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June 2, 2017

Darren Christle
Secretary / Executive Director
Public Utilities Board of Manitoba
400 – 330 Portage Avenue
Winnipeg, Manitoba R3C 0C4

Dear Mr. Christle:

**RE: MANITOBA HYDRO 2017/18 AND 2018/19 GENERAL RATE APPLICATION (GRA)
AUGUST 1, 2017 INTERIM RATES**

In its letter of May 17, 2017, the Public Utilities Board (“PUB”) requested that Interveners provide written submissions on whether the PUB should consider a request for an interim rate process and, if so, what that process should be. Manitoba Hydro is in receipt of the submission on behalf of the Manitoba Industrial Power Users Group (“MIPUG”) dated May 25, 2017 and those on behalf of the Green Action Centre (“GAC”), Consumers Association of Canada (Manitoba) and Winnipeg Harvest (“Coalition”), and Manitoba Keewatinowi Okimakanak Inc. (“MKO”) each dated May 26, 2017.

The PUB Possesses Broad Discretion When Considering Interim Rate Proposals

The PUB derives its authority to review Manitoba Hydro’s rates for service pursuant to Part IV of the *Crown Corporations Public Review and Accountability Act* (the “Accountability Act”). Section 26(3) of *The Accountability Act* provides that:

26(3) The Public Utilities Board Act applies with any necessary changes to a review pursuant to this Part of rates for services.

The Public Utilities Board Act (“*The PUB Act*”) provides the PUB with broad discretion as to how it conducts its proceedings:

15(2) The board shall sit at such times and places within the province as the chairman may designate and shall conduct its proceedings in such a manner as may seem to it most convenient for the speedy and effectual dispatch of business.

The PUB is specifically authorized to employ interim rates as a means of an efficient review process pursuant to section 47(2) of *The PUB Act*:

47(2) The board may, instead of making an order final in the first instance, make an interim order and reserve further directions, either for an adjourned hearing of the matter, or for further application.

It is of note that the legislature did not elect to impose any conditions, requirements or restrictions on the PUB's interim rate approval authority and instead gave the PUB broad discretion in this regard. GAC correctly acknowledged the PUB's authority to make an interim rate order in the present circumstance.¹

Matters of the Public Interest

The overriding regulatory principle in Manitoba when considering any rate application, including interim rates, is as articulated 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.*²

The appropriate concern is whether the interim rate increase is in the general public interest. While factors such as urgency, length of time required to issue a final order or financial deterioration may well be valid considerations for the PUB in coming to its decision, none are determinative of the matter. The decision to be made is whether the interim rate increase is in the general public interest.

The PUB has Ruled Urgency is Not A Pre-Condition for an Interim Rate Increase

MIPUG, MKO and Coalition argue that there is a requirement of urgency or some emergency circumstance in order for the PUB to grant interim relief to Manitoba Hydro³. These

¹ GAC Submission dated May 26, 2017 at page 1.

² Consumers Association of Canada (Man.) Inc. et al v. Manitoba Hydro Electric Board, 2005 MBCA55.

³ Submission of Manitoba Keewatinowi Okimakanak Inc. pgs. 2 and 4; Submission of Consumers Association of

Intervenors have unsuccessfully attempted to advance these same arguments on numerous occasions in the past and the PUB has consistently rejected the notion that urgency is a required condition in order to issue an interim rate order. For example:

All Board Members at the Interim Rate Consideration Hearing find that the Board has the jurisdiction to approve interim rate adjustments for MH (Order 18/10, p.5)

In response to Intervenor's views as to the ability of the Board to approve an interim rate increase and that approving an across-the-board interim increase could disadvantage certain classes, the Board finds: a) that it has the necessary jurisdiction – urgency is not a required condition: (Order 40/11, pg. 28)

As it has found previously, the Board confirms that it has jurisdiction to approve interim rates for MH... (Order 116/12, pg. 18)

The questions to be determined by this Board are whether it would be just and reasonable to grant interim rates, and whether Manitoba Hydro would suffer a deleterious effect in the absence of an interim rate increase. For the reasons set out below, the Board considers it to be in the public interest to approve an interim rate increase, albeit at a level lower than requested by Manitoba Hydro.... The Board agrees with Manitoba Hydro's rebuttal submission that urgency is not a necessary precondition for an interim rate increase (Order 49/14, pg. 16 & 17)

The legislature has afforded the PUB broad jurisdiction as to when, how and in what circumstances it approves interim rates. The governing legislation has not changed since the issuance of these Orders. Intervenor's have not raised any new arguments nor referenced new case law which might impact the PUB's previous decisions with respect to its ability to approve rates on an interim basis. It is clear that the PUB has the necessary jurisdiction to review an interim rate increase in this case. Nevertheless, to ensure completeness of the record, Manitoba Hydro's response to each of the Intervenor's arguments can be found in Appendix A hereto.

