

1992-7

YUKON UTILITIES BOARD

DECISION 1992-7

FEBRUARY 28, 1992

REGARDING

INTERVENOR COST AWARDS

FRIDAY THE 28TH DAY OF FEBRUARY A.D. 1992

IN THE MATTER OF the Public Utilities Act being Chapter 143 of the Revised Statutes of the Yukon, 1986, as amended:

AND IN THE MATTER OF applications by the Yukon Electrical Company Limited and Yukon Energy Corporation to the Yukon Utilities Board for Orders approving changes in existing rates, tolls or charges for electrical light, power or energy and related services supplies to its customers within Yukon,

AND IN THE MATTER OF applications made by intervenors for an award of costs.

BEFORE:

THE YUKON UTILITIES BOARD

1. INTRODUCTION

The Yukon Energy Corporation and the Yukon Electrical Company Limited filed Application on June 6th, 1991 with the Yukon Utilities Board. The Applications requested the Board to fix and to approve just and reasonable rates, charges or schedules for electrical light, power or energy and related services. The Board held a prehearing conference on August 8th. As a part of the prehearing conference the Board identified intervenors or parties to the proceedings. The Board recognized the following as intervenors:

The City of Whitehorse
The Whitehorse Chamber of Commerce
The Yukon Chamber of Mines
The Curragh Resources Incorporated
Mr. Peter Percival
Ms. B. Firth
Mr. A. Nordling
The City of Dawson.

Section 56 of the Public Utilities Act (Chp. 143) states:

The board may order to whom or by whom any costs incidental to any proceeding before the board are to be paid, and may fix costs to be paid.

In June of 1991 the board prepared and released a paper entitled "Intervenor Costs", that paper stated:

This document sets out the criteria by which the Yukon Utilities Board may award costs to intervenors. An intervenor is defined as an interested and/or affected person or group representative who participates in a proceeding before the Yukon Utilities Board. An intervention is a presentation made to the Yukon Utilities Board, by groups or individuals affected by proposed changes to electrical rates, policy reviews, or other consultative projects proposed by the Board.

and further

There are no guarantees that any particular group or individual will necessarily have the costs of their intervention reimbursed. The criteria established for awarding intervenor costs will serve as guidelines, not as official rules. As guidelines, the criteria will be applied and intervention costs awarded solely at the discretion of the Yukon Utilities Board. Costs awarded should be appropriate and consistent with the value of assistance provided to the Board.

When costs are awarded, the Board will direct the applicant utility to pay the approved costs directly to the intervenor. The utility will generally recover such costs by incorporating them into the rates.

Within the paper seven criteria were established for judging of cost awards:

1. *Effective and Useful Interventions*

The Board wishes to assist intervenors with clearly ascertainable interests to bring forward information and evidence that can test an applicant's case. Information and evidence should be of a substantive and factual nature and be directly relevant to the case at hand. The Board also wishes to have the opportunity to hear diverse points of view on matters that may become the subject of Board consultation or review.

2. *Relevance of Issues*

Issues introduced in interventions should affect a significant segment of the public and should affect the public interest (not just private interests). The Board will not award costs to intervenors whose participation served no useful purpose in testing an applicant's case, or whose intervention is judged by the Board to be frivolous in nature.

3. *Significant and Sole Interest*

Interventions are generally made by groups, that are represented by a spokesperson. Intervenors who do not represent significant interests will not normally be awarded costs. The Board recognizes that there may exist special circumstances in the Yukon, where an individual representing a sole interest could legitimately ask for and be awarded costs.

4. *Cooperation of Intervenors*

Intervenors who have common objectives in the outcome of the proceedings are expected to cooperate to avoid duplication of expense and effort in the intervention.

5. *Financial Need*

The Board wishes to assist intervenors who do not have sufficient financial resources to enable them to adequately represent their interests before the Board.

6. *Shared Costs and Alternate Funding*

Under most circumstances, the Board would award only partial costs or a portion of the costs. Intervenors should therefore be prepared to pay a portion of the costs of intervention. If alternate funding is available, the intervenor should secure that funding. The Board does not wish to duplicate other sources of funds.

7. *Reasonably Incurred Costs*

The Board will only award costs that have been reasonably and prudently incurred.

