

# **Yukon Utilities Board**

Board Order 2023-02  
Appendix A: Reasons for Decision  
January 13, 2023

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## 1 Summary

1. On November 20, 2020, Yukon Energy Corporation (YEC) filed a general rate application (Application) with the Yukon Utilities Board (Board), pursuant to the *Public Utilities Act* and Order-in-Council (OIC) 1995/90 (referred to as “Rate Policy Directive [1995],” as amended by OIC 2018/220 and OIC 2021/161<sup>1</sup>), for approval of its forecast revenue requirements for the 2021 test year. YEC sought approval of forecast revenue requirements of \$75.135 million, representing an increase of \$10.971 million for 2021 over revenues from existing rates and riders of \$64.164 million (a 17.1-percent increase), with a 2021 total increase of \$25.342 million over the 2018 approved revenue requirement.
2. In Board Order 2022-03,<sup>2</sup> the Board determined that not all of the forecast revenue requirements for the 2021 test period were reasonable and consequently adjusted or denied specific components of the revenue requirement. Because the revenue requirement was not approved in full, YEC was ordered to submit a compliance filing with respect to its Application within 30 days of the issuance of the Board Order.
3. This Appendix A addresses cost applications related to the proceeding leading to Board Order 2022-03. Cost applications were filed by the City of Whitehorse (CW), Utilities Consumers’ Group (UCG), Nathaniel Yee, and YEC. Costs related to YEC’s Application compliance filing will be addressed in a future costs award.
4. In reaching the determinations contained within this Board order, the Board has considered all relevant materials comprising the record of this proceeding. Accordingly, references in this Appendix A: Reasons for Decision to specific parts of the record are intended to assist the reader in understanding the Board’s reasoning related to a particular matter and should not be taken as an indication that the Board did not consider all relevant portions of the record with respect to that matter.

## 2 Intervener costs

5. In Board Order 2021-01,<sup>3</sup> the Board granted intervener status to ATCO Electric Yukon (AEY), CW, UCG, and Nathaniel Yee. CW, UCG, and Nathaniel Yee submitted costs claims within the timelines specified in Section 3.1 of the Board’s Scale of Costs.<sup>4</sup> AEY did not submit a costs claim.

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<sup>1</sup> OIC 2021/16, dated February 11, 2021, was issued during the course of the 2021 GRA proceeding.

<sup>2</sup> Board Order 2022-03: General Rate Application by Yukon Energy Corporation for Approval of Revenue Requirements for 2021, March 16, 2022.

<sup>3</sup> Board Order 2021-01: General Rate Application by Yukon Energy Corporation for Approval of Revenue Requirements for 2021, January 12, 2021.

<sup>4</sup> Nathaniel Yee’s costs claim was filed on April 19, 2022 but the 30-day deadline for filing costs of April 16, 2022 fell on the weekend. Therefore, Mr. Yee’s costs claim was filed on time.

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## 2.1 City of Whitehorse

6. CW claimed the following costs:

Brownlee LLP (fees and disbursements)	\$ 41,169.18
Russ Bell & Associates Inc. (fees)	<u>\$ 14,410.00</u>
<b>Total amount claimed</b>	<b>\$ 55,579.18</b>

7. CW retained Brownlee LLP as legal counsel and Russ Bell of Russ Bell & Associates Inc. as its technical and regulatory analyst. In its costs claim, CW stated that it advanced positions regarding rental diesel generation units, normalization of sales, brushing costs, herbicide use, recovery of appeal costs, and the use of updated forecasts during the Application proceeding. CW referred to its alignment with the Board's findings on the requirement for YEC to provide a business case on the rental diesel generation units and on the level of information included in the Application. It also noted that the Board denied hearing cost reserve account costs for appeal matters, which was an area of concern for CW.

