



B R O W N L E E
L L P
B a r r i s t e r s & S o l i c i t o r s

Refer to: T.D. Marriott
Direct Line: (780) 497-4868
E-mail: tmarriott@brownleelaw.com
Your File#:
Our File#: 71310-0008

March 23, 2009

Yukon Utilities Board
Box 31728
Whitehorse, Yukon, Canada
Y1A 6L3

Attention: Deana Lemke
Executive Secretary

Dear Madam:

Re: 2008/09 YECL GRA, Cost Claim of the City of Whitehorse

This is the letter of justification for the applied-for costs of the intervention of the City of Whitehorse in the above cited proceeding. The City of Whitehorse comprises 70% of the population of the Yukon and the City's residential and commercial customers account for the vast majority of the sales of Yukon Electrical Company Limited. Therefore, it is submitted that it was important that the City of Whitehorse represent its citizens and businesses in this GRA hearing process. The City of Whitehorse was represented in these proceedings by its regulatory counsel, Brownlee LLP (Brownlee) and its technical and regulatory analyst, Garbutt Consulting Inc. (GCI) for the purpose of undertaking all necessary examination and analyses of the application, and preparation of all required regulatory submissions.

Brownlee has a considerable background and knowledge with respect to utility regulation in general, and has for many years represented numerous utilities, consumer groups and municipalities in regulated matters and general rate applications in Alberta and the Northwest Territories. GCI has extensive experience in regulated industries, representing both utilities and customers as well as acting as Board Staff. The City of Whitehorse submits that Brownlee and GCI have the relevant knowledge and expertise necessary to effectively and efficiently represent the interests of the City of Whitehorse in this general rate application.

In Schedule 1 of the Board's Rules of Practice (Scale of Costs), the Board states:

“Before exercising its statutory discretion to award costs, the Board will consider such questions as the effectiveness of the party's participation, its relevancy to the issues, and whether the costs were reasonably and prudently incurred, and whether the party has been diligent in the efficient presentation of its position.”

The City of Whitehorse addresses these matters in detail below.

Effectiveness of City of Whitehorse's Participation

The City of Whitehorse submits that its participation in the 2008 YECL GRA was effective, as the Board consistently relied on the City of Whitehorse's submissions and input to shape the final decision in this proceeding. The City of Whitehorse notes that positions put forth in its argument or reply were cited by the Board numerous times in Decision 2009-2. In some instances, the City of Whitehorse's positions were fully adopted by the Board. In others, its positions were adopted in part or were used to shape the Board's final ruling. Even with regard to issues where the Board chose not to adopt the particular position presented by the City of Whitehorse, those positions were considered by the Board and often referenced in Decision 2009-2. The City of Whitehorse submits even in examples of the latter, its participation and filed positions effectively contributed to a positive deliberation of the issues at hand.

Relevancy to the Issues

The City of Whitehorse submits that its participation was relevant to the issues. As mentioned above, many of its positions were approved in whole or in part or were cited in the final decision.

With regard to Sales and Revenue, positions of the City of Whitehorse were accepted and cited by the Board pertaining to the 2009 forecast residential customer additions count, the forecast residential UPC for 2008 and 2009, and the forecast commercial UPC for both test years. With respect to Operations and Maintenance Expenses, positions put forth on behalf of the City were weighted heavily in the Decision's final rulings on the proposed vacancy rate for 2008 and 2009 as well as the proposed inflation rate pertaining to Non-Labour Costs for both test years.

The City of Whitehorse submits that its intervention was fair, relevant and not obstructive. In the matter of Affiliate Costs, the City of Whitehorse accepted Yukon Electrical's position on this matter on the basis of the most efficient manner in which to proceed on a prospective basis. The City of Whitehorse notes that the Board accepted this position that the Affiliate Costs be considered final.

With respect to depreciation, the City of Whitehorse's position of supporting a change to the Average Service Life method was not approved by the Board. Nonetheless, the City of Whitehorse submits that it contributed to an understanding of the issues by the Board. Respecting the issue of future reserve for site restoration (FRSR), City of Whitehorse supported the FRSR cap proposed by the Yukon Energy Corporation on the basis of regulatory consistency. The Board quoted from City of Whitehorse's reply argument, which put forth its concern with intergenerational inequity. The Board decided this issue in the manner proposed by the City.

