

Manitoba Hydro Application to Review and Vary Order 59/18

Written Submissions

Assembly of Manitoba Chiefs

On May 1, 2018, the Public Utilities Board (“PUB” or “Board”) released Order 59/18 in the 2017/18 and 2018/19 General Rate Application (“GRA”) of Manitoba Hydro (“MH” or “Hydro”) after a thorough hearing of the evidence. Order 59/18 was arrived at after lengthy deliberation and is carefully reasoned. Hydro now asks the Board to reconsider and vary Order 59/18. The Assembly of Manitoba Chiefs (“AMC”) makes these submissions only in respect of Hydro’s application to review and vary Directive 6 of Order 59/18. In our submission, Directive 6 was amply justified on the evidence and is legally sound. Moreover, Hydro has not met the burden required for the Board to grant the application to vary Directive 6 of Order 59/18.

STATUTORY FRAMEWORK

The Board’s jurisdiction is set out in the *Public Utilities Board Act*.¹ This *Act*, at s.44(3), empowers the Board to “review, rescind, change, alter, or vary any decision or order made by it.”

That being said, the Board is also empowered by s.24(1) of the *PUB Act* to adopt rules of practice. Under Rule 36 of the *Rules of Practice*, the Board has set out conditions under which it will exercise its power to review, rescind, change, alter or vary any decision or order. Rule 36(5)(a) sets out the Board may dismiss the application for review if:

- i) in the case where the applicant has alleged an error of law or jurisdiction or an error in fact, the Board is of the opinion that the applicant has not raised a substantial doubt as to the correctness of the Board’s order or decision; or
- ii) in the case where the applicant has alleged new facts not available at the time of the Board’s Hearing that resulted in the order or decision sought to be reviewed or a change of circumstances, the Board is of the

¹ CCSM c P280 (the “*PUB Act*”).

opinion that the applicant has not raised a reasonable possibility that the new facts or the change in circumstances as the case may be, could lead the Board to materially vary or rescind the Board's order or decision;

It does not appear from Hydro's Application that it is alleging any new facts not available at the time of the Board's Hearing. As such, Hydro's application appears to be made pursuant to Rule 36(5)(a)(i) of the Board's rules.

As set out in Rule 36(5)(a)(i), the person making the application for review has the burden of "rais[ing] a substantial doubt as to the correctness of the Board's order or decision." In AMC's respectful submission, Hydro has not met this burden, and its Application must be dismissed.

DIRECTIVE 6

For convenient reference, Directive 6 of Order 59/18 sets out:

Manitoba Hydro create a First Nations On-Reserve Residential customer class. This customer class is to receive a 0% rate increase for the 2018/19 Test Year, such that the rate for this class will be maintained at the August 1, 2017 approved Residential rate. A 0% rate increase is to also apply to First Nations Residential customers in the diesel zone communities.

Hydro's Application attacks Directive 6 on two grounds: (1) that the Board has neither the jurisdiction to create a new customer class nor order a bill affordability program, and (2) that the First Nations On-Reserve Residential customer class is prohibited by statute as being a class defined solely on the basis of the region of the province in which customers are located.² Our submissions will deal with each ground in turn.

² Application, Appendix A, p 2 of 14.

JURISDICTION TO CREATE A FIRST NATIONS ON-RESERVE CUSTOMER CLASS

Hydro's Application attacks the Board's jurisdiction to create a First Nations On-Reserve customer class. First, Hydro argues that the PUB's role is restricted to reviewing and approving the price for which Hydro has made a proposal, and does not extend to the creation of new customer classes. As a result, according to Hydro, the PUB lacks the jurisdiction to order bill affordability programs.

