

Order No. 89/17

**AWARD OF COSTS TO
GENERAL SERVICE SMALL/GENERAL SERVICE MEDIUM CUSTOMER CLASS
GROUP
FOR THEIR INTERVENTION IN THE
MANITOBA HYDRO COST OF SERVICE METHODOLOGY REVIEW
2015/2016**

August 17, 2017

**BEFORE: Marilyn Kapitany, B.Sc., (Hon), M.Sc., Panel Chair
Hugh Grant, Ph.D., Member
Larry Ring, Q.C., Member**

1.0 Introduction

By this Order, the Public Utilities Board (Board) approves an award of costs of \$256,624.19 to the General Service Small/General Service Medium (GSS/GSM) customer class group for their intervention in the Board's review of Manitoba Hydro's Cost of Service Methodology.

2.0 Application

GSS/GSM filed with the Board an Application for an Award of Costs on March 27, 2017.

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 who 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.

The Board approved Intervener status to the GSS/GSM in Procedural Order 26/16 dated February 26, 2016. In the same Order, the Board requested all approved interveners to file a budget proposal with the Board by March 1, 2016. On March 1, 2016 GSS/GSM filed a budget proposal with the Board requesting a budget of approximately \$288,000

(adjusted to reflect US dollar conversion). On April 4, 2016 the Board acknowledged a budget of \$230,000 for GSS/GSM intervention. On September 20, 2016 the Board approved an overall budget increase for interveners of no more than 15% above original budget allocations to accommodate changes in the scope of work in the Cost of Service review process.

In Board Order 26/16 (Cost of Service Procedural Order) the Board approved interim invoicing from interveners for the duration of the Cost of Service Hearing. All interim invoices were subject to a 25% holdback. Based on a statement of accounts, the total holdback amount owing to GSS/GSM is \$63,236.30.

GSS/GSM's request for reimbursement of costs was supported by statements of accounts as summarized below:

<i>Legal Costs</i>	TOTALS
Lawyers	
Monnin	\$52,003.00
Weinstein	\$10,008.00
Sub-total legal	\$62,011.00
Disbursements	\$1,464.22
Taxes	
Legal	\$4,958.96
TOTAL LEGAL	\$68,434.18
Consultants	
Goulding	\$45,195.87
Baatar	\$10,955.25
Chow	\$28,035.00
Leslie	\$83,220.00
Bruno	\$1,920.00
Zoomerwalla	\$15,537.60
Sub Total	\$178,593.67
Disbursements	
Printing/fax/travel	\$6,618.51
Data Application	\$2,977.83
Sub Total Disbursements	\$9,596.34
TOTAL CONSULTANTS	\$188,190.01
TOTAL COSTS	\$256,624.19

3.0 Manitoba Hydro's Comments

On August 16, 2017 Manitoba Hydro provided its comments on GSS/GSM's Cost Application. Manitoba Hydro raised concerns in three areas of the Application. The first questioned taxes pertaining to the total cost claim. The second questioned costs related to the pro rata share of annual data subscriptions for expert witness data application(s), and the absence of receipts for the subscriptions. The last issue raised concerns related to expert consultant fees exceeding the PUB maximum allowable hourly rate policy. Manitoba Hydro acknowledged that GSS/GSM has corrected the errors respecting the tax amounts noted in the first point.

4.0 Board Findings

The Board has reviewed the cost application by GSS/GSM, as well as the comments provided by Manitoba Hydro. The Board considered the GSS/GSM argument that the expert fees were previously dealt with in Board Order 84/15, and a subsequent Board policy that should expenses exceed 15% over the approved budget, interveners must seek additional Board approval. Lastly, GSS/GSM referenced case law (Ontario Court of Appeal decision *Moon v. Sher*, 2004) whereby the use of “Quicklaw Services” were deemed a reasonably necessary disbursement. GSS/GSM explained that no receipts were provided for the data subscription charges due to the expense being an apportionment of a general overhead charge. The Board finds that GSS/GSM response to Manitoba Hydro’s concerns sufficient. Additionally, the Board finds that GSS/GSM meets the requirements for a cost award. The Board further finds that the costs incurred by GSS/GSM are reasonable and the Board is prepared to accept them as filed in GSS/GSM’s Application for Costs.

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.pubmanitoba.ca.

5.0 IT IS THEREFORE ORDERED THAT:

1. The Application of the GSS/GSM for an award of costs BE AND IS HEREBY APPROVED in the total amount of \$256,624.19.
2. Manitoba Hydro is to pay to General Service Small / General Service Medium the holdback amount of \$63,236.30
3. Costs be payable by Manitoba Hydro to General Service Small / General Service Medium within 15 days of the date of this Order.

THE PUBLIC UTILITIES BOARD

“Marilyn Kapitany, B.Sc., (Hon), M.Sc.”
Panel Chair

“Darren Christle, MPA, B.A., CCLP, P.Log., MCIT”
Secretary

Certified a true copy of Order No. 89/17
issued by The Public Utilities Board

Secretary