

IN THE MATTER OF the *Public Utilities Act*

and

**General Rate Application by Yukon Energy Corporation
for Approval of Revenue Requirements for 2017 and 2018
Second Compliance Filing Costs**

BEFORE: R. Laking, Chair) February 14, 2020
B. King, Vice-Chair)
A. Fortin)

BOARD ORDER 2020-01

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 June 22, 2017, Yukon Energy Corporation (YEC) filed its General Rate Application (GRA) with the Board pursuant to the Act and Order-In-Council 1995/90 requesting an order approving a forecast revenue requirement of \$48.544 million for 2017 and \$49.864 million for 2018;
- C. On June 30, 2017, the Minister of Justice authorized the Board to incur the expenses necessary to conduct a public hearing into the GRA pursuant to section 50 of the Act;
- D. On July 27, 2017, the Board issued Board Order 2017-05 which granted intervener status to:
 - ATCO Electric Yukon (AEY);
 - City of Whitehorse;
 - Utilities Consumers’ Group (UCG);
 - Yukon Conservation Society (YCS); and
 - John Maissan (Mr. Maissan);
- E. On December 27, 2018, the Board issued Board Order 2018-10 approving the GRA for the reasons set out in Appendix A to that order and directed a compliance filing from YEC;
- F. The Board issued its September 12, 2019 decision on YEC’s first compliance filing to the GRA (first compliance filing), which is found in Board Order 2019-04. In Board

Order 2019-04, the Board directed YEC to file a second compliance filing in accordance with the findings and directions of the Board;

- G. On September 23, 2019, YEC submitted to the Board its second compliance filing to the GRA (second compliance filing) with respect to Board Order 2018-10 and Board Order 2019-04;
- H. In an October 4, 2019 letter, the Board exercised its discretion and allowed cost claims for the second compliance filing proceeding, including the technical meeting;
- I. The technical meeting was held on October 8, 2019 regarding YEC's second compliance filing application. YEC, City of Whitehorse, UCG and Board staff were in attendance;
- J. The Board issued Board Order 2019-08 on November 24, 2019, approving YEC's second compliance filing, subject to the directions provided by the Board;
- K. With respect to the GRA second compliance filing proceeding, the Board received costs claims from:
 - 1. City of Whitehorse,
 - 2. UCG, and
 - 3. YEC;
- L. On January 6, 2020, the Board received comments from UCG on the cost claim of YEC;
- M. The Board has reviewed the costs claims and UCG's comments;
- 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, 2017-07, 2018-08, 2018-09 and 2019-03.

NOW THEREFORE, the Board orders as follows:

INTERVENER COSTS

1. City of Whitehorse

City of Whitehorse claiming:

Brownlee LLP(Fees, the Attendance Honorarium, Disbursements and GST):

\$2,829.50

Russ Bell & Associates Inc. (Fees and the Attendance Honorarium): \$4,700.00

Total costs claimed: \$7,529.50

Comments

City of Whitehorse retained Brownlee LLP as legal counsel and Russ Bell of Russ Bell & Associates Inc. as a regulatory analyst.

Thomas Marriott is senior counsel, and accordingly, the City of Whitehorse's costs claim reflects the hourly rate of \$350.00. The hours claimed for Mr. Marriott are 4.25 hours for attendance of the technical meeting and 0.5 hours for argument. The total claimed for Mr. Marriott is \$1,662.50. Keegan Rutherford was junior counsel assisting Mr. Marriott. The City of Whitehorse claimed the hourly rate for Mr. Rutherford of \$240.00 based on his three years of experience. The hours claimed for Mr. Rutherford are 1.25 hours for preparation and 3.50 hours for argument. The amount claimed for Mr. Rutherford is \$1,140.00 and the total amount claimed for both counsel is \$2,802.50.

City of Whitehorse submitted that Mr. Bell has extensive experience in regulated industries in Yukon, Northwest Territories and Alberta. In its costs claim, City of Whitehorse claimed \$200.00 per hour for Mr. Bell. The hours claimed are 16.50 for preparation and attendance at the technical meeting and an additional 7.00 hours for preparing argument. The total costs claimed for Mr. Bell are \$4,700.00.

Disbursements were claimed for Brownlee LLP in the amount of \$27.00 for printing charges. No GST was claimed on fees or disbursements.

In its costs claim, City of Whitehorse submitted that its participation was effective and relevant to the issues.

