

IN THE MATTER OF the *Public Utilities Act*

And

**An Application by Yukon Electrical Company Ltd. and
Yukon Energy Corporation**

**To Revise the Diesel Contingency Fund and Related Amendments
to Rate Schedule 42 Pertaining to the
Energy Reconciliation Adjustment**

BEFORE: B. McLennan, Chair) June 1, 2015
 R. Laking, Vice-Chair)
 A. Fortin)

BOARD ORDER 2015-04

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 set the costs to be paid”;
- B. On January 31, 2014, the Yukon Electrical Company Ltd. (YECL, also known as ATCO Electric Yukon) and the Yukon Energy Corporation (YEC) (jointly, the Companies) each filed an application with the Yukon Utilities Board (Board) seeking an Order from the Board for approval of their proposals for revisions to the Diesel Contingency Fund (DCF) and Energy Reconciliation Adjustment (ERA). The applications were filed in response to the Board’s direction given in Appendix A to Board Order 2013-01.
- C. More specifically, the Board directed YEC to provide a revised DCF proposal. In the revised DCF proposal, YEC was to incorporate other non-diesel generation facilities (e.g. Fish Lake hydro, wind) forecasts into its model and the suggestions of the City of Whitehorse (CW) and the Utilities Consumers’ Group (UCG) as to how DCF transactions are to be reported. Further, YEC was to provide an example of approximately five years of transactions that would show how the balance in the DCF will change and how those changes will be reported. Finally, YEC was to work with YECL, and the two utilities were to provide a joint recommendation on how the DCF would affect the Energy Reconciliation Account (ERA) in Rate Schedule 42 and any proposed wording changes to that rate schedule.

- D. In its compliance filing application dated May 1, 2013, YEC requested approval of a revised DCF proposal that incorporated the directions of the Board, except for a joint recommendation from the Companies on the ERA. In Board Order 2013-03, Appendix A, the Board did not approve YEC's revised DCF because YEC had not filed a joint recommendation as directed in Paragraph 255 of Appendix A to Board Order 2013-01 and the revised DCF proposal submitted in the compliance filing had not been tested in a proceeding. The Board further stated:

YEC may file a future revised DCF proposal and ERA application. The Board prefers a joint filing from YEC and YECL. However, if agreement cannot be reached, a filing in which the companies state which aspects of the revised DCF proposal and ERA amendment they agree upon, the aspects they disagree upon, and the position of each company on those aspects they disagree upon is acceptable. The filing must also address the concerns raised in Board Order 2013-01 Attachment A: Reasons for Decision. This future revised DCF proposal and ERA application will be separate from the compliance filing directed in this order.

- E. Subsequently, in correspondence dated July 16, 2013, the Board directed YEC to file the revised DCF application by no later than September 30, 2013. YEC and YECL requested an extension of this filing deadline on September 23, 2013, which the Board granted, and a new filing deadline of November 15, 2013 was set. YEC and YECL requested a further extension to continue to meet and discuss the various aspects of the issue. The Board granted another extension of the filing deadline to January 31, 2014.
- F. On January 31, 2014, YEC informed the Board that YEC and YECL were not able to agree on a joint filing and each utility would be filing its position separately. On the same day, YEC filed the application which is the subject of this order, and YECL filed its proposals regarding the DCF and the ERA.
- G. In the revised DCF application, YEC proposed the following options: Option A provides for the DCF as proposed, with adjustments essentially as outlined in the May 1 compliance filing, but modifies the ERA, as proposed in the 2012-13 GRA and May 1, 2013 compliance filing, to reflect net cost to YEC after all added revenues related to wholesales variances, and provides for the YECL recovery through its deferral account and related rate rider of any net added cost after full consideration of added revenues due to increased sales.

Option B provides for the Revised DCF as proposed in the 2012-13 GRA (with adjustments essentially as outlined in the May 1, 2013 compliance filing), but amends Rate Schedule 42 as requested by YECL to remove reference to an ERA mechanism; in place of an ERA, a new YEC Diesel Deferral Account (DDA) would be administered to address YEC's net thermal generation cost changes at LTA related to variances in firm YEC sales from GRA approved forecasts (after

consideration of all revenue changes related to such variances in firm YEC sales).