8. Thomas Marriott is senior counsel and CW's costs claim accordingly reflects the hourly rate of \$350.00. The hours claimed for Mr. Marriott are 34.90 hours for preparation and 6.50 hours for argument and reply argument. The total claimed for Mr. Marriott is \$14,490.00. Keegan Rutherford assisted Mr. Marriott in the proceeding and, due to a scheduling conflict, participated in the oral hearing in Mr. Marriott's stead. Mr. Rutherford conducted cross-examination of YEC witnesses, prepared CW's witnesses and conducted direct examination. CW claimed the hourly rate for Mr. Rutherford of \$280.00 based on his five years of experience. The hours claimed for Mr. Rutherford are 34.15 hours for preparation, 20.75 hours for attendance and 40.00 hours for argument and reply argument. The amount claimed for Mr. Rutherford is \$26,571.98 and the total amount claimed for both counsel is \$41,061.98. CW claimed \$107.20 for photocopying.

9. CW submitted that Russ Bell has extensive experience in regulated industries in Alberta, Northwest Territories and Yukon and claimed the hourly rate of \$220.00 for Mr. Bell in its costs claim. The hours claimed are 46.00 hours for preparation, 17.00 hours for attendance and 2.50 hours for argument and reply argument. The total claimed for Mr. Bell is \$14,410.00.

### Board costs award

10. The Board notes that CW participated in the proceeding by reviewing the Application, making Information Requests (IRs), reviewing information responses, filing evidence and filing argument and reply argument. This participation contributed to the Board's better understanding of the issues.

11. Considering the hours claimed for Mr. Marriott and Mr. Rutherford and that the legal fees claimed are within the Scale of Costs, the Board finds that the legal fees claimed are reasonable based on the tasks performed. Accordingly, CW's legal fees are awarded as claimed. The claim for disbursements for photocopying of \$107.20 is consistent with the Scale of Costs and is approved as filed.

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12. For Mr. Bell, the fees are within the Scale of Costs and the hours incurred are reasonable for the tasks performed in respect of CW’s evidence and intervention. Accordingly, CW’s consulting fees are awarded as claimed.
13. Accordingly, the Board awards fees and disbursements in the total amount of \$55,579.18.
14. In summary, the Board awards costs to CW as follows:

**Legal services provided by Brownlee LLP**

Legal fees	\$ 41,061.98
Disbursements	\$ 107.20

**Consulting services provided by Russ Bell & Associates Inc.**

Consulting fees	<u>\$ 14,410.00</u>
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**Total costs awarded** **\$ 55,579.18**

**2.2 Utilities Consumers’ Group**

15. UCG claimed the following costs:

Roger Rondeau (fees and disbursements)	<u>\$ 22,351.48</u>
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**Total amount claimed** **\$ 22,351.48**

16. UCG submitted a claim for fees for Roger Rondeau at the hourly rate of \$100.00. It claimed that this rate was warranted based on the complexity and scope of issues and the length of the proceeding. UCG claimed 127.00 hours for preparation, 30.00 hours for attendance and 65.00 hours for argument and reply argument.<sup>5</sup> The total claimed for Roger Rondeau was \$22,200.00. Disbursements of \$15.00 for notary public services and \$136.48 for photocopies and office supplies were claimed.
17. Further, UCG noted that Mr. Rondeau has been participated in Board proceedings since 1993.

**Board costs award**

18. The Board has reviewed Mr. Rondeau’s activities included in the costs claim, which included a review of the Application, attendance at YEC’s information session, making IRs, reviewing information responses, preparing motions, attending the hearing and filing argument and reply argument.

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<sup>5</sup> UCG’s costs claim, Form U2, UCG Part 2 Affidavit and forms April 2022, PDF page 4.

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19. Section 4.3 of the Scale of Costs allow for cost recovery of an unrepresented intervener:

An intervener who has not hired legal counsel or a consultant may claim for the number of hours spent in preparing its evidence and submissions in a proceeding. The hourly rate of an intervener shall not exceed \$100 per hour and will be determined by the Board when assessing the costs claim.

