Yukon Utilities Board

Board Order 2025-11

Appendix A: Reasons for Decision

May 21, 2025

ERRATA

[*Errata noted at the end of this document]

1 Introduction

1. On August 31, 2023, Yukon Energy Corporation (YEC) filed a General Rate Application (GRA, Application) with the Yukon Utilities Board (the Board) pursuant to the *Public Utilities Act* (the Act) and Order-in-Council 1995/90.

2. On September 7, 2023, the Board issued Board Order 2023-19 providing notice of the Application and setting out the process steps, including: intervener registration; comments and reply comments on YEC's proposed interim rates; a YEC technical workshop; a round of Information Requests (IRs) to YEC and YEC IR responses; filing of intervener evidence; IRs and IR responses on intervener evidence; rebuttal evidence; an oral hearing; and written final and reply arguments.

3. Ministerial approval for this proceeding was granted on September 20, 2023.

4. In Board Order 2023-23 (issued October 10, 2023), the Board granted intervener status to ATCO Electric Yukon (AEY), John Maissan, Nathaniel Yee, and the Utilities Consumers' Group (UCG), and provided its ruling on interim rates.

5. Through Board Order 2023-25, issued December 22, 2023, the Board ruled on motions for further and better IR responses.

6. The Board held an oral hearing on March 4 to 7, 2024, in Whitehorse, Yukon, with some virtual attendance. The parties filed written final and reply arguments in accordance with the amended process schedule as determined in the oral hearing.

7. The record of this proceeding closed on April 2, 2024, the date that written reply arguments were filed by the parties.

8. The Board issued Board Order 2024-05 and Appendix A: Reasons for Decision on the Application on July 12, 2024, and a subsequent Errata to Appendix A.

9. UCG, Nathaniel Yee, and YEC filed costs claims for participation in the proceeding within the timelines specified in Section 3.1 of the *Scale of Costs*, Schedule 1 to the Board's *Rules of Practice (Scale of Costs)*. Mr. Maissan informed the Board he would not be filing a costs claim.

10. On August 29, 2024, the Board received comments from UCG and Nathaniel Yee on YEC's costs claim, as well as from YEC on Nathaniel Yee's cost claim, within the timeline set out by the Board for comments.

11. Costs claimed by the parties are subject to stringent scrutiny by the Board as costs awarded are charged to customers through the utility's rates. In making its costs award, the Board considered the provisions of the *Scale of Costs*. More specifically, the Board noted the following provisions:

3.1. A participant may apply in writing to the Board within 30 days after the issuance of a Board decision in a proceeding for an award of costs incurred in that proceeding by filing a costs claim which explains:

(i) what interests they represent.

(ii) what tasks they have undertaken,

(iii) why they appeared before the Board

(iv) what efforts were expended to avoid duplication as between participants or as between counsel, experts, and consultants, and

(v) why the costs submitted are reasonable.

...

3.3 The onus is on the applicant or intervener to provide sufficient information for the Board to effectively assess its claim and must address the specifics of the proceeding.

...

6.1 In exercising its discretion to award costs, the Board may award costs, in accordance with the Scale of Costs, to a participant if the Board is of the opinion that:

(a) the costs are reasonable, prudent, and directly and necessarily related to the proceeding, and

(b) the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Board.

6.2 In determining the amount of costs to be awarded to a participant, the Board may consider whether the participant did one or more of the following:

...

(f) submitted evidence and argument on issues that were not relevant;

...

(h) engaged in conduct that unnecessarily lengthened the duration of the hearing or other proceeding or resulted in unnecessary costs to other participants...

12. 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*. In addition, the Board has considered all relevant materials comprising the record of this proceeding, including the evidence and argument provided by each party.

2 Intervener costs

13. As noted above, UCG and Nathaniel Yee submitted costs claims.

2.1 UCG

14. UCG claimed costs for two regulatory consultants, Mr. Roger Rondeau and Mr. Pat McMahon, on Form 2, as follows:

Roger Rondeau- Hourly rate $100.00	
Hours of Preparation	94.5 Hrs
Attendance at Hearing	40.0 Hrs
Argument and Reply	43.5 Hrs
Total Fees claimed: (178 hours x $100.00)	$17,800.00
Disbursements claimed	$ 240.00
Patrick McMahon - Hourly Rate $225.00	
Hours of Preparation	17.0 Hrs
Argument and Reply	8.5 Hrs
Total Fees Claimed: (25.5 x $225.00)	$ 5,737.50
GST (5%) claimed:	$ 286.88
Total UCG claim:	**$24,062.38**

