

Order No. 18/21

**AWARD OF COSTS: TAXI COALITION– INTERVENTION IN MANITOBA PUBLIC
INSURANCE CORPORATION'S GENERAL RATE APPLICATION FOR THE 2021/22
INSURANCE YEAR**

January 27, 2021

BEFORE: Irene A. Hamilton, Q.C., Panel Chair
Robert Gabor, Q.C., Board Chair.,
Carol Hainsworth, Member

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1.0 Introduction

By this Order, the Public Utilities Board (Board) approves an order of costs in favour of the Taxi Coalition (TC), in the amount of \$140,208.35.

The award relates to TC's intervention in the Manitoba Public Insurance (MPI) General Rate Application for the 2021/22 insurance year (2021 GRA).

2.0 Application

On December 29, 2020, the Taxi Coalition filed with the Board an Application for an Award of Costs for its intervention at the Manitoba Public Insurance 2021/22 General Rate Application (Cost Application).

Pursuant to Section 56 of *The Public Utilities Board Act*, the Board has jurisdiction to award costs of, and incidental to, any proceeding before the Board. For the purpose of this hearing, the Board adopted an interim Intervener Costs Policy (the Policy). The purpose of the Policy was to set out the Board's procedures 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.

Sections 3.1 and 3.2 of the Policy describes Intervener eligibility for a cost award and the Board's principles in determining the amount of the 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;

In June, 2020, the TC filed an application for Intervener status with the Board. MPI did not oppose TC's application. The Board awarded TC Intervener status on July 6, 2020 in Order 88/20. Included in the Board's Order was an issues list deemed by the Board as applicable to TC for this proceeding.

On July 7, 2020, TC filed its projected budget of \$132,559.80 with the Board. On August 7, 2020, TC filed an amended budget of \$145,822.80. Board staff acknowledged receipt of the budgets.

On December 29, 2020, TC filed the Cost Application, supported by statements of accounts, and summarized below:

		Amended Budget Total*	Cost Application Total
Legal Costs	(A. Hacault)	\$51,000.00	\$56,670.00
Consultant Costs	(J. Crozier)	\$38,025.00	\$57,817.50
	(P. Bowman)	\$40,800.00	\$18,360.00
	(A. Kasanbaev)	\$2,835.00	\$2,205.00
Disbursements		\$2,449.80	\$1,188.95
GST		\$6,633.00	\$6,812.07
PST		\$4,080.00	\$3,966.90
TOTAL COSTS		\$145,822.80	\$147,020.42

TC also provided the Board with detailed invoices and a written submission describing TC's participation in the 2021 GRA.

3.0 Manitoba Public Insurance Comments

On January 12, 2021, MPI provided written comments to the Board. MPI requested that the Board deny the Cost Application because TC did not represent interests other than its own business interests and because it did not represent the interests of a substantial number of ratepayers. In that regard, MPI noted that TC was a coalition of two taxi dispatch companies, representing approximately 80% of the Taxicab Vehicles for Hire (VFH) and 22% of the Accessible VFH in Manitoba, totalling approximately 600 ratepayers. This would amount to approximately 0.05% of all ratepayers in the 2021 GRA.

MPI also argued that TC's intervention mainly advanced its own business interests, in that TC advocated for better financial incentives for Taxicab VFH operators and higher rates

for Passenger VFH operators, and that neither of these objectives extended beyond the goals of increasing profitability for the Taxicab VFH class and increasing the expenses of its competitors. MPI also submitted that another intervener, Consumers' Association of Canada (Manitoba) Inc. (CAC), advanced an argument against the cross-subsidization of Passenger VFH rates on behalf of all consumers, and declined to endorse the 1-year, 56% rate increase that was proposed by TC.

Alternatively, if the Board were to award costs to TC, MPI's position was that the amount be reduced on the basis that:

1. The amount claimed by TC was not commensurate with the scope of its participation;
2. The amount claimed for professional fees did not accord with the prescribed hourly rates;
3. One of the TC witnesses did not offer objective, non-partisan evidence; and
4. TC claimed an amount for taxes paid without first establishing that an input tax credit was unavailable.

MPI pointed out that TC asked for an award of costs that was equivalent to 97% of that applied for by CAC (which was \$151,552.95), even though the scope of TC's intervention was substantially less than CAC's. Moreover, TC sought consultant fees of \$84,109.80 for three consultants whereas CAC had sought \$94,830 for six consultants, and the hourly rate charged by TC for those consultants was excessive. MPI argued that if TC is granted a costs award, it should be limited to 50% of those charged by CAC.

MPI also argued that Mr. Patrick Bowman, who provided consulting services to TC, did not provide impartial testimony when he was cross-examined by counsel for CAC, by advocating for strict action to discourage new operators in the Passenger VFH market.

Lastly, MPI argued that TC had not demonstrated it had a financial need for an award of costs.

4.0 Taxi Coalition Response

TC provided the Board with a response to MPI's written comments on January 20, 2021. TC pointed out instances in Order 1/21 following the 2021 GRA where the Board accepted the evidence adduced or the position advanced by TC.

