

Yukon Utilities Board Board Order 2024-07

Appendix A: Reasons for Decision

July 26, 2024

1. Introduction

1. On March 16, 2022, the Yukon Utilities Board issued Board Order 2022-03 in relation to Yukon Energy Corporation's (YEC) 2021 General Rate Application (GRA). In Appendix A to Board Order 2022-03: Reasons for Decision, the Board made findings on the GRA.
2. On April 14, 2022, Yukon Energy Corporation filed an Application for Review and Variance of Board Order 2022-03 (Review Application), pursuant to section 62 of the Act and section 31 of the Board's Rules of Practice (Rules).
3. In its Review Application, YEC stated that it disagreed with the reduction of 50 basis points to YEC's risk premium, and with the disallowance of costs for the WH2 Uprate Project and for the WH4 Project. YEC alleged that the Board committed errors in fact, law or jurisdiction and that the process followed by the Board in making these findings was unfair to YEC.
4. On August 26, 2022, the Board issued Board Order 2022-10 granting YEC's Review Application in part on the initial screening phase. Accordingly, the Board directed that the Review Application proceed to Phase 2 on the limited issue of determining the amount of the risk premium reduction and whether the reduction should be greater than zero but not more than 50 basis points. The Board dismissed the Review Application on the other grounds noted above.
5. The Board issued a process schedule for Phase 2 of the Review Application in Board Order 2022-12 on September 6, 2022.
6. Interveners to the YEC 2021 GRA were given the opportunity to participate in Phase 2 of the Review Application proceeding without filing a request for intervener status. No interveners participated in this proceeding.
7. The Board considered the record for this proceeding closed as of November 3, 2022.
8. On January 9, 2023, the Board issued Board Order 2023-01 and Appendix A to Board Order 2023-01: Reasons for Decision.
9. The Board received a costs claim from YEC on February 8, 2023 and comments from Utilities Consumers' Group (UCG) on February 9, 2023.
10. After careful consideration, the Board has exercised its discretion based on the criteria set out in the Scale of Costs, Schedule 1 to the Rules.

2. Applicant costs – Yukon Energy Corporation

2.1. Costs claim

11. Yukon Energy Corporation claimed the following costs:

DLA Piper (Canada) LLP (fees)	\$ 6,055.00
InterGroup Consultants (fees and disbursements)	\$ <u>17,093.50</u>
Total amount claimed	\$ 23,148.50

12. YEC retained DLA Piper LLP as legal counsel, InterGroup Consultants Ltd. (InterGroup) as its regulatory consultant. In its costs claim, YEC submitted that all costs as applied for are reasonable and necessarily incurred in order to prepare and support the Phase 2 of its Review Application of Board Order 2022-03 and the costs claimed are in accordance with the Scale of Costs.
13. P. John Landry of DLA Piper LLP provided legal service, with the assistance of Jason Herbert. YEC claimed legal fees for P. Landry and J. Herbert at the hourly rate of \$350.00 as they have more than 20 years experience. The total hours claimed are 17.30 hours for assistance in preparations of the September 20, 2022 submission, review of YEC's responses to the information requests, preparation and review of November 3, 2022 submission; and provision of legal advice as required during the proceeding. The total fees claimed for legal services are \$ 6,055.00.
14. YEC claimed costs for InterGroup totalling \$ 17,093.50. This amount included disbursements for photocopying of \$17.50. It submitted that InterGroup was involved in the preparation of the September 20, 2022 submission and with the drafting, coordination, review and finalization of interrogatory responses and the November 3, 2022 submission. YEC stated that the consulting services claimed were primarily provided by Cam Osler, who has over 20 years of experience, at a rate of \$260.00 an hour and Mona Pollitt-Smith who has over 15 years of experience, at a rate of \$190.00 an hour. 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. The total amount of hours claimed are 54 hours for Mr. Osler and 14.75 for Ms. Pollitt-Smith.
15. The UCG commented on the YEC costs claim application. It stated that the UCG did not understand why consultants were necessary when the Review Application was obviously a legal process. These are costs YEC wishes to pass on to ratepayers. It submitted that the Board has disallowed costs for reviews in previous decisions.

2.2. Board costs award

16. At the outset, the Board notes that section 32 of the Rules states:
32. (1) Pursuant to section 56 of the Act, the Board may award costs in accordance with Schedule 1.
- (2) No costs shall be awarded with respect to the first phase of an application for review outlined in section 31.
17. Under subsection 32 (2) of the Rules, no costs will be awarded for the first phase of an application for review. In the past, the Board has disallowed costs for the first phase of a review application. However, in this instance, the Board is considering costs claimed for phase 2 of the YEC Review Application. Costs for a phase 2 Review Application fall under subsection 32(1) of the Rules and costs may be awarded for this Review Application.
18. 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 phase 2 of the Review Application. Accordingly, the Board awards \$6,055.00 in legal fees for DLA Piper.
19. In Board Order 2022-10, the Board determined that the Review Application would advance to Phase 2 of the review process only on the limited issue of determining the amount of the risk premium reduction and whether the reduction should be greater than zero but not more than 50 basis points. Further, in Board Order 2022-12 which set out the process for the second phase, the Board provided YEC with an opportunity to file evidence and submissions on the appropriate risk premium reduction and set out an information request process. Therefore, under Phase 2, the Board sought information on the appropriate risk premium reduction. This was not solely a legal process, as argued by UCG in its requests to Board disallow costs claimed for InterGroup. The Board finds that YEC incurred these costs to make its submission, respond to information requests and make a reply submission in accordance with the process schedule for this proceeding.
20. For InterGroup, the Board finds that the hourly consulting fees claimed for InterGroup consultants are within the Scale of Costs. The Board further finds that the costs claimed for InterGroup are reasonable, and directly and necessarily related to the proceeding. For the above reasons, the Board awards \$17,076.25 in consulting fees for InterGroup. The disbursements in the total amount of \$17.25. for photocopying are claimed in accordance with the Scale of Costs and are approved.
21. In summary, the Board awards costs to YEC as follows:

Legal services provided by DLA Piper LLP

Legal fees: \$ 6,055.00

Consulting services provided by InterGroup Consultants

Consulting fees:	\$ 17,076.25
Disbursements:	\$ <u>17.25</u>
Total costs awarded:	\$ 23,148.50

3. Government of Yukon costs – Yukon Utilities Board

22. The Board costs with respect to Phase 2 of the Review Application 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.
23. The Board directs an award of costs to Government of Yukon in the amount of \$109,726.63.

4. Total costs awarded

NOW THEREFORE the Board Orders as follows:

1. YEC shall pay the following amounts to the Government of Yukon within 30 days of the issuance of this Order:

Yukon Energy Corporation	\$ 23,148.50
Government of Yukon (Board Costs)	\$ 109,726.63
Total costs awarded:	\$ 132,875.13
2. The Board finds that the total cost awarded as hearing-related costs of the Review Application shall be deemed utility regulatory costs and shall be added to the utility's rate case reserve fund.