

MANITOBA) **Order No. 114/15**
)
THE PUBLIC UTILITIES BOARD ACT) **November 10, 2015**

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

**ORDER WITH RESPECT TO AWARD OF COSTS
TO ORLE LAW CORPORATION IN THE INTERVENTION BY THE
MANITOBA KEEWATINOWI OKIMAKANAK (MKO) AT**

MANITOBA HYDRO'S 2014/15 & 2015/16 GENERAL RATE APPLICATION

INTRODUCTION

By this Order, the Public Utilities Board (Board) approves an award of costs of \$73,248.00 to Orle Law Corporation for legal costs in the intervention of the Manitoba Keewatinowi Okimakanak (MKO) at Manitoba Hydro's 2014/15 and 2015/16 General Rate Application (GRA).

MKO Application

The Orle Law Corporation filed a Cost Application with the Board on September 24, 2015. The Orle Law Corporation represented MKO at Manitoba Hydro's 2014/15 and 2015/16 GRA.

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*:

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.

The Board approved Intervener status to the MKO in the Board's Procedural Order (Order 18/15) dated February 9, 2015.

MKO's original budget and applied for costs are outlined in the Table below:

MKO Budget and Costs for Manitoba Hydro 2014/15 & 2015/16 GRA

	Budget	Actual
Legal Costs - George Orle		
G. Orle		
Lower limit legal fees	\$58,374.00	
Upper Limit legal fees	\$76,024.00	\$73,248.00
GST		
RST		
Subtotal - Legal	\$58,374.00 to \$76,024.00	\$73,248.00
Consultants		
Proposed Rate Panel ¹	\$8,000.00	\$0.00
Expert Consultants ²	\$50,000.00	\$0.00
Michael Anderson (MKO Staff) ³	\$15,000.00	\$0.00
Subtotal - Consultants	\$73,000.00	\$0.00
Total - Legal and Consulting	\$149,024.00	\$73,248.00

Notes to Table

1- Board denied Rate Panel in Procedural Order 18/15

2- MKO used Expert Consultants from other Interveners

3- Board denied MKO staff costs for Michael Anderson in Procedural Order 18/15

The Cost Application from Orle Law Corporation included a copy of a “Retainer Agreement” between MKO and Orle, Borgen, Davidson LLP which directed approved legal fees and disbursements be paid directly to Orle Law Corporation.

In Procedural Order 18/15 the Board approved the MKO as an Intervener but limited the scope of the MKO intervention to the following:

- Whether Manitoba Hydro’s forecasts are reliable.
- Whether the actual and projected costs of Manitoba Hydro are necessary.
- Whether Manitoba Hydro’s revenue requirements are reasonable.
- The finalization of Diesel Rates, provided MKO has provided Manitoba Hydro and Canada with all required settlement documents.
- Bill Reduction issues for MKO members through DSM initiatives. However, as indicated for GAC, the Board does not intend to conduct a similarly detailed review of DSM in this proceeding as it did in the NFAT, but rather, intends to focus its review on the reasonableness of, and justification for, Manitoba Hydro’s projected DSM expenditures during the test years.
- Bill Reduction Issues through rate mitigation measures. MKO indicated that it wants to revive a policy discussion as to whether separate rates should be considered for MKO members. Such separate rates would exclude Manitoba Hydro’s mitigation costs and water rental fees

In the Board’s Procedural Order (Order 18/15) the Board denied MKO’s proposal to introduce a proposed ratepayer panel; the Board heard evidence from rate payers in the recent Needs for and Alternatives to (NFAT) review and felt further ratepayer panel evidence was unwarranted in this GRA. The Board also did not approve MKO’s \$15,000 budget for internal MKO staff to assist in the review process. The Board approved

\$50,000 for MKO to retain one or more expert consultants but requested MKO to provide the name of any selected consultant and scope of work for Board approval. MKO did not retain any expert consultants but rather collaborated with the expert consultants used by other interveners.

MKO stated in their Cost Application that they represent approximately 65,000 residents in First Nations communities and are directly impacted by any increase in Manitoba Hydro rates.

In its Application the MKO suggested that it contributed to the GRA review process in a responsible manner and cooperated with other interveners by only asking additional questions on cross examination that was specific to MKO interests. MKO also highlighted that it substantially reduced expert consultant costs by accepting the evidence set out in other expert reports filed with the Board.

MKO's position was that they made a significant contribution to the hearing and MKO put forward positions and views that were adopted and promoted by the Chiefs representing the many northern First Nations Communities. These views could not and would not have come before the Board except with the participation of the MKO. In particular, MKO highlighted they provided a unique perspective to the Board regarding how Demand Side Management (DSM) programs are promoted and delivered in the North and the difficulties First Nations have in regards to coping with Hydro rates.

MKO's legal costs are \$73,248.00. This cost is slightly less than the estimated maximum legal cost of \$76,024.00 provided in MKO's budget estimate.

Manitoba Hydro Comments

Legal Costs

Manitoba Hydro highlighted MKO legal costs were at the higher end of the budgeted range despite the fact MKO did not retain expert consultants and therefore did not have to spend time reviewing expert evidence or cross-examining its own experts. MKO's request to bring a ratepayer panel to the hearing was also denied by the Board suggesting this could reduce legal costs. Manitoba Hydro noted that MKO did not provide an explanation as to why their legal costs were at the higher end of the budgeted range.

Consulting Cost

Manitoba Hydro noted the Board authorized MKO to retain one or more expert consultants but MKO did not engage any expert consultants for this hearing.

MKO Response to Manitoba Hydro Comments

In response to Manitoba Hydro comments, MKO suggested legal costs were higher due to the following:

- Additional hearing days (19 days versus 15 days)
- Legal cost hourly rates should have been \$224/hour rather than \$221/hour in accordance with the Board's revised fee schedule effective October 1, 2014.
- Although MKO did not retain its own experts, MKO met with experts of the Consumers Association of Canada (Manitoba) and had access to the report and expert consultant retained by the Green Action Centre (GAC). This evidence was used by MKO in developing its questions and position during the hearing.

MKO also noted that Manitoba Hydro was not concerned with the work that was done by MKO but rather the amount of time spent by MKO legal counsel.

BOARD FINDINGS

The Board has reviewed the Cost Application provided by Orle Law Corporation, as well as comments from Manitoba Hydro. The Board believes the MKO made a significant contribution that was relevant to the proceeding which enhanced the understanding of selective issues before the Board. The Board is also of the view that the MKO participated in the hearing in a responsible manner and co-operated with other interveners to avoid duplication in their intervention.

The Board recognizes that MKO does not have in-house legal counsel nor does MKO have the financial resources to obtain and pay for outside legal counsel. Further, the Board recognizes that many of the issues addressed in the GRA have a direct impact on the First Nation's communities represented by MKO.

As MKO did not retain expert consultants, the only matter before the Board is that of legal costs. The Board notes MKO's legal cost are at the upper end of MKO's budgeted amount. MKO has suggested this is largely due to additional hearing days, the volume of material filed, the complexity around many of the issues, and time spent to work with other interveners and their experts. The Board appreciates these contingencies and recognizes the complexity of the issues. The Board also appreciates the significance of rate impacts and possible rate mitigation programs are a significant concern to MKO.

The Board will therefore approve legal costs as submitted by MKO.

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.

