

MANITOBA ) Order No. 205/02  
 )  
THE PUBLIC UTILITIES BOARD ACT ) December 5, 2002

BEFORE: G. D. Forrest, Chairman  
R. Mayer, Q.C., Vice-Chairman  
K. Kinew, Member

APPLICATION BY THE MANITOBA INDUSTRIAL POWER  
USERS GROUP FOR AN AWARD OF COSTS FOR  
PARTICIPATING IN THE CONSIDERATION OF A FILING  
BY MANITOBA HYDRO REGARDING INTEGRATION  
ACTIVITIES AS A RESULT OF THE ACQUISITION OF  
CENTRA GAS MANITOBA INC. AND MANITOBA HYDRO  
STATUS UPDATE FILING

### Background

A public hearing was held in the City of Winnipeg, commencing April 16, 2002 to consider issues arising out of a filing by Manitoba Hydro ("Hydro") regarding integration activities as a result of the acquisition of Centra Gas Manitoba Inc. ("Centra") and Manitoba Hydro Status Update Filing. The Manitoba Industrial Power Users Group ("MIPUG") were granted intervenor status.

### **The Application**

By letter dated October 30, 2002, Counsel for MIPUG (the "Applicant") filed the appropriate hearing and summary sheets. The claim submitted for costs for the Centra Integration Hearing is \$47,547.86, comprised of professional fees of \$42,791.50, disbursements of \$1,645.75 and GST of \$3,110.61. The claim submitted for the Manitoba Hydro Status Update Hearing is \$135,546.31 comprised of professional fees of \$122,488.00, disbursement of \$4,190.79 and GST of \$8,867.52.

The Applicant noted that they "made a significant and relevant contribution, which led to a better understanding by all parties of the issues before the Board". The Applicant was of the opinion that all electrical ratepayers were represented by its intervention as it offered "unique expertise in terms of assessing the impact of the acquisition on ratepayers". The Applicant submitted that its contribution was thoughtful and extensive with a significant, relevant and valuable contribution to the Board.

The Applicant submitted that it had co-operated with the Board and other intervenors to ensure that there was no duplication of effort and presentation. The Applicant further submitted that the issues tested in cross-examination and examined in final argument were significant and had not been fully developed by any other party or intervenor during the course of the hearing. The Applicant also noted that in order to avoid duplication it did not cross-examine the witness from KPMG.

On the matter of insufficient financial resources the

Applicant noted its membership consisting of about "half a dozen industrial companies" indicating that it was motivated by a desire to assist the Board on the matter of the unique regulatory issues and the potential rate impact. The Applicant notes the complex nature of the hearing, which involved thirteen hearing days and felt it was necessary to not curtail its efforts in this matter. The Applicant submitted its members do not have the financial support necessary to intervene to the extent required in order to properly address the issues of public interests. The Applicant noted that its intervention advanced the interests of all electricity consumers primarily focusing on issues raised in Board Order No. 156/99.

The Applicant submitted that its contribution was relevant and valuable and that the volume of material, the complexity of issues and the length of the hearing resulted in MIPUG incurring significant costs. The Applicant submitted that the same circumstances which justified the award of costs in 1999 following the acquisition hearing exists in the present application and that costs be awarded in its favour.

Hydro responded to the Applicant's submission by way of letter dated November 13, 2002. Hydro objected to the Application on the grounds that MIPUG failed to meet the criteria set out in Sec 41(c) of the Board's Rules. Hydro also submitted that MIPUG have not established that they have insufficient funds to present the case adequately without an award of costs. Hydro noted that in awarding costs to MIPUG at the Acquisition Hearing, the Board indicated that it was not setting a precedent. Hydro noted that it was up to intervenors to determine the areas of their intervention and submitted that an intervenor is not entitled to recover costs

on the basis that the position it takes is of interest to more than its members. Hydro cited Board Order No. 1/02 in support of its opposition to the awarding of costs to this Applicant.

The Applicant responded by way of letter dated November 25, 2002 noting that the budget costs of participating had doubled and that if an award is not made in its favour its unique expertise and background would be lost to the Board. The Applicant submitted that the Draft Rules contemplates participation in areas beyond one's specific interest. The Applicant submitted that Board Order No. 1/02 is not relevant to this Application and that an award of costs is appropriate in the circumstances.

#### **Board Comments**

The Applicant is well known to the Board as an intervenor on matters relating to Manitoba Hydro. The Board is satisfied that the Applicant represents a significant interest in the proceedings. The Board is also mindful of the Applicant's participation in the Acquisition Hearing and the fact that this Hearing dealt extensively with matters considered at that time. On the matter of financial resources to present its case adequately without an award of costs, the Board notes the unusual scope of the hearing which could significantly affect the interest of the ratepayers of Manitoba Hydro in general, as well as the members of MIPUG. The Board is of the opinion that it does have the discretion to consider this application and is not strictly bound to the guide on cost awards. The Board has exercised its discretion on previous occasions and is of the opinion that the subject matter of the proceedings on the matter of Integration warrant the exercise of its discretion. The Board however is not of the opinion that

similar discretion should be exercised with regards to the proceeding on the Status Update Hearing.

The Board recognizes the contribution made by this Intervenor to the process with regards to the Centra Integration Hearing and while this decision will not set a precedent, the Board, on the basis of the nature of the matter of this hearing will allow the request in the amount of \$47,547.86. The Board will deny in full the Applicant's submission with regards to the Manitoba Hydro Status Update hearing.

**IT IS THEREFORE ORDERED THAT:**

1. The Manitoba Industrial Power Users Group's application for an award of costs be allowed in the amount of \$47,547.56.
2. The costs shall be payable by Manitoba Hydro within 15 days of the date of this Order.

THE PUBLIC UTILITIES BOARD

"G. D. FORREST"  
Chairman

"H. M. SINGH"  
Acting Secretary

Certified a true copy of Order  
No. 205/02 issued by The Public  
Utilities Board

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Acting Secretary