H. YEC recommended Option A and requested the following approvals from the Board:

1. Approval, effective January 1, 2012, of Yukon Energy's Revised DCF proposal as described in the Revised DCF Term Sheet in Appendix 1, Attachment 1.1 to YEC's filing.
2. Approval to implement Option A to address the updated ERA, including the following specific approvals related to this option:
 - Approval to trigger the ERA provision of Rate Schedule 42 on an ongoing basis effective January 1, 2012, based on the Revised ERA as described in Appendix 2, Attachment 2.1 to YEC's filing.
 - Confirmation that all ERA charges or rebates to YECL will go directly to YECL's Purchase Power Flow Through deferral account, net of any related YECL revenue changes associated with the same purchase power variances addressed by the ERA charges or rebates, to flow through to ratepayers at such times and terms as approved by the Board.
3. Approval of final DCF and ERA amounts for 2012 and, if final numbers are available, for 2013.

I. YECL submitted that YEC's proposed changes would fundamentally alter the design of the DCF and ERA from what was originally agreed upon and approved by the Board. It added that YEC's proposed changes rely on a complicated, opaque model with questionable accuracy and assumptions that are not consistent with current or reasonably anticipated circumstances. It asserted that, if adopted, YEC's proposals would result in greater regulatory inefficiency and would increase regulatory costs to ratepayers. As a result, YECL has proposed using a deferral account instead of the DCF. Finally, YECL proposed that this matter be resolved by way of a Board-initiated mediated dispute resolution process, similar to the process used in 1999.

J. In Board Order 2014-07, the Board set out that the revised DCF application proceed by way of a written process because the application pertained to a specific issue and that a Board-facilitated dispute resolution process may not be useful in this matter seeing that YEC and YECL had held discussions for about six months and could not arrive at a joint recommendation. The process schedule was revised by Board Order 2014-08.

K. The Board issued Board Order 2014-10 on July 29, 2014, in which the Board notified Parties that the Board had received ministerial approval to proceed with a written hearing and granted intervener status to the Utilities Consumers' Group (UCG).

- L. The Board considered the evidence, written argument and written reply argument of the parties respecting that proceeding and issued Board Order 2015-01 approving the DCF and ERA amendments subject to the directions set out in the Reasons for Decision (Appendix A attached to that Order).
- M. The Board received costs claims from UCG, YECL and YEC. The Board received comments from UCG regarding the costs claims of YECL and YEC.
- N. The Board has reviewed all the costs claims and the comments from UCG.
- O. Costs claimed by parties are subject to stringent scrutiny by the Board, as costs awarded are charged to the customers of the utility through the utility's rates.
- P. After careful consideration, the Board has exercised its discretion, and has made the adjustments set out below based on the criteria set out in the Scale of Costs, Schedule 1 to the Board's Rules of Practice, as well as the principles relating to cost awards set out in previous Board Orders — in particular, Appendix A to Order 2007-06, and Board Orders 2005-16, 2005-17, 2007-07, 2007-08, 2007-09, 2009-6, 2009-11, 2010-09, 2011-08, 2013-08, 2014-11, and 2014-12.

INTERVENER COSTS

1. Utilities Consumers' Group

UCG Claiming:

Patrick McMahon of PaTina Energy Consultants (Fees)	\$12,525.00
HST	\$ 1,628.25

Total Costs Claimed	\$14,153.25
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Comments

UCG hired Patrick McMahon of PaTina Energy Consultants. UCG stated that Mr. McMahon has a comprehensive background in the history of the Yukon energy sector, as he has been providing regulatory consulting services in this sector from 2006 to 2014. Amongst other relevant employment experience, Mr. McMahon has previously been employed by the Government of Yukon as a utilities analyst and Northwest Territories Power Corporation as a Manger of Rates and Regulatory Affairs.

