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Our File No. 10146-01

July 24, 2020

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

Attention: Dr. Darren Christle, Secretary and Executive Director

Dear Dr. Christle:

Re: Manitoba Hydro's Proposed 6.6% Rate Increase to Former First Nation On Reserve Residential and Diesel Zone Residential Customers

As you know, we represent Manitoba Keewatinowi Okimakanak Inc. ("**MKO**"), an approved intervener in many past proceedings before the Manitoba Public Utilities Board (the "**Board**" or the "**PUB**").

MKO is a longstanding non-profit advocacy organization representing 26 rights-bearing northern First Nations, with collectively more than 65,000 treaty First Nation citizens, many of whom are Manitoba Hydro customers in the former First Nations On Reserve Residential ("**FNORR**") customer class, and customers in the "Diesel Zone".

MKO is in receipt of the following documents:

- Manitoba Hydro's June 23, 2020 correspondence to the Board with a proposal to increase the rates for former FNORR customers and Diesel Zone Residential customers by 6.6% effective August 1, 2020;
- The Board's July 13, 2020 correspondence to Manitoba Hydro and past interveners of record with the Board's Questions for Manitoba Hydro regarding Manitoba Hydro's proposed rate increase, and the Board's invitation for comments from interveners of past record; and
- Manitoba Hydro's July 20, 2020 correspondence to the Board with responses to the Board's Questions.

MKO thanks the Board for this opportunity to provide comments on Manitoba Hydro's correspondence and proposed rate increase that, if approved, will adversely affect MKO member First Nations and citizens.

In brief, MKO strongly opposes Manitoba Hydro's proposed rate increase and proposed method of implementing the June 9, 2020 decision of the Manitoba Court of Appeal in

Manitoba (Hydro-Electric Board) v Manitoba (Public Utilities Board), (2020 MBCA 60).

This Application is Premature

The Manitoba Court of Appeal has determined that the Board exceeded its jurisdiction by ordering Manitoba Hydro to create the FNORR customer class in Directive 6 of Board Order 59/18. However, MKO notes that the appeal period with respect to the Court's decision has not yet lapsed. For this reason, MKO submits that Manitoba Hydro's proposed rate increase, which MKO opposes, is premature.

What is the Most Appropriate Method and Timing for Implementation?

MKO also notes that, whether or not any party appeals the Court of Appeal's decision, the Board has not yet determined the most appropriate method and timing for implementing the Court's decision. In the June 23, 2020 correspondence Manitoba Hydro seems to presume that there is only one method for implementation of the Court's decision, and states that there are no material changes in circumstances to warrant a further review. MKO disagrees. This is more than an administrative matter. Any method of implementing the Court's decision that results in Manitoba Hydro changing rates for services to customers without approval of the Board contravenes section 25(1) of *The Crown Corporations Governance and Accountability Act*.

MKO is particularly concerned with the timing of Manitoba Hydro's proposed rate increase, which does not exist in a vacuum, but instead comes amidst an unprecedented global pandemic, with an economic downturn and unpredictable and potentially recessionary results, none of which appear to have been factored in to Manitoba Hydro's proposed rate increase, or presented to the Board for consideration.

Pushing Through a Rate Increase Without a GRA

Upon receipt and review of the documents and information provided by Manitoba Hydro, it is MKO's understanding that Manitoba Hydro is attempting to "push through" a rate increase without filing either a Review and Vary Application or a General Rate Application ("**GRA**") and without any process. Instead Manitoba Hydro has filed a "rate application by letter" which MKO views as wholly inappropriate.

MKO is concerned with the lack of evidentiary record upon which Manitoba Hydro has based its requested 6.6% rate increase to customers within the former FNORR and Diesel Residential customer classes. MKO notes that Manitoba Hydro has not provided the Board now or in previous hearings with the necessary materials or basis upon which the Board can make an informed determination in the public interest with respect to Manitoba Hydro's proposed rate increase. The onus is on Manitoba Hydro to justify a proposed rate increase, and it is MKO's position that Manitoba Hydro has not met that onus, having not prepared any documentation to show that the requested rate increase is either just or reasonable.

