

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

DECISION 16-2007

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 Thermal Generation 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

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John Donihee	Board Counsel

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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 Village of Fort Simpson, Hamlet of Fort Liard and Town of Inuvik (“**Thermal Generation Communities**”, “**TGC**”) 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 August 2, 2007, the Counsel for the Thermal Generation Communities, Mr. A.O. Ackroyd, made an Application to the Board for intervenor costs. The costs consisted of Legal Fees, Consultant Fees, and Disbursements in the amount of \$95,674.98.

The Board, in a letter dated August 2, 2007 advised NTPC of the Application for Intervenor Costs made on behalf of the TGC and asked them to provide comment.

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

1. TGC's cost claim indicates that Mr. Ackroyd spent 116 hours in preparation and 39 hours with argument and reply. In contrast, Mr. Marriott, for the HC, spent 106.7 hours in preparation and 32.65 hours with argument and reply. In considering the reasonableness of Mr. Ackroyd's preparation time, the Board may wish to consider that Mr. Ackroyd, unlike Mr. Marriott, did not conduct any cross-examination. Further, the length and level of detail of TGC's argument and reply argument was significantly less than that presented by the HC.
2. The Corporation understands that the Town of Inuvik, Village of Fort Simpson and Hamlet of Fort Liard qualify for a 100% GST rebate. The Corporation recommends that TGC's cost claim be adjusted to exclude GST, a reduction of \$5,162.55.

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.

The TGC, by letter dated August 30, 2007, responded to NTPC and stated the following:

“As lawyer and accountant, we worked together as a team in this application as we have done in previous applications. In the present case, Mr. Merani presented evidence on behalf of the TGC and was cross examined by NTPC at some length. Because of the close inter-relationship between evidence given by Mr. Merani and the expected cross-examination and reply anticipated from NTPC, it was decided to have Mr. Merani carry the response to his evidence through cross-examination conducted by Mr. Merani. Considerable time was spent in “wood shedding” this arrangement, with the expectation that more efficient and economical use of the hearing time could be accomplished.

Prior to our presentations, I contacted Mr. Lee, counsel for NTPC, and advised him of our intended departure from the usual format for cross-examination. Mr. Lee raised no concerns or objection.

As a consequence of the change in procedure for presentation and cross-examination, there may be a resulting change reflected in preparation times.

The objective of the TGC was to make maximum efficient use of its consultants’ abilities to contribute to the hearing process. We believe this was accomplished in this case.”

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 Thermal Generation 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 notes Mr. Ackroyd claimed costs for being present at the hearing as well as preparation time for hearing. Since he did not actively participate in the hearing the Board considers it appropriate to disallow these costs in order to avoid duplication with Mr. Merani's costs. Mr. Ackroyd has also included costs for work, such as research time for green initiatives, which in the Board's view, is work that should be done by the consultant. Accordingly the Board will reduce Mr. Ackroyd's hours used to calculate the cost award by 40%.

The Board notes Mr. Merani has claimed disbursements with respect to transcript costs. Since the transcripts could have been downloaded at no cost, the Board will disallow the disbursement of \$839.00 claimed by Mr. Merani.

With respect to travel time, the Board notes that Mr. Merani claimed 0.8 hours on January 7th and 0.8 hours on January 8th for travel time relating to attendance at the technical meeting. In the Board's view, Mr. Merani appears to have reflected a reduced rate for travel in his hours claimed. Review of hours claimed by Mr. Merani on his hearing travel dates indicates he claimed 5.5 hours for preparation of cross examination on May 22nd and 3 hours for hearing attendance on May 25th. In the Board's view, Mr. Merani does not appear to have included any significant travel time on the two hearing travel dates.

The Board considers the reduction for Mr. Ackroyd's hours noted earlier includes any reduction related to travel time. Accordingly the Board will not adjust the TGC's claim for any reduced rate applicable to travel time.

Subject to the foregoing, the interventions by the Thermal Generation Communities in the proceeding were, in the Board's view, of benefit to the Board and NTPC's ratepayers within the Village of Fort Simpson, Hamlet of Fort Liard and Town of Inuvik.

The Board expects the Thermal Generation 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 Thermal Generation Communities:

Costs Claimed						
	Hours	Rate	Fees	Expenses	GST/PST	Total
A O Ackroyd	169.10	\$250.00	\$42,275.00	\$1,136.77	\$2,604.71	\$46,016.48
Azad Merani	250.10	\$175.00	\$43,767.50	\$3,080.14	\$2,810.86	\$49,658.50
Total			\$86,042.50	\$4,216.91	\$5,415.56	\$95,674.97

Costs Awarded						
	Hours	Rate	Fees	Expenses	GST/PST	Total
A O Ackroyd	101.46	\$250.00	\$25,365.00	\$1,136.77		\$26,501.77
Azad Merani	250.10	\$175.00	\$43,767.50	\$2,241.14		\$46,008.64
Total			\$69,132.50	\$3,377.91	\$0.00	\$72,510.41

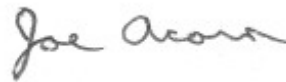
Accordingly, the Board awards costs in the amount of \$72,510.41 to the Thermal Generation Communities. NTPC should forward this amount to Mr. A.O. Ackroyd, in trust for distribution to the claimants. NTPC shall be entitled to recover this sum from its customers through the hearing cost reserve.

4. BOARD ORDER

NOW, THEREFORE IT IS ORDERED THAT:

The Northwest Territories Power Corporation shall forward payment for \$72,510.41 to the solicitor of the Thermal Generation 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 Thermal Generation Communities.

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



**Joe Acorn
Chairman**

Dated October 1, 2007