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MANITOBA LAW
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MANITOBA
BAR
ASSOCIATION

200 – 383 PORTAGE AVE
WINNIPEG, MANITOBA
R3B 3H6

TEL: 204.985.8540
FAX: 204.985.8544

E-MAIL: centre@pilc.mb.ca

Writer's direct line: (204) 985-8533
Email: bwilliams@pilc.mb.ca

March 1, 2016

The Public Utilities Board of Manitoba
Attention: Mr. Darren Christle
400 – 330 Portage Avenue
Winnipeg, MB R3C 0C4

Dear Mr. Christle:

Re: Consumer Coalition Budget Estimates for Hydro Cost of Service Proceeding

A. Introduction – A Marked Change in Process and Estimates

The Consumer Coalition is pleased to submit its preliminary budget estimates for the pending Hydro Cost of Service (COS) proceeding. In preparing its estimates, the Consumer Coalition has consulted with counsel for a number of intervenors as well as Mr. Harper who has considerable experience with concurrent evident proceedings and workshops in other jurisdictions. It appreciates their advice.

The Coalition notes the COS hearing process constitutes a material departure from general PUB practice.¹ While the Consumer Coalition looks forward to exploring this new process, its legal and expert budget have been materially impacted by the changes.

A traditional General Rate Application involves a pre-hearing conference, two rounds of information requests, an oral evidentiary proceeding and oral argument. Evidence is generally delivered subsequently by each party.

By contrast, the COS proceeding involves:

- a February pre-hearing conference
- discussions relating to the Hydro model
- one round of information requests (Irs)
- an April workshop relating to the Hydro information responses
- a response by Hydro to undertakings

1 The Board finds merit in a departure from the usual hearing process involving two rounds of written Information Requests followed by sequential oral testimony subject to cross-examination. However, the Board does not consider it feasible to dispense with a written discovery process entirely and considers it important that cross-examination be permitted on key issues. Order 26-16, p. 17

- a May workshop relating to the Intervenor evidence
- a response by Intervenors to undertakings
- a second pre-hearing conference to scope out subject matter relating to the oral hearing including concurrent evidence panel(s)
- written submissions on matters not subject to concurrent evidence
- an oral hearing relating to concurrent evidence
- written submissions on matters subject to concurrent evidence
- oral submissions

While we look forward to the improved insight the PUB may garner from this process, we expect it will have a significant inflationary impact on Intervenor budgets and time requirements. Intervenor resources will be materially strained by more challenging procedural aspects coupled with tight time frames. In parts B and C of this letter, we outline the expected effects of the new process on both legal and expert time.

B. Impact of COS process on legal time estimate

i) the traditional hearing approach of legal counsel

During the first pre-hearing conference, "MIPUG rejected Manitoba Hydro's workshop-based process, stating that it did not think that approach would be more cost-effective than a regular hearing."² Like MIPUG, we expect the proposed COS process will increase Coalition legal costs materially.

With more than 20 years of experience in similar proceedings before a variety of tribunals at the provincial and federal level, legal counsel for the Coalition have developed a fairly refined method of estimating hearing time commitments based on the expected number of hearing days. A review of many PUB and CEC files over more than a decade, has suggested that for every one day of scheduled hearings, legal counsel can expect to spend between 16 and 20 hours of time.

That does not mean that legal counsel is working 16 hours a day during the actual oral hearing (although that can happen). What it does mean is that for a typical regulatory hearing, when we total the amount of time spent in preparation prior to the hearing plus preparation and hearing attendance during the actual hearing and divide it by the number of hearing days, the total per day consistently amounts to between 16 and 20 hours per hearing day.³

The experience of legal counsel in the last Hydro and MPI General Rate Applications supports this estimate with both hearings tending towards the mathematical result of 20 hours per hearing day.