Hydro correctly states that the jurisdiction of the Board over Manitoba Hydro is set out in the *Crown Corporations Governance and Accountability Act* ("CCGAA").³ It is true that the CCGAA, at s.25(1), limits the jurisdiction of the Board to the determination of "rates for services". Further, the CCGAA at s.25(2) defines "rates for services" for Manitoba Hydro to be "prices charged by that corporation with respect to the provision of power". Yet it is a leap for Hydro to argue that this leads inexorably to the conclusion that the PUB's jurisdiction is limited to the arrangement of "Manitoba Hydro develops the product and proposes a price, the PUB reviews and approves the price"⁴. Such a position represents a radical narrowing of the Board's jurisdiction and must be rejected.

The interpretation of the scope of the Board's statutory jurisdiction takes place in reference to the objects of the statutory scheme.⁵ The jurisdiction of utility regulators has been considered by the Supreme Court of Canada within the framework of the regulatory compact,⁶ in which the interests of public utilities, which are natural

³ CCSM c C336.

⁴ Application, Appendix A, p6 of 14.

⁵ *Dorn v Association of Professional Engineers and Geoscientists of the Province of Manitoba*, 2018 MBCA 18, para 79, citing *Katz Group Canada Inc v Ontario (Health and Long-Term Care)*, 2013 SCC 64, paras 24-28.

⁶ Also referred to as the "regulatory compact".

monopolies, are balanced out with the interests of the public whom they serve.⁷ As set out by the Supreme Court of Canada, “the regulator limits the utility’s managerial discretion over key decisions, including prices [and] service offerings”⁸. The purpose of PUB regulation goes beyond simple approval of a price proposed by Hydro; it extends to ensuring the fairness and reasonableness of those rates, and that those rates are for services offered to the public in a manner that complies with the Board’s understanding of public policy objectives.

In determining just and reasonable rates, the inquiry must logically extend to the question of to whom those rates apply. There is no review of rates in a vacuum; they must always apply to certain customers and not others. It therefore is an essential aspect of the Board’s jurisdiction over rate setting that the definition of classes – the customers to whom those rates apply – must be part of that jurisdiction.

Hydro appears to be arguing that any oversight beyond a simple approval (or disapproval) of a proposed rate goes beyond the jurisdiction of the Board. It argues that “[t]he ability to establish terms and conditions of service falls squarely within the jurisdiction of the Manitoba Hydro Electric Board”⁹. In support of its argument, Hydro cites s.28(1) of the *Manitoba Hydro Act*, which sets out that

28(1) The board may, by regulation, prescribe (a) the terms, and conditions upon and subject

28(1) Le conseil peut, par règlement, prescrire :

⁷ *ATCO Gas and Pipelines v Alberta*, 2006 SCC 4, para 3.

⁸ *Ibid* para 4.

⁹ Application, Appendix A, p 5 of 14.

to which the corporation will supply power to the users of the power supplied by it [...] a) les modalités et conditions selon lesquelles la Régie fournit de l'énergie à ses usagers [...] ¹⁰

This power accorded to the Hydro Electric Board, according to Hydro, means that by implication, that the PUB does not have jurisdiction over terms and conditions of service.¹¹ Hydro appears to be arguing that the definition of customer classes is one of these terms and conditions which falls under the exclusive purview of the Manitoba Hydro Electric Board.

It should be observed at this stage that s.28(1) of the *Manitoba Hydro Act* is not a wide ranging power to define all terms and conditions of service, but actually a power to make regulations to define terms and conditions. The regulations made under this provision, the *Electric Power Terms and Conditions of Supply Regulation*,¹² do not define customer classes. Indeed, customer classes are not defined in any statute or regulation.

The definition of customer classes by which Hydro has operated and continues to operate, therefore, is not one of the terms and conditions contemplated in s.28(1).

On the other hand, the PUB does have certain powers with respect to classification as it relates to the prices to be charged for power. For instance, the *PUB Act* prohibits unjust or unreasonable classification in the setting of rates:

82(1) No owner of a public utility shall

82(1) Le propriétaire d'un service public ne

¹⁰ *Manitoba Hydro Act*, CCSM c H190.

