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October 6, 2017

Mr. D. Christle  
Secretary and Executive Director  
Public Utilities Board  
400-330 Portage Avenue  
Winnipeg, Manitoba  
R3C 0C4

Dear Mr. Christle:

**RE: MANITOBA HYDRO 2017/18 & 2018/19 GENERAL RATE APPLICATION (“GRA”) – CSI  
MOTION - MANITOBA HYDRO REPLY TO INTERVENOR SUBMISSIONS**

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**Background**

In May and June of 2017 Manitoba Hydro filed responses on the public record to Minimum Filing Requirement (“MFR”) requests submitted by the Public Utilities Board of Manitoba (“PUB”). A number of the MFRs required the Corporation reference confidential and commercially sensitive information in order to be responsive. Where possible Manitoba Hydro aggregated information or otherwise provided descriptive responses suitable for the public record. In some instances it was necessary to redact or remove information from the public filing.

On September 5, 2017, Manitoba Hydro filed its responses to First Round Information Requests (“IR”). A limited number of the PUB’s first round IRs required Manitoba Hydro disclose confidential and commercially sensitive information which information was redacted or removed from the public filing.

On September 7, 2017 Manitoba Hydro filed a motion pursuant to Rule 13 of The PUB’s Rules of Practice and Procedure (“Rule 13 Motion”) seeking an Order of the Public Utilities Board of Manitoba (“PUB”) that it receive in confidence Manitoba Hydro’s responses, or portions thereof, to certain PUB Minimum Filing Requirements as identified in the motion materials. Copies of the full responses, with redactions removed were also filed with the PUB on September 7, 2017.

*Available in accessible formats upon request*

On September 11, 2017 the PUB issued correspondence directing that Intervenor written response submissions are to be filed with the PUB and provided to all parties by 4:00 pm, Tuesday September 26, 2017 and that Manitoba Hydro's Reply is to be filed by 4:00 pm on Friday, October 6, 2017. The PUB further directed that should any Party have comments with respect to any IRs arising from the information that is the subject of Manitoba Hydro's Rule 13 Motion, those comments should be provided with the Party's submission.

On September 21, 2017 Manitoba Hydro filed a Rule 13 Motion with respect those PUB IRs that had been identified as containing confidential or commercially sensitive information (collectively "CSI") in its September 5, 2015 filing of response to first round IRs. Copies of the referenced responses, with redactions removed were also filed with the PUB on September 21, 2017.

On September 26, 2017, the Consumers Association of Canada (Manitoba)/Winnipeg Harvest ("Coalition" ) filed its written response to Manitoba Hydro's Rule 13 Motion. The Coalition also filed its own motion seeking access to certain confidential and commercially sensitive materials contained in responses to MFRs and sought clarification, additional information or access to confidential and commercially sensitive materials contained in Manitoba Hydro's first round IRs.

On September 27, 2017 Green Action Centre ("GAC") and Manitoba Industrial Power Users Group ("MIPUG") filed responses to Manitoba Hydro's Rule 13 Motion. GAC also sought disclosure of Manitoba Hydro's response to a PUB IR filed in confidence with the PUB. On October 4, 2017 MIPUG filed a supplemental submission dealing with Manitoba Hydro's September 7, 2017 Rule 13 Motion.

Manitoba Hydro's submission is intended to respond to Intervenor submissions with respect to Manitoba Hydro's Rule 13 Motion as well as to respond to The Coalition's September 26, 2017 response to Manitoba Hydro's Rule 13 Motion and the Coalition's Rule 13 Motion as well as respond to GAC and MIPUG's September 27, 2017 submissions in their entirety.

It is of note that with only minor exceptions<sup>1</sup> no party objected to the PUB receiving in confidence the information which Manitoba Hydro has identified as confidential in its responses to PUB MFRs. Similarly there were few objections to the PUB receiving in confidence the Information Requests identified in Manitoba Hydro's September 21, 2017 Rule 13 motion.<sup>2</sup> There being no issues raised with respect to the balance of information

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<sup>1</sup> MIPUG objected to the redaction of Great Northern transmission Line costs being afforded confidential treatment in PUB/MFR 20. MIPUG also commented generally that BCG rates for service information should be disclosed. Manitoba Hydro's response to MIPUG's comments can be found in Appendix B and G.

<sup>2</sup> The Coalition and GAC sought release of information filed in confidence in PUB/MH I-131b (marginal cost information) dealt within in

identified as confidential in Manitoba Hydro Rule 13 motions, the PUB should accept Manitoba Hydro's submissions and afford the information confidential status.

Intervenors did however seek access to certain information under terms of confidentiality. The Coalition filed a separate motion seeking disclosure under terms of a confidentiality agreement to a number of confidential documents. MIPUG and GAC also sought disclosure of certain confidential PUB MFRs however did not identify their requests as being motions for disclosure. Manitoba Hydro will respond to all such submissions within the context of this Reply Submission, including requests for disclosure of or to compel responses to First Round Information Requests.

In a number of instances the Intervenors' submissions deal with the same subject matter and as such Manitoba Hydro's response is organized by topic in the attached Appendices.

Manitoba Hydro has a number of comments that are applicable to requests for disclosure of commercially sensitive information under terms of confidentiality which apply generally and which it will address in the main body of this submission.

### **Non-Disclosure Agreements**

The Coalition, MIPUG and GAC each suggest they be authorized access to confidential or commercially sensitive information pursuant to the terms of a PUB authorized Non-Disclosure Agreement (NDA). Confidentiality agreements do not adequately address a number of fundamental issues related to the disclosure of Manitoba Hydro and Third Party confidential information.

The membership of some Intervenor groups includes individuals or entities who actively oppose Manitoba Hydro's plans and operations. It would be unacceptable to turn over confidential information in these circumstances as even the most well intentioned individuals could be replaced or over-ruled by their membership. There also exists varying degrees of experience in handling information with this degree of sensitivity as between Intervenor groups. Lay persons may not be adequately informed as to the significance of the information.

Some Intervenors, legal counsel and advisors actively participate in other regulatory processes. Once seen, the confidential information can't be unlearned or erased. Insights regarding the business affairs of adverse parties will inevitably be remembered and carried

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Appendix "E" herein. The Coalition also sought PUB/MH I-50b (forecasts of dependable energy premiums and capacity premiums), dealt with in Appendix "C" herein

over into other proceedings at other times, even if it is never disclosed. In past PUB processes, and despite Manitoba Hydro's prior identification of CSI in IEC Reports, IECs have looked to Manitoba Hydro during oral testimony to determine whether they are venturing where they ought not go on the public record. Relying on Intervenors to govern themselves outside of the PUB process represents a risk the PUB ought not to introduce to the electric regulatory process. The stakes are too high, the risk of disclosure (inadvertent or otherwise) too great.

Limiting the disclosure to certain Intervenors is not the answer. Manitoba Hydro seriously questions the wisdom of setting the precedent for this type of access and putting the PUB in the extremely difficult position having to authorize access to some parties and deny others going forward. There also exists procedural fairness issues with this approach.

The Coalition acknowledges that Intervenors have not been provided access to CSI in earlier proceedings but attempts to argue that Order in Council 00092/2017 (OIC 92/17) somehow serves to change the nature of the protection confidential information should be afforded. To the contrary, while OIC 92/17 arguably streamlines the transfer of information between Manitoba Hydro and the PUB, it expressly recognizes that there exists a need to protect commercially sensitive information. OIC 92/17 does not alter the PUB's jurisdiction nor does it in any way suggest the PUB change its practices with respect to the treatment of such information. At the June 12, 2017 Pre-Hearing Conference Mr. Williams, on behalf of the Coalition, expressed almost verbatim agreement with this statement:

...I can indicate on behalf of our clients that—that like our friends from the Manitoba Industrial Power Users Group, we did not see the Order in Council sig—expanding the Board's jurisdiction in any meaningful way. We did say it—see it as streamlining the transfer of information between the – the regulatory process and Manitoba Hydro. (Pre-Hearing Conference, June 12, 2017, transcript p. 273)

Manitoba Hydro's experience in attempting to negotiate these agreements in the regulatory arena is that Intervenors and their advisors are unwilling to enter into agreements containing usual commercial terms, notably meaningful consequences for breach, for example liquidated damages provisions. Counterparties in jurisdictions such as Minnesota are accustomed to the existence of significant penalties for the release of their confidential information including incarceration and substantial fines. The lack of meaningful consequences in a confidentiality agreement represents a serious impediment to their adoption in Manitoba.