Order 59/16 Has Not Been Ignored

The Coalition, MIPUG and MKO argue interim rates should not be considered as to do so would allow Manitoba Hydro to ignore the PUB's concern, expressed in Order 59/16, that interim rate orders should not become the norm and that the PUB will not consider interim

rate applications unless warranted by unforeseen or emergency situations.⁴

Manitoba Hydro is very much alive to the PUB's concern and shares the PUB's preference for full public hearings and final rate orders over interim processes and interim orders. However, under the circumstances, Manitoba Hydro believes the public interest must prevail and the PUB must consider Manitoba Hydro's interim rate application.

As outlined above, the legislature granted the PUB jurisdiction to hear matters on an interim basis and to issue rate Orders extending out three years.⁵ Manitoba Hydro respectfully cautions against any party, including the PUB itself, from fettering future PUB panel's discretion to deal with any application, interim or final, on its own merits, taking into consideration the factors impacting the timing and nature of the particular application. The PUB has not historically allowed previous rulings to fetter discretion in current proceedings. For example as recently as the PUB's review of Manitoba Hydro's Cost of Service Study Methodology, the PUB provided explicit direction as to the approach to cost of service that varied that which was directed by previous PUB panels. The PUB panel did not bind itself to previous decisions or approaches in this regard, and indicated in its Order 164/16 at pg. 27-28 that;

"The Board finds that, as acknowledged by Manitoba Hydro, it is not bound by prior Board decisions. As such, the Board has approached this review of Manitoba Hydro's COSS methodology through applying the principles discussed above to the evidence in the present proceeding."

Manitoba Hydro respectfully submits that this current PUB panel similarly needs to consider the current interim rate request on its own merits.

The Coalition, MIPUG and MKO have also raised concerns that Order 59/16 also directed that Manitoba Hydro make its application to the PUB by December 1, 2016.⁶ MIPUG criticizes Manitoba Hydro for time spent undertaking a review of Manitoba Hydro's finances, holding community meetings to communicate review findings and receive stakeholder feedback and assessing that information, suggesting that the meeting the PUB's deadline should have been of higher priority and the change of strategic direction should not have

⁴ Order 59/16 at pg. 4-5 & 12-13

⁵ See s. 27 (1) of *The Accountability Act* – A corporation may submit for the approval of The Public Utilities Board pursuant to this Part proposals regarding rates for services relating to a period of not more than three years and the board shall identify in its order the change approved, if any, with respect to each year.

⁶ Submission of Manitoba Keewatinowi Okimakanak Inc. pg. 3; Submission of Consumers Association of Canada (Manitoba Branch) and Winnipeg Harvest dated May 26, 2017 pg. 2; and Letter from Mr. Antoine Hacault on behalf of MIPUG dated May 25, 2017 pg. 1.

been undertaken without PUB review.⁷

Manitoba Hydro did not disrespect the PUB, the interveners or the regulatory process when it did not file its GRA on December 1, 2016. Significant changes occurred subsequent to the PUB issuing this directive on April 28, 2016. In particular, on May 3, 2016, following the provincial election, the former Manitoba Hydro Electric Board (“MHEB”) was replaced in its entirety and new members were appointed. The Province of Manitoba also issued a mandate to the Minister of Crown Services on May 3, 2016 to work with the MHEB to review the circumstances around the Bipole III Reliability Project.

Assessing and directing the overall strategic and financial objectives of the Corporation’s business is properly the role of the MHEB and it should not be subject to criticism for fulfilling this role. To do so, it was necessary for the MHEB to examine and consider an enormous amount of information on a broad array of topics, identify and consider available options and make its independent determination of how the corporation should move forward. Given the MHEB’s additional mandate issued by government, it was imperative that the MHEB focus its initial efforts on making its determination on whether projects will proceed and set the strategic direction of the corporation in light of its determination. Taking the time to consult with staff, external experts and Manitobans prior to implementing a different approach to managing the Corporation’s finances is what one should expect from a newly appointed MHEB.

MIPUG’s allegation that information was not brought to the PUB until very recently is incorrect. MIPUG has chosen to ignore that while Manitoba Hydro gave the PUB formal written notice on November 29, 2016, it also kept PUB staff apprised of its progress and timelines for completion of a new financial plan and subsequent GRA filing throughout.⁸

The History of Prior Interim Rate Increases

The Coalition has argued that Manitoba Hydro has an “addiction” to interim rate increases⁹ and has attached its version of events as an appendix to its submission. The Coalition incorrectly states Manitoba Hydro has made nine interim rate applications in the last eight fiscal years, inclusive of the current process.¹⁰ The Coalition’s Appendix A however only identifies seven past interim rate reviews plus the current review. Manitoba Hydro would

⁷ Letter from Mr. Antoine Hacault on behalf of MIPUG dated May 25, 2017 pg. 6.

