

Order No. 130/22

**FIRST PROCEDURAL ORDER
IN RESPECT OF
MANITOBA HYDRO'S 2023/24 AND 2024/25 GENERAL RATE APPLICATION**

December 8, 2022

BEFORE:

Robert Gabor, K.C., Board Chair
Marilyn Kapitany, B.Sc., M.Sc., Vice Chair
George Bass, K.C., ICD. D., Member
Carol Bellringer, FCPA, FCA, Member
Hamath Sy, B.Sc., M.Sc., Member

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1.0 EXECUTIVE SUMMARY

This is the first procedural order in Manitoba Hydro's 2023/24 and 2024/25 General Rate Application. By this order, the Public Utilities Board ("Board"):

- approves intervener status for the following five applicants:
 - Assembly of Manitoba Chiefs,
 - Consumers Coalition (a coalition of the Manitoba Branch of the Consumers' Association of Canada, Harvest Manitoba and the Aboriginal Council of Winnipeg),
 - Representative of the General Service Small and General Service Medium Customer Classes,
 - Manitoba Industrial Power Users Group, and
 - Manitoba Keewatinowi Okimakanak;
- approves Manitoba Hydro's motion for the Board to receive certain information in confidence, without making a determination on how such information is to be tested in the proceeding; and
- establishes a hearing timetable for the orderly exchange of evidence.

2.0 PROCEDURAL HISTORY

On November 15, 2022, Manitoba Hydro filed its 2023/24 and 2024/25 General Rate Application with the Board. Among other things, the application sought confirmation of the interim 3.6% rate increase approved effective January 1, 2022, and two further rate increases of 3.5% effective September 1, 2023 and April 1, 2024, respectively.

In its cover letter, Manitoba Hydro included a motion to treat certain information filed in respect of the application as commercially sensitive information, as described in section 4.0 below.

On October 16, 2022, the Board sent a letter to past interveners of record in Manitoba Hydro rate proceedings. The letter indicated that applications for intervener status would be due on November 24, 2022, and that the Board would hold a pre-hearing conference on December 5, 2022.

The Board received six applications for intervener status, as described in section 3.0 below.

On November 23, 2022, the Minister of Finance announced, in the Manitoba Legislative Assembly, that the provincial government would reduce the water rental fees and debt guarantee fee payments Manitoba Hydro makes to the Province of Manitoba, retroactive to April 1, 2022.

On November 29, 2022, Manitoba Hydro advised the Board that, based on the announcement in the Legislative Assembly, Manitoba Hydro would re-file portions of its application to reduce the rate increases sought for September 1, 2023 and April 1, 2024 from 3.5% to 2.0%, and to update its application to reflect the consequences of those changes.

On November 30, 2022, Manitoba Hydro provided a written response to applications for intervener status.

The Board held the first pre-hearing conference in this proceeding on December 5, 2022.
This order results from that pre-hearing conference.

3.0 INTERVENER STATUS AND HEARING SCOPE

3.1 Submissions Received

3.1.1 *Assembly of Manitoba Chiefs (AMC)*

The Assembly of Manitoba Chiefs (“AMC”) is the political and technical coordination organization for 62 of the 63 First Nations in Manitoba. It represents approximately 151,000 people. The AMC’s member First Nations exercise inherent Aboriginal and Treaty rights over traditional territory and reserve lands. The AMC represents residential and general service ratepayers.

The AMC plans to intervene on the following issues:

- the finalization of the 3.6% interim rate increase effective January 1, 2022;
- the subsequent two rate increases sought by Manitoba Hydro effective September 1, 2023 and April 1, 2024, respectively; and
- the endorsement of changes to existing deferral accounts and the establishment and amortization of new deferral accounts.

The expected focus of AMC’s intervention is the impact of rate increases on customers, in particular First Nations customers in the Residential and General Service customer classes. The AMC submits that it will take a targeted approach relevant to First Nations customers throughout Manitoba.

The AMC plans to retain Brady Yauch and Christine Runge of Power Advisory LLC as expert consultants to assist AMC with its overall intervention. However, the AMC does not expect its experts to file evidence on the record of the proceeding.

