

**IN THE MATTER OF the *Public Utilities Act*, RSY 2002, c 186**

**And**

**Review and Variance of Board Order 2019-03**

**BEFORE:**            B. King, Vice-Chair            )            August 12, 2020  
                          A. Fortin                        )  
                          M. Johnson                     )

**BOARD ORDER 2020-02**

**Background**

1. On June 4, 2020, the Government of Yukon filed an Application for Review and Variance (Review Application) of Board Order 2019-03, dated May 23, 2019.
2. Board Order 2019-03 addressed the cost claim applications related to Yukon Energy Corporation's (YEC) General Rate Application (GRA) for approval of revenue requirements for 2017 and 2018. As part of Board Order 2019-03, the Board made the following findings regarding Board costs:

The Board costs with respect to the GRA 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 are allowed as utility regulatory costs.

The Board directs an award of costs to the Government of Yukon in the amount of \$244,025.32.

3. In the Review Application, the Government of Yukon requested that the Board review and vary Board Order 2019-03 on the basis of a factual error in the amount of approved Board costs. The Government of Yukon advised that it had inadvertently omitted \$124,199.89 of Board costs incurred in the 2017-18 fiscal year. The Government of Yukon submitted that, given the Board's finding that the Government of Yukon should recover all Board hearing-related costs from the ratepayer rather than the taxpayer, the cost award of \$244,025.32 should be adjusted to \$368,225.21.
4. The Board invited YEC and interveners to provide comments on the Review Application by June 19, 2020.

5. On June 22, 2020, the Board received comments from the Utilities Consumers' Group (UCG). UCG submitted that the Review Application should be denied because the Government of Yukon made no basis for finding that a factual error had been committed. UCG made a number of other submissions, including a request that the Board's costs claim rules, as set out in Schedule 1 Scale of Costs of the Board's Rules of Practice, apply to the Board and its consultants.

### **Preliminary matter**

The Review Application was filed 378 days after the issuance of Board Order 2019-03. Given that the Board's *Rules of Practice* do not set out a timeline in which a review application must be filed, and given that the Government of Yukon filed the Review Application in a timely manner upon discovering the accounting error in the total amount of Board costs for the GRA which it submitted for approval, the Board considers it reasonable to review the Government of Yukon's Review Application.

However, the lack of a timeline requirement for filing a review and variance application in the *Rules of Practice* is a concern for the Board. Specifically, the Board is concerned that the lack of such a timeline does not incent a party to act in a timely manner in filing a review and variance application, and does not contribute to the benefits of achieving finality of Board decisions. Accordingly, the Board will be deliberating on whether a timeline requirement for review applications should be added to its *Rules of Practice*. Although no process for revisions to the *Rules of Practice* is currently underway, the Board will invite comments from external parties on a proposed deadline for the filing of review applications in its next consultation process regarding revisions to the *Rules of Practice*.

### **Board review process**

The Board's authority to review its own decisions is found in Section 62 of the *Public Utilities Act*. Section 31 of the Board's *Rules of Practice* states that the Board will use a two-phase system for applications for review. The first phase is the initial screening phase where the applicant must establish a *prima facie* case sufficient to warrant full consideration by the Board. In the case of an alleged error, in order to advance to the second phase of the process, the applicant for review must show that the claim of error is substantiated on a *prima facie* basis and that the error has significant material implications.

### **Board findings**

The Board considers UCG's request to expand the applicability of the Board's Scale of Costs to include Board costs to be a request to amend Schedule 1 Scale of Costs of the Board's *Rules of Practice*. Such a request is outside the scope of the Board's review process and could be raised in a consultation process on the *Rules of Practice*. Accordingly, the Board will not consider this request further.

The Review Application involves both stages of the review process. As part of the first phase of the review process, the Board accepts the evidence of the Government of Yukon, which was signed by the Director of Finance, Systems, Administration and Records, that there was an inadvertent error in reporting the Board's costs by omitting the 2017-18 costs, and that the correct amount of Board costs for the YEC GRA up to the date of issuance of Board Order 2019-03 actually totals \$368,225.21. Due to this inadvertent error, the Board finds that the Government of Yukon has shown on a *prima facie* basis that there is an error of fact in the award of Board costs in Board Order 2019-03.

As part of the second phase of this process, the Board finds that the error of fact has significant material implications. This is because, consistent with the Board's finding in Board Order 2019-03, costs related to YEC's GRA for approval of revenue requirements for 2017 and 2018 more appropriately belong to the utility, and ultimately the utility ratepayer, than to the Yukon taxpayer. The correct amount should be reflected in the Board Order to account for the material costs incurred related to the YEC's GRA.

For the reasons set out above, the Board grants the Government of Yukon's application to review and vary Board Order 2019-03. The Board awards the Government of Yukon an additional payment of \$124,199.89.

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

1. YEC shall pay \$124,199.89 to the Government of the Yukon within 30 days of the issuance of this Order.
2. Board Order 2019-03 is corrected in section 5 of Board Order to read:

The Board directs an award of costs to the Government of Yukon in the amount of \$368,225.21.
3. The Board corrects the order section of Board Order 2019-03 to reflect the revised amounts awarded for hearing-related costs of the Government of Yukon (Board costs) to \$368,225.21 and the Total costs awarded to \$1,007,182,86.

**DATED** at the City of Whitehorse, Yukon, the 12<sup>th</sup> day of August 2020.

BY ORDER



Bonnie King  
Vice-Chair