⁸ Letter from Manitoba Hydro to the PUB dated May 5, 2017.

⁹ Submission of Consumers Association of Canada (Manitoba) and Winnipeg Harvest dated May 26, 2017 pg.5.

¹⁰ Submission of Consumers Association of Canada (Manitoba) and Winnipeg Harvest dated May 26, 2017 pg 3

point out that in fact six interim rate reviews have taken place over this period, four of which were initiated by a Manitoba Hydro interim rate application. The Coalition failed to recognize that some of the interim rate change processes were implemented at the request of other Parties to the respective processes. In other cases the regulatory calendar could not accommodate an extensive review at the time of the application or occurred immediately following the conclusion of an extensive hearing process where relevant information had recently been reviewed. In all cases the interim processes proved to be the most efficient means of reviewing the need for a rate increase and it was in the public interest to proceed in this manner.

Of the five interim rate reviews referenced by the Coalition for fiscal years 2010/11, 2011/12 and 2012/13, only two were made by application of Manitoba Hydro and in one case (Order 99/11) there was no interim rate review whatsoever. By way of background, on November 30, 2009, Manitoba Hydro filed a full General Rate Application (the "Risk Review") which amongst other things, requested a two year rate increase (2.9% effective April 1, 2010 and 2.9% effective April 1, 2011). When it became apparent that the timetable would not facilitate an April 1, 2010 rate adjustment and as such, RCM/TREE (now known as GAC) recommended an interim rate adjustment be implemented.¹¹

*The Board therefore accepted the recommendation by RCM/TREE, and supported by MH, that the rate increase request for April 1, 2010 be considered on an interim basis, pending completion of the GRA process."*¹²

The Risk Review's oral hearing did not begin until early January 2011. Given the expectation that the Risk Review would not conclude until long after April 1, 2011, the PUB implemented an interim rate review process and sought submissions from parties.¹³ The PUB approved an interim rate of 2% (versus the 2.9% requested by Manitoba Hydro in its GRA):

*The Board is satisfied that a further interim rate adjustment is required of an expected fall conclusion of MH's General Rate Application (GRA).*¹⁴

Under the heading fiscal year 2011/12, the Coalition has also included Order 99/11 in its list of interim rate approvals. Order 99/11 was the first of two PUB Orders following the

¹¹ PUB Order 18/10, pg. 3-4

¹² See Order 18/10 at pg. 3

¹³ January 31, 2011, Transcript pg.2477-2478; PUB Order 40/11, pg. 6

¹⁴ See Order 40/11 dated March 30, 2011 at page 2

completion of the evidentiary process and final argument in the Risk Review.¹⁵ In its final argument delivered in May 2011, Manitoba Hydro requested that the PUB approve the 2.9% increase for fiscal 2011/12 sought in its November 30, 2009 GRA, effective August 1, 2011 (rather than applying a retroactive rate adjustment to achieve an April 1, 2011 effective date). Order 99/11 indicated that the existing interim rates and Manitoba Hydro's request for the additional 0.9% rate increase would be further considered and may be adjusted on a final basis in a subsequent Order of the Board.¹⁶ The final Risk Review Order 5/12 issued January 17, 2012.

No interim rate application was filed by Manitoba Hydro for either the 2010/11 or 2011/12 fiscal years.

As one would expect, it would have been extremely challenging to prepare and file the necessary materials for a comprehensive GRA seeking 2012/13 rates without a final rate Order relating to the previous two fiscal years in hand. Manitoba Hydro therefore filed an interim rate application in March of 2012 seeking an interim 3.5% increase effective April 1, 2012. Order 32/12, the last electric Order issued by that PUB panel, reduced the rate approval to 2.0 %.

A comprehensive GRA was filed shortly thereafter in June of 2012 which included consideration of the April 1, 2012 interim rate approval together with a further interim request for 2.5% effective September, 2012 as well as April 1, 2013 rates. Manitoba Hydro's second interim rate application was approved as requested.¹⁷

It can hardly be said that Manitoba Hydro had abused or was overly dependent on interim rate orders during and immediately following the arduous 26 month Risk Review process. The length of that process and the timing of its final rate order clearly required the use of interim rate orders so as to implement predictable, stable rate increases that were in the public interest. To reiterate, the Coalition has attributed five interim rate applications to Manitoba Hydro during this time frame when in fact there were only four reviews. Only two of these reviews were as the result of Manitoba Hydro initiating the process.

The Coalition correctly points out that no interim rate reviews took place with respect to fiscal 2013/14 as the GRA filed in June 2012 also sought approval of 2013/14 rates. The final order in this matter (Order 43/13) issued April 26, 2013 for rates effective May 1, 2013.

