

Utilities Consumers' Group

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September 1, 2017

Yukon Utilities Board

Box 31728

Whitehorse, Yukon Y1A 6L3A

Attention: Mr. Robert Laiking, Chair

Dear Mr. Laiking:

**Re: APPLICATION FOR REVIEW AND VARIANCE OF BOARD ORDER
2017-07 BY THE UTILITIES CONSUMERS' GROUP**

The Utilities Consumers' Group hereby submits the attached application for Review and Variance of Board Order 2017-07.

Regards,

Roger Rondeau

cc. ATCO by email

In the Yukon Utilities Board

In THE MATTER OF the *Public Utilities Act*, Revised Statutes of Yukon 2002, C.186 as amended:

And

And an Application by ATCO Yukon Electrical for Approval of General Rate Application 2016-2017

And

In the matter of Yukon Utilities Board Order 2017-07

APPLICATION FOR REVIEW AND VARIANCE OF BOARD ORDER 2017-07 BY THE UTILITIES CONSUMERS' GROUP

REVIEW

1. The Utilities Consumers' Group(UCG) seeks a review and variance of Board Order 2017-07 issued August 24,2017 pursuant to sec. 62 of the Public Utilities Act made in the context of the ATCO Yukon Electrical proceeding convened under Board Order 2016-01.
2. The grounds for this application are pursuant to sec 31(1) of the Yukon Utilities Board Rules of Practice (Rules of Practice) in that UCG submits:
 - (a) The Board made an error in fact or law in the determination of amount paid to UCG pursuant to sec.56 of the Act.
 - (b) Such other grounds as the Board may determine require a review.
3. UCG submits that pursuant to the Rules of Practice, if the Board finds the claim of error is substantiated on a prima facie basis, and the error has significant material implications, that the Board may proceed to determine the merits of this application without the necessity of a full argument on the merits. UCG submits there are significant material implications in this case (i.e. the Board's own Scale of Costs state intervenor participation is fundamental in proceedings before the Board, yet not to adequately compensate representatives of these intervenors results in loss of their ability to hire relevant assistance.
4. UCG seeks variance of the Board Order 2017-07 in accordance with the material previously filed by the UCG and the facts stated herein.

5. In support of this application, the UCG relies upon the record of this proceeding, the materials previously submitted in support of its application for costs, and the Brief Statement of Facts herein.

BRIEF STATEMENT OF FACTS

6. Pursuant to sec. 56 of the Act, the Board may “order to whom or by whom any costs incidental to any proceeding before the Board are to be paid, and may set costs to be paid.”
7. Pursuant to prior rulings and in parts of this particular ruling by this Board, the Board has exercised its’ discretionary powers to alter the Scale of Costs and Schedule 1 of the Board’s Rules of Practice, after consideration of the facts and fairness of the decision to be rendered.
8. Following the issuance of Board Order 2017- 01 concerning the application of ATCO Yukon Electrical herein, the Board received cost claims from the participating parties and by Order 2017-07 determined the amount of costs to be paid out to each claiming party.
9. With respect to the Applicant, UCG, the Board made two determinations that are subject matter of this request for review and variance:
 - (a) The number of hours claimed and the hourly rate charged by UCG consultant Pat McMahon were both reduced, finding the number of hours claimed were not reasonable and the hourly rate was also not reasonable.
 - (b) The amount of compensation for Roger Rondeau was reduced for attendance, preparation, cross-examination of witness panels, as per Rules of Practice.
10. The UCG submits that the two determinations described above were wrong in fact and were subsequently used to obtain a result that failed to achieve the goal set out in sec.2.2 of Schedule 1 (the Scale of Costs).
11. With respect to the determination made by the Board under paragraph **Board costs award**, p. 4 Reasons, the Board endeavors to qualify its’ reasons for denying Mr. McMahon the requested \$200 per hour for which is entirely within the Scale of Costs range for a consultant with this many years’ experience in rate reviews, as well as what was granted to other consultants from other parties with even less experience. The Board failed to consider these facts.

