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June 18, 2018

VIA EMAIL & ORIGINAL TO FOLLOW BY MAIL

Public Utilities Board of Manitoba
400 - 330 Portage Avenue
Winnipeg, MB R3C OC4

Attention: Kurt Simonsen, Associate Secretary

Dear Sirs:

Re: Manitoba Hydro Application to Review and Vary Order 59/18

Please see attached, comments on behalf of the Manitoba Industrial Power Users Group (MIPUG) with respect to Manitoba Hydro's Review and Vary Application for Public Utilities Board Order 59/18 and Manitoba Hydro's application for a stated case dated May 30, 2018.

Thank you for the opportunity to comment on these matters.

Yours truly,

THOMPSON DORFMAN SWEATMAN LLP

Per: Antoine F. Hacault

Antoine F. Hacault*

AFH

*Services provided through Antoine F. Hacault Law Corporation

Manitoba Industrial Power Users Group Response to Manitoba Hydro's Review & Vary Request of PUB Order 59/18

Manitoba Hydro submitted an Application to Review and Vary (R&V) Order 59/18 (and 68/18) on May 30, 2018 with the Public Utilities Board (PUB). In letter dated June 1, 2018, the PUB invited Intervenor submissions on the R&V Application by June 18, 2018.

Legislative Authority

Pursuant to subsection 44(3) of *The Public Utilities Board Act,* the PUB has authority to review, rescind, change, alter, or vary any decision or order made by it.

Section 58.4 of *The Public Utilities Board Act*¸ set forth the procedure for a stated case to the Court of Appeal as follows:

> **Reference to Court of Appeal**
>
> 58.4(1) The board may, of its own motion or on the application of any party to proceedings before the board, state a case in writing for the opinion of the Court of Appeal upon any question of law or jurisdiction.
>
> **Court of Appeal to remit decision**
>
> 58.4(2) The Court of Appeal shall hear and determine the stated case and remit it to the board with its opinion.
>
> **Proceedings, etc. not stayed**
>
> 58.4(3) A case stated pursuant to this section does not stay or suspend any proceedings of the board or stay or suspend the operation of any decision or order of the board.

Appeals of a PUB decision are governed by s. 58 of *The Public Utilities Board Act,* the relevant parts of which read as follows:

> **Grounds of appeal**
>
> 58(1) An appeal lies from any final order or decision of the board to The Court of Appeal upon
>
> (a) any question involving the jurisdiction of the board; or
>
> (b) any point of law; or
>
> (c) any facts expressly found by the board relating to a matter before the board.
>
> **Leave to appeal**
>
> 58(2) The appeal shall be taken only
>
> (a) by leave to appeal obtained from a judge of The Court of Appeal;
>
> (b) within one month after the making of the order or decision sought to be appealed from, or within such further time as the judge under special circumstances shall allow; and
>
> (c) after notice to the other parties stating the grounds of appeal.
>
> **Inferences by court**
>
> 58(5) On the hearing of the appeal, the court may draw inferences that are not inconsistent with the facts expressly found by the board and that are necessary for determining the question, and shall certify its opinion to the board; and the board shall thereupon make an order in accordance with that opinion.

Rule 36 subsections 4 and 5 of the PUB's Rules of Practice and Procedure set out a two step process for considering R&V applications,

4) The Board shall determine, with or without a hearing, in respect of an application for review, the preliminary question of whether the matter should be reviewed and whether there is reason to believe the order or decision should be rescinded, changed, altered or varied.

5) After determining the preliminary question under subsection (4), the Board may:

   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 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 to materially vary or rescind the Board's order or decision; or

   b. Grant the application; or

   c. Order a hearing or proceeding be held.[1]

Manitoba Hydro has filed its R&V Application on five items Ordered by the Board (Appendix A to E of Hydro's R&V application) and has provided comment on Board Recommendations (Appendix F). It appears decisions are only required in respect of the five specific R&V requests.