20. The Board considers that UCG’s cost application should be assessed on the basis of it being an unrepresented intervener, as UCG was not represented by an external consultant or legal counsel in the Application proceeding. Acting on behalf of UCG, Mr. Rondeau prepared IRs, participated in the information session, attended the oral hearing and prepared written argument and reply argument. Recognizing Mr. Rondeau’s many years of experience appearing before the Board, an hourly rate of \$100.00 is warranted in the specific circumstances of this proceeding. YEC’s application raised multiple issues that required UCG to advance positions affecting ratepayers’ interests and which informed the Board of the relevant issues. Such issues included the level of detail YEC presented in its application and UCG’s submissions on YEC’s demand-side management costs.
21. While determining the claimed hourly rate of \$100.00 is warranted in the specific circumstances of the Application proceeding, the Board is not persuaded that the full number of hours claimed for Mr. Rondeau should be awarded. Mr. Rondeau claimed a total of 222.00 hours. Of these hours, 24.00 hours were claimed for attendance at the oral hearing.<sup>6</sup> In respect of Mr. Rondeau’s fees for attending the oral hearing, Section 4.4 of the Scale of Costs prescribes that “An unrepresented intervener may claim an honorarium of \$50 for each half day of attendance at an oral hearing.” The Board reduces Mr. Rondeau’s costs for attendance of the hearing because the Board considers that the attendance honorarium for an unrepresented intervener is \$50.00 for each half day of attendance at the oral hearing. The hearing spanned three days and the Board accordingly allows \$300.00 to Mr. Rondeau for attending the hearing rather than the \$2,400.00 claimed. As a result, the remaining allowable consulting fee eligible to be claimed by Mr. Rondeau for his participation in the original proceeding is \$19,800.00.<sup>7</sup>
22. Mr. Rondeau’s contribution on behalf of UCG was, on some issues, of assistance and contributed to a better understanding of the issues before the Board. However, the Board found that submissions in respect of some UCG motions and on issues relating to secondary sales and proposed reductions to the Low Water Reserve Fund were unhelpful to the Board’s determinations.<sup>8</sup> Further, the 7 hours claimed for preparation and attendance at the public information session<sup>9</sup> were excessive for what would be expected for attending YEC’s information session, which was a fairly short session. Accordingly, and pursuant to Section 6.1(b) of the Scale of Costs, the Board reduces the remaining allowable consulting fees eligible to be claimed by Mr. Rondeau by 10 percent, resulting

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<sup>6</sup> UCG’s costs claim, UCG Part 1 Costs for YEC 2021 YEC GRA, PDF page 8, Roger Rondeau claimed 24 hours for “September 27-29,2021” to “Attend all hearing days via video conference (subtotal 24 hrs.)”

<sup>7</sup> \$22,200.00 - \$2,400.00 = \$19,800.00.

<sup>8</sup> Board Order 2022-03, Appendix A, Section 5.16 Secondary sales: paragraphs 52 and 56; Section 6.2.1 LWRF annual reports : paragraphs 345 to 347.

<sup>9</sup> UCG’s costs claim, UCG Part 1 Costs for YEC 2021 YEC GRA, PDF page 7, time entry “January 5-8, 2021.”

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in an award for Mr. Rondeau’s fee claim in the amount of \$17,820.00.<sup>10</sup> This amount does not include the \$300.00 honorarium for attendance at the oral hearing awarded above.

23. The claim for disbursements for notary services, photocopies and office supplies of \$151.48 is consistent with the Scale of Costs and is approved as filed.
24. In summary, the Board awards costs to UCG as follows:

**Consulting services provided by Roger Rondeau**

Professional fees	\$ 17,820.00
Disbursements	\$ 151.48
Attendance honorarium	<u>\$ 300.00</u>
<b>Total costs awarded</b>	<b>\$ 18,271.48</b>

**2.3 Nathaniel Yee**

25. Nathaniel Yee claimed the following costs:

Professional fees and disbursements	\$ 5,852.00
Attendance honorarium	<u>\$ 300.00</u>
<b>Total amount claimed</b>	<b>\$ 6,152.00</b>

26. Nathaniel Yee submitted a claim for 164.50 hours for preparation, argument and reply argument at the hourly rate of \$35.00. This totalled \$5,757.50. He also claimed an attendance honorarium of \$300.00 for 6 half days of attendance at the hearing and disbursements of \$90.00 (and associated GST of \$4.50) for internet services to connect to the hearing through his telephone. Mr. Yee explained that the disbursement was reasonably incurred because he had internet connectivity issues that required him to use a cellphone for a portion of the hearing.