15. In its costs claim, UCG stated that it is a ratepayer group representing residential and small business ratepayers and used Mr. Roger Rondeau as its regulatory consultant in the proceeding. In addition, as Mr. Rondeau was dealing with the AEY General Rate Application, UCG negotiated a services agreement with Mr. Patrick McMahon to aid in specific areas of its intervention. UCG submitted that, considering the issues in the proceeding, the extensive evidence contained in the application and interrogatories, and the length of the proceeding, the costs incurred by UCG were reasonable and necessary to effectively participate in the proceeding. It added that it acted responsibly and contributed to a better understanding of the issues to be decided by the Board and that UCG was referenced several times in the Board decision on the application. In support of its costs claim, UCG submitted: a services agreement with time rendered for Mr. Rondeau; an invoice summary; a detailed schedule for the time claimed for Mr. Rondeau; a breakdown of Mr. McMahon's costs and services agreement; and details of the disbursements.

16. UCG also submitted that Mr. Rondeau and Mr. McMahon provided extensive consulting services without the assistance of legal counsel, and that the hourly rate claimed for Mr. Rondeau of $100.00 and for Mr. McMahon $225.00 was lower than the rates for consultants in the *Scale of Costs* given their over 40 years of experience as participants in regulatory proceedings, and that these rates were justified due to the complexity and length of the proceeding. UCG added that Mr. Rondeau and Mr. McMahon assisted UCG in making valuable and comprehensive submissions. It stated that Mr. Rondeau attended each day of

the oral hearing, took notes for later use in the final argument, and that Mr. Rondeau spent two hours in cross examination on the first day of the hearing and four hours on the second.

2.1.1 Costs awarded

17. The Board notes that UCG retained the services of two regulatory consultants, Mr. Rondeau and Mr. McMahon, to represent it in the proceeding. In past cost awards on previous proceedings, the Board has considered UCG as an unrepresented intervener and awarded costs under section 4.3 of the *Scale of Costs*. However, given that UCG retained the services of Mr. Rondeau and Mr. McMahon as regulatory consultants and submitted a services agreement and a description of the activity undertaken for UCG in relation to the proceeding and the date the activity was undertaken, the Board has assessed UCG's costs claim under section 4.1 of the *Scale of Costs*. As the hourly rate claimed for Mr. Rondeau is below the rates for a consultant under paragraph 4.1 (b) of the *Scale of Costs*, the Board grants the hourly rate for Mr. Rondeau's consulting services service of $100.00. The rate requested for Mr. McMahon is within the *Scale of Costs*.

18. In assessing UCG's costs claim, the Board reviewed the services provided by each consultant and the dates the services were provided by each consultant as UCG stated that it retained Mr. McMahon to aid it in specific areas of its intervention because Mr. Rondeau was dealing with the AEY General Rate Application. First, the Board assesses the costs claimed for Mr. Rondeau and subsequently the costs claimed for Mr. McMahon.

19. Mr. Rondeau participated in the proceeding by reviewing of the Application, attending YEC's procedural conference, making IRs, reviewing information responses, preparing motions, attending the hearing, cross-examining witnesses, and preparing final argument and reply argument. Mr. Rondeau also claimed for preparation of the UCG cost claim. The Board finds that there are discrepancies among the various documents submitted in support of the hours claimed for Mr. Rondeau. However, the total hours claimed are 178.

20. After analyzing the services provided and hours claimed, the Board is not persuaded that the full number of hours claimed by UCG for Mr. Rondeau are reasonable for the following reasons. The Board considers that the proceeding was not complex or lengthy given the YEC General Rate Application in question, although Mr. Rondeau's contribution on behalf of UCG was of assistance and contributed to a better understanding of some of the issues before the Board. Where the Board found the costs claimed were not reasonable were hours claimed for the UCG submissions on brushing costs as what was provided did not help the Board to make its decision on these costs and its submissions on YEC forecast of costs of long-term debt as the forecast was prepared in accordance with Board direction. The hours claimed for preparing a costs claim and the hours claimed for discussion with Mr. McMahon regarding the consulting contract are disallowed as neither of these tasks assisted the Board in its determination on the issues in the proceeding. Accordingly, pursuant to Section 6.1(b) of the *Scale of Costs*, the Board reduces the consultant fees claimed for Mr. Rondeau by 20 percent, resulting in an award of consulting fees of $14,240.00.

21. UCG claimed $420.00 in disbursements for Mr. Rondeau for lunches, mileage, and internal photocopying. The claim for lunches was not accompanied by receipts as required by the *Scale of Costs*. Mileage can only be claimed if Mr. Rondeau travelled for 50 km or more to the hearing each day. The claim for mileage indicated that it was 8 km to the hearing venue. Therefore, the disbursements are reduced by $120.00 and the Board awards $120.00 in disbursements.

