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June 18, 2018

The Public Utilities Board of Manitoba
Attention: Mr. Darren Christle
Executive Director and Secretary
400-330 Portage Avenue
Winnipeg, MB R3C 0C4

Dear Mr. Christle:

**Re: Manitoba Hydro's May 30, 2018 Application to review and vary
Order 59/18**

Winnipeg Harvest and the Manitoba Branch of the Consumers Association of Canada (the Consumers Coalition) appreciate the opportunity to respond to the May 30, 2018 application of Manitoba Hydro to review and vary Order 59/18.

Rate Approval Jurisdiction of the Manitoba Public Utilities Board

The Consumers Coalition's position with regard to Hydro's application is guided by its understanding of the Manitoba Public Utilities Board's authority over the approval of rates for service of Manitoba Hydro as well as by the *Rules of Practice*¹ as they relate to the criteria for determining whether to accept or dismiss an application to review and vary a prior board order.

The statutory scheme for setting just and reasonable rates for service for Manitoba Hydro is governed by the interaction² of *The Crown Corporations Governance and Accountability Act* (CGGA Act),³ *The Public Utilities Board Act* (PUB Act)⁴ and *The Manitoba Hydro Act* (MH Act).⁵ No change in the prices charged by Manitoba Hydro with respect to the provision of power (rates for service) shall be made and no new rates for services shall be introduced without the approval of the Public Utilities Board (PUB or Board).⁶

In approving Manitoba Hydro's rates for service, the PUB is mandated to fix just and reasonable rates that are not unduly discriminatory.⁷ While the criteria for setting just and reasonable rates is grounded in more than a century of regulatory practice and case law, further guidance can be found both in the *CGGA Act*⁸ and the *MH Act*.⁹ The considerable discretion generally accorded to an expert tribunal like the PUB is reinforced by its authority to consider:

1 http://www.pub.gov.mb.ca/pdf/pandp/rules_pandp_mar07.pdf

2 This was noted by the Manitoba Court of Appeal in the context of Manitoba Public Insurance *Manitoba (Public Utilities Board) v. Manitoba Public Insurance Corp.* 2011 MBCA 88 Manitoba Court of Appeal, para 33

3 *The Crown Corporations Governance and Accountability Act*, CCSM c C336 [*CGGA Act*].

4 *The Public Utilities Board Act*, CCSM c P280 [*PUB Act*].

5 *The Manitoba Hydro Act*, CCSM c H190, s 2 [*MH Act*].

6 *CCGA Act*, supra, note 3, 25 (1) (2).

7 *PUB Act*, supra note 4, s. 77 and 82.

8 *CCGA Act*, supra, note 3, 25 (4).

9 *MH Act*, supra, note 5, s. 2, 39 and 40.

- (viii) any compelling policy considerations that the board considers relevant to the matter, and
- (ix) any other factors that the Board considers relevant to the matter.¹⁰

In setting just and reasonable rates for electricity, the Board must balance two concerns “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.”¹¹ In considering proposed rates for service under the *CCGA Act*, the PUB is not a mere “rubber stamp” charged with merely accepting or rejecting an application.¹² Given the Board's jurisdiction to approve any rate that is just and reasonable and in the public interest “all aspects of the rates are “in issue” when the Board holds a public hearing on rates.”¹³ (emphasis added)

Rate Approval in Practice

In interpreting their own statutes on issues closely connected to their function, specialized administrative tribunals are entitled to considerable deference.¹⁴ The Board's process for approving electricity rates for Manitobans follows three sequential steps:

1. Determination of Manitoba Hydro's approved Revenue Requirement reflecting all the Board-approved costs incurred to provide services to all its customers;
2. Determination of a Board-approved Cost of Service Study for Manitoba Hydro;
3. Determination of a Board-approved Rate Design.¹⁵

The appropriate role for the Board in approving just and reasonable rates for service for Manitoba Hydro was confirmed in *Order 5/12*¹⁶ and reiterated in the context of MPI in *Order 98/14*:

In the past, the Board has characterized the key elements of its independent review function and rate-setting role as follows:

- Ensuring that forecasts are reasonably reliable;
- Ensuring that actual and projected costs incurred are necessary and prudent;

10 *CCGA Act*, *supra* note 5 at s 25(4)(a).