**Board costs award**

27. Nathaniel Yee’s costs claimed are subject to Section 4.3 of the Scale of Costs for his participation as an unrepresented intervener at the hearing. In addition, because this is Mr. Yee’s first intervention in a general rate application before the Board, the Board finds that, exercising its discretion, an hourly rate of \$35.00 is reasonable. Mr. Yee’s participation primarily related to YEC’s diesel rental units for 2021 and the intervention provided assistance to the Board in reaching its determinations. Further, the hours claimed are not excessive for the tasks undertaken in the proceeding.

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<sup>10</sup> \$19,800.00 \* 0.90 = \$17,820.00.

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28. In summary, the Board awards costs to Nathaniel Yee as follows:

**Consulting services provided by Nathaniel Yee**

Consulting fees	\$ 5,757.50
Disbursements	\$ 94.50
Attendance honorarium	\$ 300.00
<b>Total costs awarded</b>	<b>\$ 6,152.00</b>

**3 Applicant costs – Yukon Energy Corporation**

**3.1 Costs claim application**

29. YEC claimed the following costs:

DLA Piper (Canada) LLP (fees and disbursements)	\$ 83,751.01
InterGroup Consultants Ltd. (fees and disbursements)	\$ 449,738.86
Alliance Consulting Group (fees and disbursements)	\$ 58,892.75
YEC disbursements	\$ 19,526.44
<b>Total amount claimed</b>	<b>\$ 611,909.06</b>

30. YEC retained DLA Piper LLP as legal counsel, InterGroup Consultants Ltd. (InterGroup) as its primary regulatory consultant and Alliance Consulting Group as its depreciation consultant. YEC also claimed disbursements in the total amount of \$19,526.44. In its costs claim, YEC submitted that all costs as applied for are reasonable and necessarily incurred in order to prepare and support its Application in the original proceeding and that the costs claimed are in accordance with the Scale of Costs.

31. P. John Landry of DLA Piper LLP provided legal counsel, with assistance provided by Jason Herbert and Emily Snow. YEC claimed legal fees for Mr. Landry and Mr. Herbert at the hourly rate of \$350.00, as they have more than 20 years of experience, and fees for Ms. Snow at the hourly rate of \$240.00. The total hours claimed are 174.70 hours for preparation, 30.50 hours for attendance and 52.20 hours for argument and reply argument. The total fees claimed for legal services are \$83,734.30. Disbursements of \$16.71 for courier/delivery are also claimed.

32. YEC claimed costs for InterGroup totalling \$449,738.86. This amount included disbursements of \$150.11. It submitted that InterGroup assisted it with preparation of the Application and the drafting, review and finalization of interrogatory responses, preparation and support for the oral hearing process and assisting with 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 \$240.00-\$250.00 an hour and Mona Pollitt-Smith, who has over 12 years of experience, at a rate of \$175.00-\$185.00 an hour. YEC added that other consultants and research staff from InterGroup performed additional tasks including technical analysis, quality assurance review and document production. It stated that the hourly rates for all InterGroup staff are claimed in accordance with the individuals' years of experience under the Scale of Costs. YEC's claimed hours for InterGroup included 2,372.50 hours for preparation of the Application,



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50.50 hours for attendance and 238.50 hours for argument and reply argument. The disbursements claimed for InterGroup related to internal photocopying, external printing and long-distance telephone calls. These disbursements totalled \$150.11.

33. YEC claimed hourly consulting fees for the Alliance Consulting Group (Alliance) of \$10,218.75 and claimed flat-rate consulting fees (as a disbursement) of \$48,674.00. The total claimed for consulting fees was \$58,892.75. A full depreciation study dated December 31, 2018 was prepared by Dane Watson and Karen Ponder of Alliance. Alliance proposed changes to the depreciation parameters for certain YEC plant asset accounts. The recommended changes were determined based on the analysis of actuarial information as available, comments provided by YEC’s management and other internal operational personnel, Alliance’s professional judgement and experience and, in some instances, a review of peer electric utilities’ life-curve parameters. YEC’s cost application notes that Alliance also provided support for responses to IRs and for the oral hearing.
34. YEC also claimed disbursements for its participation in the proceeding in the total amount of \$19,526.44. These disbursements included claims of \$7,454.00 for external printing of hearing binders from Artic Star Printing Inc., \$135.08 for office supplies from Staples, \$21.10 for postage, \$9,468.57 for consulting/creative services and newspaper ad services provided by Aasman Brand Communications Inc. and \$2,447.69 for “Meals & Incidentals.” The claimed amount for “Meals & Incidentals” appears to include a claim of \$1,750.00 for 3.5 days of technical services provided for the hearing on September 27-29, 2021 by Upstream Events Inc. and the remainder (calculated by the Board as \$697.69<sup>11</sup>) claimed for meals and snacks during the hearing.

