

**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 the Power Purchase Agreement between**  
**Yukon Energy Corporation and**  
**Victoria Gold Corp. and StrataGold Corporation**

**BEFORE:** R. Laking, Chair ) August 3, 2018  
B. King, Vice-Chair )  
A. Fortin )  
P. Fitzgerald )

**BOARD ORDER 2018-08**

**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 November 10, 2017, Yukon Energy Corporation (YEC) filed an application with the Board seeking an Order for approvals related to the implementation of the Purchase Power Agreement (PPA) concluded between YEC and Victoria Gold Corp. and StrataGold Corp. (collectively known as VGC Group);
- C. The PPA included provisions whereby VGC Group will develop and own a 69-kV transmission line from the McQuesten substation to the mine. The McQuesten substation will be jointly developed by VGC Group and YEC but will be owned and operated by YEC. VGC Group, except as specified in the PPA, is responsible for all capital costs related to the McQuesten substation development;
- D. Prior to delivery of grid electricity, the PPA requires:
  - the completion of the McQuesten substation and confirmation that the mine facilities and mine facilities spur are available to receive grid electricity;
  - YEC to complete initial YEC system improvements on YEC’s existing power system to accommodate the sale of grid electricity for the mine in accordance with Schedule C of the PPA;
  - VGC Group to install VGC Group power facilities at the mine facilities and to operate those facilities as specified in Schedule D of the PPA; and
  - YEC and VGC Group to finalize an operating agreement, a draft of which is in Schedule E of the PPA;

- E. The PPA provides that YEC recover from VGC Group:
- YEC's actual costs to negotiate and conclude the PPA, estimated at \$200,000;
  - YEC's actual capital costs for the McQuesten substation development in accordance with Table B-1 of Schedule B of the PPA, currently estimated at \$483,240;
  - the initial actual YEC system improvement costs as set out in Schedule C of the PPA, currently estimated at \$1,667,883;
  - YEC's costs for the step-down transformer, if required; and
  - the firm mine rate as approved by the Board from time to time, including a fixed charge that is adjusted on an ongoing basis to equal 85% of transmission facilities' fixed costs as approved by the Board from time to time, and the provision for the VGC Group fixed charge to be adjusted when other industrial customers utilize the transmission facilities;
  - any related amendments to the Rate Schedule 39 Firm Mine Rate as required to conform with Attachment A to this Application and to accommodate the PPA;
- F. The Board issued Board Order 2017-10 on November 16, 2017, regarding the Application in which the Board set out a process schedule for a written proceeding, pending ministerial approval;
- G. Due to the compressed process schedule, the Board indicated in the Notice of Application and Written Proceeding that it was granting intervener status to any person who wanted to participate in the proceeding;
- H. On December 7, 2017, the Minister of Justice authorized the Board to incur the expenses necessary to conduct a written hearing into the Application pursuant to Section 50 of the Act;
- I. The Utilities Consumers' Group (UCG) and John Maissan participated in the proceeding by filing information requests, argument and reply argument in accordance with the process schedule;
- J. On March 6, 2018, the Board issued Board Order 2018-04 approving the Application for the reasons set out in Appendix A to that order;
- K. The Board received costs claims from:
1. UCG;
  2. John Maissan; and
  3. YEC;
- L. The Board received comments from UCG on the YEC cost claim in a letter dated April 19, 2018;
- M. The Board has reviewed all of the cost claims and comments of UCG;

- N. Costs claimed by the 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; and
- O. After careful consideration, the Board has exercised its discretion and 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 Board 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, 2014-12, and 2017-07.