11 *Consumers' Association of Canada (Manitoba) Inc v Manitoba Hydro Electric Board*, 2005 MBCA 55, at para 65 [*CAC Manitoba*]. See more generally paras 61 – 66.

12 *Coalition of Manitoba Motorcycle Groups Inc v Public Utilities Board and Manitoba Public Insurance Corporation*, 1995 CarswellMan 433 Manitoba Court of Appeal, at para 20. See also para 23 “It is the Corporation's accountability which gives the Board its broad power to approve a different rate than that sought by the Corporation.”

13 *Coalition of Manitoba Motorcycle Groups and Manitoba Public Utilities Board and Manitoba Public Insurance (CMMG)*, 1995 CarswellMan 433 Manitoba Court of Appeal, *supra*, note 12, para 25.

14 *Groia v Law Society of Upper Canada* 2018 SCC 27 at para 45. To similar effect, see *New Brunswick (Board of Management) v. Dunsmuir* 2008 SCC 9 at para 54 and *Alliance Pipeline Ltd. v Smith* 2011 SCC 7 at para 80,

15 *Order 164/16*, p. 16

16 p. 26 and 27.

- Assessing the reasonable revenue needs of an applicant in the context of its overall general health;
- Determining an appropriate allocation of costs between classes; and
- Setting just and reasonable rates in accordance with statutory objectives. (Board Order 5/12 issued January 17, 2012 relative to Manitoba Hydro)

The Board's rate-setting role includes the consideration of evidence that is relevant to these key factors; evidence that can assist the Board in the determination of the issues, including the setting of just and reasonable rates. (emphasis added)¹⁷

Recognizing that the Board is no mere “rubber stamp” and that “all aspects of the rate are in issue”, it is incumbent upon the PUB in approving just and reasonable rates to examine the reasonableness of forecasts, the reasonableness of costs, the overall health of the corporation including appropriate reserves, the reasonableness of the allocation of costs among classes as well as the reasonableness of the classes proposed by Manitoba Hydro and rate design issues.

In terms of the appropriate allocation of costs among different classes of consumers, while the Board has relied on the principle of cost causation in establishing the appropriate method of allocating Manitoba Hydro’s financial costs for the purposes of a cost of service study, it has made it clear that other ratemaking principles should be considered in the general rate application (GRA).¹⁸ In determining a just and reasonable rate structure, Bonbright has observed that in consideration can be given to “all of the present and future private and social costs and benefits occasioned by a service's provision (i.e. all internalities and externalities).”¹⁹

What legal test applies to a review and vary application?

Under s. 44(3) of the *PUB Act*,²⁰ the board may review, rescind or vary its orders. Rule 36 a) i) of the *Rules of Practice* authorizes the Board to:

a) 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

¹⁷ p. 28.

¹⁸ *Order 164/16*, p. 5.

¹⁹ Bonbright, et al, *Principles of Public Utility Rates*, Public Utilities Reports, Inc, 1988, p. 383 (see also p. 173). See also Weiss and Strickland, 1976. *Regulation: A Case Approach*, McGraw-Hill Book Company.

²⁰ *Supra*, note 4.

Board's Hearing that resulted in the order or decision sought to be reviewed or a change of 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 as the case may be, could lead the Board to materially vary or rescind the Board's order or decision;

In essence and recognizing that the onus lies with the Applicant, the issue is not whether reasonable persons might have come to a different conclusion based on the same evidence but whether:

- a) there is an error of law, jurisdiction or fact that substantially taints the decision; or,
- b) a new circumstance has arisen or been learned that raises a reasonable possibility that the Board's decision might be materially changed.

