

MANITOBA) **Order No. 131/14**
)
THE PUBLIC UTILITIES BOARD ACT) **November 27, 2014**

Before: Régis Gosselin, B ès Arts, M.B.A., C.G.A., Chair
Dr. Hugh Grant, Ph.D. (Economics)
Richard Bel, B.A., M.A. , M.Sc.
Marilyn Kapitany, B.Sc. Honours, MSc.

**ORDER WITH RESPECT TO AWARD OF COSTS:
MANITOBA KEEWATINOWI OKIMAKANAK (MKO)**

THE PUBLIC UTILITIES BOARD'S "NEEDS FOR AND ALTERNATIVES TO" (NFAT)
REVIEW OF MANITOBA HYDRO'S PREFERRED DEVELOPMENT PLAN
TO CONSTRUCT THE KEEYASK AND CONAWAPA GENERATING STATIONS
AND ASSOCIATED TRANSMISSION FACILITIES

BACKGROUND AND BOARD FINDINGS

Manitoba Keewatinowi Okimakanak (MKO) sought an Order from the Public Utilities Board (Board) to recover costs incurred by MKO to intervene in The Public Utilities Board “NEEDS FOR AND ALTERNATIVE TO” Review of Manitoba Hydro’s (MH) Preferred Development Plan which resulted in the Board issuing a report to the Minister responsible for The Public Utilities Board dated June 20, 2014.

MKO’s cost request dated October 14, 2014 includes statements of account from Counsel George Orle and experts and firms that provided advice to MKO.

While MH’s response of November 12, 2014 acknowledged that MKO deserved an award of costs, MH raised concerns regarding the quantum of a cost award.

Subsection 56(1) of *The Public Utilities Board Act* provides:

Cost in discretion of board

56(1) The costs of, and incidental to, any proceeding before the board are in the discretion of the board, and may be fixed in any case at a sum certain or may be taxed.

In exercising its discretion, the Board is guided by Rule 43 of the Board’s *Rules of Practice and Procedure*:

Criteria

43. In any proceeding the Board may award costs to be paid to any intervener who has:

- (a) made a significant contribution that is relevant to the proceeding and contributed 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 Interveners who have common objectives in the outcome of the proceedings in order to avoid a duplication of intervention;
- (c) insufficient financial resources to present the case adequately without an award of costs; and
- (d) a substantial interest in the outcome of the proceeding and represents the interests of a substantial number of the ratepayers.

Having reviewed each of the criteria in Rule 43, the concerns raised by MH, and in exercising its discretion, the Board will approve MKO's Application for costs as amended by the Board.

In Board Order 67/13 and subsequent orders and correspondence, the Board determined the scope of intervention for each intervener, and approved on a preliminary basis, the budget for each intervener. As well, the Board authorized interim payments for costs applied for by interveners during the hearing process, subject to a 30% holdback pending disposition of the matter subsequent to the conclusion of the process.

MKO's Comments:

MKO submitted a total bill of costs of \$147,664.91. The budget of which \$111,104.00 was approved for legal fees and \$53,189.00 approved for Hildebrand, Chymko and Turner submitted by MKO and approved on a preliminary basis for MKO amounts to \$164,293.00.

MKO is asking for reconsideration of a further allowance of \$10,000.00, given that the counsel had foregone legal fees for preparation time in the initial stages of the procedures. In addition, MKO is asking for \$3,000.00 for the cost of transportation of the presenters to the public hearing in Thompson, MB. MKO's counsel personally paid for this expenditure.

MKO's consulting and legal fees claimed to date includes:

Legal (plus taxes and disbursements)	\$ 120,435.16
Desiderata Consulting (Hildebrand)	\$ 4,543.50
Chymko Consulting	\$ 22,686.25
Total	<u>\$ 147,664.91</u>

Thus, considering all items that has been requested, the submitted total bill of costs for MKO of \$147,664.91, plus a further \$10,000.00 of legal fees for preparation time, as well as \$3,000.00 of transportation costs previously enumerated, brings the total request to \$160,664.91, of which \$103,365.44 has already been paid to MKO, leaving an outstanding balance of \$57,229.46 if the full request of MKO is accepted.

