

**Order No. 143/23**

**AWARD OF COSTS TO CONSUMERS COALITION FOR INTERVENTION IN  
THE MANITOBA HYDRO 2023/24 & 2024/25 GENERAL RATE APPLICATION**

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**December 14, 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 Consumers Coalition (Coalition) for a costs award of \$651,413.87 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 the Coalition’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 July 25, 2023, the Coalition 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 \$651,413.87.

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

	<b>Cost Estimate December 2022</b>	<b>Updated Cost Estimate May 2023</b>	<b>Costs Application July 2023</b>
<b>Legal Costs:</b>			
B. Williams	\$131,880.00	\$131,880.00	\$110,559.40
C. Klassen	-	-	\$21,230.00
Disbursements	\$5,000.00	\$5,000.00	\$2,025.00
Tax	-	-	-
<b>Total Legal Costs</b>	<b>\$136,880.00</b>	<b>\$136,880.00</b>	<b>\$133,814.40</b>
<b>Consultant Costs:</b>			
D. Rainkie	\$165,540.00	\$181,560.00	\$169,945.50
K. Derksen	\$116,412.00	\$135,903.00	\$147,384.00
P. Colaiacovo	\$90,000.00	\$90,000.00	\$90,000.00
Midgard Consulting	\$59,130.00	\$113,004.00	\$108,220.50
Disbursements	\$1,000.00	\$5,000.00	\$2,049.47
Taxes	-	-	-
<b>Total Consultant Costs</b>	<b>\$432,082.00</b>	<b>\$525,467.00</b>	<b>\$517,599.47</b>
<b>TOTAL COSTS</b>	<b>\$568,962.00</b>	<b>\$662,347.00</b>	<b>\$651,413.87</b>

The Coalition Cost Application was supported by detailed invoices and a written submission describing its participation in the Manitoba Hydro 2023/24 & 2024/25 General Rate Application Proceeding.

The Coalition's final Cost Application is \$82,451.87 more than the original cost estimate submitted in December 2022 and \$10,933.13 lower than the May 2023 budget revision. The Coalition states that the variance from the cost estimates and final costs are due to the increased use of senior legal counsel, more hearing days than anticipated, larger role

of consultants and support to prepare for depreciation issues, and expanded scope of work for preparation of evidence for asset management.

The Coalition states that in an effort to keep costs lower co-counsel did not claim all of their hours in the cost claim, contributing 569.5 hours and claiming 193 hours, and utilized the lower tariff rate where appropriate. In addition, the Coalition's advisor relied on primarily on the junior engineer with a lower tariff rate to gain experience for regulatory hearings and control costs. Lastly, the Coalition submits that the consultants work collaboratively to ensure an efficient use of time.

### **Manitoba Hydro Comments**

On September 26, 2023, Manitoba Hydro was provided with the opportunity to provide its comments regarding the Coalition's Cost Application. On October 3, 2023, Manitoba Hydro responded by comparing the Coalition cost claim from the 2017/18 & 2018/19 hearing to the current cost claim, citing the consultant's costs are 26% higher. Hydro points out that the 2017/18 & 2018/19 process was more involved with more hearing days than the 2023/24 & 2024/26 proceeding and the Coalition consultants spent 200 more hours in this general rate application. Hydro requested that the Board take this fact and comparison into consideration when awarding costs.

Hydro questions the appropriateness of consultant costs at the rate of \$267 per hour to complete administrative tasks (compiling charts and graphs) assisting another consultant. Hydro respectfully requested the Board consider reducing the cost award of this consultant to a more appropriate hourly rate for this work.

Hydro calculated the expert witness fees for the consultant from Morrison Park Advisors at \$750 per hour, stating it is above the maximum rate of any other advisor as set out in the Board's Maximum Fee Schedule, where \$330 is the maximum for legal, \$280 accounting, and \$230 for engineering advisors. Hydro requested the Board consider providing a limit to the hourly/daily rate allowed for consultants for future hearings.

Hydro also pointed out that although the final amount remains the same, the template for costs states 494.16 hours at a rate of \$219 for the Midgard consultants, and upon review of the time sheets the hourly breakdown was 3.75 hours at \$112/hour, 136.5 hours at \$152/hour, and 397.5 hours at \$219/hour

### **Coalition Reply to Manitoba Hydro Comments**

On October 6, 2023, the Coalition provided a reply to Hydro's comments of October 3, 2023 to the Board. To address the Hydro comments, disputing the role of one of the Consultants and rate of pay for supporting work, the Coalition provided that if the Consultant in question had not provided support the other consultant would have incurred the costs for their tasks at the same rate. The Coalition provides that on a combined basis consultants Derksen and Rainkie incurred costs below budget.

The Coalition notes that Hydro correctly identified the discrepancy between the total number of hours and consultants used on the budget template when compared to the time sheets by the consultant team Midgard. The Coalition states that the Midgard team was efficient and used lower-cost resources but the prescribed budget template does not accommodate the time entry of multiple hourly rates. Further, the Coalition did not find it appropriate to list the Midgard team's lower-cost contributors independently as "experts" for the purposes of the budget template, and considering that work was supervised by the Senior Consultants which the tariff rates were appropriated applied for in this cost award.

## 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 Coalition and the position of Manitoba Hydro. The Board finds that Coalition meets the requirements for a cost award.

The Board finds, that the Coalition participated in a reasonable and responsible manner, collaborating with other intervening groups, presenting evidence, and cross-examination, which assisted the Board in making its determinations in this proceeding.

The Board finds that the comparison of current and past general rate applications have no bearing on this decision and finds that the number of days and scope of issues to be different including the variables of inflation and tariff rate increases.

Upon considering Hydro's comments regarding the Coalitions Consultants participation and suggested reduction, the Board finds that participation of the consultants Derksen and Rainkie reasonable. The Board notes that the Coalition stated that the consultants work together and in taking this into consideration and the combined costs are below the budget that the overall costs were reasonable. The Board awards the costs for the consultant with no reduction.

The Board notes the request of Manitoba Hydro that it consider a limit to the hourly/daily rates allowed for consultants at future hearings. This is a matter that will be considered by the Board.

The Board awards the total amount of \$651,413.87 to Coalition for intervention in the Manitoba Hydro 2023/24 & 2024/25 General Rate Application.

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



**5.0 IT IS THEREFORE ORDERED THAT:**

1. The Application of The Consumers Coalition for an award of costs **BE AND IS HEREBY APPROVED** in the total amount of \$651,413.87.
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., MPA"  
Associate Secretary

Certified a true copy of Order No. 143/23  
issued by The Public Utilities Board

  
Associate Secretary