

1993-4

YUKON UTILITIES BOARD

Decision 1993-4

June 18, 1993

Regarding

Intervenor Costs

for

1992 Capital Hearing

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 submissions by the Yukon Electrical Company Limited and Yukon Energy Corporation to the Yukon Utilities Board for approval of Capital Plans pursuant to Order in Council 1992/92,

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

BEFORE:

THE YUKON UTILITIES BOARD

INTRODUCTION

The Yukon Energy Corporation and the Yukon Electrical Company Limited filed Capital submissions pursuant to Order in Council 1992/92 with the Yukon Utilities Board. The submissions requested the Board to approve major capital projects and contract commitments through to AD 2001.

The Board held pre-hearing conferences on August 8 and September 25, 1992. The following intervenors were recognized by the board:

- the City of Whitehorse;
- Friends of Aishihik & Associates;
- New Era Electric Corporation;
- Richie Outfitters Limited;
- the Whitehorse Chamber of Commerce;
- the Yukon Chamber of Mines; and
- the Yukon Conservation Society.

Section 56 of the Public Utilities Act (Chapter 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, 1991 the Board prepared and released a paper entitled Intervenor Costs, which sets out the criteria and guide lines for awarding intervenor costs for interventions which are an assistance to the Board.

The Board directed the intervenors to file detailed claims for their costs with the board on completion of the hearing process.

The Board has received requests for funding from:

- Friends of Aishihik & Associates;
- New Era Electric Corporation; and
- the Yukon Conservation Society.

In considering requests for intervenor funding it must be remembered that the purpose of regulated utilities is to attempt to replace free market forces in situations where competition is not available or practical.

The public hearing process is a review of applications for capital projects or rates and obtains a wider perspective by public input through interventions. Interventions may be presented by individuals or groups. They may present a particular point of view or a view of a section of society through a special interest group. No matter who is

presenting an intervention, its purpose must be to assist the Board in its deliberations.

The public hearing process is expensive and time consuming. Where interventions or parts of them clearly exceed the jurisdiction of the Board, they will be ruled to have no relevance. No costs can be recovered for such interventions.

The Board is well aware that most intervenors are concerned citizens who are devoting their own time to preparing and mounting interventions. The Board's purpose in establishing an Intervention Cost Policy was to attempt to reduce the out-of-pocket expenses for intervenors. The Board is also mindful that Intervenor Costs are added to the Utilities' general revenue requirement; hence, paid for by ratepayers.

When the Board issued its first decision on costs, 1992-7, it included comments on the usefulness of the various interventions, for the benefit of all intervenors or potential intervenors.

These comments met with both positive and negative reaction. After careful consideration, the Board has decided to continue to comment on interventions. The Board believes Administrative Law and Board Practices and Procedures are relatively new areas of law which are continuing to grow and evolve. The Board has determined that it is only by making comments that intervenors can learn how to best assist the Board.

For the benefit of readers, the attached Appendix A to this decision is a summary of the criteria considered by the Board in awarding costs.

COST AWARDS

New Era Electric Corporation

This intervention was presented by a Yukon small business and was considered as a "sole interest" intervention. It concentrated on construction costs, environmental affects and independent power producers. The intervention was concise and though provoking. While it may be argued that New Era Electric Corporation is interested in expanding its own business opportunities, the Board found its clear and forthright presentation to be such that any recognition of Independent Power Producers or an IPP Policy will immediately invite competition for New Era from southern IPPs.

The Board notes that New Era did not attempt to charge the Board for items it had on hand, particularly in relation to

its slide presentation, which was invaluable to the Board.

While the Intervention Policy states that sole interest intervenors will not normally be funded, the Board is of the view that in this case, the material presented and perspective argued were for the provision of a fair policy on Independent Power Producers and was in no way limited to this specific company. The Board also notes that there is no Independent Power Producer organization in the Yukon.

New Era Electric Corporation claimed	\$6,613.27
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Costs allowed:

a) fees for preparation, research and presentation	\$5,000.00
b) photocopying and office supplies	<u>203.27</u>

Total claim approved by the Board	\$5,203.27
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Yukon Conservation Society

The Yukon Conservation Society presented a wide ranging and well balanced intervention addressing approximately seventy per cent of the issues before the Board. Their submissions and cross examination were of assistance to the Board in a number of areas as is reflected in our recommendations to the Commissioner in Executive Council.

The Society is to be complemented for its cooperative attitude and care in not wasting the Board's time on repetitive cross-examination or argument.

Yukon Conservation Society claimed	\$6,247.20
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Costs allowed:

a) fees for preparation, research and presentation	\$2,900.00
b) disbursements for photocopying and supplies	<u>447.26</u>

Total claim approved by the Board	\$3,347.26
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Friends of Aishihik & Associates

The Friends of Aishihik covered a variety of topics before the Board and made a number of useful points in cross-examination and submission.

A major thrust of the intervention concerned habitat damage by Yukon Energy Corporation at Aishihik Lake. Obviously from our recommendations, the Board recognizes the importance of this issue in general terms as an issue to be considered in assessing the potential and viability of the development proposed. Friends of Aishihik, in spite of considerable direction from the Board at the pre-hearing conferences, during the main hearing and from the Board staff, persisted in filing material and attempting to present material which was clearly beyond the jurisdiction of the Board.

Friends of Aishihik claimed \$7,347.54

Costs allowed:

a) gas and travel expenses (5 round trips - Haines Junction to Whitehorse)	302.85*
b) office supplies	36.75
	51.49
	11.24
	117.70
	21.40
	278.20
c) Yukon Conservation Society for office services (photocopying at 50%)	240.78
d) J.G.Moore, binding and pre-hearing transcript	286.78
e) photocopying (allowed at 50%)	105.09
f) room & board in Whitehorse for preparation	920.00*
g) hotel and meals during the hearing	650.63*
h) research, preparation and presentation (McRobb)	1,400.00
research, preparation and presentation (Percival)	671.85

Total claim approved by the Board \$5,094.76

* The Board notes personal travel and per diem expenses were below YTG travel allowances

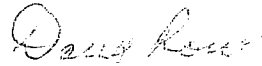
Friends of Aishihik claimed \$4,747.59

This claim is for one transcript. While the bill was submitted by Friends of Aishihik, the transcript was shared

by all intervenors save and except the City of Whitehorse.

The Board considers that since it would be very difficult to assess the need for partial transcripts for a variety of intervenors, this expense should be allowed in full.

Friends of Aishihik has requested this item be paid to J.G. Moore directly.



Doug Row
ViceChair
Yukon Utilities Board

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THE YUKON UTILITIES BOARD

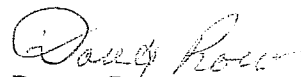
ORDER:

IT IS HEREBY ORDERED THAT:

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

New Era Electric Corporation	\$ 5,203.27
Yukon Conservation Society	3,347.26
Friends of Aishihik & Associates	5,094.76
J.G. Moore & Associates	4,747.59

Dated at Whitehorse this 10 day of June, 1993.


 Doug Row
 ViceChair
 Yukon Utilities Board

Appendix A

Seven criteria for awarding intervenor costs taken from a June, 1991 paper released by the Board entitled "Intervenor Costs."

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 be 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.