



June 14, 2007

Ms. Wendy Shanks, Chair
Yukon Utilities Board,
Box 31728
Whitehorse, YT Y1A6L3

Dear Ms. Shanks:

**RE: YUKON ENERGY 20 YEAR RESOURCE PLAN AND POWER PURCHASE
AGREEMENT – INTERVENOR HEARING COSTS**

Pursuant to the Board's Hearing Cost Process distributed at the Pre-Hearing Conference on August 30, 2006 and Board Order 2007-1, Yukon Energy encloses comments regarding intervenor applications for hearing cost awards for the Yukon Energy 20 Year Resource Plan and Power Purchase Agreement Hearing.

Overview of Intervenor Applications for Hearing Cost Awards

Yukon Energy has received four intervenor cost claim forms totaling \$107,304.30 (plus \$5,186.07 for GST), as follows:

1. **Yukon Electrical Company Limited (YECL) for \$12,797.38 (plus \$767.84 GST):**
 - a. The amount claimed reflects external legal fees and expenses solely related to legal counsel. Resource Plan costs account for 22.4 hours (plus \$744.96 of other charges and disbursements) or \$5,784.96 (before GST) of claimable costs, and PPA cost account for 30.4 hours (plus \$172.42 of other charges) or \$7,012.42 (before GST) of claimable costs.
 - b. Legal fees included in claimable costs are charged subject to maximum of \$225 per hour for professional fees as provided for in Board Rules of Practice (Order 1995-2).

2. **Utilities Consumers' Group (UCG) submitted¹ claims for \$77,692.53 (plus \$4,418.23 GST):** In total, the UCG cost claim submitted is \$50.00 below the

¹ Note however that UCG's cost claim includes a number of arithmetic errors as follows:

- In the Resource Plan claim, \$50.00 for disbursements indicated for "photocopy evidence for hearing" is not included on the cost claim form.
- In the PPA claim, the fees invoiced by Buonaguro total \$6,783.00, the UCG claim form uses \$6,873.00 or \$90.00 higher

justification provided for the Resource Plan, and \$408.16 above the level of justification provided for the PPA claim. Each claim also includes higher “alternative” amounts if the Board chooses to pay for Rondeau’s time at \$35 per hour versus the \$55 per hour claimed.

- a. **Resource Plan** for \$51,752.17 (plus \$2,982.60 GST, including \$1,064.70 GST on the McMahon claim, which is not otherwise separately identified).
 - i. **McMahon consulting fees:** \$17,745.28 (plus \$1,064.72 GST equal \$18,810.00) reflects Patrick McMahon for 171 hour at rate of \$110/hour including GST (calculated to be \$103.77/hour before GST).
 - ii. **Legal fees and expenses:** \$16,167.00 in fees (plus \$970.02 in GST) as well as \$2,251.05 in disbursements (plus \$129.46 GST) for a total \$18,418.05 plus \$1,099.48 in GST. This reflects 95.1 hours for Micheal Buonaguro’s legal fees at \$170 per hour plus travel and disbursements.
 - iii. **Rondeau consulting fees:** \$13,640.00 (plus \$818.40 GST equals \$14,458.40) reflect Roger Rondeau for 248 hour at \$55 per hour. UCG also provides the Board an “alternative” approach to suggest that if the Board only awards a non-professional rate for Rondeau’s time (\$35 per hour) then UCG seeks to claim additional hours for Rondeau (in-house secretarial duties, etc.) that as a result ensure the cost claim is higher than if the \$55/hour proposed rate is applied (a total of 444 hours at \$35 per hour or \$15,540.00 plus \$932.40 GST, for a total of \$16,472.40).
 - iv. **UCG internal expenses:** \$1,998.84 in invoices for disbursements for transcripts, photocopying, long distance phone and fax, and “miscellaneous”. However, only \$1,948.84 of this invoiced amount is claimed.
- b. **PPA Hearing** for \$23,757.01 (plus \$1,417.62 GST)
 - i. **McMahon consulting fees:** \$12,141.51 (plus \$728.49 GST equals \$12,870.00) reflects Patrick McMahon for 117 hours at \$110 per hour including GST (calculated to be \$103.77/hour before GST).
 - ii. **Legal fees and expenses:** \$6,873.00 in fees are claimed (plus \$406.98 GST equals \$7,279.98). However, the underlying invoices reflect only 39.9 hours for Micheal Buonaguro’s legal fees at \$170 per hour for a total fee of \$6,783.00 plus \$406.98 in GST for a total \$7,189.98. No disbursements are claimed.