In sum, MIPUG submits the Board should grant, in part, Hydro's R&V in respect of Appendix A and B (leading to a stated case), dismiss Hydro's R&V in respect of Appendix C and D, and grant in part Hydro's R&V in respect of Appendix E (leading to a paper hearing regarding scheduling, but without varying the Board's conclusions regarding future use of interim rates). MIPUG does not comment on Hydro's Appendix F in respect of recommendations.

Review and Vary, Stated Case, Leave to Appeal

It is generally recognized at law that a party should exhaust its remedies prior to filing an Application for Leave to Appeal. Manitoba Hydro has therefore appropriately filed a R&V prior to exercising any appeal rights.

The R&V incorporates applications to the PUB to have issues sent to the Court of Appeal by way of stated cases. The PUB has discretion to do so under s. 58.4 quoted above.

The issue arises as to whether and how the PUB should exercise its discretion to ask the Manitoba Court of Appeal for its opinion on certain matters of law or jurisdiction. MIPUG notes that both in the case of an appeal and in the case of a stated case it is the opinion of the Court

[1] Rules of Practice and Procedure, pages 20 & 21, available online: http://www.pubmanitoba.ca/v1/pdf/pandp/rules_pandp_mar07.pdf

of Appeal which is sought. Once the opinion of the Court of Appeal is received, the PUB has a duty to exercise its powers in accordance with that opinion.

1) Appendix A: Bill Affordability and First Nation On Reserve Residential Class

Manitoba Hydro requests relief in the form of setting aside Directive 6 or, in the alternative, stating a case to the Court of Appeal regarding the Board's jurisdiction in this matter.

MIPUG did not take a position on these matters in the GRA hearing, and has provided only limited comment in this submission tied to standards for PUB review, and problematic submissions by Hydro in the R&V application regarding the creation of new customer classes.

In MIPUG's submission, the threshold for proceeding to a review and variance application can be tied to the relief requested. This threshold should be viewed as relatively high in the case of proposals to permanently set aside or alter aspects of the Order. An R&V is not and should not be an opportunity to reargue a case.

Manitoba Hydro's grounds for the PUB to review and vary Directive 6 and set it aside is based on three aspects: (1) an error of jurisdiction and an error of law in respect of taking into account a customer's income level in rate setting, (2) an error of law and an error of fact in respect of an On-Reserve First Nation's customer being not defined by "the region of the province in which the customer is located" and (3) an error in law and in jurisdiction regarding the PUB's jurisdiction to order the creation of new customer class.

MIPUG does not view any of the submissions of Hydro as constituting new facts.

In regard to the alleged error in law and in jurisdiction regarding the creation of customer classes, Manitoba Hydro's submission appears incorrect and unworkable in its portrayal of the Board's jurisdiction. The Hydro submission sets out Hydro's view that the Manitoba Hydro Electric Board alone has jurisdiction over all matters of "Terms and Conditions" (s.28(1)(a)) of The Manitoba Hydro Act) and the PUB has jurisdiction over "prices to be charged" (s.39(2) of The Crown Act). However, without elaboration, Hydro concludes that the power to "create new customer classes" is related to the power to set Terms and Conditions, and not to the power to set prices to be charged.

It is reasonable for the PUB to exercise its regulatory discretion in accordance with the applicable regulatory principle and applicable legislation.

In **Consumers' Assn. of Canada (Manitoba) Inc. v. Manitoba Hydro Electric Board**2005 CarswellMan 141, 2005 MBCA 55, [2005] M.J. No. 142, 138 A.C.W.S. (3d) 990, 195 Man. R. (2d) 12, 351 W.A.C. 12 the Court held that the PUB's authority is derived in part from s. 77(a) of *The Public Utilities Board Act* which reads as follows:

> **Orders as to utilities**
>
> 77 The board may, by order in writing after notice to, and hearing of, the parties interested,
>
> (a) fix just and reasonable individual rates, joint rates, tolls, charges, or schedules thereof, as well as commutation, mileage, and other special rates that shall be imposed, observed, and followed thereafter, by any owner of a public utility wherever the board determines that any existing individual rate, joint rate, roll, charge or schedule thereof or commutation, mileage, or other special rate is unjust, unreasonable, insufficient, or unjustly discriminatory or preferential;

