

Order No. 32/23

**AWARD OF COSTS TO MANITOBA KEEWATINOWI OKIMAKANAK
FOR INTERVENTION IN THE
MANITOBA HYDRO: 2021 STATUS UPDATE & 2021/22 INTERIM RATE
PROCEEDINGS**

March 20, 2023

BEFORE: Robert Gabor, K.C., Chair
Marilyn Kapitany, B.Sc.(Hon), M.Sc., Vice Chair
Irene A. Hamilton, K.C., Member
Shawn McCutcheon, Member

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1.0 Summary

By this Order, the Public Utilities Board of Manitoba (“Board”) approves Manitoba Keewatinowi Okimakanak (MKO) for a costs award of \$27,797.96. This amount includes \$16,141.81 for intervention in the Manitoba Hydro (Hydro) 2021 Status Update Proceeding and \$11,656.15 for intervention in the Hydro 2021/22 Interim Rate Application.

2.0 Procedural History

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

On March 21, 2021, the Consumers Coalition, representing residential electricity ratepayers, supported by the Manitoba Industrial Power Users Group, the Assembly of Manitoba Chiefs, and Manitoba Keewatinowi Okimakanak, applied to the Board for a status update hearing. This hearing was requested to determine whether rates charged by Manitoba Hydro were just and reasonable and whether Manitoba Hydro’s costs were fairly allocated among the customer classes.

Due to a change in circumstances for the utility, as outlined in Order 9/22, the Minister of Crown Services issued a Ministerial Directive to the Manitoba Hydro-Electric Board on September 22, 2021, instructing Manitoba Hydro to file an interim rate application with the Board for the 2021/22 fiscal year. In addition, Manitoba Hydro was also directed to engage with the Board to start planning for Manitoba Hydro’s next multi-year General Rate Application.

On September 29, 2021, Manitoba Hydro advised the Board that it intended to file an interim rate application to address the financial impacts due to the current drought conditions to ensure the financial health of Manitoba Hydro. On October 12, 2021, the Board issued a Decision Letter suspending the Status Update Proceeding pending Manitoba Hydro filing its interim rate application. In this letter the Board also approved

Intervener status for the Interim Application to four Interveners, the Assembly of Manitoba Chiefs, the Consumers Coalition, Manitoba Industrial Power Users Group, and Manitoba Keewatinowi Okimakanak.

On November 15, 2021 the Board received an Interim Rate Application from Manitoba Hydro. On November 22, 2021, the Board issued Procedural Order 128/21 setting the procedures, timeline, and scope of the hearing. The proceeding started on December 1, 2021, with public presentations, followed by oral testimony on December 10th and 13th, 2021, and oral closing submissions on December 14th and 15th, 2021, for a total of five hearing days.

On December 24, 2021, the Board issued Order 137/21 varying Manitoba Hydro's request for a 5% increase in General Consumers revenue and approving a 3.6% increase instead, indicating a further Order would be issued containing substantive reasons. On January 26, 2022, the Board issued Order 9/22 setting out the Board's further reasons for decisions in Order 137/21.

3.0 Application for Costs

On December 19, 2022, MKO filed with the Board an Application for an Award of Costs for its intervention in the Hydro 2021 Status Update Proceeding and the Hydro 2021/22 Interim Rate Application in the amount of \$27,797.96.

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

	Costs Application December 2022
Legal Costs:	
M. Bucharth	\$25,153.20
M. Jerch	\$825.20
Tax	\$1,818.56
TOTAL COSTS	\$27,797.96

The MKO Cost Application was supported by detailed invoices and a written submission describing its participation in the Manitoba Hydro Status Update Proceeding and the Board's review of Manitoba Hydro 2021/22 Interim Rate.

Manitoba Hydro Comments

On December 21, 2022, Manitoba Hydro was provided with the opportunity to provide its comments regarding MKO Cost Application. On January 6, 2023, Manitoba Hydro responded that it did not have any comments on MKO's Cost Application.

4.0 Board Findings

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 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 has reviewed the Cost Application by MKO, and considered the position of Manitoba Hydro having no comments to provide to the Board. The Board finds that MKO meets the requirements for a cost award.

The Board finds further that MKO participated in a responsible manner, collaborated with other intervening groups, and added value by providing reasonable evidence, which assisted the Board to make its determinations on the Status Update and Interim Rate proceedings.

The Board awards the total amount of \$27,797.96 to MKO for intervention in the work completed for the Status Update Proceeding and the Board's review of Manitoba Hydro's Interim Rate Application.

The Board will direct Manitoba Hydro to pay the amount of the approved costs to MKO within 15 calendar days of the date of this Order. The Board appreciates Manitoba Hydro's efforts in this regard.

5.0 IT IS THEREFORE ORDERED THAT:

1. The Application of Manitoba Keewatinowi Okimakanak for an award of costs **BE AND IS HEREBY APPROVED** in the total amount of \$27,797.96.
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."

Associate Secretary

Certified a true copy of Order No. 32/23
issued by The Public Utilities Board



Associate Secretary