

MANITOBA) **Order No. 134/13**
)
THE PUBLIC UTILITIES BOARD ACT) **November 6, 2013**

BEFORE: Régis Gosselin, B ès Arts, MBA, CGA, Chair
Larry Soldier, Member

**AWARD OF COSTS: AWARD OF COSTS to CONSUMERS' ASSOCIATION
OF CANADA (MANITOBA) INC. - INTERVENTION IN MANITOBA HYDRO
2012/13 and 2013/14 GENERAL RATE APPLICATION**

BACKGROUND AND BOARD FINDINGS

Consumers' Association of Canada (Manitoba) Inc. (CAC) sought an Order from the Public Utilities Board (Board) to recover costs incurred by CAC 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.

CAC's cost request dated August 21, 2013 includes statements of account from the Public Interest Law Centre (PILC) and six other experts and firms that provided advice to PILC and/or provided evidence and testified in the proceeding.

While MH's response of September 18, 2013 acknowledged that CAC deserved an award of costs, MH raised concerns regarding the quantum of a cost award. CAC subsequently responded, on October 9, 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 CAC's responses with respect to those concerns, and in exercising its discretion, the Board will approve CAC's Application for costs as submitted.

CAC Comments:

CAC submitted a total bill of costs of \$221,481.22 commenting that it is appropriate given the length of time and complexity of the hearing and that it compared favourably with the budget presented by the CAC. CAC offered comments with respect to individual amounts being sought by CAC's consultants and legal counsel.

The original estimate for the ECS team was for 250 hours at a cost of \$47,500. The actual number was lower at just over 180 hours at a cost in the range of \$34,000. CAC submitted that the work requested of Mr. Harper was part of a legitimate preparation on rate related issues including; issues related to challenges to Board Order No. 5/12 rollback, consideration of interim rates flowing from Orders Nos. 32/12 and 34/12, and the pending filing of a GRA. The work undertaken by Mr. Harper prior to June 15, 2013 was in the context of an ongoing series of proposed rate changes by Manitoba Hydro dating to February of 2012.

CAC is of the belief that the application for costs of Mr. Dunsky was faithful to both its original blended hourly rate estimate and to the recognition that all regulatory costs are passed on to consumers. To this point, CAC provided a brief biography of the Dunsky personnel and as well as curriculum vitae. CAC noted that having maintained strict fidelity to the Board's tariff would have passed on more than \$2,000 in additional costs to consumers.

In addition, CAC (by way of letter dated October 22, 2013) referenced Board Order No. 102/13. This order adjusted the hourly rate chargeable by Mr. Williams based on his years of experience and allowed for an hourly rate of \$217.00.

CAC asked that the Board determine the appropriate rate to be used given that the cost application was filed using a rate of \$200.00 for Mr. Williams.

Manitoba Hydro Comments:

Manitoba Hydro did not take issue that CAC is deserving of an award of costs. Manitoba Hydro noted that the costs sought by CAC are within the range of the costs included in the CAC's budget of July 31, 2012. Manitoba Hydro offered comments with respect to individual amounts being sought by CAC's consultants and legal counsel.

Manitoba Hydro had no issue with costs in the amount of \$77,908.47 for legal services, noting that the number of hearing days (23) exceeded the number estimated by CAC and that Mr. Williams was in attendance for 22 of the 23.

Manitoba Hydro agreed that the accounts of the Stephen Johnson Team be approved as submitted. Manitoba Hydro acknowledges that the costs of Mr. Matwichuk and Mr. McCormick were significantly less than budgeted.

Manitoba Hydro does not object to the costs submission for ECS in regards to their involvement in the GRA. Manitoba Hydro noted that Mr. Harper's Statement of Costs included an invoice for the review of Order 5/12 and the preparation of a report. This invoice was for the months of March and April 2012 in the amount of \$2,042.50. Manitoba Hydro also commented that the GRA was not filed until June 15, 2013.

CAC is seeking costs of \$79,822.50 with respect to Mr. Dunsky who appeared as a witness for one day, devoted 158.5 hours for a total of \$35,606.25 for his time and appearance at the hearing. Mr. Dunsky has charged a rate of \$225 per hour, which is more than the Board's approved maximum rates.

With respect to Mr. Williams' hourly rate, Manitoba Hydro had no objections to Mr. Williams applying for an hourly rate of \$217 for future proceedings but was of the view that Mr. Williams should be charging a rate of \$200 given the parties' understanding that an hourly rate of \$200 would be charged. Manitoba Hydro suggested that if the PUB finds that Mr. Williams should be paid the maximum in accordance with the PUB's rate structure, then it should be done on a go-forward basis.

BOARD FINDINGS

The Board has reviewed the cost application of CAC, the comments provided by Manitoba Hydro and the responding comments of Mr. Byron Williams. The Board finds that CAC meets all of the requirements for a cost award. In particular, the Board is of the view that CAC 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 CAC participated in the hearing in a responsible manner and co-operated with other interveners to avoid duplication in intervention.

With respect to ECS and the concern of invoice for the months of March and April 2012 in the amount of \$2,042.50, the Board finds that in Board Order No. 32/12 it welcomed submissions from Interveners during the GRA process. This was because of a number of ongoing issues including the matter of the Interim relief requests by Manitoba Hydro to be varied or finalized during the GRA process.

With respect to Dunsky Energy Consulting, the Board finds that it compared favourably with the budget presented by the CAC. The Board also accepts the rationale provided by the CAC and approves the blended rates provided by the Dunsky Team noting that strictly adhering to the Public Utilities Board rates by individual members of the team would create additional cost to consumers.

With respect to the Stephen Johnson Team, the Board accepts that the costs of Mr. Matwichuk and Mr. McCormick were significantly less than budgeted.

The Board recognizes that the cost of legal counsel provided by Byron Williams was greater than the original estimate and is calculated in relation to the hearing days. Seeing that the hearing days exceeded the number of estimated by CAC, the Board finds the costs for legal services to be acceptable.

The Board appreciates the comments of Manitoba Hydro on the matter of the hourly rate payable to Mr. Williams. The Board, however, finds that while Mr. Williams' budget and subsequent claim was filed at the old rates it is reasonable to allow Mr. Williams to claim an hourly rate of \$217 subsequent to the issuing of Board Order 102/13.

Given all of the foregoing, the Board finds that the costs incurred by CAC are reasonable and is prepared to accept them as presented, with the hourly rate for Mr. Williams adjusted accordingly

The total award of costs will therefore be approved for CAC in the amount of \$221,481.22, plus \$6,063.90 reflecting the hourly rate adjustment for Mr. Williams for a total of \$227,545.

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.

IT IS THEREFORE ORDERED THAT:

1. The application of Consumers Association of Canada (Manitoba) for an award of costs BE AND IS HEREBY APPROVED in the amount of \$227,545.12.
2. Costs be payable by Manitoba Hydro as soon as possible within 30 days of the date of this Order.

THE PUBLIC UTILITIES BOARD

“Original signed by”

Régis Gosselin, B ès Arts, MBA, CGA
Chair

“Original signed by”

H.M. Singh
Secretary