It is therefore unreasonable to suggest that the PUB can only set a price for power that must be applied to groups of customers ("classes") as established by Hydro. Consider that a rate being "just and reasonable" only makes sense in the context of the customers being charged the rate being "similarly situated". The PUB also has jurisdiction to set rates which are not "unjustly discriminatory". These regulatory principles are so well established that the US Federal Energy Regulatory Commission contains this same terminology in its "FERC 101" document to describe its mandate in plain language.[2] It is reasonable to conclude that if Hydro proposes a rate that is intended to apply to a "class" as defined by Hydro, in which the members of the class are not similarly situated, the Board cannot be bound to have to find a single rate for that class. The Board's requirement to ensure rates are just and reasonable can only practically be applied to the extent the Board has the ability to find which customers are sufficiently similarly situated to justify being charged the same rate, and which are not – the very definition of creating a class for rate purposes. As such, Hydro's R&V in respect of the creation of customer classes should not be granted.

Beyond the above comments, it is MIPUG's view that the issues raised by Hydro in (1) and (2) may or may not reach the threshold for the Board to Review and Vary (the "preliminary question") in respect of overturning or setting aside this aspect of the Board's decision, but reach the threshold required for the Board to consider the relief proposed in the form of a stated case on aspects (1) and (2) above (i.e., income level and On-Reserve status).

2) Appendix B: Excess Energy Purchase Rate

Hydro is requesting the PUB set aside Directive 7 or in the alternative submit a case in writing for the opinion of the Court of Appeal regarding the question of whether the PUB has jurisdiction to review and approve the price paid by Manitoba Hydro to Non-Utility Generators for the purchase of energy put on the grid by the Non-Utility Generator pursuant to contractual arrangements with Manitoba Hydro. Manitoba Hydro also requests the PUB immediately clarify that Directive 7 is not intended to apply to Non-Utility Generation other than the Solar Energy Pilot Program.

Hydro's R&V application for this is based upon errors of jurisdiction, law and fact when the PUB concluded it possesses "legal jurisdiction to review and approve the electricity rate that Manitoba Hydro applies to customers participating in the Solar Energy Program, or to customers with any on-site generation, for the return of excess energy to the grid".

MIPUG did not take a position on these matters in the GRA hearing.

In MIPUG's view, Hydro's submission contains new facts and/or perspectives on the jurisdiction of the Board and the ability to set rates paid by Hydro for power, which, to the best of MIPUG's review, were not similarly provided during the GRA proceeding.

In MIPUG's view, the PUB's conclusion in Order 59/18 regarding its jurisdiction to approve rates paid to non-utility generators raises important legal issues, and has significant and wide-ranging implications that had not been fully canvassed at the time of the GRA. It is also not consistent with the conclusions reached by the Board in past proceedings, when the presence of Hydro's power purchase activities were well known, but no effort was made by the Board to set the prices for these purchases. In this regard, MIPUG is concerned that the net effect of the Board's conclusion is not just that the Board can set a rate for Hydro's purchase of net metered energy

[2] See https://www.ferc.gov/about/ferc-does/ferc101.pdf

by solar generators under 200 kW, but that the Board must set all rates for Hydro's purchase of non-utility generation regardless as to source or scale.

MIPUG makes specific reference to Order 153/98, on an application seeking approval to set the prices for the Curtailable Service Program "reference discount" which proposed a formula-based pricing that could be adjusted by Hydro based on a formula without further approval by the Board. In that Order the Board noted the position of CAC/MSOS as follows: "CAC/MSOS noted that the Crown Corporation Public Review and Accountability Act does not authorize the setting of rates on the basis of a formula proposed and that it is the intent of the Legislature to ensure that each and every price charged to a customer by Manitoba Hydro would be scrutinized and approved by the Board prior to implementation by the utility"[3]. The Board reached the conclusion that "…the Board accepts the position of CAC/MSOS…". In short, the conclusion in Order 153/98 was that the Board cannot forego a direct role, in advance of purchases, in setting all rates. If the concept of setting rates for service is now understood to include rates paid by Manitoba Hydro to acquire power, the logical extension is that the Board must approve all rates paid by Hydro to acquire any power, including such examples of the Wuskwatim Limited Partnership, the large non-utility wind generation in southern Manitoba, or any other power or energy acquired by Hydro.

