Order No. 89/21

SECOND ORDER IN RESPECT OF THE CONSUMERS COALITION'S APPLICATION FOR A MANITOBA HYDRO STATUS UPDATE HEARING

August 17, 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

Overview

The Board is satisfied, based on the evidence, that the circumstances of Manitoba Hydro have changed substantially since the Board adjudicated Manitoba Hydro's General Rate Applications in 2018 and 2019 through Orders 59/18 and 69/19.

The Board directs a public process be held through which Manitoba Hydro is to provide additional evidence to assist the Board in its determination of whether Manitoba Hydro's rates are just and reasonable and its costs are fairly allocated among the various customer classes.

It is important to note that no rates are being changed in this Order. This Order does not examine whether existing rates are just and reasonable and in the public interest.

The Board also grants the Consumers Coalition's Motion to admit new evidence in support of its Application, namely, the Hansard transcript of the June 29, 2021 Standing Committee on Crown Corporations.

Background

The Consumers Coalition, representing residential electricity ratepayers, supported by the Manitoba Industrial Power Users Group ("MIPUG"), the Assembly of Manitoba Chiefs ("AMC"), and Manitoba Keewatinowi Okimakanak ("MKO"), has applied to the Manitoba Public Utilities Board ("Board") for a status update hearing to determine whether current rates charged by Manitoba Hydro are just and reasonable and whether Manitoba Hydro's costs are fairly allocated among the customer classes (the "Application").

The Consumers Coalition's Application maintains that in light of the substantial changes in Manitoba Hydro's circumstances since electricity rates were last adjudicated in Board Orders 59/18 and 69/19, ratepayers need up-to-date information through an independent Board process to determine whether they are paying just and reasonable rates for the essential monopoly electricity service.

In Order 53/21, the Board stated that under subsection 26(3) of *The Crown Corporations Governance and Accountability Act* (the "Crown Act"), the Board must be satisfied that Manitoba Hydro's circumstances have changed substantially before it proceeds with a review of prior Board rate Orders.

Following Order 53/21, the Board received additional submissions from Manitoba Hydro as well as from Interveners as detailed in the Procedural History section of this Order.

A Substantial Change in Circumstances

Based on the publicly filed evidence, the Board has determined that Manitoba Hydro's circumstances have changed substantially since the issuance of Orders 59/18 and 69/19, necessitating a public process to assess whether Manitoba Hydro's rates are just and reasonable and its costs are fairly allocated among the different customer classes. The Board finds that the following changes, taken collectively, constitute a substantial change in Manitoba Hydro's circumstances:

- In issuing Order 69/19, the Board relied upon the representation of Manitoba Hydro that it would file its long-range financial forecast and full GRA with the Board in the fall of 2019. That circumstance changed. As submitted by the Consumers Coalition, Manitoba Hydro failed to file the forecast or the GRA. In Order 69/19, the Board specifically noted that "in the absence of a long-term financial forecast, the Board is challenged in its ability to assess the appropriate level of a rate increase in the 2019/20 test year to reduce the likelihood of future rate shock to consumers". Having determined that Manitoba Hydro did not require additional revenue in 2019/20, the Board was concerned about the additional costs to consumers when the Keeyask Generating Station ("Keeyask") and the Manitoba Minnesota Transmission Project ("MMTP") came into commercial service. As the amount and timing of those additional costs had not crystallized, the revenues from the Board's approved rate increase were directed to a deferral account for the future benefit of consumers. The Board stated that, once Manitoba Hydro had filed its full rate application, it would assess future rates in the context of a long-term financial forecast given the expected in-service for Keeyask.

- Over the last three years, Manitoba Hydro has doubled the size of its assets and debt through the new major capital generation and transmission projects that have entered or are entering commercial service, which has a significant annual revenue requirement impact. This includes the $8.7 billion Keeyask Generating Station of which the first of seven units entered commercial service in February 2021, followed by the second unit in April 2021. Manitoba Hydro's Chief Executive Officer ("CEO") stated before the Standing Committee that when all the units of Keeyask are in service by April 2022, Manitoba Hydro's debt will "peak" at $25 billion and Manitoba Hydro's annual debt servicing costs will amount to $1.1 billion. Further, Manitoba Hydro's CEO asserted that once its debt peaks, Manitoba Hydro will have a debt-to-equity ratio that is the highest of all utilities in Canada, including all Crown corporations.

- Between 2020/21 and 2022/23, significant revenue requirement impacts are expected from major new generation and transmission projects, including Bipole III (completed in July 2018), Keeyask, MMTP (completed in June 2020), and Birtle Transmission Project (completed in March 2021).

- Manitoba Hydro's CEO also indicated before the Standing Committee that Manitoba Hydro is currently borrowing funds for its business operations capital expenditures that are required to maintain the utility's assets. These comments indicate that Manitoba Hydro's Capital Coverage Ratio is less than 1.0. This ratio is a measure of the ability of cash flow from Manitoba Hydro's operations to fund Business Operations Capital expenditures, excluding consideration of spending and capitalized interest on major capital projects. Where the ratio falls below 1.0, Manitoba Hydro will have to borrow to fund Business Operations Capital spending. The Capital Coverage Ratio target approved by the Manitoba Hydro-Electric Board at the time of the 2017/18 GRA is a ratio greater than 1.20;

- In October 2020, Manitoba Hydro confirmed a multi-billion dollar 215 MW export sale with SaskPower beginning in June 2022, as well as a 125 MW export sale to Northern States Power beginning on May 1, 2021. The impact of the SaskPower sale on Manitoba Hydro's net income is unclear;

- Interest rates on long term bonds have dropped sharply since March 1, 2018, which may have significant implications for Manitoba Hydro given its stated expectation before the Board in 2019 that it was undertaking $4.0 billion of incremental borrowing in the next few years, as well as refinancing $4.8 billion of debt in the five-year period following the test year. Manitoba Hydro did not provide details of its debt management plan beyond 2019/20, indicating that it would be included in the context of its next IFF that was to be filed in 2019. At the 2019/20 GRA, Manitoba Hydro forecast that it would be issuing $2.2 billion in debt in 2019/20 with a weighted average interest rate ("WAIR") of 3.71%. Manitoba Hydro has reported in its 2019/20 Annual Report that the Corporation had taken advantage of favourable market conditions and issued $2.2 billion in debt at a WAIR of 2.42%, which is 129 basis points lower than what was forecast for the year. It is unclear from the information provided whether these favourable borrowing conditions have continued;

- The disposition of the Major Capital Deferral Account, which was established effective June 1, 2019 in Order 69/19, is presently unknown to the Board. All revenues from a 2.5% rate increase granted in that Order, estimated at approximately $40 million annually, were to be placed in a deferral account for major capital projects currently under construction. The deferral account will partially mitigate future rate increases required when new major capital projects are in service, consistent with the principles of rate stability and predictability. The Board stated in Order 69/19 that "the Board will determine how the deferral account will be brought into Manitoba Hydro's operating revenues at a future GRA". In her statements before the Standing Committee, the CEO of Manitoba Hydro stated that Manitoba Hydro "is no longer amortizing the major capital reserve, which is– reserve is revenue we collected in prior years, but it was placed into a reserve by the PUB to be recognized in future years". It is unclear to the Board whether Manitoba Hydro has ceased deferring the revenues from the prior Board approved 2.5% rate increase or whether Manitoba Hydro has begun recognizing the previously deferred revenue on the Income Statement;

- There is potentially a significant change in Manitoba Hydro's near-term net income. The Board has received conflicting evidence regarding Manitoba Hydro's budgeted net income for the 2020/21 and 2021/22 fiscal periods. In its submissions, Manitoba Hydro asserts that Manitoba Hydro's budgeted net income for 2020/21 to 2021/22 has changed by only $17 million from the amount forecasted in the 2017/18 GRA. Manitoba Hydro notes that the forecasted cumulative net income for 2020/21 and 2021/22 in Exhibit-93 from the 2017/18 GRA was $293 million. Manitoba Hydro provided a fall 2020 forecast for the 2020/21 and 2021/22 cumulative net income of $276 million, which indicates that Manitoba Hydro's forecasted net income for 2020/21 to 2021/22 has changed by only $17 million from the amount forecasted in the 2017/18 GRA. This change of $17 million was confirmed by the CEO of Manitoba Hydro in her statements before the Standing Committee. Specifically, the CEO of Manitoba Hydro stated that "…in the near term net income is only changing by $17 million and the PUB has line-by-line revenue and cost information to assess and determine if there is a change, and that- and the PUB will work that process through." However, Manitoba Hydro also indicated in its June 9, 2021 response to Order 53/21 that its 2021/22 forecasted net income may be significantly decreased based on more recent hydrology information. Manitoba Hydro stated that based on actual starting hydraulic energy in storage conditions, updated projections of water supply and other underlying forecasts, there is a projected $80 million decrease in forecasted net income for 2021/22 compared to the approved budget. In addition, according to Manitoba Hydro's evidence before the Board, if water conditions further deteriorate, Manitoba Hydro's net income could be reduced by as much as $230 million in the event of the most unfavourable water conditions, or by $140 million in the event that lower quartile water conditions are experienced. The Board further notes that for the 2020/21 and 2021/22 fiscal years, it did not receive any line-by-line revenue and cost information from Manitoba Hydro in its response to Order 53/21;

- The COVID-19 pandemic has resulted in a material reduction in electricity consumption by major industrial and commercial customers, which has been somewhat offset by increased electricity consumption in the residential sector. Manitoba Hydro's CEO also indicated before the Standing Committee that Manitoba Hydro has experienced a $78 million decrease to net income (partially offset by $30 million in savings) because of circumstances relating to the COVID-19 pandemic, including a reduction in commercial and industrial usage;

- Manitoba Hydro has indicated that the energy landscape is changing, which has fundamentally altered the nature of its financial forecasting. Both in response to Order 53/21 and before the Standing Committee, Manitoba Hydro has repeated that a long-term financial forecast does not presently exist for Manitoba Hydro. Manitoba Hydro's CEO explained that Manitoba Hydro does not currently have a 20-year forecast because "The energy landscape that we are operating in is changing and … the key variables that are input into a long-term financial forecast are currently unknown".

