

Order No. 128/21

**ORDER IN RESPECT OF THE PROCEDURE FOR MANITOBA HYDRO'S 2021/22
INTERIM RATE APPLICATION**

November 22, 2021

BEFORE: Robert Gabor, Q.C., Chair
Marilyn Kapitany, B.Sc., (Hon), M.Sc., Vice Chair
Hugh Grant, Ph.D., Member
Shawn McCutcheon, Member
Larry Ring, Q.C., Member
Irene A. Hamilton, Q.C., Member

Table of Contents

1.0	Executive Summary	3
2.0	Procedural History	3
3.0	Motion on Confidentiality by Manitoba Hydro	5
4.0	Intervenors	7
5.0	Process Options	9
6.0	Board Findings	13
7.0	IT IS THEREFORE ORDERED THAT:	17

1.0 Executive Summary

In this Order the Public Utilities Board (“Board”) establishes the procedures for the public hearing in respect of Manitoba Hydro’s 2021/22 Interim Rate Application, filed on November 15, 2021.

2.0 Procedural History

On May 10, 2021, in Order 53/21 and in response to a Motion before the Board, the Board directed additional procedures to assist the Board in examining:

- a. whether current Manitoba Hydro rates were just and reasonable and costs were fairly allocated among customer classes;
- b. unfinished business from Order 69/19 in terms of the Major Capital Deferral Account that was established to protect future Manitoba Hydro ratepayers from rate shock; and
- c. a process to address other unfinished directives in Orders 59/18 and 69/19.

In Order 53/21, the Board also directed Manitoba Hydro to provide financial, operational, capital expenditure, hydrology, and cost of service information (then currently in existence and in use in the operations and management of Manitoba Hydro).

On August 17, 2021 the Board issued Order 89/21 directing a Status Update Proceeding and for Manitoba Hydro to provide evidence to assist the PUB in its determination of whether Manitoba Hydro’s rates were just and reasonable and its costs were fairly allocated among the various customer classes.

On September 9, 2021, the Board proposed certain Minimum Filing Requirements for the Status Update Proceeding for comment by Manitoba Hydro.

On September 22, 2021, the Minister of Crown Services issued a Ministerial Directive to the Manitoba Hydro-Electric Board of Directors providing specific instruction for Manitoba Hydro to take all steps necessary to proceed with an Interim Rate Application to this Board

for the 2021/22 fiscal year, as well as directing Manitoba Hydro to engage with the Board on the timing and parameters of Manitoba Hydro's next multi-year General Rate Application.

On September 29, 2021, Manitoba Hydro advised the Board that it intended to file an interim rate application to address the financial impacts due to the current drought conditions to ensure the financial health of Manitoba Hydro. On that date the Board was advised that Manitoba Hydro would be including in its Interim Rate Application responses to the Minimum Filing Requirements that were issued as part of the Status Update Proceeding.

On October 12, 2021 recognizing Manitoba Hydro would be seeking urgent approval from its Board of Directors to file a 2021/22 interim rate increase application with the Board, this Board suspended the Status Update Proceeding.

The Board's October 12, 2021 Decision Letter, with the noted support of Manitoba Hydro, approved Intervener status in the Interim Rate Application for the Assembly of Manitoba Chiefs, the Consumers Coalition, Manitoba Industrial Power Users Group, and Manitoba Keewatinowi Okimakanak.

Additionally as indicated in the Board's October 12, 2021 Decision Letter, the longstanding use of Minimum Filing Requirements is to assist in the efficient and focused filing of complete rate increase applications by Manitoba Hydro and reduce subsequent written information requests. Interveners were invited to submit, for Board approval, their proposed Minimum Filing Requirements for Manitoba Hydro to include in its Interim Rate Application.

On October 19, 2021 and after hearing from Interveners, the Board approved the list of Minimum Filing Requirements that Manitoba Hydro was to include in its Interim Rate Application. In its Decision Letter of October 19, 2021 the Board also invited Manitoba Hydro and approved Interveners to submit process options for the public review and the Board's adjudication of Manitoba Hydro's Interim Rate Application.

On October 22, 2021 the Board received submissions from Manitoba Hydro, the Consumers Coalition, and Manitoba Industrial Power Users Group as to various process options that could be used related to Manitoba Hydro's matters before the Board, including the expected Interim Rate Application.