¹¹ Application, Appendix A, p 5 of 14.

¹² Man Reg 186/90.

[...]

peut :

(c) adopt or impose any unjust or unreasonable classification in the making, or as the basis, of any individual or joint rate, toll, fare, charge, or schedule for any product or service rendered by it within the province [...]

[...]

c) adopter ou imposer une classification injuste ou déraisonnable dans l'établissement ou comme base d'un taux, tarif, prix de billets, charge ou barème de taux, individuel ou conjoint, pour un produit fourni ou un service rendu dans la province [...]¹³

The prohibition on unjust or unreasonable classification in the making of rates is enforced by the PUB. The mechanism by which the PUB is able to do this is the approval (or disapproval) of rates. The approval or disapproval of rates is more than a simple up or down on a Hydro proposal; as the *PUB Act* contemplates, it necessarily extends to judgements about the justness or reasonableness of classifications as well.

Although Hydro asserts the sole role of the PUB is that it “reviews and approves the price”¹⁴ proposed by Hydro, presumably Hydro acknowledges the jurisdiction of the Board to not approve the proposed price as well. It would be open to the Board, at this stage, to set out conditions that Hydro must meet to secure approval of the proposed price. One condition for finding a rate to be just and reasonable could include modifying the classification of customers to which it would apply. At this point Hydro would need to revise its classification of customers in order to secure approval of its rate proposal. Functionally, this would produce the same result as directly ordering a reclassification of customers, but in a much more cumbersome manner. Directly or indirectly, the Board clearly has jurisdiction with respect to the classification of customers.

¹³ *PUB Act*, CCSM c P280.

¹⁴ Application, Appendix A, p 6 of 14.

As is set out in s.25(4)(a) of the *CCGAA*, the PUB, in exercising these powers under the *PUB Act* over Manitoba Hydro, is empowered to consider “any compelling policy considerations that the board considers relevant to the matter”¹⁵. The subsequent part of our submissions address the compelling policy considerations that justify Directive 6, but at this point it will be helpful to note that these compelling public policy considerations inform the scope of the Board’s jurisdiction over rates for services.

Directive 6 is a targeted bill affordability program, an administratively simple step that enables some alleviation of the burden of energy poverty on some of the most vulnerable people living in Manitoba. The Board heard extensive evidence about energy poverty, concluding that “the projected rate plan would result in the proportion of energy poverty increasing from 9.7% to 15.2% in 2024, and remaining at a permanently higher level through at least 2036.”¹⁶ For one-sixth of Manitobans to be energy poor is a clear and compelling public policy issue that the Board is entitled to take into consideration in its decisions.

In dealing with the impact of rate increases, the Board has a decision to make to balance the financial needs of Hydro against the impacts of high energy prices on the public. If the Board denied Hydro’s rate increase altogether, it would alleviate the impact of high energy prices, but may cause great harm to Hydro’s finances. It is axiomatic that wealthier ratepayers are better able to pay higher energy costs and do not need bill affordability programming. It is open to the Board to more narrowly target bill affordability programs and policies to match a particular need in the customer base, while keeping Hydro financially whole.

Hydro’s Application attacks the jurisdiction of the Board to order bill affordability programming.¹⁷ It cites a decision of the Nova Scotia Court of Appeal and another

¹⁵ *CCGAA*, CCSM c C336.

¹⁶ Order 59/18, p223.

¹⁷ Application, Appendix A, pp6-7 of 14.

decision of the Alberta Energy and Utilities Board for this purpose.¹⁸ Both of these decisions were canvassed in Hydro's Final Submissions,¹⁹ refuted in intervener submissions,²⁰ fully considered and rejected by the Board in Order 59/18.²¹ There is no need to revisit these arguments here.

