

Order No. 55/23

**REVIEW AND VARY OF BOARD ORDER No. 134/22:
AWARD OF COSTS TO CONSUMERS COALITION FOR INTERVENTION IN THE
MANITOBA HYDRO: 2021 STATUS UPDATE & 2021/22 INTERIM RATE
PROCEEDINGS**

April 28, 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 Executive Summary

By this Order, the Public Utilities Board of Manitoba (“Board”) varies Board Order No. 134/22 to correctly reflect the participation of the Consumers Coalition in the Status Update Proceeding, the Manitoba Hydro (Hydro) 2021/22 Interim Rate Application, and the Hydro Review and Vary Application of Board Order 9/22. Board staff confirm that the Consumers Coalition Cost Application for the Hydro Status Update Proceeding for costs in the amount of \$61,270.10 are outstanding and were not included in Board Order No. 134/22. The Board approves for a cost award of \$61,270.10 for intervention in the Status Update Proceeding.

2.0 Procedural History

On December 20, 2022, the Board issued Board Order No. 134/22 awarding costs of \$61,747.20 to the Consumers Coalition for its intervention in the Manitoba Hydro 2021/22 Interim Rate Application, including costs incurred for the Status Update Proceeding, as well as the Hydro Review and Vary Application of Board Order No. 9/22. The total cost award included costs incurred for the Status Update and Hydro Interim Rate Application of \$54,640.00, as well as \$7,107.20 for the Hydro Review and Vary Application of Board order No. 9/22.

3.0 Application

On February 3, 2023, the Consumers Coalition filed a letter with the Board seeking clarification of Board Order 134/22 and the omission of the Consumers Coalition Application for Costs for the Hydro Status Update proceeding submitted on February 3, 2022.

After a review of the February 3, 2023 Consumer Coalition letter and a records search, Board staff confirmed there was an oversight and omission of the Consumer Coalition February 3, 2022 Cost Application for the Status Update. The Consumers Coalition Cost

Application for the Hydro Status Update Proceeding for costs in the amount of \$61,270.10 are outstanding and were not included in Board Order No. 134/22.

4.0 Manitoba Hydro's Comments

The comments from Manitoba Hydro regarding the Consumers Coalition Cost Applications were previously provided in a letter to the Board dated March 16, 2022 for a combined response to the Status Update Proceeding and the Hydro 2021/22 Interim Rate Application. Manitoba Hydro stated that costs for the Status Update Proceeding were not properly aligned with the filing date of the Interim Rate Application on November 15, 2021 and some costs should likely have been allocated to the interim rate process, but had no further comment.

Comments regarding the Consumers Coalition participation in the Hydro 2021/22 Interim Rate Application are as stated in Board Order 134/22.

Manitoba Hydro was also provided the opportunity to comment on the Consumers Coalition Cost Application for the Review and Vary Application of Order 9/22, and did not have any further comment for the Board

5.0 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 all Cost Applications from Consumers Coalition and note there were three cost applications:

1. February 3, 2022 Status Update Proceeding \$61,270.10 which is outstanding;
2. February 3, 2022 Hydro 2021/22 Interim Rate Application Proceeding \$54,640.00 awarded in Board Order No. 134/22; and
3. May 31, 2022 Hydro Review and Vary of Board Order No. 9/22 proceeding \$7,107.20 awarded in Board Order No. 134/22.

As previously found by the Board in Order 134/22 the Board finds that the Consumers Coalition meets the requirements for a cost award for its participation in three of the Manitoba Hydro Proceedings.

The Board concurs with the Board Staff findings that the Status Update Cost Application was overlooked due to administrative error and confirms steps have been taken to correct procedures.

The Board has awarded two out of the three costs applications in Board Order 134/22 and reiterates its findings from that Order:

The Consumers Coalition's intervention in the proceedings added value by providing the historical background, addressing the need for Hydro to provide up-to-date information for electricity rates, and provided reasonable evidence, which assisted the Board to make its determinations on the Status Update, Interim Rate, and Review and Vary proceedings.

The Board finds that the Consumers Coalition made a significant contribution that was relevant to the Status Update Application, the 2020/21 Interim Rate Application, and the Review and Vary Application of Order 9/22 and contributed to a better understanding of the issues before the Board. The Board is satisfied that the Consumers Coalition contributed to the Minimum Filing Requirements and Information Requests processes adequately.

The Board also finds that the Consumers Coalition participated in a responsible manner and is not persuaded that the Consumers Coalition made any irrelevant contributions or unnecessarily lengthened the proceedings.

The Board awards the outstanding costs in the amount of \$61,270.10 to the Consumers Coalition for intervention in the work completed for the Status Update Proceeding.

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

6.0 IT IS THEREFORE ORDERED THAT:

1. The Board Varies Board Order No. 134/22 to reflect the Consumer Coalition two Cost Awards for the Manitoba Hydro 2021/22 Interim Rate and Review and Vary of Board Order No. 9/22 Applications and not the Status Update Proceeding.
2. The February 3, 2022 Application of Costs for the Manitoba Hydro Status Update from the Consumers Coalition **BE AND IS HEREBY APPROVED** in the total amount of \$61,270.10.
3. 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. 55/23
issued by The Public Utilities Board



Associate Secretary