

Order No. 140/23

**AWARD OF COSTS TO GENERAL SERVICE SMALL & GENERAL SERVICE
MEDIUM CUSTOMER CLASSES REPRESENTATIVE
FOR INTERVENTION IN THE
MANITOBA HYDRO 2023/24 & 2024/25 GENERAL RATE APPLICATION**

December 13, 2023

BEFORE: Robert Gabor, K.C., Chair
Marilyn Kapitany, B.Sc.(Hon), M.Sc., Vice Chair
George Bass, K.C., ICD. D., Member
Carol Bellringer, FCPA, FCA, Member
Hamath Sy, B.Sc., M.Sc., Member

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1.0 Summary

By this Order, the Public Utilities Board of Manitoba (“Board”) approves the General Service Small and General Service Medium Customer Classes Representative (GSS/GSM) for a costs award of \$409,877.50 for intervention in the Manitoba Hydro (Hydro) 2023/24 & 2024/25 General Rate Application.

2.0 Procedural History

The Procedural History leading to these proceedings and GSS/GSM’s participation and request for costs are detailed below.

On November 15, 2022, Hydro filed its General Rate Application with the Board seeking rate increases of 3.5% for September 1, 2023 and April 1, 2024. On November 23, 2023, the provincial government announced its commitment to reduce the water rental fee and debt guarantee fee payments by 50% that Hydro pays to the province. Because of this reduction in payments Hydro revised its application to the Board and amended its General Rate Application requesting rate increases of 2.0% for September 1, 2023 and April 1, 2024. In each application Hydro sought to finalize the 3.6% interim rate that was effective January 1, 2022.

The Board approved five interveners for the hearing process, including Assembly of Manitoba Chiefs, the Consumers Coalition, Representatives of the General Service Small and General Service Medium, Manitoba Industrial Power Users Group, and Manitoba Keewatinowi Okimakanak. The Board conducted an extensive four-week hearing process that included two rounds of written information requests, the participation of all five approved interveners, oral evidence, cross-examination, and written submissions from parties.

On August 24, 2023, the Board issues its final decision for the Manitoba Hydro 2023/24 & 2024/25 General Rate Application based on sworn evidence, written submissions, and oral testimony.

3.0 Application for Costs

On September 26, 2023, the GSS/GSM filed with the Board an Application for an Award of Costs for its intervention in the Hydro 2023/24 & 2024/25 General Rate Application Proceeding in the amount of \$415,028.33.

The GSS/GSM provided statements of accounts, as summarized in the following table.

	Cost Estimate December 2022	Costs Application September 2023
Legal Costs:		
T. Reimer	\$103,455.00	\$68,534.60
R. Walichnowski	\$18,150.00	\$31,812.00
W. Gange	-	\$2,417.80
Sub-Total Legal Costs	\$121,605.00	\$102,764.40
Disbursements	\$3,000.00	\$252.25
Taxes	\$14,952.60	\$12,344.34
Total Legal Costs	\$139,557.60	\$115,360.99
Consultant Costs:		
D. Madsen	\$262,127.25	\$254,691.44
A. Chau (Junior Associate)	-	\$10,920.00
Disbursements	\$2,045.00	\$2,044.44
Taxes	\$31,701.00	\$32,011.45
Total Consultant Costs	\$295,873.25	\$299,667.33
TOTAL COSTS	\$435,430.85	\$415,028.33

The GSS/GSM Cost Application was supported by detailed invoices and a written submission describing its participation in the Manitoba Hydro 2023/24 & 2024/25 General Rate Proceeding. The GSS/GSM final cost application was \$20,402.52 less than the cost estimate submitted in December 2022 at the beginning of the proceeding. GSS/GSM states that it participated in a responsible manner, trying to limit duplication by working with other intervenor and consultants collaboratively, and by having one lawyer present when GSS/GSM issues were not being presented.