On November 15, 2021 Manitoba Hydro's 2021/22 Interim Rate Application was filed with the Board and Interveners seeking an Order of the Board for the following:

- Approval, on an interim basis, of rate schedules incorporating an overall increase in General Consumers Revenue of 5.0% effective January 1, 2022. The requested rate increase would generate \$27 million in the remaining three months of fiscal 2021/22 and \$88.2 million on an annualized basis. To generate that additional revenue Manitoba Hydro proposes differentiated rate increases by customer class; and
- Approval to begin on January 1, 2022 recognizing the revenues from the Major Capital Deferral Account, established by the Board in Order 69/19, with the balance to be amortized over 24 months.

3.0 Motion on Confidentiality by Manitoba Hydro

Pursuant to Rule 13(2) of The Public Utilities Board's Rules of Practice and Procedure, Manitoba Hydro's November 15, 2021 Interim Rate Application also seeks an Order of the Board confirming that it will receive one Appendix and select portions of one Minimum Filing Request response in confidence and not place that information on the public record.

The information which Manitoba Hydro seeks to be received and held in confidence by the Board is Manitoba Hydro's commercially sensitive and confidential information. Manitoba Hydro submits that it is in the public interest for the Board to receive this information in confidence as the disclosure of such information could reasonably be expected to significantly harm Manitoba Hydro's competitive position. Additionally, this

information is financial and commercial in nature and has been consistently treated as confidential by Manitoba Hydro.

Manitoba Hydro submits that its interest in maintaining confidentiality over Appendix 2 and PUB MFR 11 of its Interim Rate Application outweighs the public interest in the disclosure of that information. As such, Manitoba Hydro requests the Board accept this information in confidence and order no further access under any terms in the event such access is requested by any other party.

- Appendix 2 includes information relating to Manitoba Hydro's fixed price power purchase transactions and fixed price natural gas purchases for energy generation. Manitoba Hydro indicates these commercial arrangements were undertaken to "hedge" against the risk of increasing energy market prices. Appendix 2 also includes energy market price scenario analysis which Manitoba Hydro maintains the disclosure of which could detrimentally impact Manitoba Hydro's competitive position in future transactions with commercial counterparties.
- Manitoba Hydro's response to Minimum Filing Requirement #11 contains incremental revenues and unit revenues for Keeyask Generating Station by year under three sets of assumptions. Manitoba Hydro submits that knowledge of unit revenues (actual or forecast) provides counterparties with insight into how Manitoba Hydro prices its products. Further, Manitoba Hydro maintains disclosure of revenues could lead counterparties and/or their regulators to second guess the prudence of their contracts. According to Manitoba Hydro, in the past, disclosure has caused commercial counterparties to demand to renegotiate terms sheets or withdraw from negotiations entirely and therefore disclosure of such information will negatively impact the Corporation's competitive position.

4.0 Interveners

The Board's October 12, 2021 Decision Letter, with the noted support of Manitoba Hydro, approved Intervener status in the Interim Rate Application for:

Assembly of Manitoba Chiefs ("AMC")

The AMC is the political and technical coordinating organization for 62 of the 63 First Nations in Manitoba. AMC represents a diversity of Anishinaabe (Ojibway), Nehetho/Ininew (Cree), Anishinew (Ojibwe-Cree), Denesuline (Dene), and Dakota Oyate (Dakota) people. This includes 151,000 First Nations citizens in the province, accounting for approximately 12% of the provincial population.

All of the AMC's member First Nations and their citizens and institutions associated with, and operated by, each First Nation (including schools, health centres and corporations), and the AMC Secretariat, are Manitoba Hydro ratepayers and rely on Manitoba Hydro for their electrical power.

Consumers Coalition

The Consumers Coalition consists of three independent organizations that together represent the interests of a broad cross-section of Manitoba consumers. Consumers Coalition is comprised of Harvest Manitoba, the Consumers Association of Canada (Manitoba) Inc. and the Aboriginal Council of Winnipeg.

- The Aboriginal Council of Winnipeg was founded in 1994 as an Indigenous political organization representing First Nations, Inuit and Métis living in Winnipeg. It is the only organization of its kind in Canada – focusing solely on the urban Indigenous community. It currently has approximately 7000 members.
- Consumers Association of Canada (Manitoba) Inc. is a volunteer, non-profit, independent organization working to inform and empower consumers, and to represent the consumer interest in Manitoba. Formed in 1947, it is a branch of the

national Consumers' Association of Canada but is financially separate and separately incorporated.

- Founded in 1984, Harvest Manitoba is a non-profit, community-based organization committed to providing food to people who struggle to feed themselves and their families. Harvest Manitoba provides emergency food assistance to almost 64,000 people a month across Manitoba.