With respect to the hourly rates sought by the AMC’s experts, AMC submits that the rates are the same rates approved in Alberta and Ontario and that the matter should not be decided at this time.

3.1.2 Consumers Coalition

The Consumers Coalition is a coalition consisting of the Manitoba Branch of the Consumers' Association of Canada, Harvest Manitoba and the Aboriginal Council of Winnipeg.

The Manitoba Branch of the Consumers' Association of Canada is a volunteer, non-profit independent organization representing the interest of consumers. The organization represents the interests of consumers on issues relating to food safety and security, patient rights and health care, financial service, access and inclusion in public services, environmental sustainability, and the regulatory review of utilities and Crown corporations delivering services and products to consumers.

Harvest Manitoba is a non-profit, community-based organization committed to providing food to people who struggle to feed themselves and their families. It provides emergency food assistance to almost 64,000 people a month across Manitoba and shares food with more than 50 Manitoba communities through the Manitoba Association of Food Banks.

The Aboriginal Council of Winnipeg was founded in 1994 as an Indigenous political organization representing First Nations, Inuit and Metis living in Winnipeg. It focuses on the urban Indigenous community and has approximately 7,000 members. The Aboriginal Council of Winnipeg seeks to ensure that Indigenous voices are represented around the tables of decision makers, policy makers and service providers.

The Consumers Coalition is planning to intervene on the following issues:

- Manitoba Hydro's rate requests in light of its short-term financial position and long-term financial outlook;
- Manitoba Hydro's proposed responses to legislated capital targets and legislated constraints on rate increases;
- access to capital markets;
- Manitoba Hydro's load forecast;

- the prudence of Manitoba Hydro's drought management and resource planning;
- operating, maintenance and administration expenses;
- Manitoba Hydro's debt management strategy;
- asset management;
- ratemaking objectives, cost of service and differentiated rates;
- payments to government;
- Manitoba Hydro's medium- and long-term strategic planning as it has implications for the rate-setting process;
- compliance with prior Board directives; and
- bill affordability and energy poverty, taking into account the unique high inflationary times and the attitudes and perceptions of Manitoba ratepayers.

The Consumers Coalition is also contemplating assembling a panel of ratepayers to present their experiences directly to the Board.

The Consumers Coalition indicated that it plans to collaborate with the Manitoba Industrial Power Users Group ("MIPUG") with respect to a number of issues. On a preliminary basis, and subject to on-going conversations, the two parties have agreed that:

- the Consumers Coalition will take the lead with respect to the issues of operational and administrative expenses, business operations capital, major capital, financial targets and Manitoba Hydro's access to capital markets;
- MIPUG will take the lead on the issues of load forecasting and depreciation; and
- both parties will share responsibility on the issue of export revenues.

The Consumers Coalition plans to retain the following expert consultants to assist it with respect to the hearing:

- Darren Rainkie of Darren Rainkie Consulting, to assist with the testing of the overall rate application and on the issues of operating & administrative expenses;
- Pelino Colaiacovo of Morrison Park Advisors, on the issue of Manitoba Hydro's access to financial markets;
- Chris Oakley and Peter Helland of Midgard Consulting, on the issue of business operations capital and other capital spending; and
- Kelly Derksen of Kelly Derksen Consulting, on the issues of cost of service and rate design.

3.1.3 *Representative of the General Service Small and General Service Medium Customer Classes*

The Representative of the General Service Small and General Service Medium Customer Classes (“GSS/GSM Representative”) is a still-coalescing group of organizations whose members fall within one of those customer classes. As of the Board’s December 5, 2022 pre-hearing conference in this matter, the Building Owners and Managers Association of Manitoba is the only confirmed member of the group. However, the GSS/GSM Representative intends to represent the interests of the two customer classes as a whole, and not simply the interests of any individual members of the group.

The General Service Small customer class consists of primarily small commercial customers with a demand of less than 200 kW. The class is divided into two subcategories, namely (i) Demand and (ii) Non-Demand. The Demand subcategory pays a charge based on the monthly peak demand. The Non-Demand subcategory does not pay a demand charge.

The General Service Medium customer class contains predominantly large commercial customers with a demand of more than 200 kW.