Hydro cites s.43(3) of the *Manitoba Hydro Act* to attack the Board's jurisdiction to implement bill affordability programming. The provision plainly is a prohibition on the commingling of Hydro and government funds and does not speak to bill affordability. Directive 6 maintains a rate freeze for First Nations on-reserve ratepayers but leads to no revenue impact on Hydro as very slightly higher rates on other users make up the difference. There can be no argument that "the funds of [Hydro]" are being used at all.

EXERCISING THE BOARD'S JURISDICTION TO TARGET FIRST NATIONS ON-RESERVE CUSTOMERS

Hydro objects in particular to relief targeted at First Nations On-Reserve residential customers, alleging that the "PUB erred in failing to consider that the additional circumstances ascribed to the class are not unique to customers living on reserve and that the defining feature of the new rate class is geographical location"²².

The jurisdiction of the Board is circumscribed by s.39(2.1) and s.39(2.2) of the *Manitoba Hydro Act*. These sections read as follows:

¹⁸ Application, Appendix A, pp6-7 of 14.

¹⁹ Exhibit MH-137, pp175-177.

²⁰ Exhibit AMC-21, pp18-19; Exhibit CC-53, pp2-3.

²¹ Order 59/18, pp214-222.

²² Application, Appendix A, p 10 of 10. Underlining added.

39(2.1) The rates charged for power supplied to a class of grid customers within the province shall be the same throughout the province.

39(2.1) Le prix de l'énergie vendue à une catégorie de clients branchés au réseau de la province est le même partout dans la province.

39(2.2) For the purpose of subsection (2.1),

39(2.2) Pour l'application du paragraphe (2.1) :

(a) grid customers are those who obtain power from the corporation's main interconnected system for transmitting and distributing power in Manitoba; and

a) les clients branchés au réseau reçoivent leur énergie du réseau d'interconnexion principal de la Régie servant au transport et à la distribution de l'énergie au Manitoba;

(b) customers shall not be classified based solely on the region of the province in which they are located or on the population density of the area in which they are located.²³

b) il est interdit de catégoriser les clients uniquement en fonction de la région ou de la densité de la population de la région où ils se trouvent dans la province.

Section 39 (2.2) is an interpretive provision meant to define what is meant in s.39(2.1). As stated in the French text, s.39(2.2) governs “l’application” (or the “application”) of s.39(2.1). The plain meaning of s. 39 (2.2) is a prohibition on classifying customers “based solely on the region of the province in which they are located or on the population density of the area in which they are located.” If there are other salient features setting those customers apart into a class, the statutory scheme clearly permits the use of those features to differentiate among customers.

Hydro cites certain Hansard excerpts “which clearly identify the intent of the legislature to create one single residential class and create a single rate for residential Hydro users.”²⁴ It is notable that the actual enacted statutory provisions do not set out one single residential rate class, although it would have been open for the Legislature to have done so if that is indeed what it intended. It is also notable that Manitoba does not currently have a single residential rate for Hydro. The diesel zone rates, for one, form a

²³ *Manitoba Hydro Act*, CSSM c H190, s.39(2.1) and (2.2).

²⁴ Application, Appendix A, p9 of 14.

separate rate class. Indeed, even within the interconnected grid, Hydro's current rate regime (aside from the First Nations on-reserve rate), contains two separate grid-connected residential rates: standard and seasonal.²⁵ Each rate applies to different residential customers who have different characteristics, and there is no suggestion that this differentiation is prohibited by statute. Indeed, it is notable that Hydro has not taken the position that the statutory scheme prohibits the residential – seasonal rate, even though it has a lower revenue to cost ratio than the residential standard classes, and is therefore likely being subsidized by the residential standard classes.²⁶ The conclusion must be that the statutory scheme does not prohibit multiple rate classes for residential customers on the interconnected grid. Rather, the statute sets up a carefully calibrated scheme which permits the Board discretion to order just and reasonable rates, but within a particular framework in which the differentiation of rates is not based solely on the region of the province in which customers are located, or on the population density of the area. This carefully formulated scheme allows for the Board to account for other salient features and factors that unite customers into particular classes.