Manitoba Industrial Power Users Group (“MIPUG”)

MIPUG is an association of large energy consumers working together on issues of common concern related to electricity supply and rates in Manitoba. The association's key concerns relate to reliability of supply and delivery, electricity costs and measures for ensuring rates reflect the costs for the efficient provision of electricity, and are fair and reasonable, stable and predictable.

MIPUG member companies are substantial users of electric power in Manitoba Hydro's General Service Large rate classes (including all three voltage subclasses). These customer rate classes collectively purchase approximately 8,000 GWh of power annually (and account for about 35% of Hydro's domestic energy sales).

MIPUG members at this time include:

Amsted Rail - Griffin Wheel Company	Koch Fertilizer Canada ULC
Canada Kraft Paper Industries Ltd.	Maple Leaf Foods
Chemtrade Logistics Inc.	Roquette Canada Ltd.
Enbridge Pipelines Inc.	J.R. Simplot Company
ERCO Worldwide;	TransCanada Keystone Pipeline
Gerdau Long Steel North America – Manitoba Mill	Winpak Ltd.
CTD Group (Integra Castings)	

Beyond members proper, MIPUG has ongoing engagement on energy matters with other industrial stakeholders and associations that are not members of MIPUG. These parties have an active interest in energy matters, are affected in a similar manner as MIPUG members and often are aligned with MIPUG in matters of priorities and positioning.

Manitoba Keewatinowi Okimakanak (“MKO”)

MKO is a non-profit advocacy organization that has been in existence for more than 35 years and provides a collective voice for more than 65,000 treaty First Nation citizens in northern Manitoba.

The Mission Statement of MKO is: to maintain, strengthen, enhance, lobby for and defend the interests and rights of First Nation people within its jurisdiction and to promote, develop and secure a standard quality of life deemed desirable and acceptable by its First Nations without limiting the generality of the foregoing and the objectives of MKO.

MKO explores ways to strengthen and promote the interests of First Nations in northern Manitoba with respect to all areas that affect the lives of northern First Nations’ citizens.

All citizens of the MKO First Nations, the MKO First Nation government facilities, and all entities operated by MKO First Nations receive electrical service solely from Manitoba Hydro. These consumers are all situated in northern Manitoba.

5.0 Process Options

As indicated above, in the Board’s Decision Letter of October 19, 2021 the Board invited Manitoba Hydro and approved Interveners to submit process options for the public review and the Board’s adjudication of Manitoba Hydro’s Interim Rate Application. On October 22, 2021, the Board received submissions from Manitoba Hydro, the Consumers Coalition, and Manitoba Industrial Power Users Group as to various process options that could be used related to Manitoba Hydro’s matters before the Board, including the Interim Rate Application.

Consumers Coalition

The Consumers Coalition did not present a final recommendation but requested that legal counsel for the Board, Manitoba Hydro and Interveners meet to discuss potential process options immediately after Manitoba Hydro has filed its materials. According to the Consumers Coalition, any interim process undertaken should be linked to a prompt return to a transparent, orderly and evidence-based rate setting process whether through a General Rate Application or a continuation of the Status Update process. To the extent that an expedited interim process is initiated, according to the Consumers Coalition it must be tied to a timely and meaningful return to robust regulatory oversight.

The Consumers Coalition suggested three options:

- An expedited written and oral process modelled after the process leading to PUB Order 71/20 [MPI Special Rebate]. For example, a process could be contemplated which envisions a filing on November 15, information requests on November 22, responses on November 29 and a short oral hearing with a view to a decision by no later than December 15, 2021;
- A written process modelled after Manitoba Hydro's 2016/17 Interim Rate Application. That process resulted on an Order approximately 5 months after the filing;
- A written and oral process modelled after the Manitoba Hydro 2017/18 Interim Application. In that proceeding following review of the application and filings, interveners shared outlines of oral submissions in advance of a July hearing and interim rates were approved to go into effect on August 1, 2017.

According to the Consumers Coalition any relief ordered should be conditional upon a comprehensive rate review in the spring of 2022.

Manitoba Industrial Power Users Group

According to the Manitoba Industrial Power Users Group 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. This Intervener submitted there was no basis to "discontinue" the Coalition-led Status Update process but rather the need for the Status Update is further enhanced rather than reduced by the interim nature of a short-term drought focused process Manitoba Hydro is seeking.

The options put forward for consideration included:

- 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). Immediately following the Interim Rate Application process, the Board would resume the Status Update process to test the comprehensive justness and reasonableness of Manitoba Hydro's overall rates, including current rates and any interim increase.
- The Board may direct Manitoba Hydro to file the Interim Rate Application and Minimum Filing Requests, followed by a brief but fulsome process. If at any point the interim process is likely to fail, the Board could immediately reject this approach, and then direct Hydro to instead file forthwith a full General Rate Application including all necessary long-term forecasts.