The GSS/GSM Representative intends to focus on issues affecting the General Service Small and General Service Medium customer classes, including the following:

- cost of service and rate design as it affects the two classes;
- operating costs;
- capital expenditures; and
- the overall reasonableness of Manitoba Hydro's interest and depreciation expenses, its load forecasts, and the treatment of its deferral accounts.

The GSS/GSM Representative proposes to retain Dustin Madsen of Emrydia Consulting to assist it with the application and expects Mr. Madsen's primary area of focus to be the issue of cost allocation between customer classes.

3.1.4 Manitoba Industrial Power Users Group

The Manitoba Industrial Power Users Group ("MIPUG") is an association of large energy consumers working together on key matters of common priority related to electricity supply and rates in Manitoba. MIPUG's primary concerns relate to the reliability of the electricity supply, Manitoba Hydro's ability to deliver to customers, the reasonableness of Manitoba Hydro's revenue requirement, and the appropriateness of rate class cost allocations used to establish electricity rates. MIPUG members seek rates that are reasonable and appropriate, fair and equitable, while remaining stable and predictable in the short, medium, and long term.

MIPUG member companies are substantial users of electric power in Manitoba Hydro's General Service Large (GSL) rate classes and together account for approximately 20% of Manitoba Hydro's domestic energy sales.

MIPUG expects to critically assess the following issues in the hearing:

- export markets and export revenues;
- linkages between financial projections in relation to the load forecast, demand-side management activities, major decreases in the costs of purchases and imports, major reductions in revenues from exports, major changes in the balance of exports between contracted firm sales and opportunity sales, and the proposed

capital spending aimed at enhancing hydraulic capacity from existing infrastructure;

- depreciation, including both the proposed adoption of the Equal Life Group methodology and the asset lives proposed in Manitoba Hydro's depreciation study;
- operating performance, and linkages to salary costs for front-line workers;
- risk scenarios and how to understand the uncertainty inherent in the long-term financial forecast, including drought, interest rate variability, and export prices;
- financial targets and Manitoba Hydro's performance against appropriate targets;
- deferral accounts;
- capital spending; and
- Phase 2 matters based on the second part of Manitoba Hydro's application.

MIPUG intends to collaborate with the Consumers Coalition to develop a key issues list for the hearing. On a preliminary basis, MIPUG has agreed to collaborate with the Consumers Coalition on various issues as described in section 3.1.2 of this order.

MIPUG plans to retain the following expert consultants to assist it with respect to the hearing:

- Patrick Bowman of Bowman Economic Consulting Inc., on the issues of Manitoba Hydro's revenue requirement, financial targets, finance expense, debt management, depreciation expense, amortization, revenue forecasts, cost of service, and the use of short-, medium- and long-range forecasts and projections;
- Dale Friesen of Intergroup Consultants, on the issues of consumer behaviour, load forecasts, resource planning, renewable generation resources, water resources, energy efficiency and demand response, cost of service allocations, standard and alternative rate designs, customer impacts and capital expenditures; and

- Jeff Crozier of Intergroup Consultants, on the issues of operating, maintenance and administrative expenses, capital expenses, economic forecasting, inflation and interest rates.

On addition, MIPUG is contemplating retaining Patricia Lee as an expert on depreciation.

3.1.5 Manitoba Keewatinowi Okimakanak

Manitoba Keewatinowi Okimakanak (“MKO”) is a non-profit advocacy organization that represents more than 65,000 Treaty First Nation citizens in Northern Manitoba. It is governed by the elected Chiefs of the 26 First Nations who are signatories to Treaties 4, 5, 6, and 10. MKO receives its mandate by resolution of the MKO Chiefs in General Assembly. The Grand Chief, elected for a three-year term, serves as the principal spokesperson of MKO, and a regionally representative Executive Council of Chiefs provides ongoing direction between General Assemblies. The four First Nations in Manitoba currently served by diesel power are MKO-member First Nations.