In Board Order 59/18 the Board approved a 3.6% average revenue increase, with no increase to the FNORR or Diesel Residential customer classes. The Board noted that Manitoba Hydro was “kept whole” by the Board’s application of a marginally higher rate increase of 3.73% to the other customer classes. Thus, Manitoba Hydro did not “lose” any revenue as a result of the “rate freeze” ordered to the FNORR or Diesel Residential customer classes in Board Order 59/18.

In Board Order 69/19 the Board approved a 2.5% rate increase for most customer classes, other than the FNORR and Diesel Residential customer classes. The Board found that Manitoba Hydro did not require an increase to its revenues in the 2019/20 fiscal year, ordering that all revenues from the 2.5% rate increase were to be placed in a deferral account. Thus, Manitoba Hydro did not “lose” any revenue as a result of the “rate freeze” ordered to the FNORR or Diesel Residential customer classes in Board Order 69/19.

In the June 23, 2020 correspondence, Manitoba Hydro has proposed a 6.6% rate increase to the FNORR and Diesel Residential customer classes without a corresponding rate decrease to the other customer classes. Any rate adjustment to one class should require an adjustment to all other rates so that the adjusted rates recover only the Board approved revenue requirement. The proposed rate increase, if approved, will result in additional revenues to Manitoba Hydro, which in Board Order 69/19 the Board found was not necessary.

It is MKO’s position that rate changes proposed by Manitoba Hydro require it to file a GRA and require a GRA process. The issue of possible methods for implementation of the Court of Appeal decision, taking into account the potential rate shock that could result, should be just one of the issues for consideration before the Board in a GRA process.

It is also MKO’s understanding that a Manitoba Hydro GRA is due to be filed, as the 2019/20 GRA was for a one-year requested rate increase, which the Board approved to be considered through a truncated process, partially on the basis that Manitoba Hydro was expected to prepare and file a GRA in late 2019 with an updated Integrated Financial Forecast (“**IFF**”) and a new Prospective Cost of Service Study (“**PCOSS**”).

Rate Shock – Not Rate Stability or Predictability?

Manitoba Hydro’s materials to date have provided no justification for the proposed rate increase, or the timing of the proposed rate increase. MKO has neither seen, nor had an opportunity to test, any evidence to suggest that Manitoba Hydro has paid any regard to the firmly established rate setting principles of rate stability and predictability, or gradualism or rate smoothing in proposing this rate increase. Instead, MKO is very concerned that the proposed rate increase, if approved, will result in significant rate shock for customers within the former FNORR and Diesel Residential customer classes.

The Court of Appeal Did Not Decide Anything to do with the Diesel Zone

In addition, MKO notes that the Court of Appeal neither considered nor decided anything to do with the rates applicable to customers in the Diesel Zone, which was not part of Manitoba Hydro's appeal. Manitoba Hydro has not justified an increase in rates to customers in the Diesel Zone, and MKO notes that this portion of Manitoba Hydro's proposed rate increase is completely unjustifiable and should be denied outright.

MKO opposes any change to rates in the Diesel Zone without a GRA, and as MKO recommended in a previous hearing before the PUB, MKO also once again recommends that the Board order that Manitoba Hydro file a diesel-specific rate application which should be followed by a diesel-specific hearing.

Conclusion

MKO seeks the opportunity for interveners to further assist the Board in making its determination on whether the rate increase requested by Manitoba Hydro is just and reasonable, and in the public interest. Therefore, MKO proposes that the Board:

- deny this "rate application by letter"; and
- order Manitoba Hydro to file a GRA, with a new IFF and a PCOSS.

In the alternative, if the Board does not agree with MKO that Manitoba Hydro should file a full and complete GRA, it is MKO's position that, at the very least, some form of hearing process, with either oral or written submissions from interveners, should precede the Board's determination of the appropriateness of Manitoba Hydro's proposed rate increase, and the most appropriate method for implementing the Court of Appeal decision to eliminate the FNORR.

Once again, MKO thanks the Board for the opportunity to provide comments on the correspondence and proposed rate increase of Manitoba Hydro and looks forward to the decision of the Board on these matters.

Should you have any questions or concerns, please contact the undersigned.

Yours truly,

JERCH LAW

Per: 

Jared Wheeler

cc: Board Counsel
Manitoba Hydro
Intervenors of Past Record