

THE PUBLIC UTILITIES BOARD OF MANITOBA

IN THE MATTER OF:

Application of the Consumers Coalition
for an Order requiring a Manitoba Hydro
Status Update Hearing.

AND IN THE MATTER OF:

*The Crown Corporations Governance and
Accountability Act, CCSM c 336 at s
26(3); The Public Utilities Board Act,
CCSM c P280 at s 44; The Public Utilities
Board Rules of Practice and Procedure at
r 23.*

**APPLICATION OF THE CONSUMERS COALITION FOR AN ORDER REQUIRING A
MANITOBA HYDRO STATUS UPDATE HEARING**

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1. A Status Update Process is Urgently Required and in the Public Interest

A Status Update Hearing is Needed

Manitoba Hydro is a regulated crown monopoly undergoing fundamental change. Its customers rely on the Public Utilities Board (PUB) to ensure their rates are just and reasonable through evidence based, public processes.

But Manitoba ratepayers have been left in the dark about the impact of recent major changes to Manitoba Hydro. Hydro's last full rate hearing took place in 2018.

The Consumers Coalition is comprised of Harvest Manitoba, the Consumers Association of Canada (Manitoba) Inc. and the Aboriginal Council of Winnipeg.¹ Recognizing the "substantial change in circumstances" since *Orders 69/19* and *59/18*, the Consumers Coalition is asking² the PUB to order a status update process to:

- determine whether current rates are just and reasonable and costs are fairly allocated;
- address urgent unfinished business from *Orders 69/18* and *59/18* including the treatment of the deferral fund set aside to protect future Hydro ratepayers from rate shock; and,
- provide fundamentally important rate setting information for the public record.

The PUB has recognized the importance of regular rate reviews in improving the efficiency, effectiveness and timeliness of the regulatory process.³ A status update hearing to review *Orders 69/19* and *59/18* is urgently needed in light of the three year gap since the last full hearing, the substantial change in circumstances over that time and the risk that Manitoba Hydro will not have a public rate review for many years to come.⁴

¹ Background on the individual members of the Consumers Coalition can be found at Appendix A. Harvest Manitoba and the Consumers Association of Canada (Manitoba) Inc. are long time intervenors on rate regulation matters before the PUB including issues related to Manitoba Hydro. Together, with the Aboriginal Council of Winnipeg, they regularly intervene before the Canadian Radio-television and Telecommunications Commission as the Manitoba Coalition.

² This application is made under *The Crown Corporations Governance and Accountability Act*, CCSM c 336 at s 26(3); *The Public Utilities Board Act*, CCSM c P280 at s 44; *The Public Utilities Board Rules of Practice and Procedure* at r 23.

³ Please see *PUB Order 7/03* at pages 9, 108 and 121 where the PUB directed Hydro to establish a more regular schedule for periodic rate reviews, not exceeding three years between hearings even if no rate changes are required. In the view of the PUB, the timeframe would improve the efficiency, effectiveness and timeliness of the regulatory process.

⁴ Please see Bill 35, *The Public Utilities Ratepayer Protection and Regulatory Reform Act (Various Acts Amended)*, 3rd Sess, 42nd Leg, Manitoba, 2020 at cl. 59 as it amends s. 39(1) *The Manitoba Hydro Act*, C.C.S.M. c H190 at s 39 [*The Hydro Act*] and the definition of "rate period".

Unfinished Business from *Order 69/19* and *Order 59/18*

In Manitoba Hydro's last full rate hearing for the 2018/19 year, its request for a 7.9% rate increase was reduced by the PUB to 3.6% (*Order 59/18*). In its 2019/20 rate application, Hydro did not file a long-term rate-setting forecast (IFF⁵) because its new Board was undertaking a "comprehensive review" of its operations. In seeking an expedited process rather than a full hearing, Manitoba Hydro indicated that it expected to file a full rate application "in late 2019" which would include IFF19.

Based on those representations, the PUB did not hold a full hearing. In approving rates, it focused primarily on the 2019/20 fiscal year. In *Order 69/19*, the PUB granted Hydro a 2.5% rate increase to be put into a special fund. The purpose of the special fund was to guard against potential rate shock related to major capital projects coming into service in the early 2020s. The PUB indicated it would decide about the use of the special fund for rate setting purposes at the next Manitoba Hydro General Rate Application (GRA).

However, Hydro did not provide IFF19 or file a GRA in November 2019. While the Manitoba legislature recently imposed a 2.9% rate increase on all classes of Hydro ratepayers, no full, PUB review of rates has taken place since the proceedings leading to *Order 59/18*.

A Substantial Change in Circumstances⁶

Over the last three years, Manitoba Hydro has effectively doubled the size of its assets and debts for rate setting purposes by bringing into service the Bipole III Transmission Line, the Manitoba-Minnesota Transmission Line as well as the first unit of the Keeyask Generating Station with the additional units of Keeyask expected to be placed into service in the coming year.

These new capital assets will have profound impacts on the revenue needs of Manitoba Hydro as well as the allocation of costs between different classes of consumers for many years to come.

In October 2020, Manitoba Hydro also confirmed a 215 MW export sale with SaskPower that is estimated by some sources to be worth billions of dollars over the next 30 years.⁷

⁵ Also known as an Integrated Financial Forecast.

⁶ Since *PUB Order 69/19* and as detailed in s. 5, Manitoba Hydro also has experienced a pandemic, enjoyed a "sharp" drop in interest rates and completed a new corporate strategic plan with potentially important ramifications for hydro revenues, costs and rates. It also has seen significant regulatory, judicial and legislative changes with corresponding effects on its ratepayers including vulnerable ratepayers.

⁷ The contract will begin in 2022. See Dan Lett, *Manitoba Hydro's \$5-billion deals with Sask. "deliberately covered up"* (Winnipeg Free Press), March 24, 2021, available online: <https://www.winnipegfreepress.com/local/Manitoba-Hydros-5-billion-deals-with-Saskatchewan-deliberately-covered-up-574052921.htm>.

