

MANITOBA
THE PUBLIC UTILITIES BOARD ACT
THE MANITOBA HYDRO ACT
THE CROWN CORPORATIONS PUBLIC
REVIEW AND ACCOUNTABILITY ACT

Order No. 110/08

July 22, 2008

Before: Graham Lane, C.A., Chairman
 Robert Mayer, Q.C., Vice-Chairman
 Susan Proven, P.H.Ec., Member

MANITOBA KEEWATINOOK ININEW OKIMOWIN:
FOR AN AWARD OF COSTS
ARISING OUT OF MANITOBA HYDRO'S 2008/2009 GENERAL RATE
APPLICATION

Introduction

Following a Pre-Hearing Conference held October 15, 2007, The Public Utilities Board (Board) issued Order 136/07 approving a public hearing process for Manitoba Hydro's (Hydro) General Rate Application (GRA) for revised rates. Among other matters, the Order approved intervener status for the Manitoba Keewatinook Ininew Okimowin (MKO) for a public hearing that followed in March, April and May 2008.

Following the GRA, MKO applied to the Board for an award of costs. In accordance with the Board's normal process, Hydro commented on MKO's application and, subsequently, MKO responded to Hydro's concerns.

By this Order, the Board provides MKO a cost award of \$6,940.77.

Application

MKO applied for an award of costs of \$6,940.77, comprised of:

Desiderata Energy Consulting Inc. - fees	\$5,633.26
Disbursements	<u>\$1,307.51</u>
TOTAL	<u>\$6,940.77</u>

MKO submitted that all costs for "experts" claimed were in relation to Mr. Dale Hildebrand of Desiderata Energy Consulting Inc., and that MKO's disbursements were entirely for the cost of hearing transcripts.

MKO relied on its pre-hearing application, which set out its interests in and intentions with respect to the then-upcoming hearing, to support its claim for costs.

Hydro's Comments

With respect to the cost of transcripts, Hydro indicated that in future it would expect that transcripts, as they are available on the Board's website, would be accessed electronically avoiding the additional costs of purchasing them from the contractor. Hydro was willing to accept that MKO may not have been aware of that availability and did not object to costs being awarded for the cost.

Hydro opined that MKO neither participated in the hearing in a responsible manner, nor did it make a significant contribution, one relevant to the proceeding. Hydro cited that MKO only advanced second round information requests, with the result that topics later addressed by MKO in cross-examination were not sufficient to allow Hydro to properly respond. Further, for Hydro, many of the topics raised by MKO through the process were not germane to the application. Hydro also indicated that MKO's expert did not appear at the hearing, making the nature of the services provided unclear.

In summary, Hydro recommended that the Board award costs in the amount of \$1,307.51, representing the cost of transcripts, and deny any award with respect to the costs related to MKO's consultant.

Rebuttal

MKO advised that the role of its consultant, Desiderata, was to provide MKO's representative at the hearing with background information and analysis.

With respect to the issue of relevancy, MKO cited the transcripts which in part included an indication that the Board "found most of Mr. Anderson's questions relevant".

With respect to transcripts, MKO suggested that time pressures resulted in an inability to wait for the time delay between the hearing day and the website posting of transcript.

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 applicants have a material interest in the proceeding, lack the financial resources necessary to participate in the absence of a cost award, and participate responsibly.

MKO is well known to the Board, and the Board accepts MKO has a material interest in the outcome of the proceeding, and is a non-profit organization lacking the ability to participate effectively without cost award eligibility.

The Board finds that, while not all the matters raised and commented on by MKO during the hearing were germane to the matters at hand, at least in the perception of Hydro, MKO's participation was sufficiently relevant to allow for an award of costs. However, with respect to the issue raised by Hydro concerning MKO's preparatory work, the Board reminds MKO of a further observation of the Board noted in the transcript referenced by MKO:

“Perhaps... you have inadvertently caused yourself a disservice. Advance notice of your specific areas of questions may have assisted Manitoba Hydro in having someone better versed in the subject areas present...”

To some degree, the Board shares Hydro's concerns with respect to the quality of MKO's participation in this particular process. In addition to the information request issue raised by Hydro, and despite clear direction, MKO failed on more than one occasion to respect the timelines set by the Board for cross-examination and closing submissions. In a complex hearing such as the Hydro proceeding it is of paramount importance that every party gives due consideration to the effects of its actions on the efficiency of the process, so as to ensure the process is not negatively affected. The Board expects MKO to consider these comments ahead of future interventions. That said, the Board understands that MKO's representative was working on several files concurrently while participating on MKO's behalf in the

proceeding, and accepts the representative was making a best effort to meet the requirements of the proceeding.

As to the matter of evidence of MKO's expert's participation, as raised by Hydro, the Board accepts MKO engagement of Desiderata. It is not unusual that expert assistance is engaged by interveners and the Board is sympathetic to MKO's need to acquire the assistance and will find the quantum of costs reasonable.

Therefore, the Board will award MKO's costs as requested.

IT IS THEREFORE ORDERED THAT:

1. The Manitoba Keewatinook Ininew Okimowin, be and is hereby awarded costs of \$6,940.77, with respect to its intervention at the Manitoba Hydro 2008 General Rate Application hearing.
2. Costs shall be payable by the Manitoba Hydro within 30 days of the date of this Order.

THE PUBLIC UTILITIES BOARD
"GRAHAM LANE, CA"

Chairman

"H. M. SINGH"

Acting Secretary

Certified a true copy of Order No. 110/08
issued by The Public Utilities Board

Acting Secretary