

MANITOBA) Order No. 5/03
)
THE PUBLIC UTILITIES BOARD ACT) January 14, 2003

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

APPLICATION BY THE CANADIAN CENTRE FOR
ENERGY POLICY INC. 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
THE 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 also a Manitoba Hydro Status Update. The Canadian Centre for Energy Policy Inc. (the "Applicant" or "CCEP") was granted intervenor status.

The public hearings were held in separate phases to consider matters concerning Hydro's acquisition of Centra, separate from the matters concerning the Hydro Status Update.

Application

By letter dated October 31, 2002, the Applicant, through its Counsel filed with the Board, the required hearing and summary sheets detailing the claim for costs. The total claim for costs is \$121,781.79 comprised of professional fees (legal, accounting and consultant) of \$112,559.75, disbursements of \$1,228.86 and GST of \$7,993.18.

The Applicant submitted that the CCEP had made a significant contribution to the Board's understanding of the issues. The Applicant also submitted that without the intervention of CCEP, the issues of concern to the General Service Small Class and General Service Medium Class would not have received as high a level of attention as they have with CCEP's intervention. The Applicant also noted its participation focused on adjusting the rates for the General Service Small Class. On the matter of the Acquisition and Integration of Centra the Applicant noted its focus was on smaller agricultural and commercial operators.

The Applicant also submitted that it participated in a responsible manner and co-operated with other intervenors. The Applicant also submitted that it had insufficient financial resources to present its case adequately without an award of costs. The Applicant noted that its membership consisted of

small businesses and non-profit entities who lack the resources to pay for the services to be adequately represented. The Applicant also submitted that CCEP represents a class of customers with a substantial interest in the outcome of the hearings.

Hydro by way of letter dated November 13, 2002 provided their comments regarding the Applicant's submission for costs. Hydro objected to an award of costs for a number of reasons.

Hydro submitted that the Applicant did not meet the requirements of Section 41(a) of the Board's Draft Rules ("Rules") as the Applicant did not make a significant contribution or contribute to a better understanding by all parties of the issues before the Board. Hydro submitted that the Applicant did not raise any issues which had not already been raised by Hydro in its filing.

Hydro also submitted that Section 41(b) of the Rules was not met as the Applicant failed to avoid duplication. Hydro noted that many of the questions posed by the Applicant in the interrogatory stage and during cross examination were duplicative and posed by other parties.

Hydro also submitted that the Applicant did not meet the requirement of Section 41(c) of the Rules as they have not established that it had insufficient financial resources to adequately present its case. Hydro submitted that the members of CCEP could support an appropriate level of intervention of

interest to the class. Hydro also questioned the expense related to having legal and accounting representatives present for each day of the hearing.

Hydro submitted that CCEP's costs associated with the Integration portion of the hearing was unnecessary.

Hydro further submitted that the Applicant failed to meet criteria 41(d) of the Rules as they do not represent the interests of a substantial number of ratepayers. Manitoba Hydro submitted that the Applicant attempted to advocate issues more properly addressed by government policy and as such cannot be said to be representing any class at the hearing. Hydro, also objected to any costs being awarded to Dr. Nicolaou who is a Director of CCEP.

Hydro objected to any funding being awarded to the Applicant.

The Applicant responded to Hydro's submission by way of letter dated November 26, 2002.

The Applicant indicated that its approach was to derive, through proper cross-examination and argument, what might be provided by expert evidence thereby saving costs. The Applicant submitted that without its intervention the evidence in the filing would have remained latent dormant and unexplored.

In dealing with the matter of duplication of intervenor requests, the Applicant submitted that the nature of

the proceedings and the time lines would normally cause some duplication. The Applicant also submitted that it was largely successful in avoiding duplication in cross-examination.

The Applicant submitted that it is unreasonable to expect it to extract financing from the classes that it represents. The Applicant also objected to Hydro's submission regarding the quantum of costs for legal and accounting and submitted that these services were necessary in order to obtain a full understanding of the issues. The Applicant also submitted that it does represent a substantial interest and that the issues raised are substantial.

With regards to the fees for Dr. Nicolaou, the Applicant noted that he is a Director of CCEP and not the client to whom the bills are sent. Since CCEP is the client, Dr. Nicolaou's expertise as an Economist was also noted by the Applicant. The Applicant submitted that its application for costs should be granted in its entirety.

Board Comments

The Board has reviewed the submissions of the Applicant and the comments provided by Hydro. The Board notes that CCEP's stated purpose for seeking and obtaining intervenor status was to attempt to provide rate relief to the General Service Small and General Service Medium Classes. The Board is of the opinion that for the applicant to do that, it was necessary for the Applicant to participate in the portion of the hearing dealing with revenue requirements cost of service and

rate design. The Board notes the Applicant did not exist and was not involved in the public hearing process in 1999 that led to the Board's approval of Hydro's acquisition of the shares of Centra Gas. The Board is not convinced of the Applicants' need to participate in the Acquisition and Integration update portion of the hearing.

The Board is also not convinced as to the need and contribution through the attendance of the Applicant's accounting consultant. As no expert witnesses were called by CCEP the Board can not justify the awarding of full costs for the attendance of the Applicant's advisors and experts.

With respect to the balance of Hydro's objections, the Board agrees with the Applicant and will allow costs as follows:

Compu-Inform Consulting \$10,111.50 inclusive of GST

Meyers Norris Penny \$12,003.20 inclusive of GST

Duboff Edwards Haight & Schachter \$58,347.03 inclusive of GST

IT IS THEREFORE ORDERED THAT:

1. The Canadian Centre for Energy Policy Inc.'s application for an award of costs BE AND IS HEREBY APPROVED in the total amount of \$80,461.73.

2. These costs shall be paid by 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. 5/03 issued by The
Public Utilities Board

Acting Secretary