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September 25, 2017

VIA E-MAIL

The Public Utilities Board of Manitoba
400 – 330 Portage Avenue
Winnipeg, MB R3C 0C4

Attention: Darren Christle, Executive Director and Secretary - Darren.Christle@gov.mb.ca

Dear Sir:

Re: Intervener Budget Decision – August 25, 2017
2017/18 2018/19 General Rate Application (the "GRA")
Our File No. 104735-1

Further to our letter of September 15, 2017 with respect to Issues and Expert Evidence to be considered in the GRA (the "**Letter to the PUB**"), this letter is an application on behalf of the Business Council of Manitoba (the "**BCM**") requesting that the Public Utilities Board (the "**PUB**") review and reconsider its decision of August 25, 2017 (the "**Decision**") to deny the BCM the opportunity to retain its own experts on macro-economic impacts and bond rating considerations on the basis that such areas will be addressed by other witnesses and that the BCM had not provided an explanation as to how its proposed experts would provide additional value to the GRA. In particular, the PUB found as follows:

The Board does not approve the Business Council of Manitoba's experts on macro-economic impacts and bond rating considerations. These areas will be addressed by other witnesses and the Business Council of Manitoba has not provided an explanation as to how its proposed experts would provide additional value. The Board also shares Manitoba Hydro's concern that Business Council of Manitoba has not identified the experts it is proposing on these topics and the budgets do not appear to be tied to hourly rates.

Enclosed with our Letter to the PUB was a copy of our letter to all approved Interveners, dated September 14, 2017 (the "**Letter to the Interveners**"), setting out the various issues and questions the BCM views as integral to its participation in the GRA (the "**BCM Issues**"). Having regard to the PUB's Decision and Board Order No. 70/17, the BCM sought to collaborate with the other approved Interveners as a means of determining: 1) the scope of each Intervener's work; 2) which, if any, of the Interveners will be addressing the BCM Issues; and 3) whether there may be differing

perspectives on a common issue that the BCM may be in a position to highlight to the PUB; all of which is consistent with the PUB's expectations outlined in Order No. 70/17.

Our office received responses from two of the eight Interveners addressed in the Letter to Interveners and we have not yet received a response to our Letter to the PUB. While we understand that the parties involved in the GRA are facing a number of GRA filing deadlines and in the process of reviewing a vast quantity of information related to the GRA (in addition to non-GRA related matters and deadlines), having regard to the time period in which the BCM has to apply to the PUB to review its Decision, the BCM must proceed with its current application to the PUB.

Facts

1. The BCM Issues are an integral component of the Approved Issues

The BCM is approved to intervene on numerous issues set out in Appendix "A" of Order No.70/17, issued June 30, 2017 (the "**Approved Issues**"). At the time the BCM submitted its proposed budget for the GRA on July 25, 2017 (the "**BCM Budget Letter**"), the BCM was still in the process of trying to identify potential expert witnesses that could speak to the various Approved Issues. While the PUB did not approve BCM's request for costs to retain its own expert witnesses, the PUB expressly acknowledged that the BCM's approved scope for the GRA was centered "on revenue requirement issues and, specifically, credit/bond rating and economic impacts".¹ The BCM respectfully submits that the BCM Issues enumerated in the Letter to Interveners and referred to in our Letter to the PUB fall squarely within the scope of the BCM's approved participation in the GRA and reflects the directed focus of the BCM.

2. The BCM diligently pursued appropriate and viable expert witnesses prior to submitting its budget

In reaching its Decision, the PUB expressed concern that the BCM had not identified its proposed experts in the BCM Budget Letter. The BCM was granted intervener status on June 30, 2017 and submitted its estimated budget to the PUB by letter dated July 25, 2017 with the understanding that the failure to do so by such date may be a bar to the PUB subsequently approving and awarding costs to the BCM for its participation in the GRA. The BCM has not previously applied for or been granted intervener status in any prior Manitoba Hydro rate applications or proceedings.

Notwithstanding the long list of Approved Issues the BCM was approved to participate in and speak to pursuant to order No. 70/17, the BCM Budget Letter identified a significantly shorter and more focused set of issues to be considered by the BCM. Having regard to the nature and timing of the GRA, the budgetary limitations, and the narrow Approved Issues on which the BCM wished to speak, the task of identifying potential experts was not without difficulty, especially in the short time frame available to the BCM to submit its GRA budget. Indeed, in his September 18, 2017 response to our Letter to the Interveners, Mr. Byron Williams noted that the Consumer Coalition had undertaken an "extensive search for potential expert witnesses" throughout January to April 2017 and that it was only "[a]fter extensive discussions with a number of potential witnesses" that his client ultimately selected their expert witnesses.