Board costs award

The Board notes that the City of Whitehorse filed a separate cost claim on October 8, 2019 for its costs for participation in the first compliance filing. The Board denies these costs because the Board, in its October 4, 2019 letter, only exercised its discretion to allow costs for the second compliance filing proceeding. Unlike the first compliance filing, the second compliance filing proceeding included an opportunity for parties to attend a technical meeting, and this was an oral process. A technical meeting is a non-routine process step for a compliance filing proceeding, and therefore, the second compliance filing proceeding resulted in increased costs to parties that would not normally be incurred in a GRA compliance filing process.

The Board considers that City of Whitehorse participated fully in all aspects of the second compliance filing proceeding and its intervention was of assistance to the Board in making its decision.

With regard to the consultant fees claimed for Brownlee LLP and Mr. Bell for the second compliance filing, the fees are within the Scale of Costs and are reasonable.

The disbursement of \$27.00 in printing charges from Brownlee LLP was submitted in accordance with the Scale of Costs and the Board finds that this disbursement is reasonable.

In summary, the Board awards costs to the City of Whitehorse as follows:

Legal services provided by Brownlee LLP

Legal fees:	\$ 2,802.50
Disbursements:	\$ 27.00

Consulting services provided by Russ Bell & Associates Inc.

Professional fees:	<u>\$ 4,700.00</u>
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Total costs awarded	\$ 7,529.50
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2. Utilities Consumers' Group

UCG claiming:

PaTina Energy Consultants (Fees, the Attendance Honorarium and GST):	\$11,694.38
Roger Rondeau (Fees and the Attendance Honorarium):	<u>\$ 1,890.00</u>

Total costs claimed:	\$13,584.38
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Comments

UCG retained Patrick McMahon of PaTina Energy Consultants. UCG stated that Mr. McMahon supported UCG's intervention by providing extensive consulting services without the assistance of legal counsel. UCG submitted that Mr. McMahon's expertise supported the quality and efficiency of the proceeding as a whole. UCG stated that the claimed rate of \$225.00 per hour was justified based on the complexity of the issues addressed and the need for Mr. McMahon to take on a significant role without the assistance of legal counsel. Accordingly, the costs incurred were reasonable and were directly and necessarily related to UCG's effective participation.

The hours claimed for Mr. McMahon are 38.00 for preparation, 5.00 for attendance at the technical meeting and 6.50 for drafting argument, and all hours were claimed at \$225.00 per hour.

UCG submitted a claim for Mr. Rondeau for his attendance at the technical meeting and for preparation and contributions to argument in the second compliance filing proceeding. UCG's claim for Mr. Rondeau included 17.50 hours for preparation, 6.00 hours for attendance and 8.00 hours for drafting argument.

UCG added that it generally acted responsibly and contributed to a better understanding of the issues to be decided by the Board.

Board costs award

With respect to the second compliance filing costs claim, the \$225.00 claimed for Mr. McMahon is consistent with the Scale of Costs for a consultant with eight to twelve years of experience in Yukon rate proceedings. The Board has reviewed the activities of Mr. McMahon in the second compliance filing on behalf of UCG and considers that the hours claimed for preparation, attendance at the technical meeting and drafting argument and other correspondence were reasonable. The Board concludes that the consultant activities were directly and necessarily related to the second compliance proceeding.

However, the Board cautions the UCG that the itemized statement of accounts should reconcile with the activities provided on the file. The hours included in Appendix A of the costs claim did not reconcile with the itemized invoices provided. However, the Board accepts the activities and hours included in Appendix A for the purposes of this proceeding because it reasonably reflects the activities undertaken by Mr. McMahon.

If there are inconsistencies in the statement of account and any summary document of the activities provided, in future costs decisions, the Board may choose to approve only the lesser amount of consulting fees claimed.

Given the matters raised in the application, Mr. McMahon's hourly rate is supported given the attendance at the technical sessions and UCG's submissions on the complex issues raised in the second compliance filing.

For these reasons, Mr. McMahon's costs are approved, as filed.

With respect to UCG's claim for Mr. Rondeau, a rate of \$60.00 per hour was applied to his activities. No statement of account was provided for the 17.50 hours for preparation, 6.00 hours for attendance at the technical meeting and 8.00 hours for the development of argument.

A statement of account is required by the Board's Scale of Costs. In addition, sections 4.3 and 4.4 of the Scale of Costs state:

4.3 Fees and Honorarium of 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.

4.4 Attendance Honorarium

An unrepresented intervener may claim an honorarium of \$50 for each day of attendance at an oral hearing.