**NOW THEREFORE, the Board orders as follows:**

**INTERVENER COSTS**

**1. Utilities Consumers' Group**

**UCG claiming:**

Patrick McMahon (Fees and HST): \$9,788.63

**Total costs claimed:** **\$9,788.63**

**Comments**

UCG employed Patrick McMahon as a consultant for the YEC-VGC Group PPA proceeding. UCG stated that Mr. McMahon supported the intervention of UCG by providing extensive consulting services without the assistance of legal counsel. UCG submitted that Mr. McMahon has relevant general knowledge of the utility industry, and in particular, has an extensive background in the history of the Yukon energy sector. UCG added that Mr. McMahon provided expert services that assisted the quality and efficiency of the proceeding as a whole. UCG also stated that while this proceeding was limited in scope, the costs incurred by UCG were reasonable and directly and necessarily related to UCG's effective participation in this regulatory review. UCG further submitted that it acted responsibly and contributed to a better understanding of the issues before the Board. With respect to Mr. McMahon's claimed hourly fee of \$225, UCG submitted that this rate is well below the maximum rate allowed in the YUB's Scale of Costs for a consultant with Mr. McMahon's experience and expertise. It acknowledged that the hourly rate claimed for Mr. McMahon is higher than the rate allowed by the YUB of \$150 for work performed by Mr. McMahon between May 2016 and December 2016 related to YECL's 2016-17 General Rate Application (GRA) but this increase in the hourly rate is justified based on Mr. McMahon's additional experience as a consultant in Ontario. The hours claimed for Mr. McMahon are 12.5 for preparation and 26 for argument and reply argument at \$225 an hour.

**Board cost award**

Although the \$225 hourly rate claimed for Mr. McMahon is within the Scale of Costs, the Board emphasizes in the Scale of Costs that the maximum allowable hourly rate for lawyers or consultants will not be awarded as a matter of course. The Board notes that, in Board

Order 2011-09, YEC-Alexco PPA cost awards, UCG claimed an hourly rate of \$60 because 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 that proceeding, the Board awarded an hourly rate of \$50 for Mr. McMahon. Further, the issues raised in the current proceeding are similar to those raised in the YEC-Alexco PPA proceeding. In addition, UCG acknowledged that the YEC-VGC Group PPA proceeding was limited in scope and that the Board awarded an hourly rate of \$150 for Mr. McMahon in the YECL 2016-17 GRA. The Board considers that the additional experience cited by UCG in support of the claimed hourly rate does not relate to proceedings in the Yukon. The Board is also of the view that UCG has claimed a substantial increase in the hourly rate claimed for Mr. McMahon since its 2011 cost claim in a PPA proceeding. For these reasons, the Board is not persuaded by the UCG submissions that an hourly rate of \$225 is warranted for Mr. McMahon in this proceeding. Accordingly, the Board awards a rate of \$160 an hour for Mr. McMahon. Given the limited number of issues and number of Parties, the Board finds that the 26 hours claimed for argument and reply argument are not reasonable. The Board reduces these hours by 15% and awards 34.6 hours in total. Further, UCG has claimed HST on Mr. McMahon's fees. Since Mr. McMahon's client is resident in Yukon, only the GST applies, and the total claim has been adjusted accordingly.

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

#### **Consulting Services**

Mr. McMahon Professional Fees and GST:	\$5,812.80
<b>Total costs awarded to UCG</b>	<b>\$5,812.80</b>

## **2. John Maissan, resident of the City of Whitehorse**

#### **Mr. Maissan claiming:**

Non-represented intervener:

<b>Total costs claimed:</b>	<b>\$1,515.00</b>
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#### **Comments**

In Mr. Maissan's cost application, he stated that he is well-qualified intervener because he was a former registered professional engineer in the Yukon with more than 25 years of experience in matters related to the electricity sector. Mr. Maissan added that he has a broad familiarity with the regulated electrical utilities of Yukon and with their technical issues in particular. Mr. Maissan requested an hourly rate of \$60 and acknowledged the rate is at the Board's discretion. The hours claimed are 11.25 for preparation and 14 for argument and reply argument, for a total of 25.25 hours.