¹ Letter from PUB to Manitoba Hydro and Approved Interveners Re: Manitoba Hydro 2017/2018 & 2018/19 General Rate Application – Intervener Budgets, dated August 25, 2017 at p. 3 [**Decision**].

We note that notwithstanding the fact that the Consumer Coalition has been an active participant in past Manitoba Hydro rate applications and proceedings for many years, its identification of appropriate experts for the GRA took a much longer time than that which was afforded the BCM. The BCM respectfully submits that the inability of the BCM to identify its expert witnesses at the time of the BCM Budget Letter should not bar the PUB from approving the BCM to retain expert witnesses or awarding costs to the BCM for such expert witnesses.

3. *The BCM Issues will not be addressed by expert witnesses of the other Interveners*

The PUB's Decision found that the areas of macro-economic impacts and bond rating considerations would be addressed by other witnesses. Our Letter to Interveners was an effort to confirm such finding and identify which of the approved witnesses would, in fact, be speaking specifically to the BCM Issues, as opposed to other macro-economic impacts or bond rating considerations, in general. The BCM submits that the BCM Issues and the relationships among debt load, credit rating, cost of borrowing and risk of decreasing bond ratings for Manitoba Hydro and the Province of Manitoba must be adequately addressed in the GRA. While such an investigation falls within the general topics of "macro-economic impacts and bond rating considerations", the BCM recognizes that it may not necessarily be the focus of any particular Intervener or expert witness.

The BCM has reviewed the Scope of Work summary posted on the PUB website for Dr. Adonis Yatchew. The macroeconomic aspects to be considered by Dr. Yatchew do not appear to include the BCM Issues and there is no express reference to bond rating considerations.

Mr. Williams' letter to our office, on behalf of the Consumers Coalition, provides some details as to the scope of work to be undertaken by the experts retained by the Consumers Coalition. We understand that such experts will opine on financial market considerations relating to Manitoba Hydro as such considerations may inform the Provincial credit rating. We further understand that consideration of the appropriate financial targets that should be integrated into the rate setting process so as to balance the interests of Manitoba Hydro, consumers and the Province of Manitoba as guarantor of Manitoba Hydro's debt will be included in Mr. Coloaiacovo's evidence. The BCM views such issues to be of interest to the BCM and related to the BCM Issues but it is not clear as to whether all of the BCM Issues will be canvassed nor is it made clear precisely what the evidence will be in order for the BCM to determine whether it is consistent with the BCM's position on these issues. As noted by Mr. Williams, the appropriate overall rate increase is "the function of an analysis of the entire record including the reasonableness of current forecasts, the necessity and prudence of forecast expenditures and the overall well-being of the corporation taking into account the public interest". The BCM submits that all of the BCM Issues must necessarily be investigated and addressed as part of such an analysis.

Our office also received Mr. Hacault's letter, dated September 21, 2017. As a preliminary matter, it appears that Mr. Hacault is of the understanding that macro-economic impacts and bond rating considerations are issues outside of the Approved Issues. As set out above, macro-economic impacts and bond rating considerations are Approved Issues and the BCM's approved scope of involvement in the GRA was specifically centered on "revenue requirement issues and, specifically, credit/bond rating and economic impacts".² The BCM Issues are not

² *Ibid.* at p. 3.

new and different issues. Rather, the BCM Issues must necessarily be addressed in considering credit/bond rating matters and the economic impacts of a rate increase. It does not appear that the experts retained by MIPUG will be addressing the BCM Issues as they relate to and contribute to macro-economic impacts or bond rating considerations from the perspective of the BCM.

No responses were received from the other approved Interveners. The BCM can only conclude that those other Interveners will not be addressing any of the BCM Issues in their evidence. While the areas of macro-economic impacts and bond rating considerations may be touched upon by other witnesses, the scopes of work for the approved expert witnesses will not include a focus on credit/bond rating and economic impacts from the perspective of the BCM. Respectfully, it was unreasonable (and an error) for the PUB to conclude that experts of other Interveners would necessarily consider and adequately address macro-economic impacts and bond rating considerations from the BCM's perspective.

