

GCH

Barristers
& Solicitors

GANGE COLLINS HOLLOWAY

William S. Gange
Jacqueline G. Collins
R. Ivan Holloway*
David M. Cordingley
Katlyn B. Bomback
Thomas K. Reimer
Chad M. Penner[■]

Writer: (204) 953-5401
Writer's Direct:
Writer's Email: wsg@gchlaw.ca
Assistant: (204) 953-5411
Assistant's Direct:
Assistant's Email: lec@gchlaw.ca

* Services through R.I. Holloway Law Corporation
* Also of the Alberta Bar
■ Services through Chad Penner Law Corporation

January 29, 2018

VIA E-MAIL

Manitoba Public Utilities Board
400 - 330 Portage Avenue
Winnipeg, MB R3C 0C4

Attention: Kurt Simonsen

Dear Sirs/Mesdames:

Re: Board Direction Re Legal Arguments
Our File No. 17161 WSG

The Board has requested that parties provide notice of legal arguments to be made in closing submissions. The main focus of the intervention of Green Action Centre has been on the development of a bill affordability program. It is our position that there is no legal question to be considered regarding the jurisdiction of the Public Utilities Board to adjudicate on a bill affordability program drafted in a manner similar to that proposed by Mr. Chernick.

The jurisdiction of the Board in this area has been decided in previous Board Orders. In Board Order 116/08, the Public Utilities Board ruled that it had the jurisdiction to direct Manitoba Hydro to implement a bill assistance program (pages 229-231). At Board Directive 18-D, the Public Utilities Board ordered Manitoba Hydro to submit a proposal on bill assistance. That directive was ignored.

In Board Order 73/15, the Board re-stated its position that the Public Utilities Board has the jurisdiction to establish a bill affordability program (pages 25-30). The Board conducted a thorough review of case law, statutory provision and the legal issues and concluded that the Public Utilities Board has the jurisdiction to establish a bill affordability program.

The Board stated:

As such, it is the Board's intention to evaluate any future proposals for bill assistance programs from a comprehensive policy perspective rather than through the lens of jurisdictional constraints, provided that such proposals fall within the legislative framework set by *The Manitoba Hydro Act*, *The Crown Corporations Public Review and Accountability Act* and *The Public Utilities Board Act*.

Given the position of the Board on this issue, it would be quite inappropriate for any party to argue that the issue of the jurisdiction of the Public Utilities Board to consider and rule upon proposals related to bill affordability remains a legal issue. If any party intended to make such a legal argument, they ought to have appealed the Board's finding on jurisdiction in 116/08 and 73/15 to the court.

Green Action Centre will argue that Mr. Chernick's proposed bill affordability program, or alternatives such as those considered by the Affordability Working Group fall within the legislative framework set by *The Manitoba Hydro Act*, *The Crown Corporations Public Governance and Accountability Act* and *The Public Utilities Board Act*.

In addition, our position regarding conservation and affordability is grounded in *The Sustainable Development Act*. In Board Order 117/06, the Board held that both the Public Utilities Board and Manitoba Hydro were subject to *The Sustainable Development Act* (page 58). We will rely upon the guiding principles set out in Schedule A of *The Sustainable Development Act* that emphasize that decisions must adequately reflect social consequence and present and future social well being. We will also be relying upon Schedule B that sets out that decisions be made with proper resource pricing, demand management and resource allocation.

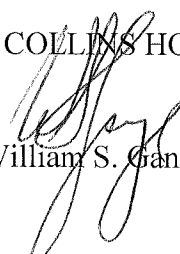
We also expect to rely upon *The Efficiency Manitoba Act* to consider the ability of Efficiency Manitoba to carry forward measures introduced by Manitoba Hydro for bill mitigation.

I trust that this sets out the position of Green Action Centre.

Yours very truly,

GANGE COLLINS HOLLOWAY

Per:


William S. Gange

WSG/lc