Manitoba Hydro has indicated that new sales of dependable power are having a materially positive effect on its export revenues in the current fiscal year.⁸

From the rate setting perspective, the long-term financial health of Hydro is fundamentally unclear. Manitoba Hydro:

- claims it “has not prepared an Integrated Financial Forecast” (IFF) since IFF2016;⁹
- admits it was “unable to finalize [its] Annual Business Plan for 20-21”;¹⁰
- has not made a detailed operating and maintenance budget publicly available since the 2015 GRA;
- has not provided the PUB with its new Corporate Strategic Plan (CSP); and,
- has yet to provide the PUB with a Prospective Cost of Service Study (PCOSS) that explores the implications of major new capital projects on the allocation of costs between different classes of consumers.

The public interest is not well served when fundamental aspects of Manitoba Hydro’s rate making process are either not undertaken or shrouded in secrecy.

As ratepayers and citizens, Manitoba consumers need up to date information through an independent PUB process to know whether they are paying the right rates for this essential monopoly service. They need to know that the Corporation’s financial health and the consumer interest in affordable rates are being appropriately balanced.

Recognizing both the substantial change in circumstances since *Orders 69/19* and *59/18* and the responsibility of the PUB to protect the public interest by approving just and reasonable rates, a status update review is urgently required. As suggested by the proposed initial schedule set out in s. 2 of this Application, such a process can be undertaken in a timely, cost-effective manner and concluded by the fall of 2021.

Ordering an evidence-based status update process is in the public interest of all Manitobans.

Roadmap of the submissions

In the submissions that follow, s. 2 sets out the relief sought from the PUB by the Consumers Coalition. Section 3 canvasses the statutory authority of the PUB to review prior orders when it finds a substantial change in circumstances. Section 4 provides essential background to *Orders 69/19* and *59/18*. Section 5 canvasses the substantial

⁸ The Manitoba Hydro-Electric Board, “Quarterly Report for the nine months ended December 31, 2020” at “Electric Segment”, p. 3, available online: https://www.hydro.mb.ca/corporate/pdfs/quarterly_report_201231.pdf.

⁹ Manitoba Hydro Legal Services Letter to Kevin Walby, February 23, 2021, FOI 2021-07.

¹⁰ Manitoba Hydro Legal Services Letter to Kevin Walby, February 23, 2021, FOI 2021-06.

change in circumstances that necessitates a review of the two orders. Section 6 briefly addresses the issue of regulatory costs.

2. The Consumers Coalition seeks a Review of Orders 69/19 and 59/18

The Consumers Coalition seeks an order under s. 26(3) of *The Crown Corporations Governance and Accountability Act* (CCGAA), s. 44 of *The Public Utilities Board Act* (PUB Act) and s. 23 of the *PUB Rules of Procedure*. It asks the PUB to:

- 1) Find the circumstances of Manitoba Hydro have changed substantially since *Orders 69/18* and *59/18* and that it is appropriate to review those orders in a status update hearing to:
 - a) examine whether current hydro rates are just and reasonable and costs are fairly allocated;¹¹
 - b) address unfinished business from *Order 69/19* in terms of the deferral account set aside to protect future Hydro ratepayers from rate shock; and,
 - c) establish a process to address other unfinished directives from *Order 59/18* and *69/19*.
- 2) Direct that for the purpose of the status update, Manitoba Hydro should file by June 1, 2021:
 - a) its new Corporate Strategic Plan (CSP) or if it full CSP cannot be filed, a description of its new strategic imperatives and their impacts on key corporate business activities including but not limited to spending priorities for operating and capital programs, customer service initiatives and the marketing of excess power;
 - b) its current IFF or if no current IFF is available, then an IFF scenario analogous to Exhibit 93 from the process leading to *Order 59/18*;
 - c) its current PCOSS or if no current PCOSS is available, a directional update of the material filed in the proceedings leading to *Order 69/19* offering a preliminary view on the impact of the Bipole III Transmission Line, the Manitoba Minnesota Transmission Line, and the Keeyask Generating Station on the Revenue to Cost Coverage Ratios (RCCs) of the existing Hydro classes; and,

¹¹ As noted in *PUB Order 9/02* at p. 3, Manitoba Hydro had “the onus to demonstrate that the rates currently charged and proposed for 2002/03 are just and reasonable” for the purposes of the 2002/03 Status Update hearing. This required the filing of Phase I – revenue requirement information and Phase 2 – cost of service rate design information. See also *PUB Order 7/03* at p. (i).

- d) any further results, forecasts and information as the PUB in its discretion may deem appropriate.
- 3) Direct that a pre-hearing conference be held on or about June 15, 2021 to consider an effective and expeditious process including process scope, additional information requirements, the timetable and whether an oral hearing is required.

3. Prior Orders may be Reviewed when a Substantial Change is Found

The PUB may direct a review of prior orders if it finds a substantial change in circumstances. The PUB is mandated by the Manitoba Legislative Assembly to review whether the rates for service of Manitoba Hydro “are just and reasonable.”¹²

A PUB process to consider the rates for service of Manitoba Hydro can be triggered when the Crown monopoly seeks a rate change and applies for regulatory approval. Alternatively, under s. 26(3) of the CCGAA and s. 44 of the *PUB Act*, the PUB may on its own motion or on the application of Manitoba Hydro or an interested person, review and modify one of its prior orders as it deems “reasonable and justified” if it is “satisfied” that the circumstances of Manitoba Hydro “have changed substantially.”¹³

The last status update hearing for Manitoba Hydro took place in 2002. While Hydro did not apply for a rate change, the evidence considered included Manitoba Hydro’s “financial results, forecasts, methodologies, processes” as well as events that had “transformed the electricity industry”.¹⁴

The *PUB Act* applies to any review of Manitoba Hydro’s rates. In determining whether to amend a prior order,¹⁵ the PUB has the authority to set just and reasonable rates and classifications¹⁶ as well as to order Manitoba Hydro to provide a detailed report of its finances and operations.¹⁷

¹² See *Manitoba (Hydro-Electric Board) v Manitoba (Public Utilities Board) et al*, 2020 MBCA 60 at paras 38-41. See also *The Crown Corporations Governance and Accountability Act*, SM 2017, c 19 at s. 25 [CCGAA]; *The Public Utilities Board Act*, C.C.S.M. c. P280 at ss 77, 82 [*PUB Act*]; *The Hydro Act*, *supra* note 4 at s 39.

