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April 12, 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: SUBMISSION ON THE APPLICATION OF THE CONSUMERS COALITION FOR AN ORDER REQUIRING  
A MANITOBA HYDRO STATUS UPDATE HEARING**

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On March 26, 2021, the Consumers Coalition (the "Coalition") filed an application with the Public Utilities Board of Manitoba ("PUB" or "Board") seeking an Order requiring Manitoba Hydro to file a Status Update, on the basis that there has been a substantial change in circumstances since the issuance of Orders 59/18 and 69/19 (the "Application"). On April 1, 2021, the PUB requested written submissions from Manitoba Hydro and Interveners on "whether the Board should consider the Application and, if so, what the process should be."

Contrary to the assertions made in the Application, Manitoba Hydro's circumstances have not substantially changed since the issuance of Order 59/18 and 69/19. Accordingly, Manitoba Hydro submits that the Board should not consider the Application further and should deny the relief requested therein including the request for an additional process.

**PUB's Jurisdiction over Manitoba Hydro**

Pursuant to the existing legislative scheme, the Manitoba Hydro-Electric Board, the government, and the PUB are assigned responsibility for oversight of specific aspects of Manitoba Hydro. Section 26 of *The Crown Corporations Governance and Accountability Act* limits the PUB's jurisdiction over Manitoba Hydro to approval of "rates for services" for "provision of power". Attempting to expand the PUB's jurisdiction to include general supervisory powers over Manitoba Hydro under the guise of the PUB's ratemaking role as requested within the Application is clearly inconsistent with section 2(5) of *The Public Utilities Board Act* and the overall legislative framework applicable to the PUB's role as it relates to Manitoba Hydro.

In a recent case considering the PUB's rate setting authority of the Manitoba Public Insurance Corporation ("MPIC"), the Manitoba Court of Appeal affirmed that the PUB's role is not to review and evaluate MPIC's ongoing planning, management and operations as a Crown Corporation. Rather, the PUB's mandate over Crown Corporations is expressly limited to the approval of rate changes sought in the test years which are applied for by the crown utility in any application:

*Available in accessible formats upon request*

...plans do not affect the rates that are subject to review in a particular year. While plans, if implemented, may well affect the rates for basic insurance in future years, *those rates will be subject to review by the PUB if and when the plans are realized and put into effect.* Until then, the mandate to review and comment on long-term plans has been left to the Crown Corporations Council and the government, and the PUB has not demonstrated how they are relevant to, or affect its ability to carry out its mandate in any particular year.<sup>1</sup>

In the absence of a rate application having been filed directly by Manitoba Hydro at this time, the Application seeks an immediate status update and public review of the Corporate Strategic Plan, business reorganization efforts, debt management strategy and a long-term financial plan on the false premise that Manitoba Hydro's circumstances have *substantially* changed such that existing rates for services no longer remain just and reasonable.

While Strategy 2040 and an accompanying financial forecast of Manitoba Hydro may be of interest to the PUB and other stakeholders at this time, the strategic initiatives that will underpin Strategy 2040 are presently being developed and reviewed and will form an integral part of a long-term financial forecast to be developed by Manitoba Hydro. Strategy 2040 and the continued development of the underlying initiatives have no impact on current rates.

As the applicant, the Coalition has failed in its evidentiary onus to sufficiently demonstrate that circumstances have in fact *substantially* changed and that the existing rates, most recently approved by the PUB in August 2020 in Orders 100/20 and 110/20, are no longer just and reasonable. Consequently, the unprecedented relief they seek within the Application must be denied by the PUB.

**Existing Rates were found to be just and reasonable by the PUB in June 2019 and subsequently in August 2020**

The Coalition repeatedly claims that rates for electricity have not been subject to a "full" review by the PUB in three years. In accordance with specific PUB direction, a full rate review proceeding was commenced in late 2018. That proceeding continued through the spring 2019 and culminated in Order 69/19 on May 28, 2019 wherein the PUB determined "that it is just and reasonable to approve a 2.5% rate increase for most customer classes, effective June 1, 2019."

The scope of that proceeding was directed by the PUB over six months and involved an extensive review of financial information and other written and oral evidence. From the onset in that process, the Coalition was dissatisfied with the evidence, particularly the absence of a long-term financial forecast as it was accustomed to reviewing from previous rate proceedings. Notwithstanding all of the procedural objections and similar concerns raised now by the Coalition in this Application, the PUB determined and approved just and reasonable rates based upon the complete application and evidence submitted by Manitoba Hydro. The Coalition did not seek to review, vary or appeal Order 69/19.

