

**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 an Energy Project Certificate and an Energy Operation
Certificate regarding the Proposed Carmacks-Stewart
Transmission Project (CSTP)**

BEFORE: W. Shanks, Chair) September 12, 2007
 M. Florence, Vice Chair)
 R. Hancock)
 J. Woodland)

BOARD ORDER 2007-08

WHEREAS:

- A. On June 5, 2006, the Minister of Justice required that the Yukon Utilities Board (YUB or the Board) carry out a review and hold a hearing on Yukon Energy Corporation's (YEC) 20-Year Resource Plan: 2006-2025 (Resource Plan). As part of that Resource Plan, YEC sought approval for Stage One of the proposed Carmacks-Stewart Transmission Project (CSTP or the Project).
- B. The proposed Project has been designated as a regulated project under Part 3 of the *Public Utilities Act*, and on April 2, 2007, YEC applied under Part 3 of the *Public Utilities Act* for an energy project certificate and an energy operation certificate regarding the proposed Project.
- C. On April 2, 2007, the Minister of Justice for the Government of Yukon directed the Board to review the application and conduct an oral hearing as part of its review.
- D. The following parties had been recognized as registered Intervenors in the proceedings:
 - Yukon Electrical Company Ltd. (YECL)
 - Utilities Consumers' Group (UCG)
 - Yukon Conservation Society (YCS)
 - Peter Percival (Percival)
 - Yukon Sustainable Energy Association (YSEA)
- E. Information Requests and Replies were filed in April and May of 2007, and a public oral hearing was conducted on May 15 and May 16, 2007.

- F. The Board filed its report to the Minister on May 31, 2007.
- G. At the conclusion of the substantive portion of the proceedings and pursuant to Section 56 of the *Public Utilities Act*, the Board requested applications for cost awards from the Intervenors.
- H. The Board received applications for cost awards, as follows:
- UCG – June 15, 2007 (and June 20, 2007)
 - YECL – June 29, 2007
 - YCS – July 3, 2007
 - YEC – July 3, 2007
 - Percival – July 30, 2007 (an e-mail indicating there was no claim for a cost award in this proceeding)
- I. YEC provided comments regarding cost applications on July 17, 2007.
- J. Although, in its July 4 and 17, 2007, correspondence to the Board, UCG raised concerns regarding YEC not meeting deadlines for cost claims and comments to be submitted to the Board, the Board confirms that all above applications and comments were received by the deadlines set by the Board.
- K. The Board has reviewed all applications for costs based on the criteria set out in the Scale of Costs [Schedule 1 of Board Order 1995-2 (the Rules of Practice)], the Hearing Cost Process document that was distributed at the August 30, 2005, Pre-Hearing Conference for the 20-Year Resource Plan review, and Board precedents in Board Orders 1996-10 and 2005-16, 2005-17, 2006-7, and 2007-07.
- L. On July 18, 2007, the Board requested clarification of Mr. Percival's cost application, which was provided by Mr. Percival on July 30, 2007.
- M. On July 19, 2007, the Board requested further information regarding YEC's cost claim, which YEC provided July 31, 2007.
- N. Costs claimed by parties to a proceeding must be subject to stringent scrutiny. As provided for in the Scale of Costs, costs are generally awarded against a utility and charged to the customers of the utility throughout the utility's rates.
- O. After careful consideration, the Board has assessed the cost adjustments primarily in the following areas:
- Hourly rates under the Scale of Costs for both sections 1, Professional Fees, and 3, Intervenors, were assessed and adjusted with consideration to intervention of a general or non-specific nature and whether subject matter expertise was demonstrated and/or substantiated in cost applications. The cost applications of the YECL and UCG legal counsel and UCG arm's-length consultant, Patrick McMahon, were deemed to fall under Section 1 of the Scale of Costs. The cost applications of YCS, UCG (Roger Rondeau), and Percival were deemed to fall under Section 3 of the Scale of Costs.
 - Adjustments were also made based on the value of a party's contribution to the proceedings. As noted in Section 3 (Costs) of Appendix A to Order 2006-7, an Intervenor could receive more

or less than \$35/hr., depending on the degree to which the Board considers an intervention to be of value to the Board. As in past cost awards, adjustments in cost claims were made on the basis of the following criteria:

- i. the effectiveness of a party's participation,
 - ii. the relevance of the participation to the issues list,
 - iii. whether costs of the party were reasonably and prudently incurred, and
 - iv. the efficiency with which a party's position was presented.
- Pursuant to the Scale of Costs, the Board has not approved an attendance allowance for any of the Intervenors and has adjusted all cost applications accordingly;
 - As provided for in the Scale of Costs, the Board considered the awarding of costs where duplication was found to exist and limited cost awards in these instances.

P. In the future, the Board encourages Intervenors to consider combining efforts to reduce duplication and costs to ratepayers, particularly in relation to sharing the resources of hired legal counsel and consultants by Intervenors. The Board strongly encourages Intervenors to combine their efforts in hiring consultants with substantiated subject matter expertise (beyond general subject matter knowledge).

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

1. Yukon Electrical Company Ltd.

YECL submitted a cost claim in the amount of \$350.01

The Board awards full costs, as applied for.

