

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

and

**Requests of the Utilities Consumers' Group for the Board to
Review and Vary Orders 2005-16 and 2005-17**

BEFORE:

Wendy Shanks, Acting Chair)	March 8, 2006
Richard Hancock, Member)	
Michael Phillips, Member)	

BOARD ORDER 2006-3

WHEREAS:

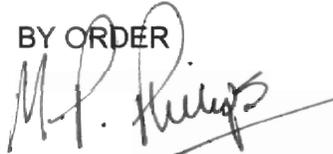
- A. On January 9, 2006, the Utilities Consumers' Group ("UCG") filed an application to the Yukon Utilities Board ("Board) to review and vary Order 2005-16 "specifically UCG's Cost Award Decision re: Rate Application by Yukon Energy Corporation for Approval of 2005 Revenue Requirements";
- B. On January 9, 2006, the UCG filed a second application to the Board, in this instance, to review and vary Order 2005-16 "specifically Government of the Yukon Cost Award Decision re: Rate Application by Yukon Energy Corporation for Approval of 2005 Revenue Requirements";
- C. On January 9, 2006, the UCG filed a third application to the Board, in this instance, to review and vary Order 2005-17 "specifically Yukon Energy Cost Award and Reconciliation of Order 2005-17 re: Rate Application by Yukon Energy Corporation for Approval of 2005 Revenue Requirements";
- D. All three applications are made under section 62 of the Public Utilities Act ("Act");
- E. By letter dated November 7, 1996, the Board issued guidelines for an application for review pursuant to Section 62 of the Act (Attachment 1 to this Order).
- F. On February 23, 2006, the Board acknowledged receipt of a copy of the UCG Notice of Motion for Application to Appeal Board Orders 2005-16 and 2005-17 and noted that relief sought from the Yukon Court of Appeal is essentially the same as that requested in your applications to review and vary. The Board requested that UCG advise the Board whether it has abandoned its request to have the Board review and vary Board Orders 2005-16 and 2005-17.
- G. On February 26, 2006, UCG responded to the Board that it intended to proceed with the Requests to Review and Vary.

NOW THEREFORE the Board orders with Reasons attached as Appendix A, as follows:

The Requests for Review and Variance are denied.

DATED at the City of Whitehorse, in the Yukon Territory, this 9th day of March, 2006.

BY ORDER

A handwritten signature in black ink, appearing to read "M. P. Phillips", written over a rectangular stamp area.

Michael Phillips
Member

Appendix A to Board Order 2006-3

Reasons for Decision

A. BACKGROUND

The Board has received three applications pursuant to section 62 of the *Public Utilities Act* (the "Act") for review and variance from the Utilities Consumers' Group ("UCG"), all dated January 9, 2006. Two of the applications request a review and variance of Board Order 2005-16 and the third requests a review and variance of Board Order 2005-17. All the applications relate to awards for costs made by the Board in the matter of the application of Yukon Energy Corporation for 2005 Required Revenues and Related Matters (the "YEC Application") which is the subject of Board Order 2005-12. The matters which are the subject of the three applications are also the subject of a leave application before the Yukon Court of Appeal. By letter dated, February 23, 2006, the Board acknowledged receipt of UCG's Application to Appeal Board Orders 2005-16 and 2005-17 and noted the relief sought in the Court of Appeal was essentially the same as that requested in the applications. It also asked UCG to advise whether it had abandoned its request to have the Board review and vary Board Orders 2005-16 and 2005-17. By letter dated February 26, 2006 UCG replied that it intended to proceed with the applications before the Board and requested an "expedited response."

B. SECTION 62 APPLICATIONS

The Act provides the Board with discretion to determine whether it will grant an application for review and variance under section 62. Section 62 of the Act states: The board may review, change, or cancel any decision or order made by it, and may rehear any application or complaint before deciding it.

On November 7, 1996, the Board issued guidelines for applications made pursuant to section 62 of the Act. The guidelines provide, in part, the grounds for review that the Board will consider in section 62 applications. The grounds are as follows:

- (i) the Board has made an error in jurisdiction;
- (ii) the Board has made an error in fact or law;
- (iii) there has been a fundamental change in circumstances or facts since the decision or order;
- (iv) a basic principle has not been raised in the original proceedings;
- (v) a new principle has arisen as a result of the decision or order; and
- (vi) such other grounds as the Board determines requires a review.

Under the guidelines, an application for review is subject to an initial screening phase where the applicant must establish a prima facie case sufficient to warrant full consideration by the Board.

UCG's three applications do not provide a specific reference to one of the foregoing grounds for review. However, the UCG letter of February 23, 2006, alleges that it has "presented a prima facie argument that the Board made an error in law for decisions resulting in [Board Orders 2005-16 and 2005-17]." The Board will therefore examine the applications on the basis of that alleged ground for review.

C. COST AWARDS

The Act provides the Board with discretion to award costs.

Section 56 of the Act provides as follows: "The board may order to whom or by whom any costs incidental to any proceeding before the board are to be paid, and may set the costs to be paid."

Schedule I to Board Order 1995-2, dated November 10, 1995, provides the Scale of Costs for cost awards in matters before the Board. It recognizes the statutory discretion of the Board to award costs and sets out the matters that the Board will consider prior to exercising its statutory discretion.

On June 3, 2005, the Board also established an Intervenor Costs Award Policy (the "Policy") for the YEC Application.

