



Final Submissions of Manitoba
Keewatinowi Okimakanak, Inc.

Manitoba Hydro 2019/20 Electric
Rate Application

Jared Wheeler and Markus Buchart of Jerch Law

May 2, 2019



One Core Issue

Has Manitoba Hydro discharged its onus in establishing that a 3.5% across-the-board rate increase is just and reasonable, and therefore in the public interest?



MKO's Position

Manitoba Hydro has not discharged its onus in establishing that a 3.5% across-the-board rate increase is either just and reasonable, or in the public interest, and therefore the Board should order that the rate increase as requested be denied.



MKO understands this hearing does not end there

- ▶ Is any rate increase just and reasonable?

In the event the Board should find that a rate increase is justified, multiple issues arise:

- ▶ Is 3.5% the most appropriate rate increase?
- ▶ To which customer classes should a rate increase apply?
 - ▶ Should a rate increase be applied to the First Nations On-Reserve Residential customer class?
 - ▶ Should a rate increase be applied to customers in the Diesel Zone?



It is Appropriate to Continue Class-Specific Rate Freezes

- ▶ A rate freeze should continue on a public and social policy basis with respect to all aspects of the First Nations on Reserve Residential rates, and all aspects of the diesel residential rates, such that the rates for these classes should be maintained at the August 1, 2017 approved Residential rate.

Manitoba
Keewatinowi
Okimakanak
Inc. ("MKO")





Treaties

Rights, Responsibilities
and Relationships

- 
- 35. (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.

Constitution Act, 1982

- 4(2) The corporation is an agent of Her Majesty.

The Manitoba Hydro Act



Direction from Supreme Court of Canada

- ▶ “We do not, however, see the public interest and the duty to consult as operating in conflict. As this Court explained in *Carrier Sekani*, the duty to consult, being a constitutional imperative, gives rise to a special public interest that supersedes other concerns typically considered by tribunals tasked with assessing the public interest (para. 70). A project authorization that breaches the constitutionally protected rights of Indigenous peoples cannot serve the public interest (*ibid.*).”

Clyde River (Hamlet) v. Petroleum Geo-Services Inc. 2017 SCC 40 at para 40; applying *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43 at para 70



The Path to Reconciliation Act

- ▶ Preamble - AFFIRMING that the Government of Manitoba is committed to reconciliation and will be guided by the calls to action of the Truth and Reconciliation Commission and the principles set out in the United Nations Declaration on the Rights of Indigenous Peoples;

[...]

- ▶ 1(1) "Reconciliation" refers to the ongoing process of establishing and maintaining mutually respectful relationships between Indigenous and non-Indigenous peoples in order to build trust, affirm historical agreements, address healing and create a more equitable and inclusive society.

(emphasis added)



Missed Opportunities to Engage

MKO/MH I-10

RESPONSE:

While Manitoba Hydro has not undertaken a formal engagement process with its customers with respect to its 2019/20 Electric Rate Application, information is communicated through a number of forums to help customers understand the rationale for the requested rate increase. Manitoba Hydro is planning to broadly communicate the requested rate increase to customers using social media posts, an insert in all April 2019 bills and a related webpage on the corporation's external website. Electricity Rates will also be one of the topics customers can discuss with Manitoba Hydro at upcoming public meetings scheduled for Steinbach, The Pas and Winnipeg in March 2019.