The mere passage of time since the last PUB rate order does not give rise to a substantial change in a utility's circumstances or render those rates unjust or unreasonable. Consistent with the principle of regulatory efficiency, section 26(1) of *The Crown Corporations Governance and Accountability Act* permits Manitoba Hydro to seek multi-year rate approvals up to three years. As seen with other utility

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<sup>1</sup> Public Utilities Board v. Manitoba Public Insurance Corp. et al., 2011 MBCA 88 at paragraph 43 (emphasis added).

rate and tolling frameworks within Canada, the current legislative scheme governing Manitoba Hydro does not require annual or biennial reviews of rates.

**While Manitoba Hydro's business and operations continue to evolve as planned since Orders 69/19, 100/20 and 110/20, circumstances have remained substantially the same**

Manitoba Hydro acknowledges that section 26(3) of *The Crown Corporations Governance and Accountability Act* provides:

Where The Public Utilities Board is satisfied that *the circumstances of a corporation have changed substantially*, The Public Utilities Board may, of its own motion or on the application of the corporation or an interested person, review an order made pursuant to this section and modify the order in any manner that The Public Utilities Board considers reasonable and justified in the circumstances.

As directed by the PUB, Manitoba Hydro has been providing the PUB with quarterly capital and operating and administrative reports along with externally audited annual financial reports. Based on their review of these reports to date, the PUB has not expressed any concerns to Manitoba Hydro or found that the circumstances of Manitoba Hydro have substantially changed so as to justify a rate review by way of its own motion.

On the threshold question to initiate a review of a previous rate order, the Application fails to establish that there has been a *substantial change in its circumstances* such to render existing rates unjust or unreasonable.

The Coalition argues that a status review is urgently needed because of the "risk that Manitoba Hydro will not have a public rate review for many years to come." The Board's determination of whether the circumstances of Manitoba Hydro have substantially changed should not be influenced by the *potential* for legislative change. Any prospective legislative change is speculative and irrelevant to the PUB's determination of whether Manitoba Hydro's circumstances have substantially changed. Moreover, prospective legislative change does not in any way impact or raise any doubt as to the justness and reasonableness of existing PUB approved rates. As such, any consideration of or speculation on potential legislative change for the future by the PUB as part of its determination of the threshold question in this Application is inappropriate.

**The following five circumstances cited by the Coalition in the Application do not, individually, or collectively, amount to a substantial change in the circumstances of Manitoba Hydro**

**1. Strategy 2040**

On page 13 of their Application, the Coalition states that:

*"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."*

*"It appears that Manitoba Hydro has already reorganized its corporate structure and business units to begin executing this new strategic direction."*

Currently, Manitoba Hydro is in the process of a corporate reorganization to enable it to develop,

resource and implement the initiatives underlying Strategy 2040. While Strategy 2040 will position Manitoba Hydro for when decarbonization, digitalization and decentralization become significant factors in the Manitoba energy market, such factors have not had a significant influence on customer behaviour and expectations since the issuance of Orders 69/19, 100/20 and 110/20. The continued planning of Strategy 2040 is just that; it represents the on-going strategic business planning of Manitoba Hydro. At this moment, Strategy 2040 does not represent or constitute a *disruptive* or *substantive* change in Manitoba Hydro's circumstances as alleged in the Application. Consistent with the Manitoba Court of Appeal's findings on the limited legislative mandate of the PUB over Manitoba Hydro, any review of Strategy 2040 is outside the jurisdiction of the PUB as Strategy 2040 has no impact on rates at this time.

By way of update on Strategy 2040, Manitoba Hydro's current focus is on preparing to socialize Strategy 2040 with the public including the members of the Coalition, who were engaged as part of the development of Strategy 2040, in order to capture overall public perspectives on the current state of Manitoba Hydro and the province's energy future. When the implementation of Strategy 2040 will have an impact on rates, this important initiative will then be properly reviewed by the PUB and other stakeholders in accordance with the PUB's existing rate-setting function. Any attempts to guess or assume how Strategy 2040 and the corporate re-organization will impact rates in the future is entirely premature at this time.

## **2. Major Capital Projects**

The Coalition asserts on page 14 of their Application that:

*"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."*

While the Coalition has portrayed the review of these major capital investment projects in previous rate applications as a "distant, speculative enterprise" in attempting to satisfy the threshold question within the Application, this suggestion is grossly misleading and factually incorrect.