Where liquidated damages are not incorporated in confidentiality agreements, actual damages must be proven. The quantum of damages associated with the disclosure of

Manitoba Hydro's CSI has the potential to be extremely large, but very difficult to quantify. By way of example, release of confidential information related to the negotiation of export sales contracts can be used to extract concessions worth millions of dollars from the transaction, but parties will never know how the transaction would have turned out had the breach not occurred.

The practicality of enforcing the terms of confidentiality agreements (including those with meaningful consequences), particularly against Intervenors who are unlikely to possess the financial wherewithal to make payment of meaningful damages feasible, represents another significant issue with the proposed use of confidentiality agreements.

The use of confidentiality agreements does not serve to address the issues associated with Third Party Information. Much of the information which Intervenors propose to access under terms of confidentiality in this GRA is Third Party Information. As indicated in Manitoba Hydro's Rule 13 Motion (p. 3) Manitoba Hydro owes a contractual or fiduciary duty to maintain Third Party Information in confidence unless consents are received. Consents received were generally on the express condition that the information only be released to the PUB. No consents to disclose information to Intervenors pursuant to terms of confidentiality were received. As such, if the PUB authorizes release of confidential information pursuant to NDAs, Manitoba Hydro will be required to request the return of the information and thereafter trigger the notice of mandatory disclosure provisions in the affected contracts. At that point Third Parties will take such steps they consider necessary to protect their information. Manitoba Hydro believes this exposes the process to unnecessary risk of delay, particularly given the steps taken by the PUB to retain Independent Expert Consultants to assist Intervenors with issues associated with commercially sensitive information.

An additional risk of failing to meet Third Parties' legitimate expectations with respect to the treatment of their confidential information is that they may decline to deal with Manitoba Hydro or otherwise continue to share information that supports Manitoba Hydro's success and/or assists the PUB in getting the information it needs in order to make good rate decisions. Given the role of the IEC in this process and Third Parties' consents to share commercially sensitive information with the IEC, it is unnecessary to antagonize Third Parties with the exercise of forced disclosure.

The Coalition recognized that a breach of confidentiality could lead to financial loss to the Corporation which in turn will lead to higher rates to ratepayers. The fact is, the more parties who have access to the information, the higher the likelihood a breach will occur. The recent inadvertent disclosure on the British Columbia Utilities Commission's (BCUC)

website of the unredacted version of the commercially sensitive BCUC commissioned Deloitte LLP Site C Report, (an independent expert report containing confidential contract, budget, risk and business strategy information) and subsequent publication of the entire unredacted report in the Vancouver Sun<sup>3</sup> is a prime example of the risks associated with sharing this type of information. The risk of disclosure increases as the number of parties with access to the information grows. This is an unnecessary additional risk given the role of Independent Expert Consultants in the Manitoba process.

### **The Coalition's Proposed Form of NDA**

The Coalition suggests the form of Non-Disclosure Agreement could be based on the form used in the current Manitoba Public Insurance (MPI) PUB proceeding. Manitoba Hydro points out that this form of NDA does not address the concerns raised by the utility as detailed above.

It should be understood that the risks associated with use of this NDA in the context of MPI's operations are not comparable to those of Manitoba Hydro – the consequences of breach for MPI pale in comparison. Manitoba Hydro is advised that this form of NDA was used in a situation where the information needed to remain confidential for a short period of time. Manitoba Hydro understands that there existed no concerns with disclosing the information to all Intervenors and that it was simply a timing issue. Further, Manitoba Hydro is not aware of any Third Party Information having been at issue in the MPI process. The situations are clearly not analogous. In addition to significant differences with respect to the sensitivity of the information and the consequences of breach, unlike MPI's situation, the timeframes under which Manitoba Hydro must maintain information in confidence often extends out several decades and in some instances the obligation does not expire.

### **MIPUG's B File Proposal**

MIPUG proposes the PUB adopt a process it indicates the Court of Queen's Bench uses when dealing with confidential information. Manitoba Hydro points out that the B File process is not appropriate for the treatment of confidential information in this process nor is the protection of confidential information the purpose of B Files in the adjudication of disputes by means of trial or application at the Court of Queen's Bench as indicated by MIPUG.

MIPUG's statement that B Files are used in "to ensure all parties obtain full disclosure in the public court process to ensure that a decision is made after a review and testing of all relevant evidence" is made without reference to authority and is incorrect. MIPUG

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<sup>3</sup> <http://vancouversun.com/news/local-news/site-c-read-here-deloittes-unredacted-bombshell-report-to-the-b-c-utilities-commission>

reproduced extracts from the Court of Queen's Bench Rules including Rule 4.09(2), but neglected to bring the immediately preceding Rule 4.09(1) to the PUB's attention:

4.09(1) All documents filed or deposited with the court in connection with a case conference (Rule 20A), pre-trial conference (Rule 50 or rule 70.26), case management conference (rule 70.24) or judicially assisted dispute resolution conference shall be kept in a separate court file known as a "B" file.

B Files are used (with a deemed undertaking) for the purpose of facilitating pre-trial negotiation. If settlement is not achieved, the trial judge in the trial do not review the B File information.<sup>4</sup> Confidential information associated with a litigation matter is generally dealt with in the court process as a one-time event. The regulatory process deals with the similar issues and parties repeatedly with a record of information building over time. Information in a regulatory process is not for settlement purposes nor can it be unlearned in future processes. B Files are not intended for a very narrow purpose and do not address the concerns associated with disclosing commercially sensitive information as outlined with respect to confidentiality agreements above.

#### **Payment for Third Party Information**

MIPUG takes the position that where the option exists for the PUB to "exercise its documentary production powers through Minimum Filing Requirements to require production of a third party report at no cost, that power should be exercised."<sup>5</sup> These reports represent the work product, intellectual property and livelihood of the third parties who produce them. It is inappropriate to use the PUB's production powers in order to avoid to obtain access to Third Party Information on anything other than reasonable commercial terms. To do otherwise could result in Manitoba Hydro finding itself in a position where the creators of these reports will no longer deal with the Corporation.

#### **Weight to be Afforded Information Held In Confidence By the PUB**

MIPUG makes the comment that it does not object to the confidentiality sought by Manitoba Hydro provided that the PUB places no weight on the evidence that is not on the public record. This is ludicrous. The PUB must at all times balance the interests of ratepayers with the financial health of the utility. This cannot occur if the PUB is barred from taking into consideration commercially sensitive information the disclosure of which could negatively impact the financial health of the utility and by extension, the ratepayer. The PUB is not strictly bound by the rules of evidence and has itself created a process for the filing of

<sup>4</sup> Bulloch v. LaFreniere, 2012 MBQB 315 (Rempel J.)

<sup>5</sup> Thompson Dorfman Sweatman letter dated September 27, 2017 at p. 3

information in confidence in its Rules of Practice and Procedure. MIPUG's added proviso is self-serving and not in the public interest.

Manitoba Hydro deals with each of the Intervenor submissions in the attached Appendices:

- Appendix "A" Credit Rating Agency Reports
- Appendix "B" Construction of Major Projects
- Appendix "C" Export Price Forecasts
- Appendix "D" Load Forecast Information
- Appendix "E" Marginal Cost Information
- Appendix "F" Export Contracts, Revenues and Related Information
- Appendix "G" BCG Materials

If you have any questions or comments with respect to this submission, please contact the writer at 204-360-3946 or Odette Fernandes at 204-360-3633.

Yours truly,

MANITOBA HYDRO LEGAL SERVICES DIVISION

Per:



PATRICIA J. RAMAGE  
Barrister & Solicitor

cc:

Bob Peters, Board Counsel  
Dayna Steinfeld, Board Counsel  
All Interveners of Record



## APPENDIX "A" – CREDIT RATING AGENCY REPORTS

The Coalition and MIPUG seek access to the full response to PUB MFR 60 and PUB MFR 78 i.

The Coalition seeks to compel a more complete response to Information Request PUB/MH I-60b

Manitoba Hydro filed a number of credit rating agency reports in response to PUB MFR 60 and PUB MFR 78i. Manitoba Hydro was unable to secure the requisite permissions to file all of the reports on the public record.

Credit Rating Agency reports are not confidential to Manitoba Hydro and Manitoba Hydro has no objection to any Intervenor viewing the reports. The issue which Manitoba Hydro was addressing is that Standard & Poors and Moody's were not prepared to allow Manitoba Hydro or the PUB to post the reports on their website or otherwise distribute the reports free of charge. The cost charged to Manitoba Hydro for provision of these reports is substantial.