- Manitoba Hydro's CEO indicated before the Standing Committee that the delay of the first generating unit at Keeyask entering service was a primary driver behind Manitoba Hydro's net income increasing to $111 million in the year ending March 31, 2021. This delay deferred $97 million of cost, interest and depreciation until the first generating unit entered into service in February 2021;

- Manitoba Hydro's CEO stated before the Standing Committee that Manitoba Hydro requires a 3.5% rate increase effective October 1, 2021. While Manitoba Hydro has assumed a 3.5% rate increase for the 2021/22 fiscal year, Manitoba Hydro may not receive this rate increase. The Board takes notice of the announcement by the provincial government that it intends to introduce legislative amendments to Bill 35 to increase rates by 2.5% for 2021, 2022 and 2023, which may undermine the validity of Manitoba Hydro's net income forecast that was provided to the Board in response to Order 53/21; and

- Effective December 1, 2020, the Legislative Assembly of Manitoba imposed a 2.9% rate increase on almost all Manitoba Hydro customer classes, which increases the revenues of Manitoba Hydro. While the 2.9% rate approval is not subject to review by the Board, it amounts to a change in Manitoba Hydro's circumstances that the Board can consider in determining the question of whether Manitoba Hydro's circumstances have changed substantially.

While the Board has determined that Manitoba Hydro's circumstances have changed substantially, the Board has made no rate changes and no findings in this Order as to whether current electricity rates are just and reasonable when balancing the interests of Manitoba Hydro's ratepayers and the financial health of Manitoba Hydro.

Additional Procedural Steps Required

To determine the next steps in the Board's rate review process, the Board will convene a pre-hearing conference with Manitoba Hydro and the Interveners to discuss which additional documentation is required and the process steps to be taken. Prior to convening a pre-hearing conference, and based on the evidence already provided to the Board, Interveners are requested to file their written list of suggested minimum filing requirements. In addition, the Board will provide its suggested list of minimum filing requirements to Manitoba Hydro. The Board requests that Interveners submit written comments regarding the minimum filing requirements by Manitoba Hydro for the public process within two weeks from the date of this Order, and will provide Manitoba Hydro with an opportunity to respond to the suggested lists of minimum filing requirements from the Board and interveners within two weeks thereafter. After Manitoba Hydro responds to the suggested minimum filing requirements, the Board will convene a pre-hearing conference to further consider and adjudicate the minimum filing requirement requests and to establish a process for the review of that additional information.

2.0 Procedural History

The Application was filed by the Consumers Coalition on March 26, 2021. The Board requested that Manitoba Hydro and past Interveners of Record provide written submissions on whether the Board should consider the Application and, if so, what the process should be. Written submissions were provided by Manitoba Hydro, AMC, MIPUG, and MKO on April 12, 2021. On April 19, 2021, the Consumers Coalition provided written Reply submissions.

In Order 53/21, the Board stated that it can review a prior Order under s. 26(3) of the Crown Act only after the Board is satisfied that the circumstances of Manitoba Hydro have changed substantially. To assess the threshold question of whether Manitoba Hydro's circumstances have changed substantially, the Board determined that it required additional information that would provide an accurate picture of Manitoba Hydro's financial health. The Board directed that Manitoba Hydro provide financial, operational, capital expenditure, hydrology, and cost of service information currently in existence and in use in the operations and management of Manitoba Hydro.

On June 9, 2021, Manitoba Hydro provided its response to Order 53/21. By letter dated June 18, 2021, the Board provided past Interveners of Record with the opportunity to provide written submissions to address Manitoba Hydro's response to Order 53/21. The Board received written submissions from the Consumers Coalition, AMC, MIPUG and MKO on June 24, 2021. By letter dated June 28, 2021, the Board provided Manitoba Hydro the opportunity to reply to Intervener submissions.

On July 2, 2021, Consumers Coalition filed a motion to submit new evidence in support of its Application. This new evidence consisted of the Hansard transcript of the June 29, 2021 sitting of the Standing Committee on Crown Corporations, during which the CEO of

Manitoba Hydro appeared regarding the presentation of Manitoba Hydro's Annual Report for the year that ended March 31, 2020.

Manitoba Hydro provided its reply to the written submissions of Interveners and Consumers Coalition's new evidence motion on July 6, 2021.

3.0 The Consumers Coalition's Application

The Consumers Coalition seeks an order under s. 26(3) of The Crown Act, s. 44 of *The Public Utilities Board Act* and s. 23 of the Board's Rules of Practice and Procedure. The Consumers Coalition asserts that the circumstances of Manitoba Hydro have changed substantially since the 2017/18 & 2018/19 and 2019/20 GRA decisions (Board Orders 59/18 and 69/19) and requests that the Board review those Orders in a status update hearing to:

a. examine whether current hydro rates are just and reasonable and costs are fairly allocated;
b. address unfinished business from Order 69/19 in terms of the deferral account set aside to protect future Manitoba Hydro ratepayers from rate shock; and
c. establish a process to address other unfinished directives in Orders 59/18 and 69/19.

The Consumers Coalition is of the view that a status update hearing to review Orders 69/19 and 59/18 is urgently needed in light of the three year gap since the last full hearing, the substantial change in circumstances over that time, and the risk that Manitoba Hydro will not have a public rate review for many years to come.

The Consumers Coalition notes that the last full Manitoba Hydro General Rate Application hearing took place in 2018 and that hearing relied on an Integrated Financial Forecast ("IFF") from 2016 with only selected updates. According to the Consumers Coalition, IFFs have served for many years as Manitoba Hydro's primary forecast for determining the rate changes necessary to maintain a reasonable financial position for Manitoba Hydro while balancing the interests of current and future ratepayers. In its 2019/20 rate application to the Board, Manitoba Hydro did not file an IFF and stated in its Letter of Application that it would file a full rate application which would include IFF19. Manitoba Hydro stated that it anticipated filing the full rate application in late 2019. However, Manitoba Hydro did not file a General Rate Application or provide IFF19 in 2019 but instead received a 2.9% general rate increase effective December 1, 2020 through *The Budget Implementation and Tax Statutes Amendment Act*.

The Consumers Coalition's position is that there have been significant changes since Orders 59/18 and 69/19, and the cumulative impact of these changes constitutes a substantial change in circumstances that raises serious doubts about the fairness of the current rates of Manitoba Hydro. Included in these significant changes identified by the Consumers Coalition are the following:

- major new capital projects have come into service with increased revenue requirements. Over the last three years, Manitoba Hydro has effectively doubled the size of its assets and debts for rate setting purposes by bringing into service Bipole III, MMTP, and the first unit of Keeyask, with the additional units of Keeyask expected to be placed in service in the coming year;
- major new export sales have been undertaken recently, such as the multi-billion dollar export sale with SaskPower that Manitoba Hydro announced and the 125 MW system power sale agreement with Northern States Power that began on May 1, 2021;
- Manitoba Hydro has a new corporate strategic direction in Strategy 2040 and has undertaken a corporate reorganization consistent with this plan;
- the COVID-19 pandemic has led to a material reduction in consumption by major industrial and commercial customers, which has been somewhat offset by increased consumption in the residential sector;
- interest rates on long-term bonds have sharply dropped since March 1, 2018; and
- since Orders 59/18 and 69/19, there have been important regulatory, judicial and legislative decisions with implications for all Manitoba ratepayers. Those decisions include:

- the recommended approval of Efficiency Manitoba's three-year plan by the Board in February 2020,
- the Manitoba Court of Appeal's determination in June 2020 that the Board lacked the authority to create the First Nation On-Reserve Residential customer class,
- the imposition of a 2.9% rate increase on most Manitoba Hydro customer classes effective December 1, 2020 through the enactment of *The Budget Implementation and Tax Statutes Amendment Act*,
- rate shock level increases for First Nation on-reserve residential customers in the range of 9% since September 1, 2020, and
- findings by the Wall Report in February 2021 that raised questions about the primary reliance on rigid debt equity financial targets for the setting of rates.