Such an outcome should be viewed as a fundamental reorientation of the role and jurisdiction of the Board. If this expansive view is not necessitated by the Board's conclusions (for example, if the Board concluded that its jurisdiction is limited by the scale of the generation) it is MIPUG's view that the boundaries of this jurisdiction have not been sufficiently enumerated in Order 59/18 to provide necessary clarity to Hydro or to the energy market participants. In either case, the issues raised by Order 59/18 would appear to be sufficiently material and of sufficient likelihood that the Order may need to be varied or rescinded that Hydro's request for review should be granted.

MIPUG is of the view that the appropriate relief is either a stated case, or the convening of a hearing process (including potentially a paper hearing) to further examine the merits of Hydro's submission.

MIPUG submits that with respect to issues identified by Manitoba Hydro in Appendices A and B, it is appropriate for the PUB to exercise its discretion to state a case for the following reasons:

a) The issues in Appendices A and B deal with Orders with respect to significant new jurisdictional and legal areas and general policy considerations;

b) With respect to the issues in Appendix A, there was dissenting opinion;

c) Stating a case would allow for an expedited opinion from the Court of Appeal as opposed to having to go through the process of Leave to Appeal and Appeal;

d) There is a sufficient factual foundation with the hearing record and the R&V record on which to base a stated case.

3) Appendix C: Retain Consultant to Report on Asset Management Program, Progress of UMS Report and Corporate Value Framework (Directive 14)

[3] Order 153/98, page 12

Hydro is seeking to Review and Vary Directive 14 on the grounds that the PUB has exceeded its jurisdiction and made an error at law in ordering Hydro to retain an independent consultant and thereby incur expense, to review the Corporation's base capital asset management process and decisions made thereunder. Hydro requests relief in the form of setting aside Directive 14, or alternatively state a case to the Court of Appeal regarding the Board's jurisdiction in this matter.

In its letter dated June 1, 2018 the Public Utilities Board varied Directive 14 as follows:

> Directive 14: [It is therefore ordered that] Manitoba Hydro retain an independent consultant to assess Manitoba Hydro's development of its asset management program and its progress in addressing the recommendations made by UMS, as well as the progress of the development of the Corporate Value Framework. Manitoba Hydro is to file with the Board the Terms of Reference for the consultant for the Board's review and comment. Manitoba Hydro is directed to report back to the Board on its progress and the result of the consultant's assessment at the next GRA.

MIPUG's view is that Hydro's application does not raise issues of a material nature that merit a Review and Vary process. The Board clearly has the ability to weigh evidence as it sees fit, and has the ability to indicate to Hydro the evidence that the Board suggests it will require to be persuaded in respect of future Hydro rate cases. The issue of directing that an external consultant be retained, versus indicating that evidence from an external consultant will be weighed far more heavily than Hydro's own internal evidence, is not of sufficient distinction to merit the use of a Review and Vary process.

The Manitoba Hydro Act, at clause 39(10)(d) grants to the PUB wide discretion as to the information it can request from Hydro:

> **Material supplied by corporation**
>
> 39(10) Where an application is made to The Public Utilities Board under this Act, the corporation, upon request of The Public Utilities Board, shall provide The Public Utilities Board with
>
> (a) a statement showing the prices fixed or proposed to be fixed and the prices which were or are in effect prior to the new prices being fixed;
>
> (b) a statement of the reasons for any changes in the prices fixed or proposed to be fixed including a statement of the facts supporting those reasons;
>
> (c) a statement of the manner in which and a time at which the changes in the prices were or are proposed to be implemented; and
>
> (d) such further information incidental thereto as The Public Utilities Board may reasonably require.

