

Manitoba Keewatinowi Okimakanak, Inc.

FINAL SUBMISSION FEBRUARY 7, 2018

WHO WE ARE

MKO represents more than sixty-five thousand (65,000) treaty First Nation citizens in Northern Manitoba; and

Is a nonprofit advocacy organization governed by the elected Chiefs of the thirty (30) sovereign First Nations in Northern Manitoba.

The citizens of the MKO First Nations are residential ratepayers and the First Nation governments are general service ratepayers.

All of the citizens of the MKO First Nations on reserve and the MKO First Nation government facilities on reserve receive electrical service solely from Manitoba Hydro.

WHAT IS THE MEANING OF EQUITABLE IN RATE SETTING?

Manitoba Hydro believes that equitable means equal and that all ratepayers must be treated equally.

MKO believes that equitable has a broader meaning and takes its context from what is fair in the circumstances.

MKO believes that equitable as it relates to MKO ratepayers is governed by the policy and direction set out in *The Path To Reconciliation Act* CCSM C R30.5.

The Path to Reconciliation Act

RECOGNIZING that Manitoba is situated on the traditional lands and territories of Indigenous peoples;

FURTHER RECOGNIZING that Manitoba benefited and continues to benefit from the historical relationships and treaties with Indigenous peoples and nations;

FURTHER RECOGNIZING that Indigenous people within Canada have been subject to a wide variety of human rights abuses since European contact and that those abuses have caused great harm;

FURTHER RECOGNIZING that reconciliation is founded on respect for Indigenous nations and Indigenous peoples and their history, languages and cultures, and reconciliation is necessary to address colonization;

FURTHER RECOGNIZING that the Truth and Reconciliation Commission was established as part of a response to the abuses of colonization, and that the Commission has provided a path forward to reconciliation;

FURTHER RECOGNIZING that the Government of Canada also has a significant role in advancing reconciliation;

AND AFFIRMING that the Government of Manitoba is committed to reconciliation and will be guided by the calls to action of the Truth and Reconciliation Commission and the principles set out in the United Nations Declaration on the Rights of Indigenous Peoples;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Reconciliation

1(1)"Reconciliation" refers to the ongoing process of establishing and maintaining mutually respectful relationships between Indigenous and non-Indigenous peoples in order to build trust, affirm historical agreements, **address healing and create a more equitable and inclusive society.**

Indigenous peoples

1(2) "Indigenous peoples" includes First Nations, Inuit and Metis peoples of Manitoba.

Principles

2 To advance reconciliation, the government must have regard for the following principles:

Respect: Reconciliation is founded on respect for Indigenous nations and Indigenous peoples. Respect is based on awareness and acknowledgement of the history of Indigenous peoples and appreciation of their languages, cultures, practices and legal traditions.

Engagement: Reconciliation is founded on engagement with Indigenous nations and Indigenous peoples.

Understanding: Reconciliation is fostered by striving for a deeper understanding of the historical and current relationships between Indigenous and non-Indigenous peoples and the hopes and aspirations of Indigenous nations and Indigenous peoples.

Action: **Reconciliation is furthered by concrete and constructive action that improves the present and future relationships between Indigenous and non-Indigenous peoples.**

WHAT ARE THE FACTS THAT CONSTITUTE THE INEQUITY WHICH MUST BE RESOLVED

- 96% of the residents on Northern Manitoba Reserves live below the poverty line
- 76% of the children on reserves live in poverty
- MKO ratepayers do not have access to the most effective method of energy cost reduction - gas heating
- MKO ratepayers use more energy just because of the fact that daylight hours and temperatures are lower than southern communities
- All MKO communities are in arrears on payment of hydro bills with a total amount outstanding of over 7.5 million dollars. No suggestion that choice not to pay. MKO communities are in arrears from a low of 25% of the residents to 80% of the residents (MKO-MH 1 3b)
- more MKO residents are subject to electricity cut offs than the general population
- MKO ratepayers are obligated to pay as part of their hydro bills the amount paid to them for mitigation of Hydro work on their lands (\$58,000,000.00 MKO-MH1-4a-c)

MKO relies primarily on the Principle :

“Reconciliation is furthered by concrete and constructive action that improves the present and future relationships between Indigenous and non-Indigenous peoples”.