The Consumers Coalition submitted that for the purpose of the status update, the Board should direct Manitoba Hydro to file:

a. the Current Corporate Strategic Plan (or spending priorities for operating and capital programs and marketing of excess power);
b. the Current Integrated Financial Forecast (or an updated Exhibit MH-93 scenario which was filed at the 2017/18 & 2018/19 General Rate Application by Manitoba Hydro); and
c. the Current prospective Cost of Service Study (or a directional update as to the effect of Bipole III, MMTP, and Keeyask on Revenue-to-Cost Coverage ratios).

The Consumers Coalition also proposes that the Board direct a pre-hearing conference to consider the appropriate further process for the status update hearing.

As justification for holding a status update hearing, the Consumers Coalition asserts that the costs of independent regulation are relatively low for ratepayers and are greatly outweighed by the benefits. According to a study cited by the Consumers Coalition, over the past three years, the cost of the regulatory process has averaged less than 0.25% of

Manitoba Hydro's anticipated annual domestic revenues. Further, every one percent increase in Manitoba Hydro rates has a direct impact to the Manitoba economy of between $370 and $430 million in present value terms. The Consumers Coalition states that 17% to 18% of each dollar of Manitoba Hydro revenue is directed annually by Manitoba Hydro to the Province of Manitoba.

Submissions on the Consumers Coalition's Application

Manitoba Hydro

Manitoba Hydro submits that the Board should dismiss the Consumers Coalition's Application. Manitoba Hydro takes the position that the Consumers Coalition has failed to establish that there has been a substantial change in circumstances since the issuance of Orders 59/18 and 69/19 and that the existing rates are no longer just and reasonable.

Manitoba Hydro asserts that the Board's mandate is limited to the approval of rate changes sought in the fiscal test years as applied for by the Utility. In Manitoba Hydro's view, the Consumers Coalition's Application attempts to expand the Board's jurisdiction to include general supervisory powers over Manitoba Hydro, which is inconsistent with the Board's overall legislative framework.

Manitoba Hydro disagrees with the Consumers Coalition that electricity rates have not been subject to a full review by the Board in three years. A full rate proceeding was commenced in late 2018 and concluded in Order 69/19. Manitoba Hydro also notes that the Board's determination of whether the circumstances of Manitoba Hydro have changed substantially should not be influenced by the risk that Manitoba Hydro will not have a public rate review for many years to come. According to Manitoba Hydro, any prospective legislative change is speculative and should not be considered by the Board.

With respect to the changes in circumstances cited by the Consumers Coalition, Manitoba Hydro takes the position these circumstances do not individually or collectively constitute a "substantial change in circumstances" of Manitoba Hydro. Rather, each of these "changes" was anticipated and reasonably forecasted at the time of Orders 59/18, 69/19, 100/20, and 110/20. While Manitoba Hydro indicates these changes are likely to result in future rate impacts, no such changes have yet materialized to render existing rates unjust or unreasonable. Manitoba Hydro submits:

- the revenue requirement impacts of the major capital projects referred to by the Consumers Coalition have been fully considered in several rate applications over the past decade, including most recently in Orders 59/18 and 69/19;
- Strategy 2040 represents the ongoing strategic business planning of Manitoba Hydro and does not currently have an impact on rates. Any attempts to speculate as to how Strategy 2040 and the corporate re-organization will impact rates in the future is entirely premature at this time;
- the 215 MW export sale to SaskPower does not impact Manitoba Hydro's revenue until 2022;
- the increase in opportunity export sales following the in-service of Keeyask was anticipated and included in IFF16 in Manitoba Hydro's 2017/18 & 2018/19 GRA;
- the recent increase in Manitoba Hydro's short-term borrowing capacity has yet to be activated and therefore no change has resulted for Manitoba Hydro. As such, changing interest rates within the financial markets does not constitute a substantial change in circumstances;
- that, although Manitoba Hydro acknowledges that there have been regulatory, judicial, and legislative developments since Order 69/19, such developments are not unusual and occur in the normal course. The necessary rate adjustments resulting from the Manitoba Court of Appeal decision were recently approved by the Board. Further, the 2.9% legislated rate increase is not subject to review by the Board and it is inappropriate for the Board to consider this rate increase at all in determining whether there is a "substantial change" in circumstances; and
- that updates to its financial position and business plans will be publicly submitted in due course. Manitoba Hydro has shared information with Manitoba ratepayers through numerous avenues, including presentations before the Standing Committee on Crown Corporations in June 2020, publication of quarterly financial reports and the annual public meeting held in February 2021. Manitoba Hydro has

submitted its 2021/22 Annual Business Plan for review by the Minister and is in the process of preparing its year end financial statements and annual report for the 2020/21 fiscal year to be provided to the Minister.

In addition, Manitoba Hydro asserts that its immediate regulatory focus for 2021 is to complete regulatory proceedings that have been commenced by Centra Gas Manitoba Inc. ("Centra"). Centra submitted a Rate Re-bundling Application in March 2021 and is currently working towards filing a Cost of Service Methodology review before the summer. Manitoba Hydro is currently planning to file in the winter of 2022/23 a comprehensive electric and gas general rate application that will then include a complete long-term forecast that reflects Strategy 2040, updated integrated resource planning analysis, as well as provincial energy policy direction. Manitoba Hydro is concerned that any status update proceeding will interrupt its ongoing work on these initiatives, and that the Consumers Coalition's proposed schedule and timing for a status update process is unrealistic given these regulatory processes.

Assembly of Manitoba Chiefs ("AMC")

AMC submits that the Board should grant the Consumers Coalition's Application. AMC agrees with the Consumers Coalition that the circumstances of Manitoba Hydro have changed substantially since Orders 59/18 and 69/19 and that a status update hearing as proposed by the Consumers Coalition should be held.

The status update hearing should also address whether Manitoba Hydro's rate classifications are just and reasonable, a matter determined to be within the Board's jurisdiction in the recent Manitoba Court of Appeal decision. AMC notes that, since September 1, 2020, most First Nations on-reserve residential ratepayers have faced an approximate 9% rate increase without full regulatory review by the Board. In AMC's view, this has exacerbated the energy poverty faced by these ratepayers during a time of economic recession and the significant negative effects of the COVID-19 pandemic. The three-year gap since the last rate hearing has been detrimental for First Nations ratepayers in Manitoba who do not have clarity about the impact of recent changes to Manitoba Hydro.

AMC takes the position that, since the Board did not hold a full hearing for the 2019/20 year in anticipation that Manitoba Hydro would file a full rate application in late 2019, the Board should now hold a full hearing. AMC also submits that the Board should direct that a pre-hearing conference be held by videoconference and should consider holding a non-evidentiary technical conference.

Manitoba Industrial Power Users Group ("MIPUG")

MIPUG submits that the Board should grant the Consumers Coalition's Application and proceed as proposed by the Consumers Coalition. MIPUG concurs with the Consumers Coalition that there has been a "substantial change in circumstances" of Manitoba Hydro.

MIPUG submits that Manitoba Hydro has not had a true comprehensive rate review for 4 to 6 years and that, absent action on the Application, a transparent review of Manitoba Hydro rates will likely not occur for a number of years. MIPUG emphasizes that "a transparent and independent regulatory process is the best approach to establishing oversight for Manitoba Hydro".

MIPUG points out that an intervener-initiated review of Manitoba Hydro is not without precedent and notes that a review of electricity rates in Manitoba in 1986/87 started with a filing from the Consumers' Association and that a Manitoba Hydro "status update" in 2002 was also initiated by interveners.

MIPUG agrees with the Consumers Coalition that Manitoba Hydro's assets have doubled during the last three years through completion of Bipole III, MMTP, and with the first unit of Keeyask entering commercial service in early 2021. However, MIPUG is of the view that the appropriate timeline for assessment has been six years, given that the last full rate filing and review, including a full consideration of operating and maintenance budgets, was undertaken in January 2015, over six years ago. Although the 2017/18 and 2018/19 General Rate Application was an extensive proceeding, its primary focus was on the proposed 7.9% annual rate increases and little time was made available during the proceeding for many normal and traditional rate review topics. Further, an updated IFF was never filed and the hearing produced only a general baseline financial forecast.

MIPUG asserts that since the last full rate filing and review in 2015, there have been various changes in Manitoba Hydro's circumstances, such as multiple rounds of operating cuts imposed by government directives, changes to Manitoba Hydro subsidiaries, the operation of the MMTP, and an evolution of export market pricing. MIPUG also references the need for forward-looking information about the level of rates and related risks that Manitoba Hydro will face today and into the future.

Another changed circumstance according to MIPUG is the finding by the Wall Commission in its Report that Manitoba Hydro's ratepayers should not bear the risk associated with new generation projects that will be used for exports for an extended period of time and are not needed to serve domestic demand. As the government benefits from these new generational projects through capital taxes, water rental charges, and debt guarantee fees, the government, and not the ratepayer, should bear the risks of such projects.

