

**Order No. 166/19**

**AN ORDER IN RESPECT OF THE REVIEW OF CONFIDENTIAL INFORMATION IN  
EFFICIENCY MANITOBA'S 2020/23 EFFICIENCY SUBMISSION**

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**November 12, 2019**

**BEFORE: Robert Gabor, Q.C., Board Chair  
Hugh Grant, PhD, Member  
Irene Hamilton, Q.C., Member**

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## 1.0 Executive Summary

On October 25, 2019, Efficiency Manitoba filed its first three-year efficiency plan, the 2020/21 to 2022/23 Efficiency Plan submission (the “Plan”), with the Public Utilities Board (the “Board”), commencing the process of the Board’s public review of the Plan.

Proceedings before the Board are public. However, pursuant to Rule 13(2) of the Board’s Rules of Practice and Procedure, the Board may receive information in confidence on any terms it considers appropriate in the public interest. In this Order, the Board approves a process for the review of commercially-sensitive information (“CSI”) in the Plan.

The Board has retained an Independent Expert Consultant, Daymark Energy Advisers (“IEC”). The IEC has signed a non-disclosure agreement with Efficiency Manitoba.

Efficiency Manitoba has agreed to provide to the IEC specific CSI (as detailed and identified in this Order) that was previously accepted by the Board in confidence in prior Board proceedings. The Board will receive this specific CSI in confidence pursuant to Rule 13 and directs that this CSI will be reviewed only by the IEC and the Board, its Staff, Advisors, and legal counsel.

Efficiency Manitoba may seek to file other information as confidential pursuant to Rule 13. The Board has not determined whether it will accept other information as confidential, and if it does, whether it will impose terms or conditions on access to this information.

The IEC will prepare and file a public report that provides its assessments and supporting analysis, and will be available for cross-examination by all parties in the Plan proceeding. In addition, all parties, including the Board, will have the opportunity to pose Information Requests to the IEC. However, responses that reveal CSI will be provided only to Efficiency Manitoba, and the Board, its Staff, Advisors, and legal counsel and, if applicable, any party granted access to that information by the Board under Rule 13.

## 2.0 Procedural History

On October 25, 2019, Efficiency Manitoba filed its 2020/21 to 2022/23 Efficiency Plan submission with the Board.

The Board received written applications for intervener status in the review of the Plan. By Procedural Order No. 162/19, the Board approved the Applications to Intervene by Assembly of Manitoba Chiefs, Consumers' Coalition, Manitoba Industrial Power Users Group and Manitoba Keewatinowi Okimakanak.

In its submissions to the Board regarding the Applications to Intervene, Efficiency Manitoba stated that it was in agreement with a process whereby the IEC retained by the Board would receive and review all CSI filed by Efficiency Manitoba pursuant to Rule 13. In addition, Efficiency Manitoba agreed to provide specific CSI to the Board and the IEC.

The Board stated in Procedural Order No. 162/19 that it had retained Daymark as the IEC to assist the Board and parties in the review of the Plan.

### 3.0 Board Findings

#### 3.1 The Board's Rules for Receipt of Confidential Filings

Proceedings before the Board are public. Pursuant to the Board's Rules of Practice and Procedure, documents filed with the Board by a party to a proceeding are placed on the public record. However, under Rule 13(2), the Board may receive information in confidence on any terms it considers appropriate in the public interest. This exception to the general rule of public disclosure arises where the test under Rule 13(2) is met:

(a) If the Board is of the opinion that disclosure of the information could reasonably be expected

i. to result in undue financial loss or gain to a person directly or indirectly affected by the proceeding; or

ii. to harm significantly that person's competitive position

or (b) if

i. the information is personal, financial, commercial, scientific or technical in nature; or

ii. the information has been consistently treated as confidential by a person directly affected by the proceeding; and

iii. the Board considers that the person's interest in confidentiality outweighs the public interest in the disclosure of the information.

On hearing a motion under Rule 13, the Board may order the information in question to be placed on the public record, order the document not to be placed on the public record with such conditions on access imposed as the Board considers appropriate, order an abridged version of the document to be placed on the public record, or make any other order the Board finds to be in the public interest.

### 3.2 Appointment of the IEC

The Board retained Daymark as the IEC to assist the Board and the parties in the review of the Plan. In addition to assessing the documentation publicly filed with the Board, the IEC signed a non-disclosure agreement with Efficiency Manitoba.

