



360 Portage Avenue (22) • Winnipeg Manitoba Canada • R3C 0G8
Telephone / N° de téléphone: (204) 360-3257 • Fax / N° de télécopieur: (204) 360-6147 • baczarnecki@hydro.mb.ca

December 16, 2021

THE PUBLIC UTILITIES BOARD OF MANITOBA
400-330 Portage Avenue
Winnipeg, Manitoba
R3C 0C4

ATTENTION: Dr. D. Christle, Board Secretary and Executive Director

Dear Dr. Christle:

RE: 2021/22 Interim Rate Application - Manitoba Hydro's Written Reply Submission

In accordance with the direction of the Board received on December 15, 2021, please find enclosed Manitoba Hydro's Written Reply Submission with respect to its 2021/22 Interim Rate Application.

Should you have any questions with respect to this submission, please contact the writer at 204-360-3257.

Yours truly,

MANITOBA HYDRO LEGAL SERVICES DIVISION

Per:

A handwritten signature in blue ink, appearing to read 'B. Czarnecki', written over a horizontal line.

BRENT A. CZARNECKI
Barrister & Solicitor

PUBLIC UTILITIES BOARD

MANITOBA HYDRO

WRITTEN REPLY SUBMISSION

2021/22 INTERIM RATE APPLICATION

**MANITOBA HYDRO
2021/22 INTERIM RATE APPLICATION**

WRITTEN REPLY SUBMISSION

INDEX

1. Introduction	1
2. Legal Framework to Consider an Interim Rate Application	1
4. Determination of Costs Associated with Drought	3
5. Consumers Coalition – Asset Management	5
6. Coalition & MIPUG – Net Income before Net Movement	6
7. MIPUG – Sinking Fund Comments	6
8. MIPUG – Manitoba Hydro’s Cash from Operations	7
9. MIPUG – Ministerial Directive	7
10. Clarification of the Evidence	8

1 **1. Introduction**

2 Pursuant to the direction of the Public Utilities Board (“PUB” or “Board”), Manitoba
3 Hydro provides the following written reply submission limited to new issues first raised
4 in the final submissions of the Intervenor on December 15, 2021 that it could not have
5 reasonably anticipated. Any issues raised or allegations or arguments made by the
6 Intervenor, which are not specifically addressed by Manitoba Hydro within this limited
7 reply submission, should not be interpreted as or deemed to be Manitoba Hydro’s
8 agreement or acceptance of same.
9

10 **2. Legal Framework to Consider an Interim Rate Application**

11 Manitoba Industrial Power Users Group (“MIPUG”) argues that the PUB’s jurisdiction to make
12 any rate award and set its own process is restricted by section 48 of *The Public Utilities Board*
13 *Act* (the “PUB Act”), such that all parties must have an opportunity to produce evidence “except
14 in case of urgency”.¹ Manitoba Hydro submits that the PUB should reject this interpretation
15 of section 48 and the suggested application to this Interim Application. Section 48 is
16 completely separate and distinct from section 47 and those two sections cannot and
17 should not be read together as suggested by MIPUG’s legal counsel.
18

19 There are various sections through-out the PUB Act which intentionally use the term
20 “rates”.² Section 48 on the other hand refers to “outlay, loss or deprivation”. It does not
21 make any reference to “rates”. If legislatures intend for language to be interpreted
22 consistently or apply throughout various sections of legislation, the same language will
23 be purposefully utilized throughout legislation. When that consistent language is not
24 used in a section, it is assumed that the section has a different application and/or
25 meaning.
26

27 The notable absence of any reference to “rates” in section 48 suggests that it does not
28 apply to interim rate orders, or to rate orders at all. Furthermore, the interpretation
29 advocated for by MIPUG would create inconsistency within the *PUB Act*. For example,

¹ MIPUG-9, Final Submission, December 15, 2021 at pages 4-5.

² See for example *The Public Utilities Board Act*, CCSM cP280, sections 77, 8, 116, 120,124, 126 and 127.

1 section 45 grants the PUB the authority to make interim *ex parte* orders where “special
2 circumstances” so require. Section 125 of the *PUB Act* authorizes interim orders for gas
3 “rates, tolls or charges”. If all orders of the PUB dealing with rate increases, including
4 interim orders as being argued by the Intervenors require a full hearing as suggested,
5 then sections 45 and 125 of the *PUB Act* are in clear conflict with section 48 of the *PUB*
6 *Act*. Interpretations that produce confusion or inconsistency or undermine the efficient
7 operation of a legislative scheme should be discounted.