Application to Review and Vary Directive 6

Manitoba Hydro asks the PUB to set aside Directive 6 which directs Hydro to create a First Nations On-Reserve Residential customer class. Manitoba Hydro appears to advance three arguments:

- the PUB does not have authority to create a bill affordability program or take affordability into account in setting just and reasonable rates;
- the First Nations On-Reserve Residential customer class does not comply with the Uniform rates legislation;
- the PUB does not have the authority to create a new customer class.²¹

While many of its arguments appear to substantively reiterate submissions considered by the PUB in the proceedings leading to *Order 59/18*, Hydro also argues that:

new customer classes are not contemplated in the wording or definition of "rates for services" under Part 4 of The Crown Act or The Manitoba Hydro Act";²²

Manitoba Hydro develops the product and proposes a price, the PUB reviews and approves the price;²³

PUB jurisdiction with respect to rates for service/price for power cannot be implied or assumed to include jurisdiction with respect to terms and conditions associated with the service being offered;²⁴

there is no ability in legislation to take a sub-set of a class and charge them less than

21 Hydro Review and Vary Application (Hydro R and V), May 30, 2018, Appendix A, p. 2.

22 Hydro R and V, supra note 21, Appendix A, p. 5.

23 Hydro R and V, supra note 21, Appendix A, p. 6.

24 Hydro R and V, supra note 21, Appendix A, p. 6.

the remainder of the class.²⁵

Comments of the Consumers Coalition

The Consumers Coalition has reviewed the June 17, 2018 arguments of AMC filed with regard to Order 6 and will try not to duplicate their submissions. In terms of issues related to the Board's authority to implement a bill affordability program, the Consumers Coalition relies on the submissions made in its written argument of February 7, 2018.

The Consumers Coalition is supportive of tax payer support for highly vulnerable individuals and communities but it does not endorse either a ratepayer funded bill affordability program or the First Nations On-Reserve Residential customer class whose costs are supported in part by other ratepayers.²⁶

However, notwithstanding its position on the policy question, the Consumers Coalition is of the view that the PUB acted reasonably and within its jurisdiction in concluding that it had the authority to create a First Nation rate class.

In the respectful view of the Consumers Coalition, Manitoba Hydro's submissions on this issue, as they relate to the determination of rate classes and to the consideration of whether rates are unduly discriminatory between different classes of ratepayers, represent an emaciated analysis of the Board's jurisdiction that is out of step with the principles of modern statutory principles and untethered to an understanding of the practice of setting just and reasonable rates.

From the perspective of the Consumers Coalition, the statutory authority is to be read holistically in a purposive manner consistent with the underlying objective of the statutory scheme not sliced and diced to suit the particular self interest of an applicant to review and vary. The interpretation put forward by Manitoba Hydro would effectively neuter central aspects of the rate approval inquiry. In particular, contrary to the implicit assertion of Manitoba Hydro, the PUB is not obliged to take the classes of consumers proposed by Manitoba as sacrosanct. As the Manitoba Court of Appeal has confirmed, the Board is no mere rubber stamp confined to accepting or rejecting what ever Hydro puts before it. Given the Board's jurisdiction over the approval of just and reasonable rates "all aspects of the rates are "in issue".²⁷

The definition of a rate class is central to the price paid "for the provision of power". As determined in *Order 5/12* and consistent with over a century of regulatory practice, rate approval requires the appropriate allocation of costs among classes. Implicit in that decision is

25 Hydro R and V, supra note 21, Appendix A, p. 8.

26 As Bonbright observes "public utility rates are ineffective instruments by which to minimize inequalities in income distribution; and that alternative instruments (including public education, social security laws, progressive taxation, and possibly even some forms of subsidized public services) are better designed to accomplish this objective. Bonbright, supra, note 19, p. 72.

