



The Public Utilities Board
400 – 330 Portage Avenue
Winnipeg, Manitoba, Canada R3C 0C4
T 204-945-2638 / 1-866-854-3698
F 204-945-2643
Email : publicutilities@gov.mb.ca
Website : www.pub.gov.mb.ca



Régie des services publics
330, avenue Portage, pièce 400
Winnipeg (Manitoba) Canada R3C 0C4
Tél. 204-945-2638 / 1-866-854-3698
Télééc. 204-945-2643
Courriel : publicutilities@gov.mb.ca
Site Web: www.pub.gov.mb.ca

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Manitoba Hydro Law Department
PO BOX 815 Station Main
Winnipeg, MB R3C 2P4

Aikins MacAulay & Thorvaldson LLP
360 Main Street
Winnipeg, MB R3C 4G1

Attention: Patti Ramage/Marla Boyd

Attention: Helga Van Iderstine

Dear Ms. Ramage, Ms. Boyd and Ms. Van Iderstine:

RE: PUB NFAT Hearing Decision of the Panel respecting Potomac Economics Report: Redactions Review of Commercially Sensitive Information

This letter is to inform you that the Public Utilities Board (PUB) accepts Manitoba Hydro's submissions with respect to required redactions to the public version of the report of Potomac Economics (Potomac) and will not require the removal of any additional redactions in the document. Accordingly, the Potomac report as currently available of the NFAT Review website will stand as the final redacted version.

Background

The NFAT Panel required Manitoba Hydro (MH) to reconsider a number of its redactions to the reports filed by the Independent Expert Consultants (IECs) retained by the Panel. MH reviewed its initial redactions and a number were removed and the new public versions of the IEC reports were accepted by the Panel as in compliance with the Terms of Reference (TOR) for Commercially Sensitive Information (CSI). The new versions of the IEC reports were then posted to the PUB website.

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One exception was the Potomac Economics (Potomac) Report. The Panel sought greater disclosure than proposed by MH upon its second review of the Potomac Report. In accordance with the CSI redactions review process, MH presented in camera evidence to the Panel and MH's witness panel was subject to cross examination on the position MH advanced respecting the remaining redactions. Upon completing this process the Panel was satisfied that, but for certain specific modifications to various graphs, it was proper to permit the remaining proposed redactions to stand as CSI.

Accordingly, Potomac has been directed to prepare a final redacted public version of its report to place on the record. The Panel's reasons are contained herein below.

Redactions Review Process

The TOR define both the Board's NFAT jurisdiction and procedures to be followed in the NFAT process, where such procedures are specifically outlined. CSI relevant to the Panel's work is available to the Panel in full unredacted form and is also accessible to defined participants under the TOR on the conditions of confidentiality set out therein. Access has been given to Board advisors and counsel, and to the IECs and their counsel in the preparation of their reports.

The TOR also define specific documents which are automatically considered CSI, including export contracts and term sheets between MH and its US customers, MH's internal non-public load forecast, and MH's internal non-public power resource plans. MH submits that due to the wording of the CSI dispute resolution process in Appendix A to the TOR, the contents of third party proprietary price forecasts are also automatically considered CSI and not subject to challenge for public disclosure.

MH required all IECs to redact portions of their reports considered to be CSI. The Panel reviewed the IEC report redactions and by letter to MH dated February 28 2014, the Panel directed MH to review the existing redactions based on criteria defined by the Panel for greater public disclosure. MH replied by letter of March 11 2014, having reviewed redactions on all but two of the IEC reports. MH's new versions of the IEC report redactions were provided and as a result a significant amount of additional information was made publicly available. The new public versions of these reports were placed on the public record.

The Panel did not accept the remaining redactions in the Potomac Report and MH's March 11th justification and high level explanations for the Potomac redactions. Potomac was hired to examine and critically assess the export price forecasts used by MH as well as its projected export revenues. As part of the Preferred Development Plan (PDP), projected export prices and the resultant expected export revenues are central to MH's plan to generate excess capacity in the near to mid-term to facilitate export sales.

The Panel considers the subject matter of the Potomac report to be central to its considerations on this subject and to the review of the economic viability of the PDP and other development options. The goal of the Panel is to permit the widest public disclosure of Potomac's observations and conclusions subject only to the proven requirement for protection of CSI. The remaining redactions contain observations and conclusions of Potomac arising from their review of MH's purchased export price forecasts and comparison of the forecasts to Potomac's own work.

MH sought and the Panel permitted in camera evidence on the issue of the need for protection of the remaining redacted information in the Potomac Report. This final procedural step was a precursor to submission of any remaining contested redaction issues to a third party reviewer under the CSI process.

MH filed an affidavit of a senior export market analyst MH staff member in two parts: (1) a public record narrative description of the retainer and use of the external price forecasts and MH's attempts to gain permission of the forecast consultants to publicly produce the forecast information and (2) confidential exhibits to the affidavit containing the correspondence and detail of the requests for permission and replies the forecasters. MH produced the staff member for cross examination if required.

MH's executives David Cormie and Joanne Flynn also gave oral evidence on the issues respecting the specific need for CSI protection.

