



Manitoba Keewatinowi Okimakanak, Inc.

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DAVID HARPER

February 12, 2014

Hollis M. Singh
Secretary and Executive Director
The Public Utilities Board
400 - 330 Portage Avenue
Winnipeg, Manitoba
R3C 0C4

Dear Mr. Singh:

**Re: Intervenor Budget of the Manitoba Keewatinowi Okimakanak, Inc. (MKO)
NFAT review for Manitoba Hydro's proposed preferred development plan
MKO Coalition with Pimicikamak: Pimicikamak Proposed Budget (Legal Costs)**

Order 67/13, at page 22, states that Pimicikamak "will be able to seek a coalition with approved Interveners as to in-scope issues and make its own final submissions on those issues".

Further to Board Order 67/13 and Order 92/13 (the latter in respect of the budget of MKO), please find attached a proposed budget (as provided to MKO by Pimicikamak) to provide for the participation of Pimicikamak, in coalition with the approved intervenor Manitoba Keewatinowi Okimakanak, Inc. (MKO), in the Board's NFAT review of Manitoba Hydro's proposed preferred development plan. The attached budget identifies Pimicikamak's proposed legal costs and disbursements and is in accordance with the Board's approved tariff.

Order 67/13, at pages 22 and 23, identifies the following matters of interest to Pimicikamak to be within the scope of the NFAT Terms of Reference (of which matters (a) and (e) have been approved by the Board as the in-scope issues for MKO):

- (a) Domestic electricity rates as a consequence of Manitoba Hydro's Preferred Development Plan (PDP);
- (b) Whether Manitoba Hydro's PDP is aligned with the Clean Energy Strategy, and Sustainable Development Principles;
- (c) Alternate energy sources and energy conservation;
- (d) The MISO energy market into which Manitoba Hydro exports electricity; and
- (e) Socio-economic benefits and impacts on Manitobans, aboriginal communities and Northern communities.

MKO requests the Board's confirmation that Pimicikamak, in coalition with MKO, may examine, test and provide final submissions independent of MKO on items (a) through (e), above. In respect of the requested confirmation, please note that the attached budget contemplates two scenarios: first, that the Board confirms that Pimicikamak may examine, test and make final submissions on all in-scope matters identified at page 23 of Order 67/13; and, second that Pimicikamak is approved by the Board to address and speak only to matters (a) and (e), above, being only those in-scope matters approved for MKO.

In order for Pimicikamak to prepare for and to conduct cross-examination of witnesses in coalition with MKO and to prepare final submissions independent of MKO, Pimicikamak has advised MKO that Pimicikamak will also require independent technical advice. Pimicikamak also advises MKO that Pimicikamak is actively seeking a technical expert and intends to submit a budget in the near future for the cost of the proposed independent expert technical support.

In summary, in respect of MKO's coalition with Pimicikamak, MKO requests the following considerations, determinations and directions by the Board:

- further to Order 67/13, at pages 22 and 23, confirmation of the approved scope of Pimicikamak's participation in the NFAT proceedings in coalition with MKO;
- the consideration and approval of the attached budget for Pimicikamak's legal costs and disbursements; and
- confirmation and direction as to the acceptance in future by the Board, for consideration and approval, of a further budget to provide for independent expert technical support to be retained by Pimicikamak.

In order to assist MKO, and Pimicikamak, in preparing for the upcoming commencement of the NFAT proceedings, MKO would be grateful for the Board's earliest consideration and response to these matters.

Sincerely,



Michael Anderson
Research Director

cc. Board Counsel

Budget for Pimicikamak's Participation in Coalition with MKO

As the PUB ordered in Order 67/13, Pimicikamak is allowed to seek a coalition with an approved intervener as to in-scope issues and to make its own final arguments on those issues. MKO and Pimicikamak have agreed to form a coalition.

This NFAT Review will be enriched by Pimicikamak's involvement in a coalition with MKO. While MKO and Pimicikamak share some similar interests, Pimicikamak has a unique perspective and worldview as an Aboriginal People under s. 35 of the *Constitution*, which Pimicikamak will bring to the hearings as part of a coalition with MKO.