### **3.2 UCG comments on YEC’s costs**

35. UCG’s costs claim identifies four points for the Board’s consideration. UCG argued that certain legal and consulting costs should be denied for DLA Piper and InterGroup respectively for the reasons summarized below:
- Costs as early as January 2020 for legal and consultants should be disallowed because of delays in the Application proceeding. There were also too many inter-office emails, group meetings between consultants and “check-ins” for InterGroup.
  - There is overlap with the Battery Energy System Storage project.
  - There is duplication between InterGroup consultants’ tasks, as well as office and administrative costs.
  - The hours for YEC’s legal counsel and InterGroup are extremely high hours, e.g., preparing the YEC witness panel. Further, DLA Piper’s hours were high for legal advice on the Faro diesel extension project.

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<sup>11</sup> Total claimed for “Meals & Incidentals” \$2,447.69 minus amount billed by Upstream Events \$1,750.00 equals \$697.69.

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## Board costs award

36. Regarding the legal fees claimed for DLA Piper LLP, the fees are in accordance with the Scale of Costs. In addition, the Board finds that the hours and activities were commensurate with the legal work required related to the Application. The Board is not persuaded by UCG's submission that the invoices reflect disproportionate hours for legal advice or that there were overlapping costs with the Battery Energy System Storage project. However, the Board found in Appendix A to Board Order 2022-03 that some of the undertaking responses provided by YEC contain information that exceeded what was asked in the undertaking and that may have resulted in inefficiencies.<sup>12</sup> The Board considers that responses to undertakings contain both a legal component and a factual component, and it has factored the joint responsibility for undertaking responses in the reduction to each of DLA Piper's and InterGroup's costs. The Board finds that a reduction to the legal costs claimed of 15 percent is warranted because of the content of the undertakings, which contained argument or extra information not required in the undertaking. The Board has also factored InterGroup's responsibility in preparing undertakings in a reduction in costs to InterGroup later in this section of Appendix A.
37. In summary, the Board applies a 15-percent reduction to the fees claimed for DLA Piper. Accordingly, the Board awards \$71,174.16 in legal fees for DLA Piper. The disbursements of \$16.71 for courier/delivery are claimed in accordance with the Scale of Costs and are approved.
38. For InterGroup, the Board further finds that the hourly consulting fees claimed for InterGroup consultants are within the Scale of Costs. The Board notes in previous Board orders<sup>13</sup> that it had concerns with the number of consultants used for InterGroup or duplication of consulting activities. In the current proceeding, InterGroup used five consultants and additional support staff, which supports approval of InterGroup's costs based on the number of consultants and the corresponding activities in preparing the Application and to assist YEC during the proceeding.
39. However, in terms of the Application, the Board found in Board Order 2022-03 that the business cases included with the Application were not sufficient to support certain areas of YEC's capital programs or projects or the associated capital costs.<sup>14</sup> In addition, in some responses to IRs, hyperlinks were not provided, which added to further process to obtain updates to YEC's responses,<sup>15</sup> and a consolidated set of IRs was not provided until after the established filing deadline.
40. Consistent with Board Order 2018-09 and other previous board orders, the Board considers that document production staff are not consultants, analysts or experts within the meaning of the Scale of Costs. Document production staff are 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

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<sup>12</sup> Board Order 2022-03, Appendix A, paragraphs 19 and 21.

<sup>13</sup> For example, see Board Order 2021-13 (erratum), Board Order 2019-03 and Board Order 2018-09.

<sup>14</sup> Board Order 2022-03: Appendix A, paragraphs 9-13 and paragraphs 238-241 identify the Board's general concern with the business cases included in the application.