WHAT IS NOT ACTION

- **Further studies**
- **Further payment of consultants to study ways to solve the problems**
- **Further hearings to discuss possible action**
- **shifting the onus to resolve these issues to different jurisdictions or government entities**

WHAT DOES THE PUBLIC UTILITIES BOARD HAVE AVAILABLE TO DEAL WITH THIS ISSUE

Ability to determine what fair rates are:

The Manitoba Court of Appeal in the decision of *Consumers' Association of Canada (Manitoba) Inc. v. Manitoba Hydro Electric Board*, 2005 MBCA 55 at paras. 63 and 65:

63 The intent of the legislation is to approve fair rates, **taking into account such considerations as cost and policy or otherwise as the PUB deems appropriate**. Rate approval involves balancing the interests of multiple consumer groups with those of the utility..... [Emphasis Added]

65 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**. [...] [Emphasis Added]

In PUB Order 73/15 this board stated:

“Rates are not only required to meet the requirements of subsection 39 (1) of the Manitoba Hydro act but must also be just and reasonable. In the board's view, affordability is a factor to consider when setting “just” and “reasonable” rates”. Page 29 No 73/15

Ability to recognize certain at risk ratepayers and provide them with programs to make energy affordable

In Board Order 73/15 the Board concluded that:

“The board recognizes that higher electricity rates will have an impact on lower income ratepayers. This is a particular concern with respect to all electric customers, many of whom live in areas in which natural gas is not available as an alternative heating source.

In that same order the board reminded Hydro that in the previous order 116/08 it had concluded that it had jurisdiction to order the implementation of a bill affordability program. Page 28 No 73/15

Ability to create a rate class that pays less than the average cost to serve such customers

In Board Order 73/15 the board expressed the opinion that it had the power to create a lower income customer class provided that no geographic limitations or impose on such a class.

Further, the board found that it does not prohibit the creation of a rate class that pays less than the average cost to serve such customers. Page 29 No 73/15

As an example the board cited the Curtailable Rate Program as providing a level of rate not available to other classes or even within the same class.

Why should all MKO on reserve ratepayers be qualified as being eligible for lower rates or for an affordability program?

- Hydro already qualifies all households on MKO reserves as being entitled to its low income programs without proof of income
- Whichever definition you use to determine “low income” when 96% of your residents on the reserve live below the poverty line it’s a small risk that you will be paying any significant amount to any ineligible recipient
- Offsetting any responsibility to government at any level ignores the reality that nothing will happen
- The source of band funds should not be a factor in determining eligibility
 - paternalistic
 - why should federal government pay to increase the equity level of hydro or the Manitoba Government
 - As found in the NFAT hearing In accordance with the DIAND Capital Facilities and Maintenance Operation and Maintenance mechanism, electrical costs are funded based on a percentage of the estimated electricity costs based on a Cost Reference Manual and not by comparison to actual Manitoba Hydro bills. The percentage of the estimated costs which are funded is based on the use and classification of a capital asset. The resulting funding contribution of a percentage of the estimated cost is described as the Net Funding Requirement (NFR) (Tab 6 of the MKO NFAT Panel Book of Documents).
- Eligible MKO ratepayers can be identified by Treaty Number as well as the meter number which bears a physical location. Hydro already is able to make adjustments to its bills by identifying First Nations ratepayers and adjusting the amount of tax on the bill

WHAT IS POSSIBLE IMMEDIATELY

1. Set the rate for MKO ratepayers at current level with an adjustment to reduce the portion of the bill that relates to mitigation payments made by Hydro to First Nations and only adjust for the actual annual cost of living adjustment. MKO ratepayers provide 1.4 % of Hydro domestic revenue. Not applying the requested increase would result in Hydro forgoing 1.6 million dollars which would have to be collected from other classes.
2. Set heating bills to reflect the same cost as if energy source was natural gas.
3. Set up an affordability plan based upon the model presented by Green Action and implement it on MKO First Nations as a trial program.
4. Calculate the amount of the new charges upon MKO ratepayers and rebate that amount proportionately to the First Nations for them to use as part of an energy affordability plan. Similar to the Tobacco Tax rebate.
5. Direct Hydro to write off all arrears that are in excess of the limitation date for collection (6 years) and offer a plan that pays a monthly amount towards the remaining arrears over a period of 3 years and if payments are made for the 3 years at the end of that time remaining arrears are cancelled.
6. Suggest that all DSM programs are to be directed only to low income households and for the next several years DSM be regarded only on the basis of rate mitigation.