¹³ CCGAA, *ibid* at s 26(3). *PUB Act*, *ibid* at s 44(1): “Upon any application to it, the board may make an order granting the whole or part only of the application or may grant such further or other relief in addition to or in substitution for that applied for, as fully and in all respects as if the application had been for such partial, further or other relief.”

¹⁴ *PUB Order 7/03* at p. (i).

¹⁵ CCGAA, *supra* note 12 at s. 25(3).

¹⁶ See *Manitoba (Hydro-Electric Board) v Manitoba (Public Utilities Board) et al*, 2020 MBCA 60 at paras 39 and 41. See also *PUB Act*, *supra* note 12 at ss 77(b), 82(1)(c).

¹⁷ See also *PUB Act*, *supra* note 12 at s 78(1)(e).

In reviewing just and reasonable rates and classifications, the PUB may consider any of the factors outlined in s. 25(4) of the CCGAA. It also “must take into consideration”, the costs to be incurred by Manitoba Hydro in respect of Efficiency Manitoba.¹⁸

4. Regulation amid Substantial Change – the Backdrop to Orders 59/18 and 69/19

The Last Full Hydro GRA was based on IFF16

The last full Hydro GRA began over 3 years ago in December 2017 and relied upon an Integrated Financial Forecast from 2016 with only selected updates.

The 2018/19 GRA grappled with the reality of a Crown monopoly seeking to bring major capital projects on-line and to address an alleged sustaining capital deficit while focusing on a financial target that was out of step with the requirements of the bond market.

The directives flowing from *Order 59/18* signaled a fundamental shift in how the PUB expected to regulate the rates of MH in the years to come. These directives highlighted the importance in the rate setting process of an evidence-based assessment of capital asset management and the evaluation of risk. They also identified a need for dialogue on the use of financial metrics that are responsive to the needs of the marketplace and the utility.¹⁹

In *Order 59/18*, the PUB rejected a request by the Crown monopoly for a 7.9% rate increase for the 2018/19 year. Instead, it approved a 3.6% overall rate increase effective June 1, 2018.

Integrated Financial Forecasts have served for many years as Manitoba Hydro’s primary forecast for determining the rate changes necessary to maintain a reasonable financial position while balancing the interests of current and future ratepayers. In making its 2019/20 rate approval determination, the PUB considered IFF16 as well as an Integrated Financial Forecast (“IFF”) scenario known as Manitoba Hydro Exhibit 93.²⁰

In the absence of an updated IFF or analogous document, any future rate setting process of Manitoba Hydro was bound to be fundamentally compromised.

¹⁸ CCGAA, *supra* note 12 at s 25(4) and (6). See also *PUB Act*, *supra* note 10 at ss 77, 78 and 82; *The Hydro Act*, *supra* note 4 at ss 39, 40.

¹⁹ *PUB Order 59/18* at p. 267-268, Directives 9, 14.

²⁰ Please see *PUB Order 59/18* at p. 11, 12, 173 and 283 as well as *PUB Order 69/19* at p. 8/50. As noted in *PUB Order 59/18* at p. 283, an IFF provides projections of Manitoba Hydro’s financial results and position over a multi-year forecast period, typically 20 years. The most current forecast was MH16 Update with Interim.

Expectations for a November 2019 GRA drove the expedited process for the 2019/20 Rate Application

In seeking a rate increase for 2019/20, Manitoba Hydro realized the challenges posed for evidence-based rate setting by the absence of an updated IFF. In a letter dated November 12, 2018, Hydro indicated its intention to seek a one-year rate increase sufficient to avoid a loss for the 2019/20 year.²¹ Hydro indicated that:²²

- It was not presently in a position to submit a long-term financial forecast (IFF) for PUB review;
- Its Board was undertaking a “comprehensive review” of its strategic direction, operations and financial plan;
- It would submit a full GRA to the PUB “presently anticipated to be filed in late 2019” “upon completion of the Integrated Financial Forecast (IFF19) incorporating the direction” of its Board; and,
- The delay of a full GRA until 2019 would allow Hydro the appropriate time to develop and bring forward responses to a number of outstanding PUB directives at the next GRA.

There is Unfinished Business from *Order 69/19*

From the rate setting perspective, there is still unfinished business from the 2019/20 Rate Application. *Order 69/19* flagged both the pending challenges and opportunities likely to face Manitoba Hydro and its ratepayers in the early 2020s.

During the proceedings related to the 2019/20 Rate Application, the PUB learned that although no final contract had been signed, a term sheet was completed between Manitoba Hydro and SaskPower for what was then expected to be a 40-year, 215 MW power export sale beginning in 2022.²³

The PUB heard Manitoba Hydro would be undertaking \$4.0 billion of incremental borrowing in the next few years as well as refinancing \$4.8 billion of debt in the five-year period following the test year.²⁴

The PUB also learned, as set out in Table 1, that between 2020/21 and 2022/23 significant revenue requirement impacts were expected from Manitoba Hydro capital projects. At a time when Hydro’s domestic revenue requirement was in the range of

²¹ 2019/20 Manitoba Hydro General Rate Application, MH Exhibit 1: Manitoba Hydro Letter to the PUB, (November 12, 2018).

²² *Ibid* at p. 1-2.

²³ *PUB Order 69/19* at p. 10.

²⁴ *Ibid* at p. 11.

\$1.5 - \$1.6 Billion dollars,²⁵ Manitoba Hydro was alleging that it would be incurring over \$1.1 Billion in costs associated with its capital projects by 2022-23.