Manitoba Hydro reached out to both Moody's and Standard & Poors requesting information regarding the cost to Intervenors of accessing the specific reports requested.

Moody's indicated that: "The Credit opinions have a cost of \$250 US dollars each and rating actions are for free. If the Intervenors register for free to <http://www.moody's.com> they will be able to read for free the rating actions, announcements and methodologies as well as looking at the ratings. We kindly let you know that these are public reports and the Intervenors can purchase the reports from the Moody's site."

Standards & Poors advised that "the summary of the reports are \$225 each and the full reports are \$500 each. Due to the delay in getting back to you, I got approval from my manager to allow you to share them with the two Intervenors ( Consumers Association of Canada (Manitoba)/Winnipeg Harvest and the Manitoba Industrial Power Users Group) at no cost. This is with the understanding that they do not reproduce, disclose any commercially sensitive material, or give away our reports, and use them for the purpose of your case."

The Coalition and MIPUG share an advisor on this topic, Morrison Park Advisors. In the circumstances Manitoba Hydro suggests Morrison Park Advisors access the Moody's Reports online and include its costs in the amount billed to its clients. Manitoba Hydro acknowledges that this cost will be included in the Intervenor's final bills. Manitoba Hydro will supply the Coalition and MIPUG with one copy each of the requested Standard and

Poors reports.

Manitoba Hydro cautions that it endorses this approach in these unique circumstances only. Specifically because the information at issue is not confidential, can be shared with all parties at a conceptual level (including quotations) and because the cost is reasonable in the circumstance. If multiple parties sought access to otherwise public information at Manitoba Hydro's expense and where there existed alternative means of dealing with the information such as through the participation of the Independent Expert Consultants, Manitoba Hydro's position may not be the same.

If this approach is acceptable to the PUB, Manitoba Hydro requests the PUB include in its order a condition that the Coalition and MIPUG acknowledge and agree that neither will reproduce, disclose any commercially sensitive material, or give away the Standard and Poor's reports, or use them for any other purpose than the current Manitoba Hydro General rate Application.

Manitoba Hydro believes it necessary to dispel certain inaccuracies contained in the Coalition and MIPUG's submissions. Core to the Coalition and MIPUG's arguments for access to credit rating information is that Manitoba Hydro has or intends to make credit ratings a major point of support for the proposed rate increases. MIPUG gives notice of its position that the authors need to be called by Manitoba Hydro to testify so that they can be tested on what has been written.<sup>6</sup>

Manitoba Hydro disputes the characterization Intervenor's have afforded the credit rating report evidence. Intervenor's treat the evidence as being Manitoba Hydro proffered opinion evidence, subject to challenge, debate and a ruling by the regulator as to whether it accepts the conclusions contained in the report.

Credit rating agencies regularly assess the relative credit risk of the Province of Manitoba. Manitoba Hydro's long and short term credit ratings are a flow through from the Province of Manitoba's credit ratings. These assessments are obtainable by any party who is prepared to agree to the given agency's commercial terms for access and use. The credit rating agencies are independent entities who form and market their own opinions on Manitoba Hydro's creditworthiness notwithstanding Manitoba Hydro's concurrence (or otherwise) with any of their conclusions. In order to effectively issue debt, or enable the Province of Manitoba to issue debt on the Corporation's behalf or for its own purposes, Manitoba Hydro must allow its operations and financial conditions to be reviewed by said agencies. The credit rating, assessment and associated commentary are facts which the Corporation must deal with in

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<sup>6</sup>Thompson Dorfman Sweatman letter dated September 27, 2017 at p. 1

structuring its finances and business operations. Such ratings, assessments and commentaries can inform decisions financial market participants make when considering whether to advance credit to the Corporation and/or the Province of Manitoba and at what price.

Whether the Coalition, MIPUG or even the PUB itself disagrees with the credit rating or related commentary is irrelevant to the treatment afforded to Manitoba Hydro by the financial community. Manitoba Hydro's current and future cost of debt is what is relevant for rate setting purposes. Cost of debt is influenced by credit ratings, rating outlooks and commentary. The rating agencies' commentaries are also relevant to understanding the rating agencies concerns and how the regulator can address those concerns through its rate orders.

The PUB is not bound by the technical rules of evidence.<sup>7</sup> The PUB has on multiple occasions in the past, directed Manitoba Hydro to file credit rating reports and these reports have been discussed during the oral portion of the hearing, sometimes at length. At no point has it been suggested that it is necessary to call the author of the report. Manitoba Hydro notes that the Court of Queen's Bench Rules authorizes proof of a particular fact or document to be given as specified by the trial judge<sup>8</sup> such that even where the rules of evidence do apply, discretion does exist.

#### **PUB/MH I-60b**

The Coalition seeks a more complete response to PUB/MH I-60b :

Please provide all presentations and communications made by and to S&P, Moody's and DBRS since 2015.

The Coalition acknowledges Manitoba Hydro provided copies of presentations made to the rating agencies but seeks copies of materials provided by the agencies to Manitoba Hydro as well as notes or reports in the possession of Manitoba Hydro describing the meetings. Manitoba Hydro notes that the latter portion of this request (notes and reports describing the meetings) did not form part of the Information Request. It is not open for Intervenors to use this process to seek new information or expand an Information Request.

Manitoba Hydro can confirm that the answer provided to this Information Request represents a full and complete response. The Credit Rating Agencies did not make any

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<sup>7</sup> The Public Utilities Board Act, s. 24(1)

<sup>8</sup> Manitoba Regulation 553/88 Court of Queen's Bench Rules, Rule 53.03(1)

presentations to Manitoba Hydro. Manitoba Hydro did not prepare any reports following the meeting nor were minutes exchanged.

For further information please see Appendix E to Manitoba Hydro's September 7, 2017 Rule 13 Motion.

## APPENDIX "B" CONSTRUCTION OF MAJOR PROJECTS

No Intervenor other than the Coalition has sought access to additional information regarding the construction of Keeyask and Bipole III. Manitoba Hydro agrees with MIPUG's assessment that "it is not apparent that any individual item covered by the Appendix is uniquely central to issues at hand in the proceeding, in a manner that will not be adequately addressed by the IECs..."<sup>9</sup>

The Coalition suggests it be provided access to commercially sensitive information pursuant to the terms of a confidentiality agreement. Manitoba Hydro outlined its concerns with the use of confidentiality agreements in the main body of this submission. Manitoba Hydro opposes the disclosure of commercially sensitive information to Intervenors using confidentiality agreements or otherwise.

Specifically with respect to major project related confidential information, the British Columbia Utilities Commission was recently called upon to determine whether commercially sensitive information (similar to the requested Keeyask and Bipole III information) should be disclosed to intervenors pursuant to confidentiality terms in the course of its Inquiry into BC Hydro's Site C project. The British Columbia Utilities Commission declined to provide intervenors and their advisors access to unredacted materials disclosing financial and budget information, contingency amounts, timeframes, contract information, business strategy and the like related to the construction of Site C, and noted that:

In this case, redacted information in the Deloitte Report No. 1 and in BC Hydro's submission of data and analysis, could reasonably be expected to result in significant harm or prejudice to BC Hydro's current and future negotiating position with its contractor(s), which would ultimately increase costs to ratepayers and therefore not be in the public interest to release.<sup>10</sup>

The Coalition's statement that none of its legal counsel, clients or advisors are business competitors of Manitoba Hydro or have commercial interests in the projects and thus should be provided access to commercially sensitive information demonstrates a lack of understanding of the breadth of the Keeyask and Bipole III Projects and fails to address fundamental concerns with releasing this type of information.

The risk of harm from disclosure of this type of information is compounded by the fact that Manitoba Hydro is generally unable to identify those parties who may be able to benefit from accessing the commercially sensitive information to the detriment of the utility and

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<sup>9</sup> Thompson Dorfman Sweatman letter dated September 27, 2017 at p. 6

<sup>10</sup> BCUC Inquiry Respecting Site C, Exhibit A-16, British Columbia Utilities Commission, correspondence dated September 29, 2017

participating contractors. To be clear Manitoba Hydro's concern is not, as suggested by the Coalition, with Intervenor, their legal counsel and advisors being in competition with the utility (a monopoly electricity provider). The Corporation's concern is whether there exists a relationship with an individual or entity (including current or potential contractors, suppliers, stakeholders together with their employees, members and associates) who has an interest in using commercially sensitive information found in the Risk Registry, Recovery Plan or productivity measurements in order to gain an advantage over Manitoba Hydro, its contractors, suppliers or stakeholders. The Keeyask Project is enormous, utilizing a huge number of local and extra-provincial contractors and suppliers acting in their own capacity and as part of joint ventures or as sub-contractors. In these circumstances, limiting disclosure of commercially sensitive information, particularly given the role of the Independent Expert Consultant in this process, is in the public interest.

