

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

DECISION 3-2009

January 30, 2009

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 intervener costs for the Hydro Communities arising from the review of the Northwest Territories Power Corporation's Phase 2 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	5
4. BOARD ORDER	7

1. BACKGROUND

On August 15, 2008, the Northwest Territories Power Corporation ("**NTPC, the Corporation**") filed its Phase 2 General Rate Application ("**Application**") for the fiscal years April 1, 2006 to March 31, 2007 and April 1, 2007 to March 31, 2008 for approval of rates reflecting the Northwest Territories Public Utilities Board's ("**the Board**") Phase 1 revenue requirement and revenue deficiency determinations.

The Board combined the review of the Phase 2 GRA with the review of the NTPC responses to Directives 49 (Conflict of Interest) and 50 (Code of Conduct) from Decision 13-2007. Although the review was combined, the Board would issue separate decisions on the Phase 2 GRA and the responses to Directives 49 and 50.

The Board received submissions from interested parties respecting the Application through a written process.

For the Phase 2 GRA, the Board issued Decision 26-2008 dated October 27, 2008 providing directions to NTPC to refile its Phase 2 Application.

By letter dated October 30, 2008, NTPC refiled its Phase 2 Application. By letter dated October 31, 2008, NTPC filed a revised refiling of its Phase 2 Application due to questions from the Board and the Hydro Communities. The Board issued Decision 27-2008 dated October 31, 2008 approving the rate schedules, effective November 1, 2008.

The Board has not yet issued its decision on the review of the responses to Directives 49 and 50.

The City of Yellowknife and the Towns of Hay River and Fort Smith (“**Hydro Communities**”, “**HC**”) participated as an intervener in the proceedings.

2. APPLICATION

By letter dated December 24, 2008, the Counsel for the Hydro Communities, Mr. Thomas D. Marriott, made an Application to the Board for intervener costs with respect to the Phase 2 proceedings. The costs consisted of Legal Fees, Consultant Fees and disbursements in the amount of \$25,610.10.

The Board, by letter dated January 6, 2009, advised NTPC of the Application for Intervener Costs made on behalf of HC and requested that they provide comment, if any, by January 20, 2009.

By letter dated January 20, 2009, NTPC suggested that the Board may wish to take into account that Mr. Bruggeman spent 95.5 hours in preparation, argument and reply as compared to the 51.5 hours spent by Mr. Merani for the Thermal Generating Communities. NTPC also stated that the City of Yellowknife, Town of Hay River and Town of Fort Smith qualify for a 100% GST rebate and recommended the HC's cost claim be adjusted to exclude GST, a reduction of \$1,219.52.

The counsel for the Hydro Communities, by letter dated January 21, 2009, responded to NTPC's letter as follows:

“Although NTPC makes an arbitrary comparison of the relative number of hours spent by the consultants, it does not provide any evidence whatsoever that the Hydro Communities did not meet the Board's criteria for awarding costs. The Hydro and Thermal Communities had significantly differing interests in the outcome of the proceeding that are not captured in any meaningful way by the simple and arbitrary comparison of consultant's hours.

The Hydro Communities respectfully request the Board reach its cost decision respecting their intervener costs based on the Information Requests, Argument, Reply and the Cost Submission submitted by the Hydro Communities which they submit support the significant and relevant contribution, the responsible manner of participation and their substantial interest in the outcome of the proceeding. Further, the Hydro Communities represented a substantial number of ratepayers.”

3. DECISION

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

“(2) The Board may award costs to an intervener 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 interveners 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.

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

The Board considers that the costs claimed by Mr. Marriott on behalf of the HC were reasonably and prudently incurred. However, the Board understands that the HC qualifies for GST rebates. The HC will be able to claim back as an input tax credit any GST paid to the Counsel and Consultants and so the Board will not include any GST amounts in any cost award.

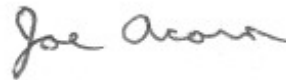
Based upon the foregoing, the Board finds that costs of \$24,390.58 are reasonable and necessary and that NTPC should forward such amounts to Mr. Thomas D. Marriott, in trust for distribution to the claimants. NTPC shall be entitled to recover the sum from its customers and the method of recovery shall be addressed by NTPC at the time of its next GRA.

4. BOARD ORDER

NOW, THEREFORE IT IS ORDERED THAT:

The Northwest Territories Power Corporation shall forward payment for \$24,390.58 to the counsel 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 Intervener Costs submitted by the Hydro Communities.

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



**Joe Acorn
Chairman**

Dated January 30, 2009