MKO plans to focus its intervention on the following issues:

- make a case for the Board to recommend to the Minister responsible for the Board to amend *The Manitoba Hydro Act* to create, or permit the creation of, a First Nation On-Reserve Residential Ratepayer class;
- explore possible remedial rate-relief measures for First Nation residential customers, both on- and off-reserve, that are within the Board’s jurisdiction under *The Manitoba Hydro Act*; and
- relate provisions of Treaty Nos. 4, 5, 6, and 10 and the official government policy of Reconciliation with Aboriginal peoples as these are relevant to Manitoba Hydro’s application and MKO’s intervention.

MKO does not plan to retain an expert consultant.

3.1.6 Mr. Gerald Finkle

Mr. Finkle seeks intervener status on his own behalf. He expresses concern about indeterminate rate increases and the risks to the financial health of the Province of Manitoba as well as its businesses and residents. Aside from his application, Mr. Finkle did not make a written submission and did not attend the oral pre-hearing conference to support his application for intervener status, although duly served with notice of the pre-hearing conference.

3.1.7 Manitoba Hydro

Manitoba Hydro was provided an opportunity to comment on the applications for intervener status and the scope of issues raised by the applicants. Manitoba Hydro's comments from its November 30, 2022 correspondence and at the oral Pre Hearing Conference are summarized below.

Assembly of Manitoba Chiefs

Manitoba Hydro does not object to the AMC's application for intervener status or the retainer of its proposed experts. However, Manitoba Hydro requests the Board to require AMC to limit the proposed hourly rates of its consultants to tariff rates.

Consumers Coalition

Manitoba Hydro does not object to the Consumers Coalition's application for intervener status, but is concerned about the potential duplication of effort among the Consumers Coalition's proposed experts. Specifically, Manitoba Hydro submits that the Board should limit the Consumers Coalition to one expert on financial matters. In particular, Manitoba Hydro questions the need for Pelino Colaiacovo of Morrison Park Advisors on the issue of Manitoba Hydro's access to financial markets. Manitoba Hydro states that it obtains a flow-through credit rating from the Province of Manitoba, who is not a participant in the general rate application, and that the Consumers Coalition already expects Mr. Rainkie to provide evidence on the overall application.

Manitoba Hydro also submits that the issues of Manitoba's energy policy and the trends in the evolving energy landscape on the electric load forecast should be ruled out of scope of this proceeding. In Manitoba Hydro's view, these matters will be incorporated into Manitoba Hydro's integrated resource plan, which is a requirement under recent legislative amendments, namely *The Manitoba Hydro Amendment and Public Utilities Board Amendment Act*, S.M. 2022, c. 42. The integrated resource plan should be ruled out of scope, as the government may direct a specific review of that plan in due course.

Representative of the General Service Small and General Service Medium Customer Classes

Manitoba Hydro does not object to the Representative of the General Service Small and General Service Medium Customer Classes' application for intervener status, but notes the potential overlap between the retainer of this intervener's proposed expert, Dustin Madsen, with the scope of the Consumers Coalition's proposed expert on cost of service matters, Kelly Derksen.

Manitoba Industrial Power Users Group

Manitoba Hydro does not object to MIPUG's application for intervener status but is concerned about MIPUG's planned retainer of more than one expert witness with depreciation experience. In Manitoba Hydro's view this is unnecessary, especially since the Representative of the General Service Small and General Service Medium Customer Classes also intends to retain a depreciation professional.

Manitoba Hydro submits that Mr. Dale Friesen should not be approved as an independent expert consultant since he serves as a representative of, and advocate for, MIPUG. As such, he is not an independent expert. In Manitoba Hydro's view, if MIPUG would like to utilize Mr. Friesen's services for the purposes of the hearing, his fees should be paid for by MIPUG and not funded by the Board.

Manitoba Keewatinowi Okimakanak

Manitoba Hydro does not object to MKO's application for intervener status, but notes that Manitoba Hydro is not seeking an increase to diesel rates. As such, electricity rates in the communities served by diesel power should not be an issue of focus in the general rate application.

Mr. Gerald Finkle

Manitoba Hydro indicates that Mr. Finkle has previously applied for intervener status on several occasions. On each of those occasions, the Board did not approve Mr. Finkle as an intervener but encouraged him to communicate his issues to an approved intervener representing residential ratepayers, and to make a written or oral presentation to the Board. In Manitoba Hydro's submission, Mr. Finkle's issues are being raised by other applicants for Intervener status. Specifically, Mr. Finkle should communicate his concerns to the Consumers Coalition.

