

**MANITOBA** ) **Order No. 103/13**  
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**THE PUBLIC UTILITIES BOARD ACT** ) **September 19, 2013**

BEFORE: Régis Gosselin, CGA, MBA, Chair  
Larry Soldier, Member  
Raymond Lafond, B.A., CMA., FCA, Member

**AWARD OF COSTS: GREEN ACTION CENTRE (“GAC”) –  
INTERVENTION IN MANITOBA HYDRO  
2012/13 and 2013/14 GENERAL RATE APPLICATION**

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## **BACKGROUND AND BOARD FINDINGS**

Green Action Centre (“GAC”) sought an Order from the Public Utilities Board (Board) to recover costs incurred by GAC to intervene in Manitoba Hydro’s (MH) 2012/13 and 2013/14 General Rate Application (GRA) which resulted in the Board issuing Order 43/13.

GAC’s cost request included statements of account from Resource Insight Inc., a consultant engaged by this intervener, and Gange Goodman & French, legal counsel for this Intervener.

While MH’s response of June 4, 2013 acknowledged that GAC deserved an award of costs, MH raised concerns regarding the quantum of a cost award. GAC subsequently responded, on June 17, 2013, to address the quantum concerns raised by MH.

Subsection 56(1) of *The Public Utilities Board Act* provides:

### ***Cost in discretion of board***

*56(1) The costs of, and incidental to, any proceeding before the board are in the discretion of the board, and may be fixed in any case at a sum certain or may be taxed.*

In exercising its discretion, the Board is guided by Rule 43 of the Board’s *Rules of Practice and Procedure*:

### **Criteria**

43. In any proceeding the Board may award costs to be paid to any intervener who has:
  - a) made a significant contribution that is relevant to the proceeding and contributed to a better understanding, by all parties, of the issues before the board;

- b) participated in the hearing in a responsible manner and cooperated with other Interveners who have common objectives in the outcome of the proceedings in order to avoid a duplication of intervention;
- c) insufficient financial resources to present the case adequately without an award of costs; and
- d) a substantial interest in the outcome of the proceeding and represents the interests of a substantial number of the ratepayers.

Having reviewed each of the criteria in Rule 43, the concerns raised by MH and GAC's responses with respect to those concerns, and in exercising its discretion, the Board will approve GAC's Application for costs as submitted.

**GAC Comments:**

GAC submitted that it had met the criteria for an award noting that some of the work undertaken by Mr. Chernick was being deferred to a future Cost Of Service Study and Rate Design case. Specifically, draft testimony on time of use rates and other rate design issues was prepared prior to the Board's letter of November 6, 2012 moving the cost of service and rate design issues into a future separate process.

**Manitoba Hydro Comments:**

Manitoba Hydro did not take issue that GAC is deserving of an award of costs. Manitoba Hydro also had no issue with costs in the amount of \$58,178.31 for legal services, noting that GAC counsel focused on specific interests of GAC and avoided duplication. MH agreed that the accounts of Gange Goodman and French be approved as submitted.

Manitoba Hydro objected to the costs submission for Resource Insight Inc. Manitoba Hydro submitted that Mr. Chernick's testimony was an update of previous testimony and

in many respects duplicative. As well, Manitoba Hydro submits that there does not appear to be any adjustment for overlap in the work of Mr. Chernick and Ms. Gellar. Manitoba Hydro noted that it would be helpful if the accounts of Resource Insight Inc. were more detailed and suggested a reduction in the accounts of Resource Insight Inc..

## **BOARD FINDINGS**

The Board has reviewed the cost application of GAC, the comments provided by Manitoba Hydro and the responding comment of Mr. Gange. The Board finds that GAC meets all of the requirements for a cost award. In particular, the Board is of the view that GAC makes a significant contribution that is relevant to the GRA proceeding, and which enhances the understanding, of all parties, of the issues before the Board. Further, it is the view of the Board that GAC participated in the hearing in a responsible manner and co-operated with other interveners to avoid duplication in intervention.

The Board also understands that GAC has insufficient financial resources to present its case adequately without an award of costs. Lastly, there is no doubt that GAC has a substantial interest in the outcome of Manitoba Hydro's rate application.

With respect to the request by Manitoba Hydro to reduce the cost application of GAC, with specific reference to the accounts of Resource Insight Inc., the Board agrees going forward that more detailed billings should be provided in a format to be drafted by the interveners and approved by the Board. Additional detail would give rise to further transparency within the GRA process, which the Board believes should be done whenever possible.

With respect to the number of hours spent by Mr. Chernick and Ms. Gellar and the issue of an overlap in the work of both individuals, while the Board supports the use of less senior colleagues to reduce costs the Board expects all parties to minimize overlap. The Board also understands the need to review prior year's materials for context.

With respect to the costs billed by Mr. Chernick subsequent to his testimony the Board notes the contribution of GAC with respect to the matter of non-disclosure agreements and including block rates and will accept GAC's position on the matter. In the view of the Board the onus is on legal counsel for each intervener to manage the work done and time spent by consultant to ensure that work is within scope and within budget.

Given all of the foregoing the Board finds that the costs incurred by GAC are reasonable and is prepared to accept them as presented.

The award of costs will therefore be approved for Gange Goodman French in the amount of \$58,178.31; and for; Resource Insight Inc. in the amount of \$157,076.58. The total cost award to GAC will be \$215,254.89.

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with Section 36 of the Board's *Rules of Practice and Procedure*. The Board's Rules may be viewed on Board's website at [www.pub.gov.mb.ca](http://www.pub.gov.mb.ca).

**IT IS THEREFORE ORDERED THAT:**

1. The application of Green Action Centre for an award of costs BE AND IS HEREBY APPROVED in the amount of \$215,254.89.
2. Costs be payable by Manitoba Hydro as soon as possible within 15 days of the date of this order.

THE PUBLIC UTILITIES BOARD

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Chair

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Acting Secretary