12. On p.5 Reasons for this same order, the Board “claims the number of hours for preparation argument and reply are excessive. The Board observed that these total number of hours is much higher than those of consultants for other interveners.” The Board uses this logic to exercise its’ discretion to reduce the number of hours considerably, by 35%.
13. However, when making this judgment the Board failed to consider the fact that other interveners and the applicant to whom they compare also had legal expertise which claimed many hours. Since the UCG did not have legal assistance, the resulting facts is that to adequately perform its duties in this rate application, UCG had to rely more heavily on the expertise and time of its consultant, thus adding to his hours.
14. UCG recognizes that the applicant, with various amounts of legal and consultant costs, has greater expenses due to more demanding responsibilities. Therefore, the City of Whitehorse is the only comparable party in this matter.
15. The City of Whitehorse was awarded all of their cost application in the total amount of \$38,931.00. UCG on the other hand was reduced to a total of \$18, 919.00.
16. To provide a basis to establish the mistaken factual assumption upon which the 35% reduction in consultant fees was arrived by the Board, the actual compensable work completed by UCG’s representative was outlined exclusively in the cost application (see attached copy). This then can be compared to the costs for counsel and representation team of the City of Whitehorse charged with similar responsibilities in this proceeding.
17. The City of Whitehorse was given the full applied for cost award and not clawed-back as the UCG for performing the same tasks and duties. Subsequently, UCG submits that a 35% reduction made by the Board for consultant time as being outside the reasonable range claimed by the comparable party and was made in furtherance of incorrect assumptions made about costs of other participants.
18. By doing so, the Board failed to achieve the goal set out in sec.2.2of Schedule 1 of providing any participant with “adequate, competent and professional assistance.
19. With regard to the UCG expense claim for Roger Rondeau, the Board erred in paragraph 2 p. 5 Reasons, when stating “the only detail provided is that \$100 per hour is being claimed for attendance and participation in the hearing, including cross-examination of panels.” The Board obviously did not review the affidavit filed by the UCG which included explanation made regarding Mr. Rondeau’s claim and reasons for requesting an amount above the Board’s Scale of Costs.

20. With respect to the determination made by the Board in paragraphs 2 and 3 page 5 Reasons, it is somewhat unclear what the Board's grounds for finding that the UCG's claim for Mr. Rondeau was unreasonable. Mr. Rondeau was obviously not filling a chair and attending as an interested party. He was the representative of a registered intervener granted status under Board Order 2016-03 and he performed all the tasks necessary as would legal counsel for the City of Whitehorse.
21. Review of reference material presented in aid to cross-examination, transcripts time of cross by Mr. Rondeau and follow-up clearly demonstrate that Mr. Rondeau, on behalf of UCG, was tasked with many more questions and issues than did the legal for the City of Whitehorse during this proceeding.
22. The Board clearly erred in the fact that it did not pursue "natural justice" when utilizing its discretionary powers to not allow Mr. Rondeau a reasonable, just and fair award of costs. Mr. Rondeau had to perform the same tasks as the lawyers for the City of Whitehorse and ATCO Electric Yukon, including listening to the facts presented, gleaning information and taking notes for final argument and reply, preparation for each day of the hearing and the preparation and cross-examination of each panel.
23. The Board erred in fact, that it did not consider that by utilizing in-house personnel, UCG saved ratepayers several thousands of dollars on legal fees, flights and disbursements.

VARIANCE SOUGHT

1. Considering the facts above, the Yukon Utilities Board reinstate the amount of hourly compensation for Pat McMahon, a person with his number of years' experience and identified under the Board's Scale o Costs, back to the applied for hourly rate of \$200/hr.
2. Reflecting the facts above, the Yukon Utilities Board reconsider the number of hours claimed for Pat McMahon and award costs with a 15% reduction as opposed to the previous 35%.
3. The Yukon Utilities Board reconsider the facts offered above in the review and award the costs to Mr. Rondeau as applied for in the amount of \$1,800.00.

Dated at Whitehorse, this 31st. day of August, 2014

Roger Rondeau, UCG representative