D. DISCUSSION

In this part of the Reasons, the Board considers each of the three applications, having regard to the discretion it may exercise under section 62 of the Act and its guidelines for applications to review and vary. The Board addresses the reasons for review alleged by UCG in each of the three applications by reference to the paragraph number in the applications.

I. Application to Review and Vary Board Order 2005-16, specifically UCG's Cost Award decision re Rate Application by Yukon Energy Corporation for Approval of 2005 Revenue Requirements

1. In the Board's view this allegation does not present a prima facie case of an error in law. The Board's granting Intervenor status to UCG and Mr. Rondeau, pursuant to section 24 of the Board's Rules of Practice is irrelevant to the actual cost award made to UCG. The granting of Intervenor status, as the Scale of Costs makes clear, does not automatically entitle an Intervenor to a cost award.

2. In the Board's view, this allegation does not present a prima facie case of an error in law. The Board agrees with the statement in paragraph 2 of the Scale of Costs. However, the statement must be considered in the context of the subsequent paragraphs in the Scale of Costs. The Board based UCG's cost award on criteria that are the subject of the later paragraphs.
3. In the Board's view, this allegation does not present a prima facie case of an error in law. The Board's Policy does not require the mandatory filing of an affidavit. It states that an affidavit should support the cost award application, not that it will. The Board acknowledges that UCG detailed its hourly billings, as it asserts. The Board did not directly reduce the hours claimed by any of the Intervenors. Instead, the Board evaluated the cost awards per the criteria of effectiveness, relevancy, reasonable and prudently incurred expenses, and diligence in efficient presentation, as per the Scale of Costs and the Policy, and as stated in Board Order 2005-16. All of these criteria were used for evaluating each of the Intervenor cost awards, including UCG's cost award.
4. In the Board's view this allegation does not present a prima facie case of an error of law. UCG takes issue with Mr. Rondeau's Non-Professional Fee category classification by the Board. UCG did not file a retainer letter with the Board within one month of the pre-hearing conference, as is required according to the Scale of Costs, in order to obtain classification for Mr. Rondeau within the Professional Fee category. Despite not filing the retainer letter, the UCG cost award application claimed the maximum hourly fee of \$225 per hour under the Professional Fee category. In the absence of the required filing, the Board determined Mr. Rondeau to be in the Non-Professional Fee category in Board Order 2005-16, and followed the same criteria as outlined in Board Order 1996-10, except that an increase was given from \$25 per hour to \$35 per hour in Board Order 2005-16.
5. In the Board's view, UCG's breaking down of its file does not present a prima facie case of an error in law.
6. The Board does not consider this allegation a prima facie case of an error in law. The Board's comment that Mr. Rondeau chose not to participate in the oral hearing, should be read as supplementary to its conclusion that he did not provide a responsible intervention for the reasons given in Board Order 2005-16.
7. The Board does not consider this allegation a prima facie case of an error in law. The Board based its decision on the UCG cost award on the statutory discretion given to it under section 56 of the Act and having regard to the Scale of Costs and the Policy.

II. Application to Review and Vary Board Order 2005-16, specifically Government of Yukon Cost Award

1. UCG has provided no particulars for its reference to the "reliable information" that it says it has received. A suggestion of "reliable information" without particulars in the Board's view does not present a prima facie case of an error in law.
2. The Board is of the view that the allegations in paragraphs 2, 3 and 4 do not present a prima facie case of an error in law. The Scale of Costs does not apply to the Board, but rather to parties appearing before the Board. The Scale of Costs refers to Intervenors and parties. The Rules of Practice define "party" as "either an applicant or an Intervenor." Furthermore, section 56 of the Act does not provide for a review of the Board's Hearing costs.

III. Request to Review and Vary Board Order 2005-16, specifically Yukon Energy Cost Award

1. For the reasons given on UCG's second application, the Board is of the view that the allegations in this paragraph do not present a prima facie case of an error in law.
2. In paragraphs 2, 3 and 4 of this application, UCG asserts that the only public filing for costs in the YEC Application is inadequate to make a thorough decision on legitimate costs. The Board disagrees. The Board explained its approach to the awarding of costs for YEC in Board Order 2005-17. In addition, in its letter to UCG, dated February 16, 2006, the Board noted that UCG could have addressed the YEC costs, as originally forecast in Exhibit B1-23 filed by YEC on April 8, 2005, at the Oral Hearing and in its Final Argument. UCG did not do so. The Board is of the view that this was more than adequate public accountability. UCG asserts by letter of February 26, 2006, that, "regulatory hearing costs are not to be entertained until after a decision on the utility application is made by the Board and then one month is given to do so." This requirement that UCG refers to is one that is taken from the Policy, which applies to Intervenors submitting cost awards, not applicants. The Board is of the view that the allegations in paragraphs 2, 3 and 4 do not present a prima facie case of an error in law.

Further Comments

While there is no specific allegation of bias in the applications, the Board notes that UCG's covering letter dated January 9, 2006, asserted a perception of bias. The bias of that allegation was that other Intervenor cost award applications did not include affidavits. The Board does not find that this fact supports allegations of the perception of bias, as the Policy does not require the affidavits to support the cost award applications.

E. CONCLUSIONS

The Board has concluded that the applications do not meet the prima facie test for the error in law ground alleged by UCG as the basis for the reviews under section 62 of the Act. The Board notes that it determined in Board Order 2005-14 that only "the party being asked to pay," namely Yukon Energy Corporation, was to receive the cost award applications and that no further input was being sought by the Board. The Requests for Review and Variance of Board Orders 2005-16 and 2005-17 are denied.