

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

and

**An Application by Yukon Energy Corporation for an Energy Project
Certificate and an Energy Operation Certificate regarding the
Proposed Mayo Hydro Enhancement Project (Mayo B)**

BEFORE: B. McLennan, Chair
 K. Avery) September 2, 2010
 J. Woodland)
 R. Hancock

BOARD ORDER 2010-09

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 fix the costs to be paid;”
- B. On December 18, 2009, the Minister of Justice required the Board to carry out a review and hold a public hearing on Yukon Energy Corporation’s (YEC) Mayo Hydro Enhancement Project (Mayo B) application under Part 3 of the *Public Utilities Act* as OIC 2009/220 designated Mayo B as a regulated project. The Board was directed to provide a report and recommendations on the potential benefits, costs, risks and customer impacts that influence whether Mayo B should proceed as proposed by YEC.
- C. On January 28, 2010, the Board issued Board Order 2010-01 in which it gave notice of the Mayo B Energy Project Certificate and Energy Operation Certificate Application and that a hearing would be held into the Application in Whitehorse, Yukon. The Board also asked persons seeking intervenor status to apply by February 8, 2010.
- D. On February 11, 2010, the Board issued Board Order 2010-02 in which it granted intervenor status to

Yukon Electrical Company Limited (YECL)
City of Whitehorse
John Maissan
Yukon Conservation Society.

- E. The Board also granted observer status to the following:
Department of Energy, Mines and Resources, Government of Yukon
Yukon Chamber of Commerce.
- F. In addition, the Board granted intervenor status to Mr. Peter Percival in Board Order 2010-03 and to Utilities Consumers' Group in Board Order 2010-04.
- G. The Board held an oral public hearing in the City of Whitehorse, Yukon on April 6, 7 and 8, 2010. The Board notes that although Peter Percival and John Maissan were granted intervenor status, they did not participate in the hearing.
- H. On May 17, 2010, the Board issued its Report to the Yukon Minister of Justice on the Yukon Energy Corporation Application for an Energy Project Certificate and Energy Operation Certificate Regarding the Proposed Mayo Hydro Enhancement Project (Mayo B).
- I. Subsequent to the release of the Report, the Board reminded parties respecting the filing of applications for cost awards.
- J. The Board received applications for cost awards from:

City of Whitehorse
Utilities Consumers' Group
Yukon Conservation Society
YEC.
- K. In its correspondence to the Board dated June 30, 2010, the Utilities Consumers' Group submitted comments on the cost claim submitted by the City of Whitehorse and that of YEC.
- L. The Board has reviewed all applications for costs and comments of the Utilities Consumers' Group 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 relating to cost awards set out in previous Board Orders, in particular, Appendix A to Order 2007-06, and Orders 2005-16, 2005-17, 2007-07, 2007-08, 2007-09, 2009-06 and 2009-11.
- M. 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 utility's rates;

- N. After careful consideration, the Board has assessed the cost applications in accordance with the Scale of Costs and the principles outlined above in determining the cost applications.

Therefore, the Board awards costs as follows:

INTERVENOR COSTS

City of Whitehorse

City of Whitehorse Claiming:

Brownlee LLP (Fees, Disbursements)	\$20,720.35
Garbutt Consulting Inc. (Fees, Disbursements)	\$4,331.25
Municipal and Regulatory Consulting Inc.	\$14,453.27
Total Costs Claimed	\$39,504.87

Comments

The City of Whitehorse was represented by Ms Kristjana Kellgren of Brownlee LLP (Brownlee), legal counsel, and Mr. Greg Garbutt of Garbutt Consulting Inc. (GCI), and Mr. Keith Dannacker of Municipal and Regulatory Consulting Inc. (MARCI), technical and regulatory analysts. In its cost claim application, the City of Whitehorse noted that Ms Kellgren charged \$175.00 an hour, well below the maximum allowed by the Scale of Costs. Also, it submitted that Brownlee, GCI and MARCI have the relevant knowledge and expertise necessary to effectively and efficiently represent the interests of the City. In addition the City stated that it incurred costs only as required to properly examine the Application, develop and file relevant information requests, pursue pertinent cross examination and provide practical and reasonable argument.

In its letter of June 30, 2010, the Utilities Consumers' Group pointed to the Board's statements in Board Order 2009-11 regarding the City's costs submitted in relation to the YEC 2008-2009 General Rate Application. It submitted that the Board at a minimum should reduce the professional fees submitted for Brownlee by \$4,000.00 to \$6,000.00 because Ms Kellgren's hourly rate should be reduced to a fee in the range of \$110.00 to \$140.00 an hour as she is a lawyer with only 2 years experience and had charged \$90.00 an hour in the previous year for the cost claim related to the YEC 2008-2009 General Rate Application. Utilities Consumers' Group further added that the time charges of 1.4 hours should be disallowed because these costs were not hearing costs. Also, Utilities Consumers' Group asked the Board to disallow hours claimed by GCI and MARCI that overlap in the services provided or for which no detail of the services was provided in support of the time claimed.

