

**Order No. 100/18**

**AWARD OF COSTS TO THE  
MANITOBA INDUSTRIAL POWER USERS GROUP  
FOR THEIR INTERVENTION IN THE  
MANITOBA HYDRO 2017/18 AND 2018/19 GENERAL RATE APPLICATION**

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**July 24, 2018**

BEFORE: Robert Gabor, Q.C., Chair  
Marilyn Kapitany, B.Sc., (Hon), M.Sc., Vice Chair  
Hugh Grant, Ph.D., Member  
Shawn McCutcheon, Member  
Sharon McKay, BGS, Member  
Larry Ring, Q.C., Member

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## 1.0 Introduction

By this Order, the Public Utilities Board (Board) approves an award of costs of \$510,595.25 to the Manitoba Industrial Power Users Group for their intervention in Manitoba Hydro's 2017/18 and 2018/19 General Rate Application.

## 2.0 Application

On June 1, 2018, the Manitoba Industrial Power Users Group (MIPUG) filed with the Board an Application for an Award of Costs for its intervention at the Manitoba Hydro 2017/18 and 2018/19 General Rate Application.

Pursuant to Section 56 of *The Public Utilities Board Act*, the Board has jurisdiction to award costs of, and incidental to, any proceeding. The Board's Rules of Practice and Procedure (Rules) stipulate the Board may award costs to be paid to an Intervener which has:

1. 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;
2. participated in the hearing in a responsible manner and cooperated with other Interveners with common objectives in the outcome of the proceedings in order to avoid a duplication of intervention;
3. insufficient financial resources to present the case adequately without an award of costs; and
4. a substantial interest in the outcome of the proceeding, and represents the interests of a substantial number of the ratepayers.

In Order 70/17 the Board found that the sufficiency of financial resources (point #3, above) would not be a factor in determining the cost awards in the General Rate Application, as the full Board was in the process of reviewing its rules and policies respecting interveners, including the factors to be considered for awarding costs.

In Order 70/17, the Board approved Intervener status to MIPUG and requested that all approved interveners file a budget proposal with the Board by July 14, 2017.

On July 14, 2017, MIPUG filed a budget proposal with the Board. On August 25, 2017, the Board provided its decision regarding intervener budgets. In the case of MIPUG, the Board reduced the legal fee pre-tax budget to an upper limit of \$150,000, mainly attributed to MIPUG's limited participation on bill affordability issues.

On March 12, 2018, MIPUG filed a budget increase submission with the Board totalling \$572,963.27 (excluding GST and Morrison Park fees). On May 15, 2018, MIPUG filed an updated budget submission totalling \$569,168 (excluding GST and Morrison Park fees). In its updated submission of May 15, 2018, MIPUG stated that it removed all costs associated with Morrison Park Advisors, which are now to be 100% claimed by the Consumers Coalition. In neither case however, has the Board provided a decision regarding MIPUG's budget increase submissions of March 12, 2018 and May 15, 2018.

In Procedural Order 70/17, the Board approved interim invoicing from interveners for the duration of the General Rate Application hearing. All interim invoices were subject to a 25% holdback. Based on a statement of accounts, the total interim costs paid out to date to MIPUG is \$333,863.44 (including GST and PST).

On June 1, 2018, MIPUG filed its Cost Application for its participation in Manitoba Hydro's 2017/18 and 2018/19 General Rate Application. The Cost Application was supported by statements of accounts as summarized below:

	<b>Budget Total *</b>	<b>Cost Application Total*</b>
<b>Legal Costs</b>		
Counsel	\$150,000.00	\$183,854.07
<b>Sub Total Legal</b>	<b>\$150,000.00</b>	<b>\$183,854.07</b>
<b>Consultants</b>		
InterGroup Consultants (Bowman, Osler, Research Support)	\$243,925.00	\$342,570.20
Forkast Consulting (Forrest)	\$14,400.00	\$21,600.00
<b>Sub Total Consultants</b>	<b>\$258,325.00</b>	<b>\$364,170.20</b>
<b>Disbursements</b>		
Expenses (Legal and Consultants)	\$2,200.00	\$6,144.05
<b>Sub Total Disbursements</b>	<b>\$2,200.00</b>	<b>\$6,144.05</b>
<b>GST **</b>	\$20,526.25	\$27,708.42
<b>PST (on legal fees only)</b>	\$12,000.00	\$14,708.33
<b>Contingency ***</b>	\$21,126.25	NIL
<b>TOTAL COSTS *</b>	<b>\$464,177.50</b>	<b>\$596,585.06</b>

\* The budget totals shown are the amounts approved by the Board on August 25, 2017, exclusive of the Morrison Park Advisors fees and expenses.

