

MANITOBA) Order No. 63/05
)
THE PUBLIC UTILITIES BOARD ACT) May 4, 2005

BEFORE: Graham F. J. Lane, B.A., C.A., Chairman
R. Mayer, Q.C., Vice-Chairman
L. Evans, B.A., M.A., LL.D. (Hon.)

APPLICATION BY CONSUMERS' ASSOCIATION OF
CANADA (MANITOBA) INC./MANITOBA SOCIETY OF
SENIORS FOR AN AWARD OF COSTS RELATED TO
MANITOBA HYDRO'S APPLICATION FOR CONDITIONAL
RATE INCREASE - APRIL 1, 2005

Introduction

Board Orders 101/04 (July 28, 2004) and 143/04 (November 18, 2004) arose out of a Manitoba Hydro's ("MH") General Rate Application ("GRA"), heard in a public hearing in the summer of 2004. In Board Order 101/04, The Public Utilities Board ("the Board") approved revised MH rates effective August 1, 2004, and provided two interim conditional rate increases to be effective April 1, 2005 and October 1, 2005, both requiring the receipt of additional material.

- "2. MH file the following information by no later than January 31, 2005, for review by the Board with respect to a conditional rate increase for April 1, 2005:
 - (a) An update of its forecast for fiscal 2004/05 and 2005/06; and
 - (b) Its second and third quarter financial statements for fiscal year 2004/05;
3. MH file its audited financial statements for 2004/05, updated forecast for fiscal 2005/06 and subsequent years through to and including fiscal 2013/14, and its first quarter 2005/06 financial statements by July 31, 2005, for review by the Board with respect to a conditional rate increase for October 1, 2005;"

On January 27, 2005, the Board issued a procedural letter providing intervenors information with respect to participation in the Board's consideration of the conditional rate increases. Consistent with the decisions and directions of Board Orders 101/04 and 143/04, which established the grounds for the Board's review of applications arising out of the Board's provision of two conditional rate increases, the Board's process did not involve an oral hearing, but relied on a paper process.

Subsequently, MH filed an Application seeking approval of the April 1, 2005 conditional rate increase and provided the Board with the requisite required information, which was shared with the intervenors. Consumers' Association of Canada (Manitoba) Inc. and Manitoba Society of Seniors ("CAC/MSOS") intervened in the paper hearing process that followed, as the intervenor had done in the General Rate Application hearing that led to Orders 101/04 and 143/04.

CAC/MSOS asked the Board to vary its intended process with respect to the first conditional rate increase, and requested an oral hearing at which it would have standing. Initially, the Board reserved judgement on CAC/MSOS' motion to vary and amended its process to allow CAC/MSOS and other intervenors to submit information requests ("IRs") for the Board's review, for subsequent transmittal to MH. CAC/MSOS submitted IRs, and responses to them were provided by MH and shared with all intervenors.

In reaching its decision on the April 1 conditional rate increase, a decision that accepted MH's application to implement a 2.25% increase, the Board denied CAC/MSOS' motion to vary.

Application for Costs

In accordance with the Board's Draft Rules of Practice and Procedure ("the Rules"), on March 29, 2005 CAC/MSOS applied for an award of costs related to their participation in the Board's consideration of the first conditional rate increase.

CAC/MSOS based their request on CAC/MSOS having:

- a) a substantial interest in the outcome of the proceeding;
- b) financial need; and
- c) made a responsible intervention.

CAC/MSOS sought an award of costs, comprised as follows:

Legal Fees	\$2205.00
Consultation Fees	\$6125.00
Disbursements	<u>0</u>
Total	<u>\$8330.00</u>

CAC/MSOS contended that their intervention had been within the scope of the proceeding, which included the financial position of MH; the utility's Operating, Maintenance & Administration expenses; MH's capital expenditures; and the utility's updated financial forecast ("IFF").

CAC/MSOS noted that the Board's decision commented on the areas of interest cited above and addressed in CAC/MSOS' intervention.

Comments by MH

Pursuant to the Board's Rules, MH has the right to comment on an intervenor's request for a cost award, and MH provided comments by a letter dated April 12, 2005.

While MH did not object to CAC/MSOS's claim for costs for participation directly related to MH's submission, it did object to CAC/MSOS seeking costs related to CAC/MSOS' attempt to overturn the Board's established process for reviewing the conditional rate increase. MH noted that no other intervenor to the process made a similar objection, and that the Board did not accept CAC/MSOS' process initiative.

MH also noted that CAC/MSOS incurred costs partially related to actions taken by CAC/MSOS in advance of the Board disclosing its process. Furthermore, MH opined that CAC/MSOS attempted to lead the review process notwithstanding the Board's clearly indicated intention to lead the examination process and, by so doing, assist all parties.

MH acknowledged that the Board found merit in some of CAC/MSOS' IRs, but submitted that CAC/MSOS' actions were, in part, improper, and CAC/MSOS should bear some of the responsibility for costs.

CAC/MOS responded on April 20, 2005. On the question of the timing of its IRs, CAC/MOS noted it accepted the Board's invitation to file its IRs with the Board, and suggested that the fact that the IRs were filed in this fashion had not affected the costs incurred by the process. CAC/MSOS claimed it was acting in the spirit of the process adopted by the Board, and denied it was attempting to drive the process as claimed by MH.

With respect to procedural motions filed by CAC/MSOS, CAC/MSOS argued it had exercised a statutory right to request a variance, and that there was no relevance to the fact that the other intervenors did not object to the Board's hearing process.

In summary, CAC/MSOS opined that it had intervened responsibly, in the spirit of the Rules adopted by the Board and found in statute, and ought not be penalized in this award of costs.

Board Findings

MH's application with respect to the April 1, 2005 conditional rate increase was important, and the Board appreciates the efforts of all parties and finds that the deliberation of this matter occurred within a reasonable timeframe, and at a reasonable cost.

While CAC/MSOS procedural objections affected the process and its timeline, the Board agrees with CAC/MSOS' contention that its motion to vary was permitted by statute and reasonable to exercise in the circumstance. The Board's decision by Order 101/04 to provide for two conditional rate increases for possible implementation in 2005, without a General Rate Application being required, was unusual. Though merited by the circumstances, it justifies CAC/MSOS' effort to have the Board reconsider not having an oral hearing in the matter. CAC/MSOS' motion resulted in the Board re-evaluating its paper process, and that re-evaluation, although it did not result in CAC/MSOS' motion being accepted, was useful.

The Board is satisfied with the contribution of CAC/MSOS in this regard, and, accordingly, will allow costs in full.

IT IS THEREFORE ORDERED THAT:

1. The Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors' application for an award of costs BE AND IS HEREBY APPROVED in the total amount of \$8,330.00
2. These costs shall be paid by Manitoba Hydro within thirty days of this Order.

THE PUBLIC UTILITIES BOARD

"GRAHAM F. J. LANE, CA"
Chairman

"G. O. BARRON"
Secretary

Certified a true copy of
Order No. 63/05 issued by The
Public Utilities Board

Secretary