Regarding disbursements, the Utilities Consumers' Group submitted that disbursements for printing, photocopying costs, telephone, file duplication, scanning, postage and parking should be disallowed because some of these disbursements were not substantiated, some were included in normal overhead costs or some are not recoverable under the Scale of Costs.

The Board notes from the City of Whitehorse's letter of February 8, 2010 that the City has generally supported the project from the start of this proceeding. The City of Whitehorse's concerns related to the project's effect on the rates of non-industrial customers under different scenarios of forecast load and believed that the project should not proceed at the expense of needed DSM measures. Considering these facts, the Board is of the view that the number of hours claimed for preparation in this proceeding, 75.30 for legal services and 61.25 for technical and regulatory services, was not reasonable. Also, the City of Whitehorse did not file any evidence. The Board also considers that there was overlap in the services provided by GCI and MARCI. The Board took into account that the legal and regulatory issues in this proceeding were not complex in nature. The Board reduces the number of hours claimed for preparation by legal counsel and the technical and regulatory consultants by 40%.

In addition, the Scale of Costs sets out a maximum fee for legal services on an hourly basis. However, in the Board's view this rate is related to the experience of legal counsel. Considering that the City of Whitehorse's legal counsel was charging \$90.00 per hour at the previous year, the Board is of the view that it is not reasonable to allow an hourly fee of \$175.00 at this hearing. Therefore the Board exercises its discretion and reduces the legal fees to \$130.00 per hour and reduces the amount claimed accordingly.

Furthermore, the Board notes that on the summary of hours claimed no time was claimed by Ms Kellgren, after the hearing closed. Therefore, no reduction was necessary as argued by the Utilities Consumers' Group.

Regarding disbursements, the Board notes that on the summary of disbursement that the disbursements claimed are within the Scale of Costs and the Board awards the disbursements claimed.

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

Legal Services Provided by Brownlee LLP:

Legal Fees: (75.30 hours x 60% = 45.18)	
+ 18 hours = 63.18) x \$130.00	\$8,213.40
Disbursements:	\$4,380.35

Consulting Services Provided by GCI:

Professional Fees: (19.25 hours x 60% = 11.55) x \$225	\$2598.75
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Consulting Services Provided by MARCI

Professional Fees: ((42 hours x 60% = 25.2)	
+ 14.25 = 39.45 hours) x \$225	\$8876.25
Disbursements:	\$1797.02

Total Costs Awarded to the City of Whitehorse: \$25,865.77

Utilities Consumers' Group

Utilities Consumers' Group Claiming:

Legal Services Provided by PIAC

Legal Fees	\$8,730.00
Disbursements	\$4,553.32
GST	\$651.33

Consulting Services Provided by P. McMahon

Professional Fees	\$7,350.00
Disbursements	0
GST	\$367.50

Total Costs Claimed \$21,652.15

Comments

Utilities Consumers' Group submitted that it was represented by Mr. Michael Buonaguro, legal counsel from Public Interest Advocacy Centre and Mr. Patrick McMahon, consultant. Utilities Consumers' Group added that Mr. McMahon was a skilled consultant with relevant general knowledge of the industry and an extensive background in the history of the Yukon energy sector, in support of the requested rate of \$60.00 an hour. With regards to Mr. Buonaguro's disbursements related to his Certificate of Permission to Act from the Yukon Law Society, the Utilities Consumers' Group submitted that this expense is not a general overhead expense as it does not relate to his general practice, but it is specific to allowing him to represent the Utilities Consumers' Group.

The Board evaluated the Utilities Consumers' Group's cost application as that of an intervenor under section 3 of the Scale of Costs. The Board finds that the number of hours spent by Mr. Buonaguro in this proceeding were reasonable and the resulting professional fees are accepted as submitted. However, the Board has reduced from his disbursements the costs related to his Certificate for Permission to Act of \$800.00 plus \$40.00 of related GST because the Board considers these expenses as a necessary expense for Mr. Buonaguro to practice law in the Yukon and the Scale of Costs does not allow for the reimbursement of membership fees paid to the Yukon Law Society.