¹⁵ PUB Order 99/11, pg. 7

¹⁶ PUB Order 99/11, pg. 106

¹⁷ PUB Order 116/12, pg. 3

Immediately thereafter Manitoba Hydro and the PUB became fully engaged in the Need For and Alternatives To (NFAT) review of Manitoba Hydro's Preferred Development Plan. There can be no dispute that this was an extremely taxing process on all Parties and there was no way imaginable for the PUB to conduct a concurrent GRA process. Manitoba Hydro therefore filed its third application for interim rate relief. Order 51/14 approved a 2.75% interim rate increase.

Following completion of the NFAT, Manitoba Hydro began work on a GRA seeking confirmation of Order 51/14 and new rates effective April 1, 2015 and April 1, 2016. The GRA was filed January 15, 2015. By Order 17/15, dated February 9, 2015, the PUB determined that the April 1, 2016 rate request would not be considered as part of this process. The PUB stated:

Additionally, in the GRA materials filed to date, Manitoba Hydro included its forecasts for the April 1, 2016 to March 31, 2017 fiscal year as well as other future years. As that information will be reviewed by the Parties to this GRA Hearing, it will be open to the Board to provide further direction, in its final GRA Order, as to any additional information to be filed and considered before determining whether any process should be instituted for possible April 1, 2016 interim rates.¹⁸

Manitoba Hydro filed its Supplemental Filing to its 2015/16 & 2016/17 GRA on November 18, 2015 requesting approval, on an interim basis, of a 3.95% rate increase effective April 1, 2016. Following a review which included a round of Information Requests and submissions by all parties, the PUB issued Order 59/16 on April 28, 2016, approving a 3.36% rate increase effective August 1, 2016.

The review of Manitoba Hydro's past rate approval processes demonstrates that interim rate increases have been advanced by both the Corporation and other parties, recognizing the need for predictable regular rate increases in the context of a very busy regulatory calendar. Manitoba Hydro strongly believes the characterization of an unhealthy addiction is unfair, inflammatory and fails to acknowledge the circumstances associated with these rate reviews.

The suggestion by Coalition that past interim rate increases or applications should have an impact on the review of Manitoba Hydro's interim rate request is without merit. Manitoba Hydro is confident that the PUB recognizes that any review of a rate request, including interim rate requests, need to be examined on its own merits and on the evidence provided.

¹⁸ PUB Order 17/15, pg. 5

Prima Facie Justification for August 1, 2017 Interim Rate Request

The PUB's letter of May 17, 2017 requested Interveners provide submissions on whether the PUB should consider a request for an interim rate process, and if, so what the process should be. The Coalition and MIPUG have argued that Manitoba Hydro has not demonstrated a material deterioration in the Corporation's finances since its last rate review and as such an interim rate increase should not be approved.

In response, Manitoba Hydro reiterates that a material deterioration in the Corporation's finances is not the test for consideration of an interim rate application – whether an increase is in the public interest is the appropriate consideration.

In light of the process set out by the PUB in its May 17, 2017 correspondence, Manitoba Hydro understands that arguments based on the financial position of the Corporation are premature. The Corporation will respond to the Coalition and MIPUG's assertions regarding the financial position of the Corporation in detail once it has been determined that the PUB intends to consider the interim rate request and in accordance with the process established for that purpose. Manitoba Hydro would be remiss however if it did not present the following observations:

The Regulatory Compact

MIPUG and the Coalition each make reference to Manitoba Hydro having broken the "regulatory compact" by virtue of changing its "covenant" that investments could be managed without material rate increases in the short term.

This notion of a "regulatory compact" is non-existent in the legislation which governs the regulation of Manitoba Hydro. In an effort to understand its meaning, Manitoba Hydro was required to look to academic literature. MIPUG and the Coalition have clearly misconstrued the concept of the "regulatory compact". The text "The Regulation of Public Utilities" indicates the term has two aspects: *"First in return for a monopoly franchise, utilities accepted an obligation to serve all comers. Second, in return for agreeing to commit capital to the business, utilities were assured a fair opportunity to earn a reasonable return on that capital.* Properly used, the regulatory compact describes the commitment between the regulator and the utility that once an investment is approved, the utility will earn a reasonable return, even if subsequent developments provide them with the hindsight to see

that a plant should not have been built, or that the build was mis-timed.¹⁹

It should also be recognized that when advancing the case for regular, annual 3.95% rate increases Manitoba Hydro was careful to consistently point out that it was its view that such increases were the minimum and carried a significant degree of risk:

MR. BOB PETERS: And I take from your answer then that there's no promises being made by Manitoba Hydro that 3.95 is going to be the maximum rate increase sought going forward?