22. UCG costs claim sets out that Mr. McMahon undertook the following tasks from October 1 to November 1, 2023: he reviewed the application, discussed with UCG regarding issues to address in IRs, discussed specific issues for argument, prepared draft IRs on YEC evidence, and revised IRs after discussion with UCG. Twelve hours are claimed for these tasks. An additional five hours is claimed from November 29, 2023 to March 3, 2024, for: review and analysis of YEC IR responses; preparation of a draft motion for further IR responses; review of evidentiary record; and preparation of initial cross-examination questions. For argument and reply, UCG claimed 8.5 hours for Mr. McMahon. Considering the preparation hours and hours for argument and reply claimed for Mr. Rondeau for the same tasks, the Board finds that the hours claimed for Mr. McMahon are not reasonable as there is duplication. The rationale given by UCG in engaging the services of Mr. McMahon is that Mr. Rondeau was dealing with the AEY General Rate Application and Mr. McMahon was to aid it in specific areas of its intervention. However, Mr. Rondeau carried out the same tasks as Mr. McMahon. In addition, considering that record for the AEY GRA proceeding closed on December 20, 2023, claims for time spent in 2024 are disallowed. Due to the duplication of tasks and the total hours awarded for the tasks performed by Mr. Rondeau, the Board finds that need for two consultants was not supported. Accordingly, the Board reduces the hours claimed for Mr. McMahon by 60 percent and awards $2,295.00, plus GST in the amount of $114.75.

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

Consultant Fees	
Roger Rondeau	$ 14,240.00
Patrick McMahon: ($2,295.00 plus GST of $114.75)	$ 2, 409.75
Disbursements	$ 120.00
Total costs awarded	**$ 16,769.75**

2.2 Nathaniel Yee

24. Nathaniel Yee filed a costs claim for the proceeding. He claimed 323 hours in total, comprised of 267.75 hours for preparation and 55.25 hours for argument and reply, at $45.00 an hour, and $400.00 in honorarium, for a total claim of $14,535.00. Mr. Yee submitted that "[w]hile some of my conclusions were perhaps controversial, I was thorough and exacting in my research." He added that his contributions had value in highlighting N-1 capacity and permitting issues, regardless of the outcome. He noted that he participated in four previous

proceedings. In support of the hours claimed, Mr. Yee filed a document entitled "Nathaniel Yee Cost Claim Detail- YEC 2023-24 GRA" (cost claim detail) set out below.

Nathaniel Yee Cost Claim Detail, YEC 2023-24 GRA

Dates:	Hours:	Activity:
Sep-04	2.00	Initial look at GRA
Sep-21	3.75	Intervenor App, notes on interim rates
Sep-27	3.50	Reading and notes on GRA, interim rates
Oct-02 to 06	9.25	Reading and notes, Initial IRs
Oct-11	0.75	GRA Workshop (online attendance)
Oct-26 to Nov 1	27.00	Reading and notes, working on IRs
Nov-02	6.00	Reading IRs from others
Nov-03 to 26	59.50	Reading and notes, preparation of evidence
Nov-29	9.75	Review of IR responses - mine and others
Dec-04 to 06	6.00	Review of IR responses, Motion for further response
Dec-12 to 17	9.75	Review YEC response to Motion, preparing comment on response
Dec-22 to Jan 11	50.25	Reading and notes, preparation of evidence and for oral hearing
Jan-17 to 22	3.00	Review of YEC replies to my motion and YUB motion.
Feb-08 to 22	25.75	Review of Rebuttal Evidence, prep for oral hearing
Feb-23 to 27	17.75	Review and preparation for hearing
Feb-28 to 29	13.00	Oral Hearing prep and writing opening statement.
Mar-01	4.75	Oral Hearing prep and opening statement analysis, aids to cross.
Mar-02 to 03	16.00	Review and preparation for hearing
Subtotal Preparation:	267.75	
Mar-04 to 07		4 days Oral Hearing
Mar-09	5.00	Review of transcripts, notes.
Mar-17 to 22	36.00	Review of transcripts, notes, writing preparing final Argument
Mar-25 to 26	4.50	Review of Final Arguments
Mar-27 to 28	9.75	Review of Final Arguments, preparing Reply Argument
Subtotal Argument & Reply:	55.25	
Total hours excluding Attendance at hearing	323.00	

2.2.1 Comments of YEC on Yee Cost Claim

25. YEC asked the Board to consider, in exercising its discretion to award costs to Mr. Yee, the amount of costs to be awarded based on the factors set out in section 6 of the *Scale of Costs*, including:

> whether the participant "acted responsibly in the proceeding" (s. 6.1(b)), as well as whether the participant:

- submitted evidence and argument on issues that were not relevant (s. 6.2(f)); or
- engaged in conduct that unnecessarily lengthened the duration of the hearing or other proceeding or resulted in unnecessary costs to other participants (s. 6.2(h)).