8 MIPUG also suggests that “the standard of review of interim rates is a higher standard
9 than a more detailed GRA. Evidence is meant to be overwhelming...”³. Manitoba Hydro
10 submits this is an incorrect statement of the law and wholly inconsistent with the
11 overall legislative scheme of *the PUB Act* and all prior precedent from this Board.
12

13 **3. Scope of this Interim Rate Application**

14 Manitoba Hydro submits that the Assembly of Manitoba Chiefs, Consumers Coalition
15 and MIPUG each failed to recognize the proper scope of an interim rate application.
16 Each of these intervenors criticized Manitoba Hydro for what it perceived to be a lack of
17 evidence on a wide range of topics. Manitoba Hydro provided responses to each of the
18 PUB’s Minimum Filing Requirements (“MFRs”) which were initially established for the
19 purpose of the Status Update proceeding, as well as responses to approved Intervenor
20 MFRs. The Board determined in Order 128/21 that the Application was complete.⁴
21

22 Manitoba Hydro submits that the intervenor submissions citing to lack of evidence are
23 inconsistent with the PUB’s direction in Order 128/21 that “the focus of this interim
24 hearing process will be on interim rates and the evidence that is directly related to
25 Manitoba Hydro’s 2021/22 Interim Rate Application.”⁵
26
27
28
29

³ MIPUG-9, Final Submission, December 15, 2021 at page 7.

⁴ Order 128/21 at page 13.

⁵ Order 128/21 at page 15.

1 **4. Determination of Costs Associated with Drought**

2 **4.1. Assembly of Manitoba Chiefs**

3 Beginning at page 738 of the Transcript, Assembly of Manitoba Chiefs (“AMC”) incorrectly
4 suggested that the financial impact of the drought is more accurately described as a \$250
5 million budget deficit attributable to lower hydraulic generation.

6 As set out in the Application materials, net imported power increased by approximately
7 4.4 TWh as compared to the 2021/22 Budget,⁶ as a result of the lower hydraulic
8 generation caused by the drought. While export prices have increased beyond the
9 forecasted price utilized when preparing the 2021/22 Budget, it is not possible to separate
10 the export price risk from the drought risk. For this reason, drought risk correctly includes
11 both the risk of low water inflows and storage and the elevated energy market prices.⁷

12 The Application clearly sets out that Manitoba Hydro had to purchase higher than
13 forecasted amounts of power as a direct result of the drought and those higher volumes
14 were purchased at prices that were higher than forecasted in the 2021/22 Budget.

15 AMC appears to suggest that Manitoba Hydro should bear the risk associated with the
16 uncertainty in export price markets. That position is inconsistent with recent guidance
17 from this Board at page 65 of Order 59/18:

18 *“In addition, the Board accepts the evidence of Morrison Park Advisors that*
19 *Retained Earnings should be used to manage drought risk in combination*
20 *with regulatory action by the Board. **The Board further agrees that interest***
21 ***rate and export price risks over the long term should be addressed with rate***
22 ***increases as and when those risks materialize.** Rates should not be set to*
23 *increase Retained Earnings to manage those longer-term risks. As discussed*
24 *elsewhere in this Order, the Board is prepared to consider regulatory action*
25 *when required to address emerging risks facing Manitoba Hydro.” (emphasis*
26 *added)*

⁶ MH-1-0, 2021/22 Interim Rate Application at page 13.

⁷ MH-1-0, 2021/22 Interim Rate Application at page 9.

1 Manitoba Hydro submits that AMC's submission in this respect should be disregarded by
2 the Board.

3 **4.2. Consumers Coalition and MIPUG – 0.8% Representing the Carrying Costs of**
4 **Additional Debt Incurred as a Result of the Drought**

5 Both the Consumers Coalition and MIPUG recommend this Board make a rate award
6 inclusive of 0.8% representing the carrying costs associated with additional debt to fund
7 core operations incurred as a result of the drought. The proposed 0.8% increase relies
8 upon an assumption that the carrying costs associated with additional incremental
9 borrowing for core operations in \$13 million annually.⁸

10 The estimated carrying costs of \$13 million annually reflects the borrowing of \$348 million
11 set out in the 2021/22 Forecast, which assumes a 5% increase effective January 1, 2022.⁹
12 As set out in Coalition/MH I-3b, Manitoba Hydro's borrowing in 2021/22 will increase
13 beyond \$348 million should the rate relief awarded be less than the proposed 5%.
14 Manitoba Hydro submits that the Intervenor's recommendations relating to the 0.8%
15 increase fails to adequately recognize that the amount of borrowing in 2021/22 is linked
16 to the rate relief sought in this Application and more fundamentally, is entirely
17 inconsistent with the principle of cost recovery for a utility regulated in accordance with a
18 cost of service model.

