

MANITOBA) Order No. 102/13
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THE PUBLIC UTILITIES BOARD ACT) September 3, 2013

BEFORE: Régis Gosselin, CGA, MBA, Chair
Karen Botting, B.A., B.Ed., M.Ed., Member
The Hon. Anita Neville, P.C., B.A.(Hons), Member

AWARD OF COSTS: CONSUMERS' ASSOCIATION OF CANADA
(MANITOBA) INC. - INTERVENTION IN MANITOBA PUBLIC
INSURANCE CORPORATION'S GENERAL RATE APPLICATION
FOR THE 2013/14 INSURANCE YEAR

Introduction

By this Order, the Public Utilities Board (Board) varies the application of the Consumers' Association of Canada (Manitoba) Inc. (CAC) for a cost award of \$119,786.50 with respect to the recently concluded Board hearing of Manitoba Public Insurance's (MPI) application for 2013/14 Compulsory Basic Driver and Vehicle Insurance Premiums.

Application

The Board held a public hearing of MPI's application at the Board's offices in Winnipeg commencing in September 2012 with final argument on October 25, 2012. Several interested parties, including CAC, intervened.

Pursuant to Section 56 of *The Public Utilities Board Act*, the Board has jurisdiction to award the costs of, and incidental to, any proceeding. The Board's Rules of Practice and Procedure (Rules) stipulate four main criteria to be reviewed in determining whether costs should be awarded to an Intervener. Those criteria were reflected in the Notice of Public Hearing of MPI's application and are summarized as follows:

- Contribution by the Intervener to the process;
- Responsible and co-operative participation in the process;
- Available financial resources; and
- Representation of a substantial number of ratepayers.

Pursuant to the Board's Rules and following the hearing, CAC applied for an award of costs in the amount of \$119,786.50, comprised of:

Legal Fees		\$29,720.00
Disbursements (including GST)		<u>\$ 2,599.00</u>
Total Legal		\$32,319.00
Consultants		
Andrea Sherry	\$25,250.00	
Peter Dyck	\$45,030.00	
Dr. Wayne Simpson	<u>\$17,187.50</u>	
	<u>\$87,467.50</u>	<u>\$87,467.50</u>
Total Claim		\$119,786.50

CAC's Comments:

CAC submitted that its cost application of \$119,786.50 is lower than its original budget which forecast a cost application of between \$121,900.00 and \$144,600.00 and is appropriate given the length and complexity of the hearing. The lower amount reflects in part the fewer than anticipated hearing days. CAC also noted that it was not seeking recovery of its focus group costs (\$1,240.00) within its cost application. CAC also submitted that it exercised effective management of the duties of its expert advisors and witness.

MPI's Comments:

MPI objected to CAC's cost application in the requested amount of \$119,786.50, indicating that it was not in agreement with

CAC's assertion that reasonable and prudent management of costs was demonstrated. MPI objected to the number of Information Requests ("IRs") filed by CAC and the billing formats of CAC's consultants. MPI considered the time spent on the file by Mr. Williams to be reasonable but objected to his proposed hourly rate of \$200/hour, suggesting that it should remain at \$190/hour. With respect to Mr. Dyck, Ms. Sherry and Professor Simpson's fees, MPI submitted that the billings are excessive and that the Board should hold CAC Manitoba accountable for its lack of management of costs by authorizing a significantly reduced amount of costs to be paid. In summary, MPI asked that Mr. Williams' rate be reduced from \$200/hour to \$190/hour, that Ms. Sherry's time be reduced from 101 hours to 54 hours, that Mr. Dyck's time be reduced from 237 hours to 98 hours and that Professor Simpson's time be reduced from 137.50 hours to 70 hours, thereby reducing the total applied for costs from \$119,786.50 to \$71,703.00.

BOARD FINDINGS

The Board has reviewed the cost application of CAC, the comments provided by MPI and the responding comments of Mr. Williams. The Board finds that CAC meets all of the requirements for a cost award. In particular, the Board is of the view that CAC makes a significant contribution that is relevant to the GRA proceeding, and which enhances all parties' understanding of the issues before the Board. Further, it is the Board's view that CAC responsibly participated in the hearing and co-operated with

other interveners to avoid duplication in intervention.

The Board also understands that CAC has insufficient financial resources to present its case adequately without an award of costs. Lastly, there is no doubt that CAC has a substantial interest in the outcome of MPI rate applications given its representation of the interests of CAC members acting on behalf of a substantial number of ratepayers. MPI is a Crown corporation and the Basic insurance program is a monopoly which touches on the lives of all Manitoba drivers and vehicle owners, as well as Manitobans involved in motor vehicle accidents in Canada and the US.

