

**THE PUBLIC UTILITIES BOARD
OF THE
NORTHWEST TERRITORIES**

DECISION 15-2007

October 1, 2007

IN THE MATTER OF the Public Utilities Act, being Chapter 110 of the Revised Statutes of the Northwest Territories, 1988(Supp.), as amended.

AND IN THE MATTER OF an application pursuant to Section 26 of the Public Utilities Act for intervenor costs for The Hydro Communities arising from the review of the Northwest Territories Power Corporation's Phase I General Rate Application for the 2006/07 and 2007/08 Test Years.

THE PUBLIC UTILITIES BOARD

BOARD MEMBERS

Joe Acorn	Chairman
John Hill	Vice-Chairman
William Koe	Member
Sandra Jaque	Member

BOARD STAFF

Louise Larocque	Board Secretary
Raj Retnanandan	Board Consultant
John Donihee	Board Counsel

TABLE OF CONTENTS

1. BACKGROUND	1
2. APPLICATION	3
3. DECISION	8
4. BOARD ORDER	11

1. BACKGROUND

By letter dated November 24, 2006, the Northwest Territories Power Corporation ("**NTPC, the Corporation**") submitted to the Northwest Territories Public Utilities Board ("**the Board**") its Phase I General Rate Application ("**GRA, Application**") for the fiscal years April 1, 2006 to March 31, 2007 and April 1, 2007 to March 31, 2008 ("**Test Years**").

Pursuant to the provisions of section 13.(1) of the Rules of Practice and Procedure, the Board, by letter dated November 30, 2006, directed NTPC to publish notice of the public hearing of the GRA in newspapers that circulate in the Northwest Territories. The notices were published in December 2006, included details and schedule of the GRA, and invited interested persons to file a request with the Board for intervenor status (Ex.1)

By letter dated December 4, 2006, NTPC informed all communities that they had filed a GRA with the Board (Ex. 21).

NTPC, by e-mail dated December 18, 2006, advised all those parties who were granted intervenor status, that the Corporation would be holding a technical workshop on January 8, 2007 in Yellowknife.

In accordance with the schedule, the Board and the interested parties were provided an opportunity to make information requests of NTPC. Interested parties were also provided an opportunity to file evidence.

All information requests by the Board and intervenors together with the responses and intervenor evidence were made available to all parties before the hearing.

At the close of the hearing, the Board and interested parties agreed on dates for written argument and written reply argument.

The City of Yellowknife, Town of Hay River and Town of Fort Smith (“**Hydro Communities**”, “**HC**”) participated as an intervenor in the proceedings, prepared a number of information requests, submitted evidence, and submitted argument and reply argument after the hearing.

2. APPLICATION

By letter dated July 31, 2007, the Counsel for the Hydro Communities, Mr. Thomas D. Marriott, made an Application to the Board for intervenor costs. The costs consisted of Legal Fees, Consultant Fees, and Disbursements in the amount of \$213,983.83.

The Board, in a letter dated August 1, 2007 advised NTPC of the Application for Intervenor Costs made on behalf of the HC and requested NTPC to provide comment.

NTPC provided their comments, by letter dated August 14, 2007, and stated the following:

1. The Hydro Communities (HC) sent a letter to the Board dated January 4, 2007 requesting permission to incur costs of retaining expert witnesses to test the cost of capital issues. In this letter, HC provides an estimate of these costs:

"We estimate that the cost of retaining expert witnesses to properly test the cost of capital issues identified above would be in the order of \$60,000 to review the application, prepare information requests, file expert evidence, respond to information requests from NTPC and the Board, testify in support of that evidence and to assist with argument and rely."

The Corporation notes that the scope of work described in HC's letter was in fact delivered by the expert witnesses, however the actual costs submitted for this work is vastly different. The total actual cost for Drs. Kryzanowski and Roberts to deliver the work described above was \$103,396.12.

