

February 5, 2019

Ms. Odette Fernandes  
Legal Counsel  
Manitoba Hydro  
22 – 360 Portage Avenue  
Winnipeg, MB R3C 0G8

- and -

Interveners of Record (per attached list)

**Re: Manitoba Hydro 2019/20 General Rate Application – Manitoba Hydro’s December 6, 2018, December 11, 2018, January 28, 2019, and January 31, 2019 Rule 13 Motions Respecting Confidential Information**

**Background:**

In its letter of November 12, 2018, Manitoba Hydro (or the “Utility”) informed the Public Utilities Board (“Board”) of the Utility’s intention to file its 2019/20 General Rate Application (“GRA”) in which Manitoba Hydro would seek approval of a one-year rate increase sufficient to generate a minimum level of net income such that the Utility would avoid a projected net loss in the 2019/20 fiscal year.

On November 30, 2018 Manitoba Hydro filed its 2019/20 GRA seeking a 3.5% rate increase for all customer classes to be effective April 1, 2019. According to the Utility, the proposed 3.5% rate increase would generate additional revenues of \$59 million per year and would result in a \$31 million contribution to net income rather than the projected net loss of \$28 million.

**Manitoba Hydro’s Four Motions for Confidentiality of Specific Information:**

Since the filing of its GRA, and pursuant to Rule 13 of the Board’s Rule of Practice and Procedure (available on the Board’s website, [www.pub.gov.mb.ca](http://www.pub.gov.mb.ca)), Manitoba Hydro has made four requests of the Board to keep certain information confidential and not place it on the public record.

December 6, 2018: Exhibit No. MH-5

As part of its GRA filing, Manitoba Hydro provided copies of the detailed quarterly public reports on the Keeyask Generating Station, the Bipole III Project, the Manitoba-Minnesota Transmission Project and the Birtle Transmission Project for the quarters ending March 31, 2018, June 30, 2018 and September 30, 2018 as Appendix 7.

Previously the Board directed Manitoba Hydro, in Order 59/18, to outline proposed budgets and schedule (at time of contract), budget and schedule changes and reasons for such changes and current forecast at completion costs and schedule. In addition, Manitoba Hydro was to provide specific details of contract costs for any contracts in excess of \$50 million. As a result of the nature of the detailed information requested, Manitoba Hydro filed copies of quarterly reports containing the requested confidential information, on blue paper, for each of the projects listed above. These confidential quarterly reports contained information on contingency summaries (including drawdowns, and remaining contingency amounts including allocated and unallocated amounts), forecast at completion amounts, escalation, contract values and capital expenditures by contract to date. While Manitoba Hydro does not view the level of detail contained in the confidential reports to be required for purposes of the 2019/20 Electric General Rate Application the Utility was requested to file these 'Confidential Quarterly Reports' (for the quarters ending March 31, 2018, June 30 2018 and September 30, 2018) as part of the record of the 2019/20 Electric Rate Application.

Manitoba Hydro would prefer that the 2019/20 GRA be considered on the basis of the publicly filed information. However, should the Board require that the Confidential Quarterly Reports form part of the record of the current 2019/20 Electric Rate Application, Manitoba Hydro requests that the previously filed Confidential Quarterly Reports be accepted for this purpose and that these Confidential Quarterly Reports and the commercially sensitive information contained therein be held in confidence by the Board pursuant to Rule 13 (2) (a) and (b). The Utility maintains this information has consistently been received by the Board in confidence and has been treated as confidential. Manitoba Hydro submits that holding this information in confidence outweighs the public interest in disclosure of this information.

1. December 11, 2018: Exhibit No. MH-6

Manitoba Hydro has been requested to provide a schedule of export volumes, revenues/costs and average unit revenues for the test year and actual results for the 2016/17 and 2017/18 years (split between firm and opportunity volumes and revenues for each year). Manitoba Hydro has publicly provided aggregated actual price information for export sales to Canada in 2016/17, 2017/18 and actual average price information for Export Sales to the USA split between firm and opportunity. Manitoba Hydro has also publicly provided aggregated firm and opportunity sales information for Canadian and USA exports for 2018/19 and 2019/20 fiscal years, including volumes (in GW.h), revenue/cost data (in millions of dollars) and average unit revenue cost (\$/MW.h).

