

October 16, 2017

Taylor McCaffrey, LLP
900-400 St. Mary Avenue
Winnipeg, Manitoba R3C 4K5

Attention: Kevin T. Williams;

Re: Business Council of Manitoba's Application to Review and Vary Public Utilities Board decision of August 25, 2017.

On September 25, 2017, the Business Council of Manitoba ("BCM") applied to the Public Utilities Board ("Board") to have the Board review and vary its August 25, 2017 decision, which states:

The Board does not approve the Business Council of Manitoba's experts on macro-economic impacts and bond rating considerations. These areas will be addressed by other witnesses and Business Council of Manitoba has not provided an explanation as to how its proposed experts would provide additional value. The Board also shares Manitoba Hydro's concern that Business Council of Manitoba has not identified the experts it is proposing on these topics and the budgets do not appear to be tied to hourly rates.

Pursuant to the Board's Rules of Practice and Procedure, and for the reasons that follow, the Board hereby dismisses BCM's Application to review and vary the Board's August 25, 2017 decision respecting BCM's experts on macro-economic impacts and bond rating considerations.

Background

In its Application for Intervener Status in the current Manitoba Hydro General Rate Application ('GRA'), BCM indicated, if approved as an Intervener, it intended to call Mr. Murray Taylor (a former CEO and actuary) to testify ... *"on the process of bond ratings for corporations and public institutions, what considerations affect the ratings assigned, how those ratings impact borrowing costs and the implications of lower bond ratings for ratepayers."* BCM also indicated it may call ... *"additional CEOs as may be required."*

At the June 12, 2017 Pre Hearing Conference, when the Applications for Intervener status were presented to the Board, BCM stated that it had not collaborated extensively with any of the other prospective interveners. However, having heard the submissions from the Consumers Coalition and MIPUG regarding the proposal to engage Morrison Park Advisors as an expert witness in the proceeding, the BCM indicated (at page 181 of the Transcript):

Based on what we saw this morning, the opinions of Morrison Park Advisors will likely be of interest to our clients, and we've obviously prepared to collaborate to every extent possible in the context of this proceeding. Our clients have no interest in duplication and are prepared to do what it can do to minimize costs associated with its intervention.

In Board Order 70/17 BCM was approved as an Intervener, within the scope approved by the Board. In Order 70/17, the Board directed that it is incumbent on approved Interveners to avoid duplication and that approved Interveners are to collaborate among themselves in the development of their scope of work for the issues and corresponding work plans and budgets. As a result of this directive, MIPUG and the Consumers Coalition agreed to share the investment firm Morrison Park as an expert witness.

By July 14, 2017, approved Interveners were to submit for Board approval their detailed budgets for their intervention, including their consultants and expert witnesses.

In its July 25, 2017 budget request letter, BCM indicated it still had not been involved in discussions with other Interveners as to where they may collaborate. In its letter BCM indicated for the first time that it was proposing two additional expert witnesses, who were not yet identified, to address macro-economic impacts of bond ratings and bond rating considerations. While BCM indicated in its budget request letter that it hoped to identify its proposed two expert witnesses and any revised budget "in short order", BCM has yet to do so.

In its August 25, 2017 decisions related to the BCM, the Board approved a legal costs budget for BCM in the amount of \$62,500. The Board also approved the BCM's proposed expert on corporate strategic considerations, Mr. Murray Taylor. As noted above, the Board did not approve the BCM's experts on macro-economic impacts and bond rating considerations:

These areas will be addressed by other witnesses and Business Council of Manitoba has not provided an explanation as to how its proposed experts would provide additional value. The Board also shares Manitoba Hydro's concern that Business Council of Manitoba has not identified the experts it is proposing on these topics and the budgets do not appear to be tied to hourly rates.

On September 14, 2017, BCM communicated with other Interveners to determine whether their approved expert witnesses would be addressing the issues identified by BCM.

In correspondence of September 18, 2017 and September 21, 2017, respectively, both the Consumers Coalition and MIPUG advised BCM that the issues raised by BCM, to the extent they are relevant to rate setting and the Board's jurisdiction, will be dealt with by the expert witnesses the Board approved for both the Consumers Coalition and for MIPUG.

The Consumers Coalition witnesses approved by the Board to address matters applicable to BCM issues consist of the following:

- Morrison Park – for the review of Manitoba Hydro's financial targets and impacts of Manitoba Hydro debt on Provincial credit rating.
- Dr. Wayne Simpson and Dr. Janice Compton – to examine implications of rate increases on the Manitoba economy.

MIPUG witnesses approved by the Board to address matters applicable to BCM issues consist of the following:

- Mr. Patrick Bowman and Mr. Cam Osler – to examine Manitoba Hydro's financial forecast, risk, and the overall mandate of a Crown utility versus private utilities.
- Mr. Gerry Forrest – to examine crown utility risks and provincial economic effects.

Additionally, BCM was reminded that aspects of its issues were within the scope of work of Dr. Yatchew who is an Independent Expert Consultant engaged by the Board.

To explore further dialogue and discussions with their approved expert witnesses, both Consumer Coalition and MIPUG invited contact from BCM. It appears BCM has not accepted the invitations from counsel for the other Interveners to contact them; as well it has not contacted counsel for the Independent Expert witnesses retained by the Board. Instead BCM applied on September 25, 2017 to the Board to review and vary its August 25, 2017 decision which denied BCM's proposed experts on macro-economic impacts and bond rating considerations.

