



PUBLIC INTEREST LAW CENTRE – CENTRE JURIDIQUE DE L'INTÉRÊT PUBLIC

AN INDEPENDENT SERVICE OF LEGAL AID MANITOBA – L'AIDE JURIDIQUE DU MANITOBA

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October 22, 2021

Manitoba Public Utilities Board
330 Portage Avenue
Winnipeg, MB R3C 0C4

Sent via email:
Rachel.McMillin@gov.mb.ca

Attention: Rachel McMillin, Associate Secretary

Dear Ms. McMillin,

Re: Comments of the Consumers Coalition regarding Process

The Consumers Coalition appreciates the opportunity to respond to the October 19, 2021 correspondence of the Public Utilities Board (PUB) which invites intervenors to comment on procedural options respecting Manitoba Hydro's anticipated interim rate application as well as the Status Update process ordered in PUB Order 89/21.

In the letter which follows, the Consumers Coalition sets out the considerations that have guided its approach. It also outlines potential options for the consideration of the PUB.

The Consumers Coalition does not present a final recommendation. It respectfully recommends that legal counsel for the PUB, Hydro and Intervenors meet to discuss potential process options immediately after Manitoba Hydro has filed its materials for the interim rate application and parties have a better sense of the quality of the filing and the magnitude of the interim rate request.

In offering its comments, the Consumers Coalition wishes to highlight 5 important messages:

- 1) Consumers lack confidence that the current rates of Manitoba Hydro are just and

reasonable due to an endemic and long-standing lack of transparency on the part of the monopoly;

- 2) Public confidence in Hydro's rates can only be restored by a prompt return to a transparent, orderly and evidence-based rate setting process with a view to the immediate, medium and long-term risks facing the monopoly;
- 3) There is no credible reason why a competently managed monopoly that is committed to an independent regulatory process could not have a full General Rate Application (GRA) initiated by the spring of 2022;
- 4) Any interim process undertaken should be linked to a prompt return to a transparent, orderly and evidence-based rate setting process whether through a GRA or a continuation of the Status Update process; and,
- 5) Any interim relief granted should be conditional upon a prompt return to a transparent, orderly and evidence-based rate setting process.

The Consumers Coalition reserves the right to provide final recommendations respecting process after receiving Manitoba Hydro's rate application and supporting materials.

Key Principles

The Consumers Coalition acknowledges that it is the Board's responsibility to establish a process which is appropriately responsive to the circumstances of the corporation without compromising the high standards of its integrity as an independent regulator. For both processes, the Board must set out a pathway which ensures that the information necessary for an informed decision will be properly before it. This will necessarily include opportunities for parties to test Manitoba Hydro's applications and to meaningfully address inadequacies in its filings.

The selection of an appropriate process must also be informed by the interests at stake in the PUB's regulatory process, including ratepayers' need for certainty, stability and predictability of rates, and the corporation's operational requirements and obligations to creditors and export markets.

Further, the Board's findings in Order 89/21 confirm that present realities are complicated by multiple substantial changes in circumstances which have transpired since the last comprehensive review of Manitoba Hydro's corporate health. These changes are compounded by the ongoing drought for which Manitoba Hydro intends to seek interim rate relief.

Finally, in the respectful view of the Consumers Coalition, the Board's selected process must constitute an assertive response to the ongoing refusal of Manitoba Hydro to meaningfully engage with its statutory regulator. Manitoba Hydro's continuing efforts to stall progress toward accountability following years of avoiding public scrutiny should not be countenanced.

To the extent that an expedited interim process is initiated, it must be tied to a timely and meaningful return to robust regulatory oversight. Any relief ordered must be

conditional upon a return to such an orderly process.¹

Possible Interim Rate Application Processes

With these principles in mind, the Consumers Coalition offers the following options for the Board's consideration:

1. An expedited written and oral process modelled after the process leading to PUB Order 71/20

One option to consider is the process followed by the PUB in April of 2020 in response to Manitoba Public Insurance's (MPI) first Special Rebate Application. While this was not an interim application, it demonstrates one approach to an effort to be both time sensitive and rigorous.

This process consisted of an application filed on April 27, 2020, a round of Pre-Ask Questions filed two days later, and one half-day each of oral questions and closing submissions on April 30th and May 1st, 2020. Importantly, this process was followed by the filing of MPI's General Rate Application in June of 2020 which proceeded to a hearing in October.²

A comparable but more extensive process may be appropriate here if Manitoba Hydro's interim rate application proposes a modest rate change, accompanied by a quality filing and any interim rate change ordered is expressly conditional upon a timely GRA or a robust Status Update process.

For example, a process could be contemplated which envisions a filing on November 15, information requests on November 22, responses on November 29 and a short oral hearing with a view to a decision by no later than December 15, 2021.

Any relief ordered could be conditional upon a comprehensive rate review in the spring of 2022.

2. A written process modelled after Manitoba Hydro's 2016/17 Interim Rate Application

Another option is the written process following the corporation's 2016/17 Interim Rate Application. In that proceeding, Manitoba Hydro's application was filed in November of 2015 with written information requests filed in January 2016. Responses to information requests and the exchange of written submissions and replies took place in February 2016, and Order 59/16 was issued in late April, approximately 5 months after the filing. That Order directed Manitoba Hydro to file a General Rate Application by December 1, 2017, 7 months later.³

¹ See for example, Order 108/15, p. 34-35 and Directives 5 and 12, where the PUB directed that Centra's non-gas rates would revert back to the 2010/11 GRA levels from the 2013/14 GRA levels if Centra did not file a GRA by January 20/17.

² Order 71/20 at 6-8.

³ Order 59/16 at 4, 6-7.

Any relief ordered could be conditional upon a comprehensive rate review in the spring of 2022.

3. A written and oral process modelled after the Manitoba Hydro 2017/18 Interim Application

This process began with the filing of a General Rate Application and Minimum Filing Requirements in May of 2017, including an application for interim rate relief. Following review of the application and filings, interveners shared outlines of oral submissions in advance of a July hearing and interim rates were approved to go into effect on August 1, 2017.⁴

This interim process was complemented by the concurrent General Rate Application and the Board benefitted from the GRA filings.

Any relief ordered could be conditional upon a comprehensive rate review in the spring of 2022.

Conclusion

The Consumers Coalition respectfully requests the opportunity to offer final recommendations after the nature and quality of Manitoba Hydro's application is known.

Thank you for considering these comments.

Thank you,



Byron Williams
Director, Public Interest Law Centre

⁴ Order 80/17 at 3, 7-10.