Total Cost Award: \$350.01

2. Utilities Consumers' Group (UCG)

UCG submitted a cost claim in the amount of \$21,709.64, as follows:

| | |
|----------------|------------|
| UCG (Rondeau): | \$6,296.40 |
| Mr. McMahon: | \$8,030.00 |
| Mr. Buonaguro: | \$6,245.09 |
| Disbursements: | \$1,138.15 |

The Board accepts Patrick McMahon as a consultant (section 1 of Schedule 1, the Scale of Costs), with general subject matter knowledge, and assesses him at an hourly rate of \$35. Roger Rondeau was accepted as an Intervenor (UCG) under section 3 of the Scale of Costs, at a rate of \$35/hr.

The Board found substantial duplication between the work of Mr. McMahon and Mr. Rondeau, as indicated in their billing summaries. The Board determined the duplication of work amounts to a total of 73 hours. Therefore, the Board reduces each claim respectively by 36.5 hours.

Mr. Rondeau, President of UCG, filed two cost claim approaches for himself, although the Board did not request that two alternatives be filed for its consideration. As Mr. Rondeau's intervention falls under Section 3 of the Scale of Costs, Intervenor, the Board evaluated Mr. Rondeau's first approach for both the Resource Plan and PPA proceedings. The Board did not consider it appropriate for UCG to advance an alternative claim of greater hours in the event the Board awards Mr. Rondeau a lower per hour fee than claimed. The Cost Award for Mr. Rondeau is adjusted to an hourly rate of \$35/hr. The Board considers that the intervention and Mr. Rondeau's involvement was of a non-specific nature, with no subject matter expertise demonstrated or substantiated in his cost application. The Board notes that this is consistent with its past Cost Award for Mr. Rondeau in Board Orders 2005-16 and 1996-10, and sees no further evidence or substantiation from Mr. Rondeau to justify changing this assessment.

Mr. Rondeau's claim for attendance fees is disallowed (13 hours).

The Board notes the UCG cost applications include a request for costs for general office overhead expenses for the UCG. The Board's cost award policy makes no allowance for the awarding of such costs and, as such, none have been awarded.

Mr. Buonaguro claimed an hourly fee of \$170 which appears to be based on his years of experience in relation to the maximum hourly rate of \$225 in the Scale of Costs. The Board finds that Mr. Buonaguro's involvement was helpful to the UCG and made for a more effective intervention.

| | | |
|----------------|------------|-----------------------------|
| UCG (Rondeau): | \$2,047.50 | (108 hrs - 49.5 hrs x \$35) |
| Mr. McMahon: | \$1,277.50 | (73 hrs - 36.5 hrs x \$35) |
| Mr. Buonaguro: | \$6,245.09 | |
| Disbursements: | \$1,138.15 | |

Deduct unsubstantiated disbursements: \$71.13

Total Cost Award: \$10,637.11

3. Yukon Conservation Society

YCS submitted a cost claim in the amount of \$341.25

The YCS cost claim is reasonable for the work done; therefore, the Board awards its full cost request. The Board notes that future cost applications will be reviewed as per the Board's comments in paragraph (P), above. Material will be examined for possible duplication and other adjustments related to the perceived value of the intervention, including specific subject matter expertise.

The Cost Award for YCS has been assessed under Section 3 of the Scale of Costs. The Board sees that the intervention was of a non-specific nature, with no subject matter expertise demonstrated or substantiated in its cost application. The Board accepts the hourly rate of \$35, as claimed.

Total Cost Award: \$341.25

4. Yukon Utilities Board

Total CSTP Hearing-Related Costs: \$56,322.00

The Yukon Utilities Board's costs with respect to the CSTP Proceeding are costs that more appropriately belong to the utility, and ultimately the utility ratepayers 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 the Government of Yukon in the amount of **\$56,322.00**

Applicant Costs

Yukon Energy Corporation

YEC submitted a cost claim in the amount of \$135,386.96, as follows:

| | |
|----------------|--------------|
| Fees: | \$115,928.25 |
| Disbursements: | \$ 19,458.71 |

Intervenors have expressed that for this proceeding "legal counsel and consultants used by the Applicant should be subject to the maximum fee of \$225/hr as per Schedule 1." Intervenors made no such request in previous cost claim processes. The Board finds the request appropriate and adjusted the YEC application to this maximum hourly fee of \$225/hr. YEC is instructed to make no allowance for the extra unclaimable fees in present or future revenue requirement.

On July 18, 2007, YEC was requested by the Board to provide detail on consultant fees and travel costs. This was provided on July 31, 2007. UCG's cost application included a question regarding whether travel was booked at economy rates. YEC's breakdown verifies that all travel was incurred at economy rates. The Board finds that the expenses claimed were prudently incurred.

The Board approves YEC's costs, as submitted.

NOW THEREFORE the Board orders as follows:

Yukon Energy Corporation shall pay the following amounts to parties identified:

| | |
|---------------------------|--------------------|
| YECL | \$ 350.01 |
| UCG | \$10,637.11 |
| YCS | \$ 341.25 |
| Government of Yukon | <u>\$56,322.00</u> |
| Total Cost Awards: | \$67,650.37 |

DATED at the City of Whitehorse, in the Yukon Territory, the 25th day of September 2007.

BY ORDER



Wendy Shanks
Chair