2 Order 26-16, p. 11

3 Preparation time prior to the hearing (plus) hearing attendance (plus) preparation time during hearing/number of days

The Coalition considers this an efficient allocation of resources which is facilitated by the traditional two rounds of information requests and oral hearing. The traditional PUB hearing enables legal counsel to delegate much of the early analysis to independent experts while undertaking only a high level of review of the filing and its until shortly before that hearing. At that point in time, a higher quality and more critical examination of the record can be undertaken informed by information responses and intervenor evidence.

In other words, rather than undertaking two major reviews of the file, one immediately following the application and one immediately before the hearing, legal counsel delegates the bulk of the first review to key experts. At the second stage immediately before the hearing, legal counsel is able to make a much more quality and cost effective examination informed by information responses, expert advice and intervenor expert evidence.

The traditional approach to a GRA also is efficient in that it allows for the joint preparation of cross examination and draft closing argument. In other words, the second review immediately before the hearing allows for the preparation of notes that can be used for two distinct purposes. The outline for closing is prepared at the same time as the cross examination outline and only needs to be enriched by a review of the hearing transcript.

The traditional PUB approach facilitates witness preparation by allowing legal counsel to focus only on the hearing in preparing the witness.

ii) impacts of COS process on legal counsel participation

We note that using GRA estimates for a COS process already is challenging given the ten year gap between hearings. The fact that no COS review has been undertaken for over a decade will require significant preparation time for counsel related to reviewing old decisions, prior evidence and leading texts. Also, the full scope of the proceeding is still unknown as we have yet to see Manitoba Hydro's filings with respect to Basic Rate Design or its Terms and Conditions of Service and Service Extension Policy.

More importantly though, we expect the COS process to materially inflate legal counsel's time in a number of ways:

- rather than streamlining hearing cross examination preparation to immediately prior to the hearing, counsel will have to:
 - prepare for the Hydro Workshop in April by undertaking an in depth review of the Hydro filing and its responses rather than a more high level review
 - prepare for the Intervenor Workshop in May by undertaking an in depth review of the Intervenor evidence rather than a more high level review
 - redo much of this work in preparation for hearing in late June
- the absence of information requests for Intervenor evidence will make preparation for the May Workshop particularly important and more likely to be time consuming
- rather than restricting expert witness preparation to the hearing, counsel will need to:

- assist the expert in preparing for the May Workshop
- assist the expert in preparing for the June hearing
- preparing for a second pre-hearing conference is likely to be quite challenging given the novelty of the concurrent evidence experience
- preparing the expert for a concurrent panel is likely to be more time consuming than preparing for the much more predictable direct and cross examination under the traditional model
- three distinct closing submissions will have to be prepared:
 - non concurrent written submissions
 - concurrent written submissions
 - oral submissions
- written submissions are more time intensive to prepare

There also is a significant risk factor relating to the Workshop concept. What happens in the event that there is a dispute over whether an undertaking should be taken? Will there need to be motions to compel a response to undertakings?

iii) impact on legal counsel's estimates

The revised process will have a significant inflationary impact on Coalition legal counsel estimates. We expect the two biggest drivers of increased time to be:

- preparation for pre-hearing workshops, and
- the necessity of preparing written submissions

In preparing our estimate, we considered it likely that the revised COS process will increase legal counsel's time by at least 20 percent leading to an estimate of 24 hours per hearing day (preparation time prior to hearing, plus attendance and preparation during hearing divided by number of hearing days). We believe this is an optimistic estimate and would consider more conservative estimates to be quite reasonable.⁴

iv) number of hearing days estimated

In reviewing the draft PUB schedule, we note that only 1 day has been set aside for each of the two Workshops. We do not believe these estimates are conservative enough given the likely scope of the proceeding, the adversarial position of intervenors on certain positions, the number of intervenors likely to submit evidence and the absence of information requests on intervenor evidence.

4 A more cautious and quite defensible estimate would have been a 50% increase amounting to roughly 30 hours per hearing day

We also note that prior Hydro workshops have been driven by lengthy presentations by Manitoba Hydro which have some value for our clients but only modest utility for Intervenor experts. If Hydro continues this practice, it is almost certain that the Hydro Workshop will last the better part of two days.

