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September 26, 2017

The Public Utilities Board of Manitoba
Attention: Mr. Darren Christle
Executive Director and Secretary
400-330 Portage Avenue
Winnipeg, MB R3C 0C4

Dear Mr. Christle:

**Re: Manitoba Hydro GRA 2017/18 & 2018/19 – Consumers Coalition
Response to Manitoba Hydro's CSI Motion and Rule 13 Motion**

Response to Manitoba Hydro's CSI Motion

As a response to Manitoba Hydro's Motion of 7 September 2017, the Consumers Coalition is filing its own motion for access, under specific conditions, to select documents claimed as confidential.

In the Coalition's view, its motion strikes an appropriate balance between the public interest in disclosure and the financial health of the utility, as contemplated in Rule 13 of the Public Utilities Board Rules of Practice and Procedure.

Unless specifically listed in the Consumers Coalition's Motion below, at this time, the Coalition does not take a position regarding the confidentiality of documents and the proposed processes as outlined in Manitoba Hydro's Motion of 7 September 2017.

The Coalition reserves the right to file a Motion seeking disclosure on documents other than the ones specifically identified in this Motion.

Motion

Pursuant to Rule 13(2) and Rule 13(3) of The Public Utilities Board Rules of Practice and Procedure ("Rules"), the Consumers Coalition is seeking an Order of the Public Utilities Board of Manitoba ("PUB" or "Board") confirming that it will be granted access, under specific conditions, to select documents filed by Manitoba Hydro as responses to Minimum Filing Requirements ("MFRs") and Information Requests ("IRs"), as identified in the attached **Appendices A to F**.

Grounds

The default position under the Rules is that filings will be public. Confidential filings should only be accepted where the Rule 13(2) test has been met.

Under Rule 13(2), the Board must decide whether the interest in confidentiality outweighs the public interest in disclosure. As stated by the Manitoba Court of Appeal:

The PUB has two concerns when dealing with a rate application; the interests of the utility's ratepayers, and the financial health of the utility. Together, and in the broadest interpretation, these interests represent the general public interest.¹

The Consumers Coalition's proposed process and conditions for access to select documents claimed as confidential by Manitoba Hydro, as outlined in this motion, strikes the appropriate balance between the interests of ratepayers, the public interest in a transparent proceeding, and the financial health of the utility.

The Consumers Coalition has been approved or has applied to provide evidence and/or to conduct analysis in the three main areas pertaining to the documents requested:

- Financial targets and access to capital;
- Large capital projects; and
- Export price forecasts.²

The experts retained by the Consumers Coalition have expertise in the areas outlined above and are in the process of conducting their independent analyses. These analyses can reasonably be expected to assist the Board in its deliberations for the benefit of all Manitoba Hydro ratepayers.

To date, the non-disclosure of Manitoba Hydro has materially impaired the ability of Morrison Park Advisors³ to provide evidence and has materially impaired the ability of METSCO⁴, Dr. Gotham⁵ and Mr. Harper⁶ to conduct analysis and provide advice to the Coalition and, if necessary, evidence on related issues.

The Coalition notes that it has entered into a collaborative dialogue with Manitoba Hydro regarding access to select documents claimed as confidential. While no mutually satisfactory resolution has been reached to date, the Coalition acknowledges that the discussions with Manitoba Hydro have assisted the Coalition in better understanding the Corporation's concerns and how a process may be crafted in order to mitigate or eliminate the risk to the Corporation.

1 PUB Order 26/17.

2 See PUB Order 70/17, Appendix A and PUB letter of 25 August 2017. As per the 25 August 2017 letter, the PUB's decision on the Coalition's advisor on load forecasting and export price forecasting is outstanding.

3 Retained by the Coalition to provide evidence on the financial health of the Corporation and access to capital markets.

4 Retained by the Coalition to provide advice on large capital projects.

5 Retained by the Coalition to provide advice on load forecasting and export price forecasting.

6 Retained by the Coalition to provide advice on various issues, including marginal cost, rate design and financial forecasts.

Proprietary information

For some documents claimed as confidential by Manitoba Hydro, the justification relates to contract terms between Manitoba Hydro and third party authors of the documents in question, as well as the cost of accessing the documents. This is the case for credit rating agency reports and third-party export price forecasts.

The Coalition acknowledges that, should Manitoba Hydro breach contract terms by placing certain documents on the public record, this could lead to a financial loss to the Corporation, which in turn could lead to higher rates for ratepayers. This is not the Coalition's intention.