Regarding the consulting services of Patrick McMahon, the Board has chosen to exercise its discretion provided for in the Scale of Costs to reduce the hours submitted by Patrick McMahon by 50%. The reason for the reduction is as follows: It was not prudent or reasonable for Mr. McMahon to have spent 122.50 hours in total on behalf of the Utilities Consumers' Group in light of the intervention presented by the Utilities Consumer Group and the issues raised by the Application. The hours claimed on page 5 of the Utilities Consumers' Group Cost Claim Summary for Mr. McMahon was incorrectly added and

should have read 122.25, not 122.50 as submitted. Accordingly the claim has been reduced by that arithmetic error. The Board notes that the Utilities Consumers' Group did not file any evidence in this proceeding. The Board is of the view that Mr. McMahon was not a subject matter expert in relation to the Application and awards the rate of \$50.00 per hour for Patrick McMahon.

In summary, the Board awards costs to the Utilities Consumers' Group as follows:

Under Scale of Costs Section 3:

PIAC

Professional Fees	\$8730.00
Disbursements: \$4553.32 - \$800.00	\$3753.32
GST	\$611.33
Patrick McMahon (122.25 hours x 50% = 61.125 hours)x\$50.00	\$3056.25
GST	\$152.81

Total Costs Awarded to Utilities Consumers' Group: \$16,303.71

Yukon Conservation Society

Yukon Conservation Society Claiming:

Fees \$5,880.00

Total Costs Claimed \$5,880.00

Comments

The Yukon Conservation Society submitted a claim for hours worked by five members of the Society. Some members claimed for preparing information requests, preparing evidence, and preparing for the hearing and attendance at the hearing. The total number of hours claimed was 168 hours.

The Board evaluated the Yukon Conservation Society's cost application as that of an intervenor under section 3 of the Scale of Costs. The Board notes that intervenors cannot claim attendance costs under section 3 of the Scale of Costs. Therefore, the Board reduces the number of hours claimed by 38 hours. The Board is of the view that the claim of the remaining 130 is not reasonable considering the focused nature of its intervention in this proceeding and the limited scope of its evidence. The Board exercises its discretion to reduce the 130 hours claimed by 60%.

In summary the Board awards costs to Yukon Conservation Society as follows:

Fees: (168 - 38= 130 hours x 40% = 52 hours) x \$35.00 \$1820.00

Total Costs Awarded to Yukon Conservation Society: \$1820.00

APPLICANT COSTS

YEC Claiming:

Davis LLP

Professional Fees \$17,730.00

Disbursements \$2,592.47

InterGroup Consultants Ltd.

Professional Fees \$109,207.25

Disbursements \$5,756.75

YEC

Disbursements: Advertising and Misc. Supplies & Services \$4,325.80

Total Costs Claimed \$139,612.27

Comments

YEC submitted that the costs applied for are reasonable and were necessarily incurred to prepare and support its application. YEC retained Davis LLP as legal counsel, with P. John Landry providing the majority of the legal services required, as in past hearings and other regulatory processes. It added that Davis LLP provided assistance to YEC in relation to the preparation, filing and review of its application and that the professional fees in the cost award application for legal services do not exceed \$225/hour. The hours claimed are 59.30 for preparation, 16.50 hours for hearing attendance, 3 hours for argument, reply and follow up. YEC also stated that these fees include consultations with Jason Hebert relating to issues arising from the application and Mr. Hebert's potential attendance at the hearing.

YEC submitted that it retained InterGroup Consultants Ltd. (InterGroup), who acted as primary regulatory consultants. It added that InterGroup assisted YEC with the preparation of the filing and the review process before the Board. InterGroup claimed professional fees for Cam Osler, Patrick Bowman and Mona Pollitt-Smith, as well as other consultants and research staff. Also, YEC explained that InterGroup provided professional services for production of documents which were not included in the consultants fees. Total hours claimed are 820.8, comprising of 761.75 hours for preparation, 54 hours for hearing attendance, and 5 hours for argument, reply, and follow-up.

In total, YEC claimed \$12,765.02 in disbursements. YEC referred to Reasons for Decision in Board Order 2008-1 to support its claim for travel costs related to costs for the preparation of its Application. YEC stated that the Board had allowed for such costs in that case because "the Board was satisfied that YEC had not made provisions for these costs in its revenue requirement."

Utilities Consumers' Group submitted that the fees claimed for Mr. Hebert should be treated similar to administrative support and be disallowed. Also, the time charges for Mr. Landry after final argument should be disallowed. Regarding disbursements claimed for Davis LLP, Utilities Consumers' Group

submitted that meals and beverages were included and such costs are not allowed by the Scale of Costs. Also, rental car and gas expenses should be disallowed as well as unexplained or unjustified expenses for telephone, binding and photocopying. Utilities Consumers' Group argued that \$808.81 of disbursements should be disallowed.