UCG further stated that Mr. McMahon took the lead in preparing its filings in this proceeding. The consulting services provided to UCG included the preparation of background information and research on all issues raised within YEC's and YECL's applications, preparation of information requests to YEC and YECL, detailed review of information responses, research and preparation of UCG evidence, review of rebuttal evidence, and preparation of UCG final argument and reply. UCG claimed

that given the nature and complexity of this proceeding, Mr. McMahon's expert services assisted by contributing to the quality and efficiency of this proceeding. Mr. McMahon's consulting services allowed UCG, as the sole intervener in this proceeding, to make valuable submissions from the perspective of the ratepayers that UCG represents.

Mr. McMahon worked a total of 83.50 hours and charged a fee of \$150.00 per hour. The fees for Mr. McMahon's services totaled \$12,525.00, while \$1,628.25 is charged for HST, resulting in a total invoice of \$14,153.25 charged to UCG. UCG submitted that given Mr. McMahon's knowledge and experience, his hourly fee was reasonable and necessarily related to UCG's effective participation in this proceeding. UCG further submitted that it acted responsibly and contributed to a better understanding of the issues to be decided by the Yukon Utilities Board.

Board costs award

In determining a cost award, the Board considered that UCG participated fully in the proceeding including submitting evidence. Also, Mr. McMahon prepared information requests and reviewed information responses, conducted research, prepared argument on behalf of UCG and that UCG did not have the assistance of counsel. Therefore, the Board awards the hours claimed. However, the Board notes that the DCF-ERA issue arose in the 2012-13 YEC General Rate Application in which UCG participated and retained the services of Mr. McMahon. In the costs claim for that proceeding, the hourly rate claimed for Mr. McMahon in the UCG costs claim for the YEC 2012-13 General Rate Application was \$75.00 and he was awarded \$75.00 an hour in Board Order 2013-08. Although Mr. McMahon was awarded an hourly fee of \$125.00 an hour in Board Order 2014-11 and Board Order 2014-12, the Board makes a determination case by case, based on the issues raised in a specific proceeding. In this case, the Board considered that Mr. McMahon's curriculum vitae does not reveal any specific experience with DCF-ERA issues and the fee claimed in the YEC 2012-13 General Rate Application. The Board notes that Mr. McMahon spent 18.5 hours conducting research and preparing the UCG evidence which was an overview on the manner in which the issues related to DCF-ERA were addressed in other jurisdictions. Accordingly, the Board is not persuaded that Mr. McMahon should be awarded double the hourly rate for consulting work which relates to issues raised in a proceeding which took place two years before the current one and for which Mr. McMahon claimed \$75.00 an hour. As a result, the Board awards UCG for Mr. McMahon's services a rate of \$100.00 an hour for an award of \$8,350.00 and HST of \$1,085.50, totaling \$9,435.00.

2. Yukon Electrical Corporation Ltd. (YECL)

Yukon Electrical Corporation Ltd. claiming:

Bennett Jones LLP (Fees and Disbursements)	\$ 9,751.00
Ronin Utility Consulting	\$12,600.00

Total Costs Claimed **\$22,351.00**

Comments

YECL retained Bennett Jones LLP, legal counsel, and Mr. Richard Stout of Ronin Utility Consulting Ltd., an electric utility management and regulation consultant.

In its costs claim application, YECL submitted that the fees and disbursements incurred were reasonable and in accordance with the Scale of Costs, and further that the costs were necessarily and reasonably incurred for the purpose of this proceeding.

Legal fees were claimed for Mr. L.G. Keough and Mr. M.O. Synnott of Bennett Jones LLP. L.G. Keough has over 12-plus years of legal experience, and charged the hourly rate of \$350.00. The fees claimed for Mr. Keough were for two hours for argument and reply for a total claimed of \$700.00. Mr. Synnott has between five and seven years of legal experience and claimed fees at \$280.00 an hour for 31.30 for preparation for a total of \$8,764.00. Disbursements of \$287.00 for external printing costs were claimed for Bennett Jones LLP.

