

<p>M A N I T O B A</p> <p>THE PUBLIC UTILITIES BOARD ACT</p> <p>THE MANITOBA HYDRO ACT</p> <p>THE CROWN CORPORATIONS PUBLIC REVIEW AND ACCOUNTABILITY ACT</p>	<p>Order No. 123/08</p> <p>August 21, 2008</p>
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Before: Graham Lane, C.A., Chairman
 Robert Mayer, QC, Vice-Chairman
 Susan Proven, P.H.Ec., Member

**RESOURCE CONSERVATION MANITOBA AND
TIME TO RESPECT EARTH'S ECOSYSTEMS
AWARD OF COSTS
ARISING OUT OF THE HEARING OF MANITOBA HYDRO'S
2008/09 GENERAL RATE APPLICATION**

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 to be effective April 1, 2008). Among other matters, the Order approved intervener status for Resource Conservation Manitoba and Time to Respect Earth's Ecosystems (RCM/TREE) for the Public Hearing that followed in March, April and May 2008.

Following the GRA, RCM/TREE applied to the Board for an award of costs. In accordance with the Board's normal process, Hydro commented on RCM/TREE's Application and, subsequently, RCM/TREE responded to Hydro's comments.

This Order approves a cost award and directs Hydro to provide a payment to RCM/TREE of \$142,066.84.

Application

RCM/TREE applied for an award of costs of \$142,066.84, comprised of:

Legal Fees	Fees	\$ 58,440.60	
	Disbursements	\$ 705.81	\$ 59,146.41
Consulting Fees			
	Resource Insights Inc:		\$ 77,520.43
	Steven Weiss		\$ 5,400.00
Total			\$142,066.84

In support of its request, RCM/TREE stated that by its participation in the hearing the intervener had assisted the Board in identifying and narrowing issues for consideration and providing written testimony. RCM/TREE noted that its witness, Mr. Chernick, had provided insightful commentary on the rate design proposal of Hydro and alternative methods of rate design.

RCM/TREE noted its unique perspective, stating that it had been the only intervener that reviewed Hydro's operation from the perspective of environmental and sustainability considerations.

Addressing the Board's criterion requiring responsible participation, RCM/TREE opined that it had focused its efforts on ensuring their contribution dealt with issues in a cost-effective manner, through meeting with the counsel for the Coalition early in the process to ensure that the expert testimony brought by RCM/TREE would not duplicate that advanced by the Coalition. RCM/TREE also noted that in order to further reduce costs, and with the concurrence of other parties, RCM/TREE did not incur expense of having one of their witnesses, Mr. Weiss, travel to Winnipeg to provide oral testimony.

As to meeting the Board's financial criterion, the intervener noted "RCM and TREE are non-profit organizations that would not possibly take part in the hearing process if they had to rely upon their own resources."

In relation to having a substantial interest in the proceeding, the intervener noted:

"It is the position of RCM and Tree that they represent the interests of a substantial number of rate-payers of Manitoba Hydro. The issues raised by RCM and Tree are significant and constitute matters of concern in the public interest."

RCM/ TREE also addressed the cost overrun of its original proceeding budget, as follows:

"The submission for costs exceeds the amount requested in our pre-hearing budget. ... At the time we submitted our estimate, we did not take into account the MIPUG severance motion ... (and) also under-estimated the length of the hearing."

And,

"Mr. Chernick advises that he and his staff spent considerably more time than had been expected dealing with issues involving inverted rates. It is our belief that because inverted rates are a new concept for Manitoba Hydro in making its presentation to the Board, the information from Manitoba Hydro and the proposal submitted by RCM/Tree to the Board were both more complicated than was originally expected. As a result, the work of Resource Insight Inc. was more time consuming than had been expected."

Hydro's Comments

Manitoba Hydro accepted RCM/TREE's explanation that the increase in legal costs was as a direct result to the MIPUG severance motion and the longer than expected hearing.

However, Hydro questioned the amount billed by Resource Insight (in respect of the services of Susan C. Geller), noting that Mr. Chernick was the only individual identified in RCM/TREE's Intervener Budget and Cost Summary sheet as being its consultant and expert witness.

"Although RCM/TREE requested that Ms. Geller be added to the distribution list (email from Bill Gange dated November 9, 2007), Manitoba Hydro was not made aware that Ms. Geller would be providing consulting services to RCM/TREE and was not made aware that Ms. Geller would be acting in the same consultant capacity as Mr. Chernick. ... Manitoba Hydro is not aware of any evidence placed before the proceeding or in this application for cost, which sets forth the qualifications and experience of Ms. Geller."

Manitoba Hydro also questioned the value of and need for the evidence of Mr. Weiss: "The evidence provided by Mr. Weiss to the GRA proceeding was not relevant, in that there is no legally established framework and no tradition in this Province for the provision of bill payment support as recommended in the evidence of Mr. Weiss. Further, the evidence was duplicative, since it was virtually the same evidence provided by Mr. Weiss, through RCM/TREE, in the 2007 Centra Gas General Rate Application."

Notwithstanding the foregoing comments, Manitoba Hydro did not object to RCM/TREE being compensated through a cost award that would recognize Mr. Weiss' costs in the amount of \$5,400.00.

In summary, Hydro concluded that

"RCM/TREE produced a reasonable intervention with respect to the narrow range of issues it pursued during the proceeding. However, its costs substantially exceeded its budget and, in the case of consultant cost, exceeded by a wide margin the amounts it has claimed in previous hearings. Manitoba Hydro accepts the additional expenses may have been incurred because of the difficulties establishing a firm date for Mr. Chernick's testimony. ... Manitoba Hydro recommends that the Board require further explanation for the fact that RCM/TREE consultant billings in this proceeding exceed the amounts claimed in previous hearings by such a wide margin and provide the justification regarding the engagement of both Mr. Chernick and Ms. Geller on the same issues. Manitoba Hydro

also recommends that the board inquire into the qualifications and experience of Ms. Geller before accepting the hourly rate claimed."

RCM/TREE's Response

Responding to the concerns about the participation by and costs for Ms. Geller, RCM/TREE attached Ms. Geller's curriculum vitae and stated:

"Ms. Geller conducted the majority of the pre-hearing work on this file. She assisted RCM/TREE in the preparation of Information Requests. She was instrumental in preparing the list of issues for discussion by RCM/TREE. She assisted in the preparation of cross examinations of the witnesses of MH. She prepared the first draft of Mr. Chernick's testimony."

"From our review of the records, it would appear that there is little, if any, duplication of work between Mr. Chernick and Ms. Geller."

Board Findings

The Board is satisfied that RCM/TREE has met the criteria established for an award of costs, as defined in the Board's Rules of Practice and Procedure. RCM/TREE is well-known to the Board, and its intervention representing environmental interests was of value in broadening the Board's knowledge and understanding.

The Board accepts the explanations provided by RCM/TREE with respect to the concerns expressed from Hydro. While the Board accepts the qualifications of Ms. Geller, as provided by RCM/TREE subsequent to its cost award application, the Board urges interveners to provide such information earlier in subsequent Board proceedings.

The Board accepts the cost overrun of RCM/TREE's intervention was due primarily to the complexities of the issues and the lengthier than expected hearing.

The Board will award RCM/TREE costs as requested.

IT IS THEREFORE ORDERED THAT:

1. Resource Conservation Manitoba and Time to Respect Earth's Ecosystems be awarded costs in the amount of \$142,066.84.
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. 123/08 issued by
The Public Utilities Board

Secretary