

Order No. 106/16

**ORDER WITH RESPECT TO AWARD OF COSTS
TO THE GEORGE J. ORLE Q.C. LEGAL CORPORATION
(REPRESENTING THE MANITOBA KEEWATINOWI OKIMAKANAK INC.)
INTERVENTION IN
MANITOBA HYDRO'S APPLICATION FOR INTERIM RATES
EFFECTIVE APRIL 1, 2016**

August 8, 2016

Before: Régis Gosselin, B ès Arts, M.B.A., C.P.A., C.G.A., Chair
Dr. Hugh Grant, Ph.D. (Economics)
Marilyn Kapitany, B.Sc. Honours, MSc.

INTRODUCTION

By this Order, the Public Utilities Board (Board) approves an award of costs of \$20,785 to the George J. Orle Q.C. Legal Corporation. Mr. George Orle represented the Manitoba Keewatinowi Okimakanak Inc. (MKO) in the Board's review of Manitoba Hydro's Application for interim rates effective April 1, 2016.

MKO represents approximately 65,000 residents in First Nations communities that are directly impacted by any increase in Manitoba Hydro rates.

THE MKO APPLICATION FOR COSTS

Mr. George Orle, on behalf of the MKO, filed a Cost Application with the Board on July 11, 2016. A summary of MKO's original budget estimate and Cost Application is shown on Table 1.

Table 1. The MKO Cost Submission – Summary of Budget Submissions

	<u>Budget Total</u>	<u>Cost Application Total</u>
<i>Legal Costs</i>		
Senior Counsel	\$16,950	\$21,375
<i>Disbursements</i>	\$500	\$0.00
Totals	\$17,450	\$21,375

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*:

43. *In any proceeding the Board may award costs to be paid to any intervenor 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.*

In its Application the MKO suggests that it contributed to the Board's review of Manitoba Hydro's Interim Application for rates effective April 1, 2016 through the following means:

- Advanced MKO's position that Manitoba Hydro had not demonstrated any urgency for a rate increase and that Manitoba Hydro's financial information was insufficient for the Board to consider an Interim rate increase at this time.
- Took a reasonable stand and tested evidence in regards to the actual financial need of Manitoba Hydro
- 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 duplication. MKO cooperated with other interveners and their experts to reduce costs.

MKO also suggested that it has a significant interest in the outcome of the proceedings given First Nations already have difficulty coping with current Manitoba Hydro rates. MKO also has insufficient financial resources to present its case adequately without an award of costs.

In MKO's Cost Application, MKO notes that actual legal counsel time spent in this proceeding was 82.5 hours but this time was reduced to 75 hours in keeping with MKO's original budget. The overall increase in costs from a budgeted \$17,450 to \$21,375 was partly due to the Board's adjustment to legal counsel rates which became effective January 1, 2016. These revised rates were not reflective in MKO's original budget.

MANITOBA HYDRO COMMENTS

On July 20, 2016, Manitoba Hydro filed their comments with the Board on the MKO's Application for Costs.

Manitoba Hydro noted that MKO exceeded its original budget of \$17,450, and did not file any Information Requests. Manitoba Hydro also questioned the number of hours spent by MKO counsel to review Information Requests from other Interveners in light of the limited number of Information Requests filed. MKO billed 6 hours each for their review of Information Requests from the Board, the Consumers Association of Manitoba/Winnipeg Harvest, and the Manitoba Industrial Power Users Group for a total of 18 hours.

Manitoba Hydro also noted the hourly rate charged by MKO legal counsel did not accurately reflect the Board's rate schedule that became effective January 1, 2016. MKO legal counsel erroneously charged 10 hours of legal counsel time accrued in 2015 at 2016 rates.

On July 21, 2016 MKO filed a response to Manitoba Hydro comments on MKO's Cost Application. MKO's argued that time spent to review Information Requests is not a function of the number of Information Requests filed but rather the time required to

review, compare and analyze the Information Requests and the responses. MKO also agreed that 10 hour of legal time billed prior to January 1, 2016 should have been billed at the previous Board-approved rates.

BOARD FINDINGS

The Board has reviewed the Cost Application provided by the MKO, as well as comments from Manitoba Hydro. The Board believes MKO made a reasonable contribution that was relevant to the proceeding which enhanced the Board's understanding of issues and the position of the MKO. Further, it is the view of the Board that the MKO participated in the review in a responsible manner and co-operated with other interveners to reduce costs. The Board also believes the time spent by MKO legal counsel to review and analyze Information Requests is reasonable.

The Board understands that the MKO has insufficient financial resources to present its case adequately without an award of costs.

As to Costs, the Board will approve the following:

MKO Legal Counsel Costs

Legal Counsel Hours	Legal Counsel Billing Rate	Total
10 hours at 2015 Board-Approved Legal Counsel Billing Rates	\$226/hour	\$2,260
65 hours at 2016 Board-Approved Legal Counsel Billing Rates	\$285/hour	\$18,525
Total		\$20,785

The Board will therefore approve and award of costs to George J. Orle Q.C. Legal Corporation in the amount of \$20,785.

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 the George J. Orle Q.C. Legal Corporation, on behalf of the Manitoba Keewatinowi Okimakanak Inc. (MKO), for an award of costs of \$21,375 **BE AND IS HEREBY DENIED.**
2. The George J. Orle Q.C. Legal Corporation be awarded costs of \$20,785.
3. Costs be payable by Manitoba Hydro as soon as possible within 30 days of the date of this Order.

THE PUBLIC UTILITIES BOARD

"Régis Gosselin, B ès Arts, MBA, CPA, CGA"
Chair

"Kurt Simonsen"
Acting Secretary

Certified a true copy of Order No. 106/16
issued by the Public Utilities Board

Acting Secretary