

**Order No. 134/22**

**AWARD OF COSTS TO CONSUMERS COALITION FOR INTERVENTION IN THE  
MANITOBA HYDRO: 2021/22 INTERIM RATE PROCEEDING & APPLICATION TO  
REVIEW AND VARY BOARD ORDER NO. 9/22**

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December 20, 2022

BEFORE: Robert Gabor, K.C., Chair  
Marilyn Kapitany, B.Sc.(Hon), M.Sc., Vice Chair  
Irene A. Hamilton, K.C., Member  
Shawn McCutcheon, Member

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## Table of Contents

|     |  |    |
|-----|--|----|
| 1.0 | Summary .....  | 3  |
| 2.0 | Procedural History .....                                       | 3  |
| 3.0 | Application – Status Update and Interim Rate Application ..... | 5  |
| 4.0 | Application – Review and Vary Application of Order 9/22 .....  | 7  |
| 5.0 | Board Findings .....   | 8  |
| 6.0 | IT IS THEREFORE ORDERED THAT: .....                            | 11 |

## 1.0 Summary

By this Order, the Public Utilities Board of Manitoba (“Board”) approves the Consumers Coalition Application for a costs award of \$61,747.20. This amount includes \$54,640.00 for its intervention in the Manitoba Hydro (Hydro) 2021/22 Interim Rate Application, including costs incurred for the Status Update, as well as \$7,107.20 for the Hydro Review and Vary Application of Board Order No. 9/22.

## 2.0 Procedural History

The Procedural History leading to these proceedings and the Consumers Coalition participation and request for costs are detailed below.

The Consumers Coalition consists of three members from Harvest Manitoba, Consumers’ Association of Canada (Manitoba), and the Aboriginal Council of Winnipeg. On March 21, 2021, the Consumers Coalition, representing residential electricity ratepayers, supported by the Manitoba Industrial Power Users Group, the Assembly of Manitoba Chiefs, and Manitoba Keewatinowi Okimakanak, applied to the Board for a status update hearing. This hearing was requested to determine whether rates charged by Manitoba Hydro were just and reasonable and whether Manitoba Hydro’s costs were fairly allocated among the customer classes.

Due to a change in circumstances for the utility, as outlined in Order 9/22, the Minister of Crown Services issued a Ministerial Directive to the Manitoba Hydro-Electric Board on September 22, 2021, instructing Manitoba Hydro to file an interim rate application with the Board for the 2021/22 fiscal year. In addition, Manitoba Hydro was also directed to engage with the Board to start planning for Manitoba Hydro’s next multi-year General Rate Application.

On September 29, 2021, Manitoba Hydro advised the Board that it intended to file an interim rate application to address the financial impacts due to the current drought conditions to ensure the financial health of Manitoba Hydro. On October 12, 2021, the

Board issued a Decision Letter suspending the Status Update Proceeding pending Manitoba Hydro filing its interim rate application. In this letter the Board also approved Intervener status for the Interim Application for the Assembly of Manitoba Chiefs, the Consumers Coalition, Manitoba Industrial Power Users Group, and Manitoba Keewatinowi Okimakanak.

On November 15, 2021 the Board received an Interim Rate Application from Manitoba Hydro. On November 22, 2021, the Board issued Procedural Order 128/21 setting the procedures, timeline, and scope of the hearing. The proceeding started on December 1, 2021, with public presentations, followed by oral testimony on December 10<sup>th</sup> and 13<sup>th</sup>, 2021, and oral closing submissions on December 14<sup>th</sup> and 15<sup>th</sup>, 2021, for a total of five hearing days.

On December 24, 2021, the Board issued Order 137/21 varying Manitoba Hydro's request for a 5% increase in General Consumers revenue and approving a 3.6% increase instead, indicating a further Order would be issued containing substantive reasons. On January 26, 2022, the Board issued Order 9/22 setting out the Board's further reasons for decisions in Order 137/21.