MS. LIZ CARRIERE: No, I think we've said it's the minimum.

MR. BOB PETERS: And when you say it's the minimum, it's the minimum that Manitoba Hydro feels it can -- it can work with in terms of keeping its financial targets in relative check?

MS. LIZ CARRIERE: It's the minimum we're -- we're willing to accept and -- and the -- the most risk that we're willing to put customers at in terms of, you know, future rate increases.²⁰

The public interest is best served when plans are made based on the best information known at the time and, recognizing that no person can predict the future with accuracy, adjustments are made as circumstances change, as new information becomes available and as new perspectives are introduced to the process. This is the regulatory construct in Manitoba. Attempts to bind the Corporation to outdated projections is not consistent with the PUB's public interest mandate and should be rejected.

Change is Real

The Coalition and MIPUG each attempt to suggest that there have been no material changes since the PUB's last review of Manitoba Hydro's rates and as such argue there is no basis for an interim rate review. The foundation for this proposition is clearly flawed. Some of the material changes since Manitoba Hydro's last GRA are outlined below:

- **Keeyask** - The control budget for Keeyask has increased by \$2.2 billion and project completion has been delayed 21 months, thereby delaying associated export revenues.
- **Bipole III** - The control budget for Bipole III has increased by \$0.4 billion.

¹⁹ The Regulation of Public Utilities, Charles F Phillips Jr., .Robert G. Brown, 1993 Public Utilities Reports, Inc at pg. 21

²⁰ Manitoba Hydro 2014/15 and 2015/16 GRA, tr. 1915- 1916

- **Load Forecast** - The domestic Load Forecast has significantly deteriorated, lessening the opportunity for Manitoba Hydro to look to growth to cure its financial challenges.
- **Export Price Forecast** - Export price growth expectations have again been tempered from past forecasts as the outlook for sustained low fossil fuel costs perpetuates.
- **Corporate Re-Organization** - A new Board of Manitoba Hydro has been appointed along with a new President and CEO and a new Chief Finance & Strategy Officer. The Corporation has undergone a dramatic reorganization, senior management has been significantly downsized and a Voluntary Departure Package has resulted in the expected elimination of roughly 820 staff by early in 2018.
- **Introduction of a Capital Review** - OIC 00092/17 issued April 5, 2017 directing the PUB to increase the focus on capital expenditures and review voluminous capital related contracts, justifications, analysis, reports and other documents as part of setting Manitoba Hydro's rates for service. The introduction of this additional work within the confines of the GRA increases the likelihood that a 2017/18 rate will not occur in the absence of an interim rate increase. The impact of deferral is discussed below.

Regular Rate Increases are in the Public Interest

The practical implications of declining to consider Manitoba Hydro's interim rate application will be foregoing a revenue increase of any kind in 2017/18. This is inconsistent with Manitoba Hydro's evidence, past and present regarding the need for regular predictable rate increases, and will place negative pressure on income, cash flow and other financial metrics.

The Coalition and MIPUG have argued that Manitoba Hydro's financial position has not materially deteriorated since the last rate review and that Manitoba Hydro has not demonstrated a need for an interim rate increase. The Coalition and MIPUG's proposition is short-sighted as their analysis truncates at 2017/18, a period in which Manitoba Hydro's net debt is climbing and its cash interest obligations associated with the major projects are not recognized on its operating statement or in its conventional revenue requirement.

Looking forward just four months following the fiscal year end 2017/18, the Bipole III project will enter into service in July 2018, thus adding approximately \$337 million in annual carrying costs to be recovered from ratepayers. To forgo an interim rate increase for 2017/18 ultimately will result in compounding the deficit funding of its continuing operations, raise the level of net debt on an already highly levered balance sheet and increase the cost to customers in the long run. The PUB recognized that allowing rates to escalate in a stable and

predictable fashion mitigated the incremental cost to customers and reduced the likelihood of rate shock when it had the foresight to direct Manitoba Hydro place revenues attributed to certain rate increases into a Bipole III deferral account. However, the deferral account is projected to grow to just over \$350 million, or effectively just one year of incremental revenue requirement driven by the in-service of Bipole III, indicating that the risk of rate shock is deferred by one year and that an interim rate increase is necessary to avoid rate increases that could be even higher than the current projected level.

Manitoba Hydro fully endorses GAC's position that, *"to achieve relative stability and predictability, rates should be set on a trajectory over several years, rather than year-by-year, with sufficient reserves to address Manitoba Hydro's variable income and rapidly increasing debt load"*.²¹ GAC correctly points out that any pause in rate increase will have to be made up by accelerating future rate increases. Deferring consideration of a rate increase for 2017/18 is clearly not in the public interest. As noted by GAC, and somewhat reluctantly by MIPUG, measured and predictable rate changes are in the public interest.