This Intervener recommends the Board make known to Manitoba Hydro that any interim Order on 2021/22 rates will be conditional on Manitoba Hydro's agreement to a procedural Order outlining the content of and process for a complete General Rate Application to be filed in the Spring of 2022. Manitoba Industrial Power Users Group's alternate approach to this recommendation would include an option for

withdrawal of the approved interim rate increase if Manitoba Hydro does not file a full and comprehensive General Rate Application within a specified timeframe.

Manitoba Hydro

In regards to an Interim Rate Application, Manitoba Hydro proposed:

- Because its Interim Rate Application will satisfy the evidentiary onus of establishing a prima facie case for interim rate relief, no additional process is required for the Board to issue its rate Order;
- Alternatively, should the Board require any additional process Manitoba Hydro proposes that after its Interim Rate Application is filed on November 15, 2021, interveners be provided an opportunity to file written submissions on Manitoba Hydro's Application by November 26, 2021, followed by a written reply submission by Manitoba Hydro by December 8, 2021 culminating with a Board Order effective January 1, 2022.

In regards to the Status Update Application that the Board has suspended:

- Manitoba Hydro submits its Interim Rate Application to be filed on November 15, 2021, will serve to provide a complete and current "status update" of Manitoba Hydro, including answering all of the Board's Minimum Filing Requirements requested in the context of the Status Update process, as well as all Board approved Minimum Filing Requirements from Interveners. Manitoba Hydro submits that the information contained in its Interim Rate Application, inclusive of responses to Minimum Filing Requests, will provide information to satisfy the Board that current rates are just and reasonable and that costs are fairly allocated. As such, Manitoba Hydro reiterates its request for the Board to discontinue the Status Update process permanently as Manitoba Hydro's Interim Rate Application effectively renders it moot.

In regards to a future Manitoba Hydro General Rate Application:

- In accordance with September 22, 2021 Ministerial Directive, Manitoba Hydro indicates an intention to file a multi-year General Rate Application in 2022, which would include a request to finalize any interim rate relief approved by the Board for 2021/22.
- In its November 15, 2021 Interim Rate Application, Manitoba Hydro indicates it will engage with the PUB following the 2021/22 Interim Rate Application process, on the timing and parameters for its next General Rate Application for fiscal 2022/23. Manitoba Hydro recognizes the challenges placed on the Board by not having a longer-term view of Manitoba Hydro's financials when considering rate applications before it and will work with the Board on the filing requirements for the next General Rate Application that will allow the Board to complete its rate review while Manitoba Hydro's foundational work is underway.

6.0 Board Findings

Completeness

Under Manitoba law, the Board must set electricity rates for Manitoba Hydro's customers that are just and reasonable. In so doing, as confirmed by the Manitoba Court of Appeal, the Board balances two concerns: the interests of Manitoba Hydro's ratepayers and the financial health of Manitoba Hydro. Together, and in the broadest interpretation, these interests represent the general public interest.

Manitoba Hydro acknowledges that the overarching principle of awarding rates in the general public interest, that is balancing the interests of the customers and the financial health of the utility, applies to its 2021/22 Interim Rate Application. It must also be noted that by their very nature, interim rate applications are not subject to the same rigor and standards of a final rate application. As the Board has previously found, interim rates are set without the benefit of a full evidentiary record and on a less onerous legal standard,

which recognizes the Supreme Court of Canada's principle that interim applications are "made in an expeditious manner on the basis of evidence which would often be insufficient for the purposes of the final decision."

Recognizing the above principles, the Board finds Manitoba Hydro's 2021/22 Interim Rate Application filing, including the responses to prescribed Minimum Filing Requirements is, for filing purposes, complete. That said, the Board also finds that it would benefit from an expanded evidentiary record that includes responses to written information requests, oral evidence, and submissions from Manitoba Hydro and the Interveners as set out below.

Motion on Confidentiality

The Board has reviewed the un-redacted copies of Manitoba Hydro's Appendix 2 and its response to the Board's Minimum Filing Requirement #11. The Board finds that this information, if publicly disclosed, could reasonably be expected to significantly harm Manitoba Hydro's competitive positions. The Board further finds that the interest in maintaining confidentiality over Appendix 2 and Minimum Filing Requirement #11 outweighs the public interest in disclosure of that information. Therefore, the Board will receive this information in confidence in accordance with the Board's Rules of Practice and Procedure. Likewise, should any other Party request access to this information accepted in confidence the Board will adjudicate such requests in accordance with its Rules.