The revenue requirement impacts of bringing these major capital projects into service has been extensively discussed in several rate applications over the past decade and fully considered; most recently in the proceedings concluding with Orders 59/18 and 69/19. The Application itself recognizes this reality citing that the 2018/19 General Rate Application "grappled with ... seeking to bring major capital projects on-line".

As directed by the PUB in Order 59/18 (Directive 16), Manitoba Hydro continues to provide the PUB with quarterly updates on the financial and construction related progress of these projects without the PUB expressing any formal concerns with respect to these reports or the progress of these projects.

The mere fact that these projects have and will continue to come into service as fully contemplated by the PUB and all interested parties, including the Coalition, does not in any manner constitute a *substantial change* in Manitoba Hydro's circumstances since the most recent PUB rate orders.

## **3. Export Sales**

The 215 MW export sale to SaskPower referred to at page 15 of the Application does not impact Manitoba Hydro's revenue until 2022 and as such, it does not reflect a substantive change in circumstance that impacts Manitoba Hydro's existing PUB approved rates. The Application also refers

to an increase in export revenues in the 2020/21 fiscal year as a result of firm export contracts coming into effect. An increase in opportunity export sales following the in-service of the Keeyask generating station was anticipated and included in IFF16 in Manitoba Hydro's 2017/18 and 2018/19 GRA. The influx of export revenue from the additional capacity made available by the Keeyask generating station is entirely expected and does not constitute a substantive change in circumstance. Currently only one turbine unit is in-service at the Keeyask generating station with the rest of the units anticipated to be in-service by the end of April 2022.

#### **4. Impacts of the Pandemic on the Cost of Debt**

The recent increase in Manitoba Hydro's short-term borrowing capacity cited in the Application has yet to be activated and therefore to date, no change has resulted in relation to this item for Manitoba Hydro. In the normal and usual course of conducting its business and operations, Manitoba Hydro continues to adjust and respond to evolving market circumstances. Changes with respect to interest rates is but one of the routine circumstances that Manitoba Hydro encounters when planning and conducting its business and related operations. Changing interest rates within the financial markets does not constitute a substantial change in circumstances such to justify an immediate status review as urgently demanded in the Application.

#### **5. Regulatory, Judicial and Legislative Developments**

Manitoba Hydro acknowledges that there have been developments since Order 69/19 in these areas. However, such developments are not unusual and occur in the normal course and do not represent a substantive change in Manitoba Hydro's circumstances. Furthermore, they are mischaracterized by the Coalition as developments that are subject to the PUB's initial or further review.

For example, the Coalition alleges that the 2.9% rate increase effected through legislation constitutes a substantial change in Manitoba Hydro's circumstances without any recognition that this legislated rate change is not subject to any review by the PUB. Sections 233(3) and 234 of *The Budget Implementation and Tax Status Amendment Act, 2020 S.M. 2020, c. 21 ("BITSA")* expressly mandated the implementation and treatment of the rate increase without any further review by the PUB:

##### **Increases not subject to approval**

233(3) The increase required under subsection (1) is not subject to  
(a) section 39, except subsections (2.1) and (2.2), of The Manitoba Hydro Act; or  
(b) Part 4 (Public Utilities Board Review of Rates) of The Crown Corporations Governance and Accountability Act.

##### **Treatment of increased revenue**

234 The revenue generated from the rate increases provided for under this Division is to be recognized immediately in Manitoba Hydro's and Centra's general revenues, respectively, and is not to be deferred to a regulatory deferral account for future recognition.

Manitoba Hydro submits that it is inappropriate for the PUB to consider or review this legislated rate increase at all or as representing a "substantial change" in circumstance as requested in the Application as it is beyond its purview and would directly violate section 233(3) of *BITSA*.