27 Coalition of Manitoba Motorcycle Groups and Manitoba Public Utilities Board and Manitoba Public Insurance (CMMG), 1995 CarswellMan 433 Manitoba Court of Appeal, supra, note 12, para 25.

a determination of what is an appropriate class. As Bonbright notes, “ratepayers must necessarily be grouped into broad rate classes for purposes of administrative feasibility.”²⁸ Any independent tribunal vested with the authority to determine just and reasonable rates must consider whether the rate classes proposed are appropriate for achieving that objective.

While cost causality must be of critical importance to the determination of appropriate rate classes, the Board retains jurisdiction to consider all relevant policy matters as well as the “social costs and benefits occasioned by a service's provision”.²⁹ While the Consumers Coalition does not endorse the PUB decision, it acknowledges the Board's jurisdiction in the context of the current design of the First Nations On-Reserve Residential customer class.

Recommendation of the Consumers Coalition on Directive 6

The Consumers Coalition recommends that the PUB dismiss Manitoba Hydro's application to review and vary Directive 6.

Application to Review and Vary Directive 7

Manitoba Hydro asks the PUB to set aside Directive 7 which directs the crown monopoly to credit net-metered customers' excess energy put on the grid at the rate of 8.196¢/kWh for 2018/19. Directive 7 also obliges Manitoba Hydro to apply to the Board for approval of any future net-metered rate or changes to the 8.196¢/kWh rate.

In support of its findings, the PUB refers to its jurisdiction under the *CCGA Act* as well as s. 38 of the *MH Act*.³⁰ Hydro argues that the PUB can regulate the rates it charges consumers but that the definition of rates for service does not encompass the rates Hydro pays consumers. It suggests that s. 38 of the *MH Act* applies only in circumstances where the power has been requisitioned pursuant to s. 16(c) of The Manitoba Hydro Act.³¹ Hydro appears to concede that the PUB can explore its demand side management programs for the purposes of rate review (ie a prudence assessment) but suggests that the PUB has no “jurisdiction to review, approve or change Manitoba Hydro's demand side management programs.”³²

Comments of the Consumers Coalition

The Consumers Coalition is generally aware of the submissions of MIPUG on Directive 7 and will attempt not to duplicate them. While not in agreement with all arguments presented by MIPUG, the Consumers Coalition does agree that the Board's determination that it has jurisdiction to approve rates to credit the excess energy of net-metered customers raise important legal issues (and perhaps questions of true jurisdiction) which were not well

²⁸ Bonbright, *supra*, note 19, p. 174.

²⁹ Bonbright, *supra*, note 19, p. 383. Conceivably, a rate class that radically or entirely departed from the key criterion of cost causality would be beyond the jurisdiction of the Board.

³⁰ *Order 59/18*, p. 241

³¹ Hydro R and V, *supra* note 21, Appendix B, pp. 4 – 7.

³² Hydro R and V, *supra* note 21, Appendix B, p. 8.

canvassed by intervenors or Hydro during the proceeding leading to *Order 59/18*.

From the perspective of the Consumers Coalition, it is important to distinguish between customer's who, when installing their own generation, specifically plan such facilities with a view to supplying not only their own load but to selling the excess to their utility and those consumers who are simply installing such generation to reduce their load.

In the first case, there is an important matter of integrated resource planning. If the economic case has been made, utilities may choose to enter into such arrangements. Any agreement reached can be expected to set out the terms of supply with the price payable linked to the terms and timing of supply both of which will impact value to the utility.³³

However, this is not the circumstance that is being addressed by Hydro's net metering program and payment for "excess generation". As the Consumers Coalition understands the program, "the incentive is limited to the PV capacity that, at a maximum, generates less energy than that customer's annual load."³⁴

The Consumers Coalition understands that the intent of the payment is to recognize that customers are billed on a monthly basis and there may well be months where the PV output exceeds the customer's gross energy requirements. In many jurisdictions, this situation is addressed through a "banking system" where any excess is carried forward and used to reduce the next month's usage. Manitoba Hydro has chosen to not adopt a "banking" approach but rather settle each month individually by crediting the customer for any excess at the Residential rate.

