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October 22, 2021

VIA E-MAIL:
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Public Utilities Board
400-330 Portage Avenue
Winnipeg, Manitoba R3C 0C4

Attention: Rachel McMillin, Associate Secretary

Re: Manitoba Hydro's Status Update Proceeding
and Manitoba Hydro's Interim Rate Application
Our Matter No. 0186495 AFH

The Manitoba Industrial Power Users Group ("MIPUG") provides this submission in response to the Public Utilities Board ("Board") correspondence of October 19, 2021, regarding the Manitoba Hydro ("Hydro") Interim Rate Application and the separate Status Update Proceeding. In that correspondence, the Board requests comment on "the various processes and procedural options and timelines available for each of the Interim Rate Application and the Status Update Proceeding".

MIPUG has also reviewed Manitoba Hydro's correspondence of October 15, 2021. In that letter, the Crown Corporation reminded the Board that interim rates "are to be set without a full evidentiary record, are adjudicated on a less onerous legal standard than final rates and should not consider contentious issues". MIPUG agrees with this interpretation of interim rates but notes that Manitoba Hydro's continued reliance on interim rate approvals through the past decade raises a concerning trend for avoidance of comprehensive regulatory reviews. The utility suggests that the interim rate application should be adjudicated on whether "Manitoba Hydro has established a prima facie case for interim rate relief given the deleterious financial impact caused by the drought". In short, Hydro proposes a single-issue, narrowly focused proceeding driven by drought concerns. The October 15th letter indicates that Hydro intends to provide a small degree of complementary information (e.g., 5-year capital plans and 2022/23 load forecasts) but does not expect to address complementary matters of risk related to whether the current drought continues beyond the present horizon, or how financial



performance may rebound if and when water conditions revert to normal (for example, Hydro states it will only provide risk information for 2021/22 and 2022/23).

It remains somewhat unclear at this time how Manitoba Hydro will pass a threshold test indicating that its current rates are too low without inclusion of “contentious issues” or demonstrate that there has been a “deleterious financial impact caused by the drought”. The question remains – deleterious compared to what? The lack of a comprehensive filing by Manitoba Hydro over the past five years creates an inherent absence of an effective reference for the determination of a “deleterious” impact. What standard or accepted financial performance ought to govern the Crown Corporation’s path, from which it has now fallen? Has the basis for that standard or performance criteria been independently reviewed by the Board? These issues, which are meant to be addressed through the Status Update Proceeding, may unavoidably be front and centre in the Interim Rate Application process.

MIPUG is cognizant that interim rates are not a new feature for Hydro. During the period from the NFAT (2012) to 2017, interim rates were used 5 times. However, in each case, the interim rates were effectively complemented by ongoing regulatory reviews (such as to get new rates in place early before the full GRA review was complete) or built very quickly upon data that had just been extensively reviewed and subjected to just and normal annual updates (e.g., the use of IFF from 2015 quickly following a GRA that relied upon the IFF from 2014). As has now become the norm over the last few years, Hydro appears to be creating unprecedented situations driven by the continued avoidance of proper and fulsome regulatory reviews. The present situation appears to be a continuation of this tactic, notwithstanding apparent moves by Government to revert to a more normal regulatory approach (e.g., the demise of Bill 35, the current directive to engage with the PUB about establishing normal GRAs in future, etc.).

This submission addresses the Board’s request for comment, which considering the lack of knowledge of what precisely Hydro will be filing, creates the question of what justification it will use for any rate proposal, and what data it will rely on in support.

MIPUG views

Given the above information, MIPUG makes the following observations relevant to considerations of proper process to be adopted at this time.