MIPUG's view is that the failure of Manitoba Hydro to produce an appropriate IFF since 2016, combined with presentations of limited short-term forecasts (for example, the 2019/20 GRA) and a lack of transparency regarding the most recent rate and regulatory changes imposed by the legislature, has resulted in industry in Manitoba presently operating with an unprecedented lack of confidence in electricity rates.

From the list of materials that the Consumers Coalition recommended the Board direct Manitoba Hydro to file, MIPUG considered the Corporate Strategic Plan, the long-term Capital Expenditure Forecast, and the long-term (20-year) IFF to be of critical importance for the public record.

Manitoba Keewatinowi Okimakanak ("MKO")

MKO submits that the Board should grant the Application. MKO agrees with the Consumers Coalition that there has been a substantial change in circumstances of Manitoba Hydro justifying a status update hearing into current electricity rates.

Specifically with respect to former First Nations on-reserve customers, MKO submits that these customers face rate shock in the range of 9%. MKO notes that former First Nations on-reserve class customers experienced the same 2.9% general electricity rate that all Manitobans experienced on December 1, 2020. Former First Nations on-reserve class customers also face a 6.5% increase in electricity rates as a result of the Manitoba Court of Appeal's decision eliminating the First Nation On-Reserve Residential ("FNORR") customer class. MKO asserts that this 9% rate increase on former FNORR class customers, some of the most vulnerable people in the Province, during a pandemic constitutes on its own a substantial change in circumstances that warrants the Board directing a status update hearing.

MKO agrees with the Consumers Coalition that there have been substantial changes since the partial GRA hearings that gave rise to Board Orders 59/18 and 69/19 that still govern electricity rates.

With respect to the Board's jurisdiction to direct a status update hearing, MKO notes that the 2.9% rate increase that was enacted by *The Budget Implementation and Tax Statutes Amendment Act* does not suspend the Board's ability to review electricity rates. Although the Board has no jurisdiction to review the 2.9% rate increase on its own, the Board can consider this rate increase as a substantial change in circumstance.

Further, MKO submits that Bill 35, *The Public Utilities Ratepayer Protection and Regulatory Reform Act*, is presently before the Legislative Assembly but has not been passed. Accordingly, Bill 35 is not law. The legislative regime that exists today is all that is relevant for the Board's determination regarding whether to hold a status update hearing.

Reply by Consumers Coalition

The Consumers Coalition asserts that Manitoba Hydro mistakenly states that the onus is on the Consumers Coalition to demonstrate both that circumstances have changed substantially and that existing rates are no longer just and reasonable. Given that Manitoba Hydro has control over important rate approval information and documents, imposing an onus on the Consumers Coalition to establish that rates are not just and reasonable would erect an impassable practical barrier because of the information asymmetry.

The Consumers Coalition disagrees with Manitoba Hydro that the request for a status update hearing falls outside the Board's jurisdiction. The purpose of the status update hearing is to determine whether Manitoba Hydro's rates are just and reasonable recognizing the fundamental change in Manitoba Hydro's circumstances over recent years that potentially have material implications for rates. That question, according to the Consumers Coalition, falls squarely within the Board's authority under Part 4 of the Crown Act.

In its reply submissions, the Consumers Coalition argues that Manitoba Hydro's assertion that there has not been a substantial change in circumstances is undermined by the Utility's own admissions. Manitoba Hydro admits that it has a new corporate strategic plan and that its corporate reorganization is underway, that it expects all units of Keeyask will be in-service by April 2022, and it concedes that the major export sale to SaskPower will result in a new revenue source in 2022. According to the Consumers Coalition, these are clearly substantial and material changes in circumstances that are directly relevant to the purposes of a status update to consider whether rates are just and reasonable.

With respect to Manitoba Hydro's submission that the revenue requirement impacts of bringing major capital projects into service have been fully considered over the past decade, the Consumers Coalition notes that it is only the integrated financial picture, as produced in an IFF, that enables a reliable forecast of revenue requirements and rate impacts. The Consumers Coalition says that an analysis grounded in IFF16 cannot provide sufficient insight into a major transmission project coming online in 2018, a complete business unit restructuring in 2019, and a massive new generating station with all units coming into service by April 2022.

The Consumers Coalition also replies that Manitoba Hydro's new Corporate Strategic Plan shows that its business unit organization was fundamentally altered and that substantial changes have been made to Manitoba Hydro's corporate structure. According to the Consumers Coalition, these changes can be expected to materially affect spending decisions by Manitoba Hydro.

The Consumers Coalition takes the position that the Board should draw adverse inferences from Manitoba Hydro's failure to address the following key aspects of the Application:

- That electricity rates are based on outdated information;
- That a status update hearing is necessary to determine how the major capital project deferral account will be brought into Manitoba Hydro's operating revenues at a future GRA;
- The sharp drop in yields on long-term debt since March 1, 2018 may have critical implications for ratepayers given expected borrowings of over $8 billion between 2019 and 2026; and
- The Board's regulatory costs have averaged less than 0.25% of Manitoba Hydro's anticipated annual domestic revenues over the past three years while annually 17% to 18% of each dollar of Manitoba Hydro revenue is directed to the Province of Manitoba.

With respect to Manitoba Hydro's argument that a status update hearing is premature and the timing of the status update process is unrealistic, the Consumers Coalition is of the view that the unprecedented lack of confidence in Manitoba Hydro's rates, as expressed by long-standing regulatory stakeholders, requires an urgent and respectful response by Manitoba Hydro and that there is no time for further delay.

The Consumers Coalition accepts the submissions of MIPUG and MKO in terms of additional grounds identified by those parties supporting a finding of substantial change. In particular, it agrees with MIPUG that recent operating cost cuts in response to the pandemic further support a finding of a substantial change in circumstances. As well, from the perspective of residential ratepayers, the Consumers Coalition concurs with MIPUG that “routine and transparent regulation, overseen by an independent regulator, is the only way to achieve ratepayer confidence”.

4.0 Board Order 53/21

In Order 53/21, the Board found that the Consumers Coalition had provided information from publicly available documents and prior Board Orders to support, on a *prima facie* basis, that there may have been a change in Manitoba Hydro's circumstances.

The Board determined that to assess the threshold question of whether Manitoba Hydro's circumstances have changed substantially, the Board required additional information that would provide an accurate picture of Manitoba Hydro's financial health, including financial forecast, hydrology, and capital forecast documents, as well as how Manitoba Hydro's current costs, including those for major new capital projects, are being borne by the different customer classes.

Accordingly, the Board directed that Manitoba Hydro provide the versions of the following documents, or form of the following documents, containing substantially the same information as would be provided in General Rate Application filings before the Board, that are currently in use in the management and operations of Manitoba Hydro:

> *1. the Integrated Financial Forecast*
> *2. the Capital Expenditure Forecast*
> *3. the Prospective Cost of Service Study; and*
> *4. the 2021/22 and 2022/23 forecast of net export revenue and net income for each of the possible water flow conditions.*

The Board noted that if the versions of these documents currently in use in the operations and management of Manitoba Hydro are not in the form typically provided to the Board in General Rate Applications, the form of documents containing substantially the same information that are currently in use in the operations and management of Manitoba Hydro may be provided to satisfy the directives. The Board was confident that in order to effectively manage a multi-billion dollar corporation, this information must exist.

5.0 Manitoba Hydro's Response to Order 53/21

In response to Order 53/21, Manitoba Hydro provided additional information to the Board, which included four appendices relating to the four Board Directives set out above.

Manitoba Hydro asserts that the information provided demonstrates that there has been no substantial change in the circumstances of Manitoba Hydro since Orders 59/18 and 69/19.

Manitoba Hydro states that it does not have an approved IFF or Capital Expenditure Forecast ("CEF"). In lieu of an IFF, Manitoba Hydro provided a comparison of actual financial results for 2018/19 and 2019/20 with the budgets for those years provided in the 2019/20 Manitoba Hydro General Rate Application ("GRA"). Manitoba Hydro also provided a comparison of the forecasted net income for 2020/21 and the budgeted net income for 2021/22 with the net income forecasted for those years that was provided in the 2017/18 Manitoba Hydro GRA. Manitoba Hydro submitted that these comparisons demonstrated that Manitoba Hydro's actual and budgeted net income results for the period of 2018/19 to 2021/22 are consistent with the financial forecasts relied on by the Board in issuing Orders 59/18 and 69/19. With respect to the cumulative budgeted net income for 2020/21 to 2021/22, Manitoba Hydro stated that this amount was different from the net income forecast for those years provided in the 2017/18 GRA by only $17 million.

Manitoba Hydro also provided a comparison of the actual capital expenditures for 2018/19 and 2019/20 and the capital budgets for 2020/21 and 2021/22 with the forecast of capital expenditures for those years provided in the 2019/20 GRA. Manitoba Hydro submitted that the differences between Manitoba Hydro's actual and current budget capital expenditure levels compared to the forecasts reviewed in the 2019/20 Manitoba Hydro GRA range from less than 1% to approximately 5%. In Manitoba Hydro's view, the impacts of bringing Keeyask and other major capital projects into service was contemplated by the Board in Orders 59/18 and 69/19. Manitoba Hydro's position is that the above comparison shows that there has been no substantial change in Manitoba

Hydro's circumstances from that which was forecasted in the proceedings resulting in Orders 59/18 and 69/19.