4. The BCM cannot provide a more detailed explanation as to how its proposed experts will provide additional value because neither the BCM nor the other Interveners currently know what evidence and conclusions the approved expert witnesses will be presenting

The PUB's Decision concluded that the BCM Budget Letter had not provided an explanation as to how the BCM's proposed experts would provide additional value. As noted above, given the short time frame from the time the BCM was granted intervener status until the deadline for Interveners to submit their budgets, the BCM was not in a position to identify its experts. The BCM was not even fully aware as to whom other Interveners would propose as their respective witnesses at that time. Presumably, the additional value a witness may provide to the GRA is particular expertise on an issue or a differing perspective notwithstanding a common set of facts or figures.

Without the benefit of: 1) the entire record of the GRA before it; 2) knowing the view other expert witnesses would be taking; or 3) what evidence such expert witnesses would provide, the BCM was not (and is not currently) able to highlight any differing perspectives it may take on an issue from that of another Intervener (as directed by the PUB³) or outline the additional value its proposed experts might add to the GRA in a more specific manner. Indeed, Mr. Byron has confirmed that the expert witnesses retained by the Consumers Coalition, all of whom were carefully chosen over a prolonged period of time, are still not in a position to pronounce an opinion on an appropriate rate indication at this time.⁴

The perspective of the BCM is likely to be different from those of the other Interveners. Indeed, the differing perspective that the BCM may bring to the GRA was likely a factor in the PUB's decision to grant the BCM intervener status in the GRA. Accordingly, the focus and perspectives of any expert retained by the BCM may differ from those of the Consumers Coalition (or any other Intervener) notwithstanding the fact that Interveners may have reminded their experts that their duty in giving evidence is to help the PUB and that such duty overrides any obligation to a particular Intervener.⁵ Independent experts may, and often do, come to differing conclusions. On the other hand, if Interveners with differing perspectives provide expert evidence that comes to a common conclusion, one would think that the PUB should be interested in, and perhaps persuaded, by such an outcome.

³ PUB Order No. 70/17, p. 23 [Order No. 70/17].

⁴ Letter from Byron Williams letter dated September 18, 2017 Re: Request for Information on Proposed Evidence at p. 2 -3.

⁵ *Ibid.* at p. 1.

The BCM's decision to apply for intervenor status in the GRA was driven by its position that the rate increase, whatever amount it may be, must assist and place Manitoba Hydro on a solid independent financial footing, while safeguarding Manitoba Hydro's and the Province of Manitoba's overall financial stability. It is BCM's view that the BCM Issues must be directly addressed and considered in order to determine whether, and to what extent, a rate increase is necessary given the wide-sweeping and long term effect an increase (and the magnitude of any such increase) will have on hydroelectric users and the Province of Manitoba. Respectfully, it was unreasonable for the PUB to require that the BCM provide an explanation as to how the BCM's proposed experts would provide additional value at the time of the BCM Budget.

5. The BCM is unable to either present probative evidence or critically consider evidence relevant to the BCM Issues without its own expert witness(es)

As noted in Mr. Hacault's letter of September 21, 2017, written evidence of the experts will be filed on October 31, 2017. Appendix B to Order No. 70/17 indicates that Information Requests on Intervenor Evidence are due by November 8, 2017 and that Interveners are to respond to such Information Requests by November 15, 2017. As set out above, the BCM still does not have a clear understanding of whether all of the BCM Issues will be adequately addressed and, if so, whether there may be differing perspectives on a common issue that the BCM may be in a position to highlight to the PUB.

Even if one were to assume that all of the BCM Issues are substantively addressed by the approved experts of the other Interveners and/or Dr. Yatchew in the Intervenor Evidence to be filed by October 31, 2017, it is only at that point (and after reviewing all such evidence) that the BCM will know whether its position differs from the perspectives presented. While the BCM is afforded a 1 week window of time to submit Information Requests on the Intervenor Evidence, the BCM will not have the benefit of an expert reviewing the Intervenor Evidence from the BCM's perspective unless the BCM independently covers all of the costs of such expert review. In fact, the BCM will not even have the benefit of its own experts reviewing the relevant evidence on which all other experts will be advancing their opinions and conclusions.