Further, *The Interpretation Act,* at subsection 32(1) provides:

> **Exercising powers under an Act or regulation**
>
> 32(1) The power to do a thing or to require or enforce the doing of a thing includes all necessary incidental powers.

MIPUG is of the view that issuing the directive is a necessary incidental power to it performing its regulatory role. For this reason, MIPUG submits that Hydro's Review and Vary application in respect of Appendix C be dismissed.

4) Appendix D: Technical Conference on Minimum Equity (Directive 9)

Manitoba Hydro seeks to Review and Vary Directive 9 on the grounds that the PUB has made errors in law and fact in directing the Terms of Reference for its technical conference for the purpose of establishing rule-based guidance in the consideration of future rate increases be limited to a minimum retained earnings or similar test.

Further Hydro states that the PUB erred in fact if it concluded that it supported the long term objective of meeting a 75/25 debt to equity target while also endorsing a minimum retained earnings test, as a 75/25 debt to equity ratio will not be achieved if a minimum retained earnings test guides future rate applications.

Hydro is requesting clarification on Directive 9 from the PUB in its R&V application, and to vary Directive 9 to remove reference to a minimum retained earnings (MRET) or similar test.

MIPUG does not view any of the submissions of Hydro as constituting new facts.

In MIPUG's submission, Hydro's application for a Review and Vary on this item is unnecessary, and does not merit the relief requested, and should be dismissed. In particular, Hydro has repeatedly misstated the board's directive, and excessively over-interpreted the scale and impact of the directive in setting out sensational conclusions that will arise as a result of the Board's Order. Manitoba Hydro has not quoted or referenced all of the relevant findings of the PUB on this issue.

In this regard, it must be noted that the Board has solely directed the holding of a technical conference – that is all. The Board has not directed adoption of any particular approach. Further, this technical conference shall provide for "consideration of the establishment of a minimum retained earnings of similar test" (emphasis added), and finally that were such a test to be developed it would only "provide guidance in the setting of consumer rates" (emphasis added).

In preparing its Review and Variance application, Hydro has relied upon substantial misstatements of the Board's directive, and adopted an overly specific presumption of what may be concluded out of a technical conference. In particular Hydro provides the new Appendix D – Schedule A which Hydro appears to assume is the inevitable outcome of the technical conference, and further asserts that the impacts are unacceptable – ignoring that (a) the new Schedule A is at most one possible outcome of the technical hearing, and (b) that the technical hearing would provide Hydro with ample opportunity to present its view why the approach shown in Schedule A is not acceptable in Hydro's view. Specific examples of Hydro's unreasonable submission include, but are not limited to, the following:

- Order 59/18 "provides no clarity on how or when the achievement of financial targets are to be actioned or on what a long-term plan acceptable to the regulator will look like" (Appendix D, page 2). Regardless as to whether the Order itself provides sufficient clarity for Hydro, the very purpose of the technical conference is to add clarity. Also at issue at page 4 ("further guidance on these matters is required").

- At page 4 Hydro requests that "the PUB review and clarify its intention with respect to the abandonment of targets in place for decades" and that "Manitoba Hydro is uncertain that the PUB appreciates that adopting its MRET as understood will effectively abandon these targets, not only for the short term, but for the long-term as well". This assertion fails to support the Review and Variance for multiple reasons:
    1. the very purposes of the technical conference is to clarify the PUB's intention with respect to future targets
    2. there is no assertion in the Directive at issue that the MRET will necessarily be adopted, much less be the dominant or sole financial test in future
    3. the Directive does not reference whether or how any test will apply for the short or long-term – this is presumably yet to be decided (including based on the future input of Hydro, to make these same arguments if it so chose)
    4. the Directive does not indicate that any existing financial targets will be abandoned
    5. the entire GRA hearing was based on Hydro itself attempting to abandon targets that were long in place, and Hydro failed to make the case that abandonment of these targets, in favour of the new plan, was merited.
- At page 4 Manitoba Hydro develops its own interpretation of what a specific MRET approach may look like (without any indication that this is in any way the MRET that is contemplated by the Directive at issue), and indicates "this information was not requested of it during the GRA process". This is a specious argument regarding the hearing evidentiary record. In particular, the very concept of an MRET was primarily brought in by Messrs Osler and Forrest who did not assert an MRET to be anything like the concept portrayed by Hydro in Schedule A (which simply fixes retained earnings at the $2.979 billion level). In fact, Messrs Osler and Forrest indicated in response to an IR asked by the PUB (PUB/MIPUG-14) that:

> Hydro today is in the midst of a period with monetarily the largest major capital expansion in its history that started shortly after Hydro attained its long-term financial target debt to equity ratio of 75/25. Today's central financial target issues relate to assessing (a) the significance of the likely lowest level of retained earnings during the next decade (where MRET provides a useful perspective) before reserves once again start to grow rapidly, and (b) a reasonable target time for once again seeking to achieve the long-term financial target debt to equity ratio of 75/25.
>
> Looking at today's context, and accepting that the forecast minimum level of retained earnings over the next decade exceeds any reasonable MRET, setting dollar and time targets to recover specific higher levels of reserves or retained earnings is dependent primarily on the future rate pathway that can be considered economically acceptable, and on the ability to define an acceptable risk threshold. In this context, any such "target" continues to be an objective rather than a level that Hydro cannot be allowed to fall below. And, as in the past, the time to achieve such targets will likely need ongoing adjustment in response to actual conditions.

Also important to note is that this Information Request, highlighting that MRET "provides a useful perspective" at the present time, was followed by Hydro's Rebuttal Evidence. If Hydro indeed believed that the MRET approach that it now includes in Appendix D Schedule A was relevant and useful to the Board, it had every opportunity to provide that in its Rebuttal Evidence. The concept that Hydro was prejudiced by its own decision not to file information it considers relevant is not the basis for a Review and Vary.

- The Hydro Review and Vary at page 5 also predicates their assertion of errors made by the Board on the premise that an MRET test "foregoes net income and therefore incapacitates debt reduction". Ignoring the already cited issues above regarding Hydro providing a single interpretation (likely a misinterpretation based on the hearing evidence) of what a MRET would mean, this support of the claim that the Board erred ignores that the Board specifically heard extensive evidence about whether "debt reduction" was in fact a valid objective today or at any time, and concluded "The Board does not accept that rate increases should be higher in order to allow Manitoba Hydro to retire debt according to their new proposed debt management plan" (page 68). In short, Hydro's assertion is that even discussing an MRET is an error since it fails to achieve an objective that the Board specifically did not endorse. This further shows why Hydro's Review and Vary application should be dismissed.
- Hydro suggests that an MRET approach is flawed, because the PUB would be "endorsing a strategy which appears to accept reserves that are not scaled to the size and risk of Manitoba Hydro's business" at page 7. This is a nonsensical straw man argument. Not only is it in no way clear that any MRET would ignore Hydro's size and risk, the very purpose of the MRET is to test scenarios against the true risks Hydro faces (in a manner that is more clearly linked to potential risk scenarios than a rote 25% of capital approach). Further, Hydro has every opportunity to make these very same submissions as part of its participation in the upcoming technical conference.
- Hydro misstates the evidence and the Board's findings in respect of "qualified expert testimony" (page 9) when it asserts that "The financial plan brought forward by Manitoba Hydro in this proceeding reflects the expert judgment of a senior executive team steeped in experience managing large scale financial risk and setting financial policies and targets. The plan was endorsed by a Manitoba Hydro-Electric Board who individually have extensive personal experience in such matters." In no way does this statement reflect the Board's findings on these matters. In fact, the Board made no direct findings about the relevance or credibility of the financial expertise among Hydro's senior financial managers nor the Board of Directors. Further, the evidence in the proceeding was that Hydro provided no senior financial expert witnesses (internal or external) with experience in utility matters, Crown corporations, or indeed any capital-asset intensive businesses of the scale of Hydro. This option was open to Hydro, and indeed at past GRAs Hydro called both internal experts who spent their careers in relevant utility businesses, and external experts such as KPMG. Further, Hydro called none of the members of the Manitoba Hydro-Electric Board to testify and be cross-examined as to the state of their expertise or understanding of the issues. Hydro provided no resumes or qualifications for the members of its Board of Directors.