The Board is of the view that Mr. Rondeau is acting as the unrepresented intervener, and a consultant was also hired to represent UCG. Since UCG was represented by a consultant, the Board finds that Mr. Rondeau is only reasonably eligible for an attendance honorarium for the six hours to attend the technical meeting.

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

Consulting services provided by PaTina Energy Consultants

PaTina Energy Consultants – Mr. McMahon (Fees, the Attendance Honorarium and GST):	\$11,694.38
Roger Rondeau (the Attendance Honorarium):	<u>\$ 360.00</u>
Total costs awarded	\$12,054.38

**3. Yukon Energy Corporation
YEC claiming:**

DLA Piper LLP (Fees):	\$ 3,675.00
InterGroup Consultants Ltd. (Fees and Disbursements):	\$48,617.17
Yukon Energy Corporation (Disbursements and GST):	<u>\$ 625.00</u>
Total costs claimed:	\$52,917.17

Comments

In its cost application for the second compliance filing, YEC submitted that all applied-for costs are reasonably and necessarily incurred in order to prepare and support the second compliance filing application. It submitted that all of the costs claimed are in accordance with the Scale of Costs.

YEC retained DLA Piper LLP (Canada) as legal counsel, with P. John Landry providing 10.50 hours of legal assistance to YEC in the second compliance proceeding. His activities related to preparing the application, providing support with respect to the technical meeting, reviewing information requests (IRs) and advising on other matters arising in the second compliance filing proceeding. The total fees claimed for DLA Piper for legal services are \$3,675.00. No GST was claimed on legal fees.

YEC claimed consulting fees for InterGroup Consultants Ltd. (InterGroup) of \$46,522.50 for assistance with the second compliance filing. YEC submitted that InterGroup assisted it with preparation and review of the application. Further, InterGroup's activities included the drafting, review and finalization of interrogatory responses and preparation of argument and reply argument. No GST was claimed on consulting fees.

YEC submitted that the consulting services claimed were primarily provided by Cam Osler who has over 20 years of experience at a rate of \$240.00 an hour, Mona Pollitt-Smith who has over 13 years of experience at rates between \$172.00 and \$175.00 per hour, and Hamid Najmidinov who has over 10 years of experience at rates between \$114.00 and \$125.00 per hour. Costs for Jolene Gordon for production coordination and for Thao Vu for administrative support were claimed at \$85.00 and \$45.00 per hour respectively.

YEC stated that its consultant hours and rates do not include costs for clerical, administrative or research support staff. It added that the production services are specific professional services that are provided to YEC in relation to major filings and have been separated out from pure administration costs. For example, for IRs, each separate question must be entered into templates by production staff and each response must be tracked, compiled into subparts, formatted, consolidated and distributed. For the second compliance filing proceeding, YEC claimed for InterGroup 246.00 hours for all activities including preparation of the application, attendance of Mr. Osler and Ms. Pollitt-Smith at the technical session, formulation of responses to IRs and preparation of argument and reply argument. Of the total hours claimed, 2.50 hours were for production services and 6.50 hours were for administration.

YEC claimed the following disbursements for its own costs and those of InterGroup:

- Airfare of \$1,116.12 for InterGroup (Mr. Osler and Ms. Pollitt-Smith to attend the technical meeting);
- Accommodation of \$697.42 for InterGroup (Mr. Osler and Ms. Pollitt-Smith to attend the technical meeting);
- Meals of \$91.57 for InterGroup (Mr. Osler and Ms. Pollitt-Smith to attend the technical meeting);
- Teleconferencing charges of \$111.61 and photocopying charges of \$77.95 for InterGroup; and
- YEC's conference room costs of \$625.00 for the technical meeting.

UCG comments

In its letter of January 6, 2020, UCG raised concerns regarding how much of the costs for regulatory proceedings should be recovered in rates. UCG pointed out that some costs claimed by YEC are not allowed under the Scale of Costs and past Board rulings.

With respect to legal costs, UCG submitted that the actual hourly rate paid by YEC was over the Scale of Costs, while acknowledging that the maximum hourly cost rate of \$350.00 per hour in accordance with the Scale of Costs was charged for Mr. Landry's activities related to the second compliance filing. UCG requested that the Board place a condition on YEC that it indicate how the extra costs above the Scale of Costs are recovered, i.e. through electricity rates or tax bills.

