

**INTERVENER COSTS POLICY
FOR GENERAL RATE APPLICATIONS**

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Purpose of the Intervener Costs Practice Policy

The Manitoba Public Utilities Board (“Board”) provides Intervener costs funding to eligible participants in proceedings pursuant to section 56 of *The Public Utilities Board Act* (the “Act”).

The purpose of this Policy is to set out the Board’s procedure 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.

This Policy applies to the proceeding for the review and hearing of all General Rate Applications, including in the event of any inconsistency with the Board’s Rules of Practice and Procedure.

1.0 Definitions

In this Policy:

- a) "ACT" means *The Public Utilities Board Act*, R.S.M. 1987 Chapter P 280 as amended from time to time;
- b) “ADVANCE OF FUNDS” means an interlocutory award of costs for monies expended during the review of an application and hearing process, subject to review and variation in a final costs award after the conclusion of the proceeding.

c) "APPLICANT" means a party who has filed an application with the Board under the Act or its Regulations;

d) "BOARD" means The Public Utilities Board and where the context requires, includes a panel of the Board;

e) "HEARING" means a proceeding before the Board wherein a party or parties provide submissions to the Board which submissions may, in the Board's discretion, be preceded by the provision of information and/or evidence to the Board, and includes an Electronic Hearing, an Oral Hearing and a Written Hearing;

f) "INFORMATION REQUEST" means any request made in writing by a party for information or particulars directed to a party in a proceeding;

g) "INTERVENER" means a party other than the applicant who has formally filed for registration in respect of a proceeding and who intends to participate in the production and testing of evidence and whose registration has been approved by the Board pursuant to Rule 27 of the Board's Rules of Practice and Procedure;

h) "MOTION" means a request for a ruling or order in a proceeding or a pending proceeding;

i) "ORAL HEARING" means a hearing at which the parties or their representatives attend before the Board in person;

j) "PARTY" means either an applicant, an Intervener and for the purpose of this Policy, any other person whom the Board determines to be a party to a proceeding;

k) "PRE-HEARING CONFERENCE" means a meeting, which may be held before a Hearing, to set a timetable for the Proceeding, to finalize what matters may be discussed and to identify Interveners;"

l) "PROCEEDING" means a process to decide a matter brought before the Board, including a matter commenced by application;

m) "SECRETARY" means the Secretary or Acting Secretary of the Board;

n) "WRITTEN HEARING" mean a Hearing in which the proceeding before the Board is conducted entirely in writing.

2.0 Cost Award Availability

2.1 The Board may award costs for participation in a proceeding under section 56 of the Act.

2.2 Advance of Funds may be available pursuant to Section 4.0 and further to the Board's authority under subsection 47(2) of the Act.

2.3 Costs awarded shall be at the sole discretion of the Board.

2.4 The Board may award only a portion of the costs being sought by an Intervener.

3.0 Intervener Eligibility for a Cost Award and Board Determination of the Amount of a 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 a 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 submission with that of similarly interested interveners; and

(c) needed legal or technical assistance to take part in the proceeding;

3.3 The Board may award an amount of costs that is less than the amount sought in a costs application, including an award of no costs, where the Board determines that the Intervener did one or more of the following,:

(a) asked questions on cross-examination that were unduly repetitive of questions previously asked by another intervener;

(b) presented in oral evidence significant new evidence, not previously provided in the proceeding, that was available to the intervener at the time that intervener pre-filed its written evidence;

(c) failed to comply with a direction of the Board, including a direction on the filing of the evidence;

(d) submitted evidence and argument on issues that were not relevant to the proceeding;

(e) engaged in conduct that unnecessarily lengthened the duration of the proceeding or resulted in unnecessary costs;

(f) incurred costs that did not assist in the Board's consideration and adjudication of the issues in the proceeding and/or did not contribute to an advancement of the Board's understanding of the issues;

(g) the Intervener failed to provide notification of a material difference in the amount of the Intervener's cost estimate or the scope of the Intervener's participation at the time the material difference should reasonably have been anticipated; or

(h) such other factor(s) as the Board considers relevant.