26. YEC submitted that Mr. Yee's overall approach to the proceeding "crossed the line of a participant acting 'responsibly'. In many instances it was irresponsible, inappropriate and disrespectful to the process." It added that Mr. Yee submitted evidence and argument on issues that were not relevant and engaged in conduct that unnecessarily lengthened the duration of the hearing or other proceeding or resulted in unnecessary costs to other participants.

27. YEC pointed its previous submissions on Mr. Yee's conduct in: YEC's February 8, 2024 Rebuttal Evidence; YEC's Opening Statement; Mr. Landry's comments at the hearing; and in YEC's Final Argument, that it was

> wholly inappropriate for Mr. Yee to level and pursue unsupported allegations of fraud against YEC – including reputable and hard-working YEC employees who were individually named in his materials – in the context of this regulatory proceeding before the Board. Those allegations were entirely without merit, and served only to distract from the relevant issues that were properly before the Board in this proceeding.

28. YEC added that YEC incurred unnecessary expense to respond to Mr. Yee's persistence in pursuing his fraud allegations and other irrelevant lines of argument (that were for other regulators to deal with) and that this conduct unnecessarily lengthening the duration of the hearing. Also, YEC noted that, during the hearing, the Board Chair recognized that Mr. Yee's attempts to advance allegations of fraud in a GRA were inappropriate. It also asked the Board to consider the need to deter such conduct in future proceedings before the Board when assessing Mr. Yee's cost claim.

2.2.2 Costs awarded

29. Mr. Yee's costs claimed are subject to Section 4.3 of the *Scale of Costs* for his participation as an unrepresented intervener at the hearing.

30. The Board observes that Mr. Yee provided a very limited explanation of the tasks undertaken in relation the proceeding, topics researched, and, at times, only provided a range of dates for the tasks undertaken. Mr. Yee provided little explanation as to why the costs submitted are reasonable and that incurring such costs was prudent and directly and necessarily related to the proceeding. The Board notes that there are numerous entries for reading and making notes and preparation of evidence, for example: November 3 to 26, 59.50 hours for notes and preparation of evidence and oral hearing; December 22 to January 11, 50.25 hours; and numerous subsequent hours for hearing preparation. This is an

excessive number of hours for the preparation of evidence and preparation for the hearing considering the focus on allegations of fraud in his document and little new information prepared by Mr. Yee on issues to be considered in the proceeding. The Board also finds that the information contained in Mr. Yee's evidence was opinion, but that Mr. Yee was not qualified as an expert in the YEC GRA proceeding and is therefore not entitled to provide opinion evidence. Further, it is unclear to the Board how much time claimed by Mr. Yee relates to making unsubstantiated allegations of fraud or false information and false representation. This conduct is further addressed below. The onus was on Mr. Yee to provide sufficient information for the Board to effectively consider his claim. The Board considers that Mr. Yee has not met this onus due to the lack of specific detail on the tasks undertaken and the dates and times on which the specific tasks were done and the reasonableness of incurring the costs claimed.

31. Mr. Yee's participation in the GRA proceeding focused largely on environmental permits for diesel generation and permitted capacity. The Board considers that the information provided by Mr. Yee on the N-1 criteria and the generation capacity required to meet the N-1 criteria did not contribute to a better understanding of this issue. Further, the Board stated, in Appendix A to Board Order 2024-25, that:

> 137. Mr. Yee has provided substantial comment on permitted capacity and whether ratepayers should pay for costs related to unpermitted capacity. Mr. Yee also commented on YEC's elasticity when determining the capacity rating of several of its thermal units. These submissions do not provide evidence the Board is able to use to determine the revenue requirement for YEC to provide safe and reliable electric service at rates that are in the public interest.

32. The Board Also notes the following statement in Mr. Yee's Opening Statement:

> In the current proceeding, part of my focus has been in contrasting what YEC has presented to the Board with what has been presented to other regulators.

33. This focus on contrasting information made to the Board and other regulators was not of assistance to the Board in making its findings on the costs of rental diesel units and whether the rental diesels were useful and required to be used.

34. In addition, Mr. Yee alleged in his evidence that the applicant provided false information to the Board and that the information was fraudulent. He provided opinion and made argument on the elements of fraud. The Board considers that such allegations are out of scope of a utility proceeding and irrelevant to the GRA proceeding. Such allegations have no place in any Board proceeding and such conduct is not acceptable in a regulatory proceeding. The Board finds that Mr. Yee did not act responsibly by bringing forward unsubstantiated allegations of fraud in the GRA proceeding. The Board further finds that such conduct unnecessarily lengthened the duration of the hearing and resulted in unnecessary costs to YEC and other parties.