The scope of the Interim Rate Application, if the Board accepts Hydro’s proposed approach for basic information sharing and focus, will be exceedingly narrow and expedited. Such a process, will in no way obviate or replace the Coalition process for addressing the fact that there is no present confidence regarding whether Hydro’s current rates are just and reasonable, as is required. For example, if the PUB determines that an immediate rate adjustment is required for drought, of say 1%, this increase will be applied on top of rates



in which there is no confidence of being at the right level and result in new rates in which there similarly would be no such confidence. The premise of the Coalition Application and the findings in Order 89/21 of significant change in Hydro's circumstances by the Board in review of this application remain unchanged.

Having secured a potential rate adjustment for drought, Hydro will have bolstered its revenues and financial position, potentially reducing the urgency in filing a proper GRA application. Urgency and transparency will be further reduced, not enhanced. In short, there is no basis today to "discontinue" the Coalition-led Status Update process. Indeed, the need for the Status Update is further enhanced by the interim nature of a short-term drought-focused process rather than reduced by it.

As further evidence of this concern, Hydro's September 29, 2021 letter indicates (pages 2-3) that Hydro "is undertaking important foundational work that will support a comprehensive General Rate Application" and cites the need to evolve its enterprise planning processes to meet the outcomes of the Manitoba Government process for creation of an Energy Policy Framework. The problem with this approach is that the Energy Policy Framework development process is not targeted for completion and anticipated public release until Fall of 2022. If the development of GRA-related plans and budgets cannot be confirmed and built into a comprehensive GRA filing until after the Crown Corporation determines its response to an as yet uncertain Government Energy Policy in the Fall of 2022 (assuming this process is completed on time and released for public review), Hydro is at best proposing a review of rates into the Spring of 2023. Under a best-case scenario, this extended process potentially results in no determination of final confirmed and approved rates or clear understanding of rate trajectory that customers can rely upon for their own planning until the 2023/24 fiscal period. This risk is wholly and patently unacceptable by any reasonable standard of regulatory transparency. Customers were promised that the expedited review in 2019 was to be followed quickly by a comprehensive GRA review. We are now contemplating a plan from Hydro that may delay that transparency and confidence in the rate setting process of a Crown Corporation by up to half a decade.

In MIPUG's consideration, this continuing uncertainty can be addressed from a process perspective in at least two ways:

1. Manitoba Hydro files its limited-scope drought-focused application in 2021 as outlined in the Board's letter of October 12th. The review of the Interim Application is expedited using a written process. Once a basic evidentiary threshold is reached (potentially requiring a limited round of IRs), the parties submit brief written evidence, followed by an exchange of argument, with a target to complete the process of all submissions in a short period of time (e.g., 60 days or less after filing). Contentious items should be avoided and therefore



not accepted as a rationale for interim rate increases. The case presented by Hydro must be strong on a prima facie basis.

MIPUG begins its participation in this process with scepticism that Hydro can provide sufficient evidence that a one-year drought (so far), which pales in comparison to the 5-year drought scenarios that have been in the utility's planning and presentations to the PUB for the last 30 years, can have possibly thrown Hydro so far off course to make a prima facie case for needing such rate relief. Has Hydro depleted its financial reserves? Is there a risk of default? Will bills go unpaid? Nonetheless, an expedited process would be limited to such prima facie questions on the need for relief, with a thin evidentiary record that must be strongly compelling in order to grant relief.

Immediately following the Interim Rate process, the Board would resume the Coalition process to test the comprehensive justness and reasonableness of Hydro's overall rates, including current rates and any interim increase, as they fit into a reasonable long-term forecast, akin to a GRA.

2. An alternative path allows the Board to take specific notice of the Ministerial Directive provided to Manitoba Hydro on September 17, 2021. That Directive specifically noted that in setting 2021/22 rates, Hydro was to "...take all steps necessary to proceed with submission of an interim rate application to The Public Utilities Board (or other application as determined by The Public Utilities Board)." (underlining added).

The Board, via this directive, is reminded that it has all powers necessary to ensure any application it hears provides the confidence needed to discharge its duties. In issuing this Directive, the Minister has specifically voiced his support and lent the Cabinet's considerable authority to ensuring Manitoba Hydro complies with the decisions of the Board. In this instance, the authority and power of the Board is clear.