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- In the PPA claim, the fees for Rondeau are indicated to be 85.5 hours at \$55.00/hour, which totals \$4,702.50. However, \$4,720.50 is included on the Rondeau invoice and claim form, \$18.00 higher than the calculated value.
 - In the PPA claim, Rondeau’s fees are indicated as \$5,002.65 and a further \$300.16 for GST is added to these amounts. However, as noted on the Rondeau invoice, the \$5,002.65 already includes \$282.15 for GST on the fees submitted. As a result, the cost claim is overstated by \$300.16.

- iii. **Rondeau consulting fees:** \$5,002.65 are claimed (plus \$300.16 GST equals \$5,302.81). However, the underlying invoices reflect Roger Rondeau for 85.5 hour at \$55 per hour for a total calculated fees of \$4,702.50 (reported in error on Rondeau's invoice as \$4720.50) plus \$282.15 for GST for a total \$4,984.65 (reported as \$5,002.65 on the Rondeau invoice due to the error). In summary, the cost claim appears to include both the error in calculation of total fees, and also to charge GST on the total twice. Under the UCG "alternative" approach as described above, the alternative cost claim for this component of the proceeding similarly results in a higher cost claim reflecting the addition of extra hours into the claim (153.5 hours of UCG time for \$5,372.50, plus \$322.35 GST equals \$5,694.85)² for the PPA Hearing.
 - iv. **UCG internal expenses:** \$130.00 for photocopying, long distance, and fax.
3. **Yukon Conservation Society (YCS) for \$5,267.50 (no GST claimed)**
- a. The full amount consists of non-professional fees of 127 hours at \$35 per hour or \$4,445.00 for the Resource Plan Hearing and 23.5 hours at \$35 per hour or \$822.50 for the PPA Hearing.
 - b. No other expenses were charged.
4. **Peter Percival (Percival) submitted³ at \$11,546.90 (no GST claimed).**
- a. \$11,375 for fees (91 hours at \$125 per hour).
 - b. Expenses claimed total \$167.20 for road travel allowance⁴ at \$0.55/km plus \$24.70 for disbursements; however, only \$171.90 is claimed in total for expenses.
 - c. A breakdown between Resource Plan and PPA hearing costs is not provided.

Of the four, only YECL and UCG retained third party professional assistance (in each case limited to legal counsel) and provided evidence of costs for professional fees and expenses incurred. The two other intervenors and the UCG consulting cost claims relate to both fees and expenses that represent non-arm's length services provided by one or more members of the group in question, by parties previously determined by the Board to be in a non-professional status, or by the individual intervenor themselves.

General Comments on Normal Rules for Intervenor Cost Recovery

Subject to normal restrictions as to eligibility (as noted below), Yukon Energy takes no issue with a proper claim for *reimbursement* to intervenors for legal counsel or 3rd party

² In the PPA claim, UCG alternative fees for Rondeau and staff claim is \$5,375.5 and a further \$322.35 for GST is added which equals \$5,694.85. However, on the invoice it says \$5,594.85. As a result, the invoice is understated by \$100.00.

³ Note that Percival provides justification for \$11,566.90, \$20.00 more than is claimed, but does not provide a rationale for the difference. As a result the cost claim appears to be understated by \$20.00.

⁴ Note that the Board's Rules of Practice in Order 1995-2 indicate a rate for travel of \$0.27/kilometre.

consultants hired and paid for by intervenors (or any reasonable disbursements incurred) as long as the intervenors have met the Board's stated criteria relating to efficient and responsible interventions, avoidance of duplication and non-reimbursements of costs related to a sole business interest.

The Board's key principles regarding reimbursement of costs for parties participating in a rate hearing are set out in Board Order 1995-2 including Schedule I; further information is provided in Exhibit A-15 of the Resource Plan (Yukon Utilities Board Hearing Cost Process and Board Order 2006-7 Appendix A). The Board has consistently evaluated fees and other costs based on criteria that include: effective and useful interventions; relevance of issues raised; significant and sole interest; cooperation of intervenors; financial need; shared costs and alternate funding; and reasonably incurred costs. Board Order 2006-7, Appendix A states that "the Board will consider the value provided by the Intervenor. As the Board Order cited [2006-16] indicate, in the past the norm has been to allow Intervenor \$35/hr.; however, that does not mean that an Intervenor will necessarily receive \$35/hr" (page 2).