The Corporation notes that while the amount claimed is approximately \$43,000 or 72% higher than originally estimated, there is no explanation for that variance in the HC's cost claim. Consequently, in the determining the reasonableness of the HC's claim, the Board may

- wish to consider the HC's previous estimate for experts and lack of justification regarding the variance from that estimate.
2. HC's cost claim indicates that Mr. Bruggeman spent 200.5 hours in preparation. In contrast, Mr. Merani, for the Thermal Generating Communities (TGC), spent 185.2 hours in preparation. In considering the reasonableness of Mr. Bruggeman's preparation time, the Board may wish to consider that approximately 20% of HC's IRs were prepared by its cost of capital experts and that Mr. Merani, unlike Mr. Bruggeman, had extra preparation requirements as a witness and to conduct the TGC's cross-examination.
 3. The Corporation understands that the City of Yellowknife, Town of Hay River and Town of Fort Smith qualify for a 100% GST rebate. Further these communities would not be subject to PST. The Corporation recommends that HC's cost claim be adjusted to exclude GST and PST, a reduction of \$16,394.44.

By letter dated August 20, 2007, the Board provided intervenors an opportunity to respond to NTPC's comments by August 31, 2007. The Board also requested that NTPC provide a summary of its expenditures in securing the evidence and attendance of Ms. McShane in the proceeding, by August 24, 2007.

HC, by letter dated August 31, 2007, responded to NTPC and stated the following:

"It appears that NTPC may not have reviewed the entire cost claim as several of NTPC's comments do not appear to acknowledge what was contained in the July 31 justification letter submitted together with and forming part of the cost claim nor the detailed statements of account.

Drs. Kryzanowski and Roberts

With respect to the services provided by these cost of capital experts, and contrary to the statement made by NTPC in its August 14, 2007 letter, the July 31, 2007 letter accompanying and forming part of the HC cost claim did include an explanation of the variance between the original preliminary estimate and the actual expenses incurred.

The original preliminary estimate of \$60,000 was for fees only, whereas the actual fees came in at \$92,580. The original preliminary estimate was never intended or represented to be inclusive of GST and PST, which are included in the figure of \$103,396.12 cited by NTPC. With respect to the variance in the level of fees between the original preliminary estimate and the actual costs incurred, the July 31, 2007 letter cited the following contributing factors, all of which are reflected in the invoices from Drs. Kryzanowski and Roberts: “the unique aspects and lengthy history surrounding the sinking fund debentures and capital lease, the unexpected number of detailed information requests, review of extensive rebuttal evidence and preparation of extensive argument and reply.” By way of illustration, the original evidence provided by Ms. McShane as Appendix “B” to the application was comprised of some 60 pages of text plus appendices, and her rebuttal on cost of capital matters was some 56 pages of text and further attached schedules. Her evidence was also replete with footnotes to articles and other information sources. In addition the company filed rebuttal evidence of its own responding further to Drs. Kryzanowski and Roberts. The HC submit that it is impossible to estimate with any certainty in advance the length and extent of Information Requests and Rebuttal evidence.

For further clarity, the HC submit reasons for the variance between the original preliminary estimate by Drs. Kryzanowski and Roberts and their actual costs include the following, which the HC submit are reflected in the record of the proceeding and the invoices submitted by Drs. Kryzanowski and Roberts:

- (a) an increase in scope and information volume from that initially expected for a small utility;
- (b) added time for obtaining the necessary data and for the analyses of the sinking funds and capital lease;
- (c) an unexpectedly large number of IRs;
- (d) review and critique of rebuttal evidence which was much more extensive than anticipated, and which included new information which could and should have been included in the original evidence, or in responses to IRs;
- (d) a greater than anticipated participation in the drafting of argument and reply; and
- (e) an underestimate of the time required to become familiar with the first-time provision of expertise dealing with an unfamiliar utility, its business and regulatory setting, and with past Board decisions dealing with that utility.

Drs. Kryzanowski and Roberts wanted the Board to be aware of the following comment: "Both the initial "ball-park" estimate and the actual amount of fees reflect the excellent assistance that Drs. Kryzanowski and Roberts expected and received from Mr. Robert Bruggeman, which greatly facilitated their work."

In the end, the HC submit that the costs should be judged on the basis of whether having additional expert evidence was of assistance to the Board in assessing the evidence provided on these issues on behalf of the Corporation. We note that Decision 13-2007 refers extensively to the evidence provided by these experts and the Decision suggests that considerable weight was given to their evidence, particularly with respect to the findings on rate of return. Certainly the reductions of 1.9% and 1.25% respectively for the two test years from the rates of return advocated by Ms. McShane are significant. We note also that the Board agreed with the HC evidence that the CE method should be given no weight. No doubt the Board itself is in the best position to determine whether the HC evidence was helpful in identifying and analyzing issues dealt with in the Board's decision.