Process and Procedures

As noted by the Board in Order 59/18, interim rates are set without the benefit of a full evidentiary record, involve an abbreviated process, and are adjudicated against a less onerous legal standard than are final rates. Further, interim rate processes are not to be used for purposes of convenience or as substitutes for the proper planning of General Rate Applications. Both the ratepayers and Manitoba Hydro benefit from a robust transparent public process that results in final rates that are just and reasonable for all

consumers. In the absence of unforeseen or emergency circumstances, the Board has previously indicated it will not consider future interim rate applications.

With the focus on the drought conditions, the Board finds that the unforeseen or emergency conditions put forth by Manitoba Hydro justify an interim hearing process for the consideration and adjudication of Manitoba Hydro's 2021/22 Interim Rate Application. Furthermore, given the stated urgency of Manitoba Hydro's financial situation, the Board finds that the focus of this interim hearing process will be on interim rates and the evidence that is directly related to Manitoba Hydro's 2021/22 Interim Rate Application. The Status Update Proceeding remains suspended and out of scope for this interim rate hearing.

Recognizing the requested urgency of Manitoba Hydro's Interim Rate Application, the Board finds that an expedited public hearing process is in the public interest. Any interim rates approved must be the subject of a further public hearing process before the Board to alter or finalize any such rates. The Board expects that an expedited hearing process will be enhanced with the contributions of the approved Interveners and additional evidence from Manitoba Hydro.

Without committing to Manitoba Hydro's requested Order date, the Board finds that for this Interim Rate Application the expedited public hearing process should include a limited number of written Information Requests that are first approved by the Board, followed by brief oral cross examination of Manitoba Hydro witnesses, and then followed by oral submissions before the Board. Those oral submissions may be supplemented by written submissions should any Party so decide.

Information Requests from Interveners that the Board will first review and then approve before forwarding them to Manitoba Hydro, will be limited in number and in scope to matters directly related to Manitoba Hydro's 2021/22 Interim Rate Application. Any Party posing Information Requests that are not in-scope is prohibited from seeking cost awards for the research and preparation of such out-of-scope Information Requests. In addition

Parties are expected to coordinate their Information Requests to ensure there is no duplication.

Having reviewed Manitoba Hydro's 2021/22 Interim Rate Application the Board finds that in-scope topics include:

- hydrology
- financial situation
- export revenues
- hedging
- drought mitigation measures
- O&A including staffing
- COVID-19 response
- finance expense
- revenue requirements of major new generation and transmission assets
- customer rate class differentiation
- customer bill impacts

The Board further finds that the following topics are not in-scope for Manitoba Hydro's 2021/22 Interim Rate Application:

- long range financial targets
- credit rating reports
- load forecasts
- resource planning
- domestic revenue changes
- Strategy 2040
- demographic specific information not aggregated as customer class information
- specific business operations capital projects
- Minimum Filing Requirements that were submitted but not approved by the Board

Parties must recognize the time constraints that this expedited process is under. To assist Parties in avoiding duplication and to allow prompt response by Manitoba Hydro, the Board's Information Requests are enclosed with this Order.

Oral testimony and oral submissions may be in-person or virtual in compliance with all Provincial Health orders.

Schedule "A" attached to this Order sets out the procedural steps and the timelines to be met. The Board appreciates the expected cooperation of all Parties in adhering to this timetable.

7.0 IT IS THEREFORE ORDERED THAT:

1. The procedures and timelines for review and adjudication of Manitoba Hydro's 2021/22 Interim Rate Application as contained in the attached Appendix "A", **BE AND ARE HEREBY APPROVED.**

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

THE PUBLIC UTILITIES BOARD

"Robert Gabor, Q.C."

Chair

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

Secretary

Certified a true copy of Order No. 128/21
issued by The Public Utilities Board



Secretary

Schedule "A"

Action	Date (By No Later Than)
Manitoba Hydro files its 2021/22 Interim Rate Application with the Board and Approved Interveners	November 15, 2021
Intervener Information Requests are filed with the Board for advance approval	November 25, 2021
Manitoba Hydro receives approved Information Requests from the Board	November 26, 2021
Manitoba Public Utilities Board Opening Comments Virtual Public Presentations	December 1, 2021 (AM only)
Manitoba Hydro Responses to Information Requests	December 3, 2021
Oral Testimony by Manitoba Hydro	December 10 & 13, 2021
Oral Submissions by Manitoba Hydro and Interveners	December 14, 15 (AM only) & 16 (AM only), 2021