

Order No. 126/18

**AN APPLICATION BY MANITOBA HYDRO
TO REVIEW AND VARY ORDER 59/18 TIME-OF-USE RATE DIRECTIVE 29 AND
REVIEW AND VARY ORDER 59/18 TECHNICAL CONFERENCE ON RETAINED
EARNINGS DIRECTIVE 9 PURSUANT TO THE PUBLIC UTILITIES BOARD'S OWN
INITIATIVE**

September 18, 2018 (Amended)

BEFORE: Robert Gabor, Q.C., Chair
Hugh Grant, PhD., Member
Shawn McCutcheon, Member
Sharon McKay, BGS, Member
Larry Ring, Q.C., Member

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1.0 Executive Summary

By this Order, the Manitoba Public Utilities Board (“Board”) grants Manitoba Hydro’s Application to vary the time-of-use rate design Directive 29 of Order 59/18. The Board is in agreement with Manitoba Hydro’s process for the development of a time-of-use rate design proposal in consultation with General Service Large customers. The process for adjudication of that rate design proposal will be determined by the Board once there is more information available as to the status of the rate design process, including consultation measures, as well as the anticipated timing for the filing of the next Manitoba Hydro General Rate Application (“GRA”). Manitoba Hydro is further directed to file at the next GRA information as to the status of the development of a time-of-use rate design proposal, including consultation measures undertaken to that point in time, and anticipated and/or scheduled next process steps.

Also by this Order, the Board, on its own initiative pursuant to subsection 44(3) of *The Public Utilities Board Act* (“Act”), rescinds Directive 9 of Order 59/18, which required Manitoba Hydro to participate in a technical conference hosted by Board Staff or an external consultant retained by the Board for the consideration of the establishment of a minimum retained earnings or similar test to provide guidance in the setting of consumer rates for use in rule-based regulation.

This amended Order corrects a typographical error on page 10 of the original order. The original order said, “By this order Directive 29 of 59/18 is set aside.” The amended language says, “By this order, Directive 9 of Order 59/18 is set aside.”

2.0 Procedural History

On May 1, 2018, following a written and oral hearing process that began on May 5, 2017 with Manitoba Hydro’s filing of its Letter of Application, the Board issued its Order 59/18 in Manitoba Hydro’s 2017/18 & 2018/19 General Rate Application (“GRA”). On

May 29, 2018, the Board issued Order 68/18, which approved rate schedules as filed by Manitoba Hydro in its compliance filing reflecting the Board's decisions in Order 59/18.

On May 30, 2018, Manitoba Hydro filed its Application to review and vary certain aspects of Orders 59/18 and 68/18 ("R&V Application"), including the Board's Directives that Manitoba Hydro file with the next GRA a time-of-use rate design proposal with the results of customer consultation undertaken with General Service Large customers ("Directive 29") and that Manitoba Hydro participate in a technical conference for the consideration of the establishment of a minimum retained earnings or similar test to provide guidance in the setting of consumer rates for use in rule-based regulation ("Directive 9").

On July 13, 2018, the Board issued Order 90/18, which granted in part Manitoba Hydro's R&V Application. With respect to Directive 9, the Board denied the R&V Application and invited parties to provide comments to the Board on the scope and process for the technical conference. With respect to Directive 29 on time-of-use rates, the Board ordered a further process for consideration of Manitoba Hydro's R&V Application. The Board directed Manitoba Hydro to provide within two weeks of receipt of Order 90/18 its comments as to when Directive 29 could be completed for filing with the next GRA.

By letter dated July 26, 2018, Manitoba Hydro provided its further written comments, including its position that the timing of the next electric GRA is dependent on the findings of the technical conference to be held further to Directive 9 of Order 59/18 and that there should be a written hearing process, separate from any GRA, for review of a time-of-use rate proposal. On August 15, 2018 and August 27, 2018 respectively, the Manitoba Industrial Power Users Group and the Consumers Coalition filed their written responding submissions.

By letters dated August 15, 2018, Manitoba Hydro, the Consumers Coalition, Green Action Centre, and the Manitoba Industrial Power Users Group provided comments on

the scope and process for the technical conference referenced in Directive 9 of Order 59/18.

3.0 Time-of-Use Rate Design Proposal

Directive 29 of Order 59/18 directed as follows:

IT IS THEREFORE ORDERED THAT:

29. Manitoba Hydro file with the next GRA a time-of-use rate design proposal including the results of consultation undertaken with General Service Large customers prior to filing the proposal with the Board.

Manitoba Hydro seeks to review and vary this Directive as it says that it is unable to complete all tasks required in advance of the next GRA within the timeline prescribed by the Board. Manitoba Hydro submitted that the work directed cannot be completed by September 1 or December 1, 2018 – the dates provided by the Board as a filing schedule for the next GRA in an effort to assist Manitoba Hydro in establishing a regular regulatory cycle. Manitoba Hydro's R&V Application was therefore premised on a matter of timing, rather than the Board's conclusion that time-of-use rates should be implemented for General Service Large customers.

