

YUKON UTILITIES BOARD

IN THE MATTER OF the *Public Utilities Act*

And

Yukon Energy Corporation Application for Energy Project Certificate and Energy Operation Certificate Regarding the Proposed Battery Energy Storage System (BESS Project) Costs Awards

BEFORE: R. Buchan, Chair) September 26, 2021
B. King, Vice-Chair)
A. Fortin)
A. Middler)

BOARD ORDER 2021-13

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 December 17, 2020, the Government of Yukon designated the Yukon Energy Corporation’s (YEC’s) proposed Battery Energy Storage System Project (BESS Project) as a regulated project under Part 3 of the Act;
- C. On January 21, 2021, YEC filed an application for an energy project certificate and an energy operation certificate for the BESS Project (Application) with the Minister of Justice (Minister). In a February 2, 2021 letter, the Minister referred the Application to the Yukon Utilities Board (Board) for a review and hearing pursuant to Part 3 of the Act. The letter included terms of reference, which set out the purpose and the specific aspects of the BESS Project to be reviewed, and stipulated that the Board hold a public hearing;
- D. In correspondence dated February 2, 2021, the Minister of Justice authorized the Board to incur the expenses necessary to conduct a public hearing into the Application pursuant to Section 50 of the Act;
- E. The Board received requests for intervener status from ATCO Electric Yukon (AEY), the Utilities Consumers’ Group (UCG), the Yukon Conservation Society (YCS), and John Maissan. All requests for intervener status were granted in Board Order 2021-05, issued on March 5, 2021;

- F. A public oral hearing on the Application was held from May 4 to May 6, 2021, in Whitehorse, Yukon, with the Board members and Board staff in attendance. YEC, interveners and certain Board staff participated through a virtual hearing platform. After receiving final submissions from YEC and interveners, the Board issued its report on the BESS Project to the Minister on June 30, 2021;
- G. With respect to the proceeding, the Board received costs claims from UCG and YEC;
- H. The Board received comments from UCG on the costs claim of YEC in a letter dated August 5, 2021;
- I. The Board has reviewed all the costs claims and comments;
- J. 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
- K. 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, 2019-03 and 2020-01.

NOW THEREFORE, the Board orders as follows:

INTERVENER COSTS

1. Utilities Consumers' Group

UCG claiming:

PaTina Energy Consultants (Fees and GST)	<u>\$14,411.25</u>
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Total costs claimed:	\$14,411.25
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Comments

UCG retained Patrick McMahon of PaTina Energy Consultants. UCG stated that Mr. McMahon supported the intervention of UCG by providing expertise that assisted in the quality and efficiency of the proceeding as a whole and in making submissions from the ratepayer perspective that is represented by UCG. 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. In UCG's view, the claimed rate of \$225.00 per hour is below the maximum rate of \$270.00 per hour for a consultant with McMahon's level of experience and expertise.

UCG added that the scope of issues in the proceeding were extensive and the updated information provided by YEC required numerous hours of work to ensure that arguments made to the Board were comprehensive and relevant. UCG added that it acted responsibly and contributed to a better understanding of the issues to be decided by the Board.

The hours claimed for Mr. McMahon are 33.00 for preparation, 21.50 for attendance of the hearing, and 6.50 for preparation of final comments, for a total of 61.00 hours. All hours were claimed at \$225.00 per hour.

Board costs award

The Board notes that Mr. McMahon is presented as a consultant with knowledge of and experience in utility proceedings in the Yukon and has knowledge of regulatory issues of the natural gas and electricity industries in other jurisdictions. With respect to the current 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, and Mr. McMahon has extensive utility experience and he has been participating in Board hearings since 2008 or 2009.

With respect to the BESS Project proceeding, Mr. McMahon reviewed the Application, prepared information requests (IRs), reviewed responses to IRs, consulted with UCG on procedural issues, cross-examined YEC's witness panel at the hearing, and prepared final comments on the BESS Project. The Board has reviewed the activities of Mr. McMahon and considers that the hours claimed were commensurate with work undertaken and that his activities were directly and necessarily related to the proceeding.