19
20 To consider only the additional carrying costs of additional borrowings for core business is
21 an exceptionally narrow view of the actual financial impacts of the drought in 2021/22. As
22 outlined in response to Coalition/MH I-6, an annualized rate increase greater than 12%
23 would be required to recover the net losses projected in 2021/22 as a result of the
24 drought, and an annualized increase of approximately 21% would be required to recover
25 the additional borrowing required to fund core operations in 2021/22 resulting from the
26 drought. Manitoba Hydro submits rate relief to address only the carrying costs of
27 increased borrowing does not assist the utility in recovering from the financial impact of
28 this drought in any meaningful way.

⁸ CC-5, Consumer Coalitions Closing Submissions - December 14, 2021 at page 10; MIPUG-9, Final Submission, December 15, 2021 at pages 3, 7 and 12; and Transcript at pages 783, 804, and 830.

⁹ MH-1-0, Manitoba Hydro, 2021/22 Interim Rate Application at page 6.

1 **5. Consumers Coalition – Asset Management**

2 Consumers Coalition alleged in its closing submission that “Hydro is not using asset
3 management tools to prioritize BOC in a drought situation.”¹⁰ Such submission is made
4 without any evidentiary basis from this proceeding and is a pure contradiction of the
5 limited amount of evidence on the record of this proceeding on what is a contentious
6 matter that ought not to be considered as part of an interim rate request.

7 Mindful of this Board’s finding in Order 128/21 for this interim proceeding that specific
8 business operations capital projects were deemed out of scope and asset management
9 was not on the list of “in-scope topics”, Manitoba Hydro, did not have the full
10 opportunity to provide detailed evidence, for example with a panel of subject matter
11 experts, of its asset management tools and processes currently in use at Manitoba
12 Hydro.

13 Nonetheless, there is some evidence on the record of this proceeding about the work
14 currently being done by the new Asset Planning and Delivery Business Unit.¹¹

15 Furthermore, and again while recognizing that specific business operations capital
16 projects were ruled out of scope for this interim proceeding by the Board and that these
17 are contentious issues for the Coalition, Manitoba Hydro submits that the
18 recommendation to reduce revenue requirement by \$55 million in 2021/22,
19 representing 10% of Business Operations Capital in the 2022/23 Preliminary Plan, was
20 raised for the first time in closing submission. Despite having the opportunity through
21 information requests and in oral cross-examination, the Consumers Coalition denied
22 Manitoba Hydro the fair opportunity to provide evidence on the impact of such a
23 recommendation to Manitoba Hydro’s actual operations thereby preventing the Board
24 from properly assessing this recommendation as if this was a full GRA process and not
25 an interim process.

¹⁰ CC-5, Consumer Coalitions Closing Submissions - December 14, 2021 at page 12; Transcript at page 786.

¹¹ PUB 5-5, MFR 5 – Annual Report at page 9.

1 **6. Coalition & MIPUG – Net Income before Net Movement**

2 Both the Consumers Coalition and MIPUG criticize Mr. Tess and Manitoba Hydro for a
3 brief comment made about net income before net movement.¹² Manitoba Hydro
4 submits that these Intervenors have mischaracterized these comments. Manitoba Hydro
5 has not proposed this Board “focus” only on net income before movement and
6 regulatory deferral accounts as a rate setting metric.¹³ Net income before net
7 movement is a conventional and standard line item which is reported in accordance
8 with IFRS accounting standards. Manitoba Hydro has not proposed this line item be the
9 primary or sole consideration for this Board in rate setting as suggested by the
10 Consumers Coalition and MIPUG.