Assuming two days for both the Manitoba Hydro and the intervenor Workshops, we have estimated 12 hearing days comprised of:

- April Workshop – 1 day plus 1 day contingency
- May Workshop – 1 day plus 1 day contingency
- June pre-hearing conference – 1 day
- Concurrent evidence panels – 5 days
- Intervenor oral submissions – 1 day
- Hydro oral submissions – 1 day

v) *legal counsel estimate*

Mr. Williams has over 20 years of experience directly relevant to rate regulation including COS. It is our understanding that he will be eligible for the top hourly rate on the PUB tariff. Based on the formula of 24 hours per hearing day, we estimate the legal counsel will bill 288 hours for the COS process.

Assuming 288 hours at \$285 an hour, that totals \$82,080 plus disbursements. Given the material change in hearing process and the uncertainties inherent in the Workshop proposal, we believe our estimate of hours is optimistic.⁵

It also should be noted that the Consumers Coalition has the benefit of an extremely gifted articling student who has more than two years experience with regulatory processes in the United States. Although the Coalition will not charge for his time, his assistance is one reason why a more optimistic rather than more conservative estimate was selected.

While we have more confidence in our macro estimate of hours, we have provided a preliminary micro estimate of tasks which supports our big picture estimate. The Consumers Coalition reserves the right to shift times between tasks in order to improve efficiency.

⁵ We considered a range as high as 330 hours to be reasonable

Budget for PILC support of the Consumer Coalition

ACTIVITY	ESTIMATED HOURS	ESTIMATED COST ^s
Review and Prepare Issues List based on Harper draft, Meet with Intervenors to coordinate Intervention, Prepare both Intervenor Application and February 10 Response to PUB, Prepare and Attend Pre-hearing conference, Comment on Hydro's modeling letter, Prepare budget estimate including emails, phone calls and meetings legal counsel, Consider revised schedule, Attend scheduling meeting at Fillmore Riley LLP, Review Prior Board Order, Review Expert Evidence Last COS, Review Key Authorities (ie NARUC manual)	35	\$9,975
Review Harper Comment on Initial MH COSS Models	.2	\$57
Review Draft Irs	3	\$855
Review Application, Review Ir Responses/Prepare for WorkShop#1 including client briefing	30	\$8,550
Meet with Harper for Workshop 1, Attend Workshop #1, follow up memos and review undertakings including focus groups and advisory groups	18	\$5,130
Review Harper Intervenor	32	\$9,120

Evidence, Review Evidence of other Intervenors, Prepare for Workshop #2 including Harper Preparation		
Attend Workshop #2 follow up memos and review undertakings including focus groups and advisory groups, Review Undertakings for follow-up	18	\$5,130
Prepare and Attend Pre-hearing Conference	11	\$3,135
Prepare Written Submission on Non-Concurrent Evidence	12	\$3,420
Prepare Cross Examination, <i>voire dire</i> and review opening Harper comments	46	\$13,110
Attend oral hearing	30	\$8,550
Prepare written submission concurrent evidence	29	\$8,265
Prepare Oral Submissions	18	\$5,130
Attend Submissions and Deliver Oral Submissions	6	\$1,710
General disbursements (photocopies, transcripts, couriers and incidentals)		\$3,500
Total	288.2	\$85,637

B – Expert Evidence

As compared to a more traditional proceeding, the estimates of Mr. Harper have been affected by a number of factors relating to the new process. Additional time has been related to:

- the review of the initial MH COSS model and providing comments to Daymark
- attendance at the Hydro Workshop which will require time over and above the traditional tasks of reviewing round #1 responses and preparing follow-up questions
- attendance at the Intervenor Workshop which will require time over and above the traditional tasks of as preparing irs/questions on the intervenor evidence
- preparing for both the Intervenor Workshop and Concurrent hearing rather than preparing for one appearance

Mr. Harper has prepared two estimates. One assumes he does not call evidence; the other assumes he does. The Consumer Coalition believes it is more likely that it will call evidence from Mr. Harper.

