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THE PUBLIC UTILITIES BOARD ACT) Order No. 65/05
) May 10, 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 REVISED
RATES EFFECTIVE APRIL 1, 2004 AND 2005

Introduction

The Consumers' Association of Canada (Manitoba) Inc. and the Manitoba Society of Seniors ("CAC/MSOS") applied to the Public Utilities Board ("the Board") for an award of costs related to CAC/MSOS' participation in Manitoba Hydro ("MH") General Rate Application proceeding.

On January 29, 2004, MH filed an application for revised rates with the Board, and a Pre-Hearing Conference was held on March 17, 2004 resulting in Board Order No. 43/04. The Order approved intervenor status for CAC/MSOS for the public hearing that followed in June and July, 2004.

This Order provides the Board's response to CAC/MSOS' application.

CAC/MSOS' Application

On March 24, 2005, pursuant to the Board's Draft Rules of Practice and Procedure and Board Order No. 163/87 with respect to the awarding of costs to intervenors, CAC/MSOS applied for an award of costs for:

Legal Fees	\$ 22,080.00
Consultant/Expert Witness	62,430.00
Fees	
Disbursements	<u>4,728.13</u>
Total	<u><u>\$89,238.13</u></u>

Applications for costs are to be filed with the Board no later than thirty days following the conclusion of the related proceeding; in short, CAC/MSOS' application should have been filed by the end of August 2004.

Mr. Byron Williams, Counsel for CAC/MSOS, provided an explanation for CAC/MSOS' delay, his explanation cited inadequate internal human resources of the Public Interest Law Centre (which provides the intervention for CAC/MSOS) due to staff resignations.

Discussion and Commentary

In accordance with established practice, the Board provided MH with a copy of CAC/MSOS' application, and sought MH's perspective. Provided with the opportunity to comment on CAC/MSOS's application, MH made no comment on the filing delay and based its limited objection to the application on its perception of CAC/MSOS' "... duplicitous (cross examination) of earlier cross examination."

MH noted that CAC/MSOS had exceeded the budget for its participation that it had presented at the Pre-Hearing Conference. MH suggested that CAC/MSOS had been duplicitous in its examination of MH's operating, maintenance and administrative expenses, as the matter had been canvassed by Board Counsel. MH recommended that the Board "... consider reducing CAC/MSOS' claim on account of such duplication."

In its application, CAC/MSOS noted that its original budget for its intervention was exceeded by \$12,000 due to the complexity and extended duration of the hearing, and that in its efforts to restrain its cost award application the Public Interest Law Centre had absorbed one half of the costs associated with photocopying material in support of its direct and cross examination.

With respect to MH's objection, CAC/MSOS reminded the Board of the Board's statement in a prior Order that the Board must "... be satisfied that Hydro has fully examined its internal costs before seeking a rate increase from its ratepayers."

CAC/MSOS reported that it had assisted the Board in its examination of MH's operating, maintenance and administrative costs, and had determined that the forecast of these expenses were at least \$10 Million too high, that being the equivalent of a 1% rate increase. With respect to MH's view that CAC/MSOS had duplicated the work of Board Counsel, CAC/MSOS stated that in preparation for a hearing it is impossible to know with certainty the areas to be covered by cross-examination by Board Counsel, and that upon completion of Board's Counsel cross-examination CAC/MSOS adjusted its approach to focus on unresolved issues with regard to operating, maintenance and administrative expenses.

CAC/MSOS concluded that its application for costs is reasonable and costs were prudently incurred.

Board Findings

Cost awards are at the Board's discretion.

The Board makes cost awards on the basis of long established criteria. These criteria require that the applicant seeking costs have a material interest in the proceeding, lack the financial resources necessary to participate in the absence of a cost award, and participate responsibly.

CAC/MSOS is well known to the Board, and the Board accepts CAC/MSOS had a material interest in the outcome of the proceeding and participated responsibly. Furthermore, the Board is satisfied that CAC/MSOS is a non-profit organization with charitable status, and lacks the ability to participate without cost award eligibility.

The operating, maintenance and administrative expenses of MH represent significant expenditures important to rate determinations, and are properly the subject of scrutiny. The Board does not share the perspective of CAC/MSOS with respect to all elements of the scrutiny provided this area at the public proceeding, but is satisfied that CAC/MSOS contributed to the process by its efforts and that any duplication that did or may have occurred was not deliberate or representative of a lack of cooperation.

With respect to the quantum of costs sought by CAC/MSOS, the Board appreciates that intervenor budgets are prepared based upon best estimates and that the public hearing that follows often varies in length and nature due to the complexities involved. While the Board agrees with MH that there is no necessary link between the duration of a hearing and cost awards, a lengthened hearing can be a contributing factor to a budget overrun.

The Board has reviewed the quantum of expenditures sought by CAC/MSOS and finds the request reasonable, and will grant the application for costs in the amount sought.

This being said, the Board notes that timely applications for costs are important and this award is not binding on the Board with respect to future award requests filed after the due date for such applications. The Board is appreciative of the resource restraints of CAC/MSOS and appreciative of its involvement in the proceedings.

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 \$89,238.13.
2. These costs shall be paid by Manitoba Hydro within 30 days of the date of this Order.

THE PUBLIC UTILITIES BOARD

"GRAHAM F. J. LANE, B.A., C.A."
Chairman

"G. O. BARRON"
Secretary

Certified a true copy of Order
No. 65/05 issued by The Public
Utilities Board

Secretary