11 More importantly, despite having ample opportunity on December 13, 2021 to question
12 Mr. Tess about his comment, neither Consumers Coalition, nor MIPUG put this issue
13 directly to him. Given the failure to cross-examine Mr. Tess, this Board ought to
14 disregard the submissions of Consumers Coalition and MIPUG on this topic.
15

16 **7. MIPUG – Sinking Fund Comments**

17 At page 847 of the Transcript, Mr. Hacault referred to payments into the sinking fund as
18 “discretionary”. *The Manitoba Hydro Act* provides for the establishment of the sinking
19 fund in section 41 and indicates that the board shall reserve and set aside out of the
20 funds of the corporation for the purposes of repayment of moneys borrowed by the
21 corporation. The minimum annual contribution is determined by a formula set out in
22 section 41(2).
23

24 MIPUG in its written submissions and its oral submission¹⁴ suggests that Manitoba
25 Hydro would not forecast placing monies into the sinking fund in 2022/23 if it was
26 concerned about cash. As stated by Mr. Tess and demonstrated in MFR 6, the
27 forecasted contributions to the sinking funds are not cash from operations but

¹² CC-5, Consumer Coalitions Closing Submissions - December 14, 2021 at page 35; MIPUG-9, Final Submission, December 15, 2021 at page 19, Transcript at pages 809-810, and 851.

¹³ Transcript at page 809; C-5, Consumer Coalitions Closing Submissions - December 14, 2021 at page 35.

¹⁴ MIPUG-9, Final Submission, December 15, 2021 at pages 14, 16 and 19; Transcript at page 847.

1 borrowed funds and net debt is forecasted to increase.¹⁵ In both the Test Year and in
2 the 2022/23 Preliminary Plan, Cash from Operations is consumed by the Cash Used for
3 Investing Activities. The forecasted sinking fund contributions, utilizing borrowed funds,
4 are used for risk management purposes
5

6 **8. MIPUG – Manitoba Hydro’s Cash from Operations**

7 In its written submission, MIPUG asserts that Manitoba Hydro has a positive cash flow
8 from operations in the 2021/22 Forecast.¹⁶ Manitoba Hydro submits this is an
9 exceptionally skewed view of cash flow. Cash from Operations does not reflect the full
10 costs required to fund core business operations. As demonstrated in MFR 6, Cash from
11 Operations are completely consumed by Cash Used for Investing in the 2021/22
12 Forecast. Investing activities includes additions to property, plant and equipment,
13 payments to the City of Winnipeg and other core business operations. MIPUG
14 submission ignores the \$348 million of borrowing for core business operations that
15 must occur in 2021/22, assuming a 5% rate increase is awarded.
16

17 **9. MIPUG – Ministerial Directive**

18 MIPUG alleged that Manitoba Hydro “conveniently ignored” a portion of the Directive
19 issued by the Minister of Crown services and failed to ask the PUB what type of
20 Application it wanted.¹⁷ In doing so, MIPUG conveniently ignores the facts that
21 Manitoba Hydro corresponded to the Board on September 29, 2021 in advance of the
22 Application being filed, that the Board then invited submissions from all parties and
23 ultimately issued a ruling to accept an interim rate filing from Manitoba Hydro and
24 related process to consider the Application.¹⁸ Manitoba Hydro submits that the
25 Application is compliant with the Ministerial Directive and that it fully intends on
26 satisfying the remainder of the directive by engaging further with the PUB to consider a
27 multi-year GRA.
28

¹⁵ Transcript at page 586.

¹⁶ MIPUG-9, Final Submission, December 15, 2021 at page 14.

¹⁷ MIPUG-9, Final Submission, December 15, 2021 at page 22; Transcript at page 856.

¹⁸ PUB Letter Decision dated October 12, 2021; PUB Letter Decision dated October 19, 2021 and Order 128/21.

1 **10. Clarification of the Evidence**

2 For the benefit of the PUB, Manitoba Hydro is providing the following clarifications or
3 corrections to misstatements of the evidence made during the parties' closing
4 submissions to ensure an accurate record of this proceeding.

5 **10.1. Consumers Coalition – Forecast of FTE Levels**

6 In its closing submission, Coalition alleged Manitoba Hydro has a “policy goal of
7 returning to an EFT level justified by its operations 20 years ago.”¹⁹ Manitoba Hydro’s
8 evidence is that it intends to return to FTE levels in 2017/18, after the Voluntary
9 Departure Program concluded.²⁰ This FTE level is justified by its current operations and
10 will be continually reviewed by management.

11 **10.2. Consumers Coalition – Costs associated with Major Capital Projects**

12 In its closing submission Coalition argued that Manitoba Hydro had sufficient revenues
13 in 2022/23 to “pay for MCP carrying costs of \$619M as well as MH’s other costs.”²¹ For
14 clarity of the record as set out in Figure 18 of the Application, gross revenue
15 requirement impact of the five major capital projects in 2022/23 is \$912 million. After
16 amortization of the Bipole III deferral account and assuming the amortization of the
17 Major Capital Projects deferral account proposed in this Application, the net impact is
18 \$881 million.