While OIC 92/17 serves to place added emphasis on capital expenditures and associated documentary disclosure to the PUB in OIC 92/17, it also recognizes there exists confidentiality issues related to the public disclosure of that information. The PUB has addressed those concerns by retaining an Independent Expert Consultant to review complex and highly sensitive commercially sensitive documents. It is unnecessary from both a regulatory efficiency and risk of disclosure perspective to duplicate the Independent Expert Consultant's efforts.

The PUB should, consistent with the decision of the British Columbia Utilities Commission conclude that disclosure of major project related commercially sensitive information to Intervenor is not in the public interest.

### **Keeyask**

The Coalition seeks access to:

1. The Keeyask Risk Registry (PUB MFR 129);
2. The projection of Contractor's productivity rate for Keeyask (COALITION/MH I-208a);
3. Forecast versus actual productivity for each contract by construction season Productivity Reports (PUB MFR 143); and
4. Keeyask Recovery Plan Strategy Report (COALITION/MH I-208j)

The Coalition indicates that its advisor is conducting a "reasonableness analysis" of the large capital projects for which he requires further information to assess the impact on rates of the rising cost estimates and delayed schedule, risks generally including geotechnical issues, productivity challenges and the reasonableness of the strategy established to complete the project.

The Keeyask Risk Registry (PUB MFR 129) and Recovery Plan (COALITION/MH I-208j) are expansive documents which outline the risks associated with a project, identify parties associated with those risks (eg. contractors, stakeholders) and set out strategic actions to be taken, all at a very detailed level. Manitoba Hydro notes that it fully responded to COALITION/MH I-208j as posed – “Was there a report prepared regarding the Recovery Plan? If so, can the report be filed in evidence? The manner in which this question was posed strongly suggests the author understood that the information was highly confidential and could not be filed in evidence.

Manitoba Hydro notes that PUB MFR 143 provides a detailed response regarding how it calculates productivity in each of the Keeyask contracts. The only information that has been redacted from the public record is a comparison of forecast and actual productivity for each construction season to date. The obligation to be transparent and provide as much information as reasonably possible has been met.

COALITION/MH I-208a, requested bid information regarding productivity rates, whether there has been an improvement in this area and the projected productivity rate. Manitoba Hydro provided a qualitative response outlining issues and the plan to address those issues. Requiring disclosure of bid information and a specific contractor’s current productivity rate is unnecessary in the circumstance. As noted in Manitoba Hydro’s September 7, Rule 13 Motion, release of such information has the potential to harm both the contractor and Manitoba Hydro’s competitive positions. In Manitoba Hydro’s view only current and forward looking information is relevant in this rate review. Nevertheless the Independent Expert Consultant has been provided with access to all of this information. The obligation to be transparent and provide as much information as reasonably possible has been met.

The public record discloses a vast amount of information regarding the Keeyask project including current and previous budgets and identifies the underlying reasons for changes to the budget and project risks. The Independent Expert Consultant will have access to granular information when assessing the current budget and project risk, and may take into consideration a host of factors (including productivity challenges and geotechnical issues) when providing its public report. It is at that point open to Intervenor to address potential impacts to rates for service. Intervenor do not require access to commercially sensitive information at the granular level in order to participate meaningfully in the process.

For further information regarding the Keeyask Risk Registry please refer to Appendix F-5 to Manitoba Hydro’s September 7, 2017 Rule 13 Motion.

For further information regarding Productivity Rates please refer to Appendix F-4 to Manitoba Hydro's September 7, 2017 Rule 13 Motion.

**Bipole and Converter – Proposals, Third Party Estimate Reports**

The Coalition seeks access to:

1. Addendum 08a dated 26 October 2016 and subsequent Addenda for the Bipole (PUB MFR 155);
2. Third Party estimate reports for evaluation of HVDC equipment bids (PUB MFR 160);
3. Table of HVDC converter equipment proposals with engineer's or third party estimates (PUB MFR 161); and
4. Rashwan Consulting Report (PUB MFR 164).

**PUB MFR 155**

The Coalition has in its possession the entire record of Capital Project Justifications for the Bipole III Transmission Project including the Addendum 08a, dated October 14, 2016,<sup>11</sup> with redactions of Addendum 8a being limited to the total contingency amount for the transmission line component of the project and a description of the remaining risks (i.e. post 2016) related to the transmission line contingency amount broken down by contract or cost category.

As noted in Manitoba Hydro's September 7, 2017 Rule 13 Motion, if detailed contingency dollars are revealed on the public record, less scrupulous contractors may be incited to plan work to gain access to those sums.

Manitoba Hydro notes that the Coalition does not address Addendum 08d (Community Development Initiative) and it is unclear to Manitoba Hydro whether the Coalition is requesting disclosure of this document and on what basis. Addendum 08d contains minor redactions related to a budget decrease. Manitoba Hydro confirms it opposes release of this information on the basis outlined in Appendix F-3 to its September 7, 2017 Rule 13 Motion. Manitoba Hydro would request an opportunity to respond if the Coalition indicates it seeks disclosure of this information and provides reasons for requiring such access.

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<sup>11</sup> The Coalition incorrectly identifies the date of this document as being October 26, 2016



PUB MFR 160, PUB MFR 161 and PUB MFR 164

Each of these MFRs focus upon Bipole III converter equipment bids – third party estimate reports used in the evaluation of the bids (PUB MFR 160); a table comparing converter equipment proposals with engineers or third party estimates (PUB MFR 161) and a copy of “A Review of Manitoba Hydro Cost Estimates for Bipole III Converter Stations and Associated Facilities” dated February 18, 2011, which the Coalition refers to as the “Rashwan Report” (PUB MFR 164).

The Coalition states that it wishes to explore issues related to the estimates for HVDC converter stations and synchronous condensers. The equipment and materials in question have already been procured and construction is near completion. The costs of the equipment are well established and are not subject to change at this late stage. Those current cost estimates are properly the focus of a rate review. Manitoba Hydro submits that a review of decisions made and which cannot be reversed are irrelevant to a rate review in for the 2017/18 and 2018/19 test years.

The Coalition should not be allowed to divert precious regulatory time and resources on matters which cannot be changed, which do not impact current rate decisions and are outside of the PUB’s mandate as defined by legislation and OIC 92/17. The entire record has been made available to the Independent Expert Consultant retained by the PUB to review major capital expenditures. To such extent there exists relevant information to the current rate review, the Independent Expert Consultant can bring it forward in a manner that does not disclose commercially sensitive information.

It should be recognized that despite the Corporation’s views regarding the relevance of the requested information as it relates to rate for service in the current GRA, it filed complete responses to PUB MFR 160 and 161. Manitoba Hydro notes that PUB MFR 161 contains bid information, including proponent specific pricing and cannot be disclosed.

PUB MFR 160 discloses the blended or average budgetary pricing from three leading HVDC equipment vendors and the industry standard pricing from CIGRE (International Council on Large Electrical Systems). Upon further consideration, Manitoba Hydro concludes that these blended values are not commercially sensitive information. While raised in the context of the Coalition’s motion, Manitoba Hydro did not consider relevancy when filing responses to other MFRs. As such, consistent with this approach Manitoba Hydro will file an unredacted copy of PUB MFR 160 on the public record.

Manitoba Hydro provided the main body of the Rashwan report on the public record. The confidential portion of the report are the appendices which are detailed Manitoba Hydro estimate documents. The summary values from the estimate are captured in the main body of the report. The appendices contain commercially sensitive details on Manitoba Hydro costs that don't add any further context to the report itself. Nevertheless the Independent Expert Consultant has been provided this granular information. The obligation to be transparent and provide as much information as reasonably possible has been met.

For further information regarding Bipole III related MFRs please see Manitoba Hydro's September 7, 2017 Rule 13 Motion, Appendix F-3.