3.2 Board Findings

3.2.1 Intervener Status and Intervener Costs

The purpose of interveners is to assist the Board in the hearing process, including improving the Board's understanding of the issues in scope in the hearing. Intervener status is not a matter of right but must be approved by the Board under its *Rules of Practice and Procedure*.

The Board approves the applications for intervener status of the following applicants:

1. Assembly of Manitoba Chiefs;
2. Consumers Coalition;
3. Representative of the General Service Small and General Service Medium Customer Classes;
4. Manitoba Industrial Power Users Group; and

5. Manitoba Keewatinowi Okimakanak.

With respect to Manitoba Keewatinowi Okimakanak, the approval is limited to the impact of the proposed rate increases and rate design on residential customers in the Northern First Nations that are MKO members. The Board also directs MKO to section 3.2.2 of this order.

The Board does not approve the application for intervener status of Mr. Gerald Finkle. In determining whether intervener status is the appropriate method of participation for a specific party, the Board considers, for purposes of regulatory efficiency, whether the proposed intervener represents a substantial number of ratepayers that are not otherwise represented on issues that are within the scope of this hearing. In Mr. Finkle's case, the issues are better raised through the Consumers Coalition, which represents the interests of residential ratepayers. The Board invites Mr. Finkle to communicate his issues to the Consumers Coalition for its consideration. The Board also invites Mr. Finkle to either provide a written presentation or register with the Board Secretary to provide an oral public presentation.

The Board reminds all approved interveners of the Board's maximum fee schedule for the purpose of preparing their proposed budgets. The fee schedule establishes maximum rates for legal counsel, accountants and providers of engineering services, and requires the Board to determine appropriate rates for other services on a case-by-case basis. With respect to the rates for the AMC's proposed witnesses, the Board notes that economists fall into the "other services" category, which means the Board will have to consider the proposed rates at the cost award stage of the process.

The approved interveners are to collaborate among themselves in the development of their scope of work for the issues and corresponding work plans and budgets. To the extent interveners are collaborating on an issue, the Board expects each intervener to indicate clearly which intervener will take the lead. If interveners have differing perspectives on a common issue, interveners should highlight this in their budgets and work plans.

By December 23, 2022, approved interveners are to submit their detailed cost estimates for their intervention, including their consultants and expert witnesses, using the cost estimate spreadsheet available on the Board's website. Cost estimates that are incomplete or prepared improperly will be returned to the intervener.

The filing of intervener cost estimates does not guarantee or disqualify an intervener from eligibility for a cost award. Any comments provided by Board staff on intervener cost estimates are not binding on the intervener or the Board. All cost awards, whether an advance of funds or a final costs award, are in the sole discretion of the Board and all applications for cost awards will be considered by the Board in accordance with the criteria set out in section 3.0 of the Intervener Costs Policy. Should any approved intervener seeking an award of costs determine that its scope of participation in the proceeding or its final cost application will deviate or differ materially from its cost estimate, the intervener is to notify the Board forthwith. Unless there are exceptional circumstances, interveners will not be approved for such deviations or differences without the required prior written notification of the Board.

The Board's Intervener Cost Policy may be obtained at the following link:

<http://www.pubmanitoba.ca/v1/about-pub/pubs/int-cost-policy-gra-.pdf>

3.2.2 Legislative Authority

In light of submissions received during the pre-hearing conference, and to avoid potential confusion during the hearing process, the Board considers it advisable to provide a summary of the legislative authority under which the general rate application is being heard.