The Scope of the Work for the IEC is available on the Board's website. The IEC will file a public report that provides its assessments and supporting analysis, and will be available for cross-examination in the Plan proceeding by all parties. All parties, including the Board, will have the opportunity to pose Information Requests to the Independent Expert Consultant. However, responses that reveal CSI will be provided only to Efficiency Manitoba, the Board, and, if applicable, any party granted access to that information by the Board under Rule 13.

### 3.3 Review of Previously Accepted CSI Provided by Efficiency Manitoba

Efficiency Manitoba has agreed to provide the Board and the IEC with specific CSI, which was provided to Efficiency Manitoba by Manitoba Hydro and Centra Gas to facilitate its preparation of the Plan and includes data used in the determination of the cost-effectiveness of demand-side management initiatives under the Efficiency Manitoba Regulation. This information was accepted by the Board as confidential in prior Manitoba Hydro and Centra Gas General Rate Application proceedings (the "Previously Accepted CSI"). The Previously Accepted CSI consists of:

- a) electric marginal cost values (similar to the table included on page 3 of the redacted IR (PUB/MH II-57R) filed during Manitoba Hydro's 2017/18 & 2018/19 General Rate Application), including:
  - i. the marginal value of electricity when levelized over shorter periods of time than 30 years, where programs have a shorter than 30 year value/life
  - ii. the seasonal marginal values
  - iii. on- and off-peak marginal value;

- b) the gas marginal cost values (in a similar table as PUB/MH II-57R), including as comprised of the natural gas price forecast and the upstream transportation cost;
- c) the gas volumes based on the 2018 Natural Gas Volume Forecast as well as the math used to calculate the .75 natural gas target set forth in the legislation; and
- d) gas savings as a percentage of annual consumption, including class-by-class saving percentages.

The Board finds that it is in the public interest to receive the Previously Accepted CSI in confidence pursuant to Rule 13, and directs that only the IEC and the Board, its Staff, Advisors, and legal counsel will have access to the Previously Accepted CSI.

The Board previously found that such information should be received in confidence in prior proceedings, and finds that there is no basis in the current proceeding to justify deviating from that conclusion. The Board maintains its opinion that disclosure of this information could reasonably be expected to result in undue financial loss or gain to Manitoba Hydro or Centra Gas and its customers directly or indirectly affected by the proceeding, or would harm significantly their competitive positions. In addition, as in the prior proceedings, the IEC will review this CSI and prepare a public report that provides their assessments and supporting analysis. All parties, including the Board, will have the opportunity to pose Information Requests to the IEC, and the IEC will also be available for cross-examination by all parties during the hearing.

As such, the Board finds that receiving this information in confidence, while permitting the IEC to review this information, strikes a reasonable balance between protecting the CSI and permitting the CSI to be adequately tested in the hearing process.

### **3.4 Review of Other Information Filed by Efficiency Manitoba Pursuant to Rule 13**

With respect to other information that Efficiency Manitoba may file with the Board in confidence, the Board has not determined whether such information will be accepted by the Board as confidential and if it is deemed confidential, whether any terms or conditions will be imposed on its access.



#### 4.0 IT IS THEREFORE ORDERED THAT:

1. The Board will receive in confidence the following information filed in the proceeding, which information shall not be placed on the public record, but which shall be provided in full to the Independent Expert Consultant, the Board and the Board's Staff, Advisors, and legal counsel:
  - a) electric marginal cost values (similar to the table included on page 3 of the redacted IR (PUB/MH II-57R) filed during Manitoba Hydro's 2017/18 & 2018/19 General Rate Application), including:
    - i. the marginal value of electricity when levelized over shorter periods of time than 30 years, where programs have a shorter than 30 year value/life
    - ii. the seasonal marginal values
    - iii. on- and off-peak marginal value;
  - b) the gas marginal cost values (in a similar table as PUB/MH II-57R), including as comprised of the natural gas price forecast and the upstream transportation cost;
  - c) the gas volumes based on the 2018 Natural Gas Volume Forecast as well as the math used to calculate the .75 natural gas target set forth in the legislation; and
  - d) gas savings as a percentage of annual consumption, including class-by-class saving percentages.

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.pubmanitoba.ca](http://www.pubmanitoba.ca)

THE PUBLIC UTILITIES BOARD

"Robert Gabor, Q.C."

Chair

"Darren Christle, PhD, CCLP, P.Log., MCIT"

Secretary

Certified a true copy of Order No. 166/19  
issued by The Public Utilities Board



Secretary