<sup>15</sup> Board Order 2022-03: Appendix A, paragraphs 15-17.

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InterGroup; therefore, the Board disallows the consulting costs claimed for InterGroup’s document production staff. The Board reiterates that only support staff costs are allowable under the Scale of Costs. In future cost applications to the Board, YEC is directed to exclude document production costs, and the Board may reject the cost application as deficient if document production costs continue to be included.

41. For the above reasons, the Board applies a 40-percent reduction to the consulting fees claimed for InterGroup. Accordingly, the Board awards \$269,753.25 in consulting fees for InterGroup. The disbursements in the total amount of \$150.11 for telephone and fax charges, internal photocopying and external printing are claimed in accordance with the Scale of Costs and are approved.
42. Regarding the consulting fees claimed for Alliance, the Board finds that the hourly and flat-rate consulting fees are reasonable and are directly and necessarily related to YEC’s participation in the Application proceeding. Although the Scale of Costs specifies that the statement of account for professional fees must include details of the date of activity undertaken, description of the activity and the time incurred for each described service,<sup>16</sup> the Board accepts the flat fee invoices for Alliance because the depreciation report and data were filed on the record of the proceeding and the flat fee is commensurate with the work that would be expected to be completed in preparing the depreciation study. The Board therefore exercises its discretion and approves consulting fees for Alliance in full. Accordingly, the Board awards \$58,892.75 to YEC for the consulting services provided by Alliance.
43. With respect to claim for disbursements for YEC, the Board finds that the claims for external printing of \$7,454.00, office supplies of \$135.08, postage of \$21.10, technical support services for the hearing of \$1,750.00 and meals and snacks of \$697.69 are made in accordance with the Scale of Costs and are approved.
44. However, the claim for disbursements of \$9,468.57 for consulting/creative services and newspaper ads provided by Aasman Brand Communications Inc. is reduced for the following reasons. The majority of these costs appear to be for communications packaging, account management for the Application and for presentation of communication materials. These costs were included as new disbursement, but there was no corresponding explanation in the cost application for the Board to be able to conclude that these costs are directly and necessarily related to the proceeding. Further, without explanation on why these services were incurred, the Board concludes from the activities listed in the invoices that YEC should have internal staff who would do this sort of work, rather than outsourcing some of this work to additional cost of rate payers. The Board finds that YEC did not demonstrate in its Application why the costs incurred for Aasman Brand Communications Inc. were directly and necessarily related to the proceeding and that YEC has not met its onus set out in Sections 2.3 and 3.3 of the Scale of Costs, with one exception: A portion of the costs incurred are labelled as “GRA ads in the Whitehorse Star and Yukon News” and these total \$3,705.87.<sup>17</sup> The costs for Aasman

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<sup>16</sup> Scale of Costs, Section 4.1, Professional fees.

<sup>17</sup> YEC cost claim application, PDF pages 166 and 169.

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Brand Communications Inc. are reduced to \$3,705.87. The \$3,705.87 in costs approved relate to the notices posted in local newspapers and are approved.

45. For the above reasons, the Board approves disbursements for YEC in the total amount of \$13,763.74.

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

**Legal services provided by DLA Piper (Canada) LLP**

Legal fees	\$ 71,174.16
Disbursements	\$ 16.71

**Consulting services provided by InterGroup Consultants Ltd.**

Consulting fees	\$ 269,753.25
Disbursements	\$ 150.11

**Consulting services provided by Alliance Consulting Group**

Consulting fees	\$ 58,892.75
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**YEC disbursements** \$ 13,763.74

**Total costs awarded** **\$ 413,750.72**

**4 Government of Yukon costs – Yukon Utilities Board**

47. The Board costs with respect to the Application proceeding are costs that more appropriately belong to the utility and ultimately the utility ratepayers rather 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 \$409,734.58.

**5 Total costs awarded**

48. The total costs awarded are 903,487.96 based on the following:

City of Whitehorse	\$ 55,579.18
Utilities Consumers' Group	\$ 18,271.48
Nathaniel Yee	\$ 6,152.00
Yukon Energy Corporation	\$ 413,750.72
Government of Yukon (Board costs)	\$ 409,734.58