4.0 Advance of Funds Requests

4.1 Advance of Funds may be available in a proceeding before the Board. Interveners must make an application for an Advance of Funds Request to

the Board. The Board will consider eligibility and amount for an Advance of Funds by applying Section 3.0.

- 4.2 An Intervener seeking an Advance of Funds must:
- (a) be an approved Intervener in the proceeding;
 - (b) have submitted and received comment from Board staff on the Intervener Cost Estimate;
 - (c) complete the applicable portions of the Intervener Costs Award Form, available as a fillable Excel spreadsheet on the Board's website; and
 - (d) provide invoices detailing the actual expenditures incurred by the Intervener to the date of the application for an Advance of Funds.
- 4.3 Board staff will review Advance of Funds Requests for completeness and compliance with the Board's Rules of Practice and Procedure and this Policy. The application must be filed using the prescribed form. Any applications that are incomplete or not in compliance will be returned. If invoices submitted with the Intervener Costs Award Form are not consistent with the information provided in the form, the application will be returned.
- 4.4 In granting an Advance of Funds request, the Board will provide for a hold back amount, such that a percentage of the costs estimate and/or a portion of the expenditures incurred by the Intervener to the date of the application will be payable as an Advance of Funds. The portion payable is in the full discretion of the Board in consideration of each individual application for an Advance of Funds. Any portion specified by the Board is a percentage of the total amount expended to the date of the application, including fees, disbursements and taxes.
- 4.5 Any Intervener granted an Advance of Funds must track the amount granted and submit the amount granted, including any cumulative amount, in

completing the Intervener Costs Award Form, available as a fillable Excel spreadsheet on the Board's website, when applying for a final costs award.

- 4.6 An award of an Advance of Funds will be deducted from the total costs granted in any final costs award.
- 4.7 If the Board awards an Advance of Funds to an eligible Intervener under this section, the Board may issue an Order directing the Applicant to pay the Advance of Funds to the participating party granted Intervener status in the proceeding, unless otherwise supported by documentation.
- 4.8 On consideration of the factors in Section 3.0, the Board may vary or deny costs on the claim for a final costs award filed by the eligible Intervener at the close of the hearing. Where the Board grants a final costs award that varies or denies an amount paid to the Intervener as an Advance of Funds, the Board may set the terms for repayment of the Advance of Funds.

5.0 Professional Fees

- 5.1 Cost awards may include the fees of consultants, expert witnesses and counsel associated with the intervention but shall not include indirect expenses relating to an Intervener's own time, such as wages lost by attendance at the hearing.
- 5.2 The Board expects Interveners to use professional services in a cost-effective manner and to make efforts to avoid duplication of services among legal counsel, consultants, specialists, and expert witnesses. The Board may adjust cost awards where any duplication appears to have occurred.
- 5.3 The Board will award professional fees in accordance with the Board's tariff rates, as set out in Appendix A, unless otherwise provided by the Board, and as updated or revised from time to time. The tariff rate that was in effect at the time that the application in a proceeding was filed shall apply throughout the duration of the proceeding.
- 5.4 The Board's tariff rates are exclusive of applicable taxes.

- 5.5 Legal counsel fees may be awarded in accordance with the fees listed in Appendix A, unless otherwise provided by the Board. The tariff rate that was in effect at the time the application in a proceeding was filed shall apply throughout the duration of the proceeding. Interveners are expected to use legal services in a cost-effective manner, giving regard to the years of experience required to perform tasks.
- 5.6 Consultants are expected to provide services related to their technical expertise and may be paid in accordance with the fees listed in Appendix A, unless otherwise provided by the Board, and as updated or revised from time to time. The tariff rate that was in effect at the time that the application in a proceeding was filed shall apply throughout the duration of the proceeding.
- 5.7 Expert witnesses are expected to provide services related to their specialized technical expertise, provide fair, objective and non-partisan opinion evidence, assist in the Board's consideration and adjudication of the issues in the proceeding, and contribute to an advancement of the Board's understanding of the issues. Expert witnesses may be paid in accordance with the fees listed in Appendix A, unless otherwise provided by the Board, and as updated or revised from time to time. The tariff rate that was in effect at the time that the application in a proceeding was filed shall apply throughout the duration of the proceeding.
- 5.8 The Board may award fees for an expert witness that exceed the tariff rates if the Board determines that the expert witness services are not available at the maximum fee because of the specialized technical expertise required to competently address the issues in a proceeding.