GAC's Recommendation to Fast Track Low Income Rate Relief

GAC's agreement that some form of interim rate increase should be approved is conditioned on Manitoba Hydro concurrently adopting a targeted strategy to address impacts on low-income customers with the highest energy burden.

As acknowledged by GAC, Manitoba Hydro and stakeholders have engaged in two separate processes to consider measures to make bills more affordable for low-income and electric heat customers – a Bill Affordability process and a Demand Side Management process. There has been a great deal of work already accomplished over the past year and as noted in the Summary Report and Recommendations of the Manitoba Hydro Bill Affordability Collaborative Process:

"The recommendations largely validate Manitoba Hydro's current approach through its bill affordability programs, and set out a series of proposed improvements and enhancements to increase participation rates and the impact of existing programs.

The Working Group's research and findings also illuminate where more work and future study is most needed. Research gathered over the course of the Working Group's mandate makes clear that households in First Nations, remote and rural

²¹ GAC submission dated May 26, 2017 at pg. 2

communities are most likely to be affected by energy poverty and also most likely to have unpaid Manitoba Hydro bills. The geographically disparate nature of these communities poses a considerable challenge for effective data collection, however, and additional research may further identify specific program enhancements that could prove most useful for these groups.”²²

GAC recommends, at Pages 5 and 6 of its May 26th submission, that an interim rate process should incorporate steps to identify and analyze options and provide for the adjudication of options. In particular, GAC suggests that a workshop may be constituted to identify and analyze options, and then a separate process would follow to adjudicate interim rates and interim mitigation strategies. Given the breadth and complexity of the nature of bill affordability in Manitoba, as noted above, the development of further strategies cannot conceivably be accomplished over the course of a few weeks and certainly not during the course of a GRA which has already been expanded as a result of OIC 92/2017 and for which intensive Information Request processes are expected to commence immediately.

However, Manitoba Hydro is alive to the concerns of GAC and other Parties as to the potential for alternative residential rate designs to assist a portion of the residential customer base in light of the level of rate increases sought in this GRA. In order to address this matter, Manitoba Hydro further proposes an adjustment to the timetable to allow it to collaborate with Parties on the identification of plausible alternative residential rate design scenarios, as discussed in Option 2 below.

Manitoba Hydro also submits that once the PUB has completed the review of the current GRA and establishes the trajectory of rate increases, a collaborative process to discuss further steps and options for bill affordability strategies can be undertaken.

Recommended Process

Manitoba Hydro proposes the following with respect to the review of its interim rate request:

To date, Manitoba Hydro has provided its GRA composed of four binders of materials including responses to over 100 Minimum Filing Requirements (“MFRs”) posed by the PUB and Interveners, with information for the 2017/18 test year. It would not be unreasonable for parties to base written submissions on materials filed to date. As such, Manitoba Hydro is

²² Page 7, Appendix 10.5.

of the view that a round of information requests is not required for purpose of the review of its interim rate increase. Manitoba Hydro proposes that interveners issue written submissions on the interim rate increase on or around June 30, 2017, following the Pre-Hearing Conference and the next filing of MFRs. Manitoba Hydro would then provide a reply submission on or around July 12, 2017.

Potential Alternative Process to Address Bill Affordability

Manitoba Hydro views that the work accomplished through the collaboration of parties in the Bill Affordability Working Group in 2016 was valuable and presented a sound problem solving model by which to address complex matters outside of a public hearing format. Manitoba Hydro would be amenable to a timetable that would also incorporate an off line process with interveners of record in this proceeding, in the development of plausible alternative revenue neutral residential rate design scenarios prior to the receipt of first round information requests. At that time, the resulting scenarios could be incorporated into the public hearing process for review. Manitoba Hydro offers this option provided that the interim rate process as described is adopted, in order for Manitoba Hydro to have the opportunity to address its need for interim rate relief in a timely manner for this fiscal year.

Manitoba Hydro acknowledges concerns raised regarding implementing more than one rate increase over the course of a twelve month period. Manitoba Hydro suggests that if the PUB were to determine that it is appropriate to award an interim rate effective August 1, 2017 as requested, the PUB would also be in a position to determine the timing of any increase for the 2018/19 fiscal year.

Conclusion

Intervenors have not raised any new arguments nor referenced new case law which might impact previous decisions with respect to the PUB's authority to approve rates on an interim basis nor has the governing legislation changed. It is clear that the PUB has the necessary jurisdiction to review and order an interim rate increase in this case.

Manitoba Hydro submits that the materials provided establish a prima facie justification for its interim rate increase. The impact of increases in the control budgets for Keeyask and Bipole III of \$2.2 billion and \$0.4 billion respectively cannot be summarily dismissed, nor can deterioration of Load Forecast and export price forecasts be ignored. More significantly an August 1, 2017 rate increase is necessary to mitigate the significant impacts of Bipole III coming into service and its associated costs into rate base in 2019.

