

Order No. 141/23

**AWARD OF COSTS TO MANITOBA INDUSTRIAL POWER USERS GROUP
FOR INTERVENTION IN THE
MANITOBA HYDRO 2023/24 & 2024/25 GENERAL RATE APPLICATION**

December 13, 2023

BEFORE: Robert Gabor, K.C., Chair
Marilyn Kapitany, B.Sc.(Hon), M.Sc., Vice Chair
George Bass, K.C., ICD. D., Member
Carol Bellringer, FCPA, FCA, Member
Hamath Sy, B.Sc., M.Sc., Member

Table of Contents

1.0 Summary 3

2.0 Procedural History 3

3.0 Application for Costs 4

4.0 Board Findings 7

5.0 IT IS THEREFORE ORDERED THAT: 10

1.0 Summary

By this Order, the Public Utilities Board of Manitoba (“Board”) approves Manitoba Industrial Power User Group (MIPUG) for a costs award of \$443,509.74 for intervention in the Manitoba Hydro (Hydro) 2023/24 & 2024/25 General Rate Application.

2.0 Procedural History

The Procedural History leading to these proceedings and MIPUG’s participation and request for costs are detailed below.

On November 15, 2022, Hydro filed its General Rate Application with the Board seeking rate increases of 3.5% for September 1, 2023 and April 1, 2024. On November 23, 2023, the provincial government announced its commitment to reduce the water rental fee and debt guarantee fee payments by 50% that Hydro pays to the province. Because of this reduction in payments Hydro revised its application to the Board and amended its General Rate Application requesting rate increases of 2.0% for September 1, 2023 and April 1, 2024. In each application Hydro sought to finalize the 3.6% interim rate that was effective January 1, 2022.

The Board approved five interveners for the hearing process, including Assembly of Manitoba Chiefs, the Consumers Coalition, Representatives of the General Service Small and General Service Medium, Manitoba Industrial Power Users Group, and Manitoba Keewatinowi Okimakanak. The Board conducted an extensive four-week hearing process that included two rounds of written information requests, the participation of all five approved interveners, oral evidence, cross-examination, and written submissions from parties.

On August 24, 2023, the Board issues its final decision for the Manitoba Hydro 2023/24 & 2024/25 General Rate Application based on sworn evidence, written submissions, and oral testimony.

3.0 Application for Costs

On September 29, 2023, MIPUG filed with the Board an Application for an Award of Costs for its intervention in the Hydro 2023/24 & 2024/25 General Rate Application Proceeding in the amount of \$465,146.96.

MIPUG provided statements of accounts, as summarized in the following table.

	Cost Estimate December 2022	Updated Cost Estimate March 2023	Costs Application September 2023
Legal Costs:			
A. Hacault	\$122,460.00	\$125,169.00	\$146,058.00
M. Beaumont	-	-	\$25,885.80
Disbursements	\$1,500.00	\$1,500.00	\$2,116.67
Tax	\$14,695.20	\$15,020.28	\$20,739.09
Total Legal Costs	\$138,655.20	\$141,689.28	\$194,799.56
Consultant Costs:			
P. Bowman	\$77,430.00	\$102,480.00	\$123,760.00
D. Friesen	\$67,890.00	\$70,150.00	\$72,864.00
J. Crozier	\$56,550.00	\$67,915.00	\$23,335.50
J. Dyck	\$33,000.00	\$34,557.50	\$36,972.50
P. Lee	\$40,000.00	-	-
Disbursements	\$1,000.00	\$1,000.00	\$568.80
Taxes	\$11,743.5	\$13,755.13	\$12,846.61
Total Consultant Costs	\$287,613.50	\$289,857.63	\$270,347.40
TOTAL COSTS	\$426,268.70	\$431,546.91	\$465,146.96

MIPUG provided an updated Budget on March 17, 2023 advising that there were changes in MIPUG team roles and composition and used approved tariff rates at the time (January 2023).

The MIPUG Cost Application was supported by detailed invoices and a written submission describing its participation in the Manitoba Hydro 2023/24 & 2024/25 General Rate Application Proceeding.

MIPUG's final Cost Application is \$38,878.26 more than the original cost estimate submitted at the beginning of the proceeding, in December 2022. MIPUG explains the increased costs were due to a 5% increase in approved tariff rates, changes to the MIPUG advisor team shifting work from one advisor to another, and changes to legal team to include co-counsel.

Manitoba Hydro Comments

On October 4, 2023, Manitoba Hydro was provided with the opportunity to provide its comments regarding MIPUG Cost Application. On October 17, 2023, Manitoba Hydro responded stating its concerns with legal and consultant costs, disbursements, and GST.

Hydro provided that MIPUG did not advise Hydro Counsel prior to the hearing that there would be a second lawyer involved in the proceeding, and the Board should consider restricting the cost claim strictly to their participation in the oral hearing only. The remaining costs to be paid by MIPUG for transition and succession planning quoting the Board's Policy and Billing Rates for Public Utilities Board Advisory Services. Hydro alternatively requests, if the hours are granted that the fees be reduced by 0.4 hours to exclude hours that Hydro believes not related to this proceeding.