As a matter of fact, there was evidence and argument before the Board regarding a plethora of ways in which on-reserve residents are in a different position with respect to electricity services than other ratepayers, including:

1. Higher rates of poverty in First Nations communities, including the fact that 96% of residents of First Nations reserves live below the poverty line²⁷, and that reserves in Manitoba had the highest rates of child poverty in Canada, at 76%.²⁸

²⁵ “Residential Rates”, available at: https://www.hydro.mb.ca/accounts_and_services/rates/residential-rates.shtml (accessed June 14, 2018)

²⁶ PUB/MH II-93, p3 of 5.

²⁷ Final submissions of AMC, Exhibit AMC-21, p7, citing Evidence of Phil Raphals, Exhibit AMC-7-1, p18.

2. Housing conditions that Hydro's CEO, Mr Kelvin Shepherd, acknowledged were "abysmal"²⁹; and that the Senate Standing Committee on Aboriginal Peoples concluded that there were there would be an infrastructure deficit of \$9.7 billion by 2018, and that federal funding allocations are inadequate to properly manage and maintain housing and infrastructure on reserve"³⁰; and that the scale of the problem was such that it would take years to improve the housing infrastructure in First Nations communities, long beyond the time horizon of the applied for rates.³¹
3. Building codes do not apply to on-reserve housing the same way that they do in off-reserve communities³², and that low building quality on reserve will mean that more energy must be consumed to heat houses.³³
4. After controlling for housing type and electricity as heating source, the average on-reserve detached home consumed 13.1% more electricity than their off-reserve counterpart.³⁴

²⁸ Final submissions of AMC, Exhibit AMC-21, p7, citing Evidence of Phil Raphals, Exhibit AMC-7-1, p19.

²⁹ Final submissions of AMC, Exhibit AMC-21, p7, citing Transcript, Dec 5, p562, line 11.

³⁰ Final submissions of AMC, Exhibit AMC-21, p7-8, citing Exhibit AMC-13, p6, and AMC-13, p12.

³¹ Final submissions of AMC, Exhibit AMC-21, p8, citing cross-examination of Dr Simpson, January 15, p4700.

³² Final submissions of AMC, Exhibit AMC-21, p8-9, citing cross-examination of Mr Shepherd, Transcript, Dec 5, p573, lines 17-19; cross-examination of Ms Morrison, Transcript, Dec 20, p2673, lines 3-22; Exhibit AMC-13, p20.

³³ Final submissions of AMC, Exhibit AMC-21, p9, citing Cross-examination of Mr Shepherd, transcript, Dec 5, p574; AMC-14, Presentation of Mr Raphals, p18; Cross-examination of Mr Chernick, transcript, Jan 9, p3669; Cross-examination of Dr Simpson, Transcript, Jan 15, p4695.

³⁴ Final submissions of AMC, Exhibit AMC-21, p10-11, citing Presentation of Phil Raphals, AMC-14, p18; Cross-examination of the Cost of Service Panel, transcript, Dec

5. The alternative of switching to natural gas as a heating source is almost non-existent for on-reserve residents, given that out of 63 First Nations in Manitoba, only 2 have gas service, and even in those two communities the preponderance of households are still using electric space heating.³⁵

This evidence was uncontroverted at the hearing and was specifically noted by the Board in Order 59/18.³⁶

Hydro alleges that the PUB committed an error of fact in reaching the conclusion that on-reserve residents are in a different situation than other ratepayers, yet it does not refer to any of the above contrary evidence in its submissions.³⁷ Hydro suggests that “consumption patterns are not specific to reserves” and seems to imply that energy consumption for single detached homes off-reserve is “consistent with the amount of energy consumed by First Nations residential customers who also reside in single detached homes and heat with electric heat.”³⁸ In support of this argument, Hydro cites Information Request answer AMC/MH I-23. Based on this, Hydro alleges that the Board made an error of fact in finding that consumption on-reserve is higher than off-reserve.