Deferring rate increases will only accelerate the need for future increases and is not in the public interest. The justification for the rate increase will be reviewed extensively and debated at length during the hearing to review the current, full GRA.

Manitoba Hydro urges the PUB to establish a process for the review of its interim rate proposal.

Should you have any questions with respect to the foregoing, please do not hesitate to contact the writer at 204-360-3946.

Yours truly,

MANITOBA HYDRO LAW DIVISION

Per:



PATRICIA J. RAMAGE

Barrister and Solicitor

cc : Odette Fernandes, Manitoba Hydro
Bob Peters, Board Counsel
Dayna Steinfeld, Board Counsel
All Interveners of Past Record

APPENDIX A

Urgency or Special Circumstance Are Not Required For the PUB to Issue an Interim Rate Order

Section 47(2) of the PUB Act Provides Clear Authority to Award Interim Rate Increases

The PUB is specifically authorized to employ interim rates as a means of an efficient review process pursuant to section 47(2) of *The PUB Act*:

47(2) The board may, instead of making an order final in the first instance, make an interim order and reserve further directions, either for an adjourned hearing of the matter, or for further application.

It is of note that the legislature did not elect to impose any conditions, requirements or restrictions on the PUB's interim rate approval authority and instead gave the PUB broad discretion in this regard.

Section 48 of the PUB Act Does Not Serve to Fetter the PUB's Discretion

Despite the PUB's previous rulings on the matter, MIPUG and MKO once again argue that pursuant to section 48 of the PUB Act, if an interim order is with respect to an order involving an outlay to ratepayer, there must be a case of urgency.¹ Manitoba Hydro cautions the PUB in terms of accepting the Intervenors assumptions and interpretation of section 48. Section 48 is completely separate and distinct from section 47 and those two sections cannot and should not be read together.

48 The board shall not make an order involving any outlay, loss, or deprivation to any owner of a public utility, or any person without due notice and full opportunity to all parties concerned, to produce evidence and be heard at a public hearing of the board, except in case of urgency; and in that case, as soon as practicable thereafter, the board shall, on the application of any party affected by the order, re-hear and reconsider the matter and make such order as to the board seems just.

There are various sections through-out the PUB Act which intentionally use the term "rates".² Section 48 on the other hand refers to "outlay, loss or deprivation". It does not make any reference to "rates". If legislatures intend for language to be interpreted consistently or apply throughout various sections of legislation, the same language will be purposefully utilized throughout legislation. When that consistent language is not used in a section, it is assumed that the section has a different application and/or meaning.³ The notable absence of any reference to

1 Letter from Mr. Antoine Hacault on behalf of MIPUG dated May 25, 2017, Attachment 1, pgs 3 and 4; Submission of Manitoba Keewatinowi Okimakanak Inc. pgs. 4 and 5.

2 Including sections 77, 8, 116, 120,124, 126 and 127

3 Sullivan and Driedger on the Construction of Statutes, Buttersworth Canada Ltd. 2002, pg 189

“rates” in section 48 suggests that it does not apply to interim rate increases, or to rate increases at all.

MIPUG and MKO have argued that pursuant to section 48 of the PUB Act parties require a full opportunity to be heard and that there must be a full hearing prior to the PUB making an order with respect to a rate increase.⁴ This raises further doubt as to its application to rate increases as the interpretation of the PUB Act suggested by the Intervenors serves to create internal inconsistency within the Act.

For example, section 45 of the PUB Act grants the PUB the authority to make interim ex parte orders where “special circumstances” so require. Section 125 of the PUB Act authorizes interim orders for gas “rates, tolls or charges”. If all orders of the PUB dealing with rate increases (including interim orders as being argued by the Intervenors) require a full hearing as suggested, then sections 45 and 125 of the PUB Act are in clear conflict with section 48 of the PUB Act.

In addition, if section 48 were to be applied broadly, it would further render other provisions of the regulatory scheme governing Manitoba Hydro inoperative and unnecessary. Section 47(2) of the PUB Act plainly authorizes the PUB to make interim orders. Section 28 of the Crown Corporations Public Review and Accountability Act contemplates the compensation or refunds where final orders do not confirm interim approved rates. If the PUB were required to hold a full hearing with respect to rate requests, the PUB could issue final orders in every instance and there would be no requirement to provide for interim rates.

That the legislature saw fit to insert a “special circumstances” requirement with respect to s. 45 interim *ex-parte* orders, but imposed no such requirement in its s. 47(2) interim order provision further supports the notion that there exist no specific pre-conditions to issuing interim orders in Manitoba.

