IN THE MATTER OF the *Public Utilities Act*
Revised Statutes of Yukon, 2002, c. 186, as amended

and

Review of Yukon Utilities Board Order 2011-08 and
Appendix A – Reasons for Decision

BEFORE:	B. McLennan, Chair	)	October 14, 2011
	R. Laking	)	
	R. Hancock	)	

BOARD ORDER 2011-13

WHEREAS:

A. On July 11, 2011, the Yukon Utilities Board (Board) received an application from the City of Whitehorse (City) for the Board to conduct a review and variance of Board Order 2011-08 (Decision). The Decision issued on June 28, 2011 contains the Board's cost awards to the applicants and intervenors for the Yukon Energy Corporation (YEC) and Yukon Electrical Company Ltd. (YECL) 2009 Joint Phase II Rate Application.

B. In its July 11, 2011 application, the City, as an intervenor, requested the Board on its own motion review and vary the Board's cost award to the City regarding the costs of Kristjana Kellgren, legal counsel for the City. The City submitted that the Board has discretion under section 62 of the *Public Utilities Act* to reconsider a decision on its own motion. The City submitted that the Board committed errors of fact, law or jurisdiction regarding the appropriateness of Ms. Kellgren's hourly rate as legal counsel for the City by reducing her rate in the proceeding to $130 per hour.

C. The Board has the discretion to review, change or cancel any of its Decisions or Orders, under section 62 of the *Public Utilities Act*.

D. The Board has adopted section 62 Review Guidelines which set out that the Board uses a two-phase system for applications for review and variance. 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 a second phase on the merits. In the case of an alleged error, the application must show that the error is substantial on a *prima facie* basis and has significant material implications.

E. On July 15, 2011, the Board sought comments on the City's July 11, 2011 application from the Parties who participated in the YEC and YECL 2009 Joint

Phase II Rate Application. The City was given an opportunity to reply to the other Parties' comments.

F. Comments were received from the Utilities Consumers' Group (UCG), John Maissan, YECL, and YEC. The Board also received a reply from the City.

G. The Board has considered the City's request for a review and variance and the submissions of the Parties in light of the Board's section 62 Review Guidelines.

H. The Board has decided that the City has not shown on a *prima facie* basis that the Board committed substantial errors of law or fact in its costs award to the City regarding Ms. Kellgren's hourly rate. Therefore, the City has not established a *prima facie* case sufficient to warrant full consideration by the Board in a second phase on the merits. As a result, the Board need not decide that an error has significant material implications.

NOW THEREFORE, for the reasons set out in the attached Appendix A, the Board denies the City of Whitehorse's application for the Board to review and vary Board Order 2011-08.

DATED at the City of Whitehorse, in the Yukon Territory, the 14th day of October 2011.

BY ORDER



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Bruce McLennan
Chair