35. For the above stated reasons, the Board reduces the hours claimed by Mr. Yee by 60 percent of the hours claimed, and awards 129.2* hours (323 hours – 193.80 hours). Further, given that Mr. Yee did not act responsibly in this proceeding and that his conduct resulted in unnecessary costs for other parties, the Board exercises its discretion and grants an hourly rate of $40.00. Accordingly, the Board awards Mr. Yee $5,168.00*. The honoraria claimed is in accordance with the *Scale of Costs* and is awarded accordingly.

36. In summary, the Board awards costs to Nathaniel Yee as follows:

Fees	$5,168.00*
Attendance honorarium	$ 400.00
Total costs awarded	**$5,568.00***

3 Applicant Costs Claim — YEC

3.1 YEC Costs Claim

37. YEC claimed the following costs:

DLA Piper (Canada) LLP (fees and disbursements)	$217,888.72
InterGroup Consultants Ltd. (fees and disbursements)	$376,682.05
Aasman Brand Communications	$ 4,921.13
YEC disbursements	$ 5,030.99
Total amount claimed	**$599,601.76**

38. YEC submitted that all costs as applied for are reasonable and necessarily incurred in order to prepare and support its Application. It added that:

- Applicant costs are incurred as a necessary part of its business or operations as a regulated utility;
- Applicants begin to incur costs related to their application prior to a formal process with the YUB commencing, i.e., costs to prepare and file an Application;
- Applicants that require a review or approval by the YUB must engage in the formal review process and cannot realistically limit their level of participation in the process, i.e., applicants must address all issues and questions raised by intervenors and the Board as they arise;
- An applicant must participate actively in the process and typically cannot reasonably coordinate with others to increase efficiency or reduce duplication.

39. YEC provided additional detail and justification for professional costs incurred — legal and consulting — which are summarized below, as well as on disbursements expended.

40. YEC retained DLA Piper LLP as legal counsel, with P. John Landry and Jason Herbert providing the legal services required. They were assisted by Mr. B. Herbert and an articling student. YEC claimed legal fees for Mr. Landry and Mr. Herbert at the hourly rate of $350.00, as they have more than 20 years of experience, fees for Mr. B. Herbert, who has also more than 20 years of experience, at the hourly rate of $350.00, and fees for an articling student at $140.00. All of the rates claimed were in accordance with the *Scale of Costs*. The total hours claimed are 439.75 hours for preparation, 63 hours for attendance, and 108.20 hours for argument and reply argument. Detailed invoices from DLA Piper LLP were submitted as part of the cost claim. The total fees claimed for legal services are $212,656.50. Disbursements of $ 5,232.22 for airfare, accommodation, taxis, and parking were also claimed.

41. YEC stated that Mr. Landry and Mr. Herbert provided the following assistance to it in relation to the proceeding by reviewing the Application, information requests by intervenors, and YEC's responses to information requests:

- Assistance in preparations for the oral hearing;
- Attendance at the oral hearing;
- Review of final argument and reply arguments; and
- Providing legal advice as required during the proceeding.
- Significant extra effort was required to address the matters outside of the scope of this proceeding, including unsupported claims and accusations made by Mr. Yee in his evidence and during the hearing preparations and process. Mr. Yee's persistence in consistently taking positions and pursuing lines of argument that are for other regulators to deal with, making it practically necessary for YEC to respond and to incur unnecessary expenses. YEC had no choice but to defend itself.

42. YEC also retained InterGroup Consultants Ltd. (InterGroup) as its regulatory consultant to assist with the preparation and filing of the Application and the review process before the Board. More specifically, InterGroup assisted YEC with: preparation of the Application and the drafting, review, and finalization of interrogatory responses; preparation and support for the oral hearing process; and argument and reply argument. YEC added that InterGroup provided support to witnesses prior to and during the hearing by providing and reviewing briefing materials for witnesses, and in preparation of undertakings and other submissions provided during the oral hearing. These services were primarily provided by the following consultants: Cam Osler who has over 40 years of experience, at a rate of $ 260.00 to $270.00 an hour; Mona Pollitt-Smith who has over 20 years of experience, at a rate of $195.00 to $205.00 an hour; and Abiola Asaolu who has over 5 years of experience, at a rate of $115.00 an hour. YEC added that other InterGroup team members contributed to development and review of material, but this effort was not duplicative and was required to ensure that specific expertise was brought to the development, review, and finalization of materials. YEC stated that the hourly rates for all InterGroup staff are claimed in accordance with the *Scale of Costs*. YEC claimed 1,656.75 hours in total hours for InterGroup, including: 1,418 for preparation; 73 hours for attendance; and 165.75 hours for argument, reply, and

follow up. Detailed invoices from InterGroup were submitted as part of the cost claim. The total fees claimed for InterGroup are $364,760.00. Disbursements of $7,092.00 for airfare, accommodation, meals, and internal photocopying were also claimed.