Hydro’s Application notably does not refer to the extensive evidence adduced on the record on this very point, and which further explicated the data given in AMC/MH I-23. This evidence is summarized at pp9-11 of AMC’s Final Submissions. There is no need to repeat the whole debate, but the salient point to be derived from it is this: when

20, p2694-2695; Evidence of Phil Raphals, AMC-7-1, p25-26; AMC/MH I-23, p2 of 2; Presentation of Phil Raphals, AMC-14, p18, analyzing data from AMC/MH II-1, p3, and COALITION/MH I-130b, p5; MH-108.

³⁵ Final submissions of AMC, Exhibit AMC-21, p12, citing AMC/MH II-32, Att 1; Cross-examination of Dr Simpson, Transcript, Jan 15, p4701-4704.

³⁶ Order 59/18, p227, 232.

³⁷ Application, Appendix A, pp10-11 of 14.

³⁸ Application, Appendix A, p11 of 14.

comparing on an apples-to-apples basis, using the average residential customer in detached housing using electric space heating, the average on-reserve customer consumes 13.1% more than an off-reserve customer.³⁹

In our submission, the PUB is amply supported by the evidence in its conclusion that “[o]n average, First Nations on-reserve customers consume more energy than off-reserve residential customers, despite the efforts of Manitoba Hydro to use demand side management programming to improve energy efficiency for homes on reserves”⁴⁰.

Hydro alleges the Board made an error of fact in concluding that on-reserve consumption patterns are different. As set out in Rule 36(5)(a)(i) of the Rules of Practice, Hydro’s burden is to raise “a substantial doubt as to the correctness of the Board’s order or decision”. Hydro has not met the burden with respect to the Board’s conclusion.

Moreover, it is evident that the Board considered all of this evidence before concluding that First Nations on-reserve customers should be charged a different electricity rate. All of these factors showing the differences between on-reserve and off-reserve consumers informed the Board’s Directive 6, and each of these factors constitute a basis, other than the region of the province in which a customer is located, for classifying on-reserve residential customers separately. The majority of the Board explicitly stated this conclusion when it said that:

the Board agrees with the Assembly of Manitoba Chiefs that many more factors distinguish on-reserve residents as electricity ratepayers, such that

³⁹ Final submissions of AMC, Exhibit AMC-21, p10-11, citing Presentation of Phil Raphals, AMC-14, p18; Cross-examination of the Cost of Service Panel, transcript, Dec 20, p2694-2695; Evidence of Phil Raphals, AMC-7-1, p25-26; AMC/MH I-23, p2 of 2; Presentation of Phil Raphals, AMC-14, p18, analyzing data from AMC/MH II-1, p3, and COALITION/MH I-130b, p5; MH-108.

⁴⁰ Order 59/18, p232.

even if this classification were based in part on the region of the province in which the customers are located, it is not solely based on region. The circumstances of on-reserve residential customers include the particular housing infrastructure, energy consumption patterns, non-availability of natural gas heating, and poverty levels. The specific conditions of electricity needs, usage, and cost on First Nations reserves justifies the creation of a separate customer class.⁴¹

Hydro nonetheless attacks the Board's decision by alleging that "the additional circumstances ascribed to the class are not unique to customers living on reserve and that the defining feature of the new rate class is geographical location."⁴²

Hydro's argument here should be rejected for multiple reasons. First, it reads the words "defining feature" into the statutory scheme when those words are simply not present. The statutory scheme prohibits a classification "based solely on the region of the province in which [customers] are located". It does not ask the Board to inquire as to, if there are a plethora of factors distinguishing one set of customers from another, whether geographical location is the "true" or "defining" factor lurking beneath the analysis.

Second, although Hydro's argument impugns an on-reserve rate as being based on "geographical location", that is not what the statute addresses itself to. The *Manitoba Hydro Act*, at s.39(2.2)(b), prohibits the classification of customers "based solely on the region of the province in which they are located"⁴³. It does not address itself to "geographical locations". Hydro's application makes repeated reference to the fact that

⁴¹ Order 59/18, p234.