For the consulting costs of InterGroup, UCG submitted that YEC and its consultants continue to disregard Board decisions on the costs that are not to be recovered through ratepayers' electricity rates. UCG cited past Board decisions where excessive costs before the Board were reduced for duplication of work of the individual consultants, the number of consultants and the use of administrative or document production staff. Further, UCG asserted that it was unnecessary for both Mr. Osler and Ms. Pollitt-Smith to attend the technical sessions when teleconferencing was available.

Regarding YEC's claims for disbursements, UCG objected to the recovery of costs from ratepayers that are not recoverable under the Scale of Costs, including meals, accommodation and airfare. For the second compliance filing, the meals,

accommodation and airfare were not related to attendance at an oral hearing and should be disallowed. Costs for these disbursements should be borne by shareholders.

Board costs award

UCG comments on costs recovered through ratepayers or taxpayers

The Board does not agree with UCG's request to require YEC to provide an explanation on how costs beyond the Scale of Costs are recovered. There is no evidence before the Board in this proceeding that indicate that any costs in excess of the Scale of Costs are recovered from ratepayers. If UCG wishes to pursue how costs above scale or denied by the Board are treated by YEC, such queries and issues are more appropriately addressed in a GRA proceeding to the extent that the issue of costs beyond scale are relevant to the GRA and costs borne by ratepayers.

DLA Piper LLP

Regarding the legal fees and disbursements claimed for DLA Piper, the Board considers that the legal fees are in accordance with the Scale of Costs. After reviewing the invoices submitted for the legal services provided by Mr. Landry, the Board finds that the total hours claimed for the second compliance filing are reasonably related to the proceeding and are consistent with the activities undertaken by Mr. Landry in support of YEC's second compliance filing.

Therefore, the Board awards total legal fees for DLA Piper of \$3,675.00.

InterGroup Consultants Ltd.

The hourly consulting fees claimed for the consultants and their support staff are within the Scale of Costs.

After reviewing the invoices submitted for consulting services provided by InterGroup for the second compliance filing, the Board concludes that the 237.00 hours claimed by InterGroup for three consultants to be excessive. In the second compliance filing proceeding, the combined hours for each of the consultants totals 238.00 hours, or almost six weeks of time based on a 40-hour week. The number of hours incurred for the three consultants are higher than what would be expected for a second compliance filing.

Further, the Board finds that there was evidence provided on issues that were not required for the compliance filing, resulting in unnecessary costs. For example, at paragraph 53 of Appendix A to Board Order 2019-08, the Board stated:

The Board, in IR YUB-YEC-1-8, inquired about a paragraph in the term sheet concerning the thermal fuel mix. YEC responded that the paragraph was required as it establishes rules for addressing fuel mix to LTA thermal generation transfer costs. It should be noted that the Board previously accepted the fuel mix as part of YEC's 2017-18 GRA and that no further direction was given for YEC to comply with on this issue. However, further information on fuel mix has been provided in YEC's second compliance

filing. The Board will not reopen this issue in the compliance filing. However, due to the concerns the Board has regarding YEC's fuel mix calculations and the unverifiable nature of the results of those calculations provided in the second compliance filing and the resulting thermal fuel costs, those calculations will not be accepted by the Board for use in future GRAs. (footnotes removed) ¹

It is apparent that the approach taken by YEC and InterGroup in its filings to comply with the Board's directions has added unnecessary complexity to finalizing YEC's GRA rates. In its findings in Appendix A to Board Order 2019-08, the Board identified specific concerns with YEC's approach to: the forecasting fuel mix which was not verifiable to actuals (paragraph 27 of Appendix A to Board Order 2019-08); the steps to separate thermal generation changes due to overall load changes from water conditions that did not adequately reflect regulatory principles (paragraphs 41-42); and the complexity of the proposed low water reserve fund (paragraph 79).

Unfortunately, the approach to compliance with Board directions has resulted in additional hours by InterGroup and has resulted in delay in approving final rates related to the GRA. This resulted in unnecessary duplication of work. It also increased the regulatory effort and costs of other parties because they had to address the issues of YEC's compliance with the Board's directions in a second compliance filing. As a result of the above, the Board finds that a reduction of 25 percent is warranted because of the hours incurred and the increased regulatory efforts required to address the issues before the Board created by YEC's approach to compliance with the Board's directions.