Costs of Mr. Bruggeman

NTPC's critique of Mr. Bruggeman's costs is based on a selective comparison to Mr. Azad Merani's hours of preparation. Again, the Board should assess costs based on the assistance provided in testing the case, not on selective comparisons. In general, Mr. Merani and Mr. Bruggeman reviewed different issues as they represented different clients with somewhat different interests and had preliminary discussions aimed at reducing the likelihood of duplication in IRs and cross examination.

NTPC suggests that 20% of IRs were prepared by capital experts and that this should somehow reduce Mr. Bruggeman's preparation time; however a review of the detailed statement of account clearly shows that Mr. Bruggeman spent considerable time assisting the experts in all aspects of their preparation including not only the IR's, but also researching and providing background information, reviewing and discussing background information, reviewing and discussing the evidence, assisting in responding to IRs and briefing the witness, i.e. the type of assistance that all experts typically require from "local" consultants, particularly in their first appearance in this jurisdiction. As noted in the HC's July 31 letter, the HC addressed not only issues specific to the HC but also a number of issues common to the entire company including miscellaneous revenues, salaries

and wages, treatment of the job evaluation program, travel and accommodation expenses, at-risk compensation, site remediation costs, cost of capital and reserve for injuries and damages.

Selective Comparisons

While selective comparisons are an unreliable means of assessing the reasonableness of costs particularly when the issues dealt with by the individuals being compared are different, NTPC has relied heavily on this approach in its letter of August 14, 2007. In this context it is interesting to note the comparative costs of NTPC's cost of capital expert as disclosed in the summary attached to NTPC's letter of August 24, 2007 and those retained by the HC. Fees for Ms. McShane, her associate and associated administrative support exceeded \$178,000 in U.S. dollars, while the fees for Drs. Kryzanowski and Roberts totaled less than \$93,000 in Canadian funds. The HC experts did not submit a bill for administrative support. Given the foreign currency exchange rate, it is apparent that the HC expert cost of capital evidence was obtained at less than half the cost incurred by NTPC.

With respect to Ms. McShane's CV, the HC would simply submit that Dr. Kryzanowski's and Dr. Roberts' CVs attached as Appendix 1.A to Exhibit 8 are no less impressive.

GST and PST

The HC are responsible for paying the GST and PST on the invoices submitted by their lawyers and consultants. The HC would be amenable to an order of the Board directing the Hydro Communities to apply for all applicable credits available on the GST and PST paid with respect to costs in this matter and to remit them to NTPC either when received or when NTPC forwards the payment of costs, whichever is later.

Alternatively, if despite our submissions herein, the Board is inclined to disallow any of the HC's costs as advocated by NTPC, and is inclined to disallow the GST and PST payable on any such costs, then only the GST or PST payable on the amounts that NTPC is ordered to pay should be disallowed."

3. DECISION

The Board's Rules of Practice and Procedure subsection 32.(2) stipulates that:

“(2) The Board may award costs to an intervenor who

- (a) made a significant contribution which was relevant to the proceeding and which lead to a better understanding by all parties of the issues before the board;
- (b) participated in the hearing in a responsible manner and cooperated with other intervenors having common objectives in the outcome of the proceeding in order to avoid a duplication of intervention;
- (c) made a reasonable effort to secure alternative funding where such funding was available to the intervenor;
- (d) had a substantial interest in the outcome of the proceeding and represented the interests of a substantial number of ratepayers; and
- (e) has made an application for costs under rule 33.”

Pursuant to the Board's rules, the Hydro Communities applied to the Board for an award of costs as specified in Section 2 of this Decision.

In determining whether costs should be awarded in a particular application, the Board considers a number of factors including the nature of the application, the extent of participation by the intervenors and the actual costs.

Predicated upon these and any other factors particular to a costs application, the Board determines whether the intervention by a party was meaningful and of assistance, whether the costs were prudently incurred, reasonable and necessary and by whom, to whom and in what amount the costs are to be paid.

