

2005-16

**IN THE MATTER OF the Public Utilities Act
Revised Statutes of Yukon, 2002, c. 186, as amended**

and

**An Application by Yukon Energy Corporation
for Approval of 2005 Revenue Requirements**

BEFORE: W. Shanks, A/Chair) December 14, 2005
 R. Hancock)
 M. Phillips)

BOARD ORDER 2005-16

WHEREAS:

- A. On December 13, 2004, Yukon Energy Corporation ("YEC", "the Company") filed with the Yukon Utilities Board ("the Board"), pursuant to the *Public Utilities Act* ("the Act"), and *Order-In-Council 1995/90*, an Application requesting an Order granting new rates for Secondary (interruptible) Energy and the Faro Mine site, on an interim refundable basis, effective with consumption January 1, 2005 ("the Application"); and
- B. By Order 2005-2, the Board scheduled an oral public hearing into the YEC Application for April 18, 2005, in Whitehorse, Yukon, and issued a regulatory timetable and a final issues list; and
- C. The following Intervenorers were recognized by the Board:
- Peter Percival
 - Utilities Consumers' Group
 - Patrick McMahon
 - City of Whitehorse
 - Association of Yukon Communities
 - Ad Hoc Group of Businesses
 - Whitehorse General Hospital
 - Copper Ridge Place
 - Indian and Northern Affairs Canada
 - Yukon Conservation Society
 - Yukon Chamber of Commerce
 - Yukon Electrical Company Limited
 - Gary McRobb
 - Yukon Chamber of Mines
 - High Country Inn

- D. Pursuant to Section 56 of the Act, Section 33 of the Rules of Practice, and its Intervenor Cost Award Policy, the Board requested applications for Intervenor costs.
- E. The Board received applications for Intervenor costs from the following Intervenor:
- Yukon Electrical Company Limited ("YECL")
 - Utilities Consumers' Group ("UCG")
 - Peter Percival ("Percival")
 - Ad Hoc Group of Businesses ("AGB")
 - Yukon Conservation Society ("YCS")
 - Pat McMahon ("McMahon")
- F. Schedule 1 to Board Order 1995-2 provides the Scale of Costs for cost awards in matters before the Board. As stated in Schedule 1, costs are generally awarded against a utility, and charged to the customers of the utility throughout the utility's rates. For this reason, The Board considers that the costs claimed by parties to a proceeding must be subject to stringent scrutiny.
- G. While the Board welcomes informed, effective and responsible intervention from intervenors to test various aspects of an applicant's rate case, cost awards are assessed on their own merits. The Board may disallow or reduce costs in some circumstances.
- H. The Board has reviewed all applications for costs based on the criteria set out in Schedule 1 and the manner in which the Board previously applied Schedule 1 in Board Order 1996-10.
- I. The Board has assessed the cost applications on the principles outlined in Schedule 1, making adjustments primarily on the basis of: (1) the effectiveness of the party's participation, (2) the relevancy of the participation to the issues list, (3) whether costs of the party were reasonably and prudently incurred, and (4) the diligence the party in the efficient presentation of its position.
- J. While the Board has previously allowed awards of \$25 per hour for non-professional fees, the Board established a new rate of \$35 per hour for non-professional fees for the purposes of this hearing. The Board determines that the UCG, AGB, McMahon, YCS and Percival fall into this category. The Board has adjusted the applications of those parties to reflect the new rate in its evaluation of their applications.
- K. Pursuant to Schedule 1, the Board has not approved an attendance allowance for any of the applicants.
- L. Consistent with past Board practice, all cost awards have been granted inclusive of GST.

The Board has made determinations for costs to be granted to intervenors, as follows:

1. Yukon Electrical Company Limited

YECL submitted a claim for \$47,824.05 including \$3,128.69 GST. YECL's claim reflects external legal fees and expenses including fees for transcripts in the amount of \$1,717.42 and hotel charges in the amount of \$529.65. In addition, other disbursements of \$1,970.85 (including GST) were claimed.

The transcript costs are disallowed.

The Board recognizes that the costs of a utility intervening in another utility's proceeding would not normally be recoverable in other jurisdictions as it would represent intervention of a sole business interest. The Board further recognizes that YECL can be expected to intervene in matters such as this because it is in its own best interest to do so.

The Board considers that the circumstances in the Yukon are unique and it does not want to discourage the intervention of other Yukon utilities in matters before the Board. Since the Board views the intervention of YECL in this particular matter as beneficial to ratepayers and therefore not entirely in the sole interest of YECL, in this instance, the Board will evaluate 50% of YECL's cost application under the same principles applicable to the other applicants for cost awards in this proceeding.

The Board's decision to award YECL a portion of its costs is not intended to set a precedent for future proceedings when a utility intervenes in a proceeding of another utility.

YECL costs for evaluation is	\$22,788.49
Awarded 60% of fees:	\$13,673.09
Disbursements:	\$ 2,500.50

The Board directs an award of costs to YECL in the amount of **\$16,173.59**

2. Utilities Consumers' Group

UCG submitted a claim for \$74,405.13. This amount represents \$69,187.50 for fees for 307.5 hours at \$225 per hour, \$350.00 for disbursements, and GST in the amount of \$4,867.63.

Taking into account the adjusted non-professional fee of \$35 per hour, the fees are adjusted to total \$10,762.50 plus GST of \$753.37, which equals \$11,515.87.