Given the matters raised regarding the BESS Project, the hourly rate and the total costs claimed are reasonably supported given the complexity of issues and UCG's submissions with respect to the Application.

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

Consulting services provided by PaTina Energy Consultants

Mr. McMahon Professional Fees and GST	<u>\$14,411.25</u>
Total costs awarded:	\$14,411.25

2. Yukon Energy Corporation

YEC claiming:

DLA Piper LLP (Fees)	\$ 16,100.00
InterGroup Consultants Ltd. (Fees and Disbursements)	\$ 88,482.53
Hatch Ltée (Fees)	<u>\$ 12,052.00</u>

Total costs claimed:	\$116,634.53
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Comments

In its costs claim, YEC submitted that all costs as applied for are reasonable and necessarily incurred in order to prepare and support the Application. It stated that the costs claimed are in accordance with the Scale of Costs. YEC submitted that applicants before the Board have a distinct role from interveners and there are additional costs to prepare the application as a necessary part of its business and operations as a regulated utility. Further, regulated utilities require regulatory approvals from the Board and cannot realistically limit their level of participation in the process or coordinate to reduce duplication with others.

YEC retained DLA Piper (Canada) LLP as legal counsel, with P. John Landry providing the relevant assistance to YEC in relation to reviewing IRs and responses to IRs, assistance with and attendance at the oral hearing, and reviewing final submissions. Mr. Landry provided legal advice as required during the BESS Project proceeding. YEC claimed legal fees for Mr. Landry of 46.00 hours at a rate of \$350.00 an hour for 20.00 hours of preparation, 19.00 hours for attendance, and 7.00 hours for final submissions. The total fees claimed for DLA Piper for legal services are \$16,100.00.

YEC claimed costs for InterGroup Consultants Ltd. (InterGroup) for preparation of the Application and BESS Project proceeding in the total amount of \$88,482.53, which was comprised of \$88,407.50 in consulting fees and \$75.03 in disbursements for printing. YEC submitted that InterGroup specific activities were that it assisted with preparation of the application, IRs, and materials for the oral hearing. InterGroup also provided document production services, supported YEC's witnesses during the oral hearing, and drafted and reviewed final submissions.

YEC submitted that the consulting services claimed for InterGroup were primarily provided by Cam Osler who has over 40 years of experience at a rate of \$240.00 an hour, Mona Pollitt-Smith who has over 15 years of experience at a rate of \$175.00 an hour, and Hamid Najmidinov who has over 11 years of experience at a rate of \$125.00. Additional costs were claimed for two additional consultants, Roberta Connon and Jolene Gordon, at rates of \$175.00 and \$85.00 per hour, respectively. Additional costs for administration, clerical, and document production costs were claimed at \$45.00 per hour. YEC stated that the hourly rates for all InterGroup consultants are claimed in accordance with the individuals' years of experience under the Scale of Costs.

YEC noted that professional services for document production are not included in InterGroup's consultant fees and that document production services are fundamental to the hearing process and in understanding of matters in the proceeding by ensuring coherent documents and links to referenced documents are produced to the Board.

Costs for Hatch were for preparing its engineering report on battery storage options, "Hatch Engineering Utility Battery Feasibility Study Final Report – Phase 1".¹ YEC also claimed costs for Hatch to assist the utility with the preparation of IRs, attendance at the oral hearing, and "follow-up."

¹ Attached as Appendix B to YEC's BESS Application. The report is dated January 2021.

YEC submitted that the consulting services claimed for Hatch were primarily for the participation of Jocelyn Zuliani who has 9 years of experience, at a rate of \$176.00 per hour, Joel Guibault who has 15 years of experience, at a rate of \$176.00 per hour, and Mark Mitchell who has 8 years of experience, at a rate of \$152.00 per hour.

UCG comments

In its letter of August 5, 2021, UCG submitted that, YEC ratepayers should be spared excessive costs that YEC believes are a cost of doing business for utilizing InterGroup, when there are less expensive alternatives to use YEC staff. At a minimum, a total of \$63,252.00 plus GST should be disallowed. Panel attendance at the hearing included Mila Milojevic of YEC and Ms. Zuliani of Hatch.