With respect to Ms. Gordon's activities in the second compliance filing, the Board considers that the description of tasks for Ms. Gordon in the itemized invoices were administrative in nature:

Wednesday, October 2, 2019	1.00 hours	IRs
Friday, October 18, 2019	0.50 hours	Formatted draft for review of IRs
Monday, October 21, 2019	1.00 hours	IR cross checks; finalized CWs and AEYs

Although administrative tasks are not included in consultants' hourly rates, it is unclear to the Board why special assistance to transfer IRs to template documents to prepare responses to IRs or specialized knowledge to cross-reference the IRs was required. Ms. Gordon's hourly rate is reduced to \$45.00 per hour for the work completed on the second compliance filing proceeding for the 2.50 hours claimed.

Accordingly, based on the reasons enumerated above, the Board awards total consultant fees for InterGroup of \$34,918.13.

InterGroup and YEC disbursements

With respect to the \$2,094.67 in disbursements claimed for InterGroup, the Board disagrees with UCG's recommendations to disallow costs related to accommodation and airfare. The Board exercised its discretion to reasonably extend costs to this proceeding because of the technical session, and it would have been reasonable to have Mr. Osler

¹ Appendix A to Board Order 2019-08 – Reasons for Decision; page 13, paragraph 53.

and Ms. Pollitt-Smith in attendance given the complexity of the issues in the second compliance filing application. While this process was not an oral hearing as referenced by UCG, the Board considers that the reasonable costs for attendance should be allowed because the technical session assisted the parties attending with understanding the contents of the application. Accordingly, the Board allows YEC's disbursements for accommodation, airfare, telephone charges, photocopying and the conference room rental costs.

However, the Board denies the meal costs for InterGroup of \$91.57. YEC submitted only hotel receipts, not meal receipts that would have provided a sufficient level of detail for the Board to identify the costs of meals. In Board Order 2019-03, the Board exercised its discretion to allow meal costs on a per diem basis.² However, YEC continues to submit meal costs that do not comply with the Scale of Costs. The Scale of Costs requires, in section 4.2b:

4.2 Expenses

The Board will not consider expense claims that are based upon percentages of the fees claimed. All receipts relating to a claim for disbursements must be legible and clearly identify the date upon which the receipt was issued. Unless otherwise stated, the Board will not request clarification for receipts that do not satisfy these requirements, and the related claim may not be approved.

b. Personal expenses

The Board will consider claims for the following personal expenses that are incurred during an oral hearing:

Meals

The maximum allowable daily claim for meals is in accordance with current Government of Yukon rates. Claims for meals are restricted to the duration of an oral hearing. Tips are not claimable. Receipts are required for all meals claimed, with the date of the meal marked on the receipt.

The amounts in the Statutory Declaration Forms and receipts provided are not approved because the Board was unable to ascertain the actual meal costs excluding tips because no receipts for meals were provided. In this decision, and in future costs applications, the Board will not accept meals costs without itemized receipts attached.

Regarding YEC's disbursements claimed for the conference room for the technical meeting, the room was required as a venue for the technical meeting, and the costs for this disbursement, \$625.00, is approved.

Accordingly, the Board awards \$1,116.12 for airfare, \$697.42 for accommodation, \$111.61 for teleconferencing calls, \$77.95 for photocopying and \$625.00 for the

² Board Order 2019-03, General Rate Application by Yukon Energy Corporation for Approval of Revenue Requirements for 2017 and 2018, costs decision, page 12.

conference room for the technical meeting. For these reasons, the Board awards total disbursements to YEC of \$2,628.10.

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

DLA Piper LLP (Fees and Disbursements):	\$ 3,675.00
InterGroup Consultants Ltd. (Fees):	\$ 34,918.13
Yukon Energy Corporation and InterGroup Consultants Ltd. (Disbursements and GST):	<u>\$ 2,628.10</u>
Total costs awarded:	\$ 41,221.23

BOARD COSTS

4. Yukon Utilities Board

The Board costs with respect to the second compliance filing are costs that more appropriately belong to the utility, and ultimately the utility ratepayer, than to the Yukon taxpayer. Therefore, all hearing-related costs of the Board, including for Board staff attendance of the technical meeting, are allowed as utility regulatory costs.

The Board directs an award of costs to the Government of Yukon in the amount of \$32,150.00

NOW THEREFORE, the Board orders as follows:

YEC shall pay the following amounts to 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:

City of Whitehorse	\$ 7,529.50
UCG	\$ 12,054.38
YEC	\$ 41,221.23
Government of Yukon (Board costs)	<u>\$ 32,150.00</u>

Total costs awarded: \$ 92,955.11

Dated at the City of Whitehorse, Yukon, the 14th day of February 2020.

BY ORDER



Robert Laking
Chair