

Order No. 131/18

**AWARD OF COSTS TO THE
ASSEMBLY OF MANITOBA CHIEFS
FOR THEIR INTERVENTION IN THE
ORDER 59/18 AND ORDER 68/18 REVIEW AND VARY PROCESS**

September 25, 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 \$5,544.28 to the Assembly of Manitoba Chiefs for their intervention in the process related to Manitoba Hydro's request to review and vary Order 59/18 and Order 68/18, which were both related to Manitoba Hydro's 2017/18 and 2018/19 General Rate Application.

2.0 Application

On July 26, 2018, the Association of Manitoba Chiefs (AMC) filed with the Board an Application for an Award of Costs for their intervention in the Order 59/18 and Order 68/18 review and vary process.

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 AMC in Order 70/17, the Procedural Order for Manitoba Hydro's 2017/18 and 2018/19 General Rate Application. In Order 97/18, the Board approved an award of costs to AMC for their intervention in Manitoba Hydro's 2017/18 and 2018/19 General Rate Application. The Order 97/18 cost award was based

on the use of legal fee hourly rates of \$190/hour (senior counsel) and \$140/hour (junior counsel), which were included in AMC's initial General Rate Application Intervener budget proposal and were consistent with the Board's policy and billing rates for advisory services.

By letter dated June 1, 2018, the Board established a process for the hearing of Manitoba Hydro's May 30, 2018 Application to review and vary Order 59/18 and Order 68/18. While the Board's process did not require Interveners to submit budget proposals, submissions in response to Manitoba Hydro's Application were requested.

On July 26, 2018, AMC filed its Cost Application for its participation in the Order 59/18 and Order 68/18 review and vary process. The Cost Application was supported by statements of accounts as summarized below:

	Budget Total	Cost Application Total
Legal Costs		
Counsel (Fees)	N/A	\$6,818.50
Counsel (Disbursements)	N/A	\$313.59
GST	N/A	NIL
PST	N/A	\$640.49
TOTAL COSTS *	N/A	\$7,772.58

As part of its submission, AMC stated that the hourly rates for the legal fees portion of its Cost Application are slightly higher than the Board's approved hourly rates. Specifically, AMC included billing rates of \$260/hour for senior counsel, \$235/hour and \$215/hour for junior counsels, and \$170/hr for a base lawyer. However, as explained in AMC's June 1, 2018 Cost Application for Manitoba Hydro's 2017/18 and 2018/19 General Rate Application, AMC stated that it should be reimbursed at the actual rates charged by counsel rather than at the Board's reduced rates. AMC further stated that while the extra costs for counsel from the main hearing that led to Order 59/18 were anticipated and budgeted for by AMC, the Application to review and vary was not similarly anticipated.

3.0 Manitoba Hydro's Comments

On August 15, 2018, Manitoba Hydro provided its comments regarding AMC's Cost Application. In its submission, Manitoba Hydro noted that the Board's Rules of Practice and Procedure clearly provide for the ability of a party to apply to seek a review, change, or variance of any Board decision or Order. Whether or not parties themselves expect or contemplate a filing of an application for review and variance of an Order is not a criteria for the awarding of costs nor should it be a criteria for deviating from the Board's policy and billing rates for advisory services.

Manitoba Hydro therefore submitted that AMC's participation in the review and vary process arose directly from its intervention in the General Rate Application, and as such, the same hourly rates determined to be applicable in Order 97/18 should also apply to AMC's participation in the Order 59/18 and Order 68/18 review and vary process.

4.0 Board Findings

The Board has reviewed the Cost Application by AMC, as well as the comments provided by Manitoba Hydro. The Board finds that AMC meets all of the requirements for a cost award.

In regards to the legal fees portion of AMC's Cost Application, the Board agrees that AMC's participation in the Order 59/18 and Order 68/18 review and vary process arose directly from its intervention in Manitoba Hydro's 2017/18 and 2018/19 General Rate Application. The Board therefore finds that the hourly rates determined to be applicable in Order 97/18 should also apply to AMC's participation in the Order 59/18 and Order 68/18 review and vary process.

The table below summarizes the Board's cost award to AMC.

	Budget Total	Cost Award*
Legal Costs		
Counsel (Fees)	N/A	\$4,820.00
Counsel (Disbursements)	N/A	\$313.59
GST	N/A	NIL
PST**	N/A	\$410.69
TOTAL COSTS *	N/A	\$5,544.28

* The legal fees portion of the Cost Award accounts shown are based the Board's approved tariff for advisory services and include hourly rates of \$190/hour for AMC's senior counsel, \$140/hour for AMC junior counsels, and \$100/hr for AMC's base lawyer.

** PST was calculated as 8% of counsel fees and disbursements.

As the Board did not approve an advance of funds for the Order 59/18 and Order 68/18 review and vary process, the total balance owing is \$5,544.28 (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.

5.0 IT IS THEREFORE ORDERED THAT:

1. The Application of the Assembly of Manitoba Chiefs for an award of costs BE AND IS HEREBY APPROVED in the total amount of \$5,544.28.
2. Manitoba Hydro is to pay Olthuis Kleer Townshend LLP, for work undertaken on behalf of the Assembly of Manitoba Chiefs, the final invoice amount of \$5,544.28.
3. Costs be payable by Manitoba Hydro to Olthuis Kleer Townshend LLP within 15 days of the date of this Order.

THE PUBLIC UTILITIES BOARD

"Marilyn Kapitany, B.Sc., (Hon), M.Sc"
Vice Chair

"Kurt Simonsen"
Acting Secretary

Certified a true copy of Order No. 131/18
issued by The Public Utilities Board



Acting Secretary