

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

and

**An Application by Yukon Energy Corporation (YEC) for approval of
the Power Purchase Agreement (PPA) between
YEC and Alexco Resource Corp. (Alexco)**

BEFORE: B. McLennan, Chair) July 21, 2011
 R. Laking)
 R. Hancock)
 J. Woodland)

BOARD ORDER 2011-09

WHEREAS:

- A. Pursuant to Section 56 of the *Public Utilities Act* (Act), the Yukon Utilities Board (Board) may “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”;
- B. On September 28, 2010, Yukon Energy Corporation (YEC) filed an application with the Yukon Utilities Board (Board) seeking an Order approving the Purchase Power Agreement (PPA) between YEC and Alexco;
- C. The application stated that Alexco, who intends to develop mines and mills in the Mayo-Keno area, is to be connected to the transmission facilities in early October. Also, Alexco was to commence services as a major industrial customer, as defined in OIC 1995/90, by mid-October 2010;
- D. The PPA included provisions whereby Alexco will pay YEC for the reasonably incurred costs related to the initial mine facilities spur, capital costs for any other mine facilities, costs to negotiate and conclude the PPA and decommissioning costs;
- E. Section 6.1 of the PPA also sought approval to issue only one bill totaling the Electric Demand and Electric Energy at the Points of Delivery;
- F. YEC also sought approval for the Alexco Fixed Charge of \$7,289 per month as defined in Schedule A of the PPA;
- G. The Board issued Board Order 2010-10, which set out the application would be determined by way of a written proceeding. The order outlined the process schedule and requested that persons wishing to seek Intervenor status were ordered to register no later than November 10, 2010;

- H. The Board received requests for Intervenor status from Yukon Electrical Company Ltd., John Maissan, and the Utilities Consumers' Group (UCG). The City of Whitehorse informed the Board that it had not decided whether or not to intervene in this application but it asked to be registered as an Interested Party to receive all future correspondence;
- I. On November 19, 2010, the Board issued Board Order 2010-11 granting Intervenor status to Yukon Electrical Company Ltd., John Maissan, and UCG for the proceeding. The Board granted the City of Whitehorse Interested Party status because it did not seek Intervenor status;
- J. The Board considered the evidence and the written argument and reply of the Parties respecting the application;
- K. On December 31, 2010, the Board issued Board Order 2010-14 denying the PPA as applied for. In order to approve the PPA, a change was required with respect to totalized metering as discussed in the attached Appendix A — Reasons for Decision. The Board directed YEC to revise the PPA based on the foregoing and file a revision with the Board by January 31, 2011. As guidance to YEC, the Board accepted all other terms included in the PPA;
- L. The Board received applications for cost awards from:
 - 1. UCG,
 - 2. John Maissan, and
 - 3. YEC;
- M. The Board received comments on the applications for cost awards from UCG in a letter dated February 14, 2011;
- N. The Board has reviewed all applications for costs and comments of the Parties based on the criteria set out in Schedule 1 to the Board's *Intervenor Costs Award Policy (Scale of Costs)*, established by section 33 of the Board's Rules of Practice, Board Order 1995-02, dated November 10, 1995, as well as the principles relating to cost awards set out in previous Board Orders — in particular, Appendix A to Order 2007-6, and Board Orders 2005-16, 2005-17, 2007-7, 2007-8, 2007-9, 2009-06, 2009-11 and 2010-09;
- O. Costs claimed by Parties are subject to stringent scrutiny by the Board, as costs are awarded against a utility and charged to the customers of the utility through the utility's rates; and
- P. After careful consideration, the Board has assessed the cost applications on the principles outlined above and has made the adjustments set out below.

Therefore, the Board awards costs as follows:

INTERVENOR COSTS

1. Utilities Consumers' Group

UCG Claiming:

Consulting Services Provided by P. McMahon
(Fees and HST) \$3,830.70

Total Costs Claimed \$3,830.70

Comments

UCG was represented by Patrick McMahon, consultant. UCG submitted that Mr. McMahon was a skilled consultant with relevant general knowledge of the industry and an extensive background in the history of the Yukon energy sector in support of the requested rate of \$60/hr.

The hours claimed for Mr. McMahon are 30 for preparation and 26.5 for argument, reply and follow-up, for a total of 56.5 hours.

The Board finds that Mr. McMahon's professional fees are not reasonable seeing the nature of the application and the issues raised in this proceeding. As a result, the Board reduces Mr. McMahon's professional fees to \$50/hr and the hours by 25%.

In summary, the Board awards costs to UCG as follows:

Patrick McMahon \$50/hr x 42.38 hours (56.5 hours – 25%) \$2,119.00

HST (13% of \$2,119.00) \$ 275.47

Total Costs Awarded to UCG: \$2,394.47

2. John Maissan, Resident of City of Whitehorse

John Maissan claiming:

Consulting Services \$ 612.50

GST \$ 30.62

Total Costs Claimed \$ 643.12

Comments

Mr. Maissan's cost application was evaluated as that of an Intervenor under section 3 of the Scale of Costs and the applied-for costs are being considered on the basis that he is a resident of the City of Whitehorse. In his cost application, Mr. Maissan stated that he is a registered professional engineer in the Yukon and held senior engineering positions with YEC for about 14

years. He added that he has a broad familiarity with the regulated electrical utilities of the Yukon and their technical issues. In his cost application, he stated that “he prepared and submitted Interrogatory Requests on the Application, prepared and submitted written Argument, and prepared and submitted Reply Argument”.