19 **10.3. MIPUG – “Industrial Energy Cost Gap”**

20 At page 17 of its written submission, MIPUG includes a chart from MIPUG-4 which it
21 states compares British Columbia and Quebec “in relation to Manitoba’s average price
22 for power”. Counsel for MIPUG also stated that the graphic shows “how Manitoba
23 compares in rates”.²² This is a misrepresentation. As set out in full in MIPUG-4, the
24 graphic shows “weighted annual all-in energy costs in \$/MWh, inclusive of costs for
25 provincial taxes, riders, demand and energy charges.” Moreover, the graphic represents

¹⁹ Coalition Exhibit CC-5 at page 11 and Transcript at page 784.

²⁰ PUB – 5-5, PUB/MH I-5; CC-2-2, CC/MH I-2.

²¹ Coalition Exhibit CC-5 at page 14 and Transcript at page 788.

²² Transcript at page 849.

1 one customer's specific consumption profile in each of the compared jurisdictions. This
2 basic illustration is in no way an accurate comparison of the "average price for power".
3 In any event, Manitoba Hydro notes that the relative reduction in price differential
4 between Manitoba and British Columbia is largely reflective of a change in British
5 Columbia's provincial tax policy rather than a change in energy rates.

6 **10.4. MIPUG – Net Liquidity to Fund Six Months of Operations**

7 In its written submission, MIPUG asserts that Manitoba Hydro intends to hold \$592
8 million in cash at year end in 2022/23, which "represents well over the net liquidity
9 needed for six months of Hydro's operations."²³ There is no evidence on the record of
10 this proceeding as to what amount of liquidity is required to fund six months of
11 Manitoba Hydro's operations.

12 **10.5. MIPUG – Normalized Net Income**

13 In its written submissions, MIPUG asserts that "at a normalized net income in the range
14 of \$200 million, the 5-year net income forecast would be \$1 billion to the positive..."²⁴
15 Manitoba Hydro notes that there is no evidence to support this claim. The current
16 forecasted net income in the 2022/23 Preliminary Plan is not certain and is not
17 indicative of net income which may be earned in future years.

18 **10.6. MIPUG – Interest Cost as a Percentage of Revenue**

19 In its written submission, MIPUG incorrectly states that Manitoba Hydro provided no
20 benchmark or metric to compare its interest cost as a percentage of revenue.²⁵
21 Manitoba Hydro did provide such information in this proceeding and refers this Board to
22 Figures 13, 14 and 15 of the Application.

23 **10.7. MIPUG – Load Forecast and Resource Planning**

24 Even though load forecasts and resource planning being ruled out of scope of this
25 proceeding, counsel for MIPUG speculated that "everybody knows that, you know,

²³ MIPUG-9, Final Submission, December 15, 2021 at page 16.

²⁴ MIPUG-9, Final Submission, December 15, 2021 at page 14.

²⁵ MIPUG-9, Final Submission, December 15, 2021 at page 20.

1 we've got enough capacity and energy until the 2030s" and "What substantial things are
2 we going to have to build in the next 10 years? I don't see it".²⁶ These comments are not
3 based in any evidence on the record in this proceeding and should be disregarded by
4 the Board.

5 **10.8. MIPUG – Full-time Equivalent ("FTEs") Employees**

6 MIPUG has misrepresented the growth level of FTEs when comparing the 2019/20 level
7 to the 2022/23 level stating that:

8 *"The 2022/23 results are also at the stated level despite a projected \$61 million*
9 *increase in Operating and Administration costs (greater than 10%), and an*
10 *increase of 467 positions, which has not been tested in a full hearing⁴⁸. Excluding*
11 *these items, which would reasonably meet the test of "contentious" and may*
12 *readily be excessive and later refined downwards (for example, for vacancies),*
13 *and the net income of \$200 million may yet be well exceeded."²⁷*

14 As discussed in response to PUB/MH I-5, FTEs are forecast to grow to 5175 in 2022/23,
15 which compared to actual FTEs of 4954 in in 2020/21 is an increase of 221 FTEs not 467.
16 The increase of 221 FTEs represents a 4% growth rate.

²⁶ Transcript at page 855.

²⁷ MIPUG-9, Final Submission, December 15, 2021 at page 16.