Hydro questioned the tariff rate and expert consultant classification of one of the advisors from InterGroup, and offered that in their view the advisor was more of a general representative and organizer and should be omitted from the cost claim. Hydro states should the cost submission be allowed, that Hydro requests the Board consider reducing the final awarded costs adjusting the hourly tariff rate to a more appropriate amount reflecting administrative and coordinating work.

Hydro pointed out that there was no supporting documentation for the disbursements claim of \$2,685.47, and requested the Board to require MIPUG to provide. Hydro also states that the GST amount charged MIPUG consultants should not be charged to the Public Utilities Board as the Board is GST-exempt and that the cost award be reduced by \$12,846.60 GST invoiced. Further, Hydro questions the GST charged by MIPUG legal

and whether InterGroup Consultants Ltd. can recover through an Input Tax Credit, and if confirmed suggests the Board reduce the cost award by \$8,703.02 GST amount.

MIPUG Reply to Manitoba Hydro Comments

On October 25, 2023, MIPUG provided a reply to Hydro's comments of October 17, 2023 to the Board. MIPUG provided that in regard to co-counsel charges, co-counsel participated in a virtual meeting prior to the hearing in April 2023 where all parties were introduced to co-counsel for MIPUG in the proceeding. MIPUG states that the addition of a co-counsel was made to facilitate "transition and continuity" for MIPUG participation in hearing processes, and therefore, in recognition of this co-counsel restricted charges on non-MIPUG evidence and did not charge for the full extent of their time. MIPUG provided that co-counsel actively participated in meetings with other counsel, review of MIPUG draft evidence, and co-drafted sections of MIPUG submissions.

To address the Hydro comments, disputing the role of one of the InterGroup Consultants, MIPUG provided that the Consultant's role and participation is supported by entries in the time sheets and cost claim that show their involvement in various activities and responsibilities including, but not limited to, administrative and coordinating work. MIPUG states that the Consultant was involved in the Discovery phase of the GRA, preparation and responses of Information Requests, collaboration with other Intervening parties, coordinating MIPUG Members, analysis and development of materials for MIPUG's evidence and presentation to the Board.

In response to claims for and questions regarding disbursements, MIPUG provided copies of receipts and information to support the cost claim and assist the Board.

MIPUG confirms that the GST charged by MIPUG legal counsel and consultants can be recovered through an Input Tax Credit, however the GST amounts included reflect prior interpretations of the Board's Intervener Costs Policy and awarded payments.

4.0 Board Findings

Pursuant to Section 56 of *The Public Utilities Board Act*, the Board has jurisdiction to award costs of, and incidentals to, any proceeding before the Board. For this hearing, the Board adopted an “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 Intervener Costs Policy describe 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 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 submissions with that of similarly interested interveners; and*

c) *needed legal or technical assistance to take part in the proceeding.*

The Board reviewed the Cost Application by MIPUG and the position of Manitoba Hydro. The Board finds that MIPUG meets the requirements for a cost award.

The Board finds, that MIPUG participated in a reasonable and responsible manner, collaborating with other intervening groups, presented evidence, and cross-examination, which assisted the Board in making its determinations in this proceeding.

The Board notes that this was a complex hearing that consisted of 23 hearing days, two rounds of information requests, numerous submissions, and a technical panel on depreciation, where most parties including the applicant and the Board used two lawyers. The Board finds the costs related to co-counsel for MIPUG reasonable and that they should be included in the cost award. However, after looking into the 0.4 hours that Hydro is disputing for a conference call on another file, the Board confirms that the 0.4 hours in dispute should be removed and are not part of the cost award. The Board reduces co-counsels hours from 118.2 hours to 117.8 hours and adjusts the cost award accordingly.

Upon considering Hydro's comments regarding the InterGroup Consultants participation and suggested reduction, and the time sheets and participation of the Consultant, the Board finds that participation was greater than administrative and coordination work. The consultant carried out a number of roles with overlap between them, and in these circumstances it is difficult to allocate the time allotted between the different roles, the Board finds the overall costs were reasonable. The Board awards the costs for the consultant with no reduction.

After reviewing the supporting documentation for disbursements, the Board finds the disbursements are eligible for a cost claim and awards the costs as submitted.

In reviewing the GST issue raised by Hydro and information provided by MIPUG, the Board finds that the GST amounts charged by legal and the consultants for MIPUG should be recovered through an Input Tax Credit. The cost claimed by MIPUG is reduced by the GST amount of \$21,549.62. However, the Board would like to clarify that the Public

Utilities Board is not the entity the invoices are remitted to for payment. The Utility is not tax exempt and cost claim should include applicable taxes if an Input Tax Credit could not be claimed by MIPUG.

The Board awards the total amount of \$443,509.74 to MIPUG for intervention in the Manitoba Hydro 2023/24 & 2024/25 General Rate Application.

The Board directs Manitoba Hydro to pay the amount of the approved costs to MIPUG within 15 calendar days of the date of this Order.

5.0 IT IS THEREFORE ORDERED THAT:

1. The Application of Manitoba Industrial Power Users Group for an award of costs **BE AND IS HEREBY APPROVED** in the total amount of \$443,509.74.
2. Costs shall be payable by Manitoba Hydro within fifteen (15) 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, K.C."
Chair

"Rachel McMillin, B.Sc., MPA"
Associate Secretary

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issued by The Public Utilities Board


Associate Secretary