The Board has considered the matter of the number of IRs included in either CAC's Book of Documents or the Book of Documents prepared by Board counsel. The Board is of the view that the fact that a small number of IRs made their way into the Books of Documents does not necessarily indicate that the IR process is wasteful or that some questions are tantamount to a fishing expedition. Rather, the Board appreciates that, in many instances, the answers to IRs provided by MPI adequately answer the question posed and, as a consequence, eliminate the need for further examination on a given point.

With respect to the specific requests by MPI to reduce the cost application of CAC, the Board makes the following findings.

Mr. Williams

With respect to Mr. Williams' hourly rate, the Board has

reviewed all submissions, as well the Board's Rate Structure applicable to counsel appearing before the Board which is based upon counsel's years of experience. The Board notes that its own counsel in respect of MPI proceedings, Candace Grammond, was Called to the Bar in 1999 and as such is paid \$190/hour pursuant to the Board's current Rate Structure. The Board does not agree with MPI's suggestion that Mr. Williams, who was called to the Bar in 1993 and has gained experience in regulatory matters since 1992 should be paid the same rate as Board counsel pursuant to the Board's Rate Structure.

The Board find that it is both reasonable and prudent that Mr. Williams be paid in accordance with the Board's Rate Structure which, given his experience of 20 or more years starting in 1992 gives rise to a rate of \$217/hour.

The Board therefore approves the cost application of CAC with the variance of Mr. William's rate from \$200/hour to \$217/hour.

Ms. Sherry

With respect to the costs requested for services provided by Ms. Sherry, the Board agrees that going forward, more detailed billings should be provided, as requested by MPI and in a format similar to other advisors. Additional detail would give rise to further transparency within the GRA process, which the Board believes should be done wherever possible.

With respect to the hours spent by Ms. Sherry, the Board notes that billed hours (101) exceeded budgeted hours (100) by one hour. This difference is not significant either in relative or

absolute amounts and does not render Ms. Sherry's fees unreasonable. The Board appreciates that 101 hours is a significant length of time, but is of the view that, in a year such as the 2013/14 GRA, where actuarial issues were very much a part of the process, (including the methodology by which the RSR target or target range is to be set, forecasting and reserving methodologies), the hours are well justified.

MPI has stated that Ms. Sherry made information requests that were duplicative, or for which answers were already found within the materials filed by MPI. CAC disputes that assertion, and states that Ms. Sherry's questions were designed to elicit responses in areas for which no response was previously provided.

The Board reminds all parties and advisors that, in reviewing the filed GRA materials, they should be as thorough as possible, but should seek to avoid asking duplicative questions, or questions for which the answers are already found within the filed materials. The Board recognizes, however, that the material filed by MPI is voluminous, and there can be oversights even after a thorough review.

MPI has also stated that Ms. Sherry spent more time regarding second round IRs than she did on first round IRs. CAC has advised that Ms. Sherry focused on areas of the GRA other than the actuarial report in the second round, and that it is not necessarily the case that one should spend less time on the second round of IRs than the first round.

The Board does not hold the view that parties must ask more questions in the first round of IRs than in the second round, although this is often the case. In this instance, if Ms. Sherry spent more time on the second round IRs, her time is justified as long as her questions were relevant to the process.

MPI states that CAC challenged only one element of the DCAT, such that the overall fees charged by Ms. Sherry are not justified. CAC advises that Ms. Sherry provided to Mr. Williams over 50 e-mails or memos with respect to the GRA, and that in addition to the DCAT, Ms. Sherry examined the robustness of MPI's financial model.

CAC has offered to provide the Board with copies of the e-mails and memos provided to Mr. Williams by Ms. Sherry, which the Board does not seek to review at this time. The Board does not wish to interfere in legal counsel's management of the work done by outside advisors. It is the Board's view that the onus is on intervener legal counsel to adequately manage the work done and time spent by advisors, and, absent one or more compelling reasons to examine that management, the Board does not wish to do so.

The same is true regarding the extent of communication between Ms. Sherry and CAC's other advisors, including Dr. Simpson. In the absence of a compelling reason to conduct a more detailed review of that interaction, the Board does not wish to involve itself in the oversight of those communications since that is the role of counsel for CAC.

With respect to cross-examination, the Board acknowledges that Ms. Sherry did not testify as a witness, and again relies upon Mr. Williams to determine how Ms. Sherry can best assist CAC, whether through giving evidence, assisting in the preparation of cross-examination and through others forms of assistance. Similarly, the Board notes that Ms. Sherry did not run a parallel DCAT, which the Board expects would be very difficult to do without MPI involvement. The Board also notes that, given the anticipated changes to the DCAT developed since last year's GRA, running a parallel DCAT last year would have been premature in any event.