While it did not file the actual study, Manitoba Hydro provided the Revenue to Cost Coverage ratios resulting from the Prospective Cost of Service Study for 2020/21 ("PCOSS21"), which reflects the costs of Bipole III fully in-service as well as costs related to Keeyask, MMTP, and the Great Northern Transmission Line. Manitoba Hydro's position is that there has not been a significant change in the Revenue to Cost Coverage ("RCC") ratios when considering the in-service of the major capital projects, and that the PCOSS21 results are consistent with the information considered by the Board in issuing Orders 59/18 and 69/19.

Finally, Manitoba Hydro provided information regarding current water conditions, energy in storage, hydraulic generation, and the range of net export revenue for 2021/22, given low and high-water flow conditions. Manitoba Hydro states that for the periods 2018/19 through to 2020/21, water levels were, for the most part, close to or above average resulting in hydraulic generation that ranged from 5% below to 9% above the hydraulic generation assumed in the budgets for these years. For the 2021/22 forecast period, overall system flows are approximately 80% of the average for this time of year and hydraulic generation is projected to be 5% below budget. However, based on actual starting storage conditions, updated projections of water supply, and other underlying forecasts, the forecast for 2021/22 net export revenue is $80 million unfavourable relative to budget, assuming normal precipitation for the remainder of the year. Manitoba Hydro submits that it is too early to speculate and draw conclusions on the impact of low water flows.

Submissions on Manitoba Hydro's Response to Order 53/21

The Consumers Coalition

The Consumers Coalition submits that the information provided by Manitoba Hydro in response to Order 53/21 does not comply with the directives in that Order.

The Consumers Coalition asserts that Manitoba Hydro failed to provide an IFF or any of the components of an IFF, such as the Load Forecast, Power Resource Plan, CEF, and Operating and Administrative Expenditure Forecast, among others. The Consumers Coalition submits that as a capital-intensive monopoly with long-lived asserts, the rate setting, planning, and management of Manitoba Hydro requires consideration of short-term, mid-term, and long-term forecasts in an integrated fashion with a view to Manitoba Hydro’s financial targets. Further, the Consumers Coalition argues that Manitoba Hydro has also failed to provide any metrics to assess its financial health, as Manitoba Hydro has not provided any information regarding its debt ratio, interest coverage ratio, or capital coverage ratio, all of which are typically found in an IFF.

With respect to the information that Manitoba Hydro provided in lieu of an IFF, the Consumers Coalition argues that the 2018/19 and 2019/20 actual information is stale-dated and is a summary of information that was already publicly available to the Board and Interveners. The budgeted net income for 2020/21 was also previously disclosed. The Consumers Coalition submits that the financial information that Manitoba Hydro provided is of little relevance to rate-setting in general and to determining the adequacy of current rates.

The Consumers Coalition also asserts that Manitoba Hydro failed to provide a current version of its CEF, and that the historic actuals or current year capital expenditure forecasts provided by Manitoba Hydro in lieu of a CEF are mostly stale dated. The Consumers Coalition argues that Manitoba Hydro did not provide any forward-looking insight into its capital expenditures over a five, ten, or twenty year period beyond its current year, which is critical for determining rates for a capital-intensive monopoly with long-lived assets. In the context of prospective rate setting, the information provided by Manitoba Hydro is of limited value to determining whether there has been a substantial change in circumstances.

Further, the Consumers Coalition states that Manitoba Hydro failed to provide a Prospective Cost of Service Study, and submits that the full impact of the in-service costs for the Birtle Transmission Project, MMTP, and Keeyask are not reflected in the summary of the Revenue to Cost Coverage ratios for each of the customer classes for the 2020/21 fiscal year that Manitoba Hydro provided.

With respect to water conditions and the hydraulic generation forecast, the Consumers Coalition points out that Manitoba Hydro has provided information only for the year 2021/22 and only with respect to net export revenues.

The Consumers Coalition submits that the Board should draw an adverse inference from Manitoba Hydro's non-compliance with Order 53/21, namely, that the documents, data, and information sought in Order 53/21 that Manitoba Hydro failed to produce undermine Manitoba Hydro's assertion that it has not undergone a substantial change in circumstances.

In conclusion, the Consumers Coalition asserts that the threshold issue of a substantial change in circumstances has been met. Accordingly, the Board should order a review of Orders 59/18 and 69/19 and direct that a pre-hearing conference be held to determine a schedule for the status update hearing.

Manitoba Industrial Power Users Group ("MIPUG")

MIPUG asserts that Manitoba Hydro's response to Order 53/21 did not comply with the Board's directives in that Order.

MIPUG submits that none of the documents ordered by the Board were produced, nor were comparable versions provided. MIPUG states that Manitoba Hydro failed to produce any forecasts beyond the 2021/22 year, and although it refers to a "2021/2022 budget", it did not produce this budget, but instead provided only limited figures from the document. MIPUG also points out that Manitoba Hydro did not provide any information on any of the three key financial ratio targets that Manitoba Hydro has adopted – namely, interest coverage, capital coverage, and debt-to-equity.

MIPUG argues that Manitoba Hydro focused solely on its net income in the information provided to the Board, which does not permit the parties to assess fully whether current rates are stable and predictable. Industry has long identified that the most important outcome of regulation is stable and predictable rates into the future. MIPUG submits that long-term forecasts are critical to the assessment of whether rates will remain stable and predictable in the long-term. Rate stability is a result of slow adjustments made to rates over time, with an eye to the future, which long-term forecasts provide. MIPUG points out that the rates paid by customers today are more than 5% lower than would have been predicted in Exhibit MH-93, yet Manitoba Hydro asserts that it is making a comparable net income. Further, a number of these rate increases are not even included in Manitoba Hydro's net income, as the revenue was directed to be deferred to the future.

As such, in MIPUG's view, the information provided by Manitoba Hydro does not permit parties to assess whether ratepayers are paying rates that are likely to be stable and predictable. MIPUG submits that it is possible that current rates are either too low or too high. If current rates are too low, then rates could increase materially in the next few years and result in rate increase instability. Conversely, if current rates are too high, then ratepayers will be paying rates that are not just or reasonable.

MIPUG submits that there are two options for the Board with respect to Manitoba Hydro's response to Order 53/21. First, the Board could direct the cross-examination of Manitoba Hydro's officials or retain an independent expert consultant to attend Manitoba Hydro's offices to review its forecasts or to prepare forecasts on Manitoba Hydro's behalf using Manitoba Hydro's base data.

Second, the Board can find that there has been a substantial change in Manitoba Hydro's circumstances and direct a review of Orders 69/19 and 59/18. In MIPUG's view, a review of Orders 69/19 and 59/18 would require Manitoba Hydro to meet minimum filing requirements, a stage of discoveries, and the opportunity for parties to call opinion evidence. The first step may be a procedural conference to set out the recommended steps and schedule.

Assembly of Manitoba Chiefs ("AMC")

AMC agrees with Consumers Coalition and MIPUG that Manitoba Hydro has failed to comply with the directives of Order 53/21. AMC supports the Consumers Coalition's submissions and agrees that the Board should find that there has been a substantial change in Manitoba Hydro's circumstances and order a status update hearing.

AMC submits that every delay in holding a status update hearing amounts to another day that First Nations ratepayers continue to suffer from rate shock without sufficient regulatory oversight from the Board.

Manitoba Keewatinowi Okimakanak ("MKO")

MKO submits that Manitoba Hydro has not complied with Order 53/21 and that the Consumers Coalition has satisfied its onus for holding a status update hearing.

MKO points out that in Order 9/02, the Board held a hearing to determine whether Manitoba Hydro's rates were just and reasonable in the absence of evidence from Manitoba Hydro. MKO's position is that the Board should grant Consumers Coalition's Application and direct that a status update hearing be held.

Manitoba Hydro's Reply

Manitoba Hydro maintains that it has fully complied with Order 53/21, that there has been no substantial change in Manitoba Hydro's circumstances, and that there is no legal basis for a status update hearing.

Manitoba Hydro submits the submissions from the Interveners regarding Manitoba Hydro's response to Order 53/21 do not refute Manitoba Hydro's position that its financial circumstances have remained substantially the same. Manitoba Hydro asserts that Consumers Coalition and MIPUG offer no substantive review of the information actually filed by Manitoba Hydro and no assistance regarding determination of the threshold issue.

Manitoba Hydro states that it is not concealing evidence requested by the Board in Order 53/21. The allegations made by Interveners that Manitoba Hydro chose not to comply with Order 53/21 are unfounded. Manitoba Hydro notes that its CEO confirmed that an IFF does not exist in her statements made before the Standing Committee on June 29, 2021. Manitoba Hydro states that it is in the process of developing "an Enterprise-wide business plan and Integrated Resource Plan analysis", and that it cannot prepare an accurate IFF without first developing its Enterprise-wide business plan, integrated resource plan analysis, and Strategy 2040. In Manitoba Hydro's view, a status update hearing is not in the best interests of customers at this time, as Manitoba Hydro needs to first complete the above initiatives to develop an IFF.