In Order 90/18, the Board found that Manitoba Hydro had not provided enough information for the Board to make a determination with respect to this aspect of its R&V Application. The Board therefore established a further written process and directed Manitoba Hydro to file its position as to when Directive 29 on time-of-use rates can be completed for filing with the next GRA.

Party Submissions

Manitoba Hydro's submissions imply that it is unable to state whether Directive 29 on time-of-use rates can be completed for filing with the next GRA as, in its view, the timing of the filing of the next GRA is dependent on the findings of the technical conference on retained earnings ordered in Directive 9. Manitoba Hydro further submits that there must be sufficient time for it to engage its large industrial customers in order for there to be meaningful results in developing a time-of-use rate design proposal. As such, Manitoba Hydro submits that the implementation of a rate design change such as time-of-use rates be undertaken in a separate written hearing process, held independently from an electric GRA.

Manitoba Hydro advises that it has commenced its internal process to analyze and further study the key inputs and considerations underlying a time-of-use rate proposal. It expects this work to be done by the end of September of 2018. Manitoba Hydro proposes that the process for customer consultation on and filing of a time-of-use rate design be as follows:

- Early October of 2018 – Initial “kick-off” meeting with all participating large industrial customers hosted by Manitoba Hydro, with presentation of rate design options
- October of 2018 through end of January of 2019 – Manitoba Hydro meets with individual industrial customers to provide feedback on Manitoba Hydro's rate design options
- End of January of 2019 – Final public meeting held for all participants to review the consultation findings and explore next steps
- Approximately late February of 2019 – Presentation by Manitoba Hydro of the recommended time-of-use rate design proposal to the Manitoba Hydro-Electric Board (“MHEB”) for approval. The timing of this is dependent on the scheduling of MHEB meetings.

- Post-MHEB approval – Manitoba Hydro will file its rate design proposal with the Board.

Manitoba Hydro states that it will keep the Board apprised of any significant changes in the anticipated timelines.

The Manitoba Industrial Power Users Group which represents a segment of general Service Large electricity customers advises that Manitoba Hydro's proposed timelines appear appropriate. This Intervener recommends that the time-of-use rate design process not be rushed just to meet tighter deadlines. While the Manitoba Industrial Power Users Group finds Manitoba Hydro's proposed process to be reasonable, it suggests that Manitoba Hydro engage earlier with customers at the stage when it is reviewing key inputs and considerations underlying the rate design.

The Consumers Coalition does not agree that a written process should be used to review and adjudicate Manitoba Hydro's time-of-use rate design proposal. This Intervener states that time-of-use rates raises interrelated issues of rates, loads, costs (costs to serve), and revenue requirements. The Consumers Coalition submits that changing rate structures affects customers beyond the participating customer classes, the total revenue requirement to be recovered from rates, and the allocation of costs to all customer classes. Given what the Consumers Coalition describes as the technical complexity of these issues, it submits that a written process should not be used and that consideration should be given to broadening the scope of consultation on the rate design options.

Board Findings

The Board finds that Manitoba Hydro has raised new facts about its internal capabilities and timelines, including with respect to the matters involved with internal review and study and the appropriate timeframe for consultation. The Manitoba Industrial Power

Users Group supports Manitoba Hydro's view of the time required in order for there to be meaningful consultation.

The Board varies Directive 29 to remove the requirement that a time-of-use rate design proposal be filed with the next GRA. Manitoba Hydro is directed to develop a time-of-use rate design proposal and to consult with General Service Large customers in the development of the rate design. Manitoba Hydro is further directed to file with the Board the schedule for the consultation process within two weeks of the initial meeting with customers anticipated to be held in early October 2018. In addition, Manitoba Hydro is directed to file with the next GRA information as to the status of the development of a time-of-use rate design proposal, including consultation measures undertaken to that point in time, and anticipated and/or scheduled next process steps.

The Board finds that there is uncertainty as to the timelines for the process of developing the time-of-use rate design proposal, including approval of Manitoba Hydro's recommended proposal by the MHEB, as well as the anticipated timeframe for the filing of the GRA. The Board is therefore not prepared at this time to determine the process that will be used for future adjudication of the time-of-use rate design. The process for adjudication of the time-of-use rate design proposal will be determined by the Board once there is more information available as to the status of the rate design process, including consultation measures, as well as the anticipated timing for the filing of the next GRA.

4.0 Technical Conference on Minimum Retained Earnings

Directive 9 of Order 59/18 directed as follows:

IT IS THEREFORE ORDERED THAT:

9. Manitoba Hydro participate in a technical conference hosted by Board Staff or an external consultant appointed by the Board for the consideration of the establishment of a minimum retained earnings or similar test to provide guidance in the setting of consumer rates for use in rule-based regulation.