The BCM is of the view that the GRA should provide an opportunity for approved parties to: 1) present evidence; 2) critically consider the evidence presented; and 3) test and cross examine experts on such evidence. While the BCM has been approved to participate in the GRA, the PUB's Decision to disallow the BCM from retaining its own experts, essentially prohibits the BCM from actively participating and contributing to the GRA in a meaningful manner. Even if the BCM retains its own expert witnesses, at its own costs (which would be unfair and discriminatory), the PUB Decision prevents the BCM from calling such witnesses. Where the BCM wishes to present differing conclusions, how much weight would the PUB give to such conclusions if they are neither provided by an expert witness nor available to be tested by other expert witnesses?

It is noted that the PUB has expressly stated that: "to be eligible for a cost award, Interveners must actively participate on the issues for which they are approved to assist the Board".⁶ The BCM respectfully submits that the PUB's rejection of the BCM's request to retain its own witnesses and the denial of costs for the BCM to retain such witnesses restricts the BCM from

⁶ *Supra* note 3 at p. 23.

actively participating in the GRA to the extent it desires on the issues for which the BCM is approved to assist.

Grounds on which the Present Application is Made

The grounds on which the within application is made are as follows:

1. The PUB prematurely concluded (or erred in concluding) that the issues in which the BCM has been approved to participate will be adequately addressed by other witnesses; and
2. The PUB's Decision to deny the BCM the opportunity to retain its own expert witnesses on the issues of macro-economic impacts and bond rating considerations is prejudicial as it:
 - a) limits the ability of the BCM to:
 - (i) critically review the record of the GRA from the perspective of the BCM;
 - (ii) adequately test the Intervener Evidence; and
 - (iii) present perspectives differing from other Interveners;
 - b) seriously compromises the weight given to any evidence or arguments BCM presents during the GRA; and
 - c) essentially thwarts the BCM's ability to actively participate and contribute to the GRA.

Nature of Prejudice or Damage

Denying the BCM approval to retain its own expert witnesses severely limits the ability of the BCM to participate in the GRA in a meaningful way. The Government's Order in Council issued April 5, 2017 (the "**Order in Council**") puts the issue of the financial health of Manitoba Hydro before the PUB and gives the PUB broader jurisdiction to consider issues relating to Manitoba Hydro's financial health. In granting the BCM intervener status, the PUB appeared to recognize that the BCM may be able to assist in presenting evidence related to credit/bond rating and economic impacts. The Decision, however, severely restricts:

1. the BCM's ability to present evidence and arguments from the BCM's perspective, which may be different from the other Interveners;
2. cross examine the findings and conclusions of the approved expert witnesses; and
3. provide credible support for the arguments made by parties to the GRA, where appropriate.

Credit/bond rating and the economic impacts of any rate increase is wide reaching and long lasting. The BCM's focus on these two issues is narrow and largely encapsulated in the BCM Issues. The failure to adequately address the BCM Issues as a part of the GRA is inconsistent with the Order in Council. Not only is the Decision prejudicial to the BCM for all the reasons set forth above, the failure to critically address the BCM Issues from the perspectives of various Interveners may cause

damage to all hydroelectric users and the Province of Manitoba regardless of the rate of increase, if any, ultimately approved by the PUB in the GRA.

Remedy Sought

The BCM seeks:

1. Approval for the BCM to retain its own expert witnesses on the narrow focus of the BCM Issues;
2. A reasonable amount of time for the BCM to identify such expert witnesses and to submit a revised budget for such experts for the PUB's approval;
3. Approval of an increased budget for BCM's legal counsel taking into account the increased time and effort to appeal the Decision and to re-initiate efforts to identify and retain appropriate expert witnesses;
4. An increased budget for any witnesses so approved.

Or, in the alternative:

1. The ability (and the costs) for the BCM to retain experts to review the Intervener Evidence submitted on or before October 31, 2017;
2. A reasonably lengthened time period for such BCM experts to review and test the Intervener Evidence; and
3. Approval for the BCM to call such expert witnesses during the oral hearing, if necessary.

Thank you for your consideration and the opportunity to raise this matter with the PUB. Please do not hesitate to contact the undersigned should you require anything further at this time.

Yours truly,

TAYLOR McCARTHY LLP

Per:



KEVIN T. WILLIAMS

KTW/vt

cc: Don Leitch, Business Council of Manitoba
Bob Peters, Board Counsel
Patricia Ramage, Manitoba Hydro
Bill Haight, Counsel to IECs
Approved Interveners