Further, UCG raised concerns that some costs claimed by YEC are not consistent with the Board's findings and directions on costs in previous Board Orders² regarding the number of consultants and the costs of support staff. UCG argued that the costs for attendance of InterGroup to listen in at the hearing and support staff should be completely disallowed. It submitted that there was also duplication of effort between InterGroup's consultants and at least a 50% reduction of InterGroup's consulting costs should be disallowed. UCG also commented on specific costs related to hearing preparation or preparation of briefs and concluded that YEC was claiming costs of an excessive number of legal and regulatory consultants, and such preparation costs should be disallowed.

Board costs award

DLA Piper

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 related to the BESS Project proceeding included in YEC's costs claim are reasonable, are commensurate with the tasks described in the invoices for DLA Piper, and have been claimed in accordance with the Scale of Costs.

For these reasons, the Board approves legal fees of \$16,100.00 for DLA Piper for participation in the BESS Project proceeding.

InterGroup

After reviewing the invoices submitted for consulting services provided by InterGroup for the 2017-18 GRA, the Board views that the 491.50 hours claimed by InterGroup for five consultants and additional administrative support staff to be excessive.

The Board has the discretion to determine costs pursuant to Section 56 of the *Public Utilities Act*. Section 3.3 of the Board's Scale of Costs confirms that the onus is on the applicant to provide sufficient information for the Board to effectively assess its claim and must address the specifics of the proceeding.

² Board Orders 2011-09, 2013-08, 2014-12, 2015-04, 2018-08, 2018-09 and 2019-03.

The Board finds that there is insufficient information to justify the number of consultants and other support staff used in the BESS Project proceeding. In reviewing the invoices, there are charges for overlapping tasks, particularly for the preparation of the Application. There are charges for internal meetings, calls, and reviews of emails between the consultants. It is not apparent why the three primary consultants — Mr. Osler, Ms. Pollitt-Smith, and Mr. Najmidinov — were undertaking certain tasks such as internal meetings. The Board considers that there was overlap in these tasks that was not directly and necessarily related to the preparation of the BESS Application or required for the BESS Project proceeding. The Board finds that the hours claimed for these tasks were not reasonably incurred by InterGroup.

Despite YEC's argument that document production is fundamental to the efficient and effective conduct of a hearing and that coherent documents are produced, these costs do not generally meet the requirements of Section 6.1 of the Scale of Costs. Section 6.1 requires that the costs are reasonable, prudent, and directly and necessarily related to the proceeding and that the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Board. Document production activities are support activities and do not contribute to a better understanding of the issues to be tested by the Board. It is reasonable to award costs at a rate above the \$45.00 per hour allowed for support staff.

The Board remains of the view as was stated in Board Order 2019-03 that document production staff is more akin to support staff. The Scale of Costs only permits claims for support staff who are not part of the office staff of the consultants, analysts, or experts. The Board finds that document production staff are not consultants, analysts, or experts within the meaning of the Scale of Costs. In this case, the document production staff work for InterGroup; therefore, the Board has considered document production activities within administrative support activities.

In addition, for the reasons set out above, the Board finds that InterGroup consulting fees claimed for witness preparation activities should not be recovered as reasonably related to the proceeding. Consultants who have not provided testimony should not be entitled to time for witness preparation, as it is primarily legal counsel who prepares company witnesses for oral hearings.

InterGroup is claimed to have supported YEC in the preparation of responses to IRs. However, on several IRs, YEC did not provide adequate responses. InterGroup did not support YEC in providing meaningful and helpful responses to the Board, including robust evaluation of alternatives, which would have assisted the Board with assessing reasonableness of the BESS Project.

For example, YUB-YEC-1-(d) was not responded to reflect, the cost of generation from the Whitehorse Rapids facility, on a full costs basis.

For YUB-YEC-1-18(a), YEC response did not provide a meaningful and helpful response for the Board and it could have done so using some reasonable assumptions on battery degradation. Furthermore, YEC's evaluation of alternatives was limited and responses to IRs such as YUB-YEC-1-18(a) would have assisted the Board with assessing reasonableness of the BESS Project.