Table 1: Forecast of estimated 2020-21 – 2022-23 revenue requirements for selected capital expenditures²⁶ (in Millions of Dollars)

Project	20-21	21-22	22-23
KEEYASK	39	196	502
MANITOBA-MINNESOTA TRANSMISSION PROJECT	19	31	31
GREAT NORTHERN TRANSMISSION LINE	74	99	97
BIPOLE III & RIEL STATION	287	294	294
DSM	23	36	47
BUSINESS OPERATIONS CAPITAL	92	127	160
Total	534	783	1,131

In *Order 69/19*, the PUB expressed its concern that Hydro had not filed an updated or detailed operating and administrative expenditure forecast or budget for the test year.²⁷ It denied the Manitoba Hydro request for a 3.5% rate increase.

Instead, the PUB imposed a 2.5% rate increase on most rate classes.²⁸ Finding that Manitoba Hydro did not require an increase to its revenues for the 2019/20 fiscal year,

²⁵ 2018/19 Manitoba Hydro General Rate Application, MH Exhibit 93 at p. 3.

²⁶ 2019/20 Manitoba Hydro General Rate Application, Response to PUB/MH I-9. The cost components include: Finance/Depreciation/ Operating/Water Rentals/F&PP/Taxes.

²⁷ *PUB Order 69/19* at p. 22-24.

²⁸ *PUB Order 69/19* at p. 4 “The Board finds that it is just and reasonable to differentiate the June 1, 2019 rate increase to the General Service Small Non-Demand class”. The PUB also did not impose the 2.5% increase on the First Nations On-Reserve Residential and Diesel Zone Residential customer classes, and the non-grid portion of the Diesel Zone rates. In *Manitoba (Hydro-Electric Board) v Manitoba (Public*

the PUB directed that all revenues from the increase were to be “placed in a deferral account for major capital projects currently under construction.”²⁹

In doing so, the PUB noted the need to mitigate future rate increases when major new projects come on-line. It observed that Keeyask could enter service as early as October 2020, the Manitoba Transmission Line (MMTP) was scheduled to enter service in June 2020 and the Bipole III Deferral Account would be fully amortized into revenues as of 2023/24.³⁰

The PUB indicated that it would make a determination about “*how the deferral account will be brought into Manitoba Hydro’s operating revenues at a future GRA.*”³¹

The Evidence Missing from the 2019/20 Rate Application

In approving rates for the 2019/20 year, the PUB highlighted the fundamental flaw in seeking to set rates for Manitoba Hydro without a long-term financial forecast. The PUB observed that:

*In the absence of a long-term financial forecast, the Board is challenged in its ability to assess the appropriate level of a rate increase in the 2019/20 test year to reduce the likelihood of future rate shock to consumers. . . the Board expects that it will be necessary to assess future rates in the context of a long-term financial forecast given the expected in-service for Keeyask.*³²

Emphasizing the importance of completed regulatory filings, the PUB directed that “Manitoba Hydro’s next GRA, expected to be filed in late 2019, is to be filed with an IFF or other long-term financial forecast.”³³ Noting its difficulty in understanding “why Manitoba Hydro has not yet been able to develop a detailed O&A budget, the PUB also directed Hydro to develop and file a detailed O&A budget with the next GRA filing.”³⁴

The PUB also issued a number of important foundational directives to set the rate-setting framework for future GRAs, including Keeyask cost and revenue implications, the “role and sufficiency of financial reserves”, the financial metric used to set rates and a new Prospective Cost of Service Study to ensure a fair allocation of costs between customer classes given the potential impacts of the major capital projects.³⁵

Utilities Board) et al, 2020 MBCA 60, the Manitoba Court of Appeal subsequently held the PUB had no authority to create the First Nation On-Reserve Residential Class.

²⁹ *PUB Order 69/19* at p. 3, 17. Assuming domestic revenues in the range of \$1.5 billion and two years of contributions to the deferral account, the amount might be estimated to be in the range of \$75 million by June 2021.

³⁰ *PUB Order 69/19* at p. 3, 17.

³¹ *PUB Order 69/19* at p. 3, 18 (emphasis added).

³² *PUB Order 69/19* at p. 19. For further comments regarding the limitations on regulatory approval related to the absence of an IFF, please see p. 4-6, 17, 29, 43 - 45.

³³ *PUB Order 69/19* at p. 45.

³⁴ *PUB Order 69/19* at p. 24.

³⁵ *PUB Order 69/19* at p. 46-47.

Where is Manitoba Hydro's long term financial strategy?

Notwithstanding the expectations during the 2019/20 GRA, no new GRA was filed by Manitoba Hydro in November 2019. No update to IFF16 has been shared publicly with the PUB or Manitoba ratepayers.

Indeed, Manitoba Hydro's response on February 23, 2021 to Freedom of Information (FOI) requests, suggests that:

- "Due to the evolving impact of the pandemic, Manitoba Hydro was unable to finalize the Annual Business Plan for 20-21";³⁶ and,
- "Manitoba Hydro has not prepared an Integrated Financial Forecast (IFF) since IFF2016".³⁷

The absence of a publicly available financial plan in the form of an IFF, or otherwise, threatens consumer confidence in the rates they pay for this basic necessity. Captive Hydro ratepayers are compelled to ask, is it truly credible that Hydro has been operating without a long-term financial plan over the past five years?

Given the myriad challenges related to capital costs and debt financing identified by Manitoba Hydro during the 2019/20 GRA as well as significant potential opportunities related to new export opportunities, it is critical for public confidence in the rate setting process that Manitoba ratepayers be allowed to review Hydro's best estimate of its current and long-term financial situation.

In the absence of a GRA, a status update process is the best mechanism to test the credibility of any such analysis.

5. The Circumstances of Manitoba Hydro have Changed Substantially since Orders 69/19 and 59/18

Four fundamental factors underpin the substantial change in circumstances of Manitoba Hydro since *Orders 69/19* and *59/19*.

- 1) Manitoba Hydro has a new Strategic Direction in *Strategy 2040* and has undertaken a corporate reorganization consistent with this direction;
- 2) Major new capital projects have come into service and major new export sales have been undertaken with significant and sometimes countervailing impacts on Hydro's short-term and long-term financial position;

³⁶ Manitoba Hydro Legal Services Letter to Kevin Walby, February 23, 2021, FOI 2021-06

³⁷ Manitoba Hydro Legal Services Letter to Kevin Walby, February 23, 2021, FOI 2021-07.