Manitoba Hydro Comments

On October 4, 2023, Manitoba Hydro was provided with the opportunity to provide its comments regarding the GSS/GSM Cost Application. On October 17, 2023, Manitoba Hydro responded by comparing the GSS/GSM cost claim from the 2017/18 & 2018/19 Hydro General Rate Application to the current cost claim which is 11% higher. Hydro states that the 2017/18 & 2018/19 process was more involved with more hearing days than the 2023/24 & 2024/26 proceeding. Hydro requested that the Board take this fact and comparison into consideration when awarding costs.

Hydro also questioned the GST amount charged GSS/GSM legal counsel should not be charged to the Public Utilities Board as the Board is GST-exempt and that the cost award be reduced by \$5,138.82 GST invoiced. Further, Hydro states the GSS/GSM consultant GST amount of \$13,280.57 should be recovered through an Input Tax Credit, and if confirmed by GSS/GSM.

GSS/GSM Reply to Manitoba Hydro Comments

On October 25, 2023, GSS/GSM provided a reply to Manitoba Hydro comments of October 17, 2023 to the Board. GSS/GSM responded that it is difficult to compare hearings and participation in a hearing that current legal counsel and consultant did not attend, and further that the issues in the hearings are not an “apples to apples” comparison for determination of costs. GSS/GSM states that legal counsel endeavoured to work efficiently and economically during the proceeding and staying within budgeted amounts. GSS/GSM pointed out that there was also an increase in the Board’s Maximum Fee Schedule that would account for some of the differences in costs between General Rate Applications. GSS/GSM also states the work of the consultant on depreciation issues was a considerable amount of work than other hearings, and found of value to other parties during the proceeding.

GSS/GSM clarifies that there was a mistake in submitting some of the GST amounts. GSS/GSM resubmitted the legal counsel statement of accounts and removed \$5,150.83

of GST claimed. GSS/GSM confirmed the GSS/GSM intervening group does not have the ability to recover the GST amounts through an Input Tax Credit, and therefore, states the amount of GST charged by the consultant of \$13,280.57 is requested as part of the costs application.

4.0 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 reviewed the Cost Application by the GSS/GSM, and considered the comments provided by Manitoba Hydro and reply by GSS/GSM to the Board. The Board finds that GSS/GSM meets the requirements for a cost award.

The Board find that the participation of GSS/GSM was done in a reasonable and responsible manner by, providing evidence, cross-examination, and collaborating with other intervening group, which assisted the Board to make its determinations.

The Board noted that the suggested comparison to the 2017/18 & 2018/19 hearing is not appropriate because of the difference in hourly rates and because GSS/GSM was represented by different legal counsel with no second lawyer. The Board recognizes that, given the length and complexity of the hearings, most parties (applicant, interveners, and Board) use two lawyers. The appropriate comparison is with the legal fees charged by lawyers for the other parties in this hearing. The Board has considered that in this instance the claim of Gange Collins for legal costs to be reasonable.

The Board notes the issue raised by Manitoba Hydro regarding the GST charges by the GSS/GSM legal counsel and consultant and revision and information provided by GSSGSM. The Board accepts the GSS/GSM revision to the invoices and reduces the amount of the cost claimed by GSS/GSM by the GST amount fro legal counsel by \$5,150.83. As the GST amount for the GSS/GSM consultant cannot be recovered by an Input Tax Credit, the Board finds the amount of \$13,280.57 to be included in the cost award.

The Board awards the total amount of \$409,877.50 to GSS/GSM for intervention the Manitoba Hydro 2023/24 & 2024/25 General Rate Application.

The Board directs Manitoba Hydro to pay the amount of the approved costs to GSS/GSM within 15 calendar days of the date of this Order.

5.0 IT IS THEREFORE ORDERED THAT:

1. The Application of the General Service Small and General Service Medium Customer Classes Representative for an award of costs **BE AND IS HEREBY APPROVED** in the total amount of \$409,877.50.
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.

THE PUBLIC UTILITIES BOARD

"Robert Gabor, K.C."

Chair

"Rachel McMillin, B.Sc., MPA"

Associate Secretary

Certified a true copy of Order No. 140/23
issued by The Public Utilities Board



Associate Secretary