On February 25, 2022, Manitoba Hydro filed a Review and Vary Application of Board Order 9/22. On March 31, 2022. The Board invited submissions from Interveners that participated in the Interim Rate Application Proceeding. Submissions were received from Manitoba Industrial Power Users Group and the Consumers Coalition, and a reply from Manitoba Hydro.

On July 21, 2022, the Board issued its decision in Order 77/22, dismissing Manitoba Hydro's Review and Vary Application of Order 9/22.

### 3.0 Application – Status Update and Interim Rate Application

On February 3, 2022, the Consumers Coalition filed with the Board an Application for an Award of Costs for its intervention in the Hydro 2021/22 Interim Rate Application, which included costs incurred for the Status Update proceeding, in the amount of \$54,640.00.

The Consumers Coalition provided statements of accounts, as summarized in the following table.

|                          | <b>Costs Application Total</b> |
|--------------------------|--------------------------------|
| <b>Legal Costs:</b>      |                                |
| B. Williams              | \$22,980.60                    |
| K. Dilay                 | \$1,499.40                     |
| Total Legal Costs        | \$24,480.00                    |
| <b>Consultant Costs:</b> |                                |
| D. Rainkie               | \$30,160.00                    |
| Total Consultant Costs   | \$30,160.00                    |
| <b>TOTAL COSTS</b>       | <b>\$54,640.00</b>             |

The Consumers Coalition Cost Application was supported by detailed invoices and a written submission describing its participation in the Manitoba Hydro Status Update Proceeding and the Board's review of Manitoba Hydro 2021/22 Interim Rate.

#### Manitoba Hydro Comments

On March 16, 2022, Manitoba Hydro provided its comments regarding the Consumers Coalition Cost Application. Manitoba Hydro compared the 2016/17 interim process to the 2020/21 interim process and noted that the 2020/21 process was more streamlined but cost more than the 2016/17 proceeding. Manitoba Hydro also noted that the Consumers Coalition participation in the formation of Minimum Filing Requirements and /information Requests were consistent with the Board's direction, outlined in the Decision Letter on October 12, 2021, but half of the Consumers Coalition proposed Minimum Filing Requirements were not accepted by the Board. Further, Manitoba Hydro states:

*The difficulty in performing a cost assessment for reasonability without an approved budget, is attempting to gauge the value of the Coalition's contribution to the process, in particular the Coalition's consultant total hours claimed (116) for a four-week expedited process; especially given the fact that the consultant did not file any evidence or testify in the proceeding.*

Manitoba Hydro requested the Board reduce the Consumers Coalition costs by 50% due to the comparison of costs on the interim processes and the limitations of assessing costs.

### **Consumer's Coalition Response**

On March 29, 2022, the Consumers Coalition provided a response to the Board regarding Hydro's comments of March 16, 2022. The Consumers Coalition submitted its intervention was reasonable and necessarily incurred, where participation reflected a significant contribution to challenge caused by the dearth of evidence of Hydro's health, long period between regulatory processes, and difficulty of assessing appropriate rates.

The Consumers Coalitions submitted that the comparison of the Coalition's cost claims in the 2020/21 and 2015/16 interim regulatory processes by Hydro was inappropriate because the interim processes were not analogous and the most recent rate information for 2020/21 was not confirmed as just and reasonable as in the 2015/16 process.

The Consumers Coalition stated:

*To properly assess Manitoba Hydro's application, the Consumers Coalition was required to spend considerable time supplementing the evidence in the present proceeding with filings and Board findings from past proceedings to develop a functional understanding of the corporation's financial health. This work was necessary due to the limited up-to-date information available about the corporation, and the Consumers Coalition relied heavily on its expert consultant to assist in filling these evidentiary gaps.*

#### 4.0 Application – Review and Vary Application of Order 9/22

On May 31, 2022, the Consumers Coalition filed with the Board an Application for an Award of Costs for its intervention in the Hydro Review and Vary Application of Order 9/22, in the amount of \$7,107.20.