It must be noted that deliveries to the utility under such a scheme are likely to have little value since they are not guaranteed and the utility cannot rely on them to the same extent they would likely be able to rely on purchases from a non-utility generator under a power purchase agreement. The utility, in offering to pay for/bank such power, is simply trying to recognize that power is being delivered to the system and to set a "rate" that is easy to understand (i.e., customers making a long term decision about PV installation have an understanding of how an excess will be compensated over the long term) and administer, with the view that the amount of power involved will be minimal. There are no implications for integrated resource planning since these excess loads are likely not even accounted for in the planning process (due to small size and lack of predictability).

However, one of the main issues that has arisen with the level of rate offered in other jurisdictions is that – if it is too generous – it can incent customers oversize their PV systems so that there will continuously/more frequently be excess power – which is not the intent of the

³³While solar PV systems can be configured as off-grid systems, residential solar PV installations are usually tied into the local electric grid system. This allows solar PV customers to benefit from reduced grid-electricity consumption while maintaining system reliability through access to the local grid for back-up electric energy. Similarly, any excess solar PV power not consumed by the solar PV customer can be sold back to the local utility, usually through a power purchase agreement. *Order 59/18*, p. 239.

³⁴*Order 59/18*, p. 239.

program and can lead to the utility “buying” more power than it otherwise would and paying more than it is worth.

For this reason and from a policy perspective, the Consumers Coalition applauds the interest the PUB has shown in this issue which raises important issues of fairness for all ratepayers both today and in particular, in the future as distributed generation options become increasingly attractive to Manitoba Hydro ratepayers.

The Consumers Coalition is confident that the PUB has the jurisdiction to examine the value of such credits in determining whether actual and prudent costs are necessary and prudent.³⁵ From its perspective, it is clear that the Board can vigorously examine these credits for the purposes of determining the overall reasonableness and justifications for costs.

However, based on the arguments advanced by Manitoba Hydro related to the interpretation of rates for service under the *CCGA Act* as well s. 38 of the *PUB Act*, it would be reasonable to conclude there are substantial issues of law (and indeed perhaps a true question of jurisdiction) as to whether the Board has rate approval authority as it relates to the net metering credit. In this regard, the Consumers Coalition observes that it has been unable to date to identify any relevant Manitoba case law relating to s. 38 of the *PUB Act*.

In addition, there is little guidance in the Board's decision to the rationale underlying the 8.196¢/kWh rate. Future discussions before the PUB relating to this issue would benefit from additional insight into the selection of the particular rate.

Recommendation of the Consumers Coalition on Directive 7

The Consumers Coalition recommends that the PUB accept Manitoba Hydro's application to review and vary Directive 7 with consideration given to establishing a paper review process to consider more fully whether the PUB has jurisdiction and if so, what the appropriate criteria for setting the rate should be.

Application to Review and Vary Directive 14

Manitoba Hydro devotes eight pages of argument to asking the PUB to set aside Directive 14 which directs Manitoba Hydro to retain an independent consultant to assess the development of its asset management program and to file the consultant's Terms of Reference by June 29, 2018.

After making an oblique reference to the decade long effort by the PUB to oblige Manitoba Hydro to demonstrate that its day to day capital expenditures were reasonable and justified,³⁶ Hydro argues that the PUB erred in ordering it to retain an independent consultant and incur expense. In particular, it argues that since the PUB does not have jurisdiction to approve, reject or vary capital projects, it “cannot direct the Corporation to prepare reports with respect to matters that are beyond its jurisdiction.”³⁷

³⁵ See *Order 5/12*, p. 27 and *Order 98/14*, p. 28.

³⁶ Hydro R and V, supra note 21, Appendix C, p. 1.

³⁷ Hydro R and V, supra note 21, Appendix C, p. 3.

Comments of the Consumers Coalition

Hydro's lengthy commentary mis-identifies the issue and founders on two fundamental points.