In assessing the UCG cost application, the Board has considered the conduct of UCG representative, Roger Rondeau. His actions included conduct offensive and disrespectful to the Board and parties appearing before it, and, in an even

more serious example, a flagrant abuse of the Board's process. In the first instance, the Board refers to Exhibit A-12, where it comments on Mr. Rondeau's circulation of material offensive and disrespectful to the Board and the parties. The Board considers that this was purely a bad attempt at humour and had nothing whatsoever to do with the proceedings before the Board.

In the second example, the Board found that Mr. Rondeau tampered with summonses issued by the Board at Mr. Rondeau's request by removing pages from those summonses. The pages removed advised the parties receiving the summonses of their rights. For this reason and other reasons relating to ineffective service, the Board set aside all the summonses issued at Mr. Rondeau's request.

While these two examples are not an exhaustive list of Mr. Rondeau's conduct which served to increase the overall costs of the hearing, they illustrate his disruptive influence on the proceedings resulting in further cost and inconvenience to the Board and other parties involved.

Having considered all of Mr. Rondeau's conduct throughout the proceedings, the Board concludes that the UCG did not provide a responsible intervention in terms of effectiveness, relevancy to the issues, reasonableness and prudence, and diligence and efficiency. The Board also notes that Mr. Rondeau chose not to participate in the oral hearing. In a process where costs are ultimately borne by the ratepayer, the Board considers it an obligation of parties to the proceeding to provide responsible intervention.

Therefore, the Board further assesses a 50% cost reduction against the awarded amount, in the amount of \$1,151.58.

UCG costs for evaluation:	\$11,515.87
Awarded 20% of fees:	\$ 2,303.17
Disbursements	\$ 374.50
Cost reduction:	\$ (1,151.58)

The Board directs an award of costs to UCG in the amount of **\$1,526.09**

3. Peter Percival

Peter Percival submitted a claim for \$6,278.44. This amount represents \$6,103.12 in fees for 54.25 hours at \$112.50 per hour, plus disbursements of \$181.89 (including GST). This totals \$6,285.01.

Attendance fees were disallowed, leaving 20.25 hours remaining. Taking into account the adjusted non-professional fee of \$35 per hour, the fees are adjusted to total \$708.75.

Percival costs for evaluation: \$ 708.75

Awarded 90% of fees: \$ 637.87

Disbursements: \$ 181.89

The Board directs an award of costs to Peter Percival in the amount of **\$819.76**

4. Ad hoc Group of Businesses

AGB submitted a claim for \$23,850.00. This amount represents 27.5 hours at \$60 per hour for Gordon Clark, 20 hours at \$60 per hour for Steven Duncan, and 150 hours at \$140 per hour for Bob Baxter. Total number of hours is 197.5, adjusted to \$35 per hour, at the adjusted non-professional fee of \$35 per hour, totals \$6,912.50.

AGB costs for evaluation: \$6,912.50

Awarded 95% of fees: \$6,566.87

Disbursements: \$0

The Board directs an award of costs to AGB in the amount of **\$6,566.87**

5. Yukon Conservation Society

YCS submitted a claim for \$4,800.00. This amount represents 120 hours of non-professional fees at \$40 per hour. Taking into account the adjusted non-professional fee of \$35 per hour, the fees are adjusted to total \$4,200.00.

The Board notes that it was difficult to determine a cost award for YCS based on all of the set criteria, as the Green Power initiative was withdrawn from the proceedings well into the process. This turn of events was unforeseeable by the YCS

YCS costs for evaluation: \$4,200.00

Awarded 95% of fees: \$3,990.00

Disbursements: \$0

The Board directs an award of costs to YCS in the amount of **\$3,990.00**

6. Patrick McMahon

Patrick McMahon submitted a claim for \$53,749.78. This included disbursements off \$4,699.78.

Of the amount claimed, \$49,050 is for fees based on 327 hours at \$150 per hour. Taking into account the adjusted non-professional fee of \$35 per hour, the fees are adjusted to total \$11,445.00.

McMahon costs for evaluation: \$11,445.00

Awarded 45% of fees: \$5,150.00

Disbursements: \$1,780.00

The Board directs an award of costs to Mr. McMahon in the amount of **\$6,930.00**

7. Yukon Utilities Board

The Yukon Utilities Board, pursuant to section 50 of the Act, received approval from the Executive Council Member for necessary expenses to conduct the Revenue Application hearing. The Board was represented by the law firm of Boughton Law Corporation and received financial and technical advice from the British Columbia Utilities Commission and Higgins Energy Consultants.

Fees Claimed: \$218,209.10

Disbursements: \$ 28,060.87

The Yukon Utilities Board's costs with respect to the Revenue Application are costs that more properly belong to the utility, and ultimately the utility ratepayer than to the Yukon taxpayer. Therefore, all hearing-related costs of the Board are allowed as utility regulatory costs.

The Board directs an award of costs to Government of Yukon in the amount of **\$246,269.97**

NOW THEREFORE the Board orders as follows:

Yukon Energy Corporation shall pay the following amounts to parties identified and that such payments shall be forthcoming within 30 days of the issuance of this Order:

Yukon Electrical Company Limited: \$ 16,173.59

Utilities Consumers' Group: \$ 1,526.09

Peter Percival: \$ 819.76

Ad hoc Group of Businesses: \$ 6,566.87

Yukon Conservation Society: \$ 3,990.00

Patrick McMahon: \$ 6,930.00

Government of Yukon: \$246,269.97

Total Cost Awards: \$282,276.28

DATED at the City of Whitehorse, in the Yukon Territory, this 21st day of December 2005.

BY ORDER

A handwritten signature in dark ink, appearing to read 'Wendy Shanks', written over the printed name.

Wendy Shanks
A/Chair