### **Manitoba-Saskatchewan Transmission Project**

The Coalition seeks access to:

1. The latest Capital Project Justification underlying the Manitoba-Saskatchewan Transmission Project with the most recent Net Present Value calculation (COALTION/MH I-213 a));
2. Identification of changes in underlying assumptions used for the Net Present Value Calculation and a reconciliation of the Net Present Value Calculation with such changes (COALTION/MH I-213 b))

Manitoba Hydro's response to these Information Requests indicates that public disclosure of the response to this question will release commercially sensitive information and suggests the Coalition review its concerns with the PUB's Independent Expert Consultant.

Manitoba Hydro filed the Capital Project Justification for the Manitoba-Saskatchewan Transmission Project, dated October 1, 2015 in response to PUB MFR 195 with commercially sensitive information redacted. A summary of the business case analysis is included in the Capital Project Justification with the only redaction being the estimated value of the fixed revenue stream arising from the twenty year 100 MW system power sale linked to the transmission project.

A Capital Project Justification containing a Net Present Value Calculation for the Manitoba-Saskatchewan Transmission Project does not exist. The Manitoba-Saskatchewan Transmission Project came about as a result of a sale between Manitoba Hydro and SaskPower where SaskPower identified it has a need for Manitoba Hydro power. In these circumstances the cost of the new transmission line is included in the sales evaluation. The Saskatchewan Power 100/140 MW Sale Evaluation has been filed in these proceedings in response to PUB MFR 196 with commercially sensitive information redacted.

Manitoba Hydro notes that the Coalition has not sought disclosure of the commercially sensitive information contained in the sales evaluation. For completeness of the record, Manitoba Hydro can advise that the sales evaluation discloses confidential terms of the Power Purchase Agreement including price and negotiated items specific to the transaction. Public disclosure of this information would negatively impact the Corporation's negotiating position with other parties and is the subject of confidentiality terms as between Manitoba Hydro and SaskPower.

Manitoba Hydro can advise that in discussions with SaskPower regarding this Information Request, SaskPower advised that it has never shared commercially sensitive information with an intervenor (power purchase agreement specific or otherwise) and did not consent to doing so in this proceeding.

Manitoba Hydro submits that it has fully responded to both COALITION/MH I-213 a) and b) to such extent information is available.

#### **Great Northern Transmission Line**

The Coalition seeks access to:

1. The Capital Project Justification for the Great Northern Transmission Line, with redactions removed (PUB MFR 186).
2. Updates to NFAT Exhibits Manitoba Hydro 139 (Items 1-4) and Manitoba Hydro 168 related to the GNTL capital and operating cost responsibilities of Manitoba Hydro and Minnesota Power with redactions removed (PUB MFR 187).

In addition, MIPUG seeks access to:

1. The 20 year forecasts of revenue requirements including cost components for the Great Northern Transmission Line (PUB MFR 20).

Manitoba Hydro notes that it has provided complete responses to each of the above noted PUB MFRs and that the only information that has been redacted from the public versions of these responses relates to Minnesota Power budget and cost estimate information. This information was redacted at Minnesota Power's request as outlined in its letter of June 15, 2017 to 6690271 Manitoba Ltd., a copy of which was attached as Schedule "A" to Appendix "G" of Manitoba Hydro's September 7, 2017 Rule 13 motion.

MIPUG argues that the information requested in PUB MFR 20 is Manitoba Hydro's forecast

of financial impacts and is not Minnesota Power information and interprets such information as being outside the scope of Minnesota Power's June 15, 2017 letter. MIPUG questions why information of a type previously disclosed on the public record is now considered confidential.

Manitoba Hydro, through its subsidiary 6690271 Manitoba Ltd. provided Intervenor submissions to Minnesota Power for review. By letter dated October 3, 2017 Minnesota Power provided its response, a copy of which is attached hereto as Schedule "A".

Manitoba Hydro believes it both reasonable and necessary to respect Minnesota Power's processes and timelines for the release of its information. Minnesota Power's position regarding potential adverse effects on relationships with its regulator, its ratepayers and even on future working relationships with Manitoba Hydro and its subsidiary company if Great Northern Transmission Line information is prematurely released in the PUB process ought to be of great concern to Manitoba Hydro and its regulator.

The development of cross-border transmission involves determinations of need, environmental assessments, licensing and regulatory procedures in two countries often with different, even conflicting, requirements and timelines. Development of the Great Northern Transmission Line is essential to expanding Manitoba Hydro's import and export capabilities and is a vital component of several long term power purchase agreements. In order for Minnesota Power to realize a generation portfolio which includes a substantial hydropower component, Minnesota Power has been willing to construct the Great Northern Transmission Line in the state of Minnesota with Manitoba Hydro's subsidiary 6690271 Manitoba Ltd as a participant in its development and construction, provided that Minnesota Power's processes, requirements and timelines are respected. It is in the public interest to carefully manage this important relationship.

MIPUG argues that the response to PUB MFR 20 should be disclosed on the basis that it is not Minnesota Power's information but rather Manitoba Hydro's forecast of financial impacts. The redacted information in PUB MFR 20 relates solely to Manitoba Hydro's forecast of expenses as a result of its participation in the construction of the Great Northern Transmission Line. This information is derived from Minnesota Power's construction cost estimate. With information available on the public record of this proceeding it is possible to reverse engineer the information contained in Manitoba Hydro's 20 year financial forecast of Great Northern Transmission Line expenses and reproduce the confidential information. As such Manitoba Hydro requests the 20 year Great Northern Transmission Line financial forecast be held in confidence until such time as Minnesota Power releases its information, in accordance with its processes.

Financial impacts associated with the Great Northern Transmission Line are accounted for in Manitoba Hydro's financial forecasts. More detailed information is in the possession of the PUB and the Independent Expert Consultant. In these circumstances, Manitoba Hydro submits that the appropriate focus of inquiries with respect to the Great Northern Transmission Line is with respect to the relationship between the entities, their respective roles and the controls in place to ensure Manitoba Hydro's interests are adequately addressed.

## APPENDIX "C" EXPORT PRICE FORECASTS

### Export Price Forecast

The Coalition seeks access to Export Price Forecast information specifically:

1. Disclosure of Manitoba Hydro's Electricity Export Price Forecast (PUB MFR 79 and COALITION/MH I-56);
2. Disclosure of the independent Third Party produced forecasts (PUB MFR 79 and COALITION/MH I-57);
3. Information relating to forecasting methodology changes (PUB MFR 79);
4. Information regarding the structure of the model (COALITION/MH I-51), the input assumptions (COALITION/MH I-52), forecasters assumptions regarding carbon costs (COALITION/MH I-55); and
5. Information regarding forecasts of dependable energy premiums and capacity premiums (COALITION /MH I-54 and PUB/MH I-50b).

GAC seeks access to Export Price Forecast information including:

1. Disclosure of the unredacted version of PUB MFR 79;
2. Disclosure of hourly export price information by season and time (GAC/MH I-31);
3. Disclosure of the forecast of Summer, Winter and All-In marginal cost values broken down by Generation Energy, Generation capacity, transmission capacity, Distribution Capacity (PUB/MH I-131 b, which would provide insight to GAC/MH I-21, GAC/MH I-27, GAC/MH I-29, GAC/MH I-30, GAC/MH I-34).

Neither the Coalition or GAC dispute that the information contained in Manitoba Hydro's Electricity Export Price Forecast or the third party purchased electricity export price forecasts is confidential. Both suggest they be provided access to the information pursuant to the terms of a confidentiality agreement.

Manitoba Hydro has outlined its concerns with the use of confidentiality agreements in the main body of this submission. Manitoba Hydro opposes the disclosure of electricity export price information to Intervenors using confidentiality agreements or otherwise.

Manitoba Hydro notes that it is contractually bound to maintain the purchased forecasts in confidence and cannot disclose or enter confidentiality agreements with respect to the forecast information without the consent of the creators of the forecasts. Despite Manitoba Hydro's misgivings regarding the use of confidentiality agreements, following the filing of First Round Information Requests, Manitoba Hydro submitted requests seeking Export Price

Forecasters' consent for public release of their information or release to specific Intervenors under terms of confidentiality. This request did not result in any consents being issued.

Manitoba Hydro agrees with MIPUG's approach to dealing with this commercially sensitive information – "So long as there is some form of public confirmation that the values are being used correctly (e.g. by qualified IEC's conducting a review and publicly publishing their results) MIPUG does not challenge the claim for confidentiality with respect to...third-party forecasts."<sup>12</sup>

In Manitoba Hydro's view it is unnecessary from both a regulatory efficiency and risk of disclosure perspective to duplicate the Independent Expert Consultant's review of the Electricity Export Price Forecast.