Bill 36, *The Manitoba Hydro Amendment and Public Utilities Board Amendment Act*, received Royal Assent on November 3, 2022 and has now been passed into law as S.M. 2022, c. 42. Part 1 of the statute reforms the manner in which, and the authority under which, the Board approves Manitoba Hydro's rate applications. While Part 1 came

into force on Royal Assent, the following transitional provision applies to the hearing of this general rate application:

Transitional

65 *Despite Part 1 and sections 23 and 64 of this Act, the following Acts or provisions, as they read immediately before the enactment of this Act, continue to apply to the determination of rates for the retail supply of power under **The Manitoba Hydro Act** for any period ending before April 1, 2025:*

*(a) Part 4 of **The Crown Corporations Governance and Accountability Act**;*

*(b) **The Manitoba Hydro Act**;*

*(c) section 2 of **The Public Utilities Board Act**.*

As such, this is expected to be Manitoba Hydro's last general rate application to be heard under the former legislative regime.

Subsection 39(11) of *The Manitoba Hydro Act*, which was relied on by MKO as an authority for the Board to make recommendations to the provincial government, no longer exists and does not provide the Board with any authority. The provision was a remnant of the time when the Board did not fix rates under *The Crown Corporations Governance and Accountability Act* or its predecessor statute, *The Crown Corporations Public Review and Accountability Act*, but rather made non-binding rate recommendations to the government. For many years, the provision has not been operational and, effective November 3, 2022, the provision has been repealed. This does not prevent the Board from, as part of an order in a general rate application, making recommendations to the government related to the application.

3.2.3 Independence of Experts

In light of arguments raised by Manitoba Hydro with respect to the independence of certain proposed intervenor experts, the Board considers it advisable to remind the

parties about the distinction between a consultant and an independent expert witness, as well as the legal obligations of the latter.

A consultant may assist a party in understanding and testing the evidence before the Board, drafting information requests, and preparing for a hearing. An independent expert witness provides their own opinion evidence on the record. The latter owes a duty to the court or tribunal in front of which the expert opinion evidence is filed to file independent, unbiased evidence. As the Board recently stated in Order 109/22:

The duty of an expert witness to a court or tribunal, and the implication of any impartiality or bias, was summarized by the Supreme Court of Canada in White Burgess Langille Inman v. Abbott and Haliburton, 2015 SCC 23:

[2] Expert witnesses have a special duty to the court to provide fair, objective and non-partisan assistance. A proposed expert witness who is unable or unwilling to comply with this duty is not qualified to give expert opinion evidence and should not be permitted to do so. Less fundamental concerns about an expert's independence and impartiality should be taken into account in the broader, overall weighing of the costs and benefits of receiving the evidence.

[...]

[50] [...] The concept of apparent bias is not relevant to the question of whether or not an expert witness will be unable or unwilling to fulfill its primary duty to the court. When looking at an expert's interest or relationship with a party, the question is not whether a reasonable observer would think that the expert is not independent. The question is whether the relationship or interest results in the expert being unable or unwilling to carry out his or her primary duty to the court to provide fair, non-partisan and objective assistance.

The Board shares the concern expressed by Manitoba Hydro that, while Mr. Friesen has ample experience on the matters for which MIPUG intends to retain him, his involvement

as a representative of MIPUG means that he should not file independent expert evidence on the record of the proceeding. However, Mr. Friesen's involvement on behalf of MIPUG does not disqualify him from serving as a consultant to assist MIPUG in the course of the hearing. In that respect, the Board will not pre-determine any potential application by MIPUG of an award of costs.

3.2.4 Hearing Scope

The Board notes that, as of the date this order is issued, Manitoba Hydro's application is not yet complete. Manitoba Hydro intends to file the rate design and cost of service portion of the application later in December 2022. Manitoba Hydro's updated rate application – based on 2.0% rate increases rather than the 3.5% initially sought – had not yet been filed by the date of the pre-hearing conference. As such, the Board is not prepared to make a ruling as to in-scope and out-of-scope issues for the hearing at this time. The Board anticipates issuing a second procedural order in due course that will provide guidance on scope.

With respect to Manitoba Hydro's submission that the utility's integrated resource plan should be out of scope, the Board agrees that the review of the completed plan is out of scope. At this time, the integrated resource plan has not been released and, if the plan is referred to the Board for review and recommendation under subsection 38.1(3) of *The Manitoba Hydro Act*, that review will happen outside the current general rate application. Nonetheless, to the extent that assumptions made with respect to the integrated resource plan underpin Manitoba Hydro's general rate application (such as load forecasting, export revenue or planned capital expenditures), testing those assumptions in the hearing of the application is relevant and in scope.

