

**Order No. 142/23**

**AWARD OF COSTS TO ASSEMBLY OF MANITOBA CHIEFS  
FOR INTERVENTION IN THE  
MANITOBA HYDRO 2023/24 & 2024/25 GENERAL RATE APPLICATION**

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**December 14, 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

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## 1.0 Summary

By this Order, the Public Utilities Board of Manitoba (“Board”) approves the Assembly of Manitoba Chiefs (AMC) for a costs award of \$105,907.68 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 AMC’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 19, 2023, the AMC 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 \$107,060.43.

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

	<b>Cost Estimate December 2022</b>	<b>Costs Application September 2023</b>
<b>Legal Costs:</b>		
C. Fox	\$52,065.00	\$19,224.00
E. Guglielmin	\$57,305.00	\$50,020.20
Sub-Total Legal Costs	\$109,370.00	\$69,244.20
Disbursements	\$7,800.00	\$13,608.48
Total Legal Costs	\$117,170	\$82,852.68
<b>Consultant Costs:</b>		
B. Rauch & C. Runge	\$33,350.00	\$23,055.00
Taxes	\$1,667.50	\$1,152.75
Total Consultant Costs	\$35,017.50	\$24,207.75
<b>TOTAL COSTS</b>	<b>\$152,187.50</b>	<b>\$107,060.43</b>

The AMC Cost Application was supported by detailed invoices and a written submission describing its participation in the Manitoba Hydro 2023/24 & 2024/25 General Rate Proceeding. AMC used an expert advisor, Power Advisory LLP, during this proceeding for a total cost of \$24,207.75. AMC stated that there was no applicable tariff rate for economists in the Board's Maximum Fee Schedule, and therefore, provided that these services fit within the "other" category for advisor for the Board to consider on a case-by-case basis. AMC submitted that the costs for advisors were reasonable for the scope and participation in the General Rate Application proceeding.

AMC participated virtually throughout the proceeding, when reasonable to do so, to minimize legal and disbursement costs. AMC counsel disbursement charges used the National Joint Council Meal and Incidental Allowance which is used when counsel must travel to represent AMC at hearings, and charges a fixed rate for meals. AMC's final cost

application was \$45,127.07 less than the cost estimate submitted in December 2022 at the beginning of the proceeding.

### **Manitoba Hydro Comments**

On September 26, 2023, Manitoba Hydro was provided with the opportunity to provide its comments regarding the AMC Cost Application. On October 3, 2023, Manitoba Hydro responded stating that the legal fees and hours for the AMC Cost Application were reasonable. However, Manitoba Hydro stated that the rate charged by Power Advisory LLP (expert advisor) is outside the Public Utilities Board Maximum Fee Schedule and that the disbursements claimed by legal counsel travel and meals is over budget.

Further, Manitoba Hydro questioned if the GST of \$1,152.75 submitted by Power Advisory LLP could be recovered through an input tax credit by AMC, and if so, that the Board reduce the final cost award by the GST amount.

### **AMC Reply to Manitoba Hydro Comments**

On October 12, 2023, AMC provided a reply to Manitoba Hydro comments of October 3, 2023 to the Board. AMC restated that there is no category for in the Board's Maximum Fee Schedule for economists and that the "Other category" was used and that the participation of the Power Advisory LLP to assist AMC was reasonable for the proceeding. With respect to disbursement costs, AMC commented that travel costs are justified, and noted that final costs are \$45,127.07 below the cost estimate.

AMC confirmed that the amount Power Advisory LLP charged for GST can be recovered through an Input Tax Credit, and therefore, states the amount of \$1,152.75 may be deducted from the total application costs.

## 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 the AMC, and considered the comments provided by Manitoba Hydro and reply by AMC to the Board. The Board finds that the AMC meets the requirements for a cost award.

The Board find further, that AMC's participated in a reasonable and responsible manner, providing evidence, and collaborating with other intervening group, which assisted the Board to make its determinations.

The Board notes the issue raised by Manitoba Hydro regarding the GST charges by the AMC advisor, Power Advisory LLP, and the confirmation by AMC that the GST amount can be recovered through an Input Tax Credit. In light of this information, the Board reduces the amount of the cost claimed by AMC by the GST amount of \$1,152.75.

The Board notes Manitoba Hydro's request to limit AMC's Advisor costs, Power Advisory LLP, to the tariff rates. However, there is no specified rate for economists. This is a matter that will be considered by the Board for future proceedings.

The Board awards the total amount of \$105,907.68 to the AMC for intervention the Manitoba Hydro 2023/24 & 2024/25 General Rate Application.

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

**5.0 IT IS THEREFORE ORDERED THAT:**

1. The Application of the Assembly of Manitoba Chiefs for an award of costs **BE AND IS HEREBY APPROVED** in the total amount \$105,907.68.
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](http://www.pubmanitoba.ca).

THE PUBLIC UTILITIES BOARD

"Robert Gabor, K.C."  
Chair

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

Certified a true copy of Order No. 142/23  
issued by The Public Utilities Board

  
Associate Secretary