43. YEC also claimed consultant fees for Aasman Brand Communications to assist with media or communication related activities, including preparation of news releases and advertisements related to the Application, workshop, and hearing. The services were provided by: A. Aasman, who has over 20 years of experience, at an hourly rate of $150.00; R. Aasman, who has over 20 years of experience, at a rate of $135.00; C. Bradbury, who has over 15 years of experience, at an hourly rate of $135.00; and R. Girault, who has over 5 years of experience, at an hourly rate of $135. YEC claimed a total of 31 hours for preparation, for a total of $4,473.75, and disbursements of $447.38 for miscellaneous supplies.

44. YEC claimed $5,030.99 in disbursements for meals, postage, internal photocopying, external printing, and miscellaneous supplies.

3.1.1 Intervener comments on YEC Costs Claim

45. UCG commented on the YEC costs claim. It stated that YEC had four lawyers and 7 consultants to do the work that YEC staff and administration should be doing. UCG submitted that, based on the information presented, it was unable to determine which job each lawyer and consultant did and that this resulted in duplication of costs. Further, it submitted that the ratepayer should not have to pay for the transition of the legal members, due to the retirement of one lawyer from the firm hired, or for two consultants to attend the hearing when one of these consultants did not participate in the hearing. UCG added that YEC had an in-house regulatory person. UCG argued that the costs of only one lawyer and one consultant should be paid for by the ratepayer and the rest of those costs should be paid by YEC's shareholder. UCG noted that AEY had claimed $311,000.00 in costs for its 2023-24 GRA while YEC is claiming over $599,000.00. UCG requested that the Board disallow 50 percent, or more, of the costs claimed by YEC.

46. UCG critiqued the Board in submitting that the Board had "a history of not allowing interveners fair cost recoveries during the hearings, by allowing only $50 per half-day to those parties who have no legal representative". It added that these local interveners spend several hours in cross-examination of the panel in which a lawyer would charge a full $350 per hour, "three and a half times more than what the Board is willing to pay an active intervener for a full day of work."

47. Mr. Yee also submitted comments on the YEC cost claim. He took issue with redactions in the legal invoices filed in support of the legal costs claimed by YEC, and noted some examples. In some of these examples, Mr. Yee set out text for the redacted items from unredacted invoices he claims to have received. Mr. Yee offered to provide the Board with the unredacted invoices which he attempted to file, but the Board did not accept them because the Board's practice is to review the cost claims as filed by a party. He submitted that, in a number of these redacted items, YEC is claiming costs for work that is irrelevant to

the GRA. He added that the "reasoning behind the redaction is unclear to me." He is of the view that "... what YEC has chosen to redact is not private or sensitive information, but in many cases text indicating that these items or portions of them are not chargeable to the GRA." He argued that YEC had no legitimate reason for any redactions in costs claimed in a public hearing, that it has failed to reduce claimed hours correspondingly, and that this is a "false document". He noted that, in a few cases, unrelated charges were moved to "not claimed hours", but not in many other cases. He added that if the Board acts on the redacted document, the Board should disallow any hours and associated costs that include redacted information, meaning a total of 78.5 hours, totaling $26,299.00.

48. Further, Mr. Yee contended that YEC's material alteration of a document to hide unrelated costs is a serious matter and referred the Board to section 366(2)* of the *Criminal Code*. He provided the Board with his interpretation of this section. He asked the Board to explain if it believes that altering invoices and making a false document is an acceptable practice. Further, he asked the Board to evaluate YEC's cost claim "in relation to Canadian Criminal Code sections 366, 367 and 368 and award no costs whatsoever to YEC."

49. Mr. Yee then states that YEC incurred unnecessary expenses for themselves and for interveners by providing incorrect or incomplete information throughout the process. He submitted that, if YEC had been consistent in their information, or more transparent about the inconsistencies, everyone would have saved many hours. He points to the following instances in support of this position. In response to an IR on the specifications for Faro replacement diesels, YEC provided specifications for more expensive Tier 4 units rather than the less expensive Tier 2 units with exhaust treatment to bring Tier 4 equivalency that YEC was planning to install. YEC insisted that this information was correct but finally admitted that the specifications provided to the Department of Environment were correct. Another example is that YEC was not clear, from the beginning of the proceeding, that to meet N-1 requirements it would be contravening permit terms. This would have saved everyone lots of time. The hours that YEC spent on this was time not well spent. Mr. Yee reiterated his argument made in the proceeding that YEC made the unsupported claim in the GRA that YESAA Section 49 allowed them to exceed permitted limits. He stated that the revised response to YUB-YEC-1-35 included questioning about Section 49 and accounted for 31.3 hours ($10,955) on the invoice from DLA Piper. As a result, Mr. Yee takes issue with YEC's statement that "Significant extra effort was required to address the matters outside of the scope of this proceeding, including unsupported claims and accusations made by Mr. Yee in his evidence and during the hearing preparations and process."

