

1994-9

**YUKON UTILITIES BOARD**

**DECISION 1994-9**

August 10, 1994

Regarding

**INTERVENOR COST AWARDS -  
1993/94 GENERAL RATE APPLICATION**

YUKON UTILITIES BOARD

DECISION 1994-9

WEDNESDAY, THE 10TH DAY OF AUGUST, 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 award of costs.

BEFORE:

THE YUKON UTILITIES BOARD Monday the 1st day of August, 1994

1. INTRODUCTION

The Yukon Energy Corporation and the Yukon Electrical Company Limited (the "Companies") filed an 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 or 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. 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 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 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 will only award costs that have been reasonably and prudently incurred.

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

- the City of Whitehorse
- Friends of Aishihik
- Superior Indoor Climate Engineering
- Peat Marwick Thorne Inc., Interim Receiver of Curragh Inc.

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

The Board has had an opportunity of reviewing in detail the requests for final intervenor costs from the intervenors together with a review of the detailed accounts and receipts submitted together with the comments of the Companies pertaining to these costs.

The Board has also taken into consideration the position of the Companies with respect to the City of Whitehorse whereby the Companies have asked this Board to review and advise as to

the application of the fifth identified criteria "Financial Need". The submission of the Companies is that the City of Whitehorse has sufficient financial resources and therefore no Order should be made with respect to intervenor funding for the City of Whitehorse.

The Board also considered the position of the Companies with respect to the awarding of fees to individual intervenors to compensate them for loss of income.

The Board reviewed the comments of the Companies with respect to Peat Marwick Thorne Inc., the Interim Receiver of Curragh Inc., and the submission that the intervenor costs submission offends the provisions of Board decision 1993-8 and in particular, section 12 which provided that:

"All intervenors requesting costs must submit within twenty days of the date of this decision an application for intervenor costs if those intervenors are seeking costs in accordance with the Board's policy and forms."

The Board has considered carefully the submissions made by the Companies and the intervenors and wishes to make the following preliminary finding:

1. Financial Need

Section 56 of the *Public Utilities Act* (the "Act") states that the Board may make Order to whom or by whom any costs incidental to any proceeding before the Board are to be paid and may fix the costs to be paid.

The Board's intervenor costs guidelines are guidelines not official rules. As guidelines, the criteria are to be applied on the basis of encouraging interventions to assist the Board in balancing the interests of the Companies and the rate payers.

Among the guidelines is the criteria of financial need. The Board wishes to assist intervenors who do not have sufficient financial resources to adequately represent their interests before the Board.

There is nothing in the guidelines that prevents intervenors such as the City of Whitehorse from seeking assistance. Guideline 5 has not been interpreted by this Board to exclude parties with resources and therefore on this ground, the Board is of the view that it is prepared to assist the City of Whitehorse in granting intervenor funding as it has done in the past.

2. The Awarding of Intervenor Costs for Time Spent by Individual Intervenor

This Board has made the decision in the past to award time spent by intervenors. Whether this Board is compensating solicitors' time, accountants' time, or an individual's time, this decision is left in the discretion of the Board as a basis of encouraging intervention by interested parties.

3. Whether the Interim Receiver of Curragh Should be Awarded Costs

At the conclusion of the 1993\94 GRA, the Board in its decision, made it clear that all intervenors requesting costs had to submit their applications within twenty days of the date of the decision. Furthermore, applications were sent to all intervenors including the Interim Receiver of Curragh. The remaining intervenors, namely: the City of Whitehorse, Friends of Aishihik, and Superior Indoor Climate Engineering met the deadline and were granted costs as intervenors.

Peat Marwick Thorne Inc., the Interim Receiver of Curragh did not meet the deadline and therefore no costs shall be awarded on an interim basis.

This Board is now dealing with final costs. A letter was sent out to all intervenors extending time with respect to final costs. Peat Marwick Thorne, the Interim Receiver of Curragh met this deadline based on the correspondence to the Board from the Interim Receiver.

4. 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. In decision 1994-3, their request for intervenor funding was dealt with on an interim basis.

The City of Whitehorse submitted a claim for fees and disbursements from Brownlee Fryett, Matthew Craig Davies, and JBS Energy Inc. which totalled \$26,522.86 in fees and \$5,899.77 in disbursements.

fees claimed	\$ 26,522.86
disbursements claimed	<u>\$ 5,899.77</u>
	\$ 32,422.63



The Board directs an award of costs to the City of Whitehorse in the amount of \$20,633.54, inclusive of GST.

