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Rhetoric versus Reality: An Unhealthy Addiction Revisited

Submissions of the Consumers Association of Canada (MB Branch) and
Winnipeg Harvest (the Consumers Coalition)

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May 26, 2017



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Separating Rhetoric from Reality

Except in emergency circumstances, interim rate increases work to the detriment of Manitoba consumers and to public confidence in the regulatory process.

Interim rates enable Manitoba Hydro to delay rigorous scrutiny under oath. They create budgeting uncertainty for consumers and business.

Interim rate increases enable the imposition of significant rate increases without rigorous “before the fact” regulatory review. They allow for the entrenchment of a regulatory *status quo* that is difficult to overturn.

In *Board Order 59/16*, Manitoba's Public Utility Board (PUB) sought to put a stop to Manitoba Hydro's unhealthy addiction¹ to interim rate increases. The PUB indicated that:

- *The Board is not prepared to consider interim rate applications unless warranted by unforeseen or emergency situations.*²
- *[I]nterim rate applications ought not be the ‘norm’ for Manitoba Hydro.*³
- *Manitoba Hydro is to adjust its planning cycles to ensure the required information is available on a timely basis.*⁴
- *Manitoba Hydro is therefore directed to file on or before December 1, 2016, a General Rate Application to finalize rates for the 2016/17 fiscal year and prospectively set rates for the 2017/18 fiscal year. A December 2016 filing would allow for the adjustment of consumer rates for August 1, 2017.*⁵

The Board's express direction to Manitoba Hydro created a legitimate expectation⁶ among Manitoba consumers and business that:

- Manitoba Hydro would be expected to get its regulatory house in order,
- interim rate increases would be limited to unforeseen or emergency situations, and
- future processes would respect the process guidance set out in *Order 59/16*.⁷

1 In its February 2016 commentary *Manitoba Hydro and Interim Rates: An Unhealthy Addiction*, the Coalition provided a more extensive criticism of its concerns that Manitoba Hydro's regulatory house was not in order and the detrimental effect of interim rates on consumers.

2 *Order 59/16*, p 4 and 12.

3 *Order 59/16*, p 13.

4 *Order 59/16*, p 13.

5 *Order 59/16*, p 13.

6 *Old St Boniface Residents Association Inc v Winnipeg (City)*, [1990] 3 SCR 1170 at paras 110-111; *Centre hospitalier Mont-Sinaï c Québec (Ministre de la Santé & des Services sociaux)*, 2001 SCC 41 at paras 22-38. The doctrine of legitimate expectation is part of the duty of fairness and is based on the principle that procedural fairness must take into account the promises or regular practices of delegates and that it will be unfair for them to act inconsistently with representations as to procedure.

7 The Coalition notes that s. 48 of *The Public Utilities Board Act* provides that: *The board shall not make an order*

Manitoba Hydro did not file a December 2016 rate application. Rather than provide its independent regulator with an evidence based Integrated Financial Forecast in December 2016, the Chairperson of the Hydro Board undertook a highly public, highly rhetorical campaign alleging a financial crisis for the Crown monopoly.⁸

In May, 2017, Hydro filed its ninth interim rate application in the last eight fiscal years.⁹ It seeks to impose an additional 7.9% interim rate application over and above the still unfinalized 3.36% interim rate increase from August 2016.

Contrary to the inflamed rhetoric of recent months, the dispassionate review of IFF16 set out in Appendix B to this submission leads to the following conclusions:

- The actual results for 2015/16 are in line with those forecast at the time of the 2016 Interim Rate Approval (IFF15). There is no evidence of any material deterioration since that time.¹⁰
- The most recent outlook for 2016/17 is not out of line with that in IFF14 and IFF15 – suggesting there is no real deterioration in expected financial position up to this point in time.¹¹
- The information that has been provided for 2017/18 indicates that:
 - Rate increases less than the requested 7.9% would produce financial results in line with past forecasts
 - Even with no rate increase, net income is expected to be positive and the equity

*involving any outlay, loss, or deprivation to any owner of a public utility, or any person without due notice and full opportunity to all parties concerned, to produce evidence and be heard at a public hearing of the board, **except in case of urgency**; and in that case, as soon as practicable thereafter, the board shall, on the application of any party affected by the order, re-hear and reconsider the matter and make such order as to the board seems just. [emphasis added].*

8 For example: on October 18, 2016, the chair of Manitoba Hydro stated "The question everyone asks me is, 'How are we going to get out of this mess?' There's going to be pain, relative to where we are today, suffered by everybody. Clearly, Hydro's operations are going to require a significant restructuring and that will not be pleasant for the people at Hydro" (CBC news: <http://www.cbc.ca/news/canada/manitoba/manitoba-hydro-bipole-transmission-line-1.3811316>); on February 6, 2017, the chair of Manitoba Hydro stated "Even with these reductions, double digit annual rate increases would be required for at least five years in order to re-establish Manitoba Hydro on a proper financial footing," (CBC news: <http://www.cbc.ca/news/canada/manitoba/manitoba-hydro-rate-increase-pallister-business-low-income-1.3969221>); on February 7, 2017 the chair of Manitoba Hydro stated "We want to make people understand, this is a big problem. It's not a small problem. We take that position not only from Manitoba Hydro's perspective, but from the perspective of the government of Manitoba and the people of Manitoba; Hydro is a ticking time bomb" (CBC news: <http://www.cbc.ca/news/canada/manitoba/manitoba-hydro-sandy-riley-rate-increases-1.3970470>).

