

IN THE PUBLIC UTILITIES BOARD OF MANITOBA

IN THE MATTER OF:                    )           THE MANITOBA HYDRO  
  )             
  )           2021/22  
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  )           INTERIM RATE APPLICATION.

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Final submission of Manitoba Keewatinowi Okimakanak Inc.  
(December 14, 2021)

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(File no. 10146-09)

FINAL SUBMISSION OF MANITOBA KEEWATINOWI OKIMAKANAK INC.

Good afternoon, Mr. Chair Gabor, Vice-Chair Kapitany, and fellow panel members Ring, Hamilton, Grant, and McCutcheon:

1. For the transcript, my name is Markus Buchar. I am pleased to have this opportunity to make this submission to the Board, and am honoured to have been asked to do so for the intervenor Manitoba Keewatinowi Okimakanak Inc. (or MKO or short).
2. MKO is the organization of Chiefs that represents the citizens of 26 First Nations in northern Manitoba who are signatories to Treaties 4, 5, 6, and 10. MKO therefore provides the collective voice for about 65,000 treaty First Nation citizens in northern Manitoba.
3. MKO became a party to this interim rate application proceeding almost by accident. This is the long and winding road how MKO got here.
4. This Board created a new First Nation On-Reserve Residential customer class in Board Order 59/18, which MKO supported. In Order 59/18 (at pages 27–28), the Board found that, and noted Manitoba Hydro’s agreement, “that electricity rates and the resulting bills place a particularly heavy burden on First Nations communities due to inadequate housing infrastructure and the absolute levels of poverty.” MKO agreed with this rationale for creating the First Nation On-Reserve Residential class. In Order 59/18, the Board maintained electricity rates for the new class, including the diesel communities, at the August 1, 2017, rates.
5. MKO participated in the 2017/2018 and 2018/2019 general rate application proceeding. In Board Order 29/19, the Board once again ordered that there shall be no increase in electricity rates for the First Nation On-Reserve Residential class.

6. Unfortunately for MKO citizens, Manitoba Hydro appealed the creation of the new First Nation On-Reserve Residential class to the Court of Appeal. On June 9, 2020, the Court of Appeal ruled that the Board exceeded its jurisdiction under *The Manitoba Hydro Act* when it created the First Nation On-Reserve Residential customer class. The citation for that decision is *Manitoba (Hydro-Electric Board) v Manitoba (Public Utilities Board) et al*, 2020 MBCA 60. The Supreme Court of Canada declined to grant leave to appeal that decision on March 18, 2021, in *Assembly of Manitoba Chiefs v Manitoba Hydro-Electric Board*, 2021 CanLII 20317.

7. In Board Order 100/20 made on August 12, 2020, the Board revised rates applicable to the now-abolished First Nation On-Reserve Residential rate class to follow the Court of Appeal's decision, to be effective on September 1, 2020. The result was an effective rate increase on First Nation On-Reserve Customers of 6.5%.

8. Meanwhile, back in government, the Government of Manitoba decided to by-pass the statutory regulatory scheme that it itself had enacted and by-pass this Board. Instead, the Government enacted an ordinary government budget bill to apply a further across-the-board electricity rate increase of 2.9% effective on December 1, 2020. The citation for the budget statute is *The Budget Implementation and Tax Statutes Amendment Act*, 2020, SM 2020, c 21. The 2.9% budget rate increase applied equally to the former First Nation On-Reserve Residential customers, who had only two months earlier experienced a 6.5% rate increase. The two rate hikes together represent an increase of 9.6%.

9. So, MKO was encouraged when the Consumers Coalition began the ball rolling to compel a new general rate application or rates review by its motion to this Board on March 26, 2021. MKO saw such a hearing as an opportunity to resurrect the former First Nation On-Reserve Residential rate class, not directly of course, because the Court of Appeal says that this Board lacks jurisdiction, but indirectly. *The Manitoba Hydro Act*, subsections 39(11) and (12), permit this Board to make recommendations to the Lieutenant Governor in Council. MKO thought that this

Board might recommend the re-creation of a First Nation On-Reserve Residential class and the Government might adopt that recommendation and amend the relevant statute(s).

10. After much sound and fury and apparent resistance by Manitoba Hydro, this Board granted the Consumer Coalition's motion for an electricity rates hearing in Board Order 89/21 on August 17, 2021. On September 16, 2021, MKO submitted an application for intervenor status in that prospective hearing.

11. Then the Earth apparently moved. The application in this proceeding discloses that the Minister of Crown Services issued a ministerial directive to Manitoba Hydro on September 22, 2021, to proceed with this interim rate application. Manitoba Hydro then filed this application a week later on September 29, 2021. The crown corporation that resisted fiercely the Consumer Coalition's motion for a rates review suddenly needed a 5% increase in revenue and needed it fast.

12. MKO had applied on September 16, 2021, to be an intervenor in the Consumer Coalition's proposed rate review proceeding. Instead, that application made MKO an intervenor in this interim rate application which none of the intervenors even imagined at the time they implied. Which is how MKO accidentally became an intervenor in the present interim rate application.

13. MKO applied in September to begin the process of restoring the First Nation On-Reserve Residential rate class properly, starting with a Board recommendation to the Government under *The Manitoba Hydro Act* as I have described earlier. MKO knows that that is beyond the scope of the proceeding that it has found itself in.