Manitoba Hydro also notes that it has provided Crown Services with an updated Annual Business Plan for the 2021/22 fiscal year for approval, which provides line item details of Manitoba Hydro's Consolidated Statement of Net Income (among other information). Once the Annual Business Plan is approved by government, it will be made publicly available on Manitoba Hydro's website.

Manitoba Hydro asserts that there is no legal basis for issuing subpoenas to Manitoba Hydro, sending independent consultants to Manitoba Hydro to review documents, or inferring that there has been a substantial change in circumstances. Manitoba Hydro notes that it previously requested that the Board treat its initial submission in response to Order 53/21 as a Review & Vary application, pursuant to the Board's enabling legislation and Rules of Practice and Procedure, if the Board determined that Manitoba Hydro was not strictly in compliance with the intent of the Order.

6.0 The Consumers Coalition's New Evidence Motion

On July 2, 2021, the Consumers Coalition brought a motion seeking to adduce the Hansard transcript of the June 29, 2021 sitting of the Legislative Assembly of Manitoba's Standing Committee on Crown Corporations (the "Standing Committee"). On June 29, 2021, the CEO of Manitoba Hydro appeared before the Standing Committee with respect to the presentation of Manitoba Hydro's 2019/20 Annual Report. The Consumers Coalition notes that the CEO of Manitoba Hydro stated to the Standing Committee that Manitoba Hydro required a 3.5% rate increase in 2021 and that financial projections identifying this need were available as early as August 2020.

The Consumers Coalition asserts that the Board should admit this new evidence for the following reasons. First, the information provided by Manitoba Hydro's CEO on June 29, 2021 was not available prior to the Consumers Coalition's filing of its written comments on Manitoba Hydro's response to Order 53/21. Second, in the Consumers Coalition's view, the statements by Manitoba Hydro's CEO are highly relevant and material to the issue of whether Manitoba Hydro's circumstances have changed substantially, as they indicate that current rates are not sufficient for Manitoba Hydro to meets its financial targets. Further, the CEO of Manitoba Hydro indicated that financial forecasting and analysis supporting the 3.5% rate increase was available as of August 2020. The Consumers Coalition notes that this information has not been provided to the Board as part of Manitoba Hydro's response to Order 53/21.

Lastly, the Consumers Coalition takes the position that although the statements made by Manitoba Hydro's CEO to the Standing Committee were made outside of the Application proceeding, they are admissible on the basis that they constitute an admission against interest.

<u>Manitoba Hydro's Submissions on Consumers Coalition's New Evidence Motion</u>

With respect to Consumers Coalition's new evidence motion, Manitoba Hydro does not object to the Board receiving as evidence the Hansard transcript of the June 29, 2021 sitting of the Standing Committee.

Manitoba Hydro asserts that the CEO of Manitoba Hydro's request for a rate increase of 3.5% before the Standing Committee is not evidence of a substantial change in circumstances, as this rate increase is consistent with evidence before the Board in the last two GRAs. Manitoba Hydro points out that a 3.5% rate increase is less than the assumed annual rate increases in MH Exhibit 93, which were directionally consistent with Orders 59/18 and 69/19. Further, Manitoba Hydro submits that the requested 3.5% rate increase is only an assumption in an unapproved annual business plan for the 2021/22 fiscal year. The annual business plan and financial forecasting and analysis that inform the plan are not equivalent to an IFF and do not contain long-term financial forecasting.

7.0 Board Findings

Summary

There are two issues before the Board: first, whether the Board should receive into evidence the Hansard transcript of the June 29, 2021 sitting of the Standing Committee and second, whether the circumstances of Manitoba Hydro have changed substantially such that the Board should grant the Consumers Coalition's Application.

As detailed below, the Board determines that the evidence of the Hansard transcript is admissible in this proceeding. In addition, the Board finds that the circumstances of Manitoba Hydro have changed substantially. The Board directs that a public process be established to review the rates that were approved as a result of Orders 59/18 and 69/19 and to consider whether Manitoba Hydro's costs are fairly allocated among the various customer classes.

It is important to note that no rates are being changed in this Order. Furthermore, this Order does not examine whether existing rates are just and reasonable. Rather, the Board is satisfied, based on the evidence, that the circumstances of Manitoba Hydro have changed substantially such that the Board directs that a public process be held. Through this public process, additional evidence is to be made available to assist the Board in its determination of whether Manitoba Hydro's rates are just and reasonable and its costs are fairly allocated among the various customer classes.

Prior to convening a pre-hearing conference, and based on the evidence already provided to the Board, Interveners are requested to file their written list of suggested minimum filing requirements. In addition, the Board will provide its suggested list of minimum filing requirements to Manitoba Hydro. The Board acknowledges that while Manitoba Hydro does not have an approved integrated financial forecast, as indicated in Order 53/21, the Board will accept documents containing substantially the same information that was used or is currently in use in the operations and management of Manitoba Hydro. The Board is confident that in order to effectively manage a multi-billion dollar corporation, this information must exist. After Manitoba Hydro responds to the suggested minimum filing requirements, the Board will convene a pre-hearing conference to further consider and adjudicate the minimum filing requirement requests and to establish a process for the review of that additional information.

The Consumers Coalition's New Evidence Motion

As indicated, the Consumers Coalition requests that the Board admit new evidence, namely, the Hansard transcript of the June 29, 2021 sitting of the Standing Committee during which the CEO of Manitoba Hydro stated that Manitoba Hydro requires a 3.5% rate increase in 2021. Pursuant to Rule 26(1) of the Board's Rules of Practice and Procedure, an Applicant must seek leave of the Board to submit written evidence in addition to the information contained in the Application and in the Applicant's submissions. The Board notes that Manitoba Hydro does not object to the Board receiving this transcript into evidence.

The PUB Act and the Board's Rules of Practice and Procedure set out a flexible approach to the admissibility of evidence in Board proceedings. Section 24(2) of the PUB Act expressly states that the Board is not bound by the technical rules of legal evidence. Further, pursuant to Rule 17(1) of the Board's Rules of Practice and Procedure, the Board may receive evidence by such manner "as may be deemed appropriate by the Board". As an example of the Board's flexible rules regarding evidence, the Board is permitted under s. 41 of the PUB Act to admit into evidence any documents purporting to have been issued or authorized by a corporation, or any officer, agent, or employee of a corporation, as "prima facie proof" without any further evidence than the mere production of the document.

The Board notes that the question of whether certain evidence is admissible is distinct from the issue of the weight to be assigned to that evidence. A finding by the Board that evidence is admissible under its Rules and statutory mandate does not necessarily mean that the Board will assign significant weight to that evidence. Where the Board determines that it will receive information as evidence, it will then consider as a separate question the weight to be assigned to the evidence by assessing the persuasiveness and credibility of the evidence.

With respect to the new evidence that Consumers Coalition seeks to adduce, the Board is satisfied that the evidence of the Hansard transcript of the June 29, 2021 sitting of the Standing Committee is admissible pursuant to the PUB Act and the Board's Rules of Practice and Procedure. The Board notes that Manitoba Hydro does not object to the Board receiving this transcript into evidence.

Consumers Coalition's Application for a Status Update Hearing

The Board's Review Mandate

The Board indicated in Order 53/21 that the threshold question in this Application is whether the circumstances of Manitoba Hydro have changed substantially. The Board can review a prior Order under s. 26(3) of the Crown Act only after the Board is satisfied that this requirement has been met. Subsection 26(3) of the Crown Corporations Governance and Accountability Act ("Crown Act") provides:

> *Where The Public Utilities Board is satisfied that the circumstances of a corporation have changed substantially, The Public Utilities Board may, of its own motion or on the application of the corporation or an interested person, review an order made pursuant to this section and modify the order in any manner that The Public Utilities Board considers reasonable and justified in the circumstances.* (underline added)

Under the Crown Act, the Board must set the rates paid by consumers of electricity to Manitoba Hydro, which has a monopoly on the sale of electricity in the Province of Manitoba. As a monopoly, Manitoba Hydro, by definition, does not face market competition with respect to the sale of electricity. The Board's statutory mandate is to ensure that the rates charged by Manitoba Hydro to its ratepayers are just and reasonable and in the public interest. In setting those rates, as confirmed by the Manitoba Court of Appeal, the Board balances 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.

In balancing these two interests, the Board must consider the context in which Manitoba Hydro operates. As noted by the Board in Order 59/18:

> *As a monopoly Crown utility that generates, transmits, and distributes electricity (also known as vertically integrated), Manitoba Hydro is different from many other electric utilities operating in Canada, and in particular, from privately owned for-profit corporations. Unlike private corporations, Manitoba Hydro does not have private shareholders in the traditional sense. While owned by the Province of Manitoba for the benefit of Manitobans, Manitoba Hydro is a non-share capital corporation. This means that Manitoba Hydro does not have investors or shareholders that contribute equity to the Utility and it is not required to make payments to any equity investors. Any equity acquired by Manitoba Hydro is obtained from domestic ratepayers or export power sale customers. Rather, as a Crown utility, Manitoba Hydro has a public policy purpose.*

Furthermore, in Order 59/18, the Board specifically noted that Manitoba Hydro is a pure cost recovery utility. Unlike some other government-created utilities in Canada, Manitoba Hydro is not required to pay dividends to the provincial government. Like some other Crown utilities, Manitoba Hydro pays water rental fees, debt guarantee fees, capital taxes, and other taxes to the Provincial Government. In Order 59/18 those annual fees and taxes were forecast at $433 million.

