where the applicant must establish a *prima facie* case sufficient to warrant full consideration by the Board. In the case of an alleged error, in order to advance to the second phase of the process, the applicant for review must show that the claim of error is substantiated on a *prima facie* basis and the error has significant material implications.
- G. The Board has considered the requests for a review and variance from UCG and YCS-LE and comments from UCG dated September 10, 2014 in light of the test set out in section 31 of the Board's *Rules of Practice*. With respect to the UCG review and variance request, the Board has decided that UCG has shown on a *prima facie* basis that an error occurred in the calculation of the reduction of 20% in the attendance and argument and reply hours of its legal counsel. The Board has considered this ground for review on the merits as the second phase of the process and corrected the calculation error. The Board awards UCG the additional amount of \$8,750.00 plus HST of 13% in the amount of \$1,137.50, for a total of \$9,887.50.
- H. With respect to travel time of legal counsel, the Board has decided that UCG has not shown on a *prima facie* basis that the Board committed substantial errors of law or fact in its costs award to UCG. Therefore, the Board has determined that, on this ground, the review and variance application will not advance to the second phase of the process.

- I. Regarding the review and variance request of YCS-LE, the Board has decided that YCS-LE has not shown on a *prima facie* basis that the Board committed errors of law or fact in its costs award to YCS-LE. Therefore, the Board has determined that the review and variance application will not advance to the second phase of the process.

NOW THEREFORE, for the reasons set out in the attached Appendix A, the Board grants in part the UCG application and denies the YCS-LE application for the Board to review and vary Board Order 2014-12.

DATED at the City of Whitehorse, Yukon, the 20th day of November 2014.

BY ORDER



Bruce McLennan
Chair