



PUBLIC INTEREST ADVOCACY CENTRE

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April 23, 2013

VIA E-Mail

Yukon Utilities Board
Box 31728
Whitehorse, Yukon
Y1A 6L3

Attention: Mr. Bruce McLennan, Chair

**Re: Yukon Energy Corporation 2012-2013 General Rates Application
UCG Comments on City of Whitehorse Cost Claim**

Dear Mr. McLennan:

According to the Yukon Utilities Board's Scale of Costs which was approved by Board Order 2012-09 on October 17, 2012, participants may comment on cost claims filed by other participants within 14 days of the filing with the Board of a costs claim.

Our client, the Utilities Consumers' Group ("UCG"), is in receipt of the cost claim submitted by the City of Whitehorse on April 15, 2013. We enclose for the review of the Board the comments of UCG on the City's cost claim.

If there are any questions concerning the contents of this submission, I would ask that they be directed to me by email at mjanigan@piac.ca or by phone at (613) 562-4002 ext. 26.

Thank you.

Yours truly,

A handwritten signature in black ink, appearing to be 'Michael Janigan', written in a cursive style.

Michael Janigan
Counsel for UCG

Cc: Interested Parties – via email

**Utilities Consumers' Group
Submission on Cost Claim – City of Whitehorse
Yukon Energy Corporation
2012/2013 General Rate Application**

As a general comment, it appears to UCG that the City of Whitehorse continues to apply to recover costs that the Board has denied in previous proceedings according to the Intervenor Cost Awards Policy and the associated Scale of Costs. UCG does not understand why an experienced intervenor such as the City and its consultants continues to disregard the rulings and determination of the YUB regarding costs that are not to be recovered from Yukon ratepayers through electricity rates. It should not always be left to the review of the Board and intervenors such as UCG to save ratepayers from having to pay for excessive hourly rates, meals, accommodations, etc. that should not be included in the cost claim.

While the summary tables provided in its cost claim did not add up (Form U2 + Summary of Disbursements) nor was the GST isolated on these tables, according to its cost claim, the City of Whitehorse is looking to recover a total of \$70,753.68 (\$67,384.44 + \$3,369.24 GST) in legal and consultant fees and disbursements. **UCG submits that, at a minimum, a total of approximately \$15,160 from this cost claim should be disallowed and not recovered from Yukon ratepayers.**

Hourly Legal Fees

UCG is particularly concerned about the following submission in the City's cost claim:

"The Board will note that Ms. Kristjana Kellgren of Brownlee LLP hourly rate for this matter was charged at \$200.00 per hour and \$240.00 per hour. Mr. Thomas Marriott, as senior counsel with Brownlee LLP, charged the City \$250.00 per hour and \$350.00 per hour. Mr. James Lambert, who is an articling student, assisted Mr. Marriott where appropriate at a much lower rate of \$140.00 per hour. The increase in legal rates charged for work done by Ms. Kellgren and Mr. Marriott were implemented for invoices submitted to the City subsequent to the issuance of Board Order 2012-09 on October 17, 2012 and brought those rates in line with those charged in Alberta for the same type of work."

UCG submits that the issuance by the Board of an updated Scale of Costs was not intended to be a trigger point for legal, utility and regulatory consultants to begin charging more for their services. UCG submits that at the beginning of these proceedings in April 2012, Brownlee LLP would have signed an agreement to represent the City at these proceedings at a specific rate and this agreement should have been filed as part of this cost claim. Absent any sort of agreement, UCG submits that it should be assumed that a single hourly rate would have been agreed to for these proceedings.

UCG submits that it is totally inappropriate for Mr. Marriott to arbitrarily increase the cost of his services to Yukon ratepayers by \$100.00 per hour in the middle of this proceeding. UCG submits that no company in the world would sign a contract for legal services that would allow such an arbitrary adjustment to rates being charged. **UCG submits that the costs of Mr. Marriott's time in this proceeding should be limited to \$250.00 per hour.**

UCG questions the amount of travel time that Mr. Marriott is claiming between Edmonton and Whitehorse. While he is claiming 9 hours travel time each way, UCG submits that this seems a bit high for a flight that is identified as 5½ hours in length, especially in light of his 5 hour cost claim during the 2008/2009 GRA proceeding for “Travel to Whitehorse” on January 5, 2009. **UCG submits that Mr. Marriott’s fee claim should be reduced by 6 hours related to excessive travel times being claimed.**

