

MANITOBA) **Order No. 132/14**
)
THE PUBLIC UTILITIES BOARD ACT) **November 28, 2014**

Before: Régis Gosselin, B ès Arts, MBA, CGA, Chair
Dr. Hugh Grant, Ph.D. (Economics)
Richard Bel, B.A., M.A., M.Sc.
Marilyn Kapitany, B.Sc. Honours, M.Sc.

**ORDER WITH RESPECT TO AWARD OF COSTS:
MANITOBA METIS FEDERATION (MMF)**

THE PUBLIC UTILITIES BOARD'S "NEEDS FOR AND ALTERNATIVES TO" (NFAT)
REVIEW OF MANITOBA HYDRO'S PREFERRED DEVELOPMENT PLAN
TO CONSTRUCT THE KEYASK AND CONAWAPA GENERATING STATIONS
AND ASSOCIATED TRANSMISSION FACILITIES

BACKGROUND AND BOARD FINDINGS

Manitoba Métis Federation (MMF) sought an Order from the Public Utilities Board (Board) to recover costs incurred by MMF to intervene in The Public Utilities Board “NEEDS FOR AND ALTERNATIVE TO” Review of Manitoba Hydro’s (MH) Preferred Development Plan which resulted in the Board issuing a report to the Minister responsible for The Public Utilities Board dated June 20, 2014.

MMF’s cost request dated August 15, 2014 includes statements of account from Myers Weinberg and experts and firms that provided advice to MMF and/or provided evidence and testified in the proceeding.

MH responded to MMF’s request by way of correspondence letters dated July 31, 2014, August 13 and 20, 2014. MH provided comments on the legal bills and each of the consultants retained by MH.

Subsection 56(1) of *The Public Utilities Board Act* provides:

Cost in discretion of board

56(1) The costs of, and incidental to, any proceeding before the board are in the discretion of the board, and may be fixed in any case at a sum certain or may be taxed.

In exercising its discretion, the Board is guided by Rule 43 of the Board’s *Rules of Practice and Procedure*:

Criteria

43. 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) insufficient financial resources to present the case adequately without an award of costs; and
- (d) a substantial interest in the outcome of the proceeding and represents the interests of a substantial number of the ratepayers.

Having reviewed each of the criteria in Rule 43, comments made by MH, and in exercising its discretion, the Board will approve MMF's Application for costs as amended.

In Board Order 67/13 and subsequent orders and correspondence, the Board determined the scope of intervention for each intervener, and approved on a preliminary basis, the budget for each intervener. As well, the Board authorized interim payments for costs applied for by interveners during the hearing process, subject to a 30% holdback pending disposition of the matter subsequent to the conclusion of the process.

MMF's Comments:

The following table shows the amounts requested by MMF and the amounts paid to date to MMF:

	Request	Amount Paid
Camerado	\$ 49,026.97	\$ 11,232.01
MSES	\$ 41,272.50	\$ 16,569.00
Ratepayer Panel	\$ 1,320.42	0
Pape Salter Teillet	\$ 1,964.40	0
Meyers Weinberg	\$ 201,545.20	\$ 35,130.66
Whitfield Russell (US funds)	\$ 293,385.96	\$ 16,506.35 (CDN funds)
Total	\$ 588,515.45	\$ 79,438.02

Also, the Board approved a budget of \$6,894.00 for a joint CAC/MMF presentation by a ratepayer panel. MMF is asking for \$1,320.42 for the appearance of two individuals with CAC to account for the remaining amount.

MMF is asking for consideration of a further amount of \$1,964.40 for legal fees to Pape Salter Teillet LLP.

Whitfield Russell Associates' (WRA) total claim is \$293,385.96, with a request to be paid in US dollars.

Thus, considering all that has been requested, the total bill of costs submitted by MMF is \$588,515.45, significantly larger than the preliminary approved budget by the Board. Payments totalling \$79,438.02 have been paid to MMF.

Manitoba Hydro's Comments:

MH did not take issue that MMF is deserving of an award of costs. MH had no comments on the amounts billed by Camerado Energy Consulting and MSES.

With respect to Pape Salter Teillet LLP, MH noted that it was unusual for an intervener to retain further counsel and takes no position with respect to payment of the invoice submitted by the law firm, noting that the hourly rate claimed for Mr. John Madden is \$250/hour, above the Board's rate of \$221/hour. MH submits that the cost of retaining the outside firm should be included as part of the approved \$196,000.00 budget for legal fees.

MH did not object to costs of \$1,320.42 pertaining to the ratepayer panel, providing the claim by CAC's cost did not exceed the approved amount of \$6,894.00.

