

M A N I T O B A
THE PUBLIC UTILITIES BOARD ACT
THE MANITOBA HYDRO ACT
THE CROWN CORPORATIONS PUBLIC
REVIEW AND ACCOUNTABILITY ACT

Order No. 121/08

August 19, 2008

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

THE CONSUMERS' ASSOCIATION OF CANADA (MANITOBA) INC./
MANITOBA SOCIETY OF SENIORS/WINNIPEG HARVEST:
AWARD OF COSTS
ARISING OUT OF A GENERAL RATE APPLICATION
BY MANITOBA HYDRO FOR 2008/09 RATES

Introduction

Following a pre-hearing conference held on 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, Order 136/07 approved intervener status for Consumers' Association of Canada (Manitoba) Inc./ Manitoba Society of Seniors/ Winnipeg Harvest (Coalition) for the Public Hearing that followed in March, April and May 2008.

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

This Order provides the Board's response to the Coalition's application and directs Hydro to provide a payment to the Coalition in the amount of \$176,144.35.

Application

The Coalition applied for an award of costs of \$176,144.35, comprised of:

Legal Fees	Fees	\$ 48,282.50	
	Disbursement	\$ 2,138.26	\$ 50,420.76
Consulting Fees			
Econalysis:	Fees	\$ 54,838.75	
	Disbursements	\$ 727.60	\$ 55,566.35
Dunsky Energy	Fees	\$ 25,190.00	
	Disbursements	\$ 2,161.24	\$ 27,351.24
Stephen Johnson and Co.	Fees	\$ 42,066.00	
	Disbursements	\$ 740.00	\$ 42,806.00
Total			\$176,144.35

In support of its application for a cost award the Coalition stated:

"... Mr. William Harper provided extensive evidence ... on the issues of the corporation's management of its operating maintenance and administrative expenses (OM&A) as well on issues related to the design and implementation of inverted rates. The Coalition's other expert witness, Mr. Phillip Dunsky, provided an independent analysis of one aspect of the corporation's demand site management program ... To the Coalition's knowledge, Mr. Dunsky was the first expert witness ... to specifically and critically analyze specific aspects of the corporation's energy efficiency program."

In support of its application respecting legal costs, the Coalition cited a number of the issues it had addressed, including revenue requirement, rate design and cost allocation. The Coalition suggested its arguments were helpful to the Board's determinations on a variety of issues, including the review of OM&A expenditures, low-income energy efficiency programs and Hydro's various capital expenditures.

In support of its cost award request in relation to its advisor Stephen Johnson and Co., the Coalition noted that the consultant had specifically addressed Hydro's risk management strategy and accounting policy, reviewing the application and had assisted the Coalition by preparing information requests focused on these issues. The Coalition also noted that Stephen Johnson and Co. had also provided assistance with respect to the Coalition's view of Hydro's current debt management practices.

The Coalition attributed the cost overrun (the original budget presented by the Coalition at the PHC was \$138,595), to the fact

that the hearing lasted 19 days rather than the originally estimated 12 days.

Hydro's Comments

Hydro accepted the Coalition's submissions related to legal fees and Dunsky Energy as reasonable and acceptable, agreeing that the participation of those parties contributed to the value of the hearing.

In relation to the charges related to Stephen Johnson and Co., Hydro suggested the "Coalition advisors were biased to the position that Manitoba Hydro had been too conservative in its use of floating rate financing ... this bias prevailed despite attempts of Manitoba Hydro during information requests and rebuttal evidence phases of the process to outline its target floating rate range ... The Coalition's information requests of the floating rate debt issue contain long argumentative preambles and were repetitive in what they asked in that they asked the same questions over and over from numerous slightly different points of view. ... The Coalition responded in second round information requests by accusing the Utility of non-responsiveness ... becoming more adversarial ... and simply repeating the original questions, seemingly ignoring the information provided in the first round."

In short, Hydro questioned the value of the contribution by Stephen Johnson and Co., particularly given that none of the consultant's contributions were placed into evidence "with

exception of a reference to a short promotional article from a major Canadian bank". Hydro expressed concern that the Advisor was conducting research to gain expertise, and billing for it.

Notwithstanding their objection to the Stephen Johnson and Co.'s contribution, Hydro concluded "The Coalition produced an efficient intervention with respect to most issues. Its costs of \$176,144.35 in total are not unreasonable for a proceeding of this length and complexity."

Coalition's Response

The Coalition refuted Hydro's contention that its advisor was biased against Hydro's debt portfolio management strategy, stating: "They asked Hydro to provide empirical support, independent analysis, academic literature and express Board Policy in support of its target range or its management towards the bottom of that range. Given the dearth of material provided, the Coalition proposed an independent review of Hydro's long standing approach."

And,

"In terms of the information requests posed by the Coalition in the first and second rounds ... Coalition analysts were of the view that Hydro's responses were inadequate... not an uncommon experience in regulatory proceedings. ... The Coalition makes no apologies for the information requests it posed but Mr. Williams does undertake to continue to carefully review future information requests ...".

And,

"The Coalition did not accept Hydro's suggestion that its expert was involved in this proceeding merely to gain expertise, and advised that the object was to test the reasonableness and the implications of Hydro's debt portfolio management ... by testing the basis for the range and its practical application (and) ... the implications of the policy against the marketplace over a ten year investment horizon. Arguably, the result of their work was that enough doubts were raised about Hydro's current practice to justify the Coalition's request for an independent review."

Board Findings

The Board is satisfied that the Coalition has met the Board's criteria for an award of costs as set out in the Board's *Rules of Practice and Procedure*. The Coalition is well known to the Board and its intervention was of value in augmenting the Board's knowledge of the various issues tested through the proceeding.

While having some empathy for Hydro's perspective, on balance, the Board accepts the explanations provided by the Coalition with respect to the concerns expressed by Hydro as related to Stephen Johnson and Co. The Board agrees with Hydro and the Coalition that the Coalition's overall contribution was valuable and assisted the Board in its gaining an understanding of the issues.

Without accepting that it was the case with the Coalition's advisor, the Board continues to caution interveners that gaining expertise should not come at the expense of Hydro and its ratepayers.

The Board agrees with Hydro's conclusion that the overall costs submitted by the Coalition for its participation in a proceeding that was lengthy and complex was reasonable, and will therefore award costs to the Coalition as submitted.

IT IS THEREFORE ORDERED THAT:

1. The Consumers' Association of Canada (Manitoba) Inc./Manitoba Society of Seniors/Winnipeg Harvest (Coalition) be awarded costs in the amount of \$176,144.35.
2. Costs shall be paid by Manitoba Hydro within 30 days of the date of this Order.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, C.A."
Chairman

"G. A. GAUDREAU, C.M.A."
Secretary

Certified a true copy of
Order No. 121/08 issued by
The Public Utilities Board

Secretary