- 3) The economic and social dislocation of the COVID19 pandemic has disrupted energy use consumption patterns as well as “sharply” dropping yields on long term bonds with potential impacts on Hydro’s cost of debt;
- 4) Important regulatory, judicial and legislative decisions have important implications for Hydro’s costs and rates including the rates paid by many vulnerable consumers.

Strategy 2040 may have important cost, revenue and transparency implications

Manitoba’s new strategic plan has been much promised over recent years but never publicly shared. In a November 12, 2018 letter to the PUB, Hydro cited completion of this comprehensive analysis as being central to its ability to file a new IFF.

While details are scanty, *Strategy 2040* appears to be focused on the impacts of “Disruptive forces, including decarbonization, digitalization and decentralization” on customer behaviour and expectations.³⁸ As the new Hydro CEO has noted,

*Manitoba Hydro has been in a building phase for the last number of years—working on critical major energy projects like Keeyask, Bipole III and now the Manitoba-Minnesota Transmission Project. But as these projects wind down and are completed, we need to be ready to shift gears.*³⁹

It appears that Manitoba Hydro has already reorganized its corporate structure and business units to begin executing this new strategic direction. A review of Manitoba Hydro’s website in the “About Us” section and under “Our Leadership Team” shows new responsibilities for many of its Vice-Presidents and two new Vice-Presidents.

In and of itself, a change to Hydro’s business model in the face of disruptive change constitutes a substantial change in circumstances. It is likely to portend a shift in spending priorities related to day-to-day operating costs as well as to investments in distributed generation and sustaining capital. It may lead to a focus on core business and a divestiture of subsidiaries. A new strategic direction also may affect the marketing of surplus electric capacity and the focus on electrification.

Ironically, given the substance of this application, Hydro’s new strategic direction also appears to focus on Hydro’s obligation to demonstrate its value to Manitoba ratepayers:

What steps can we take at Manitoba Hydro to ensure we are continuing to meet your needs while investing wisely. How can we ensure that you and your businesses are getting the best value for your energy dollar? And how do we

³⁸ Jay Grewal, “Navigating change and challenges with action: President and CEO’s Letter to Customers”, Manitoba Hydro-Electric Board 69th Annual Report for the year ended March 31, 2020 at 7, available online: <https://www.hydro.mb.ca/corporate/ar/pdf/annual_report_2019_20.pdf>.

³⁹ Jay Grewal, “Changing Energy Value Chain”, Address to the Manitoba Chambers of Commerce MBiz Breakfast Series (September 25, 2019) at 12-13, available online: <https://www.hydro.mb.ca/corporate/news_media/pdf/2019_09_25_mb_chamber_presentation.pdf> [emphasis added].

*prove to you that Manitoba Hydro is in the best position to address these challenges and opportunities in the future?*⁴⁰

A status update review can be an important first step in meeting this onus.

The Current and Long Term Financial and Cost of Service Implications of New Capital Projects and Export Sales

In the proceedings leading to *Orders 69/19* and *59/18*, there was much speculation about the impacts of new capital projects and potential new export sales on Hydro rates. But the most fundamental recent change in the circumstances of Manitoba Hydro relates to the fact that long promised, capital intensive infrastructure investments are now rapidly coming on-line and affecting Hydro's revenue requirement.

Determining the rate impact of these major projects and associated power sales is no longer a distant, speculative enterprise but a clear and present financial reality requiring a complex balancing of inter-generational interests.

Among the major new capital projects since *Orders 69/19* are:

- The Manitoba–Minnesota Transmission Project energized on June 1, 2021 bringing both additional transmission capacity and material impacts to Manitoba Hydro's financial statements and revenue requirement;⁴¹
- The first unit of the Keeyask Generating Station going into commercial service on February 16, 2021⁴² and additional units going into service over the next year bringing both additional generation capacity as well as material impacts to Manitoba Hydro's financial statements and revenue requirement; and,
- The \$70 M, 230 kV Birtle Transmission line completed in March 2021 and materially enhancing Hydro's export sales capacity to Saskatchewan.⁴³

⁴⁰ Jay Grewal, "Changing Energy Value Chain", Address to the Manitoba Chambers of Commerce MBiz Breakfast Series (September 25, 2019) at 13, available online: https://www.hydro.mb.ca/corporate/news_media/pdf/2019_09_25_mb_chamber_presentation.pdf [emphasis added].

⁴¹ Manitoba Hydro, "Manitoba – Minnesota Transmission Project", available online: https://www.hydro.mb.ca/projects/mb_mn_transmission/#:~:text=The%20Manitoba%E2%80%93Minnesota%20Transmission%20Project%20will%20strengthen%20the%20overall,export%20sales%20that%20keep%20rates%20lower%20for%20Manitobans.>. The Bipole III project was completed July 2018 after *PUB Order 59/18* but prior to *Order 69/19*. See: https://www.hydro.mb.ca/regulatory_affairs/projects/bipole3/.

⁴² Manitoba Hydro, "Keeyask Generating Station produces first electricity for Manitoba grid" (News Release), February 18, 2021, available online: https://www.hydro.mb.ca/articles/2021/02/keeyask_generating_station_produces_first_electricity_for_manitoba_grid/

⁴³ Winnipeg Free Press, *Hydro announces completion of western transmission line*, March 19, 2021, available online: <https://www.winnipegfreepress.com/breakingnews/this-just-in/574025621.html>.

As set out previously in Table 1, during the 2019/20 GRA, Keeyask was expected to bring over \$190 million in costs into the revenue requirement in 2021/22 and a daunting \$500 million in 2022/23. The time to examine the actual impact of Keeyask on rates has come.

A significant countervailing development relates to recent dependable power sales including the confirmation in October 2020 of a multi-billion dollar, 215 MW export sale to SaskPower beginning in 2022. The most recent SaskPower sale has major implications for Manitoba Hydro's revenues out to the 2050s.⁴⁴

Other firm power sales are making their impact felt on Hydro's revenues. Over the first three quarters of the current fiscal year, Hydro's export revenues were \$101 million or 28% higher than the same period last year reflecting in part an increase in dependable sales volumes flowing from new firm export contracts coming into effect.⁴⁵

For Manitoba ratepayers, a central question is how will these often offsetting developments over the past three years affect both the likely trajectory of Hydro rates over the short, medium and long term as well as the fair allocation of costs between customer classes.

