

WITHOUT PREJUDICE - FOR DISCUSSIONS PURPOSES ONLY

DRAFT

## **Grant Funding**

### 1. Background

Under Article 12 of the Process Agreement funding for the process is to be provided by Manitoba and Hydro under prior approved work plans and budgets consistent with Manitoba's financial and Treasury Board requirements and Hydro's Reimbursement Policy including all financial reporting requirements.

Manitoba Hydro uses its policy whenever it has agreed to reimburse process costs of another party involved in a process with Manitoba Hydro. Both the Process Agreement and the Reimbursement Policy require the parties to develop an agreed workplan and budget and then to provide and review the reporting to ensure that there has been consistency with the workplan, adherence to the budget and compliance with the maximum rates permitted under the policy.

This has created two basic issues for Pimicikamak. First, the need for line item budgeting including agreement on costs which requires more detail about consultants and experts and other expenditures than is often available in detail at the budgeting stage and, second, the need to comply with the maximum rates permitted under the policy.

The first issue has left the parties with only a core budget and the need to subsequently approve additional costs for consultants, which may not have been previously identified as being required. That can delay progress and certainly requires additional process and process costs as approval is obtained. The second issue, related to the imposition of maximum rates, has created concerns for Pimicikamak where Manitoba or Manitoba Hydro's maximums are less than the maximums under Pimicikamak's policies.

As a response to these concerns, Pimicikamak has proposed that the parties should move to a grant funding model where there would still be a need for an agreed work plan and budget and agreement on the amount of funding to implement that work plan. Under this model, Pimicikamak would have more flexibility with spending and would not be tied to the maximums under Manitoba Hydro's policy or Manitoba Treasury Board requirements but would be expected to meet work plan requirements within specified timeframes without requests for funding increases.

The issue of varying from the Reimbursement Policy and the Treasury Board requirements has been raised in the past and Manitoba Hydro and Manitoba have both indicated that they do not support such a variation because these are mandatory requirements if funding is to be advanced for process costs. Varying from these requirements would require Board approval within Manitoba Hydro's system and approval within the Provincial system. Neither Manitoba nor Manitoba Hydro believe that such variations would be approved because these policies are the basis for funding many processes and the maximum rates permitted are similarly broad-based and apply not just to these types of processes.

Pimicikamak strongly argued for a grant funding approach and Manitoba and Hydro agreed to consider the implications of such an approach in dealing with process funding, program funding and situations where there is a mix of process and program funding.

## 2. Process funding

Concerns about moving away from or varying the reimbursement policy include among others the issues discussed below.

1. There is no mechanism in place for Manitoba Hydro to fund process costs except through the Reimbursement Policy.
2. The Reimbursement Policy is used consistently and has been accepted by other entities.
3. Although the Reimbursement Policy is quite prescriptive in its permitted maximums, it does allow for deviations where supported by facts. For example, it allows for higher hotel rates when normal rates are not available due to limited hotel availability.
4. The rates are reviewed and revised regularly to ensure that they reflect reasonable market rates in Manitoba.
5. The funds used to cover these costs are derived from ratepayer revenues and as a Crown Corporation, expenditure of such funds are subject to audit requirements and public scrutiny. In large measure the need to meet these interests gave rise to the need for a well-established policy.

Although there may be some benefits to Pimicikamak, Manitoba and Manitoba Hydro from having a different mechanism for the funding of process costs, there is no way to move from the current regime to some new approach in any reasonable time frame and any such changes would likely require broader discussions with other parties that would be affected.

## 3. Program and incidental process funding

Manitoba and Manitoba Hydro have experience and precedent for funding of programs, which are tied to understood deliverables, with varying degrees of reporting requirements. Funding can be used under these mechanisms for related processes without the line item budgeting and reporting, but rather with delivery of the deliverables within the budget. The degree of discretion with respect to the program funding varies to a significant degree on ultimate responsibility. The greater the responsibility of the party receiving the funds, and correspondingly the less responsibility on Manitoba and Manitoba Hydro related to the program delivery, the less the reporting requirements. It is similar to the difference between a fixed price contract and a cost plus contract.

This program funding approach is in many ways similar to providing government grants to groups and agencies with respect to certain programs or works. Generally grants of this nature are non-repayable funds provided by one party, often a government department, corporation, foundation or trust, to a recipient, often a non-profit entity, educational institution, business or individual. For example the Province makes grants to municipalities to cover identified costs. The Public Schools Finance Board provides capital grants for building schools. In the NFA context a grant of program funding could be considered as a mechanism to implement a program that otherwise would have to be implemented by Manitoba or Manitoba Hydro.

Although the terminology of grant funding was not used, there have been situations in the past where a program being implemented by Manitoba and/or Manitoba Hydro has been turned over for implementation by Pimicikamak/ CLBOI. Where this has occurred there has generally been a fairly detailed program and clear expectations about what is to be done with the funding provided. There is still a high degree of reporting and even monitoring required. However, if Pimicikamak was to accept the funds and take over full responsibility for the implementation of the program and release Manitoba and/or Manitoba Hydro from all responsibility under the NFA for such program, the degree of reporting could be significantly reduced. In other words, such an arrangement could provide more discretion, but Pimicikamak would need to accept the grant effectively as a proxy or alternative mechanism for such implementation. It could not take the funding for the purposes of implementing the program and then bring a claim for non-implementation or shortfalls in implementation.

This could be program specific or more general in nature. A grant of funds or even a series of fixed annual funds could be provided in return for confirmation of satisfaction and releases from Pimicikamak/ CLBOI for adverse effects of the Project and NFA implementation for the corresponding period.

For example, the provisions of agreed annual funding from Manitoba and Manitoba Hydro as compensation for adverse effects and NFA Implementation for 10 years in return for an acknowledgement of satisfaction and release with respect to NFA implementation and compensation for Project impacts from Pimicikamak/ CLBOI for that same period of time. This would provide Pimicikamak with effectively unlimited discretion with respect to expenditures, subject to meeting the interests of its Citizens. The longer the term of the agreement the longer the annual payments could continue and the size of the annual payments could increase since the need for expenditures on three party processes would be reduced during the “settled period”.

Such an agreement would allow Pimicikamak to undertake its own programs to implement the NFA and address Project impacts in the way it sees as best to benefit its Citizens.

#### 4. Proposal

Manitoba and Manitoba Hydro are proposing that, initially at the Main Table for the purpose of discussing high-level conceptual ideas, and subsequently at the Working Group where details could be worked out, the Parties consider such an approach. From Manitoba and Manitoba Hydro’s perspective such an approach might consider the following issues or topics:

1. Look at the potential for a term of 10 years or longer.
2. Cover as many areas of NFA Implementation as reasonably practical.
3. Identify areas where Manitoba and/or Manitoba Hydro will continue with implementation.
4. Consider the form of release and satisfaction that would deal with responsibility and liability during the term.
5. Consider if the proposal would be consistent with Pimicikamak's NFA Implementation Law.
6. Consider an extension to the PDC Agreement for the term.
7. Consider reasonable ways to fund required continuing processes such as those related to the land exchange.
8. Consider how processes and funding with respect to the Policy Level Issues to be considered under the Process Agreement may be addressed.
9. Consider the quantum of any block or grant funding that may be appropriate and reasonable for the term.
10. Consider how Claims, particularly in relation to the past may reasonably be addressed.
11. Consider the obligations and role of Canada under the NFA and if and how they may be addressed.
12. Consider any other matter that is relevant.