The Consumers Coalition provided statements of accounts, as summarized in the following table.

|                          | <b>Costs Application Total</b> |
|--------------------------|--------------------------------|
| <b>Legal Costs:</b>      |                                |
| B. Williams              | \$2,920.20                     |
| C. Klassen               | \$1,067.00                     |
|                          |                                |
| Total Legal Costs        | \$3,987.20                     |
|                          |                                |
| <b>Consultant Costs:</b> |                                |
| D. Rainkie               | \$3,120.00                     |
|                          |                                |
| Total Consultant Costs   | \$3,120.00                     |
|                          |                                |
| <b>TOTAL COSTS</b>       | <b>\$7,107.20</b>              |

The Consumers Coalition Cost Application was supported by detailed invoices and a written submission describing its participation in the Board's review of Manitoba Hydro Review and Vary Application of Order 9/22.

Manitoba Hydro was provided the opportunity to comment on the Consumers Coalition Cost Application for the Review and Vary Application of Order 9/22, and did not have any further comment for the Board.

## 5.0 Board Findings

Pursuant to Section 56 of *The Public Utilities Board Act*, the Board has jurisdiction to award costs of, and incidentals to, any proceeding before the Board. For this hearing, the Board adopted an “Intervener Costs Policy”. The purpose of this 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 Intervener Costs Policy describe 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 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 submissions with that of similarly interested interveners; and*



*c) needed legal or technical assistance to take part in the proceeding.*

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

The Consumers Coalition's intervention in the proceedings added value by providing the historical background, addressing the need for Hydro to provide up-to-date information for electricity rates, and provided reasonable evidence, which assisted the Board to make its determinations on the Status Update, Interim Rate, and Review and Vary proceedings.

The Board finds that the Consumers Coalition made a significant contribution that was relevant to the Status Update Application, the 2020/21 Interim Rate Application, and the Review and Vary Application of Order 9/22 and contributed to a better understanding of the issues before the Board. The Board is satisfied that the Consumers Coalition contributed to the Minimum Filing Requirements and Information Requests processes adequately.

The Board also finds that the Consumers Coalition participated in a responsible manner and is not persuaded that the Consumers Coalition made any irrelevant contributions or unnecessarily lengthened the proceedings.

The Board acknowledges there were steps missed, such as request for updated budget information in the 2020/21 Interim Rate Proceeding. As a result of the urgency indicated by Manitoba Hydro, this was an unusual regulatory process. Order 9/22 Section 3 set out details for the timeline of the Drought and Manitoba Hydro's actions in response to this emergent and urgent situation. The Board, in response to Manitoba Hydro's Interim Application, immediately suspended the Status Update proceeding and, with the assistance of interveners, completed a compressed five week hearing process. This resulted in a rate for January 1, 2022, to address Manitoba Hydro's situation.

The Board awards the total amount of \$61,747.20 to the Consumers Coalition for intervention in the work completed for the Status Update Proceeding and the Board's review of Manitoba Hydro's Interim Rate Application and Review and Vary of Board Order 9/22 Application.

Recognizing the time delays in adjudicating this matter, and also recognizing the approaching business year end, the Board will direct Manitoba Hydro to pay the amount of the approved costs to the Consumers Coalition within 15 calendar days of the date of this Order. The Board appreciates Manitoba Hydro's efforts in this regard.

**6.0 IT IS THEREFORE ORDERED THAT:**

1. The Application of Consumers Coalition for an award of costs **BE AND IS HEREBY APPROVED** in the total amount of \$61,747.20
2. Costs shall be payable by Manitoba Hydro within fifteen (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](http://www.pubmanitoba.ca).

THE PUBLIC UTILITIES BOARD

"Robert Gabor, K.C."

Chair

"Rachel McMillin, B.Sc."

Associate Secretary

Certified a true copy of Order No. 134/22  
issued by The Public Utilities Board



Associate Secretary