

**Order No. 98/18**

**AWARD OF COSTS TO THE  
BUSINESS COUNCIL OF MANITOBA  
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 \$151,874.52 to the Business Council of Manitoba for their intervention in Manitoba Hydro's 2017/18 and 2018/19 General Rate Application.

## 2.0 Application

On May 29, 2018, the Business Council of Manitoba (BCM) 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.

The Board approved Intervener status to BCM in Order 70/17, the Procedural Order for Manitoba Hydro's 2017/18 and 2018/19 General Rate Application. In the same Order, the Board requested that all approved interveners file a budget proposal with the Board by July 14, 2017.

On July 25, 2017, BCM filed a budget proposal with the Board. On August 25, 2017, the Board provided its decision regarding intervener budgets. In the case of BMC, the Board reduced the overall pre-tax budget from the proposed \$185,000 to \$62,500 in order to reflect the scope of BCM's approved intervention, and the fact that BCM did not follow the Board's rules when it failed to propose specific experts on macro-economic impacts and bond rating considerations as well as a budget for those experts.

On November 22, 2017, BCM filed a budget variance request with the Board as its expected legal costs may exceed its approved budget. On December 5, 2017, the Board approved an additional legal fee budget of \$60,000 (pre-tax), bringing BCM's total pre-tax budget to \$122,500.00 (or \$138,425.00 including both GST and PST).

In 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 to date to BCM is \$103,025.97 (including taxes).

On May 29, 2018, BCM 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>		
Fees	\$122,500.00	\$131,700.91
Disbursements	NIL	\$3,068.97
<b>Sub-Total</b>	<b>\$122,500.00</b>	<b>\$134,769.88</b>
GST***	\$6,125.00	\$6,591.04
PST***	\$9,800.00	\$10,536.07
<b>TOTAL COSTS</b>	<b>\$138,425.00</b>	<b>\$151,896.99</b>

\* BCM's budget proposal was approved on a pre-tax basis. However, taxes were added to the budget totals shown in order to facilitate comparisons to BCM's Cost Application.

\*\* The Cost Application totals shown are based on BCM's invoices dated November 14, 2017, December 20, 2017, and May 22, 2018.

\*\*\* GST was applied to legal fees and disbursements, although BCM did not claim GST on disbursements sourced from the U.S. PST was applied to legal fees only.

As part of its submission, BCM stated that, given the lack of expert witnesses available to BCM and the need to review various expert reports, prepare information requests, and provide cross-examination, its legal cost exceeded the budget granted by the Board by a considerable amount. However, BCM advised that it is willing to accept a 10% increase of the budget granted by the Board, which BCM determined to result in a total pre-tax cost award request of \$136,205.10.

### 3.0 Manitoba Hydro's Comments

On June 15, 2018 Manitoba Hydro provided its comments regarding BCM's Cost Application. Manitoba Hydro noted that on November 14, 2017 and December 20, 2017, BCM submitted interim invoices totalling \$121,039.70 (inclusive of holdback but exclusive of taxes and the December 20, 2017 invoiced disbursements). BCM did not notify or request a further increase in its approved budget until its Application for Costs submission on May 29, 2018. Considering the total approved pre-tax budget was \$122,500, a further increase in budget should have been sought immediately after submission of the December 20, 2017 interim invoice in accordance with Order 70/17.

Manitoba Hydro also noted that BCM has taken steps by reducing its pre-tax legal fees by \$27,303.09. Given that the 2017/18 and 2018/19 Manitoba Hydro General Rate Application was BCM's first appearance at a Board hearing, and given that legal counsel had no assistance from its own experts, Manitoba Hydro submitted that some additional amount above BCM's approved budget would not be unreasonable.

## 4.0 Board Findings

The Board has reviewed the Cost Application by BCM, as well as the comments provided by Manitoba Hydro. The Board finds that AMC meets all of the requirements for a cost award. The Board further finds that the costs incurred by BCM are reasonable. However, the Board notes that BCM's Cost Application materials contain discrepancies with respect to BCM's account summaries relative to BCM's invoices of November 14, 2017, December 20, 2017 and May 22, 2018. As BCM's submitted invoices indicate costs that are approximately 10% above BCM's approved pre-tax budget of \$122,500.00, and in light of BCM's request to award costs that are 10% above its pre-tax budget, the Board approves a pre-tax cost award of \$134,750.00. Inclusive of applicable GST and PST, BCM's cost award is determined to be \$151,874.52. Based on \$103,025.97 in interim costs paid out to date, the total balance owing is \$48,848.55 (inclusive of taxes).

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

	<b>Budget Total*</b>	<b>Cost Award</b>
<b>Legal Costs</b>		
Fees**	\$122,500.00	\$131,681.03
Disbursements	NIL	\$3,068.97
<b>Sub-Total</b>	<b>\$122,500.00</b>	<b>\$134,750.00</b>
GST***	\$6,125.00	\$6,590.04
PST***	\$9,800.00	\$10,534.48
<b>TOTAL COSTS</b>	<b>\$138,425.00</b>	<b>\$151,874.52</b>

\* BCM's budget proposal was approved on a pre-tax basis. However, taxes were added to the budget totals shown in order to facilitate comparisons to BCM's cost award.

\*\* The pre-tax cost award for legal fees is 10% above the approved budget, less the total disbursements claimed on BCM's invoices of November 14, 2017, December 20, 2017, and May 22, 2018.

\*\*\* GST was applied to legal fees and the GST-applicable disbursements (based on BCM's invoices that did not claim GST on disbursements sourced from the U.S.). PST was applied to legal fees only.

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).



**5.0 IT IS THEREFORE ORDERED THAT:**

1. The Application of the Business Council of Manitoba for an award of costs BE AND IS HEREBY APPROVED in the total amount of \$151,874.52.
2. Manitoba Hydro is to pay Taylor McCaffrey LLP, for work done on behalf of the Business Council of Manitoba, the holdback amount and final invoice amount of \$48,848.55.
3. Costs be payable by Manitoba Hydro to Taylor McCaffrey LLP 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. 98/18  
issued by The Public Utilities Board



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Secretary