At its most fundamental, Hydro has created a straw man definition for the MRET to argue against, to attempt to prevent a technical conference focused on matters that Board saw as important and relevant, based on the evidence provided to it. It is Hydro's right to provide a view regarding the inappropriateness of any specific MRET concept as part of its participation in the technical conference. It is not an appropriate basis for a Review and Vary application.

In respect of the relief sought, the relief tied to the Board providing further guidance is unnecessary and not appropriate as a matter for a Review and Variance application. The technical conference is specifically a Board-led process, and it should be assumed the Board will provide any guidance it sees as appropriate and necessary throughout the course of the process.

The relief tied to adjusting the language to remove the phrase "minimum retained earnings or similar test" is also unnecessary and should be dismissed given no apparent errors led to the Board making this conclusion, the addition of the language helps focus the purpose of the technical conference and provide direction as to the interest of the Board (ironically, the very complaint Hydro makes in the first request for relief that further guidance would be beneficial), and the Directive remains open to how, if at all, any such MRET may be used in future which can be shaped by Hydro's submissions as part of the Technical Conference.

The Board may wish to clarify that Manitoba Hydro and intervenors will be offered the opportunity to participate in all phases of the Technical Conference, to provide clarity and ensure that the views of all parties will be considered throughout.

5) Appendix E: Determination of Timing of a Future Rate Increase and Time of Use Rate Proposal (Directive 29 and Board Findings p. 171)

Manitoba Hydro is requesting to vary Board findings on page 171 regarding timing of a rate application and consideration of future interim rate increases due to errors of law. Hydro seeks to review and vary Directive 29 because of competing regulatory priorities making it not possible to complete all such tasks within the timeline prescribed.

In MIPUG's view, Hydro's submission includes new facts not available at the time of the Board's Hearing, regarding Hydro's capabilities to meet all identified directives in the time allotted. Such information could not have been in evidence before the Board, since the timelines and directives set out in the Order were not known at the time of the hearing. Given this, Hydro's Review and Vary application should pass the preliminary stage in respect of schedule and timing.

Hydro's argument in respect of future interim rate increases includes no new facts. The Board has made clear for the utility how it intends to proceed in future as a guide to assist the utility in planning for future application activities. Further, Manitoba Hydro's own submission indicates that the ultimate relief required is in the form of improved scheduling, as page 7: "Manitoba Hydro believes that the best means of addressing this issue is to work with the PUB to develop a realistic work plan and timetable as well as determine priorities as between various regulatory demands." The PUB is entitled, in the exercise of its discretion, to set out the parameters of how it will exercise that discretion. This is the 2nd panel which has given notice to Hydro of which principles it intends to apply in exercising that discretion. Courts regularly set out principles on how they make discretionary decisions. Hydro is rearguing its case.

Regarding Board findings on page 171, MIPUG agrees with Hydro's analysis of the issue that a technical conference on financial targets should be complete prior to Hydro filing a GRA.

MIPUG is also of the view that further exploring a Time of Use rate should be priority, but may be disadvantaged by the need to have such rate design fully concluded, including consultation, by the time of filing Hydro's next GRA (currently schedules for September 1, 2018).

In the interests of reflecting the new facts, and of efficiency, MIPUG is of the view that the Board should permit the Review and Variance to proceed to a hearing in respect of sequencing and scheduling, to allow for near-term planning to set priorities and develop a timetable to PUB with the information it requires, recognizing the realities of resource constraints.