6.0 Disbursements

- 6.1 Costs awarded may include disbursements directly related to the Intervener's participation in the proceeding.

6.2 Payment of disbursements may be up to the amounts allowed under the Manitoba Government employee rates, approved from time to time, for travel, meals and accommodation. Consideration will be given to providing for different amounts if they can be justified.

7.0 Tax Costs

7.1 GST and PST costs, which are applicable to specific costs and or fees sought to be funded through a cost award and which cannot be recovered through an Input Tax Credit, may be allowed. Interveners seeking an award for tax costs must confirm in their application for an award that the applied-for taxes are applicable to the costs and/or fees in question and cannot be recovered by the Intervener through an Input Tax Credit.

8.0 Other Costs

8.1 The Board may award any other costs that the Board deems as reasonable and justified for assistance in the Board's consideration and adjudication of the issues in the proceeding and/or to contribute to an advancement of the Board's understanding of the issues.

9.0 Procedure for Applying for an Intervener Cost Award

9.1 Intervener Application

9.1.1 An Intervener applying for costs shall so inform the Board when filing the form requesting to intervene posted on the Board's website for Intervener Applications in the GRA proceeding.

9.1.2 The Intervener Application shall identify any expert witness or consultant the Intervener seeks to retain to assist in the Intervener's participation or provide evidence in the proceeding.

9.1.3 Intervener Applications shall be submitted with copies of curriculum vitae for any experts and/or consultants that the Intervener intends

on retaining to assist the Intervener or provide evidence in the proceeding.

9.2 Intervener Cost Estimates

9.2.1 Following the Board's approval of an Intervener Application, the Intervener shall file a detailed cost estimate within the time prescribed by the Board and using the Intervener Costs Award Form available as a fillable Excel spreadsheet on the Board's website.

9.2.2 Intervener cost estimates shall include a detailed estimate of the costs and means required for legal, expert, consultant, analyst and other fees, depending on the issues that are the subject of the intervention.

9.2.3 Intervener cost estimates shall provide an estimate for the time to be expended by each counsel and all experts and or/consultants for each stage of the hearing, as prescribed in the Intervener Costs Award Form available as a fillable Excel spreadsheet on the Board's website.

9.2.4 Interveners shall not include an amount for contingency in the cost estimate submitted to the Board.

9.2.5 Cost estimates will be reviewed by Board staff on receipt for completeness and compliance with the Board's Rules and this Policy. The cost estimate must be filed using the prescribed form. Cost estimates that are incomplete or not in compliance will be returned.

9.2.6 Board staff will conduct a review of Intervener cost estimates and may provide comments as to whether, in the view of Board staff, all or a portion of the Intervener's cost estimate may be at risk of not being funded. In examining a cost estimate, Board staff will consider whether the estimate is necessary and reasonable taking into

account the importance and implications of the file, the amount of documentation involved, the nature of the Intervener's involvement, the degree of complexity of the issues to be addressed by the Intervener, the experience and expertise of the Intervener, and the total cost estimate for the Intervener's costs in the proceeding.

9.2.7 The filing of Intervener cost estimates and Board staff's review of Intervener cost estimates does not guarantee or disqualify an Intervener from eligibility for a cost award. Any comments from Board staff on Intervener cost estimates are not binding on the Intervener or the Board. All cost awards, whether an Advance of Funds or a final costs award, are in the sole discretion of the Board and all applications for cost awards will be considered by the Board in accordance with the criteria in Section 3.0.