Given all of the foregoing, the Board finds that the costs incurred by Ms. Sherry were both reasonable and prudent and is prepared to accept Ms. Sherry's time spent and fees incurred as presented.

Mr. Dyck

With respect to the costs requested for services provided by Mr. Dyck, the Board notes the submission of MPI that 237 hours is far too much time spent, given Mr. Dyck's role within the proceeding. CAC states that Mr. Dyck provided analytical support to Mr. Williams in many areas, including expenditure controls, productivity benchmarks, cost allocation and road safety, and that Mr. Dyck's recommendations on expenditure control and productivity benchmarks appear to be strongly reflected in the findings of the Board. CAC also states that Mr. Dyck provided important historical context, given his former employment by MPI, as well as continuity, given his role of

preparing a pre-hearing memo for Mr. Williams addressing key issues and outstanding tasks. CAC also states that Mr. Dyck's work has resulted in the discontinuance of CAC's retainer of Econanalysis resulting in costs savings.

The Board recognizes that 237 hours is a lot of time, and based on a 40 hour work week, represents about 6 weeks of full-time work. The Board notes that Mr. Williams is involved in multiple proceedings at a time, and accepts that Mr. Dyck is performing some work, such as review of previous orders, and preparation of issues lists and outstanding tasks, that Mr. Williams would otherwise be doing, at a higher hourly rate.

Again, the Board does not wish to involve itself in the nuances of the relationship between CAC and its advisor. Mr. Williams has advised that Mr. Dyck prepares cross-examination memos, memoranda, as well as memoranda for closing argument, which are also tasks that would otherwise have to be done by Mr. Williams, or someone in his office.

With respect to MPI's comment that Mr. Dyck asked duplicative questions, and questions for which the answers were already contained within the GRA filing, the Board repeats that all parties and advisors reviewing the GRA materials filed should be as thorough as possible, and should seek to avoid asking duplicative questions, or questions for which the answers are already found within the materials filed. The Board recognizes, however, that the material filed by MPI is voluminous, and there can be oversights even after a thorough review.

Given all of the foregoing, the Board finds that the costs incurred by Mr. Dyck were both reasonable and prudent and is prepared to accept Mr. Dyck's time spent and fees incurred as presented.

Dr. Simpson

With respect to the costs requested for services provided by Dr. Simpson, MPI states that the report produced did not justify 40 hours of drafting time, particularly given that the report constituted 20 pages including a summary of information from previous applications and the GRA, while the analysis was limited to a few paragraphs. CAC states that Dr. Simpson's evidence was helpful in identifying flaws in the DCAT, and suggesting the process for future DCAT reports.

The Board understands that Dr. Simpson would have had to spend time reviewing prior years' materials for context, and that it is the length of the analysis conducted, rather than the length of the resultant report that is important. The Board does not find that 40 hours spent by Dr. Simpson with respect to the report is unreasonable.

MPI also notes that Dr. Simpson billed 70 hours after the report was completed.

The Board recognizes that Dr. Simpson's evidence was helpful in identifying issues and alternatives with respect to the DCAT,

and again the Board relies on counsel for CAC to manage the time spent by its advisors.

Given all of the foregoing, the Board finds that the costs incurred by Dr. Simpson were both reasonable and prudent and is prepared to accept Dr. Simpson's time spent and fees incurred as presented.

CAC Intervention Generally

The Board has no doubt that the intervention of CAC in the GRA process is a necessary component of the process, and agrees with Mr. Williams' assertion that CAC has provided high quality intervention. The other interveners that have traditionally participated in the GRA process are also important, but the Board notes that the intervention of the Coalition of Manitoba Motorcycle Groups (CMMG) is focused, as one would expect, on issues related to motorcycles, and while the Canadian Automobile Association, Manitoba Chapter (CAA) certainly represents many Manitoba motorists, it typically limits its intervention to a watching brief, which is still valuable, but is a different and less "hands on" approach than that which has been taken by CAC.

Given CAC's role as a major intervener in the MPI GRA process, the Board finds that its cost application is reasonable and prudent, subject to the revision regarding Mr. Williams' hourly rate as reflected above.

IT IS HEREBY ORDERED THAT:

1. Consumers' Association of Canada (Manitoba) Inc. BE AND IS HEREBY awarded costs of \$122,312.70 with respect to its intervention at the Manitoba Public Insurance Corporation's 2013/14 Compulsory Driver and Vehicle Insurance Premiums hearing.

2. Costs shall be payable by the Manitoba Public Insurance Corporation within 30 days of the date of this Order.

THE PUBLIC UTILITIES BOARD

Régis Gosselin, BA, MBA, CGA
Chair

H. M. SINGH
Secretary