Concerning Capital Structure, the Board accepted the arguments of the City of Whitehorse that, based on the equity ratio proposed by YECL the FFO interest coverage ratio is higher than that for other Canadian transmission or distribution utilities and that YECL did not satisfy the Board that its business risks are higher than those of a typical distribution or transmission utility. This was certainly factored into the Board's ruling that YECL should use the last approved equity ratio of 40%.

Finally, the City of Whitehorse introduced evidence that ATCO Electric, YECL's parent, had issued a debenture at the coupon rate of 5.623%. YECL agreed that this was the actual cost of the 2008 debt issue. The Board accepted that the best information on the record concerning the cost of 2008 new debt was the City of Whitehorse's evidence that the parent company had actually issued debt at a coupon rate of 5.623%.

The City of Whitehorse's Costs Were Reasonably and Prudently Incurred

The City of Whitehorse incurred costs only as required to properly examine the Application, develop and file relevant and appropriate information requests, pursue pertinent cross examination, and produce practical and reasonable argument and reply which were germane to its concerns. The City of Whitehorse submits that the effort it expended in these proceedings was the minimum necessary to properly represent its interests. The City of Whitehorse believes the costs it incurred in this GRA hearing process were both appropriate and reasonable.

The City of Whitehorse was diligent in the efficient presentation of its position

The City of Whitehorse submits it was diligent regarding the efficient presentation of its position. It put forth many positions successfully in this proceeding by utilizing only information requests and cross examination to gather evidence. The City of Whitehorse's representatives avoided the costly undertaking of developing and defending evidence while still properly representing its interests. For that reason City of Whitehorse submits that its intervention in this proceeding was very efficient.

Scale of Costs

You will note from the City's cost claim that invoices from Garbutt Consulting Inc. for this matter were posted as a disbursement to Brownlee LLP's invoices, as this was the arrangement made between Brownlee LLP and its client, City of Whitehorse. Although Mr. Garbutt's time is reflected on the Brownlee invoice as a disbursement it is not shown as a mere disbursement on the cost claim, but rather Mr. Garbutt's invoices have been attached to the cost claim and have broken down Mr. Garbutt's time according to preparation, attendance and argument & reply. This was done so that the activities and fees of Brownlee LLP and Garbutt Consulting Inc. would be more readily transparent to the Board.

The City also confirms that pursuant to Schedule 1 of the Scale of Costs legal counsel and consultants are allowed a maximum hourly rate of \$225.00. We further note that this hourly rate has been in effect for all hearings commencing on or after September 1, 1995. The City submits that the result is that the current schedule is out of step with the market for legal and consulting services. The City considers that in order to maintain access by intervenors to skilled professional assistance, a review and adjustment of the scale of costs is needed. The City's cost claim has been submitted at an hourly rate of \$250.00 per hour for both legal and consulting services, as per the above mentioned agreement between the City of Whitehorse and Brownlee LLP. The City submits that the complexity of this proceeding was no greater nor less than other general rate application proceedings, but respectfully requests that the Board consider a review of the long-standing maximum allowable hourly rate of \$250, in light of the undeniable inflationary increases since 1995. It is submitted that if that rate was reasonable then, it can hardly be said to be reasonable now.

For the information and consideration of the Board, the City would advise that in Alberta the scale of costs has been reviewed recently and to keep up with the current market for legal and consulting services the scale of costs has been increased substantially. The hourly rate allowed for legal services with more than 12 years at the bar is now \$350.00 per hour. For consulting services with more than 12 years experience an hourly rate of \$270.00 was approved. These rates are found in the Alberta Utilities Commission's Rule 022 posted to its website. Further the NWT Public Utilities Board has recently recognized the \$350 per hour and \$270 per hour rates as reasonable and recoverable rates for senior legal counsel and senior consultants respectively, in regulatory proceedings¹.

Finally, if the Board is not persuaded that recovery at the \$250 hourly rate is allowable, the City would in the alternative request that the Board order cost recovery at least at the \$225 per hour level.

¹ See NWT PUB Decision 24-2008 at pages 35-39.
{20/03/2009 ,E0770198.DOC;1}

We trust the enclosed is satisfactory.

Yours truly,

BROWNLEE LLP

PER:

A handwritten signature in black ink, appearing to read 'T. Marriott', with a long horizontal flourish extending to the right.

THOMAS D. MARRIOTT

TDM/rd