Manitoba Hydro Comments:

MH noted that legal fees totalling \$120,435.16 (fees, RST and disbursements) has been submitted by MKO and paid by MH, subject to a 30% holdback. MH notes that Mr. Orle charged a rate of \$221/hour and accepted that rate as allowed by the Board Tariff. MH also noted that following the November 4, 2014 note from Mr. Orle, the hours for the month of May should be adjusted downwards by 6 hours (72 to 66 hours). MH submits that the legal fees should be reduced to \$109,616.00 plus RST in the amount of \$8,769.28. MH noted that the Board's approved budget of \$111,104.00 was silent on the matter of disbursements and had no comments on MKO requests for \$617.80 of

disbursements. The sum total of the above is \$119,003.08. With respect to the additional sum of \$10,000.00 requested by MKO, MH did not see it as reasonable in light of the limited scope of the intervener.

With respect to Desiderata Consulting, MH noted that the consultants did not present direct oral evidence and as such, did not require preparation time or disbursements associated with an appearance before the NFAT panel. MH submits that the amounts approved for the consultants should be less than the \$53,189.00 approved by the Board in February 2014. MH also noted the hourly rates were above those in the Board's tariff and submits that the hourly rate for Mr. Hildebrand be reduced to \$220/hour. This hourly rate will result in a total amount of \$4,446.00. MH indicated that a payment of \$3,180.45 has been paid and submitted that the amount owing to Mr. Hildebrand should be \$1,265.55.

With respect to Chymko Consulting, MH again noted that no direct oral evidence was presented to the NFAT panel. MH noted the hourly rate for Mr. Chymko of \$245/hour is an amount higher than the Board's tariff and submits that the rate be reduced to \$220/hour. This hourly rate will result in a total amount of \$21,497.66. MH indicates that a payment of \$15,880.39 has been paid and submits that the amount owing to Mr. Chymko should be \$5,617.27.

BOARD FINDINGS

The Board has reviewed the cost application of MKO and the comments provided by Manitoba Hydro. The Board finds that MKO meets all of the requirements for a cost award. The Board is of the view that MKO made a contribution that was relevant to the proceeding, and which enhanced the understanding of all parties. Further, it is the view of the Board that MKO participated in the hearing in a responsible manner and co-operated with other interveners to avoid duplication in intervention.

The Board also understands that MKO has insufficient financial resources to present its case adequately without an award of costs and that MKO has a substantial interest in the outcome of Manitoba Hydro's rate application.

With respect to legal fees, disbursements, and RST, the Board notes the submission of MH. The Board notes the November 4, 2014 clarification sought by MH from the intervener and will accordingly adjust the hours claimed for the month of May from 72 hours to 66 hours. The Board also notes that the hourly rate of legal counsel as filed is the amount allowed by the Board's tariff effective October 2013 and will allow the hourly rates and disbursements as filed. The Board will therefore allow the legal fees as claimed less 6 hours amounting to \$119,003.08 (fees, RST and disbursements).

The Board recognizes that the cost incurred for transportation of presenters to Thompson was borne by the counsel for MKO but will not allow the amount of \$3,000.00.

With respect to the reconsideration of additional fees of \$10,000 for preparation time in addition to time to attend the hearing, the Board notes that legal counsel was engaged at a time when the process was well underway and as such would have found it necessary to spend additional time to review the file and prepare his client's position. The Board also notes the significant changes to the application made in the early days of the proceedings. The Board will therefore approve the request of MKO for a further contribution to legal fees of \$10,000.

With respect to Desiderata and Chymko Consulting, the Board notes the limited role undertaken by these consultants. The Board also is of the opinion that the hourly rates should be in line with the Board's tariff effective October, 2013. For

Desiderata, the Board will allow an hourly rate of \$220/hr. resulting in fees of \$4,446.00. For Chymko Consulting, the Board will adjust Mr. Chymko's rates to \$220/hr., the Board will allow fees of \$21,497.66.

Therefore, the total award of costs approved for MKO is \$154,946.74. .

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with Section 36 of the Board's *Rules of Practice and Procedure*. The Board's Rules may be viewed on Board's website at www.pub.gov.mb.ca.

IT IS THEREFORE ORDERED THAT:

1. The application of Manitoba Keewatinowi Okimakanak (MKO) for an award of costs BE AND IS HEREBY APPROVED in the amount of \$154,946.74.
2. The amount outstanding of \$51,581.30 be paid to MKO within 30 days of the date of this Order.

THE PUBLIC UTILITIES BOARD

“Régis Gosselin, B ès Arts, MBA, CGA”

Chair

“Hollis M. Singh”

Secretary

Certified a true copy of Order No. 131/14
issued by the Public Utilities Board

Secretary