As detailed in the Appendices to this motion, specifically Appendices A and C, the Coalition proposes processes to be put in place to ensure that contract terms are not breached by placing information on the public record, while still allowing the Coalition to access the information required for its advisors' analysis. For example, the signing of Non-Disclosure Agreements could result in access to select documents that are in Manitoba Hydro's possession, such as credit rating agency reports and third-party export price forecasts, while ensuring these documents are not produced on the public record. Similarly, the redaction of select information in export price forecasts could protect the information while still allowing the Coalition's advisor to conduct his analysis.

Commercially sensitive information

For some of the documents claimed as confidential by Manitoba Hydro, the justification relates to commercial consequences that could arise out of disclosure, such as loss of competitive position, which could lead to an undue financial loss to the Corporation or to third parties. This is the case for the information relating to Manitoba Hydro's export price forecast and large capital projects.

The Coalition acknowledges that if Manitoba Hydro's competitive position is impaired, this could lead to higher costs and ratepayers could face higher rates as a result. As stated above, this is not the Coalition's intention.

However, the Coalition believes that there are select documents to which it and its relevant advisors can be granted access under specific conditions designed to result in:

- no harm to the Corporation's competitive position;
- no undue financial loss to the Corporation or affected third parties; and
- an appropriate balance between the public interest in disclosure and the Corporation's interest in confidentiality.

The Consumers Coalition, its legal counsel and its advisors are not business competitors to Manitoba Hydro and have no commercial interest in the information being requested. Rather, the Coalition requests access to these documents so that its advisors can provide independent, evidence-based analysis of the materials provided by Manitoba Hydro to the

benefit of the Board in its decision-making role and to all ratepayers.

The conditions on access to select documents being proposed by the Coalition in this motion would appropriately mitigate any risks associated with commercially sensitive information identified by Manitoba Hydro. For example, a Non-Disclosure Agreement is a proposed solution, which would ensure that commercially sensitive information is not placed on the public record, while still allowing access to documents required by the Coalition's advisors to conduct their analysis and for the Coalition to meaningfully participate in the hearing before the PUB.

Relief sought strikes appropriate balance

In the Coalition's view, Manitoba Hydro's proposed treatment of the documents required by the Coalition is overly broad and will impede the Coalition's ability to properly address Manitoba Hydro's General Rate Application and meaningfully participate in the hearing. It will impair the Coalition's development of informed opinions and test the accuracy of Manitoba Hydro's statements regarding:

- the Corporation's stated objectives relating to financial targets and its continued access to capital markets;
- budgets, risks and uncertainty associated with large capital projects; and
- the reasonableness of the methodology used for export price forecasts.

The PUB will determine whether the public interest in disclosure outweighs the interest in confidentiality. The Coalition suggests that determining what is in the public interest includes balancing the public's right to know the information relied upon and the value brought to the regulatory process by Interveners and their advisors based on adequate knowledge, with the potential risks to the commercial interests of Manitoba Hydro or its vendors.

In Appendices A to F, the Coalition proposes specific processes that are tailored to the documents sought. These processes address the risks identified by Manitoba Hydro and aim to reach a balance between the public interest in disclosure and the Corporation's interest in confidentiality. In the Coalition's view, this balance can be achieved by providing access to its advisors to essential evidence, while acknowledging proprietary rights for credit rating agency reports (e.g. only quoting appropriate excerpts), accessing documents through Non-Disclosure Agreements rather than placing them on the public record and agreeing to redactions for the export price forecasts, even under a Non-Disclosure Agreement.

The Coalition acknowledges that some of the documents for which Manitoba Hydro has sought confidentiality have been treated as confidential in past proceedings before the PUB. The Coalition notes, however, that this rate application represents a significant change of philosophy at Manitoba Hydro compared to past proceedings. While some of the documents may have been treated as confidential in the past, the Consumers Coalition submits that there is a greater public interest in disclosure in this proceeding given the changed circumstances as signalled by Order in Council 92/2017 regarding large capital

expenditures, combined with the magnitude of the proposed rate increases and the potential impact on all Manitoba ratepayers.

Providing the Coalition with access to the specified documents under the proposed conditions for the purposes of testing Manitoba Hydro's evidence and statements strikes the appropriate balance between the public interest in disclosure and the Corporation's interest in confidentiality.

Should you have any questions or need further information, please do not hesitate to contact me at (204) 985 5220 or Mr. Byron Williams at (204) 985 8533.

Yours truly,

A handwritten signature in black ink, appearing to read 'Katrine Dilay', written in a cursive style.

Katrine Dilay
Attorney
KD/bw/vs

cc: Consumers Coalition
Board Counsel
Manitoba Hydro
All Intervenors