Based on the above normal rules for intervenor cost recovery, Yukon Energy submits that only YCS potentially qualifies for full recovery of costs claimed. Specifically in regards to the intervenors claiming recovery of costs:

1. **YECL:** As stated in Board Order 2007-16, "The Board recognizes that the cost of a utility intervening in another utility's proceeding would not normally be recoverable in other jurisdictions as it would represent intervention of a sole business interest." However, in that case the Board viewed YECL intervention as beneficial to ratepayers and not entirely in the sole interest of YECL. In assessing the cost claim, the Board disallowed transcript costs, allowed all other disbursements, and evaluated 50% of YECL's legal fees claimed. Of the 50% evaluated YECL was awarded 60% of its legal fees. Any cost claims of YECL must also be viewed in light of the requirement to cooperate and avoid duplication with Percival and UCG.

In these proceedings, YECL's claim would appear to be based on representing broader consumer interest and not a sole business interest. However, a considerable component of YECL's costs represent the period prior to the filing of the PPA during the hearing into the Resource Plan proper (approximately 45% based on the invoices covering the period in 2006 prior to the filing of the PPA). Fees for this period would not appear to be properly recoverable given YECL in the end elected to not participate in that proceeding, including failing to submit interrogatories or argument.

2. **UCG's** costs reflect three considerations as follows. Any cost claims of UCG must also be viewed in light of the requirement to cooperate and avoid duplication with Percival and YECL.

- a. **Legal Counsel and Internal Expenses:** Fees for *legal counsel and related disbursements* would normally be recoverable, as would *UCG internal expenses* properly supported by invoices.
 - b. **Rondeau:** In assessing the claim for Rondeau's time, pursuant to the principles set out in Board Order 1995-2 Schedule I, the Board must determine what value the UCG and more particularly Rondeau added to the processes. Regardless as to this determination, there is no justification for Mr. Rondeau's hourly rate to increase beyond a maximum of \$35/hr, reflecting his non third party relationship and non-professional status, which is consistent with previous Board rulings (e.g. BO 2005-16). With respect to the "alternative" calculations for added Rondeau time at a lower rate as presented by UCG that result in greater cost claims despite a lower hourly rate, YEC submits that there is no basis for such claims which reflect hours that are not otherwise justified as compensable with respect to the current proceeding. This is of particular note given such time is not included in the cost claim under the first approach from UCG. Intervenor hours related to maintaining an organization or related secretarial functions (to the extent they represent a true investment of time) are not charged to regulatory hearings in any other cases including YCS and should not be so allocated by UCG.
 - c. **McMahon:** The cost claim for McMahon represents the largest single intervenor cost item claimed in this proceeding (\$29,886.79 before GST, more than 30% above the second highest claim, which is UCG's counsel). This claim is simply not justified and therefore not recoverable from Yukon ratepayers on a number of bases. First, the Board in this proceeding has already concluded that Mr. McMahon did not have a substantive interest in the proceeding and declined to grant Mr. McMahon intervenor status. Allowing Mr. McMahon the ability to redefine his role in a manner, which could result in the recovery of substantial fees, would not only be patently unfair to ratepayers in general it would be an abuse of the Board rules. Second, and in any event, Mr. McMahon did not attend the hearings, provided no expert evidence, and as such UCG has not demonstrated to the Board support for any payment being made to Mr. McMahon especially since UCG had already secured the contributions of Mr. Rondeau and UCG legal counsel to their intervention. Finally, even if there was such evidence Mr. McMahon has previously been assessed by this Board in a non-professional status at \$35 per hour (and in the 2005 proceeding, when he participated at the hearing, was awarded only 45% of hours claimed).
3. **YCS costs** would normally be recoverable on all bases, subject only to the non-third-party aspect of the YCS staff costs claimed. In the 2005 hearing, YCS was awarded 95% of fees claimed.

4. **Percival's** costs would not normally be recoverable on the basis of his participation being an intervention on his own behalf. Nevertheless, the Board in the 2005 hearing (Board Order 2005-16) awarded Percival intervenor cost recovery at a rate of \$35 per hour. The award was for 90% of hours charged plus all disbursements. Any cost claims of Percival must also be viewed in light of the requirement to cooperate and avoid duplication with UCG and YECL.

If the Board or their staff have any questions, please contact me at (867) 393-5400.

Yours truly,


 David Morrison
President & CEO