With respect to WRA, considering the Board's comments concerning fees in excess of the Board's tariff, MH submits (Manitoba Hydro letter to The Public Utilities Board dated July 31, 2014):

“Manitoba Hydro submits that there has been a complete disregard for the PUB's decision in respect of the budget of WRA. The invoices submitted by WRA is \$147,723.96 over the budget approved by the PUB. Upon reviewing the final invoice submitted by WRA, Manitoba Hydro notes that WRA completely ignored the PUB's direction in its letter of February 5, 2014 and in its invoice has still charged an hourly rate of \$350/hour for Whitfield Russell and has in fact, increased the hourly rate for its outside consultants, Harrison Clark and Thomas Besich, to \$250/hour. These rates continue to its letter of February 5, 2014. Reducing the hourly rates for Mr. Russell, Mr. Clark and Mr. Besich to the PUB's approved hourly rate of \$221/hour would result in a total amount for Mr. Russell of \$119,605.20, a total amount for Mr. Clark of \$6,652.10 and a total amount for Mr. Besich of \$2,320.50. When these new totals are added to the remainder of the invoice from December to May, which

include other consultants and expenses and the previous invoice of \$23,580.50, this results in a new total of \$228,379.22. This new amount is still approximately 52% higher than the original budget approved by the PUB.

MMF has requested an increase to the budget of WRA in the amount of \$142,723.96, or alternatively, an increase amount to be determined by the PUB. Manitoba Hydro submits that the PUB should deny the request of the MMF to reimburse WRA for the \$293,385.96, and should deny the request for any increase to the budget of WRA over the \$150,662.00. There appears to have been no attempt to track, manage or constrain the costs of WRA, The PUB reviews and approves draft budgets in order to ensure that the Intervenors conduct a focused and efficient intervention taking into consideration that the costs are ultimately included in rates which are paid by Manitoba ratepayers. The PUB's review of WRA's invoices should begin with the understanding that any award of costs would have a starting point of the maximum budget approved of \$150,662.00."

MH also noted Board Order 22/14, in which the Board indicated an intention to disallow a portion of costs to MMF with respect to evidence outside the scope of NFAT. MH submits the disallowance should be made from the original approved budget of \$150,662.00 and regards 35% of the approved budget as an appropriate disallowance.

MH notes that the total amount requested for legal services is \$203,509.60, which is \$6,847.60 over the amount approved by the Board and comments as follows:

"Finally, with respect to the legal costs being sought, Manitoba Hydro submits that the PUB should approve a final total amount of \$196,662.00 which will cover the costs of Myers Wienberg in an amount of \$194,923.80 (subject to the disallowance pursuant to Order 22/14 for out-of-scope matters and, if the PUB determines the costs should be recovered, an amount of \$1,738.20 to cover a portion of the costs of Pape Salter Teillet LLP (covering Mr. Madden's hours at a rate of \$221/hour and disbursements))."

BOARD FINDINGS

The Board has reviewed the cost application of MMF and the comments provided by MH. The Board finds that MMF meets all of the requirements for a cost award. The Board is of the view that MMF made a contribution that was relevant to the proceeding, and which enhanced the understanding of all parties. It is the view of the Board that MMF participated in the hearing in a responsible manner, except as noted in this Order with respect to MMF's treatment of out of scope matters, and co-operated with other interveners to avoid duplication.

With respect to the claim for the ratepayer panel, the Board will approve the amount claimed by MMF in concert with the claim from CAC. The Board will also approve the amounts for Camerado Energy Consulting of \$49,026.97 and MSES of \$41,272.50.

With respect to the amount claimed on behalf of WRA, the Board notes that sufficient direction was given by the Board to MMF with respect to the budget of WRA and that it was the responsibility of MMF to carefully manage costs of its consultants. The Board will limit the claim of WRA to \$150,662.00 as approved on a preliminary basis by the Board and further, noting that redactions to its report for matters it ruled out of scope amounted to approximately 13 out of 40 pages of the report, will disallow a total of 32.5% for an award of \$100,190.23.

With respect to the currency in which payment is to be made, the Board notes that the issue was not raised by the intervener at the time the budget was approved on a preliminary basis, and determines that payment in US funds is not warranted.

With respect to the cost claim of Pape Salter Teillet LLP, the Board will not approve any amounts for the retention of external counsel, as this is not the normal practice of the Board and was not done in consultation with or approval of the Board.

With respect to the invoices of Myers Weinberg amounting to \$201,545.20, the Board is not persuaded that any amounts above the approved amount of \$196,662.00 should be allowed. In doing so, the Board highlights the importance for interveners to carefully manage their files with reference to inscope and budget matters and the Tariff approved by the Board. The Board will not disallow any amounts from the budget approved on a preliminary basis and will grant an award of \$196,662.00.

The total award of costs awarded to MMF will be:

	Approved Cost Award
Camerado Energy Consulting	\$ 49,026.97
MSES	\$ 41,272.50
Ratepayer Panel	\$ 1,320.42
Myers Weinberg	\$ 196,662.00
Whitfield Russell Associates	\$ 100,190.23
TOTAL	\$ 388,472.12

To date, an amount of \$79,438.02 has been paid to MMF, leaving an outstanding amount of \$309,034.10.

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 Board's website at www.pub.gov.mb.ca.

IT IS THEREFORE ORDERED THAT:

1. The Manitoba Metis Federation (MMF) for an award of costs BE AND IS HEREBY APPROVED in the amount of \$388,472.12.
2. The amount outstanding of \$309,034.10 be paid to MMF within 30 days of the date of this Order.

THE PUBLIC UTILITIES BOARD

“Régis Gosselin, B ès Arts, MBA, CGA”

Chair

“Hollis M. Singh”

Secretary

Certified a true copy of Order No. 132/14
issued by the Public Utilities Board

Secretary