50. Mr. Yee recommended that, in future proceedings, YEC be directed to provide correct and clear information from the beginning to ensure an efficient process and to provide consistent information to all regulators. Mr. Yee set out other requests for directions that the Board should issue to YEC.

3.1.2 Costs Awarded

51. As noted above, the Board has discretion to award costs in accordance with the *Scale of Costs*. Section 6 of the *Scale of Costs* states the factor the Board considers in exercising its discretion to award costs and is set out in part above. The Board examines YEC costs claim under the *Scale of Costs* and awards costs as set out below.

52. Regarding the legal fees claimed for DLA Piper LLP, the fees are in accordance with the *Scale of Costs*. The Board is not persuaded of the need for the services of two senior legal counsel for this proceeding. On review of the invoices of DLA Piper, the Board is of the view that there was some overlap and duplication in the tasks undertaken by Mr. Landry and Mr. J. Herbert (Mr. Herbert). These included reviewing the application, attendance at meetings, reviewing information requests and responses, meetings between Mr. Landry and Mr. Herbert, preparation of rebuttal evidence, attendance at hearing, and review of argument and reply. However, the Board is not persuaded by UCG's argument that the Board should only award costs for one lawyer as the detailed invoices support that two legal counsel were needed by YEC for the proceeding.

53. With respect to Mr. Yee's argument about "false documents" and "altering invoices" regarding the redactions on DLA Piper LLP invoices, the Board is not persuaded by Mr. Yee's submissions for the following reasons. First, the Board accepts redacted invoices and has done so in the past as the Board considers whether the redacted invoices support the costs claimed in making a costs award. Also, the Board does not inquire into the reasons for redaction on legal invoices. However, the Board is aware that there may be issues of legal privilege related to information on such invoices. Second, the Board does not accept or rely on the text provided by Mr. Yee in the unredacted examples he provided in his comments on the YEC costs claim in exercising its discretion to award costs because YEC did not submit the unredacted text or rely on it in its costs claim. Third, on disallowing all of the hours and associated costs that include redacted information, the Board finds that such a disallowance is unreasonable as the described tasks undertaken, which are not redacted, relate to the proceeding. Fourth, the Board finds unacceptable Mr. Yee's allegations that YEC has made "false documents", as these comments are unsubstantiated and impute intention, but he has no basis in doing so. The comments on "false documents" and the *Criminal Code* provisions are not within the scope of this costs proceeding and are not relevant to the Board's considerations of the costs. As a result, the Board will not comment on, or consider, such comments. The Board again emphasizes that it awards costs based on the considerations set out in the *Scale of Costs*. Further, the Board is not persuaded to disallow the whole of the YEC claim as the costs pertain to the GRA proceeding and there is no basis for doing so and Mr. Yee has not provided any convincing argument.

54. The Board accepts YEC's submissions that additional legal costs were incurred due to Mr. Yee's allegations of fraud and has considered it in Mr. Yee's costs award set out above. However, the Board considers that the need for some additional IRs and responses arose from YEC's lack of clarity in its responses which added to the costs of the GRA proceeding, including YEC's costs. The Board has considered this in awarding costs to the interveners

and in reducing some of the YEC's costs claimed for legal services and InterGroup. The reduction to consultant fees for InterGroup is set out below.

55. For these reasons the Board reduces the legal fees claimed for DLA Piper LLP by 25 percent. Accordingly, the Board awards $159,492.38. The disbursements claimed are in accordance with the *Scale of Costs* except for the accommodation for Mr. Herbert on March 2, 2024, which was not a hearing day. As a result, the Board has reduced the disbursement by $259.33 and awarded disbursements in the amount of $4,972.89.

56. For InterGroup, the Board finds that the hourly consulting fees claimed for InterGroup consultants are within the *Scale of Costs*. In the GRA proceeding, YEC claimed costs for three InterGroup consultants. YEC added that other InterGroup team members contributed to development and review of material. The Board reviewed the InterGroup detailed invoices. Although YEC stated that the effort of the consultants was not duplicative and was required to ensure that specific expertise was brought to the development, review, and finalization of material, the Board is of the view that there was some duplication of tasks among the three consultants. The Board notes that, although the services of a junior consultants were employed, this did not reduce the number of hours spent by Mr. Osler and Ms. Pollitt-Smith in the drafting of the Application including business cases, the reviewing of IRs and responses, preparing of rebuttal evidence, attending the hearing, and in drafting undertakings, argument, and reply. For example, Ms. Asaolu, attended the hearing virtually and summarized undertakings while Ms. Pollitt-Smith also attended the hearing but not as a witness and provided support at the hearing. Mr. Osler was a witness at the hearing. Further, claiming witness preparation and preparation of briefing materials for both Mr. Osler and Ms. Pollitt-Smith was duplicative.