## Board cost award

The Board evaluated Mr. Maissan's cost claim as that of an intervener, under section 4.3 of the Scale of Costs, and these costs are being considered on the basis that he is a resident of the City of Whitehorse. He is not eligible to claim professional fees as a consultant. The Board notes that in the Board Order 2011-09, the YEC-Alexco PPA cost award, Mr. Maissan has been awarded \$50 or \$75 an hour. As noted by Mr. Maissan, the Board has the discretion to set the hourly rate for interveners, taking into account the value of the intervention in helping the Board come to its decision. The Board finds that Mr. Maissan's submissions were useful in addressing the issues before the Board in the YEC-VGC Group PPA proceeding. For these reasons, the Board has chosen to exercise its discretion and award Mr. Maissan an hourly rate of \$60. The Board notes, however, that each intervention is evaluated on an individual basis and the hourly rate awarded in this instance does not constitute a guarantee that future interventions will be valued at the same rate. Further, the Board is of the view that the number of hours claimed is reasonable.

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

Unrepresented intervener fees:	\$1,515.00
<b>Total costs awarded to Mr. Maissan</b>	<b>\$1,515.00</b>

### 3. Yukon Energy Corporation

#### YEC claiming:

DLA Piper (Fees)	\$ 2,450.00
InterGroup Consultants Ltd. (Fees of \$63,349.00 and disbursements of \$462.12)	\$63,811.12
YEC (disbursements)	<u>\$ 44.10</u>
<b>Total costs claimed:</b>	<b>\$66,305.22</b>

#### Comments

In its costs claim, YEC submitted that the claimed amount includes costs incurred for preparation of the November 10, 2017 Application to the Board, the responses to Information Requests in November/December 2017, and argument and reply argument. It also submitted that all costs as applied for are reasonable and necessarily incurred in relation to its Application and the costs claimed are in accordance with the Scale of Costs.

YEC retained DLA Piper LLP as legal counsel, with P. John Landry providing the legal services. YEC claimed legal fees for Mr. Landry of 7 hours at rate of \$350 an hour for review of argument and reply argument for a total of \$2,450.00.

YEC claimed costs for InterGroup Consultants Ltd. (InterGroup) totalling \$63,811.12. This amount included disbursements of \$462.12. It submitted that InterGroup assisted with preparation of the Application and the drafting, coordination, review and finalization of interrogatory responses, argument and reply argument. It stated that the consulting services claimed were primarily provided by Cam Osler who has over 20 years of experience, at a rate of \$240 an hour and Mona Pollitt-Smith who has over 12 years of experience, at a rate of \$168 an hour. YEC added that other research staff from InterGroup provided a quality assurance review and technical analysis, as required. Costs also included services provided by Jolene Gordon, Production Coordinator with over 12 years of experience and other staff related to document review, production and process tracking. It stated that the hourly rates for all InterGroup staff are claimed in accordance with the individual's years of experience under the Scale of Costs. YEC claimed for InterGroup 259 hours for preparation of the Application and 80.25 hours for argument and reply argument. The disbursements claimed for InterGroup were for long distance telephone calls and photocopies.

YEC claimed disbursements in the amount of \$44.10 for meals.

**UCG Response:**

In its letter of April 19, 2018, UCG submitted comments on the YEC cost claim. It compared the costs claimed by YEC in the YEC-Alexco PPA proceeding to those claimed for this proceeding and submitted that the cost claim for this proceeding was 250% more than the costs awarded by the Board to YEC with respect to the YEC-Alexco PPA proceeding. It added that the costs claimed for InterGroup were 300% more than the amount claimed for the YEC-Alexco PPA proceeding. More specifically, UCG argued that the hours claimed for DLA Piper were not consistent with the invoices filed in support of the cost claim and that the legal fees were not in accordance with the Scale of Costs.

With respect to InterGroup, UCG pointed to Board Order 2011-09 in which the Board disallowed the professional fees of any InterGroup analysts other than Mr. Osler and Ms. Pollitt-Smith because "the services of other analysts and researchers were duplicative of the services provided by these two consultants." It submitted that "the costs claimed by YEC in the current proceeding are even more extreme than those claimed as part of the review of the Alexco PPA." It added that the 9.5 hours claimed for Mr. Osler and 1 hour for Ms. Politt-Smith in the March 2018 invoice should be disallowed because the services claimed were incurred after reply argument was filed.