#### PUB MFR 79, COALITION/MH I-51, 52, 55, 56 and 57 - Methodology Review

The Coalition indicates access to the forecast information is required in order to conduct "an analysis of the reasonableness of Manitoba Hydro's and third party consultants' forecasting methodologies to ensure that the forecasts used in the rate application are reasonably reliable."<sup>13</sup>

Each of the forecasters have invested in the creation of extremely complex, multi-layered production costing models with capacity expansion capabilities. These are not simple spreadsheets or regression analysis models, but rather complex computer programs with hundreds of inputs and outputs, and with run times typically measured in hours. The models do not lend themselves to the type of review contemplated by the Coalition. The methodologies employed in the model and the modelling assumptions are the forecaster's intellectual property and their most carefully guarded secret. Manitoba Hydro cannot imagine a forecaster consenting to third party review of its methodology nor does it understand why such review would be considered necessary. It is akin to asking vehicle manufacturers for their design drawings when purchasing a car.

Manitoba Hydro receives a summary of key inputs (such as the natural gas, coal and oil price forecasts) and key price related outputs from the electricity price forecasters. Other detailed inputs, such as operating parameters for each generating unit in the market footprint, or all simulation output details, such as individual unit operating detail are not disclosed to Manitoba Hydro and remain confidential to the forecaster. It is also of note that the agreements governing the use of use of price forecast information generally prohibit the

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<sup>12</sup> Thompson Dorfman Sweatman letter dated September 27, 2017 at p. 5

<sup>13</sup> Public Interest Law Centre letter dated September 26, 2017, Appendix "C", p. 10

reverse engineering of the price forecast models (assuming that is even possible given the amount of information that is not shared with purchasers and the complexity of the models).

During the NFAT, Potomac Engineering was retained by the PUB to act as an Independent Expert Consultant. Potomac's Scope of Work included:

1. Review the factors considered to arrive at Manitoba Hydro's export market expectations and comment on whether they are complete, reasonable and accurate. ...
5. Review the capacity revenues projected by Manitoba Hydro, benchmarked against your own forecast of MISO capacity prices in the short term and long-term. ...
6. Review Manitoba Hydro's export revenue forecasting process<sup>14</sup>

Clearly a review of Manitoba Hydro's long term export price forecast methodology has been conducted. The IEC was provided access to all information available to Manitoba Hydro and a public and confidential report was prepared. Potomac's findings confirm that Manitoba Hydro does not have access to the information necessary to assess the forecasters' methodologies:

Due to limits on the availability of the underlying data from the consultants' models , we were not able to perform a detailed review of the consultants models nor could we adjust the specific assumptions in the consultants' forecasts to address differences.<sup>15</sup>

It is not necessary or of value to attempt to test the forecasters methodologies. Daymark, the IEC charged with reviewing export price forecast information will be aware of the forecasters identities and their standing in the industry – all are well known and respected. The purchased reports are “off the shelf”, hence none of the forecasters can be accused of having a vested interest in manipulating the model's results to suit a particular interest. The reality is that forecasters will have diverse views on a number of input assumptions and no one forecast will correctly predict the future on all counts. It is for this very reason that Manitoba Hydro adopted the consensus forecasting approach using the average of a number of forecaster's views for its Electricity Export Price Forecast. Manitoba Hydro expects that this is for this reason that the PUB's Scope of Work for Daymark states “The third party consultant forecasts are to be taken as a “given” and are to assumed to be reasonable and accurate with respect to the other tasks in this Scope of Work.”<sup>16</sup>

The Coalition does not require access to Manitoba Hydro Electricity Export Price Forecast or the input purchased forecasts in order to gain an understanding of changes to Manitoba

<sup>14</sup> NFAT IEC Scope of Work – Potomac Engineering

<sup>15</sup> Potomac Engineering, NFAT Manitoba Hydro's Preferred Development Plan expert Report on Export Prices and Revenues, January 15, 2014 at p. 5

<sup>16</sup> Daymark Energy Advisors Scope of Work, 2017/18 & 18/19 GRA



Hydro's methodology since 2014. PUB MFR 79 explains changes to the methodology in the public version of the response and the Coalition has been afforded the opportunity to submit Information Requests on this evidence.

PUB/MH I-50 b) and COALITION /MH I-54 – Dependable Energy Premiums and Capacity Premiums

The Coalition seeks access to PUB/MH I-50 b) with redactions removed. Manitoba Hydro's response to PUB/MH I-50 a)- c) provides a detailed explanation regarding the calculation and net revenue impact of the long term dependable product premium treatment. Manitoba Hydro explained that prior to 2016, the value of generation capacity was derived from the value in the Electricity Export Price Forecast (which forecast is, as explained herein and in Manitoba Hydro's September 7, 2017 Rule 13 Motion, commercially sensitive information).

Manitoba Hydro redacted from the public version of its response detailed tables setting out the values included in Manitoba Hydro's forecasts on account of potential premiums and capacity revenue for each year to 2034/35. Providing the detailed year by year breakdown of the energy and capacity revenue, facilitates reverse engineering of Manitoba Hydro's Electricity Export Price Forecast. For example, dividing the yearly capacity revenue by the surplus capacity yields Manitoba Hydro's capacity price forecast. This value is used in export sales negotiations and is commercially sensitive information.

GAC – PUB MFR 79 and GAC/MH I-31

GAC identifies a number of Information Requests which it states are impacted by Manitoba Hydro's refusal to disclose the commercially sensitive information redacted from PUB MFR 79 (GAC/MH I-21, GAC/MH I-27, GAC/MH I-29, GAC/MH I-30, GAC/MH I-31 and GAC/MH I-34). GAC acknowledges that these Information Requests ask for the same information, that is marginal cost information, but in different ways. GAC argues that if PUB MFR 79 were fully disclosed many of its issues would disappear. Manitoba Hydro interprets GAC's "issues" as meaning its desire to access the Corporation's generation marginal or avoided costs.

Manitoba Hydro cannot disclose its export price forecast information to GAC on the public record or in confidence for the reasons outlined above and in Manitoba Hydro's September 7, 2017 Rule 13 Motion. That GAC asked for the same information, but in different ways serves as an acknowledgement that GAC was aware of the sensitivity of information and hoped it could be accessed by coming at it from numerous angles.

Manitoba Hydro's position with respect to generation marginal cost information, including

GAC's request, is dealt with more specifically in Appendix E to this submission - Marginal Cost Information.

It is important to note that the PUB has acknowledged that the Electricity Export Price Forecast is commercially sensitive in all prior hearings and has rejected previous attempts to require disclosure of this information under terms of confidentiality or otherwise. No new arguments have been raised in this proceeding.

## APPENDIX "D" – LOAD FORECAST INFORMATION

The Coalition seeks a response to COALITION/MH I-29 and COALITION/MH II -12.

Specifically, in COALITION/MH I-29 seeks a copy of the 2017 Energy Price Outlook. Manitoba Hydro's response directed the Coalition to PUB/MFR 79, portions of which are commercially sensitive and have been redacted.

Historically Manitoba Hydro has prepared both an Electricity Export Price Forecast and an Energy Price Outlook. There is a great deal of overlap as between the information contained in the reports and they each rely on the same consultant data. Going forward the two report have been consolidated into a single report referred to as the Energy Price Forecast. The basis for seeking confidential treatment of the 2017 Energy Price Outlook/Forecast is set out in Manitoba Hydro's September 7, 2017 Rule 13 Motion at Appendix B (dealing with PUB MFR 79) and in Appendix C hereto.

The Coalition states that it is unclear why the information claimed in COALITION /MH I-29, relating to load forecast, would be found in PUB MFR 79 and indicated it would seek clarification in second round information requests. Manitoba Hydro notes that this clarifying question is COALITION/MH II-12 - "Please provide the energy prices used as input in the load forecast".

Manitoba Hydro uses its gas price forecast as the basis for energy prices in the load forecast. Manitoba Hydro's gas price forecast within Manitoba Hydro's Energy Price Forecast is a consensus forecast based on the gas prices utilized as input assumptions in each of the independent electricity export price forecasts purchased by Manitoba Hydro which are referenced in Appendix "C" herein. Each electricity price forecaster creates a gas forecast using proprietary models. The output of their gas model, their gas forecast, is then inputted into their electricity forecast models. The gas forecast is the single most important input into the electricity price forecast.