In Order 90/18, the Board denied this aspect of Manitoba Hydro's R&V Application related to Order 59/18. The Board found that Manitoba Hydro had not raised a substantial doubt as to the correctness of the Board's decision or new facts that meet the threshold to review and vary. Rather, Manitoba Hydro seemed to be misinterpreting Order 59/18 as requiring that a minimum retained earnings test be established and that all other financial metrics be abandoned. The Board's intent in ordering the technical conference was to gain a better understanding of rule-based regulation in Manitoba Hydro's particular operational context and circumstances through providing a forum for discussion and exploration of these issues.

In Manitoba Hydro's July 26, 2018 letter providing its submissions on the time-of-use rate design matter, Manitoba Hydro stated that it "cannot develop a meaningful financial plan and associated rates to underpin a GRA filing absent an understanding of the financial targets that will be relied upon by the PUB. As such, the timing of Manitoba Hydro's next electric GRA is dependent upon the findings of the technical conference."

By its letter dated August 9, 2018, the Board clarified that "[t]he Board does not expect that the technical conference will set financial targets that it will rely upon in the next or future GRAs" and that, given the purpose and intent of the technical conference, the Board did not view Manitoba Hydro as being prevented from "filing a GRA based on its financial plan that it views as just and reasonable for the financial health of the Utility, as

it has done in the past.” The Board invited comments from parties on the scope and timing of the technical conference.

In its comments to the Board, Manitoba Hydro acknowledges that it can submit a GRA “notwithstanding any clear guidance from the PUB on reserve maintenance or other financial metrics that the PUB will consider in rate-setting” but argues that it would be unavailing and inefficient to do so. Manitoba Hydro’s position is that it placed an extensive amount of evidence on the record at the GRA and financial risk management was the principal focus of the GRA – contrary, Manitoba Hydro says, to the findings of the Board that the management of potential risks and the level of financial strength necessary to address such risks were not well canvassed in the hearing.

Manitoba Hydro proposes a process for the technical conference that is similar to an adversarial hearing process, in which all participants would be required to establish positions, parties would present final written submissions, and the Board would then assess the evidence and submissions and provide its findings in advance of Manitoba Hydro’s next GRA.

The Board also received and reviewed detailed comments from the Consumers Coalition, Green Action Centre, and the Manitoba Industrial Power Users Group as to process and scope for the technical conference.

Board Findings

By this Order, Directive 9 of Order 59/18 is set aside.

Pursuant to subsection 44(3) of the Act, the Board may review, rescind, alter, or vary any decision or order made by it. Rule 36(1) of the Board’s Rules of Practice and Procedure provides that the Board may do so on its own initiative.

As explained in Orders 59/18 and 90/18, the intent of the Board in directing a technical conference was to establish a collaborative forum for dialogue and education for

stakeholders on rule-based regulation and the use of such a regulatory approach in the context of Manitoba Hydro's operations and the financial reserves required for Manitoba Hydro under various circumstances. The submissions provided to the Board, both in the course of the hearing of the R&V Application and further in the provision of comments on the scope and process for the technical conference, demonstrate that there has been a change in circumstances. In particular, the technical conference has become an adversarial process, which the Board finds would not be conducive to accomplishing the Board's intended goals of dialogue and education. Further, based on the process proposals put forward by the parties, the Board is concerned about the potential cost of a process that has evolved in complexity beyond what was intended by the Board. The Board finds that there would be a further unanticipated cost, namely that the filing of the next GRA would be delayed until after the technical conference is concluded. This would be entirely contrary to the Board's aim in assisting Manitoba Hydro in achieving a regular regulatory cycle.

As it is apparent that the technical conference will not achieve the Board's intended goals, the Board finds that the reasons set out in Order 59/18 in support of holding the technical conference are no longer applicable. The Board notes that, while Directive 9 is set aside, parties remain free to raise matters of rule-based regulation in the course of scoping any future GRA proceeding.

5.0 IT IS THEREFORE ORDERED THAT:

1. Manitoba Hydro's Application to review and vary the time-of-use rate design Directive 29 of Order 59/18 BE AND HEREBY IS GRANTED. Directive 29 of Order 59/18 is varied to remove the requirement that a time-of-use rate design proposal be filed with the next GRA;
2. Manitoba Hydro develop a time-of-use rate design proposal and consult with General Service Large in the development of the time-of-use rate design;
3. Manitoba Hydro file with the Board, within two weeks of the initial meeting with customers anticipated to be held in early October, the schedule for the consultation process for the development of a time-of-use rate design proposal.
4. Manitoba Hydro file with the next GRA information as to the status of the development of a time-of-use rate design proposal, including consultation measures undertaken to that point in time, and anticipated and/or scheduled next process steps.
5. Directive 9 of Order 59/18 regarding a technical conference on minimum retained earnings BE AND HEREBY IS SET ASIDE.

Board decisions may be appealed in accordance with the provisions of Section 58 of *The Public Utilities Board Act*, or reviewed in accordance with Section 36 of the Board's Rules of Practice and Procedure. The Board's Rules may be viewed on the Board's website at www.pub.gov.mb.ca.

THE PUBLIC UTILITIES BOARD


"Robert Gabor, Q.C."

Chair

"Kurt Simonsen"

Acting Secretary

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Acting Secretary