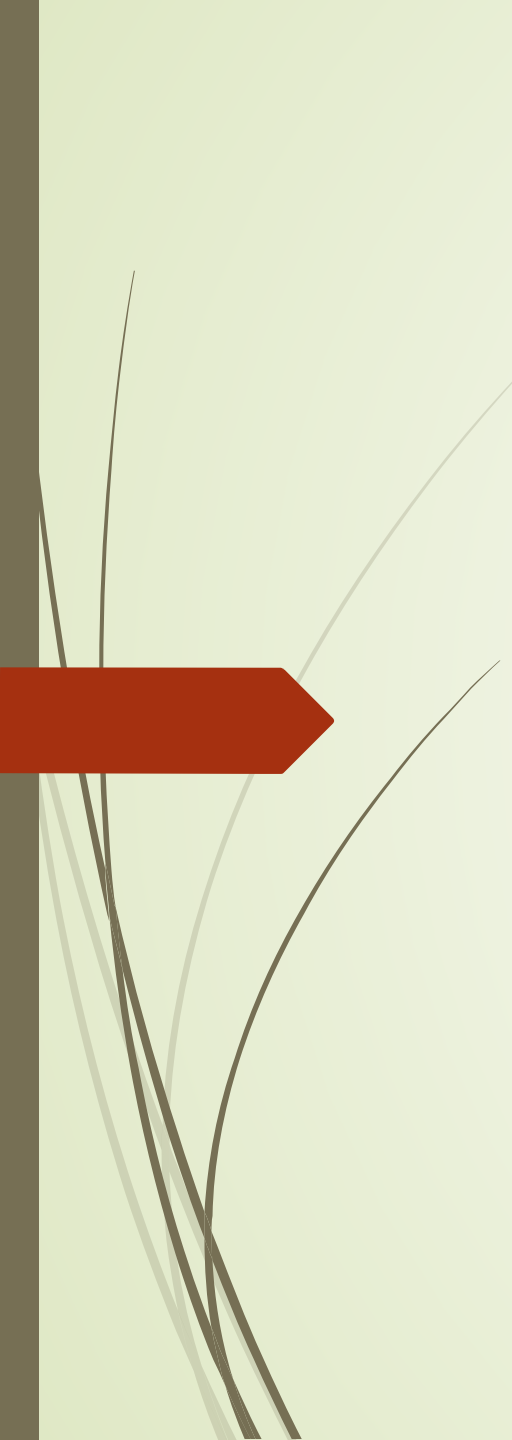


Missed Opportunities to Engage

AMC/MH I-13

RESPONSE:

Manitoba Hydro did not undertake a formal engagement process with First Nation leadership or with residential customers living on First Nation reserve land regarding the implementation of the First Nations on Reserve Residential rate class.



13 MR. BOB PETERS: Ms. Pachal, in terms
14 of the corporate strategic planning that the
15 Corporation is doing, is included in that ratepayer
16 consultations?

17 MS. SHAWNA PACHAL: There's definitely
18 a component of the corporate strategic planning that
19 has stakeholder consultations included in that. We've
20 just begun to create the list and have discussions of
21 which groups of stakeholders we would consult with in
22 what way.



MKO Recommendations - Engagement

- MKO recommends that the Board find that Manitoba Hydro has not adequately engaged with First Nations about implementation of the First Nations on Reserve Residential customer class, or with respect to the proposed 3.5% rate increase.
- MKO recommends that the Board order Manitoba Hydro to include MKO member First Nations in the list of stakeholders with whom Manitoba Hydro will consult, in the interest of implementing the First Nations on Reserve Residential customer class.
- MKO also recommends that the Board order that Manitoba Hydro engage with MKO member First Nations prior to filing future rate applications in order to: provide notice of proposed rate increases; maintain mutually respectful relationships; and, to gain an understanding of positions, interests, issues and concerns.



MKO Recommendation – Recommend Diversion of Portion of Water Rentals

- MKO proposes that the Board recommend to the provincial government that a portion of water rental fees be diverted to implement, support and maintain a comprehensive government bill affordability program targeting the First Nations on-Reserve Residential customer class, and customers in the Diesel Zone.



MKO Recommendation

- MKO recommends that the Board order that Manitoba Hydro file a Diesel specific rate application within a reasonable time frame.



MR. JARED WHEELER:

10 Would you agree that following Board
11 Order 59/'18 this statement would be more accurately
12 put as with respect to rates in the diesel zone rates
13 for all residential consumption and general service
14 usage up to 2000 kWh per month are priced at
15 equivalent to the grid rate for the First Nations on-
16 reserve residential customer class on a policy basis?

17

18 (BRIEF PAUSE)

19

20 MS. LIZ CARRIERE: Yes, we would
21 agree with that.

Transcript, April 24, 2019, page 508



First Nations on Reserve Residential Customer Class



Certainties with Respect to the Class

- ▶ The First Nations on Reserve Residential customer class exists in Manitoba.
- ▶ The reasons for the creation of this customer class remain the same



Brief Response to a Portion of Manitoba Hydro's Final Argument

- Before the Court of Appeal is a leave application
- In the event leave is granted, Manitoba Hydro has a very optimistic view of the timeframe within which Manitoba Hydro's appeal might be heard and decided
- Not likely to be a decision within the test year



MKO's Recommendation

- ▶ Rate freeze should be maintained pending the Court of Appeal process
- ▶ Further, more robust discussions should take place during the 2020/2021 GRA

“Modest Contribution”?

