

Order No. 136/20

**AWARD OF COSTS TO
MANITOBA KEEWATINOWI OKIMAKANAK
FOR THEIR ENGAGEMENT IN THE FIRST NATIONS ON-RESERVE RATE
PROCEEDING**

November 24, 2020

BEFORE: Robert Gabor, Q.C., Chair
Marilyn Kapitany, B.Sc., (Hon), M.Sc., Vice Chair
Hugh Grant, Ph.D., Panel Member
Shawn McCutcheon, Panel Member
Larry Ring, Q.C., Panel Member

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1.0 Introduction

By this Order, the Public Utilities Board (Board) approves an award of costs of \$2,495.14 to Manitoba Keewatinowi Okimakanak (MKO) for intervener comments pertaining to Manitoba Hydro's revised rate schedule following the Manitoba Court of Appeal's ruling on the Manitoba Hydro First Nations On-Reserve Rate (FNORR), as set out in PUB Order 100/20.

2.0 Application

On September 22, 2020, MKO filed an application for costs with the Board in the amount of \$2945.14. Board staff acknowledged receipt of the budget. On September 23, 2020, MKO filed an amended application of \$2,873.14 with the Board ("Amended Application #1").

3.0 Manitoba Hydro's Comments

On October 5, 2020, Manitoba Hydro (MH) provided its comments regarding MKO's costs application as set out in Amended Application #1. MH had no comments regarding the legal fees submitted by Jerch Law. MH did take issue with the rate and appropriateness of the costs billed to Elenchus Research Associates ('Elenchus'). Namely, MH offered that the September 23, 2020 rate exceeded the maximum allowed in Section 5.3 of the PUB policy. Additionally, MH stated, "*Any time associated with determining whether to appeal the Manitoba Court of Appeal decision should not be allowed as those costs are not properly within the scope of the PUB's process of reviewing the rate schedules.*"

4.0 MKO Response

MKO responded to the Manitoba Hydro comments by email to the Board with a copy to MH. MKO agreed with Manitoba Hydro that the maximum allowable rate for their consultant under the Board Policy was invoiced at an incorrect amount and noted that they have corrected this over-claim by reducing the hourly rate from \$400/hr to \$240/hr as set out in Appendix A of the Interim Intervener Cost Policy.

In response to Manitoba Hydro's comment about the wording in the Elenchus invoice for services, MKO stated that the discussions with Elenchus were not about whether MKO would appeal the decision. They stated that the discussions were about whether the revised rate schedule was premature given the possibility that someone would appeal, and what that might mean with respect to the revised schedule proposed by Manitoba Hydro.

MKO submitted Amended Application #2, which set out its costs, summarized as follows:

	Cost Application Total
Legal Costs (J. Wheeler)	\$1460.00
(M. Buchart)	\$342.00
Consultant Costs	
(J. Todd – Elenchus)	540.00
Subtotal	\$2342.00
GST	\$27.00
PST	\$126.14
TOTAL COSTS	\$2495.14

MH did not file any further comment.

5.0 Board Jurisdiction

Pursuant to Section 56 of *The Public Utilities Board Act*, the Board has jurisdiction to award costs of, and incidental to, any proceeding before the Board. For the purpose of this hearing, the Board adopted an Interim Intervener Costs Policy. The purpose of this Policy was to set out the Board's procedures for considering requests for Intervener costs and to provide guidance to Interveners on how to apply for funding of costs for participation in Board Proceedings.

Sections 3.1 and 3.2 of the Interim Intervener Costs Policy describes Intervener eligibility for a cost award and the Board's principles in determining the amount of the cost award:

3.1 *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) *represented interests beyond their sole business interest; and*
- (d) *a substantial interest in the outcome of the proceeding and represents the interests of a substantial number of ratepayers.*

3.2 *In determining whether the Intervener should receive the amount of costs sought in a costs application, the Board may consider whether the Intervener did one or more of the following:*

- (a) *made reasonable efforts to ensure that the intervener's evidence was not unduly repetitive of evidence presented by another intervener;*
- (b) *made reasonable efforts to cooperate with other interveners to reduce the duplication of evidence and questions or to combine the intervener's submission with that of similarly interested interveners;*
and
- (c) *needed legal or technical assistance to take part in the proceeding;*

6.0 Board Findings

The Board has reviewed the Cost Application by MKO, the Manitoba Hydro comments and the MKO response to those comments.

The Board finds that MKO's request for an award of costs, as set out in Amended Application #2, falls within the scope of the Board's Interim Intervener Costs Policy. The Board accepts the explanation in support of the Amended Application #2 in relation to the reduction of the disbursement payment to Elenchus.

7.0 IT IS THEREFORE ORDERED THAT:

1. The legal costs and the amended consultant costs incurred by MKO are reasonable, and the Board awards an amount of \$2,495.14 to MKO, through its lawyers, Jerch Law; and
2. Manitoba Hydro pay Jerch Law the amount ordered herein within 30 days of the date of this Order.

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 the Board's website at www.pubmanitoba.ca

THE PUBLIC UTILITIES BOARD

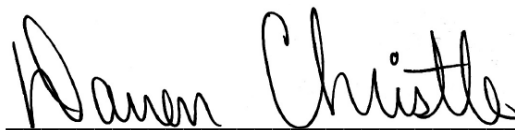
"Robert Gabor, Q.C."

Chair

"Darren Christle, PhD, CCLP, P.Log., MCIT"

Secretary

Certified a true copy of Order 136/20
issued by the Public Utilities Board



Secretary