The Threshold Question of Substantial Change in Circumstances

In determining whether Manitoba Hydro's circumstances have changed substantially, the Board is guided by its statutory mandate to balance the interests of Manitoba Hydro's ratepayers and the financial health of Manitoba Hydro, taking into account that Manitoba Hydro is a monopoly Crown utility that sells a basic necessity.

Further, as stated in Order 53/21, the Board accepts the submissions that "information asymmetry" exists, which the Board understands to mean that current documentation related to Manitoba Hydro's business operations and expenses is held by Manitoba Hydro and is not publicly available to ratepayers or stakeholders.

For the reasons that follow, the Board determines that Manitoba Hydro's circumstances have changed substantially since the Board's issuance of Orders 59/18 and 69/19, necessitating a public process to determine whether Manitoba Hydro's rates are just and reasonable and its costs are fairly allocated among the various customer classes. Based on the publicly filed evidence and written submissions from the parties in this proceeding, the Board finds that, taken collectively, the following changes that have occurred after the issuing of Orders 59/18 and 69/19 constitute a substantial change in Manitoba Hydro's circumstances:

- In issuing Order 69/19, the Board relied upon the representation of Manitoba Hydro that it would file its long-range financial forecast and full GRA with the Board in the fall of 2019. That circumstance changed. As submitted by the Consumers Coalition, Manitoba Hydro failed to file the forecast or the GRA. In Order 69/19, the Board specifically noted that "in the absence of a long-term financial forecast, the Board is challenged in its ability to assess the appropriate level of a rate increase in the 2019/20 test year to reduce the likelihood of future rate shock to consumers". Having determined that Manitoba Hydro did not require additional revenue in 2019/20, the Board was concerned about the additional costs to consumers when Keeyask and MMTP came into commercial service. As the amount and timing of those additional costs had not crystallized, the revenues from the Board's approved rate increase were directed to a deferral account for the future benefit of consumers. The Board stated that, once Manitoba Hydro had filed its full rate application, it would assess future rates in the context of a long-term financial forecast given the expected in-service for Keeyask.

- Over the last three years, Manitoba Hydro has doubled the size of its assets and debt through the new major capital generation and transmission projects that have entered or are entering commercial service, which has a significant annual revenue requirement impact. This includes the $8.7 billion Keeyask Generating Station of which the first of seven units entered commercial service in February 2021, followed by the second unit in April 2021. Manitoba Hydro's CEO stated before the Standing Committee that when all the units of Keeyask are in service by April 2022, Manitoba Hydro's debt will "peak" at $25 billion and Manitoba Hydro's annual debt servicing costs will amount to $1.1 billion. Further, Manitoba Hydro's CEO asserted that once its debt peaks, Manitoba Hydro will have a debt-to-equity ratio that is the highest of all utilities in Canada, including all Crown corporations.

- Between 2020/21 and 2022/23, significant revenue requirement impacts are expected from major new generation and transmission projects, including Bipole III (completed in July 2018), Keeyask, MMTP (completed in June 2020), and Birtle Transmission Project (completed in March 2021).

- Manitoba Hydro's CEO also indicated before the Standing Committee that Manitoba Hydro is currently borrowing funds for its business operations capital expenditures that are required to maintain the utility's assets. These comments indicate that Manitoba Hydro's Capital Coverage Ratio is less than 1.0. This ratio is a measure of the ability of cash flow from Manitoba Hydro's operations to fund Business Operations Capital expenditures, excluding consideration of spending and capitalized interest on major capital projects. Where the ratio falls below 1.0, Manitoba Hydro will have to borrow to fund Business Operations Capital spending. The Capital Coverage Ratio target approved by the Manitoba Hydro-Electric Board at the time of the 2017/18 GRA is a ratio greater than 1.20;

- In October 2020, Manitoba Hydro confirmed a multi-billion dollar 215 MW export sale with SaskPower beginning in June 2022, as well as a 125 MW export sale to

Northern States Power beginning on May 1, 2021. The impact of the SaskPower sale on Manitoba Hydro's net income is unclear;

- Interest rates on long term bonds have dropped sharply since March 1, 2018, which may have significant implications for Manitoba Hydro given its stated expectation before the Board in 2019 that it was undertaking $4.0 billion of incremental borrowing in the next few years, as well as refinancing $4.8 billion of debt in the five-year period following the test year. Manitoba Hydro did not provide details of its debt management plan beyond 2019/20, indicating that it would be included in the context of its next IFF that was to be filed in 2019. At the 2019/20 GRA, Manitoba Hydro forecast that it would be issuing $2.2 billion in debt in 2019/20 with a weighted average interest rate ("WAIR") of 3.71%. Manitoba Hydro has reported in its 2019/20 Annual Report that the Corporation had taken advantage of favourable market conditions and issued $2.2 billion in debt at a WAIR of 2.42%, which is 129 basis points lower than what was forecast for the year. It is unclear from the information provided whether these favourable borrowing conditions have continued;

- The disposition of the Major Capital Deferral Account, which was established effective June 1, 2019 in Order 69/19, is presently unknown to the Board. All revenues from a 2.5% rate increase granted in that Order, estimated at approximately $40 million annually, were to be placed in a deferral account for major capital projects currently under construction. The deferral account will partially mitigate future rate increases required when new major capital projects are in service, consistent with the principles of rate stability and predictability. The Board stated in Order 69/19 that "the Board will determine how the deferral account will be brought into Manitoba Hydro's operating revenues at a future GRA". In her statements before the Standing Committee, the CEO of Manitoba Hydro stated that Manitoba Hydro "is no longer amortizing the major capital reserve, which is– reserve is revenue we collected in prior years, but it was placed into a reserve by the PUB to be recognized in future years". It is unclear to the Board whether

Manitoba Hydro has ceased deferring the revenues from the prior Board approved 2.5% rate increase or whether Manitoba Hydro has begun recognizing the previously deferred revenue on the Income Statement;

- There is potentially a significant change in Manitoba Hydro's near-term net income. The Board has received conflicting evidence regarding Manitoba Hydro's budgeted net income for the 2020/21 and 2021/22 fiscal periods. In its submissions, Manitoba Hydro asserts that Manitoba Hydro's budgeted net income for 2020/21 to 2021/22 has changed by only $17 million from the amount forecasted in the 2017/18 GRA. Manitoba Hydro notes that the forecasted cumulative net income for 2020/21 and 2021/22 in Exhibit-93 from the 2017/18 GRA was $293 million. Manitoba Hydro provided a fall 2020 forecast for the 2020/21 and 2021/22 cumulative net income of $276 million, which indicates that Manitoba Hydro's forecasted cumulative net income for 2020/21 and 2021/22 has changed by only $17 million from the amount forecasted in the 2017/18 GRA. This change of $17 million was confirmed by the CEO of Manitoba Hydro in her statements before the Standing Committee. Specifically, the CEO of Manitoba Hydro stated that "…in the near term net income is only changing by $17 million and the PUB has line-by-line revenue and cost information to assess and determine if there is a change, and that- and the PUB will work that process through." However, Manitoba Hydro also indicated in its June 9, 2021 response to Order 53/21 that its 2021/22 forecasted net income may be significantly decreased based on more recent hydrology information. Manitoba Hydro stated that based on actual starting hydraulic energy in storage conditions, updated projections of water supply and other underlying forecasts, there is a projected $80 million decrease in forecasted net income for 2021/22 compared to the approved budget. In addition, according to Manitoba Hydro's evidence before the Board, if water conditions further deteriorate, Manitoba Hydro's net income could be reduced by as much as $230 million in the event of the most unfavourable water conditions, or by $140 million in the event that lower quartile water conditions are experienced. The Board further notes that for the 2020/21 and 2021/22 fiscal years, it did not receive any line-by-line revenue and cost information from Manitoba Hydro in its response to Order 53/21;

- The COVID-19 pandemic has resulted in a material reduction in electricity consumption by major industrial and commercial customers, which has been somewhat offset by increased electricity consumption in the residential sector. Manitoba Hydro's CEO also indicated before the Standing Committee that Manitoba Hydro has experienced a $78 million decrease to net income (partially offset by $30 million in savings) because of circumstances relating to the COVID-19 pandemic, including a reduction in commercial and industrial usage;

- Manitoba Hydro has indicated that the energy landscape is changing, which has fundamentally altered the nature of its financial forecasting. Both in response to Order 53/21 and before the Standing Committee, Manitoba Hydro has repeated that a long-term financial forecast does not presently exist for Manitoba Hydro. Manitoba Hydro's CEO explained that Manitoba Hydro does not currently have a 20-year forecast because "The energy landscape that we are operating in is changing and … the key variables that are input into a long-term financial forecast are currently unknown".