First, as confirmed in *Order 5/12*, an important element of the exercise of approving just and reasonable rates for service is “ensuring that actual and projected costs incurred are necessary and prudent”.³⁸ For over a decade, the PUB has sought to test the reasonableness of Hydro's management of its day to day expenditures. As the evidence of METSCO and the filed report of UMS amply demonstrated, Manitoba Hydro has long standing and ongoing challenges in managing these expenditures and safeguarding consumers.

Second, the PUB as authorized under s. 24 of the *PUB Act* is master of its own procedure and possesses a right as expressly articulated under s. 39 10 d) of the *MH Act* and as necessarily implicit under the broader statutory scheme to require additional information in support of any future proposed rate application.

The Board's duty to determine if rates are just and reasonable and the long standing recalcitrance of Manitoba Hydro to demonstrate the reasonable of its day to day capital expenditures coupled with Hydro's ongoing challenges as demonstrated by METSCO and UMS gives the Board ample reason both in law and fact to make Directive 14.

The fact that there are expenditures ancillary to and necessarily incidental to Directive 14 does not remove the Directive from the Board's authority any more than a directive asking Hydro to spend internal money or staff time on an assignment would.

Recommendation of the Consumers Coalition on Directive 14

The Consumers Coalition recommends that Hydro's application to review and vary Directive 14 be dismissed as being devoid of merit. It is strongly arguable that were an intervenor to bring such an argument devoid as it is of merit, the Board would be well justified in making an adverse finding with regard to costs.

Application to Review and Vary Directive 9

Manitoba Hydro spends ten pages of argument supporting its request that the PUB remove the words “minimum retained earnings or similar test” from Directive 9 of *Order 59/18*. Under the Directive, Hydro is asked to participate in a technical conference for the consideration of “the establishment of a minimum retained earnings or similar test to provide guidance in the setting of consumer rates for use in rule-based regulation.” Hydro also seeks clarification from the PUB about a number of the PUB intentions relating to the workshop.

It is difficult to discern a substantive legal argument or new facts in Hydro's submissions. Rather, Hydro's submissions are perhaps best characterized as an effort to express disappointment in what Hydro attempts to characterize as a radical departure “from a common, long-held mutual understanding of the importance of long term financial objectives,

38 *Order 5/12*, p. 27.

risk management practices”.³⁹

Comments of the Consumers Coalition

The hyperbole underling Hydro's submissions in Appendix D are not warranted by the Directive. There is sufficient room in the question as posed to allow a valuable discussion for the purposes of rate setting. The questions on which Hydro requests clarification are ones which the Consumers Coalition expects would begin to be addressed through the workshop.

Recommendation of the Consumers Coalition on Directive 9

The Consumers Coalition recommends that Hydro's application to review and vary Directive 14 be dismissed as being devoid of merit. It is strongly arguable that were an intervenor to bring such an argument devoid as it is of merit, the Board would be well justified in making an adverse finding with regard to costs.

Application to Review and Vary Directive 29

Manitoba Hydro takes issue with guidance from the Board that:

- in the absence of unforeseen or emergency circumstances, the Board will not consider future interim rate increases;
- filing of a GRA after September 1, 2018 but before December 1, 2018 is required for consideration of a request for a revised rate year 2019/20;
- for the next GRA, the Board will not consider rate increases for more than two Test Years.⁴⁰

Citing other obligations including the Centra General Rate Application and a Diesel review,⁴¹ Manitoba Hydro seeks to vary Directive 29 of *Order 59/18* which directs Manitoba Hydro to file with the next GRA a time-of-use rate design proposal including the results of consultation undertaking with General Service Large customers prior to filing the proposal with the Board. As an alternative, Hydro proposes working “work with the PUB to develop a timetable to accommodate each of the processes that require review by the PUB” (emphasis added).⁴²

Claiming that it “does not see a path to allow the preparation and filing of a GRA in the 2018 calendar year”,⁴³ Hydro argues it would be procedurally unfair to prematurely reject an interim rate application that is not based upon an emergency or unforeseen circumstances or a 3 year rate application. It also suggests that eliminating the option of a 3 year rate application “serves to eliminate one of the tools the legislature has provided in order that rate review can be conducted in an orderly manner.”⁴⁴

39 Hydro R and V, supra note 21, Appendix D, p. 9.

40 *Order 59/18*, p. 171.