Manitoba Hydro cannot disclose this information for the same reasons outlined in its September 7, 2017 Rule 13 Motion at Appendix B (dealing with PUB MFR 79) and in Appendix C hereto. The gas price forecast represents the work product, proprietary intellectual property and livelihood of the forecasters who produce them. Their significance in signalling Manitoba Hydro's view of future export market pricing can also not be overlooked.

It is of note that Manitoba Hydro has not released its gas forecast on the public record in the past. The PUB held the gas forecast price information in confidence during the NFAT and has not required its public disclosure in other proceedings.

## APPENDIX "E" MARGINAL COST INFORMATION

Both the Coalition and GAC seek access to PUB/MH I-131b and argue that the information contained therein is not properly confidential.

While the Coalition accepts that the annual values for generation marginal cost are reflective of annual export prices and cannot be disclosed, it disputes that the levelized cost at 4.15% Discount Rate for All-In Summer and Winter marginal cost values is sensitive analysis and operational data facilitating back calculation.

PUB/MH I-131b describes Manitoba Hydro's marginal cost methodology used to derive its generation marginal value. The response notes that the generation marginal value represents the value of energy savings on the export market when valued as a long-term firm sale. Manitoba Hydro provides a table of Marginal Costs Applicable to Distribution Level Programs including the Summer (broken down by Generation Energy and Generation Capacity), Winter (broken down by Generation Energy, Generation Capacity, Transmission Capacity, Distribution Capacity) and All-In (broken down by Summer, Winter and Annual). The All-In Annual marginal cost has been redacted as has the breakdowns between Summer and Winter and the breakdowns between Generation Energy and Generation Capacity for both the Summer and Winter seasons. The Levelized Cost at 4.15% Discount Rate has been redacted for each component excepting the Annual All-In Levelized Cost.

The generation component of marginal cost represents the marginal generation revenue Manitoba Hydro expects to receive on the sale of surplus energy and capacity in the export market. Marginal generation revenue is based on the current Electricity Export Price Forecast. Manitoba Hydro evaluates sales opportunities on a marginal cost basis. To the extent Manitoba Hydro has a sales opportunity that exceeds its marginal cost, there is an economic benefit to Manitoba Hydro to enter into the sale. Should the sale be evaluated at less than the marginal cost, there would be no benefit to the sale and it would not be entered into. Manitoba Hydro's generation component of marginal cost represents the bottom line in its sales negotiations, below which it would not enter into a sale, and is very commercially sensitive.

The seasonal and capacity components of marginal cost are also commercially sensitive information, as they are derived from/with the annual generation component of marginal cost. Manitoba Hydro has sales which vary the capacity and energy requirements on a seasonal basis, and hence the seasonal capacity and energy component of marginal costs are commercially sensitive for the same reason the annual value are. Further, as will be explained in the response to PUB/MH II-36e, Manitoba Hydro is working through the MISO

stakeholder process in support of implementing a seasonal resource adequacy construct/capacity market. Should such a seasonal resource adequacy construct/capacity market be implemented, the seasonal capacity marginal costs would become even more commercially sensitive.

Manitoba Hydro's response to PUB/MH I-131b does disclose the long term levelized bundled (capacity plus energy) value for the generation component of marginal cost. This value has been deemed not to be commercially sensitive as it levelized over a long period which does not match any current sales negotiations, and is for a capacity plus energy at 100% demand factor product which Manitoba Hydro historically has not sold. Therefore the published value provided cannot be compared to product currently being sold in the long term export market.

GAC does not dispute the confidentiality of Manitoba Hydro marginal cost of generation. Instead GAC argues that such information is released in other regions, often under terms of confidentiality agreements. GAC does not identify the utilities it references. GAC's unsupported statement does however serve to confirm an important point – marginal cost information is in certain circumstances confidential. Manitoba Hydro submits that whether the marginal cost is confidential is dependent on the nature of the product and the market into which it is sold. Generalized statements that other regions provide access to such information is of no value without such information.

This is not the first time GAC has attempted to advance this argument nor is it the first time GAC has failed to provide the full picture when making such statements. The other unnamed utilities which GAC refers to that it claims "routinely provide forecasts of market prices" are likely predominately thermal utilities that do not have surplus hydro energy that will be sold at market prices. Fuel costs for predominately thermal utilities are generally a flow through, much like natural costs in Manitoba for Centra Gas. The predominately thermal utilities make their rate of return on their capital investment in plant and are largely indifferent to fuel prices and hence fuel/ energy price forecasts are either not commercially sensitive or of very low sensitivity. Fuel (natural gas) and energy price forecasts are commercially sensitive to Manitoba Hydro in part because Manitoba Hydro sells its surplus dependable hydro energy and capacity at negotiated prices informed by the market price forecasts. To make public the forecasts Manitoba Hydro utilizes to inform its sale negotiations is to compromise those negotiations.

GAC claims that it requires access to marginal cost information (and PUB MFR 79 - electricity export price information) on the basis that "it is not clear whether the levelized marginal energy costs they provide include the losses". Manitoba Hydro specifically answered this

question in response to a GAC/MH I-41 when it stated “The generation component cost is derived at the generation level and a 14% adjustment for transmission and distribution losses has been incorporated to arrive at the estimate that is applicable to load savings at the distribution level.” Reserve requirements were provided in response to GAC/MH I-35b, “As indicated in Section 7.4 of Tab 7, Manitoba Hydro uses a 12% planning reserve margin for resource planning purposes, including the determination of marginal generation costs.” A dozen or more second round Information Requests, one with 14 sub parts, will provide a great deal of detail on the marginal cost calculations including losses. GAC is asking for the release of commercially sensitive information for the purposes of obtaining information that has or will be provided on the public record and in the case of planning reserve margin – was part the original application.

Given the nature of rate design issues in Manitoba, detailed marginal cost information is not of critical value to rate design. For example, with respect to seasonal rates, the simple fact is winter marginal costs are higher than summer due to the much higher winter load. This means the marginal cost of electric heat in the winter is higher and a seasonal marginal cost rate design would only serve to punish electric heat customers. Manitoba Hydro does not believe any party will seriously advocate a rate design that punishes winter heat users.

Manitoba Hydro suggests use of publicly available weekly pricing from the Surplus Energy Program, which prices are approved by the PUB on a weekly basis as a proxy for prices obtained in the MISO market. Manitoba Hydro has utilized such pricing information in its previous analysis of on-peak and off-peak pricing differentials for winter and summer periods for potential TOU rate designs and has been used as a proxy for marginal cost in previous PUB processes.

Please see Appendix “C” Export Price Forecast and Appendix “D” Load Forecast Information to this submission and Appendix B to Manitoba Hydro’s Sept 7, 2017 Rule 13 Motion for further information regarding why electricity export price forecast information and by extension marginal cost information, cannot be disclosed.

**APPENDIX “F” EXPORT CONTRACTS, REVENUES and RELATED INFORMATION**

The Coalition seeks clarification and details regarding COALITION/MH I-101a)-c) which relates to PUB MFR 83.

GAC notes that the position Manitoba Hydro takes in Appendix A - Export Contracts , to its September 7, 2017 Rule 13 Motion (in particular PUB MFRs 24, 81-84 and 197-198) has an effect on GAC/MH I-32 and GAC/MH I-33.

GAC claims “it is difficult to determine whether the design of the retail rates reasonably reflects lost sales opportunities if we do not know how much Manitoba Hydro has been able to sell its energy for in the recent past”. The Application, MFRs and IR responses contain large amounts of detailed energy sales revenue for GAC to analyze, such as:

<b>2017/18 General Rate Application Export Price Related Data</b>	
<b>MFR No</b>	<b>Description</b>
PUB MFR 80	Year-over-year comparisons of price and volume components for unit revenues for total export sales
PUB MFR 27	Monthly NEB data on firm and interruptible sales plus imports by export permit number beginning January 2015 to the most current month.
PUB MFR 28	a) Export revenues showing Opportunity Bilateral, Day Ahead, Market, Real Time Market and Merchant Trading, separately showing summer and winter components . b) Fuel and Power purchases showing system merchant purchases, import power purchases (without wind), wind energy purchases, fuel purchases, and transmission charges. c) Export revenues showing Opportunity Bilateral, Day Ahead, Market, Real Time Market and Merchant Trading, separately showing summer and winter components split by summer and winter seasons . d) Fuel and Power purchases showing system merchant purchases, import power purchases (without wind), wind energy purchases, fuel purchases, and transmission charges split by summer and winter seasons. e) Total dependable, opportunity, and merchant export volumes, sales, and average price by season. f) Total dependable, opportunity, and merchant U.S. export volumes, sales, and average price by season. g) Opportunity export volumes, sales, and average prices differentiated by season and by on-peak/off-peak.
PUB MFR 30	Quarterly and annual summaries of generation and energy purchase.
PUB MFR 31	Monthly physical export volumes by firm sales (5x16), opportunity sales (5x16), weekend sales (2x16), and off-peak sales (7x8) from January 2015 to present.
<b>Information Request Round I</b>	
<b>Round I IR No</b>	<b>Description</b>
PUB-MH I-19d	Export revenues, fuel & power purchases, and net export revenues for the second forecast year based on the previous methodology (80-year median) and based on the new methodology showing the annual system inflows and hydraulic energy forecasted under each methodology.
PUB-MH I-153c	Actual volumes, revenues, and unit revenues/costs



There clearly exists a great deal of information on the public record in this GRA regarding how much the utility has sold its energy for in the recent past. GAC does not require access to Manitoba Hydro's commercially sensitive information for this purpose.