Manitoba Hydro submits that the information contained in the Actual Average Price Calculation table for 2016/17 and 2017/18 and the Average Unit Revenue/Cost Calculation table for 2018/19 and 2019/20 for Canadian sales, if split between firm and opportunity volumes and revenues, would provide the blended capacity and energy price

of the Canadian firm exports. The Utility maintains this information is subject to confidentiality provisions and disclosure of the information would cause economic and reputational harm to Manitoba Hydro in ongoing discussions over future opportunities and harm to future negotiations with various counterparties if disclosed publicly.

While aggregate sale volume and revenue information for forecast years has been provided on the public record, Manitoba Hydro has consistently advised that knowledge of the average unit forecast price or average unit forecast revenues, broken down by firm and opportunity, provides Manitoba Hydro's counterparties with insight into how Manitoba Hydro will price its products. According to the Utility this will negatively affect the Corporation during negotiations with counterparties. With knowledge of how products are priced, counterparties will want the same or a better price than average unit prices. Counterparties who have contracted at higher prices may feel slighted, impacting relationships and willingness to enter contracts in the future. Disclosure of revenues may lead counterparties and/or their regulators to second guess negotiations with Manitoba Hydro and may lead them to believe they have paid too much. In the past, where this has occurred, counterparties have demanded to renegotiate Term Sheets or withdrawn from negotiations. Disclosure of volume information facilitates reverse engineering of revenues and pricing using other information in the public domain.

As a result, Manitoba Hydro has included the tables providing the requested information as Attachment 3 to the December 11, 2018 letter. The confidential portions of the response have been redacted.

Manitoba Hydro submits that holding this information in confidence outweighs the public interest in the disclosure of the information and notes that this information has consistently been received by the Board in confidence in previous proceedings. Manitoba Hydro requests that this information be received in confidence by the PUB pursuant to Rule 13(2) (a) and (b) and not be placed on the public record.

2. January 28, 2019: Exhibit No. MH-7

On December 14, 2018, Manitoba Hydro received a number of Information Requests from the Board requesting information from Manitoba Hydro for the review of the 2019/20 Electric Rate Application. Following the Board's Pre-Hearing Conference on December 20, 2018, the Board issued Procedural Order 1/19 which set forth a schedule for the review of Manitoba Hydro's 2019/20 Electric Rate Application. The schedule provided, amongst other things, that Manitoba Hydro was to file any responses to Information Requests containing commercially sensitive information with the Board by January 28, 2019.

Pursuant to Rule 13(2) of The Public Utilities Board Rules of Practice and Procedure, Manitoba Hydro seeks an Order of the Board confirming that it will receive and hold in confidence Manitoba Hydro's responses to the following Information Requests:

PUB/MH CSI-1  
PUB/MH 1-4 d)  
PUB/MH 1-9  
PUB/MH 1-43  
PUB/MH 1-46 a)

PUB/MH 1-47 a)-c)  
PUB/MH 1-55 b)  
PUB/MH 1-58 a)-b)

Manitoba Hydro has relied upon the same redaction criteria which have been utilized by Manitoba Hydro in previous applications before the Board. Manitoba Hydro has inserted codes corresponding to categories in the Redaction Criteria in the responses to the Information Requests in order to identify the basis for the redactions. A copy of the Redaction Criteria is attached to the Utility's Motion as Appendix A in the January 28, 2019 letter.

Generally, the information which Manitoba Hydro provided the Board and seeks to be held in confidence by the Board, is confidential and commercially sensitive information to Manitoba Hydro as it is either 1) confidential and commercially sensitive information of Manitoba Hydro, or 2) third party confidential or commercially sensitive information which Manitoba Hydro is bound to maintain in confidence or is not authorized to reproduce or distribute by virtue of a contractual or fiduciary duty to the third party (collectively "CSI").

Manitoba Hydro expects that the release of the CSI would result in undue financial loss to Manitoba Hydro (or the third parties who have released their confidential information to Manitoba Hydro) and/or harm the competitive position of Manitoba Hydro or those third parties. Manitoba Hydro notes that in all cases the information of the nature described herein has been consistently treated as confidential. Manitoba Hydro submits that the need to maintain the information in confidence outweighs the public interest in the disclosure of the information.