For “illustrative purposes”, Mr. Maissan included an hourly rate of \$35/hr and acknowledged that the rate is subject to the Board’s discretion. The hours claimed are 8 for preparation and 9.5 for argument, reply and follow-up.

The Board found Mr. Maissan’s submissions to be useful in addressing some of the issues before the Board in this application. As such, the Board considers the rate per hour and the number of hours, as a combined total, to be prudent.

In summary, the Board awards costs to Mr. Maissan as follows:

Under Scale of Costs section 3:

John Maissan Fees \$35/hr x 17.5 hours	\$ 612.50
GST	\$ 30.62
Total Costs Awarded to Mr. Maissan:	\$ 643.12

APPLICANT COSTS

3. Yukon Energy Corporation

Yukon Energy Corporation Claiming:

Davis & Company	\$ 3,375.00
InterGroup Consultants Ltd.	\$ 17,074.50
InterGroup Consultants Disbursements	\$ 60.75
YEC — Misc. Supplies & Services	\$ 1,554.66

Total Costs Claimed **\$ 22,064.91**

Comments

YEC stated that, as in past General Rate Applications and recent regulatory processes, it retained Davis & Company as legal counsel with P. John Landry providing the majority of the legal services required. Davis & Company provided assistance to YEC in relation to the preparation, filing, and review of its application and that the professional fees in the cost award application for legal services do not exceed \$225/hr. The hours claimed are 9 for preparation and 6 for argument, reply and follow up, for a total of 15 hours.

YEC submitted that it retained InterGroup Consultants Ltd. (InterGroup), who acted as primary regulatory consultants. InterGroup assisted YEC with the preparation of the filing and the review process before the Board. Also, YEC explained that InterGroup produced preliminary and final drafts of the

application materials and provided professional services for production of final documents. In addition, InterGroup was involved in responding to interrogatories and assisted with argument and reply. Professional fees were claimed for Cam Osler, Mona Pollitt-Smith, Roberta Connon, H. Najmidinov, and Brenda Wilson. The hours claimed are 106.50 for preparation and 18 for argument, reply and follow up.

YEC claimed in total \$1,554.66 for advertising costs and \$60.75 for InterGroup photocopying costs, which is a total of \$1,615.41 for disbursements.

In relation to Intergroup Consultants' costs claimed by YEC, UCG submitted comments on February 14, 2011. UCG stated that only costs for Cam Osler and Mona Pollitt-Smith should be approved and any other costs were duplicative and should be regarded as administrative support. Specific costs from November and December of 2010 in the amount of \$667.50 and \$33.38 GST should be disallowed.

Regarding the professional fees claimed by Davis & Company, the Board finds that the number of hours claimed for this proceeding is reasonable.

In terms of InterGroup Consultants, the Board disallows the professional fees of any analysts other than Mr. Osler and Ms. Pollitt-Smith because the services of other analysts and researchers are duplicative of the services provided by these two consultants. Mr. Osler expensed 6.75 hours at an hourly rate of \$215, for a total of \$1,451.25, and 32.75 hours at an hourly rate of \$225, for a total of \$7,368.75. The total amount claimed for Mr. Osler was \$8,820.00 for 39.5 hours. Ms. Pollitt-Smith expensed 77.5 hours at an hourly rate of \$93 to \$104, for a total of \$7,587.00. The Board is of the opinion that the hours claimed are excessive because some of these services were duplicative based on the invoices provided in the cost application. The Board has exercised its discretion and reduces the number of hours of each of these consultants by 20% at the lowest hourly rate indicated on the invoices.

In summary, the professional fees amount claimed is \$17,074.50, which the Board has reduced by the following:

Mr. Osler: 7.90 hours x \$215/hr (39.5 hours – 20%)	\$1,698.50
Ms. Pollitt-Smith: 15.5 hours x \$93/hr (77.5 hours – 20%)	\$1,441.50
Total reduction:	<u>\$3,140.00</u>

With respect to YEC's disbursements, the Board allows the \$1,554.66 YEC disbursement for advertising and the Intergroup internal photocopying cost of \$60.75, as outlined in YEC's cost application.

In summary the Board awards costs to YEC as follows:

Davis & Company

Legal Fees \$225 x 15 hours \$ 3,375.00

InterGroup

Professional fees: (\$17,074.50 – \$3,140.00) \$13,934.50

Disbursements \$ 60.75

Yukon Energy Corporation

Disbursements \$ 1,554.66

Total costs awarded to YEC \$18,924.91

BOARD COSTS

4. Yukon Utilities Board

The Board costs with respect to the YEC-Alexco PPA proceeding are costs that more appropriately belong to the utility, and ultimately the utility ratepayers than to the Yukon taxpayers. 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 \$31,891.02.

Total Costs Awarded to Government of Yukon \$31,891.02

NOW THEREFORE the Board Orders as follows:

YEC shall pay the following amounts to the Intervenors identified and the Government of the Yukon within 30 days of the issuance of this Order. The Board directs YEC to amortize these hearing-related costs.

Utilities Consumers' Group \$ 2,394.47

John Maissan \$ 643.12

Yukon Energy Corporation \$18,924.91

Government of the Yukon (Board Costs) \$31,891.02

Total Costs Awarded: \$53,853.52

Dated at the City of Whitehorse, in the Yukon Territory, the 21st day of July 2011.

BY ORDER



Bruce McLennan
Chair