BUDGET FOR ECONALYSIS SUPPORT OF the Consumer Coalition

Consultant Support

ACTIVITY	ESTIMATED HOURS	ESTIMATED COST ⁵
NO EVIDENCE		
• Review Application, Issue Summary, Assist with Procedural Conf.	35	\$7,875
• Review & Comment on Initial MH COSS Models	10	\$2,250
• Draft IRs – Round #1	45	\$10,125
• Review IR Responses / Prepare for WorkShop#1	30	\$6,750
• Attend Workshop #1	15 ¹	\$3,375

• Review Intv Evid & Prepare for Workshop #2 ²	20	\$4,500
• Attend Workshop #2	15 ³	\$3,375
• Assist Counsel with Case Theory, Client Briefings, Cross Examination and Submissions	150	\$33,750
TOTAL-1	320	\$72,000
WITH EVIDENCE ADD		
• Prepare Evidence ⁴	120	\$27,000
• Prepare for Workshop #2	10	\$2,250
• Concurrent Panel Prep	35	\$7,875
• Hearing Attendance	45	\$10,125
TOTAL -2	530	\$119,250

- Notes:
- (1) Assumes 2 days required
 - (2) Based on 2-3 other intervenors filing evidence.
 - (3) Assumes 2 days required
 - (4) Resources required will depend upon the scope of the evidence, i.e., Issues that need to be addressed following the completion of the written discovery phase and Workshop #1.
 - (5) Based on \$225 / hour

Other Resources

- Travel – No Evidence: \$4,000 (assumes two trips to Winnipeg)
Evidence: \$7,000 (assumes 3 trips to Winnipeg)
- Other Incidental (phone and courier) - \$100

Total Budget: No Evidence: \$76,100
Evidence: \$126,350

D – Modelling Support

An innovation in this proceeding is the sharing of a Hydro model to assist in scenario development. The Consumer Coalition is appreciative of this development.

In order to facilitate the efficient use of scarce consumer resources, the City of Winnipeg and the Consumer Coalition have agreed to share the services of Mr. Andrew Frank, a modelling advisor provided by Elenchus. Mr. Frank was retained by the Coalition in the NFAT process and would perform a number of tasks:⁶

- explain what is going on inside the model on a purely technical level
- identify questions of clarification in terms of the model presented
- undertake confidential runs for the City of Winnipeg and Consumer Coalition

It is expected that the modelling advisor would abstain from taking any positions and would maintain confidentiality with respect to requested runs by each party. We believe this will introduce efficiencies and minimize the cost and time required to do the necessary alternative scenarios.

Our understanding is that the modelling advisor from Elenchus will be available to other parties upon similar terms.

Modelling advisor	35	\$5,950
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E – Conclusion

Total estimate of the Consumer Coalition with and without evidence	Low Range - without evidence	High Range - with evidence
Counsel	\$ 85,637	\$ 85,637
Econalysis	\$ 76,100	\$ 126,350
Modelling advisor	<u>\$ 5,950</u>	<u>\$ 5,950</u>
	\$167,687	\$217,937

The Consumer Coalition is looking forward to this opportunity to experiment with hearing process. It has some optimism that the process will enable the PUB to have greater confidence in its ultimate conclusion.

However, there can be no doubt that the new process will put extreme pressure on Intervenor budgets and resources. It will take significantly longer to perform analogous tasks.

Intervenor budgets with regard to the COS process are subject to considerably more

6 We have suggested an hourly rate of \$170 because of his 5 years experience in computer programming and modelling. We understand he billed \$165 per hour during the NFAT.

uncertainty than normal proceedings. The Consumer Coalition estimates are not conservative and might be characterized as somewhat optimistic. There is a risk that time demands will exceed the amount estimated.

Thank you for your consideration of these comments.

Yours truly,


For BYRON WILLIAMS
DIRECTOR

BW/sk

c.c. The Coalition (CAC MB and Winnipeg Harvest)
 Manitoba Hydro, Ms Patricia Ramage and Ms. Odette Fernandes
 Fillmore Riley, Mr. Robert Peters, Board Counsel
 Other interested parties