- Manitoba Hydro's CEO indicated before the Standing Committee that the delay of the first generating unit at Keeyask entering service was a primary driver behind Manitoba Hydro's net income increasing to $111 million in the year ending March 31, 2021. This delay deferred $97 million of cost, interest, and depreciation until the first generating unit entered into service in February 2021;

- Manitoba Hydro's CEO stated before the Standing Committee that Manitoba Hydro requires a 3.5% rate increase effective October 1, 2021. While Manitoba Hydro has assumed a 3.5% rate increase for the 2021/22 fiscal year, Manitoba Hydro may not receive this rate increase. The Board takes notice of the announcement by the provincial government that it intends to introduce legislative amendments to

Bill 35 to increase rates by 2.5% for 2021, 2022, and 2023, which may undermine the validity of Manitoba Hydro's net income forecast that was provided to the Board in response to Order 53/21; and

- Effective December 1, 2020, the Legislative Assembly of Manitoba imposed a 2.9% rate increase on almost all Manitoba Hydro customer classes, which increases the revenues of Manitoba Hydro. While the 2.9% rate approval is not subject to review by the Board, it amounts to a change in Manitoba Hydro's circumstances that the Board can consider in determining the question of whether Manitoba Hydro's circumstances have changed substantially.

The Board notes that several of the above changes, even if taken individually, would amount to a substantial change in Manitoba Hydro's circumstances. The Board accepts that these changes represent a substantial change in Manitoba Hydro's circumstances and raise the possibility that electricity rates today may not be just or reasonable.

In its submissions to the Board, Manitoba Hydro argues that its circumstances have not changed substantially, asserting that its budgeted net income results are consistent with financial forecasts relied on by the Board in Orders 59/18 and 69/19, and that its financial circumstances are consistent with past forecasts. As discussed above, the fall 2020 forecast provided by Manitoba Hydro in response to Order 53/21 indicates that Manitoba Hydro's forecasted cumulative net income for 2020/21 and 2021/22 has changed by only $17 million from the amount forecasted in the 2017/18 GRA. However, as mentioned above, Manitoba Hydro also indicated in its June 9, 2021 response to Order 53/21 that its 2021/22 forecasted net income may be significantly decreased based on more recent hydrology information. Manitoba Hydro advised that based on actual starting hydraulic energy in storage conditions, updated projections of water supply and other underlying forecasts, there is a projected $80 million decrease in forecasted net income for 2021/22 compared to the budgeted net income. According to Manitoba Hydro's evidence before the Board, if water conditions further deteriorate, Manitoba Hydro's net income could be reduced by up to $230 million.

In Manitoba Hydro's prior applications to the Board, the risks associated with low water flows were a factor cited in support of a rate increase to protect the Utility's financial health. For example, in the 2019/20 GRA, Manitoba Hydro submitted that significant uncertainty in water supply for 2019/20 and significant risk of financial losses associated with below average water flows justified a 3.5% rate increase. Manitoba Hydro maintained that the financial risks associated with low water flows required mitigation through a rate increase even given the positive changes in water flow conditions that had occurred in that fiscal year. This evidence provided by Manitoba Hydro appears to conflict with its current position that its circumstances have not changed substantially.

Given the change in forecasted net income and uncertainty outlined above, in addition to other changes affecting Manitoba Hydro's financial health, the Board accepts MIPUG's submission that current electricity rates may be too low or too high, which would result in future rate instability. For example, if water flow conditions continue to deteriorate, Manitoba Hydro may require significantly higher rates in the future, which could result in rate shock to consumers. Even if Manitoba Hydro achieves a target net income in the short term, its positive net income may be temporary due to the costs of Keeyask entering service and major export contracts ending, which could result in Manitoba Hydro's rates increasing materially in the next few years. The Board accepts the submissions of MIPUG that a key factor of just and reasonable rates is their stability and predictability over the long term, and that stable and predictable rates are best achieved through slow adjustments over time, as opposed to abrupt rate changes.

Manitoba Hydro also asserts that several of the above mentioned changes, such as the revenue requirement impacts of the major capital projects and the increase in opportunity export sales following Keeyask entering service, have been considered in previous GRAs and in Orders 59/18 and 69/19. As such, in Manitoba Hydro's view, these events do not amount to changes in Manitoba Hydro's circumstances since those Orders were issued. The Board does not accept this submission. Orders 59/18 and 69/19 were based on the available evidence at the time those Orders were issued. Several of the major capital projects mentioned above were not yet fully in service, and the referenced export sales contracts had not yet been confirmed by Manitoba Hydro.

In particular, the latter Order was issued after an abbreviated process that was requested by Manitoba Hydro. The proceeding was limited to the consideration of the single 2019/20 test year, and there was no IFF, Prospective Cost of Service Study, Debt Management Strategy, or detailed operating budgets before the Board. The Board relied upon the representation of Manitoba Hydro that it would file a full GRA to be filed late in 2019 for the next fiscal year, which would include a new IFF prepared in the fall of 2019. The Board specifically noted that Manitoba Hydro stated in its Letter of Application that it would file a full rate application in late 2019, which included a current IFF. As indicated above, the Board noted in 69/19 that "in the absence of a long-term financial forecast, the Board is challenged in its ability to assess the appropriate level of a rate increase in the 2019/20 test year to reduce the likelihood of future rate shock to consumers". Having determined that Manitoba Hydro did not require additional revenue in 2019/20, the Board was concerned about the additional costs to consumers when Keeyask and MMTP came into commercial service. As the amount and timing of those additional costs had not crystallized, the revenues from the Board's approved rate increase were directed to a deferral account for the future benefit of consumers. In issuing Order 69/19, the Board specifically contemplated that the approved rates and underlying assumptions would be re-assessed at a later date after Manitoba Hydro filed its full rate application. After that Order was issued, Manitoba Hydro failed to file a GRA for the 2020/21 fiscal year.

The Board acknowledges that, as asserted by the Consumers Coalition and MIPUG, in the absence of a rate hearing, the substantial change in circumstances experienced by Manitoba Hydro since Orders 59/18 and 69/19 may undermine consumer and industrial confidence in rates. As noted by the Board in Order 53/21:

> *Achieving the Board's mandate of setting for a monopoly just and reasonable rates that are in the public interest requires ratepayer trust and confidence. In order to achieve public trust, there must be transparency in the Board's processes. A transparent process allows the public to have access to information regarding the basis for the rates charged for electricity, and to trust that the monopoly utility is being regulated in the public interest.*

In its submissions supporting Consumers Coalition's Application, MIPUG notes that a lack of transparency regarding current rates has resulted in

> *…industry in Manitoba … presently operating with an unprecedented lack of confidence. Conditions related to rate competitiveness in Manitoba are opaque and important decisions regarding capital investment by industry and post-pandemic production scheduling are already beginning to direct critical resources elsewhere. If allowed to continue, opportunities for Manitoba-based operations will inevitably be lost… Routine and transparent regulation, overseen by an independent regulator, is the only way to achieve ratepayer confidence.*

For all of the above reasons, the Board is satisfied that the circumstances of Manitoba Hydro have changed substantially, necessitating a public process to assess whether current electricity rates are just and reasonable and costs are fairly allocated.

To determine the next steps regarding the public process, the Board will hold a pre-hearing conference with Manitoba Hydro and Interveners. Prior to convening a pre-hearing conference, and based on the evidence already provided to the Board, Interveners are requested to file their written list of suggested minimum filing requirements. In addition, the Board will provide its suggested list of minimum filing requirements to Manitoba Hydro. The Board requests that Interveners submit written comments regarding the minimum filing requirements by Manitoba Hydro for the public process within two weeks from the date of this Order, and will provide Manitoba Hydro with an opportunity to respond to the suggested lists of minimum filing requirements from the Board and interveners within two weeks thereafter. After Manitoba Hydro responds to the suggested minimum filing requirements, the Board will convene the pre-hearing conference to further consider and adjudicate the minimum filing requirement requests and to establish a process for the review of that additional information.

8.0 IT IS THEREFORE ORDERED THAT:

1. Having found that Manitoba Hydro's circumstances have changed substantially, the Consumers Coalition's Application for a public process to determine whether Manitoba Hydro's rates are just and reasonable and its costs are fairly allocated among the various customer classes BE AND HEREBY IS GRANTED.

2. The Consumers Coalition's Motion to submit new evidence in support of its Application, namely, the Hansard transcript of the June 29, 2021 sitting of the Standing Committee on Crown Corporations, BE AND HEREBY IS GRANTED.

3. Past Interveners of Record are directed to provide any written comments regarding the minimum filing requirements by Manitoba Hydro for the public process within two weeks of the date of this Order. Manitoba Hydro is directed to provide any reply within two weeks thereafter.

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

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

Certified a true copy of Order No. 89/21 issued by The Public Utilities Board

Darren Christle
Secretary