Impacts of the Pandemic on the Cost of Debt

Over the past year, the COVID19 pandemic has led to a material reduction in consumption by major industrial and commercial customers as compared to traditional patterns. This decline has been somewhat offset by increased consumption in the residential sector.⁴⁶

More fundamentally, given the billions of dollars of near-term Hydro borrowing forecast in the 2019/20 rate application, interest rates on long term bonds have "sharply" dropped since March 1, 2018.⁴⁷

⁴⁴ The sale is reported to be for 30 year and 215 MW. Combined with a previous 20 year and 100 MW sale, the estimated value of the sales is alleged to be more than \$5 billion. See Manitoba Hydro, "New transmission line to Saskatchewan under construction" (October 1, 2020), available online: https://www.hydro.mb.ca/articles/2020/10/new_transmission_line_to_saskatchewan_under_construction/; Dan Lett, *Manitoba Hydro's \$5-billion deals with Sask. "deliberately covered up"*, March 24, 2021, available online: <https://www.winnipegfreepress.com/local/Manitoba-Hydros-5-billion-deals-with-Saskatchewan-deliberately-covered-up-574052921.htm>.

⁴⁵ The Manitoba Hydro-Electric Board, "Quarterly Report for the nine months ended December 31, 2020" at p. 3, available online: https://www.hydro.mb.ca/corporate/pdfs/quarterly_report_201231.pdf.

⁴⁶ *Ibid* at p. 2. See also Manitoba, Legislative Assembly of Manitoba Standing Committee on Crown Corporation, *Hansard*, 42nd Leg 2nd Sess, Vol LXXIV No. 3 (June 11, 2021) at p. 69 (Jay Grewal). Ms. Grewal: "The change, though, is in the mix of customer base consuming that energy. Residential energy consumption has gone up at times by 9 per cent over historical. There is a softening in the industrial and commercial, but not to the degree seen in other markets and jurisdictions."

⁴⁷ Please see the comparison of the yields of long Canada bonds at March 1, 2018 versus March 2, 2021 at: <https://www.bankofcanada.ca/rates/interest-rates/canadian-bonds/>. See also Bank of Canada, *Monetary Policy Report* (April 2020) at p. 1, 20, available online: <https://www.bankofcanada.ca/wp-content/uploads/2020/04/mpr-2020-04-15.pdf>; Bank of Canada, *Monetary Policy Report* (July 2020) at p. 8, 13, 14, 27-28, available online: <https://www.bankofcanada.ca/wp-content/uploads/2020/07/mpr-2020->

As noted by the Bank of Canada in July 2020,

*Central banks around the world have taken decisive measures to stabilize the financial system and support credit flows to businesses and households. . . Major central banks have reduced their policy rates or eased through other measures.*⁴⁸

In the Canadian context, the Bank of Canada reports that,

*The lowering of the policy interest rate to its effective lower bound, the bond purchases and the easing of global financial conditions have all contributed to lower domestic interest rates and made it easier for households and businesses to borrow.*⁴⁹

In January 2021, the Bank of Canada confirmed that:

*Financial market conditions are highly accommodative. . . Sovereign bond yields continue to be very low for most advanced economies, consistent with accommodative monetary policies.*⁵⁰

In addition to a significant drop in long term interest rates, Manitoba Hydro's short-term debt maximum also has tripled from \$0.5 B to \$1.5 B. Taking advantage of more short-term or floating rate debt is expected to bring annual savings to ratepayers of between \$8 million and \$15 million annually.⁵¹

Recognizing the expectation of Manitoba Hydro in 2019 that it was undertaking \$4.0 billion of incremental borrowing in the next few years as well as refinancing \$4.8 billion of debt in the five-year period following the test year,⁵² the sharp drop in yields on long term debts since March 1, 2018 may have critical implications for Hydro ratepayers and its Debt Management Strategy.⁵³

[07-15.pdf](#); Bank of Canada, *Monetary Policy Report* (January 2021) at p. 21, available online: <https://www.bankofcanada.ca/wp-content/uploads/2021/01/mpr-2021-01-20.pdf>.

⁴⁸ Bank of Canada, *Monetary Policy Report* (July 2020), *ibid* at p. 8.

⁴⁹ Bank of Canada, *Monetary Policy Report* (July 2020), *ibid* at p. 14.

⁵⁰ Bank of Canada, *Monetary Policy Report* (January 2021), *supra* note 45 at p. 4.

⁵¹ Manitoba, Legislative Assembly of Manitoba, *Hansard*, 42nd Leg, 2nd Sess, Vol. LXXIV No. 3 (November 21, 2019) at 39 (Hon. Jeff Wharton). Mr. Wharton: "Bill 4 amends The Manitoba Hydro Act and enables Manitoba Hydro to perform more efficient cash management within existing credit frameworks. The amendment will increase the short-term borrowing authority and bring Manitoba Hydro into greater alignment with other similar public utilities across Canada. The amendment seeks the—to increase the short-term borrowing authority from \$500 million to \$1.5 billion. . . The amendments to the short-term borrowing limit will bring annual savings to Manitoba Hydro and ratepayers of approximately 8 to 15 million dollars, depending on financial markets and cash balances."

⁵² *PUB Order 69/19* at p. 11.

⁵³ There may be important implications for Hydro's Debt Management Strategy due to a drop in interest rates, the new borrowing limit and the impending completion of the major capital projects.