Interpretations that produce confusion or inconsistency or undermine the efficient operation of a scheme may be appropriately labeled as absurd.⁵ Manitoba Hydro submits that the interpretation of section 48 as being proposed by Intervenors cannot be accepted. The legislature clearly understood interim rates could be approved in a broad range of circumstances and that a mechanism ought to be in place should final orders not confirm the interim rates.

The Bell Canada Case is Not Applicable

MIPUG has once again referenced the 1989 Supreme Court of Canada decision in *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)* [1989] 1S.C.R. 1722, in support of their position that the overriding regulatory principle for interim rates is

⁴ Letter from Mr. Antoine Hacault on behalf of MIPUG dated May 25, 2017, Attachment 1, pg. 3; Submission of Manitoba Keewatinowi Okimakanak Inc. pg. 5.

⁵ Sullivan and Driedger on the Construction of Statutes, Buttersworth Canada Ltd. 2002, pg. 248

urgency. As Manitoba Hydro has submitted in previous interim applications, the Bell Canada decision does not deal with the PUB Act of Manitoba nor the interim rate provisions found therein.

In the Bell Canada case, Bell sought and was awarded interim rate increases on the basis that it would prevent a serious deterioration in Bell's financial situation while awaiting the hearing and final decision on the merits of its case. Bell's regulator clearly expressed its intention to review the interim rate increase in its final decision. Bell's financial position improved and it withdrew its general rate application. The issue before the court was whether the regulator had legislative authority to review the revenues made by Bell during the period interim rates were in force and order Bell Canada to grant a one-time credit to its customers. The court did not look at the issue of whether the circumstances in that case warranted the granting of an interim rate increase. While the court acknowledged the appropriateness of the CRTC's policy to issue interim orders in circumstances where lengthy delays in dealing with an application could result in serious deterioration in the financial condition of an applicant absent a general interim increase, it did not suggest this CRTC policy set out the only circumstance in which interim orders, including those made under other regulatory schemes, would be appropriate. The court did not consider the issue and its comments should not be taken out of context.

The Rules and Practices In Other Jurisdictions Cannot Amend Manitoba Legislation

In its submission, MIPUG reproduces section 24(2) of the PUB's Rules of Practice and Procedure which set out the requirements when applying for interim *ex-parte* orders. This rule requires the applicant demonstrate urgency, emergency, efficiency or other special circumstance in order to seek an interim *ex-parte* order. MIPUG goes on to opine that because such factors are similar to factors used by the Alberta Utilities Commission in a 2005 decision regarding an interim rate application (non-*ex-parte*), the Manitoba PUB ought to employ similar factors when assessing interim rate applications (where notice is provided).

It is understandable that interim requests without notice to affected parties should only be used in rare and exceptional circumstances. There is a distinction between interim orders with and without notice. The same concerns do not exist where parties are provided notice and an opportunity to comment prior to the PUB considering an interim request. This distinction was noted by the Manitoba Court of Queen's Bench when reviewing a decision as to whether the PUB should have dealt with an matter on an interim *ex-parte* basis:

The need to move quickly underlies most interim applications. Perhaps the Board felt that giving notice to the applicants would delay the process. Yet the Act gives the Board control over its own processes. A requirement to give notice does not entail an obligation to provide a full hearing in response to an application for an urgent interim order. The obligation to give notice to interested parties or intervenors does not mean the Board is obliged to permit them to frustrate the

expedited hearing.

...

The record shows me that the Board did not turn its mind to the distinction between an interim hearing and an interim ex parte hearing. Indeed there was no evidence presented to the Board that supported the exceptional requirements of an ex parte hearing.⁶

The PUB, as it is entitled to do, has set its own Rules and has made a clear distinction as to the necessary requirements to obtain an interim order without notice and the discretion that will be applied to considering interim applications where notice is provided. The PUB should not fetter that discretion by adopting tests that are in place in other jurisdictions under different regulatory regimes. Pursuant to section 26(4) of *The Accountability Act* the legislature has provided the factors it expects be considered by the PUB when reviewing applications for rate increases in Manitoba. Such factors include, in addition to financial considerations, any relevant policy considerations and any other factors the board considers relevant demonstrates the broad jurisdiction the Manitoba legislature has afforded the PUB with respect to its rate approval function.

There has been no change in the PUB's constating legislation nor has any new case law been introduced which could serve to impose an urgency requirement or otherwise alter the PUB's broad discretion to issue interim rate orders. The PUB has the flexibility to make a preliminary determination on the initial evidence provided by Manitoba Hydro based on its view of the factors set out in section 26(4) of *The Accountability Act* and can do so on an interim basis if it is in the public interest.

⁶ Consumers Association of Canada (Manitoba) Inc. and The Manitoba Society of Seniors v. The Public Utilities Board of Manitoba 2005 MBQB 152 (CanLII) at pg. 14