\*\* GST is added to MIPUG's budget to allow for a direct comparison with MIPUG's interim cost billings and its June 1, 2018 Cost Application. Consistent with MIPUG's interim billings, GST was applied to legal fees, consultant fees, and disbursements.

\*\*\* MIPUG's original contingency of \$24,000 was based on the inclusion of MIPUG's 50% of Morrison Park's fees. With the removal of the Morrison Park fees from MIPUG's original contingency amount, the budget contingency is determined to be \$21,126.25.

As part of its June 1, 2018 submission, MIPUG stated that the total cost is appropriate given the length and complexity of the hearing. Furthermore, MIPUG stated that it participated in the hearing in a reasonable manner, cooperated with other Interveners and, to the extent possible, constrained its intervention to the approved areas of MIPUG's Order 70/17 intervention scope.

### 3.0 Manitoba Hydro's Comments

On June 15, 2018, Manitoba Hydro provided its comments regarding MIPUG's Cost Application as well as MIPUG's budget increase submissions of March 12, 2018 and May 15, 2018. Manitoba Hydro's comments related to the following areas of concern.

First, Manitoba Hydro noted that the Discovery and Pre-Hearing Processes portion of MIPUG's budget increase submission of March 12, 2018 were claimed to be over budget primarily due to Manitoba Hydro's expansive filing as compared to MIPUG's July 14, 2017 budget estimates. This, despite Manitoba Hydro having filed its General Rate Application on May 5 and 12, 2017, and responded to the Board's Minimum Filing Requirements (MFR) on or before June 30, 2017. MIPUG was therefore well aware of the contents and breadth of the filing as well as the responses to MFRs at the time it submitted its budget proposal on July 14, 2017.

Second, Manitoba Hydro noted that MIPUG was close to reaching its budget maximum in December, 2017, prior to Manitoba Hydro having concluded its witness panels and prior to MIPUG presenting any of its witnesses. MIPUG is an experienced Intervenor and is well aware of the resources required to present and cross examine witnesses. As such, it is apparent that MIPUG was aware that it was greatly exceeding budget and had ample time to present its concerns to the Board prior to its March 12, 2018 budget increase request. By submitting a request for a substantial budget increase one month following the close of the hearing, MIPUG clearly contravened the Board's direction of Order 70/17 and its initial budget approval letter of August 25, 2017. Given the exceptions made to the Board's Rules of Practice and Procedure for this Intervenor, Manitoba Hydro is of the view that MIPUG should be subjected to the same standard of accountability as other intervenors with respect to the use of resources and ensuring that their scope of work is within the confines of their Board-approved budget. MIPUG ought not be allowed to ignore the Board's budget process, particularly when it already built a contingency into its budget for unanticipated matters.

Third, Manitoba Hydro submitted that MIPUG's additional costs are excessive and its submissions do not provide justification for approval of costs that are 27% higher than the approved budget.

As part of its April 12, 2018 comments on MIPUG's budget increase request of March 12, 2018, Manitoba Hydro also stated that the purpose of MIPUG's aggressive and over-budget intervention was to protect its members' business interests.

#### **4.0 MIPUG's Response Comments**

While the Board did not receive a response from MIPUG regarding Manitoba Hydro's comments of June 15, 2018, MIPUG did file its response to Manitoba Hydro's April 12, 2018 budget increase comments on April 30, 2018. In its submission, MIPUG agreed that the timing for the March 12, 2018 budget increase request should have been better managed. In an effort to manage costs, MIPUG explained that its General Rate Application team was small and stated that, the scope and schedule of the hearing took priority to administrative tasks during the hearing. MIPUG also did not think, given that this process was unlike other General Rate Application processes that MIPUG had participated in before, that it was appropriate to submit a budget extension without knowledge of how much additional budget was required. MIPUG further stated that it notified Board staff as it became clear that it had gone over the approved budget and followed the process suggested by Board staff.