YECL stated that Mr. Richard Stout of Ronin Utility Consulting Ltd. has 40 years of experience in electric utility management and regulation and is particularly experienced in electric policy, regulation, transmission and industrial tariffs. In its cost claim, YECL claimed \$150.00 an hour for the services of Mr. Stout. The hours claimed for Mr. Stout were 84, including preparation, draft submissions, information request reviews and responses and evidence review. The total claimed for the services of Mr. Stout was \$12,600.00.

UCG Comments

In its letter of March 25, 2015, UCG made submissions regarding the YECL costs claim. It submitted that a total of approximately \$9,685.00 should be disallowed from the YECL costs claim because of above-scale billing by Bennett Jones LLP and that Mr. Synnott should not qualify for legal fees because of insufficient information. UCG took issue with the rates charged for legal services and the disbursements claimed. It argued that costs claimed for Ronin Utility Consulting represent a duplication of the time of YECL staff involved in the proceeding.

Board Costs Award

The Board has reviewed the costs claimed by YECL and considers the costs reasonable and related to the proceeding, except for the legal fees claimed for filing a consent order to adjourn an appeal and call to Yukon Court of appeal registry. The Board observes that the invoices for legal fees describe Mr. Synnott as an associate with Bennett Jones LLP and that the U2 form filed states he has between five and seven years of legal experience. Further the legal fees claimed are in accordance with the Scale of Costs. As a result, the Board has reduced the legal fees by \$140.00 including GST for the time spent in filing the consent order to adjourn and awards \$9,324.00. The Board awards the disbursements of \$287.00 as claimed because charging for external printing is allowed under the Scale of Costs.

Regarding the professional fees claimed for Ronin Utility Consulting, the Board considers the costs are reasonable and necessarily related to the proceeding. Considering the expertise of Mr. Richard Stout the fee of \$150.00 an hour is within the Scale of Costs. Considering that YECL was also an applicant in this proceeding, the Board finds that the 84 hours claimed for Mr. Stout are acceptable, even though there may have been YECL staff working on matters within this proceeding. Accordingly, the Board awards YECL a total of \$22,211.00 in professional fees, disbursements and GST.

3. Yukon Energy Corporation (YEC)

Yukon Energy Corporation Claiming:

Davis LLP (Fees and Disbursements)	\$ 25,962.37
InterGroup Consultants (Fees and Disbursements)	\$146,260.89
KGS Group (Fees)	\$ 3,971.00
YEC Misc. Supplies & Services (Disbursements)	\$ 238.63

Total Costs Claimed **\$176,432.89**

Comments

In its cost claim YEC highlighted that it had prepared a detailed and comprehensive application to the Board. YEC noted that as the applicant, costs are effectively incurred as a necessary part of its business or operations as a regulated utility. Given the intensive nature of this proceeding, which involved many complex issues, this proceeding therefore required significant analysis, writing, review and production to ensure accurate, clear and coherent documents were provided and properly defended before the Board. YEC submitted that all costs as applied are reasonable and necessarily incurred to support its application.

Regarding its legal costs, Yukon Energy retained Davis LLP to represent it in this proceeding. Mr. P. John Landry, legal counsel, provided relevant assistance to YEC in relation to preparing, filing and reviewing of the application. Mr. Landry reviewed the draft application and draft supplementary filings, reviewed information requests

and information request responses, reviewed intervenor evidence and rebuttal evidence, reviewed argument and reply argument, and provided legal advice as required during the proceeding. Mr. Landry claimed 64.50 hours for preparation and 9.50 hours for argument and reply. Professional fees for Mr. Landry were charged at \$350.00 an hour. The total fees claimed by Davis LLP for legal services are \$25,900.00.

YEC claimed costs for InterGroup Consultant Ltd. for their assistance with the preparation of the application, filing, and the review process before the Board. InterGroup was involved in the consultation process with YECL, including preparation of summary materials and review of options and approaches to the DCF and ERA to address concerns raised by the Board and by YECL. InterGroup provided assistance with the preparation of the application, supplemental filings, professional services for document production, active participation in the review process before the Board and also preparation of argument.