The City submitted its reply argument in this proceeding on December 12, 2012. UCG submits that the charges for Mr. Marriott’s time to review reply arguments of other parties in this proceeding served no useful purpose for the Board’s deliberations so Yukon ratepayers should not have to pay for this time. **UCG submits that Mr. Marriott’s fee claim should be reduced by 3.75 hours representing the time he charged on December 13, 2012 and December 14, 2012 to review the reply arguments of other parties.**

A summary of the above noted reductions:

Thomas Marriott	6.00 hours @ \$175/hour (travel time)	\$1,050.00 <u>+ \$ 52.50</u> GST \$1,102.50 reduction
Thomas Marriott	3.75 hours @ \$350/hour (review of reply arguments)	\$1,312.50 <u>+ \$ 65.63</u> GST \$1,378.13 reduction
Thomas Marriott	76.85 hours @ \$100/hour	\$7,685.00 <u>+ \$384.25</u> GST \$8,069.25 reduction

In its Order 2011-08 issued June 28, 2011, the Board allowed Brownlee’s Kristjana Kellgren to recover an hourly rate of \$130.00 based on her limited experience:

“Regarding the legal hourly rate in the cost claim, the Board considered that the Scale of Costs sets out a maximum fee for legal services on an hourly basis for experienced counsel. Considering that Whitehorse’s legal counsel has only a few years at the bar and that the work on the Application was being done during the same period as the Mayo B proceeding, the Board is of the view that it is not reasonable to allow an hourly fee of \$175 for this proceeding. Therefore, the Board exercises its discretion and reduces the legal fees to \$130/hour and reduces the amount claimed accordingly.”

Assuming that Ms. Kellgren started working in this proceeding with just 1 more year experience, it does not seem logical or reasonable to UCG to allow her to claim rates of \$200 and \$240 per hour for this proceeding representing an unbelievable 85% increase in her hourly rate. The City has not provided any background on Ms. Kellgren’s experience in this proceeding nor a reasonable justification to increase her charged rate in the middle of this proceeding.

As the Board reiterated in its revised Scale of Costs, the maximum allowable hourly rates will not be awarded as a matter of course.

UCG submits that the legal fees recovered for Ms. Kellgren's time should be limited to an experience-based increase to the previously approved rate. UCG submits that a more reasonable rate would be \$150 per hour.

Kristjana Kellgren	28.25 hours @ \$50/hour	\$1,412.50
	3.35 hours @ \$90/hour	\$ 301.50
		+ \$ 85.70 GST
		\$1,799.70 reduction

The City is claiming the costs of an articling student (Mr. James Lambert) who assisted Mr. Marriott at the maximum rate allowed within the Scale of Costs (i.e., \$140.00 per hour). Again, the Board is not required to award the maximum allowable hourly rates as a matter of course especially when there is absolutely no information regarding Mr. Lambert's experience on the record of this proceeding. **UCG submits that the articling student in this case should not be paid any more than \$75 per hour.**

James Lambert	7.15 hours @ \$65/hour	\$ 464.75
		+ \$ 23.24 GST
		\$ 487.99 reduction

Disbursements

Regarding allowed claims for office disbursements incurred throughout a proceeding, the Scale of Costs allows claims for the following:

- courier charges
- long-distance telephone calls
- photocopies or printing charges (10 cents per page)
- postage
- transcripts (must be accompanied by a receipt)

The invoices from Brownlee LLP contain the following charges which, while some may appear small and not worth worrying about, UCG submits should not be recoverable from Yukon ratepayers in this proceeding since all intervenors are quite aware of the rules under which cost claims are made. **UCG submits that the City's cost claim should be reduced by \$1,017.69 (\$969.20 plus \$48.49 GST) related to the following claimed disbursements:**

May 30, 2012:	Laser - Printing Letter paper	\$13.80 + 0.69 GST = \$14.49
	• no detail provided to allow determination of number of pages at 10¢ per page	
June 25, 2012:	Laser - Printing Letter paper	\$27.00 + 1.35 GST = \$28.35
	• no detail provided to allow determination of number of pages at 10¢ per page	
June 26, 2012:	Laser - Printing Letter paper	\$13.80 + 0.69 GST = \$14.49
	• no detail provided to allow determination of number of pages at 10¢ per page	
July 27, 2012:	Scanning	\$5.40 + 0.27 GST = \$5.67
	• no receipt or explanation provided	
	Laser - Printing Letter paper	\$23.10 + 1.16 GST = \$24.26
	• no detail provided to allow determination of number of pages at 10¢ per page	