Another example is the response to YUB-YEC-1-43 that was not of assistance to the Board, as the response by YEC did not assess the realistic potential of a thermal option. It would have been helpful to the Board in its assessment of the viability of the BESS Project compared to a thermal plant option.

Finally, Hatch provided subject matter expertise on batteries, was on the witness panel, and gave evidence in the proceeding. Because of Hatch's participation, the need and justification for the use of Intergroup in assisting with the BESS Application, proceeding documents, and hearing were not transparent to the Board.

The witnesses for this proceeding were all YEC employees. It is not evident why YEC needed several Intergroup consultants in attendance at the oral proceeding (who were not witnesses in the hearing), nor why support for the YEC witnesses could not be handled by internal YEC staff and counsel. The Board has considered the hours for witness preparation in its overall reduction of InterGroup's consulting costs.

Accordingly, the Board reduces the consultant fees claimed for Intergroup by 50%, which results in costs awarded for InterGroup's consultant fees in the amount of \$44,203.75.

The Board approves Intergroup's disbursement of \$75.03 for external printing.

Accordingly, the Board approves consulting fees and administrative support fees of \$44,203.75, and disbursements of \$75.03, which results in a total of \$44,278.78 for Intergroup for participation in the BESS Project proceeding.

Hatch

The costs claim filed for Hatch was for work performed between March 2021 and May 2021. The invoices submitted for Hatch were largely redacted and neither itemized tasks nor were the hours associated with those tasks reflected in the invoices. The invoices do reflect hours incurred by consultant by date, the consultant rate, and the total amounts billed in that specific invoice. YEC did not explain in its costs application why the invoices supporting Hatch's participation in the BESS Project proceeding were redacted. A "Breakdown of Hatch Invoices"³ was included in YEC's costs application and it summarized the redacted information. The breakdown provided more detail on whether a task was related to "preparation," "attendance", or "follow-up" but it did not explain further what specific tasks were undertaken by specific consultants.

It can be reasonably discerned from the breakdown that all tasks completed after April 23, 2021 for preparation, attendance, and follow-up were completed by Ms. Zuliani. Ms. Zuliani was also the Hatch witness who was available to provide testimony on the Hatch engineering report in support of the BESS Project.

³ YEC's Cost Application, PDF page 55 of 77, activities between January 4, 2021 and January 22, 2021.

As stated above, Section 3.3 of the Board’s Scale of Costs confirms that the onus is on the applicant to provide sufficient information for the Board to effectively assess its claim and must address the specifics of the proceeding. In Section 4.1 of the Scale of Costs, the following is stated under the section “Professional fees”:

Claims for professional fees must be accompanied by a statement of account that must include the following:

- The date of activity undertaken;
- A description of the activity undertaken with sufficient detail to allow the Board to understand the nature of the activity and how it relates to the issues being advanced by the eligible participant; and
- The time incurred with respect to each described service.

The Board considers that, on balance, YEC’s costs claim for Hatch does not sufficiently provide a description of the activities undertaken by Hatch’s consultants with enough detail to allow the Board to understand the preparation activities undertaken and how they related to the Hatch engineering report or the issues that were advanced. Although the Hatch report and the Hatch witness were integral to the proceeding, due to insufficient information being provided, the Board disallows 25% of the Hatch costs for its activities related to the BESS Project proceeding.

Accordingly, the Board approves consulting fees of \$9,039.00 for Hatch for participation in the BESS Project proceeding.

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

For the BESS Project proceeding:

DLA Piper LLP (Fees)	\$16,100.00
InterGroup Consultants Ltd. (Fees and Disbursements)	\$44,278.78
Hatch Ltée	<u>\$ 9,039.00</u>

Total costs awarded: \$69,417.78

BOARD COSTS

3. Yukon Utilities Board

The Board costs with respect to the BESS Application and BESS Project proceeding 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 \$102,718.60.

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 record these hearing-related costs in its Hearing Costs Reserve Account.

UCG	\$ 14,411.25
YEC	\$ 69,417.78
Government of Yukon (Board costs)	<u>\$102,718.60</u>

Total costs awarded: \$186,547.63

Dated at the City of Whitehorse, Yukon, the 26th day of September 2021.

BY ORDER



Richard Buchan
Chair