In Decision 1992-2 dated January 17, 1992 the Board stated:

The Board directs the intervenors to file detailed claims for their costs with the Board within thirty days of this Decision.

The Board has received claims for costs from the following intervenors:

City of Whitehorse
Curragh Resources Incorporated
Whitehorse Chamber of Commerce
Peter Percival

The following details the Boards award of costs and reasons for decision.

2. COST AWARDS

The City of Whitehorse presented a well balanced case and in the judgement of the Board was the most helpful to the Board in testing the applicants' cases. The Board shall use the City of Whitehorse as a measure against which the usefulness of other intervenors shall be evaluated.

CITY OF WHITEHORSE

The City of Whitehorse was represented by legal firm of Brownlee Fryett. They have claimed total expenses of \$41,092.05.

This amount was composed of 172 hours of professional services charged at \$37,095 and disbursements of \$3,997.05.

The Board directs an award of costs to the City of Whitehorse in the amount of \$31,000.

REASON FOR DECISION

The Board found the participation of the City of Whitehorse to have been of great value to the Board in coming to its decision with regard to the applications. The City had a well prepared case, participated in a cooperative and efficient manner in the hearing and provided the Board with excellent written summary and rebuttal argument.

CURRAGH RESOURCES INCORPORATED

Curragh resources Incorporated was represented by the legal firm of Cassels, Brock and Blackwell.

Curragh Resources claimed total expenses of \$61,255.62. Curragh Resources did not provide an accurate indication of the number of hours of professional services included in this amount. They incurred approximately \$28,000 of expenses and \$33,000 of professional fees.

The Board directs an award of costs to the Curragh Resources in the amount of \$31,000.

REASON FOR DECISION

The Board is of the opinion that the presentation of Curragh was not as helpful to it as that of the City of Whitehorse. The Board noted the participation of Mr. Parcel as a rate of return witness for Curragh Resources. His testimony was of great assistance to the Board.

WHITEHORSE CHAMBER OF COMMERCE

The Whitehorse Chamber of Commerce was represented by Mr. D.Morrison. They have claimed total expenses of \$23,710.

This amount is composed of 200 hours of professional services charged at \$21,250 and disbursements of \$2,459.

The Board directs an award of costs to the Whitehorse Chamber of Commerce in the amount of \$13,100.

REASONS FOR DECISION

Of the four interventions the Board found the Chamber's to be the least useful in assisting it.in reaching its decision

MR. PETER PERCIVAL

Mr. Percival claimed total expenses of \$2,388.50. These included his disbursements and lost wages.

The Board directs an award of costs to Mr. Percival in the amount of \$2,350.

REASONS FOR DECISION

Mr. Percival, a concerned and interested citizen, was of considerable assistance in helping the Board come to its decision. The Board notes his assistance regarding the rates charged in Lower Post and Upper Liard. The material provided by Mr. McRobb was also of interest and assistance to the Board. In establishing its criteria for the award of intervenor costs, the Board did not contemplate compensating intervenors for lost wages. In providing Mr. Percival with compensation for lost wages the Board is doing so in recognition of the quality of his intervention, on this occasion. The Board considers this to be an exceptional case and not precedent setting.

ORDER:

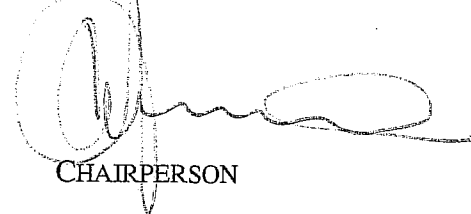
THEREFOR IT IS ORDERED THAT:

Yukon Electrical Company Limited shall pay the following amounts to the following parties and that such payments shall be forthcoming within 30 days of the issuance of this order:

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|--------------------------------|----------|
| CITY OF WHITEHORSE | \$31,000 |
| CURRAGH RESOURCES INCORPORATED | \$31,000 |
| WHITEHORSE CHAMBER OF COMMERCE | \$13,100 |
| MR. PETER PERCIVAL | \$2,350. |

Dated at Whitehorse this 28th day of February 1992

YUKON UTILITIES BOARD



CHAIRPERSON