Important Regulatory, Judicial and Legislative Developments

Since *Orders 69/19* and *59/18*, there also have been substantial regulatory, judicial and legislative developments with important implications for all Manitoba ratepayers. These developments include:

- The recommended approval of Efficiency Manitoba's three-year plan by a PUB panel in February 2020;⁵⁴
- The Manitoba Court of Appeal's determination in June 2020 that the PUB lacked the authority to create the First Nation on Reserve Residential class;⁵⁵
- The imposition by the Legislative Assembly of Manitoba of a 2.9% rate increase on almost all Manitoba Hydro customer classes effective December 1, 2020;⁵⁶
- Rate shock level increases for First Nation residential customers on reserve in the range of 9% since September 1, 2020;⁵⁷ and,
- Findings by the *Wall Report* in February 2021 raising questions about the primary or exclusive reliance on rigid debt equity financial targets for the setting of rates, especially at a time of high capital expenditure;⁵⁸

There can be no doubt that an across the board, 2.9% rate increase constitutes a substantial change in circumstances. Of even greater moment to the individuals and nations effected, is the roughly 9% rate increase for First Nation residential customers on reserve in less than one year.

⁵⁴ Manitoba Public Utilities Board, *Report on Efficiency Manitoba's 2020/21 to 2022/23 Efficiency Plan Submission*, February 28, 2020, p. 18, Recommendation, 13.2.1, available online: <<http://www.pubmanitoba.ca/v1/proceedings-decisions/appl-current/pubs/2020-em-3-yr-plan/em-report-final-feb-2020.pdf>>.

⁵⁵ *Manitoba (Hydro-Electric Board) v Manitoba (Public Utilities Board) et al*, 2020 MBCA 60 at paras 11-12.

⁵⁶ *The Budget Implementation and Tax Statutes Amendment Act, 2020*, SM 2020 c 21 at s 233. The 2.9% rate increase applied to all customer classes with the exception of certain limited exclusions under s. 233(2).

⁵⁷ *PUB Order 100/20* at p. 5: "The Board notes that, effective September 1, 2020, former FNORR customers will receive an approximate 6.5% rate increase. Given the energy poverty experienced by First Nations living on-reserve, and in the context of a global pandemic and economic recession, together with the Interveners representing these customers (Assembly of Manitoba Chiefs and Manitoba Keewatinowi Okimakanak Inc.), the Board is concerned that such an increase will result in rate shock for former FNORR customers."

⁵⁸ Brad Wall, Commissioner, Economic Review of Bipole III & Keeyask Commission, *Economic Review of Bipole II and Keeyask*, Vol. 1 at p 118 -122, available online: <https://manitoba.ca/asset_library/en/proactive/2020_2021/ERBK-Report-Volume1.PDF>. See in particular Finding #4.24 " . . . achievement of a debt/equity target should not be the singular focus and an interest coverage ratio target should also be used. The Commissioner recognizes that in the short-term, aggressive debt/equity targets can have a negative impact on rate stability and predictability and, therefore, cash flow stability and predictability. The Commissioner further recognizes that financial targets must take into account changing variables and context and be adjustable based on real drivers of rate-making policy, including risks."

6. The Benefits of Independent Regulation Greatly Outweigh the Costs

While regulatory costs are a legitimate concern, independent research by Mr. William Harper has demonstrated that the cost of the PUB regulatory process is a very small portion of Manitoba Hydro's ongoing revenue requirement.

In a September 2020 research report, Mr. Harper concluded that over the past three years, the cost of the regulatory process has averaged less than 0.25% of Hydro's anticipated annual domestic revenues. For comparison purposes, information considered in the *Wall Report* suggests that 17% to 18% of each dollar of Hydro revenue is "directed by Manitoba Hydro to the Province."⁵⁹

Moreover, the benefits to the Manitoba economy of just and reasonable rates outweigh the concern over costs. Hydro's own calculations suggest that "every one percent increase in MH rates has a direct impact to the Manitoba economy of between \$370 to \$430 million in present value terms."⁶⁰

7. Conclusion - the Cumulative Impact of Substantive Change

Since *Orders 69/19* and *59/19*, Manitoba Hydro has initiated a strategic change in how it does business and Hydro's assets and debts for rate setting purposes have doubled.

Over the same period, the financial impacts of these major new projects have been mitigated both by an important new power sale and by the sharp, unexpected drop in long-term government bond yields flowing from the pandemic. It is unclear how all these significant changes may have impacted the allocation of costs between the various customer classes.

Manitoba Hydro has not been immune to judicial and legislative changes over the same period with all ratepayers experiencing a substantial rate increase and with certain vulnerable ratepayers suffering rate shock level impacts.

The cumulative impact of these substantive changes raises serious doubts about the fairness of the current rates of Manitoba Hydro especially given the absence of a current, publicly available IFF or analogous forecast.

⁵⁹ Please see Brad Wall, Commissioner, Economic Review of Bipole III & Keeyask Commission, *Economic Review of Bipole II and Keeyask*, Vol. 1 at p 122 - 124, available online: <https://manitoba.ca/asset_library/en/proactive/2020_2021/ERBK-Report-Volume1.PDF>. Please see also 2019/2020 Manitoba Hydro General Rate Application, Response to PUB/MH I-32, available online: <<http://www.pubmanitoba.ca/v1/proceedings-decisions/appl-current/pubs/2019-mh-gra/pub-ex/pub-mh-i-1-64-march7.pdf>> in which Hydro suggested that its payments to government in the 2018/19 year were in the range of \$400 million.

⁶⁰ 2019/20 Manitoba Hydro General Rate Application, Response to Coalition/MH I-5: a 3.5% rate increase has a present value of between \$1.3 B to \$1.5 B.

In light of these substantive changes in circumstances, a review of *Orders 69/19* and *59/18* is both justified and reasonable.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of March, 2021.



Byron Williams, Director
Public Interest Law Centre

Appendix A: The Consumers Coalition

The Consumers Coalition consists of three independent organizations that together represent the interests of a broad cross-section of Manitoba consumers. Harvest Manitoba and the Consumers Association of Canada (Manitoba) Inc. have regularly jointly appeared before the Manitoba PUB on rate regulation matters related to hydro and payday loans.

With the Aboriginal Council of Winnipeg, they have previously collaborated to bring the interests and experience of Manitoba consumers before the Canadian Radio-television and Telecommunications Commission (CRTC) in such proceedings as the 2018 call for comments on lower cost data-only plans,⁶¹ the recent review of mobile wireless services⁶² and others.