On the YEC disbursement claimed, UCG stated that \$44.10 should be disallowed because it was for a meal expense which is not allowed under the Scale of Costs. UCG also took issue with the photocopying expense claimed because it appeared to it as though InterGroup photocopied 4,474.5 pages for an application that totalled 87 pages and IR responses that only totalled 340 pages.

UCG asked the Board to specifically state in its order that disallowed costs are at the expense of YEC's shareholders. It also requested that YEC file after the issuance of the cost award a continuity schedule showing that disallowed proceeding costs are at its shareholders' expense.

## Board cost award

Regarding the professional fees claimed for DLA Piper LLP, the Board finds that the number of hours claimed for this proceeding are reasonable. The Board has reviewed the hourly rate claimed for Mr. Landry of \$350 and finds that this rate is in accordance with the Scale of Costs. Accordingly, the Board awards the legal fees as claimed.

In terms of InterGroup Consultants, the Board disallows the professional fees of any researcher or other analyst because the Board is not satisfied that these services were needed since the consulting services were provided by Mr. Osler and Ms. Pollitt-Smith. In addition, the Board considers that document production staff are not consultants, analysts or experts within the meaning defined in the Scale of Costs. Document production staff is more akin to support staff and the Scale of Costs only permits claims for support staff who are not part of the office staff of the consultants. In this case, the document production staff work for InterGroup. Therefore, the Board disallows the consulting costs claimed for InterGroup's document production staff.

After reviewing the invoices submitted for consulting services provided by InterGroup, the Board finds that the total hours claimed for Mr. Osler of 157 and for Ms. Pollitt-Smith of 122.50 were not reasonable considering the nature of the Application, the limited scope of the issues raised and the duplication in the services provided by Mr. Osler and Ms. Pollitt-Smith. The Board has exercised its discretion and reduces the number of hours of each of these consultants by 40%. The Board further finds that the hourly consulting fees claimed for Mr. Osler and Ms. Pollitt-Smith are within the Scale of Costs. In summary, the Board awards consulting fees for Mr. Osler in the amount of \$22,608.00 and for Ms. Pollitt-Smith in the amount of \$12,348.00, for a total of \$34,956.00 for InterGroup. The Board finds that the InterGroup disbursements are in accordance with the Scale of Costs and awards the disbursements as claimed in the amount of \$462.12.

With respect to YEC's disbursements, the Board disallows the YEC disbursements of \$44.10 for meals because the Scale of Costs only permits claims for meals during the attendance at a hearing.

In response to the requests made by UCG in its April 19, 2018 submission, the Board denies the requests because the purpose of determining the costs for a proceeding is for recovery of the costs awarded by the Board through YEC's Hearing Cost Reserve Account. Costs that are reduced or disallowed cannot be recovered through this account. Accordingly, the need for a continuity schedule has not been shown.

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

LLA Piper LLP	\$ 2,450.00
InterGroup	\$35,418.12
<b>Total costs awarded to YEC</b>	<b>\$37,868.12</b>

## BOARD COSTS

### 4. Yukon Utilities Board

The Board costs with respect to the YEC-VGC Group 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 \$39,580.19.

<b>Total Costs Awarded to Government of Yukon</b>	<b>\$39,580.19</b>
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### NOW THEREFORE the Board Orders as follows:

YEC shall pay the following amounts to the Interveners 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	\$ 5,812.80
John Maissan	\$ 1,515.00
Yukon Energy Corporation	\$37,868.12
Government of the Yukon (Board Costs)	<u>\$39,580.19</u>
<b>Total Costs Awarded:</b>	<b>\$84,776.11</b>

Dated at the City of Whitehorse, Yukon, the 3<sup>rd</sup> day of August 2018.

BY ORDER



Robert Laking  
Chair