The Board considers Drs. Kryzanowski and Roberts' evidence with respect to the Dogrib Power Corporation lease was not of assistance to the Board. In view of this, the Board will reduce Drs. Kryzanowski and Roberts' preparation, appearance and Argument/Reply hours used to calculate the cost award by 10%. The Board also considers the hourly rate of \$300.00 charged by Drs. Kryzanowski and Roberts to be excessive considering the value of the assistance provided to the Board. The Board will therefore reduce the hourly rate for Drs. Kryzanowski and Roberts to \$250.00.

The Board notes Mr. Marriott and Dr. Kryzanowski charged travel time at the full hourly rate. The Board considers the award for travel time should be at one half the full hourly rate.

The Board expects the Hydro communities will have the ability to claim GST and PST back from the respective Governments. Accordingly, the Board will not award any recovery of GST and PST as part of this cost order.

The following is a summary of the costs claimed and awarded to the Hydro Communities:

Costs Claimed						
	Hours	Rate	Fees	Expenses	GST/PST	Total
Thomas D Marriott	145.74	\$ 250.00	\$ 36,434.50	\$ 11,356.03	\$ 2,867.43	\$ 50,657.96
Thomas D Marriott Travel	10.50	\$ 250.00	\$ 2,625.00		\$ 157.50	\$ 2,782.50
Robert L Bruggeman	278.25	\$ 190.00	\$ 52,867.50		\$ 3,172.05	\$ 56,039.55
Robert L Bruggeman Travel	11.00	\$ 95.00	\$ 1,045.00		\$ 62.70	\$ 1,107.70
Gordon Roberts	88.00	\$ 300.00	\$ 26,400.00		\$ 1,584.00	\$ 27,984.00
Lawrence Kryzanowski	208.60	\$ 300.00	\$ 62,580.00		\$ 8,729.91	\$ 71,309.91
Lawrence Kryzanowski-Travel	12.00	\$ 300.00	\$ 3,600.00		\$ 502.20	\$ 4,102.20
Total			\$ 185,552.00	\$ 11,356.03	\$ 17,075.79	\$ 213,983.82

Costs Awarded						
	Hours	Rate	Fees	Expenses	GST/PST	Total
Thomas D Marriott	145.74	\$ 250.00	\$ 36,434.50	\$ 11,356.03		\$ 47,790.53
Thomas D Marriott Travel	10.50	\$ 125.00	\$ 1,312.50			\$ 1,312.50
Robert L Bruggeman	278.25	\$ 190.00	\$ 52,867.50			\$ 52,867.50
Robert L Bruggeman Travel	11.00	\$ 95.00	\$ 1,045.00			\$ 1,045.00
Gordon Roberts	79.20	\$ 250.00	\$ 19,800.00			\$ 19,800.00
Lawrence Kryzanowski	187.74	\$ 250.00	\$ 46,935.00			\$ 46,935.00
Lawrence Kryzanowski-Travel	12.00	\$ 125.00	\$ 1,500.00			\$ 1,500.00
Total			\$ 159,894.50	\$ 11,356.03	\$ -	\$ 171,250.53

Subject to the foregoing, the interventions by the Hydro Communities in the proceedings were, in the Board's view, of benefit to the Board and NTPC's ratepayers within the City of Yellowknife, Town of Hay River and Town of Fort Smith.

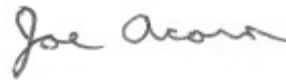
Accordingly, the Board awards costs in the amount of \$171,250.53 to the Hydro Communities. NTPC should forward this amount to Mr. Thomas D. Marriot, in trust for distribution to the claimants. NTPC shall be entitled to recover this sum from its customers through the hearing cost reserve.

4. BOARD ORDER

NOW, THEREFORE IT IS ORDERED THAT:

The Northwest Territories Power Corporation shall forward payment for \$171,250.53 to the solicitor of the Hydro Communities within 30 days of this Decision with a copy to the Board for its information. These are the total costs approved by the Board with respect to the Application for Intervenor Costs submitted by the Hydro Communities.

**ON BEHALF OF THE
PUBLIC UTILITIES BOARD
OF THE NORTHWEST TERRITORIES**



**Joe Acorn
Chairman**

Dated October 1, 2007