The grounds on which BCM relies in its Application to review and vary the Board's decision are that:

- a. The Board erred in concluding that BCM's issues will be addressed by other witnesses.
- b. The Board's decision is prejudicial to BCM.

In its Application to review and vary the Board decision, the relief sought by BCM includes: approval for BCM to retain its own expert witnesses; an extension of time in which BCM can continue to seek expert witnesses; an increased budget for additional BCM witnesses; and an increased budget for legal counsel to recognize the time and effort to prepare BCM's Application to review and vary the Board's decision.

In the alternative, the relief sought by BCM includes: approval of an increased budget and a revised procedural timetable such that BCM can retain experts to review the Intervener Evidence to be filed October 31, 2017; an extension of time for BCM experts to review and test Intervener evidence; and approval for BCM to call such experts during the oral GRA hearing.

Board Findings

Pursuant to *The Public Utilities Board Act* and the Board's Rules of Practice and Procedure, the Board may, on its own initiative or on application, review, rescind, change, alter or vary any decision or order by it. On an application, the Board determines whether there is reason to believe the order or decision should be rescinded, changed, altered or varied. The Board may order a hearing or proceeding, grant the application, or dismiss the application. An application may be dismissed where, if the applicant has alleged an error of law or jurisdiction or an error in fact, the applicant has not raised a substantial doubt as to the correctness of the Board's order or decision, or where, if the applicant has alleged new facts not available at the time of the Board's hearing or a change in circumstances, the Board is of the opinion that the applicant has not raised a reasonable possibility that the new facts or the change in circumstances could lead the Board to materially vary or rescind the Board's order or decision.

The Board dismisses BCM's Application to review and vary the Board's August 25, 2017 decision respecting BCM's experts on macro-economic impacts and bond rating considerations.

The Board has determined that there is no reason to believe the decision should be rescinded, changed, altered or varied. BCM has not raised a substantial doubt as to the correctness of the Board's decision respecting whether BCM's issues will be addressed by other witnesses, or that the Board's decision is prejudicial to BCM. BCM also has not raised a reasonable possibility that there are new facts or a change in circumstances that could lead the Board to materially vary or rescind the Board's August 25, 2017 decision.

In proceedings before the Board, the role of Interveners and their expert witnesses is to assist the Board in understanding the issues in Manitoba Hydro's GRA. Expert witnesses are not to be advocates and their opinions are to be independent of the Party that retains them. Interveners are also expected to collaborate with other Interveners to avoid duplication, achieve efficiencies, and reduce costs.

In their responses to the September 14, 2017 letter of BCM, the Consumers Coalition and Manitoba Industrial Power Users Group ("MIPUG") have indicated that the issues and questions raised by BCM appear consistent in content with the questions that their approved expert witnesses will address. BCM was invited to explore discussions with the approved Consumer Coalition and MIPUG witnesses, but instead BCM decided to seek to review and vary the Board's decision. In its September 25, 2017 letter to the Board, BCM stated:

"...it is not clear as to whether all of the BCM Issues will be canvassed nor is it made clear precisely what the evidence will be in order for the BCM to determine whether it is consistent with the BCM's position on these issues."

The Board does not understand how the BCM can state that it is uncertain as to what precisely will be the evidence filed by other approved expert witnesses when it did not enter into substantive discussions with the other Interveners, even after being invited to

do so by the Interveners. As well, the BCM's concern that such expert evidence may be inconsistent with BCM's position contradicts the requirement that expert evidence be independent.

In its September 25, 2017 Application to vary the Board's decision, BCM also acknowledges that it is not able to identify any differing perspectives it may take on an issue from that of other Interveners or outline the specific additional value BCM expert witnesses might add to the GRA. Moreover, despite stating in its July 25, 2017 budget request letter that it hoped to identify its proposed two expert witnesses "in short order", BCM has yet to do so. The Board notes that, prior to the Board's decisions on Intervener budgets, all other Interveners identified with specificity the experts proposed to provide evidence in the proceeding. Additionally, as stated in the Consumer Coalition's September 19, 2017 letter, the determination of an appropriate overall rate increase is the function of an analysis of the entire record and therefore it would be premature to ask an expert charged with only part of the analysis to pronounce an opinion on an appropriate rate increase without a better understanding of the entire record.

To the extent that Dr. Yatchew's Scope of Work (posted on the Board's website) includes the intended macro-economic issues of BCM, contact should be made through counsel for further discussion and understanding of those issues. The BCM can also contact counsel for the Interveners (Consumer Coalition and MIPUG) which have retained expert witnesses who will provide evidence on matters applicable to BCM.

Through BCM's intervention with its approved witness, Mr. Taylor, it can test the evidence of other Interveners' expert witnesses through written Information Requests and oral cross-examination as well as present arguments that may differ from, or support, other Interveners. In all of these circumstances, the Board's decision cannot be said to be prejudicial to BCM.

Board decisions may be appealed in accordance with the provisions of Section 58 of The Public Utilities Board Act, or reviewed in accordance with Section 36 of the Board's Rules of Practice and Procedure. The Board's Rules may be viewed on the Board's website at www.pubmanitoba.ca.

Yours truly,



Kurt Simonsen
Cc: Manitoba Hydro
Interveners of Record