3.2.5 Hearing Timetable

The Board establishes the hearing timetable attached as the Appendix to this order. The Board notes the following with respect to the hearing timetable:

- the timetable was developed through consultation among legal counsel;

- to the extent the Board or approved interveners issue information requests based on Manitoba Hydro's original application as filed on November 15, 2022, Manitoba Hydro, in its responses, will provide updated information based on the utility's re-filed application;
- by way of an informal agreement among the parties, MIPUG will receive a one-week extension – from January 10, 2023, to January 17, 2023 – to deliver Round 1 Phase 2 information requests to Manitoba Hydro.

4.0 COMMERCIALLY SENSITIVE INFORMATION

4.1 The Board's Rules for Receiving Confidential Filings

Proceedings before the Board are public. By standard protocol, and pursuant to the Board's *Rules of Practice and Procedure*, documents filed with the Board by a party to a proceeding are placed on the public record. However, under Rule 13(2) the Board may receive information in confidence on any terms it considers appropriate if the following test is met:

- a) if the Board is of the opinion that disclosure of the information could reasonably be expected
 - i. to result in undue financial loss or gain to a person (including Manitoba Hydro and other corporations) directly or indirectly affected by the proceeding; or
 - ii. to harm significantly that person's competitive position;

or

- b) if
 - i. the information is personal, financial, commercial, scientific or technical in nature; or
 - ii. the information has been consistently treated as confidential by a person directly affected by the proceeding; and
 - iii. the Board considers that the person's interest in confidentiality outweighs the public interest in the disclosure of the information.

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

Rule 13(5) allows the filing party to request that the document be withdrawn prior to being placed on the public record where the Board has determined to place any part of the document on the public record.

4.2 Manitoba Hydro's Motion

Manitoba Hydro has made a motion to treat portions of the following documents filed by Manitoba Hydro as commercially sensitive information ("CSI") to be filed in confidence in accordance with Rule 13 of the Board's *Rules of Practice and Procedure*:

Document	Manitoba Hydro's Reason for Claiming CSI Status
MFR 28	This MFR contains incremental revenues and unit revenues for Keeyask by year under three sets of assumptions. Knowledge of unit revenues (actual or forecast) provides counterparties with insight into how Manitoba Hydro prices its products. Further, disclosure of revenues could lead counterparties and/or their regulators to second guess the prudence of their contracts. In the past, disclosure has caused commercial counterparties to demand to renegotiate terms sheets or withdraw from negotiations entirely. Disclosure of such information will negatively impact Manitoba Hydro's competitive position. PUB MFR 28 contains substantially the same information as the 2021/22 Interim Rate Application PUB MFR 11. The PUB accepted Manitoba Hydro's response to PUB MFR 11 in confidence with no further access granted.
MFRs 42, 84, 85 & 86	Manitoba Hydro has entered into agreements for the firm supply of electricity with counterparties in the United States, and Canada, at negotiated, fixed prices. These contracts contain information on pricing, revenues, volumes (both energy and capacity) and other terms and conditions related to the sale or proposed sale of electricity to these counterparties which are confidential and commercially sensitive. Manitoba Hydro will be required to disclose information derived from these contracts to fully respond to these MFRs as requested by the PUB. These MFRs contain substantially the same information as MFR's 24, 79, 83 and 84 filed in the 2017 /18 & 2018/19 general rate application. The PUB accepted Manitoba Hydro's request in Order 112/17.
MFR 83	This MFR contains Manitoba weather information that is utilized within the electric load forecast & natural gas volume forecast. Manitoba Hydro's Degree Days Heating ("DOH") data could be used to derive Manitoba energy demand (gas and electric), which may result in adverse pricing activity by counterparties when Centra and Manitoba Hydro transact in energy markets, thereby increasing costs for Manitoba ratepayers. The PUB accepted Centra's request to redact this information in Centra's 2019/20 General Rate Application in a letter dated February 26, 2019, on page 3.
Portions of Appendix 5.3	This appendix includes detail on how Manitoba Hydro plans to serve its export contracts under severe drought, largely by having the market provide the energy. Having this level of detail in the public domain may be damaging to Manitoba Hydro's reputation as a reliable supplier of energy and therefore affect Manitoba Hydro's ability to enter into new export contracts. Also redacted are details on what level of imports Manitoba Hydro will rely upon in a severe drought. If potential counterparties had this detail, it may impact Manitoba Hydro's ability to negotiate bilateral contracts under future drought conditions.