9 See Appendix A.

10 See Appendix B at p 10.

11 See Appendix B at p 11.

ratio close to previous forecasts.¹²

- Focusing on the long term, the key take away is that in comparing IFF14 (last GRA) and IFF16-modified (i.e. 3.95% rate increases) both return to 25% equity in the same year.¹³
- Again focusing on the long term, the Equity ratio does not decline in IFF16-modified as much now as it did in IFF14 and the 3.95% increases are not required for as many years as in IFF14.¹⁴

Leaving aside rhetorical excess and accepting for the purposes of this submission only that the estimates and forecasts of Manitoba Hydro are reasonably reliable, a careful review of Appendix B as well as the thoughtful May 25, 2017 submissions of the Manitoba Industrial Power Users Group (MIPUG) leads the Coalition to agree with MIPUG that:

*there are no significant urgent circumstances underlying the need for an expedited interim rate increase.*¹⁵

The Consumers Coalition also agrees with MIPUG that:

- *Adding an interim rate process to a GRA schedule, even a written process, will delay the full review process and result in duplicative, unnecessary work.*¹⁶
- *The efforts, time and expense of the parties are better spent in focusing on an efficient and prompt determination of schedule and process for the upcoming GRA.*¹⁷

Manitoba consumers are entitled to reasonably rely on the Board's indication that it was “not prepared to consider interim rate applications unless warranted by unforeseen or emergency situations”. Manitoba Hydro has not discharged its onus. The Coalition recommends that the application for an interim rate increase not be considered.

The Broken Regulatory Covenant cannot be addressed in an Interim Rate Application

The Coalition also agrees with MIPUG that:

*The fundamental change between forecasts appears to relate to an attempt by Hydro to impose a new attitude and philosophy into the financial forecasts — one that represents a betrayal of the basic compact of the NFAT concept despite no changes in Hydro's constating legislation, Corporate objects, regulations, or Ministerial directives.*¹⁸

No member of the Coalition endorsed the Keeyask Hydro-electric Generating Station project

12 See Appendix B at p 12.

13 See Appendix B at p 17.

14 See Appendix B at p 17.

15 MIPUG letter, May 25, 2017, p 1.

16 MIPUG letter, May 25, 2017, p 2.

17 MIPUG letter, May 25, 2017, p 2.

18 MIPUG letter, May 25, 2017, p. 5.

or the Bipole III transmission line. CAC MB expressly refused to support Hydro's preferred development during the NFAT proceeding as well as the Keeyask and Bipole III environmental reviews.

However, the Coalition agrees with MIPUG that there was an implicit covenant made by Manitoba Hydro with the Board and ratepayers during the NFAT – namely that the investments could be managed without material rate increases in the short-term by relaxing the Equity ratio requirements for period of time extent into the 2030's.

This Application has already seen MH fundamentally changing its estimate as to the capital cost of Keeyask and BP III from that put forward in NFAT – to the detriment of rate payers. The Corporation is now compounding the impacts of this “error” by insisting that financial health be restored over a considerably shorter period of time.

Hydro's argument for a faster return to financial health has not been tested. Issues relating to financial targets, how soon should they be achieved and to what level should the equity ratio be permitted to decline are: i) longer term questions and ii) questions that are central to the upcoming full GRA proceeding – not questions to be resolve in an interim rate application.

In the Alternative – Weaning Manitoba Hydro off Interim Rate Increases

In the event that PUB decides there “may be” an urgent need that requires consideration, the Coalition would recommend that an interim application be considered within the framework of Hydro's current financial targets and expectations as established in recent GRAs and the NFAT proceeding.

The process should not be driven by yet untested claims regarding proposed changes to longer term financial performance. To test such claims at this stage, would expand the scope of interim process to include core issues related to the overall GRA.

Any consideration of an interim application is likely to encourage Hydro's addiction. As a means to discourage such unhealthy regulatory practice as well as to deliver greater rate certainty to hard pressed consumers and businesses, the Coalition's alternative recommendation would be that if an interim application is granted effective August 1, 2017, no further rate increase should be imposed for a 12 month period (ie August 1, 2018). This would in effect be an effort to regularize annual rate increases to a specific annual date and shield consumers from multiple rate increases within a 12 month period. Additionally, on a going forward basis, we would recommend that Manitoba Hydro be limited to one unconfirmed interim rate at any given time.

As noted in Appendix B, there are significant information gaps regarding the state of Hydro's financial health and the implications of no (or lower) rate increases in 2017/18. An interim process is likely to require at least one round of information requests (focusing on the current need and, to a lesser degree, the near term implications of no rate increase or a lower than 7.9% increase in 2017/18) followed by written submissions.

The Suggestion of an Inflation Linked Interim Rate Application Allocated to the Bipole III Deferral Account

The Coalition acknowledges the thoughtful suggestion by MIPUG that the PUB order an inflationary increase today (such as 1.6% as the recent Manitoba CPI) with the revenues being entirely targeted to the Bipole III deferral account.¹⁹

The Coalition observes that this is an interim rate increase under another guise without the exigent emergency or unforeseen circumstance.

Keeping the Covenant of Order 59-16

PUB *Order 59-16* sent a clear message to Manitoba Hydro to get its regulatory house in order and to Manitoba consumers that the unhealthy practice of interim rate applications would cease except in truly unforeseen or urgent circumstances.

Stepping away from the inflammatory rhetoric used over recent months, it is clear that urgency has not been demonstrated. Our clients recommend that an interim application not be considered.

The pending rate application raises issues of profound importance to current and future generations of Hydro ratepayers. Manitobans would be well served by a regulatory process that focuses scarce resources on the crucial objective of honouring Hydro's NFAT covenant to Manitobans.

¹⁹ The Coalition also observes that significant concerns regarding intergenerational equity can be raised with regard to the Bipole III deferral account.