MH's in camera testimony addressed the following substantive issues:

- (1) Proprietary rights of the third party price forecast consultants with respect to the contents of each report as governed by confidentiality agreements with MH; and
- (2) Potential use by third parties of sensitive commercial information in the Potomac Report, derived from the forecasts, which may reasonably be expected to harm MH or its counterparties if made public.

MH's witness panel was cross examined by PUB counsel and by the Panel on the evidence presented and their position was tested. Given the process required to be followed by the Panel for consideration of these matters, the Panel was satisfied that it received a full understanding of the risks and likely harm arising from the disclosure of the balance of the redacted content.

MH addressed the actual use that has been made of its sensitive information known to third parties. Sophisticated parties are capable of combining new information with past accumulated knowledge about MH for their purposes.

Ultimately, greater public information at a certain level of detail has been demonstrated to affect MH's competitive position. As MH noted in its March 11th letter to the Board's reference which on its face may appear as general, isolated or unrelated may be stitched together by those with the requisite existing knowledge and capability. MH continues to negotiate with various counterparties; MH's products offered in the export market are a permanent aspect of its operations.

Much relevant information is already on the public record. MH specifically noted the public filing of the Brattle 2013 price forecast and substantial amounts of its own related data in both prior general rate applications (GRAs) and in the NFAT. Potomac's 2013 export price forecast is also on the public record within its report. Further, a number of general observations and conclusions of Potomac remain in the public version of its report.

Decision

The Panel sees the public interest in this CSI decision and the exercise of its procedural jurisdiction as not dissimilar to the PUB's normal regulatory jurisdiction in considering confidentiality of documents. The Panel in consideration of the language of the TOR has attempted to balance: (1) The need for NFAT participants including interveners, MH's ratepayers, the media, and all Manitobans to have access to information and to be knowledgably engaged in the matters being examined, with (2) the future financial health and commercial well-being of the Utility and the implications and consequences of publication of information which is reasonably likely to cause harm to MH or its counter parties.

Implicit in the latter point is that if MH suffers commercial harm and loss by being put at a competitive disadvantage and/or put at risk for breach of confidentiality agreements with its third party consultants, the Utility (and by extension ratepayers and citizens of Manitoba) are also harmed.

The Panel, its counsel, its advisors and the IEC's have had access to CSI. Since the Panel has access and is equipped to test the information in camera, the fundamental objectives of the NFAT can be achieved while properly established CSI is protected and the harm to the Utility is avoided.

MH provided specific examples of third party use of information which has become available in public proceedings up to the present time. The Panel is convinced that sophisticated third parties will equip themselves with as much information as possible to gain the greatest advantage in commercial transactions involving MH. MH's filed affidavit placed on the public record explains the acquisition of third party proprietary price forecasts, and the steps taken by MH to obtain permission for disclosure, along with the responses of the third party consultants. In every case where permission was sought, it was refused.

The Board is aware that the acquisition price for the approved use of each individual price forecast, being the proprietary product of each consultant, is significant. The Board infers that a breach of the confidentiality agreement between MH and its individual consultants could prove to be very costly to MH. Further loss to MH would be caused by the inability of MH to purchase future forecasts if proprietary information of these third party consultants is forced to be made public, contrary to confidentiality agreements. MH's use of these third party proprietary price forecasts necessitates long term access to such forecasts. As the suppliers of electricity price forecast products in North America are relatively limited, the Board concludes that an inability to access these products long term also constitutes commercial harm which would be suffered by MH.

The Board notes that MH was able to place the Brattle Group 2013 forecast on the public record. Potomac's observation and conclusions about that forecast are public, along with a number of general observations and conclusions of Potomac.

The Panel reiterates the critical importance of the public nature of this NFAT process and the publication of all relevant materials where no harm to MH or its counter parties can reasonably be expected to occur. The impact of the NFAT on all Manitobans is understood to be huge and publicly available information in the proceedings leading to a better general public understanding and is vitally important. Further, the Panel recognizes that public access to its detailed public recommendations report, borne on the record of the public proceedings will be necessary both as an input into decisions to be made by the Government of Manitoba and MH, and as to views of the citizens of Manitoba on these fundamental development matters.

The Panel is called upon by the TOR to exercise its judgment and discretion in determining whether MH has met its test in seeking to protect the remaining redactions in the Potomac Report. The balancing of needs to secure the public interest can be difficult to achieve as between public access and protection the commercial interests of the Utility. The Panel finds that as to the remaining redacted portions of the Potomac Report, the harm from disclosure arising as outlined herein outweighs the benefit of transparency and access. The Panel has exercised its discretion in accordance with the TOR and its mandate under the NFAT reference.

The final redacted version of the Potomac Report will be prepared and filed on the record of the proceedings and posted on the PUB website as soon as possible. This letter forms part of the public record of the NFAT and is being circulated to counsel for the interveners and the independent expert consultants.

Sincerely,

"Original Signed By"

Kurt Simonsen, P. Eng.
Acting Secretary

KS/nac

c.c. R.F. Peters - PUB, Board Counsel
Counsel for the Independent Expert Consultants
All Parties and Interveners