In this Application, Manitoba Hydro is requesting an Order pursuant to section 25(1) of *The Crown Corporations Governance and Accountability Act* for final approval of a 3.5% rate increase for all customer classes to be effective April 1, 2019. As shown in Appendix 1, page 1, this increase is projected to generate additional revenues of \$59 million and would result in a modest contribution to financial reserves (net income) of \$31 million in 2019/20.

Manitoba Hydro, November 30, 2018, 2019/20 Electric Rate Application, pages 1-2 (emphasis added)

The proposed 3 1/2 percent is projected to generate an additional \$50 million in revenue and provide a modest contribution to the financial reserves or net income of \$115 million in 2019/20.

Ms. Liz Carriere, Transcript, April 23, 2019, page 68 (emphasis added)

“Modest Contribution”?

- ▶ “The proposed 3.5% rate increase generated a more modest level of net income based on the lower water flow conditions at the time of the Application. However, the proposed 3.5% rate increase is aligned with the 3.6% rate increase granted in Order 59/18 as well as the projected 3.57% rate increases underlying Exhibit 93, and having regard for the expedited Application process, Manitoba Hydro determined it would accept the lower projected level of net income in its Application in favour of balancing the interests of ratepayers and their bill impacts.”

Manitoba Hydro, February 14, 2019, Supplemental Filing, Page 3

(emphasis added)




Numbers That Matter

Manitoba Hydro

➤ \$20,000,000,000.00

MKO Citizens

➤ \$6.30




MKO Recommendation – Accounts in Arrears

- ▶ 2(1) The following actions shall be commenced within and not after the times respectively hereinafter mentioned:
 - (i) actions for the recovery of money (except in respect of a debt charged upon land), whether recoverable as a debt or damages or otherwise, and whether a recognizance, bond, covenant, or other specialty, or on a simple contract, express or implied, and actions for an account or not accounting, within six years after the cause of action arose;

The Limitations of Actions Act, CCSM c L150

- ▶ MKO recommends that the Board should order that any residential account in arrears for longer than 6 years in an MKO member First Nation should be entirely written off by the corporation.



“When I think of a household budget, it doesn't make sense to plan your household expenditures, based on simply breaking even when you could have an emergency that comes up and you're going to have to cover that.”

Ms. Liz Carriere, Transcript, April 23, 2019 page 158, lines 3-7




Appendix 10 (Updated)

For the 2019/20 fiscal year a 3.5% rate increase with a June 1, 2019 implementation date is expected to provide Manitoba Hydro with approximate revenues of:

- \$1.4 million from the First Nations On-Reserve Residential customer class; and,
- \$21,000 from the Diesel Residential customer class.



Long-Term compounding impacts
to a population of Manitobans that
is disproportionately vulnerable to
rate increases



Limits of First Nations on Reserve Residential customer class

- ▶ Not intended to be a “magic bullet”
- ▶ Intended to be a first step
- ▶ Supposed to be a “stop gap” measure while awaiting the province’s creation of a comprehensive bill affordability program



From Rainkie, Derksen, Harper response to MKO/CC IR 1

- ▶ A balance between the financial health of Manitoba Hydro with customer interests and avoidance of an erosion of Manitoba Hydro's capital structure in 2019/20 can be achieved even if no rate increase was applied to the First Nations on-Reserve and diesel residential customer classes.



Options for addressing foregone revenue if FNoRR and diesel exempted

1. Recommend to the Province that a portion of water rental fees be diverted to cover the shortfall;
2. Allow the shortfall to impact Manitoba Hydro's net income; or,
3. Factor the cost into the levels of the average general rate increase granted for the Test Year to all other customer classes.



Not Proposing Rate Freeze in Perpetuity


MKO recognizes that:

- ▶ The cost of doing business is not static.
- ▶ The cost of living is not static.
- ▶ Rates paid for hydro electricity cannot remain forever static.



Blindly adhering to a pre-determined rate request without considering:

- Impacts to First Nations on-Reserve residential customers;
- Impacts to diesel customers;
- Consumption patterns;
- Expert evidence about energy poverty on-reserve;
- Residential energy use Reports and data commissioned by Manitoba Hydro themselves;
- Charter values, including equality;
- Reconciliation; OR,
- The perspective of Manitoba Hydro's own employees working with Indigenous peoples.



MKO maintains that it would be neither just, nor reasonable, to increase the levels of Manitoba Hydro's financial reserves by disproportionately impacting people living on reserve.



Thank you