August 30, 2012:	Laser - Printing Letter paper	\$17.70 + 0.89 GST = \$18.59
	• no detail provided to allow determination of number of pages at 10¢ per page	
September 25, 2012:	Photocopies	\$0.90 + 0.05 GST = \$0.95
	• no detail provided to allow determination of number of pages at 10¢ per page	
	Laser - Printing Letter paper	\$27.60 + 1.38 GST = \$28.98
	• no detail provided to allow determination of number of pages at 10¢ per page	
October 30, 2012:	Laser - Printing Letter paper	\$389.70 + 19.49 GST = \$409.19
	• no detail provided to allow determination of number of pages at 10¢ per page	
	CD/DVD/Flash Drives - File Duplication	\$10.00 + 0.50 GST = \$10.50
	• no receipt or explanation provided	
November 29, 2012:	Photocopies	\$2.70 + 0.14 GST = \$2.84
	• no detail provided to allow determination of number of pages at 10¢ per page	
	Colour copies	\$49.00 + 2.45 GST = \$51.45
	• no detail provided to allow determination of number of pages at 10¢ per page	
	Scanning	\$7.20 + 0.36 GST = \$7.56
	• no receipt or explanation provided	
	Laser - Printing Letter paper	\$205.50 + 10.28 GST = \$215.78
	• no detail provided to allow determination of number of pages at 10¢ per page	
	Faxes / Copy (High Country Inn Invoice)	\$25.00 + 1.25 GST = \$26.25
	• no detail provided to allow determination of number of pages at 10¢ per page	
December 19, 2012:	Laser - Printing Letter paper	\$158.40 + 7.92 GST = \$166.32
	• no detail provided to allow determination of number of pages at 10¢ per page	
January 15, 2013:	Laser - Printing Letter paper	\$2.40 + 0.12 GST = \$2.52
	• no detail provided to allow determination of number of pages at 10¢ per page	

With respect to accommodations, the Scale of Costs states the following:

“The maximum daily claim for accommodation will be based on the allowable rates for accommodations as specified in the most current Accommodation and Car Rental Directory published by Public Works and Government Services Canada (or a renamed successor document). Claims for accommodation are restricted to the duration of an oral hearing. Receipts must accompany all claims for accommodation.”

According to the Public Works and Government Services Canada’s 2012 Accommodation List, the maximum allowable rate for a hotel stay in Whitehorse was \$119.00 per night (see attached).

While the High Country Inn is not on the list, Mr. Marriott should only be able to recover the cost of a comparable room at a hotel listed on the Public Works list. **UCG submits that the City’s claim for Mr. Marriott’s accommodations should be reduced by \$143.50 (\$560.00 claimed vs. \$416.50 allowed) plus \$7.18 GST.**

With respect to meals, the Scale of Costs states the following:

“The maximum allowable daily claim for meals is in accordance with current Government of Yukon rates. Claims for meals are restricted to the duration of an oral hearing. Tips

are not claimable. Receipts are required for all meals claimed, with the date of the meal marked on the receipt.”

The hearing in this proceeding occurred on November 12, 13 and 14, 2012. The maximum amounts claimable per the Government of Yukon rates effective April 1, 2012 (see attached) for meals in the Yukon were:

Breakfast	\$15.60
Lunch	\$20.00
Dinner	\$48.15
Full Day	\$101.05

While Mr. Marriott’s invoice from the High Country Inn had line items identified as meals, the itemized invoices were not provided so it could not be verified when the meals occurred, how many people were eating, whether the noted “delete \$25 for wine and tip” is actually representative of the actual cost, and what daily meal limits applied. Without this detail, **UCG submits that all of the meals included in Mr. Marriott’s High Country Inn invoice and included in the City’s cost claim (\$68.50) should not be allowed to be recovered from Yukon ratepayers.**

Regarding the other receipts provided in the City’s cost claim, UCG submits that the following claims should be considered for reductions to the City’s cost claim:

November 12, 2012 (8:03 pm)

Giorgio’s Cuccina - \$31.00 + \$1.55 GST = \$32.55

- no detail to verify deductions for wine and tip; no identification on receipt of who incurred/paid this cost

November 14, 2012 (1:25 pm)

Sanchez Mexican Restaurant - \$31.40 + \$1.57 GST = \$32.97

- \$12.97 above allowed amount; no identification on receipt of who incurred/paid this cost

November 14, 2012 (8:17 pm)

Monk’s Grill – Vancouver Airport - \$27.00 + \$3.24 HST = \$30.24

- not during the oral hearing time period; no identification on receipt who incurred/paid this cost

November 15, 2012 (2:05 am)

Edmonton Airport Valet Parking - \$128.00 + \$6.40 GST = \$134.40

- no identification on receipt who incurred/paid this cost; excessive parking fees to use valet service

With respect to travel, the Scale of Costs clearly state that the Board will recognize claims for airfare at economy rates or less and that claims for airfare are restricted to an oral hearing. The City’s cost claim includes the cost of air travel for Mr. Marriott (\$698.25 + \$34.91 GST) plus extra costs of \$160.00 + \$8.00 GST identified as a flight change fee (November 29, 2012 invoice). **UCG submits that the extra \$160.00 + \$8.00 GST in claimed travel fees should not be allowed to be recovered from Yukon ratepayers.**

Garbutt Consulting

In its December 19, 2012 invoice, Garbutt has charged Yukon ratepayers for 18 hours of travelling time related to Mr. Dannacker's trip between Edmonton and Whitehorse. Similar to the arguments above regarding Mr. Marriott's travel time, UCG submits that Garbutt's fee claim should be reduced by 6 hours related to excessive travel times being claimed.

Keith Dannacker	6.00 hours @ \$90/hour (travel time)	\$ 540.00 <u>+ \$ 27.00 GST</u> \$ 567.00 reduction
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With respect to Mr. Dannacker's disbursements:

- With respect to travel, the Scale of Costs clearly state that the Board will recognize claims for airfare at economy rates or less and that claims for airfare are restricted to an oral hearing. Mr. Dannacker's cost claim includes the cost of air travel (\$698.25 + \$34.91 GST) plus extra costs of \$140.00 + \$7.00 GST identified as a change of reservation fee (December 19, 2012 invoice). **UCG submits that the extra \$140.00 + \$7.00 GST in claimed travel fees should not be allowed to be recovered from Yukon ratepayers.**
- The receipt provided for charges claimed for the Edmonton International Parkade (\$87.62 + \$4.38 GST) does not identify who incurred/paid this cost. **UCG submits that these charges totalling \$92.00 should not be allowed to be recovered from Yukon ratepayers.**
- The receipts provided for charges claimed for the Commerce Place Parkade (\$23.81 + \$1.19 GST) are dated November 8, 2012 and November 9, 2012 which are not related to the dates of the oral hearing. **UCG submits that these charges totalling \$25.00 should not be allowed to be recovered from Yukon ratepayers.**
- The hotel charges identified in the cost claim include \$10.00 plus \$0.50 GST for internet charges. UCG submits that these charges are clearly part of the overhead charges assumed to be included in the hourly fee charged. Given that there was no explanation provided for these charges, **UCG submits that these charges totalling \$10.50 should not be allowed to be recovered from Yukon ratepayers.**
- The cost claim includes 4 charges related to meals at the High Country Inn that are not supported by detailed receipts so it is unknown whether they included alcoholic beverages and tip nor for which meal they pertained in order to know what daily meal limits applied. Clearly, the Bistro meal costing \$54.00 + \$2.40 GST is above any meal allowance. **UCG submits that given the lack of proper receipts and explanation for these meals, the \$144.11 expense of these 4 meals (\$137.25 + \$6.86 GST) should not be allowed to be recovered from Yukon ratepayers.**
- The cost claim includes a meal at the BG Urban Café at the Vancouver airport on November 14, 2012 (7:58 pm) which is not during the oral hearing time period nor is there any identification on receipt of who incurred/paid this cost. **UCG submits that the \$6.81 expense of this meal (\$6.49 + \$0.32 GST) should not be allowed to be recovered from Yukon ratepayers.**

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