57. However, the Board is not persuaded by UCG's argument that the Board should only award the costs of one consultant as the tasks undertaken show that that more than one consultant was needed for the tasks carried out. The Board does not accept UCG's submission that YEC had in-house staff to prepare the GRA application and participate in the proceeding because it was not supported.

58. In addition, as noted above, the Board considers that the need for some additional IRs responses arose from YEC's lack of clarity in its original responses which added to the costs of the GRA proceeding, including YEC's costs. The Board has taken this into consideration in awarding costs for InterGroup.

59. For the reasons set out above, the Board reduces the costs claimed for InterGoup by 25 percent. Accordingly, the Board awards fees of $273,570.00 for InterGroup. Respecting the disbursements, accommodation is claimed for Mr. Osler from March 1 to 6, inclusive, and Ms. Pollitt-Smith from February 29 to March 6, inclusive. However, the *Scale of Costs* states that claims for accommodations are restricted to the duration of an oral hearing. As February 29, 2024, and March 1 and 2, 2024, were not hearing days, the Board reduces the accommodation costs of Mr. Osler by two nights and Ms. Pollitt-Smith by three nights for a total reduction for accommodation in the amount of $1,189.00. In addition, meals for

March 2, are disallowed in the amount of $119.61. The other disbursements are in accordance with the *Scale of Costs* and are granted as claimed. Therefore, the Board awards $5,783.39 for InterGroup disbursements.

60. For the fees claimed for Aasman Brand Communications, the Board finds that the fees are in accordance with the *Scale of Costs* and relate to the proceeding because the services are for preparation of news releases and advertisements of the Application, workshop, and hearing. However, the Aasman invoices to YEC do not indicate the tasks performed by each person providing services, and YEC has not explained why it was reasonable to use four persons in the provision of these services. The Board therefore reduces these costs by 50 percent and awards $2,236.88 in fees for Aasman Brand Communications. The disbursements of $447.38 are awarded as claimed.

61. The Board has reviewed the receipts for the disbursements claimed by YEC for meals, postage, external printing, and advertisement of workshop and hearing. The Board awards the disbursements as filed in the amount of $5,030.99, as these are within the *Scale of Costs* and relate to the GRA proceeding.

62. Therefore, the Board awards YEC the following costs:

DLA Piper LLP	
Fees and disbursements	$ 164,465.27
InterGroup	
Fess and disbursements	$ 279,443.39
Aasman Brand Communications	
Fees and disbursements	$ 2,684.26
YEC Disbursements	$ 5,030.99
Total costs awarded	**$ 451,623.91**

63. Although Mr. Yee asked the Board to provide directions to YEC on future GRA proceedings, the Board considers such a request is outside the scope of a costs award proceeding. In addition, as the costs claim process does not provide for replies to a party's comments, YEC has not had an opportunity to respond to this request as fairness dictates. Accordingly, the Board has not considered the request.

64. In response to UCG's critique that the Board had "a history of not allowing interveners fair cost recoveries during the hearings, by allowing only $50 per half-day to those parties who have no legal representative", the Board notes that interveners may hire consultants or lawyers to represent them and may file costs claims under the *Scale of Costs* for such costs. The Board notes that UCG claimed 40 hours for Mr. Rondeau's attendance as a consultant, at $100 per hour, at the hearing. The honorarium of $ 50 per half-day is for unrepresented interveners, meaning those who have not hired a consultant or a lawyer.

4 Government of Yukon costs — Yukon Utilities Board

65. The Board costs with respect to the Application proceeding are costs that more appropriately belong to the utility and ultimately the utility ratepayers rather than to the Yukon taxpayers. As the Board costs have not been ascertained, the Board will issue a subsequent Board Order directing an award of costs to Government of Yukon.

5 Total costs awarded

66. For the reasons set out above, the total costs awarded the parties are $473,961.66 as follows:

UCG	**$16,769.75**
Mr. Yee	**$5,568.00***
YEC	**$451,623.91**

* Mr. Yee claimed 323 hours. The Board reduced the hours claimed by 60 percent which amounts to 129.2 hours. An error was made in the calculation of the reduced hours awarded. Paragraphs 35 and 36 were corrected to reflect the 129.2 hours awarded. At $40 per hour, the total amount awarded comes to $5,168.00.

** An error was made in paragraph 48 in which the Board incorrectly stated that Mr. Yee referred to section 362(2) of the *Criminal Code*. The paragraph was corrected to state that Mr. Yee referred the Board to 366(2) of the *Criminal Code*.