9.2.8 The Board will disclose to the regulated entity, or other party who will be asked to pay, the cost estimate amount submitted.

9.2.9 Interveners shall notify the Board of material differences or deviations in the amount of a cost estimate and/or or the scope of the Intervener's participation in the proceeding, with an explanation as to the reason for the difference or deviation.

9.2.10 The amount of any final costs award granted by the Board may be less than the amount included in an Intervener's cost estimate if warranted on consideration of the criteria set out in Section 3.0.

9.3 Interveners seeking an award of costs should attend any Pre-Hearing Conference to advise the Board as to discussions with other Interveners and how they will cooperate with other Interveners to avoid duplication of intervention as required under Section 3.2.

9.4 Application for a Final Costs Award

- 9.4.1 The Board may hear submissions regarding a final costs award to Interveners during final argument, or may direct such submissions to be made in writing following final argument.
- 9.4.2 Any Intervener applying for a final costs award shall complete the Intervener Costs Award Form, available as a fillable Excel spreadsheet on the Board's website, within 30 days of the last day of the hearing, and serve a copy on the Applicant. An application for a final costs award shall include supporting documentation, including detailed invoices.
- 9.4.3 If an Intervener anticipates filing a late Application for a final costs award, the Intervener must notify the Board in writing before the expiry of the 30-day deadline and explain the reasons for the delay. If an Application for costs is incomplete or filed after the deadline, without a valid reason, the total amount reimbursed may be reduced.
- 9.4.4 An application for a final costs award must include an explanation for any increases in costs about the amount contained in the Intervener's cost estimate. The Board may reduce a final costs award where an Intervener failed to provide notification of a material difference or deviation in the amount of the cost estimate or the scope of the Intervener's participation, as provided in Section 3.3(g).
- 9.4.5 Applications for final costs awards will be reviewed by Board staff on receipt for completeness and compliance with the Board's Rules and this Policy. Applications that are incomplete or not in compliance will be returned.
- 9.4.6 The Applicant may forward any comments or objections on applications for final costs awards, as set out on the Intervener Costs Award Form, to the respective Intervener and to the Board within 10 working days after receipt thereof.

- 9.4.7 The Intervener seeking costs shall have a further period of 10 working days, after receipt of any comments by the Applicant under Section 9.4.6, to submit a response to the Board with a copy to the Applicant.
- 9.4.8 The Board will determine an Intervener's eligibility for a cost award and the amount of a final costs award taking into account the criteria established in Section 3.0.
- 9.4.9 Prior to making its determination on a final costs award, the Board may require further supporting documents from the Intervener seeking costs, such as additional information about the Intervener or records supporting particulars of costs.
- 9.4.10 The Board shall issue an order in response to each application for a final costs award, and if costs are awarded, the party ordered to pay the costs shall pay such costs within 15 days of the Board's cost order.
- 9.4.11 Payments shall be made to the participating party granted Intervener status in the proceeding, unless otherwise stipulated and supported by documentation.

APPENDIX A: TARIFF RATES

MAXIMUM FEE SCHEDULE
(Effective as of January 1, 2016)

LEGAL COUNSELS:

| | |
|---|----------------|
| 20 or more years of relevant experience | \$285 /hr |
| 15-19 years | Up to \$240/hr |
| 10-14 years | Up to \$190/hr |
| 5-9 years | Up to \$140/hr |
| Base salary (new lawyer) | \$100/hr |

ACCOUNTANTS

| | |
|---|----------------|
| 20 or more years of relevant experience | \$240/hr |
| 15-19 years | Up to \$205/hr |
| 10-14 years | Up to \$170/hr |
| 5-9 years | Up to \$135/hr |
| Base fee (new accountant) | \$100/hr |

ENGINEERING SERVICES:

| | |
|---|----------------|
| 20 or more years of relevant experience | \$200/hr |
| 15-19 years | Up to \$175/hr |
| 10-14 years | Up to \$150/hr |
| 5-9 years | Up to \$125/hr |
| Base fee | \$100/hr |