The costs related to the activities noted above primarily relate to the participation of the following: Cam Osler, Principal and Consultant, with over 20 years of experience, hourly rate of \$240.00, 221.75 hours for preparation, 108.25 hours for argument, reply and follow-up; Mona Pollitt-Smith, Consultant, with over nine years of experience, hourly rate of \$134.00, 220.00 hours for preparation, 98.75 hours for argument, reply and follow-up; and Hamid Najmidinov, Research Consultant, with over eight years of experience, hourly rate of \$95.00, 92.25 hours for preparation, 4.50 hours for argument, reply and follow-up.

One of the issues raised during the proceeding related to approvals used in the jurisdictions of Northwest Territories, Manitoba and Newfoundland. InterGroup staff with relevant experience providing advice on rate regulation matters to utilities and interveners in these jurisdictions was relied upon. Their participation is as follows: Andrew McLaren, Principal and Consultant, with over 14 years of experience, hourly rate of \$178.00, 6.50 hours for preparation; Patrick Bowman, Principal and Consultant, with over 16 years of experience, hourly rate of \$191.00, 1.50 hours for preparation; Melissa Davies, Research Consultant, with over four years of experience, hourly rate of \$93.00, 17.00 hours for preparation.

YEC claimed costs for KGS Group for assistance with the responses to the information requests related to the YECSIM model. KGS Group had previously developed the YECSIM model for Yukon Energy and therefore the individuals who assisted in the development of the model provided guidance with drafting and review of the specific information request responses related to the YECSIM model. KGS Group claimed a total of \$3,971.00 for a total of 23.00 hours.

Disbursements were claimed for Davis LLP in the amount of \$62.37 for telephone and fax services. Disbursements claimed for InterGroup included \$4,188.03 for travel, \$65.81 for meals and incidentals, and \$1,343.80 for photocopying and printing services. Total disbursements claimed for InterGroup were \$5,597.64. Yukon Energy claimed disbursements of \$195.35 for meals and incidentals, and \$43.28 for telephone and fax services, totalling \$238.63. Total disbursements claimed are \$5,898.64.

UCG Comments

In its letter of March 25, 2015, UCG submitted that the legal fees claimed were above the Scale of Costs. Regarding the professional fees claimed by Inter Group, UCG referred to previous Board Orders in which the Board had disallowed costs for administrative, clerical or support staff and for analysts whose work was duplicative of the services provided by other consultants within InterGroup. Based on previous Board Orders, UCG was arguing for a disallowance of approximately \$100,000.00 in fees and GST from the costs claimed for InterGroup. UCG further asked that the Board disallow the disbursements claimed for InterGroup for travel expenses and printing and photocopying and by YEC. It further submitted that the professional fees claimed for KGS should be reduced because of duplication of services within KGS.

Board costs award:

Regarding the legal fees claimed for Davis LLP, the Board is of the view that a claim of 64.50 hours for preparation in relation to the proceeding is not reasonable considering that the issue was raised in the YEC 2012-13 General Rate Application, the technical nature of the issues related to the DCF-ERA proceeding, and the involvement of numerous consultants from InterGroup. It was not clear from the invoices whether legal counsel needed to attend all the meeting noted in the invoices. As a result, the Board reduces the legal fees for preparation claimed by 20 percent which is an amount of \$4,515.00. The legal fees claimed are in accordance with the Scale of Costs. The Board awards legal fees in the total amount of \$21,385.00 and disbursements as claimed of \$62.37 which are allowed under the Scale of Costs.

The Board has reviewed the costs claimed for InterGroup. The Board notes that costs for administrative and clerical staff were not claimed, but costs for production services were claimed. The Board has taken into account previous Board Orders which have disallowed costs claimed for production services claimed for InterGroup. The Board is not persuaded that such costs are necessary for this proceeding. Therefore, the Board disallows the costs claimed for production services of \$3,365.00.