Aboriginal Council of Winnipeg

The Aboriginal Council of Winnipeg (ACW) was founded in 1994 as an Indigenous political organization representing First Nations, Inuit and Metis living in Winnipeg. It is the only organization of its kind in Canada – focusing solely on the urban Indigenous community. It currently has approximately 7000 members. Governed by a board of directors, ACW advocates for and seeks to empower Winnipeg's Indigenous community and to realize its individual and collective potential.⁶³ It is committed to removing systemic barriers for Indigenous people.

ACW works to connect, support and collaborate with the many urban Indigenous program and service agencies in Winnipeg including programs working with urban Indigenous people who are experiencing homelessness and suffering from multiple barriers to actively participating in programming and service.⁶⁴ ACW also seeks to ensure that Indigenous voices are represented around the tables of decision-makers, policy-makers, and service providers including the Housing First/Homelessness Partnering Strategy, Make Poverty History Manitoba and the Community Wellness and Public Safety Alliance.

⁶¹ TNC CRTC 2018-98.

⁶² TNC CRTC 2019-57.

⁶³ ACW strives to undertake its activities and pursuit of its objectives in a manner that honours the seven sacred teachings: love (eagle), respect (buffalo), courage (bear), honesty (sabe), wisdom (beaver), humility (wolf), and truth (turtle).

⁶⁴ See for example the Aboriginal Health and Wellness Centre – Ni-Apin Program, which is currently funded by Manitoba Health, in partnership with Health Canada and Families, Children and Social Development

Manitoba Branch of the Consumers' Association of Canada (CAC Manitoba)

CAC Manitoba is a volunteer, non-profit, independent organization working to inform and empower consumers, and to represent the consumer interest in Manitoba. Formed in 1947, it is a branch of the national Consumers' Association of Canada but is financially separate and separately incorporated.

CAC Manitoba represents the interests of consumers across Manitoba in a number of areas including food safety and security, patient rights and health care, financial services, access, and inclusion as well as environmental sustainability. CAC Manitoba is guided by its understanding of a number of generally accepted consumer rights including:

- The right to satisfaction of basic needs,
- The right to be informed,
- The right to choose,
- The right to be heard, and
- The right to consumer education.

CAC Manitoba seeks input on its policy positions from consumers through consumer engagement and through consumer education programs and services to the public. In addition, the organization seeks other perspectives on relevant issues through the use of policy community advisory committees and interviews.

CAC Manitoba takes pride in its long-standing record of quality, evidence-based advocacy. Over the past 30 years, CAC Manitoba has been active in rate regulation matters relating to Manitoba Hydro, Centra Gas, Manitoba Public Insurance, government cheque cashing and payday lending rates. It also has regulatory experience before the CRTC.⁶⁵

In 2016, CAC Manitoba was honoured to be selected by the federal Office of Consumer Affairs to conduct a major research project on energy poverty across Canada. In 2019, OCA supported the organization's conduct of two research projects which are ongoing:

⁶⁵ See for example Canada, Canadian Radio-television and Telecommunications Commission, *Telecom Decision CRTC 2005-19* (Ottawa: Canadian Radio-television and Telecommunications Commission, 30 March 2005); Canada, Canadian Radio-television and Telecommunications Commission, *Telecom Decision CRTC 2007-48* (Ottawa: Canadian Radio-television and Telecommunications Commission, 3 July 2007); Canada, Canadian Radio-television and Telecommunications Commission, *Broadcasting Decision CRTC 2016-487* (Ottawa: Canadian Radio-television and Telecommunications Commission, 20 December 2016); Canada, Canadian Radio-television and Telecommunications Commission, *Telecom Decision CRTC 2018-475* (Ottawa: Canadian Radio-television and Telecommunications Commission, 22 March 2018); Canada, Canadian Radio-television and Telecommunications Commission, *Report on Misleading or Aggressive Communications Retail Sales Practices*, (Ottawa: Canadian-Radio-television and Telecommunications Commission, 20 February 2019).

one looking at the telecommunications marketplace across Canada, and another looking at good practice for public participation and consumer engagement in regulatory proceedings.

Harvest Manitoba

Founded in 1984, Harvest Manitoba is a non-profit, community-based organization committed to providing food to people who struggle to feed themselves and their families. It seeks to maximize public awareness of hunger while working towards long-term solutions to hunger and poverty. Winnipeg Harvest is governed by a community-based Board which employs the Executive Director to make all operational decisions.

Harvest Manitoba provides emergency food assistance to almost 64,000 people a month across Manitoba, redistributing more than 11 million pounds of food a year through food banks and other emergency programs. One-third of the families experiencing hunger are dual wage-earner families (ie - the working poor) and approximately 41% of its clients are children living in poor families.

Harvest Manitoba shares food with more than 50 Manitoba communities through the Manitoba Association of Food Banks and through partnerships with nearly 400 agencies (including soup kitchens, food banks and youth programs) to distribute surplus food to hungry families all over Manitoba. The 180 food banks it supports are located throughout Manitoba and include urban centres, First Nations and rural and northern communities.

The significant expertise of Harvest Manitoba on issues relating to poverty and hunger was recognized by Olivier De Schutter, the United Nations Special Rapporteur on the Right to Food who attended a workshop at Harvest Manitoba during his mission to Canada in 2012.

In addition to providing services directly to communities, households and individuals, Harvest Manitoba has been an active participant both as an intervener and a presenter on regulatory matters before the Manitoba Public Utilities Board on issues relating to payday lending and Manitoba Hydro. Harvest Manitoba participated as part of the Manitoba Coalition in the proceedings leading to the CRTC Report on Misleading or Aggressive Communication Retail Sales Practices⁶⁶ and the recent review of mobile wireless services.⁶⁷

⁶⁶ Canada, Canadian Radio-television and Telecommunications Commission, *Report on Misleading or Aggressive Communications Retail Sales Practices*, (Ottawa: Canadian-Radio-television and Telecommunications Commission, 20 February 2019).

⁶⁷ TNC CRTC 2019-57.