With regards to the fees claimed for Intergroup, Utilities Consumers' Group cited Board Order 2009-11 which disallowed fees claimed for administrative services including production staff and professional fees other than Cam Osler, Patrick Bauman and Mona Pollitt-Smith. Utilities Consumers' Group argued that on the basis of Board Order 2009-11, the fees claimed for supporting staff of \$11,858.25 should be disallowed. It added that Intergroup has not explained how the duplication of effort has been avoided. Regarding InterGroup's disbursements, Utilities Consumers' Group submits that \$514.80 for photocopying should be disallowed because adequate supporting documentation was not filed by YEC.

Based on the supporting documents for the professional fees claimed for Davis LLP, the Board considers that the services provided by Mr. Hebert duplicate those provided by Mr. Landry. Also, the Board is of the view that the justification submitted by YEC for these services was rather vague. Therefore, the Board exercises its discretion to disallow Mr. Hebert's hours, which total 4 hours. In addition, the Board considers that the hours spent by Mr. Landry in discussion with the YEC Board of 3.5 hours in September of 2009 were not for purposes of the proceeding as it appears the application was not even in the initial stages. Therefore, the Board reduces the professional fees by an additional 3.5 hours. In addition, the Board considers the 3 hours on April 9, 2010 which were described as "follow up" were not for purposes of the proceeding and reduces the professional fees by a further 3 hours. In total, the Board reduces the professional fees claimed for Davis LLP by 10.5 hours.

Regarding the disbursements of Davis LLP, the Board disallows the following costs as these were not in accordance with the Scale of Costs: the amount claimed for car rental and gas \$452.68, the amount of \$199.06 for food from the accommodation claim submitted and \$108.66 for telephone and fax. The total disbursements disallowed is \$760.40.

InterGroup claimed professional fees for a large number of persons. From the detailed time sheets submitted, the Board determines that there is duplication in the services provided by the various analysts. In addition, InterGroup claimed professional fees for productions staff. The Board considered the costs claimed in light of the nature of the application and the principles applied in previous cost awards.

The Board finds that it was not reasonable for YEC to incur costs for productions staff for its application because these professional services did not assist the Board in gaining a better understanding of the issues relating to

the application. Therefore, the Board exercises its discretion and disallows the professional fees claimed for the production staff of InterGroup.

The Board finds that the fees claimed for analysts other than Mr. Cam Osler, Mr. Patrick Bauman and Ms Mona Pollitt-Smith were duplicative and unnecessary given the expertise of Mr. Osler, Mr. Bauman and Ms Pollitt-Smith. Therefore, the Board disallows the hours claimed for the other analysts.

In addition, from the time sheet description of services provided by Mr. Osler, Mr. Bauman and Ms Pollitt-Smith, the Board finds that there was also duplication in the services they provided; therefore, the Board further reduces the costs for professional fees by 15%.

With respect to disbursements, the Board in the past has exercised its discretion by allowing for the recovery of travel expenses claimed by a utility for the preparation of its application if these costs were reasonable. In this case, the Board is of the view that a meeting in Vancouver just prior to the hearing was not justified as the consultants could have met in Whitehorse prior to the hearing. Therefore, the Board denies the airfare and other costs related to this meeting of \$504.99 and \$854.99. Also, the board reduces the airfare claimed to attend the hearing to an economy fare. The Board has reduced YEC's disbursements by a total of \$633.11 which was the cost of meals, as meals are not allowed under the Scale of costs. .

In summary the Board awards costs to YEC as follows:

Davis LLP

Legal Fees (78.8 - 10.5) = 68.3 hours x \$225 =	\$15,367.50
Disbursements: \$2592.47 - \$760.40 =	\$1832.07

InterGroup

Professional fees	
Osler: \$33,625.58	
Bowman: \$18,105.00	
Pollitt-Smith: \$23,240.00	
Total:	\$74,970.58
Disbursements: \$5,756.75 - \$1923.14=	\$3833.61

YEC Disbursements: \$4325.80 - \$633.11=	\$3692.69
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Total costs awarded to YEC	\$99,696.45
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NOW THEREFORE the Board orders as follows:

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

City of Whitehorse	\$25,865.77
Utilities Consumers' Group	\$16,303.71
Yukon Conservation Society	\$1820.00
YEC	\$99,696.45
Government of the Yukon (Board Costs)	\$135,428.40
Total Costs Awarded:	\$279,114.33

Dated at the City of Whitehorse, in the Yukon Territory, the 2nd day of September, 2010.

BY ORDER



B. McLennan
Chair