

1994-3

YUKON UTILITIES BOARD

DECISION 1994-3

April 19, 1994

Regarding

INTERVENOR COST AWARDS -  
1993/94 GENERAL RATE APPLICATION

YUKON UTILITIES BOARD

DECISION 1994-3

TUESDAY, THE 19TH DAY OF APRIL, 1994

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

AND IN THE MATTER OF applications made 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 supplied to customers within Yukon;

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

BEFORE:

THE YUKON UTILITIES BOARD

## 1. INTRODUCTION

The Yukon Energy Corporation and the Yukon Electrical Company Limited filed Application on March 12, 1993 with the Yukon Utilities Board. The Application 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 pre-hearing conferences on April 28, 1993 and the following intervenors were recognized by the Board:

- the City of Whitehorse;
- Curragh Resources Inc.
- Friends of Aishihik & Associates;
- Superior Indoor Climate Engineering;
- the Whitehorse Chamber of Commerce;
- the Yukon Conservation Society; and
- Karen Lang.

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 of 1991, the Board prepared and released a paper entitled "Intervenor Costs" which 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.

and further

There are no guarantees that any particular group 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.

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 Interests

Interventions are generally made by groups that are represented by a spokesperson. Intervenor 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 Intervenor

Intervenor 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 intervenor who do not have sufficient financial resources 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. Intervenor should therefore be prepared to pay a portion of the costs of the intervention. If alternative 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 directs the Intervenor to file detailed claims for their costs with the Board within thirty days of this decision.

In June of 1993, the Board amended these guidelines by directing that detailed applications for intervenor costs be submitted within twenty days of a final decision.

The Board has received applications for intervenor costs from the following intervenors:

- the City of Whitehorse
- Friends of Aishihik
- Superior Indoor Climate Engineering

These applications were sent, at the Companies' request, to the Companies for comment.

The Companies objected, in Exhibit #1993-1-300, to compensation being awarded to Mr. Ellwood and Mr. McRobb for their "labour", on the grounds that payment for their labour was "merely an indirect per diem to which they are not otherwise entitled."

The Board considered the Companies' objection and the fact that these costs have been awarded in the past. In view of the fact that the Board has a policy of encouraging helpful interventions and these two intervenors were of considerable assistance to the Board, the time of these intervenors was allowed in the applications for intervenor costs.

## 2. COST AWARDS

### The City of Whitehorse

The City of Whitehorse was represented by the legal firm of Brownlee Fryett, in consultation with Matthew Craig Davies and JBS Energy Inc. The total claimed expenses were \$187,484.35.

This amount was composed of \$160,275.84 of professional fees and \$27,208.51 of disbursements. The individual claims were:

Brownlee Fryett	Fees	\$ 74,071.25
	Disbursements	23,270.78
Matthew Craig Davies	Fees	47,804.92
	Disbursements	1,713.46
JBS Energy Inc.	Fees	38,399.67
	Disbursements	2,224.27
		<u>\$187,484.35</u>

The Board directs an award of costs to the City of Whitehorse in the amount of \$137,815.48.

Brownlee Fryett		
awarded 75% of Fees		\$ 55,553.44
and 100% of Disbursements		23,270.78
Matthew Craig Davies		
awarded 75% of Fees		35,853.69
and 100% of Disbursements		1,713.46
JBS Energy		
awarded 50% of Fees		19,199.84
and 100% of Disbursements		2,224.27
		<u>\$137,815.48</u>

Friends of Aishihik

The Friends of Aishihik submitted a claim for 430 hours by one intervenor, Gary McRobb and disbursements of \$2,392.76. The Board determined that time was to be calculated at the rate of \$25 per hour.

Gary McRobb	Fees	\$10,750.00
	Disbursements	<u>2,392.76</u>
		\$13,142.76

The Board directs an award of costs to the Friends of Aishihik in the amount of \$10,992.76.

Gary McRobb		
awarded 80% of fees		\$ 8,600.00
and 100% of Disbursements		<u>2,392.76</u>
		\$10,992.76

Superior Indoor Climate Engineering

Superior Indoor Climate Engineering submitted a claim for 350.5 hours for the time of a sole intervenor, Robb Ellwood and disbursements of \$213.38. The time was calculated at the rate of \$25 per hour.

Robb Ellwood	Fees	\$ 8,762.50
	Disbursements	<u>213.38</u>
		\$ 8,975.88



The Board directs an award of costs to Superior Indoor Climate Engineering in the amount of \$6,785.26.

Robb Ellwood	
awarded 75% of Fees	\$ 6,571.88
and 100% of Disbursements	<u>213.38</u>
	\$ 6,785.26

ORDER:

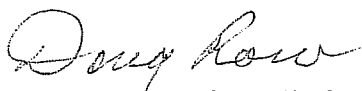
THEREFORE IT IS ORDERED THAT:

The Yukon Electrical Company Limited and the Yukon Energy Corporation 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:

City of Whitehorse	\$137,815.47
Friends of Aishihik	10,992.76
Superior Indoor Climate Engineering	6,785.26

Dated at Whitehorse this 19th day of April, 1994

YUKON UTILITIES BOARD

  
Doug Row, Vice-Chair