TC disputed that its intervention was limited to its own business interests, arguing that its evidence and the Board's findings demonstrated a broad and comprehensive analysis of VFH issues. Further, it argued, its evidence and submissions addressed VFH issues generally. The directive in Order 1/21 of 20% increases to Passenger VFH rates will benefit the Private Passenger Major class, not the Public VFH class, and therefore, it is not TC's constituency that will benefit from Mr. Bowman's recommendations. Accordingly, TC argued that it was unfair for MPI to argue that Mr. Bowman's evidence and recommendations were partisan and not objective.

TC also noted that the 2021 GRA was the first time that there was a substantive review of all aspects of the VFH class and TC made efforts to represent the issues related to the Public VFH class generally.

With respect to the amount of costs sought by TC, it argued that the scope of its participation required a review of all aspects of the GRA, the fees charged for consultants was commensurate with Board-approved rates for consultants with comparable experience, and that TC used its resources efficiently in that its counsel did not charge for time where the subject matter canvassed was outside the scope of TC's intervention.

In response to MPI's comments on TC's financial need, TC noted that this is not a criterion set out in the Policy for eligibility for a cost award.

Upon review, TC withdrew its claim for GST in the amount of \$6,812.07 as it is able to claim input tax credits.

5.0 Board Findings

The Board has considered the Cost Application along with the comments submitted by TC and MPI. The Board finds that TC has met all of the requirements for a costs award, and grants a costs award in the amount of \$140,208.35, equivalent to the total of the Cost Application of \$147,020.42, less the claim for \$6,812.07 for GST, which was withdrawn by TC.

TC made a significant contribution to the 2021 GRA, beyond that of its sole business interest. As the Board noted in Order 1/21:

The VFH class is relatively new, having been introduced on March 1, 2018. As a result of a lack of claims experience and data, the Board approved the rates for the class based upon certain initial assumptions used by MPI within the approved ratemaking methodology. Until now, the Board has not undertaken a substantive review of all aspects of the VFH class.

TC's intervention allowed the Board to undertake an informed and detailed review of the VFH class for the first time since its inception. Ultimately, the Board found, on the strength of the evidence presented on behalf of TC, that it was just and reasonable to increase Passenger VFH rates to remedy the cross-subsidization of that class by other ratepayers. The Board also accepted TC's recommendations as to what issues MPI is to consider in its VFH framework review.

Although the members of the TC comprise a relatively small proportion of the total number of ratepayers, the Board nonetheless finds that this number is significant because it comprises an entire rate class, a class the travelling public relies upon for service. The Board appreciates the contributions that stakeholders make to the GRA process, which serve to ensure that the rates it sets are just and reasonable. As an example, in the context of Manitoba Hydro Electric rate applications, under this Policy the Board has

granted intervener status and an award of costs to Manitoba Industrial Power Users Group (MIPUG), which is comprised of the 12 largest users of electricity in Manitoba. While this represents a small number of users, the constituency is significant due to the importance of the members of MIPUG to the economy. The Board finds that TC's circumstances are analogous to MIPUG, given the significance of the services provided by the Taxi VFH class to the public.

The Board also notes that MPI did not oppose TC's application for intervention, which included a statement that it intended to seek an order for costs. MPI did, however, oppose the intervention of the Insurance Brokers Association of Manitoba (IBAM) in the 2021 GRA on the basis that IBAM's focus was primarily on its own commissions and fees. TC indicated in its application for intervention that it intended to examine, among other things, the reasonableness of ratemaking approaches for Accessible VFH and Limousine VFH uses, and All Purpose Private Passenger VFH classes, in comparison to the Taxi VFH class.

The Board also finds that TC participated in the hearing in a responsible manner. TC used counsel efficiently in the public hearings and did not attend when it was not necessary to do so. While MPI has contrasted TC's Cost Application with that of CAC, TC provided detailed evidence through its expert witnesses about the VFH class, which the Board relied upon. CAC did not introduce any evidence through expert witnesses. TC and CAC also shared a consultant, Mr. Jeff Crozier. The Board sought comment from both TC and CAC in order to determine whether there was significant overlap of consulting services performed by Mr. Crozier. The Board has determined that the interventions of CAC and TC were unique, and the consulting services performed by Mr. Crozier were specific to the respective interventions.

The Board considered the evidence given by Mr. Bowman and affords little weight to MPI's submission that he provided partisan evidence. Further, MPI did not make this suggestion in the course of the public hearings.

The Board also finds that the rates charged by TC are appropriate. The Board's Rate Schedule does not prescribe a maximum rate for consultants but provides that appropriate rates will be determined on a case-by-case basis. Contrary to MPI's submissions, the rates charged for Mr. Bowman and Mr. Crozier, with 20 years and 13 years of experience respectively, are less than the corresponding rates for legal counsel.

Lastly, demonstration of financial need is not a requirement for eligibility of an award of costs in the Policy and accordingly, TC was not required to provide proof of financial need in the Cost Application.

For all of the above reasons, the Board is prepared to grant an award of costs to TC as set out in the Cost Application, less the claim for GST.

6.0 IT IS THEREFORE ORDERED THAT:

1. The Application of the Taxi Coalition for an award of costs BE AND IS HEREBY APPROVED in the total amount of \$140,208.35.
2. Manitoba Public Insurance pay TDS LLP within 15 days of the date of this Order.

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

THE PUBLIC UTILITIES BOARD

"Irene Hamilton, Q.C."

Panel Chair

"Darren Christle, PhD, CCLP, P.Log., MCIT"

Secretary

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Secretary