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## Yukon Utilities Board

**From:** Yukon Utilities Board  
**Sent:** Tue 2008-06-10 6:54 PM  
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**Cc:** allan.domes@auc.ab.ca; Dwayne Ward [Dwayne.Ward@auc.ab.ca]; bob.clarke@auc.ab.ca  
**Subject:** Hearing Cost Award Information  
**Attachments:** Scale of Costs.pdf(21KB) Hearing Cost Process for distribution at PHC Aug 30, 2006.doc(34KB) Intervenor Costs Awards Policy.pdf(500KB)

All Parties:

Attached are the Board's Intervenor Costs Award Policy and the Scale of Costs (Schedule 1) for your reference. I have also included below an excerpt from Board Order 2006-7, Appendix A, for further clarification about Intervenor costs and the application of the policy.

**Appendix A, Board Order 2006-7, excerpt:**

### 3.0 Costs

With respect to the Scale of Costs, the issue of professional versus non-professional status was discussed at the Pre-hearing Conference. The Board has reviewed the comments provided by parties, previous orders where professional and non-professional status was addressed, and the YUB Intervenor Costs Award Policy. Based on this review, it appears to the Board that there has been some confusion over the years regarding how the Scale of Costs is to be applied. The Board will take this opportunity to clarify the policy and how it will be applied.

In Schedule 1 of the Intervenor Costs Award Policy, item 3 states:

#### 3. Intervenor

The Board encourages Intervenor with similar interest to combine their interventions. Individual Intervenor accredited under section 24 who provide the Board with a constructive view on a particular regulated part of a utility's operations will in the Board's discretion be eligible for reimbursement of their reasonable disbursements in accordance with the scale above. Intervenor participating generally, throughout proceedings will have any claims for costs assessed on their own merits. The Board will not approve an attendance allowance.

In previous Board Orders, a non-professional fee has been allowed to certain Intervenor. For example, in Board Order 1996-10, UCG was allowed a non-professional fee of \$25/hr. In Order 2005-16, UCG, Mr. Percival, the Ad Hoc Group of Businesses, YCS, and Mr. McMahon were allowed a non-professional fee of \$35/hr. Going forward, and consistent with the Scale of Costs, the Board will assess each Intervenor cost application on its own merits. That is, the Board will consider the value provided by the Intervenor. As the Board Orders cited indicate, in the past the norm has been to allow Intervenor \$35/hr.; however, that does not mean that an Intervenor will necessarily receive \$35/hr.

As provided for in the Scale of Costs, an Intervenor's cost application will be assessed on its own merits. An Intervenor could receive more or less than \$35/hr., depending on the degree to which the Board considers an intervention to be of value to the Board. The Board will continue to refer to

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the factors set out in the Scale of Costs when making this assessment. However, to provide parties with additional guidance, if an Intervenor provides subject matter expertise in a manner beneficial and of value to the proceeding, then costs will be awarded accordingly; that is, more than the \$35/hr may be awarded. If an intervention is of limited value to the Board's decision, less than \$35/hr. will be awarded. Interventions of a general or non-specific nature will not generally be valued as subject matter expertise. Intervenors should address these issues in their cost applications.

Costs for retaining lawyers and consultants will be considered under item 1 in the Scale of Costs – Professional Fees. In addition to assessing the value a lawyer or consultant provided, where an Intervenor hires lawyers and/or consultants, the Board will also consider whether these arrangements are arm's-length, third-party arrangements.

The Board reminds parties that for the purposes of its decision in the subject proceeding, the Board will consider all evidence and argument put forward. The Board will not assign more or less weight to a party's position based on hourly rates. Rather, the Board will consider the relevancy and merits of a party's position in making its decision. For cost application purposes, the Board will consider what cost recovery, if any, is appropriate based on the value provided by the party in the proceeding.

At the Pre-hearing Conference, YECL requested the Board determine up front whether YECL is participating in the hearing for its sole business interest. YECL submitted that it is participating on behalf of its customers. The Board is of the view that it cannot prejudge what interest YECL is participating in the proceeding to protect and, therefore, will not determine in advance whether YECL is participating for its sole business interest or for the protection of its customers.

***Deana Lemke, Executive Secretary***

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