FOX LLP

April 21, 2023

Public Utilities Board
400-330 Portage Ave,
Winnipeg, MB R3C 0C4

RE: Regulatory Deferral Account Submissions

1. In Board Order 42/23, the Public Utilities Board (the "**Board**") requested written submissions from each party on the potential write-off of certain Board-approved regulatory deferral accounts against Manitoba Hydro's ("**MH**") 2022/23 net income. The largest of the Board-approved deferral accounts is the $316 million in the Conawapa deferral account. The Board has requested submissions from parties on the following issues:
    - Is it appropriate to write off Board-approved regulatory deferral accounts against 2022/23 net income?
    - Are there adverse consequences (e.g. perceived lack of regulatory certainty) to writing off a Board-approved regulatory deferral account? If so, what is the anticipated impact of those consequences?
    - Should any other deferral accounts be written off completely or partially against 2022/23 net income?
2. The Assembly of Manitoba Chiefs ("**AMC**") makes the following written submissions in response to the Board's request.
3. The AMC's primary concern on this issue is the impact a write-off will have on MH's proposed rates charged to its customers who are facing broader economic hardship from inflation and other factors. Any increase in rates, particularly for First Nations residential customers but for all First Nations customers, resulting from the write-off would be strongly opposed by the AMC and its member First Nations. The AMC's comments will focus primarily on the Conawapa deferral account, as it is the largest of the potential accounts being proposed for an immediate write-off.

Is it appropriate to write-off Board approved regulatory deferral accounts against 2022/23 net income?

4. If there is no immediate or long-term rate impact, particularly for First Nations residential customers, resulting from the immediate write-off of the deferral accounts, the AMC does not oppose the proposed write-off of the regulatory deferral accounts against net income. The AMC does, however, submit that any ruling by the Board approving a write-off should include language that does not hold future ratepayers accountable for the financial impact of the write-off in the form of additional rate increases.

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5. The AMC is concerned about the lack of evidence regarding what impact, if any, may result from the proposed write-off of deferral accounts on residential ratepayers. If the Board concludes that there may be a future negative impact, particularly for First Nations residential ratepayers, if the deferral accounts are written off then the AMC does not support Mr. Bowman's recommendations. Depending on how rates from the deferral accounts are allocated to different customers classes, it is not immediately clear what the long-term impact of the write-off will be. The AMC recommends that MH provided a long-term and detailed impact analysis on the write-off before a decision is made.

Are there adverse consequences to the proposed write-off?

6. In response to interrogatories regarding the immediate write-off of deferral accounts, MH responded that it would "not improve or change the achievement of the debt ratio target dates" that are included in Bill 36 and are incorporated in its General Rate Application (GRA). The AMC interprets this response as an immediate write-off of the Conawapa deferral account will have no impact on rates being proposed by MH in the General Rate Application (GRA), but will instead reduce its net income in the 2022/23 financial year. MH provided the impact of writing-off the Conawapa deferral account and highlighted what its impact would be on net income, not rates. The AMC is concerned that there is no evidence of the future rate impact, if any, Mr. Bowman's recommendation will have for First Nations ratepayers.

Figure 1 Impact to Net Income – Write off Conawapa Deferral

Impact to Net Income **Write-Off of Conawapa Deferral** ***(in Millions)***	**2022/23**	**2023/24**	**2024/25**	**2025/26**	**2026/27**	**2027/28**	**2028/29**	**2029/30**	**2030/31**	**2031/32**
Net Income before write-off of Conawapa deferral	$ 751	$ 469	$ 295	$ 149	$ 166	$ 97	$ 92	$ 111	$ 105	$ 169
Write-off Conwapa deferral	$ (316)									
Remove amortization of Conwapa deferral		13	13	13	13	13	13	13	13	13
Net Income if Conawapa deferral is written off	**$ 434**	**$ 482**	**$ 307**	**$ 162**	**$ 178**	**$ 109**	**$ 105**	**$ 123**	**$ 117**	**$ 182**

	2032/33	**2033/34**	**2034/35**	**2035/36**	**2036/37**	**2037/38**	**2038/39**	**2039/40**	**2040/41**	**2041/42**
Net Income before write-off of Conawapa deferral	$ 190	$ 219	$ 277	$ 250	$ 282	$ 309	$ 358	$ 439	$ 507	$ 569
Write-off Conwapa deferral										
Remove amortization of Conwapa deferral	13	13	13	13	13	13	13	13	13	13
Net Income if Conawapa deferral is written off	**$ 202**	**$ 231**	**$ 289**	**$ 262**	**$ 295**	**$ 322**	**$ 371**	**$ 452**	**$ 520**	**$ 582**

7. Net income for 2022/23 is expected to be more than $700 million and is hundreds of millions of dollars greater than MH's previous forecast due to high export prices and other conditions. Net income is expected to decline over the next decade as water levels return to normal levels and current export contracts expire and are replaced with lower value spot market transactions. The higher than forecast net income provides an opportunity to remove costs in deferral accounts that will be paid for by future ratepayers by utilizing this year's high net income amounts.

8. The AMC is concerned that writing off more than $300 million in deferral account balances this year lessens MH's ability to pay down debt by an equivalent amount. While MH has stated that it does "not change the achievement of the debt ratio target dates", it must alter the timeline in how those targets are met. Conceivably, a $300 million reduction in net income this year increases the amount of debt that MH would have on its books in future years when it is likely to incur higher borrowing costs on debt that must be refinanced.

9. Given the uncertainty regarding net income over the next decade (i.e. the potential that net income is lower than currently forecast), if MH requires higher-than forecasted rate increases

to achieve its financial targets, and at least some portions of this rate increase can be tied to the impact of lower debt payments today due to the write-off of regulatory deferral accounts, the AMC submits that these costs should be solely borne by MH without resort to a rate increase. Any ruling by the Board related to the write-off should include language that does not hold future ratepayers accountable for the financial impact of the write-off in the form of additional rate increases.

10. The AMC also recommends that MH provide a detailed accounting of its debt repayment schedule with and without the write-off of the deferral account. If the write-off results in higher total debt amounts in years when net income is lower and borrowing costs are higher, MH should make this clear to the Board and interested parties.

11. One negative regulatory consequence of the write-off is that it could allow for the possibility to arbitrarily push certain costs to future years when net income is below forecast. While the current proposal is utilizing the current higher-than-anticipated net income to write-off deferral accounts, there is no reason to suggest the counter could not occur in years when net income is lower-than-forecast. For example, if net income was well below MH's forecast, MH may request that the clearing of certain deferral accounts be deferred to future years. This, in essence, pushes costs from current to future ratepayers and may not fully hold MH to account for the reasons why net income was below forecasts. If the Board were to pursue a write-off of deferral accounts, it may want to consider language in its decision to ensure that this is asymmetric – i.e. it is an option when net income is significantly higher than forecasted amounts and allows for the clearing of deferral accounts, but cannot be used to defer costs in years when net income is below forecasted amounts.

Sincerely,

FOX LLP

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