4.3 Submissions Received

None of the applicants for intervener status challenges the merits of Manitoba Hydro's claim to treat the information referred to in section 4.2 above as CSI. However, MIPUG emphasizes that the information is critical to an evaluation of the influence that the export market has in Manitoba Hydro's financial forecast. In the absence of direct access to the information, MIPUG seeks a means to ensure that the analysis and findings of a review of the information are not withheld from interveners. If the Board decides to engage the services of an independent expert to review the information, then MIPUG recommends that the Board obtain input from interveners on the terms of reference for the review.

4.4 Board Findings

The Board finds that Manitoba Hydro has demonstrated that the redacted information included in the documents referenced in section 4.2 above meets the requirements of Rule 13. In particular, the Board considers that in each instance, the requirement of Rule 13(2)(a)(i) is met, as disclosure of the information could harm Manitoba Hydro's competitive position in the marketplace, for the reasons set out by Manitoba Hydro as summarized in section 4.2 above.

The Board will consider whether, and to what extent, an independent expert consultant should be retained to review CSI filed in this proceeding and provide a report on the public record.

5.0 IT IS THEREFORE ORDERED THAT:

1. Intervener status for Manitoba Hydro's 2023/24 and 2024/25 General Rate Application **BE AND IS HEREBY APPROVED** for the following entities:
 - a) Assembly of Manitoba Chiefs;
 - b) Consumers Coalition (a coalition of the Manitoba Branch of the Consumers' Association of Canada, Harvest Manitoba and the Aboriginal Council of Winnipeg);
 - c) Representative of the General Service Small and General Service Medium Customer Classes;
 - d) Manitoba Industrial Power Users Group; and
 - e) Manitoba Keewatinowi Okimakanak.
2. Intervener status for Mr. Finkle **BE AND IS HEREBY DENIED**.
3. Approved interveners must provide the Board with a budget for their intervention by December 23, 2022.
4. The hearing timetable in the attached Appendix "A" is established for the orderly exchange of evidence in the 2023/24 and 2024/25 General Rate Application.

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, K.C."

Board Chair

"Rachel McMillin, B.Sc."

Associate Secretary

Certified a true copy of Order No. 130/22
issued by The Public Utilities Board



Associate Secretary

APPENDIX “A” – HEARING TIMETABLE

Procedural Step	Due Date
Information requests from the Public Utilities Board to Manitoba Hydro (Round 1, Phase 1)	December 13, 2022
Information requests from interveners to Manitoba Hydro (Round 1, Phase 1)	December 20, 2022
Filing of Phase 2 of Manitoba Hydro’s application	December 21, 2022
Intervener budgets	December 23, 2022
Response from Manitoba Hydro to intervener budgets	January 6, 2023
Motions (if any) on refusals to answer information requests or to provide commercially sensitive information	January 9, 2023
Information requests from all parties to Manitoba Hydro (Round 1, Phase 2)	January 10, 2023
Hearing day for motions (if required)	January 13, 2023
Manitoba Hydro responses to information requests (Round 1, Phase 1 & 2)	February 3, 2023
Motions (if any) on insufficient responses to information requests	February 8, 2023
Hearing day for motions (if required)	February 13, 2023
Information requests from all parties to Manitoba Hydro (Round 2)* *Questions to be limited to follow-up on Round 1 information requests	February 15, 2023
Manitoba Hydro responses to information requests (Round 2)	March 10, 2023
Intervener evidence	April 3, 2023
Pre-hearing conference (if required)	April 6, 2023
Information requests from all parties to interveners	April 14, 2023
Intervener responses to information requests	April 28, 2023
Manitoba Hydro rebuttal evidence	May 5, 2023
Oral Hearing	May 12 – June 30, 2023