41 Hydro R and V, supra note 21, Appendix e, p. 4.

42 Hydro R and V, supra note 21, Appendix E, p. 7– 8.

43 Hydro R and V, supra note 21, Appendix E, p. 4.

44 Hydro R and V, supra note 21, Appendix E, p. 5–6.

Comments of the Consumers Coalition

The Consumers Coalition applauds the intent of the PUB commentary at p. 171 which would serve to eliminate Hydro's excessive reliance on interim rates as a mechanism to side step ongoing challenges with its management of the regulatory process. It also appreciates the intent underlying the expectations regarding orderly filing of the rate application and the recognition by the PUB that rate applications for three Test years are not appropriate in Hydro's current circumstances.

In the view of the Consumers Coalition, there is a basis in good policy and in s. 48 of the *PUB Act*⁴⁵ for the PUB determination regarding interim rates.

The Consumers Coalition notes that s. 26(1) of the CCGA provides that:

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.⁴⁶ (emphasis added)

Based on that provision, it appears that Manitoba Hydro has a right to apply for rates for service for a period of not more than three years. That being said, it would be open to the PUB to reject a three Test year proposal given the ongoing challenges experienced by Manitoba Hydro in managing its operations in a reasonable manner as well as the ongoing pressures on consumers. The Consumers Coalition would strongly support rate applications of no more than two Test years until Manitoba Hydro demonstrates that its house is in order.⁴⁷

Hydro's claim that it cannot foresee a path to filing a rate application in the 2018 calendar year and its proposed solution of working with the PUB (with no reference to stakeholders) underlines a deeper concern with how Manitoba Hydro develops its rate applications. As demonstrated during the recent Hydro General Rate Application by looking to the activities of other regulated entities in Ontario including Toronto Hydro, other regulated entities seek to proactively address their regulatory challenges by engaging with stakeholders and consumers on a regular and on-going basis.

Given its failure to engage with consumers on its 7.9 percent rate shock proposal and the interest expressed in the recent Hydro General Rate Application by over 2300 consumer comments, the Consumers Coalition would expect that the first step taken by Manitoba Hydro in planning for its next application would be to engage directly with consumers and stakeholders. Proper engagement takes time and so should already be underway at Hydro.

Given the new fact alleged by Manitoba Hydro – namely that it cannot see a path to filing a rate application in the 2018 calendar year - the Consumers Coalition would be open to

45 *PUB Act*, supra note 4. Section 48 provides that “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.”

46 *CCGA Act*, supra note 3.

47 Given recent challenges experienced by Manitoba Hydro, a reasonable argument could be made for annual rate reviews.

meeting with Manitoba Hydro, PUB advisors and other stakeholders in the relatively near future to discuss ways by which Manitoba could re-engage with consumers and stakeholders both within and outside the regulatory process.

Recommendation of the Consumers Coalition on Directive 29

There may be value in varying Directive 29 for the purposes of MB Hydro developing jointly with the PUB and stakeholders a plan for an orderly regulatory process which focuses on early engagement with consumers and stakeholders consistent with modern good practices. Any such meeting should be done in the near future and be premised on a commitment by Manitoba Hydro to actively engage with consumers in a manner consistent with good practice.

Conclusion

The Consumers Coalition appreciates the opportunity to comment on Hydro's review and vary application. It also appreciates the courtesy offered by PUB staff in extending the time for filing these comments in light of other commitments of Consumer Coalition legal counsel. Thank you for your consideration of these comments.

Yours truly,

BYRON WILLIAMS
DIRECTOR

BW/kd

cc: Board Counsel
Consumers Coalition
Manitoba Hydro
All Intervenors