60% of fees requested	\$ 15,913.72
80% of disbursements requested	<u>\$ 4,719.82</u>
	\$ 20,633.54

Friends of Aishihik

The Board has received the final request for costs of Friends of Aishihik dated July 5, 1994 wherein the Friends of Aishihik are claiming costs in the sum of \$4,925.00 representing 36 hours preparation, 62 hours research, and 93 hours presentation. In addition, Friends of Aishihik are seeking disbursements of \$324.00.

costs claimed	\$ 4,925.00
disbursements claimed	<u>\$ 324.00</u>
	\$ 5,249.00

The Board directs an award of costs to Friends of Aishihik in the amount of \$3,214.20, as follows, inclusive of GST.

60% of costs requested	\$ 2,955.00
80% of disbursements requested	<u>\$ 259.20</u>
	\$ 3,214.20

Superior Indoor Climate Engineering

Superior Indoor Climate Engineering's claim for interim costs was dealt with by Decision 1994-3.

The Board has received a letter dated June 23, 1994 for final costs. It is broken down into receipts of fees of 38 hours at \$25.00 per hour for the amount of \$950.00 and \$65.19 in disbursements.

costs claimed	\$ 950.00
disbursements claimed	<u>\$ 65.19</u>
	\$ 1,015.19

The Board directs an award of costs to Superior Indoor Climate Engineering in the amount of \$527.15, as follows, inclusive of GST.

50% of costs requested	\$ 475.00
80% of disbursements requested	\$ <u>52.15</u>
	\$ 527.15

Peat Marwick Thorne, Inc., Interim Receiver for Curragh Inc.

The Board received an application from Cassels, Brock, & Blackwell, solicitors for Peat Marwick Thorne Inc., Interim Receiver of Curragh July 7, 1994.

The Interim Receiver of Curragh did respond to the request for final submissions with respect to costs. On this basis the Board will accept the Interim Receiver's request for costs on the basis of dealing with final costs that were subsequent to the interim request of October, 1993.

fees claimed	\$ 3,000.00
disbursements claimed	\$ <u>550.20</u>
	\$ 3,550.20

The Board directs an award of costs to the Interim Receiver in the amount of \$1,940.16, as follows, inclusive of GST.

50% of fees requested	\$ 1,500.00
80% of disbursements requested	\$ <u>440.16</u>
	\$ 1,940.16

A summary of the total fees and disbursements requested and granted is attached hereto as Schedule "A".

ORDER:

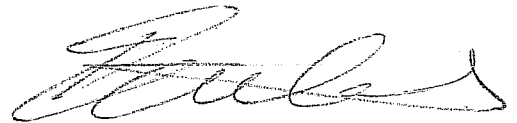
THEREFORE IT IS ORDERED THAT:

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	\$20,633.54
Friends of Aishihik	\$ 3,214.20
Superior Indoor Climate Engineering	\$ 527.15
Peat Marwick Thorne Inc., Interim Receiver of Curragh Inc.	\$ 1,940.16

Dated at Whitehorse this 19 day of August, 1994.

YUKON UTILITIES BOARD



Edith Walters, Chairman

# KON UTILITIES BOARD - 1993/94 GRA Intervenor Costs

	City of Whse	City of Whse	F.O.A.	F.O.A.	S.I.C.E.	S.I.C.E	PMT/Curragh	PMT/Curragh
	Fees	Disbursements	Fees	Disbursements	Fees	Disbursements	Fees	Disbursements
1993-8								
med Costs	\$160,275.84	\$227,208.51	\$10,750.00	\$2,392.76	\$8,762.50	\$213.38	\$95,698.45	\$36,020.64
med Costs	\$110,606.97	\$227,208.51	\$8,600.00	\$2,392.76	\$6,571.88	\$213.38	\$0.00	\$0.00
ent Allowed	69%	100%	80%	100%	75%	100%	0%	0%
Final								
med Costs	\$26,522.86	\$5,899.77	\$4,925.00	\$324.00	\$950.00	\$65.19	\$3,000.00	\$550.20
med Costs	\$15,913.72	\$4,719.82	\$2,955.00	\$259.20	\$475.00	\$52.15	\$1,500.00	\$440.16
ent Allowed	60%	80%	60%	80%	50%	80%	50%	80%
al Claimed	\$186,798.70	\$33,108.28	\$15,675.00	\$2,716.76	\$9,712.50	\$278.57	\$98,698.45	\$36,570.84
al Allowed	\$126,520.69	\$31,928.33	\$11,555.00	\$2,651.96	\$7,046.88	\$265.53	\$1,500.00	\$440.16
ent Allowed	68%	96%	74%	98%	73%	95%	2%	1%