

IN THE MATTER OF the *Public Utilities Act*

and

**Review of Yukon Utilities Board Order 2017-07 and
Appendix A – Reasons for Decision**

BEFORE: R. Laking, Chair) December 18, 2017
B. King, Vice-Chair)
A. Fortin)
M. Hannam)
P. Fitzgerald)

BOARD ORDER 2017-11

WHEREAS:

- A. On September 1, 2017, the Yukon Utilities Board (Board) received an application from the Utilities Consumers' Group (UCG) requesting a review and variance of Board Order 2017-07 (Decision), under section 62 of the *Public Utilities Act* (Act). The Decision issued on August 24, 2017 contains the Board's cost awards to the interveners and applicant for the Yukon Electrical Company Ltd. (AEY) General Rate Application (Proceeding).
- B. In summary, the grounds for the review and variance request are as follows: UCG alleged that the Board made an error of fact or law in determining the amount of costs awarded to the UCG for fees claimed for its consultant, Pat McMahon, and for Roger Rondeau. It argued that the reduction in the fees claimed by UCG 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). UCG relied on the record of the Proceeding, its materials previously filed in the cost application, and the facts and submissions contained in its review request.
- C. With regard to the fees claimed for Mr. McMahon, UCG argued that the reduction in his hourly fee from \$200.00 to \$150.00 and the reduction of the number of hours claimed were wrong in fact. It added that UCG had to rely more heavily on Mr. McMahon because it did not have legal counsel. With respect to the fees claimed for Mr. Rondeau, UCG contended that he was its representative and performed all the same tasks and duties as the lawyers for the City of Whitehorse and AEY. It alleged that the Board erred when it did not award the costs claimed for Mr. Rondeau.

- D. UCG submitted that the Board should grant the review and variance application and vary its award by granting Mr. McMahon the hourly rate claimed of \$200.00 an hour and reduce his fees by 15% rather than 35% and award the fees claimed for Mr. Rondeau of \$1800.00.
- E. On September 6, 2017, the Board issued a letter requesting comments from parties to the Proceeding and affording the applicant for review an opportunity to respond to any comments filed. No comments were received.
- 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 that the error has significant material implications.
- G. The Board has considered the request for a review and variance from UCG 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 not shown on a *prima facie* basis that the Board committed any errors of law or fact in its costs award to UCG. 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 orders as follows:

The Board denies the UCG application for review and variance of Board Order 2017-07.

DATED at the City of Whitehorse, Yukon, the 18th day of December 2017.

BY ORDER



Robert Laking
Chair