⁴² Application, Appendix A, p10 of 14.

⁴³ Underlining added.

First Nations reserves are specific parcels of land, each with a geographical location.⁴⁴ But there can be no argument that reserves constitute a particular “region of the Province”, which is what the statute actually prohibits as a basis for classification.

Section 39(2.1) and (2.2) were enacted to cure a particular mischief in which there were a number of zoned Hydro rates for different areas of the Province, roughly tied to population density. Section 39(2.2) is therefore specific in its ambit in impugning the regime of rate zones, tied to population density. It is carefully framed to avoid circumscribing the jurisdiction of the Board to define rates in other ways, if the Board decides that a certain rate is justified by public policy.

It is a truism that all consumers are located in specific geographical locations, and any group of consumers will be located in a set of geographical locations that is smaller than the totality of the province. Some such locations in which one group of customers find themselves will have some commonalities with each other. For instance, industrial customers will exclusively be found in locations that have been zoned municipally as industrial land. Residential – seasonal customers will generally be found in locations that are zoned municipally as recreational land. General service customers will be found in locations that are zoned municipally as commercial land. Section 39 (2.2) does not prohibit classification on these grounds because geography is not the sole feature that forms the basis of the classification. Nor does it prohibit a First Nations on-reserve class of customers.

Contrary to Hydro’s submissions,⁴⁵ it was entirely appropriate for the Board to have considered Charter values and *The Path to Reconciliation Act*.⁴⁶ This Act defines “reconciliation” and sets out principles that the government must have regard for in

⁴⁴ Application, Appendix A, pp9-10 of 14.

⁴⁵ Application, Appendix A, pp11-12 of 14.

⁴⁶ CCSM c R90.5.

order to advance reconciliation and it is entirely appropriate for the PUB,⁴⁷ as a statutory body making decisions on the basis of compelling public policy considerations, to have recourse to these principles. As set out in AMC's final submissions, the Board must act consistently with Charter values and we rely on those submissions here.⁴⁸ As the Supreme Court of Canada has most recently stated:

Constitutional and *Charter* values have been recognized as an important tool in judicial decision making since *R. v. Oakes* [...]. Far from controversial, these values are accepted principles of constitutional interpretation. In the administrative context, this Court has recognized that "any exercise of statutory discretion must comply with the *Charter* and its values" [...]. There is no reason why *Charter* values should be seen as less significant in the context of administrative decision-making.⁴⁹

In our submission, the Board's reasoning in Order 59/18 is an exemplary reflection of the interpretive approach endorsed by the Supreme Court of Canada.

In summary, Rule 36(5)(a)(i) of the Rules of Practice sets out Hydro's burden in an application to review and vary: Hydro must raise "a substantial doubt as to the correctness of the Board's order or decision". Most of Hydro's submissions have only rehashed argument and evidence that has been thoroughly considered by the Board, and rejected. Hydro does raise a new argument, the effect of which is that the Board only has jurisdiction to approve prices proposed by Hydro. This would be a radical narrowing of the Board's jurisdiction which should be rejected. As such, Hydro's application has not raised substantial doubt as to the correctness of Directive 6. It should be rejected by the Board.

⁴⁷ *Ibid*, ss 1-2.

⁴⁸ AMC-21, pp22-30.

⁴⁹ *Law Society of British Columbia v. Trinity Western University*, 2018 SCC 32, para 41 (references omitted).

ALL OF WHICH IS RESPECTFULLY SUBMITTED

A handwritten signature in black ink, consisting of two distinct parts. The first part is a stylized, cursive signature that appears to be 'Senwung Luk'. The second part is a shorter, more compact signature that appears to be 'Corey Shefman'.

Senwung Luk and Corey Shefman

Counsel for the Assembly of Manitoba Chiefs