Regarding the hours claimed for numerous consultants that result in 865.75 hours which included the production hours claimed, the Board considers that the hours are excessive given the nature of the application, the previous work on the DCF-ERA issues and the duplication of professional services provided by the consultants within InterGroup. In Board Order 2013-08, YEC 2012-13 General Rate Application costs award, the Board stated regarding professional fees claimed by InterGroup in that proceeding:

In addition, the Board disallows the professional fees of any analysts other than Mr. Osler, Ms. Pollitt-Smith and Mr. Najmidinov because the services of other analysts are duplicative of the services provided by these three consultants. The Board notes that Mr. Osler expensed 770 hours at an hourly rate of \$230 to \$236, for a total of \$178,612.00; Ms. Pollitt-Smith expensed 1,207 hours at an hourly rate of \$120 to \$127, for a total of \$146,754.50; and Mr. Najmidinov expensed 816 hours at an hourly rate of \$85 to \$91, for a total of \$70,039.25. The total amount claimed for the three above consultants is \$395,405.75.¹

Further in Board Order 2014-12, YEC Application for LNG Conversion Project costs award, the Board stated regarding professional fees claimed for InterGroup in that proceeding:

Further, the Board considered that 936.75 hours of preparation time were claimed for consultants or research consultants. Although research consultants are being used, a total of 663 hours is claimed for the main consultants. The Board is of the view that there is some duplication in the tasks performed by the consultants and the research consultants. Further, the Board has taken into account that there were three different meetings for hearing preparation. As a result, the Board reduces the total costs claimed for preparation time by the consultants and research consultants by 15% and awards a total of \$125,218.60 in fees for preparation. As noted above, the hearing preparation meetings do not appear to be for purposes of witness preparation; therefore, the Board has not reduced any of the preparation hours on this basis. The Board considers the consulting fees claimed for attendance are reasonable, including oral argument and reply argument and awards an additional \$11,092.50. Accordingly, the Board awards \$136,311.10 in fees for InterGroup.²

¹ Board Order 2013-08, page 14

² Board Order 2014-12, page 13

The Board adopts the above views in this proceeding because a total of six analysts or research analysts were involved in this proceeding as well as four other individuals. The Board considers that there was duplication of work and that the main consultants were Mr. Osler and Ms. Pollit-Smith. A total of 648.75 hours was claimed for these analysts who are experienced and have worked on previous YEC applications. The need for the other analysts, research analysts and other individuals has not been shown to the satisfaction of the Board. Also, the number of hours spent by these consultants on argument and reply of 207 hours is excessive considering that YEC was also assisted by legal counsel. The Board reduces the total number of hours claimed by 25 percent for each consultant. As a result, the total number of hours awarded for Mr. Osler is 257.5 and for Ms. Pollit-Smith are 239.11. Accordingly, the Board awards professional fees in the amount of \$93,840.74 [(\$240.00 X 257.5) plus (\$134.00 X 239.11)].

The fees claimed for KGS are disallowed because in the opinion of the Board, the questions raised about the YECSIM did not require the expertise of KGS and could have been answered by InterGroup or YEC staff.

Regarding disbursements claimed for InterGroup and YEC, the Board only grants costs for telephone, photocopying and printing which are allowed under the Scale of Costs in the amount of \$1,387.08.

The total costs awarded to YEC are \$116,675.19.

4. BOARD COSTS

Yukon Utilities Board

The Board costs with respect to the YEC-YECL DCF-ERA proceeding are costs that more appropriately belong to the utilities, 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 the Government of Yukon in the amount of \$63,958.00.

NOW THEREFORE, the Board Orders as follows:

YEC and YECL shall pay 50 percent of the following amounts to UCG and the Government of Yukon within 30 days of the issuance of this Order. The Board directs YEC to amortize its hearing-related costs and YECL to record its hearing-related costs in its hearing costs reserve account.

UCG	\$ 9,435.00
YECL	\$ 22,211.00
YEC	\$116,675.19
Government of Yukon (Board costs)	<u>\$ 63,958.00</u>
Total Costs Awarded	\$212,279.19

Dated at the City of Whitehorse, Yukon, the 1st day of June 2015.

BY ORDER



Bruce McLennan
Chair