January 31, 2019: Exhibit No. MH-8

In this January 31, 2019 Motion the Board was advised that it has come to Manitoba Hydro's attention that Information Requests PUB/MH 1-30 a)-c) and PUB/MH 1-31 a)-b) contain information which is confidential to Manitoba Hydro's subsidiary, Centra Gas Manitoba Inc. ("Centra").

Manitoba Hydro is seeking the information contained in these Information Request responses also be held by the Board in confidence consistent with the request made by Centra Gas in its 2019/20 General Rate Application.

PUB/MH 1-30a)-c) and PUB/MH 1-31 a)-b) request information related to monthly heating degree days for 2017/18 and 2018/19 actual to date. Since approximately 2015, Centra has requested that certain information be maintained by the Board in confidence. TransCanada Pipelines Limited currently has unlimited discretion in establishing the short-term firm and interruptible transportation bid floors on the Canadian Mainline which has caused Centra to consider historical and forecast annual gas supply and gas cost information as confidential and commercially sensitive. Disclosure of information on heating degree days may be used for adverse pricing activity by market participants to the detriment of Centra and may expose Centra and its ratepayers to increased costs by virtue of Centra being a captive shipper on the Canadian Mainline. Centra's competitive market position is reasonably expected by the Utility to be prejudiced by public disclosure of this information, including the potential for a material cost increase to Centra and its ratepayers.

### **The Board's Rules for Receipt of Confidential Filings:**

Proceedings before the Board are public. By standard protocol, and pursuant to the Board's Rules of Practice and Procedure (available on the Board's website at [www.pubmanitoba.ca](http://www.pubmanitoba.ca)), documents filed with the Board by a party to a proceeding are placed on the public record. However, Rule 13(2) provides that the Board may receive information in confidence on any terms it considers appropriate in the public interest. This exception to the general rule of public disclosure arises where the test under Rule 13(2) is met:

(a) If the Board is of the opinion that disclosure of the information could reasonably be expected

- i. to result in undue financial loss or gain to a person (including Manitoba Hydro and other corporations) directly or indirectly affected by the proceeding; or
- ii. to harm significantly that person's competitive position

or

(b) if

- i. the information is personal, financial, commercial, scientific or technical in nature; or
- ii. the information has been consistently treated as confidential by a person directly affected by the proceeding; and
- iii. the Board considers that the person's interest in confidentiality outweighs the public interest in the disclosure of the information.

On hearing a motion under Rule 13, the Board may order the information in question be placed on the public record, order the document not be placed on the public record with such conditions on access imposed as the Board considers appropriate, order an abridged version of the document be placed on the public record, or make any other order the Board finds to be in the public interest.

### **Board Adjudication of Manitoba Hydro's Four Motions for Confidentiality:**

A Panel of the Board consisting of the Chair Robert Gabor, Q.C. and Vice Chair Marilyn Kapitany heard the four Manitoba Hydro Motions respecting the proposed redactions as set out in the letters of December 6, 2018, December 11, 2018, January 28, 2019 and January 31, 2019.

The Board accepts Manitoba Hydro's submissions in its December 6, 2018 Motion and finds that the previously filed Confidential Quarterly Reports will be available to the Board if required in this 2019/20 GRA and these quarterly filings will continue to be held in confidence by the Board pursuant to Rule 13 (2) (a) and (b). This information has

consistently been received by the Board in confidence and has been treated as confidential. Holding this information in confidence outweighs the public interest in disclosure of this information.

The Board accepts Manitoba Hydro's submissions in its December 11, 2018 Motion and the proposed redacted information will be held in confidence by the Board pursuant to Rule 13 (2) (a) and (b). Holding this information in confidence outweighs the public interest in disclosure of this information.

For the reasons advanced by Manitoba Hydro, the Utility's requests that the information contained in the responses to the Information Requests specified in the January 28, 2019 and January 31, 2019 Motions will be received and held in confidence by the Board pursuant to Rule 13(2) (a) and (b) and will not be placed on the public record or released to any other parties. In previous proceedings, the Board has received and held such information in confidence as the Board has determined that holding this information in confidence outweighs the public interest in the disclosure of the information.

**Conclusion:**

Should any party have questions of clarification, please contact our office.

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

Yours truly,



Kurt Simonsen  
Associate Secretary

KS/kl

cc: Marla Boyd, Manitoba Hydro  
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