The Coalition also alleges that the rate increase that resulted from the Manitoba Court of Appeal's 2020 decision reversing the PUB's First Nation on Reserve Residential rate constitutes a substantial change in Manitoba Hydro's circumstances. While acknowledging that this decision impacted its

customers, this rate increase did not alter Manitoba Hydro's circumstances at all as all customer class rates were adjusted to prevent over-collection of revenues. The necessary rate adjustments resulting from the Court of Appeal decision were recently approved by the PUB in Orders 100/20 and 110/20. These orders were not appealed by the Coalition or any other party. However, the Coalition now seeks to establish that these circumstances represent substantial change requiring urgent additional review by the PUB

#### **Prematurity of this Application**

Manitoba Hydro submits that the Coalition's unprecedented request for a comprehensive review of existing just and reasonable rates is premature, unwarranted and practically unworkable at this moment. For all of the reasons cited above, the circumstances relied upon by the Coalition in support of its Application are either not relevant and/or were reasonably and fully contemplated by the PUB in determining the justness and reasonableness of Manitoba Hydro's existing rates for service. Several of the circumstances cited by the Coalition as representing "substantial change" are in fact consistent with forecasts previously provided in past rate filings of Manitoba Hydro to project future rate impacts which were fully considered by the PUB in the establishment of Manitoba Hydro's existing just and reasonable rates.

#### **Updates to Manitoba Hydro's financial position and business plans will be publicly submitted in due course**

It is evident that a primary goal of the Application is to make public, information about Manitoba Hydro through a PUB proceeding. This goal ignores the limited jurisdiction of the PUB and the comprehensive legislative scheme that requires Manitoba Hydro to make public information about its operations in other forums. Manitoba Hydro has shared information with Manitoba ratepayers through numerous avenues including presentations before the Standing Committee on Crown Corporations in June 2020, publication of quarterly financial reports and the annual public meeting held in February 2021.

Manitoba Hydro has submitted its 2021/22 Annual Business Plan for review by the Minister in accordance with the legislative requirement contained in section 7 of *The Crown Corporations Governance and Accountability Act*. In addition, the Corporation is in the process of preparing its year end financial statements and annual report for the 2020/21 fiscal year to be provided to the Minister as required by section 10 of *The Crown Corporations Governance and Accountability Act*. As it has routinely done in the past, Manitoba Hydro anticipates providing this information to the PUB and the public by way of its website as soon as it has the legal authority to do so following review by and direction from the Minister. These steps, which regularly occur outside the rate setting process, ensure that customers and stakeholders have current information about the Corporation's financial health and operations.

#### **Pending Regulatory Calendar**

Manitoba Hydro's immediate regulatory focus within Manitoba for 2021 is to complete regulatory proceedings that have been commenced by Centra Gas Manitoba Inc. ("Centra"). Centra submitted a Rate Re-bundling Application in March 2021 and is currently working towards filing a Cost of Service Methodology ("COSM") review before the summer in accordance with procedural direction from the PUB. The PUB and other stakeholders have previously emphasized the urgency of completing Centra's COSM review and the PUB indicated that this review must precede any general rate application (Order 152/19 at page 84).

Manitoba Hydro is currently planning to file in winter of 2022/23 a comprehensive electric and gas general rate application that will then include a complete long-term forecast that reflects Strategy

2040, updated integrated resource planning analysis, as well as provincial energy policy direction. Manitoba Hydro is very concerned that any status update proceeding will interrupt the on-going work to complete these important initiatives and the planned reasonable sequence of these proceedings. Manitoba Hydro submits that the Coalition's proposed schedule and timing for a status update process is wholly unrealistic given previous experience and other regulatory processes underway.

Further, any status update process at this time would be premature and would not serve the needs of the PUB, interveners and the utility and would only result in a high cost, low benefit outcome for Manitoba Hydro's customers.

**Conclusion**

Manitoba Hydro submits that the Application does not establish that there has been a substantial change in the circumstances of Manitoba Hydro that would justify the extraordinary and unprecedented relief requested of initiating a public review of the recently PUB approved Manitoba Hydro rates for services in the absence of Manitoba Hydro advancing its own rate application. The items referred to by the Coalition as the basis for the Application were each considered and extensively reviewed by the PUB in Orders 59/18, 69/19, 100/20 and 110/20. The on-going work related to these items was anticipated and reasonably forecasted at the time of these rate Orders and do not constitute a substantial change to justify conducting a review of these rate Orders at this time. While these initiatives are likely to result in changes for the purpose of future rates, no such changes have yet materialized to render existing rates unjust or unreasonable. Moreover, granting the Application would usurp the governance processes established for the Manitoba Hydro-Electric Board and the government by the legislative framework of Manitoba Hydro and would exceed the jurisdiction of the PUB over Manitoba Hydro.

All of which is respectfully submitted.

Yours truly,

**MANITOBA HYDRO LEGAL SERVICES DIVISION**

Per:



**BRENT A. CZARNECKI**  
Barrister & Solicitor