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August 14, 2014

Yukon Utilities Board  
Box 31728  
Whitehorse, Yukon  
Y1A 6L3

Attention: Mr. Bruce McLennan, Chair

Dear Mr. McLennan:

**Re: APPLICATION FOR REVIEW AND VARIANCE OF BOARD ORDER 2014-12  
BY THE UTILITIES' CONSUMERS GROUP**

On behalf of the Utilities Consumers Group (UCG) we have attached their application for Review and Variance of Board Order 2014-12.

Thank you.

Yours truly,

A handwritten signature in black ink, appearing to read 'Michael Janigan', is written above the typed name.

Michael Janigan  
Counsel for UCG

**In the Yukon Utilities Board**

**In the THE MATTER OF** the *Public Utilities Act*, Revised Statutes of the 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 Whitehorse Diesel  
to Liquefied Natural Gas Conversion Project;

**And**

**In the matter of** Yukon Utilities Board Order 2014-12

**APPLICATION FOR REVIEW AND VARIANCE OF BOARD ORDER  
2014-12 BY THE UTILITIES' CONSUMERS GROUP**

1. The Utilities Consumers Group (UCG) seeks a review and variance of Board Order 2014-12 issued August 8, 2014 pursuant to sec. 62 of the *Public Utilities Act* (the *Act*) made in the context of YEC-LNG proceeding convened under Board Order 2014-01
2. The grounds for the 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 of fact and law in the determination of the amounts to be 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.
4. UCG seeks a variance of the Board Order 2014-12 in accordance with the material previously filed by UCG and the facts stated herein.
5. In support of its application, 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

1. Pursuant to sec. 56 of the *Act*, the Board may award costs in accordance with Schedule 1.
2. Following the issuance of the Board Report concerning the application by Yukon Energy Corporation, herein, the Board received cost claims from the participating parties and by Order 20114-12 determined the amount of costs to be paid out to each claiming party.
3. With respect to the Applicant, UCG, the Board made two determinations that are the subject matter of this request for review and variance:
  - (a) The number of hours claimed for travel time by legal counsel Michael Janigan was found to be “excessive” and reduced from 26 hours to 12 hours
  - (b) The Board stated that “the hours claimed for attendance and argument of 61.40 hours (for UCG legal counsel) are not reasonable and reduces the fees by 20%”
4. UCG submits that the two determinations were wrong in fact and were subsequently used to determine a result that failed to achieve the goal set out in sec. 2.2 of Schedule 1 providing the Scale of Costs.
5. With respect to the determination made by the Board under paragraph 3 (a) above, it is UCG’s contention that in accordance with the goal in sec. 2.2 of Schedule 1 of providing any participant with “adequate, competent, and

professional assistance”, a claim for travel time should only be determined to be excessive if it exceeds the actual time spent travelling, or represents an itinerary that differs from that which reasonable legal counsel or other professional might travel in the representation of a participant.

6. In this case, the airline invoices with itineraries submitted with the cost claim are useful in establishing actual travel times for UCG counsel (excluding flight delays etc.). In this case, UCG’s counsel travelled from Ottawa to Whitehorse on Sunday March 30, 2014 and returned to Ottawa on flights that took place on the evening of Wednesday April 2, and the morning of April 3. The total travel time claimed was 26 hours.

7. For greater specificity, with respect to the outbound flight:

Ottawa to Vancouver flight time: 5 hours 16 minutes

Layover in Vancouver: 2 hours and 30 minutes

Flight to Whitehorse: 2 hours 35 minutes

Ground transit time (Ottawa and Whitehorse): 1 hour

Total Travel time (outbound) 11 hours 21 minutes

8. For greater specificity, with respect to the return leg:

Whitehorse to Vancouver: 3 hours 45 minutes

Layover in Vancouver 3 hours and 15 minutes

Flight to Toronto: 4 hours and 27 minutes

Layover in Toronto: 2 hours

Flight to Ottawa: 1 hour

Ground Transit time Whitehorse and Ottawa: 1 hour

Total Travel Time Return leg 15 hours 27 minutes

Total Travel Time for Entire Trip 26 hours 48 minutes

Total Travel Time Claimed 26 hours

9. UCG Counsel arranged for the most economical air fare and, like most counsel, left immediately after the hearing ended.
  
10. If it is the intention of the Board that claims for compensated travel time are to be capped, it should be done directly in the provisions of Schedule 1. Otherwise, UCG submits that reasonable travel time is to be reimbursed at the one/half rate as per 4.1 of Schedule 1. The inference that the amount claimed by UCG counsel was excessive is not borne out by the facts set out above.
  
11. With respect to the other Board determination under appeal, it is to be noted that while it is stated on page 5 of Board Order 2014-12, that 61.40 hours were claimed for attendance, argument and reply by UCG counsel, the actual figure is 36.30 hours. In addition, while the Order mandates a 20% reduction in these hours, a reduction of slightly more than 50% was effected reducing the hours claimed to 29.12hours. The net effect was to reduce the fees claimed from \$26,040 to \$12,292.00.
  
12. For greater certainty the components of the claim for legal counsel, derived directly from the time dockets submitted with the cost claim will be set out herein:

Preparation before the hearing including emails with consultant and client, securing instructions, reviewing evidence, research, reviewing consultant's notes and preparing cross

27.15 hours,

Attendance at hearing and cross of panel

22.25 hours (out of the total of 29 hearing hours)

Argument

10.30 hours

Review of Decision

.55hours

Total hours

60.25 hours

13. While the times for preparation and argument have been slightly amended after scrutiny of the time dockets, essentially the claim in its entirety is hardly excessive particularly considering the reduction made to UCG's consultant's time elsewhere in the Decision. Attendance could not be realistically further pared down and argument time seems to reflect precisely what the Chair had in mind when the start of the proceeding on Wednesday April 2 was delayed to allow for the review of transcripts and preparation of argument by participants. With respect to preparation, it is hard to imagine any counsel not engaged in the engineering trades being able to participate with lower preparation time given the nature of the issues involved.

14. In addition, UCG's counsel's total time compares favourably with that claimed by, and allowed to, other legal counsel in this proceeding, and is in line with the goal set out in sec. 2.2 of Schedule 1, previously referenced in paragraph 5 herein..
15. UCG thus claims that significant errors of fact associated with the assessment of travel time were made in Cost Order 2014-12. As well, reductions based on faulty mathematical calculations were made concerning legal counsel time expended that materially affected the Cost Order for UCG's legal counsel in this proceeding.
16. UCG submits that it has met the test under the first phase of a Review and Vary application pursuant to the Rules of Practice, and that the Board should move to restore the monetary amounts to UCG's cost claim contemplated by the submissions set out herein.

Dated at Ottawa, this 14<sup>th</sup> day of August 2014.



Michael Janigan  
Counsel for UCG