The details of that coalition and the budget for Pimicikamak to participate are set out below.

ISSUES TO BE ADDRESSED

In PUB Order 67/13, the PUB found that the following issues Pimicikamak sought to raise were within the scope of the PUB's Terms of Reference for the NFAT Review:

- (a) Domestic electricity rates as a consequence of Manitoba Hydro's Preferred Development Plan (PDP);
- (b) Whether Manitoba Hydro's PDP is aligned with the Clean Energy Strategy, and Sustainable Development Principles;
- (c) Alternate energy sources and energy conservation;
- (d) The MISO energy market into which Manitoba Hydro exports electricity; and
- (e) Socio-economic benefits and impacts on Manitobans, aboriginal communities and Northern communities;

Also as the PUB ordered in 67/13, Pimicikamak is able to seek a coalition with an approved intervener "as to in-scope issues and make its own final submissions on those issues".

As a result, **Pimicikamak seeks the PUB's approval to address the above listed in-scope issues through its coalition with MKO. Pimicikamak also seeks approval to make its own final argument on the above listed issues.**

In the alternative, if the PUB denies Pimicikamak's request to address all of the above listed in-scope issues, then **Pimicikamak seeks the PUB's approval to address at least the issues MKO is approved to speak to** (including macro-environmental considerations if approved).

Please note that the budget set out below includes two scenarios: Pimicikamak is approved to speak to (i) the five issues found to be in-scope in Order 67/13 OR (ii) just the issues MKO is approved to speak to.

SCOPE OF WORK REQUIRED

Pimicikamak and MKO will work together to put forward evidence and perspectives on the approved in-scope issues.

Due to circumstances beyond Pimicikamak's control, the details of Pimicikamak and MKO's coalition have only recently been confirmed. As a result, Pimicikamak recognizes that it is too late for it to secure expert evidence in addition to MKO's for the February 4, 2014 filing deadline.

Instead, Pimicikamak will adduce evidence as part of a coalition with MKO by:

- (a) Relying on evidence MKO files;
- (b) Cross examining the other parties' witnesses;
- (c) Requesting undertakings where required from witnesses; and
- (d) Putting relevant documents to witnesses on cross-examination.

Pimicikamak will use the evidence gathered by the above means and the relevant evidence adduced by other parties to prepare its final argument. As noted above, as part of a coalition, Pimicikamak is entitled to make its own final argument.

In order to prepare for and conduct cross-examination of witnesses in coalition with MKO, Pimicikamak requires legal and technical advice. Pimicikamak will also require legal and technical advice to prepare its final argument. The details and budgets for that advice are provided below.

BUDGET FOR SCOPE OF WORK

Total Requested by Pimicikamak = **\$103,765.20 + tax if all in-scope issues**

\$96,765.20 + tax if only MKO issues

**A. Legal Costs for Pimicikamak (\$91,700 +tax if all in scope issues;
\$84,700 + tax if only MKO issues)**

Legal Work Required

Pimicikamak requires its own legal counsel to represent its interests in the coalition. Pimicikamak's legal counsel will work with MKO's representatives and legal counsel (once retained) to coordinate work to avoid duplication of efforts.

Pimicikamak does not have the internal capacity to adequately participate in a coalition with MKO. In order to be a true partner in the coalition, it needs legal counsel to represent its interests. Further, Pimicikamak requires legal counsel because, at this time, the only way for Pimicikamak to address the in-scope issues and adduce evidence for its final argument is through legal means (e.g., cross examination).

Pimicikamak does not have the funds to pay for legal counsel – it needs PUB funding. Without funding for legal counsel, this will not be a “true coalition” because Pimicikamak will not have a voice in the coalition.

Pimicikamak's legal counsel's work will include the following:

- Reviewing documents and reports filed as part of the NFAT Review and those relevant to the issues Pimicikamak in coalition with MKO is approved to speak to;
- Coordinating with MKO on evidence to be presented and cross-examinations of witnesses;
- Preparing for the hearings and cross examinations of witnesses;
- Attending the hearings to cross-exam witnesses and listen to relevant evidence;
- Reviewing transcripts from hearing days where legal counsel is not in attendance and where evidence is given that is relevant to the issues Pimicikamak in coalition with MKO is approved to speak to; and
- Preparing and delivering final argument for Pimicikamak.