There is no shortage of export revenue related information available in this process and elsewhere on the public record. Provision of further detailed information facilitates back calculation of Manitoba Hydro's firm export sales prices. Manitoba Hydro is aware that its customers mine its PUB filings seeking the "missing pieces" required to reverse engineer Manitoba Hydro's confidential contract pricing information – it is a common industry practice. In these circumstances it is critically important to hold certain information absolutely confidential and not risk its disclosure elsewhere, inadvertent or otherwise. For these reasons, together with Manitoba Hydro's contractual obligations and the reasons outlined in the main body of this submission, the utility opposes release of further export contract related information to Intervenors under terms of confidentiality.

#### COALITION/MH I-101a-c

The Coalition seeks "a full response to COALITION/MH I-101a-c which requested clarification regarding PUB MFR 83 dealing with export contracts."

PUB/MFR 83 provided an update to certain NFAT CSI exhibits, disclosing details of every one of Manitoba Hydro's export contracts, broken down by Total Revenue, Capacity Revenue and Energy Revenue. COALITION/MH I-101a seeks to reconcile the total revenue from all export sales disclosed in PUB MFR 83 with that used in MH 16 for 2016/17. COALITION/MH I-101b-c seeks the further breakdown of Total Revenues by energy sales, revenues and resulting average unit revenue for each of the contracts identified in PUB MFR 83.

On further consideration, COALITION/MH I-101a does not appear to be commercially sensitive and Manitoba Hydro will provide a response on the public record.

The information sought in COALITION/MH I-101b-c (and the underlying PUB MFR 83) is highly sensitive, even when aggregated and cannot be provided on the public record. Disclosure of average energy sales, revenues and unit revenue would allow an export customer to compare its price to the average and have a good idea if it is paying more than Manitoba Hydro's other customers and expose the Corporation to price reopening. Release of forecast revenues from signed export contracts, even in aggregate, will negatively impact

Manitoba Hydro's ability to maximize value from new contracts as such information would enable export customers to infer what Manitoba Hydro may be willing to accept.

#### **APPENDIX "G" – BCG MATERIALS**

MIPUG complains that Manitoba Hydro has redacted from the 615 page attachment to PUB MFR 72, the cost of the Boston Consulting Group Report and the rates paid to the Boston Consulting Group.

Manitoba Hydro notes that a document titled Manitoba Hydro-Electric Board Boston Consulting Group (BCG) Engagement Details, dated November 3, 2016 is disclosed on the public record. This document summarizes BCG's engagement and includes the total cost of the engagement (\$3,845,600 pre-tax (\$4,345,528 including taxes)).

At the request of BCG (who is party to a mutual non-disclosure agreement with Manitoba Hydro) Manitoba Hydro sought to redact BCG's rates at a more detailed level. BCG cited competitive reasons for this request. MIPUG has not explained nor does Manitoba Hydro understand how knowledge of BCG's rates for service will assist the PUB in approving rates for electric service in the 2017/18 and 2018/19 test years.

Manitoba Hydro is puzzled by MIPUG's comment that "there is no principled reason to not produce the entire Boston Consulting Group report". Manitoba Hydro has produced the entire Boston Consulting Group Report together with 615 pages of additional materials including letters of engagement and the presentations made to the Manitoba Hydro Electric Board made pursuant thereto. As noted in Manitoba Hydro's response to PUB MFR 72, due to the volume of materials already filed, preliminary working papers in Manitoba Hydro's possession, but which were not circulated to staff, have not been filed.



AN ALLETE COMPANY

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October 3, 2017

**VIA OVERNIGHT DELIVERY AND EMAIL**

Daryl Maxwell, General Manager  
6690271 Manitoba Ltd.  
P.O. Box 1886  
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R3C 3R2

**RE:** Motion to Disclose Confidential Data related to the Great Northern Transmission Line

Dear Mr. Maxwell,

Minnesota Power is in receipt of the September 26, 2017 Consumers Coalition letter and the September 27, 2017 Manitoba Industrial Power Users Group (“MIPUG”) letter to the Public Utilities Board of Manitoba (“PUB”) regarding motions for commercially sensitive information. In particular, the Consumers Coalition and MIPUG are apparently requesting certain information related to Minnesota Power’s Great Northern Transmission Line (“GNTL”) being constructed in the State of Minnesota be made public. Minnesota Power has shared this information as part of agreements with 6690271 Manitoba Ltd. (“6690271”) with the expectation that it would not be public.

Minnesota Power strongly objects to these motions and urges that the PUB maintain any information related to GNTL be maintained as confidential. Minnesota Power has not yet disclosed this preliminary information to our regulators in Minnesota given that Minnesota Power, as project manager for GNTL, is still finalizing contracting, engineering, and construction plans and making related project updates since the Presidential Permit was issued on November 16, 2016 by the United States Secretary of Energy. Disclosure of budget information may be used by vendors and others in submitting bids or negotiating contracts to the disadvantage of Minnesota Power and its ratepayers. In addition, if the PUB publicly disclosed the updated cost information, at this juncture and before full analysis and reasoning is complete as to the prudence of Minnesota Power’s investments, it would significantly harm Minnesota Power. Furthermore, it was never Minnesota Power’s understanding that GNTL budgeting and planning information would be made public given that the project is being built in the United States, the role of 6690271, and prior treatment of Minnesota Power’s contracts and agreements with Manitoba Hydro.

As stated in our previous letter and reaffirmed here, Minnesota Power asserts that such confidential treatment of the confidential information related to the GNTL is necessary to protect:

- (i) the competitive business practices in respect of the GNTL project and without such protections the costs of the GNTL project could increase;
- (ii) proprietary engineering information of vendors for the GNTL project which would otherwise be disclosed with risk to the GNTL project;
- (iii) preliminary information that is under development which would otherwise be disclosed with the risk to the GNTL project;
- (iv) vendors continuing to bid on work for the GNTL project and bids may unnecessarily increase due to a public disclosure;
- (v) Minnesota Power's relationship with Manitoba Hydro and particularly the continued sharing of confidential GNTL project information, wherein 6690271 was provided with significant access to confidential information of Minnesota Power on a project being constructed by Minnesota Power in Minnesota and with such access Minnesota Power also agreed to provide 6690271 with significant oversight on the GNTL project through the governance provisions in the GNTL Construction Management Agreement; and
- (vi) Minnesota Power had no expectation that any of its confidential information would be publicly disclosed and any disclosure of information would not be complete and not provide the entire analysis of GNTL.

In addition, public disclosure of confidential information related to GNTL may harm the forward-looking and long-standing relationship between Minnesota Power and Manitoba Hydro. As previously discussed in Minnesota Power's September 8, 2011 letter in *Manitoba Hydro-Electric Board v. Consumers' Association of Canada (Manitoba) Inc. et al*, Suit No. AI 11-30-07612, public disclosure of confidential information would significantly harm Minnesota Power's customers through potentially higher resource acquisition costs as well as interfere with any future agreements between Minnesota Power and Manitoba Hydro.

Minnesota Power respectfully requests that the PUB deny any requests by the Consumers Coalition and MIPUG to disclose confidential information filed by Manitoba Hydro related to the GNTL as confidential with such information only to be viewed by the PUB. In the event the PUB will grant the MIPUG motion, then Minnesota Power respectfully requests the PUB stay such grant to allow Minnesota Power time to evaluate all available legal and regulatory remedies in the United States and Canada.

If you have any questions regarding this letter, please do not hesitate to contact me at the number above.

Sincerely,



David R. Moeller