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August 24, 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: Clarification of Order 89/21 and Request for Stay

On August 17, 2021, the Public Utilities Board of Manitoba (“PUB” or “Board”) issued the Second Order in Respect of the Consumers Coalition’s Application for a Manitoba Hydro Status Update, Order 89/21 (“Order 89/21”). Order 89/21 grants the Consumers Coalition’s Application for a public process to determine whether Manitoba Hydro’s rates are just and reasonable and its costs are fairly allocated, and further directs Past Interveners of Record to provide, within two weeks of the Order, written comments on minimum filing requirements on Manitoba Hydro.

Pursuant to subsection 44(3) of *The Public Utilities Board Act*, CCSM c. P280 (the “Act”), and Rule 10 and 36 of the PUB Rules of Practice and Procedure (“Rules”), Manitoba Hydro respectfully requests immediate clarification of:

1. the intended scope of the public process and identification of the specific issues which shall be considered by the Board in this proceeding;
2. the process to be followed by Manitoba Hydro as non-applicant; and
3. the treatment of costs in this proceeding.

This clarification is required to provide Manitoba Hydro with a fair opportunity to properly assess the implications of Order 89/21. Until this necessary clarification is provided, Manitoba Hydro further requests that the two-week time limit for the provision of comments on minimum filing requirements and the 30-day time limit referred to in Rule 36 be stayed.

Clarification on the Intended Scope

The intended scope of legal and factual issues to be addressed in the public process ordered in Order 89/21 is not prescribed and therefore unclear. This has impacted Manitoba Hydro’s review and assessment of the Order specifically with respect to any determination as to

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whether the scope and issues of the intended PUB process is properly within its jurisdiction.

As set out in Manitoba Hydro's submission dated April 12, 2021, the rates approved in Orders 59/18 and 69/19 are not the current rates for power. Yet at various points of Order 89/21, the PUB has described the forthcoming process to "assess whether current electricity rates are just and reasonable" (p. 45) and to "review the rates that were approved as a result of Orders 59/18 and 69/19" (p. 33). Based upon the wording in Order 89/21, it is not clear as to whether this is an inadvertent error or if the PUB has conflated the two.

Additionally, the Coalition's Application identified in its prayer for relief three specific items to be addressed through the status update hearing process:

1. examine whether current hydro rates are just and reasonable and costs are fairly allocated;
2. address unfinished business from Order 69/19 in terms of the deferral account set aside to protect future Hydro ratepayers from rate shock; and
3. establish a process to address other unfinished directives from Order 59/18 and 69/19.

The PUB did not address the second or third items in Order 89/21 and it remains unclear as to whether or not the public process shall consider these two items.

Manitoba Hydro understands that the PUB intends to address procedural issues relating to Order 89/21 at a pre-hearing conference. When Manitoba Hydro files an application, such pre-hearing conferences are routinely held wherein the scope of the proceeding and the issues to be contested by the interveners from the specific relief being requested within the application are clarified. Thereafter, the PUB may require Manitoba Hydro to file additional information in support of the application and then allows interveners to pose information requests on the issues that are deemed to be in-scope for the proceeding. This situation with the Coalition's Application is clearly distinguishable from the normal course where the specific relief and the related issues have been set forth within an application filed by Manitoba Hydro. Asking parties to file minimum filing requirements at this stage of the process without clarity on the specific issues the PUB intends to determine as part of this proceeding, is a procedural error and results in procedural unfairness to Manitoba Hydro.

Accordingly, Manitoba Hydro seeks clarity at this time as to the scope and specific issues to be considered, and any that will not be considered, by the PUB in the public process envisioned through Order 89/21, including whether the PUB will consider:

- a) whether current electricity rates established in accordance with *The Budget Implementation and Tax Statutes Amendment Act, 2020*, S.M. 2020, c. 21 are just and reasonable;
- b) any aspect of Orders 100/20 and Order 110/20;

- c) the disposition of the major capital deferral account created in accordance with Order 69/19;
- d) all directives from Orders 59/18 and 69/19; and
- e) the facts outlined at pages 37 – 42 of Order 89/21.

Process to be Followed and Associated Costs

As this proceeding was not initiated by Manitoba Hydro, Manitoba Hydro seeks clarification as to process and costs.

Firstly, Rule 23 requires minimum filing requirements form part of an application at the time of filing. Manitoba Hydro has not been directed to file an application, yet Order 89/21 contemplates Manitoba Hydro providing minimum filing requirements. This contemplated process appears inconsistent with the PUB Rules. Accordingly, Manitoba Hydro is seeking clarification as to the process that will be followed and whether the PUB intends to direct Manitoba Hydro to file a new application.

Secondly, pursuant to section 56 of the Act, the PUB has the discretion to order costs of any proceeding. In past proceedings as the applicant, Manitoba Hydro has borne significant costs of PUB legal counsel, PUB advisors, miscellaneous PUB expenses (i.e. transcription services) and intervener costs. As Manitoba Hydro is not the applicant in this proceeding, it is seeking confirmation at this time as to the PUB's intentions with respect to the costs of the proceeding it envisions. In doing so, Manitoba Hydro notes, pursuant to section 21 of the Act, that persons who assist the PUB in an advisory capacity can be paid out of the Consolidated Fund. The Corporation appreciates that the issue of costs is most often finally resolved upon the conclusion of a proceeding. However, in light of the unique circumstances as a responding party to the Coalition's Application, the potential magnitude of the costs and the expectation that Manitoba Hydro will be required by PUB Order to pay for all of the costs of this proceeding in which it is not the applicant, Manitoba Hydro is seeking clarification on the treatment of costs at this early juncture.

If the PUB determines that Manitoba Hydro is to bear all PUB and approved intervener costs in this proceeding, then Manitoba Hydro respectfully requests the PUB to provide its forecast to Manitoba Hydro of the anticipated costs to conduct this proceeding (PUB legal counsel, PUB advisors, miscellaneous PUB expenses) and that of intervener costs and consider imposing a maximum amount of intervener funding for this proceeding. Providing the PUB's forecast and cap on funding at this early juncture is necessary to allow Manitoba Hydro to prudently manage and budget what is expected to be a significant, unforeseen regulatory expense for its customers.

Conclusion

For the above reasons, Manitoba Hydro respectfully submits that procedural fairness obligates the PUB to immediately clarify its intended scope of the proceeding envisioned in Order 89/21 and to identify the specific list of issues it intends to assess and make determinations upon.

Doing so now (and prior to the commencement of other steps in this proceeding, such as providing minimum filing requirements and information requests) is essential such that all parties to the proceeding can make a proper and informed initial assessment of the specific issues intended to be addressed and whether or not those issues are properly within the jurisdiction of the PUB.

Manitoba Hydro respectfully submits that until the specific scope and intentions of the PUB for its proceeding have been properly and fairly identified, it is entirely premature and inefficient to request parties to develop and submit minimum filing requirements and unfair to Manitoba Hydro who will then be expected to divert significant resources from other priorities to provide the requested information in a timely manner. As such, Manitoba Hydro requests that the timelines for comments on minimum filing requirements and a review and vary application of Order 89/21 be stayed by the PUB until the PUB rules upon this request and provides the relief requested herein by way of subsequent Board Order.

The above submission is provided without prejudice to Manitoba Hydro's right to file an application to review and vary the Board Order that results from this request and/or Order 89/21 or to make further submissions on the scope of issues or any procedural matter in this proceeding. 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:



BRENT A. CZARNECKI
Barrister & Solicitor