Hours Required:

Kate Kempton, partner at Olthuis, Kleeer, Townshend LLP (“OKT”) will be Pimicikamak’s legal counsel. Ms. Kempton will be assisted by other associates at OKT. Names, years of call, and rates are provided below:

- Kate Kempton, called in 2001, rate = \$190/hour
- Stephanie Kearns, called in 2010, rate = \$155/hour
- Jessica Iveson, called in 2012, rate = \$135/hour

If Pimicikamak is approved to speak to **all five issues the PUB found to be in-scope in Order 67/13**, Pimicikamak’s legal counsel estimates that they will require:

- 250 hours to attend hearings (assume attend for 25 hearing days at 10 hours per day)
- 200 hours for preparations for the hearings (preparation work as set out above)

For budgeting purposes, given that the lawyers working on this file have different hourly rates, we have used a **\$175 blended rate** to estimate the total legal costs:

TOTAL LEGAL FEES for all in-scope issues = (250 hours x \$175/hour) + (200 hours x \$175/hour) = **\$78,750** + tax

If Pimicikamak is approved to speak to **only those issues MKO has been approved to speak to**, Pimicikamak’s legal counsel estimates that they will require:

- 250 hours to attend hearings (assume attend for 25 hearing days at 10 hours per day)
- 160 hours for preparations for the hearings (preparation work as set out above)

For budgeting purposes, given that the lawyers working on this file have different hourly rates, we have used a **\$175 blended rate** to estimate the total legal costs:

TOTAL LEGAL FEES if only MKO issues= (250 hours x \$175/hour) + (160 hours x \$175/hour) = **\$71,750** + tax

Legal Disbursements:

Travel – round trip airfare Toronto to Winnipeg \$1,000 x 5 trips = \$5,000
Accommodation – 5 weeks hotel in Winnipeg x \$150/night = \$3,750
Meals – 5 weeks meals x \$48/day = \$1,200
Miscellaneous (taxi, office supplies, printing, long distance phone/fax, etc.) = **\$3,000**

TOTAL LEGAL DISBURSEMENTS = \$12,950 + tax

(Note that legal disbursements will be the same no matter how many issues Pimicikamak is approved to speak to.)

B. Pimicikamak’s Representative Costs (\$12,065.20 + tax)

Pimicikamak needs to have a representative appointed by Pimicikamak Okimawin’s Executive Council to represent Pimicikamak’s interests at the hearings and to provide instructions to legal counsel. A representative has not yet been chosen.

Pimicikamak does not receive funding from any outside sources to operate and does not have the funds to pay for a representative to attend the hearings. As a result, Pimicikamak seeks funding from the PUB for its representative to travel from Cross Lake to Winnipeg to attend the hearings.

To save costs, Pimicikamak’s representative will only attend four weeks of the hearings; the trips will be planned to coincide with issues of particular concern to Pimicikamak and for final argument. Note that Pimicikamak’s representative’s costs will be the same no matter how many issues Pimicikamak is approved to speak to.

Fees = \$200/day

TOTAL FEES = \$200/day x 20 days at hearings = \$4,000

Disbursements:

Travel – round trip airfare Cross Lake to Winnipeg \$721.04 x 4 = \$3,605.20
Accommodation – 4 weeks hotel in Winnipeg x \$150/night = \$3,000
Meals – 4 weeks meals x \$48/day = \$960
Miscellaneous (taxi, office supplies, etc.) = \$500

TOTAL DISBURSEMENTS = \$8,065.20 + tax

C. Technical Advice

Pimicikamak requires technical advice to assist Pimicikamak and its legal counsel to review reports and documents, prepare cross-examination questions, and prepare final argument. A technical expert has not yet been hired, but Pimicikamak is actively seeking an expert to provide it with the necessary advice.

Pimicikamak requests that any order from the PUB to provide Pimicikamak with funding to participate in a coalition with MKO allow for Pimicikamak to apply to the PUB in the future for further funding to hire a technical expert to assist Pimicikamak.