14. Then, what does MKO say that this Board should do that is within scope?

15. MKO says that the Board should start as Manitoba Hydro's first witness did. The President and Chief Executive Officer of Manitoba Hydro, Jay Grewal, was

Manitoba Hydro's First Witness. In the transcript (at page 120), among the very first things that Ms Grewal said, was:

“Before I move forward, as is practice for us, as Manitoba Hydro, I'd like to do a land and territorial acknowledgment.

“We are joining you today from Treaty 1 territory and the homeland of the Metis nation where, of course, Manitoba Hydro has a presence across this province, on Treaty 1, Treaty 2, Treaty 3, Treaty 4, and Treaty 5 lands, the original territories of the Anishinabe, Cree, Oji-Cree, Dakota, and Dene peoples, and the homeland of the Metis nation.

“We acknowledge these lands and pay our respects to the ancestors of these territories. The legacy of the past remains a strong influence on Manitoba Hydro's relationships with Indigenous communities today and remain committed to establishing and maintaining strong, mutually beneficial relationships with Indigenous communities.”

16. What does this evidence —the affirmed evidence of the President and Chief Executive Officer of Manitoba Hydro that Ms Grewal chose to lead off her direct testimony — mean in the context of Manitoba Hydro's present interim rate application?

17. A land and territorial acknowledgement *has* to have *some* meaning. If it has no meaning, then it's just empty words.

18. *The Path to Reconciliation Act*, reinforces land and territorial acknowledgments. Subsection 1(1) defines “reconciliation”:

## **Reconciliation**

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.

19. Subsection 2(1) includes four principles to advance reconciliation:

### **Principles**

2 To advance reconciliation, the government must have regard for the following principles: ...

**Action:** Reconciliation is furthered by concrete and constructive action that improves the present and future relationships between Indigenous and non-Indigenous peoples.

20. The principles of statutory interpretation require that statutory enactments must have meaning. Therefore, just like a land and territorial acknowledgement, *The Path to Reconciliation Act* should not be read as empty words.

21. On the first day of this proceeding, the Board heard from Amanda Leighton, a spokesperson for the Interchurch Council of Hydropower. Her presentation, which MKO highly commends for the Board’s consideration, is recorded in the transcript at pages 70 to 76. Although not affirmed or sworn evidence, Ms Leighton’s comments are, in general terms, uncontentious and would not likely be substantially disputed by Manitoba Hydro. Northern hydroelectric development, mostly on MKO First Nations’ land and territory, has been highly disruptive to First Nation society and economy. Northern First Nation people’s electricity consumption is significantly higher than that in, say, Winnipeg. Electricity rates are a special hardship to First Nation people, many of whom live in poverty. None of these observations are especially controversial.

22. MKO is skeptical whether Manitoba Hydro really needs to increase its revenue by 5% now. The thorough cross-examination by the other intervenors has raised doubts about that alleged urgent revenue requirement. For MKO's part, President Grewal testified that Manitoba Hydro began to be concerned about a developing drought "late in June in 2021." [*Transcript page 218.*] She testified that the corporation's concern became greater in late September and became serious by mid-October. [*Transcript page 219.*] She testified that Manitoba Hydro was preparing for compliance with Bill 35 in an application in 2023 or 2024, had no Plan "B" in case Bill 35 was not passed, and did not make any preparations for applying for a rate increase until forced to do so by the Ministerial Order of September 22. [*Transcript pages 219–221.*] That does not sound like the actions of a utility panicking about an impending, dire revenue shortfall.

23. But if this Board finds that Manitoba Hydro indeed does require an interim rate increase, either as a uniform across-the-board increase of 5% or less, or as varying increases between different rate classes, what guidance can MKO give?

24. The First Nation On-Reserve Residential rate class is gone. If the Board grants a rate increase that applies to the Residential rate class, that rate increase would apply equally to all First Nation citizen-customers, whether they reside on-reserve or not. There's no avoiding it. The Court of Appeal has spoken. So, the only way to provide relief to First Nation citizen-customers is to provide the same relief to all residential customers. And that would be MKO's recommendation. If say, the Board were to increase the Residential rate class by 5.0%, that would mean that the former First Nation On-Reserve Residential customers would have experienced an increase of just about 15.1% since September 1, 2020, only 16 months ago. And they will have experienced that increase during a period of economic dislocation caused by the present pandemic.

25. One can hear Manitoba Hydro objecting. In MKO's cross-examination of Manitoba Hydro's technical panel, the witnesses said that Manitoba Hydro is

somewhat neutral as to how rate increases are distributed between rate classes except that the corporation would prefer to maintain rates within the zone of reasonableness. [*Transcript pages 391–394.*]

26. Fair enough. MKO would answer that objection by saying that the affirmed land and territorial acknowledgement and the enactment *The Path to Reconciliation Act* trump a merely technical concept like a desired zone of reasonableness. Technical concepts are supposed to serve society. An effective 15.1% rate increase within 16 months on the Province’s northern Indigenous citizen’s cannot be considered “reasonable” even if it is outside the technical “zone of reasonableness”.

27. To summarize in conclusion, MKO submits that the Board should not increase the Residential class rate in this interim rate application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,

December 14, 2021

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Per:



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