This option, which remains available to the Board, may direct Manitoba Hydro to file the Interim Rate Application and MFRs, followed by a brief but fulsome process through which the Board, Intervenors and Manitoba Hydro (including a pre-hearing conference) can determine if the process is likely to lead to success. In this regard, success would include not only the award of a rate change, but also the achievement of justice and transparency, supporting customer confidence in the rates they are required to pay to a Crown Corporation. If the Interim Rate Application shows little prospect of achieving that outcome, the Board can immediately reject this approach, and then direct Hydro to instead file forthwith a full GRA including all necessary long-term



forecasts. The Board can be rest assured that Hydro, under this pre-ordered direction from its Minister, will comply and help the Board achieve a comprehensive review of rates.

MIPUG recommends that the Board make known to Manitoba Hydro that its Interim Order on rates will be conditional on the Corporation's agreement to a procedural Order outlining the content of and process for a fulsome GRA filed by the utility in the Spring of 2022. Since this Interim Rate Application appears to be focused exclusively on the current drought (a time sensitive event) and its deleterious financial impact, an alternate approach to this recommendation could include an option for withdrawal of the approved interim rate increase if Manitoba Hydro does not file a full and comprehensive rate application within a specified timeframe.

In MIPUG's submission, the decision as to which of the above paths is appropriate will depend on variables that are not yet known, including the scale of increase sought by Hydro, the evidentiary base provided by Hydro, and the degree of cooperation Hydro offers.

MIPUG acknowledges that further delays or obstruction on Hydro's part may yet require the Board to revert to options such as those reviewed in MIPUG's letter of June 24, 2021 (e.g., direct that knowledgeable Hydro officials attend, with documents in hand, for the purposes of comprehensive cross-examination, or directing Board selected experts such as Daymark to attend the offices of Hydro to collect, review and opine on the utility's forecasts or to prepare forecasts on Hydro's behalf using the Crown Corporation's base data), if Hydro's competencies do not at this time extend to the ability to prepare a proper financial forecast. However, MIPUG remains cautiously hopeful that Hydro is in fact sufficiently cooperative and competent to avoid such a path.

Through the entirety of pre-hearing exchanges, dating back to the Coalition's first application for review in March 2021, MIPUG has been guided by the basic principle that customers today are hampered in their decision-making by their lack of access to high quality financial and regulatory information, lack of insight into Hydro's financial and rate projections, and the resulting overall lack of confidence in Hydro's leadership to openly and fairly participate in regulatory reviews, as required by applicable legislation as it now exists. MIPUG members are guided by their desire for a comprehensive and open process of review and welcomes Hydro to work collaboratively towards the achievement of this outcome.

At each step of this process, including this latest Interim Rate proposal from Hydro, it appears as though the Crown Corporation has no intention of being forthcoming or collaborative with its customers, or indeed its regulator. This continued uncertainty is an active choice being made by the Corporation, at a time when other less contentious paths are



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available to it. The process for the Interim Rate Application and the Status Update Proceeding must therefore reflect a sustained effort for Hydro to cooperate and ensure that all available options are available to the Board and intervenors, in order to compel responsible behavior in cases where Hydro may otherwise choose to continue actions in defiance of the authority of the Board. It is unfortunate that such oversight tactics are necessary, but MIPUG can only react to the continuation of the unfortunate position in which Hydro has placed its key stakeholders. MIPUG's comments on process and schedule reflect this position.

Yours truly,

THOMPSON DORFMAN SWEATMAN LLP

Per:

Antoine F. Hacault*

AFH/av

cc: Board Counsel
Manitoba Hydro
CAC
Manitoba Keewatinowi Okimakanak Inc.
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*Services provided through A. F. Hacault Law Corporation