MIPUG refuted that Manitoba Hydro's claim that MIPUG was solely protecting its business interests is unfounded as MIPUG spent considerable efforts to present evidence on economic impacts in general, and on the long-term considerations for the economy and the Manitoba Hydro ratepayers of all rate classes.

## 5.0 Board Findings

The Board has reviewed the Cost Application by MIPUG, the comments provided by Manitoba Hydro, the party submissions regarding MIPUG's budget increase request of March 12, 2018, as well as MIPUG's budget increase request update of May 15, 2018.

The Board finds that MIPUG made a significant contribution to the Board's review of Manitoba Hydro's 2017/18 and 2018/19 General Rate Application. Moreover, pursuant to the Board's Order 70/17 decision to determine the award of costs to approved Interveners without consideration of sufficiency of financial resources of the Intervener, the Board finds that MIPUG meets all of the requirements for a cost award.

However, the Board agrees with Manitoba Hydro that MIPUG should have submitted its budget increase request earlier, as specified in Order 70/17 and the Board's budget decision letter of August 25, 2017. Furthermore, given the Board's decision to award costs to approved Interveners without consideration of sufficiency of financial resources of the Intervener, the Board agrees with Manitoba Hydro that MIPUG should be subjected to the same standard of accountability as other intervenors with respect to ensuring that its' scope of work is within the confines of their approved budget. Given that other Interveners either filed timely budget increase requests or worked within the confines of its' approved budget, subject to the Board's 10% overage notice threshold of Order 70/17, the Board further finds that the submission of a significant budget increase request following the close of the hearing process to be unreasonable. As a result, the Board denies MIPUG's budget increase submissions of March 12, 2018 and May 15, 2018, and determines that MIPUG's cost award should be limited to the approved budget amount plus 10%.

In regards to the approved budget amount, the Board notes that MIPUG's budget increase submission of May 15, 2018 included a summary of the approved budget that included the removal of all Morrison Park fees and a \$24,000 contingency amount. In reviewing MIPUG's budget proposal of July 14, 2017 and the May 15, 2018 budget increase request, the Board determines that MIPUG's budget contingency amount was taken as 5% of total professional fees, disbursements, and PST. Furthermore, the Board



finds that MIPUG's \$24,000 budget contingency amount was actually based on the inclusion of 50% of the estimated fees from Morrison Park. While MIPUG has advised that all Morrison Park fees will be claimed by the Consumers Coalition, MIPUG's revised budget representation (included in its May 15, 2018 budget increase submission) did not adjust the initial contingency amount for the removal of the Morrison Park fees from MIPUG's accounts. When excluding the Morrison Park fees from MIPUG's budget contingency amount, the Board determines the contingency to be \$21,126.25, which results in a total budget of \$464,177.50 (inclusive of GST and PST).

As a result of the Board's decision to award costs that are 10% above MIPUG's full budget amount, and in light of the Board's revision to MIPUG's budget contingency amount, the Board approves a total cost award of \$510,595.25 (including GST and PST). Based on \$333,863.44 in interim costs paid out to date, the total balance owing is \$176,731.81 (inclusive of taxes).

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).

**6.0 IT IS THEREFORE ORDERED THAT:**

1. The Application of the Manitoba Industrial Power Users Group for a budget increase request BE AND IS HEREBY DENIED.
2. The Application of the Manitoba Industrial Power Users Group for an award of costs BE AND IS HEREBY APPROVED in the total amount of \$510,595.25.
3. Manitoba Hydro is to pay InterGroup Consultants Ltd., for work undertaken on behalf of the Manitoba Industrial Power Users Group, the holdback amount and the final cost award amount of \$176,731.81.
4. Costs be payable by Manitoba Hydro to InterGroup Consultants Ltd. within 15 days of the date of this Order.

THE PUBLIC UTILITIES BOARD

"Robert Gabor, Q.C."  
Chair

"Darren Christle MPA, BA, CCLP, P.Log, MCIT"  
Secretary

Certified a true copy of Order No. 100/18  
issued by The Public Utilities Board



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Secretary